



# Supreme Court of Victoria Common Law Division

## Practice Note No. 8 of 2015 Valuation, Compensation & Planning List

### 1. INTRODUCTION

- 1.1 This Practice Note replaces *Practice Note No. 6 of 2006* and *Notice to the Profession 2010 (Valuation, Compensation & Planning List)*, and provides updated guidance on the operation of the Valuation, Compensation & Planning List (*List*), a specialist case management list within the Common Law Division of the Supreme Court of Victoria (*Court*). The procedures set out in this Practice Note will apply from 1 March 2015 to relevant proceedings commenced in the Trial Division of the Court.
- 1.2 The Judge in Charge of the List (*Judge in Charge*) is Justice Emerton. The Judge in Charge conducts the pre-trial management of proceedings in the List, and is the trial judge for most proceedings in the List.
- 1.3 References in this Practice Note to *Associate* are to be read as references to the Associate to the Judge in Charge.

### 2. PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 2.1 The following types of proceedings should be initiated in the List:
- a) Valuation of land under the *Valuation of Land Act 1960* (Vic);
  - b) Compensation for resumption of land under the *Land Acquisition and Compensation Act 1986* (Vic);
  - c) Appeals (including applications for leave to appeal) from an order of the Planning and Environment List of the Administrative Division of the Victorian Civil and Administrative Tribunal (*VCAT*);
  - d) Referrals on a question of law from the Planning and Environment List of the Administrative Division of VCAT;
  - e) Proceedings relating to compensation payable pursuant to Part 5 of the *Planning and Environment Act 1987* (Vic); and
  - f) Judicial review of ministerial and other decisions in respect of issues of land use and development;
  - g) Proceedings involving challenges to government acting with respect to protection of the environment and/or endangered species;
  - h) Nuisance claims involving allegations of damage to the environment such as land contamination; and
  - i) Proceedings with respect to the management of public land.
- 2.2 If uncertain about whether a proceeding should be initiated in the List, practitioners are encouraged to make inquiry of the Associate.

### **3. PROCEDURE FOR ENTRY INTO THE LIST**

- 3.1 Proceedings of the nature set out in paragraph 2.1 should be initiated in the List by endorsing the heading of the originating process “Valuation, Compensation & Planning List”. The heading of all subsequent documents filed in the proceeding should also be endorsed “Valuation, Compensation & Planning List”.
- 3.2 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the proceeding may be transferred into the List on the Court’s own motion.
- 3.3 Conversely, a proceeding initiated in the List may be transferred out of the List on the Court’s own motion if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 3.4 Until further notice, additional fees are payable for the inclusion of a proceeding in the List. Current fees are on the Court website.

### **4. DIRECTIONS HEARINGS**

- 4.1 Directions hearings are conducted by the Judge in Charge, generally at 10.30am on the last Friday of every month during the Court sitting terms (*List directions day*).
- 4.2 The Judge in Charge will give directions for the management of a proceeding at a first directions hearing. Parties will be allocated a specific date by the Registry when filing a summons for directions.
- 4.3 Where possible, any proposed orders should be drawn from the template orders set out in **Schedules 1** or **2**, adapted as appropriate. Practitioners should note, however, that orders in **Schedule 1** for the filing and service of lists of documents (discovery) in proceedings brought under the *Land Acquisition and Compensation Act 1986 (Vic)* will be made only in appropriate circumstances.
- 4.4 In addition to having considered whether orders should be made with respect to the matters set out at **Schedules 1** or **2**, at the first directions hearing all parties are expected to be ready to explain, by brief oral outline, the nature of the dispute and the substantial questions in controversy.
- 4.5 The solicitors of the initiating party are encouraged to deliver proposed orders to all other parties in advance of all directions hearings, with a view to obtaining orders by consent without the need for an appearance. The parties should email minutes of consent in both Word and signed PDF format to the Associate by 1.00pm two days prior to the directions hearing.
- 4.6 All parties are required to appear at scheduled directions hearings unless otherwise advised by the Associate.

### **5. INTERLOCUTORY APPLICATIONS**

- 5.1 All interlocutory applications are to be made by summons, returnable before the Judge in Charge on a List directions day. This includes applications for leave to appeal on a question of law from an order of the Planning and Environment List of the Administrative Division of VCAT.
- 5.2 A time estimate and a scanned copy of any material parties intend to rely on (including a copy of any exhibits to affidavits and an outline of submissions) should be emailed to the Associate by 1.00pm two days prior to the hearing.
- 5.3 Depending on the complexity and time estimate of the application, it may be adjourned for a special fixture.

## **6. APPEALS FROM VCAT**

- 6.1 At the first directions hearing, the Judge in Charge may, if appropriate, hear any application for leave to appeal, for an extension of time or for summary determination of the proceeding. Alternatively, such applications may be adjourned to be heard at a later date either alone or together with the substantive proceeding.
- 6.2 Persons who are named as respondents in an appeal from an order of the Planning and Environment List of the Administrative Division of VCAT who do not wish to participate in the appeal should send an email to the Associate, stating that they do not intend to participate in the appeal and that they will abide by any order of the Court. They will be identified as non-participating parties.
- 6.3 In such circumstances, the non-participating parties will be excused from attendance at the hearing of the appeal and orders may be made relieving the participating parties of any obligation to serve documents on the non-participating parties. As a result of their non-participation, non-participating parties will not usually be the subject of any costs orders made at the conclusion of the appeal.
- 6.4 Where proposed consent orders would set aside or vary a decision under appeal or would involve the remittal of any matter or would otherwise affect the conduct or the result of a proceeding or matter before VCAT, judicial power is engaged and the Court may need to consider for itself whether the orders should be made. Where orders of such a kind are sought “on the papers”, a joint memorandum explaining the legal justification for the proposed orders must be provided to the Court. The Court may nevertheless require the attendance of practitioners. Even if satisfied that the proposed consent orders are appropriate, the Court may consider it necessary to publish reasons for the making of the orders or at least to direct that a copy of the joint memorandum be served on VCAT together with a copy of the orders made.

## **7. PROCEEDINGS BROUGHT UNDER the *Land Acquisition and Compensation Act 1986 (Vic)***

- 7.1 Where the parties seek to rely upon expert evidence, orders for joint conferences of experts and for the production of joint expert reports will be made by the Judge in Charge unless persuaded that such a course is unnecessary or undesirable in a particular proceeding.
- 7.2 In the normal course, the production of joint reports should be completed before mediation in order to ensure that the areas of dispute are clearly identified prior to mediation.
- 7.3 Parties wishing to depart from this course are encouraged to make submissions to the Judge in Charge at the first directions hearing.
- 7.4 The order of presentation in a particular proceeding will be determined at the final directions hearing.

## **8. LABELLING OF DOCUMENTS**

- 8.1 Before production to the Court in any case in the List:
- a) Any document more than one page in length must have page numbers added legibly;
  - b) Any photograph must be endorsed with a numbered or lettered code, and must be accompanied by a brief description enabling it to be distinguished from other photographs in the proceeding;
  - c) Any plan on which land is said to be defined by reference to colour must be appropriately coloured; and
  - d) Any map or plan must display:
    - i. A north line; and
    - ii. Either a scale, or an indication that the map or plan is not to scale.

**9. COMMUNICATIONS WITH THE COURT**

9.1 At all stages of the proceeding, communications with the Court should be by email with a copy to all other parties and should be confined to uncontroversial matters. Contact details for the Associate are on the Court website.

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
24 February 2015

**SCHEDULE 1**  
**Valuation, Compensation & Planning List**  
**In proceedings brought under s80 of the *Land Acquisition and Compensation Act 1986* (Vic)**

**Interlocutory steps**

1. By [ ], the [claimant] shall file and serve particulars of claim showing how each of the disputed heads of claim is calculated and specifying each statutory provision under which each claim is made.
2. By [ ], the [acquiring authority] shall file and serve on the [claimant] its Particulars of Offer, showing how each head of offer is calculated.
3. By [ ], the [claimant] shall file and serve a list of documents in its possession, custody or power which are relevant to the issues in dispute in these proceedings.\*
4. By [ ], the [acquiring authority] shall file and serve a list of documents in its possession, custody or power which are relevant to the issues in dispute in these proceedings.\*
5. By [ ], the parties shall file and serve a joint statement of agreed facts and/or issues in the proceeding.
6. By [ ], the [claimant] shall file and serve any lay witness statements upon which it intends to rely at the trial of this proceeding.
7. By [ ], the [acquiring authority] shall file and serve any lay witness statements in reply upon which it intends to rely at the trial of this proceeding.

**Expert Evidence**

At the first available opportunity, the parties should inform the Court that a party intends to or may adduce expert evidence at trial.

8. By [ ], the parties shall file and serve any expert witness statements or expert evidence upon which that party proposes to rely.
9. By [ ], the parties shall cause the opposing expert witnesses to hold a joint conference of experts and prepare and provide to each party a Joint Statement of Experts which identifies matters on which:
  - (a) They have agreed; and
  - (b) They have not agreed, and the reasons for their disagreement.
10. The experts (not the parties or their legal representatives) are to determine the venue and procedure to be adopted at the conference. In the event that agreement cannot be reached about any matter relevant to the conference or joint report to the court, further directions may be sought from the Court.
11. The parties and their legal representatives must not seek to restrict the freedom of the experts at the conference in identifying the matters on which they agree.
12. Each expert attending a conference is to be provided with a copy of this order and the reports of the experts with whom they will confer.
13. Each expert must affix their respective signatures to the report, and the report must be provided to the Court and the parties on or before [ ]
14. Subject to any further order, the parties shall bear their own costs in respect of the joint conference of experts.

**Alternative dispute resolution**

15. The proceeding be referred to a mediator to be agreed between the parties or in default of an agreement to be appointed by the Court with such mediation to take place not before [ ].
16. Subject to the terms of this order, the solicitor for the [claimant] shall, after consultation with all parties, deliver to the mediator a copy of all relevant documents together with a copy of this order, and take all steps necessary to ensure that the mediation commences as soon as possible.
17. The mediation shall be attended by those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement, and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.

18. The Mediator shall report back to the Court no later than [ ].
19. Subject to any further order, the cost of the mediator and the venue shall be paid by the parties in equal shares. All remaining costs associated with mediation shall lie where they fall.
20. The parties must immediately notify the Judge in Charge of the List Court in the event of the proceeding being resolved before the date fixed for the trial.

**Court Books and Books of Authorities**

21. By [ ], the legal representatives for the parties shall have met, or otherwise communicated about, and agreed on the contents of a Court Book for the trial of this proceeding.
22. By [ ], the [acquiring authority] shall prepare a paginated Court Book containing all relevant documents including but not limited to:
  - (a) the originating documents/notice of referral;
  - (b) all affidavits (including exhibits);
  - (c) lay witness statements;
  - (d) joint statement of agreed facts and/or issues in the proceeding;
  - (d) expert material; and
  - (e) written submissions
23. By [ ], the [acquiring authority] shall deliver a copy of the agreed Court Book to each party.
24. The [acquiring authority] shall have available, prior to opening her/his/its case, two copies of the court book for the use of the Court and the witness.

**Other matters**

25. The proceeding is adjourned to [ ] for directions.<sup>1</sup>
26. Costs are reserved.
27. There is liberty to apply.

**SCHEDULE 2**  
**Valuation, Compensation & Planning List**  
**In proceedings brought under s148 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic)**

**Leave to Appeal\***

1. The Applicant have leave to appeal against the order of the Victorian Civil and Administrative Tribunal in proceeding [*insert proceeding number*] made on [*insert date*] in respect of the following questions of law: [ ].

**Extension of time\***

2. Time be extended pursuant to [*insert relevant provision*] so far as necessary to authorise the commencement by the Applicant of this proceeding.

**Leave to Amend\***

3. The Applicant have leave to file and serve an amended application/notice of appeal/originating motion by [ ].

**Affidavits**

4. On or before [ ], the Applicant shall file and serve any further affidavits upon which they seek to rely.
5. On or before [ ], the Respondent shall file and serve any further affidavits upon which they seek to rely.
6. On or before [ ], the Applicant shall file and serve any affidavits in reply upon which they seek to rely.

**Submissions**

7. On or before [ ], the Applicant shall file and serve a written outline of submissions and list of authorities.

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<sup>1</sup> A proceeding in the List must be adjourned to a further directions hearing until the final directions hearing confirming readiness for trial.

8. On or before [ ], the Respondent shall file and serve a written outline of submissions in response and list of authorities, and serve copies of all authorities not also relied upon by the Applicant.
9. On or before [ ], the Applicant shall file and serve a written outline of submissions in reply and any additions to the list of authorities.

**Court Book**

10. On or before [ ], the Applicant shall file and serve a Court Book and a Combined Book of Authorities.

**Hearing**

11. The application for leave to appeal, and if leave is granted, the appeal be heard together on [ ].

**Other matters**

12. There is liberty to apply.
13. Costs are reserved.

*\*Omit if inapplicable*