



# Policy: Case Management

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## Commencement

1. This policy commences on 17 May 2024 and replaces the policy published 28 May 2010.

## Purpose of the policy

2. The purpose of the policy is to promote the case management of proceedings, and in particular, provide guidance on the use and conduct, and set the objectives of case management conferences.

## Application

3. The policy applies to all civil proceedings in Classes 1, 2, 3, 4 and 8 of the Court's jurisdiction.

## Definitions

4. In this policy:

**Applicant** means the party bringing the matter before the Court.

**Case management** mean the process of assessing, planning, timetabling and expediting the administrative procedures for managing a case in order to give effect to the principle of facilitating the just, quick and cheap resolution of the real issues in proceedings. Case management can be described or listed as "Directions", "Mentions" or a "Case Management Conference".

**Commissioner** means any Commissioner or Acting Commissioner of the Court.

**Court** means the Land and Environment Court of New South Wales.

**CPA** means the *Civil Procedure Act 2005*.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.



**Judge** means any Judge of the Court.

**Registrar** means any Registrar of the Court.

**Respondent** means the other party or parties involved with the matter before the Court.

**UCPR** means the *Uniform Civil Procedure Rules 2005*.

### **What is case management?**

5. Case management involves the ongoing management by the Court of the conduct of proceedings from the time of commencement to finalisation of the proceedings.

### **What is the purpose of case management?**

6. Case management allows the Court to perform its duty to give effect to the overriding purpose of facilitating the just, quick and cheap resolution of the real issues in proceedings in the Court (s56(1) and s56(2) of the CPA).

### **What are the objects of case management?**

7. The Court is to case manage proceedings to achieve the four objects in s57(1) of the CPA:

- (a) The just determination of the proceedings,
- (b) The efficient disposal of the business of the Court,
- (c) The efficient use of available judicial and administrative resources,
- (d) The timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.



### **When is case management appropriate?**

8. Circumstances in which a case management conference may be appropriate include:
  - 8.1 proceedings that involve multiple parties or multiple issues;
  - 8.2 proceedings where one or both of the parties are not legally represented;
  - 8.3 proceedings that are fixed for a hearing that is expected to be conducted over three or more days;
  - 8.4 where parties disagree about how the matter should be managed, including in relation to pleadings, evidence, dispute resolution process, timing and duration of hearings;
  - 8.5 where more time is needed than is available at a directions hearing or in the List to make appropriate case management directions; or
  - 8.6 when there has been a material slippage in the timetable or failure to comply with an order of the Court justifying further management of the case.

### **When should a case management conference be organised?**

9. The Court may at any time arrange a case management conference on its own motion or on application of a party. In most cases, a case management conference will be arranged at the first directions listing or a directions listing at which a hearing date is allocated (refer to each Class Practice Note for the timing of the first directions listing).

### **When is case management conducted?**

10. Case management of a proceeding may occur:
  - 10.1 at a directions hearing before a Judge, Commissioner or Registrar, or in the conduct of the List before the List Judge or Registrar;
  - 10.2 at a specially fixed listing at the direction of a Judge, Commissioner or Registrar for the purpose of making appropriate directions for the case management of the proceedings;
  - 10.3 whenever the matter is before a Judge, Commissioner or Registrar; or
  - 10.4 at the request of parties.



11. If a party makes a request for case management, the party should provide reasons for the need for the case management, as well as outline the efforts made to come to an agreement on the purpose of the case management before the Court. A Judge, Commissioner or Registrar will determine the need and timing to list a case management conference.

### **Multiple case management conferences and adjournments are discouraged**

12. Multiple case management conferences and adjournments of case management conferences generally should be avoided unless such action would give effect to the overriding purpose of facilitating the just, quick, and cheap resolution of the real issues in the proceedings and the objects of case management.

### **Goals of a case management conference**

13. At the case management conference, the presiding Judge, Commissioner or Registrar will work with the parties to:
  - 13.1 clearly define the real issues in the proceedings, including:
    - 13.1.1 ensuring that all issues have been properly particularised;
    - 13.1.2 ensuring that the parties understand the issues that remain in dispute;
    - 13.1.3 identifying any issues that may not be relevant to the determination of the proceedings, or that the Court does not have jurisdiction or power to act upon; or
    - 13.1.4 exploring the opportunity for alternative solutions to the issues in dispute (for example the imposition of conditions rather than the need for expert evidence).
  - 13.2 direct for the appropriate use of evidence, including:
    - 13.2.1 whether the parties intend to rely on any lay evidence, and if so, the nature of that evidence and its relevance to the issues in dispute;
    - 13.2.2 the requirement for, and the type of, expert evidence required to deal with the issues in dispute;
    - 13.2.3 where expert evidence has not been filed, the extent and timing of expert evidence (for example whether a single expert should be appointed, individual expert reports should be filed, joint conferencing and joint report should be directed);



- 13.2.4 where expert evidence has been filed, the reports or parts of the report to be relied upon by each party; and
  - 13.2.5 the documents that are required to be included in the bundle of documents to facilitate the resolution of the issues in dispute, including the elimination of any unnecessary documents.
- 13.3 direct a timetable up to the hearing, including:
- 13.3.1 the filing or exchange of documents, affidavits or expert reports;
  - 13.3.2 the administration and answer of interrogatories (in exceptional circumstances);
  - 13.3.3 the request for and reply to particulars;
  - 13.3.4 the filing of written submissions; or
  - 13.3.5 the filing of draft conditions of consent.
- 13.4 direct a timetable for conduct of the hearing, including:
- 13.4.1 a timetable for the efficient conduct of any site inspection, including a schedule of the on-site location to be viewed;
  - 13.4.2 a timetable for the giving of evidence on-site by objectors or lay witnesses;
  - 13.4.3 the allocation of a specific timeframe for the giving of expert evidence in court, including concurrent evidence;
  - 13.4.4 the use of teleconferencing or videoconferencing or other equipment to facilitate the hearing; or
  - 13.4.5 the allocation of a specific timeframe during the hearing for parties in the proceeding to provide their submissions.
- 13.5 avoid delay by making directions to fix the proceeding for hearing, so as to avoid delay between filing of the originating process to the finalisation of the proceeding (s59 CPA); and
- 13.6 ensure proportionality of costs: make directions with the object of resolving the issues between the parties in such a way that the cost to the parties is proportionate to the importance and complexity of the subject matter in dispute (s60 CPA).



### Directions the Court may make:

14. The Court may give such directions as it thinks fit:

14.1 for the speedy determination of the real issues in dispute between the parties in the proceeding (s61(1) CPA), including:

14.1.1 directing any party to take specified steps;

14.1.2 directing any party as to the time within which the specified steps must be completed;

14.1.3 directions with respect to the conduct of the proceeding (s61(2) CPA); or

14.1.4 sanctions for non-compliance with any directions (s61(3) CPA).

14.2 as to the conduct of the hearing, including directions as to the sequence in which evidence is to be given, submissions made or questions of fact are to be tried (s62(1) and s62(2) CPA). Directions may include (s62(3) CPA):

14.2.1 limiting the time that may be taken in the examination, cross-examination or re-examination of a witness;

14.2.2 limiting the number of witnesses (including expert witnesses) that a party may call;

14.2.3 limiting the number of documents that a party may tender in evidence;

14.2.4 limiting the time that may be taken in making any oral submissions;

14.2.5 that all or any part of any submissions be in writing;

14.2.6 limiting the time that may be taken by a party in presenting their case; or

14.2.7 limiting the time that may be taken by the hearing (s62(3) CPA).

### Who should attend a case management conference?

15. Those persons responsible for the carriage of the matter should attend a case management conference. Those who attend must:

15.1 have a thorough understanding of the issues in dispute;

15.2 approach the case management conference in good faith and with a genuine desire to discuss the issues in dispute;



- 15.3 have the authority to respond to opportunities to minimise the issues in dispute or agree to potential solutions to the issues in dispute; and
- 15.4 have the authority to agree to a timetable for the future conduct of the proceeding.
16. Experts are not required to attend case management conferences unless their contribution is required in order to minimise or settle the issues in dispute. Parties should advise each other of any experts they intend should appear at the case management conference at least 3 days in advance of the date of the conference.

**Issued by:**

*The Honourable Justice Brian J Preston  
Chief Judge – Land and Environment Court of NSW  
Date: 17 May 2024*

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**Document Information**

**Title:** Policy: Case Management  
**Document Number:** LEC-PPL01  
**Document Owner:** Land & Environment Court of New South Wales  
**Classification:** OFFICIAL  
**Key Words:** Case Management, Directions, Mention, Conference