



**Blue Mountains Public Inquiry**  
Office of the Commissioner

**BLUE MOUNTAINS PUBLIC INQUIRY**

**GENERAL PRACTICE DIRECTION PUBLIC HEARINGS**

**Note: In this document:**

- (a) “Inquiry” means the Blue Mountains City Council Public Inquiry
- (b) “Inquiry Website” means: [www.olg.nsw.gov.au/blue-mountains-inquiry](http://www.olg.nsw.gov.au/blue-mountains-inquiry)
- (c) “Inquiry Email Address” means: [bluemountainpublicinquiry@olg.nsw.gov.au](mailto:bluemountainpublicinquiry@olg.nsw.gov.au)
- (d) “Inquiry Postal Address” means Blue Mountains City Council Public Inquiry, Locked Bag 3012 NOWRA NSW 2541 (Attention Angus Broad)

**General**

1. The Commissioner is currently not inquiring into any matter directly relating to asbestos management by the Council. Accordingly, only Terms of Reference 3, 4, 6 and 8 will proceed at this stage.
2. This practice direction is intended to provide guidance as to the procedures that the Commissioner intends to adopt in the ordinary course of the Inquiry. Where the Commissioner thinks it appropriate, the procedures outlined below may be dispensed with or varied.

**Venue and sitting times of the Public Hearings**

3. The Public Hearings in relation to Term of Reference 4 are to commence on 8 April 2019 at the NSW Bar Association Dispute Resolution Centre, level 1, 174 Phillip Street Sydney.
4. It is intended that all evidence will be given and all oral submissions made regarding Term of Reference 4 in this period.
5. The usual hours for the hearings will be from 9.30am to 1pm (with a 20 minute break between 11:30am and 11:50am), and from 2pm to 4.00pm. The Commissioner may at his discretion on any hearing day extend sitting hours beyond 4:00pm.

**Duration of hearings**

6. The hearings will commence on Monday 8 April 2019 and continue on Tuesday 10 April 2019. If necessary, the hearings will continue on Friday 12 April 2019.

**Legal representation and authorisation to appear**

*Application for legal practitioner to represent a witness while giving evidence*

7. Where a legal practitioner seeks authorisation to appear before the Inquiry for the limited purpose of representing an individual while that individual is giving evidence at the



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hearings, an application is to be made orally immediately prior to the individual being called to give evidence and will be then determined by the Commissioner.

### Applications for authorisation to appear in all other cases

8. Paragraphs 9 to 17 apply in any case other than that described in paragraph 7 above.
9. Any person, including any legal practitioner, wishing to obtain authorisation to appear at the hearings should apply in writing to the Inquiry in the form of the application annexed to this Practice Direction. Any such application should be sent by email to the Inquiry Email Address or by post to the Inquiry Postal Address in sufficient time that it is received by close of business Monday 1 April 2019.
10. The Commissioner will make a ruling on the application and notify the applicant of his decision.
11. The hearings are unlikely to be delayed for the purpose of considering and determining an application for authorisation which is not the subject of a written application provided in accordance with the preceding paragraph.
12. However, nothing in the above practice directions prevents a person from seeking authorisation to appear at any time before or during the hearings if something occurs which leads the person to believe that the person's interests may be materially affected. Such an application should address the matters identified in the form of application annexed to these practice directions and will be determined at a time considered appropriate by the Commissioner.
13. Unless the Commissioner otherwise determines, any authorisation to appear granted by the Commissioner is granted on the following conditions:
  - (a) Authorisation may be withdrawn by the Commissioner, or made subject to altered or additional limitations or conditions at any time.
  - (b) The nature and extent of the participation of the authorised person in the hearings is subject to the Commissioner's control from time to time.
  - (c) The authorised person has no automatic right to examine any witness. Amongst other things, the Commissioner may, depending on the circumstances at the relevant time, direct that there should be no examination of a particular witness by the authorised person, or that any examination shall be limited as to topic, time or otherwise.
  - (d) The authorised person is expected to follow the practice and other directions of, and rulings from, the Commissioner, and not to disrupt the proceedings.
14. The Commissioner will determine the nature and extent of any other conditions attaching to any grant of authorisation taking into account all relevant considerations.

### **Prior notification required to be given of certain matters**



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15. Any person, including any legal practitioner, authorised by the Commissioner to appear at the hearings (**Authorised Person**) who proposes to apply to call any person as a witness (whether to give evidence in rebuttal of the evidence of another witness, or otherwise) must make a written application to the Inquiry, identifying the person by name, providing short reasons why the person should be called to give evidence and attaching a copy of a statement, signed by that person, setting out the evidence that person would give to the Inquiry. The Commissioner will make a ruling on the application and notify the applicant of his decision at a time he considers appropriate.
16. Each Authorised Person should give the Inquiry written notice of the following matters as soon as possible:
  - (a) if the Authorised Person proposes to request permission to call any person as a witness to give evidence at the hearings: a copy of a statement, signed by that person, whose name must also be clearly printed, setting out the evidence that person would give if called to give evidence;
  - (b) any issues of law which the Authorised Person proposes to raise accompanied by a short outline of submissions; and
  - (c) any procedural matter the Authorised Person proposes to raise (including, by way of example only, any objections to evidence, confidentiality issues, non-publication concerns and administrative arrangements) accompanied by a short outline of submissions.
17. Written notice provided under paragraphs 15 and 16 above should clearly state the identity of the Authorised Person and should be sent by email to the Inquiry Email Address or by post to the Inquiry Postal Address by no later than close of business Monday 1 April 2019.

### **Conduct of the Hearings – witnesses**

18. Subject to the control of the Commissioner, counsel assisting will determine which witnesses are called at the hearings and the order in which they are called and examined. It may on some occasions be necessary to call some witnesses to give evidence on more than one occasion.
19. Prior to the commencement of the hearings, the Inquiry will publish on the Inquiry Website a list of witnesses who are to give evidence.
20. Reasonable endeavours will be made to indicate the likely order that witnesses will be called, but circumstances may lead to witnesses being called in a different order than listed on the Inquiry Website.
21. Any person granted leave to give evidence, or who has been summoned to give evidence at any hearing, may in addition seek leave to provide a witness statement to the Inquiry relevant to the Terms of Reference. Such statement is to be lodged with the Inquiry at least 7 days prior to the date upon which the witness is due to give evidence. Where a witness has provided a written statement, a copy of that statement will be made available to any person the Commissioner or Counsel Assisting considers may be



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substantially and directly interested or affected by the evidence prior to that witness being called at the hearing, and will be placed on the Inquiry website.

22. All witnesses will be called to give evidence by counsel assisting, and then examined by counsel assisting. If leave is granted by the Commissioner, the witness may then be examined by or on behalf of any person considered by the Commissioner to have a sufficient interest to do so. If leave is granted by the Commissioner, the witness may then be examined by his or her own legal representative. If leave is granted, counsel assisting may then re-examine the witness.
23. Given the limited number of hearing days, any person who is granted leave to examine a witness will be expected to proceed with that examination without delay after the witness has first been examined by counsel assisting. There should be no expectation that there will be any adjournment after the witness has been examined before further examination or by other persons takes place.
24. The Commissioner may impose time limits on the length of any examination, and may limit the topics upon which a witness may be examined. The Commissioner will not allow a witness to be examined multiple times on the same topic unless good reason for doing so can be demonstrated.

### **Conduct of the Hearings – documents**

25. Subject to the control of the Commissioner, counsel assisting will determine which documents are tendered, and the time at which they will be tendered.
26. Prior to the commencement of the hearings, or prior to any particular witness being examined, the Inquiry may provide to persons that may be directly interested or affected by the subject matter of the Inquiry with copies of certain documents that will be or are likely to be tendered as exhibits in the hearings.
27. Any person wishing to tender a document must notify the Inquiry by providing a copy of the document prior to the commencement of the hearings. Subject to the control of the Commissioner, counsel assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender a particular document if the above procedure has been complied with.

### **Publication of Transcript**

28. A daily transcript of evidence will be available from the Inquiry Website.

### **Submissions**

29. At the conclusion of the evidence, oral submissions may be allowed if time permits. Otherwise, orders will be made for the making of written submissions. Counsel assisting will make submissions first. An opportunity will then be given to any person whom the Commissioner considers is directly interested or potentially materially affected by those submissions to make their own submissions. The Commissioner will determine whether such submissions are to be made orally or in writing.



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30. Limits will be placed on the length of time granted for oral submissions, and the length of any written submissions.

Dated:

Richard Beasley SC  
Commissioner



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**APPLICATION FOR AUTHORISATION TO APPEAR**

<b><u>Part 1 – Name and contact details</u></b>	
<b>Name:</b>	<i>[Name of the person seeking authorisation to appear, or the name of the person who proposes to be represented by a legal practitioner (as the case may be)].</i>
<b>Address:</b>	
<b>Contact person:</b>	
<b>Telephone:</b>	
<b>Fax:</b>	
<b>Email:</b>	
<b><u>Part 2 – Name and contact details of legal practitioner</u></b>	
<b>Name:</b>	
<b>Address:</b>	
<b>Telephone:</b>	
<b>Fax:</b>	
<b>Email:</b>	
<b>Details of instructing solicitors:</b>	
<b>Name:</b>	
<b>Address:</b>	
<b>Contact person:</b>	
<b>Telephone:</b>	
<b>Fax:</b>	
<b>Email:</b>	
<b><u>Part 3 – Terms of reference</u></b>	



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**Which particular term or terms of reference does the person in question claim to have an interest?**

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**Part 4 – Nature and extent of interest**

**In respect of each term of reference identified in answer to Part 3, what is the nature and extent of the person’s asserted interest in that matter?**

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**Part 5 – Assistance to the Inquiry**

**a) Will the person appearing or to be represented be in a better position to assist the Inquiry if authorisation to appear is granted? If so, how?**

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**b) Please specify precisely the nature and extent of any assistance that will be provided to the Inquiry if authorisation is granted?**

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**Part 6 – Conflicts**

**In the case of an application for authorisation for a legal practitioner to appear, does the practitioner (and in the case of Counsel, his or her instructing solicitors) act for any other person in relation to the Inquiry and the matters it is inquiring into? If so, what information can be provided to the Inquiry such as to enable the Commissioner to determine whether it is appropriate for authorisation to be granted?**

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**Part 7 – Submissions**

**What submissions do you wish to make, and what other matters do you wish to rely upon, in support of the application for authorisation?**

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