



**EDO** Qld.

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*Using the law to protect  
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This handbook was last updated in September 2010. The Planning and Environment Court costs rules, referred to on page 27 and 38-40, have since been changed. An overview of the changes to the costs rule is provided below and a copy of the relevant sections is **enclosed**.

### ***Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012***

The *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012 (Qld) (SPOLA)* has changed the costs rule in the Planning and Environment Court (**the Court**). As of 22 November 2012, the rule that parties bear their own costs no longer applies. The costs of a proceeding, or part of a proceeding, are now in the general discretion of the Court.<sup>1</sup>

Matters that the Court may consider in making an order for costs include, but are not limited to:

- relative success of the parties;
- commercial interest of the parties;
- whether the proceedings were commenced for an improper purpose or without a reasonable prospect of success;
- whether a decision conflicts with a relevant instrument;
- if there is a change to the development application which is the subject of the appeal, the circumstances relating to the change and the effect of the proceedings;
- whether the proceedings involved a matter of public interest;
- whether a party acted unreasonably leading up to the proceedings or in the conduct of the proceedings;
- whether a party has incurred costs because of another party; and
- whether a party should have been more active in the proceedings.<sup>2</sup>

The general discretion rule applies to all proceedings except for enforcement proceedings, which are usually initiated by local council. Costs for enforcement proceedings follow the event, and include investigation costs, unless the Court orders otherwise.<sup>3</sup>

The previous costs rule that each party is to bear their own costs still applies to matters that are resolved during the dispute resolution process (mediation), unless the Court orders otherwise.<sup>4</sup> However, if the parties participate in the mediation process and matter is not resolved, then the costs of mediation will be included in the costs of the proceedings.<sup>5</sup>

In deciding whether to appeal to the Court or become a co-respondent you must consider the impact that these changes will have on you. With costs in the general discretion of the Court there is greater uncertainty as to the risks involved in appealing. The Court has the discretion to make an order as it sees fit, which could range from parties bearing their own costs to a costs order against you, meaning that you will have to pay the costs of the other party.

<sup>1</sup> *Sustainable Planning Act 2009 (Qld) s457(1).*

<sup>2</sup> *Sustainable Planning Act 2009 (Qld) s457(2)-(3).*

<sup>3</sup> *Sustainable Planning Act 2009 (Qld) s457(9).*

<sup>4</sup> *Sustainable Planning Act 2009 (Qld) s457(4).*

<sup>5</sup> *Sustainable Planning Act 2009 (Qld) s457(5).*

The old costs rules (under the former s457) continue to apply to any proceedings commenced before SPOLA commenced on 22 November 2012, including interlocutory proceedings.<sup>6</sup>

The amended *Sustainable Planning Act 2009 (Qld)* is available online at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SustPlanA09.pdf>.

With thanks,

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<sup>6</sup> *Sustainable Planning Act 2009 (Qld)* s945.