

CLAUSE NOTES

Land Use Planning and Approvals Amendment (Streamlining of Process) Bill 2014

- Clause 1 Short title of the Bill
- Clause 2 The provisions commence on a day or days to be proclaimed.
- Clause 3 Defines the Principal Act for Part 2 of the Bill.
- Clause 4 Amends section 3 of the Principal Act by:
- defining discretionary permit and interim planning directive;
 - amending the definition of interim planning scheme; and
 - amending the definition of planning directive
- Clause 5 Amends section 12(4) of the Principal Act to omit the reference to an Act that has now been repealed and replace it with a reference to the current relevant Act.
- Clause 6 Repeals section 12A of the Principal Act and substitutes a new section 12A for the issue of interim planning directives and a new section 12B for the modification or revocation of interim planning directives. The amendments provide for the provisions of an interim planning directive to have effect, during the period in which it is in force, in substitution of the specified provisions of a planning directive previously issued.
- Clause 7 Amends section 13 of the Principal Act, relating to the issue of planning directives, by providing that this section does not apply to an interim planning directive which are issued under section 12A.

- Clause 8** Amends section 14 of the Principal Act by providing that modification of a planning scheme for a purpose relating to a planning directive under that section may be given effect by annotating the planning scheme and by inserting the provisions of an interim planning directive into the planning scheme in substitution of those which give effect to a planning directive previously issued under section 13(1).
- Clause 9** Repeals section 15 of the Principal Act and substitutes a new section 15 that provides for the modification or revocation of a planning directive, clarifying that this Part does not apply to a modification or revocation of an interim planning directive issued under the new section 12B(1).
- Clause 10** Amends section 16 of the Principal Act so that the power for the Minister to dispense with certain requirements in relation to the modification of a planning directive does not apply to interim planning directives. Modification and revocation of interim planning directives is covered under the new section 12B.
- Clause 11** Inserts a new section 17 in the Principal Act to provide transitional provisions for an application for a permit that is lodged before but has not been determined until after a planning directive comes effect, and for an application for a permit that is lodged and not determined before a planning directive ceases to have effect. Both the planning authority and the Appeal Tribunal must determine the application based on the situation when the application was lodged.

Clause 12 Amends section 20 of the Principal Act to provide that a relevant decision-maker, in preparing, accepting, declaring or making a relevant scheme must be of the opinion that it meets certain existing requirements in the Act. The new section 20(2A) defines a relevant decision-maker as including planning authorities, the Planning Commission and the Minister, and defines a relevant scheme as the various forms of planning schemes and interim planning schemes and any amendments to them.

Section 20 is also amended to extend the provision that restricts a planning scheme from preventing the reconstruction of a building or the restoration of works accidentally destroyed or damaged which were integral and subservient to a lawfully established use, from its current limitation to non-conforming uses, to include uses that conform to the scheme., It also clarifies that this includes removing any requirement a permit under the planning scheme. This provides equity for the reconstruction of accidentally destroyed buildings irrespective of whether the use or development is conforming or otherwise.

Clause 13 Amends section 21 of the Principal Act to provide that a planning scheme must, in the opinion of the relevant decision-maker, meet certain existing requirements in the Act.

Clause 14 Amends section 30E of the Principal Act to provide that a planning scheme must, in the opinion of the relevant decision-maker, meet certain existing requirements.

Clause 15 Amends section 30EA of the Principal Act to ensure the definition of 'relevant scheme' for this

section is consistent with related amendments to the Act.

- Clause 16** Amends section 30F of the Principal Act to allow for an amendment to be initiated or approved under Division 2 or 2A of the Act and to provide consistent references to other sections of the Act based on the repeal of the existing section 30M and 30N and introduction of the new section 30M.
- Clause 17** Amends section 30FA of the Principal Act to provide that the new section 17 applies despite anything in this section. This ensures transitional arrangements for lodged permit applications which do not involve amendments to the planning scheme,
- Clause 18** Amends section 30H of the Principal Act to change the period for public exhibition of an interim planning scheme to 42 days, to replace the current 2 month period.
- Clause 19** Amends section 30I of the Principal Act to omit subsections (3) and (4) which require a planning authority to provide a copy of each representation on a common provision to each other planning authority in the region that is notified under section 30G that an interim scheme has been declared for that area. The current requirement is an unnecessary administrative process.
- Clause 20** Amends section 30IA of the Principal Act to include a requirement that the Minister may only issue an authorisation to amend a scheme in relation to the purposes specified at section 37(1)(a) where he or she is satisfied that the public interest will not be prejudiced. Section

37(1)(a) provides for direct amendments without a public notification process. It also repeals the purposes of the amendment that were previously specified in this section, apart from section 30IA(3)(e) of the Principal Act which is now covered at the amended 30IA(3).

Section 30IA is also amended to correctly reference the relevant sections of the Act as amended and to remove the reference to dispensations, as the dispensation provisions will be repealed by this Bill.

Clause 21 Amends section 30J of the Principal Act to provide a new reporting period for comments on the interim planning scheme of 3 months, to replace the current 4 months once the public exhibition period has finished.

Clause 22 Amends section 30K of the Principal Act to repeal the provisions for mandatory hearings in relation to the representations provided to the Commission in accordance with section 30J(3) and to provide a new process where the Commission after considering the applicable matters must consider whether to issue a notice to the Minister under section 30IA recommending that an authorisation be issued under that provision for an immediate amendment to the interim scheme, and whether to seek the approval of the Minister under section 34(2) for a written direction to be given to the relevant planning authority in relation to initiating an amendment to the scheme which would provide for an opportunity for a hearing before the Commission.

Section 30K is also amended to introduce a statutory timeframe of 3 months or such longer

period as the Minister may allow, for the Commission to consider the applicable matters in relation to the scheme.

Clause 23

Repeals sections 30L, 30M and 30N of the Principal Act and substitutes a new section 30L which provides that the Commission may, but is not required to, provide a report to the Minister in relation to the common provisions of the interim planning scheme within 2 months of complying with section 30K, and a new section 30M.

The new section 30M provides that the Commission, after considering the applicable matters under the current section 30K before it is repealed, may direct the planning authority to, or itself prepare, an interim planning scheme to replace the existing interim planning scheme. It can then, make this replacement interim planning scheme with the approval of the Minister. This section will provide for the planned modifications to be made to the Launceston Interim Planning Scheme, which has been through the hearing process and assessment under s.30K of the current Act. It will not allow modifications to be made to other interim schemes under this section.

Clause 24

Amends section 30O of the Principal Act to provide that an amendment to a local provision of a planning scheme may only be made under Division 2 or 2A of the Act if the amendment is, as far as in the opinion of the relevant decision-maker consistent with the existing requirement in the Act in relation to a regional land use strategy. This section is also amended to remove references to section 30N, which will be repealed.

Clause 25 Repeals Subdivision 4 of Division 1A of Part 3 of the Principal Act, which relates to dispensations. Dispensations for interim planning schemes will be replaced by a consistent amendment process for all planning schemes. Transitional provisions are provided in the new Schedule 5 for dispensation applications made but not decided and for dispensations granted prior to these amendments becoming law.

Clause 26 Amends section 32 of the Principal Act to provide that both a draft amendment and an amendment of a planning scheme must, in the opinion of the relevant decision-maker, meet certain existing requirements in the Act, and introduces a new requirement that such an amendment must in the opinion of the relevant decision-maker, not conflict with the requirements of section 30O, which includes provisions in relation to amendments to local provisions, overriding local provisions, conflicting local provisions, common provisions and optional common provisions of a planning scheme.

Clause 27 Amends section 33 of the Principal Act to provide that if a form has been approved by the Commission, a request for an amendment of a planning scheme is to be in that form. The intention is to allow for a consistent statewide form to be introduced for requesting an amendment to any planning scheme. Where no such form exists, a request is to continue to be in the form approved by the relevant planning authority.

Section 33 is also amended so that when the planning authority is deciding whether to initiate an amendment it must consider any representation

made under section 30I and any statements in any section 30J report that may be relevant to the amendment. This section is also amended to provide that the Commission may allow the planning authority a longer period than 42 days to initiate an amendment to a planning scheme, and that where a planning authority decides to initiate an amendment it must also certify the amendment within that period. The current Act does not set a period for the certification of an amendment.

This section is amended to provide a process for an owner or occupier of land who made a representation under s.30I in relation to a declared and exhibited interim planning scheme that contains a change to the zoning of that land, to request a planning authority to amend a planning scheme. The planning authority must then provide a notice to the Commission that includes specified information including the planning authority's opinion on the merits of the proposed alteration of the zoning. The Commission is to determine within 30 days whether to seek the approval of the Minister to give a written direction under section 34(2) to the planning authority to initiate the amendment.

Clause 28 Inserts a new section 33A and section 33B in the Principal Act to provide a process for a planning authority to require additional information before it considers a request for an amendment, and to provide a process where a person may request the Commission to review the process by which the planning authority reached its decision to require the additional information.

Clause 29 Amends section 34 of the Principal Act to provide a mechanism for a planning authority to withdraw

an amendment that it has initiated of its own motion. Currently there is no process that allows withdrawal of an amendment.

Clause 30 Amends section 37 of the Principal Act to include certain criteria from section 30IA of the Principal Act, and introduces two new criteria at section 37(1)(a)(vid) and (vie) in relation to zoning translation and agreed amendments for interim planning schemes, where the Commission may dispense with the requirements of sections 38, 39, 40 and 41 in relation to the draft amendment.

The Commission must be satisfied that amendments under section 37 do not prejudice the public interest. Consequently a new process is introduced where the Commission must publicly exhibit, invite and take into account any submissions when determining whether the public interest will be prejudiced in respect of an amendment for these two new criteria.

Clause 31 Amends section 38 of the Principal Act to introduce a new standard public exhibition period for a draft amendment of 28 days, or such longer period as is agreed by the planning authority and the Commission.

Clause 32 Amends section 40 of the Principal Act to provide that the Commission, in considering a draft amendment and any representations, may also consider any representation made during the exhibition of the declared interim scheme under section 30I and any statements made in a report under section 30J that is in its opinion, relevant.

Clause 33 Amends section 43 of the Principal Act to provide that this provision relates to the certification of a

draft amendment, as well as its preparation. This section the Commission may assume the responsibilities of a planning authority where it has failed to comply with a provision of the Division within the period specified.

Clause 34 Amends section 43A of the Principal Act to correct an error in the reference to an application under section 43(1).

Clause 35 Amends section 43C of the Principal Act to provide that the planning authority must, *in its opinion*, meet the existing requirements in the Act, when determining an application under section 43E.

Clause 36 Amends section 43E of the Principal Act to clarify the drafting at section 43E(1) and to correctly reference the relevant sections of the Act, as amended.

Clause 37 Inserts a new section 43EA that provides that a person may request the Commission to review the process by which the planning authority reached its decision to require the additional information in relation to a combined planning scheme amendment and development application.

Clause 38 Amends section 43I of the Principal Act to provide that a planning authority may grant a further extension for a further period of 2 years for a use or development to substantially commence before the permit would otherwise lapse, and to provide that an application may be made for the extension of that period, or the initial 2-year extension, any time before 6 months from the day in which the permit would otherwise have lapsed. This effectively provides up to 6 years for

developments to commence where a planning authority agrees to extend the permit on two separate occasions.

Clause 39

Amends section 43K of the Principal Act to provide further clarification on the application of this section for where a planning authority may make a minor amendment to a permit and to include provisions in relation to a minor amendment of a permit where a condition or restriction has been required imposed or amended by the Appeals Tribunal.

This section is also amended to provide that a planning authority must notify the Heritage Council where it amends a permit containing a condition or restriction which the Heritage Council has required. This addresses a current gap in the Act where a notification is only required to be given to the Board of the Environment Protection Authority, but not to the Heritage Council.

Clause 40

Amends section 51 of the Principal Act to provide that an application for a permit under this section is to be in a form, *if any*, approved by the Commission.

Clause 41

Amends section 53 of the Principal Act to mirror the amendments to section 43I of the Principal Act for where a planning authority may grant a further extension for a further period of 2 years for a use or development to substantially commence before the permit would otherwise lapse, and to provide that an application may be made for the extension of that period, or the initial 2-year extension, any time before 6 months

from the day in which the permit would otherwise have lapsed.

Clause 42 Amends section 54 of the Principal Act to provide that a requirement for additional information must be served within 21 days of receiving the application for a discretionary permit, and within 14 days of receiving the application for a permit for permitted use or development. This amendment introduces a shorter timeframe for the request for additional information for permitted use or development, to support the new reduced timeframe for the assessment of a permitted use or development under section 58.

Clause 43 Amends section 56 of the Principal Act to provide further clarification on the application of this section for where a planning authority may make a minor amendment to a permit and to include provisions in relation to a minor amendment of a permit where a condition or restriction has been required imposed or amended by the Appeals Tribunal.

This section is also amended to provide that a planning authority must notify the Heritage Council where it amends a permit containing a condition or restriction which the Heritage Council has required. This addresses a current gap in the Act where a notification is only required to the Board of the Environment Protection Authority, but not to the Heritage Council.

Clause 44 Amends section 58 of the Principal Act to provide that the new period within which a planning authority must grant a permit in relation to a permitted use or development is 28 days, to replace the current 42-day period.

- Clause 45** Amends section 61 of the Principal Act to remove references to sections of the Act that will be repealed, relating to the dispensation provisions.
- Clause 46** Amends section 62 of the Principal Act to remove references to sections of the Act that will be repealed, relating to the dispensation provisions.
- Clause 47** Inserts a new section 87B of the Principal Act to provide that the new savings and transitional provisions in Schedule 5 have effect.
- Clause 48** Inserts a new Schedule 5 that contains transitional provisions. The Schedule includes definitions, validation and savings of certain applications and dispensations, provisions in relation to dispensations and applications for dispensations, and for the application of provisions relating to applications and periods in which actions must be taken.
- Clause 49** Defines the Principal Act for Part 3 of the Bill. This is the Local Government (Building and Miscellaneous Provisions) Act 1993.
- Clause 50** Amends the Principal Act by inserting definitions for acceptable solution, discretionary permit, performance criteria, permitted development permit and planning scheme.
- Clause 51** Amends section 81 of the Principal Act by providing that a planning scheme may provide that an application for approval of a subdivision plan is to be made as if it were an application for a discretionary or a permitted development permit.

- Clause 52** Amends section 83 of the Principal Act to provide that a planning scheme may specify that compliance with a requirement in this section is an acceptable solution, and may enable a permitted development permit to be issued if the acceptable solution is complied with.
- Clause 53** Amends section 84 of the Principal Act by providing that a planning scheme may specify an acceptable solution for section 84(1)(a), (b) or performance criteria for section 84(1)(a) or (b) and that where these are met, the requirements of the section do not apply.
- Clause 54** Inserts a new section 85A to provide that a planning scheme may specify an acceptable solution or performance criteria for a matter referred to in section 85 and that where this is complied with, it may enable a permitted development permit or a discretionary permit to be issued.
- Clause 55** Amends section 86 of the Principal Act to provide that a planning scheme may specify that compliance with a requirement in this section is an acceptable solution, and may enable a permitted development permit to be issued if the acceptable solution is complied with.
- Clause 56** Amends section 109 of the Principal Act to remove the references to interim orders, which is no longer required.
- Clause 57** Amends section 117 of the Principal Act to provide that a planning scheme may specify that compliance with a requirement in subsection (1) is an acceptable solution, and may enable a

permitted development permit to be issued if the acceptable solution is complied with.

Clause 58 Inserts a new section 123 for transitional matters arising under the Amendment Act. The new section inserts definitions for amending Act and commencement day and provides that the amendments to the Principal Act apply to an application that has been made, but not determined, before the commencement day.

Clause 59 Provides that the Amendment Act is repealed 365 days after the day on which all the provisions of the Act commence.