

PRACTICE DIRECTION NUMBER 7 OF 2023
PLANNING AND ENVIRONMENT COURT

WRITTEN SUBMISSIONS

Introduction

1. This Practice Direction applies after 18 March 2024 to proceedings in the Brisbane Registry of the Planning and Environment Court.
2. This Practice Direction prevails to the extent of any inconsistency with Practice Direction No. 1 of 2008.

Purpose of this Practice Direction

3. The purpose of this Practice Direction is to ensure written submissions presented by, or on behalf of, a party to a proceeding in the Planning and Environment Court in Brisbane:
 - (a) assist the Court to understand each party's contentions and to enhance oral argument;
 - (b) shorten a hearing by ensuring the real issues in dispute are understood by the parties and the Court; and
 - (c) are retained on the Court file and available for search under r 981 of the *Uniform Civil Procedure Rules 1999*.

Format of written submissions

4. Unless the Court directs otherwise, all written submissions presented by or on behalf of a party in a proceeding must:
 - (a) be printed on A4 paper in type face no smaller than 12 point in Times New Roman font or 11 point in Arial font;
 - (b) have line spacing that is no less than single line spacing;
 - (c) be paginated with paragraphs and subparagraphs separately numbered;
 - (d) state, at the end of the document, the name of the person who prepared the written submissions and on whose behalf they were prepared; and
 - (e) state, at the end of the document, the date the written submissions were prepared.
5. For written submissions presented by, or on behalf of, a party at the completion of a hearing, in addition to paragraph 4, the submissions should be provided on a USB to the hearing Judge's Associate in a searchable PDF form.

Requirement to file and serve written submissions

6. Unless the Court otherwise orders,¹ written submissions must be filed and served as early as practicable prior to a hearing.
7. Where written submissions are presented to the Court, and other parties, at a hearing without being filed, two copies should be provided, one for the file and one “*working copy*” for the Judge. On presentation, there will be a concurrent grant of leave that the written submissions be filed and read. In such circumstances, the Judge’s Associate, or other proper officer of the Court, will endorse the file in relation to the proceeding to reflect this grant of leave and place a copy of the submissions on the file.

Written submissions for interlocutory applications

8. Written submissions for interlocutory applications must:
 - (a) list the material the party reads on the application and the Court Document number of each filed document;
 - (b) list the material, including any written submissions, the party seeks leave to read and file on the application, and the date of each document;

Example

1. The Appellant reads the following material:

<i>Doc #</i>	<i>Description</i>	<i>Filing date</i>
<i>1.</i>	<i>Notice of Appeal</i>	<i>1 February 2023</i>
<i>2.</i>	<i>Application</i>	<i>8 February 2023</i>
<i>3.</i>	<i>Affidavit of W Smith (sworn 8 February 2023)</i>	<i>8 February 2023</i>
<i>-</i>	<i>Written Submissions</i>	<i>By leave</i>

- (c) include a summary of the party’s argument; and
 - (d) identify all relevant legislation, rules, and cases (including specific page and paragraph references for the cases).
9. Practitioners should email their written submissions to the associate to the Judge sitting in P&E Court reviews or Applications no later than 2 pm on the business day before the return date of the application. The email should be copied to all other parties. There is no mandatory process of exchange. Each party may act independently, or by agreement, exchange written submissions.
10. The provision of written submissions by email does not remove the obligation to comply with paragraph 7 above.

¹ A review before the hearing judge for a proceeding the subject of Practice Direction Numbers 3, 4 and 5 may result in an order/s that require the parties to provide written submissions at a different time - for example, after the completion of evidence.

Written submissions for a minor change to a development application or development the subject of a change application (other change)

11. Unless the Court orders otherwise, written submissions must be provided to the Court by, or on behalf of, an applicant seeking to make a minor change to a development application or development the subject of a change application (other change) (**Minor change submissions**).
12. Minor change submissions must comply with paragraphs 8 and 9 above. It can be assumed that it is unnecessary for Minor change submissions to contain general statements of principle about the ‘*substantially different development*’ test. Reference need only be made to relevant cases, and principles, to the extent they have application in the circumstances. Practitioners must provide copies of the cases for the Judge.
13. Minor change submissions should be accompanied by a bundle of plans sufficient to demonstrate the form of development for which approval was sought or given and the changes proposed to that development. The bundle is to be extracted from the filed affidavit material and will be treated as a litigation aide.
14. The bundle of plans is to be provided to the Associate to the Judge sitting in P&E Court reviews or Applications (in conjunction with any written submissions) in accordance with paragraph 9.
15. Where a minor change application is opposed, orders will need to be sought in relation to the provision of written submissions by other parties.
16. Compliance with paragraphs 11, 12, 13, 14 or 15 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.

Written submissions for a change application for minor changes where the Court is the responsible entity, and the application is not opposed

17. Unless the Court orders otherwise, written submissions must be provided to the Court by, or on behalf of, an applicant for a change application for a minor change to a development approval (**Minor change to an approval submissions**) in circumstances where the Court is the responsible entity by operation of s 78A of the *Planning Act 2016* and the application is not opposed by a party to the proceeding.
18. Minor change to an approval submissions must:
 - (a) list the material the party reads on the application and the Court Document number of each filed document;
 - (b) list the material, including any written submissions, the party seeks leave to read and file on the application, and the date of each document;

Example

1. The Applicant reads the following material:

<i>Doc #</i>	<i>Description</i>	<i>Filing date</i>
<i>1.</i>	<i>Originating application</i>	<i>1 February 2023</i>
<i>2.</i>	<i>Affidavit of W Smith</i>	<i>8 February 2023</i>
<i>-</i>	<i>Affidavit of B Brown (sworn 9 February 2023)</i>	<i>By leave</i>
<i>-</i>	<i>Written Submissions</i>	<i>By leave</i>

- (c) include a summary of the party's argument;
 - (d) demonstrate compliance, by reference to the evidence, with the requirements of ss 79(1A) and 80(1) of the *Planning Act 2016*;
 - (e) demonstrate, by reference to the evidence, compliance with the definition of 'minor change' for a development approval in Schedule 2 of the *Planning Act 2016*;
 - (f) by reference to supporting affidavits, traverse each of the mandatory considerations identified in ss 81(2) and (4) of the *Planning Act 2016*; and
 - (g) by reference to the evidence, traverse each of the matters, to the extent relevant, identified in s 81(5) of the *Planning Act 2016*.
19. It can be assumed it is unnecessary for Minor change to an approval submissions to contain general statements of principle about the 'substantially different development' test. Reference need only be made to relevant cases, and principles, to the extent they have application in the circumstances.
 20. Practitioners should email Minor change to an approval submissions to the Associate to the Judge sitting in P&E Court reviews or Applications no later than 12 pm on the business day before the return date of the application. The email should be copied to all other parties. This is not a process of exchange. Each party is to act independently.
 21. Minor change to an approval submissions should be accompanied by a bundle of plans sufficient to demonstrate the form of development for which approval was granted and the changes proposed to that approval. The bundle is to be extracted from the filed affidavit material and will be treated as a litigation aide. An extract of the conditions of approval to be changed, in tracked form, should also be provided with the Minor change to an approval submissions.
 22. The bundle of plans and amended conditions is to be provided to the Associate to the Judge sitting in P&E Court reviews or Applications with the written submissions in accordance with paragraph 20.
 23. Compliance with paragraphs 17, 18, 20, 21 and 22 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.

Written submissions for a proceeding where non-compliance with an assessment benchmark or draft planning document is in dispute

24. Written submissions provide significant assistance to the Court when determining merits appeals, particularly where a large number of non-compliances are alleged with adopted planning instruments and the Court is required to examine a large body of expert evidence.
25. In proceedings where non-compliance is alleged with adopted or draft planning instruments, written submissions prepared by, or on behalf of, a party must:
- (a) identify the provisions, or part thereof, of the adopted or draft planning instruments in issue in the appeal;
 - (b) identify those provisions, or parts thereof, of the adopted or draft planning instruments for which non-compliance or compliance (as the circumstance requires) is conceded, and, explain the weight to be attributed to the provision;
 - (c) make submissions, where required, about the proper interpretation of each provision in issue, particularly where they contain compound propositions;
 - (d) explain why non-compliance or compliance (as the circumstance requires) arises with each provision in issue;
 - (e) identify the evidence relied upon to establish compliance or non-compliance with each provision in issue; and
 - (f) provide an analysis of the evidence, and where relevant, explain why evidence relied upon should be preferred to other contrary evidence.
26. The requirements stated in paragraphs 25(b) to 25(f) above will not be met by written submissions that assert compliance or non-compliance with a planning provision and seek to establish this by repeating the words of the provision in issue. An assertion of this kind, absent reference to, or analysis of, the evidence is of little assistance to the Court.
27. Compliance with paragraph 25 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.
28. To assist the Court, written submissions prepared by, or behalf of, a party must be accompanied by Schedule of Assessment benchmarks and draft planning documents. The Schedule is to comprise three parts, namely:
- (a) Part A – Documents to which s 45(7) of the *Planning Act 2016* applies;
 - (b) Part B – Documents to which s 45(8) of the *Planning Act 2016* applies; and
 - (c) Part C – Draft planning documents.
29. A Schedule of assessment benchmarks and draft planning documents prepared by, or on behalf of, a party alleging non-compliance or contending for refusal of a development application must be in the form of Annexures 1, 2 and 3.² The Annexures prepared in draft form to demonstrate compliance with a definition for ‘*Ready for hearing*’ need only be completed to the extent required by the relevant definition. All columns of the

² To remove doubt, the Annexures are to be provided in A3 size (folded down to A4). The font is to be at a size that is legible.

Annexures must be completed where the document is intended to form part of final written submissions.

30. A Schedule of assessment benchmarks and draft planning documents prepared by, or on behalf of, a party alleging compliance or contending for approval of an application must be in the form of Annexures 4, 5 and 6. The Annexures prepared in draft form to demonstrate compliance with a definition for '*Ready for hearing*' need only be completed to the extent required by the relevant definition. All columns of the Annexures must be completed where the document is intended to form part of final written submissions.
31. Save where an issue has arisen in relation to the interpretation of a provision, written submissions should not repeat the terms of a planning provision set out in a Schedule of assessment benchmarks. It will be sufficient for the submissions to refer to the provisions by item number in Part A, B or C of the Schedule.
32. Compliance with paragraphs 29 or 30 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*. Further, it should not be assumed that a hearing Judge will reserve a matter for consideration until satisfied the Annexures required by paragraphs 29 or 30 have been properly completed, having regard to the circumstances of the case.



Brian Devereaux
Chief Judge
7 December 2023

[NAME OF PARTY CONTENDING FOR REFUSAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part A - Documents to which s 45(7) of the Planning Act 2016 applies

Planning scheme version 7

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Item #	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non-compliance identified as an issue	Construction issue Y/N	Submission about construction issue	Submission about non-compliance and evidence relied upon to establish non-compliance	Non-compliance can be cured by condition/s Y/N	Where non-compliance cannot be cured by condition/s is identified as an issue	Submission identifying evidence relied upon to establish non-compliance cannot be cured by condition/s	Submission as to the nature of the non-compliance	Non-compliance is determinative of the outcome of the appeal Y/N	Submission why non-compliance is determinative of the appeal
1	3.3.2.1(9)(b)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... b.a reinforced local identity and sense of place;	Ex.1, p.6, para 10	N	-	Respondent's written submissions paragraphs x-x	N	Ex.1, p.6, para 11	Respondent's written submissions paragraphs x-x	Respondent's written submissions paragraph x	Y	Respondent's written submissions paragraphs x-x
2	3.3.2.1(9)(f)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... f.housing choice and affordability;	Ex.1, p.6, para 10	Y	Respondent's written submissions paragraphs x-x	Respondent's written submissions paragraphs x-x	N	Ex.1, p.6, para 11	Respondent's written submissions paragraphs x-x	Respondent's written submissions paragraph x	Y	Respondent's written submissions paragraphs x-x
3	AO2, Table 6.2.2-2	Ex.9, p.141	For all other uses, site cover does not exceed a cumulative total of: (a) 50% of net site area up to 8 storeys;	Ex.1, p.7 para 13	N	-	Respondent's written submissions paragraphs x-x	N	Ex.1, p.7, para 13	Respondent's written submissions paragraphs x-x	Respondent's written submissions paragraphs x-x	N	-
4	PO2(b), Table 6.2.2-2	Ex.9, p.141	Site cover: (b) contributes to neighbourhood character and amenity;	Ex.1, p.7 para 14	N	-	Respondent's written submissions paragraphs x-x	N	Ex.1, p.7, para 14	Respondent's written submissions paragraphs x-x	Respondent's written submissions paragraphs x-x	Y	Respondent's written submissions paragraphs x-x
5	PO15, Table 7.2.2-2	Ex.9, p.167	Development should not have an unacceptable impact in terms of noise , dust and odour. (The provision has no accompanying AO. Non compliance is alleged only in respect of noise.)	Ex.1, p.9 para 24	N	-	Respondent's written submissions paragraphs x-x	Y			Respondent's written submissions paragraphs x-x	Y	Respondent's written submissions paragraphs x-x

ANNEXURE 2

[NAME OF PARTY CONTENDING FOR REFUSAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part B - Documents to which s 45(8) of the Planning Act 2016 applies

Planning scheme version 8

1	2	3	4	5	6	7	8	9	10	11	12	13
Item #	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non-compliance identified as an issue	Construction issue Y/N	Submission about construction issue	Submission about non-compliance and evidence relied upon to establish non-compliance	Non-compliance can be cured by condition/s Y/N	Where non-compliance cannot be cured by condition/s is identified as an issue	Submission identifying evidence relied upon to establish non-compliance cannot be cured by condition/s	Submission as to the nature of the non-compliance	Submission as to weight
1	3.3.2.1(9)(f)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... f. the proposed development contributes to housing choice and affordability;	Ex.1, p.10, para 15	N	-	Respondent's written submissions paragraphs x-x	N	Ex.1, p.10, para 16	Respondent's written submissions paragraphs x -x	Respondent's written submissions paragraph x-x	Respondent's written submissions paragraph x-x

[NAME OF PARTY CONTENDING FOR REFUSAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part C - Draft planning documents

Draft planning scheme amendments

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Item #	Draft Document	Publicly notified Y/N	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non- compliance is identified as an issue	Construction issue Y/N	Submission about construction issue	Submission about non- compliance and evidence relied upon to establish non-compliance	Non- compliance can be cured by condition/s Y/N	Where non- compliance cannot be cured by condition/s identified as an issue	Submission identifying evidence relied upon to establish non- compliance cannot be cured by condition/s	Coty point relied upon Y/N	Submission as to weight
1	Medium density zone code	Y	PO1, Table 6.2.2-2	Ex.12	Increases in building height above the Building height overlay map are not anticipated in urban neighbourhoods.	Ex.1, p.10, para 15	N	-	Respondent's written submissions paragraphs x-x	N	Ex.1, p.10, para 16	Respondent's written submissions paragraphs x -x	N	Respondent's written submissions paragraph x-x

[NAME OF PARTY CONTENDING FOR APPROVAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part A - Documents to which s 45(7) of the Planning Act 2016 applies

Planning scheme version 7

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Item #	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non-compliance identified as an issue	Non-compliance conceded	Perfomance solution advanced	Construction issue Y/N	Submission about construction issue	Submission about non-compliance and evidence relied upon to establish non-compliance	Non-compliance can be cured by condition/s Y/N	Where non-compliance can be cured by condition/s identified as an issue	Submission identifying evidence relied upon to establish compliance can be cured by condition/s	Submission as to the nature of the non-compliance	Non-compliance is determinative of the outcome of the appeal Y/N	Submission why non-compliance is not determinative of the appeal
1	3.3.2.1(9)(b)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... b.a reinforced local identity and sense of place;	Ex.1, p.6, para 10	N	N	N	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraphs x-x	Y	Ex.1, p.6, para 11	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraph x	N	Applicant's written submissions paragraphs x-x
2	3.3.2.1(9)(f)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... f.housing choice and affordability;	Ex.1, p.6, para 10	N	N	Y	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraphs x-x	Y	Ex.1, p.6, para 11	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraph x	N	Applicant's written submissions paragraphs x-x
3	AO2, Table 6.2.2-2	Ex.9, p.141	For all other uses, site cover does not exceed a cumulative total of: (a) 50% of net site area up to 8 storeys;	Ex.1, p.7 para 13	Y	Y	N	-	-	Y	Ex.1, p.7, para 13	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraphs x-x	N	Applicant's written submissions paragraphs x-x
4	PO2(b), Table 6.2.2-2	Ex.9, p.141	Site cover: (b) contributes to neighbourhood character and amenity;	Ex.1, p.7 para 14	N	Y	N	-	Applicant's written submissions paragraphs x-x	N		Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraphs x-x	NY	-
5	PO15, Table 7.2.2-2	Ex.9, p.167	Development should not have an unacceptable impact in terms of noise , dust and odour. (The provision has no accompanying AO. Non compliance is alleged only in respect of noise.)	Ex.1, p.9 para 24	N	Y	N	-	Applicant's written submissions paragraphs x-x	Y	Ex.1, p.7, para 14	Applicant's written submissions paragraphs x-x	Applicant's written submissions paragraphs x-x	N	Applicant's written submissions paragraphs x-x

[NAME OF PARTY CONTENDING FOR APPROVAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part B - Documents to which s 45(8) of the Planning Act 2016 applies

Planning scheme version 8

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Item #	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non-compliance identified as an issue	Non-compliance conceded	Construction issue Y/N	Submission about construction issue	Submission about compliance and evidence relied upon to establish compliance	Non-compliance can be cured by condition/s Y/N	Where non-compliance can be cured by condition/s identified as an issue	Submission identifying evidence relied upon to establishcompliance can be cured by condition/s	Submission as to the nature of the non-compliance	Submission as to weight
1	3.3.2.1(9)(f)	Ex.9, p.116	Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied: ... f. the proposed development contributes to housing choice and affordability;	Ex.1, p.10, para 15	N	N	-	Applicant's written submissions paragraphs x-x	Y	Ex.1, p.10, para 16	Applicant's written submissions paragraphs x -x	Applicant's written submissions paragraph x-x	Applicant's written submissions paragraph x-x

[NAME OF PARTY CONTENDING FOR APPROVAL]'S SCHEDULE OF ASSESSMENT BENCHMARKS AND DRAFT PLANNING DOCUMENTS

Part C - Draft planning documents

Draft planning scheme amendments

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Item #	Draft Document	Publicly notified Y/N	Section No / Table No.	Exhibit Reference	Identified non-compliance with provision text	Where non- compliance identified as an issue	Non-compliance conceded	Construction issue Y/N	Submission about construction issue	Submission about compliance and evidence relied upon to establish compliance	Non- compliance can be cured by condition/s Y/N	Where non- compliance cannot be cured by condition/s identified as an issue	Submission identifying evidence relied upon to establish non-compliance cannot be cured by condition/s	Overtaken by events relied upon Y/N	Submission as to weight
1	Medium density zone code	Y	PO1, Table 6.2.2-2	Ex.12	Increases in building height above the Building height overlay map are not anticipated in urban neighbourhoods.	Ex.1, p.10, para 15	Y	N	-		N		-	N	Applicant's written submissions paragraph x-x