

RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

Annual Report 2019-2020

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CHAIRPERSON'S REPORT

Dear Minister,

It is with pleasure that I submit the Annual Report for the Resource Management & Planning Appeal Tribunal for 2019-2020.

1. In this reporting year, the Tribunal's work principally 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). There has been a modest increase in the number of appeals filed with the Tribunal, which includes a small increase in applications made pursuant to the *Neighbourhood Disputes About Plants Act 2017*, appeals made pursuant to the *Building Act 2016* and appeals made pursuant to the *Local Government Act 1993*. The work of the Tribunal continues to predominately comprise reviews of planning decisions made by municipal councils.
2. The *Biosecurity Act 2019*, parts of which commenced on 1 October 2020 will, upon the commencement of the relevant provisions, provide for appeals to the Tribunal with respect to various administrative decisions authorised pursuant to that Act. Upon commencement of that Act, appeal rights to be heard and determined by the Tribunal will constitute a new jurisdiction with respect to which the Tribunal will exercise a review function.
3. While there has only been a modest increase in the number of appeals in the reporting year, there has been a notable increase in the number of appeals that have progressed to a substantive hearing and, consequently, an increase in the number of substantive decisions issued by the Tribunal, having increased from 17 in the 2018-2019 period, to 26 in the current reporting period (as noted in Table 4). The increase in the number of substantive hearings (and, consequently, a reduction in consent

decisions) may be a consequence of the associated complexities relevant to the issues in dispute to be considered and determined on those appeals.

4. The Tribunal has also experienced a substantial increase in the number of interim rulings issued by the Tribunal (see Tables 4, 5 and 10) which includes rulings made with respect to interlocutory matters requiring adjudication. The request and need for interlocutory rulings appears to be highly correlated with those appeals raising complex issues challenging jurisdiction, adequacy of appeal grounds and joinder of parties. Interim determinations, where appropriate, assist in the narrowing of issues to be determined on appeal thereby potentially saving hearing time and costs to the parties.
5. In this reporting period, the statutory timeframes to which the Tribunal is subjected continue to be managed successfully as is evident from Table 8, with the Tribunal achieving a 100% compliance with either the 90th day statutory timeframe or such extended timeframe as sought by the parties and reasonably required.
6. Notwithstanding the reduction in consent agreements lodged with the Tribunal, the Tribunal has maintained a high rate of resolution of appeals through the Alternative Dispute Resolution (ADR) process, achieving a high resolution rate evident in number of applications for consent decision and appeal withdrawals. The Tribunal has three specialist mediators who assist the parties to an appeal to explore avenues for resolution of some or all issues brought into dispute by the appeal. The utilisation of ADR has a combined benefit of saving Tribunal hearing time and lowering the costs to parties in proceeding to a hearing. The Tribunal's mediators, Mr Jarrod Bryan, Ms Sally Bridge and Mr Nick Mackey, by their dedication and professionalism, ensure the effective and efficient delivery of that service.

7. The COVID-19 pandemic has impacted upon the Tribunal's user operations during the reporting period. Tribunal staff have worked hard to modify hearing practices and procedures, ADR processes and adjusted the way in which Tribunal staff engage with stakeholders. This has occurred without compromising compliance with the Tribunal's statutory obligations and the quality of engagement with stakeholders. The Tribunal has successfully arranged hearings (preliminary and substantive) to be held remotely by telephone and / or audio visual links and developed an appointment system so that members of the public requiring the Tribunal's assistance can attend the Tribunal's premises in person or by phone as required.
8. While noting that outdated technology has impacted, from time to time, the Tribunal's capacity to remotely hear and determine matters in an effective and efficient manner, the new Tribunal Centre premises, to which the Tribunal relocated in July 2020, has provided improved audio visual equipment to enable effective and efficient delivery of remote hearings which will likely lead to cost efficiencies for both the Tribunal and parties to appeals.
9. Pursuant to s18 of the *Resource Management & Planning Appeal Tribunal Act 1993* (the RMPAT Act), a Tribunal hearing of an appeal must be held in public. The size of the Tribunal's hearing rooms prevented face-to-face hearings involving parties, counsel and access to hearings by the general public without the breaching of social distancing restrictions. While the Tribunal made application for and was issued with a notice under s20 of the *COVID-19 - Disease Emergency (Miscellaneous Provisions) Act 2020*, which provided that proceedings before a Tribunal may be heard in an approved manner determined by the Chairperson, the Tribunal continued to fulfil its statutory responsibilities, albeit in a modified way, facilitating livestreaming Tribunal hearings to other hearing premises to enable public access to hearings while still complying with social distancing requirements.

10. The Tribunal has again in this reporting period enjoyed significant contribution and assistance from the sessional members of the Tribunal. The Tribunal confirms that an increase in sessional payments for Tribunal members, approved in the last reporting period, has now been implemented. The sessional members of the Tribunal perform an important role of bringing expert knowledge and experience, which contributes to the Tribunal's decision making functions. Without the contribution of these members, the Tribunal could not fulfil its statutory obligations.
11. The Tribunal welcomed Mr David Tanner and Ms Vicki Davies as newly appointed members of the Tribunal during the reporting period. Both members have essential specialist knowledge which will assist the Tribunal in the performance of its functions.
12. I wish to acknowledge the professionalism and capability of the Tribunal's Registrar, Mr Jarrod Bryan, who ensures the successful day-to-day operation of the Tribunal as well decision making under delegation with respect to interlocutory proceedings before the Tribunal. In addition, Mr Bryan has continued during the reporting year, to assist in the implementation of the single civil and administrative tribunal for Tasmania and provided assistance with the progression of the co-location of various Tribunals and Boards which occurred in July 2020. Mr Bryan's dedication to his role as Registrar, while undertaking additional responsibilities under delegation, provides considerable assistance to me in my capacity as Chair contributing significantly to the proper functioning of the Tribunal.
13. I also acknowledge the contribution of the operational and administrative Tribunal staff who, with the oversight of the Registrar, all contribute to the successful functioning of the Tribunal. Mrs Susan Vernon and Ms Danielle Cingel, assist the Tribunal generally and in hearings. Ms Cingel also undertakes the lion's share of the searching and maintenance of the Tribunal's Neighbourhood

Disputes About Plants Act 2017 database which, as noted in Table 9, has necessitated a response to search requests of 5,200 with 100% of those searches being completed within 14 days. Mr Stephen Main is responsible for the Tribunal's financial records and reporting and also provides assistance to other staff when required. Mrs Hilary Harris provides executive support to the Registrar. Ms Sally Bridge and Mr Nick Mackey manage appeals, direction hearings and ADR, and also provide invaluable support to me from time to time. My Executive Assistant, Ms Angela Barrett, undertakes the laborious task of assisting me in the transcription of decisions, managing my work flow 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 sense of humour.

M Duvnjak

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.”

List of Tasmanian Acts within the jurisdiction of RMPAT

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

- Agricultural and Veterinary Chemicals (Control of Use) Act 1995
- Bio Security Act 2019
- 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

Members of the RMPAT 2019-2020:

Table I

NAME	EXPIRY	AREA OF EXPERTISE
Ms Margaret L Baird	2/10/23	Planning
Mr Michael E Ball	27/10/23	Planning
Ms Elizabeth A Benz	06/05/20	Planning
Mr Mark Broadley	18/6/24	Engineering (traffic)
Mr Simon Cooper	8/4/24	Legal
Mr Geoffrey P Code	2/10/23	Planning & Legal
Mr Peter Cripps	20/11/22	Architecture/Heritage Conservation/Engineering
Ms Jan Davis	24/08/20	Planning
Ms Vicki Davies	02/12/24	Planning
Ms Gina Goodman	22/1/24	Planning
Mr Ken Greig	20/11/22	Plumbing
Mr Richard Grueber	20/11/22	Legal
Ms Lesley Hambly	20/11/22	Legal
Ms Fran Healy	20/11/22	Science/Environmental Management
Mrs Sandra Hogue	06/05/20	Planning
Mr Roger Howlett	06/05/20	Planning
Mr Peter A Jans	20/11/22	Legal
Mr Max Kitchell	24/08/20	Planning
Dr Helen Locher	24/8/20	Planning
Mr Roger Locke	20/11/22	Building/Engineer
Ms Kate Loveday	22/1/24	Planning
Mr Anthony McMullen	2/10/23	Planning
Ms Elizabeth Maclaine-Cross	20/11/22	Legal

NAME	EXPIRY	AREA OF EXPERTISE
Mr David Masters	24/8/20	Planning
Dr Christine S Mucha	2/10/23	Water management/major infrastructure
Mr Ross Murphy	20/11/22	Building
Ms Anita Smith	20/11/22	Legal
Mr Peter Spratt	18/06/24	Engineering
Mr David Tanner	02/12/24	Engineering
Mrs Marietta Wong	06/05/20	Planning

ACTIVITY:

The following tables set out the relevant numbers and statistics to report on the Tribunals functions for the year 2018-2019.

TABLE 2

This table sets out the number of proceedings by reference to legislation.

Appeals By Legislations	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
LUPAA	150	117	101	119	131	126	123	124
Heritage	7	10						
SOL	1	1					1	
Marine	4	1	1					
Water	4			1			1	
Strata Titles	4	2	5	4	11	1	6	1
EMPCA		1	2	8	2	1	2	1
Threatened Species								
Local Government Act					1		1	4
Local Government Highways Act					1			
Water & Sewerage Industry Act								1
Building Act	6	3	9	9	10	5	3	5
NDAP Act						8	8	10
Total	176	135	118	141	155	141	144	146

TABLE 3

This table sets out the numbers of applications by reference to legislation.

Applications By Legislations	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
S23(6) RMPAT							1	1
S62 LUPAA							1	
S64 LUPAA	17	9	12	1		3	1	
S48 EMPCA			1	1				
S96 Strata Titles	1				1	1		
S264 Water Management								
P12 S218A Building Act		1						
Total	18	10	13	2	1	4	3	1

TABLE 4

This table sets out the number of decisions of each decision category.

Decision Types	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Interim	31	24	37	29	21	11	66 ¹	102
Costs	29	33	12	10	15	5	12	9
Consent	80	62	57	55	74	47	67	58
Amended		4	1					5
Hearing	17	23	15	14	27	19	17	26
Total	157	146	122	108	137	82	162	195

¹ Since 2018-2019, the Tribunal determined that all interim decisions, regardless of publication, should be identified to accurately represent the work that is undertaken by the Tribunal. Interim decisions are explained in Table 10.

TABLE 5

This table provides a percentage calculation of decision types drawn from Table 4.

% of Decisions	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Interim	19.75%	16.44%	30.33%	26.85%	15.33%	13.41%	40.74%	52.31%
Costs	18.47%	22.60%	9.84%	9.26%	10.95%	6.10%	7.41%	4.62%
Consent	50.96%	42.47%	46.72%	50.93%	54.01%	57.32%	41.36%	29.74%
Amended	0.00%	2.74%	0.82%	0.00%	0.00%	0.00%	0.00%	2.56%
Hearing	10.83%	15.75%	12.30%	12.96%	19.71%	23.17%	10.49%	13.33%

TABLE 6

This table sets out the number of substantive decisions, that is, decisions which dispose of proceedings by either consent orders or a final merits decision arising from a hearing.

% Consent / Hearings to substantive decisions	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2018-19
Total For Year	97	85	72	69	101	66	84	84
Consent	82.47%	72.94%	79.17%	79.71%	73.27%	71.21%	79.76%	69.05%
Hearings	17.53%	27.06%	20.83%	20.29%	26.73%	28.79%	20.24%	30.95%

TABLE 7

This table sets out the duration of proceedings which were closed during the year 2019-2020. The table also identifies the amount of time attributable to parties who requested and consented to deferment of proceedings for a range of reasons.²

Average Duration of Files Closed in Financial Year 2019-20						
Type	Number	Days ³	Average Days	Discount Days ⁴	Total Days	Average Total Days
Consent	60	7687	128.12	4502	3185	53.08
Decision	25	5360	214.40	1451	3909	156.36
Withdrawals	55	4671	84.93	2209	2462	44.75
Others	10	925	92.50	270	655	65.50
Neighbourhood Disputes About Plants Files						
Consent	0	0	0	0	0	0
Decision	0	0	0	0	0	0
Withdrawals	5	339	67.80	0	339	67.80
Other	1	4	4	0	4	4
Total	156	18986	121.71	8432	10554	67.65

TABLE 8

Percentage of appeals resolved within the 90th day statutory timeframe or within such extension required by the parties to an appeal.

Performance Indicator	Unit of Measure	2012-2013 Actual	2013-2014 Actual	2014-2015 Actual	2015-2016 Actual	2016-2017 Actual	2017-2018 Actual	2018-2019 Actual	2019-2020 Actual
Percentage of appeals resolved within 90 days without extension	%	76.47	72.41	61.48	55.47	57.52	63.87	62.68	59.71
Percentage of appeals which did require extensions due to parties ⁵	%	90.00	92.50	92.31	91.23	84.62	91.30	98.11	100%

² This time is discounted from the total to ensure accuracy in the reporting of time taken by the Tribunal as opposed to delay which was requested and consented to by parties.

³ These totals represent the number of days from the lodgment of proceedings to any final order disposing of the matter whether by withdrawal, consent decision or final determination. These numbers however require refinement as to the reasons for their duration which is addressed in "Discount Days".

⁴ The Tribunal often adjourns matters at the request and consent of all parties for a range of reasons but the most common is to allow extended negotiations between the parties. The delay involved is not as a consequence of the Tribunal inability to hear and determine matters where it is called upon to exercise its functions, but as a result of the request of parties to the proceedings. Any file which was closed in 2019-2020, which exceeded 90 days of duration was audited. This column represents the cumulative additional time required for all those proceedings, which were by request and consent of all parties including such reasons as: later than usual hearing dates to accommodate legal counsel or witnesses; requests for time to conduct extended negotiations between parties; adjourning proceedings to allow separate approval processes to be made.

⁵ This measure identifies that where the Tribunal exceeded the 90 day timeframe under Section 16(1)(f) of the *Resource Management and Planning Appeal Tribunal Act 1993*, it as a result of requests or actions of parties to the proceedings. This may include requests for adjournments by consent; requests for initial hearing dates outside the 90 day timeframe due to availability of counsel or witnesses; failure to comply with directions or a range of other reasons related to the parties conduct of proceedings.

TABLE 9

The Tribunal receives Applications for Searches of the database it must maintain pursuant to Section 37 of the *Neighborhood Disputes About Plants Act 2017 (NDAP Act 2017)*. This table shows the number of search applications pursuant to Section 37(4) of the *NDAP Act 2017* for the year.

Year	Searches Lodged	No. of Working Days ⁶	Average No. of Searches Per Work Day	Percentage of searches completed within 14 days
2019-20	5287	248	21	100%

Other Decisions and Directions:

Interim decisions are those decisions which are made in the course of proceedings, or at the conclusion of proceedings (such as costs or other subsequent applications made). These determinations may vary from relatively simple case management determinations related to adjournments or variations to timetables and the issuing of special directions, through to quite complex matters such as striking out grounds of appeal or interlocutory applications. All of these decisions are vital to the case management of proceedings as well as discharging the statutory obligations of the Tribunal. They occupy considerable time and resources of the Tribunal and are included to report upon the considerable work undertaken as part of the management of proceedings leading up to final disposition of them.

Table 10 identifies the type and number of decisions made in the reporting period.

TABLE 10

Interim Decisions. ⁷	102
Costs Decisions. ⁸	9
Disposal of Proceedings by withdrawal order pursuant to Section 13(6) of RMPAT Act with costs orders. ⁹	60
Case Management Directions, Decisions and Correspondence. ¹⁰	563

⁶ This number is provided to demonstrate the number of working days available to Tribunal staff to undertake these searches. This is to provide an indication of the work generated by these searches. The search results are recorded and emailed out to persons who made an application. The Tribunal advises it will provide search results within 14 days. All search results have been issued within that timeframe for this year.

⁷ A broad range of decision types fall under this category. They include, but aren't limited to, rulings in relation to applications for: variations to development applications under Section 22(3) of the *Resource Management and Planning Appeal Tribunal Act 1993*; joinder of parties; striking out grounds of appeal; late variations to grounds of appeal; dismissal of proceedings; summonses; adjournments and recusal of members. They also include jurisdictional rulings, interim orders and the issuance of final conditions of approval after a merits decision. The Tribunal only publishes interim rulings which assist in and advance the interpretation of statutory provisions.

⁸ Applications for costs by any party are made after a final decision has been issued by the Tribunal.

⁹ The *Resource Management and Planning Appeal Tribunal Act 1993* under Section 13(6) allows a party to withdraw proceedings. The Tribunal is then obliged to notify parties pursuant to Section 13(7) and in doing so, the Tribunal issues orders for costs including a timeframe for the making of costs applications in terms the same as any final decision of the Tribunal.

¹⁰ These activities represent the day to day decisions and directions which are made by the Tribunal as part of its functions of case management. They do not include standard correspondence or directions and listings which are made. They represent: complex correspondence or file notes with reference to case law and statutory requirements; complex directions or the making of listings which required more considered analysis and the exercise of discretionary powers; decisions to vary or extend established direction timeframes and the making of directions requiring parties to furnish submissions, further information or responses.

BUDGET MANAGEMENT- Resource Management and Planning Appeal Tribunal Budget Position

Consolidated Fund	YTD Total	
	\$	
Budget	1,561,421	
Actual	1,501,421	
Difference	60,000	
Retained Revenues		YTD Balance
		\$
T424 – RMPAT Recoveries		73,037.12
		<hr/>
		73,037.12
		<hr/>

Dated this 27th day of October 2020



M D Duvnjak
Chairperson



Tasmanian
Government

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