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Friends of Four Mile Creek Inc
Falmouth Community Centre

10 August 2015

Dear Sir

Submission on Consultation Draft:
LAND USE PLANNING AND APPROVALS AMENDMENT (TASMANIAN PLANNING SCHEME) BILL 2015

Thank you for the opportunity to comment on the above.

The Four Mile Creek and Falmouth communities have historically taken interest in planning matters which affect their vicinities and within the Break O'Day municipality generally. Over many years we have contributed on a range of matters including Planning Schemes, Interim Orders, rezoning issues and Resource Management and Appeals Tribunal appeals. This document is another contribution, and we expect to make further contributions in the future, specifically concerning:

- the Draft State Planning Provisions in early 2016,
- the BOD Local Planning Schedules later in 2016, and
- the review of State Planning Policies in 2017

Understandably, land developers, builders, home owners and service providers, etc, have difficulties in dealing with different planning schemes in each municipality. Some uniformity is obviously potentially beneficial. However, the efficient improvement of a state-wide planning scheme should not come at the cost of local relevance of planning. The test will be the appropriateness of both the State Planning Provisions (SPPs) and the relevance of the Local Planning Schedules (LPSs) in each municipality. Time will tell.

We notice that not all of the development issues in the State have been incorporated into the proposed State Planning Scheme. Specifically: forestry operations, mineral exploration, fishing or marine farming are excluded from the Scheme. While the Scheme proposes controls over "use, development, protection or conservation of any land", the exclusion of the above activities limits its universality.

Notwithstanding the above comments, one of our main interests is in the processes surrounding the issuing of development applications, particularly those which may detract from community amenity. At another level we are interested in processes of amendment to planning schemes, including re-zoning. Central to these matters are the processes of consultation and appeals. Our experience in these matters with the Break O'Day Interim Planning Scheme 1996 can best be described as mixed. Generally we have felt the 1996 Scheme has served the region quite well, but aspects of its administration by the Break O'Day Council leaves much to be desired.

In the draft Tasmanian Planning Scheme Bill there are no details of permitted uses of land. They will be contained in the yet to be published SPPs and the LPSs. The Bill details in great depth the processes for development, amendment and implementation SPPs and LPSs. It basically leaves unchanged, at least for the moment, the processes around the application, issuing and appeals of development applications as in the current Land Use Planning Approvals Act 1993. This may change with the SPPs or LPSs.

Recent history of planning controversies in other states shows that when due process is obscure and decision making is arbitrary, the results can be corrupted. The Government has responsibility to

eliminate as far as practical the potential for corruption from planning decisions. To this end it is necessary to have transparency of decision making at all levels. We on the Suncoast would like to see more decisions made "in the sunshine", not behind closed doors.

Consultation

While we welcome the opportunity to comment on a new framework for planning, we have a particular interest in consultation processes.

Consultation is a very general term used to cover a wide variety of circumstances. It needs specific definition. Planning law changes are difficult and the Government needs to have the community on-side rather than off-side. So it is important that consultation processes are tailored, transparent and authentic.

To illustrate our point, the draft Bill Section 17 specifies a number of consultation components for exhibition of draft SPPs. They include the following:

- publishing a notice in a (i.e. one) "generally" circulated newspaper, before the consultation period begins and once more within the first 14 days of the 42-day consultation period
- display of a (i.e. one) copy at the Commission's premises during the consultation period
- make available for view and download on a website advertised in the newspaper notice
- provide a (i.e. one) copy to each planning authority

We feel the above consultation components are deficient in a number of respects.

- Firstly, the two-times notice advertisement in the one state-wide newspaper, "The Mercury", is hardly sufficient. On Saturdays "The Mercury" sells about 47,000 copies, less during the week. There are a little over 200,000 households in Tasmania, so the notice could reach possibly 23% of households if they read the Public Notices. So this is not a very efficient way of informing interested people. But it is a traditional method and necessary.
- Secondly, display of one copy of the document in a Hobart office and sending of one copy to each planning authority is extremely minimal. It seems hardcopy documents are precious nowadays.
- Thirdly, making a copy of the document available online, ("available for viewing by the public at an electronic address"), is the only modern aspect of the consultation process. However, many of these draft planning documents are many pages long, (the draft Bill is 190 pages), and to examine such documents conveniently and efficiently is extremely difficult on a computer screen.

The purpose of consultation must also be defined. In the above case it is presumably to distribute the draft SPPs as widely as possible so as to gain a broad range of quality inputs. It should not be just a "token" effort to avoid political criticism of lack of consultation. Going through the motions is not enough.

We suggest a number of improvements should be made to the process of exhibition of draft documents:

- The advertising of a notice should be made in all Tasmanian newspapers and more times than just twice. Pre-exhibition period notices should allow interested persons to register for receipt of a hard copy of the document.
- Use should be made of local government, industry, community and other organisations' newsletters to advertise a forthcoming consultation.
- The Commission could easily notify previous "clients" including community organisations, industry associations, etc, via an email database, and invite any person or organisation to be

listed on their database.
- Hard copies should be available from local authorities, even if a nominal cost of printing is required.
- Summaries of some documents could be useful to outline the main points, or changes being floated. Granted this may not always be possible in a highly technical document.

The above comments also apply generally to processes around exhibition of draft amendments to SPPs (Section 29), draft LPSs (Sections 44, 45) and draft amendments to LPSs (Sections 47X, 47Y).

Permits requiring amendments to the Planning Scheme

An area in the draft Bill which raises serious concerns is the matter of permit applications which require amendment of a LPS, (Section 47ZK). Obviously there needs to be a process to deal with unforeseen circumstances, but Section 47K (1) allows an applicant to apply for a permit which is knowingly not permitted and simultaneously request the planning authority to amend the LPS to allow the permit. This seems to encourage open slather. So is this the nub? We have a planning scheme, but we don't have a planning scheme.

Further, if the local authority requests additional information from the applicant (Section 47ZL (1)), the applicant can contest the request for additional information by referral to the Commission (Section 47ZM (1)). If the local authority agrees with the proposal to amend the LPS to meet the applicant's request, it may grant the permit as if the amendment is in place while proceeding with public exhibition of the draft amendment.

If a Section 47K (1) application proceeds to a draft amendment of a LPS, it is noted that the local authority must forward to the Commission a report on submissions made in respect to the exhibition of the draft amendment. The report must contain, among other things, a statement of the opinions of the local authority on merits of each submission, (Section 47ZQ (5) (b)). We request that such a report to the Commission should be made public, and that the decision by the Commission regarding the proposed amendment should be made public, not just to the applicant, the local authority and submitters, (Section 47ZS (2)). The opinions of a local authority need to be transparent and accountable.

It seems every effort is being made to encourage almost any type of development, whether conforming to LPSs or not. In the cases where amendments are made to a LPS to provide a particular development or use, the permit can be extended for up to 6 years before "substantial" commencement. For property developers, sub-divisions requiring an amended LPS could be mothballed for up to 6 years before a sod is turned.

Role of the Minister

We note that in the preparation of amendments to SPPs, arguably the framework for the new Planning Scheme, the Minister "may inform himself or herself, in the manner he or she thinks fit, in relation to any matter", (Section 32 (1)). While the Minister must be able to consult with anyone he or she thinks fit, it is important for public confidence and the integrity of the system, that such consultations are not hidden. We therefore request that the Minister report to Parliament regularly, say every 6 months, the names and affiliations, but not the details of discussions, of all persons the Minister has received on planning matters. The central role the Minister plays in directing the new Planning Scheme provides risk that the Minister could be unduly influenced by vested interests, and by open disclosure the Minister can reduce this risk.

Local government and the Planning Scheme

Our communities generally support council amalgamations where they provide greater efficiencies and higher quality services for residents. Indeed, in the 1990s the Four Mile Creek community publicly supported the Liberal Minister for Local Government, Denise Swan, when she proposed council amalgamations. Presumably, the proposed new Tasmanian Planning Scheme will not be a hindrance to future local government amalgamations.

For low population municipalities, such as Break O'Day with around 6,500 residents, the administrative burden of planning schemes is considerable. In the proposed Tasmanian Planning Scheme there are quite tight timelines for planning authorities to respond to planning applications, requests and directives from the Commission, assessment of submissions, etc. Penalties apply if timelines are not met. If the new Scheme is to be an improvement on the past, then planning authorities must have sufficient professional staff resources to administer the Scheme. The Scheme, while aimed at state-wide orderly planning processes, is an impost on local governments, more so for some. The State government should fund a minimum number of professional staff positions in all planning authorities to ensure minimal professional services. Larger municipalities will be more capable of self funding planning services, but smaller municipalities will not. If a core of professional staff is not available in all municipalities, then the system is bound to fail.

Break O'Day

The Break O'Day Council has embarked on an ambitious long term planning exercise, based around a Municipal Management Plan. Part of this project is to engage consultants to prepare a Land Use & Development Strategy which aims to identify land use and development opportunities for future incorporation into the Break O'Day Planning Scheme. This is an important study which will have long term impacts on land use zoning throughout the municipality. Unfortunately the Council has not brought the community along in the process. Consultation with affected communities has been far from adequate.

Unfortunately the Council has taken the view that the draft Land Use & Development Strategy "is not subject to the same exhibition requirements as a Planning Scheme", (letter from General Manager BODC to residents 2 July 2015). This is claimed as a defence for inadequate consultation. While inviting residents to comment on the draft, there is no independent review of submissions; they are merely forwarded to the consultants for their "consideration", or not. Note, the consultants deal with the submissions, not the Council. This is hardly an authentic consultation process.

Herein lays a problem that only the State government can resolve. Consultation processes by local government are in great need of improvement. The current Land Use & Development Strategy study at BODC is arguably just as important in the long term as the proposed State Planning Provisions and Local Planning Schedules. All have impacts on future uses and development of land. It is clear residents don't want to be surprised by recommendations about their townships, their local natural assets, their communities, by policies which they have had little or no input. It is time the State government acted to require local governments to develop and adopt sensible and authentic public consultation practices which communities can have confidence in.

We hope you find our comments instructive.

President of sub-committee
Falmouth Community Centre

Secretary
Friends of Four Mile Creek Inc