

LAND AND ENVIRONMENT COURT ACT 1979—RULE

(Land and Environment Court Act Rules (Amendment No. 7) 1993)

NEW SOUTH WALES



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1. These amendments to the Rules have been made by the Judges of the Court.

2. These amendments shall commence on 1st November 1993.

3. Part 12, Division 3, is amended by adding the following Rule 3 (3):

“Where the Minister or a public authority makes a written submission or provides information to the Court in response to a notice pursuant to section 97 (3) of the Environmental Planning and Assessment Act 1979 otherwise than by way of application to be heard at the hearing, the Court will not take into account the submission made or the information provided unless a copy is provided to the parties and the parties have been given the opportunity to be heard and if necessary to adduce evidence in relation thereto”.

4. Rule 3 of Part 12, Division 6A, is amended by deleting the Rule and inserting in its place the following new Rule 3:

“3. Where proceedings are not referred to mediation or conciliation or where the proceedings remain unresolved following mediation or conciliation, they will be fixed for hearing. Where proceedings have been fixed for hearing the following requirements apply:

- (i) All expert reports (including plans, diagrams and photographs) to be relied upon at the hearing must be served at least fourteen (14) days prior to the date fixed for hearing.
- (ii) Except with the leave of the Court the expert’s report is not admissible unless it has been served in accordance with any relevant Practice Direction and Rules of the Court.

- (iii) A party shall give notice in writing to the Court and to the other party or parties of his or her desire to cross examine any expert whose report is to be relied upon at least seven (7) days prior to the hearing.
- (iv) Oral expert evidence of any expert shall only be allowed by leave of the presiding Judge or Assessor.
- (v) Where there is an appeal against the refusal by a consent authority of an application when an approval, if it had been given, could have been made subject to conditions, then:
 - (a) Any conditions which the consent authority would seek to impose if the Court were to grant the appeal are to be filed with the Court and served on the applicant not later than fourteen (14) days prior to the listed hearing date;
 - (b) The applicant's conditions in response are to be filed with the Court and served on the consent authority or its solicitor not later than seven (7) days prior to the listed hearing date.
- (vi) Unless a point of law is raised at the call-over referred to above, in accordance with Rule 1 of Part 12, Division 6A, it can only be raised in the proceedings by leave, by notice of motion.
- (vii) Subject to the foregoing it shall not be open to a party to raise any question of law in proceedings before an Assessor and the determination by the Assessor shall be made:
 - (a) on the issues in dispute between the parties, and
 - (b) on the merits of the case.
- (viii) Notwithstanding subrules (vi) and (vii) where in proceedings heard by an Assessor a dispute arises as to whether there is power in the Court to grant the application, the Assessor shall refer the question to the Chief Judge pursuant to section 36 (5) of the Land and Environment Court Act.

- (ix) Where parties to a proceeding consent the Court may give its decision after a hearing limited to submissions based upon documentary materials lodged with the Court.”

M. L. PEARLMAN,
Chief Judge.

N. R. BIGNOLD,
Judge.

P. L. STEIN,
Judge.

C. J. BANNON,
Judge.

R. N. TALBOT,
Judge.

EXPLANATORY NOTE

(This Note does not form part of the Rules).

The purpose of the amendment to Part 12, Division 3, is to require the production of copies of submissions made by public authorities pursuant to section 97 (3) of the Environmental Planning and Assessment Act.

The purpose of the amendment to Part 12, Division 6A, is to further clarify the procedures to be adopted in Class 1 and Class 2 matters before the Court with respect to the filing of expert reports, notice of cross-examination of experts, oral examination of experts, filing of draft conditions, raising of questions of law and dealing with a case on the basis of written submissions.
