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URGENT

Briefing on the Tasmanian Government's

'Proposed Changes to Planning Legislation Consultation Draft'

Attached is a file titled: Consultation Draft - Principles of Legislation (final).doc

This document fell off the back of a truck. It was probably written by the Department of Justice. There is no author attribution; the faceless arm of government reaches out. The name of the file says it all. This is what the Government intends to do. Please read this government draft to understand the situation. This letter represents our preliminary assessment of some of the worst features of the Government's plan.

The Government of Tasmania is intending to gut the Resource Management Planning System (RMPS) of Tasmania. They are intending to do this as a matter of urgency and before a groundswell of public opposition can cause an electoral backlash. In the event that no action is taken in the media and through Local Councils this set of positively preposterous proposals is intended to be legislated as soon as May 2009.

The minister responsible is David Llewellyn but it seems that the impetus for this proposed draconian set of changes has come from higher up such as Premier Bartlett.

For more background go to the Department of Justice website and read about Better Planning Outcomes and the more recent Review of the Planning System Tasmania. Note that whilst there has been a report from Better Planning Outcomes for some time only recently has the report for Review Of The Tasmanian Planning System Steering Committee Report (dated 13 February 2009) been produced, also attached to this email.

The Environment Association (TEA) Inc. is a stakeholder in such matters and has been working on planning outcomes for many years. We are conversant with the RMPS the RPDC and LUPAA.

There is a suite of legislation that comprises the RMPS and currently three organisations the Resource Planning and Development Commission (RPDC) and the Resource Management Planning Appeals Tribunal (RMPAT) and the newly formed Environmental Protection Authority (EPA), (which has already been compromised with an MOU with the Forest Practices Authority that has destroyed the arms length character). The former two organisations have independence but the March 2009 document 'Proposed Changes to Planning Legislation Consultation Draft' (which I refer to as the draft paper) makes it very clear that the arms length character of the RPDC is intended to be quashed, completely and utterly destroyed. The paper skirts around such a blunt description but that is the effect that would be foisted upon the RPDC by the proposal to convert it into a Tasmanian Planning Commission (TPC) and to meld the Department of Justice with the RPDC.

The draft paper may seem innocuous, with the word draft, but there is unlikely to be a final one, only legislation. We urge that people call for both a final consultation paper and more importantly that beforehand the draft be converted into a formal public consultation draft and released for public comment as per the recommendation of the

Review Of The Tasmanian Planning System Steering Committee Report and in the interests of continuing democracy. It is important to note that although this obviously arose out of the Review of the Planning System Tasmania in 2008 the draft paper does not say so.

The paper proposes substantial power for the Minister of Planning to intervene. This is outlined in Section 3 “Minister Call In Powers”. This is a further erosion of the RPDC’s independence as well as undermining of Local Government. The right of almost unfettered political influence is proposed to be built into the legislation.

The paper proposes legislative change that would effectively destroy local government planning schemes in the long term. It proposes three regional schemes, which would be introduced without consultation and put in place as interim schemes. Local schemes would have to be consistent with those three regional schemes.

Then there would be a comment and appeals period once the three regional schemes are in place. That appeals process would almost certainly be a sham and would be the one process for all three schemes. Note the following from the paper in section 4:

“That the planning schemes be able to be simultaneously put into effect as interim planning schemes immediately after they have been agreed to by the Project Sponsors with the statutory exhibition process to follow.”

“That the RPDC can consider all representations on the common standard provisions of the planning schemes in a single process.”

In other words the government intends to have a statewide planning scheme and local government is likely to be relegated to the role of processing development applications under a performance based criteria that would ensure a set of reduced opportunities for appeal on the grounds that the performance criteria have been met. Discretionary Uses would be reduced and Permitted Uses would increase.

Currently on the RPDC website one can find the Common Key Elements Template and Planning Directive 1 which forces Council planning schemes to OBEY. This was the start of a statewide planning scheme.

Local Government currently has its own Land Use Strategies but now it is proposed to have Regional Land Use Strategies and that would in effect override any local government strategy. It is clear that this will effectively replace the local strategies.

There is already supposedly a MOU between the Regional Partners, the host organisations of the regional schemes but these have not been made public. We doubt whether such MOUs actually exist but this paper states they do. The MOUs mentioned in section 4 of the paper should be the subject of an FOI application. Note it is described in the paper as a “state wide project”.

Note that the MOU objectives quoted in the paper avoid compliance with the RMPS and LUPAA objectives. This is a major failing. One could construe that such a failing means the current draft paper actually undermines LUPAA and the RMPS.

Note also in Section 4 that there are “Project Sponsors” We quote:

“That the planning schemes be able to be simultaneously put into effect as interim planning schemes immediately after they have been agreed to by the Project Sponsors with the statutory exhibition process to follow.”

It is not stated who the Sponsors of this project actually are. Are they the project developers waiting in the wings for the demise of the RPDC? What was the price of being a sponsor? Why are the sponsors not named in the paper? Are you wondering if decisions are being made behind closed doors? Pulpmills, Canal developments?

The removal of the independence of the RPDC though the proposals in the paper is comprehensive and leaves the planning system open to undue influence behind closed doors. The changes in effect increase the power of Government departments and Government Ministers to influence planning outcomes in a completely untransparent fashion. That is, this proposal gives more power to government and less power to the citizens of Tasmania. It completely destroys the current arms length arrangement of the RPDC. This fundamental change is a huge backward step and an erosion of democracy.

Currently State policies (such as PAL) have an independent assessment and public consultation process through the RPDC as well as being created in the Department of Justice. That is intended to become one process.

The Tasmanian Planning Commission is proposed to perform a policy advice role and the statutory functions of the RPDC. This is a conflict of interest and a most undesirable situation, which lessens the ability of the RPDC to stop a development. Thus if this set of proposals goes ahead the likely outcome is a sham of consultation whilst developers have a free for all.

Talking of free for alls, in the section of the paper on Projects of Regional Significance one can see that if developers pay \$20,000 they can have their project fast tracked past local government planning schemes. It is amazing that the Government is so cash desperate that they have to resort to coffer building by ripping off funds that should by rights go to local government.

The paper makes it clear that Ministerial influence will be required. It is dressed up as a “Ministerial Statement of Expectation”. That would be another destruction of the arms length characteristics of the current RPDC. It can also be read from the paper that politicians could be placed on The Tasmanian Planning Commission. Political influence would no longer be a backdoor effort but rather a blatant declaration of influence by people with party political vested interests. A disgusting abrogation of independence.

In section 6 of the paper (titled Future Miscellaneous Amendments) is perhaps the most draconian assault on persons that Tasmania has seen since its days as a convict colony. The Department of Justice is proposing to have the right to enter your home on the pretext of getting evidence over a planning breach. This is deplorable. Please note the following statement:

“a properly authorised officer to apply for the issue of a warrant to enter a house, where there is strong evidence of a breach of the Act or an instrument made under the Act such as a planning scheme;”

It is also clear that Councils would have far more power to pursue enforcement and to recover the cost of such enforcement from property owners. Unreasonably so.

Note the statement under section 6:

“The Government has also agreed to pursue the following amendments later this year. Further more detailed consultation will take place at that time.”

In other words this whole matter has been substantially progressed and yet there has been little described in public to warn Tasmanians of the impending erosion of their rights.

In Conclusion

Planning all over Australia is an area of increasing complexity requiring increased competence, staff and other planning resources. Many states have more complex planning with many more policies and vastly more resources devoted to planning policy than Tasmania. Tasmania has less people and development pressure and thus conflicts are often generally less but sometimes poor projects gain substantial objection.

In climate change terms Tasmania will be seen as a desirable location and although rural population is not anticipated to increase there is likely to be increased pressure to pursue developments in Tasmania. Giving such developments a fast track process is obviously seen as an economic measure and is likely to be sold as such.

But the Government in proposing to gut the RMPS and the RPDC would encourage development at the expense of community participation, would go against such indicators of public interest direction as the Tasmania Together goals and outcomes. It goes against the RMPS objectives and the reasonable checks and balances seem to be foregone.

The Review Of The Tasmanian Planning System Steering Committee 68 page Report’s (13 February 2009) first recommendation has been cynically ignored:

“THAT, in conjunction with the release of the Review Report, the Government makes public its assessment of the structure and performance of the current Planning System, its preferred changes to the system and explanations as to the benefits that are anticipated from those changes.”

Sending out the attached document ‘Proposed Changes to Planning Legislation Consultation Draft’ to local government as a fait accompli is not public consultation. The paper does not fulfil that recommendation even if they made it public.

The bottom line is that the proposed changes represent a plan to gut planning and reduce the proper democratic rights of people to stop unwise or harmful developments through appeals in Tasmania.

This needs a public outcry. Tasmanians need to let the Government know that they want to continue to live in a democracy. We should all demand that the Tasmanian Government’s ‘Proposed Changes to Planning Legislation Consultation Draft’ be released for public consultation with a proper comment period and a fully described and independently managed process.

Yours faithfully

Andrew Ricketts
Convenor