

## The Community Litigants Handbook and the New Planning Laws

We are updating *The Community Litigants Handbook* to reflect recent changes to the law with the introduction of the [Planning Act 2016](#); [Planning Regulation 2017](#); and the [Planning & Environment Court Act 2017](#). We hope to have the new 5<sup>th</sup> edition available mid 2018.

There have been a number of changes to the law, however, the process for lodging, joining and conducting a planning appeal is very similar to the process discussed in the Handbook 4<sup>th</sup> edition. If you are commencing or joining an appeal and using the Handbook 4<sup>th</sup> edition, please note the information below.

### Commencing and joining planning appeals

Under the old act, submitter appellants were not required to serve other submitters with a copy of the Notice of Appeal (see page 63 of the Handbook). Under the *Planning Act*, submitters have 2 business days to serve the Notice of Appeal on **all other eligible submitters**. Service is required on all submitters, not just principal submitters.<sup>1</sup> Submitter appellants will need to obtain a list of eligible submitters from council. Service by post or e-mail is acceptable.

### New decision framework

The *Planning Act* commenced on 3 July 2017. Planning appeals commenced after that date will be heard under the *Planning Act* and not the *Sustainable Planning Act 2009*.<sup>2</sup>

The rules about how a development application is decided have changed. Under the old legislation, the decision could not conflict with the planning scheme unless there were sufficient grounds to justify the decision despite the conflict (*Sustainable Planning Act*, s326 - page 19 of the Handbook 4<sup>th</sup> edition).

The *Planning Act* does not stipulate a similar test for approval or refusal of impact assessable development. Broadly, the assessment must be carried out against the assessment benchmarks of the planning scheme and regard may be had to any other relevant matter (*Planning Act*, s45(5)).

We are yet to see how these new provisions will change the way development applications are assessed and decided. In the meantime, when drafting your Notice of Appeal, list all conflicts with the planning scheme and any other grounds that may be relevant - such as planning need or a change in circumstances since the planning scheme was drafted.

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<sup>1</sup>*Planning Act* ss229 &230. See the recent decision in [Ayre v Brisbane City Council \[2018\] QPEC 17 \(3 April\) 2018](#).

<sup>2</sup>See the recent decision in [Jakel Pty Ltd & Ors v Brisbane City Council & Anor \[2018\] QPEC 21](#).

## New costs rule

Under the new *Planning & Environment Court Act 2016*, the rule about who must pay the legal costs for planning appeals has changed. The Handbook 4<sup>th</sup> edition section on costs risks (pages 39 to 41) should be disregarded.

The *Planning & Environment Court Act 2016* restates the general rule that each party pay its own costs (subject to some exceptions for undue delay or conduct). This is good news and makes the Planning & Environment Court more accessible to community litigants.

For the costs rule and exceptions, see [sections 58 to 62](#) of the *Planning & Environment Court Act 2016*. If you are considering litigation prior to the publication of the updated Handbook, please contact the EDO for a copy of the costs chapter contained in the 3<sup>rd</sup> edition of the Handbook as it more accurately reflects the current law.

## References to legislation and rules

All references to legislation in the Handbook 4<sup>th</sup> edition should be disregarded. The new laws can be found in the: [Planning Act 2016](#); [Planning Regulation 2017](#); and the [Planning & Environment Court Act 2017](#).

The Planning and Environment Court case management *Practice Direction No 2 of 2011* (included in pages 156-159 of the 4<sup>th</sup> edition) has been replaced with [Practice Direction No 2 of 2014](#). The *Planning & Environment Court Rules (2010)* and the *Uniform Civil Procedure Rules 1999* have not changed.

For information on the new planning laws see:

- [Community Rights to be Involved in Development Assessment](#) on the EDO website.
- [Our Planning System](#) on the Department of Local Government and Planning website.
- [Going to the Planning and Environment Court](#) on the Queensland Courts website.