



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

PRACTICE NOTE

CLASS 3 ABORIGINAL LAND CLAIMS

Name and commencement of Practice Note

1. This practice note is to be known as Practice Note – Class 3 Aboriginal Land Claims. It commences on 10 December 2012.

Application of Practice Note

2. This practice note applies to appeals in Class 3 of the Court’s jurisdiction by Aboriginal Land Councils against refusals of claims to Crown land under the *Aboriginal Land Rights Act 1983* (“the ALR Act”) commenced after 10 December 2012.

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 Aboriginal land claim appeals.

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 a 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 an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.
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 with as much expedition, as the requirements of the *Land and Environment Court Act 1979* and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the *Land and Environment Court Act 1979*).

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 authorised agent (to whom leave of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. 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 Aboriginal land claim appeal

9. A Class 3 Aboriginal land claim appeal is to be commenced by filing in the Registry of the Court a completed Class 3 Application Form (Form B (Version 1)) (“the application”), to which is attached a copy of the refusal by the Crown Lands Minister (“the Minister”) of the claim the subject of the appeal.

Service of originating application

10. A stamped copy of the application is to be served on the Minister within 7 days of filing.

Return date of the originating application

11. The application will be given a return date before the Court usually 8 weeks after it is filed. On the return date, the first directions hearing will occur before the List Judge.

Class 3 Aboriginal Land Claim List

12. There is a Class 3 Aboriginal Land Claim List, which will be managed by the List Judge, usually each Friday.
13. In the Class 3 Aboriginal Land Claim List the Court:
 - (a) conducts directions hearings; and if appropriate,
 - (b) hears or manages any notices of motion or other interlocutory applications.
14. Matters in the Class 3 Aboriginal Land Claim 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 the Court in order to determine the “not before” time that their matter is listed.

Number of pre-hearing attendances

15. Unless there are interlocutory applications, a Class 3 Aboriginal land claim normally should appear in Court before the final hearing on no more than three occasions before the List Judge in the Friday list as follows:
 - (a) at the first directions hearing;
 - (b) at the second directions hearing; and
 - (c) at the third directions hearing.
16. Where the matter is particularly complex or is expected to exceed three days hearing time, a pre-hearing mention may be required, on the second last Friday before the hearing commences, preferably before the judge allocated to hear the matter.

Before the first directions hearing

17. To prepare for the first directions hearing and to enable the Court to make appropriate directions at the first directions hearing, the parties must complete the following steps beforehand:
 - (a) within 14 days of being served with the application the Minister is to issue subpoenas to relevant public authorities, public officials or other persons for documents relevant to whether or not the lands claimed are claimable Crown lands;
 - (b) within 21 days of being served with the application the Minister is to provide to the applicant copies of all documents in the Minister's possession or control relevant to the Minister's grounds for refusing the claim the subject of the application;
 - (c) the Minister is to further consider the grounds upon which the Minister contends that the whole or any part of the lands claimed by the applicant are not claimable Crown lands under s 36 of the ALR Act. This includes re-assessing the grounds upon which the Minister was satisfied that the lands were not claimable Crown lands in deciding to refuse the claim the subject of the appeal and considering whether there are any further grounds supporting the conclusion that the lands are not claimable Crown lands;
 - (d) in light of the documents produced in response to the subpoenas issued and the further consideration of the claim by the Minister, the Minister is to prepare a list of additional persons or bodies to whom subpoenas might be issued to hand to the Court at the first directions hearing;

- (e) the parties are to agree upon a descriptive name to be allocated to the proceedings; and
- (f) the parties are to discuss and endeavour to agree upon the directions that the Court should make at the first directions hearing. If the parties do not agree, each party should prepare their own written version of the directions they propose.

At the first directions hearing

18. The first directions hearing will be on the return date of the originating application and will be held on a Friday, usually 8 weeks after the application is filed.
19. At the first directions hearing, the Minister is to hand to the Court a list of:
 - (a) the public authorities, public officials or other persons to whom the Minister has already issued subpoenas and the response to those subpoenas; and
 - (b) the further persons to whom the Minister wishes to issue subpoenas.
20. The parties, having conferred beforehand, are to hand to the Court agreed or competing short minutes of the directions they propose the Court should make to prepare the matter and facilitate the just, quick and cheap resolution of the appeal.
21. If the parties are in dispute as to any proposed directions, they are to briefly inform the Court of the nature of the dispute and their estimate of how long a hearing of the dispute will take. The Court may hear the dispute at that directions hearing, or if it is more appropriate to do so, fix a date for the hearing of the dispute.
22. At the first directions hearing, the List Judge will usually make directions in accordance with **Schedule A**, including the allocation of a descriptive name to the proceedings, and directing and fixing a date:
 - (a) by which the Minister is to issue subpoenas to the further persons identified by the Minister;
 - (b) for the service on the applicant of the Minister's evidence in chief, including all lay and expert affidavits and a bundle of documents;
 - (c) for the Minister to file and serve a statement of facts and contentions setting out the grounds of fact and law forming the basis of the refusal of the applicant's claim; and
 - (d) for the second directions hearing.

23. In addition, other directions may be given with a view to the just, quick and cheap resolution of the proceedings.
24. Directions for formal discovery and interrogatories will only be made in exceptional circumstances and will generally be confined to particular issues. A party seeking such directions must provide the Court with a draft list of categories of documents to be discovered or draft interrogatories.

Before the second directions hearing

25. Within 21 days of serving the statement of facts and contentions, the Minister is to provide to the applicant copies of all further documents relevant to the Minister's grounds as set out in the statement of facts and contentions for refusing the claim the subject of the application.
26. The applicant must consider, in light of the Minister's statement of facts and contentions, served documents and evidence:
 - (a) whether the applicant wishes to subpoena any persons and, if so, prepare a list of persons to hand to the Court at the second directions hearing;
 - (b) the time by which the applicant can prepare, file and serve the applicant's statement of facts and contentions in response to the Minister's statement of facts and contentions; and
 - (c) the time by which the applicant can prepare and serve its evidence in chief, including all lay and expert affidavits and documents.
27. The applicant is to provide the Minister with a draft of the statement referred to at paragraph 32 below.
28. The applicant and the Minister are to discuss and endeavour to agree on whether conciliation, mediation or other means of resolving the appeal without a hearing would be appropriate.
29. The applicant and Minister are to discuss and endeavour to agree upon the directions that the Court should make at the second directions hearing. If the parties do not agree, each party should prepare their own written version of the directions they propose.

At the second directions hearing

30. The second directions hearing will usually be conducted on a Friday by the List Judge on a date fixed at the first directions hearing.
31. At the second directions hearing, the applicant is to hand to the Court a list of persons to whom the applicant wishes to issue subpoenas.

32. If applicable, the applicant is to hand to the Court a statement of the disciplines in respect of which the applicant proposes to call expert evidence, 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 just, quick and cheap requirement.
33. At the second directions hearing, the parties, having conferred beforehand, are to hand to the Court agreed or competing short minutes of the directions they propose the Court should make to prepare the matter and facilitate the just, quick and cheap resolution of the appeal.
34. At the second directions hearing, the List Judge will usually make directions in accordance with **Schedule B**, including directing and fixing a date:
 - (a) by which the applicant is to issue subpoenas to the persons identified by the applicant;
 - (b) for the applicant to serve on the Minister the applicant's evidence in chief, including all lay and expert affidavits and a bundle of documents;
 - (c) for the applicant to file and serve on the Minister the applicant's statement of facts and contentions in response to the Minister's statement of facts and contentions;
 - (d) for conciliation, mediation or other means of resolving the appeal without a hearing (if appropriate); and
 - (e) for the third directions hearing.
35. In addition, other directions may be given with a view to the just, quick and cheap resolution of the proceedings.

Before the third directions hearing

36. Before the third directions hearing:
 - (a) the parties are to discuss and endeavour to agree on:
 - (i) a list of the real issues for determination in the proceedings;
 - (ii) a statement of agreed facts, such statement to comprise the factual matters that are bona fide not in dispute between the parties;
 - (iii) if applicable, a list of the expert evidence to be relied upon at the hearing;
 - (iv) if applicable, the conferral by and production of any joint experts' report;

- (v) a realistic estimate of the hearing time broken down by the elements referred to at paragraph 38 below;
 - (vi) whether any witnesses are to be required for cross-examination; and
 - (vii) the directions to be made at the third directions hearing; and
- (b) the Minister is to consider whether any evidence in reply is required.

At the third directions hearing

37. The third directions hearing will usually be conducted on a Friday by the List Judge, on the date fixed at the second directions hearing.
38. At the third directions hearing, the parties, having conferred beforehand, are to hand to the Court a realistic agreed estimate, or individual estimates, of the hearing time, broken down into the following elements of the hearing:
- (a) opening addresses;
 - (b) tender of documents, written evidence and any objections;
 - (c) cross-examination (if any witnesses are so required and, if expert witnesses are required, grouping experts by categories); and
 - (d) closing submissions.
39. At the third directions hearing, the List Judge will usually make directions in accordance with **Schedule C**, including directions and fixing a date for:
- (a) the serving of any evidence in reply by the Minister;
 - (b) if applicable, the conferral by and production of any joint experts' report;
 - (c) the final hearing;
 - (d) if the matter is particularly complex or expected to exceed 3 days hearing time, a pre-hearing mention;
 - (e) the preparation of an agreed list of issues for determination and a statement of agreed facts;
 - (f) giving notice for cross-examination;
 - (g) the filing and serving of a Court Book and Evidence Book; and

- (h) any other directions that may be necessary to ensure the just, quick and cheap disposal of the proceedings.
40. The usual directions will ensure that the parties complete the following, by no later than the specified number of weeks before the commencement of the hearing:
- (a) the parties are to confer and endeavour to reach agreement on an agreed list of issues to be determined and a statement of agreed facts; 5 weeks
 - (b) the parties are to prepare and the applicant is to file and serve a paginated Court Book, along with an electronic copy of its contents, in a white folder with dividers between each section and a table of contents containing copies of the following: 4 weeks
 - (i) the originating application;
 - (ii) the parties' statements of facts and contentions;
 - (iii) an agreed list of issues to be determined;
 - (iv) where warranted, an agreed chronology or (if not agreed) each party's chronology;
 - (v) where warranted by the number of persons involved, a list of characters; and
 - (vi) each party's list of objections (if any) to evidence;
 - (c) the parties are to prepare and the applicant is to file and serve a paginated Evidence Book, along with an electronic copy of its contents, in a grey folder (or folders), containing the following (with dividers for each section and a table of contents indicating which party is tendering each document): 4 weeks
 - (i) the statement of agreed facts;
 - (ii) the applicant's non-expert affidavits;
 - (iii) the Minister's non-expert affidavits;
 - (iv) the expert evidence of all parties grouped by discipline, including all joint reports; and
 - (v) all other documents proposed to be tendered in chronological order.
 - (d) the Minister is to file and serve opening submissions responsive to the agreed list of issues, statement of agreed facts and chronology, together with a table of evidence to be relied upon referable to the agreed issues for determination and cross-referenced to the Evidence Book; 3 weeks

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| (e) | any party requiring a witness for cross-examination at the hearing is to give notice; | 2 weeks |
| (f) | the applicant is to file and serve opening submissions responsive to the agreed list of issues, statement of agreed facts and chronology, together with a table of evidence to be relied upon referable to the agreed issues for determination and cross-referenced to the Evidence Book; and | 2 weeks |
| (g) | the Minister is to file and serve any reply to the applicant's opening submissions. | 1 week |

At the pre-hearing mention (if applicable)

41. A pre-hearing mention may be directed to take place by the List Judge at the third directions hearing where the matter is particularly complex or is expected to exceed three days hearing time. The pre-hearing mention will be held on the second last Friday before the hearing and before the hearing judge, if possible. Counsel briefed to appear at the final hearing or (if counsel is unavailable) a solicitor with the carriage of the matter must attend for each party.
42. The purpose of the pre-hearing mention is to ensure readiness for hearing and to give any further directions necessary to facilitate the just, quick and cheap resolution of the appeal.

Notices of motion returnable in the Friday list

43. Any notice of motion is to be returnable on a Friday before the List Judge 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 by the List Judge or Duty Judge. If the motion is lengthy, complex, or it is otherwise impracticable to hear the motion on the first return date, directions will be made on that occasion for the preparation and setting down of the motion for final hearing.

Amendment of statements of facts and contentions

44. Parties require leave of the Court to amend their statements of facts and contentions.
45. 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

46. If there is any significant breach of the Court's directions sufficient to cause slippage in a timetable, the parties must promptly, by eCourt communication or fax to the Registrar, restore the matter to the next Friday list before the List Judge.
47. The party in breach or a legal practitioner with knowledge of the reasons for the breach must serve an affidavit no later than 4:00pm on the preceding day (Thursday) which identifies the breach, explains the reasons for the breach and proposes directions to be made in consequence of the breach.
48. A 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.

Variation of timetables

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

Liberty to restore

50. Parties have general liberty to restore to the Friday list on three working days' notice, or less if urgency requires it. A party seeking to do so is to make prior arrangements with, or give appropriate notice to, any other party, and send an eCourt communication or fax to the Registrar.

Adjournments

51. Proceedings will not be adjourned generally. They will only be adjourned to a specific date.
52. Proceedings will not be adjourned because of a failure to comply with this practice note or directions or because of a lack of preparedness for any attendance before the Court. If a 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.

Applications to vacate hearings

53. Hearings, including hearings of motions and directions hearings, will not generally be vacated and will not be vacated merely because the parties consent to the vacation.

54. 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.

Applications for disqualification

55. Upon the allocation of a Commissioner to assist a judge in hearing an appeal, the parties will, as soon as practicable, be informed by the Court of the identity of that Commissioner. Any application for disqualification of that Commissioner must be brought by the party seeking disqualification within 7 days of being notified by the Court of the identity of the Commissioner. Applications for disqualification must be brought by way of notice of motion accompanied by an affidavit in support of the application. Applications for disqualification will, where possible, be heard by the judge allocated to hear the matter.

Evidence to be by affidavit

56. The evidence in chief of all witnesses is to be given by affidavit subject to any contrary direction by the Court.

Filing and service of evidence

57. Evidence to be relied upon at the final hearing should not be filed as case preparation occurs, with the exception of evidence for interlocutory applications.
58. Each party's evidence for the final hearing, accompanied by a list of that evidence, is to be filed when the Evidence Book is filed and copies are to be included in the Evidence Book.
59. 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.

Expert evidence

60. Where expert evidence is necessary to be called in relation to an issue, the parties are to confer before the first directions hearing to see if they can agree on the appointment of a parties' single expert and, if so, the identity and remuneration of the expert. Failing agreement, directions may be sought at the first directions hearing concerning the appointment of a parties' single expert. Such directions will require adaptation of the usual directions in **Schedules A, B and C**.
61. The Court encourages parties to use a parties' single expert. The use of a parties' single expert in an appropriate case can reduce costs and ensure that the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single

expert might be appropriate in a particular case, consideration should be given to:

- (a) the importance and complexity of the subject matter in dispute in the proceedings;
- (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
- (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);
- (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;
- (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts; and
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline;
- (f) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;
- (g) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
- (h) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.

62. A parties' single expert is to file and serve one expert report only. Without leave of the Court, a parties' single expert is not to provide parties with preliminary reports or opinions.

Note: Under r 31.41 of the Uniform Civil Procedure Rules 2005 a party may seek clarification of the report of a parties' single expert on one occasion only.

63. The parties are not to provide a parties' single expert with any expert report brought into existence for the purpose of the proceedings addressing any matter the subject of instructions to the parties' single expert, without leave of the Court.

64. Where a parties' single expert has been appointed to give evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert. Leave is to be sought by notice of motion, with an affidavit in support explaining:
- (a) the name, qualifications and expertise of the expert proposed to be called;
 - (b) the matters proposed to be addressed by the expert;
 - (c) the date on which the expert was first retained and the date or dates of any expert report that the expert has already prepared;
 - (d) the reasons for the need to call an additional expert to give that evidence, rather than having the parties' single expert address the matters further in cross examination;
 - (e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the quick, just and cheap resolution of the proceedings; and
 - (f) the party's position in relation to any additional costs that might be caused by the calling of the expert.
65. Any expert (including a parties' single expert) and any expert's report are to comply with this practice note, and the requirements of 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.
66. The parties are to serve a copy of this practice note, 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.
67. It is the responsibility of the parties to agree to the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree to that remuneration.

Note: See r 31.45 of the Uniform Civil Procedure Rules.

68. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.
69. If experts are directed by the Court to confer, experts are to ensure that any joint conference is a genuine dialogue between experts in a

common effort to reach agreement with the other expert witnesses about the relevant facts and issues.

70. 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.
71. 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.
72. 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.
73. 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 processes they used to reach those positions.
74. Each expert is to sign and date the joint report.
75. A joint report of experts is to include any evidence in reply.
76. Where expert evidence from more than one expert in the same discipline is to be given in Court, the experts will give such evidence concurrently (subject to any order by the Court to the contrary).
77. 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 this practice note, Division 2 of Pt 31 of the Uniform Civil Procedure Rules or the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules. 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 may result in the imposition of sanctions.

Alternative dispute resolution

78. Aboriginal land claim appeals are usually resolved by hearings. However, other means of dispute resolution are available, including mediation, conciliation, neutral evaluation, reference to a referee, or a settlement conference.
79. Consideration must be given prior to and throughout the course of the proceedings to whether the appeal or any issues are appropriate for mediation, conciliation, neutral evaluation, reference to a referee, or a settlement conference.

80. 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:
- (a) whether the parties have attempted mediation, conciliation, neutral evaluation or a settlement conference; and
 - (b) whether the parties are willing to proceed to mediation, conciliation, neutral evaluation, reference to a referee, or a settlement conference at an appropriate time.
81. At a mediation, conciliation, neutral evaluation or settlement conference, the parties are to ensure that the person who is able to make a decision as to whether the proceedings or particular issues settle or are resolved is present personally or by an authorised nominee.
82. Where issues are appropriate to be referred to a mediator, conciliator, neutral evaluator, or referee, the parties should prepare proposed short minutes to be handed to the Court which:
- (a) formulate the issues 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, conciliator, neutral evaluator or referee can commence the mediation, conciliation or evaluation;
 - (iii) the expected duration of the mediation, conciliation, neutral evaluation or reference; and
 - (iv) the anticipated date for finalisation of the mediation, conciliation or neutral evaluation, or for delivery to the Court of the referee's report.
83. Proposed consent orders for amendment of the questions referred to a mediator, conciliator, neutral evaluator or referee may be filed with the List Judge's Associate and the List Judge may make such orders in chambers. Any contested amendments or amendments in respect of which the List Judge wishes to hear from the parties will usually be heard on a Friday before the List Judge.

Settlement of proceedings

84. If the matter is resolved out of Court, it is necessary to have the Court make orders finalising the litigation, rather than merely filing terms with the registry.
85. If proceedings settle, the parties are to arrange for the proceedings to be listed in the Friday list by written request to the Registrar accompanied by a copy of the proposed final consent orders signed by all parties.
86. Representatives of the parties attending for the purpose of the making of 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.

The hearing

87. A judge will conduct the final hearing, assisted by a Commissioner with qualifications under s 12(2)(g) of the *Land and Environment Court Act 1979* (as required by ss 37(2) and 30(2A) of that Act).
88. 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: Applications for separate determination of questions, under s 62(2) of the *Civil Procedure Act 2005* or r 28.2 of the Uniform Civil Procedure Rules, should be made by notice of motion with supporting affidavit.

89. At the hearing, evidence in the Evidence Book may be tendered as one exhibit, or separately as more than one exhibit, subject to any objections.
90. A written summary of opening submissions should generally not be a substitute for a written summary of closing submissions. The Court will usually be assisted by a written summary of closing submissions, which includes references to oral evidence.

Authorities and legislation

91. Each party is to provide a list of authorities and legislation that are to be expressly referred to at the hearing to the judge's associate one working day before the hearing is to commence.
92. If any unreported authorities, superseded legislation or planning instruments are to be relied on, copies are to be provided to the judge at the hearing. Duplicate copies of such material are to be avoided.

Proposed final orders

93. Proposed final orders are to be provided in hard copy and electronically to the hearing judge.

Co-operation

94. The Court expects legal practitioners and experts to work cooperatively to implement this practice note in a practical and sensible way that ensures that it achieves its intended purpose.

Costs

95. If a breach of the Court's directions or 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.
96. 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.
97. 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.

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

22 November 2012

SCHEDULE A

Usual Directions at First Directions Hearing

1. The proceedings are hereafter to be known as “[insert descriptive name as agreed by the parties]”.
2. The Minister is to issue subpoenas to the further persons or bodies identified by the Minister at the first directions hearing by no later than [insert date, usually 1-2 weeks after the first directions hearing].
3. No further subpoenas may be issued by the Minister without leave of the Court.
4. The Minister must serve the evidence on which the Minister intends to rely, including affidavits and/or a bundle of documents, by [insert date, usually 7 weeks after the first directions hearing].
5. The Minister must file and serve its statement of facts and contentions by [insert date, usually 8 weeks after the first directions hearing].
6. The matter is stood over for further directions on [insert date, usually 9 weeks after the first directions hearing].
7. Parties have liberty to restore on 3 working days’ notice.

SCHEDULE B

Usual Directions at Second Directions Hearing

1. The applicant is to issue subpoenas to the persons identified by the applicant at the second directions hearing by no later than [insert date, usually 1-2 weeks after the second directions hearing].
2. The applicant is to hand to the Court a statement of the disciplines in respect of which the applicant proposes to call expert evidence, the issues to which the proposed expert evidence relates and the reasons why the proposed expert evidence is reasonably required to resolve the proceedings.
3. The applicant is to serve the evidence on which the applicant intends to rely, including all lay and expert affidavits and/or a bundle of documents, by [insert date, usually 7 weeks after the second directions hearing].
4. The applicant is to file and serve its statement of facts and contentions in response to the Minister's statement of facts and contentions by [insert date, usually 8 weeks after the second directions hearing].
5. [If the parties agree or if the Court requires] The proceedings are to be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* [or some other form of alternative dispute resolution] on [insert date, usually no later than 8 weeks after the second directions hearing].
6. The matter is stood over to a third directions hearing on [insert date, usually 9 weeks after the second directions hearing].
7. Parties have liberty to restore the matter on 3 working days' notice.

SCHEDULE C

Usual Directions at Third Directions Hearing

1. The Minister is to file and serve its evidence in reply (if any) by [insert date, usually 2 weeks after the third directions hearing].
2. If expert evidence is required, the experts are to confer and serve their joint report by [insert date, usually 3-4 weeks after the third directions hearing].
3. The parties are granted leave forthwith to approach the Registrar for the allocation of a hearing date (estimate of [insert] days).
4. The parties are to confer and endeavour to reach agreement on an agreed list of the real issues for determination in the proceedings by [insert date, usually 5 weeks days before the hearing].
5. The parties are to confer and endeavour to reach agreement on a statement of agreed facts by [insert date, usually 5 weeks before the hearing].
6. The parties are to prepare and the applicant is to file and serve a paginated Court Book, along with an electronic copy of its contents, in a white folder, with dividers between each section and a table of contents indicating which party is tendering each document, containing copies of the following, by [insert date, usually 4 weeks before the hearing]:
 - (a) the originating application;
 - (b) the parties' statements of facts and contentions;
 - (c) an agreed list of issues to be determined in the proceedings;
 - (d) where warranted, an agreed chronology or (if not agreed) each party's chronology;
 - (e) where warranted, an agreed list of characters; and
 - (f) each party's list of objections (if any) to evidence.
7. The parties are to prepare and the applicant is to file and serve a paginated Evidence Book in a grey folder (or folders) containing the written evidence proposed to be tendered by the parties with dividers between each section and a table of contents indicating which party is tendering each document, containing copies of the following [insert date, usually 4 weeks before the hearing]:
 - (a) the agreed statement of facts;

- (b) the applicant's non-expert evidence;
 - (c) the respondent's non-expert evidence;
 - (d) the parties' expert evidence grouped by discipline, including all joint reports;
 - (e) all other documents proposed to be tendered in chronological order.
8. The Minister is to file and serve opening submissions responsive to the agreed list of issues, agreed statement of facts, chronology and the list of characters, together with a table of evidence to be relied upon referable to the agreed issues for determination and cross-referenced to the Evidence Book, by no later than [insert date, usually 3 weeks before the hearing].
 9. The applicant is to file and serve opening submissions responsive to the agreed list of issues, agreed statement of facts, chronology and the list of characters, together with a table of evidence to be relied upon referable to the agreed issues for determination and cross-referenced to the Evidence Book, by no later than [insert date, usually 2 weeks before the hearing].
 10. If a party requires a witness for cross-examination at the hearing, notice is to be given by [insert date, usually 2 weeks before the hearing].
 11. The Minister is to file and serve any submissions in reply, if necessary, by no later than [insert date, usually 1 week before the hearing].
 12. [if required] Counsel briefed to appear at the final hearing or (if counsel is unavailable) a solicitor with carriage of the matter, is to appear for each party at a pre-hearing mention if possible before the hearing judge on [insert date, usually the second-last Friday before the hearing].
 13. Liberty to restore on 3 working days' notice.