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

PRACTICE NOTE

CLASS 3 VALUATION OBJECTIONS

Name and commencement

1. This practice note commences on 2 April 2024. It replaces the Practice Note – Class 3 Valuation Objections dated 14 May 2007.

Application of Practice Note

2. This practice note applies to Class 3 proceedings, which are objections to valuations under s 37 of the *Valuation of Land Act 1916*. In this practice note, these proceedings are called “Valuation Objections”. This practice note is to be known as *Practice Note – Class 3 Valuation Objections*.

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 Valuation Objections.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, their legal practitioners and agents (as applicable) to consider the orders and 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 any 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 the other party of the proposed alternative procedures as soon as practicable and is to make available to the Court short minutes reflecting that alternative procedures.
6. Parties are to ensure that all directions which they seek will assist in

enabling Valuation Objections to be dealt with at the hearing with as little formality and technicality, and with as much expedition, as the requirements of the *Land and Environment Court Act 1979* (“The Court Act”) and of every other relevant enactment and as the property consideration of the matters before the Court permits (see s 38 of the Court Act).

Legal practitioners and agents of parties to be prepared

7. Each party not appearing in person shall be represented before the Court by a legal practitioner or duly authorised agent familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. Legal practitioners and agents for the 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.

Breach of the Court’s directions

9. If any party fails to comply with a 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 five working days of the specified time, the defaulting party is to:
 - (a) have the matter relisted;
 - (b) file and serve, when relisting, an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction; and
 - (c) provide short minutes of order of the directions and orders the party seeks for the Court to make.
10. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.
11. Any proposed directions that vary an existing timetable, must include the vacation of previous directions that can no longer be maintained including any dates for directions hearings or mention or for the hearing of motions.

Commencing a Valuation Objection

12. A Valuation Objection is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry a completed Class 3 Application Form (Form B (Version 1)).

The return date of the Valuation Objection

13. The originating application will usually be given a return date before a registrar on a date 13 weeks after the application was filed. On the return date, the first directions hearing will occur before a registrar.

Service of originating application

14. The originating application for Valuation Objection and the accompanying documents are to be served with 7 days of filing.

Number of pre-hearing attendances

15. Unless there are interlocutory applications, a Valuation Objection usually should appear in Court before the final hearing on no more than six occasions as follows:
 - (a) at the first directions hearing;
 - (b) for complex matters, at a case management conference;
 - (c) at a conciliation conference pursuant to s 34 of the Court Act;
 - (d) at the second directions hearing;
 - (e) at the third directions hearing; and
 - (f) at a pre-hearing mention during the second last week before the hearing commences, if possible before the hearing judge or commissioner.

Before the first directions hearing

16. Prior to the first directions hearing each party shall file and serve a position paper that identifies:
 - (a) the underlying basic facts relating to the Valuation Objection;
 - (b) the grounds of appeal and orders to be sought;
 - (c) the value for which it is contended including:
 - (i) the address and title details of the subject site;
 - (ii) the area of the subject site;
 - (iii) the zoning of the subject site;
 - (iv) the planning instruments applying to the subject site which are contended to be material to the valuation;
 - (v) the valuation methodology to be adopted in the Valuation Objection;
 - (vi) the features of the subject site which are contended to be material to the valuation;
 - (vii) the comparable sales, if any, relied upon by the party in the

- determination of the Valuation Objection (including, if reasonably practicable, with respect to each comparable sale, the title details, site area, sale date, unadjusted sale price expressed as \$ rate per square metre and adjusted sale price expressed as \$ rate per square metre);
- (viii) any sections of the Valuation of Land Act 1916 said to be relevant;
 - (ix) the value of the subject site expressed as \$ rate per square metre;
 - (x) any other facts, matters or circumstances contended to be material to the resolution of the Valuation Objection; and
- (d) whether the Valuation Objection is considered to be a complex Valuation Objection and the reasons why.
17. The position paper is to be filed and served:
- (a) by the applicant within 4 weeks of filing of the Valuation Objection;
 - (b) by the Valuer-General within 10 weeks of filing of the Valuation Objection; and
 - (c) any reply by the applicant is to be filed within 11 weeks of filing of the Valuation Objection.
18. If reasonably practicable, before the first directions hearing in the matter, the Valuer-General is to provide the applicant with access to documents within the possession, custody or control of the Valuer-General that were relevant to the Valuer-General's consideration and determination of the valuation the subject of the objection. The Valuer-General is to provide the applicant with copies of such documents on request, provided that the applicant is willing to meet the reasonable copying costs of the Valuer-General.
19. If reasonably practicable, before the first directions hearing, the applicant and the Valuer-General (or their authorised representatives) are either to:
- (a) meet for the purpose of formal or informal mediation on a "without prejudice" basis for the purpose of determining whether the objection may be resolved; or
 - (b) confer in order to nominate a time for such a meeting to occur so that this time may be notified to the Court at the first directions hearing.

Note: Except with leave of the Court, parties will not be permitted to proceed to a hearing of Valuation Objections unless and until the parties have engaged in an informal or formal process of mediation to ascertain whether the Valuation Objection may be resolved other than by a hearing before the Court. Parties may proceed to a preliminary conference under s 34 of the *Land and Environment Court Act 1979* instead of mediation.

Where a party has made an offer of compromise to settle a Valuation Objection, and the matter proceeds to a Court hearing in which the Court determines the Valuation Objection by deciding the value of the subject site is (i) in the case of an offer of compromise by an applicant – a value equal to or less than the value in the offer of compromise, or (ii) in the case of the Valuer-General - a value equal to or greater than the value in the offer of compromise, the making of the offer of compromise will be a circumstance relevant to the question whether it is fair and reasonable for an order for costs to be made in accordance with Part 16 Rule 4 of the *Land and Environment Court Rules 1996* (which provides that no order for the payment of costs will be made in proceedings to which this Rule applies unless the Court

considers that the making of a costs order is, in the circumstances of the particular case, fair and reasonable).

20. If reasonably practicable, before the first directions hearing, the parties must confer and identify to each other whether they propose to rely on any expert evidence.

At the first directions hearing

21. The first directions hearing will be on the return date.
22. Unless good reason is demonstrated, each party is to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the dates of the conciliation conference and the second directions hearing. Legal practitioners and other representatives of the parties are to ensure that they advise the parties of their obligation to be ready to agree to a timetable up to and including those dates and are to obtain full and timely instructions to ensure the parties comply with this obligation.
23. To assist the Court in making the appropriate directions, each party is to complete and hand to the Court at the first directions hearing a completed Hearing Information Sheet in the form of **Schedule A**.
24. At the first directions hearing the Court will determine whether the Valuation Objection is a complex matter.
25. Should the Valuation Objection be determined not to be a complex matter the directions in Part 1 of **Schedule B** will usually be made.
26. Should the Valuation Objection be determined to be a complex matter the directions in **Schedule C** will usually be made.
27. If the parties do not agree, each party should prepare their own written version of the directions they propose the Court should make.

At the second directions hearing

28. The second directions hearing will usually be held 14 days after any conciliation conference if agreement is not reached at the conciliation conference.
29. At the second directions hearing, the Court will:
 - (a) after consulting the parties, determine the appropriateness of conducting the hearing on a paperless basis,
 - (b) if the Valuation Objection is determined not to be a complex matter, make the directions in Part 2 of **Schedule B**; and
 - (c) not fix a hearing date until all evidence (excluding valuation evidence) has been filed.

At the third directions hearing

30. At the third directions hearing, the Court will:
- (a) if the Valuation Objection is determined not to be a complex matter, make the directions in Part 3 of **Schedule B**; and
 - (b) not fix a hearing date until all evidence (excluding valuation evidence) has been filed.

At the pre-hearing mention

31. The pre-hearing mention will be in the second last week before the hearing. If possible, it will be before the judge or commissioner allocated to hear the proceedings. Counsel or solicitors briefed to appear on the hearing should attend.
32. The purpose of the pre-hearing mention is to ensure readiness for hearing and to give directions as to the conduct of the hearing and of any inspection of the resumed property and comparable sale properties. Prior to the pre-hearing mention, in accordance with any direction made, the parties are to file:
- (a) one copy of the Court Book (either in a folder [if the hearing is to be paper-based] or on a USB stick);
 - (b) one copy of the Evidence Book (either in folders [if the hearing is to be paper-based] or on a USB stick);
 - (c) one copy of the bundle of documents (either in folders [if the hearing is to be paper-based] or on a USB stick);
- NOTE: If all the material required by (a) to (c) for a paperless hearing can be loaded on a single USB stick, this is to be done.
- (d) a statement by the respondent as to those matters which might have been expected to be contested but which are no longer contested by the respondent; and
 - (e) an agreed schedule:
 - (i) containing a brief description of the resumed property and each comparable sale property that it is proposed the Court should inspect;
 - (ii) noting which party relies on each comparable sale;
 - (iii) including a map showing the location of each property; and
 - (iv) if a site inspection is determined to be necessary, proposing a time when the hearing judge or commissioner should inspect the properties and the arrangements for inspection.

33. The Court at the pre-hearing mention will determine whether an onsite inspection is necessary and if so, when such inspection will take place. The parties will be required to identify what properties each party contends

should be physically inspected and why such inspection is necessary. The parties are to give genuine consideration to the necessity for such inspection to enable the just, quick and cheap resolution of the real issues in dispute in the proceedings.

34. If any witness is required for cross-examination at the hearing, notice is to be given before the pre-hearing mention.

The hearing

35. Evidence and submissions at the hearing are to address all issues the subject of the proceedings. No issue will be separately determined unless the Court so orders.

NOTE: Application for separate determination of questions, under s 62(2) of the *Civil Procedure Act 2005* or Pt 28 r 28.2 of the Uniform Civil Procedure Rules, should be made by notice of motion with supporting affidavit.

36. Unless the hearing judge or commissioner otherwise directs, expert evidence is to be taken concurrently where there are two or more experts giving evidence in the same area of expertise. Parties are to ensure that any witnesses to be called are reasonably available during the period the proceedings are listed for hearing so as to ensure the efficient conduct of the hearing.
37. At the commencement of oral evidence of any witness, counsel or the solicitor appearing for a party, having conferred beforehand, are to hand to the hearing judge or commissioner agreed or competing lists of the topics on which it is proposed to cross-examine and for which leave is sought. Generally, the conduct of the hearing will not be determined by the convenience of a particular witness.
38. The brief opening submissions should not generally be a substitute for a written outline of closing submissions. The Court will usually be assisted by a written outline of closing submissions that includes references to evidence in the Evidence Book, the bundle of documents and oral evidence. The written outline of closing submissions should be filed and served for the early attention of the hearing judge or commissioner.

Short matters

39. Parties may request short matters (less than 2 hours) to be fixed for hearing before a Duty Commissioner or Duty Judge.
40. If the request is by consent, the parties may file the request with the Registry before the first return date. Parties will be notified if the hearing can be listed before the first return date, in which event the first return date will be amended to be the hearing date.

Seeking directions before adducing expert evidence

41. Parties are encouraged to consider whether there is a genuine need to adduce expert evidence on any issue in dispute. Unnecessary expert evidence substantially increase the time and costs of Valuation Objections.

42. Parties may not adduce expert evidence in a Valuation Objection unless directions have been sought and made under r 31.19 of the Uniform Procedure Rules 2005 (NSW) (“UCPR”) and otherwise than in accordance with those directions (see r 31.19(3) of the UCPR).
43. If the Valuer-General intends to adduce expert evidence from the valuer who prepared the valuation report for the valuation of the land to which objection is made:
- (a) directions are taken to have been given by the Court under r 31.19 of the UCPR to tender that valuation report;
 - (b) the Court is taken to have ordered under r 31.23(3) of the UCPR that that valuation report may be admitted;
 - (c) directions will need to be sought and obtained by the Valuer-General to adduce further expert evidence from that valuer in addition to that valuation report; and
 - (d) directions will need to be sought and obtained by the Valuer-General to adduce expert evidence from another valuer in addition to the expert evidence of that valuer.
44. The Court may give directions in relation to the use of expert evidence generally and as to any matter in r 31.20(2) of the UCPR, including:
- (a) any limitation on the subject matter or issues on which the expert evidence may be adduced;
 - (b) the identity of the expert who may adduce expert evidence on a subject matter or issue;
 - (c) any limitation on the number of expert witnesses who may be called to give evidence on a subject matter or issue;
 - (d) the date for filing and serving the expert evidence; and
 - (e) the date for experts to confer and prepare a joint report.
45. Before directions are sought to adduce expert evidence, the parties and their legal representatives are to ensure that the expert has agreed to provide the expert evidence, including any report, in accordance with such directions as the Court may make, including the dates for joint conferencing and report and filing expert evidence.
46. An application for directions to adduce expert evidence will be heard on a date allocated for that purpose. This could be at a scheduled directions hearing or a date fixed at a directions hearing for hearing of the application.
47. The application for directions to adduce expert evidence should include but not be limited by the answers to the questions in **Schedule A**.

48. Should a party seek to vary the directions the Court has made regarding expert evidence, application to vary the directions is to be made by notice of motion together with an accompanying affidavit that identifies:
- (a) the variation sought;
 - (b) if variation is to extend the time for filing the expert evidence, the extension of time sought;
 - (c) the reason for the need for variation; and
 - (d) the time upon which both the expert and the legal practitioner or party first became aware of the need for variation.

Use of a parties' single expert

49. Where expert evidence is necessary to be adduced in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties' single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:
- (a) the importance and complexity of the subject matter in dispute in the proceedings;
 - (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
 - (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);
 - (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;
 - (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline;
 - (f) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
 - (g) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;

- (h) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
 - (i) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.
50. If the parties agree on the use of a parties' single expert, directions still need to be sought and made permitting the appointment of and adducing of expert evidence from that expert.
51. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.
52. Where a parties' single expert has been appointed to adduce evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

Expert's compliance with expert witness code of conduct

53. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the UCPR and the Expert Witness Code of Conduct in Schedule 7 of the UCPR.
54. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.

Joint conferencing of experts

55. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
56. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.

Notices of motion

57. Any notice of motion is to be returnable at a directions hearing unless the circumstances are so urgent as to justify an earlier listing. Parties and legal practitioners should file and serve evidence in support of the motion so that, if practicable, the motion may be heard on the return date.

Liberty to restore

58. Parties have general liberty to restore to the Class 3 Valuation Objections on three working days' notice, or less if urgency requires it. A party seeking to do so should make prior arrangement with, or give appropriate notice to, any other party, and should send an Online Court communication or e-mail to the registrar.

Applications to vacate hearings and for adjournments

59. Proceedings will not be adjourned generally.
60. Proceedings usually will not be adjourned because of failure to comply with this practice note or directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
61. 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.

Settlement of proceedings

62. If proceedings settle on terms that require the Court to make an order, it is necessary to apply to the Court to make orders finalising the litigation.
63. If proceedings are to be discontinued a notice of discontinuance is to be filed with the Registry.
64. If the parties have agreed to final orders by consent, they are to exercise the liberty to restore and are to file proposed consent orders signed by all parties before the return date pursuant to the liberty.
65. If the Court considers the consent orders finalising the proceedings to be satisfactory, orders may be made in chambers.
66. If orders are not made in chambers, the proceedings will be listed before a judge, commissioner or registrar. Representatives of the parties attending the listing must be familiar with the subject matter of the proceedings and have instructions sufficient to inform the Court about the terms of the proposed orders.

Cooperation

67. The Court expects legal practitioners and experts to work together to implement this practice note in a practical and sensible way which ensures that it achieves its intended purpose.

Mediation, conciliation, neutral evaluation or reference

68. Consideration should be given prior to and throughout the course of the

proceedings as to whether the proceedings or any questions are appropriate for mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report.

69. It is expected that legal practitioners, or parties not legally represented, will be in a position to advise the Court at any directions hearing:
- (a) whether the parties have attempted mediation, conciliation or neutral evaluation; and
 - (b) whether the parties are willing to proceed to mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report at an appropriate time.
70. At a mediation, conciliation or neutral evaluation, the parties are to ensure that a person who is able to make a decision as to whether the proceedings or any particular issue should settle or be resolved is present personally or represented by an authorised nominee. If this is not possible, a person with authority must be contactable and have authority to confirm acceptance of any proposed settlement.
71. Where the proceedings or questions are appropriate to be referred to a mediator, conciliator or neutral evaluator or to a referee for inquiry and report, the parties should prepare proposed short minutes to be handed to the Court which:
- (a) where questions are to be referred, formulate the questions with precision; and
 - (b) state:
 - (i) that the matter is to be mediated by an in-court mediator or conciliator, or the name of an agreed external mediator, neutral evaluator or referee or, if no agreement can be reached, the person each party suggests;
 - (ii) the date on which the mediator, neutral evaluator or referee can commence the mediation, neutral evaluation or reference;
 - (iii) expected duration of the mediation, neutral evaluation or reference; and
 - (iv) the anticipated date for finalisation of the mediation or neutral evaluation, or for delivery to the Court of the referee's report.
72. Proposed consent orders for amendment to the questions referred to a mediator, neutral evaluator or referee may be filed with the Court, which may make such orders in chambers. Any contested amendments, or amendments in respect of which the Court wishes to hear the parties, will be heard on a date notified to the parties by the registrar.

Costs of non-compliance

73. If a breach of the Court's directions or of 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.

74. 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.
75. 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. Both parties are responsible for ensuring that they comply with directions.

***The Honourable Justice Brian J Preston
Chief Judge***

22 February 2024

SCHEDULE A

Class 3 Valuation Objections – Information Sheet

Note: Attach additional pages as required.

Proceedings No. _____

Parties _____

Applicant _____

Respondent _____

1. Has the Valuer-General provided the Applicant with access to, and copies of, relevant documents? YES/NO

If not, when will access be provided?

2. Has the Applicant notified the Valuer-General of the valuation for which the applicant contends? YES/NO

If not, when will the Applicant do so?

3. Have the parties sought to resolve their dispute by mediation? YES/NO
[Give details of the steps taken to resolve the dispute]

4. Is there any reason for the proceedings not be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979*? If so, provide reasons.

5. Have the parties conferred and identified whether they propose to rely on any expert evidence? YES/NO

If so, state the identity of the expert, the area of expertise, the issues on which expert evidence is to be adduced, the reason why the expert evidence is necessary and the dates the expert is available to prepare expert evidence and appear at the hearing.

6. Can the expert evidence be filed at the same time or does some evidence need to be prepared before or after other evidence?

If so, state directions sought and reasons.

7. If parties' single experts are agreed, set out below their name, charge rates, estimate of total fees and disbursements and available dates to prepare expert evidence and appear at a hearing.

8. If parties' single experts are not appropriate, state the reasons why not.

9. Is sufficient information available or is it otherwise appropriate for any experts proposed to be called by parties to proceed directly to a joint conference and joint report, without preparing other reports? If so, identify the experts and areas of expertise. If not, provide the reasons why not.

10. Are there any experts who should prepare an individual report before proceeding to a joint conference and joint report and, if so, identify the expert, the area of expertise and provide reasons supporting the individual report being necessary or appropriate?

11. Identify number and names of lay witnesses and available dates to appear at the hearing.

12. I state that the expert witnesses for which leave to adduce expert evidence has been sought have been advised of the directions sought to be obtained at 5, 6 and 7 above and they have advised me that they are able to comply with any such directions and acknowledge their obligation to do so and that leave will be limited to only such evidence that complies with directions made by the Court.

Name of party or legal representative _____

Date

Signed

SCHEDULE B

Usual Directions for Class 3 Valuation Objections

Note: Strike through/amend as required.

PART 1

First Directions Hearing

1. By # [+ 7 days of the first directions hearing], the Respondent is to provide the applicant with access to and copies of documents within the possession, custody or control of the Respondent relevant to the Respondent's consideration and determination of the objection. The applicant must meet the reasonable copying costs of the Respondent in so doing.
2. The proceedings are listed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) on #.
3. The proceedings are listed for a second directions hearing on # [+ 14 days after the conciliation conference].
4. The [party's] application for directions to adduce expert evidence is listed on # before # [this may be at the second directions hearing].
5. If the proceedings are resolved at or after the conciliation conference, the parties are to notify the Court at least 48 hours before the date of the second directions hearing.

PART 2

Second Directions Hearing

[Directions regarding lay evidence, expert witnesses and expert evidence].

1. The matter is fixed for a third directions hearing on # [7 days after final evidence is to be filed].

PART 3

Third Directions Hearing

1. The hearing is fixed for # days commencing on #.
2. The parties are to confer and prepare a paginated and consecutively numbered Court Book with a table of contents, a copy of the originating application and pleadings and any objections to evidence or documents in the bundle of documents.
3. The parties are to confer and prepare a paginated and consecutively numbered Evidence Book with a table of contents and the lay and expert evidence (with expert reports grouped by discipline). The table of contents for the Evidence Book is to conform with the template in **Schedule D** to this practice note.
4. The parties are to confer and prepare a bundle of documents (the bundle) on which the parties seek to rely. The bundle is to include a table of contents and be paginated and consecutively numbered. The bundle is not to include documents annexed or exhibited to an affidavit unless there are good reasons to do so.
5. Correspondence and other documents in the bundle of documents are to be arranged in chronological order.
6. Unnecessary copying or duplication of documents is to be avoided.
7. Any party objecting to the tender of any evidence in the Evidence Book or a document within the bundle of documents is to notify the other party of the objection and the grounds in support at least three working days before the Court Book, Evidence Book and bundle of documents are to be filed. The documents subject to objection are to be included in the Evidence Book or bundle of documents, but the objection, as well as the party tendering the document and the party objecting to the tender, is to be noted in the table of contents to the Evidence Book or bundle of documents. Short reasons for each objection are to be provided in the Court Book.
8. The parties are to file and serve their opening submissions of not more than ten pages; an agreed statement of facts; an agreed (or, if not agreed, their competing) chronology; and (where warranted by the number of persons involved) a list of relevant persons by 10 working days prior to the hearing.

9. The parties are to file and serve any submissions in reply of no more than five pages by five working days prior to the hearing.
10. The parties are to file:
 - (a) the Court Book;
 - (b) the Evidence Book; and
 - (c) the bundle of documents,10 working days prior to the hearing.

Date: # [insert date]

SCHEDULE C

Usual Directions for complex Class 3 Valuation Objections

Note: Strike through/amend as required.

1. The matter is fixed for a case management conference at # on # before #.
2. At the case management conference it is expected that each party will be represented by a person with sufficient knowledge of the matter and authority to conduct the matter so as to assist the Court.
3. At the case management conference it will be expected that the parties have already conferred with each other in broad terms as to the appropriate manner for the conduct of the proceedings.
4. At the case management conference discussion will be had, and if appropriate directions made, in respect of:
 - (a) the identification of the issues that arise for determination in the proceedings;
 - (b) the appropriateness for mediation and or s 34 conciliation;
 - (c) the need for and order of witnesses to be called (should leave be granted);
 - (d) the seeking and granting of leave to adduce expert evidence; and
 - (e) any particular matters that arise due to the identified complexity of the matter.
5. At the case management conference directions will be made for the conduct of the matter:
 - (a) as best respond to the issues raised having regard to the overriding purpose referred to in [3] of this Practice Note; and
 - (b) usually in accordance with the directions in **Schedule B** (adapted as appropriate to the circumstances of the case).
6. The parties should be aware that a hearing date will not be fixed until all of the evidence (excluding valuation evidence) has been filed and served.

Date: # [insert date]

SCHEDULE D

Index to Evidence Book

Note: Strike through/amend as required.

[DATE]

Tab	Document	Date	Adducing Party	Page	Objections
PART A: Lay evidence					
A	1. Affidavit of [name of witness]				Yes/No
A	2. Affidavit of [name of witness]				Yes/No
A	3. Affidavit of [name of witness]				Yes/No
A	4. Affidavit of [name of witness]				Yes/No
PART B: (expert discipline)					
B	1. SoE of [name of witness]				Yes/No
B	2. SoE of [name of witness]				Yes/No
B	3. Joint Expert Report				Yes/No
PART C: (expert discipline)					
C	1. SoE of [name of witness]				Yes/No
C	2. Supplementary SoE of [name of witness]				Yes/No
C	3. SoE of [name of witness]				Yes/No
C	4. Joint Expert Report				Yes/No

Add new parts for other expert disciplines as required



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

PRACTICE NOTE
CLASS 3 COMPENSATION CLAIMS

Name and commencement

1. This practice note commences on 2 April 2024. It replaces the Practice Note – Class 3 Compensation Claims dated 15 March 2019.

Application of Practice Note

2. This practice note applies to Class 3 claims for compensation by reason of the acquisition of land (“Class 3 Compensation Claims”), including claims under the *Land Acquisition (Just Terms Compensation) Act 1991* (“Just Terms Act”).

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 Class 3 Compensation Claims.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, their legal representatives and agents (as applicable) to consider the orders and 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 any 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 alternative procedures will be more conducive to such a resolution. In that event, the party is to notify the other party of the proposed alternative procedures as soon as practicable and is to make available to the Court short minutes reflecting the alternative procedures.
6. Parties are to ensure that all directions which they seek will assist in

enabling Class 3 Compensation Claims to be dealt with at the hearing with as little formality and technicality, and as quickly as the requirements of the *Land and Environment Court Act 1979* (“the Court Act”) and of every other relevant enactment and as the proper consideration of the matters before the Court permits (see s 38 of the Court Act).

Legal practitioners and agents of parties to be prepared

7. Each party not appearing in person shall be represented before the Court by a legal practitioner or duly authorised agent familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
8. Legal practitioners and agents for the 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.

Breach of the Court’s directions

9. If any party fails to comply with a 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 five working days of the specified time, the defaulting party is to:
 - (a) have the matter relisted;
 - (b) file and serve, when relisting, an affidavit explaining the non-compliance, the reason for the non-compliance and what action the party proposes to take and when the party proposes to take action to comply with the direction; and
 - (c) provide short minutes of order of the directions and orders the party seeks for the Court to make.
10. If any party fails to comply with a direction of the Court or this practice note, the Court will usually order that the defaulting party pay the costs of the other party of and occasioned by the non-compliance and any relisting required unless it appears to the Court that some other order should be made as to the whole or any part of the costs.
11. Any proposed directions that vary an existing timetable, must include the vacation of previous directions that can no longer be maintained including any dates for directions hearings or mention or for the hearing of motions.

Commencing a Class 3 Compensation Claim

12. A Class 3 Compensation Claim is to be commenced by filing in the Registry of the Court, by mail, over the counter or through the NSW Online Registry, a completed Class 3 Application Form (Form B (Version 1)).

The return date of the Class 3 Compensation Claim

13. The originating application will usually be given a return date before the Court about 12 weeks after the application was filed. On the return date, the first directions hearing will occur before a registrar.

Service of originating application

14. The originating application for a Class 3 Compensation Claim and the accompanying documents are to be served within 7 days of filing.

Identifying the issues in the Class 3 Compensation Claim

15. The issues involved in the determination of the Class 3 Compensation Claim are to be identified by the applicant's and the respondent's contentions on determination of compensation and, if necessary, the applicant's contentions in reply.
16. The contentions on the determination of compensation are to include:
 - (a) the amount of compensation that each party contends should be payable;
 - (b) the components of that amount by reference to each relevant matter in s 55(a) to (f) of the Just Terms Act;
 - (c) the basis of the valuation of the market value or special value of the land under s 55(a) and (b) and ss 56 and 57 of the Just Terms Act;
 - (d) the valuation methodology to be adopted in determining compensation;
 - (e) particulars of any comparable sales upon which the valuation is based;
 - (f) a schedule of any hypothetical development calculations;
 - (g) the schedule of losses attributable to disturbance under s 55(d) and s 59(1)(a) to (e) of the Just Terms Act including, where appropriate, the factual foundation upon which such claim is made;
 - (h) the schedule of other financial costs claimed under s 59(1)(f) of the Just Terms Act including, where appropriate, the factual foundation upon which such claim is made;
 - (i) any matter in respect of which the respondent contends compensation is not payable under ss 61 or 62 of the Just Terms Act; and
 - (j) any matter relied upon to offset the claim.
17. The applicant is to file and serve its contentions on determination of compensation within four weeks of filing its originating application.

18. The respondent is to file and serve its contentions on determination of compensation 10 weeks after the filing of the originating application.

Number of pre-hearing attendances

19. Unless there are interlocutory applications, a Class 3 Compensation Claim usually should appear in Court before the final hearing on no more than six occasions as follows:
- (a) at the first directions hearing;
 - (b) for complex matters, at a case management conference;
 - (c) at a conciliation conference pursuant to s 34 of the Court Act;
 - (d) at the second directions hearing;
 - (e) at the third directions hearing; and
 - (f) at a pre-hearing mention during the second last week before the hearing commences, if possible before the hearing judge or commissioner.

Before the first directions hearing

20. Before the first directions hearing, the parties are to discuss and endeavour to agree upon:
- (a) whether the proceedings are suitable for a conciliation conference;

[NOTE: There is a presumption that all Class 3 Compensation Claims will be referred for at least one conciliation conference – the parties will need to persuade the Court why this should not be the case.]
 - (b) whether the matter should be treated as a complex matter; and
 - (c) the directions that the Court should make at the first directions hearing.

At the first directions hearing

21. The first directions hearing will be on the return date.
22. Unless good reason is demonstrated, each party is to be sufficiently prepared at the first directions hearing to assist the Court in making and to accept a timetable up to and including the dates of the conciliation conference and the second directions hearing. Legal practitioners and other representatives of the parties are to ensure that they advise the parties of their obligation to be ready to agree to a timetable up to and including those dates and are to obtain full and timely instructions to ensure the parties comply with this obligation.
23. To assist the Court in making the appropriate directions, each party is to

complete and hand to the Court at the first directions hearing a completed Hearing Information Sheet in the form of **Schedule A**.

24. At the first directions hearing the Court will determine whether the Class 3 Compensation Claim is a complex matter.
25. Should the Class 3 Compensation Claim be determined not to be a complex matter, the directions in Part 1 of **Schedule B** will usually be made.
26. Should the Class 3 Compensation Claim be determined to be a complex matter, the directions in **Schedule C** will usually be made.
27. If the parties do not agree, each party should prepare their own written version of the directions they propose the Court should make.

At the second directions hearing

28. The second directions hearing will usually be held 14 days after any conciliation conference if agreement is not reached at the conciliation conference.
29. At the second directions hearing, the Court will:
 - (a) after consulting the parties, determine the appropriateness of conducting the hearing on a paperless basis;
 - (b) if the Class 3 Compensation Claim is determined not to be a complex matter, make the directions in Part 2 of **Schedule B**; and
 - (c) not fix a hearing date until all evidence (excluding valuation evidence) has been filed.

At the third directions hearing

30. At the third directions hearing, the Court will:
 - (a) if the Class 3 Compensation Claim is determined not to be a complex matter, make the directions in Part 3 of **Schedule B**; and
 - (b) not fix a hearing date until all evidence (excluding valuation evidence) has been filed.

At the pre-hearing mention

31. The pre-hearing mention will be in the second last week before the hearing. If possible, it will be before the judge or commissioner allocated to hear the proceedings. Counsel or solicitors briefed to appear on the hearing should attend.
32. The purpose of the pre-hearing mention is to ensure readiness for hearing and to give directions as to the conduct of the hearing and of any inspection of the resumed property and comparable sale properties. Prior to the pre-

hearing mention, in accordance with any direction made, the parties are to file:

- (a) one copy of the Court Book (either in a folder [if the hearing is to be paper-based] or on a USB stick);
- (b) one copy of the Evidence Book (either in folders [if the hearing is to be paper-based] or on a USB stick);
- (c) one copy of the bundle of documents (either in folders [if the hearing is to be paper-based] or on a USB stick);

NOTE: If all the material required by (a) to (c) for a paperless hearing can be loaded on a single USB stick, this is to be done.

- (d) a statement by the respondent as to those matters which might have been expected to be contested but which are no longer contested by the respondent;
 - (e) an agreed table setting out the matters in s 55(a) to (f) and s 59(1) of the Just Terms Act in respect of which the applicant claims compensation. This table should set out the amount claimed for each matter; the statutory provision pursuant to which the claim is made; a short summary (maximum one, 10 line paragraph) of the basis for the claim; and, if a claimed matter is disputed by the respondent, the amount (if any) conceded by the respondent and a short summary (maximum one, 10 line paragraph) by the respondent as to the nature of the dispute concerning this claimed matter; and
 - (f) an agreed schedule:
 - (i) containing a brief description of the resumed property and each comparable sale property that it is proposed the Court should inspect;
 - (ii) noting which party relies on each comparable sale;
 - (iii) including a map showing the location of each property; and
 - (iv) if a site inspection is determined to be necessary, proposing a time when the hearing judge or commissioner should inspect the properties and the arrangements for inspection.
33. The Court at the pre-hearing mention will determine whether an onsite inspection is necessary and if so, when such inspection will take place. The parties will be required to identify what properties each party contends should be physically inspected and why such inspection is necessary. The parties are to give genuine consideration to the necessity for such inspection to enable the just, quick and cheap resolution of the real issues in dispute in the proceedings.
34. If any witness is required for cross-examination at the hearing, notice is to be given before the pre-hearing mention.

The hearing

35. Evidence and submissions at the hearing are to address all issues the

subject of the proceedings. No issue will be separately determined unless the Court so orders.

NOTE: Application for separate determination of questions, under s 62(2) of the *Civil Procedure Act 2005* or Pt 28 r 28.2 of the Uniform Civil Procedure Rules, should be made by notice of motion with supporting affidavit.

36. Unless the hearing judge or commissioner otherwise directs, expert evidence is to be taken concurrently where there are two or more experts giving evidence in the same area of expertise. Parties are to ensure that any witnesses to be called are reasonably available during the period the proceedings are listed for hearing so as to ensure the efficient conduct of the hearing.
37. At the commencement of oral evidence of any witness, counsel or the solicitor appearing for a party, having conferred beforehand, are to hand to the hearing judge or commissioner agreed or competing lists of the topics on which it is proposed to cross-examine and for which leave is sought. Generally, the conduct of the hearing will not be determined by the convenience of a particular witness.
38. The brief opening submissions should not generally be a substitute for a written outline of closing submissions. The Court will usually be assisted by a written outline of closing submissions that includes references to evidence in the Evidence Book, the bundle of documents and oral evidence. The written outline of closing submissions should be filed and served for the early attention of the hearing judge or commissioner.

Seeking directions before adducing expert evidence

39. Parties are encouraged to consider whether there is a genuine need to adduce expert evidence on any issue in dispute. Unnecessary expert evidence substantially increases the time and cost of Class 3 Compensation Claims.
40. Parties may not adduce expert evidence in a Class 3 Compensation Claim unless directions have been sought and made under r 31.19 of the Uniform Procedure Rules 2005 (NSW) ("UCPR") and otherwise than in accordance with those directions (see r 31.19(3) of the UCPR).
41. The Court may give directions in relation to the use of expert evidence generally and as to any matter in r 31.20(2) of the UCPR, including:
 - (a) any limitation on the subject matter or issues on which the expert evidence may be adduced;
 - (b) the identity of the expert who may adduce expert evidence on a subject matter or issue;
 - (c) any limitation on the number of expert witnesses who may be called to give evidence on a subject matter or issue;
 - (d) the date for filing and serving the expert evidence; and

- (e) the date for experts to confer and prepare a joint report.
42. Before directions are sought to adduce expert evidence, the parties and their legal representatives are to ensure that the expert has agreed to provide the expert evidence, including any report, in accordance with such directions as the Court may make, including the dates for joint conferencing and report and filing expert evidence.
43. An application for directions to adduce expert evidence will be heard on a date allocated for that purpose. This could be at a scheduled directions hearing or a date fixed at a directions hearing for hearing of the application.
44. The application for directions to adduce expert evidence should include but not be limited by the answers to the questions in **Schedule A**.
45. Should a party seek to vary the directions the Court has made regarding expert evidence, application to vary the directions is to be made by notice of motion together with an accompanying affidavit that identifies:
- (a) the variation sought;
 - (b) if variation is to extend the time for filing the expert evidence, the extension of time sought;
 - (c) the reason for the need for variation; and
 - (d) the time upon which both the expert and the legal practitioner or party first became aware of the need for variation.

Use of a parties' single expert

46. Where expert evidence is necessary to be adduced in relation to an issue, the Court encourages parties to use a parties' single expert. The use of a parties' single expert in an appropriate case can reduce costs and ensure the Court has the benefit of evidence from a person who is not engaged by only one party. In determining whether a parties' single expert might be appropriate in a particular case, consideration should be given to:
- (a) the importance and complexity of the subject matter in dispute in the proceedings;
 - (b) the likely cost of obtaining expert evidence from a parties' single expert compared to the alternative of obtaining expert evidence from individual experts engaged by each of the parties;
 - (c) the proportionality of the cost in (b) to the importance and complexity of the subject matter in (a);
 - (d) whether the use of a parties' single expert in relation to an issue is reasonably likely either to narrow the scope of the issue or resolve the issue;

- (e) the nature of the issue, including:
 - (i) whether the issue is capable of being answered in an objectively verifiable manner;
 - (ii) whether the issue involves the application of accepted criteria (such as Australian Standards) to ascertainable facts;
 - (iii) whether the issue is likely to involve a genuine division of expert opinion on methodology, or schools of thought in the discipline;
 - (f) whether the parties' single expert would be required independently to obtain further information or to undertake monitoring, surveys or other means of obtaining data before being able to provide expert evidence;
 - (g) whether the parties are prepared at the time to proceed to hearing on the basis of a parties' single expert report about the issue and no other expert evidence about that issue;
 - (h) whether the integrity of expert evidence on the issue is likely to be enhanced by evidence being provided by a parties' single expert instead of by individual experts engaged by the parties; and
 - (i) whether the Court is likely to be better assisted by expert evidence on the issue being provided by a parties' single expert instead of by individual experts engaged by the parties.
47. If the parties agree on the use of a parties' single expert, directions still need to be sought and made permitting the appointment of and adducing of expert evidence from that expert.
48. It is the responsibility of the parties to agree the remuneration to be paid to a parties' single expert. This includes making provision with respect to the amount of the expert's fees and the frequency with which the expert renders accounts. The Court will fix the remuneration of a parties' single expert only where the parties are unable to agree that remuneration.
49. Where a parties' single expert has been appointed to adduce evidence in relation to any issue, the parties may not rely on any other expert evidence about that issue without leave. Any application for leave is to be made as soon as reasonably possible and usually no later than five days after receiving the report of the parties' single expert.

Expert's compliance with expert witness code of conduct

50. An expert (including a parties' single expert) and the expert's report are to comply with the requirements of Division 2 of Pt 31 of the UCPR and the Expert Witness Code of Conduct in Schedule 7 of the UCPR.
51. An expert witness should identify any pre-existing relationship between the expert witness, or their firm or company, and a party to the litigation.

Joint conferencing of experts

52. If experts are directed by the Court to confer, experts are to ensure that their joint conference is a genuine dialogue between experts in a common effort to reach agreement with the other expert witness about the relevant facts and issues. Any joint report is to be a product of this genuine dialogue and is not to be a mere summary or compilation of the pre-existing positions of the experts.
53. Legal representatives are not to attend joint conferences of experts or be involved in the preparation of joint reports without the leave of the Court.

Notices of motion

54. Any notice of motion is to be returnable at a directions hearing unless the circumstances are so urgent as to justify an earlier listing. Parties and legal practitioners should file and serve evidence in support of the motion so that, if practicable, the motion may be heard on the return date.

Amendment of contentions on determination of compensation

55. Parties require leave of the Court to amend their Contentions on Determination of Compensation.
56. Other than amendments sought during the hearing or where the other party consents, leave to amend is to be sought by notice of motion accompanied by a short affidavit in support explaining the reasons for leave being sought.

Liberty to restore

57. Parties have general liberty to restore to the Class 3 Compensation Claim on three working days' notice, or less if urgency requires it. A party seeking to do so should make prior arrangement with, or give appropriate notice to, any other party, and should send an Online Court communication or e-mail to the registrar.

Applications to vacate hearings and for adjournments

58. Proceedings will not be adjourned generally.
59. Proceedings usually will not be adjourned because of failure to comply with this practice note or directions or because of lack of preparedness for any attendance before the Court. If failure to comply or lack of preparedness nevertheless does cause the adjournment of proceedings, the defaulting parties or legal practitioners may be ordered to pay costs.
60. 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.

Settlement of proceedings

61. If proceedings settle on terms that require the Court to make an order, it is necessary to apply to the Court to make orders finalising the litigation:
- (a) the application is to be by written request to the registrar accompanied by a copy of the proposed final consent orders signed by all parties;
 - (b) if the Court considers the consent orders finalising the proceedings to be satisfactory, orders may be made in chambers; and
 - (c) if orders are not made in chambers, the proceedings will be listed before a judge, commissioner or registrar. Representatives of the parties attending the listing must be familiar with the subject matter of the proceedings and have instructions sufficient to inform the Court about the terms of the proposed orders.

Cooperation

62. The Court expects legal practitioners and experts to work together to implement this practice note in a practical and sensible way which ensures that it achieves its intended purpose.

Mediation, conciliation, neutral evaluation or reference

63. Consideration should be given prior to and throughout the course of the proceedings as to whether the proceedings or any questions are appropriate for mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report.
64. It is expected that legal practitioners, or parties not legally represented, will be in a position to advise the Court at any directions hearing:
- (a) whether the parties have attempted mediation, conciliation or neutral evaluation; and
 - (b) whether the parties are willing to proceed to mediation, conciliation, neutral evaluation or reference to a referee for inquiry and report at an appropriate time.
65. At a mediation, conciliation or neutral evaluation, the parties are to ensure that a person who is able to make a decision as to whether the proceedings or any particular issue should settle or be resolved is present personally or represented by an authorised nominee. If this is not possible, a person with authority must be contactable and have authority to confirm acceptance of any proposed settlement.
66. Where the proceedings or questions are appropriate to be referred to a mediator, conciliator or neutral evaluator or to a referee for inquiry and report, the parties should prepare proposed short minutes to be handed to the Court which:

- (a) where questions are to be referred, formulate the questions with precision; and
 - (b) state:
 - (i) that the matter is to be mediated by an in-court mediator or conciliator, or the name of an agreed external mediator, neutral evaluator or referee or, if no agreement can be reached, the person each party suggests;
 - (ii) the date on which the mediator, neutral evaluator or referee can commence the mediation, neutral evaluation or reference;
 - (iii) expected duration of the mediation, neutral evaluation or reference; and
 - (iv) the anticipated date for finalisation of the mediation or neutral evaluation, or for delivery to the Court of the referee's report.
67. Proposed consent orders for amendment to the questions referred to a mediator, neutral evaluator or referee may be filed with the Court, which may make such orders in chambers. Any contested amendments, or amendments in respect of which the Court wishes to hear the parties, will be heard on a date notified to the parties by the registrar.

Costs of non-compliance

68. If a breach of the Court's directions or of 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.
69. 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.
70. 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. Both parties are responsible for ensuring that they comply with directions.

***The Honourable Justice Brian J Preston
Chief Judge***

22 February 2024

SCHEDULE A

Class 3 Compensation Claims – Information Sheet

Note: Attach additional pages as required.

Proceedings No. _____

Parties _____

Applicant _____

Respondent _____

1. Has the Respondent provided the Applicant with access to, and copies of, relevant documents? YES/NO

If not, when will access be provided?

2. Has the Applicant notified the Respondent of the valuation for which the applicant contends? YES/NO

If not, when will the Applicant do so?

3. Have the parties sought to resolve their dispute by mediation? YES/NO
[Give details of the steps taken to resolve the dispute]

4. Is there any reason for the proceedings not be fixed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW)? If so, provide reasons.

5. Have the parties conferred and identified whether they propose to rely on any expert evidence? YES/NO

If so, state the identity of the expert, the area of expertise, the issues on which expert evidence is to be adduced, the reason why the expert evidence is necessary and the dates the expert is available to prepare expert evidence and appear at the hearing.

6. Can the expert evidence be filed at the same time or does some evidence need to be prepared before or after other evidence?

If so, state directions sought and reasons.

7. If parties' single experts are agreed, set out below their name, charge rates, estimate of total fees and disbursements and available dates to prepare expert evidence and appear at a hearing.

8. If parties' single experts are not appropriate, state the reasons why not.

9. Is sufficient information available or is it otherwise appropriate for any experts proposed to be called by parties to proceed directly to a joint conference and joint report, without preparing other reports? If so, identify the experts and areas of expertise. If not, provide the reasons why not.

10. Are there any experts who should prepare an individual report before proceeding to a joint conference and joint report and, if so, identify the expert, the area of expertise and provide reasons supporting the individual report being necessary or appropriate?

11. Identify number and names of lay witnesses and available dates to appear at the hearing.

12. I state that the expert witnesses for which leave to adduce expert evidence has been sought have been advised of the directions sought to be obtained at 5, 6 and 7 above and they have advised me that they are able to comply with any such directions and acknowledge their obligation to do so and that leave will be limited to only such evidence that complies with directions made by the Court.

Name of party or legal representative

Date

Signed

SCHEDULE B

Usual Directions for Class 3 Compensation Claims

Note: Strike through/amend as required.

PART 1

First Directions Hearing

1. By # [+ 7 days of the first directions hearing], the Respondent is to provide the applicant with access to and copies of documents within the possession, custody or control of the Respondent relevant to the Respondent's consideration and determination of the objection. The applicant must meet the reasonable copying costs of the Respondent in so doing.
2. The proceedings are listed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) on #.
3. The proceedings are listed for a second directions hearing on # [+ 14 days after the conciliation conference].
4. The [party's] application for directions to adduce expert evidence is listed on # before # [this may be at the second directions hearing].
5. If the proceedings are resolved at or after the conciliation conference, the parties are to notify the Court at least 48 hours before the date of the second directions hearing.

PART 2

Second Directions Hearing

[Directions regarding lay evidence, expert witnesses and expert evidence].

1. The matter is fixed for a third directions hearing on # [7 days after final evidence is to be filed]

PART 3

Third Directions Hearing

1. The hearing is fixed for # days commencing on #.
2. The parties are to confer and prepare a paginated and consecutively numbered Court Book with a table of contents, a copy of the originating application and pleadings and any objections to evidence or documents in the bundle of documents.
3. The parties are to confer and prepare a paginated and consecutively numbered Evidence Book with a table of contents and the lay and expert evidence (with expert reports grouped by discipline). The table of contents for the Evidence Book is to conform with the template in **Schedule D** to this practice note.
4. The parties are to confer and prepare a bundle of documents (the bundle) on which the parties seek to rely. The bundle is to include a table of contents and be paginated and consecutively numbered. The bundle is not to include documents annexed or exhibited to an affidavit unless there are good reasons to do so.
5. Correspondence and other documents in the bundle of documents are to be arranged in chronological order.
6. Unnecessary copying or duplication of documents is to be avoided.
7. Any party objecting to the tender of any evidence in the Evidence Book or a document within the bundle of documents is to notify the other party of the objection and the grounds in support at least three working days before the Court Book, Evidence Book and bundle of documents are to be filed. The documents subject to objection are to be included in the Evidence Book or bundle of documents, but the objection, as well as the party tendering the document and the party objecting to the tender, is to be noted in the table of contents to the Evidence Book or bundle of documents. Short reasons for each objection are to be provided in the Court Book.
8. The parties are to file and serve their opening submissions of not more than ten pages; an agreed statement of facts; an agreed (or, if not agreed, their competing) chronology; and (where warranted by the number of persons involved) a list of relevant persons by 10 working days prior to the hearing.

9. The parties are to file and serve any submissions in reply of no more than five pages by five working days prior to the hearing.
10. The parties are to file:
 - (a) the Court Book;
 - (b) the Evidence Book; and
 - (c) the bundle of documents,10 working days prior to the hearing.

Date: # [insert date]

SCHEDULE C

Usual Directions for complex Class 3 Compensation Claims

Note: Strike through/amend as required.

1. The matter is fixed for a case management conference at # on # before #.
2. At the case management conference it is expected that each party will be represented by a person with sufficient knowledge of the matter and authority to conduct the matter so as to assist the Court.
3. At the case management conference it will be expected that the parties have already conferred with each other in broad terms as to the appropriate manner for the conduct of the proceedings.
4. At the case management conference discussion will be had, and if appropriate directions made, in respect of:
 - (a) the identification of the issues that arise for determination in the proceedings;
 - (b) the appropriateness for mediation and or s 34 conciliation;
 - (c) the need for and order of witnesses to be called (should leave be granted);
 - (d) the seeking and granting of leave to adduce expert evidence; and
 - (e) any particular matters that arise due to the identified complexity of the matter.
5. At the case management conference directions will be made for the conduct of the matter:
 - (a) as best respond to the issues raised having regard to the overriding purpose referred to in [3] of this Practice Note; and
 - (b) usually in accordance with the directions in **Schedule B** (adapted as appropriate to the circumstances of the case).
6. The parties should be aware that a hearing date will not be fixed until all of the evidence (excluding valuation evidence) has been filed and served.

Date: # [insert date]

SCHEDULE D

Index to Evidence Book

Note: Strike through/amend as required.

[DATE]

Tab	Document	Date	Adducing Party	Page	Objections
PART A: Lay evidence					
A 1.	Affidavit of [name of witness]				Yes/No
A 2.	Affidavit of [name of witness]				Yes/No
A 3.	Affidavit of [name of witness]				Yes/No
A 4.	Affidavit of [name of witness]				Yes/No
PART B: (expert discipline)					
B 1.	SoE of [name of witness]				Yes/No
B 2.	SoE of [name of witness]				Yes/No
B 3.	Joint Expert Report				Yes/No
PART C: (expert discipline)					
C 1.	SoE of [name of witness]				Yes/No
C 2.	Supplementary SoE of [name of witness]				Yes/No
C 3.	SoE of [name of witness]				Yes/No
C 4.	Joint Expert Report				Yes/No

Add new parts for other expert disciplines as required



SUPREME COURT PRACTICE NOTE SC CL 11

Supreme Court Common Law Division - Bail

Commencement

1. This Practice Note was issued on 23 February 2024 and commences on 26 February 2024.

Application

2. This Practice Note applies to Bail Applications made under the *Bail Act 2013* (NSW) to be heard in the Supreme Court of New South Wales.

Definitions

3. In this Practice Note:
 - 3.1 **Applicant** means a person applying to the Court for a bail decision to be made; this includes that person's legal representative;
 - 3.2 **Bail Application** means a detention application, release application, variation application or any other application made under the *Bail Act 2013* (NSW);
 - 3.3 **Court** means the Supreme Court of New South Wales;
 - 3.4 **email** means an email sent to the email address identified on the Court's approved form for a Bail Application;
 - 3.5 **Registry** means the Registry of the Court;
 - 3.6 **Respondent** means the opposing party to a Bail Application; this includes that person's legal representative.

Purpose

4. The purpose of this Practice Note is to outline the practice and procedure to be adopted for preparing and filing a Bail Application for hearing in the Court.
5. The practice and procedure set out in this Practice Note aim to enable the Court, wherever possible, to list all applications within 20 working days of the first call-over listing.

Introduction

6. The Court will accept a Bail Application for filing only when it is ready to be listed for hearing, and specifically when:
 - 6.1 it is accompanied by all material on which the Applicant seeks to rely; and
 - 6.2 the Applicant's legal representation is confirmed (or the Applicant confirms that they will represent themselves).
7. Clauses 10-17 of this Practice Note sets out the steps for filing a Bail Application where the Applicant has legal representation.
8. Clauses 18-23 of this Practice Note sets out the steps for filing a Bail Application where the Applicant does not have legal representation.
9. A flowchart representation of the principal procedures is set out in Annexure A to this Practice Note.

Filing a release or variation application – Applicants with legal representation

10. An Applicant seeking to have a Bail Application listed before the Court must file with the Registry a completed Supreme Court Bail Application form, which can be found using the following link:

<https://supremecourt.nsw.gov.au/practice-procedure/forms/forms-by-subject/bail-forms.html>
11. The form must be completed in full and be accompanied by all documents (as set out in the form) on which the Applicant relies in support of the Bail Application, including confirmation that the Bail Application is ready to be heard. Lodging an incomplete form may lead to the form being rejected for filing.
12. The Applicant must also confirm in the form that they have:
 - 12.1 confirmation of the Applicant's proposed accommodation (including, if applicable, accommodation in a rehabilitation facility); and
 - 12.2 organised sureties (if proposed).
13. The Applicant's legal representative must complete the form, sign it and file it with the Court; otherwise the Bail Application may be rejected for filing.
14. The completed Bail Application form and attachments may be lodged in the following ways for filing:
 - 14.1 by email; or
 - 14.2 over the counter at the Registry; or
 - 14.3 by post.

15. The Applicant must serve the Bail Application, including attachments, on the opposing party on the day of filing.
16. After the Bail Application is accepted for filing, it will be either:
 - 16.1 listed for a call-over and the Registry will send the parties a Notice of Listing confirming the call-over date; or
 - 16.2 at the Court's discretion, listed by the Registrar in chambers, without a call-over, for a hearing and the Registry will send the parties a Notice of Listing confirming the hearing date and providing orders for the filing and service of any further documents for the Applicant, submissions and any other material by the opposing party and any reply. Those materials must be filed in any of the ways listed in Clause 14 of this Practice Note.
17. Wherever practical, the Court's aim is to list all applications within 20 working days of the first call-over listing.

Filing a release or variation application – Applicants without legal representation

18. An Applicant who does not have legal representation may file a Bail Application with the Court, provided the Applicant fully completes pages 1, 3 and 4 of the Supreme Court Bail Application form, which can be found using the following link:
<https://supremecourt.nsw.gov.au/practice-procedure/forms/forms-by-subject/bail-forms.html>
19. Clause 11 of this Practice Note applies.
20. The Applicant must confirm at the first call-over that one of the following circumstances applies for the application to be listed for hearing:
 - 20.1 he or she does not wish to obtain legal representation for the Bail Application and will be self-represented; or
 - 20.2 he or she has:
 - (a) contacted Legal Aid NSW, the Aboriginal Legal Service (ALS) or a private lawyer for the purpose of obtaining legal representation for the Bail Application; and
 - (b) been told that he or she will not be represented; and (if he or she intends to appeal the decision)
 - (c) exhausted all avenues of appeal against any such decision.
21. The Bail Application may be filed in any of the ways listed in Clause 14 of this Practice Note. Alternatively, if the Applicant is representing himself or herself and is in custody, the Bail Application may be filed by fax.
22. The Court will reject the Bail Application for filing if the Applicant has (or is proposing to obtain) legal representation (any Bail Application must then be filed in accordance with Clauses 10-17 of this Practice Note).

23. If the Court accepts the Bail Application for filing:
 - 23.1 the Registry will forward a copy of the application form to the opposing party; and
 - 23.2 the Registry will proceed as set out in Clauses 16 and 17 of this Practice Note to list the Bail Application for call-over or hearing.

Detention applications

24. The Crown, when seeking to have a detention application listed before the Court, must file with the Registry a completed Supreme Court Bail Application form, which can be found using the following link:

<https://supremecourt.nsw.gov.au/practice-procedure/forms/forms-by-subject/bail-forms.html>
25. The Crown must personally serve the Bail Application on the Respondent and their last known legal representative (either personally, or by email or fax) on the day of filing or as soon as possible thereafter.
26. After the Bail Application is accepted for filing, it will be either:
 - 26.1 listed for a call-over and the Registry will send the parties a Notice of Listing confirming the call-over date; or
 - 26.2 at the Court's discretion, listed by the Registrar in chambers, without a call-over, for a hearing and the Registry will send the parties a Notice of Listing confirming the hearing date and providing orders for the filing and service of submissions and any other material by both parties. Those materials must be filed in any of the ways listed in Clauses 14 or 21 (if applicable) of this Practice Note.
27. Detention applications will be listed with expedition and counsel's availability will not be taken into consideration unless there are exceptional circumstances.

Call-overs and listing for hearing

28. The cut-off day for Bail Applications to be listed in a call-over is 5:00pm three working days prior to the call-over.
29. At the call-over, if the Registrar is satisfied that a Bail Application is ready to proceed to a hearing, a hearing date will be fixed. In all other cases the Registrar will treat the Bail Application as having been withdrawn. This does not preclude an Applicant from filing a further Bail Application.
30. Bail Applications listed for call-over will not be adjourned to a future call-over without a hearing date being fixed unless there are exceptional circumstances.
31. Applicants appearing at call-over should attend with information as to a reasonable estimate of time for oral submissions on behalf of the Applicant and an overall estimate for the bail hearing. Confirmation in accordance with the relevant Checklist on the Bail Application form of all material to be relied on must be given.

Where documents or other material are not yet available, Clause 11 will apply at the discretion of the Registrar.

32. After fixing a hearing date the Registrar will fix a timetable for the filing and service of any further documents for the Applicant, submissions and any other material by the opposing party as well as submissions and other material in reply. The standard timetable (subject to application from either party and the Registrar's discretion) is for the opposing party to file and serve submissions and material by 4pm four working days prior to the bail hearing, and any reply by 4pm two working days prior to the bail hearing. These must be filed in any of the ways listed in Clauses 14 or 21 (if applicable). Slippage of the timetable may result in the bail hearing date being vacated at the discretion of the Registrar. At the Registrar's discretion, orders may be made for the filing and service of documents prior to a hearing date being fixed.

Adjournments

33. The Court will not grant an adjournment of a Bail Application unless there are exceptional circumstances.
34. If an Applicant or Respondent seeks to adjourn a Bail Application that has been filed but has not yet been listed for hearing, he or she must apply to the Court by email. The application will be considered by the Registrar in chambers.
35. If an Applicant or Respondent seeks to adjourn a Bail Application that has been listed for hearing, he or she must apply to the Court by email setting out the reasons why the adjournment is sought.
 - 35.1 Hearing dates will not be vacated except by an order of the Court.
 - 35.2 Adjournment applications made within two working days of the allocated hearing date will be referred to the presiding Judge for determination.
 - 35.3 Adjournment applications made earlier than two working days prior to the allocated hearing date will be considered by the Registrar in chambers.
36. If an Applicant or Respondent seeks to adjourn a Bail Application on the day of hearing, he or she must appear before the presiding Judge to make the application (unless excused, on application to the Court by email) and provide the Court with an affidavit setting out why the adjournment is sought.
37. If an adjournment is granted, the Bail Application will be listed in the next available call-over for case management. At the call-over, if the Registrar is not satisfied that the Bail Application is ready to proceed to a hearing within a time considered reasonable by the Registrar, the Registrar will treat the Bail Application as having been withdrawn. This does not preclude an Applicant from filing a further Bail Application.

Withdrawing a Bail Application

38. If an Applicant seeks to withdraw a Bail Application prior to the day of hearing, the Applicant must notify the opposing party and the Court by email. The application will then be withdrawn.

39. If an Applicant seeks to withdraw a Bail Application on the day of hearing, the Applicant must appear before the presiding Judge to withdraw the application (unless excused, on application to the Court by email).

Applicants released from custody or sentenced to imprisonment before bail hearing

40. Where the Court is advised (either by the Applicant, the opposing party, another Court, Corrective Services NSW or Youth Justice), prior to an allocated hearing date for a Bail Application, that an Applicant has either been released from custody or sentenced, (or in the case of a Respondent to a detention application, that the Respondent has been taken into custody) the Court will treat the Bail Application as having been withdrawn.

The Hon. A S Bell
Chief Justice of New South Wales
23 February 2024

Related Information:
Bail Act 2013 (NSW)

Amendment history:

23 February 2024: This Practice Note replaces the previous version of Practice Note SC CL 11 which was issued on 18 December 2018.

18 December 2018: The Practice Note issued on 4 February 2016 and commencing on 7 March 2016 is replaced.

ANNEXURE A – BAIL APPLICATIONS TO THE SUPREME COURT

CHART 1 – BAIL APPLICATION PROCEDURES – APPLICANTS WITH LEGAL REPRESENTATION

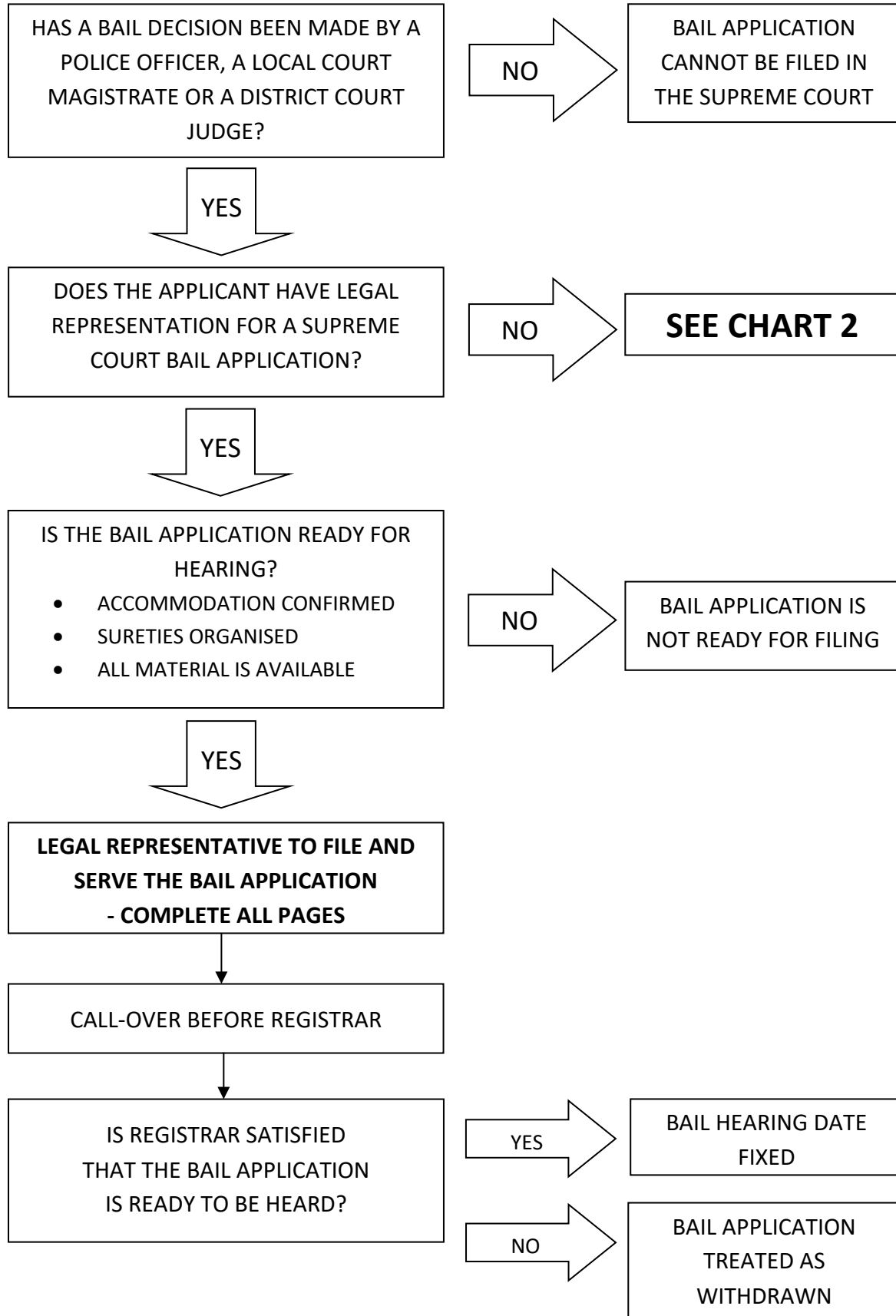
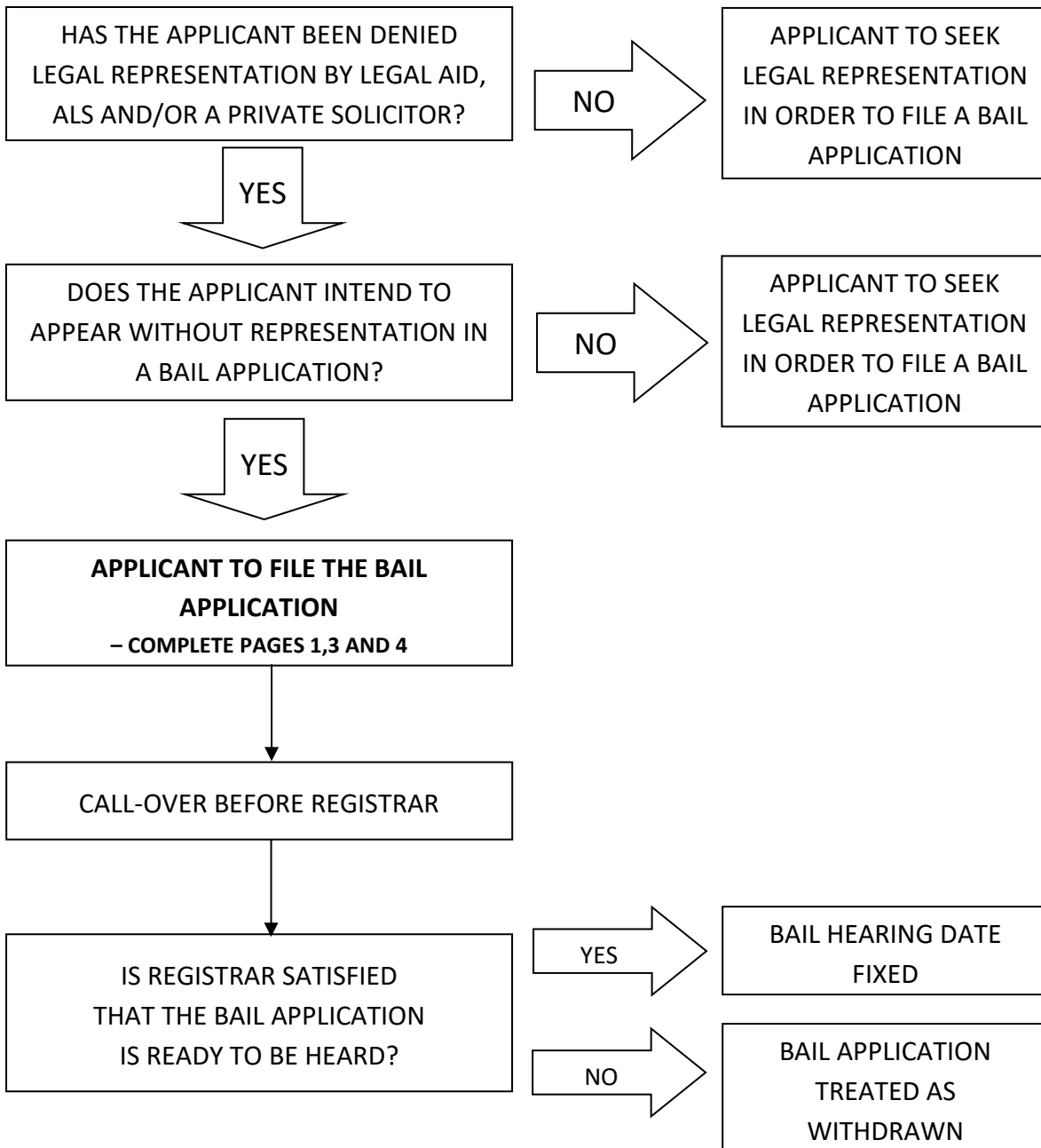


CHART 2 – BAIL APPLICATION PROCEDURES – APPLICANTS WITHOUT LEGAL REPRESENTATION



CONSTITUTION ACT 1902

Ministerial Arrangements for the Minister for Small Business, Minister for Lands and Property,
Minister for Multiculturalism, Minister for Sport

Pursuant to section 36 of the *Constitution Act 1902* (NSW), Her Excellency the Governor, with the advice of the Executive Council, has authorised the Honourable Rose Jackson MLC to act for and on behalf of the Minister for Small Business, Minister for Lands and Property, Minister for Multiculturalism, Minister for Sport on and from 28 February 2024 to 5 March 2024, inclusive.

Dated: 1 March 2024

CHRIS MINNS, MP
Premier