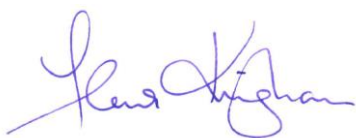


# Model Directions

Version 2

A handwritten signature in blue ink, appearing to read "Paul Kingham".

*President FY Kingham  
Issued 25 January 2019*

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# INTRODUCTION

## Introduction

This document sets out the preferred format for case management directions made by the President or a Member of the Land Court at directions hearings or reviews. It includes directions for most pre-hearing steps, including issue identification, disclosure, ADR, and expert evidence procedures. A glossary of terms is included to assist those unfamiliar with court procedures.

The directions can be adapted for use in simple disputes and those involving multiple areas of expertise. When proposing directions for their case, the Court expects parties to use the model directions, as amended or supplemented to reflect the particular circumstances of the case.

The Court will revise the model directions periodically.

In this document, a reference to the parties should be taken to include the lawyer or agent representing the parties, unless specified otherwise.

## Case Management in the Land Court

The Court manages cases through a variety of procedures, during which directions for the conduct of the case may be made.

As soon as practicable after a case is filed, the Court will list it for a directions hearing or, in the case of appeals against land valuations of \$5 million or less, for a Preliminary Conference before the Judicial Registrar. After the initial Directions Hearing (or Preliminary Conference), the case will be reviewed regularly to ensure the case is progressing.

### THE COURT'S APPROACH

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.

The following principles and requirements will guide the Court in making directions.

#### *The Court's core values*

The Court will manage its case load in a way that promotes the core values of the Court: equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness, and certainty.<sup>1</sup>

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<sup>1</sup> The International Framework for Court Excellence, 2<sup>nd</sup> Edition - Section 2: Court Values.

# CASE MANAGEMENT IN THE LAND COURT

## *Land Court Act 2000*

The Court is–

1. not bound by the rules of evidence and may inform itself in the way it considers appropriate; and
2. must act according to equity, good conscience, and the substantial merits of the case without regard to legal technicalities and forms, or the practices of other courts.<sup>2</sup>

The President may issue Practice Directions of general application about the procedure of the Court.<sup>3</sup> A Member may issue directions about a particular case when constituting the Court for that case.<sup>4</sup>

## *Land Court Rules 2000 and Uniform Civil Procedure Rules 1999*

The *Land Court Rules 2000* provide for some aspects of procedure. Where they do not, the *Uniform Civil Procedure Rules 1999* (UCPR) apply with necessary changes.<sup>5</sup> However, the UCPR does not apply in the Court’s recommendatory jurisdiction, such as when the Court hears objections to mining lease applications.

## THE COURT’S EXPECTATIONS OF THE PARTIES

At every stage of the case, the Court expects parties to consider what directions would best progress the case. The Court periodically reviews all active cases to ensure they are progressing productively and that the parties have appropriately explored options for resolving the dispute.

The Court expects parties to discuss proposed directions with each other prior to any directions hearing or review.

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<sup>2</sup> *Land Court Act 2000* s 7.

<sup>3</sup> *Land Court Act 2000* s 22(2).

<sup>4</sup> *Land Court Act 2000* s 22(3).

<sup>5</sup> *Land Court Rules 2000* r 4.

# CASE MANAGEMENT IN THE LAND COURT

## NON-COMPLIANCE WITH DIRECTIONS

Directions are procedural orders of the Court. Non-compliance with directions may expose a party to procedural and other consequences, including an order to pay the costs incurred by another party because of a party's non-compliance.

The Associate to the Member managing a case monitors compliance with directions, keeps the Member informed about progress, and is the point of contact for parties about directions.

If a party becomes aware of any circumstances that may prevent them from complying with a direction, they should notify the Land Court Registry and the other parties in writing as soon as practicable of the following matters:

1. the direction and the date the direction was made by the Court;
2. the reason for the anticipated non-compliance; and
3. the party's proposal to remedy the non-compliance, including any proposed variation to the current directions.

If a party fails to provide notice in those terms prior to the date for compliance, the Court will consider that failure on any application for costs.

## CONSENT DIRECTIONS

If the parties agree, the Court may issue directions by consent without requiring the parties to attend court in person. However, the Court will require the parties to attend a review despite their agreement if:

1. the proposed directions puts any court listings at risk; or
2. the President or Member managing the case is concerned about the progress of the case.

## DRAFT DIRECTIONS

Unless otherwise directed, and as soon as practicable after the directions hearing or review, the applicant/appellant parties must provide, to the associate to the Member who presided, an electronic word version of draft directions to give effect to the Member's directions.

# IDENTIFYING THE ISSUES

## Identifying the issues

Unless it otherwise directs, the Court does not use the system of pleadings provided for in the UCPR. The following directions are used to clarify the parties' cases and to identify the real issues in dispute.

The process for starting a case in the Court depends on the nature of the case and includes:

1. by a notice of appeal, filed in the Court (e.g. land valuation, rating categorisation, and other appeals against government decisions);
2. by an originating application, filed in the Court (e.g. compensation claims for acquisition of land, conduct and compensation for land access, and compensation for the grant of mining leases and mining claims, and applications to review compensation).
3. by a referral to the Court by a government agency (e.g. objections to the grant of mining and environmental authorities).

Once the case starts, the Court expects the initiating document to include sufficient or adequate particulars of the appellant/applicant's case to enable any other party to understand the case they must meet. If the initiating document does not contain sufficient or adequate particulars, the Court may require a party to deliver further and better particulars.<sup>6</sup>

### CLAIMS FOR COMPENSATION FOR ACQUISITION OF LAND

**AQL1:** By **[TIME & DATE]** **[respondent's name]** must file in the Land Court Registry and serve on **[applicant's name]** a statement of facts, matters and contentions in response to the applicant's claim for compensation.

**AQL2:** By **[TIME & DATE]** **[applicant's name]** must file in the Land Court Registry and serve on the **[respondent's name]** a statement of facts, matters and contentions in reply, if any.

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<sup>6</sup> Please refer to the Words and meanings for the definition.



## IDENTIFYING THE ISSUES

### MINING TENURES AND ENVIRONMENTAL AUTHORITIES

**MOH1:** By **[TIME & DATE]** **[applicant's name]** must file in the Land Court Registry and serve on all active parties any request for further and better particulars of any grounds of objection of any active party objector to the hearing.

**MOH2:** By **[TIME & DATE]** any active party objector who has received a request for particulars in accordance with order **[X]** must file in the Land Court Registry and serve on all active parties the further and better particulars of their grounds of objection.

**MOH3:** The issues for the hearing will be those issues raised by any ground of objection, as particularised, unless all active parties advise the Court that a hearing is no longer required on any issue raised by an objection. The active parties may advise the Court of this at any stage of the case, including after the hearing has commenced.

**MOH4:** By **[TIME & DATE]** the statutory party must file in the Land Court Registry and serve on the other active parties an affidavit complying with paragraph 32 of Land Court *Practice Direction 4 of 2018*.

### COMPENSATION FOR MINING LEASES AND MINING CLAIMS, DISPUTES ABOUT CONDUCT AND COMPENSATION FOR LAND ACCESS, AND APPLICATIONS TO REVIEW COMPENSATION

**MC1:** By **[TIME & DATE]** **[resource holder/applicant's name]** must file in the Land Court Registry and serve on the **[landholder's name]** a compensation statement, including all evidence relied on to support the compensation statement.

**MC2:** By **[TIME & DATE]** **[landholder's name]** must file in the Land Court Registry and serve on **[resource holder/applicant's name]** a response to the compensation statement, including all evidence relied on to support the response to compensation statement.

**MC3:** By **[TIME & DATE]** **[resource holder/applicant's name]** must file in the Land Court Registry and serve on **[landholder's name]** a reply, if any, including all evidence relied on in reply.

## IDENTIFYING THE ISSUES

### OTHER APPLICATIONS AND APPEALS<sup>7</sup>

**OA1:** By **[TIME & DATE]** **[respondent's name]** must file in the Land Court Registry and serve on **[appellant/applicant's name]** a statement of facts, matters and contentions in response to the **[grounds of appeal/application]**.

**OA2:** By **[TIME & DATE]** **[appellant/applicant's name]** must file in the Land Court Registry and serve on the **[respondent's name]** a statement of facts, matters and contentions in reply, if any.

### FURTHER AND BETTER PARTICULARS

**FBP1:** By **[TIME & DATE]**, the respondent must file in the Land Court Registry and serve on the **[appellant/applicant]** any request for further and better particulars of the **[grounds of appeal/application]**.

**FBP2:** By **[TIME & DATE]**, the **[appellant/applicant]** must file in the Land Court Registry and serve on the respondent its further and better particulars of the **[grounds of appeal/application]**.

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<sup>7</sup> In 2019, the Land Court is piloting standard directions that are issued by the Land Court Registry to a defined timetable as soon as the Notice of Appeal is filed.

# DISCLOSURE OF DOCUMENTS BY A PARTY

## Disclosure of documents by a party

The provisions of the UCPR apply to disclosure of documents, except in the Court's recommendatory jurisdiction, such as mining objection hearings. Until a specific power is conferred on the Court to order disclosure of documents for mining objection hearings, orders for disclosure will only be made with the consent of the active parties.

To promote efficient and effective preparation for hearing and to avoid unnecessary costs, the Court expects each party to be specific about the categories of documents it seeks, or the documents it seeks in relation to particular issues.

Disclosure is an ongoing obligation. In all cases, except those in the Court's recommendatory jurisdiction, the Court expects parties to provide a certificate of compliance with the disclosure obligations<sup>8</sup> at the commencement of the hearing.

If a party seeks disclosure from someone who is not a party to the proceeding, they must make an application in accordance with the procedure in the UCPR. Again, that procedure is not available in the Court's recommendatory jurisdiction.

**D1:** By **[TIME & DATE]** **[party's name]** must deliver to **[party's name]**:

1. a list of all documents in their possession or control in the following categories or which are directly relevant to the following issues **[specify here the documents sought by category and/or issue]**; and
2. a separate list of any of the documents for which they claim privilege from disclosure, and the basis for that claim.

**D2:** By **[TIME & DATE]** **[party's name]** must produce the listed documents for inspection or deliver copies of the listed documents as requested by any other party.

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<sup>8</sup> In compliance with *Uniform Civil Procedure Rules 1999* r 226.

# EXPERT WITNESS PROCEDURES

## Expert witness procedures

The following directions support the *Guidelines for Expert Evidence in the Land Court* and should be read in conjunction with those guidelines. The Court's objective is to reinforce the independence of expert witnesses and to make the most timely, efficient, and effective use of expert evidence. To retain flexibility, the Court will direct the process for expert evidence on a case-by-case basis. The Court's choice of procedure will respond to the nature, scope and complexity of the issues, resources, and preferences of the parties.

If there is more than one expert in an area of expertise, the Court will make directions for a meeting of expert witnesses and the preparation of a joint expert report. In complex cases, or where the Court considers that closer supervision of the briefing and meeting of expert witnesses is necessary, the Court may direct the parties to engage in Court Managed Expert Evidence (CMEE).

### NOMINATION OF EXPERTS

**Ex1:** By **[TIME & DATE]** 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 specify:

1. the name of each expert witness;
2. their area of expertise;
3. a short statement of each specific issue or assertion the expert witness will address; and
4. confirmation that the expert is able to participate fully, properly, and promptly in the court process.

# EXPERT WITNESS PROCEDURES

## ONE EXPERT ON AN ISSUE

This direction applies where only one party is calling an expert on an issue.

- Ex2:** By **[TIME & DATE]** **[party's name]** must file in the Land Court Registry and serve on any other party a statement of evidence sworn or affirmed by **[expert's name]**, **[expert's area of expertise]**.
- Ex3:** By **[same date as Ex2]** **[party's name]** must provide to any other party a copy of the brief of instructions provided to the expert witness and any document included or referred to in the brief that has not already been disclosed.
- Ex4:** The filed statement of evidence sworn or affirmed by **[expert's name]** will be their evidence in chief at the hearing, unless the Court orders otherwise.

## MORE THAN ONE EXPERT ON AN ISSUE

Where more than one party is calling an expert witness on an issue, The Court will consider whether to direct the case to Court Managed Expert Evidence (CMEE)

If the case is not directed to CMEE, the Court will direct the parties to manage the expert evidence procedure. This is suitable in simple cases where the parties have engaged an expert in only one area of expertise or where the issues are clearly defined.

The directions provide for a consolidated brief to each expert prepared by all parties which identifies any issue a party considers the expert should address and includes any document or information a party considers is relevant. The parties do not need to agree about the issues or documents. The directions reserve the parties' rights to object to the admission of irrelevant or otherwise inadmissible evidence. The Court can rule on disputes about relevance and admissibility of evidence at the hearing or, if it is necessary for efficient case management, prior to the hearing.

The directions also provide for the experts to confer and deliver a joint report to the Court. The joint report specifies those matters upon which they agree and disagree and the reasons for any disagreement. The Court expects the experts to address any factual scenario or methodology advanced by another expert, even if they do not agree with the scenario or methodology. To the extent the experts disagree, the Court expects the experts to say what their evidence would be if the Court accepted the evidence of the other expert on any of those matters.

Where the evidence of experts in one discipline could affect the evidence given by experts in another discipline, the parties must take that into account in proposing a schedule for the

## EXPERT WITNESS PROCEDURES

conferences. The Court expects the parties to consult with each other and with the expert witnesses to develop a sensible schedule, with realistic deadlines that allow the expert witnesses adequate time to confer and prepare their reports.

### Briefing the expert witnesses

**Ex5:** By **[TIME & DATE]** the parties **must** prepare and deliver to the **[area of expertise]** expert witnesses a consolidated brief of instructions which:

1. identifies any issue that any party considers the experts need to address; and
2. includes any information or documents that any party considers relevant to those issues.

**Ex6:** Including information or a document in a consolidated brief of instructions is without prejudice to the parties' rights to object at the hearing to:

1. the admission into evidence of all or part of any information or document included in the brief of instructions; and
2. any evidence relating to the disputed information or document.

### Meeting of experts and joint reports

**Ex7:** By **[TIME & DATE]** the **[area of expertise]** expert witnesses must participate in a meeting of experts.<sup>9</sup>

**Ex8:** By **[TIME & DATE]** the **[area of expertise]** expert witnesses must produce a joint report<sup>10</sup> and deliver a copy to each party.

**Ex9:** **[appellant/applicant name]** must file a **copy** of the joint report in the Land Court Registry within two business days of its receipt.

**Ex10:** Unless otherwise ordered, the expert witnesses may not file any statement of evidence other than their joint report.

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<sup>9</sup> As that term is defined in the *Land Court Rules 2000* r 22.

<sup>10</sup> As that term is defined in the *Land Court Rules 2000* r 22.

# EXPERT WITNESS PROCEDURES

## COURT MANAGED EXPERT EVIDENCE (CMEE)

The Court will consider whether to direct a case to CMEE on a case-by-case basis, usually after the parties have nominated their expert witnesses.

The Court will consider directing a case to CMEE if:

1. the parties nominate multiple experts; or
2. the case involves complex issues on which expert evidence will be required; or
3. the evidence of experts in one or more areas of expertise will impact on the evidence of other experts; or
4. there is a history of non-compliance with the *Land Court Rules 2000* or with directions made by the Court about expert evidence.

The CMEE process will respond to the circumstances of the particular case, involving a similar process of consolidated briefing, meetings of experts, and joint reporting as provided for above.

A CMEE is conducted by a CMEE Convenor, who must be a Member or Judicial Registrar of the Court. The role of the CMEE Convenor is procedural. The CMEE Convenor assists in the Court's management of the evidence of expert witnesses. The powers of the CMEE convenor are set out in *Land Court Practice Direction 3 of 2018*.

The directions provide for the appointment of a CMEE Convenor. The CMEE Convenor will manage communications between the experts, the parties and their representatives, and the Court. The CMEE process is conducted on a without prejudice basis.

**Ex11:** This case is directed to Court Managed Expert Evidence (CMEE) pursuant to *Land Court Practice Direction 3 of 2018*.

**Ex12:** The CMEE Convenor is **[insert name of Member or Judicial Registrar]**.

**Ex13:** By **[TIME & DATE]** the CMEE Convenor must convene a case management conference.

**Ex14:** By **[TIME & DATE]** the CMEE Convenor must provide a report to the President on the progress of the CMEE **[or specify the specific issue to be reported on]**.

# EXPERT WITNESS PROCEDURES

## CONCURRENT EVIDENCE

These directions should be read in conjunction with *Land Court Practice Direction 2 of 2017*. After consultation with the parties, the Member allocated to hear the case will decide whether to take evidence from expert witnesses in a concurrent evidence session. If that is not settled beforehand, it will be determined at the hearing review. If a party seeks clarity about the mode of expert evidence for the hearing before the hearing review, they should raise this at another review, or by correspondence with the Land Court Registry. The question will then be referred to the Member allocated to hear the case.

An agenda for the concurrent evidence session assists all participants to prepare. The directions provide for the parties to agree upon an agenda for the Court's consideration. The purpose of the agenda is to prepare the parties and the witnesses and to help the Member guide the concurrent evidence session. Requiring the parties to contribute to the agenda ensures those with an intimate knowledge of the case can identify key issues for the Court to consider. A proposed agenda:

1. should identify any matters on which the experts agree (so they can be confirmed at the commencement of the session);
2. should organise the matters on which they disagree under broad topics, arranged in a logical order; and
3. may identify particular passages of the joint reports or statements of evidence, or documents in evidence, that are relevant to those topics.

The Member will settle the agenda in consultation with the parties. The parties must deliver the settled agenda to the expert witnesses as soon as practicable before the session commences.

**Ex15:** The evidence of **[names of expert witnesses]**, **[experts' area of expertise]** will be taken concurrently.

**Ex16:** By **[TIME & DATE]** the parties must file in the Land Court Registry an agreed proposed agenda for the concurrent evidence session(s) for the Court's consideration.

**Ex17:** By **[TIME & DATE]** the parties must deliver to each of their nominated expert witnesses:

1. a copy of *Land Court Practice Direction 2 of 2017*; and
2. a copy of the agreed/proposed agenda for their concurrent evidence session.



# LAY WITNESSES

## Lay witnesses

- E1:** By **[TIME & DATE]** each party must file in the Land Court Registry and serve on any other party statements of evidence sworn or affirmed by any lay witness they intend to rely upon at the hearing.
- E2:** The filed statement of **evidence** sworn or affirmed by a lay witness will be their evidence in chief at the hearing, unless the Court orders otherwise.

# ALTERNATIVE DISPUTE RESOLUTION (ADR)

## Alternative Dispute Resolution (ADR)

The Court is committed to resolving disputes fairly, cost-effectively and efficiently. ADR makes an important contribution to the Court achieving that goal. In all cases, the Court encourages parties to reach agreement without the need for a hearing. It offers ADR processes, convened by a Member or the Judicial Registrar, to assist the parties to do so, including:

- Preliminary Conference (PC)
- Mediation

Mediations can also be chaired by a Convenor from the Court's ADR Panel, or a private mediator.

### PRELIMINARY CONFERENCE (PC)

A preliminary conference is 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. The parties and their advisers attend in person. The convenor will assist the parties to identify and discuss the issues in dispute and to explore options to settle the case, without the need for a court hearing. The conference is 'without prejudice'. This means it is confidential. If the case does not settle, a party cannot rely on anything said at the conference as evidence in the hearing.

**PC1:** The parties must attend, participate in and act reasonably and genuinely in a preliminary conference before **[name of Member/the Judicial Registrar]** at **[TIME & DATE & LOCATION]**.

**PC2:** If at the end of the preliminary conference the case is not resolved, **[name of Member/Judicial Registrar]** must file a certificate in the approved form in the Land Court Registry.

# ALTERNATIVE DISPUTE RESOLUTION (ADR)

## COURT-SUPERVISED MEDIATION – MEMBER OR JUDICIAL REGISTRAR

A court-supervised mediation must be conducted by a Member or the Judicial Registrar of the Court in accordance with *Land Court Practice Direction 3 of 2017*.

**JADR1:** The parties, **including** their representatives and nominated experts, must attend, participate in, and act reasonably and genuinely in, a court-supervised mediation before **[name of Member/the Judicial Registrar]** for **[X days]** commencing at **[TIME & DATE & LOCATION]**.

This direction is a referring order for the purposes of the *Civil Proceedings Act 2011*.

**JADR2:** By **[TIME & DATE]** each party must:

1. deliver to any other party a brief mediation statement which:
  - a. sets out the issues they say arise in the case;
  - b. states how they would like the case resolved;
  - c. lists any documents they intend to specifically refer to in the mediation; and
  - d. attached copies of those documents, if they are not already included in the Land Court’s file.
2. deliver a copy of the statement and attachments to the Land Court Registry in a sealed envelope or by email marked “Confidential to be opened only by **[name of Member/Judicial Registrar]**, Land Court **[File No.]**”.

**JADR3:** A document attached to a mediation statement is provided on a without prejudice basis.

**JADR4:** As soon as practicable after the mediation has finished, **[name of Member/Judicial Registrar]** must file a certificate in the approved form in the Land Court Registry.

**JADR5:** Unless a Notice of Discontinuance is filed by the parties, the case is listed for review at **[TIME & DATE]** at **[LOCATION]**.

**JADR6:** Unless the mediator and all parties agree otherwise, the parties must attend the mediation in person or be represented by a person who has the authority to deliver instructions and to execute terms of settlement.

# ALTERNATIVE DISPUTE RESOLUTION (ADR)

## COURT-SUPERVISED MEDIATION – LAND COURT ADR PANEL

The Court has established an ADR Panel to help parties find a suitably qualified mediator. To be accepted for the panel, a mediator must be accredited under National Mediation Accreditation Standards. Importantly, they must also possess qualifications or experience that is relevant to the types of cases filed in the Court. Their additional qualifications and experience mean the mediators will have a better understanding of:

- the circumstances of the parties and the issues likely to arise in their disputes;
- the options to resolve the disputes; and
- the Court’s processes, if the case must be heard by the Court.

Mediation by a Convenor from the Court’s ADR Panel will be conducted in accordance with Land Court *Practice Direction 1 of 2018*. The mediation procedure is the same as applies to mediation by a Member or Judicial Registrar except that the parties must bear the costs of the mediation, such as the mediator’s fees and the cost of the venue.

**CADR1:** The parties, **including** their representatives and nominated experts, must attend, participate in, and act reasonably and genuinely in, a court-supervised mediation before a Convenor from the Land Court ADR Panel agreed to by the parties or, if the parties cannot agree, nominated by the Land Court Registrar, at a time, date and location to be confirmed by the Convenor, but no later than **[DATE]**.

This direction is a referring order for the purposes of the *Civil Proceedings Act 2011*.

**CADR2:** By **[TIME & DATE]** each party must:

1. deliver to any other party a brief mediation statement which:
  - a. sets out the issues they say arise in the case;
  - b. states how they would like the case resolved;
  - c. lists any documents they intend to specifically refer to in the mediation; and
  - d. if those documents referred to in (c) are not included in the Land Court’s file, deliver copies of those documents.
2. deliver a copy of the statement and attachments to the Convenor in a sealed envelope or by email marked “Confidential to be opened only by **[name of ADR Panel Convenor]**, Land Court **[File No.]**”.

**CADR3:** A document attached to a mediation statement is provided on a “without prejudice” basis.

## ALTERNATIVE DISPUTE RESOLUTION (ADR)

- CADR4:** Unless otherwise agreed between the parties and the Convenor, the parties must share the costs of the mediation equally.<sup>11</sup>
- CADR5:** As soon as practicable after the mediation has finished, the ADR Panel Convenor must file a certificate in the approved form in the Land Court Registry.
- CADR6:** This case is listed for review at **[TIME & DATE]** unless all parties deliver prior written notice to the Land Court Registry, at least seven days prior to the review, that the case has been resolved without the need for Court orders.
- CADR7:** Unless the mediator and all parties agree otherwise, the parties must attend the mediation in person or be represented by a person who has the authority to deliver instructions and to execute terms of settlement.

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<sup>11</sup>

Another costs order may be made by the Court after hearing from the parties.

# ALTERNATIVE DISPUTE RESOLUTION (ADR)

## PRIVATE MEDIATION

Parties may wish to make private arrangements for mediation. These directions apply to mediation by a person who is not a Member or Judicial Registrar of the Court or appointed in their capacity as a Convenor on the Court's ADR Panel.

**PADR1:** By **[TIME & DATE]** the parties, their **representatives** and nominated experts must attend, participate in, and act reasonably and genuinely in, a mediation conducted by a mediator agreed to by the parties at a date, time and location to be confirmed by the mediator, but no later than **[DATE]**.

This direction is a referring order for the purposes of the *Civil Proceedings Act 2011*.

**PADR2:** Unless the mediator and all parties agree otherwise, the parties must attend the mediation in person or be represented by a person who has the authority to deliver instructions and to execute terms of settlement.

**PADR3:** Unless otherwise agreed between the parties and the mediator, the parties must share the costs of the mediation equally.<sup>12</sup>

**PADR4:** As soon as practicable after the mediation has finished, the mediator must file a certificate in the approved form in the Land Court Registry.

**PADR5:** This case is listed for review at **[TIME & DATE]** unless all parties deliver prior written notice to the Land Court Registry, at least seven days prior to the review, that the case has been resolved without the need for court orders.

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<sup>12</sup> Another costs order may be made by the Court after hearing from the parties.

# REVIEW

## Review

- R1:** The case is listed for review at **[TIME, DATE & PLACE]**.
- R2:** Any party may apply for further review by giving at least two business days' written notice to the Land Court Registry and to the other parties of:
1. the proposed date for review;
  2. the reasons for the request; and
  3. the proposed directions.
- R3:** The time for compliance with order **[#]** of the orders made **[DATE]** is extended to **[TIME, DATE & PLACE]**.
- R4:** The orders dated **[date]** are vacated and the following orders are made in substitution:

## eTrial

**ET1:** The hearing will proceed by eTrial and the parties must comply with Land Court *Practice Direction 1 of 2019* eTrials (Electronic Hearings).



# LISTING FOR HEARING

## Listing for hearing

The Court will list matters as soon as the parties confirm they are ready to proceed to hearing. Listings for hearings will be arranged by the President or the Member managing a particular list, in consultation with the parties. The parties may be given an indication of the Member allocated to hear the matter at the time it is listed. However, that may change without reference to the parties depending on the circumstances of the Court and its case load.

The Court may also set tentative dates in the Court calendar, before the parties confirm they are ready to proceed to hearing. The Court will only make a tentative listing in consultation with the parties, and to ensure dates are reserved in the calendar. When the parties confirm they are ready to proceed, the tentative listing will become a listing for hearing. A party is not exposed to an order for costs if a tentative listing, which has not been confirmed by all parties, needs to be amended.

### HEARING ORDER AT REQUEST OF PARTIES

**H1:** The case is set down for hearing for **[X days]** commencing at **[TIME & DATE & LOCATION]**.

### TENTATIVE HEARING ORDER AT THE COURT'S DIRECTION

**H2:** The Court will reserve **[X days]** commencing at **[TIME & DATE & LOCATION]** as tentative hearing dates for this case.

### HEARING ON THE PAPERS

**H3:** Unless the parties otherwise request in writing, the case will be determined on the filed material, without an oral hearing not before **[TIME & DATE]**.

# HEARING ARRANGEMENTS

## Hearing arrangements

Directions for some hearing arrangements (such as whether cases should be consolidated or heard together) may be made by the President or the Member managing the list. Other hearing arrangements will be addressed at the hearing review, which will usually:

1. held a month before the date the hearing is listed to start; and
2. be conducted by the Member allocated to hear the case.

Generally, hearings will commence with a site inspection and orientation session in accordance with Land Court *Practice Direction 2 of 2018*. The purpose of the site inspection and orientation session is to provide context for the Member, the parties and, where relevant, the witnesses.

The purpose of the hearing review is to ensure the parties are ready for hearing and have provided the Member with the necessary information to prepare for the hearing. At the hearing review, the Member will settle arrangements for the hearing including the hearing plan, the orientation session, the site visit (if necessary) and, if not already settled, whether expert evidence will be heard concurrently.

### CASES HEARD TOGETHER<sup>13</sup>

**H4:** The cases **[file number]** and **[file number]** will remain as separate cases but will be heard and decided together. The evidence in one case will be the evidence in all cases, to the extent that it is relevant. The lead file is **[file number]**. All material will be filed on the lead file unless a party advises, when filing a document, that it relate only to a specific file.

### CASES CONSOLIDATED

**H5:** The cases **[file number]** and **[file number]** are consolidated and will proceed under case file number **[file number]**. All material filed to date in either case is taken to be filed in case file number **[consolidated file number]**. All material filed after this order will be filed in case file number **[consolidated file number]**

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<sup>13</sup> Sometimes, the parties will request files to be listed so they travel together during reviews. This can be done administratively, without direction by the Court, but each file will be self-contained and Model Directions H4 and H5 will not apply.

# HEARING ARRANGEMENTS

## HEARING REVIEW

**H6:** The case is set down for a hearing review at [TIME, DATE & PLACE].

## HEARING MATERIALS

**H7:** By [TIME & DATE]<sup>14</sup> the parties **must** provide to the Land Court Registry:

1. a list of issues;<sup>15</sup>
2. a list of matters not in dispute;<sup>16</sup>
3. an index to hearing materials;<sup>17</sup> and
4. a proposed hearing plan, which identifies the issues relating to a site inspection and orientation session, if applicable, in accordance with Land Court *Practice Direction 2 of 2018*.<sup>18</sup>

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<sup>14</sup> Five business days before the date of the hearing review.

<sup>15</sup> See attachment A to the Model Directions.

<sup>16</sup> See attachment B to the Model Directions.

<sup>17</sup> See attachment C to the Model Directions.

<sup>18</sup> See attachment D to the Model Directions.

# WORDS AND MEANINGS

## Words and meanings

*Active party:* An active party for a mining objection hearing is any of the following:

- a) the applicant for the mining lease or claim and/or environmental authority;
- b) the Department of Environment and Science (also the statutory party);
- c) any objector who elects to be an active party.

*Alternative Dispute Resolution (ADR):* The use of alternative methods such as preliminary conferences and mediation to resolve a dispute without the need for the Court to decide the case.

*Appellant:* An objector to a land valuation who files a notice of appeal; or another person who is entitled by legislation to carry on an appeal against a decision which affects them.

*Applicant:* The person bringing the application before the Court.

*Compensation statement:* A statement detailing the amount of compensation the party considers the court should determine having regard to:

- a) in the case of a mining claim – the criteria in s 85(7) and (8) of the Mineral Resources Act 1989 (Qld); or
- b) in the case of a mining lease – the criteria in s 281(3) and (4) of the Mineral Resources Act 1989 (Qld) (see Land Court *Practice Direction 1 of 2017*).

*Concurrent evidence:* Concurrent evidence involves two or more experts in the same or closely related fields giving evidence at the same time (see Land Court *Practice Direction 2 of 2017*).

*Court-supervised mediation:* A mediation conducted by either:

- a) a Member or Judicial Registrar of the Court (see Land Court *Practice Direction 3 of 2017*);  
or
- b) a Convenor from the Land Court's ADR Panel (see Land Court *Practice Direction 1 of 2018*).

*Directions:* The procedural orders made by the President or a Member regarding the actions the parties and others must take to progress the case.

*Directions hearing:* The first procedural hearing at which the President or a Member makes procedural orders the parties and others must do to progress the case.

*Disclosure:* The delivery or production of documents by a party to a case to the other parties in the case.

## WORDS AND MEANINGS

*eTrial*: A hearing where the documents are submitted and presented electronically.<sup>19</sup>

*eCourtbook*: Controlled by a central operator, while also allowing remote participation in real-time.

*Evidence in chief*: The questioning of a witness during a hearing, by the party who called the witness.

*Expert witness*: A person that has a specialised knowledge or skill in a particular field that qualifies them to give evidence on an issue in the case, specific to their expertise.

*File and serve*: To lodge a document with the Court (file) and ensure a copy of the document is received by the other party/parties (serve).

*Further and better particulars*: Additional information required to provide sufficient clarity or accuracy with respect to the issues in the case.

*Ground of objection*: A ground of objection relied upon by a person objecting to the grant of a mining lease or claim, or environmental authority.

*Initiating document*: A document which commences a legal proceeding in the Court.

*Jurisdiction*: The power of a court to hear and determine a case. The extent of legal authority of a court.

*Lay witness*: A person who gives evidence in a hearing, who is not an expert witness.

*Legal professional privilege*: A mechanism which is designed to protect certain communications from subsequent disclosure. The privilege encourages open communications between a client and their lawyer.

*Mediation*: A form of alternative dispute resolution in which a neutral third person helps the parties reach a voluntary agreement to end the dispute.

*Practice Direction*: A procedural direction made by the President of the Court that applies to all cases referred to in the Practice Direction.

*Preliminary conference*: A form of ADR in which the Judicial Registrar or a Member convenes an informal meeting between the parties to identify the issues in dispute, discuss those issues and try to find a mutually acceptable outcome, without a court hearing.

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<sup>19</sup> Land Court of Queensland, *Practice Direction 1 of 2019 – eTrials (Electronic Hearings)*.

## WORDS AND MEANINGS

*Privilege:* A claim for privilege against disclosure of a document may be made on the basis that it is a “without prejudice” communication, or is subject to legal professional privilege or public interest immunity.

*Public interest immunity:* A principle by which government can prevent disclosure of documents where that would be against the public or national interest.

*Recommendatory jurisdiction :* Where the Court recommends to the Government what decision it should make on a matter.

*Respondent:* The person responding to an application or an appeal before the Court.

*Review:* A procedural hearing (after an initial directions hearing) where the President or a Member reviews the progress of the case and makes procedural directions regarding the future management of the case.

*Statement of evidence:* A written statement of the expert’s evidence for the hearing of a proceeding, usually an affidavit; experts can prepare expert reports.

*Statement of facts, matters and contentions:* An explanation of the particular circumstances of the case together with what you say the issues are and how you say those issues should be resolved.

*Statutory party:* A party to a dispute that gains its power and obligations from legislation (e.g. the Department of Environment and Science in mining objection hearings), but is not an applicant or respondent.

*UCPR:* Uniform Civil Procedure Rules 1999 (Qld)

*Without prejudice communications:* Communications (verbal or written) made in the course of genuine attempts to negotiate or mediate. If negotiations fail, the communication cannot be used in court without the consent of both parties.

# APPENDIX A

## Appendix A

LAND COURT OF QUEENSLAND

REGISTRY: [insert]

NUMBER: [insert]

Applicant/Appellant<sup>20</sup> [insert name]

AND

[First] Respondent [insert name]

AND

[Statutory Party] [insert name]

### LIST OF ISSUES OF FACT AND LAW

The following is a list of the real and substantial issues of fact in dispute between the parties in this matter.

- 1.
- 2.
- 3.
- 4.
- 5.

The following is a list of the real and substantial issues of law in dispute between the parties in this matter.

- 1.
- 2.

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<sup>20</sup> If the case was commenced by way of Originating Application the heading should read "Applicant". If the case was commenced by way of Notice of Appeal the heading should read "Appellant".

# APPENDIX A

Signed:

Name:

Description:

Date:

Signed:

Name:

Description:

Date:



# APPENDIX B

## Appendix B

LAND COURT OF QUEENSLAND

REGISTRY: [insert]

NUMBER: [insert]

Applicant/Appellant<sup>21</sup>

[insert name]

AND

[First] Respondent

[insert name]

AND

[Statutory Party]

[insert name]

### LIST OF MATTERS NOT IN DISPUTE

The parties agree that the following facts and matters will not be in dispute at the hearing and therefore proof of them is not required.

- 1.
- 2.
- 3.
- 4.
- 5.

Signed:

Name:

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<sup>21</sup> If the case was commenced by way of Originating Application the heading should read "Applicant". If the case was commenced by way of Notice of Appeal the heading should read "Appellant".

## APPENDIX B

Description:

Date:

Signed:

Name:

Description:

Date:

# APPENDIX C

## Appendix C

LAND COURT OF QUEENSLAND

REGISTRY: [insert]

NUMBER: [insert]

Applicant/Appellant<sup>22</sup> [insert name]

AND

[First] Respondent [insert name]

AND

[Statutory Party] [insert name]

### INDEX TO HEARING MATERIALS

No.	Description	Date	Tendered by	By Consent Yes/No	Page
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<sup>22</sup> If the case was commenced by way of Originating Application the heading should read "Applicant". If the case was commenced by way of Notice of Appeal the heading should read "Appellant".

# APPENDIX D

## Appendix D

LAND COURT OF QUEENSLAND

REGISTRY: [insert]

NUMBER: [insert]

Applicant/Appellant<sup>23</sup> [insert name]

AND

[First] Respondent [insert name]

AND

[Statutory Party] [insert name]

### PROPOSED HEARING PLAN

1. The parties **do/do not** intend to use the eTrial document management system at the hearing of this matter.
2. The parties **will/will not** require technological facilities to be available at the hearing and in particular [insert as appropriate].
3. The parties' best estimate of the likely duration of the hearing of this matter is [insert days/hours].
4. The parties intend to call witnesses at the hearing as indicated and in the order as appears in the annexure attached to this Plan and marked "A".

OR

4. The parties do not intend to call witnesses.
5. The parties propose the expert witnesses will give evidence **concurrently/consecutively** by **area of expertise/in the ordinary course of the presentation of each party's case**, as indicated in annexure A to this Plan.

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<sup>23</sup> If the case was commenced by way of Originating Application the heading should read "Applicant". If the case was commenced by way of Notice of Appeal the heading should read "Appellant".

## APPENDIX D

Signed:

Name:

Description:

Date:

Signed:

Name:

Description:

Date: