Information sheet

Environmental Protection Act 1994

Internal review and appeals

This information sheet gives a summary of the process for the review of decisions and appeals to the Land Court and the Planning and Environmental Court under sections 519 to 539 of the Environmental Protection Act 1994 *and subordinate legislation. This information sheet replaces the two information sheets (1) Internal review and appeal to Land Court (EM1157) and (2) Internal review and appeal to the Planning and Environment Court (ESR/2015/1572).*

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1 Introduction

The *Environmental Protection Act 1994* (EP Act) includes provisions for the internal review and appeal of certain decisions made under the EP Act.

The decisions that are subject to internal review are referred to as 'original decisions' in Schedule 2 of the EP Act and subordinate legislation.

A person who is dissatisfied with an original decision made by the Department of Environment and Heritage Protection (the department) may apply to have that decision internally reviewed[1]. Generally an application for a review of an original decision must be made:

- within 10 business days of the receiving a notice about the original decision or from when the department is taken to have made the decision;
- be supported by enough information to enable the department to decide the review application; and
- be made using the approved form Application for review of original decision (ESR/2015/1573[2]).

Where an application has been made for a review of an original decision, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review and any later appeal.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days of receiving the notice about the review decision. Schedule 2, Part 3 includes original decisions for internal review only.

What is the relevant court?

Land Court

Original decisions mentioned in Schedule 2, Part 1 are subject to Land Court appeal. These decisions generally relate to environmental authorities for resource activities.

The EP Act confers jurisdiction to the Land Court to hear and determine matters relating to natural resource issues, including appeals against decisions concerning the grant of mining tenures and other state land interests.

Planning and Environment Court

Original decisions mentioned in Schedule 2, Part 2 can be appealed against to the Planning and Environment Court. These decisions generally relate to environmental authorities for prescribed environmentally relevant activities.

The Planning and Environment Court is constituted by judges and hears matters including those relating to planning and development, environmental protection and management, nature conservation and heritage.

The relevant sections of Chapter 11, Part 3 of the EP Act that provide for the review of decisions and appeals are outlined below.

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[1] Note: In accordance with section 521(13) internal reviews are not undertaken for an original decision to issue a clean-up notice.
[2] This form is available on the Queensland Government website at www.qld.gov.au, using the publication number ESR/2015/1573 as a search term.

Chapter 11—Administration, Part 3—Review of decisions and appeals

Division 1—Interpretation

Section 519 Original decisions

(1) A decision mentioned in schedule 2 is an 'original decision'.

(2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an original decision.

Section 520 Dissatisfied person

(1) A dissatisfied person, for an original or review decision, is—

(a) if the decision is about an environmental impact statement (EIS) or the EIS process for an EIS—the relevant proponent under chapter 3, part 1, for the project to which the EIS relates; or

(b) if the decision is to refuse to accredit an Environmental Risk Management Plan (ERMP)—the person who submitted it; or

(c) if the decision is about an application for an environmental authority—the applicant; or

(d) if the decision is about an environmental authority, including financial assurance for an authority—the holder of the authority; or

(e) if the decision is about an application for registration of a person as a suitable operator—the applicant; or

(f) if the decision is about a registered suitable operator—the operator; or

(g) if the decision is to give an audit notice under section 322 or 323—the recipient; or

(h) if the decision is to conduct an environmental audit or prepare an environmental report for an audit undersection 326—the relevant environmental authority holder; or

(i) if the decision is about an ERMP direction, environmental investigation or environmental protection order—the recipient; or

(j) if the decision is about a transitional environmental program—the holder of an approval for the program or person or public authority that is required to submit, or submits, the program; or

(ja) if the decision is about a temporary emissions licence—

(i) the applicant for the licence; or

(ii) the holder of the licence; or

(k) if the decision is to issue a direction notice, clean-up notice or cost recovery notice—the recipient; or

(l) if the decision is about recording particulars of land in, or removing particulars of land from, the environmental management register or contaminated land register—the land's owner; or

(o) if the decision is about a site management plan for contaminated land—

(i) the recipient for the notice to prepare or commission the site management plan, other than for a decision under section 399; and

(ii) the land's owner; and

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(iii) if another person prepares or commissions the plan—the other person, other than for a decision under section 399; or

(p) if the decision is about erecting signs on contaminated land—the land's owner; or

(q) if the decision is about a disposal permit—the applicant for the permit; or

(r) if the decision is about an exemption under chapter 8, part 3F, division 3—the person applying for, or given, the exemption; or

(s) if the decision is to give a notice under section 451(1)—the person to whom the notice is given; or

(t) if the decision is about an application for approval as an auditor under chapter 12, part 3A, division 2—the applicant; or

(u) if the decision is about an auditor—the auditor; or

(v) if the decision is about a complaint under chapter 12, part 3A, division 5—the person who made the complaint; or

(w) if the decision is about a conversion application under section 695—the applicant; or

(x) if the decision is a decision under an environmental protection policy or a regulation that the policy or regulation declares to be a decision to which this part applies—the person declared under the policy or regulation to be a dissatisfied person for the decision.

(2) A submitter for an application is also a dissatisfied person if the decision is about—

(a) a site-specific application for an environmental authority for a petroleum activity; or

(b) an amendment application under chapter 5, part 7 for an environmental authority for a resource activity, other than a mining activity; or

(c) the submission of a transitional environmental program to which section 335 applies.

2 Internal review of decisions

The relevant sections of the EP Act regarding the process for the internal review of original decisions are outlined below.

Division 2—Internal review of decisions

Section 521 Procedure for review

(1) A dissatisfied person may apply for a review of an original decision.

(2) The application must—

(a) be made in the approved form to the administering authority within—

(i) 10 business days[1] after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or

(ii) the longer period the authority in special circumstances allows; and

(b) be supported by enough information to enable the authority to decide the application.

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(3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

(a) notice of the application (the 'review notice');

(b) a copy of the application and supporting documents.

(4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days (the 'submission period') after the application is made to the authority.

(5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within the decision period—

(a) review the original decision;

(b) consider any submissions properly made by a recipient of the review notice; and

(c) make a decision (the 'review decision') to—

(i) confirm or revoke the original decision; or

(ii) vary the original decision in a way the administering authority considers appropriate.

(6) The application does not stay (i.e. suspend or stop) the original decision.

(7) The application must not be dealt with by—

(a) the person who made the original decision; or

(b) a person in a less senior office than the person who made the original decision.

(8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

(9) The notice must—

(a) include the reasons for the review decision; and

(b) inform the persons of their right of appeal against the decision.

(10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.

(11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, s. 27A.

(12) This section does not apply to an original decision made by—

(a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or

(b) for another matter—the chief executive personally.

(13) Also, this section does not apply to an original decision to issue a clean-up notice.

(14) In this section—

'decision period' means—

(a) if a submission is received within the submission period—15 business days after the administering authority receives the application; or

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(b) if no submissions are received within the submission period—10 business days after the administering authority receives the application.

Section 522 Stay of operation of particular original decisions

(1) If an application is made for review of an original decision mentioned in Schedule 2, Part 1 or 2, the applicant may immediately apply for a stay of the decision to—

(a) for an original decision mentioned in Schedule 2, Part 1—the Land Court; or

(b) for an original decision mentioned in Schedule 2, Part 2—the Court.

(2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

(3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.

(4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

(5) This section applies subject to sections 522A and 522B.

Section 522A Stay of decision about financial assurance

(1) This section applies to an application under section 522 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.

(2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

Section 522B Stay of decision to issue environmental protection order

(1) This section applies to an application under section 522 for a stay of a decision to issue an environmental protection order.

(2) The Land Court or the Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted.

3 Appeals to Land Court

The relevant sections of the EP Act regarding the process for appealing against a decision to the Land Court are outlined below.

Division 3—Appeals

Subdivision 1—Appeals to Land Court

Section 523 Review decisions subject to Land Court appeal

This subdivision applies if the administering authority makes an original decision mentioned in schedule 2, part 1.

Section 524 Right of appeal

A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the Land Court.

Section 525 Appeal period

(1) The appeal must be started within 22 business days after the appellant receives notice of the decision.

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(2) However, the Land Court may at any time extend the time for starting the appeal.

Section 526 Land Court mediation

(1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.

(2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court[2].

Section 527 Nature of appeal

The appeal is by way of rehearing, unaffected by the review decision.

Section 528 Land Court's powers for appeal

In deciding the appeal, the Land Court has the same powers as the administering authority.

Section 530 Decision for appeals

(1) In deciding the appeal, the Land Court may—

(a) confirm the decision; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.

(2) In setting aside or substituting the decision, the Land Court has the same powers as the authority unless otherwise expressly stated.

(3) However, this part does not apply to a power exercised under subsection (2).

(4) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision.

4 Appeals to the Court

The relevant sections of the EP Act regarding the process for appealing against a decision to the Court are outlined below.

Division 3—Appeals

Subdivision 2—Appeals to Court

Section 531 Who may appeal

(1) A dissatisfied person who is dissatisfied with a review decision may appeal against the decision to the Court.

(2) However, the following review decisions cannot be appealed against to the Court—

(a) a review decision to which subdivision 1[3] applies;

(b) a review decision that relates to an original decision mentioned in Schedule 2, Part 3[4].

(3) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.

(4) A dissatisfied person who is dissatisfied with an original decision to which s. 521 does not apply may appeal against the decision to the Court.

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Section 532 How to start appeal

(1) An appeal is started by—

(a) filing written notice of appeal with the registrar of the Court; and

(b) complying with rules of court applicable to the appeal.

(2) The notice of appeal must be filed—

(a) if the appellant is the chief executive—within 33 business days after the decision is made or taken to have been made; or

(b) if the appellant is not the chief executive—within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.

(3) The Court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Section 533 Appellant to give notice of appeal to other parties

(1) Within 8 business days after filing the notice of appeal, the appellant must serve notice of the appeal on—

(a) if the appellant is the chief executive—all persons who were given notice of the original decision; or

(b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.

(2) The notice must inform the persons that, within 10 business days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

Section 534 Persons may elect to become respondents to appeal

A person who properly files in the Court a notice of election becomes a respondent to the appeal.

Section 535 Stay of operation of decisions

(1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.

(3) The period of a stay must not extend past the time when the Court decides the appeal.

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

(5) This section applies subject to sections 535A to 535C.

Section 535A Stay of decision to issue clean-up notice

(1) This section applies to an application under section 535 for a stay of a decision to issue a clean-up notice.

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(2) In deciding the application, the Court must have regard to—

(a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and

(b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

Section 535B Stay of decision about financial assurance

(1) This section applies to an application under section 535 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.

(2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

Section 535C Stay of decision to issue environmental protection order

(1) This section applies to an application under section 535 for a stay of a decision to issue an environmental protection order.

(2) The Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted.

Section 536 Hearing procedures

(1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

(2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

Section 537 Assessors

If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint 1 or more assessors to help the judge in deciding the appeal.

Section 538 Appeals may be heard with planning appeals

(1) This section applies if—

(a) a person appeals against an administering authority's decision (whether an original or review decision)—

i. to refuse to accredit an ERMP; or

ii. about an application for an environmental authority for a prescribed ERA; and

(b) a person appeals against the assessment manager's decision under the *Sustainable Planning Act 2009* about a planning or development matter for the premises to which the ERMP or the application for the authority relates.

(2) The Court may order—

(a) the appeals to be heard together or 1 immediately after the other; or

(b) one appeal to be stayed until the other has been decided.

(3) This section applies even though the parties, or all of the parties, to the appeals are not the same.

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Section 539 Powers of Court on appeal

(1) In deciding an appeal, the Court may—

(a) confirm the decision appealed against; or

(b) vary the decision appealed against; or

(c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

(2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

5 Judicial review

Under the *Judicial Review Act 1991*, a person whose interests would be adversely affected by a decision made by the department has the right to:

- request a statement of reasons explaining a decision; and
- apply to the Supreme Court for a review of a decision if they are not satisfied with the statement of reasons for that decision.

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Heritage Protection should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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[1] Under the *Environmental Protection Act 1994* business days—'generally, does not include a day between 20 December in a year and 5 January in the following year'.
[2] For information on how to start the appeal, see the *Land Court Rules 2000*. For information on the conduct of the mediation, see the *Land Court Act 2000*. Information is also available on the Land Court website at www.landcourt.qld.gov.au.
[3] Subdivision 1 is about appeals to the Land Court.
[4] Original decisions mentioned in Schedule 2, Part 3 are original decisions for internal review only.