



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

PRACTICE NOTE

SECTION 56A APPEALS

Name and commencement of Practice Note

1. This Practice Note is to be known as Practice Note – Section 56A Appeals. It commences on 21 December 2015.

Application of Practice Note

2. This Practice Note applies to proceedings on appeal from an order or decision of a commissioner pursuant to section 56A of the *Land and Environment Court Act 1979*. Such appeals are on a question of law only.

Purpose of Practice Note

3. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of appeals pursuant to section 56A.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
5. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.



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Legal practitioners and agents of parties to be prepared

6. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave of the Court has been granted to appear for the party) familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
7. Parties are to communicate prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and preparation of agreed or competing short minutes recording the proposed directions.

Applicable rules

8. Attention is drawn to Part 50, entitled “Appeals to the court” of the *Uniform Civil Procedure Rules 2005* (UCPR), which regulates (among other things):
 - (a) the time for commencing an appeal;
 - (b) the content of the summons commencing an appeal;
 - (c) security for costs;
 - (d) a cross-appeal and notice of contention;
 - (e) the conduct of the appeal.

Appeal Book

9. However, by way of “otherwise” orders under UCPR 50.14, the Court will normally order the preparation of an Appeal Book in accordance with the usual directions set out in the Schedule hereto.

Commencing a s 56A appeal

10. Section 56A appeals are to be commenced by summons (UCPR Form 84) filed in the registry of the Court.
11. The summons is to be filed in the same class of jurisdiction of the Court as the proceedings in which the order or decision the subject of the appeal was made.



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Service

12. A copy of the summons is to be served on each respondent within 7 days of filing.

Return date of the summons

13. The summons will be given a return date before the Court usually 28 days (or thereabouts) after it is filed. On the return date, the first directions hearing will occur before the Registrar.

Number of pre-hearing attendances

14. Unless there are interlocutory applications, section 56A appeals normally should appear in court before hearing at one directions hearing only.
15. Where the appeal is particularly complex or is expected to exceed three days hearing time, a pre-trial mention may also be required, usually on the second last Friday before the hearing commences, if possible before the appeal judge.

Cross appeal or notice of contention before the first directions hearing

16. At least two working days before the first directions hearing the respondent is to file and serve any cross appeal or notice of contention.

The matters before the first directions hearing

17. Before the first directions hearing the parties are to:
- (a) discuss and endeavour to agree upon the estimated hearing time, the directions that the Court should make at the first directions hearing and the contents of the Appeal Book; and
 - (b) discuss whether any party will be making an application for leave to rely on further evidence.

At the first directions hearing

18. The first directions hearing will be on the return date of the summons. It will usually be conducted by the Registrar in a courtroom in the Court building at



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225 Macquarie Street, Sydney. The location of the courtroom and the time of day the first directions hearing is listed should be shown on the Court Lists posted on a notice board in the foyer of the building and on the Court's website under Court Lists in the afternoon of the day before the directions hearing.

19. At the first directions hearing, the Court will usually make directions in accordance with the Schedule hereto, including fixing a hearing date.
20. At the first directions hearing the parties are to hand to the Court agreed or competing short minutes of the directions they propose the Court should make.
21. If the parties are in dispute as to any proposed directions, they are to briefly inform the Court of the nature of the dispute and their estimate of how long a hearing of the dispute will take. If practicable, the Court will determine the dispute at that directions hearing, otherwise it will fix a date for the hearing of the dispute.

Service of directions on absent party

22. If a party is absent when directions are made, the party who is present is to serve a copy of the directions on the absent party within three working days. Unless the Court otherwise directs, the party who is present is also to file an affidavit of service at least one working day before the matter is next listed before the Court, except where the party who is present mentioned the matter on behalf of the absent party.

Extension of time to file appeal

23. Any application for an extension of time to commence an appeal will, if practicable, be dealt with by the Court on the return date of the summons commencing an appeal or otherwise the Court will fix a date for the hearing.

At the pre-hearing mention (if applicable)

24. The Court may direct that a pre-hearing mention take place where the appeal is particularly complex or is expected to exceed three days hearing time. The pre-hearing mention will usually be held on the second last Friday before the hearing, if possible before the appeal judge. Counsel briefed to



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appear at the hearing or (if counsel is unavailable) a solicitor with carriage of the appeal must attend for each party.

25. The purpose of a pre-hearing mention is to ensure readiness for trial and to give any further directions necessary to facilitate the just, quick and cheap resolution of the appeal.

List of authorities and legislation

26. Each party is to provide a list of the authorities and legislation the Court will be specifically referred to at the hearing to the appeal judge's associate no later than two working days before the hearing is to commence. Copies of these authorities and legislation are not be provided to the Court except as provided in the next paragraph or with leave of the Court.
27. If any obscure reported authorities, unreported authorities, superseded legislation, environmental planning instruments, or particular parts of development control plans are to be specifically referred to, copies must be provided to the judge at the hearing.

The hearing

28. Submissions at the hearing are to address all issues the subject of the appeal. No issue will be separately determined unless the Court so orders.

Breach of the Court's directions

29. If there is any significant breach of the Court's directions sufficient to cause slippage in a timetable, the parties must promptly, by eCourt communication or fax to the Registrar, restore the matter to the next directions hearing list before the Registrar. The party in breach or a legal practitioner with knowledge of the reasons for the breach must serve an affidavit no later than 4.00pm on the preceding day which identifies the breach, explains the reasons for the breach and proposes directions to be made in consequence of the breach. The party must file the affidavit in Court at that directions hearing.
30. A 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. If proposed directions vary an existing timetable there must also be a



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direction to vacate previous directions that can no longer be maintained, including for dates for directions hearings or the hearing of motions.

Liberty to restore

31. Parties have general liberty to restore the proceedings to the Court on three working days' notice, or less if urgency requires it. A party seeking to do so is to make prior arrangements with, or give appropriate notice to, any other party, and send an eCourt communication or fax to the Registrar.

Adjournments

32. Proceedings will not be adjourned generally. They will only be adjourned to a specific date.

Applications to vacate hearing dates

33. Hearing dates will not generally be vacated and will not be vacated merely because the parties consent to the vacation. Applications to vacate hearing dates are to be by notice of motion, with an affidavit in support explaining the circumstances of the application and the reasons the hearing date should be vacated.

Co-operation

34. The Court expects parties and legal practitioners to work cooperatively to implement this Practice Note in a practical and sensible way to ensure that it achieves its intended purpose.

Costs

35. If a breach of the Court's directions or this Practice Note causes costs to be thrown away, a party or legal practitioner responsible for the breach may be ordered to pay those costs.
36. The cost of unnecessary photocopying and assembly of documents is unacceptable. Legal practitioners for the parties are to consider carefully the documents necessary to be tendered. Excessive documents may attract adverse costs orders.



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37. 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.

***The Honourable Justice Brian J Preston
Chief Judge
Date: 17 December 2015***



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SCHEDULE

USUAL DIRECTIONS

1. The appeal is listed for hearing on [date not less than 9 weeks to accommodate directions below].

2. There is to be an Appeal Book and by way of “otherwise” orders under UCPR 50.14:
 - (a) By [date 7 days] the appellant is to serve on the respondent a proposed index to the Appeal Book incorporating references to the following:
 - (i) the summons commencing the appeal, any summons commencing a cross-appeal and any notice of contention;
 - (ii) the Commissioner’s orders and reasons for judgment;
 - (iii) the transcript of the proceedings and the affidavits, exhibits and other documents before the Commissioner that are relevant and necessary for the hearing and determination of the appeal, any cross-appeal and any notice of contention.

 - (b) By [date 14 days] the respondent is to either notify the appellant in writing that it agrees with the appellant’s proposed index or serve on the appellant an alternative index including any additional parts of the transcript and additional documents before the Commissioner relevant and necessary for the hearing and determination of the appeal and any cross-appeal and notice of contention.

 - (c) By [date 21 days] the parties are to attend before the Registrar in chambers to settle the index and contents of the Appeal Book. The



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parties are to forthwith make an appointment with the Registrar for that attendance.

- (d) By [date 28 days] the appellant is to file and serve the Appeal Book in a lever arch folder or folders duly indexed and paginated, with appropriate dividers between documents.
3. By [date 5 weeks] the appellant is to file and serve:
 - (a) an outline of submissions (not exceeding 20 pages) cross referenced to the Appeal Book; and
 - (b) a chronology of relevant events, cross-referenced to the Appeal Book.
 4. By [date 7 weeks] the respondent is to file and serve:
 - (a) an outline of submissions (not exceeding 20 pages) cross-referenced to the Appeal Book; and
 - (b) (if applicable) an alternative or supplementary chronology of relevant events cross-referenced to the Appeal Book.
 5. By [date 8 weeks] the appellant is to file and serve an outline of any submissions in reply (not exceeding 10 pages).
 6. The parties are to promptly notify the Court if there is any material slippage in the timetable and, if appropriate, relist the matter.
 7. Liberty to restore on 3 working days' notice.