

TRANSITIONAL ARRANGEMENTS FOR EXISTING PROVISIONS

Purpose

This advice is issued by the Planning Policy Unit (PPU), Department of Justice as endorsed by the Minister for Planning and Local Government to provide guidance to planning authorities and the three regional council groups in relation to the current transitional provisions under Schedule 6, Clause 8 of the *Land Use Planning and Approvals Act 1993* (the Act) and the additional transitional provisions proposed under Schedule 6 of the *Land Use Planning and Approvals Amendment (Transitional Provisions) Bill 2017* (the Amendment Bill). It provides specific advice for the inclusion of existing particular purpose zones (PPZs), specific area plans (SAPs) and site-specific qualifications (SSQs), and certain existing code provisions in draft Local Provisions Schedules (LPSs).

Background

The Government recognises the importance of providing continuity for particular provisions in current interim planning schemes and planning schemes approved under section 29 of the former provisions of the Act where there is a need and the particular provision is not directly inconsistent with the recently 'made' State Planning Provisions (SPPs).

Current interim planning schemes and section 29 planning schemes contain a number of provisions which provide for unique circumstances either as PPZs, SAPs, or some form of specified and limited overriding controls. They also contain overlays, lists and other provisions that indicate how codes spatially apply. These controls have been determined to be appropriate through separate assessments in the past by the Tasmanian Planning Commission (the Commission) or its predecessors.

The amendments to the Act which provide for the Tasmanian Planning Scheme include a set of transitional provisions to save a variety of planning instruments and processes which were in effect at the time of the amendments to the Act coming into effect.

Further amendments will be made to the transitional provisions in the Act to improve their operation and provide greater scope for transitioning existing provisions into a LPS. The Amendment Bill has passed through the committee stage of the Legislative Council and only

requires confirmation by a third reading scheduled for the Legislative Council sitting in early August 2017.

Transitional provisions for existing PPZs, SAPs and SSQs

Schedule 6, Clause 8 (in effect through section 87C of the Act), and Clauses 8A and 8C of the Amendment Bill, provide transitional provisions for existing PPZs, SAPs and SSQs. This includes those that applied under the planning scheme that was in operation in that municipal area immediately before 17 December 2015 (the commencement day) (Schedule 6, Clause 8 of the Act) and after the commencement day.

Specifically the transitional provisions (including the additional provisions in the Amendment Bill):

- require that a draft LPS, and an approved LPS, must contain any PPZs, SAPs and SSQs that existed immediately before the commencement day (including any urgent amendments made after the commencement day under section 30IA of the former provisions of the Act), unless otherwise declared by the Minister;
- provide the Minister with the ability to declare that a draft LPS, and an approved LPS, must contain a PPZ, SAP or SSQ that was inserted into the planning scheme after the commencement day; and
- provide the Minister with the ability to declare that a draft LPS, and an approved LPS, must contain any non-urgent amendments that were made after the commencement day to a PPZ, SAP or SSQ that existed immediately before the commencement day.

These transitional provisions do not apply to a new PPZ, SAP or SSQ proposed in a draft LPS.

The transitional provisions at Schedule 6, Clause 8C of the Amendment Bill provide for existing PPZs, SAPs and SSQs to be modified to conform with the SPP requirements such as terminology, clause numbering, references and to ensure they achieve the effect intended.

Schedule 6, Clause 8C(4) of the Amendment Bill further provides for the conversion of existing provisions, such as an existing code, into the form of a provision covered by the transitional provisions, such as a SAP. This only applies to existing provisions that meet the definition of a PPZ, SAP or SSQ under Schedule 6, Clause 1 of the Act.

What are existing PPZs, SAPs and SSQs?

Schedule 6, Clause 1 of the Act defines what constitutes a PPZ, SAP or SSQ for the purposes of the transitional provisions.

Any zone or plan that is referred to as a PPZ or SAP in an existing interim planning scheme or section 29 planning scheme meet the relevant definitions for the purposes of the transitional provisions.

Schedule 6, Clause 1 of the Act also provides for other zones or plans contained in an existing planning scheme to be considered as a PPZ or SAP for the purpose of the transitional provisions.

A zone that is not referred to as a PPZ in the planning scheme may be considered as a PPZ for the purposes of the transitional provisions if it is applied to a particular area for a specific or unique purpose.

A plan that is not referred to as a SAP in an existing planning scheme may be considered as a SAP for the purposes of the transitional provisions if it consists of:

- a map or overlay that spatially delineates a particular area of land; and
- provisions that are applied in addition to, in modification of, or in substitution for, a provision, or provisions, of the relevant planning scheme.

Some existing codes in interim planning schemes may be considered as existing SAPs and subject to the transitional provisions where they meet the definition in Schedule 6, Clause 1 of the Act. The Amendment Bill includes Schedule 6, Clause 8C(4) which provides for this conversion.

Planning schemes have traditionally not referred to provisions as SSQs. This is a new term used in the Act, introduced for the purposes of the Tasmanian Planning Scheme.

Schedule 6, Clause 1 of the Act defines a SSQ as a provision or provisions that only apply in relation to a particular area of land. SSQs therefore do not apply to multiple areas.

An example of an SSQ is a use class qualification for a specific site or area in a zone use table or an alternate setback or subdivision requirement for a specific site or area by textual reference to a specific title, street address or locality. Such provisions may also be delineated by an overlay.

Which PPZs, SAPs or SSQs should not be transferred to a draft LPS?

Schedule 6, Clauses 8(4) and 8A of the Amendment Bill provides for the Minister to declare that the transitional provisions:

- do not apply to certain PPZs, SAPs or SSQs that existed in a planning scheme immediately before the commencement day (Schedule 6, Clause 8(4) of the Amendment Bill);
- apply to certain PPZs, SAPs or SSQs that were inserted in a planning scheme after the commencement day (Schedule 6, Clause 8A(2) of the Amendment Bill); and
- apply to certain non-urgent amendments that were made after the commencement day to a PPZ, SAP or SSQ that existed in a planning scheme immediately before the commencement day (Schedule 6, Clause 8A(2) of the Amendment Bill).

Subject to a case-by-case assessment against the provisions of the Act and the Amendment Bill, it is considered that in general the transitional provisions should not apply to existing PPZs, SAPs or SSQs in planning schemes that:

- are not required as they are addressed by the SPPs, such as a:
 - PPZ which has provisions provided by a SPP zone;
 - SSQ as a zone provision that relates to use on a specific site or area which has the same status (e.g. no permit required, permitted, discretionary or prohibited) as the SPP zone that is likely to be applied to the specific site; or
 - SSQ as a zone provision which is the same as, or similar to, that in the SPP zone, such as a minimum setback, minimum lot size, or maximum building height;
- have become redundant because they are no longer required as a consequence of the use or development being complete, been acted upon, or otherwise no longer applicable;
- are superseded due to broader changes in regional or local land use planning policy, as specified in an identified strategy or study, and endorsed by the planning authority;
- are no longer considered necessary by the planning authority;
- are inconsistent with, or in conflict with, the SPPs, including the:
 - scope of the SPPs;
 - purpose of a SPP zone or code;
 - SPP administration provisions or general provisions, such as exempt use or development; or
 - ‘down grading’ of the status of a use in a zone use table, such as an SSQ which makes a particular use discretionary for a particular site or area if the SPP zone use table includes it as a permitted use in the zone;
- duplicate or are covered by other legislation or statutory processes; or
- are no longer included in the current planning scheme or relate to a provision that has been amended since the commencement day.

Transitional provisions for existing code provisions

Schedule 6, Clause 8D of the Amendment Bill will provide transitional provisions for certain code provisions (referred to as ‘code-applying provisions’) that applied under the planning scheme that was in operation in that municipal area immediately before the commencement day. Specifically it will require that a draft LPS, and an approved LPS, must contain a code-applying provision, unless otherwise declared by the Minister.

Code applying provisions are those provisions that indicate the spatial application of the code such as a map or overlay, list (e.g. local heritage place list), or other relevant provision that

indicates the code's application. The transitional provisions will only apply to code-applying provisions that are substantially similar to those in an SPP code (Schedule 6, Clause 8D(2)(b) of the Amendment Bill). This will provide continued protection for code provisions that are consistent with the SPP requirements and codes.

As with the transitional provisions for existing PPZs, SAPs and SSQs, the transitional provisions for code-applying provisions will include any urgent amendments made to these provisions after the commencement day.

Importantly, Schedule 6, Clause 8D(5) and (6) of the Amendment Bill also provides for the Minister to specify that certain SPP requirements do not apply to the code-applying provisions. This will provide a mechanism for planning authorities to transfer existing local heritage places into the LPS Local Heritage Place list without the need to prepare a statement of local historic heritage significance if one is not contained in the existing planning scheme. Future amendments to the SPP Local Historic Heritage Code and Guideline No. 1 – Local Provisions Schedules: zone and code application (Guideline No.1) will be proposed following royal assent of the Amendment Bill to provide for this approach consistent with the amended transitional provisions in the Act. The Act sets out the assessment and approval process for any amendment to the SPPs.

Which code-applying provisions should not be transferred to a draft LPS?

Schedule 6, Clause 8D(3) and (4) of the Amendment Bill will provide for the Minister, after consulting with the Commission, to declare that specific existing code-applying provisions are not subject to the transitional provisions.

Existing code-applying provisions would only be subject to the transitional provisions if they:

- relate to a code that is substantially similar to an SPP code; and
- are provisions that indicate the spatial application of the code and are able to be implemented through a LPS for the purposes of a SPP code, such as a code overlay or code list.

In general terms, the transitional provisions are intended to provide for the automatic transfer of a code overlay or code list to a LPS if:

- it is substantially similar to that in the applicable SPP Code; and
- the LPS requirements in the SPPs and Guideline No.1 do not specify any particular mapping or data sources to be used in generating the overlay or list.

It is considered that in general the transitional provisions for existing code-applying provisions should not apply to:

- any code overlays that are subject to the LPS requirements under clause LPI.7 of the SPPs which specify statewide mapping to be used for a particular overlay, specifically the overlays for the:
 - Electricity Transmission Infrastructure Protection Code;
 - Coastal Erosion Hazard Code;
 - Coastal Inundation Hazard Code; and
 - Landslip Hazard Code;
- any code overlays that are subject to guidelines in Guideline No.1 which specify mapping to be used for a particular SPP overlay, specifically the overlays for the:
 - Natural Assets Code; and
 - Safeguarding of Airports Code;
- a code list that is subject to guidelines in Guideline No. 1 which specifies the data source that needs to be used in populating the SPP code list, specifically the Coastal Inundation Hazard Bands AHD Levels for the Coastal Inundation Hazard Code;
- any code provisions that indicate an alternate application for a SPP code, such as an:
 - overlay that applies to a zone that is not applicable to the SPP Code (e.g. Scenic Protection Code and the priority vegetation area overlay in the Natural Assets Code); or
 - overlay that indicates an alternate application to that required by the LPS requirements under clause LPI.7 of the SPPs or Guideline No.1;
- any heritage places listed on the Tasmanian Heritage Register;
- any code overlays or code lists that are superseded due to broader changes in regional or local land use planning policy, as specified in an identified strategy or study, and endorsed by the planning authority;
- any code overlays or code lists no longer considered necessary by the planning authority; or
- any code overlays or code lists no longer included in the current planning scheme or relating to a provision that has been amended since the commencement day.

Process for transitioning existing provisions

The PPU will review all current interim planning schemes and section 29 planning schemes to identify provisions subject to the transitional provisions under the Act and the Amendment Bill, and will soon commence consultation with planning authorities.

Following consultation with councils, the PPU will provide advice to the Minister on those provisions that should and those that should not be subject to the transitional provisions.

Determining some advice may be dependent on the application of the SPPs through the preparation of the draft LPS to allow consideration of whether the PPZ, SAP or SSQ is still required.

The Minister may declare which existing provisions are subject to transitional provisions, or otherwise, in a number of stages. The PPU will coordinate the staging of this advice to the Minister in consultation with planning authorities.

The Minister is required to consult with the Commission prior to making a declaration on which provisions are subject to the transitional provisions. Royal Assent of the Amendment Bill will be required before the Minister can make any declarations under the transitional provisions.

A PPZ, SAP or SSQ declared not suitable by the Minister for automatic transfer to a draft LPS through transitional provisions may still be considered by the Commission in its assessment of the draft LPS, provided it can meet the requirements in the Act.

Code-applying provisions declared not suitable by the Minister for automatic transfer to a draft LPS may also be considered by the Commission in its assessment of the draft LPS, provided it can meet the LPS requirements in the SPPs, the requirements for the contents of LPSs in Part 3A, Division 2 of the Act, and Guideline No.1.

Where can I get more information?

General information about the Tasmanian Planning Scheme and the preparation of draft LPSs can be found on the Department of Justice's [Tasmanian planning reform website](#).

General enquiries about the transitional provisions and the review of existing provisions in planning schemes, or general enquiries on the Tasmanian Planning Scheme should be directed to:

Planning Policy Unit, Department of Justice
GPO Box 825 HOBART TAS 7001
Ph (03) 6166 1429
email planning.unit@justice.tas.gov.au

Enquiries on the public exhibition and assessment process of draft LPSs should be directed to:

The Tasmanian Planning Commission



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GPO Box 1691 HOBART TAS 7001

Ph (03) 6165 6828

email tpc@planning.tas.gov.au

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