

APPEALS UNDER NATURAL RESOURCES MANAGEMENT ACT 2004

Section 202 of the *Natural Resources Management Act 2004* provides for appeals against certain decisions made by the Relevant Authority under the *Natural Resources Management Act 2004*. Such appeals are heard by the Environment, Resources and Development Court, which requires that all appeals must be instituted in accordance with Rule 5 of the Environment Resources and Development Court Rules, 1995. The relevant sections of Rule 5 are set out below, for your information:

5.1 Institution of Appeals

- 5.1.1 Every appeal to the Court shall be by notice of appeal in writing which must:-
- (a) identify the land, watercourse or building to which the appeal relates;
 - (b) name and provide (to the extent the appellant knows) the postal and email(s) addresses and telephone and facsimile numbers of the Minister for Sustainability, Environment and Conservation against which the appeal is instituted;
 - (c) specify the decision or notice of the authority to which the appeal relates;
 - (d) specify the grounds of appeal against such decision or notice;
 - (e) specify the full name of and the address for service of the appellant and, if available, the telephone and facsimile numbers and email address of the appellant; and
 - (g) be signed by the appellant, or on his or her behalf by a solicitor, agent or other representative.
- 5.1.2 Every notice of appeal to the Court shall have affixed to it a copy of the order, notice or notice of decision of the Authority which is the subject of the appeal.
- 5.1.3 No appeal shall be duly instituted until:-
- (a) a notice of appeal meeting the requirements of these Rules has been filed in a registry of the Court;
 - (b) the prescribed fee has been paid; and
 - (c) the notice of appeal has been served on the Authority in the manner prescribed by these Rules.
- 5.1.4 Notwithstanding that a notice of appeal has not been served in accordance with these Rules, the Court may hear and grant any interlocutory application.

On an appeal the Court may:

- (a) affirm or vary the decision, direction or restriction appealed against, or substitute any decision, direction or restriction that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Minister or other authority for further consideration;
- (c) make or give any consequential or ancillary order or direction.

POINTS OF CLARIFICATION

Fee

1. The prescribed fee mentioned in section 5.1.3 (b) above for lodging an appeal is subject to annual review. You should contact the Court registry on 8204 0289 or erdcourt@courts.sa.gov.au to confirm the current fee.

2. The fee **must** accompany the notice of appeal and cheques should be made payable to: *Environment Resources and Development Court*.

Lodging the Appeal

1. Under section 202 of the *Natural Resources Management Act 2004*, your appeal **must** be lodged with the Court **within six weeks** of the decision you are appealing against. While the Court may extend the time to appeal, you should make every attempt to institute your appeal within the time stated.
2. Under 5.1.3 (a) and (c) above, your appeal must be lodged in a registry of the Court. You may do this either by post, or personal delivery. If you are mailing your appeal, it should be addressed to:

The Registrar
Environment, Resources and Development Court
GPO Box 2465
ADELAIDE SA 5001

A copy of your appeal must also be served on the Relevant Authority being the South Australian Arid Lands Natural Resources Management Board. You can do so by delivering or posting a copy of the appeal to:

The Regional Manager
South Australian Arid Lands Natural Resources Management Board
PO Box 78
PORT AUGUSTA SA 5700

L1/ 9 Mackay Street
PORT AUGUSTA SA 5700



APPEAL PROCEDURES

Conferences and Hearings

1. 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. A Commissioner of the Court will convene the conference and assist parties in exploring a possible resolution of the matters in dispute, without resorting to a formal hearing. To that end, it is expected that:
 - (a) the issues in dispute, will be discussed openly by all parties;
 - (b) the parties (or their representatives) attending the conference will have obtained the authority to fully discuss, negotiate and authorise a settlement of the issues in dispute, should agreement be reached
2. If the appeal relates to land in country areas, the Court will usually conduct both the conference and the appeal hearing in the nearest convenient city or township.
3. 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.
4. When an appeal proceeds to hearing, a Judge and two Commissioners will sit to hear the matter. The Commissioner who convened the conference will not be one of the Commissioners that hears the matter.
5. You will be notified of the time and place of hearing in writing.
6. You will be required to pay a hearing fee. This fee is subject to annual review and you will be advised of the amount applicable at the time of the hearing.

Representation

You may wish to obtain legal representation. You are also entitled to be represented or assisted by a person who is not a lawyer. Should you decide to do so after you have lodged your appeal with the Court, you should advise the Court immediately of the name and contact details of your lawyer or the person representing you. This will assist in setting conference and/or hearing dates.

General

Proceedings before the Environment Resources and Development 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 registry 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 do not hesitate to contact:

The Registrar
Environment Resources and Development Court
GPO Box 2465
ADELAIDE SA 5001
Telephone 8204 0289 or Fax 8204 8434
Email erdcourt@courts.sa.gov.au