

An approach to applying section 32(4)

1. Background

The Ministers second reading speech provides useful context for the preparation of a draft LPS, including PPZs, SAPs and SSQs. The following extracts are of relevance:

*“The Tasmanian Planning Scheme will deliver a consistent approach to planning controls that apply across the state, providing greater certainty to investors and the community about what types of use and development can occur. **It will also provide the necessary flexibility to ensure that local planning matters can be adequately catered for and that an appropriate balance between consistency and meeting local planning needs can be achieved.**”*

“..... the Government recognises that some certainty around the types of local variations that will be allowable is desirable in the legislation. The bill explicitly allows for particular types of local provisions and variations to the state planning provisions, such as specific area plans, particular purpose zones and site-specific qualifications.

*“This is an important enabling bill to set in place the structure of the Tasmanian planning Scheme. It is a fundamental step in providing a mature and contemporary planning system and articulates the roles and responsibilities of state and local government in a planning system that promotes equity, clarity and consistency across Tasmania. **It retains flexibility for the Tasmanian Planning Scheme to appropriately deal with important local matters and retains the ability for local communities to shape the ways in which their local and built natural environment evolve.**”*

2. The meaning of the words in section 32(4)

The section 32(4) tests should be applied based on the ordinary meaning of the words in section 32(4) (a) & (b). The Macquarie Dictionary is the Commission’s primary reference source for the meaning of those words.

3. The section 32(4) Questions

The following information and approach may assist in setting out how a new PPZ, SAP or SSQ meets the requirements of section 32(4), keeping in mind that a new PPZ, SAP or SSQ need to meet one of the requirements under section 32(4).

The significant benefit test – section 32(4)(a)

The land

What is the particular area of land and how is it delineated?

Use or development

What is the use or development to which the provision relates?

If of benefit to the state

What is the significant **social**; or **economic**; or **environmental** benefit to the State of the use or development?

If of benefit to a region

What is the region and how is it delineated? What makes it a region?

What is the significant **social**; **economic**; or **environmental** benefit to that region of the use or development?

If of benefit to a municipal area

What is the significant **social**; or **economic**; or **environmental** benefit to the municipal area of the use or development?

If of benefit to part of a municipal area

Does the use or development relate to part of the municipal area and if so, how is the part of the municipal area delineated?

What is the significant **social**; or **economic**; or **environmental** benefit of the use or development to that part of the municipal area?

The particular qualities test - section 32(4)(b)

The land

What is the particular area of land and how is it delineated?

If the land has particular qualities

What are the particular **environmental**; or **economic**; or **social**; or **spatial** qualities of the land?

Why does one of those particular qualities require unique provisions to apply to the land?

Why are the SPPs not suitable for the intended planning outcome?

Are the unique provisions in substitution for, in addition to, or a modification of the SPPs?