



2020

Parliament of Tasmania

PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

**SCRUTINY OF NOTICES ISSUED UNDER THE COVID-19
DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT
2020 – REPORT 4 (No. 10)**

ADDENDUM

Please note: *the following attachments were inadvertently omitted from Report 4.
The following Appendices should be considered in conjunction with the previous Report.*

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Notice Under Section 15 (Land Use Planning and Approvals Act 1993)
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PREMIER OF TASMANIA

4 MAY 2020

Hon Tania Rattray MLC
Chair
Parliamentary Standing Committee on Subordinate Legislation
Parliament House
HOBART TAS 7000

By Email - subleg@parliament.tas.gov.au

Dear Ms Rattray

Please find enclosed a copy of Notices issued by me as Premier pursuant to section 15 and 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The Notices were signed on 23 April 2020 and were published in the Gazette on 24 April 2020.

The Notices provide for the following:

1. **Protection from offences against planning law for certain emergency use and development for health services as necessary to effectively implement, or comply with, a requirement, direction or authorisation under the *Emergency Management Act 2006* or the *Public Health Act 1997* (Section 15 Notice)**

A number of health services are required to implement emergency use and development, usually in the form of temporary structures within the car parking areas adjoining the practice, so they can continue to consult, diagnose and treat patients during the COVID-19 emergency. There is also now a number of temporary COVID-19 testing pods located at Princes Wharf Shed No. 1 and the need to provide an urgent response to the health emergency in the north west of the State with the closure of the two hospitals in Burnie.

There are currently exemptions in planning schemes relating to emergency works, however, it is uncertain if this also provides for emergency use. The s.15 Notice aims to address this by providing clear protection from offences, including failure to obtain the normal planning permits, for emergency use and development related to health services during the emergency period if necessary for compliance with requirements under the *Emergency Management Act 2006* or the *Public Health Act 1997*.

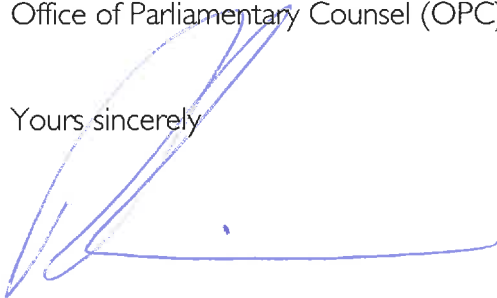
2. **The public exhibition of certain documents required under the *Land Use Planning and Approvals Act 1993* (LUPAA) and the *Land Use Planning and Approvals Regulations 2014* (LUPA Regulations) to be undertaken in an alternate manner (Section 19 Notice).**

The majority of council offices are now closed to the public, which has implications for the public exhibition of documents for development applications, planning scheme amendments, and draft Local Provisions Schedules (LPSs) as LUPAA and the LUPA Regulations require the documents to be available for viewing at the council offices. The s.19 Notice provides alternative arrangements for public exhibition of documents for development applications and planning scheme amendments – documents may be viewed at the council's website or hardcopies can be made available on request for a fee.

The above approach of making hardcopies available on request is not feasible for draft Local Provisions Schedules due to the volume of documents, which also include a range of supporting reports. Discussions are continuing with LGAT and the Commission to determine if other alternative arrangements can be found for the exhibition LPSs, particularly those that are currently on exhibition and have had to stall due to the council offices needing to close.

I enclose a fact sheet to provide further information on the Notices and the Advice provided by the Office of Parliamentary Counsel (OPC) under section 7(2) of the *Subordinate Legislation Act 1992*.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Gutwein', with a long horizontal stroke extending to the right.

Peter Gutwein MP
Premier

Attachments –

- Signed Notices for s15 and s19
- Fact Sheet
- OPC Advice for Notices under s15 and s19

ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL***Notice under section 15 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

I advise that this statutory rule –

- (a) appears to be within the powers conferred by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) does not appear, without clear and express authority being provided by any Act, to –
 - (i) have any retrospective effect; or
 - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
 - (iii) sub-delegate powers delegated by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (c) appears to be within the general objectives of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

Dated 22 April, 2020.



Katherine Woodward
Deputy Chief Parliamentary Counsel

ADVICE OF DEPUTY CHIEF PARLIAMENTARY COUNSEL***Notice under section 19 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020***

I advise that this statutory rule –

- (a) appears to be within the powers conferred by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (b) does not appear, without clear and express authority being provided by any Act, to –
 - (i) have any retrospective effect; or
 - (ii) impose any tax, fee, fine, imprisonment or other penalty; or
 - (iii) sub-delegate powers delegated by the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (c) appears to be within the general objectives of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

Dated 22 April, 2020.



Katherine Woodward
Deputy Chief Parliamentary Counsel

TASMANIA

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTION 15

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 15(1) of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager, declare that a person does not commit an offence against the *Land Use Planning and Approvals Act 1993* ("the Act"), including an offence relating to the contravention of an existing planning permit issued, and in force, under the Act, in relation to an area of land, within the meaning of the Act, that is to be developed, or used, for the purposes of Hospital Services, medical centres or consulting rooms, as defined in the State Planning Provisions made under the Act, if the development, or use, of the land for such a purpose is necessary to effectively implement a requirement, direction or authorisation under the *Emergency Management Act 2006* or the *Public Health Act 1997*.

Dated: 23-4-20

Signed:

Premier

TASMANIA

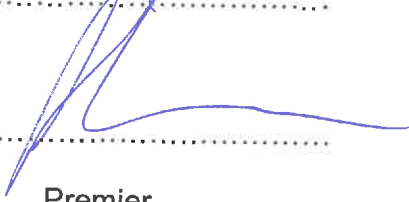
COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTION 19

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, being of the opinion that the relevant emergency circumstances exist in relation to this notice and with the approval of the emergency manager, declare that, despite any provision specified in the Schedule to this notice, a requirement specified in the provision for a document, or information, to be available for inspection, or displayed, is taken to be satisfied if –

- (a) the document, or the information, is –
 - (i) available, for viewing by members of the public, at a website of the relevant local council; or
 - (ii) available, in hard copy, on request by telephone and for a fee representing the cost of reproducing the document, either –
 - (A) for collection from a place nominated by an officer of the relevant council; or
 - (B) by posting the hard copy to the person who requested the copy; and
- (b) if submissions may be made in respect of the document or information, provision is made in accordance with section 80Q of the *Land Use Planning and Approvals Act 1993* for those submissions to be made, in addition to any other method, by an electronic method.

Dated:.....23-4-20.....

Signed:..........

Premier

SCHEDULE

1. Regulation 7(3)(a) of the *Land Use Planning and Approvals Regulations 2014*.
 2. Regulation 8(1)(b) of the *Land Use Planning and Approvals Regulations 2014*.
 3. Regulation 9(1)(b) of the *Land Use Planning and Approvals Regulations 2014*.
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MINISTERIAL NOTICE - FACT SHEET

The attached draft Ministerial Notices are issued pursuant to sections 15 and 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act). The State Controller has approved the issuing of the Notices, as required under section 6 of the Act.

Reasons for Notice(s)

The Tasmanian Government has been working closely with the local government sector, through the Local Government Association of Tasmania (LGAT), to identify priority business continuity and regulatory compliance challenges for Tasmanian councils associated with the COVID-19 pandemic emergency, particularly in relation to the current restrictions on the movement of council elected members and staff and the need to close council offices to the public.

The key areas that need to be addressed include:

- providing for protection from planning offences, such as failure to get a planning permit under the *Land Use Planning and Approvals Act 1993* (LUPAA) for certain emergency use and development for health services during the emergency period; and
- providing alternative arrangements for the public exhibition of documents relating to development applications and planning scheme amendments under LUPAA and the associated regulations.

The Premier considers that the issuing of the attached Notices is necessary to effectively manage immediate business continuity and statutory compliance risks for the local government sector, consistent with objectives of the COVID-19 Act and that the emergency circumstances specified in sections 5(2)(a), 5(2)(b), 5(2)(c), and 5(2)(e) of the COVID-19 Act exist in relation to the Notices.

Consultation with the local government sector regarding business and service continuity during the pandemic emergency is ongoing.

Effect of Notice(s)

The Ministerial Notices provide for the following:

1. Protection from offences against planning law for certain emergency use and development for health services as necessary to effectively implement, or comply with, a requirement, direction or authorisation under the *Emergency Management Act 2006* or the *Public Health Act 1997* (Section 15 Notice)

A number of health services are required to implement emergency use and development, usually in the form of temporary structures within the car parking areas adjoining the practice, so they can continue to consult, diagnose and treat patients during the COVID-19 emergency. There is also now a number of temporary COVID-19 testing pods located at Princes Wharf Shed No. 1 and the need to provide an urgent response to the health emergency in the north west of the State with the closure of the two hospitals in Burnie.

There are currently exemptions in planning schemes relating to emergency works, however, it is uncertain if this also provides for emergency use. The s.15 Notice aims to address this by providing clear protection from offences, including failure to obtain the normal planning permits, for emergency use and development related to health services during the emergency period if necessary for compliance with requirements under the *Emergency Management Act 2006* or the *Public Health Act 1997*.

2. The public exhibition of certain documents required under LUPAA and the *Land Use Planning and Approvals Regulations 2014* (LUPA Regulations) to be undertaken in an alternate manner (Section 19 Notice)

The majority of council offices are now closed to the public, which has implications for the public exhibition of documents for development applications, planning scheme amendments, and draft Local Provisions Schedules (LPSs) as LUPAA and the LUPA Regulations require the documents to be available for viewing at the council offices. The s.19 Notice provides alternative arrangements for public exhibition of documents for development applications and planning scheme amendments – documents may be viewed at the council's website or hardcopies can be made available on request for a fee.

The above approach of making hardcopies available on request is not feasible for draft Local Provisions Schedules due to the volume of documents, which also include a range of supporting reports. Discussions are continuing with LGAT and the Commission to determine if other alternative arrangements can be found for the exhibition LPSs, particularly those that are currently on exhibition and have had to stall due to the council offices needing to close.

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

FRIDAY 1 MAY 2020

COMMENCEMENT

The Committee at 11.02 am in Committee Room 2 and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Forrest (*Deputy Chair*)
Ms Rattray (*Chair*)
Ms Webb (*via Webex*)

House of Assembly

Ms Standen (*via Webex*)
Mr Street
Mr Tucker

**NOTICES UNDER
COVID-19 DISEASE
EMERGENCY
(MISCELLEANEOUS
PROVISIONS)
ACT 2020
(held-over)**

That the following Notices be held-over —

2. Notice under section 15 (Land Use Planning and Approvals Act 1993)

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

TUESDAY 5 MAY 2020

COMMENCEMENT

The Committee at 11.02 am in Committee Room 2 and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Forrest (*Deputy Chair*)
(*via Webex*)
Ms Rattray (*Chair*) (*via Webex*)
Ms Webb (*via Webex*)

House of Assembly

Ms Standen (*via Webex*)
Mr Street (*via Webex*)
Mr Tucker (*via Webex*)

**SUPPORTING
CORRESPONDENCE
(NOTICE)**

Resolved, that the following supporting correspondence be received:

1. Letter dated 4 May 2020 from the Hon Peter Gutwein MP, Premier regarding Notices issued under sections 15 and 19 of the *Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

**NOTICES UNDER
COVID-19 DISEASE
EMERGENCY
(MISCELLEANEOUS
PROVISIONS)
ACT 2020
(examined)**

That the following Notices be examined —

1. Notice under section 15 (Land Use Planning and Approvals Act 1993)

The Committee **AGREED** that the *Secretary* prepare a draft report including previous standard wording as previously agreed to by the Committee.

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

FRIDAY 8 MAY 2020

COMMENCEMENT

The Committee at 11.00 am in Committee Room 2 and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Forrest (*Deputy Chair*)
Ms Rattray (*Chair*)
Ms Webb

House of Assembly

Ms Standen (*via Webex*)
Mr Street
Mr Tucker

**DRAFT REPORT 4 –
NOTICES UNDER
COVID-19 DISEASE
EMERGENCY
(MISCELLEANEOUS
PROVISIONS)
ACT 2020**

The Committee considered the draft report.

RESOLVED, that draft Report 4 be adopted and Ms Webb to present Report No. 4 to the President next week and further, Report No 4 be tabled in the House of Assembly.

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

TUESDAY 26 MAY 2020

COMMENCEMENT

The Committee at 1.30 pm in Committee Room 2 and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Forrest (*Deputy Chair*)(*via Webex*)
Ms Rattray (*Chair*) (*via Webex*)
Ms Webb (*via Webex*)

House of Assembly

Ms Standen (*via Webex*)
Mr Street (*via Webex*)
Mr Tucker (*via Webex*)

**ATTACHMENTS
ADDED TO DRAFT
REPORTS**

The Committee considered the proposed motions circulated in advance of today's meeting.

The *Deputy Chair* moved Motion No. 1 with amendments:

1. That each Report released by the Committee related to a Notice under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*, that all information provided to the committee related to the Notice be considered and agreed to, including incoming and outgoing correspondence, relevant Hansard and Minutes to be published with and as part of the Report.

The Committee ***RESOLVED*** to adopt Motion No. 1.

The *Deputy Chair* moved Motion No. 2:

2. That when any Report, prepared as in Motion 1 above, is tabled, either with the President or tabled in Parliament, as soon as is practicable the Report be published on the website as Reported and the Notice and supporting documents be removed from the section of the website where Notices under consideration are listed.

The Committee ***RESOLVED*** to adopt Motion No. 2.

The *Deputy Chair* moved Motion No. 3 with amendments:

3. That Reports 2, 3 and 4 of the Committee related to Notices under the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* be reconsidered and amended to include all relevant information, related to the Notices as per Motion 1 above and be reissued as the Reports of the Committee.

The Committee ***RESOLVED*** to adopt Motion No. 3.

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

FRIDAY 29 MAY 2020

COMMENCEMENT

The Committee at 11.00 am in Committee Room 2 and via Webex.

MEMBERS PRESENT

Legislative Council

Ms Forrest (*Deputy Chair*) (via Webex)
Ms Rattray (*Chair*) (via Webex)

House of Assembly

Ms Standen (via Webex)
Mr Street (via Webex)
Mr Tucker (via Webex)

**CONFIRMATION
OF MINUTES**

The amended Minutes of the Meeting on Tuesday 26 May 2020 as amended in writing and circulated in advance of this meeting by the *Deputy Chair* were considered.

Ms Webb took her place at 11.05 am (via Webex)

**DRAFT ADDENDUM
REPORTS 2,3, & 4**

The Acting Secretary provided advice regarding the possible process to follow when reissuing Reports 2, 3 and 4 related to COVID-19 Notices. The additional information not attached to the previous Reports 2, 3 and 4 be included in an Addendum to each Report (to be considered and agreed to) and further, the Addendum Reports can then be tabled.

The Committee considered Draft Addendum Report 4.

The Committee **RESOLVED** to adopt Draft Addendum Report 4.

The Committee **RESOLVED**, to table the Addendums to Reports 2, 3 and 4 next Wednesday, 3 June 2020.

Further, the Committee **RESOLVED**, that Addendums to Reports 2, 3 and 4 as agreed to, include today's minutes (once confirmed).

JOINT STANDING COMMITTEE

SUBORDINATE LEGISLATION

TUESDAY 2 JUNE 2020

COMMENCEMENT

The Committee met at 1.30 pm in Committee Room 2, Parliament House, Hobart

MEMBERS PRESENT

Legislative Council

Ms Forrest (Deputy Chair)
Ms Rattray (Chair)
Ms Meg Webb

House of Assembly

Ms Standen
Mr Street
Mr Tucker

MINUTES
ATTACHED TO
ADDENDUM REPORTS
2, 3 AND 4; REPORTS
5 AND 6 AND FUTURE
REPORTS OF THE
COMMITTEE

The Committee ***RESOLVED*** —

Minutes to be attached to Reports be confined to sections of the Minutes related to the notices under consideration for Addendum Reports 2, 3 and 4; Reports 5 and 6; and future Reports of the Committee.