Miscellaneous LEGISLATIVE Amendments: *Land Use Planning and Approvals Act 1993* and *Tasmanian Planning Commission Act 1997*

## Overview

The *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Act 2018* (Amendment Act) has made a number of miscellaneous legislative amendments to the *Land Use Planning and Approvals Act 1993 (*LUPAA) and the *Tasmanian Planning Commission Act 1997* (TPC Act) that are administrative in nature.

The independent statutory body, the Tasmanian Planning Commission (the Commission), specifically requested a number of these miscellaneous amendments, to assist the Commission in its timely assessment of the draft Local Provisions Schedules (LPSs).

The miscellaneous legislative amendments provide direction to the Minister when he or she is declaring or reviewing a regional land use strategy. They also streamline the LPS assessment process, and improve the functionality of LUPAA and the TPC Act.

The purpose of this fact sheet is to provide a high-level summary of the following miscellaneous legislative amendments**:**

* ensuring that regional land use strategies further the objectives set out in Schedule 1 of LUPAA, are consistent with each State Policy, and are consistent with the Tasmanian Planning Policies (TPPs);
* considering the LPS criteria;
* issuing an ‘LPS criteria outstanding issues notice’;
* removing an administrative step in the draft LPS exhibition process;
* aligning the SPPs with other planning reforms;
* notifying ‘relevant agencies’; and
* correcting a decision made by the Commission that contains a ‘minor’ error after a decision document has been finalised.

## Regional land use strategies

Section 5A of LUPAA applies to regional areas and regional land use strategies. The Amendment Act specifies that the Minister, after having received advice from the Commission, must not declare a regional land use strategy unless he or she is satisfied that it:

* furthers the objectives set out in Schedule 1 of LUPAA, 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;
* is consistent with each 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; and
* is consistent with the TPPs.

When keeping all regional land use strategies under regular and periodic review, the Minister will also be required to consider whether the regional land use strategy:

* furthers the objectives set out in Schedule 1 of LUPAA;
* is consistent with each State Policy; and
* is consistent with the TPPs.

Furthermore, the Minister will be required to review all regional land use strategies as soon as practicable after making the TPPs, or an amendment to the TPPs, to determine whether the strategies are consistent with the TPPs or an amendment of the TPPs.

## Considering the ‘LPS criteria’

The Amendment Act clarifies how the ‘LPS criteria’ under section 34 of LUPAA are considered by a planning authority, the Commission or a representor.

Under subsection 34(2) of LUPAA (operating before 17 December 2018), the ‘LPS criteria’ needed to be considered on several occasions as part of the draft LPS assessment process.

To allow a draft LPS, or future amendments to an LPS, to proceed through the LPS assessment process in a more timely manner, modifications to the tests that apply to ‘LPS criteria’ at subsection 34(2)(e) and subsection 34(2)(f) have been made. These modifications provide planning authorities and the Commission with a greater degree of flexibility when considering whether a draft LPS is ‘consistent’ with a relevant regional land use strategy or council strategic plan.

The Amendment Act specifies that a draft LPS, or future amendments to an LPS, are to be consistent, ‘as far as practicable’ with the relevant regional land use strategy.

The test for a council strategic plan is that planning authorities and the Commission must have ‘regard’ to these documents. This is because council strategic plans are not required to further the objectives set out in Schedule 1 of LUPAA and may be at odds with the regional land use strategies that must adhere to those objectives.

## Issuing an ‘LPS criteria outstanding issues notice’

When the Commission is considering whether a draft LPS meets the’ LPS criteria’ under subsection 34(2) of LUPAA (operating before 17 December 2018) and prior to the draft LPS being publicly exhibited, it is required to be satisfied that the LPS meets all the relevant ‘LPS criteria’. This might require making requests for additional evidence or clarification from the planning authority. If additional information is required, these delays can hold up a draft LPS from being publicly exhibited. This could also result in an impasse if the planning authority refuses to provide the information.

Flexibility has been added to the draft LPS assessment process under LUPAA, by providing the Commission with the ability to defer specific issues until the hearing stage of the draft LPS assessment process, instead of delaying the LPS public exhibition process until all the ‘LPS criteria’ issues are resolved. Any unresolved issues can be included in an ‘LPS criteria outstanding issues notice’.

To achieve this, the Amendment Act specifies that the Commission can issue an ‘LPS criteria outstanding issues notice’ and direct a planning authority to undertake public exhibition in respect of a draft LPS.

An ‘LPS criteria outstanding issues notice’ is a notice, in relation to a draft LPS, setting out the ‘LPS criteria’ that the Commission considers it needs further information in order to be of the opinion that the draft LPS meets the ‘LPS criteria’.

To ensure public transparency, the ‘LPS criteria outstanding issues notice’ will be placed on exhibition with the relevant exhibition documents for a draft LPS. The Commission will consider any outstanding issues identified in this notice during the hearing process and any submissions made in relation to those matters.

To provide for the issuing of an ‘LPS criteria outstanding issues notice’, a number of amendments to LUPAA have also been made at sections 35B, 35C, 35D, 35E, 35F, 35G and 35H.

## Draft LPS exhibition process

Under section 35B of LUPAA (operating before 17 December 2018), once the Commission was satisfied that a draft LPS met the ‘LPS criteria’ and was suitable for exhibition, it needed to first seek the approval of the Minister before directing a planning authority to exhibit the draft LPS.

This extra administrative step took additional time and was unnecessary, particularly given that it is highly unlikely that the Minister would deny a request from the Commission that it direct the exhibition of a draft LPS.

Therefore, the Amendment Act specifies the removal of the former subsections (1), (2), (3) and (4) of section 35B of LUPAA.

An additional amendment at subsection 35B(4D) requires the Commission to ‘notify’ the Minister that it is directing a planning authority to undertake exhibition in respect of a draft LPS.

## Aligning the SPPs with other planning reforms

The Amendment Act includes a new power whereby the State Planning Provisions (SPPs) can be more easily aligned with planning directives that have been approved since the SPPs were made (e.g. Planning Directive No. 6 Exemption and Standards for Visitor Accommodation in Planning Schemes, which became effective on 1 July 2018).

Since the making of the SPPs and until all LPSs are approved, the former provisions of LUPAA continue to apply and it is possible that more planning directives could be made prior to all the LPSs being in place. The making of any further planning directives would involve a comprehensive exhibition and hearing process conducted by the Commission.

Given that the making of the SPPs also undergoes a public exhibition and hearing process, there is duplication between the two processes.

The legislative amendments to LUPAA will enable the SPPs to be amended to remove any inconsistency between them and any future approved planning directive without duplicating the assessment process.

Accordingly, when bringing the SPPs into conformity with a planning directive, the Amendment Act allows the Minister and the Commission to determine whether the public exhibition and hearing components of the assessment process for the SPPs can be dispensed if the public interest will not be prejudiced (subsection 30H(3)(b) of LUPAA).

However, this provision only applies to final planning directives that have been subject to a public exhibition and assessment process, and not to interim planning directives that take effect without public exhibition. In addition, the power is only provided if the Minister has determined that a final planning directive should be reflected in the SPPs (at section 30BA).

## Notifying ‘relevant agencies’

The Amendment Act specifies at section 40FA and in Schedule 6 of LUPAA that a planning authority must notify State agencies or State authorities before exhibiting a draft amendment of an LPS or a draft amendment of an existing planning scheme. Mandatory ‘relevant agencies’ will be listed in regulation.

A further modification to LUPAA has been made whereby a planning authority can choose to notify any State agency or State authority (that is not identified as a ‘relevant agency’), which it considers may have an interest in a draft amendment of an LPS or draft amendment to a current planning scheme.

Early notification of a draft amendment by a planning authority to State agencies or State authorities will allow the State’s interests to be included in the consideration of a draft amendment of an LPS or a draft amendment of an existing planning scheme as early as possible in the assessment process.

## Correcting a ‘minor’ error in a Commission decision

A number of changes have been made to the TPC Act (at section 18A) to provide a power to correct a decision made by the Commission if it contains:

* a clerical mistake or an error arising from any accidental slip or omission; or
* an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

A similar provision has also been made in LUPAA at section 81AA.

The changes are consistent with other planning legislation that provide for correcting a minor clerical mistake, or an error arising from any accidental slip or omission.

However, the Commission can only make a correction to a decision if the decision has not taken effect and the rights and obligations of any person has not been altered. Errors that are more than ‘minor’ or discovered after the decision comes into effect would need to be corrected in accordance with the LPS or planning scheme amendment provisions of LUPAA.

## What consultation has there been?

The legislative provisions of the Amendment Act that relate to the miscellaneous legislative amendments were largely contained in the draft Land Use Planning and Approvals (Miscellaneous Amendments) Bill 2018 (draft LUPA Miscellaneous Amendments Bill).

The legislative provisions relating to the changes to LUPAA and the TPC Act help in streamlining the LPS assessment process and improving the functionality of LUPAA and the TPC Act. These amendments were subject to targeted stakeholder consultation that closed in September 2018.

Stakeholders who commented on the draft LUPA Miscellaneous Amendments Bill broadly supported the amendments to the LUPA Act and TPC Act and noted that they are administrative in nature and will assist with streamlining the LPS assessment process.

The miscellaneous amendments to LUPAA at section 5A relating to regional areas and regional land use strategies were included in the draft Land Use Planning and Approvals Amendment (Tasmanian Planning Policies) Bill 2017. These amendments were subject to both targeted and community consultation processes that closed in May 2017.

## Where do I find the Amendment Act?

The *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Act 2018* (Amendment Act) received Royal Assent on 17 December 2018.

A copy of the Amendment Act, LUPAA and the TPC Act are available on the Tasmanian Legislation Online website at: <https://www.legislation.tas.gov.au/>.

## Enquiries

Any enquiries can be directed to the Planning Policy Unit within the Department of Justice at Planning.Unit@justice.tas.gov.au or by telephoning (03) 6166 1429.

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