

TASMANIA

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

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

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.

SHANE DONNELLY, *Clerk of the House*  
15 June 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.

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**3. Principal Act**

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

**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

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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

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before an LPS applies in  
relation to the municipal  
area –

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

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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 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

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of the Commission, the relevant amendment –

- (a) will conform to the requirements of the SPPs 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



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provisions in the  
relevant  
amendment, in the  
LPS to which the  
relevant  
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

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contains permitted  
alterations; and

(ii) to submit the  
relevant  
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

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(b) a particular  
purpose zone; or

(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 –

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

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provisions, other provisions in the draft LPS, or in other instruments 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:

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- (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 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

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paragraph (d), the  
draft LPS as so  
modified; and

(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

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instrument, a  
provision of a  
code that  
formed part of,  
or was referred  
to in, the  
planning  
instrument.

(2) If –

- (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 –



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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, 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

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- (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) –

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

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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
  - (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

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- under  
subclause (7); 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 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,

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under a provision of Part  
3A of this Act, in relation  
to a draft LPS that has  
been approved under this  
subclause.

**5. Repeal of Act**

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