



Guide to completing an Application for Appeal/Declaration Building and Development Dispute Resolution Committees

All applications for an appeal or declaration are submitted to the Building and Development Dispute Resolution Committees Registry (the Registry) administered by the Department of Infrastructure and Planning. The Registry handles the application, submits it to the appropriate committee and coordinates the publication of decisions.

Applicant's details

If the applicant for an appeal/declaration to the Building and Development Dispute Resolution Committees (the Committees) is a company, a contact person must be identified. It is important to fill in the form in the same name as noted on development applications/ approvals/ notices, etc. In addition to mailing correspondence to this address, the Registry will also e-mail a copy of the decision to the parties where an e-mail address is provided.

It is important to note that under the *Sustainable Planning Act 2009* (SPA) the 'applicant for a development application' for the purpose of appealing decisions includes 'the person in whom the benefit of the application vests'. An applicant may include the property owner and it is important to consider this when appealing decisions.

Property description

The description must identify all land that is the subject of the application. The lot and plan details (e.g. SP/ RP) are shown on title documents or rates notices. If the plan is not registered by title, provide previous lot and plan details.

Grounds for application and fees

The grounds for appeal/declaration must be stated in the application. The Application for Appeal/Declaration must state the grounds for appeal/declaration and be accompanied by the prescribed fee. If insufficient space has been provided on the form please attach the grounds as a separate document and note the reference on the form e.g. attachment 1. Fees are prescribed in schedule 21 of the Sustainable Planning Regulation 2009 or can be found on the department's website at www.dip.qld.gov.au.

Fast track and site inspections

Fees vary according to whether the applicant has requested that the appeal/declaration be fast-tracked, or whether a site inspection is required. An application to fast track the appeal/declaration is subject to approval of the chief executive (or delegate) and may be



granted only if all parties to the proceeding have agreed in writing to the request. If you are uncertain as to whether a site inspection is required please contact the Committee Registry on (07) 3237 0403 or registrar@dip.qld.gov.au.

Appeals about building matters

Appeals about building development applications

These may be made under section 527 of the SPA. The jurisdiction is restricted to matters that are related to the *Building Act 1975* (BA), about the following:

- the refusal or the refusal in part, of a development application
- any condition or other matter stated in a development approval, other than the identification or inclusion of a code under section 242 of the SPA
- the decision to give a preliminary approval when a development permit was applied for
- the length of a currency period under section 341 of the SPA
- a deemed refusal.

The types of building related matters could relate to the following:

- appeal about amenity and aesthetics of single detached class 1 buildings or class 10 buildings or structure
- appeal about the amount and form of security for the removal and rebuilding of a building or structure
- appeal about design and siting requirements
- appeal about high risk personal appearance services
- appeal against building work for residential services
- appeal about building work for rainwater tanks in designated rainwater tank area
- appeal in relation to occupying a building for residential purposes that is not a class 1, 2, 3 or 4 building
- appeal against a local government decision that the premises do not comply with the prescribed building requirements under section 30 of the *Residential Services (Accreditation) Act 2002*.

Appeals about building development approvals

These include:

- a decision relating to the extension of a building development approval (see section 529 of SPA)
- a decision relating to permissible changes for a building development approval (see section 530 of SPA)
- a decision about changing or cancelling conditions imposed on a building development approval (see section 531 of SPA).

For both building development applications and approvals, the applicants' period for lodging an appeal is 20 business days after the decision notice is given to the applicant. However an appeal about a deemed refusal may be started at any time after the last day a decision on the matter should have been made.



Appeals about enforcement notices issued under the *Building Act 1975*

These are required to be lodged within 20 business days after the enforcement notice has been given. However, for an enforcement notice given under section 250 of the *Building Act 1975* for a dangerous building or structure, the appeal must be lodged within five business days after the enforcement notice is given.

Appeals about information notices issued under the *Building Act 1975*

The *Building Act 1975* provides when an information notice must be given to a person. Appeals may be lodged where a person has been given or is entitled to be given an information notice. For example, an appeal may be lodged against the decision of the chief executive about an application to vary the *Building Act 1975*. A person may also appeal against a decision made by a local government regarding an application for exemption from the pool fencing standards where the person has a disability.

These appeals must be lodged within 20 business days after the person is given notice of the decision.

Appeals against decisions by building certifiers and referral agencies about inspection of building work under the *Building Act 1975*

Appeals of this nature relate to decisions made about the inspection of building work. For example an appeal may relate to a decision about a certificate of classification or a change of the classification of an existing building or structure. It may also involve appeals about non-compliance notices issued after building work is inspected.

These appeals must be lodged within 20 business days after the person is given notice of the decision.

Appeals about failure to decide other applications (not building development applications) made under the *Building Act 1975*

This appeal right relates to the failure by local government to decide applications, other than building development applications, within the period specified in the *Building Act 1975*. Appeals may be lodged within 20 business days after the end of the relevant decision period.

Appeals about infrastructure charges and contributions

Appeals can be made to the committees for infrastructure charges notices or state infrastructure charges notice issued under a Priority Infrastructure Plan, under section 535 of the SPA.

A new appeal right was introduced in section 849 of the SPA for an infrastructure charge contribution imposed through a planning scheme policy.

Both appeals can only be about an error in the calculation of the charge. All other appeals must be made to the Planning and Environment Court and must be lodged within 20 business days after the day the notice is given to the person.



Appeals about plumbing and drainage matters

Appeals can be lodged about matters under the *Plumbing and Drainage Act 2002* (PDA). An appeal may be about an enforcement notice (see section 533 of the SPA) or an information notice (see section 532 of the SPA) for a compliance permit or compliance certificate.

The SPA provides that a person who is given or entitled to be given an information notice may appeal to the committees. Appeals may also be made to the committees about the decision of the chief executive to refuse or approve subject to conditions a chief executive approval e.g. for a waste water treatment plant or greywater treatment plant.

All appeals must be lodged within 20 business days after the day the notice is given to the person. However, for an enforcement notice issued under section 116(1)(a)(i), (b) or (c) of the PDA for plumbing or drainage that constitutes a danger or health risk, the appeal must be lodged within five business days after the enforcement notice is given.

Appeals by advice agencies

Advice agencies may appeal to the committees under 528 of the SPA. This type of appeal is most commonly made by the Queensland Fire and Rescue Service against the decision of building certifiers regarding the fire services proposed to be installed in a building.

The appeal may be lodged about the giving of a development approval where the development application involves code assessment for the aspect of building work to be assessed against the *Building Act 1975*. The appeal must be started within 10 business days after the day the decision notice or negotiated decision notice is given to the advice agency.

Appeals about material change of use of prescribed buildings and limited class 2 buildings

A new right of appeal has been provided under the SPA relating to the material change of use of prescribed buildings and limited class 2 buildings.

For prescribed buildings an appeal may be lodged about a development application (section 519), a decision relating to the extension of a development approval (section 520) or a decision made about a permissible change (section 521). For these appeal rights “prescribed building” is defined as a building that is classified under the Building Code of Australia (BCA) as either:

- (a) a class 1 building
- (b) a class 10 building, other than a class 10 building that is incidental or subordinate to the use, or proposed use, of a building classified under the BCA as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

A limited appeal about the conditions imposed on a development approval for the material change of use of limited class 2 buildings is also available. This is limited to class 2 buildings with no more than three storeys and with fewer than 60 sole occupancy units (see section 522).



The definitions of classes 1, 2 and 10 buildings are taken from the Building Code of Australia, which defines them as:

Class 1: one or more buildings which in association constitute-

(a) **Class 1a**—a single dwelling being

- (i) a detached house; or
- (ii) one group of two or more attached dwellings, each being a building separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or

(b) **Class 1b**—a boarding house, guest house, hostel or the like-

- (i) with a total area of all floors not exceeding 300m² measured over the enclosing walls of the class 1b; and
- (ii) in which not more than 12 persons would ordinarily be resident, which is not located above or below another dwelling or another class of building other than a private garage.

Class 2: a building containing two or more sole-occupancy units each being a separate dwelling.

Class 10: a non-habitable building or structure-

(a) **Class 10a**—a non-habitable building being a private garage, carport, shed or the like; or

(b) **Class 10b**—a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool or the like.

For development applications, appeals must be lodged within 20 business days after the day the notice or negotiated decision notice is given to the person. For a deemed refusal, the appeal may be started at any time after the last day a decision on the matter should have been made. For development approvals, appeals must be started within 20 business days after the notice of decision is given to the person.

Appeals about compliance assessment

A new right of appeal has been provided under the SPA for compliance assessment. An appeal may be lodged about a decision on request for compliance assessment (section 523), against a condition imposed on compliance permit or compliance certificate (section 524) or about a notice of decision to change or withdraw an action notice or refusal of a change to a compliance permit or certificate (section 525).

Compliance is not entirely new, being permitted to a lesser extent under the *Integrated Planning Act 1997*. However, under the SPA a regulation may prescribe types of development that must be subject to compliance assessment. In addition, local government can also prescribe development that must be assessed under compliance assessment. Concurrent appeal rights are provided to the Planning and Environment Court and to the committees.

An appeal must be started within 20 business days after the notice/ compliance permit/ compliance certificate is given to the person.



Declarations

Declarations about whether a development application is properly made

An applicant for a development application may bring a proceeding before a committee for a declaration about whether an application is a properly made application. This is a new right introduced under section 510 of the SPA and is tied to the provisions designating that an application must be properly made, which have changed from those provided under the *Integrated Planning Act 1997*.

However, a person can not seek a declaration as to whether a development application includes or is supported by the written consent of the owner of the land the subject of the application. Additionally, a declaration cannot be sought about whether an application is supported by evidence prescribed under a regulation where a development application involves a state resource.

Applications must be brought to the committees within 20 business days after receiving notice under section 266 of the SPA that the application is not a properly made application.

Declarations about an acknowledgement notice for a material change of use of a prescribed building

Section 511 of the SPA provides that an applicant for a development application may, within 20 business days after receiving an acknowledgement notice for the application, bring a proceeding before a committee for a declaration about a matter stated in the notice. However, this right is limited to development applications for a material change of use of premises that involve the use of a prescribed building.

“Prescribed building” is defined as a building that is classified under the Building Code of Australia (BCA) as—

- (a) a class 1 building; or
- (b) a class 10 building, other than a class 10 building that is incidental or subordinate to the use, or proposed use, of a building classified under the BCA as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

Declarations about lapsing of a request for compliance assessment

A new right to seek a declaration relating to compliance assessment has been provided in section 512 of the SPA. This provides that a person requesting compliance assessment of development, a document or work, or the compliance assessor for the request, may bring a proceeding before a committee for a declaration about whether the request has lapsed under this Act. The proceeding for the declaration may be commenced at any time.

Declarations about a change sought is a permissible change for a material change of use of a prescribed building

A person may bring a proceeding before a committee for a declaration that a change sought by the person to the approval is a permissible change, unless the responsible entity for making the change is the Minister or the Court.



In addition, if the responsible entity for making the change is other than the Minister or the Court, the responsible entity may bring a proceeding before a committee for a declaration about whether a proposed change to the approval is a permissible change.

However, this right is limited to development applications for a material change of use of premises that involve the use of a prescribed building.

Signatures

If the applicant includes more than one person, e.g. a property is held in more than one name, please ensure both parties sign the form.

Registry opening hours

The Registry is open between the hours of 8.30am to 5.00pm each business day.

Other queries

All other queries can be directed to:

Department of **Infrastructure and Planning**

The Registrar, Building and Development Dispute Resolution Committees

Building Codes Queensland

post PO Box 15009 City East Qld 4002 Australia

visit 63 George Street Brisbane

tel +61 7 3237 0403

fax +61 7 3237 1248

registrar@dip.qld.gov.au

www.dip.qld.gov.au