

BUILDING AND DEVELOPMENT TRIBUNALS

Purpose

To provide information about the Building and Development Tribunal appeal process under Chapter 4 Part 2 of the *Integrated Planning Act 1997*.

Scope of building and development tribunals

Tribunals are constituted to hear appeals about the decisions of assessment managers and building certifiers concerning the following matters-

- siting requirements for houses, garages, carports, sheds etc, contained in Part 3 of the *Standard Building Regulation 1993 (SBR)*;
- siting requirements as contained in the Queensland Residential Design Guidelines (QRDG), where it is adopted by resolution under the SBR;
- specific matters requiring local government decision as listed under Schedule 6 of the SBR;
- swimming pool fencing requirements;
- compliance with the *Building Code of Australia*;
- inspection of building work and certificates of classification;
- enforcement notices about building matters (eg demolition, repair etc) approved under the Building Act;
- appeals by advice agencies;
- the amount and form of security for the removal and rebuilding of a building or structure; and
- a range of other minor matters under the legislation.

Matters outside the jurisdiction of building and development tribunals

The Integrated Planning Act does **not** give building and development tribunals the jurisdiction to consider appeals against council decisions concerning-

- compliance with a town planning scheme. For example, where the siting requirements for class 1 and 10 buildings or structures are contained within a council's planning scheme, a council decision assessed against the scheme's siting requirements is not appealable to a tribunal;



- compliance with the QRDG where it is adopted under a planning scheme and not by resolution under the SBR; and
- an application for material change of use, operational work or reconfiguring a lot.

In the above circumstances, an appeal would have to be made to the Planning and Environment Court, (refer IPA Chapter 4 Part 1).

The applicant should check with the assessment manager, building certifier or the Registrar of Building and Development Tribunals to ascertain whether the particular matter can be appealed to a tribunal.

Time limit for lodging appeals

All appeals must be made on the prescribed form (Form 10), which is available on the department's internet site at www.dcilgp.qld.gov.au/index_building.html - under "Forms". Most appeals must be lodged with the registrar **within 20 business days** after the day the decision, notice or requirement is given to the applicant.

Exceptions:

- An appeal against a deemed refusal may be lodged **at any time** after the last day a decision on the matter should have been made.
- An appeal by an advice agency must be lodged **within 10 business days** after the day the decision notice or negotiated decision notice is given to the advice agency.
- An appeal under Section 24 of the Building Act against an enforcement notice given in relation to a dangerous building or structure must be lodged **within 5 business days** after the enforcement notice is given to the applicant.

If a notice of appeal is not lodged within the time stated for starting an appeal, no further action can be taken in regard to the appeal.

Tribunal appeal fees

Class of building	No site inspection by Tribunal	Site inspection by Tribunal
1 & 10	\$250	\$400
2 to 9 – floor area less than 500m ²	\$350	\$500
2 to 9 - floor area more than 500m ²	\$500	\$750

Appointment of referees and establishing a tribunal

The Minister may appoint any number of persons under the Integrated Planning Act to be referees for a term not longer than 3 years. Currently there is a pool of 57 referees appointed until 5 December 2000. Currently, the expertise of referees is spread over a number of professions and includes architects, engineers, building certifiers, builders and consultants. Tribunals may consist of between one and five referees depending on the nature and complexity of the appeal.

Conduct of hearings

A tribunal determines whether it will conduct a hearing or if all parties agree, decide the appeal on the basis of written submissions. In most cases a hearing is convened and the appellant may request a site inspection by the tribunal.

A tribunal may sit at the times and places it decides and in conducting a hearing, it need not proceed in a formal way and is not bound by the rules of evidence. It may inform itself in the way it considers appropriate and may seek the views of any person. It must give all persons appearing before it reasonable opportunity to be heard and must make its decision in a timely way.

A party to an appeal may appear in person or be represented by an agent. However a person who is a lawyer must not represent any party at the hearing.

Appeal decision

A tribunal may-

- confirm the decision appealed against; or
- change the decision appealed against; or
- set aside the decision appealed against and make a decision replacing the decision set aside.

For a deemed refusal, a tribunal may-

- order the assessment manager to decide the application by a stated time; and
- if the assessment manager does not comply with the order - decide the application.

For an amenity and aesthetics appeal, a tribunal may-

- vary the application so that the tribunal is satisfied that the building when erected, will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood and will not be in extreme conflict with the character of the building's neighbourhood.

The majority of decisions are made within three weeks after receipt of the appeal.

Costs

Each party to an appeal must bear their own costs for the appeal.

Appeal against a tribunal decision

A party to a tribunal proceeding may appeal against the tribunal's decision to the Planning and Environment Court **within 20 business days** after the day the decision is given, but only on the ground-

- (a) of error or mistake in law on the part of the tribunal; or
- (b) that the tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

Contact details

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