****

**RPS PRACTICE DIRECTION 4 – Evidence, Witnesses and Hearing Process**

These Practice Directions are made pursuant to Section 93 of the *Tasmanian Civil and Administrative Tribunal Act 2020.*

1. Any evidence that a party wishes to present to the Tribunal in support of their case must be in the form of a Statement of Evidence and set out in accordance with the following requirements:

4.0.1 Must have a cover sheet in accordance with Appendix A to this Practice Direction. Cover sheets are not to include illustrations or material other than set out in the Annexure.

4.0.2 Where an original contains coloured material, copies for all parties and all Tribunal members must also be in colour.

4.0.3 Specific documents listed in Annexure B, must be submitted in accordance with that Annexure’s requirements.

4.0.4 Be on A4 size paper, portrait layout, paginated and with paragraph numbers.

4.0.5 For all documents lodged in PDF, bookmarks must be inserted into the document. Bookmarks facilitate the location of contents within the document. This link explains the process: <https://helpx.adobe.com/acrobat/using/page-thumbnails-bookmarks-pdfs.html>

4.0.6 Parties are to file a complete list of the witnesses to be called at the hearing and submit that list with evidence filed.

* 1. Where a party seeks to tender materials contained in the Council Papers, they must notify each party and the Tribunal in writing, at the time for exchange of evidence. The notification must clearly identify each document that a party seeks to have received into evidence. The author of any document will need to attend the hearing to be cross examined in accordance with (below PD 4.7).
	2. The Tribunal will have regard to any representations that were made at first instance in accordance with Section 51(2)(c) and Section 62(4) of the Land Use Planning and Approvals Act 1993. The parties will be heard at the full hearing in relation to any representations which may be considered and what weight may be given to them.
	3. If the Tribunal issues a direction for the parties to file a Statement of Facts and Contentions, then the statement must be filed in accordance with the following requirements:

**Requirements of Statement of Facts and Contentions by Planning Authority**

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A Facts and Part B Contentions.
3. An authorised officer of the planning authority is to sign and date the statement.
4. In Part A - Facts, the planning authority is to identify:
5. **The proposal**: a brief description of the proposed development or modification of a development including any building, subdivision and/or land use and, where relevant, matters such as density, floor space ratio, setbacks and heights.
6. **The site**: a description of the site including its dimensions, topography, vegetation and existing buildings.
7. **The locality**: a description of the locality including the type and scale of existing surrounding development.
8. T**he statutory controls**: details of the applicable planning instruments and the relevant provisions, including the applicable zone.
9. **Actions of the respondent consent authority (Council or planning authority):** date of application, application number, details of any advertising process and its results, details of any consultation and results, the decision of the respondent and the reasons for refusal.

Part A Facts is not to include matters of opinion.

1. In Part B – Contentions, the planning authority is to identify each fact, matter and circumstance it contends requires or should cause the Tribunal, in exercising it powers under Section 23 (1) of the Act to either refuse the application or to grant a permit subject to certain conditions.
2. In Part B - Contentions, the planning authority is to:
3. focus on issues genuinely in dispute;
4. have a reasonable basis for its contentions;
5. present its contentions clearly, succinctly and without repetition;
6. where it contends that the application must be refused, identify the factual and/or legal basis for that contention; any such contention is to be listed at the beginning of Part B - Contentions and is to be clearly identified as a contention that the application must be refused;
7. where the planning authority contends there is insufficient information to assess the application, list the information it contends is required;
8. where it contends that a proposal does not comply with provisions, of the applicable planning scheme or body of legislation, identify the standard or provision that is breached and quantify the extent of the non-compliance (if necessary, in a diagrammatic form), grouping together provisions or sections dealing with the same aspect (for example, height or density);
9. identify the nature and extent of each environmental impact relied upon to support any contention and, if practicable, quantify that impact; and
10. Identify Any Contentions That May Be Resolved By Conditions Of Consent.

 **Requirements for Statement of Facts and Contentions by Applicant for Permit**

1. The statement is to be as brief as reasonably possible.
2. The statement is to be divided into two parts – Part A - Facts and Part B - Contentions.
3. The Applicant for the Permit or its authorised officer or agent is to sign and date the statement.
4. In Part A - Facts, the applicant for a permit is to identify:
5. the relevant Application for Use or Development, its number and the date of determination;
6. if an Applicant for a Permit, the decision or conditions appealed against.

Part A - Facts is not to include matters of opinion.

1. In Part B - Contentions an Applicant for a Permit is to identify each fact, matter and circumstance that is contended require or should cause the Tribunal, in exercising it powers to grant a permit, or not to impose or to amend certain conditions
2. An Applicant for a Permit is to:
3. focus its contentions on issues genuinely in dispute;
4. have a reasonable basis for the contentions; and
5. present its contentions clearly and succinctly.
6. An applicant for a permit is to identify:
7. each condition that the applicant contends should be deleted; and
8. each condition that the applicant contends should be amended and, for each such condition, the amendment sought and the reason for seeking the amendment.
	1. Evidence must be filed in accordance with the time frames directed by the Tribunal. The primary evidence of parties is required to be filed with the Tribunal, and served on each other party 21 days prior to the hearing, unless directed otherwise. Any response evidence is to be filed with the Tribunal and served on each other party 7 days prior to the hearing, unless otherwise directed. A party must seek leave from the Tribunal to vary any directions to file evidence in accordance with PD 2.
	2. The planning authority is to make, file with the Tribunal and serve upon each other party a set of draft conditions of approval seven days prior to the hearing. The draft conditions are to be responsive to the issues in the proceedings and are to be provided regardless of whether the planning authority refused or approved the use/development at first instance. A planning authority is at liberty to submit that it is not possible to frame practicable conditions of approval which are responsive to the issues in dispute, but they are to place all parties on notice of that submission seven days prior to the hearing.
	3. The parties are to confirm in writing to the Tribunal, seven days before the hearing, that they have conferred to agree facts and submit a statement of agreed facts. If there are no facts which can be agreed, then the Tribunal is to be advised of that result.
	4. The author of any statement of evidence is required to attend the hearing to allow other parties to cross examine the witness.
	5. A party may seek to excuse a witness from attending a hearing, by making written application to the Tribunal, with the consent of all parties to the proceedings.
	6. A party who will wish to cross-examine any witness at a hearing must advice each party and the Tribunal, in writing, at least 3 days prior to the hearing.
	7. A party is required to hand up a written summary of their final submissions at the conclusion of a hearing. They must also send an electronic copy to the Tribunal.
	8. If a party seeks to rely upon any decisions of a court or tribunal in making submissions, they must forward a list of legal authorities to each party and the Tribunal no less than 48 hours prior to the hearing.
	9. Any application for the Tribunal to undertake a site inspection, with specific reference to particular areas, is to be filed seven day prior to the hearing.

**ATTENDANCE AT HEARINGS OF THE TRIBUNAL IN PERSON OR BY TELEPHONE/VIDEO CONFERENCE:**

* 1. A member of the public who wishes to attend a directions hearing in person must notify the Tribunal Registry 48 hours prior to the hearing. (This is to ensure the Tribunal is aware of the number of people who propose to attend in person to ensure COVID19 maximum capacity of rooms is not exceeded).
	2. A member of the public who wishes to attend a directions hearing by telephone conference must notify the Tribunal Registry 48 hours prior to the hearing and provide the relevant contact number for the call.
	3. The use of video conference is limited to full hearings of the Tribunal. A party must seek leave of the Tribunal for a party, representative or witness to attend a hearing by video conference. The application for leave must be in writing, filed with the Tribunal and served on each other party at least 14 days prior to the hearing. The Tribunal will arrange a test of the connection prior to the hearing.

**EXPERT WITNESSES:**

* 1. As soon as practicable after an expert witness is engaged or appointed the engaging party must provide the expert witness with a copy of the code of conduct which is Annexure C to this Practice Direction.
	2. An expert must comply with the Code of Conduct in Annexure C.
	3. An expert’s statement of evidence must contain an acknowledgment that the author has read the code of conduct and agrees to be bound by it. A failure to do so may result in the exclusion of the evidence. Oral evidence may not be received from an expert witness unless the Tribunal is satisfied that the expert witness has acknowledged, whether in an expert report prepared in relation to the proceedings or otherwise in relation to the proceedings, that he or she has read the code of conduct and agrees to be bound by it, unless the Tribunal otherwise orders.
	4. Expert Evidence must comply with all Practice Directions in format and content set out in this Practice Direction.
	5. Where parties call expert witnesses who share the same fields of expertise, those experts are direct to:
* Confer; and
* endeavour to reach agreement on matters in issue; and
* to file within seven days of the hearing, a statement which identifies those matters which are agreed, or otherwise certifies that a conference has occurred and that no matters could be agreed between them.
	1. The Tribunal may issue a direction that a joint report be submitted by expert witnesses. If that direction issues then the expert witnesses are to:
1. prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement, and

b) base any joint report on specified facts or assumptions of fact, and may do so at any time, whether before or after the expert witnesses have furnished any individual statements of evidence.

The Tribunal may direct that a conference be held:

1. with or without the attendance of the parties affected or their legal representatives, or
2. with or without the attendance of the parties affected or their legal representatives, at the option of the parties, or
3. with or without the attendance of a facilitator (that is, a person who is independent of the parties and who may or may not be an expert in relation to the matters in issue).

Expert witnesses so directed may apply to the Tribunal for further directions to assist in any aspect of the performance of their functions.

Any such application must be made by sending a written request for directions to the Tribunal, specifying the matter in relation to which directions are sought.

An expert witness who makes such an application must send a copy of the request to the other expert witnesses and to the parties to the proceedings.

* 1. Where the Tribunal directs a conference between experts and a joint statement of evidence is to be submitted, then that report must:
		1. specify matters agreed and matters not agreed and the reasons for any disagreement.
		2. The joint statement of evidence may be tendered at the hearing as evidence of any matters agreed.
		3. In relation to any matters not agreed, the joint statement of evidence may be used or tendered at the hearing only in accordance with the practices of the Tribunal.
		4. Except by permission of the Tribunal, a party to the proceedings may not adduce evidence from any other expert witness on the issues dealt with in the joint statement of evidence.

### *APPENDIX A - Cover Sheets for Statements of Evidence*

**STATEMENT OF EVIDENCE**

**IN THE RESOURCE AND PLANNING STREAM**

**TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**Tribunal reference number \***

**Appellant**

**First Respondent**

**Other Respondents (if any)**

 **Party Joined (if any)**

**Author:**

**Field of Expertise**

**Filed on behalf of:**

(Appellant, Respondent or Third Party)

**Date**

***APPENDIX B –*** *Schedule of Plans, Drawings & Illustrations*

**1. Information required under Clause 8.0 of the “Planning Scheme Template for Tasmania” – Schedule to Planning Directive No. 1 – “The Format and Structure of Planning Schemes”, 17 February 2016:**

***Clause 8 – Assessment of an Application for Use or Development***

8.1.2 An application must include:

(a) details of the location of the proposed use or development;

(b) a copy of the current certificate of title for the site to which the permit sought is to relate, including the title plan and any schedule of easements;

(c) a full description of the proposed use or development; and

(d) a description of the manner in which the proposed use or development will operate.

8.1.3 In addition to the information that is required by clause 8.1.2 to be included in an application, a planning authority may, in order to enable it to consider an application, request such further or additional information as the planning authority considers necessary or desirable to satisfy it that the proposed use or development will comply with any relevant standards and purpose statements in the zone, codes or specific area plan, applicable to the use or development including:

(a) a site analysis and site plan at an acceptable scale showing:

(i) the existing and proposed use(s) on the site;

(ii) the boundaries and dimensions of the site;

(iii) topography including contours showing AHD levels and major site features;

(iv) natural drainage lines, watercourses and wetlands on or adjacent to the site;

(v) soil type;

(vi) vegetation types and distribution, and trees and vegetation to be removed;

(vii) the location and capacity of any existing services or easements on the site or connected to the site;

(viii) existing pedestrian and vehicle access to the site;

(ix) the location of existing and proposed buildings on the site;

(x) the location of existing adjoining properties, adjacent buildings and their uses;

(xi) any natural hazards that may affect use or development on the site;

(xii) proposed roads, driveways, car parking areas and footpaths within the site;

(xiii) any proposed open space, communal space, or facilities on the site;

(xiv) main utility service connection points and easements; and

(xv) proposed subdivision lot boundaries, where applicable.

(b) where it is proposed to erect buildings, a detailed layout plan of the proposed buildings with dimensions at a scale of 1:100 or 1:200 showing:

(i) the internal layout of each building on the site;

(ii) the private open space for each dwelling;

(iii) external storage spaces;

(iv) car parking space location and layout;

(v) major elevations of every building to be erected;

(vi) the relationship of the elevations to natural ground level, showing any proposed cut or fill;

(vii) shadow diagrams of the proposed buildings and adjacent structures demonstrating the extent of shading of adjacent private open spaces and external windows of buildings on adjacent sites; and

(viii) materials and colours to be used on roofs and external walls.

(c) where it is proposed to erect buildings, a plan of the proposed landscaping:

(i) planting concept;

(ii) paving materials and drainage treatments and lighting for vehicle areas and footpaths; and

(iii) plantings proposed for screening from adjacent sites or public places.

**2. Information Required in addition to Part A above:**

The following requirements are additional to and/or complementary to those contained in Part A above, or any other planning authority requirements.

**A. GENERAL REQUIREMENTS**

* scaled plans - to include bar scale/graphic scale to ensure accuracy of copies;
* preferred drawing sheet size is A1 unless project is small enough for A3;
* A3 sheets containing only one floor plan, elevation or section are discouraged as resulting in excessive bundles;
* A4 sheets should not be used except in unusual circumstances;
* where sheets are reduced, at least one copy should be provided at the original sheet size in addition to the 4 mandatory copies;
* reduced copies must be to a true scale e.g. 1:100 at A1 = 1:200 at A3;
* originals at A3 must not be reduced to A4 because of resulting legibility problems;
* where originals are in colour, all copies must be in colour;
* any amendments must be noted and dated and sets of drawings must be consistent in relation to each other;
* the preferred location for the title blocks, including details of amendments, is to the right hand edge so that individual sheets are easy to identify when bound, folded or in bundles.

**B. SITE PLANS** should include:

* all dimensions and site boundaries in metric;
* all critical distances from front, side and rear boundaries;
* relevant features of adjacent properties including windows, private open spaces, paved areas, landscaped areas, driveways, decks and terraces;
* relevant features of immediately adjoining streets including poles, footpaths, kerbs, crossings, pits and street vegetation;
* relevant auxiliary elements such as garbage storage, clothes drying and water and retention tanks;
* calculation of site area and site coverage and method of calculation.

**C. BUILDING DRAWINGS** should include:

* room/space names and/or uses;
* location of all doors and windows;
* levels at AHD of floors, decks, courtyards, terraces, ceilings and roofs on all elevations and sections;
* sections, as appropriate;
* materials and finishes;
* roof levels relative to natural ground levels immediately below and relative to any planning scheme height limits and/or envelope requirements;
* setbacks relative to planning scheme distances and/or envelope requirements;
* clear distinction between existing and new work with separate plans, elevations and sections of the existing if critical;
* overall dimensions and the dimensions of significant projections and re-entrant features and sufficient internal dimensions to confirm overall figures and area calculations;
* calculation of site coverage and/or plot ratio and method of calculation.

**D. MONTAGES** are optional but can be very useful; where required (see Character and Streetscape and Heritage entries below) they should:

* explain the method employed;
* include representation of the existing situation including any relevant vegetation;
* include any relevant proposed or altered vegetation on the representation of the proposal;
* use unrendered frame or block forms only where scale, mass and height are the issues;
* employ rendered materials, textures, colours and shadows where Character and/or Streetscape or Cultural Heritage Significance are in issue.

**E. PHOTOGRAPHS** if included should include:

* an indication of the lens type used and the height of the vantage point;
* the date and time taken;
* author’s name;
* confirmation of any stitching, modification or enhancement of originals.

**F. SUBDIVISION AND ESTATE PLANS** - should include:

* full contours to AHD at intervals relevant to slopes, access, parking, road and drainage grades;
* details of any proposed natural drainage pattern modifications;
* adjacent development patterns and structures;
* dimensions and lot areas in metric;
* location and dimensions of any proposed development envelopes;
* any planning scheme required inscribed circles, dimensional limitations and slope parameters;
* major service easements and planned or proposed infrastructure details;
* relevant zone and precinct boundaries;
* relevant geological constraints such as landslip prone areas;
* relevant any contaminated areas;
* relevant flood and projected climate change water level contours;
* relevant bushfire hazard management zones on the same base as the main plans;
* any relevant noise and/or odour buffers or contours;
* any threatened native vegetation and threatened native ecological communities;
* any threatened /or endangered fauna habitats;
* any relevant cultural heritage and/or archaeological details;
* proposed soft and hard landscaping (see below for details).

**G. SPECIFIC REQUIREMENTS RELEVANT TO GROUNDS AND ISSUES IN THE APPEAL**

 **Where Overshadowing is at issue** - drawings should include:

* true north;
* explanation of the method employed and confirmation of the altitude and azimuth of the sun for each shadow plan;
* comparison between existing and proposed shadowing at least at 9.00am, 12noon and 3.00pm at the solstices and equinoxes;
* shadowing from existing buildings, vegetation, fences and any other significant structures such as outbuildings;
* shadowing from proposed works and landscaping;
* where critical shadows fall on vertical surfaces - include sections, elevations and/or 3D diagrams.

 **Where Privacy is at issue** - drawings should include:

* all relevant/involved elements;
* comparative levels at AHD supplemented with relative sections;
* distances and off-sets between sensitive viewing points and impacted features;
* the effect of any proposed screens and/or vegetation.

**Where Character and/or Streetscape are at issue** - illustrations and drawings should include:

* photographs/detail photographs descriptive of the existing situation (see 5 PHOTOGRAPHS above for requirements);
* a figure-ground diagram of the proposal and the surrounding area (Google or other aerial photographs are an acceptable base);
* a ground-figure diagram version where spaces rather than building impacts are the main issue;
* street elevations and/or perspectives and/or montages illustrating the relationship of the proposal to the existing setting.

**Where Cultural Heritage Significance** **is at issue -** documents and drawings should include:

* authentication/attribution of all historical material;
* plans and drawings of the existing situation where major changes are proposed;
* clear distinction between existing and new work where changes are minor;
* illustrations and drawings as for Character and/or Streetscape (see above) where impacts on any adjacent place(s) of cultural heritage significance are at issue.

**Where Parking and Access is at issue** - diagrams and drawings should include:

* clear dimensions of access, pedestrian facilities, turning paths and parking spaces;
* contour or gradient plans where relevant;
* comparison with planning scheme requirements and/or Australian Standards e.g. AS/NZS 2890.1:2004 as relevant.

**Where Traffic** **is at issue** - diagrams and drawings should include:

* clear dimensions of footpaths, crossings, pavements, shoulders and lanes;
* relevant sight distances;
* relevant features such as street parking, traffic controls, bus stops, pedestrian crossings, street vegetation and power poles;
* comparison with planning scheme requirements and Australian or other relevant standards.

**Where Landscaping is at issue** - drawings should include:

* plans using the same base , orientation, scale, levels, contours, etc as for the main site and building drawings except for details;
* existing vegetation including species, height and spread of canopy;
* hard and soft landscaping details;
* alterations and new proposals, a schedule of plantings and the proposed maintenance regime.

***APPENDIX C –*** *Expert Witness Code of Conduct*

**EXPERT WITNESS CODE OF CONDUCT**

### Expert Witness Code of Conduct

**1. Application of code**

This code of conduct applies to any expert witness engaged or appointed:

a) To provide an expert’s statement of evidence for use as evidence in proceedings or proposed proceedings, or

b) To give opinion evidence in proceedings or proposed proceedings.

**2. General duty to the Tribunal**

a) An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert witness’s area of expertise.

b) An expert witness’s paramount duty is to the Tribunal and not to any party to the proceedings (including the person retaining the expert witness).

c) An expert witness is not an advocate for a party.

**3. Duty to comply with Tribunal’s directions**

An expert witness must abide by any direction of the Tribunal.

**4. Duty to work co-operatively with other expert witnesses**

An expert witness, when complying with any direction of the Tribunal to confer with another expert witness or to prepare a party’s expert’s statement of evidence with another expert witness in relation to any issue:

a) Must exercise independent, professional judgment in relation to that issue, and

b) Must endeavour to reach agreement with any other expert witness(es) on that issue, and

c) Must not act on any instruction or request to withhold or avoid agreement with any other expert witness(es).

**5. Experts’ reports**

a) An expert’s statement of evidence must (in the body of the statement or in an annexure to it) include the following:

i) the expert’s qualifications as an expert on the issue the subject of the report,

ii) the facts, and assumptions of fact, on which the opinions in the report are based (a letter of instructions may be annexed),

iii) the expert’s reasons for each opinion expressed,

iv) if applicable, confirmation that a particular issue falls outside the expert’s field of expertise,

v) a list of literature or other materials utilised in support of the opinions,

vi) any inspections, examinations, tests or other investigations, on which the expert has relied, including details of the qualifications of the person who carried them out,

vii) in the case of a statement of evidence that is lengthy or complex, a brief summary of the statement (to be located at the beginning of the statement).

b) Where an expert believes that a statement of evidence may be incomplete or inaccurate without some qualification, that qualification must be stated in the statement.

c) If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

d) If an expert witness changes an opinion on a material matter after providing an expert’s statement to the engaging party (or that party’s legal representative), the expert witness must forthwith provide the party (or legal representative) with a supplementary statement to that effect containing such of the information referred to in subclause 5(a) above as is appropriate.

**6. Experts’ conference**

a) Without limiting subclause 3 above, an expert witness must abide by any direction of the Tribunal:

i) to confer with any other expert witness(es), or

ii) to endeavour to reach agreement on any matters in issue, or

iii) to prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement, or

iv) to base any joint report on specified facts or assumptions of fact.

b) An expert witness must exercise independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.

**7. Joint reports arising from experts’ conferences**

a) This rule applies if expert witnesses prepare a joint report as referred to in subclause 6 above.

b) The joint report must specify matters agreed and matters not agreed and the reasons for any disagreement.

c) The joint report may be received at the hearing as evidence of any matters agreed.

d) In relation to any matters not agreed, the joint report may be used or tendered at the hearing only in accordance with the rules of evidence and the practices of the Tribunal.

e) Except by leave of the Tribunal, a party affected may not adduce evidence from any other expert witness on the issues dealt with in the joint report.