Submission No. 065
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QELA

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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws which apply, or are proposed to apply in Queensland. QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

18 January 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Email: ipnrc@parliament.qld.gov.au

Dear Honourable Committee Members,

Submission about the Planning Bill 2015 and Planning and Environment Court Bill 2015

Thank you for the opportunity for Queensland and Environmental Law Association (**QELA**) to make a submission about the Planning Bill 2015 (**Planning Bill**) and Planning and Environment Court Bill 2015 (**Court Bill**).

QELA is a non-profit, multi-disciplinary association. Its members include lawyers, town planners, and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

QELA has provided a number of submissions about planning reform, including about the recent planning reform agenda. A number of the issues raised in those submissions are canvassed in the attached detailed submission. In particular, QELA provided a submission in relation to the Planning Bill 2015 (**Draft Planning Bill)** and Draft Planning and Environment Court Bill 2015 when they were available for public consultation in October 2015.

Of particular importance, QELA:

- QELA supports the inclusion of a reference to ecological sustainability in the Planning Bill's purpose. However, QELA considers the reference ought to be to ecologically sustainable development as was proposed in the Draft Planning Bill;

- supports the presumption in favour of approval for code assessable development applications, subject to the detailed comments in our submission;

- is concerned that the broadly defined nature of an assessment benchmark could lead to code assessment being an uncertain process, potentially involving assessment against strategic policy statements in a planning scheme;

- agrees that adverse planning changes to reduce the risk to persons or property from natural events should be treated differently to other planning changes. An amalgam of the SPA and Draft Bill approaches would be supported. Consistent and objective criteria for determining the significance of the risk should be identified in the Minister's rules and the Minister's rules should provide for the assessment to be made in good faith, by appropriately qualified persons in relation to the relevant natural processes and using the best available information. However, the SPA approach should be continued also – that a land owner ought to be entitled to demonstrate that a particular risk could have been substantially reduced by the imposition of conditions on a future development approval;

- is concerned that the division of important provisions about development assessment between the Planning Bill, regulation and the development assessment rules. The result is that the development assessment process is difficult to follow. The development assessment rules do not allow a reader to logically follow the development assessment process in the way that the SPA does. QELA considers this is contrary to the purpose of providing an efficient, effective and integrated system;

- strongly supports the creation of administrative options for providing consent for State land, as has been flagged in the Consultation Report, dated November 2015;

- strongly supports the position, as adopted, that each party bears its own costs;

- notes that the Court Bill does not propose to confer a criminal jurisdiction on the P&E Court. QELA continues to encourage the creation of a criminal jurisdiction in the specialist P&E Court.

We thank you for the opportunity to make a submission about the Planning Bill and Court Bill. We would welcome the opportunity to assist the Committee further , if required.

Yours sincerely,

James Ireland

President
Queensland Environmental Law Association

QELA

Section no.	Section reference	Comments
1.	3	QELA supports the inclusion of a reference to ecological sustainability in the Planning Bill's purpose. However, QELA considers the reference ought to be to ecologically sustainable development as was proposed in the Draft Planning Bill. The content of section 3(3) could be moved to the schedule of definitions.
2.	4	This section is unnecessary as it is simply a summary of the provisions in the Planning Bill. Where these sections describe the purpose of particular documents, the sections would be more appropriately relocated to where these documents are dealt with in the Planning Bill.
3.	5	QELA supports the matters that are included in advancing the Act's purpose.
4.	8(4)	Section 8(4) should, but does not, deal with the status of temporary State planning policies in the hierarchy of planning instruments.
5.	8	This section does not, but should, deal with when a designation has effect.
6.	9(4)	If a TLPI takes effect from a date prior to it being approved by the Minister, a person may be liable to prosecution for a development offence if they undertake development contrary to that TLPI in the period between the local government resolution and the Ministerial approval. The fact that the retrospectivity dates back to the date on which the local government at a public meeting resolves to give the TLPI or amendment to the Minister for approval does not ameliorate this concern. Making a TLPI retrospective may have unintended and unjust consequences for members of the public, who cannot be expected to read all minutes of every local government meeting prior to undertaking development. QELA acknowledges the Department's view that the retrospective application of a TLPI would occur in limited circumstances only. However, QELA considers that the Planning Bill ought to deal with the liability of a person to prosecution or other enforcement proceedings for undertaking development contrary to a TLPI where the development occurs in the period between the retrospective date of application of the TLPI and the date that notice of the TLPI is published.

7.	10(3) 18(5)(b)	QELA supports the timeframes proposed for public notice of planning schemes, regional plans and State planning policies. We consider these timeframes strike the right balance in ensuring planning instruments can be made and amended in a timely manner and ensuring public input into those instruments.
8.	11	This section allows for a minor amendment to be prescribed by regulation. This is arguably contrary to the purpose of the Planning Bill to be transparent and accountable, as there are no criteria for what constitutes a minor amendment in the Planning Bill and the legislative oversight afforded to regulations is far less rigorous than that required for an amendment to legislation.
9.	16(3)	This provision has the potential to be problematic in its application and interpretation. It would require a user of every local planning instrument to read, not only the local planning instrument, but also the required contents and make a determination if the local planning instrument is inconsistent with the required contents. If a local planning instrument and the required contents are inconsistent, this should be a matter that is capable of being addressed through a Ministerial direction. The provision is directly contradictory to the purpose of the legislation to have an effective and efficient system of planning. Furthermore, the chief executive's involvement in plan making should alleviate this concern. Perhaps the solution to overcome the concern is to remove section 16(3) but ensure that the guidelines referred to in section 17(1) incorporate the required contents for the contents of local planning instruments under a regulation made under section 15. Similarly section 18(7) could be amended to ensure that Ministerial approval requires satisfaction that the planning scheme incorporates those required contents. If the provision is to stand as currently drafted, an effective transitional provision would need to ensure that the provision does not apply to existing planning schemes.
10.	26(5)(c)	Section 26(5)(c)(ii) states that the Minister may direct a local government to make, amend or repeal a local planning instrument in accordance with "the process in the Minister's notice". This section enables the Minister to avoid the processes in sections 18 to 24, the Minister's guidelines and the Minister's rules. It is simply too open ended and is arguably contrary to the purpose of the Planning Bill to be transparent and accountable. Even in the case of urgent action (see section 27) the Minister is confined to the taking action in accordance with the process in the Minister's rules.

11.	28	It is unclear whether an exclusion from liability includes an exclusion from liability for compensation under the Planning Bill.
12.	29	If a local government agrees or is taken to have agreed to a superseded planning scheme request to apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme, it is still unclear whether this "right" is personal to the person who made the superseded planning scheme request or whether it runs with the land. Section 29(10)(b) simply applies certain provisions "as if the decision were a development approval"; it does not say that the decision is taken to be a development approval.
13.	30(4)(e)	QELA agrees that adverse planning changes to reduce the risk to persons or property from natural events should be treated differently to other planning changes. QELA supports the inclusions of the terms material risk and serious harm, which attempt to quantify the risk. QELA considers that the preferred approach is an amalgam of the SPA and Planning Bill approaches. That is, consistent and objective criteria for determining if there is a material risk of serious harm should be identified in the Minister's rules. It would also be appropriate for the Minister's rules to provide for the assessment to be made in good faith, by appropriately qualified persons in relation to the relevant natural processes and using the best available information. However, a land owner ought to still be entitled to demonstrate that the relevant risk could have been substantially reduced through conditions imposed on future development approvals (as is the approach in the SPA).
14.	32	If a claim for compensation is made to a local government and the claim relates to a public purpose change, the local government may decide to amend the planning scheme to allow the premises to be used for the purposes that the premises could be used for under the superseded planning scheme. However, there is no imperative for a local government to amend the planning scheme within a reasonable timeframe, or at all. The section simply refers to a local government deciding to amend the planning scheme, not to implementing its decision.
15.	General	The removal of the right to request a hardship acquisition is not supported. In its place, the Planning Bill proposes a right for a person with an interest in designated land to request

		the Minister to repeal the designation. There are no appeal rights for any parties. The former hardship provisions are preferable. Those provisions gave a person with an interest, who claims to be suffering hardship, a defined process by which to be compensated for their hardship. If the currently proposed provisions are retained, an appeal right against the Minister's decision should be included for both the person who made the request and the affected infrastructure provider.
16.	General	QELA considers that the two categories of assessable development should be called standard and merit assessment, rather than code and impact assessment. It is possible that an assessment benchmark might be a different part of a planning scheme than a code, such as a strategic outcome. Calling such assessment code assessment would be an inappropriate description (see also our comments in relation to section 60(2)). Similarly, merit, rather than impact, assessment is a more accurate representation of the type of assessment being carried out under the provisions for such assessment.
17.	46	Exemption certificates are supported. It is noted that section 264(4) of the Planning Bill provides for the content of standard planning and development certificates to be prescribed by regulation. A standard planning and development certificate should include all exemptions certificates given by the local government, whether or not they are in effect.
18.	48	Section 48(3) provides for the assessment manager to be a chosen assessment manager. The ability for a person to engage a chosen assessment manager for a development application that is subject to only code assessment is supported. There are, however, concerns regarding the lack of machinery provisions in the Planning Bill about chosen assessment managers. The Explanatory Notes (**ENs**), at page 59, contemplate a chosen assessment manager being nominated for part of a development application while other parts of the same development application may be dealt with by the prescribed assessment manager. How this is to be managed is unclear. The ENs state, at page 62, that the chosen assessment manager will be the respondent in any appeal made by an applicant against the chosen assessment manager's decision. The ENs further state, at page 62, that "the chosen assessment manager and the applicant would each bear their own costs in any such appeal". This statement does not appear to be reflected in the provisions of either the Planning Bill or the Court Bill.

		The ENs refer, at page 61, to the prescribed assessment manager and the chosen assessment manager negotiating "service level agreements or any other administrative arrangements to ensure appropriate development outcomes". The chosen assessment manager will be an assessment manager (see the definition in Schedule 2) for the development application and have statutory rights and obligations as an assessment manager. The chosen assessment manager is not a delegate of, or a contractor to, the prescribed assessment manager. The ENs, at page 62, list a large number of matters that might be the subject of a "service level agreement" between the prescribed assessment manager and the chosen assessment manager. As the chosen assessment manager has statutory rights and obligations, the appropriateness of negotiating such matters is questionable and may amount to an unlawful fetter on the chosen assessment manager exercising its discretion. The keeping of applications available for inspection is one of the matters referred to on page 62 of the ENs. This is a matter which should be governed by the Planning Bill and the access rules made under the Planning Bill, not by contract. There also need to be some additional provisions dealing with chosen assessment managers including: • Provisions dealing with conflicts of interest. Concerns about conflicts of interest were highlighted in the Department's consultation report, but not addressed in its response or the Planning Bill; • Provisions requiring the chosen assessment manager to provide the prescribed assessment manager with all documents relating to the development application (not just the application or the decision notice); • Provisions dealing with a situation where an application has been made to a chosen assessment manager and the chosen assessment manager dies or is otherwise unable to continue acting as the assessment manager. The ENs state, at page 62: *The Bill also addresses situations when the ongoing responsibilities of a chosen assessment manager will revert back to the prescribed assessment manager. For example, if the chosen assessment manager no longer exists or is unable to assume the role of the assessment manager at the time a change application or extension application is made, those functions will be the responsibility of the prescribed assessment manager.*

		However, the provisions referred to above do not appear in the provisions of the Planning Bill.
19.	49(4)	QELA maintains its concern that this subsection will be problematic and is unnecessary. A preliminary approval is, by its very nature, less detailed than a development permit. There is no reason for it to automatically prevail over a development permit. The ENs state, at page 65, that the subsection affords applicants certainty in relation to rights or obligations attached to a preliminary approval. For the reasons below, that statement is not correct. a) No such provision currently exists in the *Sustainable Planning Act 2009* (**SPA**) and it is unclear what current difficulty this section seeks to address. b) It is likely that there will be litigation about whether or not a development permit is inconsistent with a preliminary approval, including whether it sufficiently states the extent of any inconsistency. c) The subsection has the effect of requiring an applicant to work out which parts of its development permit are inconsistent with an earlier preliminary approval. In the case of a preliminary approval that does not override the planning scheme, understanding the extent of inconsistency would be a difficult exercise as the preliminary approval would, by its nature, be more broad and generic. d) The subsection is not required to protect an applicant, as an applicant will have appeal rights in relation to an unsatisfactory development permit. The Court may consider the earlier inconsistent preliminary approval in making its decision. e) The subsection has no real application in circumstances where the preliminary approval in question does not override a local planning instrument because such a preliminary approval does not authorise the carrying out of assessable development. f) In the case of a preliminary approval that overrides the planning scheme, the issuing of a development permit does not result in the preliminary approval that overrides a local planning instrument falling away. An applicant may still apply for a different development permit using the assessment regime in the preliminary approval that overrides a local planning instrument. g) Each development application is to be assessed on its own facts and circumstances (merits) and subject to the planning instruments as they exist at the time that the application is made, subject to weight being given to subsequent planning instruments. If this section is to remain as drafted the information in section 49(4)(a) and (b) should be recorded on the decision notice or negotiated decision notice otherwise a third party (e.g. a third party undertaking a due

		diligence inquiry) will not become aware that the development permit takes precedence. The same comment applies in relation to section 66(2) which states that a development condition must not be inconsistent with a development condition of an earlier development approval except in certain circumstances.
20.	General	QELA is concerned that the change in terminology from a preliminary approval overriding the planning scheme to a variation request is unnecessary. A 'variation approval' is the same concept as a 'preliminary approval overriding the planning scheme' under the SPA. There appears to be no policy need to change the terminology.
21.	52(2)(b)	The wording of this section is unclear and difficult to follow.
22.	60(2)	This section relates to the deciding of an application for development that requires code assessment. The term "code" is not defined in the Planning Bill. Sub-paragraph (a) endeavours to keep the assessment of such an application within the bounds of the relevant assessment benchmarks, however such benchmarks are not tied exclusively to codes or their equivalents under local government planning schemes. The ENs state, at page 52: *There is nothing preventing the assessment benchmarks for particular development consisting of several codes together with overarching statements of intent for the development, or areas in which the development is to be located. It would even be possible for the relevant parts of an entire planning scheme to be identified for assessing particular development in particular contexts, for example major development proposal that are not otherwise contemplated under the scheme.* Based on the above, code assessable development applications may be assessed, by expansion of the benchmarks, against broad policy statements and intents, or narrow and prescriptive statements and intents, with no ability under code assessment to introduce other relevant factors that may bring balance into the assessment. This broad definition of assessment benchmarks is also contrary to the ENs explanation of code assessment on page 48: **code assessment** is the assessment category for assessable development proposals that

		can be assessed against standard criteria or codes. QELA also considers that assessment against such broad policy statements and intents is inconsistent with the community's expectation of code assessment. Similarly, there is a difficulty with how to assess a development application that does not comply with assessment benchmarks and for which compliance cannot be achieved by the imposition of conditions. If the framework as proposed is to remain, the Department might consider an additional provision that permits approval of these types of development applications only if they are consistent with the purpose of the assessment benchmarks for the development. Approval in other circumstances would also be inconsistent with the community's expectation of code assessment.
23.	63	The section provides for a decision notice to be provided to principal submitters at the same time as it is provided to an applicant. The ENs state, at page 77: *Principal submitters only receive a copy of the decision notice if the applicant does not subsequently seek a negotiated decision notice. This is to ensure submitters are not provided with multiple and conflicting copies of decision notices and will only receive the final version of the decision notice.* While sub-paragraph (e) acknowledges the possibility for a negotiated decision notice to be given, the timing is not dealt with and as a result the submitter and the applicant will receive the decision notice at the same time. Once a submitter receives a decision notice, its appeal period will commence. If the submitter files an appeal within its appeal period, and the applicant utilises the negotiated decision notice process during the applicant's appeal period, it is likely that the assessment manager's ability to respond to representations about the decision notice would be usurped by the Court's jurisdiction to hear and determine the submitter's appeal. Alternatively, the submitter may not utilise its appeal rights, and if a negotiated decision notice issued, it will have the benefit of a further submitter's appeal period. The split notification that exists under the SPA should be continued so that submitter appeals can only be made after all the applicant's rights to negotiated have been exhausted. We understand that the Department's intention is to provide, in the development assessment rules, for a staged approach to provision of the decision notice under section 63, with the staged approach following

		that in the SPA. However, the draft development assessment rules do not provide for this.
24.	63 and 64	It appears that the provisions of section 63 are intended to apply to a decision notice issued by an assessment manager under section 64. However, this link is not specifically made.
25.	65	There is no equivalent to section 345(2) of SPA. This is an important provision for providing certainty to applicants.
26.	General	QELA supports the retention of deemed approvals.
27.	68	Section 68(1) provides for development assessment rules. While the matter is one of Government policy, QELA maintains that a further separate document adds another layer of complexity to the process and is inconsistent with the intention of this legislation to provide for an efficient, effective, transparent, integrated and accountable system of land use planning and development assessment.
28.	73	This section provides that a development approval attaches to premises. The definition of premises includes land, buildings and structures. Under the SPA, a development approval attached to land only. We understand the intention of this is to provide consistency throughout the Planning Bill. However, there are likely to be implications of the expanded provision. For example, many buildings and structures are movable. Arguably these could be moved to new land, or to a different location within the same area of land, and still be lawfully approved by the relevant development approval. If the intended change from SPA is for consistency only, we recommend against its adoption. We are not aware of any situations that have led to section 73(2) being necessary. Section 154, which provides for an infrastructure agreement to attach to premises, should also revert to attaching to land only.
29.	75	Reading sections 75(4)(b)(iii) and 228(3)(e) together suggests that the applicant's appeal period restarts upon receipt by an applicant of a negotiated decision notice. However, this is not clear because section 75(4)(b) describes the appeal period as "suspended". If the intention is to restart the appeal period after a negotiated decision notice is given, it would be advisable to include a specific provision to this effect in the Planning Bill for the avoidance of doubt. In addition, under section 75(4)(b)(iv), the suspension of the applicant's appeal period expires when any

		period for deciding the change representations under the development rules expires. It is unclear whether this constitutes a "deemed refusal" as defined (see definition in Schedule 2). If it is a deemed refusal, the appeal period under section 228(3)(b) would apply i.e. the appeal period would be open ended. The alternative interpretation is that the balance of the applicant's appeal period that was suspended, restarts. This is an important matter and needs to be clarified in the Planning Bill.
30.	77	It is not clear why an applicant should not be able to make representations during the applicant's appeal period about a currency period imposed by the assessment manager. It would be more convenient to do so rather than wait until the development approval takes effect and then make an extension application (particularly where there is an error in the currency period stated in the decision notice). This would be more consistent with providing efficient and effective development assessment.
31.	78	This section provides that the responsible entity is the Court for a change application if the development was originally granted by the Court and there were properly made submissions. It is of some concern that there may be a lack of transparency of records and a potential for misunderstanding for stakeholders if there is a Court ordered approval and then a later assessment manager decision pursuant to section 78(3)(c) purportedly varies a Court order (because there were no properly made submissions for the application). It is noted that the Court Bill (section 22) contemplates that the ADR Registrar may have powers to hear and decide change applications for a minor change. In circumstances where the Court provides a low cost pathway for the determination of change applications it seems unnecessary to divert any change applications to assessment managers as proposed. Additionally, the drafting of this section provides for 'submissions' in plural, which could be interpreted to mean that if there was only one submission the assessment manager is the responsible entity.
32.	82(4)(d)	The reference to section 45(2)(b) needs to be reviewed as there is no longer a section 45(2)(b) in the Planning Bill. If the intended cross reference is to section 45(5) (the list of matters against which impact assessment must be carried out or may be carried out), this is already captured in section 82(4)(c).
33.	84	Section 84(1)(c) refers to an authority "under this or another Act". The meaning of this type of provision is a common cause of debate. As a result, it might be useful to provide an example of what is mean by the

		reference to an "authority". In section 84(4)(b)(v) there appears to be an unnecessary "and" at the end of this subsection.
34.	88(1)	It is unclear why this section is needed now that the roll forward provisions have been removed.
35.	95	In addition to publishing a direction in a gazette notice, the Minister should also give a copy of the direction to the assessment manager. Section 95(4)(b)(ii) does not appear to work. The balance of the process is unlikely to "restart" if the Minister calls in an application or gives another direction. If either of these events occur, then a different process will start.
36.	104	Section 104(1)(a) states that if the Minister gives a call in notice to the decision maker, the Minister may assess and decide all or part of the application instead of the decision maker. This section needs to be amended to provide that the Minister must decide all of the application. If the Minister were to assess and decide only part of the application, there is no framework in the Planning Bill for dealing with the balance of the application. In addition, all subsequent dealings (including change, extension, and cancellation requests) would become problematic if the Minister were to assess and decide only part of an application.
37.	109	The Infrastructure chapter includes provisions for regulations about adopted charges by both local governments and distributor-retailers. The regime for infrastructure charges and conditions for local governments and distributor-retailers are essentially the same. It creates unnecessary uncertainty for the infrastructure regime for distributor retailers to be predominantly contained in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (**SEQ Water Act**) but with requirements relating to adopted charges contained in a regulation under the Planning Act. QELA suggests that the infrastructure provisions for distributor-retailers either be contained within the SEQ Water Act and Regulation, or the Planning Act and Regulation, but not both.
38.	149	Other legislation refers to an infrastructure agreement under the SPA (eg the *Economic Development Act 2012*, or the *SEQ Water Act)*. As a result consideration should be given to better definition under the Planning Bill.
39.	Chapter 4, Part 2	Chapter 4, Part 2 applies only to local governments. Consideration needs to be given to how this Part will

		work if the assessment manager is a chosen assessment manager (i.e. not a local government). At the time these provisions were originally drafted, the ability for a chosen assessment manager to assess and decide a development application did not exist.
40.	150	The requirement (and accompanying examples) in this provision may result in a negotiated infrastructure agreement being challenged due to non-compliance with the proposed obligation to act in good faith. This could undermine the finality and certainty of infrastructure agreements. QELA notes the ability for parties to bring declaratory proceedings in the Planning and Environment Court in relation to a matter that should have been done under the Planning Bill, which would include negotiating in good faith under the proposed new section. Declaratory proceedings can also be brought in relation to the construction of the Planning Bill. Such proceedings have the potential to result in delayed and more costly negotiations of infrastructure agreements. Additionally, QELA notes that the examples contained in subsection (3) are not exhaustive and section 14D of the *Acts Interpretation Act 1954* may extend the meaning of the provision.
41.	161	There should also be an exemption if a person carries out prohibited development under a development permit. It may be that development has become prohibited as a result of a planning scheme amendment, a new planning scheme or a TLPI that prior to these planning instruments taking effect was not prohibited and for which a development permit existed, but had not been implemented. In addition, under the SPA, there is a further exemption for carrying out prohibited development that is an existing lawful use – see s 581(2). The operation section 161 also needs to be made subject to the operation of existing lawful use rights.
42.	170	Under section 170(2) there should be an explicit ability for the recipient of an enforcement notice to apply to the P&E Court to seek an order staying the operation of the enforcement notice
43.	174	Section 174 of the Planning Bill does not addresses the problems noted in the Court of Appeal decision in *Ipswich City Council v Dixonbuild Pty Ltd* [2012] QCA 98 and the District Court decision in *Bowman v Brown* [2004] 3 QPELR 416. Local governments are likely to be the primary users of these provisions and section 174(1)(a) essentially requires a Council resolution if the proceeding is brought in a representative capacity, which has been

		demonstrated to be impracticable. In previous QELA submissions it was suggested that there be a more precise link with these provisions and section 237 *Local Government Act 2009* (Qld). The note provided goes part of the way to doing this. However, a precise reference within the subsection would avoid any doubt.
44.	175	Subsections (5) to (10) require the Defendant under an Enforcement Order to ask the Registrar of Titles to make a record of the enforcement order on "the appropriate register for the premises to which the order relates" and go on to provide the enforcement order attaches to the premises and binds the owner, the owner's successors in title any occupier of the premises. The provisions to bind owner (who may or may not be the party against whom the enforcement order is made), successors in title and "any occupier of the premises" is very wide and seems to have potentially significant implications for parties not involved in or responsible for the offence giving rise to the enforcement order. It's not clear whether subsection (6) is independent of subsection (5). Does subsection (6) apply to bind the owner, the owner's successors in title any occupier of the premises only if a "record" has been made "on the appropriate register for the premises" under subsection (5) or does it apply irrespective of whether any such record has been made? If the latter, it gives rise to the possibility of a subsequent owner or occupier taking their interest without the opportunity to identify from the public record the liability they are acquiring. Even if a record has been made, an innocent party may acquire an interest without making the appropriate search that would have brought the obligations to their attention and the implications appear to include the possibility of committing an offence under section 175(4) for contravening the enforcement order. Subsections (7) and (8) allow the defendant to take steps to remove the record from the appropriate register but not specifically for any other party (such as a subsequent owner) to do so. There will be circumstances in which a defendant (e.g. a previous owner after selling land, a tenant, lessee or occupier of the land) has no interest in expending further time and money in seeking a compliance order, leaving the register encumbered by enforcement orders which cannot be removed. Given the significance of this section, as an offence provision, the above issues ought to be addressed.
45.	176	Section 176 is awkwardly expressed if it is intended to provide a right to compensation for third parties. It will not always (and perhaps not often) be the case that losses to third parties (who may or may not be

		parties to the proceedings) have been quantified in a way that allows calculation of, for example, "a reduction in the value of or damage to, property". Such claims for compensation (particularly by affected third parties) might be better provided for as a separate, consequential application and would be likely to be more appropriately dealt with in the Planning and Environment Court, which is more familiar with such compensation claims.
46.	178	Section 178 uses an example of compensation that appears unrelated to the powers under the section, which do not specifically include a compensation power, but are rather limited to orders to refrain from committing a development offence or remedy the effect of a development offence. Perhaps "remedy the effect of a development offence" is wide enough to take into account compensation to other parties but it would seem to be preferable that any such power is spelt out as a specific provision (as it is for the Magistrate's Court in section 175). Section 178(9) – (14) – see comments on section 175(5) – (10) above.
47.	179	See comments on section 175.
48.	Schedule 1, Table 2, Items 2 and 3	These provisions allow for another eligible submitter to elect to become a co-respondent to a submitter appeal. This is procedurally awkward as, firstly, that eligible submitter has already elected not to exercise their statutory appeal rights, but are being given a second chance (for no obvious reason) and secondly because (in the case of an adverse submitter, which will be the usual case) they are opposing the development approval, but they are not an Appellant against the decision - rather simply a Co-Respondent. The second point may be overcome by directions from the Court but it remains anomalous and awkward, when there appears no sound or reasonable basis for affording a second chance.
49.	Schedule 1 Definition of operational work	QELA is concerned about the narrowing of the definition of operational work. The SPA definition is broad, presumably to capture a wide variety of works. The narrowed definition proposed is likely to lead to unnecessary debate about the purpose of it being narrowed. It is also likely that works that are intended to be captured, or ought to be captured, as operational works will be excluded.
Planning and Environment Court Bill 2015		
50.	7	Section 7(2) refers to a P&E Court decision, but section 7(3) refers to both a P&E Court decision and a P&E Court order. It is unclear why the separate terminology is necessary or used.

51.	59 and 60	QELA strongly supports the position adopted in section 59; being that each party bears its own costs. QELA understands that the example for section 60(1)(a) is designed to capture commercial competitor appeals. It should not be overlooked that many commercial competitors' concerns are well founded in the form that the particular planning scheme takes. They have made investment and other commercial decisions relying on that form. Why should they not be entitled to argue that the scheme says what it means and means what it says without risk of costs sanction? It is appropriate to here reiterate that in these kinds of proceedings, the Court is often called on to resolve competing approaches about the meaning of scheme provisions that are not drawn with the precision of statutes, or the existence of matters of public interest (i.e. grounds) that might justify a decision to approve that which on its face cuts across a planning instrument; matters which are not readily susceptible to divining absolute certainty of result and which inevitably involve matters about which reasonable minds differ. In those circumstances, a primary purpose is to seek to obstruct the development approval, but the proceedings might otherwise be reasonable on the basis of the planning scheme. We acknowledge that such a proceeding might be considered to be for a proper purpose (that is not for an improper purpose) and so not enliven the example. However, the provision does present doubt that disadvantages smaller commercial operators. It is possible that the effect of the example might be to make it unattractive for smaller commercial operators to instigate proceedings, even where the basis for doing so might be supported by the particular planning scheme. QELA has previously suggested that the reasonableness of the conduct of a party to a proceeding might be an appropriate measure. This element of unreasonableness could be incorporated into the example, such as: "A party (the first party) with similar commercial interests to another party started a proceeding. The P&E Court considers the proceeding was started primarily, and unreasonably, to advance the first party's commercial interests by delaying or obstructing the other party's development approval from taking effect."

52.	General	QELA notes that the Court Bill does not propose to confer a criminal jurisdiction on the P&E Court. QELA continues to encourage the creation of a criminal jurisdiction in the specialist P&E Court. QELA does not consider there are sufficient reasons, individually or cumulatively, to justify the continued exclusion of the criminal jurisdiction from the P&E Court.