



Resource Management & Planning Appeal Tribunal

Annual Report 2017 - 2018

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I Chairperson's Report

Dear Minister,

It is with pleasure that I submit the Annual Report for the Resource Management & Planning Appeal Tribunal for 2017-2018.

I commenced the role of Chairperson in an acting capacity in late November 2017, and was appointed as Chairperson in May 2018. The vacancy in the role of Chairperson arose following the elevation of the former Chairman, Mr Gregory Geason, to a Justice of the Supreme Court of Tasmania. I congratulate Justice Geason on that appointment and thank him for his significant contribution to the Tribunal during his period as Chairman.

As in previous years, in this reporting year the Tribunal's work predominately comprised of the review of decisions of planning authorities made pursuant to the provisions of the *Land Use Planning & Approvals Act 1993* (the LUPA Act). A substantial number of these appeals raised grounds necessitating interpretation of complex, inconsistent and sometimes impenetrable use of language in planning instruments. While it is accepted that statutory interpretation is a part of the Tribunal decision making obligations, I observe that the absence of definitions of oft used terms or words (or departures from common terminology) in planning schemes and a poor consideration of the effect of the use of conjunctive and disjunctive prepositions does not assist parties to the planning process to be able to properly understand what may constitute compliance or otherwise with Planning Scheme provisions. This often results in appeal grounds being raised that cannot be resolved by way of alternative dispute resolution, necessitating long hearings where expert evidence is required to address a number of possible scheme provision interpretations. This inevitably results in greater costs to the parties. Also, as has been previously expressed, a greater consistency between planning schemes of different municipalities would at least allow a broader application of the Tribunal's interpretative determinations. It is hoped that the drafting of the Tasmanian Planning Scheme which is comprised of the State Planning Provisions and the Local Provision Schedules may address at least some of these issues.

As noted in Table 8 there have been a number of applications made pursuant to the *Neighbourhood Disputes about Plants Act 2017* (the NDAP Act) for which the Tribunal assumed responsibility on 1 December 2017. The NDAP Act provides for processes and remedies for neighbours to resolve disputes that arise in relation to problem trees or other vegetation, including disputes about the obstruction of sunlight and views, as well as other impacts shown to interfere with the enjoyment of the use of property. The relief available under the NDAP Act extends to interim orders where the Tribunal is satisfied that a plant is causing an imminent risk to persons or property, pending the determination of the substantive application for final orders. Those final

orders can include the removal or destruction of a plant or plants if the Tribunal is satisfied that the purpose for which the application was sought could not be attained by any action other than destruction or removal. Orders to carry out work on the plant, either once or on an ongoing basis, are the usual orders sought by applicants.

The experience of the Tribunal to date is that these applications are usually commenced by self-represented litigants who struggle to properly identify the statutory provision relied upon to obtain the relief sought and/or to properly identify the issues of relevance and meet the evidentiary requirements and obligations required to be met should the matter not be the subject of successful alternative dispute resolution (ADR) and is required to proceed to hearing.

The Tribunal has continued to refine its Practice Directions with respect to applications filed pursuant to the provisions of the NDAP Act to provide additional guidance to parties. However, the independence and impartiality of the Tribunal prevents the provision of assistance beyond that which is procedural in nature. Additional assistance to self-represented litigants, to navigate through what is a complex Act which may require the obtaining of expert evidence prior to the hearing of an application, is likely to benefit the parties and enable a more efficient and effective resolution or determination of these disputes, both with respect to cost and outcomes. It is the experience of Tribunal Registry staff that potential applicants are frustrated by what is perceived to be an absence of any availability of such assistance.

In addition to the applications made pursuant to the NDAP Act, the Tribunal has established and maintains a database of applications and orders made under the NDAP Act in accordance with s37. The Tribunal's obligations under the NDAP Act includes provision, upon application and payment of a fee, of a certified copy of the information contained in the database. Compliance by the Tribunal with requests made under s37(4) of the NDAP Act for database searches is a resource intensive process undertaken by Tribunal staff. The 1156 search requests received by the Tribunal from the date of the commencement of the legislation in December 2017 until 30 June 2018 has added substantially to the work of the administrative staff of the Tribunal. A less resource intensive means to comply with those obligations is presently being investigated by the Tribunal.

I am pleased to be able to report that the Tribunal has improved the level of compliance with the statutory obligation imposed upon it by s16(1)(f) of the LUPA Act to hear, determine and deliver written decisions within 90 days after an appeal has been instituted, an obligation unique to the Tasmanian planning jurisdiction. As noted in Table 7 below, the majority of appeals which require extensions of time are as a result of parties seeking hearing dates outside the 90 day timeframe, or seeking adjournments due to evidentiary matters outside the parties' control. The actions of parties accounts for 91.3% of cases in which the 90 day period has been exceeded. While some delay is occasioned by non-compliance with the Tribunal's directions, it is

the experience of the Tribunal that adjournments are predominately due to matters outside the parties' control.

As has been previously expressed, the complexity of some appeals before the Tribunal have militated against achieving compliance with the 90 day timeframe provided by the LUPA Act. Issues of statutory interpretation, multiple issues requiring different and comprehensive expert evidence to address what are often technical issues arising on appeal, necessitate the granting of applications for adjournment or the appointment of hearing dates beyond the 90 day period prescribed in order to afford the parties natural justice and enable the Tribunal to reach the correct and preferable decision.

The Tribunal is assisted to perform its statutory functions by a number of members, both legal and expert, whose contribution is critical to the Tribunal's performance. In this reporting year, a number of new Tribunal members were appointed:

- Richard Grueber;
- Peter Jans;
- Elizabeth MacLaine-Cross; and
- Lesley Hambly.

All the members of the Tribunal are listed in Table I below.

The significant contribution of members to the Tribunal's work for a very modest sessional rate is both commendable and appreciated. Without the contribution received from the Tribunal's legal and other expert members, it could not fulfil its statutory obligations. In particular, I thank retiring member Ms Elaine Stratford for her contribution and professionalism. I particularly acknowledge the contribution of Professor John Webster, a member of the Tribunal for a period of 10 years who passed away earlier this year. His contribution to the Tribunal has been invaluable.

I would also like to make special mention of Ms Ann Cunningham, who had been a legal member of the Tribunal for a period of more than 20 years, including a period where she acted as Chairperson. She has not sought reappointment, delivering her final determination earlier this year. I thank her for her many years of dedicated service to the Tribunal.

In this reporting year, the Tribunal has again achieved a very high rate of resolution through the ADR process. The Tribunal places significant emphasis on ADR in accordance with its legislative obligations. It has maintained a resolution rate of in excess of 70% which is testament to the significant contribution of the Tribunal's experienced and professional ADR staff. I thank the Registrar, Jarrod Bryan, Sally Bridge, and Nick Mackey for their ongoing commitment to ensure that the ADR process functions efficiently and effectively. The Tribunal continues to fund training of its mediators to maintain national accreditation.

I acknowledge the contribution of Tribunal staff who provide administrative and operational support that ensures the effective day to day functioning of the Tribunal. Mrs Susan Vernon assists the Tribunal at reception and in hearings, being ably assisted by Ms Danielle Cingel. Mr Stephen Main is responsible for the Tribunal's financial records and reporting and provides ongoing assistance to other staff when required. Mrs Hilary Harris provides executive support to the Registrar, and Mr Mackey and Ms Bridge, who manage appeals, directions hearings and ADR, and also provide invaluable support to me. Ms Carmen Dittmann retired from her administrative role with the Tribunal earlier this year. Her contribution over many years is acknowledged and appreciated.

I acknowledge in particular, not only the considerable assistance provided to me by the Registrar but that in addition to his role as Registrar of this Tribunal, Mr Bryan undertook the role of Acting Registrar of the Guardianship and Administration Board for a period of 5 months during the reporting year. I observe that his undertaking of that additional role has fostered a collegial approach between the Tribunal and the Board to the sharing of ideas and resources, where available, assisting both statutory bodies to meet their obligations. It has highlighted the potential benefits and efficiencies that could be achieved in the establishment of a single Tribunal in Tasmania.

My executive assistant Ms Angela Korotki, undertakes the considerable task of preparing decisions, managing my work and undertaking file management. It would be impossible for me to fulfil my duties without her assistance. I thank her for her considerable patience and assistance.

2 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.”

The legislation the Tribunal operates under is the *Resource Management & Planning Appeal Tribunal Act 1993*. Tasmanian Acts under which appeals to the Resource Management Planning Appeal Tribunal can be made are:

- *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*
- *Building Act 2016*
- *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
- Neighbourhood Disputes About Plants Act 2017
- Public Health Act 1997
- Strata Titles Act 1998
- Threatened Species Protection Act 1995
- Urban Drainage Act 2013
- Water and Sewerage Industry Act 2008
- Water Management Act 1999

3 Members of the Tribunal as at 30/06/18

TABLE I

Person	Appointed until	Area of Expertise
Baird, Ms M L	02/09/18	Planning
Ball, Mr M E	27/10/18	Planning
Bensz, Ms E	06/05/20	Planning
Bryant, Ms N	27/10/18	Legal
Code, Mr G	02/09/18	Legal
Cripps, Mr P	20/11/22	Building
Cunningham, Mrs AF	30/04/23	Legal
Davis, Ms J	24/08/20	Planning
Greig, Mr K	20/11/22	Plumbing
Grueber, Mr R	20/11/22	Legal
Hambly, Ms L	20/11/22	Legal
Healy, Ms F	20/11/22	Science/Environmental Management
Hogue, Mrs S	06/05/20	Planning
Howlett, Mr DR	06/05/20	Planning
Jans, Mr P	20/11/22	Legal
Kitchell, Mr M	24/08/20	Building
Locher, Dr H	24/08/20	Planning
Locke, Mr R	20/11/22	Building
McMullen, (Tony) A Mr	25/08/18	Planning

Person	Appointed until	Area of Expertise
Maclaine-Cross, Ms E	20/11/22	Legal
Masters, Mr D	24/08/20	Planning
Mucha, Dr C	05/08/18	Water management/major infrastructure
Murphy, Mr R	20/11/22	Building
Neale, Dr A	02/03/19	Heritage
Nicholson, Ms C	09/05/21	Planning/ Environmental management
Nolan, Mr RJ	06/05/20	Planning
Schaap, Mr A	24/08/20	Environmental management
Smith, Ms A	20/11/22	Legal
Spratt, Mr P	07/04/19	Civil & structural engineering Heritage & building conservation
Wong, Ms M	06/05/20	Planning

4 Activity

Appeals from planning authorities constituted the majority of the Tribunal's work this year. 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 2016* and the NDAP Act and appeals/applications under both those Acts have come before the Tribunal during the reporting year. 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.

TABLE 2

Appeals By Legislations	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
LUPAA	266	195	150	117	101	119	131	126
Heritage	14	11	7	10				
SOL		1	1	1				
Marine	3		4	1	1			
Water			4			1		
Strata Titles	3	2	4	2	5	4	11	1
EMPCA	6	4		1	2	8	2	1
Threatened Species								
Local Govt. Highways Act							1	
Water & Sewerage Industry Act								
Building Act			6	3	9	9	10	5
NDAP Act								8
Total	292	213	176	135	118	141	155	141

TABLE 3

Applications By Legislations	2010-11	2011-12	2012-13	2013-14	2014-15	2014-15	2016-17	2017-18
S64 LUPAA	28	24	17	9	12	1		3
S48 EMPCA					1	1		0
S96 Strata Titles			1				1	1
S264 Water Management								
P12 S218A Building Act				1				
Total	28	24	18	10	13	2	1	4

TABLE 4

Decision Types	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Interim	30	10	31	24	37	29	21	11
Costs	22	27	29	33	12	10	15	5
Consent	114	126	80	62	57	55	74	47
Amended	5			4	1			
Hearing	44	39	17	23	15	14	27	19
Total	215	202	157	146	122	108	137	82

TABLE 5

% of Decisions	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Interim	13.95%	4.95%	19.75%	16.44%	30.33%	26.85%	15.33%	13.41%
Costs	10.23%	13.37%	18.47%	22.60%	9.84%	9.26%	10.95%	6.10%
Consent	53.02%	62.38%	50.96%	42.47%	46.72%	50.93%	54.01%	57.32%
Amended	2.33%	0.00%	0.00%	2.74%	0.82%	0.00%	0.00%	0.00%
Hearing	20.47%	19.31%	10.83%	15.75%	12.30%	12.96%	19.71%	23.17%

TABLE 6

% Consent / Hearings to substantive decisions	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Total For Year	158	165	97	85	72	69	101	66
Consent	72.15%	76.36%	82.47%	72.94%	79.17%	79.71%	73.27%	71.21%
Hearings	27.85%	23.64%	17.53%	27.06%	20.83%	20.29%	26.73%	28.20%

TABLE 7

Performance Indicator	Unit of Measure	2010-2011 Actual	2011-2012 Actual	2012-2013 Actual	2013-2014 Actual	2014-2015 Actual	2015-2016 Actual	2016-2017 Actual	2017-2018 Actual
Percentage of appeals resolved within 90 days without extension	%	66.50	66.50	78.00	76.47	72.41	61.48	55.47	63.87
Percentage of appeals which did require extensions due to parties	%	97.03	95.00	90.00	92.50	92.31	91.23	84.62	91.30

TABLE 8

Month	Searches Lodged	Running Total	Average Per Work Day*
December 2017	6	6	0.37
January 2018	85	91	4
February 2018	144	235	7.2
March 2018	184	419	9.3
April 2018	192	611	10.5
May 2018	288	899	12.5
June 2018	257	1156	12.9

(Excludes public holidays)