ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT
PRACTICE DIRECTIONS

TABLE OF CONTENTS

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 1

APPEALS - POST CONFERENCE & LISTING

1. Preliminary

The Court is concerned, in the interest of parties who come before it, to limit the hearing of proceedings to those matters that are clearly in issue between the parties. Accordingly, the Court will endeavour to encourage the parties to explore the issues at an early stage, to ascertain whether the hearing time might be limited. In addition, the Court is concerned to ensure that parties do not incur expenses associated with late amendments to plans and changes to proposals. To this end, the Court directs that the procedures set out in the following paragraphs be adopted.

2. At the Conclusion of the Conference

Immediately after the closure of a conference conducted pursuant to Section 16 of the *Environment, Resources and Development Court Act 1993*, the chairperson will ask the parties:

2.1 their views concerning the composition of the bench to hear and determine the matter; and

2.2 to identify the issues and advise whether there is a legal issue to be determined, and if so, the nature of the legal issue.

3. Where all parties request a full bench, the matter will be set for a full bench. In all other situations, the views of the Senior Judge must prevail in accordance with Section 15 of the *Environment, Resources and Development Court Act 1993*. It is the view of the Senior Judge that if an appeal is likely to involve a legal issue, the matter should be listed before a judge, either sitting alone or with commissioners.

4. Composition of bench for hearing is determined

Where the chairperson has obtained the final views of the Senior Judge as to the composition of the bench, the following may occur:

4.1 the chairperson may order that any party provide particulars of its case;

4.2 where the chairperson considers it appropriate, he or she may set, in consultation with the parties, a time-table for the following:

4.2.1 the filing and service of any amended plan;

4.2.2 a meeting of proposed expert witnesses having similar expertise, for the purpose of identifying the differences in opinion between them; and

4.2.3 the exchange of expert reports

4.3 the chairperson may consult the Listings Co-ordinator to ascertain a hearing date except where there is good reason not to list the matter for hearing; and

4.4 the Listings Co-ordinator will either:

4.4.1 fix a date for the hearing of the appeal; and/or

4.4.2 assign the matter to a member of the Court (the member assigned), depending upon whether the matter is ready to be listed

4.5 where a hearing date has been allocated, the chairperson shall inform the parties of the hearing date;

4.6 where a matter has not been listed for hearing, a time and date for a directions hearing will be fixed (before the member assigned, or if no member has been assigned, a Judge). At a subsequent directions hearing, the composition of the bench will be determined and a date for the hearing of the appeal allocated, after consultation with the Listings Co-ordinator.

5. Composition of bench for hearing to be determined

Where, at the conclusion of the conference, the composition of the bench has not been finally determined by the Senior Judge, the conference chairperson, after consultation with the Listings Co-ordinator, will list the matter for directions before a Judge. The directions hearing may take place either by telephone (but not by mobile telephone) or in a courtroom, whichever is more convenient to the parties. At the directions hearing, the following may occur:

5.1 the parties will inform the Court with respect to:

5.1.1 the issues for determination, as between the parties;

5.1.2 any proposed amendments, the exchange of expert reports and meetings of experts; and

5.1.3 any other matters relevant to the listing of the appeal, including the availability of witnesses and the estimated duration of the hearing.

5.2 where the Court has not previously set a timetable, the Judge will set, in consultation with the parties, a time-table for the following:

5.2.1 the filing and service of any amended plan;

5.2.2 the exchange of expert reports; and

5.2.3 a meeting of proposed expert witnesses having similar expertise, for the purpose of identifying the differences in opinion between them.

5.3 following consultation with the Listings Co-ordinator, the Judge will advise the date(s) for the hearing of the appeal.

6. Accommodating Parties' Preferences

Parties should attend the conference or directions hearing at which it is expected that the appeal will be listed for hearing, informed as to the availability of counsel. The Court will endeavour to accommodate each party's respective counsel, but it will not always be possible to accommodate everyone.

7. Conference Dispensed With

The Court, when it has dispensed with the conference, will set the matter down before a Judge, for directions.

8. Re-Opening of Conference/Referral to Mediation

The parties, by agreement, may request the Court, either:

8.1 at any time prior to the scheduled hearing date, to reconvene the conference of the parties; or

8.2 at any time, to appoint a mediator to endeavour to achieve a negotiated settlement of the matter.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 2

ADJOURNMENT APPLICATIONS & LISTING OF MATTERS

Preliminary

1. In the past, adjournment applications have on occasions been made shortly before the conference or hearing. This has created difficulties for the Court staff. It has been difficult to deal fairly with late applications for adjournment. Applications should be made in a timely fashion, in fairness to other parties and in the interests of the efficient disposal of the business of the Court. Conference applications may be made in letter format by email (erdcourt@courts.sa.gov.au), or facsimile. For all other applications refer to paragraphs 9 and 10 below and Practice Direction 8 (Electronic Non-Contentious Applications).

General

2. Conference applications must:

2.1 be in writing, and may be made in letter format per facsimile, or by email; and

2.2 include the telephone number (office hours) of the applicant (which must not be a mobile telephone number) and, so far as is known, that of the other parties.

3. Where an application for an adjournment is to be made, it is the responsibility of the requesting party to obtain the attitude of all other parties prior to making the application to the Court. Their responses will need to be outlined on, or attached to, the application for the Courts consideration.

4. Any other applications must:

be made by Electronic Non-Contentious Application (see Practice Direction 8).

Conferences

5. Where a party seeks to adjourn a conference, an application should be received by the Registrar, at the latest by:

5.1 12 noon on the business day before the day of the conference, for a conference in Adelaide; or

5.2 12 noon on the second business day before the day of the conference, for any conference at a location outside the Adelaide metropolitan area.

An application not received within these time limits cannot be guaranteed consideration.

6. An application for the adjournment of a conference will usually be determined by the Registrar or the Deputy Registrar, unless the conference has already commenced and

been adjourned, in which case an application to further adjourn may be determined by the member of Court who is the chairperson of that conference.

7. The conference in any matter, excepting country conferences, will usually be scheduled at a time that is between 2 weeks and 4 weeks after the lodgement of the matter. If the scheduled day or time is unsuitable for a party, that party or a representative must notify the Court *immediately* upon receipt of notice of the scheduled conference, in which event a new day or time may be notified.

8. Where parties have agreed to re-convene the conference on a particular day, the Court expects that the conference will resume on the agreed day. Parties must therefore come to the conference prepared to discuss *firm* dates. Unrepresented parties who expect to engage counsel in the matter, are encouraged to discuss possible dates with their counsel *prior* to attending the conference.

Hearings

9. In the event that there is to be an application to adjourn, the Court encourages the submission of that application, as early as possible, particularly where the hearing is scheduled to be heard entirely, or in part, outside the metropolitan area, because of the administrative arrangements which need to be made for country hearings.

10. An application to adjourn the hearing of a matter will usually be determined by that member of the Court to whom the matter has been assigned. The application may be heard in a courtroom, by Electronic Non-Contentious Application (see Practice Direction 8) or telephone conference.

11. Where an application to adjourn a hearing is made on the day of the hearing, and is granted, parties may be offered a time and date for the adjourned hearing, and should therefore be prepared to consider the suitability of dates for hearing offered by the Court.

12. Where parties are in the process of negotiation, and it becomes clear that it is in the interests of the parties that the matter be adjourned to facilitate that negotiation, an application for adjournment should be made at the earliest possible time before the day upon which the hearing is scheduled to commence, to enable the Court to use the vacated date.

13. Matters will be adjourned only to a fixed date. Dates will always be allocated, even if "for mention only".

14. Listing Generally

Solicitors and parties should attend conferences and directions hearings informed as to the availability of counsel. The unavailability of counsel, who have been briefed after the matter has been listed for hearing with the agreement of the parties, generally will not be an acceptable basis for the adjournment of the hearing.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 3

LIST OF AUTHORITIES

1. Preliminary

A list of authorities to be cited or referred to by counsel, is required in advance of hearings to enable the Court staff, where necessary, to have references available in Court. It is not always possible to attend to this at the last minute. Accordingly, timely lodgement of a list of authorities is important. It is also important to ensure that citations are accurate.

Accordingly, in each case where it is proposed to make submissions on the law, the party should lodge with the Judge or Senior Judge of the bench listed to hear the matter, and provide to each other party, a list of authorities, unless counsel intends to provide to the Court and each party, at the hearing, a copy of each judgment upon which he or she proposes to rely.

2. Format

2.1 The list should identify:

2.1.1 the proceedings;

2.1.2 the anticipated date of hearing/submissions; and

2.1.3 the name of the Judge or Commissioner who is to hear or preside at the hearing (if known).

2.2 The list should be divided into two parts:

PART I to be headed "Authorities To Be *Read*" is to contain the authorities from which passages are to be read to the Court.

PART II to be headed "Authorities To Be *Referred To*" is to contain the authorities which are to be relied upon but from which counsel does not expect to read.

3. Citations

Where a case is reported in the Environment and Development Law Reports, South Australian State Reports or the Commonwealth Law Reports, the report of the case in that series should be used. Where cases have been reported in numbered paragraphs, reference should be to the number of the relevant paragraph.

4. Time for Delivery and Number of Copies

One copy of the list of authorities is to be filed in the Registry and served upon each other party, *two working days* prior to the date of hearing or submissions. A list of

authorities may be emailed to the Court at erdcourt@courts.sa.gov.au, or faxed to the Registry on 8204 8434, by the due date.

5. Photocopies of Authorities

The Court discourages the preparation of photocopies of judgments readily available in the District Court library. However, it acknowledges the convenience of the practice. The cost of preparation of photocopied judgments is not to be a cost to the client unless the client consents. Where a party proposes to rely on an authority which is not included in the list of authorities, it is expected that counsel will make a copy available to the Court and to each other party. The cost will not be recoverable either from the client or as an item of party and party costs.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 4

APPLICATIONS FOR CIVIL ENFORCEMENT ORDERS

- COPY DOCUMENTS FOR HEARING

1. Preliminary

In the past, it has been the practice of applicants generally to lodge one or more sets of application documents with the Court to commence proceedings. Many matters do not proceed to a hearing. It is necessary to lodge only one complete set of documents, together with one additional copy of the application, to commence the proceedings. Should the matter proceed to a hearing, the Judge and any other member of the Court hearing the application, must each be provided with a set of copy documents.

2. Provision of Copy Documents

An applicant for orders in the nature of civil remedies (eg, pursuant to Section 85 of the *Development Act 1993*, Section 104 of the *Environment Protection Act 1993*, Section 201 of the *Natural Resources Management Act 2004*, Section 31A of the *Native Vegetation Act 1991* and Section 29 of the *Upper South East Dryland Salinity and Flood Management Act 2002*) must provide to the Court and each other party, copy documents for use at the hearing.

3. Contents and Format

The copy documents must include a copy of each of the following documents:

3.1 the summons;

3.2 any affidavit which supported the application;

3.3 any interim or other order of the Court, relevant to the hearing; and

3.4 any responding affidavit filed by a respondent.

4. The pages of the copy documents shall be sequentially numbered and in chronological order, and an index provided.

5. Time for Lodgement

Copy documents must be delivered to the Court Registry in sufficient numbers, having regard to whether the matter is to be heard by a full bench or judge sitting alone, and, subject to any direction or order of the Court, to each party, at least 5 clear business days prior to the commencement of the hearing.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 5

APPEALS IN RESPECT OF APPLICATIONS MADE UNDER THE

DEVELOPMENT ACT 1993 (excluding building disputes),

ENVIRONMENT PROTECTION ACT 1993,

NATURAL RESOURCES MANAGEMENT ACT 2004

HERITAGE ACT 1993

UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT ACT 2002

and

NATIVE VEGETATION ACT 1991

DOCUMENTS FOR THE HEARING

1. Preliminary

It has become evident that there is a need for guidelines with respect to the standard of plans to be provided to the Court by an applicant for consent. In addition, the standard and content of "copy documents" provided by the relevant authority varies considerably. A standard approach should be adopted, to ensure that the Court, and the parties, have access to all documents in the possession of the authority relevant to the application.

2. Applicant's Documents

The applicant for an authorisation or a consent under the *Development Act 1993*, who is either an appellant or a party to an appeal against a decision by an authority in respect of the application, must produce a copy of the following documents and plans in preparation for the hearing of the appeal:

2.1 any relevant Certificate of Title (need not be certified but must be current);

2.2 a full set of plans, with dimensions, and drawn to an identified scale, which relate to the development as proposed at the time of the hearing; and

2.3 in addition, one copy of the site plan or plan of division, whichever is relevant, reduced to A3 size.

3. The documents and plans must be delivered to the Court Registry in sufficient numbers, having regard to whether the matter is to be heard by a full bench or a member sitting alone, and, subject to any direction or order of the Court, to each party, at least 5 clear business days prior to the commencement of the hearing.

Authority's Documents

4. The authority whose decision is the subject of an appeal to the Court under any of the above-mentioned Acts, must prepare a book of documents for the use of the Court and each other party at the hearing of the appeal.

5. The book of documents must include a copy of the following documents, where appropriate:

5.1 the application documents, including any additional information provided subsequently to the authority by the applicant, whether in response to a request by the authority, in response to representations, or otherwise;

5.2 any representation made in respect of a category 2 or category 3 application for provisional development plan consent;

5.3 the report of any referral agency;

5.4 any report by an officer of the authority;

5.5 any advice or report provided prior to the decision of the authority, by a consultant engaged by the authority to advise upon the application or aspects of the application;

5.6 the minutes of any meeting of the authority at which the application was considered;

5.7 the notification of the decision of the authority; and

5.8 the reasons for the authority's decision.

6. It is not necessary to include more than one copy of any document in the book of documents. Where a document which is included in the book of documents, was also an attachment, for example, to an agenda for a meeting of the authority or a committee, or to the report of an officer, it will be sufficient to insert a note following the reproduced agenda, report or other document, identifying the document and indicating the numbers of the pages of the book of documents where the document has been reproduced.

7. The book of documents must be delivered to the Court Registry in sufficient numbers, (one copy for each member of the Court hearing the matter and one additional copy) and, subject to any direction or order of the Court, to each other party, at least 5 clear business days prior to the commencement of the hearing.

8. The book of documents must contain an index to the documents, and the pages of the book must be sequentially numbered, and in chronological order.

9. Other Documents

Any party to an appeal who plans to use, in the course of the hearing, any diagram, specification, photograph, or other documentary material, which is reasonably capable of being copied without undue expense, must deliver copies of same to the Court Registry, in sufficient numbers, (one copy for each member of the Court hearing the matter and one additional copy) and, subject to any direction or order of the Court, to each other party, at least 5 clear business days prior to the commencement of the hearing.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 6

GUIDELINES FOR EXPERT WITNESSES

1. Any party or solicitor preparing to adduce expert evidence from an expert witness at a hearing before the Court must ensure that, prior to the witness preparing the expert report, the witness is aware of his or her obligations as set out in these Guidelines.

2. The opinion, and the reasons in support thereof, of any person whom a party proposes to call as an expert witness in the hearing of any matter in the Court, must be set down in a written report.

3. Subject to any direction or order of the Court, a copy of the report of any expert which is proposed to be tendered as evidence must be either emailed (erdcourt@courts.sa.gov.au) or faxed (8204 8434) or provided to the Court in hard copy form (one copy for each member of the bench and one additional copy) and each party at least 5 clear business days prior to the date of the hearing.

4. These Guidelines are not intended to address exhaustively all aspects of an expert's duties.

5. General Duty to the Court

- An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- An expert witness is not an advocate for a party.
- An expert witness must truthfully, objectively and fully express his or her expert opinion, without regard to any views or influence which the person retaining or employing the expert may have or seek to exercise.

6. The Form of the Expert Evidence

- An expert's written report must give details of the expert's qualifications, and of any policy document or other literature or material used in making the report.
- All assumptions made by the expert must be clearly and fully stated and appropriately identified as assumptions.
- The report must identify who carried out any tests, calculations or modelling upon which the expert relied in compiling the report, and give details of the qualifications of the person who carried out any such test, calculation or modelling. The premise upon which a test, calculation or computer model is based, should be stated.
- Where several opinions are provided in the report, each such opinion must be fully expressed.
- The expert must give reasons for each opinion.

- At the end of the report the expert must declare in writing 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, to [the expert's] knowledge, been withheld from the Court".
- There must be summarised in the report, the following:
  (i) all instructions (original and supplementary and whether in writing or oral) given to the expert which define the scope of the report;
  (ii) the facts, matters and assumptions upon which the report proceeds; and
  (iii) the documents and other materials which the expert has been instructed to consider.
- If, after the exchange of reports, or at any other stage, an expert witness changes his or her view on a material matter, the change of view must be communicated in writing, without delay, to each party to whom the report of the expert witness has been provided and, when appropriate, to the Court.
- If an expert's opinion is not fully researched, because the expert 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.
- The expert must make it clear when a particular question or issue falls outside his or her field of expertise.
- Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to each other party at the same time as the exchange of reports.

7. The Expert's Evidence

An expert's evidence in chief at the hearing, unless the member of the Court presiding otherwise allows, is to be given only by tendering the report(s) from the expert and the expert swearing that the report(s) are correct.

8. Experts' Conference

If experts retained by the parties meet at the direction of the Court, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement. If, at a meeting of experts, the experts cannot reach agreement on matters of expert opinion, they must specify their reasons for being unable to do so.

9. Section 16 Conferences

Summaries of expert reports may be produced at any conference conducted pursuant to Section 16 of the *Environment, Resources and Development Court Act 1993* provided that:

- the reports are not summarised in such a way that they may be inaccurate or misleading; and
- a copy of the summary is provided to the Registrar and to each of the other parties at least 24 hours before the commencement of the conference.

10. Experts Employed by a Party to the Proceedings

The provisions of this Practice Direction apply to any person called as an expert in the proceedings, even if the expert is employed by one of the parties to the proceedings.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 7

CRIMINAL PROCEEDINGS

Preliminary

1. The Court has jurisdiction to deal with a charge of an offence in accordance with the procedures appropriate to a summary offence. When a charge is brought to the Court, on complaint or information it may be dealt with summarily by either a Magistrate or a Judge: see Section 7 of the *Environment, Resources & Development Court Act 1993*.

In order to facilitate the efficient disposal of the criminal proceedings lodged in the Court on 29 March 2001 all magistrates were appointed as members of the Environment, Resources & Development Court. The following procedures will now be adopted.

Procedure

2. Generally, the hearing of a complaint or an information which alleges one or more breaches of the *Environment Protection Act* or the *Development Act* will be assigned to a Judge of this Court. It will first be listed before a Judge of the Court at 9.15am on a Friday (not being a general callover day), which is 4-6 weeks after the day of the issue of the summons for the appearance of the defendant. Matters will be listed before a Judge for plea or mention on these days.

3. Although it is unlikely, a matter may subsequently be adjourned to be heard by a magistrate holding a designation in this Court (a designated magistrate), in which case it would first be listed in a callover before a magistrate sitting in the Adelaide Magistrates' Court building.

4. Where the complaint is most appropriately heard at a courthouse outside the metropolitan area, or at the courthouse at Christies Beach, Elizabeth, Holden Hill or Port Adelaide, it may first be listed before a designated magistrate, sitting in the relevant courthouse, on a day that is 4-6 weeks after the day on which the summons is issued.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 8

MINOR & NON-CONTENTIOUS ELECTRONIC APPLICATIONS

Preliminary

1. Pending the future introduction of a general system of electronic filing ("e-filing") in relation to all proceedings in the Environment, Resources and Development Court, a scheme for the electronic processing of certain types of applications, including directions and adjournment applications to the Court has been established. This is to come into operation on 1 September 2005.

2. The making and disposal of such applications are the equivalent of conducting a matter in an ordinary courtroom. Thus:

2.1 the system must only be used for issues requiring consideration and determination by a Judge, Master, Commissioner, Registrar, or Deputy Registrar of the Court;

2.2 communications between the relevant parties or their representatives are not to be released to the Court;

2.3 the language and modes of address used must be the same as would be used if the matter were being dealt with in an ordinary courtroom;

2.4 undertakings given, in an e-mail communication, by a party or their representative to the Court or other parties are binding as if the undertakings were given in an ordinary courtroom;

2.5 the rules of contempt apply to proceedings conducted by means of the electronic applications scheme; and

2.6 where an application is made for an order by consent, it is for the party transmitting the application to show that the proposed order has the consent of all other parties.

3. Scope of the Scheme

The scheme is restricted to situations in which the applicant and each potential party to the matter, or their representative, has an existing e-mail address.

4. What types of matter may be dealt with electronically

4.1 Whether a matter, or part of a matter, is to be dealt with electronically will be determined by the Court having regard to such considerations as the nature and complexity of the issues to be resolved, the number of parties, the views of the parties, the agreement of all parties, the nature and extent of any evidence that may be required, and the urgency of the matter, or part of a matter.

4.2 Examples of proceedings which may be accepted for electronic hearing and determination are:-

Non-contentious *ex parte* applications of all types, including applications for final order;
Applications for Directions;
Applications to dispense with the conference;
Applications that would ordinarily be dealt with in a Callover;
Applications for leave to issue a summons for an enforcement order;
A request to close a conference that had been previously adjourned;
Applications for an adjournment;
Consent applications to record a compromise or for an order of any type; and
Non-contentious applications to amend an appeal notice or other document.

The foregoing list is only indicative and not intended to be exhaustive.

5. Initiation and termination of electronic processing

5.1 If the party or the representative of a party seeks the electronic processing of a matter or part of a matter, this is to be done by e-mail request to the relevant Registrar directed to:

erd.efiling@courts.sa.gov.au

The request should generally be in the form set out in Annexure A to this Practice Direction.

5.2 If the Court cannot respond to an e-filed application within 48 hours, the Registrar will advise the applicant by a return message (see Annexure B) as to whether the application will be accepted and, if so, to which judicial officer it has been directed. The staff of that judicial officer, and/or the judicial officer personally, will thereafter communicate with the parties by e-mail as appropriate. If no response has been received to a request within two working days after its transmission, the maker is to assume that it may not have been received and should contact the Registry to ascertain whether this is the situation. For an annual fee, any person can subscribe to a service known as ReadNotify.com, which will, automatically, notify receipt of e-mail transmissions by addressees.

5.3 If the request relates to a proceeding of which a specific judicial officer is already seized, that fact should be advised to the Registrar at the time of the request.

5.4 The Court may terminate the use of electronic processing of a matter, or any part of a matter, at any time, either at the request of a party or of its own motion.

5.5 Each transmission to and from the Registry will be given an "e-filing" (FILE NO.) reference, which will be incorporated into the Court Record.

6. Notification of other parties

6.1 Where notice of the application should be given to another party, a copy of the application should be transmitted by e-mail to that party, simultaneously with its transmission to the Registrar. The Registrar is to be forthwith notified of the e-mail address of each party.

6.2 All subsequent documents transmitted to the Court must, simultaneously, be transmitted to each other party referred to in 6.1 above. The date and time of each transmission must be recorded permanently on the relevant document file.

6.3 Due service of, or notice to, a party of any proceeding or document filed in a proceeding shall be deemed to have occurred on the day following that on which it is transmitted to that party at the then correct e-mail address of the party, if that transmission occurs before or within normal business hours. If it occurs after normal business hours it will be deemed to have occurred on the day following the next business day after such transmission.

7. Transmission of Documents

7.1 All documents intended to be used, and not already filed in the proceeding must be attached to the transmitting e-mail message, utilising one of the following application programs:

Word 2000
Word 97

7.2 Any document so transmitted must utilise a font such as Arial or Times New Roman minimum size 12, and be in Rich Text Format (RTF), Tagged Image Format (TIF), Graphical Information Format (GIF), Joint Photographic Experts Group (JPG), or as a Word document. If there are documents not already filed which cannot be attached in electronic format, the request to the Registrar should indicate that situation and advise when such document will, physically, be filed in the Registry.

7.3 Where an e-mail message refers to a document earlier filed in court, a copy of the filed document may be attached to the message for ease of reference.

7.4 In urgent matters a document that is to be filed may be attached as stipulated in 7.1 above with an undertaking, in the relevant e-mail message, that it will be filed in the Court on the next business day. Exhibits to an affidavit (if any) shall be scanned so as to convert them to an electronic image (*.tif) file.

7.5 All copy documents attached to an e-mail message shall, where applicable, have any ink signatures, dates or other additions to the original document typed in, so that they may be read as completed documents. Where a document has already been filed the e-mail message shall indicate the date of filing and its File Number (FILE NO.).

7.6 The Court's word processing application will be Microsoft Office 2000. Documents will be received using Standard Internet e-mail format (SMTP) and be compatible with that system. Documents sent by the Courts will be transmitted in Microsoft Word 2000 or Portable Document Format (PDF).

8. Mode of use of e-mail application facility

8.1 Where an e-mail message has been transmitted by a practitioner who is a principal of, or employed by a firm of solicitors, that e-mail message must clearly identify the name of the practitioner sending it and, where appropriate, the separate e-mail address of that person.

8.2 The Court will deem that messages and attached documents purporting to have been sent to it by a party or that party's representative have, in fact, been sent by or on behalf of that party, and have been authorised for transmission by the party on whose behalf they have been sent.

8.3 A person transmitting copies of documents not already filed will be deemed to accept personal responsibility for payment of any Court filing or other fees attaching to the matters being dealt with electronically.

9. Consent Orders and Minutes of Order

9.1 Where a consent order or judgment is sought, it is preferable that:

9.1.1 draft minutes of order in a form suitable for being settled "on screen" for ultimate signature be attached to the e-mail request; and

9.1.2 the e-mail message certify that all relevant parties have seen and consent to an order the substance of which is embodied in the draft or, alternatively, may attach a document that is an image of any signed consent to the proposed order.

9.2 In all other cases, orders made will be processed in the following manner:

9.2.1 if the order is one which would normally need to be sealed and entered, a draft order in a form suitable for being settled "on screen" must be attached. Generally speaking, most routine orders in the ERD Court will not attract a requirement for submission of minutes. In these circumstances the request should be in the form set out in Annexure A to this Practice Direction. An e-mail message submitting an order (and settled minutes when required) for approval of a party or parties will normally stipulate that, if no response is received from a party within 48 hours, that party will be deemed to have approved the order/settled minutes; and

9.2.2 any document so hard copied is to bear the FILE NO. allocated to it, as a means of cross reference.

10. Procedure where information or submissions required

10.1 A request may have attached to it brief submissions or representations to the judicial officer, without any direction requiring this to be done.

10.2 In any case in which the Court may desire further information or submissions to be made to it by a party in relation to a matter, such party will be advised by e-mail of the nature of the further information and submissions and the date by which it or they are to be supplied.

10.3 If such a request is not complied with in a timely manner the Court may, in its discretion, set the matter down for a directions hearing in a courtroom, and advise the parties that attendance is required at a stipulated place and time.

11. Conditions of Use, Privacy Aspects and Security

11.1 By making a request to the Registrar, generally in accordance with Annexure A, a person represents to the Court that:

11.1.1 (if a legal practitioner) such practitioner has made due enquiry and that instructions received justify the making of the subject application;

11.1.2 insofar as the request attaches a copy of any affidavit not yet filed, the information supplied in the copy is believed by the transmitter to be true and correct, the original of the affidavit duly sworn is held by the transmitter and that it has duly been sworn; and

11.1.3 the transmitter has taken all reasonable precautions to ensure that all material transmitted is virus free.

11.2 Each time the legal representative of any party transmits an e-mail message to the Court at the above address, the Court system will collect information as to:

- the name of the transmitter;
- the time at which the message has been received; and
- the IP address of the transmitter.

11.3 Such information will not be disclosed to any other person not entitled, by law, to it. However, any e-mail message sent to a Court may be monitored by its staff, or that of the Courts Administration Authority in order to facilitate decisions as to possible changes to its web site, maintenance, or when e-mail abuse is suspected.

11.4 Any person having concerns as to the security of information proposed to be transmitted, should communicate those concerns to the Registrar prior to the transmission and confer with the proper officer of the Court as to such concerns.

11.5 The Court will take reasonable precautions to ensure that its transmissions are virus free. However, it is for persons using the system to adopt their own virus protection strategies.

12. Costs

One factor, which may be taken into account in any taxation of costs, will be whether a matter that could have been processed as an e-application, has, unnecessarily, been set down before a judicial officer so as to require personal attendance at court.

13. Amendments to the Scheme

13.1 The scheme will be reviewed and, if necessary, modified from time to time in light of practical experience gained.

13.2 Practical suggestions as to its improvement or functionality are welcome and should be directed to a Registrar.

14. General

It should be stressed that the new procedure is not in any way intended to restrict the option of hearing applications by means of telephone or videoconferencing facilities, in appropriate cases. Where it is considered that either of these options is preferred, an application should be made to the Registrar.

……
Michael Moore
REGISTRAR
1 September 2005

Annexure A:

ELECTRONIC NON-CONTENTIOUS APPLICATION

☐ **By Consent**

☐ **Ex parte**

[*Mark Box*]

Names of Parties:

File No:
[*NOTE: If the request relates to an initiating application the Registrar will assign a File Number, which will appear on the Registrar's Response*]

Applicant [Nature of Party/Parties], [Name(s)]:

Date of application:

[*If applicable*] (*name of judicial officer*) is already seized of the proceedings to which this application relates.

1. The applicant(s) seeks(s) the following orders/directions:

   [*State specific orders/directions sought*]

2. The grounds/reasons for the orders/directions sought are:

   [*State reasons for application or refer to relevant affidavit evidence*]

3. [*Where order is by consent*]
   3.1 Date(s) of consent given:

   3.2 Parties consenting: [*Specify*]

4. The e-mail address of other parties entitled to be served or given notice of the application:

5. **ORDER MADE:**

……..

Judge/Master/Commissioner/
Registrar/Deputy Registrar

Date:

NOTES:

1. **Draft minutes of order should be attached to the electronic application other than in the case of short or routine orders in the Environment, Resources and Development Court.**
2. **If it is necessary to rely on an affidavit not already on file a completed electronic copy is to be attached, with an understanding to file the original.**

Annexure B:

REGISTRAR'S RESPONSE TO APPLICATION FOR ELECTRONIC DISPOSAL

Title of Action:
File Number ..... of 20

To: *[Return address of applicant for electronic processing.]*

For information: *[e-mail address of each other party nominated in paragraph 3 of Request.]*

1. Receipt is acknowledged of your e-mail request dated 20

2. This matter has been referred to ...[*judicial officer*].... for hearing and determination. That judicial officer will communicate with you in due course.

OR

This matter has been referred to a judicial officer for initial consideration. It has been determined that it is unsuitable for hearing and determination electronically. The matter has been set down for hearing in the normal manner in the Court before.....at .....……..…on..... 20...., at .....am/pm.

Date: [DD/MM/YYYY]
Name and title of releasing officer, for Registrar:

ENVIRONMENT, RESOURCES & DEVELOPMENT COURT

PRACTICE DIRECTION 9

RESERVED JUDGMENTS

In ordinary cases, the Court aims to deliver judgment no later than 60 days from the reservation of judgment. However, the Court recognises that there will be particular cases in which that target is not appropriate. The Court also recognises that due to workloads and other matters there may be occasions when it is not practicable for a Judge or Commissioner to observe the target.

Notwithstanding those comments, which are offered by way of explanation, in any case, after 60 days from the reservation of judgment, parties are at liberty to invoke the following protocol:

(a) Where, following the hearing of any matter, the judgment is not delivered within 60 days of the date upon which judgment was reserved, any party may by letter addressed to the Senior Judge enquire about progress of the judgment.

(b) The party making an inquiry pursuant to sub-paragraph (a) hereof will deliver a copy of the letter to all other parties to the action.

(c) The identity of a party making an inquiry in accordance with paragraph (a) is not to be disclosed other than to:

  (i) the Senior Judge; and

  (ii) the other parties to the action.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 10

GUIDELINES FOR THE USE OF TECHNOLOGY IN PROCEEDINGS

This Court has adopted as a standard direction in all proceedings excepting criminal, the contents of Supreme Court Practice Direction 52, insofar as they are relevant to proceedings, excepting criminal, in this Court.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 11

APPEALS FROM THE WARDEN'S COURT

1. Every appeal from a judgment or order of the Warden's Court shall be listed before a Judge for directions at least 14 days after the appeal has been instituted.

2. At such directions hearing:

   (a) the parties should be prepared to indicate:

      (i) the expected period of time required for the hearing;

      (ii) whether leave will be sought to submit new evidence; and

      (iii) whether a view is desirable

   (b) the Judge may give directions including with respect to:

   - the filing of appeal books or documents; and
   - the preparation and filing of written submissions, or other documents.

……
Michael Moore
REGISTRAR
1 September 2005

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

PRACTICE DIRECTION 12

CITATION

1. In any proceedings being conducted before the Environment, Resources and Development Court it is permissible for a party in citing or in providing the Court with a copy of a judgment from this Court or any other Court or Tribunal to use and submit any of the following versions.

    a. The version of the judgment available from AustLII in the 'Signed by AustLII' format.

    b. A version of the judgment published in a series of law reports by a commercial publisher or a council of law reporting.

    c. Versions from such other sources and in such other formats as the Court decides to accept.

2. When providing a copy of an AustLII version of a judgment to the Court, parties are required to check that the copy provided has not been replaced by any more recent copy of the judgment. This may be achieved by use of the updating facility provided in electronic copies of the 'Signed by AustLII' judgments, or by equivalent means.

……
Philip Hocking
REGISTRAR
4 June 2015