Queensland

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Expanded court powers under the Sustainable Planning Act 2009

The *Sustainable Planning Act 2009* replaced the *Integrated Planning Act 1997* on 18 December 2009. In addition to many other changes to Queensland planning and environment law, it expanded the powers of the Planning and Environment Court.

The Court now has expanded power to excuse non-compliance with a provision of the Act. In particular, the Court may now fix development applications that were not properly made or that have lapsed. Previously the Court interpreted its powers to do this as only when a positive requirement of the *Integrated Planning Act 1997* was not complied with, and only when it did not affect a person's rights. References to these limitations have been removed in the *Sustainable Planning Act 2009*.

The Court may now make an order or direction about the conduct of a proceeding it considers inappropriate, even if the order or direction would be inconsistent with another provision in the *Sustainable Planning Act 2009*. Under the *Integrated Planning Act 1997*, the Court only had this power in relation to matters not provided by the *Planning and Environment Court Rules*.

The Court may now award costs against a party if proceedings are considered to be started or continued primarily to delay or obstruct. This has been expanded from the definition under the *Integrated Planning Act 1997*, which used the word 'merely' rather than primarily, and did not refer to the continuation of proceedings. According to the Queensland Government, this was done to discourage commercial competitors from continuing proceedings designed to obstruct, even if the proceedings were valid on other grounds.

New Planning and Environment Court fees

A new fee structure for appeals in the Planning and Environment Court has been brought in by the *Sustainable Planning Regulation 2009*. Many fees that were formerly paid over the course of an appeal have been consolidated into the initial filing fee. The fee for filing a notice of appeal has increased to $480.00 for individuals and $950.00 for all other applicants. In comparison, the fee for filing a notice of appeal under the superseded *Integrated Planning Regulation 1998* was $36.50. However, many other fees under the superseded regulation have been abolished.

Amendment of ambulatory boundaries

On 26 March 2010 the *Natural Resources and Other Legislation Amendment Act 2010* received Royal Assent, amending many pieces of legislation. In particular, the Act introduces a new way for determining the location of tidal and non-tidal ambulatory boundaries through amendments to the *Land Act 1994*, *Survey and Mapping Infrastructure Act 2003*, and the *Water Act 2000*.

An ambulatory boundary is the point where a water body meets land. Tidal boundaries have previously been determined by the mean spring tide, while non-tidal boundaries have been determined by the flow of a watercourse.

The Queensland Government has been concerned that in some cases, landowners were able to include on their properties sections of beach or watercourse, therefore taking them out of State management. In 2005 the Government put a stay on registration of tidal boundary surveys due to this concern. This stay expired 8 May 2010 to be replaced by the new provisions.

The new provisions associate the location of ambulatory boundaries with clearly identifiable land features, rather than a measurement of the mean spring tide or flow of a watercourse. These features must also be stable, not subject to inundation or other deteriorating processes, and be natural.

The new provisions will affect all new surveys undertaken from the date of commencement. As such, they will affect new developments which require surveys of land to be undertaken as part of the development assessment process.

Separation of State forests and plantations

The *Natural Resources and Other Legislation Amendment Act 2010* amended the *Forestry Act 1959* to keep State forests legally separate to plantations on the same land. These amendments create separate licences for forestry plantations so that in the event a plantation licence is granted to a non-government party, the land will not lose its status as a State forest. This aims to ensure that any specific characteristics of State forests – such as the public right of access or protection under the *Nature Conservation Act 1992*, will not be removed when the plantation licence is granted.