

## SEA Workshop: Tasmanian Example (from AJEM 13 2006)

The Resource Management and Planning System (RMPS) of Tasmania includes legislation, policies and administrative arrangements which aim to achieve sustainable outcomes from the use and development of the State's natural resources.<sup>1</sup> The objectives of the RMPS are incorporated in the several pieces of legislation included within the RMPS.<sup>2</sup> The Resource Planning and Development Commission (RPDC) has a central role within the RMPS which includes the assessment of planning schemes and policies prepared under these Acts. Recent reviews of strategic planning and planning schemes have emphasised a gap in the structure of the RMPS resulting from State Policies (below) taking a long time to prepare and not providing a suitable vehicle to bring together all matters of relevance to planning schemes. The review concludes that information, policy and strategies could be better integrated and coordinated (Government of Tasmania and Local Government Association of Tasmania 2002).

The *State Policies and Projects Act*, 1993 Tas provides for the making of State Policies concerning sustainable development of natural and physical resources, land use planning, land management, environmental management, environmental protection, and any other matter that may be prescribed. State Policies are required to further the objectives of the RMPS. As at May 2006, Tasmania had the following State Policies: Tasmanian Coastal Policy; State Policy on Protection of Agricultural Land; State Policy on Water Quality Management; and National Environmental Protection Measures.<sup>3</sup> When a policy has been prepared, the Minister may give a written direction to the RPDC to prepare a written report on the draft policy. The RPDC places the draft policy on public exhibition, receives representations and considers them. The RPDC may conduct hearings and may modify a draft policy. On completion of its assessment, the RPDC submits its report on the draft policy to the Minister. The Minister may then recommend to the Governor the making of a Tasmanian Sustainable Development Policy.

As an example, a report was recently prepared on the proposed amendments to the State Policy on Water Quality Management (Resource Planning and Development Commission 2002). The amendments were needed as a result of legislative changes including the passage of the *Water Management Act*, 1999 Tas, in particular provisions for protected environmental values contained therein. A recent report (Better Planning Outcomes) has recommended reforms to the SPPA allow for 'Projects of Regional Significance' to ensure a higher level of review and/or broader assessment of projects that have significant impacts outside of a particular municipality. In avoiding cumulative impacts, assessment of these projects (as for those of State Significance) has some analogies with SEA-type provisions elsewhere (Hayes 2002).

The *Land Use Planning and Approvals Act*, 1993 Tas (LUPAA) is the central planning legislation under the RMPS. Under LUPAA, local councils are designated as planning authorities and are responsible for the preparation and administration of planning schemes and associated functions. A planning scheme must seek to further the objectives of LUPAA (which incorporate the objectives of the RMPS) and must be prepared in accordance with State Policies. Under ss.23-29 of LUPAA the functions of the RPDC include the certification and approval of draft planning schemes and the approval of draft amendments to planning schemes. The certification stage involves an assessment of the draft planning scheme to determine whether it furthers the objectives of LUPAA and has been prepared in accordance with State policies. Once it is certified the draft planning scheme is placed on public exhibition for a minimum of two months. Representations made in relation to the

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<sup>1</sup> The objectives of the RMPS are set down in Schedule 1 to the *Resource Planning and Development Commission Act*, 1997 Tas.

<sup>2</sup> See for example, *Land Use Planning and Approvals Act*, 1993 Tas, *Resource Planning and Development Commission Act*, 1997 Tas, *State Policies and Projects Act*, 1993 Tas, and *Environmental Management and Pollution Control Act*, 1994 Tas.

<sup>3</sup> RPDC website 25 May 2006.

planning scheme are assessed by the council responsible for preparation of the scheme and a report setting out its position on each representation is sent to the RPDC. The RPDC may conduct hearings in relation to the scheme. After considering the council's report and after any hearings the RPDC can either approve, modify or reject the planning scheme, or require a part or parts of it to be re-done.

Amendments to LUPAA have introduced provisions for planning directives. The first of these contains the Common Elements Key Template, prepared as part of the Simplifying Planning Schemes Project. The Directive requires application of the Template to ensure uniformity in planning scheme preparation. Significantly, the legislative amendments require planning directives to be assessed by the RPDC. The report on the first planning directive was released in October 2003 (Resource Planning and Development Commission 2003). While on paper this has the appearance of an SEA Report, in practice it focuses on determining whether the draft Directive is capable of providing a regulatory framework for the implementation of land use policy 'that is lawful and internally consistent'. The main discussion in the report concerning the effect of the directive on the environment is in the context of how the template responds to the objectives of the Act.<sup>4</sup>

The *Environmental Management and Pollution Control Act, 1994* Tas (EMPCA) includes provision for assessment and review of draft Environment Protection Policies (EPP) by the EPP Review Panel. The Panel is a statutory body established under s.96A of the Act which consists of the chair of the RPDC and three others with experience of environmental management. After considering submissions in response to a notice of proposal to prepare a draft EPP, the Minister may prepare a draft policy and must also prepare an impact statement which among other things explains the purpose and effect of the policy. The EPP Review Panel must consider all submissions properly made to it in respect of the draft policy and impact statement and may hold hearings in respect of submissions on the draft policy. The panel may modify the draft policy in light of its assessment. The panel submits its report to the Minister, who may recommend or refuse to recommend to the Governor the making of an environmental protection policy. An EPP requires approval by both houses of the Tasmanian Parliament.

An example of recent assessment under EMPCA is the Assessment of the draft EPP for Air Quality (Environmental Protection Policy Review Panel 2002). The EPP was prepared in response to a number of matters including the expiration of the current air pollution regulations and the desire to replace them with a more modern approach to regulation. It was also in response to the introduction of the NEPM for Ambient Air Quality, which itself became a State Policy when introduced in 1998. The procedure followed with respect to the assessment process involved placing the draft EPP (and associated Regulatory Impact Statement addressing costs on the public and others) on public exhibition, panel hearings with those making submissions to the policy, and a panel report assessing the policy in the light of the submissions made. Each of the submissions made are detailed, responded to by the responsible Department, and commented upon by the Panel. A summary of the impacts of the policy are set out in Table E below.

<b>Table E: Summary of impacts detailed in the Tasmanian draft EPP for Air Quality 2002</b>
<ul style="list-style-type: none"> <li>• Air quality impacts considered in the policy relate to fixed sources of pollution, primarily from wood-heaters, backyard burns and forestry re-generational burning.</li> <li>• Implementation of the policy largely falls to local government, and given resource constraints the issue of greatest concern is not surprisingly the capacity for enforcement of the policy.</li> <li>• Negative impacts discussed are primarily those upon public health.</li> </ul>

<sup>4</sup> See pp 9-12, Tasmanian Conservation Trust submission.

Under the *Water Management Act, 1999 Tas (WMA)* the Minister may determine that a water management plan (WMP) is to be prepared in respect of a water resource or water resources in Tasmania. The Department of Primary Industries and Water (DPIW) prepares the draft plan in accordance with consultation and other requirements set down in the WMA. These include the requirement that preparation of the draft plan must have regard to the consistency of the plan with the objectives of the RMPS, any relevant State Policy, relevant environmental agreements and environmental improvement programmes, relevant planning schemes, and other specified matters. After considering written representations on the draft plan the Secretary of DPIW forwards the draft plan to the RPDC with a report on the representations and any proposed amendments to the draft plan. The RPDC, on the direction of the Minister, reviews the representations and the Secretary's report and may conduct a hearing into the draft plan. When the RPDC has completed its review, it forwards its report to the Minister together with the Secretary's report and copies of the representations. The Minister is to have regard to the RPDC's report in deciding whether to request the Secretary to submit for final approval an unaltered draft water management plan or an amended plan.

An example of a recent assessment under the WMA is the Report on the draft Lakes Sorell and Crescent and draft River Clyde WMPs (Resource Planning and Development Commission 2005). The draft plans provide for the management of the Clyde water catchment for the following four years, with the purpose being to provide a framework for managing the water resources of the catchment in accordance with both the WMA and the State Policy on Water Quality Management 1997. Submissions to the draft policy were generally divided between recreational anglers (in support on the policy) and the irrigation industry (in opposition). The reason for the difference of opinion is largely due to restrictions introduced for abstractions, which improves flows for fish, but which restricts flows for irrigation. The right to take water from the catchment was a key issue for the industry which argued that compensation should be available as a result of an argued reduction in the water available. Government legal advice disputed such an entitlement, indicating that rights to water for the industry were increased rather than reduced as they had no prior right to the water. The consultation undertaken as part of the assessment process was criticised by the industry, although it would appear that the procedures were correctly followed. Similarly the science underlying the introduction of the 'cease to take rule' (which protects the river environment by denying access to water) was also criticised by the industry, which again was refuted by the RPDC. Impacts detailed in the EIS are set out in Table F below.

**Table F: Summary of impacts detailed in the Tasmanian Report on the draft Lakes Sorell and Crescent and draft River Clyde Water Management Policy 2005**

- One of the concerns of the assessment deals with the exceptional circumstances rules which allow drawing the lakes below the Critical Minimum Levels.
- These concerns were addressed by the RPDC on the basis that a balance had to be struck in order to provide access to water in times of drought;
- However given the presence of a listed threatened species in the catchment, in the event that the exceptional circumstances rules are invoked, it was recognized that a referral would be needed if the rules were applied to the Commonwealth Environment Minister under the EPBC Act (as a controlled action).

The *Marine Farming Planning Act, 1995 Tas (MFPA)* provides for the making and assessment of draft marine farming development plans (MFDPs). DPIW prepares MFDPs for the major marine farming areas using the process set down in the MFPA. DPIW must prepare an EIS to accompany a draft plan, a modification to a draft plan, a draft amendment to a plan and a modification to a draft amendment to a draft plan. Draft plans are placed on public exhibition for two months during which time representations may be submitted to the

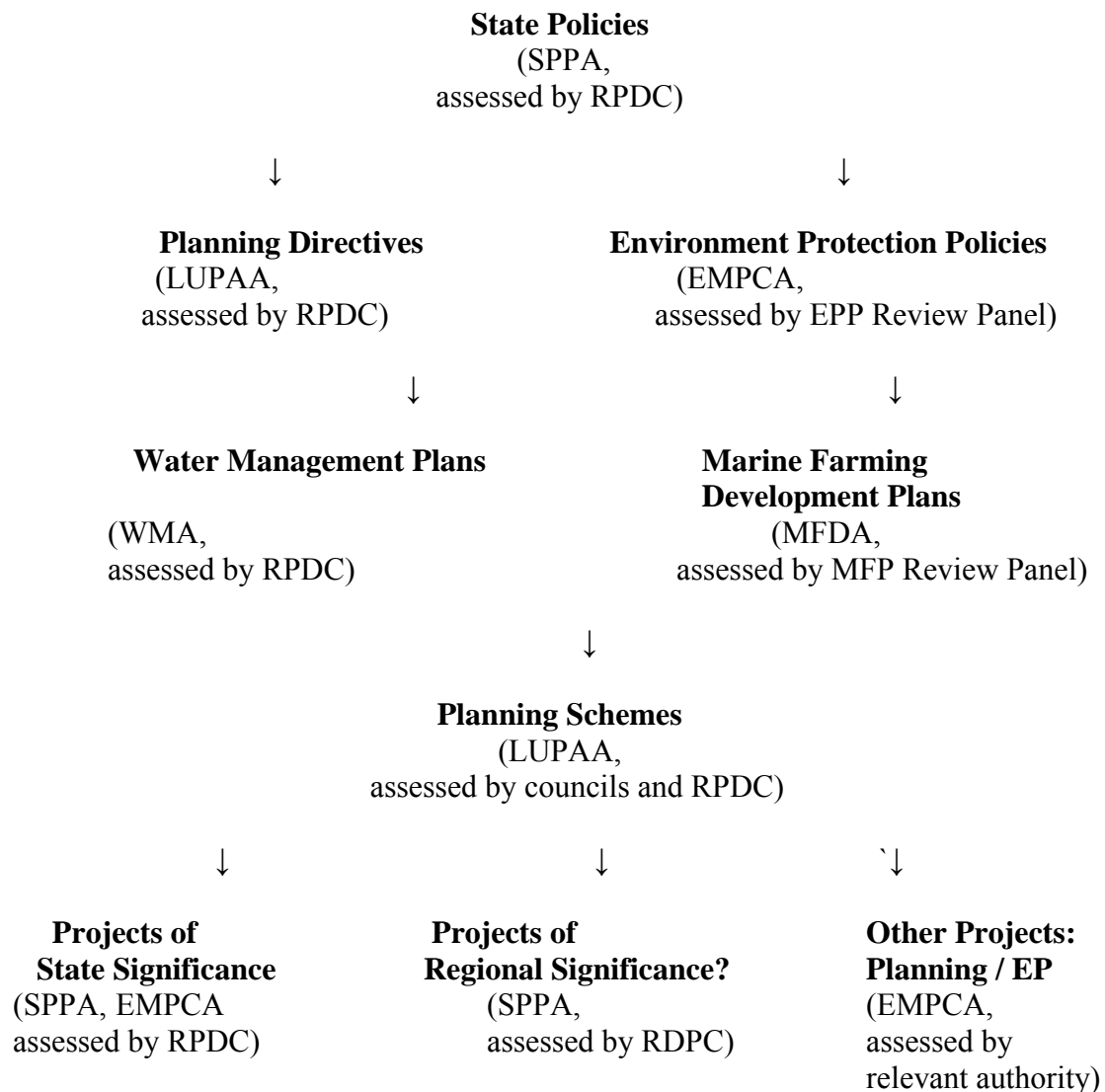
Secretary of DPIW. An independent expertise-based Marine Farming Planning Review Panel assesses representations and may require modifications to a draft MFDP in light of representations. Any modifications must be exhibited for a further two months. The Minister for Primary Industries and Water gives final approval to an MFDP.

An example of an assessment carried out under the MFPA is that carried out on the draft Macquarie Harbour MFDP (Department of Primary Industries, Water and the Environment 2005). The EIS is a detailed document setting out impacts from marine farming on the surrounding environment and of the surrounding environment on the marine farms. It consists of a number of sections setting out the statutory policy and planning context, describing the existing environment and the marine farming zone areas and development, and analysing the potential impacts and mitigation measures required. Table G below contains the impacts set out in the EIS.

**Table G: Summary of impacts detailed in the Tasmanian EIS on the draft Macquarie Harbour Marine Farming Development Plan**

- One of the most significant potential impacts on the marine farms set out in the report is the historical pollution originating from acid mine drainage from the King River into the harbour. One farm had to be relocated as a result of this contamination, and a detailed Risk Assessment was carried out.
- Other impacts on the fish farms include impacts on water quality as a result of land based activities of others, including wastewater, silt, fertilizer and dirt run off.
- Of the impacts from the fish farms themselves, deterioration in water quality is the greatest concern on the natural environment, together with visual and noise impacts from the operation of the farm on humans. Concentrating on the former, the production of algal blooms is raised as a concern, together with impacts upon marine vegetation, birds and mammals (which include threatened species), and species escapes, disease, waste and the introduction of marine pests.
- Mitigation measures are described in detail for each potential impact, together with the results of marine farm environmental monitoring since 1997.

**Potential Example of Tiering –  
Tasmanian Resource Management and Planning System**



SPPA = *State Policies and Projects Act 1993*

LUPAA = *Land Use Planning and Approvals Act 1993*

EMPCA = *Environmental Management and Pollution Control Act 1994*

WMA = *Water Management Act 1999*

MFPA = *Marine Farming Planning Act 1995*

RPDC = Resource Planning and Development Commission

EPP Review Panel = Environment Protection Policy Review Panel

MFP Review Panel = Marine Farming Planning Review Panel