Planning and Environment Court Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the *Planning and Environment Court Bill* 2014.

Policy objectives and the reasons for them

On 12 June 2013, the government announced its intention to reform Queensland's planning and development assessment system, and prepare new planning legislation to replace the *Sustainable Planning Act 2009* (SPA).

The government's announcement was in response to growing concerns from stakeholders that SPA is long, complex and unresponsive, resulting in an over-regulated and burdensome planning system that stifles, instead of facilitates, development. This high level of regulation has also created a process-driven system, rather than one focused on delivering positive outcomes.

Creating a more prosperous Queensland is at the heart of the government's reform agenda. In order to achieve this aim, it is evident that a simplified, responsive system with lower regulatory burden is required. Fundamental reform, rather than simply amending the existing SPA, is considered necessary in order to deliver such a system. Through these reforms, the government will seek to deliver Australia's best planning and development assessment system.

Following an extensive program of public consultation, the *Planning and Development Bill 2014*, the *Planning and Environment Court Bill 2014* and the *Planning and Development (Consequential) and Other Legislation Amendment Bill 2014* have been developed to implement these reforms. The purpose of the *Planning and Development Bill 2014* is to facilitate Queensland's prosperity, inclusive of ecologically sustainable development that balances economic growth, environmental protection and community wellbeing.

The purpose of the *Planning and Environment Court Bill 2014* is to provide a separate piece of legislation to govern the constitution, composition, jurisdiction and powers of the Planning and Environment Court. The Bill provides the legislative foundation for new Court Rules and procedures to ensure the Court's efficient operation.

The Planning and Environment Court is presently established under provisions of the SPA (Chapter 7, part 1, division 1). These provisions are located in SPA primarily due to the historical establishment of the court in local government and planning legislation over time.

In more recent years, the Court's jurisdiction has expanded significantly, with it now having jurisdiction conferred on it by approximately 28 different acts in addition to SPA. They cover topics such as planning and development, environmental protection, coastal protection and management, heritage, fisheries, marine parks and maritime conservation, transport infrastructure and vegetation management.

Given the wide jurisdiction of the Planning and Environment Court, it is considered appropriate for the provisions establishing the jurisdiction and powers of the court to be transferred out of the State's planning legislation, and into its own specialised, stand-alone Bill.

Having a separate Bill for the Planning and Environment Court will enhance the role and visibility of the Court as a distinct, specialised and accountable court to hear planning and environment disputes. A stand-alone Bill will also ensure its assignment to the most appropriate Minister under the administrative arrangements and assure its efficacy.

The *Planning and Environment Court Bill 2014* complements the *Planning and Development Bill 2014*. Together, both Bills will govern the development assessment dispute resolution system in Queensland, which comprise of the following:

- The Planning and Environment Court, which hears more complex, high risk matters generally started by applicants and submitters .
- An Alternative Dispute Resolution (ADR) Registrar who, as an officer of the Planning and Environment Court, conducts mediations, without prejudice conferences, case management conferences and has the power to hear and decide certain low risk proceedings started by applicants and submitters at a low cost (unless otherwise determined by the Court).
- The Development Tribunals (formerly the Building and Development Dispute Resolution Committees), which hear certain low risk, technical disputes started by applicants only (established under the *Planning and Development Bill 2014*).

Since 2012, there has been significant consultation with stakeholders about the need for reform and it has been evident that stakeholders generally consider the broader dispute resolution framework and mechanisms in Queensland including the Planning and Environment Court are working well.

However, it was noted that adjustments could be made to improve the overall system, for example, stakeholders continue to raise concerns about the time and cost associated with resolving disputes, and that the provisions of the SPA are difficult to apply in court proceedings. The reforms under the *Planning and Environment Court Bill 2014* and the *Planning and Development Bill 2014* (to the extent they relate to dispute resolution) have sought to address these concerns.

There has also been much positive feedback on the previous improvements to the ADR processes within the Planning and Environment Court. There remains considerable support for continued improvement, particularly in relation to those matters that are considered relatively simple, straightforward disputes and to enable those matters to be resolved quickly, cheaply and effectively. Feedback also provided continued support for routine procedural matters to be dealt with by the ADR Registrar, particularly where those matters are uncontested. These improvements will undoubtedly uphold the efficiency of the court, allow disputes to be resolved more quickly and affordably and importantly reduce judicial time in determining such matters.

Essential to the delivery of Australia's best planning and development assessment system is the availability of appropriate processes for the just and expeditious resolution of disputes. Formulated with stakeholders and focus group members, Queensland's dispute resolution system is therefore being simplified and improved, consistent with 5 overriding guidance principles:

1. *Affordability* – the costs of resolving a dispute are minimised and unreasonable expense is avoided.
2. *Efficiency* – matters are resolved expeditiously, and unreasonable, futile and vexatious proceedings are discouraged.
3. *Transparency & Certainty* – processes and decision-making are transparent, with entities acting on recorded evidence and publishing reasons for its decision, ensuring public confidence in the system.
4. *Accessibility* – equitable access to dispute resolution processes are provided including access in the regions; processes contribute to public confidence and are simple to understand and use, including the availability and simplicity of information regarding dispute resolution alternatives and its decisions.
5. *Fit for purpose* – a range of dispute resolution alternatives are available, and proceedings are commensurate to the scale and technicality of the matter.

Simplification and improvements to the dispute resolution system have continually been compared and benchmarked against these overriding guidance principles. Understandably, achieving these overriding guidance principles are not limited to legislative changes.

For example, options are being explored to as far as possible, to improve public information about the alternatives for dispute resolution. This includes better collaboration between the registry of the Planning and Environment Court and the Development Tribunals on the provision of information and communication tools such as fact sheets and better use of the Queensland Government websites.

Achievement of policy objectives

The policy objectives of the Bill are achieved through the following key elements.

Administration of the Planning and Environment Court

The Bill provides that the Chief Judge of the District Court has overall responsibility for the administration of the Planning and Environment Court.

In practice, the Chief Judge of the District Court may also, through administrative arrangements, nominate a Judge constituting the Planning and Environment Court with the responsibility and management of the lists and day-to-day operation of the Planning and Environment Court. This administrative arrangement may include the orderly and expeditious exercise of the court's jurisdiction, and anything necessary or convenient to ensure the court performs its functions.

Remit to Development Tribunals

The Bill retains the existing ability for the Planning and Environment Court to remit a matter within the jurisdiction of the Development Tribunal to a Tribunal. This provision recognises the Tribunals as a lower cost alternative to the Court.

It is possible for development applications and approvals to comprise of different aspects of development (e.g. material change of use and building work) and for the applicant or appellant to be dissatisfied with different aspects of the decision. This remittal power allows a person to make a single appeal to the court covering all matters in dispute. However, the clause requires the court to remit to the Development Tribunal the matters the court is satisfied should be dealt with by a Tribunal.

Philosophy of the Court - principles for exercising the Court's jurisdiction

The court's overriding philosophy is currently found in the Planning and Environment Court Rules and not the principal legislation. It is considered that the philosophy and principles for exercising the Court's jurisdiction is better embedded in the Bill.

The philosophy provides that in conducting a Planning and Environment Court proceeding and applying the rules, the Planning and Environment Court must facilitate the just and expeditious resolution of the issues and avoid undue delay, expense and technicality.

Declaratory jurisdiction

The Bills continues the ability for any person to start a Planning and Environment Court proceeding seeking a declaration on a matter done, to be done or that should have been done for this Bill or the interpretation of this Bill or the lawfulness of land use or development under this Bill or 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 the construction of the Brisbane port LUP under the *Transport Infrastructure Act 1994*.

Orders and Directions Powers

The clause contemplates that the Planning and Environment Court, in its day-to-day work, may make an order or direction about the conduct of a proceeding it considers appropriate, even though such an order or direction may be inconsistent with a provision of the Court Rules. This inbuilt flexibility enables the Court to respond to each case on its merits and confirms that the interests of justice are paramount.

Alternative Dispute Resolution and the powers of an Alternative Dispute Resolution (ADR) Registrar

The Bill continues the opportunity for parties to a proceeding before the Planning and Environment Court to participate in an alternative dispute resolution (ADR) process. ADR processes provide alternative, efficient and lower cost options for resolving disputes and are more likely to result in better development outcomes, to the benefit of the community.

This is in recognition that there are some development matters which are relatively simple, straight forward disputes which could be resolved without the burden of an expensive trial. Also, there are routine procedural applications which need to be dealt with on an ongoing basis.

It is intended that this will continue to add to the efficiency of the Planning and Environment Court, improve access to justice for the public, allow disputes to be resolved sooner without costs and reduce judicial time in determining relatively minor matters dealing with routine applications.

Discretion to deal with non-compliance

A provision has been included in the Bill to provide that where the Planning and Environment 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.

It is intended that the Planning and Environment Court may deal with the matter in the way it considers appropriate. The inbuilt flexibility of this clause enables the parties to achieve a range of outcomes, premised on the position that legal technicality should not defeat appropriate development, unless in the court's discretion there are reasons to do so.

Security for costs

A provision has been included in the Bill to provide the Planning and Environment Court with the discretion to make orders requiring the party that started the proceeding to give security for costs. It had been considered in the past that the Planning and Environment Court had inherent jurisdiction to make orders for security for costs (see for example *Fitzgerald v Council of the City of Logan* [1992] QPLR 198). However, the availability of this discretion was put in doubt by the recent decision in the case of *Fanirata Pty Ltd v Logan City Council & Anor* [2013] QPEC 55, where Robin J found that a submitter appellant in the Planning and Environment Court was not a "plaintiff" for the purposes of rule 671 in the Unitary Civil Procedure Rules 1999.

An application for security for costs may be for all or part of the proceedings.

General discretion for the Court in relation to costs

In 2012, new costs rules were introduced under SPA to give the Planning and Environment Court general discretion in relation to making costs orders. These costs rules have been carried over into the Bill. Before the reforms in 2012, each party ordinarily paid their own costs, except in specific circumstances, including where the court considered a party had brought a frivolous or vexatious proceeding.

The purpose of making costs at the discretion of the Court was to discourage the use of the court as a means of delaying or frustrating appropriate development outcomes, including deterring vexatious litigants or those looking to gain commercial advantage. These changes ensure that submitter appellants with legitimate and well considered grounds for the appeal. The costs rules are not designed to prevent parties with genuine disputes from bringing proceedings in the Court.

Some minor changes have been made to the costs rules in the Bill. The costs rules clarify that the Court's discretion includes the power to order costs against someone who is not a party to the proceeding. This may include ordering costs against a party (other than the assessment manager in clause 62(3)) who has withdrawn from the proceeding or someone who is evidently funding the appeal. There is a concern that, with the change to the costs rules, there is a greater risk of a party using companies or incorporated associations with no capacity to pay as the vehicle for litigating to avoid adverse costs orders.

The Bill provides a non-exhaustive list of what the Planning and Environment Court may take into consideration in making a decision to award costs.

Retention of hearing anew "de novo" appeals

Under the Bill appeals heard by the Planning and Environment Court started under the Planning and Development Bill, or any other enabling Act (unless that Act provides otherwise) is to be heard anew ('de novo') meaning that the Court 'stands in the shoes' of the initial decision-maker and re-decides the development application, having reviewed the merits of the application on the evidence before the PEC and not being limited to the material that was before the initial decision maker. This is a feature of the existing system under SPA, and is a fundamental feature of the Planning and Environment Court jurisdiction. Historically, this provision has ensured that any controversy or influence (political or other bias) placed on the development application is neutralised, by ensuring a jurisdiction of independent judges in a specialised court.

De novo appeals focus the appeal upon the true merits of the dispute, thereby removing unnecessary and distracting debates about the earlier decision-making process, politics or personality. They also enable parties to adduce fresh evidence to properly address issues.

Whilst 'de novo' is retained for the purposes of the Bill, de novo appeals are not without its shortcomings. It can provide scope for parties to raise new issues (adding costs and delays), it can be costly for smaller, less complex appeals where a review of the original decision may suffice, and can provide an opportunity for a "scattergun" style approaches to the notice of appeal and subsequent proceedings. However, it the flexibility of the powers of the ADR registrar and the Court already mitigate such issues. This may include powers to:

- To strike out or modify the issues pleaded, either of its own volition or upon application, after hearing from the parties;
- To strike out an issue raised by a party if the party nominates no expert, after hearing from the parties;
- To report expert witnesses nominated by the parties to attend 1 or more without prejudice meetings chaired by the ADR Registrar for the purpose of narrowing and/or resolving issues and producing a joint report expeditiously;
- To make such directions with respect to the conduct of the hearing the Planning and Environment Court considers necessary, including placing limits on the time allowed for examination and cross-examination of witnesses and the presentation of submissions;
- To aware costs against a party in certain circumstances; and
- To make rules or practice directions to ensure the overall philosophy of the Planning and Environment Court is upheld.

Uniformity of Relief

A number of reforms have been identified in recent times in relation to the Planning and Environment Court, including reforms to remedies and powers of the courts. The reforms provide for consistency in the relief available in both the Magistrates Court (see clause 173 of the *Planning and Development Bill 2014*) and the Planning Environment Court (see clause 177 of the *Planning and Development Bill 2014*) for enforcement orders. Uniformity has also been extended in criminalising contravention of court orders, such that the provisions in the Magistrates Court and the Planning and Environment Court are now the same in this regard (with the maximum penalty being 4500 units or 2 years imprisonment). Similarly, in relation to payment of compensation to third parties for loss caused by commission of an offence, both the Magistrates Court and confirms the ability of the Planning and Environment Court to also provide orders for compensation to third parties in the relevant circumstances. There was no justification for the previous differences between the courts powers in this regard.

Another significant improvement is those changes made to better secure compliance with orders, whether made by the Magistrates Court (see clause 173 of the *Planning and Development Bill 2014*) or the Planning and Environment Court (see clause 177 of the *Planning and Development Bill 2014*). The amendments provide that the defendant in criminal proceedings or the respondent in civil proceedings must give the registrar of titles a notice in the approved form, asking the registrar to record the order on the appropriate register. The order attaches to the premises and binds the owner, the owner's successors in title and any occupier of the premises. At any time (presumably after complying with the order), the defendant or respondent (dependant on the court) can apply to the court for an order stating they have complied with the enforcement order. In such instances, the defendant or respondent can request that the registrar of titles remove the enforcement order for the premises in which the order relates.

The intent of such proposals is to provide a disincentive for noncompliance with orders by attaching temporal consequences to orders which will remain for as long as the order remains unperformed. This is particularly fundamental given that enforcement orders can relate to issues of substantial public value and importance for the people of Queensland.

Whilst these amendments have been made to the *Planning and Development Bill 2014*, they provide significant changes and improvements for the Planning and Environment Court, including continued flexibility to the Court's ability to adapt to the circumstances of the matters put before it.

Registry and resources of the Court

The Planning and Environment Court will continue, as it currently does, to use the resources of the District Court throughout Queensland. This includes the registry staff and its facilities.

Annual Report

The Bill includes a provision to require an annual report to be prepared for the Planning and Environment Court. The annual report will provide the operation and performance of the court on a yearly basis, including the number and types of proceedings lodged and the number and type of proceedings that benefit from alternative dispute resolution processes. This will continue feedback between the judiciary in the executive, and will also provide information and the demands of those using the system.

To remove any doubt, the annual report of the Planning and Environment Court and the District Court maybe the same report. This is consistent with current practice.

Approval of forms

A new clause has been inserted for the Chief Judge and another P&E Court judge to approve forms under the Bill. This provides further flexibility to the Court and its ability to respond accordingly.

Regulation-making power

A new clause has been inserted for the Governor in Council to make regulations under the Bill. This continues the flexibility provided by the Bill to deal with matters that could be provided as part of the regulation as the need arises.

Savings and Transitional provisions

The Bill contains several savings and transitional provisions. The Bill continues existing judgeships, existing proceedings and proceeding rights, appeals to the Court of Appeal, continuance of existing orders and directions, existing references to the court and existing rules that migrate under the Bill. The Bill also provides that two sections of the repealed SPA will continue in effect as if they formed part of the rules. This is largely due to these particular provisions being procedural, and therefore best placed outside the principal legislation.

Other Legislation amendments

A range of other amendments have been made to improve the overall simplicity, operation and clarity of the framework, including the improvements to the structure, functionality and usability of the Bill.

Alternative ways of achieving policy objectives

The purpose of the *Planning and Environment Court Bill 2014* is to provide a separate piece of legislation to govern the constitution, composition, jurisdiction and powers of the Planning and Environment Court.

The existing Planning and Environment Court (with associated ADR processes) and the Development Tribunals (formerly the Building and Development Dispute Resolution Committees) continue to be supported by stakeholders as the best dispute resolution system for the jurisdiction of Queensland. There are therefore no alternatives to establishing the Planning and Environment Court in primarily legislation, however, alternative legislation options were considered.

The following three legislative options were presented for the constitution of the court through development of the Bill:

1. Retaining the establishment and jurisdiction of the Planning and Environment Court in the *Planning and Development Bill 2014.*
2. Transitioning the establishment, powers and jurisdiction of the Planning and Environment Court into a chapter of the *District Court Act 1967.*
3. A separate, specialised Planning and Environment Court Act supported by attendant rules.

Option 1 would effectively maintain the status quo, establishing the powers and jurisdiction of the Planning and Environment Court within the *Planning and Development Bill 2014*. This would be despite jurisdiction on the Planning and Environment Court conferring approximately 29 statues, with the *Planning and Development Bill 2014* being only one of them. It would continue the historical establishment of the court within the local government and planning legislation. Option 1 would not meet the overall planning reform objectives of simplifying and streamlining the system, increasing navigability or ease of use.

In relation to option 2, the legislative option was primarily based on the existing Planning and Environment Court and District Court administrative arrangements being shared, and that the Planning and Environment Court is constituted by District Court judges. However, it was quickly found that establishing the Planning and Environment Court as a chapter of the *District Court of Queensland Act 1967* would not be user-friendly, with users having to go to multiple places within different statues to find relevant provisions. This option would also create unnecessary duplication not found in the existing arrangements, resulting in duplicative provisions within the *District Court Act 1967* to create a stand-alone Planning and Environment Court chapter.

In relation to option 3, the Department sought comment from the dispute resolution focus group and selected stakeholders including the Queensland Law Society, Queensland Environmental Law Association and the Queensland Bar Association on the range of options available for reform. Consultation confirmed that members of the dispute resolution focus group and the stakeholders unanimously supported a separate Planning and Environment Court Bill due to the limitations presented by options 1 and 2, including that options 1 and 2 would potentially lead to multiple incremental legislative amendments without comprehensive and cohesive reform benefits.

In consideration of the above, options 1 and 2 were therefore rejected as unable to meet the overall planning objectives of streamlining the system and increasing navigability, nor its ease of use, for users of the system.

This resulted in the preparation of a separate, specialised and streamlined *Planning and Environment Court Bill 2014*. Having a separate, specialised Bill for the Planning and Environment Court also:

- Supports the Government's vision to achieve Australia's best planning system, enhancing the role of the Planning and Environment Court as a visible, distinct and accountable court.
- Ensures that matters within the court's jurisdiction are considered objectively and independently, continuing to safeguard confidence in the system by robust, transparent and expeditious decision making.
- Provides a simple, accessible and easy to use system, understandable by practitioners, governments and the community/self-represented litigants who use the system.

Estimated cost for government implementation

Although the Bill now provides for the establishment and jurisdiction of the Planning and Environment Court by a separate and specialised piece of legislation, any financial cost implications that may be incurred through the implementation of the Bill are considered negligible. This is because that while the Planning and Environment Court is a separate, stand-alone Bill, the framework for implementation is essentially the same as that provided under SPA, and as such will continue to be funded within current resources.

Whilst there are no precise costing's of the objectives contained in the Bill, there are a number of potential savings for reasons including that:

- The Bill continues to provide for a streamlined system of court-supervised case management and a range of pre-hearing steps (including ADR processes). This will continue to encourage early resolution of appeals (currently 90-95% of appeals are resolved through ADR processes) and narrow the issues in dispute, which is highly likely to lessen the hearing time for those cases that do proceed to trial.

- The ADR Registrar continues to compromise of functions associated with ADR processes, and the hearing and determining of certain types of matters that would otherwise be performed by Judges.
- Provisions in the Bill allow more than one ADR Registrar to be appointed, giving the Court the ability to send additional non-contentious matters to ADR processes and save the Judge's valuable time.
- Projected savings, time and effort should continue not only for the Court, but also for the parties to those proceedings more generally by its improved processes – whether they are government departments, statutory authorities or other private litigants.

Allowances in the Bill for continued improvements of the ADR provisions may require additional resources to manage demand over time. However, this is balanced against the broader cost savings to the government and the community to resolve disputes by consensual agreement via ADR processes rather than go to a full hearing.

Where appropriate, the Development Tribunals, currently administered by the Queensland Government, will also retain concurrent jurisdiction with the Court for certain types of appeals. The Tribunal is typically a low cost forum, with appointed referees eligible for basic remuneration to cover the costs of the referee's time to prepare, hear and decide disputes that come before it. These costs are partially offset by the filing fees attributed to the proceeding, which may vary depending on the type and complexity of the issue in dispute.

The Planning and Environment Court will continue to utilise the District Court's judges, registry staff and other officers, as well as its facilities. The association of the Planning and Environment Court with the District Court also allows each to benefit from flexibility in matching judicial resources to its caseload. For example, if a matter is resolved in the Planning and Environment Court before it reaches trial, that judge may be reassigned to undertake work in the District Court or vice versa.

There will be initial costs to government in rolling out the new arrangements and training users of the improved planning system provided by the *Planning and Development Bill 2014*, as well as those presented by this Bill, related to dispute resolution processes. However these costs are considered to be outweighed by the benefits and cost savings expected over the longer term. This will also likely include improved information about the options for dispute resolution and facilitate improved practices as well as communication tools such as fact sheets and better use of government websites to provide overall benefit to users of the system.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*.

Consultation

Consultation on reviewing SPA and its various components commenced in 2012 with a series of stakeholder working groups involving local government, peak bodies, professional and legal representatives. These groups examined key operational questions around plan making, development assessment and referrals, and dispute resolution, and identified opportunities for immediate improvement. Key reforms were identified and a package of SPA amendments was progressed, including changes to the cost rules in the Planning and Environment Court, commencing in November 2012.

A further series of sessions were conducted with key industry stakeholders along with matters not encompassed in the 2012 reforms, which formed the basis of a paper that was presented to the inaugural annual Queensland Planning Forum in March 2013. Issues and thought-provoking ideas were posed to progress consultation on more a fundamental review of Queensland's planning, development assessment and dispute resolution frameworks. Participants at the forum were surveyed in April 2013 to further evidence key issues and priorities for reform.

Largely following the feedback from participants of the Queensland Planning Forum, a regular stakeholder forum was established (and has been on foot since May 2013) to continue the discussions around planning reform. Members include Agforce, Australian Institute of Building Surveyors, Council of Mayors (SEQ), Environmental Defenders Office, Housing Industry Association Ltd, Local Government Association of Queensland, Planning Institute of Australia, Property Council of Australia, Queensland Chamber of Commerce, Queensland Environmental Law Association, Queensland Law Society, Queensland Master Builders Association, Queensland Resources Council, Shopping Centre Council of Australia and the Urban Development Institute of Australia.

Focus groups comprising a small number of leading practitioners across industry and local government have also been established to test reform ideas and their impacts on day-to-day operations. This includes a focus group about dispute resolution. Members of this focus group include eminent building and planning professionals, solicitors and barristers, officers within various parts of the system, and other practitioners. Members have been heavily involved in the reform process and provided significant input and support.

The dispute resolution focus group has continued to meet throughout the preparation and development of the Bills with approximately 13 meetings in the last 12 months. Key themes and topics for discussion were generated from earlier planning reform activities as well as issues raised during the forums and focus group meetings. These included issues such as: submitter rights; the onus of proof for proceedings; the jurisdiction of the Planning and Environment Court; costs and fees; the court rules; offences and enforcement; the ADR Registrar and its powers; and issues pertaining to the Development Tribunals). These themes were further discussed and refined at the second Annual Planning Forum in March 2014.

Early working draft versions of the Bill and the *Planning and Development Bill 2014*, comprising of the ideas raised and captured as part of the planning reform and focus group discussions, were released in April 2014 to a targeted but large group of recipients comprising the stakeholder forum member organisations, focus group members and a number of other stakeholders engaged in developing the Bill. Feedback was invited and, along with further scrutiny by forums and focus groups, informed further development of the Bills.

A consultation draft of the Bill, and the *Planning and Development Bill 2014* were released for open consultation on 1 August 2014 for an eight week period to 26 September 2014. The draft Bills were provided to every local government in Queensland, all identified stakeholder groups including the membership of the stakeholder forum and focus groups, and those that attended the Annual Forum 2014. The Bills were also made publicly available during the same period via the Department's website.

The government undertook a number of meetings with councils across Queensland which included regionally based stakeholders. Stakeholder groups were offered detailed briefings on the Bills including through an expressions of interest process through the consultation website. All requests were met, including a detailed workshop with the Planning Institute of Australia, and presentations to large groups organised through the Queensland Environmental Law Association, and a number of forums through the Urban Development Institute of Australia. Other presentations included to the Environmental Defender's Office's community LawJam, various law firms, Property Council of Australia, Council of Mayors SEQ, SEQ Development Assessment Managers group, Local Government Association Queensland Planning Reform Reference Group and energy providers.

A number of these presentations were filmed and made available on departmental websites and emailed to stakeholders so the information could be accessed if attendance was not possible. A further two-hour live question and answer session was hosted by the Queensland Government to respond to queries from the public. This included discussion on dispute resolution matters.

All stakeholders, interest groups and individuals were invited to provide comment on the draft Bills during the consultation period, with approximately 230 submissions being received. These submissions were analysed and supplement the extensive engagement and feedback received in developing the Bills.

Overall, there has been broad support for the reforms and opportunities they present. There has been continued positive commentary from a range of stakeholders on the policy concepts of the Bill, particularly from the planning and legal stakeholders and a range of peak bodies. Whilst it is clear that the broader dispute resolution framework and mechanisms in Queensland are working well, it was noted that adjustments could be made to improve the overall system. Understandably, because of the diversity of stakeholders who use or contribute to the system, differing levels of support have also been expressed on some matters.

Where possible, every effort has been made to resolve these matters and reach a compromised position, consistent with the achievement of the dispute resolution policy objectives. The Bill has been heavily informed and adjusted by the consultation, particularly in response to feedback about the practical application, interpretation and realisable benefits of proposals.

It is intended that engagement will continue with focus group members, stakeholders and key bodies to ensure support if given, as users of the system transition. This is anticipated to include the preparation of new Planning and Environment Court Rules to ensure the procedural arrangements of the court are consistent with the reform process.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. Its uniqueness when compared to other States and Territories is largely due to the planning and development assessment dispute resolution system in Queensland being governed by two separate bodies, being the Planning and Environment Court and the Development Tribunals. Other States and Territories rely on one or the other. The two bodies are further complemented by specific powers which may be provided to an Alternative Dispute Resolution Registrar within the Planning and Environment Court.

The Planning and Environment Court in Queensland also maintains high international and national recognition, achieved particularly in advancements about individual case management, alternative dispute resolution processes and its efficient management of expert evidence. Despite this, as part of the consultative process for Bill development, the dispute resolution focus group considered the courts and tribunals in other jurisdictions and whether learning's and improvements could be transitioned into the Bill.

A principal finding was that, unlike the courts legislation in New South Wales (*Land and Environment Court Act 1979*) and South Australia (*Environment, Resources and Development Act 1993*) the Planning and Environment Court does not have criminal jurisdiction, except for its power to punish for contempt. Those charged with development and environmental offences in Queensland are brought before the criminal courts (i.e. the Magistrates Court or the District Court, depending on the gravity of the offence). Planning and Environment Court judges however do sometimes deal with such matters in their capacity as District Court judges presiding over trials or appeals from the Magistrates Court.

As part of the reform process, an investigation was therefore undertaken to explore opportunities to conferring criminal jurisdiction on the Planning and Environment Court.

Due largely to the possibility of higher court judges being occupied with simple or regulatory offences, the resourcing and financial implications on the courts and subsequently parties (as the matters would be expected to have increased cost implications by going to a higher court) and that there are other mechanisms to enable complex environmental and planning matters to be dealt with, this reform will not be implemented at this time. Other non-legislative measures will continue to be discussed with stakeholders about this reform initiative with the view to minimise concerns.

The Bill's jurisdiction is otherwise substantially uniform or complementary to legislation governing the Land and Environment Court, New South Wales and the Environment, Resources and Development Court, in South Australia. The Bill's direction of being more risk appropriate, navigable and adaptable where appropriate, is generally consistent with the policy objectives sought by other jurisdictions.

Other States and Territories (Victoria, Tasmania, Western Australia, Tasmania, Australian Capital Territory and Northern Territory) deal with dispute resolution in relation to planning, environmental and development matters via Tribunal arrangements with varied success.

Part 1 Preliminary

Clause 1 Short title

Clause 1 establishes that when enacted, the Bill will be cited as the *Planning and Environment Court Act 2014*.

Clause 2 Commencement

Clause 2 states that the Bill is intended to commence on a day to be fixed by proclamation.

Clause 3 Dictionary

Clause 3 provides that the dictionary in schedule 1 defines particular words used in the Bill.

Where a word or term is only used in one section of the Bill, it is not defined in the dictionary, but rather in the relevant section of the Bill. Certain words or terms used in the Bill are also defined in the *Acts Interpretation Act 1954* (Qld).

Part 2 Establishment and jurisdiction

Division 1 Establishment

Clause 4 Continuation

Clause 4 provides for the continuance of the existing Planning and Environment Court, presently established under provisions of the SPA (Chapter 7, part 1, division 1). These provisions are located in SPA primarily due to the historical establishment of the court in local government and planning legislation over time.

The Court was first established as the Local Government Court under the *City of Brisbane Town Planning Act 1964*, which was proclaimed into force on the 21 December 1965. The Court's primary function, at the outset, was to hear appeals from those dissatisfied with local government decisions on applications for rezoning, land subdivision or land use. Before the Court was established, decisions were determined on appeal to the Minister for local government, or the delegate of the Minister.

Pursuant to the *Local Government (Planning and Environment) Act 1990*, which commenced on 15 April 1991, the court was renamed to the Planning and Environment Court. The court has continued to exist under the *Integrated Planning Act 1997* and the SPA.

The majority of the court's work continues to involve the hearing appeals from decisions of local governments or government departments or agencies relating to development applications and approvals.

Subclause (2) states the Planning and Environment Court is a court of record. In practice, the Planning and Environment Court provides an online electronic record of all documents filed in the court which can be accessed by any person free of cost. This facility is used extensively by Judges, legal practitioners, litigants (some of which are self-represented) and the public registry staff. It has streamlined the administration and provision of justice services and is the only Queensland Court to do so.

Subclause (2) also provides the Planning and Environment Court has a seal that must be judicially noticed by all courts and persons acting judicially.

Clause 5 Constituting the P&E Court

Clause 5 describes the notification process and manner in which the Governor in Council appoints District Court judges as Planning and Environment Court judges (termed 'P&E Court judges' in the Bill) to constitute the Planning and Environment Court. In practice, the Chief Judge of the District Court is also appointed as a P&E Court judge.

Subclause (2) states that the appointment of a P&E Court judge may be for a specific period.

Subclause (3) states that a decision or order of a District Court judge purporting to constitute the Planning and Environment Court without being appointed, or a decision or order of a judge who's appointment as a P&E Court judge has ended, is not, and never has been, invalid merely because the decision or order was made.

Subclauses (4) and (5) provide that more than one P&E Court judge may constitute the Planning and Environment Court and sit at the same time, and in doing so, each court may exercise the jurisdiction and powers of the court.

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

Clause 6 provides that the Chief Judge of the District Court has responsibility for the administration of the Planning and Environment Court.

The Chief Judge of the District Court already has responsibility for the administration of the Planning and Environment Court, so the intent of this clause is to confirm and clarify the powers of the Chief Judge in relation to the administration of the court.

In practice, the Chief Judge of the District Court may also administratively, nominate a Judge constituting the Planning and Environment Court with the responsibility and management of the lists and day-to-day operation of the court. This administrative arrangement may include the orderly and expeditious exercise of the court's jurisdiction, and anything necessary or convenient to ensure the court performs its functions.

For example, it may include reviewing the practice and procedures of the court, as reflected in its rules and Practice Directions in consultation with the Chief Judge of the District Court and other judges of the Planning and Environment Court.

Division 2 General jurisdiction

Clause 7 Jurisdiction

Clause 7 establishes the jurisdiction of the Planning and Environment Court. Pursuant to section 49A of the *Acts Interpretation Act 1954*, the Planning and Environment Court has the jurisdiction given to it under any Act (referred to as 'enabling Acts'). As well as this Bill, one of the key enabling Acts to confer jurisdiction on the Planning and Environment Court will be the *Planning and Development Bill 2014*, which will repeal the SPA.

The Planning and Environment Court currently has jurisdiction conferred on it by approximately 29 different Acts. They cover matters such as planning and development, environmental protection, coastal protection and management, heritage, fisheries, marine parks and maritime conservation, transport infrastructure and vegetation management.

The jurisdiction conferred on the Planning and Environment Court is exclusive, subject to two exceptions. One exception is set out in part 7 of the Bill, and allows for an appeal to the Court of Appeal about an error of law, or about the jurisdiction of the Planning and Environment Court in making a decision.

The second exception is in relation to the jurisdiction of the development tribunals, as established under the *Planning and Development Bill 2014*, which enables the tribunals to hear a range of matters related to building and planning issues, largely of a technical nature. Schedule 1 of the *Planning and Development Bill 2014* sets out those matters for which both the Planning and Environment Court and the development tribunals will have concurrent jurisdiction. However an appellant, having made a choice of jurisdiction for an appeal, is unable to also appeal in the alternative jurisdiction, unless the appeal is about a matter of law or jurisdiction from a development tribunal to the Planning and Environment Court.

Subclause (2) states that a Planning and Environment Court decision or order is final and conclusive and is non-appealable other than under part 7 (to the Court of Appeal), under the relevant enabling Act (if that Act permits) or to the Supreme Court on the ground of jurisdictional error. 'Non-appealable' means that the decision or order may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way. Following the decision of the High Court in *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531; [2010] HCA 1, it is considered necessary to include an express provision in the Bill confirming that a decision can be appealed to the Supreme Court on the ground of jurisdictional error. This provision is considered necessary given the broad privative clause ousting review under the *Judicial Review Act 1991*.

Clause 8 District Court jurisdiction unimpaired

Clause 8 provides that a judge serving on the Planning and Environment Court is not prevented from hearing or continuing to hear matters in the District Court.

Clause 9 When P&E Court must remit to tribunal

Clause 9 allows the Planning and Environment Court to remit a matter within the jurisdiction of the development tribunals to a tribunal.

It is possible for development applications and approvals to comprise of different aspects of development (e.g. material change of use and building work) and for the applicant or appellant to be dissatisfied with different aspects of the decision. This clause allows a person to make a single appeal to the Planning and Environment Court covering all matters in dispute. However, the clause requires the Planning and Environment Court to remit to the development tribunal the matters the court is satisfied should be dealt with by a tribunal.

The variety and degree of seriousness or importance of matters within the jurisdiction of the Planning and Environment Court makes it difficult to identify any particular category that will always be suitable for referral to the Tribunals. Practically, remittance may occur by the Planning and Environment Court in its discretion, generally on application to the Planning and Environment Court by the parties on a case-by-case basis.

Clause 10 Principles for exercising jurisdiction

Clause 10 provides that in conducting a Planning and Environment Court proceeding and applying the rules, the Planning and Environment Court must facilitate the just and expeditious resolution of the issues and avoid undue delay, expense and technicality. While the Planning and Environment Court currently undertakes an effective and efficient approach to conducting proceedings, the court's overriding philosophy is currently found in the court rules (rule 4) and not the principal legislation. It is considered that the philosophy and principles for exercising jurisdiction are better embedded in the Bill. Despite the clause embedding the principles overarching the court's administration and practice, the Planning and Environment Court will continue to exercise its jurisdiction judicially.

Subclause (2) states that the parties to a Planning and Environment Court proceeding impliedly undertake to the court and each other to proceed in an expeditious way.

Division 3 Declaratory jurisdiction

Clause 11 General declaratory jurisdiction

Clause 11 describes the power of the Planning and Environment Court to hear and decide declaratory matters, and to make orders about a declaration made by the court. This clause allows for any person to initiate a proceeding for a declaration. The Planning and Environment Court has jurisdiction to hear and decide a proceeding about the following matters:

- a matter done, or to be done, or that should have been done under this Bill or the *Planning and Development Bill 2014*;
- the interpretation of the Bill or the *Planning and Development Bill 2014*;
- the lawfulness of land use or development under the *Planning and Development Bill 2014*;
- the construction of a land use plan under the *Airport Assets and (Restructuring and Disposal) Act 2008*, and the interpretation of chapter 3, part 1 of that Act; and
- the construction of the Brisbane port LUP (land use plan) under the *Transport Infrastructure Act 1994*.

The intent of this clause, along with clause 12, is to retain the current declaratory jurisdiction of the Planning and Environment Court, as provided in current section 456 SPA. Pursuant to section 7 of the *Acts Interpretation Act 1954*, a reference to an Act in this clause includes a reference to the statutory instruments made under the Act. Section 7 of the *Statutory Instruments Act 1992* defines a statutory instrument to include a regulation, a rule, and a guideline of a public nature.

Therefore, the declaratory jurisdiction of the Planning and Environment Court extends to, for example, planning instruments, Development Assessment and Access rules and guidelines made under the *Planning and Development Bill 2014.*

However, a declaratory proceeding for a matter relating to a Ministerial call in under chapter 3, part 7, division 3 of the *Planning and Development Bill 2014* can only be started under clause 12. Declaratory proceedings cannot be started for a matter relating to the exercise of the Minister's powers to make a direction under chapter 3, part 7, division 2 of the *Planning and Development Bill 2014*.

Subclause (4) states that the Planning and Environment may also make an order about a declaration made by the court.

Clause 12 Declaratory jurisdiction for Ministerial call in of development application

Clause 12 provides for an assessment manager to bring a proceeding for a declaration about a matter done, to be done, or that should have been done in relation to an application that has been called in by the planning Minister under the *Planning and Development Bill 2014*, chapter 3, part 7, division 3. However, this clause only applies if, at the time the application was called in, the assessment manager had refused the application or not made a decision on the application.

Part 3 Rules and orders or directions

Clause 13 Rules

Clause 13 provides that matters relating to court procedure will be set out in the Planning and Environment Court Rules. In Queensland, the *Uniform Civil Procedure Rules 1999* (UCPR) apply to civil proceedings in the Supreme Court, District Court and Magistrates Court. The UCPRs are designed to achieve a level of consistency across courts exercising civil jurisdiction. The rules are comprehensive, but complex and lengthy. Specific practices and procedures in relation to the Planning and Environment Court are governed by the *Planning and Environment Court Rules 2010*. The current rules aim to be comprehensive enough to be read as 'stand alone' set of rules, but not so bulky as to be unwieldy or incomprehensible. Given the uniqueness and specialisation of the Planning and Environment Court, the need for recourse to the UCPRs is limited and encountered relatively infrequently.

The rules are subordinate legislation made by the Governor in Council under this Bill, and are made with the concurrence of the Chief Judge of the District Court and another Planning and Environment Court judge.

The clause provides that the Planning and Environment Court's procedures are to conform to the rules of court, subject to the requirements of enabling Acts.

Clause 14 Orders and directions

Clause 14 sets out the court's broad power to make orders or directions about the conduct of a proceeding. In making orders or directions, the interests of justice are paramount. In the event that there is no provision, or an insufficient provision, governing a particular issue or matter in the rules of court, then the judge may make an order or direction.

The Chief Judge of the District Court may also make directions of general application (practice directions) about the procedures of the Planning and Environment Court. Practice directions may also be made to encourage the just and expeditious resolution of matters and avoid unreasonable expense and undue delay.

This may include continued encouragement of fit-for-purpose alternative dispute resolution practices, to ensure proceedings are commensurate to the scale and technicality of the issues in dispute.

The orders and directions of the Court, and the directions of the Chief Judge made under this clause may be inconsistent with a provision of the rules. In this instance, the order or direction of the Court or Chief Judge prevails to the extent of the inconsistency.

Part 4 Powers and procedure (general)

Division 1 Alternative dispute resolution

Subdivision 1 ADR process

Clause 15 Purpose of sdiv 1

Clause 15 provides that the purpose of this subdivision is to provide an opportunity for parties to a proceeding before the Planning and Environment Court to participate in an alternative dispute resolution (ADR) process. ADR processes provide alternative, efficient and lower cost options for resolving disputes and are more likely to result in better development outcomes, to the benefit of the community.

Historically, the ADR provisions for the District Court were made applicable to the Planning and Environment Court under the *Integrated Planning Act 1997* (then provided in the *District Court of Queensland Act 1967*). Under SPA, part 6 of the *Civil Proceedings Act 2011* applies to the ADR processes in the Planning and Environment Court, which sets out a standard set of ADR provisions applicable in the Supreme, District and Magistrates Courts, where appropriate.

Since the enactment of the *Civil Proceedings Act 2011*, ADR processes with the Planning and Environment Court have relied on its provisions. This includes section 491 SPA, which provides that the costs provisions of the ADR provisions in the *Civil Proceedings Act 2011* prevail over the costs provisions in the SPA to the extent of any inconsistency.

As the ADR processes in the Planning and Environment Court have continued to evolve, adapt and respond to the needs and demands of a specialised jurisdiction, many of the provisions within the *Civil Proceedings Act 2011* need amendment to apply to the varied circumstances that are common in the Planning and Environment Court jurisdiction or are now considered redundant. The inability of the *Civil Proceedings Act 2011* to apply to the varied and specialised circumstances of the Planning and Environment Court has ultimately led to a lack of a clear framework to guide the operation of ADR processes in the court.

More generally, the provisions lack of clarity about what the ADR process is which cost provisions apply in the circumstances, and the roles and responsibilities of those who use it.

Given this, it was considered appropriate to adapt the relevant ADR provisions, including the relevant cost provisions, from the *Civil Proceedings Act 2011* and incorporate these tailored provisions into the Bill so that they support the unique ADR processes now available in the Planning and Environment Court.

This also has the advantage of reducing the layering of legislation relevant to the Planning and Environment Court. Put simply, ADR processes for Planning and Environment Court proceedings including the costs provisions relating to it are now under one piece of legislation, contained in this Bill.

Clause 16 ADR process

Clause 16 states the 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 proceeding to achieve an early, inexpensive settlement or resolution of the dispute. The resolution of a dispute through a judgment of the court is not, and should not be thought of to be, the inevitable, or even usual, conclusion of litigation in the Planning and Environment Court.

The clause states that the ADR process includes all the steps in the process, including for example, an ADR conference, pre-conference and post-conference sessions. This clause provides flexibility in that another step, appropriate to a Planning and Environment Court proceeding, may be prescribed by the rules and therefore be adapted as new ADR processes continue to evolve.

The clause also provides that an ADR registrar may confer with the parties about the way to conduct the proceeding, for example by way of case management conference, as provided for under the rules.

Clause 17 Referral to ADR process

Clause 17 provides that, if a dispute is referred to an ADR process, then the proceeding is not stayed unless the Planning and Environment Court orders otherwise. However, the court cannot decide the proceeding until the ADR process has been finalised.

Clause 18 Resolution agreement

Clause 18 provides that if the parties agree on a resolution of their dispute or part of it, the agreement must be written down and signed by or for each party and by the ADR registrar who conducted the ADR process. The clause provides that such an agreement has the same effect as a compromise.

Clause 19 Documents to be filed

Clause 19 provides that as soon as practicable after the end of an ADR process, the ADR registrar must file a certificate about the ADR process in the approved form.

The purpose of the certificate is for the ADR registrar to certify whether or not the parties attended the ADR process, and whether or not they resolved all or part of their dispute. However, the ADR registrar cannot include in the certificate any comment about the extent to which a party participated in, or refused to participate in, the ADR process.

Clause 20 Orders giving effect to resolution agreement

Clause 20 provides that a party may apply to the Planning and Environment Court for an order giving effect to an agreement reached at or after an ADR process; however that party may apply for the order only after the ADR registrar's certificate is filed pursuant to clause 19. This is particularly important in circumstances where parties agree a way forward in a proceeding, but is however, delayed in the implementation of the agreement without reasonable excuse.

When enforcing a resolution agreement, the Planning and Environment Court may make any order it considers appropriate in the circumstances.

Clause 21 Preservation of confidentiality

Clause 21 provides that an ADR registrar must not without reasonable excuse disclose information coming to the ADR registrar's knowledge during an ADR process, and provides a maximum penalty of 50 penalty units. The clause lists instances of reasonable excuse to disclose the information, if for example the ADR has the agreement of the person to who the information relates.

Subdivision 2 P&E Court proceedings

This subdivision is intended to provide an inexpensive and timely resolution of Planning and Environment Court proceedings by an ADR Registrar, where the matters are relatively straight forward and the disputes can be resolved effectively without the burden of an expensive trial. Also, there are routine procedural applications that currently go before the Planning and Environment Court which in most circumstances are best placed heard and determined by the ADR registrar.

The Bill continues to provide that the Chief Judge of the District Court has the discretion to direct that certain powers of the Court be exercised by an ADR registrar.

Matters are heard and determined by an ADR registrar on the basis each party pay their own costs.

It is intended that the increased powers to an ADR registrar will add further efficiencies to the Planning and Environment Court by hearing and determining relatively minor matters and dealing with routine applications without the need for a trial. This will improve access to justice for the public, allow disputes to be resolved sooner without costs and, ultimately save judicial time and unnecessary demand on court resources.

Clause 22 ADR registrar's powers to hear and decide

Clause 22 provides added efficacy to the Planning and Environment Court.

Subclause (a) provides that an ADR registrar can hear and decide a proceeding, including a final judgment or order, within a development tribunal's jurisdiction if the chief executive decides to end the proceeding under the Planning Act. An ADR registrar can also make interlocutory orders and procedural orders about the proceeding. The proceeding does not need to go back before a judge for final orders.

When a development tribunal is formed, every effort is taken by the chief executive to choose a suitable tribunal, comprising of between one and five referees drawn from a pool of appointed referees with appropriate qualifications and experience to hear the matter. The issues in dispute, as identified in the original documents lodged in support of the appeal or application, are used to help identify the appropriate qualifications and experience required by referees in order to form a development tribunal. However, in certain limited certain circumstances, it may become evident after a tribunal has been formed that it does not have the appropriate qualifications and experience to hear the issues in dispute (e.g. the issues in dispute, ordinarily identified at the hearing, may differ from those within the appeal or application documentation, or new issues may come to light during the hearing that requires resolution).

The matters heard by the development tribunals are generally characterised as those of a technical nature not ordinarily requiring judicial determination, and are regularly started by self-represented litigants. These proceedings are generally best placed to be heard and determined by an ADR registrar, rather than the court. It is intended that the parties would benefit from the low-cost, timely and informal process that this alternative provides.

Subclause (b) provides that an ADR registrar can hear and decide a proceeding, including a final judgment or order, if the proceeding relates to a minor change about a development application or development approval under the Planning Act. The ADR registrar can also make interlocutory orders and procedural orders about the proceeding. The proceeding does not need to go back before a judge for final orders.

In practice, in order to meet the minor change test, parties ordinarily prepare affidavit material from experts that the parties have engaged to support the application or approval, including relevant compliance of the tests associated with a minor change.

By allowing an ADR registrar to hear and determine these matters, the parties will absolve themselves of the cost of an appearance, will be timely by the ability of the ADR registrar to hear and determine the matter on the papers and save judge time and court resources. The low proportion of appeals involving minor changes that are contested by parties will continue to be heard by the Planning and Environment Court.

Importantly, subclauses 22 (a) and (b) provide an alternative option to the court for resolving these types of disputes, and recognises that there will be circumstances in which matters are better disposed of by judges who constitute the Planning and Environment Court. It is at the parties discretion, given the circumstances of the matter, whether they wish to take a matter to an ADR registrar or alternatively to the court. It is encouraged that these alternatives be considered by the parties on a case-by-case basis.

In any case, and with reference to clause 25, if an ADR registrar considers it more appropriate for the Planning and Environment Court to hear and decide a matter then it can be referred to the court. Also, clause 26 provides that the parties may ask the Court to review any decision, direction or act of an ADR registrar.

Subclause (c) provides that the Planning and Environment Court may make a direction that an ADR registrar is to hear and decide in a particular P&E Court proceeding, including the power to make a final judgment or order. The ADR registrar can also make interlocutory orders and procedural orders about the proceeding. The proceeding does not need to go back before a judge for final orders.

Clause 22 is not limited in any way by clause 23.

Clause 23 ADR registrar's powers on Chief Judge's direction

Clause 23 provides a general power that the Chief Judge of the District Court may issue directions about the matters and types of proceedings in which the ADR registrar may exercise powers of the court. In practice, this may be a general practice direction about matters such as procedural requirements about the way in which an ADR registrar may hear and determine a matter and also the types of proceedings the ADR registrar may hear and decide, such as condition appeals and infrastructure charges appeals.

This continues to achieve the policy objective of increasing the efficiency of the Planning and Environment Court by providing for the Chief Judge of the District Court the ability to issue directions of a general nature (practice directions) about the matters and types of proceedings the ADR registrar to exercise a power of the Court generally and for the Court to direct the ADR registrar hear and decide particular matters of a minor nature without the burden of an expensive trial and the risk of adverse costs orders.

This power is in addition to the ADR registrar's powers to hear and decide under clause 22 and the general powers of the ADR registrar under clause 27.

Clause 24 Conduct of proceedings

Clause 24 provides that an ADR registrar may decide how to conduct a proceeding before the ADR registrar, for example they may decide it is appropriate to conduct the proceeding on written submissions only. This clause is subject to clause 28, so in deciding how to conduct a proceeding, the ADR registrar must, for example, continue to ensure all parties are afforded natural justice.

If the ADR registrar decides a hearing is to be conducted for the proceeding, the ADR registrar must notify the parties of the time and place for the hearing. If the ADR registrar decides the proceeding can be decided on written submissions only, then the ADR registrar must notify the parties of the period within which written submissions must be given to the ADR registrar. This stated period for submissions must be reasonable, taking into account those principles provided by clause 28.

Clause 25 Reference to P&E Court by ADR registrar

Clause 25 provides that an ADR registrar may refer a proceeding to the Planning and Environment Court if it appears to the ADR registrar to be more appropriate for the court to decide the matter. In this event, the Planning and Environment Court may dispose of the matter or refer it back to the ADR registrar with any direction the court considers appropriate.

For example, whilst the parties may have agreed that the matter should go before an ADR registrar to hear and determine under clause 22, the ADR registrar may consider that the matter is too complex, and best to be dealt with by judicial determination in the Planning and Environment Court.

Clause 26 Review by P&E Court

Clause 26 provides that the Planning and Environment Court may review a decision, direction or act of an ADR registrar made or done under this division.

Subclause (2) provides that an application for the review must be made to the Planning and Environment Court within 15 business days after the decision, direction or act complained of is made or done or any longer period allowed by the court.

Subclause (3) seeks to clarify that the review is not a hearing anew. Instead, it is a review on the material that was before the ADR registrar and any additional material the court gives leave to consider.

Subdivision 3 ADR registrar's powers

Clause 27 ADR registrar's powers – general

Clause 27 provides general orders and directions powers available to an ADR registrar in a P&E Court proceeding, whether during an ADR process or when hearing and deciding a proceeding.

This clause provides a sensible set of powers to an ADR registrar to make orders or give directions if the parties consent in writing, or about the conduct of an ADR process or at the end of an ADR process, to ensure the proceeding progresses expeditiously.

However, the orders under this clause cannot be a final judgment or order, unless permitted under clause 22 or clause 23 in relation to a matter for the ADR registrar to hear and decide.

This clause also provides that the ADR Registrar has powers to make interlocutory orders or issue procedural directions in a proceeding.

Clause 28 Provision for exercise of ADR registrar's powers

Clause 28 provides how an ADR registrar must exercise its powers and inform itself under this division. For example, an ADR registrar must act with as little formality as is consistent with a fair and appropriate consideration of the issues.

Importantly an ADR registrar may for example, subject to ensuring all parties are afforded natural justice, prohibit or regulate questioning. This may be to limit the duration of the hearing, limit the number of witnesses, or limit the time taken in cross-examination. Ultimately, the intent or this power is to avoid unnecessary delay, expense and ensure the expeditious resolution of the issues.

Division 2 Powers

Clause 29 Where P&E Court may sit

Clause 29 states that the Planning and Environment Court may convene at any place.

The Planning and Environment Court, using the infrastructure of the District Court of Queensland, achieves a regional presence across Queensland. It is not unusual for Planning and Environment Court proceedings to extend from Brisbane to the District Court at Southport, Ipswich, Maroochydore, Rockhampton, Townsville and Cairns. Mindful of the desirability of hearing cases near the community they affect, the Planning and Environment Court from time to time, sits at places where there is no court at all. In practice, community halls or other facilities are used on such occasions.

Clause 30 Adjournments

Clause 30 provides that the Planning and Environment Court may allow proceedings to be postponed, interrupted or continued at another time and place and in relevant circumstances, fixed.

Clause 31 Subpoenas

Clause 31 describes the manner in which the Planning and Environment Court can obtain evidence or produce documents in a person's possession. The Planning and Environment Court also has powers to punish for non-compliance with a summons. The powers of a P&E Court judge are the same as those of a District Court Judge under the *District Court of Queensland Act 1967* for the purposes of this clause.

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

Clause 32 allows the Planning and Environment Court to grant extensions of time for actions otherwise required within a specified time, if the court is satisfied there are sufficient grounds for the extension.

Clause 33 Taking and recording evidence.

Clause 33 establishes the ways in which the Planning and Environment Court must take evidence and the requirement to record the evidence.

Clause 34 Power to state case for Court of Appeal

Clause 34 describes the manner in which a P&E Court judge may submit a question of law, which has arisen during a Planning and Environment Court proceeding, to the Court of Appeal.

If the P&E Court judge considers it desirable, it may state the question in the form of a case stated for the Court of Appeal's opinion. The *Uniform Civil Procedure Rules 1999* establish the relevant procedures. The question may only be stated during a Planning and Environment Court proceeding, and the court must not make a decision about the matter while the question is pending, or proceed in a way, or make a decision inconsistent with the Court of Appeal's opinion on the question.

Clause 35 Terms of orders etc.

Clause 35 states that the Planning and Environment Court may make an order, give leave or do anything else, it is authorised to do on terms it considers appropriate.

Clause 36 Contempt and contravention of orders

Clause 36 states that a P&E Court judge has the same powers to punish for contempt as a District Court judge. The contempt powers in section 129 (Contempt) of the *District Court of Queensland Act 1967* apply in the Planning and Environment Court the same way they apply to the District Court.

This clause also establishes that a failure to comply with an order of the court is contempt of the court. This is intended to clarify that the court has the power to enforce its own orders.

Clause 37 Discretion to deal with noncompliance

Clause 37 provides the Planning and Environment Court with broad discretionary powers to relieve against any non-compliance, partial non-compliance or non-fulfilment of any provision of the Bill or an enabling Act. The intent of this clause is to ensure a person's rights to hearings are not compromised on the basis of technicalities concerning processes.

Recent case law has identified issues with the current equivalent provision in SPA, section 440, and the transitional provision in section 820. It was held by the Planning and Environment Court that these provisions do not apply to matters of non-fulfilment, and it was unclear whether the term 'provision' also includes a definition. This clause aims to address these identified issues, to ensure the of the Planning and Environment Court excusatory powers.

The term "provision" is intended to be interpreted broadly, includes a definition, and is not limited to circumstances where there is a positive obligation to take a particular action.

The clause clarifies that it applies to a development approval that has lapsed, or a development application that has lapsed or has not been properly made under the Planning Act. The intent is to include other matters that may not otherwise by valid, for example, timeframes that have not been complied with, fees that have not been paid, a change or mistake in relation to: ownership details; boundaries of land; an entity which should have issued a notice; provisions referred to in a development application or development approval under the *Planning and Development Bill 2014* or an approval or permit (howsoever called) granted under an enabling Act.

This clause enables the court to give relief in response to proceedings commenced for that purpose or in the context of other proceedings; and to give that relief notwithstanding any other provision of the Bill or an enabling Act, including provisions which would otherwise provide that an application had lapsed.

The court's power is not restricted to proceedings before it. This allows access to the Planning and Environment Court for declarations and orders about procedural disputes which do not form part of wider proceedings.

The clauses intent is that the P&E Court may deal with the matter in the way it considers appropriate. The inbuilt flexibility of this clause enables the parties to achieve a range of outcomes, premised on the position that legal technicality should not defeat appropriate development, unless in the court's discretion there are reasons to do so.

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

Clause 38 describes what will occur if the presiding P&E Court judge or ADR registrar dies or cannot continue with a proceeding for any reason.

Subclause (2) applies if the presiding judge has started to hear a proceeding and is unable to continue with a proceeding for any reason, including illness or leave of absence. This provision is intentionally broad to cover a broad range of circumstances that may lead to a judge being unable to continue with a proceeding.

Subclause (2) provides that another P&E court judge, in consultation with the parties, can postpone the proceeding until the original judge can continue, or order the matter to be reheard. This clause also allows for the second judge, with the consent of the parties, to make an order about deciding the proceeding, or about completing the hearing of, and deciding, the proceeding.

Subclause (3) provides that, if an ADR registrar has started to perform functions for a Planning and Environment Court proceeding, but dies or cannot continue with the proceeding for any reason, then the court may deal with the proceeding in the way it considers appropriate.

Division 3 Parties

Clause 39 Planning Minister

Clause 39 states the planning Minister is entitled to be represented at any declaratory proceeding or appeal under the Planning Act if the Minister is satisfied that the proceeding involves a matter of State interest. The Minister may elect to be a party by filing a notice of election in the approved form in the court.

There may be occasions where decisions are made affecting State interests where there has been no State involvement in assessing and deciding the application. The power under this clause provides a mechanism for the State to be provided reasonable opportunity to be heard.

This clause makes it clear that the Minister can join a declaratory proceeding or appeal at any time before it is decided.

Clause 40 Appearance

Clause 40 provides that a party to a Planning and Environment Court proceeding may appear personally before the court or be represented by a lawyer or agent. It will be presumed that the representative has the authority to bind the party.

Clause 41 Representative proceedings in particular cases

Clause 41 provides that a declaratory proceeding or a proceeding for an enforcement order under the Planning Act may be brought in a representative capacity with the consent of the person on whose behalf the proceeding is brought, if the represented is a person. If the represented is an unincorporated body, a representative may start the proceeding if its committee or other controlling body or governing body consents.

Subclause (3) provides that the person on whose behalf the proceeding is brought may contribute to or pay the expenses, including legal costs, incurred by the person bringing the proceeding.

Subclause (3) allows for the person being represented to contribute to, or pay, the expenses (including legal costs) incurred by the representative. This clause clarifies that the common law principles relating to maintenance (i.e. the support of litigation by a person with no personal interest in the proceeding) do not apply.

Division 4 Miscellaneous

Clause 42 P&E Court proceedings open to public

Clause 42 requires that all matters be heard and decisions given in open court, unless the court has ordered the proceeding be decided on written submissions only, or if the rules of court provide otherwise.

Clause 43 Nature of appeal in general

Clause 43 establishes that, subject to any relevant enabling Act; an appeal is to be heard by the court by way of hearing anew, or as if the court "stands in the shoes" of the original decision-maker. This clause is particularly relevant if an enabling Act is silent on the nature of appeals heard by the Planning and Environment Court under that Act.

Clause 46 provides an equivalent clause, specifically for appeals under the Planning Act.

Clause 44 Privileges, protection and immunity

Clause 44 provides the P&E Court judge presiding over a proceeding, a party to the proceeding, a lawyer or agent appearing in the proceeding or a witness in a proceeding, with the same privileges, protection or immunity as they would have if the proceeding were in the District Court.

In performing the functions of an ADR registrar, including the ADR process and circumstances whereby an ADR registrar may hear and decide a matter, the ADR registrar also has the same privileges, protection or immunity as a District Court judge performing a judicial function.

Part 5 Planning Act proceedings

Part 5 notes that the Planning Act provides for matters about starting an appeal, including the parties to an appeal and how to give notice of the appeal.

Division 1 Planning Act appeals

Clause 45 Who must prove case

Clause 45 establishes who must prove the case in an appeal to the court started under the Planning Act. In most situations the appellant has the responsibility for establishing that the appeal should be upheld. However, there are some important exceptions in subclauses (2) to (4) to be noted.

Subclause (2) provides that if the appeal is brought by a submitter or referral agency (advice only); it is for the applicant to establish that the appeal should be dismissed (i.e. the onus remains with the applicant).

A referral agency (advice only) is a referral agency whose functions have been limited by a regulation, pursuant to clause 51(5) of the *Planning and Development Bill 2014* to the giving of advice to the assessment manager.

Subclause (3) provides that if the appeal is about the giving of an enforcement notice under the Planning Act, it is for the enforcement entity that gave the notice to establish that the appeal should be dismissed (i.e. the enforcement entity must prove case). As such appeals relate to the commission of an offence, it is appropriate that it is consistent with the onus of proof for offence proceedings.

Subclause (4) provides that in an appeal about a claim for compensation made under the Planning Act, it is for the local government that decided the claim for compensation who must establish that the appeal should be dismissed.

In most planning appeals, there is no particular disadvantage to an applicant in bearing the onus of proof, and by allowing the applicant to state their case first; a context is established for the court's consideration of the matters in dispute, allowing quicker proceedings.

In each case, the alteration of the onus of proof is considered to be consistent with fundamental legislative principles. It ensures that persons affected by a decision are not further disadvantaged in an appeal.

Clause 46 Nature of appeal

Clause 46 establishes that an appeal is to be heard by the court by way of hearing anew, or as if the court "stands in the shoes" of the administering authority.

Subclause (2) provides however, that if the appellant was the applicant or a submitter for the development application, the subject of appeal, subsection (1) applies subject to subsections (3) to (6).

Subclause (3) states that section 40 of the Planning and Development Bill 2014 applies for the decision of the Planning and Environment Court on the appeal as if the as if the P&E Court were the assessment manager for the development application and the reference to subsection (6) to when the assessment manager decides the application were a reference to when the P&E Court makes the decision. This clause is not intended to prevent the court from applying the "Coty" principle (or non-derogation doctrine) whereby the court may also give weight to laws and policies not yet in effect when an appeal is heard.

Subclause (4) and (5) state that the P&E Court cannot consider a change to the development application or a development approval unless the change is only a minor change under the Planning Act for a development application or a development approval respectively.

Subclause (6) states that the P&E Court is not prevented from considering and making a decision about a ground of appeal merely because that Act required the assessment manager to refuse the development application or approve it subject to conditions. This confirms that, while the court "stands in the shoes" of the assessment manager, this does not mean that, like the assessment manager, the court is bound to apply referral agency conditions, or refuse an application on the basis of a referral agency's response;

Subclause (7) states that if the appeal is against a decision about a superseded scheme development application under the Planning and Development Bill 2014, the P&E Court must consider the aspect of the appeal relating to the assessment manager's consideration of the superseded scheme in question as if the application had been made under the superseded scheme and in considering the aspect, disregard the planning scheme in force when the application is made.

Clause 47 Appeal decision

Clause 47 describes the ways in which the court must decide the appeal. The court must do one of the following: confirm the original decision; change the original decision; set aside the original decision and substitute it with a new decision; or set aside the original decision and return the matter to the entity that made the original decision appealed against with directions the court considers appropriate. For example, if the appeal was about the decision of a building and development committee, the court may remit the matter to the committee with a direction to make its decision accord to law.

In the event that the court changes the original decision or makes a new decision to be substituted, then this new decision takes the place of the decision appealed against.

Division 2 Evidence in P&E Court proceedings

Clause 48 Application of division

Clause 48 applies to any Planning Act proceeding and any declaratory proceeding under this Bill.

This clause also provides a note that under the Planning Act, the division of this Bill 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.

Clause 49 Appointments and authority

Clause 49 provides that it is not necessary for an enforcement authority Chief Executive Officer to prove either their appointment or the authority to do anything under the Planning Act. This goes further than usual evidentiary provisions related to enforcement authorities which usually require a conclusive evidence certificate to prove that a particular matter is a fact.

Clause 50 Signatures

Clause 50 provides that a signature purporting to be the signature of the chief executive of an enforcement authority is evidence of the signature it purports to be.

Clause 51 Instruments, equipment and installations

Clause 51 provides that any instrument, equipment, or installation prescribed and used in accordance with any regulations is taken to be accurate and precise unless there is evidence to the contrary.

Clause 52 Analyst's certificate or report

Clause 52 provides that a certificate or report purported to be signed by an analyst is evidence of certain matters that it states, such as the analyst's qualifications and the results of the analysis.

Clause 53 Evidence of planning instruments or notices of designation

Clause 53 provides that in a proceeding, a certified copy of a planning instrument or a notice of a designation is evidence of the content of the instrument or notice, and requires all persons acting judicially to take judicial notice of such instruments.

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

Clause 54 Planning instruments presumed to be within power

Clause 54 states that unless the matter is raised, the power of a local government and the Minister to make planning instruments may be presumed.

Clause 55 Evidence of local planning instruments

Clause 55 allows for the evidentiary certification of a document purporting being a true copy of all or part of a local planning instrument. Such a certified document is admissible as if it were the original instrument.

Clause 56 Effect of planning and development certificates

Clause 56 states that in a proceeding, a planning and development certificate under the Planning Act is evidence of the matters the certificate states. This statement clarifies the status of planning and development certificates and recognises its potential function as the basis of planning and development decisions which may later become a matter in a proceeding.

Clause 57 Evidentiary aids generally

Clause 57 specifies that if a certificate purporting to be signed by an enforcement authority Chief Executive Officer contains any of the matters specified in subclause (1), such as whether or not a development permit was in force on a stated day, or whether a stated amount is payable under the Planning Act and has not been paid by a stated person, it is considered to be evidence of the matter.

Part 6 Costs

Division 1 Security for costs

Clause 58 Security for costs

Clause 58 applies to any P&E Court proceeding.

On the application by a respondent, which is defined for the purposes of the clause to mean a party other than the proceeding-starter or a party joined with the proceeding-starter, the P&E Court may order the proceeding-starter to given security for the respondent's costs, including those incidental to the proceeding. An application for security for costs may be for all or part of the proceedings.

The clause defines a proceeding-starter to mean the party who started the proceeding (regardless of who bears the onus of proof or who must prove their case).

Subclause 2 states that the P&E Court may not make an order under the Planning Act, section 69(2)(b), unless and until the security is given. Subclause 3 clarifies that in making the order for security, the P&E Court may, but need not, have regard to the matters mentioned in clause 60 to the extent they are relevant.

The P&E Court may make an order that the Court considers appropriate in the circumstances.

This clause has been included in the Bill to provide the Planning and Environment Court with the discretion to make orders requiring the party that started the proceeding to give security for costs. It had been considered in the past that the Planning and Environment Court had inherent jurisdiction to make orders for security for costs (see for example *Fitzgerald v Council of the City of Logan* [1992] QPLR 198). However, the availability of this discretion was put in doubt by the recent decision in the case of *Fanirata Pty Ltd v Logan City Council & Anor* [2013] QPEC 55, where Robin J found that a submitter appellant in the Planning and Environment Court was not a "plaintiff" for the purposes of rule 671 in the Unitary Civil Procedure Rules 1999.

Division 2 Costs in P&E Court proceedings

The Bill continues to provide the P&E Court with the general discretion to award costs. This continues the outcome for the majority of proceedings, the exception being for costs associated with enforcement proceedings which may include investigation costs, which follow the event unless otherwise determined by the P&E Court.

The Bill also continues a non-exhaustive list of matters the P&E Court may take into consideration in making a decision to award costs. This provides greater certainty and transparency for the community, industry and local governments when bringing forward proceedings and, since its commencement in November 2012 following the Sustainable Planning and Other Legislation Amendment Bill 2012, has proven to be successful with a higher percentage of proceedings being resolved at or soon after mediation on the basis that each party bears its own costs rather than risk the costs generally associated with a trial and the uncertainty of the outcome.

Clause 59 General costs provision

Clause 59 provides that costs of a proceeding (including an application in proceeding) are in the discretion of the Court, subject to: the cost rules for participation in an ADR process under clause 61; the cost rules for particular proceedings under clause 62; and the provisions of any enabling Act.

Subclause (2) clarifies that the Court's discretion includes the power to order costs against someone who has an interest in the proceeding but is not a party to the proceeding. This may include ordering costs against a party other than the assessment manager (see clause 62(3)) in particular proceedings if the P&E Court allows an assessment manager to withdraw.

While the *prima facie* general principle is that an order for costs is only made against a party to litigation, there are a variety of circumstances in which considerations of justice may, in accordance with general principles relating to awarding of costs, support an order for costs against a non-party. These circumstances may include for example, in conditions where the party to the litigation is a man of straw; where the non-party has played an active part in the conduct of the litigation; a person is the effective litigant standing behind an active party; there has been abuse of the process of the court in some way; or where the non-party, or some person on whose behalf they are acting, has an interest in the subject litigation.

It such circumstances it may be appropriate for an order for costs against the non-party if the interests of justice may require that such an order of the P&E Court be made.

Subclause (3) provides that the amount of costs awarded must be decided under the procedure and costs scale for District Court proceedings, which are provided under the *Uniform Civil Procedure Rules 1999.*

Subclause (4) also provides that an order of costs may be made an order of the District Court and therefore enforced in that court.

Subclause (5) clarifies that the costs for certain declaratory and enforcement proceedings (as listed in clause 59(5) (a) (i)-(iii)) includes costs the court decides were reasonably incurred by a party relating to the investigation of, or gathering of evidence for the proceeding. Subclause (5) (b) clarifies that in relation to an enforcement appeal, costs relate to investigations or gathering of evidence for the giving of the enforcement notice.

Clause 60 Specific criteria for making costs order

Clause 60 sets out criteria that the Planning and Environment Court may have regard to in making a costs order. The list of criteria is not exhaustive.

The matters to which the court may have regard to include the relative success of the parties and the parties commercial interests. This allows the court to consider the motivations behind the initial proceeding or the continuance of the proceeding in determining whether costs should be awarded. For example, in the case of an application for a commercial development, costs might be awarded against a submitter who owned a competing commercial interest, and who appealed, if the court considered that despite the grounds stated in the appeal, the primary purpose of the its own commercial interests.

In relation to subclause (c), the Planning and Environment Court can also have regard to whether a party commenced or participated in the proceeding for an improper purpose or without reasonable prospects of success.

Subclause (d) enables the Planning and Environment Court to determine, in relation to merit assessment of development under the Planning Act, whether matters to which regard was had, or the assessment was against, were relevant. Subclause (e) provides that for an appeal where the Planning and Environment Court can consider a change to a development application, the Planning and Environment Court can have regard to the circumstances of the change and its effect on the proceeding.

Subclause (f) also allows the Planning and Environment Court to consider whether the proceeding involved an issue that affects, or may affect, a matter of public interest, in addition to any personal right or interest of a party.

Subclause (g) provides that the Planning and Environment Court can consider whether a party has acted unreasonably, leading up to the proceeding. This includes an example in which the applicant may have acted unreasonably by not, in responding to the request, giving all the information reasonably required before the decision was made or in conducting the proceeding. It also includes whether a party has acted unreasonably in conducting the proceeding, such as the parties conduct cause an adjournment, where for example, the instructing solicitor had not received the instructions of a client without a reasonable excuse.

Subclause (h) includes whether a party has incurred costs only because another party has done either or both of the following; introduced, or sought to introduce, new material; contravened all or part of a provision of an enabling Act relating to an issue in the proceeding; or contravened all or part of the procedural requirements under the rules or an order or direction under section 14.

Subclause (i) includes whether a party should have taken a more active part in a proceeding and did not do so. An example is included for subclause (i) to include circumstances where a party does not adduce sufficient evidence for any or all grounds relied on by the party and the Planning and Environment Court considers the party could or ought to have done so. This may also include a circumstance where the assessment manager, referral agency or local government has a responsibility to take an active part in a proceeding but does not do so. It is important to note that it may not always be necessary, practical or appropriate for each party to adduce evidence in support of the grounds of appeal in certain or all circumstances. For example, it is also not uncommon for a submitter appeal to succeed even though it did not lead its own evidence.

Clause 61 Provision for participation in ADR process

Clause 61 provides that, unless the Planning and Environment Court orders otherwise, the parties to a Planning and Environment Court proceeding must bear their own costs if the parties participate in an ADR process early in the proceeding, and the proceeding is resolved at, or soon after the ADR process has been finalised.

Subclause (3) clarifies that if the proceeding is not resolved in accordance with this clause, then the costs of the proceeding are to include the costs of the ADR process.

Part 4, division 1, subdivision 1, sets out the ADR provisions, and explains what an ADR process is. Ultimately, this clause encourages parties to avail themselves of early ADR by providing that each party bears their own costs.

Clause 62 Costs provisions for particular proceedings

Clause 62 clarifies that for particular proceedings costs are generally pre-determined.

Subclause (1) provides that the costs of a Planning Act proceeding for an enforcement order or an interim enforcement order follow the event, unless the P&E Court orders otherwise.

Subclause (2) provides that costs must be awarded against the owner 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 and Development Bill 2014.*

Subclause (3) states that the P&E Court cannot award costs against an assessment manager if it allows an assessment manager to withdraw from an appeal.

Subclause (4) provides that under clause 22, if an ADR registrar hears and decides a P&E Court proceeding, the parties must bear their own costs of the proceeding.

Part 7 Appeals to Court of Appeal

Clause 63 Who may appeal

Clause 63 provides that a party may appeal a decision of the P&E Court proceeding but only on the ground of error or mistake in law or jurisdictional error (meaning that the court had no jurisdiction over the matter or appeal or alternatively that the court exceeded its jurisdiction in making its decision).

The party appealing the matter to the Court of Appeal must first seek leave from the Court of Appeal or a judge of appeal.

The Planning and Environment Court does not have jurisdiction to excuse non-compliance or extend timeframes in relation to proceedings purported to start in the Court of Appeal. Any such applications must be made to the Court of Appeal under the *Uniform Civil Procedure Rules 1999.*

Clause 64 When leave to appeal must be sought and appeal made

Clause 64 provides for when leave to appeal must be sought and an appeal made to the Court of Appeal.

Subclause (1) requires that a party intending to seek the Court of Appeal's leave against a P&E Court decision must initiate the application within 30 business days. The requirement to seek leave is intended to avoid unnecessary costs of bringing a notice of appeal and to discourage parties from making an appeal based primarily on the purpose of obstruction or delay.

Subclause (2) requires that following the grant of any leave a notice must be served and filed, unless the Court orders otherwise.

The relevant notices under this clause are made to the Court of Appeal under the *Uniform Civil Procedure Rules 1999*.

Clause 65 Court of Appeal's powers

Clause 65 specifies the powers by which the Court of Appeal can decide a matter. It may return the matter to the P&E Court to decide in accordance with the appeal decision; it may affirm, amend or revoke the decision appealed against and substitute another; and it as appropriate has broad powers to make any orders it considers appropriate.

For example, under the *Planning and Development Bill 2014*, the Court of Appeal has the power to allow development, or an aspect of development, to proceed before the appeal is decided if the Court of Appeal considers the outcome of the appeal would not be affected.

Part 8 Registry and officers

Clause 66 Registrars and other officers

Clause 66 establishes that the principal registrar, registrars and other officers appointed for the District Court will be the principal registrar, registrars and other officers for the Planning and Environment Court. This clause reflects the flexible resourcing arrangements between the District Court and the Planning and Environment Court.

Clause 67 ADR registrar

Clause 67 provides that an ADR registrar is a registrar or court officer of the Planning and Environment (and of the District Court pursuant to clause 66) appointed as an ADR registrar by the principal registrar of the court in consultation with the Chief Judge of the District Court.

The clause permits the principal registrar to appoint more than one ADR registrar.

Clause 68 Registries

Clause 68 states that the each District Court registry is a registry of the Planning and Environment Court. This clause also allows for the establishment of a principal registry in Brisbane, which will be under the control of the principal registrar. It also allows the principal registrar to give directions to other registrars and officers of the Planning and Environment Court in relation to the court and its proceedings.

Clause 69 P&E Court records

Clause 69 requires the principal registrar to keep records of Planning and Environment Court decisions which must be kept in the custody of the principal registrar. The clause also provides that the principal registrar must perform other functions the court directs.

Part 9 Miscellaneous

Clause 70 Annual Report

Clause 70 states that, after the end of each financial year, the Chief Judge must prepare and give the Minister a written report about the operation of the Planning and Environment Court during the financial year.

Subclause (2) provides that the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Subclause (3) provides that the Chief Judge may combine the report with the District Court report for the same financial year. This is intended to negate the need for a separate annual report for the Planning and Environment Court and is consistent with current practice.

Clause 71 Judicial notice

Clause 71 requires that judicial notice be taken of the appointments and signatures of the registrars and court officials holding office under the Bill.

Clause 72 Approval of forms

Clause 72 enables the Chief Judge of the District Court and another P&E Court judge to approve forms for use under this Bill. Should an approved form under this Bill be required to be combined with, or used together with an approved form under another Act it is intended to rely on section 48A(3) of the *Acts Interpretation Act 1954* for this purpose.

Clause 73 Regulation-making power

Clause 73 enables the Governor in Council to make regulations under the Bill including a maximum penalty for a contravention of a provision of a regulation of no more than 20 penalty units.

Part 10 Savings and transitional provisions

Clause 74 Definitions for part

Clause 74 includes definitions used for this part.

Clause 75 Continuance of existing judgeships

Clause 75 provides for the continuation of the notification of judges to the Planning and Environment Court for the rest of the judge's unexpired term of office as a judge of the Court.

Clause 76 Existing proceedings and proceeding rights

Clause 76 provides to a person who was entitled to start proceedings under the repealed SPA for a matter under an enabling Act. If the proceedings had not been started before the repealed SPA was repealed, SPA continues to apply to the proceedings and this Bill applies to any appeal in relation to those proceedings.

Any reference to the Court in the repealed SPA is the Planning and Environment Court. How the Planning and Environment Court deals with noncompliance is declared to also apply for a development approval that has lapsed, but not limited to the circumstances in relation to a court proceeding or provisions (inclusive of definitions) under which there is a positive obligation to take particular action. It continues to apply as if a reference to a provision not being complied with or not being fully complied with is taken to include non-fulfilment of part of all of the provision and a partial noncompliance with the provision. This is intended to ensure as much flexibility to the Planning and Environment Court as necessary to adequately dispense with the matter.

Transitional provisions for proceedings started under SPA can be found in the *Planning and Development Bill 2014*.

Clause 77 Continuance of existing orders and directions

Clause 77 provides for the continuation of orders and directions in effect under the *Sustainable Planning Act 2009* before the commencement, as if they had been made or given under this Bill.

Clause 78 Existing references to court

Clause 78 provides that a reference in another Act or document to the court to be taken as a reference to the Planning and Environment Court.

Clause 79 Existing rules migrate to this Act

Clause 80 provides for the continuation of the *Planning and Environment Court Rules 2010* as if they had been made under this Bill. However, the operation of the rules will only continue for a period of 6 months after commencement, or until they are replaced by new rules under the Bill, whichever happens sooner.

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

Clause 81 provides that existing sections 456(8) and 459 of SPA are to continue in effect as if they form part of the rules of court. Section 456(8) requires a person starting a proceeding for a declaration to give notice to the chief executive, and section 459 provides for the payment of witnesses. These existing provisions in SPA are procedural and best placed in the Planning and Environment Court Rules.

Subclause (4) provides that this clause expires 6 months after the commencement or earlier should the rules amend or repeal their effect.

Schedule 1 Dictionary

This schedule defines particular words used in this Act. Many of the words and terms used in the Bill are defined in Schedule 2 of the Planning and Development Bill.

ADR conference

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

ADR direction

ADR direction means that the Planning and Environment Court may make a direction to the ADR registrar to hear and determine a particular P&E Court proceeding.

ADR process

ADR process means an ADR Registrar led process which assists the parties in a dispute subject to a P&E Court proceeding, to act bona fide to achieve an early resolution or settlement of the P&E Court proceeding.

ADR registrar

ADR registrar means the Alternative Dispute Resolution registrar, which is appointed by the Chief Judge through consultation with the Planning and Environment Court's principal registrar.

appeal decision

Appeal decision means the Planning and Environment Court must decide a Planning Act appeal by allowing it, or changing it, or setting it aside, or including further orders or declarations.

approved form

Approved form means a form approved by the Chief Judge and another P&E Court judge.

assessment manager

Assessment manager means the person responsible for administering a properly made development application and assessing and deciding part or all of a properly made development application

business day

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

change application

Change application means an application to change a development approval.

Chief Judge

Chief Judge means the Chief Judge of the District Court.

declaratory proceeding

Declaratory proceeding means a person may start a P&E Court proceeding relating to a matter that ought to be done under this Act or the Planning Act, or the interpretation of this Act, or the lawfulness or land use under the Planning Act, or the construction of a land use plan under the *Airport Assets (Restructuring and Disposal) Act 2008* or the construction of the Brisbane port LUP under the *Transport Infrastructure Act 1994*.

development application

Development approval means a preliminary approval; or a development permit; or a combination of a preliminary approval and development permit.

development approval

Development approval refers to the definition of development approval under the Planning and Development Bill.

enabling Act

Enabling Act means any act for which the Planning and Environment Court has jurisdiction.

enforcement authority

Enforcement authority refers to definition of Enforcement authority under the Planning and Development Bill.

enforcement authority CEO

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

minor change

Minor change means to a development application or approval is a change that does not result in substantially different development and does not cause the inclusion of prohibited development in the application or cause referral to a referral agency if there were no referral agencies for the development application or cause referral to additional referral agencies or cause public notification if public notification was not required for the development application.

P&E Court

P&E Court means the Planning and Environment Court of Queensland.

P&E Court judge

P&E Court judge means a judge appointed under this Act who constitutes the Planning and Environment Court.

P&E Court proceeding

P&E Court proceeding means a proceeding before the Planning and Environment Court.

P&E Court's principal registrar

P&E Court's principal registrar means the principal registrar appointed for the District Court.

party

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—the Minister.

Planning Act

Planning Act means the Planning and Development Bill 2014.

Planning Act appeal

Planning Act appeal means an appeal to the Planning and Environment Court for which the Planning Act is the enabling Act.

Planning Act proceeding

Planning Act proceeding means a P&E Court proceeding for which the Planning Act is the enabling Act or a declaratory proceeding relating to the Planning Act.

planning instrument

Planning instrument means a State planning instrument or a local planning instrument under the Planning and Development Bill.

relevant enabling Act

Relevant enabling Act, for a provision about a P&E Court proceeding, means the enabling Act that confers jurisdiction for the proceeding on the Planning and Environment Court.

rules

Rules means the rules of the Planning and Environment Court.

tribunal

Tribunal means a development tribunal under the Planning and Development Bill.