

TASMANIA

LAND USE PLANNING AND APPROVALS AMENDMENT (TASMANIAN PLANNING SCHEME MODIFICATION) BILL 2021

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**LAND USE PLANNING AND APPROVALS
AMENDMENT (TASMANIAN PLANNING
SCHEME MODIFICATION) BILL 2021**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
24 June 2021

*(Brought in by the Minister for Local Government and
Planning, the Honourable Roger Charles Jaensch)*

A BILL FOR

An Act to amend the *Land Use Planning and Approvals Act 1993*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “, section 30NA(6) or section 30NB(3)” after “section 30P” in the definition of *amendment of the SPPs*.

5. Section 30D amended (Preparation of draft amendment of the SPPs by Minister)

Section 30D of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) The Minister, in his or her consultation under subsection (2) in relation to the preparation by the Minister of a draft amendment of the SPPs, may request the Commission, each planning authority, and each State Service Agency, or State authority, that is so consulted to advise the Minister, within the period specified by the Minister, as to whether all or some of the provisions of the draft amendment of the SPPs should become an interim SPPs amendment.

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6. Section 30G amended (Approval for public exhibition)

Section 30G of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) This section does not apply in relation to a draft amendment of the SPPs prepared by the Minister under section 30D(1), if the Minister makes under section 30NA(6) an amendment of the SPPs in the terms of the draft amendment of the SPPs.

7. Sections 30H, 30I and 30J repealed

Sections 30H, 30I and 30J of the Principal Act are repealed.

8. Part 3, Division 2, Subdivisions 3A and 3B inserted

After section 30N of the Principal Act, the following Subdivisions are inserted in Division 2:

Subdivision 3A – Minor amendments of the SPPs

30NA. Preparation of minor amendments of the SPPs

- (1) For the purposes of this section, a draft amendment of the SPPs meets the criteria for minor amendments of the SPPs if –

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- (a) the amendment is for one or more of the following purposes:
 - (i) correcting a clerical mistake, an error arising from any accidental slip or omission, an evident miscalculation of figures, or an evident material mistake, in a provision of the SPPs;
 - (ii) removing an anomaly in the SPPs;
 - (iii) clarifying or simplifying the SPPs;
 - (iv) removing an inconsistency in the SPPs;
 - (v) removing an inconsistency between the SPPs and this Act or any other Act;
 - (vi) bringing the SPPs into conformity with a State Policy;
 - (vii) bringing the SPPs into conformity with a planning directive which the Minister has, under section 30BA, determined

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should be reflected in the
SPPs;

(viii) changing provisions of
the SPPs that indicate or
specify the structure to
which an LPS is to
conform or the form that a
provision of an LPS is to
take;

(ix) a prescribed purpose; and

(b) the public interest will not be
prejudiced by Subdivision 3 not
applying to the draft amendment
of the SPPs.

(2) The Minister, after having prepared
under section 30D(1) a draft amendment
of the SPPs that is in accordance with
terms of reference in relation to which
notice has been given under
section 30C(2) –

(a) must, if the draft amendment
contains amendments for the
purposes of subsection (1)(a)(iii),
(vi), (vii), (viii) or (ix), consult
with –

(i) the planning authorities;
and

(ii) the State Service
Agencies, and any State

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authority, that the
Minister thinks fit; and

- (b) may, if the draft amendment contains amendments for the purposes of subsection (1)(a)(i), (ii), (iv) or (v), consult with –
 - (i) the planning authorities;
and
 - (ii) the State Service Agencies, and any State authority, that the Minister thinks fit.
- (3) The Minister, after having prepared under section 30D(1) a draft amendment of the SPPs that is in accordance with terms of reference in relation to which notice has been given under section 30C(2), must, by notice in writing to the Commission, request the Commission to advise the Minister, by a day specified in the notice, as to whether the Commission is of the opinion that the draft amendment of the SPPs meets the criteria for minor amendments of the SPPs.
- (4) The Commission must, before the day specified in a notice under subsection (3) in relation to a draft amendment of the SPPs, or a longer period allowed by the Minister, advise the Minister –

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- (a) that the Commission is of the opinion that the draft amendment of the SPPs meets the criteria for minor amendments of the SPPs;
or
- (b) that the Commission is of the opinion that the draft amendment of the SPPs does not meet the criteria for minor amendments of the SPPs –

and provide to the Minister the Commission's reasons for being of that opinion.

- (5) The Minister, after considering all advice and reasons provided in the course of consultation under subsections (2) and (4) in relation to a draft amendment of the SPPs, may determine that –
 - (a) the draft amendment of the SPPs, modified, if at all, as the Minister thinks fit, meets the criteria for minor amendments of the SPPs;
or
 - (b) the draft amendment of the SPPs does not meet the criteria for minor amendments of the SPPs.
- (6) If –
 - (a) the Minister makes a determination under

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subsection (5)(a) in relation to a draft amendment of the SPPs; and

- (b) the Minister is satisfied that the amendment of the SPPs meets the SPPs criteria –

the Minister may make an amendment of the SPPs in the terms of the draft amendment of the SPPs, without publicly exhibiting the draft in accordance with Subdivision 3.

- (7) As soon as practicable after the Minister makes a determination under subsection (5) in relation to a draft amendment of the SPPs –

- (a) the Commission must place on the Commission's principal website –

- (i) a copy of the advice provided under subsection (4) in relation to the draft amendment of the SPPs; and

- (ii) the Commission's reasons for giving that advice; and

- (b) the Minister must place on a website of the Department a copy of the Minister's reasons for making the determination.

Subdivision 3B – Interim SPPs amendments

30NB. Interim SPPs amendments

- (1) The Minister, after having given a notice under section 30G(3) of the approval for exhibition of a draft amendment of the SPPs, may give to the Commission a notice requesting the Commission to advise the Minister, within a period specified in the notice, as to whether some or all of the provisions of the draft amendment of the SPPs should become an interim SPPs amendment.
- (2) The Commission, within the period specified in a notice under subsection (1) or a longer period allowed by the Minister, is to –
 - (a) advise the Minister whether, in the opinion of the Commission, some or all of the provisions of the draft amendment of the SPPs should become an interim SPPs amendment; and
 - (b) give to the Minister the Commission’s reasons for giving that advice.
- (3) The Minister, after considering the advice, and opinion, received under subsection (2) in relation to a draft amendment of the SPPs, may –

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- (a) make an interim SPPs amendment in the terms of some or all of the provisions of the draft amendment of the SPPs, modified, if at all, as the Minister thinks fit; or
 - (b) decide not to make an interim SPPs amendment in the terms of some or all of the provisions of the draft amendment of the SPPs.
- (4) The Minister may only make an interim SPPs amendment under subsection (3)(a) in the terms of some or all of the provisions of a draft amendment of the SPPs, modified, if at all, as the Minister thinks fit, if the Minister is satisfied that –
 - (a) it is necessary or desirable to make the interim SPPs amendment in order to urgently address issues relating to a natural or environmental hazard, public health, public safety or a prescribed circumstance or matter; and
 - (b) it is in the public interest to give effect as soon as practicable to the provisions of the draft amendment of the SPPs contained in the interim SPPs amendment.

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- (5) If the Minister makes an interim SPPs amendment under subsection (3)(a), the Minister must –
- (a) give written notice of the interim SPPs amendment to the Commission and all planning authorities; and
 - (b) publish in the *Gazette* notice of the making of the interim SPPs amendment and of the day on which the interim SPPs amendment is to come into effect as an amendment of the Tasmanian Planning Scheme, which is to be a day on or after the day on which the notice is so published.
- (6) If the Minister decides under subsection (3)(b) not to make an interim SPPs amendment, the Minister must give written notice of the decision to the Commission.
- (7) As soon as practicable after the Minister makes a decision under subsection (3) in relation to a draft amendment of the SPPs –
- (a) the Commission must place on the Commission’s principal website a copy of the advice and reasons given under

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subsection (2) in relation to the draft amendment of the SPPs; and

- (b) the Minister must place on a website of the Department a copy of the Minister's reasons for making the decision.

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

- (1) An interim SPPs amendment made under section 30NB(3)(a) comes into effect as an amendment of the Tasmanian Planning Scheme on the day specified, in the notice published under section 30NB(5)(b) in relation to the interim SPPs amendment, as the day on which the interim SPPs amendment is to come into effect as an amendment of the Tasmanian Planning Scheme.
- (2) An interim SPPs amendment remains in effect as an amendment of the Tasmanian Planning Scheme until –
 - (a) the end of the period of 12 months from the day on which the interim SPPs amendment comes into effect as an amendment of the Tasmanian Planning Scheme; or
 - (b) the day on which a draft amendment of the SPPs, in the

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same terms as the interim SPPs amendment, comes into effect under section 30R as an amendment of the Tasmanian Planning Scheme; or

- (c) a revocation of the interim SPPs amendment comes into effect under section 30ND(5) –

whichever occurs first.

- (3) If an interim SPPs amendment has come into effect as an amendment of the Tasmanian Planning Scheme –
 - (a) the SPPs are, for the period that the interim SPPs amendment remains in effect, amended in accordance with the interim SPPs amendment; and
 - (b) the SPPs cease to be amended in accordance with the interim SPPs amendment when the interim SPPs amendment ceases to be in effect as an amendment of the Tasmanian Planning Scheme.
- (4) The Minister may publish a notice in the *Gazette* specifying –
 - (a) a day, after the day on which the notice is published in the *Gazette*, on which; or

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- (b) the period, beginning on the day on which the notice is published in the *Gazette*, after the end of which –

an interim SPPs amendment, that has come into effect under subsection (1) as an amendment of the Tasmanian Planning Scheme, is to come into effect as an amendment of the Tasmanian Planning Scheme in relation to a municipal area specified in the notice.

- (5) An interim SPPs amendment comes into effect in relation to a municipal area –
 - (a) on the day specified, in the notice published in the *Gazette* under subsection (4)(a), as the day on which the interim SPPs amendment is to come into effect as an amendment of the Tasmanian Planning Scheme in relation to the municipal area; or
 - (b) on the day immediately after the end of the period specified, in the notice published in the *Gazette* under subsection (4)(b), as the period after the end of which the interim SPPs amendment is to come into effect as an amendment of the Tasmanian Planning Scheme in relation to the municipal area.

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- (6) An interim SPPs amendment remains in effect as an amendment of the Tasmanian Planning Scheme in relation to a municipal area until –
- (a) the end of the period of 12 months from the day on which the interim SPPs amendment comes into effect as an amendment of the Tasmanian Planning Scheme (other than as an amendment of the Tasmanian Planning Scheme in relation to the municipal area); or
 - (b) the day on which a draft amendment of the SPPs, in the same terms as the interim SPPs amendment, comes into effect under section 30S in relation to the municipal area; or
 - (c) a revocation of the interim SPPs amendment comes into effect under section 30ND(5) in relation to the municipal area; or
 - (d) the interim SPPs amendment ceases to have effect as an amendment of the Tasmanian Planning Scheme in relation to the municipal area under section 30ND(7) –

whichever occurs first.

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- (7) If an interim SPPs amendment has come into effect as an amendment of the Tasmanian Planning Scheme in relation to a municipal area –
- (a) the Tasmanian Planning Scheme in relation to the municipal area, as amended by the interim SPPs amendment, remains in effect for the period that the interim SPPs amendment remains in effect in relation to the municipal area; and
 - (b) the Tasmanian Planning Scheme in relation to the municipal area ceases to be amended, in accordance with the interim SPPs amendment, when the interim SPPs amendment ceases to be in effect under subsection (6) as an amendment of the Tasmanian Planning Scheme in relation to a municipal area.

30ND. Revocation of interim SPPs amendment

- (1) The Minister may revoke an interim SPPs amendment.
- (2) If the Minister revokes under subsection (1) an interim SPPs amendment, the Minister must –

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- (a) give written notice of the revocation of the interim SPPs amendment to the Commission and all planning authorities; and
 - (b) publish in the *Gazette* notice of the revocation of the interim SPPs amendment and of the day on which the revocation takes effect, which is to be the day on or after the day on which the notice is so published.
- (3) If the Minister revokes under subsection (1) an interim SPPs amendment, the revocation takes effect on the day specified in the notice under subsection (2)(b) as the day on which the revocation takes effect.
- (4) If the Minister revokes under subsection (1) an interim SPPs amendment that has come into effect under section 30NC(5) in relation to a municipal area, the Minister must –
 - (a) give written notice of the revocation of the interim SPPs amendment to the Commission and to the planning authority for the municipal area; and
 - (b) publish in the *Gazette* notice of the revocation of the interim SPPs amendment and of the day

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on which the revocation takes effect in relation to a municipal area specified in the notice, which is to be the day, or a day after the day, on which the notice is so published.

- (5) If the Minister revokes under subsection (1) an interim SPPs amendment, the revocation of the interim SPPs amendment takes effect in relation to a municipal area on the day specified in the notice under subsection (4)(b) as the day on which the revocation takes effect in relation to the municipal area.
- (6) The Minister may, by notice in the *Gazette*, declare that an interim SPPs amendment ceases to have effect in relation to a municipal area on a day specified in the notice.
- (7) An interim SPPs amendment ceases to have effect in relation to a municipal area on the day specified in the notice under subsection (6) in relation to the municipal area.

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

Section 30O of the Principal Act is amended as follows:

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(a) by inserting in subsection (1) “, section 30NA(6) or section 30NB(3)(a)” after “section 30P”;

(b) by inserting in subsection (2) “, section 30NA(6) or section 30NB(3)(a)” after “section 30P”.

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

Section 30P of the Principal Act is amended by omitting subsections (4), (5) and (6).

11. Section 30R amended (When amendment of the SPPs comes into effect as part of Tasmanian Planning Scheme)

Section 30R of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “or section 30NA(6)” after “section 30P”;

(b) by inserting in subsection (2) “or section 30NA(6)” after “section 30P”.

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

Section 35 of the Principal Act is amended by inserting after subsection (5) the following subsections:

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- (5A) Without limiting the generality of subsection (5)(b), the Commission may give to a planning authority under subsection (5)(b) a direction to modify a draft LPS –
- (a) to include provisions that correspond to provisions that were included, in the planning scheme, within the meaning of section 10(2)(a)(ii), that applies in relation to the municipal area, by an amendment, of that planning scheme, that came into effect after the draft LPS was submitted to the Commission under subsection (1); or
 - (b) so that the provisions of the draft LPS, as modified in accordance with the direction, will correspond to the provisions, of the planning scheme, within the meaning of section 10(2)(a)(ii), that applies to the municipal area, as that planning scheme is altered by an amendment, of that planning scheme, that is in effect on the day on which the draft LPS is submitted to the Commission under subsection (1).
- (5B) A direction may not be given under subsection (5A) unless the provision to

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be included in the draft LPS, as so modified, if at all, in accordance with the direction, is a provision of a kind that may be included in a draft LPS prepared under section 35.

- (5C) A provision, that is to be included, in a draft LPS in relation to a municipal area, in accordance with a direction under subsection (5A) to modify the draft LPS, may be varied so that the provision –
- (a) will conform to the requirements of the SPPs in relation to the LPS; or
 - (b) will reflect the terminology used in the SPPs or in the LPS, including, but not limited to including, where the modification relates to the designation of a zone in the planning scheme, by changing the designation of the zone to the zone in the draft LPS that most closely corresponds to the zone in the planning scheme; or
 - (c) will contain provisions that –
 - (i) are appropriately numbered; or
 - (ii) make correct references to provisions in the draft LPS or in other

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instruments, including but
not limited to the SPPs; or

- (d) will achieve the effect intended by the amendment of the planning scheme to which the direction relates.

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

Section 35B(5)(b) of the Principal Act is amended by omitting “date, within 14 days after the direction is given, before” and substituting “period of 21 days, within”.

14. Section 35E amended (Representations)

Section 35E of the Principal Act is amended as follows:

- (a) by inserting in subsection (3) “but subject to subsection (3A)” after “subsection (1)”;
- (b) by inserting the following subsection after subsection (3):
 - (3A) A representation in relation to the relevant exhibition documents that relate to a draft LPS may not be made in relation to a provision included in the draft LPS in accordance with a direction referred to in section 35(5A).

15. Section 35K amended (Modifications to draft LPS)

Section 35K of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:
 - (c) by notice to the planning authority, reject the draft LPS and direct the planning authority to submit to the Commission a substitute draft LPS within 28 days, or a longer period allowed by the Commission, from the date of the notice.
- (b) by omitting from subsection (2)(c) “paragraph (a); and” and substituting “paragraph (a).”;
- (c) by omitting paragraph (d) from subsection (2);
- (d) by omitting from subsection (3) “under subsection (1)(c)(i)” and substituting “subsection (1)(c)”.

16. Sections 35KA and 35KB inserted

After section 35K of the Principal Act, the following sections are inserted in Division 5:

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35KA. Modifications to draft LPS relating to subsequent planning scheme amendments

- (1) The modifications that the Commission may make, or direct a planning authority to make, under section 35K(1)(a) or (b), to a draft LPS, include, but are not limited to including, a relevant modification.
- (2) For the purposes of this section, a relevant modification is a modification to a draft LPS in relation to a municipal area –
 - (a) to include provisions that correspond to provisions that were included, in the planning scheme, within the meaning of section 10(2)(a)(ii), that applies in relation to the municipal area, by an amendment, of that planning scheme, that is in effect at the time at which the draft LPS is to be modified under section 35K(1)(a) or (b); or
 - (b) so that the provisions to be included in the draft LPS, as so modified by the relevant modification, will correspond to the provisions, of the planning scheme within the meaning of section 10(2)(a)(ii), that applies to the municipal area, as altered

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by an amendment, of that planning scheme, that is in effect at the time at which the draft LPS is to be modified under section 35K(1)(a) or (b).

- (3) Despite subsection (1), a relevant modification may not be made unless the provision to be included in the draft LPS, as so altered, if at all, in accordance with the relevant modification, is a provision of a kind that may be included in a draft LPS prepared under section 35.
- (4) A provision to be included, in a draft LPS in relation to a municipal area, in accordance with a relevant modification may be varied so that the provision –
 - (a) will conform to the requirements of the SPPs in relation to the LPS; or
 - (b) will reflect the terminology used in the SPPs or the LPS, including, but not limited to including, where the relevant modification relates to the designation of a zone in the planning scheme, by changing the designation of the zone to the zone in the draft LPS that most closely corresponds to the zone in the planning scheme; or

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- (c) will contain provisions that –
 - (i) are appropriately numbered; or
 - (ii) make correct references to provisions in the draft LPS or in other instruments, including but not limited to the SPPs; or
- (d) will achieve the effect intended by the amendment of the planning scheme to which the relevant modification relates.

35KB. Where substantial modifications required

- (1) The Commission, after complying with section 35J in relation to a draft LPS in relation to the municipal area of a planning authority, may issue, in relation to the draft LPS, a direction to the planning authority.
- (2) The Commission may only issue, in relation to a draft LPS, a direction under subsection (1) if the Commission is of the opinion that the draft LPS requires substantial modification but that the modification required is such that it is suitable for it to be made by way of an amendment, under Part 3B, of the LPS in relation to the municipal area of the planning authority, after the LPS comes into effect.

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- (3) A direction issued under subsection (1) to a planning authority is to direct the planning authority –
- (a) to prepare, in the terms specified in the direction, an amendment, under Part 3B, of the LPS in relation to the municipal area of the planning authority; and
 - (b) to submit to the Commission the amendment of the LPS within 42 days, or a longer period allowed by the Commission, after the LPS comes into effect.
- (4) If a direction is issued under subsection (1) to a planning authority –
- (a) the planning authority –
 - (i) must prepare, in the terms specified in the direction, an amendment, under Part 3B, of the LPS in relation to the municipal area of the planning authority; and
 - (ii) must submit the amendment to the Commission within 42 days, or a longer period allowed by the Commission, after the

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LPS comes into effect;
and

- (b) the Commission may, on receiving from the planning authority a draft of the amendment of the LPS under paragraph (a) or (c) –
 - (i) by notice to the planning authority, require the planning authority to publicly exhibit the amendment in accordance with section 40G; or
 - (ii) by notice to the planning authority, require the planning authority to resubmit to the Commission an amended draft of the amendment of the LPS within the period specified in the notice;
and
- (c) the planning authority is to resubmit to the Commission an amended draft of the amendment of the LPS within the period specified in the notice, if any, under paragraph (b)(ii).

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

Section 35K of the Principal Act is amended by omitting subsection (4).

18. Section 35L amended (Approval of Local Provisions Schedules)

Section 35L of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) from subsection (1) and substituting the following paragraph:
 - (b) the draft LPS modified in accordance with section 35K(1) or (2).
- (b) by omitting subsection (3) and substituting the following subsection:
 - (3) The Commission must approve under subsection (1) a Local Provisions Schedule within 90 days, or a longer period allowed by the Minister, after receiving a report under section 35F(1) in relation to the draft LPS to which the Local Provisions Schedule relates.

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19. Section 40G amended (Notice of exhibition)

Section 40G(1) of the Principal Act is amended by inserting “or receiving under section 35KB(4)(b)(i) a notice in relation to a draft amendment of an LPS” after “a draft amendment of an LPS”.

20. Section 40H amended (Exhibition)

Section 40H of the Principal Act is amended by inserting “or receiving under section 35KB(4)(b)(i) a notice in relation to a draft amendment of an LPS” after “an LPS”.

21. Section 51 amended (Permits)

Section 51 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made in accordance with the provisions of the planning scheme as in effect on the day on which the application is validly made, unless another subsection of this section applies in relation to the application.

(3AA) If –

(a) an application, referred to in subsection (1A) or (1B), is validly made to a planning

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authority after the end of the 7-day period after the planning authority has been directed under section 41(a) of this Act, as in force before the day on which section 10 of the Tasmanian Planning Scheme Amendment Act commenced, to modify, or alter to a substantial degree, a draft amendment of a planning scheme; and

- (b) there is not in effect, on the day on which the application is validly made, an amendment, of the planning scheme, in the terms, or substantially in the terms, of the draft amendment of the planning scheme, modified or altered as required by the direction –

the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as those provisions would be in effect on that day if an amendment of the planning scheme, in the terms, or substantially in the terms, of the draft amendment, modified or altered as required by the direction, were in effect on that day.

(3AB) If –

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- (a) an application, referred to in subsection (1A) or (1B), is validly made to a planning authority after the end of the 7-day period after the planning authority has been directed under section 35K(1)(a) to modify a draft LPS; and
- (b) there is not in effect, on the day on which the application is validly made, an LPS, in the terms, or substantially in the terms, of the draft LPS, modified as required by the direction –

the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as those provisions would be in effect on that day if –

- (c) an LPS, in the terms, or substantially in the terms, of the draft LPS modified in accordance with the direction, were in effect on that day; and
- (d) the SPPs were, on that day, in effect in relation to the land to which the application relates.

(3AC) If –

- (a) an application, referred to in subsection (1A) or (1B), is

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validly made to a planning authority after the end of the 7-day period after the planning authority has, in relation to a draft LPS, been directed under section 35KB to prepare an amendment, under Part 3B, of an LPS made in the terms, or substantially in the terms, of the draft LPS; and

- (b) there is not in effect on the day on which the application is validly made, an LPS in the terms, or substantially in the terms, of the draft LPS, modified as required by the direction –

the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as those provisions would be in effect on that day if –

- (c) an LPS, in the terms, or substantially in the terms, of the draft LPS, modified as required by the direction, were in effect on that day; and
- (d) an amendment of the LPS in the terms, or substantially in the terms, of the draft amendment of the LPS made in accordance with

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the direction, were in effect on that day; and

- (e) the SPPs were in effect in relation to the land on that day.

(3AD) If –

- (a) an application, referred to in subsection (1A) or (1B), is validly made to a planning authority after the end of the 7-day period after the planning authority has, in relation to a draft LPS, been directed under section 35KB to prepare an amendment, under Part 3B, of an LPS made in the terms, or substantially in the terms, of the draft LPS; and
- (b) there is in effect, on the day on which the application is validly made, an LPS, in the terms, or substantially in the terms, of the draft LPS, modified as required by the direction; and
- (c) there is no amendment of the LPS, in the terms, or substantially in the terms, of the draft amendment of the LPS prepared in accordance with the direction, that is in effect on that day –

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the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as those provisions would be in effect on that day if an amendment of the LPS, in the terms of a draft amendment of the LPS prepared in accordance with the direction, were in effect on that day.

(3AE) If –

- (a) an application, referred to in subsection (1A) or (1B), is validly made to a planning authority after the end of the 7-day period after the planning authority has, in relation to a draft LPS, been directed under section 35KB to prepare an amendment, under Part 3B, of an LPS made in the terms, or substantially in the terms, of the draft LPS; and
- (b) the planning authority has been directed under section 35K(1)(a) to modify a draft LPS but there is not in effect, on the day on which the application is validly made, an LPS, in the terms, or substantially in the terms, of the draft LPS, modified as required by the direction –

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the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as those provisions would be in effect on that day if –

- (c) an LPS, in the terms, or substantially in the terms, of the draft LPS modified in accordance with the direction under section 35K(1)(a), were in effect on that day; and
- (d) an amendment has been made, under Part 3B, of an LPS in the terms, or substantially in the terms, of the draft LPS that the planning authority has been directed under section 35KB to prepare; and
- (e) the SPPs were, on that day, in effect in relation to the land to which the application relates.

(3AF) If –

- (a) an application, referred to in subsection (1A) or (1B), is validly made to a planning authority after the end of the 7-day period after the planning authority has been directed under section 40N to modify, or

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substantially modify, a draft amendment of an LPS; and

- (b) there is no amendment of the LPS, substantially in the terms of the draft amendment of the LPS, modified, or substantially modified, in accordance with the direction that is in effect on that day –

the planning authority is to make the decision on the application in accordance with the provisions, of the planning scheme, as they would be in effect on that day if an amendment of the LPS made in accordance with the direction were in effect in relation to the land on that day.

- (3AG) If a permit in relation to land is granted, by a planning authority or the Appeal Tribunal, in accordance with a decision or determination that is made under this section or section 62 in accordance with the provisions, of the planning scheme, as those provisions would be in effect in relation to land, the decision or determination, and the grant of the permit, are not to be taken to be made in contravention of the provisions of the planning scheme as in effect on the day on which the decision or determination is made.

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22. Section 62 amended (Determination of appeals)

Section 62 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) Despite subsection (3), if –

- (a) an appeal is made to the Appeal Tribunal in relation to a determination by a planning authority of an application for a permit in relation to land; and
- (b) in accordance with section 51, the planning authority was required to make its decision in relation to the application in accordance with the provisions, of a planning scheme, as they would be in effect –

the Appeal Tribunal must determine the appeal in accordance with the provisions, of the planning scheme, that are the provisions in accordance with which, under section 51, the planning authority was required to make its decision in relation to the application.

23. Section 87F inserted

After section 87D of the Principal Act, the following section is inserted in Division 2:

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87F. Savings and transitional – *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021*

(1) In this section –

amending Act means the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021*;

amendment day means the day on which the amending Act commences.

(2) Until a direction, if any, referred to in subsection (3) is given in relation to the draft LPS –

(a) the amendments made by the amending Act to sections 35K and 35L, and section 35KB as inserted by the amending Act, do not apply; and

(b) the provisions of this Act, as in force before the amendment day, apply –

in relation to a draft LPS in relation to which a direction has, before the amendment day, been given under section 35K(1)(c)(ii), as in force immediately before that day.

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- (3) The Commission may, by notice to a planning authority that has submitted to the Commission under section 35(1) a draft LPS in relation to which a direction has, before the amendment day, been given under section 35K(1)(c)(ii), as in force immediately before that day, declare that any one or more of the following applies in relation to the draft LPS:
- (a) the amendments made, by the amending Act, to section 35K;
 - (b) the amendments made, by the amending Act, to section 35L;
 - (c) section 35KB, as inserted by the amending Act.
- (4) The amendments to section 51 made by the amending Act apply in relation to an application for a permit that has not been determined by a planning authority before the day on which the amendments come into effect.

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

Clause 3 of Schedule 6 to the Principal Act is amended by inserting after subclause (2) the following subclauses:

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- (2A) If a draft planning directive prepared under section 10 of the former provisions consists of provisions that meet the relevant conditions, the Minister may issue under section 13(1) of the former provisions a planning directive in the form of the draft planning directive, even though a report and recommendations have not been made, under section 12(5) of the former provisions, in relation to the draft planning directive.
- (2B) For the purposes of subclause (2A), provisions of a draft planning directive (the *relevant directive*) meet the relevant conditions if –
- (a) the Minister has issued an interim planning directive under section 12A of the former provisions in the terms of the relevant directive; and
 - (b) the relevant directive consists only of any one or more of the following provisions of the SPPs, modified, if at all, for the relevant purposes:
 - (i) planning terms and definitions contained in clause 3.0 of the SPPs;
 - (ii) exemptions contained in clause 4.0 of the SPPs;

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- (iii) application requirements contained in clause 6.1 of the SPPs;
 - (iv) general provisions contained in clause 7.0 of the SPPs;
 - (v) development standards, relating to dwellings, that relate to the General Residential Zone or the Inner Residential Zone, as referred to in the SPPs;
 - (vi) other provisions that are necessary or convenient to include for the relevant purposes.
- (2C) For the purposes of subclause (2B)(b), the relevant purposes are –
- (a) to enable the provisions of the SPPs included in the directive –
 - (i) to operate effectively when included, in accordance with the directive, in a planning scheme to which the directive is to relate; or
 - (ii) to operate effectively in conjunction with the provisions included in the

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planning scheme in
accordance with any other
planning directive that
applies to the planning
scheme; or

(b) to enable the provisions of the
directive to operate effectively.

(2D) The Minister may, by a planning directive issued, in accordance with subclause (2A), under section 13(1) of the former provisions, modify the provisions of a directive (the *original directive*) that was issued, in accordance with subclause (2A), under section 13(1) of the former provisions, but only if it is necessary to modify the provisions of the original directive so as to ensure that the provisions, contained in a planning scheme in accordance with the original directive, will be consistent with the provisions of the SPPs as amended by an amendment of the SPPs made after the original directive was issued.

25. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.