Our Ref: BS | MP

15 April 2024

Department of Natural Resources and Environment
GPO Box 44
HOBART TAS 7001

Via email: RAAreform@nre.tas.gov.au

Dear Sir / Madam

National Parks and Reserves Management Act 2002 - Reserve Activity Assessment Process Reform – Statutory Environmental Impact Assessment Process

Thank you for the opportunity to provide a submission on the *National Parks and Reserves Management Act 2002* - Reserve Activity Assessment Process Reform – Statutory Environmental Impact Assessment Process. This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of Tasmanian local government in collaboration with our members; all 29 councils.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. Where a council has made a direct submission to this process, any omission of specific comments made by that council in this submission should not be viewed as lack of support by LGAT for that specific issue.

Please contact Bec Stevenson if you have any questions or would like further information, at bec.stevenson@lgat.tas.gov.au or 6146 3740.

Yours sincerely,

Dion Lester
Chief Executive Officer

LGAT Submission: Reserve Activity Assessment Process Reform

Introduction

LGAT has consulted with its members via a well-attended online workshop facilitated by LGAT and delivered by representatives of the Department of Natural Resources and Environment and has also received written feedback from several councils.

Our engagement work identified the following key points from councils:

- Consultation efforts by the Department of Natural Resources and Environment (NRE) with councils has been excellent, is welcomed by councils, and is to be commended. The efforts by NRE included is the allowance of robust timeframes, flexibility for councils to develop their responses, and the collaboration with LGAT to deliver an online workshop for council professional staff. This effort will improve the quality and utility of responses.
- Improving and formalising the current non-statutory Reserve Activity Assessments (RAAs) process is overwhelmingly supported by councils.
- The proposed Independent Assessment Panels (IAPs) are supported for Level 3 and above projects. A simplified, fair and equitable system for Level 1 and 2 projects, proportional to the risk presented, should also be developed.
- Councils are concerned about the resourcing capacity of the Tasmanian Planning Commission and further information is required on the independent appointment process for panel members and management of any conflicts with applicants.
- Specific timeframes are required for the new statutory process outlined in the Consultation Paper. It is acknowledged the new process gives more certainty however the model outlined is resource intensive. One suggestion received was to develop standardised criteria to assess impacts on reserves.
- Concerns are raised on the limited details of the fee proposal and cost recovery model suggested in the Consultation Paper.

More details on the above themes follow.

Statutory environmental impact assessment process

We note the intent of the proposed amendments is to create a statutory process under the *National Parks and Reserves Management Act 2002* for significant proposals. This will ensure that those proposals are subject to a statutory assessment process that provides for similar processes to that required for discretionary use and development under LUPAA, including a public representation process.

Councils support a clear and transparent process for assessment of Level 3 RAAs with the removal of any duplication of processes with LUPAA permit assessments. A clear definition of a significant proposal will provide guidance for all interested parties.

Concern was raised in relation to the application of planning scheme codes to proposals assessed through the new process. Clarity is therefore required as to the determination and decision-making process to be used by the IAP to determine which codes should be applied to an application.

Resourcing the Independent Assessment Panels

Councils expressed concern of the resourcing of the Independent Assessment Panel through the Tasmanian Planning Commission. These concerns included the resourcing levels of the existing commission, the IAP selection method, roles and appointment process of suitably qualified independent individuals, and the adequate level of funding to oversee the proposed process.

A robust RAA process must have adequate cost recovery mechanisms to ensure assessments can be appropriately resourced. It is appropriate and prudent to recover these costs from proponents of the activities being assessed through user charges and to minimise subsidisation from public general revenue.

It is also important for assessment processes to be efficient, proportional to the assessment task, and assessment resources attributed to appropriate process tasks. Some other Australian states employ proponent-driven assessment processes, where the proponent is responsible for keeping their application active and for undertaking certain administrative or non-assessment related steps, such as statutory referrals and public consultation. This relieves the assessment authority of these tasks, encourages more active proponent involvement in the process, and can improve the speed and efficiency of assessment processes. Proponent-driven mechanisms should be considered in the proposed RAA process.

Clear and transparent process

Concern was noted that the model outlined in the Consultation Paper appears to be lengthy and resource intensive with no specific statutory assessment timeframe provided. Further information on the proposed assessment timelines is required.

Furthermore, to support the success of any new process it must be clear and transparent on the application and assessment process, timeframes, and the cost. Applicants should have certainty as to the quantum of time and fees of a project before making an application. They should also have certainty around any decision appeal opportunity, if provided.

Appeals process

Councils noted the lack of a merits-based appeal pathway, with some concerned at the lack of appeal rights and others seeing this as appropriate. We understand that the nature of reserve land where the Tasmanian Government is the landowner (or custodian) is different to that of freehold land, and that the onus of natural rights for proponents of activities are distinctly different between these cases, which affects the rationale for providing an appeal process. We also understand that with an independent merit-based assessment panel for the application, having an additional independent merits-based assessment panel for appeal may be considered unnecessary duplication with little value added. However, the Tasmanian Government needs to make this justification explicit so that the 'appropriateness' of whether or not there should be an appeal process can be evaluated by stakeholders in this consultation process.

Clarity: eligibility and assessment criteria

There is a view among a number of councils that the proposed RAA process having almost no or only very vague eligibility or assessment criteria (beyond merely being in a reserve) is very problematic and that developing clear criteria for at least eligibility but also assessment is not only possible but highly desirable. We agree with this view.

We understand that determining activities on reserve land is different to that of land uses and development on freehold or otherwise unreserved land and must be approached differently. The sensitivities are much higher on reserve land and the scope of appropriate activities is much narrower yet also difficult to predict and classify in advance of actual proposals. Nevertheless, we and many in the sector remain convinced that this is possible.

For example, the previous history of RAAs already completed could be examined to classify known land use proposals, their operational nature and impacts to determine how activities should be classified for assessment. Proposed activities could be classified by land use (e.g. tourism) and activity/operating requirement or impact (e.g. vegetation clearing).

In addition, some specific assessment codes could be developed in advance and made publicly available, even if their application may be at the discretion of the of the assessment authority/IAP. Even simply pointing to likely codes to be required will help create a more certain regulatory environment for proponents.

Because the sensitivities of reserve land are high, there is a need to lock down permissions and default to the highest level of assessment (Level 3) where a lower level of assessment cannot be justified. The onus to demonstrate a lower level of assessment could be placed on the proponent. Certain very low impact and/or critically needed activities, like maintenance

of existing infrastructure or environmental works, particularly those undertaken by or on behalf of a public authority, could be clearly prescribed and assigned a lower level of assessment or even made exempt. This will help with regulatory efficiency.