



# Land and Environment Court

of New South Wales

## COVID-19 PANDEMIC ARRANGEMENTS POLICY

### Commencement

1. This Policy commences on 23 March 2020.

### Purpose

2. The purpose of this Policy is to guide the conduct of hearings, conciliation conferences, and mediations in all classes of the Court's jurisdiction in response to the COVID-19 pandemic.

### Application

3. The Policy applies to:
  - Court hearings, including:
    - On-site hearings under s 34B of the *Land and Environment Court Act 1979* (the Court Act);
    - Court hearings under s 34D of the Court Act;
    - Hearings of notices of motion and other interlocutory applications;
  - Conciliation conferences (including on-site inspections and any subsequent hearings) under s 34 of the Court Act;
  - Conciliation conferences (including on-site inspections and any subsequent hearings) for small-scale residential developments dealt with under s 34AA of the Court Act;
  - Hearings of matters under the *Trees (Disputes Between Neighbours) Act 2006* (tree disputes);
  - Mediations under s 26 of the *Civil Procedure Act 2005*; and
  - Delivery of judgments.

## **Filing documents and applications to the Court**

4. The parties and their representatives are to comply with the following procedures for filing documents:
  - Parties in matters in Class 1, 2 (excluding tree dispute applications), 3, 4 or 8 are required to use Online Registry and Online Court where they are entitled and registered to do so.
  - Both Online Court and Online Registry operate 24 hours a day so that parties can use them at any time.
  - Originating process, including an application, summons or notice of appeal commencing proceedings, notices of motion, notices to produce and applications for the issue of subpoenas must be filed by Online Registry.
  - Online Court is to be used to seek directions in proceedings (including listing matters for conciliation conferences, mediations and hearings) and access orders for subpoenas and notices to produce.
  - Parties in Class 2 tree disputes are, whenever practicable, to file with the Court, and send a copy to the other party, or parties, their written statements of evidence, expert reports, photographs, plans, and submissions by email to the Court using the [lecourt@justice.nsw.gov.au](mailto:lecourt@justice.nsw.gov.au) email or by post to the Court Registry, at least 14 days prior to the hearing.
  - Parties in Class 2 tree disputes and Class 5, 6 and 7 criminal proceedings and appeals must seek directions and access orders for subpoenas and notices to produce by email to the Court using the [lecourt@justice.nsw.gov.au](mailto:lecourt@justice.nsw.gov.au) email address, sending a copy of their email to the Court to the other party or parties in the proceeding at the same time. A party may likewise email the Court with their response to the applying party's application to the Court, but should do so within 24 hours of receiving the applying party's email.

## **Directions hearings and Lists**

5. For applications not able to be determined by the Court through means of Online Court or email, the Court will continue to conduct the Registrar's list and the Friday Judge lists, but these will be conducted by telephone. Parties and practitioners are to notify the Court in advance of the name and telephone number of their representatives who will be attending. The Court will telephone the parties' representatives when the matter is called in the list or parties will be advised to use the Telstra dial-in number.
6. Parties should advise the Court, when filing and responding to notices of motion and applications, whether the parties agree that the matter can be

dealt with by the Court on the written material, without the parties being further heard.

### **Site inspections for hearings**

7. At least seven days prior to any scheduled site inspection, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that a site inspection should not proceed.
8. Any site inspection will require compliance with social distancing practices, including maintaining a distance of 1.5 metres between people on site.
9. Site inspections will be limited to essential participants only, being as few representatives of the parties, their legal representatives and required expert witnesses as practicable.
10. If it is necessary to enter a building, the Judge or Commissioner will control the number of people allowed in the building at the same time and enforce the social distancing practices required.
11. The Court's *Site Inspections Policy*, stating that a maximum of six persons objecting to a development proposal should provide oral evidence on site, is temporarily suspended. Instead of giving oral evidence at the commencement of the hearing, objectors' evidence is to be reduced to writing and supplemented with any photographic evidence that would assist the Court to understand their concerns. In proceedings concerning an appeal against a Council, the Council is to provide the objectors' written material to the other party in advance of the hearing and tender it at the hearing.
12. In the event that a site inspection does not proceed, photographs and video presentations of the site, or relevant matters, that might have been seen or heard on-site may be admitted into evidence upon application to the presiding Judge or Commissioner.

### **Hearings in courtrooms**

13. A Judge or Commissioner may direct any person in a courtroom, including parties, practitioners or witnesses in the proceedings, to practice social distancing and sit at least 1.5 metres apart. This may require that only the advocates sit at the bar table and restricting the number of people in the courtroom at any one time. Seating in the public gallery of the courtroom may be required to be left vacant, such as leaving a spare seat or seats between people.
14. The Court may exclude non-essential participants from the courtroom. Only Court staff and legal representatives essential to the hearing of the matter should attend the courtroom.

15. Witnesses may be directed to attend the Court hearing at a nominated time to limit the number of people within the courtroom at any time.
16. To minimise the need for oral evidence at the hearing, parties should ensure that lay and expert witness evidence that can be reduced to writing is reduced to writing. The Court may direct that this be done.
17. Parties should consider whether cross-examination of any witness called by the other party is necessary, or whether the object of cross-examination could be achieved by other means, such as by providing further written evidence of another witness called by the party.
18. Parties should consider whether any cross-examination that is necessary can be conducted by telephone and, if so, advise the Court in advance so that appropriate arrangements can be made.

### **Concurrent evidence**

19. If expert evidence is to be given concurrently, the Court will direct that the witnesses practice social distancing and sit at least 1.5 metres apart. Where the space available in the witness box is insufficient, the Court may direct the witnesses to sit at the bar table for the purposes of concurrent evidence. This may require the temporary movement of advocates to other areas within the courtroom proximate to a microphone for recording purposes.
20. Witnesses may be placed on call to reduce the number of people in the courtroom at any time.
21. The number of witnesses giving concurrent evidence may be limited if social distancing cannot be achieved.

### **Submissions**

22. Parties may be directed to provide final submissions in writing to reduce hearing time in open court.

### **Section 34 conciliation conferences**

23. At least seven days prior to any scheduled site inspection for a conciliation conference, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that the site inspection should not proceed and, in that event, the alternative venue for holding the conciliation conference, such as a courtroom.
24. Any site inspection will require compliance with social distancing practices, including maintaining a distance of 1.5 metres between all individuals present.

25. On-site inspections will be limited to essential participants only, being as few representatives of the parties, their legal representatives and required expert witnesses as practicable.
26. If it is necessary to enter a building, the Commissioner will control the number of people allowed in the building at the same time and the social distancing practices required.
27. In the event that a site inspection does not proceed, photographs and video presentations of the site or relevant matters that might have been seen or heard on site may be shown at the conciliation conference or hearing with leave of the presiding Commissioner.
28. For a conciliation conference held in a courtroom, the Commissioner will sit on the bench within the courtroom and the representatives of the parties will separate along the bar table in order to comply with social distancing requirements.
29. The Court's *Site Inspections Policy*, stating that a maximum of six persons objecting to a development proposal should provide oral evidence on site, is temporarily suspended. Instead of giving oral evidence at the commencement of the conciliation conferences, objectors' evidence is to be reduced to writing and supplemented with any photographic evidence that would assist to understand their concerns. The Council is to provide the objectors' written material to the other party and the Commissioner at the conciliation conference.

### **Section 34AA conciliation conferences**

30. The practices outlined in this Policy in relation to conciliation conferences under s 34 of the Court Act will apply to conciliations held under s 34AA of the Court Act. The practices outlined in this Policy in relation to hearings will apply to any hearings held under s 34AA.

### **Tree dispute hearings**

31. At least seven days prior to any scheduled site inspection for a tree dispute, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that the site inspection should not proceed and, in that event, the alternative venue for holding the hearing of the tree dispute, such as a courtroom.
32. In the event that the scheduled hearing of a tree dispute cannot proceed on-site, the hearing may be conducted in a courtroom with the parties present or by telephone where appropriate.

## **Mediations**

33. The practices outlined in this Policy in relation to conciliation conferences under s 34 of the Court Act will apply to mediations under s 26 of the *Civil Procedure Act 2005*.
34. At least seven days before the scheduled mediation, the parties are to advise the Court if they agree that the mediation can be conducted by telephone and, if so, the names and telephone numbers of the representatives of the parties who will attend the mediation by telephone.
35. If an agreement is reached between the parties at the mediation, the presiding Commissioner will refer the matter to the Registrar to be dealt with by the Duty Judge.

## **Regional matters**

36. The Court will continue to conduct regional hearings, conciliations (including site inspections), and mediations in accordance with the procedures outlined in this Policy and, subject to the Judge or Commissioner being able to travel to the location of the hearing, conciliation or mediation.
37. If travel to the location is no longer feasible, the Court will make, in consultation with the parties, alternative arrangements for conducting the hearing, conciliation or mediation, such as by telephone, or listing the hearing, conciliation, mediation on another date.

## **Delivery of judgments**

38. Reserved judgments will continue to be handed down in Court by the presiding Judge, Commissioner or Registrar, or the Registrar on behalf of the presiding Commissioner.
39. The Court will make arrangements to have judgments delivered in court by telephone.
40. Upon being notified that judgment will be delivered, parties and practitioners are to provide the Court with the names and telephone contact details of the relevant representatives who will receive judgment or, if they do not wish to receive the judgment via telephone, they are to so advise the Court.
41. After delivery of judgment, a written copy of the judgment will be sent to the parties in accordance with the Court's usual practice.

## **Self-isolation and vacation of listings**

42. Any practitioner, party, expert, or person involved in court proceedings who is required to self-isolate, or who has been in contact with a person who is required to self-isolate, or who is sick, must not attend the Court premises, including the Registry, a courtroom or any other room in the Court building, or any conciliation, mediation, hearing or directions hearing in the proceedings.
43. If, by reason of the need to self-isolate or sickness, there is a need to vacate any listing, the party or practitioner should immediately apply to vacate the listing, providing reasons, and suggest alternative dates to reschedule the listing.
44. The following procedure applies for notifying the Court and vacating a listing:
  - (a) The party or practitioner is to send a request by Online Court (or email Listings if not an Online Court user) advising of the issue that has arisen and provide the telephone number and the name of the party or practitioner who should be contacted in the event of a telephone conference with the Judge or Commissioner allocated to hear the matter.
  - (b) Listings will forward the online communication to the Judge or Commissioner allocated to hear the matter.
  - (c) If possible, the Judge or Commissioner will respond to the online communication and resolve the issue online.
  - (d) Alternatively, the Judge or Commissioner will arrange for a telephone conference with the parties and practitioners to discuss the best way to resolve the issue (such as arranging for the person to give evidence by telephone or cancelling the on-site start and instead convening the matter in Court with social distancing measures in place).
  - (e) The outcome of the telephone conference will be confirmed in an online communication by the Court through Online Court.
  - (f) In the event that the issue is not resolved before close of business (4.30pm) on the day before the allocated hearing, conciliation or mediation, the listing will be vacated by the Court and the matter will be listed for an online communication for further directions, including listing the matter at another date.

### **Issued by**

The Hon. Justice N H M Pain  
Acting Chief Judge  
Land and Environment Court of New South Wales  
On 20 March 2020