

TASMANIA

**LAND USE PLANNING AND APPROVALS
AMENDMENT (TRANSITIONAL PROVISIONS)
BILL 2017**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Schedule 6 amended (Savings and Transitional Provisions –
*Land Use Planning and Approvals Amendment (Tasmanian
Planning Scheme) Act 2015*)
5. Repeal of Act

**LAND USE PLANNING AND APPROVALS
AMENDMENT (TRANSITIONAL PROVISIONS)
BILL 2017**

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

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 (Transitional Provisions) Act 2017*.

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.

*No. 70 of 1993

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

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

Schedule 6 to the Principal Act is amended as follows:

- (a) by inserting in clause 8(1) “, as those plans, zones or qualifications have, before an LPS comes into force in relation to the land to which the planning scheme relates, been amended, if at all, under section 30IA of Part 3 of this Act, as in force immediately before the commencement day and as it applies in relation to the planning scheme by virtue of this Schedule” after “day”;
- (b) by inserting the following subclause after subclause (1) in clause 8:
 - (1A) Subclause (1) does not apply in relation to a specific area plan, a particular purpose zone, or site-specific qualifications, if a declaration is made under clause 8A(1) in relation to the plan, zone or qualifications.
- (c) by inserting the following clauses after clause 8:

8A. Inclusion of certain plans, zones and qualifications inserted or amended after commencement day

(1) If –

- (a) after the commencement day but before an LPS applies in relation to a municipal area, a specific area plan, a particular purpose zone, or site-specific qualifications, is or are inserted in a planning scheme in relation to the municipal area by an amendment to the planning scheme; or
- (b) a specific area plan, a particular purpose zone, or site-specific qualifications, that is or are included in a planning scheme in relation to a municipal area before the commencement day is or are amended after the commencement day but before an LPS applies in relation to the municipal area –

the Minister, after consultation with the Commission, may, by

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

notice to the planning authority in relation to the municipal area, declare that a draft LPS prepared, and an LPS made, in relation to the municipal area under Part 3A of this Act must contain the plan, zone or qualifications, as so inserted or amended.

- (2) If the Minister declares under subclause (1) that a draft LPS prepared, and an LPS made, in relation to a municipal area must contain a specific area plan, a particular purpose zone, or site-specific qualifications, a draft LPS prepared, and an LPS made, in relation to the municipal area must contain the plan, zone or qualifications, as so inserted or amended.
- (3) This clause does not apply in relation to a specific area plan, a particular purpose zone, or site-specific qualifications to which clause 8(1) applies if the plan, zone or qualifications has or have, before an LPS comes into force in relation to the land to which the planning scheme relates, been amended, if at all, under section 30IA of Part 3 of this Act as it applies in relation to

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

the planning scheme by virtue of
this Schedule.

**8B. Alteration of draft amendments to
which clauses 4(2)(b) or 5(2)(b) apply**

(1) In this clause –

permitted alterations means
alterations, referred to in
subclause (3), to the
provisions of a relevant
amendment;

relevant amendment means a
draft amendment to which
clause 4(2)(b) or 5(2)(b)
applies.

(2) Despite clauses 4(2)(b) and
5(2)(b), but without limiting the
generality of those clauses, the
alterations that may be made by a
planning authority to a relevant
amendment include the permitted
alterations.

(3) For the purposes of this clause,
permitted alterations are
alterations to a relevant
amendment so that, in the opinion
of the Commission, the relevant
amendment –

(a) will conform to the
requirements of the SPPs

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

in relation to the LPS to which the relevant amendment relates; or

- (b) will reflect the terminology used in the SPPs or the LPS, including, but not limited to including, where the relevant amendment relates to the designation of a zone in a planning instrument, by changing the designation of the zone to the zone in the LPS that most closely corresponds to the zone in the relevant amendment before the relevant amendment contains the permitted alterations; or
- (c) will contain provisions that –
 - (i) are appropriately numbered; or
 - (ii) make correct references to provisions in the relevant amendment, in the LPS to which the relevant

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

amendment
relates, or in other
instruments,
including but not
limited to the
SPPs; or

- (d) will achieve the effect intended, by the relevant amendment, before the permitted alterations are contained in the relevant amendment.
- (4) The Commission may, in relation to a relevant amendment, take any one or more of the following actions:
 - (a) by notice to the planning authority, direct the planning authority –
 - (i) to modify the relevant amendment in the manner specified in the notice, so that the relevant amendment contains permitted alterations; and
 - (ii) to submit the relevant

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

amendment, as so
modified, to the
Commission for
approval under
paragraph (b);

(b) approve, or refuse to
approve, a relevant
amendment as modified
by a planning authority in
accordance with a
direction under
paragraph (a);

(c) direct the planning
authority to take action,
under a provision of Part
3B of this Act, in relation
to a relevant amendment
that has been approved
under paragraph (b).

**8C. Alteration of instruments to which
clause 8(1) or 8A(1) applies**

(1) In this clause –

included document means –

(a) a specific area
plan; or

(b) a particular
purpose zone; or

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

(c) site-specific
qualifications –

that is or are required,
under clause 8(1), to be
contained in a draft LPS
and an LPS or to which a
declaration under
clause 8A(1) relates;

permitted alterations means
alterations, referred to in
subclause (3), to the
relevant provisions;

relevant provisions means the
provisions, of an included
document, that are
contained in a draft LPS.

(2) Despite clause 8(1) and
clause 8A(2), the relevant
provisions may contain permitted
alterations.

(3) For the purposes of this clause,
permitted alterations are
alterations to the relevant
provisions so that, in the opinion
of the Commission, the relevant
provisions –

(a) will conform to the
requirements of the SPPs
in relation to the draft
LPS in which the relevant

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

provisions are included;
or

- (b) will reflect the terminology used in the SPPs or the draft LPS, including, but not limited to including, where the relevant provisions relate to the designation of a zone in a planning instrument, by changing the designation of the zone to the zone in the draft LPS that most closely corresponds to the zone in the relevant provisions before the relevant provisions contain the permitted alterations; or
- (c) will contain provisions that –
 - (i) are appropriately numbered; or
 - (ii) make correct references to relevant provisions, other provisions in the draft LPS, or in other instruments

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

referred to in the
draft LPS,
including but not
limited to the
SPPs; or

- (d) will achieve the effect
intended by the relevant
provisions before they
contain the permitted
alterations.
- (4) Alterations to the relevant
provisions under subclause (3)(d)
may consist of, but are not
limited to consisting of, an
alteration of an instrument
referred to in a paragraph of the
definition of ***included document***
in subclause (1) so that the
instrument becomes, when
included in a draft LPS, an
instrument referred to in another
paragraph of that definition.
- (5) The Commission may, in relation
to a draft LPS to which
clause 8(1) or clause 8A(2)
applies, take any one or more of
the following actions:
 - (a) by notice to the planning
authority, direct the
planning authority –

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

- (i) to modify the draft LPS in the manner specified in the notice, so that the relevant provisions contain permitted alterations; and
 - (ii) to submit the draft LPS, as so modified, to the Commission for approval under paragraph (b);
- (b) approve a draft LPS as modified and submitted by a planning authority in accordance with a direction under paragraph (a);
- (c) itself modify the draft LPS so that the relevant provisions contain the permitted alterations and –
 - (i) approve, for the purposes of paragraph (d), the draft LPS as so modified; and

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

- (ii) provide to the
planning authority
a copy of the draft
LPS as so
approved;
- (d) direct the planning
authority to take action,
under a provision of Part
3A of this Act, in relation
to a draft LPS that has
been approved under this
subclause.

**8D. Inclusion in LPSs of certain code-
applying provisions**

- (1) In this clause –

code-applying provision
means a map, overlay,
list, or provision, that,
immediately before the
commencement day –

- (a) was included in a
planning instrument; and
 - (b) applied, to a provision of
the planning instrument, a
provision of a code that
formed part of, or was
referred to in, the
planning instrument.
- (2) If –

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

- (a) a planning instrument that applied in relation to a municipal area immediately before the commencement day included, or referred to, a code immediately before that day (*the planning instrument code*); and
- (b) the SPPs contain a code (*the SPPs code*) that is substantially similar to the planning instrument code; and
- (c) the planning instrument, immediately before the commencement day, contained one or more code-applying provisions in relation to the planning instrument code –

a draft LPS prepared, and an LPS made, in relation to the municipal area under Part 3A of this Act must contain each of the code-applying provisions as modified, if at all, in accordance with a determination under subclause (7).

- (3) The Minister, after having consulted with the Commission,

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

may declare that subclause (2) does not apply in relation to a code-applying provision, specified in the declaration, in relation to a municipal area specified in the declaration.

- (4) Subclause (2) does not apply in relation to a code-applying provision specified in a declaration under subclause (3), in relation to a municipal area specified in the declaration.
- (5) The Minister may declare that –
 - (a) a requirement, of the SPPs, that relates to the formatting of a code-applying provision when the provision is included in a draft LPS and an LPS in accordance with subclause (2); or
 - (b) any other requirement, of the SPPs, that relates to a code-applying provision when the provision is included in a draft LPS and an LPS in accordance with subclause (2) –

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

does not apply in relation to a particular draft LPS and LPS or to all draft LPSs and all LPSs.

- (6) If the Minister declares under subclause (5) that a requirement, of the SPPs, does not apply in relation to a particular draft LPS and LPS or to all draft LPSs and all LPSs, the requirement of the SPPs does not, despite any other provision of this Act, apply in relation to the particular draft LPS and LPS, or to all draft LPSs and all LPSs, as the case may be.
- (7) The Commission may determine that a code-applying provision that is to be included in a draft LPS in relation to a municipal area is to be included in the draft LPS as modified in accordance with the determination.
- (8) The Commission may only determine under subclause (7) that a code-applying provision is to be modified if the modification is necessary in order to ensure –
 - (a) that a correct cross-reference is used in the code-applying provision when it is included in the draft LPS; or

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

- (b) the correction of a minor error in the code-applying provision; or
 - (c) the effective operation of the provision when it is included in a draft LPS.
- (9) The Commission may, in relation to a draft LPS in relation to a municipal area, take any one or more of the following actions:
 - (a) by notice to the planning authority, direct the planning authority –
 - (i) to modify the draft LPS in the manner specified in the notice, so that the draft LPS contains a code-applying provision as so modified in accordance with the determination under subclause (7); and
 - (ii) to submit the draft LPS, as so modified, to the Commission for

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 4

approval under
paragraph (b);

- (b) approve a draft LPS as modified by a planning authority in accordance with a direction under paragraph (a);
- (c) itself modify the draft LPS so that the draft LPS contains the code-applying provision as so modified in accordance with the determination under subclause (7);
- (d) approve, for the purposes of paragraph (e), the draft LPS as modified under paragraph (c);
- (e) provide to the planning authority a copy of the draft LPS as approved under paragraph (d);
- (f) direct the planning authority to take action, under a provision of Part 3A of this Act, in relation to a draft LPS that has been approved under this subclause.

*Land Use Planning and Approvals Amendment (Transitional
Provisions) Act 2017*
Act No. of

s. 5

5. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.