# tasmanian planning policies: roles and responsibilities

## Overview

The *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Act 2018* (Amendment Act) makes provision in the *Land Use Planning and Approvals Act 1993* (LUPAA) to establish a mechanism to prepare, make, amend, implement and review Tasmanian Planning Policies (TPPs).

The TPPs will provide direction on matters of state interest within Tasmania’s land use planning system.

The purpose of this fact sheet is to provide a high-level summary of the roles and responsibilities of the key decision-makers in the making of the TPPs. Key roles are attributed to the:

* Minister for Planning (the Minister); and
* Tasmanian Planning Commission (the Commission).

Planning authorities, and State agencies and State authorities, also have a role when the Minister is preparing a draft of the TPPs, making the TPPs, or preparing a draft amendment to the provisions of the TPPs.

The community has a role in making a representation on the contents or merits of the draft of the TPPs or a draft amendment to the provisions of the TPPs.

## Role of the Minister

The primary role for the Minister is preparing the draft of the TPPs, making the TPPs and making amendments to the provisions of the TPPs.

The Minister may inform himself or herself in the manner he or she thinks fit in relation to preparing a draft of the TPPs or a draft amendment to the provisions of the TPPs.

The Minister:

* may prepare a draft of the TPPs;
* may make or refuse to make the TPPs, or substantially modify a draft of the TPPs, as he or she thinks fit;
* must consult with the Commission, planning authorities, and relevant State agencies and State authorities as the Minister thinks fit when preparing a draft of the TPPs – in relation to the intention to prepare a draft of the TPPs and the preparation of a draft of the TPPs;
* may provide the Commission with a draft of the TPPs and direct the Commission to undertake public exhibition of the draft of the TPPs (this provides for the Minister to exercise discretion as to whether the draft of the TPPs are ready to be publicly exhibited);
* may substantially modify the draft of the TPPs that was publicly exhibited, but cannot make the TPPs unless he or she has directed the Commission to re-exhibit the substantially modified draft of the TPPs and conduct its formal statutory processes of consultation, assessment against the ‘TPP criteria’, and reporting again;
* may prepare and make a draft amendment to the provisions of the TPPs as he or she thinks fit;
* must consult with the Commission, planning authorities, and relevant State agencies and State authorities as the Minister thinks fit when preparing a draft amendment of the TPPs – in relation to the intention to prepare a draft amendment of the TPPs and the preparation of a draft amendment of the TPPs;
* may provide to the Commission with a draft amendment of the TPPs and direct the Commission to undertake public exhibition of the draft amendment;
* may substantially modify a draft amendment of the TPPs that was publicly exhibited, but cannot make a draft amendment of the TPPs unless he or she has directed the Commission to re-exhibit the substantially modified draft amendment and conduct its formal statutory processes of consultation, assessment against the ‘TPP criteria’ and reporting again;
* may determine that a draft amendment of the TPPs is a minor amendment if he or she:
  + is of the opinion that the public interest will not be prejudiced if the draft amendment is not publicly exhibited;
  + is satisfied the minor amendment meets the ‘TPP criteria’; and
  + determines it is for a purpose listed in section 12H(4)(b) of the Amendment Act;
* must keep the TPPs under regular and periodic review;
* must, at the end of every 5-year period after the TPPs are made, conduct a review of the TPPs and the implementation of the TPPs – or direct the Commission to conduct a review of the TPPs and the implementation of the TPPs; and
* must table a report on the 5-yearly review in Parliament as soon as practicable after the report has been prepared.

Although not explicitly detailed in the provisions of the Amendment Act, the Minister is able to consult informally and more widely than the statutory processes on the draft of the TPPs or a draft amendment of the TPPs before they are submitted to the Commission for consultation, assessment and reporting. The Minister has another opportunity to consult informally prior to making the TPPs or an amendment to the provisions of the TPPs.

The Minister can only make, or refuse to make, the TPPs or an amendment to the TPPs after considering the Commission’s report.

The Minister also needs to be satisfied, after taking advice from Commission, that the draft of the TPPs or a draft amendment to the TPPs meets the ‘TPP criteria’. This means that the Minister needs to be satisfied that the draft of the TPPs or the draft amendment:

* seek to further the Part 1 and Part 2 objectives set out in Schedule 1 of LUPAA; and
* is consistent with any relevant State Policy.

However, where the Minister does not direct the Commission to undertake public exhibition of a draft of the TPPs or a draft amendment of the TPPs, the process effectively stops. There is no power for the Minister to make the TPPs or an amendment of the TPPs without directing the Commission to undertake public exhibition.

As soon as practicable after making the TPPs, the Minister must publish a notice in the *Tasmanian Gazette* specifying that the Minister has made the TPPs or an amendment of the TPPs and when they come into effect.

The Minister must also publish a notice in a newspaper that is published and circulates in Tasmania specifying:

* that the Minister has made the TPPs or an amendment of the TPPs;
* when the TPPs or an amendment of the TPPs come into effect; and
* if relevant, the reasons why the Minister modified the draft of the TPPs or a draft amendment of the TPPs after they were publicly exhibited and after receiving the Commission’s report, including the evidence that the Minister has based his or her reasons on.

The Minister must also publish a notice in the *Tasmanian Gazette* if he or she refuses to make the TPPs or an amendment of the TPPs and publish his or her reasons for making the refusal.

## Role of the Tasmanian Planning Commission

The Commission can provide advice to the Minister when he or she is preparing a draft of the TPPs or a draft amendment of the TPPs.

Once the draft of the TPPs or a draft amendment of the TPPs has been prepared, and after receiving a notice from the Minister to undertake public exhibition in relation to the draft of the TPPs or a draft amendment of the TPPs, the Commission must ensure they are placed on public exhibition.

The exhibition period for the first draft of the TPPs (or a substantially modified draft of the TPPs) is 60 days (excluding any days on which the exhibition premises are closed during normal business hours).

The exhibition period in relation to a draft amendment of the TPPs (or a substantially modified draft amendment of the TPPs) is 42 days (excluding any days on which the exhibition premises are closed during normal business hours).

The Commission must:

* publish the exhibition notice in a Tasmanian newspaper once before, and once within 14 days after, the first day of the exhibition period;
* ensure that a copy of a draft of the TPPs or a draft amendment of the TPPs is made available for viewing at the Commission offices (i.e. the exhibition premises) and on the Commission’s website;
* invite all persons and bodies to make a representation, in relation to a draft of the TPPs or a draft amendment of the TPPs;
* consider all representations;
* consider if a draft of the TPPs or a draft amendment of the TPPs meets the ‘TPP criteria’ where they must:
  + seek to further the Part 1 and Part 2 objectives set out in Schedule 1 of LUPAA; and
  + be consistent with any relevant State Policy; and
* consider whether there are any matters of a technical nature (or that may be relevant) in relation to the application of the TPPs or an amendment to the TPPs to the Tasmanian Planning Scheme or each regional land use strategy.

The Commission may also hold one or more hearings in relation to the representations received if it thinks fit.

Once the Commission has conducted its formal statutory processes of consultation, assessment against the ‘TPP criteria’ and reporting, it must provide the Minister with a report on:

* the draft of the TPPs (or a substantially modified draft of the TPPs), within 90 days after the end of the exhibition period (or a longer period allowed by the Minister);
* a draft amendment of the TPPs (or a substantially modified draft amendment of the TPPs) within 60 days after the end of the exhibition period (or a longer period allowed by the Minister);
* include in the report on a draft of the TPPs or a draft amendment of the TPPs:
  + a summary of the issues raised in the representations;
  + a statement as to whether the Commission is satisfied that a draft of the TPPs or a draft amendment of the TPPs meets the ‘TPP criteria’; and
  + a statement as to whether there are any matters of a technical nature, or that may be relevant, in relation to the application of the TPPs or an amendment of the TPPs to the Tasmanian Planning Scheme or each regional land use strategy; and
* conduct a review of the TPPs and the implementation of the TPPs and provide the Minister with a report in relation to the review, if directed by the Minister to conduct a review.

## Role of local councils

The role of local councils (acting as planning authorities) is to provide advice to the Minister when he or she is preparing a draft of the TPPs or a draft amendment the TPPs.

As part of the formal consultation process, the Commission must also provide a copy of the draft of the TPPs or a draft amendment of the TPPs to each planning authority and invite them to make a representation.

Planning authorities can then make a representation on the contents or merits of the draft of the TPPs or a draft amendment of the provisions of the TPPs.

## Role of State agencies and State authorities

The role of State agencies and State authorities is to provide advice to the Minister when he or she is preparing a draft of the TPPs or a draft amendment of the TPPs.

Role of the community

The Commission is responsible for conducting the formal statutory processes of consultation, assessment against the ‘TPP criteria’ and reporting to the Minister.

This means that the Commission must conduct the public exhibition process and invite persons and bodies to make a ‘representation’ (i.e. a submission) on the a draft of the TPPs or a draft amendment of the TPPs.

A representation is the community’s opportunity to comment about content and merit of a draft of the TPPs or a draft amendment of the TPPs.

A representation can be made in writing, in an email, orally or in any other form providing it is made within the exhibition period and submitted to:

* the premises (i.e. the offices of the Commission); or
* an electronic address;

that is specified in the publicly advertised exhibition notice.

## What consultation has there been?

The legislative provisions of the Amendment Act that relate to the making of the TPPs were developed in consultation with the State Policies Interdepartmental Committee (SPIDC) and key State Government agencies.

The SPIDC prepared a number of ‘indicative’ or ‘demonstration’ TPPs and an accompanying explanatory document.

The legislative provisions of the Amendment Act that relate to the making of the TPPs were subject to both targeted and community consultation processes that closed in May 2017.

During these consultations, the ‘indicative’ or ‘demonstration’ TPPs and accompanying explanatory document were released along with the draft legislation. The ‘indicative’ or ‘demonstration’ TPPs were included in the consultation package to broadly show the types of policies that might be developed in the future and what form these policies may take.

Formal preparation of the draft of the TPPs will occur now the legislative mechanism that is included in this Amendment Act has been established.

## Where do I find the Amendment Act?

The *Land Use Planning and Approvals Amendment (Tasmanian Planning Policies and Miscellaneous Amendments) Act 2018* (Amendment Act) received Royal Assent on 17 December 2018.

A copy of the Amendment Act and LUPAA are available on the Tasmanian Legislation Online website at: https://www.legislation.tas.gov.au/.

## Enquiries

Any enquiries can be directed to the Planning Policy Unit within the Department of Justice at [Planning.Unit@justice.tas.gov.au](mailto:Planning.Unit@justice.tas.gov.au) or by telephoning (03) 6166 1429.

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