

FOREWORD

In November last year, the Minister for Environment and Planning, the Honourable Judy Jackson, released a Discussion Paper entitled Better Planning Outcomes.

In the foreword to that document it was indicated that the Government was keen to keep Tasmania's land use planning system in tune with the needs of the State in this rapidly changing world.

The Discussion Paper, prepared by the Department of Primary Industries, Water and Environment, outlined a number of opportunities for improvements to the existing system and comment was sought on those opportunities.

More than 80 submissions were received, many very detailed. The Department thanks all those who made submissions.

The Steering Committee has carefully considered all the submissions and has prepared this Response Report outlining some options for further consideration.

The Government will be considering this report in due course.

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GLOSSARY

ABS –	Australian Bureau of Statistics
BCA –	The Building Code of Australia
COAG –	Council of Australian Governments
DAP –	Development Assessment Panel
DAF –	Development Assessment Forum
DIER –	The Department of Infrastructure, Energy and Resources
DPIWE –	The Department of Primary Industries, Water and Environment
EDO –	The Environmental Defenders Office
EMPCA –	The Environmental Management and Pollution Control Act 1994
EMPC Board –	The Environmental Management and Pollution Control Board
GIS –	Geographic Information System
HCHA –	The Historic Cultural Heritage Act 1995
LGAT –	The Local Government Association of Tasmania
LGBMP Act –	The Local Government (Buildings and Miscellaneous Provisions) Act
LIST –	The Land Information System Tasmania
LUPAA –	The Land Use Planning and Approvals Act 1993
MFPA –	Marine Farming Planning Act 1995
MFDP –	Marine Farm Development Plans
PIA –	The Planning Institute of Australia
PORS –	Projects of Regional Significance
POSS –	Projects of State Significance
RMPAT –	Resource Management and Planning Appeal Tribunal
RMPS –	Resource Management and Planning System
RPDC –	Resource Planning and Development Commission
The Department –	The Department of Primary Industries, Water and Environment
The Tribunal –	The Resource Management and Planning Appeal Tribunal

1.0 INTRODUCTION

In November last year, the Department of Primary Industries, Water and Environment released the Better Planning Outcomes Discussion Paper. The aim of the Paper was to gain feedback from stakeholders and the community on how to improve the current legislative framework for land use planning in Tasmania. It did not try to focus on all aspects of the State's Resource Management and Planning System and was not designed to be a major overhaul of the system.

The Discussion Paper canvassed a range of opportunities to reform both the legislative framework and the delivery of land use planning more broadly. These include opportunities to:

- ensure that all levels of government adopt relevant policies and strategies;
- ensure that planning schemes have a sound strategic basis;
- achieve greater certainty of planning processes for governments, industry and the community; and
- provide a planning system that balances industry and community interests without jeopardising cost effectiveness.

The Paper did not provide detailed proposals in recognition that much more investigation and consultation was required before detail could be suggested. Instead it provided an overview of the current legislative system, the way the policy setting has changed during its life and the issues presented by this change. It is expected that further investigation will be conducted according to the priorities and views of the stakeholders.

This Report has been written in response to the issues raised in the consultation process. It outlines options for both legislative and non-legislative reforms based on the stakeholder's priorities identified in the consultation period. It also considers other issues raised by the stakeholders that were outside the scope of the Discussion Paper.

The format of the Report is as follows;

1. A review of what was proposed in the Discussion Paper
2. Summary of the comment received from stakeholders and the community
3. The Steering Committee's response to the comments received
4. Options

The options will need to be canvassed extensively with stakeholders.

2.0 STATE POLICIES

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The suggestions in the Discussion Paper were to;

- Clarify that State Policies are to inform and be implemented primarily through planning schemes.
- Make the Minister for Planning responsible for State Policies, rather than the Premier.
- Clarify that they should be short high level statements of policy and should not be self-executing.
- Require their implementation by amendment to planning schemes within a fixed timeframe, with powers to intervene if Councils do not progress amendments voluntarily.
- Require that State Policies be introduced with accompanying implementation tools.
- Resource a program for delivery of State Policies over the next two years.
- Resource the review of existing Policies to bring them into conformity with legislative reforms over the next two years.

PUBLIC COMMENT

Submissions strongly supported the introduction of a simpler and more effective framework for the development and implementation of State Policies. Suggestions were well supported, particularly the concept of accompanying tools to help with the implementation of State Policy.

There also was general acknowledgment of the importance of State Policies and that the limited number of policies has undermined the planning system. A number of submissions called for improvements in the development of State Policies in order to better advance key State interests through the planning system.

Concerns about resourcing and the mechanism to be used to select policy areas were raised. It was suggested that a regulatory impact statement be prepared for each new policy to demonstrate the costs and benefits of the policies.

STEERING COMMITTEE RESPONSE

The Steering Committee acknowledges that resourcing is an issue and that it is essential to have an implementation regime that can be instigated relatively quickly and at minimal cost. In terms of what policy areas will be chosen in the future, the Steering Committee considers that this is a matter for State Government to decide, but agrees that the identification of priority policy areas is desirable.

The Steering Committee agrees that the costs and benefits of a proposed State Policy needs to be identified as part of any State Policy's preparation.

OPTIONS

Legislative;

The State Policies part of the *State Policies and Projects Act 1993* be extracted into a new piece of legislation. (*Whilst the framework detailed below could be developed by amendments to the State Policies and Projects Act, the Steering Committee considers that there is no natural relationship between “State Policies” and major “projects” and would be better separated*); and on this basis;

The new legislation would:

1. identify that State Policies are implemented primarily through planning schemes;
2. rename State Policies as “State Planning Policies” to make it obvious what they apply to;
3. require that a State Planning Policy be relatively short and consist primarily of high level desired outcome statements;
4. make it clear that a “State Planning Policy” is not self-executing but that planning schemes in particular must be amended to give effect to the outcomes identified in a State Planning Policy;
5. require that planning schemes must give effect to any new State Planning Policy within a specified timeframe, but that there be a capacity for extensions where delays are unavoidable;
6. continue the existing provision that a State Policy must be considered in preparing management plans for Crown Land and in relation to specifically identified other purposes;
7. continue the existing provision that the Crown is bound by a State Policy;
8. retain the existing provisions that provide the Minister with the power to direct the RPDC to place provisions in a planning scheme to give effect to a State Policy if a Council does not act to do so on its own volition;
9. retain the current approval process provided for in the existing legislation.

Non-Legislative;

1. That State Planning Policies be released with a range of implementation tools. This will enable Councils to implement the changes through planning schemes relatively quickly and at minimum cost.
2. That a suite of State Planning Policies be progressively developed.
3. That existing Policies be progressively reviewed to bring them into conformity with the legislative reforms.

3.0 REGIONAL PLANNING

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The suggestions in the discussion paper were to;

- Establish a State/Local Government project to evaluate the benefits of regional planning for Tasmania and consider potential models for its introduction.
- Require consideration of a regional perspective when planning schemes and amendments are prepared.

PUBLIC COMMENT

The submissions strongly supported the concept of regional planning. Most submissions recognised the importance of regional planning as a way to ensure that future growth and development in the regions are sustainable.

Regional Planning was seen by many as a mechanism that offers opportunities to better coordinate regional infrastructure, economic development projects, and environmental and social interests. It was also seen as a vehicle to promote the State's vision for an area.

A number of submissions went so far as to say that State and Local Government should immediately proceed with its introduction. There was concern that a State-Local government project to evaluate the benefits of regional planning for Tasmania is a recipe for protracted discussion and debate with the likelihood of a less than satisfactory outcome. On the other hand it was suggested that careful consideration of any model is necessary to avoid the mistakes of the past.

Whilst there was support for the concept of regional planning, there was considerable debate about the form it should take. Although a number of models were put forward, a common theme was the need for a cooperative (voluntary) or partnership approach between State and local government. Another recurring theme was that there was no need for another level of governance in the State.

Some promoted the Tasmanian Government's Partnership Program as an example of a successful mechanism through which to develop and implement regional planning and as a way to more effectively use the limited resources (experienced personnel) available to both levels of government.

A number suggested that any regional planning initiative should be directly related to NRM process and associated regions. There was also support for a model based on the Regional Organisation of Councils (Cradle Coast, Southern Tas. Councils & Region North).

One view was that LUPAA should be amended to allow the RPDC or Minister to make declarations establishing planning authorities (other than local governments) and determine planning areas to be administered. It was suggested that this would provide for regional plans and regional authorities to assess projects of regional significance but day-to-day control remain with local Councils.

A number of other models were promoted in the submissions based on experiences elsewhere.

The contrary view to the effectiveness of a voluntary model was also canvassed. It was suggested that the previous regional planning models have failed in Tasmania because Council participation had been voluntary – allowing a Council to withdraw from the system if an issue became too difficult.

There was agreement, however, that regional planning should not replace the need for a State-wide perspective and that it must be undertaken in the context of a State-based planning strategy.

STEERING COMMITTEE RESPONSE

Based on the submissions, the Steering Committee is of the view that regional planning is rightly seen as an important but missing element in the planning system. The Steering Committee agrees with those who consider that regional planning offers opportunities to better coordinate regional infrastructure, economic development projects, and environmental and social interests. The Steering Committee also is of the view that regardless of the model promoted to deliver regional planning, any planning at this level must be in a State-based planning context (State Policies / strategies).

The Steering Committee acknowledges that in some quarters there is a desire to progress regional planning as quickly as possible. However, the Steering Committee is of the view that given that no one model was favoured over all others in the submissions, further consideration of the delivery mechanisms is necessary. The Steering Committee agrees that the initiation of a joint State and local government project to further consider the issue is unnecessary.

OPTIONS

1. That the Department of Primary Industries, Water and Environment (the Department) explore the options outlined in the submissions and prepare a discussion paper based on a preferred model. The discussion paper should be released to key stakeholders and be made available publicly on the Department's website.
2. That in the short term, the Department initiate an amendment to LUPAA to give the RPDC the authority to consider a regional perspective when considering planning schemes and amendments.

4.0 MAKING PLANNING SCHEMES

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

It was identified that planning scheme preparation could be improved by:

- Specifying core matters that a planning scheme must provide for.
- Formalising the preparation of the strategic planning basis or rationale for the planning schemes, including the need for specific documentation.
- Clarifying the tests for certification.
- Requiring the early involvement of stakeholders on the scope of issues to be the focus of the planning scheme review.
- Developing practical and effective administrative procedures to ensure the State Government is involved in the preparation of planning schemes and amendments.

PUBLIC COMMENT

There was strong support for the call for greater focus on the pre-certification preparation of new schemes. Much of the discussion on this section centred on improvements to the strategic base underpinning planning schemes.

Those who commented on this issue supported the principle of underpinning a planning scheme with a sound strategic base. There also was general consensus that this process needed to be formalised, although one submission considered that it was unnecessary to make it a statutory requirement.

Most considered that it was necessary for the strategic base of the planning scheme to be clear and well documented while others considered that it had to be informed by early input from all stakeholders. Some called for the articulation of the scheme's strategic base to be incorporated in the planning scheme ordinance. One submission suggested that the State Government should produce a guide for Councils on how to prepare the strategic section of their planning scheme. Another submission considered that the schemes' strategic bases should be informed by a State Planning Strategy and linked to State and Council corporate strategic planning and budgetary processes.

There also was acknowledgment that planning authorities need accurate up-to-date planning information to produce a credible document and much of this information will come from State Government. Concern was expressed that the goal of improving the strategic basis of planning schemes would not be achieved unless the 'glaring gap' of State strategic policy is rectified.

In relation to core matters in a planning scheme, there was general agreement that it would be appropriate to codify a list of specified matters that a scheme must provide for. A number of submissions suggested matters that should be specified. These included medium density housing, planning for an aging population, natural hazards, regional issues, amenity issues (noise, overlooking) and heritage. There were also calls for planning schemes to harmonise with other relevant legislation such as the *Building Act 2000* and the *National Parks and Reserves Management Act 2002*.

The proposal to clarify the tests for certification also generated some discussion. While there was support for reviewing the certification tests under LUPAA, a number of submissions expressed concern about the current process. This was seen as being unnecessarily protracted and inefficient, resulting in delays for the approval of planning schemes and amendments. Providing additional resources to the RPDC and Councils or alternatively simplifying the assessment process were provided as possible solutions.

It was apparent from two submissions that the proposal was not sufficiently explored to enable a full understanding of the basis for the need to clarify the test for certification. Those submissions sought an expansion of the issue in the Discussion Paper.

One submission suggested that there should be a statutory obligation for Councils to ensure that a draft planning scheme or an amendment satisfies a number of specified requirements before going to the RPDC. They also recommended amendments to LUPAA to specifically require the RPDC to satisfy itself on particular matters before it approves an amendment or a new scheme.

STEERING COMMITTEE RESPONSE

The Steering Committee notes that while many comments were put forward, there was broad support for the proposals outlined in the Discussion Paper with the possible exception of proposal 3 (certificate) which, according to two submissions, was not sufficiently explored to allow informed comment.

The comments received in the submissions confirm the Department's position that a planning scheme requires a sound strategic base and that the preparation of that strategic base needs to be formalised as part of the scheme development. The Steering Committee notes, however, that there was some debate as to whether the preparation process of the strategic base is a statutory one or a 'best practise model'. The Discussion Paper does not assist in this matter. On this basis, the Steering Committee considers that the proposal needs to be explored further with key stakeholders, particularly the RPDC and Councils, before any process is established.

Similarly, the Steering Committee considers that detailed consideration needs to be given to identifying the core matters that a planning scheme must provide for or what if any clarification is required for the tests for certification.

The Steering Committee notes that there was no debate on the merits of proposals 4 and 5 and as such they should be incorporated into the processes to be established for the preparation or review of a planning scheme.

OPTIONS

That the Department liaise with the RPDC, LGAT and selected Councils on proposals 1, 2 & 3 with a view to producing a detailed paper(s) on suggestions to further these matters for release to key stakeholders for comment.

5.0 SUPPORTING PLANNING DIRECTIVE NO. 1

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The following was suggested:

- Promote the development of standard schedule provisions by appropriate State Government agencies.
- Provide additional planning resources to coordinate and assist the development of standard schedules.
- Review Planning Directive No.1 following the assessment of the first planning scheme to be prepared using the Directive. Make any modification to the Planning Directive necessary as a result of the review.
- Encourage Councils to update their planning schemes.

PUBLIC COMMENT

There was considerable support for the proposals in the Discussion Paper although some of that support was qualified on one or two of the proposals. More generally, there was support for Planning Directive No.1, which was seen as a way of achieving a consistent format and structure on a statewide basis and enabling Councils to concentrate on developing the content of a scheme rather than the operational aspects. The Planning Directive also had its critics who argued that it is untested and promotes an incomprehensible performance based approach.

Much of the discussion was on the proposal to encourage Councils to update their planning schemes. There was considerable support for mandatory updating of planning schemes to bring them into conformity with the Planning Directive within a specified period of time. The period suggested ranged from the end of 2005 to 5 years.

There were calls for greater support (not direction) from State Government to assist in the development of new planning schemes. Two areas identified as situations when State Government could assist were a) by providing up-to-date and relevant information within a more integrated planning framework of statewide policies and strategic plans and b) by providing additional funding.

One submission also considered that the Planning Directive should equally apply to major planning scheme amendments unless it can be demonstrated to the RPDC that to do so would involve a major rewrite of the existing scheme.

The concept of developing standard schedule provisions by appropriate State Government agencies was well supported in the submissions. However, there was some concern about the status of the schedules once produced. It was considered that the schedules should be in the form of a guide to facilitate amendment should more up-to-date information become available. There also were calls for the schedules to provide for local variation ("one size does not fit all") and that they be developed in cooperation with Councils and the LGAT. It also was stated that they needed to be linked to State Policies and strategies but should not cover provisions already in other legislation (eg the *Building Act 2000*).

It also was suggested that there should be a mechanism available to amend a Directive without subjecting the Directive to the full approval process if the amendment is to correct any technical deficiencies, unexpected outcomes or legal problems.

In terms of reviewing the Planning Directive (Proposal 3), the only comments received suggested that any review needed to be approached cautiously given the time and resources that went into the development of the Directive. One submission suggested that a five year review would be more in order.

STEERING COMMITTEE RESPONSE

The Steering Committee notes the support for Planning Directive No. 1 and the desire to have it implemented by way of mandatory requirement within a specified period of time. The Committee also notes the calls for State Government assistance to make this occur.

The issue of whether to set an end point for planning schemes to be brought into conformity with Planning Directive No.1 was considered by the RPDC when the draft Directive was assessed. The RPDC formed the view that time frames or trigger mechanisms in the Planning Directive should not be necessary, as alternatives to this approach were available under LUPAA (ss. 14(1) & 22(2)). The Commission also made the observation that past attempts at assistance through the provision of funding for the preparation of planning schemes had resulted in the schemes being prepared but not approved by the responsible Council.

The Steering Committee sympathises with the intent of the call for mandatory implementation but does not consider that this will achieve the desired result. Ideally Councils would voluntarily agree to prepare new schemes based on the Directive. What is important is that there is ownership of the scheme by both the Council and the community.

The problem with a mandatory requirement is when there is a default of that requirement. While planning consultants or the RPDC could be charged with the responsibility of preparing the scheme on behalf of the Council, it is unlikely that there would be any ownership of the scheme. This being the case, it is doubtful that it would be administered to the same degree as it would be if the Council produced the scheme.

Whilst acknowledging past problems with providing assistance to Councils, the Steering Committee still considers this to be the best approach. However, unlike the previous approach with individual Councils, the State Government should, in conjunction with LGAT and the RPDC, develop a program of implementation that targets those planning schemes most in need of review. The program should state the agreed timeframes (negotiated with individual Councils) and determine what, if any, assistance is required from the State Government. The Committee understands that a number of planning schemes that would potentially be included in the program are already being reviewed by the relevant Councils.

In terms of the development of standard schedules, the Committee considers that schedules are an important means to implement State Policies, as well as Council and State agency policies. They also are an effective means to determine where non-zone specific issues should be addressed and provide a basis for greater consistency between planning schemes on particular issues. Accordingly, the Committee does not agree with the submissions suggesting that the standard schedules should be guides only. The Committee understands that the intent of the Directive was to provide a standardised list of schedules with common nomenclature that could be applied consistently across the State. Whilst the Committee acknowledges that the schedules should be able to be amended readily if more up-to-date information becomes available, to give them the status of a guide only would defeat their purpose.

The Committee also understands that it was never intended that each and every schedule would be required in all schemes and that Councils would be able to add any number of other schedules to suit their own particular requirements. The intent, as the Committee sees it, was that if a schedule is required for a particular issue and that issue was covered by one of the standardised schedules, then that schedule must be used. Even with this, the Committee understands that there would be scope for modification or extension of the schedules to address local circumstances.

Accordingly, the Committee supports the development of standard schedules as part of Planning Directive No.1 and endorses the comments that recommend they be identified and developed in conjunction with the LGAT and Councils. To make this occur, the Committee considers that the Department should prepare a program for their identification and development, in conjunction with LGAT and Councils, for the approval of the Interdepartmental Committee on Planning. The program should identify the lead agency for each schedule to be developed and how local government and other State agencies will be consulted throughout the development process.

In terms of the review of the Directive, the Committee considers all that is required is for the Department to have a watching brief of the assessment of the first scheme prepared using the Directive and respond with amendment if necessary.

The Committee considers there is merit in amending LUPAA to provide for the amendment of a Directive that does not subject that Directive to a full approval process if the amendment is to correct any technical deficiencies, unexpected outcomes or legal problems.

OPTIONS

1. That the Department prepare a program of implementation in conjunction with LGAT and the RPDC to bring planning schemes across the State into conformity with Planning Directive No. 1. The program should state the agreed timeframes (negotiated with individual Councils) and determine what, if any, assistance is required of State Government;
2. That the Department prepare a program for the identification and development of standard schedules, in conjunction with LGAT and Councils, for the approval of the Interdepartmental Committee on Planning. The program should identify the lead agency for each schedule to be developed and how local government and other State agencies will be consulted throughout the development process;
3. That the Department have a watching brief of the assessment of the first scheme prepared using the Directive and respond with amendment if necessary; and
4. That the Department amend LUPAA to provide for the amendment of a Directive that does not subject that Directive to a full approval process if the amendment is to correct any technical deficiencies, unexpected outcomes or legal problems.

6.0 UP-TO-DATE PLANNING SCHEMES

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper identified that a 'review' rather than 'replace' approach to planning scheme maintenance is preferable once Councils have reached the point of having a single, contemporary planning scheme in place. The following specific actions were suggested:

- Introduce a requirement to periodically check that the planning scheme is consistent with the Council's strategic planning regime, coinciding with the annual review of the Council's Strategic Plan. This would be an audit, rather than a 're-do' and amendments would follow only as required.
- Require reporting to the Commission on this process.

PUBLIC COMMENT

There was strong support for the principle of periodic review of planning schemes. The majority of submissions considered that regular review of planning schemes was desirable to ensure that there was consistency with individual Council strategic plans and in line with community expectations and attitudes. There was some debate, however, about the frequency of the review.

A number of submissions considered that an annual check of planning schemes would be unduly onerous on local government. Most submissions supported a review period of between two to five years. Those suggesting a five year review period did so on the basis that it would coincide with Councils' major review of their strategic plans. Other submissions, however, suggested that a continuous process of review and updating be required to ensure continued credibility of a scheme.

One submission considered that planning authorities must be prepared to review on demand rather than be tied to a fixed timetable. Another submission considered that the RPDC should take on an auditing role to identify deficiencies and set a review timeframe if deficiencies are found. They also considered that penalties should be imposed on Councils should they neglect to review their schemes.

One submission expressed concern that requiring consistency with a Council strategic plan potentially weakens a planning scheme, as the former is not subject to same sort of statutory rigour and representation.

There was little direct comment received on the second suggested proposal - to require reporting to the RPDC on the audit process. One submission considered that the reporting to the RPDC should not be compulsory while another submission considered that the RPDC should supervise the audit process rather than being an observer at the end of it.

Most commented on this issue by way of a general indication of support for the proposals in the Discussion Paper, or through comments on the resource burden on Councils if required to undertake an annual review.

STEERING COMMITTEE RESPONSE

The Steering Committee acknowledges the strong support for the introduction of a requirement for a periodic check that the planning scheme is consistent with Council's strategic plan.

While it recognises that better planning outcomes are unlikely to be achieved if a planning scheme is not up-to-date, the Steering Committee agrees with those submissions that consider an annual review to be unnecessarily onerous on local government. This view is influenced by the fact that local government will be required to periodically review planning schemes for reasons other than just maintaining consistency with the relevant Council's strategic plan (eg introduction of a new State policy). The Steering Committee also notes that whilst Councils are required to report against their strategic plans annually, a major review of the plan takes place every five years. On this basis, the Steering Committee considers there is merit in having the planning scheme reviewed at the same time as the major review of the strategic plan, i.e. every five years.

If a five-year review is adopted, the Steering Committee considers that this should allay the concerns of local government with committing limited planning resources to an annual review.

In terms of the requirement for the reporting to the RPDC on the audit process, the Steering Committee is of the view that it has merit and as such should be an integral part of the review process. On receipt of the report, the Commission will have the opportunity to make comment to the planning authority if it so desires. The Steering Committee also considers that this report should be made available publicly to ensure transparency of the process.

OPTIONS

1. That a requirement be introduced in LUPAA that planning authorities review planning schemes at the same time that the Council's strategic plan is reviewed, i.e. every five years.
2. That it be a requirement that a planning authority prepare a report of the planning scheme review and forward it to the RPDC for information and any comment it may wish to make.
3. That it be a requirement that the report is publicly available on the RPDC and the relevant planning authority's websites.

7.0 MAINTAINING PLANNING SCHEMES

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper focussed on the benefits that could be achieved from greater electronic access to, and more up-to-date, planning schemes. The following actions were identified as having the capacity to improve the availability of accurate planning scheme information:

- Investigate the measures required to give confidence that the documents available on the LIST are an accurate record, incorporating all amendments.
- Introduce requirements for electronic submission of planning schemes and amendments to manage future data.

PUBLIC COMMENT

There was strong support for the proposals in the Discussion Paper. A number of submissions considered that there should be a single custodian of a 'true' and up-to-date copy of planning schemes on the internet. In addition to these requirements, one submission considered that access to the planning schemes should be at minimum cost to practitioners and users of the information.

However, there were differing views as to the appropriate location to keep electronic records of the planning schemes. Possible places proposed were: individual Council websites, the Tasmanian Legislation website, the RPDC website and the LIST.

The majority of submissions considered that the State Government should take responsibility for maintaining the official record but equal support was given to the three suggested State Government locations. One submission suggested that the centralised internet-based system should be modelled on the Victorian system. Another suggested that archival quality copies of planning schemes should be maintained in case there are problems with the accuracy of the electronic versions.

Not in dispute was the need for cooperation between the Councils and State Government to ensure access to up-to-date planning schemes. One submission suggested that this could be achieved through partnership agreements.

One submission stated that in addition to making available a 'true' copy of the planning scheme, there must be appropriate measures in place to ensure accountable tracking of any amendments to those planning schemes. Another submission stated that if the LIST were to be used as the single depository of planning schemes, then it would need to be more user-friendly and quicker to access.

One submission considered that until there is uniformity in electronic availability, Councils should make accurate copies available to practitioners and related parties free of charge.

STEERING COMMITTEE RESPONSE

Whilst there was some discussion about the appropriate location to keep electronic records of the planning schemes, the Steering Committee acknowledges that there is strong support for a single electronic record of the State's planning schemes. It is clear from the submissions that the single electronic record should have the following features:

1. be accurate and up-to date;
2. be easy accessibility at minimal cost;
3. be Internet based; and
4. be maintained by a single custodian.

The Steering committee favours a single State Government maintained record. In terms of location, the Steering Committee favours using the LIST given that the logistics of placing and maintaining planning schemes on a web-based system are already in place in that system.

OPTIONS

1. That the Department, in addition to the suggested proposals in the Discussion Paper, investigate what legislative and technological changes are required to introduce a single electronic record of the State's planning schemes on the LIST. The legislation also should provide for accountable tracking of any amendments to planning schemes
2. That the Department liaise with the LGAT about how best to achieve a smooth transition between Council websites and the LIST.

8.0 CLARIFYING DISCRETIONARY AND PERMITTED DEVELOPMENTS

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

It was identified that improvements to the development assessment process could be achieved through review of the development assessment provisions in LUPAA to:

- develop an approach that more clearly distinguishes the circumstances in which discretion is triggered given contemporary planning scheme drafting; and
- provide a more efficient process for assessing and determining matters of limited impact while assuring the appropriate level of consultation occurs.

PUBLIC COMMENT

The suggestions prompted a lot of discussion and diverse opinions although generally there was qualified support.

The variety of opinions expressed included a broad concern at the current operation of discretions, particularly the presence of open-ended general discretions that have the effect of allowing variation to any provision of a planning scheme. Most submissions felt the issue of finding the balance between public and third party involvement and efficiency in planning approvals was difficult and complex.

The submissions ranged from suggestions that more development should be permitted through a reduction in discretion to a strong call not to weaken the community's right to have a say on developments in its area. A specific suggestion was to introduce a new category of development which is discretionary but does not require notification (nominally referred to as D1).

The issue relating to dealing differently with 'minor' matters prompted suggestions of introducing limited notification and modified approval processes. Limited notification might be restricted to only immediate neighbours or where there is a limited impact potential. However, there remains substantial concern that such systems might be open to abuse and any such moves would require careful specification of what the limits on discretion and the degree of variation are, who is appropriate to judge what constitutes a minor matter and what form modified notification should take.

There was significant disquiet about the way new performance-based planning schemes as set out in PD1 relate to the issue of discretion, particularly in the context of the operation of existing clauses (s.57 and 58) in LUPAA. Although there was some support for this new approach, the general feeling was that there should be more guidance and explanation to Councils and the community on the operation of these sections of the Act through the PD1 process.

A number of responses from Councils indicated that disputes about discretions and what may be minor variations could be reduced through careful drafting of planning schemes and consequently the problem is not necessarily as large as has been implied.

In summary the central issue relates to the capacity for a Council to deal with certain 'minor' variations from an acceptable solution without invoking the whole section 57 (notification and discretionary) process.

A number of Councils indicated that they have overcome the problem by careful drafting of their planning schemes and the few cases that are evident do not justify a change.

STEERING COMMITTEE RESPONSE

The Steering Committee agrees that it is possible, with careful drafting of planning schemes through exemptions, acceptable solutions and schedule provisions, to deal with the majority of the perceived problems. It does however see benefit in providing guidance to Councils and would recommend that the Department consult planners across various sectors and amend Planning Directive 1 to provide greater clarity in the use of performance based provisions in line with sections 57 and 58 of LUPAA.

The Steering Committee does not discount the need to make amendments to LUPAA if further clarification is required following consultation.

OPTIONS

1. That the Department seeks the views of planners who have an interest in this issue to further explore options.
2. That the Department develop amendments to Planning Directive 1 that clarify the operations of both sections 57 and 58 within the context of the Template.

9.0 PRIVATE CERTIFICATION

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper suggested that Tasmania should be open to any improved planning outcomes that private certification could offer and that the State Government and Local Government Association of Tasmania keep a watching brief on progress being made nationally on this issue.

It qualified this by indicating that a number of issues concerning private certification needed further consideration.

PUBLIC COMMENT

A range of views were put forward covering outright opposition to the idea to enthusiastic support. Many of the submissions agreed that further investigation should occur although there was substantial concern about the level and types of impacts on Councils.

There also were many submissions that questioned the impartiality of private certifiers and stressed the need for quality assurance to ensure appropriate decisions.

Comparisons were drawn with private certification of building approvals under the Building Code of Australia and suggestions that planning approvals for standard housing would be an effective starting point.

The move to private certification is connected to a desire for quicker and more efficient approvals but some submissions pointed out that Tasmania compares favourably with other States and that for this reason there may not be the imperative to introduce these reforms here.

In terms of the impacts on Councils, positive suggestions were that private certification of routine development applications might 'freeup' staff for more strategic work but could also lead to the downsizing and dismantling of planning units.

Although potential cost savings and efficiencies were mentioned there were also concerns about the loss of Council control and connection to the community which result from assessments and decisions being 'outsourced'. Additionally there were questions raised about the independence of private certifiers who may be engaged by developers and subject to their influence.

A range of technical issues were also raised including the need for some form of accreditation of certifiers and insurance and accountability issues.

Where submissions favoured further consideration of the concept, they were tempered by suggesting only limited application of private certification to initial assessments where the Councils retain full control of the actual decision and could apply its local knowledge and policies through conditions on permits. The use of private assessment of requests for planning scheme amendments was specifically suggested.

STEERING COMMITTEE RESPONSE

The Steering Committee recognises that private certification has been successfully implemented for building approvals but is also aware that some planning issues are more complex and the community perceives them as more of a public interest matter.

The Committee also acknowledges that on average Tasmanian planning approvals compare favourably with other states for timeliness and efficiency. However, it accepts that there is merit in arguments that improvements can be made.

The Steering Committee also believes that private certifiers would carry out the same function as planners in Councils by assessing the proposal against the provisions of the planning scheme and this is consistent with the Council's role as a planning authority under LUPAA rather than an elected body. Consequently it supports the idea of some level of private certification being made possible although recommends the need for more detailed examination of the technical and quality assurance issues.

The Committee also recommends that LUPAA be reviewed to remove any restrictions on private sector certification being allowed as a delegation by a planning authority. This would ensure the planning authorities would still be responsible for all planning decisions.

OPTIONS

That the Department, in conjunction with LGAT and Councils, establish a project to examine what issues might need to be addressed to introduce a greater level of private sector certification in the future with appropriate checks and balances and quality assurance.

10.0 ASSESSMENT OF REGIONALLY SIGNIFICANT DEVELOPMENTS

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

A process was suggested for “Projects of Regional Significance” to ensure a higher level of review and/or a broader assessment of projects that appeared to have significant impacts outside the actual municipality. Such a process was proposed to have the following features:

- A one-off Development Assessment Panel convened at the direction of the Minister with responsibility for specifying the matters to be addressed by the proponent and ultimately for granting or refusing a permit.
- Criteria for assessment that will address issues with regional implications.
- Public input through the exhibition of the development application and supporting information.
- Appeal rights for the proponent and third parties to the Tribunal.
- Specified timeframes for key milestones.

PUBLIC COMMENT

The majority of submissions gave qualified support for the introduction of a new process for the assessment of Projects of Regional Significance.

A number of submissions accepted that a ‘midway’ process between the existing approval processes under LUPAA and high level consideration under the Project of State Significance process was necessary to achieve a broader, more integrated assessment.

One submission cited the Southwood forestry proposal in the Huon Valley as an example where the existing assessment process was inappropriate. It was stated that the proposal impacted on four or five local government areas but was assessed by one Council alone. Another submission was of the view that the current assessment processes under the RMPS did not adequately cater for larger developments such as wind farms.

One submission stated that medium projects are beyond the competence of many smaller Councils to properly consider, particularly when the economic impacts of those projects spread far beyond the boundaries of that one Council. They also questioned whether a single planning officer in a typical small Council could be expected to have the necessary variety of skills and experience to undertake and assessment of an ‘out of the ordinary’ development.

There was, however, considerable discussion about the details of how the new process would operate. Much of this discussion was based on who should be represented on the Panel if one were to be created. Suggestions included: members of the affected communities, an elected member and officer from affected Councils, a representative of the State Government and qualified experts. One Council commented that there might be difficulty in regional assessment panels involving representatives from competing municipalities.

Some of the submissions proposed that the RPDC identify any major projects and make the final decision in concert with the local planning authority. Another suggestion was that the three existing regional bodies of local Councils could be used to designate projects.

There was some concern about the potential for political influence. One submission stated that absence of political involvement is a ‘threshold’ issue in the RMPS. A number of submissions stated that if the Minister is to be involved, then there should be criteria for the Minister to determine which projects are regionally significant.

There was strong agreement with the discussion paper that appeal rights must exist and effective timeframes must be put in place.

Those submissions opposed to a new process were of the view that its introduction was unnecessary. The reasons given for this position were either that the existing approval processes under the RMPS were adequate to cater for this category of development or that the existing processes could be expanded to provide for developments that have impacts on more than one municipal district. One submission stated that if something of regional significance can't be effectively dealt with by the planning authority or the EMPC Board, then it must be a candidate for a Project of State Significance. Another submission commented that there was nothing under LUPAA or the EMPC Act that prevented planning authorities coming together to undertake joint assessments.

STEERING COMMITTEE RESPONSE

The Steering Committee accepts the comments that if an existing process can be used to achieve a broader assessment of regionally significant projects, then introduction of a new process would be unnecessary.

The Steering Committee considers that the suggestion for a grouping of planning authorities would not overcome the jurisdiction issues over either the assessment of a proposal or ultimately the enforcement of permit conditions if one were issued. Whilst the Steering Committee acknowledges that the planning authority making the decision would be better informed of potential impacts on adjoining municipal areas through input from other Councils, the final decision will rest with that planning authority. The Steering Committee also understands that permit conditions placed on a proposal to mitigate impacts in another municipal area (eg transport issues) cannot be enforced by the planning authority making the decision as it would have no jurisdiction over the other Council's area.

The Steering Committee also considers that, with the exception of the POSS process, a cooperative approach would not overcome deficiencies in a planning scheme nor would it necessarily address the need for expertise or greater information being required to assess a proposal.

In terms of why the POSS process would not be used in these circumstances, the Steering Committee agrees with the submissions that there is a requirement for a 'midway' process between the existing approval processes under LUPAA and the Project of State Significance process. The Steering Committee does not consider that regionally significant projects require a high level consideration and the requirement for the approval of the Parliament which exists under the POSS process.

The Steering Committee also notes that the direction of using Development Assessment Panels has recently been endorsed as 'leading practice' by a National Forum (Development Assessment Forum) made up of all State and Territory Governments.

In relation to the comments concerning the involvement of the Minister, the Steering Committee notes that the Minister for Planning has a role in LUPAA as well as other Acts under the RMPS.

OPTIONS

Given the strong support for the introduction of a new process for the assessment of Projects of Regional Significance, the Steering Committee considers that the following legislative approach should be pursued by the Department in consultation with key stakeholders, particularly local government. The Steering Committee is of the view that the legislation needs to:

1. contain criteria that identifies what projects could be classified as Projects of Regional Significance (PoRS);
2. contain provisions that include public comment on the PoRS development applications;
3. provide appeal rights in relation to the decision to approve or reject the development proposal;
4. provide timeframes for key milestones in the assessment process;
5. require the preparation of assessment standards for the proposed project;
6. require that the developer prepare a project impact statement;
7. provide for the establishment of a Development Assessment Panel (DAP) to assess the development application;
8. provide for local government membership on the DAP; and,
9. provide for the costs of the assessment process to be borne by the developer.

11.0 PRE-PERMIT MEDIATION

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The comments in the Discussion paper were premised on the view that the number of appeals in relation to decisions by planning authorities on permits could be reduced by resolving issues before the permit is granted. The following improvements were suggested in the Discussion Paper:

- Resource the training of mediators skilled in planning matters by developing a short-course program and producing a training kit containing guidelines on how to conduct a mediation and materials such as draft documents.
- Investigate the appointment of trained mediators to be available to the Tribunal (similar to the appointment of Tribunal members) and to Councils.
- Require that broad confidentiality apply to mediation.

PUBLIC COMMENT

A clear majority of submissions were in support of the principle of pre-permit mediation and only one expressed complete disagreement. It was acknowledged that it would have the potential to save time and money by reducing appeals against permit decisions and some of the disputes that occur later.

There was also general agreement with the conclusions made in the Discussion Paper about why the current mediation provisions in LUPAA have not been used as frequently as they might.

Many of the comments received were related to the mediation process: whether it should be formal or informal and, to a lesser degree, the financial costs and human resources it would entail. One Council suggested a regional mediator could fill the role to be shared between municipal areas while another suggested that mediators could be on Council staff. There was full agreement that the independence and expertise of the mediator are crucial to the success of mediation.

There also was concern that the introduction of mandatory pre-permit mediation may protract the approval process with some fearing that it could be used as a stalling tactic. Many called for safeguards to prevent misuse of mediation mechanisms.

Notwithstanding these comments, the current 42 day approval period was seen by many, particularly the Councils, as a major impediment to the process working effectively. Most considered that any mediation ought to be outside this statutory time limit.

Better information about the planning system and how a Council operates under that system were seen as ways of reducing the number of appeals. One submission strongly suggested that the public needed to understand that Councils are there to assess proposals against planning schemes rather than assess proposals against community opinion, the number of representations or the loudness of those representations. Encouraging developers to consult neighbours prior to lodgement of applications with Councils was also seen as a positive initiative to reduce the number of appeals.

STEERING COMMITTEE RESPONSE

The Steering Committee recognises the general support for pre-permit mediation but acknowledges that a number of matters need to be resolved to promote greater utilisation of the current process under s.57A of LUPAA. The Committee recommends that the Department, in consultation with the LGAT and interested Councils, review the current process to address those issues identified in the submissions that are impediments to using that process including:

- a) 42 day time period to assess applications;
- b) costs of the process; and
- c) access to qualified mediators.

The Committee also considers that the review should determine whether the process should be made mandatory and, if so, what changes are required to LUPAA.

The Committee also is of the view that more can be done at the pre-lodgement stage of the approval process by encouraging anyone undertaking development to consult with neighbours and to consider potential conflicts of proposed developments with those neighbours.

OPTIONS

1. That the Department, in consultation with LGAT and interested Councils, review the section 57A process under LUPAA to determine ways of encouraging greater utilisation of this process. In reviewing the process the following matters need to be taken into account:
 - a) the time constraints imposed on the process by the 42 day time period to assess applications;
 - b) the costs of the process to Councils;
 - c) the accessibility of qualified mediators; and
 - d) whether the s.57A process should be made mandatory.
2. That the Department, through LGAT, encourage Councils to provide information on their websites to persuade intending developers to consult with neighbours and to consider potential conflicts of proposed developments with neighbours.

12.0 DETERMINING APPLICATIONS

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The main thrust of the discussion paper was that improvements could be achieved in the determination of permit applications through the following initiatives:

- Require Councils to access qualified planning advice (whether by sharing planners, use of consultants, appointing staff or by other means) thereby increasing the capacity to delegate determinations.
- Develop a model for delegations to promote a more consistent approach to the matters that can be dealt with under delegation across the State (this may include a formal role for Councils' internal development assessment or advisory groups in determining applications).
- Develop administrative or legislative arrangements that clarify the role and responsibility of a Council when acting as a planning authority, including the circumstance where the Council may also be the applicant.
- Develop information materials or a short course to assist Council's elected members to understand the planning system and their obligations.
- Require that where Councils approve or refuse permit applications contrary to planning advice, they advise that the decision was made contrary to planning advice and specify the reasons for the decision when giving notice of their decision.

PUBLIC COMMENT

The proposals in the Discussion Paper generated considerable discussion and comment.

A common concern raised in the submissions was that people involved in making planning decisions lacked relevant education and understanding.

Several of the submissions argued that separation of powers is necessary and that there should be special processes in place when a planning authority is the land owner, applicant, developer, etc. One submission stated that it is important that the public perception of uncertainty and inconsistency be addressed by adopting arrangements that depoliticise planning approval processes. It was stated in one submission that discretionary use that would usually be adjudicated by a planning authority should be dealt with under delegation or other independent authority. One Council expressed concern about the implication in the Discussion Paper that Councils are prone to populist decisions and do not take into account the relevant planning considerations. In addition to this, several Councils (and others) suggested that planning authority meetings should be separate from Council meetings to encourage clear thinking regarding the separate roles. The expert-based Development Assessment Forum decision making model was seen as a possible solution to the perceived problem while another submission considered that the RPDC could play a role under particular circumstances.

Several submissions agreed that Councils should have to list the reasons when a decision conflicts with planning advice, although one Council stated this already occurs.

Another Council commented that planning authorities routinely make sound decisions which involve amendment or overturning of officer recommendations, particularly when these decisions come down to the weighing of finely balanced competing claims and the making of subjective judgments. Another submission commented that there are usually very good reasons for rejecting planning advice and it is normally an indication that the advice is inadequate.

Several submissions suggested that the 42 day time limit for decisions should be reviewed. One Council noted that the 42 days should not commence until all required information is provided. One of the submissions stated that the time should be extended given the current un-availability of qualified town planners. Another stated that the section 54 period for additional information should be extended as issues may be raised in representations that require more information after that time has passed.

STEERING COMMITTEE RESPONSE

Most of the comments on this section concerned the activities of elected Council members in the performance of their role as a planning authority, particularly when they were a developer or when Council land is involved.

Whilst acknowledging the comments, the Steering Committee cannot determine the veracity of these comments given there was no evidence to substantiate the claims. What is clear to the Steering Committee, however, is that there is a perception by many in the community that some Councils are under-performing as planning authorities. This has led to many questioning the credibility of the planning approval system.

The issue of public perception also applies to the situation where Councils do not provide reasons for their decisions to reject professional advice. The Steering Committee considers that whether the decisions are sound or not, or whether there are good reasons for a decision, it is important that these decisions are publicly available. The Steering Committee notes that, under the *Judicial Review Act 2000*, it is implicit that decision making bodies need to keep records of their reasons for decisions in the event that a person wishes to be provided with them. Similar perception issues arise where there is a blurring of responsibilities as a planning authority as opposed to a Council.

Based on the comments received, the Committee considers the proposals outlined in the Discussion Paper warrant further and more detailed consideration, in particular whether:

- a Development Assessment Panel needs to be established to determine applications for permits that are initiated by a Council or where Council land forms part of an application for a permit;
- provisions should be introduced into LUPAA to define the roles and responsibilities of Councillors when sitting as a planning authority;
- the LUPAA regulations should be amended to include prerequisites for a person sitting as a member of a planning authority (eg attendance at recognised training courses);
- amendments are needed to LUPAA to require Councils to access qualified planning advice when considering applications for planning permits;
- amendments are needed to LUPAA to make it explicit that Councils are required to specify the reasons for a decision made contrary to planning advice when giving notice of that decision; and
- a preferred model for delegations is necessary to achieve a degree of consistency across the State.

In terms of reviewing the time limits under LUPAA, the Committee notes that they were examined as part of the National Competition Policy Review of LUPAA in 2000. It was determined in this review that the benefits to the community associated with retaining the statutory time limit for section 58 permits outweighed the impacts on business. The section therefore remained unchanged. In light of this, the Committee does not consider there is any compelling reason to review them again at this time.

OPTIONS

That the Department, in conjunction with LGAT, examine the issues 1 to 6 outlined above and make recommendations to the Interdepartmental Committee on Planning as to whether the issues should be pursued.

13.0 SUBDIVISION

WHAT WAS PROPOSED IN THE DISCUSSION PAPER

The Discussion Paper explained the situation where subdivision is included in the definition of 'development' in LUPAA and how the provisions of the *Local Government (Building and Miscellaneous Provisions) Act* (LGBMP) were intended only as a temporary solution and have been under review for a number of years.

It also made reference to the current review of the *Strata Titles Act*.

The Discussion Paper also considered the need to reform developer contributions and open space arrangements related to development approvals.

PUBLIC COMMENT

There was overwhelming support for consolidating the subdivision provisions in LUPAA and removing them totally from the LGBMP Act. The submissions urged that this task that has been in process for a number of years be concluded as a matter of urgency.

A number of submissions made reference to the need to properly assess subdivision as a form of development which has consequences for use and that the two should be better integrated. It was put that because the design of subdivisions often constrains future development (eg through poor layout or by creating servicing problems) there is a need to place its approval in a more holistic assessment process.

It was suggested that if subdivision were better dealt with under LUPAA then certain applications could be permitted in particular zones where they comply with appropriate standards.

In relation to the strata title issue, there was a strong point of view that strata approvals should also be dealt with as subdivision through planning schemes. There were particular concerns where strata titles were being approved in rural areas.

Submissions by a number of Councils and others suggested the need for clearer provisions relating to developer contributions and open space. A variety of mechanisms to deliver this were suggested. Primarily it was considered that open space or developer contributions should be taken where there is a relevant local strategy. This could be prescribed by a State Policy or legislation that makes it a mandatory part of any planning scheme.

One of the submissions stated that there is no provision for contributions to public open space or cash in lieu for strata title developments, even though these place significant additional demand and pressure on nearby public open space.

STEERING COMMITTEE RESPONSE

The Steering Committee agrees that once a subdivision approval has been given, invariably the development of a house will follow without the opportunity for determining the full merits of the application because a house on a block is permitted under most planning schemes. This reinforces arguments that the subdivision itself should be more carefully scrutinised in line with the provisions of the planning scheme to ensure that all relevant impacts are properly assessed at this first stage.

As suggested, if subdivision were better dealt with under LUPAA then certain applications could be permitted in particular zones where they comply with appropriate standards. This is of course possible within planning schemes currently but separate approval under the *LGBMP Act* is still required.

The Committee also agrees that the areas of developer contributions and open space arrangements require more detailed consideration. There is considerable evidence that a failure by Councils to require developers to contribute to the full costs of infrastructure (such as water and sewerage) results in those communities either accepting a much lower standard of infrastructure or being subsidised by others in the community. This situation raises a number of equity issues that require further assessment.

The Steering Committee believes there is a need for a more consistent approach by Councils as to who makes a contribution to the provision of associated or consequential infrastructure, the nature of that contribution and the purposes to which the collected monies are applied. In respect of the strata title situation, the Committee acknowledges that to all intents and purposes this equates to subdivision and should be assessed in terms of planning impacts as are other applications for subdivision. It is noted that the detailed standards would be different for strata title than for subdivision.

The issue of providing open space certainly is not as well administered as it should be. The Committee agrees that determining whether open space is required as a part of a subdivision application or not, and how much and where the appropriate location of that space should be, is best assessed within the context of a local or regional open space strategy and this should be expressed through a local Council's planning scheme.

OPTIONS

1. That the Department finalise its review of the *LGBMP Act* by removing approval of subdivisions and ensuring that the provisions of LUPAA provide for comprehensive assessment of applications through planning schemes.
2. That those planning schemes are required to assess the ultimate use and development that will result from the subdivision at the time of application.
3. That the Department assess what changes are necessary to the *Strata Titles Act* to achieve a similar level of integration with LUPAA to that proposed above for subdivisions.
4. That the Department in conjunction with local Councils and other stakeholders prepares a discussion paper on developer contributions and open space arrangements and release it for public comment.

14.0 COORDINATING EXPERT ADVICE AND OTHER APPROVALS

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper suggested that the user-friendliness of the planning system could be improved by better coordinating requirements for 'expert advice'. It was specifically suggested that:

- The relationship with other approval processes and the planning permit process is reviewed. Initially considering the works application process under the *Historic Cultural Heritage Act 1995* and clarifying the relationship between Park- Management Plans and planning schemes.
- The State Government identifies those matters it may have an interest in when planning applications are assessed and the administrative arrangements for making any referral.
- The State Government ensures that when planning schemes are prepared matters of State interest are integrated into the planning scheme provisions to minimise the need for referral of specific applications.
- The State Government investigates the wider availability and application of up-to-date spatial data to assist Councils preparing planning schemes and assessing development applications.

PUBLIC COMMENT

The suggestions of removing any duplication of approvals and better integrating assessment processes were welcomed by the vast majority of submissions. Reviewing the relationship between LUPAA and the *Historic Cultural Heritage Act* (HCHA) was particularly supported, as was better integration with building approvals under the *Building Act*.

There was much support for improving the role of State agencies in informing local Council planning decisions. Many submissions indicated there was a need for State interests to be much more clearly defined during the review of planning schemes. The suggested methods for achieving this varied from developing new State Policies, fully integrating Parks and Wildlife Service and World Heritage Area Management Plans and clarifying development applications that trigger referrals with the assistance of spatial plans. It was also suggested that there could be a schedule of issues that sets out the referral requirements for each.

Some concern was expressed that where agency comment is sought on individual development applications, officers are constrained or limited in their advice by an uncertain departmental position or a political concern to stay out of local Council business.

Where advice was sought there was concern with gaining a consensus position across the multi-functions of an agency in order to achieve whole-of-agency endorsement.

Although many submissions were concerned with achieving better State agency input, a number of Councils were keen to ensure that the status of the input was advisory only and that it did not become another approval process by default.

There were many suggestions on the detail of a referral process. These included amending section 54 of LUPAA as a mechanism for local government to seek State Government input into planning applications.

The issue of improving referrals also extended to what were described as 'bona fide' voluntary bodies, such as Landcare, various environment centres and progress associations rather than relying on public advertising to seek input on development proposals.

STEERING COMMITTEE RESPONSE

The Steering Committee recognises that there is a need to clarify and streamline the approval processes under LUPAA, EMPCA, the *Historic Cultural Heritage Act* (HCHA) and the *Building Act* and acknowledges that some of this work is underway. Specifically, the ten year review paper on EMPCA published late last year looked at how the relationship between LUPAA and EMPCA could be improved.

The provisions in the HCHA requiring all applications to go to the Heritage Council may no longer be necessary and the 'planning' aspects of heritage approvals should be contained in LUPAA. The Steering Committee believes that the system of different 'levels' of approval found in EMPCA would work well in relation to heritage issues.

In relation to the *Building Act*, the Committee accepts that there is no formal mechanism for dealing with a situation where there is a conflict between the *Building Act* and LUPAA except where a permit issued under the latter conflicts with the Building Code of Australia (BCA). In these cases it is clear that the requirements of the BCA prevail.

The Steering Committee accepts that the advice from State Agencies is particularly fragmented and variable in relation to the higher level strategic positions and this should be addressed through a range of State Policies as explained in Section 2.0 of this Report and improved agency advice coordinated through the Department to local Councils.

The Department should consider producing a 'Compendium of State Interests' which sets out policy positions and relevant standards promoted by the various agencies.

The Committee feels that referrals to any external body during a local council assessment of a development is not the ideal situation and as such does not support the suggestion that non-government community groups be included as designated referral agencies in the legislation. In relation to State agencies, the Committee prefers the approach of providing higher level and more consistent advice which informs planning schemes as opposed to a case by case review by individual developments. It acknowledges that this does not address the submissions' emphasis on community groups but believes these are best dealt with by local Councils relevant to the particular area. It is noted that a number of planning schemes include referrals of development application to advisory groups such as in Battery Point. Furthermore the potential for improving the notification processes under LUPAA will assist with clearer information about developments.

OPTIONS

1. That the Department introduce changes to LUPAA to achieve improved integration with EMPCA.
2. That the Department investigate changes to LUPAA and the *Historic Cultural Heritage Act* in conjunction with DTPHA that in essence require, where a State significant heritage property is affected, the Tasmanian Heritage Council is to give advice on a local Council development application rather than issue a separate approval. Any such advice must be accepted by a planning authority.
3. That the Department investigate in conjunction with the Local Government Association and the Building Standards and Regulations Section of DIER, mechanisms which can be introduced to ensure consistency between approvals under LUPAA and the BCA and streamline assessment and approval processes.
4. That in particular the Department consider the introduction of a provision in the Building Act to require a certificate from a planning authority that a set of plans that have been presented fully complies with the planning permit before a building permit is issued.

5. That the Department upgrade information on its website about EMPCA, the HCHA and the *Building Act* and how they interface with the planning system and the relationship of the various approvals required under them.

15.0 COSTS AND FEES OF RMPAT

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper suggested that there be a review of the Tribunal's fees for appeals, specifically examining the purpose served by fees, whether a fee for lodging an appeal is required and if so, the amount of the fee/fees, the manner of setting fees, and whether any new fees are required.

PUBLIC COMMENT

Comments made recognised the distinction between the fees required to lodge appeals and the costs of conducting the appeals. In most cases the submissions recognised the need to find a balance between, legitimate access, to the appeal system for all parties and the desire to limit vexatious or frivolous appeals.

Many submissions agreed that a modest fee as currently exists does act as a disincentive to vexatious appeals but perhaps a more refined hierarchy of fees should be introduced to encourage mediation or resolution at an early stage. Some submissions suggested the fees should be extended to any party seeking to join an appeal which has already been lodged.

In respect of awarding costs against a party to an appeal there was strong support for the recent amendments to the *RMPAT Act* which reinforce the principle that each party pay their own costs as the normal situation.

Notwithstanding this, some submissions argued that any threat of costs being given against a party acts to discourage genuine participation in the system contrary to the objectives of LUPAA. Moreover there is a feeling that the effective operation of the system relies to some degree on the 'watch-dog' function of community groups and they should not be penalised or inhibited through awarding of costs especially where they are already carrying their own costs through planning expertise and legal representation.

How costs are calculated was also the subject of submissions with suggestions that the removal of lawyers from the appeal processes would reduce costs and the schedule of fees be based on the actual costs of the Tribunal processes.

Additional comments were made in relation to the costs that are given against Councils under s.59 of LUPAA where a decision has not been made on an application within the 42 day time period. It was suggested that this provision should be modified to allow the Tribunal to assess the circumstances that led to the situation as it may be that fault does not lie entirely with the Council.

STEERING COMMITTEE RESPONSE

The Steering Committee believes that the recent amendments to the legislation regarding this issue have substantially improved the criteria for awarding costs. They strengthen the basic premise that each party bear their own costs but also clarify that there are a number of activities that are considered undesirable in relation to appeal proceedings and the Tribunal is now able to award costs if it believes it is fair to do so in the circumstances. It is considered that no further change is necessary.

In relation to the fee for lodging appeals, the Committee is of the view that the current modest fee strikes the right sort of balance between discouraging vexatious appeals and allowing reasonably equitable access to the appeal system.

It also believes that although a hierarchy of fees depending on the type of appeal process may encourage mediated outcomes, requiring a higher level of fee for pursuing an appeal to a full hearing could result in some parties being compromised into unsatisfactory negotiated outcomes at mediation. Such a process may also provide a poor planning outcome. Therefore any such hierarchy of fees must strike the right balance between encouraging mediation but not at the expenses of proper process.

However, the Steering Committee does agree there is merit in all parties to an appeal contributing and that the modest fee should be applicable to any party joining an already established appeal.

OPTIONS

1. That the RMPAT regulations be amended to provide that a fee is payable by those who 'join' an appeal.
2. That the RMPAT regulations be amended to enable a tiered structure of fees based on the services used;
 - a) for direction hearings and mediation services; and
 - b) for full hearings
3. That the RMPAT regulations be amended so that the new structure of fees would keep the current fee for direction hearings etc at 50 fee units and that the fee for a full hearing be set at 100 fee units.
4. That the Department discuss with the Tribunal how to create better community awareness of the fees and costs issue with the view to encouraging more use of mediation processes.

16.0 MORE EFFECTIVE ENFORCEMENT

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

In broad terms the Discussion Paper indicated that there had been relatively little focus on enforcement aspects of the land use planning system in the past and suggested that significant change in this area appeared warranted. The main changes identified to improve enforcement of the planning system were:

- Introduction of provisions for Councils to issue infringement notices to give a more efficient, less expensive means of initiating enforcement proceedings.
- Provision for the recovery of the costs associated with an investigation to support enforcement proceedings.
- Revision of the penalty provisions to ensure that they act as a deterrent to breaches of the planning scheme.
- A requirement that Councils conduct a periodic audit on planning scheme compliance in relation to permits issued.
- Investigation of an annual State Government contribution to an organisation, such as the Environmental Defenders Officer or Legal Aid Commission, to act as an advocate for review and enforcement matters pursued in the public interest.

PUBLIC COMMENT

There was strong support for improved enforcement measures in the planning system. A number of submissions stated that the enforcement tools under LUPAA were quite limited compared to the *EMPC Act* and other pieces of legislation in the State. Several submissions raised concern about the complex, time consuming and costly nature of the current mechanisms of LUPAA. A number of submissions expressed concern that the penalties handed out were not in proportion to the effort undertaken by Councils to achieve the conviction.

Overall, the majority of submissions supported the proposed measures in the Discussion Paper although there was some debate about certain aspects of the measures.

There was strong support for the introduction of infringement notices. A number of submissions stated that infringement notices would avoid costly and complicated action through the Tribunal and Courts. Only one submission did not consider that infringement notices were necessary.

A number of submissions suggested further powers that would aid Councils in their enforcement. These included powers to:

- enter and inspect land;
- require information;
- issue a 'show cause' notice;
- issue a 'stop work' notice;
- issue 'enforcement notices';
- enforce Part 5 agreements;
- amend or cancel permits; and,

- gain a warrant to enter a building;

The proposal of periodic audits received some discussion. The main concern of the minority was the resources needed for periodic auditing. One submission considered that it would be better to place limited planning resources into rectifying obvious breaches rather than indiscriminate audits. Another submission was of the view that the costs of periodic audits and enforcement action may be significant, particularly to smaller Councils. They noted that Councils were already obligated under LUPAA to enforce the provisions of their planning schemes.

Other submissions suggested that the results of the audits should be publicly available. Another submission considered that the frequency of the auditing should be specified or formalised.

It was suggested by one submission that provision be made for Councils to require auditing by an independent third party at the developer's expense. Another submission stated that they did not support the concept of periodic auditing but did not give reasons for this position.

One submission in support of periodic auditing raised questions about who would carry out the auditing and what action would occur should a Council be found to have approved an application in error. The Steering Committee notes that a right of redress is available under LUPAA but considers that it is legal matter that would need to be addressed through the appropriate legal channels.

The EDO was popular as an advocate for review and enforcement, although one submission suggested that prime responsibility should remain with the Councils and should not be delegated to the community. Another submission did not support the concept of a third party acting as an advocate as they regarded this to be a function of the planning authority.

There were a number of submissions about Councils' resources in terms of their ability to properly undertake an enforcement role. A number of submissions considered that Councils required additional funding to take on this role adequately. One submission stated that the lack of resources did not justify the lack of enforcement across the State. One submission noted that if enforcement mechanisms were in place that avoided court action, it would have a positive effect on the resourcing issue. There was general agreement, however, that enforcement must occur and that it is essential that a way be found to deal with this issue.

A number of submissions raised other issues not directly related to the Discussion Paper. The issues included:

- clarification of the meaning of the words 'taking all reasonable steps' in s.63A of LUPAA is required.
- time limits from taking action in relation to breaches should be removed or extended.
- Councils should be required to issue a planning completion certificate under the legislation.
- the restriction under s.64 of LUPAA should be removed to allow any party to apply to the Tribunal for an order.
- enforcement and compliance of Heritage Tasmania decisions needs to be addressed.
- enforcement provisions in regard to signs contained in *the Sullivans Cove Waterfront Authority Act* should be applied throughout the State.
- amend Part 5 of LUPAA to allow Part 5 agreements to be enforced through the Tribunal.

STEERING COMMITTEE RESPONSE

The Steering Committee is of the view that the concerns raised were important matters of detail that would need to be addressed if the proposal progresses further.

The Steering Committee considers that there are ways to offset many of the costs involved with careful construction of an enforcement regime. For example, it is possible for legislation to provide that costs incurred in an investigation can be recovered from a party found guilty. Another approach is to have fine revenue flow to the party initiating the prosecution. The Steering Committee agrees with the submission that the avoidance of court proceedings through the introduction of more effective enforcement tools will have a positive effect on the resourcing issue.

The Steering Committee concludes from the submissions that there is considerable support for the introduction of a contemporary enforcement regime in the planning system. The Steering notes, however, that there are a number of issues raised in the submissions that need to be addressed. This is a matter for the Department when it develops the package of enforcement measures.

OPTIONS

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.

Non-Legislative;

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.

17.0 MORE INTEGRATION BETWEEN MARINE FARM PLANNING AND LUPAA

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper suggested that better integration between LUPAA and marine farm planning regimes might be assisted by:

- Introducing a requirement for draft Marine Farming Development Plans and amendments to be assessed by the Resource Planning and Development Commission (RPDC).
- Clarifying the current legislative provisions that affect the relationship between the making and amending of both Marine Farm Development Plans and planning schemes to promote closer integration of these two planning regimes.

PUBLIC COMMENT

There was strong support for these suggestions from a range of different stakeholders including local Councils, environmental groups and some State agencies. The suggestion that the RPDC should take over the role of approving Marine Farming Development Plans was strongly supported. Interestingly, the RPDC itself did not consider this as necessarily the right way of ensuring better integration although it supported the intent of the suggestions.

The extent of proposed integration varied between stakeholders with some seeking to repeal the separate Marine Farming legislation and deal with all matters under LUPAA.

A range of particular resource management and planning issues were given as examples of the need for better integration including holistic catchment management, the relationship between land-based and water-based activities under different planning regimes, and environmental management issues related to aquaculture. It was suggested that perhaps Marine Farming Development Plans should be integrated into planning schemes in a similar manner to Reserve Management Plans.

The *Marine Farming Planning Act 1995* was criticised for its limitations on third party appeal rights and lack of formal referrals of plans to Councils for input.

A number of submissions drew parallels with forestry activity as a significant resource issue with poor integration with LUPAA and local Council governance.

STEERING COMMITTEE RESPONSE

Whilst the Steering Committee supports the need for better integration of marine farming and land use planning it does not agree that each should be dealt with in exactly the same manner. The Committee believes there are significant differences between land-based planning and resource management and some separate legislative regimes are appropriate.

This does not imply that better integration should not be pursued through legislation and practice. It should be noted that the *Marine Farming Planning Act 1995* is already part of the Tasmanian RMPS and there is a responsibility on decision makers to further the Schedule 1 LUPAA objectives and comply with the State Coastal Policy.

The Steering Committee considers that there is substantial scope to reduce potential conflicts between land use and water-based marine farming through a broader catchment management approach and better spatial planning of adjacent uses. This should be predominantly pursued at the strategic planning level within the context of the State Coastal Policy and regional NRM strategies, where marine farming is considered as another use with spatial repercussions and requirements. This would facilitate better assessment of impacts of other land and water uses within the same biophysical and visual catchments.

The Steering Committee also considers that the RPDC is the appropriate forum for determining the appropriate balance between sometimes competing uses.

OPTIONS

1. That the Department investigate the statutory changes needed to require draft MFDPs to be assessed by the RPDC.
2. That the Department investigate other legislative changes necessary to ensure regard is had to land and water planning issues including amendments to s.21 of LUPAA to require coordination of planning schemes with MFDPs and regional NRM strategies.
3. That the Department make available through its website information that explains the processes involved in marine farm planning and promote a catchment approach to resource use to avoid potential conflicts.

18.0 PLANNING INFORMATION

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

To ensure that the planning policy framework is well informed and the performance of the system can readily be evaluated, the following actions were suggested:

1. DPIWE establish a planning information function to centralise the collection and regular reporting of statistical planning information to evaluate performance of the planning system and optimise any synergies with the reporting required under the State of the Environment Report and *Tasmania Together*.
2. Legislation or regulation be introduced to facilitate the reporting of planning activity by Local Councils.
3. DPIWE facilitate improved access to relevant planning information held by State Agencies to assist the preparation of planning schemes.
4. Investigate measures to advance electronic notification of planning notices.

PUBLIC COMMENT

Strong support was given for the better coordination and availability of planning information although one submission considered that this information was of limited value unless it was provided in the context of a strategy or guideline. There were many comments to the effect that comprehensive and easily accessible information is vital to the achievement of better planning outcomes. One submission stated that planning information is essential for evaluating the strengths and weaknesses of the planning system and to assist stakeholders fulfil their requirements under the system.

There was particular support for the information to be readily available in an electronic form, with several suggesting the State be responsible for collecting and verifying the information. Other submissions stated that Councils already collect statistics for their own performance management and any further requirement to provide more detailed information may impose an unreasonable burden on the Councils.

The LIST was seen by some as an easy and fail safe mechanism for checking the status of a particular heritage place as well as other planning information. Another submission stated a need to support and encourage planning authorities to use GIS systems to record the location of permit sites, tagged to textual data about the kind of use/development approved and permit conditions.

It also was suggested that Councils retain a register of interested individuals and community groups for notification by email if there is an application which matches their expressed area/s of interest.

STEERING COMMITTEE RESPONSE

The Steering Committee considers that the mass of information held by the State Agencies, Councils and others could greatly assist in achieving better planning outcomes if it were more easily available. Given the support for the proposals outlined in the Discussion Paper, the Committee considers that the Department should take the necessary steps to put them into effect.

It is acknowledged that the collection of certain information may impose a burden on Councils but the Committee considers that the benefit of being able to use this information to better plan far outweighs the additional impost.

The Committee also considers that the investigation of measures to advance electronic notification of planning notices is primarily a local government matter.

OPTIONS

1. That the Department establish a planning information function to centralise the collection and regular reporting of statistical planning information to evaluate performance of the planning system and optimise any synergies with the reporting required under the State of the Environment Report and Tasmania *Together*.
2. That the Department undertake what is necessary to give effect to a regulation to require the reporting of planning activity by Councils.
3. That the Department facilitate improved access to relevant planning information held by State Agencies to assist the preparation of planning schemes.
4. That the Department seek the assistance of the LGAT to facilitate the investigation of measures to advance electronic notification of planning notices.

19.0 COMPETENT PLANNING ADVICE FROM QUALIFIED PLANNERS

WHAT WAS SUGGESTED IN THE DISCUSSION PAPER

The Discussion Paper suggested a range of actions to address this issue. These were for industry, professional bodies and governments to investigate cadetships and sponsorships for new students, to examine mentoring and professional development of planners in the workplace and to promote the role of planning in the community and to consider incentives to attract planners from interstate to move to Tasmania.

PUBLIC COMMENT

Submissions covered a number of possible ways of addressing these issues. Some were concerned with making structural changes to the planning framework to improve the context within which planners work and the tools which they use. It was suggested that such initiatives would reduce the demand on the currently limited number of professionals. The nexus was made between the complexity and demands of new planning regulation and the pressure on planners processing development applications.

Particular emphasis was placed on improving the system to create more exemptions and standard schedules resulting in less assessment work for professional planners.

Many submissions suggested a range of cadetships, scholarships and other education programs would assist in providing more professionals but recognised that these will have a significant lead-time before delivering benefits. In the interim some form of private certification was encouraged to deflect the load from Council planners.

Additionally a number of submissions raised the need to better educate elected decision makers in Councils and to consider para-professional courses to allow some development assessment to be undertaken by supporting staff.

Particular submissions raised the need to ensure that conditions and salaries of planners in Tasmania were comparable with other places in Australia to reduce the loss of professional to higher paid interstate positions.

The resourcing of the State planning unit was raised as a means of assisting Councils, other agencies and the community with planning matters and helping to improve the planning system and information base.

Submissions also raised the issue of supporting planners through workplace initiatives in stress management, communication skills, and mediation.

The University of Tasmania was identified as the primary provider of short courses for post graduate and operating planners to ensure ongoing professional development.

STEERING COMMITTEE RESPONSE

There is some reason for optimism that the new post graduate planning course is making big inroads to the skill shortages that were very evident a few years ago. However shortages are still evident particularly in the regional areas of the State.

The Department is working with LGAT and professional organisations to tackle the shortage of professionals in a range of local government areas including planners, building inspectors and environmental health officers.

It should be recognised that the shortage of professional planners is a national and indeed international problem. The Planning Institute of Australia has recently addressed the shortage by way of a major inquiry into planning education and it is pursuing a number of initiatives with governments and education institutions. The introduction of para-professionals has been pursued in Victoria and Queensland, and the Steering Committee recommends this option be considered for Tasmania.

Suggestions about improving the understanding of planning work amongst non-professionals would reduce tension between elected Councillors and professionals. This would result in less work, stress and burn-out, and possibly free up highly trained planners for more strategic work that, in time, would improve the planning regulations and planning schemes in place. The Steering Committee believes that better education of non-planners in local government and the broader community would improve a number of aspects of the planning system and should be encouraged. It recognises that initiatives in this area have been established by the RPDC and LGAT.

The Steering Committee recognises that improving tools such as planning schemes and provisions through more precise language and careful drafting will reduce time spent in their interpretation and possible appeals against decisions. It also believes the development of more exemptions will reduce the need for planning assessments and will lead to a reduction in the workload of planners in Councils.

OPTIONS

1. That the Department continue its dialogue with LGAT and the Planning Institute of Australia (PIA) to gain a better understanding of supply and demand issues.
2. That the Department in conjunction with these other parties, commence a dialogue with the University of Tasmania about the development of a 'para planner' qualification.
3. That the Department support and contribute to initiatives such as the RPDC extension service to improve the understanding of planning matters for elected Councillors.
4. That the Department continue to develop more template based development assessment reporting systems such as standard schedules, exemptions and provisions through the PD1 process.

20.0 MINOR LEGISLATIVE AND REGULATORY IMPROVEMENTS

There were 20 minor legislative and regulatory improvements suggested in the Discussion Paper, with most receiving only a few comments, but general support. The following table contains the comments received, the Steering Committee's response and options.

ISSUE	PUBLIC COMMENT	OPTIONS
<p>1. Allow the Commission to initiate a hearing even when there are no representations.</p>	<p>There was general support for the amendment although one Council was not convinced that the RPDC should have additional powers.</p>	<p>The amendment provides the opportunity for the RPDC to hold a hearing where it considers that a matter needs to be explored further in a public hearing. This provision would be commonly used where the RPDC has issues with an amendment that would benefit more from input from both the public and the relevant Council. The Steering Committee understands that currently the only course of action available to the RPDC is to refuse the amendment or require a substantial alteration and re-advertising. This would require the Council to start the process again, which in the Committee's opinion, is an unnecessary step especially if the issues could be resolved through the hearing process. The Committee considers that the amendment should be made to LUPAA. This allows for a degree of transparency where the Commission and the Council may determine modifications are required.</p>
<p>2. Allow the Commission to pay the costs of witnesses in special circumstances where their appearance is in support of the public interest.</p>	<p>There was general support for the amendment with one submission suggesting that the ability to meet the costs of expert witnesses during the plan formulation phase will enable greater access to information and facilitate debate before a planning provision is applied and challenged before RMPAT.</p> <p>One submission was concerned that paying costs of witnesses may be abused by major lobby groups at the expense of genuine community interests.</p>	<p>The amendment allows for public interest advocacy to be assisted financially. The Steering Committee acknowledges that to participate in hearings can be a substantial burden on some people, and for this reason many choose not to attend. This could limit the debate to the detriment of achieving the appropriate planning outcome. The Committee understands that the Commission's decision, as a semi-judicial body, is based on the evidence before it. Without that evidence, a particular matter of public interest may not be able to be taken into account. The Committee agrees with any proposal that allows for a matter of public interest to be considered by the RPDC if, ordinarily, it wouldn't because of cost constraints. In these circumstances, the Committee sees the matter as one of the Commission informing itself of an issue rather than assisting any particular party to the hearing. The Committee considers that the amendment should be made to LUPAA.</p>

ISSUE	PUBLIC COMMENT	OPTIONS
<p>3. The same requirement for consistency and coordination with adjacent areas as applies to planning schemes should also apply to amendments.</p>	<p>The amendment was supported as it was considered that greater consistency and coordination with adjacent area was a desirable outcome. One submission suggested that a Planning Note should be issued to provide for greater consistency between adjoining municipal areas.</p>	<p>The Steering Committee considers that the requirement to achieve consistency and coordination between municipal areas should apply to planning scheme amendments to achieve better integration of planning scheme provisions within the State. Clearly the fact that amendments are not currently required to do this is really an oversight. The issues relevant to an amendment should be no different to those relevant to a planning scheme. The Committee considers that the amendment should be made to LUPAA.</p>
<p>4. Minor amendments to permits under joint amendment/permit process (s.43A) should require approval of the Commission.</p>	<p>There was general support for the amendment.</p>	<p>The Steering Committee considers that as the RPDC issues the permit, the provisions relating to minor amendments to permits issued by the Tribunal should also apply. S.56 of LUPAA allows for minor amendments only where it does not change the effect of a condition required by the Tribunal. Currently s.43K states a Planning Authority may amend a permit that does not change the effect of any decision of the Commission under section 43H.</p> <p>There is merit in more closely aligning these provisions. Requiring the Commission to give its approval to any minor amendment may prove overly restrictive where the amendment does not change anything of substance. It would improve the current situation if s.43K were amended to ensure a minor amendment to a permit cannot change the effect of a condition required by the Commission.</p> <p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>5. Requirements for planning schemes and amendments should include reference to Planning Directives.</p>	<p>There was general support for the amendment with one submission suggesting there should be a simple process by which planning directives and State Policies are inserted or referenced in schemes.</p>	<p>The Steering Committee considers that there should be a clear onus to consider planning directives when a Council prepares a new planning scheme as it will generally influence a scheme's content. The Committee considers that the amendment should be made to LUPAA.</p>

I S S U E	P U B L I C C O M M E N T	O P T I O N S
<p>6. Allow the Commission to require amendments to a planning scheme to reflect an approval for a Project of State Significance under LUPAA.</p>	<p>A number of submissions expressed concerns about this amendment. One submission considered that the amendment could be used by the State Government to ride roughshod over a Council.</p> <p>Another submission considered that the current s.43A process seems adequate to deal with amendments of planning scheme to reflect POSS's.</p>	<p>The Steering Committee understands that the <i>State Policies and Projects Act 1993</i> has recently been amended to implement this proposal. No action is required.</p>
<p>7. Allow the Tribunal to refer a matter discovered to require amendment to clarify or avoid ambiguity to the Commission for a direction to the Council to amend.</p>	<p>There was general support for the amendment.</p>	<p>The Tribunal sees first hand the problems caused by poor drafting in planning schemes. Future problems could be avoided if the subject wording was amended. The RPDC, once advised, could liaise with the relevant Council with a view to having the scheme amended. The Committee considers that the amendment should be made to LUPAA.</p>
<p>8. Require all the relevant strategic plans, associated and incorporated documents to be exhibited with the planning scheme or amendment.</p>	<p>There was general support for the amendment. It was agreed that there is a nexus between strategic planning and the planning scheme response and that relationship should be a first point of consideration by anyone with an interest in the scheme, including the RPDC.</p>	<p>The Steering Committee considers that the amendment will improve public understanding of the basis of a new planning scheme and the reason for changes to an existing scheme. The Committee considers that the amendment should be made to LUPAA.</p>
<p>9. Clarify that Planning Directives can apply to both use and development.</p>	<p>There was support for the amendment.</p>	<p>The Steering Committee understands that there is some legal doubt as to whether Planning Directives can provide for development. The Committee understands that the original intent of Directives was to achieve a level of consistency across the State in land use matters. With this in mind, it would make little sense if a Directive was restricted to use alone. The Committee is of the view that development is closely connected to land use and accordingly considers that the amendment should be made to LUPAA.</p>

ISSUE	PUBLIC COMMENT	OPTIONS
<p>10. Provide powers to make minor amendments to Planning Directives without the need to undergo the full assessment and notification processes.</p>	<p>There was general support for the amendment although one submission considered that the amendments should go through the full assessment.</p>	<p>The Steering Committee considers that provisions for minor amendments to Planning Directives are appropriate but acknowledges that criteria or guidance is required to determine what is minor. The Committee is of the view that any minor amendment to a Directive should only be for the purposes of:</p> <ul style="list-style-type: none"> (i) the correction of any error in the Directive; or (ii) the removal of any anomaly in the Directive; or (iii) clarifying or simplifying the Directive; or (iv) removing any inconsistency between the Directive and any Act; or (v) making procedural changes to the Directive; or (vi) amending the Directive to bring it into conformity with Planning Directive No. 1 (as amended) and <p>be made only where the public interest will not be prejudiced.</p> <p>The Committee considers that the amendment should be made to LUPAA with the inclusion of the above criteria.</p>
<p>11. Require a longer notification period for development applications notified during the Christmas period.</p>	<p>The principle of allowing for a longer notification over the Christmas holiday period was well supported. However, a number of submissions considered that allowance for the Easter holiday period was also necessary. In keeping with this theme, others suggested discounting public holidays from the notification period.</p> <p>One submission considered that notification period should be dictated by the days a Council opens.</p> <p>Another submitter considered that the current notification period was inadequate but supported extending the period of Christmas and Easter.</p> <p>It was also suggested the LUPAA regulations should be changed to require a 3 week advertising timeframe if a permit is lodged in the week before Christmas.</p>	<p>The Steering Committee considers that allowing for a longer notification over extended holiday periods has merit as it will make the development approval process more transparent and accessible to the community. The Committee does not support the suggestion of simply discounting public holidays from the notification period as it would not overcome the problem of accessibility to documentation and advice when the Council offices are closed. The Committee notes that the closure of Council offices over the Christmas and Easter period does not coincide with public holidays. The Committee prefers the addition of an extra week to avoid these problems.</p> <p>The Committee considers that the amendment should be made to LUPAA to extend the notification period to a minimum of three weeks where the period includes either the Christmas or Easter holiday period.</p>

ISSUE	PUBLIC COMMENT	OPTIONS
<p>12. Introduce a penalty for obscuring or removing an on site notice before the lapse of the 14 day notification period.</p>	<p>The intent of the amendment was supported, however, the practicality of the enforcing such a provision was questioned. Most considered that it would be difficult to police and apprehend offenders and was seen by others as just another impost on Councils.</p> <p>One submitter stated that there have been numerous instances of appeals regarding the location of site notices and the duration that such notices were in place. They considered that the proposed amendment would go part way to addressing this issue, but suggested that it would also need to include a requirement that gives details of and records the precise location for each site notice.</p> <p>One submission considered that there should be a penalty or even invalidation of an application if the notice is not on site for the whole of the 14 day period.</p>	<p>The Steering Committee agrees with the comments that the provision would be difficult to police and apprehend any offenders. Whilst this is may be true, the Committee considers that if the provision can send a message of the importance of the “notice” being on display for the required 14 day period it may serve as a deterrent to removal.</p> <p>The Committee also agrees that details of the date and time the notice was displayed on the site and its location should be well documented by the relevant Council. This, however, is an administrative matter for the Council and does not need to be covered in LUPAA.</p> <p>In terms of the penalties for obscuring or removing the notice, the Committee does not agree that it should automatically invalidate an application.</p> <p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>13. Clarify that planning permits are to be made publicly available.</p>	<p>There was support for the amendment.</p> <p>One Council considered that it may be necessary to charge a fee for search and reproduction of documents.</p>	<p>The Steering Committee considers that access to the application documentation is essential to enable the public to make an informed judgement of the proposal and subsequent representation if found to be necessary.</p> <p>The Committee also considers that copies of the document should be available to the public on request and for a fee. The Committee considers that the amendment should be made to LUPAA.</p>

ISSUE	PUBLIC COMMENT	OPTIONS
<p>14. Clarify that Councils must accept development applications, whether they consider them complete or not.</p>	<p>There were varied comments received on this amendment. Two Councils in particular expressed concerns that the existing provisions under LUPAA (ss 57 and 54) did not cover the situation where the application was manifestly inadequate. The argument presented was that the use of ss 57 and 54 requires considerable time and cost to refuse what is plainly an insufficient application. It was also stated that Councils cannot use s.57 to refuse an application in this category as it is simply an incomplete application for which the Council would need to seek additional information.</p> <p>Another submission considered that for more complex proposals, s 54 should be available to Councils on more than a once only basis.</p> <p>One submission considered that Councils should be able to refuse applications where that application has not complied with clearly articulated guidelines for lodging applications.</p>	<p>The Steering Committee understands that the intent of the amendment is to prevent Councils from refusing to accept an application on the basis that it was incomplete. The situation as the Committee sees it, is that the right of appeal under s.54 of LUPAA against a Council's request for additional information can only be exercised if the application has been received. This means a Council can deny this right of appeal if it refuses to accept an application. This is procedurally unfair in the Committee's view, especially if, the Council's request for additional information is unnecessarily excessive.</p> <p>Whilst the Committee is sympathetic to the case presented in the submissions by the two Councils, it should not be at the expense of denying an applicant a right of appeal to the Tribunal.</p> <p>The Committee also considers that the problem would be reduced if there were clear lodgment of application guidelines available to applicants before they lodge an application with Council. The Committee does not agree that there should be open ended requests for information under s.54.</p> <p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>15. Require confidentiality of all aspects of mediation outside the mediation process, unless the mediator expressly directs that matters be disclosed.</p>	<p>There was no disagreement with the proposed amendment.</p>	<p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>16. Extend the current legal protection for Tribunal members to include Tribunal appointed mediators.</p>	<p>There was no disagreement with the proposed amendment.</p>	<p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>17. Allow the Tribunal to agree to an extension of time where all parties agree, without the need for Ministerial approval.</p>	<p>There was no disagreement with the proposed amendment.</p>	<p>The Committee considers the proposal has merit, but to be unambiguous, the agreement should be in written form.</p> <p>The Committee considers that the amendment should be made to LUPAA.</p>

ISSUE	PUBLIC COMMENT	OPTIONS
<p>18. Allow the Tribunal to consolidate parties to an appeal when there are common grounds of appeal.</p>	<p>There was general support for the amendment, although some submissions considered that the consolidation of parties should only occur with the consent of those parties.</p> <p>One submission, whilst supporting the amendment, considered that the opportunity should be available to pursue separate grounds for good planning outcomes.</p>	<p>The Steering Committee considers that the Tribunal is in the best position to determine whether parties to an appeal should be consolidated or not. The Committee considers that this has the potential to considerably streamline the appeal process and reduce costs for all parties.</p> <p>The Committee considers that the amendment should be made to LUPAA.</p>
<p>19. Make parties initiating injunction proceedings liable for losses and damages if the order was wrongly made, with the exception of Councils.</p>	<p>There was some support for the amendment with the proviso that the Tribunal retains discretion over who is liable for losses or damages incurred by a party.</p> <p>One submission considered that an automatic responsibility might deter action by parties with a genuine concern while another considered that costs should be awarded against a party if the case is vexatious.</p> <p>One submission considered that the clarification of parties bearing own costs in appeal should extend to civil enforcement proceedings. It was also questioned why Councils should be exempt from liability.</p>	<p>The Steering Committee considers that it has insufficient information before them to make a suggestion for a way forward in relation to this amendment. The Committee considers that the Department should investigate this matter further in light of the submissions before proceeding with the amendment.</p>
<p>20. Introduce third party rights to enforcement proceedings in relation to the <i>Historic Cultural Heritage Act 1995</i>.</p>	<p>There was some support for the amendment although it was stated that if heritage considerations were incorporated within an integrated planning permit process, then the right of appeal would exist under LUPAA not the heritage legislation.</p> <p>Another submission considered that, for equity, third party rights for enforcement should apply to Forestry and Marine Farming as well.</p>	<p>The Steering Committee agrees that third party rights to enforcement proceedings should be consolidated into LUPAA. The Committee considers that the Department, conjunction with DTPHA should examine whether this is practical or feasible.</p>

21.0 OTHER MATTERS

21.1 Additional Issues - Tribunal Processes

In response to some sections of the Discussion Paper, particularly with respect to powers for civil enforcement proceedings brought before the Tribunal, many submissions raised issues about the actual Tribunal processes.

PUBLIC COMMENT

Many comments were received relating to the Tribunal procedures, with calls to make them more user-friendly. There was a general sense that Tribunal processes are not as fair as they could be.

Comments indicated that many people are not aware of the approach or mode of operation of the Tribunal or the reason it exists. Particular concerns were expressed about the overly adversarial nature of proceedings where legal representation is regarded by many as imperative despite not being a mandatory requirement of the system. This view was not unique to community and environmental groups but also expressed by industry lobby groups. Related to this was a suggestion that witnesses such as professional planners should not be engaged by any particular party but rather be funded through the Tribunal to reduce adversarial argument and costs. Others strongly disagreed with this suggestion.

In general there was considerable concern that the system tends to favour those who are well resourced and can afford the best advice and representation.

Submissions also highlighted room for improvement such as better processes for preliminary rulings to remove irrelevant issues. It was also suggested that the Tribunal could better assist inexperienced parties through advice on procedural matters.

Particular emphasis was placed on the notions of procedural fairness and natural justice and the most appropriate way for these to be delivered through Tribunal processes.

Other views sought to limit access to the Tribunal to those third parties directly affected rather than open to anyone regardless of their connection to the proposal.

The issue of legal representation before the Tribunal provoked quite different responses. One submission supported the right for any party appearing before the Tribunal to be represented by a qualified professional sufficiently experienced to analyse the issues and well-informed on the legal constraints of the planning scheme to properly address the relevant issues. Other submissions suggested that lawyers should not be allowed in the Tribunal except under exceptional circumstances as they can frustrate good planning outcomes through pursuing legal technicalities.

There also were calls to ensure any changes to the review and enforcement provisions do not compromise the independence of the Tribunal or result in lengthy timeframes that are an unnecessary burden on business. It was also pointed out that the intent and wording of the actual legislation of the Tribunal processes are adequate but the manner in which they are administered is a problem.

STEERING COMMITTEE RESPONSE

The Steering Committee is aware of considerable community concern about the operation of the Tribunal, particularly in terms of the legalistic procedures and the resulting sense of disadvantage experienced by some members of the community.

However, the Committee considers at least some of this can be mitigated by making it clear that the primary role of the Tribunal is to determine whether a planning authority made a decision according to the provisions of its planning scheme. The Tribunal is limited to some degree to the grounds of appeal and is not set up to mediate between the community and a Council in relation to a broad range of cultural and social aspects of a proposal.

It is also necessary to clarify that a certain degree of formality is required in the Tribunal to ensure the rules of natural justice are followed and there is consistency in the decisions made. For obvious reasons it is essential that evidence is tested and examined properly and formality is inherent in this process. Although it may not seem so to members of the community, the Committee considers that the Tribunal is reasonably flexible and informal in its procedures when compared to the operation of the Courts.

Notwithstanding this, the Committee considers that the perception of fairness is important to provide confidence in the appeal system. It agrees that generally the intent and wording of the *RMPAT Act* is appropriate and suggests that what is required in the immediate sense is fine-tuning in its actual day-to-day application.

The Committee notes that compared to the Tribunal, the processes of the RPDC are far closer to a number of the suggestions made in the submissions. RPDC hearings are less legalistic and conducted more like an inquiry. Professional planners are employed by the Commission to assist its functions.

It is important that procedural fairness and natural justice are not confused with a lack of formal process and the Committee considers that there is need to ensure that the material before the Tribunal is relevant to the appeal and that it is tested in a fair manner. Notwithstanding this, the Committee considers there is merit in considering in more detail the suggestion that lawyers should be excluded from Tribunal hearings unless there are exceptional circumstances.

The Committee is of the opinion that the Tribunal could better explain the processes and requirements of the appeal system through written material and by way of more detailed directions hearings. Currently directions hearings predominantly serve to set dates for exchange of evidence and hearings rather than explain in some detail the way the hearing will work and what will be expected of the participants. The Committee is aware that the Tribunal has prepared a number of brochures outlining aspects of the appeal process and makes these available to appellants.

In relation to the proposal that some experts be retained by the Tribunal and provide expert testimony to assist its deliberations rather than 'act' for one party, the Committee notes there has been an attempt to introduce a variant of this in NSW where the parties pay for the experts on a shared basis. The Steering Committee considers this model should be very carefully examined as it represents a significant change to the traditional approach where parties choose their own witnesses. In Tasmania the proposal would result in more efficient use of a very limited supply of qualified planners because instead of several of these being used to provide evidence for different sides in a planning dispute, only a single expert would be required to assist the Tribunal. This role of assisting the Tribunal would also free planners from the constraints of an adversarial system as they would not be engaged by one side or another.

A related matter is the part-time employment status of many of the Tribunal members. The Committee notes that the RPDC employs two full-time delegates to hear matters as well as using some of the Commissioners. The Committee considers there is merit in the Tribunal exploring a move to engage a full-time planner to act as a permanent Tribunal member thereby providing more continuity and consistency.

In summary the Committee believes that the existing provisions in the *RMPAT* legislation provide a suitable legislative framework for the operation of the Tribunal in a way that is fair but some changes should be considered to further the intent of the Act. The following changes are proposed in response to the comments received.

OPTIONS

1. That the Department cooperate with the Tribunal to provide a more comprehensive statement of the appeal processes both in paper form and on the website.
2. That the Tribunal continue to provide a hard copy brochure to each person who lodges an appeal indicating the processes, procedures and what to expect.
3. That the Department recommend to the Tribunal that it expand the function of its Directions Hearings to explain the actual processes of a hearing and mediation and set out why these processes are considered appropriate to provide for procedural fairness.
4. That the Department ask the Chairman of the Tribunal to review the behaviour of legal practitioners appearing in hearings to ensure that those without legal representation are not disadvantaged or intimidated and that good planning outcomes are not frustrated by legal technicalities.
5. That the Department in conjunction with the Tribunal explore the suggestion that legal practitioners be excluded generally from Tribunal Hearings unless there are exceptional circumstances.
6. That the Department in conjunction with the Tribunal explore the need for more prescriptive guidelines for the Tribunal's functions in conducting an appeal hearing and what limitations are appropriate to allow it to achieve a good planning outcome.
7. That the Department in conjunction with the Tribunal consider the merit in appointing a full-time planner to act as a permanent Tribunal member.

21.2 Miscellaneous

A number of people took the opportunity to make comments and suggestions outside the range of issues that were canvassed in the Discussion Paper.

PUBLIC COMMENT	STEERING COMMITTEE RESPONSE	OPTIONS
<p>1. Forestry needs to be subject to LUPAA.</p>	<p>How forestry is regulated within the State is outside the scope of the Better Planning Outcomes Project.</p>	<p>No action required.</p>
<p>2. The regulations concerning advertising developments need a major overhaul. Photos of the site, independently produced images, CAD models and balloons could be used to show height etc as methods to alert public to real impacts of proposals.</p>	<p>The Steering Committee considers that the measures proposed in the submission would considerably add to the cost of development for limited gain. The type of site information suggested may be appropriate for developments in sensitive or heritage areas but should not have general application. Notwithstanding this the Committee considers there is scope to improve the written description in advertisements and on notices. (This is explored more in issue 3)</p>	<p>The Department consider preparing a best practice guide on notification of development.</p>
<p>3. The regulations of LUPAA should be changed to require further and better particulars about the nature of permit proposals received by Councils that need to be advertised.</p>	<p>The Steering Committee agrees that the information in advertisements could be improved. At present, the public's capacity to make informed comment on advertised permit application is being restricted by minimal detail in the advertisement. Any change to the LUPAA Regulations to require additional information would need to take into consideration the cost of providing that information. The Committee considers that this issue should be considered in conjunction with Public Comment 3 above.</p>	<p>That the Department investigate an amendment to the LUPAA Regulations in order to improve the information about permit applications in the public advertisement.</p> <p>The issue should be considered in conjunction with Public Comment 4.</p>
<p>4. Individuals and groups should be given more time and notification by Councils through various electronic and postal media, rather than just public notices in newspapers.</p>	<p>The Steering Committee agrees that the use of email/website to notify individual and groups of proposed development would be an effective communication tool. The Committee considers that the Department should liaise with the LGAT to determine whether a electronic notification system could be implemented statewide</p>	<p>The Department liaise with the LGAT to determine whether an electronic development application notification system could be implemented statewide.</p>
<p>5. Planning Schemes will need to investigate new tools to effectively and efficiently deal with Aboriginal heritage, as the system is compromised if kept separate. New legislation is planned to integrate Aboriginal heritage into the planning system.</p>	<p>The Steering Committee understands that this issue is currently being considered as part of a separate Aboriginal Cultural Heritage Review. This is the appropriate vehicle to address this issue</p>	<p>No action required.</p>

PUBLIC COMMENT	STEERING COMMITTEE RESPONSE	OPTIONS
<p>6. The current objectives of the RMPS should be reviewed and brought up to date, especially the definition of Sustainable Development, which could be significantly tightened and redefined.</p>	<p>The Steering Committee notes that the RMPS has been independently assessed to be one of the best in Australia. While the Committee recognises that some improvements can be made to elements of the system, it does not consider that the objectives of the RMPS and the definition of sustainable development are in this category.</p>	<p>No action required.</p>
<p>7. A State policy should be prepared on noise that sets out in clear terms that noise is an important issue and must be taken into account in all land use decision making.</p>	<p>The Steering Committee agrees that noise is an important issue and should be taken into consideration in all land use decisions. However, the Committee considers that it is premature to determine whether a State policy is required for noise given that the Department is currently developing a Noise Policy under EMPCA. The issue should be reconsidered in the light of the results of the development of the Noise Policy.</p>	<p>That the Department reconsider this issue in the light of the results from the development of the Noise Policy under EMPCA.</p>
<p>8. The State needs effective land clearance control legislation that is integrated into the RMPS instead of forestry.</p>	<p>The Steering Committee understands that legislative amendments have been foreshadowed that will provide further controls over land clearing. The Committee considers that it would be prudent to wait until the details of the legislation are known before deciding whether anything further is required to address this issue.</p> <p>The Committee notes that Councils have the head power under LUPAA to introduce land clearance controls in planning schemes at any time. Many Councils have already done so.</p>	<p>That the Department reconsider this issue once the legislative amendments affecting land clearance are enacted.</p>
<p>9. There should be greater provision by the Government of best practice guidance to Councils.</p>	<p>The Steering Committee considers that greater access to best practice guidance in strategic and statutory planning would benefit all that participate in the RMPS. The Committee considers that the Department is in the best position to promote these examples and make them readily available on the web.</p>	<p>That the Department actively promote examples of best practice guidance in strategic and statutory planning on its website.</p>
<p>10. Change the legislation to make it clear that once a person has a permit application, it is valid until the expiry of that permit – notwithstanding any changes to planning schemes.</p>	<p>The Steering Committee considers that if there is any uncertainty in relation to the validity of permits it should be removed. The Committee considers that LUPAA should make it clear that a permit can be acted upon for the period it is in force. It should also be noted that a permit relates to a particular piece of land and not necessarily linked to any person.</p>	<p>That the Department initiate an amendment to LUPAA to clarify that once a permit has been issued, it is valid until its expiry.</p>

PUBLIC COMMENT	STEERING COMMITTEE RESPONSE	OPTIONS
<p>11. Create a requirement that “development” that is undertaken by a fire service etc in an emergency does not create an offence under LUPAA.</p>	<p>The Steering Committee understands that most, if not all, planning schemes provide for exemptions from requiring a permit for emergency works. Having said this, there may be merit in introducing a general exemption in LUPAA to ensure that the issue is covered and to achieve a consistent approach across the State.</p>	<p>That the Department initiate an amendment to LUPAA to exempt certain works authorised by emergency services personnel in the course of an emergency situation.</p>
<p>12. Not enough consideration is being given to the increasing number of residential developments in Sullivan’s Cove, which outnumber and conflict with the licensed premises, Council approved functions and general unruly behaviour. These problems centre on the noise from night clubs, extended licensing hours, the Taste of Tasmania etc.</p>	<p>This is a matter for the Sullivan’s Cove Waterfront Authority, as planning authority, to address and as such, is outside the scope of the Project.</p>	<p>No action required.</p>
<p>13. There are a myriad of controls in planning eroding away housing affordability, and consequently diminishing community and industry confidence in the benefits of the planning system.</p>	<p>The Steering Committee is aware that housing affordability is being addressed through the State Government’s Affordable Housing Strategy. This is the appropriate vehicle to address this issue at this detailed level.</p>	<p>No action required.</p>
<p>14. There needs to be greater liaison by Councils with developers on proposed conditions for a permit.</p>	<p>The Steering Committee understands that there is nothing in LUPAA that prevents Councils from liaising with developers about proposed conditions to be included in a permit.</p>	<p>No action required.</p>
<p>15. Planning Directive No 1 be modified with regard to the exemption for minor protrusions under 5.3.3 of the Directive, to specify that the recommended exemption for satellite dishes be for dishes of up to 90cm. Alternatively, satellite dishes should be made exempt under LUPAA.</p>	<p>The Steering Committee supports the Department’s approach by standardising a list of exemptions to be included in all planning schemes through the implementation of Planning Directive No.1. With the initiative to bring planning schemes across the State into conformity with Planning Directive No. 1 (refer Section 5), the Committee does not see the need to introduce a general exemption for satellite dishes under LUPAA. The inclusion of an amendment does, however, have some merit and should be considered by the Department.</p>	<p>That the Department consider amending section 5.3.3 Planning Directive No.1 to insert a size limit for satellite dishes of 90cm.</p>

PUBLIC COMMENT	STEERING COMMITTEE RESPONSE	OPTIONS
<p>16. Introduce a power to remove a Council's planning powers if the council demonstrates it can't properly undertake its responsibilities.</p>	<p>Currently there are no powers under the <i>Local Government Act 1993</i> (LG Act) or the LUPA Act to take action against a Council that is not fulfilling its obligations as a planning authority (as opposed to its general functions). In fact the Committee considers the general lack of explanation about a planning authority's roles and functions is of concern. Whilst audits of councils' performance are routinely undertaken by the Local Government Office under the LG Act, they do not generally extend to the performance of a council as a planning authority.</p> <p>While this is the case, the Steering Committee is not aware of any calls in the past for the removal of a Council's planning powers in the State and certainly cannot predict the future in this regard.</p> <p>Whether there should be a latent power in the Act for such a circumstance, is, however, another question. The Committee, whilst considering it an unlikely occurrence, is of the view that if a Council is consistently and blatantly not observing or enforcing its planning scheme, there should be legislative powers to remove the Council's planning powers, either temporarily or more on a permanent basis.</p> <p>Given this, the Committee considers that, at least, the principle of removing Councils planning powers in certain circumstances should be explored by the Department with the LGAT and Councils.</p>	<p>That the Department explore with the LGAT and Councils the introduction of provisions detailing the constitution, functions and powers of planning authorities and specifically consider whether Councils planning powers should be removed where they are not fulfilling their obligations as a planning authority.</p>
<p>17. Consideration should be given to the need for final approval of amendments and planning schemes by the relevant Minister.</p>	<p>The Steering Committee notes that the RPDC cannot give its approval to a planning scheme without the approval of the Minister responsible for LUPAA (s.29). As noted in response to Issue 16, the RPDC is established as an independent statutory body charged with approving planning schemes and amendments in line with the provisions of LUPAA. The Committee does not consider that such a high level approval is required for planning scheme amendments.</p>	<p>No action required.</p>

PUBLIC COMMENT	STEERING COMMITTEE RESPONSE	OPTIONS
<p>18. RPDC's varied roles should be reviewed to determine whether:</p> <ul style="list-style-type: none"> the strategic and statutory functions are relevant; there is appropriate transparency in its decision making; there is a greater role for the Minister and her Department. 	<p>The Steering Committee notes that:</p> <ul style="list-style-type: none"> The RPDC is an independent statutory body charged by the Tasmanian Parliament with a number of roles and functions under a variety of Acts. The RPDC does not have a strategic function by statute. Any decision of the RPDC is subject to the <i>Judicial Review Act 2000</i>. The Minister may give directions in writing to the RPDC. The RPDC must perform its functions and exercise its powers in accordance with those directions. <p>The Committee's understanding of the Project was to identify potential improvements to the land use planning system in Tasmania and not undertake a review of one of the statutory bodies within the system. If such a review is required, it is for another process.</p>	<p>No action required.</p>
<p>19. Consideration to the potential of Ministerial "call in" powers should also be given in respect of appeals, amendments and planning schemes.</p>	<p>The Steering Committee understands that when the RMPS was introduced it was intended that the independent statutory bodies, not the Minister, would have responsibility for the process matters under the relevant Acts. The Steering Committee does not see the need to divert from this principle in this case.</p>	<p>No action required.</p>
<p>20. In the light of the RPDC decision regarding the Mt Nelson decision, there needs to be a review of s.66 of LUPAA to clarify when land is set aside for a public purpose and when compensation is payable.</p>	<p>The Steering Committee is not totally familiar with the detail of the Mt Nelson case referred to, but understands that the issue relates to the definition of land set aside for a 'public purpose'. Given that zoning of land has changed over the years to reflect a range of public and community values although it may remain in private hands there may be need to consider whether the term 'public purpose' is adequately defined in LUPAA.</p> <p>In light of this, the Committee considers that the Department should investigate the RPDC decision and determine whether any changes to LUPAA are required.</p>	<p>That the Department should investigate the RPDC decision and determine whether any changes to s.66 of LUPAA are required in respect of land set aside for a 'public purpose'.</p>

