

Submission 5**Submission by Mervin C Reed FAICD AAFA ADFS(FP) AAIM****Review of the Planning System of Tasmania.**

The process of reviewing the present confused and patchwork quilt, of Tasmanian planning legislation and authorities is long overdue.

The significant failures of the RPDC to deliver results for the Tasmanian community need to be addressed.

The terms of reference has identified that the decision making on planning matters is not efficient.

The terms of reference has identified a loss of confidence by the Government at all levels, in the ability of the present RPDC to deliver an outcome within reasonable time frames with some consistency in the outcomes, aligned to general community expectations of fairness of outcome.

This is also reflected in Local Government's view of the RPDC as having an unnecessarily over-bearing and interfering approach to land use planning matters.

The general community, business community, building construction industry, building developers and the funds management industry, is concerned that these bodies make decisions with no economic accountability especially to local government. This is a cost to the community for an unaccountable organisation.

The RPDC has increased costs of housing in Tasmania by 28% in the past 5 years.

They have also cost the Tasmanian Government considerable revenue in lost stamp duty and taxes.

In a very general sense the community loss of confidence in the RPDC is pretty much across the board and is probably not recoverable.

Furthermore the review has identified the fundamental economic facts that the RPDC and RMPAT have not delivered economic benefits to the people of Tasmania in the broad sense, and provided a barrier to capital investment across many facets of the Tasmanian economy.

This failure to deliver a community good outcome would in other jurisdictions see these two bodies abolished. This is not an inconsistent outcome for non-performance.

This submission therefore is relational the terms of reference and follows the logic of the Steering Committee.

This submission is not intended to canvass the issues that land use planners have identified, so I will leave that to others. Suffice to say, that the present system is not user friendly to anyone and thus the imperative for change is universal.

a) streamlining planning system decision making by

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

Presently the overlap and duplication is a cost to the people of Tasmania that they can ill afford.

It costs jobs and investment ranging from simple housing allotments (RPDC interference in the market which is not their role) to the inability for eco tourism to flourish.

The planning process is duplicated and triplicated, by a range of wasteful practices and inconsistent single decision cycle policies, rather than a benchmarking approach.

The waste of time and costs of the paperwork to be shuffled between various agencies who do not have common systems, is in simple terms, a disgrace.

Therefore it is submitted there is no need for RPDC and RMPAT to be separate agencies rather they should be abolished and a new agency formed.

It is submitted that the new agency be called the Tasmanian Planning Authority.

It is further submitted that the agency would have a much reduced role, and be focused on bringing all of the planning schemes in Tasmania into one common simplified framework.

The authority to local government should be increased at the expense of the Authority, as it with local government where all of the economic decisions in regard to land use are made. It is also the point where local representations concerning land use are founded. It is the start of community good.

The relationship between the EPA and the new Authority should be fully segregated so that economic assessments and decisions, can be seen without the need for another layer of bureaucracy inserting spurious elements, into the planning decision making.

The EPA needs to make sure that it is as uninvolved in planning matters as possible.

The responsibility of the new Planning Authority should be to ensure that the environmental guidelines for land and structure development approved by the Government via the EPA are provided to all prospective users of the system, rather than the EPA becoming a defacto planning authority, where a second round of objectors go to try and determine an outcome.

The Planning Authority will have enough to do determining each case or function it has on the merits rather than being essentially turned into a cipher for the EPA.

There is a **great danger** that if this is not addressed, a flight of capital out of Tasmania will occur.

The presently difficulty with even simple Eco Tourism developments highlights the inability of the present RPDC to deliver an outcome on a **consistent** basis.

This type of Corporate behavior by the RPDC, then is seen for what it is, a flawed, slow, ponderous, inconsistent, planning authority.

The future need for the Appeals Tribunal will over time with a revamped new Authority be diminished and this can simply be constituted as a review panel within the authority.

It's power should be truncated so that it simply orders a review of the planning decision by the Authority.

Any further disputes that can achieve a mediated outcome can go to the Supreme Court as they do now. However each party should be required to lodge bonds with the court for costs to reduce the litigious behavior in land use planning.

- ***increasing efficiency through statutory timelines, case management or other means.***

It is submitted that the use of statutory timelines and case management is futile, and simply will mean that the default decision on cases that cannot be coped with, will be in the negative, causing appeals and more costs for all concerned.

It is submitted that a **benchmark system** be used whereby cases coming to the Authority are approved or not subject to a benchmarking system **which over time reduces case loads. In this case if the Authority cannot meet the statutory period for the review the case is determined by default in the affirmative.**

Planning decisions presently are subject to far too much discretion, and as a result proponents and opponents alike use the system for a decision, rather than seeking the support of the local planning authority, that is the local city or council who are the primary determiners of planning for their community within the broad frameworks set by Government.

There are many instances where local government refuses a decision in such a way as to make an appeal to the RPDC succeed. Some local authorities do this consistently to defer decisions from their planning committees who consist of elected members.

The political consequences for the decision as thus blamed on the RPDC.

In these cases if they are referred to the authority for decision it is submitted that all costs for the proponent and appellants be met by the local planning authority in order to deter such behavior.

It is submitted that Local Government be provided with far more power to determine land use in their respective council areas, in order to **reduce the costs to the State Government.**

There is no reason why if a land use decision is determined by the local planning authority in line with the approved planning scheme and with full representational capacity by the citizens of that area, that any appeal be allowed to anywhere.

• **mechanisms to give greater weight to State policy priorities**

Presently the mechanism for giving any priority to state policies is simply take a ticket in the queue, and hope for the best.

The State policies get the same treatment as everyone else.

The primary mechanism to give greater weight to state policy priorities is quite simple in that a simple paragraph is inserted into the new legislation that says:

“Consideration of State Land Use policy priorities shall be the first charge against the resources of the authority in all respects”.

This sets the priorities absolutely.

The other issue of paramount importance here **is the fact that the views of the Treasury and not taken into account by the present authorities.**

The Treasurer has said on many occasions that the focus of the Government is the provision of affordable housing to Tasmanians.

The actions of the present authority are almost 100% counter to this stated objective and the RPDC appears to be trying to prevent land subdivision as the centre piece of its corporate mission statement.

For this reason of the failure to address the policy priorities of the Government and the Tasmanian community especially those persons without housing, the RPDC needs to be abolished, as these failures have caused social concerns and lower standards of living.

• reviewing the process for making & reviewing State Policies

The present process is far too cumbersome and lacks vitality.

There is sufficient fluidity in what is occurring in the state for there to be annual reviews by way of expressions of public interest and such a short review should address:

- . Are the people of Tasmania being served by the authority appropriately?
- . Is there anything that needs to be changed in any planning scheme, that does not help the community?
- . Is there any backlog of cases to be determined and why is this the case.

The cases and the reasons for their delay including a statement from each party as to the their view of the delays is to be published quarterly.

- . What is the authority doing about vexatious appellants?

- ***reviewing the process for approving Projects of State Significance***

Presently the approach by the RPDC to projects of State significance has been appalling.

These are the priorities of the Government and the RPDC is a part of the Tasmanian Government.

The Government is elected to govern and if the Government of the day has the confidence of the Parliament, then the RPDC must deliver for the people of Tasmania a timely and rapid response to the Government's requirements. Projects thus designated would not be so designated as of State significance if a lower priority was assigned to them.

If the RPDC cannot find a way to do this, and seemingly its failure to deliver an adequate and timely response on the Pulp Mill project, then the case for its abolition in the present form is confirmed.

- ***wider use of mediation, including mandatory mediation and***

- ***reviewing the process of third party appeals***

Third party appeals from persons who are not directly affected by the proposed development should be abolished.

They add no value and are a costly disincentive to development whether it be politically desirable or not. For example if there is wide support for a wildlife refuge from all community quarters it should not be agreed that persons who do not have a direct interest by way of adjoining properties should be heard in any way.

The RPDC process is onerous enough especially for developers and proponents, without vexatious third party professional appellants' who in some cases use the RPDC as a form of entertainment. Sad but true.

Lift the costs of appealing and allow the right of compensation for proponents in regard to economic loss caused by appellants', if the case is approved after being approved by the local council planning authority.

Lift the cost of appeals to \$2,500 per appeal, and every appellant must be a person of status.

The number of cases heard by the RPDC where the appellants lose versus the number of cases where the appellant wins should be provided as a statistical table in your report.

Also the number of cases abandoned by the proponent who runs out of money for lawyers and advisers should also be published.

This way the community can be better informed as to the true costs of the planning system as it stands.

b) the viability of amalgamating the RPDC and RMPAT

The most desirable pathway would be abolition of both and a clean start with a new authority.

This course of action would be opposed by the Executive Commissioner of the RPDC but in the interests of achieving an outcome he should set himself aside from any deliberations of the Steering Committee in regard to future structure. In this instance it is unlikely he would agree to the abolition of the organisation he heads

Organisation reform does not mean that systems or corporate memory has to be wasted, rather the new authority will have a clean start and a degree of public confidence presently not apparent.

There will of course be a need for new staff and a new structure focused on outcomes rather than inputs.

The new authority should have a clear target to finalise all outstanding local government planning scheme amendments within one year as a base failure standard. Should this not be achieved then the Executive Head of the Authority should be terminated and replaced with someone who can deliver the outcomes required.

There should be a bonus to achieve this target of an additional one years salary for the appointed head of the authority if he achieves the required results. It would be economic for Government to consider this. The community would support such an efficiency measure.

On this the steering committee needs no compromise, or else the application of state policy priorities will not occur, and the Steering Committee would have failed.

c) the structure of the RPDC

The structure of the RPDC is archaic and has been devolved, not designed.

It is not an open body and presently does not have enough community or local government representation.

The members of the Commission are in the main planning professionals, and this colours all decisions with little reference to community desirable outcomes.

There is a distinct difference to community desirable outcomes and planning professional desirable outcomes. The latter sometimes has little recognition of community values and desires, and to some extent is impacted by the view of the planner, of what is desirable in their personally acceptable view, not the view of the broader community.

For example, it should not be the case where a staff member of RPDC takes the view that a land subdivision approved by the local planning authority should not be agreed as he or she does not want to personally see any more land subdivision. This appears to be the present prevailing attitude of some RPDC staff.

In real terms planners have little or no accountability for their decisions that have an economic effect to the community, and this must change.

The new authority should have new members made up of professionals from other disciplines including engineering, transport economists, farmers, financial services specialists and tourism operators.

The new authority should be made up of mostly new staff with new ideas going forward.

d) assessing best practice models for ministerial call in powers

Presently this Ministerial authority is minimal and should be expanded to allow the Minister to make decisions in regard to planning applications by advising the Authority that he is to do so in the interests of the people of Tasmania.

The authority would be compelled to present a case to the Minister within 14 days of the Minister's advice setting out the arguments in regard to the case.

This is the only model that works.

e) assessment of projects of regional significance by expert panels

The idea that expert panels can assess projects is not new.

The problem is with the decision making.

Too often the expert panels meet and assess an application and say for instance, recommend approval of a change for a regional area.

Presently this would simply be ignored by the RPDC, and what was delivered to the region would be too little too late. This is an area of immense frustration to Local government. In some instances it could be construed as a "make work" process by the RPDC. It repeats what has already been done. The amount of public hearings should be reduced to a minimum and more desk top analysis undertaken with a view to discussion with regional planners rather than paper shuffling.

There can however be effective change by the expert committee system for regional land use decision cycles being enshrined in the new legislation, in such a way as the expert committee decision is binding on the RPDC or its replacement, and the decision is final with no appeal.

These expert panels must be balanced with the region concerned, having all statutory planners on the panel plus engineering, and other experts such as traffic specialists and water planning experts.

Less emphasis on flora and fauna environmental considerations and more emphasis on basic services to Tasmanian's such as clean water and adequate sewerage systems, would be a useful starting point in meeting the community's needs, and indeed the priorities of the Government and the Opposition.

If looked at objectively, the over-emphasis on for instance bush land management, versus the provision of clean water to residents of towns, seems to run counter to the need to look to the **welfare of the people**, in the first instance.

2. Manage consultation on the reform options

The principal of open and full and frank discussion should apply.

Once this process is over then the decision is made, and its implementation time.

The decision will not be loved by all, but it will be a decision of the Government of the day who have the confidence of Parliament, and in essence that is the end of the matter. If desirable a future Parliament can change anything it wishes to.

Whilst this frank discussion process is ongoing, it would be useful for the steering committee to publish a simple analogue of the main themes being proposed, and the diversity of the responses.

This increases public confidence in the whole of the process.

3. Prepare legislative amendments to implement these options

The legislation should not be amendments but a complete new Land Use Planning Act with the new authority being a subset of the main act.

The new legislation should be fully discussed in the drafting stage with the Scrutiny of Bills committee of the Legislative Council and the bill introduced in that house.

4. Implement the changes following passage through Parliament.

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

Project Governance

The Review is to be overseen by a Steering Committee chaired by the nominee of the Minister for Infrastructure, Resources, Planning and Workplace Relations.

Other members of the Steering Committee are:

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

The Project Officer for the review will provide executive support to the Steering Committee with other support to come from the Land Use Planning Branch of DoJ.

Comment: There appears not to be a member from the Department of Treasury and Finance on this committee.