



## Resource Management and Planning Appeal Tribunal

### Report for 2010/2011

#### ***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 acts and decisions associated with resource management, environmental and planning issues.

Unlike a court the Tribunal possesses no original jurisdiction. It may only exercise such jurisdiction as is conferred upon it by Act of Parliament. Specifically the Tribunal exercises jurisdiction under the following Acts:

- *Land Use Planning and Approvals Act 1993*
- *Environmental Management and Pollution Control Act 1994*
- *Historic Cultural Heritage Act 1995*
- *Inland Fisheries Act 1995*
- *Living Marine Resources Management Act 1995*
- *Marine Farming Planning Act 1995*
- *Public Health Act 1997*
- *Strata Titles Act 1998*
- *Threatened Species Protection Act 1995*
- *Water Management Act 1999*
- *Local Government (Highways) Act 1982*
- *Local Government Act 1993*
- *Water and Sewerage Industry Act 2008*
- *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*
- *National Parks and Reserves Management Act 2002*
- *Gas Act 2000*
- *Gas Pipelines Act 2000*

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*. It is worth setting them out in full:

- “(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 in terms of the management of the Tribunal's business and guide the exercise of the Tribunal's wide and varied areas of jurisdiction.

## **2. Role**

The majority of the Tribunal's work this year was, as it ordinarily is, concerned with appeals in respect of decisions of planning authorities.

Normally the appeals are concerned with decisions to either grant or refuse town planning permits. On occasions it may be that one or more of the conditions of a permit are the subject of appeal, rather than the grant or refusal of the permit itself. Whatever the nature of the permit appeal the Tribunal considers the matter afresh or, in legal terms, conducts a *de novo* hearing (see Section 23 (1) of the *Appeal Tribunal Act*). In conducting such a merits review the Tribunal in effect makes the decision again but, importantly, is not confined to the material that was before the planning authority. It may have regard to new material or material that whilst in existence earlier was not before the planning authority. Neither is the Tribunal constrained to the issues raised by either the planning authority in its reasons for refusal or the parties in their grounds of appeal. It looks at the matter completely afresh.

Although the Tribunal's main function (at least in terms of numbers of matters filed) is to conduct an independent merits review of town planning decisions by local councils it does many other things. For example it has the power to review several administrative decisions by Ministers in relation to fisheries regulation and threatened species. It also has other functions which do not fit easily, or at all, within the 'independent merits review' description most notably civil enforcement proceedings under Section 64 of the *Land Use Planning and Approvals Act 1993* (the '*Land Use Act*') and Section 48 of the *Environmental Management and Pollution Control Act 1994*. During the year the subject of this report it dealt with all of these things and more.

## **3. Members**

The Tribunal is composed of a Chairman, two (2) presiding legal members and a number of other members possessing experience and expertise in planning, resource economics, science, engineering, medicine, environmental management, heritage, and industry process operations.

Members are appointed for a five (5) year term pursuant to Section 6 of the *Appeal Tribunal Act*. That section allows for the appointment to the Tribunal of persons with expertise in planning, resource economics, science, engineering, medicine, environmental management, heritage, industry process operations and such other areas of expertise that are considered necessary from time to time. The *Water Management Act 1999* also makes provision for the appointment of members with expertise in water resource issues.

No new members were appointed during the year the subject of this report although Ms C Nicholson and the author were each reappointed for a further period of 5 years by His Excellency the Governor.

As has been the case in the past the Tribunal relies, very heavily, upon a limited number of expert members without whom it would be literally impossible for the Tribunal to function. The author of this report thanks each member for her or his contribution and acknowledges the wisdom, experience, hard work and counsel of, in particular, Mr John Caulfield, Mr Clarrie Pryor, Professor John Webster, Mr Neville Lester, Mr Barry McNeill, Dr Laurie Cosgrove, Mr Michael Ball and Mr Peter Spratt.

Table 1 sets out details, as at 30<sup>th</sup> June 2011 of the members of the Tribunal, including the length of their appointment and area of expertise.

Table 1

PERSON	APPOINTED UNTIL	AREA OF EXPERTISE
<b>Ball</b> ( <i>Michael</i> ) ME Mr	27/10/13	Planning
<b>Bensz</b> ( <i>Elizabeth</i> ) EA Ms	02/11/14	Planning
<b>Bryant</b> ( <i>Naomi</i> ) N Ms	27/10/13	Legal
<b>Cannell</b> ( <i>Ean</i> ) REJ Mr	02/11/14	Planning
<b>Caulfield</b> ( <i>John</i> ) JJ Mr	02/11/14	Planning
<b>Cosgrove</b> ( <i>Laurie</i> ) SL Dr	02/03/14	Environmental Management
<b>Cunningham</b> ( <i>Ann</i> ) AF Mrs	09/07/12	Legal
<b>Geason</b> ( <i>Greg</i> ) GP Mr	12/01/12	Legal
<b>Healy</b> ( <i>Frances</i> ) F Ms	25/06/12	Science/ Environmental Management
<b>Hogue</b> ( <i>Sandra</i> ) S Mrs	02/11/14	Planning
<b>Howlett</b> ( <i>Roger</i> ) DR Mr	02/11/14	Planning
<b>Lester</b> ( <i>Neville</i> ) ND Mr	02/11/14	Surveying
<b>Mucha</b> ( <i>Christine</i> ) CS Dr	16/06/13	Water management/Major infrastructure
<b>McMullen</b> ( <i>Tony</i> ) A Mr	16/6/13	Planning
<b>McNamara</b> ( <i>Gregory</i> ) GC Mr	02/11/14	Valuation
<b>McNeill</b> ( <i>Barry</i> ) B Mr	02/11/14	Planning/Architect/ Heritage
<b>Neale</b> ( <i>Anne</i> ) AI Dr	02/03/14	Heritage
<b>Nicholson</b> ( <i>Catherine</i> ) C Ms	07/12/16	Planning/ Environmental management
<b>Nolan</b> ( <i>Robin</i> ) RJ Mr	02/11/14	Planning
<b>Pryor</b> ( <i>Clarence</i> ) CG Mr	02/11/14	Planning/Architect
<b>Richardson</b> ( <i>Alastair</i> ) AM Dr.	02/11/14	Zoology
<b>Sandford</b> ( <i>Rosemary</i> ) RA. Dr	02/11/14	Heritage/ Environmental management
<b>Spratt</b> ( <i>Peter</i> ) P Mr	07/04/14	Civil & structural engineering Heritage & building conservation
<b>Stratford</b> PhD MPIA ( <i>Elaine</i> ) E Dr	02/03/14	Geography/ Environmental studies
<b>Temple-Smith</b> ( <i>Mike</i> ) MG Mr	07/04/14	Water management
<b>Webster</b> ( <i>John</i> ) JC Professor	25/08/13	Architect/heritage /planning
<b>Wong</b> ( <i>Marietta</i> ) M Mrs	02/11/14	Planning

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

The Tribunal is committed to continuing professional development of its members. As has become our practice during the year the subject of this report two (2) Professional Development days were held. These were conducted at the Tribunal premises on the 16<sup>th</sup> July and 26<sup>th</sup> November, at minimal cost and are essential to the continued effective operation of the Tribunal. Apart from ensuring that all members, from all backgrounds, are able to continue to enhance and share their knowledge and expertise, these occasions assist in developing a collegiate atmosphere critical to the smooth operation of the Tribunal.

In particular Mr Barry McNeill's excellent presentation on Hobart's built heritage should be acknowledged.

During the year the subject of this report the Tribunal's Practice Directions were completely reviewed. The work of Messrs Geason, Ball and McNeill, along with the Registrar in relation to this important task must be acknowledged.

The author of this report attended the Australasian Conference of Planning and Environment Courts and Tribunals conference in Sydney in September 2011 and delivered a paper 'Jurisdiction, Structure, Civil Practice and Procedure: Tasmania'.

In addition the author delivered a paper on the subject of the amalgamation of administrative tribunals to a Council of Administrative Tribunals seminar in Hobart on 22<sup>nd</sup> February 2011 and has spoken to the leadership group of the Tasmanian Fire Service and to the Tasmanian Development Board on aspects of planning and environmental law.

Finally the Tribunal hosted a visit from members of the Western Australian State Administrative Tribunal on 7th March 2011.

#### **5. Personnel**

As has been the case in the past the role of the Registrar, Mr Jarrod Bryan, must be acknowledged. Mr Bryan continued to be responsible for the efficient administration of the Tribunal as well as management and delivery of its Alternative Dispute Resolution services.

The Tribunal could not function without its support staff. The staff are truly a team whose members are always professional and helpful and usually cheerful. They are a pleasure to work with.

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

During the year the subject of this report the Tribunal continued to exercise its statutory obligations in relation to the hearing and determination of appeals. 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.

**Table 2**

<b>Appeals By Legislations</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
LUPPA	346	403	425	300	270	266
Heritage	10	16	14	13	19	14
SOL	2	4		2		
Marine	1		3	5	2	3
Water	7		4	1	5	
Strata Titles	2	2	7	2	2	3
EMPCA	9	5	3	5		6
Threatened Species		1				
Local Govt. Highways Act			21			
Water & Sewerage Industry Act					1	
<b>Total</b>	<b>377</b>	<b>431</b>	<b>477</b>	<b>328</b>	<b>299</b>	<b>292</b>

<b>Applications By Legislations 2005-2006</b>	<b>2006-7</b>	<b>2007-8</b>	<b>2008-9</b>	<b>2009-10</b>	<b>2010-11</b>
S64 LUPAA	31	28	36	25	29
S48 EMPCA	3	1	3	1	
S96 Strata Titles	1	1	1	0	
S264 Water Management			1		
<b>Total</b>	<b>35</b>	<b>30</b>	<b>41</b>	<b>26</b>	<b>28</b>

Table 3

## Decisions Financial Yrs 2001-02 to 2010-11

Decision Types	2001-02	2002-03	2003-04	2004-5	2005-6	2006-7	2007-8	2008-9	2009-10	2010-11	Total
Interim	12	8	18	15	17	39	25	46	41	30	251
Costs	21	20	34	3	65	34	26	43	31	22	299
Consent	67	94	164	189	133	164	217	161	123	114	1426
Amended	3	7	14	20	16	11	9	5	0	5	90
Hearing	38	37	108	76	81	56	65	46	52	44	603
<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>2669</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>2029</b>
<b>% of Total Decisions</b>											
Interim	8.51%	4.82%	5.33%	4.95%	5.45%	12.83%	7.31%	15.28%	16.60%	13.95%	9.40%
Costs	14.89%	12.05%	10.06%	0.99%	20.83%	11.18%	7.60%	14.29%	12.55%	10.23%	11.20%
Consent	47.52%	56.63%	48.52%	62.38%	42.63%	53.95%	63.45%	53.49%	49.80%	53.02%	53.43%
Amended	2.13%	4.22%	4.14%	6.60%	5.13%	3.62%	2.63%	1.66%	0.00%	2.33%	3.37%
Hearing	26.95%	22.29%	31.95%	25.08%	25.96%	18.42%	19.01%	15.28%	21.05%	20.47%	22.59%
<b>% Consent / Hearings to substantive decisions</b>											
Consent	63.81%	71.76%	60.29%	71.32%	62.15%	74.55%	76.95%	77.78%	70.29%	72.15%	70.28%
Hearings	36.19%	28.24%	39.71%	28.68%	37.85%	25.45%	23.05%	22.22%	29.71%	27.85%	29.72%



## **7. Alternative Dispute Resolution**

As has been emphasised in the past the Tribunal is strongly committed to the use of alternative dispute resolution (ADR) in all its many forms. The fact is that resolution of planning and environmental disputes by agreement prior to hearing is in the interests of the parties. It is also clearly consistent with the objectives of the Resource Management and Planning System of Tasmania. As such all matters are considered as part of the case management process for ADR and ADR is undertaken in virtually every case lodged with the Tribunal, although of course not every dispute is amenable to such an approach and not every dispute which is amenable will necessarily resolve as a result.

Even if the matter does not resolve as the result of mediation or some other form of ADR frequently the areas of dispute between the parties will be narrowed in advance of a hearing which in itself is a most desirable outcome. The rate of settlement achieved by mediation compares more than favourably to other comparable jurisdictions. There is no doubt that mediated settlements are cost effective and undoubtedly in the best interests of all involved with the planning system.

As in previous years the Tribunal continues to provide its own ADR service. The Registrar, the Mediation Officer, Ms Sally Bridge and the Senior Executive Officer, Mr Nick Mackey have all undergone extensive training in the area. Mr Bryan's training has been provided by Australian Commercial Dispute Centre, LEADR (Association of Dispute Resolvers), Positive Solutions and the Institute of Arbitrators & Mediators. Ms Bridge and Mr Mackey have undertaken training with IAMA , Institute of Arbitrators and Mediators, Australia. All three are regularly engaged in the conduct of ADR. Their professionalism in the performance of this important service should be acknowledged. It is particularly important that this service be provided in the future to the same high standards that it has been provided in the past. It is also desirable for ADR to continue to be provided by officers of the Tribunal. The Tribunal remains extremely committed to the task.

During the year the subject of this report the Tribunal has continued to provide Expert Neutral Evaluation as part of its ADR procedures. In such cases a Tribunal mediation officer conducts mediation with the assistance and input of one of the Tribunal's experts. These mediations are almost always conducted on-site. The expert gives neutral expert feedback to parties involved in the appeal to assist in resolving the issues in dispute. Several members of the Tribunal, including Mr McNeill, Dr Cosgrove, Mr Pryor and Mr Howlett all greatly assisted the Tribunal in this process during the year, the subject of this report.

## **8. Other Developments**

The Tribunal continued to conduct many hearings (or parts thereof) by video link during the year the subject of this report. As has been noted in the past such an approach makes involvement in appeals before the Tribunal significantly easier, particularly for persons in places other than Hobart, thus serving one of the objectives of the Resource Management Planning System for

the State. It reduces the need for, and expense of, travel which also makes easier the involvement of ordinary members of the public. It reduces the need for and expense of expert witnesses travel, which is frequently a barrier to participation in Appeals.

The Tribunal has commenced an investigation of the feasibility of the development of an iphone 'app' to enhance community access to justice and, in particular, involvement in the Resource Management & Planning System. Already a preliminary study has been undertaken and the important task of broad based (and ongoing) consultation with stakeholders commenced. Further work on this innovative and exciting project will occur this coming year.

The perennial issue of inadequate funding continued to impact upon the Tribunal.

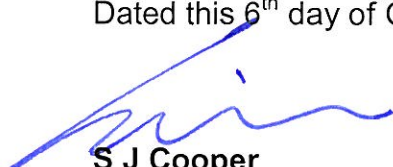
The Tribunal continues to be allocated insufficient funding to meet both its fixed (and known) and variable costs. The shortfall in allocated funding is significant and presents a continued risk to the Tribunal effectively discharging its statutory obligations. The Tribunal has endeavoured, through various austerity measures, to reduce its operating costs. There are limited discretionary expenditures, however, over which the Tribunal can exercise control. In saying this (again) the Tribunal does not ignore the whole of government difficulties in this regard but cannot help but observe that the funds apparently expended recently by a related planning agency within the Department upon office renovations would have gone a long way toward addressing the Tribunal's longstanding financial shortfall, as would a modest increase in the fees charged by the Tribunal, an issue first raised over five (5) years ago, and pursued, without any apparent success on several occasions since.

As this report pointed out last year the shortfall in funding has been a continuing problem for the Tribunal, even pre-dating its move to the Department of Justice. It must be rectified to ensure that the Tribunal can continue to properly carry out its statutory functions and properly serve the community.

## **9. Conclusion**

The Tribunal continues to strive to meet the challenge of providing a fair and efficient appeal process which meets the objectives of Tasmania's resource management and planning system. Objectively it continues to achieve that aim and is certain that in the coming years it will continue so to do.

Dated this 6<sup>th</sup> day of October 2011



**S J Cooper**  
**Chairman**

## GLOSSARY

ACDC	Australian Commercial Dispute Centre
ADR	Alternative Dispute Resolution
	Environmental Management and Pollution Control
EMPCA	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	Water and Sewerage Industry Act 2008
Act	