

DRAFT SECOND READING SPEECH

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Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Bill 2015

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The introduction of a statewide planning scheme is a key election commitment of the Government.

The Tasmanian Planning Scheme will deliver a consistent approach to the planning controls that apply across the state, providing greater certainty to investors and the community about what types of use and development can occur.

It will also provide the necessary flexibility to ensure that local planning matters can be adequately catered for and that an appropriate balance between consistency and meeting local planning needs can be achieved.

The Bill provides the structure for the Tasmanian Planning Scheme, which will consist of State Planning Provisions and a Local Provisions Schedule that applies in each municipal area.

The State Planning Provisions will be developed by the Minister or the Tasmanian Planning Commission (the Commission) on the direction of the Minister, in consultation with planning authorities and relevant state agencies and state authorities.

Local planning authorities will then develop the Local Provisions Schedules, and will continue to administer all of the planning controls that apply in their municipal area.

The Tasmanian Planning Reform Taskforce, reporting to me as Minister, is undertaking the initial drafting of the State Planning Provisions in an extensive consultation process with local government, community, environmental, agricultural, industry, small, medium and large business stakeholders, ahead of the important Tasmanian Planning Commission's statutory public consultation process provided for by this Bill.

While the Bill is enabling legislation to provide for the Tasmanian Planning Scheme to be developed and introduced, the Government recognises that some certainty around the types of local variations that will be allowable is desirable in the legislation.

The Bill explicitly allows for particular types of local provisions and variations to the State Planning Provisions, such as Specific Area Plans, Particular Purpose Zones and site specific qualifications.

The Bill includes comprehensive transitional arrangements for planning schemes and other matters to ensure the current planning schemes continue to operate until the Tasmanian Planning Scheme comes into force in each council area.

This Bill provides more robust and transparent processes for making the State Planning Provisions compared to the planning directive processes in the Principal Act.

It provides that while any person may request an amendment to the State Planning Provisions, the preparation of the draft provisions and any amendments to these is controlled through the Minister, who may either prepare the draft or direct the Commission to do so.

Furthermore, the Bill provides for the development of the State Planning Provisions with consultation with relevant parties, public exhibition and representations, together with a formal assessment by the Commission.

It is a more transparent and accountable process than currently exists.

The powers in the Principal Act for the Minister to declare interim planning schemes and interim planning directives that come into effect prior to any public exhibition and assessment will not be retained for the Tasmanian Planning Scheme, once the Scheme is operational.

The Bill requires the State Planning Provisions and Local Provisions Schedules to be publicly exhibited and assessed as a draft before they come into effect, unlike the previous interim scheme process. This will provide a high degree of transparency and natural justice for the introduction and ongoing implementation of the Tasmanian Planning Scheme.

It is appropriate that I thank all stakeholders for providing comprehensive and considered advice and solutions during the 6-week public consultation on the draft Bill.

It was encouraging to see that the draft Bill received broad support from industry and community stakeholders and the Tasmanian Planning Reform Taskforce, which includes membership from the Local Government Association of Tasmania, industry groups – the Tasmanian Chamber of Commerce and Industry, the Master Builders Association, the Housing Industry Association and Tasmanian Farmers and Graziers Association - together with planning and legal experts.

The Government has responded to matters raised during the consultation process and made changes to the final Bill, including providing for greater transparency around the processes for making, amending and reviewing the Tasmanian Planning Scheme in circumstances where the Minister is the decision-maker, as well as addressing a range of matters of a technical nature including issues identified with the Principal Act.

I now turn to the contents of the Bill.

The Bill replaces the provisions for making and amending planning directives, planning schemes and interim planning schemes with a framework for the Tasmanian Planning Scheme consisting of the State Planning Provisions and Local Provisions Schedules.

The Bill includes new definitions and a framework for what may be included in the State Planning Provisions and the Local Provisions Schedules including where certain local variations may modify, override, substitute for, or apply in addition to, the State Planning Provisions.

It provides that the Minister must prepare terms of reference for the draft State Planning Provisions and may either prepare or direct the Commission to prepare the draft. The Minister or the Commission respectively must consult with planning authorities, relevant state agencies

and authorities, and if the Minister is preparing them, he or she must also consult with the Commission.

Once the draft State Planning Provisions are prepared, the Commission must publicly exhibit them along with the terms of reference, an explanatory document and any incorporated documents.

Any person may make a representation, which must be considered by the Commission in its formal assessment. The Bill retains the power in the Principal Act for the Commission to hold hearings as part of the process. It also lists matters the Commission must consider and report on.

The Bill provides greater transparency in preparing the State Planning Provisions than the Principal Act provides for planning directives, where any person may prepare a draft without being required to consult, no terms of reference or explanatory documents are required, and there is no general invitation for public representations.

Currently, under the Principal Act the Commission must publish notice that it is undertaking an assessment of the draft planning directive however it is only required to invite representations from planning authorities, the person who prepared the draft and any affected state agencies.

There are also no statutory timeframes and no clear requirement for the Commission to consider any submissions that may be received from the public or other bodies in addition to the representations from the invited parties in the Principal Act.

The Bill addresses these matters in a more transparent and accountable process.

In addition to considering the Commission's report, the Minister may inform him or herself in any manner, before deciding whether to make the State Planning Provisions, with or without amendments. This would allow, for example, the Minister to seek advice from an expert body or state authority on any a particular matter.

The Minister may also re-exhibit a part of the State Planning Provisions that have been modified following the exhibition and assessment process.

Furthermore, where the Minister makes any modifications he or she must publish the reasons for the modifications to enhance transparency.

The Bill provides for separate notice to be given that the State Planning Provisions will come into effect in a municipal area. This will allow the State Planning Provisions to come into effect in each municipal area once the relevant Local Provisions Schedule is made.

The process for amending the State Planning Provisions is similar to the process for making them. Any person may request the Minister to amend the State Planning Provisions, and there are specific provisions for planning authorities to raise matters that may require an amendment to the State Planning Provisions during the process of making the Local Provisions Schedules.

The Bill requires the Minister to review the State Planning Provisions every 5 years or to direct the Commission to undertake a review of a particular matter at any time.

The processes in the Bill for making and amending Local Provisions Schedules are broadly similar to the current processes, which they will replace, for making and amending planning schemes in the Principal Act.

The Bill provides that a planning authority may prepare a draft Local Provisions Schedule or may be directed to do so by the Minister. This will allow the Minister to direct a planning authority to prepare a draft Schedule once the State Planning Provisions are made, to provide for the Tasmanian Planning Scheme to come into effect in that area.

Once a planning authority has provided the draft Local Provisions Schedule to the Commission, the Commission may, with the Minister's approval, direct the planning authority to publicly exhibit the draft. Representations and a report from the planning authority are subject to statutory assessment and report by the Commission to the Minister.

The Commission can then make the final Local Provisions Schedule, with or without amendments and with the agreement of the Minister.

The Bill retains the power in the Principal Act for a planning authority to seek the Commission's approval to withdraw a draft Local Provisions Schedule if it proposes to prepare another draft Schedule or a Special Local Provisions Schedule to replace it.

The Bill provides transitional arrangements for the inclusion of local variations to the State Planning Provisions in the first Local Provisions Schedules, through translation of the particular purpose zones, specific area plans and site specific qualifications in current planning schemes.

There is flexibility for these to be amended if required, or excluded from automatic translation by the Minister on the advice of the Commission, if it is not appropriate for such a local variation to translate. For example, where an existing local variation is catered for by a new zone or code contained within the State Planning Provisions.

In many cases where a particular purpose zone, specific area plan or site specific qualification has been through a public exhibition and assessment by the Commission, these provisions may not require any further change, particularly where this has occurred recently as part of the interim planning scheme process.

However, these local provisions will go through the public exhibition and assessment process as part of the draft Local Provisions Schedule so that any issues that may be identified with them can be appropriately addressed.

Once the Local Provisions Schedules are in place, local planning authorities will be able to initiate amendments that provide for variation from the State Planning Provisions through new particular purpose zones, specific area plans and site specific qualifications.

A planning authority may initiate an amendment itself or in response to a request, for example from the landowner, or must initiate an amendment where it is directed by the Minister to do so. The Bill specifies the circumstances where the Minister may direct a planning authority to initiate an amendment.

The Bill includes a specific test for new particular purpose zones, specific area plans and site specific qualifications. The test is that the use or development must be of significant social, economic or environmental benefit to the State, region or municipal area, or the area of land must have particular environmental, economic, social or spatial qualities that require unique provisions.

The Bill makes a change to the provisions in the Principal Act that currently prevents someone's capacity to request a similar amendment within a two-year period, to allow the Commission to give leave to a person to make a request where there has been a change to the State Planning Provisions or a regional land use strategy and the Commission is satisfied the change may be relevant to the consideration by the planning authority of the new request.

It includes a change to the process in the Principal Act where the Commission reviews a decision of a planning authority to request additional information from a person requesting an amendment of the scheme. The change allows the Commission to direct the planning authority to revoke the notice or issue its own notice, rather than directing the planning authority to reconsider whether the additional requirement is required.

It also includes a new requirement that if an additional information request is not responded to within 5 years, the application lapses. This addresses an issue with the Principal Act where an application may remain live indefinitely on the basis that at some stage there was a request for additional information. These provisions have been extended to requests for additional information for applications for planning permits as well as applying to applications for amendments to a Local Provisions Schedule.

The Bill retains the provisions in the Principal Act for the making and revoking of special planning orders, which are now called Special Local Provisions Schedules to meet the language and structure of the Tasmanian Planning Scheme.

These only apply in limited circumstances where it may be necessary to bring in planning controls quickly where no such controls apply, or where a specific issue is identified with the Local Provisions Schedule. For example, where Commonwealth land has been sold and effectively ended up with no local planning controls.

The Bill retains the powers in the Principal Act for an exemption from the requirement for public exhibition for urgent and minor amendments, where the public interest will not be prejudiced, for both the State Planning Provisions and Local Planning Schedules.

The processes for combined applications for an amendment to a planning scheme and a permit are retained for Local Provisions Schedules, based on the processes in the Principal Act.

A change has been made to address an issue in the Principal Act where only a planning authority can correct a mistake in a permit, so that the Commission may also correct the permit where the Commission has issued the permit.

The Bill retains the provisions for the declaration by the Minister of regional areas and regional land use strategies and provides a more robust process requiring the Minister to consult with

the Commission, planning authorities and relevant state service agencies and authorities before declaring a strategy.

It also provides that a regional land use strategy may incorporate or refer to any document prepared by a planning authority to reflect the application of the strategy to that municipal area. This will allow local plans, strategies and structure plans to be recognised where appropriate.

The Bill introduces a power for the Commission, with the approval of the Minister, to issue guidelines to assist planning authorities to prepare draft Local Provisions Schedules and amendments to these, and to implement the Tasmanian Planning Scheme.

The Bill delivers on the Government's election commitment to introduce a 21-day statutory timeframe for the assessment of permitted use and development applications.

I made a commitment when I introduced the *Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014* to Parliament last year that I would introduce a 21-day timeframe as part of the next suite of legislative planning reforms for a statewide planning scheme.

The 2014 Bill amended the previous statutory timeframe from 42 to 28 days. In response to issues raised during consultation, the Bill includes a 'stop clock' mechanism where a referral to TasWater occurs, to ensure these referrals will not impact on the time available to planning authorities to undertake the assessment.

The Bill also retains various provisions from the Principal Act relating to planning schemes which in some cases have been modified to address technical matters and issues with the Principal Act, and to fit the new structure and language for the Tasmanian Planning Scheme.

These include provisions for what may be included in a planning scheme, minor amendments and corrections to permits, and the ability for the Commission to take over the role of a planning authority in relation to a local scheme where a planning authority has failed to comply with a provision of the Act in the statutory timeframe.

They also include amendments to the provisions for the Commission to review a planning authority's decision not to initiate an amendment to a planning scheme (now a Local Provisions Schedule) to provide greater clarity that this is a review of process, rather than merit, as the drafting in the Principal Act is considered unclear.

The Bill provides clearer transitional provisions for existing use rights when either a new planning scheme is introduced or amendments are made to an existing scheme, including where no permit was required under the previous scheme, to address an issue identified with the transitional provisions of the Principal Act for existing uses.

It also makes a number of amendments to other sections of the Principal Act to ensure consistency with, and reflect the new language and provisions of the Tasmanian Planning Scheme.

Transitional provisions are included to ensure current planning schemes and other instruments including planning directives and regional land use strategies remain in force until the Tasmanian Planning Scheme comes into force in a municipal area, and that these schemes can operate effectively, including that permits and amendments can be applied for and assessed.

Transitional provisions also allow certain amendments to planning schemes where the assessment has not been completed when a Local Provisions Schedule comes into force, to continue as an amendment to the Local Provisions Schedule.

This includes amendments to change the designation of a zone (from one zone to another), amendments to an existing particular purpose zone, specific area plan or site specific qualification, and amendments to introduce a new specific area plan.

These transitional provisions aim to provide that for complex amendment proposals that may take a significant amount of time to be assessed and a final decision made, including amendments that may have an associated application for a permit, the applicant is not required to initiate what may be a costly and lengthy process from the beginning only because the new scheme has come in.

A person who has requested the amendment may withdraw it at any time, and where a planning authority has initiated it without such a request, the planning authority with the Commission's approval, may withdraw the amendment at any time.

This will allow for an amendment to cease if it is no longer required or desired, for example if a change to the planning controls through the State Planning Provisions means the amendment is no longer necessary.

The Bill provides that a person who has applied for a permit which has not been decided at the time that the Local Provisions Schedule comes into effect may choose to withdraw the application. The right to appeal against a decision under the previous planning scheme is also retained, to address an issue that has been identified with the Principal Act.

Finally, the Bill makes consequential amendments to a number of Acts to ensure these reflect the new section references, language and provisions for the Tasmanian Planning Scheme. These are: the *Historic Cultural Heritage Act 1995*, the *Water and Sewerage Industry Act 2008*, the *Environmental Management and Pollution Control Act 1994* and the *Tasmanian Planning Commission Act 1997*.

This is an important enabling Bill to set in place the structure of the Tasmanian Planning Scheme.

It is a fundamental step in providing a mature and contemporary planning system and articulates the roles and responsibilities of state and local government in a planning system that promotes equity, clarity and consistency across Tasmania.

It retains flexibility for the Tasmanian Planning Scheme to appropriately deal with important local matters and retains the ability for local communities to shape the ways in which their local built and natural environment evolve.

It provides a higher degree of transparency which is supported through a more accountable process and importantly maintains the review role of the independent statutory Tasmanian Planning Commission.

I commend the Bill to the House.