



Resource Management and Planning Appeal Tribunal

Report for 2009/2010

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*
- *Water and Sewerage Industry Act 2008*

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 concepts, central to the Resource Management and Planning System of Tasmania are also central to the day to day operations of the Tribunal.

3. Role

The majority of the Tribunal's work was concerned with appeals in respect of decisions of planning authorities (usually, but not always local councils) 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 material not in the possession of 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 Appeal 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 has many other functions. For example for example it has the power to review of 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*.

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.

During the year the subject of this report two (2) Professional Development days were held. These were conducted at the Tribunal premises and are essential to the continued effective operation of the Tribunal.

No new members were appointed during the year the subject of this report although several existing members were re-appointed by His Excellency the Governor for a further 5 years.

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 his or her 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, and Mr Michael Ball.

Table 1 sets out details, as at 30th June 2010 of the members of the Tribunal, including the length of their appointment and area of expertise.

Table 1

PERSON	APPOINTED TILL	AREA OF EXPERTISE
Ball (<i>Michael</i>) ME Mr	27/10/13	PLANNING
Bensz (<i>Elizabeth</i>) EA Ms	02/11/14	PLANNING
Bryant (<i>Naomi</i>) Ms	27/10/13	LEGAL
Cannell (<i>Ean</i>) REJ Mr	02/11/14	PLANNING
Caulfield (<i>John</i>) JJ Mr	02/11/14	PLANNING
Cosgrove (<i>Laurie</i>) SL Dr	02/03/14	ENVIRONMENTAL MANAGEMENT
Cunningham (<i>Ann</i>) AF Mrs	09/07/12	LEGAL
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	02/11/14	PLANNING
Howlett (<i>Roger</i>) DR Mr	02/11/14	PLANNING
James (<i>Elizabeth</i>) EA Ms	21/12/10	SCIENCE
Lester (<i>Neville</i>) ND Mr	02/11/14	SURVEYING
Mucha (<i>Christine</i>) C Dr	16/06/13	WATER MANAGEMENT/MAJOR INFRASTRUCTURE
McMullen (<i>Tony</i>) A Mr	16/6/13	PLANNING
McNamara (<i>Gregory</i>) GC Mr	02/11/14	VALUATION
McNeill (<i>Barry</i>) B Mr	02/11/14	PLANNING/ARCHITECT/ HERITAGE
Neale (<i>Anne</i>) AI Dr	02/03/14	HERITAGE
Nicholson (<i>Catherine</i>) C Ms	21/12/10	PLANNING/ ENVIRONMENTAL

		MANAGEMENT
Nolan (<i>Robin</i>) RJ Mr	02/11/14	PLANNING
Pryor (<i>Clarence</i>) CG Mr	02/11/14	PLANNING/ARCHITECT
Richardson (<i>Alastair</i>) AM Dr.	02/11/14	ZOOLOGY
Sandford (<i>Rosemary</i>) RA. Dr	02/11/14	HERITAGE/ ENVIRONMENTAL MANAGEMENT
Spratt (<i>Peter</i>) Mr	07/04/14	CIVIL & STRUCTURAL ENGINEERING HERITAGE & BUILDING CONSERVATION
Stratford PhD MPIA (<i>Elaine</i>) E Dr	02/03/14	GEOGRAPHY/ ENVIRONMENTAL STUDIES
Temple-Smith (<i>Mike</i>) MG Mr	07/04/14	WATER MANAGEMENT
Webster (<i>John</i>) JD Professor	25/08/13	ARCHITECT/HERITAGE /PLANNING
Wong (<i>Marietta</i>) M Mrs	02/11/14	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. The Tribunal is well served by its support staff who are always professional and helpful and usually cheerful. The assistance of Mrs Susan Vernon, who performs the role of clerk in the majority of hearings, is particularly worthy of recognition.

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	2005-6	2006-7	2007-8	2008-9	2009-10
LUPAA	346	403	425	300	270
Heritage	10	16	14	13	19
SOL	2	4		2	
Marine	1		3	5	2
Water	7		4	1	5
ST	2	2	7	2	2
EMPCA	9	5	3	5	
Threatened Species		1			
Local Govt. Highways Act			21		
Water & Sewerage Industry Act					1
Total	377	431	477	328	299

Applications By Legislations	2005-6	2006-7	2007-8	2008-9	2009-10
S64 LUPAA	31	28	36	25	29
S48 EMPCA	3	1	3	1	
S96 Strata Titles	1	1	1	0	
S264 Water Management			1		
Total	35	30	41	26	29

Table 3

Decisions Financial Yrs 2001-2, 2002-3, 2003-4, 2004-5, 2005-6, 2006-7, 2007-2008, 2008-9, 2009-10

Decision Types	2001-02	2002-03	2003-04	2004-5	2005-6	2006-7	2007-8	2008-9	2009-10	Total
Interim	12	8	18	15	17	39	25	46	41	221
Costs	21	20	34	3	65	34	26	43	31	277
Consent	67	94	164	189	133	164	217	161	123	1312
Amended	3	7	14	20	16	11	9	5	0	85
Hearing	38	37	108	76	81	56	65	46	52	559
Total	141	166	338	303	312	304	342	301	247	2454

Substantive decisions	105	131	272	265	214	220	282	207	175	1871
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% of Total Decisions										
Interim	8.51%	4.82%	5.33%	4.95%	5.45%	12.83%	7.31%	15.28%	16.60%	9.01%
Costs	14.89%	12.05%	10.06%	0.99%	20.83%	11.18%	7.60%	14.29%	12.55%	11.29%
Consent	47.52%	56.63%	48.52%	62.38%	42.63%	53.95%	63.45%	53.49%	49.80%	53.46%
Amended	2.13%	4.22%	4.14%	6.60%	5.13%	3.62%	2.63%	1.66%	0.00%	3.46%
Hearing	26.95%	22.29%	31.95%	25.08%	25.96%	18.42%	19.01%	15.28%	21.05%	22.78%

% Consent / Hearings to substantive decisions										
Consent	63.81%	71.76%	60.29%	71.32%	62.15%	74.55%	76.95%	77.78%	70.29%	70.12%
Hearings	36.19%	28.24%	39.71%	28.68%	37.85%	25.45%	23.05%	22.22%	29.71%	29.88%

7. Alternative Dispute Resolution

The Tribunal is strongly committed to the use of alternative dispute resolution (ADR) in all its many forms. Aside from the fact that resolution of planning and environmental disputes, by agreement prior to hearing is in the interests of the parties, it is clearly consistent with the objectives of the Resource Management and Planning System of Tasmania. All matters are considered as part of the case management process for ADR. Virtually all are subject to a formal direction that ADR take place. 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 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 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.

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 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 Pryor, Mr Howlett Professor John Webster, Mr Michael Ball and Ms Nicholson, all greatly assisted the Tribunal in this process during the year, the subject of this report.

8. Other Developments

The Tribunal conducted many more hearings (or parts thereof) by video link this year. 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.

Some initial teething problems with the video conferencing facility are acknowledged but these appear now to have been resolved.

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.

This 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 12th day of October 2010

S J Cooper
Chairman

GLOSSARY

ACDC	Australian Commercial Dispute Centre
ADR	Alternative Dispute Resolution
	Environmental Management and Pollution Control Act 1994
EMPCA	
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 Act	Water and Sewerage Industry Act 2008