

APPEALS UNDER LANDSCAPE SOUTH AUSTRALIA ACT 2019

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Section 216 of the *Landscape South Australia Act 2019* (the Act) provides for appeals against certain decisions made by the Minister for Environment and Water under the Act. Such appeals are heard by the Environment, Resources and Development Court (the Court), which requires that all appeals must be instituted in accordance with the rules in the *Environment Resources and Development Court Rules 2003* (Court Rules).

This document has been prepared to assist you to understand how to appeal a decision made by the Minister for Environment and Water and the processes involved. To view the full Court Rules visit www.courts.sa.gov.au/ForLawyers/Pages/ERD-RulesForms-Current.aspx (Part 5 relates to appealing administrative decisions). To view the Act, visit www.legislation.sa.gov.au/LZ/C/A/LANDSCAPE%20SOUTH%20AUSTRALIA%20ACT%202019.aspx¹.

How to appeal a decision

In order to appeal a decision, you must, within six weeks of the decision you are appealing against, complete the steps outlined below.

Complete the prescribed form

In order to appeal against an administrative decision under the Act, you must complete the prescribed form. This is [Form 5G - 'Appeal against an Administrative Decision'](#). This form will require you to:

- provide name and postal and e-mail addresses and telephone number of the Authority against whose decision the appeal is instituted (being the Minister for Environment and Water – contact details under the 'lodge the appeal' section below);
- specify the decision to which the appeal relates;
- specify the grounds of appeal against the decision;
- specify the full name and address where hard copy documents can be delivered to the applicant and, if available, the telephone number and e-mail address of the applicant.

Every application to appeal an administrative decision must have attached to it a copy of the notice of decision of the Authority which is the subject of the appeal.

¹ Correct as at 1 July 2020. Court rules are subject to change from time to time.

Lodge the Appeal

Under section 216 of the Act, your appeal *must* be lodged with the Court within six weeks of the decision you are appealing against. This includes:

- Lodging Form 5G and paying the prescribed fee to the Court; and
- Providing a copy of Form 5G to the Minister for Environment and Water.

While the Court may extend the time to appeal, you should make every attempt to institute your appeal within six weeks.

You may lodge your appeal with the Court either by post, personal delivery or email. If you are personally delivering, you may deliver to the Court located at Sir Samuel Way Building, 241- 259 Victoria Square, Adelaide or to an alternative Country, Suburban or City Court listed at www.courts.sa.gov.au/GoingtoCourt/Pages/default.aspx.

If you are mailing or emailing your appeal, it should be addressed to:

The Registrar
Environment, Resources and Development Court
GPO Box 2465, ADELAIDE SA 5001
Email: erdcourt@courts.sa.gov.au

The prescribed fee for lodging an appeal is subject to annual review. You should contact the Court on telephone: (08) 8204 0289 to confirm the current fee and obtain advice on how to make payment. Fees can also be obtained at website:

www.courts.sa.gov.au/OurCourts/ERDCourt/Pages/default.aspx. The fee *must* accompany the appeal.

A copy of Form 5G (and supporting documentation) must also be served on the Minister for Environment and Water, through their representative. You can do so by delivering it, posting or emailing to:

Minister for Environment and Water
Care of General Manager, Water Licensing Branch
Department for Environment and Water
81-95 Waymouth Street
GPO Box 1047, ADELAIDE SA 5001
Email: DEW.WaterLicensingCorrespondence@sa.gov.au

Appeal procedures

Conferences and Hearings

Once your appeal is lodged, it will be set down for a conference where all parties attend. You will be notified, in writing, of the place and time of the conference. The Commissioner of the Court will convene the conference. The purpose of the conference is to assist parties to explore a possible resolution of the matters in dispute, without resorting to a formal hearing. To that end, it is expected that:

- the matters in dispute, from the perspective of each party, will be aired and discussed openly, with a view to a fair and reasonable exchange of views in good faith;
- the parties (or their representatives) will have obtained the authority to fully discuss, negotiate and authorise a settlement of the issues in dispute, should agreement be reached; and
- each party (or their representatives) will be prepared to discuss its case, identify the issues it proposes to argue, and the grounds therefor and respond as best it can to the case of each other party.

The appeal hearing will usually be conducted in the Sir Samuel Way Building, 241- 259 Victoria Square, Adelaide. However, telephone conferencing is available or you may discuss alternative locations with the Court.

If a matter does not settle at conference, the conference will be closed and it will proceed to hearing. Anything said or done at the conference is confidential and is not admissible in proceedings before the Court, except by consent of all parties.

When an appeal proceeds to hearing, a 'bench' that the Court sees fit will sit to hear the matter (comprising a Judge and two Commissioners OR a judge or Commissioner). The Commissioner who convened the conference will not be one of the Commissioners that hears the matter.

You will be notified of the time and place of the hearing in writing.

You will be required to pay a hearing fee. This fee is subject to annual review and can be obtained by calling the Court on (08) 8204 0289 or at website: www.courts.sa.gov.au/OurCourts/ERDCourt/Pages/default.aspx.

Possible outcomes of appeal

Under section 218 of the Act the Court may, on hearing an appeal:

- confirm, vary or reverse any decision, order, direction or restriction appealed against, or substitute any decision, order, direction or restriction that should have been made in the first instance;
- refer the subject matter of the appeal to any person or body under the Act for further consideration;
- order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit; or
- make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

General

At both conferences and/or hearings, you may either represent yourself or you may nominate someone to represent or assist you. This person does not necessarily need to be a lawyer. If you are not representing yourself, you need to provide the name and contact details of your representative to the Court. This will assist in setting conference and/or hearing dates.

Proceedings before the Court are relatively informal. Parties who are not legally represented are given as much assistance as possible throughout the conference and hearing process. The Court's staff are able to provide advice on the procedure of the Court (but not legal advice), and throughout the conference or hearing, Court staff are available to answer any queries you may have regarding the process.

Should you have any queries regarding the lodgement of your appeal, or Court procedures, please contact:

Environment Resources and Development Court on telephone: (08) 8204 0289.