



Tribunals and Courts

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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Sometimes legal action is the most appropriate first step to prevent environmental harm. In other situations, it might be a necessary last resort.

Taking legal action can be an intimidating experience, but it doesn't need to be. This factsheet outlines how the legal system works, including information about:

- court procedures
- costs that may be incurred
- when and how to get legal assistance

Appealing to RMPAT

This This factsheet only provides general information about the conduct of appeals before the Resource Management & Planning Appeal Tribunal (**RMPAT**).

Visit: [RMPAT's Practice Directions page](#) for more detailed guidance on their procedures.

RMPAT operates in accordance with the [Resource Management and Planning Appeal Tribunal Act 1993](#).

RMPAT is more 'user friendly' and less formal than a court. Hearings are intended to be conducted with as little formality and technicality and as simply as a "proper consideration of the matters before the Tribunal permits". Unless particular evidence needs to be given in private to protect confidentiality, RMPAT hearings are open to the public.

Members of RMPAT are not bound by the rules of evidence and may inform themselves on any matter and in any way they consider appropriate. However, they must observe the rules of natural justice. This means that RMPAT must ensure that every party to an appeal is given a reasonable opportunity to present their case, to inspect any documents on

which the Tribunal proposes to rely and to make submissions in relation to those documents.

Filing an appeal

Appeals to RMPAT can be initiated under a range of laws. These Acts prescribe what decisions can be appealed in the Tribunal, who may appeal and what orders the Tribunal can make.

To commence an appeal, complete and lodge a Notice of Appeal along with the required fee.

Visit: [RMPAT's Forms page](#) to download the appropriate Notice of Appeal form.

Visit: [RMPAT's Fees page](#) to see the schedule of fees for lodging appeals

Strict time limits apply for filing appeals (for most appeals, it is 14 days from notice of the decision). You can request an extension in some circumstances, however it is better to lodge your appeal before the deadline wherever possible.

Standing

“Standing” refers to your right to be heard in legal proceedings. Who has standing in relation to an appeal depends on the nature of the appeal, the relevant legislation and the circumstances of the particular case. For planning decisions, any person who made a representation has a right of appeal.

If someone else has lodged an appeal and your interests are affected by a decision, you may apply to the Tribunal to be made a party to that appeal. For planning appeals, the Tribunal will not allow you to join the appeal unless:

- you made a representation, or
- you have a “proper interest” *and* a good reason for not making a representation.

Parties who join an appeal may be restricted to arguing only those points raised by the person who originally appealed. For these reasons, you are in a better position if you institute your own appeal than if you rely on trying to join someone else’s appeal.

If you are unsure whether you have standing to appeal or join an appeal, [contact EDO](#) for advice.

Grounds of appeal

Before lodging your appeal, consider whether you have good grounds for an appeal. If the Tribunal finds your appeal to be frivolous or vexatious, it must dismiss the appeal and may direct you to pay the costs of the appeal (including costs incurred by other parties).

Visit: [RMPAT's Practice Directions page to read Appendix 2A Examples \(of Grounds of appeal\)](#)

RMPAT also maintains a referral list of experts willing to provide 15 minutes of free advice to anyone considering an appeal. If you require further advice on grounds of appeal, [contact EDO](#).

Directions hearing

Once a Notice of Appeal has been lodged, RMPAT will publish a notice in the public notices section of the local newspaper confirming that an appeal has been lodged. The notice will give a date for a directions hearing.

The Directions Hearing is a preliminary meeting of the parties, generally held before the Registrar of the Tribunal. Any party to the appeal, or person wishing to join the appeal, must attend the directions hearing (in person or by telephone).

At the directions hearing, the Registrar will consider applications to join, invite parties to clarify their grounds of appeal, consider requests for documents, and set a preliminary timetable for the appeal (including dates for mediation, exchange of evidence and a full hearing, if necessary).

The Tribunal will make directions following the hearing, which all parties are required to comply with.

Who are the 'parties to an appeal'?

The parties to an appeal will generally include:

- the person who has instituted the appeal
- the person who made the decision that is being appealed against (eg the local council)
- the person whose initial action gave rise to the decision appealed against (eg. the developer)

If the appeal relates to a refusal or conditions resulting from TasWater's submissions, TasWater is also taken to be a party to the appeal. TasWater may also appeal against any decision related to a planning application which had been referred to TasWater for comment.

If the appeal relates to a direction by the EPA to Council regarding a Level 2 activity, the EPA is automatically a party to the appeal. If the Council refused the application but the EPA did not direct refusal, the EPA may apply to join the appeal. If the development did not involve a permit but required an Environment Protection Notice or environmental licence, the EPA is the decision maker and a party to the appeal.

Any other person whose interests are affected by the decision can also apply to join the appeal.

Mediation conference

The Tribunal generally requires parties to participate in [mediation](#) to attempt to resolve the appeal. More than half of all planning appeals are resolved by consent agreement following a mediation conference.

Even if the mediation conference does not fully resolve the appeal, it can help to narrow the issues in dispute.

Mediations are confidential and evidence of anything that happens at a conference is inadmissible at the full hearing. The mediation conference is often held on the site of the proposed development.

Visit: [RMPAT's Practice Directions page to read more about mediation conferences in Practice Direction 5: Alternative Dispute Resolution](#)

Statements of evidence

The parties are generally required to exchange their expert evidence at least 14 days prior to the hearing. This gives all parties an opportunity to understand that case being put by the other side and to prepare their arguments.

Experts can prepare a responding statement that provide additional evidence to address issues raised by other parties or to clarify their earlier evidence. All primary evidence and evidence in response must be provided to all parties.

RMPAT has produced a number of guidance documents about the way that evidence is presented and exchanged. This includes an [Expert Witness Code of Conduct](#) confirming that an expert's overall duty is to the Tribunal, not to their client. Therefore, their evidence must be accurate and not exclude any material that would be relevant to the Tribunal's assessment.

Hearing

If mediation is unsuccessful, the appeal will proceed to a full hearing.

Because RMPAT appeals are merits reviews, the Tribunal will re-examine the decision that is the subject of the appeal. That is, it will look at the development proposal and associated considerations as if the first decision had not been made. RMPAT has the power to make any decision that the planning authority could have made, including imposing conditions on the development proposal, rejecting or approving it.

During a Tribunal hearing, the Tribunal may refer a question of law to the Supreme Court for consideration (for example, about the correct interpretation of a provision of the legislation). The hearing is then suspended until the Supreme Court determines the issue.

The parties will generally appear before the Tribunal panel to present their evidence (usually through expert witnesses). The panel is normally comprised of the chairperson (who must be a lawyer) and two other members (specialists in a relevant field, such as engineering, town planning or heritage issues).

All witnesses must be present at the hearing (in person or by video link, if agreed) so that their evidence can be tested by questions from the other parties and the panel. Unless the witness is present, their evidence may be disregarded.

Visit: [RMPAT's page on Lodging an appeal](#) for tips on how to prepare for a hearing.

RMPAT Decision

The Tribunal must hear and determine an appeal within 90 days of it being lodged, unless the parties all agree to extend this period.

The Tribunal must notify each party to the appeal of its decision as soon as practicable after making its decision. The Tribunal provides written reasons for its decision (including its findings on questions of fact and the evidence or other material on which the findings are based).

Once the Tribunal has handed down its decision, it has no further jurisdiction and cannot enter into any correspondence with the parties in relation to the decision (other than to correct minor errors).

The decision comes into effect 10 days after it is made (unless the Tribunal has specified another date).

Awarding costs

Unlike the 'usual' legal position that the party that loses a case is required to pay all or part of the winner's costs, the presumption in the Tribunal is that each party will bear their own costs, regardless of the outcome. However, the Tribunal may award costs where it is "fair and reasonable" to do so, having regard to the outcome, how complex the case was, the relative merits of the issues raised, the behaviour of the parties and the financial position of the parties.

The best way to avoid a costs order is to seek advice about your prospects before commencing an appeal, following all Tribunal directions and ensuring that you are well prepared. If any other party seeks a costs order against you, you should seek legal advice about how to respond. The Tribunal will generally hold a separate costs assessment hearing to determine any costs application.

Visit: RMPAT's page on [Practice Directions](#) page to read:

- [Practice Direction 15: Costs](#)

- [Practice Direction 16: Cost Assessment Hearings](#)

Appeals against RMPAT decisions

Any party may appeal against any decision of the Tribunal to the [Supreme Court](#) on a question of law only (not the merits of the case).

Appeals must be lodged within 28 days of the Tribunal decision and must comply with the [Rules of the Supreme Court](#).

The Tribunal's decision takes effect even if an appeal has been lodged in the Supreme Court. To prevent the developer from acting on the Tribunal decision, the notice of appeal should include an application for a 'stay order' until the Supreme Court appeal is resolved.