

LAND & ENVIRONMENT COURT

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.