



31 October 2011

Productivity Commissioner
Business Regulation Benchmarking: Role of Local Government
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioner

**Business Regulation Benchmarking: Role of Local Government -
Submission in respect of the proposed Springfarm Development – Channel Highway,
Kingston, Tasmania**

The subject of this submission relates to the costly, protracted and problematic nature associated with the development approval process in Tasmania. Specifically it draws on an example of a recent proposed development in the Municipality of Kingborough, for which GHD submitted an application with Council in 2010, on behalf of AAD Nominees Pty Ltd.

A significant factor impeding the development approval process within the State can be attributed to the inconsistent approach that currently prevails in Tasmania. Currently there are 29 Councils and significantly more planning schemes in operation across the State. A review of local government amalgamations is underway and work has commenced to create some conformity across the State's planning schemes. However, it is still likely that inconsistency arising from varying scheme requirements will persist due to the limited extent of the current planning reforms.

The example I draw on relates specifically to the Kingborough Planning Scheme. Whilst the issues encountered with the particular development to which I refer relate directly to that planning scheme, I point out that it is not uncommon for development in Tasmania to face similar hurdles and levels of uncertainty in the approval process, irrespective of the relevant jurisdiction.

A development application was submitted with Kingborough Council for a supermarket and specialty shops on a parcel of land zoned for commercial purposes in Kingston, the Municipality's largest suburb commercial hub. The proposal was to be sited directly adjacent to the Australian Antarctic Division and at the intersection of Channel Highway and the new Kingston Bypass which is currently under construction. As such, it was identified as a strategic location to service the southern Municipality's catchment area.

Whilst the zoning of the land permitted commercial uses, the proposal invoked a number of 'discretions'. A discretionary application requires a proposal to be placed on public notification, allows 'representations' to be received by Council and gives Council the power to either approve or refuse the application. In this instance discretion was invoked in respect of the location of the car parking; the minimal disturbance of vegetation; the location of the proposal in relation to a waterway; signage; and as a result of the supermarket being identified under the Scheme as a 'Major Traffic Generating Development'.

In discussions with Council prior to lodging the application, our client was advised that a number of supporting studies would need to be undertaken to demonstrate that the proposal met the Planning Scheme's requirements in relation to the abovementioned discretions. The reports prepared included an extensive economic study to justify the location of the proposal; an ecological assessment; a stormwater report; a Traffic Impact Assessment and a supporting planning report. Each report prepared demonstrated that the proposal met the planning scheme's requirements in all of the above matters.

The proposal was subsequently lodged and Council's Planners undertook an assessment of the proposal, making recommendation of approval to Council. At Council's meeting, however, the proposal was refused despite the Officer recommendation for approval. The grounds upon which Council refused the application were numerous and related to each of the discretions invoked under the planning scheme, despite each of the assessment reports demonstrating compliance with the Scheme's requirements. An additional ground of refusal related to the commercial use. A strategic consideration related to the 'desired future character', which identified the subject land as being for the purposes of a 'science or technical' park, in association with the adjacent Antarctic Division. It was asserted by Council that the commercial nature of the proposal was inconsistent with the identified character. I note that, should the proposal have been 'permitted', i.e. did not invoke any of the abovementioned discretions, which may have been easily achievable with any number of smaller scale commercial developments the not fitting the science/technical park description, Council would have been bound to issue a permit for the development.

However, aside from the shortcomings of the planning scheme, our client's concerns with this development relate particularly to Council's requirement for extensive investigative works and reporting to be undertaken, which incurred great expense, to then refuse the application. It is also concerning that Council dismissed the findings of all those investigations as evidenced through their grounds of refusal.

Council's decision was then appealed at the Resource Management and Planning Appeals Tribunal. This was a process that, due to Council's extensive grounds of refusal, required expert evidence to be produced from Traffic Engineers, Economists, Civil Engineers, Planners and Biologists, again consuming considerable resources. I point out that the Tribunal accepted all evidence provided by our experts, demonstrating that consistency with the Scheme's requirements had been achieved, despite Council's assertions to the contrary. Nevertheless, the Tribunal was required to refuse the application. In its decision, it concluded the following:

Although the proposal demonstrates a high level of compliance with most of the applicable scheme requirements because of the conclusion that the Tribunal has reached as to the operation of clause 6.2.1(m) and the inability of the proposal to demonstrate compliance with Desired Future Character Statement for the Australian Antarctic Division Headquarters Precinct it follows that the appeal cannot succeed...

The appeal process raises a number of issues in relation to Council's attitude toward the proposal and the Kingborough Planning Scheme. Firstly, as I have previously pointed out, Council required extensive and costly investigations to be carried out, the findings of which were apparently ignored. However, the process also highlighted the complexities of the Planning Scheme, which is evident upon reading the Tribunal's decision, and which Council's own staff encounter issues in the interpretation of. The matter

upon which the Tribunal refused the application was then appealed at the Supreme Court. Whilst the Court upheld the Tribunal's decisions, the following remarks were made by J Blow in his Judgement:

The planning scheme is very complex and exceedingly and unnecessarily difficult to comprehend or interpret. Most ordinary people would not have a chance. Most sensible people, or people with a life, would not attempt the task unless they had absolutely no choice. In order to determine how the scheme operates in relation to the appellant's proposed development, it is practically essential to have a law degree, decades of experience in interpreting legal documents, a talent for understanding gobbledygook and misused words, a lot of time, and a very strong capacity for perseverance.

The economic studies that were undertaken in preparing the development application and the appeal, demonstrated that the proposed site would cater for a catchment with an expanding population base that was strategically located in convenience to the new Kingston Bypass as well as to public transport. Aside from a 'technicality' within the planning scheme, there appears to be no logical basis for the refusal of the development. The development, should it have proceeded, would have returned numerous economic, employment and community benefits.

It is acknowledged that a Planning Authority clearly has the ability to set strategies and a planning scheme that will direct orderly development within their Planning Area. However it is critical that such strategies and planning schemes are sufficiently clear that a proponent, Council and the community can readily evaluate a fundamental concept of whether the use of a shopping centre is an allowable use on a site. The above account demonstrates how the approach adopted by Council in this matter, as well as the inadequacies of the planning scheme, for which they are responsible for the drafting and administering, merely frustrates appropriate development and leads to unnecessary costs by proponents, the planning authority and appellants. These inefficiencies clearly reduce Tasmania's productivity. This is particularly concerning given the current vulnerability of Tasmania's economy, as it acts as a deterrent to investment in the State.

I attach for your information the judgements as referred to above. Please contact me should you require any further details or information.

Yours faithfully
GHD Pty Ltd



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