



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

**PRACTICE NOTE**

**CLASS 3 COMPENSATION CLAIMS**

**Name and commencement**

1. This Practice Note commences on 15 March 2019. It replaces the Practice Note - Class 3 Compensation Claims dated 15 July 2011.

**Application of Practice Note**

2. This practice note applies to Class 3 claims for compensation by reason of the acquisition of land ("Class 3 Compensation Claims"), including claims under the *Land Acquisition (Just Terms Compensation) Act 1991* ("Just Terms Act").

**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 Class 3 Compensation Claims.

**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 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 alternative procedures will be more conducive to such a resolution. The party is to notify the other party of the proposed alternative procedures as soon as practicable and is to make available to the Court short minutes reflecting the alternative procedures.
6. Parties are to ensure that all directions which they seek will assist in enabling claims to be dealt with at the hearing with as little formality and technicality, and as quickly as the requirements of the *Land and Environment Court Act 1979* ("the 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 Court Act).

### **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 duly authorised agent familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. Legal practitioners and agents for the parties are to communicate 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 3 Compensation Claim**

9. A Class 3 Compensation Claim 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 3 Application Form (Form B (Version 1)).
10. The originating application is to be accompanied by:
  - (a) a schedule of losses attributable to disturbance under s 59(1)(a) to (e) of the Just Terms Act; and
  - (b) a schedule of the other financial costs claimed under s 59(1)(f) of the Just Terms Act.

### **Service of originating application**

11. The originating application for a Class 3 Compensation Claim and the accompanying documents are to be served within 7 days of filing.

### **Identifying the issues in the Class 3 Compensation Claim**

12. The issues involved in the determination of the Class 3 Compensation Claim are to be identified by the applicant's points of claim and the respondent's points of defence and, if necessary, the applicant's points of reply.
13. Points of claim and points of defence are to include:
  - (a) the amount of compensation that each party contends should be payable;
  - (b) the components thereof by reference to each relevant matter in s 55(a) to (f) of the Just Terms Act;
  - (c) the basis of the valuation of the market value or special value of the land under s 55(a) and (b) and ss 56 and 57 of the Just Terms Act;

- (d) particulars of any comparable sales upon which the valuation is based;
- (e) a schedule of any hypothetical development calculations;
- (f) the schedule of losses attributable to disturbance under s 55(d) and s 59(1)(a) to (e) of the Just Terms Act;
- (g) the schedule of other financial costs claimed under s 59(1)(f) of the Just Terms Act;
- (h) in the points of defence, any matter in respect of which the respondent contends compensation is not payable under ss 61 or 62 of the Just Terms Act;
- (i) in the points of defence, any matter relied upon to offset the claim.

### **Filing and serving points of claim and points of defence**

14. The applicant is to file and serve its points of claim within one week of filing its originating application.

NOTE: if the proceedings are not settled at the first conciliation conference, an opportunity is provided for the applicant to seek to revise its points of claim in the ninth week after the first directions hearing.

15. The respondent is to file and serve its points of defence three weeks after the first directions hearing.

### **The return date of the originating application**

16. The originating application will usually be given a return date before the Court about four weeks after the application was filed. On the return, the first directions hearing will occur before the Compensation List Judge in the Class 3 Compensation List.

### **Class 3 Compensation List**

17. There is a Class 3 Compensation List which will be managed by the Compensation List Judge, usually each Friday.

18. The Class 3 Compensation List Judge will conduct:

- (a) the first directions hearing;
- (b) the second directions hearing; and
- (c) the return of any notice of motion and any other interlocutory applications.

19. Matters in a Friday 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 on a Friday in order to determine the “*not before*” time that their matter is listed.

### **Number of pre-hearing attendances**

20. Unless there are interlocutory applications, a Class 3 Compensation Claim usually should appear in Court before the final hearing on no more than five occasions as follows:
- (a) at the first directions hearing in the Class 3 Compensation List;
  - (b) at a conciliation conference pursuant to s 34 of the Court Act;
  - (c) at the second directions hearing in the Class 3 Compensation List;
  - (d) at a second conciliation conference, if appropriate; and
  - (e) at a pre-hearing mention during the second last week before the hearing commences, if possible before the hearing judge or commissioner.

### **Before the first directions hearing**

21. 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;  
  
[NOTE: there is a presumption that all Class 3 Compensation Claims will be referred for at least one conciliation conference – the parties will need to persuade the Class 3 Compensation List Judge why this should not be the case]
  - (b) the directions that the Court should make at the first directions hearing;
  - (c) the proposed dates for hearing and 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 the 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. A party intending to adduce expert evidence at the hearing of any Class 3 Compensation Claim 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 Class 3 Compensation Claim is already listed. The application is to be supported by a completed Hearing 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 area 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 (“the UCPR”).
25. If practicable, the Court will determine the application for directions to adduce expert evidence at the directions hearing or otherwise it will fix a date for hearing such an application. At the hearing of the application for directions to adduce expert evidence, 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 Class 3 Compensation Claim 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 UCPR).
27. Any directions for the filing of experts’ reports and joint expert reports made by the Court will identify each expert for whom leave to adduce expert evidence is given.
28. If either party seeks to adduce evidence of any expert not named in the directions made, that party is required to seek additional directions for the adducing 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 an explanation of the necessity for the additional evidence (see paragraph 25 of this practice note).

### **At the first directions hearing**

29. The first directions hearing will be on the return date of the originating application and will usually be about four weeks after the application is filed.
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 dates of the conciliation conference and the second directions hearing. Legal practitioners and other representatives of the parties are to ensure that they advise the parties of their obligation to be ready to agree to a timetable up to and including those dates 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 Hearing Information Sheet in the form of **Schedule D**.
32. At the first directions hearing, the parties should expect that the Court will ordinarily make the “Usual Directions at First Directions Hearing” in **Schedule A**.
33. The usual directions will be that the following documents be served or exchanged and the following events occur within the following times after the first directions hearing (see **Schedule A**):
  - (a) The applicant is to serve: 1 week
    - its position paper for the conciliation conference (including identifying the amount of compensation claimed and how that amount has been calculated); and
    - the applicant’s lay evidence.
  - (b) The respondent is to serve: 3 weeks
    - its position paper for the conciliation conference (including identifying the amount of compensation to which the respondent contends the applicant is entitled and how that amount has been calculated);
    - a reply to the applicant’s schedules of losses attributable to disturbance under s 59(1)(a) to (f) and other financial costs claimed under s 59(1)(f);
    - its points of defence; and
    - its lay evidence in reply.
  - (c) The parties will attend a conciliation conference. 4 weeks
  - (d) 5 weeks
    - The applicant is to serve evidence of losses attributable to disturbance under s 55 (d) and s 59(1)(a)-(f).
    - Each party is to serve its expert evidence other than valuation evidence.
  - (e) If the conciliation conference is unsuccessful, the parties will attend a second directions hearing. The parties are expected to give an estimate of hearing length and take hearing dates at this 6 weeks

directions hearing.

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| (f) | The joint experts' reports, other than any joint valuation experts' report and any joint experts' report on other financial costs claimed under s 59(1)(f), are to be provided by the experts to the parties.   | 6 weeks  |
| (g) | The respondent is to serve its evidence on the applicant's losses attributable to disturbance under s 55(d) and 59(1)(a)-(f).   | 7 weeks  |
| (h) | The parties are to serve their expert valuation evidence on each other.   | 8 weeks  |
| (i) | <ul style="list-style-type: none"><li>• The applicant is to make any application to amend its points of claim and, if successful, file and serve the amended points of claim.</li><li>• At the time of dealing with any application to amend the points of claim, the utility of a possible second conciliation conference will be discussed with the parties.</li><li>• If there is no application to amend the points of claim, the parties are to confer as to the prospects of success of a second conciliation conference. If the parties agree that a second conciliation conference has prospects of success, the parties are to approach the Registrar by Online Court to seek an early date for a second conciliation conference.</li><li>• Any joint experts' report on other financial costs claimed under s 59(1)(f) is to be provided by the experts to the parties.</li></ul> | 9 weeks  |
| (j) | <ul style="list-style-type: none"><li>• The respondent is to file and serve any amended points of defence.</li><li>• Any joint valuation experts' report is to be provided by the experts to the parties.</li></ul>   | 10 weeks |
| (k) | <ul style="list-style-type: none"><li>• The parties will attend a second conciliation conference (if appropriate).</li></ul>  | 11 weeks |
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. In some complex matters, it may be necessary for these usual directions to be modified to allow for expert non-valuation evidence to be obtained and served sequentially rather than simultaneously (such as ecological evidence which may impact on hydrological evidence and consequently planning evidence).
37. At the first directions hearing, the Class 3 Compensation Claim usually will be referred to the Registry to fix a date for the conciliation conference under s 34 of the Court Act, in accordance with the timetable above.
38. At the first directions hearing, the Class 3 Compensation List Judge will enquire whether the parties are able to provide an estimate of the hearing length and available dates if the conciliation conference is not successful and, if so, refer the parties to the Registry to obtain dates for such a hearing.

#### **At the second directions hearing**

39. The Compensation List Judge will discuss with the parties the appropriateness of conducting the hearing on a paperless basis.
40. The parties should expect that the Court will usually fix the hearing dates (if this has not happened at the first directions hearing and a pre-hearing mention date in the second-last week before the hearing and make the “Usual Directions at the Second Directions Hearing” in **Schedule B** (for paper-based hearings) or **Schedule C** (for hearings conducted on a paperless basis).
41. The parties, having conferred beforehand, are to hand to the Court realistic agreed or competing estimates of the hearing time on half a page broken down by the following elements:
  - (a) opening addresses;
  - (b) tender of documents and written evidence and any objections;
  - (c) any inspection of properties by the Court;
  - (d) oral evidence and cross-examination (grouping witnesses by categories of lay evidence and categories of expert evidence); and
  - (e) closing submissions.
42. The usual directions will include that the parties file at the pre-hearing mention or file and serve by no later than the following business days before the commencement of the hearing:
  - (a) bundles of documents:
    - (i) a paginated Court Book containing aAt the pre-hearing

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| <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>table of contents, a copy of the application and pleadings, and any objections to evidence or documents in the bundle of documents);</li> <li>(ii) a paginated Evidence Book containing a table of contents and the lay and expert evidence (with expert reports grouped by discipline); and</li> <li>(iii) a bundle of documents.</li> </ul> </li> <li>(b) an agreed schedule:           <ul style="list-style-type: none"> <li>(i) containing a brief description of the resumed property and each comparable sale property that it is proposed the Court should inspect;</li> <li>(ii) noting which party relies on each comparable sale;</li> <li>(iii) including a map showing the location of each property;</li> <li>(iv) proposing a time when the hearing judge or commissioner should inspect the properties and the arrangements for the inspection.</li> </ul> </li> <li>(c) brief opening submissions, agreed or competing chronology and (where warranted by the number of persons involved) a list of characters.</li> <li>(d) brief reply submissions.</li> </ul> | <p>mention</p> <p>At the pre-hearing mention</p> <p>4 working days prior to the hearing</p> <p>1 working day prior to the hearing</p> |
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43. Directions will also be made based on the usual directions at second directions hearing in **Schedule B** (for paper-based hearings) or **Schedule C** (for hearings conducted on a paperless basis).

**At the pre-hearing mention**

44. The pre-hearing mention will be in the second last week before the hearing. If possible, it will be before the judge or commissioner allocated to hear the proceedings. Counsel or solicitors briefed to appear on the hearing should attend.

45. The purpose of the pre-hearing mention is to ensure readiness for hearing and to give directions as to the conduct of the hearing and of any inspection of the resumed property and comparable sale properties.

46. At the pre-hearing mention, the parties, having conferred beforehand, are to file:

- (a) one copy of the Court Book (either in a folder [if the hearing is to be paper-based] or on a USB stick);
- (b) one copy of the Evidence Book (either in folders [if the hearing is to be paper-based] or on a USB stick);
- (c) one copy of the bundle of documents (either in folders [if the hearing is to be paper-based] or on a USB stick);

**NOTE:** If all the material required by (a) to (c) for a paperless hearing can be loaded on a single USB stick, this is to be done.

- (d) a statement by the respondent as to those matters which might have been expected to be contested but which are no longer contested by the respondent;
- (e) an agreed table setting out the matters in s 55(a) to (f) and s 59(1) of the Just Terms Act in respect of which the applicant claims compensation. This table should set out the amount claimed for each matter; the statutory provision pursuant to which the claim is made; a short summary (maximum one, 10 line paragraph) of the basis for the claim; and, if a claimed matter is disputed by the respondent, the amount (if any) conceded by the respondent and a short summary (maximum one, 10 line paragraph) by the respondent as to the nature of the dispute concerning this claimed matter; and
- (f) an agreed schedule:
  - (i) containing a brief description of the resumed property and each comparable sale property that it is proposed the Court should inspect;
  - (ii) noting which party relies on each comparable sale;
  - (iii) including a map showing the location of each property;
  - (iv) proposing a time when the hearing judge or commissioner should inspect the properties and the arrangements for inspection.

47. If any witness is required for cross-examination at the hearing, notice is to be given before the pre-hearing mention.

### **Notices of motion returnable in the Class 3 Compensation List**

48. Any notice of motion is to be returnable in the Class 3 Compensation List unless the circumstances are so urgent as to justify an earlier listing. Parties and legal practitioners should endeavour to arrange evidence so that, if practicable, the motion may be heard on the return date.

## **Amendment of pleadings**

49. Parties require leave of the Court to amend their points of claim and points of defence.
50. Other than amendments sought during the hearing or where the other party consents, leave to amend is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave being sought.

## **Breach of the Court's directions**

51. 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) have the matter relisted before the Compensation List Judge on the next available Class 3 Compensation List day; and
  - (b) file and serve, when 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.
52. 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**

53. 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.
54. 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 two days of the request or such other time as the Registrar determines, the proceedings may be listed for further directions.
55. 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.

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

### **Liberty to restore**

57. Parties have general liberty to restore to the Class 3 Compensation List on three working days' notice, or less if urgency requires it. A party seeking to do so should make prior arrangement with, or give appropriate notice to, any other party, and should send an Online Court communication, e-mail or fax to the Registrar.

### **Applications to vacate hearings and for adjournments**

58. Proceedings will not be adjourned generally.
59. Proceedings usually will not be adjourned because of failure to comply with this practice note or 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 proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
60. 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.

### **Settlement of proceedings**

61. If proceedings settle, it is necessary to have the Court make orders finalising the litigation, rather than merely filing terms with the registry.
62. If proceedings settle, the parties are to arrange for the proceedings to be listed in the Class 3 Compensation List or before the Duty Judge by written request to the Registrar accompanied by a copy of the proposed final consent orders signed by all parties.
63. Representatives of the parties attending for the purpose of making final consent orders must be familiar with the subject matter of the proceedings and have instructions sufficient to inform the Court about the terms of the proposed orders.

### **Filing and service of evidence**

64. Evidence to be relied upon at the final hearing should not be filed as case preparation occurs, with the exception of evidence in support of interlocutory applications.
65. The evidence to be relied upon at the final hearing is to be included in the Evidence Book and bundle of documents to be filed at the pre-hearing mention.

66. Evidence to be relied upon in support of interlocutory applications is to be filed and served. Timetables for preparation of such applications should include provision for that process.

### **Cooperation**

67. The Court expects 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.

### **Mediation, conciliation, neutral evaluation or reference**

68. Consideration should be given prior to and throughout the course of the proceedings to whether the proceedings or any questions are appropriate for mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report.
69. It is expected that legal practitioners, or parties not legally represented, will be in a position to advise the Court at any directions hearing or mention:
- (i) whether the parties have attempted mediation, conciliation or neutral evaluation; and
  - (ii) whether the parties are willing to proceed to mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report at an appropriate time.
70. At a mediation, conciliation or neutral evaluation, the parties are to ensure that a person who is able to make a decision as to whether the proceedings and particular issues settle or are resolved is present personally or represented by an authorised nominee. If this is not possible, a person with authority must be contactable and have authority to confirm acceptance of any proposed settlement.
71. Where the proceedings or questions are appropriate to be referred to a mediator, conciliator or neutral evaluator or to a referee for inquiry and report, the parties should prepare proposed short minutes to be handed to the Court which:
- (a) where questions are to be referred, formulate the questions with precision; and
  - (b) state:
    - (i) that the matter is to be mediated by an in-court mediator or conciliator, or the name of an agreed external mediator, neutral evaluator or referee or, if no agreement can be reached, the person each party suggests;
    - (ii) the date on which the mediator, neutral evaluator or referee can commence the mediation, neutral evaluation or reference;
    - (iii) expected duration of the mediation, neutral evaluation or reference; and

- (iv) the anticipated date for finalisation of the mediation or neutral evaluation, or for delivery to the Court of the referee's report.

72. Proposed consent orders for amendment to the questions referred to a mediator, neutral evaluator or referee may be filed with the Compensation List Judge's Associate and the Compensation List Judge may make such orders in chambers. Any contested amendments, or amendments in respect of which the Compensation List Judge wishes to hear the parties, will be heard in the Class 3 Compensation List by the Compensation List Judge.

### **Costs**

73. 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.

74. 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. Excessive documents may attract adverse costs orders.

75. 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.

### **Early inspection of the site**

76. If a party considers that an early site inspection might be appropriate, the party should raise this proposal at the first directions hearing.

77. If the Compensation List Judge is satisfied that an early site inspection is potentially warranted (thus requiring an early allocation of the hearing judge or commissioner), the Compensation List Judge will raise this proposal with the Chief Judge and, if determined by him to be appropriate, arrangements will be made for early allocation of the hearing judge or commissioner. Following allocation, an early site inspection, at a time convenient to the parties and the hearing judge or commissioner, will be arranged through the hearing judge's chambers or the Registry.

### **The hearing**

78. Evidence and submissions at the hearing are to address all issues the subject of the proceedings. No issue will be separately determined unless the Court so orders.

NOTE: Application for separate determination of questions, under s 62(2) of the *Civil Procedure Act 2005* or Pt 28 r 28.2 of the Uniform Civil Procedure Rules, should be made by notice of motion with supporting affidavit.

79. At the hearing, the Evidence Book may be tendered as an exhibit containing all the written evidence in the Evidence Book, subject to any objections.

80. At the hearing, the bundle of documents may be tendered as an exhibit containing all the documentary evidence in the bundle, subject to any objections.
81. Unless the hearing judge or commissioner otherwise directs, expert evidence is to be taken concurrently where there are two or more experts giving evidence in the same area of expertise.
82. At the commencement of oral evidence of any witness, counsel or the solicitor appearing for a party, having conferred beforehand, are to hand to the hearing judge or commissioner agreed or competing lists of the topics on which it is proposed to cross-examine.
83. The brief opening submissions should not generally be a substitute for a written outline of closing submissions. The Court will usually be assisted by a written outline of closing submissions that includes references to evidence in the Evidence Book, the bundle of documents and oral evidence. The written outline of closing submissions should be filed and served for the early attention of the hearing judge or commissioner.

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

***15 March 2019***

## Schedule A

### Usual Directions at First Directions Hearing

- (1) Pursuant to r 31.19 of the Uniform Civil Procedure Rules 2005:
  - the applicant is granted leave to adduce expert evidence from [name of each expert] in [respective area of expertise] on [specified issues];
  - the respondent is granted leave to adduce expert evidence from [name of each expert] in [respective area of expertise] on [specified issues].
- (2) The applicant is to serve:
  - its position paper for the conciliation conference (including identifying the amount of compensation claimed and how that amount has been calculated); and
  - the applicant's lay evidence.By [insert date:1 week]
- (3) The respondent is to serve:
  - its position paper for the conciliation conference (including identifying the amount of compensation to which the respondent contends the applicant is entitled and how that amount has been calculated);
  - a reply to the applicant's schedules of losses attributable to disturbance under s 59(1)(a) to (e) and other financial costs claimed under s 59(1)(f);
  - its points of defence; and
  - its lay evidence in reply.By [insert date:3 weeks]
- (4) The parties will attend a conciliation conference. By [insert date:4 weeks]
- (5)
  - The applicant is to serve evidence of losses attributable to disturbance under s 55 (d) and s 59(1)(a)-(f). By [insert date:5 weeks]
  - Each party is to serve its expert evidence other than valuation evidence.
- (6) If the conciliation conference is unsuccessful, the parties will attend a second directions hearing. By [insert date:6 weeks]
- (7) The joint experts' reports, other than any joint valuation experts' report and any joint experts' report on other financial costs claimed under s 59(1)(f), are to be provided by the experts to the parties. By [insert date:6 weeks]
- (8) The respondent is to serve its evidence on the applicant's losses attributable to disturbance under s 55(d) and 59(1)(a)-(f). By [insert date:7 weeks]

- (9) The parties are to serve on each other their expert valuation evidence. By [insert date:8 weeks]
- (10)
  - The applicant is to make any application to amend its points of claim and, if successful, file and serve the amended points of claim. By [insert date:9 weeks]
  - At the time of dealing with any application to amend the points of claim, the utility of a possible second conciliation conference will be discussed with the parties.
  - If there is no application to amend the points of claim, the parties are to confer as to the prospects of success of a second conciliation conference. If the parties agree that a second conciliation conference has prospects of success, the parties are to approach the Registrar by Online Court to seek an early date for a second conciliation conference.
  - Any joint experts' report on other financial costs claimed under s 59(1)(f) is to be provided by the experts to the parties.
- (11)
  - The respondent is to file and serve any amended points of defence. By [insert date:10 weeks]
  - Any joint valuation experts' report is to be provided by the experts to the parties.
- (12) The parties are to attend a second conciliation conference (if appropriate). On [insert date 11 weeks]  
NOTE: If this conciliation conference is also unsuccessful, the matter will proceed to hearing on the dates set at the second directions hearing with a pre-hearing mention during the second last week before the hearing commences, if possible before the hearing judge or commissioner.
- (13) The parties are to serve a copy of these directions, 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 on their experts when retaining the experts. Experts are to comply with those provisions.
- (14) The parties are to serve on their respective expert valuers a copy of all non-valuation expert reports, including joint reports, and lay witness statements as relevant to valuation issues promptly after they become available.
- (15) A joint report of experts is to include any evidence in reply.
- (16) In preparing their joint report, expert valuers should consider the matters in Annexure 1 to the Usual Directions at First Directions Hearing insofar as relevant to matters agreed and not agreed.
- (17) Experts are 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.

- (18) 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.
- (19) A joint report of experts is to identify the experts involved in its preparation, the dates of their joint conferences, the matters on which they agree, the matters on which they disagree and the reasons for any 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.
- (20) 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.
- (21) 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.
- (22) Each party has liberty to restore on three working days' notice.

## **Annexure 1 to Usual Directions at First Directions Hearing**

In conferring and preparing their joint report, expert valuers should consider the issues set out below insofar as relevant to the matters agreed and not agreed.

- 1 Identify the method of valuation adopted including the primary method and any check method.
- 2 Disclose full workings and calculations.
- 3 Identify comparable sales including:
  - (a) property address and title details of each comparable sale;
  - (b) sale date;
  - (c) sale price absent any adjustments expressed as a total and as a \$ rate per sq m if relevant;
  - (d) sale price adjusted for any condition of sale expressed as a total and as a \$ rate per sq m where relevant;
  - (e) area of land of each comparable sale;
  - (f) zoning of each comparable sale at the relevant date;
  - (g) any other relevant planning controls applicable to the comparable sale as at the relevant date; and
  - (h) floor space area of any buildings on the comparable sales sites which may be relevant.
- 4 State agreed matters.
- 5 State matters not agreed and give reasons for disagreement.
- 6 Consider:
  - (a) highest and best use adopted for assessment of market value of land at the date of acquisition and the reasons;
  - (b) alternative facts and assumptions which the Court may accept, including alternative facts and assumptions based on non-valuation expert reports;
  - (c) factors which should be taken into consideration in applying a comparable sale to the resumed land including but not limited to time, location, site area, site configuration, and conditions of sale; and
  - (d) comparable sales which should be inspected by the Court.

## Schedule B

### Usual Directions at Second Directions Hearing for Paper-Based Hearings

- 1 The hearing is fixed for [insert number] days commencing on [insert date to be obtained from the Registry].
- 2 The parties are to confer and prepare a paginated and consecutively numbered Court Book with a table of contents, a copy of the originating application and pleadings and any objections to evidence or documents in the bundle of documents.
- 3 The parties are to confer and prepare a paginated and consecutively numbered Evidence Book with a table of contents and the lay and expert evidence (with expert reports grouped by discipline). The table of contents for the Evidence Book is to conform with the template in **Schedule E** to this practice note.
- 4 The parties are to confer and prepare a bundle of documents (the bundle) on which the parties seek to rely. The bundle is to include a table of contents and be paginated and consecutively numbered. The bundle is not to include documents annexed or exhibited to an affidavit unless there are good reasons to do so.
- 5 Correspondence and other documents in the bundle of documents are to be arranged in chronological order.
- 6 Unnecessary copying or duplication of documents is to be avoided.
- 7 Any party objecting to the tender of any evidence in the Evidence Book or a document within the bundle of documents is to notify the other party of the objection and the grounds in support at least three working days before the Court Book, Evidence Book and bundle of documents are to be filed. The documents subject to objection are to be included in the Evidence Book or bundle of documents, but the objection, as well as the party tendering the document and the party objecting to the tender, is to be noted in the table of contents to the Evidence Book or bundle of documents. Short reasons for each objection are to be provided in the Court Book.
- 8 The parties are to file and serve their opening submissions of not more than ten pages; an agreed statement of facts; an agreed (or, if not agreed, their competing) chronology; and (where warranted by the number of persons involved) a list of relevant persons by four working days prior to the hearing.
- 9 The parties are to file and serve any submissions in reply of no more than five pages by one working day prior to the hearing.
- 10 At the pre-hearing mention, the parties are to file:

- (a) the Court Book;
  - (b) the Evidence Book; and
  - (c) the bundle of documents.
- 11 At the pre-hearing mention, the hearing judge or commissioner will indicate whether or not an additional paper copy of any of the material in the preceding direction is to be provided as working documents.
- 12 At the pre-hearing mention, the parties are to hand up:
- (a) an agreed table setting out the matters in s 55(a) to (f) and s 59(1) of the Just Terms Act in respect of which the applicant claims compensation, containing the information required by paragraph 46(e) of this practice note; and
  - (b) an agreed Schedule:
    - (i) containing a brief description of the subject property and each comparable sales property that it is proposed the Court should inspect;
    - (ii) noting which party relies on each comparable sale;
    - (iii) including a map showing the location of each property;
    - (iv) proposing a time when the judge should inspect the properties and the arrangements for inspection.
- 13 If any witness is required for cross-examination, notice is to be given before the pre-hearing mention.
- 14 At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing judge or commissioner directs otherwise.
- 15 At the commencement of oral evidence of any witness, counsel or the solicitor appearing for a party, having conferred beforehand, are to hand to the Court an agreed list or competing lists of the topics on which it is proposed to cross-examine.

## Schedule C

### Usual Directions at Second Directions Hearing for Paperless Hearings

- 1 The hearing is fixed for [insert number] days commencing on [insert date to be obtained from the Registry].
- 2 The parties are to confer and prepare an electronic paginated and consecutively numbered Court Book with a table of contents, a copy of the originating application and pleadings and any objections to evidence or documents in the bundle of documents.
- 3 The parties are to confer and prepare an electronic paginated and consecutively numbered Evidence Book with a table of contents and the lay and expert evidence (with expert reports grouped by discipline). The table of contents for the Evidence Book is to conform with the template in **Schedule E** to this practice note.
- 4 The parties are to confer and prepare an electronic bundle of documents on which the parties seek to rely. The bundle of documents is to include a table of contents and be paginated and consecutively numbered. The bundle of documents is not to include documents annexed or exhibited to an affidavit unless there are good reasons to do so.
- 5 The Court Book and the Evidence Book must be created as PDF Portfolio files separated into electronic tabs. The grouping of the material in the Evidence Book is to be in the format of the table of contents in **Schedule E** to this practice note.
- 6 Files contained in the Court Book, Evidence Book and bundle of documents must be created in able-to-be-read formats, across all potentially relevant software platforms (in .pdf; Word; Excel or .rtf format).
- 7 In the primary tendered electronic Court Book, Evidence Book and bundle of documents, all documents are to be locked.
- 8 All documents are to be saved in searchable form.
- 9 All documents are to be saved in copyable form.
- 10 Any document created by optical character recognition (OCR) is to be revised and corrected before being saved for incorporation in documents to be tendered.
- 11 Expert evidence is to be grouped by area of expertise and saved in a separate electronic folder for each discipline.
- 12 Correspondence and other documents in the bundle of documents are to be arranged in chronological order.

- 13 Unnecessary duplication of documents is to be avoided.
- 14 Any party objecting to the tender of any evidence in the Evidence Book or a document within the bundle of documents is to notify the other party of the objection and the grounds in support at least three working days before the Court Book, Evidence Book and bundle of documents are to be filed. The evidence or documents subject to objection are to be included in the Evidence Book or bundle of documents, but the objection, as well as the party tendering the document and the party objecting to the tender, are to be noted in the table of contents to the Evidence Book or bundle of documents. Short reasons for each objection are to be provided in the Court Book.
- 15 The Court Book, Evidence Book and bundle of documents are to be provided on a USB stick for the Court file. Each party to the proceedings is also to have a USB stick copy. The USB stick will be retained on the Court file at the conclusion of the proceedings.
- 16
  - (a) New documents not in the Evidence Book or bundle of documents may be tendered during the hearing. Such documents are to be handed up on a USB stick and will be given the relevant alphabetic or numerical identifier;
  - (b) Similarly, any documents proposed to be Marked For Identification are to be handed up on a USB stick;
  - (c) A copy of any new document tendered or Marked for Identification is to be provided electronically to the other party at the time of tender or handing up to the Court;
  - (d) The hearing judge or commissioner will also indicate whether or not a paper working copy of any new document is required to be provided; and
  - (e) Nothing in this direction acts to prevent a witness, whilst in the witness box, being shown a paper copy of a document.
- 17 The parties are to file and serve electronically their opening submissions of not more than ten pages; an agreed statement of facts; an agreed (or, if not agreed, their competing) chronology; and (where warranted by the number of persons involved) a list of relevant persons, by four working days prior to the hearing.
- 18 The parties are to file and serve any submissions in reply of no more than five pages by one working day prior to the hearing.
- 19 At the pre-hearing mention, the parties are to file in conformity with direction 15 above:
  - (a) the Court Book;

- (b) the Evidence Book; and
  - (c) the bundle of documents.
- 20 At the pre-hearing mention, the hearing judge or commissioner will indicate whether or not paper copies of any of the material in the preceding direction are to be provided as working documents.
- 21 At the pre-hearing mention, the parties are to hand up, as a paper document:
- (a) an agreed table setting out the matters in s 55(1) to (f) and s 59(1) of the Just Terms Act in respect of which the applicant claims compensation containing the information required by paragraph 46(e) of this practice note; and
  - (b) an agreed schedule:
    - (i) containing a brief description of the resumed property and each comparable sales property that it is proposed the Court should inspect;
    - (ii) noting which party relies on each comparable sale;
    - (iii) including a map showing the location of each property;
    - (iv) proposing a time when the hearing judge or commissioner should inspect the properties and the arrangements for inspection.
- 22 If any witness is required for cross-examination, notice is to be given before the pre-hearing mention.
- 23 At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing judge or commissioner directs otherwise.
- 24 At the commencement of oral evidence of any witness, counsel or the solicitor appearing for a party, having conferred beforehand, are to hand to the Court an agreed list or competing lists of the topics on which it is proposed to cross-examine.
- 25 At the pre-hearing mention, the parties are to provide details of any DropBox or other form of shared electronic access to documents, including links and any relevant passwords.

NOTE: The Court will not be able to establish or administer any DropBox or other form of shared electronic access to documents for any Class 3 Compensation Claims but will utilise any such facility established by the parties (in addition to but not in substitution for any electronic provision of documents provided for in these directions).

## Schedule D

<b>Class 3 Compensation Claims - Hearing Information Sheet</b>			
Applicant:			
Respondent:			
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 on whose evidence the party seeks to rely (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	Is there any reason why a conciliation conference pursuant to s 34 of the <i>Land and Environment Court Act 1979</i> should not be arranged? If not, what arrangements for the conciliation conference should be made?
5	Identify the dates sought for a conciliation conference.
Applicant:	
Respondent:	
6	If the Class 3 Compensation Claim concerns land outside of the Sydney metropolitan region, should the proceeding be heard, in whole or in part, in the local area? If so, what part?
7	Is there any reason why the hearing should not commence at 9.30am on site to undertake an inspection of the resumed property followed by an inspection of any comparable sale properties?
8	If it is proposed to hear openings prior to the site inspection, on what hearing day should the site inspection take place?
9	Estimate of the length of hearing.
Applicant:	
Respondent:	
10	Identify hearing dates sought.
Applicant:	
Respondent:	
11	Should the hearing be conducted on a paperless basis? If not, why not?
Applicant:	
Respondent:	

## Schedule E

[Name of applicant - A below] v [Name of acquiring authority - R below]

[PROCEEDINGS NUMBER]

### Index to Evidence Book

[DATE]

Tab	Document	Date	Adducing Party	Page	Objections
<b>PART A: Lay evidence</b>					
A	1.	Affidavit of [name of witness]			Yes/no
A	2.	Affidavit of [name of witness]			Yes/no
A	3.	Affidavit of [name of witness]			Yes/no
A	4.	Affidavit of [name of witness]			Yes/no
<b>PART B: ..... (expert discipline)</b>					
B	1.	SoE of [name of witness]			Yes/no
B	2.	SoE of [name of witness]			Yes/no
B	3.	Joint Expert Report			Yes/no
<b>PART C: ..... (expert discipline)</b>					
C	1.	SoE of [name of witness]			Yes/no
C	2.	Supplementary SoE of [name of witness]			Yes/no
C	3.	SoE of [name of witness]			Yes/no
C	4.	Joint Expert Report			Yes/no

**Add new parts for other expert disciplines as required**