

# RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

## Annual Report 2018-2019



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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 2018-2019.

There has been a slight increase in the number of appeals filed with the Tribunal in this financial year, but otherwise the work of the Tribunal continues to predominantly comprise reviews of Council planning decisions, this being the major review function of this Tribunal.

There has also been an increase in the number of appeals from determinations of the Recorder of Titles with respect to Strata Title disputes.

The number of appeals made pursuant to the *Neighbourhood Disputes About Plants Act 2017* has been identical for this financial year, with all but one matter being resolved by agreement or being withdrawn. While many of these matters resolve following the utilisation of Alternative Dispute Resolution (ADR) as almost all of these parties are self-represented, it is often not until the parties engage with the Tribunal as to the requirements of the Act to identify the impacts of plants on the affected property and the consequential matters required to be addressed for the Tribunal to grant the relief sought, that there is an appreciation of what is required to make a compliant application. While the Tribunal's website provides some information regarding applications under the Act, some form of handbook or publicly available information to assist self-represented litigants is desirable both to assist applicants and respondents and to bring about more efficient and less resource intensive outcomes for both this Tribunal and the parties concerned.

As can be seen in Table 9 of this report, the Tribunal received and processed a significant number of Applications for Searches of the Tribunal's Database maintained pursuant to Section 37 of the *Neighbourhood Disputes About Plants Act 2017*. While the Tribunal has in this reporting year entered into a service agreement with Service Tasmania to accept lodgement and payment of manual search requests saving considerable manual handling, this function of the Tribunal remains a resource intensive task for Tribunal staff, and I wish in particular to thank Danielle Cingel who undertakes the lion's share of the searching and maintenance of the Tribunal's database.

As is evident from Table 8 the Tribunal has improved the level of compliance with its statutory obligations to hear and determine and deliver written decisions within 90 days after an appeal has been instituted, an obligation unique to Tasmania's planning jurisdiction. The majority of appeals which require extensions of time arise as a result of requests and applications of parties for adjournments due to availability of counsel and expert witnesses such that hearing dates outside the 90 day timeframe are required. These circumstances account for approximately 98% of cases and are predominantly related to issues arising outside the control of the parties. Issues of complexity remain a factor impacting on the achievement of compliance with the 90 day timeframe provided by the *Land Use Planning & Approvals Act 1993*. The complexity of appeals can require comprehensive expert evidence to address what are often technical and difficult issues. A careful consideration of applications for adjournments or appointments for hearing dates is required in order to ensure that parties are not prejudiced by practically unattainable timeframes

and that natural justice considerations prevail. This, in turn, assists the Tribunal to reach the correct and preferred decision.

The Tribunal in its day to day operation makes decisions or rulings which ensure the fair and efficient case management of the appeal process from commencement to final determination. These decisions, which comprise directions, formal rulings or interim determinations, have not previously been the subject of reporting. The Tribunal in this reporting year has provided additional information at Table 10 identifying the extent of the Tribunal's decision making beyond its substantive decisions which dispose of proceedings by consent orders or final determinations. The interim decision data in Table 10 illustrates the considerable body of work undertaken by the Tribunal and its staff as part of the appeal process.

As in previous years, the Tribunal has maintained its high rate of resolution of appeals through the ADR process, achieving a resolution rate in excess of 79%. Utilisation of ADR offered by the Tribunal provides a cost effective way of resolving disputes or narrowing issues. The Tribunal has three specialist mediators who assist parties to identify the issues in dispute and provide a means within which these issues can be explored and resolved and save the valuable time of the Tribunal and significantly lowering the costs to parties in proceeding to a hearing. The commitment and professionalism of Jarrod Bryan, Sally Bridge and Nick Mackey in undertaking ongoing professional development to maintain accreditation and provide the best assistance possible to parties seeking a mediated outcome is illustrated in the number of cases resolved in this reporting year through successful ADR. I thank the Tribunal mediators for their ongoing commitment to ensure that ADR continues to function efficiently and effectively.

Again, in this reporting year sessional members of the Tribunal, who assist the Tribunal to perform its statutory functions, have made a significant contribution for a very modest sessional rate. In that respect the Tribunal welcomes the increase in sessional payments for Tribunal members approved this financial year, which is currently being implemented. The Tribunal welcomes new members recently appointed, namely Mark Broadley, Gina Goodman and Kate Loveday. All members of the Tribunal are listed in Table 1 below. Without the contribution of these members which include legal and other expert members, the Tribunal could not fulfil its statutory obligations. In particular, I thank legal member, Mr Richard Grueber. His contribution to the effective operation of the Tribunal has been considerable.

I wish to acknowledge the contribution of Ella-Grace Isles who continues the important task of developing a Bench Book to assist the Tribunal and its members to fulfil the Tribunal's obligations under the Act. Although not yet complete, the Bench Book has already proved a very valuable resource.

I wish to acknowledge the considerable contribution the Tribunal's Registrar Jarrod Bryan makes which ensures the successful day-to-day operation of the Tribunal. In addition, he has continued in his important role with respect to the implementation of a single civil & administrative tribunal for Tasmania. Tasmania remains the only state without a single administrative tribunal. It appears that progress is likely to be made in the near future towards the creation of a single tribunal given the proposed co-location of the various Tribunals and Boards due to occur mid to late 2020. The Tribunal welcomes both the co-location of statutory tribunals and the formation of a single civil and administrative tribunal. The introduction of a single tribunal would, without doubt, bring challenges both operationally and logistically upon its implementation, but it is likely to generate efficiencies, provide for improved services and enhance the provision of better access to justice.

I also acknowledge the contribution of the operational and administrative Tribunal staff who, with the oversight of the Registrar, successfully ensure the effective day to day functioning of the Tribunal. Mrs

Susan Vernon assists the Tribunal generally and in hearings, being ably assisted by Ms Danielle Cingel. Mr Stephen Main is responsible for the Tribunal's financial records and reporting and also provides general assistance to all other staff when required. Mrs Hilary Harris provides executive support to the Registrar; Mr Mackey and Ms Bridge who attend to case management of appeals, directions hearings and alternative dispute resolution and provide invaluable support to me whenever required.

I would also like to extend my particular thanks to the ongoing assistance provided by my Executive Assistant, Ms Angela Korotki, who in addition to assisting with the Tribunal's registry matters, undertakes the considerable task of decision transcription, file management and providing me with whatever assistance is required. Without her assistance, my task would be considerably more difficult.

## 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*
- *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 2018-2019:

| <b>NAME:</b>                | <b>EXPIRY</b> | <b>AREA OF EXPERTISE</b>                       |
|-----------------------------|---------------|--|
| Ms Margaret L Baird         | 2/10/23       | Planning                                       |
| Mr Michael E Ball           | 27/10/23      | Planning                                       |
| Ms Elizabeth A Bensch       | 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 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  |
| 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                                       |

## 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       | 2011-12    | 2012-13    | 2013-14    | 2014-15    | 2015-16    | 2016-17    | 2017-18    | 2018-19    |
|-------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| LUPAA                         | 195        | 150        | 117        | 101        | 119        | 131        | 126        | 123        |
| Heritage                      | 11         | 7          | 10         |            |            |            |            |            |
| SOL                           | 1          | 1          | 1          |            |            |            |            | 1          |
| Marine                        |            | 4          | 1          | 1          |            |            |            |            |
| Water                         |            | 4          |            |            | 1          |            |            | 1          |
| Strata Titles                 | 2          | 4          | 2          | 5          | 4          | 11         | 1          | 6          |
| EMPCA                         | 4          |            | 1          | 2          | 8          | 2          | 1          | 2          |
| Threatened Species            |            |            |            |            |            |            |            |            |
| Local Government Highways Act |            |            |            |            |            | 1          |            |            |
| Water & Sewerage Industry Act |            |            |            |            |            |            |            |            |
| Building Act                  |            | 6          | 3          | 9          | 9          | 10         | 5          | 3          |
| NDAP Act                      |            |            |            |            |            |            | 8          | 8          |
| <b>Total</b>                  | <b>213</b> | <b>176</b> | <b>135</b> | <b>118</b> | <b>141</b> | <b>155</b> | <b>141</b> | <b>144</b> |

**TABLE 3**

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

| <b>Applications By Legislations</b> | <b>2011-12</b> | <b>2012-13</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> |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| S23(6) RMPAT                        |                |                |                |                |                |                |                | 1              |
| S62 LUPAA                           |                |                |                |                |                |                |                | 1              |
| S64 LUPAA                           | 24             | 17             | 9              | 12             | 1              |                | 3              | 1              |
| S48 EMPCA                           |                |                |                | 1              | 1              |                |                |                |
| S96 Strata Titles                   |                | 1              |                |                |                | 1              | 1              |                |
| S264 Water Management               |                |                |                |                |                |                |                |                |
| P12 S218A Building Act              |                |                | 1              |                |                |                |                |                |
| <b>Total</b>                        | <b>24</b>      | <b>18</b>      | <b>10</b>      | <b>13</b>      | <b>2</b>       | <b>1</b>       | <b>4</b>       | <b>3</b>       |

**TABLE 4**

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

| <b>Decision Types</b> | <b>2011-12</b> | <b>2012-13</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>  |
|-----------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| Interim               | 10             | 31             | 24             | 37             | 29             | 21             | 11             | 66 <sup>1</sup> |
| Costs                 | 27             | 29             | 33             | 12             | 10             | 15             | 5              | 12              |
| Consent               | 126            | 80             | 62             | 57             | 55             | 74             | 47             | 67              |
| Amended               |                |                | 4              | 1              |                |                |                |                 |
| Hearing               | 39             | 17             | 23             | 15             | 14             | 27             | 19             | 17              |
| <b>Total</b>          | <b>202</b>     | <b>157</b>     | <b>146</b>     | <b>122</b>     | <b>108</b>     | <b>137</b>     | <b>82</b>      | <b>162</b>      |

<sup>1</sup> The Tribunal in previous years has only reported published interim decisions. This year 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>2011-12</b> | <b>2012-13</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> |
|-----------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Interim               | 4.95%          | 19.75%         | 16.44%         | 30.33%         | 26.85%         | 15.33%         | 13.41%         | 40.74%         |
| Costs                 | 13.37%         | 18.47%         | 22.60%         | 9.84%          | 9.26%          | 10.95%         | 6.10%          | 7.41%          |
| Consent               | 62.38%         | 50.96%         | 42.47%         | 46.72%         | 50.93%         | 54.01%         | 57.32%         | 41.36%         |
| Amended               | 0.00%          | 0.00%          | 2.74%          | 0.82%          | 0.00%          | 0.00%          | 0.00%          | 0.00%          |
| Hearing               | 19.31%         | 10.83%         | 15.75%         | 12.30%         | 12.96%         | 19.71%         | 23.17%         | 10.49%         |

**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>2011-12</b> | <b>2012-13</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> |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Total For Year                                       | 165            | 97             | 85             | 72             | 69             | 101            | 66             | 84             |
| Consent  | 76.36%         | 82.47%         | 72.94%         | 79.17%         | 79.71%         | 73.27%         | 71.21%         | 79.76%         |
| Hearings   | 23.64%         | 17.53%         | 27.06%         | 20.83%         | 20.29%         | 26.73%         | 28.20%         | 20.24%         |

**TABLE 7**

This table sets out the duration of proceedings which were closed during the year 2018-2019. 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 2018-19 |            |                   |               |                            |             |                    |
|--|------------|-------------------|---------------|----------------------------|-------------|--------------------|
| Type   | Number     | Days <sup>3</sup> | Average Days  | Discount Days <sup>4</sup> | Total Days  | Average Total Days |
| Consent  | 69         | 8359              | 121.14        | 4662                       | 3697        | 53.58              |
| Decision   | 19         | 3392              | 178.53        | 1096                       | 2296        | 120.84             |
| Withdrawals  | 45         | 3013              | 66.96         | 1132                       | 1881        | 41.8               |
| Neighbourhood Disputes About Plants Files                  |            |                   |               |                            |             |                    |
| Consent  |            |                   |               |                            |             |                    |
| Decision   | 3          | 642               | 214           | 118                        | 524         | 174.67             |
| Withdrawals  | 9          | 1071              | 119           | 335                        | 736         | 81.78              |
| <b>Total</b>   | <b>145</b> | <b>16477</b>      | <b>113.63</b> | <b>7343</b>                | <b>9134</b> | <b>62.99</b>       |

**TABLE 8**

| Performance Indicator  | Unit of Measure | 2011-2012 Actual | 2012-2013 Actual | 2013-2014 Actual | 2014-2015 Actual | 2015-2016 Actual | 2016-2017 Actual | 2017-2018 Actual | 2018-2019 Actual |
|--|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Percentage of appeals resolved within 90 days without extension                | %               | 66.50            | 78.00            | 76.47            | 72.41            | 61.48            | 55.47            | 63.87            | 62.68            |
| Percentage of appeals which did require extensions due to parties <sup>5</sup> | %               | 95.00            | 90.00            | 92.50            | 92.31            | 91.23            | 84.62            | 91.30            | 98.11            |

<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 2018-2019, 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.

**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 <sup>6</sup> | Average No. of Searches Per Work Day | Percentage of searches completed within 14 days |
|-----------|-----------------|----------------------------------|--------------------------------------|---|
| 2018-2019 | 5277            | 245                              | 22                                   | 100%  |

## Other Decisions and Directions:

The Tribunal ordinarily reports upon substantive decisions - that is, decisions which dispose of the proceedings by either consent orders or final determinations. Those statistics are reported in the tables set out above. This year the Tribunal will include statistics of 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**

|  |     |
|--|-----|
| Interim Decisions. <sup>7</sup>  | 66  |
| Costs Decisions. <sup>8</sup>  | 12  |
| Disposal of Proceedings by withdrawal order pursuant to Section 13(6) of RMPAT Act with costs orders. <sup>9</sup> | 60  |
| Case Management Directions, Decisions and Correspondence. <sup>10</sup>  | 662 |

<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 (24 in the year 2018-2019).

<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

# BUDGET MANAGEMENT- Resource Management and Planning Appeal Tribunal Budget Position

| <b>Consolidated Fund</b> | <b>YTD Total</b> |    | <b>YTD Balance</b> |
|--------------------------|------------------|----|--------------------|
|                          |                  | \$ |                    |
| Budget                   | 1,552,231.00     |    |                    |
| Actual                   | 1,482,231.00     |    |                    |
| Difference               | 70,000.00        |    |                    |
| <b>Retained Revenues</b> |                  |    |                    |
|                          |                  | \$ |                    |
| T424 – RMPAT Recoveries  |                  |    | 107,072.39         |
|                          |                  |    | <hr/>              |
|                          |                  |    | 107,072.39         |
|                          |                  |    | <hr/>              |

Dated this 28 day of October 2019



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

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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.



Tasmanian  
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