

Government Gazette

of the State of
New South Wales

Number 39
Friday, 6 April 2018

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, private and other notices.

From 1 January 2018, each notice in the Government Gazette has a unique identifier that appears in square brackets at the end of the notice and that can be used as a reference for that notice (for example, [n2018-14]).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website (www.legislation.nsw.gov.au) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal – see Gazette Information.

GOVERNMENT NOTICES

Appointments

GOVERNMENT SECTOR EMPLOYMENT ACT 2013

Appointment of the Public Service Commissioner

His Excellency the Governor, with the advice of the Executive Council, upon the recommendation of the Premier, has approved, pursuant to section 9 of the *Government Sector Employment Act 2013*, that Emma Hogan be appointed as the Public Service Commissioner for a term of seven years, effective on and from 7 May 2018.

Dated: 4 April 2018

GLADYS BEREJIKLIAN, MP
Premier

[n2018-1106]

Planning and Environment Notices

CONTAMINATED LAND MANAGEMENT ACT 1997

Environment Protection Authority

Declaration of significantly contaminated land
(Section 11 of the Contaminated Land Management Act 1997)

Declaration Number 20171104; Area Number 3410

The Environment Protection Authority (EPA) declares the following land to be significantly contaminated land under the *Contaminated Land Management Act 1997* ("the Act"):

1. Land to which this declaration applies ("the site")

This declaration applies to the land that is located at 183 Fitzmaurice Street, Wagga Wagga, NSW (Lot 2 of DP 631019), within the Local Government Area of Wagga Wagga City Council). The land to which this declaration applies is shown on the attached figure.

2. Nature of contamination affecting the site

The EPA has found that the site is contaminated with the following substances ("the contaminants"):

- Chlorinated hydrocarbons including tetrachloroethylene (PCE), trichloroethene (TCE) and dichloroethylene (DCE) in soil vapour.

3. Nature of harm that the contaminants may cause

The EPA has considered the matters in section 12 of the Act and for the following reasons has determined that the land is contaminated and that the contamination is significant enough to warrant regulation under the Act:

- Soil vapour is contaminated with chlorinated hydrocarbons, associated with the former use of the site as a dry cleaning facility, at concentrations above the appropriate criteria for the protection of human health;
- There is potential for contaminated soil vapour to intrude into buildings;
- There is potential for contaminated groundwater to migrate towards the Murrumbidgee River;
- There is potential for people to be exposed to the contamination through vapour inhalation and direct contact with contaminated soil; and
- The extent of contamination is not known and requires further investigation.

4. Further action under the Act

The making of this declaration does not prevent the carrying out of voluntary management of the site and any person may submit a voluntary management proposal for the site to the EPA.

5. Submissions invited

The public may make written submissions to the EPA on:

- Whether the EPA should issue a management order in relation to the site; or
- Any other matter concerning the site.

Submissions should be made in writing to:

Director Contaminated Land Management Section
Environment Protection Authority
PO Box A290
SYDNEY SOUTH NSW 1232

or emailed to: contaminated.sites@epa.nsw.gov.au

or faxed to: 02 9995 5930

by not later than 17 April 2018.

3 April 2018

ARMINDA RYAN
Director Contaminated Land Management
Environment Protection Authority

NOTE:

Management order may follow

If management of the site or part of the site is required, the EPA may issue a management order under s.14 of the Act.

Amendment/Repeal

This declaration may be amended or repealed. It remains in force until it is otherwise amended or repealed. The subsequent declaration must state the reasons for the amendment or repeal (s.44 of the Act).

Information recorded by the EPA

Section 58 of the Act requires the EPA to maintain a public record. A copy of this significantly contaminated land declaration will be included in the public record.

Information recorded by councils

Section 59 of the Act requires the EPA to give a copy of this declaration to the relevant local council. The council is then required to note on its planning certificate issued pursuant to section 10.7 of the Environmental Planning and Assessment Act that the land is declared significantly contaminated land. The EPA is required to notify council as soon as practicable when the declaration is no longer in force and the notation on the section 10.7 certificate is no longer required.

Relationship to other regulatory instrument

This declaration does not affect the provisions of any relevant environmental planning instruments which apply to the land or provisions of any other environmental protection legislation administered by the EPA.



Source: SixMaps NSW – Declared Area marked in yellow. 183 Fitmaurice Street, Wagga Wagga, NSW. Lot 2 DP 631019.

[n2018-1107]

NATIONAL PARKS AND WILDLIFE ACT 1974

Sturt National Park
Plan of Management

The *Sturt National Park Plan of Management* — was adopted by the Minister for the Environment on 23 January 2018.

The plan is available on the web at: www.environment.nsw.gov.au/parkmanagement/ParkManagementPlans.htm

[n2018-1108]

PESTICIDES REGULATION 2017

clauses 19(8), 31(2)(b) and Schedule 2

APPROVED UNITS OF COMPETENCY AND COMPETENCY STANDARDS

Background

The *Pesticides Regulation 2017* (the Regulation) provides that certain users of pesticides must be qualified to use pesticides. A user will be qualified to use a pesticide if they have a licence issued under the *NSW Pesticides Act 1999* or if they have achieved certain units of competency that are:

- specified in a current training package endorsed by the Australian Industry and Skills Committee established by the Council of Australian Government's Industry and Skills Council, or by its predecessor bodies; and
- approved by the Environment Protection Authority (EPA).

Revocation of previous Approval

The Notice of Approved Units of Competency under the *Pesticides Regulation 2009* published in the NSW Government Gazette No 16 of 3 February 2017 at pages 264 to 265 is revoked.

Approved units of competency and standards

1. Competency standard for ground applicator work

The following units of competency are approved by the EPA and are the competency standard for ground applicator work under a ground applicator licence for the purposes of clause 19(8) of the Regulation:

- (a) the unit of competency known as unit code AHCCHM303 *Prepare and apply chemicals* specified in the AHC Agriculture, Horticulture and Conservation and Land Management Training Package; and
- (b) the unit of competency known as unit code AHCCHM304 *Transport and store chemicals* specified in the AHC Agriculture, Horticulture and Conservation and Land Management Training Package.

2. Approved competencies for recognised qualification

The following units of competency are approved by the EPA for the purposes of the definition of recognised qualification in clause 31(2) of the Regulation and are required to be achieved for purposes of the issue of a prescribed qualification in that clause:

- (a) the units of competency known as:
 - (i) unit code AHCCHM303 *Prepare and apply chemicals*, and
 - (ii) unit code AHCCHM304 *Transport and store chemicals*,specified in the AHC Agriculture, Horticulture and Conservation and Land Management Training Package;
- or
- (b) the unit of competency known as unit code AHCCHM201 *Apply chemicals under supervision* specified in the AHC Agriculture, Horticulture and Conservation and Land Management Training Package (refer to the notes to this Approval).

The units of competency in this Approval and their assessment requirements are available on the register of nationally recognised training components at www.training.gov.au.

Commencement

This Approval takes effect on publication in the NSW Government Gazette.

Signed

ASELA ATAPATTU
Director Hazardous Materials Chemicals and Radiation
NSW Environment Protection Authority
(by delegation)

NOTES

1. *Minimum standard*

All pesticide users who are required to achieve specified units of competency under clause 31(2)(b) of the Regulation should, wherever possible, attain both unit AHCCHM303 (Prepare and Apply Chemicals) and unit AHCCHM304 (Transport and Store Chemicals), which are part of the AHC Training Package and at Australian

Quality Framework Level 3 (AQF3). The unit AHCCHM201 (Apply Chemicals under Supervision), which is part of the AHC Training Package and at Australian Quality Framework Level 2 (AQF2), is the minimum level of competency acceptable under the Regulation. At this level it is recommended that the pesticide user work under the supervision of someone who has achieved the AQF3 units of competency.

Pesticide users should seek training that is appropriate for their level of work and responsibility from Registered Training Providers. If users are working as unsupervised operators/farmers they should seek chemical training at AQF3. Pesticide users who have language or literacy difficulties and are unable to fulfil the requirements of the AQF3 units of competency can be deemed competent at AQF2 if they have successfully demonstrated competence at that level. Major providers of chemical training have been advised to provide training on this basis.

2. Review of approved unit of competency

The approved units of competency will be subject to future review. The review will be undertaken in parallel with reviews of the Regulation (as determined by the Subordinate Legislation Act 1989) or where the need arises. The review will also be undertaken in consultation with relevant groups and will take into account:

- any developments in the AHC Training Package and/or the Australian Qualifications Framework relating to pesticides;
- any developments at national level regarding pesticide user training requirements.

3. Previous qualifications

If pesticide users have achieved one of the competency units superseded by the unit codes AHCCHM303, AHCCHM304 and AHCCHM201 they do not need to be trained or assessed until 5 years after the date on which they were issued their certificate or statement in recognition of their achievement of these competencies.

4. Exceptions

A person can use a pesticide without being qualified to use the pesticides in the circumstances detailed in clause 32(2).

5. Copies of approval

Copies of this approval are available for public inspection without charge and during ordinary business hours at offices of the Environment Protection Authority.

6. Further information

Further information is available at <http://www.epa.nsw.gov.au/your-environment/pesticides/compulsory-training-pesticides>, by contacting the Environment Line on 131555, or by emailing chemicals.reform@epa.nsw.gov.au

[n2018-1109]

PESTICIDES REGULATION 2017

Clause 31(1)

NOTICE OF APPROVED QUALITY ASSURANCE AND STEWARDSHIP PROGRAMS

I, Asela Atapattu, Director Hazardous Materials Chemicals and Radiation, as delegate of the NSW Environment Protection Authority, by this Notice:

1. **revoke** the Notice of Approved Quality Assurance and Stewardship Programs under clause 31(1) of the *Pesticides Regulation 2017* published in the NSW Government Gazette No 12 of 2 February 2018 at pages 471 to 472.
2. **approve**, for the purposes of clause 31(1)(c)(i) of the *Pesticides Regulation 2017*, the following programs for the use of pesticides other than fumigants:
 - a. *National Feedlot Accreditation Scheme* – the feedlot quality system management and quality assurance program managed by the Feedlot Industry Accreditation Committee
 - b. *myBMP* accreditation – as supported by the Cotton Research Development Corporation and Cotton Australia
 - c. *Freshcare Environmental (ENV3 Code)* – the Australian fresh produce industry on-farm assurance program developed by Freshcare
 - d. *Freshcare Food Safety & Quality (FSQ4 Code)* – developed by Freshcare, the Australian fresh produce industry on-farm assurance program

- e. GlobalG.A.P. (Good Agricultural Practice) *Integrated Farm Assurance Version 5*, Crops Base module
- f. GlobalG.A.P. (Good Agricultural Practice) *Integrated Farm Assurance Version 5*, Livestock module
- g. *Graincare* – the on-farm program and code of practice developed by Australian grain growers through the Grains Council of Australia as supported by the Grains Research & Development Corporation
- h. *Livestock Production Assurance Quality Assurance* – the Australian livestock industry on-farm assurance program covering safety, animal welfare and biosecurity as supported by Meat & Livestock Australia
- i. *SQF Code Edition 7*, Modules 3, 5, 7 and 8 – developed by the worldwide Safe Quality Food program (SFQ Institute)

Commencement

This approval takes effect on publication in the NSW Government Gazette.

Signed

ASELA ATAPATTU

Director Hazardous Materials Chemicals and Radiation

NSW Environment Protection Authority

(by delegation)

Background

The *Pesticides Regulation 2017* ('the Regulation') provides that certain users of pesticides must be qualified to use pesticides. Users described in clause 32(1) of the Regulation who are not required to have a licence issued under the *NSW Pesticides Act 1999* are generally required to have achieved certain units of competency and to have these competencies reassessed every five years.

Clause 31(1)(c) of the Regulation provides an alternative to the five-yearly reassessment requirement if a pesticide user has:

- participated in a quality assurance or stewardship program ('programs') relating to the use of pesticides which has been approved by the Environment Protection Authority (EPA) by notice published in the Gazette, and
- has complied with any conditions required by the notice in relation to that program.

The NSW EPA Board has endorsed a *Quality Assurance and Stewardship Program Approval Policy* (November 2017) which is available on the NSW EPA website www.epa.nsw.gov.au and this Notice of Approved Quality Assurance and Stewardship Programs has been developed with reference to the Policy.

[n2018-1110]

Roads and Maritime Notices

MARINE SAFETY ACT 1998

MARINE NOTICE

Section 12(2)

REGULATION OF VESSELS – EXCLUSION ZONE

Location

Tasman Sea – near the township of Shellharbour as marked by buoys near the entrance of Shellharbour Boat Harbour and Cowrie Island.

Duration

10.00am to 1.00pm Sunday 8 April 2018.

Detail

A swim event will be conducted in the location specified above between the above times.

An **EXCLUSION ZONE** is specified during the event, which will be marked by buoys at the location specified above.

Unauthorised vessels and persons are strictly prohibited from entering the exclusion zone which will be monitored by control vessels.

All vessel operators and persons using waters in the vicinity of the event should keep a proper lookout, keep well clear of competing and support vessels, and exercise extreme caution.

Penalties may apply (section 12(5) – *Marine Safety Act 1998*)

For full details visit the Roads and Maritime Services website – www.rms.nsw.gov.au/maritime

Marine Notice: SO1819

Date: 4 April 2018

Deon Voyer
Manager Operations South
Delegate

[n2018-1111]

ROADS ACT 1993

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land at Yallah in the Wollongong City Council Area

Roads and Maritime Services by its delegate declares, with the approval of His Excellency the Governor, that the land described in the schedule below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the *Roads Act 1993*.

K DURIE

Manager, Compulsory Acquisition & Road Dedication
Roads and Maritime Services

Schedule

All that piece or parcel of land situated in the Wollongong City Council area, Parish of Calderwood and County of Camden, shown as Lot 208 Deposited Plan 1235464, being part of the land in Certificate of Title 1/108251.

The land is said to be in the possession of Electricity Transmission Ministerial Holding Corporation.

(RMS Papers: SF2018/088982; RO SF2015/165773)

[n2018-1112]

ROADS ACT 1993

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land at Parramatta in the Parramatta City Council Area

Roads and Maritime Services by its delegate declares, with the approval of His Excellency the Governor, that the land described in the schedule below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the *Roads Act 1993*.

K DURIE

Manager, Compulsory Acquisition & Road Dedication
Roads and Maritime Services

Schedule

All that piece or parcel of land situated in the Parramatta City Council area, Parish of St John and County of Cumberland, shown as Lot 2 Deposited Plan 1239848, being part of the land in Certificate of Title CP/SP66427.

The land is said to be in the possession of New South Wales Land and Housing Corporation, being The Owners – Strata Plan No 66427.

(RMS Papers: SF2018/012397; RO SF2017/197007)

[n2018-1113]

Mining and Petroleum Notices

Persuant to section 136 of the *Mining Act 1992* and section 16 of the *Petroleum (Onshore) Act 1991*

NOTICE is given that the following applications have been received:

EXPLORATION LICENCE APPLICATIONS

(T18-1049)

No. 5660, AUSTRALIAN PRECIOUS METALS CORPORATION PTY LTD (ACN 624701131), area of 99 units, for Group 1, dated 24 March, 2018. (Singleton Mining Division).

(T18-1051)

No. 5662, ALLOY MINERALS PTY LTD (ACN 611 918 846), area of 2 units, for Group 1 and Group 2, dated 29 March, 2018. (Broken Hill Mining Division).

(T18-1052)

No. 5663, BACCHUS RESOURCES PTY LTD (ACN 606340872), area of 71 units, for Group 1, dated 3 April, 2018. (Cobar Mining Division).

NOTICE is given that the following applications have been granted:

EXPLORATION LICENCE APPLICATIONS

(T17-1232)

No. 5620, now Exploration Licence No. 8717, TRK RESOURCES PTY LTD (ACN 116543081), County of Buccleuch, Map Sheet (8527), area of 21 units, for Group 1, dated 27 March, 2018, for a term until 27 March, 2020.

(T18-1005)

No. 5625, now Exploration Licence No. 8718, HAVERFORD HOLDINGS PTY LTD (ACN 142660553), Counties of Cunningham and Gipps, Map Sheet (8231, 8331), area of 30 units, for Group 1, dated 27 March, 2018, for a term until 27 March, 2024.

MINING LEASE APPLICATION

(T00-0136)

Orange No. 162, now Mining Lease No. 1769 (Act 1992), SCANDIUM21 PTY LTD (ACN 008 755 155), Parish of Gillenbine, County of Cunningham, Map Sheet (8432-3-N), area of 389.7 hectares, to mine for limestone, dated 15 February, 2018, for a term until 15 February, 2039.

The Honourable Don Harwin MLC
Minister for Resources

[n2018-1114]

NOTICE is given that the following applications for renewal have been received:

(V18-0533)

Exploration Licence No. 8352, BUSHMAN RESOURCES PTY LTD (ACN 167 123 079), area of 21 units. Application for renewal received 15 February, 2018.

(V18-1016)

Exploration Licence No. 5461, SAXONVALE COAL PTY. LIMITED (ACN 003 526 467) AND NIPPON STEEL & SUMITOMO METAL AUSTRALIA PTY LTD (ACN 001 445 049), area of 546 hectares. Application for renewal received 28 March, 2018.

(V18-1036)

Exploration Licence No. 7931, VARISCAN MINES LIMITED (ACN 003 254 395), area of 10 units. Application for renewal received 3 April, 2018.

(V18-1008)

Exploration Licence No. 8357, MODELING RESOURCES PTY LTD (ACN 169 211 876), area of 16 units. Application for renewal received 27 March, 2018.

(V18-1018)

Mining Lease No. 1064 (Act 1973), WHYBATON PTY LTD, area of 23.65 hectares. Application for renewal received 29 March, 2018.

RENEWAL OF CERTAIN AUTHORITIES

Notice is given that the following authorities have been renewed:

(V17-8642)

Exploration Licence No. 8385, RELENTLESS RESOURCES LIMITED (ACN 160 863 892), County of Tara, Map Sheet (7130), area of 35 units, for a further term until 19 August, 2020. Renewal effective on and from 3 April, 2018.

(V17-9708)

Exploration Licence No. 8477, AUSTRALIAN MINES LIMITED (ACN 073914191), County of Yancowinna, Map Sheet (7133), area of 7 units, for a further term until 31 October, 2023. Renewal effective on and from 27 March, 2018.

(V17-9713)

Exploration Licence No. 8478, AUSTRALIAN MINES LIMITED (ACN 073914191), Counties of Cunningham and Kennedy, Map Sheet (8332), area of 18 units, for a further term until 31 October, 2023. Renewal effective on and from 27 March, 2018.

The Honourable Don Harwin MLC
Minister for Resources

[n2018-1115]

APPLICATIONS TO TRANSFER RECEIVED

Notice is given that the following applications to transfer have been received:

(V18-1000)

ISOKIND PTY LIMITED, (ACN 081 732 498) has applied for approval to transfer Exploration Licence No. 6140 to OXLEY EXPLORATION PTY LTD, (ACN 137 511 141). Application received 26 March, 2018.

(V18-1000)

ISOKIND PTY LIMITED, (ACN 081 732 498) has applied for approval to transfer Exploration Licence No. 6501 to OXLEY EXPLORATION PTY LTD, (ACN 137 511 141). Application received 26 March, 2018.

(V18-1000)

ISOKIND PTY LIMITED, (ACN 081 732 498) has applied for approval to transfer Exploration Licence No. 6739 to OXLEY EXPLORATION PTY LTD, (ACN 137 511 141). Application received 26 March, 2018.

(V17/12583)

BOGGABRI COAL PTY LIMITED, (ACN 122 087 398) and WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253) have applied for approval to transfer Mining Lease No. 1579 to WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253). Application received 20 December, 2017.

(V17/12583)

BOGGABRI COAL PTY LIMITED, (ACN 122 087 398) and WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253) have applied for approval to transfer Mining Lease No. 1685 to WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253). Application received 20 December, 2017.

(V17/12583)

BOGGABRI COAL PTY LIMITED, (ACN 122 087 398) and WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253) have applied for approval to transfer Mining Lease No. 1693 to WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253). Application received 20 December, 2017.

(V17/12583)

BOGGABRI COAL PTY LIMITED, (ACN 122 087 398) and WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253) have applied for approval to transfer Mining Lease No. 1749 to WHITEHAVEN COAL MINING LIMITED (ACN 086 426 253). Application received 20 December, 2017.

WITHDRAWAL OF APPLICATIONS TO TRANSFER

Notice is given that the following applications for transfer have been withdrawn:

(Z07-6217)

Mining Lease No. 1492, AUSTRALIAN GEMSTONE RESOURCES PTY LTD, (ACN 121 034 811). Withdrawal took effect on 19 March, 2018.

REQUESTED CANCELLATIONS

Notice is given that the following authorities have been cancelled:

(V18-0777)

Exploration Licence No. 6407, ILUKA RESOURCES LIMITED (ACN 008 675 018), County of Wentworth, Map Sheet (7329), area of 39 units. Cancellation took effect on 29 March, 2018.

(T15-1103)

Exploration Licence No. 8440, ABX1 PTY LTD (ACN 139 790 364), County of Gough and County of Hardinge, Map Sheet (9138), area of 49 units. Cancellation took effect on 29 March, 2018.

The Honourable Don Harwin MLC
Minister for Resources

[n2018-1116]

Primary Industries Notices

BIOSECURITY ACT 2015

Instrument of Appointment of Authorised Officers and Approval of Functions – Department of Primary Industries and Local Land Services officers

I, Peter Day, Director Biosecurity & Food Safety Compliance, in exercise of delegated authority of the Secretary and of the Secretary as Accreditation Authority under the *Biosecurity Act 2015* (the Act) make the following appointments and approvals:

- 1) Pursuant to section 361 of the Act, I appoint the persons listed in Column 1 of the table set out in Schedule 1 as authorised officers for the purposes of the Act.
- 2) Pursuant to section 195 of the Act, I approve those authorised officers listed in Column 1 of the table set out in Schedule 1 to exercise the functions of a biosecurity certifier as specified in Column 2 of the table.

Duration of appointment and approval:

The appointment and approval of each person listed in Schedule 1 will end on the earliest of the following dates:

- A. the date that is five years from the date of this instrument; or
- B. the date of revocation of this instrument, or an instrument of revocation of appointment of a person listed in Schedule 1 as an authorised officer; or
- C. the date that the person ceases to be employed by either the Department of Industry or the Local Land Services.

Dated this 28th day of March 2018

PETER DAY

PETER DAY

DIRECTOR

BIOSECURITY & FOOD SAFETY COMPLIANCE

(as delegate on behalf of the Secretary of the Department of Industry)

SCHEDULE 1

Column 1	Column 2
Name of person appointed as authorised officer	Approved functions of biosecurity certifier
Deborah Ann Martin	NIL Conditions
Anita Caroline Kennedy	NIL Conditions
George Nastase	NIL Conditions
Helen Smith	NIL Conditions

[n2018-1117]

Crown Land Notices

1300 886 235 www.crownland.nsw.gov.au

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – Bocobidgle; County – Ashburnham

Land District – Forbes; LGA – Forbes

Road Closed: Lot 1 DP 1238523

File No: 16/07757

SCHEDULE

On closing, the land within Lot 1 DP 1238523 remains vested in the State of New South Wales as Crown land.

[n2018-1118]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – Millah Murrrah; County – Roxburgh

Land District – Bathurst; LGA – Bathurst Regional

Road Closed: Lot 2 DP 1209706

File No: 16/00544

SCHEDULE

On closing, the land within Lot 2 DP 1209706 remains vested in Bathurst Regional Council as operational land for the purposes of the *Local Government Act 1993*.

In accordance with Section 44 of the *Roads Act 1993*, the Crown consents to the land in Lot 2 DP 1209706 being vested in Bathurst Regional Council as operational land, to be given by the Council as compensation for other land acquired by the Council for the purpose of the *Roads Act 1993*.

Council Reference: KJ:156749

[n2018-1119]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Gooninbar; County – Rous
Land District – Murwillumbah; LGA – Tweed*

Road Closed: Lot 5 DP 1239342

File No: 17/10438

SCHEDULE

On closing, the land within Lot 5 DP 1239342 remains vested in the State of New South Wales as Crown land.

[n2018-1120]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Condong; County – Rous
Land District – Murwillumbah; LGA – Tweed*

Road Closed: Lot 2 DP 1235647

File No: 17/01130

SCHEDULE

On closing, the land within Lot 2 DP 1235647 remains vested in the State of New South Wales as Crown land.

[n2018-1121]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parishes – Bimbalingel, Ulambong; County – Dowling
Land District – Lake Cargelligo; LGA – Lachlan*

Road Closed: Lot 1 DP 1226655

File No: 09/06362

SCHEDULE

On closing, the land within Lot 1 DP 1226655 remains vested in the State of New South Wales as Crown land.

[n2018-1122]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parishes – Salisbury, Mihi; County – Sandon

Land District – Armidale; LGA – Uralla

Road Closed: Lots 4-5 DP 1239535

File No: 17/09761

SCHEDULE

On closing, the land within Lot 4 DP 1239535 remains vested in the State of New South Wales as Crown land.

On closing, the land within Lot 5 DP1239535 becomes vested in the State of New South Wales as Crown Land.

[n2018-1123]

ROADS ACT 1993

ORDER

Transfer of a Crown Road to a Council

IN pursuance of the provisions of Section 151, *Roads Act 1993*, the Crown roads specified in Column 1 will be transferred to the Roads Authority specified in Column 2, hereunder, as from the date of publication of this notice and as from that date, the roads specified in Column 1 cease to be Crown roads.

The Hon Paul Toole, MP
Minister for Lands and Forestry

Column 1	Column 2
 <p>Crown public roads comprising Collum Collum Road within Lot 76 DP 752369 and Lot 15 DP 752369 as shown by red colour Parish Churchill County Drake at Lionsville Council ref: Map 1 Churchill Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>
 <p>Crown public road comprising Collum Collum Road north Lot 6 DP 728239 as shown by red colour Parish Clarenza County Clarence at Clarenza Councils ref: Map 1 Clarenza Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>

Column 1	Column 2
 <p>Crown public road comprising Timbs Lane west Lot 96 DP 751362 as shown by red colour Parish Clarenza County Clarence at Clarenza Map 2 Clarenza Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>
 <p>Crown public road comprising Reilley's Lane commencing within Lot 94 DP 751362 and heading east to Lot 4 DP 623556; Crown public road within and east Lot 4 DP 623556 as shown by red colour Parish Clarenza County Clarence at Clarenza Map 4 Clarenza Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>
 <p>Crown public road comprising Sanders Road south Lot 801 DP 833369, Lot 805 and Lot 806 DP 1193719; north Lot 1 DP 1225100 Map 1 Clifden Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>
 <p>Crown public road comprising Campbells Place north Lot 125 DP 706947; intersection Campbells Place and Tallowood Lane and east Lot 123 DP 706947 Parish Coldstream County Clarence at Tucabia Councils ref: Map 1 Coldstream Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>

Column 1	Column 2
 <p>Crown public road comprising Red Root Road south Lot 163 DP 751365 and intersection east of Lot 163 DP 751365 Parish Coldstream County Clarence at Pillar Valley Councils ref: Map 2 Coldstream Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>
 <p>Crown public road comprising Foster Hut Lane west Lot 164 DP 751365, intersection with Council road, north Lot 164 DP 751365, lot 1 DP 1136787 and lot 149 DP 751365 up to the intersection with Crown public road as shown by red colour on diagram. Parish Coldstream County Clarence at Pillar Valley Councils ref: Map 3 Coldstream Lands ref: W592398 – 17/11565</p>	<p>Clarence Valley Council</p>

[n2018-1124]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Glass; County – Murchison
Land District – Bingara; LGA – Gwydir*

Road Closed: Lot 1 DP 1239440
File No: 17/10282

SCHEDULE

On closing, the land within Lot 1 DP 1239440 remains vested in the State of New South Wales as Crown land.

[n2018-1125]

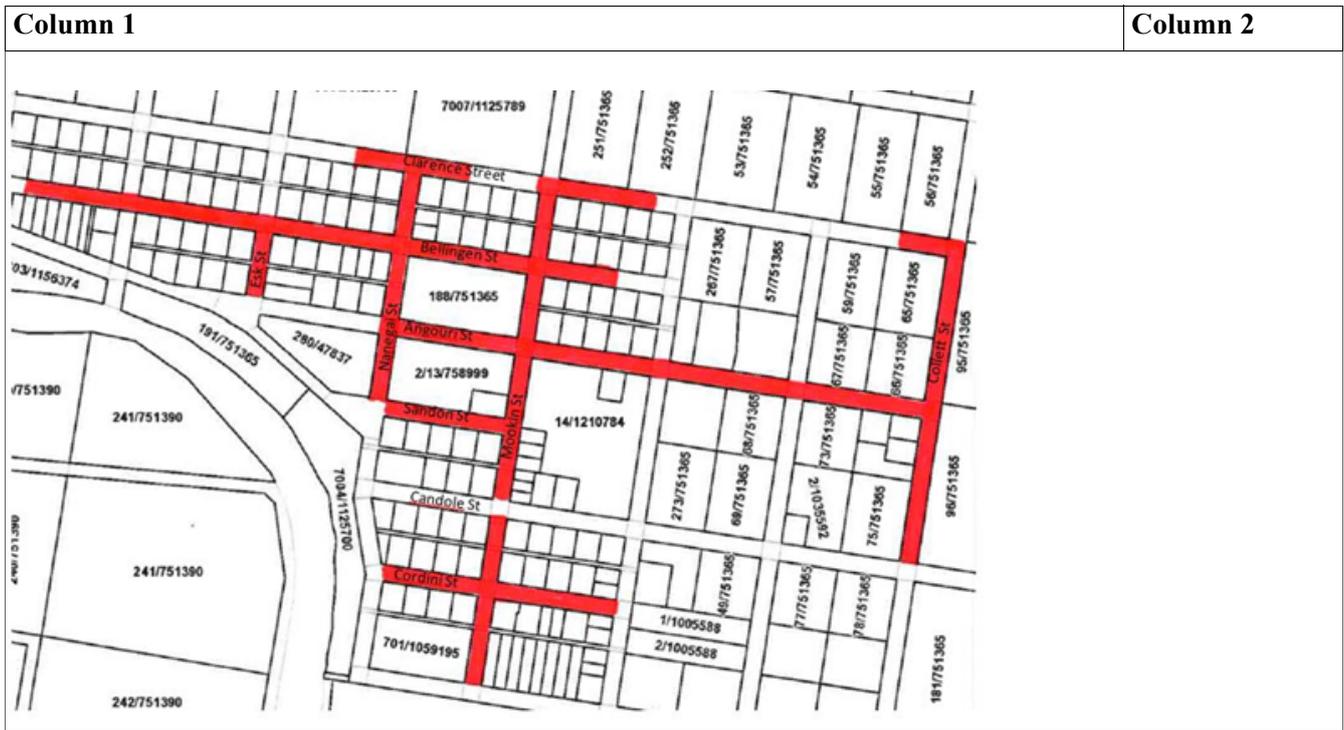
ROADS ACT 1993**ORDER**

Transfer of a Crown Road to a Council

IN pursuance of the provisions of Section 151, *Roads Act 1993*, the Crown roads specified in Column 1 will be transferred to the Roads Authority specified in Column 2, hereunder, as from the date of publication of this notice and as from that date, the roads specified in Column 1 cease to be Crown roads.

The Hon Paul Toole, MP
Minister for Lands and Forestry

Column 1	Column 2
<p>All within Parish Coldstream County Clarence at Tucabia and as shown by red colour on diagram.</p> <p><u>Crown public road referred to as Clarence Street</u> That part Crown road separating Lot 7006 DP 1125789 from Lots 7 Sec 4 DP 758999 then east to Crown road separating lot 9 Sec 5 DP758999 from 7007 DP 1125789 including intersection. Crown road separating Lots 251 and 252 DP751365 from lots 7-10 Sec 6 DP 758999; Crown road separating Lot 56 DP 751365 from Lot 65 DP 751365</p> <p><u>Crown public road referred to as Bellingen Street</u> That part of Crown road separating Lot 2 Sec 2 DP 758999 from lot 3 Section 11 DP 758999 and then east to Crown road separating Lot 3 Section 6 DP 758999 from Lot 8 Sec 7 DP 758999 including all Crown road intersections</p> <p><u>Crown public road referred to as Angouri Street</u> That part Crown road separating Lot 2 Section 13 DP 758999 from Lot 188 DP 751365 and then east to Crown road separating Lot 66 DP 751365 from Lot 744 DP 1140941</p> <p><u>Crown public road referred to as Sandon Street</u> That part Crown road separating Lot 1 and 2 Section 13 DP 758999 from Lot 6 – 10 Sec 16 DP 758999</p> <p><u>Crown public road referred to as Cordini Street</u> That part Crown road separating Lot 1 Sec 17 DP 758999 from Lot 1 Sec 20 DP 758999 and then east to Crown road separating Lot 52 DP 775636 from Lot 1 DP 600478</p> <p><u>Crown public road referred to as Esk Street</u> That part Crown road east Lot 6 Sec 10 DP 758999, Crown public road and Lot 5 Sec 10 DP 758999</p> <p><u>Crown public road referred to as Nanagai Street</u> That part of road separating lot 280 DP 47837 from Lot 2 sec 13 DP 758999 and then north to road separating Lot 6 ec 4 DP 758999 and Lot 10 Sec 5 DP 758999 including intersections</p> <p><u>Crown public road referred to as Mookin Street</u> That part of Crown road separating lot 701 DP 1059195 from Lot 15 sec 19 DP 758999 and then north to Crown road separating Lot 6 Sec 5 DP 758999 from lot 10 sec 6 DP 758999 including all Crown road intersections</p> <p><u>Crown public road referred to as Collett Street</u> That part Crown road west Clarence Street, lot 65-66 DP 751365, intersection of Angouri Steet and west Lot 744-746 DP 1140941 and Lot 75 DP 751365</p>	<p>Clarence Valley Council</p>



Councils reference: Minute Map 4 Coldstream
 Crown Lands Reference: W592398 – 17/11565

[n2018-1126]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
 Minister for Lands and Forestry

DESCRIPTION

*Parish – Nanami; County – Ashburnham
 Land District – Molong; LGA – Cabonne*

Road Closed: Lots 1-3 DP 1240227
 File No: CL/00744:JT

SCHEDULE

On closing, the land within Lots 1-3 DP 1240227 remains vested in the State of New South Wales as Crown land.

[n2018-1127]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
 Minister for Lands and Forestry

DESCRIPTION

*Parish – Richmond; County – Hume
Land District – Corowa; LGA – Greater Hume Shire*

Road Closed: Lot 10 DP 1238575
File No: 17/06106

SCHEDULE

On closing, the land within Lot 10 DP 1238575 remains vested in the State of New South Wales as Crown land.

[n2018-1128]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Beranghi; County – Macquarie
Land District – Kempsey; LGA – Kempsey*

Road Closed: Lot 1 DP 1193067
File No: TE07H23

SCHEDULE

On closing, the land within Lot 1 DP 1193067 remains vested in the State of New South Wales as Crown land.

[n2018-1129]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Tyalgum; County – Rous
Land District – Murwillumbah; LGA – Tweed*

Road Closed: Lot 2 DP 1238987
File No: GF06H143

SCHEDULE

On closing, the land within Lot 2 DP 1238987 that was formerly Council road becomes vested in the State of New South Wales as Crown land.

Council's reference: GR3/12/12

[n2018-1130]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – South Bellingen; County – Raleigh

Land District – Bellingen; LGA – Bellingen

Road Closed: Lot 1 DP 1216796

File No: 15/01680

SCHEDULE

On closing, the land within Lot 1 DP 1216796 that was formerly Council road becomes vested in the State of New South Wales as Crown land.

Council's reference: DW 335381

[n2018-1131]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – Weah Waa; County – Courallie

Land District – Moree; LGA – Moree Plains

Road Closed: Lot 2 DP 1220395

File No: 16/00407

SCHEDULE

On closing, the land within Lot 2 DP 1220395 remains vested in the State of New South Wales as Crown land.

[n2018-1132]

ERRATUM

IN the Government Gazette of 4 February 2011, folio 532 under the heading “Withdrawal of Lands from Western Lands Leases”, the reference in Column 3 to title 6384/769267 being WLL868 should have read 6384/769267 and 4279/766967.

File Reference: 10/06048

The Hon. Paul Toole M.P.
Minister for Lands and Forestry

[n2018-1133]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – Toolond; County – Rous

Land District – Murwillumbah; LGA – Byron

Road Closed: Lot 8 DP 1169229

File No: 09/03271

SCHEDULE

On closing, the land within Lot 8 DP 1169229 remains vested in the State of New South Wales as Crown land.

[n2018-1134]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parishes – Bramah, Barnett, Wallah; County – King

Land District – Boorowa; LGA – Hilltops

Road Closed: Lots 1-5 DP 1238655

File No: 08/8399 RS

SCHEDULE

On closing, the land within Lots 1, 2 & 4 DP 1238655 remains vested in the State of New South Wales as Crown land.

On closing, the land within Lot 3 DP1238655 remains and becomes vested in the State of New South Wales as Crown Land.

On closing, the land within Lot 5 DP1238655 becomes vested in the State of New South Wales as Crown Land.

Council's reference: 08/8399

[n2018-1135]

REVOCATION OF RESERVATION OF CROWN LAND

Pursuant to section 90 of the *Crown Lands Act 1989*, the reservation of Crown land specified in Column 1 of the Schedule hereunder is revoked to the extent specified opposite thereto in Column 2 of the Schedule.

The Hon Paul Toole, MP
Minister for Lands and Forestry

SCHEDULE

COLUMN 1	COLUMN 2
Land District: Glen Innes Local Government Area: Glen Innes Severn Locality: Glen Innes Reserve No. 753282 Public Purpose: Future Public Requirements Notified: 29 June 2007 File Reference: 10/05067	The part being Lot 744 DP No44699 Parish Glen Innes County Gough of an area of 6469m2

[n2018-1136]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Burroway; County – Ewenmar
Land District – Dubbo; LGA – Narromine*

Road Closed: Lot 2 DP 1231004

File No: 17/00164

SCHEDULE

On closing, the land within Lot 2 DP 1231004 remains vested in the State of New South Wales as Crown land.

[n2018-1137]

ROADS ACT 1993

ORDER

Transfer of a Crown Road to Council

In pursuance of the provisions of Section 151, *Roads Act 1993*, the Crown public road specified in Schedule 1 is transferred to the Roads Authority specified in Schedule 2, as from the date of publication of this notice and from that date the road specified in Schedule 1 ceases to be a Crown public road.

THE HON PAUL TOOLE, MP
Minister for Lands and Forestry

SCHEDULE 1

Land District – Metropolitan;
Local Government Area – The Hills Shire;
Parish – Cornelia;
County – Cumberland;

That part of Crown public road known as Mitchells Road at Sackville North shown by yellow outline on the diagram hereunder.



SCHEDULE 2

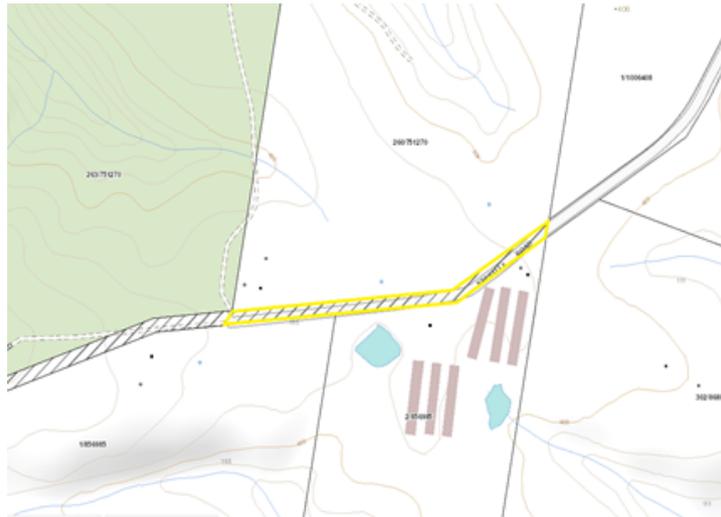
Roads Authority: The Hills Shire Council

File No: 18/02553

SCHEDULE 1

Land District – Picton;
Local Government Area – Wollondilly Shire;
Parish – Couridjah & Burratorang;
County – Camden;

That part of Crown public road known as Kelsalls Road at Lakesland shown by yellow outline on the diagram hereunder.



That part of Crown public road known as Fergusson Road at Lakesland shown by yellow outline on the diagram hereunder.



That part of Crown public road known as Fergusson Road at Lakesland shown by yellow outline on the diagram hereunder.



DESCRIPTION

*Parish – Palmerston; County – Macquarie
Land District – Port Macquarie; LGA – Kempsey*

Road Closed: Lot 7 DP 1239878

File No: 17/09424

SCHEDULE

On closing, the land within Lot 7 DP 1239878 remains vested in the State of New South Wales as Crown land.

[n2018-1139]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Kenebri; County – Baradine
Land District – Coonabarabran; LGA – Warrumbungle*

Road Closed: Lot 1 DP 1237041

File No: 17/02177

SCHEDULE

On closing, the land within Lot 1 DP 1237041 remains vested in the State of New South Wales as Crown land.

[n2018-1140]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Derringullen; County – King
Land District – Yass; LGA – Yass Valley*

Road Closed: Lot 2 DP 1239684

File No: 17/10081

SCHEDULE

On closing, the land within Lot 2 DP 1239684 remains vested in the State of New South Wales as Crown land.

[n2018-1141]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

Parish – Merriangaah; County – Wellesley
Land District – Bombala; LGA – Snowy Monaro Regional

Road Closed: Lot 1 DP 1236856

File No: 17/04385

SCHEDULE

On closing, the land within Lot 1 DP 1236856 remains vested in the State of New South Wales as Crown land.

[n2018-1142]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
 Minister for Lands and Forestry

DESCRIPTION

Parishes – Tulladunna, Pian, Helebah; County – Jamison
Land District – Narrabri; LGA – Narrabri

Road Closed: Lot 1 DP 1233193

File No: 15/03916

SCHEDULE

On closing, the land within Lot 1 DP 1233193 remains vested in the State of New South Wales as Crown land.

[n2018-1143]

APPOINTMENT OF TRUST BOARD MEMBERS

Pursuant to section 93 of the *Crown Lands Act 1989*, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

The Hon Paul Toole, MP
 Minister for Lands and Forestry

Schedule

Column 1	Column 2	Column 3
Julia Anne Harrison (new member) For a term commencing the date of this notice and expiring 03 September 2020.	Swansea Memorial Hall Trust	Reserve No. 700037 Public Purpose: community purposes Notified: 11 July 1997 File Reference: MD80R82-002

[n2018-1144]

APPOINTMENT OF CORPORATION TO MANAGE COMMON TRUST

Pursuant to Division 1, Section 7, Subsection (6) of the *Commons Management Act 1989*, the corporation specified in Column 1 of the Schedules hereunder, is appointed to manage the affairs of the common trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedules.

The Hon Paul Toole, MP
 Minister for Lands and Forestry

SCHEDULE 1

Column 1	Column 2	Column 3
Broken Hill City Council For a term of three years commencing the day of this notice	Willyama Common Trust	Public Purpose: Commonage and Temporary Common. Reserve 2421 Notified: 4 September 1886 Reserve 5498 Notified: 11 February 1888 Reserve 23158 Notified: 8 November 1895 Reserve 48340 Notified: 27 November 1912 Reserve 48342 Notified: 27 November 1912 Reserve 63592 Notified: 28 October 1932 Reserve 68806 Notified: 17 November 1939 Reserve 70559 Notified: 1 May 1942 Reserve 81342 Notified: 16 January 1959 Reserve 90760 Notified: 15 April 1977 File No: 11/11438

SCHEDULE 2

Column 1	Column 2	Column 3
Balranald Shire Council For a term of three years commencing the day of this notice	Balranald Common Trust	Public Purpose: Permanent Common and Addition Commonage. Reserve 630056 Notified: 12 January 1883 Reserve 78245 Notified: 6 January 1956 File No: WL04R37

SCHEDULE 3

Column 1	Column 2	Column 3
Central Darling Shire Council For a term of three years commencing the day of this notice	Wilcannia Common Trust	Public Purpose: Commonage, Temporary Common, Extension to Temporary Common, Commonage Addition. Reserve 19334 Notified: 23 December 1893 Reserve 52442 Notified: 14 September 1917 Reserve 77322 Notified: 7 January 1955 Reserve 77328 Notified: 7 January 1955 File No: WL86R47-2

SCHEDULE 4

Column 1	Column 2	Column 3
Central Darling Shire Council For a term of three years commencing the day of this notice	Menindee Common Trust	Public Purpose: Common, Temporary Common, Commonage Addition, Extension to Common, Camping, Access. Reserve 3 Notified: 17 April 1886 Reserve 1016288 Notified: 26 August 1870 Reserve 64609 Notified: 22 June 1934 Reserve 64899 Notified: 9 November 1934 Reserve 64901 Notified: 9 November 1934 Reserve 71522 Notified: 25 May 1945 File No: WL04R38-1

[n2018-1145]

ALTERATION OF CORPORATE NAME OF RESERVE TRUST

Pursuant to section 92(3) of the *Crown Lands Act 1989*, the corporate name of the reserve trust specified in Column 1 hereunder, which is trustee of the reserve referred to in Column 2, is altered to the corporate name specified in Column 3.

The Hon Paul Toole, MP
Minister for Lands and Forestry

Schedule

Column 1	Column 2	Column 3
Skipway Park (R89048) Reserve Trust	Reserve No. 89048 Public Purpose: public recreation Notified: 12 October 1973 File Reference: 15/05391	Skiway Park (89048) Reserve Trust

[n2018-1146]

NOTICE OF PURPOSE OTHER THAN THE DECLARED PURPOSE PURSUANT TO SECTION 34A(2)(b) OF THE CROWN LANDS ACT 1989

Pursuant to section 34A(2)(b) of the *Crown Lands Act 1989*, the Crown reserve(s) specified in Column 2 of the Schedule is to be used or occupied under a relevant interest granted for the purpose(s) specified in Column 1 of the Schedule where such use or occupation is other than the declared purpose of the reserve

The Hon Paul Toole, MP
Minister for Lands and Forestry

Schedule

Column 1	Column 2
access	Reserve No. 190112 Public Purpose: environmental protection, public recreation Notified: 29 July 1994 File Reference: 17/03023
	Reserve No. 752459 Public Purpose: future public requirements Notified: 29 June 2007 File Reference: 17/01780

Schedule

Column 1	Column 2
communication facilities	Reserve No. 97753 Public Purpose: public recreation Notified: 4 April 1985 File Reference: 08/6163

Schedule

Column 1	Column 2
environmental protection	Reserve No. 78309 Public Purpose: future public requirements Notified: 3 February 1956 File Reference: 18/02411 Reserve No. 63879 Public Purpose: public recreation, resting place Notified: 13 April 1933 File Reference: 18/00963 Reserve No. 86006 Public Purpose: future public requirements Notified: 21 October 1966 File Reference: 18/00963 Reserve No. 88723 Public Purpose: soil conservation Notified: 22 September 1972 File Reference: 18/00963 Reserve No. 752412 Public Purpose: future public requirements Notified: 29 June 2007 File Reference: 18/00963 Reserve No. 754396 Public Purpose: future public requirements Notified: 29 June 2007 File Reference: 18/00963 Reserve No. 754423 Public Purpose: future public requirements Notified: 29 June 2007 File Reference: 18/00963

Schedule

Column 1	Column 2
wet area jetty	Reserve No. 85773 Public Purpose: public recreation Notified: 29 April 1966 File Reference: 17/11615

Schedule

Column 1	Column 2
sporting event	Reserve No. 90677 Public Purpose: public recreation Notified: 31 December 1976 File Reference: 18/02560

Column 1	Column 2
	Reserve No. 755902 Public Purpose: future public requirements Notified: 29 June 2007 File Reference: 18/02560
	Reserve No. 1011848 Public Purpose: access and public requirements, rural services, tourism purposes and environmental and heritage conservation Notified: 18 August 2006 File Reference: 18/02560

Schedule

Column 1	Column 2
pipeline pump grazing	Reserve No. 63476 Public Purpose: access, public recreation Notified: 12 August 1932 File Reference: 17/08840

Schedule

Column 1	Column 2
reservoir access	Reserve No. 84138 Public Purpose: future public requirements Notified: 11 January 1963 File Reference: 17/10832

Schedule

Column 1	Column 2
grazing	Reserve No. 744 Public Purpose: trigonometrical station Notified: 16 March 1875 File Reference: 15/07548

Schedule

Column 1	Column 2
power/transmission line	Reserve No. 3075 Public Purpose: public recreation Notified: 12 February 1887 File Reference: 14/11112

[n2018-1147]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Warrumba; County – Forbes
Land District – Cowra; LGA – Cowra*

Road Closed: Lot 1 DP 1237287

File No: 17/08405

SCHEDULE

On closing, the land within Lot 1 DP 1237287 remains vested in the State of New South Wales as Crown land.

[n2018-1148]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parishes – Lynch, Gilgoenbon, Coreen; County – Canbelego
Land District – Nyngan; LGA – Bogan*

Road Closed: Lots 1-3 DP 1239688, Lot 4 DP 1239690, Lot 5 DP 1239692

File No: 17/05846

SCHEDULE

On closing, the land within Lots 1-3 DP 1239688, Lot 4 DP 1239690, Lot 5 DP 1239692 remains vested in the State of New South Wales as Crown land.

[n2018-1149]

NOTIFICATION OF CLOSING OF A ROAD

In pursuance of the provisions of the *Roads Act 1993*, the road hereunder described is closed and the lands comprised therein cease to be public road and the rights of passage and access that previously existed in relation to the road is extinguished. Upon closing, title to the land, comprising the former public road, vests in the body specified in the Schedule hereunder.

The Hon Paul Toole, MP
Minister for Lands and Forestry

DESCRIPTION

*Parish – Wuuluman; County – Bligh
Land District – Wellington; LGA – Dubbo Regional*

Road Closed: Lot 1 DP 1239686

File No: 09/15478

SCHEDULE

On closing, the land within Lot 1 DP 1239686 remains vested in the State of New South Wales as Crown land.

[n2018-1150]

Other Government Notices

ASSOCIATIONS INCORPORATION ACT 2009

Cancellation of registration pursuant to section 80

TAKE NOTICE that BANKSTOWN CANTERBURY COMMUNITY TRANSPORT INCORPORATED (Y0905820) became registered under the Co-operatives National Law (NSW) as BANKSTOWN CANTERBURY COMMUNITY TRANSPORT CO-OPERATIVE LIMITED (NSWC32669), a non-distributing co-operative with share capital, on 29 March 2018, and accordingly its registration under the *Associations Incorporation Act 2009* is cancelled as of that date.

Robyne Lunney
 Delegate of the Commissioner,
 NSW Fair Trading
 4 April 2014

[n2018-1151]

ASSOCIATIONS INCORPORATION ACT 2009

Cancellation of registration pursuant to section 80

TAKE NOTICE that LEEP NGO INCORPORATED (Y1695646) became registered under the *Corporations Act 2001* as LEEP NGO LIMITED (ACN 624 225 538), a company limited by guarantee, on 6 March 2018, and accordingly its registration under the *Associations Incorporation Act 2009* is cancelled as of that date.

Robyne Lunney
 Delegate of the Commissioner,
 NSW Fair Trading
 4 April 2014

[n2018-1152]

ASSOCIATIONS INCORPORATION ACT 2009

Cancellation of incorporation pursuant to section 74

TAKE NOTICE that the incorporation of the following associations is cancelled by this notice pursuant to section 74 of the *Associations Incorporation Act 2009*.

2852 CLUB INCORPORATED	INC9881752
CANDLES CANCER SUPPORT GROUP INC	INC9884152
COMMUNITY KIDS MORBRUK NFP INCORPORATED	INC1500367
ENGADINE DISTRICT YOUTH SERVICES INCORPORATED	Y1680518
THE JAZZ GROOVE ASSOCIATION INCORPORATED	Y3049035
THE PROBUS CLUB OF TAMWORTH CITY INCORPORATED	Y0269917
SRI GIRIRAJA GAUDIYA MATH INCORPORATED	INC9890100
SYDNEY DISC GOLF CLUB INCORPORATED	INC1700533
SYDNEY WESTERN AIRFIELD GROUP INCORPORATED	INC9894684
TRAVINH FELLOWSHIP'S ASSOCIATION INCORPORATED	INC9893842

Cancellation is effective as at the date of gazettal.

Dated this 4 April 2018

Robyne Lunney
 Delegate of the Commissioner
 NSW Fair Trading

[n2018-1153]

ASSOCIATIONS INCORPORATION ACT 2009

Cancellation of Registration pursuant to Section 76

TAKE NOTICE that the registration of the following associations is cancelled by this notice pursuant to section 76 of the *Associations Incorporation Act 2009*.

ASIAN STUDENT SHELTER ASSOCIATION INCORPORATED	INC9894915
BABASIGA MOSHIMS DOONSIDE VOLLEYBALL INCORPORATED	INC9895169
CAMDEN CLASSIC VINTAGE HISTORICAL AND CLASSIC CARS INCORPORATED	INC9896059
CAMDEN WOMEN'S BOWLING CLUB INCORPORATED	INC9878974
COASTAL BOOTSCOOTERS INCORPORATED	INC9888362
COBAR FOOTBALL & NETBALL CLUB INCORPORATED	INC9887217
COOLRUNNING AUSTRALIA INCORPORATED	INC9884847
FIRECHASE INCORPORATED	INC9882046
FLOW INTERNATIONAL INCORPORATED	INC9893905
HEADLAND CHURCH INTERNATIONAL INCORPORATED	INC9893090
INTERNATIONAL PEN SYDNEY CENTRE INCORPORATED	INC9874482
KAREN BAPTIST CHURCHES OF AUSTRALIA INCORPORATED	INC9891277
LOCKHART TENNIS CLUB INC	Y1397116
METRO SOUTH WEST INDIGENOUS FOSTER CARER SUPPORT GROUP INCORPORATED	INC9897031
NEWCASTLE CHITO-RYU KARATE ASSOCIATION INCORPORATED	INC9881034
ORANA AVICULTURAL SOCIETY INCORPORATED	Y1815521
OUT OF THE PIT INCORPORATED	INC9883282
PACIFICA OUTRIGGER AND CANOE CLUB INCORPORATED	INC9893471
PENRITH CITY GRIDIRON INCORPORATED	Y2998910
PREMIUM INCOME FUND ACTION GROUP INCORPORATED	INC9894759
PROJECT BENEATH GALLIPOLI INCORPORATED	INC9893168
SCHOFIELDS CRICKET CLUB INC	Y1215208
SIDHASHRAM SADHAK PARIWAR AUSTRALIA INCORPORATED	INC9893658
ST PAULS EX-STUDENTS ASSOCIATION INCORPORATED	Y2751124
SYDNEY JUNIOR HOCKEY ASSOCIATION INCORPORATED	INC9884643
THE REX CAT CLUB OF NEW SOUTH WALES INCORPORATED	Y2275913
TULLAMORE PONY CLUB INCORPORATED	INC9883316
VIETLINK INCORPORATED	INC9894922

Cancellation is effective as at the date of gazettal.

Dated this 4th day of April 2018.

Christine Gowland
 Delegate of the Commissioner
 NSW Fair Trading

[n2018-1154]

GEOGRAPHICAL NAMES ACT 1966

PURSUANT to the provisions of Section 8 of the *Geographical Names Act 1966*, the Geographical Names Board hereby notifies that it proposes to assign the name:

Bob Bellear Sportsground for a sportsground accessed via Shara Boulevard, located adjacent to Brunswick Valley Way and New Brighton Road in the locality of Ocean Shores.

The position and extent for this feature is recorded and shown within the Geographical Names Register of New South Wales. The proposal can be viewed and submissions lodged on the Geographical Names Board website at www.gnb.nsw.gov.au from Wednesday 4 April to Friday 4 May 2018. Alternatively, email submissions may be lodged with the Secretary, Geographical Names Board, at ss-gnb@finance.nsw.gov.au or written submissions mailed to 346 Panorama Ave, Bathurst, NSW 2795.

In accordance with Section 9 of the *Geographical Names Act 1966*, all submissions lodged may be subject to a Government Information (Public Access) application and may be viewed by a third party to assist the Board in considering this proposal.

NARELLE UNDERWOOD
Chair
Geographical Names Board
PO Box 143
BATHURST NSW 2795

[n2018-1155]

LOCAL GOVERNMENT ACT 1993

Cancellation of Registration of Party

It is hereby notified that pursuant to section 320 of the *Local Government Act 1993* the registration of the following party is cancelled.

Sydney Matters Independent Team

John Schmidt
NSW Electoral Commissioner
NSW Electoral Commission
Level 25, 201 Kent Street
Sydney NSW 2000

[n2018-1156]

POISONS AND THERAPEUTIC GOODS REGULATION 2008

ORDER

Restoration of Drug Authority

In accordance with the provisions of clause 175(1) of the *Poisons and Therapeutic Goods Regulation 2008* a direction has been issued that the Order that took effect on and from 3 July 2017, on **Robert Steven MCDOWELL** (NMW0001298150) of Kingsford NSW 2032, prohibiting him as a registered nurse, from having possession of or supplying a drug of addiction as authorised by clause 101(1) of the Regulation, shall cease to operate on and from 3 April 2018.

Dated at Sydney, 28 March 2018

ELIZABETH KOFF
Secretary
NSW Health

[n2018-1157]

SYDNEY OLYMPIC PARK AUTHORITY ACT 2001

Notice of Proposal to grant license under section 32 (4) of the Sydney Olympic Park Authority Act 2001.

Sydney Olympic Park Authority is responsible for managing and developing the 640 hectares that comprise Sydney Olympic Park and maintaining it as a lasting legacy for the people of NSW.

Pursuant to Section 32 (4) of the *Sydney Olympic Park Authority Act 2001*, Sydney Olympic Park Authority proposes to grant a short term license in the Millennium Parklands for the operation and management of the Lodge facility in the Newington Armory.

Development consent was granted in 2005 for the adaptive reuse of (4) buildings at the Newington Armory as a low cost lodge accommodation facility. The proposed license is for the continued operation and management of the Lodge facilities for a period of less than five years.

The proposal applies to part of the Newington Armory Lot 3 DP 883215 and within the Millennium Parklands.

Interested parties can make written submissions on the proposed license:

- online at tenders.nsw.gov.au
- by email to enquiries@sopa.nsw.gov.au, or
- by mail addressed to

Senior Manager, Commercial
Sydney Olympic Park Authority
8 Australia Ave
Sydney Olympic Park NSW 2127

The closing date for submissions is Tuesday 1 May 2018.

The proposed license referred to in this notice will not be entered into before all public submissions relating to the matter have been duly considered and an approval under the Parklands Plan of Management is issued.

[n2018-1158]

Practice Note DC (Civil) No. 1A

Case Management in Country Sittings

This Practice Note is issued under sections 56 and 57 of the *Civil Procedure Act 2005* and is intended to facilitate the just, quick and cheap resolution of the real issues in all proceedings before the Court. It applies to all matters heard in country sittings (i.e. excluding Sydney, Gosford and Newcastle) from 6 April 2018 as do the Standard Orders for Hearings In Country Matters annexed to this Practice Note at Schedule 1.

1. Time Standard

- 1.1 The Court aims to have cases completed within 12 months of commencement.
- 1.2 Parties should expect to be allocated a trial date within 12 months of the commencement of proceedings. Parties to proceedings and the legal practitioners representing them will be expected to assist the Court to meet this time standard.
- 1.3 Counsel's advice should be obtained early. Proceedings will not be delayed by reason of a party's failure to brief counsel at an early stage.

2. Commencing Proceedings

- 2.1 Before commencing proceedings or filing a defence, legal practitioners must give their clients notice in writing about the requirements of this Practice Note and of the Court's insistence on compliance with its orders. That notice must state that the Court may dismiss actions or cross claims or strike out defences if orders are not complied with and that the Court may make costs orders against parties who fail to comply with its orders. Practitioners should be mindful of the Standard

Orders for Hearings In Country Matters, annexed at Schedule 1 of this Practice Note.

- 2.2 Parties should give earnest consideration to the appropriateness of the venue where proceedings will be commenced.
- 2.3 Plaintiffs must not commence proceedings until they are ready to comply with the requirements of the *Uniform Civil Procedure Rules* (UCPR) and the Court's practice notes for preparation and trial. This means that, except in special circumstances, the plaintiff's preparation for trial must be well advanced before filing the statement of claim.
- 2.4 In actions under the *Motor Accidents Compensation Act 1999*, *Motor Accident Injuries Act 2017* or Part 2A of the *Civil Liability Act 2002*, if attaining an impairment threshold is necessary to entitle a plaintiff to claim damages of any particular type, proceedings should not be commenced without evidence as to the relevant threshold.
- 2.5 Rules 15.12 and 15.13 provide that in personal injury cases and claims under the *Compensation to Relatives Act 1897* the plaintiff must file and serve particulars and serve the supporting documentation on the defendant or the defendant's insurer or solicitor either with the statement of claim or as soon as practicable after the service of the statement of claim. In order to protect the plaintiff's privacy, the Court does not require the particulars to be served personally on the defendant.
- 2.6 If it has not already done so, the defendant must commence its preparation on receipt of the statement of claim. In a personal injury case, the defendant must start preparing for trial based on the matters alleged in the statement of claim and rule 15.12 or 15.13 particulars. The defendant's solicitor must arrange medical examinations on receipt of these documents or receipt of any further notification of medical examinations under rule 15.14.

- 2.7 This Practice Note does not apply to a statement of claim in which a liquidated amount is claimed until a defence is filed. When a defence is filed, the Court will list the case for a pre-trial conference.

3. Proposed Consent Orders

- 3.1 The plaintiff must serve proposed consent orders for the preparation of the case on the defendant with the statement of claim. The orders must be drafted specifically for each case. They must include all steps necessary to ensure that the case will be ready to be referred to mediation and/or other form of alternative dispute resolution and listed for trial at the status conference.
- 3.2 If the defendant does not agree with the proposed orders, or wants to add additional steps, it must serve amended consent orders on the plaintiff's solicitor at least 7 days before the pre-trial conference.
- 3.3 The Court expects that, in most cases, the defendant will have requested particulars of the statement of claim, which the plaintiff will have supplied before the pre-trial conference. The defendant should also have filed and served a defence and any cross claims.
- 3.4 In a personal injury case, the Court expects that the plaintiff will have served complete rule 15.12 or 15.13 particulars and primary medical reports, have qualified the experts who will prepare reports, including any liability or economic loss expert and notified the defendant of the expert appointments under rule 15.14. The Court expects that the defendant will have arranged medical examinations and issued subpoenas.

4. Representation

- 4.1 The Court requires proper representation at all appearances. If a party is legally represented, a legal practitioner with adequate knowledge of

the case must represent that party whenever the case is listed before the Court. That legal practitioner must have sufficient instructions to answer the Court's questions and to enable the Court to make all appropriate orders and directions.

- 4.2 Cases should not be mentioned by consent unless they are settled or ready for a hearing date.
- 4.3 It is generally inappropriate for parties to be represented by agents or clerks. Where a party is represented by an agent, that agent should have complete instructions and be able to deal with any questions asked by the Court.
- 4.4 If there is no proper representation, the case will either be stood down or stood over to another day to allow proper representation. The adjournment will be at the cost of the party not properly represented and usually such costs will be payable by that party's legal representative.

5. Pre-Trial Conference

- 5.1 In all cases in the case managed list, (except defamation cases and child care appeals) the Court will allocate a pre-trial conference date when the statement of claim is filed. The plaintiff must notify the defendant of the date and time of the pre-trial conference when the statement of claim is served.
- 5.2 The pre-trial conference will be held two months after commencement of proceedings.
- 5.3 At the pre-trial conference, the Court will examine the orders proposed by the parties and make all appropriate directions and orders to ensure that the case is ready to be listed for hearing at the status conference. The orders of the Court must be strictly complied with. Failure to

comply with those orders will be treated seriously and may lead to adverse costs orders against the non-compliant party or where appropriate, a legal practitioner.

- 5.4 The Court will give directions for the service of expert reports under rule 31.19 at the pre-trial conference. The parties must be able to tell the Court the precise nature of any expert evidence to be relied on and the names of all experts so that appropriate directions can be made. All reports must be served at least 28 days before the status conference. For concurrent evidence, the parties must comply with clauses 6-9 of the Standard Orders for Hearings In Country Matters.
- 5.5 In cases under the *Motor Accident Compensation Act 1999*, *Motor Accident Injuries Act 2017* or Part 2A of the *Civil Liability Act 2002*, the defendant should tell the plaintiff whether or not it agrees that the relevant threshold has been reached at or before the pre-trial conference. In a motor accident case, the proposed orders must provide for any referral to the Medical Assessment Service if the matter has not yet been referred.
- 5.6 In an appropriate case, the Court will allocate a trial date at the pre-trial conference or refer the parties to a settlement conference or mediation.

6. Subpoenas

- 6.1 Parties must issue subpoenas as early as possible so that documents can be produced and inspected and are available for the proper preparation of the case, including submission to experts.
- 6.2 Parties should inspect all documents produced under subpoena and serve any documents on which they rely before the status conference. Parties must ensure that they follow up any non-production of documents and file any necessary notices of motion before the status conference.

7. Motions and Summonses

- 7.1 Interlocutory disputes between the parties should generally be resolved by filing a notice of motion. Parties must file any motions as soon as practicable. The parties should not wait until the next occasion when the case is before the Court to consider seeking orders or filing a motion.
- 7.2 A motion will be allocated a hearing date on the first day of the next country sittings. Urgent motions and motions that may affect the hearing of a matter in a forthcoming country sittings should be returnable in Sydney as foreign motions.
- 7.3 Where there are more than two parties to the proceedings and the dispute to be resolved by way of notice of motion does not affect a party the appearance of that party may be mentioned by consent.
- 7.4 Counsel are not required to robe for the hearing of motions and summonses.
- 7.5 Affidavits in support of motions will be returned to the parties at the conclusion of the hearing of the motion.

8. Status Conference

- 8.1 All cases, except for those which for good reason cannot be heard within 12 months of commencement, will be required to take a hearing date within a period between 8 and 11 months from commencement.
- 8.2 Cases in the General List will be required to take a hearing date at the status conference even though there are still some matters to be completed before the hearing. Appropriate orders will be made.

- 8.3 Matters allocated a hearing date will generally be referred for alternative dispute resolution in accordance with clause 11 of this Practice Note.
- 8.4 When parties attend a status conference they must have instructions about alternative dispute resolution under Part 4 of the *Civil Procedure Act 2005*, details of the availability of their client, witnesses and counsel together with an estimate of the length of the case to allow directions to be made as to alternative dispute resolution or a hearing date to be fixed.
- 8.5 Any cases, except those which have a genuine need for an additional time for preparation, will be subject to an enquiry as to why they have not been prepared for hearing, orders will be made for their further preparation and costs orders will be made. In cases not ready to proceed to a hearing, the party responsible may have to show cause why the case or cross claim should not be dismissed or the defence struck out.
- 8.6 Unless orders are made at the status conference, the Court will usually not allow parties to rely on medical reports and experts' reports served later than 28 days before the status conference. Reports which are not served in accordance with the Court's orders are usually inadmissible (see rule 31.28).
- 8.7 The Court will generally order that final particulars under rule 15.12 or 15.13 be filed and served before the status conference.
- 8.8 Parties should be aware that cases may only be placed in the Inactive List by order of a Judge or the Judicial Registrar. Applications for entry into the Inactive List should be made by Notice of Motion supported by affidavit annexing any relevant material relied upon.

- 8.9 Cases in the Inactive List will be listed for review at the next sittings after the expiration of the period during which they are ordered to remain in the Inactive List.

9. Estimates of the Length of Hearings

- 9.1 Any estimate given to the Court of the length of a hearing when the matter is allocated a hearing date must be honest and reliable, having been given earnest consideration by the parties. Parties must promptly notify the Court if the estimate given for the hearing changes. Substantial underestimations of the length of a hearing may lead to costs orders against legal practitioners pursuant to ss 98 and 99 of the *Civil Procedure Act 2005*.
- 9.2 Parties should be aware that matters will not normally be adjourned part-heard to Sydney, and are expected to finish within the country sittings in which they are listed. In this regard, parties will be expected to make early applications for any expert witness not locally resident to give evidence by audio-visual link and any other applications relevant to courtroom logistics and ensuring the smooth operation of proceedings. If the matter is unlikely to finish within the time allocated for the sittings it should be commenced in Sydney. Any request to extend the sittings to accommodate a hearing which is likely to exceed the length of the sittings must in the first instance be made to the List Judge in Sydney who will then consult with the Chief Judge. Such extensions to country sittings will rarely be granted.

10. Circuit Lists

- 10.1 Parties should be aware that all cases in the sittings will be listed on the first day of the sittings and will be listed in the following order of priority:

- (i) Child care appeals;
- (ii) Cases that have been not reached at a previous sittings;

(iii) Any cases with priority. Information as to parties or witnesses with age or health problems or from interstate or overseas or cases requiring expedition should be provided at the Status Conference;

(iv) All other cases.

Any other application for priority should be made to the Judge presiding at the sittings.

10.2 The relevant registry will prepare a list of cases at the sittings. The list should be finalised a fortnight before the sittings so that a copy may be sent to the Judicial Liaison Officer for the information of the Chief Judge, the Civil List Judge and the Judge presiding at the sittings.

11. Alternative Dispute Resolution

11.1 The Court will refer all appropriate cases for alternative dispute resolution. The parties must have instructions about suitability for mediation or other alternative dispute resolution when they ask for a hearing date. Parties should note that the Court's power to order mediation does not depend on the consent of the parties.

12. Directions Hearings and Show Cause Hearings

12.1 If a case is not ready for hearing at the status conference it will be listed for directions before the presiding Judge at the next sittings. Any order to provide statements or file affidavits must be strictly complied with. Generally, the Court will not accept statements, affidavits or submissions which have not been provided in accordance with an order.

12.2 Where there has been non-compliance with Court orders, the Court may list the case before the List Judge in Sydney for:

- (a) the plaintiff to show cause why the case should not be dismissed for want of prosecution or;
- (b) the defendant to show cause why the defence should not be struck out and/or any cross claim dismissed for want of prosecution

The party ordered to show cause should expect to pay the costs of the show cause hearing.

- 12.4 At least 5 days before the show cause hearing, the legal practitioner for the party in default (or the party, if self-represented) must file and serve an affidavit setting out the reasons why he or she has not complied with the Court's orders and/or this Practice Note. In addition, any other party who wishes the Court to consider any submissions must put those submissions in writing, file and serve them at least 5 days before the show cause hearing.

13. Adjournments

- 13.1 If a hearing date is in jeopardy as a result of non-compliance with orders or intervening events, either party must immediately approach the Court by filing an affidavit in the registry. The registry will allocate a directions hearing before the List Judge in Sydney. The affidavit and details of the listing date and time must be served on all other parties forthwith. If adjournment of the hearing date is later sought, the Court will take any failure to approach the Court under this clause into account when considering the adjournment application.

- 13.2 The Court will only grant adjournment applications where there are very good reasons. The following will normally not be sufficient reasons for adjournment:

- (a) the unavailability of counsel or;

(b) the failure to comply with the Standard Orders for Hearings or any other orders or directions made by the Court or;

(c) the failure to properly prepare the matter for hearing.

13.3 Parties who breach the Standard Orders for Hearings or any other Court orders may be restricted in the evidence which they can rely on at the hearing.

13.4 An application for adjournment of a trial is made by notice of motion and supporting affidavit and must be made at the earliest possible opportunity and will be heard in Sydney.

13.5 Where appropriate, the Court will make costs orders in a fixed sum payable at a nominated time. The Court will, almost invariably, make an order for costs against a party whose legal representative has failed to ascertain the availability of the parties and their witnesses before taking a date for trial. The Court may call on legal practitioners to show cause why they should not pay the costs of an adjournment personally or reimburse their client for those costs.

14. Conduct of Hearings

14.1 The Court considers that rule 58 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* applies to all legal practitioners who appear before it. Accordingly, in conducting a hearing, legal practitioners must:

(a) confine the case to identified issues which are genuinely in dispute;

(b) present the identified issues in dispute clearly and succinctly;

(c) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case; and

(d) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.

15. Settled Matters

- 15.1 Practitioners are requested to advise the relevant registry immediately when cases with hearing dates are settled.
- 15.2 Until terms of settlement, consent orders or a notice of discontinuance is filed, the parties must attend when the case is listed before the Court. Parties should aim to file settlement documents in court on that day. If settlement documents are not available when the case is listed for hearing, the case will be listed for directions.
- 15.3 Settlement documents must be filed promptly and, if they have not been filed, parties must attend on the directions date. The Court may dismiss cases for want of prosecution if settlement documents are not filed or if the parties do not appear.

Schedule 1 – Standard Orders For Hearings In Country Matters

STANDARD ORDERS FOR HEARINGS IN COUNTRY MATTERS

CHRONOLOGY

1. The Plaintiff's solicitor is to prepare a full chronology of relevant events, a copy of which is to be served upon the other party/parties at least 3 clear days prior to the hearing date.
2. The plaintiff is to read (or have read to them) the chronology before giving evidence. The chronology should be tendered in the plaintiff's case.

MEDICAL AND EXPERT REPORTS

3. Each party is to prepare a schedule of medical and expert reports and any other documents which are to be tendered. A copy of the schedule is to be served upon the other party/parties at least 3 days prior to the hearing date.
4. The schedule is to contain the dates of the reports and the dates of service.
5. Working copies of all medical reports, the chronology and all other documents which any party proposes to tender should be available for the Trial Judge.

CONCURRENT EVIDENCE

6. Where more than one expert has been required to give oral evidence, if the experts' field of expertise is the same or substantially the same, arrangements should be made by the parties for the experts to give their evidence concurrently.
7. If the parties disagree or are in doubt as to whether the case is suitable for concurrent expert evidence, directions should be sought from the Court on that matter at the earliest convenient time after such disagreement or doubt arises. If the relevant circuit court is not sitting, the application should be made to the list judge in Sydney. This order includes an application by any party for a hearing to be exempt from the requirement for concurrent evidence.
8. Where experts are to give their evidence concurrently each expert should be provided with the reports of the other expert/s, if not already in their possession, at least 21 days before the commencement of the hearing.
9. The experts, before giving their oral evidence, should confer with the intent of reducing the issues between them. Thereafter a joint report should be prepared stating areas of agreement and continued disagreement. Where

areas of continued disagreement remain, reasons must be stated by each expert (or group of experts holding a common opinion) for such continued disagreement.

SCHEDULES OF DAMAGES AND ISSUES

10. Each party is to prepare a schedule of damages and a schedule of issues which is to be served upon the other party/parties at least 3 days prior to the hearing date. Copies of the schedules are to be provided to the Trial Judge.

COURT TECHNOLOGY AND EVIDENCE

11. If a party intends to adduce electronic evidence, for example CCTV footage, via CDs, DVDs or data files the party must consult the "Information Sheet – Presentation of Electronic Evidence" located on the District Court website at: <http://www.districtcourt.justice.nsw.gov.au> 28 days prior to the hearing to confirm that the Court's technology resources capable of playing the evidence. Arrangements for testing any equipment may be the Court Registry or contacting multimedia@justice.nsw.gov.au.

If the electronic evidence is not in a form that is compatible with the Court's technology resources the evidence must either be converted to formats used by the Court or the party must bring their own devices to play the evidence.

ADJOURNMENTS

12. All cases should be ready to proceed during the sittings in which they are listed. All sittings will operate as a running list and applications for special fixtures within the running list will not normally be granted. Parties should be aware that matters will not normally be adjourned part-heard to Sydney, and are expected to finish within the country sittings in which they are listed. Please see clause 9.2 of Practice Note DC (Civil) No.1A. Further, the parties must comply with clause 9.1 of Practice Note DC (Civil) No.1A when providing estimates of the length of hearing. Parties should prompt notify the Court if the estimate given changes.

13. Subject to sections 56-60 of the CPA, hearings will only be vacated or adjourned where there are very good reasons. These must be demonstrated by the party seeking the vacation or adjournment. The unavailability of counsel or a failure to comply with court orders or to properly prepare the matter for hearing, will normally not be sufficient reasons.

14. Any application for an adjournment must be made by way of Notice of Motion with an affidavit in support and must be made at the earliest possible time. If the relevant circuit court is not then sitting, the application should be made to the list judge in Sydney.

COUNSEL

15. Counsel appearing at the hearing are to be notified of these orders.
16. The presiding Judge will call through all matters at commencement of circuit and all parties should be represented.

The Hon. Justice D.M. Price A.M.
Chief Judge
29 March 2018



PRACTICE NOTE
CLASS 1 DEVELOPMENT APPEALS

Name and commencement

1. This Practice Note is to be known as Practice Note – Class 1 Development Appeals. It commences on 3 April 2018. It replaces the Practice Note – Class 1 Development Appeals made on 22 March 2017.

Application of Practice Note

2. This practice note applies to appeals under ss 8.7, 8.8, 8.9 and 8.23 and applications under s 4.55(8) of the *Environmental Planning and Assessment Act 1979* in Class 1 of the Court’s jurisdiction (“development appeals”).

Purpose of Practice Note

3. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of development appeals.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
5. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed

alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.

6. Parties are to ensure that all directions which they seek with respect to development appeals will assist in enabling such appeals to be dealt with at the hearing with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the *Land and Environment Court Act 1979*).

Legal practitioners and agents of parties to be prepared

7. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. Any person seeking to perform the role of an agent should make themselves aware of the obligations of an agent and the requirement to obtain the leave of the Court to appear on someone's behalf in the proceedings. An application for leave to appear as an agent in the proceedings may be made at the time of commencing the proceedings by letter to the Registrar, or orally at the first directions hearing. The application must be supported by evidence that rule 7.7 of the *Land and Environment Court Rules 2007* has been complied with.

Note: More information regarding the obligations of agents in development appeals can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Coming to the Court" and then "Having someone represent you."

9. Legal practitioners and agents for each party should communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and on preparation of short minutes recording the directions

Commencing a development appeal

10. A development appeal is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry a completed Class 1 Application Form (Form B).

Note: the application form for development appeals can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Forms & Fees" on the right hand menu.

11. Any plans accompanying the development appeal application are to satisfy the requirements in **Schedule A**. If leave is granted by the Court to amend the plans, any amended plans are also to meet those requirements.
12. If the plans the subject of the determination of a consent authority in respect of which a development appeal application is to be made do not satisfy the requirements in Schedule A, the applicant, before lodging the development appeal application, may amend the plans without seeking leave of the Court, but only to the extent necessary to cause the plans to satisfy the requirements in Schedule A. Any other amendment is to be by leave of the Court.

Service of the development appeal application

13. Development appeal applications are to be served within 7 days of filing.

The return date of the development appeal

14. Development appeals will usually be given a return date before the Court 28 days after the date on which they are filed. On the return date, the first directions hearing will occur. The first directions hearing will usually be before the Registrar on a weekday from Tuesday to Friday.
15. If the development appeal concerns a site that is located outside of metropolitan Sydney, the first directions hearing will occur by telephone in the telephone directions hearing list conducted before the Registrar on Mondays.
16. Applications to extend the period for the return of the application before the Court may be granted if the applicant demonstrates that service cannot be achieved within the time required. The Registrar may also extend the period if

circumstances, such as public holidays, make it appropriate that a longer period be allowed for parties to take the action required by this practice note before or by the return of the proceedings.

Access to documents

17. On request, a respondent who is a public authority or public official is to provide the other party with access to the documents relevant to the development application or modification application and its decision (if any), within 14 days of the request.

Identifying the issues in dispute

18. The respondent consent authority is to file and serve a statement of facts and contentions in accordance with **Schedule B** before 4.00pm on the third last working day before the first directions hearing unless the proceedings involve:
 - (a) an appeal against a determination to grant consent subject to conditions, or
 - (b) an appeal by an objector to the application under s 98 of the *Environmental Planning and Assessment Act 1979*.
19. If the proceedings involve an appeal against a determination to grant consent subject to conditions or an appeal by an objector, then the applicant for consent or objector is to file and serve a statement of facts and contentions in accordance with **Schedule C** before 4.00pm on the third last working day before the first return of the proceedings.
20. If any party seeks to raise an issue of fact or law that it contends precludes the grant of consent or approval to the application, then the party raising that issue is to identify it in its statement of facts and contentions.

Number of pre-hearing attendances

21. Unless there are interlocutory applications, a development appeal is normally in court before the hearing on no more than three occasions:

- (a) at the first directions hearing,
- (b) at the conciliation conference, and
- (c) at the second directions hearing.

Before the first directions hearing

22. Before the first directions hearing, the parties are to discuss and endeavour to agree upon:

- (a) whether the proceedings are suitable for a conciliation conference;
- (b) the directions that the Court should make at the first directions hearing;
- (c) the proposed dates for hearing or conciliation conference, being usually the dates in the range of available dates published at the top of the court list; and
- (d) if any party intends to adduce expert evidence at a hearing of the proceedings, a statement of the disciplines in respect of which they propose to call expert evidence, the names of the experts, the issues to which the proposed expert evidence relates, and the reasons why the proposed expert evidence is reasonably required to resolve the proceedings having regard to the requirement for the just, quick and cheap resolution of the issues in dispute.

23. If the parties do not agree, each party should prepare their own written version of the directions they propose.

Parties to seek directions before adducing expert evidence

24. Parties are encouraged to consider whether expert evidence is genuinely necessary to resolve the issues in dispute in development appeals. Unnecessary expert evidence substantially increases the time and cost of appeals. Parties are encouraged to consider whether the proceedings can appropriately be fixed for hearing before a Commissioner or Commissioners with special knowledge and experience in relation to the issues in dispute.

25. A party intending to adduce expert evidence at the hearing of any development appeal must apply for directions from the Court under Pt 31 r 31.19 of the Uniform Civil Procedure Rules 2005 permitting the adducing of expert evidence.
26. The application for directions is to be made at a directions hearing at which the development appeal is listed for hearing. The application is to be supported by a completed information sheet in the form of **Schedule F**, outlining the issues in the proceedings, the experts whose opinion is sought to be adduced as evidence in the proceedings, and the areas of expertise of each expert. The application is also to be accompanied by the proposed directions under r 31.20 of the Uniform Civil Procedure Rules 2005.
27. If practicable, the Court will determine the application for directions at the directions hearing or otherwise it will fix a date for hearing the application. At the hearing of the application for directions, the party seeking directions is to explain the expert evidence sought to be adduced and why the use of that expert evidence should be permitted, including why that expert evidence relates to a real issue in the proceedings and is reasonably required to resolve that issue.
28. A party may not adduce expert evidence at the hearing of any development appeal unless the Court has given directions permitting the adducing of that expert evidence and the adducing of that expert evidence is in accordance with those directions (see r 31.19(3) of the Uniform Civil Procedure Rules 2005).
29. Any directions for the filing of experts' reports and joint expert reports made by the Court will specify the name of each expert required to comply with the directions.
30. If either party seeks to adduce the evidence of any expert not named in the directions made, that party is required to seek additional directions for the filing of evidence by that expert, either through Online Court or by exercising liberty to restore. Any application for additional directions is to be supported by an updated hearing information sheet in the form of Schedule F and provide the information and explanation referred to in paragraphs 26 and 27 of this practice note.

At directions hearings

31. Unless good reason is demonstrated, the parties are to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the conciliation conference or hearing date. Legal practitioners and other representatives of the parties are to advise the parties of their obligation to be ready to agree to a timetable up to and including the hearing date and are to obtain full and timely instructions to ensure the parties comply with this obligation.
32. At the first directions hearing, the parties are to inform the Court if there is any reason for the development appeal not to be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979*. If the development appeal is fixed for a conciliation conference, then the parties should expect that the usual directions in **Schedule D** be made.
33. If the parties do not satisfy the Court that there is a good reason the development appeal should not be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979*, then, in the ordinary course, the development appeal will be fixed for a conciliation conference as follows:
 - (a) for short matters not requiring a site view, before the Duty Commissioner on the next available Friday; or
 - (b) for other matters, within 28 days, subject to the availability of the Court.
34. If the parties satisfy the Court that there is a good reason why the development appeal should not be fixed for a conciliation conference but instead should be fixed for a hearing, the parties should expect that the usual directions set out in **Schedule E** will be made and should have either agreed or competing proposed short minutes to hand to the Court.
35. Following any termination of a conciliation conference, the parties are to be sufficiently prepared at the second directions hearing to assist the Court in making and to accept a timetable up to and including the hearing date, and to make any application for directions to adduce expert evidence in accordance with paragraphs 25 and 26 of this practice note. The parties should expect that

the usual directions set out in Schedule E will be made and should have either agreed or competing proposed short minutes to hand to the Court.

36. In preparing the short minutes, parties may delete, amend or abridge any part of the usual directions to facilitate the just, quick and cheap resolution of the proceedings.
37. Parties may also propose alternative directions if they have a reasonable basis for considering that alternative directions will better facilitate the just, quick and cheap resolution of the proceedings. If alternative directions are proposed, the party seeking those directions is to notify the other party before the directions hearing and ensure that proposed short minutes are available to be handed to the Court.
38. To enable the usual directions in Schedule E to be made, when the development appeal is to be fixed for hearing, the parties are to hand to the Court at the directions hearing a completed information sheet in the form of **Schedule F**.
39. In the ordinary course, a development appeal will not be adjourned at the first directions hearing because it is against a deemed refusal of the development application or modification application by a consent authority unless:
 - (a) the parties agree and satisfy the Court that there is a reasonable likelihood that the development application or modification application the subject of the appeal will be determined on a date able to be identified, being a date not more than 4 weeks away; or
 - (b) the party seeking the adjournment otherwise satisfies the Court that not to adjourn the development appeal would result in an undue waste of resources.

Use of Online Court

40. Online Court allows parties to seek directions online rather than appearing at a directions hearing in court. Any of the usual directions, including fixing a date for a hearing or conciliation conference and the making of directions for expert evidence, can be made through Online Court.

41. Any application by Online Court to adduce expert evidence must be supported by a completed hearing information sheet (Schedule F) as well as the information and explanation referred to in paragraphs 26 and 27 of this practice note.
42. Parties can apply for directions to be made online by submitting an Online Court request before 12noon on the day prior to the directions hearing. The Court will endeavour to respond to the request by 4:30pm. If the parties do not receive a response there must be an appearance on their behalf at the directions hearing.
43. Any party seeking to make an application using Online Court must first contact the other parties in an attempt to provide the Court with a consent position. If the parties reach consent as to the appropriate directions to be made and the date for a hearing or conciliation conference, the party lodging the request may mention the appearance of the other party and indicate that the directions are sought by consent.
44. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. The other party is required to respond to the request by 2pm. If no response is received, appearances are required on behalf of all parties at the directions hearing.
45. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, the Court may make a costs order against that party for the cost of the other party's appearance in court unless there is some reasonable excuse for the failure to respond.

Conduct of conciliation conference

46. A conciliation conference arranged by the Court will be conducted in accordance with the Conciliation Conference Policy.

Note: the Conciliation Conference Policy can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Practice and Procedure" on the top menu.

47. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the *Land and Environment Court Act 1979*), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.
48. Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at a conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
49. The respondent is to provide to the applicant any response to the amended plans or additional information, as well as draft without prejudice conditions of consent, 7 days before the conciliation conference.
50. The conciliation conference will not be adjourned to another time and place (fixed in consultation with the Registrar) by the Commissioner presiding over the conciliation conference unless the Commissioner is satisfied that there is good reason to do so (see s 34(6) of the *Land and Environment Court Act 1979*).
51. The failure of a party to attend with adequate instructions (such as not having authority to reach agreement or the ability to respond to a proposed outcome), or the failure of a party to be sufficiently prepared to negotiate an outcome (for example, by reliance on inadequate plans or supporting material or by not having experts in attendance to assist in negotiations) will not generally be a good reason for the adjournment of a conciliation conference.
52. In general, the conciliation conference will be adjourned only in circumstances where the parties have reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties and the adjournment is required to finalise that agreement.
53. If an adjournment is given, the conciliation may be listed before the Commissioner after 4pm on a future date not more than 3 weeks after the conciliation conference. The Commissioner may conduct the adjourned

conciliation by telephone or by requiring the parties to attend in person. If the time or date of the listing changes due to other duties of the Commissioner, the parties will be notified in writing by email.

54. If a conciliation conference is terminated, the development appeal will be listed for a second directions hearing 7 days after the conciliation conference is terminated. At the second directions hearing following the termination of the conciliation conference, the parties are expected to be in a position to take a date for the final hearing of the proceedings and for the usual directions in Schedule E to be made.
55. If any application is sought to be made to amend the development appeal application (see paragraphs 88 and 91 of this practice note), the notice of motion should be filed in sufficient time to be returnable at the second directions hearing. If further time to apply to amend the development appeal application is required, the proceedings will be listed for hearing with a timetable that allows sufficient time for an application to amend the development appeal application to be made.

Conduct of hearing

56. Generally, development appeals should commence at 9.30am on site for the hearing view unless, in the particular circumstances of the case, it would be inappropriate to do so.
57. The hearing view will be conducted in accordance with the Site Inspections Policy.

Note: the Site Inspections Policy can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Practice and Procedure" on the top menu.

Expert evidence

58. Any directions made concerning the filing of expert evidence must be provided to the experts within 3 business days of being made, together with the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil

Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses.

59. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.
60. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.
61. It is not the role of any expert to opine whether a development appeal should be upheld or dismissed. That is the role of the consent authority and, on appeal, the Court exercising the functions of the consent authority. Expert opinions in reports and joint reports are to deal with the contentions raised by the parties. Any other matter relevant to the expert's expertise, which the expert feels obliged to draw to the attention of the parties and the Court, may also be noted.
62. Experts' reports are not to repeat matters in Part A Facts of the statements of facts and contentions. Wherever possible, an expert should state that Part A Facts has been adopted as correct. If this cannot be stated, the expert should identify the matters which are disputed and state his or her position in relation to those matters.
63. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
64. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.
65. Where expert evidence from more than one expert in the same discipline is to be given in Court, the experts will give such evidence concurrently (subject to any order by the hearing Judge or Commissioner to the contrary).

66. If a party requires any expert for cross-examination, notice is to be given at least 7 days before the hearing.

Parties' single expert

67. Where expert evidence is necessary to be called in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties' single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:

- (a) the importance and complexity of the subject matter in dispute in the proceedings;
- (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
- (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);
- (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;
- (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline; and
 - (iv) whether the issue relates to the adequacy or sufficiency of information provided in the development appeal application;

- (f) whether the evidence of the parties' single expert involves the provision of aids to assist in the assessment of a development appeal application (such as shadow diagrams, view lines or photo montages).
 - (g) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
 - (h) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;
 - (i) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
 - (j) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.
68. The Court will not usually accept the appointment of a parties' single expert if that expert is unable to provide a report within 5 weeks of receiving the brief or is unable to attend a hearing within a further 28 days thereafter.
69. The usual directions in **Schedule G** provide for a parties' single expert to file and serve one expert report only. Without leave of the Court, a parties' single expert is not to provide parties with preliminary reports or opinions.
- Note: Under Pt 31.41 of the Uniform Civil Procedure Rules a party may seek clarification of the report of a parties' single expert on one occasion only.
70. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.
71. Where a parties' single expert has been appointed to give evidence in relation to any issue, the parties may not rely on any other expert evidence about that

issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

72. Leave is to be sought by notice of motion, with an affidavit in support explaining:
- (a) the name, qualifications and expertise of the expert proposed to be called;
 - (b) the matters proposed to be addressed by the expert;
 - (c) the date on which the expert was first retained and the date or dates of any expert report the expert has already prepared;
 - (d) the reasons for the need to call an additional expert to give that evidence, rather than having the parties' single expert address the matters further or in cross examination;
 - (e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the just, quick and cheap resolution of the proceedings; and
 - (f) the party's position in relation to any additional costs that might be caused by the calling of the expert.

If practicable, the affidavit should not exceed three pages in length (excluding annexures).

73. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.

Note: See Pt 31.45 of the Uniform Civil Procedure Rules.

Short matters

74. Parties may request short matters (less than 2 hours) to be fixed for hearing before a Duty Commissioner or Duty Judge on a Friday.

75. If the request is by consent, the parties may lodge the request using Online Court before the first directions hearing. Parties will be notified if the hearing can be listed on a Friday before the first directions hearing, in which event the first directions hearing will be vacated and the hearing date listed.

Application for separate determination of an issue

76. In the ordinary course, all issues (including issues requiring findings on questions of law) should be heard together unless an issue genuinely capable of separate determination is likely to be determinative of the appeal.

Note: A Judge or a Commissioner who is an Australian Lawyer may be appointed to conduct the final hearing to facilitate the objective of having all issues heard together.

77. If any party seeks to raise an issue of fact or law that the party contends precludes or demands the determination of the development appeal application in a particular way or otherwise seeks to have an issue dealt with separately before the final hearing in accordance with Part 28 Division 2 of the Uniform Civil Procedure Rules 2005, the party must apply to do so by notice of motion supported by a short affidavit setting out the issue and the reasons why it should be dealt with separately. If possible, the notice of motion is to be returnable at the first directions hearing.

78. If an order is made for a separate hearing:

(a) short matters (less than 2 hours) may be listed on the first available Friday before the Duty Judge or Duty Commissioner for issues of law or fact respectively; and

(b) other matters will be listed for hearing in the ordinary course,

and the usual directions in **Schedule H** will apply.

Expedition

79. Any party may seek expedition of a development appeal by notice of motion, with a short affidavit in support setting out the reasons in support of expedition.

Breach of the Court's directions

80. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:
- (a) relist the matter before the Court within three days of the specified time; and
 - (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.
81. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

Variation of timetables

82. If either party becomes aware of circumstances that will necessitate a variation to the timetable, an application to vary the timetable can be made by Online Court request. Any party seeking to make an application to vary the timetable using Online Court must first contact the other parties in an attempt to provide the Court with a consent position.
83. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. If no response is received within 2 days of the request or such other time as the Registrar determines, the proceedings may be listed for further directions.
84. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, an order

for the payment of costs of the appearance may be made unless there is some reasonable excuse for the failure to respond.

85. If proposed directions vary an existing timetable, they must include the vacation of any date for a directions hearings or mention or for the hearing of motions that can no longer be maintained.

Liberty to restore

86. Parties have liberty to approach the Court without a notice of motion on three working days' notice or earlier if urgency requires. A party seeking to make urgent application should, if possible, make prior arrangement with, or give appropriate notice to, any other party, and should send an Online Court request.
87. The Court expects that prior to exercising liberty to restore, the parties confer with a view to reaching an agreement on any proposed variation to the timetable and if an agreement is reached, request the variation to the timetable through Online Court.

Amendments to applications and to statements of facts and contentions

88. Subject to paragraph 12 of this practice note, an applicant for consent may not rely on an amended development appeal application including amended plans unless it first obtains the leave of the Court.
89. Applicants for consent should ensure that their development appeal application is suitable for assessment at the hearing before commencing the development appeal, including ensuring plans satisfy the requirements in Schedule A. Multiple requests for leave to amend applications (including plans) cause unnecessary delay and cost for all parties and should be avoided.
90. If an applicant for consent wishes to amend its development appeal application, including by amended plans, the applicant is to consolidate all such amendments (to avoid multiple requests to amend) and apply for leave as soon as reasonably possible and usually no later than 10 days after the facts or circumstances which prompted the application for leave came to the attention

of the applicant. Examples of such facts or circumstances are the receipt of a report of a parties' single expert or a joint report of parties' experts recommending modification of the proposed development, which recommendation the applicant wishes to adopt in whole or part.

91. Other than amendments sought during the hearing of the appeal, leave to rely on an amended development appeal application including amended plans is to be sought by notice of motion, accompanied by a short affidavit in support that:

- (a) provides particulars sufficient to indicate the precise nature of the amendments proposed;
- (b) identifies any amended plans by date and plan revision number;
- (c) identifies the facts or circumstances which prompted the application for leave and when they came to the attention of the applicant;
- (d) identifies the respects in which the amendments lessen the environmental impact of the development and/or otherwise lead to an improved community outcome;
- (e) identifies why granting leave to amend the application would promote the just, quick and cheap resolution of the proceedings;
- (f) discloses if any additional documents (eg a BASIX certificate for the amended development) are required to support the amended application and, if so whether those documents have been, or are to be, obtained;
- (g) discloses the applicant's position on any additional costs that the consent authority may incur as a consequence of the amendment;
and
- (h) identifies the potential impacts on the hearing dates and the applicant's position on the adjustments to the timetable that would enable the hearing dates to be maintained if possible.

If practicable, the affidavit should not exceed 3 pages in length (excluding annexures).

92. Leave will usually not be given to amendments where to do so would require either the vacation of the final hearing (for applications to amend made prior to a hearing which has been fixed) or the adjournment of the final hearing (for applications to amend made during the final hearing). An alternative course that should be considered by an applicant is for the development the subject of the application to be amended by means of conditions of development consent or approval if the Court considers the grant of such development consent or approval is appropriate.
93. If leave to rely on an amended development appeal application is granted, the parties should expect that the Court will make the further usual directions in **Schedule I** and should hand either agreed or competing proposed short minutes to the Court, unless there is a reasonable basis for considering that alternative directions will better facilitate the just, quick and cheap resolution of the proceedings. If alternative directions are proposed, the party seeking those directions is to notify the other party before the hearing of the application for leave and ensure that proposed short minutes are available to the Court.
94. Parties require leave of the Court to amend their statement of facts and contentions. Leave to do so consequential on an amended development appeal application may be assumed where leave to amend a development appeal application has been granted and will be subject to directions made at that time. In all other cases, leave is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave being sought.

Applications to vacate hearings and for adjournments

95. Development appeals will not be adjourned generally. In particular, applicants for consent should generally be ready to proceed with their development appeal when it is commenced. This requires applicants to ensure that their development appeal application, and the development proposed in the application, is considered, complete and final, and suitable for assessment at the final hearing.

96. Development appeals usually will not be adjourned because of failure to comply with this practice note or Court directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of the proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
97. Applications to vacate hearing dates are to be by notice of motion, with an affidavit in support explaining the circumstances of the application and the reasons the hearing date should be vacated.

Application for final orders by consent of parties

98. When there is agreement prior to the commencement of a hearing of a development appeal involving a deemed refusal of the application by the consent authority, the Court will usually expect the consent authority to give effect to the agreement by itself granting consent or approval.
99. Any application for consent final orders in development appeals will be listed before the Court for determination. The parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:
 - (i) the content of the proposed orders (including the proposed conditions of consent);
 - (ii) the date of the hearing by the Court to consider making the proposed consent orders; and
 - (iii) the opportunity for any such person to be heard,or that, in the circumstances of the case, notification is not necessary.

Application for an easement under s 40 of the *Land and Environment Court Act 1979*

100. An application for an order under s 40 of *the Land and Environment Court Act 1979* can only be made if:

- (a) the Court has determined to grant or modify development consent pursuant to proceedings on an appeal under the *Environmental Planning and Assessment Act 1979*; or
- (b) proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* with respect to the granting or modification of a development consent are pending before the Court.

101. It is inappropriate for parties to seek an order under s 40 of *the Land and Environment Court Act 1979* at the hearing of an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979*.

102. An application for an order under s 40 of the Land and Environment Court Act 1979 is to be made in Class 3 of the Court's jurisdiction and is subject to *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals*.

Costs and compliance

103. If a breach of the Court's directions or of this practice note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs.

104. The cost of unnecessary photocopying and assembly of documents is unacceptable. Legal practitioners for the parties are to consider carefully the documents necessary to be tendered. Unnecessary documents may attract adverse costs orders.

105. Any failure by one party to comply with the Court's directions will not be considered an adequate excuse for any failure to comply by the other party.

Applications for a cost order

106. Where a Commissioner has heard and determined a development appeal, any party seeking an order for costs of the proceedings must apply for costs by notice of motion filed within 28 days of the making of the final orders in the proceedings.

Note: Pt 3 r 3.7 of the Land and Environment Court Rules 2007 provides that for proceedings in Class 1 of the Court's jurisdiction, including development appeals, the Court "is not to make an order of the payment of costs unless the Court considers that the making of an order as to the whole or any part of the costs is fair and reasonable in the circumstances": Pt 3 r 3.7(2). Some of the circumstances in which the Court might consider the making of a costs order to be fair and reasonable are listed in Pt 3 r 3.7(3). 70.

107. The notice of motion for costs will be heard and determined by either the Registrar or a Judge of the Court.

***The Honourable Justice Brian J Preston
Chief Judge***

29 March 2018

Schedule A

Requirements for Plans

1. General

- Plans should be drawn to an appropriate scale shown on the drawings.
- Plans should be drawn with clarity.
- Plans should indicate a north point.
- All plans shall be consistent with each other.

2. Survey plans are to indicate:

- Existing buildings, structures and features of the site;
- Topography (spot levels, contours) including that of adjoining property where relevant;
- Natural drainage of the site;
- Any easements or rights of way;
- Significant existing vegetation, indicating its location on the site, type and spread;
- Location, height and use of any adjoining buildings or structures such as swimming pools; and
- Features of streets immediately adjoining or within the property, including poles, kerbs, crossings and pits.

3. Site plans are to identify the location of the following:

- Proposed and existing buildings;
- Existing significant trees, indicating whether they will be retained or removed;
- Paved areas;
- Landscaped areas;
- Driveway entry and/or exit;
- Garbage storage areas;
- On-site detention tanks;
- Letter boxes;
- Private open spaces; and

- Where privacy is an issue in the proceedings, the location of windows of the adjoining property and the subject proposal.

4. Floor plans are to indicate:

- Room names, area and dimensions;
- The location of windows and doors;
- The levels of floors, terraces and the like to Australian Height Datum (AHD);
- Wall construction; and
- Spot levels of natural ground to AHD.

5. Elevations are to indicate:

- Elevations of all sides of the building or structure;
- Outline of existing buildings;
- Materials and finishes to be used in construction;
- Location of adjoining buildings showing address, height, setbacks and other relevant features;
- Proposed window size, sill height and location; and
- Height of eaves, ridge and floor levels to AHD.

6. Sections are to indicate:

- Appropriate number and location;
- Section line and location on plan;
- Room names;
- Adequate representation of ground level;
- Areas of cut and/or fill; and
- Height of levels to AHD.

7. Landscape plans are to:

- Be consistent with other plans tendered to the court with respect to the height, size and location of buildings;
- Indicate the location, species, height and spread of significant existing trees, indicating whether they will be retained or removed;

- Indicate the location of any additional planting to be carried out including species names, spread, height and other features; and
- Indicate the location of significant retaining walls or other structures.
- Indicate finished relative levels of all major surfaces.

8. Overshadowing plans are to:

- Be based on true north;
- Indicate the location and nature of existing and/or proposed fencing, with the shadows projected;
- Indicate horizontal and vertical impact, including any impact from any substantial wall;
- Provide a table of compliance and non-compliance with known criteria (such as a development control plan, a State environmental planning policy or Australian Model Code for Residential Development (AMCORD)); and
- Make appropriate allowance for the topography.

Schedule B

Requirements for statement of facts and contentions by respondent consent authority

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions.
3. An authorised officer of the respondent consent authority is to sign and date the statement.
4. In Part A Facts, the respondent consent authority is to identify:
 - (a) **The proposal:** a brief description of the proposed development or modification of a development including any building, subdivision and/or land use and, where relevant, matters such as density, floor space ratio, setbacks and heights.
 - (b) **The site:** a description of the site including its dimensions, topography, vegetation and existing buildings.
 - (c) **The locality:** a description of the locality including the type and scale of existing surrounding development.
 - (d) **The statutory controls:** details of the applicable statutory instruments (State environmental planning policies, regional environmental plans, local environmental plans and development control plans) and the relevant provisions.
 - (e) **Actions of the respondent consent authority:** date of application, application number, details of any advertising process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.

Part A Facts is not to include matters of opinion.

5. In Part B Contentions the respondent consent authority is to identify each fact, matter and circumstance that the respondent contends require or should cause

the Court, in exercising the functions of the consent authority, to refuse the application or to impose certain conditions.

6. In Part B Contentions, the respondent consent authority is to:
 - (a) focus on issues genuinely in dispute;
 - (b) have a reasonable basis for its contentions;
 - (c) present its contentions clearly, succinctly and without repetition;
 - (d) where it contends that the application must be refused, identify the factual and/or legal basis for that contention. Any such contention is to be made at the beginning of Part B Contentions and is to be clearly identified as a contention that the application must be refused;
 - (e) where the respondent consent authority contends there is insufficient information to assess the application, list the information it contends is required;
 - (f) where it contends that a proposal does not comply with provisions, including development standards, of an environmental planning instrument or provisions of a development control plan, identify the standard or provision that is breached and quantify the extent of the non-compliance (if necessary, in a diagrammatic form), grouping together provisions dealing with the same aspect (for example, height or density);
 - (g) identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
 - (h) identify any contentions that may be resolved by conditions of consent.

Schedule C

Requirements for statement of facts and contentions by applicant for consent or by objector

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions.
3. The applicant for consent or the objector or its authorised officer is to sign and date the statement.
4. In Part A Facts, the applicant for consent or objector is to identify:
 - (a) the relevant development consent, including (if possible) the development application number and the date of determination;
 - (b) if an applicant for consent, the conditions appealed against;
 - (c) if an objector, the date(s) of their letter(s) of objection to the development application.

Part A Facts is not to include matters of opinion.

5. In Part B Contentions an applicant for consent or objector is to identify each fact, matter and circumstance that the applicant or objector contends require or should cause the Court, in exercising the functions of the consent authority, to grant or refuse the application or to impose certain conditions.
6. An applicant for consent or objector is to:
 - (a) focus its contentions on issues genuinely in dispute;
 - (b) have a reasonable basis for the contentions; and
 - (c) present its contentions clearly and succinctly.
7. An applicant for consent is to identify:
 - (a) each condition that the applicant contends should be deleted;

- (b) each condition that the applicant contends should be amended and, for each such condition, the amendment sought and the reason for seeking the amendment;
8. In Part B Contentions, an objector is to:
- (a) focus on issues genuinely in dispute;
 - (b) have a reasonable basis for the contentions;
 - (c) present contentions clearly, succinctly and without repetition;
 - (d) where the objector contends that the application must be refused, identify the factual and/or legal basis for that contention. Any such contention is to be made at the beginning of Part B Contentions and is to be clearly identified as a contention that the application must be refused;
 - (e) where the objector contends there is insufficient information to assess the application, list the information the objector contends is required;
 - (f) where the objector contends that a proposal does not comply with provisions, including development standards, of an environmental planning instrument or provisions of a development control plan, identify the standard or provision that is breached, quantify the extent of the non-compliance (if necessary, in a diagrammatic form), grouping together provisions dealing with the same aspect (for example, height or density);
 - (g) identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
 - (h) identify any contentions that may be resolved by conditions of consent.

Schedule D

Usual directions for arranging a conciliation conference

The Court directs that:

1. A conciliation conference under s34 of the *Land and Environment Court Act 1979* ('the Court Act') is arranged for [date] commencing at [time] at [place].
2. The conciliation conference will not be adjourned to another time and place (fixed in consultation with the Registrar) by the Commissioner presiding over the conciliation conference unless the Commissioner is satisfied that there is good reason to do so (see s 34(6) of the Court Act).
3. The [applicant or respondent] is to file and serve its statements of facts and contentions in accordance with Schedule [B or C] of Practice Note – Development Appeals by [insert date having regard to date of conciliation conference].
4. The [respondent or applicant] is to file and serve its statements of facts and contentions in reply by [insert date having regard to date of conciliation conference]. This statement is not to repeat any facts not in dispute.
5. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the Court Act), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.
6. Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at a conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
7. The respondent is to provide to the applicant any response to the amended plans or additional information, and draft without prejudice conditions of consent, 7 days before the conciliation conference.
8. Any documents proposed to be relied upon by a party for the purposes of without prejudice discussions at a conciliation conference may be lodged with

the Court in a sealed envelope and marked for the attention of the Commissioner who is to preside over the conciliation conference. Such documents should not be filed and will not be recorded in the Court's records.

9. A copy of any documents so lodged is also to be provided, at the time of lodgment, to the other party to the proceedings with the notation that it has been brought into existence for the purposes of, and proposed to be relied upon by a party at, the conciliation conference.
10. If no agreement is reached at or after the conciliation conference, the proceedings are listed for a second directions hearing on [7 days after the conference].
11. Each party is to notify the other party in writing of the name of any expert upon which they propose to rely, the area of expertise of the expert and the issues to be addressed by the expert 2 business days prior to the second directions hearing, in the form of a draft completed information sheet or in such other form as may be agreed between the parties.

Schedule E

Usual directions for a hearing

The Court directs that:

1. The proceedings are fixed for hearing on [insert date as soon as reasonably possible and usually within 12 weeks from the first directions hearing date].
2. The hearing is to be [an on site hearing] or [a Court hearing] and is to commence [on site at 9.30am] or [in Court at 10.00am]. If the parties consider the site may be difficult to find, they are to file an agreed map showing the proposed location for the commencement of any hearing on site at 9.30am two working days before the hearing.

Note: If a matter is fixed for an on site hearing or is otherwise to involve substantial time or taking of evidence on site, the parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities, and that the hearing will be open to the public and will be able to be observed and heard by all persons attending the hearing.

3. The [respondent/applicant for consent or objector] is to file and serve its statements of facts and contentions in accordance with Schedule [B or C] of Practice Note – Class 1 Development Appeals by [insert date].
4. The [applicant for consent or objector/respondent] is to file and serve its statements of facts and contentions in reply in accordance with Schedule [B or C] of Practice Note – Class 1 Development Appeals by [insert date]. This statement is not to repeat any facts not in dispute.
5. Under rr 31.19 and 31.20 of the Uniform Civil Procedure Rules 2005 ('UCPR'), the Court makes the following directions regarding expert evidence:
 - [name of the expert witness] may prepare an individual expert's report on [specified issues];
 - [the named experts] are to confer in relation to [specified issues] under UCPR r 31.24 and prepare a joint expert report;
 - the individual expert's report of [named expert] is to be filed and served by [date];

- the joint expert report of [named experts] is to be filed and served by [date].

Note: The above directions may be duplicated for each area of expertise required.

6. Unless the Court otherwise orders, expert evidence may not be adduced at the hearing otherwise than in accordance with the directions made by the Court in accordance with UCPR rr 31.19 and 31.20, including compliance with directions as to the time for service and filing of experts' reports and joint expert reports.
7. Parties are to serve a copy of these directions, the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses on all experts upon whose evidence they propose to rely within 3 business days of these orders being made, or, for a statement of facts and contentions (or reply) filed after the making of these orders, within 3 business days of them being filed or served.
8. Experts are directed to give written notice to the Court and the party instructing them if for any reason they anticipate that they cannot comply with these directions. In that case, or if the experts have failed to comply with these directions, the parties will promptly list the matter before the Court for directions and give written notice to the other parties.
9. Experts are to ensure that a joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
10. A joint report is to identify the experts involved in its preparation, the date of their joint conferences, the matters they agreed about, the matters they disagreed about and reasons for agreement and disagreement. A joint report should avoid repetition and be organised to facilitate a clear understanding of the final position of the experts about the matters in issue and the reasoning

process they used to reach those positions. Each expert is to sign and date the joint report.

11. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.
12. At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing judge or commissioner directs otherwise.
13. A party calling a witness may not, without the leave of the Court, lead evidence from the witness the substance of which is not included in a document served in accordance with the Court's directions.
14. If any witness is required for cross-examination, notice is to be given at least 7 days before the hearing.
15. A party who proposes to object to any part of an affidavit, statement or report is to file and serve notice of its objections, including the grounds in support, at least seven days before the hearing.
16. The respondent consent authority is to file and serve a bundle of documents 14 days before the hearing. The bundle is to contain copies of relevant environmental planning instruments, relevant extracts from development control plans and policies, and documents evidencing the lodgment, processing and determination of the application by the consent authority, including all submissions from objectors, and the decision of the consent authority but is not to otherwise include copies of any documents annexed to the development appeal application. Unnecessary copying and duplication of documents is to be avoided. The bundle is to be subdivided into relevant divisions, paginated and have a table of contents.
17. The respondent consent authority is to file and serve a notice of objectors who wish to give evidence in the hearing, of whom the consent authority is aware, 7 days before the hearing. The notice is to identify the objector, their address, where they wish to give evidence (on site or in Court) and whether they made a written submission about the application (in which event, the notice is to provide the page number of that submission in the key bundle). If there is no submission, the respondent consent authority should, if possible, file and serve

a short statement identifying the topics about which the objector wishes to give evidence.

18. The respondent consent authority is to file and serve draft conditions of consent (in both hard copy and electronic form) 14 days before the hearing.
19. The applicant for consent is to file and serve its draft conditions in response (in both hard copy and electronic form) 7 days before the hearing.
20. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:
 - (a) relist the matter before the Court within three days of the specified time; and
 - (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

Note: The Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and the relisting unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

21. The parties have liberty to restore on three working days' notice.

Schedule F			
Class 1 Development Appeals – Hearing Information Sheet			
Applicant:			
Respondent(s):			
Proceedings no:			
1.	Is any expert evidence required? If so, nominate general issues on which expert evidence is required, the areas of expertise and the names of the experts whose evidence leave is sought to be relied upon (with a new line for each area of expertise)		
Issues	Area of expertise	Applicant Expert	Respondent Expert
2.	Could any of the above issues be better dealt with by a parties' single expert? If so, what is the proposal for engaging the expert?		
3.	Are there any experts who should prepare an individual report before proceeding to a joint		

	conference and joint report and, if so, identify the expert, the area of expertise and provide reasons supporting the report being necessary or appropriate [point form only]?
4.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the development appeal? If so, specify the relevant disciplines.
5.	If the appeal concerns land outside of the Sydney metropolitan region, should the development appeal be heard in the local area? If not, why not?
6.	Is the appeal appropriate to be heard as an on site hearing under s 34A of the <i>Environmental Planning and Assessment Act 1979</i> ? If so, will adequate facilities be available? Will the hearing be able to be observed and heard by the public?
7.	Is there any reason that the hearing should not commence at 9.30am on site?
8.	Estimate of the length of hearing.
Applicant:	
Respondent:	
9.	Identify hearing dates sought:
Applicant:	
Respondent:	

Schedule G

Usual directions on the appointment of a parties' single expert:

The Court orders:

1. The Court notes the agreement between the parties to engage [insert name] as a parties' single expert and that the parties have agreed the remuneration to be paid to that expert as being [insert details of remuneration].

Or, failing agreement about the identity and/or remuneration of the parties' single expert:

- 1A.
 - (a) The parties are to agree on a parties' single expert and their remuneration and are to notify the Court of the expert's name and that the expert's remuneration has been agreed by [insert date 7 days after the first/second directions hearing].
 - (b) Failing agreement, the parties are to file and serve the names, CVs and fee estimates of three appropriately qualified experts by [insert date 10 days after the first/second directions hearing]. The Court will make order 2 below in Chambers and notify the parties accordingly.
2.
 - (a) The Court orders the parties to engage jointly [insert name] as a parties' single expert.
 - (b) The Court fixes the remuneration of the parties' single expert at [insert details of remuneration].
3. A parties' single expert is not to incur fees or disbursements additional to the remuneration agreed by the parties or fixed by the Court without written agreement of both parties or, absent such agreement, the leave of the Court.
4. The parties are to brief the parties' single expert with agreed instructions and an agreed bundle of documents by [insert date within 7 days of direction 2 being made].
5. The parties' single expert is to file and serve their expert report by [insert date within 6 weeks of direction 2 being made]. Without leave of the Court, the

parties' single expert is not to provide the parties with a preliminary expert report or preliminary opinion.

6. The parties' single expert is to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, including the requirements for experts' reports.
7. If the Court has ordered that a parties' single expert address any issue, no expert report addressing the same issue other than the report of the parties' single expert may be relied upon at the hearing, without leave.
8. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

SCHEDULE H

Usual directions for separate determination of questions

The Court orders that:

1. Pursuant to r 28.2 of the Uniform Civil Procedure Rules 2005, the following question is to be determined separately from any other question in the proceedings:

[insert separate question]

2. The parties are to file and serve any affidavits, reports or statements on which they wish to rely by [insert date within 14 days of the separation of the question].
3. The parties are to file and serve any affidavits, reports or statements in reply by [insert date within 28 days of the separation of the question].
4. The parties are to file an agreed bundle of documents by [insert date within 5 weeks of the separation of the question].
5. The party raising the question is to file and serve an outline of submissions by [insert date two working days before the hearing of the separate question].
6. The other party is to file and serve an outline of submissions by [insert date one working day before the hearing].
7. The question is listed for hearing in court on [insert date] at 10:00am.
8. Parties are to notify promptly the Court if there is any material slippage in the timetable.
9. The parties have liberty to restore on three working days' notice.

SCHEDULE I

Usual directions where an applicant for consent seeks leave to rely on an amended application

The Court orders:

1. Leave is granted to the applicant to amend the development appeal application by [describe amendments].
2. (If applicable) Pursuant to s 97B of the *Environmental Planning and Assessment Act 1979*, the applicant is to pay the costs of the respondent consent authority that are thrown away as a result of amending the development application.
3. The parties have leave to amend their statement of facts and contentions by [insert date 14 days from the date of leave being granted or such longer period if the Court accepts that further notification/exhibition is required].

If leave is granted before evidence of any experts is filed:

- 4A. [Such of the directions in Schedule D or E as are appropriate running from the date of leave being granted].

Or, if leave is granted after evidence of any experts has been filed and if the parties agree that it is appropriate or the Registrar orders:

- 4B. (a) Any parties' single expert is to file and serve a brief addendum to their expert report identifying any changes to their opinions by reason of the amendment by [insert date 28 days from the grant of leave]; and
 - (b) Other experts are not to prepare further reports, but are to proceed to a joint conference and are to file and serve an addendum to their joint expert report by [insert date 28 days from the grant of leave].
5. The hearing date of [insert date] is confirmed.



**Land and Environment
Court**
of New South Wales

PRACTICE NOTE

CLASS 1 RESIDENTIAL DEVELOPMENT APPEALS

Name and commencement

1. This practice note is to be known as Practice Note – Class 1 Residential Development Appeals. It commences on 3 April 2018. It replaces the Practice Note – Class 1 Residential Development Appeals made on 20 July 2017.

Application of Practice Note

2. This practice note is to be known as Practice Note – Residential Class 1 Development Appeals.
3. This practice note applies to the proceedings referred to in s 34AA of the *Land and Environment Court Act 1979*. They are the following proceedings in Class 1 of the Court’s jurisdiction relating to appeals and applications under s 8.7 or s 8.9 of the *Environmental Planning and Assessment Act 1979*:
 - (a) proceedings concerning development applications or modifications to development consents for:
 - (i) development for the purposes of detached single dwellings and dual-occupancies (including subdivisions), or alterations or additions to such dwellings or dual-occupancies (referred to as “residential development”), or
 - (ii) development of a kind prescribed by the regulations,
 - (b) particular proceedings that the Court orders, on the application of a party to the proceedings or of its own motion, to be dealt with under s 34AA.

These proceedings are referred to in this practice note as “residential development appeals”.

Purpose of Practice Note

4. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of residential development appeals.

Responsibility of parties, legal practitioners and agents to facilitate resolution

5. It is the responsibility of each party and their legal practitioners and agents (as applicable) to consider the orders and directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
6. If any party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to make available to the Court short minutes reflecting that alternative regime.
7. Parties are to ensure that all directions which they seek with respect to residential development appeals will assist in enabling such appeals to be dealt with at any hearing with as little formality and technicality, and with as much expedition, as the requirements of the Land and Environment Court Act and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the Land and Environment Court Act).

Legal practitioners and agents of parties to be prepared

8. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave

of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

9. Any person seeking to perform the role of an agent should make themselves aware of the obligations of an agent and the requirement to obtain the leave of the Court to appear on someone's behalf in the proceedings. An application for leave to appear as an agent in the proceedings may be made at the time of commencing the proceedings by letter to the Registrar, or orally at the first directions hearing. The application must be supported by evidence that rule 7.7 of the *Land and Environment Court Rules 2007* has been complied with.

Note: More information regarding the obligations of agents in development appeals can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Coming to the Court" and then "Having someone represent you."

10. Legal practitioners and agents for each party should communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and on preparation of short minutes recording the directions.

Commencing a residential development appeal

11. A residential development appeal is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry, a completed Class 1 Application Form (Form B).

Note: the application form for residential development appeals can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Forms & Fees" on the right hand menu.

12. Any plans of any residential development accompanying the residential development appeal application are to satisfy the requirements in **Schedule A**. If leave is granted by the Court to amend the plans, any amended plans are also to meet those requirements.
13. If the plans the subject of the determination of a consent authority in respect of which a residential development appeal application is to be made do not

satisfy the requirements in Schedule A, the applicant, before lodging the residential development appeal application, may amend the plans without seeking leave of the Court, but only to the extent necessary to cause the plans to satisfy the requirements in Schedule A. Any other amendment is to be by leave of the Court.

Service of the residential development appeal application

14. Residential development appeal applications are to be served within 3 working days of filing.

The return of the residential development appeal application before the court

15. Residential development appeal applications will usually be given a return date before the Court 21 days after the date on which they are filed. On the return, the first directions hearing will occur. The first directions hearing will usually be before the Registrar.
16. Applications to extend the period for the return of the application before the Court may be granted if the applicant demonstrates that service cannot be achieved within the time required. The Registrar may also extend the period if circumstances, such as public holidays, make it appropriate that a longer period be allowed for parties to take the action required by this practice note before or by the return of the proceedings.

Access to documents

17. On request, a respondent who is a public authority or public official is to provide the applicant with access to the documents relevant to the residential development application and its decision (if any), within 7 days of the request.

Identifying the issues in dispute

18. The respondent consent authority is to file in the Court and serve on the applicant a statement of facts and contentions in accordance with **Schedule**

B before 4.00pm on the second last working day before the first directions hearing unless the proceedings involve an appeal against a determination to grant consent subject to conditions.

19. If the proceedings involve an appeal against a determination to grant development consent for residential development subject to conditions, then the applicant is to file in the Court and serve on the consent authority a statement of facts and contentions in accordance with **Schedule C** with its residential development appeal application.

Number of pre-hearing attendances

20. Normally, there will be only one directions hearing in residential development appeals before the conciliation conference and hearing.

Before the first directions hearing

21. Before the first directions hearing, the parties are to discuss and endeavour to agree upon:
 - (a) the directions that the Court should make at the directions hearing;
 - (b) the proposed dates for the conciliation conference and hearing, being usually the dates in the range of available dates published at the top of the court list; and
 - (c) if any party intends to adduce expert evidence at a hearing of the proceedings, a statement of the disciplines in respect of which they propose to call expert evidence, the names of the experts, the issues to which the proposed expert evidence relates, and the reasons why the proposed expert evidence is reasonably required to resolve the proceedings having regard to the requirement for the just, quick and cheap resolution of the issues in dispute.
22. If the parties do not agree, each party should prepare their own written version of the directions they propose.

Parties to seek directions before adducing expert evidence

23. Parties are encouraged to consider whether expert evidence is genuinely necessary to resolve the issues in dispute in residential development appeals. Unnecessary expert evidence substantially increases the time and cost of appeals. Parties are encouraged to consider whether the proceedings can appropriately be fixed for hearing before a Commissioner or Commissioners with special knowledge and experience in relation to the issues in dispute.
24. A party intending to adduce expert evidence at the hearing of any residential development appeal must apply for directions from the Court under Pt 31 r 31.19 of the Uniform Civil Procedure Rules 2005 permitting the adducing of expert evidence.
25. The application for directions is to be made at the first directions hearing. The application is to be supported by a completed information sheet in the form of **Schedule D**, outlining the issues in the proceedings, the experts whose opinion is sought to be adduced as evidence in the proceedings, and the areas of expertise of each expert. The application is also to be accompanied by the proposed directions under r 31.20 of the Uniform Civil Procedure Rules 2005.
26. If practicable, the Court will determine the application for directions at the first directions hearing or otherwise it will fix a date for hearing the application. At the hearing of the application for directions, the party seeking directions is to explain the expert evidence sought to be adduced and why the use of that expert evidence should be permitted, including why that expert evidence relates to a real issue in the proceedings and is reasonably required to resolve that issue.
27. A party may not adduce expert evidence at the hearing of any residential development appeal unless the Court has given directions permitting the adducing of that expert evidence and the adducing of that expert evidence is in accordance with those directions (see r 31.19(3) of the Uniform Civil Procedure Rules 2005).

28. Any directions for the filing of experts' reports and joint expert reports made by the Court will specify the name of each expert required to comply with the directions.
29. If either party seeks to adduce the evidence of any expert not named in the directions made, that party is required to seek additional directions for the filing of evidence by that expert, either through Online Court or by exercising liberty to restore. Any application for additional directions is to be supported by an updated hearing information sheet in the form of Schedule D and provide the information and explanation referred to in paragraphs 25 and 26 of this practice note.

At the first directions hearing

30. Unless good reason is demonstrated, each party is to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the date of the conciliation conference and hearing. Legal practitioners and other representatives of the parties are to ensure they advise the parties of their obligation to be ready to agree to a timetable up to and including that date and are to obtain full and timely instructions to ensure the parties comply with this obligation.
31. To assist the Court in making the appropriate directions, each party is to complete and hand to the Court at the first directions hearing a completed information sheet in the form of **Schedule D**.
32. At the first direction hearing, the parties should expect that the usual directions set out in **Schedule E** will be made to prepare for the conciliation conference and hearing of the residential development appeal, and should have either agreed or competing proposed short minutes to hand to the Court.
33. In preparing the short minutes, parties may delete, amend or abridge any part of the usual directions to facilitate the just, quick and cheap resolution of the proceedings.

34. Parties may also propose alternative directions if they have a reasonable basis for considering that alternative directions will better facilitate the just, quick and cheap resolution of the proceedings. If alternative directions are proposed, the party seeking those directions is to notify the other party before the first directions hearing and ensure that proposed short minutes are available to be handed to the Court.
35. At the first directions hearing, the residential development appeal will be fixed for the conciliation conference and hearing under s 34AA of the Land and Environment Court Act. This conciliation conference and hearing will usually be not later than 6 weeks after the first directions hearing.
36. Estimates of the length of time needed for the conciliation conference and hearing should be realistic having regard to the statements of facts and contentions.
37. Generally, the conciliation conference and hearing should commence at 9.30am on the site of the residential development unless, in the particular circumstances of the case, it would be inappropriate to do so. The parties are to inform the Court at the first directions hearing whether there is any reason for not holding the conciliation conference and hearing at the site of the residential development.

Use of Online Court

38. Online Court allows parties to seek directions online rather than appearing at a directions hearing in court. Any of the usual directions, including fixing a date for the conciliation conference and hearing, and the making of directions for expert evidence, can be made through Online Court.
39. Any application by Online Court to adduce expert evidence must be supported by a completed hearing information sheet (Schedule D) as well as the information and explanation referred to in paragraphs 25 and 26 of this practice note.

40. Parties can apply for directions to be made online by submitting an Online Court request before 12noon on the day prior to the directions hearing. The Court will endeavour to respond to the request by 4:30pm. If the parties do not receive a response there must be an appearance on their behalf at the directions hearing.
41. Any party seeking to make an application using Online Court must first contact the other parties in an attempt to provide the Court with a consent position. If the parties reach consent as to the appropriate directions to be made and the date for the conciliation conference and hearing, the party lodging the request may mention the appearance of the other party and indicate that the directions are sought by consent.
42. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. The other party is required to respond to the request by 2pm. If no response is received, appearances are required on behalf of all parties at the directions hearing.
43. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, the Court may make a costs order against that party for the cost of the other party's appearance in court unless there is some reasonable excuse for the failure to respond.

Conduct of conciliation conference and hearing pursuant to s 34AA

44. Subject to any alternative arrangement made at the first directions hearing, residential development appeals should commence at 9.30am on site.
45. The conciliation phase of the conciliation conference and hearing process will be conducted in accordance with the Conciliation Conference Policy.

Note: the Conciliation Conference Policy can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Practice and Procedure" on the top menu.

46. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the *Land and Environment Court Act 1979*), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.
47. Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at the conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
48. The respondent is to provide to the applicant any response to the amended plans or additional information 7 days before the conciliation conference.
49. The conciliation conference and hearing process will only be adjourned where the parties have reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties under s 34(3) of the *Land and Environment Court Act* and the adjournment is required to finalise that agreement.
50. If an adjournment is given, the conciliation may be listed before the Commissioner after 4pm on a future date not more than 3 weeks after the conciliation conference. The Commissioner may conduct the adjourned conciliation by telephone or by requiring the parties to attend in person. If the time or date of the listing changes due to other duties of the Commissioner, the parties will be notified in writing by email.
51. If no agreement of a kind referred to in s 34(3) of the *Land and Environment Court Act* is reached, the conciliation conference will be terminated and the residential development appeal will proceed to a hearing forthwith or, with the consent of the parties, on the basis of what occurred in the conciliation (see s 34AA(2)(b) of the *Land and Environment Court Act*). There will be no adjournment between the termination of the conciliation conference and the commencement of the hearing.

Applications to opt out or opt in to the residential development appeal regime

52. If a party seeks to make an application pursuant to s 34AA(3) of the Land and Environment Court Act that the particular residential development appeal not be dealt with or not continue to be dealt with under s 34AA(2), the party should apply by notice of motion supported by an affidavit setting out the reasons why that course is appropriate in the circumstances of the case. The notice of motion is to be made returnable on the date of the first directions hearing.
53. If a party seeks to make an application pursuant to s 34AA(1)(b) of the Land and Environment Court Act for a particular proceeding that is not a residential development appeal be dealt with under s 34AA, the party should apply by notice of motion supported by an affidavit setting out the reasons why that course is appropriate in the circumstances of the case. The notice of motion is to be made returnable on the date of the first directions hearing.

Target time for finalisation of residential development appeals

54. Residential development appeals are intended to be dealt with expeditiously. The Court sets a target of finalising 95% of residential development appeals within 3 months of filing.

Expert evidence

55. Any directions made concerning the filing of expert evidence must be provided to the experts within 3 business days of being made, together with the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses.
56. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

57. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.
58. It is not the role of any expert to opine whether a residential development appeal should be upheld or dismissed. That is the role of the consent authority and, on appeal, the Court exercising the functions of the consent authority. Expert opinions in reports and joint reports are to deal with the contentions raised by the parties. Any other matter relevant to the expert's expertise, which the expert feels obliged to draw to the attention of the parties and the Court, may also be noted.
59. Experts' reports are not to repeat matters in Part A Facts of the statements of facts and contentions. Wherever possible, an expert should state that Part A Facts has been adopted as correct. If this cannot be stated, the expert should identify the matters which are disputed and state his or her position in relation to those matters.
60. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
61. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.
62. Where expert evidence from more than one expert in the same discipline is to be given in Court, the experts will give such evidence concurrently (subject to any order by the hearing Commissioner to the contrary).
63. If a party requires any expert for cross-examination, notice is to be given at least 7 days before the conciliation conference and hearing.

Parties' single expert

64. Where expert evidence is necessary to be called in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties'

single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:

- (a) the importance and complexity of the subject matter in dispute in the proceedings;
- (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
- (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);
- (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;
- (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline; and
 - (iv) whether the issue relates to the adequacy or sufficiency of information provided in the residential development appeal application;
- (f) whether the evidence of the parties' single expert involves the provision of aids to assist in the assessment of a residential development appeal application (such as shadow diagrams, view lines or photo montages).

- (g) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
- (h) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;
- (i) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
- (j) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.

65. The Court will not usually accept the appointment of a parties' single expert if that expert is unable to provide a report within 4 weeks of receiving the brief or is unable to attend the conciliation conference and hearing.

66. The usual directions in **Schedule F** provide for a parties' single expert to file and serve one expert report only. Without leave of the Court, a parties' single expert is not to provide parties with preliminary reports or opinions.

Note: Under Pt 31.41 of the Uniform Civil Procedure Rules a party may seek clarification of the report of a parties' single expert on one occasion only.

67. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

68. Where a parties' single expert has been appointed to give evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

69. Leave is to be sought by notice of motion, with an affidavit in support explaining:

- (a) the name, qualifications and expertise of the expert proposed to be called;
- (b) the matters proposed to be addressed by the expert;
- (c) the date on which the expert was first retained and the date or dates of any expert report the expert has already prepared;
- (d) the reasons for the need to call an additional expert to give that evidence, rather than having the parties' single expert address the matters further or in cross examination;
- (e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the just, quick and cheap resolution of the proceedings; and
- (f) the party's position in relation to any additional costs that might be caused by the calling of the expert.

If practicable, the affidavit should not exceed three pages in length (excluding annexures).

70. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.

Note: See Pt 31.45 of the Uniform Civil Procedure Rules.

Application for separate determination of an issue

71. In the ordinary course, all issues in a residential development appeal should be heard together unless an issue genuinely capable of separate determination is likely to be determinative of the residential development appeal.
72. If any party seeks to raise an issue of fact or law that the party contends precludes or demands the determination of the residential development application in a particular way or otherwise seeks to have an issue dealt with

separately before the final hearing, the party must apply to do so by notice of motion supported by a short affidavit setting out the issue and the reasons why it should be dealt with separately.

73. The notice of motion is to be returnable at the first directions hearing. The Court will deal with the notice of motion on the day of the first directions hearing or at a separate hearing shortly after the first directions hearing. However, the Court at the first directions hearing may still fix a date for the final hearing of the residential development appeal.
74. If an order is made for a separate hearing:
 - (a) short matters (less than 2 hours) may be listed on the first available Friday before the Duty Judge or Duty Commissioner for issues of law or fact respectively; and
 - (b) other matters will be listed for hearing in the ordinary course, and the usual directions in **Schedule G** will apply.

Expedition

75. Any party may seek expedition of a residential development application appeal by notice of motion, with a short affidavit in support setting out the reasons in support of expedition.

Breach of the Court's directions

76. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:
 - (a) relist the matter before the Court within three days of the specified time; and
 - (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

77. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

Variation of timetables

78. If either party becomes aware of circumstances that will necessitate a variation to the timetable, an application to vary the timetable can be made by Online Court request. Any party seeking to make an application to vary the timetable using Online Court must first contact the other parties in an attempt to provide the Court with a consent position.
79. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. If no response is received within 2 days of the request or such other time as the Registrar determines, the proceedings may be listed for further directions.
80. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, an order for the payment of costs of the appearance may be made unless there is some reasonable excuse for the failure to respond.
81. If proposed directions vary an existing timetable, they must include the vacation of any date for a directions hearings or mention or for the hearing of motions that can no longer be maintained.

Liberty to restore

82. Parties have liberty to approach the Court without a notice of motion on two working days' notice or earlier if urgency requires. A party seeking to make urgent application should, if possible, make prior arrangement with, or give

appropriate notice to, any other party, and should send an Online Court request.

Amendments to applications and to statements of facts and contentions

83. Subject to paragraph 13 of this practice note, an applicant requires leave of the Court to amend its residential development appeal application, including to amend the plans for the residential development proposed in the application. Applicants should ensure, before commencing their residential development appeal, that their residential development appeal application, and the residential development proposed in the application, is considered, complete and final and suitable for assessment at the final hearing including ensuring that the plans satisfy the requirements in Schedule A.
84. If an applicant wishes to amend its residential development appeal application, including by amending plans, the applicant is to apply for leave as soon as reasonably possible and usually no later than 3 working days after the facts and circumstances which prompted the application for leave came to the attention of the applicant. Examples of such facts or circumstances are the receipt of a report of a parties' single expert or a joint report of parties' experts recommending modification of the proposed development, which recommendation the applicant wishes to adopt in whole or part.
85. Other than amendments sought during the hearing of the residential development appeal, leave to rely on an amended residential development appeal application, including amended plans, is to be sought by notice of motion, accompanied by a short affidavit in support that:
 - (a) provides particulars sufficient to indicate the precise nature of the amendments proposed;
 - (b) identifies any amended plans by date and plan revision number;
 - (c) identifies the facts or circumstances which prompted the application for leave and when they came to the attention of the applicant;

- (d) identifies the respects in which the amendments lessen the environmental impact of the development and/or otherwise lead to an improved community outcome;
- (e) identifies why granting leave to amend the application would promote the just, quick and cheap resolution of the proceedings;
- (f) discloses if any additional documents (eg a BASIX certificate for the amended development) are required to support the amended application and, if so whether those documents have been, or are to be, obtained;
- (g) discloses the applicant's position on any additional costs that the consent authority may incur as a consequence of the amendment; and
- (h) identifies the potential impacts on the hearing dates and the applicant's position on the adjustments to the timetable that would enable the hearing dates to be maintained if possible.

If practicable, the affidavit should not exceed 3 pages in length (excluding annexures).

86. Leave will usually not be given to amendments where to do so would require either the vacation of the conciliation conference and hearing (for applications to amend made prior to a hearing which has been fixed) or the adjournment of the conciliation conference and hearing (for applications to amend made during the hearing). An alternative course that should be considered by an applicant is for the residential development the subject of the application to be amended by means of conditions of development consent or approval if the Court considers the grant of such development consent or approval is appropriate.
87. Parties require leave of the Court to amend their statement of facts and contentions. Leave to do so consequential on an amended residential development appeal application may be assumed where leave to amend an application has been granted and will be subject to directions made at that time. In all other cases, leave is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave being sought.

Applications to change hearing dates and for adjournments

88. Residential development appeals will not be adjourned generally. In particular, applicants should usually be ready to proceed with their residential development appeal when it is commenced. This requires applicants to ensure that their residential development appeal application, and the residential development proposed in the application, is considered, complete and final, and suitable for assessment at the final hearing.
89. Proceedings usually will not be adjourned because of failure to comply with this practice note or Court directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of the proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
90. Applications to change hearing dates fixed by the Court are to be by notice of motion, with an affidavit in support explaining the circumstances of the application and the reasons the hearing dates should be changed.

Applications for final orders by consent of parties

91. If the parties settle the dispute the subject of the residential development appeal and its resolution does not require the Court to make any orders, the applicant is to file a notice of discontinuance of the residential development appeal signed by all parties.
92. When there is agreement prior to the commencement of the conciliation conference and hearing of a residential development appeal involving a deemed refusal of the residential development application by the consent authority, the Court will usually expect the consent authority to give effect to the agreement by itself granting consent or approval. The applicant can then file a notice of discontinuance signed by all parties.
93. If the parties settle the dispute and its resolution does require the Court to make orders, it will be necessary for the Court to determine the residential development appeal rather than filing terms of agreement with the Court registry. The parties are to exercise the liberty to restore the proceedings

before the Court and request that the application for final orders by consent be listed for determination by the Court.

94. The parties are to file the proposed consent orders signed by all parties before the date fixed for hearing the application for final orders by consent.
95. At the hearing, the parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:
- (i) the content of the proposed orders (including the proposed conditions of consent);
 - (ii) the date of the hearing by the Court to consider making the proposed consent orders; and
 - (iii) the opportunity for any such person to be heard,
- or that, in the circumstances of the case, notification is not necessary.

Application for an easement under s 40 of the Land and Environment Court Act

96. An application for an order under s 40 of the Land and Environment Court Act can only be made if:
- (a) the Court has determined to grant or modify development consent pursuant to proceedings on an appeal under the *Environmental Planning and Assessment Act 1979*; or
 - (b) proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* with respect to the granting or modification of a development consent are pending before the Court.

97. It is inappropriate for parties to seek an order under s 40 of the Land and Environment Court Act at the hearing of an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979*.
98. An application for an order under s 40 of the Land and Environment Court Act is to be made in Class 3 of the Court's jurisdiction and is subject to *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals*.

Costs and compliance

99. If a breach of the Court's directions or of this practice note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs.
100. The cost of unnecessary photocopying and assembly of documents is unacceptable. Legal practitioners for the parties are to consider carefully the documents necessary to be tendered. Unnecessary documents may attract adverse costs orders.
101. Any failure by one party to comply with the Court's directions will not be considered an adequate excuse for any failure to comply by the other party. Both parties are responsible for ensuring that they comply with directions.

Applications for a cost order

102. Where a Commissioner has heard and determined a residential development appeal, any party seeking an order for costs of the proceedings must apply for costs by notice of motion filed within 28 days of the making of the final orders in the proceedings.

Note: Pt 3 r 3.7 of the Land and Environment Court Rules 2007 provides that for proceedings in Class 1 of the Court's jurisdiction, including residential development appeals, the Court "is not to make an order of the payment of costs unless the Court considers that the making of an order as to the whole or any part of the costs is fair and reasonable in the circumstances": Pt 3 r 3.7(2). Some of the circumstances in which the Court might consider the making of a costs order to be fair and reasonable are listed in Pt 3 r 3.7(3).

70. The notice of motion for costs will be heard and determined by either the Registrar or a Judge of the Court.

***The Honourable Justice Brian J Preston
Chief Judge***

29 March 2018

Schedule A

Requirements for Plans

1. **General:**

- Plans should be drawn to an appropriate scale shown on the drawings;
- Plans should be drawn with clarity;
- Plans should indicate a north point; and
- All plans shall be consistent with each other.

2. **Survey plans are to indicate:**

- Existing buildings, structures and features of the site;
- Topography (spot levels, contours) including that of adjoining property where relevant;
- Natural drainage of the site;
- Any easements or rights of way;
- Significant existing vegetation, indicating its location on the site, type and spread;
- Location, height and use of any adjoining buildings or structures such as swimming pools; and
- Features of streets immediately adjoining or within the property, including poles, kerbs, crossings and pits.

3. **Site plans are to identify the location of the following:**

- Proposed and existing buildings;
- Existing significant trees, indicating whether they will be retained or removed;
- Paved areas;
- Landscaped areas;
- Driveway entry and/or exit;
- Garbage storage areas;
- On-site detention tanks;
- Letterboxes;
- Private open spaces; and
- Where privacy is an issue in the proceedings, the location of windows of the adjoining property and the subject proposal.

4. **Floor plans are to indicate:**

- Room names, area and dimensions;
- The location of windows and doors;
- The levels of floors, terraces and the like to Australian Height Datum (AHD);
- Wall construction; and
- Spot levels of natural ground to AHD.

5. **Elevations are to indicate:**

- Elevations of all sides of the building or structure;
- Outline of existing buildings;
- Materials and finishes to be used in construction;
- Location of adjoining buildings showing address, height, setbacks and other relevant features;
- Proposed window size, sill height and location; and
- Height of eaves, ridge and floor levels to AHD.

6. **Sections are to indicate:**

- Appropriate number and location;
- Section line and location on plan;
- Room names;
- Adequate representation of ground level;
- Areas of cut and/or fill; and
- Height of levels to AHD.

7. **Landscape plans are to:**

- Be consistent with other plans tendered to the court with respect to the height, size and location of buildings;
- Indicate the location, species, height and spread of significant existing trees, indicating whether they will be retained or removed;
- Indicate the location of any additional planting to be carried out including species names, spread, height and other features;
- Indicate the location of significant retaining walls or other structures; and
- Indicate finished relative levels of all major surfaces.

8. **Overshadowing plans are to:**

- Be based on true north;
- Indicate the location and nature of existing and/or proposed fencing, with the shadows projected;
- Indicate horizontal and vertical impact, including any impact from any substantial wall;
- Provide a table of compliance and non-compliance with known criteria (such as a development control plan, a State environmental planning policy or Australian Model Code for Residential Development (AMCORD)); and
- Make appropriate allowance for the topography.

Schedule B

Requirements for statement of facts and contentions by respondent consent authority

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions
3. An authorised officer of the respondent consent authority is to sign and date the statement.

Part A Facts

4. In Part A Facts, the respondent consent authority is to:
 - (a) **The application:** identify the application for development consent or approval by application number and date of lodgment.
 - (b) **The site:** identify the site by street address and lot and deposited plan, and describe the site including lot dimensions, site area, topographic features, existing vegetation and existing improvements on the site.
 - (c) **The proposal:** - briefly describe the proposed development or modification.
 - (d) **The locality:** briefly describe the locality including the type and scale of existing surrounding development.
 - (e) **The statutory controls:** identify the relevant provisions of the applicable statutory instruments (State environmental planning policies, local environmental plans and development control plans) and any draft statutory instruments, the zoning of the site and any other applicable designation (such as foreshore scenic protection area or heritage conservation area).

- (f) **Compliance with statutory controls:** briefly describe (if appropriate, in tabular form) the extent of compliance of the proposal with the relevant statutory controls.
 - (g) **Actions of the respondent consent authority:** provide details of any notification process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.
5. Part A Facts is not to include matters of opinion.

Part B Contentions

6. In Part B Contentions, the respondent consent authority is to identify each fact, matter and circumstance that the respondent contends require or should cause the Court, in exercising the functions of the consent authority, to refuse the application or impose certain conditions.
7. In Part B Contentions, the respondent consent authority is to:
- (a) focus on issues genuinely in dispute;
 - (b) have a reasonable basis for each contention;
 - (c) identify the nature of each contention with an appropriate short heading; and
 - (d) present its contentions clearly, simply and without repetition and not by way of submission.
8. Part B Contentions should be divided into three parts:
- (a) B1 – Contentions that the application be refused
 - (b) B2 – Contentions that may be resolved by conditions of consent
 - (c) B3 – Contentions that there is insufficient information to assess the application.

B1 - Contentions that the application be refused

9. Part B1 is to identify those contentions which the respondent contends either must result or ought result in the Court refusing consent or approval to the application.
10. If the respondent contends that the application must be refused, it is to identify the factual and/ or legal basis for that contention. An example of such a contention is that the proposal is prohibited or that a jurisdictional precondition to the grant of consent or approval has not been satisfied. Any such contention is to be made at the beginning of Part B1 and is to be clearly identified as a contention that the application must be refused.
11. If the respondent contends that the application ought to be refused, it is to identify each ground on which the respondent so contends.
12. For each contention, the respondent should identify the contention with a short heading, identify the relevant statutory controls and give particulars.

The contention heading

13. Each contention is to commence by identifying the nature of the issue in a word or two and be succinct. For example, if an issue is the height of a proposed building, the contention should identify the issue as "Height" and not by reference to a planning control or planning instrument that identifies a height requirement.
14. Contentions should be identified specifically and not generically. For example, it is not sufficient to identify a contention that the application ought to be refused in the "public interest" or the "circumstances of the case". Rather the particular aspect or aspects of the public interest or the particular circumstances of the case which warrant refusal need to be identified. Similarly, it is not acceptable to identify as a ground for refusal "matters raised by the objectors". The respondent consent authority is to identify which, if any, of the matters raised by the objectors the respondent itself contends, on a reasonable basis, justifies the refusal of the application.

The statutory controls

15. Where the respondent contends that a proposal does not comply with statutory controls, including development standards, of an environmental planning instrument or a development control plan, such as density, floor space ratio, setbacks and height, it is to identify those controls by reference to the specific clause and subclause.
16. Where the respondent contends that a proposal is inconsistent with any objective of a statutory instrument, it must identify the specific objective.
17. Given the often overlapping nature of statutory controls, different development standards or controls and objectives from different statutory instruments may apply to the same contention.

Particulars

18. The respondent is to provide details of the extent of any non-compliance with the statutory controls or any inconsistency with any objective to enable the applicant to respond properly to the contention. Any particulars should be brief and not take the form of evidence or submissions. The extent of the non-compliance with the provisions of an environmental planning instrument may be shown in diagrammatic or tabular form.

B2 - Contentions that may be resolved by conditions of consent

19. Part B2 is to identify those contentions that, in the opinion of the respondent consent authority, can be addressed through the imposition of a condition of consent or approval. The respondent is to identify the contention and provide details of those matters required to satisfy the contention or alternatively provide the specific wording of a condition that would satisfy the contention.

B3 - Contentions that there is insufficient information to assess the application

20. Part B3 is to identify those matters that, in the opinion of the respondent consent authority, cannot properly be considered because of absence of

information submitted with the application. The respondent is to identify the information it contends should be provided by the applicant to permit the Court to assess the application properly.

Schedule C

Requirements for statement of facts and contentions by applicant

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions
3. An applicant or its authorised officer is to sign and date the statement.

Part A Facts

4. In Part A Facts, the applicant is to:
 - (a) **The development consent:** identify the relevant development consent or approval, including the application number, the date of the application and the date of determination;
 - (b) **The challenged conditions or aspects of the consent:** identify the particular conditions or aspects of the development consent or approval with which applicant is dissatisfied;
 - (c) **The proposal:** briefly describe the proposed development or modification;
 - (d) **The site:** identify the site by street address and lot and deposited plan, and describe the site including lot dimensions, site area, topographic features, existing vegetation and existing improvements on the site;
 - (e) **The locality:** briefly describe the locality including the type and scale of existing surrounding development;
 - (f) **The statutory controls:** identify the relevant provisions of the applicable statutory instruments (State environmental planning policies, local environmental plans and development control plans) and any draft statutory instruments, the zoning of the site and any other applicable designation (such as foreshore scenic protection area or heritage conservation area); and

- (g) **Actions of the respondent consent authority:** provide details of any notification process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.
- 5. Part A Facts is not to include matters of opinion.

Part B Contentions

6. In Part B Contentions, the applicant is to identify:
 - (a) each condition of the development consent or approval that the applicant contends should be deleted and the reason for seeking deletion;
 - (b) each condition of the development consent or approval that the applicant contends should be amended and, for each such condition, the terms of the amendment sought and the reason for seeking the amendment; and
 - (c) any other aspect of the development consent or approval with which the applicant is dissatisfied, the manner in which the applicant contends that aspect should be addressed or changed, and the reason for each such change.

7. In Part B Contentions, an applicant is to:
 - (a) focus on issues genuinely in dispute;
 - (b) have a reasonable basis for the contentions; and
 - (c) present contentions clearly, succinctly and without repetition and not be way of submission.

Schedule D			
Class 1 Residential Development Appeals – Hearing Information Sheet			
Applicant:			
Respondent(s):			
Proceedings no:			
1.	Is any expert evidence required? If so, nominate general issues on which expert evidence is required, the areas of expertise and the names of the experts whose evidence leave is sought to be relied upon (with a new line for each area of expertise)		
	Issues	Area of expertise	Respondent Expert
2.	Could any of the above issues be better dealt with by a parties' single expert? If so, what is the proposal for engaging the expert?		
3.	Are there any experts who should prepare an individual report before proceeding to a joint conference and joint report and, if so, identify the expert, the area of expertise and provide		

	reasons supporting the report being necessary or appropriate [point form only]?
4.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the residential development appeal? If so, specify the relevant disciplines.
5.	If the appeal concerns land outside of the Sydney metropolitan region, should the residential development appeal be heard in the local area? If not, why not?
6.	Is it appropriate to conduct the conciliation conference and hearing on site? If so, will adequate facilities be available? Will the hearing be able to be observed and heard by the public?
7.	Is there any reason that the conciliation conference and hearing should not commence at 9.30am on site?
8.	Estimate of the length of the conciliation conference and hearing.
Applicant:	
Respondent:	
9.	Identify dates sought:
Applicant:	
Respondent:	

Schedule E

Usual directions at the first directions hearing for residential development appeals

1. Time and place of conciliation conference and hearing

- (a) The proceedings are listed on [insert date usually within 6 weeks after the directions hearing] for a conciliation conference and hearing under s 34AA of the *Land and Environment Court Act 1979*;
- (b) The conciliation conference is to commence on site at 9.30am. If the parties consider the site may be difficult to find, they are to file an agreed map showing its location two working days before the conciliation conference.

Note: The parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities. As any hearing will be open to the public, the venue must be adequate to ensure that the hearing will be able to be observed and heard by all persons attending.

2. Statement of facts and contentions in reply

The [applicant/respondent] is to file and serve any statement of facts and contentions in reply in accordance with Schedules B or C (as appropriate) of the Practice Note Class 1 Residential Development Appeals by [insert date 7 days after directions hearing]. This statement is not to repeat any facts not in dispute.

3. Preparation for and conduct of conciliation conference

- (a) The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the Court Act), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.

- (b) Any amended plans or additional information proposed by the applicant to be the subject of without prejudice discussions at the conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
- (c) The respondent is to provide to the applicant any response to the amended plans or additional information 7 days before the conciliation conference.
- (d) Any documents proposed to be relied upon by a party for the purposes of without prejudice discussions at the conciliation conference may be lodged with the Court in a sealed envelope and marked for the attention of the Commissioner who is to preside over the conciliation conference. Such documents should not be filed and will not be recorded in the Court's records.
- (e) A copy of any document so lodged is also to be provided, at the time of lodgment, to the other party to the proceedings with the notation that it has been brought into existence for the purposes of, and proposed to be relied upon by a party at, the conciliation conference.
- (f) If no agreement of a kind referred to in s 34(3) of the Land and Environment Court Act is reached, the conciliation conference will be terminated and the proceedings will proceed to a hearing forthwith or, subject to the agreement of the parties, on the basis of what has occurred at the conciliation conference, in accordance with s 34AA(2)(b).

4. Expert evidence

- (a) Under rr 31.19 and 31.20 of the Uniform Civil Procedure Rules 2005 ('UCPR'), the Court makes the following directions regarding expert evidence:
 - [name of the expert witness] may prepare an individual expert's report on [specified issues];
 - [the named experts] are to confer in relation to [specified issues] under UCPR r 31.24 and prepare a joint expert report;

- the individual expert's report of [named expert] is to be filed and served by [date];
- the joint expert report of [named experts] is to be filed and served by [date].

Note: The above directions may be duplicated for each area of expertise required.

- (b) Unless the Court otherwise orders, expert evidence may not be adduced at the hearing otherwise than in accordance with the directions made by the Court in accordance with UCPR rr 31.19 and 31.20, including compliance with directions as to the time for service and filing of experts' reports and joint expert reports.

5. Experts' obligations

- (a) Parties are to serve a copy of these directions, the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses on all experts upon whose evidence they propose to rely within 3 business days of these orders being made, or, for a statement of facts and contentions (or reply) filed after the making of these orders, within 3 business days of them being filed or served.
- (b) Experts are directed to give written notice to the Court and the party instructing them if for any reason they anticipate that they cannot comply with these directions. In that case, or if the experts have failed to comply with these directions, the parties will promptly list the matter before the Court for directions and give written notice to the other parties. Default without leave of the Court can result in the imposition of sanctions.
- (c) Any written expert evidence is to include acknowledgement that the expert has read and agrees to be bound by the Expert Witness Code of Conduct.

6. Obligations for joint conference and report

- (a) Experts are to ensure that a joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
- (b) A joint report is to identify the experts involved in its preparation, the date of their joint conferences, the matters they agreed about, the matters they disagreed about and reasons for agreement and disagreement. A joint report should avoid repetition and be organised to facilitate a clear understanding of the final position of the experts about the matters in issue and the reasoning process they used to reach those positions. Each expert is to sign and date the joint report.
- (c) Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.

7. Restrictions on oral expert evidence

A party calling a witness may not, without the leave of the Court, lead evidence from the witness the substance of which is not included in a document served in accordance with the Court's directions.

8. Witnesses required for cross-examination

If any witness is required for cross-examination, notice is to be given at least seven days before the conciliation conference and hearing.

9. Objections to evidence

A party who proposes to object to any part of an affidavit, statement or report is to file and serve notice of its objections, including the grounds in support, at least seven days before the conciliation conference and hearing.

10. Bundle of documents

The respondent consent authority is to file and serve a bundle of documents by 7 days before the conciliation conference and hearing. The bundle is to contain copies of relevant environmental planning instruments, relevant extracts from development control plans and policies, and documents evidencing the lodgment, processing and determination of the application by the consent authority, including all submissions from objectors, and the decision of the consent authority but is not to otherwise include copies of any documents annexed to the residential development appeal. Unnecessary copying and duplication of documents is to be avoided. The bundle is to be subdivided into relevant divisions, paginated and have a table of contents.

11. Notice of objectors who will give evidence

The respondent consent authority is to file and serve a notice of objectors who wish to give evidence at the hearing, of whom the consent authority is aware, by 7 days before the conciliation conference and hearing. The notice is to identify the objector, their address, where they wish to give evidence (on site or in Court) and whether they made a written submission about the application (in which event, the notice is to provide the page number of that submission in the key bundle). If there is no submission, the respondent consent authority should, if possible, file and serve a short statement identifying the topics about which the objector wishes to give evidence.

12. Draft conditions of consent

- (a) The respondent consent authority is to file and serve draft conditions of consent (in both hard copy and electronic form) by 14 days before the conciliation conference and hearing.
- (b) The applicant for consent is to file and serve its draft conditions in response (in both hard copy and electronic form) by 7 days before the conciliation conference and hearing.
- (c) Each party's draft conditions of consent are to identify any variance from the standard conditions of consent for residential development, including conditions which have been added, amended or deleted.

13. Non-compliance with directions and timetable

If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:

- (a) relist the matter before the Court within three days of the specified time; and
- (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

Note: The Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and the relisting unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

14. Liberty to re-list

The parties have liberty to restore on two working days' notice.

15. Concurrent evidence of experts

At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing Commissioner directs otherwise.

16. Submissions of parties

- (a) The applicant is to file and serve an outline of submissions by 5 working days before the conciliation conference and hearing.
- (b) The respondent is to file and serve an outline of submissions by 2 working days before the conciliation conference and hearing.

Schedule F

Usual directions on the appointment of a parties' single expert:

The Court orders:

1. The Court notes the agreement between the parties to engage [insert name] as a parties' single expert and that the parties have agreed the remuneration to be paid to that expert as being [insert details of remuneration].

Or, failing agreement about the identity and/or remuneration of the parties' single expert:

- 1A.
 - (a) The parties are to agree on a parties' single expert and their remuneration and are to notify the Court of the expert's name and that the expert's remuneration has been agreed by [insert date 7 days after the first directions hearing].
 - (b) Failing agreement, the parties are to file and serve the names, CVs and fee estimates of three appropriately qualified experts by [insert date 10 days after the first directions hearing]. The Court will make order 2 below in Chambers and notify the parties accordingly.
2.
 - (a) The Court orders the parties to engage jointly [insert name] as a parties' single expert.
 - (b) The Court fixes the remuneration of the parties' single expert at [insert details of remuneration].
3. A parties' single expert is not to incur fees or disbursements additional to the remuneration agreed by the parties or fixed by the Court without written agreement of both parties or, absent such agreement, the leave of the Court.
4. The parties are to brief the parties' single expert with agreed instructions and an agreed bundle of documents by [insert date within 7 days of direction 2 being made].
5. The parties' single expert is to file and serve their expert report by [insert date within 6 weeks of direction 2 being made]. Without leave of the Court, the

parties' single expert is not to provide the parties with a preliminary expert report or preliminary opinion.

6. The parties' single expert is to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, including the requirements for experts' reports.
7. If the Court has ordered that a parties' single expert address any issue, no expert report addressing the same issue other than the report of the parties' single expert may be relied upon at the hearing, without leave.
8. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

SCHEDULE G

Usual directions for separate determination of questions

The Court orders that:

1. Pursuant to r 28.2 of the Uniform Civil Procedure Rules 2005, the following question is to be determined separately from any other question in the proceedings:

[insert separate question]

2. The parties are to file and serve any affidavits, reports or statements on which they wish to rely by [insert date within 14 days of the separation of the question].
3. The parties are to file and serve any affidavits, reports or statements in reply by [insert date within 28 days of the separation of the question].
4. The parties are to file an agreed bundle of documents by [insert date within 5 weeks of the separation of the question].
5. The party raising the question is to file and serve an outline of submissions by [insert date two working days before the hearing of the separate question].
6. The other party is to file and serve an outline of submissions by [insert date one working day before the hearing].
7. The question is listed for hearing in court on [insert date] at 10:00am.
8. Parties are to notify promptly the Court if there is any material slippage in the timetable.
9. The parties have liberty to restore on three working days' notice.



**Land and Environment
Court**
of New South Wales

PRACTICE NOTE

CLASSES 1, 2 AND 3 MISCELLANEOUS APPEALS

Name and commencement

1. This Practice Note is to be known as Practice Note – Miscellaneous Appeals. It commences on 3 April 2018. It replaces the Practice Note – Miscellaneous Appeals made on 22 March 2017.

Application of Practice Note

2. This practice note applies to:
 - (a) Class 1 appeals other than those under ss 8.7, 8.8, 8.9 and 8.23 and applications under s 4.55(8) of the *Environmental Planning and Assessment Act 1979*, which are subject to Practice Note – Class 1 Development Appeals;
 - (b) Class 2 appeals and applications other than:
 - (i) proceedings under the *Trees (Disputes Between Neighbours) Act 2006*, which are subject to the Practice Note – Class 2 Tree Applications;
 - (ii) proceedings under ss 66, 85, 86 and 92 of the *Strata Schemes Development Act 2015*, which are subject to the Practice Note – Strata Schemes Development Proceedings; and
 - (c) Class 3 appeals and applications other than:
 - (i) proceedings for approval of a strata renewal plan under s 179 of the *Strata Schemes Development Act 2015*, which are subject to the Practice Note – Strata Schemes Development Proceedings;
 - (ii) claims for compensation by reason of the acquisition of land, which are subject to Practice Note – Class 3 Compensation Claims;

- (iii) objections to valuation under the *Valuation of Land Act 1916*, which are subject to Practice Note – Class 3 Valuation Objections respectively; and
- (iv) appeals and references under the *Aboriginal Land Rights Act 1983*, which are subject to Practice Note – Class 3 Aboriginal Land Claims.

The appeals subject to this practice note are referred to as “miscellaneous appeals”.

Purpose of Practice Note

3. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of miscellaneous appeals.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
5. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.
6. Parties are to ensure that all directions which they seek with respect to miscellaneous appeals will assist in enabling such appeals to be dealt with at the hearing with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the *Land and Environment Court Act 1979*).

Legal practitioners and agents of parties to be prepared

7. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. Any person seeking to perform the role of an agent should make themselves aware of the obligations of an agent and the requirement to obtain the leave of the Court to appear on someone's behalf in the proceedings. An application for leave to appear as an agent in the proceedings may be made at the time of commencing the proceedings by letter to the Registrar, or orally at the first directions hearing. The application must be supported by evidence that rule 7.7 of the Land and Environment Court Rules 2007 has been complied with.

Note: More information regarding the obligations of agents can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Coming to the Court" and then "Having someone represent you."

9. Legal practitioners and agents for each party should communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and on preparation of short minutes recording the directions.

Commencing a miscellaneous appeal

10. A miscellaneous appeal is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry a completed Class 1, 2, 3 Application Form (Form B).

Note: the application form can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Forms & Fees" on the right hand menu.

Service of the miscellaneous appeal application

11. Miscellaneous appeal applications are to be served within 7 days of filing.

The return date of the miscellaneous appeal

12. Miscellaneous appeals will usually be given a return date before the Court 28 days after the date on which they are filed. On the return date, the first directions hearing will occur. The first directions hearing will usually be before the Registrar on a weekday from Tuesday to Friday.
13. If the miscellaneous appeal concerns a site that is located outside of metropolitan Sydney, the first directions hearing will occur by telephone in the telephone directions hearing list conducted before the Registrar on Mondays.
14. Applications to extend the period for the return of the application before the Court may be granted if the applicant demonstrates that service cannot be achieved within the time required. The Registrar may also extend the period if circumstances, such as public holidays, make it appropriate that a longer period be allowed for parties to take the action required by this practice note before or by the return of the proceedings.

Access to documents

15. On request, a respondent who is a public authority or public official is to provide the other party with access to the documents relevant to the application and its decision (if any) with respect to the miscellaneous appeal, within 14 days of the request.

Identifying the issues in dispute

16. If any party seeks to raise an issue of fact or law that it contends precludes the determination of the proceedings one way or another, then the party raising that issue is to identify it in its statement of facts and contentions prepared in accordance with Schedule A.
17. The applicant is to file and serve a statement of facts and contentions in accordance with **Schedule A** before 4.00pm on the third last working day before the first return of the proceedings unless the proceedings involve an appeal against a development control order under s 8.18 of the *Environmental Planning and Assessment Act 1979*.

18. If the proceedings involve an appeal against a development control order under s 8.18, the respondent is to file and serve a statement of facts and contentions in accordance with Schedule A before 4.00pm on the third last working day before the first return of the proceedings.

Number of pre-hearing attendances

19. Unless there are interlocutory applications, a miscellaneous appeal is normally in court before the hearing on no more than three occasions:
 - (a) at the first directions hearing,
 - (b) at the conciliation conference, and
 - (c) at the second directions hearing.

Before the first directions hearing

20. Before the directions hearing, the parties are to discuss and endeavour to agree upon:
 - (a) whether the proceedings are suitable for a conciliation conference;
 - (b) the directions that the Court should make at the first directions hearing;
 - (c) the proposed dates for hearing or conciliation conference, being usually the dates in the range of available dates published at the top of the court list; and
 - (d) if any party intends to adduce expert evidence at a hearing of the proceedings, a statement of the disciplines in respect of which they propose to call expert evidence, the names of the experts, the issues to which the proposed expert evidence relates, and the reasons why the proposed expert evidence is reasonably required to resolve the proceedings having regard to the requirement for the just, quick and cheap resolution of the issues in dispute.
21. If the parties do not agree, each party should prepare their own written version of the directions they propose.

Parties to seek directions before adducing expert evidence

22. Parties are encouraged to consider whether expert evidence is genuinely necessary to resolve the issues in dispute in miscellaneous appeals. Unnecessary expert evidence substantially increases the time and cost of appeals. Parties are encouraged to consider whether the proceedings can appropriately be fixed for hearing before a Commissioner or Commissioners with special knowledge and experience in relation to the issues in dispute.
23. A party intending to adduce expert evidence at the hearing of any miscellaneous appeal must apply for directions from the Court under Pt 31 r 31.19 of the Uniform Civil Procedure Rules 2005 permitting the adducing of expert evidence.
24. The application for directions is to be made at a directions hearing at which the miscellaneous appeal is listed for hearing. The application is to be supported by a completed information sheet in the form of Schedule D, outlining the issues in the proceedings, the experts whose opinion is sought to be adduced as evidence in the proceedings, and the areas of expertise of the expert. The application is also to be accompanied by the proposed directions under r 31.20 of the Uniform Civil Procedure Rules 2005.
25. If practicable, the Court will determine the application for directions at the directions hearing or otherwise it will fix a date for hearing the application. At the hearing of the application for directions, the party seeking directions is to explain the expert evidence sought to be adduced and why the use of that expert evidence should be permitted, including why that expert evidence relates to a real issue in the proceedings and is reasonably required to resolve that issue.
26. A party may not adduce expert evidence at the hearing of any miscellaneous appeal unless the Court has given directions permitting the adducing of that expert evidence and the adducing of that expert evidence is in accordance with those directions (see r 31.19(3) of the Uniform Civil Procedure Rules 2005).
27. Any directions for the filing of experts' reports and joint expert reports made by the Court will specify the name of each expert required to comply with the directions.

28. If either party seeks to adduce the evidence of any expert not named in the directions made, that party is required to seek additional directions for the filing of evidence by that expert, either through Online Court or by exercising liberty to restore. Any application for additional directions is to be supported by an updated hearing information sheet in the form of Schedule D, and provide the information and explanation referred to in paragraphs 24 and 25 of this practice note.

At directions hearings

29. Unless good reason is demonstrated, the parties are to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the conciliation conference or hearing date. Legal practitioners and other representatives of the parties are to advise the parties of their obligation to be ready to agree to a timetable up to and including the hearing date and are to obtain full and timely instructions to ensure the parties comply with this obligation.
30. At the first directions hearing, the parties are to inform the Court if there is any reason for the miscellaneous appeal not to be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979*. If the miscellaneous appeal is fixed for a conciliation conference, then the parties should expect that the usual directions in **Schedule B** will be made.
31. If the parties do not satisfy the Court that there is a good reason why the miscellaneous appeal should not be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979*, then, in the ordinary course, the miscellaneous appeal will be fixed for a conciliation conference as follows:
- (a) for short matters not requiring a site view, before the Duty Commissioner on the next available Friday; or
 - (b) for other matters, within 28 days, subject to the availability of the Court.
32. If the parties satisfy the Court that there is a good reason why the miscellaneous appeal should not be fixed for a conciliation conference but instead should be fixed for a hearing, the parties should expect that the usual directions set out in **Schedule C** will be made and should have either agreed or competing proposed short minutes to hand to the Court.

33. Following any termination of the conciliation conference, the parties are to be sufficiently prepared at the second directions hearing to assist the Court in making and to accept a timetable up to and including the hearing date, and to make any application for directions to adduce expert evidence in accordance with paragraphs 24 and 25 of this practice note. The parties should expect that the usual directions set out in Schedule C will be made and should have either agreed or competing proposed short minutes to hand to the Court.
34. In preparing the short minutes, parties may delete, amend or abridge any part of the usual directions to facilitate the just, quick and cheap resolution of the proceedings.
35. Parties may also propose alternative directions if they have a reasonable basis for considering that alternative directions will better facilitate the just, quick and cheap resolution of the proceedings. If alternative directions are proposed, the party seeking those directions is to notify the other party before the directions hearing and ensure that proposed short minutes are available to be handed to the Court.
36. To enable the usual directions in Schedule C to be made, when the miscellaneous appeal is to be fixed for hearing, the parties are to hand to the Court at the directions hearing a completed information sheet in the form of **Schedule D**.

Use of Online Court

37. Online Court allows parties to seek directions online rather than appearing at a directions hearing in court. Any of the usual directions, including fixing a date for a hearing or conciliation conference and the making of directions for expert evidence, can be made through Online Court.
38. Any application by Online Court to adduce expert evidence must be supported by a completed hearing information sheet (Schedule D) as well as the information and explanation referred to in paragraphs 24 and 25 of this practice note.
39. Parties can apply for directions to be made online by submitting an Online Court request before 12noon on the day prior to the directions hearing. The Court will endeavour to respond to the request by 4:30pm. If the parties do not

receive a response there must be an appearance on their behalf at the directions hearing.

40. Any party seeking to make an application using Online Court must first contact the other parties in an attempt to provide the Court with a consent position. If the parties reach consent as to the appropriate directions to be made and the date for a hearing or conciliation conference, the party lodging the request may mention the appearance of the other party and indicate that the directions are sought by consent.
41. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter' request. The other party is required to respond to the request by 2pm. If no response is received, appearances are required on behalf of all parties at the directions hearing.
42. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, the Court may make a costs order against that party for the cost of the other party's appearance in court unless there is some reasonable excuse for the failure to respond.

Conduct of conciliation conference

43. A conciliation conference arranged by the Court will be conducted in accordance with the Conciliation Conference Policy.

Note: the Conciliation Conference Policy can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Practice and Procedure" on the top menu.

44. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the *Land and Environment Court Act 1979*), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.

45. Any amended documents or additional information proposed by the applicant to be the subject of without prejudice discussions at a conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
46. The respondent is to provide to the applicant any response to the amended documents or additional information, as well as draft without prejudice conditions of approval (if applicable), 7 days before the conciliation conference.
47. The conciliation conference will not be adjourned to another time and place (fixed in consultation with the Registrar) by the Commissioner presiding over the conciliation conference unless the Commissioner is satisfied that there is good reason to do so (see s 34(6) of the *Land and Environment Court Act 1979*).
48. The failure of a party to attend with adequate instructions (such as not having authority to reach agreement or the ability to respond to a proposed outcome), or the failure of a party to be sufficiently prepared to negotiate an outcome (for example, by reliance on inadequate plans or supporting material, or by not having experts in attendance to assist with negotiations), will not generally constitute a good reason for the adjournment of a conciliation conference.
49. In general, the conciliation conference will be adjourned only in circumstances where the parties have reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties and the adjournment is required to finalise that agreement.
50. If an adjournment is given, the conciliation may be listed before the Commissioner after 4pm on a future date not more than 3 weeks after the conciliation conference. The Commissioner may conduct the adjourned conciliation by telephone or by requiring the parties to attend in person. If the time or date of the listing changes due to other duties of the Commissioner, the parties will be notified in writing by email.
51. If a conciliation conference is terminated, the miscellaneous appeal will be listed for a second directions hearing 7 days after the conciliation conference is terminated. At the second directions hearing following the termination of the conciliation conference, the parties are expected to be in a position to take a date for the final hearing of the proceedings and for the usual directions in Schedule C to be made.

Conduct of hearing

52. Generally, miscellaneous appeals should commence at 9.30am on site for the hearing view unless, in the particular circumstances of the case, it would be inappropriate to do so.
53. The hearing view will be conducted in accordance with the Site Inspections Policy.

Note: the Site Inspections Policy can be found on the Court's website (<http://www.lec.justice.nsw.gov.au>) and then accessed through "Practice and Procedure" on the top menu.

Expert evidence

54. Any directions made concerning the filing of expert evidence must be provided to the experts within 3 business days of being made, together with the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules, the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses.
55. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.
56. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.
57. It is not the role of any expert to opine whether an appeal should be upheld or dismissed. That is the role of the consent authority and, on appeal, the Court exercising the functions of the consent authority. Expert opinions in reports and joint reports are to deal with the contentions raised by the parties. Any other matter relevant to the expert's expertise, which the expert feels obliged to draw to the attention of the parties and the Court, may also be noted.
58. Experts' reports are not to repeat matters in Part A Facts of the statements of facts and contentions. Wherever possible, an expert should state that Part A

Facts has been adopted as correct. If this cannot be stated, the expert should identify the matters which are disputed and state his or her position in relation to those matters.

59. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
60. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.
61. Where expert evidence from more than one expert in the same discipline is to be given in Court, the experts will give such evidence concurrently (subject to any order by the hearing Judge or Commissioner to the contrary).
62. If a party requires any expert for cross-examination, notice is to be given at least 7 days before the hearing.

Parties' single expert

63. Where expert evidence is necessary to be called in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties' single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:
 - (a) the importance and complexity of the subject matter in dispute in the proceedings;
 - (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
 - (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);

- (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;
 - (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline; and
 - (iv) whether the issue relates to the adequacy or sufficiency of information provided in the miscellaneous appeal application;
 - (f) whether the evidence of the parties' single expert involves the provision of aids to assist in the assessment of a miscellaneous appeal application.
 - (g) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
 - (h) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;
 - (i) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
 - (j) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.
64. The Court will not usually accept the appointment of a parties' single expert if that expert is unable to provide a report within 5 weeks of receiving the brief or is unable to attend a hearing within a further 28 days thereafter.

65. The usual directions in **Schedule E** provide for a parties' single expert to file and serve one expert report only. Without leave of the Court, a parties' single expert is not to provide parties with preliminary reports or opinions.

Note: Under Pt 31.41 of the Uniform Civil Procedure Rules a party may seek clarification of the report of a parties' single expert on one occasion only.

66. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

67. Where a parties' single expert has been appointed to give evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

68. Leave is to be sought by notice of motion, with an affidavit in support explaining:

- (a) the name, qualifications and expertise of the expert proposed to be called;
- (b) the matters proposed to be addressed by the expert;
- (c) the date on which the expert was first retained and the date or dates of any expert report the expert has already prepared;
- (d) the reasons for the need to call an additional expert to give that evidence, rather than having the parties' single expert address the matters further or in cross examination;
- (e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the just, quick and cheap resolution of the proceedings; and
- (f) the party's position in relation to any additional costs that might be caused by the calling of the expert.

If practicable, the affidavit should not exceed three pages in length (excluding annexures).

69. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the

amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.

Note: See Pt 31.45 of the Uniform Civil Procedure Rules.

Short matters

70. Parties may request short matters (less than 2 hours) to be fixed for hearing before a Duty Commissioner or Duty Judge on a Friday.
71. If the request is by consent, the parties may file the request with the Registry before the first directions hearing. Parties will be notified if the hearing can be listed on a Friday before the first directions hearing, in which event the first directions hearing will be amended to be the hearing date.

Application for separate determination of an issue

72. In the ordinary course, all issues (including issues requiring findings on questions of law) should be heard together unless an issue genuinely capable of separate determination is likely to be determinative of the appeal.

Note: A Judge or a Commissioner who is an Australian Lawyer may be appointed to conduct the final hearing to facilitate the objective of having all issues heard together.

73. If any party seeks to raise an issue of fact or law that the party contends precludes or demands the determination of the miscellaneous appeal in a particular way or otherwise seeks to have an issue dealt with separately before the final hearing in accordance with Part 28 Division 2 of the Uniform Civil Procedure Rules 2005, the party must apply to do so by notice of motion supported by a short affidavit setting out the issue and the reasons why it should be dealt with separately. If possible, the notice of motion is to be returnable at the first directions hearing.
74. If an order is made for a hearing of a separate question:
 - (a) short matters (less than 2 hours) may be listed on the first available Friday before the Duty Judge or Duty Commissioner for issues of law or fact respectively; and
 - (b) other matters will be listed for hearing in the ordinary course,

and the usual directions in **Schedule F** will apply.

Expedition

75. Any party may seek expedition of a miscellaneous appeal by notice of motion, with a short affidavit in support setting out the reasons in support of expedition.

Breach of the Court's directions

76. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:
- (a) relist the matter before the Court within three days of the specified time; and
 - (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.
77. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

Variation of timetables

78. If either party becomes aware of circumstances that will necessitate a variation to the timetable, an application to vary the timetable can be made by Online Court request. Any party seeking to make an application to vary the timetable using Online Court must first contact the other parties in an attempt to provide the Court with a consent position.
79. If a party makes a request for orders through the Online Court without the consent of the other side, the Online Court system gives the other party an opportunity to respond by either consenting to the request or offering a 'counter'

request. If no response is received within 2 days of the request or such other time as the Registrar determines, the proceedings may be listed for further directions.

80. If, by reason of a party's failure to respond to an Online Court request, another party is unnecessarily put to the cost of attending a directions hearing, an order for the payment of costs of the appearance may be made unless there is some reasonable excuse for the failure to respond.
81. If proposed directions vary an existing timetable, they must include the vacation of any date for a directions hearings or mention or for the hearing of motions that can no longer be maintained.

Liberty to restore

82. Parties have liberty to approach the Court without a notice of motion on three working days' notice or earlier if urgency requires. A party seeking to make urgent application should, if possible, make prior arrangement with, or give appropriate notice to, any other party, and should send an Online Court request.
83. The Court expects that prior to exercising liberty to restore, the parties confer with a view to reaching an agreement on any proposed variation to the timetable and if an agreement is reached, request the variation to the timetable through Online Court.

Amendments to applications and to statements of facts and contentions

84. An applicant requires leave of the Court to amend a miscellaneous appeal application.
85. Parties require leave of the Court to amend their statements of facts and contentions.
86. Other than amendments sought during the hearing of the appeal, leave to amend is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave to amend being sought.

Applications to vacate hearings and for adjournments

87. Miscellaneous appeals will not be adjourned generally.
88. Miscellaneous appeals usually will not be adjourned because of failure to comply with this practice note or Court directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of the proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
89. Applications to vacate hearing dates are to be by notice of motion, with an affidavit in support explaining the circumstances of the application and the reasons the hearing date should be vacated.

Application for final orders by consent of parties

90. Any application for consent final orders in a miscellaneous appeal will be listed before the Court for determination. The parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to make the consent final orders.

Costs and compliance

91. If a breach of the Court's directions or of this practice note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs.
92. The cost of unnecessary photocopying and assembly of documents is unacceptable. Legal practitioners for the parties are to consider carefully the documents necessary to be tendered. Unnecessary documents may attract adverse costs orders.
93. Any failure by one party to comply with the Court's directions will not be considered an adequate excuse for any failure to comply by the other party. Both parties are responsible for ensuring that they comply with directions.

Applications for a cost order

94. Where a Commissioner has heard and determined a miscellaneous appeal, any party seeking an order for costs of the proceedings must apply for costs by notice of motion filed within 28 days of the making of the final orders in the proceedings.

Note: Pt 3 r 3.7 of the Land and Environment Court Rules 2007 provides that for certain proceedings in Classes 1-3 of the Court's jurisdiction, the Court "is not to make an order of the payment of costs unless the Court considers that the making of an order as to the whole or any part of the costs is fair and reasonable in the circumstances": Pt 3 r 3.7(2). Some of the circumstances in which the Court might consider the making of a costs order to be fair and reasonable are listed in Pt 3 r 3.7(3). 70.

95. The notice of motion for costs will be heard and determined by either the Registrar or a Judge of the Court.

***The Honourable Justice Brian J Preston
Chief Judge***

29 March 2018

Schedule A

Requirements for statement of facts and contentions

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions.
3. An authorised officer of the relevant party is to sign and date the statement.
4. In Part A Facts, the party is to identify:
 - (a) **The subject of the appeal:** a brief description of the subject matter of the appeal.
 - (b) **The statutory context:** a brief description of the relevant statutory provisions under which the miscellaneous appeal is brought.
 - (c) **The circumstances:** a brief description of the circumstances leading to the miscellaneous appeal.
 - (d) **The land:** if relevant, a brief description of any relevant land.
 - (e) **Actions of the party:** as relevant, a brief description of any relevant actions of the party, including date any application was lodged, application number, notification and its results, decision and date of decision.

Part A Facts is not to include matters of opinion.

5. In Part B Contentions the party is to identify each fact, matter and circumstance that the party contends require or should cause the Court to uphold or dismiss the appeal.
6. In Part B Contentions, the party is to:
 - (a) focus its contentions on issues genuinely in dispute;
 - (b) have a reasonable basis for its contentions;
 - (c) present its contentions clearly and succinctly, without repetition;
 - (d) where it contends that the appeal must be upheld or dismissed, identify the factual and/or legal basis for that contention. Any such contention is

to be made at the beginning of Part B contentions and is to be clearly identified as a contention that the appeal must be upheld or refused;

- (e) where the party contends there is insufficient information to assess any relevant matter, list the information the party contends is required;
- (f) if applicable, identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
- (g) identify any contentions that may be resolved by conditions.

SCHEDULE B

Usual directions for arranging a conciliation conference

The Court directs that:

1. A conciliation conference under s34 of the *Land and Environment Court Act 1979* ('the Court Act') is arranged for [date] commencing at [time] at [place].
2. The conciliation conference will not be adjourned to another time and place (fixed in consultation with the Registrar) by the Commissioner presiding over the conciliation conference unless the Commissioner is satisfied that there is good reason to do so (see s 34(6) of the Court Act).
3. The [applicant or respondent] is to file and serve its statements of facts and contentions in accordance with Schedule A of Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals by [insert date having regard to date of conciliation conference].
4. The [respondent or applicant] is to file and serve its statements of facts and contentions in reply in accordance with Schedule A of Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals by [insert date having regard to date of conciliation conference]. This statement is not to repeat any facts not in dispute.
5. The parties are to participate, in good faith, in the conciliation conference (see s 34(1A) of the Court Act), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.
6. Any amended documents or additional information proposed by the applicant to be the subject of without prejudice discussions at a conciliation conference are to be provided to the respondent 14 days before the conciliation conference.
7. The respondent is to provide to the applicant any response to the amended documents or additional information, and draft without prejudice conditions of approval (if applicable), 7 days before the conciliation conference.

8. Any documents proposed to be relied upon by a party for the purposes of without prejudice discussions at a conciliation conference may be lodged with the Court in a sealed envelope and marked for the attention of the Commissioner who is to preside over the conciliation conference. Such documents should not be filed and will not be recorded in the Court's records.
9. A copy of any documents so lodged is also to be provided, at the time of lodgment, to the other party to the proceedings with the notation that it has been brought into existence for the purposes of, and proposed to be relied upon by a party at, the conciliation conference.
10. If no agreement is reached at or after the conciliation conference, the proceedings are listed for a second directions hearing on [insert date 7 days after the conference].
11. Each party is to notify the other party in writing of the name of any expert upon which they propose to rely, the area of expertise of the expert and the issues to be addressed by each expert 2 business days prior to the second directions hearing.

Schedule C

Usual directions for a hearing

The Court directs that:

1. The proceedings are fixed for hearing on [insert date as soon as reasonably possible and usually within 12 weeks from the first directions hearing].
2. The hearing is to commence [on site at 9.30am] or [in Court at 10.00am]. If the parties consider the site may be difficult to find, they are to file an agreed map showing the proposed location for the commencement of any hearing on site at 9.30am two working days before the hearing.

Note: If a matter is fixed for an on site hearing or is otherwise to involve substantial time or taking of evidence on site, the parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities, and that the hearing will be open to the public and will be able to be observed and heard by all persons attending the hearing.

3. The [respondent or applicant] is to file and serve its statements of facts and contentions in accordance with Schedule A of Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals by [insert date having regard to date of conciliation conference].
4. The [respondent or applicant] is to file and serve its statements of facts and contentions in reply in accordance with Schedule A of Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals by [insert date having regard to date of conciliation conference]. This statement is not to repeat any facts not in dispute.
5. Under rr 31.19 and 31.20 of the Uniform Civil Procedure Rules 2005 ('UCPR'), the Court makes the following directions regarding expert evidence:
 - [name of the expert witness] may prepare an individual expert's report on [specified issues];
 - [the named experts] are to confer in relation to [specified issues] under UCPR r 31.24 and prepare a joint expert report;
 - the individual expert's report of [named expert] is to be filed and served by [date];

- the joint expert report of [named experts] is to be filed and served by [date].

Note: The above directions may be duplicated for each area of expertise required.

6. Unless the Court otherwise orders, expert evidence may not be adduced at the hearing otherwise than in accordance with the directions made by the Court in accordance with UCPR rr 31.19 and 31.20, including compliance with directions as to the time for service and filing of experts' reports and joint expert reports.
7. Parties are to serve a copy of these directions, the statements of facts and contentions, Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, and the Court policies on Joint Reports and on Conference of Expert Witnesses on all experts upon whose evidence they propose to rely within 3 business days of these orders being made, or, for a statement of facts and contentions (or reply) filed after the making of these orders, within 3 business days of them being filed or served.
8. Experts are directed to give written notice to the Court and the party instructing them if for any reason they anticipate that they cannot comply with these directions. In that case, or if the experts have failed to comply with these directions, the parties will promptly list the matter before the Court for directions and give written notice to the other parties.
9. Experts are to ensure that a joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
10. A joint report is to identify the experts involved in its preparation, the date of their joint conferences, the matters they agreed about, the matters they disagreed about and reasons for agreement and disagreement. A joint report should avoid repetition and be organised to facilitate a clear understanding of the final position of the experts about the matters in issue and the reasoning process they used to reach those positions. Each expert is to sign and date the joint report.

11. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.
12. At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing judge or commissioner directs otherwise.
13. A party calling a witness may not, without the leave of the Court, lead evidence from the witness the substance of which is not included in a document served in accordance with the Court's directions.
14. If any witness is required for cross-examination, notice is to be given at least 7 days before the hearing.
15. A party who proposes to object to any part of an affidavit, statement or report is to file and serve notice of its objections, including the grounds in support, at least seven days before the hearing.
16. If the applicant or respondent contends that, if the appeal is upheld, conditions should be imposed, that party is to file and serve draft conditions (in both hard copy and electronic form) 14 days before the hearing.
17. If any party fails to comply with a direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within two days of the specified time, the defaulting party is to:
 - (a) relist the matter before the Court within three days of the specified time; and
 - (b) provide to the Court on the relisting an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction.

Note: The Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and the relisting unless it appears to the Court that some other order should be made as to the whole or any part of the costs.

18. The parties have liberty to restore on three working days' notice.

Schedule D			
Classes 1, 2 and 3 Miscellaneous Appeals - Information Sheet			
Applicant:			
Respondent(s):			
Proceedings no:			
1.	Is any expert evidence required? If so, nominate general issues on which expert evidence is required, the areas of expertise and the names of the experts whose evidence leave is sought to be relied upon (with a new line for each area of expertise)		
Issues	Area of expertise	Applicant Expert	Respondent Expert
2.	Could any of the above issues be better dealt with by a parties' single expert? If so, what is the proposal for engaging the expert?		
3.	Are there any experts who should prepare an individual report before proceeding to a joint conference and joint report and, if so, identify the expert, the area of expertise and provide reasons supporting the report being necessary or appropriate [point form only]?		

4.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the appeal? If so, specify the relevant disciplines.
5.	If the appeal concerns land outside of the Sydney metropolitan region, should the appeal be heard in the local area? If not, why not?
6.	Is the appeal appropriate to be heard as an on site hearing under s 34A of the Environmental Planning and Assessment Act 1979? If so, will adequate facilities be available? Will the hearing be able to be observed and heard by the public?
7.	Is there any reason that the hearing should not commence at 9.30am on site?
8.	Identify any lay witnesses, if any
Applicant:	
Respondent:	
9.	Estimate of the length of hearing.
Applicant:	
Respondent:	
10.	Identify hearing dates sought:
Applicant:	
Respondent:	

SCHEDULE E

Usual directions on the appointment of a parties' single expert:

The Court orders:

1. The Court notes the agreement between the parties to engage [insert name] as a parties' single expert and that the parties have agreed the remuneration to be paid to that expert as being [insert details of remuneration].

Or, failing agreement about the identity and/or remuneration of the parties' single expert:

- 1A.
 - (a) The parties are to agree on a parties' single expert and their remuneration and are to notify the Court of the expert's name and that the expert's remuneration has been agreed by [insert date 7 days after the first/second directions hearing].
 - (b) Failing agreement, the parties are to file and serve the names, CVs and fee estimates of three appropriately qualified experts by [insert date 10 days after the first/second directions hearing]. The Court will make order 2 below in Chambers and notify the parties accordingly.
2.
 - (a) The Court orders the parties to engage jointly [insert name] as a parties' single expert.
 - (b) The Court fixes the remuneration of the parties' single expert at [insert details of remuneration].
3. A parties' single expert is not to incur fees or disbursements additional to the remuneration agreed by the parties or fixed by the Court without written agreement of both parties or, absent such agreement, the leave of the Court.
4. The parties are to brief the parties' single expert with agreed instructions and an agreed bundle of documents by [insert date within 7 days of direction 2 being made].
5. The parties' single expert is to file and serve their expert report by [insert date within 6 weeks of direction 2 being made]. Without leave of the Court, the

parties' single expert is not to provide the parties with a preliminary expert report or preliminary opinion.

6. The parties' single expert is to comply with the requirements of Division 2 of Pt 31 of the Uniform Civil Procedure Rules and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules, including the requirements for experts' reports.
7. If the Court has ordered that a parties' single expert address any issue, no expert report addressing the same issue other than the report of the parties' single expert may be relied upon at the hearing, without leave.
8. The parties' are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

SCHEDULE F

Usual directions for separate determination of questions

The Court orders that:

1. Pursuant to r 28.2 of the Uniform Civil Procedure Rules 2005, the following question is to be determined separately from any other question in the proceedings:

[insert separate question]

2. The parties are to file and serve any affidavits, reports or statements on which they wish to rely by [insert date within 14 days of the separation of the question].
3. The parties are to file and serve any affidavits, reports or statements in reply by [insert date within 28 days of the separation of the question].
4. The parties are to file an agreed bundle of documents by [insert date within 5 weeks of the separation of the question].
5. The party raising the question is to file and serve an outline of submissions by [insert date two working days before the hearing of the separate question].
6. The other party is to file and serve an outline of submissions by [insert date one working day before the hearing].
7. The question is listed for hearing in court on [insert date] at 10:00am.
8. Parties are to notify promptly the Court if there is any material slippage in the timetable.
9. The parties have liberty to restore on three working days' notice.



**Land and Environment
Court**
of New South Wales

PRACTICE NOTE

CLASS 5 PROCEEDINGS

Name and commencement of Practice Note

1. This practice note is to be known as Practice Note - Class 5 Proceedings. It commences on 3 April 2018. It replaces the Practice Note – Class 5 Proceedings made on 22 October 2012.

Application of Practice Note

2. This practice note applies to all criminal proceedings in Class 5 of the Court's jurisdiction referred to in s 21 of the *Land and Environment Court Act 1979*.

Purpose of Practice Note

3. The purpose of this practice note is to:
 - (a) reduce delays in criminal proceedings before the Court by implementing the preliminary disclosure and case management provisions in Chapter 4, Part 5, Division 2A of the *Criminal Procedure Act 1986*;
 - (b) set out the case management procedures and the process for the preparation for, and conduct of, trials and sentencing hearings to ensure that criminal proceedings are dealt with in a just and timely way; and
 - (c) assist the defendant to take advantage of legislation which provides for a discount in sentence for an early plea of guilty.

Statutory Context

4. Case management provisions and other provisions to reduce delays in criminal proceedings are set out in Division 2A (ss 247A – 247Y) of Part 5 of Chapter 4 of the *Criminal Procedure Act*. Part 5 of Chapter 4 also applies generally to Class 5 proceedings (s 41 of the *Land and Environment Court Act*) as does Part 5 of the *Land and Environment Court Rules 2007*, which adopts certain provisions of the *Supreme Court Rules 1970* and the *Uniform Civil Procedure Rules 2005*.



**Land and Environment
Court**
of New South Wales

5. Case management measures available to the Court include the ordering of preliminary hearings, preliminary conferences and further preliminary disclosure. The Court has a discretion in determining which (if any) of those measures are suitable in the criminal proceedings concerned.

Responsibility of parties, legal practitioners and agents

6. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to ensure that criminal proceedings are dealt with in a timely way.
7. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to timely dealing with proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.

Legal practitioners and agents of parties to be prepared

8. Each party not appearing in person shall be represented before the Court by a legal practitioner familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
9. Parties are to confer prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and preparation of agreed or competing short minutes recording the proposed directions.

Commencing a Class 5 proceeding

10. *Form to commence proceedings*: Proceedings for an offence in Class 5 of the Court's jurisdiction are to be commenced by summons. The summons is to claim an order under s 246(1) of the Criminal Procedure Act in respect of the offence and claim that the defendant be dealt with according to law for commission of the offence (Pt 5 r 5.3(1) of the Land and Environment Court



**Land and Environment
Court**
of New South Wales

Rules). An order under s 246(1) of the Criminal Procedure Act is that the defendant appear before the Court at a specified date, time and place to answer to the offence charged in the order, or for the apprehension of the defendant for the purpose of being brought before a judge of the Court to answer to the offence charged in the order.

11. *Minute of order in summons:* When filing the summons, the prosecutor is to lodge copies of a minute of the order under s 246(1) of the Criminal Procedure Act claimed by the prosecutor.
12. *Affidavits accompanying summons:* A summons seeking an order under s 246 of the Criminal Procedure Act is to be accompanied by the affidavits intended to be relied on by the prosecutor as establishing prima facie proof of the offence charged (Pt 5 r 5.3(2) of the Land and Environment Court Rules).
13. *Procedure for obtaining an order:* Before filing the summons, the prosecutor is to apply orally to the Court's registrar or the duty judge's associate for the prosecutor's summons claiming an order under s 246(1) of the Criminal Procedure Act to be heard before a judge, usually the duty judge. A date, time and place will be organised. Usually, the application is dealt with in the judge's chambers, with the legal representatives of the prosecutor in attendance. The prosecutor needs to establish that it is appropriate for the judge to exercise the coercive power for which s 246(1) provides. If so satisfied, the judge will make an order under s 246(1), either that the defendant appear before the Court at the date, time and place specified or that the defendant be apprehended for the purpose of being brought before a judge to answer to the offence charged in the order.
14. The prosecutor will then proceed to the Court's registry at level 4, 225 Macquarie Street, Sydney for the purpose of formally filing the summons and affidavits and paying the filing fee and having the order made by the judge entered. The prosecutor needs three copies of each of the summons, order and affidavits, if there is one defendant, and an additional copy for each additional defendant.
15. *Processing the summons and order:* The Court will process the summons and order at the Court's registry. The summons will be recorded in the Court's record system and stamped as having been filed with the Court. The order under s 246(1) of the Criminal Procedure Act made by the judge will be



**Land and Environment
Court**
of New South Wales

entered. The date, time and place for the defendant to answer to the offence charged in the order will be specified in the order and the copies.

16. The Court's registry will keep one copy of the summons, order and affidavits for the Court's file and return the other copies to the prosecutor. One of the returned copies is for the prosecutor to keep and the other sets of copies are to be served on each defendant.

Service

17. The sealed order and stamped copy of the summons and affidavits are to be served on the defendant within 7 days of commencement of the proceedings.

The date, time and place for the defendant to answer the offence charged

18. The order under s 246(1) of the Criminal Procedure Act will usually specify the date, time and place for the defendant to answer the offence charged in the order. Usually this will be the first mention of the proceeding. It will be about 6 weeks after the proceedings were commenced and the order was made. The first mention will occur before the List Judge.

Class 5 List

19. There is a Class 5 List which will be managed by the List Judge, usually each Friday.
20. In the Class 5 List the Court:
 - (a) gives directions and conducts the first mention as a preliminary hearing; and
 - (b) hears or manages any notice of motion or other interlocutory application.
21. Matters in the Class 5 List will be listed in blocks on a "not before" a specified time basis. Parties should check the daily court lists as published prior to attendance at Court in order to determine the "not before" time that their matter is listed.



**Land and Environment
Court**
of New South Wales

Number of pre-trial or pre-sentencing hearing attendances

22. Unless there are interlocutory applications or more than one preliminary hearing is required, a Class 5 proceeding should normally appear in Court before the trial or sentencing hearing on no more than two occasions as follows:
- (a) at the first mention in the Friday list when the defendant may enter a plea and the Court gives directions;
 - (b) at a preliminary hearing in the Friday list when a date for the trial or sentencing hearing will be fixed and the Court gives directions.

Before the first mention

23. In preparation for the first mention and to enable the Court to make appropriate directions, the parties are to take the following steps before the first mention:
- (a) they should endeavour to identify their counsel or their solicitor who will be appearing for them, in order to allow meaningful and binding decisions to be taken about evidence and other matters;
 - (b) the defendant is to consider the plea the defendant intends to make in answer to the offence charged in the order. Usually, the pleas are either guilty or not guilty of the offence charged. A defendant may be given a discount on the penalties imposed for an offence if a defendant enters an early plea of guilty, which may be at the first mention;
 - (c) the prosecutor is to consider the time by which notice of the prosecution case could be given by the prosecutor under s 247E of the Criminal Procedure Act;
 - (d) the defendant is to consider the time by which notice of the defence response could be given by the defendant under s 247F of the Criminal Procedure Act;
 - (e) the prosecutor and the defendant are to consider whether the Court at the first mention should order one or more preliminary hearings before the Court under s 247G of the Criminal Procedure Act. At preliminary



**Land and Environment
Court**
of New South Wales

hearings, the Court may make directions for the efficient management and conduct of the proceedings, and hear and determine and make rulings or findings on objections, submissions and questions of law (see s 247G(2) and s 247G(3));

- (f) the prosecutor and the defendant are to consider whether the Court at the first mention should order that a preliminary conference be held under s 247H of the Criminal Procedure Act. The purpose of a preliminary conference is to determine whether the defendant and the prosecutor are able to reach agreement regarding the evidence to be admitted at the trial or sentencing hearing (see s 247H(4));
- (g) the prosecutor and the defendant are to consider whether the Court at the first mention should order preliminary disclosure by the prosecutor under s 247J of the Criminal Procedure Act, by the defendant under s 247K of the Criminal Procedure Act, and by the prosecutor in response to the defence response under s 247L of the Criminal Procedure Act; and
- (h) the prosecutor and the defendant are to discuss and endeavour to agree on the directions that the Court should make at the first mention. If the parties do not agree, each party should prepare their own version of the directions they propose.

At the first mention

- 24. *Date, time and place:* The first mention will usually be on a Friday about 6 weeks after commencement of the proceedings. It will be conducted by the List Judge, in a courtroom in the Court's building at 225 Macquarie Street, Sydney. The location of the courtroom and the precise time of the day first mention will occur will be shown on the Court Lists posted on a notice board in the foyer of the building and on the Court's website under Court Lists in the afternoon of the day before the directions hearing. The Sydney Morning Herald may also (but does not always) publish the Court Lists on the morning of the date set for the first mention.
- 25. *Defendant's plea:* The defendant should advise the Court whether the defendant is in a position and is willing to enter a plea of not guilty or guilty to the offence charged and, if so, enter the plea.



**Land and Environment
Court**
of New South Wales

26. *Restorative justice:* If the defendant enters a plea of guilty, the prosecutor and defendant are to advise the Court of any proposal for, and timing of, any restorative justice process in which the defendant and victims (people and the environment) of the offence committed by the defendant are willing to participate and any proposed order for a restorative justice activity that the defendant has agreed to carry out.
27. *Time for notices of prosecution case and defence response:* The prosecutor and the defendant are to advise the Court of the time by which notice of the prosecution case is to be given under s 247E and notice of the defence response is to be given under s 247F of the Criminal Procedure Act.
28. *Short minutes of proposed directions:* The prosecutor and the defendant are to hand to the Court an agreed or their own versions of short minutes of the directions they propose the Court should make, including:
 - (a) the time by which notice of the prosecution case and notice of the defence response under s 247E and s 247F of the Criminal Procedure Act should be given;
 - (b) ordering a preliminary hearing under s 247G of the Criminal Procedure Act;
 - (c) ordering a preliminary conference under s 247H of the Criminal Procedure Act;
 - (d) ordering the prosecutor to give to the defendant notice in accordance with s 247J of the Criminal Procedure Act (if appropriate);
 - (e) ordering the defendant to give to the prosecutor notice of the defence response to the prosecution's notice in accordance with s 247K of the Criminal Procedure Act (if appropriate);
 - (f) ordering the prosecutor to give to the defendant notice of the prosecution's response to the defence response in accordance with s 247L of the Criminal Procedure Act (if appropriate);
 - (g) whether the Court should waive any of the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act under s 247P of the Act;



**Land and Environment
Court**
of New South Wales

- (h) if the defendant enters a plea of guilty, directing the preparation of an agreed statement of facts and bundle of documents;
 - (i) if the defendant enters a plea of guilty, directing the prosecutor to give to the defendant notice and details of any orders in connection with the offence that the prosecutor will be seeking for the Court to make (such as orders under Part 8.3 of the *Protection of the Environment Operations Act 1997*) if the Court finds the offence proved; and
 - (j) other directions for the efficient management and conduct of the proceedings.
29. *Making and recording directions:* The List Judge will make directions, usually orally, including fixing times for various notices to be given and dates for any preliminary hearings or preliminary conferences or agreed statement of facts and bundle of documents that might be ordered as well as a date for the second directions hearing. It is important that the parties record the directions the List Judge makes. A written copy of the directions made is not usually sent to the parties.

Before the first preliminary hearing

30. In preparing for the first preliminary hearing and to enable the Court to make appropriate directions, the prosecutor and the defendant need to take certain steps before the first preliminary hearing:
- (a) if the defendant has not already entered a plea at the first mention of the proceedings, the defendant should consider the plea the defendant intends to make at the first preliminary hearing in answer to the offence charged in the order;
 - (b) the prosecutor and the defendant should consider whether, in light of the matters raised in the notices of the prosecution case and defence response and any notices for preliminary disclosure by the prosecutor and the defendant ordered by the Court, which have been given, a further preliminary hearing under s 247G or a further preliminary conference under s 247H of the *Criminal Procedure Act* should be ordered;



**Land and Environment
Court**
of New South Wales

- (c) the prosecutor and the defendant are to consider whether they wish to apply for directions under s 247M of the Criminal Procedure Act, including dispensing with formal proof of a fact, matter or circumstance, dispensing with the application of certain provisions of the *Evidence Act 1995*, and permitting evidence of two or more witnesses in the form of a summary;
- (d) the prosecutor and the defendant are to discuss and endeavour to agree on the estimated hearing time for the trial or sentencing hearing, broken down into the elements of the trial or sentencing hearing. If the parties are unable to agree, each party should prepare their own version of the estimated hearing time; and
- (e) the prosecutor and the defendant are to discuss and endeavour to agree on the directions the Court should make at the first preliminary hearing. If the parties do not agree, each party should prepare their own version of the directions they propose. Each party should find out the available dates of themselves and their witnesses, including experts, for the trial or sentencing hearing.

At the first preliminary hearing

- 31. *Date, time and place:* The first preliminary hearing will again be conducted on a Friday by the List Judge on the date fixed at the first directions hearing, in a courtroom in the Court's building at 225 Macquarie Street, Sydney. The location of the court and the precise time of the day will be published on the Court Lists on a notice board in the foyer of the Court's building and on the Court's website in the afternoon of the day before the first preliminary hearing. The Sydney Morning Herald may also (but does not always) publish the Court Lists on the morning of the date set for the preliminary hearing.
- 32. *Defendant's plea:* If the defendant has not already entered a plea at the first mention of the proceedings, the defendant should enter a plea at the first preliminary hearing of not guilty or guilty to the offence charged.
- 33. *Estimate of hearing time:* The prosecutor and the defendant are to hand to the Court a realistic agreed estimate or their own versions of an estimate of the hearing time, broken down into the elements of the trial or sentencing hearing.



**Land and Environment
Court**
of New South Wales

34. *Completed minute of proposed directions:* The prosecutor and the defendant are to hand to the Court an agreed or their own versions of a minute of the directions they propose the Court should make, which may include:
- (a) ordering a further preliminary hearing under s 247G of the Criminal Procedure Act (if appropriate);
 - (b) ordering a further preliminary conference under s 247H of the Criminal Procedure Act (if appropriate);
 - (c) making any directions under s 247M of the Criminal Procedure Act (if appropriate);
 - (d) whether the Court should waive any of the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act under s 247P of the Act;
 - (e) if the defendant enters a plea of guilty, directing the preparation of an agreed statement of facts and bundle of documents;
 - (f) if the defendant enters a plea of guilty, directing the prosecutor to give to the defendant notice and details of any orders in connection with the offence that the prosecutor will be seeking for the Court to make (such as orders under Part 8.3 of the *Protection of the Environment Operations Act 1997*) if the Court finds the offence proved; and
 - (g) other directions for the efficient management and conduct of the proceedings.
35. *Making and recording directions:* The List Judge will make directions, usually orally, including fixing a date for the trial or sentencing hearing. The parties should record the directions made, including importantly the date, time and venue of the trial or sentencing hearing. A written copy of the directions made is not usually sent to the parties.



**Land and Environment
Court**
of New South Wales

Expert evidence

36. An expert called to give evidence at a trial or sentencing hearing and the expert's evidentiary statement are to comply with the requirements of Division 2 of Pt 31 and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

The trial or sentencing hearing

37. The trial or sentencing hearing of the proceedings will take place in a courtroom in the Court's building at 225 Macquarie Street, Sydney or possibly, for country matters, in a court in regional New South Wales. The Court's direction fixing the trial or sentencing hearing will state the venue. The venue will also be stated on the Court Lists posted on the notice board in the foyer of the Court's building and on the Court's website on the afternoon of the day before the trial or sentencing hearing is to occur. The Online Registry also publishes the Court Lists up to three weeks prior to the listing.
38. The usual commencing time is 10.00 am. A judge will conduct the trial or sentencing hearing.

Hearing of all issues

39. Evidence and submissions at the trial or sentencing hearing are to address all issues the subject of the proceedings. No issue will be separately determined unless the Court so orders. Any application for separate determination of an issue should be made prior to the trial or sentencing hearing and be determined at a preliminary hearing ordered under s 247G(3) of the Criminal Procedure Act.

Submissions

40. The Court is assisted by parties providing skeleton opening submissions before the trial (where appropriate) or sentencing hearing. Skeleton opening



**Land and Environment
Court**
of New South Wales

submissions are to be provided by the third working day prior to the date of the trial or sentencing hearing.

41. Skeleton opening submissions generally are not a substitute for a written outline of closing submissions. The Court will usually be assisted by a written outline of closing submissions, provided at the trial or sentencing hearing, which includes references to the evidence.
42. The skeleton opening submissions and outline of closing submissions should be provided to the hearing judge in hard copy (with an extra working copy) and electronically to the hearing judge's associate.

Authorities and legislation

43. Each party is to provide a list of authorities and legislation to be relied on to the hearing judge's associate one working day before the trial or sentencing hearing is to commence.
44. If any unreported authorities or superseded legislation are to be relied on, copies are to be provided to the hearing judge at the trial or sentencing hearing.

Notices of motion returnable in the Class 5 list

45. Any notice of motion is to be returnable in the Class 5 List unless the circumstances are so urgent as to justify an earlier listing. Parties and legal practitioners should endeavour to arrange evidence and outline of submissions so that, if practicable, the motion may be heard on the return date. Any outline of submissions is to be emailed to the List Judge's Associate two working days before the notice of motion is returnable.

Breach of the Court's directions

46. If there is any significant breach of the Court's directions sufficient to cause slippage in a timetable, the parties must promptly, by e-Court communication or fax to the Registrar, restore the matter to the next Friday list before the List Judge. The party in breach or a legal practitioner with knowledge of the



**Land and Environment
Court**
of New South Wales

reasons for the breach must serve an affidavit no later than 4:00pm on the preceding day (Thursday) which identifies the breach, explains the reasons for the breach and proposes directions to be made in consequence of the breach.

Variation of timetables

47. If proposed directions vary an existing timetable, they must include a direction to vacate any previous directions that can no longer be maintained, including for dates for directions hearings or the hearing of motions.

Liberty to restore

48. Parties have general liberty to restore to the Friday list on three working days' notice, or less if urgency requires it. A party seeking to do so is to make prior arrangement with, or give appropriate notice to, any other party, and send an eCourt communication or fax to the Registrar.

Adjournments

49. Proceedings will not be adjourned generally. They will only be adjourned to a specific date.

Applications to vacate hearings

50. Dates for trials or sentencing hearings will not be vacated merely because the parties consent. Applications to vacate hearing dates are to be by notice of motion with an affidavit in support explaining the circumstances of the application and the reasons the hearing date should be vacated.



**Land and Environment
Court**
of New South Wales

Co-operation

51. The Court expects parties, legal practitioners and experts to work together to implement this practice note in a practical and sensible way which ensures that it achieves its intended purpose.

Compliance

52. Parties and legal practitioners should note s 247N of the Criminal Procedure Act which provides for procedural sanctions against parties for non-compliance with the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act.
53. Any failure by one party to comply with the Court's directions will not normally be considered an adequate excuse for any failure to comply by the other party. Both parties are responsible for ensuring that they comply with directions.

***The Honourable Justice Brian J Preston
Chief Judge***

29 March 2018

COUNCIL NOTICES

CENTRAL COAST COUNCIL

ROADS ACT 1993
Part 2, Section 10

Notice is given pursuant to Part 2, Section 10 of the *Roads Act 1993* that the land in the schedule below is hereby dedicated as public road. BRIAN GLENDENNING, Acting Chief Executive Officer, Central Coast Council, PO Box 20, Woy Woy NSW 2259.

SCHEDULE

- Lot 33 DP 1222737, Davistown Road, Saratoga
- Lot 10 DP 1234960, Langford Drive, Kariong
- Lot 6 DP 1234960, Woy Woy Road, Kariong
- Lot 9 DP 1234960, Woy Woy Road, Kariong

[n2018-1164]

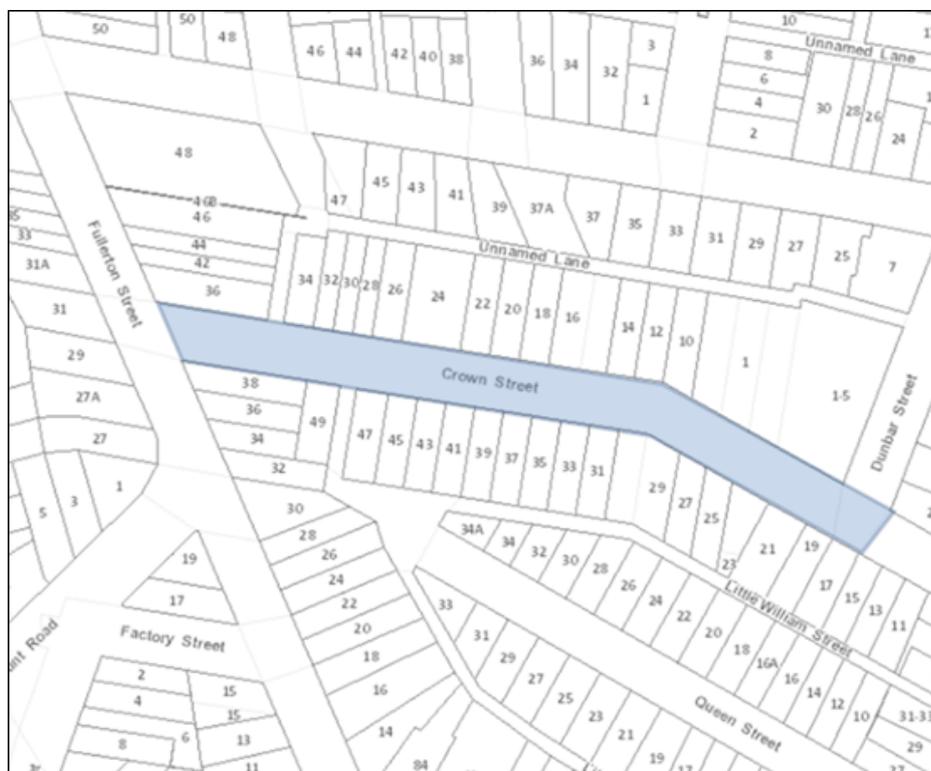
NEWCASTLE CITY COUNCIL

Roads Act 1993, Section 16
Dedication of Land as Public Road

NOTICE is hereby given that in accordance with the provisions of section 16 of the *Road Act 1993*, the land held by Council as described in the Schedule below is hereby dedicated as public road. JEREMY BATH, Chief Executive Officer, Newcastle City Council, PO Box 489, Newcastle, NSW 2300.

SCHEDULE

The land comprising of the Crown Street, Stockton commencing at Fullerton Street and ending at Dunbar Street in the Parish of Stockton, County of Gloucester and shown in DP6865 and diagram below.



[n2018-1165]

NEWCASTLE CITY COUNCIL

Roads Act 1993, Section 16

Dedication of Land as Public Road

NOTICE is hereby given that in accordance with the provisions of section 16 of the *Roads Act 1993*, the land held by Council as described in the Schedule below is hereby dedicated as public road. JEREMY BATH, Chief Executive Officer, Newcastle City Council, PO Box 489, Newcastle, NSW 2300.

SCHEDULE

The land comprising of the streets shown in blue below in Mayfield and Mayfield East, in the Parish of Newcastle, County of Northumberland and shown in DP8144, DP1861, DP5257, DP973549 and the diagram below.



[n2018-1166]

NEWCASTLE CITY COUNCIL

Roads Act 1993, Section 16

Dedication of Land as Public Road

NOTICE is hereby given that in accordance with the provisions of section 16 of the *Roads Act 1993*, the land held by Council as described in the Schedule below is hereby dedicated as public road. JEREMY BATH, Chief Executive Officer, Newcastle City Council, PO Box 489, Newcastle, NSW 2300.

SCHEDULE

The land comprising of the streets shown in blue below in Mayfield, in the Parish of Newcastle, County of Northumberland and shown in DP16009, DP9310, DP3626, DP7411 and the diagram below.



[n2018-1167]

NORTHERN BEACHES COUNCIL

ROADS ACT 1993

Naming of Roads

Notice is hereby given that Northern Beaches Council, pursuant to section 162 of the *Roads Act 1993*, has officially named the road(s) as shown hereunder:

Name	Locality
LAURINA ROAD	Warriewood
Description	
Beginning from about 200m South-East from the Macpherson/Garden Street intersection, and proceeding North-East off Macpherson Street for approximately 100m.	

Name	Locality
HASTINGS STREET	Warriewood
Description	
Beginning at the North-West corner of Chambers Circuit, proceeding North-East for 50m then turning East for 100m, then curving South for 50m to finish at the North-East corner of Chambers Circuit	

Name	Locality
CHAMBERS CIRCUIT	Warriewood
Description	
Beginning 30m along Laurina Street, proceeding North-West, then North-East, then East for 200m to intersect the end of Laurina Street & continuing East, then South-West, then North-West for another 250m to meet it's starting point.	

Name	Locality
BUBALO STREET	Warriewood
Description	
Beginning at Warriewood Road, opposite no 80 and proceeding in a south-westerly direction for approximately 150m, terminating at Lorikeet Grove.	

DAVID KERR, Acting Chief Executive Officer, Northern Beaches Council, 725 Pittwater Road, DEE WHY NSW 2099

GNB Ref: 0062

[n2018-1168]

PORT STEPHENS COUNCIL

ROADS ACT 1993

Naming of Roads

Notice is hereby given that Port Stephens Council, pursuant to section 162 of the *Roads Act 1993*, has officially named the PRIVATE Right of Way as shown hereunder:

Name	Locality
DRAGONFLY PLACE	Nelson Bay
Description	
Private Right of Way provides access to several properties to the south from 4 Canomii Close	

WAYNE WALLIS, General Manager, Port Stephens Council, 116 Adelaide Street, RAYMOND TERRACE NSW 2324. File Ref: PSC2017-03105

GNB Ref: 0060

[n2018-1169]

PORT STEPHENS COUNCIL

ROADS ACT 1993

Naming of Roads

Notice is hereby given that Port Stephens Council, pursuant to section 162 of the *Roads Act 1993*, has officially named the PRIVATE road as shown hereunder:

Name	Locality
WHYBIN LANE	Butterwick
Description	
This new Private Road provides access to properties being subdivided south of 423 Butterwick Road, Butterwick. Commencing from Butterwick Road heading west then south through 423 Butterwick Road to the new properties being created.	

WAYNE WALLIS, General Manager, Port Stephens Council, 116 Adelaide Street, RAYMOND TERRACE NSW 2324. File Ref PSC2018-00066

GNB Ref: 0061

[n2018-1170]

SNOWY VALLEYS COUNCIL

ROADS ACT 1993, Section 10

Notice of Dedication of Land as Public Road

Notice is hereby given that Snowy Valleys Council, pursuant to section 10 of the *Roads Act 1993*, dedicates the land describe in the Schedule below as public road.

MATTHEW HYDE, General Manager, Snowy Valleys Council, 76 Capper Street, TUMUT NSW 2720

SCHEDULE

Lots 1, 2, 3 & 4 of DP1232229, known as Yaven Creek Road in the Parish of Hillas, County of Wynyard

[n2018-1171]

PRIVATE NOTICES

Other Private Notices

CHURCHES OF CHRIST IN NEW SOUTH WALES INCORPORATION ACT 1947

Declaration of Trusts Certificate No. 2018-01

IN accordance with section 29B of Part V of the above Act

The Churches of Christ Property Trust (“Trust”) certifies that –

- Burwood Church of Christ has by special resolution dated 17 December 2017 requested that Conference Executive of Churches of Christ in NSW (“Conference Executive”) accept 18 Clarence Street, Burwood to be henceforth held on trust and for the benefit of Conference Executive instead of being held on trust and for the benefit of Burwood Church of Christ; and
- Conference Executive has by resolution dated 22 February 2018 advised and directed the Trust to accept 18 Clarence Street, Burwood to be henceforth held on trust and for the benefit of Conference Executive instead of being held on trust and for the benefit of Burwood Church of Christ; and, therefore,

- the Trust has resolved to accept 18 Clarence Street, Burwood to be henceforth held on trust and for the benefit of Conference Executive of Churches of Christ in NSW instead of being held on trust and for the benefit of Burwood Church of Christ.

Dated at Rhodes this Twenty-Second Day of March 2018

SHAMUS TOOMEY
Registrar

[n2018-1172]

ESSENTIAL ENERGY

ELECTRICITY SUPPLY ACT 1995 (NSW)

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991 (NSW)

NOTICE OF COMPULSORY ACQUISITION OF EASEMENTS FOR

ELECTRICITY PURPOSES BETWEEN ORANGE TO CADIA

Essential Energy declares, with the approval of His Excellency the Governor, with the advice of the Executive Council, that the Interests in Land described in Schedule 1 to this notice the terms of which are described in Schedule 2 to this notice, are acquired by compulsory process in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the purposes of the *Electricity Supply Act 1995* (NSW).

Dated at Port Macquarie 6 day of April 2018

Martin English
Head of Legal
Essential Energy
PO Box 5730
PORT MACQUARIE NSW 2444

SCHEDULE 1

No	Interest In Land	Locality	LGA	Parish	County
1.	Easement for overhead powerlines 40 wide and variable width affecting Lot 7009 in DP1000831 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 2 DP1191500	Orange	Orange	Orange	Bathurst

No	Interest In Land	Locality	LGA	Parish	County
2.	Easement for overhead powerlines 40 wide and variable width affecting Lot 133 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 3 DP1191500	Orange	Orange	Orange	Bathurst
3.	Easement for overhead powerlines 40 wide and variable width affecting Lot 7011 in DP1000831 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheets 3 – 5 DP1191500	Orange	Orange	Orange	Bathurst
4.	Easement for overhead powerlines 40 wide and variable width affecting Lot 114 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
5.	Easement for overhead powerlines 40 wide and variable width affecting Lot 115 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
6.	Easement for overhead powerlines 40 wide and variable width affecting Lot 116 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
7.	Easement for overhead powerlines 40 wide and variable width affecting Lot 117 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
8.	Easement for overhead powerlines 40 wide and variable width affecting Lot 118 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
9.	Easement for overhead powerlines 40 wide and variable width affecting Lot 119 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
10.	Easement for overhead powerlines 40 wide and variable width affecting Lot 125 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst

No	Interest In Land	Locality	LGA	Parish	County
11.	Easement for overhead powerlines 40 wide and variable width affecting Lot 126 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
12.	Easement for overhead powerlines 40 wide and variable width affecting Lot 127 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
13.	Easement for overhead powerlines 40 wide and variable width affecting Lot 128 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 5 DP1191500	Orange	Orange	Orange	Bathurst
14.	Easement for overhead powerlines 40 wide and variable width affecting Lot 145 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 6 DP1191500	Orange	Orange	Orange	Bathurst
15.	Easement for overhead powerlines 40 wide and variable width affecting Lot 145 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 7 DP1191500	Orange	Orange	Orange	Bathurst
16.	Easement for overhead powerlines 40 wide and variable width affecting Lot 145 in DP750401 and shown as “(W) Proposed easement for Overhead Powerlines 40 wide and variable width” on Sheet 7 DP1191500	Orange	Orange	Orange	Bathurst
17.	Easement for overhead powerlines 40 wide and variable width affecting Lot 103 in DP750371 and shown as “a – Proposed easement for Powerlines 40 wide and variable width” on Sheet 5 DP1191789	Orange	Blayney	Clarendon	Bathurst
18.	Easement for overhead powerlines 20 wide affecting Lot 145 in DP750401 and shown as “(F) Proposed easement for overhead powerlines 20 wide” on Sheets 1 and 2 of DP1230101	Orange	Orange	Orange	Bathurst
19.	Easement for underground powerlines 2 wide affecting Lot 145 in DP750401 and shown as “(E) Proposed easement for underground powerlines 2 wide” on Sheets 1 and 2 of DP1230101	Orange	Orange	Orange	Bathurst

SCHEDULE 2

The easements for underground powerlines numbered 1 – 18 in Schedule 1 are on the terms set out in Part A of Memorandum No. AG189384 registered on the Register held under the *Real Property Act 1900* (NSW).

The easement for underground powerlines numbered 19 in Schedule 1 are on the terms set out in Part B of Memorandum No. AG189384 registered on the Register held under the *Real Property Act 1900* (NSW)

The acquisition of the easements is a future act to which section 24MD(3) of the *Native Title Act 1993* (Cth) applies. In so far as any Native Title rights and interests may exist over the Crown land affected by the easements, the “non-extinguishment principle” applies.

[n2018-1173]