

CLAUSE NOTES

Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Bill 2018

Key acronyms:

- Commission – Tasmanian Planning Commission
- LPS – Local Provisions Schedule
- LUPAA – *Land Use Planning and Approvals Act 1993*
- RLUS – Regional Land Use Strategy
- SPPs – State Planning Provisions
- TPPs – Tasmanian Planning Policies

PART 1 – PRELIMINARY

- Clause 1** Cites the short title of the Act – the *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Act 2018*.
- Clause 2** Provides for the Act to commence upon receiving Royal Assent.

PART 2 – LAND USE PLANNING AND APPROVALS ACT 1993 AMENDED

- Clause 3** Identifies the Principal Act as the *Land Use Planning and Approvals Act 1993* (LUPAA).
- Clause 4** **Amends Section 3 of the Principal Act (Interpretation)**
Inserts definitions into s.3 (Interpretation) and amends current definitions to provide for appropriate references to the Tasmanian Planning Policies (TPPs) that will be relevant to the operation of processes for the preparation, notification, assessment, reporting and making of the TPPs.
- Clause 5** **Amends Section 5A (Regional areas and regional land use strategies)**
Provides that the Minister must not declare a Regional Land Use Strategy (RLUS) unless satisfied that the strategy furthers the objectives in Schedule 1 of LUPAA, and is consistent with the State Policies and the TPPs.
It requires that the Minister must consider consistency with the State Policies, TPPs and furthering the objective of LUPAA when reviewing an RLUS.
It also specifically requires the Minister to review all RLUSs for consistency with the TPPs as soon as practicable after the making of the TPPs, or an amendment of the TPPs.

Clause 6 Amends Section 8 amended (Functions of Commission)

Provides that the functions of the Tasmanian Planning Commission (the Commission) also include the need to conduct reviews of the State Planning Provisions (SPPs), TPPs and the Local Provisions Schedules (LPSs), when required to do so under LUPAA.

Clause 7 Inserts Part 2A – Tasmanian Planning Policies

Makes provision for the:

- content, preparation and public exhibition of draft TPPs;
- consideration of representations by the Commission and the framework for the Commission's report on the acceptability of the TPPs;
- making of, and amending the TPPs, and their regular review.

Specifically:

12A – Interpretation of Part 2A

Provides relevant definitions for Part 2A.

12B – Contents and purposes of Tasmanian Planning Policies

Sets out the contents and purposes of the TPPs. Specifically that they set out the aims and principles that are to be achieved or applied by the Tasmanian Planning Scheme and the regional land use strategies.

The TPPs may relate to:

- the sustainable use, development, protection or conservation of land;
- environmental protection;
- any other matter that may be included in a planning scheme or a regional land use strategy.

Sets the scope of the policies and the requirement that they must further the objectives in Schedule 1 of LUPAA and be consistent with any State Policies.

Also provides for the TPPs to specify the manner in which they are to be implemented through the SPPs, LPSs and RLUSs.

12C – Draft of the TPPs

Provides for the Minister to prepare a draft of the TPPs, but requires consultation with the Commission, and planning authorities, and with those State Service Agencies and State authorities that the Minister thinks fit to consult.

12C(3) enables the Minister to provide the draft of the TPPs to the Commission and to direct that a public exhibition process is undertaken. This provides the Minister with the mechanism to initiate the process of making the TPPs through the public exhibition process.

12D – Public exhibition of draft of the TPPs

Sets out the requirements for public exhibition of the draft TPPs, through the Commission.

(Note: the Commission may hold hearings with respect to representations made in accordance with their powers under the *Tasmanian Planning Commission Act 1997*).

The period of exhibition of the TPPs is 60 days for new TPPs, and 42 days for subsequent amendments of the TPPs made under s.12H.

12E – Representations

Makes provision for representations on the draft TPPs to be directed to and be considered by the Commission.

12F – Report by Commission

Sets out the scope of the Commission's report on the TPPs.

Allows the Commission a period of 90 days, or a longer period allowed by the Minister, to provide a report to the Minister for new TPPs and 60 days to provide a report for any amendments to the TPPs under s.12H.

This is consistent with the processes for the SPPs set out in LUPAA, which recognise that first SPPs were substantial in scope and number and subsequent amendments will require considerably less review time.

12G – Making of the TPPs

Provides a capacity for the Minister to 'make' (or 'refuse to make') the TPPs, after considering the Commission's report (s.12F) and after being satisfied that the TPPs meet the TPP criteria – as set out in s.12B(4).

The Minister is required to publish a notice in the *Gazette* and newspapers that are published and circulate generally in Tasmania specifying that the TPPs have been made, with the date they come into effect. The notice published in the newspapers must also specify if the TPPs are made in terms of a draft of the TPPs, or modified as the Minister thinks fit, and the reasons why the Minister modified the draft of the TPPs.

The Minister is also required to publish a notice in the *Gazette* if the Minister refuses to make the TPPs.

12H – Amendments to the TPPs

Provides that the Minister may amend the TPPs and sets out the requirements for any amendment.

The period of exhibition of a draft amendment of the TPPs is 42 days.

The Commission has a period of 60 days, or a longer period allowed by the Minister, to provide a report to the Minister on a draft amendment of the TPPs.

Provides for the making of the amended TPPs.

12H(4) provides for the Minister to determine that public exhibition is not required if satisfied that the amendment is minor in nature and the public interest will not be prejudiced.

A minor amendment to the TPPs can be made if it is for:

- correcting an error, removing an anomaly, or clarifying or simplifying in the TPPs;
- amending a provision of the TPPs providing it does not change intent of a policy expressed in the TPPs;
- bringing the TPPs into conformity with a State Policy; or
- for a prescribed purpose.

12I – Minister to review the TPPs

Provides that the Minister is to keep the TPPs under regular and periodic review.

Clause 8 Section 15 amended (SPPs criteria)

Provides that the SPPs are consistent with the TPPs that are in force when the SPPs are made or amended.

Clause 9 Section 30BA inserted

Inserts section 30BA into LUPAA whereby the Minister for Planning may determine that the SPPs conform with certain planning directives.

Given that planning directives have already been assessed through a public exhibition and hearing process, this provision enables the SPPs to be amended

to align with an approved planning directive without needing to be assessed again.

This clause is limited to amendments giving effect to *final* planning directives that have been subject to a public exhibition and assessment process, and does not apply to interim planning directives that take effect without having been through a public exhibition and assessment process.

Clause 10 Section 30H amended (When public exhibition not required)

Provides the mechanism in LUPAA whereby the Minister can declare that public exhibition in relation to a draft amendment of the SPPs is not required because the draft amendment has been assessed as part of a *final* planning directive and it is required to bring the SPPs into conformity with the planning directive.

This will allow the Minister and the Commission to determine whether the public exhibition and hearing components of the assessment process for the SPPs can be dispensed with. However, this power is only provided if the Minister has determined that a *final* planning directive should be reflected in the SPPs and the public interest will not be prejudiced.

Clause 11 Section 30T amended (Review of the SPPs)

Requires the SPPs to be reviewed for consistency with the TPPs as soon as practicable after the making of the TPPs, or an amendment of the TPPs.

Also provides for the Minister to conduct a review of the SPPs at any time.

Clause 12 Section 31 amended (Interpretation of Part)

Amends section 31 of LUPAA to insert a definition for an 'LPS criteria outstanding issues notice'. A notice sets out what further information is required for consideration during the public hearings into the draft LPS, in order for the Commission to be of the opinion that the draft LPS meets the LPS criteria.

When the Commission is assessing a draft LPS, it needs to be satisfied that the LPS Criteria have been met under section 34 of LUPAA and that the draft LPS is suitable for public exhibition, before it is publically exhibited.

An 'LPS criteria outstanding issues notice' provides a mechanism whereby the Commission, as part of this component of the assessment process, can list any outstanding issues in the notice. These outstanding issues can be considered after the draft LPS has been publically exhibited and during the public hearings into the draft LPS.

An 'LPS criteria outstanding issues notice' forms part of the relevant exhibition documents in relation to the draft LPS.

Clause 13 **Section 34 amended (LPS criteria)**

Specifically:

Provides that Local Provision Schedules (LPSs) are consistent with the TPPs.

It requires the direct application of the TPPs to the LPSs, in the period before the State Planning Provisions (SPPs) and Regional Land Use Strategies (RLUSs) have been reviewed, for consistency with the TPPs.

After the SPPs and RLUSs have been reviewed for consistency with the TPPs, the LPSs only need to comply any directions in the TPPs that are required to be implemented through the LPSs.

Specifically:

Provides a decision-maker with the ability to apply a higher level of judgement when determining that a draft LPS meets the LPS Criteria with regard to the RLUSs or a local council's strategic plan. A decision-maker now needs to be satisfied that:

- as far as practicable, the draft LPS is consistent with the RLUS for the regional area in which the land is situated.
- they have had regard to a local council's strategic plan that applies to the land (given that these documents may not have been assessed through a public process or may be difficult to relate directly to the relevant planning instrument).

Clause 14 **Section 35B amended (Directions to exhibit draft LPSs)**

Omits sections 35B(1), (2), (3) and (4) of LUPAA and inserts new sections to specify the circumstances when the Commission can direct a planning authority to undertake the public exhibition of a draft LPS. It also specifies that the Commission may prepare an 'LPS criteria outstanding issues notice' and it can form part of the exhibition documents in relation to a draft LPS.

This means that once the Commission is satisfied that a draft LPS meets the LPS criteria and is suitable for public exhibition, it will not need to first seek the approval of the Minister before directing a planning authority to exhibit the draft LPS, given that this is an administrative step and the Minister is unlikely to deny a request from the Commission that it direct the exhibition of a draft LPS.

(4D) specifies that the Commission must notify the Minister for Planning of a direction requiring a planning authority to undertake the public exhibition of a draft LPS.

Clause 15

Section 35C amended (Notice of exhibition of draft LPS)

Amends section 35C of LUPAA to provide that an exhibition notice made by a planning authority includes any 'LPS criteria outstanding issues notice' in the 'relevant exhibition documents' on a draft LPS. The exhibition notice must also invite persons and bodies to make a representation on the 'relevant exhibition documents' in relation to the draft LPS.

As already specified in LUPAA, the exhibition period starts on the day when all the relevant exhibition documents in relation to a draft LPS are available for viewing by the public and it runs for a period of 60 days (excluding the days on which the exhibition premises are closed during normal business hours).

Clause 16

Section 35D amended (Exhibition of draft LPS)

Amends section 35D of LUPAA to provide that instead of a planning authority and the Commission only making a copy of a draft LPS available for viewing by the public, they must make all the 'relevant exhibition documents' in relation to a draft LPS publically available at their premises or for viewing via an electronic address (that includes an 'LPS criteria outstanding issues notice' forms part of the relevant exhibition documents).

Clause 17

Section 35E amended (Representations)

Provides that a person or body making a representation on a draft LPS to a planning authority can make a representation on the 'relevant exhibition documents'.

However, a representor can only make a representation on the draft LPS and the 'LPS criteria outstanding issues notice' (and cannot make a representation on any applied, adopted or incorporated documents in the draft LPS).

Clause 18

Section 35F amended (Report by planning authority to Commission about exhibition)

Provides that when a planning authority is providing a report to the Commission after the public exhibition period in relation to whether a draft LPS meets the LPS Criteria or ought to be modified, the report is to contain a copy of each representation made under section 35E(1) of LUPAA in relation to the 'relevant exhibition documents'.

The planning authority must also include a statement containing the planning authority's response to any matters referred to in an 'LPS criteria outstanding issues notice'. This is to ensure that any outstanding information or responses required from a planning authority are made available prior to any hearings being held.

Clause 19 **Section 35G amended (Planning authority may notify Minister as to whether amendment of SPPs is required)**

Provides that a planning authority may advise the Commission that it is of the opinion that the content of a provision of the SPPs should be altered after considering any representations made under section 35E(1) in relation to 'the relevant exhibition documents' in relation to the draft LPS.

Clause 20 **Section 35H amended (Hearings)**

Provides that the Commission must hold a hearing in relation to any representations in relation to the 'relevant exhibition documents' in relation to a draft LPS that are contained in a report prepared by a planning authority under section 35F(1) of LUPAA.

Provides that the Commission can decide to dispense with a hearing in relation to the 'relevant exhibition documents' in relation to a draft LPS under certain circumstances that are listed in LUPAA (which includes if all the representations are in support of the draft LPS).

Clause 21 **Section 40C amended (Direction to prepare draft amendments of LPS)**

Provides that when a planning authority prepares a draft amendment of an LPS, it must ensure that, as far as practicable, the LPS must be consistent with the applicable Regional Land Use Strategy.

Clause 22 **Section 40FA inserted**

Makes provision for the insertion of section 40FA, whereby a planning authority must notify certain State Service Agencies or State authorities before exhibiting a draft amendment of an LPS under section 40H of LUPAA.

Mandatory 'relevant agencies' will be listed in regulation, although provision is made for a planning authority to notify other certain State Service Agencies and State authorities that it considers may have an interest in the draft amendment of an LPS.

This provision ensures that State Service agencies or State authorities do not miss a newspaper advertisement that details a draft amendment of an LPS and therefore, the opportunity to make a representation to the planning authority on the interests of the State.

40FA(2) specifies that planning authorities are not required to notify 'relevant agencies' (or other State Service agencies or State authorities) of a draft amendment of an LPS when the draft amendment relates to section 40I(1) of LUPAA (which includes if an amendment of an LPS is urgently required; an amendment is required to correct minor errors, anomalies or inconsistencies; or an amendment is required to bring the LPS into conformity with a State Policy).

- Clause 23 **Section 40J amended (Representations)**
Provides that a person or a body may make a representation to a planning authority on the 'relevant exhibition documents'.
- Clause 24 **Section 8IAA inserted**
Makes provision for the insertion of section 8IAA in Division 2 of Part 6 of LUPAA, whereby the Commission can correct errors that are of a 'minor' nature in its decision document prior to the decision coming into effect, providing it is to correct a clerical mistake, accidental omission or an evident miscalculation of figures.

This means that the substance of the Commission's decision cannot be altered after an LPS (or a modified LPS), a draft interim planning scheme under the former provisions, or a draft amendment of a planning scheme under the former provisions, has come into effect.
- Clause 25 **Section 87D inserted**
Provides that the savings and transitional provisions specified in Schedule 7 have effect.
- Clause 26 **Schedule 6 amended (Savings and Transitional Provisions – *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*)**
With respect to the transitional arrangements that apply to existing planning schemes (that include the interim planning schemes) under the former LUPAA, provision is made for:
 - a number of administrative changes to clarify the transitional provisions and definitions;
 - clarifying the operation of planning directives and interim planning directives under Parts 2A (Planning Directives) and 3 (Planning Scheme) of the former provisions in LUPAA;
 - providing for the efficient alignment of the SPPs and LPSs with a *final* planning directive that has been approved since the SPPs were finalised;
 - providing for notification to 'relevant agencies' on the date when a draft amendment will be placed on public exhibition (or State Service Agencies or State authorities that the planning authority considers may have an interest in the draft amendment);
 - requiring that amendments to existing planning schemes are to be consistent with any relevant requirement set out in the TPPs once they are made.

Specifically:

1 – Interpretation of this Schedule

Provides relevant definitions and clarifies the operation of a number of definitions in Schedule 6.

3(1) and (2) – Savings of various instruments

Sets out the operation of planning directives in relation to a municipal area prior to an LPS coming into effect. Administrative changes to this section allow a planning directive to be both modified or revoked, and deletes subsection 3(1)(c).

Further administrative changes to subsection 3(2) to clarify that a planning instrument remains in operation until an LPS comes into effect; and inserting into subsection 3(2)(b) that Parts 2A and 3 of the former provisions in LUPAA remain in force in relation to the municipal area and accordingly a planning directive, and an interim planning directive may be made under Part 2A of the former provisions in relation to the municipal area.

Makes provision for the insertion of subsection 3(2)(ba) whereby a planning directive, and an interim planning directive that is in force after the commencement day, made under Part 2A of the former provisions as they apply in accordance with paragraph (b), applies in relation to the planning instrument.

3(3) and 3(4) – Notice to ‘relevant agencies’

3(3) makes provision for the insertion of subsection 3(3) whereby a planning authority must notify certain State Service Agencies or State authorities before exhibiting a draft amendment of a planning instrument under section 38 of the former provisions of LUPAA.

Mandatory ‘relevant agencies’ will be listed in regulation, although provision is made for a planning authority to notify other certain agencies and State authorities that it considers may have an interest in the draft amendment of the planning instrument

This provision ensures that State Service agencies or State authorities do not miss a newspaper advertisement that details a draft amendment of a planning instrument and therefore, the opportunity to make a representation to the planning authority on the interests of the State.

3(4) specifies that planning authorities are not required to notify ‘relevant agencies’ (or other State Service agencies or State authorities) of a draft amendment of a planning instrument when the draft amendment is not required to be exhibited under the former provision of LUPAA.

3(5), 3(6) and 3(7) – Draft amendments to be consistent with the TPPs

3(5) specifies that a planning authority must not certify a draft amendment of a planning instrument under section 35 of the former LUPAA or undertake a modification, or an alteration to a substantial degree, of a draft amendment under section 41A of the former LUPAA unless the planning authority is satisfied that the draft amendment is consistent with the TPPs.

3(6) specifies that the Commission must not approve draft amendment of a planning instrument under section 42 of the former LUPAA; modify, or alter to a substantial degree; require a draft amendment to be modified or altered to a substantial degree; or certify an altered draft amendment under sections 41 or 41B of the former LUPAA, unless the Commission is satisfied that the draft amendment is, or would be, consistent with the TPPs.

3(7) further clarifies that the aims and principles of the TPPs in relation to the Tasmanian Planning Scheme, as referred to in section 12B (Contents and purposes of Tasmanian Planning Policies), are to be taken to be the aims and principles of the TPPs in relation to a draft amendment of a planning instrument.

8A(3) – Inclusion of certain plans, zones and qualifications inserted or amended after commencement day

Relates to the inclusion of certain plans, zones and qualifications inserted or amended in a planning scheme after the commencement day of the current LUPAA, and clarifies that the subsection relates to a 'plan, zone, or qualification' that applies to the 'land' rather than to a planning scheme.

Clause 27

Schedule 7 inserted

Inserts a new schedule (Schedule 7) in the Savings and Transitional Provisions that ensures that the first Local Provision Schedules (LPSs) made are not required to be consistent with the TPPs – this is because the first LPSs may be made prior to the making of the TPPs.

Only future amendments to these LPSs will be required to be consistent with the TPPs.

PART 3 – TASMANIAN PLANNING COMMISSION ACT 1997 AMENDED

Clause 28

Principal Act

Identifies the Principal Act as the *Tasmanian Planning Commission Act 1997*.

Clause 29

Section 18A inserted

Inserts section 18A (Correction of minor errors) in Part 4 (Miscellaneous) of the *Tasmanian Planning Commission Act 1997*.

Provides a mechanism whereby the Commission can correct errors that are of a 'minor' nature in its decision document prior to the decision coming into effect, providing it is to correct a clerical mistake, accidental omission or an evident miscalculation of figures.

The substance of the Commission's decision to which the new section 81AA of the LUPAA applies cannot be altered where the decision has taken effect and the correction of the decision would alter the rights or obligations of the person or another person.

Clause 30

Repeal of Act

Provides for the repeal of this Act.