

Pilot – Case Management Directions for Land Valuation Appeals

*President FY Kingham
Pilot commenced 18 March 2019*

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OVERVIEW OF THE PILOT

Overview of the Pilot

The Court proactively manages all active cases before the Court to:

1. enhance the prospects of early resolution; and
2. promote efficient and effective preparation for a fair hearing of the real issues in dispute.

Which directions are appropriate for LVAs depends on the amount of the valuation in dispute and the number and types of expert evidence relied upon. This pilot will trial standard pathways for LVAs, taking into account recent experience in using the Model Directions.

The Court's objectives for the pilot are to:

1. reduce the number of directions hearings;
2. provide certainty about the expectations for pre-hearing preparation in different types of LVAs; and
3. enhance the utility and integrity of expert evidence, particularly valuation evidence.

For LVAs exceeding \$5m, the Court will issue directions shortly after a party files an appeal. They will require the parties to undertake steps to the stage of nomination of expert witnesses, at which time it will be listed for the first directions hearing. The Court will issue directions for most LVAs not exceeding \$5m, shortly after a preliminary conference and without the need for a directions hearing.

The Court will monitor compliance with the directions and call the parties in for review if necessary. The parties will also have the option of requesting a review if they seek a variation to the standard orders or consider further or different directions.

At a review, the Court will make directions on a case specific basis, but will always consider the following matters:

1. whether an eTrial will be ordered;
2. how the parties will brief the experts;
3. whether the case will be directed to Court Managed Expert Evidence (CMEE); and
4. whether the case will be heard together with any other case.

1 year after the pilot commences, in consultation with its LVA Reference Group, the Court will:

1. evaluate the pilot; and
2. develop a new Practice Direction for this jurisdiction.

LVAS FOR VALUATIONS EXCEEDING \$5M

LVAs for valuations exceeding \$5m

The Court will issue directions in accordance with LVA 1 as soon as practicable after the Notice of Appeal is filed. The model directions set a timetable for steps up to and including the nomination of expert witnesses, culminating in the first directions hearing.

The Court will monitor compliance with directions, but also expects the parties to indicate beforehand if they anticipate they cannot comply with a direction. In either case, or if a party seeks a variation or different directions, the Court will list the case for review.

Otherwise, the first Court appearance will be the directions hearing after nomination of experts, at which the Court will set case specific directions for the further conduct of the appeal.

As appeals involving valuations exceeding \$5m will have been through an Independently Chaired Conference (ICC) prior to a party filing an appeal, the Court does not offer a preliminary conference. A party may request a referral to mediation, but the Court is unlikely to order mediation unless a party can demonstrate a change in circumstances since the ICC (or that an ICC did not take place).

LVA 1 - DIRECTIONS FOR LVAS EXCEEDING \$5M

LVA 1 - Directions for LVAs exceeding \$5m

1. By **4:00pm** on **[2 weeks from the date of the orders]**, the appellant must file in the Land Court Registry and serve on the respondent its statement of facts, matters and contentions in respect of the grounds of appeal which must address the following matters:
 - a. the **[site/unimproved]** value of the land;
 - b. the highest and best use of the land;
 - c. the valuation approach;
 - d. a list of comparable sales; and
 - e. details of any site specific characteristics, including planning and site constraints.
2. By **4:00pm** on **[4 weeks from the date of the orders]**, the respondent must file in the Land Court Registry and serve on the appellant its statement of facts, matters and contentions in respect of the grounds of appeal which must address the following matters:
 - a. the **[site/unimproved]** value of the land;
 - b. the highest and best use of the land;
 - c. the valuation approach;
 - d. a list of comparable sales;
 - e. details of any site specific characteristics, including planning and site constraints; and
 - f. for the respondent only, detail the reasons for its objection decision in relation to the land.
3. By **4:00pm** on **[6 weeks from the date of the orders]**, each party must deliver the following to the other party:
 - a. a list of all documents in their possession or control which are directly relevant to the issues in dispute; and
 - b. a separate list of any of the documents for which they claim privilege from disclosure, and the basis for that claim.
4. By **4:00pm** on **[7 weeks from the date of the orders]**, each party must produce the listed documents for inspection or deliver copies of the listed documents as requested by the other party.
5. By **4:00pm** on **[8 weeks from the date of the orders]**, each party must file in the Land Court Registry and serve on any other party a written notice of the expert witnesses they intend to engage for the hearing. The notice must include the following details with respect to each expert witness nominated:
 - a. the name of the expert witness;
 - b. their discipline or area of expertise; and
 - c. a short statement of each specific issue or assertion the expert witness will address.

LVA 1 - DIRECTIONS FOR LVAS EXCEEDING \$5M

6. The appeal is listed for review and directions at **[ASAP after the date for nomination of the experts]**.
7. If a party becomes aware of any circumstances that may prevent them from complying with a direction, they must notify the Land Court Registry and the other party, in writing, as soon as practicable, of the following matters:
 - a. which direction they will or may not be able to comply with;
 - b. the reason for the anticipated non-compliance; and
 - c. the party's proposal to remedy the non-compliance, including any proposed variation to the current directions.
8. Either party may apply for review by giving at least two (2) business days' written notice to the Land Court Registry and to the other party of:
 - a. the proposed date for review; and
 - b. the reasons for the request;

LVAS FOR VALUATIONS NOT EXCEEDING \$5M

LVA for valuations not exceeding \$5m

All appeals involving valuations not exceeding \$5m will start with a preliminary conference, usually convened by the Judicial Registrar, and be listed as soon as practicable after the appeal is filed. If the appeal is not resolved at the preliminary conference, the Judicial Registrar will file a Certificate to that effect and advise the Court what expert evidence, if any, the appellant proposes to call at the hearing. The parties will provide position statements if required by the Judicial Registrar.

Within 7 working days after the preliminary conference, the Registry will either:

1. issue directions in accordance with:
 - a. LVA 2, if no expert evidence will be called by the appellant;
 - b. LVA 3, if valuation evidence will be called by the appellant; or
2. list the appeal for review, if the appellant will call expert evidence in more than one area of expertise.

The LVA 2 and LVA 3 directions set a timetable for steps up to and including the date listed for hearing the appeal. The difference between the two models is the directions for the valuer meeting and joint report in LVA 3.

The Court will monitor compliance with directions, but also expects the parties to indicate beforehand if they anticipate they cannot comply with a direction. In either case, or if a party seeks a variation or different directions, the Court will list the case for review. Otherwise, the first Court appearance after the preliminary conference will be the hearing review.

LVA 2 - DIRECTIONS FOR LVAS FOR VALUATIONS NOT EXCEEDING \$5M – APPELLANT NOT CALLING ANY EXPERT EVIDENCE

LVA 2 - Directions for LVAs for valuations not exceeding \$5m – appellant not calling any expert evidence

1. Each party must file in the Land Court Registry and serve on the other party the following documents by the dates specified:
 - a. by **4:00pm** on **[2 weeks from the date of the orders]**, their statements of evidence and any documents they wish to rely upon at the hearing;
 - b. by **4:00pm** on **[4 weeks from the date of the orders]**, their statements of evidence and documents in reply, if any.
2. At the hearing, the statements of evidence will be the evidence in chief of the author, unless the Court orders otherwise.
3. The case is listed for a hearing review at **[TIME, the first review after the date in order 1.b & PLACE]**.
4. The case is listed for hearing for commencing at **[TIME & no earlier than 2 weeks after the hearing review & LOCATION]**.
5. If a party becomes aware of any circumstances that may prevent them from complying with a direction, they must notify the Land Court Registry and the other party, in writing, as soon as practicable, of the following matters:
 - a. which direction they will or may not be able to comply with;
 - b. the reason for the anticipated non-compliance; and
 - c. the party's proposal to remedy the non-compliance, including any proposed variation to the current directions.
6. Either party may apply for review by giving at least two (2) business days' written notice to the Land Court Registry and to the other party of:
 - a. the proposed date for review;
 - b. the reasons for the request; and
 - c. the proposed directions.

LVA 3 - DIRECTIONS FOR LVAS FOR VALUATIONS NOT EXCEEDING \$5M – APPELLANT CALLING VALUATION EVIDENCE (AND NO OTHER EXPERT EVIDENCE)

LVA 3 - Directions for LVAs for valuations not exceeding \$5m – appellant calling valuation evidence (and no other expert evidence)

1. By **4:00pm** on **[2 weeks from the date of the orders]**, the appellant must file in the Land Court Registry and serve on the respondent its statement of facts, matters and contentions in respect of the grounds of appeal which must address the following matters:
 - a. the **[site/unimproved]** value of the land;
 - b. the highest and best use of the land;
 - c. the valuation approach;
 - d. a list of comparable sales; and
 - e. details of any site specific characteristics, including planning and site constraints.
2. By **4:00pm** on **[4 weeks from the date of the orders]**, the respondent must file in the Land Court Registry and serve on the appellant its statement of facts, matters and contentions in respect of the grounds of appeal which must address the following matters:
 - a. the **[site/unimproved]** value of the land;
 - b. the highest and best use of the land;
 - c. the valuation approach;
 - d. a list of comparable sales;
 - e. details of any site specific characteristics, including planning and site constraints; and
 - f. for the respondent only, detail the reasons for its objection decision in relation to the land.
3. By **4:00pm** on **[6 weeks from the date of the orders]** each party must file in the Land Court Registry and serve on the other party, statements of evidence of any lay witness they intend to rely upon at the hearing.
4. The statement of evidence of a lay witness will be their evidence-in-chief at the hearing, unless the Court orders otherwise.
5. By **4:00pm** on **[6 weeks from the date of the orders]** the parties must prepare and deliver to the valuation expert witnesses a consolidated brief of instructions which:
 - a. identifies any issue that any party considers the experts need to address; and
 - b. includes any information or documents that any party considers relevant to those issues.
6. Including information or a document in a consolidated brief of instructions is without prejudice to the parties' rights to object at the hearing to:

LVA 3 - DIRECTIONS FOR LVAS FOR VALUATIONS NOT EXCEEDING \$5M – APPELLANT CALLING VALUATION EVIDENCE (AND NO OTHER EXPERT EVIDENCE)

- a. the admission into evidence of all or part of any information or document included in the brief of instructions; and
 - b. any evidence relating to the disputed information or document.
7. By **4:00pm** on **[9 weeks from the date of the orders]** the valuation expert witnesses must participate in a meeting of experts.¹
8. By **4:00pm** on **[11 weeks from the date of the orders]** the valuation expert witnesses must produce a joint report² and deliver a copy to each party.
9. The appellant must file a copy of the joint report in the Land Court Registry within two (2) business days of its receipt.
10. Unless otherwise ordered, the valuation expert witnesses may not file any statement of evidence other than their joint report.
11. The case is listed for a hearing review at **[TIME, the first review after the date for the joint report to be filed]**.
12. The case is listed for hearing for commencing at **[TIME & no earlier than 3 weeks after the hearing review & LOCATION]**.
13. If a party becomes aware of any circumstances that may prevent them from complying with a direction, they must notify the Land Court Registry and the other party, in writing, as soon as practicable, of the following matters:
 - a. which direction they will or may not be able to comply with;
 - b. the reason for the anticipated non-compliance; and
 - c. the party's proposal to remedy the non-compliance, including any proposed variation to the current directions.
14. Either party may apply for review by giving at least two (2) business days' written notice to the Land Court Registry and to the other party of:
 - a. the proposed date for review;
 - b. the reasons for the request; and
 - c. the proposed directions.

¹ As that term is defined in the *Land Court Rules 2000* r 22.

² As that term is defined in the *Land Court Rules 2000* r 22.