

Land and Environment Court Rules 2007

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New South Wales

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Land and Environment Court Rules 2007



New South Wales

Part 1 Preliminary

1.1 Name of rules (cf *Land and Environment Court Rules 1996*, Part 1, rule 1)

These rules are the *Land and Environment Court Rules 2007*.

1.2 Commencement (cf *Land and Environment Court Rules 1996*, Part 1, rule 2 (1))

These rules commence on the commencement of Schedule 2 [9] to the *Courts Legislation Amendment Act 2007*.

1.3 Definitions (cf *Land and Environment Court Rules 1996*, Part 1, rule 4)

(1) In these rules:

applicant includes appellant or objector.

approved form, in relation to a document, means the form approved under section 77A of the *Land and Environment Court Act 1979*, or under section 17 of the *Civil Procedure Act 2005*, for the purposes of that document.

conciliation conference means a conciliation conference arranged under section 34 of the Act.

public authority has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

the Act means the *Land and Environment Court Act 1979*.

the Court means the Land and Environment Court.

(2) Notes included in these rules do not form part of these rules.

1.4 Repeal of former rules

The *Land and Environment Court Rules 1996* are repealed.

Part 2 Administration

2.1 Seal of the Court (cf *Land and Environment Court Rules 1996*, Part 2, rule 1)

- (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” and is to be kept in the custody of the Registrar.
- (2) (Repealed)
- (3) A facsimile of the seal may be used instead of the seal for any purpose.

2.2 Sittings of the Court (cf *Land and Environment Court Rules 1996*, Part 2, rule 2)

- (1) Sittings are to be held in each year at such times and places as are appointed for that year or from time to time by the Chief Judge.
- (2) Particulars of times and places so appointed are to be published if, and in such manner as, the Chief Judge directs.
- (3) The Court may sit at any time and place even though the time and place of the sitting have not been appointed or have not been published under this rule.

2.3 Vacation (cf *Land and Environment Court Rules 1996*, Part 2, rule 3)

- (1) The Court is to observe such vacation periods as the Chief Judge directs.
- (2) A hearing or trial will not be held in a vacation period unless the Court otherwise orders.

2.4 Registry (cf *Land and Environment Court Rules 1996*, Part 2, rule 4)

- (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.
- (3) In exercising that control and direction, the Registrar is to comply with any direction by the Chief Judge.

2.5 Agents for Registrar (cf *Land and Environment Court Rules 1996*, Part 2, rule 6)

- (1) Local Court registrars and such other persons as the Chief Judge may direct are taken to be agents of the Registrar for the purposes of this rule.
- (2) An agent of the Registrar is to accept documents for filing, and any fees payable in relation to them, as though the agent’s office were the registry.
- (3) As soon as practicable after accepting any documents for filing, an agent of the Registrar is to forward them to the registry together with an account of any fees paid in respect of the documents.

Part 3 Proceedings in Class 1, 2 or 3 of the Court's jurisdiction

3.1 Application of Part (cf *Land and Environment Court Rules 1996*, Part 13, rule 1)

This Part applies to proceedings in Class 1, 2 or 3 of the Court's jurisdiction.

Note—

Proceedings to which this Part applies are also subject to the provisions of the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*. That Act and those rules refer to an applicant under these rules as a plaintiff and a respondent under these rules as a defendant.

3.2 Originating process

- (1) The originating process to commence proceedings is an application prepared in the approved form.
- (2) (Repealed)
- (3) Where the originating process is an application under section 125 of the *Aboriginal Land Rights Act 1983*, the following additional requirements apply to that process:
 - (a) it must contain the following matter:
 - (i) the description of the applicant,
 - (ii) the date and result of the election,
 - (iii) the date on which the result of the election is publicly declared, and
 - (iv) the facts relied upon to invalidate the election or return, and
 - (b) 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.

3.3 Where reference to other body required (cf *Land and Environment Court Rules 1996*, Part 13, rule 3)

As soon as practicable after being served with an application commencing proceedings to which section 97 (5) of the *Environmental Planning and Assessment Act 1979* applies, a consent authority must cause a copy of the application to be served on the appropriate Minister, public authority or approval body referred to in that subsection.

3.4 Parties to appeals under the *Environmental Planning and Assessment Act 1979* (cf *Land and Environment Court Rules 1996*, Part 13, rule 4)

- (1) Any application to be heard at the hearing of an appeal that is made under section 97 (4), 97 (5) or 98 (3) of the *Environmental Planning and Assessment Act 1979* is to be made by means of a letter, addressed and delivered to the Registrar, that identifies the appeal proceedings.

- (2) As soon as practicable after receiving such an application, the Registrar is to give notice of that fact to all of the parties to the appeal.
- (3) In an appeal under section 98 (1) of the *Environmental Planning and Assessment Act 1979*, the consent authority and the person who made the development application are to be named as respondents and served with the appeal.

3.5 Particulars (cf *Land and Environment Court Rules 1996*, Part 13, rule 5)

- (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 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 other party does not comply with the order within a specified time, the other party 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.

3.6 Public authority to make documents available (cf *Land and Environment Court Rules 1996*, Part 13, rule 6)

- (1) If the presiding Commissioner at a conciliation conference so requires, a public authority that is a party to the proceedings the subject of the conference must make available for examination by the Commissioner all documents that:
 - (a) relate to the proceedings, and
 - (b) are within the public authority's custody, possession or control,including (in the case of a consent authority) any relevant environmental planning instruments or development control plans, or draft environmental planning instruments or development control plans, within the meaning of the *Environmental Planning and Assessment Act 1979*.
- (2) The Commissioner may allow any party to examine any documents made available under this rule.
- (3) This rule does not require a public authority to make available for examination any document that is privileged from disclosure except with the consent of the person entitled to the privilege.

3.7 Costs in certain proceedings (cf *Land and Environment Court Rules 1996*, Part 16, rule 4)

- (1) This rule applies to the following proceedings (except for appeals under section 56A of

the Act):

- (a) all proceedings in Class 1 of the Court's jurisdiction,
- (b) all proceedings in Class 2 of the Court's jurisdiction,
- (c) the following proceedings in Class 3 of the Court's jurisdiction:
 - (i) appeals, references or other matters that may be heard and disposed of by the Court under the *Crown Lands Act 1989* or *Western Lands Act 1901*, as referred to in section 19 (a) of the *Land and Environment Court Act 1979*,
 - (ii) appeals under section 37 (1) of the *Valuation of Land Act 1916*,
 - (iii) appeals under section 8E of the *Rookwood Necropolis Act 1901* or clause 56 (2) of Schedule 8 to the *Crown Lands Act 1989*,
 - (iv) appeals and applications under section 526 (including section 526 as applied by section 531) or 574 of the *Local Government Act 1993*,
 - (v) appeals under section 202 of the *Fisheries Management Act 1994*,
 - (vi) appeals under section 174, and references under section 175, of the *Aboriginal Land Rights Act 1983*,
 - (vii) any other appeals, references or other matters referred to in section 19 (h) of the *Land and Environment Court Act 1979*.
- (2) The Court is not to make an order for the payment of costs unless the Court considers that the making of an order as to the whole or any part of the costs is fair and reasonable in the circumstances.
- (3) Circumstances in which the Court might consider the making of a costs order to be fair and reasonable include (without limitation) the following:
 - (a) that the proceedings involve, as a central issue, a question of law, a question of fact or a question of mixed fact and law, and the determination of such question:
 - (i) in one way was, or was potentially, determinative of the proceedings, and
 - (ii) was preliminary to, or otherwise has not involved, an evaluation of the merits of any application the subject of the proceedings,
 - (b) that a party has failed to provide, or has unreasonably delayed in providing, information or documents:
 - (i) that are required by law to be provided in relation to any application the subject of the proceedings, or
 - (ii) that are necessary to enable a consent authority to gain a proper

- understanding of, and give proper consideration to, the application,
- (c) that a party has acted unreasonably in circumstances leading up to the commencement of the proceedings,
 - (d) that a party has acted unreasonably in the conduct of the proceedings,
 - (e) that a party has commenced or defended the proceedings for an improper purpose,
 - (f) that a party has commenced or continued a claim in the proceedings, or maintained a defence to the proceedings, where:
 - (i) the claim or defence (as appropriate) did not have reasonable prospects of success, or
 - (ii) to commence or continue the claim, or to maintain the defence, was otherwise unreasonable.

3.8, 3.9 (Repealed)

3.10 Court functions not exercisable by Commissioners

- (1) The following functions of the Court are not exercisable by a Commissioner dealing with proceedings pursuant to a direction under section 36 of the Act:
 - (a) the functions conferred on the Court by any of the following provisions of the *Civil Procedure Act 2005*:
 - (i) section 61 (3) (f) (the power to order a party that has failed to comply with a direction given by the Court to pay the whole or any part of another party's costs),
 - (ii) section 71 (the power to order that proceedings be conducted in the absence of the public),
 - (iii) section 97 (the power to issue a warrant for the arrest of a person who has failed to comply with an order for the person's attendance at court or for the production of any document or thing),
 - (iv) section 98 (the power to make general orders as to costs),
 - (v) section 99 (the power to make orders as to costs in relation to a legal practitioner's neglect, incompetence or misconduct),
 - (vi) section 149C (the power to vary or revoke an order made by the Supreme Court in relation to proceedings transferred from that Court to the land and Environment Court),

- (b) the functions conferred on the Court by any of the following provisions of the *Uniform Civil Procedure Rules 2005*:
- (i) rule 1.8 (the power to determine any question arising under the rules),
 - (ii) Part 24 (the power to take evidence otherwise than at trial),
 - (iii) Part 25 (the power to make orders with respect to the preservation of property),
 - (iv) Division 2 of Part 40 (enforcement of judgments and orders),
 - (v) Part 42 (the power to make orders as to costs),
 - (vi) Part 43 (the power to hear interpleader proceedings),
 - (vii) Divisions 4 and 5 of Part 49 (the power to review decisions of the Registrar),
- (c) the functions of the Court under Part 55 of the *Supreme Court Rules 1970*, as applied by rule 3.9 (powers in relation to contempt).
- (2) Nothing in this rule prevents a Commissioner from making an order as to costs pursuant to the requirements of section 97B (2) of the *Environmental Planning and Assessment Act 1979*.

Part 4 Proceedings in Class 4 of the Court's jurisdiction

4.1 Application of Part

This Part applies to proceedings in Class 4 of the Court's jurisdiction.

Note—

Proceedings to which this Part applies are subject to the provisions of the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*. That Act and those rules refer to an applicant under these rules as a plaintiff and a respondent under these rules as a defendant. Under Part 4 of the *Uniform Civil Procedure Rules 2005*, proceedings to which this Part applies are to be commenced by statement of claim or by summons.

4.2 Proceedings brought in the public interest

- (1) The Court may decide not to make an order for the payment of costs against an unsuccessful applicant in any proceedings if it is satisfied that the proceedings have been brought in the public interest.
- (2) The Court may decide not to make an order requiring an applicant in any proceedings to give security for the respondent's costs if it is satisfied that the proceedings have been brought in the public interest.
- (3) In any proceedings on an application for an interlocutory injunction or interlocutory order, the Court may decide not to require the applicant to give any undertaking as to damages in relation to:

- (a) the injunction or order sought by the applicant, or
 - (b) an undertaking offered by the respondent in response to the application,
- if it is satisfied that the proceedings have been brought in the public interest.

4.3 Proceedings for the review of public authority's decision

In any proceedings in which a public authority's decision is challenged or called into question, the Court may make one or more of the following orders:

- (a) an order directing the public authority to make available to any other party any document that records matters relevant to the decision,
- (b) an order directing the public authority to furnish to any other party a written statement setting out the public authority's reasons for the decision, being a statement that includes:
 - (i) the public authority's findings on any material questions of fact, and
 - (ii) the evidence on which any such findings were based, and
 - (iii) the public authority's understanding of the applicable law, and
 - (iv) the reasoning process that led to the decision,
- (c) an order for particulars, discovery or interrogatories.

4.4, 4.5 (Repealed)

Part 5 Proceedings in Class 5, 6 or 7 of the Court's jurisdiction

5.1 Application of Part (cf Supreme Court Rules, Part 75, rule 4)

This Part applies to proceedings in Class 5, 6 or 7 of the Court's jurisdiction.

5.2 Application of other rules of court (cf Supreme Court Rules, Part 75, rules 2, 3 and 6; Land and Environment Court Rules, Part 6, rule 2 (1))

- (1) Parts 55 (Contempt) and 75 (Criminal proceedings) of the *Supreme Court Rules 1970* apply, so far as applicable, to proceedings to which this Part applies.
- (2) The following provisions of the *Uniform Civil Procedure Rules 2005* apply, so far as applicable, to proceedings to which this Part applies:
 - (a) Part 1 (Preliminary), other than rules 1.10, 1.10A and Division 4,
 - (b) Part 2 (Case management generally),
 - (c) Part 4 (Preparation and filing of documents), other than rules 4.2, 4.7A, 4.9 and 4.12,

- (d) rules 6.15 and 6.16,
 - (e) Part 19 (Amendment),
 - (f) rules 31.3, 31.7, 31.11, 31.12, 31.21 and 31.22,
 - (g) rule 34.1,
 - (h) Part 36 (Judgments and orders), other than rule 36.11.
- (3) Part 10 (Service of documents generally) of the *Uniform Civil Procedure Rules 2005* (other than rules 10.7 and 10.16) applies, so far as applicable, to service of a notice of listing required by the regulations under the *Criminal Procedure Act 1986*.
- (4) For the purposes of subrule (3), the address contained in a notice of appearance filed in the registry by an accused person's solicitor, as required by the regulations under the *Criminal Procedure Act 1986*, is taken to be the accused person's address for service.
- (5) Orders may not be made under rule 31.3 of the *Uniform Civil Procedure Rules 2005*:
- (a) in respect of the evidence given by an accused person, or
 - (b) that prevent an accused person from attending any part of the proceedings, without the accused person's consent.
- (6) In the application of the provisions referred to in subrules (1), (2) and (3):
- (a) a reference to the plaintiff is taken to be a reference to the prosecutor, and
 - (b) a reference to a defendant is taken to be a reference to an accused person.

5.3 Commencement of proceedings (cf Supreme Court Rules, Part 75, rule 7; Land and Environment Court Rules, Part 6, rule 2 (2))

- (1) Proceedings for an offence that may be taken before the Court in its summary jurisdiction are to be commenced in the Court by summons claiming an order under section 246 of the *Criminal Procedure Act 1986* in respect of the offence and claiming that the defendant be dealt with according to law for commission of the offence.
- (2) A summons seeking an order pursuant to section 246 (1) of the *Criminal Procedure Act 1986* is to be accompanied by the affidavits intended to be relied on as establishing prima facie proof of the offence charged.

5.4 Procedure under particular Acts

- (1) The provisions of Schedule 1 apply to proceedings under the Acts referred to in that Schedule.

- (2) A reference in any such provision to “the Act” is a reference to the Act referred to in the heading beneath which that provision appears.

Part 6 Neutral evaluation of proceedings and rules regarding contempt in Class 1, 2, 3, 4 or 8 of the Court’s jurisdiction

6.1 Application of Part

This Part applies to proceedings in Class 1, 2, 3, 4 or 8 of the Court’s jurisdiction.

6.2 Neutral evaluation

- (1) In this rule:

evaluator means a person to whom the Court refers a matter for neutral evaluation under this rule.

neutral evaluation means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law in dispute, including by assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings (including any likely findings of liability or the award of damages).

neutral evaluation session means a meeting arranged for the neutral evaluation of a matter under this rule.

- (2) If it considers the circumstances appropriate, the Court may, by order, refer any matter for neutral evaluation, and may do so either with or without the consent of the parties to the proceedings.
- (3) The neutral evaluation is to be undertaken by an evaluator agreed to by the parties or, if the parties cannot agree, by an evaluator appointed by the Court.
- (4) It is the duty of each party to proceedings the subject of a referral to neutral evaluation to participate, in good faith, in the neutral evaluation.
- (5) The costs of neutral evaluation, including the costs payable to the evaluator, are payable:
- (a) if the Court makes an order as to the payment of those costs, by one or more of the parties in such manner as the order may specify, or
 - (b) in any other case, by the parties in such proportions as they may agree among themselves.
- (6) Subject to any relevant practice notes, an evaluator may, by order, give directions as to the preparation for, and conduct of, the neutral evaluation.

6.3 Application of Supreme Court Rules regarding contempt

Part 55 (Contempt) of the *Supreme Court Rules 1970* applies, so far as applicable, to proceedings to which this Part applies.

Part 7 Miscellaneous

7.1 Time for appeal (cf *Land and Environment Court Rules 1996*, Part 17, rule 1)

- (1) A person may commence proceedings in relation to an appeal, objection or reference to the Court:
 - (a) except as provided by paragraph (b), at any time within 60 days after the right of appeal, objection or reference first arises, or
 - (b) in the case of an appeal against the refusal of a claim under section 36 of the *Aboriginal Land Rights Act 1983*, at any time within 4 months after the refusal.
- (2) This rule does not apply if the time within which an appeal, objection or reference may be made to the Court is expressly provided for by or under the Act or instrument that confers the right of appeal, objection or reference.

7.2 Reckoning of time (cf UCPR rule 1.11)

- (1) Any period of time fixed by these rules, or by any judgment or order of the Court or by any document in any proceedings, is to be reckoned in accordance with this rule.
- (2) If a time of one 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, apart from this subrule, the period in question, being a period of 5 days or less, would include a day or part of a day on which the registry is closed, that day is to be excluded.
- (4) If the last day for doing a thing is, or a thing is to be done on, a day on which the registry is closed, the thing may be done on the next day on which the registry is open.
- (5) Section 36 of the *Interpretation Act 1987* (which relates to the reckoning of time) does not apply to these rules.

7.3 Extension and abridgment of time (cf UCPR rule 1.12)

- (1) The Court may, by order, extend or abridge any time fixed by these rules or by any judgment or order of the Court.
- (2) The Court may extend time under this rule, either before or after the time expires, and may do so after the time expires even if an application for extension is made after the time expires.

7.4 Fixing times (cf UCPR rule 1.13)

If no time is fixed by these rules, or by any judgment or order of the Court, for the doing of any thing in or in connection with any proceedings, the Court may, by order, fix the time within which the thing is to be done.

7.5 Fines (cf *Land and Environment Court Rules 1996*, Part 17, rule 2)

- (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 if 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*).

7.6 Entry of judgments and orders

- (1) This rule applies to the entry of judgments and orders in all classes of the Court's jurisdiction.
- (2) Despite rule 36.11 of the *Uniform Civil Procedure Rules 2005*, unless the Court orders otherwise, a judgment or order is taken to be entered when a document embodying the judgment or order is first sealed by the Registrar.
- (3) In this rule, a reference to a judgment or order of the Court includes a reference to any judgment, order, determination, decree, adjudication or award that has been filed or registered in the Court, or of which a certificate has been filed or registered in the Court, as referred to in section 133 (2) of the *Civil Procedure Act 2005*.
- (4) This rule does not limit the operation of rule 36.10 of the *Uniform Civil Procedure Rules 2005*.

7.7 Granting of leave for a person to appear by agent

- (1) For the purposes of section 63 (3) (a) of the Act, the following information is required to be provided by an agent to the person for whom the agent wishes to appear:
 - (a) that the person is under a duty to assist the Court to further the overriding purpose of facilitating the just, quick and cheap resolution of the real issues in the proceedings and, to that effect, to participate in the processes of the Court and to comply with directions and orders of the Court,
 - (b) that the person is under a duty to take reasonable steps to resolve or narrow the issues in the proceedings,
 - (c) that the agent must not, by the agent's conduct, cause the person to be in breach

of a duty referred to in paragraph (a) or (b),

- (d) that the Court may take into account any failure to comply with a duty referred to in paragraph (a), (b) or (c) in exercising a discretion with respect to costs,
- (e) that the Court may make a costs order against the person in proceedings to which rule 3.7 applies if the Court considers it fair and reasonable in the circumstances and in any other proceedings if the person is unsuccessful,
- (f) the knowledge and experience of the agent with respect to the type of matter that is the subject of the proceedings,
- (g) whether the agent proposes to charge for the agent's services and, if so, the agent's proposed written costs agreement, a written estimate of the likely total of the agent's charges and the likely disbursements to be incurred by the person.

Note—

Section 63 (3) of the Act provides that in determining whether to grant leave for a person to appear by an agent the Court is to consider:

- (a) whether the agent has provided the person with the information required by the rules, and
- (b) whether granting leave is in the best interest of the person.

- (2) Before the Court determines whether to grant leave for a person to appear before the Court by an agent, the agent must acknowledge to the Court in writing, unless the Court waives the writing requirement, that the agent has provided the information referred to in subrule (1) to that person.

Schedule 1 Provisions regarding procedure under particular legislation

(Rule 5.4)

Protection of the Environment Operations Act 1997

1 Statement in support of application

The applicant for an order under section 232 (1), 235 (3), 238 (2) or 239 (1) of the Act must file with the summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

2 Prescribed officer: section 235 (2) (a)

For the purposes of section 235 (2) (a) of the Act, a registrar is a prescribed officer.