

# Tasmania at the cross-roads: The Planning Scheme Future

**An Interview with Professor Michael Buxton 15 November 2016**

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Professor Michael Buxton joined RMIT in 1998 after 12 years in senior management with Victorian Government Planning and Environment agencies, and with the Victorian Environment Protection Authority. He formerly headed the intergovernmental process for developing Australia's National Greenhouse Strategy, and the group responsible for the development and implementation of environmental policy in Victoria. He was an elected Victorian local government councillor and Mayor for ten years and was a member of the Upper Yarra Valley and Dandenong Ranges Authority for six years. He is a former lecturer at Monash University, Melbourne.

**Interviewer: Graeme Wathen, Secretary, Friends of the East Coast Inc.**

***“people in Tasmania understand what’s going on”***

*Graeme Wathen, FotEC: You recently gave a keynote speech to the public meeting in Hobart (8 Nov) about the proposed new Tasmanian planning. What were your impressions of the meeting?*

Professor Michael Buxton, RMIT: The Hobart Town Hall meeting showed an enormous latent interest in heritage and amenity in Hobart and Tasmania. Clearly, the community understands that this is a major issue and is sending a strong message to the Government. There are clear political implications from the failure of governments to respect heritage. The meeting was a very strong basis to build a campaign to make the Government aware of these. I don't think a meeting like that would have eventuated in the Town Hall in Melbourne, for example, on a major complex issue like a planning system. It's very difficult to get a message across on something that complicated, but there is a really strong level of concern. I

think it was a very encouraging sign that people in Tasmania understand what's going on, or at least the beginnings of it anyway.

### ***Problems of Form and Content***

*FotEC: I understand you have looked at planning schemes in various Australian states, particularly the modern, de-regulated planning systems. What are your views on the proposed new Tasmanian planning scheme?*

Michael Buxton: The concerns about the Tasmanian planning scheme are twofold.

- firstly, the Form of the scheme and the layout,
- secondly, parts of the Content.

So on the Form it's broken into basically four sections in a fairly traditional way:

- as-of-right (No Permit Required),
- permitted uses,
- discretionary uses,
- prohibitions

At first sight the scheme itself doesn't seem overly market focussed, overly de-regulatory, because the first two sections, as-of-right and the permitted uses, are fairly standard. A lot of material has been rolled over from the previous interim planning schemes.

A lot of these modern deregulated schemes try to mix up uses or they try to bring commercial uses into as-of-right and permitted uses, so applicants don't need permits for a range of commercial uses in residential zones for example. Traditional planning schemes separate uses into residential, commercial, industrial and rural, whereas these modern de-regulated schemes try to integrate uses as much as possible.

So this scheme seems to adopt a more traditional approach than some of the new market oriented planning systems in other states.

But then when you get to the discretionary uses section, there are two streams: the more regulated stream, Acceptable Solutions, and a less regulated option stream, Performance Criteria.

The Acceptable Solutions stream again seems to have a reasonable degree of regulation. There are arguments about it. There is real concern about the building envelope, for example, for a house. But there are always going to be arguments about that.

In the discretionary section of the scheme in the regulated criteria, there are height limits for residential areas and for commercial areas. These are quite strict compared to, say, Melbourne height limits in some cases. The minimum lot sizes compared to Melbourne, also, are quite strict and provide for minimum densities in multi-unit developments for example, of 325 m<sup>2</sup>

and site coverage of 50% and so on. Melbourne doesn't have a density requirement for multi unit development.

But when you go to the Performance Criteria, which is the alternative track, all sorts of problems open up. This where the Form of the scheme has real problems because in effect the Government is putting a code into an alternative stream. Now that's a bit unusual.

### ***Planning by bus stop...re-zoning by stealth***

All de-regulated planning schemes attempt to govern as-of-right and Permitted uses by codes, and also seek to control permits by codes. In this case, an alternative to a more regulated approach in the discretionary uses is a bit unusual, but similar in effect because it opens up development. For example multi-unit development seems to be regulated by the first track, or the Acceptable Solution, but is relatively unregulated on the alternative path through the Performance Criteria. So, in the General Residential Zone, land can be developed without density controls for multi unit development within 400 m walking distance of any public transport stop or any business or commercial zone. Now that opens up a lot of land in cities that is relatively unregulated.

Here the Performance Criteria becomes virtually an exemption to the Acceptable Solution, a sort of loop-hole. Developers exploit every such loop-hole to maximise development of sites. Eventually it will lead to re-zoning at higher densities. It is re-zoning by stealth.

### ***"codes that don't really control anything"***

And when you look at the Codes themselves, for example the Natural Assets Code and the Scenic Protection Code, they are codes that don't really control anything. The Natural Assets Code opens up land to vegetation clearing for agriculture. That's basically a radical de-regulation. You can clear land for agriculture without a permit and that's extraordinary. And even where there seem to be criteria to assess applications under a code, for example for protection of natural assets or heritage, a lot of the criteria are so vague and general that they are basically are no help coming to a decision. That kind of vague criteria are going to lead to enormous problems of interpretation, appeal, arguments, and delays. Inevitably, this kind of vagueness provides a kind of gold mine for cashed up developers with their legal teams, and disadvantages and wears out resident objectors.

So the Form is really problematic. It really is applying the deregulated development assessment model proposed by the Development Assessment Forum and adopted by State Planning Ministers in a slightly different way but still with similar effects.

And on the Content there are other serious problems through those alternative pathways in the discretionary uses. If you look down those discretionary uses the two that immediately jump out are:

- the high and medium density provision in the General Residential Zone which opens up a lot of land within 400 m of a public transport stop or a commercial or business zone
- and in a rural area the really big sleeper is the commercial uses allowed in the two main rural zones - Rural and Agriculture Zones, including visitor accommodation, and tourist development, but also other quasi-industrial and commercial developments such as bulky goods stores, retailing, manufacturing and processing, and business and professional services. These are not appropriate uses for a rural zone.

***“the rural zones become a holding zone for inappropriate development”***

So the rural zones become a kind of holding zone for inappropriate development, such as commercial and quasi-industrial development. They're not proper rural zones. The two main rural zones should be for protecting rural values, whether agricultural biodiversity, scenic landscape or whatever.

***“A rural zone should protect rural values”***

A rural zone should protect rural values, but around Hobart developers are going to buy up cheap rural land for commercial uses. They are going to dump warehouses and all sorts of other commercial uses in rural areas on the urban fringe where cheaper land is only a few more miles out of the city. This will provide them with huge land price savings and this is really most detrimental to a city. It leads to urban sprawl into rural areas. It destroys rural values, natural values. It increases the cost of land so it causes a land price rise which further drives out agriculture and rural zones because they can't compete. It leads to further urban pressures and results in big transport costs, trucks going long distances instead of being focussed near transport hubs and delivery points.

***“the tourist issue in the rural zones”***

Finally the tourist issue in the rural zones. This is really going to lead to big problems, particularly in your high scenic areas like the East Coast and the North-East Coast. You are going to have major tourist developments in some of the most scenic areas.

There will be widespread misapplication of zones particularly in rural areas. That's our experience right across the country. On the East Coast in the two main rural zones, the most development oriented rural zone will be applied most. Councils in applying these zones won't apply the strongest rural zone.

In Victoria which has relatively sophisticated planning expertise, we found there was widespread misapplication of zones, the strongest zone was hardly used, because land owners had control of the council, some councillors were large landowners or landowners influenced councillors and didn't like the strongest zones. So the weaker zones are applied.

### ***Problems with major integrated tourist developments***

Aside from misapplication of rural zones the new planning scheme is going to allow major integrated tourist developments, visitor accommodation, and commercial uses. This will attract national and international investors without a doubt. It may take some time to gradually build up but Tasmania already is seen as a potentially major tourist destination in its most scenic areas not just in places like Hobart and in Parks. So it is expected that increased national and international visitor pressure will affect development interest on the most scenic areas of the Tasmanian eastern and north east coasts.

Now the preference for these big resort developers is to have integrated resorts with conference centres, massive visitor accommodation of various kinds, from hotel to cabins; all sorts of accommodation types, recreation, restaurants; all integrated. Developers want to isolate their resorts from townships, to capture most of the dollar at the most scenic places. That means they'll privatise the most scenic landscapes that are publicly accessible now. People in a way have some measure of involvement with scenic places because we can see them, use them, walk on the beach, and so on. Now once you build these resorts, walls go up and people are excluded from participating in these wonderful scenic experiences.

### ***“very little benefit to the economy of local towns”***

So aside from the loss of these most beautiful areas because these are the places these resorts are going to pick, there is going to be virtually no benefit or very little benefit to the economy of local towns. Resort owners don't want the dollar to accrue to the townships. There might be a few people making beds and so on, but the resort workers will live at the resort, the transport to and from the resort will be strictly controlled. There is very little benefit to the township. Nobody's trying to stop visitor accommodation or tourist investment, but location is the issue. If a regulated planning approach says you can have these but you've got to have them in or near townships, then the town can benefit.

### ***“stand alone resorts privatise a public benefit for private gain”***

The classic comparison is New Zealand where New Zealanders built a significant part of the country's economy around high quality, value added supply chains in agriculture and tourism and recreation visitor accommodation. So people come into New Zealand from all over the world to experience high quality recreation, tourism and scenic landscapes. The approach the New Zealand Government takes is that it protects its scenic assets because they're what people come to see. So visitors usually have to stay in or near townships. So you drive out of the town to experience the delights of the South Island, for example. And that means that those scenic areas that people come to experience are protected and they're not privatised. In effect stand alone resorts privatise a public benefit for private gain.

Secondly the towns benefit. Towns like Queenstown (NZ) are lively places with everything from restaurants to night clubs, to tourist developments, but also the support services because people actually live in the towns. There are medical, educational support services business support, advice, accountants, high end professional services as well - a range of employment opportunities offered. You can walk around the town because you're staying in the town, or you're staying on the edge of the town, and so you go to hotel bars, restaurants, but also go to the cultural facilities. Small businesses gain. So the aim should be for towns to experience growth not just in the low end jobs making beds, but right through the employment chain to the high end professional services. Great benefits and few disadvantages arise from locating overseas and national investment in the towns.

***“it's going to leave towns languishing”***

Now if Tasmania doesn't wake up to this, it's going to do two things: destroy its most scenic landscapes excluding all but the privileged few, and secondly it's going to leave towns languishing. So the people of Tasmania are going to be the losers in both ways.

*FotEC: They seem to be already promoting elite tourism with helicopter trips to remote islands off the coast and high quality walking excursions and so on.*

Michael Buxton: And again there is nothing necessarily wrong with that. In New Zealand you can go on high quality, guided, very expensive walking tours on some of the most famous tracks. You can have different quality experiences. If you just want to slum it and go on your own, sleep out under the stars, you can do that. But if you want to get a cooked meal every night and be pampered you can do that too. There's nothing wrong that as long as the local economy's benefiting and the natural environment isn't being destroyed. But in New Zealand again for example the helicopter flights are from the towns into the scenic areas, although if you have too many helicopters buzzing around you can destroy the experience for walkers. The issue is how you manage diverse experiences and where you locate the facilities.

***“Money wins in the end as a general rule.”***

*FotEC: The planning scheme seems to try to exclude public involvement in that sort of management decision making.*

Michael Buxton: At the moment many uses are discretionary, so people can object and take these applications to appeal, but they will have very little chance of winning them because the criteria for assessing these types of applications either favour the investment decisions or they're neutral or they're so vague or general that they're offer no help to the objector. So without mandatory requirements in a planning scheme that force the tourist operator to develop in the towns or near the towns and other sets of mandatory requirements, development will win out in the end. Money wins in the end as a general rule.

Victoria had a very regulated rural system until the early 90s. The Kennett Government deregulated the main rural zones with only three prohibited uses. You could put industrial plant in a rural zone. And in no time at all the rural areas around Melbourne started to be degraded, and re-zoned because the policy was weakened. In the space of about 5 years 4,000 hectares of land was rezoned into residential development. So you can set a kind of framework and a philosophy in place which basically destroys the whole idea of regulated planning.

***“the planning system doesn’t really protect your National Parks”***

*FotEC: I think the proposed scheme allows the Government managers of National Parks to make all the development decisions.*

Michael Buxton: Yes, so that’s the other side of this. There is clearly a Government intention to have the most scenic privately owned areas re-developed for tourism and visitor accommodation and other commercial uses, and also to allow these kinds of developments to occur inside National Parks. The planning system doesn’t protect your National Parks from these kinds of developments. There is no appeal against Government approved developments in National Parks.

And again that’s not necessarily unusual. In Victoria and some of the other states there is a separate National Parks Act which has traditionally prohibited all these commercial developments in National Parks. The previous Victorian Liberal-Coalition Government amended the National Parks Act to allow big tourist development, and the current Labor Government restored the prohibition. I know there is a lot of concern in Tasmania about the lack of effective application of the planning system to public land like National Parks. You can argue it should be integrated in that way, and there is a reasonable argument for that. But other states have managed to protect their parks by having strict controls in the National Parks Act or the equivalent. So you can do it that way too.

*FotEC: And what’s your thoughts on recent moves to promote big hotels in the major cities, and multi-storey residential buildings?*

Michael Buxton: The Government seems to think, at least publicly it’s saying, that multi-unit development and liberalised planning rules for residential and commercial development aren’t really going to be a problem in Hobart and Launceston because the demand isn’t high enough to allow for rapid destruction of the heritage values of these towns and cities.

***“you don’t pull down the city that tourists come to enjoy”***

The problem with that argument is two-fold. Firstly, there seems to be increasing interest in national and international visitor accommodation in the centre of these cities for their own sake but also as staging posts for moving people from an airport and a nearby urban area to the scenic areas

and the natural wonders of Tasmania. Secondly, re-development of the central cities will probably be linked to the large tourist and other commercial developments away from the cities in the most important scenic areas. I would be very surprised if the Government wasn't working to a plan to increase amounts of medium and high and even high-rise residential development in the centre of cities, particularly Hobart, to firstly provide the Hobart experience and as a base for tourist complexes further afield.

Now again there is nothing wrong with that as an economic plan as long as you don't pull down the city that tourists come to enjoy and destroy what international and national tourists come to see. Otherwise, there is everything wrong with that plan.

The great danger is that development will move visitors from one enclave to another. This is what happens in the most plundered areas of the world. Tourists come in, stay in an urban enclave and get out as quickly as possible to their resort. You could be anywhere in the world. Now that's the worst possible way to implement a tourism philosophy.

***“The principle is you don't destroy what the people come to enjoy”***

It's ironic that Australian governments seem to think the only way to accommodate short-term visitors and international investment is through medium and high-rise residential enclaves. The most visited places on Earth are European cities, aside from internal migration in places like China. So the most extraordinary impacts of tourism are felt in urban areas in European cities. Yet old European cities are not pulled down as a general rule to provide high rise visitor accommodation. Visitors are accommodated within the built form of the city. This is not rocket science. Cities all over the world know how to do this. The principle is you don't destroy what the people come to enjoy.

***“Tasmania is really at a cross-road”***

So Tasmania is really at a cross-road here. A Government which has little respect for the historic values of Tasmania's urban areas, scenic areas and townships, will destroy what could be the golden goose. It's just a matter of common sense that tourism has to be managed properly. Tasmania has a special place in Australia's because of its natural and built heritage. Its cities are still relatively intact. Most other Australian cities and even a lot of regional cities are now fundamentally destroyed: 50% of the Melbourne CBD has been pulled down and most of the remainder will be demolished in the next 30 years. We're probably some of the world's worst as a country in protecting our built heritage and our natural heritage.

***“Tasmania's cultural and natural heritage are its greatest economic strengths”***

Tasmania's in a wonderful position for all sorts of historical reasons, still having basically its urban and much of its natural heritage relatively intact. Tasmania's cultural and natural heritage are its greatest economic

strengths. Destroying them will allow rich entrepreneurs and foreign investors to make lots of money in the short term, but at the cost of Tasmania's long-term economic future. This would be a tragedy.

*FotEC: So you see Tasmania on an economic cusp of change here? The planning scheme is critical to the path that it follows?*

Michael Buxton: Tasmania's at an historic point in its history where it can either reinforce its wonderful strengths - its heritage and amenity - and have a long-term sustainable future based around them and other sustainable industries, or it can plunder them for short term gain of a favoured few. That's the choice. Destruction is not good government; it's dumb government. If the Tasmanian Government doesn't understand its moment in history, it's going to preside over the loss of that history. Both Tasmania and Australia will be very much the poorer for it.

***“they allow the minister the right to over-ride whatever rules remain”***

*FotEC: What about the provisions in the planning scheme for the Minister to call in projects and over-ride requirements of the planning scheme? What's the experience elsewhere in Australia of those powers?*

Michael Buxton: Another element of neo-liberal or deregulated planning schemes is that they give ministers enormous power. So they first of all deregulate the rules but then they allow the minister the right to over-ride whatever rules remain. This is standard across the country, part of the devilish deal.

As a result, ministers make capricious decisions without proper justification and often without any public participation. In Victoria the planning minister made a series of decisions on high-rise development and nobody even saw the applications for a long time, or knew why approvals were being granted. During the Kennett era all sorts of re-zonings and planning decisions were made contrary to policy at the government's whim.

***“such ministerial powers lead to uncertainty for everybody”***

Once ministers gain this kind of power they are able to make decisions which are incomprehensible to the rest of us because there is no public justification or consistent rules that allow us to expect consistent outcomes. Planning ministers and governments love to deregulate. All talk about the need for certainty and consistency but deregulated planning systems usually lead to uncertainty for everybody including developers, because you never know if you are going to get exactly what you want. Such systems have led to capricious, inconsistent, costly decisions that are the opposite of certainty and cost-effectiveness.

Decision making cannot be rational if it is over-ridden by incomprehensible ministerial decisions. Neither can this be in the public interest. And yet this happens all over Australia. Part of the problem has been that in many

states, governments have abolished or weakened independent planning authorities that were free or relatively free of political judgement. They have politicised planning.

***“a favour bank exists”***

Nobody knows who is influencing who, how and why. And while developer donations are allowed, and powerful influences buy access, a favour bank exists. Access to the minister gives powerful interests a major advantage. If somebody walks in off the street they can't even get an audience with the minister. But if you're a peak property group you can get an audience by clicking your fingers. There's a difference. Access is rationed to the influential and the powerful, and to political donors. If people don't get what they want from making political donations, then why do they give money to political parties?

***“Ministers often think they run fiefdoms”***

So the politicisation of planning and the increase in deregulated planning systems and increased ministerial power are all linked. Somehow governments have got to be forced by public pressure to alter these political decision making roles, but ministers often think they run fiefdoms. They behave often like emperors. They like to dispense favours. They don't like to have their powers diminished.