

Our ref: Planning Directive No 8
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Sandra Hogue
Executive Commissioner
Tasmanian Planning Commission
tpc@planning.tas.gov.au

ATTENTION: Karen Fyfe

Dear Ms Hogue

DRAFT PLANNING DIRECTIVE NO 8 – INCLUSION OF STATE PLANNING PROVISIONS IN INTERIM PLANNING SCHEMES

Thank you for your letter of 15 April 2021 seeking comment on draft *Planning Directive No 8 – State Planning Provisions Exemptions, Application Requirements, Special Provisions and Zone Provisions* (PD8). The following comments on PD8 are made at officer level.

It is disappointing that Interim Planning Directive No 4 and the subsequent PD8 have been developed, given so many concerns, conflicts and failings have been identified with these elements of the State Planning Provisions (particularly the exemptions) during the development of Council's Draft Local Provisions Schedule (LPS).

The opportunity to raise concerns and have these issues resolved, via S35G of the *Land Use Planning and Approvals Act, 1993* (LUPAA) has been prevented through the development and implementation of these directives. This will lead to many poor planning outcomes (not the least being potential loss of heritage values) and inconsistent decision making, which represents a failure to meet the Schedule 1 Objectives of LUPAA.

The key concerns with PD8 are:

- The **replacement of heritage bridges** is exempt under PD8.

The provisions of the interim schemes relating to *Maintenance and Repair of Linear and Minor Utilities and Infrastructure* was limited to maintenance and repair and provided the ability to assess replacement of heritage bridges under the Local Historic Heritage Code. Clause 5.2.4 *road works* of PD8, provides exemptions for the repair **or**

replacement of bridges even if they are listed under a Code relating to historic heritage values – as only those works specified under Clause 5.2.4 (b) are not exempt if a heritage code applies.

With the introduction of PD8 the following heritage listed bridges and culverts will no longer be protected:

- Austins Ferry: The Roseneath Rivulet bridge that forms part of the Roseneath listing (both GCC & THR, refs 0139 and 1586 respectively)
- Chigwell: Stone culvert (GCC place ref 0245)
- Claremont: Main Road stone culvert (GCC place ref 0244)
- Claremont: Main Road stone railway bridge (GCC place ref 0247)
- Claremont: 19A Cadbury Rd stone bridge (GCC place ref 0248)
- Glenorchy: O'Briens Bridge (GCC place ref 0102)
- Montrose: Main Road stone culvert and retaining walls (GCC place ref 0237)
- New Town: Main Road, New Town Bridge (GCC place ref 0238)
- New Town: Creek Road, listing includes bridge abutment/retaining wall (GCC place ref 0336).

This deeply concerning and the exemption is considered inconsistent with the Schedule 1 Objectives of LUPAA, most specifically:

- Part 1 (b) to provide for the fair, orderly and sustainable use and development of air, land and water
 - Part 1 (c) to encourage public involvement in resource management and planning
 - Part 2 (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.
- **Duplication of exemptions leading to inconsistency & lack of clarity in terminology**
 - Poor terminology:

Clause 5.2.4 road works of PD8 uses the term '**including**' at the beginning of the list. This implies the list is not exhaustive, creating an ambiguous exemption.

Clause 5.2.4 road works of PD8 also includes the term '**carriageway**' – which is not defined, leading to further ambiguity in a clause that must be clear to be effective.

The lead in to Clause 5.2.4 *road works* of PD8 relates to **maintenance and repair**, and **upgrading**, however the terminology under the subclauses at (b) and (c) subsequently allows for **making, placing and replacement** – terms which are not

consistent with 'maintenance and repair'. Further, 'placing' could be interpreted as something beyond 'upgrading'.

- Duplication and inconsistency

Clause 5.2.4 relates to road works and exempts a number of elements at (b) unless they are subject to a heritage code. Clause 5.2.8 (noting there is possibly a typo and *roadworks under subclause clause 5.2.3* – should read *5.2.4*), appears to conflict (and at the very least create confusion) with the full exemption granted under Clause 5.2.4 (a) *minor widening or narrowing of existing carriageways*. Clause 5.2.10 subsequently allows for the **provision, maintenance and modification** (yet more new terms) for a range of infrastructure elements which may not be exempt under other clauses and are also potentially duplicated under Clause 5.2.4 and 5.2.8.

The poorly worded and tangled structure of these exemptions is inconsistent with the Schedule 1 Objectives of LUPAA, most specifically:

- Part 1 (b) to provide for the fair, orderly and sustainable use and development of air, land and water
- Part 1 (c) to encourage public involvement in resource management and planning.

These three clauses must be reviewed, reworded with uniform terminology and restructured to create consistency and clarity.

- **The vegetation exemptions conflict with codes that protect heritage values**

The exemptions at Clause 5.4.1 *vegetation removal for safety or in accordance with other Acts* of PD8 enables removal of vegetation under a variety of circumstances, including, clearance within 1.5m of a lot boundary in any zone (or within 3m for a Rural or Agricultural Zone) to construct or maintain a fence, and within 2m of lawfully constructed buildings for maintenance repair and protection, without qualification.

This exemption therefore conflicts with:

- The purpose of the Historic Heritage Code to regulate the removal of vegetation in heritage gardens
- The purpose of the Significant Trees Code, which is essentially nullified wherever clearance around lawfully constructed buildings and lot boundary fences is carried out
- Any site-specific controls developed via a planning scheme amendment process that protects specific vegetation.

The conflict between the objection and the intent of Codes in the same scheme is inconsistent with the Schedule 1 Objectives of LUPAA, most specifically:

- Part 1 (b) to provide for the fair, orderly and sustainable use and development of air, land and water
- Part 1 (c) to encourage public involvement in resource management and planning
- Part 2 (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.

These clauses must be reviewed and modified to ensure alignment with community values on heritage gardens and significant trees currently included in the planning scheme.

Should you wish to discuss these matters further, please contact me on (03) 6216 6424 or by email at Lyndal.Byrne@gcc.tas.gov.au

Yours sincerely



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