edotasmania
using the law to protect the natural and built environment

131 Macquarie Street
Hobart TAS 7000

tel: (03) 6223 2770
email: edotas@edo.org.au

20 October 2014

Mary Massina
Executive Chair
Tasmanian Planning Reform Taskforce
22 Elizabeth Street
Hobart TAS 7000

By email: mary.massina@stategrowth.tas.gov.au
cc: brian.risby@stategrowth.tas.gov.au, tony.mccall@dpac.tas.gov.au

Dear Mary,

Draft Land Use Planning and Approvals Amendment Bill 2014

Thank you for the opportunity to provide further comments on the draft *Land Use Planning and Approvals Amendment Bill 2014*. Given the limited time available for comments, this brief submission will focus on our concerns regarding the proposed process for finalising the interim planning schemes.

Generally, we welcome the deferral of any proposals to reduce third party appeal rights, and hope to discuss this with you further as part of the consultation for Phase 2 of the planning reforms. We also welcome the retention of the public interest test in s.37, but maintain our view that notice of the amendment is published as per s.30IA(6)(f). We also maintain our view that reducing the assessment timeframes for permitted developments is unwarranted.

The Minister has consistently spoken of the need for planning schemes to exhibit commonality, while taking into account regional differences. In this regard, we do not consider the lack of consistent content amongst the southern schemes to be an "unacceptable" outcome. Rather, it reflects how difficult (and undesirable) it is to achieve a high degree of commonality where local circumstances differ so markedly. The only practical way to achieve higher levels of commonality would be for planning schemes to be higher level policy documents, reflecting general planning policies but not discussing local details. This approach is equally undesirable as it would fail to provide the guidance, and certainty, demanded of the planning system.

Finalising interim planning schemes

As outlined in our earlier submission, we appreciate the desire to finalise the current process and ensure that somewhat modernised and consistent interim schemes are in place as rapidly as possible. However, given the significant implications that the zoning, use classes and development standards have for the future of all residents of a municipality, it is appropriate to ensure that all members of the community are able to have a say on the planning scheme. This is also consistent with the objectives of the RMPS.

For this reason, we do not support the proposal to remove the opportunity for Commission hearings following the release of the s.30J report. In particular:

- the proposal goes much further than the position articulated in the position paper, which proposed streamlining the assessment process by holding regional hearings and

providing the Commission with discretion to dispense with public hearings. Instead, the amendments remove the opportunity for public hearings (other than in the circumstances discussed below);

- the proposal will disadvantage representors in those municipalities where the deadline for public submissions has already closed. Those representors made submissions in the context of an expectation that they would be given a further opportunity to discuss their concerns at a hearing – had they been aware that the submission was their only opportunity to comment on the interim scheme, they may have approached their submission differently. For example, representors who are less comfortable articulating their concerns in writing may not have sought assistance to do so, on the basis that they were confident they could express their concerns clearly to the Commission at a hearing;
- the s.30J report may propose amendments to the interim scheme that significantly alter its potential impacts in relation to development assessment. Removing the right to be heard at a Commission hearing prevents affected parties (other than landowners and occupiers) from responding to proposed changes advocated in the s.30J report;
- the opportunity provided to owners and occupiers to seek an amendment of an interim scheme is too limited (see below);
- it is inappropriate to rely on amendment requests under s.33 to address concerns regarding interim planning schemes because:
    - the planning authority has discretion not to proceed with the request;
    - amendment requests must be signed by the landowner, preventing any opportunity for the public to challenge zoning changes supported by the landowner;
    - amendment requests are subject to a significant fee (currently around $300);
    - assessing ad hoc amendment requests, rather than addressing concerns as part of an integrated hearing process, will be inefficient and inconsistent with the objective of orderly planning.
- Any opportunity for judicial review by a person aggrieved by a decision to recommend authorisation of an interim scheme will be limited by the inclusion of qualifying statements like "if [the Commission] thinks it desirable to do so."

We strongly support retaining the provisions requiring public hearings in relation to interim schemes. At a minimum, an opportunity must be provided for representors to make further written submissions in response to the s.30J report, and for these to be considered by the Commission under s.30K.

Landowner amendment requests

In a recent speech, the Minister stated (in relation to this amendment):

> Any property owners who haven't had their issues resolved through this streamlined process can seek to change the zoning through applying for an amendment to the interim planning scheme.
>
> This means that in relation to the finalisation of the interim scheme process, property owners will still have their voices heard.
>
> I want to particularly stress this point that whilst ending the current process in a significantly reduced timeframe no one will be denied the opportunity to be heard as we work out way through this process. (emphasis added)

We acknowledge new provisions in s.33(5) which allow an owner or occupier to seek an amendment of the interim scheme and require this request to be considered by the Commission. However, we dispute the fact that providing an opportunity for landowners and occupiers to seek amendments means that "no one" is denied an opportunity to be heard.

Planning affects everyone and is, necessarily, a community-wide exercise. Landowners and occupiers are not the only ones who are impacted by zoning decisions – nearby neighbours will be affected by changing development rights in their area, coastcare groups are impacted by changes which would facilitate further residential incursions into sensitive areas and the interests of a variety of conservation groups are affected by changes to requirements in relation to vegetation clearance or protection of waterways.

As discussed above, the right to seek site-specific changes to the interim scheme also compromises any strategic basis for zoning decisions. The proposed s.33(5) does not restrict the time in which amendment requests can be made, so amendment requests may be made over the course of many months, leading to ad hoc assessments.

Furthermore, the provisions under s.33(5) are limited to landowners or occupiers who made a representation. Landowners who did not make a representation because they were happy with the proposed zoning advertised under s.30H, may be unable to seek an amendment under s.33(5) where the zoning under the authorised interim scheme differs from the advertised zoning.

In summary, we believe that the most fair and efficient mechanism to ensure that the objectives of the RMPS, and the principles of natural justice, are achieved is to allow public hearings in respect of interim planning schemes. Opportunities to streamline these hearings should be explored, but not at the expense of public involvement.

Thank you for the opportunity to comment on the draft legislation. Please do not hesitate to contact me if you would like to discuss any of our comments in further detail.

Kind regards,

Environmental Defenders Office (Tas) Inc.

Per

Jess Feehely
Principal Lawyer