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**NEW LAND AND ENVIRONMENT COURT PRACTICE NOTE  
FOR CLASS 1 DEVELOPMENT APPEALS**

The practice note dated 30 April 2007 for Class 1 Development Appeals is being replaced by a new practice note to commence on 27 March 2017.

The provisions of the existing practice note are largely replicated however there are some significant amendments which we outline below.

**First Directions Hearing**

The Court will normally expect at the first directions hearing (which will usually be 28 days after filing) that the matter will either be fixed for a section 34 conference or for hearing.

The Court will not normally adjourn the matter on the basis only that it is a deemed refusal unless the parties can satisfy the Court that there is a recommendation for approval and the matter is likely to be determined within 4 weeks of the directions hearing.

**Expert Evidence**

A party intending to rely on expert evidence must identify the nature of the expert evidence and the names of the experts at the first directions hearing.

If a party subsequently wishes to rely on additional expert evidence, an application must be made to the Court.

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## Section 34 Conciliation Conference

The Court will normally fix the matter for a section 34 conciliation conference unless it is persuaded that this is not appropriate.

If the matter is fixed for a conciliation conference, a second directions hearing will be set 7 days after the conciliation conference.

The parties are to participate in good faith in any conciliation conference, including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference.

Any amended plans or additional information proposed by the application to be the subject of without prejudice discussions at a conciliation conference **are to be provided to the council 14 days before the conciliation conference.**

The council is to provide the applicant with any response to the amended plans or additional information (if any) **as well as draft without prejudice conditions of consent, 7 days before the conciliation conference.**

The conciliation conference will not be adjourned to another time and place by the Commissioner presiding unless the Commissioner considers there is good reason to do so.

In general, the conciliation conference will only be adjourned in circumstances where the parties have reached an agreement in principle as to the terms of the decision in the proceedings that will be acceptable to the parties and the adjournment is required to finalise that agreement.

If the conciliation conference is terminated, the development appeal will be listed for a second directions hearing for the purpose of fixing the matter for hearing.

### Amended Plans

Any application to amend the plans is to be the subject of a Notice of Motion to be filed in sufficient time to be returnable at the second directions hearing.

If further time to apply to amend the plans is required, the proceedings will normally be listed for hearing with a timetable that allows sufficient time for an application to amend the development appeal application to be made.

### Breach of the Court's Directions

If any party fails to comply with the direction of the Court that some action be taken by a specified time, and the defaulting party is not able to take that action within 2 days of the specified time, the defaulting party is required to re-list the matter before the Court within 3 days of the specified time and provide to the Court on the re-listing an affidavit explaining the non-compliance, the reasons for it and what action the party proposes to take.

### Variation of Timetables

If either party becomes aware of circumstances that will necessitate a variation to the timetable, an application can be made to the Court.

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## Costs and Compliance

If a breach of the Court's direction or of the practice note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs. Any failure by one party to comply with the Court's directions will not be considered an adequate excuse for any failure to comply by the other party.

## NEW CONCILIATION CONFERENCE POLICY

A new Conciliation Conference policy is to commence on 27 March 2017 to replace the previous policy dated 1 November 2013.

The provisions of the existing policy are largely replicated however some more detail has been provided and this is discussed below.

### Resident Submissions

The council and the applicant are to prepare a list of local residents and other non-experts who they wish to make submissions on site. This list is to be filed in Court and served on the other party 7 days prior to the conference.

The number of residents speaking on site should generally be limited to 6.

The council is to ensure that people who wish to make submissions are advised of the time of the site inspection, the nature of the process and are informed of the details of the proposal (including recent amendments) so that any concerns expressed on-site are relevant.

### Expert Evidence

The parties will normally be required to bring the relevant experts to the conciliation conference.

### Amended Plans and Additional Information by the Applicant

If the applicant intends to provide amended plans or additional information for the council's consideration at the conciliation conference, those amended plans or additional information should be provided **14 days before the conciliation conference** although this can be varied by the Court.

### Conditions

The council should provide draft without prejudice conditions to the applicant 7 days before the conciliation conference.

### Access to Relevant Properties

The parties are to make every endeavour to make access available to all relevant properties to allow the Court to understand the issues.

The parties are to provide the necessary aids for the Court to fully assess the impact of the proposed development

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This may involve height poles certified by a surveyor and/or the pegging out of the proposed building.

### **Special Requirements**

The Court is to be advised 3 working days before the conciliation conference if there are special requirements such as walking boots, protective clothing, hardhat etc.

### **Adjournment of Conciliation Conference**

A conciliation conference may be adjourned only if the Commissioner is satisfied that there is good reason to do so. If an adjournment is given, the conciliation conference will generally only be adjourned on one occasion, not more than 3 weeks after the initial conference.

**Should you have any queries, please contact Ros McCulloch or Julie Walsh.**

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