

The Process for Appeals under the Land Valuation Act 2010

Practice Direction 1 of 2021

A handwritten signature in blue ink, appearing to read 'Peter Kingham', is positioned above the printed name.

President FY Kingham
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Preliminary

1. This Practice Direction applies to proceedings commenced in the Land Court by way of an appeal under the *Land Valuation Act 2010* and replaces Practice Direction 2 of 2015.
2. In cases where the valuation appealed against is \$5 million or less, the parties must attend a *preliminary conference*¹ (PC) in an effort to resolve or narrow the issues in dispute.
3. Where the valuation appealed against is more than \$5 million, the Court will not offer a PC save in exceptional circumstances.

¹ *Preliminary conference* means an informal meeting, supervised by the Court, which brings the parties together to discuss the case and try to settle it at an early stage. The conference is usually convened by the Judicial Registrar but may be convened by a Member of the Court. See section 27B of *Land Court Act 2000*.

LISTING ARRANGEMENTS

Listing arrangements

4. The Court will schedule a PC as soon as reasonably practicable after the filing of the appeal.
5. Normally, the PC will be held in the district where the subject land is located.

Procedure

6. Unless given leave by the Court, each party or their representative must attend the PC in person.
7. If a party, or their representative, wishes to appear otherwise than in person (e.g. by telephone or video link), they must apply to the Court at least 14 days prior to the date scheduled for the PC, stating why personal attendance is not possible.
8. The party or representative attending the PC must:
 - a) be familiar with the substance of the issues in dispute;
 - b) be prepared to identify and discuss the issues in dispute in an attempt to reach a resolution; and
 - c) have authority to resolve the appeal or any issue in dispute.
9. Each party must act reasonably and genuinely in the PC.
10. If a party fails to attend the PC or is not represented by a person with appropriate authority, the Member or Judicial Registrar presiding may terminate the PC and make any order as to costs as they consider appropriate.

CONCLUSION OF THE PC

Conclusion of the PC

11. If the parties agree on a resolution of their dispute, or any part of it, the Member or Judicial Registrar presiding may dispose of the appeal in the way agreed, including by making consent orders.
12. If the parties require additional time to continue their negotiations, the Member or Judicial Registrar presiding may:
 - a) grant a period of two (2) weeks for further discussion; and/or
 - b) list the appeal for another PC.
13. If the parties do not reach agreement at the PC, or within two weeks after the conference, and the Member or Judicial Registrar presiding has not exercised their discretion under [12] above, the registry will issue directions for the further conduct of the appeal.
14. If the parties do not intend to call expert evidence, the appeal will be listed for hearing using *fast track directions*.²
15. If the parties propose to call expert evidence, the registry will issue *standard directions*³ for preliminary steps and an early review by the Member managing the LVA list.

² See Appendix A.

³ See Appendix B.

APPENDIX A – FAST TRACK DIRECTIONS

Fast track directions

1. By **4:00pm on [4 weeks from the date of the orders]**, the [appellant's name] must file in the Land Court Registry and serve on the Valuer-General its statement of facts, matters and contentions which must address the following matters:
 - a) the alleged error in the issued valuation;
 - b) the [site/unimproved] value of the land which [the appellant's name] says is the correct valuation;
 - c) the highest and best use of the land;
 - d) the valuation methodology adopted;
 - e) a list of comparable sales; and
 - f) details of any site-specific characteristics, including planning and site constraints that affect valuation.

 2. By **4:00pm on [6 weeks from the date of the orders]**, the Valuer-General must file in the Land Court Registry and serve on [the appellant's name] its statement of facts, matters and contentions in response 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 methodology adopted;
 - d) a list of any sales proposed by [the appellant's name] which are accepted as comparable;
 - e) a list of any additional sales that were not referred to in [the appellant's name] list which are said to be comparable;
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APPENDIX A – FAST TRACK DIRECTIONS

- f) details of any site-specific characteristics, including planning and site constraints that were considered in determining the valuation; and
 - g) detail the reasons for its objection decision in relation to the land.
3. At the hearing, the statements of facts, matters and contentions will be the evidence in chief of the author, unless the Court orders otherwise.

“Author” means:

- a. For an individual appellant, the appellant or a person nominated in writing by the appellant.
 - b. For a corporate appellant or the Valuer General, the person who signed the statement of facts, matters and contentions or a person otherwise nominated in writing.
4. The case is listed for a hearing review at **[TIME, the first review after the date in order 1 & PLACE]**.
5. The case is listed for hearing commencing at **[TIME & no earlier than 2 weeks after the hearing review & LOCATION]**.
6. 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) any direction they cannot 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.

APPENDIX A – FAST TRACK DIRECTIONS

7. 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.

APPENDIX B – STANDARD DIRECTIONS

Standard directions

1. By **4:00pm on [4 weeks from the date of the orders]**, the [appellant's name] must file in the Land Court Registry and serve on the Valuer-General its statement of facts, matters and contentions which must address the following matters:
 - a) the alleged error in the issued valuation;
 - b) the [site/unimproved] value of the land which [the appellant's name] says is the correct valuation;
 - c) the highest and best use of the land;
 - d) the valuation methodology adopted;
 - e) a list of comparable sales; and
 - f) details of any site-specific characteristics, including planning and site constraints that affect valuation.

2. By **4:00pm on [6 weeks from the date of the orders]**, the Valuer-General must file in the Land Court Registry and serve on [the appellant's name] its statement of facts, matters and contentions in response 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 methodology adopted;
 - d) a list of any sales proposed by [the appellant's name] which are accepted as comparable;
 - e) a list of any additional sales that were not referred to in [the appellant's name] list which are said to be comparable;

APPENDIX B – STANDARD DIRECTIONS

- f) details of any site-specific characteristics, including planning and site constraints that were considered in determining the valuation; and
 - g) detail the reasons for its objection decision in relation to the land.
3. Unless otherwise ordered, neither party nor any expert witness may refer to or rely on any comparable sales that are not listed in the statements of facts, matters and contentions.
 4. By **4:00pm on [8 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 in the following categories [list them] 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.
 5. By **4:00pm on [9 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.
 6. By **4:00pm on [9 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 for 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.
 7. The appeal is listed for review at [ASAP after the date for nomination of the experts].

APPENDIX B – STANDARD 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.