



## Policy document

# Section 34 conciliation conferences

**When decisions of the Independent Planning Commission (Commission) are appealed to the Land and Environment Court (Court), the Court may direct the Commission and the other parties to the proceedings to participate in a conciliation conference under section 34 of the *Land and Environment Court Act 1979* (Section 34 Conference).**

### What is a Section 34 Conference?

A Section 34 Conference is a process of the Court, not of the Commission. In a Section 34 Conference the Court's processes and the Court's directions will always prevail over those of the Commission. The Commission has no privileges in a Section 34 Conference that the other parties to the proceedings do not also have.

A Section 34 Conference involves the parties to the Court proceedings holding discussions to identify the issues in dispute, consider options and endeavour to reach agreement. The naming of parties to proceedings is a matter for the party commencing the appeal and for the Court. The Commission may agree to other parties being joined to the proceedings, but it is not a matter for the Commission to decide alone.

The discussions are presided over by a Commissioner of the Court as an impartial third party. Except as permitted by the Court, Section 34 Conferences are not conducted in open court and the parties are required to maintain the confidentiality of the process.

All parties are required to obey the Court's requirements in respect of the confidentiality of the process.

All parties to Section 34 Conferences are required by law to participate in good faith. If agreement is reached between all parties to the proceedings, the Court is required to resolve the proceedings on the basis of that agreement, but only if the Court is satisfied that it can do so lawfully. The obligation to participate in good faith means that if the Commission considers all relevant matters have been resolved, it ordinarily will not have a basis to withhold its agreement to a conciliated outcome that it is satisfied the Court has the power to make. The Commission would not be acting in good faith by refusing to actively engage in conciliation if the Court has ordered a Section 34 Conference to be held between the parties.

Decisions giving effect to section 34 agreements are decisions of the Court. If the parties do not reach agreement on all relevant matters in a Section 34 Conference, the remaining issues in dispute will be determined by the Court after a separate hearing.

### Why does the Commission participate in Section 34 Conferences?

As stated above, the Court may direct the Commission and other parties to participate in a Section 34 Conference. The Commission is legally obliged to comply with directions of the Court.

If any party to relevant proceedings believed that a particular case is not appropriate for conciliation, it is up to that party to demonstrate that to the Court. The Commission – or any other party – cannot unilaterally decide not to participate in a Section 34 Conference.

The Court encourages dispute resolution, and the Commission (as a model litigant) is obliged to avoid litigation wherever possible, including by resolving matters through conciliation.

### **How does the Commission participate in a Section 34 Conference?**

Section 34 Conferences are confidential processes between the parties and there is no legal requirement for any person not a party to the proceedings to participate in the process. Any person who is not a party to the proceedings can only be involved in a Section 34 Conference to the extent that all parties to the proceedings and the Court agree.

Nonetheless, the Commission – consistent with its values of integrity and engagement – seeks to facilitate the involvement of stakeholders to the extent permitted by the Court's processes. This typically involves:

- The Commission – except in extraordinary circumstances – not opposing any interested stakeholder joining the proceedings as a party.
- The Commission, if appropriate, requiring – as a condition of its agreement to any conciliated outcome – that any materially amended form of the application the subject of the proceedings be publicly exhibited before the Court gives effect to any conciliated outcome. In some cases, with the consent of the other parties to the proceedings, the Commission may seek and consider written submissions from interested stakeholders on these materials before it reaches a conciliated agreement.

### **How might I go about participating in a Section 34 Conference?**

The main ways in which someone who is not a named party can participate in a Section 34 Conference are:

- Seeking to be joined to the proceedings as a party – a step that should be informed by obtaining your own independent legal advice, particularly given potential cost consequences of joining proceedings; or

- Participating to the extent stakeholders who are not parties are invited to participate – which will vary from case to case depending on the circumstances of the proceedings and the willingness of the Court and other parties to waive the default confidentiality of a Section 34 Conference. Per the Court's policies, interested stakeholders who are not parties may be permitted to provide submissions in writing or orally at the commencement of the Section 34 Conference but will not be permitted by the Court to participate in confidential discussions or negotiations.



#### **For more information**

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