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Parliamentary Counsel

TASMANIA

**LAND USE PLANNING AND APPROVALS
AMENDMENT (TASMANIAN PLANNING
POLICIES) BILL 2017**

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**LAND USE PLANNING AND APPROVALS
AMENDMENT (TASMANIAN PLANNING
POLICIES) BILL 2017**

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

A BILL FOR

An Act to amend the *Land Use Planning and Approvals Act 1993* so as to include Tasmanian Planning Policies, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies) Act 2017*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting “or the TPPs,” after “SPPs,” in paragraph (a) of the definition of *representation*;
- (b) by inserting “or the TPPs” after “amendment of the SPPs” in paragraph (a) of the definition of *representation*;
- (c) by inserting the following definition after the definition of *State Policy*:

Tasmanian Planning Policies means the Tasmanian Planning Policies made under section 12G(2), as amended from time to time under that section as applied by section 12H(3);

- (d) by inserting the following definition after the definition of *the State Planning Provisions*:

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the TPPs means the Tasmanian
Planning Policies;

**5. Section 5A amended (Regional areas and regional
land use strategies)**

Section 5A of the Principal Act is amended as
follows:

- (a) by inserting the following subsection
after subsection (3):

(3A) The Minister must not declare a
regional land use strategy unless
he or she is satisfied that it –

- (a) is consistent with each
State Policy; and
- (b) is consistent with the
TPPs; and
- (c) furthers the objectives set
out in Schedule 1.

- (b) by inserting the following subsection
after subsection (6):

(7) The Minister must, in reviewing a
regional land use strategy,
consider whether the regional
land use strategy –

- (a) is consistent with each
State Policy; and

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(b) is consistent with the TPPs; and

(c) furthers the objectives set out in Schedule 1.

6. Part 2A inserted

After section 12 of the Principal Act, the following Part is inserted:

PART 2A – TASMANIAN PLANNING POLICIES

12A. Interpretation of Part 2A

In this Part –

exhibition notice, in relation to a draft of the TPPs, means the exhibition notice published under section 12D(1) in relation to the draft;

exhibition period, in relation to a draft of the TPPs, means the period specified, in accordance with section 12D(3)(a), in the exhibition notice as the exhibition period in relation to the draft;

exhibition premises, in relation to a draft of the TPPs, means premises –

- (a) to which the public has access during normal business hours; and
- (b) that are specified, in accordance with section 12D(3)(b)(i), in the exhibition notice in relation to the draft of the TPPs;

TPP criteria means the matters referred to in section 12B(3).

12B. Contents and purposes of Tasmanian Planning Policies

- (1) The purposes of the TPPs are to set out the aims or the principles that are to be achieved or to be applied by –
 - (a) the Tasmanian Planning Scheme; and
 - (b) the regional land use strategies.
- (2) The TPPs may relate to –
 - (a) the sustainable use, development, management, protection or conservation of land; or
 - (b) environmental protection and management; or

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- (c) any other matter that may be included in a planning scheme or a regional land use strategy.
- (3) The TPPs must –
- (a) seek to further the objectives set out in Schedule 1; and
 - (b) be consistent with any relevant State Policy.

12C. Draft of the TPPs

- (1) The Minister may prepare a draft of the TPPs.
- (2) The Minister must consult with –
 - (a) the Commission; and
 - (b) the planning authorities; and
 - (c) the State Service Agencies, and the State authorities, that the Minister thinks fit –

in relation to the preparation of a draft of the TPPs.

- (3) The Minister, by notice to the Commission, may –
 - (a) provide to the Commission a draft of the TPPs; and

- (b) direct the Commission to undertake public exhibition in relation to the draft of the TPPs.

12D. Public exhibition of draft of the TPPs

- (1) The Commission, as soon as practicable after receiving a notice under section 12C(3) in relation to a draft of the TPPs, must ensure that an exhibition notice in relation to the draft of the TPPs is published in accordance with this section.
- (2) The exhibition notice is to be published once before, and once within 14 days after, the first day of the exhibition period, in a newspaper that is published, and circulates generally, in Tasmania.
- (3) An exhibition notice is to –
 - (a) specify the period that is to be the exhibition period in relation to the draft of the TPPs; and
 - (b) specify that a copy of the draft of the TPPs is or will be –
 - (i) available for viewing by the public, during the exhibition period, at premises, that are offices of the Commission,

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- specified in the notice;
and
- (ii) available for viewing and downloading by the public, during the exhibition period, at an electronic address specified in the notice;
and
- (c) contain an invitation to all persons and bodies to, within the exhibition period, make to the Commission a representation in relation to the draft of the TPPs by submitting the representation to –
 - (i) the premises specified in the notice in accordance with paragraph (b)(i); or
 - (ii) an electronic address specified in the notice.
- (4) The exhibition period, in relation to a draft of the TPPs, is to be a period of 42 days –
 - (a) beginning on the day on which the draft of the TPPs begins to be available for viewing by the public at exhibition premises in accordance with subsection (6)(a); and

- (b) excluding any days on which the exhibition premises are closed during normal business hours.
- (5) The Commission must, as soon as practicable after receiving notice under section 12C(3) in relation to a draft of the TPPs, give to each planning authority –
 - (a) a copy of the draft of the TPPs; and
 - (b) an invitation to make to the Commission a representation in relation to the draft of the TPPs.
- (6) The Commission must ensure that copies of the draft of the TPPs are, for the exhibition period –
 - (a) available for viewing by the public at the exhibition premises; and
 - (b) available for viewing and downloading by the public at an electronic address specified in the exhibition notice.

12E. Representations

- (1) A person or body may make to the Commission a representation in relation to a draft of the TPPs that is available for viewing by the public at the exhibition

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premises in accordance with section 12D(6).

- (2) A representation in relation to a draft of the TPPs –
 - (a) is to be made under subsection (1) within the exhibition period in relation to the draft of the TPPs; and
 - (b) must be made by submitting the representation to the premises, or to the electronic address, that are specified, in accordance with section 12D(3)(b), in the exhibition notice in relation to the draft of the TPPs.
- (3) For the purposes of this Part, any matter, contained in a representation under subsection (1) in relation to a draft of the TPPs, that does not relate to the contents or merits of the draft is not to be taken to be part of the representation.
- (4) The Commission must consider all representations under subsection (1) in relation to a draft of the TPPs.

12F. Report by Commission

- (1) The Commission, as soon as practicable after the end of the exhibition period in relation to a draft of the TPPs –

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- (a) must consider whether it is satisfied that the draft of the TPPs meets the TPP criteria; and
 - (b) is to consider whether there are any matters of a technical nature, or that may be relevant in relation to the application of the TPPs to –
 - (i) the Tasmanian Planning Scheme; or
 - (ii) each regional land use strategy –
if the TPPs were made under section 12G(2) in the terms of the draft of the TPPs.
- (2) The Commission, within 60 days, or a longer period allowed by the Minister, after the end of the exhibition period in relation to a draft of the TPPs, must provide to the Minister a report in relation to the draft of the TPPs.
- (3) The report in relation to a draft of the TPPs is to contain –
- (a) a summary of the issues raised in the representations in relation to the draft of the TPPs; and
 - (b) a statement as to whether the Commission is satisfied that the

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draft of the TPPs meets the TPP criteria; and

- (c) 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 –
- (i) the Tasmanian Planning Scheme; or
 - (ii) each regional land use strategy –

if the TPPs were made under section 12G(2) in the terms of the draft of the TPPs.

12G. Making of TPPs

- (1) The Minister may inform himself or herself, in the manner he or she thinks fit, in relation to a draft of the TPPs.
- (2) The Minister may make, or refuse to make, the Tasmanian Planning Policies in the terms of the draft of the TPPs, modified, if at all, as the Minister thinks fit.
- (3) The Minister may only make, or refuse to make, the Tasmanian Planning Policies under subsection (2), after considering the report provided to him or her under

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section 12F(2) in relation to a draft of the TPPs.

(4) The Minister may not make the Tasmanian Planning Policies unless the Minister is satisfied that they meet the TPP criteria.

(5) As soon as practicable after, under subsection (2), making the Tasmanian Planning Policies, the Minister must publish a notice in the *Gazette* –

(a) specifying that the Minister has made the Tasmanian Planning Policies; and

(b) specifying –

(i) a day, after the day on which the notice is published in the *Gazette*, on which; or

(ii) a period, after the day on which the notice is published in the *Gazette*, at the end of which –

the Tasmanian Planning Policies come into effect.

(5) The Tasmanian Planning Policies made under subsection (2) come into effect –

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- (a) on the day specified, in the notice published in the *Gazette* under subsection (1), as the day on which the Tasmanian Planning Policies are to come into effect; or
 - (b) on the day after the end of the period specified, in the notice published in the *Gazette* under subsection (1), as the period at the end of which the Tasmanian Planning Policies are to come into effect.
- (6) As soon as practicable after, under subsection (2), refusing to make the Tasmanian Planning Policies in the form of a draft of the TPPs, the Minister must publish a notice in the *Gazette* that the Minister has refused to make the Tasmanian Planning Policies.
- (7) As soon as practicable after, under subsection (2), making the Tasmanian Planning Policies, the Minister must publish in a newspaper that is published, and circulates generally, in Tasmania, a notice –
- (a) specifying that the Minister has made the Tasmanian Planning Policies; and
 - (b) specifying –

(i) a day on which; or

(ii) a period, after the day on which the notice is published in the *Gazette*, at the end of which –

the Tasmanian Planning Policies come into effect; and

(c) specifying, if the Tasmanian Planning Policies are in the terms of a draft of the TPPs, modified as the Minister thinks fit, the reasons why the Minister modified the draft of the TPPs.

12H. Amendments of TPPs

(1) The Minister may prepare a draft amendment of the TPPs.

(2) A draft amendment of the TPPs, and an amendment of the Tasmanian Planning Policies, may consist of –

(a) an amendment of one or more of the provisions of the TPPs; or

(b) the insertion of one or more provisions into the TPPs; or

(c) a revocation of one or more of the provisions of the TPPs; or

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- (d) the substitution of one or more of the provisions of the TPPs.
- (3) Except in relation to a draft amendment to which subsection (5) applies, this Part applies in relation to a draft amendment of the TPPs as if –
- (a) a reference in this Part to a draft of the TPPs or the TPPs were a reference to the draft amendment of the TPPs or to an amendment of the TPPs, respectively; and
 - (b) a reference in this Part to the Tasmanian Planning Policies were a reference to an amendment of the Tasmanian Planning Policies.
- (4) The Minister may determine that a draft amendment of the TPPs is a minor amendment, if –
- (a) the Minister is of the opinion that the public interest will not be prejudiced if the draft amendment of the TPPs is not publically exhibited; and
 - (b) the draft amendment of the TPPs is for one or more of the following purposes:
 - (i) correcting an error in the TPPs;

- (ii) removing an anomaly in the TPPs;
 - (iii) clarifying or simplifying the TPPs;
 - (iv) amending a provision of the TPPs other than so as to change the intent of a policy expressed in the TPPs;
 - (v) to bring the TPPs into conformity with a State Policy;
 - (vi) a prescribed purpose.
- (5) Section 12G, other than section 12G(3), applies in relation to a draft amendment of the TPPs that is determined under subsection (4) to be a minor amendment as if a reference in that section to a draft of the TPPs, or the Tasmanian Planning Policies, were a reference to the draft amendment of the TPPs, and to an amendment of the Tasmanian Planning Policies, respectively.

12I. Minister to review TPPs

The Minister is to keep the TPPs under regular and periodic review.

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7. Section 15 amended (SPPs criteria)

Section 15(2) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) is consistent with the TPPs that are in force before the planning instrument is made; and

8. Section 30T amended (Review of the SPPs)

Section 30T of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) Without limiting the matters to which a review may relate, a review of the SPPs may consist of a review as to whether the SPPs are consistent with the TPPs.

9. Section 34 amended (LPS criteria)

Section 34(2) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) is consistent with the TPPs that are in force before the planning instrument is made; and

10. Section 35N amended (Purposes of review)

Section 35N of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) to determine whether the LPS or part is consistent with the TPPs;

11. Section 51 amended (Permits)

Section 51(1) of the Principal Act is amended by inserting “a Planning Panel,” after “the scheme,”.

12. Section 87E inserted

After section 87C of the Principal Act, the following section is inserted in Division 2:

87E. Savings and transitional – *Land Use Planning and Approvals Amendment (Tasmanian Planning Provisions and Planning Panels) Act 2017*

The savings and transitional provisions specified in Schedule 7 have effect.

13. Schedule 7 inserted

After Schedule 6 to the Principal Act, the following Schedule is inserted:

SCHEDULE 7 – SAVINGS AND TRANSITIONAL PROVISIONS – *LAND USE PLANNING AND*

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***APPROVALS AMENDMENT (TASMANIAN PLANNING
PROVISIONS AND PLANNING PANELS) ACT 2017***

Section 87E

**1. Application of section 34(2)(da) in relation to
first LPS made in respect of any municipal
area**

Section 34(2)(da) does not apply in relation to the first LPS made in respect of any municipal area after the commencement of this section but applies in relation to each amendment or substitution of such an LPS.

14. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.