Representation

Tasmanian Statewide Planning Scheme

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Introduction

This submission outlines some of my basic concerns about the Statewide Planning Scheme (SPS). It deals with the following matters:

The scheme does not fulfil its stated purpose.

The scheme does not provide framework for sustainable development.

It is not a planning scheme.

Zoning.

Subdivision.

It is not a single "Statewide" Scheme.

Scheme construction.

It is not a comprehensive document that evaluates the Scheme clause by clause. It is my view that to do that would be to accept that the SPS is a valid way of achieving its stated purpose - implementing the objectives of the Act. Any reading of the Scheme will lead to only one conclusion - it cannot and will not achieve its purpose. The matters I have referred to are used to illustrate that main point.

The SPS as it currently stands effectively declares that sustainable development as defined in the Act is not an issue. The consequences of that attitude will contribute to significant economic, social and environmental costs for Tasmania. Those consequence have been well documented in Tasmania and elsewhere, and are already evident throughout the State. That information appears to have been totally ignored by the people who dew up the meaningless rhetoric masquerading as land use strategies and the simplistic and unrealistic Scheme provisions.

It is my strong view that the current process is fundamentally flawed. As a result the Government has only two options:

Accept the SPS as the new "Statewide Planning System" and abandon the charade of achieving the objectives of the Act - by removing any mention of sustainable development from LUPAA; or

Putting in place a real "planning system" that can effectively produce sustainable outcomes within the meaning of the definition in Schedule 1 of the Act, namely:

"managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment."

1. The SPS does not fulfil its stated purpose.

Clause 2.1.1 of the Statewide Planning Scheme (SPS) sets out the purpose of the Scheme as follows:

(a) To further the Objectives of the Resource Management and Planning System and of the Planning Process as set out in Parts 1 and 2 of Schedule 1 of the Act.

> The objectives of the Act focus on sustainable development. Not only does the scheme not properly address this fundamental matter, it hardly mentions it. The only specific reference is in Clause 21.1.1, which is a statement of purpose for the Agriculture Zone. There is no integration of the concept of sustainable development into the Scheme, and there is no evidence that the operation of theScheme will result in sustainable development..

(b) To provide for planning controls consistent with State Policies in force under the State Policies and Projects Act 1993.

> There are virtually no State Policies in force, and those that are (Coastal, Water Quality an Agricultural Land) do not provide a workable framework within which development can be assessed for consistency with the policy. State agencies have failed to produce policies that can be integrated into the land use planning framework and this failure means that this statement of purpose cannot be achieved

(c) To enable the implementation of declared Regional Land Use Strategies, as amended by the Minister from time to time, through the Local Provisions Schedules.

> The regional land use strategies are strategies in name only. They are not properly researched and documented strategic documents. They have not been developed through a consistent and properly formulated strategic planning process. They are little more than "wish lists" full of general statements that have no relevance to land use decision making.
>
> For example, the Southern Region Strategy has as its vision -
>
> *a vibrant, livable and attractive region, providing sustainable growth opportunities to build upon a unique natural and heritage assets and advantages as Australia's southernmost region.*
>
> It goes on to say that climate change is a significant challenge and provides this as an overarching consideration. The fact is that climate change is not an "overarching consideration" in the SPS. The location and type of development (fringe urban low density residential development, continued subdivision of land, failure to incorporate sustainable housing criteria, dependence on private motor vehicles, inadequately serviced development) embodied in the Scheme flies in the face of good planning that recognises the reality of climate change. The strategy is more case of "as long as we say it will happen, then it will happen not matter what we do".

If this Scheme cannot fulfil its purpose, then it is fundamentally flawed and in terms of achieving sustainable development, utterly useless.

2. The Scheme does not provide a framework for sustainable development

Schedule 1 of the land use planning and approvals act sets out a detailed definition of sustainable development.

> *"managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –*

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment."

I have reviewed the strategic planning documents on which the Scheme depends and the Scheme content and can find no evidence that the Scheme is capable producing sustainable outcomes. Quite simply, there is nothing meaningful in the Scheme relates to this definition.

For example the scheme privileges continued low density residential development at the fringe of our towns and cities. This development relies primarily on the subdivision of partially serviced land and construction of new single dwellings on undeveloped land. Much has been written about the unsustainability of this form of development. Neither the strategy nor the scheme recognise that the rate of construction of these new dwellings at the fringe is approximately double the rate of household formation in Tasmania. Nor do they recognise the myriad consequences of this form of development, including traffic congestion, an excessive rate of consumption of fossil fuels, loss of productive and environmentally significant land, high costs to public authorities to meet demands for even the most basic services, lack of community and social facilities within new growth areas and increased pressure on threatened habitats. The Scheme, also does not provide encouragement for realistic alternatives that might;

- reduce the environmental impact of this form of development,
- provide affordable alternatives to meet real social and economic needs,
- reduce dependence on private vehicle transport, particularly for the journey to work,
- produce a better relationship between the location of jobs, housing and community services,
- reduce the long term costs of physical and community infrastructure provision, and
- produce a better return to the public purse soon the level of investment required to support this form of development.

Throughout Tasmania there are many opportunities for redevelopment of existing service land within our towns and cities. The scheme makes it much harder to achieve these alternatives than to continue on the same course of meeting the needs of the market rather than supporting sustainable development.

For a planning scheme that is supposed to produce sustainable development and which has climate change is an overarching consideration, this is just not good enough. What makes it even more incredulous is that the strategies talk about increasing residential densities, but the hurdles to achieving it are such that developers will always pursue the easy option – another subdivision for low density residential development at the fringe.

3. This is not a planning scheme

The Government also says that its planning reforms aim "to provide a fairer, faster, cheaper and simpler planning system for Tasmania" (absolute proof that they are not interested in achieving the objectives of the Act). However, the SPS does not even achieve what the Government wants. The SPS is nothing more than a single set of rules for minor development across some of the State. It is not a "planning system", but a development approval system that has little or nothing to do with good planning and sustainable development. The Act is titled the "Land Use Planning and Approvals Act" - but the SPS exists in a planning vacuum. The critical issues of protecting our natural and cultural assets, providing adequate infrastructure, supporting truly sustainable development and meeting the needs of local communities are no "longer part of the planning system". It is little more than a development control system unrelated

Nor is the SPS a fairer planning system.

The SPS may make it easier and quicker for some developments to get approval, but even that is in doubt. The irony is that much of the material included in the Scheme need not even be there as it is little more than a set of upgraded building controls. These controls could be put in place much more cheaply and efficiently than through a "planning reform" agenda involving massive expenditure, new legislation and major upheaval of existing arrangements, none of which will result in sustainable development outcomes.

There is no doubt that Tasmania needs a more efficient and effective land and building development approval system. However, that system must operate within a robust land use planning framework if it is to deliver on the objectives of the Act. The SPPs do not provide that framework. The SPS is not "planning reform" and it is dishonest to call it that.

As evidence of this misleading approach to "planning reform" the Government's planning website informs us that the "Government is now preparing a new set of policies to guide the planning system" which will "cover a broad range of planning matters such as economic development, settlement and community infrastructure, transport and infrastructure, natural and cultural heritage, and hazards and risks". Apart from the fact that a simplistic and archaic set of development controls cannot deliver most of these things, the following words have disappeared - environment, sustainable, fair, orderly, land, water, public involvement. In addition, why wasn't this done before the SPPs were developed? This is an amazing situation. The Government is saying: "We have the controls - now we are going to work out what they are meant to do" - and they call it planning!

4. Zoning as the basic development control mechanism

The SPS depends on dividing the planning area into a number of static zones. These types of planning instruments are simplistic and are based on a view of land use as a static and fixed pattern of activity confined to easily definable localities where, for whatever reason, different activities are acceptable or not acceptable. These reasons are not stated either in the SPS or the strategy. It is supported by the naive notion that it is possible to draw a distinct boundary between different areas that are either suitable or unsuitable for different activities It fails to recognise the complex and dynamic nature of the relationships between human activity, the natural world and the evolution of economy and society in space. It also fails to recognise the fact that there is ongoing competition for the use of and access to the spaces that may be used to access those resources.

Zoning schemes are based on the a priori assumption that desired outcomes are directly associated with the definition of land as being suitable for specific uses and associated developments. Thus, if land is zoned for a particular purpose, and that purpose occurs, then the desired outcome is (or can be) achieved. Conversely, if a use is not allowed it is because it would not contribute to that desired outcome. These assumptions are so simplistic and naive as to beggar belief that they form the fundamental basis of a planning Scheme in the 21st Century. How, for example, they would allow us to focus on sustainable development or climate change as an overarching consideration is a complete mystery.

It is not possible for a planning instrument based on a static and simplistic zoning approach to "further the objectives of the Act. Sustainable development is critical to enhancing and protecting natural, cultural and social values, but a zoning Scheme cannot on its own produce sustainable development.

The Government has a mantra of "Jobs and Growth". However, many developments vital to local economies could not be established under the SPS, as they are are either totally or partially prohibited because of their location in the particular zones.

For example, tourism is seen as a major driver of growth. Bruny Island is seen by the Government as a key destination in that strategy. However, under the SPS it is likely that many existing businesses that support the Island's emergence as a destination could not have been established under the SPS provisions. They include the Roberts Point Cafe, Bruny Island Smokehouse, Bruny Island Cheese Factory, Scenic Flights, Bruny Island

Honey, HIBA, Morella, RT Place, Adventure Bay Berry Farm, Dennes Point Cafe, INALA, Bruny Long Weekend, Labillardiere Estate. Even the much lauded Bruny Island Cruises would need a special dispensation (it received one under the Kingborough Interim Scheme). All of these establishments encompass similar uses and activities. They are all commercial operations encompassing a range of different development types. From planning and sustainable development points of view they all raise similar issues, including - capacity restraints within local communities, infrastructure needs, traffic generation, parking provision, amenity effects on neighbouring properties, management of waste, compliance with health standards, operational characteristics, impacts on the natural values of the locality, nature and effect of offsite activities, building siting and design, etc. These are the matters to be considered and satisfied if a development is to meet the objectives the Scheme - not just whether or not it is in a particular zone and whether any buildings meet building control requirements.

This example highlights two things:

- a zoning approach presupposes that certain activities are not “sustainable development” and therefor cannot happen, and
- comprehensive, integrated commercial, and land management operations (tourism, agriculture, forestry operations, new residential subdivisions, commercial precincts, transport hubs, etc.) are treated merely as a collection of individual activities, some of which are acceptable and some of which are not.

Zoning schemes work best as negative documents - i.e. they are used mostly to prevent certain types of development in particular areas, and where it may be desirable to separate particular uses which are considered to be incompatible (e.g. to separate industry and residential uses). They rely on arbitrarily selecting which development types can and cannot happen in different zones. They have been used widely overseas, for example , to prevent unacceptable groups from locating in an area. They also depend on legal definitions of use and development types thus supporting the emergence of “the lawyer’s playground” that is an ingrained part of planning practice. In reality zoning is arbitrary and relies on past practice and simplistic interpretation of patterns of land use. They provide little guidance in deciding whether or not a development contributes to the Scheme purpose and objectives.

The number of zones should be significantly reduced and any zones should deal with use as it is defined in the Act and not confuse the issue by treating different development types as uses. This would allow integrated development proposals to be considered on the basis of their contribution to sustainable development rather than whether or not they fit into some arbitrary classification. It would also allow a much better focus on the effects of the way in which the land is used and the impacts on economic and environmental values. It would allow assessment of development proposals to focus on the issues of sustainable development and provide a basis for ongoing monitoring and management - a critical part of any operation that seeks to achieve sustainable outcomes. This site based approach to planning is now widely used in Queensland and South Australia and is the cornerstone of the British planning system.

Most critically, it would allow a focus on sustainability issues rather than compliance with arbitrary rules. It would encourage innovation and has the potential to allow ongoing improvement during the operational phase of a development.

5. Subdivision

The SPS treats subdivision as a form of development. Subdivision is not development - it is a means of assigning legal rights and responsibilities over particular pieces of land. The act of subdividing a piece of land does not produce anything concrete nor does it fit the definition of development in the Act. By including subdivision as a form of development, the SPS takes on the role of assigning additional use and development

rights to landowners. In many cases these rights are given without reference to any specific criteria nor with any requirement to assess the consequences of giving these rights.

For example, the Landscape Conservation Zone allows any owner of a piece of land in the zone to cut their land into 20ha lots provided they "have regard to" a number of loosely worded criteria. They don't even have to spell out what the lots are required for and address the infrastructure and environmental consequences of being able to sell these lots to build a house, open up a tourist operation, set up a food services business or establish visitor accommodation. How this would provide a means of "protecting significant natural and landscape values", as stated in the zone purpose, is beyond comprehension.

The right to subdivide land should only be given when it can be clearly shown that the creation of a number of individual lots is required as part of a development and when the consequences of creating, selling and developing those lots is properly documented and assessed as part of the development approval process. This is the only way in which issues of economic and environmental sustainability, infrastructure support, environmental impact, and avoidance of unreasonable demands on public support can be addressed. To give away development rights before that is done is not planning - it is irresponsible.

6. It is not a single statewide planning scheme

Although the SPS purports to be a Statewide Planning Scheme, it is not.

Firstly, it effectively removes a considerable amount of land from the system which will ensure that development on that land will be subject to a different set of rules.

For example, the Environmental Management Zone incorporates public land under the Crown Lands Act 1976 or is subject to the National Parks and Reserved Land Regulations 2009. However, the purpose of the zone includes

"To provide for the protection, conservation and management of areas with significant ecological, scientific, cultural or aesthetic value or with a significant likelihood of risk from a natural hazard".

There is an assumption that such resources only exist on Crown Land. That will be a revelation to many private landowners. If the land within this zone is to be used for one or more of a wide range purposes - that use and associated development is permitted provided it has "an authority under the National Parks and Reserved Land Regulations 2009 is granted by the Managing Authority, or approved by the Director General of Lands under the Crown Lands Act 1976." Such authority can be given by the Department or the Minister without reference to an independent and transparent process. This is a different set of rules and would operate a separate planning approval process. Similar processes exist for dams, electricity infrastructure , water supply and sewerage, gas infrastructure, bushfire protection, navigation aids, and removal of threatened native vegetation communities under the Forest Practices Act. Section 4 of LUPAA states explicitly that

"This Act binds the Crown in right of Tasmania".

However, the SPS has effectively subverted that provision by creating separate approval systems for many activities in many parts of the State.

Secondly, the SPS contains some significant exemptions that would remove the need for a range of matters to be assessed as part of a Statewide process. Most disturbing is the exemption to allow the removal of threatened species or threatened species habitat. Many forms of use or development that may have implications for sustainability are exempted from consideration. Because there is no process whereby a person has to demonstrate that they satisfy the qualifications for an exemption there is a high likelihood that many developments will occur without scrutiny. Take, for example the exemption for visitor accommodation - "The use of a dwelling for Visitor Accommodation for no more than 42 nights in any calendar year". Who is going to

police the 42 days? Who is going to ensure that visitor facilities are provided within the property? What about additional parking requirements or signage? A blanket exemption is an invitation to ignore the rules. These rules apply to people who do the right thing but not to those who wish to ignore them. The fact that no Council in Tasmania effectively enforces its planning scheme just adds to the problem.

Thirdly, separate approvals are created by omission. In the case of tourism signage, many schemes across the State included the requirements of the Tasmanian Visitor Information System for tourism signage. This has now disappeared and has been replaced by a provision that merely says,

"Must have written approval from Council or the relevant agency, where necessary".

In other words we now have another approval system that has no criteria, only applies "where necessary" and is operated by a "relevant agency" or "Council". This is simply a recipe for our roadsides to become littered with graffiti masquerading as tourism signage - a reality across many roads in the State. It underlines the problem of not directly linking objectives and criteria. Protecting landscapes is a mantra throughout the Scheme - and yet the SPS removes any effective control over developments that can have a significant and widespread impact on visual landscapes across the State.

There are effective ways of addressing each of these issues as part of a truly Statewide planning process. The Act has as one of its objectives

"to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals".

The SPS does not consolidate approvals it disintegrates them into a scattered and uncoordinated collection of bits and pieces. It is just another example of how the SPS fails in its fundamental purpose.

7. Scheme construction

The SPS runs to over 400 pages of often incomprehensible, repetitive and superfluous verbiage. It is simply not possible to get a clear idea of what the Scheme does and how it operates. I could give hundreds of examples to illustrate. However, all one needs to do to appreciate this is to try and get a clear idea of how the Scheme achieves its purpose. It is impossible.