



Land and Environment Court

of New South Wales

SITE INSPECTIONS POLICY

Commencement

1. This policy commences on 3 April 2018. It replaces the Site Inspections Policy made on 1 November 2013.

Purpose

2. The purpose of the policy is to guide the conduct of site inspections in certain matters in Classes 1 and 2 of the Court's jurisdiction.

Application

3. The policy applies to site inspections conducted in conjunction with:
 - On-site hearings under s 34B of the *Land and Environment Court Act* 1979 (the Court Act); and
 - Court hearings under s 34D of the Court Act.

This policy does not apply to conciliation conferences held pursuant to s 34 or s 34AA of the Court Act.

Time

4. A site inspection will normally commence at 9.30am on-site. If the location of the site requires longer than normal travel times to be reached or there is agreement between the Court and the parties that a time other than 9.30am is appropriate, then another commencement time may be set.

Nature of the site inspection process

5. Although the site inspection is carried out in a less formal manner than proceedings in court, it is nevertheless part of the hearing of the proceedings. As a consequence, usual forms of address and conduct of a court member in court should be followed.

The introductory role of the parties

6. At the site inspection, the legal representative or agent of each party is to introduce themselves to the Judge or Commissioner constituting the Court, the other party and other persons attending the site inspection.

The introductory role of the Court

7. The Court will make an introductory statement to the parties and other attendees explaining who constitutes the Court to hear and determine the matter, the reason for the site inspection, the manner in which the site inspection will be conducted, and the future conduct of the matter after the site inspection. The areas to be visited and the order in which the areas are to be visited on the site inspection should be discussed with the parties prior to the start of the site inspection.

Non-expert evidence given on site (including by objectors)

8. In Class 1 appeals under the *Environmental Planning and Assessment Act 1979*, the respondent consent authority and the applicant are to prepare a list of the non-expert witnesses, such as local residents objecting to the proposal, who they wish to call to give evidence on-site. This list is to be filed in the Court and served on the other party seven days prior to the hearing. The list should include any reference to each witness' submission made to the respondent consent authority and contained in any documents to be tendered as part of the proceedings. If no submission has been made to the respondent consent authority, a brief summary of the evidence that is expected to be given by the witness is to be provided, preferably prior to the site inspection.
9. Any witness is to provide their full name and address when giving evidence on-site. To provide for the "just, quick and cheap" disposal of the proceedings, the number of witnesses giving evidence on-site should be limited. In most circumstances, a maximum of six witnesses should provide on-site evidence. Preference should be given to those residents directly affected by a proposed development, such as those living adjoining or directly opposite the site of the development. If there are contentions that extend beyond the immediate area of the site, such as impacts on the character of the area or wider traffic implications, then a representative witness raising this contention should give evidence on-site.
10. The respondent consent authority is to ensure that:
 - People who made submissions to the respondent consent authority are advised of the time of the site inspection so they have the opportunity to ask the respondent consent authority if they can give evidence on-site.

- People who made submissions to the respondent consent authority have a full understanding of the proposal (including recent amendments) so that any concerns expressed on-site are relevant.
 - Proposed witnesses understand their obligation to the Court is to provide their evidence in a truthful and helpful manner.
 - Proposed witnesses understand that while their evidence is to be given on-site, their evidence has the same effect as if it was given in a courtroom.
 - Where written submissions have been prepared, on-site evidence should address only the main points of concern. The full text of the submission can be tendered by the respondent consent authority as part of the proceedings.
 - Where one specific issue has been addressed in detail by one witness, it is not necessary for each subsequent witness to address in full the same issue. It is sufficient for the Court's assessment if the subsequent lay witnesses acknowledge that they hold similar views to any previous witness who has given evidence on that issue.
 - When witnesses give evidence, there should be no interruptions or interjections so that those attending the site inspection can fully understand the matters raised by the witnesses.
 - The witnesses understand that their opportunity to give evidence is limited to their formal presentation of their evidence and it is not appropriate that further comments be made during the site inspection unless requested by the Judge or Commissioner, agreed by the parties or as part of an explanation of the previously given evidence, for example, from their property if their evidence was given elsewhere.
 - The witnesses understand that they may be cross-examined on their evidence.
11. An applicant who proposes to call non-expert witnesses to give evidence on site is to ensure that it and its witnesses also comply with the requirements of paragraph 10.
12. Where witnesses give evidence on-site, notes are to be taken by each party or their legal representatives or agents and an agreed summary of the evidence is to be tendered to the Court.

Expert evidence

13. Unless excused, the parties are to ensure that any expert who has prepared evidence for the proceedings is available to attend the site inspection.

Documentary evidence

14. A party wishing to tender documentary evidence at the site inspection is to have copies available for the Court and the other party. The Court will not necessarily bring all documents filed in the Registry of the Court to the site inspection except where a party has given three working days' notice to the Court that the document is required at the site inspection. Any documents tendered at the site inspection will be marked as an exhibit and identified on the exhibit list.

Access to relevant properties

15. The parties are to make every endeavour to make access available to all relevant properties to allow the Court to understand the issues in the proceedings. The applicant is to ensure that site of the appeal is available for inspection. Where there are resident objectors and where the respondent consent authority believes the proposed development will affect a resident objector's property, then the respondent consent authority should make every endeavour to provide access to the property. The Court will limit inspections to those properties that are likely to experience a direct impact from the proposed development.
16. In some circumstances, internal access to properties may be restricted in number and confined to the relevant experts giving evidence on the contentions relevant to the particular property and the parties and their legal representatives or agents.
17. The Court has no power to allow persons to enter onto private property if the owner of that property objects to any person entering their property. Where access is to be denied to a private property, the parties are to advise the Judge or Commissioner prior to the commencement of the site inspection.

Assessment of impacts

18. The parties are to provide the necessary aids for the Court to fully assess the impact of a proposed development. This may involve the following:
 - the erection of a temporary frame to identify the outline of a proposed building to assess view impacts;
 - the pegging out of a proposed building to assess the impact on adjoining properties;
 - a height pole where issues of height are raised; and

- survey details for existing, nearby and other prominent features to allow an assessment of the relationship and height of a proposed development with adjoining features.
19. There should be no dispute at the site inspection over the accuracy of such aids. In the event of a dispute, it may be necessary for a Registered Surveyor to certify the accuracy of any aids prior to the site inspection. Any aids used to assess the impact of a proposed development should be in place in sufficient time to allow the experts to consider the impacts prior to the commencement of the site inspection.

Site location

20. In rural or remote locations, the Court is to be provided with adequate information to locate the site. Maps are preferred and should be provided three working days prior to the hearing. If the site has more than one frontage or is large, the location for the start of the site inspection should be identified. Where a site is not readily accessible, arrangements are to be made to meet in a convenient and identifiable location before travelling to the site.

Special requirements

21. The Court is to be advised, three working days before the site inspection, if there are special site requirements, such as walking boots, protective clothing, hard hat etc.

Safe site requirements

22. The applicant is to ensure that the site is suitable for inspection and the Acts and Regulations administered by Workcover New South Wales are complied with.

On-site facilities

23. Where the hearing is to be conducted on-site or where the site inspection is likely to take considerable time, the Court and parties should have access to a reasonable range of facilities, such as:
- toilet;
 - shelter;
 - sufficient area to provide enough tables and chairs to allow the parties and the Court to conduct the hearing or discuss the contentions;

- tables which are sufficiently large to provide adequate workspace having regard to the documentation likely to be provided, including sufficient area for plans to be laid out; and
- water, tea or coffee.

Alternative location

24. An on-site hearing may be held at an alternative location to the site of the proposed development where the Court considers that:
- it would be unfair to the interests of one or more of the parties to hold the on-site hearing at the site of the proposed development;
 - the lack of facilities at the site of the proposed development makes it impractical to hold the on-site conference there;
 - the particular weather conditions on the day of the on-site conference make it impractical to hold the on-site conference there; or
 - there is any likelihood that extraneous noise from sources such as traffic, aircraft or construction activities may make hearing difficult during the site inspection (particularly if hearing of what is being said is likely to be difficult for resident and other lay submitters during the initial submissions period or during any post conciliation hearing).
25. In these circumstances, the parties are to confer and agree on, or in the absence of an agreement, the Court may direct a suitable convenient alternative location where the adjourned on-site hearing is to take place immediately following the site inspection.

Issued by

The Hon. Justice B J Preston SC
Chief Judge
Land and Environment Court of New South Wales
On 29 March 2018