

Draft Planning Directive No. 8

Summary report on submissions

September 2021



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1. Purpose of this document

Following the recent amendments to the *Land Use Planning and Approvals Act 1993* (the LUPA Act), the Minister for Planning and Local Government (the Minister) has announced his intention to issue draft *Planning Directive No. 8 – Exemptions, Application Requirements, Special Provisions and Zone Provisions* (draft Planning Directive No. 8).

Notwithstanding this, the Minister has carefully considered the issues raised in the submissions made to the Tasmanian Planning Commission (the Commission) during the public exhibition of the draft planning directive.

This document has been prepared by the Department of Justice’s Planning Policy Unit to assist with considering the issues raised in the submissions on draft Planning Directive No. 8 and keep stakeholders informed about the decision making process. It identifies how the issues raised are proposed to be considered in finalising draft Planning Directive No. 8 and in subsequent reviews and amendments of the State Planning Provisions (SPPs).

2. Glossary

The following acronyms and abbreviations are used in this report.

Commission	–	Tasmanian Planning Commission
draft Planning Directive No. 8	–	draft <i>Planning Directive No. 8 – Exemptions, Application Requirements, Special Provisions and Zone Provisions</i>
Interim Planning Directive No. 4	–	<i>Interim Planning Directive No. 4 – Exemptions, Application Requirements, Special Provisions and Zone Provisions</i>
LPS	–	Local Provisions Schedule
LUPA Act	–	<i>Land Use Planning and Approvals Act 1993</i>
Minister	–	Minister for Local Government and Planning
Planning Directive No. 1	–	<i>Planning Directive No. 1 – The Format and Structure of Planning Schemes</i>
Planning Directive No. 4.1	–	<i>Planning Directive No. 4.1 – Standards for Residential Development in the General Residential Zone</i>
SPPs	–	State Planning Provisions

3. Background

Draft Planning Directive No. 8 was prepared to introduce certain parts of the already approved SPPs into the remaining interim planning schemes.

The SPPs were approved by the then Minister in early 2017 following a comprehensive public exhibition and assessment process undertaken by the independent Commission, including 25 days of public hearings. The SPPs are currently in effect across several municipalities through the Tasmanian Planning Scheme and are automatically brought into effect when each council's Local Provisions Schedule (LPS) is approved by the Commission.

Earlier implementation of parts of the SPPs was intended to:

- provide a more uniform platform for planning applications during the transition to the Tasmanian Planning Scheme; and
- implement some of the more contemporary planning provisions which were prepared and tested as part of the SPPs preparation and assessment.

Bringing some of the SPPs into effect through the remaining interim planning schemes provides improved consistency across the State during the transition to full implementation of the Tasmanian Planning Scheme. It allows for councils and the community to make use of some of the more contemporary planning provisions earlier.

3.1 Contents of draft Planning Directive No. 8

Draft Planning Directive No. 8 contains a number of administrative provisions that outline how it operates and how it is implemented through the remaining interim planning schemes. It contains the following SPPs:

- 15 additional terms and definitions from the SPPs to allow the provisions to operate;
- certain exemptions that either add to, or replace, the general and limited exemptions previously contained in interim planning schemes;
- application requirements from clause 6.1 in the SPPs that replace the requirements in clause 8.1 of interim planning schemes;
- certain General Provisions (to be applied as Special Provisions) from the SPPs, which either add to, or replace, the Special Provisions in clause 9.0 of interim planning schemes; and
- the development standards for dwellings from the General Residential Zone and Inner Residential Zone replace those in interim planning scheme.

These form some of the core parts of the SPPs and were intended to deliver improved consistency across the State during the transition to the Tasmanian Planning Scheme. The SPPs included in draft Planning Directive No. 8 were limited to those that could operate effectively within the remaining interim planning schemes. This includes provisions that operate independently from the application of zones or codes at a local level, or those that relate to equivalent zones or codes.

Draft Planning Directive No. 8 also contains the exemptions that are retained from *Planning Directive No. 1 – The Format and Structure of Planning Schemes* (Planning Directive No. 1), which set the content and structure for the interim planning scheme. It also saves a number of locally and regionally unique provisions from current interim planning schemes, such as exemptions, Special Provisions, and residential development standards relating to road setbacks, heritage and tree protection.

3.2 Legislative processes for draft Planning Directive No. 8

The process for the preparation, assessment and issuing of planning directives and interim planning directives is detailed in former Part 2A of the LUPA Act. These provisions remain in effect through the savings provisions in Schedule 6, Clause 3 of the LUPA Act.

On recommendation from the independent Commission, the Minister gave interim effect to draft Planning Directive No. 8 through *Interim Planning Directive No. 4 – Exemptions, Application Requirements, Special Provisions and Zone Provisions* (Interim Planning Directive No. 4). Interim Planning Directive No. 4 came into effect on 22 February 2021 and was implemented by the Commission through amendments to the remaining interim planning schemes.

The normal process requires the Commission to undertake a formal assessment of a draft planning directive, including public exhibition and the holding of public hearings. The Commission commenced its assessment of draft Planning Directive No. 8 with the public exhibition commencing in April 2021.

However, recent amendments to the LUPA Act enables the issuing of a planning directive (such as draft Planning Directive No. 8) without the normal assessment process, following the issuing of interim planning directive (such as Interim Planning Directive No. 4) if it relates to certain parts of the SPPs.

The Minister has announced his intention to issue Planning Directive No. 8 in accordance with the recent LUPA Act amendments. Waiving the normal assessment process for draft Planning Directive avoids a duplicated assessment of parts of the SPPs, which would be an inefficient and costly exercise for the community, industry, and local and State government at this point in time. The SPPs are also due for their 5 yearly review commencing in 2022, which allows for them to be considered in their entirety, instead of the limited range in the draft Planning Directive No. 8 assessment.

4. Public exhibition

The Commission started the first stage of the assessment of draft Planning Directive No. 8 with public exhibition running from 17 April to 17 May 2021 and sought written submissions.

The Commission commenced the assessment of the draft planning directive due to uncertainties regarding the timing of the recently made LUPA Act amendments. This followed the suspension of Parliament following the announcement of the State election on 31 March 2021. At the time they were bound to follow the legislative requirements for assessment of planning directives.

A total of 11 submissions were received, 9 of which provided comment on draft Planning Directive No. 8. The submissions are available for viewing on the [Commission's website](#).

5. Summary of issues raised in the submissions

Appendix 1 provides a summary of the issues raised in the submissions on the content of draft Planning Directive No. 8. These are broadly categorised into matters that are proposed to be considered through the following:

1. **Statutory review of the SPPs** – concerns with parts of the SPPs and their policy intent which can be considered through the statutory review of the SPPs in 2022;
2. **Review of residential development standards** – concerns with the SPPs residential development standards in the General Residential Zone and Inner Residential Zone which can be considered through the pending review of the residential development standards derived from *Planning Directive No. 4.1 – Standards for Residential Development in the General Residential Zone* (Planning Directive No. 4.1).
3. **Minor modifications to Planning Directive No. 8** – that can be made to Planning Directive No. 8 at the time of issue; and
4. **Minor amendments of the SPPs** – that can be made to the SPPs (e.g. error corrections and clarifications) and subsequently included in the issued Planning Directive No. 8.

5.1 Other issues raised in submissions

A number of other issues were raised that go beyond draft Planning Directive No. 8, including:

- the recent legislative amendments to the LUPA Act;
- general concerns with the introduction of the Tasmanian Planning Scheme and the SPPs;
- concerns with reduced powers for local councils and whether there will still be opportunity to raise issues on the SPPs under section 35G of the LUPA Act;
- concerns with current interim planning schemes, including no significant tree register or heritage code and an out of date biodiversity code in the George Town Interim Planning Scheme 2013 as compared to the SPPs;
- the need to focus on strategic planning; and
- concerns with flammable cladding on buildings.

The legislative amendments to the LUPA Act have been finalised and given effect after passing through both Houses of Parliament without amendment. The Minister is now intending to act in accordance with the legislation to finalise draft Planning Directive No. 8.

The implementation of the Tasmanian Planning Scheme has been in train for the last 4-5 years following the approval of the SPPs and the release of a range of guidance material to assist local councils prepare their LPSs. The Tasmanian Planning Scheme is currently in effect in several municipalities across the three regions and will be brought into effect as each LPS is approved by the independent Commission.

The SPPs are due for their statutory 5-yearly review commencing in 2022. This provides an opportune time to undertake a comprehensive review taking into consideration the experience of operating the Tasmanian Planning Scheme and the parts of the SPPs that are now in effect in the remaining interim planning schemes through Interim Planning Directive No. 4.

Draft Planning Directive No. 8 does not diminish the general powers for local councils to continue to operate the remaining interim planning schemes. Local councils are still responsible for administering their interim planning schemes, including making any necessary amendments to keep them up to date while transitioning to the Tasmanian Planning Scheme. Draft Planning Directive No. 8 retains the locally unique requirements in the remaining interim planning schemes. It does not impact on current Particular Purpose Zones, Specific Area Plans and Site-specific Qualifications being included in the LPS through the transitional provisions under the LUPA Act, nor the ability for new provisions to be proposed as part of the draft LPS.

Local councils are still able to raise issues with the SPPs in accordance with section 35G LUPA Act in the course of considering representations on their draft LPS. The issuing of draft Planning Directive No. 8 will not change this. Early introduction of parts of the SPPs through draft Planning Directive No. 8 may actually assist local councils in identifying any issues through the section 35G process.

The broader concerns relating to the operation of interim planning schemes are beyond the scope of draft Planning Directive No. 8. Implementation of the Tasmanian Planning Scheme will assist with the concerns relating to the George Town Interim Planning Scheme with the SPPs providing a framework for the listing and management of significant trees and local heritage places and precincts and the application of updated mapping on natural values. The councils are able to apply these through their approved LPSs.

Issues relating to flammable cladding on buildings are beyond the scope of the planning system and are best managed through the building regulations and the National Construction Code.

6. Next Steps

All issues identified in Appendix 1 will be considered as part of the issuing of draft Planning Directive No. 8, through the pending review of the residential development standards, or the broader statutory review of the SPPs due to commence in 2022.

Draft Planning Directive No. 8 will be issued by the Minister later in 2021 with corrections made to any clerical errors at this time, including those identified in Appendix 1. It is intended to align the issuing of the draft planning directive with the making of minor amendments of the SPPs, including those identified in Appendix 1, to ensure the changes align between both instruments.

All issues relating to the residential development standards in the General Residential Zone or Inner Residential Zone will be considered as part of the pending review of development standards derived from Planning Directive No. 4.1.

The broader statutory review of the SPPs will consider all issues raised on the content of the SPPs, including those identified in Appendix 1. The statutory review will commence in 2022.



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