

Tasmanian Planning Policies: Requirements and Processes

Overview

Part 2A of the Land Use Planning and Approvals Act 1993 (the Act) provides for the preparation, making, amending, implementation and review of the Tasmanian Planning Policies (TPPs).

The TPPs will establish strategic policies that will provide high-level direction to guide Tasmania's land use planning system.

The purpose of this fact sheet is to provide a summary of the following processes:

- content and purpose of the TPPs;
- preparing the draft TPPs;
- exhibition of the draft TPPs;
- making a representation on the draft TPPs;
- assessment and reporting by the Tasmanian Planning Commission (the Commission);
- making the TPPs;
- amendments of the TPPs;
- minor amendments of the TPPs;
- implementation of the TPPs;
- review of the TPPs; and
- judicial review.

Content and purpose of the TPPs

The TPPs are to set out common land use planning aims, or principles, to be achieved or applied by the Tasmanian Planning Scheme and the regional land use strategies.

The TPPs refer to the full suite of policies rather than individual policies. When a new policy or provision is proposed, they will be added as an amendment to the provisions of the TPPs, similar to a 'chapter' being added to a 'book'.

Tasmanian Planning Policies – Requirements and Processes

The TPPs may relate to:

- the sustainable use, development, protection or conservation of land;
- environmental protection;
- liveability, health and wellbeing of the community; and
- any other matter that may be included in a planning scheme or a regional land use strategy.

The TPPs must meet the ‘TPP criteria’ which is to:

- seek to further the Part 1 and Part 2 objectives set out in Schedule 1 of the Act, which includes promoting sustainable development; providing for fair, orderly and sustainable use and development; encouraging public involvement in resource management and planning; facilitating economic development; and promoting the sharing of responsibility for resource management and planning; and
- be consistent with any relevant State Policy, which includes the State Coastal Policy 1996, State Policy on the Protection of Agricultural Land 2009, State Policy on Water Quality Management 1997 and the National Environment Protection Measures.

Preparing the draft TPPs

The Minister for Local Government and Planning (the Minister) prepares a draft of the TPPs and is required by the Act to give notice to the Commission, planning authorities and State Agencies and State Authorities of the intention to prepare a draft of the TPPs .

When preparing the draft of the TPPs, the Minister may inform himself or herself in the manner he or she thinks fit and can undertake broad, informal consultation while drafting the TPPs.

Once the Minister has prepared a draft of the TPPs, the Act requires further consultation with the Commission, planning authorities, and relevant State agencies and State authorities–.

before they enter the formal statutory assessment process by the Commission.

Once the Minister is satisfied with the content of the draft TPPs, he or she may provide the Commission with the draft TPPs and direct the Commission to undertake public exhibition of the draft TPPs.

If the Minister does not direct the Commission to undertake public exhibition of the draft of the TPPs, the process effectively stops. There is no power for the Minister to make the TPPs without directing the Commission to undertake public exhibition.

Exhibition of the draft TPPs

After receiving a notice from the Minister to undertake public exhibition of the draft TPPs, the Commission must ensure they are placed on public exhibition.

The draft TPPs are to be exhibited for a period of 60 days (excluding any days on which the exhibition premises are closed during normal business hours).

Tasmanian Planning Policies – Requirements and Processes

The exhibition notice must be published in a Tasmanian newspaper once before, and once within 14 days after, the first day of the exhibition period.

The exhibition notice must:

- specify the exhibition period;
- specify where a copy of the draft of the TPPs can be viewed; and
- invite all persons and bodies to make a representation (i.e. a submission), to the Commission.

The Commission must also provide a copy of the draft TPPs to each planning authority and invite them to make a representation.

In addition, the Commission must ensure that a copy of the draft TPPs is made available for viewing at the Commission offices (i.e. the exhibition premises) and on the Commission's website.

Making a representation

Any person may make a representation to the Commission in relation to the draft TPPs (or a draft amendment of the TPPs).

A representation is the community's opportunity to comment about content and merit of a draft TPPs (or a draft amendment of the TPPs).

A representation can be made in writing, in an email, orally or in any other form providing it is made within the exhibition period and submitted to:

- the premises (i.e. the offices of the Commission); or
- an electronic address;

that is specified in the publicly advertised exhibition notice.

Assessment and reporting

Once the exhibition period has ended, the Commission must consider:

- all representations received;
- whether it is satisfied that the draft TPPs meets the 'TPP criteria'; and
- whether there are any matters of a technical nature (or that may be relevant) in relation to the application of the TPPs to the Tasmanian Planning Scheme or each regional land use strategy.

The Commission may also hold one or more hearings in relation to the representations received if it thinks fit.

Within 90 days (or a longer period allowed by the Minister) after the end of the exhibition period, the Commission must provide a report to the Minister in relation to the draft TPPs. The report must contain:

- a summary of the issues raised in the representations in relation to the draft TPPs;
- a statement as to whether the Commission is satisfied that the draft TPPs meets the 'TPP criteria'; and

Tasmanian Planning Policies – Requirements and Processes

- a statement as to whether there are any matters of a technical nature, or that may be relevant, in relation to the application of the TPPs to the Tasmanian Planning Scheme or each regional land use strategy.

Making the TPPs

Prior to making the TPPs and when considering the Commission's report in relation to the draft TPPs, the Minister may inform himself or herself in the manner he or she thinks fit. This means that the Minister may seek further advice on the draft TPPs.

The Minister may make or refuse to make the TPPs, or substantially modify a draft of the TPPs, as he or she thinks fit.

However, the Minister can only make or refuse to make the TPPs after considering the Commission's report provided to him or her in relation to the draft TPPs.

The Minister also needs to be satisfied, after taking advice from the Commission, that the TPPs meet the 'TPP criteria'.

If the Minister substantially modifies the draft TPPs that was publicly exhibited, he or she must direct the Commission to re-exhibit the substantially modified draft of the TPPs and conduct its formal statutory processes of consultation, assessment against the 'TPP criteria' and reporting again.

After making the TPPs, the Minister must publish a notice in the *Tasmanian Gazette* and a Tasmanian newspaper specifying that he or she has made the TPPs and when they come into effect.

If the Minister modifies the draft of the TPPs after they were publicly exhibited and after receiving the Commission's report, he or she must also give reasons in the notice in a Tasmanian newspaper why he or she has modified the draft of the TPPs, including the evidence that the Minister has based his or her reasons on.

If the Minister refuses to make the TPPs in the form of the draft of the TPPs, he or she must publish a notice in the *Tasmanian Gazette* that he or she has refused to make the draft TPPs and publish his or her reasons for refusing to make the TPPs.

[Appendix I](#) illustrates the preparation, consultation, assessment and reporting processes for the draft of the TPPs.

Amendments of the TPPs

The Minister may prepare a draft amendment of the TPPs. A draft amendment may consist of:

- an amendment of one or more of the provisions of the TPPs;
- the insertion of one or more provisions into the TPPs;
- a revocation of one or more of the provisions of the TPPs; or
- the substitution of one or more of the provisions of the TPPs.

When preparing a draft amendment of the TPPs, the Minister may inform himself or herself in the manner he or she thinks fit. The Minister must also consult with the Commission, planning authorities, and relevant State agencies and State authorities – in relation to the intention to prepare a draft amendment of the TPPs and the preparation of the draft amendment.

Tasmanian Planning Policies – Requirements and Processes

The Minister may then refer a draft amendment of the TPPs to the Commission (i.e. direct the Commission to publicly exhibit the draft amendment) and the consultation, assessment against the 'TPP criteria', and reporting processes follow the same statutory processes that apply to the initial draft of the TPPs with some changes in time frames.

If the Minister does not direct the Commission to undertake public exhibition of a draft amendment of the TPPs, the process effectively stops. There is no power for the Minister to make an amendment of the TPPs without directing the Commission to undertake public exhibition.

The Commission must:

- publicly exhibit a draft amendment of the TPPs for 42 days (excluding any days on which the exhibition premises are closed during normal business hours) and invite representations from any person or body;
- provide a copy of a draft amendment of the TPPs to each planning authority and invite them to make a representation;
- ensure that a copy of a draft amendment of the TPPs is made available for viewing at the Commission offices (i.e. the exhibition premises) and on the Commission's website; and
- consider all representations received, consider if a draft amendment of the TPPs meets the 'TPP criteria', and consider whether there are any matters of a technical nature (or that may be relevant) in relation to the application of the TPPs to the Tasmanian Planning Scheme or each regional land use strategy.

The Commission may also hold one or more hearings in relation to the representations received if it thinks fit.

Once the Commission has conducted its formal statutory processes of consultation, assessment against the 'TPP criteria' and reporting, it must provide the Minister with a report in relation to the draft amendment of the TPPs within 60 days after the end of the exhibition period (or a longer period allowed by the Minister).

The 42-day exhibition period for a draft amendment of the TPPs is shorter than the 60-day exhibition period for the initial draft of the TPPs because a smaller range of matters is likely to be considered through representations with regard to the draft amendment.

The time allowed for the Commission to provide a report on a draft amendment of the TPPs to the Minister (within 60 days after the end of the exhibition period) is also shorter than for the Commission's report on the initial draft of the TPPs, or a substantially modified draft of the TPPs, for the same reason (that is within 90 days after the end of the exhibition period).

When considering the Commission's report in relation to a draft amendment of the TPPs, the Minister may inform himself or herself in the manner he or she thinks fit. This means that the Minister may seek further advice on the draft amendment of the TPPs.

The Minister may make, or refuse to make, an amendment of the TPPs. However, the Minister can only make an amendment of the TPPs if, after taking advice from the Commission, he or she is satisfied the amendment meets the 'TPP criteria'.

If the Minister substantially modifies a draft amendment of the TPPs that was publicly exhibited, he or she must direct the Commission to re-exhibit the substantially modified draft amendment of the TPPs and conduct its formal statutory processes of consultation, assessment against the 'TPP criteria' and reporting again.

Tasmanian Planning Policies – Requirements and Processes

After making an amendment to the TPPs, the Minister must publish a notice in the *Tasmanian Gazette* and a Tasmanian newspaper specifying that he or she has made an amendment of the TPPs and when it comes into effect.

If the Minister modifies a draft amendment of the TPPs after it was publicly exhibited and after receiving the Commission's report, he or she must also give reasons in the notice in the Tasmanian newspaper why he or she has modified the draft amendment, including the evidence that the Minister has based his or her reasons on.

If the Minister refuses to make an amendment of the TPPs, he or she must publish a notice in the *Tasmanian Gazette* that he or she has refused to make the amendment and publish his or her reasons for refusing to make the amendment of the TPPs.

[Appendix 2](#) illustrates the preparation, consultation, assessment and reporting processes for a draft amendment of the TPPs.

Minor amendments of the TPPs

If a draft amendment of the TPPs is proposed, the Minister may determine that the draft amendment is a minor amendment.

However, the Minister can only make a minor amendment of the TPPs if he or she:

- is of the opinion that the public interest will not be prejudiced if the draft amendment is not publicly exhibited; and
- is satisfied the minor amendment meets the 'TPP criteria'.

A minor amendment of the TPPs can be made:

- to correct an error;
- to remove an anomaly;
- to clarify or simplifying;
- to amend a provision as long as the policy intent is not changed;
- to bring the TPPs into conformity with a State Policy; or
- for a prescribed purpose.

When making a minor amendment of the TPPs, the Minister may inform himself or herself in the manner he or she thinks fit. This means that the Minister may seek advice on a minor amendment of the TPPs.

After making a minor amendment of the TPPs, the Minister must publish a notice in the *Tasmanian Gazette* and a Tasmanian newspaper specifying that the Minister has made a minor amendment of the TPPs and when it comes into effect.

If the Minister refuses to make the minor amendment of the TPPs, he or she must publish a notice in the *Tasmanian Gazette* that the he or she has refused to make the minor amendment.

The process for making a minor amendment of the TPPs is similar to other processes in the Act for making a minor amendment to a planning scheme.

[Appendix 2](#) includes the preparation, consultation, assessment and reporting processes for a minor amendment of the TPPs.

Implementation of the TPPs

The Act requires that the TPPs may specify the manner in which the TPPs are to be implemented in the Tasmanian Planning Scheme and each regional land use strategy.

The relationship between the TPPs, Tasmanian Planning Scheme and regional land use strategies require a considered approach to ensure timely alignment and consistency between the instruments.

Under section 30T of the Act, the Minister is required to conduct a review of the State Planning Provisions (SPPs) at the end of a five-year period or by issuing a notice to the Commission at any time.

Although the Act does not automatically trigger a review of the SPPs once the TPPs have been made, it would be anticipated that the Minister would seek to ensure the TPPs are integrated with the rest of Tasmania's land use planning system as a matter of priority.

In this context, the Act specifies that the Minister is to conduct a review of the SPPs and the regional land use strategies as soon as practicable after the making of the TPPs, or an amendment of them, to determine what, if any, amendments to these are required.

However, given that the Tasmanian Planning Scheme reforms have largely preceded the preparation of the TPPs, the Act specifically excludes the implementation of the TPPs into the first Local Provisions Schedules (LPSs) that are prepared.

The Act specifies that when the first LPSs were made, they did not need to meet the relevant 'LPS criteria' in relation to the TPPs. However, an amendment to, or substitution of, an LPS once it is made does need to meet the relevant 'LPS criteria'. This means that a future instrument needs to meet the 'LPS criteria' including that the instrument "*satisfies the relevant criteria in relation to the TPPs*".

In addition, given that the TPPs may be finalised while some of the current interim planning schemes are still in effect, the Savings and Transitional Provisions under Schedule 6 of the Act have also been amended to require any amendment to these planning schemes to also be consistent with the TPPs.

Review of the TPPs

The Minister must keep the TPPs under regular and periodic review.

At the end of every 5-year period after the TPPs are made, the Minister must also:

- conduct a review of the TPPs and the implementation of the TPPs; or
- by notice to the Commission, direct the Commission to conduct a review of the TPPs and the implementation of the TPPs and provide the Minister a report in relation to the review within the period specified in the notice.

The Minister must then table a report on the review in Parliament as soon as practicable.

Judicial review

The administrative processes leading to the making or amending of the TPPs need to be consistent with the requirements of the legislation, and application under the [Judicial Review Act 2000](#) could test the administrative processes if a person felt aggrieved.

A copy of the Act is available on the [Tasmanian Legislation](#) Online website at: <https://www.legislation.tas.gov.au/>.

Enquiries

Any enquiries can be directed to the State Planning Office within the Department of Premier and Cabinet at stateplanning@dpac.tas.gov.au or by telephoning 1300 703 977

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State Planning Office

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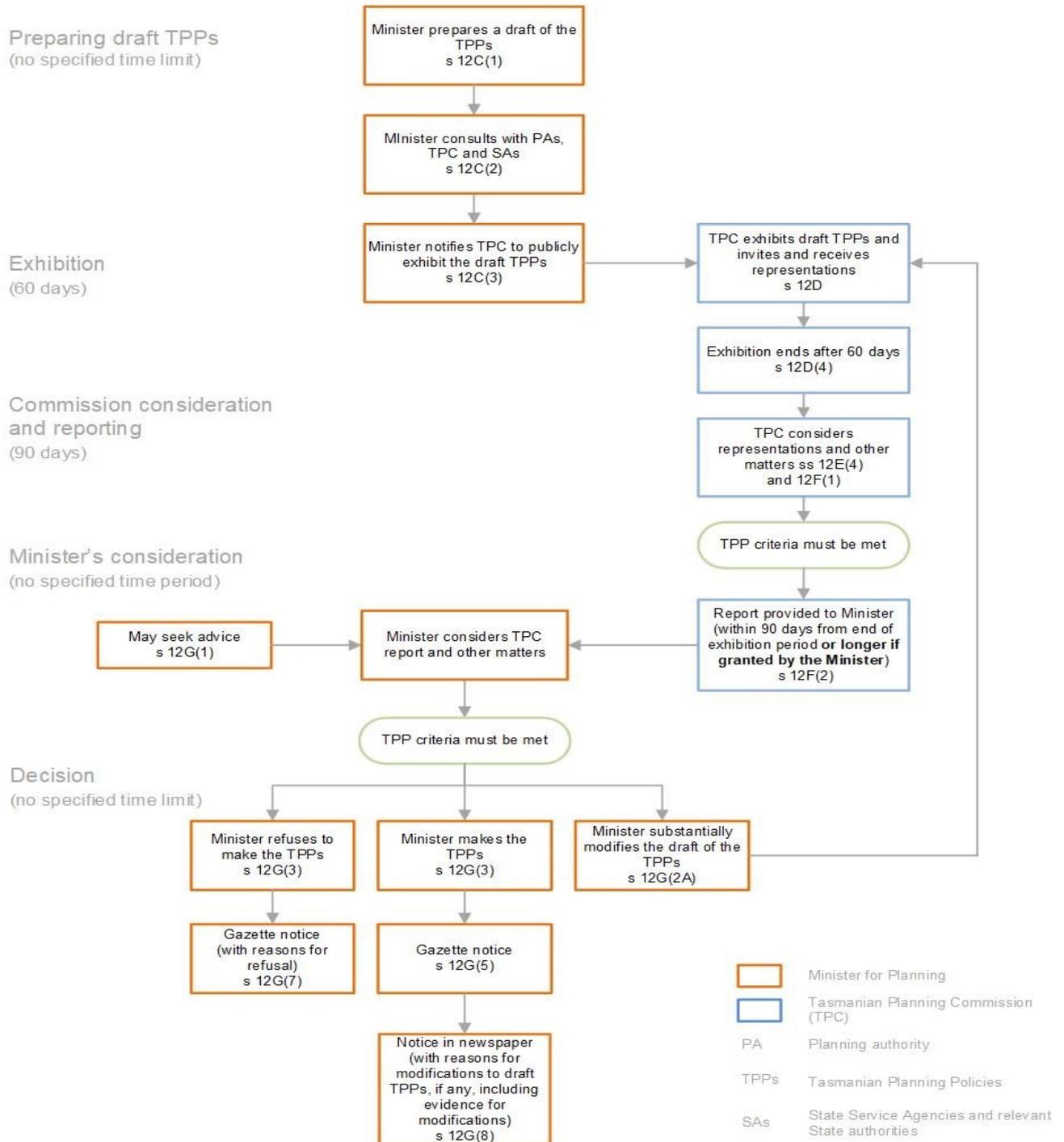
Email: stateplanning@dpac.tas.gov.au



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Appendix 1: The preparation, consultation, assessment and reporting processes for the draft of the Tasmanian Planning Policies

Tasmanian Planning Policies (TPPs) process



Appendix 2: The preparation, consultation, assessment and reporting processes for a draft amendment of the Tasmanian Planning Policies

Tasmanian Planning Policies (TPPs) amendment process

