



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Level 9, 193 North Quay (cnr Herschel St) Brisbane Qld 4000

Phone: (07) 3211 4466

Fax: (07) 3211 4655

Email: edoqld@edo.org.au

www.edo.org.au/edoqld

ABN 14 911 812 589

INTEGRATED PLANNING ACT SEMINAR – CHALLENGING DEVELOPMENT

PART ONE - 10 tips for your development application submission

1. **Individual submissions:** tend to be much more effective than petitions or form letters.
2. **Who can submit:** Anyone (including groups, even if unincorporated) can make a submission on an advertised development application – you don't need to be a resident of the area.
3. **Documents you need:** Before you write the submission, get copies of and read:
 - The development application and supporting material. The assessment manager, usually the local Council, has to keep these available for inspection and copying (bar "sensitive security information") until the appeal period against the decision of the Council expires, but may charge you to photocopy it;
 - The local government planning documents. This includes the planning scheme and policies, maps, temporary planning instruments and any relevant local area documents, and should also be available for a fee at your local Council. You should also get any relevant State Planning Policies (eg Conservation of Koalas on the Koala Coast) from the Department of Local Government and Planning website (see bottom of page 4);
 - Any relevant codes the development is required to comply with; and
 - Any planning, ecological, cultural, traffic or other studies for the area which are relevant given the nature of the application.
4. **Impact versus Code assessment:** The public is only notified about development applications for impact assessable development - these applications must be publicly advertised, and the public has a formal entitlement to make "submissions" (objections) about them. There is no right for a public submission about Code assessable development (which is not usually advertised) to be taken into account. Sometimes public submissions are sought on Code assessable development applications but not appeals rights follow. For this reason, where a development application has aspects that are impact assessable as well as aspects that are Code assessable, focus on the impact assessable aspects in your submission, but if you have particular concerns that the development will not comply with any relevant Codes (eg building codes, landscape codes etc) then you might as well draw this to the attention of the assessment manager in your submission.
5. **Grounds of objection:** In your submission, focus on grounds of objection, include as much supporting evidence as you can and try to avoid being overly emotive, and structure your submission clearly. Grounds for making submissions can include the impact of a development on amenity, urban design

and character; traffic; noise; water pollution; air pollution; waste management; land contamination; need and economic factors, property values, ecological impacts, cultural impacts, social impacts; the reasonable expectations of residents; and, most influentially, town planning grounds (see point 6 below). Remember, for impact assessable development the Council's decision must advance ecological sustainability.

6. Town planning grounds of objection: These are the most influential grounds of objection. The Council **must refuse** an application that conflicts with the Planning Scheme (or, for a transitional Planning Scheme, the Strategic Plan or a Development Control Plan) where there are not sufficient town planning grounds to justify approving the application despite the conflict, and also **must refuse** an application which compromises the Desired Environmental Outcomes (in the Planning Scheme) for the area. If there are any town planning conflicts like this in your development application, direct your objection to them and focus on how the application does not comply with any of the planning documents.

7. Defects in the application: Use your submission to point out any defects in the development application, for example misdescription of the land, absence of written consent of the owner of land, if the developer is not the owner, or any non-compliance with the requirements about advertising the development application.

8. Suggestions about conditions: If you believe that any of your concerns can be addressed by imposing certain conditions on the development approval, you should set out example conditions (or the type of condition you think would be suitable).

9. Proper form of objection: To be taken into account a submission must be "properly made". This means it must be in writing, be received during the submission period (this is a minimum of either 15 or 30 business days, but may be more, and should be specified on the advertising notice), state the name and address of every person making the submission, be signed by all making the submission, state the grounds of the submission and the facts relied on to support those grounds, and be addressed and sent to the assessment manager for the development application (usually the local Council). Do not fax your submission, post or hand deliver it and get a receipt, ensuring that if you send it by post it will arrive on or before the last date for making a submission.

10. Fees: There is no fee for lodging a submission (but if you engage an expert or some other person to help you in writing it they may charge a fee), but there will be court costs and fees if you decide to appeal against the assessment manager's decision. You will only end up in court if you decide to appeal against the assessment manager's decision, or if the developer appeals against the decision and you decide to join the appeal as a co-respondent.

Want more information?

- **Check out the website of the Department of Local Government and Planning at <http://www.ipa.qld.gov.au/main/index.asp> for links to IPA, State Policies and Codes and other useful information**
- **Check out EDO Factsheets at www.edo.org.au/edoqld/index.html, then click on "Planning Law Factsheets" and select your area of interest**

NOTE: you must lodge a submission to have the right to appeal Council's decision

PART TWO - 10 tips for your Planning and Environment Court appeal against a development approval

N.B. The Community Litigants Handbook discusses these steps in much more detail.

1. Writing your appeal notice: Before you start writing your appeal notice, go to Council and photocopy the Public Scrutiny file about the development application - you will need it to write a good notice of appeal, and don't miss out, because once the appeal period expires the file gets taken away from public access. Make sure to use the correct form to do your Notice of Appeal - see the forms to use online at <http://www.courts.qld.gov.au/practice/legislation/p&e.htm> or see an example Notice of Appeal in EDO's The Community Litigants Handbook. Your Notice of Appeal can be very similar to your objection to Council, but make sure you include all the main grounds (especially town planning grounds) that you want the court to consider. In a submitter appeal the Council will be named as the Respondent and the developer will be named as the Co-Respondent. Get your Notice of Appeal filed with the Court Registry in time (20 business days after receiving the decision notice from the Council) and personally serve it within a further 10 business days on the developer, the Council, the Chief Executive at the Department of Local Government and Planning, and any concurrence agencies (other interested Departments) listed in the Acknowledgment Notice by Council. Court Registries (where you file/lodge court documents) are usually open from 9am til 4pm. It is wise to prepare an affidavit of service of the Notice of Appeal so you can prove to the Court that the other parties received it – see the form to use for an affidavit at <http://www.courts.qld.gov.au/practice/legislation/p&e.htm>, or ring EDO for an example.

2. Directions hearing: Normally after your appeal is filed and served, the other side will serve you with an 'Entry of Appearance' saying they will be involved in the case. The next step in the action will be to list the matter for directions by the court (called a "directions hearing"), where the court sets a timetable for the matter to be prepared for hearing. The court usually sets dates for disclosure of relevant documents by each party, the preparation and exchange of expert reports, a settlement conference and exchange of offers to settle. The matter will go before the court against at the conclusion of the timetabled steps and then dates for hearing will be set.

3. Self-representation: You are allowed to represent yourself in the court, but might want to hire a barrister if the matter is complicated. If you have very limited funds, consider hiring a barrister just for the directions hearing, which is the first court hearing where the timetable for all future actions is set (see point 2). As an individual, community or green group with fewer resources than a developer, it is important the court gives you enough time within which to perform the tasks required of you. Most cases can be heard within about four months of being commenced in Brisbane (in court centres outside Brisbane delays are longer because there are fewer judges to share the workload) so think about what else you've got going on and plan ahead.

4. Engage experts: It is helpful to discuss your case with experts before you appeal, to help organise the grounds of your appeal. It is also strongly advisable to engage an expert to give expert evidence (especially on town planning) to the Planning and Environment Court – the court will not just take your word for it about

environmental or planning issues, they will require someone with relevant expertise to do a report that clearly sets out the potential adverse effects of the development or clearly points out conflicts with the Planning Scheme. This is relevant information for the court, as the court makes a decision afresh about whether the development should be approved, and good expert evidence can tip the scales.

5. Court rules: It is very important that you comply with the court's procedural requirements. Most community groups can achieve this with reasonable diligence. The procedural requirements are contained mostly in the Court Rules (available at http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegPlaPECRu99_01A.pdf) and also in the Practice Direction of the Court (available at <http://www.courts.qld.gov.au/practice/pracdir/further.htm> under 'Planning and Environment Court'). Have copies of the Court Rules and read them thoroughly.

6. Court fees: The cost of appealing to the court will vary depending upon whether you retain Counsel (a barrister) or experts. Your costs might include fees for filing documents with the Court (usually \$10 - \$20), fees for retaining any experts (optional but recommended), fees for engaging a barrister to represent you in Court (optional but recommended in complex cases), and miscellaneous costs like the cost of travel to and from Court for hearings and photocopying or printing fees for making copies of your documents which need to be sent to other parties.

7. Court costs: Generally each party to the appeal bears their own costs, regardless of which party 'wins' the case. **However**, the court can order a party to pay another party's legal costs where the court thinks that the case or part of it has been frivolous or vexatious (ie groundless, and instituted to wrongfully delay or obstruct), or where a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party, or where a party has incurred costs because another party has defaulted in the court's procedural requirements, or generally if a party does not properly discharge its responsibilities in the proceedings. So it is very important that you comply with the Court's procedural requirements. Never try surprise tactics with new material or late notice of an important decision you've made – always give the other parties and the court lots of notice.

8. Court etiquette: Never be late to Court and always be organised with your paperwork (with enough copies of documents) and polite to the Judge – refer to the Judge as "Your Honour" and stand when speaking to the judge or examining a witness. Treat other people with the same respect you'd expect them to show you. Don't interrupt or talk over other people (unless you are objecting to evidence from a witness). Keep to the point and don't waffle. If the judge rules against you, accept the ruling and move on to your next point.

9. Court location: The Planning and Environment Court has resident judges in Brisbane, Rockhampton, Southport, Townsville and Cairns, but the court can sit in any place. The Court has a general policy of hearing cases, wherever possible and convenient to do so, in the locality where the dispute before it has arisen. An appeal can be started in any Registry of the court, and must be then heard in that location unless a party applies to have it moved elsewhere for fairness or convenience.

10. Check your mail daily! Your "address for service" (where the other parties will send court documents to you) will be your residential address (unless you specify another address, such as that of your solicitors, or your place of business). The general rule is that all documents can be served by ordinary post after the appeal is commenced. You should be careful to ensure that your mail is checked at least every day for documents served by the other parties. You should also ensure that the receptacle for the receipt of mail is secure and cannot be entered by another person

without your authority - because there is a presumption of effective service upon posting a document.

Want more information?

- Check out Dept of Local Government and Planning website at <http://www.ipa.qld.gov.au/main/index.asp> for links to IPA, State Policies and Codes and other useful info
- Check out EDO Factsheets at www.edo.org.au/edoqld/index.html, then click on “Planning Law Factsheets” and select your area of interest
- Buy a copy of [The Community Litigants Handbook](#), \$30 (*inc GST*), from EDO. For details, follow the links from our website: www.edo.org.au/edoqld