

Queensland



Subordinate Legislation 1999 No. 116

*Integrated Planning Act 1997*

**PLANNING AND ENVIRONMENT COURT  
RULES 1999**

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**DICTIONARY**

## CHAPTER 1—PRELIMINARY

### Short title

1. These rules may be cited as the *Planning and Environment Court Rules 1999*.

### Commencement

2. These rules commence on 1 July 1999.

### Application of rules

3.(1) These rules apply to proceedings in the Planning and Environment Court.

(2) If these rules do not provide for a matter in relation to a proceeding, or proceedings, in the Planning and Environment Court and the rules applying in the District Court would provide for the matter in relation to a proceeding, or proceedings, in the District Court, the rules applying in the District Court apply for the matter in the Planning and Environment Court with necessary changes.<sup>1</sup>

### Definitions

4. The dictionary in the schedule defines particular words used in these rules.

### Compliance with rules

5. The court may excuse a person from complying with a rule, or waive a non-compliance with a rule, if the court considers the compliance would be likely to cause the person injustice or unreasonable expense or inconvenience.

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<sup>1</sup> If neither these rules nor the rules applying in the District Court provide for a matter about court procedure, directions may be made under section 4.1.11 of the Act.

## CHAPTER 2—CONDUCT OF PROCEEDINGS

### PART 1—STARTING PROCEEDINGS

#### Starting proceedings

6. A proceeding, other than an appeal,<sup>2</sup> is started by filing an originating application with the registrar.

*Example of a proceeding other than an appeal—*

A proceeding for a declaration or order under chapter 4, part 1, division 7<sup>3</sup> of the Act.

#### Where to start proceeding

7. A proceeding may be started in any registry of the court.

#### Content of originating process

8.(1) An originating process, other than for an appeal under the Act, must name as respondents the persons directly affected by the relief sought in it.

(2) An originating process for an appeal under the Act must name as respondents the persons who are respondents under the Act.<sup>4</sup>

(3) Subrule (1) does not apply to an originating application if under rule 14 or another law the application may be heard without notice being given to any other person.

(4) The applicant or appellant must state in an originating process—

(a) for a proceeding other than an appeal—

(i) the orders or other relief sought in the proceeding; and

(ii) the grounds on which the orders or other relief are sought; or

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<sup>2</sup> See section 4.1.39 of the Act, for how appeals to the court are started.

<sup>3</sup> Chapter 4 (Appeals, offences and enforcement), part 1 (Planning and Environment Court), division 7 (Other court matters) of the Act

<sup>4</sup> See chapter 4, part 1, division 10 (Making an appeal to court) of the Act.

- (b) for an appeal—
  - (i) the orders or other relief sought in the appeal; and
  - (ii) the grounds of the appeal.

### **Applicant’s or appellant’s contact details and address for service**

**9.(1)** The applicant or appellant (the “**person**”), or the person’s solicitor or agent must ensure—

- (a) if the person intends to act personally, the following details are on the originating process before it is filed—
  - (i) the person’s residential or business address;
  - (ii) if the address given under subparagraph (i) is more than 30 km from the issuing registry, an address not more than 30 km from the registry or another address approved by the court as the address for service;
  - (iii) the person’s telephone number, if any;
  - (iv) if the person does not have a telephone number, a way of contacting the person by telephone;
  - (v) the person’s fax number, if any;
- (b) if a solicitor or agent is appointed to act for the person, the following details are on the originating process before it is filed—
  - (i) the person’s residential or business address;
  - (ii) the name of the solicitor or agent and, if the solicitor or agent practices in a firm, the name of the firm;
  - (iii) the address of the solicitor’s or agent’s place of business;
  - (iv) if the address given under subparagraph (iii) is not the person’s address for service or is not a Queensland address, an address for service in Queensland including, for example, an address approved by the court as the address for service;
  - (v) the solicitor’s or agent’s telephone number;
  - (vi) the solicitor’s or agent’s fax number.

(2) If the person intends to act personally and has an email address, the person may include the email address with the details required under subrule (1)(a).

(3) If the person's solicitor or agent, or the solicitor's or agent's firm, has an email address, the solicitor or agent may include the email address with the details required under subrule (1)(b).

(4) If the solicitor or agent, or the solicitor's or agent's firm, is a member of an approved document exchange, the solicitor or agent may include the document exchange address with the details required under subrule (1)(b).

(5) The “**address for service**” of the person is—

(a) for a person acting personally—

(i) if the person is required to give an address under subrule (1)(a)(ii)—that address; or

(ii) otherwise, the address given under subrule (1)(a)(i); and

(b) for a person for whom a solicitor or agent acts—

(i) if an address is specified under subrule (1)(b)(iv)—that address; or

(ii) otherwise—the address specified under subrule (1)(b)(iii).

### **Originating process must be signed**

**10.** The applicant or appellant, or the applicant's or appellant's solicitor or agent, must sign the originating process.

### **Originating application must be given to other parties**

**11.** Unless the court otherwise orders under rule 14, the applicant must give a copy of the originating application to each other party.<sup>5</sup>

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<sup>5</sup> See sections 4.1.41 and 4.1.42 of the Act, for giving notice of an appeal to other parties.

## PART 2—HEARING PROCEEDINGS

### *Division 1—Venue*

#### **Where proceeding is heard**

**12.(1)** A proceeding must be heard in the court at the place where the originating process is filed (the “**first court**”).

**(2)** However, the proceeding, or part of it, may be heard in the court at another place (the “**other court**”) if—

- (a) the first court decides it can be more conveniently or fairly heard in the other court; or
- (b) the hearing is transferred to the other court under rule 13.

#### **Party may request hearing be transferred to other court**

**13.(1)** This rule applies if no judge of the court is, or will be, at the first court when a party wishes to be heard on the proceeding.

**(2)** The party may request the hearing be transferred to the other court.

**(3)** A request under subrule (2) must be written and given to the registrar of the first court.

**(4)** The registrar must immediately—

- (a) give the registrar of the other court true copies of all documents in the proceeding filed in the first court and necessary for the hearing; and
- (b) give the parties written notice of the transfer to the other court.

***Division 2—Procedure******Subdivision 1—Hearing originating applications without notice*****Hearing originating application without notice**

**14.** If the court considers it appropriate because of urgent circumstances in a particular case, the court may—

- (a) order the originating application be heard and decided without notice being given by the applicant to any other person; and
- (b) make any other order.

***Subdivision 2—General*****Entry of appearance**

**15.(1)** This rule applies to—

- (a) a person named as a respondent in an originating application who wishes to be heard on the application; and
- (b) a person named as a respondent or co-respondent in a notice of appeal who, under a law, is entitled to be heard on the appeal and wishes to be heard on the appeal.

**(2)** The person must—

- (a) within 10 days after being served with a copy of the originating process, file an entry of appearance with the registrar at the place where the application is to be heard; and
- (b) serve a copy of the entry of appearance on each other party.

**Preliminary steps**

**16.(1)** An active party may—

- (a) file a notice requiring preliminary steps with the registrar at the place where the proceeding is to be heard; and

(b) serve a copy of the notice on each other active party.

(2) The notice may only be filed within 10 days after the last day on which a party may file an entry of appearance in the proceeding.

(3) Subrule (2) does not apply if the court orders, or the active parties agree in writing, that the notice be filed at a later time.

(4) The applicant or appellant must serve on each other active party a list of issues in the proceeding and the applicant or appellant's document list—

(a) if the applicant or appellant is the party who filed the notice—within 10 days after filing the notice; or

(b) if the applicant or appellant is not the party who filed the notice—within 10 days after being served with a copy of the notice.

(5) Within 10 days after the list of issues is served on an active party, the party (the “**disclosing party**”) must—

(a) give each other active party the disclosing party's document list; or

(b) otherwise comply with the disclosing party's duty of disclosure under the rules applying in the District Court as if the proceeding were a proceeding in the District Court.

(6) An active party wishing to inspect a document mentioned in a document list given to the party under subrule (4) or (5) must inspect the document within 7 days after the party is given the list.

(7) Within 14 days after the last day on which an active party may inspect a document under subrule (6), the active parties must, with the consultant experts decided by the active parties, confer with a view to reaching agreement on, or narrowing, the issues stated in the list of issues.

(8) Within 7 days after the conference ends, the applicant or appellant must file and serve on each other active party a written notice of—

(a) any agreement reached in relation to an issue; and

(b) all unresolved issues.

(9) In this rule—

“**document list**”, for a party, means a list of documents presently in the party’s possession or under the party’s control and directly relevant to an issue stated in the list of issues given under subrule (4).

### **Court may excuse parties from taking preliminary steps**

17. If the court considers compliance with rule 16 is likely to cause injustice to a party or is unlikely to produce a worthwhile result, the court may, at any time after the originating process is filed, order that the rule, or part of the rule, does not apply to the proceeding.

### **Confidentiality**

18.(1) Evidence of anything done or said, an admission made, or a document tendered, at a conference held under rule 16 is admissible in the proceeding or before another civil proceeding in the court or elsewhere only if—

- (a) all the active parties to the proceeding agree; or
- (b) the evidence is an agreement reached in the conference.

(2) In subsection (1)—

“**civil proceeding**” does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conference.

### **Entry for hearing**

19. Any active party may file an entry for hearing with the registrar if—

- (a) a party does not file and serve a notice requiring preliminary steps under rule 16; or
- (b) a notice of unresolved issues in the proceeding is filed under the rule; or
- (c) the court orders that the rule does not apply to the proceeding.

**Orders or directions**

**20.(1)** At any time after an entry for hearing is filed in a proceeding, any party may apply to the court for an order or directions about the proceeding.

**(2)** Without limiting subrule (1), the application may be for 1 or more of the following—

- (a) a declaration that the court is satisfied chapter 3, part 4<sup>6</sup> of the Act, or similar provisions of another relevant Act, for a development application have been complied with;
- (b) an order about a preliminary point that may wholly or substantially decide the proceeding or a significant issue in the proceeding;
- (c) directions about a procedural matter not provided for in these rules or under the Act or another relevant Act;
- (d) an order about the conduct of the proceeding, including an order about 1 or more of the following—
  - (i) the grounds of dispute;
  - (ii) exchanging statements of evidence;
  - (iii) disclosure by inspection of documents or delivery of interrogatories;
  - (iv) a compulsory settlement conference;
  - (v) a hearing date;
  - (vi) a pre-hearing review by the court.

**(3)** If the application is for a matter mentioned in subrule (2)(a) or (b), a party wishing to raise an argument about the matter must serve the following documents on each other active party—

- (a) any affidavit the party intends to rely on;
- (b) a short outline of the party's intended argument.

**(4)** The affidavit and outline of argument must be served at least 2 business days before the application for the declaration or order is heard.

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<sup>6</sup> Chapter 3 (Integrated development assessment system (IDAS)), part 4 (Notification stage) of the Act

**Effect of application under rule 20**

**21.(1)** An application under rule 20 must be dealt with by the court before the court hears the proceeding.

**(2)** If the court makes an order or gives directions under the rule, the court may decline to set a date for hearing the proceeding until the court is satisfied the parties have complied with the order or directions.

**(3)** The parties must comply with the order or directions before the proceeding is heard, unless the court considers it appropriate, because of the exceptional circumstances of the case, to hear the proceeding without the order or directions being complied with.

**PART 3—EVIDENCE***Division 1—General***Rules of evidence**

**22.(1)** The court may, at any time during a proceeding, order that the rules of evidence do not apply to proving a fact if the court considers—

- (a) strict proof of the fact may cause unnecessary or unreasonable expense, delay or inconvenience in the proceeding; or
- (b) the fact is not seriously in dispute.

**(2)** Without limiting subrule (1), the court may order that the rules of evidence do not apply to proving handwriting or a document, authority or identity.

**(3)** This rule applies regardless of the importance of the fact sought to be proved.

**Expert evidence**

**23.(1)** Other than with the court's leave, a party, at any hearing in a proceeding, may call evidence from only 1 expert witness for each subject

of expertise dealt with in the hearing.

(2) An expert witness must prepare a written statement of the witness's evidence for the hearing.

(3) The party intending to call the evidence must serve each other party with a copy of the statement of evidence as directed by the court.

(4) Other than with the court's leave, an expert witness, in examination in chief, must not repeat or expand on matters contained in the witness's statement of evidence or introduce fresh material.

(5) To remove doubt, it is declared that this rule is in addition to, and does not limit the application in the proceeding of, the rules about experts and court experts applying in the District Court.

### *Division 2—Affidavits*

#### **Content of affidavit**

24.(1) A note must be written on an affidavit stating the name of the party on whose behalf it is filed.

(2) An affidavit may contain statements based on information and belief if the person making the affidavit states the sources of the information and the grounds for the belief.

(3) However, if the court considers it just in the circumstances of the case, the court may decline to act on the statements.

## **PART 4—APPLICATIONS IN A PROCEEDING**

#### **Content of application in a proceeding**

25.(1) An application within a proceeding must state the date on which it is to be heard.

(2) The application must name as respondent any party whose interests may be affected by the granting of the relief sought.

(3) If the application is made by a person who is not a party to the proceedings, the application must have on it the information required under rule 9<sup>7</sup> to be on an originating process unless the information has already been provided on a document filed in the proceeding.

### **Service of application and supporting affidavit**

**26.(1)** A person making an application within a proceeding must—

- (a) file the application and any supporting affidavit with the registrar; and
- (b) serve a copy of the application and each supporting affidavit on each respondent at least 2 business days before the day set for hearing the application.

(2) Subrule (1) does not apply if, because of the urgent circumstances of the case, the court orders that it does not apply.

### **Hearing application**

**27.** Other than with the court's leave, an application within a proceeding must be heard and decided on affidavit evidence.

## **CHAPTER 3—APPEALS TO COURT OF APPEAL**

### **Documents to be given to registrar**

**28.(1)** A party who applies, under section 4.1.56<sup>8</sup> of the Act, for leave to appeal to the Court of Appeal against a decision of the court must give the registrar a copy of the following documents—

- (a) the application for leave to appeal;
- (b) the Court of Appeal's decision on the application for leave;

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<sup>7</sup> Rule 9 (Applicant's or appellant's contact details and address for service)

<sup>8</sup> Section 4.1.56 (Who may appeal to Court of Appeal) of the Act

(c) if the leave is granted and the appeal is started—

- (i) the notice of appeal; and
- (ii) the Court of Appeal's decision on the appeal.

(2) The registrar must keep the copies with the documents kept by the registrar for the proceeding in the court.

## CHAPTER 4—MISCELLANEOUS

### Forms

29.(1) The approved forms must be used for the purposes for which they are applicable with the necessary changes circumstances may require.

(2) The document must be—

- (a) consecutively numbered on each page; and
- (b) divided into consecutively numbered paragraphs each containing, as far as practicable, a separate allegation or topic.

### Fees

30. A document may be filed only if any prescribed fee for filing it is paid when the document is given to the registrar.

### Court fees if state-related party

31.(1) In a proceeding to which a state-related person is a party—

- (a) despite rule 30, the state-related person may file a document without payment of a fee; and
- (b) the state-related person is not required to prepay any other fees of court.

(2) However, if judgment is given against another party in the proceeding, the state-related person may recover fees of court with costs from the other party.

(3) In this rule—

**“state-related person”** means the Sovereign, the State, a person acting for the State, an entity whose expenditure is payable, in whole or part, out of amounts from the consolidated fund or a person acting for the entity.

## **Repeal**

**32.** The *Local Government Court Rules 1966* are repealed.

**SCHEDULE****DICTIONARY**

rule 4

**“active party”**, for a proceeding, means—

- (a) the applicant or appellant; and
- (b) each other party who has filed an entry of appearance in the proceeding.

**“address for service”**, see rule 9(5).

**“application”** means an originating application and an application made within a proceeding.

**“application made within a proceeding”** means an application about the proceeding made after the proceeding is started and before it is decided.

**“first court”**, for chapter 2, part 3, division 1, see rule 12(1).

**“originating application”** means an application that starts a proceeding.

**“originating process”** means an originating application or notice of appeal.

**“other court”**, for chapter 2, part 3, division 1, see rule 12(2).

**“party”** means a party to a proceeding.

**“proceeding”** means an appeal and a proceeding started by an originating application.

**“registrar”** means a registrar of the court.

## ENDNOTES

1. Made by the Governor in Council on 24 June 1999.
2. Notified in the gazette on 25 June 1999.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Communication and Information, Local Government and Planning.