

PRACTICE DIRECTION 3: Procedures

- 3.1 OVERVIEW:** The Tribunal makes directions for the timely and efficient resolution of appeals. Those directions must be complied with or a costs order against the party may result. In extreme cases, a party's appeal may be dismissed or a person dismissed as a party to an appeal. This Practice Direction deals with the making and variation of directions, and the making of various applications in appeals.
- 3.2 FAILURE TO COMPLY:** Failure to comply with a direction may lead to a party being removed from the proceedings, or the appeal dismissed. If you cannot comply with a direction for a good reason, you can apply to vary the direction in question.
- 3.3 EVERYTHING BY APPLICATION:** Frequently parties communicate with the Tribunal to seek directions, variations to orders or extensions of time. Sometimes letters include submissions about the adequacy of grounds of appeal or requests are made to strike out appeals. This direction is intended to streamline procedures relating to all such matters.

The following procedure is to be observed:

- Every request to the Tribunal is to be made by an application to the Tribunal.
- An application must be made in accordance with Appendix 3A and must include the following:-
 - 3.3.1 The application which is made, including references to any relevant sections of legislation;
 - 3.3.2 The basis for the application (e.g., that a witness is not available, the stated grounds do not invoke a relevant consideration etc.);
 - 3.3.3 Submissions in support of the application;
 - 3.3.4 The orders which are sought; and
 - 3.3.5 Whether or not the application is made with the consent of the other party/ies to the proceedings;

A party not consenting to the orders sought shall have 48 hours to respond to the application, and must include submissions in support of their argument and, if applicable, alternative orders. The response must be filed and served upon the other parties.

There will not be a right of reply to a response submission, save to correct a factual error.

The application is to be served on all other parties. The Tribunal is not responsible for circulating applications. An application must disclose that the other parties have been served before it will be entertained. The Tribunal will not circulate applications.

Upon submissions being completed, filed and served, the Tribunal will make determination on the application.

For certain types of applications additional specific requirements are set out further below.

3.4 APPLICATION FOR A MATTER TO BE LISTED FOR A DIRECTIONS HEARING: If a party requests a directions hearing before the Tribunal it must be done so by application to the Tribunal.

The Tribunal will determine whether orders in those terms are appropriate or not. If so, it will make the orders. If not, the Tribunal may make alternative orders or convene a directions hearing.

3.5 APPLICATION TO VARY A DIRECTION OR A HEARING DATE: A party to proceedings may apply to the Tribunal for an alteration to a direction or to a listed hearing or mediation date. The application should comply with Practice Direction 3.3. There must be a good reason for seeking a variation of a hearing date. Mere Inconvenience to a party is typically not a good reason. It should be noted that applications to change hearing dates may be refused if made too late, or can give rise to risks of a costs order in some circumstances (See *Practice Direction 15 – Costs*).

3.6 APPLICATION TO BE MADE A PARTY TO THE PROCEEDINGS: The relevant section relating to an application to be made a party is Section 14 of the *Resource Management & Planning Appeal Tribunal Act 1993*. A person wishing to make an application to join proceedings should use the form contained on the Tribunal's website. The application must contain information addressing the requirements of Section 14. Please note that a fee is charged for the making of an application to join. The Tribunal's website contains details of the current fee. Tribunal will issue directions for timeframes for other parties to make any submissions regarding any application to join.

3.7 APPLICATION UNDER SECTION 22(3) OF THE RESOURCE MANAGEMENT & PLANNING APPEAL TRIBUNAL ACT 1993: Any application under this section must comply with Practice Direction 3.3 and in addition to those requirements the application must contain:

- 3.7.1 Written detailed particulars of the changes; and
- 3.7.2 Plans conforming to Schedule A of the Tribunal's Practice Directions showing the amendments, unless the changes are so minor as to be unnecessary to show them in plan form.

3.8 AN APPLICATION UNDER SECTION 62(2) OF THE LAND USE ACT: An application under this section is to be made where a person seeks permission from the Tribunal to lodge a new Application for Use or Development within two years of a determination of the Tribunal, and where the development or use is substantially the same as has already been decided by the Tribunal. Such an application must:

- 3.8.1 Be in writing clearly stating the application is pursuant to Section 62(2) of the *Land Use Act*.
- 3.8.2 Include a copy of the original decision of the Tribunal related to the Application for Use or Development, or cite the judgment number of the decision.
- 3.8.3 Enclose a copy of the Application for Use or Development that the proponent seeks to lodge.
- 3.8.4 Contain reasons why the Tribunal should grant the application under Section 62(2) of the *Land Use Act*.

An approval under this section is **ONLY** to lodge a fresh Application for Use or Development to be lodged with the planning authority. It is **NOT** approval for the development itself.

Parties to the original appeal will be notified of the application pursuant to Section 62(2) of the LUPA Act 1993 and afforded an opportunity to be heard, in accordance with the Tribunal's obligations to accord Natural Justice pursuant to Section 16(1)(d) of the RMPAT Act 1993. The applicant will be allowed a final right of reply to any submissions.

3.9 APPLICATIONS TO RAISE JURISDICTIONAL ISSUES: A party may lodge an application to raise a jurisdictional issue. Such an application must be in accordance with PD3.3 and:

- 3.9.1 Be in writing.
- 3.9.2 Include a brief statement with full particulars of the jurisdictional issue in a similar format to drafting a statement of issues (see *Practice Direction 2.13*).
- 3.9.3 Contain detailed submissions in support of the jurisdictional issue.
- 3.9.4 Provide a list of all facts relied upon – with:
 - a) a statement at the bottom of the document that identifies agreed facts; and
 - b) a list of disputed facts; and
 - c) the signatures of all parties confirming the statement.
- 3.9.5 Where a party seeks to have a jurisdictional issue resolved prior to a full merits based hearing, contain submissions detailing reasons why.

Where a dispute as to facts has arisen, unless the dispute is minor and capable of swift hearing and determination, the preliminary hearing of the jurisdictional issue may be declined. This would result in both merits of the proposal and any jurisdictional issue being heard and determined together at the final hearing.

A failure to adhere to these requirements will result in any jurisdictional issue being deferred until the full hearing and heard and determined along with the merits of the appeal.

The Tribunal cannot disregard a jurisdictional issue once it has been raised. The Tribunal must be satisfied it has power to issue any subsequent orders or directions and will need to determine any jurisdictional issue once raised.

3.10 APPLICATIONS TO EXTEND TIME TO LODGE AN APPEAL: Section 13(2) and (2A) of the *Appeal Tribunal Act* sets out the Tribunal's powers in relation to extending the time within which to lodge an appeal. In making any application to extend time for lodging an appeal, the following must be adhered to:

- 3.10.1 Carefully read Section 13 of the *Appeal Tribunal Act* to ensure you understand the requirements set out in that Section, in particular that you need to act quickly in relation to planning appeals (Section 13(2A)(b)).
- 3.10.2 Any application must be made in writing.
- 3.10.3 The application to extend time must accompany the actual appeal which you are lodging, along with the required fee. You cannot make an 'anticipatory' application to extend time.
- 3.10.4 It must contain submissions addressing the requirements set out in Section 13 of the *Appeal Tribunal Act*.

3.11 Application to amend a decision of the Tribunal: Section 23(6) of the *Appeal Tribunal Act* relevantly provides:

- (6) *The Appeal Tribunal may amend its decision on an appeal if it is satisfied that the amendment* –
- (a) does not change the effect of any condition required by the Appeal Tribunal; and*
 - (b) will not cause an increase in detriment to any person.*

A person who wishes to amend a decision needs to make an application in writing to the Tribunal which provides the following information:

- 3.11.1 Detailed submissions which identifies the changes sought (which includes plans as required below), and addresses the two requirements set out in 23(6)(a) and 23(6)(b).
- 3.11.2 A copy of the original decision and plans or documents which the applicant wishes to alter.
- 3.11.3 A copy of any new plans, materials or documents which are proposed to be included in any changes. These plans must demonstrate the extent of any change if they relate to changes to the built form of an approval.
- 3.11.4 A list of persons whose interests may be affected, including original parties to the proceedings before the Tribunal, and the addresses of adjoining land holders to the subject site.

Upon receiving an application under Section 23(6) of the *Appeal Tribunal Act*, the Tribunal will notify all original parties to the proceedings including the planning authority and any adjoining land holders. Each person notified will be afforded an opportunity to respond to the application. The Tribunal will determine whether a hearing is required to determine the application having regard to any submissions received.

If an application is contested, then the application will be heard and determined in the same manner as any appeal or application before the Tribunal as set out in these Practice Directions.

3.12 Notification of Withdrawal of an Appeal: The withdrawal of an appeal must be made as soon as possible. The notification must be in writing, clearly stating that you withdraw the appeal. Any decision to withdraw should be made and acted upon quickly as late withdrawal of proceedings may risk a costs order being made against you (See *Practice Direction 15 – Costs*).

3.13 Electronic Communication: If you provide an email address the Tribunal will use that address as its primary method of contact and provision of information **and will not forward hard copy documentation unless specifically requested**. It is vital that you ensure you provide the Tribunal with your correct email that you check your email account on a daily basis on the event of important communications from the Tribunal. When commencing proceedings with the Tribunal, if you receive the initial correspondence electronically you are required to confirm receipt of that material so the Tribunal can confirm it has your correct email address.

APPENDIX 3A
APPLICATION TO THE Tribunal

In the Resource Management & Planning Appeals Tribunal

Matter no.

[Heading to the matter]

Application:

[Detail the application which is made and the reasons for the application. Attach written submissions supporting the application where necessary]

Orders Sought:

- 1.
- 2.

This application has been served on (set out names of parties served).

Filed by: [insert party filing name and contact details].