



Resource Management and Planning Appeal Tribunal

Report for 2006/2007

*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 section governs its jurisdiction. It also makes the Tribunal part of Tasmania's resource management and planning system.

The Tribunal deals with appeals against a wide range of administrative Acts and decisions associated with resource management, environmental and planning issues.

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

It may only exercise jurisdiction conferred by an Act of the Parliament of Tasmania. Unlike a court it has no original jurisdiction. A statutory Tribunal's previous decisions are of no precedent value. The Tribunal is not bound by its own earlier decisions.

The Tribunal was established in 1993. That year saw an extensive review, and overhaul, of Tasmania's resource management, planning and environmental legislation. Several important Acts of Parliament, such as the Resource Management and Planning Appeals Tribunal Act 1993, Land Use Planning and Approvals Act 1993 and the Local Government Act were introduced. This 'suite' of legislation made significant practical and philosophical changes to the legal framework within which planning and environmental matters were dealt with in Tasmania. As noted in last year's report the legislation contains objectives. It is unnecessary to reproduce those objectives, but the important point that these objectives inform and guide the Tribunal in the performance of its various statutory roles must not be overlooked.

3. Role

The Tribunal has a broad role that is central to the Land Use and Planning System for Tasmania. It continues to exercise the powers conferred by the Acts of Parliament referred to in the introduction to this report. Most of the work of the Tribunal remains so-called 'permit' appeals. Such appeals are typically concerned with 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. In such circumstances the Tribunal considers the matter afresh. It in effect assumes the position of the planning authority and makes the decision again. It is not bound by the evidence (or material) that was before the planning authority. It is not reviewing the authority's decision as such but rather making a decision in substitute therefore. Hence, complaints about the decision-making process of the planning authority are at best peripherally relevant, if relevant at all.

4. Members

The Tribunal is composed of a Chairman 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 Tribunal's effective operation was hampered in the second half of the year the subject of this report as a consequence of the author's appointment as acting Executive Commissioner of the Resource Planning and Development Commission. This left the Tribunal under resourced which led in turn to unavoidable and unacceptable delays in the disposition of matters.

The issue of timely disposition of matters in the jurisdiction is always difficult. The Act requires, for good reason, that matters are to be dealt with within 90 days, subject, of course, to ministerial extension of time. A review of matters dealt with in the year the subject of this report indicates that approximately 25% of matters are not dealt with within this time. But it should not be overlooked that the vast majority of those matters that fall outside the statutory time frame do so at the request of the parties to the appeal. It is commonly the case that, for a variety of reasons, parties will seek the cooperation of the Tribunal in having matters dealt with outside the 90 day period. Often this will be because parties are simply unable to prepare their cases within that time.

The Tribunal is always mindful of the need to complete matters in a timely manner and strives so to do. It is an escapable fact that 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.

During the year Mr Gregory Geason was appointed as an additional legal member and helped ease some of the burden. His contribution and that of Mrs Ann Cunningham should be acknowledged.

Table 1 sets out details of the members, details of the length of their appointment and their area of expertise.

Table 1

| PERSON | APPOINTED TILL | AREA OF EXPERTISE |
|--|-------------------|---|
| Bensz (<i>Elizabeth</i>) A Ms | 15/11/09 | PLANNING |
| Brett (<i>David</i>) M Mr | 15/10/06 | ENGINEERING |
| Burbury (<i>Timothy</i>) TV Mr | 04/03/07 | ENGINEERING |
| Cannell R (<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 | 04/03/07 | 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 |
| Healy (<i>Frances</i>) F Ms | 04/03/07 | SCIENCE/ ENVIRONMENTAL MANAGEMENT |
| Holt (<i>Stephen</i>) S Mr | 21/06/07 | LEGAL |
| 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 | 09/12/07 | WATER/MAJOR INFRASTRUCTURE |
| 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 |
| Ramsay (<i>John</i>) J Mr | 21/12/10 | ENVIRONMENTAL MANAGEMENT |
| Richardson (<i>Alastair</i>) AM Dr. | 15/11/09 | ZOOLOGY |
| Sandford (<i>Rosemary</i>) RA. Dr | 15/11/09 | HERITAGE/ ENVIRONMENTAL MANAGEMENT |
| Sansom (<i>Ian</i>) I Mr | 21/06/07 | PLANNING/ARCHITECT |
| Stratford PhD MPIA (<i>ELAINE</i>) E Dr | 17/11/08 | GEOGRAPHY/ ENVIRONMENTAL MANAGEMENT |
| Wong (<i>MARIETTA</i>) M Mrs | 5/11/09 | PLANNING |

Despite the reasonably large pool of members in fact the burden of the majority of the work of the Tribunal falls on the shoulders of a handful of people since the majority of members are unavailable much of the time due to professional commitments. In particular the essential contributions of Mr John Caulfield, Mr Clarrie Pryor, Mr Ean Cannell, Mr Neville Lester, Mr Barry McNeill and Mr Roger Howlett must be acknowledged. Indeed without them, and the other regular members, the Tribunal would be unable to function.

The issue of resources, a perennial complaint in Tasmania, and already touched upon, is highlighted if regard is had to the equivalent jurisdiction in South Australia. That state (with a population three times that of Tasmania) produces almost exactly the same number of planning and environmental matters each year. For that case load the South Australian Environment, Resources and Development Court has 2 full time judges and 3 full time commissioners, shares 3 masters and has 27 part time commissioners.

5. Personnel

Once again the role of the Registrar, Mr Jarrod Bryan, must be acknowledged. As noted last year Mr Bryan is responsible for the administration of the Tribunal as well as the delivery of the Alternative Dispute Resolution services of the Tribunal.

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 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 | 2005-6 | 2006-7 |
|------------------------------|------------|------------|
| LUPPA | 346 | 403 |
| Heritage | 10 | 16 |
| SOL | 2 | 4 |
| Marine | 1 | |
| Water | 7 | |
| ST | 2 | 2 |
| EMPCA | 9 | 5 |
| Threatened Species | | 1 |
| Total | 377 | 431 |
| | | |
| Applications By Legislations | 2005-6 | 2006-7 |
| S64 LUPAA | 31 | 28 |
| S48 EMPCA | 3 | 1 |
| S96 Strata Titles | 1 | 1 |
| | | |
| Total | 35 | 30 |

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

| Decision Types | 2001-02 | 2002-03 | 2003-04 | 2004-05 | 2005-06 | 2006-07 | Total |
|--|------------|------------|------------|------------|------------|------------|-------------|
| Interim | 12 | 8 | 18 | 15 | 17 | 39 | 109 |
| Costs | 21 | 20 | 34 | 3 | 65 | 34 | 177 |
| Consent | 67 | 94 | 164 | 189 | 133 | 164 | 811 |
| Amended | 3 | 7 | 14 | 20 | 16 | 11 | 71 |
| Hearing | 38 | 37 | 108 | 76 | 81 | 56 | 396 |
| | | | | | | | |
| Total | 141 | 166 | 338 | 303 | 312 | 304 | 1564 |
| | | | | | | | |
| Substantive decisions | 105 | 131 | 272 | 265 | 214 | 220 | 1207 |
| | | | | | | | |
| % of Total Decisions | | | | | | | |
| Interim | 8.51% | 4.82% | 5.33% | 4.44% | 5.03% | 11.54% | 6.97% |
| Costs | 14.89% | 12.05% | 10.06% | 0.89% | 19.23% | 10.06% | 11.32% |
| Consent | 47.52% | 56.63% | 48.52% | 55.92% | 39.35% | 48.52% | 51.85% |
| Amended | 2.13% | 4.22% | 4.14% | 5.92% | 4.73% | 3.25% | 4.54% |
| Hearing | 26.95% | 22.29% | 31.95% | 22.49% | 23.96% | 16.57% | 25.32% |
| | | | | | | | |
| % Consent / Hearings to substantive decisions | | | | | | | |
| Consent | 63.81% | 71.76% | 60.29% | 71.32% | 62.15% | 74.55% | 67.19% |
| Hearings | 36.19% | 28.24% | 39.71% | 28.68% | 37.85% | 25.45% | 32.81% |

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 favourably to other comparable jurisdictions. Mediated settlement is cost effective and undoubtedly in the best interests of all involved with the planning system.

As with last year the Tribunal provides its own mediation service. The Registrar, Mr Bryan, the Mediation Officer, Ms Bridge and the Senior Executive Officer, Mr Mackey have all undergone extensive training in the area. Mr Bryan's training has been provided by ACDC, LEADR and Positive Solutions. Ms Bridge has undertaken training with LEADR; Mr Mackey 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.

9. Conclusion

The Tribunal continues to strive to meet the challenge of providing a fair and efficient appeal process which meets the objectives in the Planning Appeal Act and is certain that in the coming years will continue to do so.

Dated this 23rd day of October 2007

SJ Cooper
Chairman