



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

## **JOINT EXPERT REPORT POLICY**

### **Commencement**

1. This policy commences on 12 June 2015.

### **Application**

2. This policy applies to all civil proceedings in the Land and Environment Court's jurisdiction.

### **Purpose**

3. The purpose of the policy is to provide guidance regarding the form and content of joint expert reports, so as to achieve consistency in the preparation and attainment of the objectives of joint expert reports.

### **What are joint expert reports?**

4. A joint expert report is a written document that is the product of a conference directed by the Court between expert witnesses with expertise in the same or similar fields on matters in issue in the proceedings (see Uniform Civil Procedure Rules 2005 (UCPR) r 31.24(1)(c) and r 31.26). The joint report must specify matters agreed and not agreed and the reasons for any disagreement (UCPR r 31.26(2)). In addition, a joint report may identify matters that have not been agreed but might be able to be agreed with additional information identified by the experts or (in planning appeals) with a change or modification.

### **Objectives of joint expert reports**

5. The objectives of a joint expert report include:
  - to promote the just, quick and cost effective disposal of proceedings;
  - to identify the real issues in dispute;
  - to eliminate issues not genuinely in dispute;
  - to commit experts to their position on issues, thereby enhancing certainty as to how the expert evidence will come out at the hearing;
  - to provide clearer and more succinct presentation of the evidence of the experts on matters not agreed; and
  - to avoid or reduce the need for experts to attend court to give evidence.



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6. A joint expert report should:

- generally engage with the matters the experts are required to address and any disagreement between them;
- not be a mere “copy and paste” from an individual expert report or council report;
- only set out facts and assumptions that are relevant to the opinions expressed in the joint report;
- where relevant, contain photos, maps and diagrams to explain the expert’s evidence, or the difference in the evidence of the experts;
- avoid jargon;
- prefer short sentences or “dot points” to long sentences;
- not use excessive amounts of material directly taken from legislative sources or other reports.

**Grouping of similar contentions in planning appeals**

7. In planning appeals, the contentions in the Statement of Facts and Contentions usually form the basis of a joint expert report. However, a joint expert report should not blindly follow the format and description in the Statement of Facts and Contentions. Often, the Statement of Facts and Contentions is drafted by a person other than the experts preparing the joint expert report and is drafted a considerable time prior to the hearing and prior to discussions between the parties’ experts. The experts preparing a joint report are encouraged to address these problems by grouping like contentions together so that a single response is provided to multiple contentions. This can be done as part of the joint conferencing of the experts prior to the preparation of the joint expert report.
8. A joint expert report should not contain uninformative statements. Contentions drafted with high generality, such as “unsuitability of the site”, should not be regarded as contentions in their own right, but need to be broken down into specific contentions. For example, a site might be unsuitable for one or more specific reasons such as steepness, topography, tree cover, geotechnical impacts, width or depth. These specific reasons are the contentions that need to be identified and addressed by the experts.

**Length of a joint expert report**

9. The Court may decide not to admit into evidence a joint expert report that is excessive in length and may instead direct the experts to produce a further and more concise joint expert report.
10. The facts and assumptions set out in a joint expert report should be kept to a minimum but should be sufficient to allow the experts to explain their respective



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positions and comment on the other expert's evidence. Where a joint expert report makes conclusions based on data, surveys or the like contained elsewhere, the source document should be referenced in the joint expert report.

**Form of joint expert reports**

11. The joint expert report should be divided into the following sections:

- statement of matters agreed, in respect of each group of matters or a specific matter;
- statement of matters not agreed, with succinct reasons for any disagreement, in respect of each group of matters or a specific matter;
- in planning appeals, statement of matters not agreed but capable of agreement if changes or modifications can be made to address the matter disagreed, including specific details of what changes or modifications are necessary in order to reach agreement, in respect of each group of contentions or specific contention;
- if applicable, statement that a particular matter falls outside an expert's field of expertise (UCPR r 31.27(1)(d));
- statement of qualification of opinions, ie matters in respect of which an unqualified or concluded opinion cannot be given and short reasons why (see UCPR r 31.27(2) and (3));
- any suggestion by the participating experts as to any other matter that they believe could usefully be submitted to them for their opinion;
- disclosure of any circumstances by reason of which an expert may be unable to give impartial consideration to the matter; and
- if a curriculum vitae is not provided with an individual expert report, a one page curriculum vitae for each expert is to be attached to the joint report.

12. The joint expert report should:

- be provided in portrait form, unless there is good reason to do otherwise;
- be A4 size and stapled or bound;
- have continuous pagination, including any attachments or annexures, and have numbered paragraphs to allow for easy reference;
- avoid small fonts (not less than 10 point);
- contain a heading for each group of matters or specific matter to be addressed, and a reference to the relevant paragraph of any pleading or Statement of Facts and Contentions;
- provide any plans, photographs and montages at a size and of sufficient clarity to allow easy understanding (documents provided in A3 size may be required to achieve adequate clarity);



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- where colour is used in the joint report, ensure that all copies are similarly coloured; and
- contain a table of contents if the joint report addresses a number of matters.

**Signing and submission of the joint expert report**

13. The joint expert report should, if possible, be signed by all participating experts at the conclusion of the joint conference or, otherwise, as soon as practicable thereafter.
14. The joint expert report is to contain each expert's acknowledgment that he or she has read the Expert Witness Code of Conduct (in Sch 7 of the UCPR) and agrees to be bound by it (UCPR r 31.23).
15. Prior to signing a joint expert report, unless the Court has otherwise directed (UCPR r 31.24(2)), the participating experts should not seek advice or guidance from the parties or their legal representatives except for the following:
  - responding to any questions from an expert in relation to the legal process applicable to the case;
  - identifying relevant documents;
  - providing further materials on request; and
  - correcting any misapprehensions of fact or assumptions or any misunderstanding concerning the joint conferencing process.
16. After signing the joint expert report, the experts are to provide a copy of the report to each party or their legal representative at the same time. Draft or interim joint reports are not to be produced by the experts.
17. The joint expert report, when signed by all participating experts, is to be forwarded to the Court within the time directed by the Court.

**Related Policy:** Conference of Expert Witnesses Policy

**Issued by:**

The Hon. Justice Brian J Preston  
Chief Judge  
Land and Environment Court of New South Wales  
On 12 June 2015