

PRACTICE DIRECTION 2 OF 2019
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 repeals and replaces Practice Direction 2 of 2018.
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) **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.
 - (b) **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 paragraphs 5 and 6 of this Practice Direction and paragraph 17 of Practice Direction 1 of 2019, the ADR Registrar may, if the ADR Registrar 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. In addition to paragraph 5, the power of the ADR Registrar to make an order or issue directions about a P&E Court proceeding under paragraph 4(a) does not extend to an order or direction in the following circumstances:
- (a) where no substantive orders or directions have been made in the proceeding by a Judge;
 - (b) where orders or directions are sought from the ADR Registrar more than 12 months after the proceeding was commenced; and
 - (c) where the orders or directions sought would vary or vacate an order or direction made by a Judge.

Note

For the purposes of paragraph 6(a), an order adjourning the proceeding is not a substantive order or direction.

7. A request for an order or direction under paragraph 4(a):
- (a) may be made at any time but, if it involves deferring a review, must be made not later than noon 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.
8. Notwithstanding paragraphs 5 and 6, 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
9 May 2019