



REFORMING TASMANIA'S PLANNING SYSTEM

A POSITION PAPER ON THE

*LAND USE PLANNING AND APPROVALS AMENDMENT
BILL 2014*

FOR CONSULTATION WITH LOCAL GOVERNMENT AND
STAKEHOLDERS

AUGUST 2014

This Position Paper outlines proposed legislative amendments to implement the first phase of the Government's planning reform agenda to make Tasmania's planning system fairer, faster, cheaper and simpler.

The Paper has been prepared for consultation with local government and key stakeholders through the Planning Reform Taskforce.

While every effort has been made to provide a comprehensive outline of the proposed legislative amendments, the Government reserves the right to make further changes based on outcomes of the consultation process and the legislative drafting process.

The Government intends to provide draft legislative amendments as soon as practicable, to the Taskforce to support this consultation process. The Position Paper deals with the range of issues that Government intends to address as part of the first phase of the planning reforms in 2014.

These reforms focus on urgent amendments that are required to support finalisation of the interim planning schemes and address a number of the Government's commitments and recommendations from the Taskforce on urgent matters that can be addressed within this timeframe.

Feedback on broader planning issues or additional proposed changes to LUPAA that are not canvassed in this paper, such as the matters to be dealt with in phase two of the reforms in 2015., will not be considered as part of these current reforms.

Government will consult on the broader planning reforms under phase 2 in 2015.

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Background

The Government is strongly committed to reforming the Tasmanian planning system to make it fairer, faster, cheaper and simpler for all Tasmanians.

The Government will continue to work closely with local government, industry and other stakeholders to deliver on these reforms, through the Planning Reform Taskforce which reports directly to the Minister for Planning and Local Government.

The Taskforce has a central role in providing advice to Government on key planning issues, particularly the development of a single statewide planning scheme approach, and on the views of local government and stakeholders on the proposed legislative reforms.

The Government intends to introduce legislation to Parliament in October 2014 as the first major step in implementing its planning reform agenda.

This Position Paper provides an overview of the proposed changes to the *Land Use Planning and Approvals Act 1993* (LUPAA), for consultation purposes with local government and stakeholders.

The Bill will be drafted in parallel with the targeted consultation process to be led by the Taskforce. Matters of detail may arise in the drafting process that will need to be considered as part of this consultation.

An early draft of the Bill and subsequent drafts where possible, will be made available by the Government to support this process.

The *Land Use Planning and Approvals Amendment Bill 2014* will provide a more efficient process for declaring and finalising the 29 interim planning schemes that are at various stages of development across the State.

The conclusion of the interim planning scheme process is the first step in delivering a single planning scheme outcome. It will ensure the investment by the State and local government to-date is captured and that all interim schemes have the same contemporary structure in preparation for the introduction of a single statewide planning scheme approach.

This will allow State and local government resources to focus on the Government's planning reform agenda, including the development of new statewide planning scheme provisions.

It will also avoid a situation where lengthy public hearings may be held on matters that may change again with the introduction of the new statewide planning scheme provisions.

These changes will be supported by a more streamlined and faster process for amending planning schemes. In combination with changes to current administrative processes, this will enable all interim planning schemes to be translated to final planning schemes in 2015 and provide a platform for transitioning to a single statewide planning scheme outcome.

These amendments are considered urgent as the current process for finalising interim schemes is lengthy and resource-intensive, and if it were to continue beyond 2015 it would be likely to be overtaken by the single statewide planning scheme approach. If Government were to continue with the current process for declaring and assessing interim planning schemes it has been estimated that it could take up to four years to finalise these schemes. The proposed reforms will build on the substantial investment by local government in preparing the interim planning schemes.

The Bill will also implement a number of Government's other commitments and recommendations from the Planning Reform Taskforce.

The proposed changes will primarily be implemented through amendments to LUPAA. Amendments are also proposed to the *Local Government (Building and Miscellaneous Provisions) Act 1993* to allow planning schemes to determine where a subdivision development may be discretionary or permitted rather than being deemed as discretionary in all circumstances.

This package of amendments is the first stage in implementing the Government's broader package of reforms to deliver a fairer, faster, cheaper and simpler planning system for Tasmania.

The Government intends to bring forward further legislation in 2015 to provide the framework for delivering a single statewide planning scheme outcome and implement the remaining reform commitments relating to major projects, ministerial call-in powers, in-principal approval and further measures relating to third-party appeals. These reforms will be supported by the development of new state policies and statewide planning scheme provisions.

Summary of proposed changes

In summary, the amendments to the *Land Use Planning and Approvals Act 1993* are to:

- streamline the process for declaring and finalising the interim planning schemes;
- provide a streamlined amendment process that applies to all planning schemes and replaces the dispensation process for interim planning schemes;
- introduce shorter assessment timeframes for permitted use and development;
- introduce a \$600 appeal fee for certain third parties on discretionary permits ;
- allow interim planning directives to replace or revoke existing planning directives;
- allow councils to extend a permit for an additional 2 years (to a maximum of 6 years);
- provide copyright and indemnity protection for Government in relation to making electronic data on planning schemes available online;
- extend the provision for the reconstruction of accidentally destroyed buildings and works to include conforming uses; and
- provide clearer provisions for where minor amendments to permits can occur

In addition to these amendments to LUPAA, amendments will be made to the *Local Government (Building and Miscellaneous Provisions) Act 1993* so that a planning scheme can provide for a subdivision to be a permitted or a discretionary development rather than being deemed as discretionary in all circumstances.

The amendments will provide an administratively simpler process for declaring and finalising interim planning schemes that in combination with a more streamlined and faster process for amending planning schemes will allow for the issues raised in representations to be dealt with more expeditiously.

The Bill will provide a more streamlined and faster process for amendments to a planning scheme that require a public process including where an applicant has applied for a permit at the same time. This amendment process will apply to all planning schemes and replace the dispensation provisions for interim planning schemes.

The Bill will also provide a consolidated set of criteria in the Act for where amendments can be made to planning schemes for 'urgent and administrative' changes that do not require a public exhibition process.

A shorter assessment timeframe of 21 days, rather than the current 42 days, will apply to applications for permitted use and development, allowing developers and applicants to receive approval quickly for the types of use and development that a planning scheme clearly allows for and which do not require public exhibition.

A higher fee of \$600 will be introduced for certain third party appeals on discretionary permits. The higher fee will not apply to applicants for a development, or to third parties who are owners and occupiers of adjoining lands to the proposed use or development.

The current provision where a planning scheme cannot prevent reconstruction of buildings and restoration of works that have been unintentionally destroyed or damaged for non-conforming uses will be extended to include all uses. This seeks to address an issue that arose following the January 2013 bushfires where there were different requirements in place for owners seeking to rebuild their homes under different planning schemes.

Amendments will be made to support implementation of the digital online planning system by clarifying how digital data can be used and reproduced by the Crown, and to provide indemnity for Government, councils and licensed users in relation to copyright.

LUPAA will also be amended to provide the ability for an interim planning directive to 'replace' an existing planning directive, where urgent changes are required to the planning directive. The standard consultation can then be undertaken on the changes to the planning directive, while the interim planning directive is in force.

Councils will be provided with discretion to extend a permit that has already been extended by two years for an additional two years, giving a maximum of six years for substantial commencement of a development.

A clearer mechanism will also be provided for minor amendments to permits so that an applicant is not required to lodge an entire new development application for a minor change to an existing permit approval.

Streamlined process for declaring and finalising interim planning schemes

The changes will provide a more efficient process for declaring and finalising interim planning schemes. Along with changes to administrative practice and a streamlined process for amending planning schemes, this will allow the interim schemes to be finalised in 2015, in preparation for the introduction of a single statewide planning scheme approach. The changes will allow the interim schemes to progress to final planning schemes that comply with the Act, without requiring all the issues that may be raised in representations to be resolved prior to final schemes being made. A streamlined amendment process will provide an efficient way of dealing with any remaining issues arising from the representations once the final schemes have been made.

The amendments will include changes to the provisions for declaring interim planning schemes, timeframes for public exhibition, notification and reporting on representations, the requirements for hearings and the modification and making of final planning schemes.

Figure 1 provides an overview of the process for making and finalising interim planning schemes.

DECLARING INTERIM PLANNING SCHEMES

The requirements for interim planning schemes including the structure with mandatory common, optional common and local provisions will be retained in planning schemes made under Division 1A.

Section 30F of LUPAA will be amended so the Minister may declare an interim scheme where “*he or she is satisfied that*” it complies with the requirements of section 30F(3). This will replace the current wording that “*The Minister may only declare a draft interim planning scheme to be an interim planning scheme if*” it complies with those requirements.

This will address an issue that has been identified with the Act, that it is more normal for legislation to provide that a Minister ‘must be satisfied’ of certain matters as a basis for making this type of decision.

AMENDMENTS TO INTERIM PLANNING SCHEMES

The process for amending planning schemes will be streamlined under Division 2 and 2A of Part 3 of LUPAA and the dispensation provisions for interim planning schemes under

Division 1A of Part 3 will be repealed. There will be transitional provisions to deal with any applications that are subject to the current dispensation process, and for any existing dispensations.

Administrative processes will be used to ensure that any current applications to amend a planning scheme under section 43A of LUPAA are either assessed and finalised prior to the declaration of those interim schemes that are still to be declared, or that applicants are advised to await the declaration of the interim scheme prior to lodging an application for an amendment. The streamlined amendment process will mean those applications that are lodged after the amendments to LUPAA come into effect will be processed more quickly.

The provisions for 'urgent amendments' to interim planning schemes in section 30IA will be reviewed and combined with the matters for which the Commission can dispense with the requirements for public exhibition for a draft amendment to a planning scheme under section 37.

This will provide a single, consolidated set of criteria under the Act for when an amendment can be made to a planning scheme in order to meet the requirements of the Act, and for any urgent or administrative amendments where public exhibition is not required. Further detail on these proposed changes is provided under the *Streamlined Amendment Process*, below.

PUBLIC EXHIBITION, NOTIFICATION AND HEARINGS

The public exhibition period for an interim planning scheme will be shortened from two months to one month and the period for a council to report to the Commission on representations under section 30J will be reduced from four months to two months. This would facilitate the making of interim planning schemes into final planning schemes across the State in 2015.

Public exhibition of the interim schemes will ensure the community is made aware of any changes that may affect them. All schemes in the Cradle Coast Region and the majority of the schemes in the Northern Region have been declared and public exhibition completed. It is expected that the remaining schemes will be ready for declaration by the end of 2014.

Section 30K of LUPAA will be amended to provide the Commission with discretion in relation to hearings, making hearings optional, rather than being required to hold a public hearing on each representation. The Commission will be able to hold hearings regionally and to focus on any thematic issues with the scheme. The changes will include a power for the Commission to decide matters on the written submissions rather than through a public hearing process.

The Commission will focus its amendments to interim schemes on any matters resolved through the hearings or on the written submissions, and any ‘urgent and administrative’ amendments proposed by councils or identified by the Commission that do not require re-exhibition of the scheme prior to it being made into a final planning scheme.

Any proposed amendments that are not necessarily direct translations of the zoning in the previous scheme but are supported by all representations and approved by the Commission, or have been resolved through the hearings, will also be made at this time.

This will allow interim planning schemes to be made into final schemes expeditiously without a need to re-exhibit the schemes.

The remaining representations and any unresolved issues for individual zoning matters where a further public process is required will then be dealt with through the streamlined amendment process under Division 2.

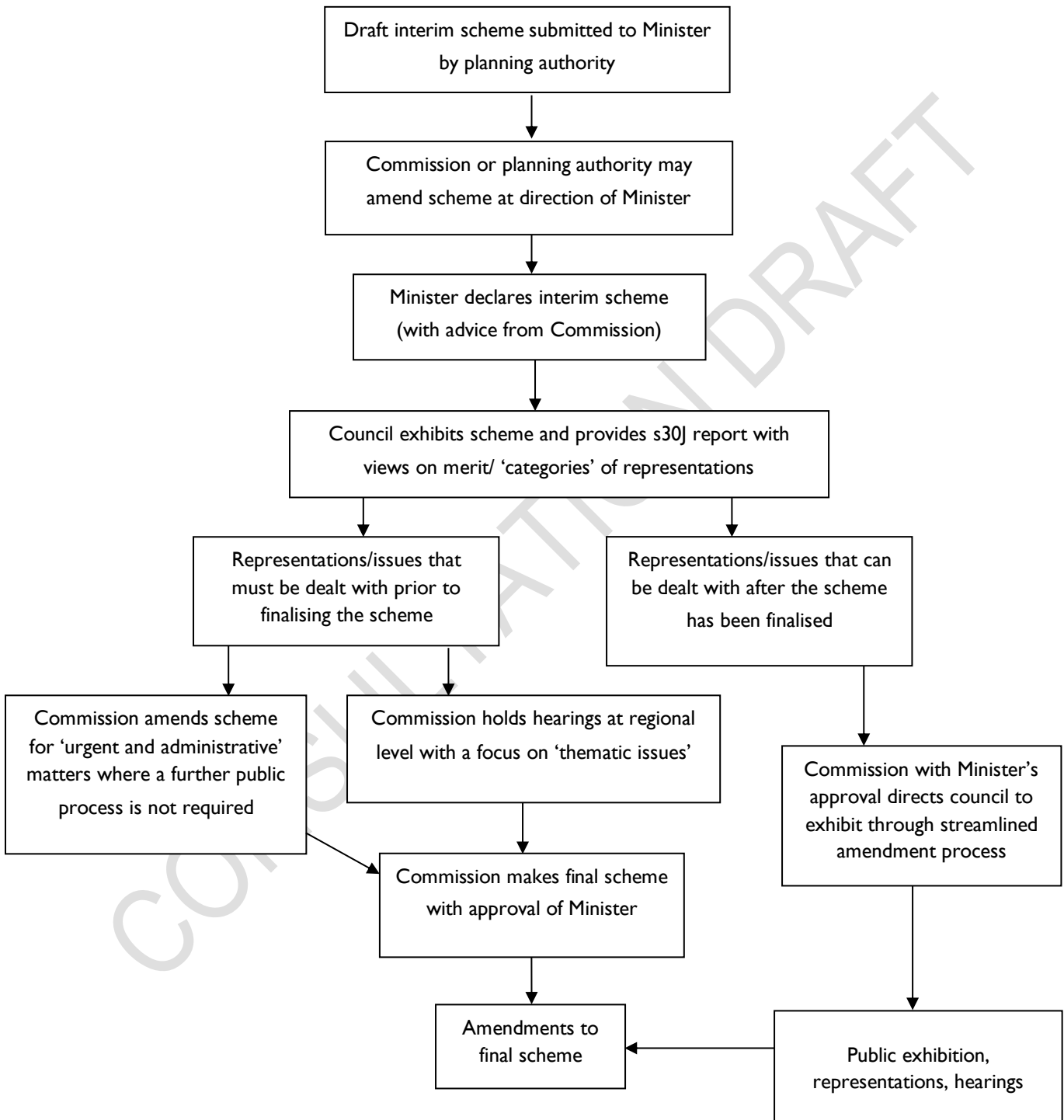
These amendments could be dealt with after the interim planning schemes have been made into final schemes. There may be no need to go through the normal council initiation and certification process in these cases because these matters will have been adequately dealt with as part of the council’s recommendation on the merit of the representation in the section 30J report.

The Commission will categorise the representations and any issues arising from the section 30J report of a council into those issues that can be dealt with efficiently prior to the making of the final scheme without need for the scheme to be re-exhibited, and those that may require a further public process.

In addition to providing advice on the merit of the representation in section 30J reports, councils may also be asked to provide advice on how each representation should be dealt with (as an ‘urgent or administrative’ amendment that does not require a hearing, through a public hearing or a decision on the written submissions, or through a public amendment process which may occur after the scheme has been finalised).

The requirement for the Commission to report to the Minister on common provisions for each interim planning scheme under section 30L will be amended so the Commission may provide advice to the Minister on the common provisions, and so this can be done at a regional or State level rather than individually for each scheme.

FIGURE 1 INTERIM PLANNING SCHEMES



This will provide a broader scope for the Commission to report in a way that will be most useful for both maintaining the operation of the current common provisions and informing the development of the statewide planning scheme provisions.

MAKING OF FINAL PLANNING SCHEMES

Section 30N(4) will be amended so the Commission can make a planning scheme “*where it is satisfied that*” the scheme complies with the requirements of section 30N(3) rather than the current wording that “*The Commission may only make a planning scheme if*” it complies with the requirements of that section. This change is consistent with the proposed change to section 30F in regard to the Minister’s decision to declare an interim scheme.

Streamlined amendment process

As interim planning schemes come into force on declaration, an efficient process will be needed for applicants to deal with any zoning issues that may arise.

Simplifying the process for amending all planning schemes, rather than only the dispensation provisions for interim planning schemes, will support a ‘fairer, faster, simpler, cheaper’ planning system for Tasmania.

Figure 2 provides an overview of the proposed streamline amendment process.

The proposed changes will provide a streamlined amendment process that applies to all planning schemes. This will involve amending a range of provisions under Division 2 and 2A of Part 3 of LUPAA and providing for this process to apply to all planning schemes under the Act, including interim planning schemes.

The current dispensation process for interim planning schemes under Division 1A of Part 3 will be repealed, with transitional provisions put in place for any matters subject to the current process.

These amendments are expected to include the following situations:

- Amendments proposed by a council to a planning scheme that is in force;
- Amendments proposed by an owner or developer to a planning scheme, including combined permit and scheme amendment applications, to a scheme that is in force [note applications are made to the council which may initiate the amendment];

- Amendments proposed by the Commission on authority of the Minister or the Minister’s own motion for ‘urgent and administrative’ matters, including any genuine translation issues for interim planning schemes (these amendments are drafted by the Commission); and
- Amendments where the Commission with the approval of the Minister directs a council to initiate an amendment to a planning scheme that is in force.

AMENDMENTS THAT DO NOT REQUIRE A PUBLIC PROCESS

As noted above, the provisions for ‘urgent amendments’ to interim planning schemes at section 30IA will be broadened and combined with the requirements at section 37. This would provide a consolidated set of criteria to deal with amendments to a planning scheme to ensure consistency with requirements of the Act and any urgent or administrative amendments that do not require public exhibition and representations.

The test where the Minister must be satisfied that the public interest will not be prejudiced will be retained.

The current power to dispense with the requirements for public exhibition sits with the Minister to authorise the Commission to draft an amendment to an interim planning scheme under Division 1A, and with the Commission under Division 2.

Under section 30IA, the Minister can direct the Commission to prepare a draft amendment on his or her own motion or at the request of the Commission.

Under section 37, the Commission can dispense with these requirements for a draft amendment initiated by a council.

The scope of these amendments will include “translation issues” arising from the interim planning schemes. This will allow issues that are a result of an incorrect translation to be corrected, as opposed to an application to upgrade or change the effect of the zoning, which would require a public process with representations.

The scope will include amendments for the purpose of:

- the correction of any error in the planning scheme; or
- the removal of any anomaly in the planning scheme; or
- clarifying or simplifying the planning scheme; or

- ensuring the provisions of the planning scheme are consistent with one another and comply with sections 20, 21, 30E and 30EA of the Act, including ensuring the effective operation of a planning purposes notice; or
- dealing with any translation issues arising from the drafting of a draft interim planning scheme or the declaration of an interim planning scheme; or
- ensuring the scheme complies with this Act; or
- removing any inconsistency between the scheme and any Act; or
- making procedural changes to the scheme; or
- amending the scheme to bring it into conformity with a State Policy; or
- amending the scheme to bring it into conformity with a planning directive; or
- for a purpose specified in a notice to the Minister; or
- for any other prescribed reason.

SCOPE OF AMENDMENTS INITIATED BY COUNCILS

The consistent structure of interim planning schemes with mandatory common, optional common and local provisions will be retained in planning schemes made under Division 1A.

Separate processes are in place for the Minister, or the Commission with the Minister's approval, to amend the content of mandatory and optional common provisions.

Section 30O of LUPAA appears to adequately provide for this. However, some minor amendments may be required to Division 2 and 2A to support this. For example, the Victorian *Planning and Environment Act 1987* provides a range of supporting provisions to maintain the common Victorian Planning Provisions, such as that “a person is not entitled to make a submission which requests a change to the terms of any State standard provision to be included in a planning scheme by amendment.”

AMENDMENTS THAT REQUIRE A PUBLIC PROCESS

STATUTORY TIMEFRAMES

It is proposed to combine the steps under the Act for a council to decide whether to initiate an amendment and to prepare and certify a draft amendment.

The current timeframe to decide on initiating an amendment is 42 days where an individual has requested the amendment, and ten (10) weeks where the Commission, with the approval of the Minister directs the council to initiate an amendment.

There is currently no timeframe in place for a council to prepare and certify the draft amendment. The proposed new timeframe to initiate, prepare and certify a draft amendment is 42 days. This new timeframe will not apply to amendments that are made on the council's own motion. This is expected to require amendments to sections 32, 33, 34 and 35 of LUPAA.

The timeframe for public exhibition will be reduced. A statutory timeframe will be introduced for requests for additional information for amendments under Division 2 and the statutory timeframe for such requests for combined permit and amendment applications will be shortened under Division 2A.

A more streamlined, faster amendment process will also be delivered through changes to the provisions for information requirements and hearings.

Sections 43 and 43M will be amended to broaden the current scope for the Commission to assume the responsibilities and obligations of a planning authority in preparing a draft amendment under section 43A, to include the ability to certify the draft amendment, allowing it to proceed to public exhibition.

This is broadly consistent with the provisions at section 59 of LUPAA for the deemed granting of a permit and referral to the Tribunal where a council has not met the statutory timeframe for assessment.

Unlike the provisions under Part 4 there is no automatic referral to the Commission when the timeframe expires. The council and the applicant will be able to agree to extend the timeframe, and the Commission will also be able to extend the timeframe at the council's request.

ADDITIONAL INFORMATION

A council can currently require additional information from an applicant for a combined permit and amendment application under Division 2A.

That ability will be extended to include the ability for a council to request additional information on applications under Division 2 that do not involve a permit. There is currently no formal provision in LUPAA for a council to request further information relating to an amendment under Division 2. However, in practice, councils can and do require additional

information in many cases, for the purposes of determining whether to initiate an amendment.

Without any statutory timeframes or clear process in place, this leaves applicants without a clear pathway for resolving any issues regarding the amount or type of information that has been requested.

Tying the information requirements and timeframes to the process for initiating an amendment will provide consistency with the process used for permits elsewhere in the Act and a clear framework for information requirements to be dealt with in relation to stand-alone amendments.

The current 28 day timeframe for a council to require additional information for a combined permit and scheme amendment application under section 43A will also apply to a council requiring additional information for an amendment to a scheme that does not involve a permit application.

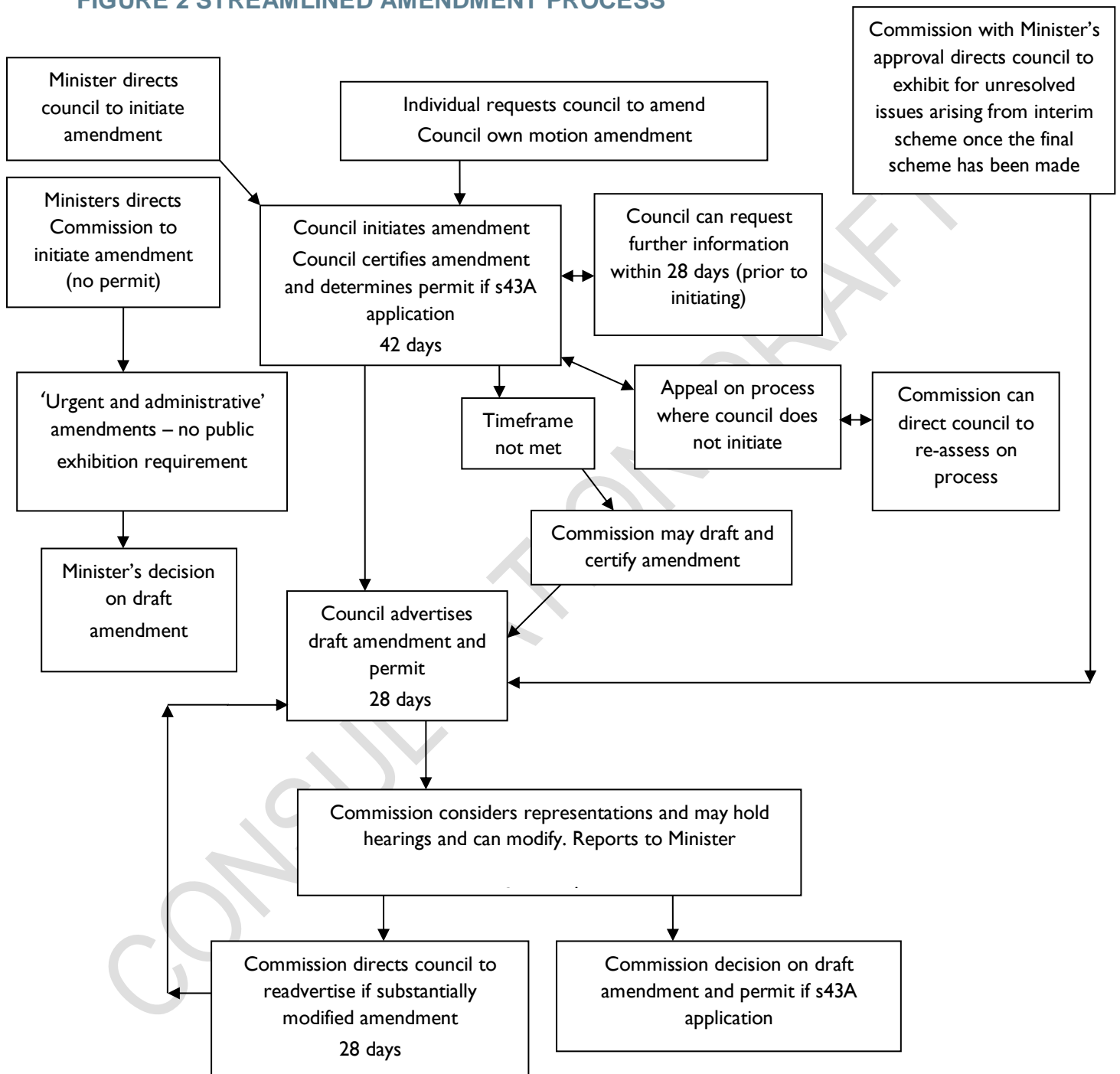
A requirement that an application for an amendment to a scheme, or a combined amendment and permit, to be in “a form prescribed by the Commission” will be introduced to provide greater clarity to all parties on what information is required from applicants.

This seeks to ensure that the sometimes lengthy process for an applicant to provide an amendment in a form that is accepted as a ‘valid application’ can be substantially reduced.

A right for the applicant to request a review by the Commission on a council’s decision to require additional information will be introduced, both for proposed amendments to schemes under Division 2 and combined amendment and permit applications under Division 2A.

The Commission is considered the appropriate body to review such a decision where it relates to an amendment to the planning scheme, which is a role for the Commission and the Minister under the Act. This is instead of an appeal to the Tribunal which is currently in place for contesting a requirement for additional information for a permit application that is not associated with a request for an amendment to the planning scheme. As with the existing review process of a council decision not to initiate an amendment to a planning scheme, this will be a review on process not merit.

FIGURE 2 STREAMLINED AMENDMENT PROCESS



HEARINGS AND REPORTING ON REPRESENTATIONS

The timeframe for public exhibition under section 38 of LUPAA will be reduced from the current range of three weeks to two months, to a standard one month (28 days) for all amendments.

The existing provision for the Commission to provide permission to the council for a longer public exhibition period where appropriate will be retained, to provide some flexibility for complex or significant amendments where the public and parties providing representations may require more time.

Amendments may be required to ensure hearings are at the discretion of the Commission by replacing “must” with “may”. This will not apply where the applicant wishes to be heard, as this right will be carried over from the current provisions.

A power for the Commission to undertake hearings on the written submissions will also be introduced, for consistency with the proposed changes to the hearing provisions for interim planning schemes.

Shorter assessment timeframes for permitted use and development

LUPAA provides 42 days for a council to make a decision on a permitted use or development under section 58, and 21 days for the council to determine whether to require additional information from the applicant under section 54 before it continues to assess the application. Where additional information is required, the 42 day clock stops for assessment until that information is provided by the applicant.

The proposed amendment will implement the Government’s commitment to reduce the timeframe for assessment of permitted use and development applications from 42 days to 21 days, and the statutory timeframe for a planning authority to require additional information, from 21 days to 14 days.

The longer 42 day timeframe will remain in place for assessment of discretionary permits and permits under section 43A, where public notification is mandatory and a greater level of assessment would be required.

Third party appeal fees

Appeal fees are currently set under the *Resource Management and Planning Appeals Tribunal (RMPAT) Regulations 1994* unless a different fee is specified in another Act.

Separate fees are already in place for certain appeals to the Tribunal, such as under the *Building Act 2000*. The current fee for all appeals under LUPAA in the RMPAT Regulations is \$307.84, following an amendment made to the RMPAT Regulations that came into force in 2013.

The amendment will provide for the new higher \$600 appeal fee to LUPAA, as part of delivering on the Government's commitments in regard to limiting unreasonable third party appeals. It is proposed to achieve this by introducing a new \$600 fee for appeals in relation to discretionary permits under section 57.

The new fee will only apply to third parties who are not owners or occupiers of 'adjoining' lands, who could be directly affected by the proposal.

The new higher appeal fee will not affect applicants who choose to appeal a decision of a council to refuse a permit, to put conditions on a permit, or require additional information in relation to an application.

Interim planning directives

The recent *LUPAA Amendment Bill 2013* provided for interim planning directives to be issued under section 12A of LUPAA that take effect on the day specified in the *Gazette* and remain in force for 12 months or until a planning directive that is in the same terms is issued by the Minister or the planning directive is revoked.

This allows the Minister to make a planning directive on a matter that requires an urgent change to the planning controls, without the sometimes lengthy process of public representations and consultation that occurs prior to making a planning directive under section 9.

Consultation can then occur on a draft planning directive through the normal process under section 12 during the time in which the interim planning directive is in place.

An issue arose in relation to the intent to introduce an interim planning directive to modify the current planning directive introducing the Bushfire Prone Areas Code (PD5) following

the Bushfire Inquiry, where it became apparent that the current provisions of LUPAA do not explicitly provide for an interim planning directive to amend, or replace, an existing planning directive on the same issue.

The proposed changes will provide for an interim planning directive to temporarily ‘replace’ an existing planning directive that covers the same issue, by amending, overriding or suspending the existing planning directive for the period in which the interim planning directive is in place.

This will allow interim planning directives to immediately deal with urgent changes to a planning directive and avoid any potential issues with having two planning directives in force concurrently.

The standard consultation would then be undertaken to modify the existing planning directive as it would if this were a new draft planning directive, while the interim planning directive is in force.

Extension of planning permits

An ordinary permit under LUPAA expires after two years unless substantial commencement has occurred during that time, with the planning authority having discretion to provide a single two-year extension, thereby providing a maximum of four years for substantial commencement.

The amendment will provide a planning authority with discretion to extend the requirement for substantial commencement for an additional two years, giving a maximum of six years for substantial commencement to occur.

It is expected that section 53 of LUPAA will be amended to provide for this.

An amendment to section 431 will also be made for consistency, so the maximum six year timeframe also applies to permits granted with an amendment to a planning scheme.

There is currently no capacity in LUPAA for a planning authority to extend a permit retrospectively as an administrative matter, in cases where the date of expiry has been accidentally missed. The amendment will provide for an extension of the permit to occur retrospectively, up to six months following the expiry date of the initial two-year permit period or the first two-year extension.

There are recent examples of projects in Tasmania that have not achieved substantial commencement within four years due to difficulties in obtaining finance, where the proponent has been required to resubmit an entire new development application despite obtaining the required backing a short time after the permit expired.

There have also been examples where the renewal period was missed by a matter of days and without any ability to retrospectively entertain a request for an extension.

In all of these cases a complete new development application is required, involving substantial costs and time delays to a project that has previously received approvals.

The six month retrospective period for seeking to extend the permit is consistent with the Victorian planning legislation.

The extension of a permit will remain a matter at the discretion of a council upon application from the permit holder.

Copyright and indemnity for planning schemes online

The recent *LUPAA Amendment Bill 2013* provided new digital planning provisions to facilitate implementation of the online digital planning system. Tasmanian councils currently provide digital planning scheme and development application information to the Commission, much of which is already made available to the public via the internet.

The proposed amendments will indemnify the Crown, councils and licensed users against any claim or action in respect of breach of copyright in relation to the use of the data provided on that website.

Further amendments may be required to specify the ways in which the Crown can use planning data provided by councils. This would include allowing the data to be placed on its website, producing and approving the production of copies, and allowing licence users of its website to access and use the data for certain purposes.

Reconstruction of accidentally destroyed buildings and works

The matters a planning scheme can provide for are prescribed under section 20 of LUPAA. Section 20(3A) sets out a range of matters that a planning scheme cannot prevent. Those matters aim to ensure that existing development and use is not affected by the introduction of a new planning scheme.

Section 20(3A) provides that:

“nothing in a planning scheme is to prevent the reconstruction of a building, or restoration of works, destroyed or damaged, which was or were integral and subservient to a lawfully established existing use that does not conform to the scheme if the destruction or damage was not caused intentionally by the owner of that building or those works; and the building or works was or were lawfully established before the coming into operation of the scheme.”

This provision is understood to have originated from the previous shack disposal project, where the reconstruction of buildings and works being constrained by a planning scheme had only been identified as an issue for non-conforming uses.

The amendment will extend this provision, to include conforming uses.

This will address an issue that arose following the Tasmanian January 2013 bushfires where some planning schemes provided that the reconstruction of buildings or restoration of works were exempt, while other schemes required a permit application which could be subject to refusal.

Minor amendments to permits

Under section 56 of LUPAA, a planning authority can make minor amendments to a permit without the requirement for an applicant to go through a new development application process, which is a costly and lengthy exercise when dealing with what is only a minor change to the conditions attached to an existing permit.

Section 56(2) provides that *the planning authority may amend the permit if it is satisfied the amendment:*

- (a) does not change the effect of any condition required by the Appeal Tribunal; and*
- (b) will not cause an increase in detriment to any person; and*
- (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.*

There is no clear mechanism in the Act for a planning authority to make minor amendments to the permit conditions which have been set or amended by the Appeals Tribunal. This can mean there is very little scope in practice to modify the permit's conditions under section 56 where there has been an appeal in relation to the permit.

The changes will clarify when a planning authority can make minor amendments to a permit where the Appeals Tribunal has made a decision in relation to that permit. This will allow a planning authority to make minor amendments to all parts of the permit apart from any conditions that were specifically amended or included in the permit by the Appeals Tribunal.

This will remove the requirement for an entirely new development application for a minor change to a condition that is unaffected by a decision of the Appeals Tribunal but forms part of the permit issued by the planning authority.

The amendments will also provide a clear mechanism for minor amendments where the condition is a condition of the Appeals Tribunal, including where the Appeals Tribunal has overturned the planning authority's decision to refuse the permit.

This will provide for all relevant parties, including the Appeals Tribunal, the planning authority, the applicant and any persons who made a representation in relation to the original application to be given notice of the proposed minor amendment, with appeal rights for those third parties on the granting of the minor amendment.

The Act will also be simplified so there is a single process in the Act for minor amendments to permits to occur.

Subdivision development

The current provisions of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGBMP Act) make all subdivision developments discretionary regardless of the content of a planning scheme that applies to that land.

The LGBMP Act does this by prescribing circumstances where a subdivision must be refused and where conditions can be set by a council in relation to certain matters before an approval is granted. As the LGBMP Act is legislation, compliance with it overrides any approval of a subdivision that could otherwise occur under a planning scheme.

Some interim planning schemes provide acceptable solutions for subdivision development with the intention of making it a permitted development in certain circumstances. However, without the proposed amendments to the LGBMP Act, these provisions will not be able to operate.

The amendments will allow a planning scheme to determine where subdivision development may be permitted or discretionary. This would allow for a planning scheme to legitimately provide acceptable solutions for permitted development, performance criteria for discretionary permits and other provisions to address various matters in the LGBMP Act, such as provisions in relation to public open space and roads.

The key provisions of the LGBMP Act to be amended are section 84 which provides the circumstances in which a council must not approve a subdivision, and section 85 which provides discretion for a council to refuse to approve a plan where it is of a certain opinion on the matters listed. Some other provisions of the Act may also require amending to achieve the policy intent.