



Resource Management and Planning Appeal Tribunal

Report for 2007/2008

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. In addition to establishing the Tribunal, that Act governs its jurisdiction and makes the Tribunal part of Tasmania's resource management and planning system.

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

As has been noted in the last two annual reports, the Tribunal was established in 1993, a year which saw widespread change to the State's environmental laws. Of the many changes then brought about, one of the most significant was the introduction of objectives into the 'suite' of legislation. Those objectives are worth reproducing since they inform and guide the Tribunal in the performance of its various statutory roles. They are as follows:

- (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.

3. Role

Once again, in the year the subject of this report, the majority of the Tribunal's work was concerned with so-called 'permit' appeals. Such appeals typically relate to decisions of local councils acting as planning authorities. They may be concerned with either a refusal to grant a permit applied for or, alternatively, the grant of a permit. 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 appealed the Tribunal considers the matter afresh or, in legal terms, conducts a *de novo* hearing. It in effect assumes the position of the planning authority and makes the decision again but is not confined to the material that was before the planning authority.

A common misconception is that the Tribunal is in some way reviewing the local council's decision and determining whether that decision was correct. It is not. The Tribunal's job is to make a decision in substitution therefore. Hence, complaints about the decision-making process of the planning authority, even if justified, are at best peripherally relevant, if relevant at all.

4. 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, and industry process operations.

Members are appointed for a five (5) year term pursuant to Section 6 of the Resource Management and Planning Appeals Tribunal Act 1993. That section allows for the appointment to the Tribunal of persons with expertise in planning, resource economics, science, engineering, medicine, environmental management, 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.

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 acknowledges the wisdom, experience, hard work and counsel of, in particular, Mr John Caulfield, Mr Clarrie Pryor, Mr Ean Cannell, Mr Neville Lester, Mr Barry McNeill, Dr Laurie Cosgrove and Mr Roger Howlett.

It is, however, necessary to broaden the pool of expert members. To that end it is extremely pleasing to report that during the year His Excellency the Governor appointed Mr Tony McMullen as a member of the Tribunal. Mr McMullen brings us a wealth of experience as a statutory planner, both in Tasmania and Victoria. There is no doubt that he will make an excellent contribution to the work of the Tribunal.

This year, unfortunately, saw the departure of Mr John Ramsay from the Tribunal. Mr Ramsay has been appointed to head the new Environmental Protection Agency. The EPA's gain is the Tribunal's loss.

The Tribunal's effective operation was severely hampered in the first 7 months of the year the subject of this report as a consequence of the author's continued appointment as Acting Executive Commissioner of the Resource Planning and Development Commission. Although this situation was specifically noted in last year's report it is unfortunate that the situation remained unchanged for a significant part of this year. The efforts of Ms Ann Cunningham and Mr Gregory Geason, the part-time presiding members, meant that the Tribunal was still able to function in a highly professional manner. Their contribution is extremely important.

The Tribunal is always mindful of the need to complete matters in a timely manner and strives so to do. It relies very heavily upon the co-operation of stakeholders to achieve this aim and in most cases receives that co-operation, particularly from members of the legal profession. But as was noted last year a combination of a constantly increasing case load, more and more complex matters, limited resources and above all the needs of stakeholders means that some delays are unavoidable.

Table 1 sets out details of the members of the Tribunal during the year the subject of this report, including the length of their appointment and area of expertise.

Table 1

PERSON	APPOINTED TILL	AREA OF EXPERTISE
Bensz (<i>Elizabeth</i>) A Ms	15/11/09	PLANNING
Burbury (<i>Timothy</i>) TV Mr	06/08/12	ENGINEERING
Cannell (<i>Ean</i>) REJ Mr	15/11/09	PLANNING
Caulfield (<i>John</i>) JJ Mr	15/11/09	PLANNING
Claxton (<i>Robin</i>) AC Mr	05/05/08	FISHERIES
Cosgrove (<i>Laurie</i>) SL Dr	17/11/08	ENVIRONMENTAL MANAGEMENT
Cunningham (<i>Ann</i>) AF Mrs	09/07/12	LEGAL
Derrick (<i>David</i>) D Mr	05/05/08	PLANNING
Domeney (<i>Tim</i>) T Mr	05/05/08	ARCHITECT/HERITAGE
Fitzpatrick (<i>Michael</i>) MD Mr	09/10/07	ENGINEER/ DAMS
Gourlay (<i>David</i>) DK Mr	21/12/10	VALUATION
Geason (<i>Greg</i>) GP Mr	12/01/12	LEGAL
Healy (<i>Frances</i>) F Ms	25/06/12	SCIENCE/ ENVIRONMENTAL MANAGEMENT
Hogue (<i>Sandra</i>) S Mrs	15/11/09	PLANNING
Howlett (<i>Roger</i>) DR Mr	15/11/09	PLANNING
Imlach (<i>Mary</i>) MA Ms	12/3/09	LEGAL
James (<i>Elizabeth</i>) EA Ms	21/12/10	SCIENCE
Lester (<i>Neville</i>) ND Mr	15/11/09	SURVEYING
Mucha (<i>Christine</i>) C Dr	16/06/13	WATER/MAJOR INFRASTRUCTURE
McMullen (<i>Tony</i>) A Mr	16/6/13	PLANNING
McNamara (<i>Gregory</i>) GC Mr	15/11/09	VALUATION
McNeill (<i>Barry</i>) B Mr	15/11/09	PLANNING/ARCHITECT/ HERITAGE
Nicholson (<i>Catherine</i>) C Ms	21/12/10	PLANNING ENVIRONMENTAL MANAGEMENT
Nolan (<i>Robin</i>) RJ Mr	15/11/09	PLANNING
Pryor (<i>Clarence</i>) CG Mr	15/11/09	PLANNING/ARCHITECT
Richardson (<i>Alastair</i>) AM Dr.	15/11/09	ZOOLOGY
Sandford (<i>Rosemary</i>) RA. Dr	15/11/09	HERITAGE/ ENVIRONMENTAL MANAGEMENT
Stratford PhD MPIA (<i>Elaine</i>) E Dr	17/11/08	GEOGRAPHY/ ENVIRONMENTAL STUDIES
Wong (<i>Marietta</i>) M Mrs	5/11/09	PLANNING

5. Personnel

Once again 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 the delivery of its Alternative Dispute Resolution services.

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. In addition mediation was undertaken in virtually every case lodged with the Tribunal.

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

Appeals By Legislations 2005-2006			2006-7	2007-8	Percentage Increase since 2005-6
Land Use Act	346		403	425	
Heritage	10		16	14	
Sale of Public Land	2		4		
Marine	1			3	
Water	7			4	
Strata Titles	2		2	7	
Environmental Management and Pollution Control	9		5	3	
Threatened Species			1		
Local Govt. Highways Act				21	
Total	377		431	477	26.53%

Applications By Legislations 2005-2006		2006-7	2007-8	
Section 64 Land Use Act	31	28	36	
Section 48 Environmental Management and Pollution Control Act	3	1	3	
Section 96 Strata Titles Act	1	1	1	
Section 264 Water Management Act			1	
Total	35	30	41	17.14%

Last year's report highlighted the fact that the work of the Tribunal had increased markedly from 2000-2001. That upward trend continues and shows no sign of abating. Table 3 (below) illustrates this point very well.

Table 3

Decisions Financial Yrs 2001-02 2002-03 2003-04 2004-5 2005-6 2006-7 2007-8 Total

Decision Types	2001-02	2002-03	2003-04	2004-5	2005-6	2006-7	2007-8	Total
Interim	12	8	18	15	17	39	25	134
Costs	21	20	34	3	65	34	28	205
Consent	67	94	164	189	133	164	229	1040
Amended	3	7	14	20	16	11	9	80
Hearing	38	37	108	76	81	56	66	462
Total	141	166	338	303	312	304	357	1921

Substantive decisions	105	131	272	265	214	220	295	1502
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% of Total Decisions								
Interim	8.51%	4.82%	5.33%	4.44%	5.03%	11.54%	7.40%	6.98%
Costs	14.89%	12.05%	10.06%	0.89%	19.23%	10.06%	8.28%	10.67%
Consent	47.52%	56.63%	48.52%	55.92%	39.35%	48.52%	67.75%	54.14%
Amended	2.13%	4.22%	4.14%	5.92%	4.73%	3.25%	2.66%	4.16%
Hearing	26.95%	22.29%	31.95%	22.49%	23.96%	16.57%	19.53%	24.05%

% Consent / Hearings to substantive decisions								
Consent	63.81%	71.76%	60.29%	71.32%	62.15%	74.55%	77.63%	69.24%
Hearings	36.19%	28.24%	39.71%	28.68%	37.85%	25.45%	22.37%	30.76%

7. Alternative Dispute Resolution

The direction issued in June 2006 making *all* matters subject of mandatory mediation has continued to apply in the year the subject of this report. Last year it was reported that it was too early to judge the effectiveness or otherwise of this approach but the expectation was that it will lead to a further increase in matters being settled by mediation. This expectation has been fulfilled.

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 mediation service. The Registrar, Mr Bryan, 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 ACDC, LEADR and Positive Solutions. Ms Bridge and Mr Mackey have undertaken training with the Institute of Arbitrators and Mediators, Australia. All three are regularly engaged in the conduct of mediations. 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 mediation to continue to be provided by officers of the Tribunal. The Tribunal remains extremely committed to the task.

Amendments to the ADR provisions of the Appeal Tribunal Act have meant that the Tribunal has been able to introduce Expert Neutral Evaluation as part of its ADR procedures. In appropriate cases a Tribunal mediation officer conducts mediation with the input of one of the Tribunal's experts. These mediations are usually 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 Cannell, Mr McNeill, Dr Cosgrove, Mr Caulfield, Mr Pryor, Mr Howlett and Ms Nicholson have provided this assistance, and their efforts are greatly appreciated. Feedback from parties involved in such mediations has been uniformly enthusiastic.

8. Other Developments

During the year the Tribunal introduced electronic payment of filing fees and had installed the necessary equipment to allow for parties, their representatives and witnesses to participate in hearings by video link. Both initiatives make 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. The introduction of video conferencing has the added advantage of reducing the need for travel, thus achieving a positive outcome in reducing the Tribunal's carbon footprint.

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 5th day of September 2008

Simon Cooper
Chairman