

DRAFT SECOND READING SPEECH

Hon Roger Jaensch MP

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

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Madam Speaker, I move that the Bill be read a second time.

This Amendment Bill makes a number of amendments to the *Land Use Planning and Approvals Act 1993* (LUPA Act). These amendments refine current processes to ensure the planning system is efficient and responsive; they also work to support a fair and orderly transition to the new planning system. The Bill has been refined in response to consultation with local councils; state agencies and authorities; professional, industry, environmental and community groups; and importantly the independent Tasmanian Planning Commission.

These amendments deliver improvements to four areas of the planning system.

First, the changes to the LUPA Act improve processes for amending the State Planning Provisions (those planning rules that apply across all of Tasmania under the new Tasmanian Planning Scheme, also known as SPPs).

It is important that legislative processes provide for the appropriate maintenance, review, and amendment of the SPPs now operating in some parts of the State. Such processes ensure improvements can be delivered and that the provisions remain contemporary and responsive to emerging issues. The amendments therefore work to:

- simplify processes for making minor amendments to the SPPs; and
- introduce a process for making interim amendments to the SPPs, similar to the current interim planning directives process.

The criteria specified in the LUPA Act for minor amendments to the SPPs, encompass amendments ranging from typographical errors to alignment with State Policies. However, the process for giving minor amendments effect is complex and can take up to 6 months.

The changes proposed in this Bill create a distinction between minor amendments that are simple corrections or updates and those that clarify existing requirements or implement already approved policy changes in other instruments. Making simple corrections such as fixing typographical or drafting errors in the SPPs, or updating references to legislation, is simplified by removing the need for broad consultation. A simplified process is appropriate and commensurate with the scope of these minor amendments.

For less straightforward minor amendments, such as those proposed to clarify or simplify the requirements in the SPPs without changing their policy intent, consultation with local councils and State agencies and authorities must occur.

For *all* minor amendment of the SPPs, advice as to whether the amendment meets the criteria or not must be sought from the independent Commission. To improve transparency, the changes require the advice of the Commission to the Minister, and the Minister's reasons for making the minor amendments, to be made public.

The draft Bill also introduces a process for making interim amendments to the SPPs, similar to current interim planning directives.

Enabling interim amendments will mean that a proposed amendment to the SPPs can be brought into operation immediately and operate while it continues through the assessment processes already laid out in the legislation.

The similar Interim Planning Directives process has been used several times over recent years to enable immediate action on critical issues. Examples include introducing changes to the Bushfire-Prone Areas Code and temporary housing provisions to planning schemes.

Likewise, interim amendments of the SPPs will enable an immediate response to critical or significant planning issues, such as updating and implementing important natural or environmental hazard management requirements. However, while the intent is the same, the Bill introduces some key improvements on the interim planning directive process.

Clear criteria will limit the circumstances in which an interim amendment of the SPPs may be considered. An interim amendment must be necessary to urgently address issues relating to natural or environmental hazards, public health or safety matters, or any other matters that may be prescribed in future regulations. Furthermore, it must be in the public interest to give effect to the amendment as soon as practicable.

Unlike interim planning directives, before determining whether to make an interim amendment of the SPPs, consultation must occur with local councils and State agencies and authorities.

Advice from the independent Commission will also be required and this advice must be considered in determining whether to make an interim amendment of the SPPs. For transparency, the advice of the Commission and the Minister's reasons for making the interim amendment must be made publicly available.

If made, an interim amendment would operate for 12 months, unless it is deemed necessary to revoke it earlier, or the draft amendment on which it is based has come into effect to replace the interim amendment. The interim amendment process also enables the assessment of the actual amendment to be informed and improved by the experience of implementing it as an interim amendment.

Secondly, the changes to the LUPA Act improve processes for finalising the Local Provisions Schedules (each council's spatial application of the SPPs plus their locally unique planning rules as part of the Tasmanian Planning Scheme, also known as LPSs).

Changes include:

- amendments to processes for setting the date for the exhibition of an LPS;
- a new process for considering substantial modifications required by the Commission; and
- enabling amendments to Interim Planning Schemes to be included in the final LPS.

Importantly, these changes have been recommended by the independent Commission to assist with finalising the LPSs.

The current approach to setting a start date for exhibition of a draft LPS is not always long enough for councils to prepare and is not flexible enough to accommodate potential administrative delays. Based on the advice of the Commission, the Bill provides for a more flexible exhibition start date and up to 21 days for a council to prepare for exhibition.

Following exhibition of, and hearings into, a draft LPS, the Commission must decide whether modifications are required and whether any of those modifications are substantial enough to require further public exhibition.

At the moment any substantially modified parts of a draft LPS are subject to the same public exhibition and assessment process as a newly prepared draft LPS. That includes the full 60 days of exhibition. This additional process must be completed before the rest of the LPS, whether unmodified or with only minor modifications can be approved. This process almost doubles the assessment time and delays bringing into effect perhaps 95% of an LPS while the remaining 5% is put through the process again. Recently the approval of the Meander Valley draft LPS was held up for about 12 months while modified parts were prepared, re-exhibited, and assessed.

The Bill provides for a fairer and more manageable process by allowing the Commission to approve an LPS with any substantial modifications dealt with, as the first draft amendment of that approved LPS. This process is an option that can only be used if the Commission is satisfied that the LPS to be approved meets the LPS criteria and that it is suitable for the modifications to be made by an amendment to the approved LPS.

Where this process is used it will:

- bring the Tasmanian Planning Scheme into effect earlier while still allowing for 'substantial modifications' to be finalised separately but with the same level of assessment and public scrutiny;
- limit the uncertainty associated with having an interim planning scheme in effect, and perhaps subject to further amendments, at the same time as an almost approved LPS for a period which can last for 6 to 12 months; and
- result in more timely resolution of representations regarding non-substantial matters.

Opportunities for the public and government agencies to review and comment on the substantial modifications are retained through the normal LPS amendment process. There is no change to this process.

The last improvement this Bill proposes to the LPS process is to enable the Commission to include certain amendments it has approved to the current interim planning scheme in the final LPS without putting them through a separate and second assessment process.

Throughout the assessment of draft LPSs, amendments to current interim planning schemes continue to be initiated by councils, and assessed by the Commission. This dual process will continue up until the date of the draft LPS being approved.

While the LUPA Act provides for some amendments to interim planning schemes to carry through into the LPS, there is no clear process for the inclusion of zone or code amendments approved during the assessment of the draft LPSs. Not including these changes could result in approved amendments needing to be resubmitted, and reassessed, as an amendment to the LPS after it is approved. This is unnecessary, inefficient and costly to all parties, including the Commission.

The third set of changes the Bill proposes to the LUPA Act provide a fairer process for determining development applications during the transition to the new planning system.

Currently, the LUPA Act requires a planning authority to make a decision on a development application by reference to the planning scheme that is in effect at the date the decision is made, not when the development application was lodged.

This approach could create confusion for the applicant and the community, as well as complications for a planning authority if the planning scheme controls change mid-assessment.

The Bill provides for a fairer approach by requiring a decision on a development application, as a general rule, to be made by reference to the planning scheme in effect when the application was validly lodged.

For those development applications lodged after the Commission has directed a council to modify an amendment, or a draft LPS, the current LUPA Act requirement is retained. That is, decisions are to be made in accordance with the provisions of the planning scheme as if the modifications required by the Commission had come into effect.

However, a new 7-day transition period is also proposed for the planning authority to adjust its processes after the Commission gives a direction regarding an amendment or a draft LPS.

Again, and importantly, these changes do not alter the degree of public, local government, or State Agency involvement in reviewing and commenting on development applications. Instead, it provides a much fairer process for decision making as the planning requirements do not change part way through an assessment process.

Finally, the Bill proposes changes to the LUPA Act to establish a specific process that enables parts of the SPPs to have effect prior to the finalisation of LPSs.

The SPPs were made in early 2017 after a comprehensive and open public process and assessment by the independent Commission. The SPPs deliver a number of improvements to the planning system.

Since the making of the SPPs, there has been growing interest in bringing some elements into effect earlier, particularly given the comprehensive public engagement in and assessment of the remaining draft LPSs before the Tasmanian Planning Scheme will have state wide effect.

I recently issued Interim Planning Directive No. 4, on the recommendation of the independent Commission. The Interim Planning Directive improved consistency across the planning system by bringing parts of the SPPs into effect through the remaining interim planning schemes. Those SPPs brought into effect through IPD4 include some of the Administrative and General Provisions, such as exemptions, and the requirements for dwellings in the General Residential Zone and Inner Residential Zone. Again, these provisions are already approved and, in fact, operating in some parts of the State.

Draft planning directives, from which interim planning directives are derived, need to be publicly exhibited and assessed by the Commission. However, in this instance, the process would require a duplicate assessment of the SPPs, which is inefficient and costly for the community, industry, and local and State Government.

The SPPs have already been subject to public exhibition and independent review by the Commission and then approved in 2017.

The Bill removes the need to exhibit and assess a draft planning directive specifically related to these components of the SPPs, as this process has already occurred.

Consequently, the proposed change does not alter the degree of public, local government, or State Agency involvement as consultation and a determination on the SPPs have already occurred. If there are concerns with the SPPs, these can be addressed through the statutory review processes that are already required by the legislation.

Madam Speaker, this Bill proposes some simple but significant amendments.

With the Tasmanian Planning Scheme in effect in 2 council areas and all but two of the LPSs lodged for assessment some months ago, we have found a number of ways to improve the process.

The amendments in this Bill also work to enable the planning system to respond to urgent or emerging planning issues and new information, to simplify and bring more certainty to development assessment processes during the transition to the new system, and ensure the transition is fair and orderly.

Madam Speaker, I commend this Bill to the House.