

Land and Environment Court Rules 1996

[1996-3]



New South Wales

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New South Wales

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Land and Environment Court Rules 1996



New South Wales

Part 1 Preliminary

1 Name of rules

These rules may be cited as the *Land and Environment Court Rules 1996*.

2 Commencement

(1) These rules commence on 29 January 1996.

(2) Upon such commencement the *Land and Environment Court Rules 1980* are repealed.

3 Division of rules

These rules are divided into the following Parts:

Part 1—Preliminary

Part 2—Administration

Part 3—Registrar, Assistant Registrar and Officers

Part 4—Documents

Part 5—Solicitors

Part 6—Application of Supreme Court Rules

Part 7—Commencement of Proceedings

Part 8—Service

Part 9—Motions

Part 10—Amendment

Part 11—Withdrawal and Discontinuance

Part 12—Stay of Proceedings and Failure to Prosecute

Part 13—Rules applying only to Proceedings in Classes 1, 2 and 3 of the Court’s Jurisdiction

Part 14—Class 4 Proceedings: Rules Specific to Class 4 Proceedings

Part 15—Decisions, Judgments and Orders of the Court

Part 16—Costs

Part 17—Miscellaneous

Part 18—Mediation

4 Definitions

In these rules:

applicant includes appellant or objector.

file in respect of a document in proceedings means lodge at the registry, in a form and condition acceptable to the Registrar, together with the prescribed fee, if any.

on terms means on such terms and conditions (if any) as the Court (or person exercising the relevant function if not the Court) thinks fit.

place of business in respect of a party means a place of business of which the party is one of the persons in charge or the only person in charge.

proceedings means proceedings in the Court.

the Act means the [Land and Environment Court Act 1979](#).

the Court means the Land and Environment Court constituted under the Act.

5 Application of rules

- (1) The general practice of the Court prescribed by these rules is to apply to all proceedings authorised by or under any existing or future Act to be commenced in the Court, except in so far as that practice is inconsistent with that Act or with any statutory instrument made under that Act.
- (2) However, the Court may, on terms, dispense with compliance with any requirements of these rules, either before or after the occasion for the compliance arises.

6 Where no procedure provided

In any proceedings the Court may give directions as to the procedure to be followed in respect of a matter not dealt with by the Act or these rules, or by any law or the practice of the Court.

7 Time

- (1) A period of time fixed by these rules or by a judgment, decision or order or by a document in any proceedings is to be reckoned in accordance with this Part.
- (2) If a time of 1 day or longer is to be reckoned by reference to a given day or event, the given day or the day of the given event is not to be counted.
- (3) If a period is 5 days or less and would (but for this subrule) include a day on which the registry is closed, the day is not to be counted.
- (4) If the last day for doing a thing is a day on which the registry is closed, the thing may be done on the next day on which the registry is open.

8 Extension or abridgment of time

- (1) The Court may by order and on terms extend or abridge any time fixed by these rules or by any judgment, decision, or order, of the Court.
- (2) The Registrar may by order and on terms extend or abridge any time fixed by these rules.
- (3) Time may be extended under this rule before or after the time expires, whether an application for the extension is made before or after the time expires.

Part 2 Administration

1 Seal of the Court

- (1) The seal of the Court is to be an impressed seal with the wording "The Seal of the Land and Environment Court of New South Wales". The Registrar is to have custody of it.
- (2) A rubber facsimile of the seal may be used instead of the seal for any purpose (including that referred to in subrule (3)).
- (3) Orders of the Court (or copies of them) when issued out of the Court and warrants given by the Court are to be sealed with the seal of the Court.

2 Sittings of the Court

The places, dates and times of the sittings of the Court are to be published if, and in such manner as, the Chief Judge directs.

3 Vacation

- (1) The Court is not to observe vacation periods except as the Chief Judge directs.
- (2) This rule does not affect any right to leave, or extended leave, of any Judge, Assessor

or officer of the Court.

4 Registry

- (1) There is to be a registry for the Court at Sydney.
- (2) The registry is to be under the control and direction of the Registrar. In exercising that control and direction, the Registrar is to obey any direction by the Chief Judge.

5 Opening hours of registry

- (1) The registry is to be open to the public for business between 9.00 am and 4.00 pm, except on Saturdays, Sundays and public holidays.
- (2) However, if the Chief Judge gives directions as to the opening times or days, the registry is to follow those directions instead of subrule (1).

6 Agents for Registrar

- (1) Clerks of Local Courts and such other persons as the Chief Judge may direct are the agents of the Registrar.
- (2) An agent of the Registrar is to accept documents for filing, and any prescribed fees payable in relation to them, as though the agent's office were the registry.
- (3) An agent of the Registrar is to forward as soon as practicable any documents so accepted to the registry together with an account of any fees paid in respect of the documents.
- (4) An agent of the Registrar is to carry out the functions of the Registrar as directed by the Registrar, including the issuing of subpoenas or notices to produce.

7 Judges and Assessors

- (1) The Registrar is to publish as the Chief Judge directs any arrangement made by the Chief Judge under section 30 (1) of the Act as to the Judge, Assessor or Assessors who is or are to exercise the Court's jurisdiction or as to the Assessor or Assessors who is or are to exercise any other function under the Act.
- (2) If the Court decides under section 37 (1) of the Act that it will be assisted by one or more Assessors, it is to inform the Registrar of the decision, and the Registrar is as soon as practicable to take all reasonable steps towards ensuring that the parties are aware of the decision.
- (3) Except to the extent required by this rule, no formal requirements need to be met as to the making of any arrangements under section 30 (1), a direction under section 36 (1), or a decision under section 37 (1), of the Act.

8 (Repealed)

9 Chambers

- (1) The distinction between court and chambers does not apply in relation to the Court.
- (2) The business of the Court, whether conducted in court or otherwise, is taken to be conducted in court.

Part 3 Registrar, Assistant Registrar and officers

1 Documentation kept or issued by Registrar

- (1) The Registrar is to keep the books, files and other records of the Court, and is to ensure that the appropriate entries are made in them. The Registrar is to retain custody of all documents filed in any proceedings.
- (2) The Registrar is to issue and sign the process of the Court.
- (3) The Registrar is to keep an account of all fees, fines and suitors' moneys paid or payable into the Court, give such receipts as are required under any law, and pay out any money to which suitors are entitled.
- (4) The Registrar is to produce to an officer authorised by the Auditor-General any book, file or other record kept by the Registrar (whether or not it is a book of account) which the officer requires to be produced in the course of the officer's duties.
- (5) The Registrar may delegate any of the functions referred to in subrules (1)–(4) to any other officer in the Registry as the Registrar sees fit.

2 Registrar's orders by consent

Except where otherwise expressly provided by the Act, these rules, or any Practice Direction, the Registrar may exercise the powers of the Court to make any order which the Court may make, being an order consented to:

- (a) by the parties to the application for the order, and
- (b) by any other person who will be required to comply with the order or to permit anything to be done under the order.

3 Other orders by Registrar

- (1) The Registrar or the Assistant Registrar may, except where the Chief Judge otherwise orders or these rules otherwise provide, exercise the powers of the Court to make an order of any of the following types:
 - (a) that a party give discovery of documents to another party,
 - (b) for the filing of any affidavit, points of claim, points of defence, statement of facts,

statement of issues, interrogatory, or any other document which, in the Registrar's opinion, will aid the resolution of the matters in dispute between parties,

- (c) that a party produce any document to the Court on a nominated day prior to the hearing of the proceedings and that any other party be permitted to inspect any document so produced,
- (d) that a person produce any document at the hearing or on a nominated day prior to the hearing and that any party be permitted to inspect any document so produced,
- (e) that a party be at liberty to inspect property, whether real or personal, and whether or not in the possession or control of any party, for the purposes of any proceedings,
- (f) that the evidence of a witness be allowed to be taken on an examination before the hearing of any proceedings,
- (g) that a party give further particulars of any claim, defence or cross-claim,
- (h) for substituted service of process,
- (i) in respect of the joinder, misjoinder or non-joinder of parties,
- (j) in respect of the amendment of a document,
- (k) that the hearing of proceedings be expedited,
- (l) that proceedings be heard together,
- (m) consequent on the failure by any person to comply with an order of a type referred to in paragraphs (a)–(l),
- (n) that an application or objection filed out of the time stipulated in any Act, rule or regulation be dismissed,
- (o) that an extension of time be granted for the filing of an application to the Court in any matter where such an extension may be granted,
- (p) in exercise of any relevant power pursuant to the [Service and Execution of Process Act 1992](#) (Commonwealth),
- (q) subject to rule 4, awarding costs where, in the Registrar's opinion, it is appropriate to make such an order,
- (r) any order under section 69A of the Act.

- (2) The Registrar may delegate the making of any of the orders referred to in subrule (1) (a)–(q) to any other officer in the Registry as the Registrar sees fit.

4 Hearings by Registrar and undertakings

- (1) The Registrar may hear proceedings if the only matter in question is the matter of costs and it is unlikely in the opinion of the Registrar that the costs will exceed \$5,000.
- (2) The Registrar may accept an undertaking given to the Court.
- (3) The Registrar may accept the continuation of an undertaking given to the Court.
- (4) The Assistant Registrar may exercise any of the functions in subrules (1)-(3).

5 Direction to Registrar or other officer

- (1) The Court may by order direct the Registrar or any other officer of the Court to do or refrain from doing, in any proceedings, any act relating to the duties of the officer's office.
- (2) An application for an order under subrule (1) is to be made upon affidavit filed in the proceedings and reasonable notice is to be given to the officer concerned.

6 Referral of proceedings to Court

The Registrar or Assistant Registrar may, of his or her own motion or on application by a party, refer any proceedings before him or her to the Court.

7 Removal of proceedings to Court

The Court, before the conclusion of any proceedings before the Registrar, or Assistant Registrar may, on application by a party, order that the proceedings be removed into the Court.

8 Disposal of referred or removed proceedings

Upon the referral of any proceedings to the Court under rule 6, or the removal of any proceedings into the Court under rule 7, the Court may:

- (a) hear and determine any matter in the proceedings in respect of which the proceedings were before the Registrar or Assistant Registrar, or
- (b) determine any question arising in the proceedings and remit the proceedings to the Registrar or Assistant Registrar with such directions as the Court thinks fit.

9 Review of Registrar's action

If the Registrar or Assistant Registrar gives a direction or makes an order or does any other act in any proceedings, the Court may, on application by any party, review the direction, order or act, and may make such order by way of confirmation, variation, discharge or otherwise as the Court thinks fit.

Part 4 Documents

1 Information to be shown on documents

- (1) A document filed in proceedings is to be headed “In the Land and Environment Court of New South Wales” and is to show the number and year allocated to the proceedings and the names of the parties in sufficient detail to identify them.
- (2) Subrule (1) is satisfied (except in the case of an originating process, a document to be served on a person not a party to the proceedings or a final order) if the document bears an abbreviation of the matters required under that subrule sufficient to identify the proceedings.
- (3) The first page of a document prepared by a party for use in the Court is to be set out as in Form 1.
- (4) The following information is to be shown at the foot of the left hand side of the first page of a document prepared by a party for use in the Court:
 - (a) if the party is represented by a solicitor—the name, address and telephone number of the solicitor for the party,
 - (b) if the solicitor acts in the proceedings by an agent—the name, address and telephone number of the agent,
 - (c) if the address for service of the party is the office of a solicitor who has an exchange box in a document exchange of Australian Document Exchange Pty Limited—the solicitor’s exchange box number,
 - (d) if the party is not represented by a solicitor—the name and address for service of the party.

2 Registrar may add matter

The Registrar may add to the matters shown on the front page of a document filed or lodged in proceedings in the Court if the additional material is needed for the purpose of keeping the document as a record.

3 Signature of party

- (1) A document filed on behalf of a party in proceedings is to be signed by the party.
- (2) If there is more than one party in the same interest, the document is to be signed by all the parties in that interest.
- (3) If by any law a party is required to sign a document for filing in any proceedings in the Court, that requirement is satisfied if the document is signed by the solicitor for the party, or, if the party is entitled to appear by an agent authorised in writing, by that

agent.

4 Situation where no prescribed form

- (1) The Chief Judge may from time to time approve forms for use in the Court in cases where no form is prescribed by the Act or by these rules.
- (2) A document filed in proceedings is to be in such an approved form if an approved form is applicable. If no approved form is applicable, the document is to be framed to the satisfaction of the Registrar.
- (3) Section 80 of the *Interpretation Act 1987* applies to a form approved under this rule as if it were a form prescribed by these rules.

5 Paper and writing

- (1) A document is to be on paper of durable quality, capable of receiving ink writing, and of A4 size (that is, about 297 millimetres long and 210 millimetres wide).
- (2) The writing on a document is to be on one side of the paper only and a margin of not less than 25 millimetres is to be kept clear on the left hand side of each page.
- (3) There is to be a space of not less than 3 millimetres between the characters on successive lines.
- (4) The writing is to be clear, sharp, legible and permanent.
- (5) Dates, amounts and other numbers in any document filed in any proceedings are to be expressed in figures and not in words.
- (6) This rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

6 Filing by facsimile machine

Any document, other than originating process, may be filed at the Registry by facsimile machine, provided the original is filed within 7 days.

7 Rejection of documents

- (1) A document is not to be accepted at the registry if:
 - (a) it is a carbon copy, or
 - (b) it has any blotting, erasure or alteration such as to cause material disfigurement,
or
 - (c) it is in an unclean or other objectionable condition, or
 - (d) by reason of any defect or failure to comply with any rule or otherwise, the

document would if accepted be ineffective for the purpose for which it is lodged.

- (2) If the Registrar rejects a document filed or tendered for filing, the Registrar is to give notice, either orally or in writing, of the rejection and the reasons for it to the party requiring the document to be filed.

8 Scandal etc

The Court may order to be struck out of any document filed any matter which is scandalous, frivolous, vexatious, irrelevant or oppressive.

9 Search

- (1) A party to proceedings and the Registrar-General may search in the registry for, or inspect, any document relating to those proceedings without the leave of the Registrar.
- (2) Any other person cannot do that without the leave of the Registrar.
- (3) The right to inspect any document conferred by subrule (1) or (2) does not apply in respect of any document for which any claim for privilege has been upheld or is awaiting determination by the Court.

10 Certified copies

The Registrar may, on prepayment of the Registrar's costs, prepare and certify copies of any filed documents for any party entitled to require the copies.

11 Sealing of duplicates

If any document under the seal of the Court is lost or destroyed, the Registrar may from time to time seal a duplicate of the document if satisfied by affidavit or otherwise of the loss or destruction.

Part 5 Solicitors

1 Power to act by solicitor

- (1) Every matter or thing in relation to any proceedings which under the Act or these rules or otherwise by law is required or allowed to be done by a party may be done by the party's solicitor on the record of the proceedings.
- (2) This rule does not apply where the context or subject matter otherwise indicates or requires, for example, in the case of a personal undertaking given by a party to the Court.

2 Solicitor cannot normally represent two adverse parties

If a solicitor (or a partner or employee of a solicitor) acts as solicitor for any party to any

proceedings, or is a party to any proceedings, the solicitor must not, without leave of the Court, act for any other party to the proceedings not in the same interest.

3 Appointment of solicitor

- (1) If a solicitor signs and files on behalf of a party the first document filed on behalf of the party in any proceedings, the solicitor is the party's solicitor on the record of the proceedings.
- (2) If a party acts for himself or herself in any proceedings and afterwards appoints a solicitor to act for him or her in the proceedings, the party or the solicitor is to sign and file notice of the change and serve the notice on the other parties to the proceedings.
- (3) Any change referred to in subrule (2) takes effect, and a solicitor becomes the solicitor of a party on the record, when the filing and service required by that subrule are complete.

4 Change of solicitor or agent

- (1) A party may change solicitors in proceedings.
- (2) If a party changes solicitors, the party or the new solicitor is to sign and file notice of the change and serve the notice on the other parties, and, if practicable, the former solicitor of the party.
- (3) If a solicitor acts for a party in any proceedings and afterwards the party, without changing solicitors, terminates the authority of the solicitor to act for the party in the proceedings:
 - (a) the party is to sign and file notice of the change and serve the notice on the other parties and, if practicable, the solicitor, or
 - (b) the solicitor may sign and file notice of the change and serve the notice on the parties.
- (4) This rule applies where a solicitor (here referred to as the principal solicitor) acts for a party in any proceedings and another solicitor acts as agent for the principal solicitor in the proceedings. If the principal solicitor changes the solicitor acting as agent, the party, the principal solicitor or the new agent, is to sign and file notice of the change and serve the notice on the other parties, and, if practicable, the former agent solicitor.

5 Solicitor ceases to act

- (1) In a case where a party does not terminate the authority of a solicitor to act for the party in proceedings, but the solicitor ceases so to act before the proceedings are concluded, the solicitor may, subject to this rule, sign and file notice of the change

and serve the notice on the parties.

- (2) A solicitor must not file or serve a notice of change without leave of the Court unless the solicitor has, not less than 7 days before doing so, served on the former client notice of intention to file and serve the notice of change.
- (3) A solicitor filing a notice of change must, except if the notice is filed with leave of the Court, file and serve with the notice an affidavit showing service in compliance with this rule.
- (4) A solicitor may serve a notice under this rule on the client by posting it to the client at the residential or business address of the client last known to the solicitor.
- (5) A solicitor ceases to be the solicitor of a party on the record when any filing and service required by this rule are complete.

6 Signing on behalf of solicitor

- (1) If a signature by a solicitor is required or permitted for the purpose of any proceedings, a signature for the solicitor by any of the following persons instead of the solicitor's own signature, is sufficient:
 - (a) a partner of the solicitor,
 - (b) a solicitor who is the Sydney agent of the solicitor for the purpose of the proceedings,
 - (c) a partner of the Sydney agent,
 - (d) a solicitor employed by the solicitor or by the Sydney agent,
 - (e) a signatory authorised under subrule (2).
- (2) The Registrar may authorise a clerk of a solicitor to be a signatory for the purposes of this rule in all or in any class of procedures in the Court, as the case may be, for the clerk's master and for any solicitor of whom the master is Sydney agent. The Registrar may revoke any authority given under this subrule.
- (3) A signature made pursuant to this rule must be accompanied by a statement of the capacity in which the signature is made.

Part 6 Application of Supreme Court Rules

1 Proceedings in Classes 1, 2, 3 and 4

- (1) Parts 8, 10, 11, 13 (Division 2), 18, 23, 24, 25 (Division 2), 27, 31, 37, 38, 39, 42, 43, 44, 45, 46, 47, 53, 55, 63, 64 and 72 of the *Supreme Court Rules 1970* are taken to form part of these rules and to apply, with such adaptations as may be necessary, to proceedings in Classes 1, 2 and 3 of the Court's jurisdiction.

- (2) The provisions referred to in subrule (1) together with Parts 22, 28 and 36 (other than Rules 13C and 13CA) of the *Supreme Court Rules 1970* are taken to form part of these rules and to apply with such adaptations as may be necessary to proceedings in Class 4 of the Court's jurisdiction.
- (3) Where any conflict exists or arises between the operation of these rules (except subrules (1) and (2)) and the operation of subrules (1) and (2) the former are to prevail.
- (4) Without limiting the operation of subrules (1) and (2) the following adaptations to the provisions of the *Supreme Court Rules 1970* made applicable by those subrules have effect:
 - (a) a reference to the Supreme Court is taken to be a reference to the Court,
 - (a1) a reference to the Chief Justice of the Supreme Court is taken to be a reference to the Chief Judge of the Court,
 - (b) a reference to a Judge of the Supreme Court is taken to be a reference to a Judge of the Court,
 - (b1) a reference to a Master of the Supreme Court is taken to be a reference to a Commissioner of the Court,
 - (c) a reference to an officer of the Supreme Court is taken to be a reference to the officer of the Court whose functions most nearly approximate those of the officer of the Supreme Court,
 - (d) a reference to a plaintiff includes a reference to an applicant,
 - (e) a reference to a defendant includes a reference to a respondent,
 - (f) a reference to a statement of claim or other originating process is taken to be a reference to an application.

2 Proceedings in Class 5

- (1) Division 2 of Part 75 of the *Supreme Court Rules 1970* is taken to form part of these rules and to apply to proceedings in Class 5 of the Court's jurisdiction with such adaptations as may be necessary including the following:
 - (a) a reference to the Supreme Court is taken to be a reference to the Court,
 - (b) a reference to a Judge of the Supreme Court is taken to be a reference to a Judge of the Court,
 - (c) a reference to an officer of the Supreme Court is taken to be a reference to the officer of the Court whose functions most nearly approximate those of the officer of the Supreme Court,

- (d) a reference to a provision of the *Supreme Court (Summary Jurisdiction) Act 1967* is taken to be a reference to the corresponding provision, if there is a corresponding provision, of Division 5 of Part 4 of the Act,
 - (e) a reference to a plaintiff is taken to be a reference to a prosecutor,
 - (f) a reference to a defendant is taken to be a reference to a person alleged in an application to have committed an offence punishable in the Court in its summary jurisdiction.
- (2) Despite subrule (1) a summons seeking an order pursuant to section 41 of the Act is to be accompanied by the affidavits intended to be relied on by the prosecutor as establishing prima facie proof of the offence charged.

Part 7 Commencement of proceedings

1 Application

- (1) The originating process to commence proceedings is:
- (a) in the case of proceedings in Class 1, 2 or 3—an application in or to the effect of Form 2 or where the proceedings relate to an application to modify a consent pursuant to section 102 of the *Environmental Planning and Assessment Act 1979* or to amend an approval pursuant to section 106 of the *Local Government Act 1993* (where that consent or approval was granted by the Court)—an application in or to the effect of Form 3, or
 - (b) in the case of proceedings in Class 4—an application in or to the effect of Form 4, or
 - (c) in the case of proceedings in Class 6—an application in or to the effect of Form 5.
- (2) The originating process is to contain the following particulars:
- (a) the full name, the address and the telephone number of the applicant, together with particulars of any representative capacity in which the applicant brings the proceedings,
 - (b) the full name of the respondent and the address at which service is to be effected on the respondent, so far as these matters are known to the applicant,
 - (c) an address at which service of documents in the proceedings will be accepted on behalf of the applicant,
 - (d) in proceedings in Classes 1, 2 and 3—the date or other identification of the decision, or other matter appealed against, objected to, or otherwise complained of or referred or remitted to the Court,

(e) in proceedings in Class 4—a statement of the relief or remedy sought.

(3) Where the originating process is an application under section 27AC (2) of the *Aboriginal Land Rights Act 1983*, the following additional requirements apply to that process:

(i) it must contain the following matter:

- (a) the description of the applicant,
- (b) the date and result of the election,
- (c) the date on which the result of the election is publicly declared, and
- (d) the facts relied upon to invalidate the election or return, and

(ii) it must nominate as the respondents to the proceedings every person the validity of whose election or return is disputed and the Electoral Commissioner of New South Wales.

2 Commencement

- (1) Proceedings referred to in rule 1 are to be commenced by the filing of an original application, together with copies numbering one more than the number of parties to be served.
- (2) The originating process may not be filed by facsimile machine.
- (3) If an original application is posted to the Registrar together with the required number of copies and the prescribed fee, it is taken to have been filed on the day on which it is received by the Registrar.
- (4) If an application is filed at a Local Court, together with the prescribed fee, it is taken to have been filed on the day it is received at the Local Court.

3 Endorsement and service

- (1) If the proceedings are such that a conference is required to be arranged under section 34 of the Act, the Registrar is to endorse on the application and copies lodged a notification of the conference and of the date, time and place at which it is to be held.
- (2) If no conference is required to be arranged under section 34 of the Act, the Registrar is to fix a date for the hearing of the proceedings, or a date on which the proceedings are to be called over, or a date for mediation. the Registrar is to endorse on the application and copies lodged a notification of the hearing, call-over or mediation and of the date, time and place at which it is to be held.
- (3) The Registrar is to return to the applicant the copies endorsed under subrule (1) or (2). The applicant is to serve one of those copies on each respondent to the

proceedings within 14 days after the commencement of proceedings and not less than 14 days before the date endorsed.

4 Validity for service

- (1) An application is valid for service until the last day on which service could be effected in accordance with this Part.
- (2) Nothing in this rule prevents an applicant from commencing fresh proceedings by lodging another application.

5 Application not served

Except with the leave of the Court or the Registrar or Assistant Registrar, a hearing, call-over, mediation or conference cannot take place in respect of any proceedings unless the Court, Registrar or Assistant Registrar, is satisfied that the application commencing the proceedings has been served, or notices have been sent, as required by this Part.

Part 8 Service

Division 1 General

1 Definitions

In this Part:

copy means a true copy of a document to be served.

party means the person to be served with a document.

service means service of a document required or permitted by the Act or these rules or any order of the Court to be served in the conduct of any proceedings.

2 Who may serve process

Except where otherwise provided by or under any Act or in these rules, service may be effected by any person aged 16 years or more.

3 Mode of service

- (1) Service may be personal, but need not be personal unless required by these rules or any order (for example, an order for substituted service).
- (2) Except where otherwise provided by any Act, originating process must be served personally on each respondent.
- (3) Personal service on a party may be effected by delivering a copy to the party personally.
- (4) A copy may be delivered to a person by handing it to the person or by leaving it in the

person's presence and informing the person of its nature.

- (5) Except if personal service is required, service on a party may be effected by delivering a copy at the residence or place of business of the party to a person apparently not less than 16 years old and apparently residing at that residence or employed at that place of business.
- (6) For service of a document to be regular, it is not necessary that the original be produced to any person.

4 Address for service

- (1) An address for service in any proceedings is to be the address of a place at which documents in which the address is notified may, during ordinary business hours, be left for the party whose address for service it is, and to which documents in the proceedings may be posted for the party.
- (2) The address for service in any proceedings of a party who has on the record of the proceedings a solicitor acting for the party is the office of the solicitor, or of the solicitor's agent.
- (3) A party may change the address for service by filing and serving a notice of the change showing the new address for service.
- (4) If a party notifies, in any document filed by the party, an address for service, leaving a copy, or sending a copy by post addressed to the party, at that address for service is to be taken as good service on the party as on the day when the copy is left, or would have been delivered in the ordinary course of post, as the case may require.
- (5) Subrule (4) does not apply to or in respect of the service of any originating process or other document which requires personal service.

5 Day when service cannot be effected

Service cannot be effected on a Sunday on which Christmas Day falls.

6 Doubtful service

- (1) In a case of doubtful service, the Court is not to allow any fresh steps in proceedings to be taken against a party, but is to adjourn or strike out the proceedings, or order fresh process to issue, as it considers just.
- (2) In this rule, "doubtful service" refers to a case where service of any document on a party has not been personal, and the Court is satisfied on the evidence before it that the document did not come to the knowledge of the party within a reasonable time, or, on that evidence, that the service is in doubt.

7 Substituted service

- (1) If for any reason it is impracticable to effect service of any document on a person in any of the modes prescribed in this Part for that service, the Court may, on application supported by an affidavit showing grounds, by order direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person.
- (2) If the Court makes an order under this rule, it may order that service be taken to be effected on the happening of any specified event, or on the expiry of any specified time.

8 Deemed service

If it is impracticable for any reason to effect service of any document, but steps have been taken for the purpose of bringing, or having a tendency to bring, the document to the notice of the party, the Court may if it thinks fit by order direct that the service be deemed to have been effected on a date specified in the order.

9 Waiver of objection to service

If a party files any document in reply to a document alleged to have been served on the party, he or she is taken to have waived any objection to the service unless at the time of filing the document in reply, notice of the objection is also filed and served.

10 Service on solicitor (originating process)

If a solicitor makes on a copy of any originating process a note that he or she accepts service of the process on behalf of any person, process is taken to have been duly served on the person on the date on which a copy of the process was delivered to the solicitor or left at the solicitor's office.

11 Service on solicitor (other documents)

- (1) Delivery of a copy of a document in proceedings to a party's solicitor, or leaving a copy at the solicitor's office, or sending a copy by post addressed to the solicitor at the solicitor's office, is taken to be good service of the document on the party as on the day when the copy is delivered or left, or would have been delivered in the ordinary course of post, as the case may require.
- (2) Where the address for service of a person to be served is the office of a solicitor who has an exchange box in a document exchange in the State of Australian Document Exchange Pty Limited by leaving a copy of the document, addressed to that solicitor, in that exchange box or at another exchange box for transmission to that exchange box is sufficient service two days after the copy is so left.
- (3) In addition, delivery by any particular electronic means to the solicitor's office of a reproduction of the document or copy is sufficient service on that party as on the day

after that delivery if the solicitor has indicated in writing that delivery by those means is acceptable as service.

- (4) This rule applies in a case where a party has on the record of any proceedings a solicitor acting for him or her. This rule does not apply to or in respect of the service of any originating process or document if that service must be personal.

12 Identity

For the purposes of the proof of service, evidence of a statement by a person of the person's identity, or that the person holds some office, is evidence of that identity or that the person holds the office, as the case may be.

Division 2 Particular cases

13 Prisoners

Personal service on a prisoner who is a party may be effected by delivery to the prison governor or other person in charge at the prison.

14 Corporations

- (1) Personal service on a corporation which is a party may be effected by delivery to the chairperson or president of the corporation, or to the general manager, chief clerk, secretary, treasurer or other similar officer of the corporation.
- (2) This rule has effect only where no other law applies to service on the corporation.

15 Unregistered firm

- (1) If a person is carrying on business within New South Wales under a business name not registered under the *Business Names Act 1962*, any originating process or other document relating to any proceedings may be served on the person:
- (a) by leaving it at a place within New South Wales where the business is carried on with some person apparently engaged (whether as employee or otherwise) in the business and apparently 16 years old or older, or
 - (b) by sending it by certified mail addressed to the business name, or to the person, at a place within New South Wales where the business is carried on.
- (2) This rule applies whether the person is named in the proceedings in his or her own name or in a business name.
- (3) Service in accordance with this rule has effect as personal service.
- (4) If a document is served in accordance with this rule, the place of service is, for the purpose of the proceedings, taken to be the place (if any) referred to in subrule (1) (a) or (b) and not the place where the person served was at the time of service.

- (5) This rule does not limit the operation of section 31 (2) of the *Business Names Act 1962* or of any other Act or any rule or regulation relating to service.

Part 9 Motions

1 Application of Part

This Part applies to an interlocutory or other application in relation to any proceedings, other than an application by which proceedings are commenced.

2 Application to be by motion

An application to which this Part applies is to be made by motion.

3 Motion out of Court

- (1) A motion to a Judge in respect of any proceedings is to be made by filing in the proceedings the following documents:
- (a) a notice of the motion, unless such a notice may be dispensed with under rule 4 (2),
 - (b) all affidavits and other documents on the basis of which the motion is to be made,
 - (c) a minute of the order sought, if the minute is required by the Registrar.
- (2) Once the documents are filed as required by this rule, the Registrar is, as soon as practicable, to submit all documents filed in the proceedings (including those required by this rule) to a Judge for consideration of the motion.

4 Notice

- (1) A person must not move the Court for any order unless notice of the motion has first been filed in the proceedings and has been served on each interested party.
- (2) However, a person may move the Court without previously filing or serving notice of the motion:
- (a) if the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant, or
 - (b) if each party interested, other than the applicant, consents to the order, or
 - (c) if under these rules or the practice of the Court for the time being the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion, or
 - (d) if the Court dispenses with the requirements of subrule (1).
- (3) A notice of motion is to:

- (a) state the date and time when, and the place where, the motion is to be made, and
- (b) if the Court has made an order under rule 5, bear a note of the order made, and
- (c) state concisely the nature of the order which is sought, and
- (d) state concisely the grounds on which the order is sought, and,
- (e) name each party to be affected by the order which is sought.

5 Time for service

If a notice of motion is required to be served it must, unless the Court otherwise orders, be served not less than 3 days before the date fixed for the motion.

6 Affidavits

A party who intends at the hearing of any motion to rely on any affidavit must file the affidavit in the proceedings and serve a copy on each other interested party (except a party on whom service of a notice of the motion is dispensed with in accordance with these rules) not less than 2 days before the hearing or within such period as the Court may order.

7 Hearing

- (1) The Court, on the hearing or adjourned hearing of any motion, may make or refuse the order sought and may make such other order or give such directions as may be just.
- (2) A motion in relation to any proceedings is to include, so far as is practicable, all or as many applications as the applicant may desire to make in relation to the proceedings and as, having regard to the nature of the proceedings, can conveniently be dealt with at the one time.
- (3) On the hearing or adjourned hearing of the motion, any respondent is at liberty to make an application for an order in relation to the proceedings.
- (4) The Court may either grant or refuse the order applied for by the respondent, and give such directions as may be just, or may adjourn the hearing of the application and direct that notice be given of the application.
- (5) If the Court grants or refuses any order upon the hearing or adjourned hearing of a motion, it may do so on terms.

Part 10 Amendment

1 Orders for amendment

- (1) The Court may, at any stage of any proceedings, on the application of any party or

without any such application, order, on terms, that any document filed in the proceedings be amended in such manner as the Court thinks fit.

- (2) All such amendments shall be made so as to lead to the determination of the real questions raised by or otherwise depending on the proceedings, or the correction of any defect or error in any proceedings, or the avoidance of a multiplicity of proceedings.
- (3) If there has been a mistake in the name of a party, the person intended to be made the party may apply for amendment under this Part as if the person were indeed a party.
- (4) This rule does not apply to the amendment of a judgment, order or certificate. Instead, rule 7 applies to such an amendment.

2 Amendments after the expiry of periods of limitation

- (1) If a relevant period of limitation expires after the filing of an application and after that expiry a notice of motion is filed with the Court for an order to amend the application under this rule, the Court may nevertheless make the order, unless it would be contrary to any law (other than these rules) to do so.
- (2) If notice of motion for an order making an amendment is filed within 14 days after the date of filing the application, the Court may make the amendment (whatever the nature of the amendment) unless it would be contrary to any law (other than these rules) to do so.
- (3) If there has been a mistake in the name of a party and the Court is satisfied that the mistake was not misleading nor such as to cause reasonable doubt as to the identity of the person intended to be made a party, the Court may make an order making an amendment to correct the mistake, whether or not the effect of the amendment is to substitute a new party.
- (4) If at the date of filing an application, the applicant is entitled to commence proceedings in any capacity, the Court may make an order making an amendment having the effect that the applicant proceed in that capacity.
- (5) If an applicant, in an application, claims any relief on a cause of action arising out of any facts, the Court may make an order making an amendment having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts and a claim for relief on that new cause of action.
- (6) This rule does not limit the powers of the Court under rule 1.

3 Mode of amendment—directions

If the Court orders the making of an amendment, it may give such directions as it thinks

fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment, and may make any such order conditional on compliance with any such directions.

4 Simple amendments to same document

If the amendments ordered under this Part are not such as to render a document difficult or inconvenient to read, the Registrar may make them simply by writing the alterations and the date of the order in the document and sealing the alterations with the seal of the Court. However, this rule is subject to any direction under rule 3.

5 Complex amendments: fresh document

Otherwise, amendments ordered under this Part are to be made by filing a fresh document amended as so ordered, and bearing a statement specifying that the document has been amended and the date of the order. However, this rule is subject to any direction under rule 3.

6 Service after amendment

- (1) If a document has been served and is afterwards amended, the party who filed the document must, as soon as practicable after the amendment is made, serve on the parties on whom the document was served:
 - (a) if the amendment is made under rule 4—a notice specifying the amendment and the date of the order, or
 - (b) if the amendment is made under rule 5—the fresh document.
- (2) However, this rule is subject to any direction under rule 3.

7 Correction of judgment, order or certificate

- (1) If there is a clerical mistake, or an accidental error or omission, in a judgment or order, or in a certificate, the Court, on the application of any party or without any such application, may, at any time, correct the mistake or error.
- (2) Rules 4, 5 and 6 do not apply to a correction made under subrule (1).

8 Modification or amendment of Court consents or approvals

- (1) This rule applies to an application to modify a development consent under section 102 of the *Environmental Planning and Assessment Act 1979*, or to amend an approval under section 106 of the *Local Government Act 1993*—in each case where that consent or that approval has been granted by the Court.
- (2) An application under this rule shall be in or to the effect of Form 3.
- (3) The provisions of Part 9 (Motions) apply to an application made under this rule as if it

were a motion.

Part 11 Withdrawal and discontinuance

1 Discontinuance

A party may at any time discontinue any proceedings brought by the party, so far as concerns the whole or any part of any claim by the party.

2 Withdrawal

A respondent which is a consent authority referred to in section 96 (4) of the [Environmental Planning and Assessment Act 1979](#) may with the consent of the applicant, and all other parties, have the proceedings withdrawn.

3 Mode of discontinuance

- (1) A discontinuance or withdrawal is to be made by filing a notice stating the extent of the discontinuance or withdrawal.
- (2) If the discontinuance is by consent, the consent is to be endorsed by each consenting party on the notice before filing.
- (3) Consent is to be endorsed on a notice of withdrawal before filing.

4 Service

A party filing a notice under rule 3 is to serve it on each other party as soon as practicable after filing the notice.

5 Costs

- (1) If a party to any proceedings discontinues them in whole or in part, the Court may, on the application of another party, order the discontinuing party to pay the costs of any party against whom the discontinued claim was brought and who does not consent to the discontinuance.
- (2) The costs payable to a party under any order made under this rule are to be the costs of the party occasioned by the discontinued claim and reasonably incurred before service on the party of notice of the discontinuance.
- (3) Nothing in this rule limits the Court's power to order costs if proceedings are withdrawn under rule 2.

6 Discontinuance not defence

A discontinuance under this Part as to any claim is not, subject to the terms of any consent to the discontinuance, a defence to further proceedings on the same claim, or any claim which is substantially the same.

7 Stay to secure costs

- (1) This rule applies if the following elements are all satisfied:
 - (a) a party discontinues proceedings on a cause of action wholly or in part,
 - (b) the Court orders the party because of the discontinuation to pay the costs of another party in the proceedings,
 - (c) before payment of the costs, the party brings against the other party further proceedings on the same or substantially the same cause of action.
- (2) On the application of the other party, the Court may stay the further proceedings until those costs are paid.

Part 12 Stay of proceedings and failure to prosecute

1 Stay of proceedings

At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

2 Failure to prosecute proceedings

- (1) If an applicant does not within a reasonable time take any step necessary to bring any proceedings to a hearing, or unreasonably takes any step to avoid the proceedings being brought to a hearing, the Court may, on the application of the respondent, order on terms that the proceedings be dismissed or make such other order as the Court thinks fit.
- (2) The Court may at any time prior to the hearing, if satisfied that there is no good reason for the failure of the applicant to prosecute the proceedings, dismiss those proceedings.
- (3) If proceedings are dismissed under this rule, Part 11 rules 5, 6 and 7 apply as though the dismissal were a discontinuance.

Part 13 Rules applying only to proceedings in Classes 1, 2 and 3 of the Court's jurisdiction

Division 1 Preliminary

1 Application of Part

This Part applies only to proceedings in Classes 1, 2 and 3 of the Court's jurisdiction.

Division 2 Assessors

2 Limitations on functions

- (1) The functions of the Court exercisable by an Assessor under sections 34 (4) or 36 (2) of the Act do not include the functions referred to in section 67 (d) or (e) of the Act, or in Part 3 rule 3, 7 or 9, Part 4 rule 8, Part 5 rule 2 or 5 (2), Part 9, Part 11 or Part 12.
- (2) A Commissioner shall not exercise any function conferred upon the Court by Part 6 Rule 1 (1) in respect of Supreme Court Rules Part 39 or 72 except with the prior concurrence of the Chief Judge.

Division 3 Parties

3 Where reference to other body required

- (1) A respondent must serve a copy of the application commencing proceedings on the appropriate Minister or public authority referred to in section 97 (3) of the *Environmental Planning and Assessment Act 1979* if the respondent is a consent authority as referred to in that section.
- (2) The respondent must do so as soon as practicable after the respondent itself is served with the application commencing the proceedings.
- (3) This rule does not affect the power of the Court to order the joinder of any parties to the proceedings.
- (4) Where the Minister or a public authority makes a written submission or provides information to the Court in response to a notice pursuant to section 97 (3) of the *Environmental Planning and Assessment Act 1979* otherwise than by way of application to be heard at the hearing, the Court will not take into account the submission made or the information provided unless a copy is provided to the parties and the parties have been given the opportunity to be heard and if necessary to adduce evidence in relation thereto.

4 Parties to appeals under the *Environmental Planning and Assessment Act 1979*

- (1) An application by an objector under section 97 (2) of the *Environmental Planning and Assessment Act 1979*, or by the Minister or a public authority under section 97 (3) or 98 (3) of that Act, is to be made by letter which is addressed and delivered to the Registrar and which identifies the relevant proceedings.
- (2) The Registrar is to notify all parties to the relevant appeal as soon as practicable after receiving the application.
- (3) In an appeal under section 98 (1) of the *Environmental Planning and Assessment Act 1979*, the person who made the development application and the relevant consent

authority are the respondents to the appeal, and notice must be given to those respondents in accordance with these rules.

Division 4 Particulars

5 Particulars

- (1) A party may, by reasonable notice to another party, require such particulars of the other party's case as are necessary to enable the first party to identify the case to be met.
- (2) The Court may, on terms, order a party to file and serve on another party further and better particulars of the case on which the first party relies.
- (3) At the same time or subsequently, the Court may direct that if the order is not complied with within a specified time the party ordered to file and serve particulars is not entitled to rely on that case until the order is complied with.
- (4) Alternatively, the Court's direction may be that the proceedings be stayed until the order is complied with.

Division 5 Conference

6 Consent authority to make documents available

- (1) A consent authority must, if the presiding Assessor at a conference held under section 34 of the Act so requires, make available for examination by the Assessor all documents relating to the proceedings the subject of the conference and within the possession or control of the authority, including any relevant environmental planning instruments within the meaning of the *Environmental Planning and Assessment Act 1979*.
- (2) The Assessor may allow any party to examine any documents made available under this rule.
- (3) This rule does not require the authority to make available for examination any document which is privileged from disclosure except with the consent of the person entitled to the privilege.

7 Adjournment of conference

The presiding Assessor at a conference may, if satisfied that there is good reason to do so, adjourn the conference to a time and place fixed in consultation with the Registrar.

Division 6 Setting down for hearing etc

8 Call-over

- (1) If no date for the hearing of any contested proceedings has been fixed and endorsed under Part 7 rule 3 (2), or if a date has been fixed and has passed without the hearing commencing, the proceedings are not to be heard except on a date fixed by the Registrar at a call-over.
- (2) A party in contested proceedings may apply in writing to the Registrar to fix a date for a call-over, if the proceedings are on that party's part ready for hearing and no date for a conference, hearing or call-over has been fixed under these rules and is still pending.
- (3) On such an application, the Registrar is to fix a date for the call-over of the proceedings and to advise the parties of the date.
- (4) At a call-over the Registrar is to do the following in respect of proceedings listed before the Registrar:
 - (a) consider the preparations for hearing, the identification of the issues, and the probable length of the hearing,
 - (b) so far as possible, deal with all matters which may be dealt with on application to the Court before the hearing,
 - (c) give such directions for the conduct of the proceedings as appear best adapted for the just, expeditious and economical disposal of the proceedings,
 - (d) on being satisfied that the proceedings are ready for hearing, fix a date for the hearing,
 - (e) if not satisfied of that, strike the proceedings out of the call-over list, or adjourn them, on terms, to a later call-over, as the Registrar decides.
- (5) The Registrar may conduct a call-over by telephone in a special case or in a case within a special class.

9 Agreement

- (1) At a call-over, the Registrar is to endeavour to ensure that the parties make all agreements as to the conduct of the proceedings which ought reasonably to be made by them.
- (2) The Registrar may record any such agreement.
- (3) The Registrar may record any refusal to make such an agreement. Such refusal may later be taken into account on questions of costs or adjournments.

- (4) An agreement cannot be made to exclude or limit any right of appeal.

10 Information and documents

- (1) At the call-over each party is to give the information, and to produce the documents, which the Registrar requires, both to the Registrar and to the other parties appearing at the call-over.
- (2) However, a party cannot be required to give information, or to produce a document, which is privileged from disclosure except with the consent of the person entitled to the privilege.
- (3) A party is not required to give information or to produce a document to the other parties if the Registrar gives an order to that effect.
- (4) If a party fails to meet a requirement under this rule, the Registrar may:
- (a) record the requirement and failure so that they may later be taken into account on questions of costs or adjournments, or
 - (b) stay or dismiss the proceedings so far as concerns any claim for relief by the party who failed to meet the requirement.

11 Applicant fails to attend call-over

- (1) If the applicant in proceedings does not appear at a call-over, the Registrar may hold a further call-over.
- (2) The Registrar is to give notice to the parties of the further call-over. The notice is to include a warning that the application is liable to be dismissed under rule 12.

12 Failure to attend a further call-over

If an applicant is notified of a further call-over in accordance with rule 11, and fails to attend the further call-over, the Registrar may dismiss the proceedings without further notice to the parties, but only if the Registrar included warning of the dismissal in the notice of the further call-over.

Division 7 Proceedings in Classes 1 and 2, and certain proceedings in Class 3

13 Application of Division to Class 3 matters

This Division applies to Class 1 and Class 2 proceedings and to the following proceedings in Class 3:

- (i) farmland rating appeals under section 526 of the *Local Government Act 1993*,
- (ii) appeals under the *Valuation of Land Act 1916*,

(iii) appeals under section 341 of the *Local Government Act 1919*.

14 Issues identified and settled

Issues, including questions of law, are to be identified with precision and settled at the first call-over before the Registrar. They cannot later be added to or expanded without leave.

15 Referral to mediation or section 34 conference

At call-over the Registrar, where appropriate, is to refer proceedings to mediation or a conference under section 34 of the Act in accordance with these rules or the Practice Directions concerning mediation and section 34 conferences.

16 Requirements for hearing

Where proceedings are not referred to mediation or conciliation or where the proceedings remain unresolved following mediation or conciliation, they will be fixed for hearing. Where proceedings have been fixed for hearing the following requirements apply:

- (a) all expert reports (including plans, diagrams and photographs) to be relied upon at the hearing must be served at least 14 days prior to the date fixed for hearing,
- (b) except with the leave of the Court the expert's report is not admissible unless it has been served in accordance with any relevant Practice Direction and Rules of the Court,
- (b1) except with the consent of the respondent, or by leave of the Court, the applicant at the hearing shall not be entitled to rely upon any amended plans of the development proposal which the applicant initiates,
- (c) a party must give notice in writing to the Court and to the other party or parties of his or her desire to cross examine any expert whose report is to be relied upon at least 7 days prior to the hearing,
- (d) oral expert evidence of any expert shall only be allowed by leave of the presiding Judge or Assessor,
- (e) where there is an appeal against the refusal by a consent authority of an application when an approval, if it had been given, could have been made subject to conditions, then:
 - (i) any conditions which the consent authority would seek to impose if the Court were to grant the appeal are to be filed with the Court and served on the applicant not later than fourteen (14) days prior to the listed hearing date,
 - (ii) the applicant's conditions in response are to be filed with the Court and served on the consent authority or its solicitor not later than 7 days prior to the listed hearing date,

- (f) unless a point of law is raised at the call-over referred to above, in accordance with rule 14 it can only be raised in the proceedings by leave by notice of motion,
- (g) subject to the foregoing it shall not be open to a party to raise any question of law in proceedings before an Assessor and the determination by the Assessor shall be made:
 - (i) on the issues in dispute between the parties, and
 - (ii) on the merits of the case,
- (h) despite paragraph (f) and (g) where in proceedings heard by an Assessor a dispute arises as to whether there is power in the Court to grant the application, the Assessor shall refer the question to the Chief Judge pursuant to section 36 (5) of the Act, and
- (i) where parties to a proceeding consent the Court may give its decision after a hearing limited to submissions based upon documentary materials lodged with the Court.

Division 8 Proceedings in Class 3: rules specific to Class 3 compensation matters

17 Application of Division

The following rules apply only to proceedings in Class 3 of the Court's jurisdiction pursuant to section 19 (e) of the Act relating to compensation claimed for the compulsory acquisition of land.

18 Assessment of compensation

On or before the first call-over before the Registrar, the respondent shall file and serve points of assessment of compensation which shall include the following:

- (a) the value of the land taken,
- (b) the basis of the valuation so as to include reference to each relevant consideration enumerated in section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*,
- (c) comparable sales, if any, upon which such valuation was based.

19 Points of claim

On or before the second call-over before the Registrar, the applicant (claiming compensation) shall file and serve points of claim setting out the following:

- (a) the amount of compensation claimed,
- (b) the components of the claim by reference to each relevant matter enumerated in section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*,
- (c) the basis of the valuation in support of the claim,

(d) particulars of comparable sales, if any, upon which the valuation was based.

20 Points of defence

Thereafter the respondent shall file and serve points of defence in answer to each of the components of the applicant's claim and raising any matter relied upon to offset the claim.

21 Expert reports

The Registrar may give directions to all parties to, inter alia, serve expert reports, which shall include:

- (a) a full description of the bases of valuation,
- (b) sales relied upon and full reconciliation of sales,
- (c) particulars of all costs, rates, and estimates,
- (d) expert opinions (eg pertaining to planning, engineering etc) upon which the valuer undertaking the valuation has relied,

and where such directions are given the Registrar must stipulate the times for service of those reports which must be no later than 28 days before the hearing.

22 Referral to mediation

The Registrar, where appropriate, is to refer proceedings to mediation in accordance with these rules or any Practice Direction concerning mediation.

23 Setting down for hearing

Before the proceedings are set down for hearing each party must give notice to the Registrar of the following matters:

- (a) disputed questions of law raised in the case,
- (b) matters in issue arising from reports referred to in rule 21,
- (c) contracts which are in issue or must be produced,

and shall certify that the proceedings are ready for hearing.

24 Procedure at hearings

At the hearing, except with leave of the Court, the following requirements shall apply:

- (a) no expert report is admissible unless it has been served in accordance with any relevant Practice Direction and these rules,
- (b) no disputed matters of law or of fact may be raised other than those matters which

have been identified in the notice given to the Registrar under rule 23,

- (c) there shall be no cross examination of an expert unless notice in writing of the desire to cross-examine that expert has been given to the Court at least 14 days prior to the hearing, and
- (d) no oral expert testimony (including cross-examination) of any expert shall be allowed.

25 Pre-hearing mention

Fourteen (14) days before the date fixed for the hearing the proceeding shall be mentioned before the Court to ensure that it is ready for hearing with all issues in dispute identified.

26 Determination of assessment of compensation

The Registrar may direct by consent that the assessment of compensation be determined with or without oral submissions on the filed documents or affidavit evidence without a formal hearing.

27 Application of [Supreme Court Rules 1970](#)

The provisions of Part 22 of the Supreme Court Rules “Offer of Compromise” and Part 52A rule 22 of those rules apply to all compensation proceedings in Class 3.

Division 9 Hearing

28 Conduct of the hearing

The order of evidence and addresses and the conduct of the hearing generally are to be as directed by the Court.

29 Failure of applicant to attend hearing

If the applicant does not appear at the time and place fixed for the hearing the Court may dismiss the proceedings.

30 Witnesses at hearing

The evidence of a witness is to be given orally before the Court, unless the Court orders that the evidence be given by affidavit. Such an order may be on terms.

31 Attendance and production

- (1) The Court may either of its own motion or on the application of a party make an order:
 - (a) that a person attend a hearing for the purpose of being examined, or
 - (b) that a person attend a hearing and produce a document or thing specified or described in the order.

- (2) Subrule (1) applies whether or not the person for whose attendance the order is made has been required to attend by subpoena.

32 Production on notice

- (1) A party served a notice under this rule must, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for any subpoena for production.
- (2) This rule applies if a party to proceedings serves on another party notice requiring the party served to produce at a hearing, conference or call-over in the proceedings a document or thing for the purpose of evidence, and the document or thing is in the possession, custody or power of the party served.

33 Decision without hearing

If all the parties to the proceedings consent, the Court may give its decision without a hearing, but having regard to any documentary evidence and written submissions exchanged by the parties and lodged with the Court.

Division 10 Appeal

34 Application

This Division applies to an appeal to the Court under section 56A of the Act.

35 Time for appeal

- (1) An appeal must be instituted within 28 days after the order or decision is made or within such extended time as the Court may fix.
- (2) The Court may extend time under this rule at any time before or after the time has elapsed.

36 Institution of appeal

An appeal to the Court is instituted by filing a notice of motion claiming the order or determination which the party instituting the appeal seeks in place of the decision of the Assessor or Assessors.

37 Statement of ground

The Applicant must file and serve with (or subscribe to) the notice of motion a brief but specific statement:

- (a) of the grounds relied on in support of the appeal, and
- (b) as to whether the appeal is from the whole or part only of the relevant order or decision, and

(c) if from part, which part of the order or decision.

38 Parties

- (1) Each person who is directly affected by the relief sought in the appeal or is interested in maintaining the decision under appeal is to be joined as a respondent.
- (2) The Court may order the addition or removal of a person as a party to an appeal.
- (3) However, a person cannot be made an applicant without the person's consent.

39 Stay

An appeal to the Court does not:

- (a) operate as a stay of proceedings under the relevant decision or order,
- (b) invalidate any intermediate act or proceedings.

Note—

The Court may, under section 59 of the Act, suspend the operation of any relevant order or decision.

40 Security for costs

No security for the costs of an appeal to the Court is normally to be required. However, the Court may, in special circumstances, order that such security as the Court thinks fit be given for the costs of an appeal to the Court.

41 Date of hearing of appeal

An appeal cannot be heard until 21 days have elapsed after service of the motion by which the appeal is instituted, unless the Court otherwise orders.

42 Amendment

- (1) The motion by which an appeal is instituted and any statement under rule 37 may be amended by the applicant without leave by filing a supplementary notice not less than 7 days before the day appointed for hearing.
- (2) The applicant must, on the day of filing the supplementary notice, serve it on the other parties.

43 Written submissions

At least 7 days before the date set for commencement of the hearing, the party moving the appeal shall file and serve a written outline of the legal arguments and the opposing party (or parties) shall file and serve a reply no later than 2 days before the hearing. Each submission shall include a list of authorities with identification as to those authorities that will be referred to at the hearing.

Part 14 Class 4 proceedings: rules specific to Class 4 proceedings

1 Registrar to determine form of evidence

- (1) At the first call-over before the Registrar or any subsequent call-over, the Registrar is to determine whether the evidence is to be given in affidavit form or otherwise.
- (2) The Registrar is to give directions accordingly, including, where necessary, requiring the filing of points of claim and points of defence.

2 Objections to affidavits

- (1) If directions have been given for evidence to be in affidavit form, parties must file and serve notice of any objections to the affidavits at least 7 days before the first hearing date.
- (2) No objection can be made to an affidavit unless prior notice of the objection has been given in accordance with subrule (1), or the Court gives leave for the objection to be made.

3 Notice for cross-examination of witnesses

A party must give notice in writing to any other party of the desire to cross-examine a witness who has sworn an affidavit in the proceedings at least seven days before the first hearing date.

Part 15 Decisions, judgments and orders of the Court

1 Definition

In this Part **order** includes a decision or judgment.

2 General relief

- (1) The Court may, at any stage of any proceedings, on the application of any party make such order as the nature of the case requires.
- (2) The Court may do so even if the applicant did not make a claim for relief extending to that order in any originating process.

3 Setting aside or varying default judgment

- (1) A Judge may on terms set aside or vary an order of the Court given or made because the applicant has failed to prosecute the proceedings or has failed to appear at the time and place fixed for the hearing.
- (2) An application for a setting aside or variation under subrule (1) must be made within 28 days of the date upon which the Registrar provides the parties with a copy of the minute required to be made under rule 4.

4 Minute of decision etc

The Registrar is to sign and file a minute of a final order disposing of proceedings, and is to seal the minute with the seal of the Court.

5 Time of effect

A final order disposing of any proceedings takes effect when it is given or made, unless otherwise ordered by the Court.

6 Time for compliance with orders etc not relating to money

- (1) An order which requires a person to do an act, other than the payment of money, must specify the time within which the person is required to do the act.
- (2) The time is to be 21 days after the date of service of a copy of the order on the person required to do the act, unless the Court otherwise orders.
- (3) The Court may, by a later order, require the person to do the act within another specified time.

7 Order for costs alone

The Court may order the respondent to pay the costs of the proceedings where a respondent satisfies or causes to be satisfied the claim of the applicant after the proceedings have been commenced.

8 Prescribed rate of interest

For the purposes of section 69A of the Act, the prescribed rate of interest is the rate of interest prescribed for the purposes of section 95 of the [Supreme Court Act 1970](#) by Part 40 rule 7 of the [Supreme Court Rules 1970](#).

9 Setting aside, varying order

The Court, may, on terms, set aside or vary an order in any of the following cases:

- (a) if the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default, and whether or not the absent party had notice of the motion for the order,
- (b) if notice of motion for the setting aside or variation is filed before the signing and filing of the minute of the order under rule 4,
- (c) if the order was obtained by fraud,
- (d) if the order is interlocutory,
- (e) if the order does not reflect the intention of the Court,

(f) if the party in whose favour the order was made consents.

Part 16 Costs

1 Application of Part

This Part applies subject to the *Legal Profession Act 1987* and the regulations made thereunder.

2 Taxing officer

In any case where taxation or assessment of costs is required of the Court the Registrar and Assistant Registrar are to be the taxing officers.

3 Supreme Court Rules apply

In assessing and allowing costs payable by or to any party under an order of the Court, the Registrar or Assistant Registrar are to act in accordance with Parts 52 and 52A of the *Supreme Court Rules 1970*, so far as those Parts can apply.

Part 17 Miscellaneous

1 Time for appeal

- (1) A person may commence proceedings in relation to an appeal, objection or a reference to the Court at any time within 60 days after the right of appeal, objection or reference first arises.
- (2) This rule does not apply if the time within which an appeal, objection or a reference may be made to the Court is expressly provided for by or under the Act or statutory instrument which confers the right of appeal, objection or reference.

2 Fines

- (1) If the court imposes a fine, the Court is to order the person on whom the fine is imposed to pay the fine to the Registrar.
- (2) The Registrar is to pay into the Consolidated Fund all money paid to the Registrar on account of any fine imposed by the Court.
- (3) Subrule (2) does not apply where an Act makes provision for payment of any fine to a statutory body or local Council (for example, under section 694 of the *Local Government Act 1993*).

3 Trans-Tasman proceedings

For the purposes of the *Evidence and Procedure (New Zealand) Act 1994* (Cth), the Federal Court rules as in force, from time to time, shall apply to proceedings in this Court under that Act.

Part 18 Mediation

1 Mediation

- (1) Mediation is available in Classes 1, 2, 3 and 4 of the Court's jurisdiction.
- (2) A mediation session may be conducted by the Registrar, Assistant Registrar or another mediator, to whom the Court refers a matter under Part 5A of the Act.

2 Time for mediation

Parties may apply to the Court for referral to mediation of a matter arising in proceedings at any time after commencement of those proceedings.

3 Adjournment of proceedings

If the parties consent to referral to mediation, the proceedings will stand adjourned to enable the mediation to be conducted unless the Court considers that in all the circumstances they should not be adjourned.

4 Statement of issues

At least 7 days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the Court and the mediator.

5 Appointments and directions

A person to whom a matter is referred for mediation:

- (a) must, within 7 days of being notified of the referral, in writing appoint a time for the mediation,
- (b) may appoint a preliminary meeting of the parties,
- (c) may give directions relating to preparations for and conduct of the mediation.

6 Attendance and representation

- (1) A mediation session must be attended by each party or, by a representative having authority to settle the matter.
- (2) Other persons may attend a mediation session with the leave of the mediator.

7 Conclusion and outcome of mediation

- (1) The mediator must within 7 days of the conclusion of the mediation advise the Court of that fact but not the details thereof.
- (2) The parties may advise the Court in terms agreed between them of any agreement or

arrangement reached at or arising out of a mediation session.

8 Termination

- (1) A mediator may terminate a mediation.
- (2) A party may terminate a mediation at any time by giving notice of the termination to the Court, the mediator and each other party.
- (3) If a mediation is terminated, the proceedings are restored to the Court.

The Schedule

Form 1

(First page of a document. See Part 4 rule 1 (3))

(Leave clear a space of about 50 millimetres from the top of the page)

IN THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

XXXXX of 19XX
(Court file number)

(Do not describe the document here. The substance of the document shall be written within this space. A margin of not less than 25 millimetres shall be kept clear on the left hand side of the page. The dividing line to the left hand side shall be about 75 millimetres from the left hand edge of the page).

A.B.
APPLICANT

C.D.
RESPONDENT
(Describe the document)

APPLICATION
(or, in the case of an affidavit)

AFFIDAVIT
(and show the name of the deponent,
date of swearing and for whom filed)

J. Smith
7 May, 19XX
filed for applicant (and in every
document continue)

Name, address, dx, telephone number
and facsimile number of solicitor and
similar for City Agent if relevant.

Form 2

**IN THE LAND AND ENVIRONMENT
COURT OF NEW SOUTH WALES**

Full name of Applicant (whether appellant, objector, claimant or referring authority)

Address _____

Telephone _____

XXXXX of 19XX
(Court file number)

Act of Parliament or other instrument under which proceedings are brought

APPLICANT
(name/s)

Address of subject land _____

RESPONDENT
(name/s)

What are you appealing against or objecting to _____

**APPLICATION
CLASS 1, 2 & 3**

Annex copy of the application to, and letter from, Council or other body stating its decision or state why copies cannot be annexed _____

A copy of this document must be served on the Respondent by

Date:

Signed, applicant or his/her solicitor or agent

**Filed on behalf
of the Applicant**

To the Respondent (address)

A call-over will take place before the Registrar at the time and place specified below.

Address for service:

If there is no attendance before the Registrar by you or your counsel or solicitor or your agent authorised by you in writing, the call-over may take place and orders may be made in your absence.

**Telephone:
DX:**

Time:

Place: Level 6, 388 George Street, Sydney

Signed, Registrar

Form 3

**IN THE LAND AND ENVIRONMENT
COURT OF NEW SOUTH WALES**

XXXXX of 19XX
(Court file number)

Application to modify consent

granted by the Court under the *Environmental Planning and Assessment Act 1979* Section 102 or *Local Government Act 1993* Section 106.

Full Name of Applicant

Address _____

Telephone _____

Address of Subject Land

Consent:-

1. Original File No.

2. Date of Judgment/Order _____

3. Name of Judge/Assessor _____

Modification

Give details of manner and extent _____

Signed, Applicant or his/her Solicitor or
Agent _____

Date: _____

Form 4

**IN THE LAND AND ENVIRONMENT
COURT OF NEW SOUTH WALES**

Full name of Applicant

Address

Telephone

XXXXX of 19XX
(Court file number)

The applicant claims the following relief:

1. *A declaration that*

APPLICANT
(name/s)

2. *An order*

The applicant also claims by way of interlocutory relief (if relevant):

1. *An order that*

RESPONDENT
(name/s)

2.

Date:

APPLICATION
CLASS 4
(Part 7, Rule 1 (b))

*Signed, applicant or his/her
solicitor or agent*

To the respondent (address)

*A call-over will take place before the Registrar at the time and
place specified below.*

A copy of this document must be served
on the Respondent by

OR

*The hearing of (or the applicant's claim for interlocutory relief in)
these proceedings will take place before the Court at the time and
place specified below.*

Filed on behalf of the Applicant

*If there is no attendance before the Court or the Registrar, as the
case may be, by you or your counsel or solicitor or your agent
authorised by you in writing, the hearing or call-over may take
place and orders may be made in your absence.*

Address for service:

Time:

Place: Level 6, 388 George Street, Sydney

Telephone:

DX:

Signed, Registrar

Form 5

(Part 7 rule 1 (1) (c))

**IN THE LAND AND ENVIRONMENT
COURT OF NEW SOUTH WALES**

Full name of Appellant _____

Address _____

Telephone _____

XXXXX of 19XX
(Court file number)

Act of Parliament under which proceedings are brought _____

APPELLANT
(name/s)

Address of subject land _____

Date of Magistrate's decision _____

RESPONDENT
(name/s)

Place of Local Court hearing _____

Brief outline of reasons for appeal _____

APPEAL
CLASS 6

Date: _____

Signed, appellant or his/her solicitor or agent

To the Respondent (address)

Filed on behalf of the Appellant

A call-over will take place before the Registrar at the time and place specified below.

If there is no attendance before the Registrar by you or your counsel or solicitor or your agent authorised by you in writing, the call-over may take place and orders may be made in your absence.

Address for service:

Time: _____

Place: Level 6, 388 George Street, Sydney

Telephone:
DX:

Signed, Registrar