

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, May 2016*



Queensland

**No.**  
**A BILL for**  
**An Act about the Planning and Environment Court**





Queensland

# Planning and Environment Court Bill 2016

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**2016**

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**A Bill**

for

**An Act about the Planning and Environment Court**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Planning and Environment Court Act 2016*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Dictionary**

The dictionary in schedule 1 defines words used in this Act.

## **Part 2 Establishment and jurisdiction**

### **Division 1 Establishment**

#### **4 Continuation**

- (1) The Planning and Environment Court (the *P&E Court*) is continued in existence.
- (2) The P&E Court—
  - (a) is a court of record; and
  - (b) has a seal that must be judicially noticed.



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## 5 Constituting P&E Court

- (1) The Governor in Council may, by gazette notice, appoint 1 or more District Court judges who are each to constitute the P&E Court.
- (2) A District Court judge appointed to constitute the P&E Court is called a *P&E Court judge*.
- (3) The appointment may be for a specific period.
- (4) If a District Court judge purports to constitute, and make a decision or order of, the P&E Court, the decision or order is valid despite—
  - (a) the judge not having been appointed as a P&E Court judge; or
  - (b) the judge's appointment as a P&E Court judge having ended.
- (5) More than 1 P&E Court may sit at the same time.
- (6) When more than 1 P&E Court is sitting at the same time, each may exercise the jurisdiction and powers of the P&E Court.

## 6 Chief Judge has overall responsibility for P&E Court

- (1) The Chief Judge is responsible for the administration of the P&E Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the P&E Court.
- (2) Subject to any Act, the Chief Judge has power to do all things necessary or convenient to perform the functions mentioned in subsection (1).

## Division 2 General jurisdiction

### 7 Jurisdiction

- (1) The P&E Court has jurisdiction given to it under any Act (each an *enabling Act*).

*Notes—*

- 1 Various Acts give the P&E Court jurisdiction. However, under the Planning Act, chapter 6 and schedule 1 and part 4 of this Act, its main heads of jurisdiction are—
    - appeals against decisions under the Planning Act (in this Act, called ‘Planning Act appeals’)
    - appeals against decisions of tribunals established under the Planning Act, section 234.
  - 2 For when courts have jurisdiction, see also the *Acts Interpretation Act 1954*, section 49A.
- (2) Unless the Supreme Court decides a P&E Court decision or other matter under a relevant enabling Act is affected by jurisdictional error, the decision or matter is non-appealable, other than—
- (a) under part 7; or
  - (b) under the relevant enabling Act.
- (3) In this section—
- non-appealable***, for a P&E Court decision or matter, means the decision or matter—
- (a) is final and conclusive; and
  - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any way in any court.

## **8 District Court jurisdiction unimpaired**

A P&E Court judge retains all of the judge’s jurisdiction as a District Court judge.

## **9 When P&E Court must remit to tribunal**

- (1) If—
- (a) a P&E Court proceeding is, or includes, a matter within a tribunal’s jurisdiction; and

- (b) the court is satisfied the matter should be dealt with by the tribunal;
- the court must, by order, remit the matter to the tribunal.
- (2) On the making of the order, the Planning Act sections 228 and 238 apply as if the document starting the P&E Court proceeding were a document starting a tribunal proceeding under that Act.

## 10 Principles for exercising jurisdiction

- (1) In conducting P&E Court proceedings and applying the rules, the P&E Court must—
  - (a) facilitate the just and expeditious resolution of the issues; and
  - (b) avoid undue delay, expense and technicality.
- (2) The parties to a P&E Court proceeding impliedly undertake to the court and each other to proceed in an expeditious way.

## Division 3 Declaratory jurisdiction

### 11 General declaratory jurisdiction

- (1) Any person may start a P&E Court proceeding seeking a declaration (a *declaratory proceeding*) about—
  - (a) a matter done, to be done or that should have been done for this Act or the Planning Act; or
  - (b) the interpretation of this Act or the Planning Act; or
  - (c) the lawfulness of land use or development under the Planning Act; or
  - (d) the construction of a land use plan under the *Airport Assets (Restructuring and Disposal) Act 2008* and the interpretation of chapter 3, part 1 of that Act; or
  - (e) the construction of the Brisbane port LUP under the *Transport Infrastructure Act 1994*.

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*Note—*

Under the *Acts Interpretation Act 1954*, section 7, a reference to an Act in this list of subject matter about which a declaration may be sought includes a reference to the statutory instruments made under the Act.

- (2) However, a declaratory proceeding for a matter under the Planning Act, chapter 3, part 6, division 3 may be started only under section 12.
- (3) Also, a person may not start a declaratory proceeding for a matter under the Planning Act, chapter 3, part 6, division 2.
- (4) The P&E Court may also make an order about any declaration it makes.

## **12 Declaratory jurisdiction for Minister’s call in of development application**

- (1) This section applies to an assessment manager for a development application if—
  - (a) the application is the subject of a call in under the Planning Act; and
  - (b) when the call in took place, the assessment manager had not decided, or had refused, the development.
- (2) The assessment manager may start a proceeding (also a *declaratory proceeding*) in the P&E Court for a declaration about a matter done, to be done or that should have been done in relation to the call in.

# **Part 3 Rules and orders or directions**

## **13 Rules**

- (1) The Governor in Council may make rules of the P&E Court about any or all of the following matters—
  - (a) anything required or permitted under an enabling Act to be prescribed by the rules;

- (b) the P&E Court's procedures;
- (c) anything necessary or convenient for the P&E Court's purposes.

*Example of a matter the rules may provide for—*

a matter that may be dealt with by the P&E Court's officers under part 8

- (2) However, the rules may be made only with the concurrence of the Chief Judge and a P&E Court judge.
- (3) The P&E Court's procedures are governed by the rules, subject to relevant enabling Acts.
- (4) The rules may be uniform rules that apply to other courts.
- (5) The rules are subordinate legislation.

*Note—*

Under section 80, particular provisions of the repealed *Sustainable Planning Act 2009* continue in effect as if they formed part of the rules.

## **14 Orders and directions**

- (1) The P&E Court may make an order or direction about the conduct of a P&E Court proceeding.
- (2) The Chief Judge may make directions of general application about the P&E Court's procedures.

*Note—*

See, for example, section 22.

- (3) In making an order or direction under this section, the interests of justice are paramount.
- (4) An order or direction made under this section may be inconsistent with a provision of the rules.
- (5) However, if there is an inconsistency between an order or direction made under this section and a provision of the rules, the order or direction prevails to the extent of the inconsistency.
- (6) The P&E Court or Chief Judge may vary or revoke an order or direction made under this section.

## **Part 4                      Powers and procedure                                       (general)**

### **Division 1                    Alternative dispute resolution**

#### **Subdivision 1              ADR process**

##### **15            Purpose of subdivision**

The purpose of this subdivision is to provide an opportunity for parties to a P&E Court proceeding to participate in an ADR process.

##### **16            ADR process**

- (1) An *ADR process* is a process, without adjudication, under the rules in which an ADR registrar helps the parties to a dispute the subject of the P&E Court proceeding to achieve an early, inexpensive settlement or resolution of the dispute.
- (2) The ADR process includes all the steps involved in the process, including the following steps—
  - (a) ADR conferences;
  - (b) pre-ADR conference and post-ADR conference sessions;
  - (c) joint sessions of some or all of the parties;
  - (d) private sessions;
  - (e) another step prescribed by the rules.
- (3) An ADR registrar may, as part of the ADR process, confer with the parties about the way to conduct the P&E Court proceeding.

## **17 Referral to ADR process**

If a P&E Court proceeding is referred to an ADR process—

- (a) the proceeding is not stayed, unless the P&E Court orders otherwise; but
- (b) the P&E Court can not decide the proceeding until the ADR process has been finalised.

## **18 Resolution agreement**

- (1) If the parties agree on a resolution of their dispute or part of it as a result of an ADR process, the agreement must be written down and signed by or for each party and by the ADR registrar who conducted the ADR process.
- (2) The agreement has effect as a compromise.

## **19 Documents to be filed**

- (1) As soon as practicable after an ADR process has finished, the ADR registrar who conducted the ADR process must file a certificate about the ADR process in the approved form.
- (2) The certificate must not contain comment about the extent to which a party participated or refused to participate in the ADR process.
- (3) However, the certificate may indicate that a party did not attend the ADR process.

## **20 Orders giving effect to resolution agreement**

- (1) A party may apply to the P&E Court for an order giving effect to an agreement reached as a result of an ADR process.
- (2) However, a party may apply for the order only after the ADR registrar's certificate has been filed.
- (3) The P&E Court may make any order it considers appropriate in the circumstances.

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## **21 Preservation of confidentiality**

- (1) An ADR registrar must not disclose to anyone information acquired by the ADR registrar during an ADR process, other than under subsection (2).

Maximum penalty—50 penalty units.

- (2) The ADR registrar may disclose the information—
- (a) with the agreement of the person to whom the information relates or someone else authorised by the person; or
  - (b) for the purpose of giving effect to this part; or
  - (c) for statistical purposes not likely to reveal the identity of a person to whom the information relates; or
  - (d) for an inquiry or proceeding about an offence happening during the ADR process; or
  - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the ADR process; or
  - (f) if the disclosure is authorised under an Act or another law.

## **Subdivision 2 P&E Court proceedings**

### **22 ADR registrar's powers on Chief Judge's direction**

The Chief Judge may give directions about the matters and the types of proceedings in which an ADR registrar may exercise the P&E Court's powers for P&E Court proceedings.

### **23 ADR registrar's powers to hear and decide**

- (1) This section applies if the P&E Court makes a direction that an ADR registrar is to hear and decide a particular P&E Court proceeding.



- (2) The ADR registrar may hear and decide the proceeding and make an order or direction, including a final judgment or order.

## **24 Conduct of proceedings**

- (1) Subject to section 28, the ADR registrar for a P&E Court proceeding may decide how to conduct the proceeding.
- (2) However, the ADR registrar must give the parties to the proceeding—
  - (a) notice of the time and place of any hearing; or
  - (b) if the ADR registrar decides the proceeding can be decided on written submissions only—a notice requiring the submissions to be given to the ADR registrar within a stated reasonable period.

## **25 Reference to P&E Court by ADR registrar**

- (1) If an ADR registrar considers it would be more appropriate for the P&E Court to decide a matter in a P&E Court proceeding before the registrar, the registrar may refer the matter to the court.
- (2) The P&E Court may dispose of the matter or refer it back to the ADR registrar with any direction the court considers appropriate.

## **26 Review by P&E Court**

- (1) The P&E Court may review any decision, direction or act of an ADR registrar (a *court review*).
- (2) A party to a P&E Court proceeding for which an ADR registrar is exercising, or has exercised, powers may apply for a court review only within—
  - (a) 15 business days after the decision, direction or act complained of is made or done; or

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- (b) if the P&E Court is satisfied there are sufficient grounds to allow a longer period—the longer period allowed by the P&E Court.
- (3) A court review is to be on the material that was before the ADR registrar and any additional material the P&E Court gives leave to consider.

*Note—*

A court review is not by way of hearing anew.

### **Subdivision 3      ADR registrar's powers**

#### **27      ADR registrar's powers—general**

- (1) In a P&E Court proceeding, an ADR registrar may make an order or give a direction as follows—
  - (a) if the parties consent in writing;
  - (b) about the conduct of an ADR conference, or at the end of an ADR conference, to ensure the expeditious progress of the proceeding.
- (2) However, an order made under this section can not be a final judgment or order.

*Note—*

An order made under section 23(2) may be a final judgment or order.

#### **28      Provision for exercise of ADR registrar's powers**

The following apply for the exercise of powers, including the hearing and deciding of a P&E Court proceeding, by the ADR registrar—

- (a) the ADR registrar must—
  - (i) facilitate the just and expeditious resolution of the issues; and
  - (ii) avoid undue delay, expense and technicality; and

- (iii) act with as little formality as is consistent with a fair and appropriate consideration of the issues;
- (b) the provisions of this Act relevant to a P&E Court proceeding apply as if the proceeding were before the P&E Court;
- (c) the ADR registrar must ensure all parties are afforded natural justice;
- (d) the ADR registrar may, subject to paragraph (c), prohibit or regulate questioning in the hearing.

## **Division 2                      Powers**

### **29            Where P&E Court may sit**

The P&E Court may sit at any place.

### **30            Adjournments**

The P&E Court may do the following for a P&E Court proceeding—

- (a) adjourn it from time to time and place to place;
- (b) adjourn it to a time, or a time and place, to be fixed.

### **31            Subpoenas**

- (1) The P&E Court may summon a person as a witness and—
  - (a) require the person to produce in evidence documents in the person's possession or power; and
  - (b) examine the person; and
  - (c) punish the person for not attending under the summons or for refusing to give evidence or for failing or refusing to produce the documents.
- (2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.

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- (3) For subsection (1), a P&E Court judge has the same powers as a District Court judge.

### **32 P&E Court may extend period to take an action**

- (1) This section applies if the rules or a relevant enabling Act requires an action relating to a P&E Court proceeding or proposed P&E Court proceeding to be taken within a particular period or before a particular time, even if the period has ended or the time has passed.
- (2) The P&E Court may allow a longer period or different time to take the action if satisfied there are sufficient grounds for the extension.

### **33 Taking and recording evidence**

The P&E Court must take evidence on oath, affirmation, affidavit, declaration or in another way the court considers appropriate and must record the evidence.

### **34 Power to state case for Court of Appeal**

- (1) This section applies if—
  - (a) a question of law arises during a P&E Court proceeding; and
  - (b) the proceeding has not ended; and
  - (c) the P&E Court judge presiding considers it desirable that the Court of Appeal decides the question.
- (2) The P&E Court judge may state the question in the form of a case stated for the Court of Appeal's opinion.
- (3) Until the Court of Appeal decides the case stated, the P&E Court can not make a decision to which the question is relevant.
- (4) The P&E Court can not, in the P&E Court proceeding, proceed in a way, or make a decision, inconsistent with the Court of Appeal's decision on the case stated.

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**35 Terms of orders etc.**

The P&E Court may make an order, give leave or do anything else it is authorised to do on terms it considers appropriate.

**36 Contempt**

- (1) A P&E Court judge has the same power to punish a person for contempt as a District Court judge.
- (2) The *District Court of Queensland Act 1967*, section 129 applies to the P&E Court in the same way as it applies to the District Court.

**37 Discretion to deal with noncompliance**

- (1) If the P&E Court finds there has been noncompliance with a provision of this Act or an enabling Act, the court may deal with the matter in the way it considers appropriate.
- (2) Without limiting subsection (1) and to remove any doubt, it is declared that subsection (1)—
  - (a) applies for a development approval that has lapsed, or a development application that has lapsed or has not been properly made under the Planning Act; and
  - (b) is not limited to—
    - (i) circumstances in relation to a current P&E Court proceeding; or
    - (ii) provisions under which there is a positive obligation to take particular action.
- (3) In this section—

***noncompliance***, with a provision, includes—

  - (a) non-fulfilment of part or all of the terms of the provision; and
  - (b) a partial noncompliance with the provision.

***provision*** includes a definition.

### **38 What happens if P&E Court judge or ADR registrar dies or is incapacitated**

- (1) Subsection (2) applies if, after starting to hear a P&E Court proceeding, the P&E Court judge presiding (the *first judge*) dies or can not continue with the proceeding for any reason, including, for example, absence or illness.
- (2) Another P&E Court judge may—
  - (a) after consulting the parties—
    - (i) order the proceeding be reheard; or
    - (ii) adjourn the proceeding to allow the first judge to continue dealing with the proceeding when able; or
  - (b) with the parties' consent, make an order about—
    - (i) deciding the proceeding; or
    - (ii) completing the hearing of, and deciding, the proceeding.
- (3) If, after starting to perform functions for a P&E Court proceeding, an ADR registrar dies or can not continue with the proceeding for any reason, the proceeding is to be dealt with in the way the P&E Court considers appropriate.

## **Division 3 Parties**

### **39 Planning Minister**

- (1) This section applies for a declaratory proceeding or Planning Act appeal at any time before it is decided.
- (2) If the planning Minister becomes satisfied the proceeding involves a State interest, that Minister—
  - (a) is entitled to be represented in the proceeding; and
  - (b) may elect to be a party in the proceeding by filing in the P&E Court a notice of election in the approved form.
- (3) The election may be made at any time before the proceeding is decided.

(4) In this section—

*planning Minister* means the Minister administering the Planning Act, chapter 6, part 2.

*State interest* see the Planning Act, schedule 2.

#### **40 Appearance**

A party to a P&E Court proceeding may appear personally or by lawyer or agent.

#### **41 Representative proceedings in particular cases**

(1) A person (the *representative*) may start a P&E Court proceeding of the following kind on behalf of someone else (the *represented*)—

- (a) a declaratory proceeding;
- (b) a proceeding for an enforcement order under the Planning Act.

(2) However, the proceeding may be started only if the following consents—

- (a) if the represented is a person—the person;
- (b) if the represented is an unincorporated body—its committee or other controlling or governing body.

(3) The represented may contribute to, or pay, the expenses, including legal costs, incurred by the representative in relation to the proceeding.

### **Division 4 Miscellaneous**

#### **42 P&E Court proceedings open to public**

A P&E Court proceeding, other than a proceeding ordered by the court to be decided on written submissions only, must be open to the public, unless the rules provide otherwise.

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### **43 Nature of appeal in general**

Subject to any relevant enabling Act, an appeal to the P&E Court is by way of hearing anew.

### **44 Privileges, protection and immunity**

- (1) A person who is 1 of the following in a P&E Court proceeding has the same privileges, protection or immunity as the person would have if the proceeding were in the District Court—
  - (a) the P&E Court judge presiding over the proceeding;
  - (b) a party to the proceeding;
  - (c) a lawyer or agent appearing in the proceeding;
  - (d) a witness attending in the proceeding.
- (2) In performing the functions of an ADR registrar, the ADR registrar has the same privileges, protection or immunity as a District Court judge performing a judicial function.

## **Part 5 Planning Act proceedings**

*Note—*

The Planning Act provides for matters about starting an appeal. See section 228 of that Act.

### **Division 1 Planning Act appeals**

#### **45 Who must prove case**

- (1) For a Planning Act appeal about any of the following matters, the appellant must establish the appeal should be upheld—
  - (a) an application or request under the Planning Act for which the appellant was the applicant or person making the request;



- (b) a local government's decision, or the conditions applied, under a local law about the use of premises or the erection of a building or other structure under the Planning Act;
  - (c) an infrastructure charges notice, or a notice amending an infrastructure charges notice, under the Planning Act;
  - (d) a decision by a tribunal.
- (2) For a Planning Act appeal about a development application by a submitter or advice agency, the applicant must establish the appeal should be dismissed.
  - (3) For a Planning Act appeal by the recipient of an enforcement notice under the Planning Act, the enforcement authority that gave the notice must establish the appeal should be dismissed.
  - (4) For a Planning Act appeal by an affected owner of a compensation claim under the Planning Act, section 32 the local government required to decide the claim for the compensation under that section must establish the appeal should be dismissed.
  - (5) In this section—  
*advice agency* see the Planning Act, schedule 2.

## 46 Nature of appeal

- (1) If, for a Planning Act appeal, the appellant was the applicant or a submitter for a development application the subject of the appeal, section 43 applies subject to subsections (2) to (5).
- (2) The Planning Act, section 45 applies for the P&E Court's decision on the appeal as if—
  - (a) the P&E Court were the assessment manager for the development application; and
  - (b) the reference in subsection (7) of that section to when the assessment manager decides the application were a reference to when the P&E Court makes the decision.

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- (3) The P&E Court can not consider a change to the development application unless the change is only a minor change to the application.
- (4) The P&E Court can not consider a change to the development approval the subject of a change application under the Planning Act, section 78, unless the change is only a minor change to the approval.
- (5) The P&E Court is not prevented from considering and making a decision about a ground of appeal (based on a referral agency response under the Planning Act) merely because that Act required the assessment manager to refuse the development application or approve it subject to conditions.
- (6) If the appeal is against a decision about a superseded planning scheme application under the Planning Act, the P&E Court must—
  - (a) consider the aspect of the appeal relating to the assessment manager’s consideration of the superseded planning scheme in question as if the application had been made under the superseded planning scheme; and
  - (b) in considering the aspect, disregard the planning scheme in force when the application was made.

#### **47 Appeal decision**

- (1) In deciding a Planning Act appeal, the P&E Court must decide to do 1 of the following (the *appeal decision*) for the decision appealed against—
  - (a) confirm it;
  - (b) change it;
  - (c) set it aside and—
    - (i) make a decision replacing it; or
    - (ii) return the matter to the entity that made the decision appealed against with directions the P&E Court considers appropriate.

- (2) The appeal decision may also include other orders, declarations or directions the P&E Court considers appropriate.
- (3) The appeal decision (other than one to confirm the decision appealed against or to set it aside and return the matter) is taken, for the Planning Act (other than chapter 6), to have been made by the entity that made the decision appealed against.

## **Division 2                    Evidence in P&E Court proceedings**

### **48            Application of division**

This division applies to the following proceedings—

- (a) any Planning Act proceeding;
- (b) any declaratory proceeding.

*Note—*

Under the Planning Act, section 277, this division also applies to a proceeding relating to the Planning Act in a court other than the P&E Court or in a tribunal and to anyone else acting judicially in relation to a proceeding relating to the Planning Act.

### **49            Appointments and authority**

It is not necessary to prove either of the following for an enforcement authority CEO—

- (a) appointment to that office;
- (b) authority to do anything under the Planning Act.

### **50            Signatures**

A signature purporting to be that of an enforcement authority CEO is evidence of the signature it purports to be.

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## **51 Instruments, equipment and installations**

(1) Any prescribed instrument, equipment or installation that is used by an appropriately qualified person under any prescribed conditions is taken to be accurate and precise in the absence of evidence to the contrary.

(2) In this section—

*prescribed* means prescribed by regulation under this Act or another Act.

## **52 Analyst's certificate or report**

A certificate or report purporting to be signed by an appropriately qualified person and stating any of the following matters is evidence of the matter—

- (a) the person's qualifications;
- (b) the person took, or received from a stated person, a stated sample;
- (c) the person analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

## **53 Evidence of planning instruments or designations**

(1) A certified copy of a planning instrument or designation notice is evidence of the content of the instrument or notice.

(2) The P&E Court must take judicial notice of a certified copy of a planning instrument or designation notice.

(3) A copy of the gazette or newspaper containing a notice about the making of a planning instrument or designation is evidence of the matters stated in the notice.

(4) In this section—

*certified copy*, of a document, see the Planning Act, schedule 2.

*designation* see the Planning Act, section 35(1).

*designation notice* means a notice under the Planning Act, section 38(2)(b) or (c).

**54 Planning instruments presumed to be within power**

A Minister's or local government's power under the Planning Act to make a planning instrument is to be presumed, unless the issue is raised.

**55 Evidence of local planning instruments**

- (1) A local government's chief executive officer may certify a document to be a true copy of all or part of any of its local planning instruments in force at a stated time.
- (2) The certified document is admissible in evidence as if it were the original.

**56 Effect of planning and development certificates**

A planning and development certificate under the Planning Act is evidence of the matters the certificate states.

**57 Evidentiary aids generally**

- (1) A certificate purporting to be signed by an enforcement authority CEO stating any of the following matters is evidence of the matter—
  - (a) a stated document is—
    - (i) an appointment or a copy of an appointment; or
    - (ii) a direction or decision, or a copy of a direction or decision, given or made under the Planning Act; or
    - (iii) a notice, order, permit or other document, or a copy of a notice, order, permit or other document, given under the Planning Act;

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- (b) on a stated day, or during a stated period, the benefit of a development permit for stated development was or was not vested in a stated person;
  - (c) on a stated day, or during a stated period, a development permit—
    - (i) was or was not in effect for a stated person or development; or
    - (ii) was or was not subject to a stated condition;
  - (d) on a stated day, a stated person was given a stated notice or direction under the Planning Act;
  - (e) a stated amount is payable under the Planning Act by a stated person and has not been paid.
- (2) In this section—  
*development permit* see the Planning Act, section 49(3).

## Part 6                      Costs

### 58      Definitions for part

In this part—

*costs*—

- (a) for a P&E Court proceeding of the following type, includes a party's costs to investigate, or gather evidence for, the proceeding that the P&E Court decides the party reasonably incurred—
  - (i) a declaratory proceeding about the lawfulness of land use or development under the Planning Act, including any order under section 11(4);
  - (ii) an enforcement notice appeal;
  - (iii) an enforcement proceeding; and

- (b) for an enforcement notice appeal, also includes costs relating to investigations or gathering of evidence for the giving of the relevant enforcement notice.

*enforcement notice appeal* means an appeal against the giving of an enforcement notice under the Planning Act.

*enforcement proceeding* means a proceeding for an enforcement order or interim enforcement order under the Planning Act.

## 59 General costs provision

Subject to sections 60 and 61, each party to a P&E Court proceeding must bear the party's own costs for the proceeding.

## 60 Orders for costs

- (1) The P&E Court may make an order for costs for a P&E Court proceeding as it considers appropriate if a party has incurred costs in 1 or more of the following circumstances—

- (a) the P&E Court considers the proceeding was started or conducted primarily for an improper purpose, including, for example, to delay or obstruct;

*Example—*

A party (the *first party*) with similar commercial interests to another party started a proceeding. The P&E Court considers the proceeding was started primarily to advance the first party's commercial interests by delaying or obstructing the other party's development approval from taking effect.

- (b) the P&E Court considers the proceeding to have been frivolous or vexatious;

*Example—*

The P&E Court considers a proceeding was started or conducted without reasonable prospects of success.

- (c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;

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- (d) a party is required to apply for an adjournment because of the conduct of another party;
  - (e) without limiting paragraph (d), a party has introduced, or sought to introduce, new material;
  - (f) a party has defaulted in the P&E Court's procedural requirements;
  - (g) the P&E Court considers an applicant for a development application or change application did not give all the information reasonably required to assess the development application or change application;
  - (h) the P&E Court considers an assessment manager, referral agency or local government should have taken an active part in a proceeding and did not do so;
  - (i) an applicant, submitter, assessment manager, referral agency or local government does not properly discharge its responsibilities in the proceeding.
- (2) In this section—

*change application* means an application under the Planning Act, section 78, other than for a minor change.

*development assessment rules* see the Planning Act, section 68(1).

*referral agency* see the Planning Act, section 54(2).

## **61 Orders for costs for particular proceedings**

- (1) If, for an enforcement proceeding, the P&E Court makes an enforcement order or interim enforcement order against a person, it may award costs against the person.
- (2) If the P&E Court declares that an owner wrongly sought the cancellation of a development approval in contravention of the owner's consent requirement under the Planning Act, it must award costs against the owner.



- (3) If the P&E Court allows an assessment manager to withdraw from an appeal, the court must not award costs against the assessment manager.

## **62 Procedures, scale and enforcement of orders for costs**

- (1) This section applies to an order for costs made under section 60 or 61.
- (2) The P&E Court may make an order for the amount of costs to be decided under the appropriate procedure and scale of costs for proceedings in the District Court.
- (3) An order made under section 60 or 61 may be enforced as if it were an order of the District Court.

# **Part 7 Appeals to Court of Appeal**

## **63 Who may appeal**

- (1) A party to a P&E Court proceeding may appeal a decision in the proceeding, but only on the ground of error or mistake in law or jurisdictional error.
- (2) However, the appeal may be made only with the leave of the Court of Appeal.
- (3) Power to grant leave may be exercised by a single judge of appeal.

## **64 When leave to appeal must be sought and appeal made**

- (1) A party intending to seek the Court of Appeal's leave to appeal against a P&E Court decision must apply for the leave within 30 business days after receiving the decision.
- (2) A notice of appeal must be served and filed within 30 business days after any grant of the leave unless the Court orders otherwise.

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## **65 Court of Appeal's powers**

The Court of Appeal may do 1 or more of the following—

- (a) return the matter to the P&E Court to decide in accordance with the appeal decision;
- (b) affirm, amend, or revoke the decision appealed against and substitute another order or decision for the decision;
- (c) make an order it considers appropriate.

*Note—*

See also the Planning Act, section 72.

# **Part 8 Registry and officers**

## **66 Registrars and other officers**

- (1) The P&E Court's principal registrar is the principal registrar appointed for the District Court.
- (2) The P&E Court's registrars are the registrars appointed for the District Court.
- (3) The P&E Court's other officers are the other officers appointed for the District Court.

## **67 ADR registrar**

The P&E Court's principal registrar may, after consulting the Chief Judge, appoint a registrar or other officer of the P&E Court as an ADR registrar of the court.

## **68 Registries**

- (1) Each District Court registry is a registry of the P&E Court.
- (2) The registry of the P&E Court at Brisbane is the P&E Court's principal registry.
- (3) The P&E Court's registries are under the P&E Court's principal registrar's control.

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- (4) The principal registrar may give directions in connection with the P&E Court and P&E Court proceedings to the P&E Court's registrars and other officers employed in the registries.

## 69 P&E Court records

- (1) The P&E Court's principal registrar must keep records of P&E Court decisions and perform the other functions the court directs.
- (2) The P&E Court's records held at a place must be kept in the custody of the P&E Court's principal registrar.

# Part 9 Miscellaneous

## 70 Annual report

- (1) As soon as practicable but no later than 4 months after the end of each financial year, the Chief Judge must prepare and give to the Minister a written report about the operation of the P&E Court during the financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (3) The Chief Judge may combine the report with the District Court report for the same financial year in the 1 report.
- (4) In this section—

*District Court report* means the report prepared under the *District Court of Queensland Act 1967*, section 130A, for a financial year.

## 71 Judicial notice

All courts and persons acting judicially must take judicial notice of the appointment and signature of persons holding office under this Act.

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## 72 Approval of forms

The Chief Judge and another P&E Court judge may approve forms for use under this Act.

## 73 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of no more than 20 penalty units for a contravention of a regulation.

# Part 10 Savings and transitional provisions

*Note—*

For other transitional provisions concerning the P&E Court, see the Planning Act, chapter 8, part 1.

## 74 Definitions for part

In this part—

***court*** means the Planning and Environment Court continued under repealed SPA, immediately before the commencement.

***repealed SPA*** means the repealed *Sustainable Planning Act 2009*.

## 75 Continuance of existing judgeships

On the commencement, a judge of the court becomes a P&E Court judge for the rest of the judge's unexpired term of office as a judge of the court.

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## 76 Proceedings

- (1) This section applies to a matter under repealed SPA or an enabling Act if a person—
  - (a) had started proceedings under repealed SPA before the commencement but the proceedings had not ended before the commencement; or
  - (b) had, immediately before the commencement, a right to start proceedings under repealed SPA; or
  - (c) has a right to start proceedings that arises after the commencement in relation to—
    - (i) a statutory instrument mentioned in the Planning Act, section 286; or
    - (ii) an application mentioned in the Planning Act, section 287; or
    - (iii) any provision of an enabling Act that provides for the continuation of the matter after the commencement.
- (2) This Act applies to any appeal in relation to proceedings mentioned in subsection (1)(a).

*Example—*

Proceedings are continued under the Planning Act, section 308(2)(a). This Act will apply to an appeal in relation to the proceedings.

- (3) This Act applies to the proceedings mentioned in subsection (1)(b) or (c) subject to subsections (4) and (5).

*Example—*

A person starts proceedings under the Planning Act, section 308(4). This Act will also apply to the proceedings.

- (4) For proceedings brought under section 11—
  - (a) a reference in that section to the Planning Act is taken to include a reference to repealed SPA; and
  - (b) a reference in that section to the Planning Act, chapter 3, part 6, division 2 is taken to include a reference to repealed SPA, chapter 6, part 11, division 1; and

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- (c) a reference in that section to the Planning Act, chapter 3, part 6, division 3 is taken to include a reference to a call in of an application under repealed SPA, chapter 6, part 11, division 2.
- (5) For proceedings brought under section 12—
- (a) a reference in that section to the application the subject of a call in under the Planning Act is taken to include a reference to an application under repealed SPA, chapter 6, part 11, division 2; and
  - (b) a reference in that section to the assessment manager is taken to include a reference to an assessment manager under repealed SPA.
- (6) Also, to remove any doubt, it is declared that repealed SPA, section 440—
- (a) applies also for a development approval that has lapsed; and
  - (b) is not limited to—
    - (i) circumstances in relation to a court proceeding under repealed SPA or a current P&E Court proceeding; or
    - (ii) provisions under which there is a positive obligation to take particular action; and
  - (c) applies as if a reference to a provision not being complied with, or not being fully complied with, is taken to include—
    - (i) non-fulfilment of part or all of the provision; and
    - (ii) a partial noncompliance with the provision.
- (7) In this section—  
***provision*** includes a definition.

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## 77 Continuance of existing orders and directions

- (1) An order of the court in force immediately before the commencement continues in effect as an order of the P&E Court.
- (2) The order may be discharged or amended under this Act by the P&E Court.
- (3) A direction (a practice direction) issued by the Chief Judge of the District Court under repealed SPA, section 446(2), and in force immediately before the commencement continues in force as if it were made under section 14(2).
- (4) A practice direction must be read with the changes necessary to make it consistent with, and adapt its operation to, all enabling Acts.
- (5) Subsections (3) and (4) do not prevent further directions from amending or repealing a practice direction.

## 78 Existing references to court

In another Act or document, a reference to the court is taken to be a reference to the P&E Court.

## 79 Existing rules migrate to this Act

- (1) The *Planning and Environment Court Rules 2010* (the **2010 rules**) are taken to be the rules under this Act until this section expires.
- (2) The 2010 rules must be read with the changes necessary to make them consistent with, and adapt their operation to, all enabling Acts.

*Example—*

A reference to a provision (the **repealed provision**) of chapter 7 of repealed SPA must be read as a reference to any provision of this Act or of the Planning Act that corresponds, or substantially corresponds, to the repealed provision.

- (3) This section does not prevent further rules from amending or repealing the 2010 rules.

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- (4) This section expires on the earlier of the following—
  - (a) 6 months after the commencement;
  - (b) if, during the 6 months, a provision of the rules repeals all of the 2010 rules that were taken to be the rules under this Act—when the provision commences.

**80 Migration of particular repealed SPA provisions about the P&E Court to the rules**

- (1) Despite their repeal, repealed SPA, sections 456(8) and 459 (the *SPA provisions*) continue in effect until this section expires for any matter not provided for under the rules as if they formed part of the rules.
- (2) The SPA provisions must be read with the changes necessary to make them consistent with, and adapt their operation to—
  - (a) this Act; and
  - (b) the rules (whether they provide for the matter in the same way as, or a different way from, the SPA provisions); and
  - (c) the Planning Act, chapter 6.
- (3) The rules may amend or repeal the effect of either or both of the SPA provisions under this section.
- (4) This section expires on the earlier of the following—
  - (a) 6 months after the commencement;
  - (b) the repeal, under subsection (3), of the effect of both of the SPA provisions.



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## Schedule 1      Dictionary

### section 3

**ADR conference** means a mediation or a chaired meeting of experts, a case management conference or without prejudice conference convened under the rules.

**ADR process** see section 16(1).

**ADR registrar** means a person holding appointment under section 67 as an ADR registrar of the P&E Court.

**appeal decision** see section 47(1).

**approved form** means a form approved under section 72.

**assessment manager** see the Planning Act, section 48.

**business day** does not include a day between 26 December of a year and 1 January of the following year.

**Chief Judge** means the Chief Judge of the District Court.

**costs**, for part 6, see section 58.

**declaratory proceeding** see sections 11(1) and 12(2).

**development application** see the Planning Act, schedule 2.

**development approval** see the Planning Act, section 49(1).

**enabling Act**, for a provision about the P&E Court, see section 7(1).

**enforcement authority** see the Planning Act, schedule 2.

**enforcement authority CEO** means the chief executive or the chief executive officer, however called, of an enforcement authority.

**enforcement notice appeal**, for part 6, see section 58.

**enforcement proceeding**, for part 6, see section 58.

**minor change** see the Planning Act, schedule 2.

**P&E Court** see section 4.

***P&E Court judge*** see section 5(2).

***P&E Court proceeding*** means—

- (a) generally—a proceeding before the P&E Court; and
- (b) for part 6—a proceeding, including a part of a proceeding and an application in a proceeding, before the P&E Court.

***P&E Court's principal registrar*** means the P&E Court's principal registrar under section 66(1).

***party***, for a provision about a P&E Court proceeding, means any or all of the following for the proceeding—

- (a) the applicant or appellant;
- (b) the respondent;
- (c) any co-respondent;
- (d) if the Minister is represented, or elects to be a party—the Minister.

***Planning Act*** means the *Planning Act 2016*.

***Planning Act appeal*** means an appeal to the P&E Court for which the Planning Act is the enabling Act.

*Note—*

For the appeal right, see the Planning Act, section 228.

***Planning Act proceeding*** means—

- (a) a P&E Court proceeding for which the Planning Act is the enabling Act, including a Planning Act appeal; or
- (b) a declaratory proceeding relating to the Planning Act; or
- (c) a proceeding for an enforcement order under the Planning Act.

***planning instrument*** see the Planning Act, section 8(1).

***relevant enabling Act***, for provision about a P&E Court proceeding, means the enabling Act that confers jurisdiction for the proceeding on the P&E Court.

***rules*** means the rules of the P&E Court made under section 13(1).

*submitter* see the Planning Act, schedule 2.

*tribunal* see the Planning Act, schedule 2.

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