From: Anne & Miles Harrison <masmjhar@bigpond.com>
Sent: Monday, 17 May 2021 11:57 AM
To: TPC Enquiry
Subject: Draft Planning Directive 8 - PMAT representation
Attachments: PMAT representation Draft PD 8 Final .pdf; PD 8 Submission - Attachment from 210218 - SPPs implemented thro IPS.pdf; 181204 RMPAT comments Interim Provisions and State Planning Provisions.pdf; PMAT submission on LUPAA Changes 210218 FINAL.pdf

Importance: High

To Tasmanian Planning Commission

Dear TPC,

Draft Planning Directive 8

Please find attached a representation on PD8 from Planning Matters Alliance Tasmania inc (PMAT).

There are huge concerns across the state about the SPPs and the detail of the statewide planning scheme.
Instead of the SPPs being tested and evaluated for their impact on Tasmania's cherished heritage, wilderness and livability
it appears they are now to be rolled out.

Attachments here include:

- PMAT representation on draft PD 8 due 17 May 2021
- PMAT submission on LUPAA changes 18 Feb 2021. I attach separately the final page of this , focusing on early adoption of the SPPs into Interim Schemes.
- RMPAT and TPC comments around the residential provisions.

Please can you confirm that this representation is received.
We welcome this opportunity to comment, and respectfully request public hearings.

Thank you and regards,

Anne Harrison
0419585291
Planning Matters Alliance Tas, President

53 Talone Rd,

Blackmans Bay, Tas. 7052.

Email: masmjhar@bigpond.com

Monday 17 May 2021

Dear Tasmanian Planning Commission,

Draft Planning Directive No. 8 – State Planning Provisions Exemptions, Application Requirements, Special Provisions and Zone Provisions (PD8)

This representation from Planning Matters Alliance Tasmania (PMAT) concerns Planning Directive 8 (PD8). We understand from the Background Report (the Report) dated October 2020 that PD8 enabled the implementation of IPD4 on 22 Feb 2021.

It is beyond the scope of this PMAT representation to analyse the whole detail of PD8/IPD4; ie Definitions, General Exemptions, Provisions etc.

Lack of timely public consultation: We are very glad the TPC is handling public consultation but deeply disappointed in the process. This PD 8 consultation is happening approximately 2 months after the introduction of IPD4 which was implemented without prior consultation with the profession, planning authorities or the community.

We remain hopeful that ratepayers, taxpayers, residents and Tasmanians more generally, will be heard through this process. We imagine the property industry has been heard by the government. PMAT lodged a representation on the LUPAA Amendment Bill with the Planning Minister and PPU on 18 Feb 2021. See attachment. The public needs to be heard on the matter of the untested SPPs and their early introduction. PMAT assists in providing that community voice.

No mandate on planning at the 2021 state election: Planning reforms and the Tasmanian Planning Scheme (TPS) were definitely not mentioned openly by the Premier or his team in the election campaign**.** We consider there is no mandate to force early adoption of the SPPs.

Covid Response: The Report highlights the need for PD8 as a Covid response. However, the state economy is performing well now. Mercury Thurs 6 May p9, states that

"Building approvals are sky high" and the article suggests "strong years ahead for construction".

It is thought by many, and PMAT would agree, that the SPPs and much of the TPS will erode Tasmania's brand, what is valued by tourists and residents alike, and our quality of life. It has the potential to gravely undermine our future, and destroy Tasmania's "comparative" advantage. Tasmania's point of difference. Facilitating early adoption of the SPPs through PD8/IPD4 hastens that process.

Michael Buxton, Professor Environment & Planning RMIT University, in his Mercury Talking Point "Planning Reform the Trojan Horse", Dec 2016 wrote:

The government argues that the new system is vital to unlock economic potential and create jobs, but the states greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these, and the state has no future.

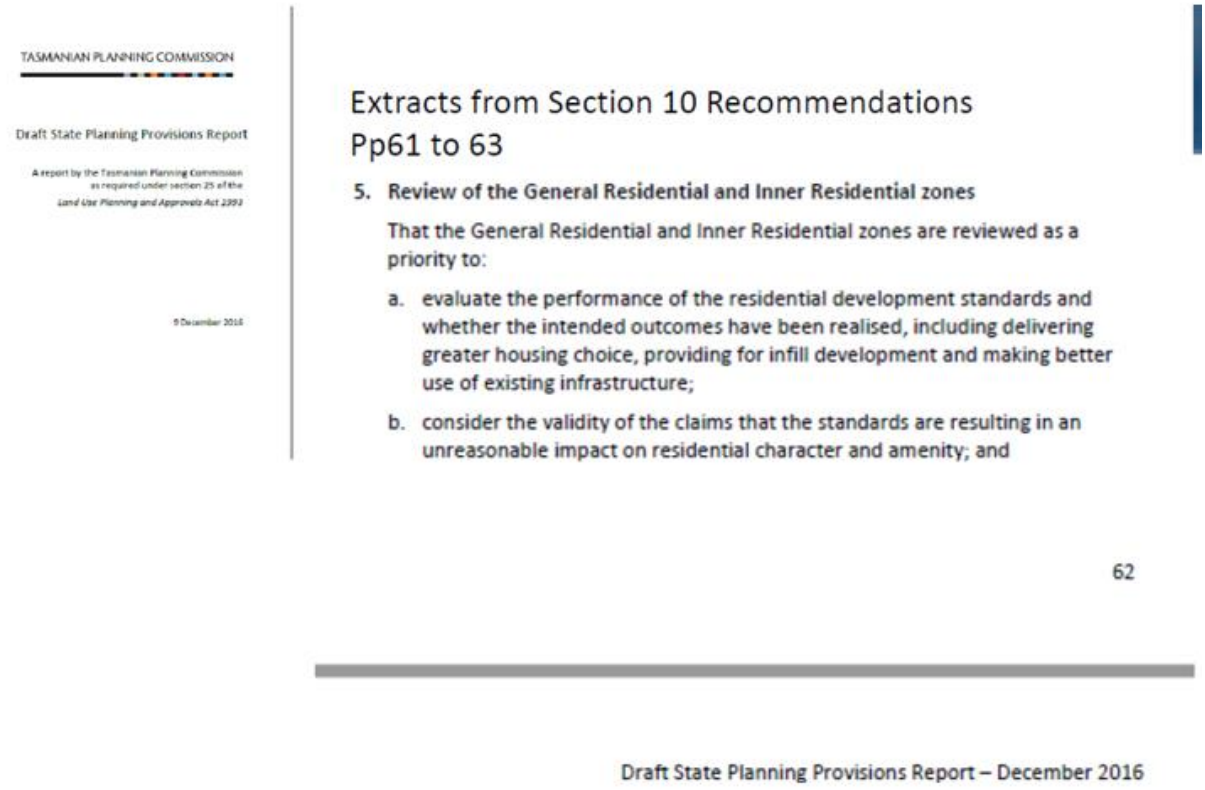
As much of Richmond and Ross are zoned General Residential (GRZ), we fear these and other special historic towns, may be under threat from the very tight, egregious GRZ standards. We note that although overlays are meant to override the zone provisions if in conflict, the heritage qualities and status could well be impacted as settlement expands in these towns.

In arguing for PD8/IPD4 the Report talks of the need for "*Greater flexibility in development standards in main residential zone*". PMAT asks what greater flexibility is envisaged and who exactly is demanding this "greater flexibility"? The development lobby is already doing well as per the Mercury article quoted above, and multi-unit dwellings are permitted across the GRZ and IRZ.

PMAT, Australia's 2020 Planning Champion awarded by the Planning Institute of Australia, represents thousands of members and people from the general public across the state. PMAT has ongoing serious concerns about the SPPs and their early adoption into the IPS. I attach the PMAT representation on LUPAA Amendment Bill submitted on 18 Feb 2021.

A Issues Raised with PMAT On the following pages, please see just some of the issues around the residential standards which are commonly raised by the public.

1.2016 TPC recommendations: many recommendations from 2016 were never adopted by the then Planning Minister. I include one extract relating to Residential Standards here.



TASMANIAN PLANNING COMMISSION

Draft State Planning Provisions Report

A report by the Tasmanian Planning Commission as required under section 25 of the *Land Use Planning and Approvals Act 1993*

9 December 2016

Extracts from Section 10 Recommendations
Pp61 to 63

5. **Review of the General Residential and Inner Residential zones**

That the General Residential and Inner Residential zones are reviewed as a priority to:

a. evaluate the performance of the residential development standards and whether the intended outcomes have been realised, including delivering greater housing choice, providing for infill development and making better use of existing infrastructure;

b. consider the validity of the claims that the standards are resulting in an unreasonable impact on residential character and amenity; and

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Draft State Planning Provisions Report – December 2016

It is tragic for this state that instead of the SPPs being reviewed as a priority, as encouraged by the TPC after exhaustive hearings in 2016, many of the provisions are being fast-tracked by PD8/IPD4.

The Acceptable Solutions pertaining to the Residential Zones never met community expectations in 2016. Their early adoption through PD8/IPD4 horrify the community now.

2.We understand Council planners are forced to approve dwellings now which are **grossly** lacking in amenity. Specific examples of negative impacts include private open space not

being accessible from habitable rooms, and habitable rooms not requiring 3 hours of sunlight in the middle of winter. This will not improve with PD8 /IPD4.

3. Our advice is that the SPPs are the opposite of sound "place-based planning". They are largely development controls and were developed with minimal public input (if any). Whilst they pertain to deliver "fairer, faster, cheaper, simpler" for property developers, we consider they do NOT deliver good planning outcomes. For example, the Resource Management and Appeals Tribunal, in some judgements, as attached , has compared the current planning provisions to a bomb when triggered by a compliant development due to the lack of regard for streetscape, character and landscaping. PMAT supports a thorough review of the residential standards in the SPPs as a priority.

4.It is hoped that a review of SPPs will happen by early 2022, 5 years after the SPPs were announced. Planners and the community understood this was the position of Planning Minster Gutwein who made the SPPs in February 2017.

5.It is appalling in our view that the Natural Assets Code and Scenic Protection Code do **not** apply to residential zones. The unintended consequence will be to strip our residential areas of character and beauty, and erode the amenity for which Tasmania's cities, towns and villages are celebrated; the "comparative" advantage mentioned above. 1 size does not fit all! We hear this from professional planners often.

B General Planning Issues across Tasmania

Acceptable Solutions:We know many Councils have very significant and widespread concerns around what must be approved as Acceptable Solutions under the IPS. This will not improve with the early implementation of SPPs under PD8/IPD4.

Strategic Planning: This is desperately needed. It should be based on sound modelling and data, and in our view, it should aspire to world's best practice. This strategic planning should deliver the triple bottom line of social, environmental and economic benefits and should be focussed on sustainability. We note the incoming government has undertaken to fund strategic planning (the Liberals pre-election website) and that is very welcome.

PMAT considers this strategic planning should also be visionary and sustainable. It is a gross oversight that there has been no State of the Environment Reporting for well over a decade and that there is no environment policy. In our view, The TPC should be adequately resourced to undertake this important task.

Statutory planning: We understand that Councils statutory planning assessment time is very short; the shortest in Australia. Despite this there is still enormous pressure in the media, one suspects from the development lobby, to hurry up assessments. This may well undermine quality and good decision making. Planning needs to be well resourced.

C PMAT queries many assertions in the Background Report

Background Report November 2020, Draft Planning Directive No. 8 – Exemptions, Application Requirements, Special Provisions and Zone Provisions

The Report p6: *To assist with implementation, the Government also intends to amend the Act to remove the requirement for an assessment of the draft planning directive to be undertaken by the Commission. The SPPs have been formally consulted on, assessed by the Commission, and approved by the Minister, which means that there should be no need to duplicate that assessment by further consultation and review of the draft planning directive".* PMAT thinks this sentence above is misleading. As per our earlier comments, many issues raised in the 2016 public hearings were never resolved satisfactorily.

PMAT definitely does not want to see the Act amended in this way, removing the requirement that the TPC assess a draft planning directive (as per our submission in 18 Feb 2021, attached here.)

Upon enacting of the legislative amendments, a planning directive may be issued in the form of this interim planning directive without the formal public exhibition and assessment process. PMAT disputes that a planning directive such as PD8/IPD4 should be implemented without effective, meaningful and timely consultation. This is anti-democratic.

The Report, Stakeholder Engagement p7

While the Department has not undertaken any detailed consultation with local government on early implementation of certain SPPs, the PPU recently commenced consultation on the intention to amend the Act to assist with implementing parts of the SPPs through interim planning schemes.

PMAT understands this consultation was targeted only, and hence limited in reach.

The Report P8

Given the SPPs have already been subject to a thorough consultation and statutory review process by the Commission in 2016-17, further consultation on the draft planning directive is considered unnecessary. PMAT considers this is a misleading statement; vis the underlined words.

Initial advice received from local councils from consultation on the proposed legislative amendments have identified the following concerns:

• potential unintended consequences of provisions from the SPPs not functioning effectively in interim planning schemes;

• loss of the opportunity to further scrutinise the SPPs, or implement 'overriding' provisions through a LPS; and

• it never being the intention for the SPPs to be implemented in this manner.

The Department is not intending to bring across any provisions from the SPPs that cannot readily operate in current interim planning schemes, as outlined in this background report. The PPU has carefully chosen those that provide improved outcomes and assist with current development programs and COVID-19 recovery efforts.
It is acknowledged that not all councils agree with some of the provisions in the SPPs however, there is currently no opportunity for councils to alter or override the exemptions or general provisions prior to an LPS coming into effect.
While councils may seek to 'add to, modify, or substitute' the zone provisions in the SPPs, the development standards for dwellings in the SPPs General Residential Zone and Inner Residential that are proposed in the draft planning directive are derived from the provisions in Planning Directive No. 4.1 which are already implemented through interim planning.

We understand that Councils have widespread and significant issues with the SPPs and with PD8/IPD4 specifically. The view of Councils mentioned in the Report (in the dot points above) are important and there are real grounds for their concerns. **PMAT thinks these are substantive issues and must be properly addressed. PMAT also disputes that PD8/IPD4 will produce "improved outcomes".**

Consideration against the Schedule 1 objectives of the Act and State Policies

PMAT does not accept the following statement that PD8/IPD4 furthers the Schedule 1 objectives:

The draft planning directive is considered to further the Schedule 1 objectives of the Act and is consistent with State Policies, as the provisions have been assessed and determined as such as part of the SPPs review undertaken by the Commission and the approval granted by the Minister for Planning. The parts of PD1 and interim planning schemes that are retained have also been previously deemed to satisfy these requirements.

PMAT considers that the PD8/IPD4 does not further the objects of the LUPA Act because the proposed changes do not deliver sustainable development, whilst maintaining ecological processes and diversity, and the community is not involved in the way we consider it should be.

The TPC's recommendation that a review of the residential standards of the SPPs be a priority strongly suggests that it was not satisfied that they would achieve the objectives of the Act. The fact that that review has not been undertaken some 5 years after that recommendation was made, provides no comfort that they are appropriate and fit-for-purpose.

PMAT appreciates this opportunity to comment on PD8/IPD4. We would welcome any feedback and questions on the forgoing and request that TPC hold public hearings on this matter of critical public importance.

Thank you and regards,

Anne Harrison

0419585291

Planning Matters Alliance Tas, President

A PMAT representation was sent to the Planning Minister and the Planning Policy Unit on 18 Feb 2021. Below is part 4 of that representation which address Planning Directives such as PD8 and IPD 4.

Topic: Submission on the Proposed Amendments to Land Use Planning & Approvals Act 1993

Part 4. Implementation of certain State Planning Provisions through interim planning schemes

"Section 22 of the LUPA Amendment Bill proposes amendments to Schedule 6 of the LUPA Act to establish a process for issuing a planning directive that brings parts of the SPPs into effect through interim planning schemes.
The SPPs were made in early 2017 and deliver a number of improvements to the planning system including:

- *clearer exemptions;*
- *clearer application requirements;*
- *a broader range of general provisions for managing use and development;*
- *refinements to the development standards for dwellings in the General Residential Zone; and*
- *consistent requirements for residential development in the Inner Residential Zone.*

Since the making of the SPPs, there has been growing interest in bringing some elements into effect earlier, particularly with the long-term timeframe for full implementation of the Tasmanian Planning Scheme.
The only available approach to bring parts of the SPPs into effect earlier is a draft planning directive that may be given immediate, interim effect through an interim planning directive."
Information Pack p 20

QUERY exactly "**whose** "growing interest" in bringing some elements into effect earlier? Who is pushing for early adoption of the SPPs? We are concerned this further tilts the balance towards the development lobby.

COMMENT PMAT absolutely rejects this as the SPPs are contentious and do not meet community expectations.

- The standards are not exemplars of visionary, sustainable or strategic planning.
- We understand this to be the view of many professional planners.

- PMAT definitely does not want to see them introduced early through the IPS.
- PMAT strongly supports a review of the most contentious of the SPPs, including in particular the residential standards, the Natural Assets Code, the Scenic Protection Code, and the Built Heritage Code. PMAT is also very concerned that there is no Aboriginal Heritage Code, no Stormwater Code and no on-site Waste Water Code.
- Similarly, we definitely do not support the implementation of IPD 4. We are deeply disappointed in the Planning Policy Unit and the Tasmanian Government that this planning directive has been created with no prior community consultation. PMAT considers it may lead to ad hoc planning outcomes that the community will have to live with for years to come and to losses in amenity and local character. It also makes a mockery of this 'consultation', where it is proposed to amend LUPAA to allow the Minister to direct parts of the SPP's to be given effect through changes to the interim planning schemes. We STRONGLY OPPOSE THIS AMENDMENT.
- We see this as short-changing future Tasmanians including people who move here from interstate.

Interim Planning Provisions and State Planning Provisions

RMPAT & TPC comments

The Tasmanian Planning Commission's report into the State Planning Provisions or SPPs (9 Dec 2016, or see iplan.tas.gov.au)) recommended a comprehensive review of the residential development standards introduced by PD4.1 as a matter of priority. Specifically, the Commission said (at p18 of their report):

4.1.4 Residential development standards review

Given residential development is the most commonly occurring form of development subject to the planning scheme, affecting the construction industry, owner builders and home owners, the Commission recommends that the General Residential and Inner Residential Zones be reviewed as a priority.

Consistent standards were put in place when Planning Directive 4.1 – Standards for Residential Development in the General Residential Zone was issued in 2014. A sufficient period of time has elapsed since their implementation that it is now appropriate to:

- *evaluate the performance of the standards and whether the intended outcomes have been realised, including delivering greater housing choice, providing for infill development and making better use of existing infrastructure;*
- *consider the validity of the claims that the standards are resulting in an unreasonable impact on residential character and amenity; and*
- *introduce drafting that is more consistent with the conventions that apply to the SPPs generally.*

In the Minister's response to the Commission's recommendations, Peter Gutwein indicated that it was premature to review the provisions immediately but the review would take place as part of the first 5 year review of the SPPs (which is required by s.30T of LUPAA). Subsequently, he committed to an earlier review, within 2 years of the introduction of the Local Provisions Schedules (see attached response to a Question on Notice from Rob Valentine).

Tribunal remarks wrt General Residential Zone Provisions

The Resource Management and Planning Appeal Tribunal has considered the Acceptable Solutions introduced by PD4.1, and their interaction with corresponding Performance Criteria, in a number of cases. In the first of them, *Henry Design and Consulting v Clarence City Council & Ors* [2017] TASRMPAT 11, the Tribunal said at paragraphs [31] and [32]:

> *[31] Clause 10.4.1 A1 establishes the magic number of 325 m2/dwelling; it contains no other considerations.* ***It is akin to a bomb which, when detonated by a compliant development, obliterates any and all non-numerical planning considerations peripheral to density - such as existing and proposed development density, compatibility with streetscape, character, urban form and so on****. The only matter of any importance is the number.* (emphasis added)
>
> *[32] An A1-compliant development may be wildly divergent from prevailing density, but the Scheme proclaims it acceptable anywhere in the General Residential Zone, and immune from any considerations of compatibility or other "impedimenta".*

The footnotes to that quote further articulate the Tribunal's concern about the one-size fits all nature of the Acceptable Solution: "*The effect of A1 may be brutal, but it is one way to answer the common and vexed question arising where the density of an existing area (and, therefore, its character) is proposed to be significantly altered by a planning control – that is: "where and in what circumstances are drastically divergent developments acceptable?" Here, the loud and clear answer is: "anywhere and any circumstances."*

These comments recognise that, without a review of PD4.1 and the SPP provisions that replicate those provisions, the Acceptable Solutions tie the hands of Councils and are likely to lead to conflict. That is, as long as a development meets the Acceptable Solutions, Councils are bound to approve them even where the development is not consistent with the prevailing character and density of the area.

The "bomb" comments from Henry Design have been quoted in a number of subsequent cases, including:

- *Boland v Clarence City Council and Anor* [2018] TASRMPAT 4 (it was also quoted in the Supreme Court appeal on this matter: *Boland v Clarence City Council* [2018] TASSC 43
- *The House Family Office Pty Ltd v Hobart City Council* [2018] TASRMPAT 6
- *Kasem v Hobart City Council & Ors* [2018] TASRMPAT 8

18 February 2021

Department of Justice

Planning Policy Unit

GPO Box

Hobart Tas 7001

Email: planning.unit@justice.tas.gov.au

Dear Planning Policy Unit,

Submission on the Proposed Amendments to Land Use Planning & Approvals Act 1993

Background

Thank you for sending PMAT the information pack regarding these important proposed changes to LUPAA 1993 (the Act) and for accepting this PMAT representation about the proposed amendments (the Bill).

Thank you also for understanding that PMAT is largely volunteer run and that the PMAT President, PMAT Vice President and State Coordinator should ideally all be consulted and informed by the Planning Policy Unit on other planning changes going forward.

General Comments

Social licence is essential: PMAT has almost 70 alliance groups and our many thousands of members are committed to visionary, strategic planning, transparency and public involvement in land use planning. We consider the public voice is necessary and fundamental to allow development to proceed with social licence.

Targeted consultation: We are very concerned about "targeted consultation" especially just prior to Christmas and the holiday season. Many stakeholders, taxpayers and ratepayers with an interest in land use planning may have been locked out by this timing and process, noting that advertising more widely (beyond the statutory requirements) would enhance opportunities for public involvement.

Increased Ministerial powers: While some streamlining of the Act is possibly justified, the overall impact of the proposed changes is to increase the say of the Minister, government and the development lobby. We consider this is to the detriment of the general public, natural and cultural heritage, strategic planning and the liveability of our neighbourhoods and communities.

Poor planning outcomes: In our view, current planning rules and the provisions of the IPS are not delivering good planning outcomes. They are not in line with community expectations, and unfortunately, the SPPs continue this with no rectification.

Interim Planning Directive 4: We are especially disappointed that from 22 Feb 2021, the Interim Planning Directive No 4 will enable early adoption of some of the SPPs. This is a very significant part of the proposed amendments to the Act on which we are commenting in this paper. As there has been no consultation about this Ministerial Directive, PMAT considers that this deployment approach shows a callous disregard for feedback from the public received in 2016 during TPC hearings on the SPPs. We understand that over 300 representations were made and over 3000 issues were raised during public consultation around the SPPs. Many of those TPC recommendations are still awaiting action. We can supply a paper on this.

Interim Planning Directive 4: We understand the IPD process is for the planning directive to be approved by TPC. PMAT asks how can this be? In reality, what the public told the TPC in 2016, appears to be ignored by the government.

Public involvement: The public is exhausted by all the myriad changes, and professional planners must be in a similar position. Planning authorities and the TPC have huge responsibility and must be better resourced and well trained to undertake these planning reforms along with the jobs of strategic and statutory planning.

EDO submission is supported: PMAT has read the EDO submission and fully supports their 12 recommendations which we consider will improve the proposed amendments.

Development at any cost: These proposed amendments to the Act appear to facilitate development approvals and to further tilt the planning system in favour of the development lobby.

RMPS and LUPAA 93: PMAT does not agree that the proposed changes carry forward the Schedules 1 and 2 of LUPAA 93 nor the RMPS.

Tasmania a world leader in good planning?: PMAT would like to see Tasmania become a world leader in strategic, sustainable, visionary community endorsed planning. This can only preserve and enhance the internationally recognised values for which Tasmania is justly famous. Right now, we are witnessing the state's special qualities trashed by inadequate, "develop at all costs" development approvals, based on provisions in our interim planning schemes, and continual granting of exemptions from planning created by recent planning changes. One senior planner has publicly stated "it is a race to the bottom. No-one known to this planner would ever live in the units they are forced to approve".

Integrated planning is sought: It is grossly unfortunate that in the push to make planning "simpler, faster, fairer and cheaper", integrated planning across relevant state agencies has been lost. Splitting off fire safety, stormwater, parking, and affordable housing from planning is extremely short sighted. It will not deliver simpler or cheaper planning and is confusing for developers.

PMAT's Key Concerns

Our comments below are based on the Information Pack provided by the Planning Policy Unit, Department of Justice.

1 Improved Processes for amending the SPPs

Simplified Process for making minor amendments to the SPPs.

Aims of the Bill are "*to deliver improvements & ensure SPPs remain contemporary and deliver on emerging planning issues*". Information Pack p 6

QUERY PMAT questions who will benefit from the "improvements". We would also like to see "the emerging planning issues" defined and described.

"Ensure the process for amending SPPs can correspond to scope or urgency of the change to the SPPs" Information Pack p 6

COMMENT It appears that the SPPs were rushed from the outset. As mentioned earlier, many of the issues raised in representations in 2016 have not been adequately addressed.

COMMENT Minor word changes PMAT is concerned about word changes which may appear to be "minor" bur are in fact very significant. In a list of standards, eg X and Y and Z the wording is very different to X or Y or Z. Some very simple words also pose questions of interpretation. Eg "X is not permitted" is completely different to " X is permitted if there is no unreasonable impact on amenity". These words appear minor, but are wide open to interpretation by different planners.

Box 3 Minor amendments are defined here. "C*onformity with state policy, with a planning directive, form or structure of LPS?*" Information pack p6

COMMENT These are massive and by their very nature sound like very important amendments. PMAT suggests they are hardly "minor".

"The Bill proposes separate processes for making minor and urgent amendments to the SPPs. This enables a clearer and simpler process for making minor amendments.
The Bill also proposes to remove the option for the Minister to direct the Tasmanian Planning Commission (TPC) to prepare an amendment of the SPPs. This ensures separation between the roles of preparing and assessing amendments". Information pack p7

COMMENT The Bill proposes to remove the option for the Minister to direct the TPC to prepare an amendment. Ensuring separation between roles of preparing and assessing amendments may sound like a positive move.

However, PMAT feedback is that the TPC is trusted and respected as a public forum acting for the common good and public benefit. That option should remain.

COMMENT PMAT suggests if TPC were to propose an amendment based on the TPC findings **from the 2016 public hearings**, that would be accepted as positive.
QUERY PMAT asks if TPC can **only assess, and not prepare** amendments, **who in fact** will actually prepare the amendments?

COMMENT Expectations of the TPC are much increased and PMAT considers that TPC needs to be adequately resourced for the big work load.

We understand from the TPC Review "The Productivity Commission (2011) has also previously found Tasmania has the lowest level of spending on planning per full time equivalent staff and lowest number of staff on both an absolute and per capita basis.[9]"

"The proposed process will still require the Minister to prepare a Terms of Reference for the minor amendment and give notice in the newspapers. However, the following changes are proposed (see flowchart at Figure 1):

• *After preparing a draft amendment, the Minister may seek the advice of the TPC on whether the minor amendments criteria are met.*

• *The Minister may also consult with planning authorities, State Service Agencies and State authorities as necessary.*

• *After considering the advice of the TPC, feedback from any consultation, and being satisfied that the minor amendment criteria are met, the Minister may make the amendment of the SPPs"* Information Pack p7

COMMENT Flowchart Figure 1 pp 8,9. This flow chart indicates a very high level of Ministerial discretion. PMAT supports increased checks and balances in the planning system regardless of who is in government.

COMMENT Additionally, it appears to PMAT, quite irresponsible to **not** consult with Planning Authorities and other state agencies such as Tas Water who have to implement the many changes and manage and fund any consequential resourcing.

COMMENT The public has been repeatedly told that the SPPs are fixed and not up for discussion by the community. How is it that SPPs can now be modified? This appears inequitable; it is unacceptable in the view of PMAT.

COMMENT PMAT considers that the Minister MUST seek advice of TPC, MUST consult with planning authorities, state agencies, and the Minister may make the amendment of SPPs acting **only** on their advice.

COMMENT As the Minister still can ignore TPC advice, PMAT suggests there needs to be another mechanism introduced to resolve issues where the Minister & the TPC disagree.

QUERY As stated earlier, PMAT would like to see clearer definition of what constitutes a "minor amendment".

Making 'interim' amendments to the State Planning Provisions

"Section 7 of the LUPA Amendment Bill proposes to insert a new Subdivision 3B in Part 3, Division 2 of the LUPA Act that provides a new process to make 'interim' SPPs amendments. This enables an immediate response to critical or significant planning issues, such as bushfire hazard management or the recent housing shortages." Information pack p 10

QUERIES

PMAT asks what will this be directed towards? How will an "interim amendment to the SPPs" be used? This is very broad, and we consider some detail is required. What constitutes a "critical or significant planning issue"?

If misused there could be negative consequences.

Why are we making interim amendments to the SPPs now, before they are implemented and tested, especially in light of the fact that The Planning Policy Unit, Department of Justice, commissioned GHD to in 2020 start the review of the residential development standards in Tasmania's State Planning Provisions which are derived from Planning Directive No. 4.1 – Standards for Residential Development in the General Residential Zone. PMAT was asked to participate in this process, and we understood that a full review would take place in 2021.

"In determining whether to issue an interim amendment of the SPPs, the Minister must consider the advice of the TPC and be satisfied that:
• it is necessary or desirable to enable an immediate response to address a critical or significant planning issue; and
• it is in the public interest to give immediate effect to an interim SPPs amendment." Information Pack p 10

QUERY PMAT would also like to know where is "public interest" defined?

COMMENT What we are hearing constantly across the state is the great distress around Tasmania's planning rules, expressed now through the Interim Planning Schemes, but also in the SPPs. They are not safeguarding our built or natural heritage, where amenity in our suburbs and villages is not protected by the General Residential standards which amount to no more than site by site development controls. Streetscape and visionary strategic planning endorsed by the community is completely subservient to the Building Envelope and the metrics of the Acceptable Solutions. RMPAT has considered the provisions and they are included here.

The Resource Management and Planning Appeal Tribunal has considered the Acceptable Solutions introduced by PD4.1, and their interaction with corresponding Performance Criteria, in a number of cases. In the first of them, *Henry Design and Consulting v Clarence City Council & Ors* [2017] TASRMPAT 11, the Tribunal said at paragraphs [31] and [32]:

http://www.austlii.edu.au/au/cases/tas/TASRMPAT/2017/11.pdf

> *[31] Clause 10.4.1 A1 establishes the magic number of 325 m2/dwelling; it contains no other considerations.* ***It is akin to a bomb which, when detonated by a compliant development, obliterates any and all non-numerical planning considerations peripheral to density - such as existing and proposed development density, compatibility with streetscape, character, urban form and so on****. The only matter of any importance is the number.* (emphasis added)
>
> *[32] An A1-compliant development may be wildly divergent from prevailing density, but the Scheme proclaims it acceptable anywhere in the General Residential Zone, and immune from any considerations of compatibility or other "impedimenta".*

The footnotes to that quote further articulate the Tribunal's concern about the one-size fits all nature of the Acceptable Solution: "*The effect of A1 may be brutal, but it is one way to answer the common and vexed question arising where the density of an existing area (and, therefore, its character) is proposed to be significantly altered by a planning control – that is: "where and in what circumstances are drastically divergent developments acceptable?" Here, the loud and clear answer is: "anywhere and any circumstances."*

These comments recognise that, without a review of PD4.1 and the SPP provisions that replicate those provisions, the Acceptable Solutions tie the hands of Councils and are likely to lead to conflict. That is, as long as a

development meets the Acceptable Solutions, Councils are bound to approve them even where the development is not consistent with the prevailing character and density of the area.

"Under the proposed process, after the preparation of a draft amendment to the SPPs the Minister could seek the advice of the TPC on whether the amendment should have immediate effect as an interim amendment of the SPPs." Information pack p 10

COMMENT PMAT considers the Minister **must** seek the advice of the TPC. As the TPC is **the only forum for public hearings**, as mentioned earlier PMAT considers it is vitally important that there is another mechanism for resolving issues, if the Minister decides not to take the advice of the TPC.

Community Impact Statement
The inclusion reflects an existing process that needs to be carried over into the new planning system. Furthermore, the process enables the final amendment to be informed by the experience of implementing the interim amendment. Information Pack p10

COMMENT PMAT members and groups all over the state certainly wish this had been the case with the Interim Planning Schemes, after implementation but before the IPS transitioned to the SPPs. Many of us asked for this, in order to test the SPPs as they relate to residential zones before they were finalized.

This section also establishes limitations for the use of interim amendments, which is an improvement to the current provisions. Information Pack p11

QUERY PMAT asks are there no limitations now?

COMMENT PMAT would like to see concrete examples of how these changes, recognize and enhance the public good. For the community, the Better Off Overall Test (BOOT) is vital. Public benefit must be demonstrated.

COMMENT *"Responsiveness and not rigidity" (sic)* may be a good thing. Information Pack 10

COMMENT Figure 2 and the proposed process for interim Amendments. In Figure 2 there is no public involvement, though TPC is involved. This is most alarming. Information Pack p12

2. Improved processes for finalising the Local Provisions Schedules

"The Tasmanian Planning Scheme comes into effect in each council area once the LPS for that area is approved.
LPSs include the zone maps, code overlays and lists, and any locally unique planning requirements for each council. LPSs operate alongside the State Planning Provisions, which contain the statewide planning requirements, including zones and codes.
The LUPA Amendment Bill includes a number of amendments to the LUPA Act to assist with finalising the assessment of the remaining LPSs and bringing the Tasmanian Planning Scheme into effect across the State."
Information Pack p 13

Directions to publicly exhibit draft LPS
COMMENT PMAT would support this change as it could allow increased public involvement.

New process for considering 'substantial modifications' to a draft Local Provisions Schedule

See Information pack p 14

The draft LPS will become operational and TPS enacted while substantial modifications are considered or prepared.

COMMENT PMAT is concerned by the Community Impact Statement.

We ask, why the haste for the TPS?
Encouraging public involvement in the LPS process is important. PMAT would like to encourage public involvement in LPS, with representations, public hearings and TPC findings or recommendations actually accepted by the Minister (noting that TPC recommendations based on 2016 hearings into the SPPs were largely ignored by the then Minister).

COMMENT—PMAT considers this could be highly problematic, however there may be a solution. See below.

COMMENT Figure 3 Information Pack p16,17
PMAT strongly prefers the current process.

COMMENT PMAT strongly supports a second round of consultation. That is the current system for substantial modifications to the draft LPS should remain. It is a fair and transparent process.

<u>Including approved interim planning scheme amendments in Local Provisions Schedules</u>

"Sections 11, 13 and 15 of the LUPA Amendment Bill propose amendments to the LUPA Act that enable the TPC to include in a LPS certain amendments approved to the current planning scheme. These amendments may have been approved during the assessment of the draft LPS, or may date from an earlier period and been inadvertently left out of the draft LPS.
Throughout the assessment of draft LPSs, amendments to current planning schemes continue to be initiated and certified by councils and assessed by the TPC. This dual process will continue up until the date of the draft LPS being approved.
While there are transitional provisions in Schedule 6 of the LUPA Act for some amendments to current planning schemes, there is no clear process for the inclusion of approved zone amendments, overlay amendments, or new entries to code lists (e.g. local heritage places), particularly those that are made during the assessment of the draft LPSs. Information pack p 18

The lack of a clear process in the Act could result in the TPC having to undertake a second assessment" etc
QUERY Was this not considered by the Planning Reform Taskforce?

"• the TPC having to undertake a second assessment of these already approved amendments as part of the draft LPS assessment process, or
• the exclusion of the approved amendment from the approved LPS, which would require it to be re-initiated and assessed as an amendment to the approved LPS.

These outcomes are inefficient and costly to all parties concerned.
The Bill:
• requires approved amendments that may be included in the LPSs to relate to matters that can be included in a LPS, such as equivalent zones in the SPPs, relevant overlays, and code lists;
• provides for the TPC, prior to directing public exhibition of the draft LPS, to also direct the planning authority to include any amendments approved to the current planning scheme since submitting the draft LPS;
• specifies that a representation cannot be made on these (IPS ?) amendments during the public exhibition of the draft LPS to provide clarity for the community and avoid the need to re-assess an already exhibited and approved amendment; and
• provides for the TPC to include in the approved LPS any amendments approved to the current planning scheme after public exhibition of the draft LPS has commenced." Information Pack 18

QUERY PMAT asks what may have changed with the introduction of LPS?

COMMENT PMAT thinks this is potentially very problematic; that IPS approved amendments can roll straight across into LPS and be inserted into the draft LPS **after** the draft LPS has gone out. This is confusing for the public.

COMMENT **However, there may be one practical and sensible solution**. As per common practice about IPS amendments currently at the TPC, a workable

check could be that the proposed IPS amendment **must align with the LPS as well as with LUPAA 93, state policies, regional land use strategies.**

Community Impact Statement

"The proposed change does not alter the degree of public, planning authority, State Service Agency, or State authorities involvement in the LPS process but rather prevents inefficient repetition of exhibition and approval processes that have already occurred.

The proposed changes specifically further objectives 1b) and 1c) in Part 1 of the Schedule 1 Objectives of the LUPA Act by improving the fairness and functionality of the LPS transition process. Objective a) in Part 2 of the Schedule 1 Objectives is also furthered through better coordination across State and local planning process." Information Pack p18

COMMENT With respect to public involvement in the process, PMAT strongly prefers public meetings to information disseminating drop-in sessions.

3. Fairer process for determining planning applications during the transition to the Tasmanian Planning Scheme

"Section 20 of the LUPA Amendment Bill proposes amendments to section 51(3) of the *LUPA Act to provide a more equitable approach for determining development applications lodged before a change was made to the relevant planning scheme. This includes the transition from current planning schemes to the Tasmanian Planning Scheme.*

Currently, the LUPA Act requires local councils to make a decision on a development application by reference to the planning scheme that is in effect at the date the decision is made, not when the application was lodged.

The current approach has the potential to create confusion for the applicant and the community as the planning requirements change part way through the assessment process. Complications can also arise for councils, particularly with the statutory timeframes for the assessment of applications, if:

• additional information is required to assess it (the DA) against the new requirements; or

• the status of the application were to change between No Permit Required, Permitted, Discretionary, or Prohibited.

The current approach is also unfair for an applicant particularly if there are significant differences between the current planning scheme and the future or amended planning scheme.

The Bill provides for a more equitable approach by requiring a decision on a development application to be made by reference to the planning scheme that is in effect at time of the application being validly lodged"
Information pack p 19

QUERIES

- What does "Equitable" mean? Fairer for whom?

- Is this the right application of the Coty principle?

- Why should a DA be assessed against "pending" planning requirements which are still a long way from being finalised, under consideration at TPC and undergoing public hearings?

COMMENT The fact that other states apply Coty does not necessarily make it right for Tasmania in our view.

4. Implementation of certain State Planning Provisions through interim planning schemes

"Section 22 of the LUPA Amendment Bill proposes amendments to Schedule 6 of the LUPA Act to establish a process for issuing a planning directive that brings parts of the SPPs into effect through interim planning schemes.
The SPPs were made in early 2017 and deliver a number of improvements to the planning system including:
• clearer exemptions;
• clearer application requirements;
• a broader range of general provisions for managing use and development;
• refinements to the development standards for dwellings in the General Residential Zone; and
• consistent requirements for residential development in the Inner Residential Zone.

Since the making of the SPPs, there has been growing interest in bringing some elements into effect earlier, particularly with the long-term timeframe for full implementation of the Tasmanian Planning Scheme.
The only available approach to bring parts of the SPPs into effect earlier is a draft planning directive that may be given immediate, interim effect through an interim planning directive." Information Pack p 20

QUERY exactly "**whose** "growing interest" in bringing some elements into effect earlier? Who is pushing for early adoption of the SPPs? We are concerned this further tilts the balance towards the development lobby.

COMMENT PMAT absolutely rejects this as the SPPs are contentious and do not meet community expectations.

- The standards are not exemplars of visionary, sustainable or strategic planning.
- We understand this to be the view of many professional planners.
- PMAT definitely does not want to see them introduced early through the IPS.
- PMAT strongly supports a review of the most contentious of the SPPs, including in particular the residential standards, the Natural Assets Code, the Scenic Protection Code, and the Built Heritage Code. PMAT is also very concerned that there is no Aboriginal Heritage Code, no Stormwater Code and no on-site Waste Water Code.
- Similarly, we definitely do not support the implementation of IPD 4. We are deeply disappointed in the Planning Policy Unit and the Tasmanian Government that this planning directive has been created with no prior community consultation. PMAT considers it may lead to ad hoc planning outcomes that the community will have to live with for years to come and to losses in amenity and local character. It also makes a mockery of this 'consultation', where it is proposed to amend LUPAA to allow the Minister to direct parts of the SPP's to be given effect through changes to the interim planning schemes. We STRONGLY OPPOSE THIS AMENDMENT.
- We see this as short-changing future Tasmanians including people who move here from interstate.

Thank you for the opportunity to comment on this hugely important matter of the proposed wide-reaching changes to the LUPA Act 93.

As stated earlier, PMAT endorses the 12 recommendations of the EDO submission.

We are happy to discuss any of the forgoing.

Yours Faithfully,

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