

## Briefing Paper – December 2016

### 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.

#### 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. The draft SPPs were open for public comment until May 2016. The public hearings, held by the Tasmania Planning Commission (TPC), were completed in October 2016.
- **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 after the SPPs are finalised (most likely sometime in 2017), and Councils will have very limited options to introduce specific restrictions to protect local character.

On 9 December 2016, the TPC handed its report regarding the draft SPPs to Planning Minister Peter Gutwein. The Minister has said he will release the Commission's report to the public in early 2017.

The Minister is not bound to follow the Commission's recommendations, or to seek further public comment. He is likely to invite comments from the Planning Reform Taskforce and local councils, but is not required to do so. After considering the report, the Minister will simply decide whether to make the SPPs as advertised, or modify in some way, and publish notice of his decision in the Gazette. The SPPs do not need to go through Parliament and will take effect on the date in the Gazette notice.

### **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. Instead, we are being presented with SPPs that do not address these issues in a thoughtful and strategic way, and which fail to achieve the sustainable development objectives under our current laws. The government is proposing to develop Planning Policies after the SPPs are introduced, however it is unclear how these belated policies 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, 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 draft SPPs make a range of changes to block size, maximum heights, minimum setbacks and greatly increase the density of development in residential areas. For example, height limits are increased from 5m in many places to 8.5m or 9.5m, houses can be built on blocks as small as 450sq m and in some places densities may increase by a factor of 3. All of these changes have the potential to alter the face of our cities, towns, and residential areas, including in your own backyard.
- 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 minimum height 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.
- 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 draft 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 draft SPPs, there is no guarantee of public comment or rights of appeal on developments in all our National Parks and Reserves.
- Assessment of development in National Parks and Reserves is delegated to a non-statutory process that lacks transparency and rigour. It remains unclear how the Tourism EOI (Expression of Interest) proposals will be assessed and what opportunities for public comment will exist.

### 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 Draft SPPs provide similar special treatment for farmers, removing options to refuse or regulate irrigation infrastructure and vegetation clearing for plantations or pasture.
- The draft SPPs allow an unprecedented range of commercial and extractive uses in Rural Zones, which will further degrade the countryside.
- The draft SPPs divide the rural landscape into three zones (Landscape Conservation, Rural and Rural Living), all designed to facilitate development and imposing very few restrictions on buildings.
- The volume of vegetation clearing permitted without advertising in the Rural Living Zone will be increased from 500m<sup>2</sup> to 3,000m<sup>2</sup>

### 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 draft 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 land zoned for agriculture)
  - 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 other than ‘priority habitat’ required for State listed threatened species and threatened vegetation communities. This excludes locally or regionally important vegetation, vegetation required for connectivity in the landscape and geoheritage.
- 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 will 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.
- If protections for the built heritage that makes Tasmanian suburbs and towns unique are compromised as proposed, the results 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.
- Also, 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 draft 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.
- The changes also 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 likely 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.

### **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)

- **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 will be 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

- 29 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. Earth Ocean Network
  7. Environment Tasmania
  8. Freycinet Action Network
  9. Friends of Four Mile Creek
  10. Friends of the Blue Tier
  11. Friends of the East Coast Inc.
  12. Friends of the Tamar Valley
  13. Huon Valley Residents & Ratepayers Association (Inc)
  14. No Fish Farms in Tasmania's East Coast Waters
  15. North East Bioregional Network
  16. Precinct 33 Amendments Group

17. Rosny Hill Friends Network
  18. Seymour Community Action Group
  19. South Hobart Progress Association
  20. Southern Beaches Conservation Society
  21. Tasmanian Conservation Trust
  22. Tasmanian National Parks Association
  23. Tasmanian Planning Information Network
  24. The Bob Brown Foundation
  25. The Friends of the Levan
  26. The Wilderness Society
  27. Waterworks Valley Community Group
  28. Waterworks Valley Landcare Group
  29. Woodbridge Community Association
- 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.