



**ANNUAL REPORT
OF
THE RESOURCE MANAGEMENT
AND PLANNING APPEAL
TRIBUNAL**

2015-2016

Dear Minister,

It is with pleasure that I submit the Annual Report for the Resource Management & Planning Appeal Tribunal for 2015/2016.

Most of the work undertaken by the Tribunal in this reporting year involved a review of Council planning decisions. This involves the interpretation of planning schemes within the framework established by the *Land Use Planning & Approvals Act 1993* and is the major part of the Tribunal's appellate review function which extends to a number of other decision makers including the Environmental Protection Authority, Director of Building Control and in some cases the Minister.

The task of interpreting planning schemes is a technical one. I have previously observed that the complex nature of planning schemes, the convoluted and inconsistent use of language in some of them, and the uncertainty created thereby, adds a layer of complexity to the process. Whilst it is impossible to conceive of a planning scheme or instrument which is beyond the scope of alternative interpretations and which does not leave open the possibility for debate about the operation and application of provisions, consistency of structure, and language is an obvious starting point in preparing schemes. Whilst I do not consider it is for the Tribunal to be articulating matters of policy, greater consistency within Schemes and across Council boundaries does, inevitably, mean that matters in respect of which the Tribunal publishes a decision have broader application and, hopefully, greater utility for planning authorities applying them.

A number of the appeals which have come before the Tribunal this year have involved Council determinations which are contrary to the terms of the relevant planning scheme or in consequence of Council aldermen adopting a position contrary to the advice of their own planners. This may reflect the fact that aldermen see themselves as performing a political function which authorises them to respond to community views, sometimes populist views, about development proposals? Such approach inevitably leads to appeal, further delay, and additional cost to all parties. Whatever the explanation, the role of the Tribunal is to correct such decisions when they constitute an erroneous application of the law. It is trite to observe that the Tribunal must do so without regard to the policy position of Councils or Government.

It is in this respect, that third party appeals have an important part to play. Third Party appeals are sometimes the only mechanism through which a development application supported by a Council, but perhaps contrary to the planning scheme, can be subjected to the Tribunal's scrutiny. It is well recognised in this jurisdiction and beyond that third party appeal rights are a useful mechanism for avoiding inappropriate planning outcomes which are inconsistent with the applicable legislation and schemes. At the same time, unmeritorious third party appeals intended to frustrate development unnecessarily, are quickly exposed at the Tribunal stage because they do not survive the appeal process and are, typically, rooted out at an early stage. The Tribunal has discretionary power with respect to costs in such cases and can award costs against a party bringing an unmeritorious appeal for a collateral or purpose.

I am pleased to report that the Tribunal continues to achieve high rates of resolution of appeals at mediation. Utilisation of Alternate Dispute Resolution methodologies provides an opportunity for parties to resolve disputes expeditiously and at reduced cost. Resolution of an appeal at mediation will typically avoid the need to engage experts to provide evidence, a course which is usually undertaken at significant cost to parties. In this respect, I record my considerable appreciation for the work of the Tribunal Registrar Jarrod Bryan and specialist mediators Sally Bridge and Nick Mackey. They have managed to achieve resolution in appeals in over 70% of cases. The result of the Tribunal's efforts in this respect has been that matters proceeding to full merits hearing tend to be those associated with major developments. It is important to emphasise that mediated resolution of disputes does not result in private deals behind

closed doors. Every resolution is the subject of formal consideration by the Tribunal which must, in turn, satisfy itself that the proposed resolution represents a decision which is according to law. The *Resource Management & Planning Appeal Tribunal Act 1993* requires that the Tribunal is satisfied that the consent agreement reached between parties can be adopted by the Tribunal as its own decision. Accordingly, the terms of a consent must be assessed against the provisions of the applicable planning scheme and legislation, and, if so, it will be published as a decision of the Tribunal. This ensures that matters are subject to formal scrutiny by the Tribunal and the subject of a published decision by it.

As part of the Tribunal's commitment to Alternative Dispute Resolution, each of its mediators received further training in the reporting year for national accreditation as mediators. This represents a significant investment in the Tribunal's commitment to Alternative Dispute Resolution. Each mediator was successful in obtaining their accreditation. I am pleased that the Tribunal was in a position to fund that training.

Expert Neutral Evaluation continues to constitute an important component of the Tribunal's alternative dispute resolution processes. It affords an opportunity for a preliminary assessment of a matter by an expert and the provision of information to parties about the merits of their argument and likely prospect to an appeal. It is intended to assist parties make appropriate judgments about whether to proceed to a hearing or not.

The amendments to the *Land Use Planning & Approvals Act 1993* in the previous reporting year which removed Councils' power to make application to the Tribunal for enforcement orders has resulted in Councils bringing no such matters before the Tribunal in this year. It remains a concern to the Tribunal that easy access to it has been removed from Councils when a core function of their municipal responsibility ought to be supervision and enforcement of the applicable planning regime. The situation is that matters are now left to individuals who can only bring proceedings to the Tribunal in limited circumstances. This important supervisory element should be restored. It is a procedure which, in the Tribunal's experience, was invoked judiciously by municipal authorities and only in circumstances where parties in breach of the planning system refused to engage with Councils to resolve matters. It provided a useful incentive to the achievement of compliance, a result which is in the best interests of community harmony.

The Tribunal is assisted by a number of members. These include two legal members who are available to sit in circumstances where the Chairman is not able to. In that respect I gratefully acknowledge the work of Ann Cunningham in the reporting year. The Tribunal's other legal member, Anita Smith, remains a member, but has recently commenced duties with the Victorian Civil & Administrative Tribunal. Two other members of that Tribunal, Geoffrey Code and Margaret Baird assisted the Tribunal in the reporting year by sitting on a matter in which I had recused myself. I acknowledge their assistance in handling that matter.

I also acknowledge the contribution made by the Tribunal's expert members. It is a unique feature of Tribunals and one of the reasons that the Tribunal structure is well suited to managing appeals in relation to planning and other specialist activities, that it is comprised of expert members. Each is chosen for a particular skill or area of expertise, the categories of which are set out in the *Resource Management & Planning Appeal Tribunal Act 1993*. Their contribution is critical to the Tribunal's performance of its statutory functions. Each has made a contribution through their continued availability and participation when required. Without their participation, the Tribunal could not function. They participate for a modest sitting fee well shy of the income forgone for the time spent on Tribunal matters. Their contribution is worthy of special mention and deserving of more generous recognition.

I noted in last year's report that the Tribunal moved to new premises in Hobart in 2015. That accommodation enables the Tribunal to better serve the public and more appropriately and comfortably accommodate its staff. Our hearing room and associated facilities enable us to better assist those with disabilities, for whom accessibility to premises and active participation in proceedings is otherwise more difficult.

The Tribunal's annual statistics follow this report. In addition to the high rates of resolution through mediation, which are recorded in those tables, I am pleased to report that the Tribunal continues to achieve a high degree of compliance with the requirement imposed upon it by Section 16(1)(f) of the governing legislation. This requires the Tribunal to hear, determine and deliver written reasons for decision within 90 days after an appeal *is instituted*. As I have noted before, this requirement is unique in Australia and often unrealistic. Often the complexity of matters militates against the achievement of the standard. It nevertheless remains the case that the vast majority of appeals which require extensions of time beyond the 90 days, 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. Sometimes, the delay is the result of a failure to comply with case management directions. The actions of parties account for 92% of cases in which the 90 day period has been exceeded. Sometimes too, the time limit is extended to facilitate alternative dispute resolution or the modification of proposals to accommodate objections. Each of these reasons represents a legitimate basis for departing from the statutory timetable.

I am pleased to report that the Tribunal's ongoing refinement of its practice and procedures continues with the result that there are better arrangements for the early identification of matters in issue. This ensures that the preparation of evidence is more focussed and less costly. The introduction of a new requirement requiring planning authorities to prepare a Statement of Facts & Contentions at an early stage in the hearing has the effect of particularising matters in issue, obviating the need for duplication of those matters in other evidence. The result should be considerable cost savings to parties. The Tribunal acknowledges the work of the legal representatives and planning authorities which appear before it, who have adapted to this new requirement, producing exceptionally good and useful information for the Tribunal. The process of improving Tribunal procedures is ongoing and I am vigilant to ensure that we achieve an appropriate balance between the implementation of necessary reforms in that respect, without unduly burdening those who engage with the Tribunal through a never-ending process of change.

I am very pleased that the Registrar, Jarrod Bryan, has been in a position to continue in his central and important role in reporting to Government on the implementation of a Single Tribunal, the single most important administrative law project in this State for some time. Tasmania is the only state without a single administrative tribunal, retaining the fragmented arrangement which requires each and every tribunal to have its own associated administrative support, and public profile and an individual community presence scattered across various sites. This is undoubtedly confusing for the public, and more costly for government than a consolidated tribunal.

I attach to this report a list of the Tribunal's members at Appendix A, and at Appendix B, a statement of the Tribunal's legislative context. At Appendix C I have set out a list of Acts in respect of which the Tribunal exercises jurisdiction.

I acknowledge the contribution of Tribunal staff who provide support to its operations. At reception and assisting in hearings, Mrs Susan Vernon and Mrs Carmen Dittman; Mr Stephen Main who looks after the Tribunal's financial records and reporting; Mrs Hilary Harris who provides executive support to the Registrar; Mr Mackey and Ms Bridge who manage appeals, directions hearings and Alternative Dispute Resolution work; and Mr Jarrod Bryan as Registrar. In the reporting year Ms Bridge has acted as Registrar to enable Mr Bryan to continue his important participation in the Single Tribunal project. I would also like to particularly acknowledge the considerable efforts of my Executive Assistant, Ms Angela

Korotki to whom falls the task of managing my work, the production of draft decisions, rulings and file management. I could not discharge my obligations without her assistance.

Gregory Geason

Chairman,

31 October 2016

Appendix A - Members of the Tribunal as at 30 June 2016.

Person	Appointed until	Area of Expertise
Arnold, Mr P	24/09/17	Building
Baird, Ms M L	02/09/18	Planning
Ball, Mr M E	27/10/18	Planning
Bensz, Ms E A	06/05/20	Planning
Bryant, Ms N	27/10/18	Legal
Code, Mr G	02/09/18	Legal
Cripps, Mr P	24/09/17	Building
Cunningham, Mrs AF	19/07/17	Legal
Flint, Ms D	24/09/17	Building
Giblin, Mr R	26/07/16	Planning
Gliddon, Ms A	24/09/17	Building
Healy, Ms F	25/06/17	Science/Environmental Management
Hogue, Mrs S	06/05/20	Planning
Howlett, Mr DR	06/05/20	Planning
Hurst, Mr A	24/09/17	Building
Keating, Mr GF	24/09/17	Building
Lester, Mr ND	06/05/20	Surveying
Locke, Mr R	24/09/17	Building

Person	Appointed until	Area of Expertise
McMullen, (Tony) A Mr	25/08/18	Planning
McNamara, Mr GC	06/05/20	Valuation
Mucha, Dr C	05/08/18	Water management/major infrastructure
Murphy, Mr R	24/09/17	Building
Neale, Dr A	02/03/19	Heritage
Nicholson, Ms C	09/05/21	Planning/ Environmental management
Nolan, Mr RJ	06/05/20	Planning
Smith, Ms A	24/09/17	Legal
Spratt, Mr P	24/09/17	Civil & structural engineering Heritage & building conservation
Stratford, Dr E	02/03/19	Geography/Environmental studies
Thompson, Mr S	24/09/17	Building
Webster, Professor JC	02/03/19	Architect/heritage/planning
Wong, Ms M	06/05/20	Planning

Appendix B - the Tribunal's legislative context

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 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, to manage “...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.”

Appendix C

I have set out a list of the Acts of Parliament in respect of which jurisdiction is conferred upon the Tribunal.

- *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;*

Activity

Set out in Table 2 is the number and types of appeal 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 9 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 longer and more complex appeals.

Appeals By Legislations	2012-13	2013-14	2014-15	2015-16
LUPAA	150	117	101	119
Heritage	7	10	0	0
SOL	1	1	0	0
Marine	4	1	1	0
Water	4	0	0	1
Strata Titles	4	2	5	4
EMPCA		1	2	8
Threatened Species				
Local Govt. Highways Act				
Water & Sewerage Industry Act				
Building Act	6	3	9	9
Total	176	135	118	141

Applications By Legislations	2012-13	2013-14	2014-15	2015-16
S64 LUPAA	17	9	12	1
S48 EMPCA			1	1
S96 Strata Titles	1			
S264 Water Management				
P12 S218A Building Act		1		
Total	18	10	13	2

Decision Types	2012-13	2013-14	2014-15	2015-16
Interim	31	24	37	29
Costs	29	33	12	10
Consent	80	62	57	55
Amended	0	4	1	0
Hearing	17	23	15	14
Total	157	146	122	108

Substantive decisions

% of Total Decisions	2012-13	2013-14	2014-15	2015-16
Total For Year	97	85	72	69
Interim	19.75%	16.44%	30.33%	26.85%
Costs	18.47%	22.60%	9.84%	9.26%
Consent	50.96%	42.47%	46.72%	50.93%
Amended	0.00%	2.74%	0.82%	0.00%
Hearing	10.83%	15.75%	12.30%	12.96%
% Consent / Hearings to substantive decisions				
Consent	82.47%	72.94%	79.17%	79.71%
Hearings	17.53%	27.06%	20.83%	20.29%

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

Performance Indicator	Unit of Measure	2012-13 Actual	2013-14 Actual	2014-15 Actual	2015-16 Actual
Percentage of appeals resolved within 90 days without extension.	%	76.47%	72.41%	61.48%	55.47%
Percentage of appeals which did require extensions due to parties	%	90.00%	92.50%	92.31%	91.23%