

PRACTICE DIRECTION NO 2 of 2014
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 real issues in proceedings at a minimum of expense.

Repeal of earlier Practice Direction

2. This Practice Direction repeals and replaces Practice Direction 2 of 2011.

Definitions

3.
 - (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 “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.
 - (c) A reference to a rule is a reference to a rule of the Planning and Environment Court Rules 2010.
 - (d) A reference to a section is a reference to a section of the *Sustainable Planning Act 2009*.

Applications for Directions Orders

Directions to be obtained promptly

4. 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 proceeding¹. The application must be brought by the party who must prove the case² unless the application has been brought by another party previously.

Affidavit

5. 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 statutory requirements³.

¹ By reason of s 446(2) this time period applies notwithstanding the 3 month period referred to in rule 19(3).

² See s 493.

³ E.g. compliance with provisions concerning public notification (if applicable) – s 297 – and giving notice of the appeal – s 482, 483 and 484 – including facts relevant to any application to excuse non-compliance (s 440 & s 820) or to extend time(s 497).

Provision of draft directions order before hearing

6. In accordance with rule 20:
 - (a) Any party seeking orders or directions 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.
 - (b) 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, give the applicant and all parties to the application a draft of the orders or directions which that party is seeking.

Contents of Directions Order

7. 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, or excusal from non-compliance;
 - b. identification of the issues in dispute;
 - c. a dispute resolution plan; the likely duration of the hearing, the sittings in which the proceeding is proposed to be heard⁴, review dates (including a date for a pre-callover review) and a date for mention at the relevant callover⁵.
8. Depending upon the nature of the matter and the issues involved, the draft order may include, for example:
 - 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 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.
9. 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:

⁴ Or the dates on which the proceeding is proposed to be heard.

⁵ Provision for a mention at a callover does not apply to a proceeding set down to be heard on specific dates.

- a. Each party is to give conscientious consideration to the orders or directions which are appropriate for the particular proceeding 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 which is as simple and cost effective as is practicable in order to achieve a just and expeditious resolution of the real issues in the proceeding at a minimum of expense.

Consent Orders on the Papers

10. 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 6 of 2013⁶, without the need for any attendance at court.

Early Reference to ADR Registrar

11. 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 an order under s 491B(2);
 - 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 case management conference,⁷ or without prejudice conference⁸.
12. 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 review

13.
 - a. The ADR registrar may, pursuant to rule 40, 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:
 - 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. 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;
 - iii. the ADR registrar has not deferred the review more than twice; and

⁶ See section 3(a) of Practice Direction 6 of 2013.

⁷ Rule 39.

⁸ Rule 41.

- iv. 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.

- 14. Any request for the ADR Registrar to list a proceeding for review on a later day must be made no later than 4.00pm on the day immediately preceding the existing review day, and
 - a. state:
 - i. the file number;
 - ii. the names of all active parties;
 - iii. the lawyer or agent (if any) who represents each active 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.
 - b. if the request is communicated by a party on behalf of 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.

Appearance on Reviews and on Applications for Directions Orders

- 15. 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 4pm on the preceding day by contact and arrangement with the Associate to the Judge who is to hear the application or conduct the review; or
 - b. where a consent order has been made on the papers by the ADR Registrar in advance of the return date; or
 - c. where, in the case of a review (other than a pre-callover review), the ADR Registrar 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

- 16. 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;
 - 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.

17. 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 moved to a lower place on the callover list or removed from the callover list.

Callover

18. 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

19. 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 trial, and to make arrangements for any site inspection.

Chief Judge PM Wolfe
25 February 2014