

## **PRACTICE DIRECTION 2: Lodgement of Documents, Notices and Grounds of Appeal**

**2.1 Forms:** The forms to be used for Notices of Appeal/Applications and other documents are available on the Tribunal website: [www.rmpat.tas.gov.au](http://www.rmpat.tas.gov.au)

**2.2 Valid Lodgement:**

In order to validly lodge an appeal the following must occur:

2.2.1 A lodgement fee must be paid at the same time as lodging an appeal. The fee changes each financial year. Please check the Tribunal website for the current fee.

2.2.2 The appeal must be lodged in writing (and preferably on the relevant form provided by the Tribunal).

2.2.3 The appeal must be lodged within the required time frame (usually 14 days from the date of notification of the original decision.)

2.2.4 You must be a person who is given a legal right (standing) to bring an appeal under the relevant Act.

**2.3 Lodgement Fee and Waiver of Fee, Reduction or Refund of Fee:** The lodgement fee can be waived or reduced pursuant to Regulation 6(3) of the *Resource Management and Planning Appeal Tribunal Regulations 2014*. An application to waive or reduce a lodgement fee MUST:

2.3.1 Be lodged at least 5 days before the expiry of the time for lodgement.

2.3.2 Include a full statement of assets and liabilities of the person seeking waiver or reduction of the fee.

2.3.3 Include a letter/submission to support the waiver or reduction (which explains why payment of the full fee would cause financial hardship.)

2.3.4 An application to refund a fee should be made with submissions in support of a refund. Note that if the Tribunal has engaged in work as a result of the application or appeal, a refund is less likely to be approved as part of cost recovery requirements.

**2.4 Method of Payment:** The fee can be paid by cash, cheque or EFTPOS.

**2.5 Electronic Communication and Lodgement:** The Tribunal consents to receiving any and all documents, notices and proceedings by electronic means

**2.6 Strata Title Appeals:** Appeals under the *Strata Titles Act 1998* are to be lodged with the RECORDER OF TITLES, not the Tribunal Registry (Website for Recorder of Titles: <http://dpipe.tas.gov.au/land-tasmania/land-titles-office>)

**2.7 Extension of Time For Lodgement:** A person may apply for an extension of time to lodge an appeal under Section 13 of the Act. Please note:

2.7.1 The application must be lodged at the same time as the notice of appeal and with the required fee.

2.7.2 The application must be in writing and contain submissions/evidence addressing the relevant tests under the legislation as to why an extension ought be granted to lodge an appeal.

2.7.3 An extension will not be automatically granted and a person should not delay lodgement of proceedings

(Please read *Practice Direction 3.10* for more details.)

- 2.8 Grounds of Appeal AND Issues Overview:** All issues a party wishes to raise at any appeal must be relevant and clear. The issues that a party wishes to raise must be in writing. They must be sufficiently detailed to enable all other parties and the Tribunal to understand what the case is about and let the other parties prepare to meet that case.
- 2.9 Disclose All Matters Early:** Ensure that you have raised all relevant matters early in the proceedings in your grounds of appeal or list of issues as you may be barred from raising additional matters later in the proceedings. The late addition of other matters can unfairly prevent a proper response by the other parties and may delay the hearing process.
- 2.10 Failure to Comply:** A failure to comply with directions of the Tribunal in drafting relevant, clear and sufficiently detailed grounds of appeals or issues may result in your proceedings being dismissed or your status as a party revoked (Section 22A of the *Appeal Tribunal Act*).
- 2.11 Form of Lodged Grounds of Appeal:** An appeal must include grounds drafted in accordance with the guidelines attached to this Practice Direction and those in *Annexure 2A – Examples*.
- 2.12 Initial Direction:** A statement of issues or Grounds of Appeal not complying with *Practice Direction 2.14* will be required to be redrafted.
- 2.13 Final Direction:** If you have not redrafted your grounds in accordance with that direction, the Tribunal will issue a final direction setting a timetable for that redrafting to occur at the preliminary conference. **A failure to comply with this final direction will result in the Tribunal considering the dismissal of proceedings unless there are exceptional circumstances as to why the direction has not been complied with** (See *Practice Direction 3.3 – Procedures* regarding variation to directions).
- 2.14 Appeal Grounds Must Be Relevant, Clear and Sufficiently Detailed:** A ground of appeal or issue must disclose a matter which the Tribunal is empowered to hear and determine. Parties cannot raise any issue they wish. The Tribunal is restricted, as a matter of law, to consider only those matters which are made relevant by legislation. Most commonly, these will be contained in legislation which confers jurisdiction on the Tribunal including council Planning Schemes. If you are in doubt as to whether a matter is relevant, you should take your own private advice from a suitably qualified practitioner. A ground of appeal or issue must clearly state the dispute that has arisen, with reference to relevant provisions of legislation (or planning schemes) and the nature of that dispute. Refer to *Appendix 2A – Examples* for assistance.
- 2.15 Jurisdictional Grounds of Appeal or Issues:** A jurisdictional ground of appeal or issue is where a party seeks to argue that there exists a problem which affects the validity of the original decision or a limitation at law which results in the Tribunal not having jurisdiction to hear the proceedings. *Practice Direction 3.9 – Procedures*, sets out the procedure for case management of a jurisdictional issue. Please have regard to that Practice Direction when raising a jurisdictional matter.

- 2.16 Reasons for Refusal:** A local planning authority which refuses an Application for Use or Development will be required to either confirm that the original Reasons of Refusal will continue to be relied upon or must deliver amended reasons within a time frame directed by the Tribunal. The list of reasons for refusal, in the same way as grounds of appeal, must be drafted to be clear and concise in accordance with *Practice Direction 2.14*.
- 2.17 Applications to Enlarge the Issues:** In certain limited circumstances, parties who are joined to an appeal (see *Practice Direction 3.5 - Applications to be made a Party to the Proceedings*) may apply to enlarge the issues in dispute. This will arise where there has been an appeal by a proponent against a refusal of an Application for Use or Development. Parties joined to an appeal against a refusal will ordinarily be able to review the grounds of refusal relied upon by the planning authority and to apply to enlarge those grounds if there are additional relevant matters sought to be argued. Applications must comply with any timeframes set. The enlarged list of issues must have regard to the directions above and to *Appendix 2A – Examples*.
- 2.18 Revision of Statement of Issues or Reasons for Refusal:** In the event any party abandons anything contained in its Statement of Issues, or Reasons for Refusal or obtains permission to amend either document (see *Practice Directions 3.3 & 3.4 – Procedures for making applications for permission to amend*), it must submit to the Tribunal and serve upon each other party, the complete and amended document in its final approved form. This must be done within 3 days of any ruling or abandonment of issues.
- 2.19 Retaining a Ground of Appeal Abandoned by a Council:** In some circumstances, a joined party may have relied upon a Council's original list of grounds of refusal as listing all matters they sought to argue. If a Council abandons a ground of refusal, a joined party may still wish to argue that issue before the Tribunal. A joined party seeking to continue to rely upon an issue which has been abandoned by a Council must make an application to enlarge and send it to all parties and the Tribunal in writing within 48 hours of notification of Council's abandonment of an issue.
- 2.20 Copies of all Letters to be Shared with other Parties:** You must ensure ANY document sent to the Tribunal as part of the proceedings, is also sent to every other party to the proceedings. The Tribunal will provide you with the contact details of all parties to the proceedings early in the appeal process. You must also note at the bottom of any document sent to the Tribunal, the names of the persons you have sent a copy of the document to, to satisfy the Tribunal it has been done.
- 2.21 Multiple Copies not Necessary to be sent to Tribunal:** For ordinary letters and documents it is not necessary to email, fax and post the document. One copy is sufficient. If you want to ensure the Tribunal has received the document, then simply request that receipt of the document be acknowledged by return email. Statements of evidence, however, must be sent in hard copy form in triplicate and in electronic format.
- 2.22 Always quote correct Tribunal File Number on Correspondence:** Once the Tribunal has allocated a file number to an appeal you must include the Tribunal's reference number on all documents (including emails) sent to the Tribunal. Please ensure the correct number is shown.