

TASMANIA

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**LAND USE PLANNING AND APPROVALS  
AMENDMENT BILL 2007**

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**LAND USE PLANNING AND APPROVALS  
AMENDMENT BILL 2007**

*(Brought in by the Minister for Planning, the Honourable  
Steven Kons)*

**A BILL FOR**

**An Act to amend the *Land Use Planning and Approvals Act 1993* and the *Resource Management and Planning Appeal Tribunal 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:

**PART 1 – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Land Use Planning and Approvals Amendment Act 2007*.

**2. Commencement**

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

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**PART 2 – LAND USE PLANNING AND APPROVALS  
ACT 1993 AMENDED**

**3. Principal Act**

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

**4. Section 9 amended (Planning directive)**

Section 9 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “land use issues” and substituting “issues relating to use, development, protection or conservation of any land”;
- (b) by omitting from paragraph (b) “land use issues” and substituting “issues relating to use, development, protection or conservation of any land”.

**5. Section 16 inserted**

After section 15 of the Principal Act, the following section is inserted in Part 2A:

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\*No. 70 of 1993

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**16. Power of Minister to dispense with certain requirements**

(1) Notwithstanding section 15, where the Minister is satisfied that –

(a) the modification to a planning directive is for the purpose of –

(i) correcting any error; or

(ii) removing any anomaly; or

(iii) clarifying or simplifying;  
or

(iv) removing any inconsistency with any Act; or

(v) making procedural changes; or

(vi) amending a planning directive to bring it into conformity with a State Policy; or

(vii) any other prescribed purpose; and

(b) the public interest will not be prejudiced –

the Minister may, by notice in the *Gazette*, dispense with the requirements of sections 10, 11 and 12 in relation to the modification, and issue the modified

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planning directive in accordance with section 13(2).

- (2) If the Minister issues a modified planning directive in accordance with section 13(2), the provisions of section 13(5) and section 14 apply to the modified planning directive as if it were a planning directive.

**6. Section 20 amended (What can a planning scheme provide for?)**

Section 20(7)(b) of the Principal Act is amended by inserting “a mining lease,” after “accordance with”.

**7. Section 25 amended (Public exhibition of draft planning schemes)**

Section 25 of the Principal Act is amended as follows:

- (a) by omitting “Where” and substituting “(1) Where”;
- (b) by inserting the following subsection:
- (2) For the purpose of determining the period of 2 months referred to in subsection (1)(a)(i), any days on which the office of the planning authority is closed during normal business hours, in

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that part of the State where the planning scheme will apply, are not to be included.

**8. Section 32 amended (Requirements for preparation of amendments)**

Section 32(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “*Gas Pipelines Act 2000.*” and substituting “*Gas Pipelines Act 2000*; and”;
- (b) by inserting the following paragraphs after paragraph (d):
  - (e) must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and
  - (f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.

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**9. Section 37 amended (Power of Commission to dispense with certain requirements)**

Section 37 of the Principal Act is amended as follows:

- (a) by omitting “Where” and substituting “(1) Where”;
- (b) by inserting the following subsection:
  - (2) Before approving the draft amendment in accordance with section 42, the Commission may modify the amendment to correct any errors or remove any anomalies.

**10. Section 38 amended (Public exhibition of draft amendment)**

Section 38 of the Principal Act is amended as follows:

- (a) by omitting “After” and substituting “(1) After”;
- (b) by inserting the following subsection:
  - (2) If the period referred to in subsection (1)(a) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the planning scheme to be amended

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applies, that period is to be extended by the number of those days.

**11. Section 40 amended (Consideration by Commission of draft amendment and relevant representations)**

Section 40 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) For the purposes of its consideration under subsection (1), the Commission may, where there are no representations, hold a hearing into issues that in the Commission's opinion require consideration.
- (5) The Commission must, within 14 days of its decision to hold a hearing, give notice, as prescribed, of its intention to hold a hearing under subsection (4).

**12. Section 43B amended (Application of certain provisions to draft amendment)**

Section 43B of the Principal Act is amended by omitting all the words after "section 43A(1)".

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**13. Section 43K amended (Minor amendment of permits referred to in section 43H)**

Section 43K of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) If the planning authority amends a permit in respect of which the Commission has modified, deleted or added conditions or restrictions under section 43H(1)(b)(ii), the planning authority must, by notice in writing served on the Commission, notify it of the amendments made to the permit.

**14. Section 44 substituted**

Section 44 of the Principal Act is repealed and the following section is substituted:

**44. Review of planning schemes**

- (1) The Commission must direct a planning authority to undertake, on every fifth anniversary of the date on which its planning scheme came into operation under section 29, a review of the planning scheme in accordance with a notice issued under subsection (2).
- (2) The notice must –
  - (a) specify matters that the planning authority must address in the review of its planning scheme; and

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- (b) include a requirement that public comments be sought on the review for a period of not less than 3 weeks; and
  - (c) include a requirement for the planning authority to prepare and submit to the Commission a report, comprising a statement of its opinion as to whether the planning scheme –
    - (i) requires amendment; or
    - (ii) needs to be replaced with another planning scheme; or
    - (iii) can continue without amendment –after taking into account public comments received; and
  - (d) specify the period by the end of which the report is to be submitted to the Commission, being a period not less than 3 months.
- (3) If the Commission is of the opinion that the report under subsection (2) has not been prepared in accordance with the notice, the Commission must direct the planning authority to revise the report and resubmit it within 2 months or such

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longer period as the Commission may allow.

- (4) If the Commission is of the opinion, based on the report under subsection (2), that the planning scheme requires replacement or amendment, the Commission, with the approval of the Minister, must direct the planning authority to initiate the preparation of a draft planning scheme in accordance with section 22 or initiate an amendment or amendments in accordance with section 34 not later than 2 months from the date on which the Commission receives the report under subsection (2) or a revised report under subsection (3).
- (5) If the Commission directs that an amendment or amendments be initiated under subsection (4), the Commission must specify the manner in which the draft amendment or amendments are to be prepared.
- (6) The planning authority must initiate the preparation of a draft planning scheme in accordance with section 22 or initiate an amendment or amendments in accordance with section 34 not later than 2 months from the date on which the direction is given under subsection (4) or such longer period as the Commission may allow.

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- (7) If a planning authority fails to comply with a direction under subsection (1) within the period specified in the notice relating to the direction, or fails to comply with subsection (3) or (6) –
- (a) the Commission may assume the responsibilities and obligations of the planning authority under this section; and
  - (b) the authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations of the authority under this section.
- (8) Subsection (1) does not apply if a planning authority has initiated the preparation of a draft planning scheme under section 22 that, if approved under section 29, would replace the planning scheme required to be reviewed.
- (9) The time period specified in subsection (1) does not apply to planning schemes in operation immediately before the commencement of this section.
- (10) The Commission must direct a planning authority to undertake a review of any of its planning schemes that are in operation immediately before the commencement of this section, in accordance with a notice issued under subsection (2), by the date prescribed in the regulations in

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respect of a planning scheme of that planning authority and on every fifth anniversary of that date.

**15. Section 48A inserted**

After section 48 of the Principal Act, the following section is inserted in Division 1:

**48A. Notice to remove signs**

- (1) If a person is erecting or placing, or has erected or placed, a sign for which the issue of a permit is required under the provisions of a planning scheme or special planning order, unless the planning authority which administers the scheme or order has granted a permit in respect of that sign and the permit is in effect, the planning authority may do one or more of the following:
  - (a) by written notice given to the person, require the person to cease erecting or placing the sign;
  - (b) by written notice given to the person, require the person to remove the sign or that part of the sign that has been erected or placed;
  - (c) by written notice given to the person, require the person to take all action necessary to restore the

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land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign;

- (d) take all action necessary to remove the sign or that part of the sign that has been erected or placed and restore the land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign.
- (2) If the planning authority takes any action under subsection (1)(d), the planning authority, by written notice given to the person who is erecting or placing or has erected or placed a sign, may require the person to pay the reasonable costs of that action, and those costs –
- (a) are a debt due and payable to the planning authority; and
  - (b) may be recovered in a court of competent jurisdiction.
- (3) If the planning authority takes any action under subsection (1)(d), the planning authority is not liable for any damages caused to the sign, or any structure to which the sign was affixed, through the removal of the sign or the storage of the sign on its removal.

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- (4) The planning authority may dispose of the sign after 2 months from the date on which the planning authority took action under subsection (1)(d) if the sign has not been collected by the person who erected or placed the sign.
- (5) For the purposes of this section, a “**person**” includes the owner and the occupier of the property on which the sign is being erected or placed or has been erected or placed.

**16. Section 51 amended (Permits)**

Section 51 of the Principal Act is amended by inserting after subsection (1A) the following subsections:

- (1AB) A planning authority must not refuse to accept a valid application for a permit, unless the application does not include a declaration that the applicant has –
  - (a) notified the owner of the intention to make the application; or
  - (b) obtained the written permission of the owner under section 52.
- (1AC) For the purposes of subsection (1AB), a valid application is an application that contains all relevant information required

by the planning scheme applying to the land that is the subject of the application.

**17. Section 52 amended (What if applicant is not the owner?)**

Section 52 of the Principal Act is amended by inserting after subsection (1G) the following subsection:

- (1H) If land in respect of which an application for a permit is required is Crown land, within the meaning of the *Crown Lands Act 1976*, subsection (1B) does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.

**18. Section 53 amended (When does a permit take effect?)**

Section 53 of the Principal Act is amended by inserting after subsection (6) the following subsection:

- (7) The permit referred to in subsection (1) remains in effect unless –
- (a) it lapses under subsection (5); or

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- (b) it expires as a result of a condition or restriction contained in the permit.

**19. Section 54 amended (Additional information)**

Section 54 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

- (1A) If the period specified in subsection (1) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

- (b) by inserting the following subsection after subsection (2):

- (3) The planning authority must, within 14 days from the day it receives the additional information under subsection (1), notify the applicant if the request for information has not been answered to its satisfaction and in that notification require the

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applicant to provide it with the additional information.

**20. Section 57 amended (Applications for discretionary permits)**

Section 57 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (4):

(4A) A person must not obscure or remove a notice of an application for a permit displayed on the land that is the subject of the application within the time period specified in subsection (5).

Penalty: Fine not exceeding 10 penalty units.

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

(5AA) If the time period specified in subsection (5) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

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**21. Section 59 amended (Failure to determine an application for a permit)**

Section 59 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (3):

(3A) The Appeal Tribunal must notify the planning authority of an application for an order under subsection (3).

(3B) The planning authority must, within 7 days of receiving notification from the Appeal Tribunal of an application under subsection (3), advise any person who made representations, under section 57(5), of that application unless the person has previously been notified under subsection (2).

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

(5A) If the Appeal Tribunal makes an order for costs under subsection (5), it –

(a) is to specify the time within which those costs are to be paid; and

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(b) may, by a further order, extend that time if it considers it reasonable in the circumstances.

(5B) If the Appeal Tribunal makes an order for costs before the end of any proceedings, it may require that the order be complied with before it continues with the proceedings.

(5C) An order for costs under this section may be registered in a court having jurisdiction for the recovery of debts of the amount ordered to be paid by or under the order.

(5D) Proceedings for the enforcement of an order for costs under this section may be taken as if the order were a judgment of the court in which the order is registered.

(c) by omitting subsection (10).

**22. Section 61 amended (Appeals against planning decisions)**

Section 61 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (3) “section 54(1)” and substituting “section 54(1) or (3)”;
- (b) by omitting from subsection (3A) “section 43K(3) or (4)” twice occurring and substituting “section 43K(3), (4) or (5)”.

**23. Section 62 amended (Determination of appeals)**

Section 62 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) The Appeal Tribunal must determine an appeal in accordance with the planning scheme that was in place at the time the planning authority determined the application for a permit.
- (4) In determining an appeal in accordance with subsection (3), the Appeal Tribunal has the same obligations as a planning authority at the time the planning authority determined the application for the permit.

**24. Section 63 amended (Obstruction of sealed schemes)**

Section 63(5)(b) of the Principal Act is amended by omitting “section 78 of the *Justices Act 1959*” and substituting “section 44 of the *Sentencing Act 1997*”.

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**25. Section 64 amended (Civil enforcement proceedings)**

Section 64 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or is likely to contravene or fail” after “fails”;
- (b) by inserting in subsection (3)(a) “or is likely to contravene or fail” after “failed”;
- (c) by omitting from subsection (6)(b) “fit” and substituting “fit, including a condition that requires an undertaking by the applicant, not being a planning authority or the Crown, at whose instance the temporary order is granted to pay to the respondent any damages that the respondent may sustain because of the order”;
- (d) by inserting the following subsections after subsection (6):
  - (6A) An application for an order for payment of damages is to be made to the Appeal Tribunal.
  - (6B) The Appeal Tribunal may order the applicant at whose instance the temporary order is granted to pay all or part of the damages, as determined by the Appeal Tribunal, that the respondent may sustain because of the order.

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- (e) by omitting from subsection (16) “12 months” and substituting “24 months”.

**26. Section 86 amended (Requirement to pay fees)**

Section 86 of the Principal Act is amended as follows:

- (a) by inserting “application,” after “and any”;
- (b) by inserting “or any imposition under section 205 of the *Local Government Act 1993*” after “section 85”;
- (c) by inserting “application,” after “lodging of that”.

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**27. Principal Act**

In this Part, the *Resource Management and Planning Appeal Tribunal Act 1993*\* is referred to as the Principal Act.

**28. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended by inserting after the definition of “chairperson” the following definitions:

“**deputy chairperson**”, in relation to the Appeal Tribunal, means the deputy chairperson of the Appeal Tribunal;

“**mediation**” has the same meaning as in the *Alternative Dispute Resolution Act 2001* and includes neutral evaluation within the meaning of that Act;

**29. Section 6 amended (Composition of Appeal Tribunal)**

Section 6 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

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\*No. 66 of 1993

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- (ab) the deputy chairperson who must be a barrister or legal practitioner, within the meaning of the *Legal Profession Act 1993*, of not less than 5 years' standing; and

**30. Section 7 amended (Appointment of members of Appeal Tribunal)**

Section 7(1) of the Principal Act is amended by inserting “, deputy chairperson” after “chairperson”.

**31. Section 7A inserted**

After section 7 of the Principal Act, the following section is inserted in Part 3:

**7A. Deputy chairperson**

The deputy chairperson acts as the chairperson –

- (a) during a vacancy in the office of the chairperson; or
- (b) during any period, or all periods, when the chairperson is absent from duty or is, for any other reason, unable to perform the functions of the office of chairperson.

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**32. Section 8 amended (Acting chairperson)**

Section 8(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or deputy chairperson” after “chairperson”;
- (b) by inserting in paragraph (b) “or deputy chairperson” after “the chairperson”.

**33. Section 13 amended (Institution of appeals to the Appeal Tribunal)**

Section 13 of the Principal Act is amended by inserting after subsection (5) the following subsections:

- (6) A party to an appeal may withdraw his or her appeal by advising the Appeal Tribunal in writing.
- (7) If a party withdraws his or her appeal, the Appeal Tribunal is to notify any other parties to the appeal.

**34. Section 16 amended (Procedure of Appeal Tribunal)**

Section 16 of the Principal Act is amended by inserting after subsection (6) the following subsection:

- (7) The extension by the Minister under subsection (6) of the period of 90 days

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referred to in subsection (1)(f) is not necessary if all parties agree in writing to the extension of that period.

**35. Section 16A amended (Mediation)**

Section 16A of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) At the hearing of an appeal before the Appeal Tribunal, evidence about anything that happens at mediation held under subsection (1) in relation to the appeal is inadmissible.

**36. Section 22A amended (Power of Appeal Tribunal to dismiss an appeal)**

Section 22A of the Principal Act is amended by inserting “or may dismiss an appeal if the appellant fails to comply with its directions” after “vexatious”.

**37. Section 29 amended (Protection of members, &c.)**

Section 29 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) A person performing duties on behalf of the Appeal Tribunal under sections 16A and 17 has the same protection and

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immunity as if the person were a member  
of the Appeal Tribunal.