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Planning Policy Unit
Department of Justice

Via email: haveyoursay@justice.tas.gov.au

Tasmania
Level 3, 124 Exhibition Street
Melbourne, 3000

T: (03) 9654 3777
E: vic@planning.org.au
W: planning.org.au/vic

ABN 34 151 601 937

Draft Land Use Planning and Approvals (Miscellaneous Amendments)

I am writing to provide feedback from the Planning Institute of Australia (PIA) Tasmania Division in relation to the proposed amendments to the *Land Use Planning and Approvals Act 1993* (LUPA Act) and the *Tasmanian Planning Commission Act 1997* (TPC Act) anticipated to be included in the Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Bill 2018 (TPP Bill).

PIA is generally supportive of amendments which avoid duplication in process and unnecessary complication or administration where the public interest is not affected.

The following details our specific consideration and comments in relation to some of the proposed amendments to the *Land Use Planning and Approval Act 1993*:

Amendment	Comment
<p>4. Section 30BA inserted After section 30B of the Principal Act, the following section is inserted in Subdivision 2: 30BA. Minister may determine that SPPs to conform with certain planning directives <i>The Minister may determine that a planning directive, to which clause 3(2)(ba) of Schedule 6 applies and that is in force in relation to a municipal area, should be reflected in the SPPs.</i></p>	<p>This amendment relates to proposed amendment 18(h) which inserts Sch 6 2(ba) as follows: ...by inserting the following paragraph after paragraph (b) in clause 3(2): <i>(ba) a planning directive, and an interim planning directive, each within the meaning of the former provisions, that is in force under, and is, after the commencement day, made under, Part 2A of the former provisions as they apply in accordance with paragraph (b), applies in relation to the planning instrument; and</i> The aim of allowing SPP's to be amended to reflect approved planning directives is generally supported. However, with this amendment, Sch 6 2(ba) relates to planning directives and interim planning directives, and interim planning directives are 'in force' prior to their own public exhibition and hearing process. The concern with this amendment relates to the following amendment (5) on the waiving of public notification.</p>

Amendment	Comment
<p>5. Section 30H amended (When public exhibition not required) Section 30H(3)(b) of the Principal Act is amended by inserting after subparagraph (vii) the following subparagraph: <i>(viii) bringing the SPPs into conformity with a planning directive which the Minister has, under section 30BA, determined should be reflected in the SPPs;</i></p>	<p>Further to above, this amendment appears to allow waiving of public exhibition, through the proposed amendment to Sch 6 2(ba), to both ordinary planning directives (ie that have been through public exhibition and hearing processes themselves) and also to interim planning directives which are in force prior to public exhibition and hearings. While the avoidance of duplication in the exhibition process is supported where it relates to provisions which have separately undergone this public process, clarity is required to ensure that changes to SPP's which reflect interim planning directives are not exempted from exhibition.</p>
<p>6. Section 31 amended (Interpretation of Part) Section 31 of the Principal Act is amended as follows: (a) by inserting the following definition after the definition of exhibition premises: <i>LPS criteria outstanding issues notice means a notice prepared under section 35B(4B);</i> (b) by inserting the following paragraph after paragraph (a) in the definition of relevant exhibition documents: <i>(ba) an LPS criteria outstanding issues notice in relation to the draft LPS, if a direction under section 35B(4) in relation to the draft LPS includes a statement that the notice forms part of the relevant exhibition documents in relation to the draft LPS; and</i></p>	<p>Provisions which expedite the public exhibition of draft LPS's is supported provided the outstanding matters form part of the exhibited documents as intended.</p>
<p>8. Section 35B amended (Directions to exhibit draft LPSs) Section 35B of the Principal Act is amended by omitting subsections (1), (2), (3) and (4) and substituting the following subsections: <i>(4) The Commission may direct a planning authority to undertake public exhibition in respect of a draft LPS that –</i> <i>(a) a planning authority has submitted to the Commission under section 35; or</i> <i>(b) the Commission has prepared under section 35A(3).</i> <i>(4A) The Commission may only issue a direction under subsection (4) –</i> <i>(a) if the Commission is of the opinion that the draft LPS meets the LPS criteria; or</i> <i>(b) if, after taking all reasonably practicable measures to determine whether the draft LPS meets the LPS criteria, the Commission –</i> <i>(i) prepares in relation to the draft LPS an</i></p>	<p>It is agreed that the proposed removal of Ministerial approval, between the Commission agreeing that a draft LPS is suitable for exhibition and councils being directed to undertake the exhibition, is reasonable in that it eliminates an apparently unnecessary administrative step.</p>

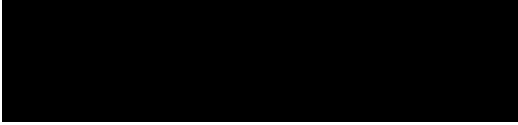
Amendment	Comment
<p><i>LPS criteria outstanding issues notice under subsection (4B); and</i></p> <p><i>(ii) includes in the direction under subsection (4) a statement that the LPS criteria outstanding issues notice forms part of the exhibition documents in relation to the draft LPS; and</i></p> <p><i>(iii) attaches to the direction a copy of the LPS criteria outstanding issues notice.</i></p> <p><i>(4B) The Commission may prepare in relation to a draft LPS an LPS criteria outstanding issues notice.</i></p> <p><i>(4C) An LPS criteria outstanding issues notice is a notice, in relation to a draft LPS, setting out the LPS criteria in relation to which the Commission considers that it needs further information in order for the Commission to be of the opinion that the draft LPS meets the LPS criteria.</i></p> <p><i>(4D) The Commission is to notify the Minister of a direction given under subsection (4).</i></p>	
<p>11. Section 35E amended (Representations)</p> <p>Section 35E of the Principal Act is amended as follows:</p> <p>(a) by omitting from subsection (1) “a draft LPS that is” and substituting “the relevant exhibition documents in relation to a draft LPS that are”;</p> <p>(b) by omitting from subsection (2) “a draft LPS” and substituting “the relevant exhibition documents in relation to a draft LPS”;</p> <p>(c) by inserting in subsection (3) “the relevant exhibition documents in relation to” after “relation to”;</p> <p>(d) by inserting the following paragraph after paragraph (a) in subsection (3):</p> <p><i>(ba) the draft LPS meets, or does not meet, the LPS criteria; or</i></p> <p>(e) by inserting in subsection (4) “the relevant exhibition documents in relation to” after “relation to”;</p> <p>(f) by inserting in subsection (5) “the relevant exhibition documents in relation to” after “relation to”.</p>	<p>This amendment, which allows greater opportunity for representations in relation to whether LPS’s meet the required criteria, is supported.</p>
<p>15. Section 40FA inserted</p> <p>After section 40F of the Principal Act, the following section is inserted in Subdivision 1:</p> <p><i>40FA. Notice to certain agencies and State authorities</i></p> <p><i>(1) A planning authority, within 7 days of certifying a draft amendment of an LPS</i></p>	<p>This amendment is supported on the basis that it will aid the timely provision of advice to councils during the initial stage of the amendment process.</p>

Amendment	Comment
<p><i>under section 40F(2), is to notify –</i></p> <p><i>(a) the relevant agencies; and</i></p> <p><i>(b) those State Service Agencies, or State authorities, that the planning authority considers may have an interest in the draft amendment of an LPS –</i></p> <p><i>of the date on which the exhibition period in relation to the draft amendment of an LPS is to begin.</i></p> <p><i>(2) Subsection (1) does not apply in relation to a draft amendment of an LPS to which a notice under section 40I(1) relates.</i></p>	
<p>17. Section 55 amended</p> <p>Section 55 of the Principal Act is amended as follows:</p> <p>(a) by renumbering the section as subsection (1);</p> <p>(b) by inserting the following subsections after subsection (1):</p> <p><i>(2) The Commission may correct a decision made by the Commission under this Act if the decision contains –</i></p> <p><i>(a) a clerical mistake or an error arising from any accidental slip or omission; or</i></p> <p><i>(b) 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.</i></p> <p><i>(3) Despite subsection (2), a correction of a decision of the Commission may not be made under that subsection in relation to so much of the decision as consists of –</i></p> <p><i>(a) a draft LPS, if an LPS in the terms of the draft LPS, or the draft LPS as modified, has come into effect under section 35M; or</i></p> <p><i>(b) a draft amendment of an LPS, if an amendment of an LPS in the terms of the draft amendment, or the draft amendment as modified has come into effect under section 40S; or</i></p> <p><i>(c) a draft interim planning scheme under the former provisions, within the meaning of Schedule 6; or</i></p> <p><i>(d) a draft amendment of a planning scheme under the former provisions, within the meaning of Schedule 6, if an amendment of the planning scheme in the terms of the draft amendment, or the draft amendment as modified, has come into effect under section 42 of the former provisions.</i></p>	<p>The intention of this amendment—to allow a brief period where administrative errors can be fixed prior to an amendment to a LPS becoming operational—is considered reasonable. However, the proposed amendment to S55 appears to be in itself an error, as S55 is within Division2 relating to development control and relates to the correction of errors in permits made by councils.</p> <p>Division 4 42D already provides for correction of mistakes by the Commission to a permit approved through the combined amendment and permit process.</p> <p>It is agreed that the intention for mistakes to the amendment component is also a good outcome, given the lengthy and costly process of a new amendment to fix such an error would not further the public interest.</p> <p>To correct an amendment to a LPS amendment we would suggest that the amendment needs to perhaps be within Subdivision 3 - Approval of amendments of LPS, ideally between 40R and 40S.</p> <p>Importantly, it is further suggested that in order to provide a reasonable opportunity for an error to be identified before the amendment is effected, that there should be a timeframe between notification of the Commission’s decision to the involved parties (including the relevant council) and the effective date. This would allow time for those familiar with the detail and intent of the amendment to consider the Commission’s decision and notify the Commission if such in error was identified.</p> <p>Fourteen days would be consistent with other parts of the Act (ie the timeframe for lodgement of appeals after notification of a council decision on a Permit application), however this would require additional amendment to S40S(1).</p>

Additionally, the proposed amendment to Section 18 of the *Tasmanian Planning Commission Act 1993*, aimed at facilitating the correction of mistakes, is supported.

Thank you again for the opportunity to comment.

Yours sincerely



Irene Duckett MPIA (Fellow)
Planning Institute of Australia, Tasmanian President