

# TASMANIA

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## LAND USE PLANNING AND APPROVALS AMENDMENT BILL 2012

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**LAND USE PLANNING AND APPROVALS  
AMENDMENT BILL 2012**

*(Brought in by the Minister for Planning, the Honourable  
Bryan Alexander Green)*

**A BILL FOR**

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

Be it enacted by His 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 Act 2012*.

**2. Commencement**

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

**3. Principal Act**

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

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\*No. 70 of 1993

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**4. Section 14 amended (Effect of planning directive)**

Section 14 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

(2) If a planning directive applies to all or part of the area of land to which a planning scheme relates, the Commission, with the approval of the Minister, may, for the purpose of –

- (a) ensuring the scheme complies with the planning directive; or
- (b) ensuring the effectiveness of the operation of the planning directive; or
- (c) removing any inconsistency between the scheme and the planning directive –

modify the scheme by revoking or amending any provision of the scheme or inserting a new provision into the scheme.

- (b) by inserting the following subsections after subsection (5):

- (6) If a planning directive applies in relation to all or part of the land to which a planning scheme relates, the Commission, with the approval of the Minister, may attach to the planning scheme, by appendix or by provisions inserted in between the provisions of the planning scheme, any provisions of the directive.
- (7) A provision of a planning directive may only be attached to a planning scheme under subsection (6) if the attached provision clearly indicates that it is a provision of a planning directive and does not form part of the planning scheme.
- (8) A provision that is attached to a planning scheme under subsection (6) does not form part of the planning scheme.
- (9) On attaching a provision to a planning scheme under subsection (6), the Commission must give notice, as prescribed for the purposes of a modification under subsection (2), of the attachment as if it were such a modification, and state in the notice that the attachment does not form part of the planning scheme.

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**5. Section 16 amended (Power of Minister to dispense with certain requirements)**

Section 16 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (vi) in subsection (1)(a):
  - (via) amending the planning directive so as to make it consistent with another planning directive; or
- (b) by omitting from subsection (1) “modification, and issue the modified planning directive in accordance with section 13(2).” and substituting “modification.”;
- (c) by omitting subsection (2) and substituting the following subsection:
  - (2) If the Minister dispenses with the requirements of sections 10, 11 and 12 in relation to a modification of a planning directive –
    - (a) despite section 15, the planning directive, as in force before the modification, is revoked by virtue of this subsection; and

- (b) the Minister must issue the modified planning directive as a planning directive under section 13(1) as if the requirements for issue under that section had been satisfied; and
- (c) a notice required to be given under section 13 is to contain a statement that the planning directive, as in force before the modification, is revoked by virtue of this subsection.

**6. Section 26 amended (Representations in respect of draft planning schemes)**

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 25(a)” and substituting “section 25(1)(a)(i)”;
- (b) by omitting from subsection (2) “section 25(a)” and substituting “section 25(1)(a)(i)”.

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**7. Section 30B amended (Interpretation: Division 1A)**

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

- (a) by inserting the following definition after the definition of *common provision*:

***conflicting local provision*** means a provision that is specified in a planning purposes notice to be a conflicting local provision;

- (b) by omitting “contain.” from paragraph (b) of the definition of *optional common provision* and substituting “contain;”;

- (c) by inserting the following definitions after the definition of *optional common provision*:

***overriding local provision*** means a provision that is specified in a planning purposes notice to be an overriding local provision;

***planning purposes notice*** means a notice in force under section 30EA.

**8. Section 30D amended (Interim planning schemes to be provided to Minister)**

Section 30D of the Principal Act is amended by inserting after subsection (5) the following subsections:



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- (6) The Minister, by notice in writing to a planning authority, may request the planning authority to provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under subsection (1) and that is amended, in accordance with the directions specified in the notice –
- (a) to remove or amend any local provision that is, under section 30EA, inconsistent with another provision; or
  - (b) to ensure that the draft interim planning scheme complies with this Act; or
  - (c) to ensure the effective operation of a planning purposes notice; or
  - (d) to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme.
- (7) A planning authority to which a notice is given under subsection (6) may provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under subsection (1) and that is amended, in

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accordance with the directions specified in the notice.

- (8) The Minister may direct the Commission to amend a draft interim planning scheme for a municipal area that has been provided to the Minister under subsection (1) or (5).
- (9) The Commission must provide to the Minister a draft interim planning scheme prepared by the Commission in accordance with a direction under subsection (8).
- (10) If a draft interim planning scheme has been provided to the Minister under subsection (9), the Minister must –
  - (a) notify the planning authority for the area of land to which the scheme, if declared, would relate, that the scheme has been provided to the Minister and that the comments of the planning authority may be provided to the Minister within 7 days after the notice is given; and
  - (b) provide to the planning authority a copy of the scheme so provided to the Minister by the Commission; and
  - (c) consider any comments in relation to the scheme that are provided to the Minister by the

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planning authority within 7 days  
after the notice is given.

**9. Section 30E amended (Contents of interim planning schemes)**

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

- (a) by omitting subsection (3) and substituting the following subsection:

- (3) Subject to this Act, a draft interim planning scheme and an interim planning scheme may contain a provision (a *local provision*) that is not a common provision.

- (b) by omitting from subsection (4) “A draft” and substituting “Subject to section 30EA, a draft”;

- (c) by omitting from subsection (4)(b) “scheme.” and substituting “scheme; or”;

- (d) by inserting the following paragraph after paragraph (b) in subsection (4):

- (c) an overriding local provision.

- (e) by inserting the following subsection after subsection (4):

- (4A) A draft interim planning scheme and an interim planning scheme may only contain a local

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provision if the provision is not a  
conflicting local provision.

**10. Section 30EA inserted**

After section 30E of the Principal Act, the  
following section is inserted in Division 1A:

**30EA. Overriding local provisions and conflicting  
local provisions**

(1) In this section –

*relevant scheme* means –

- (a) a draft interim planning  
scheme; or
  - (b) an interim planning  
scheme; or
  - (c) an interim planning  
scheme modified under  
section 30M; or
  - (d) a planning scheme made  
under section 30N.
- (2) The Minister, on the recommendation of  
the Commission, by notice to the  
Commission, may issue a planning  
purposes notice.
- (3) A planning purposes notice may  
specify –

- (a) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, an overriding local provision; and
  - (b) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, a conflicting local provision.
- (4) If there is an inconsistency between an overriding local provision of a relevant scheme and a common provision of the scheme, the overriding local provision prevails to the extent of the inconsistency.
- (5) If there is an inconsistency between a conflicting local provision of a relevant scheme and a common provision of the scheme, the conflicting local provision is of no effect.
- (6) If a planning purposes notice is issued under subsection (2), the Minister must ensure that, as soon as practicable, a notice is published in the *Gazette* specifying –

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- (a) that the planning purposes notice has been issued; and
  - (b) the date on which it was issued; and
  - (c) the relevant schemes to which the notice relates; and
  - (d) the general purport or effect of the notice.
- (7) If a planning purposes notice is issued under subsection (2), the Commission, as soon as practicable –
  - (a) must notify each planning authority in respect of a relevant scheme to which the planning purposes notice relates of the issue of the planning purposes notice; and
  - (b) make copies of the planning purposes notice available to the public at the offices of the Commission.
- (8) If a planning purposes notice that applies in relation to a relevant scheme is issued under subsection (2), the Commission must –
  - (a) amend the relevant scheme to ensure the effective operation of the planning purposes notice and the scheme as so amended; or

- (b) direct a planning authority to amend the relevant scheme in accordance with the directions of the Commission, to ensure the effective operation of the planning purposes notice and the scheme as so amended.
- (9) The Minister, on the recommendation of the Commission, by notice, may amend or revoke a planning purposes notice.
- (10) If a planning purposes notice that applies in relation to a relevant scheme is amended or revoked, the Commission must –
  - (a) amend the relevant scheme to ensure the effective operation of the amendment or revocation of the planning purposes notice and the scheme as so amended; or
  - (b) direct a planning authority to amend the relevant scheme, in accordance with the directions of the Commission, to ensure the effective operation of the amendment or revocation of the planning purposes notice and the scheme as so amended.
- (11) If an amendment or revocation of a planning purposes notice that applies in relation to a relevant scheme is to the effect that a provision of the relevant

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scheme has ceased to be an overriding local provision or a conflicting local provision, the Commission may amend, or direct a planning authority to amend, any local provision of the scheme, that, in the opinion of the Commission, requires amendment to ensure the effective operation of the scheme after a provision has ceased to be an overriding local provision or a conflicting local provision.

- (12) The amendments that may be made, to a relevant scheme, under this section include, but are not limited to including, the following:
- (a) removing or amending any local provision that is, under this section, inconsistent with another provision;
  - (b) amendments to ensure that the scheme complies with this Act;
  - (c) amendments to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme.
- (13) If an amendment to a relevant scheme is made under this section –
- (a) the amendment must be signed by the chairperson of the



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Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and

- (b) the amendment comes into effect –
  - (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
  - (ii) if no such date is specified, 7 days after the amendment is made; and
- (c) the Commission must notify the planning authority in respect of the scheme of the amendment; and
- (d) the Commission must give notice of the amendment in a newspaper circulating generally in the area to which the scheme relates.

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**11. Section 30F amended (Declaration of interim planning scheme)**

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

- (a) by omitting from subsection (1) “section 30D(1) or (5)” and substituting “section 30D(1), (5), (7) or (9)”;
- (b) by omitting from subsection (2) “section 30D(1) or (5)” and substituting “section 30D(1), (5), (7) or (9)”;
- (c) by omitting subsection (3) and substituting the following subsection:
  - (3) The Minister may only declare a draft interim planning scheme to be an interim planning scheme if –
    - (a) the scheme complies with sections 20 and 21 and section 30E; and
    - (b) where the scheme is required under section 30EA or section 30IA to be amended, it is amended under section 30EA or section 30IA respectively; and
    - (c) where the planning scheme has been provided to the Minister under

section 30D(9),  
section 30D(10) has been  
complied with in relation  
to the scheme.

(d) by inserting the following paragraph after  
paragraph (b) in subsection (5):

(ba) an amendment to the interim  
planning scheme may not be  
initiated or approved under  
Division 2 or 2A; and

## **12. Section 30IA inserted**

After section 30I of the Principal Act, the  
following section is inserted in Division 1A:

### **30IA. Urgent amendment of interim planning schemes**

(1) The Commission may issue to the  
Minister a notice –

- (a) specifying that the Commission is  
of the opinion that an  
authorisation under subsection (2)  
is urgently required; and
- (b) specifying the purposes for which  
the authorisation is sought; and
- (c) recommending to the Minister  
that the authorisation be issued.

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- (2) The Minister, on his or her own motion or on receiving a notice under subsection (1), may issue to the Commission a notice (an authorisation).
- (3) The Minister may only issue an authorisation under subsection (2) if he or she is of the opinion that the interim planning scheme requires amendments for any of the following purposes:
  - (a) to remove or amend any local provision of the scheme that is, under section 30EA, inconsistent with another provision;
  - (b) to ensure that the scheme complies with this Act;
  - (c) to ensure the effective operation of a planning purposes notice;
  - (d) to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme;
  - (e) for a purpose specified in a notice to the Minister under subsection (1).
- (4) If an authorisation is issued to the Commission in relation to an interim planning scheme that applies to land in a regional area, the Commission must

prepare and submit to the Minister a draft amendment to the interim planning scheme –

- (a) in accordance with the amendments, if any, specified in the authorisation; and
  - (b) for any of the purposes specified in subsection (3).
- (5) The Minister, by notice to the Commission, may –
  - (a) accept a draft amendment to an interim planning scheme submitted to the Minister under subsection (4); or
  - (b) direct the Commission to submit to the Minister under that subsection another draft amendment, as modified in accordance with the notice.
- (6) If the Minister accepts a draft amendment to an interim planning scheme submitted to the Minister under subsection (4) –
  - (a) the Commission must amend the interim planning scheme in accordance with the draft amendment; and
  - (b) the amendment must be signed by the chairperson of the

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Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and

- (c) the amendment comes into effect –
  - (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
  - (ii) if no such date is specified, 7 days after the amendment is made; and
- (d) the Commission must cause a copy of the interim planning scheme that has commenced public exhibition to be publicly exhibited, as so amended, at its office for the remainder, if any, of the period in which the planning authority in respect of the scheme is required under section 30H to publicly exhibit the scheme that commenced public exhibition; and

- (e) the Commission must give notice of the amendment to the interim planning scheme to –
  - (i) the planning authority for the land to which the interim planning scheme relates; and
  - (ii) each other planning authority for an area of land within the regional area; and
  - (iii) those State Service Agencies that the Commission considers to have an interest in the scheme; and
- (f) the planning authority notified under paragraph (e)(i) must ensure that notice (which may be a notice in relation to one or more interim planning schemes) of the amendment is published in a newspaper generally circulating in the regional area; and
- (g) the planning authority notified under paragraph (e)(i) must ensure that a copy of the interim planning scheme, as amended in accordance with paragraph (a) is, as soon as practicable after the

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notification, for a period of at least 14 days –

- (i) publicly exhibited at the offices of the planning authority; and
  - (ii) made available for viewing at the website address specified under section 30H(6)(e) in relation to the interim planning scheme before the scheme was amended under paragraph (a); and
- (h) the interim planning scheme as amended is to be taken to have been exhibited for the purposes of section 30H if the requirements of paragraph (d), if applicable, are satisfied; and
- (i) a reference in section 30I, 30J, 30K, 30L, 30M or 30N to an interim planning scheme is to be taken to be a reference to the interim planning scheme as amended under paragraph (a); and
- (j) any dispensation in force under section 30R in relation to an interim planning scheme is to be taken to be a dispensation in relation to the interim planning



scheme as amended under  
paragraph (a).

**13. Section 30M amended (Modification of interim planning scheme)**

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

- (a) by inserting in subsection (1) “or after an authorisation under section 30IA is issued in relation to an interim planning scheme” after “planning scheme”;
- (b) by inserting the following paragraph after paragraph (a) in subsection (4):
  - (ab) the modification is necessary for a purpose specified in section 30IA(3); or

**14. Section 30N amended (Commission may make planning schemes)**

Section 30N(1) of the Principal Act is amended by inserting “and, if the scheme is required under section 30EA or 30IA to be amended, has been so amended” after “order”.

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**15. Section 30O amended (Amendments under Divisions 2 and 2A of planning schemes made under section 30N)**

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

- (a) by inserting in subsection (1) “, or to insert a local provision into, or remove a local provision from, such a scheme,” after “section 30N”;
- (b) by omitting subsection (2) and substituting the following subsection:
  - (2) An amendment, of a planning scheme made under section 30N, that would amend a local provision of the scheme or insert a new provision into the scheme may only be made under Division 2 or 2A if –
    - (a) the amendment is not such that the local provision as amended or inserted would be directly or indirectly inconsistent with the common provisions, except in accordance with section 30EA, or an overriding local provision; and
    - (b) the amendment does not revoke or amend an

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overriding                      local  
provision; and

(c) the amendment is not to the effect that a conflicting local provision would, after the amendment, be contained in the scheme.

(c) by omitting from subsection (3) “Despite subsection (2)” and substituting “Subject to section 30EA”;

(d) by omitting from subsection (4) “, but may instead be made under section 14” and substituting “unless the common provision, as so amended, would not be inconsistent with a planning directive that requires or permits the provision to be contained in the planning scheme”;

(e) by omitting from subsection (5) “Despite subsection (4)” and substituting “Subject to section 30EA”.

**16. Section 39 amended (Representations in respect of draft amendments)**

Section 39 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “section 38(a)” and substituting “section 38(1)(a)”;

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- (b) by omitting from subsection (2) “section 38(a)” and substituting “section 38(1)(a)”.

**17. Section 43F amended (Procedure for determining an application for a permit under this Division)**

Section 43F(3) of the Principal Act is amended by omitting “section 38(b)” and substituting “section 38(1)(b)”.

**18. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which it commences.