

## APPEAL RIGHTS UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*: **Environmental impact assessment**

The *Environmental Protection Act 1986* (the Act) provides rights of appeal on decisions and recommendations of the Environmental Protection Authority (EPA) relating to the assessment of proposals and planning schemes.

There are appeal rights in relation to:

1. objections to decisions of the EPA not to assess a proposal (see exception below); and
2. objections to the content of, and recommendations in, an EPA report at the conclusion of an assessment process.

**Exception:** an appeal cannot be lodged in respect to a decision of the EPA not to assess a proposal where the EPA has determined that the proposal is 'not assessed, managed under Part V of the Act (Clearing)'. In such cases appeal rights will lie in respect to the clearing permit decision. See information sheet on appeals in respect of clearing permits.

### Who can appeal?

Any person can lodge an appeal in respect to EPA decisions not to assess a proposal, or in respect to the content of, or recommendations in, an EPA report.

### How do I lodge an appeal?

Appeals on an EPA report or decision must be:

- in writing and clearly set out the grounds of appeal
- received within 14 days of the date the decision or report is published - *late appeals cannot be accepted*
- accompanied by the appeal fee of \$10
- signed by the appellant

If your appeal does not comply with these requirements, it may be determined to be invalid and will not be investigated.

Appeals should also be accompanied by any supporting information that is relied on as a basis for an objection.

**A form for lodging an appeal is available on the Appeals Convenor's website.**

### Effect of lodging an appeal

The lodging of an appeal in objection to a decision of the EPA not to assess a proposal does not affect the EPA's decision.

The lodging of an appeal in respect to an EPA report prevents the proposal or scheme being implemented while the appeal is pending.

### What happens after an appeal is lodged?

The Appeals Convenor will provide a copy of the appeal to the EPA, and request that a written response to the matters raised is provided within a set timeframe (usually 21 days).

In the case of appeals lodged by a party other than the proponent, the Appeals Convenor will also provide the proponent the opportunity to respond within a set timeframe (usually 21 days).

The Appeals Convenor may also seek guidance from other public authorities, organisations or persons that may have an interest or technical expertise relevant to the appeal.

### Key considerations in appeals

In assessing appeals in respect to EPA decisions and reports, the Appeals Convenor will have regard to the 'consideration of significance' as described in the EPA's *Statement of Environmental Principles, Factors and Objectives* (December 2016), which includes:

- values, sensitivity and quality of the environment which is likely to be impacted;
- extent of the likely impact;
- consequence of the likely impact;
- cumulative impact with other projects;
- level of confidence in the prediction of impacts and the success of proposed mitigation; and
- level of public interest.

Appeals under the Act are 'merits' appeals. This means that the Minister can consider all relevant facts before making a decision. While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters raised in respect to the proposal or scheme.

### Is there a hearing during the appeal investigation process?

The Office of the Appeals Convenor will consult the appellant as part of the investigation of the appeal. This may be by telephone, in person or such other means as the Appeals Convenor considers appropriate (for example, email). Where the appeal is lodged by a third party, the Appeals Convenor will also consult the proponent.

These discussions are informal in nature, and are intended to provide a party to an appeal with an opportunity to clarify the issues in contention. Due to the informal nature of the process, appellants do not require, and generally do not seek, legal representation.

Occasionally the Appeals Convenor may convene a combined meeting between the parties where the Appeals Convenor is of the opinion that this will assist in resolving the issues in dispute.

### What happens if the matter is settled between the parties?

If the matters in dispute are resolved, the appellant may give not less than seven days notice of an intention to withdraw the appeal. The appeal may then be withdrawn after the seven days, and the file will be closed.

### What happens after the investigation?

After the appeal investigation is complete, the Appeals Convenor provides a report with recommendations to the Minister.

Once the Minister has determined the appeal, the Appeals Convenor's report will be provided to the appellant and published on the Appeals Convenor's website.

### How long will the appeal investigation take?

While there are no statutory timelines in respect to appeal investigations, the Appeals Convenor aims to have 80% of appeal reports submitted to the Minister for Environment within 60 days of receiving a final response to the appeal from the EPA, and where applicable, the proponent.

### What decision can the Minister make?

The following decisions are available to the Minister in determining appeals.

#### Decision of the EPA not to assess a proposal:

1. dismiss the appeal; or
2. allow the appeal in full or part by remitting the proposal to the EPA:
  - for a fresh decision; or
  - with a direction that the proposal be formally assessed.

#### Content of an EPA report on a proposal:

1. dismiss the appeal; or
2. allow the appeal in full or in part by:
  - remitting the proposal for assessment, further assessment or reassessment by the EPA; or
  - changing the implementation conditions recommended by the EPA.

#### Content of an EPA report on a planning scheme:

1. dismiss the appeal; or
2. allow the appeal in full or part, noting that if the decision:
  - will affect the content of any condition to which the scheme is subject, obtain the agreement of the Minister for Planning; or
  - will not affect the content of any such condition, decide the appeal without consulting with the Minister for Planning.

The Minister's appeal decision is final, and not subject to appeal.

The Minister's decision will be communicated to the appellant in writing, and will also be published on the Appeals Convenor's website.

#### **Further information and contact details:**

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