

Planning and Environment Court

Procedure Update - December 2014

From - ADR Registrar

The following is an update on current procedures in this Court.

- [a] Practice Direction 8 of 2014
- [b] Consent orders generally
- [c] Perfection of orders
- [d] Scanning and 'USB' devices
- [e] Special reviews (also known as 'the naughty list')
- [f] Section 491B hearing directions

[a] Practice Direction 8 of 2014

Practice Direction 8 of 2014 was issued on 30 October 2014, and replaces Practice Direction 6 of 2013. Essentially, it is more or less the same but with this important difference that it now permits the ADR Registrar to make consent orders in respect of the matters referred to in rule 19 and in particular those set out in rule 19[5] which includes orders about public notice and service of proceedings where there are no issues of non-compliance.

In the case where a consent order is sought, which includes an order those matters have been satisfied, the request for the consent order is to include a statement by the parties that the requirements of the *Sustainable Planning Act 2009* have been correctly satisfied and there are no matters of non-compliance requiring excusal.

[b] Consent Orders Generally

A request for a consent order may be made by email to the ADR Registrar either to PE.Registrar@justice.qld.gov.au or Steven.adams@justice.qld.gov.au.

All that is needed is a statement 'We consent to the above order' and the signature of each party to be endorsed on the order. Please refrain from providing consent in any other way as then I do not need to track through a whole lot of emails etc. to work out what has been consented to. This makes it faster for me and ultimately you.

If the order seeks jurisdictional findings, you must include in the email the statements referred to in [a] above.

Please note, the order should state it is a CONSENT ORDER and there is no need to include the usual 'footer' as it is not required.

Provided I am prepared to make the order, my practice is to sign and email it to the List Manager for linking to the file, and to inform you the order has been made. If you require a copy, download it from the eCourt site.

Do send me such requests as soon as you can as I may be absent in a conference and not get to see my emails for some time or even next day.

If there is a last minute consent order, say on the morning of the review, I am happy for parties to appear before me in my chambers on level 10 to save waiting before the Judge. If I am in, I will make the order. I suggest you advise me of your intentions beforehand.

[c] Perfection of Orders

For some time now the procedure for taking out orders has been as set out in the memo set out below. Please note it is still the procedure.

[d] Scanning and USB Devices.

Generally the profession has adopted the practice of providing a **USB** of a document either at the time of filing or when a document is handed to the Judge [particularly a final order with a conditions package].

This is just a reminder of my request for practitioners to continue to or to adopt the practice of providing documents on a **USB** drive.

This has been most helpful to the registry and will eventually assist in my plan to move to eFiling.

ALL PEC files, no matter where lodged, are now available on eSearch as recently Cairns, Townsville, Maroochydore and Southport were configured to allow scanning and linking of PEC files. Since then I figured a way to scan and link files in other registries, it is a little cumbersome but given that there are very few files at registries outside those above and Brisbane it works.

[e] Special reviews (also known as 'the naughty list')

As you are all aware Practice Direction 2 of 2014 requires an application for directions within 6 weeks of filing an originating proceeding and where that is a conditions or an Infrastructure Charge Notice (ICN) appeal to make application for a without prejudice conference within 1 month of filing.

This review by the court is of those files identified by me in those categories as well as other files which for one reason or another have been in-active to ensure action is taken to progress the proceeding as the court does not like to see files 'parked' for other reasons/purposes.

A review occurs about every 4/5 months and a letter is generated automatically to each party/lawyer advising of the review date. Following receipt of the letter, Parties are encouraged to take a step before the review date.

At the review you should expect the Judge to order a mediation or some other specific step.

The name 'Naughty List' was coined by the profession and has stuck. For the uninitiated it refers to files identified as having had no action within a 2 month period preceding the review.

[f] Section 491B ADR Registrar Hearings

Since 2013, the ADR Registrar has had power to hear and determine relatively small and simple disputes provided a Judge considers it appropriate he does so. The idea is to provide a cheap quick and simple method of dispute resolution as to which see the words of S 491B, the only draw back is the ADR Registrar can't do both a without prejudice conference and a hearing for obvious reasons.

Identification of suitable proceedings occurs in at least 2 ways, the first is by my looking at each new proceeding and the second is for the lawyers [especially lawyers for the local authority] to look at each new proceeding to consider its suitability for such a course of action. If you do identify a proceeding let me know and I will list it immediately. So far, Judge Rackemann has not required any formality such as supporting affidavits. If I am aware of the application, I will hold a directions hearing immediately after the order is made on the same day. This will save another appearance.

Attached is a draft of a typical directions order following a direction by the court for the ADR Registrar to hear a proceeding. It should be adapted to suit the circumstances.

Perfection of orders

The registry no longer requires orders to be filed i.e. signed and sealed unless a party so requests, refer UCPR Rule 661.

Accordingly, one copy of a proposed draft order should be handed to the presiding judge who will, if he agrees, place his initials on it and 'Order as per Draft' [OAPD] or if he amends it 'Order as per amended draft' [OAPAD] and that document will be placed on the file and scanned to the Courts eSearch facility. No longer will the registry require additional copies to be supplied and none will be signed or sealed UNLESS for some reason a party needs a sealed order.

It is expected the only occasions when a sealed order will be required are:

- [a] where the Order is FINAL and in that case 2 copies may be handed to the presiding judge or only 1 to the judge and the additional copy can be given to the registry for signing and sealing
- [b] where the OAPAD is not legible, or
- [c] a party needs to use the order for enforcement purposes.

In the 2 latter cases, the additional copy can be given to the registry or emailed to the List Manager who will print, sign and seal and put out for collection.

When the order is only endorsed on the file by the associate [i.e. there is no draft] a party may, if it so wishes, obtain a copy of that order and present a typed version to the registry for signing and sealing. It may also be emailed to the List Manager.

Orders containing conditions packages

A new Practice Direction is imminent which will provide that where 2 or more copies of a Final Order containing a conditions package are tendered for filing the order must contain or be accompanied by a statement that each copy of the conditions package is identical and signed by the party [or its lawyer or agent] having carriage of the order.

Each page of a conditions package must be numbered sequentially and the order must make reference to those page numbers.

Pending the new Practice Direction it is requested parties commence to adopt the above practices.

DRAFT 491B DIRECTIONS ORDER
As at 12 September 2014

- 1 On or before the / / of 2014 the parties in consultation are to prepare a book of **RELEVANT** common material [BCM]

[for example relevant material parts of the documents lodged with or held by the assessment manager such as the Application, supporting reports, Statutory Instruments and the like. Please do not put in documents just for the sake of it, think about their relevance to the issues in dispute and keeping costs down].

- 2 A copy of the BCM is to be provided to the ADR Registrar at least 3 days before hearing.
- 3 The issues in dispute are those set out in paragraphs of the Notice of Appeal and the

[Alternate]

On or before the / / of 2014, the parties are to reach agreement on the issues in dispute and in the event they are not agreed the parties are to appear before the ADR Registrar for the purpose of determining the issues in dispute.

- 4 On or before the / / of 2014 each party is to notify the other parties which, if any, of those issues are abandoned or in respect of which it is not intended to lead expert evidence.

[Consistent with the theme of s491B hearings, consideration is to be given to refining and limiting the issues in dispute so as to ensure a quick, informal and non-technical hearing as possible.]

- 5 Evidence in chief for each party is to be provided by way of affidavit and is to be served on each party and the ADR Registrar on or before the / / of 2014.

[Note 1: Material in the BCM is not to be exhibited or annexed to such affidavits but is to incorporate it by reference to the BCM

Note 2: Consider joint appointment of a single expert]

- 6 Affidavits of evidence in reply to evidence in chief are to be served on each party and the ADR Registrar on or before

[Note: this may limit or obviate the need to call a witness for cross examination and will be a

factor to be taken into account in an application under 8 below]

- 7 On or before [three [3] days before the date for hearing] each party is to provide each other party and the ADR Registrar with a concise outline of the case of that party and any objections to evidence with the reasons for those objections.
- 8 The evidence in the Appeal is limited to the affidavit material and other documents tendered, unless leave is given by the ADR Registrar to call a witness to give evidence in chief or for a witness to be called for cross examination.

Any party who proposes to seek leave must give notice including reasons for seeking leave to the parties and the ADR Registrar at least 3 days before the hearing.
- 9 All documents are to be provided electronically where possible and where leave is granted to call oral evidence that evidence is to be presented by means of the courts eTrial electronic technology.
- 10 The appeal is to be reviewed before the ADR Registrar for readiness for hearing on / / of 2014
- 11 The hearing of the appeal is set down for... day/s on the / / of 2014. A site visit is to occur at 0900 on the first day. Final submissions are to be in writing save where leave has been given to make oral submissions. Submissions are to address conditions of approval in the event the application is approved.
- 12 Liberty to apply to the ADR Registrar on the giving of one days notice to each other party.

Note: *The above directions are directed at achieving a hearing “as quickly and with as little formality and technicality as is consistent with a fair and appropriate consideration of the issues”.*

These are suggested directions only and parties are to give consideration to appropriate directions consistent with the circumstances of the case.

Generally these directions are intended to capture the spirit of a “hearing on the papers” but with the proviso I want litigants to be satisfied they “have had their day in court” and “have been heard”. Accordingly, although I have directed written submissions be provided, I am partial to allowing in addition [but not in substitution] oral submissions at the conclusion of the hearing. I am also partial to allowing a short adjournment where oral evidence has been given to give litigants an opportunity to peruse the transcript.

I am happy to make my copy of the transcript available for perusal only. [Note the transcript is protected by copyright and must not be copied.]

I invite suggestions to improve/streamline the conduct of these hearings.

I may be contacted at: Steven.adams@justice.qld.gov.au