

**ENVIRONMENT, RESOURCES AND  
DEVELOPMENT COURT RULES 2003**

(as varied to the 18 May 2020 – Amendment No. 2)

The Environment, Resources and Development Court Rules, dated 24 April 2003, which came into operation 8<sup>th</sup> May 2003 (*Government Gazette* 8 May 2003, p. 1871) have been varied by Environment, Resources and Development Court Rules dated:

Amendment #		Gazette	Date of Operation
1	30 May 2014	19 June 2014, p.2806	1 July 2014
<b>2</b>	<b>8 May 2020</b>	<b>14 May 2020, p. 1095</b>	<b>18 May 2020</b>

BY virtue of the provisions of section 48 of the *Environment, Resources and Development Court Act 1993*, and of all other enabling powers, we, Christine Louise Trenorden, Presiding Member of the Environment, Resources and Development Court, and Susanne Denise Cole, a Judge of that Court, hereby make the following Rules of Court.

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## **Part 1—General**

- 1.1 These Rules may be cited as the Environment, Resources and Development Court Rules 2003, and revoke the Environment, Resources and Development Court Rules 2001.
- 1.2 These Rules are divided into Parts as follows:
- Part 1—General
  - Part 2—Definitions
  - Part 3—Administration
  - Part 3A—E-Business Transactions
  - Part 4—General Powers of the Court
  - Part 5—Appeals
  - Part 5A—Appeals from the Warden’s Court
  - Part 6—Applications
  - Part 7—Enforcement/Compliance Applications
  - Part 8—Conferences
  - Part 9—Mediation
  - Part 10—Building References
  - Part 11—Provision of Documents and Copy Documents
  - Part 12—Service
  - Part 13—Jurisdiction of Master
  - Part 14—Costs
  - Part 15—Contempt
  - Part 16—Procedure upon trial of any Charge of an Offence

### **1.3 Purpose and General Procedure**

1.3.1 These Rules are made for the purpose of establishing orderly procedures for the conduct of proceedings in the Court, and are to be construed and applied so as to best ensure the attainment of the following objects:

- the simplification of practice and procedure;
- the identification of the real issues between the parties prior to the hearing of proceedings;
- the saving of expense; and
- the fair and expeditious disposal of the business of the Court,

and to this end:

- (a) the evidence of any expert witness must be in the form of a statement or report which clearly states the opinions of the witness and the basis for those opinions;
- (b) where an expert witness has provided a statement or report in relation to the subject of the proceedings, that statement or report must be provided to the Court (one copy for each member constituting the Court hearing the matter and one additional copy) and each party in accordance with the relevant Practice Directions issued by the Court;
- (c) oral examination in chief of any witness will not be necessary where the evidence of that witness has been reduced to a statement or report, or in the case of enforcement and other applications, is set out in an affidavit;

- (d) such plans, diagrams, photographs, specifications or other documents (including any plan or other document amending a development or proposal the subject of proceedings) which are reasonably capable of being copied without undue expense and which are to be relied upon at any hearing must be provided to the Court and each party in accordance with the relevant Practice Directions issued by the Court;
- (e) parties must be prepared at any conference held pursuant to section 16 of the Act to identify the issues;
- (f) in respect of an appeal pursuant to section 86 (1) (a) or (b) of the *Development Act 1993*, the applicant for development authorisation must notify each party of any proposed amendment to the development or proposal in accordance with a timetable as directed by the Court, or, where a timetable has not been set, at least 14 days prior to the hearing; and

[para 1.3.1(g) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (g) on the hearing of an appeal by a representor, under the *Development Act 1993* or the *Natural Resources Management Act 2004* or *Landscape South Australia Act 2019*, the applicant for consent must be prepared to inform the Court as to the proposal at the commencement of the hearing.

1.3.2 It is acknowledged that the business of the Court will include proceedings involving parties who will not be represented by counsel, solicitor or other qualified representative familiar with these Rules. These Rules are not intended to frustrate the presentation of a case in good faith by a party not so represented, and the Rules are to be construed and applied accordingly, having regard to the duty of the Court, expressed in section 21 (1) (c) of the *Environment, Resources and Development Court Act 1993*.

1.3.3 In accordance with the objects set out in paragraph 1.3.1, counsel need not robe for the hearing of any proceedings in the Court.

1.3.4 The Court may, at any stage of any proceedings and subject to any statutory requirement, dispense with the observance of any part of these Rules.

[subrule 1.3.5 inserted by ER&D Court Rules 2003 (Amendment No. 2)]

1.3.5 If these Rules are silent in relation to a particular procedure or other matter, unless the Court otherwise orders, that matter is governed by the *Uniform Civil Rules 2020*.

## Part 2—Definitions

2.1 In these Rules, unless the context indicates otherwise:

[2.1 definition “address for service” substituted by ER&D Court Rules 2003 (Amendment No. 2)]

“**address for service**” means an address of a place at which an application or other document may be sent or left for the party giving such address. Such address must include:

- (i) the party title and full name of the party;
- (ii) whether the party is represented by a law firm and, if so, the name of the law firm and of the individual responsible solicitor;
- (iii) a physical address at which documents in or in relation to the proceeding can be served which must:
  - (a) if the party does not provide an email address—be in South Australia; or
  - (b) if the party provides an email address—be in Australia;

- (iv) an email address at which documents in, or in relation to, the proceeding can be served, unless the party does not have available and cannot reasonably obtain an email address; and
- (v) a telephone number at which the party or, if represented, the party's law firm can be contacted.

[2.1 definition "appeal" deleted by ER&D Court Rules 2003 (Amendment No. 2)]

**"appeal"** \*\*\*\*\*

[2.1 definition inserted by ER&D Court Rules 2003 (Amendment No. 2)]

**"appeal against administrative decision"** means an appeal to the Court against, or application to the Court for review of, an administrative decision instituted pursuant to:

- (i) any of the following provisions of the *Development Act 1993*, namely:
  - subsection 6 (4);
  - subsection 74 (6);
  - subsection 86 (1) (a) or (b);
  - subsection 86 (1) (d) (i), but not being an application for an order pursuant to section 55;
  - subsection 86 (1) (d) (ii);
  - subsection 86 (1) (d) (iii), being an appeal or a notice issued pursuant to section 71;
  - subsection 86(1)(f);
- (ii) section 106 of the *Environment Protection Act 1993*;
- (iii) section 20 of the *Heritage Places Act 1993*;
- (iv) subsections 17 (6), 33 (2), 56 (3) of the *Mining Act 1971*;
- (v) section 202 of the *Natural Resources Management Act 2004* or section 216 of the *Landscape South Australia Act 2019*;
- (vi) subsections 65 (1) and 67 (1) of the *Irrigation Act 1994*;
- (vii) section 48 of the *South Eastern Water Conservation and Drainage Act 1992*;
- (viii) subsection 35 (2) of the *Ground Water (Qualco-Sunlands) Control Act 2000*;
- (ix) section 33F of the *Native Vegetation Act 1991*; or
- (x) section 31 of the *Upper South East Dryland Salinity and Flood Management Act 2002*.

[2.1 definition "application" substituted by ER&D Court Rules 2003 (Amendment No. 2)]

**"application"** means any application to the Court instituted pursuant to:

- (i) any of the following provisions of the *Development Act 1993*:
  - subsection 41 (2);
  - subsection 55 (1);
  - subsection 60 (3);
- (ii) section 42, or subsections 49(8) or 89(4) of the *Environment Protection Act 1993*;

- (iii) sections 30 or 35 of the *Heritage Places Act 1993*;
- (iv) the power of the Court to make a declaration of right pursuant to section 28 of the Act;
- (v) the power of the Court to make a determination contemplated by subsection 49 (2) of the *Irrigation Act 1994*;
- (vi) section 30 of the *Native Vegetation Act 1991*; or
- (vii) the *Natural Resources Management Act 2004* or the *Landscape South Australia Act 2019*,

but does not include an appeal against administrative decision, enforcement application, compliance application or interlocutory application.

[2.1 definition “authorised electronic communication” deleted by ER&D Court Rules 2003 (Amendment No. 2)]

**“authorised electronic communication”** \*\*\*\*\*

[2.1 definition “Authority” amended by ER&D Court Rules 2003 (Amendment No. 2)]

**“Authority”** includes the State Planning Commission, a Council, the Environment Protection Authority, the State Heritage Authority, the Native Vegetation Council, a Minister of the Crown or a public authority against whom an appeal to the Court may be instituted, or an irrigation trust constituted under the *Irrigation Act 1994*, as the case may be.

**“building referee”** and **“building referees”** mean a Commissioner or Commissioners to whom a dispute is referred for determination as a building referee or building referees.

**“building reference”** means an appeal against a refusal under section 67, a refusal under section 68 and an order under subsection 69 (1) (a) of the *Development Act 1993*.

**“certificate of title”** means every certificate of title issued pursuant to the *Real Property Act 1886*, every memorandum of lease issued pursuant to the *Crown Lands Act 1929*, the *Pastoral Land Management and Conservation Act 1989*, or the *Irrigation Act 1930*, and every mining production tenement.

**“compliance application”** means an application pursuant to section 74A of the *Mining Act 1991* or section 86 of the *Opal Mining Act 1995*.

**“conference”** means a conference conducted pursuant to Section 16 of the Act.

**“Council”** means a municipal or district council.

**“Court”** means the Environment, Resources and Development Court and includes a Judge, Commissioner, Master or Magistrate of the Court.

**“decision”** means any decision, assessment, request, declaration, direction, restriction, order or other act (including a proposal pursuant to section 67 (1) of the *Irrigation Act 1994*), against which an appeal may be instituted or which may be the subject of a reference to building referees.

**“deliver”** includes electronic transmission to the e-mail address of the deliverer by an authorised electronic communication.

**“District Registry”** means any Registry of the Court other than the Principal Registry of the Court.

**“e-mail address”** means the mailing address to and from which an authorised electronic communication may be sent and received, using the World Wide Web.

[2.1 definition “enforcement application” substituted by ER&D Court Rules 2003 (Amendment No. 2)]

**“enforcement application”** means an application to the Court for an order pursuant to:

- (i) section 85 of the *Development Act 1993*,
- (ii) section 104 of the *Environment Protection Act 1993*;
- (iii) section 201 of the *Natural Resources Management Act 2004* or section 215 of the *Landscape South Australia Act 2019*;
- (iv) section 31A of the *Native Vegetation Act 1991*; or
- (v) section 29 of the *Upper South East Dryland Salinity and Flood Management Act 2002*.

**“interim injunction”** means any injunction or other order of the Court issued pursuant to section 34 of the Act.

**“interlocutory application”** means any application for an interlocutory order of the Court.

**“interlocutory order”** means any injunction, interim injunction, interlocutory order or other order made by the Court which does not finally dispose of the rights of parties, pursuant to or as contemplated by:

- (i) sections 17 (3), 28a, 34 or 35 of the Act;
- (ii) subsections 69 (11), 71 (13), 84 (10) or 85 (10) of the *Development Act 1993*;
- (iii) subsections 106 (4) or 107 (2) of the *Environment Protection Act 1993*;

[2.1 definition “interlocutory” (iv) deleted by ER&D Court Rules 2003 (Amendment No. 2)]

- (iv) \*\*\*\*\*
- (v) Part 4 of these Rules;
- (vi) sections 31C, 31E (7) and 31F (5) of the *Native Vegetation Act 1991*; or
- (vii) section 30 of the *Upper South East Dryland Salinity and Flood Management Act 2002*,

but this list is not necessarily exhaustive.

[2.1 definition “mining appeal” inserted by ER&D Court Rules 2003 (Amendment No. 2)]

**“mining appeal”** means an appeal to the Court instituted pursuant to section 65 of the *Mining Act 1971*.

**“mining application”** means any application to the Court for:

- a determination of compensation pursuant to subsection 9 (3), sections 54 or 61 of the *Mining Act 1971* or section 38 of the *Opal Mining Act 1995*;
- a determination of the compensation payable and an order that the Minister pay such compensation to the holder of a licence pursuant to subsection 33 (5) of the *Mining Act 1971*;
- a determination consequent upon the lodging of a notice of objection pursuant to section 58A of the *Mining Act 1971* or section 32 of the *Opal Mining Act 1995*;
- a determination of the conditions on which declared equipment may be used on land, pursuant to subsection 59 (8) of the *Mining Act 1971*.

[2.1 definition “prescribed form” inserted by ER&D Court Rules 2003 (Amendment No. 2)]

**“prescribed form”**—see rule 3.4.1 and 3.4.2(b);

“**Registrar**” means the Registrar of the Court and includes a Deputy Registrar.

“**registry**” means the Principal Registry and any District Registry of the Court.

“**related decisions**” means any decisions made or issued by the same authority and relating to the same development, land, or watercourse.

“**signed**” includes executed under seal or by virtue of power of attorney or of delegation.

“**the Act**” means the *Environment, Resources and Development Court Act 1993*.

## **Part 3—Administration**

### **3.1 Seal of the Court**

- 3.1.1 The Registrar shall be responsible for the safe keeping and due and proper use of the seal of the Court.
- 3.1.2 The Registrar must ensure that a seal of the Court is kept at each registry of the Court.
- 3.1.3 Subject to paragraph 3.1.4 of this Rule, the seal of the Court shall be affixed to each originating process and all orders issued by the Court, and to such other documents as the Court may from time to time determine.
- 3.1.4 The Court may, if it considers it to be appropriate, direct that any order, other than a final order or an interim injunction, need not be drawn up or sealed, in which case the endorsement of the order in the Court record shall take effect as the order of the Court as from the date of such endorsement.
- 3.1.5 The Court may, of its own motion, affix its seal to any order issued by it.
- 3.1.6 The Court may vary or amend any order issued by it (including any order to which the seal of the Court has been affixed) in order to remedy any error or omission in such order.

### **3.2 Registries of the Court**

- 3.2.1 The Principal Registry of the Court shall be at the Sir Samuel Way Building, Victoria Square, Adelaide.
- 3.2.2 The District Registries of the Court shall be at the same places as the District Registries of the District Court, namely at Berri, Mount Gambier, Port Lincoln, Port Pirie and Whyalla.

### **3.3 Practice Directions**

- 3.3.1 The Registrar may issue practice directions, not inconsistent with these Rules, with respect to the business of the Court, for the information and guidance of parties and their representatives.

### **3.4 Prescribed Forms**

[rule 3.4 inserted by ER&D Court Rules 2003 (Amendment No. 2)]

- 3.4.1 The forms contained in Schedule 1 prescribe the form and content of defined types of documents to be filed at court (*prescribed forms*).
- 3.4.2 The Senior Judge may—
  - (a) modify or delete a prescribed form contained in Schedule 1; or
  - (b) prescribe the form and content of additional defined types of documents to be filed at court (*prescribed forms*).

- 3.4.3 When these Rules refer to a prescribed form, that form (as modified under subrule 3.4.2(a) when applicable), or with the leave of the Court a form to similar effect, must be used for that purpose or in those circumstances.

[Part 3A E-Business Transactions deleted by ER&D Court Rules 2003 (Amendment No. 2)]

### **Part 3A—E-Business Transactions\*\*\*\*\***

[Part 3A – Parties to Proceedings inserted by ER&D Court Rules 2003 (Amendment No. 2)]

### **Part 3A—Parties to Proceedings**

- 3A.1 Parties to a proceeding (not being a mining appeal) in the Court are either applicants, respondents or interested parties.
- 3A.2 An *applicant* is the party (whenever joined) seeking final relief from the Court in the action.
- 3A.3 A *respondent* is a party (whenever joined) —
- (a) against whom final relief is sought from the Court in the action; or
  - (b) whose interests may be directly and adversely affected by the orders sought in the action.
- 3A.4 An *interested party* is a party (whenever joined) against whom no relief is sought and whose interest is not directly and adversely affected by the action but who should be given the opportunity to be heard in relation to the proceeding or who must be joined to be bound by the result.

[Part 3B – Parties to Mining Appeals inserted by ER&D Court Rules 2003 (Amendment No. 2)]

### **Part 3B—Parties to Mining Appeals**

- 3B.1 Parties to a mining appeal are either appellants, respondents or interested parties.
- 3B.2 An *appellant* is the person appealing against a judgment, order or decision.
- 3B.3 A *respondent* to an appeal means a party (whenever joined) —
- (a) who was an applicant or respondent in the proceeding at first instance, unless the party has no interest in the appeal; or
  - (b) against whom orders are sought in or whose interest may be directly and adversely affected by the orders sought in the appeal.
- 3B.4 An *interested party* in an appeal means a party (whenever joined)—
- (a) who was an interested party in the proceeding at first instance unless the party has no interest in the appellate proceeding; or
  - (b) against whom no relief is sought in and whose interest is not directly and adversely affected by the appeal but who should be given the opportunity to be heard in relation to the appeal or who must be joined to be bound by the result.

[Part 3C – Electronic Court Management System inserted by ER&D Court Rules 2003 (Amendment No. 2)]

### **Part 3C—Electronic Court Management System**

- 3C.1 The Registrar must establish an electronic court management system (*the Electronic System*) to perform such of the Registrar’s general functions and for use by judicial and non-judicial officers of the Court and external users as the Registrar determines.
- 3C.2 For example, the Electronic System may enable –
- (a) the creation, filing or service of documents in electronic form;

- (b) the use of electronic signatures by parties, lawyers or other persons;
  - (c) the electronic issue of the Court’s process;
  - (d) the use of electronic signatures by judicial or non-judicial officers, sheriff’s officers or other persons performing functions on behalf of the Court;
  - (e) communications between users and the Court in electronic form;
  - (f) the electronic listing of hearings, directions hearings and trials;
  - (g) the creation, retention or deletion of electronic records of proceedings in the Court;
  - (h) the receipt, retention or deletion of electronic documents tendered in proceedings, produced in response to a subpoena or otherwise produced to the Court; or
  - (i) controlled access by internal or external users to court records.
- 3C.3 The Registrar may determine that it is mandatory that all or specified classes of documents lodged for filing by all or specified classes of persons be filed electronically via the Electronic System and to that extent the Registry will not accept physical documents for filing.
- 3C.4 The Electronic System may be established by the Registrar in conjunction with other courts.
- 3C.5 If it is mandatory for a person to file a document electronically via the Electronic System, the Registrar or the Court may waive that requirement if and to such extent and on such conditions as the Registrar or the Court thinks fit.

[Part 3D – Registered Users inserted by ER&D Court Rules 2003 (Amendment No. 2)]

**Part 3D—Registered Users**

- 3D.1 The Registrar may only permit a person other than a judicial or non-judicial officer of a court participating in the Electronic System to have access to the Electronic System if the person is a registered user.
- 3D.2 The Registrar may establish a system for a person to become a registered user and may exercise a general discretion whether to admit a person as a registered user.
- 3D.3 The Registrar may impose conditions on the use of the Electronic System by registered users, a class of registered users or individual registered users.
- 3D.4 The Registrar may cancel the registration of a person if, in the opinion of the Registrar, the person—
- (a) is not a fit and proper person to be a registered user;
  - (b) should not have been admitted as a registered user; or
  - (c) has breached a condition of the terms of use of the Electronic System published by the Registrar on the Electronic System’s portal.

[Part 3E – Originals of Documents Uploaded into Electronic System inserted by ER&D Court Rules 2003 (Amend. No. 2)]

**Part 3E—Originals of Documents Uploaded into Electronic System**

- 3E.1 A party who uploads a document electronically into the Electronic System (whether self-represented or represented by a law firm) undertakes to the Court that the document uploaded is identical to the original document.

- 3E.2 A law firm who uploads a document electronically into the Electronic System undertakes to the Court that the document uploaded is identical to the original document.
- 3E.3 A document comprising or including an affidavit or statutory declaration uploaded electronically into the Electronic System must be the original bearing the original signature of the deponent and attesting witness and not a copy.
- 3E.4 A registered user who uploads a document comprising or including an affidavit or statutory declaration electronically into the Electronic System undertakes to the Court—
- (a) that the document uploaded is the original document bearing the original signature of the deponent and attesting witness and not a copy;
  - (b) to retain possession of the original document until finalisation of the proceeding and any appeal and expiration of any appeal period; and
  - (c) to produce the original document upon request by the Court.

[Part 3F – Official Record of the Court inserted by ER&D Court Rules 2003 (Amendment. No. 2)]

### **Part 3F—Official Record of the Court**

- 3F.1 If a document is filed with, or issued by, the Court in electronic form or converted by the Court by scanning or otherwise into electronic form, the document in electronic form represents the official record.
- 3F.2 If no electronic version of a document is created by the Court, the physical document is the official record.

[Part 3G – Manner of Amendment inserted by ER&D Court Rules 2003 (Amendment. No. 2)]

### **Part 3G—Manner of Amendment**

- 3G.1 Unless the Court otherwise orders, a filed document must be amended by filing a revised version of the filed document in the relevant prescribed form—
- (a) showing a revision number in accordance with the relevant prescribed form such that the first time the document is amended the amended document is shown as “Revision 1”, the second time it is amended the amended document is shown as “Revision 2” and so on;
  - (b) showing the omission of existing text in a manner (such as striking through) that does not affect the legibility of the text omitted;
  - (c) showing the addition of text (other than the revision number) in a manner (such as by underlining) that shows what has been added; and
  - (d) preserving the existing numbering (such as numbering an additional paragraph inserted between existing paragraphs 10 and 11 as paragraph 10A).
- 3G.2 The Court may give directions about the mode of amendment of a filed document.
- 3G.3 Unless the Court otherwise orders, a party who files an amended document must serve it on all other parties as soon as practicable.

[Part 4 – substituted by ER&D Court Rules 2003 (Amendment. No. 2)]

### **Part 4—General Powers of the Court**

- 4.1 The Court may on its own initiative or on application by any person make any order that it considers appropriate in the interests of justice.

4.2 For example, the Court may—

- (a) order that a provision of these rules not apply or apply in a modified way or dispense with compliance (whether before or after compliance is or was required);
- (b) make an order that is inconsistent with or in lieu of a provision of these rules;
- (c) fix or vary the time fixed by or under a provision of these rules or a court order;
- (d) make an order subject to conditions;
- (e) specify consequences of an event referred to in, or of non-compliance with, an order;
- (f) make or refuse any order sought by a person or make a different order;
- (g) make an order on its own initiative;
- (h) set aside a step taken in a proceeding in breach of these rules or an order or for other cause;
- (i) direct the Registrar to do or not to do a thing;
- (j) give a direction when uncertainty is expressed about the effect of these rules;
- (k) make an order regarding a proceeding not yet instituted;
- (l) make an order regarding the form of a document to be filed including imposing additional requirements about the filing or form of documents;
- (m) order the amendment of, or itself amend, a document;
- (n) order that a document be uplifted and removed from the file;
- (o) order production of a document notwithstanding that a lawyer or other person claims a lien over it;
- (p) order the stay of a proceeding, of a step in or order made in a proceeding or of enforcement of a judgment or order; or
- (q) make any order as to costs when it has jurisdiction to make a costs order.

4.3 Without affecting the generality of subrule 4.1, the Court may give directions about the procedure to be followed in a proceeding—

- (a) when these rules do not address or address fully a procedural matter that arises in a proceeding;
- (b) to resolve uncertainty about the correct procedure to be adopted including commencing a proceeding or appellate proceeding); or
- (c) in any other case, when the Court thinks fit.

4.4 The conferral by these Rules of specific powers on the Court does not affect the generality of the power conferred by this rule.

4.5 The Court may order that:

- (a) two or more actions be consolidated, where such actions concern related decisions;
- (b) two or more actions be heard together;
- (c) two or more actions be heard one immediately after the other; and
- (d) evidence taken in one action be taken as evidence in another.

## **4.8 Particulars, Discovery and Production of Documents**

4.8.1 The Court may, at any time prior to or in the course of the hearing of proceedings, order a party to produce to the Court and to each other party:

- (a) further particulars of that party's case;
- (b) full particulars of the reasons for decision of the relevant authority;
- (c) a list of documents which are in the possession of that party and are directly relevant to the proceedings;
- (d) a specified document in the possession of that party, which is directly relevant to the proceedings.

4.8.2 Where a party is ordered to produce a list of documents, the party must comply with the following:

- (a) a list of documents should not describe a document separately where it is:
  - (i) part of a file which is discovered as a file;
  - (ii) contained on a computer disc which is discovered as a disc;
  - (iii) part of a related group of documents where the group is discovered, e.g., the accounting records for a stated financial year;
  - (iv) a different version of a document already discovered;
  - (v) of similar type but of different date or content to a document already discovered;
- (b) a party's list of documents must include any claim by that party for privilege for a document and the grounds upon which the claim is based;
- (c) a list of documents must identify a place where the documents may be inspected by the other party or parties to the proceedings and that party or those parties are entitled to inspect the documents and obtain copies of such documents as they require, upon payment of a reasonable fee to the party producing the copies.

## **4.9 Interlocutory Applications**

4.9.1 Every application for an order:

- (a) pursuant to the provisions of this Part;
- (b) for substituted service pursuant to Part 12 of these Rules; or
- (c) of an interim or interlocutory nature,

must be made by filing an interlocutory application in the prescribed form.

4.9.2 Subject to rule 4.9.7, every interlocutory application must:

- (a) be in writing in the prescribed form;
- (b) set out the order sought and the grounds for it;

- (c) state whether the application is to be served on any person and, if so, upon whom.

**Prescribed form—**

Form 77 Interlocutory Application

- 4.9.3 Where an interlocutory application is for an injunction or restraining order, it must be accompanied by an affidavit setting out the facts and circumstances upon which the applicant relies.
- 4.9.4 Where the Court is of the opinion that an interlocutory application should be supported by affidavit, it may adjourn such application until such affidavit has been filed.
- 4.9.5 Any interlocutory application may be included in any document instituting proceedings before the Court or may be made by subsequent interlocutory application.
- 4.9.6 Where the Court is of the opinion that an interlocutory application should have been served upon a person or party upon whom it has not been served, the Court may:
  - (a) give such directions as it thinks fit relating to the service of the interlocutory application and adjourn further consideration; or
  - (b) dismiss the interlocutory application.
- 4.9.7 In the case of urgency, or in any other circumstances in which the Court considers it appropriate, the Court may:
  - (a) hear an oral application; and
  - (b) hear an application and make an order by telephone, radio telephone, computer, email, video conference or television.

#### **4.10 Powers on Application for Restraining Order**

- 4.10.1 Where an interlocutory application is for a restraining order pursuant to section 28A of the Act, and the Court considers it appropriate to exercise its powers under subsection 28A(5) of the Act, the Court may:
  - (a) direct the Registrar to issue and cause to be served, a summons directing the respondent or defendant, as the case may be, to appear before the Court at a specified time and place to be examined concerning the identification of property the subject of the proposed restraining order; or
  - (b) issue a warrant for the arrest of the respondent or defendant, as the case may be, under the hand of a Judge, directed to the Sheriff, ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to be examined concerning the identification of property the subject of the proposed restraining order.

#### **4.11 Court May Make Orders Without Application by Party**

- 4.11.1 Where, for any reason, the Court considers it necessary or desirable that an order be made pursuant to this Part, but no interlocutory application has been made, the Court may require the parties to attend before it and may give orders relating to the conduct of the action.

#### **4.12 Failure to Comply with Rules/Orders of Court**

- 4.12.1 Where a party fails to comply with:

- (a) these Rules in relation to the production of a statement or other material which the party intends to produce or rely on at the hearing; or
- (b) an order pursuant to paragraph 4.8.1 of these Rules,

the Court may direct that any statement (including oral testimony of any expert witness whose statement should have been produced) or document shall not be admitted into evidence at the hearing.

[Part 5-Appeals deleted by ER&D Court Rules 2003 (Amendment No. 2)]

**Part 5—Appeals**\*\*\*\*\*

[Part 5-Appeals Against And Reviews of Administrative Decisions inserted by ER&D Court Rules 2003 (Amend No. 2)]

**Part 5—Appeals Against And reviews of Administrative Decisions**

**5.1 Institution of Appeals Against Administrative Decisions**

5.1.1 Every appeal against an administrative decision or notice issued by an Authority must be instituted by filing an Originating Application in the prescribed form identified in rule 5.1.2, 5.1.3 or 5.1.4, which must:

- (a) identify the land, watercourse or building to which the appeal or review relates;
- (b) name and provide (to the extent the applicant knows) the postal and e-mail addresses and telephone number of the Authority against whose decision the appeal or review is instituted;
- (c) specify the decision or notice of the Authority to which the appeal or review relates;
- (d) specify the grounds of appeal or review against such decision or notice;
- (e) specify the full name of and the address for service of the applicant and, if available, the telephone number and e-mail address of the applicant;
- (f) if the appeal or review relates to the issue or refusal of a development authorisation, specify whether the applicant was the applicant for the development authorisation or is a person who made a representation and to whom notice was given pursuant to section 38 of the *Development Act 1993*.

5.1.2 An application for review of a matter with respect to a decision as to the nature or category of a development under section 86(1)(f) of the *Development Act 1993* must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 4I Originating Application for Review (s 86)

5.1.3 An appeal against a development decision under the *Development Act 1993* must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 5H Originating Application–Appeal Against Development Decision (Development Act)

5.1.4 In any other case:

- (a) if the statute calls the proceeding a “review”, the proceeding must be instituted by filing an Originating Application in Form 4H; or
- (b) if the statute calls the proceeding an “appeal”, the proceeding must be instituted by filing an Originating Application in Form 5G.

**Prescribed forms—**

Form 4H Originating Application for Review

Form 5G Originating Application – Appeal Against Administrative Decision

5.1.5 Every Originating Application in respect of an appeal against administrative decision must have affixed to it a copy of the order, notice or notice of decision of the Authority which is the subject of the appeal or review.

5.1.6 No appeal or review shall be duly instituted until:

- (a) an Originating Application meeting the requirements of these Rules has been filed in a registry of the Court;
- (b) the prescribed fee has been paid; and
- (c) the Originating Application has been served on the Authority in the manner prescribed by these Rules.

5.1.5 Notwithstanding that an Originating Application has not been served in accordance with these Rules, the Court may hear and grant any interlocutory application.

## **5.2 Joint Parties**

5.2.1 An Originating Application may be lodged by or on behalf of one or more applicants, provided:

- (a) the appeal or review relates to one order, notice or decision or to related decisions; and
- (b) the Originating Application specifies one address for service at or to which documents or notices may be served or delivered upon all appellants or may be deemed to have been so served.

## **5.3 Representors**

5.3.1 Where an appeal is instituted pursuant to placitum 86 (1) (b) of the *Development Act 1993* or section 136, 162 or 164D of the *Natural Resources Management Act 2004* or section 113, 137 or 144 of the *Landscape South Australia Act 2019* by a person who is or was entitled to be given notice of a decision under the relevant Act, the Registrar must, as soon as is reasonably practicable, provide a copy of the Originating Application to the applicant for consent in each case, and advise the applicant that he, she or it is a party to the appeal.

5.3.2 Where an appeal is instituted pursuant to placitum 86 (1) (f) of the *Development Act 1993* by a person other than the applicant for consent the Registrar must, as soon as is reasonably practicable, provide a copy of the Originating Application to the applicant for consent, and advise the applicant that he, she or it may apply to become a party to the appeal.

5.3.3 If all parties consent to an application by the applicant for consent under rule 5.3.2, the Court or the Registrar may order the joinder of the applicant administratively without a hearing.

## **5.4 Participation in Hearings**

5.4.1 Where an appeal is instituted pursuant to placitum 86 (1) (a) of the *Development Act 1993* or section 136, 162 or 164D of the *Natural Resources Management Act 2004* or section 113, 137 or 144 of the *Landscape South Australia Act 2019* by an applicant for consent in each case, the Registrar must give notice to each person who made a

representation to the relevant Authority and whose name and address has been given to the Court pursuant to section 136, 162 or 164D of the *Natural Resources Management Act 2004* or section 113, 137 or 144 of the *Landscape South Australia Act 2019*, of the fact that an appeal has been instituted and that he or she may apply, in accordance with the provisions of this Rule, to be joined as a party to the appeal.

- 5.4.2 Where a representation has been made by two or more persons, notice shall only be given to the person nominated as the person making the representation, or (where no such nomination has been made), to the first person named in the representation, who shall be deemed to be the person who made the representation.
- 5.4.3 Any person to whom the Registrar has given notice pursuant to paragraph 5.4.1 of this Rule may, within seven days of the giving of such notice, apply in writing to the Court in the prescribed form to be joined as a party to the appeal to which such notice relates.

**Prescribed form—**

Form 77I Interlocutory Application to be Joined

- 5.4.4 The Court may, after hearing such application, join the person to whom such notice has been given.
- 5.4.5 If all parties consent, the Court or the Registrar may, in any proceeding governed by this Part, upon application join the applicant for consent as a party without hearing such application.

## **Part 5A—Appeals from the Warden’s Court**

### **5A.1 Requirements of Notice of Appeal**

[rule 5A.1 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

- 5A.1.1 An appeal under section 65 of the *Mining Act 1971* must be instituted by filing and serving a notice of appeal in the prescribed form which must set out:
- (a) a brief statement of the judgment or order appealed from;
  - (b) the grounds of appeal in sufficient detail to enable the Judge to know what points are being relied on in support of each ground;
  - (c) whether all or part only, and if so which part, of the decision is complained of;
  - (d) the order sought by the appellant,
- and unless the Judge hearing the appeal otherwise directs an appellant may not rely upon any grounds which are not set out in the notice of appeal.
- 5A.1.2 A notice of appeal shall be filed in the Registry and served on all parties directly affected by the appeal.

**Prescribed form—**

Form 181B Notice of Appeal

### **5A.2 Time for Appeal**

- 5A.2.1 An appeal under section 65 of the *Mining Act 1971* must be instituted within one month after publication of the judgment or order appealed from, or within such other period as the Court may allow.

### **5A.3 Cross Appeal**

[rule 5A.3 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

5A.3.1 Where a respondent to an appeal wishes to appeal against the whole or any part of the decision appealed, the respondent must file a notice of cross appeal in the prescribed form within fourteen days of service of the notice of appeal on him.

5A.3.2 The provisions of Rule 5A.1.1 relating to notices of appeal shall with all necessary modifications apply to a notice of cross appeal.

**Prescribed form—**

Form 184B Notice of Cross Appeal

### **5A.4 Amendment to Notice of Appeal**

[subrule 5A.4.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

5A.4.1 A notice of appeal may be amended without leave prior to the appeal being listed for hearing by filing and serving on all other parties a revised notice of appeal. After the appeal has been set down for hearing, the notice may only be amended by leave of a Judge.

### **5A.5 Discontinuance of Appeal**

[rule 5A.5 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

5A.5.1 An appellant may at any time file and serve a notice of discontinuance of appeal in the prescribed form and upon its being filed the appeal shall be abandoned.

5A.5.2 A notice of discontinuance filed under Rule 5A.5.1 by one of several appellants shall not affect any other appellant in the appeal.

5A.5.3 A party filing a notice of discontinuance under Rule 5A.5.1 shall be liable to pay the costs of the other party or parties occasioned by the appeal.

**Prescribed form—**

Form 125 Notice of Discontinuance

### **5A.6 Dismissal of Appeal as Incompetent**

5A.6.1 A respondent to an appeal may apply on notice at any time to a Judge for an order dismissing an appeal as incompetent or for want of prosecution.

5A.6.2 Upon the hearing of the application, the burden of establishing the competency of the appeal is on the appellant.

### **5A.7 Listing of Appeal for Hearing**

5A.7.1 A day shall be fixed by the Registrar for the hearing of the appeal. The Registrar must give written notice of the date fixed for hearing.

### **5A.8 Report from Warden's Court**

5A.8.1 The Court may request the presiding Warden from whose judgment or order an appeal has been brought, to furnish a report with respect to the hearing and may in the report particularise the matters and things with reference to which the report is sought. A copy of such report is to be made available to the parties.

### **5A.9 Written Case**

5A.9.1 The Court may of its own motion or on the application of a party direct any party to prepare detailed submissions as to its case.

5A.9.2 Where such a direction has been issued, the party subject to the direction must file and serve a submission:

- (a) if the party is an appellant, 5 clear business days before the date fixed for the hearing;
- (b) if the party is a respondent, 3 clear business days before the date fixed for the hearing.

[Part 6-Applications substituted by ER&D Court Rules 2003 (Amendment No. 2)]

## **Part 6—Applications**

### **6.1 Institution of Applications**

6.1.1 Subject to rule 6.1.5, every application (not being an interlocutory application, appeal against administrative decision, mining appeal, enforcement application or compliance application) to the Court must be instituted by filing an Originating Application in the prescribed form, which must:

- (a) briefly state the facts, circumstances and other relevant matters upon which the application is based;
- (b) identify the land, buildings or watercourse to which the application relates;
- (c) specify the declaration, order or orders which the applicant seeks from the Court, and the grounds upon which such declaration, order or orders are sought;
- (d) identify the Authority or person against whom such declaration, order or orders are sought and set out (to the extent the applicant knows) the postal and e-mail address and telephone number of such Authority or person; and
- (e) specify the full name of and the address for service of the applicant.

#### **Prescribed forms—**

Form 2AD Originating Application

6.1.2 Where an application seeks an order pursuant to section 55 of the *Development Act 1993*, the Originating Application must also set out the name and an address for service of the owner and/or occupier of the land to which the application relates and of any other person who (to the best knowledge of the applicant) has a material interest in the application, and must have affixed to it a copy of the certificate of title of the land.

6.1.3 Where an order is sought pursuant to either subsection 30 (3) of the *Heritage Places Act 1993* or subsection 30 (1) of the *Upper South East Dry-land Salinity and Flood Management Act 2002*, the Originating Application must be accompanied by an affidavit in the prescribed form setting out the facts in support thereof.

#### **Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit to Affidavit

6.1.4 No application shall be duly made or instituted until:

- (a) an Originating Application meeting the requirements of these Rules has been filed in a registry of the Court;
- (b) the prescribed fee has been paid; and

- (c) excepting an application pursuant to subsection 30 (3) of the *Heritage Places Act 1993* or the *Upper South East Dryland Salinity and Flood Management Act 2002*, the notice of the application has been served upon the person or Authority against whom the applicant seeks any declaration or order and, in the case of an application for an order pursuant to section 55 of the *Development Act 1993*, the notice of application has also been so served upon any owner and/or occupier whose name has been set out in the notice pursuant to paragraph 6.1.2 of this Rule.

6.1.5 In the case of urgency, or in any other circumstances in which the Court considers it appropriate, the Court may:

- (a) hear an oral application; and
- (b) hear an application and make an order by telephone, radio telephone, transmission, computer, e-mail transmission, video link or television.

## **Part 6A—Mining Applications**

### **6A.1 Institution of Mining Applications**

[subrule 6A.1.1 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

6A.1.1 Every mining application to the Court shall be made by filing an Originating Application in the prescribed form which must:

- (a) specify the full name and address for service of the applicant and, if applicable, the telephone and facsimile numbers and e-mail address of the applicant;
- (b) specify both the body or person against whom any order or declaration is sought by the applicant and any other person or body upon whom it is intended to serve the application and set out (to the extent the applicant knows) the address, telephone number and email address of such people or bodies;
- (c) identify the land, buildings or mining tenements which are involved in or to which the application relates;
- (d) briefly specify the details and nature of the dispute (if any) between the parties to the application;
- (e) specify the declaration or order which the applicant seeks from the Court, and the grounds upon which such declaration or order is sought.

**Prescribed form—**

Form 2AD Originating Application

6A.1.2 If the mining application relates to any order, declaration, assessment or other documents, such order, declaration, assessment or document must be affixed to or be filed with the application and for the purposes of these Rules (including the calculation of any fees payable upon filing the application), shall be regarded as part of the application.

6A.1.3 The Court may decline to deal with any mining application until proof of service meeting the requirements of these Rules has been filed in a registry of the Court.

- 6A.2.1 No mining application shall be accepted as having been duly made or instituted until:
- a notice of application meeting the requirements of these Rules has been filed in a registry of the Court; and
  - the prescribed fee has been paid.

## **Part 7—Enforcement and Compliance Applications**

### **7.1 Institution of Application**

[rule 7.1 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

7.1.1 An enforcement application shall be commenced by filing the following documents:

- (a) an Originating Application in the prescribed form seeking leave to serve a summons (and where the applicant requires leave to bring the application, seeking leave to bring the application);
- (b) a summons in the prescribed form in respect of which leave is sought;
- (c) one or more supporting affidavits; and
- (d) where the applicant brings the proceeding in a representative capacity, a memorandum in accordance with paragraph 7.1.5.

#### **Prescribed forms—**

Form 2AD Originating Application

Form 84D Summons

7.1.2 A compliance application shall be commenced by filing the following documents:

- (a) an Originating Application in the prescribed form seeking leave to serve a summons;
- (b) a summons in the prescribed form which the applicant seeks to be issued by the Court;
- (c) one or more supporting affidavits setting out briefly the facts upon which the applicant will request Court to make the order set out in the summons.

7.1.3 Every Originating Application must:

- (a) be in writing and give the full name of the applicant;
- (b) identify the person or persons on whom it is sought to serve the summons; and
- (c) specify the address for service of the applicant.

7.1.4 Every accompanying affidavit must be in the prescribed form, and any exhibits to the affidavit(s) must be in the prescribed form and set out:

- (a) the facts and circumstances upon which the applicant relies; and
- (b) the name (and, as far as is known, the address, email address and telephone number) of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land the subject of the application.

#### **Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit to Affidavit

- 7.1.5 Every memorandum must specify all the people or organisations upon behalf of whom or which the proceedings are brought and signed by all the people or organisations in such manner as shows that all the people or organisations consent to the proceeding being brought on their behalf.

## **7.2 Leave to Serve Summons**

- 7.2.1 The Court, on the hearing of an application for leave may refuse to grant the application or may amend or strike out part of the summons where, on the evidence before the Court, there is no reasonable prospect that the Court would make any order of the nature sought.

- 7.2.2 Every summons in respect of which leave has been granted by the Court:

- (a) shall not be issued by the Court after one month of such leave being granted; and
- (b) will remain in force for three months only after the date of such issue, unless the Court extends such period.

[subrule 7.2.3 amended by ER&D Court Rules 2003 (Amendment No. 2)]

- 7.2.3 As soon as is reasonably practicable after a summons and accompanying affidavits have been served upon any person (including an Authority, where such service is required), the applicant shall file an affidavit of proof of service.

## **7.3 Notice of Address for Service**

[rule 7.3 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

- 7.3.1 A person served with a summons and wishing to be heard by the Court in response must file a Notice of Acting in the prescribed form within fourteen days of the date of service.

- 7.3.2 The Notice of Acting must specifically acknowledge service of the summons, set out the name of the person who desires to be heard in response to the summons and specify an address for service.

**Prescribed form—**

Form 23 Notice of Acting

## **7.4 Affidavit of Merits**

[subrule 7.4.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

- 7.4.1 A person (other than a relevant Authority) who has filed a Notice of Acting Address for Service must, at least fourteen days prior to the hearing, file and serve on all other parties to the summons an affidavit setting out such facts and circumstances as he, she or it may ask the Court to take into account upon the hearing of the summons.

## **7.5 Legal or Equitable Interest**

[rule 7.5 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

- 7.5.1 Where an affidavit filed pursuant to paragraph 7.1.2 of this Part sets out the name of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land the subject of the application, the Court may order that notice of the summons in the prescribed form be given to that person.

- 7.5.2 Where, in the opinion of the Court, any person has a legal or equitable interest in the land the subject of the application, the Court may order that notice of the summons in the prescribed form be given to that person.

**Prescribed form—**

Form 47 Notice of Summons

7.5.3 Where an order that notice be given to any person is made pursuant to this Part, an affidavit verifying that such notice has been given must be filed by the applicant as soon as is reasonably practicable after such notice has been given.

7.5.4 Any person to whom notice has been given pursuant to this Rule and who desires to be heard by the Court upon the hearing of the summons, must file a Notice of Interest in the prescribed form, within fourteen days of being served with such notice.

**Prescribed form—**

Form 59 Notice of Interest

7.5.5 Every Notice of Interest filed pursuant to paragraph 7.5.4 of this Rule must give an address for service and must contain a brief statement of the person's interest in either the land or the proceedings.

7.5.6 Every notice given to a person in consequence of an order made pursuant to paragraphs 7.5.1 or 7.5.2 of this Rule shall have attached to it a copy of the summons.

## **7.6 Setting Down for Hearing**

[subrule 7.6.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

7.6.1 The summons shall be set down for hearing as soon as is practicable after the time for filing of a Notice of Acting has expired, and the Registrar must give notice of the time appointed for the conference to the applicant, any respondent who has filed a Notice of Address for Service, any person who has filed a notice pursuant to and meeting the requirements of paragraphs 7.5.4 and 7.5.5 of this Part, and any Authority which has been served.

## **Part 8—Conferences**

**8.1 A judge, commissioner, master or magistrate of the Court may preside at any conference.**

### **8.2 Matters to be Referred to a Conference**

[subrule 8.2.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

8.2.1 In addition to the matters which must be referred to a conference pursuant to subsections 85 (5) and 86 (6) of the *Development Act 1993*, and subsections 104 (2) and 106 (5) of the *Environment Protection Act 1993*, and subsection 38 (4) of the *Ground Water (Qualco-Sunlands) Control Act 2000*, and subsection 31A (5) of the *Native Vegetation Act 1991* the following actions must at first instance be referred to a conference, namely:

- (a) any appeal to the Court pursuant to subsections 6 (4) or 74 (6) of the *Development Act 1993*;
- (b) any appeal to the Court pursuant to section 48 of the *South Eastern Water Conservation and Drainage Act 1992*;
- (c) any appeal to the Court pursuant to section 20 of the *Heritage Act 1993*;
- (d) any appeal to the Court pursuant to subsections 65 (1) or 67 (1) of the *Irrigation Act 1994*;
- (e) any appeal to the Court pursuant to section 17 of the *Mining Act 1971*;
- (f) any compliance application to the Court pursuant to section 74A of the *Mining Act 1971* or section 86 of the *Opal Mining Act 1995*;
- (g) any mining application which involves a party other than the applicant;

- (h) any application to the Court pursuant to subsections 55 (1) or 60 (3) of the *Development Act 1993*, section 35 of the *Heritage Act 1993* subsection 49 (2) of the *Irrigation Act 1994*, subsections 29 (1) or 31 (1) of the *Upper South East Dryland Salinity and Flood Management Act 2002*, or section 33F of the *Native Vegetation Act 1991*.

### **8.3 Authority to Provide Application and Reports**

[subrule 8.3.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

8.3.1 Where the decision of an Authority is the subject of a proceeding to be referred to a conference, the Authority must, at least two clear business days prior to the scheduled conference date, provide to the Court and to each party to the proceeding, a copy of each of the application documents and any representation, submission or report with respect to the application (including a report by staff of, and any consultant engaged by, the Authority), submitted to the Authority or any person or Committee acting under delegation from the Authority prior to its decision. Nothing in this Rule derogates from the duty of an Authority to provide notice to the Court of persons who made representations, pursuant to subsections 38 (12) and 38 (13) of the *Development Act 1993*.

### **8.4 The Conference**

8.4.1 The purpose of a conference is to enable the member of the Court presiding at the conference to assist the parties to explore any possible resolution of the matters in dispute without resorting to a formal hearing and to that end, it is expected that:

- (a) the issues or matters in dispute, from the perspective of each party, will be aired and discussed openly at the conference, with a view to a fair and reasonable exchange of views in good faith;

[para 8.4.1(b) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (b) the party or his, her or its representative(s) attending the conference will attend in good faith, and that the representative(s) will have obtained the authority to discuss, negotiate and authorise a settlement of the proceeding, or agree on such issues or part of the proceeding as may be agreed;
- (c) each party or his, her or its representative(s), will be prepared at the conference, to discuss its case, identifying the issues it proposes to argue, and the grounds therefor and respond as best it then can to the case of each other party.

### **8.5 Adjournment of Conference to Give Notice to Another Person**

[subrule 8.5.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

8.5.1 Where, during the course of a conference, the member presiding concludes that the parties have reached or may reach a settlement which will or may prejudice any person not represented at the conference but who has a direct or material interest in the proceeding to which the conference relates, the member presiding may adjourn the conference and direct the Registrar to give notice of the conference and of the proposed or probable settlement to such person and the Registrar must give notice accordingly.

8.5.2 Any person to whom a notice has been given pursuant to this paragraph may:

- (a) attend at the adjourned conference and participate in it; and

[para 8.5.2(b) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (b) apply to be joined as a party to the proceeding the subject of the conference.

## **8.6 Order for Costs**

8.6.1 Where the member of the Court presiding at a conference makes an order for costs pursuant to placitum 16 (7) (h) of the Act, the amount of costs so ordered shall be determined by reference to Part 14 of these Rules.

## **Part 9—Mediation**

9.1 ‘Mediation’ is a process voluntarily entered into by the parties whereby a neutral third party assists and encourages the parties in dispute as to one or more matters in a proceeding, to achieve their own negotiated settlement of the matter or matters in dispute.

### **9.2 Mediation Pursuant to section 28B of the Act**

9.2.1 Mediation may be conducted in relation to proceedings at any stage thereof. The Court may appoint a mediator with the consent of the parties.

### **9.3 Settlement Resulting from Mediation**

9.3.1 In the event that a mediation results in the settlement of any of the matters in dispute between the parties, the outcome shall be reduced to writing, signed by the mediator and the parties, (‘the mediation report’) and filed in a registry of the Court.

9.3.2 Following receipt of a mediation report, the Court may record a settlement and make any decision or order it considers appropriate.

## **Part 10—Building References**

[rule 10.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

10.1 All matters to be determined by the Court pursuant to subsection 86 (5) and section 87 of the *Development Act 1993* shall be commenced by a reference to the Court (‘a building reference’) in the prescribed form.

### **10.2 Building Referees**

10.2.1 Every building referee determining a building reference must be a Commissioner with practical knowledge of, and experience in architecture, civil engineering, building, building safety or building regulation.

### **10.3 Institution of Building Reference**

[rule 10.3 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

10.3.1 Every building reference must be in writing in the prescribed form and:

- (a) identify the building work (current or proposed) to which the reference relates;
- (b) specify the decision, direction or dispute the subject of the reference and, if appropriate, have annexed to it or be accompanied by any plans, specifications or other documents (including any order or notice of refusal) either the subject of or relating to the reference;
- (c) briefly set out the order, direction or modification which the party seeking the reference is requesting the Court to make or give;
- (d) identify and give the address (and, if known) the telephone number and e-mail address of the Council or other party to the reference;

- (e) specify the address for service of the party seeking the reference.

**Prescribed form—**

Form 2AD Originating Application

## **10.4 Additional Powers of Building Referees**

10.4.1 For the purpose of expediting the hearing and determination of any building reference, the building referees, without limiting any other power of the Court, may:

- (a) waive the filing of any document or the payment of the prescribed fees until the commencement of the hearing of the building reference;

[para 10.4.1(b) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (b) conduct the proceeding at any place (including upon the land or within the building the subject of the reference), at any time and in such form or manner as he or she thinks will be conducive to the expeditious determination of the issues between the parties; and
- (c) keep or cause to be kept such transcript or other record of the proceedings of the reference as he or she thinks fit.

## **Part 11—Provision of Documents and Copy Documents**

### **11.1 Copy Documents—Civil Enforcement Applications**

11.1.1 The applicant must provide to the Court and each other party copy documents in the form, and within the time, specified in the relevant Practice Directions issued by the Court.

### **11.2 Documents Requested by the Court**

11.2.1 Where any material has been delivered or sent to the Principal Registry as a consequence of a notice given pursuant to subsection 21 (2) of the Act, the Registrar must make it available for inspection by the parties or their representatives, in the matter to which the notice relates, at a registry of the Court.

11.2.2 The Registrar may provide a copy of such material as may reasonably be copied in the Registry to any party or representative thereof upon such party or representative paying to the Registrar the relevant fee, or where there is no fee, an amount sufficient to cover the cost of producing such copy.

### **11.3 Documents for the Hearing—Appeals against Administrative Decisions**

[rule 11.3 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

11.3.1 The applicant for consent, and the Authority whose decision is the subject of an appeal against administrative decision, must each provide to the Court and each other party, those documents specified in the relevant Practice Directions issued by the Court, in the form and within the time required by the Practice Directions.

### **11.4 Statements of Expert Witnesses**

[subrule 11.4.1 amended by ER&D Court Rules 2003 (Amendment No. 2)]

11.4.1 A copy of the Statement or Report of any expert to be called as a witness at the hearing of a proceeding must be provided to the Court with a clear indication of the proceeding to which the statement relates, and to any other party, in the form and within the time required by the relevant Practice Directions issued by the Court.

## **Part 12—Service of Documents**

### **12.1 Service Generally**

[subrule 12.1.1 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

12.1.1 Subject to the provisions of the *Electronic Transactions Act 2000* and these Rules, any notice required to be served or given, or anything required to be delivered, by the Act or these Rules may be served upon, given or delivered to:

- (a) the State Planning Commission—unless subparagraph (d) applies, by delivering it to the office of the Crown Solicitor, or by posting in an envelope addressed to the Crown Solicitor at his or her office or by sending it to the email address identified by the Crown Solicitor for that purpose;
- (b) a Council—unless subparagraph (d) applies, by delivering it to the office of the chief executive officer of the Council or by posting it in an envelope addressed to the chief executive officer, at his or her office or by sending it to the email address identified by the Council for that purpose;
- (c) any other person, unless subparagraph (d) applies, by:
  - (i) delivering it personally either to the person or his or her solicitor, agent, or other representative;
  - (ii) sending it by express post in an envelope addressed to the person at his or her usual or last known address for service;
  - (iii) where the person is a body corporate, by delivering it to the registered or principal office of that body, and leaving it with a person apparently over the age of 16 years, or by posting it in an envelope addressed to the body at its registered or principal office; and
- (d) where a party to an appeal has filed a notice or other document in the proceeding which contains an address for service, leaving the notice or document to be served at the address for service with some person apparently in charge thereof, or by sending it by pre-paid post or email addressed to the party at the address for service.

### **12.2 Personal Service**

12.2.1 Personal service of any document on any person or party shall be proved by the person so serving such document swearing an affidavit or statutory declaration containing the following facts:

- (a) the time, date and place of service;
- (b) the person upon whom service was effected and the capacity in which such person was served; and
- (c) sufficient facts to prove the identity (or apparent connection) of the person served with the person or party named in the document.

### **12.3 Proof of Service**

12.3.1 Service, other than personal service, of any document on any person or party shall be proved by the person so serving such document swearing an affidavit or statutory declaration setting out the manner in which such service was effected.

## **12.4 Substituted Service**

12.4.1 Where reasonable efforts have been made but have failed to effect service of a document in accordance with these Rules, the party wishing to serve such document may apply to the Court for an order for substituted service.

12.4.2 Every application for substituted service must be supported by an affidavit setting out the grounds for such application.

12.4.3 The Court may make an order for substituted service if the justice of the case so requires.

## **Part 13—Jurisdiction of Master**

13.1 In addition to any other powers conferred upon him or her by these Rules or otherwise, a Master of the Court has jurisdiction to:

- (a) with the consent of all parties to any action, make any order which the Court is empowered to make in that action;
- (b) make any interim or interlocutory order or issue any interim injunction;
- (c) make an order requiring a party to produce particulars, a list of relevant documents or specified documents pursuant to Part 4 of these Rules;
- (d) make an order for substituted service or any other order relating to the service of documents;
- (e) where the Court has made an order for costs against any party, tax the costs to be paid pursuant to such order;
- (f) order any party to proceedings before the Court to give security for the payment of costs or make any other order in relation thereto or pursuant to section 39 of the Act;
- (g) make an order remitting or reducing any court fees to be paid by any party in accordance with subsection 45 (2) of the Act;
- (h) preside at any conference conducted pursuant to section 16 of the Act, and may, whilst so presiding, refer any question of law to a Judge of the Court for determination;
- (i) adjourn any matter set for hearing or list any matter for hearing, including making any order for the early hearing of any matter; and
- (j) settle any order of the Court (either final, interlocutory or interim) and direct that such order be sealed.

13.2 When exercising any of the powers or jurisdiction conferred by this Part or by any of these Rules, a Master shall constitute the Court.

## **Part 14—Costs**

### **14.1 Scales of Costs**

14.1.1 The Scale of Costs prescribed by the Court for the purposes of sections 29 and 44 of the Act is that which applies generally, *mutatis mutandis*, in the District Court at the relevant time.

## 14.2 Disbursements

14.2.1 Where any plan, photograph, model or other exhibit not covered by the scale prescribed by these Rules is purchased or prepared by any party for the purpose of tendering to the Court, the Court may allow the actual cost of purchasing or preparing such exhibit.

14.2.2 Where any fees have been paid to the Court in accordance with the scale prescribed in the Environment, Resources and Development Court Regulations 1993 or where liability to pay such fees either has been or is likely to be incurred, the Court may allow the amount of such fees.

14.2.3 Where a witness has attended the Court for the purpose of giving evidence, the Court may allow fees payable to such witness upon any of the following bases:

- (a) where the witness was accepted by the Court as an expert witness in a recognised profession or trade, or would have been likely to have been accepted if called, the witness shall be allowed a fee of such amount per hour necessarily attended at Court, as is reasonable having regard to the profession or trade;

[para 14.2.3(b) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (b) where a witness was accepted by the Court as an expert witness in a recognised profession or trade, or would have been likely to have been so accepted if called, the Court may allow any reasonable costs properly incurred by a party in obtaining from such witness any report on matters relevant to the proceeding before the Court;

[para 14.2.3(c) amended by ER&D Court Rules 2003 (Amendment No. 2)]

- (c) where a witness is not an expert witness but attends the Court for the purpose of giving evidence relevant to the proceeding before the Court, the witness shall be allowed a fee of \$30.00 per hour necessarily attended or such greater amount as is reasonable; and
- (d) where a witness incurs travelling expenses for the purpose of attending Court, the fee payable to such witness may include such amount as the Court thinks reasonable to reimburse to the witness such expenses.

14.2.4 Such out of pocket expenses as are not otherwise provided for herein which have been properly incurred, as the Court shall allow.

## 14.3 Order Against Parties

14.3.1 Where the Court makes an order for costs pursuant to section 29 of the Act against more than one party, it may, if it thinks it just so to do, make an order directing the amount or proportion of such costs as shall be paid by each party.

## 14.4 Order on Issue of Summons to Witness

[rule 14.4 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

14.4.1 The Court may issue a subpoena in the prescribed form requiring a person to attend before the Court pursuant to section 22 of the Act.

### Prescribed forms—

Form 105G Subpoena to Attend to Give Evidence (ERD Court)

Form 106G Subpoena to Produce Evidence (ERD Court)

Form 107G Subpoena to Attend and Produce (ERD Court)

14.4.2 Where the Court, on the application of a party to the proceeding, issues a subpoena requiring a person to appear before the Court, the Court may, either at the time of the issue of the subpoena or at any time before the conclusion of the action, order the party who applied for the issue of the subpoena to pay to the person required to appear the cost of that person attending before the Court.

14.4.3 When determining the amount to be paid pursuant to paragraph 14.3.1, the Court shall have regard to:

- the principles enunciated in subparagraph 3 under the heading ‘Disbursements’ in paragraph 14.1.1 of this Part; and
- any travelling, accommodation or other costs actually incurred or likely to be incurred by the person in attending the Court.

14.4.4 The Court may make an order pursuant to this paragraph either upon an application by the person required to appear or a party to the proceeding, or of its own motion.

14.4.5 Where an order is made pursuant to this paragraph, the amount ordered to be paid shall be a debt payable to the person required to attend by the party against whom the order is made.

## **14.5 Adjudication of Costs**

[rule 14.5 inserted by ER&D Court Rules 2003 (Amendment No. 1)]

The adjudication of costs awarded by the Court shall be undertaken in accordance with the practice and procedure for the time being of the District Court, with such modifications as may be necessary in the circumstances.

## **Part 15—Contempt**

### **15.1 Contempt of Court**

[rule 15.1 substituted by ER&D Court Rules 2003 (Amendment No. 2)]

15.1.1 Chapter 17 Part 5 of the Uniform Civil Rules 2020 applies to proceedings for contempt in the Court.

### **15.2 Action by Court**

15.2.1 Where it is alleged or appears to the Court on its own view, that a person is guilty of contempt of court the Court may:

- (a) by oral order direct that the person be brought forthwith before the Court by the Sheriff or other appropriate officer; or
- (b) issue a warrant for the arrest of the person under the hand of a Judge directed to the Sheriff ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to answer the alleged contempt.

15.2.2 Where it is alleged that a contempt has been committed the Court may, in lieu of ordering the immediate arrest of the person, direct the Registrar to issue a summons in the form set out in paragraph 15.3.1 of this Part and cause it to be served upon the person alleged to be in contempt; the said summons to state the nature of the alleged contempt with sufficient particularity for the person charged to make his or her defence to the charge, and to state a specific time and place for him or her to attend.



## 15.5 Procedure on Hearing of Charge

15.5.1 When the person so charged comes before the Court for the hearing or the adjourned hearing of the charge, the procedure shall be:

- (a) if he or she is not represented by counsel, he or she shall be advised or reminded of the nature and substance of the charge of contempt with sufficient particularity for him or her to understand the charge and the nature of the proceedings;
- (b) in all proceedings, irrespective of whether he or she is represented, he or she shall be asked whether he or she pleads guilty or not guilty;
- (c) if he or she is not represented by counsel, he or she shall be advised and reminded from time to time of his or her rights;
- (d) if he or she pleads not guilty, evidence in support of the charge of contempt shall be presented to the Court by a person and in the manner directed by the Court;
- (e) where substantial punishment is a practical possibility, the procedures to be adopted and the onus of proof to be applied and the rules of evidence to be followed, shall be those generally applicable in criminal proceedings to the extent that they are appropriate, except as follows:
  - (i) for the purposes of the proof of the charge of contempt, any affidavits previously filed in the matter, or in preparation for the hearing of the contempt charge, or during the course of the hearing on the contempt charge, may be used in evidence as proof beyond reasonable doubt of the facts therein stated provided the Judge or Magistrate is satisfied that it is safe so to act and provided the said person has been given a copy of the affidavit and afforded an opportunity to peruse it and to consider the same and thereafter elects not to require the deponent to be called for cross-examination; and
  - (ii) the Judge or Magistrate shall be entitled to call witnesses who may then be cross-examined by those persons supporting and contesting a finding of guilt;
- (f) at the conclusion of the hearing the Court shall make a finding whether the said person is guilty or not guilty of the contempt alleged or of the substance of the alleged contempt; and
- (g) where the Court finds the person guilty, he or she shall be heard in mitigation of penalty;
- (h) where the penalty for the contempt includes an order that the said person shall pay a substantial sum of money, whether by way of fine or costs of the contempt proceedings or both, the Court shall fix a period of imprisonment in default of payment within the time allowed;
- (i) where the said person is unable to pay the fine or costs within the time allowed, the Court may either extend the time for payment or reduce the fine but not the costs.

15.5.2 The Court may, pending disposal of the charge:

- (a) direct that the person be detained in such custody as the Court directs;
- (b) direct that the person be released, upon such terms to secure his or her appearance to answer the charge as the Court may direct; or

- (c) where the person so charged fails to attend before the Court in answer to a summons issued and served on him or her pursuant to this Part of the Rules, the Court may issue a warrant for the arrest of the person under the hand of a Judge directed to the Sheriff ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to answer the alleged contempt.

## **15.6 Suspension of committal order**

15.6.1 The Court when making an order for committal may by order direct that the execution of the order of committal be suspended for such period and on such terms or conditions as the Court thinks fit. Upon compliance with the terms and conditions during the said period the order for committal may be discharged.

## **15.7 Power to release before the expiration of the term of imprisonment**

15.7.1 Where a person in contempt is committed to prison for a specified period, the Court may order his discharge before the expiry of that period.

## **15.8 Order for suspension of committal to be drawn up**

15.8.1 (a) Where the Court suspends the execution of an order of committal pursuant to Rule 15.6.1 an order shall be drawn up setting out any findings of contempt, the period of imprisonment fixed, any other orders as to fines, costs or undertakings, the terms and conditions of the suspension of the term of imprisonment and a warning to the person of the consequences of non-compliance.

### *Order to be served*

(b) The order shall be drawn up and served on the person at the time of his release or as soon as practicable after his release.

### *Omission of details from sealed order not to invalidate it*

(c) If the order as served does not contain one or more of the matters in Rule 15.8.1 the omissions shall not invalidate the order of suspension or relieve the person of the obligation to comply with the terms and conditions of an order or fines or undertakings.

## **15.9 Discharge from imprisonment may be conditional**

15.9.1 Where the person is to be discharged under Rule 15.7.1 prior to the expiry of the original period fixed for his imprisonment, the discharge may be unconditional or conditional upon such terms and conditions as are fixed by the Court and where terms and conditions are fixed the provisions of Rules 15.8.1 (b) and (c) shall apply.

## **15.10 Court may direct the Registrar to apply to revoke a suspension order**

15.10.1 (a) Where the person is alleged to be in breach of any term, condition, obligation or undertaking referred to in this Rule, the Court may of its own motion, or on the application of an interested party, direct the Registrar to issue an application for the revocation of the suspension order or of the order of early discharge from custody as the case may be, the application to contain the particulars referred to in Rule 15.2.2 and the procedures to be those provided for the hearing of the original contempt allegations.

*Powers of the Court*

(b) Where the Court is satisfied that the person has been in breach as alleged it may make such order as is just and expedient in the circumstances.

*Court may issue a warrant for arrest in the first instance*

(c) The Court may, where it is just and expedient to do so, issue a warrant for arrest in the first instance either of its own motion or on the application of an interested party instead of directing the issue of a summons.

**15.11 Punishment of Contempt**

15.11.1 The Court may punish contempt of Court by committal of the person to prison or fine or both, or by the imposition of a bond to be of good behaviour with such other conditions as may be proper, and by ordering the person to pay the costs of the contempt proceedings.

15.11.2 When the Court imposes a fine, it may allow time to pay and in default of payment within that time order that the person be imprisoned for a fixed period.

15.11.3 The Court may on the person making proper tender of apology and amends recall or reconsider any previous order of the Court punishing him or her for his or her contempt.

**15.12 Power of the Court to Dispense with Service Requirements**

15.12.1 The Court may, where it is just and expedient to do so, dispense with the requirements as to personal or substituted service of any order, notice, application or summons, provided the Court is satisfied that the person had knowledge of the substance of the terms of the order, notice, application or summons and has been evading service.

**Part 16—Procedure upon trial of any Charge of an Offence**

16.1 The Magistrates Court Rules 1992 (Criminal Jurisdiction) apply generally, mutatis mutandis, to the practice and procedure of the Court in the exercise of its jurisdiction over offences.

16.2 The Court may, in its unfettered discretion, modify the application of the Magistrates Court Rules either generally or having regard to the exigencies of particular cases, in the light of the nature of the Court's jurisdiction over offences and the number of prosecutions that may from time to time be commenced in the Court.

## **Index to Schedule 1 – Forms**

### **Index of Forms**

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Form 4H	Originating Application for Review
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Form 184B	Notice of Cross Appeal

**Note—**

Each individual form in the above Index is available separately on the “Rules, Forms and Fees” page of the CAA website.

## History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
1.3.1(g)	sub am02	18 May 2020
1.3.5	ins am02	18 May 2020
2.1 multiple definitions inserted, deleted, amended, substituted	am/ins/del/sub am02	18 May 2020
3.4	ins am02	18 May 2020
Part 3A – E-Business Transactions	del am02	18 May 2020
Part 3A – Parties to Proceedings	ins am02	18 May 2020
Part 3B	ins am02	18 May 2020
Part 3C	ins am02	18 May 2020
Part 3D	ins am02	18 May 2020
Part 3E	ins am02	18 May 2020
Part 3F	ins am02	18 May 2020
Part 3G	ins am02	18 May 2020
Part 4	sub am02	18 May 2020
Part 5 – Appeals	del am02	18 May 2020
Part 5 – Appeals Against and Reviews of Administrative Decisions	ins am02	18 May 2020
5A.1	sub am02	18 May 2020
5A.3	sub am02	18 May 2020
5A.4.1	am am02	18 May 2020
5A.5	sub am02	18 May 2020
Part 6	sub am02	18 May 2020
6A.1.1	sub am02	18 May 2020
7.1	sub am02	18 May 2020
7.2.3	am am02	18 May 2020
7.3	sub am02	18 May 2020
7.4.1	am am02	18 May 2020
7.5	sub am02	18 May 2020
7.6.1	am am02	18 May 2020
8.2.1	am am02	18 May 2020
8.3.1	am am02	18 May 2020
8.4.1(b)	am am02	18 May 2020
8.5.1	am am02	18 May 2020
8.5.2(b)	am am02	18 May 2020
10.1	am am02	18 May 2020
10.3	sub am02	18 May 2020
10.4.1(b)	am am02	18 May 2020
11.3	sub am02	18 May 2020
11.4.1	am am02	18 May 2020
12.1.1	sub am02	18 May 2020
14.2.3(b)	am am02	18 May 2020
14.2.3(c)	am am02	18 May 2020

<b>Rules</b>	<b>Amendments</b>	<b>Date of Operation</b>
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
<b>14.4</b>	<b>sub am02</b>	<b>18 May 2020</b>
14.5	ins am01	1 July 2014
<b>15.1</b>	<b>sub am02</b>	<b>18 May 2020</b>
<b>Schedule 1 – Forms (separate document)</b>	<b>ins am02</b>	<b>18 May 2020</b>