

PRACTICE DIRECTION 2 OF 2018
PLANNING AND ENVIRONMENT COURT

POWER OF ADR REGISTRAR TO MAKE ORDERS OR ISSUE DIRECTIONS
Section 22 of the *Planning and Environment Court Act 2016*

1. This Practice Direction supersedes Practice Direction 8 of 2014.
2. The purpose of this Practice Direction is to provide for the ADR Registrar to exercise the power of the P&E Court to make an order or issue a direction, in particular circumstances.
3. Definitions:
 - (a) **ADR conference** means a chaired meeting of experts, a case management conference or a without prejudice conference.
 - (b) **Order or direction** means an order or direction of the kind provided for in rules of the Planning and Environment Court as made from time to time.
 - (c) Pre-callover review, for a P&E Court proceeding, means a review of the proceeding carried out shortly before a callover in which the proceeding is to be mentioned.
4. Subject to the limitations in paragraph 5, the ADR Registrar may, if the ADR Register considers it appropriate, make an order or issue directions about a procedural matter in a P&E Court proceeding if:
 - (a) the active parties consent in writing; or
 - (b) the order or directions are:
 - (i) about the conduct of an ADR conference; or
 - (ii) made at the conclusion of an ADR conference, for the purpose of ensuring the proper and timely progress of the P&E Court proceeding pending subsequent review by a judge.

Note: A procedural matter is not a matter that might affect the conduct of the hearing of a proceeding, such as orders or directions:

- (A) requiring evidence to be given in any particular form;
- (B) limiting the number of witnesses a party may call;
- (C) setting hearing dates for a P&E Court proceeding; or
- (D) where the proposed order effects the operation of an interim enforcement order or stay.

5. The power of the ADR Registrar to make an order or issue directions about a P&E Court proceeding does not extend to an order or direction in relation to one or more of the following:
 - (a) an order or direction about a non-compliance with a requirement under the *Planning Act*, section 53;
 - (b) an order or direction under section 32 of the *Planning and Environment Court Act 2016* or section 497 of the *Sustainable Planning Act 2009* to allow a longer period or a different time to take an action than that required under the rules or an Act giving jurisdiction to the P&E Court;
 - (c) an order or direction under section 37 of the *Planning and Environment Court Act 2016* or section 440 of the *Sustainable Planning Act 2009* with respect to non-compliance with a provision of the *Planning and Environment Court Act 2016*, the *Sustainable Planning Act 2009* or an Act giving jurisdiction to the P&E Court;
 - (d) an interim enforcement order;
 - (e) an order or direction awarding costs; or
 - (f) an order or direction to identify an issue to be decided in the proceeding at a preliminary stage of the proceeding.

6. A request for an order or direction under paragraph 4(a):
 - (a) must be made at any time but, if it involves deferring a review, must be made not later than 4 p.m. on the day before the existing review day; and
 - (b) must state the following:
 - (i) the file number;
 - (ii) the names of all active parties to the P&E Court proceeding;
 - (iii) the lawyer or agent (if any) who represents each active party;
 - (iv) the reason for the request;
 - (v) whether there are any current orders or directions that are relevant to the request, including whether there are any current interim enforcement orders or stays given in the proceedings;
 - (vi) if the request is a request to defer a review, that the review is not a pre-callover review and the number of times (if any) the review date has been deferred previously by the ADR registrar; and
 - (c) if the request is communicated by an active party on behalf of the other active parties, it must:
 - (i) state that all active parties join in the request; and
 - (ii) include a copy of written evidence of the consent of all other active parties.

7. Where the ADR Registrar has been directed to hear and decide a proceeding, the ADR Registrar may, for the purpose of doing so, also make orders or issue directions about the proceeding.

Chief Judge KJ O'Brien