

PRACTICE DIRECTION NUMBER 10 OF 2023
PLANNING AND ENVIRONMENT COURT

PARTICIPATION OF REFERRAL AGENCIES

Purpose

1. The purpose of this Practice Direction is to set out case management procedures about the participation of referral agencies who are not a party to, or elect to take no active part in, a proceeding, to ensure the just and expeditious resolution of disputed issues.

Application

2. This Practice Direction applies after 18 March 2024 to proceedings in the Brisbane registry of the Court to which Practice Direction Number 3 of 2023 applies.

Excusal from active participation

3. Where a referral agency has elected to be a co-respondent to a merits appeal but seeks excusal from active participation, an application will need to be made to the Court for leave, supported by affidavit material.
4. Subject to any order of the Court, it is expected the affidavit material filed in support of an application for excusal from active participation will:
 - (a) be sworn or affirmed by the person with authority to give instructions on behalf of the referral agency in the proceeding;
 - (b) identify the trigger for the referral agency's jurisdiction;
 - (c) exhibit a copy of the documents defining the issues in dispute in the proceeding;
 - (d) explain why the defined issues in dispute do not have direct, or indirect, application to the referral agency's jurisdiction;
 - (e) confirm instructions have been given that the referral agency does not contend for approval or refusal of the application the subject of the proceeding; and
 - (f) confirm instructions have been given that the referral agency does not wish to be heard in the proceeding about the defined issues in dispute.

Notice to be given to a referral agency

5. When a party to a proceeding takes any of the following steps:
 - (a) files and serves a list of reasons for approval or refusal that are not already stated in a decision notice or Notice of appeal;
 - (b) brings an application to identify a new issue/s;
 - (c) brings an application to make a minor change to a development application or a change application (other change);

- (d) seeks a change/s to a development approval that was not the subject of a Change application for a minor change in its original form;
- (e) gives notice that a condition/s will be accepted to address reasons for refusal, or to support an approval,

it is, as soon as practicable thereafter, to seek an order from the Court about the need, if any, to give written notice of the step to a referral agency, who is not a party, or is not an active party to the proceeding.

- 6. Where written notice is required to be given by an order of the Court to a referral agency that is not a party or active party, and the referral agency is the Chief Executive under the *Planning Act 2016*, notice is to be sent to saraappeals@dsdilgp.qld.gov.au.

Referral agency response

- 7. To assist the Court, a referral agency who receives written notice about a matter referred to in paragraph 5 is encouraged to respond, in writing, no more than 10 business days after receiving the notice. The response should state the referral agency's position, including, but not limited to whether it:
 - (a) seeks to be heard in relation to the step taken;
 - (b) will make an application to join the proceeding under r 69 of the *Uniform Civil Procedure Rules 1999*; and
 - (c) intends to give written notice of draft amendments to any referral agency response.
- 8. Compliance with paragraph 5 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.



Brian Devereaux
Chief Judge

7 December 2023