



PRACTICE NOTE

CLASSES 1, 2 AND 3 MISCELLANEOUS APPEALS

Commencement

1. This practice note commences on 14 May 2007.

Application of Practice Note

2. This practice note applies to:
 - (a) Class 1 appeals other than those under ss 97 and 98, and applications under ss 96, 96AA and 96A of the *Environmental Planning and Assessment Act 1979*, which are subject to *Practice Note – Class 1 Development Appeals*;
 - (b) Class 2 appeals other than those under the *Trees (Disputes Between Neighbours) Act 2006*); and
 - (c) Class 3 appeals other than:
 - (i) claims for compensation by reason of the acquisition of land, which are subject to *Practice Note – Class 3 Compensation Claims*;
 - (ii) objections to valuation under the *Valuation of Land Act 1916*, which are subject to *Practice Note – Class 3 Valuation Objections* respectively; and
 - (iii) appeals and references under the *Aboriginal Land Rights Act 1983*.

The appeals subject to this practice note are referred to as “miscellaneous appeals”. This practice note is to be known as *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals*.

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 miscellaneous appeals.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, their legal practitioners and agents (as applicable) to consider the orders and directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings. 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 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 make available to the Court short minutes reflecting that alternative regime. Parties are to ensure that all directions which they seek with respect to miscellaneous appeals will assist in enabling such appeals to be dealt with at the hearing with as little formality and technicality, and with as much expedition, as the requirements of this Act 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*).

Before the first directions hearing

5. Miscellaneous appeal applications will usually be given a return date 28 days after the date on which they are filed. The first directions hearing will usually be before the Registrar. Miscellaneous appeal applications are to be served within 7 days of filing.

Note: Parties may request from the Registry an earlier return date provided that they are able to serve the miscellaneous appeal application as filed at least 21 days before the return date. Parties may otherwise file and serve a notice of motion for expedition of the proceedings if appropriate. Applications to extend the period for the return of the proceedings before the Registrar may be granted if the applicant demonstrates that service cannot be achieved within the time required. The Registrar may also extend the period if circumstances, such as public

holidays, make it appropriate that a longer period be allowed for parties to take the action required by this practice note before or by the return of the proceedings.

6. On request, a respondent who is a public authority or public official is to provide the other party with access to the documents relevant to the application and its decision (if any) with respect to the miscellaneous appeal, within 14 days of the request.

At the first directions hearing

7. At the first directions hearing, the parties should expect that the usual directions set out in **Schedule A** will be made and should have either agreed or competing proposed short minutes to hand to the Court. In preparing these 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. 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 first directions hearing of the miscellaneous appeal application and ensure that proposed short minutes are available to be handed to the Court.
8. The parties are to inform the Court whether there is any reason for the proceedings not to be fixed for a preliminary conference under s 34 of the *Land and Environment Court Act 1979*. If proceedings are fixed for a preliminary conference, then the parties may request that only the usual directions in Pt A of **Schedule A** be made, with the balance of the usual directions to be made at a second directions hearing.
9. If it is appropriate to fix the proceedings for a preliminary conference under s 34 of the *Land and Environment Court Act 1979* then, in the ordinary course, the proceedings will be fixed for a preliminary conference as follows:
 - (a) for short matters, before the Duty Commissioner on the next available Friday; or
 - (b) for other matters, within 14 days,
subject to the availability of the Court.

10. To enable the balance of the usual directions to be made, the parties are to hand to the Court at the first directions hearing a completed information sheet in the form of **Schedule B**.

Note: This may be deferred until the second directions hearing if the matter is to be fixed for a preliminary conference.

11. If any party seeks to raise an issue of fact or law that it contends precludes the determination of the proceedings one way or another, then the party raising that issue is to identify it in its statement of facts and contentions prepared in accordance with **Schedule C**.

12. Any party seeking to have an issue dealt with in advance of the merits must apply to do so by notice of motion and short affidavit in support setting out the reasons that make a separate hearing necessary. If possible, the notice of motion is to be returnable at the first directions hearing. In the ordinary course, all issues should be heard together unless an issue genuinely capable of separate determination is likely to be determinative of the appeal. If an order is made for a separate hearing:

- (a) short matters (less than 2 hours) may be listed on the first available Friday before the Duty Judge or Duty Commissioner for issues of law or fact respectively; and

- (b) other matters will be listed for hearing in the ordinary course,

and the usual directions in **Schedule A** (Pt H.) will apply.

Note: A Judge and Commissioner may be appointed to hear a matter to facilitate the objective of having all issues heard together.

13. Unless good reason is demonstrated, the parties are 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 hearing date. Legal practitioners and other representatives of the parties are to advise the parties of their obligation to be ready to agree to a timetable up to and including the hearing date and are to obtain full and timely instructions to ensure the parties comply with this obligation.

Note: The agreement of both parties to attend a preliminary conference usually will be accepted as a good reason to defer the making of a timetable up to and including the hearing until the second directions hearing.

14. Estimates of hearing length should be realistic having regard to the statements of facts and contentions.

Short matters

15. Parties may request short matters (less than 2 hours) to be fixed for hearing before a Duty Commissioner or Duty Judge on a Friday.
16. If the request is by consent, the parties may file the request with the Registry before the first return date. Parties will be notified if the hearing can be listed on a Friday before the first return date, in which event the first return date will be amended to be the hearing date.

Expedition

17. Any party may seek expedition of a miscellaneous appeal by notice of motion, with a short affidavit in support setting out the reasons in support of expedition.

Breach of the Court's directions

18. If there is any significant breach of the Court's directions, including a breach sufficient to cause slippage in a timetable, the parties must promptly, by e-Court communication or fax to the Registrar, notify the Registrar of the breach. The Registrar may require the parties to attend before the Court if it is considered that the reasons for the breach are not adequately explained in that e-Court communication or facsimile or if the breach might materially affect the timetable. Parties are reminded that where the conduct of either party unnecessarily or unreasonably increases the number of appearances in Court, that party may be at risk of the making of a costs order against them.

Variation of timetables

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

Liberty to restore

20. Parties have liberty to approach the Court without a notice of motion on three working days' notice or earlier if urgency requires. A party seeking to make urgent application should, if possible, make prior arrangement with, or give appropriate notice to, any other party, and should send an e-Court communication or fax to the Registrar.

Amendments to applications and to statements of facts and contentions

21. An applicant requires leave of the Court to amend a miscellaneous appeal application.
22. Parties require leave of the Court to amend their statements of facts and contentions.
23. Other than amendments sought during the hearing of the appeal, leave to amend is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave to amend being sought.

Applications to vacate hearings and for adjournments

24. Miscellaneous appeals will not be adjourned generally.
25. Miscellaneous appeals usually will not be adjourned because of failure to comply with this practice note or Court 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 the proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
26. 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.

Application for final orders by consent of parties

27. Any application for consent final orders in a miscellaneous appeal will be listed before the Court for determination. The parties will be required to present such

evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to make the consent final orders.

Legal practitioners and agents of parties to be prepared

28. 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.
29. Legal practitioners and agents for each party should communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and on preparation of short minutes recording the directions.

Expert evidence

30. Parties are encouraged to consider whether expert evidence is genuinely necessary to resolve the issues in dispute in miscellaneous appeals. Unnecessary expert evidence substantially increases the time and cost of appeals. Parties are encouraged to consider whether the proceedings can appropriately be fixed for hearing before a Commissioner or Commissioners with special knowledge and experience in relation to the issues in dispute.
31. Where expert evidence is necessary to be called in relation to an issue, 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 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;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline; and
 - (iv) whether the issue relates to the adequacy or sufficiency of information provided in the appeal;
- (f) whether the evidence of the parties' single expert involves the provision of aids to assist in the assessment of the appeal (such as shadow diagrams, view lines or photo montages).
- (g) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
- (h) 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;
- (i) 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
- (j) 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.

32. The Court will not usually accept the appointment of a parties' single expert if that expert is unable to provide a report within 5 weeks of receiving the brief or is unable to attend a hearing within a further 28 days thereafter.

33. The usual directions in **Schedule A** provide for a parties' single expert 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 Pt 31.41 of the Uniform Civil Procedure Rules a party may seek clarification of the report of a parties' single expert on one occasion only.

34. 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.

35. 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.

36. 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 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 or in cross examination;
- (e) how calling the additional expert at all, or at the particular stage in the preparation of the proceedings, promotes the just, quick 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.

If practicable, the affidavit should not exceed three pages in length (excluding annexures).

37. It is not the role of any expert to opine whether an appeal should be upheld or dismissed. Expert opinions in reports and joint reports are to deal with the contentions raised by the parties. Any other matter relevant to the expert's expertise, which the expert feels obliged to draw to the attention of the parties and the Court, may also be noted.
38. An expert (including a parties' single expert) and the expert's report is to comply with 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.
39. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.
40. Experts' reports are not to repeat matters in Part A Facts of the statements of facts and contentions. Wherever possible, an expert should state that Part A Facts has been adopted as correct. If this cannot be stated, the expert should identify the matters which are disputed and state his or her position in relation to those matters.
41. It is the responsibility of the parties to agree 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 that remuneration.

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

42. If experts are directed by the Court to confer, experts are to ensure that their 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.
43. 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.

44. 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 hearing Judge or Commissioner to the contrary).
45. If a party requires any expert for cross-examination, notice is to be given at least seven days before the hearing.
46. 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.

Costs and compliance

47. 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.
48. 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. Unnecessary documents may attract adverse costs orders.
49. 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***

30 April 2007

Schedule A

Usual directions on the first directions hearing for miscellaneous appeal applications

Note: Parties may amend/strike through/abridge directions as appropriate.

A. If the parties agree or the Court requires the proceedings to be fixed for a preliminary conference under s 34 of the *Land and Environment Court Act 1979*:

1. The appeal is listed for a preliminary conference under s 34 of the *Land and Environment Court Act 1979* on #.
2. The [applicant or respondent] is to file and serve its statements of facts and contentions in accordance with Schedule C of *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals* by # [insert date having regard to date of preliminary conference].

Note: This direction may be unnecessary for short matters.

3. The [respondent or applicant] is to file and serve its statements of facts and contentions in reply in accordance with Schedule C of *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals* by # [insert date having regard to date of preliminary conference]. This statement is not to repeat any facts not in dispute.

Note: This direction may be unnecessary for short matters.

4. The proceedings are listed for a second directions hearing on # [+ 14 days after the preliminary conference].
5. (a) Each party is to notify the other party and the Court in writing of the name of the experts upon which they propose to rely and the issues to be addressed by each expert or the name of any expert they propose to nominate as a parties' single expert by # [seven days after the preliminary conference].
(b) If the parties agree or the Court requires a parties' single expert, the parties are to agree the identity and remuneration of the parties' single expert by # [no later than 11 days after the preliminary conference].

- (c) Failing agreement, the parties are to seek orders from the Court at the second directions hearing that the parties engage a named parties' single expert and to fix the remuneration of the parties' single expert. For that purpose, each party is to file and serve the names, CVs and fee estimates of three appropriately qualified experts at least three days before the second directions hearing.

Note: If the proceedings are resolved at the preliminary conference, these directions will not need to be followed.

6. If the proceedings are resolved after the preliminary conference, the parties are to notify the Court at least 48 hours before the date of the second directions hearing. If the proceedings have been resolved, the second directions hearing may be vacated.

B. If the parties do not agree or the Court does not requires the proceedings to be fixed for a preliminary conference under s 34 of the *Land and Environment Court Act 1979*:

1. The [applicant or respondent] is to file and serve its statements of facts and contentions in accordance with Schedule C of *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals* by # [insert date having regard to date of preliminary conference].

Note: This direction may be unnecessary for short matters

2. The [respondent or applicant] is to file and serve its statements of facts and contentions in reply in accordance with Schedule C of *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals* by # [insert date having regard to date of preliminary conference]. This statement is not to repeat any facts not in dispute.

Note: This direction may be unnecessary for short matters.

Note: The usual directions in the following paragraphs are intended to operate on an issue-by-issue basis. It is the responsibility of the parties to consider the most appropriate combination of directions for the particular case having regard to the real issues requiring resolution.

The directions in Part G below should usually be made.

C. **If the parties agree on or the Court requires the appointment of a parties' single expert to address any issue:**

1. The Court notes the agreement between the parties to engage # [insert name] as a parties' single expert and that the parties have agreed the remuneration to be paid to that expert as being [insert details of remuneration].

Or, failing agreement about the identity and/or remuneration of the parties' single expert:

1A. (i) The parties are to agree on a parties' single expert and their remuneration and are to notify the Court of the expert's name and that the expert's remuneration has been agreed by # [+ 7 days of the first/second directions hearing].

(ii) Failing agreement, the parties are to file and serve the names, CVs and fee estimates of three appropriately qualified experts by # [+ 10 days of the first/second directions hearing]. The Court will make orders (iii) and (iv) below in Chambers and notify the parties accordingly.

(iii) The Court orders the parties to engage # [insert name] as a parties' single expert.

(iv) The Court fixes the remuneration of the parties' single expert at # [insert details of remuneration].

2. A parties' single expert is not to incur fees or disbursements additional to the remuneration agreed by the parties or fixed by the Court without written agreement of both parties or, absent such agreement, the leave of the Court.

3. The parties are to brief the parties' single expert with agreed instructions and an agreed bundle of documents by # [within 7 days of the first/second directions hearing].

4. The parties' single expert is to file and serve their expert report by # [within 6 weeks of the first/second directions hearing]. Without leave of the Court, the parties' single expert is not to provide the parties with a preliminary expert report or preliminary opinion.

5. The parties' single expert is to comply with 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, including the requirements for experts' reports.

6. If the Court has ordered that a parties' single expert address any issue, no expert report addressing the same issue other than the report of the parties' single expert may be relied upon at the hearing, without leave.

D. If the contentions are that there is insufficient information to assess the application or any other circumstance makes it appropriate for one party to file and serve its evidence before the other, the following directions may be considered appropriate:

1. The [applicants'/respondents'] experts are to file and serve their individual expert reports by # [within + 28 days of the first/second directions hearing].
2. The [respondents'/applicants'] experts are to file and serve their individual expert reports by # [within + 6 weeks of the of the first/second directions hearing].
3. The experts, grouped in areas of expertise, are to confer in accordance with 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 and are to file and serve their joint report, which is to include any evidence in reply, by # [within + 8 weeks of the first/second directions hearing].

E. If the contentions do not involve inadequate information or any other circumstance does not make it appropriate for one party to file and serve its evidence before the other, the following directions may be considered appropriate:

1. The applicants' and respondents' experts are to file and serve their individual expert reports by # [within + 28 days of the first/second directions hearing].
2. The experts, grouped in areas of expertise, are to confer in accordance with 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 and are to file and serve their joint report, which is to include

any evidence in reply, by # [within + 6 weeks of the first/second directions hearing].

F. If the parties agree or the Court requires that **any** experts may proceed directly to joint conferences and joint reports, without having prepared an individual expert report:

1. The parties are not to instruct experts on # [insert areas of expertise] to prepare individual expert reports.
2. The experts, grouped in areas of expertise, are to confer in accordance with 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 and are to file and serve their joint report by # [within + 28 days of the first/second directions hearing].
3. No expert reports, other than the joint reports, may be relied upon at the hearing, without leave.

G. For all matters:

1. The proceedings are fixed for hearing on # [in all cases as soon as reasonably possible and usually within + 12 weeks from the return date].
2. The hearing is to commence [on site at 9.30am] or [in Court at 10.00am]. If the parties consider the site may be difficult to find, they are to file an agreed map showing the proposed location for the commencement of any hearing on site at 9.30am two working days before the hearing.

Note: If a matter is fixed for an on site hearing or is otherwise to involve substantial time or taking of evidence on site, the parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities, and that the hearing will be open to the public and will be able to be observed and heard by all persons attending the hearing.

3. If the applicant or respondent contends that, if the appeal is upheld, conditions should be imposed, that party is to file and serve draft conditions (in both hard copy and electronic form) by # [14 days before the hearing].

4. Parties are to serve a copy of these directions, the statements of facts and contentions, 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 all experts upon whose evidence they propose to rely.
5. 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.
6. Experts are directed 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.
7. 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.
8. A joint report is to identify the experts involved in its preparation, the date of their joint conferences, the matters they agreed about, the matters they disagreed about and reasons for agreement and 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.
9. 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.
10. 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.
11. If any witness is required for cross-examination, notice is to be given at least seven days before the hearing.

12. A party who proposes to object to any part of an affidavit, statement or report is to file and serve notice of its objections, including the grounds in support, at least seven days before the hearing.
13. The parties are to confer and prepare a bundle of copy documents on which the parties seek to rely. The bundle is to include a table of contents and be paginated. The bundle is not to include documents annexed to the miscellaneous appeal. Unnecessary copying and duplication of documents is to be avoided. Any party objecting to the tender of a document within the bundle is to notify the other party of the objection and the grounds in support at least three working days before the bundle is to be filed. The documents subject to objection are to be included in the bundle, but the objection and grounds in support, 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 bundle. The bundle is to be filed at least seven days before the hearing.
14. Parties are to notify promptly the Court if there is any material slippage in the timetable.
15. The parties have liberty to restore on three working days' notice.
16. At the hearing the evidence of experts is to be given by way of concurrent evidence, unless the hearing judge or commissioner directs otherwise.

H. If issues of fact or law precluding the grant of consent are raised:

If necessary [strike through/amend as required]:

1. The parties are to file and serve any affidavits, reports or statements on which they wish to rely by # [within + 14 days of the first directions hearing].
2. The parties are to file and serve any affidavits, reports or statements in reply by # [within + 28 days of the first directions hearing].

Note: Directions 1 and 2 may be unnecessary depending on the nature of the issue raised.

3. The parties are to file an agreed bundle of documents by # [within + 5 weeks of the first directions hearing].
4. The party raising the issue is to file and serve an outline of submissions by # [two working days before the hearing].

5. The other party is to file and serve an outline of submissions by # [one working day before the hearing].
6. The issue is listed for hearing separately from any other issues in the proceedings on #.
7. Parties are to notify promptly the Court if there is any material slippage in the timetable.
8. The parties have liberty to restore on three working days' notice.

Or for small matters, where there is no requirement for affidavits, reports or statements, bundles of documents or outlines of submissions:

1. The issue is listed for hearing separately from any other issues in the proceedings before the [Duty Judge/Duty Commissioner] on # (usually a Friday).

Date: # [insert date]

Schedule B

Classes 1, 2 and 3 Miscellaneous Appeals - Information Sheet

Parties:

Applicant:

Respondent(s):

Proceedings no:

To be completed by all parties (as applicable)

1. Is there any issue that the parties seek to be dealt with in advance of the merits of the appeal? If so, see paragraph 12 of *Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals*

2. Is there any reason for the proceedings not to be fixed for a preliminary conference under s 34 of the *Land and Environment Court Act 1979*? If so, provide reasons [point form only].

3. Is any expert evidence required? If so, nominate issues on which expert evidence is required and the areas of expertise.

Applicant:

Respondent:

4. (a) Is any issue in the appeal appropriate for evidence by a parties' single expert agreed by the parties and if so, identify the issue.
(b) If parties' single experts are not appropriate, the reasons in support [point form only].

Applicant:	
Respondent:	
5.	If parties' single experts are agreed, set out below their name, charge rates, estimate of total fees and disbursements and available dates to prepare a report and appear at a hearing.
Name:	
Charge rates	
Estimate of total fees and disbursements	
Date by which a reports can be prepared	
Available dates to appear at a hearing	
6.	Is sufficient information available or is it otherwise appropriate for any experts proposed to be called by parties to proceed directly to a joint conference and joint report, without preparing other reports? If so, identify the experts and areas of expertise. If not, provide the reasons in support [point form only].
7.	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]?

8.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the appeal? If so, specify the relevant disciplines.
9.	If the appeal concerns land outside of the Sydney metropolitan region, should the appeal be heard in the local area? If not, provide the reasons for not doing so [point form only].
10.	Is the appeal appropriate to be heard as an on site hearing under s 34A of the <i>Environmental Planning and Assessment Act 1979</i> ? If so, will adequate facilities be available? Will the hearing be able to be observed and heard by the public?
11.	Should the hearing commence at 9.30am on site?
12.	Estimate of the length of hearing.
Applicant:	
Respondent:	
13.	Identify number and, if possible, names of lay witnesses.
Applicant:	
Respondent:	
14.	Identify hearing dates sought:
Applicant:	
Respondent:	

Schedule C

Requirements for statement of facts and contentions

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions.
3. An authorised officer of the relevant party is to sign and date the statement.
4. In Part A Facts, the party is to identify:
 - (a) **The subject of the appeal:** a brief description of the subject matter of the appeal.
 - (b) **The statutory context:** a brief description of the relevant statutory provisions under which the miscellaneous appeal is brought.
 - (c) **The circumstances:** a brief description of the circumstances leading to the miscellaneous appeal.
 - (d) **The land:** if relevant, a brief description of any relevant land.
 - (e) **Actions of the party:** as relevant, a brief description of any relevant actions of the party, including date any application was lodged, application number, notification and its results, decision and date of decision.

Part A Facts is not to include matters of opinion.

5. In Part B Contentions the party is to identify each fact, matter and circumstance that the party contends require or should cause the Court to uphold or dismiss the appeal.
6. In Part B Contentions, the party is to:
 - (a) focus its contentions on issues genuinely in dispute;
 - (b) have a reasonable basis for its contentions;
 - (c) present its contentions clearly and succinctly, without repetition;
 - (d) where it contends that the appeal must be upheld or dismissed, identify the factual and/or legal basis for that contention. Any such contention is

to be made at the beginning of Part B contentions and is to be clearly identified as a contention that the appeal must be upheld or refused;

- (e) where the party contends there is insufficient information to assess any relevant matter, list the information the party contends is required;
- (f) if applicable, identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
- (g) identify any contentions that may be resolved by conditions of consent.