

CLAUSE NOTES

LAND USE PLANNING AND APPROVALS AMENDMENT (STATE AND REGIONAL STRATEGIES) BILL 2009

Clause 1: Short Title

This clause provides for the short title when citing the Act for legal purposes.

Clause 2: Commencement

This clause provides for the commencement of the Act on a day or days to be proclaimed.

Clause 3: Principal Act

This clause provides for the *Land Use Planning and Approvals Act 1993* to be referred to as the Principal Act.

Clause 4: amended (Interpretation)

This clause defines 'Commission', 'interim planning scheme', 'planning directive', 'regional area', 'Regional Corporation', 'regional land use strategy' 'representation' and 'special permit'.

The clause extends the definition of a 'planning scheme' to include 'interim planning schemes' and planning schemes which result from the interim planning scheme assessment process.

The Minister will specify by notice a 'regional area' which will comprise various municipal areas in accordance with s.30C(3).

A 'special permit' is a permit issued by a Development Assessment Panel in respect to a Project of Regional Significance.

Clause 5: Section 20 amended (What can a planning scheme provide for ?)

This clause simply gives the same standing to a development with a 'special permit' as currently exists for a development with a 'ordinary permit'.

Clause 6: Part 3, Division IA inserted

Division IA-Regional Land Use Strategies and Interim Planning Schemes

This clause provides for the inclusion of a new Division in the State planning legislation and provides for the introduction and assessment of Interim Planning Schemes based on regional land use strategies.

Section 30A Purpose of Division

This Section details the fundamental purpose of the Division of ensuring that there is greater consistency between planning schemes within regional areas and within the State.

Section 30B Interpretation Division IA

This Section defines various 'key' terms associated with Interim Planning Schemes and planning schemes approved under this Division.

Section 30C Regional areas and regional planning strategies

This Section provides for the Minister to specify municipal areas that will comprise a 'regional area' and for the Minister to declare a regional land use strategy for each regional area.

Section 30D Interim planning schemes to be provided to Minister

This Section provides for the Minister to receive a draft Interim Planning Scheme from a council. The Section also provides for the Minister to request that a draft Interim Planning Scheme be prepared by a council. The Section provides for the Minister to require the Tasmanian Planning Commission to prepare a draft Interim Planning Scheme in particular circumstances.

Section 30E Contents of interim planning schemes

This Section details provisions that must or may be included in interim planning schemes. In particular the Section requires that a draft Interim Planning Scheme is to be consistent with and likely to further the objectives of the regional land use strategy for the regional area.

Section 30F Declaration of interim planning scheme

This Section provides for the Minister to declare a draft Interim Planning Scheme to be an Interim Planning Scheme and details notification requirements, the status of the Interim Planning Schemes and any current development application.

Section 30G Notice of declaration of scheme or decision not to declare scheme

This Section details notification requirements following the decision of the Minister to declare or not declare an Interim Planning Scheme.

Section 30H Notification and public exhibition of interim planning schemes

This Section details the notification and public exhibition requirements (including timeframes) for Interim Planning Schemes.

Section 30I Representations in relation to interim planning schemes

This Section provides for public representations and associated administrative requirements in relation to Interim Planning Schemes.

Section 30J Report to be provided to Commission

This Section outlines procedures (including timeframes) associated with the preparation and content of a (Council) report required to be provided to the Commission following the public exhibition and receipt of representations in relation to Interim Planning Schemes.

Section 30K Commission to consider scheme and representations and must hold hearings

This Section details the circumstances under which the Commission is required to hold hearings. The Section requires the Commission to hold hearings in relation to representations made on Interim Planning Schemes and details relevant matters to be considered.

Section 30L Commission to report to Minister about common provisions

This Section requires the Commission to provide a report to the Minister in relation to the common provisions of the Interim Planning Scheme once public hearings have been completed. The Section also details what the report is to contain and requires the Minister to consider whether any amendments need to be made to the common provisions and the planning directive be modified accordingly.

Section 30M Modification of Interim Planning Scheme

This Section provides the Commission with the necessary authority to require councils to amend Interim Planning Schemes following the Commission's assessment.

The Section also details limitations as to modifications that can be made to interim planning schemes

Section 30N Commission may make planning schemes

This Section provides for the Commission (with the approval of the Minister) to approve Interim Planning Schemes as (regular) planning schemes and details notification requirements.

The Section also provides for the revocation of the relevant Interim Planning Scheme and clarifies the status of any ordinary permit made under the Interim Planning Scheme.

Section 30O Amendments under Divisions 2 and 2A of planning schemes made under Section 30N

This Section requires that an amendment to a local provision of a planning scheme that has come into operation through the Interim Planning Scheme process must not be inconsistent with the common provisions and the Land Use Strategy in the Regional Area.

The Section also requires that any amendment made to the common provisions of a planning scheme is to be (generally) made through the 'planning directive' process.

Section 30P Application for dispensation from application of local provision of interim planning scheme

This Section provides for an application to be made to the Commission for an amendment (dispensation) to a local provision of an Interim Planning Scheme during the period the Commission is conducting the assessment of the Interim Planning Scheme.

Section 30Q Process for consideration of dispensation

This Section outlines the process for the consideration of an amendment (dispensation) during the period the Commission is conducting the

assessment of the Interim Planning Scheme. The Section specifically details time-frames and requires the Commission to reject an application for a dispensation should the relevant council recommend rejection.

Section 30R Grant and revocation of dispensations

This Section provides for the matters that must be considered by the Commission in the assessment of a dispensation and clarifies the status of a dispensation that has been granted insofar as it relates to an Interim Planning Scheme as it is being assessed and after it has been made a planning scheme.

Clause 7: Section 48AA inserted

48AA Enforcement of special permits

This clause places the obligation on the relevant planning authority to enforce the conditions or restrictions in a special permit issued in respect of a Project of Regional Significance.

Clause 8: Section 54 amended (Additional information)

This clause clarifies when the statutory time period recommences when the Appeal Tribunal found that the planning authority ought to have been satisfied with the information previously received.

Clause 9: Section 59 amended (Failure to determine an application for a permit)

This clause removes the obligation for a council to pay the costs of parties to a planning appeal in circumstances where a council has made a decision within the statutory timeline but at a subsequent appeal the Resource Management and Planning Appeal Tribunal deems that the decision was not valid. The application for costs is not intended to apply where there is a demonstrable intent by a council to carry out its functions in good faith.

Clause 10: Section 60A amended (Permit for certain works not required)

This clause excludes certain works and activities approved under the *Water Management Act 1999* from requiring a special permit.

Clause 11: Part 4, Division 2A inserted

Division 2A- Special Permits for Projects of Regional Significance

This clause provides for the inclusion of a new Division in the state planning legislation and provides for the introduction of and assessment of Projects of Regional Significance.

Section 60B Interpretation: Division 2A

This Section defines various 'key' terms associated with Projects of Regional Significance and the associated assessment process.

Section 60C Projects eligible to be declared Projects of Regional Significance

This Section details the criteria the Minister is required to consider before declaring a project to be a Project of Regional Significance.

The Section also details obligations of the Minister in relation to owners of land on which Projects of Regional Significance might be declared.

The Section prevents the Minister from declaring a use or development that is 'prohibited' under an Interim Planning Scheme in force or after it has been made a planning scheme to be a Project of Regional Significance.

Section 60D Proposals that projects be declared Projects of Regional Significance

This Section provides for applications to be made to the Minister for a project to be declared a Project of Regional Significance. The Section details notification requirements and limits a council to proposing a Project of Regional Significance to projects that are situated entirely or partly in its municipal area.

Section 60E Effect of proposal on application for ordinary permits

This Section clarifies the status of an application for an ordinary permit (to a planning authority) in relation a project that is subsequently being considered by the Minister to be declared a Project of Regional Significance.

Section 60F Statement of intent and other information

This Section details the supporting information that is necessary to be provided by a proponent to the Minister in relation to a Project of Regional Significance.

Section 60G Declaration of Project of Regional Significance

This Section provides for the Minister (14 days) to declare a project to be a Project of Regional Significance or not and details the notification requirements of the Minister's decision.

The Section enables the preparation of guidelines which the Minister is to have regard in determining whether to declare a project to be a Project of Regional Significance.

SECTION 60H Effect of declaration of Project of Regional Significance

This Section details provisions of the planning legislation that are no longer applicable to the assessment of the 'declared' project and also attends to the situation where an application for ordinary permit might have previously been made in respect to the project.

Section 60I Fees

This Section provides for fees to be set by regulation for the assessment of a Project of Regional Significance. The Section also provides for an application to be made to the Commission for review of the amount of fee paid following the Panels decision.

Section 60J Revocation of declaration

This Section provides for the revocation of a Project of Regional Significance by the Minister and details notification requirements.

Section 60K Project to be referred to Director of Environment Protection Authority

This Section requires the Minister to forward a 'declared' project to the EPA Director for the Director to determine if an environmental impact assessment is to be undertaken by the EPA Board.

The Section requires the Director to respond within set time-frames and for the Minister to notify the Panel (once established) of the decision of the EPA Director.

Section 60L Environmental impact assessment by EPA Board

This Section provides for the EPA Board to carry out an environmental impact assessment in accordance with the Environmental Impact Assessment Principles specified in the EMPC Act.

The Section also aligns Projects of Regional Significance assessment with the environmental impact assessment as a consequence of Projects of Regional Significance being assessed by the Panel rather than a planning authority. The Section also deems a number of terms used under this Division to be the same as terms used in EPMCA to ensure that both assessment processes align.

The Section details administrative procedures required of the EPA Board leading to its decision; provides for conditions to be placed on the special permit and provides for the EPA Board to direct the Panel to refuse the special permit.

Section 60M Development Assessment Panel to be established for assessment of project

This Section requires the Commission to establish a Development Assessment Panel as soon as practicable after the Minister has declared a project to be a Project of Regional Significance. The Section also prescribes the composition of the Panel and details qualifications of Panel members.

Section 60N Panel to determine guidelines for how assessment is to be made

This Section requires the Panel to determine assessment guidelines in respect of the project. The Section details matters to be addressed by the Panel in the determination of the assessment guidelines including the role of the EPA Board. The Section also requires the 'giving of notice' of the guidelines.

Section 60O Project impact statements to be provided to Panel

This Section requires the preparation of a project impact statement by the proponent following the determination of the guidelines by the Panel. The Section also details the content of the project impact statement required by the Panel; includes time-frames and (if necessary) provides for project impact statement to be forwarded the EPA Board.

Section 60P Panel may request information to be provided

This Section provides for the Panel to request additional information to assist it with its decision whether to grant a permit and under what conditions or restrictions.

Section 60Q Notification and exhibition of project

This Section provides for the public notification and exhibition of the Project of Regional Significance including any assessment guidelines and the project impact statement.

The Section also provides for the making of representations to the Panel in relation to the project.

Section 60R Notification and hearings in relation to project

This Section details specific notification requirements to be undertaken by the Panel. The Section provides for the holding of hearings.

Section 60S When decision about grant of special permit is to be made

This Section requires the Panel to make a decision in relation to a project with specified time-frames.

Section 60T Grant of special permit

This Section provides for the Panel to grant or refuse to grant a special permit in relation to a Project of Regional Significance. The Section details those matters that the Panel must take into account in reaching its decision.

Section 60U Permit may be granted subject to conditions or restrictions

This Section provides for the Panel to grant a special permit subject to conditions or restrictions in respect to a Project of Regional Significance.

The Section requires that conditions or restrictions specified by the EPA Board must be imposed on the special permit.

The Section also provides the notification of conditions and restrictions and for the making of agreements that may be included in the special permit.

Section 60V Process for determining conditions or restrictions to be imposed on special permits

This Section requires the Panel to consider representations made following the public exhibition of the project in deciding whether to impose any conditions or restrictions on special permit.

The Section provides for relevant parties to be notified of the Panel's conditions or restrictions and for those parties to lodge an objection with the Panel in relation to conditions or restrictions.

The Section details specific procedures required of the Panel if an objection is in relation to conditions or restrictions required of the EPA Board.

Section 60W When special permit takes effect

This Section details when a special permit takes effect. The Section places a time-limit on the 'life' of the permit but provides for extensions to the permit in particular circumstances with the approval of the Commission.

Section 60X Amendment, revocation and correction of special permits

This Section provides for the Commission to amend a condition or restriction on a special permit and details the circumstances and administrative process associated with the consideration of any amendment.

Section 60Y Amendment of planning schemes, &c.

This Section requires an amendment to be made to the relevant planning scheme following the granting of a special permit so as to remove any inconsistency between the permit and the planning scheme.

Clause 12: Section 63 amended (Obstruction of sealed schemes)

This amended Section provides for it to be an offence to breach any condition or restriction on a special permit and provides for possible penalties.

Clause 13: Section 77 amended (Agreement may not breach planning permit)

This amendment requires that an 'agreement' is not to provide for anything to be done that would contravene or not comply with (among other planning instruments) a special permit.

Clause 14: Section 82 amended (Evidentiary provision)

This amendment provides for the addition of a special permit to be added to the list of planning instruments that might be required to be provided to a court or tribunal.

Clause 15: Section 83 amended (Planning Schemes, &c., to be judicially noticed)

This amendment provides for the addition of a special permit to be added to the list of planning instruments that constitute a public document for the purposes of judicial notice.