



ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

Guide to Representing Yourself in an ERD Court Hearing

This guide aims to provide people representing themselves in the ERD Court with some information about the court process. More information, including more detailed information on preparing for and attending a hearing, can be found

- on the court's website at www.courts.sa.gov.au
- in the court's rules and practice directions, also found on the website.

What do I need to do prior to the hearing?

Five clear business days before the hearing you need to provide the court (and the other parties) with copies of any documents (eg. expert's reports, written statements, plans, diagrams, etc) that you intend to rely on during the hearing.

If the matter is an appeal against a decision under the *Development Act*, and if you made the original application for development consent you must also provide copies of:

- any relevant certificate of title;
- a full set of plans; and
- in addition, one copy of the site plan or the plan of division (whichever is relevant) reduced to A3 size

to the court and the other parties – again five clear business days before the hearing.

The court will need two copies if a single Judge or Commissioner is hearing the case, four copies if a full bench (a Judge and two Commissioners) is hearing the case.

What is the procedure in Court generally?

Mobile phones must be switched off prior to entering the court room.

According to general court protocol when you are in a court room you must:

- stand when the Judge or Commissioner enters or leaves the room; and
- stand whenever the Judge or Commissioner is talking to you, or whenever you are talking to the Judge or Commissioner.

A Judge is addressed as 'sir' or 'madam' or 'your Honour'. A Commissioner is addressed as 'sir', 'madam' or 'Commissioner'.

What happens in the hearing?

The hearing may start with an on-site visit. You will be advised if there is to be a site visit in your case. The hearing then resumes in the courtroom.

When the Judge or Commissioner (or Commissioners in the case of a full bench) comes into the courtroom a member of the court staff will remind you to stand by saying 'Silence - please stand.' Everyone will stand while the Judge or Commissioner (or Commissioners) take their seats. The presiding Judge or Commissioner will then start the formal hearing.

Each party (or their representative) begins by telling the court their name. The party who filed the appeal is then usually asked to go first. They explain or 'open' their case. Then they call their witnesses. Witnesses may be cross-examined and re-examined. The other party (or parties) then each explain or 'open' their case and call their witnesses – who again may be cross-examined and re-examined. Once all the evidence has been heard each party is given a chance to 'sum up' or summarise their case.

At the end of the hearing a member of the court staff will again say 'Please stand – this court stands adjourned' and the Judge or Commissioner will leave the courtroom.

What happens when a party opens his or her case?

When you are 'opening' your case you should tell the court:

- what your interest is in the hearing (eg. that you are the person who lodged the appeal or the 'appellant', or that you are a third party who has been joined as a party, etc);
- what decision you are appealing against; and
- what action you would like the Court to take (eg. grant approval, refuse approval, impose conditions, etc).

What happens when a witness is called?

Swearing in

Anyone who gives evidence in a court must go into the witness box and be 'sworn in' either by oath or by affirmation. A person is sworn in by making an oath according to their religious belief and asked to promise to tell 'the truth, the whole truth and nothing but the truth'. A person sworn in by affirmation gives a similar promise – but without taking a religious oath. If you wish to be sworn in by affirmation, rather than by oath, please let a member of the court staff know prior to the hearing. Once 'sworn in' a witness may sit down while he or she answers questions.

Examination in chief

Whoever calls a witness gets to question (or 'examine') the witness first. It is a good idea to have thought about examination before the hearing and considered what things you want each of your witnesses to tell the court. Some notes (even just some dot points) to remind you of what each witness needs to cover in his or her evidence will be a useful memory jogger.

Ask questions, don't make statements. Keep your questions short. Ask only one question at a time. Listen to the answers (in case you need to ask a follow up question). And give your witnesses plenty of time to answer each question.

Cross Examination

Cross-examination is the chance one party gets to question witnesses called by another party. Therefore you can expect that, during cross-examination, a witness will have his or her evidence challenged. That is what cross-examination is for. Generally though the cross-examiner will be polite and respectful. If you are being cross-examined try to remember:

- to listen carefully to the questions;
- to not answer unless you understand the question;
- to answer only the question you have been asked. Don't volunteer information
- not to ask questions back;
- to say 'I don't know' if you don't know the answer;
- to answer audibly - not with a shake of the head or a nod. Gestures can't be recorded by the court reporter;
- to say so if you think the question has already been asked;
- to stay calm;
- not to take things personally. The cross examiner is only doing their job; and
- to tell the truth and the whole truth!

When you are cross-examining a witness you should:

- always be polite and pleasant;
- pose questions rather than making statements;
- ask one question at a time;
- only ask things that are relevant;
- always give the witness plenty of time to answer;
- keep your objectives in mind.

You don't have to cross-examine any witness if you don't want to. If you are going to cross-examine you should have purpose. For example, you may want to clarify a point, explain or expand on a point or ask questions about matters not covered in examination in chief.

Re-examination

After cross-examination the person who called the witness can ask further questions – but only if there are issues that arose in cross-examination that need clarification.

Evidence is recorded

All evidence given in a hearing is recorded. If the evidence is being taped, witnesses need to speak clearly into the microphone in the witness box. Witnesses also need to remember that gestures (for example, nodding in agreement or pointing) will not be heard or recorded.

What about expert witness?

There are some special rules about expert evidence in the ERD Court. They are set out in Practice Direction 6: Guidelines for expert witnesses. Generally expert witnesses have produced a report that has been provided to the court and the other parties prior to the hearing. They don't have to repeat the contents of that report in court. All they need to do is give the court their name, tell the court about their expertise and say that they wrote the report. The report then becomes their 'examination in chief'.

The expert can of course be cross-examined just like every other witness and challenged on the contents of their report. The expert's expertise may also be challenged by another party.

What about documents?

Parties must 'tender' documents (for example, plans, photos, maps etc) that they want to refer to during the hearing. Once a document is 'tendered' it forms part of the evidence and can be taken into account by the Judge or Commissioner.

Tendering is often done simply by the party asking to 'tender' the documents. The Judge or Commissioner will decide if a document can be tendered. Once it is tendered, the document will be referred to as an 'exhibit' and given an 'exhibit number'. If the document is later referred to in the hearing it will be identified by the exhibit number not by its name. It is therefore wise for all parties to note the exhibit numbers of all documents when they are tendered. (The simplest way to do this is to write the exhibit number on your copy of the tendered document).

What happens when a party sums up?

At the end of the case each party summarises his or her case (or 'sums up'). It is a time to tell the court what decision you would like the court to make – and why.

What happens at the end of the hearing?

At the end of the hearing the court will usually reserve (or defer) its decision. That gives the Judge (or the Judge and Commissioners) time to think about the case and prepare a written decision. The decision (or judgment) will usually be ready within six weeks of the last day of the hearing, and is posted out to parties.

How much will it cost?

The person who initiated the appeal will be invoiced a one-off hearing fee after the hearing is over.

A full list of all ERD Court fees is available from the courts website (<http://www.courts.sa.gov.au/>) or from the registry. All court fees are GST free.

In some courts, if you lose you have to pay the costs (for example, legal fees, expert witness fees, etc) incurred by the other party. Similarly if you win the other party has to pay your costs. That is not usually the case in the ERD Court. In the ERD Court (in most cases) each party has only to pay their own costs.

Bear in mind though that all parties have a right to appeal from a decision of the ERD Court to the Supreme Court. Costs of being involved in a Supreme Court appeal can be considerably higher. In addition, in the Supreme Court the party who loses the case may have to pay not only their own costs, but also the costs of the other parties.

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