

APPEAL RIGHTS UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*: Appeals against decisions under the Noise Regulations

The *Environmental Protection (Noise) Regulations 1997* (the Noise Regulations) provide an opportunity to appeal certain decisions made under the Regulations.

This includes rights of appeal in respect to:

1. decisions made by a local government or Department of Environment Regulation (DER) in respect to noise management plans for motor sport and shooting venues;
2. decisions made by local government or DER in respect to noise control notices issued under regulation 16;
3. decisions made by the Minister for Environment in respect to exemption approvals given under regulation 17;
4. decisions made by local government or DER in respect to approvals for sporting, cultural and entertainment venues.

Who can appeal?

The types of appeal considered in this information sheet are generally open to any person. However, some appeals can only be lodged by the holder of, or person served with, the document in question. Refer to the next page for details.

How do I lodge an appeal?

Appeals must be:

- in writing and set out the grounds of appeal
- received within the time limit for that type of appeal shown on the following page - *late appeals cannot be accepted*
- accompanied by the relevant appeal fee specified on the following page
- signed by the appellant

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

If you rely on supporting documentation, this should accompany your appeal.

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

Effect of lodging an appeal

The effect of the lodgment of an appeal depends on the type of appeal – refer to the following page for further information.

What happens after an appeal is lodged?

The Appeals Convenor will provide a copy of the appeal to the relevant authority (the Environmental Protection Authority, DER, or local government), and request that a

written response to the matters raised is provided within a set timeframe (usually 21 days).

Advice may also be sought from other public authorities, organisations or persons that may have an interest or technical expertise relevant to the appeal.

Key considerations in appeals

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 by the notice.

Is there a hearing during the appeal investigation process?

Appellants will be consulted as part of the investigation process. This may be by telephone, a meeting or such other means as the investigator considers appropriate (such as email). Where the appeal is by a third party, the proponent will also be consulted.

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, a report with recommendations is provided to the Minister for Environment.

Once the Minister has determined the appeal, the appeals report will be provided to appellants 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 relevant decision making authority.

What decision can the Minister make, and how is it given effect?

For appeals in respect to decisions of the Minister, the Minister is bound to determine the appeal in accordance with the recommendation of an Appeals Committee.

For other appeals, the Minister takes into account the advice of the Appeals Convenor or Committee, but is not bound to accept the advice.

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.

Type of instrument	Appeal description	Who can appeal?	Fee	Time to appeal	Effect of lodging appeal pending decision on appeal
Noise management plans for motor sport and shooting venues (regs 16AE(1) and 16BE(1))	Approval of a plan	Any person	\$50	21 days from date decision is published in <i>Government Gazette</i>	Noise management plan continues in effect
	Refusal to approve plan				Noise management plan does not have effect
	Amendment of plan				Amendment is taken not to have been made
	Refusal to approve amendment to plan				Refusal is taken not to have been made
	Conditions of a plan				Decision appealed against taken not to have been made
	Period of a plan				Period continues in effect
	Revocation of a plan				Revocation is taken not to have been made
Noise control notices (reg 16(12))	Taking of measures under notice	Person served with the notice	\$25	14 days from date of service	Measures continue in effect
	Amendment of a notice				Amendment continues in effect
Exemptions where standards cannot be met (reg 18H(1)-(3))	Grant of approval	Any person	\$50	21 days from date decision is published in <i>Government Gazette</i>	Grant continues in effect
	Conditions and period of approval				Conditions/time period continue in effect
	Amendment of approval				Amendment is taken not to have been made
	Revocation of approval				Approval taken not to have been revoked
	Refusal to assess application	Applicant only	21 days from receipt of notice		Refusal continues in effect
	Refusal to grant approval				
	Refusal to amend approval	Holder only			
Sporting, cultural and entertainment events (reg 19G(1))	Approval of venue	Any person	\$50	21 days from date decision is published in <i>Government Gazette</i>	Approval continues in effect
	Refusal to approve venue				Refusal continues in effect
	Conditions of approval				Conditions continue in effect
	Period of approval				Period continues in effect
	Amendment of a venue approval (application received)				Amendment taken not to have been made
	Refusal to amend a venue approval				Refusal taken not to have been made
	Amendment of a venue approval (CEO's initiative)				Amendment taken not to have been made
	Revocation of a venue approval				Revocation taken not to have been issued

More information:

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