

CLAUSE NOTES

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

PART I PRELIMINARY

Clause 1 Short Title

This clause provides for the short title when citing the Act for legal purposes.

Clause 2 Commencement

This clause provides for the commencement of the Act on a day or days to be proclaimed.

Clause 3 Principal Act

This clause provides for the *Land Use Planning and Approvals Act 1993* (LUPAA) to be referred to as the Principal Act.

Clause 4 Section 14 amended (Effect of planning directive)

This clause provides for the provisions of a planning directive to be inserted (but not included as part of) into a planning scheme by the Tasmanian Planning Commission (the Commission), with the approval of the Minister, to improve interpretation by the wider community. Under LUPAA, mandatory common provisions operate outside a planning scheme requiring reference to both a planning directive and a planning scheme in the assessment of development applications.

The clause also provides the Commission, with the approval of the Minister, with the ability to facilitate the effectiveness of the inserted provisions and modify the provisions of a planning scheme to remove any inconsistencies between a planning scheme and the inserted provisions.

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

This clause removes an error in subsection 1 which incorrectly references section 13(2) as the section which provides for the issue a modified planning directive by the Minister. It is proposed to remove that section reference from subsection 1 and include the correct reference in a modified subclause 2. The error was identified and brought to the attention of the Commission by the Office of the Parliamentary Counsel.

The clause also provides an additional ‘purpose’ in subsection (1)(a) which currently limits what is regarded as a minor amendment to a planning directive. Section 16(1) allows the Minister to dispense with the requirements of sections 10, 11 and 12 of LUPAA if the modification is for one of the purposes specified in section 16(1)(a) and the public interest will not be prejudiced. With the increased use of planning directives as an effective regulatory instrument, inconsistencies between the new and current planning directives have emerged. At present it is necessary to undertake a full assessment process under LUPAA to correct an inconsistency. This is an unnecessarily complex and time consuming process to achieve a correction, remove an anomaly, clarify or simplify a planning directive.

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

This clause rectifies a cross-referencing error in sections 26(1) and (2).

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

This clause defines ‘conflicting local provisions’, ‘overriding local provisions’ and ‘planning purpose notice’ which are referred to in Division 1A.

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

This clause provides the Minister with the ability to request a planning authority or the Commission to amend a draft interim planning scheme prior to it being declared as an interim planning scheme.

Under the current provisions of LUPAA, when a draft interim planning scheme is submitted to the Minister, the Minister can either declare the draft interim

planning scheme to be an interim planning scheme or decide not to declare the scheme. Section 30F(3) provides that the Minister may only declare a draft IPS if it complies with sections 20 and 21 and section 30E. The only basis for the Minister deciding not to declare a draft interim planning scheme is non-compliance with LUPAA.

A situation may arise where a planning authority has submitted its draft interim planning scheme and the Minister decides that the draft does not comply with LUPAA. Under this scenario the Minister does not have any statutory powers to direct the planning authority to amend its draft interim planning scheme so that it complies with LUPAA. The only avenue available to the Minister to have the draft interim planning scheme amended would be through negotiation with the relevant planning authority. This is unsatisfactory. While unlikely, a planning authority could refuse to voluntarily amend the draft interim planning scheme which would force the Minister to not declare the draft interim planning scheme contrary to the desired outcomes of the Government's regional planning initiative.

Under this clause where the Minister directs the Commission to amend the draft interim planning scheme, the Minister cannot declare the draft interim planning scheme unless planning authorities affected by the amendments are provided with the opportunity to provide comments to the Minister on the amendments.

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

This clause gives effect to the proposed new section 30EA (overriding local provisions and conflicting local provisions (see Clause 10)). The clause also specifies the status of an overriding local provision and a conflicting local provision in terms of the provisions of an interim planning scheme (clauses 9(d) & (e)) and clarifies that a local provision is not a common provision (clause 9(a)).

Clause 10 Section 30EA inserted

This clause provides for the issue of a 'planning purposes notice' by the Minister on the recommendation of the Commission. The notice can specify what provisions within a draft interim planning, interim planning scheme or a 30N planning scheme are either overriding local provisions or conflicting local provisions.

The introduction of a mechanism to specify overriding and conflicting local provisions under LUPAA is necessary to clarify which local provisions in a planning scheme prevail over common provisions and which local provisions are set aside by common provisions.

The introduction of Planning Directive for Standards for Single Dwellings (PD4) necessitated such clarification. While the clear intent of PD4 was to have one set of standards for single dwellings in the state, it was also clear that there were local provisions that should always be taken into consideration in the assessment of single dwellings. Those provisions are commonly found in planning schemes as codes or schedules and relate to such matters as bushfire, landslip, flood and contamination.

The standards contained in PD4 are 'mandatory common provisions' for the purposes of LUPAA and, by virtue of section 30E(4), a draft interim planning scheme cannot contain any provision that is directly or indirectly inconsistent with those standards. The current section 30E(4) will inadvertently capture those requirements in a planning scheme that should always apply to development for single dwellings if they are introduced in the draft interim planning scheme as local provisions. It is not an acceptable planning outcome to prevent those provisions from being included in a draft interim planning scheme. Recognising those provisions as overriding local provisions in a planning purposes notice overcomes this issue. Under proposed subsection (5), if there is an inconsistency between an overriding local provision in a relevant scheme and a common provision of a scheme, the overriding local provision prevails to the extent of the inconsistency.

The opposite also applies where it is necessary for statewide consistent provisions to override local provisions. The introduction of statewide codes through planning directives may not necessarily prevent the application of a local code covering the same topic area preventing statewide consistency in respect of the subject matter to which the statewide code relates. Again, identifying which provisions in a planning scheme are conflicting provisions in a planning purposes notice overcomes this issue, as those provisions will be of no effect.

As a consequence of the issuing of a planning purposes notice, the Commission must amend a planning scheme to ensure the effective operation of the notice. That is, the Commission will remove or amend any conflicting local provisions in

a planning scheme and state, where necessary, which provisions are overriding local provisions. The Commission also has the option of directing a planning authority to amend the planning scheme.

A planning purposes notice can be amended or revoked by the Minister on the recommendation of the Commission. If the amendment or revocation requires amendments to a planning scheme, the Commission must make those changes or direct the planning authority to make those changes. Proposed subsection (12) provides guidance on what amendments can be made under the proposed section.

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

This clause requires that any modifications made to a draft interim planning scheme under proposed sections 30D, 30EA or 30IA are included in the planning scheme declared by the Minister under section 30F.

The clause also clarifies that an amendment cannot be made to an interim planning scheme under the normal provisions of LUPAA (Division 2 or 2A). When regional land use strategies and interim planning schemes were introduced under LUPAA, it was intended that interim planning schemes could only be modified after a full assessment of those schemes has been undertaken by the Commission. Although LUPAA does provide for a dispensation from a local provision of an interim planning scheme, before that interim planning scheme is made a planning scheme, there is nothing in Division 1A that explicitly prevents interim schemes being amended through the normal planning scheme amendment processes under Divisions 2 and 2A of the Act. This is contrary to the intent of the interim planning scheme process. It would also be otiose for an interim planning scheme to be amended at the same time it is subject to a formal assessment by the Commission. It would also create significant confusion in the community and be unwieldy to manage by the Commission.

Clause 12 Section 30IA inserted

This clause provides the Minister with the ability to make urgent amendments to an interim planning scheme through the issue of an 'authorisation' to the Commission. The Minister is constrained from issuing an authorisation for reason other than those specified in proposed subclause (3). If an authorisation is

issued, the Commission must prepare and submit a draft amendment to the interim planning scheme to the Minister. If the Minister accepts the draft amendment, the Commission must make the necessary changes to the interim planning scheme and advise the relevant planning authority of the change. The Commission also needs to notify other planning authorities in the regional area and any agencies the Commission considers may have an interest. The amended interim planning scheme is then placed on public exhibition if the normal period for exhibition is still running. The Commission is also required to give notice to the relevant planning authority, each planning authority in the region and State agencies the Commission considers may have an interest. Under the proposed clause there is also an obligation on the planning authority to publish a notice in relation to the amendment in a newspaper generally circulating in the regional area and make the amendment available for viewing on its website. The notices of the amendment are for information only as there is no opportunity to make representation under this clause.

The ability to make amendments to interim planning schemes are necessary as a problem may become apparent with the provisions of an interim planning scheme during the assessment period which needs to be corrected before the interim planning scheme comes into operation. Such problems cannot necessarily be solved by allowing a dispensation, as currently provided for under s.30P of LUPAA, as the relevant provisions may be common provisions at a state level. In these circumstances and where the amendment is required before the interim planning scheme comes into operation, this clause is required to address the identified problem. The only alternative would be to wait until the interim planning scheme is finally approved which could mean that provision may be rendered inoperable for an extended period of time depending on when the problem is identified.

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

This clause alerts the Commission that an authorisation has been issued, and once acted on, will amend the interim planning scheme it has before it. Currently, section 30M(1) of LUPAA provides the Commission with the power to amend an interim planning scheme after considering all relevant matters. The reference to the interim planning scheme in subsection (1) relates to the interim planning scheme that has been declared by the Minister. Where an authorisation

is issued in relation to the declared interim planning scheme, the interim planning scheme the Commission must consider under section 30M is the declared interim planning scheme plus any amendments made in accordance with the authorisation.

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

This clause requires that the interim planning scheme approved under section 30N must include the amendments required by an authorisation issued under proposed section 30IA.

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

This clause is required as a consequence of the introduction of overriding and conflicting local provisions under proposed section 30EA (refer Clause 10).

Clause 16 Section 39 amended (Representation in respect of draft amendments)

This clause rectifies a cross-referencing error in sections 39(1) and (2).

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

This clause rectifies a cross-referencing error in section 43F(3).

Clause 18 Repeal of Act

This clause provides for the repeal of this amending Act following the inclusion of all provisions into the Principal Act.