

RESPONSE FROM KINGBOROUGH COUNCIL TO THE REVIEW OF TASMANIA'S PLANNING SYSTEM

Kingborough Council believes that this is a particularly opportune time to review the planning system. This is due to the imminent transfer of water and sewerage responsibilities from local government, the upcoming regional planning initiatives and requirement for consistent planning schemes, the creation of a new EPA and a marked increased interest in planning related matters within the Tasmanian (and Kingborough) community.

For too long there has not been an integrated and concerted effort to ensure there is a sound framework for strategic land use planning within Tasmania. This current review should initiate the necessary structural reform that can both build upon past enquiries (particularly the Better Planning Outcomes Project) and take into account the abovementioned current issues.

The need for an up-front and transparent regional planning process is most apparent and will be very important in future from a number of perspectives. The provision of public infrastructure must be based upon regional land use and settlement plans. There also needs to be an agency or authority that is charged with the responsibility for overseeing the ongoing regional planning process and is able to investigate the many other outstanding planning issues that are so obviously needed. Such a role must be carried out in close partnership with local government in order that there is a coordinated and informed approach.

A specific response has been compiled which is based upon the scope of the current review and is included below.

(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*

Response: Kingborough Council strongly supports the ongoing strengthening of the existing Tasmanian Resource Management and Planning System in that there must be an integrated and coordinated suite of legislation that gives effect to a fair and rational planning system. In order for this to occur, the roles and functions of the various State agencies must be clear and be easily understood. To this can be added the roles and functions of Councils (as planning authorities) and other statutory organisations. It must be recognised that there is a broad range of statutory authorities that make decisions that critically impact upon the planning system.

This will be even more apparent in future as a result of the creation of the new regional water and sewerage authorities. They will determine (through their investment decisions) where new development is to occur. Importantly, these new authorities will also need to appropriately condition (and enforce) the planning permits granted by Councils. New systems will need to accommodate this role, including a major customer service focus, quick processing turn-arounds (to meet statutory approval timeframes), a preparedness to

deal with Tribunal appeals and to monitor construction standards. The new procedural relationships with the permit authority (Council) may need to be legislated.

It is particularly important that a regional planning framework is developed that effectively integrates natural resource management strategies, regional land use plans, public infrastructure (particularly roads/transport, water and sewerage) strategies and Council planning schemes. The gaps that exist within this regional framework are most plainly evident in the land use and development area.

Roles and functions in the planning system should be clearly delineated so that there are very few gaps or overlaps and the necessary coordinated procedures are in place. There is no agency or authority charged with the responsibility to carry out many critically needed planning tasks. There are many proactive planning opportunities that need to be accelerated or expanded upon within Tasmania, and these include:

- development and maintenance of regional land use and settlement plans, as well as associated conservation, open space, recreational and landscape planning
- identifying the common linkages between natural resource, land use and infrastructure planning processes – ensuring that coordinated procedures are in place to properly conduct coordinated assessments and to initiate the necessary and associated legislative changes
- optimising the use of technology through the increased and coordinated use of ePlanning initiatives
- investigating best practice planning standards to be included within planning instruments like planning schemes, and working closely with Councils on keeping planning schemes up to date
- identifying suitable sustainability measures (eg transportation, climate change, energy efficiency and building design) to be incorporated within planning instruments
- developing a common system that enables appropriate developer contributions and charges to be levied on proposed developments (ie headworks or community asset contributions)
- developing guidelines for improved urban design outcomes and planning for urban renewal and heritage protection
- further developing State and regional policies and associated implementation guidelines
- linking strategic planning processes with economic development priorities and investigating opportunities for major new growth areas (master plans), public/private partnerships, housing strategies (including affordable housing), and facilitating increased business investment
- future scenario planning and development of longer term plans (eg in response to climate change impacts or population projections)

To date, local Councils have attempted to do as much as possible across all of these areas, but it is necessary for the State agencies to play a greater role and show leadership. A particular State agency or authority must be able to adopt the lead role as it is unlikely they will be advanced otherwise. There is a need for a proactive planning body that investigates and acts on behalf of government in regard to such matters and works closely with local government in a supportive and helpful manner.

The appropriate agency may well be the RPDC, but it would need to have a major restructure and its current roles relating to independent review would need to be allocated to another agency.

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

Response: Kingborough Council's view is that the existing statutory time frames are already very strict and it is frequently difficult for Councils to comply because of workloads, Council meeting schedules, advertising periods and the increasingly detailed investigations that are necessary. Councils must have very efficient internal systems and there is little opportunity to increase "efficiencies" (or quicker processing of applications) other than by allocating more staff resources.

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

Response: This can best be done through State Policies (see next response) and Directives as provided for under existing legislation. Existing mechanisms already exist but have been rarely utilised and there is little material currently available that clearly articulates what the State's planning priorities actually are.

- *reviewing the process for making and reviewing State Policies*

Response: The preparation of State Policies has in the past proved to be very difficult. The suggested response within the Better Planning Outcomes project is supported. All the State Policies should be "pitched" at the same level and they should all be presented in a recognisably similar format. That is, they should generally be higher level policies that are supported by accompanying implementation tools. The main focus should be on their implementation through planning schemes and other regulatory instruments – rather than having broader more obscure objectives.

As such, there should be a review of the existing State Policies and how new State Policies would best assist the statutory planning approval process. In this context, State Policies are broader policies of government within the framework of the RMPS that then need to be interpreted and applied through practical mechanisms (such as within planning schemes).

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

Response: No comment to be made as we have little direct experience in this area. It may be that there are very few projects that are truly of State significance and most larger projects are in fact only of regional significance (eg they impact upon the economy or environment of one region only).

- *wider use of mediation, including mandatory mediation*

Response: The RMPAT makes full use of all mediation opportunities within its existing procedures. This generally occurs very successfully and most matters are resolved by agreement. Councils are also required to offer mediation opportunities under the legislation. Kingborough Council does not see the need to expand on this.

Mandatory mediation is by definition not possible. It is not possible to mediate a matter unless the parties are actually willing to do so.

The only related additional opportunity is that a form of mediation could be encouraged prior to the application being made. That is, prospective applicants should be encouraged to firstly discuss their proposal with other potentially affected persons. The application requirements could provide for evidence that this has occurred or has been attempted. Such a process would encourage applicants to make early design changes and reduce unwarranted concerns within the local community.

- *reviewing the process of third party appeals*

Response: Kingborough Council's view is that the current system of third party appeals operates in a reasonable and fair manner. There is no reason to make significant changes, although one aspect that does concern Kingborough Council relates to the many technical appeals based on minor breaches of process – rather than appeals made on planning merits. Perhaps “merit based” appeals should be treated differently to those appeals against processing issues that could be more rightly considered a “judicial review”. The planning appeal process is becoming overly legalistic with minor breaches of process dominating many appeals. One solution might be to limit the Section 59 costs to the “judicial review” aspects and not the merits hearing.

(b) the viability of amalgamating the RPDC and RMPAT

Response: Prior to assessing the viability of this proposal, it is necessary to define what the planning related outcomes are. From a structural perspective these outcomes could be divided into two fundamental areas.

Firstly, there needs to be an agency that has a proactive investigative role in such areas as the development of planning policy and guidelines, maintaining the regional land use plans and also overseeing the development and amendment of planning schemes. Such an agency would have the primary responsibility for forward strategic land use planning in Tasmania and determine the policies and procedures that become embedded within the relevant statutory instruments. A very close relationship would exist with local government, as the Councils are the primary planning authorities responsible for the implementation of such planning policies.

Secondly, there needs to be an agency that has the independence to effectively carry out the roles of legal appeals against planning decisions and to conduct independent enquiries as required by the State government. This agency is to ensure that the existing rules and regulations are complied with.

That is, there would be two separate agencies (or functions within agencies) – one would have the proactive strategic planning role and the other has the independent legal or investigative role. With this in mind, it is anticipated that the assessment and approval of new planning schemes will be nowhere near as difficult as it has been in the past. Once there are regional land use plans in place and all planning schemes in the State have been produced to a consistent format (with standard schedules and many common provisions), then future amendments should be minimal and be essentially produced through mutual agreement.

The RPDC should therefore retain its role of determining the development assessment criteria (ie the planning schemes), whereas the RMPAT is judging applications against those criteria. It is beneficial and appropriate to separate out those two roles of setting and interpreting policy. It is also appropriate for the same agency (the RPDC) to be both determining the futuristic strategic planning objectives and defining the planning scheme provisions that will implement these objectives.

On the basis of the above rationale, the existing RPDC would need to be split into two. It would not be a simple merger of the RPDC and the RMPAT. Only the RPDC functions that require an independent enquiry role would be transferred and included alongside the existing RMPAT functions. This would not involve any reduction in importance of the existing independent role that the RPDC currently has and it is assumed that the government would continue to refer such matters to the RMPAT (or by whatever name it would go under).

(c) the structure of the RPDC

Response: If the scenario described in the previous section is regarded as being reasonable, then the future structure of the RPDC would change significantly. All of the independent enquiry functions would be transferred to the RMPAT – apart from overseeing the development and maintenance of planning schemes. The RPDC would retain this function, together with State of the Environment reporting (which would assume increased relevance within a more investigative and strategic organisation), and possibly Water Management Plans.

The RPDC would have a more proactive strategic role in facilitating the preparation of planning schemes and working closely with Councils and other statutory authorities in order that such statutory instruments are prepared more easily. The current situation of planning schemes taking many years to prepare is untenable. New systems and processes must be developed and the RPDC must adopt a more constructive approach and provide improved guidance and assistance to Councils.

The RPDC itself would therefore cease to be an independent Commission and become part of an agency within government. It would also need to be provided with the resources to take on many more responsibilities. It would be more of a strategic and facilitative organisation that focuses on coordinating the efforts of Councils, regional bodies and other State agencies. The earlier list of proactive planning “opportunities” provides some ideas on what a new organisation such as this should be doing in partnership with other stakeholders.

(d) assessing best practice models for ministerial call in powers

Response: The main issue here appears to be the need for criteria to be set so that both the Minister and the broader community understand under what circumstances particular developments are “called in” as projects of State (or regional) significance.

(e) assessment of projects of regional significance by expert panels

Response: The first issue is defining what projects of regional significance are. There should be criteria for when the Minister determines that a project is regionally significant. This should be fundamentally based on the fact that the direct impacts of the development

extend beyond municipal boundaries and that it would be unreasonable for one Council to determine the matter without due regard given to the concerns of its neighbouring Councils.

The suggested process for the assessment of Projects of Regional Significance is essentially the normal approval process handled by Councils – except that the Council is replaced by a Development Assessment Panel. The affected Councils would of course need to be represented on the Assessment Panel.

A system for assessing such projects would complement and be informed by the proposed regional land use planning process. They should be investigated and developed in conjunction with each other and not separately.

A more general comment is that the current review appears to focus more on structural issues rather than desired planning outcomes. It will always be necessary to target the longer term outcomes that are so critical to the State's future development. Once these desired outcomes are known, then "form should follow function" and suitable structures/processes put in place. The above comments have attempted to take this into account.

Contact:

Tony Ferrier
Director Community Planning and Development
Kingborough Council

10 June 2008