

# PRACTICE DIRECTION NO 1 OF 2010

## PLANNING AND ENVIRONMENT COURT

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### **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 the proceedings at a minimum of expense.

### **Repeal of earlier Practice Direction**

- 2) This Practice Direction repeals and replaces Practice Direction 2 of 2008.

### **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.

### **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, in accordance with rule 19, as soon as practicable but, in any event, within 3 months after the institution of the proceeding. The application must be brought by the party with the onus<sup>1</sup> in the proceedings, unless previously brought by another party.

#### *Affidavit Material*

- 5) The affidavit material filed and served in relation to an application in which orders or directions are sought about a proceeding should include any necessary evidence showing compliance with statutory requirements<sup>2</sup>.

#### *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 the other parties a draft order (“draft order”).

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<sup>1</sup> See *Sustainable Planning Act 2009*, s 493.

<sup>2</sup> E.g. compliance with provisions concerning public notification (if applicable) – s297 of the *Sustainable Planning Act 2009* - and giving notice of the appeal – s482 and 483 - including facts relevant to any application to excuse non-compliance (s440 & s820) or to extend time(s497).

- (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 that party is seeking.

#### *Contents of Directions Order*

- 7) 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.
- 8) For an appeal or other proceeding for final relief which is proposed to be heard otherwise than on affidavit material alone, a draft order:
- (a) should ordinarily include orders or directions as to:
- i) compliance with statutory requirements, or excusal of non-compliance;
  - ii) identification of the issues in dispute, and particulars thereof;
  - iii) a dispute resolution plan;
  - iv) an exchange of lists of experts and their fields of expertise;
  - v) disclosure;
  - vi) meetings of experts and the production of joint reports;
  - vii) exchange of experts statements (if any) directed to the points of disagreement identified in the joint reports;
  - viii) the likely duration of the hearing, the sittings within which the proceeding is proposed to be heard<sup>3</sup>, review dates, including a date for a pre callover review and the date for mention at the callover for the relevant sittings<sup>4</sup>; and
- (b) should also include such other orders or directions as may be appropriate for the particular matter.

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

- 9)
- (a) The ADR Registrar may, pursuant to rule 40, list a proceeding for review or further review by a judge.
- (b) If, in respect of a proceeding which is already set down for review (other than a pre-callover review):
- (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); and
  - (ii) all active parties tell the ADR Registrar the reason for requesting the proceeding be listed for review on a later day, in lieu of the existing review day; and
  - (iii) the ADR Registrar considers it appropriate to do so

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<sup>3</sup> Or the dates on which the proceeding is proposed to be heard.

<sup>4</sup> Provision for a mention at a callover does not apply to a proceeding set down to be heard on specific dates.

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.

10) Any request for the ADR Registrar to list a proceeding for review on a later day must:

- (a) be made no later than 1.00pm on the day immediately preceding the existing review day; and
- (b) state:
  - (i) the file number;
  - (ii) the name of all active parties;
  - (iii) the lawyer or agent (if any) who represents each active party;
  - (iv) the reason for the request; and
  - (v) that the review is not a pre-callover review
- (c) 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**

11) 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, in the case of an application for orders or directions about the conduct of the proceeding:
  - (i) all parties agree to the terms of a draft order; and
  - (ii) affidavits have been filed to establish compliance with statutory requirements; and
  - (iii) all parties agree there has been compliance with statutory requirements; and
  - (iv) the trial of the proceeding is capable of being set down in the sittings<sup>5</sup>, nominated in the Order, and is not expected to last more than 4 days; and
  - (v) the Order includes all the matters set out in para 8 (a); and
  - (vi) the Order is communicated, electronically or by delivery of a hard copy, to the Associate of the Judge sitting on the return date<sup>6</sup>, with notice on behalf of each party confirming compliance with each of the matters set out above, not later than 24 hours before the application is to be heard; and,
  - (vii) the Associate confirms an appearance is not required; 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.

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<sup>5</sup> Or on the dates.

<sup>6</sup> and, in matters dealt with in Brisbane, the List Manager.

## **Subsequent Procedures**

### *Review*

12) At any review the parties must:

- (a) inform the court 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) inform the court 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.

13) 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*

14) 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*

15) 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, statements of evidence or other documents for perusal prior to trial, and to make arrangements for any site inspection.

**Chief Judge PM Wolfe**

16 April 2010