SAT CONFERENCE: TOWN PLANNING PAST, PRESENT AND FUTURE

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Some Observations of a Practitioner Through Four Appeal Tribunal Generations

Four Generations of Appeal Tribunals

Using the term "tribunal" loosely to include also the Town Planning Court, there have been four generations of planning appeal tribunals in WA:

1 The Town Planning Court, 1970 - 1979;

2 The Town Planning Appeal Tribunal, 1979 - 2002;

3 WATPAT with expanded jurisdiction after the abolition of Ministerial appeals, 2002 - 2004;

4 State Administrative Tribunal, 2004 - present.

I think I may be the only lawyer practising in WA who has experience of practising as counsel in all four of those appeal tribunal generations, and that perhaps in some small way gives me a special insight on some issues of interest that is worth recording, and an excuse to reminisce.

Standard of Adjudication

My experience in the appeal tribunals spans 35 years from 1974 to 2009. For much of that time, I primarily represented developers and I can say that from the earliest days of the independent Tribunal, the development industry and the planning profession had a high level of respect for and confidence in it. That was not because they always succeeded, but because of the high standard of adjudication.

And that in turn was because of the high calibre of the adjudicators who were appointed from time to time as Chairpersons or Presidents, many of whom were subsequently appointed as judges, including one appointed as Chief Justice of the WA Supreme Court and one appointed ultimately as Chief Justice of the High Court. I don't include the Town Planning Court in that observation because the procedure and costs in that Court made it unpopular with parties, though the judges who presided were generally of a very high calibre. And of course now in the SAT the three presidential members must have judicial status.

David Malcolm QC

Notwithstanding the generally high standard of adjudicators, I think special mention has to be made of David Malcolm QC as Tribunal Chairman. His appointment as inaugural Chairman of the TPAT was auspicious, and that was in many ways what established the high reputation of planning Tribunal adjudication in WA. I will be mentioning David Malcolm QC anecdotally later in this presentation, but I will mention briefly at this point what I believe to be some of his significant characteristics that helped make the Tribunal what it was:

1 He quickly acquired and demonstrated an extraordinary grasp of planning law and planning principles, apparent in his many fine Reasons for Decision.

2 At the time of his appointment and during his period as Chairman, he was prominent and highly respected as a lawyer, and became an acknowledged leader of the Independent Bar and the legal profession in WA generally. He was amongst other things active as Law Reform Commission Chairman, in the Bar Council, and in the Law Society. And of course his service as Chairman was terminated on his appointment as Chief Justice of the WA Supreme Court.

3 He had the vision and confidence to adopt practices and procedures in the Tribunal that ensured its effectiveness including:

(a) Standard directions hearings soon after commencement of the appeal to program the appeal through to a hearing;

(b) Simplified pleadings generally consisting only of the Notice of Appeal and Statement by Respondent;

(c) Exchange of witness statements prior to hearing;

(d) An apparent practice of Tribunal Members reading the papers in advance of the hearing, so that opening addresses were made almost redundant;

(e) Virtual abolition of examinations in chief by insistence on adherence to the statements of evidence as examination in chief;

(f) After the first two or three years, he inspired the virtual removal of costs orders.

4 But perhaps more than anything, it was his overwhelming politeness to counsel and witnesses, and his unfailing judicial manner, that set a standard for the high reputation for tribunal adjudication in planning appeals that has continued in unbroken succession to today.

Pre-1970 Rights of Appeal

In order to explain the significance of David Malcolm's role in defining and refining planning appeal rights in WA, it is necessary to go back one step in the history of appeals.

Before the coming into operation in early 1971 of the Town Planning and Development Amendment Act 1970 (**TP & D Amendment Act 1970**), there was a right of appeal in the Town Planning and Development Act 1928 (**TP & D Act**) only on a subdivision refusal or unacceptable conditions (s.26). There was from 1965 a relatively insignificant right of appeal under s.28A in respect of shared subdivision roads.

There was also from 1963 a right of appeal under cl.33 of the Metropolitan Region Scheme (**MRS**). However the rights of appeal under the TP & D Act were to the Minister only.

For decisions under a planning scheme, there was generally no statutory right of appeal to the Minister or otherwise.

The Model Scheme Text published in Appendix A of the Town Planning Regulations 1967 did not contain a clause conferring a right of appeal. A note in Part V of the Model Scheme Text stated:

> "Where the exercise of a discretion by the Council is provided for, in such clauses a right of appeal to the Hon. Minister for Town Planning should also be included."

It was therefore left to the person responsible for the drafting of local planning schemes to ensure that an appropriate clause was inserted conferring a right of appeal. Most of the early clauses got it wrong as I will mention later.

1970 Amendments to the TP & D Act

The TP & D Amendment Act 1970 did not confer any further right of appeal. The section that was for some time considered to confer a right of appeal was s.37, and there were appeal provisions in most local planning schemes which generally provided to the effect that the procedure on an appeal under the scheme would be that in Part V of the TP & D Act. The TPAT under Mr Malcolm QC in ***Northlake Investments Pty Ltd v. Town of Geraldton*** [1981] held that s.37 did not confer a right of appeal. In ***Marchesi v. City of Bayswater*** [1982] WATPAT 30/82, the TPAT under Mr Malcolm QC held that the appeal clause in the City of Bayswater's scheme, which was in common form, dealt only with the procedure of appeals under the scheme, and did not confer a right of appeal. As a matter of law then, there was no right of appeal either under the Act, or under most local governments' planning schemes, until 1983, when the Act was amended.

Cl.33 of the MRS was sometimes relied upon for conferring a right of appeal that would keep alive as an appeal under the MRS what the Tribunal was prepared to regard as an appeal against a local government decision under each the local government planning scheme and the MRS. There was a difficulty in that while cl.26 of the MRS provided that approval of a development on zoned land under a local planning scheme was deemed to be approval by the relevant local government exercising delegated authority under the MRS, nothing was said in cl.26 of a refusal, and therefore the subsistence of the appeal under the MRS depended upon a deemed refusal 60 days after lodgement of the application with the planning authority. That was what was relied on by the TPAT for instance to support the appeal in ***Kazim v. Shire of Kalamunda*** [1981] WATPAT 15/81 after the Tribunal had determined that there was no right of appeal under the Shire's scheme.

But reliance on the possibility of an appeal right under the MRS was far too precarious a basis for appeals against local government planning refusals. The situation called for decisive action, and David Malcolm was equal to that task. He concluded the Tribunal's reasons in the ***Marchesi*** appeal with the following unequivocal message:

> "… In our opinion, the omission which the objection to competency in this case has revealed is one which requires to be rectified by a prompt amendment to the scheme. In the light of the problems revealed by cases such as Northlake Investments Pty Ltd v. Town of Geraldton, Kazim v. Shire of Kalamunda, and Poland v. Town of East Fremantle, as well as the instant case, it is highly desirable that a comprehensive review be made of the provisions for appeal in existing town planning schemes and appropriate action taken to remedy any deficiencies. In the present case the appellants are the unfortunate victims of an error of drafting, made more than a decade ago, which was probably based upon a misapprehension of the provisions of Part V of the Town Planning and Development Act …"

That strong statement was not lost on the State Government, and within a few months s.8A was introduced into the TP & D Act conferring a statutory right of appeal in respect of decisions made in the exercise of a discretionary power under a planning scheme. There is an equivalent provision now in s.252(1) of the P & D Act.

A similar strong message by Mr Malcolm on costs of appeals resulted in costs orders being virtually removed through the amendment of s.54 in 1982.

I was deflected from talking about the four generations of planning tribunals by what I perceived to be the necessity to comment on the role of David Malcolm QC. I will return now to the broad theme of the Tribunal, but will mention Mr Malcolm again in my anecdote on planning policy.

Town Planning Court

The Town Planning and Development Amendment Act 1970 introduced a new Part V into the TP & D Act, that established the Town Planning Court. That was WA's first independent planning appeal body. There are two things about the Town Planning Court worth mentioning in this forum:

1 The Ministerial call-in or veto; and

2 The form and procedure of the Court.

1 The Ministerial Call-in

Under s.42 of the TP & D Act following the 1970 amendment, the Minister was required to be given notice of the commencement of an appeal to the Court. Under s.42(3), within 14 days after receiving a notice of an appeal to the Court, the Minister could object to the Court hearing the appeal on the grounds that upholding the appeal would be contrary to town planning principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest. That call-in was expressed broadly enough to be able to catch virtually every appeal.

If within 30 days of the Minister's objection the Governor made an appropriate declaration, the appeal would be called in for determination by the Minister. That may not seem particularly critical, especially in view of the fact that there is presently a call-in power in s.246 of the P & D Act, but it is significant to note that the present call-in power can only be exercised in respect of an application which the Minister considers raises issues of such State or regional important that it would be appropriate for the application to be determined by the Minister. But the call-in was in fact critical in the 1970 Amendment, because the Minister was persuaded by his Commissioner for Planning to veto those appeals lodged in the first few years of the Court's operation. The Commissioner for Planning, who was also Chairman of the TPB, was deeply concerned about the damage that could be done to the planning system, especially in regard to subdivisions, by an independent appeal court. Therefore when an appeal was made to the Town Planning Court, he prevailed upon the Minister to call it in.

Consequently, up until 1974, no appeal to the Town Planning Court had survived the Ministerial call-in.

On or about 23 March 1974, I lodged an appeal to the Town Planning Court. As it happened the Notice of Appeal was lodged approximately 7 days before the State election which was held on 30 March 1974. In the week before the election, Ron Davies, the Planning Minister in the Labor Government, was too busy with electoral matters to worry about calling in the appeal I had lodged. Then the Coalition won the election, and the new Premier Mr Court took about a week to form his first Cabinet. There was no Planning Minister to call-in the appeal for the remainder of the 14 days, and therefore by accident it survived. I understand it was the first that did so.

2 The Form and Procedure of the Town Planning Court

When the Cooper appeal survived the call-in at the time of the 1974 election, the problems of the form and procedure of the Court had to be grappled with. The Chief Justice at that time, Sir Lawrence Jackson, had to appoint the Presiding Judge, and the parties had to appoint their independent members.

The Chief Justice's Associate phoned me to discuss the next step in the appeal and asked me if I knew of any procedural rules. Provision had been made for the making of regulations, but either they did not exist or did not help. I can't recall. The best I could say to the CJ's Associate was that the form of the Town Planning Court was similar to the Compensation Court under the *Public Works Act 1902*, and I assumed that the same procedures might be adopted.

It didn't matter in that first case however, because the appellant wanted to be able to talk to a certain Minister about the appeal and the Minister wouldn't talk to him on the basis that the matter was *sub-judice*. So the appellant withdrew the appeal, but still didn't have much joy in his discussions with the Minister in question (who was not the Minister for Planning).

The Minister for Planning at that time was Cyril Rushton. He appointed an Urban Coordinator, one Klaus Meyer, who was a fairly enlightened man on principles of natural justice. Cyril Rushton explained at a planning conference in 1976, that when subsequent appeals to the Town Planning Court came in, after conferring with the Urban Coordinator, the Minister decided that he shouldn't exercise the call-in power unless there were very special circumstances that justified Ministerial intervention. I believe there was only one case where the Ministerial call-in was exercised after 1974. The first case that actually went to a hearing in the Court, ***Humphreys v. TPB*** [1975] TPC 1, was commenced in mid-1974 and heard in June 1975.

1976 Amendments to the TP & D Act

The Town Planning Court laboured under the burden of difficult procedures infected by Supreme Court complexities, slowness, and high costs. It was not well used. The Hon. Cyril Rushton made the following comment on the Court in his Second Reading Speech, introducing the TP & D Amendment Bill in 1976:

> "It would therefore seem that the alternative of the court is not a popular one with appellants, possibly because it has necessarily something of the formal atmosphere of a court of law and high cost.

> It might therefore be argued that the simple answer would be to abolish the court and leave appeals to be decided solely by the Minister. On the other hand, it is clearly undesirable that an appellant should have no choice other than to appeal to the Minister.
>
> For this reason the Government has sought to find an alternative which, while giving appellants other avenue of approach, would provide a less formal atmosphere in which, nevertheless, proceedings can be conducted in a manner allowing all parties to present their cases fully so that a fair and just decision can be reached."
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> (1976 Hansard, p.3142).

The Bill was assented to on 17 November 1976. Its provisions included the following significant changes relevant to planning appeals:

1 The new s.5AA provided for Statements of Approved Planning Policy to be made by the TPB and the MRPA; and

2 Provision was made for the replacement of the Town Planning Court by a new Town Planning Appeal Tribunal, and appropriate amendments were made to Part V.

Shortly after the 1976 Amending Act was assented to, the three inaugural members of the Tribunal were announced, namely:

- David Malcolm, the legal practitioner named as Chairman;
- Peter Arney, Architect, as the member with planning knowledge and experience; and
- Len Dickson, the member with knowledge and experience in public administration, commerce and industry.

The problem for these newly announced Tribunal members was that as the Part V provisions hadn't been proclaimed, the new members couldn't convene the Tribunal and had no jurisdiction to deal with appeals. That situation went on until early 1979. Mr Malcolm subsequently explained that he and his colleagues by 1979 were embarrassed about the delay in proclaiming the amending provisions, considering that their appointment to the Tribunal had been public knowledge for 2½ years. Mr Malcolm went to see the then Planning Minister, June Craig, about the delay. She explained that Dr Carr, as the Chairman of the TPB, was desperately anxious that there should be no appeals to the new Tribunal until the TPB's various policies had been formulated as s.5AA Statements of Approved Planning Policy. The problem there was that the procedure for making s.5AA Statements of Approved Planning Policy was quite complex, and the TPB hadn't been able to get its policies through the s.5AA process. Dr Carr had relied on the fact that s.53 of the TP & D Act required the Tribunal when determining an appeal to have due regard to any Statement of Approved Planning Policy, and he was concerned about the damage that could be done to the TPB's statutory functions by a planning Tribunal unconstrained by the TPB's policies.

The concerns that Dr Carr had expressed were in fact foreshadowed by the following further comment made by the Hon. Cyril Rushton in his Second Reading Speech on the Bill, again recorded at p.3142 of the 1976 Hansard:

> "I now wish to refer to one other provision of the Bill which introduces a new and most important principle. One of the main obstacles to finding appeal machinery which both preserves the rights of the individual and yet does not erode the broad basis on which planning policies have been established, has been the possibility that a tribunal or court may take too narrow a view in arriving at its determination and fail to consider adequately the long-term or broader effects which a "local" decision might have.
>
> As a step towards some safeguard against this happening, the Bill therefore provides that the Town Planning Board shall prepare, with the approval of the Minister, and publish statements of planning policy, primarily on broad planning issues.

> Such statements will require also to be approved by the Governor before they have effect and on approval being gazetted they will be forwarded to all affected local authorities.
>
> The object of this provision is to protect Government planning policy. It will be required of the tribunal to have regard to such statements when considering appeals. Similarly, it will be a requirement that local authorities have regard to the statements when preparing or amending town planning schemes."

Mr Malcolm's response to the Minister was to the effect that Dr Carr's concerns were misplaced, as Mr Malcolm and his Tribunal colleagues recognised the significance of the TPB's policies, and recognised that planning decision-making in WA was informed by the flexible instrument of policy, and so long as a TPB policy was made by an appropriate process and represented sound planning principle, then the Tribunal would have due regard to it, regardless of s.5AA and the fact that the policy did not have the status of a Statement of Approved Planning Policy.

That apparently settled the Minister's concerns; the Part V provisions were proclaimed shortly afterwards in June 1979, and the Tribunal began hearing appeals in August 1979.

The Role of Policy

The Chairman of the new Tribunal was true to his word on the matter of due regard for TPB policies. From the time of the earliest substantive hearings, the Tribunal gave considerable weight to TPB policies, even though there was no s.5AA policy until the R Codes were first gazetted in 1986.

The first appeal hearing in the TPAT was in ***Fairway Heights Pty Ltd v. City of South Perth*** [1979] WATPAT 1. That was heard in August 1979, but it was a hearing on a preliminary jurisdiction issue only, so there were no procedural implications for that appeal.

The first substantive hearing and determination of an appeal by the TPAT was in ***Dawe v. TPB*** [1979] WATPAT 3. That happened to be an appeal I argued for the appellant. The case involved a simple two lot subdivision in a rural locality in the district of the then Shire of Swan. The facts were similar to those in the ***Humphreys*** case, though the majority of the Court in allowing the appeal in ***Humphreys*** had ignored the desperate urgings on policy in Dr Carr's evidence. The TPB's main reason for refusal of the subdivision in the ***Dawe*** case as it had been in ***Humphreys***, was that the proposed subdivision was contrary to the TPB Rural Lot Size Policy. A special problem for Mr Dawe was that the TPB at the time of the appeal hadn't published the Rural Lot Size Policy, and therefore the appellant's counsel was expected to run the appeal without access to the policy. The Tribunal on being made aware of the situation, ordered the TPB to provide a copy of the policy to me, which it did on the condition that the policy was kept confidential. I, as the appellant's counsel did not receive a copy of the policy until about half way through the appeal. The appeal was ultimately dismissed, principally on the basis that the subdivision was contrary to the policy.

Mr Malcolm in that and numerous other cases in the early days of the Tribunal demonstrated that the Tribunal would be prepared to have due regard to planning policies, whether or not they were s.5AA policies, and in the early days of the Tribunal, they were not. That regard for policies, and particularly policies of State agencies set a pattern which became one of the features of Tribunal adjudications.

The Tribunal at all times has been prepared to apply planning policies which are properly prepared and represent sound planning principles. A re-appraisal of the treatment of planning policy by planning decision-makers came in the Full Court decision in ***Falc v. SPC*** (1991) 5 WAR 522. But the attitude to policy set in 1979 has continued more or less intact to the present.

Flexible Procedure in the Tribunal

From the outset, the TPAT rules provided for a hearing within 21 days of the initiation of the appeal.

The hearing was from the beginning treated as a directions hearing at which directions would be made programming the matter through to a hearing.

At the directions hearing in the Dawe appeal, I raised with the Chairman the possibility that the Tribunal might adopt a procedure similar to that which was then operating in the Victorian Planning Appeal Tribunal, where the parties were required to exchange appeal papers at least 48 hours prior to the appeal hearing. Mr Malcolm was aware of the Victorian practice, and was sympathetic to the idea of exchanging papers prior to the hearing, but he varied, and I think improved on the Victorian practice by directing that the parties file and exchange their witness statements not less than 7 days before the hearing, and that the witness statements would be taken as evidence in chief.

That practice alone dramatically reduced hearing times, and ensured an open and positive inquiry free of forensic ambush, that set a pattern for uncomplicated and expeditious appeal hearings which has been maintained to, and extended by the SAT.

Mr Malcolm QC, and other Tribunal Chairpersons following him, frequently assured counsel attempting to open at length, or to engage in unnecessary examination in chief, that they could rely on the fact that the Tribunal members had read the papers, and so far as Mr Malcolm QC was concerned, his extraordinary grasp of the facts and issues of an appeal from the outset left counsel in no doubt that he meant what he said about having read the papers. And only the most senior of counsel would be allowed to get away with lengthy cross-examinations before the Chairman would remind them that the Tribunal was not a jurisdiction where credibility was a significant issue. Cross-examinations had to be speedily productive, or they would be just as speedily discouraged from continuing.

Mediation

The possibility of the Tribunal facilitating mediation, or hearings on the papers, was raised on a number of occasions with various Tribunal Chairmen prior to Les Stein.

On each occasion that I raised the possibility, the response was given that the Tribunal was required by s.44 to "hear and determine all appeals referred to it …", and the Tribunal was not given the power to provide a mediation process, or to determine an appeal on the papers. I am not sure the Tribunal in those days grasped the possibility of mediation by consent of both parties. In any event one can understand the obstacles in the minds of Tribunal Chairpersons in those days, given that the Tribunal members were all part-time appointees, and the Chairpersons were all very busy practitioners who could barely afford the time for Tribunal hearings and writing judgments, much less engagement in mediation. The Tribunal Registrars did not have legal training or mediation training, and it is easy to see the obstacles that would have been perceived in the setting up of a mediation process.

That was the way of things until Les Stein was appointed as Tribunal Chairman. He didn't seem to notice the obstacles. He simply arranged for Deputy Chairpersons to serve as mediators, and the system which he established on what appeared to be a reasonably ad hoc basis, worked extremely well. The mediation process has gone from strength to strength, first of all in the period from 2002 to 2004 under the Presidency of Mr McGowan, when the Tribunal took on all planning appeals after the abolition of the Ministerial appeal system, up to the point where now mediation has become a critical feature of the SAT procedures.

Limitation of Legal Representation

On the commencement of the TPAT with its expanded jurisdiction in 2002, a limitation was placed upon the right of a respondent to have legal representation. In 2002, the possible exclusion of lawyers in representing parties in certain categories of minor appeals was established along essentially the same lines as the present exclusion relating to Class 1 appeals. However what many people practising in the jurisdiction now might not realise is that there was a period in the late 1990s under the Coalition Government, when the Minister seriously considered and openly favoured the possibility of excluding lawyers altogether from representation of parties in planning appeals. The same Minister in a different portfolio had secured the effective exclusion of lawyers from industrial dispute resolution.

The Planning Minister in the ensuing Labor Government was Alannah MacTiernan, and she took reform in a different direction. She and her party transformed the planning appeal system significantly, in two related beneficial ways:

1 It was under Minister MacTiernan's administration that Ministerial appeals were abolished; and

2 It was also under her administration that the SAT was established.

What is not so commonly acknowledged is that Minister MacTiernan dismissed the possibility of totally excluding lawyers from representation in planning appeals, though she succumbed to pressure from various quarters at least to allow appellants the option of excluding lawyers in certain categories of minor appeals.

Ministerial Appeals - Two Bob Each Way

For approximately 30 years in WA, up until 2002, applicants for planning approval who were aggrieved by the decision on their applications, had the option of appealing to the Town Planning Court, and after June 1979, to the Tribunal, or alternatively to the Minister. Ministerial appeals were popular both with developers and with decision-making authorities, because they offered a simple and generally inexpensive procedure which, in most cases, suited both parties. They were not always speedy, and I was involved in some Ministerial appeals that took over a year to be determined. They did not always involve application of the principles of natural justice, and commonly, in my experience, involved a political element, or appeared to involve a political element, in the decision-making process. I saw Ministerial appeal decisions where the Minister in the final letter to the appellant, acknowledged a submission made to him or her by a Parliamentary colleague on behalf of the appellant, and where the Parliamentary colleague's submission had not been copied to the parties.

Although I was involved as legal representative of a party in numerous Ministerial appeals, I do not propose to delve into that jurisdiction other than to mention the feature that David Malcolm QC described as "having two bob each way".

Although the legislation at all relevant times provided that an appeal to one appeal body extinguished the right of appeal to the other, that only applied to the one application. If on one application an appeal was made to the Minister, it wasn't possible on that application to appeal to the Court or the Tribunal, and vice versa. However there was nothing to stop an applicant from making two applications in succession, appealing one to the Minister, and appealing the other to the Tribunal. That occurred as early as 1979 in the appeal ***Yaksich v. TPB*** [1979] WATPAT 15. In that case the appellant appealed first to the Minister unsuccessfully, and then appealed to the Tribunal successfully. Notwithstanding that Mr Malcolm QC as Tribunal Chairman in that appeal described Mr Yaksich as "having two bob each way", the appeal was still allowed, recognising circumstances personal to the appellant, and establishing in the process the parameters for considering personal issues within which special circumstances would be considered, which I believe are still applied today. In the reverse direction, the Tribunal in ***Featherstone Holdings Pty Ltd v. City of Fremantle*** [1996] WATPAT 32 dismissed an appeal against the City of Fremantle's refusal of planning approval for demolition of some old buildings with slight heritage credentials, and the Minister subsequently allowed an appeal on a subsequent development application, but for the same development. I happened to be counsel for the appellant in both the ***Yaksich*** and the ***Featherstone*** appeals before the Tribunal, but did not represent either of them in the Ministerial appeals, so I cannot fairly be accused of participating in the "two bob each way" bet.

An appellant only needed one planning approval to make a proposed development lawful, and the fact that there had been a refusal by either the Tribunal or the Minister on a previous development application was virtually irrelevant. That was an odd feature of the two alternatives appeal system which now, unfortunately for developers, is no longer available. Although there is no *res judicata* for successive planning appeals, in practice the Tribunal is likely to give significant weight to a previous decision on the same application.

The WA TPAT with Expanded Jurisdiction 2002 to 2004

I ought to say something of the Tribunal in the critical two years from 2002 to 2004 when its share of planning appeals was significantly increased.

The President of the Tribunal in that time, Peter McGowan, needed to prove that the Tribunal could handle all planning appeals, and he did so very well. Appeals in that period were heard expeditiously, and decisions were handed down promptly.

I will mention one special thing about Mr McGowan as President. He gained a reputation as an absolute stickler for punctuality. That in itself was ok, but he frequently relied on the clock in hearing room 9.07, and that generally ran three or four minutes in front of Western Standard Time. Counsel appearing in the Tribunal received little sympathy if they relied on Western Standard Time instead of the Tribunal's clock. But the matter was generally dealt with in good humour, and everyone soon got the message that punctuality was fundamental to the way things were done in that Tribunal.

The SAT Era 2004 to the Present

It seems inappropriate at this point in time to say more about the SAT than the fact that from the outset, the Development and Resources division has dealt very successfully with planning appeals. Mediation is the jewel in the crown of the jurisdiction, and the jurisdiction generally is conducted courteously, competently, and with the minimum necessary formality. There is an obvious commitment to resolving appeals and not letting them "go to sleep", and to handing down decisions expeditiously.

It may be some indication of the success of the Tribunal in performing its task that I don't believe I have heard any criticism other than the fact that in the early days there were sometimes delays in directions hearings, but the Tribunal appears to be constantly endeavouring to deal with that problem.

In the discussions that I have had with legal practitioners and planners and others in other jurisdictions, and on the basis of my experience in the relevant appeal Court in one other State, I have some confidence in saying that I believe the planning appeal jurisdiction by the SAT in WA is second to none in Australia. And an even more favourable appraisal than that may well be justified.