REVIEW OF THE TASMANIAN PLANNING SYSTEM

STEERING COMMITTEE REPORT

13 February 2009

EXECUTIVE SUMMARY

BACKGROUND

On 5 March 2008, the Government announced a review into Tasmania's planning system, with a view to streamlining decision making.

The Terms of Reference for the Review required recommendations on streamlining planning system decision making by reviewing the allocation of roles and functions of the Minister, State agencies, and statutory bodies. This included looking at the structure of the RPDC, and its relationship to the RMPAT.

The review was also required to examine models of ministerial 'call in' and processes for projects of regional significance by expert panels. There was also a specific need to examine timelines and case management, the role of State Policies, the approval processes for Projects of State Significance, third party appeals and mediation processes.

The Review was also required to have regard to relevant options from the Better Planning Outcomes project and recommendations from the Legislative Council's Select Committee on Planning Schemes.

The Premier subsequently asked the Review Steering Committee to specifically look at how the planning system structure could deal with issues arising out of climate change.

The review process sought public submissions on the issues covered by the Terms of Reference.

The Steering Committee has carefully considered all the submissions received in forming the recommendations contained in this report.

KEY FINDINGS OF THE REVIEW

The Steering Committee generally believes that the planning system is not in need of radical overhaul. However, it is apparent that there is capacity to redefine roles and functions of the bodies and agencies to reduce confusion, to consolidate, share and redistribute resources, and provide greater State direction on planning matters.

The Steering Committee recommends that a balance is required between the need for more comprehensive, consolidated and consistent policy and planning advice originating from Government through the planning system, and the requirement for retaining independent statutory processes, while acknowledging difficulties of resourcing and staff availability.

The Steering Committee recommends that the Government introduce changes to the governance model based on the key requirements of providing a single authoritative voice on planning and a critical mass of planning resources within the State Government. Three possible models are presented for immediate consideration, recognising that there are many variations possible that can deliver these broad objectives.

Two key suggestions are the inclusion of State Government representation on the RPDC and the use of a Heads of Agency group to provide a more whole of government approach to the State's planning agenda.
Additionally, the Steering Committee recommends that the Government better utilise the options available under the current legislation, particularly Planning Directives, to enable it to enhance its ability to participate in, and influence, the future direction of planning issues.

The Steering Committee also recommends the introduction of a Ministerial Directive power which enables the Minister to direct the RPDC to report on a range of planning related matters not already covered by the legislation.

RECOMMENDATIONS FROM THE REVIEW

In relation to the outcome of the Review:

Recommendation 1

THAT, in conjunction with the release of the Review Report, the Government makes public its assessment of the structure and performance of the current Planning System, its preferred changes to the system and explanations as to the benefits that are anticipated from those changes.

In relation to the governance of the planning system:

Recommendation 2:

THAT the Government determine the preferred model for governance of the planning system, based on the following broad objectives:

(a) improve coordination and promotion of State Agency interests in planning;

(b) provide a single authoritative voice on the State Government's planning agenda;

(c) provide a critical mass of planning expertise to deliver the recommendations of this Review and other aspects of Government policy;

(d) ensure independent decision making on development applications and major projects; and

(e) examine the advantages and disadvantages of the structural models presented in Appendix C to this Report, when considering the preferred model of governance.

Recommendation 3:

THAT, the Government improves coordination and promotion of State Agency interests in planning through:

(a) providing for State Government representation on the RPDC; and

(b) the inclusion of the consideration and coordination of strategic planning issues in the terms of reference of the existing Environment and Resource Heads of Agency Standing Committee.

In relation to issues arising from the other Terms of Reference:

Recommendation 4:

THAT the current case management change processes underway in the RPDC be continued with a view to:

(i) refining the consultation on the substance and supporting documentation of planning scheme amendments between Councils and the RPDC prior to Certification; and

(ii) streamlining the processing of Planning schemes and amendments, timeline adherence and public notification of decisions, conduct of public hearings and related matters.

Recommendation 5:

THAT the RMPAT Act be amended to require the RMPAT Annual Report to be tabled in Parliament.

Recommendation 6:

THAT the current review (appeal) processes conducted through the RPDC and the RMPAT are appropriate and no additional processes need to be introduced.

Recommendation 7:

THAT the enforcement of planning schemes remain the responsibility of local councils in the first instance and with RMPAT in accordance with the legislation; and

Recommendation 8:

THAT the RPDC not engage in enforcement activities; and

Recommendation 9:

THAT the Government introduce improved enforcement provisions, particularly in relation to the ability of councils to issue infringement notices and associated penalties, as suggested in the Better Planning Outcomes Report, as follows:

That enforcement measures be included in LUPAA to provide for:

1. Infringement Notices to be issued;
2. Councils to recover the costs of enforcement;
3. enforcement of Part 5 agreements;
4. the cancellation or amendment of planning permits by the Tribunal;
5. authorised officers to be designated for the purpose of undertaking compliance activities;
6. a properly authorised officer to require a person to give information in relation to use or development activities etc;
7. a properly authorised officer to enter onto land to inspect and collect evidence;
8. 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;
9. a Temporary Stop Work Notice to be issued by an authorised officer for specified development works;
10. 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;
11. 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
12. penalties to be paid to the prosecuting authority;

That in addition, there is a need to:

1. revise the existing offence provisions in LUPAA so that there are a number of specifically identified offences rather than just the existing two 'general' offences;
2. introduce provisions that have higher penalties when offences are committed by corporations;
3. introduce a provision in LUPAA requiring planning authorities to develop a compliance plan in relation to permits issued;
4. amend the Building Act 2000 to better integrate with LUPAA;
5. amend LUPAA to increase the time within which a prosecution must be commenced for non compliance from the six months that is required under the Justices Act 1959 to twelve months.

The Better Planning Outcomes Report also suggested that more could be done to educate the community about the provisions of LUPAA and the penalties that are able to be imposed for non-compliance. This would reduce the argument that people did not have any knowledge of the legal

sanctions for non-compliance. Information on Council and DPIWE websites also would assist in further education and broader compliance.

Recommendation 10:

THAT the 42 day approval period remain unchanged for both permitted and discretionary development applications.

Recommendation 11:

THAT

(a) the benchmark for approval times for permitted developments be 20 days;

(b) this be referenced by planning authorities in their annual reports; and

(c)as national or state wide standards for specific sorts of development are progressed and new planning schemes come on line, the period for permitted development be reduced to 28 days.

Recommendation 12:

THAT if projects of regional significance are adopted as a result of this review, or independently, consideration be given to extending the time period to 90 days for a determination.

Recommendation 13:

THAT 'best practice' models be developed in relation to the notification, advertising and public exhibition of regulations, including appropriate use of contemporary communications technology.

Recommendation 14:

THAT current timelines for amendments and planning scheme assessments by the RPDC be retained, and extensions only approved if agreed to by the proponent.

Recommendation 15:

THAT the combined amendment and development application process under s.43A be subject to separate review in consultation with stakeholders.

Recommendation 16:

THAT the legislation be amended to remove the costs order against a Council under s.59 if the Tribunal rules that a Council has acted to make a decision in 'good faith' within the prescribed time period.

Recommendation 17:

THAT the Government better utilise the options available under the current legislation, particularly Planning Directives, to enhance its participation in, and influence of, the future direction of planning issues.

Recommendation 18:

THAT the process for approving Planning Directives be modified by removing:

(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; and

Recommendation 19:

THAT a Ministerial Directive power be introduced that enables the Minister to direct the RPDC on a range of planning related matters not already covered by the legislation but not including matters dealing with the RPDCs independent decision making function . Such directives are to be listed in the RPDC annual report.

Recommendation 20:

THAT the State Policy legislation be amended to exclude the further review and reporting processes currently conducted by the RPDC and provide for a single process of drafting, consultation, review and gazettal, by Government.

Recommendation 21:

THAT the Government prepare guidelines on the principles, structure and implementation requirements of State Policies.

Recommendation 22:

THAT amendments be made to the Projects of State Significance legislation allowing for an extension of the statutory assessment timelines by agreement of the proponent without requiring the Minister's consent, but imposition of fixed mandatory timelines be subject to further consideration of benefits and disadvantages.

Recommendation 23:

THAT the State Policies and Projects Act be amended to preclude the RPDC from holding hearings in relation to the assessment of a Project of State Significance other than at the Draft Integrated Assessment Report Stage. This would not restrict the RPDC seeking public comment at earlier stages in the process.

Recommendation 24:

THAT legislation be amended to require compulsory conferences of all parties to appeals before the RMPAT.

Recommendation 25:

THAT arrangements relating to existing third party appeals remain unchanged.

Recommendation 26:

THAT the Options presented in the Better Planning Outcomes Report in relation to the RMPAT review processes be revisited and implemented where practical.

Recommendation 27:

THAT the RPDC and the RMPAT be retained as separate bodies.

Recommendation 28:

THAT the roles and functions of the RMPAT are generally appropriate and do not require change.

Recommendation 29:

THAT new 'call in' powers be limited to prescribed specified developments such as regionally significant projects, but assessment of such projects, and decisions on those projects be made by the relevant independent bodies.

Recommendation 30:

THAT the 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 $10million 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 .

Recommendation 31:

THAT projects 'called in' are assessed by regionally based panels which include State and local council appointed members.

Recommendation 32:

THAT in view of the importance of the planning system in addressing both mitigation and adaptation to climate change, the Government introduces a State Policy on Climate Change.

SECTION 1

BACKGROUND TO THE REVIEW

Introduction

On 5 March 2008, the previous Minister for Infrastructure, Resources, Planning and Workplace Relations announced a Review into Tasmania's planning system with a view to streamlining decision making within the planning system.

The current Tasmanian planning system has been in place since 1997. While the system has evolved in response to changed circumstances, the State level decision making processes established under that original system have not substantially altered.

This Review is intended to identify where improvements can be made to the approval process for State Policies, projects of State significance, and planning schemes and amendments.

The specific focus of the Review is to consider the overarching governance of the planning part of the Resource Management and Planning System, and the relative roles and functions of the statutory bodies that operate within it, to ensure the system operates efficiently.

As part of that focus, the Review includes an analysis of submissions from interested parties, and consideration of the basic principles and essential needs of the planning system.

This Review coincides with a range of similar inquiries in other States and Territories. These have in part been generated by the national reform agenda required under the Council of Australian Governments (COAG) processes, particularly the Development Assessment Forum (DAF) reforms which are based around a leading practice model for streamlined development assessment. This Review, however, is separate from that process.

Terms of Reference

In announcing the Review, the Minister issued the following Terms of Reference:-

1. Identify and make recommendations on:

   A) streamlining planning system decision making by –

      1. reviewing the allocation of roles and functions in the planning system between State Ministers and agencies, including the new Environment Protection Agency, the RPDC and RMPAT;

      2. increasing efficiency through statutory timelines, case management or other means;

      3. mechanisms to give greater weight to State policy priorities;

      4. reviewing the process for making and reviewing State Policies;

      5. reviewing the process for approving Projects of State Significance;

      6. wider use of mediation, including mandatory mediation; and

      7. reviewing the process of third party appeals.

   B) the viability of amalgamating the RPDC and RMPAT;

C) the structure of the RPDC;

D) assessing best practice models for ministerial call in powers;

E) assessment of projects of regional significance by expert panels.

2. Manage consultation on the reform options.

3. Prepare legislative amendments to implement these options.

4. Implement the changes following passage through Parliament.

The Minister also directed that the Review should have regard to relevant options from the Better Planning Outcomes project and recommendations from the Legislative Council's Select Committee on Planning Schemes.

After the release of the Terms of Reference, the Premier wrote to the Steering Committee requesting that it give consideration to the effectiveness of the planning system in dealing with climate change issues. The Steering Committee accepted this as a new Terms of Reference as follows:

F) report on the mechanisms available in the planning system that can ensure adequate coverage of climate change issues

Project Governance

The Review has been overseen by a Steering Committee chaired by the nominee of the then Minister for Infrastructure, Resources, Planning and Workplace Relations.

Other members of the Steering Committee were:

- a nominee of the Secretary, Department of Justice;
- a nominee of the Secretary, Department of Premier and Cabinet;
- the Executive Commissioner of the RPDC; and
- a nominee of the Local Government Association of Tasmania.

- Executive support for the Steering Committee was provided by the Land Use Planning Branch of the Department of Justice and augmented by a Project Team from the Department of Justice and the RPDC.

Project Steering and Management

The Steering Committee for the Review comprised:

Michael Stevens, Deputy Secretary, Department of Justice (Chair);
Greg Johannes, Deputy Secretary, Department of Premier and Cabinet;
Peter Fischer, State Planning Adviser, Department of Justice;
Greg Alomes, Executive Commissioner, RPDC and
Andrew Paul, General Manager, Clarence City Council (LGAT nominee)

On 11 November 2008, Mr Alomes resigned from the Committee, citing a potential conflict of interest that might result from his participation in recommendations about new governance models, including the future of the RPDC, of which he is currently Executive Commissioner.

The Committee acknowledges the contribution made by Mr Alomes on the other issues stemming from the Terms of Reference prior to his withdrawal.

Structure of the Review

The Review has proceeded on the basis of three distinct Stages:

Stage 1 of the Review required consultation with stakeholders including a call for submissions in response to the Terms of Reference. This included key stakeholders including other Government agencies.

The Steering Committee resolved that some background information be made available to the general public and stakeholders setting out some fundamental principles which the Government considered would remain unchanged. These included public involvement in the system, and the need for independent statutory bodies to determine planning outcomes.

Stage 2 required preparation of specific proposals for the selected reforms through changed administrative arrangements and, where necessary, legislative amendment.

Stage 3 required the identification of management arrangements that would need to be put in place to implement the reform options prepared in Stage 2.

The Steering Committee reviewed all submissions and considered the issues and possible options for reform where necessary. Key stakeholders were consulted on review options as determined by the Steering Committee.

A reform package requiring legislative change should be finalised for Ministerial consideration as soon as possible following the finalisation of the Review Report.

Consultation

Advertisements were placed in newspapers on Saturday 3 May 2008, with a closing date for submissions of 16 June (a 6 week period) later extended to 23 June.

A Media Release from the Minister was released to coincide with that advertisement.

Key stakeholders were concurrently contacted offering the opportunity of an interview with the Project Team and Steering Committee members.

Summary of Submissions

Sixty-nine submissions were received from a range of stakeholders. Appendix D provides a summary of the submissions relating to the specific Terms of Reference.

SECTION 2

CONSIDERATION OF THE TERMS OF REFERENCE

Terms of Reference Part A

1.0 Reviewing the allocation of roles and functions in the planning system between State Ministers and agencies, including the new Environment Protection Agency, the RPDC and RMPAT.

Background

Currently, the structure of planning in Tasmania is based around four components:

(i) the State Government's interests (nominally currently within the Land Use Planning Branch of the Department of Justice, although various agencies have planners and/or participate in the planning system directly);
(ii) the Resource Planning and Development Commission (RPDC);
(iii) local councils acting as planning authorities; and
(iv) the Resource Management and Planning Appeal Tribunal (RMPAT) .

The *Resource Planning and Development Commission Act 1997* established the Resource Planning and Development Commission ("the Commission") as a statutory body.

From 1 January 1998 the Commission assumed the functions of the Public Land Use Commission, Sustainable Development Advisory Council and Land Use Planning Review Panel.

The Commission has the following principal functions:

(a) to assess and approve local government planning schemes and planning scheme amendments;
(b) to assess projects of State Significance;
(c) to assess Draft State Policies;
(d) to prepare the Tasmanian State of the Environment report;
(e) to conduct inquiries into the use of public land;
(f) to review the representations and the report of the Secretary of the Department of Primary Industries and Water relating to draft water management plans; and
(g) to consider the draft development plan and any representations, statements and recommendations contained in a report of the Sullivans Cove Waterfront Authority.

The Commission has other roles in Government:

(i) membership of the Marine Farming Review Panel; and
(ii) membership of the Nomenclature Board.

The Executive Commissioner also has responsibility for the conduct of Appeals under the Aboriginal Lands Act 1995, and chairing the Environment Protection Policy Review Panel in accordance with the *Environmental Management and Pollution Control Act 1994*.

The RPDC is essentially set up as the statutory regulatory body that assesses and approves planning schemes and amendments to planning schemes. It carries out these functions in a manner that is consistent with State Policies, Planning Directives and the Objectives of the *Land Use*

Planning and Approvals Act 1993 (the Act). Planning schemes are drafted by local councils but subject to the approval of the RPDC. Planning schemes are administered by local councils as planning authorities determining the approval of development applications.

The Resource Management and Planning Appeal Tribunal is an independent statutory body set up under the *Resource Management and Planning Appeal Tribunal Act 1993*.

The objectives of the Tribunal are to:

(a) promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity
(b) provide for the fair, orderly and sustainable use and development of air, land and water
(c) encourage public involvement in resource management and planning
(d) facilitate economic development in accordance with these objectives and
(e) promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in Tasmania.

The Minister for Planning administers the Act but does not have any direct powers to intervene in planning decisions by either local councils, the RPDC or the Tribunal. The Minister can issue Planning Directives which can require local planning authorities to change their planning scheme in a certain way and is involved in the making of State Policies which must be given effect through planning schemes.

Although the State Government determines which projects are deemed to be Projects of State Significance it is the RPDC that carries out the assessment of these and makes recommendations to the Premier as the Minister responsible for Projects of State Significance. Draft State Policies are also subject to assessment and a report by the RPDC to Premier as Minister for State Policies.

The RPDC also has a section that every five years prepares a report on the State of the Environment. This summarises the current condition of the environment throughout Tasmania.

The newly created Environmental Protection Agency (EPA) has a primary statutory function to assess development applications for large industry in Tasmania, and it does not impact on the structure of the State planning system.. Other statutory functions include the assessment of Environmental Improvement Programs, Environmental Agreements and Environmental Audits under the Act. The Board may also advise the Minister on matters that may significantly affect the achievement of the objectives of the Act.

The provisions of the *Environmental Management and Pollution Control Act 1994* that provided for the Minister to call-in a decision of the former Environmental Management and Pollution Control Board have been removed, to reinforce the independence of the decision-making functions of the new Authority. However, the EPA remains an instrumentality of the Crown and must work within the established administrative framework of the State of Tasmania.

The Land Use Planning Branch (LUPB) is located within the Department of Justice and provides advice to the Minister and other agencies, local government, and the broader community on the planning system and the legislative framework that underpins it. Currently the LUPB is engaged in establishing the regional planning initiatives across the State, drafting provisions for model planning schemes as an adjunct to the PD1 Common Key Elements Template, participating in national COAG and Planning Officials Group programs, reviewing State Policies, and reviewing and improving the planning system.

In terms of accountability, both the RPDC and RMPAT are required to produce Annual Reports

documenting their performance. However, only the RPDC is required to table that report in Parliament. Notwithstanding this, it is normal practice for the RMPAT Annual Report to be tabled.

Issues

1.1 Implementation of Previous Reviews

1.1.1 Content of submissions

Many submissions, including those from key stakeholders such as the Tasmanian Conservation Trust and the Housing Industry Association, reflected a frustration that another review of the planning system was being conducted while many recommendations of previous (similar) reviews had not yet been implemented.

1.1.2 Steering Committee response

Confidence in the planning system appears to have suffered through a perception that the recommendations of a number of similar reviews over past years have not been acted upon. This has resulted in public scepticism that such reviews were merely 'window dressing'.

The two issues from previous reviews that were highlighted by major stakeholders as not having been addressed were the on going lack of a suite of State Policies and the lack of profile and staffing of a planning unit within Government. Together, these represent a call for a far greater role by the State Government in the planning system and its governance.

The Steering Committee also noted widespread misinformation about the State planning system, and what it actually delivers. It is therefore important to ensure that the current Review is acted upon as soon as possible, and effectively provides a range of measures that can be implemented. This should include relatively simple administrative modifications which can be acted upon immediately.

The Steering Committee therefore recommends:

Recommendation 1
THAT, in conjunction with the release of the Review Report, the Government makes public its assessment of the structure and performance of the current Planning System, its preferred changes to the system and explanations as to the benefits that are anticipated from those changes.

Submissions on this Term of Reference tended to focus on a number of issues relating to the need for a planning system that was free from political interference, the need for a State Government presence in the planning system, with adequate resourcing, and the need for a single authoritative voice on planning policy. These issues are fundamental to the roles and functions responsibilities of the major players within the State planning system.

1.2 Independence of the planning system from political interference

1.2.1 Content of Submissions

Many submissions argued that the integrity of the planning system should be protected from direct political interference. Specific references were made to the Pulp Mill project and possible implications of the Ralph's Bay (Lauderdale Quay) assessment process as a Project of State Significance.

The issue reflects directly on the broader role of the State Government in the planning system. Views on this issue covered a number of Terms of Reference including the need for more State guidance on policy issues, a more active role for State agencies, and more prominent planning presence within the public sector.

1.2.2 Steering Committee response

It was evident that there was a degree of public scepticism in relation to the timing of the current Review and its focus on the functioning of the RPDC. Several submissions viewed the Review process as a means of ultimately restricting the independence of the RPDC because of its publicly stated concerns in relation to the Gunns' pulp mill project assessment process.

That scepticism was also fuelled by the current Ralph's Bay Project of State Significance and many submissions suggested a link between the review of the RPDC and an attempt to remove barriers to the approval of that project.

Notwithstanding that there are strong and wide spread views on so-called 'political interference' in the assessment processes of the RPDC, there is also strong support for a higher level of State Government involvement in the planning system through setting policy and improving the engagement of agencies in it.

The submissions clearly favoured a higher level of engagement in policy setting and retention of arms length statutory approval for major projects of state interest. Other jurisdictions have higher levels of political involvement through Ministerial 'call in' powers, more direct policy setting, and agency referrals. These issues are discussed later under separate headings.

It is clear that currently there is independent statutory decision making in Tasmania in relation to the planning process. What is required, however, is a model that retains the public confidence in the fairness of processes, while integrating Government policy into the planning system.

The submissions to this Review indicate that there is no appetite in Tasmania for any form of increased Ministerial power in terms of approving major developments.

1.3 Resourcing and the State Government presence in the planning system

1.3.1 Content of Submissions

A large number of submissions highlighted a perceived and critically unsustainable lack of resourcing of a planning function within the State Government. These submissions reflected a broad range of interests in the planning process, particularly local councils, but also major industry bodies and non-government conservation interests.

The arguments in these submissions specifically focussed on the need to reform the RPDC and to significantly increase the profile, funding and staffing of the Land Use Planning Branch of the Department of Justice. Many submissions indicated a preference to combine these units to create a new Department of Planning with a critical mass of planning expertise operating under a consistent set of objectives and approach. The role of Government in collecting information and providing assistance to local councils was also highlighted within this context.

Some submissions also indicated high levels of support for the current regional planning initiative as a first step towards ongoing and adequately resourced State involvement in regionally based planning.

1.3.2 Steering Committee response

Recent events indicate that planning is now firmly back on the state and national agendas with issues like climate change, demographic change, and affordable housing increasingly looking to the planning system to play its part in delivering solutions.

A major failure of the current planning system appears to be the low level of engagement of the State Government. In part, this would be addressed by the implementation of a raft of State Policies but these have a considerable lead time and when in place cannot reflect the more subtle change in emphasis and interest from Government on a day to day basis or the need to respond rapidly to immediate issues such as climate change and housing affordability.

While the system currently relies on State agencies to participate as 'actors' in the policy and planning processes, it is apparent to the Steering Committee that there needs to be a stronger and more coherent 'whole of government' position.

A key area identified in many submissions as requiring resourcing is the collection of planning related information, particularly at a regional scale. Currently the information collection functions are disparate and not focussed on specific planning issues or at the regional spatial level that is necessary to effectively service the Government's regional planning initiative.

A parallel issue is the membership and nature of the pre-eminent planning body in the State. The RPDC membership reflects a range of stakeholders including local government, industry, and the broader community, but with no representation from Government.

This stands in contrast to other State and Territory jurisdictions. The Western Australian model (see Appendix B) is widely considered appropriate in managing the right mix of government representation and political independence, and is being recommended as the preferred model for reform in New South Wales which is currently viewed as having too much political interference within its planning structure.
The Committee considers that the absence of government representation on the RPDC needs to be corrected to improve State Government's engagement in the planning system and to ensure the State's interests are represented in the decision making process. Depending on the State Government's preferred model for governance of the planning system, this could include representation from an agency or agencies that have planning related portfolio responsibilities as new ex-officio Commissioners.

It is apparent that the availability of planners in the State is limited, and the relatively few in State agencies are dispersed. Notwithstanding this the recent relocation of the Sullivans Cove Waterfront Authority within the Department of Justice, has consolidated the bulk of planning related resources although they are still spread between the RPDC, RMPAT, LUPB and the Cove Authority. There is approximately 56 staff spread between these bodies, covering a range of skills from clerical and administrative support, project officers and managers, GIS specialists, media and communications officers, business managers and executive officers, and planning experts. However, the range of skills is neither efficiently nor equitably distributed.

In these circumstances more efficient use of the available staff would appear to depend on refining the roles and functions to avoid duplication and through coordinating and sharing the current planning and support staff distributed within agencies, particularly the Department of Justice.

1.4 The need for a single authoritative voice on planning policy

1.4.1 Content of Submissions

Some submissions to the Review expressed the view that there was a need to provide a single authoritative voice on planning. The view was also expressed that there was confusion, particularly among local authorities, about the planning system and the Government's position on planning matters in Tasmania.

Concern was also expressed at the lack of a single whole of government voice on Government planning policy or other policy with planning implications. The absence of a State Government position was seen as pushing the independent RPDC into that policy vacuum.

In Tasmania it is clear that a number of agencies have legitimate planning interests but it is also evident that there is a need to better coordinate and integrate those functions.

1.4.2 Steering Committee response

The issue of single voice on planning has two aspects. Firstly the need for a 'whole of government' coordination of agencies interests in planning, and secondly the relationship between the State Government and the RPDC.

The Steering Committee was of the opinion that the first issue could be best addressed by establishing some form of cross agency coordinating structure which enables high level commitment to engagement with the planning system. The Committee notes that a Planning IDC has been convened a few times over the last few years but has suffered from a lack of high level commitment and been responsive to preconceived agendas rather than jointly developing coordinated planning policy. To rectify these shortcomings the Committee recommends the expansion of the existing Environment and Resource Heads of Agency Standing Committee to include a broader agency mix although it is dependent on the State Government's preferred model for governance of the planning system. The need for a Standing Committee would be diminished if a fully integrated planning commission model (refer Appendix C) was established that has State Government representation.

The second issue concerns the singularity of a planning voice in a system which has both a State Government planning agency and the RPDC. The Steering Committee believes that a fully integrated planning commission model would provide a consistent voice on planning, as is the case with the WA Planning Commission. However, a strategy of removing overlapping roles and functions and refocussing planning staff within Government and in the independent statutory bodies would also provide a less confusing State position on planning.

The Steering Committee accepts that there are substantial resources now located in the Department of Justice although many are specific to particular regulatory functions. However, there does appear to be an inefficient spread of skills between the business units and some roles and functions which might be rationalised to provide a more streamlined, supported and uniform planning function through resource sharing and team building between the units.

The Steering Committee recommends that any changes to the governance of the planning system ensure that the broad objectives of improved coordination, a single authoritative voice on planning and the provision of a critical mass of planning expertise are delivered.

Accordingly, the Steering Committee recommends:

Recommendation 2:

THAT the Government determine the preferred model for governance of the planning system, based on the following broad objectives:

(a) improve coordination and promotion of State Agency interests in planning;

(b) provide a single authoritative voice on the State Government's planning agenda;

(c) provide a critical mass of planning expertise to deliver the recommendations of this Review and other aspects of Government policy;

(d) ensure independent decision making on development applications and major projects; and

(e) examine the advantages and disadvantages of the structural models presented in Appendix C to this Report, when considering the preferred model of governance.

To this end, the Steering Committee has given consideration to several governance models that, to varying degrees, achieve these objectives. The Steering Committee recommends that the Government examine these models with a view to determining a preferred model for further consideration.

The Steering Committee therefore recommends:

Recommendation 3:
THAT, the Government improves coordination and promotion of State Agency interests in planning through:
(a) providing for State Government representation on the RPDC; and
(b) the inclusion of the consideration and coordination of strategic planning issues in the terms of reference of the existing Environment and Resource Heads of Agency Standing Committee.

Other issues raised by submissions on this Term of Reference were:

1.5 Transparency in processes and decisions of statutory bodies

1.5.1 Content of submissions

A number of submissions raised concerns about perceived lack of transparency in processes and poorly explained decisions of the RPDC. These related to internal case management issues and documentation of decisions.

There were two issues involved in this criticism.

Firstly, there was the process of the RPDC in considering amendments and planning schemes which include its professional planning staff providing written reports to the delegates, followed by

a hearing of evidence and submission from the Councils and external representations, and a final decision by the RPDC delegates.

In this instance, a number of submissions expressed concern that the planning staff advice could not be tested or refuted by applicants or local councils.

Secondly, there was criticism of the inability to determine the reasons or logic behind RPDC decisions, and the lack of clearly articulated explanations or published digests of the decisions of both the RPDC and the RMPAT.

It was also noted in some submissions that, whilst it was a requirement to table the RPDC Annual Report in Parliament, there was no such requirement attached to the RMPAT Annual Report.

1.5.2 Steering Committee response

Recent internal structural and system changes within the RPDC have gone some way to addressing some of these issues. The Commission has instituted changes in relation to the processing of Planning Schemes and amendments, specifically in the areas of timeliness and consistency of decisions, conduct of public hearings and related processing matters. The major change by the Commission has been the introduction of an internal case management system, the key features of which include:

(a) A standing requirement for at least one Commissioner or Senior Planning Consultant to sit on Panels that have delegated responsibility to hear and determine applications. Previously, external delegates were appointed for this task;
(b) Allocation of responsibility to the Commission Manager to assign staff resources to assist Panel delegates assess and process particular applications and to monitor and manage reporting, hearing and decision making processes in accordance with appropriate statutory and delegated authorities and timeframes;
(c) Formation of a case management Committee, under the chairmanship of the Commission Manager, to coordinate advice to the Executive Commissioner and/or the Commission on the issues to be assessed with particular applications and to recommend Panel members to be delegated responsibility to hear and determine those applications;
(d) A standing requirement for Senior Planning Consultants to be available for Commission meetings to enable briefings on Panel decisions made under delegation and planning policy and procedural issues arising from the assessment process;
(e) Introduction of training and development programs for Commissioners, Senior Planning Consultants and other Panel members on the conduct of hearings; and
(f) Regular reporting to the Commission on the achievement of statutory timeframes, and the reasons for any delays that may occur.

In light of this, the Steering Committee recommends:

Recommendation 4:

THAT the current case management change processes underway in the RPDC be continued with a view to:

(i) refining the consultation on the substance and supporting documentation of planning scheme amendments between Councils and the RPDC prior to Certification; and

(ii) streamlining the processing of Planning schemes and amendments, timeline adherence and public notification of decisions, conduct of public hearings and related matters.

In addition, the Steering Committee recommends:

Recommendation 5:
THAT the RMPAT Act be amended to require the RMPAT Annual Report to be tabled in Parliament.

1.6 Appropriate review and enforcement processes

1.6.1 Content of submissions

An overriding theme in many submissions was the need for appropriate checks and balances to be built into the planning system. Submissions presented an array of different views on this, including limited Ministerial 'call in' powers, a process of appeal to RMPAT on decisions of the RPDC, and the need for a Planning Ombudsman.

Other submissions also argued that there was a lack of confidence in the planning system fuelled by feelings that the legislation (despite being well intentioned) was not being administered fairly and that those not complying were avoiding prosecution.

1.6.2 Steering Committee response

Notwithstanding comments about the individual processes of the RPDC and, to a lesser degree, the RMPAT, the general impression is that the structures for reviewing planning decisions are relatively sound.

Specific submissions suggested there should be a review of the RPDC decisions by the RMPAT, but this was countered by other submissions that indicated a preference for a clear separation of the two bodies because they dealt with different matters.

There are some members of the community who feel aggrieved by a local council, the RMPAT, or the RPDC to the point of suggesting the need for a planning ombudsman. However, the number of cases does not appear great enough to warrant establishment of a new appeal or review process. Currently, review mechanisms exist through the RPDC assessment of planning authority planning schemes and amendments, and sec. 43A applications. In terms of the RMPAT, there is a review process for planning authority decisions on development applications.

It is also noted that the current Ombudsman has the capacity to examine aspects of planning cases. Under the Ombudsman Act, that office has the power to enquire into, and investigate, complaints about the administrative actions of Tasmanian Government Departments, Local Government Councils and a range of public authorities.

The Steering Committee acknowledges that enforcement of planning schemes and decisions are still viewed as less than adequate by some members of the public, and they are relied upon to initiate enforcement actions themselves. However, the Steering Committee does not believe that significant new enforcement powers are needed.

The issue of more effective enforcement of land use planning decisions was one that was raised ,in the Better Planning Outcomes Report, as a major issue. The Better Planning Outcomes Report suggested a number of options for improving the enforcement process, and the Steering

Committee is of the view that these matters should be progressed as part of the Recommendations of this current Review.

In light of this discussion, the Steering Committee recommends:

Recommendation 6:
THAT the current review (appeal) processes conducted through the RPDC and the RMPAT are appropriate and no additional processes need to be introduced; and

Recommendation 7:
THAT the enforcement of planning schemes remain the responsibility of local councils in the first instance and with RMPAT in accordance with the legislation; and

Recommendation 8:
THAT the RPDC not engage in enforcement activities; and

Recommendation 9:
THAT the Government introduce improved enforcement provisions, particularly in relation to the ability of councils to issue infringement notices and associated penalties, as suggested in the Better Planning Outcomes initiative, as follows:

That enforcement measures be included in LUPAA to provide for:
1. Infringement Notices to be issued;
2. Councils to recover the costs of enforcement;
3. enforcement of Part 5 agreements;
4. the cancellation or amendment of planning permits by the Tribunal;
5. authorised officers to be designated for the purpose of undertaking compliance activities;
6. a properly authorised officer to require a person to give information in relation to use or development activities etc;
7. a properly authorised officer to enter onto land to inspect and collect evidence;
8. 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;
9. a Temporary Stop Work Notice to be issued by an authorised officer for specified development works;
10. 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;
11. 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
12. penalties to be paid to the prosecuting authority;

That in addition, there is a need to:

1. revise the existing offence provisions in LUPAA so that there are a number of specifically identified offences rather than just the existing two 'general' offences;
2. introduce provisions that have higher penalties when offences are committed by corporations;
3. introduce a provision in LUPAA requiring planning authorities to develop a compliance plan in relation to permits issued;
4. amend the Building Act 2000 to better integrate with LUPAA;
5. amend LUPAA to increase the time within which a prosecution must be commenced for non compliance from the six months that is required under the Justices Act 1959 to twelve months.

The Better Planning Outcomes Report also suggested that more could be done to educate the community about the provisions of LUPAA and the penalties that are able to be imposed for non-compliance. This would reduce the argument that people did not have any knowledge of the legal sanctions for non-compliance. Information on Council and DPIWE websites also would assist in further education and broader compliance.

2.0 Increasing efficiency through statutory timelines, case management or other means.

Background

The majority of planning processes in Tasmania are controlled by prescribed timelines. The Act sets out the number of days by which various bodies must reach decisions. There is the ability to extend these timelines, either by agreement of the applicant and a decision maker such as a local council, or by the Minister for Planning allowing a longer period for the decision.

Planning applications must be determined by local planning authorities within 42 days, but this period can be interrupted by a request for further information needed to carry out the assessment. Records of local council activity show that the average time taken to determine an application that does not need public notification is less than 20 days, while those placed on public exhibition for 14 days are determined, on average, within 34 days.

This means Tasmania performs well when compared to other Australian jurisdictions and ranks only behind the Northern Territory in speed of decisions, where development applications are approved by the Territory Government rather than local councils.
In Tasmania planning appeals must be determined within 90 days, although the majority (around 70 per cent) are resolved through mediated outcomes rather than a full hearing before RMPAT.

The RPDC is required to decide on planning scheme amendments within three months of receiving the s.39 report from the Council and within six months for planning schemes following the provision of the s.26 report. Each year the RPDC on average makes decisions on 130 amendments to planning schemes and approves a new planning scheme every nine months.

The current rulings on the validity of a Council decision mean that even where a decision has been made a minor procedural issue can nullify the permit. The result is that no 'valid' decision was made within the timeline.

Issues

2.1 Timelines on all statutory processes

2.1.1 Content of submissions

A number of submissions from local councils and property development interests urged the need for tighter timeframes for RPDC processes. Planning scheme approvals and some amendments were singled out as taking a particularly long time (up to 3-4 years)

In respect of development assessment by local councils, the submissions varied from seeking to extend the 42 day approval period to allow more community input (a longer period for notification) or reducing that to a shorter time for permitted developments in line with national development assessment streamlining.

A number of comments about the timeliness of statutory approvals indicated that the reasons for delays appeared to be related to staff shortages in the statutory bodies as opposed to inherently drawn out or complex processes.

Several submissions indicated that there should be a new category of development in the planning legislation which covers development that although not meeting the permitted standards, does not

require full public notification where it can be assessed against a prescriptive measurable code, or be capable of a professional judgement by the development authority.

2.1.2 Steering Committee response

The planning system appears to be efficient, as demonstrated by the more than competitive average approval times through local councils. It is apparent also that there are examples of some particular developments that have been subject to lengthy assessment processes. However these remain the minority.

Despite the average times recorded for local council decisions, which are well within the statutory 42 days, there is anecdotal evidence that many larger projects are not being decided within time and extensions are being sought from applicants, sometimes on the basis that a failure to agree to the extension might not enable the planning authority to give an approval.

Notwithstanding this the current case management strategies being introduced by the RPDC will assist in remedying this situation.

The introduction of a reduced approval time for complying development would assist in streamlining the system and encourage more developments into the complying category.

Given that the average approval time of less than 20 days for permitted applications is less than half the allotted time of 42 days, there may be a case for considering two time periods: providing a shorter period for 'complying' and a longer period for notified projects. Nevertheless, such a change will not actually improve times over those already being achieved but merely align the statutory requirement to current performance.

However, in reality it is unlikely that the introduction of shorter times for 'P' developments would alter the current average approval times.

In the current circumstances the 42 day approval period for all types of development applications appears to be the right balance between those who argue for shorter periods for permitted or complying development and those who would like a longer period for community input to discretionary applications.

However, as the development of nationally or state wide standards for specific sorts of development are furthered there should be consideration of the costs and benefits of reforms to streamline approvals for complying development to 28 days.

Accordingly, the Steering Committee recommends:

Recommendation 10:
THAT the 42 day approval period remain unchanged for both permitted and discretionary development applications; and

Recommendation 11:
THAT
(a) the benchmark for approval times for permitted developments be 20 days;
(b) this be referenced by planning authorities in their annual reports; and

(c) as national or state wide standards for specific sorts of development are progressed and new planning schemes come on line, the period for permitted development be reduced to 28 days; and

Recommendation 12:
THAT if projects of regional significance are adopted as a result of this review or independently, consideration be given to extending the time period to 90 days for determination.

2.2 Review of notification

2.2.1 Content of submissions

Submissions made in relation to planning applications generally indicated that problems with access to the proposal plans and documentation may be more of an issue than the time the documents are actually on exhibition. The issue of the adequacy of the regulations requiring public notification has been raised in previous reviews, as have the restrictions on copying and publishing plans.

The regulations that set out the means of advertising and displaying planning applications has essentially remained the same since the *Local Government Act 1962*.

2.2.2 Steering Committee response

Recent amendments to LUPAA extending the exhibition period where public holidays are involved have only recently been introduced and the general public may not be aware of these yet.

The Steering Committee, however, recommends:

Recommendation 13:
THAT 'best practice' models be adopted in relation to the notification, advertising and public exhibition of regulations, including appropriate use of contemporary communications technology.

2.3 Extensions to timelines

2.3.1 Content of submissions

Stakeholders clearly felt that there was a need to provide some constraints to avoid the extremely lengthy approval processes which can result in planning schemes being finally approved 3 or 4 years after they were drafted. The recent situation with the Clarence Planning Scheme is indicative of some of the problems that can occur.

Given that there are relatively tight timelines for both amendments and planning scheme approvals after the stage of reporting on public submissions, the lengthy approvals are the result of formal extensions of time being granted. There is a need for any extension of time to be justified.

2.3.2 Steering Committee response

The Steering Committee recommends:

Recommendation 14:
THAT current timelines for amendments and planning scheme assessments by the RPDC be retained, and extensions only approved if agreed to by the proponent.

2.4 Review of combined amendment and development applications (s.43A)

2.4.1 Content of submissions

Specific concerns were raised in several submissions about the functioning of the combined amendment and development application process allowed under s.43A of LUPAA.

Submissions from development interests, in particular, suggested there should be the ability for development proponents to actively support their proposal in assessment considerations once the council has agreed to the amendment and issued the (interim) permit. Another submission advocated for a review or appeal to the RMPAT on the refusal of a permit by the RPDC.

Another submission suggested that the s.43A process should be disconnected into a two stage process which clearly separates out strategic and development issues.

2.4.2 Steering Committee response

The combined applications under s.43A of LUPAA were designed to provide a one step process where a planning scheme did not allow a particular development and therefore needed amendment to allow it to be considered. Prior to the introduction of this amendment to LUPAA, specific departures were used to override the planning scheme provisions because of unusual circumstances. The s.43A process generally involves a more significant and permanent amendment such as a rezoning or other ordinance change as opposed to a 'suspension' of planning controls should a specific project go ahead.

Notwithstanding attempts in the past by RPDC delegates to clearly separate out the planning scheme amendment from the development application, considerable confusion still seems to exist in the processes and conduct of these hearings. It is recommended that a review of the s.43A process should consider a more distinct two-stage assessment, possibly involving both the RPDC (for the amendment) and the RMPAT (for the development application) should the amendment be approved by the RPDC.

The Steering Committee is aware that the RMPAT is technically an appeal body and the Sec 43A process is not an appeal process. However, the development application part of a Sec 43A process is a discretionary one which has been subject to representations from the general public, and any review of it is, to all intents and purposes, an appeal against the Council approval. Currently the RPDC deals with the proposed amendment as well as assessing the merits of the development and those representations made in relation to the council approval. It therefore is acting in part in the same way and covering the same issues as the RMPAT would in an appeal.

The advantage of a separated process would be that the developer would have an opportunity to refine the application in the light of any modifications to the amendment by the RPDC, prior to its consideration by the RPMAT.

The Steering Committee therefore recommends:

Recommendation 15:
THAT the combined amendment and development application process under s.43A be subject to separate review in consultation with stakeholders.

2.5 Modification to a s.59 costs application

2.5.1 Content of submissions

Under the 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 improper notification, the Council is obliged to pay the costs of all parties to the subsequent appeal.

2.5.2 Steering Committee response

S.59 is clearly not designed to penalise where there is a demonstrable intent by the council to carry out its functions.

The Steering Committee therefore recommends:

Recommendation 16:
THAT the legislation be amended to remove the costs order against a Council under s.59 if the Tribunal rules that a Council has acted to make a decision in 'good faith' within the prescribed time period.

3.0 Mechanisms to give greater weight to State policy priorities

Background

The planning system has been augmented in recent years by the development of a range of planning instruments and frameworks.

The introduction of planning directives several years ago has added to the development of State Policies as a mechanism for the Government to express its policy priorities. Planning directives can cover a range of issues including land use issues requiring consistency across all municipal areas, and the application of a State Policy. Draft planning directives can be prepared by any person, planning authority or agency including the Minister, and must be lodged with the RPDC which advises the Minister as to whether an assessment of it is recommended.

The introduction of the Common Key Elements Template in accordance with Planning Directive No.1, the standard planning scheme schedules project and proposed standard zone provisions project, all provide an alternative means of the State implementing its policies through the planning system.

Only two planning schemes to date have been approved in accordance with the Common Key Elements Template, despite it being introduced several years ago. This is a reflection in part of the time it takes to draft and assess planning schemes. The Clarence Planning Scheme was given special dispensation to proceed in its original format despite the PD1 requirement being in force.

The standard schedules and zone provisions project has been one of the major work programs of the LUPB for the last 2 years and drafts of all schedules have been produced with several being resolved to a high degree through limited stakeholder consultation. The project requires cooperation of a large number of stakeholders, agencies and interest groups as it seeks to provide the exact details of planning scheme controls for the entire range of planning issues and developments.

The project has been further complicated by the reluctance of local council planners to engage fully in the process because they are receiving or reporting a lack of commitment by officers of the RPDC to the project resulting in an expectation that ultimately the schedules will not meet with approval from that body.

This 'mixed message' issue is being addressed through the formation of a joint LUPB/ RPDC working group to cooperatively develop and finalise the outputs.

Issues

3.1 Giving weight to State policy priorities

3.1.1 Content of submissions

Many submissions, especially from local government and industry, referred to recommendations of previous studies about the need for clearly articulated Government policy positions which are required to inform the statutory planning instruments that regulate everyday use and development.

The primary mechanism identified has historically been, and remains, the development of a suite of State (Planning) Policies. There was criticism of the Government for its failure to deliver more

State Policies and in the tardy manner in which current Policies have been reviewed. Some submissions specifically listed the topics which State Policies might be drafted to cover.

An increase in the State's role in policy setting was strongly supported and seen as the appropriate point of engagement of the State government rather than as 'political interference' in the system.

3.1.2 Steering Committee response

The regional planning initiatives that will deliver a set of contemporary new planning schemes based on these projects indicates that more cooperative and strategic planning processes may be as effective as the drafting of a raft of State Policies in providing for the State's interests.

In the 2007/08 State Budget, funds were allocated for the purpose of developing Regional Planning Strategies for the three regions in the State. The regional land use planning strategy will be based on analysis of economic, social and environmental trends as well as consideration of relevant policy and legislative imperatives. That strategy will then provide the basis for a set of new planning schemes with more consistent format and structure for all of the planning authorities within the region through the promotion and implementation of Planning Directive No. 1 (Common Key Elements Template).

The drafting of State Policy should be used where it is required rather than as preferred way of implementing planning policy. This would reduce the apparent demand for creation of State Policies whilst providing government guidance on a range of issues through use of other mechanisms of the planning system which have been developed further in recent years such as the standard schedules project to expand the PD1 Template for planning schemes.

The use of planning directives in fact provides a more direct and speedier way for the Government to influence planning policy and implementation through local government decisions. To date only one directive has been put in place. However, a directive on irrigation pipeline approvals with the purpose of standardising their status as permitted developments where they meet prescribed criteria has been forwarded to the RPDC for consideration. Planning Directives are given effect over and above planning scheme provisions, thereby demonstrating their ability to directly affect local council decisions.

However, it is noted that the current legislation requires any draft planning directive to be lodged with the RPDC so that it can recommend to the Minister whether an assessment of the draft should be undertaken. The Minister can then direct that such an assessment be carried out. Although this process has merit where a draft planning directive has been prepared by a party other than the Government, it is arguably an unnecessary step where Minister has approved or required the drafting in the first instance. There seems to be merit in providing for the Minister to direct an assessment without first seeking the advice of the RPDC as to whether that is appropriate.

Currently, the Minister can only provide instruction to the RPDC which is limited to actions set out specifically in the legislation under which the RPDC operates. There may be merit in expanding the power of the Minister to direct the RPDC to report on a range of planning related matters not already covered by the legislation

The Steering Committee therefore recommends:

Recommendation 17:

THAT the Government better utilise the options available under the current legislation, particularly Planning Directives, to enhance its participate in, and influence of, the future direction of planning issues; and

Recommendation 18:
THAT the process for approving Planning Directives be modified by removing:

(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; and

Recommendation 19:
THAT a Ministerial Directive power be introduced that enables the Minister to direct the RPDC on a range of planning related matters not already covered by the legislation but not including matters dealing with the RPDCs independent decision making function . Such directives are to be listed in the RPDC annual report.

The recommendations of the following section are also relevant to this issue.

4.0 Reviewing the process for making and reviewing State Policies.

Background

The Tasmanian Resource and Management Planning System (RPMS) is predicated on a raft of State Policies that are designed to provide a way for the State Government to set out the matters it requires to be consistently given effect through the planning system.

The number and range of State Policies developed since the inception of the RMPS in 1993 is unquestionably limited. There have been three State Policies drafted and given effect in Tasmania over the last 14 years, although National Environmental Protection Measures (NEPMs), which are not derived from State processes, are treated as State Policies.

The preparation and drafting of State Policies requires considerable resources. The limited resources available for this purpose have also been employed in reviewing those three policies.

The need for a raft of State Policies was identified as early as 1996 by the Budge Report on an "Integrated System of Planning Instruments". It was reinforced by following enquiries and studies (Edwards 1997; Better Planning Outcomes 2005).

A number of recent issues within the State Government have also rekindled an interest in having a State Policy. In 2007, the then Premier announced that there would be a State Policy on Housing. while the Premier's Physical Activity Council has suggested a State Policy might assist with the promotion and planning of healthy communities.

Issues

4.1 State Policy approvals and reviews and application of policies at appropriate spatial levels

4.1.1 Content of submissions

Although the specific approval processes for State Policies were not clearly addressed in the submissions (a number seemed to confuse the approvals of Projects of State Significance with State Policies) several submissions clearly indicated that the Policies should be the expression of the Government's position and developed and expressed in a more simple way.

Consistent with the concerns expressed about there being an ongoing policy vacuum in Tasmania, many submissions, particularly from professional planners and local councils also highlighted the opportunity and the need for the State to clearly articulate its policy position on a range of subjects. This was seen as a vital part of the regional planning initiatives.

4.1.2 Steering Committee response

The development of a number of new State Policies would be resource intensive but addressing this may not provide the solution to the perceived vacuum of policies. Consideration also needs to be given to the nature of State Policies, how they are ideally implemented, and the process for approving them. These will effect the development and successful take up of the policies.

The characteristic of State Policies has also been subject to review, with the Budge Report (1996) making recommendations on their format, content and implementation. The reviews of the State Coastal Policy and the State PAL Policy have also allowed reconsideration of these issues.

Notwithstanding changes to the drafting of Policies, the Tasmanian system requires implementation through planning schemes. This is in contrast to the NSW system which enables the State Environment Planning Policies (SEPPs) to sit over and above local planning schemes. Consequently, SEPPs are not required to provide the additional layer of advice on how planning schemes might be amended. There are over 74 SEPPs in NSW.

By contrast, the Tasmanian system relies entirely on the local planning scheme to interpret through its provisions the requirements of the State Policies and is moving away from any application of these policies in a self executing way. Issues of precedence are avoided by requiring the local content of planning schemes to be totally consistent with higher level policies through amendments. This means the decision making is relatively straight forward as there is only one layer of planning control to apply to any development proposal.

Many submissions indicated that policy setting through State Policies was an appropriate role for the State, but the process for drafting and approving these in Tasmania is arguably too complex. A few submissions indicated that there should be a more direct process for establishing these as an indication of the Government's position.

The current process involves the State Government (usually a lead agency with a substantial interest in the issue) drafting discussion papers, carrying out extensive stakeholder consultation, and drafting a Policy and supporting implementation documents. The Draft Policy, once approved by Government, is forwarded to the RPDC which then exposes the Policy to a further extensive round of public submission culminating in a public hearing and a report recommending any modifications to the Draft Policy.

The State Government then decides whether to accept or reject the recommendations of the RPDC on whether the Policy should be modified before finally tabling it in Parliament where a vote can be made to disallow it. The process can take on average between 2 and 4 years, with no guarantee that a Policy expressing the wishes of the Government of the day is finally achieved.

In the light of this analysis the Steering Committee recommends that the State Policy process is changed to reflect a more direct expression of State Government policy by removing the assessment of a draft State Policy by the RPDC and allowing the Minister to prepare and gazette it after taking into account public comments. This is along the lines of the NSW SEPP system and is consistent with the Better Planning Outcomes project.

This modified Policy making process would rely on rigor in the initial research and drafting stages and comprehensive stakeholder consultation and review prior to the finalisation of the Policy. However, the emphasis would be on the quality of those processes rather than the quantity of time they take. Overall the Steering Committee believes this would reduce the time taken to draft and gazette new State Policies by at least a year.

State Policies are often grounded in or related to other policy areas of government, such as agriculture, housing or environmental conditions. The expertise in these areas is necessary for the successful drafting of a policy and its implementation.

Additionally high level planning knowledge and drafting skills are also required and these are often acquired in the preparation of each policy. There is a need to ensure the best use of experience and resources are available to draft new State Policies and implementation packages.

Currently policy drafting and review processes are not necessarily handled by the same team of people for each policy such that there is no corporate memory of drafting, consultation or review techniques.

Through better initial drafting and implementation of new State Policies there may be a reduction in the need for major Policy modification following periodic reviews.

A number of submissions coupled the policy vacuum to the need for a layer of regional planning. Regional level implementation and strategy setting is seen as providing a 'middle ground' where local issues are translated 'up' and State issues translated 'down'. Given that most (if not all) State Policies are designed to address issues that transcend local areas, a regional application provides a sound spatial level for implementation of what are essentially strategic policy positions.

The successful implementation of State Policies will be assisted by appropriate strategic regional planning processes being in place. More direct and effective implementation of State Policies will also be provided by the drafting of standard provisions to give effect to them through the Common Key Elements Template for Planning Schemes.

Notwithstanding this the Steering Committee believes that the Regional Planning initiative has expanded the range of tools available to address policy issues and provides a long term opportunity for the State to implement policies which essentially deliver the objectives of the planning system without the need for formal policy drafting and approval.

This might indicate that State Policies would be better focussed at shorter more immediate policy adjustments on issues that are more specific and requiring particular emphasis, such as affordable housing.

In light of this discussion, the Steering Committee recommends:

Recommendation 20:
THAT the State Policy legislation be amended to exclude the further review and reporting processes currently conducted by the RPDC and provide for a single process of drafting, consultation, review and gazettal, by Government; and

Recommendation 21:
THAT the Government prepare guidelines on the principles, structure and implementation requirements of State Policies.

5.0 Reviewing the process for approving Projects of State Significance.

Background

The POSS provisions of the planning system are often referred to as 'fast track' approvals for favoured projects. However, the evidence based on previous approvals indicates that the assessment processes are in fact both longer and more thorough than required for normal developments. The 'fast track' tag refers to the single integrated assessment without further review or appeal opportunities.

Despite the POSS assessment option being available for 14 years only 2 projects have been assessed and approved. Two other projects have been withdrawn from the process or terminated by the RPDC prior to full assessment.

There are clear timelines on particular aspects of the POSS assessment process. The RPDC has provided an additional stage not specifically required by the legislation, where it seeks public input for a period of 28 days into the Draft Integrated Impact Statement prepared by the proponent in response to the published guidelines. The RPDC also provides the option of an additional hearing based on those submissions. This process duplicates to some degree the statutory requirement for the public exhibition of its draft integrated assessment report, and consideration of representations through optional hearings.

Notwithstanding the specific times provided for public processes, the POSS process as a totality does not have a set time for completion. Under s.20 (3) of the legislation the Minister has the power to impose time constraints on the assessment process, but this has not been exercised to date.

Issues

5.1 Approval process and independent assessment for Projects of State Significance

5.1.1 Content of submissions

Only twelve of the 69 submissions made reference to the process for approving Projects of State Significance. Some submissions emphasised the need for a tighter control on timelines for approving Projects of State Significance.

A number of submissions emphasized the need to retain the independent assessment process for Projects of State Significance, and the need to keep the process independent of political interference.

However, there were other submissions that did not support the process, although that criticism was based on the particular process of approving the pulp mill rather than the generic approval process established under the planning legislation.

5.1.2 Steering Committee response

The lack of overall time constraints on the POSS process reflect the need for adequate and appropriate information to be provided by the proponent to the RPDC for it to carry out its assessment functions.

It appears that the RPDC's reached the view that this information requirement had not been adequately met in respect of at least 2 assessments, the Oceanport project and more recently the Pulp Mill project. In the former case the RPDC utilised its powers under s.28A to recommend to the Minister that the POSS status be revoked. In the second instance dispute about the adequacy of information and delays in provision of that led to the proponent withdrawing from the process.

There is a need to more thoroughly review the Projects of State Significance processes to determine if there is a need to set overriding timelines that prescribe the outer limits of the RPDC deliberations and whether this can be done while ensuring an adequate assessment of the relevant issues.

Mandatory timelines may result in the premature refusal of some projects and the consequent loss of that development to the State when more flexible processes may deliver appropriate but lengthier approvals. Clearly any imposition of set timelines would need to have commensurate extension provisions to allow for these circumstances. Given that the current legislation provides the opportunity for the Minister to prescribe timelines for specific POSS projects, the Government should carefully consider the benefits of imposing fixed mandatory timelines for every POSS. However, there is merit in considering amending the legislation to allow extensions to the statutory periods without Ministerial consent where the proponent agrees to a request from the RPDC.

Additionally the current practice of seeking public input into the draft Integrated Impact Statement may add several months to the current process, and, as it is not required by the legislation, should be removed.

The Steering Committee therefore recommends:

Recommendation 22:
THAT amendments be made to the Projects of State Significance legislation allowing for an extension of the statutory assessment timelines by agreement of the proponent without requiring the Minister's consent, but imposition of fixed mandatory timelines be subject to further consideration of benefits and disadvantages.

and

Recommendation 23:
THAT the RPDC discontinue the non-legislative stage of seeking public input into the draft Integrated Impact Statement for Projects of State Significance.

6.0 Wider use of mediation, including mandatory mediation.

Background

Mediation is a well used process in RMPAT proceedings, but it still relies on the consent of all parties to resolve matters. LUPAA also provides an opportunity for mediation between a developer and third parties prior to the planning authority making a decision (under s.57A). This also requires the consent of all parties.

The RMPAT process includes a preliminary conference in the form of a directions hearing usually held within 2 weeks of the appeal being lodged. The purpose of this is to ensure that all matters in dispute have been identified as early in the proceedings as possible. A failure to disclose a relevant matter early in the proceedings may result in a refusal to allow that issue to be raised at a later date.

At the directions hearing the Tribunal makes directions as to the following matters:

- Applications to be joined as a party.
- The issues which may be raised in the appeal.
- Directions are given as to mediation - when and where a *mediation conference* (see below) will be held.
- The date, time and place for the final hearing of the appeal are set.
- Directions are given to the parties to put their evidence in writing, and to give copies of that evidence to the other parties and to the Tribunal.
- Directions are given to provide documents or other information to the Tribunal and to each other party.

The Directions Hearing is also used as a pre-mediation process to determine if the parties agree to a mediation process. Mediation is, however, not compulsory.

Directions Hearings are held by the RPDC but not for every matter requiring a hearing. Mediation of issues is not available to the parties involved in the RPDC proceedings.

Issues

6.1 Compulsory mediation /independent review

6.1.1 Content of submissions

Although many submissions supported the current mediation processes and applauded their success, the notion of 'compulsory mediation' was seen as inherently contradictory and unworkable on the basis that mediation must involve willing parties and cannot be enforced.

As mentioned earlier, many submissions argued that the integrity of the system was dependent on an independent review of decisions. Over and above the issues of political, government and statutory body roles in parts of the planning system, there were several suggestions for the establishment of a new 'planning ombudsman' to enable a review of decisions made by the RPDC,

particularly, and to assist with enforcing planning schemes in situations where local councils seem reluctant to act according to their obligations under the Act.

6.1.2 Steering Committee response

Notwithstanding the current mediation opportunities, there may be some merit in examining ways of providing advice to lay persons who think they should appeal a matter but are unsure of the merit or basis of their position. This could reduce the number of appeals that are not based on sound planning grounds resulting in lengthy and unnecessary hearings, with cost implications for the appellants.

This may be best furthered through provision of advice outside of the RMPAT processes such as through the recently created Planning Aid service offered by the Planning Institute of Australia as a service through the Hobart Community Legal Service.

Some submissions expressed concern at the notion of 'compulsory mediation' on the basis that mediation needed willing participants. However, there seems to be merit in requiring attendance at a 'compulsory conference' of some sort to determine and perhaps narrow the range of appeal issues and differences and provide legitimate avenues for the early and cost free withdrawal of poorly focused appeals that may have been lodged with the best of intent.

Victoria has a system of compulsory conferences for appeals with a 50 per cent resolution success rate.

The Steering Committee, therefore, recommends:

Recommendation 24:
THAT legislation be amended to require compulsory conferences of all parties to appeals before the RMPAT.

7.0 Reviewing the process of third party appeals.

Background

Tasmania has the most liberal third party representation and appeal rights in Australia. It also boasts the second fastest average approval times (although these do not include appeal duration), and a relatively low level of full appeal hearings.

Of the almost 8,900 development applications processed by planning authorities each year in Tasmania, less than 4% are appealed and in 2007-08 nearly 80 per cent of those were resolved through the Tribunal's mediation processes. In short, 99 per cent of development applications are approved and settled without costly and drawn out appeal hearings.

Currently there is only a low administrative fee required to lodge an appeal. Appellants can be the applicant objecting to a refusal or against conditions imposed by a Council, or a third party who lodged a representation during the public notification period.

The default position on costs in an appeal is that each party pays their own costs unless there is an application and ruling that the appeal was frivolous or vexatious. This was reinforced in legislation in recent years following a ruling by the Chairman of a hearing that costs should be borne by the losing party.

The RMPAT hearing processes are now reasonably well documented and instructions are issued on the exchange and admissibility of evidence, and conduct of hearings. There remains substantial concern about the legalistic manner of proceedings and the perception of some lay persons that they are intimidated by legal practitioners.

Proceedings before the RPDC are generally less adversarial and more inquisitorial, with more questioning of witnesses coming from the delegates rather than from lawyers representing clients. It is however, still a matter of degree and can be particularly confusing where a s.43A application is being heard.

Issues

7.1(a) Third party appellants and legitimacy of 'standing'

7.1.1(a) Content of submissions

A range of positions was put in relation to the issue of 'standing' or access to any third party to lodge submissions and institute appeals. However, the majority, including some from the legal profession and development interests, strongly supported the retention of the broad third party appeal rights.
Some submissions urged a restriction on appeals by third parties and by third parties joining an appeal through a test on material interest, or as the result of a determination that appeals have planning merit issues that should proceed to a full hearing.

7.1(b) Fees for appeals and awarding of costs

7.1.1(b) Content of submissions

Differences were evident in the submissions relating to fees, costs and the provision of financial security. A substantial number of submissions indicated that there was a need to discourage frivolous appeals through higher barriers for involvement, or punitive costs or compensation if an appeal failed.

7.1.1(c) Level of legal process required for appeal processes

7.1.1(c) Content of submissions

The legalistic nature of proceedings before the RMPAT was raised by many individual submissions and organised conservation interests.

This position was countered by other submissions from development interests and lawyers citing the need for due process and the rule of law. RMPAT was seen by some as a preferred model for transparent decision making and by others as dominated by legal argument and process that disenfranchised the lay person.

The hearing processes conducted by the RPDC were seen as inefficient, obscure and unpredictable by some, but more accessible and 'user friendly' by others.

7.1.2 Steering Committee response

As discussed above, submissions in relation to third party appeals ranged from seeking further restriction on appeal rights to reducing the legalistic operation of the hearings. Submissions from members of the legal profession strongly supported the RMPAT processes as fair and not provoking many Supreme Court appeals on technicalities.

The Steering Committee notes the views expressed on this matter by the Better Planning Outcomes Report. It believes that many of the Options presented in that Report suggesting improved communication of the Tribunal processes and functions through issuing of guidelines and expanding directions hearings are relevant to the issues raised by submissions to this current Review, and should be acted upon where relevant and practical.

It is apparent that the different types of issues dealt with by the RPDC and RMPAT are best served by differing methods of enquiry. However, within this framework, there does appear to be some need to better define and control the hearing processes before the RPDC to ensure a balance between the need for inquisitorial hearings, procedural fairness and accessible and minimally legalistic proceedings.

Although a number of submissions indicated that third party appeals should be confined to those with immediate or demonstrated material interest, there were others including lawyers who argued that anyone has a legitimate interest in what is the broader public environment.

Suggestions of some pre-appeal check on the proper interest or merit of appeals, or limitation by physical proximity to the proposed development may be seen by some as removing vexatious or nuisance appellants. However, the Steering Committee saw little evidence that these were widespread.

In addition, instituting these sorts of filtering processes would be complex, time consuming and arguably open to dispute and litigation themselves. This would simply shift the argument and potential delay from the planning issues to the standing of participants in the appeal.

In summary, the Steering Committee is of the view that these modifications to the third party appeal situation may introduce a 'cure that is worse than the disease'.

On this basis, the Steering Committee recommends:

Recommendation 25:
THAT arrangements relating to existing third party appeals remain unchanged.

However, the Steering Committee also recommends:

Recommendation 26:
THAT the Options presented in the Better Planning Outcomes Report in relation to the RMPAT review processes be revisited and implemented where practical.

Terms of Reference Part B

8.0	The viability of amalgamating the RPDC and RMPAT.

Background

The RPDC and the RMPAT have distinct roles and functions prescribed by different legislation. The RPDC determines the content of planning schemes while the RMPAT determines the compliance of development proposals in accordance with those planning schemes. The RPDC has broader roles under its Act, including consideration of State Policies and Projects of State Significance.

The RMPAT also has broader review roles in relation to a range of approvals under a variety of Acts covering issues such as strata titles, heritage listings, and marine farming plans.

The combined s.43A provisions provide the RPDC with the task of initially assessing an amendment to a planning scheme and then determining a specific development application in accordance with that amendment.

Other than the organisation and holding of hearings, the two bodies have different structures and administrative arrangements.

Issues

8.1 Amalgamation of the RPDC and RMPAT

8.1.1 Content of submissions

Most submissions referred to the functional differences between the RPDC and RMPAT and the need for different types of processes suited to those bodies. However there was also a clear view expressed that security and integrity could still be retained in the planning system if a larger single review body were to be formed.

Several submissions argued for a single integrated body, but the majority (including nearly all submissions from legal practitioners) strongly argued for retention of the RMPAT as a separate body. Although the RPDC was subject to suggested modification in composition and roles, no suggestions were made to modify any aspect of the RMPAT.

Specific concerns were raised about the combined assessment of a joint planning scheme amendment and development application under s.43A of LUPAA. These views reinforced the preferred separation of RPDC functions from the review role of RMPAT.

8.1.2 Steering Committee response

Submissions were strongly in favour of the retention of the RMPAT and the RPDC as separate bodies.

The main arguments put forward for this position include

a) the appropriateness of different enquiry mechanisms for strategic 'plan making' and development assessment review;
b) a reluctance to 'pollute' the preferred clarity of processes conducted by the RMPAT;

c) a reluctance to introduce the more legalistic adversarial approach of the RMPAT to the RPDC; and
d) a recognition that the strategic level of enquiry by the RPDC requires a completely different skills set to that needed in reviewing development assessments originally made by local councils.

Retention of the two bodies as separate entities is, however, clouded by the joint amendment and development application process set up under s.43A of LUPAA. A number of submissions argued that s.43A applications needed a clearer two stage process, dealing initially with the amendment (by the RPDC) and then an expedited review of the development assessment (possibly by the RMPAT). Section 2.4.1 of this Report deals with that issue.

In light of this discussion, the Steering Committee recommends:

Recommendation 27:
THAT the RPDC and the RMPAT be retained as separate bodies; and

Recommendation 28:
THAT the roles and functions of the RMPAT are generally appropriate and do not require change.

and

as already recommended in Section 2.4.1:

Recommendation 15:
THAT the combined amendment and development application process under s.43A be subject to separate review in consultation with stakeholders.

Terms of Reference Part C

9.0	The structure of the RPDC.

Background

Membership of the RPDC is prescribed by legislation. Currently, the membership is as follows:

- An Executive Commissioner;
- A Commissioner with planning experience nominated by the Local Government Association;
- A Commissioner with expertise and management experience in resource conservation;
- A Commissioner with planning experience and experience in industry and commerce;
- A Commissioner with resource conservation or planning experience representing community interests; and
- A Commissioner with public administration experience in regard to project implementation

The RPDC has units which provide executive support, and deal with major projects, state of the environment reporting, and provision of planning advice.

Issues

9.1 Distinction and consistency of advice and decisions

9.1.1 Content of submissions

Some submissions raised concerns about the distinction and consistency of advice and decisions provided by the RPDC. Particular submissions indicated that the RPDC was providing advice through officers which ultimately did not correspond to the decisions being made by the Commission or its delegates.

Other submissions recognised the positive advice role of the RPDC, and argued for its retention or for an expanded role within a reconstructed State planning body.

Some submissions highlighted the lack of public explanation of the reasons for RPDC decisions as a factor in the scepticism about due process and consistency.

9.1.2 Steering Committee response

The issue of the advice provided to local authorities by the professional staff of the RPDC and the decisions ultimately arrived at by the delegates highlights the confusion between the advisory roles and statutory approval roles of the RPDC. This confusion serves to diminish public confidence in both functions.

This raises a tension between the desire for a more fulsome government role in the planning system and the need for review bodies that are independent of political interference. The solution to this apparent dilemma might lie in recognising, and more clearly articulating, the role for State government in the oversight of the planning system, and through having a more transparent and direct State Agency point of input into RPDC functions.

Other State governments have systems which are characterised by a close link between policy and statutory arms but which still retain independent review processes. The most integrated model in Australia is in Western Australia where the WA Planning Commission (which is serviced by the Department of Planning and Infrastructure) plays both policy and statutory roles. Further information on the WAPC is provided in Appendix B to this Report.

The current Tasmanian model (the RPDC) includes representation from industry, local government, and the community but has excluded any specific State interests. Unlike its predecessor, the Land Use Planning Review Panel (LUPRP) the Chair of the RPDC is an independent appointee as opposed to the Secretary of the Department and there is no other State Government representation.

Under the current structure of the RPDC, the State must contest items before the Commission as it has no seat on the Commission itself. If a comprehensive suite of State Policies were in place providing a clear representation of the State Government's interest this may not have as much impact but currently it results in the State Government acting as 'just another party' to proceedings if it seeks to get a legitimate State policy position put forward.

The Committee considers that the absence of government representation on the RPDC needs to be corrected to improve State Government's engagement in the planning system and to ensure the State's interests are represented in the decision making process. Depending on the State Government's preferred model for governance of the planning system, this could include representation from an agency or agencies that have planning related portfolio responsibilities as new ex-officio Commissioners.

Recommendation 3 addresses this issue.

The Steering Committee also suggests that planning advice from the professional officers of the RPDC should be focussed on assisting the delegates during and after the RPDC hearings rather than the current practice of providing preliminary reports on issues prior to the hearings.

The Steering Committee understands that under the recently appointed Executive Commissioner of the RPDC a number of administrative and case management reforms are being instituted, and suggests that these issues be included for consideration under that process.

Terms of Reference Part D

10.0 Assessing best practice models for ministerial call in powers.

Background

In Tasmania proposals which might cause environmental harm are defined as Level 2 projects under the Environmental Management and Pollution Control Act 1993 (EMPCA). Level 2 projects are either those prescribed as meeting a certain threshold or other projects called in because of potential impacts

Level 2 developments are submitted to planning authorities and then subject to separate assessment by the Environmental Protection Authority (EPA). This includes longer time periods for the provision of adequate information and decisions by the EPA, however appeal rights to the RMPAT still apply. Level 3 projects (POSS) are subject to much longer periods of assessment but there is no appeal on merit following the integrated impact assessment by the RPDC.

The only 'call in powers' in the Tasmanian planning system are for Level 2 projects and Projects of State Significance (i.e. Level 3 projects). Both of these are 'call in' to a higher level of scrutiny by independent assessment panels based on the level of potential impacts. However, Projects of State Significance, ultimately, are approved by Parliament

Other State and Territory jurisdictions have a range of Ministerial 'call in' powers. A brief discussion of these powers is contained in Appendix B to this Report.

Issues

10.1 Ministerial 'call in' powers

10.1.1 Content of submissions

Many submissions related the concept of 'call in' powers to the Projects of State Significance process and argued that such powers appeared to be an attempt to legitimise a process for removing sensitive projects from the 'independent review' of the RPDC.

The concept of Ministerial 'call in' as a means of providing a higher level scrutiny and broader assessment of project did not seemed to be understood in submissions, although there was strong support for a new assessment process for regionally significant projects.

It was apparent that none of the submissions recognised the Projects of State Significance process as, in effect, a Ministerial 'call in'. Only negative connotations (ie. political interference) were associated with the concept.
The origin and purpose of Ministerial 'call in' powers is based on joint issues of 'fast tracking' important developments and providing consideration of State issues in assessment of major projects.

Research indicates that in the majority of cases 'called in' projects do not result in a faster approval process although they do remove any further appeal right thereby providing a 'one stop shop'. An examination of the 34 Environmental Impact Statements (EISs) completed under the South Australian Planning Act from 1982 to 1993 showed that the shortest overall time from declaration to decision was 6 months and the longest was five years, with two years being about average.

Consistent with the DAF development tracks, projects that are called in are generally subject to lengthier and more complex assessments. In Tasmania the Level 2 developments are subject to longer time periods for the provision of adequate information and decisions by the EPA. Level 3 projects (POSS) are subject to much longer periods of assessment but there is no appeal on merit following the integrated impact assessment by the RPDC.

Other legislation has been established to assist with approval of major projects including the *Major Infrastructure Development Approvals Act 1999*. However, there are no fixed timelines for decisions under this process.

Despite the average times recorded for local council decisions, which are well within the statutory 42 days, there is anecdotal evidence that many larger projects are not being decided within time and extensions are being sought from applicants, sometimes on the basis that a failure to agree to the extension might not enable the planning authority to give an approval.

In general terms the current system of 'call in' (i.e. Level 2 and Level 3 processes) appears to be well accepted, if not well understood. What is clear is that a Ministerial decision making model was not welcomed in the vast majority of submissions.

Interestingly, other jurisdictions which have long retained ministerial 'call in' for ultimate decision by the Minister are now moving to devolve some of those to non-political committees or regionally based panels.

The submissions to the Review generally supported a category of regionally significant projects assessed by expert panels. South Australia has established regional planning panels for many developments which remove the decisions from the immediate local council elected members. This presents a level of 'call in' for regionally significant projects.

Generally it is accepted that Local Government often resents the use of 'call-in' powers for medium-sized developments as it views itself capable of making a proper and thorough assessment and one that is more responsive to community needs. Although this varies between councils, the introduction of a regional significant project process establishes a mid point between the local and State authority.

10.1.2 Steering Committee response

In the light of its earlier recommendation about retaining the independence of statutory decision making, the Steering Committee is of the view that additional 'call in' powers should be limited to providing higher level independent assessment and not invoke Ministerial discretion.

As such, the Steering Committee recommends:

Recommendation 29:
THAT new 'call in' powers be limited to prescribed specified developments such as regionally significant projects, but assessment of such projects, and decisions on those projects be made by the relevant independent bodies.

and

Recommendation 30:
THAT the 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.

Terms of Reference Part E

11.0 Assessment of projects of regional significance by expert panels.

Background

The discussion under the previous Term of Reference is relevant to this issue.

Issues

11.1 Projects of regional significance and expert panels

11.1.1 Content of submissions

Submissions expressed strong support for a new category of development assessment for projects considered significant in a regional context. This included vocal supporters of the 'independent' RPDC assessment for the Ralphs Bay POSS, with a clear message that this project should not be treated as one of State significance. The implication (erroneously) seems to be that despite strong support for the independence and thoroughness of the POSS assessment under the RPDC, the POSS status indicated a level of State Government support for a project that would not be forthcoming if it were only deemed to be a regionally significant project.

The support for the regional projects concept was augmented by specific suggestions about the make up of expert panels.

11.1.2 Steering Committee response

The current 'call in' provisions for environmentally complex projects under EMPCA (Level 2 projects) and as Projects of State Significance are accepted largely because they provide greater scrutiny and consideration of issues beyond the local jurisdiction without increasing the level of political decision making.

The submissions reflected a desire to retain this independent process, while acknowledging the need for more skilled and comprehensive coverage of issues for some projects which have consequences beyond the immediate council area.

Further detailed consideration of regionally significant projects is required. Amongst the possible options are:

(a) to set out predetermined threshold levels for triggering a regional project 'call in';
(b) to have these supplemented by specific projects defined by regulation; or
(c) to have a Ministerial power to 'call in' any project which is deemed to be of regional interest or where conflicts of interest might be apparent with a local council.

In NSW, the Government can prescribe by regulation not only types of projects which are related to particular policy positions but also spatially defined areas which have been identified as important development or growth nodes. Under the NSW State Planning Policies (SEPPs) specific developments can be 'called in' for higher level assessment. SEPP 32 – Urban Consolidation (Redevelopment of Urban Land) provides for the initiation of a regional environmental plan (REP) to make particular sites available for consolidated urban redevelopment with the Minister as the consent authority.

There is a need to canvass the options for composition and processes of the regional projects assessment. These should include formation of joint planning panels similar to the MIDAA (*Major Infrastructure Development Approvals Act 1999*), panels similar to those being used in South Australia and proposed in NSW.

On of the primary drivers for the South Australian model is the removal of local political considerations from the development assessment process by ensuring the panel is an independent expert body not representative of local sectional or community interests.

Given the likely complexity of regionally significant projects and the particular interests of a variety of local and state bodies, there needs to be consideration of new timeframes for decisions consistent with the approach for Level 2 processes under EMPCA.

'Call-in' powers should be defined for particular projects, and that specific assessment processes be established, along with the appropriate bodies to undertake those assessments. Call in' powers to regionally based or expert panels could be established as per the Better Planning Outcomes report. The criteria for 'call in' could include projects which are regionally significant through having impacts on more than one council area, those where the local council considers they are of a scale which is beyond their resources to assess, those which exceed a value of $10m, those where there is a potential conflict of interests (such as where the Council acts as a developer or owns land affected), and those involving land or a type of development the State has identified in regulation.

The regionally based panels could follow the model of the joint planning authorities set up under the current *Major Infrastructure Development Approvals Act 1999* (MIDAA) which are drawn from the planning authorities affected by the proposal, or could be similar to the proposed NSW Joint Regional Planning Panels which are 3 State appointed and 2 council appointed members (Local Councillors or their delegates).

Accordingly, the Steering Committee recommends:

Recommendation 31:
THAT projects 'called in' are assessed by regionally based panels which include State and local council appointed members.

Terms of Reference Part F (additional Term of Reference)

12.0 Mechanisms available to ensure adequate coverage of climate change issues.

Background

The State Government has recently completed a Climate Change Strategy and established the Office of Climate Change within the Department of Premier and Cabinet.

There are a number of current planning initiatives that include or have the potential to include mechanisms for dealing with climate change. The Schedule 1 objectives of the RMPS established in 1994 provide some direction to the statutory planning system but little to the strategic planning system established by Tasmania *Together* and the Local Government Act (Council Strategic Plans).

Issues

12.1 Mechanisms available to ensure adequate coverage of climate change issues

12.1.1 Content of submissions

This Term of Reference was not subject to public submissions.

12.1.2 Steering Committee response

While climate change has only recently come to the fore of public debate, planning systems have been dealing with changing environmental circumstances, including sea level rise, for two decades. This is reflected in the existing State Coastal policy which is now twelve years old.

The current Federal Government has committed to reducing Australia's greenhouse gas emissions by 60 per cent by 2050. These events coincide with an increasing anticipation of the world's oil supplies peaking and declining.

To date Australia has been slow to act on climate change. Tasmania as the State which has the highest percentage of renewable energy is in a strong position to benefit most from reducing its imports of fossil fuels. With a cooler climate and more water resources Tasmania could also benefit from increased migration and from changing agricultural capacity in other states.

Cities are responsible for 80% of CO2 emissions and with 40 – 60% of this from buildings (construction and operating). The role of planning is consistently highlighted as important in reducing carbon emissions. Current research indicates that compact urban form, well serviced by public transport and at higher densities, is the most sustainable pattern for growth. The more spread out the city the more dramatic the emission of CO2.

Four key areas for reducing emissions are in building/construction, transport, resource use (including waste) and city development and growth.

Regional land use planning and strategic planning can play a major role in both mitigating and adapting to climate change and adjusting to the needs of the changing demographic profile of Tasmania. Integration of land use and transport planning, for example, can address both climate change mitigation and adaptation and the provision of access and mobility to an ageing population.

A whole of government approach to climate change and oil vulnerability is considered very important because of their potential environmental, social and economic impacts. DPAC is now working on a sustainable communities policy framework which provides an opportunity to provide a consistent and integrated direction on these issues.

Regional land use strategies and planning schemes will be important coordinating and delivery mechanisms for a range of issues including housing affordability, physical activity and healthy communities. Climate change and oil vulnerability are common themes which unite and underpin these issues.

Settlement strategies which integrate land use and transport need to be given high priority in the regional planning initiatives.

In view of these comments, the Steering Committee recommends:

Recommendation 32:
THAT in view of the importance of the planning system in addressing both mitigation and adaptation to climate change, the Government introduces a State Policy on Climate Change.

13.0 Other Issues outside the Terms of Reference.

13.1 Enforcement and governance

13.1.1 Content of submissions

Several submissions made reference to the integrity of the planning system being compromised by the lack of rigorous and consistent enforcement of planning decisions and schemes.

The related issue of local council resources required to police the planning scheme was also raised.

13.1.2 Steering Committee response

The planning system is built on a series of approval and review processes and enforcement procedures. Current reviews of decisions include the RMPAT on development approvals issued by local planning authorities, the RPDC on planning schemes and amendments drafted by planning authorities, and also extend to the Supreme Court on matters of legal process from both these types of review hearings.

Enforcement is available through the RMPAT and Magistrates Courts. Additionally, there is the option of review by the State Ombudsman.

There does not appear to be a need for additional enforcement provisions or new bodies to police the planning system.

13.2 Appeal case law and legislative review

13.2.1 Content of submissions

Several submissions raised the need to provide the RMPAT with a direct link to other parts of the planning system or the Minister for the purpose of indicating areas where potential reform is required and for addressing ongoing ambiguities or short comings in planning schemes.

13.2.2 Steering Committee response

There is merit in formalising what are existing informal links whereby statutory bodies have a capacity to report to the Minister on apparent deficiencies in planning schemes or the policy framework.

14.0 Relevant options from the Better Planning Outcomes project and recommendations from the Legislative Council's Select Committee on Planning Schemes.

Better Planning Outcomes Project

The Better Planning Outcomes Project made a number of specific recommendations aimed at:

- Improving State Policies and removing impediments to developing a broad policy framework to inform the planning system;
- Improving the way planning schemes are prepared to provide better planning schemes throughout the State;
- Making development assessment processes more effective to reflect the degree of complexity of the development, including the introduction of a regional assessment process.
- Making enforcement more effective to give greater confidence in the planning system.
- Collecting and coordinating planning information to support the effective operation of the system and monitor its performance.

The specific recommendations were:

1. *Introduce an improved framework for State Policies to enable the development of further Policies to ensure State interests are represented in the planning system.*

Response: Addressed in Recommendations 20 and 21.

2. *Facilitate improved access to relevant planning information held by State Agencies to assist the preparation of planning schemes. Also provides base data of planning activity.*

Response: Addressed in Recommendations 2 and 3.

3. *Introduce a program of implementation to bring planning schemes across the State into conformity with the Directive and underpinned by better strategic planning.*

Response: Currently being addressed through regional planning initiative.

4. *Provide an understanding of the interrelationship between State and local government in a region and a framework to plan for sustainable, long term outcomes.*

Response: Currently being addressed through regional planning initiative.

5. *Provide for broader assessment of regionally significant projects without needing the time consuming Project of State Significance process*

Response: Addressed in Recommendation 12, 29 and 30.

6. Miscellaneous Amendments to legislation – *changes to greatly improve the planning system's efficiency - eg. establish development assessment panel where planning authorities are compromised, define role and responsibilities of planning authorities; allow for amendments to all planning schemes based on the Directive in one process*

Response: Minor amendments have largely been approved by Parliament.

7. *Provide a short course to assist councillors understand the planning system and their obligations and require councils to access qualified planning advice when considering applications.*

Response: No action – not relevant to the Terms of Reference.

8. *Provide a framework for more effective enforcement of the planning system*

Response: Addressed in Recommendation 9 and in minor amendments already approved.

The BPO Response Report promotes a more consistent format and structure of planning schemes state-wide while reducing the numbers of different schemes through the promotion and implementation of Planning Directive No.1.

The Report also suggests planning schemes need to be underpinned by sound strategic planning.

These are being addressed in the regional planning initiatives.

Legislative Council Select Committee

The Legislative Council Select Committee made a number of recommendations as summarised below.

State Government

1. A properly resourced department of state planning be established and maintained in order to provide councils with independent advice and assistance in preparing planning schemes and planning scheme amendments.

Response: The Steering Committee proposes a number of alternative models in Recommendations 2 and 3.

2. A template planning ordinance be adopted to provide greater consistency between planning schemes.

Response: Currently being addressed by Standard schedules and zone standards project in LUPB.

3. The current suite of State policies be expanded and that all State policies be written in clearer, less ambiguous terms, to enable consistent interpretation by all planning authorities.

Response: Addressed in Recommendations 20 and 21.

4. Planning schemes include an overlay of the provisions of other Acts affecting land use planning for uses such as forestry, mining and marine farming.

Response: Not addressed or not relevant to the Terms of Reference.

5. Legislation be amended mandating concise impact statements to accompany applications for planning scheme amendments.

Response: Not addressed.

6. Section 44 of the Land Use Planning and Approvals Act 1993 should be amended making it mandatory for planning schemes to be reviewed at least every five years.

Response: Partly addressed through regional planning initiatives.

7. State agencies be required to take a greater role in the preparation of planning schemes and planning scheme amendments.

Response: Partly addressed in Recommendation 2.

8. The properly resourced department of state planning contain a centralised electronic database of planning scheme maps.

Response: Not addressed, or not relevant to the Terms of Reference.

9. Amongst initiatives undertaken by the State Government to address the shortage of qualified planners, consideration be given to encouraging para-planners.

Response: Not addressed or not relevant to the Terms of Reference.

State and Local Government

10. The State Government and the Local Government Association of Tasmania, through the Premier's Local Government Council, formulate a process for regional planning.

Response: These are being addressed in the regional planning initiatives.

11. Education in the area of planning be made mandatory for all elected members of councils within a prescribed time.

Response: Not addressed or not relevant to the Terms of Reference.

RPDC

12. The function of RPDC be limited to ensuring that proper process has been followed and State policies adhered to in the preparation of planning schemes and planning scheme amendments.

Response: Partly addressed in Recommendations 8, 19, 20 and 23.

13. Consideration be given to the chair of all RPDC hearings being a person with legal expertise. A minimum of three commissioners should sit at all hearings of the Commission.

Response: Partly addressed in Recommendation 4.

14. Provision be made for directions hearings and mediation in the approval of planning schemes and planning scheme amendments.

Response: Partly addressed in Recommendation 4.

15. The RPDC be required to make a decision in relation to the approval of a planning scheme or a planning scheme amendment within a time limit consistent with those applying to other planning processes.

Response: Already exist – Recommendation 22 deals similarly with Projects of State Significance.

State and Local Government and the RPDC

16. Legislation be amended to provide for an appeal process to the RMPAT for all disagreements between councils and the RPDC in the preparation, assessment and approval of planning schemes and planning scheme amendments.

Response: See Recommendation 6. The Steering Committee does not favour this approach.

17. Stakeholders take steps to address the shortage of qualified planners by offering incentives such as scholarships.

Response: Not addressed or not relevant to the Terms of Reference.

Appendix A:
Western Australian Planning Commission

The WAPC is the statutory authority with statewide responsibilities for urban, rural and regional land use planning and land development matters. The WAPC responds to the strategic direction of government and is responsible for the strategic planning of the State.

As prescribed in the *Planning and Development Act 2005* the WAPC can have up to 15 members. These include an independent chairman, the directors' general of seven government agencies and representatives from economic, social and environmental areas, local government, regional development and coastal management. The WAPC is serviced by a number of planning committees that have a range of expertise and local community knowledge.

The WAPC operates with the support of the Department for Planning and Infrastructure (DPI), which provides professional and technical expertise, administrative services, and resources to advise the WAPC and implement its decisions. In this partnership the WAPC has responsibility for decision-making and a significant level of funding while the department provides the human resources and professional advice. The WAPC delegates some of its functions to officers of the department. This delegated authority includes decisions on subdivision and development applications, when they comply with the WAPC policies and practices. The WA Planning Commission has statutory responsibilities which are managed by one of its committees.

Schedule 2 of the *Planning and Development Act 2005* prescribes various statutory committees with certain roles and functions.

Statutory Planning Committee

The committee is the WAPC's regulatory decision-making body. Its functions include approval of the subdivision of land, approval of leases and licences, approval of strata schemes, advice to the Minister for Planning and Infrastructure on local government town planning schemes and scheme amendments, and the determination of certain development applications under the Metropolitan Region Scheme.

State agency representation is on both the Statutory Planning Committee and the WAPC. This enables a range of State agencies to have direct input into the deliberations of the Committees rather than acting as external players of equal standing to others.

Appendix B:
'Call in" powers in the ACT, NSW, Queensland and SA

ACT

In the ACT, most development applications are determined by ACTPLA. However, the Planning Minister has the power to 'call in' an application if he or she thinks it raises a major policy issue, if the development would have a substantial effect on the achievement or development of the objectives of the Territory Plan, or if the approval or refusal of an application would provide a substantial public benefit (s.229A).

If the Minister 'calls in' a development application he or she must inform ACTPLA of the decision. That advice must be notified in the Legislation Register within a period of 3 weeks. The Minister is also required to take into account the comments of ACTPLA and the Planning and Land Council in making his or her decision. The Minister is required, within three sitting days of determining an application, to table a statement in the Legislative Assembly giving details of the application and the minister's decision. This means that the Assembly can be advised after the decision has already been made.

Whether the decision-maker is ACTPLA or the Minister, the DA will be determined as approved, (conditionally or unconditionally), or refused.

QUEENSLAND

In Queensland call in powers for the Minister are provided under Part 6. Division 2 of the *Integrated Planning Act 1997*. The criterion for call in is simply "if the proposal is deemed to be of State interest".

NEW SOUTH WALES

NSW has had Ministerial 'call in' powers of some sort for a long time as part of the *Environmental Planning and Assessment Act 1979* which provided for the Minister to call in a development application where it is considered to be of State significance and in the public interest to do so. In 2005 new powers were introduced under Part 3A of that Act which added a power for call in anything the Minister deemed to be critical infrastructure.

However under proposed reforms currently being considered in NSW, a hierarchy of decision making bodies is proposed to reflect the differing levels of assessments for State significant, regionally significant, local, minor and complying developments and the differing levels of environmental impacts.

Currently under Part 3A the Minister for Planning cannot delegate determinations to another body. Under the proposed scheme, the Minister would delegate the majority of ministerial-level determinations to a new Planning Assessment Commission (PAC), excluding applications for critical infrastructure and other key projects of State significance.

The new PAC would determine most projects of State significance and would also be able to conduct public hearings, provide advice to the Minister, and undertake other planning functions as directed by the Minister from time to time, such as a review of outstanding Local Environmental Plans (LEPs).

The PAC would determine regionally significant projects where the host council does not have the resources to support a Joint Regional Planning Panel (JRPP).

At a regional level, JRPPs would be established to determine applications of regional significance. These could include applications by State agencies, and other developments exceeding $50 million in value. JRPPs would comprise three State appointees and two council appointees. These would only be established where Councils have sufficient planning resources to provide proper assessment advice on major applications.

SOUTH AUSTRALIA

In South Australia, the situation is similar with the Minister able to call-in a development of "major social, economic or environmental importance" or other proposals that meet prescribed criteria. The projects are then assessed by the Development Assessment Commission. Under these circumstances the assessment criteria are similar to the POSS status in Tasmania in that the requirements of the local planning scheme are not mandatory requirements.

In SA the Ministerial call-in power is the only trigger for formal Environmental Impact Assessment (EIA) under the Development Act. This is similar to the Level 2 status under the EMPCA legislation in Tasmania.

Appendix C:
Alternative Governance Models

The Steering Committee identified three options for arranging and allocating the professional planning resources which currently sit in State agencies and statutory authorities.

OPTION 1
Consolidate most planning resources within Government into a single unit.

Under this option the planners currently working in a number of agencies would be consolidated into a single planning unit in one agency with responsibility for advice and support to a single Minister. Communications expertise and administrative support should also be available to the unit to assist in consultation processes and in explaining State planning policy to stakeholders and the Tasmanian community.

The objective would be to provide a critical mass of staff to work on legislation and policy functions and major strategic work such as the development of State Policies under the State Policies and Projects Act. The unit would be located in whichever agency is responsible to the Minister for Planning. This is currently, but not necessarily, the Department of Justice.

Broad cross agency consolidation could include planners currently employed in the Department of Infrastructure Energy and Resources, the Coastal and Marine Branch in the Department of Environment, Parks, Heritage and the Arts, and the Land Use Planning Branch in the Department of Justice.

The single unit would also incorporate some staff from the Resource Planning and Development Commission and the Sullivans Cove Waterfront Authority. This could only occur to the extent that RPDC and SCWA planning staff were not required to discharge the statutory responsibilities of those bodies. This might include staff currently involved in providing advisory services, and policy and strategic work.

To ensure a more consistent engagement of State agencies with the planning system, a standing committee of Heads of Agency (either already established or specifically created) should coordinate planning policy issues.

A number of variations on this model are also possible which are discussed later.

Advantages and Disadvantages of Option 1.0

Advantages	Disadvantages
Makes better use of a scarce resource (qualified planners) and achieves critical mass of planners to work on strategic issues.	Opposition may be expected from all or some of the RPDC, SCWA, agencies and Ministers who 'lose' their planners and the staff affected. Inconsistent with recent announcements on SCWA's future.
Provides a single source of planning advice within Government.	Could compromise the capacity of the RPDC and SCWA to carry out their statutory functions and be perceived as an attack on their independence.

Provides a single source of advice to local councils, RPDC and SCWA	Does not address the fact that agencies may legitimately have competing views and interests. Possible conflicts between this advice and RPDC (or Tribunal) decisions
Assists delivery of strategic planning initiatives and programs – eg regional planning initiatives	Reduces the capacity of those agencies and Ministers who 'lose' their planners to access planning advice in carrying out their functions.
Possible efficiencies in providing non-planning support (eg administration, project management, communications.)	Cost associated with establishing the new planning unit (accommodation and other resources) and the usual issues encountered in amalgamations.

Option 1.1.
Consolidate only those staff currently employed by the Department of Justice ie LUPB, RPDC and SCWA.

Advantages and Disadvantages of Option 1.1

Advantages	**Disadvantages**
Makes better use of a scarce resource (qualified planners) and could achieve critical mass of planners to work on strategic issues depending on the number of staff reassigned from the RPDC and SCWA.	Opposition may be expected from all or some of the RPDC, SCWA and the staff affected. Inconsistent with recent announcements on SCWA's future.
Retains specialist planners in DIER and DEPHA while bolstering capacity to provide advice and support to Minister for Planning.	Could compromise the capacity of the RPDC and SCWA to carry out their statutory functions and be perceived as an attack on their independence.
Provides a single source of advice to local councils, RPDC and SCWA.	Possible conflicts between this advice and RPDC (or Tribunal) decisions.
Assists delivery of strategic planning initiatives and programs – eg regional planning initiatives.	Could compromise the capacity of the RPDC to respond to those initiatives.
Possible efficiencies in providing non-planning support (eg administration, project management, communications.)	Cost associated with establishing the new planning unit (accommodation and other resources) and the usual issues encountered in amalgamations (though these would be less than in options 1 or 1.1)

Option 1.2.
Consolidate only those staff currently employed in the LUPB and SCWA

Advantages and Disadvantages of Option 1.2

Advantages	**Disadvantages**
Makes improved use of a scarce resource (qualified planners). Goes some way to achieving critical mass of planners to deliver strategic planning initiatives and programs – eg regional planning initiatives.	Opposition may be expected from SCWA and the staff affected. Inconsistent with recent announcements on SCWA's future SCWA employs only a small number of qualified planners – removing any of them would seriously compromise the capacity of the SCWA to carry out its functions as a planning authority.
Retains specialist planners in DIER and DEPHA.	
Retains specialist planners in RPDC.	Potential remains for conflicting planning advice being provided by RPDC staff and LUPB staff. Either set of advice may be inconsistent with the eventual decision of the RPDC.
Possible efficiencies in providing non-planning support (eg administration, project management, communications.)	Resources able to be reallocated from SCWA likely to be minimal. Cost associated with establishing the new planning unit (accommodation and other resources) and the usual issues encountered in amalgamations.

OPTION 2
Integrated Planning Commission Model

Staff of the current LUPB would be integrated with the RPDC to form a new Planning Commission. In the short term there could be incorporation of some SCWA staff with probable absorption of the Authority's permanent staff at the point when it winds up.

The new Commission would be expanded to include State agency representation. It would retain the RPDC's independent decision making roles but take on the role of providing policy advice to the Minister for Planning and the Premier in relation to State Policies and support to State initiatives such as regional planning. It would also have an advisory role to local councils. As occurs with the Western Australia Planning Commission, the separation between the statutory assessment and policy roles would need to be carefully managed to ensure ongoing independence from political interference in decision making on major projects.

This model would require some changes to the statutory roles and functions of the RPDC and its relationship to the Minister particularly to provide for provision of advice to Government.

Advantages and Disadvantages of Option 2

Advantages	**Disadvantages**
Provides a single State-level source of information, advice and policy positions on planning.	Minister no longer has a direct source of planning advice from a line agency in the State Service, and would rely on policy advice and other support capacity from an independent statutory authority. This would need legislative amendment to require the new Commission to act on requests for advice from the Government. Would need appropriate administrative structures and operations to ensure separation between the decision making and advice roles of the Commission. Potential remains for inconsistency between planning advice being provided by Planning Commission staff and decisions of the Commission.
Provides a single point of integration of State planning policies and agency interests with the delivery of planning advice to local government, the development of planning strategies, and consideration of planning schemes and amendments.	Requires agency participation in on independent Commission to ensure its interests are adequately taken into account. May result in the need to modify interests to achieve a cohesive whole of Commission position represented through planning policy and advice.
Makes better use of a scarce resource	Cost of physical relocation and

(qualified planners) and achieves critical mass of planners to work on strategic issues. Also provides the opportunity to shift planning resources to fluctuations in work flows for policy development, statutory advice, and stakeholder engagement. Provides for economies of scale and sharing of administrative and technical support freeing professional staff to perform advisory and policy development functions.	establishing the new Commission although there is some spare accommodation capacity in the current RPDC offices which may be adequate to house current LUPB staff. If SCWA staff involved, opposition may be expected from SCWA and the staff affected. Inconsistent with recent announcements on SCWA's future SCWA employs only a small number of qualified planners – removing any of them would seriously compromise the capacity of the SCWA to carry out its functions as a planning authority
Provides for a single point of collection and management of planning information and records, allowing better monitoring of the performance of the planning system and provision of accurate timely advice.	Would remove some records from direct agency control.

OPTION 3
Status Quo

This option would not see any formal staff transfers between departments or authorities. However this review has clearly identified that current resourcing arrangements are inadequate to handle the demands of major initiatives and projects.

In the case of the Regional Planning Initiative this has been addressed by specific resource arrangements between State and Local Government. In the case of the Sullivans Cove Master Plan a project team will be put together through cooperative arrangements between the DoJ, SCWA and others.

Advantages and Disadvantages of Option 3

Advantages	**Disadvantages**
Does not require legislative or administrative change and has no financial implications.	Does not provide the structural changes sought by some stakeholders and relies on other recommendations in this report to deliver the improvements identified.
Retains flexibility to draw together project teams on a case by case basis as described above.	Relies on high levels of cooperation between the various entities and their senior officers.
Avoids potential conflict with RPDC and SCWA over forced staff and resource reallocation.	Does not provide the critical mass of planners and possibility of longer term efficiencies. Potential remains for continuation of conflicting planning advice being provided by RPDC staff and LUPB staff. Either set of advice may be inconsistent with the eventual decision of the RPDC.
Retains clearly separate roles for RPDC, LUPB and SCWA.	Does not provide for any economies of scale in sharing of resources, accommodation or supporting administrative and technical staff and systems.
Allows individual agencies to promote their planning interests directly in the planning system.	Retains the lack of coordinated government position on planning matters

Appendix D:
General Themes emerging from Submissions to the Review

TOR
Submissions (3, 9, 35 & 57) - contained no comments relevant to the TOR.

Amalgamating RPDC/RMPAT
Submissions (41, 2, 10, 13, 14, 16, 18, 20, 21, 25, 26, 27, 28, 29, 31, 32, 36, 39, 38, 42, 43, 46, 47, 51, 52, 53, 54, 58, 59, 60, 64, 66) – opposed to the amalgamation of RPDC & RMPAT.
Submission (5) – Abolish both organisations.
Submissions (34, 47 & 61) – RPDC & RMPAT should be amalgamated.
Submission (55) – Benefit of having a single State government planning judicator for both policy and appeals. RPDC & RMPAT could provide feedback on important and topical issues as they arise.
Submission (65) – RPDC decisions should be subject to appeal to RMPAT.

Better Planning Outcomes
Submission (22) – Local Govt. planning schemes be consistent with State and Federal govt. policy and regulation. Recommends Planning Directive be written.
Submission (32) – Single planning document for all Council areas.
Submission (34) – Tasmania's planning schemes should be consolidated. Awarding costs against unsuccessful parties.
Submission (63) – Translating broader policy objectives into lower level strategic and statutory frameworks.
Submissions (64, 65 & 69) – Comprehensive suite of policies that guide.

Structure of RPDC
Submissions (2 & 20) – Independent of political interference.
Submissions (46 & 5) – Abolish RPDC.
Submission (7) – Proponent keep involved in s43A after Council approval.
Submission (21) – Direction from State govt. strategic planning policy.
Submissions (58, 49, 28, 60 & 66) – Maintain RPDC with better resources.
Submissions (50, 29 & 53) – Clearer process for hearings. RPDC responsible for planning and policy implementation.
Submission (32) – RPDC often contradictory and inconsistent.
Submission (42) – Full time Commissioners.
Submission (46) – Limited functions transferred to RMPAT.
Submission (52) – RPDC & State Planning Dept. be amalgamated.

Ministerial Call In Powers
Submissions (2, 23, 10, 26, 20, 29, 38, 39, 42, 45, 49, 51 & 52) – opposed to ministerial call in powers.
Submissions (14, 16, 50 & 59) – support call in powers with criteria.

Projects of Regional Significance
Submissions (5, 16, 21, 25, 26, 29, 36, 39, 41, 42, 45, 52, 60, 63 & 66) – supports/exploring expert panels with criteria.
Submission (46) – separate category of projects of regional significance dealt with a less complex mechanism.
Submissions (55, 58 & 59) – opposed.

Reviewing Roles & Functions
Submissions (33, 1, 5, 7, 18, 19, 21, 24, 27, 34, 41, 52, 61, 62 & 65) – Establish one planning authority.
Submissions (7, 8, 15, 14, 16, 18, 25, 49, 60 & 69) – Regional planning/RMPS, more resources.
Submissions (26, 21, 31 & 45) – New EPA should be self-sufficient statutory authority/co-exist with RPDC & RMPAT.
Submissions (13, 49, 14, 16, 25, 28, 31, 50, 42, 65, & 67) – Strengthen/improve processes that already work well RPDC/RMPAT.
Submissions (40, 49) – Government/political interference.
Submission (56) – Establish 3 regional planning authorities.
Submissions (15, 12) – need Delegate guidelines.
Submission (46) – RPDC major improvements required. RMPAT under funded/under resourced.

Statutory Timelines
Submissions (4, 38, 39, 40, 41, 42, 44, 50, 59, 63, 67 & 69) – RPDC timelines.
Submissions (21, 14 & 15) – Timeframes strict for Councils.
Submissions (16 & 18) – Council's need to justify requirements.
Submission (19) – Little control of Hearing process.
Submissions (29, 30, 32, 36 & 40) – Resourcing
Submission (29) – Communication

State Policy priorities
Submission (8) – NRM should influence planning outcomes
Submission (14) – Adequate.
Submissions (17, 25, 29, 30, 36, 39, 42, 53, & 5) – Inconsistency/inadequate.
Submissions (19, 5, 21, 24 & 42) – Expand.

Process State Policies
Submissions (2, 38 & 45) – Adequate.
Submissions (5, 46, 53, 59, 65 & 69) – Inadequate.
Submission (7, & 69) – Suite of policies.
Submission (14) – implement BPO recommendations.
Submissions (16, 26, 36, 37, 40, 53 & 59) – Expand.

Process for Approving Projects of State Significance
Submissions (2, 23, 26 & 40) – No political interference.
Submissions (27, 51 & 60) – Do not support process.
Submissions (46, 45 & 29) – Resourcing.
Submissions (31 & 45) – require strict timelines.

Mediation & Mandatory Mediation
Submission (67) – Criteria where appropriate.
Submissions (67 & 2) – would add to costs.
Submissions (2, 24, 27, 29, 31, 39, 42, 51, 58, 62 & 60) – Against mandatory mediation.
Submissions (20, 39, 42, 64, 45, 46, 58, 60, 61 & 62) – Supported mediation.
Submissions (37, 54 & 56) – Support mandatory mediation.

Process Third Party Appeals
Submissions (5, 11, 55, 60, 64, 66 & 67) – Costs.
Submissions (15, 23 & 27) – Need to be reviewed.
Submissions (18, 11 & 34) – Council discretion.
Submissions (21, 31, 39, 42, 46, 55, 60 & 66) – Supported.

Submissions (21 & 24) – Consider written submissions.
Submissions (40, 56, & 61) – demonstrate direct interest in matter.
Submissions (64) – no reduction in time to lodge an appeal.