

REFORMING TASMANIA'S PLANNING SYSTEM

Legislation for the Tasmanian Planning Scheme

A POSITION PAPER FOR CONSULTATION TO ACCOMPANY THE DRAFT
EXPOSURE BILL

LAND USE PLANNING AND APPROVALS (TASMANIAN PLANNING SCHEME) AMENDMENT
BILL 2015



POSITION PAPER – LEGISLATION FOR A TASMANIAN PLANNING SCHEME

This Position Paper outlines the proposed legislative model for the Tasmanian Planning Scheme.

The Paper has been prepared by the Government for consultation purposes with local government, stakeholders and the Tasmanian community on the proposed model, and accompanies the draft Exposure Land Use Planning and Approvals (Tasmanian Planning Scheme) Amendment Bill 2015.

Consultation on the draft state content of the Tasmanian Planning Scheme will be managed through a separate process.

The draft Exposure Bill, Position Paper and Fact Sheets can be accessed on the Department of Justice's website at <http://www.justice.tas.gov.au/>

Submissions in relation to the draft Exposure Bill can be provided to:

legislation.development@justice.tas.gov.au; or

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The closing date for submissions is 10 August 2015.

Definitions

Tasmanian Planning Scheme	A single statewide planning scheme containing all of the State Planning Provisions and Local Planning Schedules that apply in Tasmania
State Planning Provision	A standard provision of the Tasmanian Planning Scheme that applies consistently across Tasmania
Local Planning Provision	A provision of the Tasmanian Planning Scheme that applies to a particular local council area
Local Provisions Schedule	A Schedule that contains all of the Local Planning Provisions that apply to a particular local council area
Particular Purpose Zone	A zone included in the current template for planning schemes in Tasmania and used in current schemes that allows local provisions to apply for a particular purpose, where the other standard zones do not provide appropriate controls to meet the local circumstances
Planning Directive	A planning directive made under the current Act for a statewide planning control
Specific Area Plan	A plan that provides for local planning controls to apply to a specific site within one or a number of zones

Acronyms

LUPAA	<i>Land Use Planning and Approvals Act 1993</i>
LPP	Local Planning Provision
LPS	Local Provisions Schedule
SPP	State Planning Provision
SPPA	<i>State Policies and Projects Act 1993</i>
TPC Act	<i>Tasmanian Planning Commission Act 1997</i>

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Executive Summary

The delivery of a statewide planning scheme is a key platform of the Government's planning reform agenda to make Tasmania's planning system fairer, faster, cheaper and simpler.

The Tasmanian Planning Scheme will deliver a high level of consistency in the planning controls that apply across the State, providing greater certainty to investors and the community about what use and development can occur.

This Paper provides an overview of proposed changes to the *Land Use Planning and Approvals Act 1993* to accompany the draft Exposure Bill for consultation purposes. The Government intends to introduce a final Bill to Parliament later this year to provide the framework for introducing the Tasmanian Planning Scheme.

The draft Bill gives effect to a proposed structure for the Tasmanian Planning Scheme that meets the recommendations of the Tasmanian Planning Reform Taskforce. It also introduces a 21-day statutory timeframe for assessing permitted use and development applications when the Scheme takes effect.

The proposed structure of the Tasmanian Planning Scheme includes:

- a set of statewide planning controls (State Planning Provisions); and
- Local Provisions Schedules that contain the Local Planning Provisions including the zone and overlay maps for each local area

Under the proposed model the Government will develop the State Planning Provisions including the template for the Local Provisions Schedules, while planning authorities will develop the content of the Local Planning Schedules.

The State Planning Provisions and the relevant Local Provisions Schedule will together form all of the planning controls that apply to a local area (the local application of the Tasmanian Planning Scheme). These will be administered by local planning authorities.

The proposed processes for making and amending the State Planning Provisions build on the processes for planning directives under the current Act with some changes including a clearer statutory assessment process and ability for the Minister to prepare the draft provisions, issue terms of reference for their preparation and modify the draft provisions in response to statutory consultation.

The proposed processes for making and amending Local Planning Provisions are broadly similar to the processes for making and amending planning schemes under the current Act.

The Taskforce has commenced initial drafting of the State Planning Provisions with assistance from a drafting team provided by the State Government and with support from local government through the Local Government Association of Tasmania.

Local government and stakeholders will be consulted as the draft provisions are prepared, prior to a statutory public consultation on the draft provisions in 2016.

Background

The delivery of a statewide planning scheme is a key platform of the Government's planning reform agenda to make Tasmania's planning system fairer, faster, cheaper and simpler.

This Position Paper provides an overview of the proposed changes to the *Land Use Planning and Approvals Act 1993* (LUPAA) to provide for a Tasmanian Planning Scheme, to accompany the draft Exposure Bill for consultation purposes.

The Tasmanian Planning Scheme will deliver a high level of consistency in the planning controls that apply across the State, providing greater certainty to investors and the community about what use and development can occur.

In May 2014 the Government established the Tasmanian Planning Reform Taskforce to provide advice on the delivery of a statewide planning scheme and to undertake the preliminary drafting of the state planning provisions.

The draft Exposure Bill gives effect to a proposed structure for the Tasmanian Planning Scheme that is consistent with the Taskforce's recommendations.

The proposed model aims to achieve a balance between consistency in the planning controls across Tasmania and retaining the necessary flexibility to address specific local planning matters where required.

Development of the statewide content of the Tasmanian Planning Scheme is now underway. Local government and stakeholders will be consulted as this content is developed, prior to a statutory public consultation in 2016.

The Taskforce is leading initial drafting of the State Planning Provisions with the assistance of a drafting team provided by the State Government and supported by local government, including the preliminary targeted consultation.

The amendments to the LUPAA that commenced on 1 January 2015, along with changes to administrative practice, aimed to enable all 29 interim planning schemes in Tasmania to be finalised by the end of 2015, in preparation for the introduction of the new Tasmanian Planning Scheme.

Consultation on those changes showed strong support from local government and the majority of stakeholders for finalising the interim schemes quickly and focusing State and local government resources on delivering the statewide planning scheme. The Government intends to introduce a final Bill to Parliament later this year to provide the framework for introducing the Tasmanian Planning Scheme.

Structure of the Tasmanian Planning Scheme

The Tasmanian Planning Scheme will be based on a clear set of planning controls that apply consistently to land use and development across the State.

The proposed structure of the scheme includes:

- a set of statewide planning controls (State Planning Provisions); and
- Local Provisions Schedules that contain the Local Planning Provisions including the zone and overlay maps for each local area*

Under the proposed model the Government will develop the State Planning Provisions including the template for the Local Provisions Schedules. Figure 1 illustrates this structure.

Planning authorities will develop the Local Provisions Schedules for their local municipal area. The Schedules will include the zoning and overlay maps that indicate which State Planning Provisions are to apply to each local area, and any other unique local planning controls that are approved.

The State Planning Provisions and the relevant Local Provisions Schedule will together form all of the planning controls that apply to a local area (the local application of the Tasmanian Planning Scheme). These will be administered by local planning authorities.

A key consideration put forward by the Taskforce was that it should be possible to clearly identify the State Planning Provisions as a single ‘part’ of the scheme that applies universally across the state, rather than having the State and Local Planning Provisions interspersed throughout the scheme.

* The use of the term “Local Provisions Schedule” provides for clear identification of the suite of Local Planning Provisions that apply, respectively, to each local council area, and who is the planning authority in relation to these provisions.

The use of a specific term to identify this suite for each local area will ensure, for example, each planning authority can only initiate amendments to zoning maps and other Local Planning Provisions, and issue permits for use and development, within their local municipal area, and that a change to a Local Planning Provision in one local council area will not affect any Local Planning Provision in any other local council area.

It will also allow for the Tasmanian Planning Scheme to come into effect in any local council area as soon as the Schedule for that area is completed, rather than requiring all planning authorities Schedules to be completed, providing for the Tasmanian Planning Scheme to come into effect as soon as possible in these areas.

Another key consideration was that the initial suite of State Planning Provisions should cover the 23 zones in *Planning Directive No 1*, to provide the full suite of statewide planning controls at the same time, rather than these being introduced in a staged manner over a number of months or years. This will provide greater certainty to landowners, developers and the Tasmanian community sooner, rather than providing for ongoing change to the planning controls over a longer period.

This will provide for the current 30 planning schemes in Tasmania to be replaced with a single statewide scheme. Planning authorities will not be able to modify the content of the State Planning Provisions of the Tasmanian Planning Scheme.

Amendments to current planning schemes, including strategic and other rezoning proposals, will continue to be able to be made to these schemes until the Tasmanian Planning Scheme comes into effect in each local area. It is important that the existing schemes continue to operate effectively until the Tasmanian Planning Scheme is in place.

STATE PLANNING PROVISIONS

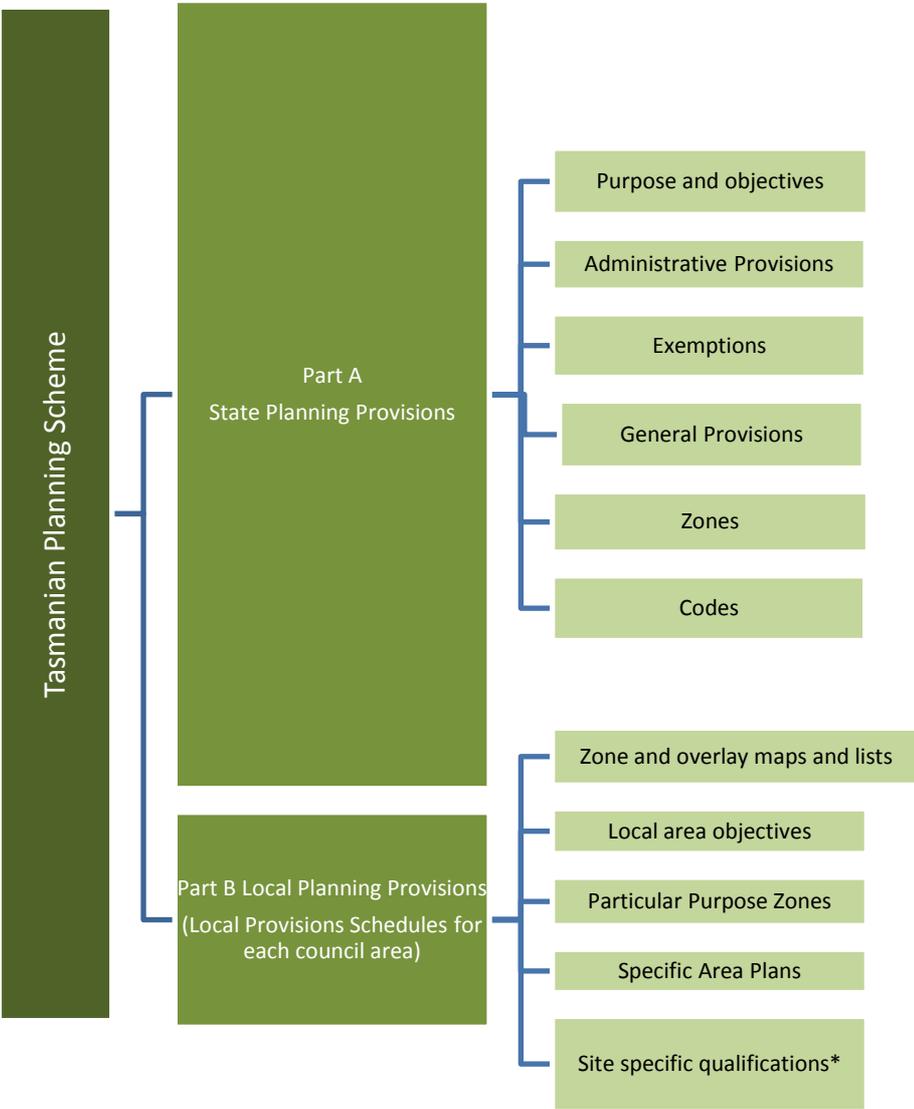
The Tasmanian Planning Scheme will build on the current *Planning Directive No 1* *The format and structure of planning schemes* by providing State Planning Provisions for each of the statewide zones and a consistent set of statewide codes.

The State Planning Provisions will include:

- Purpose and Objectives
- Administrative Provisions
- Exemptions
- General Provisions
- Zones - with standard use and development provisions
- Codes - with standard provisions

The State Planning Provisions will be drafted by the Government initially through the Taskforce, and subsequently through the relevant state agency or the Tasmanian Planning Commission. Where the Minister prepares the draft State Planning Provisions, he or she will also have the option of establishing a non-statutory body to undertake the initial drafting or provide advice in relation to the draft provisions. The Commission also currently has a power to establish a Committee for this purpose under the *Tasmanian Planning Commission Act 1997*.

FIGURE 1 STRUCTURE OF THE TASMANIAN PLANNING SCHEME



The drafting task will include populating the 23 statewide zones currently contained in Planning Directive No 1 and preparing a suite of statewide codes.

The State Planning Provision for the Particular Purpose Zone will provide a template for Local Planning Provisions where the standard suite of zones is not appropriate for a unique land use in a particular area, and will not include any other statewide content. The content of each Particular Purpose Zone will be prepared by the local planning authority as part of the Local Planning Provisions.

The remaining zones will contain a purpose statement, standards for no permit required, permitted and discretionary use and development and prescribe any prohibited use and development within that zone, to apply consistently across the State.

The final suite of codes will be determined following a review and targeted consultation with local government and stakeholders. The review will consider statewide codes that are in operation or under development and the current suite of codes in interim planning schemes.

The State Planning Provisions will also contain the administrative and machinery clauses to give effect to the Tasmanian Planning Scheme, the template for the Local Planning Provisions and their associated Schedules, and a standard suite of exemptions for use and development which does not require planning approval.

Some flexibility will be provided for the use of Local Planning Provisions to address local planning issues where planning merit can be demonstrated. Criteria will apply to provide certainty as to when Local Planning Provisions can be used.

This will maintain the integrity of the State Planning Provisions while ensuring the planning controls are not too rigid to address local needs. The Commission will play an important role as gatekeeper in assessing the first Local Provisions Schedules and any proposed amendments to these over time, to ensure a balance is maintained between statewide consistency and the need to address specific local planning matters.

The State Planning Provisions will be subject to a rigorous consultation process. Targeted consultation will occur during the Taskforce's initial drafting in 2015, followed by statutory public consultation and assessment which is expected to commence in early 2016.

Once the Minister is satisfied that the State Planning Provisions are in a final form, they will be formally 'made' by Gazette notice.

LOCAL PLANNING PROVISIONS

Once the State Planning Provisions have been made, the Minister will direct each planning authority to prepare a Local Provisions Schedule in accordance with the template provided as part of the State Planning Provisions.

The Local Provisions Schedules will contain all of the Local Planning Provisions that apply to a particular local council area.

The Local Provisions Schedules will include Local Planning Provisions for:

- Zone and overlay maps and lists
- Local area objectives
- Particular Purpose Zones
- Specific Area Plans
- Site specific qualifications*

*In addition to the current mechanisms for Particular Purpose Zones (PPZ) and Specific Area Plans (SAP) that will be retained, there may be a need for additional local planning controls to apply to specific sites in a limited number of circumstances.

The Minister will be able to direct planning authorities to review their current zoning and overlay maps and other local provisions to consider if any changes are required to support the introduction of the State Planning Provisions.

The only changes to the local provisions in the existing schemes that will be provided in the new Local Provisions Schedules are those changes that are required to effectively implement the State Planning Provisions.

This will largely be a translation exercise, with the new State Planning Provision standards largely applying to the current zone maps without requiring any redrawing of the existing zone boundaries.

Any strategic rezoning that may be required for other purposes, for example as a result of issues arising through or not addressed as part of the interim scheme process, can occur as part of the standard amendment process under LUPAA either prior to or after the introduction of the Local Planning Schedules.

The changes to the amendment process that were introduced as part of the 2014 Amendment Bill provide a more streamlined process for strategic amendments to occur to the current planning schemes. This more streamlined amendment processes are retained for the Tasmanian Planning Scheme in the draft Bill.

In most cases it is anticipated that any Particular Purpose Zones or Specific Area Plans that exist under the current planning schemes that address more complex planning requirements that apply to a specific site such as a major hospital or university complex would be retained as Local Planning Provisions in the new Schedules.

The draft Local Provisions Schedules including the zone and overlay maps would then be released for public exhibition and assessment prior to being finalised.

The draft Schedules will be subject to statutory consultation even if the local provisions, including the zone map boundaries have not changed during the translation. This is an important step to provide for natural justice as the detailed planning controls that apply to individual properties in each local area will undergo some changes to achieve the consistent statewide standards in the new State Planning Provisions.

If the provisions in relation to Particular Purpose Zones and Specific Area Plans are not changed, these will not need to be subject to the same process.

Any person will be able to make a representation in relation to the local content of the Schedule, but not in relation to the content of the State Planning Provisions, which will have already been consulted on and made through a separate statutory process.

For example, a representation could be made that a different State Planning Provision should apply to a particular piece of land, or that a Local Planning Provision should apply to that land, to address a specific local planning issue.

The Tasmanian Planning Scheme will come into effect in each local area when the Local Provisions Schedules which contain the zoning and overlay maps to operationalise the State Planning Provisions have been approved.

Once the Scheme is in force, it may not always be necessary for all Local Provisions Schedules to be reviewed before a new State Planning Provision comes into effect.

For example, if a new zone was introduced as a State Planning Provision in future that only applied to certain municipal areas, such as a new CBD zone for major centres, the Minister would only direct those planning authorities that might be affected to review their Local Provisions Schedules.

In these cases planning authorities would only be required to exhibit any modifications to their Local Provisions Schedules as a result of the new State Planning Provisions (for example, the zones where the new standards apply), rather than exhibiting the entire Schedule and representations would be limited to these matters.

INTERIM PLANNING SCHEMES

The current Act provides for interim planning schemes to come into force prior to statutory consultation, with public exhibition, assessment and any resulting modifications or amendments to the scheme occurring afterwards.

Experience with the interim planning schemes has been that these can remain in place for a number of years prior to the public consultation and assessment process being finalised.

Interim planning schemes were introduced for the purpose of providing regional consistency across individual planning schemes in Tasmania in a single process, and were largely intended to consist of a translation exercise from the previous inconsistent number of zones and codes and their content, to a new, regionally consistent model.

With the move to a statewide scheme with one set of State Planning Provisions, which will be based on the same range of zones in these interim planning schemes, this mechanism is not considered to be necessary to support introduction of the Tasmanian Planning Scheme.

The current Act also includes a power for the Minister to make interim planning directives having immediate effect for up to 12 months with the normal consultation process occurring after the interim directive has come into force. Interim planning directives may be used where an urgent change is required to planning schemes. This power is also in place for State Policies under the *State Policies and Projects Act 1993* (SPPA).

It is not proposed to include a power in the amended Act for either interim State Planning Provisions or interim Local Provisions Schedules to be made. Statutory timeframes will be in place for introducing the final provisions and natural justice will be provided with consultation occurring prior to their introduction.

Legislation for a Tasmanian Planning Scheme

SUMMARY OF PROPOSED CHANGES

Key proposed changes to the *Land Use Planning and Approvals Act 1993* include to:

- Introduce definitions for the Tasmanian Planning Scheme, State Planning Provisions, Local Planning Provisions and Local Provisions Schedules

- Replace the current provisions for planning schemes and planning directives with a new framework for making and amending the Tasmanian Planning Scheme including separate processes for State and Local Planning Provisions
- Provide a power for the Minister to direct planning authorities to prepare, or amend their Local Provisions Schedules, to implement the State Planning Provisions
- Provide that the Tasmanian Planning Scheme will only come into effect in each local area once the relevant Local Provisions Schedule is in place
- Introduce a statutory public consultation process and statutory timeframes for State Planning Provisions and the ability for the Minister to modify the draft State Planning Provisions following consultation and assessment
- Remove the provisions for interim planning schemes and interim planning directives
- Provide transitional arrangements for planning schemes and other relevant matters, including any permits being dealt with under the current planning schemes
- Ensure the recently proclaimed amendments passed by Parliament in 2013 and the Act as a whole consistently reflect the new structure for the Tasmanian Planning Scheme

It is anticipated that consequential amendments may be required to some other legislation to ensure the references to LUPAA remain valid.

It is also anticipated that changes may be required to the *Land Use Planning and Approvals Regulations 2014* to support the above amendments to the Act.

STATE PLANNING PROVISIONS

The proposed processes for making and amending State Planning Provisions build on the processes for planning directives under the current Act.

Key differences include that a clear statutory process will be introduced for public exhibition and assessment of representations by the Commission, with statutory timeframes and the Minister will either prepare the draft State Planning Provisions or issue a terms of reference and direct the Commission to prepare the draft provisions.

The Minister will also be able to make modifications to the draft State Planning Provisions after considering the Commission's report and any other relevant matters.

Key proposed elements for the State Planning Provisions include:

- The Minister may prepare, or direct the Commission to prepare in accordance with a terms of reference, draft State Planning Provisions (SPP)

- The Minister may approve the draft SPP for consultation
- The Commission is to notify relevant parties and publicly exhibit the draft SPP and invite representations for 42 days
- The Commission is to consider the representations and report to the Minister on its findings and recommendations including any proposed modifications and whether any specific part of the draft SPP should be re-done, within 90 days or such longer period as the Minister allows
- The Minister having considered the report may make, with or without any modifications proposed by the Commission or modifications of the Minister's own motion, the final SPP, or refuse to make the SPP
- The existing power for the Minister to make minor modifications to planning directives without statutory consultation will be retained for the SPP
- The Minister may direct planning authorities to review their Local Planning Provisions or to make a Local Provisions Schedule to support the introduction of the SPP.

Figure 2 illustrates the process for making the Tasmanian Planning Scheme.

Figure 3 illustrates the process for amending the State Planning Provisions and bringing them into effect in Local Provisions Schedules, once the Tasmanian Planning Scheme is in force.

Further detail is provided below on the process for making the Local Provisions Schedules and modifying these in future where new or modified State Planning Provisions are made.

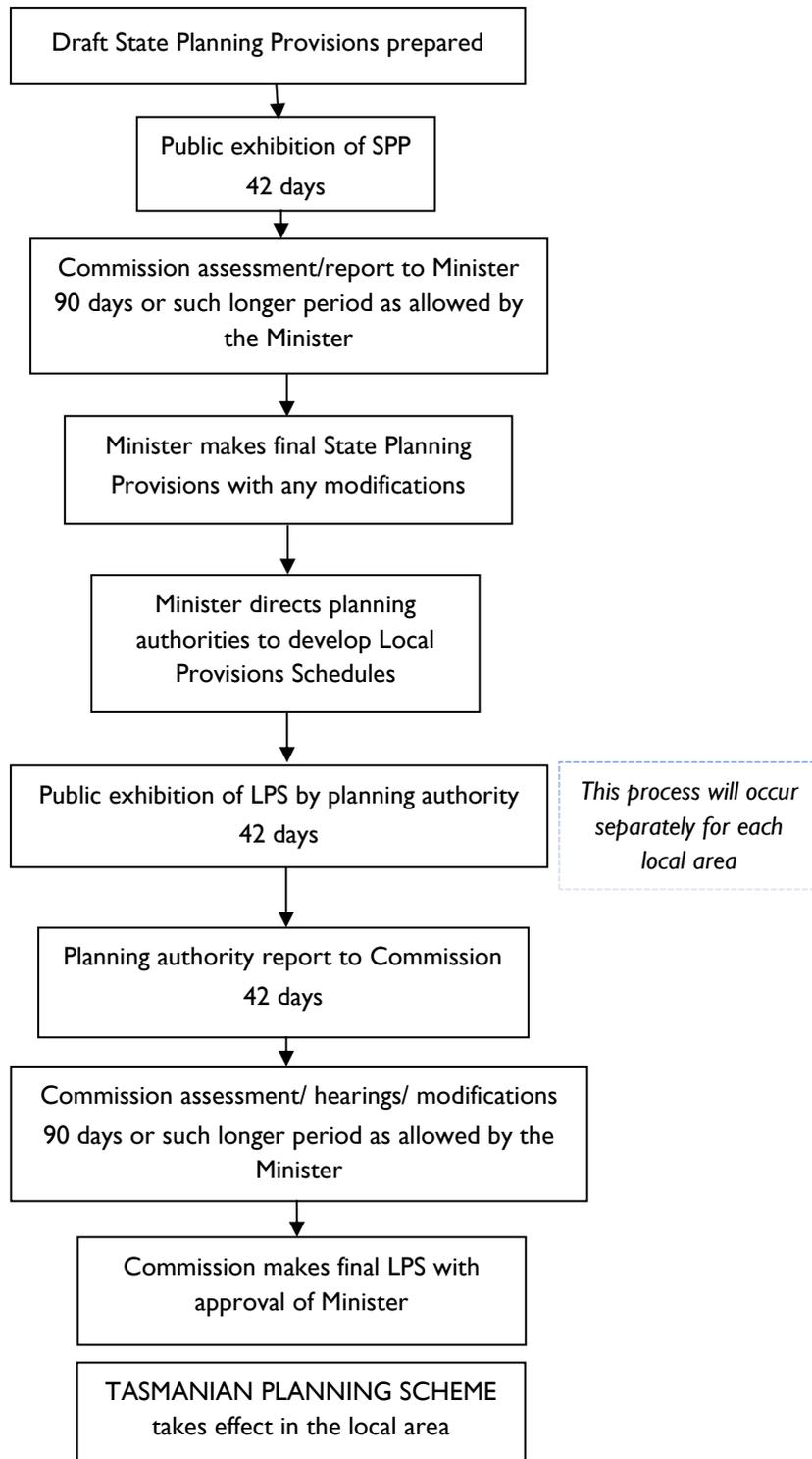
Preparation of the draft State Planning Provisions

Under the current Act, the Commission, a planning authority, a State Service Agency or any other person can prepare a draft planning directive and lodge it with the Commission. Planning directives can be used for a range of purposes, and are not specifically restricted in the current Act to making statewide planning provisions.

As the State Planning Provisions will reflect the Government's planning controls the current arrangement where 'any person' can prepare a draft planning directive is not considered to be appropriate. The draft Exposure Bill provides flexibility for the Minister to either prepare the draft provisions, or to direct the Commission to prepare these.

The Commission would be able, through its existing powers of delegation under the *Tasmanian Planning Commission Act 1997* (TPC Act), to establish a Committee to prepare the draft State Planning Provisions on its behalf. The Commission has used this power, for example, in the preparation of *Planning Directive No 4.1 Standards for Residential Development in the General Residential Zone*.

FIGURE 2 MAKING THE TASMANIAN PLANNING SCHEME



The statutory framework does not prevent any person from requesting that the Minister consider developing a State Planning Provision to address a particular issue, on an administrative basis. The Minister would then need to determine whether preparation of such a State Planning Provision is desirable before any further work could proceed.

Public exhibition and assessment

The current provisions for planning directives do not require a statutory public exhibition process that allows any person to make a statutory representation to the Commission and there is no explicit requirement in the Act itself for any submissions that may be received to be considered. There is also no statutory timeframe for the Commission's assessment and report to the Minister.

The discretionary power for the Commission to conduct a hearing on planning directives will be retained for the State Planning Provisions.

The draft Exposure Bill provides that the Commission must invite and consider representations, and may conduct a hearing. This will allow it to deal with any issues raised on the basis of written representations where appropriate, with the option of holding a hearing on certain matters where it considers this is necessary or appropriate.

The Minister will be able to be represented at any hearings that may occur into the State Planning Provisions, to provide clarity regarding the content of these provisions. This is an administrative process which has been used previously for planning directives, and does not require a statutory power. No specific provision is included for this in the draft Bill.

The Minister will be able to modify the draft State Planning Provisions, having considered the Commission's report and any other relevant information.

The process for State Planning Provisions differs from the requirements for Local Planning Provisions, which determine the specific planning controls to apply to a particular piece of land, where the Commission must hold a hearing, with some minor exceptions similar to those applying in the current Act.

LOCAL PLANNING PROVISIONS

Making and modifying Local Provisions Schedules

The draft Exposure Bill provides a separate process for making Local Provisions Schedules and modifying these to reflect any new State Planning Provisions that is similar to the current processes planning authorities follow for preparing planning schemes.

As with the current Act, a separate process will be retained for amendments to the Local Provisions Schedules that are initiated by planning authorities to address specific issues.

Key proposed elements for the Local Provisions Schedules include:

- A planning authority may with the Minister's approval provide him or her with a draft Local Provisions Schedule and the Minister may direct a planning authority to prepare a draft or to review a part of its Schedule in relation to a State Planning Provision
- The Minister may direct the Commission to prepare a draft Schedule where the planning authority has not provided a draft within the specified period and the Commission must consult with the planning authority in preparing the draft
- The Commission must recommend to the Minister whether the draft Local Provisions Schedule should be publicly exhibited
- The Commission with the Minister's approval may direct a planning authority to publicly exhibit or to amend a draft Schedule or amend the draft itself
- The planning authority must publicly exhibit the draft Schedule, or draft modification to the Schedule, for 42 days and the Commission must cause a copy of the draft to be placed on public exhibition at its office for that period
- The planning authority must forward a report to the Commission within 42 days of the exhibition period ending or such longer period as the Commission allows, including its views on the representations
- The Commission must consider the draft Local Provisions Schedule, representations and the planning authority's report and hold a hearing, unless the person making the representation provides in writing that they do not wish to be heard, apart from for 'minor and urgent' amendments
- The Commission may require a planning authority to modify the draft Schedule, modify it itself, or reject it, or direct the planning authority to re-do a specific part
- Where the Commission rejects a draft Schedule or requires a specific part to be done again the planning authority must prepare and submit it to the Commission and that part must be re-exhibited
- A planning authority may apply to withdraw a draft Local Provisions Schedule
- Where the Commission is satisfied the draft Schedule is in order, it must, with the Minister's approval, approve it within 90 days of the planning authority's report or such longer period as the Minister allows.

Amending Local Provisions Schedules

The current provisions for amending a planning scheme including the provisions brought in by the *LUPA (Streamlining of Process) Amendment Bill 2014* will generally be retained for Local Provisions Schedules, with any changes required to meet the new language and structure of the Tasmanian Planning Scheme.

Figure 4 illustrates the process for amending Local Provisions Schedules once the Tasmanian Planning Scheme is in force, based on the current Act provisions.

The provisions for zoning translation issues and agreed amendments that were specifically introduced for interim planning schemes in the 2014 Amendment Bill are no longer required and will not be retained. Transitional provisions have been included to allow these processes to continue to operate until the Tasmanian Planning Scheme is in force.

The draft Exposure Bill retains the current ability for the Commission with the Minister's approval to make certain 'urgent and minor' amendments that are specified in the Act, to a Local Provisions Schedule. It also provides that a planning authority may only initiate an amendment to its own Local Provisions Schedule, and not to other Local Provisions Schedules that it does not administer or to a State Planning Provision.

Planning authorities will continue to be able to initiate rezoning of areas through amendments to the current planning schemes, prior to the Tasmanian Planning Scheme being introduced, for example to address any strategic issues that have been identified through the interim planning scheme process and have not yet been addressed.

REVIEW OF THE TASMANIAN PLANNING SCHEME

The draft Exposure Bill includes provisions for a statutory review of both the State Planning Provisions and Local Provisions Schedules. The current Act includes review provisions for individual planning schemes.

Under the proposed model the Minister will be able to either review the State Planning Provisions on his or her own motion or direct the Commission to review these and provide recommendations on any changes that may be required.

The Minister will also be able to direct a planning authority to review all or part of its Local Provisions Schedule at any time.

FIGURE 3 - AMENDING THE TASMANIAN PLANNING SCHEME – TO IMPLEMENT STATE PLANNING PROVISIONS

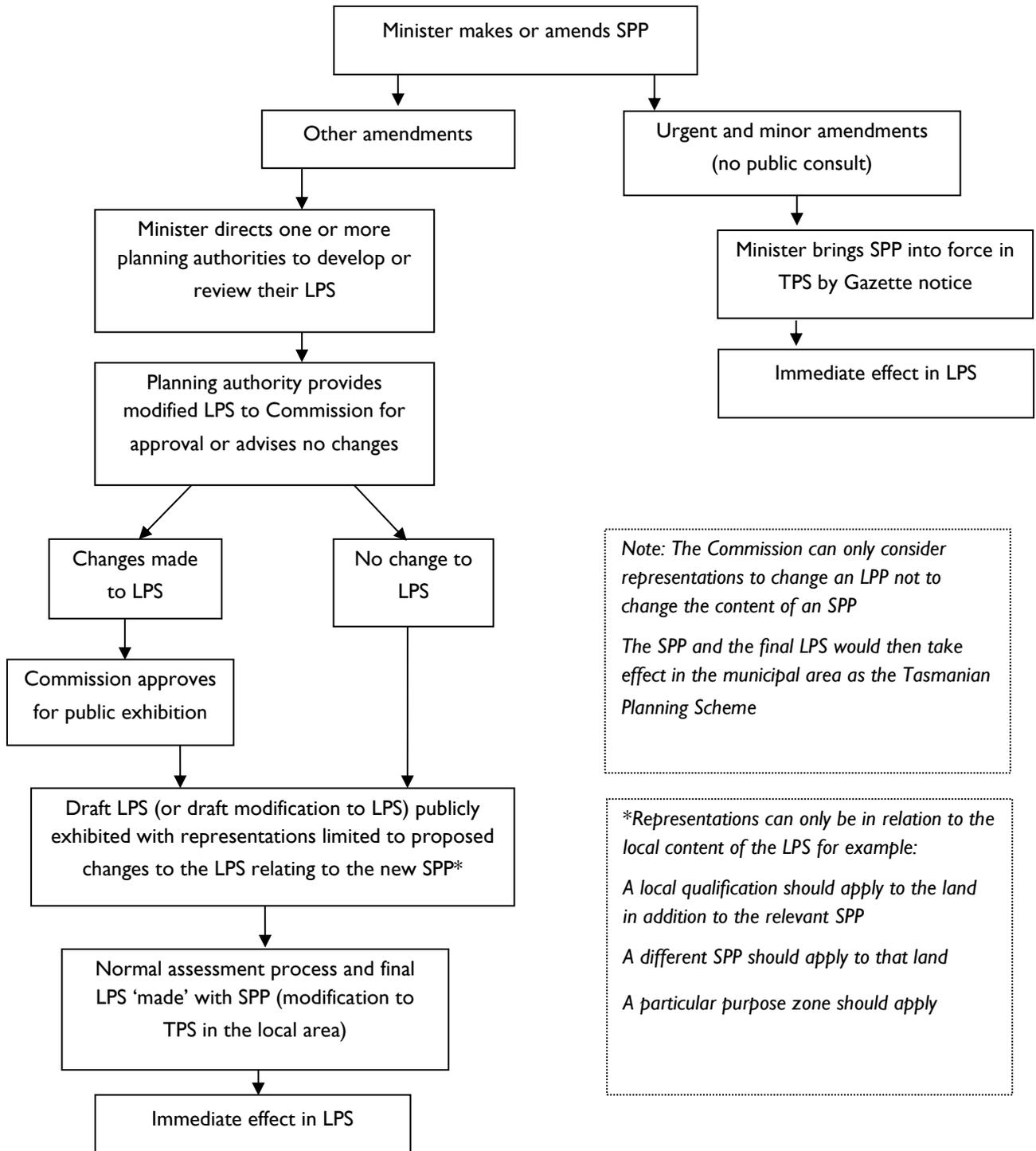
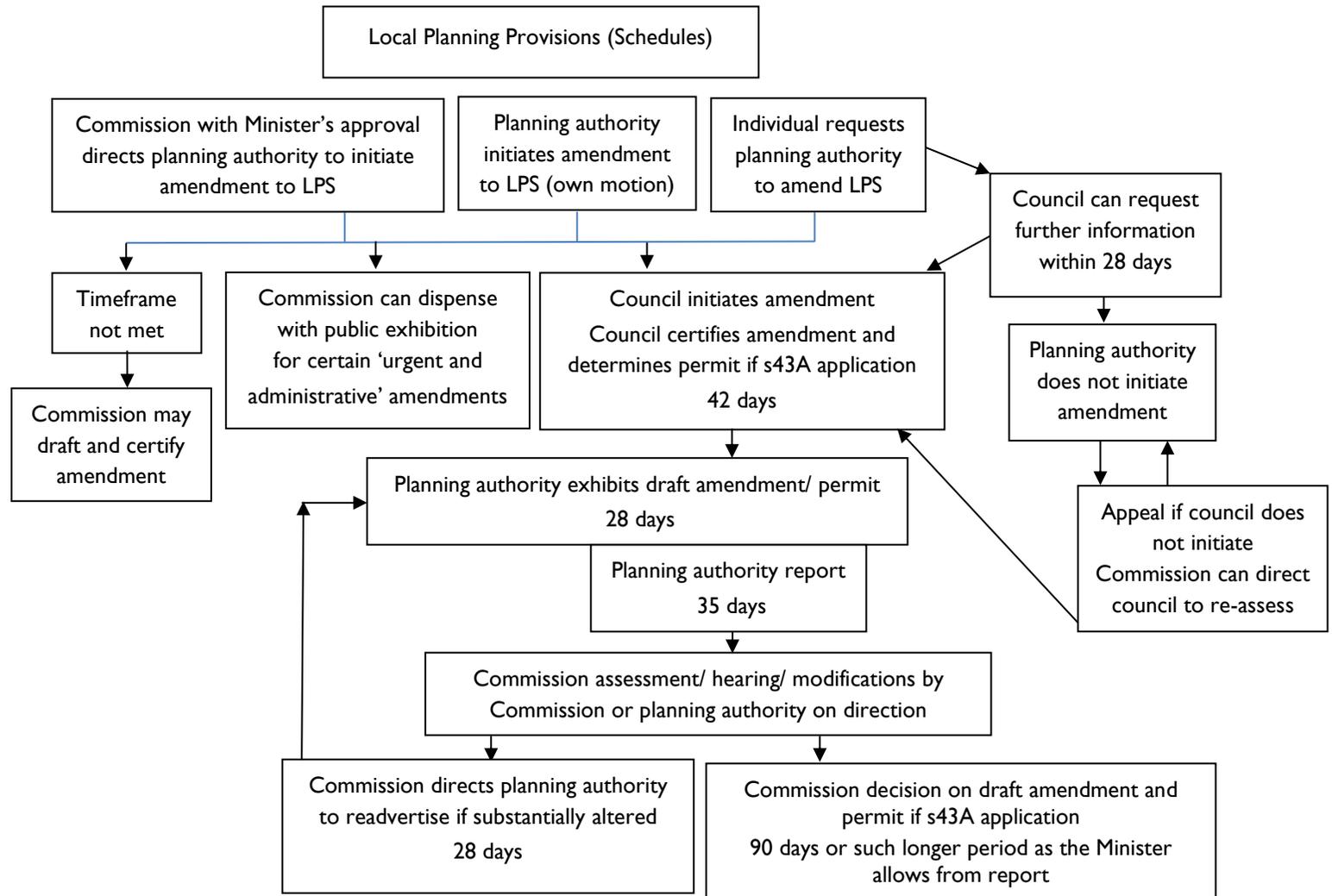


FIGURE 4 AMENDING THE TASMANIAN PLANNING SCHEME – LOCAL PLANNING PROVISIONS



The provisions for reviewing Local Provisions Schedules will build on the current provisions in the Act for reviewing planning schemes and will require planning authorities to seek public comment for a minimum of 21 days and submit a report to the Commission including the planning authority's opinion as to whether the Schedule requires amendment or replacement or can continue in its current form.

The draft Exposure Bill does not include a statutory timeframe for a regular review of the Local Provisions Schedules, as this is expected to be largely driven by any amendment of the State Planning Provisions which will contain the majority of the content of the planning controls, and any review of the Regional Land Use Strategies.

Planning authorities will also continue to keep their Local Planning Schedules, in particular the zoning maps, under regular review, as part of administering the Tasmanian Planning Scheme in their local area.

OTHER MATTERS

Special Planning Orders

The current power to make special planning orders in the Act will be retained. In the draft Exposure Bill these are now referred to as “Special Local Provisions Schedules” to fit with the structure and language of the Tasmanian Planning Scheme.

Special planning orders have been used in the past for situations such as where a planning authority has not provided an underlying zoning for Commonwealth land (as the controls wouldn't technically apply) and the land has been sold to a private owner, leaving it with no planning controls, such as with the previous Hobart airport land.

The power to make these will continue to be required for future situations where it may be necessary to bring in planning controls quickly where no such controls apply or where a specific issue is identified with the Tasmanian Planning Scheme.

Statutory timeframe for permitted use and development

The Government's election commitment to reduce the timeframe for assessing applications for permitted use or development from 42 to 21 days and the timeframe for requests for further information from 21 days to 14 days was partially delivered through the *Land Use Planning and Approvals (Streamlining of Process) Bill 2014*.

Following feedback from local government in particular, that Bill introduced a 28 day statutory timeframe for applications for permitted use or development and a 14 day timeframe for requests for further information.

The Government introduced the 28 day timeframe as a temporary measure recognising the transitional arrangements required as the result of the complex drafting of some interim planning schemes and the interaction with referrals to TasWater and the Gas entity, and with a view to reducing it to 21 days when the statewide planning scheme comes into effect.

The draft Exposure Bill introduces the 21 day timeframe, however this provision will not commence until the Tasmanian Planning Scheme is in place. This will provide planning authorities with a period of time to address the administrative matters that may be required to implement the 21 day assessment timeframe.

Other proposed changes

The draft Exposure Bill provides for a number of other changes to support the transition to a Tasmanian Planning Scheme, including that:

- The provisions for planning purposes notices will not be retained as the structure of the Tasmanian Planning Scheme and the processes supporting it will no longer require notices to allow local provisions to ‘override’ statewide provisions
- The power for the Minister to request or direct planning authorities to jointly develop, or jointly report on, their draft Local Provisions Schedules will not be retained for the Tasmanian Planning Scheme as the Act will involve a move from a regionally based model scheme to a statewide scheme

SAVINGS AND TRANSITIONAL PROVISIONS

The draft Exposure Bill provides the majority of the savings and transitional provisions in a single Schedule to the Act, for ease of reference. This will also allow for certain of these provisions to be amended or revoked more easily in future, with minimal effect on the overall structure and numbering of clauses in the Act.

Given the nature of the change from 30 individual planning schemes to a single Tasmanian Planning Scheme, a broad range of savings and transitional provisions are required for matters relating to planning schemes including permits, permit applications, applications for amendments to a planning scheme, appeals and planning directives.

While not technically a savings and transitional matter, the Act will continue to provide protection for existing uses by providing that nothing in a planning scheme is to be taken to

prevent the continuance of any use of land or buildings or any development that was commenced but not completed for any purpose for which it was lawfully used or constructed before the new Scheme comes into operation, including by virtue of requiring a permit. This will apply to situations where no permit was required under the previous planning scheme, as well as where a permit is in place.

The following is a summary of the matters that are addressed in the savings and transitional provisions, and related matters:

- Applications for permits and amendments to the current planning schemes will continue to be able to be processed until such time as the Tasmanian Planning Scheme comes into effect in each municipal area.
- Planning approvals provided under permits issued prior to the Tasmanian Planning Scheme coming into effect will continue to have legal effect once the new Scheme is in place. This is not a transitional provision per se, but rather a standalone provision of the current Act (current section 20) which has been retained.
- Permits that have been applied for, but not decided by a planning authority prior to the Tasmanian Planning Scheme coming into effect will continue to be processed under the old planning scheme however an applicant will be able to withdraw their application and reapply under the new Scheme should they wish to.
- Appeals that have been lodged but not decided prior to the Tasmanian Planning Scheme coming into effect will continue, rather than being extinguished by the introduction of the new Scheme. This will allow for these matters to be finalised.
- Appeals that are lodged after the Tasmanian Planning Scheme comes into effect on permits that were issued prior to scheme having effect will continue, rather than being extinguished by the introduction of the new Scheme. This will allow for these matters to be finalised.
- Applications for amendments that have not been decided prior to the Tasmanian Planning Scheme coming into effect, including combined applications for a permit and an amendment to a planning scheme, if still required under the new Scheme, will be able to translate into proposed amendments under the new Scheme rather than being extinguished.
- Planning directives, including interim directives that are in place, will be extinguished by the new Scheme. This will be managed administratively, with all current planning directives to be assessed and incorporated into the State Planning Provisions with any proposed modifications, where approved by the Minister.

- Planning directives subject to a current process when the Tasmanian Planning Scheme comes into effect will be extinguished by the new Scheme. There are expected to be few, if any, directives subject to a current process and this will be managed administratively, with any proposed planning directives that are not yet in place to be incorporated into the State Planning Provisions, where approved by the Minister.
- Planning directives, special planning orders, planning purposes notices and any other relevant instruments under the current planning schemes that will not be retained under the new Tasmanian Planning Scheme will be saved and subject to transitional provisions until such time as the new Scheme is in place, in each municipal area.