

PLANNING AND ENVIRONMENT COURT

PRACTICE DIRECTION NO 1 OF 2006

NOTE: *To obtain a return date for an application or for information about the sittings available for a hearing, parties should:*

- *in Brisbane, contact the planning and environment listing manager in the Higher Courts registry (Tel 3247 5407, DC-PEListManager@justice.qld.gov.au), whether or not the matter originated in Brisbane;*
- *otherwise, enquire of the Registrar at the relevant place.*

Purpose

1 The purposes of this Practice Direction are:

- to provide guidance for applications in pending proceedings; and
- to encourage agreement about orders and directions for case management and reduce the need for personal appearances in non-contentious directions hearings; and
- to require dispute resolution plans, and a process for the resolution of areas of difference in expert opinion evidence, and minimise the need for separate expert reports to be prepared.

Repeal of earlier Practice Direction

2. This Practice Direction repeals Practice Direction 1 of 2000;

Definitions

3. For this Practice Direction and, subject to express provision to the contrary, in any order made by the court the following terms have the following meanings:

- (a) a “dispute resolution plan” is a plan directed towards the narrowing and, if possible, resolution by agreement of the issues in dispute. Such a plan may include a ‘without prejudice’ conference (as herein referred), mediation, case appraisal, neutral case evaluation, a dispute resolution process offered by one of the parties (eg a local government’s ‘in house’ ADR system) or such other process, or combination of processes, as may be appropriate in the circumstances;
- (b) “neutral case evaluation” refers to the appointment of a person by and with the consent of the parties who, at their cost, provides an independent evaluation of the merits of issues in dispute in order to assist the parties to reach a consensual resolution. It is not, and does not have the same effect as, a Mediation or Case Appraisal process of the kind referred to in the *Uniform Civil Procedure Rules*, Chapter 9;

- (c) a “meeting of experts” is a meeting of expert witnesses where:
- (i) the experts in each area of expertise meet, as directed by the Court, and attempt to reach agreement;
 - (ii) the parties and their legal representatives do not participate in the meeting ;
 - (iii) the parties, or their legal representatives, give the experts instructions to meet as directed by the Court, and may assist the experts, prior to the meeting, for example, by identifying the issues in dispute and providing relevant documents and information, but no person gives and no expert accepts instructions to adopt, or reject, any particular opinion;
 - (iv) the experts produce a joint report, identifying where they are in agreement, and where they disagree. The reasons for any disagreement are to be stated. The report is prepared by the experts at the meeting, or as soon as practicable thereafter, without reference to or instruction from the parties, their legal representatives or others. The joint report contains an acknowledgement from each expert, as required under paragraph 16 of this Practice Direction.
 - (vi) save for the joint report of the meeting evidence of anything done or said, or an admission made, at the meeting, is not admissible at a trial of the proceeding except with the agreement of all relevant parties;
- (d) a “without prejudice” conference refers to a conference at which:
- (i) the parties confer “without prejudice” for the purposes of resolving or narrowing the issues in dispute between them;
 - (ii) the conference is held at a time and place as agreed, or fixed by the court;
 - (iii) the conference is attended by a representative of each party who is familiar with the substance of the dispute and has authority to settle the issues in dispute, together with such other persons (such as experts) as directed by the Court. Where attendance by a person with authority to settle is impractical, the party must be represented by a person with the power to recommend settlement.
- (e) ‘sittings’ means a discrete period of the calendar year, usually coinciding with a calendar month¹.

Applications for Directions Orders

Directions to be obtained promptly

4. An application for orders and directions about the future conduct of an appeal or application (“directions”) should be brought without undue delay and in any event within 3 months of the institution of proceedings. The application should be brought by the party with the onus² in the proceedings, unless previously brought by another party.

¹ The period previously referred to in the Court as a ‘pool’

² See *Integrated Planning Act 1997*, s 4.1.50

Affidavit Material

5. The affidavit material filed and served in relation to an application in which directions are sought should include any necessary evidence showing compliance with statutory requirements³.

Provision of draft Directions Order before hearing

6. Any party seeking directions must, as soon as practicable after filing and serving the application and, in any event, not less than two days prior to the hearing date, give the other parties a draft order ("draft Directions Order").
7. Upon receipt of the applicant's draft Directions Order, each other party must, as soon as practicable (and not later than 4pm on the day preceding the hearing date), inform the others whether the applicant's draft is accepted and, if not, the further or other orders or directions for which they will contend.

Contents of Directions Order

8. In preparing a draft Directions Order:
 - (a) consideration should be given to the circumstances of the case such as the nature and subject matter of the proceedings, the complexity of the issues, the number and range of expert disciplines and other evidence likely to be involved and matters of relative time and cost efficiency in the context of the particular case (eg a case which is expected to otherwise be long and complex may justify a more detailed dispute resolution plan and more extensive directions than a short case with few issues); and
 - (b) the party preparing the Order should ascertain the availability of time to accommodate the hearing in the sittings⁴ during which it sought to have the matter heard.
9. For an appeal or other proceeding for final relief which is proposed to be heard otherwise than on affidavit material alone, a draft Directions Order:
 - (a) should ordinarily include orders or directions as to:
 - (i) compliance with statutory requirements, or excusal of non-compliance;
 - (ii) identification of the issues in dispute, and particulars thereof, including whether by reference to the grounds of appeal, lists of issues or otherwise;
 - (iii) any requests for particulars and responses;
 - (iv) disclosure;
 - (v) a dispute resolution plan;
 - (vi) meetings of experts and production of joint reports;

³ eg. compliance with provisions concerning public notification (if applicable) – s3.4.4 of the *Integrated Planning Act 1997* - and service of the notice of appeal - ss4.1.41 and 4.1.42 - including facts relevant to any application to excuse non-compliance - s4.1.5A.

⁴ Or on the specified dates.

- (vii) exchange of experts reports (if any) directed to the points of disagreement identified in the joint reports;
 - (viii) orders or directions prohibiting, save by leave of the court, the receipt of further evidence from expert witnesses at the final hearing which differs from that contained in a joint experts' report to which the expert was a party;
 - (ix) the likely duration of the hearing, the sittings within which the proceeding is proposed to be heard⁵, a date for further review of the matter and the date for mention at the callover for the relevant sittings⁶; and
- (b) should also include such other orders or directions as may be appropriate for the particular matter. Such orders may include, for example, those as to:
- (i) meetings of the parties and their legal representatives, with or without experts, at a preliminary stage, to better identify the issues;
 - (ii) the early identification and determination of issues of law or jurisdiction;
 - (iii) meetings of experts, at a preliminary stage, to discuss, for example, matters of approach, methodology, the conduct of joint surveys, tests or investigations and the sharing of information;
 - (iv) any proposals to alter the way expert evidence is customarily received;
 - (v) the preparation of a list of agreed facts and a book of relevant documents to which all reports may refer, so as to avoid unnecessary repetition of facts or reproduction of maps, plans or other documents in several reports;
 - (vi) the preparation and exchange of written statements of evidence for non-expert witnesses;
 - (vii) preparation of a timetable for the hearing which, amongst other things, limits, subject to the discretion of the trial judge, the time for examination, cross-examination and re-examination of each witness;
 - (viii) the use of e-courts; and
 - (ix) such further or other orders or directions as are appropriate in the circumstances.

Appearance on Applications for Directions Orders

10. An appearance on behalf of each party is ordinarily required on the return date of an application for a Directions Order, with the following exceptions:
- (a) requests for leave to appear otherwise than in person (eg, by telephone) may be made by contact and arrangement with the Associate to the Judge who is to hear the application before 4pm on the preceding day; or
 - (b) where:
 - (i) all parties agree to the terms of a draft Directions Order; and

⁵ Or the dates on which the proceeding is proposed to be heard.

⁶ Provision for a mention at a callover does not apply to a proceeding set down to be heard on specific dates.

- (ii) affidavits have been filed to establish compliance with statutory requirements; and
- (iii) no party disputes compliance with statutory requirements; and
- (iv) the trial of the proceeding is capable of being set down in the sittings⁷, nominated in the Order, and is not expected to last more than 3 days; and
- (v) the Order includes all the matters set out in para 9 (a); and
- (vi) the Order is communicated, electronically or by delivery of a hard copy, to the Associate of the Judge sitting on the return date⁸, with notice on behalf of each party confirming compliance with each of the matters set out above, not later than 24 hours before the return date; and,
- (vii) the Associate confirms an appearance is not required.

Subsequent Procedures

Review

11. At any review the parties must:
 - (a) inform the court whether or not there has been compliance with the requirements of the Rules, the Directions Order and any other orders or directions and this Practice Direction and, if not, the nature and effect of all incidents of non-compliance;
 - (b) inform the court 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 given.
12. Matters are generally placed on the callover list in the order they are first mentioned. If, at the review, it is apparent the parties have not completed the steps set out in the Directions Order the matter may be moved to a lower place on the callover list.

Callover

13. 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 and Trials

14. 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, statements of evidence or other documents for perusal prior to trial, and to make arrangements for any site inspection.

⁷ Or on the dates.

⁸ and, in matters dealt with in Brisbane, the List Manager.

Experts

15. A party or the party's legal representatives must, upon first retaining an expert for the proceeding, give that expert written instructions that:
 - (i) a witness giving evidence (by report, or otherwise) in a proceeding as an expert has a duty to assist the Court and;
 - (ii) the duty overrides any obligation the witness may have to any party to the proceeding or to any person who is liable for the expert's fee or expenses.

16. Each joint report or separate expert report must contain:
 - (i) an acknowledgement of having been instructed on an expert's duty in accordance with paragraph 15 and having understood and discharged that duty; and;
 - (ii) a statement verifying that no instructions were given or accepted to adopt, or reject, any particular opinion in preparing the report.

17. Where separate expert reports are prepared, they must include the information set out in r428 of the *Uniform Civil Procedure Rules*, to the extent that information is not already contained in an earlier joint report.

Chief Judge PM Wolfe
10 February 2006