

## PRACTICE DIRECTION NUMBER 9 OF 2023

### PLANNING AND ENVIRONMENT COURT

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#### POWER OF ADR REGISTRAR TO MAKE ORDERS & LIST A PROCEEDING FOR REVIEW

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1. This Practice Direction repeals and replaces Practice Direction 1 of 2020.
2. The purpose of this Practice Direction is to provide for the ADR Registrar to exercise the power of the Planning and Environment Court to make an order or list a proceeding for review in particular circumstances.

#### Orders

3. Subject to the limitations in paragraphs 4, 5, and 8 of this Practice Direction, 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 affects the operation of an interim enforcement order or stay.
4. 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 2016* or the *Planning and Environment Court Act 2016*;
    - (b) an order or direction under section 32 of the *Planning and Environment Court Act 2016* 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* with respect to non-compliance with a provision of the *Planning Act 2016*,

*Planning and Environment Court Act 2016* 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.
5. In addition to paragraph 4 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; or
  - (c) where the orders or directions sought would vary or vacate an order or direction made by a Judge; or
  - (d) where the proceeding is included on the Supervised case list.

Note

For the purposes of paragraph 5(a), an order adjourning the proceeding is not a substantive order or direction.

6. A request for an order or direction under paragraph 3(a):
- (a) may be made at any time but, if it involves deferring a review, must be made not later than 12 p.m. on the day before the existing review day; and
  - (b) must include 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:
    - (i) a statement that all active parties join in the request; and
    - (ii) a copy of written evidence of the consent of all other active parties.

### **ADR Registrar may list a proceeding for a review**

7. The ADR Registrar may list a proceeding for review or subsequent review by a Judge.
8. Where a proceeding has been set down for review (other than a pre-callover or pre-hearing review) and:
  - (a) 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);
  - (b) subject to paragraph 10, the period of any adjournment does not exceed one month;
  - (c) the proceeding is no more than 12 months old, calculated from the date it was filed;
  - (d) 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;
  - (e) the ADR Registrar has not deferred the review more than twice;
  - (f) the review is not listed before a specific Judge; and
  - (g) 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.
9. Any request for the ADR Registrar to list a proceeding for review on a later day must be made no later than 12 p.m. on the day immediately preceding the existing review day, and include:
  - (a) the file number;
  - (b) the names of all parties;
  - (c) the lawyer or agent (if any) who represents each party;
  - (d) the reason for the request;
  - (e) that the review is not a pre-callover or pre-trial review; and
  - (f) the number of times (if any) the review date has been deferred previously by the ADR Registrar; and
  - (g) if the request is communicated by a party on behalf of other parties:
    - (i) a statement that all parties join in the request; and
    - (ii) a copy of written evidence of the consent of all other parties.
10. The ADR Registrar may list a proceeding for a review by a Judge on a date that does not comply with paragraph 8(b) where:
  - (a) all of the requirements of paragraph 8, save for subparagraph (b), are met; and
  - (b) a review date before a Judge is not available within the period stated in paragraph 8(b) due to:

- (i) Court vacation; or
- (ii) the listing arrangements for a Registry located outside of Brisbane.

11. Where the ADR Registrar decides to list a proceeding for review before a Judge in the circumstances prescribed in paragraph 10, the review date must be the next available date after the expiration of the period stated in paragraph 8(b).



**Brian Devereaux**  
**Chief Judge**  
7 December 2023