



27 September 2018

Planning Policy Unit
Department of Justice
PO Box 825
Hobart TAS 7001

By email: haveyoursay@justice.tas.gov.au

Dear Minister,

Draft Land Use Planning and Approvals (Miscellaneous Amendments) Bill 2018

Thank you for the opportunity to comment on the draft *Land Use Planning and Approvals (Miscellaneous Amendments) Bill 2018* (the **draft Bill**).

EDO Tasmania is a strong advocate for a robust and transparent planning system. We note that consultation on the draft Bill has been limited and encourage you to release future drafts for broader public comment.

Our brief comments on the draft Bill are set out below.

Consistency with Planning Directives

We support the general intent of proposed s.30BA and s.30H(3)(b)(viiia), allowing an exemption from public exhibition for amendments the Minister has determined are necessary to bring the SPPs into conformity with a planning directive. However, the exemption should be limited to amendments giving effect to *final* planning directives, rather than interim planning directives.

Planning directives are subject to public exhibition prior to their declaration, therefore advertising amendments to the SPPs that give effect to a planning directive may result in duplication. In contrast, an interim planning directive takes effect without public exhibition, and remains in effect until the interim planning directive expires, is withdrawn or is replaced by a final planning directive in the same terms.

The draft Bill proposes to amend the definition of "planning directive" in Schedule 6 to include planning directives "made in accordance with clause 3(2)(b)". The proposed clause 3(2)(b) provides for the making of planning directives and interim planning directives "each within the meaning of the former provisions". The former provisions included the following definition of "planning directive":

planning directive means a planning directive issued under section 13, **or an interim planning directive issued under section 12A**, that is in force. **[emphasis added]**

As currently drafted, s.30H(3)(b)(viiia) would allow an amendment to the SPPs giving effect to an interim planning directive to escape public exhibition, even though the interim directive has not been advertised.

Unless a distinction is made between final and interim directives, it is foreseeable that an interim planning directive could be made without public consultation, a determination made that the SPPs need to be amended to reflect the interim directive, the amendment made without public exhibition, and the interim directive subsequently withdrawn before any public exhibition occurs.

We recommend that the draft Bill be amended to distinguish between interim and final planning directives, and confine the operation of s.30H(3)(b)(viiia) to final planning directives.

Consistency with Regional Land Use Strategies

We do not support the proposal to amend the LPS criteria to require that Local Provisions Schedules be “consistent, as far as practicable, with regional land use strategies”.

Regional land use strategies (**RLUS**) are important documents for securing regional consistency and strategic direction, especially in the absence of a comprehensive suite of State Policies. This is supported by ss.35N and 40C of the Act facilitating review of planning instruments that are not consistent with the RLUS.

We appreciate the need for some flexibility in demonstrating whether draft LPS are consistent with the applicable regional land use strategy. We also note that, pursuant to s.5A(6), the Minister is required to keep RLUS under regular review and can adapt a strategy (in consultation with the relevant planning authority) where it is not serving regional needs.

However, given the strategic role played by RLUS, demonstrating that LPS are consistent with the RLUS currently in force should remain a priority.

Advertising draft Local Provisions Schedules

We support removing the requirement for Ministerial approval to advertise a draft LPS (s.35B).

The draft Bill proposes to allow the Commission to issue an “outstanding issues notice” (**OIN**) identifying areas where the Commission is not currently satisfied that a draft LPS meets the LPS criteria. A planning authority can then proceed to advertise the draft LPS, along with the OIN.

Requiring the OIN to be published with the draft LPS provides some efficiency and explicitly alerts the public to concerns raised by the Commission. However, this approach also risks information compiled by a planning authority to address those concerns not being released until after the exhibition period. Any subsequent public hearing may present an opportunity to discuss that additional information, however it would be preferable for all information relevant to the draft LPS to be available during the exhibition period.

We recommend that the planning authority be required either to:

- provide further information to the Commission’s satisfaction prior to public exhibition of the draft LPS, or
- include a response to an OIN as part of the exhibition documents. This response could include further information, a commitment to the future release of further information, or a statement explaining why the planning authority believes that the draft LPS does meet the LPS criteria.

Notifying relevant agencies

We support the requirement to notify relevant State Service agencies when a draft amendment to an LPS is certified (s40FA(1)).

Given that even minor amendments can have implications for other agencies (such as those with responsibilities for infrastructure, fire management, regulation of vegetation, tourism or coastal management), we recommend that s.40FA(2) be amended to require notification even of amendments to which s.40I(1) applies.

If you would like to discuss any of these comments, please do not hesitate to contact me on 6223 2770.

Yours sincerely,

Environmental Defenders Office (Tas) Inc.



Jess Feehely
Principal Lawyer