

TASMANIAN PLANNING COMMISSION

Draft Planning Directive No. 10

Exemption for Display Homes

Report to the Minister under section 12(5) of the
former provisions of the *Land Use Planning and*
Approvals Act 1993

November 2023

Executive Summary

1. In May 2023, the Minister for Planning, the Hon. Michael Ferguson (the Minister), directed the Tasmanian Planning Commission (the Commission) to undertake an assessment of draft Planning Directive No. 10 - Exemption for Display Homes (the draft PD).
2. As an interim measure, the Minister issued Interim Planning Directive No. 7 - Exemption for Display Homes (IPD7), which became effective on 19 July 2023. The IPD7 applies the same provisions as the draft PD.
3. The draft PD applies to all interim planning schemes and the Sullivans Cove Planning Scheme 1997.
4. The draft PD seeks to apply an exemption for display homes, enabling an existing dwelling to be used as a display home for up to three years without requiring a planning permit.
5. The Commission delegated the assessment of the draft PD to a Panel. The draft PD was exhibited from 2 August to 13 September 2023 with three submissions received. The hearing was held in Hobart on 20 November 2023.
6. Supporting documents provided by the Department of Premier and Cabinet (State Planning Office) stated that the intent of the draft PD was to provide clarity on which use class applies to display homes.
7. The Commission considers the draft PD furthers the objectives of the Act as set out in Schedule 1 as it provides for the fair, orderly and sustainable use and development of land and facilitates economic development by supporting the housing development industry.
8. The Commission considers that the impacts to residential amenity associated with display homes are minimal, as they are typically relatively low in number and visitation in the current Tasmanian context, and as they generally operate in new residential estates where dwellings are being constructed. Once the use of a display home ceases, they are ordinarily used as a private residence.
9. In summary, the Commission considers that the draft PD is in order to be issued and recommends that the Minister issue a PD in the terms of the draft PD.

Recommendation

10. The Commission recommends that the draft PD be issued as Planning Directive No. 10.

Table of Contents

1.0 Introduction	1
1.1 Background	1
1.2 Assessment Process	1
1.2.1 Legislative power	1
1.2.2 Delegation.....	2
1.2.3 Public exhibition	2
1.2.4 Hearings.....	2
1.2.5 Report to the Minister.....	2
2.0 Assessment of the draft planning directive.....	2
2.1 Matters raised in representations	2
2.1.1 Potential impact on rail network	3
2.2 Drafting of exemption.....	3
2.3 Drafting of use class.....	4
2.4 State Policies and Schedule 1 Objectives of the Act.....	4
2.4.1 State Policies.....	4
2.4.2 Schedule 1 Objectives of the Act.....	5
3.0 Conclusion.....	6

Appendix 1 - Representations

Appendix 2 - Exhibited draft planning directive

1.0 Introduction

1.1 Background

In May 2023, the Minister for Planning, the Hon. Michael Ferguson (the Minister) directed the Tasmanian Planning Commission (the Commission) to undertake an assessment of draft Planning Directive No. 10 - Exemption for Display Homes (the draft PD) under section 11(1)(a) of the former provisions¹ of the *Land Use Planning and Approvals Act 1993* (the Act).

As an interim measure, the Minister issued Interim Planning Directive No. 7 - Exemption for Display Homes (IPD7) under section 12A(2)(a) of the former provisions of the Act.

IPD7 applies the provisions of the draft PD at the same time as it is being assessed.

The interim measures are effective for a 12 month period or until the draft instrument takes effect, or the Minister revokes it, whichever occurs first.

The draft PD applies to all interim planning schemes and the Sullivans Cove Planning Scheme 1997.

The draft PD seeks to apply an exemption to allow the use of an existing dwelling as a display home for a period of up to three years.

The Commission delegated the assessment of the draft PD to a Panel. The draft PD was exhibited from 2 August to 13 September 2023 with three submissions being received. A hearing was held in Hobart on 20 November 2023.

Supporting documents provided by the State Planning Office (SPO) stated that the intent of the draft PD was to provide clarity on the use status of display homes in residential zones. This was achieved by providing an exemption for display homes and amending the definition of 'Residential' to include 'and a display home'.

1.2 Assessment Process

1.2.1 Legislative power

Part 2A of the former provisions of the Act provides for assessment and issuing of planning directives, and the issuing of interim planning directives.

Section 12A(2)(a) provides that the Minister may issue an interim planning directive in the terms of a draft PD. The Minister may only issue an interim planning directive if a direction is also issued to the Commission to undertake an assessment of the draft PD under section 11. Before undertaking the assessment, the Commission must publish a notice, write to planning authorities and State Service Agencies likely to be affected and seek representations [section 12(2)].

As part of the assessment, section 6 of the *Tasmanian Planning Commission Act 1997* requires that the Commission must perform its functions and exercise its powers in a manner that furthers the objectives of the Resource Management and Planning System.

¹ References in this report to former provisions of the Act are references to the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*.

1.2.2 Delegation

On 5 June 2023, the Commission delegated relevant powers and functions under the current and former provisions of the Act and the *Tasmanian Planning Commission Act 1997* to Rohan Probert and Claire Hynes, jointly and severally, to assess the draft instruments, and report to the Minister with recommendations.

1.2.3 Public exhibition

The draft PD was publicly exhibited from 2 August 2023 to 13 September 2023. An invitation to make representations was notified in the Mercury, Examiner and Advocate newspapers on 2 August 2023. The Commission also wrote to all planning authorities and relevant State Agencies advising them of the public exhibition period.

Three representations were received during the exhibition period.

A list of representors can be found in Appendix 1.

A copy of the exhibited draft PD can be found in Appendix 2.

1.2.4 Hearings

The Commission held a hearing into the representations at the Commission's office in Hobart on 20 November 2023.

1.2.5 Report to the Minister

The Commission must provide a report to the Minister on its findings and recommendations as to whether or not a planning directive in terms of the draft PD or a planning directive modified as recommended by the Commission should be issued under section 12(5) of the former provisions of the Act.

2.0 Assessment of the draft planning directive

2.1 Matters raised in representations

Two of the three representations received raised no objection or issues with the draft instrument. These representations were received from TasWater and Consumer Building and Occupational Services.

The third representation was received from TasRail, raising concern about potential impact on the rail network.

Section 12(3) of the Act allows the Commission, in assessing draft planning directive, to 'inform itself of any matter in any manner it considers appropriate, including the conduct of a hearing'.

The Commission convened a hearing to consider the issues raised in the representations. The following parties were in attendance:

- Mr Sean McPhail, Assistant Director - Planning Systems, SPO
- Ms Claire Wolf, Senior Planning Adviser, SPO

The Commission and parties discussed the operation and content of the draft PD, and the merit of the representations. The information from the hearing and the Commission’s consideration on these matters are outlined below.

2.1.1 Potential impact on rail network

The representation from TasRail raised concern about the potential for display homes and associated signage to impact the rail network and sought clarification on whether a publicly advertised development application would be required if an existing dwelling (or an approved unbuilt dwelling that had received planning approval prior to the PD taking effect) was used as a display home.

Commission findings

The Commission notes that the draft PD states that display homes are only exempt if they operate in an existing dwelling. Therefore, a development application would not be required for the use.

The Commission further notes that dwellings are classed as Residential under Table 8.2 of the interim planning schemes. Display homes are included in the definition of a Residential use. While no development application would be required for use of an existing dwelling as a display home for up to three years, associated signage may require planning approval, and would be subject to assessment if not covered by a specific exemption.

The Commission further considers that as the draft PD applies to the use of a display home only, use outcomes allowable under the draft PD would not cause any impact to the rail network, as development associated with the dwelling would be assessed through the usual application process.

Recommendation

That the issues raised in the representation do not warrant modification to the draft PD.

2.2 Drafting of exemption

Clause 3.1 of the draft PD states:

- 3.1 An interim planning scheme to which this planning directive applies must contain the following exemption in Table 5.1:

5.1.5	display home	The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.
-------	--------------	--

Clause 4.0 of the draft PD states:

The *Sullivans Cove Planning Scheme 1997* to which this planning directive applies must contain the following exemption in clause 8.4:

- The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.

At the hearing, the Commission discussed potential issues with the duplication of the term ‘display home’ in the draft provision and provided alternative wording for consideration by the SPO.

Mr Sean McPhail of the SPO considered that the term ‘display home’ was widely known and that a specific definition for ‘display home’ was not required. Nevertheless, the SPO gave its indicative support of alternative wording if providing additional clarity was considered desirable.

Commission findings

On balance, the Commission finds that the wording of the provision appropriately describes the requirements associated with the draft exemption and that no change is required to clause 3.1 of the draft PD.

Recommendation

That the issues raised do not warrant modification to the draft PD.

2.3 Drafting of use class

Clause 3.2 of the draft PD states:

- 3.2 An interim planning scheme to which this planning directive applies must contain the following description for the Residential use class in Table 8.2:

Residential	use of land for self contained or shared living accommodation. Examples include an ancillary dwelling, boarding house, communal residence, home-based business, hostel, residential aged care home, residential college, respite centre, retirement village, single or multiple dwellings, and a display home.
-------------	--

At the hearing, Mr McPhail advised that including ‘, and a display home’ in the Residential use class was due to the operation of the Signs Code in the interim planning schemes.

The Signs Code requires signs to be allocated to a use class. It was advised that some planning authorities have classified display homes as ‘Business and Professional Services’, which is prohibited in the General Residential Zone, and is partly the reason for preparing the draft PD.

Mr McPhail advised that the Residential use class requires amending because if a display home was allowable in an existing dwelling under clauses 3.1 and 4.0 of the draft PD, signage for the display home would not be allowable under the Signs Code.

Commission findings

The Commission finds that the inclusion of a display home in the Residential use class description is appropriate and that no change is required to clause 3.2 of the draft PD.

Recommendation

That the issues raised do not warrant modification to the draft PD.

2.4 State Policies and Schedule 1 Objectives of the Act

2.4.1 State Policies

State Policies are established under the *State Policies and Projects Act 1993*. The status of a State Policy lies between that of an Act and a planning scheme, with the latter being a significant mechanism for implementing States Policies. It is a statutory requirement that planning schemes are prepared in accordance with State Policies that are in effect when a scheme is prepared.

The State Policies are:

- *State Coastal Policy 1996;*
- *State Policy on Water Quality Management 1997;*
- *State Policy on the Protection of Agricultural Land 2009; and*
- *National Environment Protection Measures (NEPMs).*

The Commissions finds that the use of existing dwellings for a display home will not impact on any of the State Policies.

2.4.2 Schedule 1 Objectives of the Act

Planning directives are within the framework of the Resource Management and Planning System (RMPS). The obligations under the Act are to seek to further the objectives of the RMPS as set out in Schedule 1 of the Act.

The objectives relevant to the draft PD are considered below:

Part 1 Objectives

- (b) to provide for the fair, orderly and sustainable use and development of air, land and water;
- (c) to encourage public involvement in resource management and planning;
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c);

Part 2 Objectives

- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land;
- (c) to ensure that the effects on the environment are considered and provide for the explicit consideration of social and economic effects when decisions are made about the use and development of land;
- (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;

The draft PD applies only to use and will enable an already approved dwelling to be used as a display home for a limited period. The Commission is satisfied that the dwelling will need to be approved in accordance with the requirements of the planning scheme which has already been assessed as furthering the Schedule 1 objectives.

The Commission is satisfied that the draft PD seeks to further the Objectives of the Act, in particular as it seeks to provide for the fair, orderly and sustainable use and development of land designated for residential use and to facilitate economic development by assisting the housing development industry.

The assessment of the draft PD has encouraged public involvement in the planning process through representations received during the public exhibition period and submissions at the hearing.

The draft PD applies to all interim planning schemes and the Sullivans Cove Planning Scheme 1997 and gives effect to the policy position to provide for a consistent approach to the regulation of the use of existing dwellings as display homes for a limited time period.

The Commission is satisfied that the draft PD is consistent with the objectives of the RMPS as set out in Schedule 1 of the Act.

3.0 Conclusion

The Commission is satisfied in light of the representations and information obtained at the hearings, that the draft PD is in order.

The Commission recommends that the draft PD be issued as Planning Directive No. 10, in accordance with section 13(1)(a) and (4) of the former provisions of the Act.

Appendix 1 - Representations

Rep. No	Name, position	Company
1	Dave Tilley, Acting Executive Director	Consumer Building and Occupational Services
2	Al Cole, Senior Assessment Officer	TasWater
3	Jennifer Jarvis, Group Manager Property and Compliance	TasRail

Appendix 2 – Exhibited draft planning directive

Planning Directive No. 10

Exemption for Display Homes

This planning directive has been issued by the Minister for Planning under section 13(1)(a) of the former provisions of the *Land Use Planning and Approvals Act 1993* (the Act) and came into effect on XXXXXX¹.

¹ References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the **former provisions** of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The **former provisions** apply to a planning scheme that was in force prior to the **commencement day** of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The **commencement day** was 17 December 2015.

Version	Issue date	Effective date	Description
1.0	XXX	XXXX	

1.0 Citation

This planning directive may be cited as Interim Planning Directive No. 10 – Exemption for Display Homes.

2.0 Application

2.1 This planning directive applies to the following planning schemes:

- (a) interim planning schemes that have been declared in accordance with section 30F of the Act;
- (b) interim planning schemes made under section 30M of the Act; and
- (c) the *Sullivans Cove Planning Scheme 1997*.

3.0 Effect of the planning directive on interim planning schemes

3.1 An interim planning scheme to which this planning directive applies must contain the following exemption in Table 5.1:

5.1.5	display home	The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.
-------	--------------	--

3.2 An interim planning scheme to which this planning directive applies must contain the following description for the Residential use class in Table 8.2:

Residential	use of land for self contained or shared living accommodation. Examples include an ancillary dwelling, boarding house, communal residence, home-based business, hostel, residential aged care home, residential college, respite centre, retirement village, single or multiple dwellings, and a display home.
-------------	--

4.0 Effect of the planning directive on the *Sullivans Cove Planning Scheme 1997*

The *Sullivans Cove Planning Scheme 1997* to which this planning directive applies must contain the following exemption in clause 8.4:

- The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.

5.0 Suspension of provisions

The description of the Residential use class under Table 8.2 – Use Class in *Planning Directive No. 1 – The Format and Structure of Planning Schemes* is suspended for the period this planning directive is in force.

6.0 Commencement

This planning directive takes effect on XXXXX.