

**PRACTICE DIRECTION NUMBER 6 OF 2023**  
**PLANNING AND ENVIRONMENT COURT**

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**LISTING FOR HEARING**

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**Purpose**

1. The purpose of this Practice Direction is to set out procedures for the efficient listing of proceedings for hearing.

**Application**

2. The Practice Direction applies to the following proceedings in the Brisbane registry of the Court:
  - (a) a proceeding commenced after 18 March 2024; and
  - (b) an existing proceeding commenced before 18 March 2024 where no step has been taken in the proceeding;<sup>1</sup> and
  - (c) an existing proceeding commenced before the date of this Practice Direction, with necessary changes to reflect, among other things, the steps taken in the proceeding and its readiness for hearing.
3. Further to paragraph 2(c), existing proceedings commenced before the date of this Practice Direction, which are not the subject of case management by a specific Judge, will be managed and listed for hearing using the Callover system. Where an existing proceeding is case managed by a specific Judge, that proceeding will be treated and listed for hearing as if it were included in the Supervised case list.

**Definitions**

4. For the purposes of this Practice Direction, the following terms are defined:

“**Listing Judge**” is a reference to a Judge of the Court who manages the Brisbane P&E List from time to time;

“**proceeding**” means the whole, or part, of a proceeding in the Planning and Environment Court;

“**Rules**” is a reference to the *Planning and Environment Court Rules* as made from time to time.

**Types of case management and hearing listing methods**

5. A proceeding will be managed and listed for hearing in one of three case management streams. The streams are:
  - (a) the Ready for hearing list;

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<sup>1</sup> A step in the proceeding does not include an adjournment or early without prejudice meeting.

- (b) the Supervised case list; and
- (c) the Callover system.

### **Ready for hearing list**

6. At the First return date, or subsequent review, a proceeding may be included in the Ready for hearing list. A proceeding eligible for inclusion in this list will require a hearing of five days or less and is expected to be Ready for hearing (as defined in the applicable Practice Direction) within a period of 12 months calculated from the date the proceeding was filed.
7. To obtain hearing dates for a proceeding included in the Ready for hearing list, the suite of orders or directions proposed to prepare the proceeding for hearing will nominate a date for a '*pre-hearing review*'. To remain on the Ready for hearing list, this review must occur no later than 12 months after the proceeding was filed. The pre-hearing review will be conducted by the Listing Judge.
8. The purpose of the pre-hearing review is, in the first instance, to demonstrate the proceeding is Ready for hearing as defined in the relevant Practice Direction. If satisfied a proceeding is Ready for hearing, the Listing Judge may allocate fixed hearing dates. The hearing dates that may be allocated are not limited to a sittings as is the case for the Callover system. Counsel availability will be taken into account when fixing hearing dates for a proceeding in the Ready for hearing list.
9. The party who is required by a Practice Direction to file an affidavit to demonstrate readiness for hearing must file and serve a copy of that affidavit on the other parties no later than three business days before the pre-hearing review. On receipt of that affidavit, the other parties must notify whether they accept the proceeding is Ready for hearing as defined in the relevant Practice Direction. Where a party contends the matter is not ready for hearing, any competing affidavit must be filed and served no later than 4 pm on the business day before the pre-hearing review.
10. Compliance with paragraph 9 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.
11. It is expected that the advocate who will appear at the hearing (including any self-represented litigant, agent, solicitor advocate or Counsel) will appear at the pre-hearing review. The hearing advocate must be:
  - (a) familiar with the proceeding and its history;
  - (b) informed as to whether there are any outstanding issues or matters that may impact on readiness for hearing;
  - (c) informed as to whether settlement or compromise of the proceeding has been exhausted;
  - (d) in a position to give realistic time estimates; and
  - (e) in a position to explain, by reference to affidavit material, where and why there are issues with respect to the availability of witnesses.

12. A proceeding may be listed for hearing where the Listing Judge is satisfied:
  - (a) the proceeding is Ready for hearing as defined in the relevant Practice Direction; or
  - (b) there are exceptional circumstances in relation to the proceeding for the purposes of r 22(b) of the Rules.
13. A proceeding that is listed for hearing will be reviewed by the hearing Judge at a subsequent review. An order fixing the date for that subsequent review will be made at the time the proceeding is listed for hearing. At this subsequent review, the parties should expect the hearing Judge to make orders of the kind set out at:
  - (a) paragraph 28 of Practice Direction No. 3 of 2023, Determination of merits appeals;
  - (b) paragraph 25 of Practice Direction No. 4 of 2023, Determination of originating applications seeking declarations about development approvals and development applications; and
  - (c) paragraph 28 of Practice Direction No. 5 of 2023, Determination of proceedings involving enforcement notices and enforcement orders.
14. Where a proceeding is not listed for hearing after a pre-hearing review, the Listing Judge may:
  - (a) adjourn the pre-hearing review to a later date; or
  - (b) remove the proceeding from the Ready for hearing list and include it in the Callover system.
15. Whilst a pre-hearing review may be adjourned to a later date, it should not be assumed more than one adjournment will be granted. Ordinarily, a proceeding that requires the adjournment of a pre-hearing review on more than one occasion will be removed from the Ready for hearing list and included in the Callover system.
16. In circumstances where a proceeding is removed from the Ready for hearing list and included in the Callover system, the Listing Judge may also make such orders or directions that are appropriate for the resolution or determination of the proceeding. This may include allocating the proceeding to a callover for future sittings of the Court.

### **Supervised case list**

17. At the First return date, or subsequent review, proceedings may be included in the Supervised case list by the Listing Judge. The purpose of this list is to facilitate the resolution and determination of proceedings that require more intense case management given their complexity or length.<sup>2</sup>
18. Any application to include a proceeding in the Supervised case list should be made as early as is practicable in the life of a proceeding.
19. When considering whether to include a proceeding in the Supervised case list, the following matters will be taken into account:
  - (a) the nature of the proceeding;

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<sup>2</sup> This may include proceedings with an estimate of less than five days.

- (b) the number and type of disputed issues;
  - (c) the complexity of the disputed issues;
  - (d) the number of parties;
  - (e) the number of witnesses; and
  - (f) the estimated time for the hearing.
20. Where a proceeding is included in the Supervised case list, a subsequent review date will be fixed. This will be a review before the Judge allocated to supervise the proceeding (*the Supervising Judge*). Ordinarily, directions or orders requiring steps to be undertaken by the parties prior to this review will not be made. Such orders and directions will be a matter for the Supervising Judge.
  21. The Supervising Judge will case manage a proceeding up to the point where it can be demonstrated it is Ready for hearing as defined in the relevant Practice Direction. Once the Supervising Judge is satisfied the proceeding is Ready for hearing, the matter will be returned to the Listing Judge for review.
  22. At the review before the Listing Judge, the proceeding may be given fixed hearing dates or placed on a callover for a future sittings of the Court.
  23. A proceeding may be given fixed dates where it is less than 12 months old (calculated from the date of filing), and it is convenient for the Court to do so. Counsel availability for a proceeding on the Supervised case list will be taken into account in fixing hearing dates for a proceeding that is less than 12 months old. A proceeding that is given fixed hearing dates by the Listing Judge will also be reviewed by the hearing Judge at a subsequent review. An order fixing the date for that subsequent review will be made at the time the proceeding is listed for hearing. At the subsequent review, the parties should expect the hearing Judge to make orders of the kind set out at:
    - (a) paragraph 28 of Practice Direction No. 3 of 2023, Determination of merits appeals;
    - (b) paragraph 25 of Practice Direction No. 4 of 2023, Determination of originating applications seeking declarations about development approvals and development applications; and
    - (c) paragraph 28 of Practice Direction No. 5 of 2023, Determination of proceedings involving enforcement notices and enforcement orders.
  24. Where a proceeding is more than 12 months old, fixed hearing dates will, ordinarily, not be given. The proceeding will be allocated to a callover for a future sittings. Once the proceeding is allocated to a callover, the parties should not assume it will be adjourned from one callover to the next. Nor should it be assumed that the unavailability of Counsel will be regarded as a sufficient reason as to why the proceeding should not be set down in the callover to which it is allocated.

### **The Callover system**

25. The Callover system applies to all proceedings that are not included in the Ready for hearing list or Supervised case list.
26. At the First return date or a subsequent review, an order may be made placing a proceeding on a callover for a sittings of the Court. Sittings typically align with calendar

months. A callover will, generally, be held in the second week of the month for a sittings that commences about six weeks later.

*Example-*

*The June sittings of the Court are scheduled for Monday, 3 June to Friday 28 June. The callover for the June sittings would be held on a date to be advised between 12 and 19 April. The pre-callover review would be held 2 business days prior to the callover.*

27. In addition to placing a proceeding on a callover, an order will be made listing the proceeding for a pre-callover review. The purpose of the pre-callover review is to satisfy the Court the proceeding is Ready for hearing as defined in the relevant Practice Direction.
28. The party who is required by a Practice Direction to file an affidavit to demonstrate readiness for hearing must file and serve a copy of that affidavit on the other parties no later than three business days before the pre-callover review. On receipt of that affidavit, the other parties must notify whether they accept the proceeding is Ready for hearing as defined in the relevant Practice Direction. Where a party contends the matter is not ready for hearing, any competing affidavit must be filed and served no later than 4 pm on the business day before the pre-hearing review.
29. Compliance with paragraph 28 assists the Court to discharge its obligations under s 10(1) of the *Planning and Environment Court Act 2016*.
30. It is expected that the advocate who will appear at the hearing (including any self-represented litigant, agent, solicitor advocate or Counsel) will appear at the pre-callover review. The hearing advocate must be:
  - (a) familiar with the proceeding and its history;
  - (b) informed as to whether there are any outstanding issues or matters that may impact on readiness for hearing;
  - (c) informed as to whether the prospect of settlement or compromise of the proceeding has been exhausted;
  - (d) in a position to give realistic time estimates; and
  - (e) in a position to explain, by reference to affidavit material, where and why there are issues with respect to the availability of witnesses.
31. At the mention of the proceeding at the callover for the relevant sittings of the Court, the Listing Judge will, if considered appropriate, set the proceeding down for hearing to commence on specific dates where:
  - (a) the proceeding is Ready for hearing as defined in the relevant Practice Direction; or
  - (b) there are exceptional circumstances in relation to the proceeding for the purposes of r 22(b) of the Rules.
32. If dates are available, a proceeding will be set down for hearing. For a proceeding that is more than 12 months old, it should not be assumed that an agreement between the

parties, or unavailability of Counsel, will be regarded as a sufficient reason to adopt a different approach.

33. A proceeding that is listed for hearing will be reviewed by the hearing Judge at a subsequent review. An order fixing the date for that subsequent review will be made at the same time the proceeding is listed for hearing. At that subsequent review the parties should expect the hearing Judge to make orders of the kind set out at:
- (a) paragraph 28 of Practice Direction No. 3 of 2023, Determination of merits appeals;
  - (b) paragraph 25 of Practice Direction No. 4 of 2023, Determination of originating applications seeking declarations about development approvals and development applications; and
  - (c) paragraph 28 of Practice Direction No. 5 of 2023, Determination of proceedings involving enforcement notices and enforcement orders.

#### **After allocation of hearing dates**

34. After becoming aware of circumstances that indicate the time allocated to hear a proceeding is unlikely to be adequate, it is the responsibility of the advocate who will appear at the hearing (including any self-represented litigant, agent, solicitor advocate or Counsel) for any party to advise the hearing Judge of the inadequacy forthwith.
35. The hearing Judge should be notified forthwith if the proceeding has settled or there is an application for an adjournment.
36. Hearing dates will not be vacated by consent of the parties.
37. It should not be assumed a proceeding will be adjourned where the adjournment is uncontested.
38. If an application is made to adjourn a hearing, the hearing Judge should be asked whether the application can be heard and determined in advance of the hearing. If this is not convenient to the hearing Judge, the application will be allocated to the P&E Applications list for determination.



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