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**INFORMATION SHEET 7 – Hearing Process**

**1.1** 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.

**1.2** The Tribunal is usually constituted by three members. However, the Tribunal has power to increase or reduce this number. Ordinarily the Presiding Member will be the President, a Deputy President or a Member of the Tribunal 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.

**1.3** The parties will present their evidence in the order set out below, whether it is in the form of documents and/or documentary evidence or witnesses. The evidence is then tested by each other party. 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 in appeals 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.

 The order for giving evidence in originating applications is as follows:

* The person who has brought the application will go first
* Any respondents will then follow
* Any joined parties will then come last.

 The order of making submissions is then done in reverse order.

**1.4** 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 Information Sheet 6.

**1.5** 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.

**1.6** 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.

**1.7** A party requiring any expert for cross-examination must give written notice at least three days before the hearing.

**1.8** 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.

**1.9** 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 (See Practice Direction 4 at 4.10). 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.

**1.10** If a party seeks to rely upon a decision of a court or tribunal in making submissions, there is a Practice Direction requiring that 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. (See Practice Direction 4 at 4.11) 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.

**1.11** 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 (see Practice Direction 4 at 4.12)

**1.12** The Tribunal is required 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.

**1.13** A right of appeal from the Tribunal decision to the Supreme Court is available only on a question of law under Section 136 of the Tasmanian Civil and Administrative Tribunal Act 2020. The time for making an appeal to the Supreme Court is 30 days after the day on which the decision was made (see Section 137 of the TASCAT Act 2020). The Tribunal is not a party to an appeal and would not seek to be heard in relation to those proceedings*.*