

Launceston Ratepayers' Association Inc.

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16 June 2008

Steering Committee
Review of the Planning System
G P O Box 1691
HOBART Tas 7001

Attention : Mr Brian Risby,
Review Project Manager
Department of Justice
Planning.Review@justice.tas.gov.au

Dear Sir,

Re: Review of the Tasmanian Planning System

We enclose here, our submission in accordance with the invitation issued by the Minister for Planning and Workplace Relations on 3 May 2008.

We thank you for this opportunity to make a submission, and look forward to your Steering Committee's favourable consideration of our submission.

Yours faithfully,

Kelvin Jowett

Senior Vice-President
Launceston Ratepayers' Association Inc.

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Submission
to the
Review of the Planning System Tasmania

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June 2008

INTRODUCTION

The Launceston Ratepayers Association Inc. (LRA) welcomes this review and the opportunity to express its concerns regarding the Tasmanian Planning System.

As our title suggests, we represent all ratepayer interests within the municipality of Launceston and make this submission based upon the collective experiences of our membership. In doing so, it is our hope that this submission addresses the enquiry's fact-finding task and that its recommendations will produce a better planning system for Tasmanians.

TERMS OF REFERENCE

The terms of reference are couched in terms that suggest that, even before undertaking any objective investigation, judgements may have already been made that assume: -

1. (a) Decision-making in the planning system is not efficient and needs to be 'streamlined' by various means
- (b) the RPDC and the RMPAT should be amalgamated
- (c) the RPDC should be restructured
- (d) ministerial call-in powers should be employed
- (e) projects of regional significance should be declared and assessed by expert panels.

Points 2, 3 & 4 of the Scope merely set out a summary of tasks to 'manage' consultation on options, prepare legislative amendments and implement any changes passed by Parliament.

The LRA contests the assumptions in Point 1 and calls on the Steering Committee to not prejudge the issues before thoroughly investigating the facts, comparing the situation in Tasmania with planning processes in other jurisdictions and receiving submissions that are representative of *all* stakeholders, ie not just developers and local politicians but also individuals and community groups who have been exposed to planning processes, (such as scheme reviews, scheme amendments, development applications and appeals).

Having said that, LRA would like to make the following observations which are offered in a constructive vein in response to the Scope of the Review.

1(a) Streamlining the planning system decision-making by –

- (i) reviewing the allocation of roles and functions of Ministers and agencies;
- (ii) increasing efficiency through statutory timelines, case management or other means;
- (iii) mechanisms to give greater weight to State policy priorities;
- (iv) reviewing the process for making and reviewing State Policies;
- (v) reviewing the process for approving Projects of State Significance
- (vi) wider use of mediation, including mandatory mediation; and
- (vii) reviewing the process of third party appeals.

We do not think the planning system is fundamentally faulty or inefficient, but some aspects of it need strengthening, and greater emphasis needs to be placed on making the LUPAA Schedule 1 objectives operational at the level of project assessment. A deeper appreciation of the meaning of ‘sustainable development’ is required at all levels of government and in the wider community. The Schedule 1 objectives are often given lip service, but projects may not be critically examined in terms of those objectives. (see case Study – Launceston Aquatic Centre)

(i) We think the allocation of roles is generally satisfactory; the RPDC assesses and approves planning schemes through an independent and professional process involving public consultation, Councils implement their planning scheme through their decisions on development applications and finally the RMPAT provides an independent, professional body to review those (relatively few) decisions that are disputed.

The roles of the RPDC and the RMPAT are distinct and should not be confused. (Too often the media does confuse the two bodies because journalists frequently don’t understand planning processes.)

Furthermore we consider that (with two possible exceptions) the Minister should remain at arms length from the approval of individual projects. We are not convinced that Ministerial call-in powers are either necessary or desirable, based on evidence of undue political influence on planning process from other States.

The exceptions are:-

- The Minister should still (as now) be able to recommend to the Governor (i.e Cabinet) that a project is one of State Significance, thus removing it from the purview of an individual Council to an independent assessment panel convened by the RPDC; and
- The Minister should be able to recommend to the Governor that a project be one of Regional Significance, again with independent assessment through the RPDC.

We believe the second process should *always be applied* when a major project is being *proposed and assessed* as discretionary use or development by the same Council. If such a mechanism had been available when the Launceston Aquatic Centre was first proposed, it could have avoided a perceived conflict of interest between Council (as land owner and developer) and Council (as planning authority).

(ii) Statutory timelines already exist and are considered reasonable (42 days for a development application, 90 days for a scheme amendment) The incidence of time over-runs often reflects a lack of resources (planners, planning consultants and suitably experienced lawyers) rather than a lack of appropriate statutory limits. We believe that interstate comparisons would demonstrate that the Tasmanian planning system generally performs well in terms of process time and costs to participants (especially if disputants are encouraged to focus on planning merit and legal representation is kept to a necessary minimum).

(iii) We agree that greater weight needs to be given to State policy priorities, particularly in regard to settlement patterns, sustainable urban development, urban and regional transport, other regional infrastructure, affordable housing and climate change responsiveness. But the Government must pick up the baton on these issues because history shows that State Policies have not been researched and promoted by State agencies as energetically as they should have been since the inception of LUPAA.

(iv) Cabinet should be giving greater direction to agencies to prepare State Policies, particularly on the topics noted above.

(v) The original process for approving Projects of State Significance, through an independent panel process convened and managed by the RPDC, is supported. The pulp mill approval process that finally emerged is seen as an undesirable aberration which should not be repeated.

(vi) Mediation is frequently used now, successfully. We understand that over 70% of appeals to RMPAT are resolved through mediation and it is always

offered as a first option. The term 'mandatory mediation' seems an oxymoron and such a process cannot be enforced on unwilling parties.

(vii) Third party appeals are a fundamental plank of the planning system, and supported by the LUPAA objectives. They should continue. RMPAT experiences very few frivolous or vexatious appeals. Citizens who act altruistically out of genuine concern for the well-being of the community should be supported rather than castigated. However it is reasonable that they must demonstrate to the Tribunal the relevance (in terms of LUPAA objectives) of the issues they seek to raise.

1(b) We see no rationale for amalgamating the RPDC and the RMPAT. As noted earlier, they perform different functions and the separation of their roles should be maintained.

1(c) The structure of the RPDC could be improved by having three fulltime Commissioners with a more 'hands on' oversight of the Commission's functions. This would allow for better integration of State of Environment reporting, State strategic planning and State Policy formulation.

1(d) As suggested in 1(a)(i) we think Ministerial call-in powers should be confined to the declaration of Projects of State Significance (PoSS) or Projects of Regional Significance (PoRS).

1(e) We support the assessment of projects of State or Regional Significance by expert panels, convened and managed by the RPDC, that make recommendations to the Minister. The RPDC should have prime responsibility for selecting the membership of any panel in order to obtain the best professional expertise on the issues involved in a PoSS or PoRS.

We thank you for consideration of our submission.

CASE STUDY: LAUNCESTON ('REGIONAL') AQUATIC CENTRE

In 2007, it was demonstrated that the development of a proposal for a Regional Aquatic Centre, originally conceived in Launceston at the Racecourse Crescent site, but then through concerns about budget over-runs was hastily relocated to the sensitive Windmill Hill site, eluded attempts by citizens wishing to have the development proposal tested against the sustainable development provisions of the State's planning legislation.

Allegations against Council for applying different standards to itself, and criticizing it for assessing and approving its own development, regularly featured in the media.

During the course of the project's development from concept stage to commencement of construction, Council's published figures estimated its cost from \$15M to \$18M, then \$22M and then to reach \$26.5M. Calls for the development of a sustainable Business Plan prior to any further progress with this project, were ignored and apparently will now be undertaken by Council's recently-appointed Centre Manager, mid-way through the construction period.

Evidence of harm, to the protected habitat of the rare swift parrot, although an important Commonwealth responsibility, has not been distilled into proactive measures by the Commonwealth.

The Land Use Planning and Approvals Act requires Planning Authorities to promote sustainable development. The planning scheme must further the objectives of Schedule 1 of the Act.

Schedule 1 of LUPAA says that sustainable development means *managing the use, development and protection of natural and physical resources* in a way or at a rate which enables people and communities to provide for their social, *economic* and cultural *well-being* and for their health and safety, while

(a) Sustaining the potential of natural and physical resources to meet the *reasonably foreseeable needs* of future generations; and

(b) Safeguarding the life supporting capacity of air water soil and ecosystems; and

(c) *Avoiding, remedying or mitigating any adverse effects* of activities on the environment.

The important take from that all-embracing statement is that sustainable development *does* include managing development in a way that provides for the *economic well-being* of communities while avoiding or mitigating the adverse effects of activities.

The appellants against the LAC were not even allowed to raise the question before the Tribunal of how that project (an acknowledged loss-making venture by Council, to be funded by taxpayers and ratepayers) would affect the economic well-being of the Launceston community. This resulted from pre-hearing rulings by RMPAT about the inadmissibility of economic evidence. In our view the definition of 'sustainable development' was ignored or construed with unreasonable myopia.