

## **PLANNING AND ENVIRONMENT COURT**

### **PRACTICE DIRECTION NO. 1 OF 2000**

Practice Directions 1 of 1992 and 1 of 1995 are revoked.

The following directions about dispute resolution procedures and expert evidence apply to all proceedings commenced in the Planning and Environment Court.

The directions replace Practice Direction 1 of 1995. In dealing with applications outside Brisbane, the court may adapt the requirements in paragraphs 1 to 7, to accommodate local circumstances.

#### **Return Dates for Applications**

1. A party wishing to file an application within a proceeding shall first obtain from the Planning and Environment Court list manager a time and date for the hearing. The application shall be made returnable at that time and date.

#### **Directions for Hearing**

2. Any party to a proceeding seeking to have it listed for hearing may make an application under Rule 20 for directions, at any time after an entry for hearing is filed.
3. On the hearing of such an application for directions:
  - (a) those facts upon which the court's power to deal with the matter depends, must be established, and
  - (b) each party to the proceeding will be required to give a considered estimate of the time which the hearing of the proceedings will take.
4. The application will otherwise be subject to the requirements of Rules 20 and 21.
5. If the court is satisfied that the matter is one which should proceed to hearing it may:
  - (a) allocate the proceeding to a pool of matters for hearing during a specific period of the court's year;
  - (b) adjourn the application to a date which will be some two weeks prior to the commencement of that pool of matters;
  - (c) give any necessary directions including those dealing with dispute resolution procedures and expert evidence;
6. At the further hearing of the application the parties to the proceeding must:
  - (a) inform the court about whether or not the requirements of the Rules, any directions, and this practice direction have been duly followed;

- (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.
  - (c) give to the court a list of witnesses whom each party proposes to call
7. At that further hearing of the application the court will, if it considers it appropriate to do so, distribute within the pool those proceedings which will be heard and indicate to the parties when their proceeding might be expected to be heard.

### **Dispute Resolution Procedures**

8. The parties attending any directions hearing under Rule 20 must be prepared to deal with dispute resolution procedures.
9. The court may direct that the parties confer “without prejudice”, and report by a certain date.

If that order is made, then the order will have these consequences:

- (a) The parties must confer “without prejudice” for the purposes of resolving or narrowing the points of difference between them.
  - (b) The conference is to be held at a time and place to be agreed, or fixed by the court.
  - (c) The conference shall be attended by a representative of each party who is familiar with the substance of the dispute. That person must come with authority to settle the issues in dispute, or those that are capable of resolution.
  - (d) The order may include a direction that other persons (such as experts) attend the conference.
  - (e) After the conference, the parties shall file a report signed by the representatives of each party certifying that the conference has been held. The report must state the substance of any resolution that has been arrived at, or that there has been no resolution.
10. The court may make directions about the submission of any continuing conflict to a dispute resolution process as agreed between the parties or as ordered by the Court.
11. The court may order that assessors be appointed, if there are issues under the *Environmental Protection Act*.

### **Expert Evidence**

12. On the hearing of an application for directions, orders may be made about the use of expert evidence.
13. Those orders may deal with procedures such as:
- (a) The requirement to give the court’s Guidelines for Experts to an expert. (Those Guidelines are attached)

- (b) The desirability of appointing a court expert to report on one or more issues;
  - (c) The dates by which the reports of experts are to be provided to the other parties;
  - (d) Any application by a party to call evidence from more than one expert witness on a particular subject of expertise;
  - (e) A direction that experts meet before the hearing. Such a direction will have these consequences:
    - (i) All things said or done at the meeting will be “without prejudice”, until there is formal agreement, or disagreement, about an issue;
    - (ii) The experts shall produce a joint report, identifying where they are in agreement, and where they are in disagreement. The basis of any disagreement is to be stated. The report will be provided to the parties, and to the court.
    - (iii) The parties and their legal representatives are not to participate in the meeting (except at the request of all parties). An expert must not accept instructions to adopt, or reject, any particular opinion.
  - (f) The possibility of the parties agreeing to appoint a single expert, to report on an issue, or issues;
  - (g) The possibility of settling a joint letter of instruction to a single expert.
  - (h) The desirability of expert witnesses being called in groups according to their subjects of expertise, rather than in the separate cases of the parties.
  - (i) The possibility of swearing expert witnesses together.
14. Except with the court’s leave, there are to be no “response reports”. The substance of any such comments should be incorporated in an amended report.
15. All experts must acknowledge, in writing, that they have read and understood the Guidelines.

P.M. Wolfe  
Chief Judge

28 August 2000

## **PLANNING & ENVIRONMENT COURT OF QUEENSLAND**

### **GUIDELINES FOR EXPERTS**

#### **Purpose of this Document**

1. The purpose of this document is to provide general guidelines to expert witnesses of all professions. It is not intended to address all questions that an expert witness may have regarding the provision of evidence. It is suggested that any questions be addressed to the legal representative who has engaged your services.
2. Practitioners must give a copy of these guidelines to any expert witness they propose to retain for the purpose of giving a report or giving evidence in a proceeding in this court.
3. Any report shall contain an acknowledgment, that the expert has read and understood these guidelines.

#### **General Duty to the Court**

4. An expert witness has an overriding duty to assist the court on matters relevant to his or her area of expertise.
5. An expert witness is not an advocate for a party.
6. The expert witness's paramount duty is to the court and not to the person retaining the expert.
7. Any report is to be addressed to the court. It is not to be "to" or "for" a party.

#### **The Report of the Expert Witness**

8. An expert's written report must give details of the expert's qualifications and all material or literature used in making the report.
9. All assumptions made by the expert should be clearly and fully stated.
10. The report should identify who carried out any tests or experiments upon which the expert relied in compiling the report. It should give details of the qualifications of the person who carried out any such test or experiment.
11. Where a number of opinions are provided in the report, the expert should summarise them.
12. The expert should give reasons for each opinion.
13. At the end of the report the expert should declare that "[the expert] *has made all the inquiries which [the expert] believes are desirable and appropriate and that no matters of significance which [the expert] regards as relevant have, in [the expert's] knowledge, been withheld from the court*".
14. There should be attached to the report, or summarised in it, the following:

- (a) all instructions (original and supplementary and whether in writing or oral) given to the expert which define the scope of the report, the facts, matters and assumptions upon which the report proceeds; and
  - (b) the documents and other materials which the expert has been instructed to consider.
15. If, after exchange of reports (or at any other stage), an expert witness changes his or her view on a material matter, such change of view should be communicated in writing without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the court.
16. If an expert's opinion is not fully researched because he or she considers that insufficient data is available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate, without some qualification, that qualification must be stated in the report.
17. The expert witness should make it clear when a particular question or issue falls outside his or her expertise.
18. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports.

### **Experts' Conference**

19. (a) If experts retained by the parties meet to discuss the differences between the parties, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement.
- (b) If the experts cannot reach agreement on matters of expert opinion, they should specify their reasons for being unable to do so.
- (c) All discussions are to be "without prejudice" until formal agreement, or disagreement, is reached on an issue.