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Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001

By email [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

14 May 2020

Dear Sir/Madam,

#### **Submission to the Tasmanian Planning Commission Review**

Further to a submission lodged by Sophie Underwood on the 6 May 2020, please see attached the Planning Matters Alliance Tasmania's submission regarding the Tasmanian Planning Commission Review.

The [Planning Matters Alliance Tasmania](#) (PMAT) is a growing network of over [60 community groups](#) from across Tasmania, united with a common concern over the weakening of the state's planning laws and the need for a shared vision for our future.

To achieve the best future for Tasmania and all Tasmanians, PMAT believes the land use planning system must be underpinned by the six key principles, outlined in our [Platform document](#).

PMAT believes that an effective land use planning system is one which provides for economic development that respects our local amenity and character, safeguards our natural and cultural heritage, our sense of place, our brand, and allows the Tasmanian community to participate transparently in planning and development decisions that affect their future.

PMAT believes that together, we can ensure Tasmanians have a say in a planning system that prioritises the health and well-being of the whole community, the liveability of our cities, towns and rural areas, and the protection of the natural environment and cultural heritage.

**PMAT's overall position is that we must preserve and strengthen the independent Tasmanian Planning Commission (TPC).**

Any changes to the TPC could fundamentally change the planning system, and how we the community are involved in the resource management and planning decisions/processes.



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There are concerns that the review of the TPC is part of a broader move to a Minister-centred model of decision-making, displacing the role of the TPC as an independent decision-maker and advisor. This is important because the TPC is an independent expert body, which provides the community with a fair hearing on resource management and planning matters.

**PMAT's key recommendations are:**

**The TPC must have its independence maintained, broadened and strengthened**

- The TPC must retain its capacity to perform its current functions independently of government.
- The TPC's power to act independently of the government should be expanded. The TPC should be given the power to make and amend the Tasmanian Planning Scheme.
- The TPC's governance should be free from Ministerial influence, and no changes should be made that undermine the public perception of the independent operation of the TPC.
- Any public consultation conducted by the TPC, and subsequent determination by the TPC based on that consultation, should be directly passed to the Minister (i.e. NOT IGNORED).

**The TPC must maintain its function in policy development**

- Retain its existing role to review and hold hearings on representations, and report to the Minister on draft State Policies and amendments.
- Retain its existing role to report to the Minister for Planning regarding Draft Tasmanian Planning Policies and to amend any planning scheme to be consistent with those policies.
- Restore its role as the body responsible for making planning scheme controls and amendments by making the TPC the decision-maker for State Planning Provisions and removing Ministerial oversight for Local Provisions Schedules. This would provide the TPC with an important role in influencing planning policy.

**The TPC must develop Tasmania's Regional Land Use Strategies**

- Legislation should be changed to give the TPC the responsibility to develop, amend and approve Regional Land Use Strategies with public notice and hearings.

**The TPC must maintain its function of assessing Projects of State and Regional Significance**

- The TPC must retain its existing responsibility to assess Projects of State Significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay, and to provide advice and recommendations to the Minister.
- The role of the TPC in assessing and approving Projects of State and Regional Significance through existing processes should not be undermined e.g. through the draft Major Projects Bill.



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**The TPC must retain its function of Reviewing National Park and Reserve management plans**

- The TPC's role in independently and transparently reviewing reserve management plans must be retained and legislation should be amended to clarify that the TPC may make recommendations for changes to reserve management plans.

**State of the Environment Reporting should remain with the TPC**

- The problems with State of the Environment (SoE) reporting identified by the TPC in 2013 (and reconfirmed in 2018) should be addressed and the TPC should continue to produce SoE reports each five years. These reports are vital for a range of reasons, including informing good planning.

**The TPC must be properly funded**

- Properly fund the TPC to allow it to carry out existing statutory roles, including the State of Environment Report and new State Policies.

Please see attached our background report as to why we make these recommendations and a list of the Tasmanian Planning Commission's current roles and functions which provides context to our recommendations.

Yours Sincerely,

**Sophie Underwood**

PMAT State Coordinator

E: [REDACTED]

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**Anne Harrison**

PMAT State President

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## PMAT'S TASMANIAN PLANNING COMMISSION REVIEW GUIDE

### BACKGROUND TO RECOMMENDATIONS

The state government has called for submissions on the review of the Tasmanian Planning Commission (TPC) by 15 May 2020.

Any changes to the TPC could fundamentally change the planning system, and how we the community are involved in the resource management and planning decisions/processes.

#### **The TPC is under Threat**

We are very concerned that the government has requested this review to limit the potential for the TPC to make recommendations to the government relating to planning policy or legislation, to limit its independence from government and to limit its functions in other key areas.

We are concerned that this is a part of a broader move to a Minister-centred model of decision-making, displacing the role of the TPC as an independent decision-maker and advisor. This is important because the TPC is an independent expert body, which provides the community with a fair hearing on resource management and planning matters.

Many people will have been engaged with the TPC in public hearings on planning scheme amendments and the current local provisions schedules hearings, but it has a range of other important functions.

The government has undertaken this review without providing any detailed explanation of the reasons for the review. It is unclear from the terms of reference what problems the TPC has that have led to the review, or the scope of the changes being considered. The Terms of Reference are unclear and do not appear to capture the scope of the review itself e.g. while the government in announcing the review refers to 'administrative changes to the Commission's role in policy making', the terms of reference do not specifically address the TPC's policy functions.

The TPC (formerly known as the RPDC - Resource Planning and Development Commission) is an independent statutory body that carries out many important functions and is at the heart of Tasmania's planning system. See [here](#) for a list of the TPC's key functions and how it is central to our planning system. The TPC's key functions are:

- Reviews and makes recommendations to the Planning Minister regarding the State Planning Provisions (e.g. residential standards), which sets the standards for the Tasmanian Planning Scheme i.e. every inch of the State
- Reviews and makes decisions on each municipality's Local Provisions Schedule, which applies the State Planning Provisions at the local level (e.g. what land use can happen on every land title across all municipalities)
- Reviews and makes decisions regarding draft amendments to interim planning schemes e.g. Cambria Green



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- Reviews and reports to the government on draft State Policies and Draft Tasmanian Planning Policies and amendments. These policies collectively underpin the future direction of Tasmania.
- Assesses and makes recommendations to government regarding Projects of State Significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay
- Reviews and makes recommendations on public submissions to draft reserve management plans e.g. Freycinet National Park Management Plan.

Importantly the TPC provides the community with appropriate rights to formally be heard in respect of decisions it makes, or policy reviews it undertakes, including being able to appear personally to make representations at public hearings *without needing a lawyer or experts*. It runs its own processes, which have enabled public participation in a way that is fair and accessible.

The TPC acts independently from government, and has for its more than 20 years of operation developed a high level of trust within the Tasmanian community.

The Liberal government has reduced the TPC's role in planning, critically making the Planning Minister and not the TPC responsible for approval of the single most important element of the statewide planning scheme – the State Planning Provisions. While the TPC can provide advice to the Minister, and retains an important hearing role, there is nothing requiring the Minister to act on that advice. This has led to many [key problems](#) and it was why PMAT formed. **We fear the government wants to further restrict the functions and independence of the TPC and expand the role of the Planning Minister.**

We are concerned that the TPC is at risk of losing its independence and some of its key functions. The TPC must have evidence based/merits based decision making - not politically influenced decision-making.

## KEY RECOMMENDATIONS

### 1. The TPC must have its independence maintained and broadened and strengthened

We do not want a Minister-centred model over a Commission model. The TPC's independence is critical to the community's trust and confidence in how it performs its functions and makes decisions that affect our way of life and natural environment. Another reason for having critical planning decisions made by the TPC rather than the Minister is to reduce the risk of political influence and ensure decisions are made by appropriately qualified and independent experts who conduct public hearings in a fair and impartial way.

The Liberal government has reduced the TPC's role in planning, critically making the Minister and not the TPC responsible for approval of the State Planning Provisions, and requiring the Minister's approval for the TPC to approve the first Local Provision Schedules in the Tasmanian Planning Scheme (TPS). The TPS will dictate the laws of what land use and development can/cannot happen across every inch of the state.



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We fear the government wants to further restrict the functions and independence of the TPC and expand the role of the Minister.

If the TPC is changed to become more under the control of the Minister then it could lead to decisions such as appointments to panels of inquiry or assessment being made on a political basis. We oppose any changes to the governance structure, powers or functions of the TPC that would alter its independence from government or its expertise. We want the integrity and centrality of evidence-based decision-making through the TPC restored to the resource management and planning system in Tasmania – this means in both planning and environmental decision-making.

The government's Draft Major Projects Bill proposes to sideline the TPC to only appointing a Development Assessment Panel, and displaces existing processes for which the TPC is the decision-maker. These include Projects of State Significance and the combined planning scheme amendment and permit process. While the Panel system is provided for under the existing Projects of Regional Significance process – that process has never been used. We have no trust in re-invigorating a 'panel' system, when we already have a trusted Planning Commission that can do that job.

## RECOMMENDATIONS

- The TPC must retain its capacity to perform its current functions independently of the government.
- The TPC's power to act independently of the government should be expanded. The TPC should be given the power to make and amend the Tasmanian Planning Scheme.
- The TPC's governance should be free from Ministerial influence, and no changes should be made that undermine the public perception of the independent operation of the TPC.

### 2. The TPC must maintain its function in policy development

While the Minister for Planning called for the review in light of 'administrative changes to the Commission's role in policy making', the terms of reference do not specifically address the TPC's policy functions and the word policy is not mentioned. This fails to help people understand the government's concerns, its intentions or the purpose of the review.

We fear that government wants to strip the TPC of its advisory role on policy and rely more heavily on the state government's Planning Policy Unit. We do not support this change.

We support the TPC retaining its current policy functions in regard to Draft State Policies and Draft Tasmanian Planning Policies and to have them expanded to Regional Land Use Strategies and approval of the State Planning Provisions.

We support the TPC having a greater role in other public decision-making roles, including the review of reserve management plans and water management plans and being properly resourced to carry



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out the crucial State of the Environment Report. The TPC should be resourced to develop new State Policies to guide decision-making on crucial issues such as transport and climate change.

## **RECOMMENDATIONS**

The TPC must:

- Retain its existing role to review and hold hearings on representations, and report to the Minister on draft State Policies and amendments.
- Retain its existing role to report to the Minister for Planning regarding Draft Tasmanian Planning Policies and to amend any planning scheme to be consistent with those policies.
- Restore its role as the body responsible for making planning scheme controls and amendments by making the TPC the decision-maker for State Planning Provisions and removing Ministerial oversight for Local Provisions Schedules.

### **3. The TPC should develop Tasmania's Regional Land Use Strategies**

Tasmania's three existing Regional Land Use Strategies (RLUS) are likely to be reviewed this year. The RLUS guides land use planning in particular in informing the allocation of zoning in planning schemes. The RLUS have a significant role to play in the setting the medium to longer-term strategic directions for each region in Tasmania. The current RLUS were developed by private consultants that were viewed by some community groups as having too great a business and industry focus. For example Northern Tasmania Development developed the Northern Regional Land Use Strategy, creating a perceived conflict of interest.

## **RECOMMENDATIONS**

- Legislation should be changed to give the TPC the responsibility to develop, amend and approve Regional Land Use Strategies with public notice and hearings.

### **4. The TPC must maintain its function of assessing Projects of State and Regional Significance**

## **RECOMMENDATIONS**

- The TPC must retain its existing responsibility to assess Projects of State Significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay, and to provide advice and recommendations to the Minister.
- The role of the TPC in assessing and approving projects of State and regional significance through existing processes should not be undermined e.g. through the draft Major Projects Bill.

### **5. The TPC must retain its function of Reviewing National Park and Reserve management plans**



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A key function of the TPC is to review, hold hearings and report to Environment Minister on public representations on draft reserve management plans and amendments e.g. National Park Management Plans. This role critically extends to the Wellington Park Management Plan so any change to this role could have serious implications for the cable car proposal. There is uncertainty as to whether the TPC has authority to recommend changes to management plans in response to public submissions.

There is also a recent concerning trend of developing Master Plans to manage National Park issues (eg the highly contentious Freycinet Peninsula Master Plan 2019 which was developed by external consultants). Master plans are not subject to the legal requirements for openness and transparency that apply to formal management plans.

Given that protected areas cover almost 50% of Tasmania and the state government's current push is to exploit those protected areas, it is imperative the process for writing/reviewing management plans remains independent.

#### **RECOMMENDATIONS**

- The TPC's role in independently and transparently reviewing reserve management plans must be retained and legislation should be amended to clarify that the TPC may make recommendations for changes to reserve management plans.

#### **6. State of the Environment Reporting should remain with the TPC**

State of the Environment (SoE) reporting is a process for describing, analysing and communicating information on conditions and trends in the environment. SoE reporting is fundamental and must be independent but due to concerns raised following a review by the TPC in 2013, SoE Reports have not been produced since 2009. Note that the TPC updated its 2013 SoE review report in 2018, confirming the 2013 report had identified the need for a policy review of the SoE legislation.

#### **RECOMMENDATIONS**

- The problems with SoE reporting identified by the TPC in 2013 (and reconfirmed in 2018) should be addressed and the TPC should continue to produce SoE reports each five years. They are vital for a range of reasons, including informing good planning.

#### **7. The TPC must be properly funded**

#### **RECOMMENDATIONS**

- Properly fund the TPC to allow it to carry out existing statutory roles, including the State of Environment Report and new State Policies.





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## THE ROLES AND FUNCTIONS OF THE HEART OF OUR PLANNING SYSTEM – THE TASMANIAN PLANNING COMMISSION

### Tasmania's Planning System

Figure 1 depicts Tasmania's resource management and planning system.

This diagram shows the key components of the planning system as they relate to local government, referred to in legislation as the Resource Management and Planning System.

### Tasmanian Planning Commission – The Heart of our Planning System

As shown in Figure 1, the heart of Tasmania's planning system is the independent [Tasmanian Planning Commission](#) (TPC).

The TPC performs a range of statutory and advisory functions for land use which together shape Tasmania's future. It also sets down how we, the public, are involved in the resource management and planning decisions/processes.

Also see Table 1 below, which sets out the roles and functions of the TPC.

The TPC ensures that planning balances social, environmental and economic considerations and gives the community a say about planning decisions that affect them. It holds public hearings, it is staffed by experts and we currently have confidence that it is independent from government.

**It is the only forum for the community to be heard about their concerns on planning and environmental matters – without needing a lawyer or a body of experts. The TPC gives communities the right to have input into strategic planning matters.**

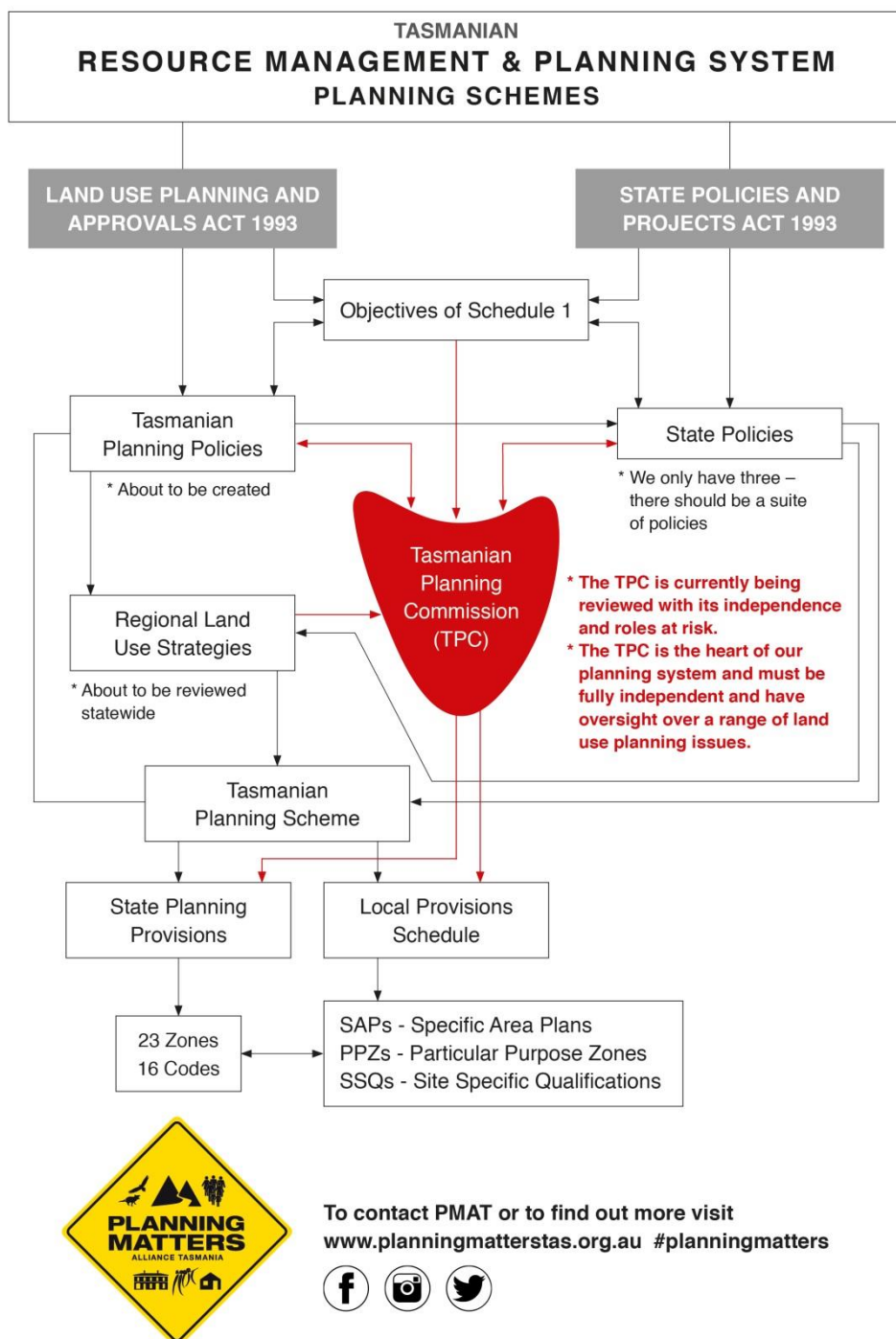
TPC's planning functions include:

- Certify and make decisions on planning schemes and planning scheme amendments e.g. SAPs like Cambria Green, where high-rise would be built.
- Assess and make decisions on combined planning scheme amendments and permit applications e.g. land rezoning for subdivision.
- Assess and report to the Planning Minister on amendments to the State Planning Provisions (SPPs) e.g. residential standards.
- Assess and make decisions on draft Local Provisions Schedules (LPSs) (with Minister's agreement) to convert local planning schemes to the new Tasmanian Planning Scheme.



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- Assess projects of State significance e.g. major projects like Gunns Pulp Mill and Ralphs Bay.
- Assess and approve projects of regional significance.
- Review and hold hearings on representations, and report to Premier on draft State Policies and amendments.
- Amend any planning scheme to be consistent with a State Policy.
- Review, hold hearings and report to Environment Minister on representations on draft reserve management plans and amendments e.g. National Park Management Plans, Tasmanian Wilderness World Heritage Area Management Plan.
- Review, hold hearings and report to Wellington Park Trust on representations on amendments to Wellington Park Management Plan e.g. cable car.
- Inquiries into the future use of public land.





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Table 1 - Roles and functions of the Tasmanian Planning Commission.

Role of TPC	Function	Example
<i>Planning – Land Use Planning and Approvals Act 1993</i>		
Draft planning schemes & planning scheme amendments	<ul style="list-style-type: none"> <li>• Certify for public exhibition</li> <li>• Assess and hold hearings on public representations</li> <li>• Decision maker</li> </ul>	E.g. Cambria Green, Westbury Prison
Combined planning scheme amendment and planning permit	<ul style="list-style-type: none"> <li>• Certify for public exhibition</li> <li>• Assess and hold hearings on public representations</li> <li>• Decision maker</li> </ul>	E.g. rezoning land for subdivision
Planning directives	<ul style="list-style-type: none"> <li>• Prepare or recommend assessment</li> <li>• Assess draft planning directive</li> <li>• Exhibit and hold hearings</li> <li>• Report to the Planning Minister</li> </ul>	E.g. visitor accommodation (AirBNB)
State Planning Provisions	<ul style="list-style-type: none"> <li>• Assess</li> <li>• Hold public hearings</li> <li>• Report to Planning Minister</li> </ul>	E.g. residential standards, biodiversity protection
Local Provision Schedules	<ul style="list-style-type: none"> <li>• Authorise for exhibition</li> <li>• Hold public hearings</li> <li>• Approve with agreement of Planning Minister for first LPS</li> <li>• Approve amendments to an LPS</li> </ul>	E.g. translation of local planning schemes to Tasmanian Planning Scheme
Tasmanian Planning Policies	<ul style="list-style-type: none"> <li>• Review and hold hearings on public representations</li> <li>• Report to Planning Minister</li> </ul>	
Projects of regional significance	<ul style="list-style-type: none"> <li>• Issue assessment guidelines</li> <li>• Establish Development Assessment Panel who:               <ul style="list-style-type: none"> <li>○ Exhibits &amp; hold hearings</li> <li>○ Approves or refuses</li> </ul> </li> </ul>	
<i>Co-ordinating role - State Policies and Projects Act 1993</i>		
Draft State Policies and amendments	<ul style="list-style-type: none"> <li>• Review Policies</li> <li>• Hold hearings on public representations</li> <li>• Report to Premier</li> <li>• Amend planning schemes to be consistent with State Policy</li> </ul>	State Coastal Policy, Protection of Agricultural Land, Water Quality



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State significant projects	<ul style="list-style-type: none"> <li>• Conduct integrated EIS</li> <li>• Hold public hearings</li> <li>• Report to Premier</li> </ul>	Major projects E.g., Ralphs Bay, Pulp Mill
State of the Environment Report	<ul style="list-style-type: none"> <li>• Prepare Tasmanian State of the Environment report every 5 years</li> <li>• Make recommendations on future action to manage environment</li> </ul>	Tells us how Tasmania's environment is functioning, last report in 2009
Public assets and water review		
Draft national parks and reserve management plans and amendments	<ul style="list-style-type: none"> <li>• Review public representations &amp; hold hearings</li> <li>• Report to Environment Minister</li> </ul>	E.g. amendments to the Freycinet National Park and Tasmanian World Heritage Area Management Plan
Draft Wellington Park Management Plan and amendments	<ul style="list-style-type: none"> <li>• Review public representations &amp; hold hearings</li> <li>• Report to Wellington Park Trust</li> </ul>	E.g. Cable Car
Draft water management plans and amendments	<ul style="list-style-type: none"> <li>• Review public representations &amp; hold hearings</li> <li>• Report to Water Minister</li> </ul>	
Inquire into use of public land	<ul style="list-style-type: none"> <li>• Where referred by Environment Minister</li> <li>• Can request reference</li> <li>• Inquiry including public hearings</li> <li>• Report to Environment Minister</li> </ul>	
Housing Land Supply Orders	<ul style="list-style-type: none"> <li>• Amend planning scheme to give effect to Order where directed</li> </ul>	E.g. Huntingfield in southern Tasmania.