



SAT

State  
Administrative  
Tribunal

Western Australia

# **Town planning law – past, present and future**

## **The advantages and disadvantages of the ministerial planning appeal system**

**Jim Jordan**

16 November 2009



## MINISTERS FOR PLANNING

Hon Gilbert Fraser	February 1953	December 1957
Hon Frank Wise	November 1958	April 1959
<b>1971 Town Planning Court commenced in addition to Ministerial appeals</b>		
Hon Les Logan	April 1959	March 1971
Hon Herb Graham	March 1971	July 1972
Hon Ron Davies	July 1972	April 1974
<b>1977 Independent Town Planning Appeal Committee established</b>		
Hon Cyril Rushton	April 1974	August 1978
<b>1979 TP Court ceased and Town Planning Appeal Tribunal commenced</b>		
Hon June Craig	August 1978	February 1983
Hon David Parker	February 1983	December 1983
Hon Peter Dowding	December 1983	December 1984
Hon Bob Pearce	December 1984	February 1989
Hon Pam Beggs	February 1989	February 1990
Hon Kaye Hallahan	February 1990	February 1991
Hon David Smith	February 1991	February 1993
Hon Richard Lewis	February 1993	January 1997
Hon Graham Kierath	January 1997	February 2001
Hon Alannah MacTiernan	February 2001	September 2008
<b>2003 Ministerial Appeals ceased</b>		
Hon John Day	September 2008	Present



## TOWN PLANNING APPEALS LODGED

Appeal Body		Total appeals	Average p a
<b>Minister</b> TP Appeal Committee Added by No 117 of 1970 Commenced 1971	1971 to 1977	<b>3022</b>	<b>431.7</b>
<b>Town Planning Court</b> Added by No 117 of 1970 Commenced 1971	1971 to 1979	<b>38</b>	<b>4.2</b>
<b>Minister</b> Full-time TP Appeal Committee	1978 to 2003	<b>14,154</b>	<b>544.4</b>
<b>Town Planning Appeal Tribunal</b> Amended No 103 of 1976 Commenced 1979	1979 to 2003	<b>1,445</b>	<b>55.6</b>

### TP & D Act

39. (1) Appeal may be made to the Minister or to the Appeal Tribunal but the commencement of an appeal to one extinguishes any right of appeal to the other.



## Appeals - TP & D Act 1928

Added by No 117 of 1970

- 40.** (1) There shall be a committee called the Town Planning Appeal Committee.
- (2) The Committee shall consist of such persons as the Governor may, from time to time, appoint.
- (3) The Minister, if he thinks fit, may require any person on the Committee to consider, and report and make a recommendation to him upon, any appeal to the Minister and that person shall do as soon as practicable thereafter, and the Minister, after considering the report and recommendation of that person, shall determine the appeal.
- (4) ...



## Town Planning Appeal Committee

### Chair

Ashley Castledine 1977-1994    Gordon Smith 1994-1999    Jim Jordan 1999-2003

### Members

Mrs Jenny Archibald	Mr Oswald Edwards	Mr Wally Lukeis	Mr Colin Porter
Mr Jerry Bateman	Mr Tony Ednie-Brown	Mr Alan Maloney	Mr Eric Sabin
Ms Lyndsay Baxter*	Ms Margaret Feilman	Mr Tom MacFarlane	Mr George Strickland
Dr Hans Bollig	Mr Phil Faigen	Mr Frank McGrath	Mr Arthur Swan
Mr Ken Bott	Mr Lloyd Graham	Mr Ian McNabb	Mr John Treloar
Mr Tony Brand	Mr Mike Grimshaw*	Mr Klaus Meyer	Mr Ray Upston
Mr Don Brown	Mr Vern Haley	Mr Eric Molyneux	Mr Bert White
Mr Gresley Cohen	Mr Roger Hope-Johnstone*	Mr Don Montgomery	Mr Karl White*
Mr Doug Collins	Mr Harold Hunt	Mr Rory O'Brien	Mr Alan Wilson
Ms Marie Connor	Mr Jim Jordan*	Mr Kelvin Oliver*	Mr Peter Woodward
Mr Eric Cummings	Mr Frank Jones	Mrs Lee O'Donoghue	Mrs Nada Zuvela
Mrs Helen Dunn	Mr Alan Keil	Mr Ian O'Hara	
Mr Len Easton	Mr Bill Kelliher	Mr Chris O'Neill	(* Full-time)
Mr Ross Easton	Mr Richard Leggo	Mr Stan Parks	



## Differences

“...the system of Ministerial Appeals resting as it does on a committee which operates largely on an informal basis, would seem to me to incorporate many of the features of the system of conciliation in the preliminary considerations before the matter goes to the Minister for decision.

...if one wants to have the relatively informal consideration of an appeal, one has the opportunity of taking the choice of the Ministerial Appeal. If one wants to have an appeal which is built around a public hearing and public accountability, then one goes for a Tribunal appeal and if an opportunity for compromise occurs in relation to that appeal or can be stimulated, well and good... “

(D K Malcolm, Chairman TPAT AIUS seminar 1982 when asked about conciliation)



## TOWN PLANNING APPEALS 1990

<b>LODGED BY</b>	<b>WITH MINISTER</b>	<b>WITH TRIBUNAL</b>
Individual (own behalf)	46.8% (244)	-
Solicitor	13 (2.5%)	31 (64.6%)
Town Planning Consultant	106 (20.3%)	14 (29.2%)
Licensed Surveyor	90 (17.3%)	2 (4.2%)
Builder/Development Company	33 ( 6.3%)	1 (2.1%)
Architect	14 (2.7%)	-
Draftsman/Designer	7 (1.3%)	-
Church/Welfare agency	6 (1.1%)	-
Real Estate Agent	4 (0.8%)	-
Engineer	3 (0.6%)	-
Accountant	1 (0.2%)	-
	<u>521</u>	<u>48</u>

## Timeliness and flexibility

Sept 9<sup>th</sup> 1970

Dear Mr. Logan,

I hate to bother you but  
we've been on tenterhooks for weeks, & gee  
it's painful!







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I know you are very busy but if  
you could spare a little time to put us out of  
our misery - one way or the other - we'd be very  
grateful.

Thank you.

yours sincerely  
(Mrs) [REDACTED]





## Hardship and compassionate grounds

“It was also submitted on behalf of the [Town Planning Board] that considerations personal to the Appellants, including evidence of hardship were not relevant to the proper application of town planning principles. As a general proposition we would accept this submission ...

In the present case, where it is conceded that there is more than one solution available consistent with good town planning principles, it is proper to take account of the circumstances or preferences of the individual land owner.”

*Yaksich v Town Planning Board* No 15 of 1979 delivered 17 December 1979) pages 10 & 11 (unreported)



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## Publication of decisions

'No town planner worthy of his profession will wish to recommend to his planning authority decisions which are going to be consistently overturned on appeal. He will, therefore, find the exercise of his discretion moulded by the decisions of the planning appeal bodies.'

(Kenneth H Gifford WA Law Review vol 16 1985 p230)

(and the recommendations of planning consultants to their clients too?)



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## Publication of decisions

“What constitutes the character of the area and whether or not something will adversely effect it or will be out of sympathy with it are necessarily subjective, aesthetic decisions upon which little guidance can be given by planning decisions.”

(Kenneth H Gifford WA Law Review vol 16 1985 p231)

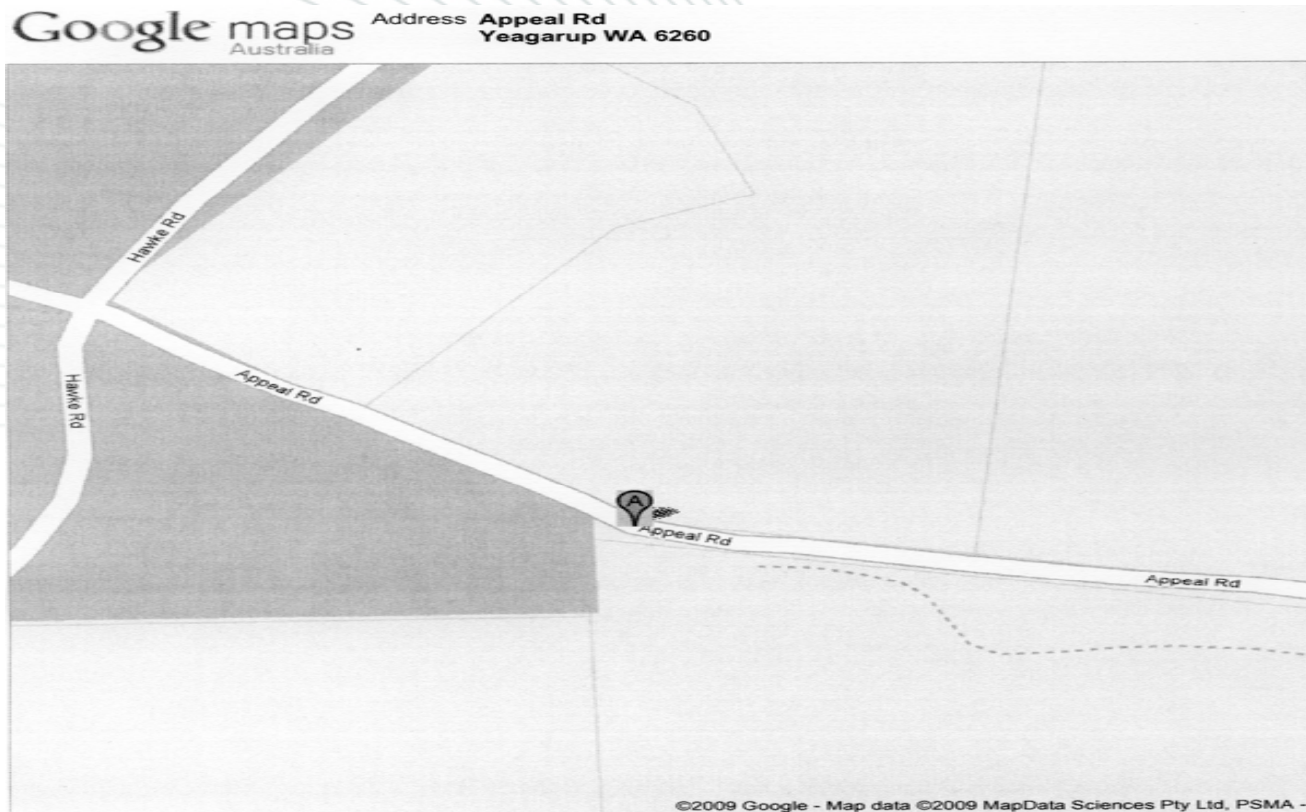


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## Appeal Road





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## Appeals 1991 – 2000

## Annual average

Ministerial  
Tribunal

677  
46

## 1997 - Tribunal introduced mediation

1995	35 appeals to Tribunal
1996	35 appeals
1997	70 appeals
1998	91 appeals
1999	65 appeals
2000	52 appeals