



## **Resource Management and Planning Appeal Tribunal**

### **Report for 2012/2013**

#### ***Pursuant to Section 37 of the Resource Management and Planning Appeal Tribunal Act 1993***

#### **1. Introduction**

The Resource Management and Planning Appeal Tribunal (the 'Tribunal') is established by Section 5 of the *Resource Management and Planning Appeal Tribunal Act 1993* (the '*Appeal Tribunal Act*'). That Act also governs the Tribunal's jurisdiction and regulates its practice and procedure.

The Tribunal is an independent statutory Tribunal which deals with appeals relating to a wide range of administrative actions and decisions associated with resource management, environmental and planning issues.

Unlike a court the Tribunal possesses no original or inherent jurisdiction. It may only exercise such jurisdiction as is conferred upon it by Act of Parliament and then in accordance with that Act. The Tribunal exercises jurisdiction under the following Acts:

- *Agricultural and Veterinary Chemicals (Control of Use) Act 1995;*
- *Building Act 2000;*
- *Building Regulations 2004;*
- *Drains Act 1954;*
- *Environmental Management and Pollution Control Act 1994;*
- *Fire Service Act 1979*
- *Gas Act 2000;*
- *Gas Pipelines Act 2000;*
- *General Fire Regulations 2010;*
- *Historic Cultural Heritage Act 1995;*
- *Inland Fisheries Act 1995;*
- *Land Use Planning and Approvals Act 1993;*
- *Living Marine Resources Management Act 1995;*
- *Local Government (Highways) Act 1982;*
- *Local Government Act 1993;*
- *Marine Farming Planning Act 1995;*
- *National Parks and Reserves Management Act 2002;*
- *Plumbing Regulations 2004;*

- *Public Health Act 1997*;
- *Strata Titles Act 1998*;
- *Threatened Species Protection Act 1995*;
- *Water and Sewerage Industry Act 2008*;
- *Water Management Act 1999*;

The Tribunal is part of the Resource Management and Planning System of Tasmania (see Section 5 (3) of the *Appeal Tribunal Act*). The objectives of that System are contained in Schedule 1 of the *Appeal Tribunal Act*. They are:

- “(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- (c) to encourage public involvement in resource management and planning; and
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.”

“Sustainable development” is defined as meaning managing:

“...the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.”

These objectives, central to the stewardship of the State’s natural and built environment, are also central to the day-to-day operations of the Tribunal. They inform decision making about the management of the Tribunal’s business and guide the exercise of the Tribunal’s wide and varied areas of jurisdiction.

## **2. Role**

Appeals from planning authorities constituted the majority of the Tribunal's work this year.

The role of the Tribunal is to conduct a *de novo* hearing which requires it to consider the subject matter of a planning appeal afresh. In other words, the Tribunal stands in the shoes of the Council to consider the development application.

In addition to the review of town planning decisions by local councils, the Tribunal has jurisdiction to review administrative decisions made by Ministers in relation to fisheries matters and threatened species. It conducts enforcement proceedings under Section 64 of the *Land Use Planning and Approvals Act 1993*, and Section 48 of the *Environmental Management and Pollution Control Act 1994*.

## **3. Members**

The Tribunal is composed of a Chairman and two Presiding Legal members. It has a number of other members who are experienced in planning, engineering, architecture, science, environmental management and of course planning. Members are appointed for a five-year term pursuant to Section 6 of the *Appeal Tribunal Act*. During the course of this year the following new members have been appointed.

Mr P Arnold, Mr M Cooper, Mr P Cripps, Ms D Flint, Ms A Gliddon, Mr A Hurst, Mr GF Keating, Mr R Locke, Mr R Murphy, Mr S Thomson and Ms A Smith.

As well, existing member, Mrs AF Cunningham and Ms F Healy were re-appointed for a further period of five years.

Following is a list of members of the Tribunal as at 30 June 2012.

**Table 1**

<b>Person</b>	<b>Appointed until</b>	<b>Area of Expertise</b>
<b>Arnold, Mr P</b>	24/09/17	Building
<b>Ball, Mr M E</b>	27/10/13	Planning
<b>Bensz, Ms E A</b>	02/11/14	Planning
<b>Bryant, Ms N</b>	27/10/13	Legal
<b>Cannell, Mr REJ</b>	02/11/14	Planning
<b>Caulfield, Mr JJ</b>	02/11/14	Planning
<b>Cooper, Mr M</b>	24/09/17	Building
<b>Cripps, Mr P</b>	24/09/17	Building
<b>Cunningham, Mrs AF</b>	09/07/12	Legal
<b>Flint, Ms D</b>	24/09/17	Building
<b>Giblin, Mr R</b>	26/07/16	Planning
<b>Gliddon, Ms A</b>	24/09/17	Building
<b>Healy, Ms F</b>	25/06/17	Science/Environmental Management
<b>Hogue, Mrs S</b>	02/11/14	Planning
<b>Howlett, Mr DR</b>	02/11/14	Planning
<b>Hurst, Mr A</b>	24/09/17	Building
<b>Keating, Mr GF</b>	24/09/17	Building
<b>Lester, Mr ND</b>	02/11/14	Surveying
<b>Locke, Mr R</b>	24/09/17	Building
<b>McMullen, (Tony) A Mr</b>	25/08/18	Planning
<b>McNamara, Mr GC</b>	02/11/14	Valuation
<b>McNeill, Mr B</b>	02/11/14	Planning/architect/Heritage
<b>Mucha, Dr C</b>	5/08/18	Water management/major infrastructure
<b>Murphy, Mr R</b>	24/09/17	Building
<b>Neale, Dr A</b>	02/03/14	Heritage
<b>Nicholson, Ms C</b>	07/02/16	Planning/ Environmental management
<b>Nolan, Mr RJ</b>	02/11/14	Planning
<b>Pryor, Mr CG</b>	02/11/14	Planning/architect
<b>Richardson, Dr AM.</b>	02/11/14	Zoology
<b>Smith, Ms A</b>	24/09/17	Legal
<b>Spratt, Mr P</b>	07/04/14	Civil & structural engineering Heritage & building conservation
<b>Stratford, Dr E</b>	02/03/14	Geography/Environmental studies
<b>Thompson, Mr S</b>	24/09/17	Building
<b>Webster, Professor JC</b>	25/08/13	Architect/heritage/planning
<b>Wong, Ms M</b>	02/11/14	Planning

The Tribunal acknowledges the contribution of each of the members. The Tribunal could not function without their contribution. I look forward to their involvement in the forthcoming year.

#### **4. Professional Development**

Due to budgetary constraints no professional development was undertaken by Tribunal staff during the financial year.

#### **5. Personnel**

I record my appreciation for the professionalism and support of the staff of the Tribunal. For the period from April 8<sup>th</sup> 2013 I was Acting Chairman, until my appointment as Chairman on September 2<sup>nd</sup> 2013. They have ensured that the transition from private practice to Chairman of the Tribunal has been a smooth one. Without their contribution that would have been a more difficult process. It is imperative that staff are valued and that their contributions are recognised. It is my intention that the workplace will be an environment in which staff know that their contribution is valued and appreciated.

#### **6. Overview of matters**

Set out below is Table 2 detailing the numbers and types of appeals and applications dealt with by the Tribunal in the year the subject of this report. It will be noted that the Tribunal has assumed responsibility for appeals under the *Building Act 2000* and six matters came before the Tribunal in that category. Whilst there was an overall decline in the number of matters dealt with by the Tribunal in the year the subject of this report, there has been an increase in the number of complex appeals, such as that against the approval of the Riley Mine in the Tarkine, and appeals from Victorian based fisherman against the removal of the right to unload catch from Tasmanian waters, in Victoria.

**Table 2**

<b>Appeals By Legislations</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
LUPPA	403	425	300	270	266	195	150
Heritage	16	14	13	19	14	11	7
SOL	4		2			1	1
Marine		3	5	2	3		4
Water		4	1	5			4
Strata Titles	2	7	2	2	3	2	4
EMPCA	5	3	5		6	4	
Threatened Species	1						
Local Govt. Highways Act		21					
Water & Sewerage Industry Act				1			
Building Act							6
<b>Total</b>	<b>431</b>	<b>477</b>	<b>328</b>	<b>299</b>	<b>292</b>	<b>213</b>	<b>176</b>

<b>Applications By Legislations</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
S64 LUPAA	28	36	25	29	28	24	17
S48 EMPCA	1	3	1				
S96 Strata Titles	1	1	0				1
S264 Water Management		1					
<b>Total</b>	<b>30</b>	<b>41</b>	<b>26</b>	<b>29</b>	<b>28</b>	<b>24</b>	<b>18</b>

**Table 3**  
**Decisions Financial Yrs 2001-02 to 2012 - 2013**

Decision Types	2001-02	2002-03	2003-04	2004-5	2005-6	2006-7	2007-8	2008-9	2009-10	2010-11	2011-12	2012-13	Total
Interim	12	8	18	15	17	39	25	46	41	30	10	31	261
Costs	21	20	34	3	65	34	26	43	31	22	27	29	326
Consent	67	94	164	189	133	164	217	161	123	114	126	80	1552
Amended	3	7	14	20	16	11	9	5	0	5	0	0	90
Hearing	38	37	108	76	81	56	65	46	52	44	39	17	642
<b>Total</b>	<b>141</b>	<b>166</b>	<b>338</b>	<b>303</b>	<b>312</b>	<b>304</b>	<b>342</b>	<b>301</b>	<b>247</b>	<b>215</b>	<b>202</b>	<b>157</b>	<b>2871</b>

<b>Substantive decisions</b>	<b>105</b>	<b>131</b>	<b>272</b>	<b>265</b>	<b>214</b>	<b>220</b>	<b>282</b>	<b>207</b>	<b>175</b>	<b>158</b>	<b>165</b>	<b>97</b>	<b>2194</b>
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% of Total Decisions													
Interim	8.51%	4.82%	5.33%	4.95%	5.45%	12.83%	7.31%	15.28%	16.60%	13.95%	4.95%	19.75%	9.09%
Costs	14.89%	12.05%	10.06%	0.99%	20.83%	11.18%	7.60%	14.29%	12.55%	10.23%	13.37%	18.47%	11.35%
Consent	47.52%	56.63%	48.52%	62.38%	42.63%	53.95%	63.45%	53.49%	49.80%	53.02%	62.38%	50.96%	54.06%
Amended	2.13%	4.22%	4.14%	6.60%	5.13%	3.62%	2.63%	1.66%	0.00%	2.33%	0.00%	0.00%	3.13%
Hearing	26.95%	22.29%	31.95%	25.08%	25.96%	18.42%	19.01%	15.28%	21.05%	20.47%	19.31%	10.83%	22.36%

% Consent / Hearings to substantive decisions													
Consent	63.81%	71.76%	60.29%	71.32%	62.15%	74.55%	76.95%	77.78%	70.29%	72.15%	76.36%	82.47%	70.74%
Hearings	36.19%	28.24%	39.71%	28.68%	37.85%	25.45%	23.05%	22.22%	29.71%	27.85%	23.64%	17.53%	29.26%

## **7. Alternative Dispute Resolution**

The Tribunal is committed to alternative dispute resolution (ADR). It offers an opportunity for the early resolution of matters with significant cost savings to parties. It expedites process from development application to development commencement and offers a practical means of addressing concerns about the time and cost associated with planning approvals.

Of course, alternative dispute resolution remains a matter which is in the discretion of the parties. Unlike some jurisdictions where mediation is a compulsory step in the path to an arbitrated resolution, in this jurisdiction the view has been that the process has prospects of success if, and only if the parties are willing to engage. Having regard to the significant cost borne by parties to proceedings when a matter is not resolved early, consideration ought be given to requiring mediation as a preliminary step in the preparation of matters for hearing. Even if resolution of matters is not achieved, it is likely, and experience confirms this, that many issues are resolved thereby narrowing the matters which require an arbitrated resolution. This reduces the cost burden to parties and produces a faster result.

The Tribunal provides its own alternative dispute resolution service. The training, qualifications and experience each of those members of staff brings to the process is significant and the advantages of their involvement tangible. The Tribunal acknowledges the significant contribution of the Registrar, Mr Bryan, and mediation officers, Ms Bridge and Mr Mackey in this regard.

Expert neutral evaluation remains an important part of the Tribunal's ADR procedures. It affords an opportunity for a preliminary assessment of a matter and the provision of information to parties with respect to their prospects on appeal. It is intended to assist parties make appropriate judgments about the course a matter should take, including whether to proceed to a hearing or not. It is intended to save costs and introduce efficiencies.

## **8. Practice Directions**

The Practice Directions were the subject of a review in the last year and are the subject of continued review, intended to achieve efficiencies and cost savings for parties.



## 9. Effectiveness Indicators

The statutory obligation imposed upon the Tribunal by Section 16(1)(f) of the *Appeal Tribunal Act* is to hear, determine and deliver written reasons for decision within 90 days after an appeal is instituted. Whilst there is provision for an extension of time with the consent of the parties or the approval of the Minister, the Tribunal has maintained a very high level of compliance with this standard. As noted earlier in this report, the complexity of matters which have occupied the Tribunal's time in the year the subject of this report, has militated against the achievement of that standard. That is because, more complex matters require more substantial pre-hearing steps to be completed by the parties. These steps include the preparation of complex expert proofs of evidence, the disclosure and exchange of documents, and sometimes the provision of further and better particulars of appeals. All of that takes time, and consumes some of the 90 day statutory period. The effect of that has been to reduce the number of days available to the Tribunal, after the hearing of a matter, within which to prepare considered reasons for decision.

My predecessor, in the annual report last year, noted that the 90-day time limit was *“an extraordinarily tight key performance indicator (in contrast most comparable courts or tribunals aim for disposition within 9 months as an absolute minimum and much longer in most instances)”*.

The following table sets out the percentage of case heard within 90 days and the percentage of cases falling outside that period.

The majority of appeals which require extensions are the result of parties seeking hearing dates outside the 90-day timeframe or seeking adjournments due to the need to file new or additional material or, on occasions, a failure to comply with case management directions. Sometimes the time limit is extended to facilitate alternative dispute resolution, or the modification of proposals to accommodate objections.

<b>Performance Indicator</b>	<b>Unit of Measure</b>	<b>2009 - 10 Actual</b>	<b>2010 - 11 Actual</b>	<b>2011 - 12 Actual<sup>1</sup></b>	<b>2012 - 13 Actual<sup>1</sup></b>
Percentage of appeals resolved within 90 days without extension.	%	77.08%	66.50%	78.00%	76.47%
Percentage of appeals which did require extensions due to parties <sup>3</sup>	%	97.11%	97.03%	95.00%	90.00%

## **10. Conclusion**

In the year the subject of this report, the Tribunal has farewelled its previous chairman, Simon Cooper, who has been appointed a Magistrate. The Tribunal records its considerable appreciation to Mr Cooper for his work over eight years as head of the Tribunal. The Tribunal Chairman carries the burden of producing considered and detailed written reasons in respect of all of the matters which come before the Tribunal. That is a considerable task which Mr Cooper undertook with diligence throughout his term. The statistics reproduced in the Tables contained in this report reflect that dedication to service. I personally wish Mr Cooper well in his new role.

I remain concerned at the costs associated with involvement in planning appeals. To that end I will be considering the introduction of procedures which expedite resolution, contain costs and provide for an early merits review of cases with a view to narrowing issues in dispute. This will mean that parties to the matter can avoid the incurring of substantial costs in witness reports for matters that are ultimately not pursued at hearing or are without merit. It is a balancing exercise which requires a recognition of the rights of parties to challenge decisions made by planning authorities, and the right of developers to pursue appropriate development proposals without incurring the cost associated with unmeritorious challenges. This can be achieved in part through neutral evaluation of grounds of appeal, and through the costs mechanism which confers upon the Tribunal some discretion with respect to the awarding of costs on appeals. These matters will be the subject of consideration and discussion in the forthcoming year with a view to ensuring that the appeal process is as efficient and fair as it can be.

Dated this 28<sup>th</sup> day of October 2013

A handwritten signature in dark ink, appearing to read 'GP Geason', written in a cursive style.

**GP Geason**  
**Chairman**

## **GLOSSARY**

ACDC	Australian Commercial Dispute Centre
ADR	Alternative Dispute Resolution
EMPCA	Environmental Management and Pollution Control Act 1994
Heritage	Historic Cultural Heritage Act 1995
Local Govt. Highways Act	Local Government (Highways) Act 1982
LUPPA	Land Use Planning & Approvals Act 1993
Marine	Living Marine Resources Management Act 1995
SOL	Sale of Public Land - Local Government Act 1993
ST	Strata Titles Act 1998
Threatened Species	Threatened Species Protection Act 1995
Water	Water Management Act 1999
Water & Sewerage Industry Act	Water and Sewerage Industry Act 2008