Notice

Environmental Protection Act 1994

Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This notice to conduct or commission an environmental evaluation is issued by the administering authority pursuant to section 326B of the Environmental Protection Act 1994.

RTA Yarwun Pty Ltd
975 Hanson Road
YARWUN QLD 4680

Your reference: EPPR00926513

Our reference: 221024, 101/0006008

15 April 2015

Take notice: that under the *Environmental Protection Act 1994* (the Act) a notice to conduct or commission an environmental investigation is issued to RTA Yarwun Pty Ltd (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The notice to conduct or commission an environmental investigation is issued in respect of the activities of RTA Yarwun Pty Ltd at 975 Hanson Road, Yarwun, QLD, 4680, on land described as Lot 1 SP144430 (the premises).

A. Grounds

The notice to conduct or commission an environmental investigation is issued on the following grounds:

- an activity or proposed activity is causing, or is likely to cause environmental harm.

The facts and circumstances forming the basis for these grounds are:

1. RTA Yarwun Pty Ltd (RTAY) operates the Yarwun Alumina Refinery over 24 tenements located approximately 10 kilometres west of the city of Gladstone.
2. RTAY report that on 29 January 2014 they provided verbal notification to the department of a ground water expression issue.
3. At a meeting on 26 August 2014, RTAY informed the department of two groundwater expressions first observed in 2013, to the north (the Northern Groundwater Expression) and northeast (the Firewater Dams Expression) of the RMA.
4. Department officers inspected the Northern Groundwater Expression (NGE) on Friday 5 September 2014 and observed an area with water ponding on the surface of the land surrounded by a significant area of dead or damaged vegetation. Department officers undertook water quality sampling of the ponded water at the NGE and results found high salinity (53.8 mS/cm).
5. Department officers also inspected the Firewater Dams Expression (FWDE) on Friday 5 September 2014 and observed damp soil up-slope of the small GW1 dam and fire water, the expression was

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ponding in the dams from the surrounding soil. Department officers undertook water quality sampling of the ponded water and the results found high salinity (31.1 mS/cm) and very low pH (2.83).

6. RTA Yarwun have expressed an opinion that, based on evidence collected to date, the expressions are naturally occurring groundwater and that there has been no release of contaminants from the RMA to groundwater.
7. Schedule 9 of the *Environmental Protection Regulations 2008* provides criteria for the definition of a water contaminant, the two of which that are relevant include;
    - a liquid containing suspended or dissolved solids; and
    - a substance that has a pH outside the range 6.5 to 8.5.
8. The water quality results obtained by departmental officers on 5 September 2014 demonstrate that the ponded groundwater expressions contain contaminants as;
    - the *Australian and New Zealand guidelines for fresh and marine water quality* define total dissolved solids (salinity) as the measure of all inorganic salts dissolved in water (see section 4.3.3.5); and
    - the NGE was characterised by very high salinity; and
    - the FWDE was characterised by a low pH of 2.83, outside the pH range 6.5 to 8.5.
9. RTAY provided the department with a report titled *Investigation of dead vegetation north of the RTA Yarwun RMA* dated October 2014 (Report number 590404001561-1). The report found that multiple lines of evidence clearly show the death of the vegetation is a result of salt scalding from the groundwater expression in the area north of the RMA.
10. RTAY provided the department with a report titled *Groundwater Expression at the Rio Tinto Alcan RMA* dated 27 November 2014 (Report number 15188-1). The report found the following;
    - Groundwater expression in the vicinity of the north wall of the RMA was first observed in 2008 with effects on site including road damage and dead vegetation.
    - In 2013 it was observed that an area of dead vegetation and standing water appeared to the north of the RMA boundary, outside of the RTAY tenure.
    - The observed groundwater expression has likely been caused by elevated pressure in the foundation materials below the RMA.
11. Environmental harm as defined by section 14 of the *Environmental Protection Act 1994*, is any adverse effect, or potential adverse effect (whether temporary or permanent and whatever magnitude, duration or frequency) on an environmental value.
12. An environmental value, defined in section 9 of the *Environmental Protection Act 1994*, is a quality or physical characteristic of the environment that is conducive to ecological health.
13. The Queensland Government data set *Biodiversity status of pre-clearing and remnant regional ecosystems series* identifies vegetation at or immediately downstream of the NGE as including regional ecosystem (RE) 11.3.4 - *Eucalyptus tereticornis* and/or Eucalyptus spp. woodland on alluvial plains with VMA class Of Concern.
14. The Of Concern RE 11.3.4 is considered a physical characteristic of the environment that is conducive to ecological health and so is an environmental value under section 9 of the *Environmental Protection Act 1994*.
15. Desktop analysis by the department using available mapping tools indicates that the some of the dead or damaged vegetation is likely RE 11.3.4.

16. The death and damage to the RE 11.3.4 and other surrounding vegetation, is considered environmental harm under section 14 of the *Environmental Protection Act 1994*.
17. A report submitted to the department by RTAY in late 2014, which was prepared by Red Earth Engineering, for the purpose of proposing temporary mitigation options, identified a number of small watercourses which run through the groundwater expression area, with the overall drainage flowing to the north-west in to Larcom Creek.
18. Larcom Creek is included in the *Curtis Island, Calliope River and Boyne River Basins Environmental Values and Water Quality Objectives*, under the *Environmental Protection (Water) Policy 2009*, which lists environmental values by waterway and states the following environmental values are applicable to Larcom Creek;
    - Aquatic ecosystems;
    - Irrigation Farm supply/use;
    - Stock water;
    - Aquaculture;
    - Human consumer;
    - Primary recreation;
    - Secondary recreation;
    - Visual recreation;
    - Drinking water;
    - Industrial use; and
    - Cultural and spiritual values.
19. In the absence of intervention by RTAY, during a rainfall event it is likely that the contaminated ponded water at the NGE and FWDE will migrate to Larcom Creek via the two ephemeral drainage channels which run through the groundwater expression areas. Such a discharge is likely to cause environmental harm to environmental values listed in the Curtis Island, Calliope River and Boyne River Basins Environmental Values and Water Quality Objective.
20. In late 2014 RTAY submitted to the department, a conceptual design for the construction a temporary levee to capture contaminated water accumulated during 24hr 60mm rainfall events as the initial mitigation option to minimise environmental harm while a more permanent solution was investigated.
21. On 26 February 2015, an alternative and preferred mitigation proposal was provided to the department for an extensive channel collection system designed to collect and pump back contaminated stormwater run-off from the groundwater expression areas during low intensity rain events.
22. In order to minimise environmental harm, RTAY confirmed on 24 March 2015 that the first short-term mitigation actions had been undertaken, which involved;
    - the construction of a system comprised of a trench, sump, pipelines and pump, being implemented to collect and transport ponded groundwater at the NGE to the RMA; and
    - the pumping of ponded groundwater from the FWDE to the RMA.

B. Requirements

The report on the environmental investigation must address the following relevant matters:

1. Identify all possible groundwater expressions associated with the Residue Management Area in addition to the already identified Northern Groundwater Expression and Firewater Dams Expression.
2. Identify the source, cause and extent of groundwater expressions associated with the Residue Management Area.
3. Characterise the chemical composition of the groundwater expression water and, with reference to Australia and New Zealand Environment Conservation Council and the Queensland Water Quality Guidelines, identify aspects of the water chemistry that have the potential to cause environmental harm in the receiving environment.
4. Determine the geographical extent of actual and potential contamination in the receiving environment. The investigation must include, but should not necessarily be limited to the following:
    a. identification of the relevant environmental values;
    b. conceptual models that delineate the geographical extent of the actual and potential contamination;
    c. assessments of the impacts on:
        i. water quality for surface and groundwaters including shallow water aquifers on and off the RTAY tenements;
        ii. sediment quality;
        iii. soils;
        iv. flora and fauna;
    d. a comparison and review of previous relevant studies undertaken;
    e. a comparison to valid reference sites.
5. Assessments must be carried out be in accordance with the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000) and AusRivas methodology and / or alternative methods where these are justified on the grounds that the alternative methods will provide a relevant and reliable assessment;
6. Based on the investigations undertaken under requirements 1 to 5, determine and report on all available remediation and rehabilitation options, including costs, and detail remedial works required to prevent contaminated water being discharge to the receiving environment and to rehabilitate impacted environmental values. Remediation and rehabilitation options must ensure ongoing protection of the environmental values of the receiving environment.
7. From the options provided in requirement 6 nominate a preferred solution and provide a timetable for implementation of the necessary remedial and rehabilitative works.

The environmental investigation must be carried out, and the environmental report prepared, by a suitably qualified person.

A suitably qualified person is defined as a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter, and can give authoritative assessment, advice and analysis using relative relevant protocols, standards, methods or literature.

The environmental report must be submitted to the department on or before:

- 4:00pm 14 October 2015.

As the recipient of this notice, you are also required to provide a statutory declaration in the form attached, to accompany the environmental report submitted to the department. The suitably qualified person who prepares the environmental report must also provide a statutory declaration in the form attached to accompany the environmental report submitted to the department.

You can view an electronic version of the statutory declaration for a recipient using the following search term (EM494).[1]

An electronic version of the statutory declaration for a suitably qualified person form is available using the search term (EM471).

Take notice:

1. the requirements of the notice to conduct or commission an environmental investigation take effect immediately upon service of this notice;
2. this notice remains in force until further notice from the department; and
3. you are responsible for meeting the costs of conducting or commissioning the environmental evaluation, preparing the environmental report and providing any further information as requested by the department.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must be made:

- within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of an original decision form (EM709).

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the:

1. Information sheet - internal review and appeal to the Planning and Environment Court (EM1866).
2. Information sheet - internal review and appeal to the Land Court (EM1157).

You may have other legal rights or obligations and should seek your own legal advice.

[1] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

D. Penalty

Failure to comply with a notice to conduct or commission an environmental evaluation is an offence.

1. The maximum penalty for an individual is 300 penalty units, totalling $34,155.
2. The maximum penalty for a corporation is 1500 penalty units, totalling $170,775.

Should you have any queries in relation to this notice, please contact David Love of the department on telephone number (07) 4971 6508.

Signature

15/4/2015
Date

Hamish Butler
A/Compliance Manager
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

Enquiries:
PO Box 7230
CAIRNS QLD 4870
Ph: (07) 4222 5334
Email: ESCairns@ehp.qld.gov.au

Statutory Declaration

Environmental Protection Act 1994

Environmental Evaluation

Suitably qualified person

A Statutory Declaration is a written statement of facts that is sworn or declared under the Oaths Act 1867. This Statutory Declaration must be completed by the person who conducted the environmental evaluation and accompany the environmental report submitted to the Department of Environment and Heritage Protection (the department).

Oaths Act 1867

QUEENSLAND
TO WIT

I _____

Insert the name of the person making this declaration

of _____

Insert the street address of the person making this declaration

_____

in the State of Queensland do solemnly and sincerely declare that:

- I am the suitably qualified person and author of an environmental report entitled

_____

Insert title of the environmental report

In accordance with the environmental evaluation issued by the department under the Act to:

_____ _____

Insert name of recipient of the notice — Insert date of the notice

A copy of my report is attached to this statutory declaration and marked "A".

I possess the following qualifications and experience relevant to this environmental evaluation:

_____

I have not knowingly included any false, misleading or incomplete information in the report; and

I have not knowingly failed to reveal any relevant information or document to the department.

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I certify that:

- The report addresses the relevant matters for the evaluation and is factually correct; and
- The opinions expressed in it are honestly and reasonably held.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1867*.

Taken and declared before me, at _____
Insert location

this _____ day of _____ in the year _____
Insert day (e.g. 18th) Insert month Insert year

Signed

(Person making this declaration)

Signed

<INSERT Justice of the Peace / Commissioner for Declarations / Lawyer>

Printed name and registration number (if applicable)

Statutory Declaration

Environmental Protection Act 1994

Environmental Evaluation

Recipient

A Statutory Declaration is a written statement of facts that is sworn or declared under the Oaths Act 1867. In accordance with section 326E of the Environmental Protection Act 1994 (the Act), this Statutory Declaration must be completed by the recipient of an environmental evaluation notice and must accompany the environmental report submitted to the Department of Environment and Heritage Protection (the department).

Oaths Act 1867
QUEENSLAND
TO WIT

I _____

Insert the name of the person making this declaration

of _____

Insert the street address of the person making this declaration

_____

in the State of Queensland do solemnly and sincerely declare that in accordance with section 326E of the *Environmental Protection Act 1994* (the Act), I have:

- not knowingly given any false or misleading information; and
- given all relevant information

to the person who carried out the environmental evaluation, over the period:

_____ to _____

Insert start date — Insert end date

for the purpose of submitting a report in accordance with the environmental evaluation notice issued by the department under the Act to:

_____ _____

Insert name of recipient of the notice — Insert date of the notice

ABN 46 640 294 485

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A copy of the report is attached to this statutory declaration and marked "A".

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1867*.

Taken and declared before me, at _____
Insert location

this _____ day of _____ in the year _____
Insert day (e.g. 18th) Insert month Insert year

_____ _____
Signed Signed

(Person making this declaration) <INSERT Justice of the Peace / Commissioner for Declarations / Lawyer>

_____
Printed name and registration number (if applicable)

Information sheet

Environmental Protection Act 1994

Internal review and appeal to Land Court

This information sheet forms part of an information notice under the Environmental Protection Act 1994. *It gives a summary of the process for review and appeal under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 to 530 and Part 1 of Schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Land Court.*

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review of certain decisions made under the EP Act. Decisions that can be reviewed are listed in Schedule 2 of the EP Act. The EP Act also provides that a dissatisfied person for a review decision listed in Part 1 of Schedule 2 of the EP Act may appeal against the original decision or the review decision to the Land Court.

Summary of the process for internal review and appeal to the Land Court

Chapter 11, Part 3 of the EP Act

Division 1—Interpretation

Section 519 Original decisions

1) A decision mentioned in schedule 2 is an 'original decision'.
2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an original decision.

Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

Division 2—Internal review of decisions

Section 521 Procedure for review

1) A dissatisfied person may apply for a review of an original decision.
2) The application must—
   a) be made in the approved form to the administering authority within—
      i) 10 business days[1] after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
      ii) the longer period the authority in special circumstances allows; and
   b) be supported by enough information to enable the authority to decide the application.
3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—
   a) notice of the application (the 'review notice');

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b) a copy of the application and supporting documents.

4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days after the application is made to the authority.

5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within 10 business days after receiving the application—

a) review the original decision;

b) consider any submissions properly made by a recipient of the review notice; and

c) make a decision (the 'review decision') to—

i) confirm or revoke the original decision; or

ii) vary the original decision in a way the administering authority considers appropriate.

6) The application does not stay (i.e. suspend or stop) the original decision.

7) The application must not be dealt with by—

a) the person who made the original decision; or

b) a person in a less senior office than the person who made the original decision.

8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

9) The notice must—

a) include the reasons for the review decision; and

b) inform the person of their right of appeal against the decision.

10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.

11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, s. 27A.

12) This section does not apply to an original decision made by—

a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or

b) for another matter—the chief executive personally.

13) Also, this section does not apply to an original decision to issue a clean-up notice.

Section 522 Stay of operation of particular original decisions

1) If an application is made for review of an original decision mentioned in schedule 2, part 1 or 2, the applicant may immediately apply for a stay of the decision to—

a) for an original decision mentioned in schedule 2, part 1—the Land Court; or

b) for an original decision mentioned in schedule 2, part 2—the Court.

2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.

4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 3—Appeals

Subdivision 1—Appeals to Land Court

Section 523 Review decisions subject to Land Court appeal

This subdivision applies to original decisions mentioned in Schedule 2, Part 1 of the EP Act.

Section 524 Right of appeal

A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the Land Court.

Section 525 Appeal period

1) The appeal must be started within 22 business days after the appellant receives notice of the decision.

2) However, the Land Court may at any time extend the time for starting the appeal.

Section 526 Land Court mediation

1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.

2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court[2].

Section 527 Nature of appeal

The appeal is by way of rehearing, unaffected by the review decision.

Section 528 Land Court's powers for appeal

In deciding the appeal, the Land Court has the same powers as the administering authority.

Section 529 Decision for appeals against refusals under s. 207

1) This section applies if the decision appealed against is a decision under s. 207 to refuse to allow an application for environmental authority (mining lease) to proceed.

2) In deciding the appeal the Land Court must confirm the decision or allow the appeal.

3) If the appeal is allowed—

   a) the relevant period for the administering authority to make the decision is taken to have been extended to when the decision on the appeal is made; and

   b) the authority is taken, at the end of the period, not to have made the decision.

Section 530 Decision for other appeals

1) This section applies if the decision appealed against is not a decision mentioned in s. 529(1).

2) In deciding the appeal, the Land Court may—

   a) confirm the decision;

   b) set aside the decision and substitute another decision; or

c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.

3) In setting aside or substituting the decision, the Land Court has the same powers as the authority.

4) However, this part does not apply to a power exercised under subsection (3).

5) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision.

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[1] Under the *Environmental Protection Act 1994* business days—'generally, does not include a day between 26 December and 1 January in the following year'.

[2] For information on how to start the appeal, see the *Land and Court Rules 2000*. For information on the conduct of the mediation, see the *Land Court Act 2000*. Information is also available on the Land Court website at <www.landcourt.qld.gov.au>.

Information sheet

Environmental Protection Act 1994

Internal review and appeal to Planning and Environment Court

This information sheet forms part of an information notice under the Environmental Protection Act 1994. *It gives a summary of the process for review and appeal to the Planning and Environment Court under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 - 539 and schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Planning and Environment Court.*

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review and appeal against certain decisions made under the EP Act. Decisions that can be reviewed or appealed are listed in schedule 2 of the EP Act and within certain sections of the regulations and subordinate legislation[1] made under the EP Act. The EP Act also provides that a dissatisfied person for a review decision, other than those listed in part 1 of schedule 2 of the EP Act[2], may appeal the decision to the Planning and Environment Court (the Court).

Summary of the process for internal review and appeal to the Court

Chapter 11, Part 3 of the EP Act

Division 1 — Interpretation

Section 519 Original decisions

1) A decision mentioned in schedule 2 is an 'original decision'.
2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an 'original decision'.

Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

Division 2 — Internal review of decisions

Section 521 Procedure for review

1) A dissatisfied person may apply for a review of an original decision.
2) The application must—
   a) be made in the approved form to the administering authority within—
      i) 10 business days[3] after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
      ii) the longer period the authority in special circumstances allows ; and
   b) be supported by enough information to enable the authority to decide the application.
3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

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a) notice of the application (the 'review notice');

b) a copy of the application and supporting documents.

4) The review notice must inform the recipient that submission on the application may be made to the administering authority within five business days after the application is made to the authority.

5) If the administering authority is satisfied the applicant has complied with subsection (2) and (3), the authority must, within 10 business days after receiving the application—

a) review the original decision;

b) consider any submissions properly made by a recipient of the review notice; and

c) make a decision (the 'review decision') to—

i) confirm or revoke the original decision; or

ii) vary the original decision in a way the administering authority considers appropriate.

6) The application does not stay the original decision.

7) The application must not be dealt with by—

a) the person who made the original decision; or

b) a person in a less senior office than the person who made the original decision.

8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

9) The notice must—

a) include the reasons for the review decision; and

b) inform the person of their right of appeal against the decision.

10) If the administering authority does not comply with subsections (5) or (8), the authority is taken to have made a decision confirming the original decision.

11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.

12) This section does not apply to an original decision made by—

a) for a matter, the administration and enforcement of which has been devolved to a local government, the local government itself or the chief executive officer of the local government personally; or

b) for another matter — the chief executive personally.

13) Also, this section does not apply to an original decision to issue a clean-up notice.

Section 522 Stay of operation of original decisions

1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to—

a) for an original decision mentioned in schedule 2, part 1—the Land Court; or

b) for an original decision mentioned in schedule 2, part 2—the Court.

2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.

4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 4 — Appeals to Court

Section 531 Who may appeal

1) A dissatisfied person who is dissatisfied with a review decision, other than a review decision to which subdivision 1^4 applies, may appeal against the decision to the Court.

2) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.

3) A dissatisfied person who is dissatisfied with an original decision to which s. 521 does not apply may appeal against the decision to the Court.

Section 532 How to start appeal

1) An appeal is started by—

   a) filing written notice of appeal with the registrar of the Court; and

   b) complying with rules of court applicable to the appeal.

2) The notice of appeal must be filed—

   a) if the appellant is the chief executive—within 33 business days after the decision is made or taken to have been made; or

   b) if the appellant is not the chief executive—within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.

3) The Court may at any time extend the period for filing the notice of appeal.

4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Section 533 Appellant to give notice of appeal to other parties

1) Within 8 business days after filing the notice of appeal, the appellant must serve notice of the appeal on—

   a) if the appellant is the chief executive—all persons who were given notice of the original decision; or

   b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.

2) The notice must inform the persons that, within 10 business days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

Section 534 Persons may elect to become respondents to appeal

A person who properly files in the Court a notice of election becomes a respondent to the appeal.

Section 535 Stay of operation of decisions

1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.

3) The period of a stay must not extend past the time when the Court decides the appeal.

4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Section 535A Stay of decision to issue a clean-up notice

5) This section applies to an application under section 535 for a stay of a decision to issue a clean-up notice.

6) In deciding the application, the Court must have regard to—

   a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and

   b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

Section 536 Hearing procedures

1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

Section 537 Assessors

If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint one or more assessors to help the judge in deciding the appeal.

Section 538 Appeals may be heard with planning appeals

1) This section applies if—

   a) a person appeals against an administering authority's decision (whether an original or review decision) to refuse to grant a registration certificate or to accredit an environmental risk management plan (ERMP); and

   b) a person appeals against the assessment manager's decision under the *Sustainable Planning Act 2009* about a planning or development matter for the premises to which the certificate or the ERMP or the application for the certificate relates.

2) On the application of a party to either of the appeals, the Court may order—

   a) the appeals to be heard together or one immediately after the other; or

   b) one appeal to be stayed until the other has been decided.

3) The application may be made—

   a) by an appellant when starting an appeal or at any time before the appeals are decided; or

   b) by another party at any time before the appeals are decided.

4) This section applies even though the parties, or all of the parties, to the appeals are not the same.

Section 539 Powers of Court on appeal

1) In deciding an appeal, the Court may—

a) confirm the decision appealed against; or

b) vary the decision appealed against; or

c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

Further information

The latest version of this publication can be found at <www.ehp.qld.gov.au>. Note: where available, the publication number (e.g. EM1866 for this document) can be used as a search term.

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[1] The original decisions under the subordinate legislation are subject to change. As at 11 May 2010 they are listed in:

- Regulation 110 of the Environmental Protection Regulation 2008; and
- Regulation 68C of the Environmental Protection (Waste Management) Regulation 2000.

[2] An appeal may be made to the Land Court for original decisions in part 1 of schedule 2.

[3] Under the *Environmental Protection Act 1994* "business days does not include a business day between 26 December and 1 January in the following year".

[4] Subdivision 1 is about appeals to the Land Court and information about this is contained in ss. 519 - 539.