

TASMANIA

MARINE FARMING PLANNING AMENDMENT BILL 2011

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MARINE FARMING PLANNING AMENDMENT BILL 2011

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
17 November 2011

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Marine Farming Planning Act 1995*

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 *Marine Farming Planning Amendment Act 2011*.

2. Commencement

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

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3. Principal Act

In this Act, the *Marine Farming Planning Act 1995** is referred to as the Principal Act.

4. Section 23 amended (Environmental impact statement)

Section 23(1) of the Principal Act is amended by omitting “plan to a draft plan.” and substituting “plan.”.

5. Section 33 substituted

Section 33 of the Principal Act is repealed and the following section is substituted:

33. Request for amendment of marine farming development plan

- (1) Once a marine farming development plan has been in operation for at least 2 years, a person (“applicant”) may request that it be amended.
- (2) The request is to be made to the planning authority in a form approved by that authority.
- (3) Within 35 days after receiving the request or any longer period the Panel allows, the planning authority must make

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- a recommendation to the Panel as to whether the amendment should be made.
- (4) After considering the recommendation under subsection (3), the Panel may –
- (a) approve the making of the amendment; or
 - (b) refuse to approve the making of the amendment.
- (5) As soon as practicable after making a decision under subsection (4)(a), the Panel must seek the Minister's approval to direct the planning authority to prepare the draft amendment.
- (6) If subsection (4)(a) applies and the Minister gives the approval sought under subsection (5), then, as soon as practicable after obtaining that approval, the Panel must –
- (a) direct the planning authority, in writing, to prepare the draft amendment; and
 - (b) serve notice of the approval and the direction on the applicant.
- (7) If subsection (4)(a) applies but the Minister refuses to give the approval sought under subsection (5), then, as soon as practicable after being informed of that refusal, the Panel must serve notice of that refusal on the applicant.

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(8) If subsection (4)(b) applies, then, as soon as practicable after making its decision, the Panel must serve notice of the refusal and the reasons for the refusal on the applicant.

(9) If –

(a) subsection (4)(b) applies; or

(b) subsection (4)(a) applies but the Minister refuses to give the approval sought under subsection (5) –

the planning authority must not, in the 2-year period immediately following the date of the relevant refusal, consider or action any request for the making of a substantially similar amendment to the same marine farming development plan.

6. Section 34 amended (Amendment of marine farming development plan)

Section 34 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “The Panel may decide” and substituting “Notwithstanding section 33, the Panel may at any time decide”;

(b) by omitting subsection (2) and substituting the following subsections:

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- (2) On making a decision under subsection (1), the Panel may direct the planning authority, in writing, to prepare the draft amendment.
- (3) However, if subsection (1)(a) or (b) applies, the direction may be given only with the Minister's prior approval.

7. Section 35 amended (Certification of draft amendment)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) Within 10 weeks after being given a direction under section 33(6)(a) or section 34(2) or any longer period the Panel allows, the planning authority must prepare a draft amendment and, unless it is withdrawn pursuant to section 36, submit it to the Panel.
- (b) by omitting subparagraph (i) from subsection (2)(b) and substituting the following subparagraph:

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- (i) must alter it as the Panel considers necessary or expedient and then refer it to the Minister for approval for the draft amendment, as so altered, to be publicly exhibited; or

8. Section 36 amended (Withdrawal of draft amendment)

Section 36(1) of the Principal Act is amended by inserting “, with the Minister’s approval,” after “Panel”.

9. Section 39 amended (Representations in respect of draft amendment)

Section 39(2) of the Principal Act is amended by omitting paragraph (e) and substituting the following paragraph:

- (e) is to be lodged by the date and at the place specified pursuant to section 38(2)(b)(vi) and (vii).

10. Sections 41 and 42 substituted

Sections 41 and 42 of the Principal Act are repealed and the following sections are substituted:

41. Consideration by Panel of draft amendment, &c.

- (1) As soon as practicable after it receives a report under section 40 or a referral under section 42(3)(b) in relation to a draft amendment, the Panel must, as the case requires –
 - (a) consider the draft amendment and report; or
 - (b) reconsider the referred draft amendment and the concerns indicated by the Minister.
- (2) After complying with subsection (1), the Panel must make a determination to –
 - (a) recommend to the Minister that the draft amendment be accepted without change; or
 - (b) modify the draft amendment; or
 - (c) direct the planning authority to modify the draft amendment; or
 - (d) recommend to the Minister that the draft amendment be rejected.
- (3) If subsection (2)(b) applies, the Panel must –
 - (a) modify the draft amendment; and
 - (b) notify the planning authority in writing of its determination and

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the reasons for making it, and of
the modification.

- (4) If subsection (2)(c) applies, the Panel must –
 - (a) notify the planning authority in writing of its determination and the reasons for making it, and of the required modification; and
 - (b) by the same notification, direct the planning authority to make the required modification.
- (5) The provisions of this Division, other than sections 33 and 34, apply in relation to the modification of a draft amendment as if it were a draft amendment.

41A. Recommendation of Panel on draft amendment

- (1) On making a determination under section 41(2)(a) or (d), the Panel must notify the Minister in writing of the relevant recommendation.
- (2) The Panel must give the notification under subsection (1) not later than –
 - (a) 3 months after receipt of the relevant report under section 40; or
 - (b) any later day the Minister approves.

42. Final approval or refusal of draft amendment

- (1) After considering a notification under section 41A(1) in respect of a draft amendment, the Minister may –
 - (a) give final approval to the draft amendment; or
 - (b) give final approval to the draft amendment subject to such alterations as the Minister, on his or her own motion, considers necessary or expedient; or
 - (c) refuse to give final approval to the draft amendment.
- (2) For the purposes of exercising his or her power under subsection (1), the Minister may at any time seek further information from the Board, Panel or planning authority.
- (3) If the Minister refuses to give final approval to the draft amendment, the Minister may, as the circumstances require –
 - (a) advise the Panel and the planning authority that he or she has accepted the Panel's recommendation to reject the draft amendment; or

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- (b) refer the draft amendment back to the Panel, indicating any concerns the Minister has with the draft amendment.
- (4) If the Minister gives final approval to the draft amendment –
 - (a) the Minister must advise the Panel and the planning authority of the final approval and, if subsection (1)(b) applies, the relevant alterations; and
 - (b) as soon as practicable after receiving the advice under paragraph (a), the planning authority, by public notice, must advertise the final approval and, if subsection (1)(b) applies, the relevant alterations.
- (5) The Minister may give final approval to the draft amendment by –
 - (a) signing the draft amendment (after incorporating any alterations made under subsection (1)(b)) and notating the approval on the relevant marine farming development plan; or
 - (b) signing a replacement marine farming development plan.

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- (6) If the Minister gives final approval to the draft amendment –
 - (a) the amendment as so approved prevails over an existing marine farming development plan to the extent of any inconsistency; and
 - (b) a marine farming development plan replaced by the amendment as so approved ceases to have effect on the signing, by the Minister, of the replacement marine farming development plan.

11. Section 52 amended (Participation in allocation process)

Section 52 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:
 - (1) If a marine farming zone is designated under a privately prepared draft plan or as a result of a privately requested amendment to a marine farming development plan, the Minister may –
 - (a) invite the relevant person to apply for a lease in

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respect of the marine
farming zone; or

(b) seek the advice of the
Board as to –

(i) the persons or
class of persons
who should
participate in the
process leading to
the allocation of a
lease in respect of
the marine
farming zone; and

(ii) whether the
process referred to
in
subparagraph (i) is
one in which a
person holding a
certificate of
preference may
participate.

(1A) If a marine farming zone is
designated otherwise than –

(a) under a privately prepared
draft plan; or

(b) as a result of a privately
requested amendment to a
marine farming
development plan –

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the Minister is to seek the advice
of the Board as to –

- (c) the persons or class of persons who should participate in the process leading to the allocation of a lease in respect of the marine farming zone; and
 - (d) whether the process referred to in paragraph (c) is one in which a person holding a certificate of preference may participate.
- (b) by omitting subsections (2) and (3);
- (c) by inserting the following subsection after subsection (6):

(7) In this section –

“privately prepared”, draft plan, means a draft plan prepared pursuant to an approval under section 16;

“privately requested amendment”, of a marine farming development plan, means an amendment of the plan requested under section 33;

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“relevant person” means –

- (a) for a privately prepared draft plan, the person who prepared the draft plan; and
- (b) for a privately requested amendment of a marine farming development plan, the person who requested the amendment.

12. Section 53 amended (Method for allocation of lease)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is to” first occurring and substituting “may”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - (2) On receiving advice pursuant to subsection (1), the Minister may decide –
 - (a) the method to be used to allocate the relevant lease; and

- (b) the criteria to be used in selecting a person who is to be allocated the relevant lease.
- (c) by omitting subsection (3);
- (d) by inserting in subsection (4) “to the Minister pursuant to subsection (1)” after “advice”.

13. Section 95 amended (Appeals against amendments and grants)

Section 95 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) a decision by the Minister not to approve the giving, by the Panel, of a direction to the planning authority to prepare a draft amendment to a marine farming development plan; and
- (b) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) 14 days after service of a notice under section 33(7) for an appeal under subsection (1)(ab); or

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14. Repeal of Act

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