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23 May 2008

Review of the Planning System
GPO Box 1691
Hobart 7001

Dear Sir

Submission to the Review

This submission deals with that part of the review concerned with aspects of the operation of the planning appeals system, especially relating to appeals against decisions of Councils acting as Planning Authorities.

We understand that when RMPAT was established an intention was to provide a process where appeals against decisions of Councils could be reviewed by an independent authority and that the system put in place was not to be a judicial body but more a process of administrative review.

It is our belief that RMPAT has become another playground for lawyers and another avenue for stroking their professional egos. The mediation component has clearly had some success, but that is often before the lawyers get into the process.

The procedural rules and processes of the Tribunal particularly when it comes to full hearings seem to be rather heavily weighted in favour of those who have the capacity to engage expert witnesses and have professionals argue their case. Ordinary folk' who have neither the knowledge nor capacity to engage such professional assistance are clearly at a disadvantage in hearings. This applies whether the 'ordinary folk' are appellants, respondents or those members of the community who seek to join, or have joined, the process.

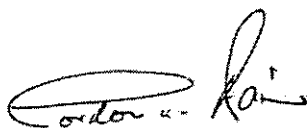
Tribunal Chairs clearly exercise their roles in different ways – some appear to treat the Tribunal as a Magistrates or Supreme Court and expect the full professional standards to apply, others give more leeway to the 'uninitiated'. But nonetheless we believe that the Tribunals expect that all persons attending – whether appellant, respondent or joined party – provide documentation and evidence ("Expert Witnesses") at the level expected of the Courts. There appears to be no opportunity for the 'uninitiated' to be able to present cogent argument (without the costly expert witness style of evidence) and for such to be taken into account by Tribunal members forming their own opinion about the merit of such argument.

If members of the public can lodge formal representations to Councils without the 'Evidence' and for that representation to be at least considered fairly by Council staff, there appears to be no reason why a similar means should not be available when and if the case goes to an administrative or quasi-judicial authority.

The Tribunal system does not differentiate the different types of appeals and in attempting a single process standard (or a one-size-fits-all approach) has opted for the highest level of documentation and procedure. This works to the disadvantage of the small players.

We do not offer any suggestions for change but urge that the review consider the fairness of a system which seems to favour those with the wherewithal to engage professional advocacy and a raft of expert witnesses, and the resources that enable taking cases forward through the various stages of an appeal to and including the Supreme Court.

Yours faithfully



Gordon Bain



Pat Bain