

Legislation Review Program

Review of the *Land Use Planning and Approvals Act 1993*

Minor Review Statement

**Department of Primary Industries, Water and Environment
January 2000**

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Review of the *Land Use Planning and Approvals Act 1993*

1. Introduction

1.1 The National Competition Policy and the Tasmanian Legislation Review Program

At the 11 April 1995 meeting of the Council of Australian Governments, Heads of Government agreed to adopt the National Competition Policy. This agreement, among other things, requires each participating government to review and, where appropriate, reform all legislation restricting competition by the year 2000.

In Tasmania, this program is known as the Legislation Review Program (LRP), which is administered by the Department of Treasury and Finance. It included a timetable for the review of all existing legislation, and the *Land Use Planning and Approvals Act 1993* has been scheduled for review beginning in 1999.

The guiding principle in the LRP is that legislation should not restrict competition unless it can be demonstrated that :

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

The LRP specifies five criteria which should be addressed when reviewing legislation that restricts competition. These criteria require:

- the objectives of the legislation to be clarified;
- the nature of the restriction on competition and any impacts on business to be identified;
- the likely effect of the restriction on competition and on the economy generally to be analysed;
- the costs and benefits of the restriction and any impacts on business to be assessed and balanced; and
- alternative means for achieving the same result to be considered, including non-legislative approaches.

1.2 The Legislation and the Review Process

The legislation under review comprises:

- the *Land Use Planning and Approvals Act 1993*; and
- the *Land Use Planning and Approvals (Application of Act) Regulations 1995*, Statutory Rules 1995, No 6.

The Department of Treasury and Finance assessed the legislation as requiring a minor review.

The review is being carried out by the Land Use Planning and Approvals Review Group consisting of:

Chair – Mr John Pretty, Manager Planning Services, Department of Primary Industries, Water and Environment (DPIWE);

Mr Jason Miller, Senior Planning Officer, DPIWE;

Ms Deidre Wilson, Policy Analyst, DPIWE;

Dr Felicity Novy, Principal Policy Analyst, Department Treasury and Finance; and

Mr Stewart Wardlaw, Executive Director, Local Government Association of Tasmania.

1.3 Format of this Statement

In reviewing LUPAA, the Review Group is to have regard to the following principle:

That legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs and
- (b) the objectives of the legislation can only be achieved by restricting competition.

To fulfill the terms of reference, the Land Use Planning and Approvals Review Body is to complete a Minor Review Statement that must:

- clarify the objectives of the Act;
- identify the nature of the existing restrictions on competition;
- consider whether the existing restrictions, or any other form of restriction, should be retained by;
 - analysing the likely effect of the existing restrictions or any other form of restriction on competition and on the economy generally;
 - assessing and balancing the costs and benefits of the restrictions; and

-considering alternative means of achieving the same result, including non-legislative approaches; and

- identify the broader impact of the *Land Use Planning and Approvals Act 1993* on business and assess whether this impact is warranted in the public benefit.

Without limiting the scope of the review, the Land Use Planning and Approvals Act Review Group will address the following issues:

- the ability for the Resource Planning and Development Commission (RPDC), with the approval of the Minister, to direct councils to develop planning schemes;
- the specification of what a planning scheme can address;
- the requirement for the RPDC to approve all planning schemes and amendments to these schemes;
- the ability for the RPDC to make special planning orders;
- the requirement for a permit to be obtained prior to undertaking any activity;
- the exemption of certain activities from the requirements of the Act; and
- the model framework for planning schemes. .

The Land Use Planning and Approvals Act Review Body is to provide a Final Review Report to the Treasurer and the Minister for Primary Industries, Water and Environment by 29 February 2000. An extension of time has been sought to this deadline.

1.4 Comments

Copies of LUPAA and associated regulations can be accessed through the Tasmanian Legislation web page. The internet address is <http://www.thelaw.tas.gov.au>. Submissions on the Minor Review Statement should be addressed to the Land Use Planning and Approvals Act Review Body at the following address by 5 PM on Monday 13 March 2000:

Land Use Planning and Approvals Act Review Body C / - John Pretty Department of Primary Industries, Water and Environment GPO Box 44A HOBART 7001

2. The *Land Use Planning and Approvals Act 1993*

2.1 Explanation of the Act

The *Land Use Planning and Approvals Act 1993* (LUPAA) is the primary land use planning legislation in Tasmania, providing the legal framework for the development and subsequent operation of planning schemes.

LUPAA was developed to replace the *Local Government Act 1962*. Unlike the previous legislation, the LUPAA is explicitly based on achieving the contemporary aim of sustainable development.

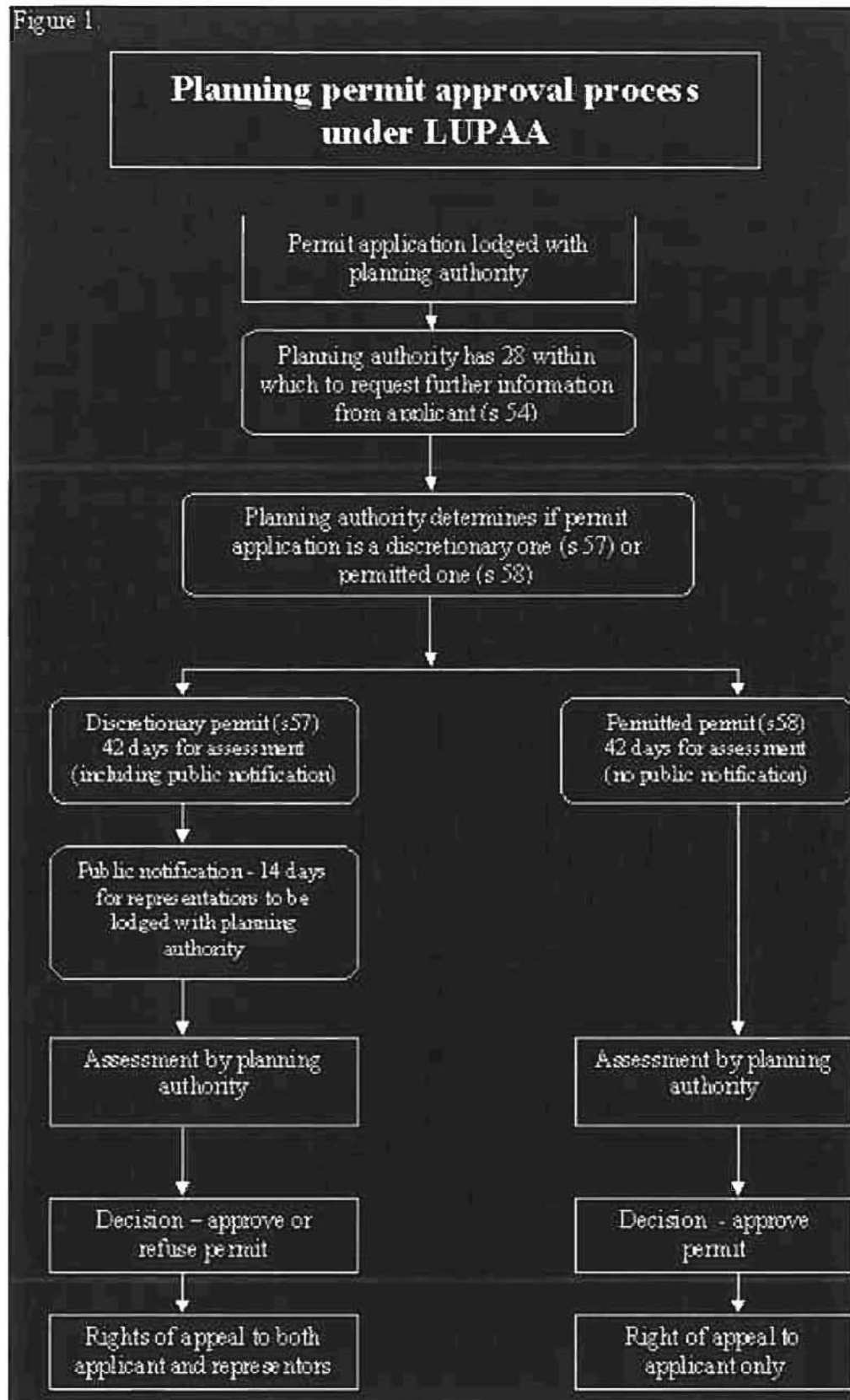
In relation to decisions concerning use or development of the States natural and built resources, it was envisaged that planning schemes prepared pursuant to the Act would be the primary means of implementing its objectives. Planning schemes regulate the use and development of natural and built resources to ensure that all costs (long and short term) and responsibilities associated with a proposed use or development are factored into the decision and that the outcome is in keeping with wider community values and expectations.

For example, planning schemes contain use and development standards which must be met in order that an application for a use or development may proceed. Planning schemes are the administrative basis by which the objectives of the Act are achieved. A flow chart which broadly outlines the permit process for use or development is shown in Figure 1.

To assist with the achievement of the objective of sustainable development, the introduction of LUPAA also provided as follows:

- A legal framework which would provide for planning at the local level.
- The Land Use Planning Review Panel to replace the Office of the Commissioner for Town and Country Planning. Instead of one person making decisions in relation to its planning functions, a more broadly-based body was created. The Land Use Planning Review Panel subsequently became the Resource Planning and Development Commission (RPDC).
- The functions of the RPDC are principally being to certify and approve planning schemes and amendments to planning schemes, but may also include introducing special planning orders where there are inconsistencies between the provisions of an existing scheme or where there is no planning scheme in operation.
- Introduced a simplified process for the granting of permits in relation to matters that, under the relevant planning scheme, require some form of approval. It is this process which forms the core of the integrated approval process, based at the local level.

Figure 1



- Provided for the planning authority and an owner of land to enter into agreements relating to the conditions upon which a use or development may proceed. The provisions were intended to provide an opportunity for planning authorities to negotiate the terms and conditions upon which an approval may be granted. This was seen as providing major benefits in terms of infrastructure provision to support large developments and as an opportunity for local government to levy headworks charges with the consent of a proponent. Registration by the Recorder of Titles gave legal effect to the agreements, becoming a charge upon the relevant land.

In 1997 the Edwards Committee in the report “*Committee for the Review of the State Planning System*” found that ‘the Tasmanian resource management and planning system is almost universally considered Australian, if not world, best practice in resource management and planning’. However, the Edwards Committee made a number of recommendations to improve the system, including changes to the LUPAA. The *Resource Planning and Development Commission Act 1997* gave effect to a number of the recommendations.

The key aspects of the 1997 amendments were as follows:

- Establishment of the Resource Planning and Development Commission which replaced the Land Use Planning Review Panel.
- Provided the Resource Planning and Development Commission with the power to conditionally certify draft planning schemes and draft scheme amendments suitable for public exhibition if there are only minor flaws, rather than send them back to the planning authority for amendment. This was to ensure that the planning process was not unnecessarily slowed down by procedural requirements,
- Introduced mediation to resolve disputes before a planning authority makes a decision in relation to a permit.
- Established a new mechanism whereby the process to amend a planning scheme and the process for a permit application for use or development can be dealt with in tandem. This was seen as a means to significantly reduce the time required to obtain a decision for such use or developments, but without compromising the right of the public to comment on the proposal or removing the opportunity for the planning authority’s permit decision to be reviewed.
- Gave powers to the Resource Planning and Development Commission to require planning authorities to prepare joint planning schemes to promote regional planning.
- Provided for the issuing of a model framework for planning schemes and established a process for its application and amendment. The aim of this provision is to bring greater conformity and consistency to planning schemes in the State.

2.2 Other States

Each Australian State and Territory has a planning system. The specific objectives of these individual systems differ, however the underlying purpose of regulating use and development of each is similar to that in Tasmania. The notion of sustainability is only explicitly referred to in those States with more recent legislation.

Each State has a primary document containing use and development controls which is usually administered at the local level. The format of planning schemes used within each State differs, however the majority are based on the zone and use table approach which determines whether particular activities may be allowed in particular parts of the municipality. The status of narrowly defined uses in particular zones is based on assumptions concerning the appropriateness or otherwise of those uses in that area. This approach has been used to separate incompatible activities and to restrict uses in particular areas which may result in impacts that are incompatible with the interests, values and expectations of the wider community.

2.3 Objectives of the Act

LUPAA is part of the Resource Management and Planning System of Tasmania (RMPS). The RMPS comprises a number of Acts with a common set of objectives based on the concept of sustainable development. These common objectives form Part 1 of Schedule 1 to LUPAA and are stated as:

- (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- (c) to encourage public involvement in resource management and planning; and
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

In clause 1(a), “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.

Part 2 of Schedule 1 of LUPAA sets out the objectives of the planning process established by the Act. These are:

- (a) to require sound strategic planning and co-ordinated action by State and local government; and
- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- (d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and
- (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and
- (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and
- (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- (i) to provide a planning framework which fully considers land capability.

The Review Group considers that these objectives remain appropriate for an Act of this nature.

2.4 The legislation's effects on business

These can be seen under two headings:

Limitations on market entry of business

- Planning schemes can allow or disallow different types of use and development throughout a planning area. Only use and development which can comply with the planning scheme and that gain a planning permit, may establish in an area.

Compliance Costs to Industry

- The LUPAA provides that the power of a council to make by-laws under the *Local Government Act 1993* includes the power to make by-laws for or with respect to the recovery of fees paid by the council in relation to requests to amend planning schemes.
- Fees can be levied with respect to any appeal, submission, representation or lodging of a document pursuant to section 87 of the LUPAA.
- Lodging an application for a permit requires plans to be prepared and other information to be supplied to the planning authority. It also requires time for assessment by the planning authority.
- In order to demonstrate compliance with the requirements of a planning scheme, the proponent may need to modify a proposal or undertake particular actions or works in conjunction with the development.

2.5 Benefits of the legislation

Environment

- The LUPAA provides a framework for ensuring that the social and economic needs of the community are balanced with the protection of natural and built resources both now and over the longer term.

Certainty

- The LUPAA provides a clear and consistent process for dealing with the development of planning schemes, amendment to planning schemes, and for applications for permits.
- The introduction of a model framework for planning schemes, is intended to introduce greater conformity and consistency to planning schemes in the State.

Local Participation

- The LUPAA provides for local decision making by council and public participation within both the plan making and development control processes.

3. Restrictions on Competition

The LRP identifies the following restrictions as having the most important impact on competition:

Restriction on market entry through legislative barriers to the undertaking of trade. This may include prohibitions in regard to particular business activities, licensing or registration requirements, quotas and permits.

Restrictions on competitive conduct by restricting ordinarily acceptable forms of competitive behaviour. This may include matters such as price controls, hours of operation, size of premises, geographical area of operation, permissible advertising, business ownership etc.

Restrictions on product or service innovation such as requirements for prescribed quality or technical standards to be observed in the production of a good or delivery of a service.

Restrictions on the entry of goods or services such as legislation that restricts the entry of goods or services from interstate or overseas.

Administrative Discretion where discretion is exercised such as favoring certain suppliers, by making financial assistance available if business is carried on in a certain location or by treating public and private sector providers differently.

4.0 What are the costs and benefits of the restrictions?

4.1 What a planning scheme can address

Background and Overview

Sections 20(1) and (2) of LUPAA provide the legal head of power for planning authorities to provide for certain matters in a planning scheme.

Section 20(1) states that a planning scheme for an area –

- (a) must seek to further the objectives set out in Schedule 1 within the area covered by the Scheme; and
- (b) must be prepared in accordance with State Policies; and
- (c) may make any provision which relates to the use, development, protection or conservation of any land in the area; and
- (d) must have regard to the strategic plan of a council referred to in Division 2 of Part 7 of the *Local Government Act 1993* as adopted by the council at the time the planning scheme is prepared.

Section 20(2) states that without limiting subsection (1), a planning scheme may –

- (a) set out policies and specific objectives; and
- (b) regulate or prohibit the use or development of any land; and
- (c) designate land as being reserved for public purposes; and
- (d) state the provisions of the planning scheme which would have applied to land reserved for a public purpose under the planning scheme if it had not been reserved for that purpose; and
- (e) set out requirements for the provision of public utility services to land; and
- (f) require specified things to be done to the satisfaction of the Commission, relevant agency or planning authority; and
- (g) apply, adopt or incorporate any document which relates to the use, development or protection of land; and
- (h) provide that any use or development of land is conditional on an agreement being entered into under Part 5; and
- (ha) set out provisions relating to the implementation in stages of uses or developments
- (i) provide for any other matter which this Act refers to as being included in a planning scheme; and

- (j) provide for an application to be made to a planning authority to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme.

Objective

The objective of section 20 is twofold. In the first instance, it provides a requirement that planning schemes be in accordance with and further the policy direction established by the State Government. This includes the notion of sustainable development as defined by the objectives of the RMPS as well as guidance for particular resource issues provided for in State Policies.

The second purpose of this section is to enable matters which contribute to the attainment of the objectives of the RMPS to be given effect through the process of developing planning schemes as well as the assessment of use and development under these schemes.

Benefits

- The majority of matters contained within Section 20 are simple headpowers associated with the fundamental operational requirements of a planning scheme to provide the basic ability to undertake a planning assessment against the environmental, social and economic objectives of the Act.

Costs

- Section 20(2)(c) and (d) enables land to be designated as being reserved for public purposes and to state the provisions of the planning scheme which would have applied if it had not been reserved for a public purpose. This means that land reserved for public purposes is treated differently from other land in the planning scheme.
- This provision can restrict particular business activity over that land on the basis of whether the service provider is a public one or not.

Options

- (1) Repeal section 20.
- (2) Retain the ability to reserve land for public purposes in a planning scheme and state the provisions which would have applied if it had not been reserved for a public purpose under s20(2)(c) & (d).
- (3) Repeal s20(2)(c) & (d) of the Act.

Evaluation

The Review Group does not consider that the repeal of section 20 would be a viable option. Planning schemes must seek to further the objectives in Schedule 1 and must comply with State Policies. The ability to regulate use and development is also essential to achieve these outcomes. The manner by which these powers are given effect in planning

schemes will be considered in more detail in Part 4.6. These are not unreasonable requirements. All other issues are not mandatory, and the majority are unlikely to have an impact on competition or business.

However, the Review Group considers that the reserving of land for public purposes within a planning scheme should be repealed.

This provision of the Act does not seem to be required because it would appear to duplicate powers under 20(1)(c) and 20(2)(b) which enable a planning scheme to make any provision which relates to the use, development or protection of land. Also, where a subdivision or other development creates the need for public utility services, s20(2)(e) & (h) enable a planning authority to require the provision of these as part of the approval.

The Review Group considers the rules that apply to public development should be the same as those applying to private development. The provision allowing the reservation of public land for public purposes has been used in the past to provide a different and usually favourable planning regime for works of a public nature. In this respect, reservation notations used in planning schemes have varied between exemption from the provisions of a planning scheme to specifying unique requirements.

There is also no definition provided in LUPAA as to what constitutes a public purpose, which is confusing. This means that it is not clear whether, for example, a privately provided school, telecommunications facility, or waste disposal facility would be considered a public purpose. Typical designations used within older planning schemes have included land reserved for public schools, parks and sewage treatment plants. However it is not considered appropriate that LUPAA simply be amended to define what constitutes a public purpose, because of the reasons outlined. The Review Group concludes that the designation of land in a planning scheme as being reserved for public purposes is an anachronism carried over from the previous planning legislation. The Review Group considers that no public benefit is served by retaining that provision.

Conclusion

The Review Group recommends the adoption of Option 3, to repeal sub-paragraphs 20(2)(c) & (d) of the LUPAA.

4.2 Functions of Resource Planning and Development Commission

The principal functions of the Resource Planning and Development Commission (RPDC) under LUPAA which have been identified as restricting competition are:

- The requirement that the RPDC certify and approve all planning schemes and amendments;
- The ability of the RPDC with the approval of the Minister to direct a planning authority to prepare a planning scheme or amendment to a planning scheme; and

- The ability of the RPDC to make a Special Planning Order.

Background and Overview

Planning schemes provide the principal statutory instrument for ensuring that decisions concerning the use and development of the State's natural and physical resources are made in a manner which satisfies the sustainability objectives of the Resource Management and Planning System of Tasmania.

The RPDC was established with the introduction of LUPAA to perform the role of ensuring that adequate planning control exists throughout the State and in a manner that furthers the objectives of the resource management and planning system and State Policies.

Objective

The objective of charging the above functions to the RPDC is to ensure that a single authority, independent of political or other interference has oversight of the adequacy of planning schemes or amendments to planning schemes throughout the State.

Benefits

- Provides a mechanism to ensure that planning schemes further the objective of sustainable development and that adequate planning control exists across the State to give effect to this objective.

Costs

- The functions of the RPDC can restrict market entry through its powers to approve or not approve planning schemes and or amendments to planning schemes. In particular, the majority of planning scheme amendments are a response to site specific use or developments and the decision on a scheme amendment can restrict the entry of new competitors. For example, if a person wanted to develop a vineyard and restaurant in an area zoned rural, the planning scheme may prohibit the use of that land for the purposes of a restaurant. A person or local council can apply for an amendment to the planning scheme to allow the restaurant use to be entertained in that zone. The RPDC, after a public consultation process, may ultimately either approve or decline the proposed amendment.
- The RPDC's powers to introduce planning control where either none exists or where it is considered to be deficient can also restrict market entry by imposing restrictions where none previously existed.

Options

(1) Retain the functions of the RPDC to:

- certify and approve planning schemes and amendments to planning schemes;
- with the approval of the Minister, direct a planning authority to prepare a planning scheme or amendment to a planning scheme; and
- make a Special Planning Order.

(2) Repeal one or more of the functions of the RPDC.

(3) Repeal all of the functions of the RPDC.

Evaluation

As the principal planning mechanism for furthering the objectives of the resource management and planning system, planning schemes perform an important function in delivering outcomes which balance the social and economic needs of the current community with the longer term protection of natural and built resources.

The Review Group considers that planning schemes are an essential mechanism to protect the environment, and that the ability of the RPDC to introduce planning control where none exists, or to direct that a planning scheme be amended to better further the objectives of the resource management and planning system is important to ensure this outcome. The Review Group considers that these powers of the RPDC are in the public benefit.

The requirement that planning schemes and amendments to planning schemes be certified and approved by the RPDC ensures that some consistency is achieved in furthering the objectives of the LUPPA throughout the State. The independent status of the RPDC also ensures that matters are dealt with in a fair and equitable manner with appropriate recourse available to affected persons.

The Review Group considers that the impact on competition arising from the RPDCs functions is negligible and is in the public benefit.

Conclusion

The Review Group recommends that retention of the status quo (Option 1) is justified as providing a public benefit.

4.3 Requirement for a permit

Background and Overview

Under Section 51 of LUPAA, a person must not commence any use or development which under the provisions of a planning scheme or special planning order requires a permit, unless the planning authority which administers the scheme or order has granted a permit.

Use and development are defined in the LUPAA as follows:

“Use”, in relation to land, includes the manner of utilising land but does not include the undertaking of development

“Development” includes -

- (a) the construction, exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and
- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land, including buildings or airspace; and
- (e) the placing or relocation of a building or works on land; and
- (f) the construction or putting up for display of signs and hoardings –

but does not include any development of a class or description, including a class or description mentioned in paragraphs (a) to (f), prescribed by the regulations for the purposes of this definition.

Objective

The objective of requiring a permit is to allow an assessment to be made as to whether the use or development performs in relation to the standards of the planning scheme and therefore the objectives of the Resource Management and Planning System.

Benefits

- Provides a relatively simple process for ensuring that use and development complies with the sustainability objectives of the Act.

Costs

- The requirement to obtain a permit for use or development by demonstrating compliance with the planning scheme can restrict competition through restricting the entry of use or development proposals into the market.
- Costs associated with having plans prepared and paying the assessment fee levied by the planning authority.

- Time taken to prepare the application and to have it assessed by the planning authority.

Options

- (1) Retain the requirement to obtain a permit for use or development specified in a planning scheme as requiring a permit.
- (2) Remove the requirement to obtain a permit for use or development – the threat of prosecution being used to ensure use and development is conducted in accordance with the planning scheme (negative licensing).
- (3) Remove the requirement to obtain a permit for specified uses or developments and - the threat of prosecution being used to ensure specified use and development is conducted in accordance with the planning scheme..

Evaluation

The primary mechanism used by the LUPAA to ensure sustainable outcomes from use and development is the permit process. This enables use and development to be assessed and to be approved or refused based on performance against the requirements of the planning scheme and the LUPAA.

The use of a permit process is the most basic of regulatory mechanisms for ensuring that a person who wishes to undertake an activity will do so in a way that does not adversely impact on those values which the broader community hold as important. The advantages of this process is that it allows conflicts to be resolved prior to the undertaking of works, removing uncertainty for the applicant once the application has been assessed.

It is acknowledged that a permit process results in a financial cost to persons wishing to undertake use or development (time and applications costs), however these are usually small compared to the cost and duration of the actual works. The issue of statutory timeframes for assessment is considered separately in section 5.3 of this review statement.

The Review Group notes that in respect of new works, limited alternatives exist to achieve the objectives of the LUPPA. In this regard, the only alternative would be to allow use or development to be carried out without approval and to prosecute where such use or development was in conflict with the planning scheme. This form of regulation would have a number of significant drawbacks including the fact that prosecutions are expensive and would in many cases lead to degradation of natural and built resources that may not be practicable to reverse.

A variation of not requiring a permit would be to allow only particular forms of use and development to be carried out without a permit. This is currently the case in some planning schemes with respect to some specified use or development such as single dwellings where compliance with the scheme is required but no permit is issued (P1). The Review Group notes however that in the case of P1 use and development a planning assessment is still undertaken by the planning authority to ensure compliance with the

planning scheme; the only difference being that a permit is not issued and no planning assessment fee is paid. The Review Group considers that the selective treatment of some use or development as P1 discriminates against other forms of use or development and is inconsistent with the objectives of the Act.

Conclusion

The Review Group considers that the costs of an approval process for use or development is relatively small when compared to the benefits it delivers in protecting the State's natural and built resources for use by future generations. Accordingly, the Review Body recommends the retention of the status quo (Option 1) on the basis that a permitting process for use or development provides benefits to the community as a whole which outweigh the costs.

4.4 Land Use Planning and Approvals (Application of Act) Regulations 1995, Statutory Rules 1995, No 6.

Background and Overview

The *Land Use Planning and Approvals (Application of Act) Regulations 1995* were introduced to replace earlier regulations made to allow the construction of the Heemskirk Development Road. The regulations removed an area of land from the requirements of the LUPAA. The road has now been constructed.

Objective

- The objective of the regulations was to allow the construction of the Heemskirk Development Road without requiring a permit under the LUPAA.

Benefits

- As the road has been constructed, the regulation serves no further purpose. No benefit can be found for retaining the regulation.

Costs

- The regulations continue to exclude an area of the West Coast from the requirements of the LUPAA or any comparable planning regime. As such, use or development conducted in this area would not be subject to the sustainability objectives of the Act that apply to use and development elsewhere in the State.

Options

- (1) Retain the *Land Use Planning and Approvals (Application of Act) Regulations 1995*, Statutory Rules 1995, No 6.

- (2) Repeal the *Land Use Planning and Approvals (Application of Act) Regulations 1995*, Statutory Rules 1995, No 6.

Evaluation

The purpose of the regulations was to enable construction of the Heemskirk Development Road without a permit under the LUPPA. This purpose has been served and the Review Group considers that the regulation is now an anomaly which is unnecessary to retain. It is considered that this portion of land should be subject to the same requirements that apply in the vicinity.

Conclusion

The Review Group recommends that the *Land Use Planning and Approvals (Application of Act) Regulations 1995*, Statutory Rules 1995, No 6 be repealed (Option 2).

4.5 Exemption of Certain Activities from LUPAA

Background and Overview

Within LUPAA, a number of resource industries are afforded particular exemptions from the requirements of planning schemes. In this respect, section 20(7) states that nothing in any planning scheme or special planning order affects:

- (a) forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985*,
 - (b) the undertaking of mineral exploration in accordance with an exploration licence, or retention licence, under the *Mining Act 1929*;
 - (c) fishing, marine farming, the taking of marine plants or any other activity conducted in accordance with the *Living Marine Resources Management Act 1995* or the *Marine Farming Planning Act 1995* or any licence, permit or lease issued under those Acts.
- (7A) In subsection (7)(a), "forestry operations" includes the processes and works connected with -
- (a) the establishment of forests; and
 - (b) the growing of timber; and
 - (c) the harvesting of timber; and
 - (d) land clearing, land preparation, burning off, road construction and associated quarry works conducted in relation to an activity specified in paragraph (a), (b) or (c).

Objective

The primary objective for exempting certain use or development from planning schemes is to provide specific regulatory regimes for industries considered to be of State strategic importance.

Benefits

- Provides consistency of regulation for those resource industries exempted from LUPAA.

Costs

- Exempting certain industries from the requirements of LUPAA and treating these differently to other industries could be argued as providing a favourable planning regime for a select group of industries.

Options

- (1) Retain the exemptions for certain industries from the requirements of LUPAA
- (2) Repeal the exemptions for certain industries from the requirements of LUPAA.

Evaluation

In evaluating this issue, the Review Group acknowledges that good reasons exist for having an integrated Resource Management and Planning System, with all participants in the system subject to the same approval process. Foremost amongst these reasons is that an integrated planning and approvals system is conducive to achieving sustainable outcomes by reducing the risks of issues failing to be addressed between the different spheres of decision making.

However, the Review Group accepts that its terms of reference are limited to looking primarily at the issue of restriction on competition. In this respect, it is acknowledged that the industries exempt from LUPAA are subject to their own approval processes, which in the case of forestry is more consistent and comprehensive than most existing planning schemes. It is also noted that a person wishing to undertake an activity exempted under s20 of LUPAA is not exempt from the necessity to obtain the relevant approval. Further, the alternative approval process is available to any person wishing to undertake that particular activity.

Conclusion

The Review Group does not consider that the exemptions under section 20(7) of the Act restrict competition and recommends that the status quo be maintained - (Option 1).

4.6 Planning Schemes

Background and Overview

A planning authority may prepare a draft planning scheme in respect of such areas as it may determine (section 22(1)). The Resource Planning and Development Commission may, with the approval of the Minister, give a written direction to a municipality to prepare a draft planning scheme (section 22(2)(2A)). A planning scheme must comply with the provisions of section 20 of the LUPAA (see section 4.1. of this statement).

The Minister may issue a model framework for the use of planning authorities in the development of planning schemes (section 19A). The model framework may specify the structure and format of planning schemes and definitions and provisions which are to be included in all planning schemes. The Minister may direct the Resource Planning and Development Commission to require planning authorities to prepare planning schemes or amend planning schemes in accordance with the model framework.

Planning schemes use two principal mechanisms to exert control over use or development. The first of these is the restriction on what uses may occur in particular parts of a municipality. This is given effect through the “use table” and relies on creating spatial units (commonly known as zones) wherein the status of particular uses as defined in the scheme can be given. This mechanism allows a planning authority to determine where particular uses may or may not be allowed, with a resulting restriction on market entry. Traditional planning schemes rely heavily on this mechanism.

The second source of restriction arises through the standards used within planning schemes to assess use and development. Standards must seek to further the objectives of the Resource Management and Planning System and be prepared in accordance with State Policies. Standards may therefore provide for any matter which it can be argued furthers the objectives of the Resource Management and Planning System and may provide restrictions to market entry. Performance based planning schemes place greater emphasis on this mechanism.

Accepting that land use planning (and therefore planning schemes) are an important mechanism to achieve sustainable outcomes from the use and development of the States resources, it is appropriate to consider how planning schemes can be made to achieve this aim with the least restriction on competition. As it is not possible to consider actual planning schemes, the following analysis will consider and compare a traditional approach to planning scheme format against a more performance based approach.

Objective

The objective of planning schemes is to ensure sustainable outcomes from decisions concerning the use and development of resources. A broader explanation of why land use planning is undertaken is provided in section 2.1 of this review statement.

Options

- (1) Support a traditional planning scheme approach to the regulation of use and development.
- (2) Support a more performance based approach to the regulation of use and development.

Evaluation

(i) Restrictions on Use

Within traditional planning schemes, the “use table” performs a central role in determining where particular activities may or may not be allowed. The use table performs this role in detail through reference to individual zones in conjunction with specified use definitions. In this way, a matrix is formed, with particular uses denoted as, permitted, discretionary or prohibited in particular zones. In some planning schemes, a further category of P1 is provided which requires compliance with the planning scheme but no permit.

The status of particular uses in particular zones is based on assumptions concerning the appropriateness or otherwise of those uses in that area. Whilst this determination is ostensibly for reasons of protecting the natural and built environment (community standards), it is one that is often based on assumption rather than fact.

For example, one Tasmanian planning scheme will allow an educational establishment, consulting rooms or hospital to be entertained as a discretionary use in a residential zone, but not an office, elderly persons unit, flats or multiple dwellings. The notion that an office, elderly persons unit, flat or multiple dwelling will have a deleterious impact on the surrounding residential environment, whereas educational establishment, consulting room or hospital may not is highly contentious and not supported by fact. Interestingly, in another residential zone in the same planning scheme, elderly persons units, flats and multiple dwellings can be entertained. A similar situation exists within other zones such as the commercial one, where for example a shop may be allowed but not a showroom or real estate agent.

This approach means that the restrictions on competition are not applied equitably to uses and are based on assumptions of impact rather than demonstrated impact. The approach can also create market distortions in and between areas of otherwise similar values and also discriminates between different forms of the same use, contrary to the LUPAA.

(ii) Restrictions on Development

Planning schemes also provide standards against which use or development must perform in order to gain approval. Existing planning schemes address a variety of issues through use and development standards. Typical standards include height of buildings, setbacks from property boundaries and car parking requirements.

Model Framework for Planning Schemes

The model framework for planning schemes is a performance based format which places less emphasis on the regulation of use. The model framework achieves this by using a smaller number of zones and broad use classes which has the effect of re-orientating the decision making emphasis to how development is undertaken, rather than what it happens to be called. In this way, decision making is concerned with ameliorating actual impacts on natural and physical resources arising from use and development rather than possible impacts which are assumed to be attributable to certain uses.

In response to the emphasis on how development is undertaken, the model framework will require clear standards which all uses within the broad use classes must comply. These standards will provide the benchmark against which use and development must perform to achieve the aim of sustainability, rather than simply what the activity is called.

Conclusion

The Review Group considers that the reorientation of emphasis from what a particular activity is called to how it performs would provide a more rigorous and rational approach to the regulation of use and development and hence restrictions on market entry.

The Review Group recognises however that the model framework for planning schemes is but one model for achieving a more performance based approach to land use planning. Acknowledging this fact, the Review Group supports the model framework for planning schemes specifically and moves toward more performance based planning generally.

5. Impacts on business

5.1 Conditions which may be imposed on section 57 permits under section 51(3A)

Introduction and Overview

There are two types of permits which are provided for under the LUPAA. These are section 57 and section 58 permits. Section 57 applies to an application for a permit in respect of a use or development which, under the provisions of a planning scheme is specified as discretionary or requires a planning authority to waive, relax or modify a requirement of the scheme. This entails public notification of the application. A section 57 permit is a permit which the planning authority has a discretion to refuse or permit. Where it is permitted, conditions or restrictions may be applied. Section 58 applies to an application for a permit in respect of a use or development for which a planning authority is bound to grant a permit either unconditionally or subject to conditions or restrictions. This does not require public notification.

The LUPAA specifies time limits for the processing of permit applications by planning authorities. For both section 57 and section 58 permits, the planning authority must make a decision on the application within 42 days of it being lodged.

Introduction and Overview

The scope of the conditions or restrictions that may be imposed on a section 57 permit by a planning authority is specified by section 51(3A) of the LUPAA. Section 51(3A) allows any condition or restriction on a section 57 permit that a planning authority may impose. This can include matters which are not specified in the planning scheme and which an applicant would not be aware of. However, a planning authority can only impose conditions or restrictions on a section 58 permit with respect to any matter specified in the planning scheme.

Objective

The objective of giving planning authorities the right to impose conditions on permits is to ensure compliance with the scheme by enabling impacts on the natural and built environment to be addressed through conditions rather than by refusal of the application.

The objective of allowing conditions to be imposed on section 57 applications for matters not specified in the planning scheme is a “safety” measure which may be used where a planning scheme does not provide appropriate standards for assessment or for guiding the imposition of conditions. It is unclear why section 58 permits are treated differently, although it may be presumed that these permits were not considered to have the same potential level of impact and therefore do not need as wide a scope of conditions.

Benefits

- Enables a planning authority to attach conditions for relevant matters not covered within the planning scheme. This may include matters specified by State Policy or under other legislation such as EMPCA 1994.

Costs

- The ability to impose conditions on a section 57 permit which do not relate to matters contained in the planning scheme has an impact on business in terms of the uncertainty which it creates with respect to what may be required by the conditions of approval.

Options

- (1) Retain the status quo providing the ability to apply conditions or restrictions to section 57 permits as the planning authority may impose, including matters not specified in the planning scheme.
- (2) Amend LUPAA to only allow conditions or restrictions to be applied to section 57 permits for matters specified in the planning scheme.
- (3) Amend LUPAA to only allow conditions or restrictions to be applied to S57 and S58 permits specified in the planning scheme, State policy or required under other legislation.

Evaluation

A planning scheme specifies those matters, and more specifically those standards which a proposal must perform against. In this way, a planning scheme acts as a set of rules which aim to ensure that use or development undertaken by individuals does not diminish wider community values. This provides both the community and a person wishing to undertake use or development with some certainty of outcome if a proposal can demonstrate performance in accordance with the stated rules.

Accepting that planning schemes perform the fundamental role of providing the rules against which use or development is assessed, the Review Group is of the view that matters which require consideration by the planning authority should be contained in the planning scheme. Following this logic, conditions which may be applied to an application for use or development should therefore be related to those matters in the planning scheme. The Review Group accepts however that matters contained in State Policies and other legislation may be required to be given effect through permits and provision should remain for these circumstances.

The Review Group considers that this approach provides the benefit of enhancing certainty for persons wishing to undertake use or development as well as the wider community, without diminishing the ability of the planning authority to achieve the objectives of LUPAA.

Conclusion

The Review Group considers that conditions or restrictions on permits should be limited to those matters specified in the planning scheme, State Policies or other legislation and recommends that section 51(3A) be amended to reflect this (Option 3).

5.2 Owners consent under section 52

Introduction and Overview

Section 52 of LUPAA requires that unless a planning scheme or special planning order provides otherwise, an application for a permit must be signed by the owner or be accompanied by the written permission of the owner.

Objective

The objective of section 52 is to prevent permits being granted over land without the owners permission, unless the planning scheme provides otherwise.

Benefits

- No tangible benefits.

Costs

- This provision can impact on business through the time taken to obtain the owners consent - particularly where:
 - (a) the proposed use or development is within a stratum plan, requiring the written permission of all other part owners within the stratum,
 - (b) a person who has contracted to purchase a property wishes to lodge an application for use or development prior to transfer of title but is unable to obtain the written permission of the current legal owner, or
 - (c) use or development which involves many landowners eg proposal for linear infrastructure such as a road, pipeline etc.

Options

- (1) Retain the requirement that unless the planning scheme specifies otherwise, the owner of land must either sign the application or be accompanied by the owners written permission.

- (2) Amend section 52 of the LUPAA to allow an application to be lodged without the owners consent.

Evaluation

The Review Group recognises the difficulties which section 52 of the Act imposes on some applicants. In particular, it is a serious impediment to persons who wish to lodge a development application for approval, but who would be reluctant to negotiate to purchase the land in advance of the planning decision. This includes large infrastructure projects such as powerlines, roads, pipelines etc.

In evaluating the right of an owner to veto a planning assessment being undertaken by the planning authority, the Review Group notes the following points:

- where a planning approval has been granted, the development could not commence until the applicant has successfully negotiated to acquire the land from the owner. In this regard, the owner has lost no rights or development potential over the land simply as a result of a planning permit being issued;
- where compulsory acquisition of land by a public authority is proposed, a separate process of compensation applies and is based on whether the owner has suffered loss, expense or damage. This is unrelated to the question of whether the proposal for which the land is sought can comply with the requirements of the planning scheme;
- compulsory acquisition of land by a public authority can be undertaken regardless of whether a planning permit has been obtained, however it is problematic for the reasons explained previously; and
- Section 52 does not enshrine an intrinsic right in the legislation as the LUPAA provides that individual planning schemes and special planning orders may dispense with the requirement;

The Review Group also notes that when the LUPAA was originally enacted, section 52 did not require the owners permission. The LUPAA was amended by the *Land Use Planning and Approvals Amendment Act (No 2) 1995* as a result of concerns raised in relation to another aspect of the Act. In this regard, the LUPAA also allowed a person to make a request to amend a planning scheme in respect of another persons land without requiring the owners consent. This situation did have the potential to alter the development rights of another persons property without the owner being aware, and was clearly unsatisfactory. The reaction to this concern resulted in other parts of the LUPAA being amended including that in relation to the lodging of an application for a permit.

The Review Group is of the view that the property rights of a landowner are not diminished by allowing another person to lodge a planning application over that land. Removing the requirement to obtain the owners permission to lodge a planning application would however resolve a number of serious difficulties discussed earlier and would be consistent with the situation operating in other states such as Victoria.

Conclusion

The Review Group is of the opinion that requiring the owners consent is not necessary to enable a planning assessment to be undertaken, nor is it necessary to protect the interests of the landowner. Replacing the owners consent with a requirement to notify the owner is considered appropriate and it is recommended that LUPAA be so amended by endorsing Option 2.

5.3 Statutory time limits for section 57 and section 58 permits

Objective

The objective of having statutory time limits is to ensure that permits are processed within a timeframe commensurate with the requirements of the permit type and amount of assessment that needs to be undertaken.

Benefits

- Provides a time frame that is certain.

Costs

- The statutory time limit for processing permits may impact on business where the maximum allowable time is excessive in relation to the requirements of the permit type and amount of assessment that needs to be undertaken. An excessive statutory time limit may result in permits not being assessed and administered as expeditiously as is possible, resulting in unnecessary delays.

Options

- (1) Retain existing statutory time limits for section 57 and section 58 permit applications.
- (2) Reduce the statutory time limits for both section 57 and section 58 permit applications.
- (3) Reduce statutory time limits for section 58 permit applications only.

Evaluation

Section 57 permits

Section 57 permits require a statutory notification period of 14 days. Allowing for this period, a planning authority has a total 42 days to determine the application. Assessing a variation from the prescribed planning scheme standard usually requires a site visit and depending on the level of delegation granted to officers, may require preparation of a report to Council for determination. A comparison of statutory time frames operating in other States is as follows:

Aust Capital Territory	30 working days, but is extended to 45 working days where objections are received.
New South Wales	Not known
Northern Territory	Not known
Queensland	20 working days after referral, information and notification stages are completed.
South Australia	8 weeks, but is extended to 14 weeks where the application is publicly notified.
Victoria	60 days excluding notification period
Western Australia	Determined by planning schemes.

This would suggest that the statutory timeframe for considering permits requiring notification in Tasmania compares favourably to that of other States. The Review Group considers that the maximum timeframe for assessing and determining a discretionary (section 57) permit is commensurate with the tasks required of the planning authority.

Section 58 permits

Section 58 permits must be granted for activities which have a permitted use status and which do not require a relaxation or variation of the relevant development standards. This entails checking that the development complies with the objective (often numeric) standards of the planning scheme. No public notification is required.

The Review Group is of the view that in the absence of a statutory notification requirement, the maximum timeframe for considering a s58 permit should be less than that required for a section 57 permit. The Review Group also considers that an application which complies with the permitted standards of the planning scheme should be dealt with more expeditiously due to the more simple task of ascertaining compliance. In this regard, the Review Group believes it is feasible for a planning scheme to set out the permitted standards for all relevant matters in a manner which would enable compliance to be determined within a maximum period of 21 days. It is acknowledged that the format of many existing schemes may not be conducive to achieving this outcome as consideration of the application is dependent on both the quality of the scheme standards and level of information required and therefore provided by an applicant. Notwithstanding, the Review Group considers that a reduction in statutory timeframes for section 58 permits is justifiable.

Conclusion

The Review Group considers that the statutory timeframe for considering section 57 permits is appropriate, but that the timeframe for section 58 permits should be reduced. It is recommended that Option 3 be endorsed and that the statutory time period for a section 58 permit be 21 days.

5.4 *Land Use Planning and Approvals Regulations 1993, Statutory Rules 1993, No 262*

Background and Overview

These regulations specify the manner by which the advertisement of planning schemes, draft amendments to planning schemes and applications for permits are to be undertaken. In relation to permits, this includes advertisement in a daily newspaper, display at the planning authorities office and notice served on the owners and occupiers of any properties adjoining the land subject of the application. The advertisement must describe the content of the development proposal and the location of the affected area and contain a statement advising of the right of any person to make a representation in accordance with section 57(5) of the Act.

Objective

The objective of the regulations is to ensure that persons have an adequate opportunity to be informed of a draft planning scheme, draft amendment or permit application currently before the planning authority

Benefits

- Public input allows local knowledge to be built into the decision making process thereby improving the quality of planning schemes, amendments to planning schemes and decisions made pursuant to the planning scheme.

Costs

- The main impact on business arising from the regulation concerns the notification of permits. In this respect, the newspaper advertising requirement adds cost to those applying for permits.

Options

- (1) Retain the method of notification for section 57 permits.
- (2) Modify the method of notification for section 57 permits; to not require advertisement in a newspaper.

Evaluation

Consistent with the preceding section, the notification of discretionary (section 57) permits is intended to encourage public involvement in the planning process. A comparison with the notification standards for notifiable development in other States is provided as follows.

Australian Capital Territory	Letter to adjoining owners Sign on land Publication in a daily newspaper
New South Wales	Letter to adjoining owners Sign on land Publication in a local newspaper
Northern Territory	Sign on land Publication in local newspaper
Queensland	Written notice to adjoining land owners Sign on the land Publication in a local newspaper
South Australia	Written notice to adjoining owners Publication in a local newspaper
Victoria	Written notice to adjoining owners / occupiers Sign on land Publication in local newspaper
Western Australia	As set out in planning scheme

This would suggest that the method of public notification provided in Tasmania is similar to that in other States and is a generally accepted standard.

The Review Group is also of the view that the method of notification is in itself not excessive, but acknowledges that the number of permit applications which are subject to notification has a potentially adverse impact on business. This separate issue is addressed in more detail in the following section.

Conclusion

The Review Group recommends the retention of the existing method of notification for section 57 permits - (option 1).

5.5 Requirement that all discretionary permits be publicly notified – section 57.

Background and Overview

Having all discretionary permits subject to public notification provides the public with an opportunity to comment on permits for:

- those activities which the planning authority has determined within its planning scheme as being of a type which may be refused or approved; and
- a deviation from the standards previously accepted by the community during the preparation of the planning scheme.

Objective

The objective of providing for public comment on certain permit types is to enable local knowledge to be used in the decision making process. This is particularly relevant under many planning schemes where a use or development is often assessed “on its merits” in lieu of specific standards or where the application proposes to use an alternative solution to the accepted standard provided within the planning scheme.

Benefits

- Enables the impacts of a proposed use or development to be better understood, providing for better decision making.

Costs

- The requirement that all discretionary (section 57) permits be publicly notified adds an additional financial costs (advertising charge) and is likely to increase the time required to finalise the assessment.
- The possibility of representations being lodged can also create additional uncertainty.

Options

- (1) Retain section 57 in its current form, requiring that all discretionary permits be publicly notified.
- (2) Amend section 57 to enable some discretionary permits to be assessed without public notification.

Evaluation

LUPPA establishes a threshold under section 57, at which point public notification must be undertaken. This threshold is where the planning scheme specifies a use or development as being able to be approved or refused, or where the standards agreed to by the community are to be waived, relaxed or modified.

In considering whether this threshold should be altered, the Review Group acknowledges the difficulties associated with finding a rational, disciplined and equitable alternative.

In this respect, the Review Group notes the deficiencies in the approach adopted by Victoria. In this regard, the Victorian legislation enables the planning authority to determine whether a permit application is publicly notified on the basis of whether it believes the grant of the permit would cause material detriment to any person. This approach introduces personal values as well as the potential for coercion into the process for determining whether material detriment will be caused. As a result, the approach has been criticised for its ad-hoc, undisciplined, and inconsistent application. The Review Group does not believe this is consistent with the objectives of LUPAA.

The Review Group also notes that within the parameters established by section 57 of the LUPPA, considerable scope exists for a planning scheme to determine the manner by which discretion applies in order to minimise its frequency of use. In this respect, one approach to resolving the underlying concern would be for planning schemes to place less emphasis on use as a determinant of discretion, and instead place greater emphasis on whether the development complied with a more comprehensive set of standards within the scheme. In this way, a much greater number of permit applications could be determined without the need for discretion and public notification if they comply with the standards already accepted by the community. The Review Group acknowledges that this approach is relatively untested, with only one planning scheme in the State (Break O Day Planning Scheme 1996) currently operating on this basis. Nonetheless, initial results suggest a drop in the number of discretionary permits being dealt with by the planning authority. This will need to be monitored to verify its effectiveness in reducing the number of applications subject to discretion.

Conclusion

The Review Group considers that achieving a reduction in the number of discretionary permit applications can be achieved through altering the format of planning schemes without the necessity for legislative change. It recommends that Option 1 be adopted.

5.6 Additional Information – section 54.

Background and Overview

This section of the LUPAA enables a planning authority to request further information from an applicant within a period of 28 days from the day on which it receives an application for a permit. Where additional information is requested, the normal statutory time limit is suspended until the request for information has been answered to the satisfaction of the planning authority.

Objective

The objective of this section is to enable sufficient information to be sought from an applicant to allow a planning authority to determine compliance with the planning scheme.

Benefits

- Adequate information is essential for good decision making, reducing the likelihood of disputes over the merits of the planning authorities decision.

Costs

- The main impact on business arising from this section is the time taken between the submission of the application to the planning authority and the request for further information being made. The LUPAA allows a maximum of 28 days for a planning

authority to request further information after receipt of the application, and can add significantly to the time taken to obtain a permit.

Options

- (1) Retain section 54 in its current form, providing 28 days for a planning authority to request further information.
- (2) Amend section 54 to reduce the maximum time period for requesting further information.

Evaluation

Having sufficient information to enable assessment against the requirements of the planning scheme is integral to good decision making and the ability to request such information is accepted by the Review Group.

In considering the question of how much time is required by a planning authority to determine its information requirements, the Review Group considers that two associated issues require mention. In this respect, the need to use section 54 to request further information would be reduced if applicants held pre-application discussions with Council staff and if planning schemes were generally more explicit in terms of what information was required from an applicant. These issues are possibly more important in addressing concerns regarding the use of s54 than the timeframe provided for seeking the information..

Nonetheless, the Review Group considers that a month to determine whether further information is required from an applicant is excessive and could be reduced without creating difficulties for planning authorities. In this respect, it is considered that a maximum of 21 days would be adequate to determine whether further information is required and to serve a notice on the applicant to this affect.

Conclusion

The Review Group considers that a reduction in the maximum timeframe for seeking additional information is feasible and recommends Option 2. A maximum of 21 days is recommended.

5.7 Extensions of Time to Permits.

Background and Overview

Section 53(5) of the Act specifies that a permit lapses after a period of two years from the date on which it was granted if the use or development in respect of which it was granted is not substantially commenced within that period.

Objective

Providing a finite life to permits recognises that community attitudes and regulatory standards change over time and that it would be inappropriate to allow approvals to run indefinitely, without regard to this fact.

Benefits

- Ensures that use and development is undertaken in accordance with contemporary planning standards.

Costs

- Where a use or development has not been substantially commenced within the two year permit period, a new application must be made irrespective of whether the regulatory standards have altered since the issue of the permit. The requirement to obtain a new permit adds a financial cost to business.

Options

- (1) Retain the requirement that a permit lapses after a period of 2 years.
- (2) Retain the requirement that a permit lapses after a period of 2 years, but allow for an extension of time to the permit on request.
- (3) Increase the time period within which a permit remains valid.

Evaluation

The Review Group accepts the objective of having an expiry period for permits. However, in considering the question of whether the existing time period is appropriate, it is useful to consider the situation in other States.

Australian Capital Territory	Generally two years Approval can be longer if specified in permit Extension of time can be granted
New South Wales	Five years, but can be reduced to not less than two years by planning authority when issuing permit.
Northern Territory	Two years Extensions of time can be granted
Queensland	Four years Extensions of time can be granted
South Australia	One year Extensions of time can be granted
Victoria	Two years

	Extensions of time can be granted
Western Australia	Two years Can be varied by planning approval

From this comparison, it can be seen that all States except Tasmania have the ability to either extend the time of the permit and / or to specify in the permit a longer period which it remains valid.

In considering this matter, the Review Group is of the view that where for both a use or development, the relevant planning scheme provisions and State Policies are the same as existed under the original assessment, the requirement to lodge another application for a permit would appear to be unnecessary. It is acknowledged however that the matters required to be considered in a planning assessment do alter over time and that applicants should not be given an expectation that permits will be unilaterally extended for indefinite periods of time.

For these reasons, the Review Group believes that where a proposal has not changed and the planning controls relevant to the proposal have not significantly altered, some scope should be available to extend the life of the permit. In this respect, the Review Group considers that a once only extension for a further period of two years would be adequate to deal with those use and developments where commencement has not occurred within the original two year timeframe.

Conclusion

The Review Group believes that the ability to extend the life of a permit is appropriate where the proposal has not altered and where the planning controls have not significantly altered. A maximum extension of two years is suggested. The Review Group recommends the adoption of Option 2.

6. Recommendations

The Review Group, in summary, recommends as follows:

- (1) Repeal sections 20(2)(c) & (d) of the Act.
- (2) Retain the functions of the RPDC to:
 - certify and approve planning schemes and amendments to planning schemes;
 - with the approval of the Minister, direct a planning authority to prepare a planning scheme or amendment to a planning scheme; and
 - make a Special Planning Order.
- (3) Retain the requirement to obtain a permit for use or development specified in a planning scheme as requiring a permit.
- (4) Repeal the Land Use Planning and Approvals (Application of Act) Regulations 1995, Statutory Rules 1995, No 6.
- (5) Retain the exemptions for certain industries from the requirements of LUPAA
- (6) Support a more performance based approach to the regulation of use and development.
- (7) Amend LUPAA to only allow conditions or restrictions to be applied to section 57 permits for matters specified in the planning scheme, State Policy or other required by other legislation.
- (8) Amend section 52 of the LUPAA to allow an application to be lodged without the owners consent.
- (9) Reduce statutory time limits for section 58 permit applications to 21 days
- (10) Amend LUPAA to allow a planning authority to only take into account matters raised within a representation which relate to those elements of the application which require the exercise of discretion under the planning scheme.
- (11) Retain the method of notification for section 57 permits.
- (12) Retain section 57 in its current form, requiring that all discretionary permits be publicly notified.
- (13) Amend section 54 to reduce the maximum time period for requesting further information to 21 days.
- (14) Retain the requirement that a permit lapses after a period of 2 years, but allow for a single extension of time of 2 years to the permit on request.

Appendix 1 - Terms of Reference for the Review of the *Land Use Planning and Approvals Act 1993*

Introduction

At the meeting of the Council of Australian Governments (COAG) on 11 April 1995, the Tasmanian Government (along with the Commonwealth and all other State and Territory governments) signed three inter-governmental agreements relating to the implementation of a national competition policy (NCP). The agreements signed were:

- the Conduct Code Agreement;
- the Competition Principles Agreement; and
- the Agreement to Implement the National Competition Policy and Related Reforms.

The Competition Principles Agreement (CPA), among other things, requires the State Government to review and, where appropriate, reform by the year 2000 all legislation restricting competition. This requirement is outlined in clause 5.

The State Government's Legislation Review Program (LRP) meets Tasmania's obligations under clause 5 of the CPA by outlining both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new legislative proposals that restrict competition or significantly impact on business are properly justified. Further, the LRP details the procedures and guidelines to be followed by agencies, authorities and review bodies in this area. Details of the LRP's requirements are contained in the *Legislative Review Program: 1996-2000 Procedures and Guidelines Manual* (the "Manual").

Terms of Reference

The Land Use Planning and Approvals Act Review Group, as detailed in Attachment 1, will conduct a minor review of the *Land Use Planning and Approvals Act 1993* and all subordinate legislation under that Act, having regard to the following guiding principle:

"That legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition."

As a minimum, the review will:

1. clarify the objectives of the legislation;
2. identify the nature of the existing restrictions on competition;
3. consider whether the existing restrictions, or any other form of restriction, should be retained by:
 - * analysing the likely effect of the existing restrictions or any other form of restriction on competition and on the economy generally;
 - * assessing and balancing the costs and benefits of the restrictions; and

- * considering alternative means for achieving the same result, including non-legislative approaches; and
- 4. identify the broader impact of the legislation on business and assess whether this impact is warranted in the public benefit.

Without limiting the scope of the review, the Land Use Planning and Approvals Act Review Group will address the following issues:

- the ability for the Resource Planning and Development Commission (RPDC), with the approval of the Minister, to direct councils to develop planning schemes;
- the specification of what a planning scheme can address;
- the requirement for the RPDC to approve all planning schemes and amendments to these schemes;
- the ability for the RPDC to make special planning orders;
- the requirement for a permit to be obtained prior to undertaking any activity;
- the exemption of certain activities from the requirements of the act; and
- the model planning framework.

The Land Use Planning and Approvals Act Review Group will take other broad policy considerations of the Tasmanian Government into account when determining whether legislative restrictions on competition or significant impacts on business are warranted. These considerations include, but are not limited to:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

Format of the Review

The Land Use Planning and Approvals Act Review Group must complete a brief assessment of:

- the objectives of the legislation;
- the costs and benefits of any restrictions on competition;
- the impact of the legislation on business; and
- whether the restrictions on competition or the impact on business is warranted in the public benefit.

The Land Use Planning and Approvals Act Review Group must ensure that the scale of the assessment is commensurate with the relative impact of the legislation. Public consultation may be undertaken if considered appropriate by the Land Use Planning and Approvals Act Review Group.

The Land Use Planning and Approvals Act Review Group must prepare a Minor Review Statement (MRS) in accordance with Appendix 5 of the Manual. The Land Use Planning and Approvals Act Review Group must then seek endorsement from the Department of Treasury and Finance's Regulation Review Unit (RRU) for the MRS.

Reporting Requirements

The Land Use Planning and Approvals Act Review Group must produce a final review report in accordance with the Manual. The final review report must contain:

- a copy of the MRS;
- a summary of any public consultation undertaken;
- clear recommendations on the possible actions that can be taken by the Government, including retaining, amending or repealing the specific legislative restrictions on competition in question. Where retention or amendment is recommended, the report must include a clear demonstration of the benefit to the public;
- clear recommendations on any possible actions that can be taken by the Government in relation to the broader impact of the legislation on business; and
- an outline of any transitional arrangements which may be required under the recommended course of action and the rationale for these arrangements.