



Appealing planning permit decisions in lutruwita/Tasmania

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What is this factsheet about?

This factsheet provides information about how a person can appeal against planning permit decisions made by planning authorities (councils) in lutruwita/Tasmania or join a planning appeal already on foot. It will be useful for anyone who wants to understand planning appeals before the Resource and Planning Stream in the Tasmanian Civil and Administrative Tribunal.

Outline

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Who can file a planning appeal?

Appeals against planning permits issued by planning authorities can be filed in the Resource and Planning Stream in the Tasmanian Civil and Administrative Tribunal (**TASCAT**) by either:

- the applicant for the development; or
- any person who has made a written submission (called a “representation”) regarding the development application during the public exhibition period.

How do you file a planning appeal?

Appeals must be in writing and in the form prescribed by TASCAT. The notice of appeal must set out the decision you are appealing against and the reasons you are appealing by reference to relevant provisions of legislation or subordinate legislation, such as the relevant provisions of the planning scheme.

N.B. An appeal must be lodged with TASCAT within 14 days of when the notice advising you of the planning authority's decision was given or sent to you.

TASCAT may grant an extension of time to appeal a planning permit decision. Before doing so, TASCAT will consider:

- the reason why the appeal was not lodged within 14-days; and
- the time which has elapsed since the end of the 14-day appeal period and whether it would be reasonable to expect that the application to extend the appeal could have been lodged before the date on which it was lodged; and
- the extent and cost of any work which has been undertaken under the permit; and
- any other matter that it considers appropriate.

The notice of appeal must be accompanied by the appeal fee. The current fee for an application to appeal a planning permit is \$353.60. Applications to reduce, waive or refund the application fee must be made at least 5 days before the closing date for the appeal, using the appropriate form.

TASCAT publishes several information sheets, practice directions and forms. It is recommended you visit the Tribunal to ensure you are aware of its most current procedures and fees.

Visit: The [Resource and Planning Stream \(TASCAT\)](#) website provides information sheets, practice directions, and prescribed forms

Who can join an appeal that is already on foot?

The parties in an appeal before TASCAT will generally be the appellant, the council that made the decision, and any other relevant statutory authorities (e.g. the Environment Protection Authority where it has imposed conditions on a planning permit).

TASCAT may also allow any person to join an appeal providing that the person's "interests are affected" by the decision which is the subject of the appeal. Where an appeal relates to a discretionary permit, the person seeking to join the appeal must have made a representation in respect of the application for the permit, or otherwise must persuade TASCAT that they have a "proper interest in the subject matter of the appeal" and it is not

reasonable to have expected them to have made a representation in respect of the application.

N.B. A “discretionary permit” is a permit the planning authority has discretion to approve or refuse under the planning scheme.

TASCAT has interpreted the phrases “a person whose interests are affected” and “proper interest” narrowly. In determining whether a person has the required level of interest to join the appeal, TASCAT will consider the nature and subject of the appeal and how the interests of the party seeking to join are affected by the decision being appealed.

When and how do you join an appeal?

To alert the community that an appeal has been filed, TASCAT will put a notice in a local newspaper circulating in the area of the proposal the subject of an appeal (for example, the Mercury or the Examiner newspapers). The notice will advise of the date and time of the preliminary conference and invite those people who wish to join the appeal to do so. TASCAT also publishes a list of upcoming hearings on its website.

Applications to join an appeal must be made in writing using TASCAT’s prescribed form and be accompanied by the prescribed fee (currently \$176.80).

While there is no statutory deadline to join an appeal, applications should ideally be made before the preliminary conference or otherwise as soon as possible. Any delay in an application to join will be relevant to TASCAT’s decision on whether to join a person as a party to the appeal.

Visit: The [Resource and Planning Stream \(TASCAT\)](#) website lists upcoming hearings

What happens next?

After receiving an appeal, TASCAT will hold a preliminary conference with all the parties. At the preliminary conference, the parties will discuss their grounds for appeal and what directions should be given by TASCAT about the timing of the exchange of evidence and the hearing.

N.B. TASCAT must hear and determine all planning appeals within 90 days or seek an extension of this time by agreement either from the parties or from the Minister.

At the preliminary conference, the parties will discuss whether mediation is appropriate. It should be noted that nearly all matters are referred to mediation before going to a full hearing. If the parties reach an agreement at mediation, the council may prepare a new permit and submit it for approval by TASCAT. If the matter cannot be resolved through mediation, there will be a full hearing.

At the hearing, the parties will be able to present their evidence, cross-examine any witnesses and make submissions to members of TASCAT.

After the hearing, TASCAT may decide to grant the permit (with or without conditions) or to refuse the application.

Issues to consider before appealing or joining an appeal

Any person seeking to appeal or join an appeal should be aware:

- They will need to read and comply with all TASCAT's Practice Directions and other directions issued (e.g., at the preliminary conference).
- To have the best chance of success, they may need to engage experts (such as planners, ecologists, or engineers) to give evidence, and/or a lawyer to represent them. This can be costly.
- While TASCAT's general rule is that each party bears their own costs of an appeal, this rule can be displaced in certain circumstances (e.g., where a party has not complied with directions, is being vexatious or has unreasonably prolonged the appeal).

Read: Information Sheet 10 on the [Resource and Planning Stream \(TASCAT\) website](#) deals with the issue of costs in TASCAT

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