

Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021

Information Pack

July 2021



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1. Introduction

The planning reform program is working to create a planning system that is policy led, evidence based, strategically guided, and kept up to date.

The first part of the planning reforms is the full implementation of the single statewide planning scheme (the Tasmanian Planning Scheme). The Tasmanian Planning Scheme is currently in effect in several municipalities across the three regions with others to come into effect as each Local Provisions Schedule is approved by the independent Tasmanian Planning Commission.

In the coming years, Phase 2 of the planning reform program will deliver a suite of planning policies (the Tasmanian Planning Policies) and a robust and sustainable regional planning framework, including comprehensive reviews of all three current regional land use strategies.

Meanwhile the Government has refined the current planning processes to ensure that the planning system is efficient and responsive, and that we can achieve a fair and orderly transition to the new planning system.

The *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021* (the LUPA Amendment Act) introduced a number of amendments to the *Land Use Planning and Approvals Act 1993* (LUPA Act) to help achieve this goal.

2. Glossary

The following acronyms and abbreviations are used in this document.

Commission	–	Tasmanian Planning Commission
LPS	–	Local Provisions Schedule
LUPA Act	–	<i>Land Use Planning and Approvals Act 1993</i>
LUPA Amendment Act		<i>Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Act 2021</i>
SPPs	–	State Planning Provisions
TPS	-	Tasmanian Planning Scheme

3. Overview of the LUPA Amendment Act

The LUPA Amendment Act introduced a number of amendments to the LUPA Act to the detailed administrative and assessments processes under the LUPA Act. The amendments are relatively simple, but they deliver important improvements to the current processes under the LUPA Act, while maintaining the rigorous and independent assessment processes that Tasmanians have come to expect.

The LUPA Amendment Act made the following amendments to the LUPA Act:

- improved processes for making amendments to the State Planning Provisions (SPPs) in the Tasmanian Planning Scheme (TPS) to ensure they remain efficient and responsive;
- improved processes for finalising Local Provisions Schedules (LPSs) and the implementation of the TPS across the State;
- a fairer process for determining development applications during the transition to the TPS and for its ongoing operation, meaning that a development application is assessed against the planning requirements at the time of lodgment, instead of the date of the decision; and
- allowing for the issuing of a planning directive to implement already approved parts of the SPPs through interim planning schemes without the need for costly and time-consuming re-assessment.

4. The LUPA Amendment Act in detail

4.1 Improved processes for amending the State Planning Provisions (SPPs)

With the Tasmanian Planning Scheme now being in effect in several parts of the State, it is important that legislative processes provide for the appropriate maintenance, review and amendment of the SPPs. Such processes ensure improvements can be delivered and that the provisions remain contemporary and responsive to emerging issues.

The LUPA Amendment Act:

- simplifies the processes for making minor amendments to the SPPs; and
- introduces a process for making interim amendments to the SPPs, similar to the current interim planning directive process, but only for important public interest issues.

4.1.1 Simplified process for making minor amendment of the SPPs

(New section 30NA of the LUPA Act)

The changes simplify the process for making minor amendments of the SPPs by matching the process, particularly for consultation and reporting, to the scope of the issue.

The minor amendment criteria under the LUPA Act remain the same, with further clarification provided on the scope for correcting errors.

The new process for making minor amendments of the SPPs creates a distinction between those that are simple corrections or updates and those that clarify existing requirements or implement already approved policy changes in other instruments.

The process is simplified by removing the need for broad consultation for minor amendments that meet the following criteria under section 30NA(1)(a):

- (i) correcting a clerical mistake, an error arising from any accidental slip or omission, an evident miscalculation of figures, or an evident material mistake, in a provision of the SPPs;
- (ii) removing an anomaly in the SPPs;
- (iv) removing an inconsistency in the SPPs; or
- (v) removing an inconsistency between the SPPs and the LUPA Act or any other Act.

A simplified process is appropriate and commensurate with the scope of these minor amendments, as they are not matters open to interpretation or dispute.

Mandatory consultation with local councils and State agencies and authorities is retained for minor amendments that meet the other criteria under section 30NA(1)(a):

- (iii) clarifying or simplifying the SPPs;
- (vi) bringing the SPPs into conformity with a State Policy;
- (vii) bringing the SPPs into conformity with a planning directive which the Minister has determined should be reflected in the SPPs;
- (viii) changing provisions of the SPPs that indicate or specify the structure to which an LPS is to conform or the form that a provision of an LPS is to take; or
- (ix) another purpose prescribed by Regulation

Consultation with councils and State Agencies and authorities is retained for these less straightforward minor amendments there could be a range of views on the most appropriate form or wording of the amendments.

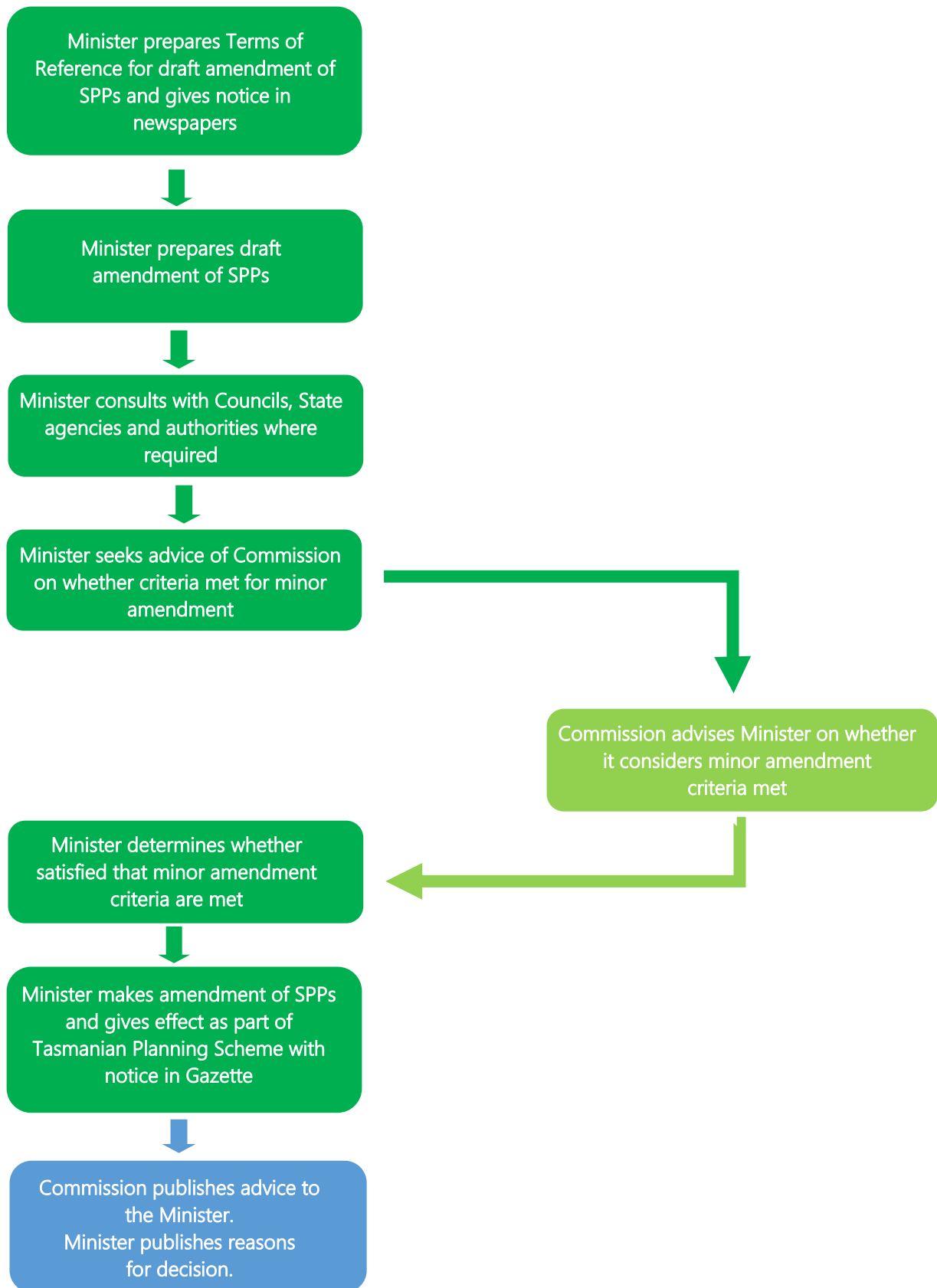
In addition to meeting the above criteria, a minor amendment to the SPPs can only proceed if the public interest is not prejudiced by making the amendment without broader public consultation.

Other changes to the minor amendment process include:

- replacing the current two-step review process by the Commission with a single step process for reviewing the amendment and providing recommendations to the Minister;
- requiring the consideration of the recommendations of the Commission, but enabling the Minister to form a different opinion based on other advice sought from councils and State agencies and authorities; and
- providing transparency in the decision-making process with the Commissions' advice to the Minister and the Minister's reasons made public.

Refer to the flowchart in Figure 1 for the new minor amendment process.

Figure 1: New process for minor amendment of SPPs



4.1.2 Making interim amendments of the SPPs

(New sections 30NB, NC and ND of the LUPA Act)

The LUPA Amendment Act introduces a process for making interim SPPs amendments, similar to current interim planning directives but more limited in scope. This is an additional part of the current process for preparing and making amendments of the SPPs.

This process provides for amendments to have immediate effect while they are being publicly exhibited and assessed and prior to the final form of the amendment being settled.

Essentially, the proposed interim SPPs amendments process replicates the current interim planning directive process with the following improvements:

- advertising of a terms of reference as part of the normal preparation of an amendment of the SPPs;
- early consultation on a proposed interim SPPs amendment with councils, State Agencies and authorities and the Commission as part of the normal preparation of an amendment of the SPPs;
- clear criteria limiting the scope of interim SPPs amendments; and
- transparency in the decision-making process with the Commissions' advice to the Minister and the Minister's reasons published.

Importantly, the scope of interim SPPs amendments is limited to those that are necessary or desirable to urgently address issues relating to a natural or environmental hazard, public health, public safety or a circumstance or matter prescribed by Regulation. It must be in the public interest to give effect to the amendment as soon as practicable.

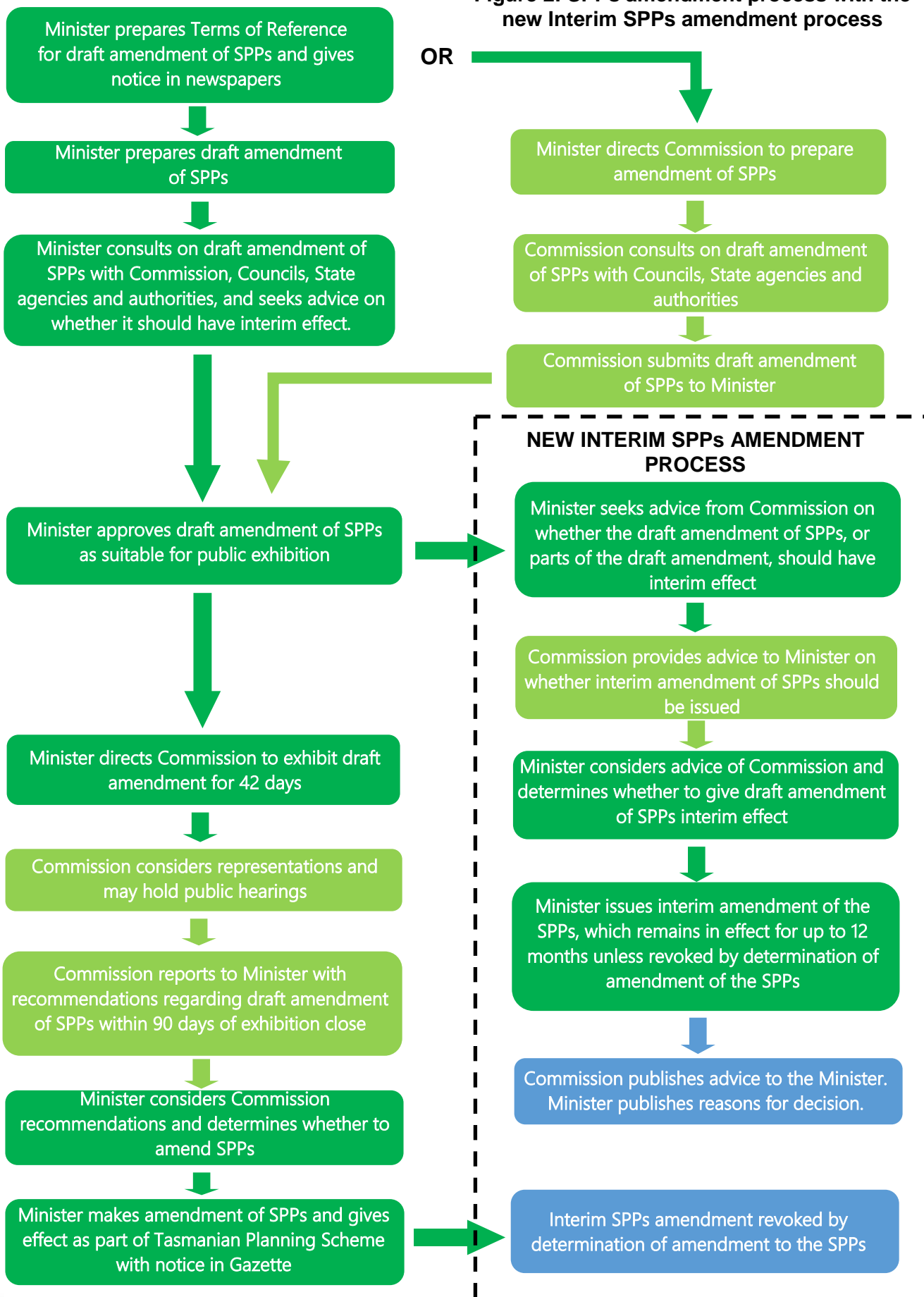
Interim SPPs amendments could be made to address issues such as implementing:

- important updates to the current landslip, coastal inundation and coastal erosion hazard overlay maps under the Tasmanian Planning Scheme;
- a new statewide planning framework and overlay maps for managing flooding hazards;
- important public safety requirements, such as new buffer requirements for sensitive uses from hazardous facilities; and
- requirements relating to public health, such as implementing broader exemptions for temporary hospital and medical treatment facilities during a pandemic or natural disaster.

Enabling interim amendments will mean that a proposed amendment to the SPPs can be brought into operation immediately to provide required protections and benefits in the public interest and will operate while it continues through the assessment processes already laid out in the legislation.

Refer to the flowchart in Figure 2 for the new Interim SPPs amendment process.

Figure 2: SPPs amendment process with the new Interim SPPs amendment process



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4.2 Improved processes for finalising the Local Provisions Schedules

The amendments to assist with finalising LPSs make changes to the timeframes for beginning exhibition of a draft LPS, processes for managing substantial modifications required to a draft LPS, and avoiding the re-assessment of approved amendments to interim planning schemes by allowing these to be included directly into draft LPSs, where appropriate.

These amendments are specifically intended to allow the TPS to be brought into effect sooner, while still maintaining the rigorous and independent assessment processes undertaken by the Commission.

4.2.1 *Timing of public exhibition of draft LPSs*

(Amended section 35B of the LUPA Act)

The LUPA Amendment Act provides a more generous period for councils to prepare for the exhibition period of their LPS following a direction from the Commission, while still ensuring the LPSs are exhibited in a timely manner. It provides for a more flexible exhibition start date and up to 21 days (increased from 14 days) for a council to prepare for exhibition.

4.2.2 *Revised process for considering substantial modifications to LPSs*

(New sections 35KB and 87F of the LUPA Act)

Following exhibition of, and hearings into, a draft LPS, the Commission must decide whether modifications are required and whether any of those modifications are substantial enough to require further public exhibition.

The LUPA Amendment Act provides for a fairer and more manageable process by allowing the Commission to approve an LPS with a requirement that any substantial modifications are dealt with as the first draft amendment of that approved LPS (refer to the flowchart in Figure 3). This process is not mandatory and is an option that can only be used if the Commission is satisfied that the LPS to be approved meets the LPS criteria and that it is suitable for the modifications to be made by an amendment to the approved LPS later because, for example, of their discrete nature.

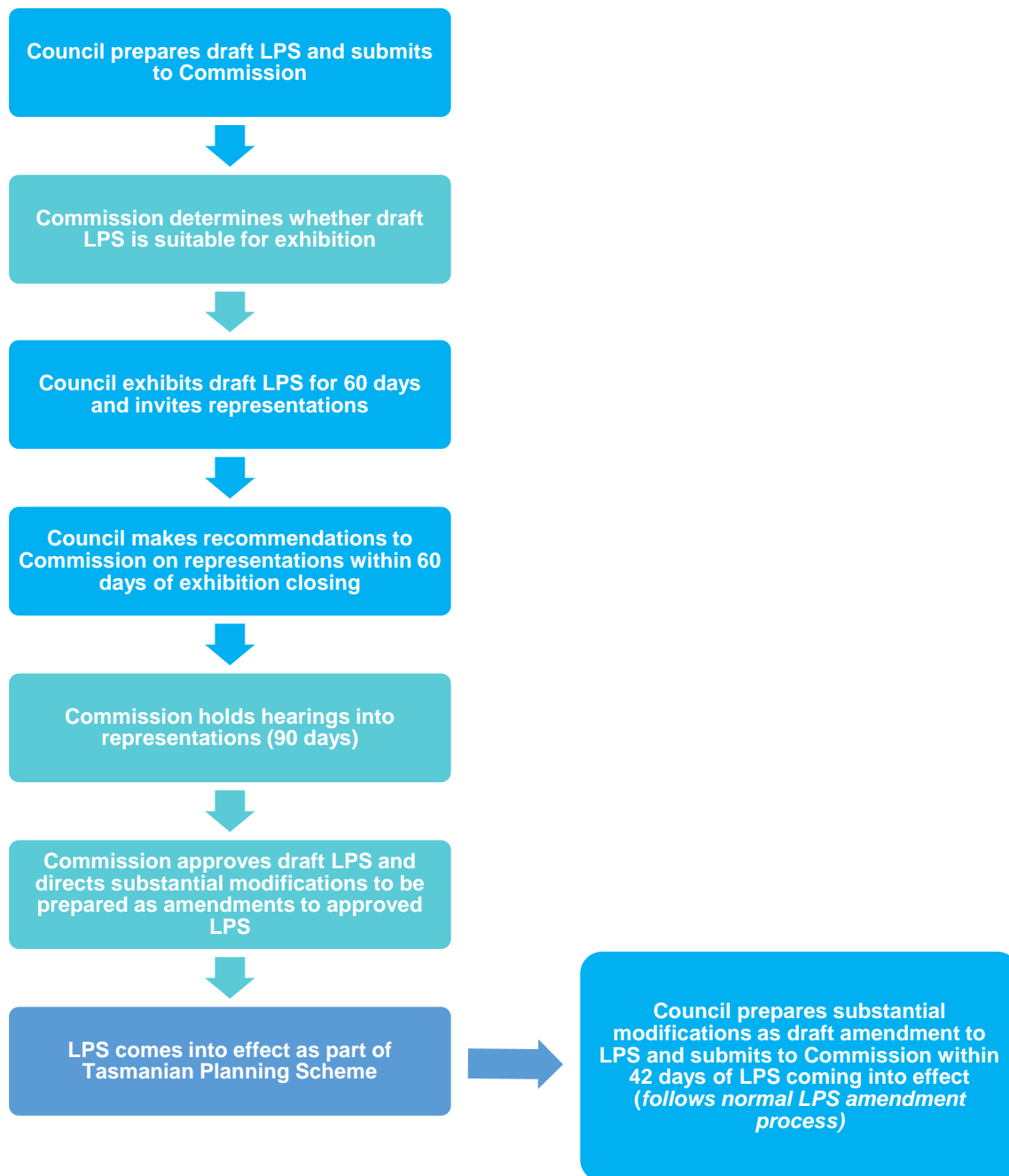
Where this process is used it will:

- bring the Tasmanian Planning Scheme into effect earlier while still allowing for 'substantial modifications' to be finalised separately but with the same level of assessment and public scrutiny;
- limit the uncertainty associated with having an interim planning scheme in effect, and perhaps subject to further amendments, at the same time as an almost approved LPS for a period which can last up to 12 months; and
- result in more timely resolution of representations regarding non-substantial matters.

To ensure that a planning permit cannot be issued in contravention of the substantial modifications while they are still under consideration as an amendment to the LPS, amendments have been made to requirements for determining development applications under section 51 of the LUPA Act. This requires decisions on development applications to be made by reference to the substantial modifications as if they are in effect. This aligns with the requirements under section 51 of the LUPA Act for determining development applications after the Commission has directed a substantial alteration or substantial modification to a planning scheme amendment or a LPS amendment.

New section 87F into the LUPA Act saves the former process for making substantial modifications to a draft LPS if the Commission has already issued a direction to the council at the time of the LUPA Amendment Act coming into effect. It also enables the Commission to direct any draft LPSs in the former substantial modification process to transition to the revised process. This would only occur after consulting with the relevant council and will be dependent on the stage that the draft LPS has reached in the current substantial modification process. Upon switching to the new process, the draft LPS will be approved and the substantial modifications considered as amendments at the equivalent stage of the new process.

Figure 3: LPS assessment process with revised process for considering substantial modifications



4.2.3 Process for including approved interim planning scheme amendments in LPSs (Amended sections 35, 35E and new section 35KA of the LUPA Act)

The LUPA Amendment Act enables the Commission to include certain amendments it has approved to the current interim planning scheme in the final LPS without requiring them to go through a separate and second assessment process.

The LUPA Amendment Act enables the Commission to:

- prior to public exhibition of a draft LPS, direct the council to include amendments approved to the interim planning scheme since submitting the draft LPS (refer to amended section 35 of the LUPA Act); and
- include in the finally approved LPS, amendments approved to the interim planning scheme since the public exhibition of the draft LPS (refer to new section 35KA of the LUPA Act).

Only certain provisions which form part of recently approved amendments to interim planning schemes can be included in a LPS. Provisions that can carry through are limited to what a LPS is allowed to contain as specified in the LPS criteria under the LUPA Act, such as:

- a rezoning to an equivalent zone under the SPPs;
- code overlay map amendments if related to an equivalent code in the SPPs, such as a local heritage precinct overlay, or scenic protection code overlay; or
- new or amended code lists if related to an equivalent code in the SPPs, such as a local heritage place or a significant tree listing.

The Commission, as part of their assessment of the LPS, will determine which approved amendments are suitable for inclusion in the LPS. This avoids the Commission having to re-examine the merits of an amendment to an interim planning scheme it has recently determined through a new amendment to the LPS. It also avoids members of the public needing to make further submissions in relation to an issue that they have recently participated in.

Accordingly, representations on the draft LPS cannot be made on any interim planning scheme amendments the Commission has directed to be included in the LPS.

4.3 Fairer process for determining development applications

(Amended section 51 of the LUPA Act)

The LUPA Amendment Act provides for a fairer approach for determining development applications by requiring a decision, as a general rule, to be made by reference to the planning scheme in effect when the application was validly lodged, instead of the requirements in effect at the time of decisions.

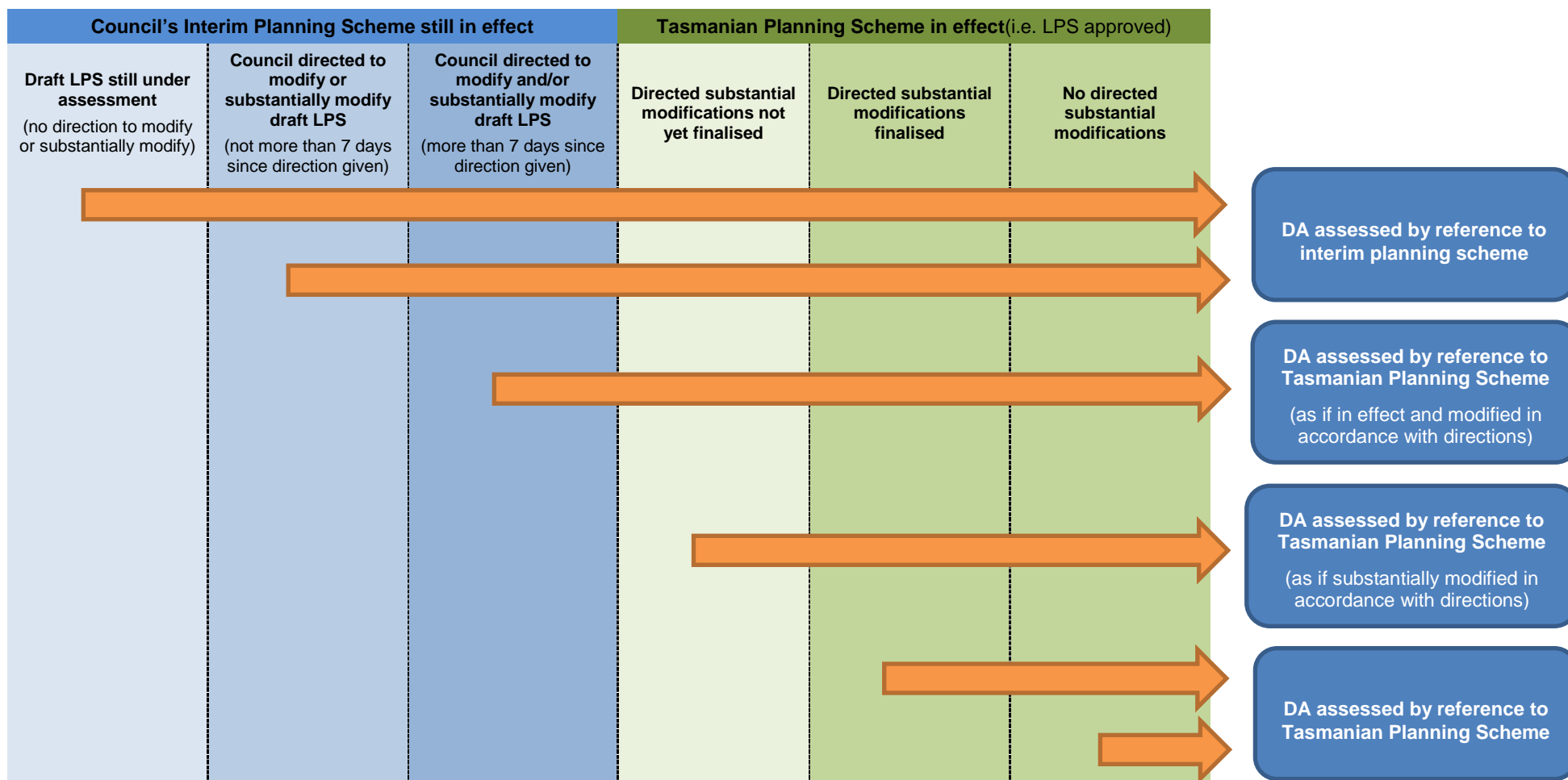
This avoids the complications of the planning requirements changing mid-assessment, including any disruptions to the council's administrative processes and additional costs and delays for the applicant.

For development applications lodged more than 7 days after the Commission has directed a council to modify a planning scheme or LPS amendment, or a draft LPS, -decisions are to be made by reference to the provisions of the planning scheme as if the modifications required by the Commission had come into effect.

The 7-day transition period is provided for the planning authority to adjust its processes after the Commission gives a direction to modify an amendment or a draft LPS.

Figure 4 provides an overview of how decisions are to be made during the transition from the interim planning schemes to the Tasmanian Planning Scheme.

Figure 4: Decisions on development applications based on circumstances at time of lodgement



4.4 Implementation of parts of the State Planning Provisions through interim planning schemes

(Amended Schedule 6 of the LUPA Act)

The LUPA Amendment Act amends the savings provisions in Schedule 6 of the LUPA Act which save the former provisions of the Act that apply to the issuing of planning directives and interim planning directives. Planning directives only apply to interim planning schemes or older planning schemes, such as the Flinders Planning Scheme 2000 and the Sullivans Cove Planning Scheme 1997.

The LUPA Amendment Act enables the issuing of a planning directive in the form of the previously approved Interim Planning Directive No. 4, without the usual assessment process.

Interim Planning Directive No. 4 brought particular parts of the SPPs into effect through current planning schemes on 22 February 2021. The LUPA Amendment Bill Waives the assessment process because the content of the planning directive has already been exhibited and approved as part of the SPPs. This prevents costly duplication of processes and further confusion over the status of the SPPs.

The SPPs were made after a comprehensive and open public process and assessment by the Commission. They are already in effect in several municipalities in the State and will be brought into effect in the remaining areas as each LPS is approved.



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