



2022

Parliament of Tasmania

JOINT STANDING COMMITTEE SUBORDINATE LEGISLATION

REPORT 18

**SCRUTINY OF NOTICES ISSUED UNDER SECTIONS 13, 15 AND 19 OF THE
*COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT
2020 (LAND USE PLANNING AND APPROVALS ACT 1993)***

Members of the Committee:

Ms Tania Rattray MLC (*Chair*)
Ms Ruth Forrest MLC
Ms Meg Webb MLC (*Deputy Chair*)

Mr Felix Ellis MP
Ms Janie Finlay MP
Ms Madeleine Ogilvie MP

Table of Contents

Introduction.....	3
-------------------	---

Notices issued under sections 13, 15 and 19 of the <i>COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Land Use Planning and Approvals Act 1993)</i>	3
---	---

Appendices

Appendix 1

Supporting documentation dated 16 September 2021 from Bruce Paterson, Assistant Director, Office of Strategic Legislation and Policy, Department of Justice in relation to Notices issued under sections 13, 15 and 19 of the <i>COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Land Use Planning and Approvals Act 1993)</i>	7
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Appendix 2

Outwards Correspondence

Letter dated 5 November 2021 to the Premier advising an inquiry had commenced and requesting attendance of the Premier and/or Departmental Officers to attend a public hearing.....	23
---	----

Appendix 3

Hansard Transcript of Evidence – Department of Premier and Cabinet, 25 November 2021	24
--	----

Introduction

The Committee was appointed under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (No. 44 of 1969). Section 8 of the Act outlines the functions of the Committee, as follows –

- (a) to examine the provisions of every regulation, with special reference to the question whether or not –
 - (i) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;
 - (ii) the form or purport of the regulation calls for elucidation;
 - (iii) the regulation unduly trespasses on personal rights and liberties;
 - (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
 - (v) the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation; and
- (b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 — Scrutiny of Notices

The Parliament of Tasmania passed the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the Act) on 26 March 2020. The Act prescribes a role for the Joint Standing Committee on Subordinate Legislation in the scrutiny of certain notices under the Act.

In response to this new scrutiny role, the Committee has given extensive consideration to an appropriate mechanism for it to report upon its deliberations on all notices gazetted under the Act in the interest of public transparency. The Committee will:

- Publish a list of the notices to be discussed by the Committee, and documentation relating to notices to be examined by the Committee, to be published on the Committee website prior to each meeting; and
- Present regular reports to Parliament, which will contain further information in relation to the completed examinations of notice.

Notices issued under sections 13, 15 and 19 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Land Use Planning and Approvals Act 1993)

The Committee resolved at its meeting on 28 October 2021 to commence an inquiry in relation to these Notices. The Committee invited the Premier and/or Departmental Officers to appear at a public hearing.

On 25 November 2021, the following Department of Premier and Cabinet Officers attended a public hearing and provided evidence:

- Craig Limkin, Deputy Secretary, Policy and Intergovernmental Relations Division; and
- Brian Risby, Director, Planning Policy Unit.

The Committee during the public hearing sought explanation from Departmental Officers regarding the rationale in relation to the reissuing of section 19 notices as follows:

Ms FORREST - *One of the reasons we decided to inquire and look into this more fully is that sooner or later we are going to have to learn to live with COVID. We are opening our borders very soon and COVID-19 will be here, whether we want it or not.*

I do not really have such a concern with some of the measures here, like the ones related to pop-up testing clinics and that sort of thing. Surely those things can happen as and where needed. But other things related to the public exhibition for LPSs and some of the other aspects, it seems that we are having a repeated renewal of these, when they are hardly used via your own evidence. I wonder if they are even relevant now. Why would we continue to extend them when, they have not been used much, and we would argue that we need to be able to deal with this as an ongoing thing now?

Mr LIMKIN - *Thank you for the question. I agree we do need to move to a living-with-COVID-type of thing. The Government has announced a process to move forward. We have the national plan to reopen Australia to living in COVID normal. However, as the Director of Public Health has said we are going to a challenging time.*

What the Government requires and councils required that all the tools in their toolbelt to be able to continue to manage that process going forward. Lockdowns are not a thing of the past at the moment. You have seen in both New South Wales and Victoria. As they have had to deal with their outbreaks and open up, there have had to be targeted and instant lockdowns to mitigate that.

This is providing councils over the next six months the ability and the option if they require it because of the decisions that are taken to keep Tasmanians safe the opportunity to continue business, to continue supporting their community and giving the community the rights and opportunities to have a say on the planning system, which is fundamental in our democracy.¹

The Committee questioned the Departmental Officers in relation to why the intent of the section 19 notice wouldn't be made a permanent feature of the regulations issued under the *Land Use Planning and Approvals Act 1993* as follows:

Ms FORREST - *The fact sheet you provided on the section 19 notice says:*

Section 19 notice provides alternative arrangements of public exhibition of documents for development applications and planning scheme amendments. Documents may be viewed on the council's website and hard copies may be made available on request for a fee.

Why wouldn't we make that permanent?

Mr RISBY - *... It is a very good question. Some of the other jurisdictions have actually gone along that line. I think at this time we would want to have a broader review of the regulations around public exhibition and notification of processes under LUPA. There's probably a need to review it, particularly in the light of the COVID-19 situation but, more broadly, in the digital age.*

Ms FORREST - *In terms of access.*

Mr RISBY - *We have conversations around these things at various times, even when legislation is being debated. There is usually a question around whether advertisements in newspapers is a relevant consideration anymore. The view we have taken is that not everyone has access to the internet and you cannot disenfranchise people.*

Ms FORREST - *But you are not removing that; you are just adding that, as an option. Hard copies can be made available. Before you had to go there and look. You could not get even get a hard copy.*

¹ Craig Limkin, Deputy Secretary, Policy and Intergovernmental Relations Division, Department of Premier and Cabinet, *Transcript of Evidence*, 25 November 2021, p. 2.

Mr RISBY - Most councils do this anyway at the moment. Most councils do have electronic access to development applications and the like. There are potentially some issues around copyright and those sorts of things, but it is worthy of consideration at the end of this period as to whether there is a need for it. What this does though, is actually say that a digital version is enough to meet the requirements. That does leave out people who do not have access to the internet.

Ms FORREST - Not if a hard copy can be provided.

Mr RISBY - I think those are the options. Yes, that is a problem if the office is closed and so forth.

Ms FORREST - Sure.

Mr RISBY - I think there is capacity to look at. I think Queensland has rolled some of this into regular updates of their regulations. So, it is something we are monitoring across the nation.

Ms FORREST - So, when are these regulations up for review?

...

Ms WEBB - Just a couple of things to clarify. My understanding from what you just said is when we are contemplating potentially making it permanent that whether you make these available on hard copy or digitally is that potentially a council could say we have made it available digitally, that is all we have to do to meet the requirement. Therefore, we met it, and then back luck. So, presumably, if we were to contemplate making it permanent, we would still have to adjust that to ensure that it must be made available in a way that is accessible to everybody, either or, those things, but not in an exclusionary way.

Mr RISBY - Yes, I think that is right.

Ms WEBB - How do we word it differently to this, is what you are saying?

Mr RISBY - Yes, we need to be careful we are not accidentally disenfranchising people that simply do not.

Ms WEBB - In contemplating the premise of establishing a permanent arrangement, instead of continuing to extend a temporary arrangement, presumably, we would look to do that quite readily as part of deciding to go ahead with that process. Yes? Like that does not stop us deciding to make this permanent.

Mr RISBY - No.

Ms WEBB - Whereby you could access it either way.

Mr RISBY - I think the LUPA regs would be due for renewal in 2024.

Ms WEBB - Right.

Ms FORREST - That is what I was asking about.

Mr RISBY - Yes, I thought you might have been. I think they need to be reviewed in the digital age, as it were. They are not much more than nailing bits of paper to trees, really.²

² Brian Risby, Director, Planning Policy Unit, Department of Premier and Cabinet, *Transcript of Evidence*, 25 November 2021, pp 2-4.

Following consideration of the evidence provided at the public hearing, the Committee concluded its examination of the Notices at its meeting on 25 November 2021 and **RESOLVED** the Notices be examined, noting the Notices were consistent with the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The Hansard Transcript of Evidence and all relevant correspondence are attached to the Report for completeness.

The Minutes of Proceedings related to these Notices are not attached to this Report due to the Committee not scheduled to meet again until 10 March 2022.

A handwritten signature in black ink, reading "Tania Rattray". The script is cursive and fluid, with the first name "Tania" and last name "Rattray" clearly distinguishable.

Hon Tania Rattray MLC
CHAIR

1 February 2022

Department of Justice
STRATEGIC LEGISLATION AND POLICY

Level 14, Trafalgar Building, 110 Collins Street, Hobart
GPO Box 825, Hobart TAS 7001
Phone 03 61654930
Email bruce.paterson@justice.tas.gov.au Web www.justice.tas.gov.au



16 September 2021

Mr Tim Mills
Secretary
Parliamentary Standing Committee on
Subordinate Legislation
Parliament House
HOBART

By email: subleg@parliament.tas.gov.au

**COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 – Reissue of Notices
under sections 13, 15 and 19 – Land Use Planning and Approvals Act**

Please find enclosed a copy of a notices (the notices) issued by the Premier pursuant to sections 13, 15 and 19 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*.

The notices under sections 15 and 19 were signed on 4 September 2021 and the notice under section 13 was signed on 8 September 2021. All notices were published in the Gazette on Monday 13 September 2021.

I enclose a fact sheet to provide further information on the notices and the Advice provided by the Office of Parliamentary Counsel (OPC).

Yours sincerely

Bruce Paterson
Assistant Director
Strategic Legislation and Policy

Attachments –

- Signed Notices
- Fact Sheet
- CPC Advice

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-

- a) despite any provision specified in Schedule 1 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 –
 - i. the document, or the information, is available in hard copy or in a digital format, on request by telephone and for a fee representing the cost of reproducing the document or information, either -
 - A. for collection from a place nominated by an officer of the relevant planning authority; or
 - B. by posting the copy of the document or information to the person who requested the copy; and
 - ii. the document, or the information, is available for viewing by members of the public at a website of the relevant planning authority; and
 - iii. if submissions may be made in respect of the document, or information, under section 80Q of the *Land Use Planning and Approvals Act 1993*, persons may make such submissions by electronic means or by document delivered to the relevant planning authority; and
- b) despite any provision specified in Schedule 2 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 –
 - i. the document, or the information, is available in hard copy or in a digital format, on request by telephone and for a fee representing the cost of reproducing the document or information, either -

- A. for collection from a place nominated by the Executive Commissioner; or
 - B. by posting the copy of the document or information to the person who requested the copy; and
 - ii. the document, or the information, is available for viewing by members of the public at a website of the Commission; and
 - iii. if submissions may be made in respect of the document, or information, under section 80Q of the *Land Use Planning and Approvals Act 1993*, persons may make such submissions by electronic means or by document delivered to the Commission.
- c) unless the contrary intention appears, an expression used in this notice that is defined in the *Land Use Planning and Approvals Act 1993* has the same meaning in this notice as it has in that Act.

Dated:.....4.9.21

Signed:.....

Premier

SCHEDULE 1

1. Section 35C(4)(b) of the *Land Use Planning and Approvals Act 1993*.
2. Section 35D(1)(a) and (b) of the *Land Use Planning and Approvals Act 1993*.
3. Section 40G(3)(b) of the *Land Use Planning and Approvals Act 1993*.
4. Section 40H(a) and (b) of the *Land Use Planning and Approvals Act 1993*.
5. Regulation 5(1)(b) of the *Land Use Planning and Approvals Regulations 2014*.
6. Regulation 8A(1)(b) of the *Land Use Planning and Approvals Regulations 2014*.

SCHEDULE 2

1. Section 30K(3)(b) and (6) of the *Land Use Planning and Approvals Act 1993*.
2. Section 35D(2) of the *Land Use Planning and Approvals Act 1993*.

ADVICE OF 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 20 August, 2021.



Robyn Webb
Chief Parliamentary Counsel

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:.....4-9-21

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*.
-
-

ADVICE OF 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 20 August, 2021.



Robyn Webb
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: 4.9.21

Signed:

Premier

ADVICE OF 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 20 August, 2021.



Robyn Webb
Chief Parliamentary Counsel

TASMANIA

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

NOTICE UNDER SECTION 13

I, PETER CARL GUTWEIN, the Premier, in pursuance of section 13 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 the further period specified in section 53(5)(c) of the *Land Use Planning and Approvals Act 1993*, at the end of which a permit lapses, is extended by a period of 6 months if the permit was in effect immediately before the day on which the making of this notice is published in the *Gazette*.

Dated:.....

8 September 2021

Signed:.....



Premier

ADVICE OF CHIEF PARLIAMENTARY COUNSEL***Notice under section 13 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 20 August, 2021.



Robyn Webb
Chief Parliamentary Counsel

MINISTERIAL NOTICE - FACT SHEET

COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

The attached Ministerial Notices are to be made in accordance with section 6 of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (the COVID-19 Act). The Emergency Manager has approved the issuing of the Notice, as required under section 6 of the COVID-19 Act. In this case the Emergency Manager is the Director of Public Health.

Reasons for Notices

During 2020, in response to the COVID-19 outbreak, the Tasmanian Government worked closely with the local government sector, through the Local Government Association of Tasmania (LGAT), to ensure continuity of government (including local government) services and administrative functions to assist in mitigating certain financial and operational circumstances affecting business during the COVID-19 emergency and to provide flexibility for the provision of health related services needed to manage or treat the virus during an outbreak. To assist notices for section 13, 15 and 19 of the COVID-19 Act were made under section 6 of the COVID-19 Act, and these notices have since expired.

With the current threat of the virus emerging in the state, the measures put in place in 2020 may be needed again. In order to prepare for a potential outbreak, these notices need to be issued again.

The key areas that are to be addressed in the Notices include providing:

- extensions of certain statutory timeframes for circumstances where an action may be, or must be, taken by a person (Section 13);
- protection from offences against planning law for certain emergency use and development 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); and
- alternative arrangements for the public exhibition of documents (Section 19) for development applications, planning scheme amendments, draft LPS's and SPP amendments.

The Premier considers that the issuing of the attached Notices are necessary to effectively manage business continuity and statutory compliance risks for the local government sector for implementing the current planning reforms for both State and local government and to assist businesses commencing works under existing planning permits, should another virus outbreak occur.

Under section 5 of the COVID-19 Act, the Notices can only be issued if a relevant 'emergency circumstance' exists in relation to the Notice. The enclosed Notices are consistent with the objectives of the COVID-19 Act, and the emergency circumstances specified in the COVID-19 Act are considered to exist in relation to the Notices, as follows:

- the need to amend or revoke provisions of existing planning permits, so as to ensure health services across the State can provide for the Covid-19 vaccines to be rolled out in a timely manner, which in turn will provide a long term safeguard to all Tasmanian residents against the risk of contraction of the disease (Sections 5(2)(b)).
- the need to provide extensions of time for proponents to commence developments under existing planning permits due to impacts from the COVID-19 disease and the potential restrictions on the movement of persons and reduced numbers of people available to carry out the development activity (Sections 5(2)(c) and 5(2)(d));
- the need to provide alternative arrangements for public exhibition of documents due to the potential restrictions on the movement of persons because of the presence of the COVID-19 disease or the risk of the spread of the disease amongst persons in the State (Section 5(2)(c));
- the desirability of ensuring the continuity of government services and administrative functions in assessing draft LPSs and amendments to LPSs and the SPPs under LUPAA, which is likely to be hindered due to restrictions on the movement of persons because of the presence of the COVID-19 disease (Section 5(2)(e));
- the need for emergency use and development relating to health services, particularly in the north west of the State, due to the presence of the COVID-19 disease in persons and the risk of contraction of the disease by persons in the State (Sections 5(2)(a) and (b)); and
- the desirability of ensuring the continuity of local government services in assessing development applications and planning scheme amendments under LUPAA which is likely to be hindered due to restrictions on the movement of persons because of the presence of the COVID-19 disease (Section 5(2)(e)).

Effect of Notices

The Ministerial Notices provides for the following:

1. **A 6 month extension to the current timeframe required to substantially commence a use or development in accordance with a permit issued under LUPAA (Section 13 Notice)**

Section 53(5) of LUPAA provides 2 years from the granting of a planning permit for the proponent to substantially commence the approved use or development.

A further 4 years may be granted by the local council administering the permit in 2 year increments, providing a total of 6 years to substantially commence. Failure to substantially commence the use or development within this specified period means that the planning permit lapses and the proponent must then reapply to the local council for a new permit.

During the last lockdown, proponents had difficulty in commencing developments under existing permits and approached the Government seeking extensions of time. Issues included difficulties in gaining secondary approvals and the restrictions on the movement of people and the reduced numbers of people available to carry out development activity during the COVID-19 emergency.

The notice provides an additional 6 months to the final 2 year extension that may be granted by local councils under section 53(5)(c) of LUPAA.

2. 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)

In 2020 the PPU received requests from local councils for relief from the requirements for permits under LUPAA for a number of health services 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 Macquarie Point. These circumstances would likely reoccur during another lockdown.

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*.

3. 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)

During the last lockdown, the majority of council offices closed to the public, which had 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. These circumstances would likely reoccur during another lockdown.

The s.19 Notice provides alternative arrangements for publicly 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.

- 4. The public exhibition of relevant documents for draft LPSs and amendments to LPSs and the SPPs, required under LUPAA and the *Land Use Planning and Approvals Regulations 2014* (LUPA Regulations), to be undertaken in an alternate 'approved manner' (Section 19 Notice)**

LUPAA and the LUPA Regulations require the relevant exhibition documents for draft LPSs and amendments to LPSs to be available for viewing at the council's offices in addition to the Tasmanian Planning Commission's offices. LUPAA requires the relevant exhibition documents for amendments to the SPPs to be available for viewing at the Commission's offices.

During the last lockdown, the majority of council offices were closed to the public, which had implications for the public exhibition of documents for draft LPSs. While the Commission's office remained open to the public in 2020 and would likely remain open again, alternative exhibition arrangements are still required to assist those who may feel uncomfortable with using council facilities, or are unable to leave their homes, during a COVID-19 emergency.

The section 19 Notice provides alternative arrangements for public exhibition of the relevant exhibition documents for draft LPSs and provides the same arrangements for any amendments proposed to the LPSs, once approved, along with any amendments that may be proposed to the State Planning Provisions during the COVID-19 emergency.

For draft LPSs and amendments to LPSs, the relevant exhibition documents can be viewed at the council's website and the Commission's website, or can be made available in a digital or hardcopy format on request for a fee. Similarly, the relevant exhibition documents for amendments to the SPPs can be viewed on the Commission's website, or can be made available in a digital or hardcopy format on request for a fee.

This approach is similar to the other section 19 Notice providing alternative arrangements for the public exhibition of development applications and amendments to existing planning schemes. This section 19 Notice provides an additional option of providing the relevant exhibition documents in a digital format (e.g. on a CD/DVD or USB drive), which will assist if there is large volume of documents available.



Joint Standing Committee Subordinate Legislation

5 November 2021

Hon Peter Gutwein MP
Premier
11th Floor, Executive Building
15 Murray Street
HOBART 7000

e: premier@dpac.tas.gov.au

Dear Premier,

**NOTICES ISSUED UNDER SECTIONS 13, 15 AND 19 OF THE
COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 –
LAND USE PLANNING AND APPROVALS ACT 1993**

The Joint Standing Committee on Subordinate Legislation is currently considering the above Notices. At the Committee's last meeting, the Committee resolved to commence an inquiry into the above Notices.

Accordingly, the Committee has requested that a public hearing be arranged with yourself or Departmental Officers. It would be appreciated if this public hearing could take place at the Committee's meeting on **Thursday, 25 November 2021 at 1.00 pm.**

It would be appreciated if you would please confirm the availability of yourself or Departmental Officers who are available to attend to the Secretary, Julie Thompson on 0488 060 687 or via email at subleg@parliament.tas.gov.au.

Yours sincerely,

A handwritten signature in black ink, reading 'Tania Rattray'.

TANIA RATTRAY MLC

CHAIR

w. 03 6212 2250 f. 03 6212 2345 m. 0488 060 687 e. subleg@parliament.tas.gov.au

PUBLIC

THE PARLIAMENTARY JOINT STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 25 NOVEMBER 2021.

INQUIRY INTO NOTICES ISSUED UNDER SECTIONS 13, 15 AND 19 OF THE COVID-19 DISEASE EMERGENCY (MISCELLANEOUS PROVISIONS) ACT 2020 (LAND USE PLANNING AND APPROVALS ACT 1993).

CRAIG LIMKIN, DEPUTY SECRETARY, POLICY AND INTERGOVERNMENTAL RELATIONS DIVISION, AND **BRIAN RISBY**, DIRECTOR, PLANNING POLICY UNIT, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Ms Rattray) - Before we commence, I will introduce our members, Meg Webb, Janie Finlay, and myself Tania Rattray, Ruth Forrest and Felix Ellis. Thank you very much. As I said, we will be broadcasting and taking sworn evidence. I will ask the witnesses to please make the statutory declaration.

Thank you and welcome to these public hearings of the Joint Standing Committee on Subordinate Legislation in regard to enquiring into the notices of issues under sections 13, 15 and 19 of the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 in regard to land use planning and approvals. The evidence is protected by parliamentary privilege. I remind you that your comments made outside of this place will not be afforded the same privilege. Have you read the witness information? Thank you very much. The evidence you present will be recorded and a *Hansard* version will be published on the committee's website. Thank you very much. I invite whoever would like to make an opening statement.

Mr RISBY - Thank you, Chair. The three items on your agenda today relate to, as you say, notices under the COVID legislation, particularly notices that go to maintaining the business of councils and commissions and the like during the COVID period, and to extending certain time periods as well. There are three notices in particular here. They are reissued notices of those issued in 2020. There was a fourth notice issued at that time that was also reissued in April this year. That one related to approving extending permit hours for the vaccine rollout to occur in particular locations.

The three that we are examining today deal with section 13. One is an extension of time relating to the substantial commencement of developments that have an approval; currently under the normal legislation as a two-year period to substantially commence a development that has been approved and then, the capacity for a two-year extension to be approved by the planning authority, and a second extension two years to be approved by the planning authority. The notice extends that by a further six months at the end of those extension periods. That is particularly important where there were some ongoing difficulties on getting workforce and getting secondary approvals that may be required to allow the development to substantially commence.

It has been used in a few cases. We are not monitoring or aware of them. The range of cases is a matter for the councils of course. I'm aware of a particular one, a substantial golf course development at Seven Mile Beach, which required using that extension. They sought advice and negotiated with the council, I think, to get that extension.

The other notice, a section 15 notice, is ostensibly around allowing new uses and development to deal with particular aspects of managing COVID to occur without offending the planning rules that were in place. It effectively allows those particular things to pop up, like clinics or vaccination areas where normally a permit may not be approved. It also allows for those things which may be constructed. It gives them a certainty of life and they are deemed to be approved through the system at that time.

The other two notices are under section 19. They relate to establishing alternative procedures and exhibition protocols around both local council development application advertisements, but also amendments to planning schemes and around the local provision schedules process for the commission and the councils as well. They were used only on one occasion I am aware of, which was in Devonport, when the north-west was going through a lockdown. The Devonport City Council had its local provision schedule exhibition, I think just starting at that time. That one really has not been used to any great extent that I am aware of.

CHAIR - Thank you. I will open it up to questions. I welcome Madeleine Ogilvie to the committee. Please, for anyone watching, this is a working lunch for members, otherwise we do not get any time, so please bear with us.

Ms FORREST - One of the reasons we decided to inquire and look into this more fully is that sooner or later we are going to have to learn to live with COVID. We are opening our borders very soon and COVID-19 will be here, whether we want it or not.

I do not really have such a concern with some of the measures here, like the ones related to pop-up testing clinics and that sort of thing. Surely those things can happen as and where needed. But other things related to the public exhibition for LPSs and some of the other aspects, it seems that we are having a repeated renewal of these, when they are hardly used via your own evidence. I wonder if they are even relevant now. Why would we continue to extend them when, they have not been used much, and we would argue that we need to be able to deal with this as an ongoing thing now?

Mr LIMKIN - Thank you for the question. I agree we do need to move to a living-with-COVID-type of thing. The Government has announced a process to move forward. We have the national plan to reopen Australia to living in COVID normal. However, as the Director of Public Health has said we are going to a challenging time.

What the Government requires and councils required that all the tools in their toolbelt to be able to continue to manage that process going forward. Lockdowns are not a thing of the past at the moment. You have seen in both New South Wales and Victoria. As they have had to deal with their outbreaks and open up, there have had to be targeted and instant lockdowns to mitigate that.

This is providing councils over the next six months the ability and the option if they require it because of the decisions that are taken to keep Tasmanians safe the opportunity to continue business, to continue supporting their community and giving the community the rights and opportunities to have a say on the planning system, which is fundamental in our democracy.

Ms FORREST - The fact sheet you provided on the section 19 notice says:

PUBLIC

Section 19 notice provides alternative arrangements of public exhibition of documents for development applications and planning scheme amendments. Documents may be viewed on the council's website and hard copies may be made available on request for a fee.

Why wouldn't we make that permanent?

Mr RISBY - I might address that if that is okay. It is a very good question. Some of the other jurisdictions have actually gone along that line. I think at this time we would want to have a broader review of the regulations around public exhibition and notification of processes under LUPA. There's probably a need to review it, particularly in the light of the COVID-19 situation but, more broadly, in the digital age.

Ms FORREST - In terms of access.

Mr RISBY - We have conversations around these things at various times, even when legislation is being debated. There is usually a question around whether advertisements in newspapers is a relevant consideration anymore. The view we have taken is that not everyone has access to the internet and you cannot disenfranchise people.

Ms FORREST - But you are not removing that; you are just adding that, as an option. Hard copies can be made available. Before you had to go there and look. You could not get even get a hard copy.

Mr RISBY - Most councils do this anyway at the moment. Most councils do have electronic access to development applications and the like. There are potentially some issues around copyright and those sorts of things, but it is worthy of consideration at the end of this period as to whether there is a need for it. What this does though, is actually say that a digital version is enough to meet the requirements. That does leave out people who do not have access to the internet.

Ms FORREST - Not if a hard copy can be provided.

Mr RISBY - I think those are the options. Yes, that is a problem if the office is closed and so forth.

Ms FORREST - Sure.

Mr RISBY - I think there is capacity to look at. I think Queensland has rolled some of this into regular updates of their regulations. So, it is something we are monitoring across the nation.

Ms FORREST - So, when are these regulations up for review?

Mr LIMKIN - These regulations last for 12 months. In my understanding, the COVID disease bill lapses 180 days after the conclusion of the public health emergency. So, if the public health emergency finishes prior to 12 months, they will lapse 180 days after that.

As Brian said, the Government is going to review all the lessons out of COVID, to see how we continue to grow as a community and go. Queensland has looked at this. We will

look at that. The Government is working on the Tasmanian planning policies and continually looking at changes to LUPA. So, that would be considered as part of that process.

Ms WEBB - Just a couple of things to clarify. My understanding from what you just said is when we are contemplating potentially making it permanent that whether you make these available on hard copy or digitally is that potentially a council could say we have made it available digitally, that is all we have to do to meet the requirement. Therefore, we met it, and then back luck. So, presumably, if we were to contemplate making it permanent, we would still have to adjust that to ensure that it must be made available in a way that is accessible to everybody, either or, those things, but not in an exclusionary way.

Mr RISBY - Yes, I think that is right.

Ms WEBB - How do we word it differently to this, is what you are saying?

Mr RISBY - Yes, we need to be careful we are not accidentally disenfranchising people that simply do not.

Ms WEBB - In contemplating the premise of establishing a permanent arrangement, instead of continuing to extend a temporary arrangement, presumably, we would look to do that quite readily as part of deciding to go ahead with that process. Yes? Like that does not stop us deciding to make this permanent.

Mr RISBY - No.

Ms WEBB - Whereby you could access it either way.

Mr RISBY - I think the LUPA regs would be due for renewal in 2024.

Ms WEBB - Right.

Ms FORREST - That is what I was asking about.

Mr RISBY - Yes, I thought you might have been. I think they need to be reviewed in the digital age, as it were. They are not much more than nailing bits of paper to trees, really.

Ms WEBB - Can I ask a different question now? Going back to the number 13, the one about extending the time period for the substantial commencement of a development. I want to understand the why of this.

Section 53(5) of LUPA provides that there is a two-year period within which substantial commencement must occur. That can be extended twice, two further two-year periods - so six years. What we are doing here with this is saying that it could be another six months on the end of that.

I am interested to know what has prompted this? Clearly, we are nowhere near that amount of time since constrained elements of COVID circumstances have come in to play and people might have needed to contemplate extras. What has prompted us to think we need an extra six months on the end of six years?

PUBLIC

Mr RISBY - There were actual situations where developers would have extended, for one reason or another, to the end of the two-year extension period, so they are up to nearly six years.

Ms WEBB - They might be well through the six.

Mr RISBY - Yes. They had intentions to substantially commence at a certain date. Then suddenly, due to physical distancing rules or unavailability of workforce from interstate, they simply could not start, which meant the permit would have lapsed.

Ms WEBB - Have we set it at six as the minimum to assist with those current situations that we are aware of, anticipating that we may well then be able to add more as we go? I am trying to establish whether we are just trying to accommodate some known circumstances. Why six months? Why didn't we make it, say, another two years that could be added on? I am trying to ascertain the rationale behind it.

Mr RISBY - I think the six months was - you have had quite a long lead-up time. There was, at that point, an obvious problem with construction site workforce physical distancing. It is only substantial commencement; it is nothing more than a need to make a physical change. It does not need to be the entirety of the development being completed or anything like that.

I think six months was seen as enough time to overcome those short-term labour shortage, equipment sort of things without extending it forever. Six years is a long time anyway. As I say, I do not know of very many circumstances - only one I am really aware of - that clearly indicated a need for that. It was caught up with needing some other works to be done before they could access the site to do something. It just fell over.

Ms WEBB - Substantially, it is a just-in-case. It is the minimum that would seem functional to serve that just-in-case purpose.

Mr RISBY - Yes, that is right. I guess those circumstances will need to be reviewed and changed. We have seen the federal government announce that there will be changes to international arrivals, with skilled migration being able to come back in. That will change the ability for them to get these labour markets and workforces. We will continue to review this as the nation opens up and the changes happen to make sure it is appropriate and relevant for Tasmania today.

CHAIR - Thank you very much. We felt that it was important to have this on the public record. These are circumstances that we do not see a lot. We very much appreciate your time today. We will continue to watch with interest. Thank you on behalf of the committee.

THE WITNESSES WITHDREW.

The Committee suspended at 1.23 p.m.