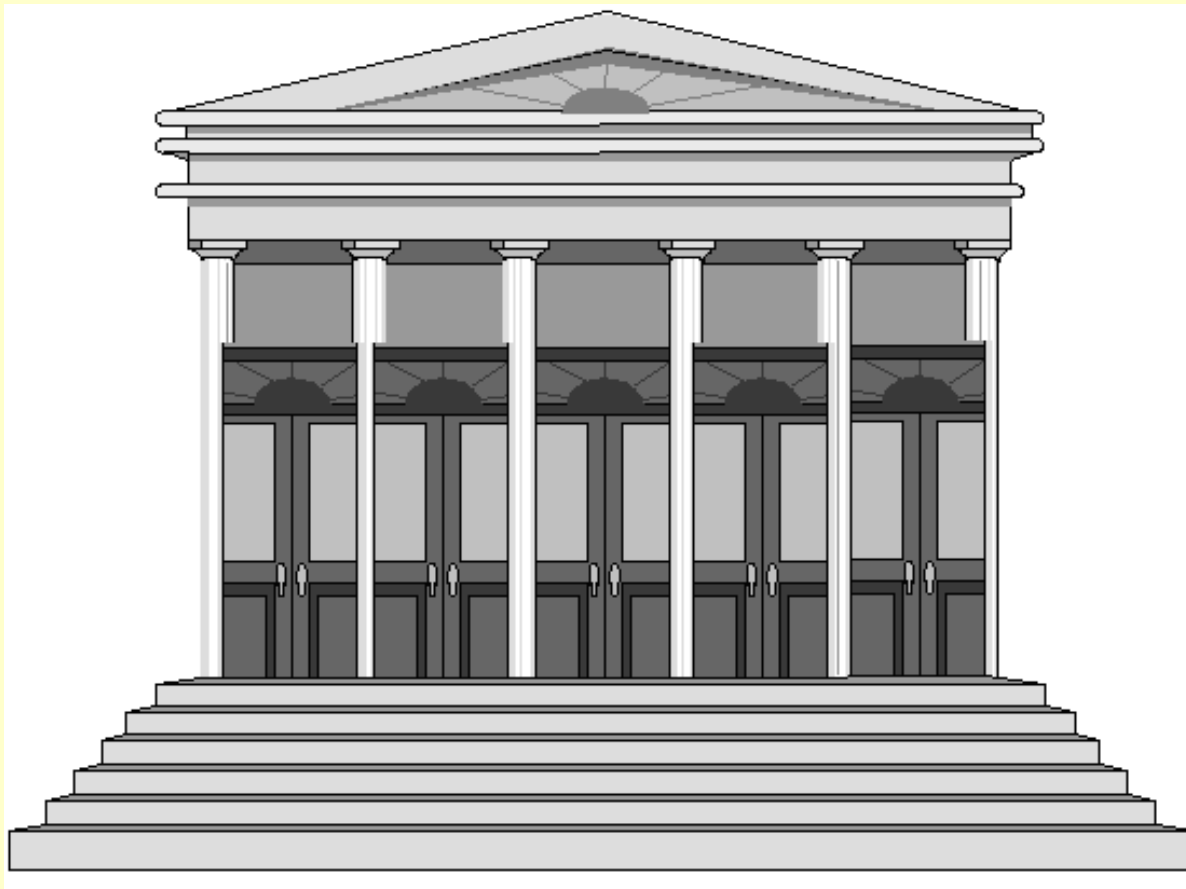


Streamlined residential development appeals

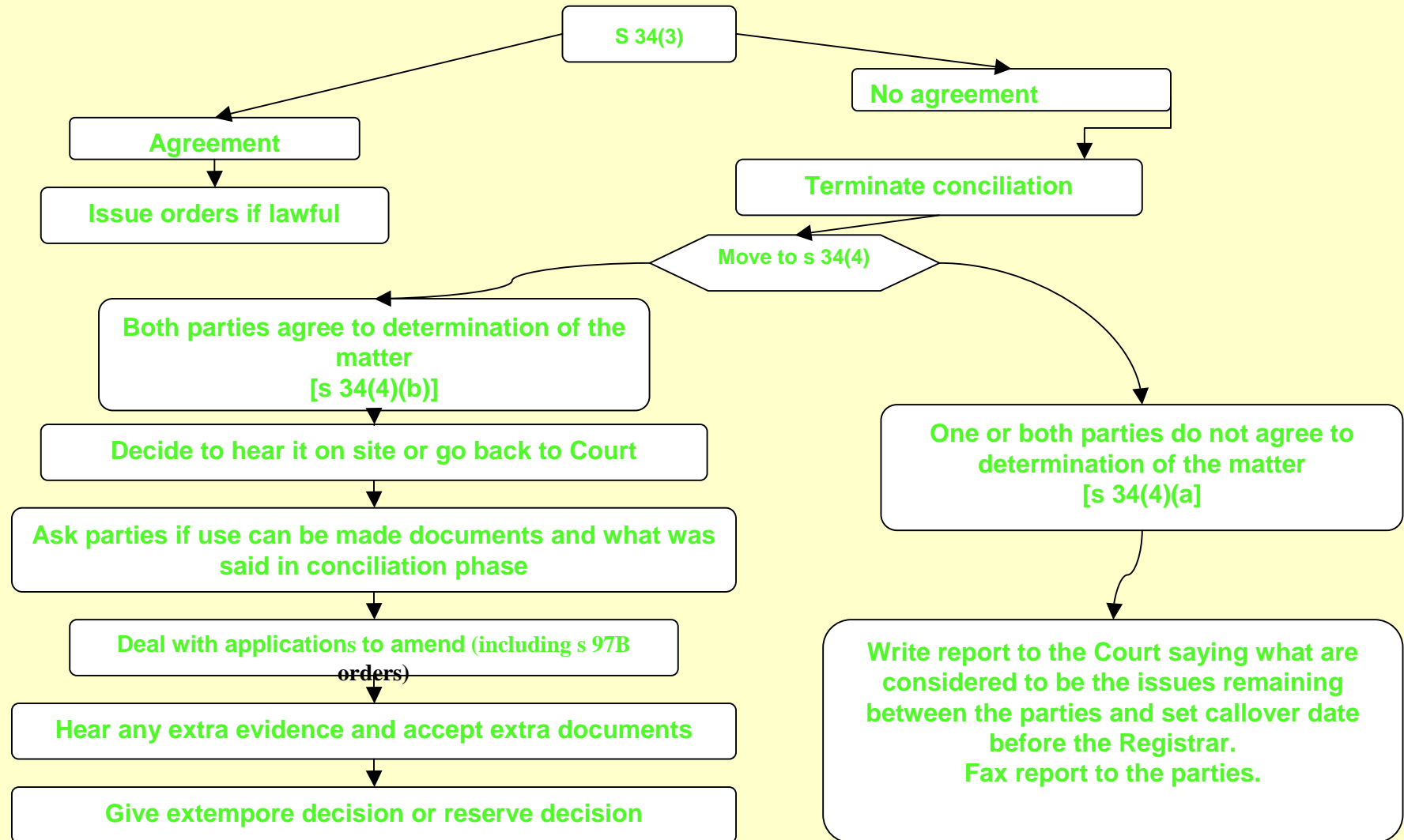
**Senior Commissioner Tim Moore
Land and Environment Court**

31 March and 4, 6 & 8 April 2011

The multi-door courthouse



How s 34 works



s 34AA of the Court Act

The scope of s 34AA

This new section is confined to applying to a limited range of residential development appeals. The section applies to:

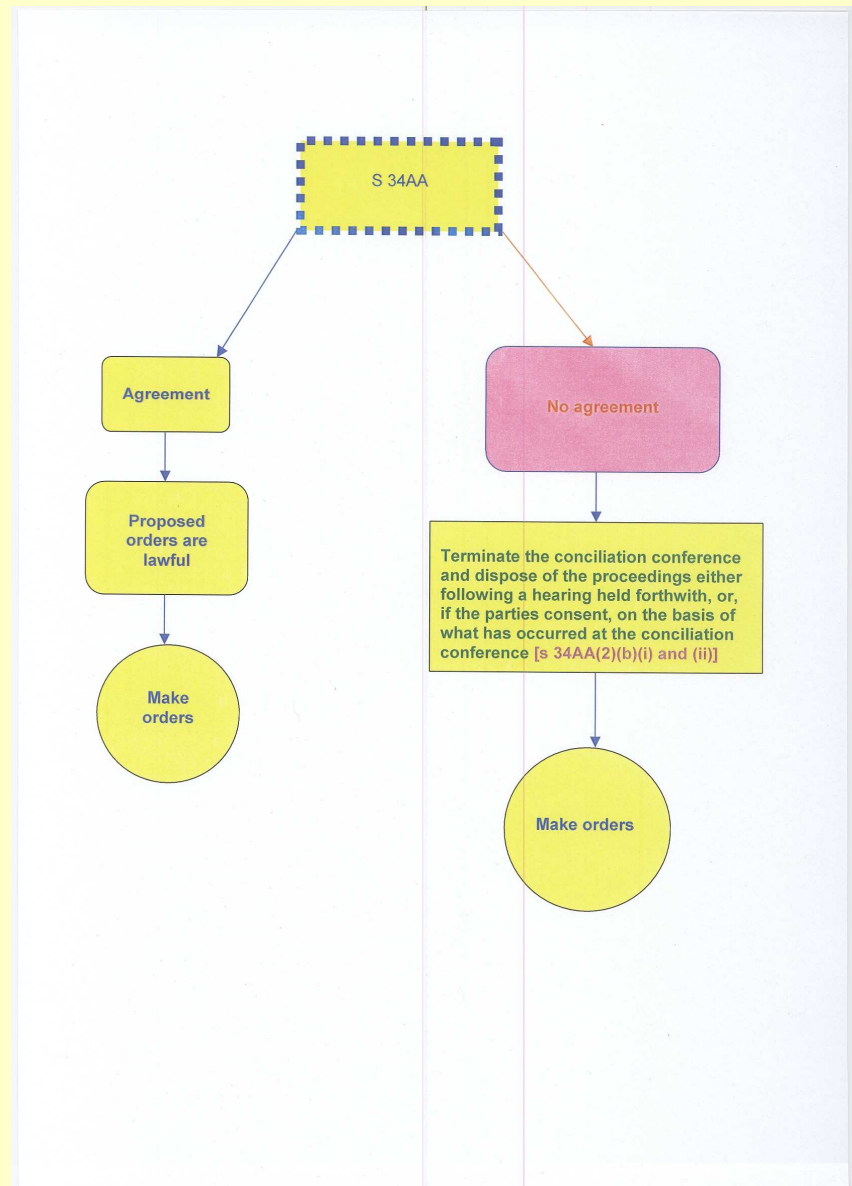
development for the purposes of detached single dwellings and dual occupancies (including subdivisions), or alterations or additions to such dwellings or dual occupancies

Commencement

s 34AA operates with applicability to all residential development appeals that are within the scope of the statutory definition and that have been filed with the Court on or after 7 February 2011.

The presumption with respect to such residential development appeals is that they will be dealt with through the s 34AA process.

How s 34AA works



Monitoring

We are monitoring each such matter that is filed to ensure that there are no matters are allocated to this stream that should properly be set aside for a conventional dispute resolution process because of the potential complexity of the issues involved.

Opting out? - 1

If my development proposal fits within this category, must I follow the conciliation/hearing model or can I have a conventional Court hearing?

The Parliament has created a presumption in favour of using this conciliation/hearing process for residential development involving dwelling houses and dual occupancies. This has been done in order to simplify such appeals and in an endeavour to reduce the cost of resolving such disputes. However, it is possible for the Court, if proper reasons are shown why it is appropriate, to order that a residential development matter be dealt with at a conventional court hearing.

If a matter has been commenced and has been allocated to the residential development conciliation/hearing process, an application can be made, by [Notice of Motion](#) and supported by an affidavit explaining the reasons for the application, to have the matter dealt with at a conventional court hearing. Ordinarily, any application of this nature should be made soon after the proceedings are commenced so that the application can be heard and determined on the date set for the directions hearing for the matter.

Web site quick link

The screenshot shows the homepage of the Land and Environment Court of NSW Online. The browser window title is "Homepage - Land & Environment Court : Lawlink NSW - Windows Internet Explorer provided by DJAG". The address bar shows the URL "http://infolink.lawlink.nsw.gov.au/pages/LEC_index". The page features a green header with the NSW logo and the text "Lawlink Justice & Attorney General Land and Environment Court". A navigation menu includes links for Privacy, Copyright & Disclaimer, Site Map, Feedback, Help, Languages, and Search. The main content area is titled "Welcome to the Land and Environment Court of NSW Online" and provides information about the court's jurisdiction. A "Quick Links" menu is highlighted with a red circle, containing links for "Residential Development Appeals", "Legal referrals", and "LawAccess NSW". The page also includes sections for "Announcements", "About the Court", "Coming to the Court", and "Information Sheets & FAQs".

Homepage - Land & Environment Court : Lawlink NSW - Windows Internet Explorer provided by DJAG
http://infolink.lawlink.nsw.gov.au/pages/LEC_index

File Edit View Favorites Tools Help
Go PDF

PlanetDomain - Accou... Homepage - Land ... NSW Legislation

NSW Lawlink Justice & Attorney General Land and Environment Court

Privacy Copyright & Disclaimer Site Map Feedback Help Languages Search

Home
About Us
Court Lists
eCourt
Forms & Fees
Judgments
Policy Documents and Tabbed Documents
Practice & Procedure
Publications
Self-Help
Contact Us

Welcome to the Land and Environment Court of NSW Online

The Land and Environment Court of New South Wales is a specialist environmental and planning court with a wide jurisdiction responsible for interpreting and enforcing environmental law in the state of New South Wales, Australia.
[More >>](#)

Quick Links

- Residential Development Appeals
- Legal referrals
- LawAccess NSW provides free legal information and referrals. Phone: 1300 888 529

Announcements

- The Chief Judge has issued a [new Instrument of Delegation](#) to Registrars pursuant to section 13 of the *Civil Procedure Act 2005*. (28 February 2011)
- [Mining Warden's Court decisions](#) are now available (18 February 2011)
- [September quarter 2010 DOH median sales prices for all dwellings](#) (15 February 2011)
- The [latest issue](#) of the Judicial Newsletter is now available (1 February 2011)
- New [Residential Development Appeals webpage](#) (17 January 2011)
- The Chief Judge has issued a new [Practice Note](#) for residential development appeals, commencing 7 February 2011. (7 January 2011)
- From 15 November 2010, the Court has jurisdiction to hear and determine proceedings for offences under [Part 17A](#) of the *Mining Act 1992*. (6 December 2010)
[earlier announcements >>](#)

About the Court

[Annual Reviews](#) | [Commissioners](#) | [Court hours](#) | [Judges](#) | [Jurisdiction of the Court](#) | [Media contact information](#) | [Media Releases](#) | [Policies](#) | [Publications](#) | [Registrars](#) | [Registry](#) | [Speeches and papers](#) | [Trustee positions](#)

Coming to the Court

[Court lists](#) | [Court process](#) | [Disability services](#) | [Dispute Resolution](#) | [eCourt](#) | [eCallover](#) | [Forms & Fees](#) | [Interpreting services](#) | [Legal advice - referral guide](#) | [On site hearings](#) | [Policies](#) | [Practice Notes](#) | [Telephone Callover](#) | [Usual Directions](#) | [Video links](#)

Information Sheets & FAQs

[Appeals](#) | [Court processes](#) | [Litigants in Person Guide](#) | [Mediation](#) | [On-site hearings](#) | [Residential](#)

Trusted sites 100%

Start 99% 1:51 PM

s 34AA web page

The screenshot shows a web browser window displaying the 'Residential Development Appeal Process' page on the Land and Environment Court website. The browser's address bar shows the URL: http://info.lnk.lawlink.nsw.gov.au/pages/LEC_residential_development_appeal_process. The page header includes the NSW Government logo, 'Lawlink Justice & Attorney General', and the 'Land and Environment Court' title. A navigation menu is visible with links for Privacy, Copyright & Disclaimer, Site Map, Feedback, Help, Languages, and Search. The main content area is titled 'Residential Development Appeal Process' and includes a breadcrumb trail: 'Where am I now? Lawlink > Homepage > Residential Development Appeal Process'. The page contains three paragraphs of text explaining the new appeal process effective from 7 February 2011. Below the text is a section titled 'LINKS TO RELEVANT MATERIALS' with two sub-sections: 'Information materials' and 'Court materials', each containing a list of links to related documents and forms. The browser's taskbar at the bottom shows the Start button, various application icons, and the system tray with the time 1:53 PM.

Residential Development Appeal Process - Land & Environment Court : Lawlink NSW - Windows Internet Explorer provided by DJAG

http://info.lnk.lawlink.nsw.gov.au/pages/LEC_residential_development_appeal_process

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NSW Government Lawlink Justice & Attorney General Land and Environment Court

Privacy Copyright & Disclaimer Site Map Feedback Help Languages Search

Where am I now? Lawlink > Homepage > Residential Development Appeal Process [Print page](#)

Residential Development Appeal Process

From 7 February 2011, new laws come into effect providing a new, streamlined way for the Land and Environment Court to resolve disputes concerning applications for the construction of detached single dwellings and dual occupancies (including subdivisions), or alterations or additions to such dwellings or dual occupancies.

These new procedures apply to appeals lodged with the Court on and after 7 February 2011 concerning such developments. The new system is designed to assist with the just, quick and cheap resolution of the issues that are in dispute between the parties.

These elements of the Court's website are designed to assist with an introduction to this new process and an explanation, in "question and answer" form, how the process will operate. Provided below are links to a range of materials that may be of assistance to persons and their legal representatives and agents involved in such proceedings.

This page is intended to act as a guide to the Court's approach to Class 1 residential development appeals, however it does not constitute legal advice or offer any guarantee as to how a particular dispute will be decided by the Court.

LINKS TO RELEVANT MATERIALS

Information materials

- [Questions and Answers - Class 1 Residential Development Appeals](#)
- [Service of Documents - A Guide for Self-Represented Litigants](#)
- [Guide to subpoenas](#)

Court materials

- [Court forms](#)
- [Court fees](#)
- [Practice Note - Class 1 Residential Development Appeals](#)
- [Requirements for Statement of Facts and Contentions by respondent consent authority](#)
- [Requirements for Statement of Facts and Contentions by applicant](#)

Start

Trusted sites 100%

99% 1:53 PM

New Practice Note for residential appeals



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

PRACTICE NOTE CLASS 1 RESIDENTIAL DEVELOPMENT APPEALS

Commencement

1. This practice note commences on 7 February 2011.

Application of Practice Note

2. This practice note is to be known as Practice Note – Residential Class 1 Development Appeals.
3. This practice note applies to the proceedings referred to in s 34AA of the *Land and Environment Court Act 1979*. They are the following proceedings in Class 1 of the Court's jurisdiction relating to appeals and applications under s 97 or 97AA of the *Environmental Planning and Assessment Act 1979*:
 - (a) proceedings concerning development applications or modifications to development consents for:
 - (i) development for the purposes of detached single dwellings and dual-occupancies (including subdivisions), or alterations or additions to such dwellings or dual-occupancies (referred to as “residential development”), or

Q & A

The Court has, to facilitate the involvement of and in order to endeavour to contain expense for the parties, published an extensive plain English, step-by-step, guide to how these proceedings will operate.

Requirements for plans

Schedule A

Requirements for Plans

1. **General:**

- Plans should be drawn to an appropriate scale shown on the drawings;
- Plans should be drawn with clarity;
- Plans should indicate a north point; and
- All plans shall be consistent with each other.

2. **Survey plans are to indicate:**

- Existing buildings, structures and features of the site;
- Topography (spot levels, contours) including that of adjoining property where relevant;
- Natural drainage of the site;
- Any easements or rights of way;
- Significant existing vegetation, indicating its location on the site, type and spread;
- Location, height and use of any adjoining buildings or structures such as swimming pools; and
- Features of streets immediately adjoining or within the property, including poles, kerbs, crossings and pits.

3. **Site plans are to identify the location of the following:**

- Proposed and existing buildings;
- Existing significant trees, indicating whether they will be retained or

Statements of Facts & Contentions - 1

- **Schedule B to Practice Note – consent authority**
- **Schedule C to Practice Note – applicant**

Statements of Facts & Contentions - 2

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS	
Court	Land and Environment Court of New South Wales
Class	1
Case number	10982 of 2010
TITLE OF PROCEEDINGS	
Applicant	Swan Properties Pty Ltd
Respondent	Bligh Shire Council
FILING DETAILS	
Filed for	Bligh Shire Council , respondent
Legal representative	Ms J Stevens, solicitor Stevens & Co
Legal representative reference	JS: BC 38776/2010

Service of documents

SERVICE OF DOCUMENTS

A GUIDE FOR SELF-REPRESENTED LITIGANTS

Service of a document is the process of making sure that any person who is required to be given a copy of an application to the Court or any other legal document is given it in a way which complies with the relevant legal rules.

The relevant legal rules are in the *Uniform Civil Procedure Rules 2005*.

Originating Process

The first important rule relates to the requirements for giving notice of the original application in any proceeding to the other people who are parties to the proceeding. Such an application commencing a proceeding is called an ***originating process***.

An ***originating process*** is required to be served personally on the respondents named in the originating process. This is called ***personal service*** (***personal service*** is required by Part 6 rule 2(3) and Part 10 rule 20(2)(a) of the *Uniform Civil Procedure Rules*).

Callover

The Registrar now runs a separate residential development appeals list for the first (and likely only procedural attendance) return date; the timetable for the exchange of evidence is compressed and there is the expectation that the respondent will have a Statement of Facts and Contentions prior to the return date before the Registrar.

Usual directions 1

What will happen at the directions hearing?

The presiding Registrar will fix the date(s) for the final conciliation/hearing and will set a timetable for the exchange of information between the parties and any involvement of expert witnesses. The Court expects that both parties would have discussed the appropriate timetable prior to the directions hearing.

This timetable will be set out in a formal document known as directions. The directions that will usually be made are set out in [Schedule E](#) to the Practice Note. Copies of the directions made by the Registrar will be provided to the parties (if they are in attendance at the Court) or, if the matter is being dealt with by a telephone hearing, will be sent by express post to the parties.

Usual directions 2

Schedule E

Usual directions at the first directions hearing for residential development appeals

1. Time and place of final hearing

- (a) The proceedings are listed on #[6 weeks time] for a conciliation conference and hearing under s 34AA of the *Land and Environment Court Act 1979*;
- (b) The conciliation conference is to commence on site at 9.30am. If the parties consider the site may be difficult to find, they are to file an agreed map showing its location two working days before the conciliation conference.

Note: The parties should ensure that appropriate facilities are available for that purpose, including a table and chairs and bathroom facilities. As any hearing will be open to the public, the venue must be adequate to ensure that the hearing will be able to be observed and heard by all persons attending.

2. Statement of facts and contentions in reply

The #[applicant/respondent] is to file and serve any statement of facts and contentions in reply in accordance with Schedules B or C of the Practice Note Class 1 Residential Development Appeals by #[7 days time]. This statement is not to repeat any facts not in dispute.

3. Appointment of a parties' single expert to address any issue

- (a) 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].

Subpoenas

SUBPOENAS AND NOTICES TO PRODUCE

A GUIDE FOR SELF-REPRESENTED LITIGANTS

If a person or organisation has documents you think are relevant to your case, you should approach them and ask to inspect the documents. If they will not give you access to inspect the documents, you might be able to compel them to produce the documents by subpoena or a notice to produce. This Guide explains how to issue subpoenas and notices to produce. It is important that, before issuing either of these, you have checked first with the person or organisation to see if they will let you inspect or obtain a copy of the documents without the necessity of a subpoena or notice to produce.

The Court's Practice Notes require public authorities, including councils, which are parties to proceedings in the court to produce on request any documents that are relevant to the application before the Court: Practice Notes - [Class 1 Development Appeals](#) at [11], [Class 1 Residential Development Appeals](#) at [19], [Classes 1, 2 and 3 Miscellaneous Appeals](#) at [6], [Class 4 Proceedings](#) at [14].

The [Uniform Civil Procedure Rules 2005](#) contain the legal requirements and procedures for obtaining access to documents, and requiring the attendance of witnesses, if it is not possible to arrange this in accordance with the Practice Notes, or otherwise by discussion with the person or organisation concerned.

Subpoenas

If a person refuses, or is unable of their own free will, to produce documents or give evidence at a hearing, a party may request the Court to issue a subpoena directed to that person.

A subpoena can be issued to a party to the proceedings, or to any other person or organisation. A subpoena is issued by the Court, and failure to comply without lawful excuse is contempt of court: Uniform Civil Procedure Rules [Part 33 rule 33.12](#).

If documents are held by a party to the proceedings, an alternative is to issue a Notice to Produce (see below).

Information sheet

Schedule D	
Class 1 Residential Development Appeals - Information Sheet	
Parties:	
Applicant:	
Respondent(s):	
Proceedings no.:	
Part A: to be completed by applicants for consent or approval (as applicable)	
1.	(a) Do the plans comply with Schedule A as relevant to the application? (b) If not, in what respects do the plans not comply?
Part B: to be completed by all parties (as applicable)	
2.	Is there any issue that the parties seek to be dealt with in advance of the merits of the appeal?
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	
Dates by which reports can be prepared:	

Available dates to appear at a hearing	
6.	Is there any reason why 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, areas of expertise and the reasons [point form only].
7.	Should a Commissioner or Commissioners with special knowledge and experience in particular disciplines hear the development appeal? If so, specify the relevant disciplines.
8.	If the appeal concerns land outside of the Sydney metropolitan region, should the development appeal be heard in the local area? If not, provide the reasons for not doing so [point form only].
9.	At an on site conciliation conference and hearing under s 34AA of the <i>Land and Environment Court Act 1979</i> , will adequate facilities be available?
10.	Is there any reason that the s 34AA conciliation conference and hearing should not commence at 9.30am on site?
11.	Estimate of the length of (a) conciliation conference (b) hearing.
Applicant:	
Respondent:	
12.	Identify number and, if possible, names of lay witnesses.
Applicant:	
Respondent:	
13.	Identify hearing dates sought
Applicant:	
Respondent:	

Date: # [insert date]

Site inspections policy



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

SITE INSPECTIONS POLICY

Commencement

1. This policy commences on 28 May 2010.

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:
 - Residential development conciliation/hearing provisions under s 34AA of the *Land and Environment Court Act 1979* (the Court Act); and

OSH presumption



Time allocation for s 34AA matters

When setting these matters down consideration is given as to whether or not the matter should be listed for two days or for a single day as the matters, once commenced are to proceed to finality.

In most instances, the matter will be listed for two days to ensure that, if it needs to carry over, once commenced, it will proceed to finalisation without adjournment.

Performance standards

The Court has accepted a performance target of 95% of these matters being heard and finalised – that is a decision given on the merits if conciliation fails – within 3 months from the date of filing.

Default conditions of consent - 1

- **The Court has developed, after consultation with DoP and interested participant groups, a set of default conditions of consent**

Default conditions of consent - 2

STANDARD CONDITIONS OF APPROVAL SINGLE DWELLINGS AND DUAL OCCUPANCIES

PART A DEVELOPMENT CONDITONS

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. Approved plans and documents

The applicant shall carry out the development in accordance with the conditions of this consent and the following plans/documents:

Title/Name	Drawing No.	Revision/Issue	Date	Prepared by

2. BASIX requirements

All commitments listed in the BASIX Certificate(s) (*insert number(s)*) shall be complied with.

3. Inconsistency between documentation

If there is any inconsistency between the plans/documents listed above, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this approval shall prevail to the extent of any inconsistency.

Amendments

The s 34AA process is not amenable to major amendments requiring revised plans needing further consideration – it is a process for a “straight-through” dealing with comparatively uncomplicated residential development appeals – such appeals comprising about 25% of our merit appeal filings.

Orders - 1

Form 43 (version 1)
UCPR 38.11

ORDER

COURT DETAILS	
Court	LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES
#Division	Class
Registry	Level 4, 225 Macquarie Street, Sydney
Case number	of
TITLE OF PROCEEDINGS	
Applicant	
Respondent	
DATE OF ORDER	
Date made or given	
Date entered	
TERMS OF ORDER	

The Court notes that the parties or their representatives have reached agreement at or after a conciliation conference held pursuant to s 34AA of the *Land and Environment Court Act* 1979, presided over by Commissioner, as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions) as set out in the document annexed hereto.

By consent, the Court makes orders in accordance with the document annexed hereto.

Orders - 2

If relevant, need to deal with:

- leave to amend;**
- s 97B order if amendments not minor;
and/or**
- SEPP 1 objections**

Operative date for amendments to Part 4

- Transition provisions are in EP&A Act Sch 6 Part 24 s 136
- Applies to development applications made to a consent authority on and after 28 February 2011

The dreaded s 97B etc

- Now requires payment by the applicant of those costs of the consent authority that are thrown away as a result of amending the development application.



s 97B when facultative

**Improving
amendments**



1.00