

CLAUSE NOTES

Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Bill 2021

Key abbreviations and acronyms:

- Amending Act – *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021*
- Appeal Tribunal – Resource Management and Planning Appeal Tribunal
- Minister – Minister for Planning
- Commission – Tasmanian Planning Commission
- LPS – Local Provisions Schedule
- LUPA Act – *Land Use Planning and Approvals Act 1993*
- SPPs – State Planning Provisions

- Clause 1** Cites the short title of the Act – the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021*
- Clause 2** Provides for the provisions of this Act to commence upon receiving Royal Assent.
- Clause 3** Identifies the Principal Act for this part of the Bill as the *Land Use Planning and Approvals Act 1993* (LUPA Act).
- Clause 4** **Section 3 amended (Interpretation)**
Amends the definition of ‘amendment of the SPPs’ in Section 3 of the LUPA Act to reference the making of minor amendments of the SPPs under new section 30NA(6) and the making of interim SPPs amendments under new section 30NB(3) of the LUPA Act.
- Clause 5** **Section 30D amended (Preparation of draft amendment of the SPPs by Minister)**
Provides for the Minister, in undertaking the usual consultation on a draft amendment of the SPPs under section 30D(2) of the LUPA Act, to also request advice on whether all or part of the amendment should be given interim effect as an interim SPPs amendment under new section 30NB. This provides for the Minister to seek early advice from the Commission, planning authorities, State Service Agencies and State authorities in circumstances where an interim SPPs amendment may be contemplated.
- Clause 6** **Section 30G amended (Approval for public exhibition)**
Clarifies that a draft minor amendment of the SPPs that is made under new section 30NA(6) of LUPA Act is not required to be approved for public exhibition due to minor amendments not requiring public exhibition.

Clause 7 **Sections 30H, 30I and 30J repealed**

These sections are repealed as they reflect the former process for making a minor amendment of the SPPs. These sections are replaced by new section 30NA.

Clause 8 **Part 3, Division 2, Subdivisions 3A and 3B inserted**

Inserts the new processes for making minor amendments of the SPPs and interim SPPs amendments.

Subdivision 3A – Minor amendments of the SPPs

30NA – Preparation of minor amendments of the SPPs

Section 30NA provides for the making of a minor amendment of the SPPs and replaces the former process under Part 3, Division 2 of the LUPA Act. This is based on the former process for making minor amendments with revisions to align the consultation and assessment process with scope of the amendments. The new process also delivers improved transparency for decision making on minor amendments.

Subsection 1 outlines the criteria for minor amendments of the SPPs. The criteria are the same as those in former section 30H(3)(b) of LUPA Act for minor amendments of the SPPs, except for the criterion for correcting an error subsection (1)(a)(i). This criterion has been further clarified and aligns with other parts of the LUPA Act for correcting errors or mistakes.

Subsection 2 provides different consultation requirements for minor amendments of the SPPs based on the scope and complexity of the amendment. For the correction of errors, removing anomalies, removing inconsistencies in the SPPs or with the LUPA Act or other legislation, the Minister is able to determine the extent of consultation undertaken with planning authorities, State Service Agencies and State authorities. For all other minor amendments that are less straightforward, such as those proposed to clarify or simplify the requirements in the SPPs without changing their policy intent, consultation must occur with planning authorities, and any State Service agencies and State authorities as the Minister thinks fit.

Subsection 3 aligns with the former process and requires the Minister to request the independent advice of the Commission on whether a draft amendment of the SPPs meets the criteria for making a minor amendment of the SPPs in subsection 1.

Subsection 4 requires the Commission to advise of its opinion on whether or not the draft amendment of the SPPs meets the criteria for making a minor amendment of the SPPs in subsection 1. The Commission must provide the advice to the Minister within the period specified in the notice issued under

subsection 3, or a longer period allowed by the Minister. The Commission must give reasons in its advice.

Subsection 5 provides for the Minister, after considering the advice of the Commission under subsection 4, and any advice of others under subsection (2), to determine whether or not the criteria for a minor amendment of the SPPs is met. The Minister may modify the draft amendment in order to meet the criteria.

Like the former process for making minor amendments of the SPPs, subsection 6 provides for the Minister to make an amendment of the SPPs without it being publicly exhibited if the Minister:

- has made a determination under subsection 5 that the draft amendment meets the criteria for a minor amendment under subsection 1; and
- is satisfied that it meets the SPPs criteria in section 15 of LUPA Act.

Subsection 7 requires the Commission's advice to the Minister under subsection 4, and the Minister's reasons for making the determination under subsection 5, to be made publicly available on an appropriate website. This is to be made available as soon as practicable after the Minister has made a determination on the draft amendment under subsection 5.

Subdivision 3B – Interim SPPs amendments

30NB – Interim SPPs amendments

Section 30NB provides for the Minister to give interim effect to an amendment of the SPPs, as an interim SPPs amendment, while it is being public exhibited and independently assessed by the Commission. This is based on the interim planning directive process under the former provisions of the LUPA Act, but with improved consultation and transparency for decision making.

The making of an interim SPPs amendments follows the normal process for preparing a draft amendment of the SPPs under Subdivision 2 of Part 3, Division 2 of the LUPA Act. Amendments to section 30D of the Act allow for the Minister to seek early advice from the Commission, planning authorities, State Service Agencies and State authorities on whether all or part of the amendment should be given interim effect as an interim SPPs amendment.

The new process making interim SPPs amendments may be triggered after the Minister approves a draft amendment for public exhibition and gives notice to the Commission under section 30G of the LUPA Act. Following this step, new subsection 30NB(1) provides for the Minister to seek independent advice from the Commission on whether some or all of a draft amendment of the SPPs should have interim effect as an interim SPPs amendment.

Subsection 2 requires the Commission to advise the Minister on whether some or all of the draft amendment should become an interim amendment of the SPPs. The Commission must provide the advice to the Minister within the

period specified in the notice issued under subsection 1, or a longer period allowed by the Minister. The Commission must give reasons in its advice.

Subsection 3 provides for the Minister, after considering the advice of the Commission, to determine whether or not to make an interim SPPs amendment in terms of some or all of the draft amendment.

Subsection 4 only allows the Minister to make an interim SPPs amendment under subsection 3 if satisfied that:

- it is necessary or desirable to urgently address issues relating to a natural or environmental hazard, public health, public safety, or a prescribed circumstance or matter; and
- it is in the public interest to give effect to the provisions in the draft amendment as soon as practicable.

Subsection 5 requires the Minister to give notice of the making of an interim SPPs amendment by:

- writing to the Commission and all planning authorities; and
- publishing a Gazette notice.

The Gazette notice is to identify the day on which the interim SPPs amendment takes effect, which may be on the date of publishing or a later date specified in the notice.

Subsection 6 requires the Minister to give written notice to the Commission if it was determined to not make an interim SPPs amendment under subsection 3.

Subsection 7 requires the Commission's advice to the Minister under subsection 2, and the Minister's reasons for making the determination on whether to make an interim SPPs amendment under subsection 3, to be made publicly available on an appropriate website. This is to be made available as soon as practicable after the Minister has made a determination on the draft amendment under subsection 3.

30NC – Effect, and taking effect, of interim SPPs amendment

Section 30NC specifies when an interim SPPs amendment takes effects as an amendment to the Tasmanian Planning Scheme, when it comes into effect in relation to a municipal area, and how long it remains in effect. The provisions allow for a whole state application of interim amendments and application to specific municipalities.

Subsection 1 outlines that an interim SPPs amendment comes into effect as an amendment to the Tasmanian Planning Scheme on the date specified in the Gazette notice published under section 30NB(5)(b).

Subsection 2 outlines how long an interim SPPs amendment remains in effect as an amendment of the Tasmanian Planning Scheme, which is:

- a period of 12 months from it coming into effect;
- until a draft amendment of the SPPs, which is in the same terms as the interim SPPs amendment, comes into effect; or
- until it is revoked under section 30ND(5),

whichever occurs first.

Subsection 3 specifies that an the SPPs are amended in accordance with the interim amendment for the period that the interim SPPs amendment is given effect and until it ceases to have effect.

Subsection 4 provides for the Minister to publish a Gazette notice specifying when an interim SPPs amendment comes into effect as an amendment of the Tasmanian Planning Scheme for a municipal area. This is either the day after the notice is published, or the day after a period specified in the notice. This allows for a delayed implementation of an interim SPPs amendment in a municipal area, if required, or for an amendment to only apply in certain municipal areas.

Subsection 5 outlines when an interim SPPs amendment comes into effect as an amendment to the Tasmanian Planning Scheme for a municipal area. This is either:

- the day specified in the Gazette notice published in accordance with subsection 4; or
- the day after the end of the period specified in the Gazette notice published in accordance with subsection 4.

Subsection 6 outlines how long an interim SPPs amendment remains in effect as an amendment of the Tasmanian Planning Scheme for a municipal area, which is:

- a period of 12 months from it coming into effect as an amendment to the Tasmanian Planning Scheme (as specified in the Gazette notice published under section 30NB(5)(b) ;
- until a draft amendment of SPPs comes into effect which is in the same terms as the interim SPPs amendment;
- until it is revoked under section 30ND(5); or
- until it ceases to have effect in that municipal area under section 30ND(7),

whichever occurs first.

Section 7 outlines that an interim SPPs amendment remains in effect as an amendment of the Tasmanian Planning Scheme in a municipal area for the period that the interim SPPs amendment is given effect and until it ceases to have effect.

30ND – Revocation of interim SPPs amendment

Section 30ND provides for the revocation on an interim SPPs amendment and specifies when the revocation takes effect. The provisions allow for a whole

state application of interim amendments and application to specific municipalities.

Subsection 1 provides for the Minister to revoke an interim SPPs amendment. In revoking an interim SPPs amendment, subsection 2 requires the Minister to:

- give written notice to the Commission and all planning authorities; and
- publish a Gazette notice.

The Gazette notice is to identify the day on which the revocation takes effect, which may be on the date of publishing or a later date specified in the notice.

Subsection 3 outlines when the revocation takes effect, which is the date specified in the Gazette notice under subsection 2.

Subsection 4 requires the Minister, in revoking an interim SPPs amendment that has come into effect for a municipal area, to:

- give written notice to the Commission and the planning authority for the relevant municipal areas; and
- publish a Gazette notice.

The Gazette notice is to identify the day on which the revocation takes effect in the municipal area, which may be on the date of publishing or a later date specified in the notice.

Subsection 5 outlines that the revocation of an interim SPPs amendment takes effect in a municipal area on date specified in the Gazette notice published under subsection 4.

Subsection 6 provides for the Minister to declare by notice in the Gazette that an interim SPPs amendment ceases to have effect within a municipal area on the date specified in that notice.

Subsection 7 outlines that an interim SPPs amendments ceases to have effect in a municipal area on the date specified in the Gazette notice published under subsection 6.

Clause 9

Section 30O amended (Matters to be considered in making amendment of the SPPs)

Amends section 30O of the LUPA Act to require that, in making a minor amendment of the SPPs, or an interim SPPs amendment, the Minister:

- must be satisfied that it meets the SPPs criteria under section 15 of the LUPA Act; and
- may inform themselves as they think fit.

These considerations are consistent for the making of all amendments to the SPPs.

Clause 10

Section 30P amended (Making of amendment of the SPPs)

Amends section 30P of the LUPA Act by deleting subsections 4, 5 and 6 as they are superseded by the new process for making a minor amendment of the SPPs under section 30NA.

Clause 11 Section 30R amended (When amendments of the SPPs come into effect as part of Tasmanian Planning Scheme)

Amends section 30R of the LUPA Act to reference the making of a minor amendment of the SPPs under section 30NA(6). This applies the same procedures for giving effect to minor amendments of the SPPs as for normal amendments of the SPPs. The equivalent procedures for giving effect to interim SPPs amendments are contained within new sections 30NB and 30NC.

Clause 12 Section 35 amended (Draft LPS to be provided to Commission)

Amends section 35 of the LUPA Act to enable the Commission to direct a planning authority to modify a draft LPS to include provisions from a recently approved amendment to a current planning scheme for that municipality.

Subsection 5A provides for the Commission to direct modifications be made prior to the public exhibition of a draft LPS to include provisions from recently approved amendments to current planning schemes. This includes amendments that were either approved before or after the draft LPS was submitted to the Commission, but prior to the draft LPS being publicly exhibited. Providing the ability for the inclusion of amendments approved before the submission of the draft LPS allows for inclusion of any approved amendments that have been inadvertently excluded from the draft LPS.

Subsection 5B limits the provisions that may be directed for inclusion in a draft LPS to those that are allowed to be included in a draft LPS. This includes compliance with the Contents of LPSs and the LPS criteria under sections 32 and 34 of the LUPA Act.

Subsection 5C provides for minor variations to the provisions to allow for effective implementation through the LPS.

Clause 13 Section 35B amended (Directions to exhibit draft LPSs)

Amends section 35B(5)(b) of the LUPA Act to enable to Commission to specify a period of 21 days within which the planning authority must commence public exhibition of a draft LPS.

Clause 14 Section 35E amended (Representations)

Amends section 35E of the LUPA Act in conjunction with the amendments made to section 35 that enable the Commission to direct a planning authority to modify a draft LPS to include provisions from a recently approved amendment to the current planning scheme.

Subsection 3A outlines that a representation on a publicly exhibited draft LPS cannot be made on a provision that was directed by the Commission for

inclusion in the draft LPS under section 35(5A). This is due to the provisions already being approved and subject to public scrutiny through a previous planning scheme amendment process. This avoids a re-assessment of these provisions by the Commission.

Clause 15

Section 35K amended (Modifications to draft LPS)

Amends section 35K of the LUPA Act to delete parts of subsections 1, 2 and 3 that are replaced by new section 35KB.

It deletes the reference to the Commission directing a planning authority to substantially modify a part of a draft LPS in subsection 1(c)(ii) and makes other consequential amendments. This is replaced by the new process for making substantial modifications to a draft LPS in section 35KB.

It also deletes the requirements for the planning authority considering a permit during the period that a draft LPS is being modified. This is managed through the requirements in amended section 51 of the LUPA Act.

Clause 16

Sections 35KA and 35KB inserted

Inserts the new processes for modifying a draft LPS for the:

- inclusion of any relevant provisions from planning scheme amendments approved to the current planning scheme; and
- making of substantial modifications.

30KA – Modifications to draft LPS relating to subsequent planning scheme amendments

Provides for the Commission to direct a planning authority, or for itself, to modify a draft LPS prior to approval to include any relevant provisions from a planning scheme amendment that has been approved to the current planning scheme. This enables the inclusion of relevant amendments approved to interim planning schemes, such as a rezoning, during the assessment of a draft LPS.

Subsection 3 limits the provisions that may be included in the LPS to those that are able to be included in a draft LPS. This includes compliance with the Contents of LPSs and the LPS criteria under sections 32 and 34 of the LUPA Act.

Subsection 4 provides for minor variations to the provisions for inclusion in the draft to allow for their effective implementation.

30KB – Where substantial modifications required

Provides for the Commission, after undertaking its assessment under section 35J of the LUPA Act, to direct a planning authority to prepare any substantial modifications as a draft amendment of the LPS once the LPS has been approved

and is in effect. This may be in addition to any non-substantial modifications directed by the Commission under section 35K(1) of the LUPA Act.

Subsection 2 requires the Commission to be satisfied that it is suitable for a substantial modification to be made as an amendment to the LPS after the LPS is has been approved and given effect.

After receiving the direction from the Commission, the planning authority must prepare the draft amendment of the LPS and submit it to the Commission within 42 days after the LPS comes into effect, or a longer period allowed by the Commission. The Commission must then determine whether or not the draft amendment is suitable for public exhibition and may require an amended version to be submitted prior to public exhibition.

Public exhibition and assessment of the draft amendment follows the same process as for all other amendments of LPSs under Subdivisions 2 and 3 of Part 3A, Division 3 of the LUPA Act.

Clause 17 Section 35K amended (Modifications to draft LPS)

Deletes subsection 4 as this reflects the former process for preparing and assessing substantial modifications to a draft LPS. This is replaced by the process in new section 35KB.

Clause 18 Section 35L amended (Approval of Local Provisions Schedule)

Amends section 35L(1) and (3) of the LUPA Act to delete references to the former process for making substantial modifications to a draft LPS. This is replaced by the process in new section 35KB.

Clause 19 Section 40G amended (Notice of Exhibition)

Amends section 40G(1) of the LUPA Act to reference the new section 35KB(4)(b)(i) that provides for the exhibition notice given by the Commission to a planning authority for a draft amendment of a LPS. This reflects the new process for making substantial modifications to a draft LPS under new section 35KB.

Clause 20 Section 40H amended (Exhibition)

Amends section 40H of the LUPA Act to reference the new section 35KB(4)(b)(i) that provides for the exhibition notice given by the Commission to a planning authority for a draft amendment of a LPS . This reflects the new process for making substantial modifications to a draft LPS under new section 35KB.

Clause 21 Section 51 amended (Permits)

Amends section 51(3) of the LUPA Act and inserts new subsections 3AA, 3AB, 3AC, 3AD, 3AE and 3AF to require a decision on a development application

to be made by reference to the requirements in place when the application is validly lodged, instead of at the time of the decision being made.

Subsection 3 outlines the default setting which requires a decision on a development application to be made by reference to the planning scheme that is in effect at the time of the application being validly lodged. Subsection 3 applies unless any of subsections 3AA, 3AB, 3AC, 3AD, 3AE and 3AF are applicable.

New subsections 3AA, 3AB, 3AC, 3AD, 3AE and 3AF retain the need for decisions to make reference to requirements that are yet to come into effect, if a development application is validly lodged more than 7 days after the Commission directs the planning authority to make modifications to a draft planning scheme amendment, draft LPS or draft amendment of an LPS. The 7 days is applied as a transition period to allow a planning authority to adjust its administrative processes after a direction is given by the Commission to make the modifications.

New subsections 3AA, 3AB, 3AC, 3AD, 3AE and 3AF apply as follows:

Subsection 3AA – if the Commission gives a direction to modify, or alter to a substantial degree, a draft amendment to an interim planning scheme, or older planning scheme, that still remains in effect, under former section 4I(a) of the LUPA Act – the decision on a development application is made by reference to the planning scheme as if amended by the modified/altered draft amendment.

Subsection 3AB – if the Commission gives a direction to modify a draft LPS under section 35K(1)(a) of the LUPA Act – the decision on a development application is made by reference to the draft LPS, as if modified and in effect, along with the accompanying SPPs.

Subsection 3AC – if the Commission gives a direction to substantially modify a draft LPS under new section 35KB and the LPS is yet to come into effect – the decision on a development application is made by reference to the draft LPS, as if modified and in effect, along with the accompanying SPPs.

Subsection 3AD – if the Commission gives a direction to substantially modify a draft LPS under new section 35KB and the LPS has come into effect (but is not yet amended in accordance with the directed substantial modification) – the decision on a development application is made by reference to the Tasmanian Planning Scheme with the LPS as if amended by the directed substantial modification.

Subsection 3AE – if the Commission gives a direction to modify, and substantially modify, a draft LPS under section 35K(1)(a) and new section 35KB of the LUPA Act and the LPS is yet to come into effect – the decision on a development application is made by reference to the draft LPS, as if modified and in effect, along with the accompanying SPPs.

Subsection 3AF – if the Commission gives a direction to modify, or substantially modify, a draft amendment to an LPS under section 40N of the LUPA Act – the decision on a development application is made by reference to the Tasmanian Planning Scheme with the LPS as if amended by the modified draft amendment.

If a development application is validly lodged after the pending planning requirements referred to in subsections 3AA, 3AB, 3AC, 3AD, 3AE or 3AF are given effect, the decision is made by reference to the planning scheme that is in effect as per new subsection 3.

New subsection 3AG confirms that there is no contravention of the requirements of the LUPA Act or the planning scheme when a permit is granted in accordance with new subsections 3AA, 3AB, 3AC, 3AD, 3AE and 3AF by reference to the provisions that are yet to take full effect. This applies to either the planning authority and the Resource Management and Planning Appeal Tribunal (Appeal Tribunal), in making a determination on a development application.

Clause 22 **Section 62 amended (Determination of appeals)**

Inserts new subsection 3A which confirms that the Appeal Tribunal is to make reference to the same requirements as the planning authority when determining an appeal on a development application, which is consistent with the current approach for determining appeals.

Clause 23 **Section 87F inserted**

Inserts new section 87F which:

- saves the former provisions of the LUPA Act for preparing, exhibiting and assessing any substantial modifications to a draft LPS;
- clarifies the requirements for determining development applications that have not been determined when the Amending Act comes into effect.

Subsection 2 saves the process for preparing, exhibiting and assessing any substantial modifications to a draft LPS that were directed by the Commission under former section 35K(1)(c)(ii) of LUPA Act prior to the Amending Act coming into effect.

Subsection 3 provides for the new process for making substantial modifications (new section 35KB) to apply if the Commission has already directed substantial modifications to a draft LPS under former section 35K(1)(c)(ii) of LUPA Act, only if the Commission issues a notice to the planning authority to apply the new process inserted by this amending Act.

Subsection 4 confirms that the amendments to section 51 of the LUPA Act for determining development applications apply to any applications that have been validly lodged, but not determined when the Amending Act comes into effect.

Clause 24

Schedule 6 amended (*Savings and Transitional Provisions – Land Use Planning and Approvals (Tasmanian Planning Scheme) Act 2015*)

Amends Clause 3 of Schedule 6 of the LUPA Act by inserting new subclause 2A, 2B and 2C to enable the Minister to issue a planning directive under former section 13(1) of LUPA Act without a report and recommendations being made by the Commission under former section 12(5) of LUPA Act.

The Minister can only issue a planning a directive under these circumstances if it relates to particular provisions of the SPPs and an interim planning directive has been issued in the terms of the planning directive. The planning directive can only relate to the following provisions from the SPPs:

- planning terms and definitions contained in clause 3.0 of the SPPs;
- exemptions contained in clause 4.0 of the SPPs;
- application requirements contained in clause 6.1 of the SPPs;
- general provisions contained in clause 7.0 of the SPPs; or
- developments standards for dwellings from the General Residential Zone or Inner Residential Zone of the SPPs.

The planning directive may also contain other provisions that enable the planning directive and the provisions of the SPPs to operate effectively. These additional provisions do not change the policy intent of the provisions of the SPPs.

Subclause 2D enables the Minister to modify the planning directive to be consistent with any amendments made to relevant provisions of the SPPs after the planning directive is issued.

Clause 25

Repeal of Act

Provides for the repeal of the Bill.