

Practice Direction 7: Hearing Process

- 7.1 Hearing Overview:** A full hearing of the Tribunal is the opportunity for all parties to present evidence to an expert panel where that evidence is tested by each party to the proceedings. The parties may also make submissions to the Tribunal panel as to the outcome they say should take place - having regard to the evidence and submissions. In preparation for a hearing, the parties must ensure they have complied with all directions of the Tribunal in the preparation and exchange of evidence. A failure to comply with those directions may result in evidence being disallowed at the hearing.
- 7.2 The Tribunal:** The Tribunal is constituted by three members. However, the Tribunal has power to increase or reduce this number. Ordinarily the Presiding Member will be either the Chairperson of the Tribunal or a person appointed for their legal knowledge and expertise. Parties must comply with any directions issued by the Presiding Member. The other members of the Tribunal are selected for their knowledge and expertise in relevant areas to the appeal proceedings. All parties to the proceedings will be notified in advance of the hearing of the composition of the Tribunal panel. A party may object to the composition of the Tribunal - in writing, and in accordance with the timetable set out in the notification of the Tribunal panel composition.
- 7.3 Venue:** Full hearings are convened in Hobart. The Tribunal issued a Circular to this effect on 10 February 2009, and the reasons are set out in the Appendix 7A. Parties may apply to change the venue, and must detail the undue hardship or injustice in holding the hearing in Hobart. If the Tribunal is satisfied that a Hobart listing would result in undue hardship or injustice, it may change the hearing venue.
- 7.4 Orders of Proceedings:** The parties, in the order set out below, present their evidence, whether that be in the form of documents and/or documentary evidence or witnesses. The evidence is tested by each other party and once that process is concluded, each party is afforded an opportunity to make final submissions or arguments to the Tribunal panel. The order of making submissions is the reverse order to that which was adopted for giving evidence.

The order for giving evidence is as follows:-

- The first party to present their evidence will be the party who initiated the original decision making proceedings which gave rise to the appeal. In planning appeals it will be the developer who applied for a development permit to the Council or authority. In other appeals, it is the Applicant who applied for a decision from the relevant decision making body.
- The second party to present their case will be the original decision maker. In planning appeals, it will be the Council or authority that made the original decision on an Application for Use or Development or permit. In all other appeals, it is the body or person charged with the decision making responsibility.
- Any third party Appellants or joined parties.

The order of making submissions is the reverse of the above.

- 7.5 Evidence and Submissions:** The giving of evidence and the making of submissions can be confusing to persons unfamiliar with legal proceedings. Please ensure that you have regard to the Tribunal's *Practice Direction 8 – Material & Evidence*.

- 7.6 Giving Evidence:** Each party determines the order of its witnesses. The witness should move to the designated place in the hearing room. They should state their full name, address and occupation and confirm that they have prepared their statement of evidence (and, if necessary, correct it). Witnesses may not elaborate/expand on their statement without permission of the Tribunal as they should have already disclosed all relevant information in the statement. Seeking to expand on a statement of evidence during the hearing risks an adjournment and a costs order against that party.
- 7.7 Cross-Examination OF Witnesses:** After the witness has confirmed their statement of evidence, the representatives of opposing parties may question that witness. Cross-examination must be undertaken by a nominated representative of the party in question. Some questions may not be allowable and you should follow any direction given by the Tribunal panel in that regard. Cross-examination is the asking of questions; it is not an opportunity make comments or statements.
- 7.8 Notice of Cross-Examination Required:** A party requiring any expert for cross-examination must give written notice at least three days before the hearing.
- 7.9 Re-Examination:** When all cross-examination is concluded by all parties and the Tribunal, the representative who called the witness is entitled to re-examine that witness. Re-examination is only to clarify issues that were raised during cross-examination and not an opportunity to raise new matters.
- 7.10 Final Submissions:** At the conclusion of evidence in an appeal, and prior to presenting closing submissions, parties are to hand up a written summary of their closing submissions. An electronic copy is to be forwarded to the Tribunal at the conclusion of the hearing.
- It is not necessary for a party to read that material back to the Tribunal, but it will be assisted by the presentation of oral submissions going to be content of the written materials.
- The party who presents oral submissions first will have a right of reply to submissions made against it.
- 7.11 Notification and Use of Legal Authorities:** If a party seeks to rely upon a decision of a court or tribunal in making submissions, a list of the authorities to be referred to is to be filed with the Tribunal and served upon the other parties to the hearing no less than 48 hours prior to the hearing. The list is to be provided electronically and include full citations and an html link to the cited reports. Hard copies of authorities are no longer required to be filed or served.
- 7.12 Site Inspections:** The Tribunal ordinarily conducts a site inspection of the subject property as part of the hearing process. This is ordinarily done without parties or their representatives present. However, if the parties wish to specifically ensure that the Tribunal members have regard to certain matters on the subject site, the parties can arrange for a view with the Tribunal members and the representatives of the parties. The Tribunal and all parties should be notified of this at least 7 days before the hearing.
- 7.13 Decision:** The Tribunal is required by Section 24 of the *Appeal Tribunal Act* to deliver its ruling in writing. The Tribunal endeavours to have a decision delivered to all parties within 28 days from the conclusion of the hearing - depending upon the complexity of the matter and the amount of evidence adduced. The final decision will also include a standard order as to costs (see *Practice Direction 15 - Costs*).

7.14 Appeals from the Tribunal Decision: A right of appeal from the Tribunal decision to the Supreme Court is available only on a question of law under Section 25 of the *Appeal Tribunal Act*. The time for making an appeal to the Supreme Court is 28 days from the date of the final decision. The Tribunal is not a party to an appeal under Section 25 of the *Appeal Tribunal Act* and would not seek to be heard in relation to those proceedings.