



## 2025 Practice Note:

### Auckland High Court: Commercial List

#### Title and commencement

1. This Practice Note is the Commercial List Practice Note 2025.
2. This Practice Note comes into effect on 6 October 2025.

#### Definitions

3. In this Practice Note:

**Application** means an interlocutory application made in accordance with HCR 7.19 or 7.41.

**Commercial List** means the case management practices employed by the High Court at Auckland set out in this Practice Note.

**Commercial List Judge** means a Judge who:

- (a) has been assigned to the commercial panel by the Chief High Court Judge in accordance with section 19(4) of the Senior Courts Act 2016; and
- (b) has been assigned by the Chief High Court Judge, with concurrence from the Chief Justice, to deal with cases placed on the Commercial List.

**Commercial List case officer** means the case officer that is responsible for administering the Commercial List.

**Directions** means directions or orders that a Judge may make under HCR Part 7.

**HCR** means the High Court Rules 2016.

Any capitalised term not expressly defined has the meaning set out in the High Court Rules 2016.

#### Overview

4. The purpose of this Practice Note is to set out the case management practices employed by the High Court at Auckland to secure the overriding objective of the HCR in the resolution of commercial proceedings.
5. Cases on the Commercial List will be managed by two dedicated Commercial List Judges, plus such other Commercial List Judges as may be assigned from time to time to assist.
6. The aim of the Commercial List is to achieve better efficiencies and quicker hearing times, based on the parties, counsel and commercially experienced Commercial List Judges working together

to ensure matters are agreed wherever possible, and disputed interlocutory and substantive issues are dealt with in a focused and expeditious manner.

7. For cases on the Commercial List, a Commercial List Judge will hear and determine Applications, applications for Directions, and the substantive hearing or trial.

#### **Entry onto and removal from Commercial List**

8. A civil proceeding is presumed suitable for placement on the Commercial List if:
  - (a) subject to replacing any reference to “\$2 million” with “\$1 million”, it is one of the types of proceedings specified in clause 5(1)(a)–(f) of the Senior Courts (High Court Commercial Panel) Order 2017; and
  - (b) the proceeding is not subject to any undetermined application for summary judgment under Part 12 of the HCR.
9. The commencing party may, by memorandum containing supporting reasons, request that a civil proceeding be placed on the Commercial List at the time of filing, and a proceeding may subsequently be added to the Commercial List, on application or by the Court’s own motion, if:
  - (a) it qualifies under [8] above; or
  - (b) a Commercial List Judge determines that its commercial character is suitable and of sufficient private or public importance to be placed on the Commercial List.
10. If a defendant opposes entry of the proceeding on the Commercial List, a memorandum containing supporting reasons is to be filed as soon as practicable and at the latest with that party’s statement of defence.
11. Subject to any direction otherwise, any disputed entry onto the Commercial List will be determined by a Commercial List Judge on the papers.<sup>1</sup>
12. When a proceeding is first requested for placement on the Commercial List it will be listed for Directions and the parties advised.
13. At any time after commencement, a proceeding may be removed from the Commercial List, on application or by the Court’s own motion, if:
  - (a) it does not qualify under [8] above; or
  - (b) a Commercial List Judge determines it is not suitable for the Commercial List, for reasons which may include (without limitation):
    - (i) one or more parties are unrepresented;
    - (ii) the proceeding includes material non-commercial aspects; or
    - (iii) the nature or complexity of the proceeding is better suited to different case management.

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<sup>1</sup> In proceedings involving a defendant(s) served or to be served outside of New Zealand, the plaintiff should address in its memorandum requesting entry onto the Commercial List any known or anticipated jurisdictional issues, as well as any engagement with the defendant(s) on that issue. In such cases, entry onto the Commercial List will be provisional pending determination of any jurisdictional issues arising. A defendant’s protest to jurisdiction (as a reason why a proceeding ought not to be entered onto the Commercial List) is likely to be the subject of a hearing, rather than determined on the papers.

## Applications and Directions

14. The Commercial List is administered in Court for Chambers on Friday of each week.
- (a) Applications are listed at 9.15 am and are called at that time for the purpose of ascertaining whether the Application is ready to be heard (and if not, making any further Directions to ready the Application for hearing), the length of the hearing and allocating a time for hearing on that or some other day.<sup>2</sup>
  - (b) All matters for Directions will be listed for hearing in groups in half-hourly intervals commencing at 10 am.
  - (c) If necessary, attendance remotely at a Friday list may be arranged through the Commercial List case officer (by notice to the Commercial List case officer no later than 12 noon on the Thursday preceding the Friday list).
  - (d) Subject to any direction otherwise, in-person attendance is expected at the hearing of any Application.
  - (e) At the first and/or subsequent listing for Directions, orders and/or Directions will be made with a view to securing the overriding objective of the HCR in the resolution of the proceedings, with the aim of avoiding any unnecessary steps.
  - (f) Applications (including to strike out, for summary judgment and in respect of discovery) are discouraged, unless consistent with the overriding objective of the HCR in the resolution of Commercial List proceedings.
  - (g) A Commercial List Judge will endeavour to hear any disputed Application as soon as possible when ready for hearing, with a view to issuing a decision orally or very soon after the hearing. Hearings for Applications will be short (ordinarily of no more than one hour), submissions must be concise and time-constrained, and any reasons (if required) will usually be brief.
15. The Court's expectation of counsel/parties appearing in the Commercial List lists includes:
- (a) Full compliance with all duties to cooperate in the HCR.
  - (b) That counsel will be in a position to advise the Court on the first call (and at later appearances, where appropriate) whether the parties:
    - i. have attempted mediation; and/or
    - ii. are willing to proceed to mediation; and
      - when that is best to happen; and
      - what needs to happen to facilitate that.
  - (c) That counsel will have engaged in discussions prior to any Directions listing with a view to agreeing draft Directions to propose to the Court.<sup>3</sup>
  - (d) That counsel will have discussed and sought to agree any categories of documents for discovery, which are to be targeted and limited to those relevant to the issues in dispute.

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<sup>2</sup> Counsel should proceed on the basis that any Application ready to be heard will be heard later that day. It is expected that counsel will work together to ensure an Application is ready to be heard within three to four weeks of its first listing.

<sup>3</sup> Counsel will be requested at each listing to confirm that such discussions have taken place. If they have not, the matter may be stood down, either to later in the Directions list, or to a subsequent Directions list, for those discussions to occur.

It is expected that Applications concerning disputed categories of documents for discovery will rarely be required.

- (e) Counsel responsible for the conduct of the case must have carefully considered the matters in HCR Part 7 Subpart 1 (as appropriate), including whether any Directions about experts should be given under HCR Part 9 Subpart 5.
  - (f) That the parties will reach agreement on a timetable for the preparation of matters for trial and consent orders will be sought in writing as provided for in [16] below, or handed up during the Directions list.
  - (g) If there is slippage in an agreed or ordered timetable, the parties must seek suitably amended Directions as soon as the need for this arises, by agreement if possible.
  - (h) Requests for Court intervention in relation to timetabling will only be sought rarely when, for good reason, agreement has proved to be impossible.
  - (i) At the time the matter is set down for trial at a Directions listing, counsel will provide to the Court: (1) a considered opinion of the realistic estimate of the time required for the trial (which will have been discussed with counsel for the other parties); and (2) the allocation of time for their client's evidence and submissions.
  - (j) Submissions will be focused and concise, and time allocations will be respected, including at the substantive hearing or trial.
16. To facilitate the resolution of matters in accordance with the HCR's overriding objective, consent orders will be made by a Commercial List Judge in chambers on days other than Friday by application in writing to the Commercial List case officer. When consent orders are to be made either in chambers or in Court varying a timetable, those orders are to include the vacation of any date for Directions listings or the hearing of Applications that the parties no longer wish to maintain.
17. The Commercial Lists for each week close at 12 noon on Thursday. Any request to add a matter to a list or remove a matter from a list must be made prior to 12 noon on Thursday. Such requests are to be made in writing (by email) to the Commercial List case officer.
18. If an Application is ready to be heard, the applicant must advise the Commercial List case officer in writing (by email) no later than noon on the Thursday prior to the Application's callover.
19. Subject to any alternative Directions made, the parties' submissions and a common bundle of documents for the hearing of any Application that is ready to be heard are to be filed with the Court no later than noon on the Thursday prior to the Application's callover.

#### **Urgent Applications and liberty to apply**

20. A party seeking without notice or urgent orders, or urgent Directions that need to be dealt with prior to the next Friday Directions or Applications list, should telephone the Commercial List case officer to advise of the matter arising, and file any necessary Application or memorandum without further delay. The matter will be referred to a Commercial List Judge for Directions or orders.
21. Parties have general liberty to apply and may cause proceedings to be listed in a Directions list prior to a scheduled future Directions listing. A party seeking to do so should make prior

arrangements with, or give appropriate notice to, any other party, and should advise the Commercial List case officer of the need for an earlier listing, who will advise the new date.

### **Representation**

22. Each party not appearing in person shall be represented at any Directions listing by counsel familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and Directions to be made.

**Hon Justice Sally Fitzgerald**  
**Chief High Court Judge – Te Kaiwhakawā Matua**  
8 September 2025