

# RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

## Annual Report 2020-2021

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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 2020-2021.

Review of the decisions of planning authorities made pursuant to the *Land Use Planning & Approvals Act 1993* (the LUPA Act) remains the lion's share of the work of the Tribunal during this reporting year. There has been a modest increase in the number of appeals and applications filed with the Tribunal which includes a small increase in planning related appeals.

The matters that have come before the Tribunal, particularly in the planning jurisdiction, are complex with a large number of interim rulings and decisions required. These matters often involve jurisdictional determinations, rulings with respect to complex statutory interpretation challenges and case management issues related to adequacy of appeal grounds, and joinder of parties issues. They include applications under s22(3) and s23(6) of the *Resource Management & Planning Appeal Tribunal Act 1993* (the RMPAT Act). While these matters often assist in better identifying the issues to be determined on appeal and, in some cases, provide a mechanism for the narrowing of the issues in dispute, they continue to form a significant body of work for the Tribunal.

There has also been an increase in the frequency of multiple day hearings in this reporting year, principally as a result of the complexity of the issues raised on appeal. Increasingly, there have been challenges to the validity of planning scheme provisions, given problematic drafting of the Interim Planning Scheme. The more complex hearings before the Tribunal usually involve represented parties, evidence from experts in different disciplines such as planning, environmental, heritage and engineering which in turn places considerable reliance by the Tribunal on those of its expert members with the appropriate expertise. All of these factors in turn have generated an increase in the sessional member fees paid during the reporting period.

The ongoing recruitment of Tribunal members with the requisite expertise called up by the legislation conferring the relevant jurisdiction on the Tribunal, has proved challenging. In order to ensure independence of decision making, members who remain actively involved in providing services / advice in their area of expertise are not always suitable for membership to the Tribunal. The busier the Tribunal becomes, the greater the reliance upon its expert members.

The Tribunal relocated to new premises during the reporting year and now shares premises with eight other Tribunals and Boards, all of which will likely soon be amalgamated to form the Tasmanian Civil & Administrative Tribunal (TASCAT). The premises are fit for purpose with multiple hearing rooms, improved audio and visual technology and appropriate facilities to enable fairer and safer access for all users of the Tribunals and Boards. The new premises have allowed for the Tribunal to hear different appeals simultaneously using differently constituted Tribunals and the improved quality and capability of the audio visual equipment has enabled expert witnesses, parties and their counsel to appear before the Tribunal remotely, thereby reducing costs to parties without compromising fairness or independence. For example, the Tribunal premises has hearing loops to assist those with hearing impairments. These are being utilised by users of the Tribunal with apparent success. Again, this has improved accessibly and

participation in the Tribunal's processes and hearings. There has, however, been a commensurate increase in operating costs to the Tribunal with respect to the provision of the improved new facilities.

The improved premises and technology has enabled the Tribunal to meet its statutory obligations with a 'business as usual' approach notwithstanding the challenges of COVID-19. While the Tribunal was issued with a Notice under s20 of the COVID-19-Disease Emergency (Miscellaneous Provisions) Act 2020, which allows proceedings before the Tribunal to be heard in an approved manner determined by the Chairperson, public access to the Tribunal's hearings under s18(1) of the RMPAT Act has not been compromised.

I have been actively engaged in providing assistance to the Inaugural President of TASCAT, Mr Malcolm Schyvens, by assisting in the facilitation of the Tribunal's inclusion in TASCAT. The establishment and commencement of TASCAT, and the Tribunal's inclusion therein, will assist the operations of what will become the Resource & Planning Stream of TASCAT as well as other streams, by enabling better allocation of resources to optimise efficiencies across all of the TASCAT's jurisdictions, to meet the statutory obligations of each of the conferring Acts. The Resource & Planning Stream of TASCAT will retain its existing Tribunal powers and, upon commencement of TASCAT, will benefit from additional powers and procedures to assist in meeting the obligations of TASCAT. I wish to thank the President for his collaborative and constructive efforts and support to facilitate the smooth transition of the Tribunal as part of TASCAT. The establishment and commencement of TASCAT is an important and significant reform. It has been a privilege to have been involved in that reform.

I wish to acknowledge the significant contribution and assistance that the Tribunal receives from its sessional members. The Tribunal's expert members perform the essential role of bringing expert knowledge and experience which contributes to the Tribunal's decision making functions and assists in the Tribunal's fulfilment of its statutory obligations. I wish to particularly acknowledge the contribution of Mr Richard Grueber, a legal member of the Tribunal now for some years. His availability and capability has enabled the Tribunal to meet its obligations to hear and determine matters within the required statutory timeframe.

The Tribunal welcomes Ms Lucinda Wilkins and Mr Mark Rapley, as newly appointed legal members of the Tribunal. Although appointed after the reporting year, I am also pleased to advise of the recent appointments of Mr Nick Heath and Mr Robert Klump as members of the Tribunal. Mr Klump's expertise in particular is relevant to potential applications or appeals under the *Biosecurity Act 2019*.

I again acknowledge the very great assistance provided to me, the members of the Tribunal and the staff, by the Tribunal's Registrar, Mr Jarrod Bryan. He has continued to have oversight of the day to day operations of the Tribunal as well engaging in decision making under delegation with respect to interlocutory proceedings before the Tribunal. He has again assisted in the implementation of TASCAT and was appointed as the Acting Principal Registrar very late in the reporting period to provide assistance to the President. I wish to personally thank Mr Bryan for his dedication to his role as Registrar of the Tribunal for what has been a significant period. His commitment to his role, his professionalism in his engagement with stakeholders and parties, his engagement with and management of administrative staff and his considerable ongoing assistance to me in my capacity as the Chair of the Tribunal, all while undertaking additional responsibilities and providing assistance to other Boards and Tribunals, demonstrates the significant contribution he has made to the proper functioning of the Tribunal over many years. I would also like to thank Mr Sam Christensen who, at very short notice and in addition to his usual responsibilities, has assisted the Tribunal by acting as Registrar with respect to administrative functions.

I also acknowledge the contribution of the Tribunal's operational and administrative staff who, with the oversight of the Registrar, provide the skills and support that have contributed to the successful functioning of the Tribunal. The Tribunal's staff are multi-skilled and are always willing and able to fulfil whatever tasks need doing. Mrs Susan Vernon capably undertakes receptionist duties and clerking. Ms Danielle Cingel maintains and completes searches of the Tribunal's Neighbourhood Disputes About Plants Act 2017 database, and also undertakes clerking, and audio typing. 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, and assists me as required from time to time. I thank them all for their contributions. I would also like to recognise the significant contribution made by Ms Sally Bridge and Mr Nick Mackey in the case management of appeals and applications, directions hearings and alternative dispute resolution. I also recognise the patience of my unflappable executive assistant, Ms Angela Barrett, who undertakes the task of assisting me in the clerking of hearings, the transcription of Tribunal decisions, undertakes file management and assists me in managing my work flows. Her assistance to me is invaluable.

M Duvnjak

## The 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*
- *Biosecurity 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 2020-2021:

Table I

NAME	EXPIRY	AREA OF EXPERTISE
Ms Margaret L Baird	2/10/23	Planning
Mr Michael E Ball	27/10/23	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 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
Mr Nick Heath	19/09/296	Local Government
Mrs Sandra Hogue	27/01/26	Planning
Mr Roger Howlett	27/01/26	Planning
Mr Peter A Jans	20/11/22	Legal
Mr Max Kitchell	27/01/26	Planning
Mr Robert L Klumpp	19/09/26	Biodiversity
Dr Helen Locher	27/01/26	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	27/01/26	Planning
Dr Christine S Mucha	2/10/23	Water management/major infrastructure
Mr Ross Murphy	20/11/22	Building
Mr Mark Rapley	27/01/26	Legal
Ms Anita Smith	20/11/22	Legal
Mr Peter Spratt	18/06/24	Engineering
Mr David Tanner	02/12/24	Engineering
Ms Lucinda Wilkins	27/01/26	Legal
Mrs Marietta Wong	27/01/26	Planning

## ACTIVITY:

The following tables set out the relevant numbers and statistics to report on the Tribunals functions for the year 2020-2021.

**TABLE 2**

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

Appeals By Legislations	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
LUPAA	117	101	119	131	126	123	124	126
Heritage	10							
SOL	1					1		
Marine	1	1						
Water			1			1		1
Strata Titles	2	5	4	11	1	6	1	3
EMPCA	1	2	8	2	1	2	1	
Threatened Species								
Local Government Act				1		1	4	3
Local Government Highways Act				1				
Water & Sewerage Industry Act							1	
Building Act	3	9	9	10	5	3	5	9
NDAP Act					8	8	10	9
<b>Total</b>	<b>135</b>	<b>118</b>	<b>141</b>	<b>155</b>	<b>141</b>	<b>144</b>	<b>146</b>	<b>151</b>

**TABLE 3**

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

<b>Applications By Legislations</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
S23(6) RMPAT						1	1	2
S62 LUPAA						1		
S64 LUPAA	9	12	1		3	1		
S48 EMPCA		1	1					
S96 Strata Titles				1	1			
S264 Water Management								
P12 S218A Building Act	1							
<b>Total</b>	<b>10</b>	<b>13</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>2</b>

**TABLE 4**

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

<b>Decision Types</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Interim	24	37	29	21	11	66 <sup>1</sup>	102	64
Costs	33	12	10	15	5	12	9	14
Consent	62	57	55	74	47	67	58	70
Amended	4	1						
Hearing	23	15	14	27	19	17	26	24
<b>Total</b>	<b>146</b>	<b>122</b>	<b>108</b>	<b>137</b>	<b>82</b>	<b>162</b>	<b>195</b>	<b>172</b>

<sup>1</sup> 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.

<b>% of Decisions</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Interim	16.44%	30.33%	26.85%	15.33%	13.41%	40.74%	52.31%	37.21%
Costs	22.60%	9.84%	9.26%	10.95%	6.10%	7.41%	4.62%	8.14%
Consent	42.47%	46.72%	50.93%	54.01%	57.32%	41.36%	29.74%	40.70%
Amended	2.74%	0.82%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Hearing	15.75%	12.30%	12.96%	19.71%	23.17%	10.49%	13.33%	13.95%

**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.

<b>% Consent / Hearings to substantive decisions</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Total For Year	85	72	69	101	66	84	84	94
Consent	72.94%	79.17%	79.71%	73.27%	71.21%	79.76%	69.05%	74.47%
Hearings	27.06%	20.83%	20.29%	26.73%	28.79%	20.24%	30.95%	25.53%

**TABLE 7**

This table sets out the duration of proceedings which were closed during the year 2020-2021. The table also identifies the amount of time attributable to parties who requested and consented to deferment of proceedings for a range of reasons.<sup>2</sup>

Average Duration of Files Closed in Financial Year 2020-21						
Type	Number	Days <sup>3</sup>	Average Days	Discount Days <sup>4</sup>	Total Days	Average Total Days
Consent	70	10407	148.67	5321	5086	72.66
Decision	20	2707	135.35	828	1879	93.95
Withdrawals	51	3337	65.43	1273	2064	40.47
Others	5	442	88.40	85	357	71.40
Neighbourhood Disputes About Plants Files						
Consent	0	0	0	0	0	0
Decision	4	1171	292.75	651	520	130.00
Withdrawals	7	588	84.00	100	488	69.71
Other	2	0	0	0	0	0
<b>Total</b>	<b>159</b>	<b>18652</b>	<b>117.31</b>	<b>8258</b>	<b>10394</b>	<b>65.37</b>

**TABLE 8**

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

Performance Indicator	Unit of Measure	2013-2014 Actual	2014-2015 Actual	2015-2016 Actual	2016-2017 Actual	2017-2018 Actual	2018-2019 Actual	2019-2020 Actual	2020-2021 Actual
Percentage of appeals resolved within 90 days without extension	%	72.41	61.48	55.47	57.52	63.87	62.68	59.71	57.45
Percentage of appeals which did require extensions due to parties <sup>5</sup>	%	92.50	92.31	91.23	84.62	91.30	98.11	100%	96%

**TABLE 9**

<sup>2</sup> 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.

<sup>3</sup> 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".

<sup>4</sup> 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.

<sup>5</sup> 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.

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 <sup>6</sup>	Average No. of Searches Per Work Day	Percentage of searches completed within 14 days
2020-2021	5707	248	23	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. <sup>7</sup>	64
Costs Decisions. <sup>8</sup>	14
Disposal of Proceedings by withdrawal order pursuant to Section 13(6) of RMPAT Act with costs orders. <sup>9</sup>	58
Case Management Directions, Decisions and Correspondence. <sup>10</sup>	550

<sup>6</sup> 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.

<sup>7</sup> 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.

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

<sup>9</sup> 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.

<sup>10</sup> 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

<b>Consolidated Fund</b>	<b>YTD Total</b>	
	\$	
Budget	<b>1,594,084</b>	
Actual	<b>1,673,673</b>	
Difference	<b>79,589</b>	
<b>Retained Revenues</b>		<b>YTD Balance</b>
		\$
T424 – RMPAT Recoveries		105,419.45
		<hr/>
		<b>105,419.45</b>
		<hr/> <hr/>

Dated this 28<sup>th</sup> day of October 2021.



**M D Duvnjak**  
**Chairperson**



Tasmanian  
Government

Resource Management & Planning Appeal Tribunal

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