

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

Planning and Environment Court costs

FACT SHEET

Court costs

The *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012* (SPOLAA (No. 2) 2012) amended the *Sustainable Planning Act 2009* (SPA) on 22 November 2012 and changes the way costs for proceedings under the Planning and Environment Court are dealt with.

What has changed?

SPOLAA (No. 2) 2012 amends section 457 of SPA so that generally, costs of a proceeding or part of a proceeding, including an application in a proceeding, are in the discretion of the court. This means that the court can award costs to the various parties to a proceeding.

The amended section 457 now includes guidance about matters the court may consider in exercising its discretion when awarding costs.

An exception to the general rule for costs applies to proceedings seeking enforcement orders under section 601 of SPA, in relation to development offences. These proceedings are generally brought forward by local governments. Amendments under SPOLA (No.2) 2012 require that costs of these proceedings are in the discretion of the court, but follow the event, unless the court orders otherwise.

This means that for these proceedings, the losing party will generally pay the winning party's costs.

The changes commenced on assent of the SPOLAA (No. 2) 2012 on 22 November 2012. The new costs arrangements apply only to proceedings commenced after this date.

Matters the court may consider in awarding costs

The matters the court may consider are not limited, and the court may consider any matter relevant to the proceeding, however the following specified matters under section 457 are noteworthy:

- the relative success of the parties
- whether the proceeding involves a matter of public interest the commercial interests of the parties
- whether a party's involvement was for an improper purpose, or had no reasonable prospect of success
- whether a party has acted unreasonably, or should have taken a more active part in a proceeding.

Costs of a proceeding determined by the court may also include investigation costs for:

- an order about a declaration
- a declaration about the lawfulness of land use or development
- an enforcement order given in relation to a development offence
- an appeal against the giving of an enforcement notice.

Changes to the ADR registrar

SPOLA (No.2) 2012 also expands the role of the Alternative Dispute Resolution (ADR) registrar, enabling the registrar to hear and decide a range of minor disputes as directed by the court.

Furthermore, if the dispute is resolved under this process, each party bears their own costs. This enables the resolution of these matters to be made quickly and cost effectively, without the cost burden of an expensive court hearing and the potential for adverse costs orders being made by the court.

Why were the changes made and what do they mean?

The changes were made to enable streamlining of court operations and to minimise the improper use of the court, for example by commercial competitors appealing development approvals for the purpose of delay, or other non-legitimate reasons.

Under the previous arrangements where each party paid their own costs of a proceeding in the court, some appeals were made purely to cause time and cost delays to projects, where there was no reasonable prospect of success. This is an improper use of the court and is wasteful of resources for all parties involved, including local and state governments who are required to defend their planning decisions.

The amendments mean that the court now has the discretion to determine costs orders for a proceeding, i.e. which parties are responsible for which costs, noting that costs orders could include some or all of the costs of other parties, for example, an appeal designed mainly to obstruct, delay or add further costs to a proposed development may result in an adverse costs order for the appellant.

However, the amendments give guidance to the court in exercising its discretion, by specifying certain matters under section 457 of the SPA that the court may have regard to in making costs orders, to ensure that outcomes are fair and just.

Community groups and individuals are still encouraged to contribute to local government planning schemes during the plan making stage and influence planning and environment matters in their local communities. These groups are also still encouraged to make submissions on impact assessable development which is publicly notified.

Changes to the ADR registrar encourages parties to resolve minor disputes early by providing that those cases heard and decided by the ADR registrar is on the basis of 'own costs'.