

PRACTICE DIRECTION 2 of 2020
PLANNING AND ENVIRONMENT COURT

Purpose

1. The purpose of this Practice Direction is to set out case management procedures for the just and expeditious resolution of the issues in proceedings and avoid undue delay, expense and technicality.
2. This Practice Direction applies to all proceedings in the Planning and Environment Court.

Repeal of earlier Practice Direction

3. This Practice Direction repeals and replaces Practice Direction 1 of 2019.

Definitions

4.
 - (a) A “dispute resolution plan” is a plan directed towards the narrowing and, if possible, resolution by agreement of the issues in dispute.
 - (b) A “party” means the applicant or appellant for a proceeding in the Planning and Environment Court and each other party to the proceeding who has filed an entry of appearance or notice of election for the proceeding.
 - (c) A “pre-callover review” is a review of the proceedings shortly before the callover in which the proceeding is to be mentioned, for the purposes of ascertaining whether orders and directions have been complied with and whether the proceeding is ready to proceed to hearing in the sittings for which the callover will be held.
 - (d) A “hearing schedule” is a schedule which provides a timetable for the completion of the hearing within the allocated time. Such a schedule will ordinarily provide for the anticipated time for the opening, site inspection, each witness (including for examination, cross-examination and re-examination) and addresses.
 - (e) A reference to a rule is a reference to a rule of the Planning and Environment Court as made from time to time.

Applications for Directions Orders

Directions to be obtained promptly

5. An application for orders or directions about the future conduct of a proceeding must be brought as soon as practicable but, in any event, within 6 weeks after the institution of the proceeding. The application must be brought by the party who

must prove the case unless the application has been brought by another party previously.

Affidavit

6. The affidavit filed and served in support of an application in which orders or directions are first sought about a proceeding should include any necessary evidence showing compliance with respect to service of the proceeding, including facts relevant to any application to extend the time for service.

Provision of draft directions order before hearing

7. Any party seeking orders or directions (other than urgent interim orders) must, no later than two days before the day the application is to be heard, give a draft of the proposed order to the other parties.
8. Upon receipt of the applicant's draft order, each other party must, as soon as practicable (and no later than 4pm on the day before the application is to be heard), tell the applicant whether the applicant's draft is accepted and, if not, directions which that party is seeking.

Contents of Directions Order

9. A draft order will include orders or directions which are appropriate for the particular proceeding and will usually include those as to:
 - (a) compliance with statutory requirements with respect to service, or to extend the time for service;
 - (b) identification of the issues in dispute;
 - (c) a dispute resolution plan;
 - (d) the likely duration of the hearing; and
 - (i) where the hearing is anticipated to be no longer than 2 days, the sittings in which the proceeding is proposed to be heard, a date for a pre-callover review and a date for mention at the relevant callover;¹
 - (ii) where the hearing is anticipated to be longer than 2 days but no longer than 7 days, the matters in sub-paragraph (i) and at least 1 additional review date; or
 - (iii) where the hearing is anticipated to be longer than 7 days that, subject to leave, further applications or reviews be heard by a specific judge, the identity of whom will be notified to the parties, and a date for the next review.²

¹ Provision for a pre-callover review and a mention at a callover does not apply to a proceeding set down to be heard on specific dates.

² Matters anticipated to be longer than 7 days will ordinarily not be set down for hearing either in a sittings or for fixed dates at the first directions hearing or review.

10. Depending upon the nature of the matter and the issues involved, the draft order may make provision for the following:
 - (a) disclosure;
 - (b) the extent to which evidence will be by affidavit, statement or oral evidence;
 - (c) whether expert evidence will be adduced and, if so:
 - (i) whether a single expert will be engaged jointly by the parties; or
 - (ii) if the parties propose to retain separate experts:
 - (A) an exchange of lists of experts and their fields of expertise;
 - (B) the conduct of meetings of experts (including as to the date of their commencement and of their completion) and the production of joint reports;
 - (C) whether the meetings of experts are to be chaired by the ADR Registrar;
 - (D) an exchange of expert statements (if any and only if necessary) directed to the points of disagreement identified in a joint report; and
 - (d) the preparation of a hearing schedule.
11. Notwithstanding the above, there is no standard suite of orders or directions which is required in each case. The procedure used in any proceeding can be as simple or as comprehensive as is appropriate in the circumstances. Accordingly:
 - (a) each party is to give conscientious consideration to the orders or directions which are appropriate for the particular proceedings and, prior to proposing or consenting to any proposed orders or directions, be satisfied that they are appropriate and that compliance would be practical and realistically achievable; and
 - (b) a draft order should provide for a procedure that is as simple and cost effective as is practicable in order to achieve a just and expeditious resolution of the issues in the proceeding without undue delay, expense and technicality.

Lengthy reviews and change applications

12. Where the hearing of:
 - (a) a review;
 - (b) an application in pending proceeding; or
 - (c) an application for final judgment involving a minor change

is likely to exceed 10 minutes but will be no longer than 60 minutes,³ after filing all material to be relied on for the review or application, and any outline of argument, the party must contact the ADR Registrar or P&E Court list manager (or the associate to a Judge sitting in the registries outside of Brisbane or the registry depending on the applicable protocols in that place) to obtain a hearing date.⁴

Consent Orders on the Papers

13. Subject to paragraph 17, where the draft order is agreed among the parties (and is not a final order), it should be submitted, in advance of the return date, to the ADR Registrar, for an order to be made on the papers if appropriate pursuant to Practice Direction 2 of 2019, without the need for any attendance at court. If the ADR Registrar considers it appropriate, the ADR Registrar may refer the matter for consideration of a judge, who may make the orders on the papers if appropriate.
14. Where a draft order is agreed among the parties (and is not a final order or an order requiring the exercise of a discretion), it may be submitted, in advance of the return date to the P&E List Manager, for an order to be made on the papers by a Judge, if appropriate, without the need for any attendance at court. A request for an order under this paragraph must be made as if it were a request to which paragraph 7 of Practice Direction 2 of 2019 applies.

Early Reference to the ADR Registrar

15. All parties should, at the outset of a proceeding, give consideration to early reference to the ADR Registrar. In particular consideration should be given to:
 - (a) whether the proceeding should be heard and determined by the ADR Registrar, pursuant to a direction under section 23 of the *Planning and Environment Court Act 2016*; and
 - (b) whether the parties should, by agreement, and without the need for a prior court order or direction, attend on the ADR Registrar for an early ADR conference.
16. Any application for an order that a proceeding be heard and determined by the ADR Registrar should be made as soon as practicable, usually prior to, or at, the first directions hearing.

ADR Registrar may list a proceeding for a review

17.
 - (a) The ADR Registrar may list a proceeding for review or further review by a judge.
 - (b) Where a proceeding has been set down for review (other than a pre-callover review) and:

³ Such as a change application under s 78 of the *Planning Act 2016*.

⁴ In Brisbane from 2021, a lengthy application, review or mention will ordinarily be considered for a hearing during an applications week.

- (i) all active parties ask the ADR Registrar to list the proceeding for review by a judge on a later day, in lieu of the day previously set for the review (the existing review day);
- (ii) the period of any adjournment does not exceed one month;
- (iii) the proceeding is no more than 12 months old, calculated from the date it was filed;
- (iv) all active parties tell the ADR Registrar of the reason for requesting the proceeding to be listed for review on a later day, in lieu of the existing review day;
- (v) the ADR Registrar has not deferred the review more than twice in the first 12 months after the proceeding commenced;
- (vi) the review is not listed before a specific Judge; and
- (vii) the ADR Registrar considers it appropriate to do so –

the ADR Registrar may list the proceeding for review by a judge on a later day, in lieu of the existing review day, and no appearance will be required on the existing review day.

18. Any request for the ADR Registrar to list a proceeding for review on a later day must be made no later than noon on the day immediately preceding the existing review day, and

- (a) state:
 - (i) the file number;
 - (ii) the names of all parties;
 - (iii) the lawyer or agent (if any) who represents each party;
 - (iv) the reason for the request;
 - (v) that the review is not a pre-callover review; and
 - (vi) the number of times (if any) the review date has been deferred previously by the ADR Registrar; and
- (b) if the request is communicated by a party on behalf of other parties, it must:
 - (i) state that all parties join in the request; and
 - (ii) include a copy of written evidence of the consent of all other parties.

Appearance on Reviews and on Applications for Directions Orders

19. Subject to temporary arrangements due to COVID-19, an appearance in court, on behalf of each party, is ordinarily required on a review or on the return date for an application for orders or directions, with the following exceptions:

- (a) where the Judge who is to hear the application or conduct the review permits an appearance otherwise than in person. Requests for leave to appear otherwise than in person (eg, by telephone) may be made before noon on the preceding day by contact and arrangement with the Associate to the Judge who is to hear the application or conduct the review;
- (b) where a consent order has been made on the papers by the ADR Registrar or a Judge in advance of the return date; or
- (c) where, in the case of a review (other than a pre-callover review), the ADR Registrar or a Judge has set a later day for the review, in accordance with this Practice Direction, no appearance is required on the existing review day.

Subsequent Procedures

Review

20. At any review the parties must inform the court:
- (a) whether or not there has been compliance with the requirements of the Rules, any orders or directions and with this Practice Direction and, if not, the nature and effect of all incidents of non-compliance; and
 - (b) of any other matter, including the expected length of the hearing, which might influence a decision to list the proceeding for hearing or bear on whether further orders or directions should be made or issued.
21. Matters are generally placed on the callover list in the order they are first set down for hearing in the relevant sittings. If, at the pre-callover review, it is apparent the parties have not completed the steps set out in any orders or directions the matter may be removed from the callover unless the Court is satisfied there are exceptional circumstances for the purposes of rule 22(b) of the *Planning & Environment Court Rule 2018*.

Callover

22. At the mention of the proceeding at the callover for the relevant sittings the Court will, if it considers it appropriate to do so, set the proceeding down for hearing to commence on a specified date.

Arrangements for Hearings

23. Once a matter has been set down for hearing for a specified date, the parties should, not less than three business days prior to the first day of the hearing, make a joint approach to the trial judge, through that judge's associate, to determine whether the judge wishes to receive any or all of the book of documents (if any), planning instruments, joint or separate experts' reports (if any), statements of evidence or other documents for perusal prior to the trial, and to make arrangements for any site inspection.

24. Each book of documents, planning instrument, joint or separate experts' report, statements of evidence and other documents is to be presented in a way that will facilitate the court's efficient and expeditious reference to them, including by ensuring each page is numbered sequentially.
- 25.
- (a) At least 7 days prior to the hearing the party that bears the onus should provide to the other parties a concise list (ordinarily not exceeding 2 pages) of what it contends are the remaining issues for determination.
 - (b) At least 2 days prior to the hearing the other parties should notify each of the other parties whether they agree with the list of disputed issues or, if not, the respects in which they disagree.
 - (c) On the first day of a hearing, the party that bears the onus should provide an agreed list of the disputed issues that remain for determination or, in the absence of agreement, the parties should provide their respective lists of issues.



Chief Judge Brian Devereaux SC
2 December 2020