

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

## Briefing Pack



# TABLE OF CONTENTS

1. Introduction .....	4
2. Glossary .....	4
3. Overview of the Bill .....	5
4. Consultation .....	5
5. The Bill in detail.....	6
5.1 Improved processes for amending the State Planning Provisions (SPPs).....	6
5.1.1 Simplified process for making minor amendment of the SPPs .....	6
5.1.2 Making interim amendments of the SPPs .....	11
5.2 Improved processes for finalising the Local Provisions Schedules .....	14
5.2.1 Timing of public exhibition of draft LPSs .....	14
5.2.2 Revised process for considering substantial modifications to LPSs .....	14
5.2.3 Process for including approved interim planning scheme amendments in LPSs.....	19
5.3 Fairer process for determining development applications .....	20
5.4 Implementation of parts of the State Planning Provisions through interim planning schemes.....	22
6. Frequently Asked Questions.....	23
APPENDIX 1 – CONSULTATION REPORT .....	27

# 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 is refining 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 draft Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Bill 2020 (the Bill) proposes 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.

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

### 3. Overview of the Bill

The Bill proposes a number of amendments to the LUPA Act, which are quite a technical in nature as they relate 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 Bill proposes 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. Consultation

Targeted consultation on the Bill was open for 12 weeks between 13 November 2020 and 5 February 2021. This extended consultation was due to the holiday period. Feedback was invited from a total of 74 stakeholder groups including all councils, as well as State agencies and authorities, industry, professional, environmental, and community groups, and the independent Tasmanian Planning Commission (the Commission).

Consultation was undertaken in conjunction with consultation on the draft Housing Land Supply Amendment Bill 2021.

Details on the issues raised in the submissions are contained in the Consultation Report in Appendix 1.

## 5. The Bill in detail

### 5.1 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 Bill proposes amendments to:

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

#### *5.1.1 Simplified process for making minor amendment of the SPPs*

*(Refer to section 8 of the Bill – new section 30NA of the LUPA Act)*

Currently, amendments may be made to the SPPs for a range of minor matters including typographical errors and alignment with State Policies, in accordance with set criteria in the LUPA Act. These all currently require consultation no matter how minor they are. Consequently, the process for giving minor amendments effect is complex and can take up to 6 months (refer to the flowchart in Figure 1).

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

The current minor amendment criteria under the LUPA Act remain the same, with further clarification provided on the scope for correcting errors. To be a minor amendment of the SPPs, it must be for one or more of the following purposes:

- 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;
- removing an anomaly in the SPPs;
- clarifying or simplifying the SPPs;
- removing an inconsistency in the SPPs;

- removing an inconsistency between the SPPs and this Act or any other Act;
- bringing the SPPs into conformity with a State Policy;
- bringing the SPPs into conformity with a planning directive which the Minister has determined should be reflected in the SPPs;
- 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
- a purpose prescribed by Regulation.

In addition to the 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.

The main change proposed in the Bill creates a distinction between minor amendments that are simple corrections or updates and those that clarify existing requirements or implement already approved policy changes in other instruments.

The process for making simple corrections such as fixing typographical or drafting errors in the SPPs, or updating references to legislation, is simplified by removing the need for broad consultation. A simplified process is appropriate and commensurate with the scope of these minor amendments, as they are not matters open to interpretation or dispute.

For less straightforward minor amendments, such as those proposed to clarify or simplify the requirements in the SPPs without changing their policy intent, mandatory consultation with local councils and State agencies and authorities is retained. This is because there could be a range of views on the most appropriate form or wording of the amendments.

Other changes to the 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; and
- providing transparency in the decision-making process with the Commissions' advice to the Minister and the Minister's reasons made public.

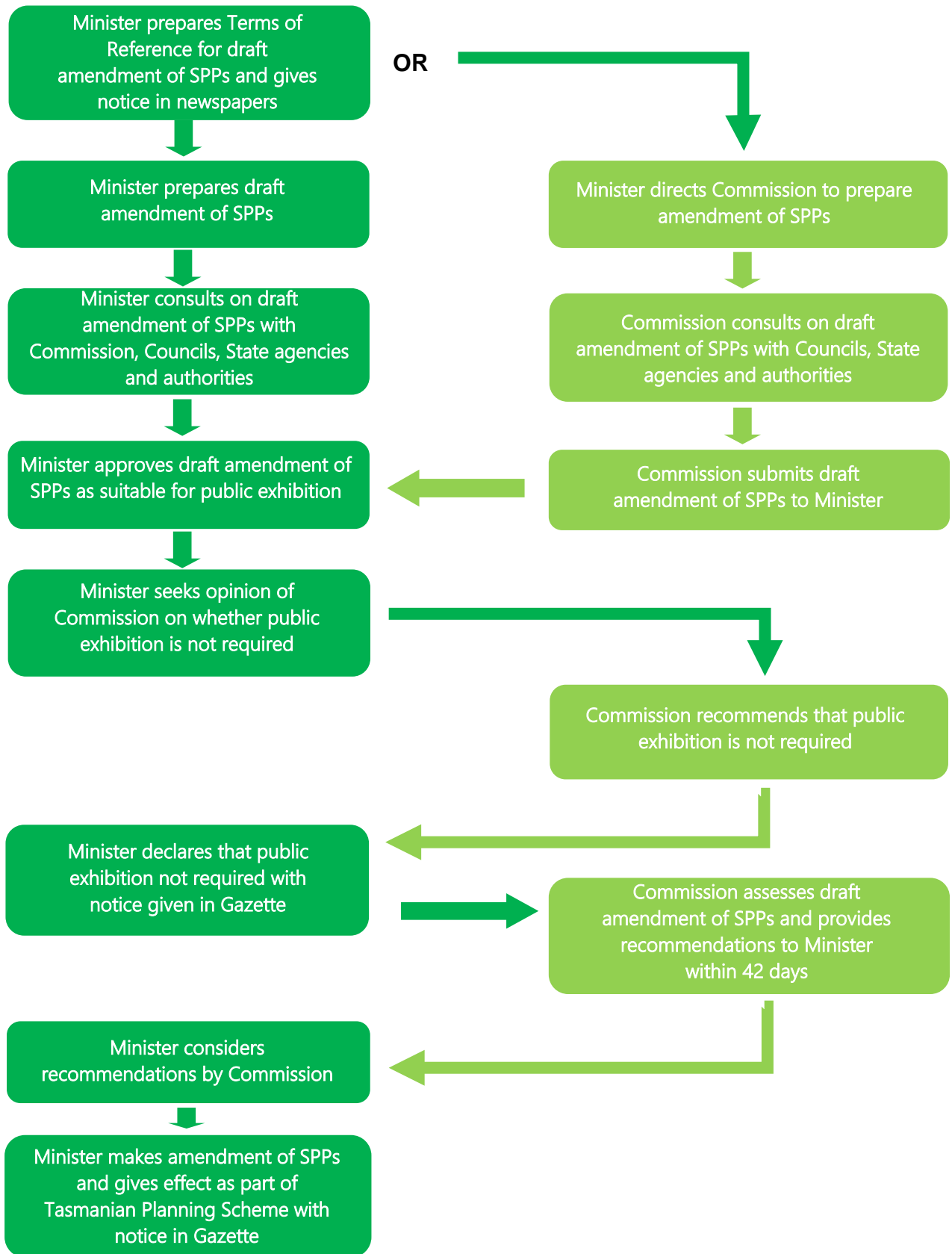
Consistent with the current processes for making the SPPs and amendments of the SPPs, the Minister is be able to inform themselves in the manner they see fit, as specified in section 300 of the LUPA Act. Consequently, the Minister is required to consider the advice of the Commission when determining whether to make a minor amendment, but may form a different opinion.

To provide appropriate transparency in the decision making process on minor amendments, the Bill has been revised to require the Commission's advice to the Minister, and the Minister's reasons for making a determination on the amendments, to be published.

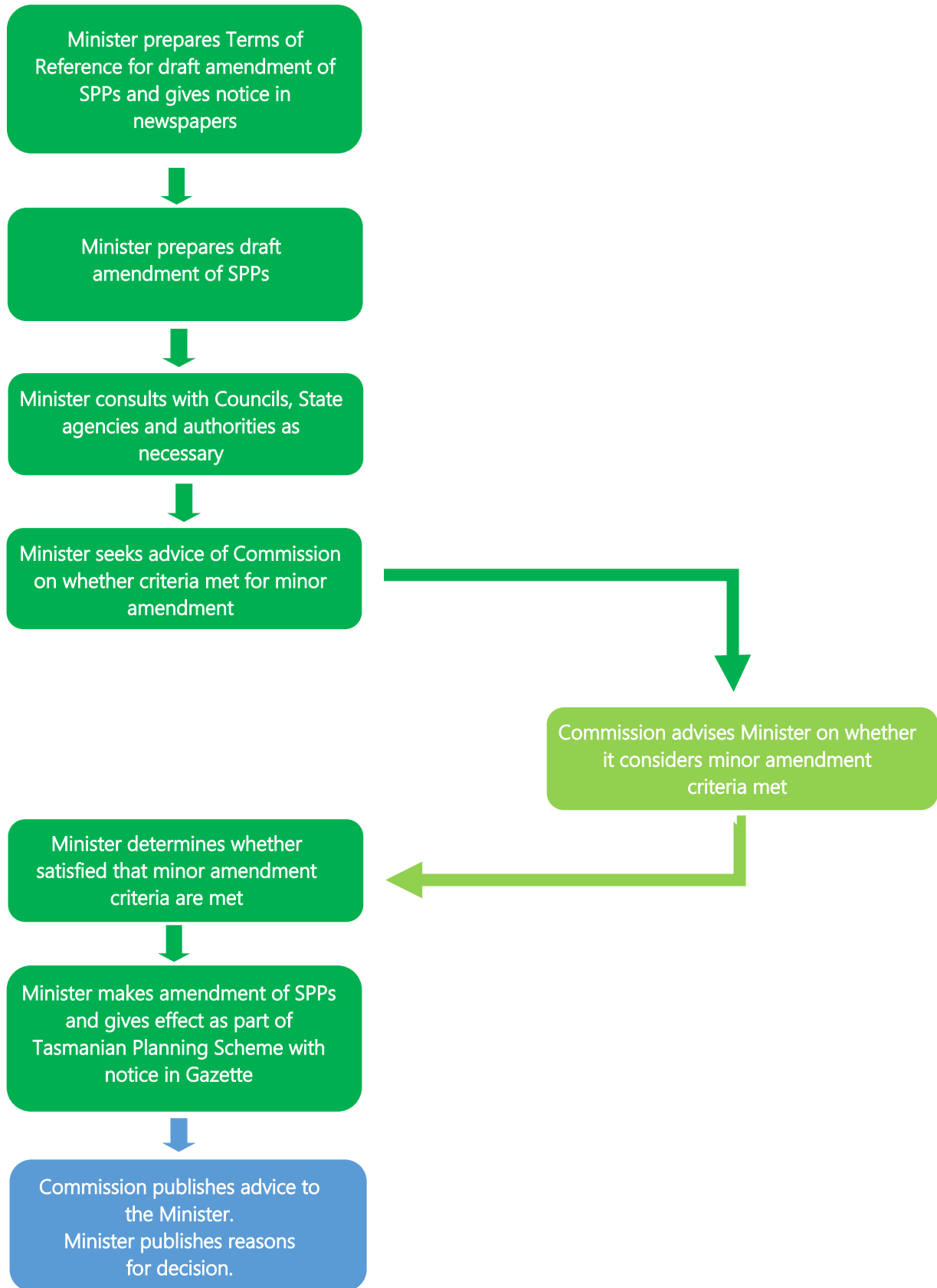
Refer to the flowchart in Figure 2 for the proposed process.



**Figure 1: Minor amendment of SPPs – Current Process**



**Figure 2: Minor amendment of SPPs – Proposed Process**



### 5.1.2 Making interim amendments of the SPPs

*(Refer to section 8 of the Bill – new sections 30NB, NC and ND of the LUPA Act)*

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

There is currently no equivalent process for amending the SPPs beyond the making of urgent amendments that are required to meet the very narrow scope under section 30H(3) of the LUPA Act.

The flexibility provided by the interim planning directive process has enabled some important changes to be immediately implemented, such as updates to the Bushfire-Prone Areas Code and the introduction of temporary housing provisions.

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.

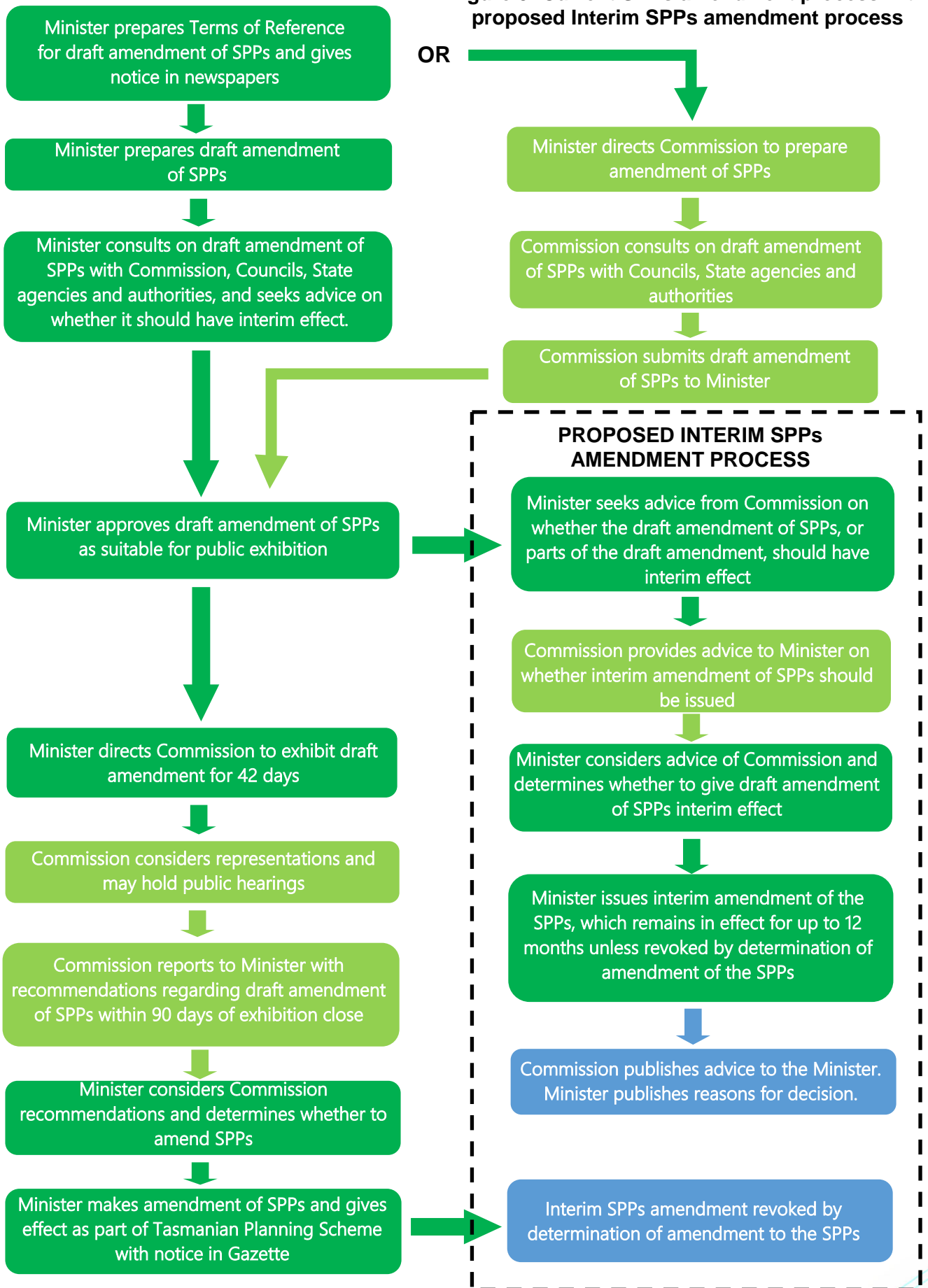
Importantly, the Bill limits the scope of interim SPPs amendments to those that are necessary or desirable to urgently address issues relating to a natural or environmental hazard, public health, public safety or a circumstance or matter prescribed by Regulation. It must be in the public interest to 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 3 for the proposed process.

**Figure 3: Current SPPs amendment process with proposed Interim SPPs amendment process**



## 5.2 Improved processes for finalising the Local Provisions Schedules

The amendments to assist with finalising LPSs were specifically requested by the Commission to assist its work based on experience in assessing the LPSs to date.

These changes relate 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.

The amendments in this Bill 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.

### 5.2.1 *Timing of public exhibition of draft LPSs*

*(Refer to section 13 of the Bill – amended section 35B of the LUPA Act)*

The current approach to setting a start date for public exhibition of a draft LPS does not always provide enough time for councils to prepare for the exhibition stage and is not flexible enough to accommodate potential administrative delays. Based on the advice of the Commission, the Bill provides for a more flexible exhibition start date and up to 21 days (increased from 14 days) for a council to prepare for exhibition.

The proposed amendment provides a more generous period for councils to prepare for the exhibition period while still ensuring the LPSs are exhibited in a timely manner.

### 5.2.2 *Revised process for considering substantial modifications to LPSs*

*(Refer to sections 16 and 23 of the Bill – 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 current process effectively places the entire LPS approval on hold while what is often a small number of modifications are subjected to the same assessment and public exhibition process as a newly prepared draft LPS, including 60 days of exhibition (refer to refer to the flowchart in Figure 4). This process must be completed before the entire LPS can be approved. The current process has unnecessarily delayed the approval of the LPSs, some by around 12 months, while a few discrete parts are subject to further public scrutiny.

To date, the substantial modifications directed by the Commission have included revised zoning of a few specific titles or areas and new or significantly revised specific area plans covering a range of issues, such as protecting local character, scenic and environmental values, protect existing regionally significant industrial sites and the delivery of specific housing types. These substantially

modified parts of the draft LPSs were directed for exhibition on the grounds that there may be broader public interest beyond those directly involved in the initial public hearing process. The proposed amendments to the LUPA Act will not change the opportunity for and extent of public scrutiny of these modifications.

The revised process for managing substantial modifications to the LPSs has been specifically requested by the Commission based on its experience to date. It will provide significant savings in terms of the time it takes to bring an LPS and therefore the Tasmanian Planning Scheme into effect.

The Bill 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 5). 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.

The current delays in approving the LPS while these modifications are dealt with as substantial modifications, also means that those who made representations on other matters in the draft LPS must wait until all issues are resolved before knowing the Commission's decision on their representation. For those draft LPSs that have been subject the substantial modification process, experience has shown that the vast majority (sometimes over 98% of the LPS) was considered appropriate for approval, but had to wait for a small number of modifications to run through the assessment process again.

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.

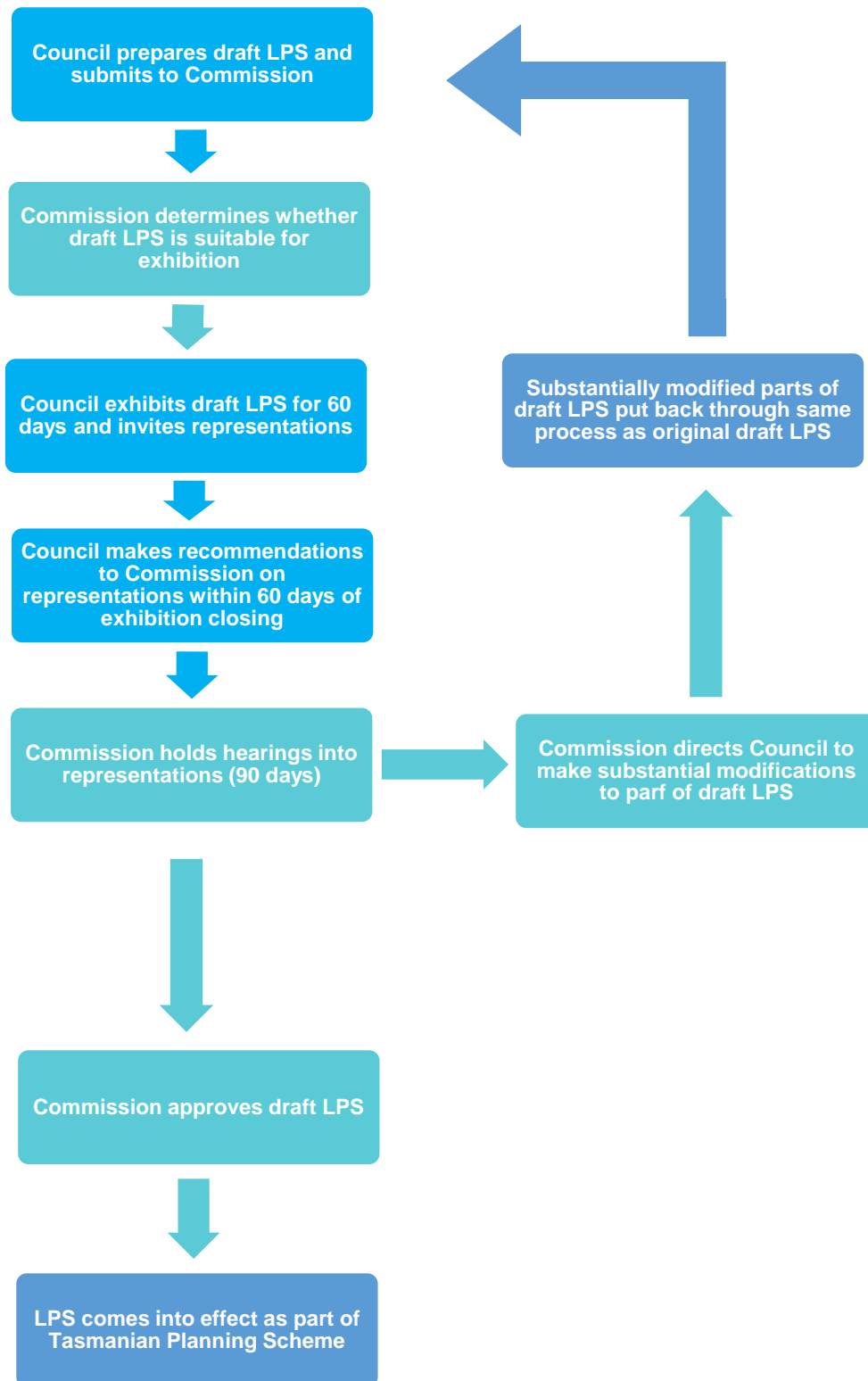
To ensure that a planning permit cannot be issued in contravention of the substantial modifications while they are still under consideration as an amendment to the LPS, amendments are proposed to requirements for determining development applications under section 51 of the LUPA Act. This requires decisions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

Section 23 of the Bill, which inserts new section 87F into the LUPA Act, saves the current process for making substantial modifications to a draft LPS if the Commission has already issued a direction

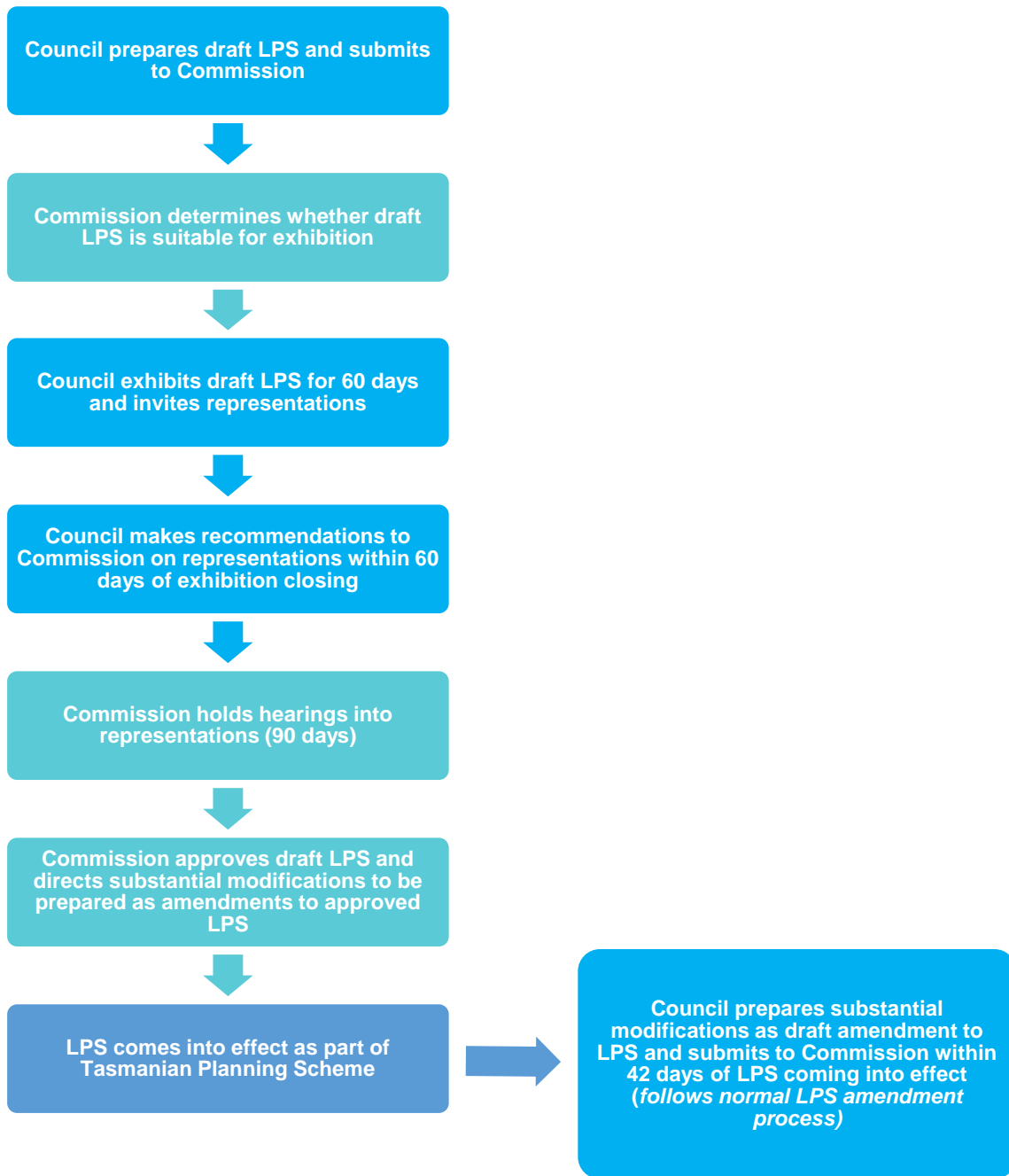
at the time of the Bill coming into effect. It also enables the Commission to direct any draft LPSs in the current substantial modification process to transition to the revised process. This would only occur after consulting with the relevant council and will be dependent on the stage that the draft LPS has reached in the current substantial modification process. Upon switching to the new process, the draft LPS would be approved and the substantial modifications considered as amendments at the equivalent stage of the new process.



**Figure 4: Current LPS assessment process including current process for considering substantial modifications**



**Figure 5: Current LPS assessment process including proposed process for considering substantial modifications**



### *5.2.3 Process for including approved interim planning scheme amendments in LPSs* *(Refer to sections 12, 14 and 16 of the Bill – amended sections 35, 35E and new section 35KA of the LUPA Act)*

During the assessment of draft LPSs, amendments to current interim planning schemes continue to be initiated by councils, and assessed by the Commission. This dual process, which allows contemporary issues to be dealt with in a timely way, will continue up until the date of the draft LPS being approved.

While the LUPA Act provides for some amendments to interim planning schemes to carry through into the LPS, there is no clear process for the inclusion of zone or code amendments approved during the assessment of the draft LPSs. Not including these changes could result in approved amendments needing to be resubmitted, and reassessed, as an amendment to the LPS after it is approved. This is unnecessary, inefficient and costly to all parties, including the Commission.

The Bill 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 Bill 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 will avoid 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.

## 5.3 Fairer process for determining development applications

*(Refer to section 21 of the Bill – amended section 51 of the LUPA Act)*

Currently, the LUPA Act requires a planning authority to make a decision on a development application by reference to the planning scheme that is in effect at the date the decision is made, not when the development application was lodged.

This approach could create confusion for the applicant and the community, as well as complications for a planning authority if the planning scheme controls change mid-assessment. This can result in additional costs and delays if an applicant has to substantially amend their development application to address different or new planning regulations which they were not aware of when they first submitted that application.

The Bill provides for a fairer approach by requiring a decision on a development application, as a general rule, to be made by reference to the planning scheme in effect when the application was validly lodged, in line with the Coty principle<sup>1</sup>.

For those development applications lodged after the Commission has directed a council to modify an amendment, or a draft LPS, the current LUPA Act requirements are retained. That is, 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.

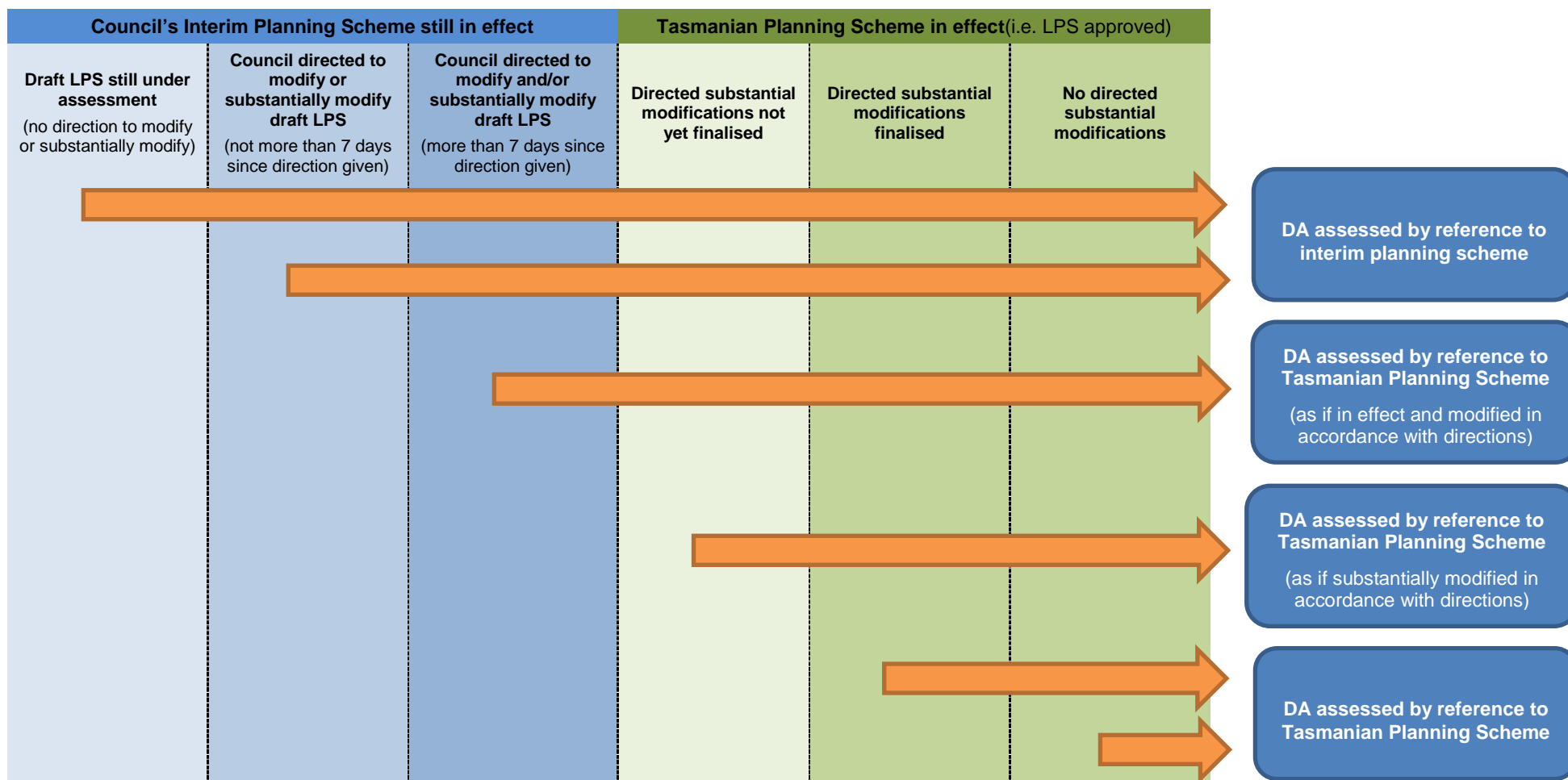
However, a new 7-day transition period is also proposed for the planning authority to adjust its processes after the Commission gives a direction to modify an amendment or a draft LPS.

Figure 6 provides an overview of how decisions are to be made during the transition from the interim planning schemes to the Tasmanian Planning Scheme.

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<sup>1</sup> The 'Coty Principle' takes its name from a well-known court decision which set a precedent for planning decisions - *Coty (England) Pty Ltd v Sydney City Council [1957] 2 LGRA 117*. The decision noted that during the transition to a new planning scheme it was in the public interest to avoid making a determination that may contravene the planning requirements that are yet to take full effect.

**Figure 6: Decisions on development applications based on circumstances at time of lodgement**



## 5.4 Implementation of parts of the State Planning Provisions through interim planning schemes

*(Refer to section 24 of the Bill – amended Schedule 6 of the LUPA Act)*

The Bill proposes amendments to 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 Bill enables the issuing of a planning directive, after the issuing of an interim planning directive that brings particular parts of the SPPs into effect through current planning schemes, without the usual exhibition and assessment processes. Waiving exhibition and assessment is proposed because the content of such a planning directive has already been exhibited and approved as part 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.

The SPPs deliver a number of improvements to the planning system, including clearer and more consistent exemptions, application requirements and general provisions. Bringing some of the core parts of the SPPs into effect earlier through the remaining interim planning schemes provides improved consistency across the State during the transition to full implementation of the TPS. It allows the benefits of these improved provisions to be available to all Tasmanians at an earlier time.

The Bill carefully limits the scope of the planning directive given that only certain SPPs can operate within the structure of current interim planning schemes. The planning directive may only include:

- planning terms and definitions contained in clause 3.0 of the SPPs;
- exemptions contained in clause 4.0 of the SPPs;
- application requirements contained in clause 6.1 of the SPPs;
- general provisions contained in clause 7.0 of the SPPs;
- development standards that relate to dwellings in the General Residential Zone or Inner Residential Zone of the SPPs; and
- any other provisions to allow the provisions from the SPPs to operate effectively within interim planning schemes and in conjunction with any other planning directives.

The criteria in the Bill align with the provisions contained in the recently issued Interim Planning Directive No. 4.

None of these SPPs are capable of being overridden by an LPS, with the exception of the General Residential Zone and Inner Residential Zone provisions. All locally unique provisions from interim planning schemes for these zones have been retained through Interim Planning Directive No. 4 and these may be progressed through an LPS where suitable.

Given the SPPs have already been subject to public exhibition and independent review by the Commission, an additional assessment of the parts included in the planning directive is unnecessary. The proposal for such a planning directive not to be exhibited and assessed prevents costly duplication of processes and further confusion over the status of the SPPs.

## 6. Frequently Asked Questions

### *6.1 Why weren't the matters included in the Bill identified earlier?*

As with all legislation and reforms, improvements are identified over time and with the benefit of experience and implementation. Legislation and administrative processes are constantly evolving and it is important that they remain under regular review and provide for continuous improvement.

The proposed amendments have been identified by the key operators of the system, including the independent Tasmanian Planning Commission and the local councils, and are based on their experience in operating the system to date.

Many of the amendments in Bill will assist with finalising the LPS assessment to bring the Tasmanian Planning Scheme into effect sooner, allowing for resources to be directed to Phase 2 reforms of building the new planning system, such as developing the Tasmanian Planning Policies, comprehensive reviews of the regional land use strategies and the legislative and governance framework in which they operate.

### *6.2 Why is the Minister not required to follow the advice of the Tasmanian Planning Commission in making a minor or interim SPPs amendment?*

Consistent with the current processes for making the SPPs and amendments of the SPPs, the Minister is able to inform themselves in the manner they see fit, as specified in section 30O of the LUPA Act. The Minister is able to gather information from a number of sources and therefore needs the opportunity to form their own opinion based on all advice received.

The Minister is required to consider the advice of the Commission in determining whether to make a minor amendment or interim SPPs amendment, but based on the full range of advice received, may form a different opinion.

To provide appropriate transparency in the decision-making process on minor amendments, the Commission's advice to the Minister and the Minister's reasons for making a determination on the amendments will be made publicly available.

### *6.3 Have other options been considered for dealing with substantial modifications to LPSs, such as reducing the current timeframes for exhibition and assessment?*

Yes, other options have been considered by the Commission, including the option for reducing the current timeframes for exhibition and assessment of substantial modifications under the current process.

However, analysis showed that significant delays would still be experienced, particularly when only a small number of substantial modifications are required. The Commission has requested this option as the most workable solution.

### *6.4 Why are decisions on development applications required to be made against planning requirements that are yet to be finalised?*

This policy approach has been embodied in the LUPA Act for many years and has been utilised in making decisions in the transition period between planning schemes and planning scheme amendments.

Once the Commission has handed down its decision and directed the council to modify a draft LPS, or an amendment, decisions on development applications are to be made by reference to the pending requirements as if they were in effect.

It is the public interest to ensure that decisions on development applications are not made in contravention of decisions to amend or modify the planning requirements, particularly during the transition to a new planning scheme, or an amended planning scheme. This is a key principle in planning law across Australia (commonly referred to as the 'Coty Principle').

### *6.5 Will the changes apply to development applications lodged before the Bill comes into effect?*

Yes. The new requirements for decision making will apply to all applications lodged before the Bill comes into effect, if they are yet to be determined. The savings and transitional provisions in new section 87F(4) of the Bill confirm this.

This means that any applications that are still to be determined at the time of the Bill coming into effect will be assessed in accordance with the planning requirements that were applicable at the time of the application being validly lodged.

### *6.6 Do the changes for making decisions on development applications change the way appeals are managed?*

No. The Resource Management and Planning Appeal Tribunal in determining an appeal must still make reference to the same requirements as the council did when it made its decision on the development application. This is the same as the current approach for determining appeals.



*6.7 A Planning Directive issued under the Bill may include any other provisions to allow the SPPs to operate effectively within the interim planning schemes. What can these provisions include?*

The Bill provides for other provisions to be included in the Planning Directive to enable the SPPs to operate effectively. These provisions outline how the planning directive operates and do not change the policy intent of the SPPs. This may include:

- the administrative provisions that specify how the Planning Directive applies to interim planning schemes, such as those in clauses 1.0 to 6.0 of Interim Planning Directive No. 4; and
- provisions that outline how the SPPs operate in conjunction with other provisions in interim planning schemes.

*6.8 Does the early implementation of the SPPs limit the ability for councils to apply their local provisions through their LPSs?*

No. The ability for councils to apply local provisions through their Local Provisions Schedule is not impacted by Interim Planning Directive No. 4, or the issuing of a Planning Directive under this Bill.

Councils are still responsible for spatially applying the zones and codes under their Local Provisions Schedules. They are still able to bring across their locally unique provisions, such as existing Particular Purpose Zones, Specific Area Plans and Site-Specific Qualifications under the existing transitional arrangements under the Land Use Planning and Approvals Act, and justify any new ones through the assessment of the Local Provisions Schedules.

*6.9 Can a local council still raise issues with the SPPs after the issuing of the Planning Directive in accordance with Interim Planning Directive No. 4?*

Yes. Local councils may still identify issues with the SPPs and potential amendments that could be made. Earlier implementation of parts of the SPPs may also assist with identifying potential issues prior to the full implementation of the Tasmanian Planning Scheme.

Section 35G of the Land Use Planning and Approvals Act provides a formal process for a local council to identify potential amendments to the SPPs during the preparation of a draft Local Provisions Schedule. The council, after considering the submissions received on their draft LPS, may provide a notice to the independent Tasmanian Planning Commission on provisions of the SPPs they believe should be amended. The Commission is required to consider the councils notice and provide advice to the Minister.

Councils are also free to identify issues and potential amendments to the SPPs during other times. A Minister's Advisory Statement is available on the Department's Planning Reform website outlining the process for councils requesting amendments to the SPPs.

*6.10 What if the SPPs are amended? Can the Planning Directive which may be issued under the Bill also be updated to reflect these changes?*

Yes. The Bill specifically provides for the Minister to modify the Planning Directive as necessary to align it with any amendments made to the SPPs after the Planning Directive is issued.

# APPENDIX 1 – CONSULTATION REPORT

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

## Consultation Report



# TABLE OF CONTENTS

1. Introduction .....	4
2. Glossary .....	4
3. Proposed amendments .....	5
4. Consultation .....	5
5. Summary of revisions .....	5
5.1 Minor Amendments of the SPPs.....	5
5.2 Interim SPPs Amendments.....	6
5.3 Substantial Modifications to draft LPSs.....	6
5.4 Determining development applications.....	7
6. Summary of issues raised in the submissions .....	7
6.1 Amendments relating to the State Planning Provisions .....	7
6.1.1 Minor Amendments of the SPPs.....	7
6.1.2 Interim SPPs Amendments .....	9
6.2 Amendments relating to the Local Provisions Schedules.....	12
6.2.1 Local Provisions Schedules – Exhibition Timing .....	12
6.2.2 Substantial Modifications to draft LPSs.....	12
6.2.3 Local Provisions Schedules – Amendments to Interim Planning Schemes.....	15
6.3 Fairer process for determining development applications .....	16
6.4 Planning Directive for implementing parts of the SPPs.....	16
6.5 Additional comments.....	18
7. Next steps .....	19

# 1. Introduction

In late 2020 proposed amendments to the *Land Use Planning and Approvals Act 1993* (LUPA Act) were circulated for targeted stakeholder consideration along with proposed amendments to the *Housing Land Supply Act 2018*.

The draft Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Bill 2021 (the LUPA Amendment Bill) proposes a number of amendments to the LUPA Act to improve the planning system and help us smoothly transition to the Tasmanian Planning Scheme (TPS). The draft Housing Land Supply Amendment Bill 2021 proposes amendments to the *Housing Land Supply Act 2018* to help increase the supply of land and improve assessment processes.

This report has been prepared by the Department of Justice, Planning Policy Unit to outline the response to the submissions received during consultation on the LUPA Amendment Bill. The feedback received was very constructive and informed a number of important revisions to the Bill. Submissions to each component of the Bill are summarised and responded to, including information on the changes made in response.

A response to the submissions on the draft Housing Land Supply Amendment Bill 2021 are provided in a separate report.

# 2. Glossary

The following acronyms and abbreviations are used in this report.

Commission	–	Tasmanian Planning Commission
LPS	–	Local Provisions Schedule
LUPA Act	–	<i>Land Use Planning and Approvals Act 1993</i>
LUPA Amendment Bill	–	Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Bill 2021
PPZ	–	Particular Purpose Zone
SAP	–	Specific Area Plan
SPPs	–	State Planning Provisions
SSQ	–	Site-specific qualification
TPS	–	Tasmanian Planning Scheme

## 3. Proposed amendments

The LUPA Amendment Bill proposes the following amendments to the LUPA Act:

- improved processes for making amendments to the State Planning Provisions (SPPs) in the 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. Consultation

Targeted consultation on the LUPA Amendment Bill and the Housing Land Supply Amendment Bill was open for 12 weeks between 13 November 2020 and 5 February 2021. This extended consultation was due to the holiday period. Feedback was invited from a total of 74 groups including all council's, as well as State agencies and authorities, industry, professional, environmental, and community groups, and the independent Tasmanian Planning Commission (the Commission).

A total of 19 responses (25% of those invited) were received from five councils, six State agencies or authorities, five industry groups, and three community groups. Of these, six (32%) expressed support or had nothing to raise. Of the remaining 13 submissions (17% of those invited), five responses offered comment on the Housing Land Supply Amendment Bill and 12 offered comment on the LUPA Amendment Bill (some submissions addressed both).

## 5. Summary of revisions

Consideration of the submissions received has resulted in the following revisions, along with a range of general drafting improvements, being made to the LUPA Amendment Bill.

### 5.1 Minor Amendments of the SPPs

- Clarified the scope of the minor amendment criterion for correcting errors in the SPPs.



- Changes to the consultation requirements to:
  - retain the requirement for the Minister to consult with all planning authorities and relevant State Service Agencies and State authorities for all minor amendments that relate to clarifying or simplifying the requirements in the SPPs, bringing the SPPs into conformity with a State Policy or Planning Directive, changing the structure for LPSs, or any future prescribed purposes; and
  - provide the Minister with the option to consult with planning authorities and relevant State Service Agencies and State authorities for minor amendments relating to correcting errors, removing anomalies, and removing inconsistencies in the SPPs or with the LUPA Act and other legislation.
- Enabled the granting of an extension of time, on agreement from the Minister, for the Commission to provide advice to the Minister on whether an amendment meets the minor amendment criteria.
- Enabled the Minister to make modifications to an amendment in response to advice received before making a minor amendment.
- Added a requirement for the Commission’s advice to the Minister, and the Minister’s reasons for decision, to be published.

## 5.2 Interim SPPs Amendments

- Clarified the scope of interim SPPs amendments.
- Provided for the Minister, as part of the initial consultation process, to request advice from the Commission, planning authorities, State Service Agencies, and State Authorities as to whether some or all of a proposed amendment should become an interim amendment.
- Enabled the granting of an extension of time, on agreement from the Minister, for the Commission to provide advice to the Minister on whether the amendment should be an interim SPPs amendment.
- Added a requirement for the Commission’s advice to the Minister, and the Minister’s reasons for decision, to be published.

## 5.3 Substantial Modifications to draft LPSs

- Allowed for an extension to the 42 day period, on agreement from the Commission, for planning authorities preparing and submitting the substantial modifications as a draft LPS amendment.

## 5.4 Determining development applications

- Further clarified the requirements for determining development applications (including appeals) when transitioning to the TPS, and for the final approval of planning scheme amendments and LPS amendments.
- Added clarification that the new requirements for determining development applications apply to any applications that have been lodged but not determined when the Bill comes into effect.

# 6. Summary of issues raised in the submissions

## 6.1 Amendments relating to the State Planning Provisions

The LUPA Amendment Bill proposes two sets of changes to processes for amending the SPPs:

- changes to simplify the process for making minor amendments of the SPPs; and
- enabling some amendments to the SPPs to have interim effect, which allows quick adaptation of policy in response to urgent or significant planning issues.

These proposed changes are intended to ensure the processes for maintaining, reviewing, and amending the SPPs remain efficient and responsive to emerging planning issues.

### 6.1.1 *Minor Amendments of the SPPs*

Responses to the proposed changes of the minor amendments process related to the degree of consultation, clarity of criteria or terminology, role of the Commission, and apparent inconsistency regarding the ability to change the SPPs.

Issues raised around the degree of consultation and the clarity of criteria or terminology included:

- the Minister should consult with State Agencies, Planning Authorities, and the Tasmanian Planning Commission on all minor amendments of the SPPs;
- some of the criteria used to define a minor amendment need clarification;
- some of the terms (e.g. 'public interest') need clarification;
- some of the criteria allow too much change to occur through a process that does not require broad consultation.

The proposed changes are intended to simplify the current 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 process is largely used to fix typographical errors, anomalies, or inconsistencies in the SPPs and to update references to legislation and Australian Standards. A simplified process is required for making these changes to keep the SPPs up to date. Consultation on these amendments would likely be unnecessary but the option for the Minister to consult remains.

Minor amendments may also relate to clarifying or simplifying the provisions, the implementation of policies approved through other instruments, such as State Policies and planning directives, and altering the structure for LPSs. These amendments are less straightforward and would benefit from consultation with planning authorities and relevant State agencies and authorities to ensure they are clearly drafted and unambiguous.

The criteria for minor amendments are already set in the LUPA Act and are consistent with those for making minor amendments to other instruments, such as LPSs and the Tasmanian Planning Policies. These criteria should be retained. However, there is an opportunity to clarify the scope of error corrections to be consistent with the scope for correcting errors or mistakes in decisions under the LUPA Act.

It is not normal to define the meaning of 'public interest' in legislation as its meaning is generally connected to the scope and purpose of the subject matter. Public interest may also change over time with shifting community expectations.

The following revisions have been made to the Bill in response to this feedback:

- clarification of the scope of 'correcting an error' in the SPPs to:  
*"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";*
- changes to the consultation requirements to:
  - retain the requirement for the Minister to consult with all planning authorities and relevant State Service Agencies and State authorities for minor amendments that relate to clarifying or simplifying the requirements in the SPPs, bringing the SPPS into conformity with a State Policy or Planning Directive, changing the structure for LPS, or any future prescribed purposes; and
  - provide the Minister with the option to consult with planning authorities and relevant State Service Agencies and State authorities for minor amendments relating to correcting errors, removing anomalies and removing inconsistencies in the SPPs or with other legislation.

These changes better match the intent of the proposed amendments and improve the transparency of the process. The new sections of the LUPA Act are at clause 8 of the LUPA Amendment Bill (new section 30NA).

Comments about the role of the Commission included that:

- the option for the Commission to prepare an amendment should be maintained;
- the current reporting processes should be maintained; and
- the Minister should only be able to determine public consultation is not warranted (i.e. that an amendment is minor) if the Commission has provided advice to that effect.

It is considered important to maintain a clear differentiation of roles in the preparation and consideration of minor amendments. Given the Minister must seek the advice of the Commission, it is best that a minor amendment be prepared by the Minister instead of the Commission.

Consistent with the current processes for making the SPPs and amendments of the SPPs, the Minister should be able to inform themselves in the manner they see fit, as specified in section 300 of the LUPA Act. Consequently, the Minister is required to consider the advice of the Commission when determining whether to make a minor amendment, but may form a different opinion.

To provide appropriate transparency in the decision making process on minor amendments, the Bill has been revised to require the Commission's advice to the Minister, and the Minister's reasons for making a determination on the amendments, to be published.

Finally, one representation considered it inequitable and unacceptable that a process to modify the SPPs was being discussed when the public has been repeatedly told that the SPPs are finalised and "not up for discussion".

While the content of the SPPs was set with their approval in 2017, so that the LPSs could then be prepared, it was never intended that they remain static in perpetuity as demonstrated by the requirement for a legislated review five years after they were made. All regulation should be able to be corrected, amended, reviewed, or updated as a matter of good governance. To this end, the provisions in the LUPA Act relating to SPPs, and all previous planning instruments, have always allowed for amendments (minor or otherwise) and review of the SPPs. In fact the SPPs are due for review in 2022.

### *6.1.2 Interim SPPs Amendments*

Concerns raised about the introduction of an option for making interim amendments related to what they are and when they can be used, clarifying terminology or criteria, consultation, transparency, and accountability, and questions of process.

Revisions have been made in response to concerns about the scope and clarity of interim amendments to further clarify the original intent. The scope for making an interim amendment is limited to the following circumstances:

- *it is necessary or desirable to make the interim SPPs amendment in order to urgently address issues relating to a natural or environmental hazard, public health, public safety or a prescribed circumstance or matter; and*
- *it is in the public interest to give effect as soon as practicable to the provisions of the draft amendment of the SPPs contained in the interim SPPs amendment.*

No definition is provided for 'public interest' for the reasons outlined above for minor amendments of the SPPs.

As with the changes to the minor amendments process, concerns about consultation, transparency, and accountability were raised. These included:

- that consultation should continue to occur with State agencies, planning authorities, and the Commission;
- that the Commission's advice to the Minister and the Minister's reasons for decision should be made public; and
- that the Minister should only be able to implement an interim amendment to the SPPs on the recommendation of the Commission.

Section 30D(2) of the LUPA Act already requires the Minister to consult with State agencies and authorities, planning authorities, and the Commission when preparing a draft amendment of the SPPs. However, in response to feedback, a new subsection (s30D(3)) has been introduced to allow the Minister to request advice from these groups as to whether some or all of a proposed amendment should become an interim amendment. This early engagement assists with highlighting the possibility of an interim amendment and with refining the amendment to ensure it is fit for purpose.

As outlined above for minor amendments, section 30O of the LUPA Act specifies the Minister should be able to inform themselves in the manner they see fit. Consequently, the Minister is required to consider the advice of the Commission, but may form a different opinion, when determining whether to make a minor amendment.

Requirements for the Commission's advice to the Minister and the Minister's reasons for decision to be published have also been introduced.

Finally, some matters largely related to process were raised in submissions, including:

- that interim amendments will add additional layers and complexities to the system;
- questioning making interim amendments to the SPPs before they are implemented and tested, especially in light of the Planning Directive No. 4.1 review;
- a lack of public involvement in interim amendments;
- that a similar process should be in place to make interim LPS amendments;

- that an alternative could be a requirement that planning authorities have regard to draft SPPs amendments in their decision-making; and
- that the date an interim amendment lapses should be identified in the SPPs.

Essentially, the proposed interim SPPs amendments process replicates, with some key improvements, the current interim planning directive process. The flexibility provided by the interim planning directive process has enabled some important changes to be immediately implemented, such as updates to the Bushfire-Prone Areas Code and the introduction of temporary housing provisions. To ensure that the interim SPPs amendments are limited to such matters, the Bill proposes limiting the scope of them for addressing issues relating to:

- natural or environmental hazards, 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.

For an interim amendment to have immediate effect, the full public consultation and assessment process must be deferred until after it is made. As with the current interim planning directive process, the making of the interim amendments is followed by the normal public consultation process for draft amendments, including public hearings and independent assessment by the Commission. If concerns arise regarding the operation of the interim amendment, they can be included in a submission during the public exhibition of the amendment.

While interim LPS amendments may be useful for local councils to implement matters such as interim local heritage place listings, this was not included in the consultation package and further consultation would need to be undertaken with local government, the community, and other key stakeholders. Currently, there is no ability for local councils to give interim effect to planning scheme amendments. However, the suggestion of extending the interim concept to LPSs does acknowledge that there are occasions when immediate actions are in the public interest.

Requiring planning authorities to have regard to draft SPPs amendments in decision making would enable all draft SPP amendments to influence decisions. The proposed interim amendment process is restricted to a narrow set of circumstances only.

It is likely that the date an interim amendment lapses can be displayed through iplan or any future electronic database that manages and displays the content of the TPS. A specific requirement is not needed in the Bill.

## 6.2 Amendments relating to the Local Provisions Schedules

Amendments to assist with finalising LPSs were specifically requested by the Commission based on their experience in assessing the LPSs to date. These changes relate to the timeframes for beginning exhibition of a draft LPS, options for managing substantial modifications required to a draft LPS, and avoiding the re-assessment of amendments to interim planning schemes by allowing for approved amendments to be included in draft LPSs. Responses to these changes are discussed below.

The 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.

### 6.2.1 Local Provisions Schedules – Exhibition Timing

Though some have noted that it is not a significant increase in time from the current 14 days, the proposal to allow up to 21 days for council's to begin exhibition of a draft LPS received general support. No change has been proposed to these parts of the draft Bill.

### 6.2.2 Substantial Modifications to draft LPSs

There are two components to the proposal to introduce a revised approach for managing substantial modifications that the Commission directs to be made to draft LPSs.

1. Enabling the Commission to approve an LPS and require any modifications, that may be of broader public interest (referred to as 'substantial' modifications), to be prepared and submitted as a draft LPS amendment.
2. Enabling decisions to be made by reference to the substantial modifications as if they were in effect. This approach is consistent with the current requirements for determining development applications after the Commission has directed a substantial alteration or substantial modification to a planning amendment or a LPS amendment.

Concerns were raised about each of these components as well as about the timing of these proposals given LPSs are currently being assessed and exhibited, and about the apparent haste to implement the TPS.

Feedback on the approach of allowing the approval a LPS and requiring substantial modifications be prepared and submitted as a LPS amendment suggested:

- there is inadequate evidence that the current process is causing problems;

- retaining the current system as it provides a fairer and clearer process for the creation of LPSs;
- reducing the timeframes for exhibition of substantial modifications instead;
- reducing the involvement of council such that directed substantial modifications do not require council endorsement following public exhibition and representations being made directly to the Commission; and
- providing the Commission with the power to extend the 42 day period for councils preparing the LPS amendment to avoid any default.

The revised process for managing substantial modifications to draft LPSs has been specifically requested by the Commission based on its experience in assessing the LPSs to date.

The revised process replaces the current process available to the Commission to direct a planning authority to substantially modify part of a draft LPSs. Currently, if the extent of modification required to the draft LPS after exhibition and the hearing is such that the draft LPS is not suitable for approval, the Commission may reject the draft LPS and direct the planning authority to substantially modify part of the draft LPS, which is then placed on exhibition and determined by the Commission.

To date, the substantial modifications directed by the Commission have included revised zoning of specific titles or areas and new or significantly revised specific area plans covering a range of issues, such as protecting local character, scenic and environmental values, protect existing regionally significant industrial sites and the delivery of specific housing types. These substantially modified parts of the draft LPSs were directed for exhibition on the grounds that there may be broader public interest beyond those directly involved in the initial public hearing process.

Both the Meander Valley draft LPS and Brighton draft LPS substantial modifications have taken about 12 months to prepare, exhibit, and assess while the remainder of the LPS was on hold. The revised process can reduce uncertainty in the community and enable better resource management when used. It does not diminish the public involvement as the matter will be subject to a future separate amendment process which will be subject to its own **broad** notification process.

Other options for reducing timeframes were explored, including those suggested by respondents. However, analysis showed that significant delays could still be experienced. The Commission has requested the revised process as the most workable solution.

The draft Bill has been adjusted to allow the Commission to extend the 42 day period for councils to prepare and submit the substantial modifications as a draft LPS amendment. This change is consistent with similar provisions for the Commission elsewhere in the LUPA Act.

Feedback received on decisions on development applications being made by reference to the not yet finalised substantial modifications included views that:



- the Coty Principle<sup>1</sup> is being misconstrued – that the principle allows for decisions to be made with regard to an amendment depending on the stage of assessment, and that a yet to be exhibited and assessed amendment should not influence decision making;
- the process assumes it is unlikely that the substantial modification to the LPS will change following public comment and TPC hearings and that this leads to the perception the amendment is a ‘done deal’;
- the perception of the amendment being a ‘done deal’ could reduce people’s willingness to engage in the long term;
- the process reduces opportunity for public engagement – particularly as people may be more engaged in the LPS process than standard amendment processes;
- the process may extend the time it takes to resolve representor issues resulting in frustration and dissatisfaction; and
- there is high potential for a mistake to be made – i.e. development is allowed to occur that is inconsistent with the final decision – making the use of the Coty Principle in this process too big a responsibility to manage.

In directing a substantial modification to a draft LPS, the Commission has determined the modification is necessary for the LPS to comply with the criteria in the Act. This normally follows additional information becoming available through the consideration of representations and the holding of public hearings.

If the Commission chooses to use the proposed substantial modification process of requiring the change as an amendment to the LPS, decisions on development applications will be made by reference to these modifications as if they are in effect. As outlined above, this is entirely consistent with the current requirements under the LUPA Act for determining development applications after the Commission has directed a substantial alteration or substantial modification to a planning amendment or a LPS amendment.

While the proposed substantial modification process allows for an LPS to be approved sooner, it requires the same level of consultation and public involvement in the process and the same rigorous assessment by the Commission. Public engagement in the process is retained as the Commission’s decisions and the submitted amendment will be publicly available for interested parties through separate public notification. The approval of the LPS prior to the making of

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<sup>1</sup> The ‘Coty Principle’ takes its name from a well-known court decision which set a precedent for planning decisions - *Coty (England) Pty Ltd v Sydney City Council [1957] 2 LGRA 117*. The decision noted that during the transition to a new planning scheme it was in the public interest to avoid making a determination that may contravene the planning requirements that are yet to take full effect.

substantial modifications will make responses to the submissions made to the draft LPS available sooner thereby assisting to keep interested parties informed of the outcome of the Commission's consideration of the issues they raised.

### *6.2.3 Local Provisions Schedules – Amendments to Interim Planning Schemes*

Feedback on the proposal to allow for amendments made to current planning schemes to carry through into draft LPSs included:

- that doing so could cause confusion;
- the process could be misused;
- the process may not be as simple as a direct translation;
- restricting representations on parts of the draft LPS that have come from amendments to current planning schemes is not appropriate; and
- queried whether this had been considered by the Planning Reform Taskforce in 2015.

The proposal only allows for the Commission to direct certain provisions which form part of recently approved amendments to current planning schemes (e.g. interim planning schemes) to 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 will avoid 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.

The Planning Reform Taskforce has been disbanded and was not responsible for the amendments made to the LUPA Act in 2015 to establish the framework for the TPS. As with all legislation and reforms, improvements are identified over time and with the benefit of experience and implementation. Legislation and administrative processes are constantly evolving and it is important that they remain under regular review and provide for continuous improvement. The proposed changes have been requested by the Commission and have support from the local councils.

Schedule 6 of the LUPA Act already provides for particular purpose zones (PPZs), specific area plans (SAPs), and site-specific qualifications (SSQs) in interim planning schemes to carry through into draft LPSs. The LUPA Act also restricts the Commission's consideration of representations to the draft LPS regarding the carrying through of these provisions. This restriction is in place because the existing provisions have already been exhibited, assessed, and approved. This proposal simply extends the scope of what can be carried through so as to prevent costly duplication of processes.

Schedule 6 also provides for changes to be made to any provisions being carried through to LPSs to make sure they can operate properly within the LPS and overall TPS. Such changes are limited to functionality and they are not able to alter the policy intent of the provisions being carried through.

Changes are not proposed to this component of the draft Bill.

### 6.3 Fairer process for determining development applications

There was general support for the proposal to base planning decisions on the requirements in place when an application was validly lodged, as opposed to when the decision is being made. However, concerns were raised about decisions being made by reference to directed substantial modifications to a draft LPS as noted in the discussion above, including directed modifications or alterations to interim planning scheme amendments and LPS amendments.

The current process for making decisions against directed modifications or alterations prior to them being finalised reflects a well-established legal principle of giving weight to planning decisions.

Changes are not proposed to this component of the draft Bill beyond the clarifications noted in previous sections.

### 6.4 Planning Directive for implementing parts of the SPPs

The Bill proposes to allow the issuing of a planning directive, after the issuing of an interim planning directive that brings particular parts of the SPPs into effect through current planning schemes, without the usual exhibition and assessment processes. Waiving exhibition and assessment is proposed because the content of such a planning directive has already been exhibited and approved as part of the SPPs. The SPPs were made after a comprehensive and open public process and assessment by the Commission. Responses to this proposal related to how such a planning directive would operate, consultation, and concerns about the SPPs.

In terms of the operation of the planning directive, there was concern that:

- it would cause confusion;
- it would result in an overnight shifting of the goal posts;

- parts of the SPPs would be brought into effect despite the possibility that LPSs might override them through a PPZ, SAP, or SSQ – thereby allowing development to occur that will later be prohibited; and
- this gives the Minister too broad a power.

There was also concern around the degree of consultation and the impact of this on community engagement more generally. Some thought planning authorities should be able to make comment to ensure the provisions work within current schemes, others were surprised by the lack of public exhibition.

Finally, concern was expressed that the SPPs had not been tested and that they should not be brought forward as there is ongoing community disagreement about their content.

The Bill carefully limits the scope of the subject planning directive given that only certain SPPs can operate within the structure of current interim planning schemes. As detailed in the consultation material, the planning directive may only include:

- planning terms and definitions contained in clause 3.0 of the SPPs;
- exemptions contained in clause 4.0 of the SPPs;
- application requirements contained in clause 6.1 of the SPPs;
- general provisions contained in clause 7.0 of the SPPs;
- development standards that relate to dwellings in the General Residential Zone or Inner Residential Zone of the SPPs; and
- any other provisions to allow the provisions from the SPPs to operate effectively within interim planning schemes and in conjunction with any other planning directives.

The criteria in the Bill align with the provisions contained in the recently issued Interim Planning Directive No. 4. There have not been any major operational issues raised to date. None of these SPPs are capable of being overridden by an LPS, with the exception of the General Residential Zone and Inner Residential Zone provisions. All locally unique provisions from interim planning schemes for these zone have been retained through Interim Planning Directive No. 4 and these may be progressed through an LPS where suitable.

Given the SPPs have already been subject to public exhibition and independent review by the Commission, an additional assessment of the parts included in the draft planning directive is unnecessary. The SPPs are also already in effect in several municipalities in the State and will be brought into effect in the remaining areas as each LPS is approved. The proposal for such a planning directive not to be exhibited and assessed prevents costly duplication of processes and further confusion over the status of the SPPs.

The legislation provides a number of opportunities to raise concerns about the SPPs, including:

- the formal process, under section 35G of the LUPA Act, for councils to identify potential amendments to the SPPs during the preparation of a draft LPS;
- formal review of the SPPs that will commence in 2022, under section 30T of the LUPA Act; and
- as per the Ministers Advisory Statement on this topic available on the Department of Justice’s Tasmanian Planning Reform website.

Bringing some of the core parts of the SPPs into effect earlier through the remaining interim planning schemes improves consistency across the State while transitioning to the Tasmanian Planning Scheme. These SPPs will not allow developments to be approved which an LPS might not allow as they are generally not provisions that can be overridden. All locally unique zone provisions have also been retained through Interim Planning Directive No. 4. Earlier implementation of parts of the SPPs may also assist with identifying potential issues prior to the full implementation of the TPS. Changes are not proposed to this part of the Bill.

## 6.5 Additional comments

Some submissions raised concerns with the complex drafting style used in the LUPA Amendment Bill. There was general acknowledgement that legislation needs to be legally robust, but considered that a more plain English drafting style could be employed to assist with interpretation by non-professionals.

The LUPA Amendment Bill relates to detailed administrative processes under the LUPA Act meaning that the legislative drafting can become complex. All legislative amendments are drafted by the Office of Parliamentary Counsel in accordance with a consistent drafting style and structure.

The Planning Policy Unit will issue a planning English information package upon royal assent of the Bill to assist with interpreting the legislative changes and to inform the broader community. The Commission will also update its information material on the LPSs to align with the modified processes.

There were a variety of other comments that were more general in nature or related more to the content of the SPPs or the consultation material than to the content of the Bills. A response is not specifically provided to these matters in this report.

Some comments made proposals outside the scope of the Bill often regarding matters more related to policy. These matters may be best managed through future planning reforms, such as the Tasmanian Planning Policies and reviews of the regional land use strategies.

Finally, individual comments were made questioning the apparent haste to introduce the TPS.

The current reforms to bring the TPS into effect have been in train for around 6 years. The SPPs were approved in early 2017 following the introduction of the legislative reforms in late 2015. The

first draft LPSs were submitted to the Commission for assessment in late 2017. The extended implementation phase is preventing improvements within the new system from taking effect and also impacting on commencing many of the other key planning reforms. The Commission's experience of assessing draft LPSs has suggested some improvements to the process are in order.

## 7. Next steps

The revised LUPA Amendment Bill will be tabled and debated in both Houses of Parliament. If passed, the Bill will come into effect upon receiving Royal Assent from the Governor.



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