

Proposed Changes to Planning Legislation

Consultation Draft

March 2009

I. TASMANIAN PLANNING COMMISSION

I.1 General Principles

A new Tasmanian Planning Commission (TPC) is to be established which will be supported by combining the staff of the current Land Use Planning Branch in DoJ with the staff of the RPDC. The TPC will have both policy and statutory roles. In general terms, the TPC will:-

- retain the independent statutory decision making functions of the RPDC.
- be the key policy adviser to Government on the Tasmanian planning system and support State initiatives such as the regional planning initiatives.
- have an advisory role to local councils in appropriate cases.
- be expanded by adding new commissioners as representatives from State agencies that have planning related portfolio responsibilities.
- with the exception of independent statutory functions, be subject to directions from Minister for Planning to report or advise on specific issues.

I.2 Outline of possible legislative changes

In order to establish the TPC it will be necessary to amend the *Resource Planning and Development Act 1997*. Changes to that Act being considered are:

- Renaming the Act to the *Tasmanian Planning Commission Act 2009*.
- Expanding the composition of the Commission to include some State Government representatives.
- Expanding the existing functions of the Commission in recognition of the TPC's policy and advisory role.
- Making clear the circumstances in which the Minister for Planning can give directions to the Commission and when the Minister cannot give such a direction.
- Require the Minister to provide the Commission with a Ministerial Statement of Expectation by 31 January every second year
- Allow for the establishment of independent planning panels to exercise specific statutory roles of the TPC on delegation and new advisory committees to assist the TPC in fulfilling its policy and advisory role.
- Specifically exclude the 'State agency' Commissioners from being members of Planning Panels.

2. PROJECTS OF REGIONAL SIGNIFICANCE

2.1 General Principles

A new process for the assessment of projects having 'significant regional impacts' is proposed with the following features:

- Assessment criteria to determine which projects with regional implications should be treated as Projects of Regional Significance (PORS).
- Appointment by the TPC at the direction of the Minister of a one-off expert based Development Assessment Panel for each PORS
- Panels will have responsibility for specifying the matters to be addressed by the proponent and ultimately for granting or refusing a permit.
- The Panel to be independently chaired by someone nominated by the TPC,
- Local government representation on the Panel.
- Public submissions and hearings.
- Panel decisions will not be appealable to the Tribunal on planning merit.
- 4 month timeframe for assessment.

2.2 Outline of possible process for Projects of Regional Significance

- (a) The Minister, a Council or a proponent may nominate a project to be declared a PORS.
- (b) The Minister may determine that a proposed project is a PORS but only if certain criteria are satisfied (there will be the need for the types of developments to be specified in Regulation).
- (c) Planning Authorities will be required to refer projects to Minister if they meet the type specified in the Regulation.
- (d) Minister determines within 14 days whether the referred project meets the criteria to declare the project a PORS and if in the Minister's opinion it does not, to return it back to planning authority – 42 day LUPAA timeframe would need to be adjusted accordingly if sent back to planning authority.
- (e) If the Minister determines a project is to be a PORS, the Tasmanian Planning Commission (TPC) is required to appoint an expert panel to be known as a Development Assessment Panel (DAP) which shall include at least:
 - (i) an independent (non Government) Commissioner/member of the TPC as Chair;
 - (ii) a nominee of councils within the affected region; and
 - (iii) at least one other person with relevant qualifications or experience.

- (f) Members for the DAP referred to in (e)(ii) and (iii) should be drawn from the following areas:
 - (i) a person with demonstrated practical knowledge and experience in urban or regional development, commerce or industry;
 - (ii) a person with practical knowledge of, and experience in, the provision of facilities or infrastructure;
 - (iii) a person with practical knowledge of, and experience in, urban design, building safety or landscape design.
- (g) The nominee referred to in (e)(ii) is not to include a councillor, within the meaning of the *Local Government Act 1993*.
- (h) Once a project is declared to be a PORS, the processes set out in Part 4 of LUPAA do not apply.
- (i) The DAP is required to:
 - (i) formulate assessment guidelines which must be addressed in an Impact Statement (IS) for the project;
 - (ii) in formulating the assessment guidelines the DAP must consult with the TPC, relevant State Agencies and the council of the area within which the development is proposed.
 - (iii) advise the developer of the need to develop a IS which addresses the issues identified (this will include environmental and infrastructure requirements);
 - (iv) notify relevant State agencies and the council of the area within which the development is proposed.
 - (v) arrange for the public display of the project proposal and the IS once received;
 - (vi) seek State agency and public comment on the IS;
 - (vii) hold hearings; and
 - (viii) provide a draft decision to the Minister giving reasons.
- (j) The Minister can refer the draft decision back to the DAP within 14 days requesting it to consider additional matters.
- (k) Once those matters, if any, have been considered the DAP is to finalise its decision accompanied by additional reasons where relevant.
- (l) On request, a relevant State agency and the council in which the development is proposed is to provide to the DAP information in their possession pertaining to the development.
- (m) The decision of the DAP is final and there is no right of appeal against the decision to RMPAT but an appeal to the Supreme Court is available on a matter of law.
- (n) If the PORS is deemed to be a Level 2 project under the *Environmental Management and Pollution Control Act 1994* the DPMP is to be incorporated within the IS.
- (o) The whole process is to be conducted within a specified timeframe of 4 months. The Minister may extend the period of 4 months where he or she is of the opinion that

the interests of proper process so require. The DAP can extend the time period without seeking the Minister's approval if the proponent consents.

- (p) The developer would meet the costs of the assessment. A proposed rate is :
1500 fee units for each million dollars of project value with a minimum fee of \$20,000
- (q) If the development is approved by the DAP, the TCP must, in consultation with the relevant planning authority, amend any relevant planning scheme to remove any inconsistency between it and the permit issued by the DAP. The *Land Use Planning and Approvals Act 1993* would not apply to an amendment in this instance.

2.3 Possible Classification Criteria

A project is eligible to be a project of regional significance if it possesses at least 1 of the following attributes:

- (a) would make a significant contribution to a region's economic development;
- (b) impacts on more than one municipal area;
- (c) is of a scale or complexity that is beyond the assessment resources of the relevant planning authority;

and involves land or a type of development the State has identified in a Regulation.

The Regulations would outline the classes of development that would meet the classification criteria if certain thresholds are met which could include the capital investment value of the project, the number of ongoing jobs to be created or its significant infrastructure requirements. The regulations may also include types of developments that can be considered projects of regional significance because of where their specific location.

2.4 Potential Projects of Regional Significance

The following classes of development could be classified as a project of regional significance:-

- Critical Infrastructure provision, e.g. major roads and rail improvements.
- Transit oriented development, e.g. major transport hubs or centres.
- Major sporting facility, e.g. new sporting complex to serve region.
- Retail Centre, e.g. large Direct Factory Outlet.
- Tourism venture, e.g. major resort.
- Residential, e.g. large retirement village.
- Health and public service facilities, e.g. major health centre
- Educational establishments, e.g. new polytechnic facility

3. MINISTER CALL IN POWERS

3.1 General Principles

The Better Planning Outcome Response Report stated that while there was no evidence to substantiate the claims, there is a perception that planning matters are being politicised and Councils blur their statutory planning responsibilities with their broader role as advocates of the community.

There is also a perception that Council's responsibility as a planning authority under *Land Use Planning and Approvals Act 1993* is unclear in circumstances where the Council is both the applicant and the planning authority.

The Report stated that the project Steering Committee considered that the proposals outlined in the Discussion Paper warranted further and more detailed consideration, in particular whether a Development Assessment Panel needs to be established to determine applications for permits that are initiated by a Council or where Council land forms part of an application for a permit.

After receiving further submissions on the matter, the Planning Review 2008 Steering Committee recommended that Government determine that projects can be 'called in' where they satisfy one of the following criteria:

- (a) are regionally significant in that they impact on more than one council area;
- (b) are of a scale that is beyond the assessment resources of a local council;
- (c) are in excess of \$10 million in value;
- (d) contain a potential conflict of interest (such as where the Council acts as a developer or owns land affected); and
- (e) involve land or a type of development the State has identified in regulation.

Projects in criteria (a), (b), (c) and (e) have been dealt with under Projects of regional significance (refer section 2). This leaves criterion (d) unresolved and if a power is to be established to call in projects in this category another mechanism is required.

Cabinet has agreed to the principle of the Minister calling in projects in two categories on the basis that the projects are determined by an expert panel and the workings of the call in power are subject to consultation with key stakeholders. The categories are:

- (i) if in the Minister's opinion the council has demonstrated through a publicly stated position on the particular development a bias toward or against the project which may compromise its assessment of the development ; or
- (ii) where the Council has a conflict of interest by acting as a developer or owning or having an interest in land affected.

It is envisaged that only projects with a substantial public interest would be called in under these categories.

4. REGIONAL BASED PLANNING SCHEMES

4.1 General Principles

The Government has entered into arrangements with local Councils and various regional representative bodies to prepare new and consistent planning schemes for each Council in the State based on a more strategic and regional approach.

This state-wide project has been divided into the 3 traditional regional areas of the State and a Memorandum of Understanding (MoU) specific to each region has been signed by the relevant parties to facilitate the preparation of these new regionally based planning schemes.

Each MoU included an appendix that outlines the objectives for the drafting of any statutory instrument proposed to underpin the project.

The Objectives stated in each MoU are as follows:

1. *That all planning schemes produced in the region will:*
 - *be consistent with and further the objectives and outcomes of the regional land use strategy; and*
 - *include common provisions that are the same in expression and content to achieve consistency between the planning schemes across the region*
2. *That the planning schemes be able to be simultaneously put into effect as interim planning schemes immediately after they have been agreed to by the Project Sponsors with the statutory exhibition process to follow.*
3. *That the RPDC can consider all representations on the common standard provisions of the planning schemes in a single process.*
4. *Any future amendments to the common provisions of the regionally based planning schemes be:*
 - *consistent with the regional land use strategy;*
 - *at the agreement of the other councils in the region; and*
 - *through a single process.*
5. *Any future amendments to the 'local' provisions of the regionally based planning schemes be consistent with the regional land use strategy.*

The Government is to legislatively give effect to the Objectives by amending the *Land Use Planning and Approvals Act 1993*.

5. REMOVE SOME COSTS ORDERS AGAINST COUNCILS UNDER S.59 OF LUPAA

5.1 General Principles

Under the *Land Use Planning and Approvals Act 1993* (LUPAA) the planning authority is bound to make a decision on a development application within 42 days. If it fails to do so the application is deemed to be approved but is subject to an 'automatic' appeal process under s.59 and the planning authority is required to pay the costs of all the parties to that appeal.

The intent of the s.59 provisions is to provide a cost incentive for local councils to carry out their duties under LUPAA within the timelines. If a planning application is not dealt with in the 42 days (or longer period if an agreed extension is granted) the Council is penalised by having to meet the costs of the parties to the appeal that follows.

Local councils raised a specific concern about the financial impost on them under s.59 of LUPAA where they have made a decision in good faith within the statutory timeline but, at a subsequent appeal, RMPAT deems that the decision was not valid.

The consequence is that for a technical reason, such as inadequate notification, the Council is obliged to pay the costs of all parties to the subsequent appeal.

The Government does not consider that s.59 was designed to apply where there is a demonstrable intent by the council to carry out its functions and should be amended accordingly.

6. FUTURE MISCELLANEOUS AMENDMENTS

The Government has also agreed to pursue the following amendments later this year. Further more detailed consultation will take place at that time.

(a) Amend SPP Act to modify the approval process for State Policies

- Remove the requirement for further review and reporting processes currently conducted by the RPDC and provide for a single process of drafting, consultation, review and gazettal, by Government.

(b) Amend LUPAA to introduce improved enforcement provisions

- infringement notices to be issued;
- Councils to recover the costs of enforcement;
- enforcement of Part 5 agreements;
- the cancellation or amendment of planning permits by the Tribunal;
- authorised officers to be designated for the purpose of undertaking compliance activities;
- a properly authorised officer to require a person to give information in relation to use or development activities etc;
- a properly authorised officer to enter onto land to inspect and collect evidence;
- a properly authorised officer to apply for the issue of a warrant to enter a house, where there is strong evidence of a breach of the Act or an instrument made under the Act such as a planning scheme;
- a Temporary Stop Work Notice to be issued by an authorised officer for specified development works;
- a properly authorised officer to issue a Show Cause Notice in circumstances when it appears that the issue of such a notice may achieve a more effective result than commencement of a prosecution;
- an Enforcement Notice to be issued requiring a person to cease a use or development that is not authorised by a planning permit or is not being undertaken legally; and
- penalties to be paid to the prosecuting authority;

- (c) Amend LUPAA to modify the approval process for Planning Directives
 - Remove:
 - a) the requirement to lodge a draft Planning Directive with the RPDC; and
 - b) the need for the RPDC to forward the draft Planning Directive to the Minister with recommendations as to whether or not an assessment should be undertaken; and
 - c) the additional consultation process carried out by the RPDC under its role of reporting to the Minister.

- (d) Amend LUPAA to place restrictions on Ministerial extensions for the RPDC to assess planning schemes and amendments
 - only where the proponent (Councils) has agreed to that extension.

- (e) Amend RMPAT Act to require compulsory conferences of all parties to appeals before the RMPAT and to require the RMPAT Annual Report is tabled in Parliament