



Queensland

*Planning and Environment Court Act 2016*

# **Planning and Environment Court Rules 2018**

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Queensland

# Planning and Environment Court Rules 2018

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# Planning and Environment Court Rules 2018

## Part 1 Preliminary

### 1 Short title

These rules may be cited as the *Planning and Environment Court Rules 2018*.

### 2 Commencement

These rules commence on 4 July 2018.

### 3 Definitions

The dictionary in schedule 2 defines particular words used in these rules.

### 4 Application of rules

- (1) These rules apply to a P&E Court proceeding.
- (2) If these rules do not provide for a matter in relation to a P&E Court proceeding and the rules applying in the District Court would provide for the matter in relation to a proceeding in the District Court, the rules applying in the District Court apply for the matter in the P&E Court with necessary changes.

*Notes—*

- 1 Under section 13(4) of the Act, the rules may be uniform rules that apply to other courts.
- 2 See section 14(5) of the Act for when an order or direction of the P&E Court, or a direction of the Chief Judge, prevails over these rules.

### 5 Compliance with rules and orders of the P&E Court

The P&E Court may—

- (a) waive compliance with a provision of these rules if the court considers compliance would be likely to cause injustice, unreasonable expense or inconvenience or otherwise considers waiving compliance appropriate; or
- (b) excuse noncompliance with a provision of these rules; or
- (c) impose appropriate sanctions if a party to a P&E Court proceeding does not comply with these rules or an order of the court.

*Example for paragraph (c)—*

The P&E Court may dismiss a P&E Court proceeding if a party to the proceeding fails to proceed as required by these rules or an order of the court.

## **Part 2                      Conduct of P&E Court proceedings**

### **Division 1                Starting P&E Court proceedings**

#### **6                      Starting P&E Court proceeding other than appeal**

A P&E Court proceeding, other than an appeal, is started by filing an originating application.

*Example of a P&E Court proceeding started by an originating application—*

a declaratory proceeding

*Note—*

For starting a Planning Act appeal, see the Planning Act, section 230.

#### **7                      Where to start P&E Court proceeding**

A P&E Court proceeding may be started in any registry of the P&E Court.



*Note—*

For the registries of the P&E Court, see section 68 of the Act.

## **8 Originating process—respondent**

- (1) An originating application must name as a respondent the entity directly affected by the relief sought.
- (2) A notice of appeal must name as a respondent or co-respondent the entity that is the respondent or co-respondent under an Act.

## **9 Originating process—content**

The originating process for a P&E Court proceeding must state—

- (a) the orders or other relief sought in the proceeding; and
- (b) the grounds on which the orders or other relief are sought.

## **10 Originating process—contact details and address for service of applicant or appellant**

- (1) An applicant or appellant intending to act personally must ensure all of the following details are stated on the originating process before it is filed—
  - (a) the residential or business address of the applicant or appellant;
  - (b) if the address stated under paragraph (a) is not in Queensland—an address in Queensland where documents may be served on the applicant or appellant;
  - (c) the telephone number, if any, of the applicant or appellant;
  - (d) if the applicant or appellant does not have a telephone number—a way of contacting the applicant or appellant by telephone;

- (e) the email address, if any, of the applicant or appellant;
  - (f) the fax number, if any, of the applicant or appellant.
- (2) A lawyer or agent acting for an applicant or appellant must ensure all of the following details are stated on the originating process before it is filed—
- (a) the residential or business address of the applicant or appellant;
  - (b) the name of the lawyer or agent and, if the lawyer or agent practises in a firm, the name of the firm;
  - (c) the address of the place of business of the lawyer or agent;
  - (d) if the address stated under paragraph (c) is not the applicant's or appellant's address for service or is not an address in Queensland—an address for service in Queensland including, for example, an address approved by the P&E Court as the address for service;
  - (e) the telephone number of the lawyer or agent;
  - (f) the email address of the lawyer or agent;
  - (g) the fax number, if any, of the lawyer or agent.
- (3) If the lawyer or agent, or the lawyer's or agent's firm, is a member of an approved document exchange, the lawyer or agent may include the document exchange address with the details required under subrule (2).
- (4) Notice of any change in an applicant's or appellant's address for service must be filed and served on each other party to the P&E Court proceeding.
- (5) The ***address for service*** of an applicant or appellant is—
- (a) for an applicant or appellant acting personally—
    - (i) if the applicant or appellant is required to state an address under subrule (1)(b)—that address; or
    - (ii) otherwise—the address stated under subrule (1)(a);  
or

- (b) for an applicant or appellant for whom a lawyer or agent acts—
  - (i) if an address is stated under subrule (2)(d)—that address; or
  - (ii) otherwise—the address stated under subrule (2)(c).

(6) In this rule—

*approved document exchange* means a document exchange approved under the *Uniform Civil Procedure Rules 1999*, rule 102.

## **11 Originating process must be signed**

The applicant or appellant, or the applicant's or appellant's lawyer or agent, must sign the originating process.

## **12 Originating application must be served on other parties**

Unless the P&E Court otherwise orders under rule 19, an applicant must, within 10 business days after filing the originating application, serve a copy of the application on each other party to the P&E Court proceeding.

*Note—*

For the requirement to serve a copy of a notice of appeal under the Planning Act to other parties, see the Planning Act, section 230.

## **13 Notice of declaratory proceeding**

If an entity starts a declaratory proceeding, the entity must, on the day the entity starts the proceeding, give the chief executive written notice of the proceeding.

## **Division 2                      Entries of appearance and notices of election**

### **14      Entity named in originating process must file and serve entry of appearance**

- (1) This rule applies to an entity—
  - (a) that is named as a respondent in an originating application and wishes to be heard on the application; or
  - (b) that—
    - (i) is named as a respondent or co-respondent in a notice of appeal; and
    - (ii) is entitled, under an Act, to be heard on the appeal; and
    - (iii) wishes to be heard on the appeal.
- (2) The entity must, within 10 business days after being served with a copy of the originating process—
  - (a) file an entry of appearance in the approved form (an *entry of appearance*); and
  - (b) serve a copy of the entry of appearance on each other party to the P&E Court proceeding.

### **15      Entity electing to be party must file and serve notice of election**

- (1) This rule applies to an entity that—
  - (a) is not named as a party to a P&E Court proceeding; and
  - (b) is entitled, under an Act, to elect to be a party to the proceeding; and
  - (c) wishes to be heard in the proceeding.
- (2) The entity must, within 10 business days after receiving the originating process—

- (a) file a notice of election in the approved form (the *notice of election*); and
- (b) serve a copy of the notice of election on each other party to the P&E Court proceeding.

*Note—*

For a Planning Act appeal, see also the requirement to file a notice of election under the Planning Act, section 230(6).

- (3) On filing the notice of election, the entity becomes a party to the P&E Court proceeding.

### **Division 3                      Discontinuing or withdrawing from P&E Court proceedings**

#### **16      Applicant or appellant may discontinue or withdraw part of P&E Court proceeding**

- (1) An applicant or appellant may discontinue a P&E Court proceeding started by the applicant or appellant, or withdraw part of it—
  - (a) by—
    - (i) filing a notice of discontinuance or withdrawal in the approved form; and
    - (ii) serving a copy of the notice on each other active party to the proceeding; and
    - (iii) filing an affidavit stating the day a copy of the notice was served on each other active party; or
  - (b) with the P&E Court’s leave.
- (2) If, after being served with a copy of the notice, an active party wishes to make an application to the P&E Court about the P&E Court proceeding, the active party must make the application within 14 days after the day the active party was served under subrule (1)(a).

[r 17]

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- (3) If an application is made under subrule (2), the discontinuance or withdrawal takes effect on the day the P&E Court decides the application or a later day decided by the court.
- (4) If no application is made under subrule (2), the discontinuance or withdrawal takes effect at the end of 14 days after the latest day on which an active party was served under subrule (1)(a).

## **17 Active party by election may withdraw**

- (1) An active party by election to a P&E Court proceeding may withdraw as an active party to the proceeding—
  - (a) by—
    - (i) filing a notice of withdrawal of election to co-respond in the approved form; and
    - (ii) serving a copy of the notice on each other active party to the proceeding; and
    - (iii) filing an affidavit stating the day a copy of the notice was served on each other active party; or
  - (b) with the P&E Court's leave.
- (2) If another active party served with a copy of the notice wishes to make an application to the P&E Court about the withdrawal of the active party by election, the other active party must make the application within 14 days after the day the other active party was served under subrule (1)(a).
- (3) If an application is made under subrule (2), the withdrawal takes effect on the day the P&E Court decides the application or a later day decided by the court.
- (4) If no application is made under subrule (2), the withdrawal takes effect at the end of 14 days after the latest day on which an active party was served under subrule (1)(a).
- (5) In this rule—

*active party by election*, to a P&E Court proceeding, means an entity that has filed and served a notice of election for the proceeding under rule 15(2).

## **Division 4            Hearing P&E Court proceedings**

### **Subdivision 1        Venue**

#### **18        Where P&E Court proceeding is heard**

- (1) A P&E Court proceeding must be heard in the P&E Court sitting at the place where the originating process for the proceeding is filed (the *first place*).
- (2) However, the P&E Court proceeding, or part of it, may be heard in the P&E Court sitting at another place (the *other place*) if—
  - (a) the court orders the proceeding or part be heard in the court sitting at the other place; or
  - (b) an affidavit (an *affidavit of consent*) is filed at the first place evidencing the consent of all the active parties to the proceeding that the proceeding or part be heard in the court sitting at the other place.
- (3) An application for an order under subrule (2)(a) must be made to the P&E Court sitting at the first place.
- (4) The application must be heard in the P&E Court sitting at the first place unless no judge of the court is available to hear the application returnable in the court sitting at the first place on the day the applicant seeks to be heard on the application.
- (5) If, under subrule (2), the P&E Court proceeding or part is not to be heard in the P&E Court sitting at the first place, the registrar of the court sitting at the first place must, immediately on the order being made or the affidavit of consent being filed—

[r 19]

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- (a) give the registrar of the court sitting at the other place copies of all documents in the proceeding filed in the court sitting at the first place and necessary for the hearing; and
- (b) give the active parties to the proceeding written notice of the transfer to the court sitting at the other place.

## **Subdivision 2      Hearing particular P&E Court proceedings without notice**

### **19      P&E Court proceeding started by originating application without notice**

- (1) This rule applies in relation to a P&E Court proceeding started by filing an originating application.
- (2) If the P&E Court considers it appropriate because of urgent circumstances in a particular case, the court may, without the applicant in the P&E Court proceeding giving notice to any other entity—
  - (a) order the proceeding be heard and decided; and
  - (b) make any other order in relation to the proceeding.

## **Subdivision 3      Orders and directions**

### **20      P&E Court may make orders and give directions**

- (1) The P&E Court may make an order or give directions about a P&E Court proceeding the court considers appropriate—
  - (a) at any time; or
  - (b) on application by an active party to the proceeding.
- (2) An active party to a P&E Court proceeding may, at any time, apply to the P&E Court for an order or directions about the proceeding.



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- (3) However, the active party to a P&E Court proceeding with the onus in the proceeding must, as soon as practicable, but within 3 months after the applicant or appellant files the originating process for the proceeding, apply to the P&E Court for an order or directions about the proceeding.
  - (4) Subrule (3) does not apply if another active party to the P&E Court proceeding has already applied to the P&E Court for an order or directions about the proceeding.
  - (5) Without limiting subrule (1), (2) or (3), an order or directions, or an application for an order or directions, about a P&E Court proceeding may be for 1 or more of the following—
    - (a) an order or directions about compliance with a requirement under the Planning Act, section 53;
    - (b) an order or directions to identify an issue to be decided in the proceeding at a preliminary stage of the proceeding;
    - (c) an order about the conduct of the proceeding or directions about a procedural matter, including an order or directions about 1 or more of the following—
      - (i) identifying matters as an issue in dispute in the proceeding;
      - (ii) the content and performance of a dispute resolution plan for the proceeding;
      - (iii) exchanging lists of witnesses, including expert witnesses;
      - (iv) meetings of experts and the production of joint reports of the experts under part 3;
      - (v) exchanging statements of witnesses the active parties to the proceeding intend to call;
      - (vi) a review by the court of the conduct of the proceeding;
      - (vii) giving, for use by the court before the hearing, a copy of—

- (A) a document identifying the issues in dispute in the proceeding; or
  - (B) an extract of a planning instrument relevant to the proceeding; or
  - (C) a report for the proceeding, including a joint report, under part 3; or
  - (D) a book of documents for the proceeding;
- (viii) limiting the duration of the hearing;
  - (ix) limiting the time to be taken by an active party to the proceeding in presenting the active party's case;
  - (x) requiring evidence to be given by affidavit, orally or in another form;
  - (xi) requiring expert witnesses in the same field to give evidence consecutively, concurrently or in another way;
  - (xii) limiting the number of witnesses an active party may call on a particular issue in dispute in the proceeding;
  - (xiii) limiting the time to be taken in examining, cross-examining or re-examining a witness;
  - (xiv) requiring an opening address or submission to be made in the way the court directs;
  - (xv) limiting the time to be taken for an opening address or in making oral submissions;
  - (xvi) limiting the length of a written submission, affidavit or report for a proceeding under part 3;
  - (xvii) any other matter the court considers appropriate.
- (6) In this rule—
- book of documents***, for a P&E Court proceeding, means a bundle of documents to be tendered at the hearing of the proceeding with the consent of the active parties to the proceeding.

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*dispute resolution plan*, for a P&E Court proceeding, means a plan prepared for narrowing and, if possible, resolving by agreement issues in dispute in the proceeding.

## 21 Copy of draft order or directions must be served

- (1) If an active party to a P&E Court proceeding (the *relevant party*) applies, under rule 20, for an order or directions about the proceeding, the relevant party must give the other active parties to the application a copy of a draft of the order or directions the relevant party is seeking (the *draft order*) not later than 2 days before the day the application is to be heard.
- (2) If an active party to the application receives a copy of the draft order, the active party must tell the relevant party and the other active parties to the application whether the draft order is accepted or rejected—
  - (a) as soon as practicable after receiving the draft order; and
  - (b) not later than 4p.m. on the day before the application is to be heard.
- (3) If the draft order is rejected by an active party to the application (the *rejecting party*), the rejecting party must give the relevant party and other active parties to the application a copy of a draft of any orders or directions the rejecting party is seeking not later than 4p.m. on the day before the application is to be heard.

## 22 Effect of orders or directions under r 20

If the P&E Court makes an order or gives directions under rule 20 about a P&E Court proceeding, the court may—

- (a) decline to set a date for hearing the proceeding until the court is satisfied the active parties to the application have complied with the order or directions; or
- (b) if the court considers it appropriate having regard to exceptional circumstances in relation to the proceeding—hear the proceeding without the order or directions being complied with; or

- (c) do anything else in relation to the conduct of the proceeding the court considers appropriate.

## Part 3 Evidence

### Division 1 Preliminary

#### 23 Definitions for part

In this part—

*code of conduct* means the code of conduct for experts set out in schedule 1.

*joint report* see rule 28(1).

*meeting of experts*—

- (a) means a meeting at which experts in each area of expertise relevant to a P&E Court proceeding meet—
- (i) to discuss and attempt to reach agreement about the experts' evidence in relation to an issue in dispute in the proceeding as it relates to the experts' area of expertise; and
  - (ii) to prepare a joint report; and
- (b) includes a resumed meeting of experts or further meeting of experts.

*report*, for a P&E Court proceeding—

- (a) means a document giving an expert's opinion on an issue arising in the proceeding; and
- (b) includes, for example—
- (i) a joint report; and
  - (ii) a separate report; and
  - (iii) a supplementary report.

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*separate report*, for a P&E Court proceeding, means a report other than—

- (a) a joint report; or
- (b) a supplementary report.

*supplementary report* see rule 35B(3)(a).

## **24 References to active party**

In this part, a reference to an active party to a P&E Court proceeding includes a reference to the active party's lawyer or agent.

## **Division 2 General**

### **25 Rules of evidence**

- (1) The P&E Court may, at any time during a P&E Court proceeding, order that the rules of evidence do not apply to proving a fact if the court considers—
  - (a) strict proof of the fact may cause unnecessary or unreasonable expense, delay or inconvenience in the proceeding; or
  - (b) the fact is not seriously in dispute.
- (2) Without limiting subrule (1), the P&E Court may order that the rules of evidence do not apply to proving handwriting or a document, authority or identity.
- (3) This rule applies regardless of the importance of the fact sought to be proved.

### **25A Expert evidence given other than by report**

- (1) This rule applies if an expert in a P&E Court proceeding is called to give evidence, other than by report, in the proceeding.

[r 26]

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- (2) The expert must give the evidence in person before the P&E Court.
- (3) However, the expert may give the evidence to the P&E Court by audio visual link or audio link if required to do so under—
  - (a) an order or direction of the P&E Court; or
  - (b) a direction of general application made by the Chief Judge under section 14(2) of the Act.
- (4) In this rule—

*audio link* see the *Evidence Act 1977*, section 39C.

*audio visual link* see the *Evidence Act 1977*, schedule 3.

## **Division 3                      Meetings of experts**

### **26            Meeting of experts**

- (1) An ADR registrar must, if ordered or directed by the P&E Court, convene and chair a meeting of experts for the proceeding.
- (2) Also, an ADR registrar may, if asked by all the active parties to a P&E Court proceeding, convene and chair a meeting of experts for the proceeding.

### **27            Active parties must ensure experts ready to take part in meeting of experts**

Before attending a meeting of experts, each active party to the P&E Court proceeding must do all things reasonably necessary or expedient to ensure an expert chosen by the active party is ready to take part fully, properly and promptly in the meeting, including by giving the expert—

- (a) reasonable notice that the P&E Court has ordered or directed a meeting of experts or that an ADR registrar has convened a meeting of experts; and

- (b) notice of the contents of any order or direction about the meeting, including the time by which the meeting must be held; and
- (c) reasonable notice of the issue in dispute in the proceeding to the extent it is relevant to the expert's expertise; and
- (d) enough information and opportunity for the expert to adequately investigate the facts in relation to the issue in dispute in the proceeding.

## **28 Attending meeting of experts and preparing joint report**

- (1) The experts attending a meeting of experts must jointly prepare a report in relation to the meeting (a *joint report*) that states—
  - (a) the matters, if any, on which the experts agree; and
  - (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.
- (2) In holding the meeting of experts, and preparing the joint report, the experts—
  - (a) must exercise independent judgement; and
  - (b) must endeavour to reach an agreement on any matter on which they disagree; and
  - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (3) Unless the P&E Court orders or directs otherwise, the experts must—
  - (a) hold the meeting of experts in the absence of the active parties to the P&E Court proceeding; and
  - (b) prepare the joint report without reference to, or instructions from, the active parties to the P&E Court proceeding.
- (4) The joint report must confirm that—

[r 28A]

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- (a) each of the experts has read, and agrees to be bound by, the code of conduct; and
  - (b) the factual matters stated in the report are, as far as each of the experts knows, true; and
  - (c) each of the experts has made all inquiries considered appropriate; and
  - (d) the opinions stated in the report are genuinely held by each of the experts; and
  - (e) the report contains reference to all matters each of the experts considers significant; and
  - (f) each of the experts understands the expert's duty to the P&E Court and has complied with the duty.
- (5) The experts must give the joint report to the active parties to the P&E Court proceeding as soon as practicable after the meeting of experts has concluded and, in any case, as ordered or directed by the P&E Court.
- (6) This rule is subject to rule 28A.

## **28A Permitted communications between experts and active parties**

- (1) Any of the experts may, at any time, participate in a without prejudice conference or mediation under part 5 involving the active parties to the P&E Court proceeding.
- (2) Also, any of the experts may, at any time before the joint report is completed, give 1 or more of the active parties to the P&E Court proceeding (each a *recipient*) a written notice—
  - (a) asking the recipient to respond to a request for information or other inquiry that may assist the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report; or
  - (b) informing the recipient of any matter affecting the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report.



*Example for paragraph (b)—*

informing the active parties of a delay in gathering data for use in the joint report

- (3) However, a notice under subrule (2) may be given to an active party to the P&E Court proceeding only if—
  - (a) all of the experts agree to the giving of the notice or, if the experts do not agree, the notice states the basis of the disagreement between the experts; and
  - (b) a copy of the notice is given to all the experts and the other active parties at the same time as the notice is given to the active party.
- (4) The recipient of a notice given by an expert under subrule (2) may respond to the notice only if—
  - (a) the response is in writing; and
  - (b) before the response is made, a copy of the response is given to all the other active parties at the same time; and
  - (c) the response is made—
    - (i) not more than 10 business days after the notice is given to the recipient; and
    - (ii) not less than 5 business days, or the shorter period agreed to by the active parties, after the copy of the response is given to the other active parties; and
  - (d) a copy of the response is given to all the other experts at the same time as the response is made.
- (5) An active party to the P&E Court proceeding (the **requesting party**) may request the experts prepare a report (the **conduct report**) about the proper and timely conduct or conclusion of the meeting of experts, or preparation of the joint report, if a copy of the request is given to all the other active parties at the same time the request is made.

*Example—*

An active party may request an update on when the joint report will be completed.

- (6) The conduct report may be given to the requesting party only if—
- (a) the conduct report is given not more than 2 business days after the request is received by the experts; and
  - (b) all of the experts agree to the giving of the conduct report or, if the experts do not agree, the conduct report states the basis of the disagreement between the experts; and
  - (c) the conduct report is in writing; and
  - (d) a copy of the conduct report is given to all the other active parties at the same time as the conduct report is given to the requesting party.

## **29 Admissions made at meeting of experts**

- (1) Evidence of anything done or said, or an admission made, at a meeting of experts is admissible at the hearing of the P&E Court proceeding, at the hearing of another P&E Court proceeding or in another civil proceeding only if all the active parties to the proceeding agree.
- (2) Subrule (1) does not apply to a joint report prepared in relation to a meeting of experts.
- (3) In this rule—  
*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the meeting of experts.

## **30 P&E Court orders and directions prevail**

If, in a P&E Court proceeding, the P&E Court makes an order or gives directions inconsistent with a provision of this division, the order or directions prevail to the extent of the inconsistency.

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## **Division 4                      Giving of evidence by experts and related matters**

### **31            Application of division**

This division applies if an expert is appointed in relation to a P&E Court proceeding.

### **32            Duty of active parties**

- (1) As soon as practicable after the expert is appointed, a copy of the code of conduct must be given to the expert by—
  - (a) the active party who appointed the expert in relation to the P&E Court proceeding; or
  - (b) if the expert was appointed in relation to the P&E Court proceeding by 2 or more active parties—the active parties or 1 of them as they may agree.
- (2) An active party to the P&E Court proceeding must not give instructions, or allow instructions to be given, to the expert to adopt or reject a particular opinion.

### **33            Duty of expert**

- (1) The expert has a duty to assist the P&E Court.
- (2) The expert—
  - (a) is not an advocate for an active party to the P&E Court proceeding; and
  - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert must comply with the requirements under the code of conduct.
- (4) However, subrule (3) does not limit any provision of this part.
- (5) The expert's duties under this rule override any obligation the expert may have to—

- (a) any active party to the P&E Court proceeding; or
- (b) any person who is liable for the expert's fees or expenses.

### **34 Expert must prepare report**

- (1) The expert must prepare a report for the hearing of the P&E Court proceeding.
- (2) If the expert has taken part in a meeting of experts for the P&E Court proceeding—
  - (a) a joint report prepared in relation to the meeting is taken to be the expert's report for the hearing of the proceeding; but
  - (b) the expert may prepare a separate report in relation to any issue of disagreement recorded in the joint report.
- (3) However, the separate report must not, without the P&E Court's leave, raise a new matter not already mentioned in the joint report.

### **35 Requirements for separate report**

- (1) A separate report prepared by the expert must be addressed to the P&E Court and signed by the expert.
- (2) The separate report must include the following information—
  - (a) the expert's qualifications;
  - (b) all material facts, whether written or oral, on which the report is based;
  - (c) the expert's reasons for each opinion expressed in the report;
  - (d) references to any literature or other material relied on by the expert to prepare the report;
  - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—

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- (i) a description of what was done; and
    - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
    - (iii) the name and qualifications of any other person involved; and
    - (iv) the result;
  - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
  - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
  - (h) a summary of the conclusions reached by the expert;
  - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) However, subrule (2) does not apply to the extent the information is already included in a joint report prepared for the P&E Court proceeding.
- (4) If the expert believes an opinion expressed in the separate report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.
- Examples of reasons why an expert may believe an opinion is not a concluded opinion—*
- insufficient research
  - insufficient data
- (5) The expert must confirm in the separate report that—
- (a) the expert has read, and agrees to be bound by, the code of conduct; and
  - (b) the factual matters stated in the report are, as far as the expert knows, true; and
  - (c) the expert has made all inquiries considered appropriate; and

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- (d) the opinions stated in the report are genuinely held by the expert; and
- (e) the report contains reference to all matters the expert considers significant; and
- (f) the expert understands the expert's duty to the P&E Court and has complied with the duty.

### **35A Serving separate report**

An active party to the P&E Court proceeding intending to call evidence by the expert must, as ordered or directed by the P&E Court, serve on each other active party to the proceeding a copy of any separate report prepared by the expert for the proceeding.

### **35B Supplementary report following change of opinion**

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion included in a report prepared for the P&E Court proceeding (an *earlier report*).
- (2) Unless the expert knows the P&E Court proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to the active party who appointed the expert.
- (3) If the earlier report has been given under rule 28 or served under this division, the active party who appointed the expert must, as soon as practicable after receiving the notice—
  - (a) obtain a further report from the expert (a *supplementary report*) that—
    - (i) states the change of opinion and the reason for the change; and
    - (ii) otherwise complies with rule 35; and
  - (b) serve a copy of the supplementary report on each other active party to the P&E Court proceeding; and

- (c) apply to the P&E Court for an order or directions about the supplementary report.
- (4) For subrule (3)(a)(ii), the supplementary report may, to the extent necessary, comply with rule 35 by incorporating by reference parts of the earlier report.
- (5) The expert may be called to give evidence only with the P&E Court's leave.

### **35C Matters contained in report not to be repeated**

The expert must not do either of the following in examination-in-chief without the P&E Court's leave—

- (a) repeat or expand on matters contained in a report prepared by the expert;
- (b) introduce new material.

### **36 Evidence from only 1 expert may be called**

Other than with the P&E Court's leave, an active party to a P&E Court proceeding, at any hearing of the proceeding, may call evidence from only 1 expert for each area of expertise dealt with in the hearing.

## **Division 5 Payment of witnesses**

### **37 Payment of witnesses**

Every witness summoned is entitled to be paid reasonable expenses by the active party requiring the attendance of the witness.

## Part 4 Applications in P&E Court proceedings

### 38 Content of application

An application in a P&E Court proceeding must—

- (a) be made in an approved form; and
- (b) state all of the following—
  - (i) the day the application is to be heard;
  - (ii) an estimate of time for the hearing of the application;
  - (iii) the relief sought in the application;
  - (iv) if the application is made by an entity that is not a party to the proceeding in which the application is made—the details required under rule 10 to be stated on an originating process unless the details have already been supplied on a document filed in the proceeding; and
- (c) name as respondent any party to the proceeding whose interests may be affected by the granting of the relief sought in the application.

### 39 Serving application and supporting affidavit

- (1) An entity making an application in a P&E Court proceeding must—
  - (a) file the application and any affidavit to be relied on by the applicant at the hearing of the application (a *supporting affidavit*); and
  - (b) serve a copy of the application and any supporting affidavit on each respondent named in the application at least 2 business days before the day the application is to be heard.



- (2) However, if the P&E Court considers it appropriate having regard to the circumstances in a particular case, the court may order that subrule (1) does not apply.

#### **40 Hearing application**

Other than with the P&E Court's leave, the application must be heard and decided on affidavit evidence.

## **Part 5 ADR processes and related matters**

*Note—*

See also rule 26.

#### **41 Definitions for part**

In this part—

*case management conference* means a conference at which the active parties to a P&E Court proceeding confer about the way to conduct the proceeding to ensure the resolution of the issues in dispute in the proceeding is just, expeditious and conducted at a minimum of expense.

*without prejudice conference* means a conference at which the active parties to a P&E Court proceeding confer to narrow and resolve the issues in dispute in the proceeding.

#### **42 References to active party**

In this part, a reference to an active party to a P&E Court proceeding includes a reference to the active party's lawyer or agent.

### **43 Case management conference**

- (1) An ADR registrar must, if directed by the P&E Court, convene and chair a case management conference for the proceeding.
- (2) Also, an ADR registrar may, if asked by all the active parties to a P&E Court proceeding, convene and chair a case management conference for the proceeding.
- (3) If a case management conference is convened under subrule (1) or (2), each active party must attend.

### **44 Listing P&E Court proceeding for review**

An ADR registrar may, on the ADR registrar's own initiative, list a P&E Court proceeding for review or further review by a judge at a time the judge directs.

### **45 Without prejudice conference**

- (1) An ADR registrar or mediator must, if directed by the P&E Court, convene and chair a without prejudice conference for the proceeding.
- (2) Also, an ADR registrar or mediator may, if asked by all the active parties to a P&E Court proceeding, convene and chair a without prejudice conference for the proceeding.
- (3) If a without prejudice conference is convened under subrule (1) or (2)—
  - (a) each active party must attend the conference; and
  - (b) any other person directed by the P&E Court must attend the conference; and
  - (c) any other person may attend the conference if all the active parties to the P&E Court proceeding agree.

*Example for paragraph (c)—*

An expert may attend if all the active parties to the P&E Court proceeding agree.

- (4) In this rule, a reference to an active party to a P&E Court proceeding includes a reference to a person who—
- (a) is familiar with the substance of the issues in dispute in the proceeding; and
  - (b) is either—
    - (i) authorised by the active party to settle the issues; or
    - (ii) if attendance by a person with authority to settle the issues is impractical—authorised to make a recommendation to the active party about settling the issues.

#### **45A Mediation**

- (1) An ADR registrar or mediator must, if directed by the P&E Court, convene and chair a mediation for a P&E Court proceeding.
- (2) Also, an ADR registrar or mediator may, if asked by all the active parties to a P&E Court proceeding, convene and chair a mediation for the proceeding.
- (3) If a mediation is convened under subrule (1) or (2) for a P&E Court proceeding—
  - (a) each active party to the proceeding must attend the mediation; and
  - (b) any other person directed by the P&E Court must attend the mediation; and
  - (c) any other person may attend the mediation if all the active parties to the proceeding agree.
- (4) In this rule, a reference to an active party to a P&E Court proceeding includes a reference to a person who—
  - (a) is familiar with the substance of the issues in dispute in the proceeding; and
  - (b) is either—

- (i) authorised by the active party to settle the issues;  
or
- (ii) if attendance by a person with authority to settle the issues is impractical—authorised to make a recommendation to the active party about settling the issues.

#### **46 Admissions at conference**

- (1) Evidence of anything done or said, or an admission made, at a conference for a P&E Court proceeding is inadmissible at the hearing of the proceeding, at the hearing of another P&E Court proceeding or in another civil proceeding.
- (2) Subrule (1) does not apply to evidence of an agreement reached at a conference.
- (3) In this rule—

*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conference.

*conference* means a case management conference, without prejudice conference or mediation.

## **Part 5A Costs**

### **46A Costs of P&E Court proceedings**

The *Uniform Civil Procedure Rules 1999*, rules 681, 692, 695 and 698 do not apply in relation to a P&E Court proceeding.

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## Part 6 Appeals to Court of Appeal

### 47 Documents to be given to P&E Court's principal registrar

- (1) A party to a P&E Court proceeding who applies, under section 64 of the Act, for leave to appeal to the Court of Appeal against a decision of the P&E Court must give the P&E Court's principal registrar a copy of the following documents—
  - (a) the application for leave to appeal;
  - (b) the Court of Appeal's decision on the application for leave to appeal;
  - (c) if the leave is granted and the appeal is started—
    - (i) the notice of appeal; and
    - (ii) the Court of Appeal's decision on the appeal.
- (2) The P&E Court's principal registrar must keep the copies with the documents kept by the principal registrar for the P&E Court proceeding in the P&E Court.

## Part 7 Miscellaneous

### 48 Hearing appeals together

The P&E Court may hear 2 or more appeals together.

### 49 Where documents to be filed

- (1) An entry of appearance or notice of election may be filed—
  - (a) at the place the originating process to which the entry of appearance or notice of election relates was filed; or

*Note—*

See also rule 7.

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- (b) otherwise—at the place the P&E Court file for the P&E Court proceeding is kept.
- (2) All other documents for a P&E Court proceeding must be filed at the place the P&E Court file for the proceeding is kept.

## **50 Document format**

Documents to be filed in a P&E Court proceeding must—

- (a) be consecutively numbered on each page; and
- (b) be divided into consecutively numbered paragraphs and, if necessary, subparagraphs, each containing, as far as practicable, a separate allegation or topic about the proceeding.

# **Part 8 Transitional provision**

## **51 References to Planning and Environment Court Rules 2010**

In a document, a reference to the *Planning and Environment Court Rules 2010* may, if the context permits, be taken to be a reference to these rules.

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# Schedule 1      Code of conduct for experts

rule 23, definition *code of conduct*

## Part 1                      Preliminary

### 1                      Purpose of code

- (1) The purpose of this code of conduct is—
  - (a) to state an expert's obligations under the following provisions of part 3 of these rules—
    - (i) rule 28;
    - (ii) rule 28A(1) to (3) and (6);
    - (iii) rule 33(1), (2) and (5);
    - (iv) rule 34;
    - (v) rule 35;
    - (vi) rule 35B(1) to (4); and
  - (b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the P&E Court.
- (2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under part 3 of these rules.
- (3) The brackets and information do not form part of these rules.

### 2                      Application of code

This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a P&E Court proceeding.

*Note—*

Rule 33(3) of these rules requires the expert to comply with the requirements under this code of conduct.

### **3 Interpretation**

Words and expressions used in part 3 of these rules have the same meaning in this code of conduct as they have in that part.

## **Part 2 Duty to comply with orders and directions**

### **4 Duty to comply with P&E Court's orders and directions**

- (1) The expert must comply with an order made, or a direction given, by the P&E Court.
- (2) Without limiting subrule (1), if the P&E Court makes an order, or gives a direction, requiring 2 or more experts to hold a meeting of experts, the experts must hold the meeting of experts, and prepare a joint report, in compliance with the order or direction.

## **Part 3 Meetings of experts and joint reports**

### **5 Application of part**

This part applies if the P&E Court makes an order, or gives a direction, requiring 2 or more experts to hold a meeting of experts.

### **6 Meeting of experts and joint report [r 28]**

- (1) The experts attending a meeting of experts must jointly prepare a report in relation to the meeting (a *joint report*) that states—
  - (a) the matters, if any, on which the experts agree; and
  - (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.



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- (2) In holding the meeting of experts, and preparing the joint report, the experts—
- (a) must exercise independent judgement; and
  - (b) must endeavour to reach an agreement on any matter on which they disagree; and
  - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (3) Unless the P&E Court orders or directs otherwise, the experts must—
- (a) hold the meeting of experts in the absence of the active parties to the P&E Court proceeding; and
  - (b) prepare the joint report without reference to, or instructions from, the active parties to the P&E Court proceeding.

*Note—*

Rule 24 of these rules provides that, in part 3 of these rules, a reference to an active party to a P&E Court proceeding includes a reference to the active party's lawyer or agent.

- (4) The joint report must confirm that—
- (a) each of the experts has read, and agrees to be bound by, the code of conduct; and
  - (b) the factual matters stated in the report are, as far as each of the experts knows, true; and
  - (c) each of the experts has made all inquiries considered appropriate; and
  - (d) the opinions stated in the report are genuinely held by each of the experts; and
  - (e) the report contains reference to all matters each of the experts considers significant; and
  - (f) each of the experts understands the expert's duty to the P&E Court and has complied with the duty.
- (5) The experts must give the joint report to the active parties to the P&E Court proceeding as soon as practicable after the

meeting of experts has concluded and, in any case, as ordered or directed by the P&E Court.

- (6) This rule is subject to rule 7.

## **7 Permitted communications between experts and active parties [r 28A(1) to (3) and (6)]**

- (1) Any of the experts may, at any time, participate in a without prejudice conference or mediation under part 5 of these rules involving the active parties to the P&E Court proceeding.
- (2) Also, any of the experts may, at any time before the joint report is completed, give 1 or more of the active parties to the P&E Court proceeding (each a *recipient*) a written notice—
- (a) asking the recipient to respond to a request for information or other inquiry that may assist the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report; or
  - (b) informing the recipient of any matter affecting the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report.

*Example for paragraph (b)—*

informing the active parties of a delay in gathering data for use in the joint report

- (3) However, a notice under subrule (2) may be given to an active party to the P&E Court proceeding only if—
- (a) all of the experts agree to the giving of the notice or, if the experts do not agree, the notice states the basis of the disagreement between the experts; and
  - (b) a copy of the notice is given to all the experts and the other active parties at the same time as the notice is given to the active party.
- (4) If an active party to the P&E Court proceeding (the *requesting party*) requests a conduct report under rule 28A of these rules, the conduct report may be given to the requesting party only if—



- (a) a joint report prepared in relation to the meeting is taken to be the expert's report for the hearing of the proceeding; but
  - (b) the expert may prepare a separate report in relation to any issue of disagreement recorded in the joint report.
- (3) However, the separate report must not, without the P&E Court's leave, raise a new matter not already mentioned in the joint report.

## **10 Requirements for separate report [r 35]**

- (1) A separate report prepared by the expert must be addressed to the P&E Court and signed by the expert.
- (2) The separate report must include the following information—
  - (a) the expert's qualifications;
  - (b) all material facts, whether written or oral, on which the report is based;
  - (c) the expert's reasons for each opinion expressed in the report;
  - (d) references to any literature or other material relied on by the expert to prepare the report;
  - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
    - (i) a description of what was done; and
    - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
    - (iii) the name and qualifications of any other person involved; and
    - (iv) the result;
  - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;

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- (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
- (h) a summary of the conclusions reached by the expert;
- (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) However, subrule (2) does not apply to the extent the information is already included in a joint report prepared for the P&E Court proceeding.
- (4) If the expert believes an opinion expressed in the separate report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

*Examples of reasons why an expert may believe an opinion is not a concluded opinion—*

- insufficient research
  - insufficient data
- (5) The expert must confirm in the separate report that—
- (a) the expert has read, and agrees to be bound by, the code of conduct; and
- (b) the factual matters stated in the report are, as far as the expert knows, true; and
- (c) the expert has made all inquiries considered appropriate; and
- (d) the opinions stated in the report are genuinely held by the expert; and
- (e) the report contains reference to all matters the expert considers significant; and
- (f) the expert understands the expert's duty to the P&E Court and has complied with the duty.

**11 Supplementary report following change of opinion [r 35B(1) to (4)]**

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion included in a report prepared for the P&E Court proceeding (an *earlier report*).
- (2) Unless the expert knows the P&E Court proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to the active party who appointed the expert.
- (3) If the earlier report has been given under rule 28 of these rules or served under part 3, division 4 of these rules, the active party who appointed the expert must, as soon as practicable after receiving the notice—
  - (a) obtain a further report from the expert (a *supplementary report*) that—
    - (i) states the change of opinion and the reason for the change; and
    - (ii) otherwise complies with rule 10; and
  - (b) serve a copy of the supplementary report on each other active party to the P&E Court proceeding; and
  - (c) apply to the P&E Court for an order or directions about the supplementary report.
- (4) For subrule (3)(a)(ii), the supplementary report may, to the extent necessary, comply with rule 10 by incorporating by reference parts of the earlier report.

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## Schedule 2 Dictionary

## rule 3

***active party***, to a P&E Court proceeding, means each of the following—

- (a) the applicant or appellant for the proceeding;
- (b) each other party to the proceeding who has filed an entry of appearance or notice of election for the proceeding.

***application***, in a P&E Court proceeding, means an application about the proceeding made after the proceeding is started and before it is decided.

***case management conference***, for part 5, see rule 41.

***code of conduct***, for part 3, see rule 23.

***entry of appearance*** see rule 14(2)(a).

***expert*** means a person who would, if called as a witness in a P&E Court proceeding, be qualified to give opinion evidence as an expert witness in relation to an issue in dispute in the proceeding.

***file*** means file in a registry of the P&E Court.

***joint report***, for part 3, see rule 28(1).

***meeting of experts***, for part 3, see rule 23.

***notice of appeal*** means the notice of the appeal mentioned in the Planning Act, section 230.

***notice of election*** see rule 15(2)(a).

***originating application*** means an application in the approved form that starts a proceeding other than an appeal.

***originating process*** means an originating application or a notice of appeal.

***report***, for part 3, see rule 23.

***separate report***, for part 3, see rule 23.

*supplementary report*, for part 3, see rule 35B(3)(a).

*without prejudice conference*, for part 5, see rule 41.