

20 December 2018

Mr Stuart Clues
Red Tape Reduction Coordinator
Office of the Coordinator General
PO Box 1186
LAUNCESTON 7250

stuart.clues@cg.tas.gov.au

Dear Stuart

Tasmanian Development Regulatory Reform Project

Thank you for the opportunity to provide a submission on the initial stage of the Tasmanian Development Regulatory Reform Project.

The Local Government Association of Tasmania (LGAT) is the peak body for Local Government in Tasmania and is incorporated under the Tasmanian *Local Government Act 1993*, our functions being:

- (a) To protect and represent the interests and rights of councils in Tasmania;
- (b) To promote an efficient and effective system of local government in Tasmania;
- and
- (c) To provide services to member councils, councillors and employees of councils.

The views and opinions expressed in this submission are representative of the Local Government sector in Tasmania, having been developed in consultation with our member councils. LGAT fully supports councils who have made individual submissions to the consultation process and in turn, supports the content and opinions expressed within those submissions.

Local Government certainly understands the frustrations for developers when approvals and the related processes become lengthy and costly and the sector is supportive of a comprehensive review of the regulatory process.

It is important to recognise that Local Government has very limited independent capacity to create or remove regulation. However, councils have capacity through business processes and practices to influence the manner in which regulation is administered and enforced. Regulation sets the purpose and considerations for the performance of a function or the exercise of a power, yet each regulator or practitioner may implement a range of requirements and practices in order to satisfy the statutory duty.

While variation may exist between councils as planning and building regulators in relation to business process matters; there is likewise considerable variation in the business processes for those who both advise and prepare or lodge permit applications and those who undertake use and development projects. Variation in business processes do not generally express as non-compliance. However, inconsistency between regulators and between practitioners can generate confusion, uncertainty and delay.

Shortcomings in business processes and practice on both sides of the regulatory divide cannot be improved by regulation alone. The current Planning and Building Portal Project, managed by Consumer Building and Occupational Services, offers a significant opportunity to harmonise variation in business processes and to drive greater consistency and conformity among regulators and practitioners.

As an initial step the Regulatory Reform Project is seeking written submissions on the Property Council of Australia Tasmanian Division's report 'Removing the Regulatory Handbrake' as well as the Property Council of Australia's national report on 'Cutting the Costs'. However, these reports are not the only authority on issues and challenges associated with regulation. For example, in 2012 the Productivity Commission investigated the role of Local Government as a regulator¹. The report noted that:

"Local Governments have expanded their role well beyond the provision of 'roads, rates and rubbish' into a range of community related activities and issues. They also have assumed key regulatory and compliance responsibilities on behalf of the state and Northern Territory governments. Indeed, all tiers of government are increasingly using Local Government to achieve their policy objectives at the local level." Page 3

Chapter 12 of the Productivity Commission report deals with development assessment and notes that two primary factors common across Australia for development application processing related issues were 1) the quality of the applications lodged and 2) the level of resourcing of the respective planning departments. These findings are demonstrably applicable in Tasmania and remain common issues of concern amongst Tasmanian councils. Whilst the 'Removing the Regulatory Handbrake' Report identifies

¹ <https://www.pc.gov.au/inquiries/completed/regulation-benchmarking-local-government/report/local-government-volume1.pdf>

resourcing as a common underlying issue that contributes to processing delays, the paper has not highlighted the quality of application issue in a similar way.

Application Quality

As well as being raised in the Productivity Commission report, the variable quality of applications and documentation submitted has also been noted by Local Government in responding to this Project. The simple fact is some applications are good but, many are not. Planning applications and post approval documentation (engineering drawings for example) could greatly be improved by standardised lodgment processes which regulate the quality of all application documents.

The Planning and Building Portal Project will provide some improvement to the quality of applications and potentially post approval engineering requirements (although this is not part of the current scope of the project). However, it is also suggested that a comprehensive audit be conducted by the Tasmanian Development Regulatory Reform Project into the quality and relevance of information contained in a range of example applications before any amendment is recommended to introduce additional statutory timeframes, as is discussed further below. Consideration should also be given to a state-wide initiative to develop standards/expectations for documentation.

Resourcing

Another issue that needs to be contemplated is the national skills shortage affecting the development industry. In late 2017 and early 2018, councils across Australia participated in the National Local Government Skills Shortage Survey. The survey was a collaborative effort between all the state Local Government associations, with around 50% of councils nationwide and in Tasmania participating in the survey.

In Tasmania the top skills shortage is in engineering, followed by town planning and then environmental health. This national result was similar with councils across the country experiencing shortages in the engineering (including engineering technicians) and town planning professions. These results are consistent with anecdotal reports from Tasmanian councils, both north and south, as well as rural and urban. There will be even more competition in recruitment of infrastructure related skills areas given the planned level of State Government infrastructure spending.

The difficulty in maintaining adequate staffing levels in these crucial skill areas puts pressure on councils in meeting statutory timeframes and forces workers to give other tasks a lower priority, simply to manage workloads. Increasing the number of tasks with statutory timeframes will only increase workloads and demands, pushing other important tasks (but without statutory deadlines) back.

Removing the Regulatory Handbrake Report

The following section provides specific comments against the proposal contained in the Property Council's Report 'Removing the Regulatory Handbrake' (the Tasmanian Report).

1 Accelerate Approvals

The Tasmanian Report proposes a statutory 42-day period for the assessment of post approval detailed design information. While supported in principal, significant concerns have been raised by the sector in relation to the proposal for automatic approval in the event a relevant statutory timeframe is not observed. Introducing a penalty for failing to meet the 42 days is a blunt reaction to the problem, without appreciating the cause. What this is likely to do is force councils to refuse plans rather than working with the design engineer to fix problems, in turn resulting in additional costs and delays.

The *Land Use Planning and Approvals Act 1993* (LUPAA) does not currently provide for a secured automatic consent if a planning authority fails to determine an application for a required permit within the applicable statutory timeframe. Section 59 of LUPAA indicates a failure to determine will result in a deemed grant of a permit subject to conditions to be imposed by the Resource Management and Planning Appeals Tribunal (RMPAT). The arrangement substitutes RMPAT for the planning authority and does not exempt the proposed use or development from need to comply with applicable standards, or from the possibility a permit may be refused. At a minimum, the requirements in Section 59 should apply in the event it is legally and practically possible to insert timeframes for determination of post-permit information.

There would need to be clear guidance on what is a valid submission of engineering design drawings and there would also need to be well defined mechanisms, like with a planning application, where a council can ask for further information which 'stops the clock'. It is also worth noting that drawings often get amended once construction starts – will there need to be an amendment application too?

2 Clear the TasNetworks Bottleneck

Councils raised no issues with the proposals detailed in the Tasmania Report.

3 Streamline TasWater's Processes

Councils raised no issues with the proposals detailed in the Tasmania Report. Although it was suggested that it would be useful if there were a more formal process of pre-lodgment consultation and binding advice to avoid the need for referral after a permit application is lodged.

4 Finalise the Tasmanian Planning Scheme

A number of councils felt the capacity of the Tasmanian Planning Scheme (TPS) to help address inconsistencies and reduce excessive red tape across Tasmania planning schemes and to help accommodate growth, is generously overstated in the absence of objective evidence.

The State Planning Provisions retain many of the mandatory requirements provided through Planning Directive No 4.1 for single and multiple dwelling development on residential land. There has been no audit for necessity and benefit in development standards for residential development; or for whether compliance will make best use of available land and utilities and reduce the cost of development and housing. Since the introduction of the controls initially through the Planning Directive, there has been a massive increase in application numbers and in the complexity of applications. This is simply because these controls introduced many more standards to be assessed, more complex standards and many more discretions. This complexity has been reported by councils, displaying in the statistics for the use of preliminary assessment services, which allows people and designers to submit draft plans for feedback to determine what standards are met and what discretions are required, before finalizing their plans. For example, one council has reported an increase from a modest yearly number prior to the Planning Directive, to up to around 1100 per year and growing.

Customers now require feedback before they finalise plans, usually finding it is extremely difficult to avoid having to go via a discretionary planning process. Local Government does not support all standards and tests contained in PD 4.1 as being necessary to the health, safety or well-being of residential use and development or the efficient and effective use of residential land.

Local Government accepts that the State Government has legislated to make the TPS the only form of planning scheme available to Tasmania. However, it has been frustrated in its endeavors and enthusiasm to prepare Local Provision Schedules (LPS) by the delay and incapability of the State Government to provide clear and stable structural and process arrangements, adequate explanation and guidelines, necessary and correct data and evidence that the system will provide a superior outcome against current arrangements.

Further, the recent changes in the approach and resourcing by government to support the LPS process and a request by the Minister for Planning that all draft LPS be submitted to the Tasmanian Planning Commission by 30 June 2019, renders redundant much of what is said by the Property Council's Report 'Removing the Regulatory Handbrake'.

5 Encourage Inner City Housing Development

Inner city housing developments are critical elements in resolving the problems of urban sprawl as well as the lack of housing choice for a changing demographic which is looking for smaller properties close to social infrastructure, shopping and other services.

However, the problem with waiving application fees (as proposed) is that there is still a cost associated with their assessment. This likely means subsidising the waived fees via fees secured from other applicants or by the community generally. This is inequitable and other inducements should be considered. These could include suitable density bonuses, reduced car parking requirements, shared open space offsets for reduced private open spaces and so on.

Other suggestions

Crown Land Consent

A significant number of councils have raised the issue of gaining Crown consent (pursuant to Section 52 of LUPAA), which currently has no time limit nor any clear process or guidance to assist. Councils have reported three to six-month time delays in gaining Crown consent across both basic and complex applications. Not only could time limits be set but the workload burden of State Agencies (such as Crown Land) could be reduced by exempting certain activities, particularly given the standardization of planning schemes across the state.

Discretionary Applications

The process for considering discretionary applications has remained substantially unchanged since LUPAA's commencement. Currently, any variation to an acceptable solution, no matter how minor, renders the application discretionary. This triggers a statutory notification process and third-party appeal rights, although the magnitude of variation or relaxation may be minor, or the matter may be entirely of a technical nature (such as site contamination). This can add unnecessarily to the time and cost of assessing the application. A more practical approach would be to:

- Allow the exercise of judgement by council on minor matters, such as small variations to boundary setbacks, without the necessity for a full-blown notification and appeal process; and
- Limit those variations that are advertised to matters on which the public can provide meaningful input, so applications where the discretionary trigger is limited to technical assessments (such as site contamination) do not require a notification process.

In both instances, the application would still be at the discretion of council. This will provide a more efficient process for assessing and determining matters of limited impact, while still assuring the appropriate level of consultation occurs. This approach

must clearly distinguish the circumstances in which discretionary application are not subject to notification.

Titles/Subdivision

Another key element in the approval process has been overlooked by the Tasmanian Report. It relates to current legislation and processes that cover the creation of titles. Currently the combination of the *Local Government (Building and Miscellaneous Provisions) Act* and *Strata Titles Act* provide for numerous procedures and different types of plans, staged plans, community development schemes, complex documentation and considerations, arrangements for public open space and other requirements that owners, surveyors, agencies and councils must navigate. Administrative processes are also outdated, for example the requirement for hard copy survey plans rather than allowing for digital processing.

These all add major costs, uncertainties and delays for all parties involved in creating and developing titles. Victoria repealed similar confusing outdated pieces of legislation over 20 years ago when it replaced them with an all embracing and simplified Subdivision Act. While the Tasmanian Government has raised the question of a review a few times over that period, no action has been taken to date. It is considered that this one step, to introduce a straightforward 'Subdivision Act' to cover the creation of titles and the associated administrative processes, would make a significant difference.

Cutting the Costs Report

The recommendations for Tasmania in the Property Council of Australia's 'Cutting the Costs' report are supported. The Report provides a useful analysis of issues, practices, and opportunities for improvement.

Delay and expense may be incurred by the need under Tasmanian law to obtain separate permits for use and development and for building, plumbing and demolition work. The siloed structure and operation of the current regulatory environment requires a sequential approach to acquisition of permits and has inherent capacity for duplication of information, multiple fees, un-productive delay, inconsistent and contradictory standards and conditions and, multiple and separate compliance and enforcement requirements.

The objectives for the Resource Management and Planning System and for the land use planning process of Tasmania are intended to deliver shared responsibility, sound strategic planning and coordinated action by government, industry and the community and for the consolidation and coordination of approvals for land use or development and related matters. The current arrangements are largely devoid of a common agreed strategy derived from integrated planning and are disaggregated and dysfunctional in terms of process and responsibility for assessment and determination. Considerable

benefit could be achieved through structural reforms that realise the long-standing intention for integration and coordination.

Many of the identified shortcomings in the 'Cutting the Costs' report appear prevalent within the structures and practices for Tasmanian State agencies and can not be resolved solely through operation of the Tasmanian Planning Scheme. There is a need to clarify and improve the processes under which advice and conditions are required or requested from State agencies and entities with a relevant statutory role and interest in the use or development described on a permit application. The former Section 60 of LUPAA allowed that if a planning scheme required a permit, the planning authority must refer the application to each of the relevant agencies as specified by the then Land Use Planning Review Panel for advice or conditions. Section 60 was repealed in 2001 and there is no replacement provision.

Under the current legislative regime, a State agency or entity (other than TasWater, Heritage Council or the Environmental Protection Authority in circumstances where a statutory referral is required) must rely on the public notification process for knowledge of a permit application and must confine any representation to matters relevant to the discretion relied upon for grant of a permit. This mechanism is often sought to implement policy or statute administered by State agencies. However, it is not the function of the planning permit process to assume the burden of compliance with other legislation, or to address matters other than specified as applicable within the provisions of the relevant planning scheme. At a minimum there is a need to amend the State Planning Provisions to insert a provision to deal with obtaining advice from an agency or entity in relation to a matter the planning schemes require must be addressed in a permit application.

Question on Section 56 Minor Amendment of Permits

I refer to the email dated 28 November from Emma Riley seeking "on whether there should be a timeframe for the assessment of minor amendment application (pursuant to Section 56 of the *Land Use Planning and Approvals Act 1993*) and if so, what Local Government believes is an appropriate timeframe."

Local Government is supportive of a timeframe for the assessment of minor amendment applications. A suitable timeframe would be to match permitted applications (28 days), bearing in mind that there is an administration and assessment time process but obviously no advertising requirement. The problem with many minor amendment applications is that often it is a case of 'spot the difference'. Planners must be very diligent to ensure other, undesirable changes are not hidden and in advertently carried through. In light of this we recommend the establishment of minimum requirements for applicants as well as a 'stop clock' if these requirements are not met.

In the 'Removing the Regulatory Handbrake' Report, the Property Council notes
*"the problems at the root of Tasmania's housing shortage are multi-layered
and require coordinated, long-term planning to properly address"*.

This initial engagement process provides an important first step in addressing this challenge. However, it is critical that any potential solutions are robustly assessed and where necessary policy responses are adapted over time.

If you have any questions or would like further information, please do not hesitate to contact Dion Lester at dion.lester@lgat.tas.gov.au or via phone on (03) 6233 5972.

Yours sincerely



Dr Katrena Stephenson
CHIEF EXECUTIVE OFFICER