Submission on the:

- Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Bill 1993 (draft exposure Bill);
- Position Paper - Reforming Tasmania’s Planning System: *Legislation for the Tasmanian Planning Scheme*; and
- accompanying Fact Sheets 1-4.
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Summary of recommendations

Recommendation 1: That the draft exposure Bill be amended by inserting a new subclause at s.11(2)(c) as follows:

‘(c) without limiting the scope of (a) and (b) make health and wellbeing the focus of objectives and provisions; and’

And

To make any consequential changes arising from new clause s.11(2)(c).

Recommendation 2: That a State Policy for Healthy Spaces and Places is introduced under the State Policies and Projects Act 1993, that provides the overarching policy framework for the state planning provisions and local planning schedules.

Recommendation 3: To achieve the intent for a fairer, faster, cheaper simpler planning system, that the intended expanded role of the Minister in the details of the content and processes for the Tasmanian Planning Scheme needs to be reconsidered.

Recommendation 4: To gain community confidence for a fairer, faster, cheaper simpler planning system the Government establishes a charter for community engagement or similar process as a means for gaining meaningful community input to the formulation of planning policy and strategy on activities conducted by State Government and councils.
Preamble

The Heart Foundation is pleased to provide this submission in response to the invitation from the Secretary, Department of Justice, for comments on the draft exposure Bill to amend the Land Use Planning and Approvals Act 1993 to make provision for the Tasmanian Planning Scheme and related matters. The submission covers aspects of the draft exposure Bill and draws on the supporting documents, the position paper ‘Reforming Tasmania’s Planning System – Legislation for the Tasmanian Planning Scheme’ and accompanying Fact Sheets.

Of the provided documents, the principal interest of the Heart Foundation is in the supporting documents that disclose some of the 'strategy' for Tasmania’s planning system beyond the bringing in of the Tasmanian Planning Scheme.

The Heart Foundation

The Heart Foundation has over the last 8 years been actively involved in promoting the importance of the role of good planning to the development of healthy spaces and places, including access to healthy food in Tasmanian communities. A list of documents that the Heart Foundation has produced or co-produced that relate to the built environment and health, as well as other literature that supports this submission (with hyperlinks to the documents) can be found at Attachment 1.

Healthy spaces and places are thoughtfully designed and safe and provide opportunities for physical activity; contribute to a range of health benefits; and facilitates access to healthy food choices. An environment with a focus on accessibility and physical activity as part of daily routines is consistent with reducing inequity in our cities and towns; supports adaption to climate change; improved community safety; supports social inclusion; and contributes significantly to food security both in facilitating access to, and in supporting the production of food at a local, regional and state-wide level.

In leading the Healthy Food Access Tasmania project, funded by Australian Government through Primary Health Tasmania (in partnership with the University of Tasmania) the Heart Foundation is exploring the role of local government in supporting local food security through its services and functions including using land use planning decisions and the built environment design to improve access to healthy food. Current recommended strategies for local governments include (but are not limited to) the protection of productive farmland and providing for urban food growing within communities, ensuring land use supports a variety of methods for direct sales from growers to community and facilitating agri-tourism.
The draft exposure Bill

Our interest in the draft Bill is to ensure that the contents of the Tasmanian Planning Scheme through the state planning provisions and the local provisions schedules promote a proper focus on improving health and wellbeing in the community. It is therefore disappointing that health is not mentioned once in the draft exposure Bill.

In the 2012 Victorian Legislative Council Inquiry into Environmental Design and Public Health in Victoria, Mr Jason Black from the Planning Institute of Australia (Victorian Division) made a salient case for how the formal objectives set out in an Act influence the decision making process. He said:

‘If our planning schemes are not telling us that the forefront consideration is the community’s health and wellbeing and it is something else, then how can planners and developers be expected to read into it that the community’s health and wellbeing is a priority?’

If Tasmanian’s health and wellbeing is the starting point of the objectives of planning then it will naturally flow down to other elements. However if health is not highlighted in our legislation, evidence from other jurisdictions, suggests it is much less likely to be considered and consequently this becomes a point of contention where community aspirations cannot be facilitated by the legislation. Health and wellbeing should be included as an objective in every layer of the planning system in Tasmania, starting with an inclusion in the Act’s objectives, and flowing through to the state planning provisions (including, but not limited to the purpose and objectives, general provisions, zones and codes), and through to the local provisions schedules (including, but not limited to the local area objectives).

Turning to the clauses of the draft exposure Bill we submit the following.

S.11(2) primarily concerns the content of the Tasmanian Planning Scheme. This section provides an open prescription of what the scheme may contain. In the context of our submission the generally open prescription of content is departed from with specific reference to the provision of public utility services (s.11(2)(d)).

S.14 draws on s.11 for the contents of the state planning provisions (SPPs).

S.15(7)(c), s.16(4)(c) and s.20 respectively requires the Commission and Minister to be satisfied that the draft of the SPPs furthers the objectives set out in Schedule 1 (Resource Management and Planning System (RMPS) objectives)).

Part 3A makes similar requirements on the contents of local planning schedules through drawing on s.11 and to further the objectives of Schedule 1.

In respect to promoting an appropriate focus on community health and wellbeing in Schedule 1 we have to resort to the definition of sustainable development that refers to; ‘provide for their ‘social, economic and cultural well-being and for their health and safety while…’
However the definition of sustainable development is very much focussed on protecting health, rather than enabling and promoting health. Promoting health and wellbeing should be an objective in its own right within the planning system of Tasmania, which would also go towards delivering on the Government’s goal of making ‘Tasmania the healthiest population in Australia by 2025’.

Moving to the Schedule 1 Part 2 objectives in the Land Use Planning and Approvals Act (LUPAA) we find at (f):

‘to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania’.

The Schedule 1 objectives only go part way towards describing health and wellbeing as an interest of Tasmania’s planning system. The objectives do not increase the visibility of health and wellbeing as an objective for planning. The objectives do not reflect the growing body of evidence both within Australia and internationally regarding the links between the planning, built environment and community health, wellbeing and the rising incidence of chronic disease.

For the Heart Foundation the preferred position would be to elaborate on s.11(2) and/or to expand the Schedule 1 Part 1 objectives. The former can be contemplated under the current draft Bill. The latter attracts a considerably greater interest as the Part 1 objectives are common to a considerable amount of legislation that falls within scope of the RMPS.

In the context of the draft exposure Bill we seek an additional clause inserted as s.11(2)(c) with the following wording:

‘(c) without limiting the scope of (a) and (b) make health and wellbeing the focus of objectives and provisions; and’

The current subclause (c) would then become (d) and so on.

The addition of subclause (c) or words to similar effect will:

- Confirm the role of health and wellbeing as a land use and development issue for the Tasmanian Planning Scheme and support all other objectives and provisions covering economic, environmental, cultural and safety interests.

- Be consistent with the intended roles of local government (as outlined in the Local Government Role and Assessment Final report) that includes:

‘Sense of place - Councils facilitate and work with their communities to develop a sense of place through branding, promoting and enhancing local identity, and promoting social cohesion and health and wellbeing.

Land-use planning - Councils are strategic land-use planners who work with communities to create an environment that guides the use of land to balance

1 Liberal party pre-election policy: A plan to build a Healthy Tasmania
economic, environmental and community/social values, and to support the health and wellbeing of their communities.'

Recommendation 1

That the draft exposure Bill be amended by inserting a new subclause at s.11(2)(c) as follows:

‘(c) without limiting the scope of (a) and (b) make health and wellbeing the focus of objectives and provisions; and’

And

To make any consequential changes arising from new clause s.11(2)(c).

Position paper and Fact sheets

The Position Paper - Reforming Tasmania's Planning System - Legislation for the Tasmanian Planning Scheme and 4 Fact sheets together disclose some of the ‘strategy’ for Tasmania’s planning system beyond the bringing in of the Tasmanian Planning Scheme. The supporting documents comprise the principal interest for the Heart Foundation at this stage of the Government’s proposals for a ‘fairer, faster, cheaper, simpler planning system’.

The Fact sheets reveal the intent for:

- A subsequent review of regional strategies.
- The introduction of state planning policies.
- A review of current State Policies.

The review of regional strategies

The intent to review regional strategies is supported as it acknowledges the differing policy interests that may not be consistent with the State view and the now considerable time lapse since the current regional strategies were prepared. In supporting a review of regional strategies the Heart Foundation contends that whilst regional diversity needs to be accommodated this needs to be in a State Policy framework.

The introduction of state planning policies

The Fact sheets reveal the intention to have state planning policies in addition to State Policies.

Fact sheet 1 introduces this new entity – state planning policies.

- ‘new state planning policies will inform a review of Tasmania’s three regional land use strategies and the first review of the Tasmanian Planning Scheme.’

Further Fact sheet 1 states:

‘Once the Tasmanian Planning Scheme is in place the Government will consider whether any changes may be required to the regional strategic planning framework to support the implementation of the Scheme and the new state planning policies.

As noted above, the new state planning policies, once finalised, will guide a review of the three Regional Land Use Strategies, in turn providing rationale for further strategic rezoning.’
Fact sheet 4 offers more information on state planning policies. To the question: ‘How will the new state planning policies be developed?’ there is reference to; ‘develop new state planning policies to support Tasmania’s planning system’, that they ‘will cover a range of matters’, and that there will be consultation. The question of ‘how’ they are to be developed and their intended status is not answered.

Fact sheet 4 also ventures to describe how state planning policies will inform a review of Tasmania’s three regional land use strategies and the first review of the Tasmanian Planning Scheme.

On what has been presented in the Fact sheets there is nothing to indicate that state planning policies will have statutory status and the Fact sheets are silent on how they are to be brought in. It appears they will simply be government ‘small p’ policies of good intent aimed at that part of planning to do with matters covered by planning schemes/Tasmanian Planning Scheme and not the whole-of-government policy offering under the State Policies and Projects Act 1993.

On the information available, the Heart Foundation does not consider that state planning policies are a fitting alternative to State Policies if that is their intended role.

A review of current State Policies
Fact sheet 4 states:

‘Once the new state planning policies have been developed, the Government will consider whether any review of the current State Policies under the State Policies and Projects Act 1993 may be required.’

Contemporary State Policies are essential for the proper execution of policy, but as contended above, it would be disingenuous for state planning policies to be viewed as an alternative to State Policies.

In reference to State Policies, the Heart Foundation has noted that the foreshadowed legislation does not consequentially propose amendments to the State Policies and Projects Act 1993. In addition, the Heart Foundation supports the exposure Bill’s assessment and approval processes for the Tasmanian Planning Scheme that continues the current requirement for the Commission and Minister respectively to be satisfied that the draft scheme ‘is consistent (currently ‘in accordance’) with any State Policies made under s.11 of the State Policies and Projects Act 1993’.

The Heart Foundation strongly supports the retention and role of State Policies as the appropriate vehicle for effecting longevity of policy implementation across State and local government.

In this context the Heart Foundation reiterates our call for a State Policy for Healthy Spaces and Places. The introduction of a State Policy for Healthy Spaces and Places that binds both state and local governments, would demonstrate the Government’s leadership and commitment to better planning, and provides the policy framework under which the state and
local planning provisions would sit. Our most recent draft of a State Policy for Healthy Spaces and Places can be found here.

**Recommendation 2**

*That a State Policy for Healthy Spaces and Places is introduced under the State Policies and Projects Act 1993, that provides the overarching policy framework for the state planning provisions and local planning schedules.*

**Making health and wellbeing a focus of the planning objectives**

The Heart Foundation supports the delivery of a statewide planning scheme and as a key platform of the Government’s planning reform agenda to make Tasmania’s planning system fairer, faster, cheaper and simpler.

As part of this process, ‘fairest’ must embody the community as well as the rhetoric that appears to focus on making it fairer for investors and developers. In this context the Heart Foundation sponsors work for a State Policy for Healthy Spaces and Places that promotes principles such as equitable travel and in a separate but integrally related project, access to healthy food, including the role of governments. The Heart Foundation work has the health and wellbeing of communities uppermost.

In addition to the above, the Heart Foundation has difficulty reconciling the intent for fairer, faster, cheaper and simpler with the considerably expanded role of the Minister in the detail of the content and making of the Tasmanian Planning Scheme under the draft exposure Bill.

The early structure of the RMPS legislation had the Minister/Government placed to provide the policy settings through State Policies and to not overly intervene in local land use issues. This arrangement offered a proper hierarchical arrangement of powers, allowing the Minister to focus on the policy settings to be applied across State and local government.

The absence of government prosecuting the 1993 framework of separation of powers between policy and implementation, particularly the failure to pursue State Policy as contemplated in 1993, has led to successive amendments to LUPAA incorporating increasing roles for the Minister in the making of planning directives, regional land use strategies and the current crop of interim planning schemes. These additions to LUPAA have allowed policy to be determined by processes that are not well equipped for such a purpose.

The Heart Foundation acknowledges that the specification of roles for the Minister is for the Government to pursue, subject to Parliament’s agreement. However we urge the Government to review what is now being proposed on the following grounds:

- Proposals for a virtual Ministerial model has not been exposed for public review. The Fact sheets that accompany the draft exposure Bill do not articulate this fundamental change in the role for the Minister. The increased intervention into process and outcomes could potentially lead to decision outcomes that are not transparent.
The draft exposure Bill details 162 mentions for the Minister to undertake some function, whether to direct, advise, initiate, consider, determine. Each mention presumably gives rise to some form of documentation involving some administrative action within government, whether it is within the Minister’s office, the department, the Commission or other body created to carry out the function.

Another view on the added administrative burden on the Minister contemplated under the draft Bill is that many matters could be delegated to someone else, presumably a head of agency. Such delegation, if put into affect, would be counter to transparency of process and the potential for bureaucratic rivalry between agency and Commission.

Unfavourable ramifications have resulted in other jurisdictions when the Minister has taken on additional process roles as proposed in the draft Bill. For example, there have been situations leading to investigations of Ministerial ‘inappropriate’ use of powers in other places (eg the Independent Commission Against Corruption investigations in NSW) where Ministers are open to lobbying by diverse interests. It is contended that the Minister could be exposed to claims of bias, perceived bias, or neglect of duty if the Minister takes on the proposed additional process roles.

The Heart Foundation contends that to add a considerably expanded role of the Minister will not achieve the intent of a fairer, faster, cheaper simpler planning system. It will primarily add to his or her administrative burden and build-in delays in decision making without necessarily improving planning outcomes.

**Recommendation 3**

To achieve the intent for a fairer, faster, cheaper simpler planning system, that the intended expanded role of the Minister in the details of the content and processes for the Tasmanian Planning Scheme needs to be reconsidered.

**General comments regarding the focus of the reform**

If we have health and wellbeing as an objective in the Act, then state and local planning provisions that comprise the Tasmanian Planning Scheme will ensure that health and wellbeing is enabled and promoted, not just protected. We have written to the Chair of the Tasmanian Planning Reform Taskforce, and offered our assistance to provide input into the development of the state planning provisions as ideally we would like to ensure that the promotion of health and wellbeing is a focus of these provisions prior to them being released for the statutory public consultation in early 2016.

When the local planning provisions are being developed, they too need to have a ‘health and wellbeing’ layer applied to them in order to assist local government to fulfil their roles as prescribed. Clarity and consistency are just as important as efficiency to a modern planning system. This would go some way to address some of the issues raised in a recent (not yet published) food security survey of local governments undertaken by the Heart Foundation and Professor David Adams that found:
• 58% of respondents highlighted land use planning to protect productive farming land, food processing and supporting community food growing and access to healthy food

• 55% of respondents believed that advocacy to other levels of government was required for investment and policies that support achieving community and regional food security

• 80% of elected members consider a perceived ‘lack of mandate’ from the state Government as a barrier to action for local government to support local food security (including using land use planning as an instrument).

Tasmanian community members themselves have increasing expectations around the role of local governments. The recent State-wide Community Satisfaction Survey conducted for the Local Government Association of Tasmania, rated Tasmanian councils well overall. However there were 2 areas, relevant to land use planning and health and wellbeing, in which satisfaction was considerably below the averages (70% satisfaction) for the list of services areas. These included “opportunities for involving residents in local decision making” (58%) and “consistent and appropriate planning development” (58%).

In other jurisdictions, mechanisms for community involvement in planning decision making have also been proposed. The Victorian Local Governance Association recommended in it’s submission to the Victorian Government Inquiry into Review of Victoria’s Overall Planning System Submission (September 2011) that thorough and on-going community engagement processes be built into the planning system, through a Charter for Community Engagement established by negotiation between governments, industry and the community. This allows a set of principles for local accountability, accessibility and transparency to be maintained in the planning system through the function of local governments as Planning Authorities and Responsible Authorities.

The Heart Foundation, in referring to a charter of community engagement or similar process, does not see such as competing with or an alternative to the statutory public processes in the draft exposure Bill. It is about obtaining meaningful input at the early stages of formulating policy and strategy and is consistent with the intent of having community input at the planning stage of activities conducted by State Government and councils. Community engagement should help to forestall later arguments emerging over applications for use and development permits.

**Recommendation 4**

To gain community confidence for a fairer, faster, cheaper simpler planning system the Government establishes a charter for community engagement or similar process as a means for gaining meaningful community input to the formulation of planning policy and strategy on activities conducted by State Government and councils.
Attachment 1
Reference sources on the links between the built environment and population health, and references providing practical examples on how to intervene in the built environment for greater health and equity outcomes.

- **Healthy by Design: A guide to planning and designing environments for active living in Tasmania.**
  National Heart Foundation of Australia 2009.
- **Blueprint for an active Australia: Government and community actions to increase population levels of physical activity and reduce sedentary behaviour in Australia, 2014–2017.**
  National Heart Foundation of Australia 2014.
- **Position statement: The built environment and walking**
  National Heart Foundation of Australia 2009.
- **Healthy Spaces and Places: A national guide to designing places for healthy living.**
  National
- **Good for Business: The benefits of making streets more walking and cycling friendly.**
  Dr Rodney Tolley, Commissioned by the Heart Foundation 2011.
- **Creating Healthy Neighbourhoods, consumer preference for healthy development:**
  Heart Foundation of Australia 2011.
- **Streets for People Compendium for South Australian Practice:**
  Government of South Australia, Heart Foundation and others 2012.
- **An Australian Vision for Active Transport.**
- **Social Inclusion Principles for Spatial Planning in Tasmania.**
  TasCOSS 2011.
- **Food-sensitive Planning and Urban Design;**
  David Lock Associates, University of Melbourne and Heart Foundation of Australia 2011.
- **Moving Australia 2030 a transport Plan for a Productive and Active Australia**
  Moving People 2030 Taskforce.
- **Inquiry into Environmental Design and Public Health in Victoria Final Report May 2012.**
  Environment and Planning References Committee Legislative Council (Victoria).
- **Healthy Communities A local government toolkit for building healthier Tasmanian communities.**
  Cradle Coast Authority, 2011
- **Review of Victoria’s Overall Planning System Submission**
  Victorian Local Government Association: September 2011.
- **Submission to the Greater Launceston Plan**
  Heart Foundation, 2014
- **Submission in response to the Regional Development Australia – Tasmania Regional Plan discussion paper**
  Heart Foundation, June 2013.
- **Response to the Exploring the Roles of Local Government discussion paper**
  Heart Foundation, 2013
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