

Australia is a liberal democracy. This means Government is based on notions of individual freedoms, justice, tolerance of opposing ideas and representative government. Four key ideas of Australian democracy include:

- Active and engaged citizens,
- an inclusive and equitable society,
- free and franchised elections,
- the rule of law for both citizens and government.

Applying these ideas to implementation of the Kingborough Biodiversity Policy and its inclusion in the Tasmanian Planning Scheme, KIPS, for me, raises a number of red flags, especially when I read,....

“The benefit of having these two documents ... formally incorporated into the planning scheme is that they form part of the scheme..... For example the building code of Australia and the Australian Standards have their own statutory standing.”

.... “It should be noted no objections were raised during that exhibition period.”

Local Government Act Section 20. **Functions and powers**

(1) In addition to any functions of a council in this or any other Act, a council has the following functions:

- (a) to provide for the health, safety and welfare of the community;
- (b) to represent and promote the interests of the community;
- (c) to provide for the peace, order and good government of the municipal area.

(2) In performing its functions, a council is to consult, involve and be accountable to the community.

It appears to me that Kingborough Planning Authority is seeking to validate its Biodiversity Policy through the TPC because it does not want to or cannot validate its existence through the Local Government Act by which it operates. That no objections were raised during the display of the interim planning scheme does not signify agreement with the policy. It seems to me that this represents an abject failure in terms of engagement, inclusion and freedom. It certainly indicates that the it has not met the requirements of its functions and powers. In our democratic society we expect robust debate, lack of engagement is cause for great concern and is often indicative of a sense of powerlessness and hopelessness.

So what does the Local Government Act say about creating charges of whatever nature.

73. Sources of funds

A council may raise funds in any one or more of the following ways:

- (a) by imposing rates, fees and charges;

In terms of a biodiversity charge, fee, tax, however described, it seems to fall under Division 5 – Separate Rates and Charges. There constraints around the establishment of such a charge. E.g. 100 (3) A separate rate or separate charge must not be made

more than one month before the beginning of the financial year in which it commences, but may otherwise be made at any time during a financial year.

(7) A separate rate or separate charge must not be continued for a period of more than 5 financial years unless, in the fifth financial year –

(a) the council resolves to continue the separate rate or separate charge under [subsection \(4\)](#); and

(b) the separate rate or separate charge is reviewed in accordance with [section 105A](#).

101. Intention to make separate rate or charge

(1) Before the council makes a separate rate or separate charge, including a separate rate first-mentioned in [section 105](#), the general manager is to –

(a) make all reasonable attempts to notify all ratepayers likely to be affected by the making of the separate rate or separate charge; and

(b) notify the council's intention to make the separate rate or separate charge in a daily newspaper circulating in the municipal area.

(2) A notification is to –

(a) state the area to which the separate rate or separate charge is to apply; and

(b) state the purpose for which the separate rate or separate charge is to apply; and

(c) state the amount of the separate rate or separate charge; and

(ca) state the date from which the separate rate or separate charge is to apply if that date is before the date on which it is made; and

(d) state the period during which the separate rate or separate charge is to apply; and

(e) invite the ratepayers, owners and occupiers of affected land to make submissions in accordance with [section 102](#); and

(f) advise that ratepayers of affected land may present a petition under [section 103](#).

105. Separate rate or charge for same purpose

A council must not make a separate rate or separate charge for the same, or substantially the same, purpose as that of a separate rate or separate charge that the council has applied at any time in the previous 5 financial years unless it conducts a review of that previous separate rate or separate charge in accordance with [section 105A](#).

105A. Review of separate rate or charge

(1) A review of a separate rate or separate charge is to include an assessment of the particular benefit of the separate rate or separate charge to –

(a) the affected land; or

(b) the owners or occupiers of that land.

(2) Before undertaking a review, the council is to –

(a) notify the ratepayers of the affected land of its intention to conduct the review; and

(b) publish notification of that intention in a daily newspaper circulating in its municipal area.

(3) Notification published under [subsection \(2\)\(b\)](#) is to include an invitation to the ratepayers, owners and occupiers of the affected land to make written submissions in respect of the review within 30 days after publication of the notification.

(4) In deciding, following a review under this section, whether or not to make or continue a separate rate or separate charge, a council must take into account –

(a) any submissions made under [subsection \(3\)](#) ; and

(b) the outcomes of the review.

106. Refund of separate rate or charge

(1) A council is to refund any revenue raised by the payment of a separate rate or separate charge to affected ratepayers if–

(a) the council resolves not to carry into effect the purpose for which the separate rate or separate charge was imposed; or

(b) there is an excess of funds over the amount required for that purpose.

(2) Any refund is to be paid to the affected ratepayers proportionally according to the amounts paid by each of them.

(3) Instead of refunding an amount to a ratepayer, a council may credit that amount against any other rate or charge payable by the ratepayer.

Then there is the following section:

Division 3 - By-laws in respect of certain matters

168. Fees and licences

A council may make by-laws prescribing –

(a) fees, charges and rents in relation to a service, works, undertaking, property, matter or thing; and

(b) the purposes for which, and the conditions on which –

(i) permits, licences, authorities and registrations may be granted by the council; and

(ii) a service, product, commodity or information may be given by the council; and

(c) the manner in which applications may be made for permits, licences, authorities and registrations; and

(d) the fee payable for the permits, licences, authorities and registrations and for their renewal.

It appears to me that Kingborough Council has failed to meet its statutory obligations under the Local Government Act 1993 and because it has implemented a biodiversity offset tax/ charge since 2004 it is hard not to think that it is attempting to circumvent proper processes.

I am also concerned that kingborough constituents have been advised that because something is already in the interim planning scheme, it has been approved and hence is not subject to review. If this is the case then it means that any oversight, or mistake will be compounded ad finitum. The Lands Use Planning and Approvals Act Section 81AA allows for the correction of mistakes.

Of course the Kingborough Council can add a document to their section of the Stawide Planning Scheme, however, it can only do this if the content of the document is consistent with the requirements of the Act.

(5) A regional land use strategy may incorporate or refer to any document prepared, by a planning authority in respect of a municipal area to which the regional land use strategy relates, for the purposes of reflecting the application of the regional land use strategy to the municipal area.

5. Objectives to be furthered

It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in [Schedule 1](#) .

(3A) The Minister, having received advice from the Commission, must not declare a regional land use strategy unless he or she is satisfied that it –

(a) furthers the objectives set out in [Schedule 1](#) ; and

(b) is consistent with each State Policy; and

(c) is consistent with the TPPs.

PART 1 - Objectives of the Resource Management and Planning System of Tasmania

1. The objectives of the resource management and planning system of Tasmania are –

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in [paragraphs \(a\)](#) , [\(b\)](#) and [\(c\)](#) ; and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In [clause 1 \(a\)](#) , *sustainable development* means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

