T h e E n v i r o n m e n t A s s o c i a t i o n (T E A) I n c
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14th November 2014

Members of the Legislative Council
Parliament House
Hobart
Tasmania 7000

By email to each member.

An Open Letter to Legislative Councillors

Concerning The Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014)

Dear Honourable Members,

We realise you are currently about to debate this Bill, being No 36 of 2014. We hope that you may genuinely consider our suggestions, proposals and take note of our reasonable and serious concerns.

We are very aware of the overall intent of this legislation and some of the ill-considered provisions of the Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014). We have however been unable to achieve detailed analysis to the whole of Bill No 36 of 2014, due to the unholy rush with which it has proceeded.

We also believe there is a raft of reforms, which could be legislated, to improve land use planning but mostly this Bill does not achieve those reforms. We also argue this is not a Streamlining Bill at all.

This letter attempts to be focused so we have attempted to not elaborate on all the minutia, but focus on the faults and the reasons that the Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014) would become another Tasmanian planning system failure, should you decide to pass it in its unamended state.

We consider that the LUPAA Division 1A process for creating Interim Schemes was probably always faulty, always bound to fail and manifestly incompetent from the very outset. The difficult question is perhaps whether it is possible to adequately reform Division 1A or whether it should be discarded in total.

Suffice to say we do not support several aspects of this Bill No 36 of 2014 at all, which in any case is not a complete remedy. There are some supportable improvements, such as the removal of the Dispensation process for example. We will focus in this letter on what cannot be supported and provide our reasons of objection as well as trying to foreshadow some of the unintended consequences.

We would strongly prefer to see the current, regionalised Interim Schemes finalised without this mostly unwarranted legislated interference.

Some of the aspects of the Bill No 36 of 2014 would mean that it would have unintended adverse consequences. But as it is hard to consider that the Government has any commitment to fairness at all, it may be it intends for LUPAA to actually become more unfair contrary to their stated intent. We are of the opinion Bill No 36 of 2014 is trashing fairness despite the hollow government rhetoric to the contrary.

Justice is a public interest issue: this legislation is unjust! We are making this representation to the MLC members purely on the basis of public interest urging you to take action to preserve the public interest intent of the existing LUPAA legislation.

Our position is very straightforward and unambiguous. We fully and completely oppose this unreasonable and undemocratic legislation wherever it either demonstrably or on balance makes the RMPS less fair, less just and less workable.

In a civilised democracy all people have a right to make representations, to effectively convey their views about matters of concern and to voice their opposition in a safe a proper fashion and to have those matters adequately considered. We would seek to defend any person's rights to make their democratic voice heard especially through the legislated processes afforded by the RMPS and LUPAA. It is the principle of the matter and it is most unwise to be removing mechanisms of public hearing rights.

In the main this legislation (Bill 36 of 2014) has been concocted in a pathetic attempt to deal with the unsolved Interim Planning Scheme debacle, poorly managed by the Tasmanian Planning Commission. Yet the Bill unwisely seeks to strengthen the powers of the TPC.

Bill 36 of 2014 is yet another unfortunate attempt that does not go to the heart of the matter. It does not create the much-touted single Statewide Planning Scheme. It does not get rid of RED and GREEN tape, whatever such pejorative terms may be considered to be (and we do not know to which planning aspects the government refers). Bill No 36 of 2014 is hardly even a step along the way. It will not solve the problem.

Worse, Bill 36 of 2014 disenfranchises the long-standing participation of stakeholders and undermines their trust in the RMPS. This trust is under threat because the Interim Schemes are already operational and the hearings have already been deferred to a time post the introduction of the Interim Schemes. So in essence the proposal to obliterate the hearings is an act of bad faith. Untrustworthy behaviour by political representatives and governments is unforgivable, intolerable and never forgotten.

We say these things with both some considerable disdain and dismay because the failures to resolve this land use planning matter are so repeated, so many times, so incompetent that we despair that Tasmania will ever find its way to adequate systems and policies that adequately govern and guide land use planning.

This legislation does little to improve this subject and makes a number of flawed and unjust proposals. Governments continue to ignore reasonable suggestions and proposals, which have been made over decades now.

Specific Clauses Criticised and Opposed

LUPAA Section 30K amendments opposed

In relation to the Land Use Planning And Approvals Amendment (Streamlining Of Process) Bill 2014 (No 36 of 2014), the Section 22 provisions, are proposed to amend LUPAA Section 30K.

Currently Land Use Planning and Approvals Act 1993 (No. 70 of 1993) (LUPAA) at Section 30K states: (note our emphasis)

> *"30K. Commission to consider scheme and representations and hold hearings*
>
> *(1) The Commission, after receiving a report under section 30J(1) in relation to an interim planning scheme –*
>
> *(a) must hold a hearing in relation to each of the representations provided to the Commission, in accordance with section 30J(3), in the report; and*
>
> *(b) may consolidate any of those representations and, if it does so, must hold a hearing in relation to the consolidated representations; and*
>
> *(c) may hold hearings in relation to other matters that it thinks fit.*
>
> *(2) The Commission, after receiving a report under section 30J(1) in relation to an interim planning scheme, must consider the applicable matters in relation to the scheme.*
>
> *(3) The applicable matters in relation to an interim planning scheme are –*
>
> *(a) the interim planning scheme itself; and*
>
> *(b) any documents in relation to the scheme that are provided to the Commission under section 30J; and*
>
> *(c) matters raised at any hearings in relation to the scheme under this section; and*
>
> *(d) the regional land use strategy, if any, for the regional area in which the scheme is to apply; and*
>
> *(e) any applicable State policy."*

Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014), Section 22 states:

> *"22. Section 30K amended (Commission to consider scheme and representations)*
>
> *Section 30K of the Principal Act (above) is amended as follows:*
>
> *(a) by omitting subsection (1);*
>
> *(b) by inserting in subsection (2) ", within 3 months or such longer period as the Minister allows," after "must";*
>
> *(c) by omitting paragraph (c) from subsection (3);*
>
> *(d) by inserting the following subsection after subsection (3):*
>
> *(4) After considering the applicable matters in relation to an interim planning scheme, the Commission must consider whether to, and may do, either or both of the following:*
>
> *(a) if an authorisation may be issued under section 30IA in relation to a provision of the scheme (including the zoning of an area of land), issue a notice under section 30IA(1) recommending to the Minister that an authorisation be issued in relation to the provision;*
>
> *(b) seek the approval of the Minister under section 34(2) to the giving under that section of a written direction to a planning authority in relation to a provision of the scheme (including the zoning of an area of land)."*

Adverse Consequences and Issues of Concern over Section 22 of the Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014)

We are firmly and implacably opposed to Section 22 of the Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014).

We contend that the hearing process (which is non-adversarial) run by the Tasmanian Planning Commission, regarding draft planning schemes, interim schemes and scheme amendments is an intrinsic part of the RMPS. Why in formulating such an amendment would a government seek to remove only the Interim Scheme process from that intrinsic right to a hearing, when that is obviously the very one most in need of enlivening in justice terms, in terms of procedural fairness?

There would be many adverse consequences of Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014 (Bill No 36 of 2014), Section 22. Those adverse consequences deserve to be identified, to have some explanation and become better understood:

1. The effect of Bill No 36 of 2014's Section 22 is clearly and indisputably to discourage public involvement and discourages the sharing of responsibility too. Thus this Bill is against objectives of The Acts under the RMPS.

2. The effect of Bill No 36 of 2014's Section 22 is clearly and indisputably to nullify the advice currently available on the TPC website. Advice people will have relied upon in making representations to the 28 interim schemes over many years.

3. One effect of Bill No 36 of 2014's Section 22 would be to diminish the TPC's capacity to consider the real intent of representors as it will have no means of ascertaining and confirming what the representor intended and no means of clarification is actually envisaged at all under Section 22.

4. There are already a large number (several hundreds) of representations made to Interim Schemes currently waiting for a hearing in Northern Tasmania. Importantly those people have a rightful expectation of their matter going to a hearing and being adjudicated in the proper manner.

5. This Bill No 36 of 2014's Section 22 diminishes the ability for multiple stakeholders to argue competing views over a particular part of a planning scheme and diminishes the Commission's ability to gain information that may elucidate and bring a better outcome including relevant considerations, which should be considered.

6. This Bill No 36 of 2014's Section 22 would increase the power of the Tasmanian Planning Commission to make executive decisions over local government planning schemes. The Tasmanian Planning Commission has for some time been struggling to argue its case (against local governments) adequately and so it seems now there is now resort to some heavy-handed interference rather than employing smarter staff.

7. The Bill No 36 of 2014's Section 22 unwisely and unreasonably removes the ability of Local Governments to elaborate on their LUPAA Section 30J reports as Planning Authorities. We argue that a review of those section 30J reports would

show that they are not complete assessments of the representations into the draft interim planning schemes. The reduction in timeframe proposed for LUPAA Section 30J reports by the amending Bill No 36 only makes the situation worse and is not supported. It may be faster but it is not more intelligent and it is not relevant given the time needed to create a planning scheme. It is against sound planning.

8. The Local Government Section 30J reports, in some cases, represent an amendment recommendation to the Interim Scheme and that recommendation may represent a difference, which is not supported by other representors and thus competing views may need to be argued in some instances. Without a hearing this cannot occur. It is important to recognise that the Section 30J report is merely a summary which indicates an acceptance or otherwise by the Planning Authority. It cannot be construed as a representation of any one person's submission.

9. So this lack of a hearing for all the parties as proposed in Bill 36 of 2014's, Section 22, can compound problems caused by the very nature of the Interim Scheme process, which we would describe as inherently unjust.

10. The Tasmanian Planning Commission knows the LUPAA Interim Scheme process is inherently faulty. We pointed it out in 2008 or so when the Regionalised Scheme amendment process was being introduced.

11. The Tasmanian Planning Commission would possibly unreasonably get to prevail over its faulty concept of rigid adherence to "direct translations" of old schemes into new. In this regard we are aware there has been significant difference of opinion over this matter; it is unbelievable and not supported. Northern Tasmania Development had sought and obtained legal advice and has published same. We enclose that legal advice of 17 August 2012 to Mayor, Barry Easther, Chairperson, Regional Management Committee, Northern Regional Planning Project, Northern Tasmania Development, for your reference and consideration. On the other hand the TPC has refused to release its legal advice. We can only assume it knows its advice is largely hopeless. Such legal advice to a government department such as the TPC should always be disclosed when it affects the public interest, such as all the new planning schemes around the State. The DoJ (Solicitor General) advice referred to above should be provided to a Select Committee of the Legislative Council, which we consider to be required in this instance. One way or the other this matter of "direct translations" of old schemes into new must be addressed and this should happen in a hearing process. The concept which needs to be cherished is that new schemes, whether created under Division 1 or Division 1A can be brave new schemes with new zones and new provisions, in essence NEW schemes must be able to be created in Tasmania. One does not need new legislation to gain a new approach, the discretion afforded in the legislation provides the TPC with sufficient control to stifle any development initiative.

12. Because the existing regionalised process (to create new schemes), now in train for several years, with the declaration of Northern Region and Cradle Coast Regional Interim Schemes and their various Section 30J reports, it would be grossly unjust to the participants (which includes Local governments) to now truncate it.

13. The proposed Bill No 36 of 2014's Section 22, amending LUPAA is a complete denial of procedural fairness for those already involved. We do not have the exact

numbers of representors affected and disadvantaged but it will be hundreds, especially if you add the Southern Interim Schemes. .

14. In essence this Bill's Section 22 in relation to LUPAA Section 30K represents a retrospective amendment. This fact is indisputable. It is not streamlining as is claimed and so this aspect may be a misrepresentation. It is removing existing rights. That is not streamlining. That is gutting.

15. The Bill 36 Section 22 amendment of LUPAA's Section 30K would not only permanently and unfairly remove the rights for a representor to an Interim Scheme to attend a hearing but would also relate to any future Interim Scheme as well. In other words it is a permanent diminishing of the RMPS in relation to Interim Schemes. It should be noted here that a TPC official refused Planning Authorities the option of proceeding with a Division 1 scheme and thus forced it to develop an Interim Scheme.

16. The Bill 36 does NOT amend LUPAA to remove the ability for a Planning Authority to create Interim Schemes which we argue remain the core of the problem. Thus the TPC could mandate more Interim Schemes, such as a single statewide planning scheme and if it were an Interim Scheme, the people of Tasmania would have no recourse to a hearing to a scheme covering all 29 municipalities. That would be an outrage.

17. Long-standing representations to LUPAA Interim Schemes, are in essence, cynically proposed to be diminished and nullified because the representors will simply not be able to explain their points in a hearing. The remedy proposed by Bill 36 of 2014's, Section 22, amending LUPAA Section 30K is thus discriminatory and abhorrent. It favours the pre-arranged outcome of the Tasmanian Planning Commission over both the Planning Authority and the representor's representation, which is rarely fully explained or complete. Thus the retrospective intent of Bill 36 Section 22 represents a breach of good faith and a misdirection to the public participants in the RMPS.

18. The proposed removal of a hearing by claiming that it would take years to hold hearings is spurious. Firstly, many representations would have been adequately accommodated by way of the Planning Authority's LUPAA Section 30J report and any associated adjustments, secondly some people will have died whilst they were waiting and some will have moved, thirdly for some it will no longer be important, fourthly some representations simply relate to the correction of errors and can be simply dealt with, some will have given up and then lastly, there will be those raising similar concerns raised across the region which can be heard together, sensibly gaining consistency in one hearing decision whilst saving considerable time, cost and energy. Some of those will be public interest issues and some will be local landowner type issues of neighbourhood concern and they may also overlap .

19. Launceston's Interim Planning Scheme was in essence a draft, which we argue should not have been approved by the Minister on the recommendation of the TPC. It was merely a DRAFT scheme and now represents an inadequate interpretation of the now updated Northern Regional Land Use Strategy (NRLUS). Thus the effect was to see a very long and drawn-out hearing process, which may have prejudiced the TPC's thinking. That process will have resolved several issues and will impact on reducing hearing times for the remaining schemes but because of unwarranted TPC approval that Scheme no longer meets

the updated NRLUS and so cannot fully be used as a template. The outcome of the TPC hearing into the LCC Interim Scheme should be published now.

20. Importantly, if it was good enough that Launceston's draft style Interim Scheme had its own hearing then there can surely not be discrimination against all the other Interim Schemes or indeed there should be no government (or TPC) resistance to regional hearings for those other equally valid interim schemes and those equally valid representors and planning authorities. We loathe discrimination.

21. Bill No 36 of 2014 has the potential to undermine the Regional Memoranda of Understanding. Is it proposed that this regional mechanism be renegotiated?

22. In relation to the Cradle Coast Interim Schemes, the TPC has malfeasantly bodgied up what in essence is a non-hearing solution (after holding a sham directions hearing on the 22nd October 2014) in breach of The Act. So when it serves its purposes the TPC ignores the legislated obligations such as Section 30K. The Act clearly provides: "*(1) The Commission, after receiving a report under section 30J(1) in relation to an interim planning scheme – (a) must hold a hearing in relation to each of the representations provided to the Commission, in accordance with section 30J(3), in the report"* Even when the TPC does not have the Discretion it flourishes in a sea of dealings behind closed doors. Such malfeasance should not be condoned though legislation, which disadvantages representors and Councils.

23. The TPC after reading representations (and not holding a hearing) could simply impose its view about a Planning Authority's Scheme provisions without discussion and then impose it via approval of the Minister. Such an unfair outcome would be very unfortunate.

24. Bill No 36 of 2014's Section 22 actually, stupidly, gets rid of hearings into Interim Schemes.

25. No benefit accrues by enacting Bill No 36 of 2014's Section 22 unless you believe it is more important to bestow more money to horse racing than land use planning. For sure it costs something to hold hearings; it is an investment in the future not only by the government but by the representors and planning authorities as well. Cheap and nasty is not the hallmark of sustainability. Tasmania needs high quality land use planning not streamlined planning. The reason we need this is so as to take full advantage of Tasmania's special qualities and intrinsic opportunities. After all what other strategic advantage does a well paid but relatively poorly educated populace have to offer on a bunch of islands at one of the ends of the planet. For too long Tasmania has missed the opportunity and streamlining of planning systems (which was poorly attempted in 2008) will become another missed opportunity.

26. We have contended the removal of the hearing process under Bill 36 of 2014, Section 22, would likely not resolve adequately a range of representor issues. This has been foreshadowed but the consequences not adequately considered. These unresolved issues would be allowed to be the subject of a planning amendment (which anyone can actually make right now) and thus each amendment would in that case become a separate hearing process for all concerned. So the opportunity to hold a combined hearing into multiple schemes and around issues which affect multiple representors is lost and may result in hearings over similar matters occurring at different times as they may be initiated

at different times and for different schemes. Another unforeseen consequence is that unresolved matters may become enlivened as appeal matters to developments and therefore may end up in the RMPAT and thus incur legal representation, have potential for costs awards and be far more litigious and adversarial.

27. One of the benefits of the Interim Planning Scheme hearing process is that it was designed to be non-technical. Tasmania, Australia's most poorly educated state with the lowest literacy rate should not remove the hearing process, which allows ordinary people to come and air their concerns verbally. Indeed we argue it is against the public interest for this reason alone. Please bear this particular fact in mind when considering the importance of meeting the RMPS objective of: ·"*to encourage public involvement in resource management and planning"*. In fact we want to know the relevant consideration as to how the removal of the hearing process better supports the above objective of the RMPS in Australia's least literate state?

We argue that all these deficits and unforeseen consequences would lower confidence in the RMPS, damage Tasmania's brand, exacerbate conflict and increase the cost of the planning system whilst increasing uncertainty.

This Bill No 36 of 2014's, Section 22, would inevitably create a poorer RMPS with almost inevitable consequence of poorer outcomes in the finalisation of the 29 Interim Schemes and there are likely to be angry, aggrieved representors. It will possibly harm the relationship of representors with local governments who will probably cop the blame.

Tasmanians who have spent time working on interim planning schemes and making representations in good faith should continue to have a right to attend a hearing and further emphasize or clarify their representation, especially if the issue of concern has not been resolved at the Section 30J Council report stage.

If the Interim Schemes, which are operational, had been done as Division 1 Draft Schemes (a process still in place) then LUPAA Section 27 (2) would apply. It states (with our emphasis),

> *"(2) For the purposes of its consideration under subsection (1), <u>the Commission must hold a hearing in relation to each representation contained in the report.</u>"*

LUPAA Section 27(2) mandates a hearing for LUPAA Division 1 Schemes where a draft is produced and then advertised. It must be noted that the Division 1A Interim Scheme process was already a reduction in rights, a reduction in fairness and now the government wants to further diminish the rights of Tasmanians by quashing the LUPAA Section 30K right to a hearing. It is unacceptable and unwise.

Bill No 36 of 2014, as an amendment to LUPAA, Section 30K, is almost certainly in breach of the spirit and intent of the Land Use Planning Approvals Act (LUPAA) itself and the Resource Management Planning System (RMPS) Objectives, which have for over two decades underpinned the land use planning system in Tasmania.

> *The objectives of the RMPS are:*
>
> - *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity*
> - *to provide for the fair, orderly and sustainable use and development of air, land and water*
> - *to encourage public involvement in resource management and planning*

- *to facilitate economic development in accordance with the objectives set out in the above paragraphs*
- *to promote the sharing of responsibility for resource management and planning between the different spheres of government, the community and industry in the State.*

Regarding Section 22 of the LUPAA Bill No 36, you should understand that the government is proposing to remove the already established and in-train hearing process for representors under LUPAA, Section 30K, in regards to the current batch of operational Interim Schemes.

What does the Tasmanian Planning Commission say about representations and hearings?(see: http://www.planning.tas.gov.au/library_and_information/planning_documents/representations) (and note our emphasis)

"Why make a representation

By making a representation you can express your opinion, contribute knowledge and make suggestions. You may have useful information, especially if you know the area well, or have particular expertise about the issues.

Your representation can help assessing documentation on the matter and may assist the Commission in writing its report.

Do not think that you are only 'one voice' and that you will not make a difference. Experience has shown that one well-reasoned representation which raises a valid concern or offers constructive suggestions can be very helpful to the Commission in assessing the matters.

What to say in a representation

There is no set length of a representation. You may agree or disagree with, or comment on the matter and issues raised. It is helpful to provide reasons and / or evidence for your conclusions.

Making your representation effective

- *Make sure your comments are legible. Preferably, they should be typed on unbound paper. Any maps or figures should also be legible (faxed maps may be hard to read).*
- *Clearly state the title or any other identifying reference numbers in the heading or cover page of your representation.*
- *Provide current contact details if the Commission needs to get in touch with you to seek clarification.*
- *Where relevant, identify any special interest you have in the proposal or matter.*
- *Be brief, simple and clear. Organise your thoughts logically. Use dot points and headings to organise your ideas.*
- *Be specific, rather than general.*
- *If you are commenting on specific text within the proposal or matter, mention the section number and heading used, where relevant.*
- *For a development proposal, state clearly whether, and how, you believe the proposal would have significant environmental, economic or social impacts. Be specific by stating which aspects of the proposal could affect relevant issues.*
- *For other matters, clearly set out any comments on particular clauses or parts of the matter about which you may have concerns.*
- *If you believe the information in the proposal or matter is misleading or incorrect, you should state the reasons why and provide correct information, if available.*

- *Be constructive in your comments, such as offering alternative wording or solutions to problems.*
- *Give the sources of any important factual information, such as scientific reports, used in reaching your conclusions. Alternatively, attach copies of this information.*
- *Include a summary of the main points if your representation is longer than a few pages.*
- *Provide comments by the due date to the address given in the public notice inviting representations.*

Things to remember

When making your representation remember to include:

- *your name*
- *your address*
- *your email address, if available*
- *the date you made the representation*

Public document

The Commission will publish all representations on this website, once the closing date for representations has passed.

The representations will only have the name of the author, if it is from a private individual, but will show the address details if the representation is from an organisation.

All representations will be treated as publicly available, unless the Commission considers that there is a legitimate commercial or other reason for confidentiality.

Defamatory representations will not be accepted, nor will they be published.

If you wish your representation to be considered as partly or wholly confidential, then this should be requested in the representation, together with reasons for this request.

What happens next

You will receive a short acknowledgment letter once the Commission has received your representation.

The Commission will read your representation and may invite you to appear at a hearing to discuss the representation further. The Commission will then consider all representations and evidence presented at hearings before writing its report on the matter. As part of its report, the Commission may recommend changes on the basis of representations and evidence at hearings."

Thus there is a clear statement on the TPC website as of the 13th November 2014 regarding representations and hearings. It is obvious that there is not an expectation on people to provide highly technical representations. There is also a concomitant recognition that people would be able to reasonably clarify their representation and the intent thereof at a hearing.

We wish to urge The Upper House to completely discard the LUPAA Section 30K amendment from Bill No 36 of 2014. Instead the Tasmanian Planning Commission should simply get on with the valid task of efficiently and concurrently holding combined regional hearings into the Regional Interim Schemes now.

We wish to warn the Legislative Council that the Clause Notes to Bill 36 of 2014 are inadequate being often vague and imprecise. We do not support such sloppy work and the point of the warning is to urge you to not rely on the clause notes. We will not be further critiquing them and have chosen to not rely upon them.

The Fact Sheet for Bill 36 of 2014 is also poorly worded. Take this paragraph for example:

> *"Removing the requirement for the Commission to hold a hearing on each representation made in relation to an interim scheme and providing instead that the Commission may first consider the matters based on the written representations and then seek the Minister's approval to make certain amendments to the scheme that do not require a further public process because it is satisfied the public interest is not prejudiced, and or to direct a planning authority to initiate an amendment that includes a public hearing process, in relation to other representations;"*

Whoever wrote this drivel, it should be criticised.

The TPC and DoJ know full well there is the capacity for combined hearings into the regionalised interim schemes and that they can and would hold hearings into a region's interim schemes and would bring the various representors over a particular issue into the hearing on the one occasion. Why should the Minister be making calls over whether a scheme should be altered? Lets be honest it is simply the TPC.

Concerns over LUPAA Section 43 Amendments

The Bill 36 of 2014's Section 35 proposes LUPAA Section 43C be amended (Applications referred to in section 43A) LUPAA Section 43 applies where there is a combined planning scheme amendment and development application. We wish to oppose the provision:

> *"Section 43C(1) of the Principal Act is amended by inserting ", in its opinion" after "authority"."*

We consider it most unwise to water down LUPAA Section 43A, as this Section amends planning schemes in combination with a planning application for a development. So really in such a circumstance there is no room for "opinion". Either the TPC knows or it does not. Just imagine if we start deciding on planning matters based on mere "opinion"!

The Bill 36 of 2014's Section 37 amendment results in a LUPAA Section 43EA being inserted. That is: After section 43E of the Principal Act, the following section is inserted in Division 2A:43EA. Review of request for additional information.

The nature of this provision is such that we consider it reduces the impartiality of the TPC in any upcoming hearing process as it has already started to review the adequacy of the Planning Authority.

Our view is that consistently it appears the TPC does not have confidence in the Planning Authorities around the state. It is probably a Colonial administration legacy.

If a Planning Authority, staffed by highly qualified professional officers cannot be trusted to exercise its discretion over a request for further information in the public interest, what hope is there for the RMPS? Either local government has sufficient professional resources and can be trusted or it cannot. If it cannot then this is just the tip of the iceberg. This is an unnecessary provision, which complicates and adds more TPC tape.

Concerns over Permitted Subdivisions Part 3 of the Bill. This is the Local Government (Building and Miscellaneous Provisions) Act 1993.

We would definitely support a fair and reasonable process to achieve the amendment of the Local Government (Building and Miscellaneous Provisions) Act 1993, which is very old legislation derived from the 1962 Local Government Act. This legislation needs the big overhaul.

We do not however support the current (Bill 36 of 2014) amendments in regards to subdivisions, especially where they provide the ability for Permitted Use subdivisions.

However in general we believe the amendments are poorly worded with the consequence of unintended problems. We set out our concerns below.

I refer you to Mr Sean McElwaine's letter to the GM of Meander Council dated 10th October 2012, enclosed. You can see here there is considerable contention over how to proceed in this area. We urge caution and believe that this rushed legislation has the strong potential to deliver poor outcomes. Why must the government introduce and rush through legislation when it basically dates back to the 1962 Local Government Act?

One would have thought that when amending, what is in effect 1962 legislation, the Government would have had the decency to have a properly advertised and public process, especially when it is over something as important as subdivision. Again adequate public consultation meets RMPS objectives. The Planning Reform Taskforce still has not published anything on its website.

If the Government's intention is to give the green light so a planning application for a subdivision could be for a permitted development we are enormously concerned. Subdivisions have never been Permitted before. It is like releasing the floodgates and likely would result in poor planning outcomes.

It is important that Planning Authorities have the local control over the urban sprawl, which would account for the majority of subdivisions and that they can have the power to exercise discretion in all subdivision cases unless perhaps it is merely a boundary adjustment with no new lots to be created or maybe simple ones in urban infill areas onto already constructed streets.

You should be aware that in some places there is virtually no more infrastructure capacity and in such a case a Planning Authority needs to exercise its discretion in pursuing sustainable development objectives when considering subdivisions. Does one have a planning system that allows subdivisions in places where drinking water has to be boiled and or where sewerage disposal capacity is near full?

The Interim Schemes have not necessarily been designed for this legislative change.

Broader Planning System Issues

We urge an open inclusive design process canvassing broad reform proposals to Tasmania's planning system in such a way so the whole Tasmanian public has an informed opportunity to make comment. The obvious reform would be to bring all land use planning related legislation under and into the RMPS system, enhanced and guided by a full and fair set of State Policies.

Interestingly there is a connection between the Workplaces (Protection From Protestors) 2014 Bill, which diminished the rights of citizens who clearly have, we would argue, limited rights of redress over certain land use planning issues and the current Land Use Planning and Approvals Amendment (Streamlining of Process) Bill, 2014 (Bill No 36 of

2014). It is all land use planning or rather the absence of a resolution of conflicts around land use planning. People protest because they have been denied adequate, fair and reasonable legal redress.

To those MLC's who voted for that anti-protest legislation please consider what happens when you fail to uphold the laudable objectives of the RMPS in a genuine way and in so doing further reduce redress and increase the potential for conflict.

Governments and the Tasmanian community should at this stage be having a consultative conversation about what the design of a modernised planning system should look like, as well as what needs to be fixed, improved, added or removed etc. But sadly Tasmania does not seem to be capable of having such a strategic discussion, notwithstanding the objectives of the RMPS. But that aspect is not the focus of this letter.

Conclusion

The government, seemingly guided by lobbyist, Ms Massina, now in the Planning Reform Taskforce, is shamelessly running roughshod over everyone's rights. For example Local Government comment on the draft Bill No 36 of 2014 was open to local government for the stunningly ludicrous period of five business days. Why? How does that give rise to good legislation? This one aspect alone is shameful.

This government plan so far, is not being fairer, unlikely to make planning appreciably faster, certainly not significantly cheaper and most definitely neither better nor smarter. It is obviously substantially less fair, less just, less adequate, poorer and dumber. Mark our words it is shaping up to be not only a sham but also a shambles.

Land Use Planning is critically important to the State and it is an increasingly sophisticated professional discipline and an area of increasing competence in sustainability terms of our society. We still have a long way to go. In the past we had open slather and now there is a modicum of control, standards, acceptable solutions and other prescriptions. If you need to confirm how primitive Tasmanian land use planning is, just go and look at the land use planning systems currently in place in the UK. Tasmania still has a long, long way to go.

For a long time Tasmania has devoted a low amount of resources to land use planning. Much lower than most other states. Even after over 20 years of the RMPS's operation there are few State Policies. There is certainly no balanced suite of State Policies to guide at all. Compared with other states Tasmania's RMPS planning system is very basic and relatively primitive and now the proposal is to dumb it down. Well if it gets dumbed down Tasmania will become a poorer place to live.

Recently I heard that the Tasmanian Government gave vastly more funding to horse and dog racing than to land use planning. Is it some $5 million to planning and $32 million to racing? Is that wise in the long run? High quality land use planning is an extremely important resource – unless people happen to be content to have a slum.

But what is occurring here with Bill No 36 of 2014 specifically in terms of public participation is an anathema to achieving sound land use planning. It is most unwise to close off the hearing process for Interim Schemes retrospectively and we would argue it would be unwise to do so for the finalised, but yet to be declared Southern Schemes, which are sitting on the Minister's desk awaiting approval and which, seemingly in a fit of manipulation, are not going to be declared any time soon. Note The Minister can basically sit on something for as long as he likes. It is a sham.

We strongly encourage you to more carefully and fairly consider this inadequate and unnecessarily unjust Bill preferably by way of a Select Committee so that the Public and hundreds of Stakeholders, would have a fair and just pathway to make detailed comment, critique and suggestions on this Bill which in part is a very inadequate and offensive set of legislative proposals that would erode our rights established under the RMPS.

In the final analysis, our fundamental and well principled criticisms; which we contend are sound and well reasoned, should give rise to the Bill No 36 of 2014 being amended. We believe the Legislative Council should vote down the aspects of this Bill including the Bill No 36 of 2014, Section 22 which would provides for a LUPPA Section 30K amendment and the poorly designed ad-hoc revisions over subdivisions.

TEA does support the finalisation of the 29 Interim Schemes in a fair and proper way, not as Bill 36 of 2014 envisages. Indeed we think we have already proposed a sound way forward which doesn't even need new legislation. Hold combined regional hearings make proper decisions based on the evidences and amend and declare the schemes.

The public interest will be prejudiced in the event you provide support of the non-hearing scenario into the currently operational Interim Schemes. There are simply too many complex issues to be handled in any other way than in a hearing.

Yours sincerely

Andrew Ricketts
Convenor

The Environment Association (TEA) Inc is a not for profit, volunteer based, regional environment community association and although not invited to participate we assert we are a stakeholder in this land use legislation process.

TEA has a long-term interest in environmental, social and land use planning outcomes in our region, Northern Tasmania. We have long worked on various land use issues including planning schemes, strategies, so called legislative reforms, heritage issues, scenic protection and the lack thereof, catchment management, forest conservation, biodiversity and forestry issues.

The Environment Association has worked in the public interest since its inception in 1990. As one of only two rural based environment centres in Tasmania, The Environment Association (TEA) is a long-term independent stakeholder in any resolution to complex land use conflicts in Tasmania.

TEA is not represented by any other conservation organisation, formally or informally. Accordingly we consider it vital to put our position.

Please Note: We reserve the right to publish this submission at any stage and in any forum or form.