



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

## **CONFERENCE OF EXPERT WITNESSES 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 conferences of expert witnesses on matters in issue in proceedings with the objective of preparing a joint expert report.

### **What is a joint conference of experts?**

4. A conference of expert witnesses is a conference pursuant to a direction of the Court that expert witnesses confer either generally or in relation to specified matters, in an endeavour to reach agreement on matters in issue within their expertise, and to specify in a joint report the matters agreed and matters not agreed and the reasons for any disagreement (see Uniform Civil Procedure Rules 2005 (UCPR) r 31.24).

### **Objectives of joint conferences**

5. The objectives of a joint conference of experts include:
  - to promote the just, quick and cost effective disposal of the proceedings;
  - to identify the real issues in dispute;
  - to eliminate issues not genuinely in dispute;
  - to bind experts to their position on issues, thereby enhancing certainty as to how the expert evidence will come out at the hearing;
  - to avoid or reduce the need for experts to attend court to give evidence;
  - in planning appeals, to provide the opportunity to explore alternative solutions to issues, particularly where objective-based solutions are available, such as access requirements for the Building Code of Australia or bushfire protection measures under Planning for Bushfire Protection 2006; and
  - as a consequence, to shorten the hearing time and enhance prospects of settlement.



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## **Preparing for a joint conference**

### *The experts to participate*

6. Prior to the Court making an order under UCPR r 31.24, the parties are to agree on the experts who should attend a joint conference, the specific matters to be addressed by the experts and the materials to be placed before the experts.
7. The experts to attend should be those specified in the Court's order. If none are specified, the parties should arrange for experts to attend who have expertise relevant to the matters to be addressed in the joint conference. Separate conferences may be required between experts with expertise in different fields in relation to different issues arising in the proceedings.
8. If the parties cannot agree on the identity of the experts or the number of experts who may attend a joint conference, the Court may make directions concerning the experts to attend the joint conference or arrange case management to resolve the question (see the Case Management Policy).
9. Separate conferences are usually required between experts in different fields in relation to different issues in the proceedings. However, where the evidence of one set of experts may influence the evidence from another set of experts, the joint conference may include both sets of experts from different fields.

### *The matters to be discussed*

10. The matters to be discussed at a joint conference are those within the experts' area of expertise identified in any pleadings or in the contentions in any Statement of Facts and Contentions and/or such matters as the Court directs or the parties agree.
11. Experts are encouraged to address a specific matter only once even though it may be raised multiple times in pleadings or in a Statement of Facts and Contentions.

### *The materials to be provided*

12. The materials to be provided to each of the participating experts should include:
  - the Expert Witness Code of Conduct (UCPR, Sch 7);
  - this policy and the Joint Expert Report Policy;
  - the directions of the Court in relation to the conference of experts;



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- any pleadings or Statement of Facts and Contentions in the proceedings and/or a statement of matters on which the Court has directed the experts to confer or the parties agree the experts should confer;
  - relevant witness statements or, preferably, a joint statement of the assumptions to be made by the experts, including any competing assumptions to be made by them in the alternative (which should be specified clearly as such);
  - copies of all experts' opinions already exchanged between the parties and all other experts' opinions and reports upon which a party intends to rely of relevance to the participating experts' discussions at the conference; and
  - such records and other documents as may be agreed between the parties or ordered by the Court.
13. Where a property is the subject matter of the proceedings (such as a proposed development site), the experts should consider whether it would be beneficial for them, individually or jointly, to visit the site prior to their conference.
14. The experts should bring to their conference all notes, background material, reports, surveys, studies, photographs, montages or any other material to support their position on the matters to be discussed.
15. Where individual expert reports of the participating experts have already been served, these reports may form the basis for joint conferencing. The Court's directions will normally state whether individual reports are to be prepared or whether the experts should only prepare a joint report.

*Convening a joint conference*

16. Subject to any directions by the Court concerning the range of dates for the convening of the conference, the parties should communicate amongst themselves to fix a mutually convenient date, time and place for the conference between the experts. The parties are to consider any directions given by the Court when settling the date of the conference, including any direction as to the time by which a joint report is to be filed.
17. The conference should take the form of a personal meeting or, if that is impracticable, teleconference, videolink, Skype or similar. If required, further meetings can take place by telephone or other electronic means.
18. The experts should be given a reasonable opportunity to prepare for the conference by ensuring that before the conference the experts have:
- an opportunity to seek clarification from the parties' legal representatives or the Court concerning any question put to them or matter to be discussed at the experts conference, and



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- access to any additional materials which the parties are able to provide and which the experts consider to be relevant.

19. The experts are obliged to promptly advise the parties' legal representatives if there is a material slippage in the timetable for the filing of the joint report or if the joint report cannot be filed within the time directed by the Court. The parties are to advise the Court of any material slippage in the preparation of the joint report. Depending on the extent of the slippage, the Court will determine whether it is fair and reasonable for the joint report to be admitted as evidence in the proceedings.

**What is the role of an expert at a joint conference?**

20. The experts should provide their joint or individual opinions on the matters they are required to address.
21. The experts' opinions should be based on the evidence or assumptions provided, including alternative assumptions.
22. It is not the role of an expert to add to matters they are required to address. If an expert considers that additional matters should be addressed, the expert may specify such matters in the joint expert report. The parties may, as a consequence, apply to the Court for directions for a further joint conference and joint expert report on the additional matters.
23. Pursuant to paragraph 4(2) of the Expert Witness Code of Conduct (UCPR Sch 7), an expert witness must exercise his or her independent, professional judgment in a joint conference and joint report and must not act on any instruction or request to withhold or avoid agreement. An expert should not assume the role of advocate for any party at the joint conference. If, for whatever reason, an expert is unable to reach agreement with the other experts on any matter, that expert should be free to express his or her disagreement with the other experts.
24. It is not the role of the experts to decide any disputed question of fact outside their expertise or the credibility of any witness. Where there are competing facts or assumptions, alternative opinions may have to be provided.
25. The experts are to ensure that the joint conference is a genuine dialogue between them in a common effort to reach agreement with the other experts about the relevant 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.



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26. In planning appeals, the experts should, within reason, discuss alternatives when addressing the matters in issue. Sketches providing alternative solutions and conditions of consent that address a particular issue are a legitimate part of such discussion. If a sketch or condition overcomes a particular issue, then that sketch or condition should be identified in the joint expert report.

**Conduct of the conference**

27. The conference should be conducted in a manner which is flexible, free from undue complexity (as far as is practicable) and fair to all parties.
28. The experts may appoint one of their number as a chairperson. If one of them so requests and the parties agree or the Court orders, some other person may be appointed to act as a chairperson.
29. Secretarial or administrative assistance can be provided by the parties if requested by the experts.
30. If the experts agree, one of them or a secretarial assistant may be appointed to make a note at the conference of the matters agreed, the matters not agreed and the reasons for disagreement.
31. For the just, quick and cost effective disposal of the proceedings, the joint conference should not be adjourned unless there is a compelling reason to do so. Any adjournment must take into consideration any directions given by the Court and any dates that have been set for the hearing.

**Joint report**

32. The experts are to produce a joint report as the culmination of their discussions at the conference. The joint report is to be in accordance with the Joint Expert Report Policy.
33. The final joint report is to be provided to each party's legal representative at the same time. Draft or interim joint reports are not to be produced by the experts.

**Limitations on communication of content of conference**

34. Unless the parties affected agree, the content of the conference between the expert witnesses must not be referred to at any hearing (UCPR r 31.24(6)).



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**Role of legal representatives**

35. Unless the Court otherwise directs, legal representatives of the parties are not to attend a joint conference of the experts.
36. A legal representative of one party who is approached for advice or guidance by a participating expert should only respond jointly with the legal representatives of the other active parties with an interest in the joint conference, unless authorised to respond by those legal representatives.
37. Advice and guidance from legal representatives should generally be limited to:
- responding to any questions in relation to the legal process;
  - identifying relevant documents;
  - providing further materials on request; and
  - correcting any misapprehensions of fact or assumptions or any misunderstanding concerning the conference process.

**Further directions**

38. Pursuant to UCPR r 31.25(2), an expert directed to confer may apply to the Court for further directions. That may be done, at the expert's election, by arrangement with the Registrar. A party may also apply for further directions in relation to a directed conference.

**Related Policy:** Joint Expert Report Policy  
Case Management Policy

**Issued by:**

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