



Ms Jacki Murfitt
Review of the Planning System
GPO Box 1691
HOBART TAS 7001

16 June 2008

Review of the Planning System

Dear Ms Murfitt,

The Property Council of Australia (Tasmania) welcomes this opportunity to provide comment to Tasmania's Planning System Review.

We are keen to work closely with the State Government to ensure a planning system that delivers certainty for government, industry, and the community alike.

Who We Are

The Property Council of Australia represents the multi billion dollar property investment industry.

Our members are the companies that help shape, build, and finance our cities, companies which have a long term interest in the future of our urban and regional areas.

They include the State's major investors in office towers, shopping centres, industrial parks, tourism accommodation, and infrastructure, as well as key players in the residential property market.

The Need for Reform

Development is at the heart of the Tasmanian economy and shapes the urban environment in which we work, live, work and play.

A well functioning and consistent Tasmanian planning system is vital to the economic, social, and environmental interests of all stakeholders.

Effective planning systems provide strong investment signals to industry, certainty for investment, and the right framework for the State to achieve the economic growth.

The Voice of Leadership

P.O. Box 1614 HOBART TAS 7001
www.propertyoz.com.au
ABN 1300 8474 422



Yet it appears that Governments have historically treated planning as an afterthought rather than recognising its fundamental role in promoting, encouraging and delivering economic prosperity for all Tasmanians.

Strategic planning should precede economic development, not the other way round.

The Property Council congratulates the Government for its commitment to ongoing reform of the planning system.

To assist with the current review, the Property Council has chosen to limit its comments to the significant issues affecting the state, with a view to reducing red tape while developing greater certainty and trust in the planning system.

Tasmania's Planning System Review

The Property Council welcomes and supports the periodic review of the State Planning System.

While we recognise that the existing Resource and Management Planning System (RMPS) is working reasonably well, there is room for improvement.

The recommendations for improvement are detailed below.

Recommendations

Streaming the Planning System

- | | |
|-------------------|---|
| Recommendation 1: | Implement the Development Assessment Forum's Leading Practice Model for Development Assessment. |
| Recommendation 2: | Coordinate development assessment activities between Government Agencies. |
| Recommendation 3: | Increase resources for the Planning Unit, Department of Justice. |
| Recommendation 4: | Reduce the need for "stopping the clock". |
| Recommendation 5: | Provide a guide and training for planners on how to manage a case load of applications within the statutory system. |
| Recommendation 6: | Implement an electronic development assessment system based on the DAF eDA protocols. |
| Recommendation 7: | Develop State wide consistency in setting consent conditions. |
| Recommendation 8: | Introduce an optional mediation process for unsuccessful applications. |

State Planning Policies

Recommendation 9: Develop robust State Planning Policies.

Recommendation 10: Review the process of creating State Planning Policies.

Amalgamation of RMPAT and RPDC

Recommendation 11: Maintain the Resource Management and Planning Appeal Tribunal (RMPAT) and Resource Planning Development Commission (RPDC) as separate entities.

Structure of the RPDC

Recommendation 12: Clarify the role, timeframes and accountability of the RPDC.

Ministerial Call in Powers

Recommendation 13: Assess the viability of an Environmental Protection Authority model for call-in powers.

Expert Panels for Regional Projects

Recommendation 14: Implement expert panels for regional projects as first step towards implementation of the Leading Practice Model.

Streamlining the Planning System

Recommendation 1: Implement the Development Assessment Forum's (DAF) Leading Practice Model for Development Assessment

The most efficient way to streamline the planning system is by implementing the Development Assessment Forum (DAF) Leading Practice Model.

As it occurs at present, development assessment is inefficient, impractical, and open to political manipulation.

It costs government and applicants alike significant amounts of money in delays and administration.

In 1995, the then Industry Commission estimated potential savings of \$1 billion a year could flow from improvements to planning and building regulations and processes (Industry Commission, *The Growth and Revenue Implications of Hilmer and Related Reforms*, AGPS Canberra 1995).

The initiatives outlined in the DAF Leading Practice Model will streamline development assessment and enable much of this lost revenue to be redirected to more productive outcomes.

The DAF leading practice model proposes ten leading practices that a development assessment system should exhibit.

These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.

The ten leading practices proposed by DAF are:

1) Effective Policy Development

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional offices and relevant experts

2) Objective rules and tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible specific policy objectives and decision guidelines should be provide.

3) Built in improvement mechanisms

Each jurisdiction should systematically and actively review its policies and objective rules and test to ensure that they remain relevant, effective, efficiently administered and consistent across the jurisdiction.

4) Track based assessment

Development applications should be streamed into an assessment "track: that corresponds with the level of assessment required to make an appropriate informed decision. The criteria and content for each track is standard.

Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

5) A single point of assessment

Only one body should assess an application, using consistent policy and objective rules and tests.

Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process.

Referral agencies should specify their requirements in advance and comply with clear response times.

6) Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third party involvement may be provided.

7) Private sector involvement

Private sector experts should have a role in development assessment, particularly in:

Undertaking pre lodgement certification of applications to improve the quality of applications;

- *Providing expert advice to applicants and decision makers*
- *Certifying compliance where the objective rules and tests are clear and essentially technical;*
- *Making decision under delegation.*

8) Professional determination for most applications

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not either:

- *Option A – Local Government may delegate DA determination power while retaining the ability to call in any application for determination by council*
- *Option B – An expert panel determines the application*
- *Ministers may have call in powers for applications of state or territory significance provided criteria are documented and known in advance.*

(9) Applicant appeals

An applicant should be able to seek a review of a discretionary decision.

A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

10) Third party appeals

Opportunities for third party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third party appeals may be provided in limited other cases.

Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

The Property Council recognises that some of these principles may already be in place in Tasmania.

However, we feel that the State would benefit greatly from implementing the entire DAF Model.

Recommendation 2: Coordinate development assessment activities between government agencies

Many agencies operate relatively independently, with only limited inter-portfolio and inter-departmental liaison.

This creates a lack of consistency and poor coordination in decision-making, and enshrines silo mentality within the public service.

The Property Council believes that there needs to be greater responsibility and coordination within and across Government agencies.

The strategic planning function of government, in particular land use planning, should coordinate other agencies in the efficient planning of hard and soft infrastructure.

Recommendation 3: Increase resources for the Planning Unit within the Department of Justice

Currently the Planning Unit of the State Government provides the strategic direction for the State's future through the Regional Planning Initiatives and the simplification and standardisation of planning schemes.

However, the Unit is not adequately resourced to deliver this policy.

The Property Council believes that the Government must reassess the level of funding and staffing of the Planning Unit to ensure that it can carry out its work.

Recommendation 4: Reduce the need for "stopping the clock"

A significant source of delay in the current approvals process is the ability of councils to 'Stop the Clock' on applications and request further information, covered under Section 39 of the LUPAA.

The delay occurs when either or both applicant and Council misunderstand the level of information that is required for a development application.

The Property Council believes that clear guidelines are needed for applicants and councils alike.

These would outline the information required for certain types of applications and ensure that requests for further information are limited to materials relevant to the application and the planning scheme.

The adoption of development tracks, as outlined in the DAF Leading Practice Model for Development Assessment, would provide such guidance.

Recommendation 5: Provide a guide and training for planners on how to manage case load of applications within the statutory system

The Property Council is aware of the time constraints and the consequential pressure that the RMPS system places on councils, particularly in circumstances where there is an increased number of applications, complexity, or during a review of planning schemes.

While adequate resourcing is part of the issue, the Property Council believes that council planners would benefit from training in managing a high case load within the RMPS time system.

Recommendation 6: Implement an electronic development assessment system based on the DAF eDA protocols

Adoption of the DAF's electronic development assessment (eDA) protocols across the State, and in doing so allowing for the online lodgment and processing of applications, would also help to ease some of the workload on council staff.

The use of an electronic lodgment and assessment system for applications would cut down the time it takes to process DAs, thereby promoting further efficiency gains.

With the Federal Government having committed \$30m to assist in the implementation of eDA, the State Government should follow suit and begin the move to an electronic system.

Recommendation 7: Develop State-wide consistency in setting consent conditions

There is currently little guidance in the creation of consent conditions and no standardisation between councils.

The majority of councils operate off a standard conditions list which could easily be developed into a State-wide template of consent conditions.

The Property Council recommends that a planning directive be made to define legal consent conditions.

This would overcome the current situation of conditions placed on developments which are either illogical or not legally binding.

Recommendation 8: Introduce an optional mediation process for unsuccessful applications

As promoted by principle 9 of the DAF Leading Practice Model, applicants should have the right to appeal a rejection of their development proposal.

In such cases, the Property Council believes that councils should be required to go into mediation to review the application on the same grounds on which it was originally considered.

The council should use this opportunity to outline to the applicant reasons for the rejection, to ensure that future applications are more appropriate.

State Planning Policies

Recommendation 9: Develop robust State Planning Policies

State Planning Policies are part of the Resource Management Planning System.

Section 13 of the *State Policies and Projects Act 1993* prescribes that a State Policy overrides any planning scheme where there is any inconsistency between the Policy and a scheme.

It also prescribes that planning schemes must be amended to incorporate all those parts of the State Policy which are relevant to a planning scheme.

The Property Council believes that for State Policies to have greater weight, they need to include more detail and adopt an objective, performance criteria and standards approach to describing issues.

State Policies should be self-executing and be used as a mechanism to deliver a consistent State position on a particular issue, without the need for a review of existing planning schemes.

Given the changing nature of the community, the Property Council recommends that State Policies undergo a periodic review to ensure they remain relevant.

Recommendation 10: Review the process for creating State Planning Policies

One of the principle shortfalls of the State Policy system is that of the three current State Policies in place, two are in need of urgent review.

There are several State-wide issues which require urgent planning policy direction such as:

- seniors living; and
- protection of mineral resources.

The Property Council recommends that the Minister for Planning should be responsible for creating and approving new State Policies, rather than the Premier, to overcome internal agency issues of leadership and policy development.

Furthermore, greater resources are required within the Planning Unit to create policies, undertake public consultation, and implement them within a reasonable timeframe.

Amalgamation of RMPAT and RPDC

Recommendation 11: Maintain the RMPAT and RPDC as separate entities

The Property Council strongly believes that it would be inappropriate to amalgamate RMPAT and the RPDC given their statutory roles and responsibilities.

The RPDC should remain an independent and expert body and retain its central role in the preparation and review of planning schemes, while the RMPAT needs to retain its own independence as a judicial body.

Structure of the RPDC

Recommendation 12: Clarify the role, timeframes and accountability of the RPDC

The RPDC was set up as an independent mechanism to review planning scheme amendments and new planning schemes.

This process has been compromised largely because the RPDC operates without an overarching policy basis by which its decisions can be tested.

The Property Council therefore recommends that:

- the RPDC be more open in its processes by establishing direct relationships with proponents and councils;
- its decisions be accountable to RMPAT, particularly the development component of Section 43A applications; and
- the RPDC be subject to similarly rigid timeframes as those applied for development assessment under the LUPAA. While the Property Council does not wish to see rushed decisions, we feel that the current time discrepancies between delivering minor scheme amendments and council development applications is unacceptable (ie. 8-10 weeks versus 10-12 months).

The RPDC will need greater resourcing to achieve this.

Ministerial Call-In Powers

Recommendation 13: Assess the viability an Environmental Protection Authority model for call-in powers

Ministerial call-in powers for applications have been rarely used to date.

However, such powers create a potential for inappropriate decisions and the perception of corruption and should be limited.

The Property Council would support consideration of transferring such call-in powers to an independent commissioner, as allowed for under the Environmental Protection Authority model, to ensure transparency.

Expert Panels for Regional Projects

Recommendation 14: Implement expert panels for regional projects as first step towards implementation of the Leading Practice Model.

The Property Council strongly supports the introduction of expert panels for regional projects and is somewhat surprised that this should be consulted on again, given the Government's acceptance of the need for them.

Independent panels were a recommendation of the DAF Leading Practice Model, which ensures that applications can be assessed objectively and without political interference.

Expert panels have already been implemented with great success in South Australia, Victoria and New South Wales have agreed to implement panels to varying degrees, and Queensland is already in discussions with the Property Council about implementation.

The use of independent expert panels is leading practice and is an essential component of development assessment reform.

Next Steps

The Property Council looks forward to continuing the dialogue with the State Government and the Steering Committee on the review of the Planning System of Tasmania.

For further information on any of the comments please contact:

Mary Massina
Executive Director
Property Council of Australia (Tas)
GPO Box 1614
HOBART TAS 7001

Mobile: 0408-594-312

E mail: mmassina@propertyoz.com.au