



Resource Planning and Development Commission

Planning Advisory Note 9

Subject: Section 39(2) Reports

Purpose: To advise on reporting pursuant to s.39(2) of the *Land Use Planning and Approvals Act 1993*.

Background

S.39(2) of the *Land Use Planning and Approvals Act 1993* (the Act) provides:

- (2) *The planning authority must, not later than the expiration of 35 days after the exhibition period referred to in section 38(a) or such further period as the Commission allows, forward to the Commission a report comprising –*
- (a) *a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and*
 - (b) *a statement of its opinion as to the merit of each such representation, including, in particular, its views as to –*
 - (i) *the need for modification of the draft amendment in the light of that representation; and*
 - (ii) *the impact of that representation on the draft amendment as a whole; and*
 - (c) *such recommendations in relation to the draft amendment as the authority considers necessary.*

It has become the practice of some planning authorities to provide a copy of the report to the planning authority as the Section 39(2) report and this report, because it is prepared for a specific purpose, does not always contain the information required for compliance with the legislation. For example, the report to the planning authority often addresses the matters raised by representors under headings that relate to particular issues and this is not sufficient to satisfy the provisions of the Act.

Procedure for s.39(2) Report

The procedure to be followed in preparing a s.39(2) report to the Commission is set out under the relevant provision of the legislation:

- (a) *A copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect*
A photocopy of each representation must be provided with the report.

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- (b) *A statement of its opinion as to the merit of each such representation, including, in particular, its views as to –*
- (i) *the need for modification of the draft amendment in the light of that representation; and*
 - (ii) *the impact of that representation on the draft amendment as a whole; and*

The report must address each representation individually, providing in relation to each:

- a statement of its opinion as to the merit of the representation; and
- whether there is a need for modification of the draft amendment in the light of the representation; and
- the impact of the representation on the draft amendment as a whole.

This information can be provided in table form. If more than one representation raises the same issues, and therefore the same responses, those representations may be cross-referenced.

If no representations are received during the public exhibition period a s.39(2) report to the Commission is still required. In this case, the report to the Commission shall contain a statement that there were no representations, in accordance with s.39(2)(a) of the Act

- (c) *Such recommendations in relation to the draft amendment as the authority considers necessary*

The planning authority may, after considering the planner's report and any representations received, make recommendations to the Commission regarding the draft amendment, including whether any modification should be made in light of the issues raised in representations. The recommendations could address, for example, a technical error that has previously been overlooked in the drafting of the amendment or recognition that the draft amendment is not as comprehensive as required.

Where the planning authority forms a different view to that of its professional officers in the report to the planning authority, detailed reasons should be given to justify that departure from professional advice.

Further Information

Relevant legislation may be viewed at <http://www.thelaw.tas.gov.au>.

For further information, contact:

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February 2008