

## Briefing Paper – March 2017

### TASMANIAN PLANNING SCHEME AND ASSOCIATED PLANNING PROVISIONS

#### Background & Process

Planning is a complex issue but is fundamental to our way of life and it's vital we get it right. A planning scheme sets out policies and requirements for the use, development and protection of land and will impact every title in Tasmania.

A Tasmanian Planning Scheme should set out a shared vision for Tasmania - why we love it, why tourists love it, and how we want it to look from now for the next 25 years or more. This vision should be about all of us, not just developers, and should cover everything from social interaction and public spaces to transport infrastructure, support services and economic opportunities. Unfortunately, this is not the case.

The planning changes that the Hodgman Liberal Government is seeking to implement represent a paradigm shift in planning law in favour of one set of interests at the expense of existing values and uses.

The planning scheme is designed to de-regulate planning (particularly for the advantage of developers), by for example, expanding the range of uses permitted without public comment, reducing heritage protections, opening up parks and reserves to commercial developments, intensifying agricultural uses, and reducing opportunities for community involvement in planning decisions.

The process to date has been very complicated and confusing. Essentially, there are two processes at play simultaneously:

- 1) the introduction of the interim planning schemes; and
- 2) the development of the Tasmanian Planning Scheme.

#### 1. The Interim Planning Schemes

The introduction of the interim planning schemes occurred between 2013 and 2015. The interim schemes were intended as a way of quickly standardising planning schemes across the State. **To achieve this, the former government passed legislation allowing interim schemes to come into effect immediately, prior to public comments being considered.** Interim schemes were required to follow State and regional templates, with limited opportunities for local variation. Public comment was not invited till after they were operational. The Planning Commission is still in the process of reviewing those comments and finalising many of the interim schemes.

Until both the State Planning Provisions and the Local Provisions Schedules commence, the interim planning schemes will continue to apply to land in your municipality.

#### 2. The Tasmanian Planning Scheme

While the interim schemes were still being introduced, the new government commenced the second part of the planning 'reforms': the development of the provisions of the Tasmanian Planning Scheme. The law was changed in December 2015 to create a process for the development of the Scheme.

Currently, each of Tasmania's 29 councils has an interim planning scheme<sup>1</sup>. The Government is seeking to replace them with a single statewide planning scheme – called The Tasmanian Planning Scheme.

The Tasmanian Planning Scheme will have two components:

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<sup>1</sup> Other than Flinders Island, which has yet to adopt an interim Planning Scheme and continues to operate under the *Flinders Planning Scheme 1994*

- **State Planning Provisions (SPPs)** - the core content that will apply across all municipalities, including zone standards, exemptions and tables showing the types of uses that are permitted, discretionary or prohibited in each zone.
- **Local Provisions Schedules (LPSs)** – local zoning maps and any special area plans or site-specific provisions adopted for one Council area. The LPSs will be prepared by Councils now that the SPPs are finalised, however Councils will have limited options to vary the application of the SPPs to protect local character.

The [draft SPPs](#) were available for public comment in early 2016, and the Tasmanian Planning Commission held a number of public hearings throughout the year. On 9 December 2016, the TPC handed its [report](#) regarding the draft SPPs to Planning Minister Peter Gutwein.

On 22 February 2017, the Minister announced that he intended to make the final SPPs, with some modifications from the draft version. Some of the modifications recommended by the Commission were adopted, others were not. You can read the Minister's reasons for the modifications he made [here](#).

The SPPs do not need to go through Parliament and took effect on 2 March 2017, following notification in the Gazette.

[You can read the final SPPs here.](#)

### **What happens now?**

Local councils will now prepare draft Local Provisions Schedules and release the drafts for public comment for at least 60 days (this is expected to occur within the next 6-9 months). Any person can make a representation about the proposed LPS during the public comment period.

The Commission will then consider the draft LPS, any comments made by the public, and any response from the Council before deciding whether to make the final LPS (with or without modifications) or to re-advertise.

### **Why are we concerned?**

Many community groups do not object to the notion of a statewide scheme. What they are concerned about is the proposed content and structure of the scheme currently being considered.

Tasmania still lacks a coherent suite of State Policies to guide key strategic planning decisions on issues such as integrated transport, population and settlements, biodiversity management, and climate change. The SPPs do not address these issues in a thoughtful and strategic way, and fail to achieve the sustainable development objectives under our current laws. The government has indicated that it intends to develop Planning Policies after the SPPs are introduced, however it is unclear what these policies will include or how they will influence the SPPs once they are in place.

The SPPs also compromise the democratic rights of appeal currently available to concerned members of the public. These appeal rights hold both developers and decision-makers to account.

While the laws about appeal rights for discretionary developments are not being changed at this stage, in practice the SPPs reduce the number of developments that will be treated as discretionary. Instead, a range of developments (including commercial developments in national parks) will be "permitted" and not subject to public comment or appeal.

### **Key Urban Issues**

- The SPPs provide for smaller block sizes, higher buildings, reduced setbacks and higher density developments in residential areas. The SPPs lock in changes introduced in 2014 which have the potential to alter the face of our cities, towns, and residential areas, including in your own backyard. In many places, buildings up to 8.5m on lots as small as 450square metres will be permitted without the opportunity for neighbours to have a say.

- In the General Residential Zone (which covers most residential areas in Tasmania's towns and suburbs), many unit developments will be permitted without the opportunity for neighbours to comment. Provided buildings comply with the maximum permitted heights, density and setback provisions, councils will not be able to refuse a proposal and neighbours will often not be advised of the development until building commences. For example, the average unit area can be as small as 325m<sup>2</sup> without being advertised.
- Where units are located within 400m of public transport, even higher densities can be permitted.
- Even if a building is higher, larger or closer than the minimum standards allow for, it can still be approved if "Performance Criteria" can be met. These developments will be advertised and open to public comment and appeal rights, however the Performance Criteria will often be vague and difficult to enforce.
- **Under the SPPs, neighbourhood amenity and character, privacy and sunlight into your backyard and home will not be adequately protected.**

### Key National Parks & Reserves Issues

- Under the SPPs, there is no guarantee of public comment or rights of appeal on developments in all our National Parks and Reserves.
- Instead, assessment of development in National Parks and Reserves will be assessed under a non-statutory process (the Reserve Activity Assessment) that lacks transparency and rigour.

### Key Rural Issues

- The rural landscape of Tasmania is unique. We have pasture and agriculture interconnected with coastal heath, alpine grasslands, wetlands and forested ridges. This landscape sustains our plants and animals and is the image that unifies our island as a major tourist attraction.
- Under the *Land Use Planning and Approvals Act 1993*, mining, dam building, aquaculture and forestry are given special treatment that limits the potential for councils to stop or restrict them. The changes contained in the SPPs provide similar special treatment for farmers, removing options to refuse or regulate irrigation infrastructure and vegetation clearing for plantations or pasture, and exempting development in the Agriculture Zone from the protections offered by the Natural Assets Code (see below).
- The SPPs allow an unprecedented range of commercial and extractive uses in Rural Zones, which will further degrade the countryside.
- The SPPs divide the rural landscape into four zones (Agriculture, Landscape Conservation, Rural and Rural Living), all designed to facilitate development and imposing very few restrictions on buildings.

### Key Biodiversity issues

- In planning schemes, codes apply across all zones and are intended to provide a level of protection for special values, a safety net, in particular where zoning is inadequate. The Natural Assets Code fails to provide this safety net for natural values. In particular, the Code will **not** apply to:
  - development in half of all the zones (including in the Agriculture zone)
  - works undertaken by councils and state government agencies
  - threats other than vegetation clearing e.g. disturbance of eagles during nesting or collisions of swift parrots with windows

- vegetation clearance in reserves, pasture and cropping land and orchards
- The Commission recommended that the Natural Assets Code be excluded from the SPPs and further detailed consideration, mapping and consultation be undertaken to ensure that the Code protected natural values. The Minister did not adopt that recommendation.
- The draft SPPs restricted 'priority vegetation' to listed threatened vegetation and 'priority habitat' for listed threatened species. The final SPPs allow local councils to extend this to include locally significant vegetation.
- Even where impacts on threatened species are considered under the code, the requirement is only to "minimise clearance of significant habitat" and to "avoid unacceptable impacts", rather than absolute restrictions on clearing. This lack of clarity will lead to continued loss of important vegetation and leave remaining vegetation fragmented and degraded; a 'death by a thousand cuts' approach resulting in more species becoming threatened and some pushed to extinction.

### **Key Coastal Issues**

- The SPPs pose a threat to our undeveloped beautiful coastlines.
- Coastal communities that currently enjoy a prohibition on subdivision within 1km of the coast are likely to lose this protection.
- Most farming and mining activities in coastal areas will be exempt from the Coastal Hazards Codes.
- The Major Tourism Zone could facilitate large scale resorts in sensitive coastal locations.

### **Key Heritage Buildings & Heritage Landscape Issues**

- The built cultural heritage landscape of Tasmania is of unique national and international character and needs strong protection under planning laws.
- The result of compromising protections for the built heritage that makes Tasmanian suburbs and towns unique are predictable: bit by bit the old houses and buildings that are an important window to our past will be replaced and the charm that is loved by locals and visitors alike will be lost forever.
- In November 2016, the Tasmanian Heritage Council advertised the removal of 514 properties from the Tasmanian Heritage Register. Many of the places that will be removed from the Tasmanian Heritage Register will remain subject to local heritage codes. However, the Local Heritage Code under the SPPs do not provide equivalent protection for heritage values, and many local councils lack the resources to properly assess heritage impacts.
- The [Hobart City Council's submission on the draft SPPs](#) concludes: "[T]he heritage code of the SPPs is deficient in many areas. Heritage values will be eroded, the detail of buildings and fine grain qualities will be lost and Hobart will become a city of facades. The code is lengthy, not consistent and poorly drafted. It requires considerable redrafting to ensure it is consistent with current and good heritage practice...". The same outcome will be repeated across Tasmania, and has not been remedied by the final SPPs.
- The National Trust has also pointed out that the SPPs allow scope for development between historic towns, with no clear buffer zones. For example, there is the opportunity of having one big suburb going all the way from Burnie to Launceston, from Launceston to Perth and Evandale and from Kempton to Hobart.

### **Key Aboriginal Cultural Heritage Issues**

- The SPPs continue to alienate Aboriginal communities from decisions about how land of cultural significance is managed. In particular, the SPPs do not include any Code or other provisions to

specifically deal with impacts on Aboriginal cultural heritage, on the basis that such impacts are already managed under the *Aboriginal Relics Act 1975*. However, the government itself has recognised that the Relics Act is grossly inadequate to protect Aboriginal heritage places and cultural landscapes.

- The SPPs do not currently require culturally appropriate assessments of developments likely to impact on Aboriginal heritage, or provide opportunities for members of the Aboriginal community to challenge decisions to approve developments that will impact on cultural heritage.

### **The Planning System will not be faster, fairer, simpler or cheaper**

- The Government continues to promote the reforms as delivering a “fairer, simpler, faster and cheaper” planning system. However:
  - a system that marginalises councils and the public from decisions about development in their area is **not fairer**.
  - a system that requires councils to introduce a patchwork of Particular Purpose Zones or Specific Area Plans in order to protect the special character of local areas is **not simpler**.
  - a system that is poorly drafted, unclear and contradictory, and therefore likely to be subject to legal challenges will ultimately **not be faster or cheaper**.

## **OTHER ISSUES**

### **Major Projects Legislation**

- While it is not part of the SPPs, the Tasmanian Government remains committed to the introduction of "major projects" legislation that would give the Minister power to "call-in" significant projects for assessment against project-specific criteria, rather than the SPPs. Draft legislation is expected to be released in early 2017 dealing with major projects.
- Fragrance Group has proposed the construction of two new hotel towers in central Hobart. Both hotel proposals are within the Sullivan's Cove Planning Scheme area, which has a set of rules on height limits designed to respect and enhance the colonial heritage of our port area. At 75 metres, the hotel proposal for Collins Street is 60 metres higher than what the planning scheme provides for. The Davey Street proposal for a hotel of 120 metres is a 102 metres higher than what is allowed. There has been talk that the Fragrance towers could be assessed outside the planning system and by future Major Projects legislation – thus bypassing the height restriction rules.

### **The impact of planning ‘reform’ on the Victorian land use planning system**

- Michael Buxton, Professor of Environment and Planning at the School of Global, Urban and Social Studies, RMIT University and Robin Goodman, Deputy Dean, Sustainability and Urban Planning in RMIT's School of Global, Urban and Social Studies have written a very insightful academic paper on the impact of planning ‘reform’ on the Victorian land use planning system.\* You only have to read the Conclusion (outlined below) to understand what the SPP’s are all about.
- Similar to Victoria, the Hodgman Government’s planning law ‘reform’ represents a paradigm shift in Tasmania’s planning system: away from careful and considered strategy-led planning, towards facilitating market-driven ad hoc development.

#### **Conclusion**

*There are strong connections between Victorian planning system changes and the national planning reform agenda being followed in most Australian states. Recent changes to state*

*planning systems seek to reduce the strength of land use planning regulations, lessen the contributions of local communities, objectors and local councils to planning decisions and empower development companies. The Victorian system changes are also the result of decades of the politicisation of planning by locating responsibility for land use planning in the state planning agency under direct ministerial control, abolishing an independent state planning body, imposing deregulated standardised planning systems intended to facilitate development onto local government, and constant ministerial intervention in planning decisions. All these represent a paradigm shift in the Victorian land use planning system away from careful and considered strategy-led planning, towards market-driven ad hoc development facilitation.*

- \*Michael Buxton & Robin Goodman (2014) The impact of planning 'reform' on the Victorian land use planning system, *Australian Planner*, 51:2, 132-140, DOI: [10.1080/07293682.2014.892866](https://doi.org/10.1080/07293682.2014.892866). To link to the full article visit here <http://dx.doi.org/10.1080/07293682.2014.892866> or if you would like a copy of the full article - please contact Sophie Underwood.

## WHAT CAN YOU DO?

- The community needs to let the government know that they want strong, sensible planning laws and the SPPs are not good enough. It is essential that you contact Planning Minister Peter Gutwein and raise your concerns. Collectively, this will make a big difference.
- This is especially important in the context of the next state election which must be held before May 2018 but could be held as early as October 2017.

- **Contact Planning Minister Peter Gutwein**

Telephone (Electorate Office) 03 6777 1007

Telephone (Parliament House) 03 6165 7670

Postal address: House of Assembly, Parliament House, Hobart TAS 7000

Postal and street address (Electorate Office): Ground Floor, Public Building, 53 St John Street, Launceston TAS 7250

Fax 03 6336 2767

Facebook @petergutweinmp

Twitter @PeterGutweinElectorate

Email [peter.gutwein@dpac.tas.gov.au](mailto:peter.gutwein@dpac.tas.gov.au)

Note: Any emails or letters you send to Peter Gutwein – please cc the Premier (email: [will.hodgman@parliament.tas.gov.au](mailto:will.hodgman@parliament.tas.gov.au), postal: House of Assembly, Parliament House, Hobart TAS 7000)

- **Contact your local Councillors**

Click on the following addresses to access each Tasmanian council's website:

<http://www.lgat.tas.gov.au/page.aspx?u=225>

- **Write to your Local Paper and Ring/SMS Talk Back Radio and raise your concerns about Peter Gutwein's Planning 'Reform'.**

Talk about developments in your area and the protections that you're worried have been lost.

### Letter Writing

#### 1. The Mercury

Email: [mercuryledletter@themercury.com.au](mailto:mercuryledletter@themercury.com.au)

Postal address: Letters to The Editor, The Mercury, Level 1/2 Salamanca Square Hobart 7001

## 2. The Examiner

Email: [editor@examiner.com.au](mailto:editor@examiner.com.au)

Postal address: Letters to The Editor, The Examiner, PO Box 99 Launceston TAS 7250

## 3. The Advocate

Email: [luke.sayer@fairfaxmedia.com.au](mailto:luke.sayer@fairfaxmedia.com.au)

Postal address: Letters to The Editor, 56 Mount Street Burnie TAS 7320

### Ring/SMS Talk Back Radio

#### 1. 936 ABC Hobart

Talkback only: 1300 222 936

SMS: 0438 922 936

#### 2. ABC Northern Tasmania

Talkback only: 1300 361 688

SMS: 0467 922 917

### • Local Provisions Schedules

Contact your local council to discuss the Local Provisions Schedules and any Special Area Plans you think should be introduced in your area. When the draft LPSs are released, make a representation to share your views.

### Growing Concern

- Over 35 community and environment groups are now united with a common concern over the Tasmanian Planning Scheme:
  1. Bay of Fires Coastal Preservation Lobby
  2. Beaumaris Action Network
  3. BirdLife Tasmania
  4. Blackmans Bay Residents Action Group
  5. Central North Field Naturalists
  6. Climate Action Northwest
  7. Earth Ocean Network
  8. Environment Tasmania
  9. Freycinet Action Network
  10. Friends of Four Mile Creek
  11. Friends of the Blue Tier
  12. Friends of the East Coast Inc.
  13. Friends of the Tamar Valley
  14. Huon Valley Residents & Ratepayers Association (Inc)
  15. Kangaroo Bay Voice
  16. Let's Grow Tasmania's Future
  17. Marine Protection Tasmania
  18. No Fish Farms in Tasmania's East Coast Waters
  19. North East Bioregional Network
  20. Precinct 33 Amendments Group
  21. Rosny Hill Friends Network

22. Seymour Community Action Group
  23. South Hobart Progress Association
  24. Southern Beaches Conservation Society
  25. St Helens Point Progress Association
  26. Swansea Group
  27. Tasmanian Conservation Trust
  28. Tasmanian National Parks Association
  29. Tasmanian Planning Information Network
  30. The Bob Brown Foundation
  31. The Friends of the Leven
  32. The Wilderness Society
  33. Waterworks Valley Community Group
  34. Waterworks Valley Landcare Group
  35. Woodbridge Community Association
  36. Wynyard Landcare
- If you know a group that would like to join our network, then please contact Sophie Underwood by email [sophie\\_underwood@hotmail.com](mailto:sophie_underwood@hotmail.com) or by phone 0407 501 999.