Practice Note 1

Subject: Planning Scheme Amendments

Purpose: To provide guidance on planning scheme amendments under former section 34 and 35 of the *Land Use Planning and Approvals Act 1993*.¹

1.0 Introduction

Amendments may be made to all planning schemes, including interim planning schemes. Part 3 - Division 2 of the *Land Use Planning and Approvals Act 1993* is relevant [sections 32 to 42].

This is a guide to ordinary amendments. See Practice Note 2 – Urgent Amendments for more information about urgent amendments [section 30IA] and Practice Note 3 – Combined Permits and Amendments for more information on combined permits and amendments [section 43A].

2.0 Getting started

Any person may request a planning authority to amend a planning scheme [section 33], or the planning authority may of its own initiative decide to amend its planning scheme [section 34].

In either case, if the amendment is for a parcel or parcels of land not owned by the applicant, owners’ consent is required [section 33(2A)].

Documentation, explaining the rationale and providing evidence of the basis for the amendment, is required to enable the Commission to determine whether the requirements under the Act are met [section 32]. These include:

- avoiding potential land use conflict with use and development permissible under a planning scheme applying in the adjacent municipal area [section 32(e)];
- being, where practicable, consistent with the relevant regional land use strategy and any common provisions (required by a planning directive) or overriding local provisions [section 30O];
- having regard to the impact on the region in environmental, economic and social terms [section 32(f)]; and

¹ References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*. Parts 2A and 3 of the former provisions remain in force until a Local Planning Schedule comes into effect for the municipal area.
• being consistent with the overarching requirements for planning schemes [sections 20(2), (3), (4), (5), (6), (7), (8) and (9)].

Although not a specific requirement under section 32, a draft amendment is taken to be a relevant scheme [section 20(2A)] and therefore section 20(1) is applicable and the draft amendment must seek to further the objectives in Schedule 1 of the Act and be in accordance with State Policies.

Supporting documentation should explain the purpose and expected outcomes of the amendment, include background reports, analyses and any relevant land use strategies or studies that have been formally adopted by the planning authority.

The supporting documentation should also include a statement of the reasons why the planning authority formed the opinion that the amendment, is as far as practicable, consistent with the RLUS. Consistency can be demonstrated by referring to relevant parts of the RLUS and providing the following information:

(a) identify those areas of the RLUS that are relevant to the proposed amendment;

(b) identify any parts of the RLUS with which the proposed amendment is inconsistent; and

(c) identify any alternatives considered to achieve greater consistency with the RLUS and state why those alternatives were not practicable, noting that maintaining the current zoning is an alternative.

If the amendment is inconsistent with the relevant regional land use strategy, the reasons for the requested departure should be explained.

Anyone proposing an amendment is encouraged to discuss the amendment with the planning authority and identify the information that may be required in support of the amendment. This will avoid the need for the planning authority to request further information [section 33A and B] after the application has been made which can delay dealing with the amendment.

If the planning authority does request further information and its request is considered unreasonable, the Commission can be asked to review the process by which the planning authority requested further information [section 33B].

3.0 Initiating and certifying a draft amendment

Under the Act, if the planning authority supports the amendment, it initiates [section 34] and certifies [section 35] the amendment. Certifying the amendment indicates that the planning authority considers the draft amendment meets the requirements of the Act and is ready for wider scrutiny. It applies its seal to the amendment document and notifies its decision, inviting representations, or written comments.

For information about preparing amendment documents for certification see Appendix 3.

The planning authority must:

• refer the draft amendment to TasWater when it is initiated under section 34 [Section 56S of the Water and Sewerage Industry Act 2008]; and
• advise the Commission that it has initiated and certified the draft amendment within seven days and provide the relevant documents.

See the checklist of information required at Appendix 1.

4.0 If the planning authority decides not to initiate a draft amendment

The person requesting the amendment cannot request the planning authority to consider an amendment that is substantially the same for two years from the planning authority decision not to initiate it [section 33(4)].

The Commission can review a decision, if requested to do so, under section 33(3A). This must be done within 14 days of the planning authority’s decision. It is limited to a review of the planning authority’s decision making process, not whether the amendment should have been initiated.

The Commission can only direct the planning authority to reconsider the amendment or confirm that the planning authority took into account certain matters when it made its decision [section 33(3D)].

5.0 Notification

The requirements for notifying a draft amendment are set out in the Land Use Planning and Approvals Regulations 2014 [regulation 7].

The draft amendment is notified twice in a newspaper circulating in the area. At least one notice is to be on a Saturday.

The period for making representations is 28 days unless the Commission agrees to a longer period [section 38(1)].

6.0 Report on the representations

After the notification period has closed, the planning authority must consider any representations and report on them to the Commission. The report must include the planning authority’s views on the merit of each representation, whether the amendment should be modified and the impact of the representation on the amendment as a whole [section 39(2)(b)].

If TasWater has responded to the referral made under section 56 of the Water and Sewerage Act 2008, the advice is taken to be a representation under section 41 of the Act. The TasWater advice is to be considered by planning authority and reported in the same way as other representations [section 39(2)9b)].

Where no representations are received, the planning authority (or a delegated officer) must still consider any recommendations it considers necessary [section 39(2)(c)]. For example, the planning authority may have identified an error or alternate drafting it would prefer.

The planning authority has 35 days from the close of the notification period to forward its report to the Commission. The Commission may grant an extension of time if requested.

A checklist of the documentation the Commission requires for the report is in Appendix 2.
7.0 Hearings

The Commission must hold a hearing into each representation. However, it can dispense with a hearing if it is satisfied that all the representations are in support of the amendment or the person who made the representation has advised in writing that they do not wish to attend a hearing [section 40(2A)].

For example, if the only representation received is from TasWater and the planning authority reports that the advice has no implications for the amendment, the Commission can confirm with TasWater whether it wishes to be heard. A hearing may not be required if TasWater does not wish to be heard.

The Commission must give notice of its intention to hold a hearing.

The Commission posts details of the draft amendment, relevant documents and the hearing under ‘assessments and hearings’ on www.iplan.tas.gov.au. These include planning authority reports under section 35 and 39; any application and supporting reports and documents; representations; directions from the chair and any written submissions made during the hearing process.

If there are a large number of representations, the Commission may begin by setting a date for a directions hearing. At the directions hearing the following may be canvassed:

- how, when and where the hearing will be conducted;
- consolidation of representations;
- whether like-minded representors will be represented by a single spokesperson;
- if the hearing will need to be held over a number of days;
- the scope of issues to be explored;
- the availability of expert witnesses;
- options for appearances by phone or video link;
- available technology and media for the presentation of evidence; and
- procedures and timeframes for the exchange of evidence.

8.0 The Commission’s consideration and decision

After the Commission has completed its consideration it can require the planning authority to modify the amendment, alter it to a substantial degree, reject it, or approve it.

The Commission must complete the process within three months of receiving the planning authority’s report on the representations, unless an extension of time has been agreed by the Minister.

The decision will be issued to all parties at the same time and will be available on www.iplan.tas.gov.au. In due course, it can also be found on the case law website AUSTLii at www.austlii.edu.au/au/tas/.
9.0   Rejection, modification or alteration of the amendment

The Commission can reject an amendment after completing its consideration under section 40. It can also modify or direct the planning authority to alter the amendment.

If the Commission wants the planning authority to alter the amendment it will issue directions in writing [section 41A].

Alternatively, the Commission may make modifications to the amendment and certify it.

If the planning authority has been directed to make alterations, it has 28 days to return the altered amendment to the Commission. The Commission then has 28 days to certify the amendment and direct the planning authority to notify it, inviting representations again.

After the close of the notification period, the planning authority must again consider any representations received and report back to the Commission [section 41B].

The Commission may reconvene the hearing after the notification period, whether or not there have been any representations.

10.0   Approval of the amendment

The Commission signs the amendment when it is approved and the planning authority gives notice in the newspaper. Notice of the approval is also to be displayed at the planning authority’s office [regulation 8].

The approved amendment will also be published under the relevant item in ‘assessment and reviews’ at www.iplan.tas.gov.au.

The amendment takes effect seven days after being signed by the Commission, unless a date is specified.

Further information

For further information contact the Tasmanian Planning Commission:

TelephoneNumber: (03) 6165 6828
Email: tpc@planning.tas.gov.au
Website: www.planning.tas.gov.au

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Tasmanian Planning Commission

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Appendix 1: Checklist for planners (section 35)

The following information and documents are to be provided to the Commission when advising that the planning authority has certified a draft amendment:

1. Date of the planning authority decision to initiate and certify the draft amendment.
2. Copy of the planning authority minutes including reasons for the decision.
3. Copy of the certified draft amendment with the council’s seal in PDF format and a word version of the draft amendment document and GIS files in MapInfo or ArcInfo for any map changes. See Appendix 3 for guidance on setting out the amendment document.
4. Copy of the application (if requested by an individual), as well as any application material, including expert reports, land title information etc. and the planning authority’s form if applicable.
5. Copy of the planner’s report to the planning authority, including their recommendations.
6. A statement of the reasons why the planning authority formed the opinion that the amendment, is as far as practicable, consistent with the RLUS.
7. A copy of any additional supporting information not already included above, such as local land use strategies or other relevant studies endorsed by the planning authority\(^2\), comments from relevant agencies, etc.
8. Evidence of owner’s permission if the request is made by a person other than the owner [section 33(2A)].
9. Title references, area, dimensions, and copy of the title if the amendment is for a specific site or title.
10. Copies of the newspaper notices, including the dates the notices appeared.
11. Copy of the notification letters and list of persons notified.

NOTES: Please provide the information above by email to tpc@planning.tas.gov.au. Where attachments are too large for email, please contact the Commission for assistance with accessing Dropbox.

The Commission keeps electronic records and does not require hard copy documents.

\(^2\) Note these need to be consistent with the relevant regional land use strategy.
Appendix 2: Checklist for planners (section 39)

The following information and documents are to be provided to the Commission after exhibition period has closed and the planning authority has considered any representations to a draft amendment:

1. A copy of the planner’s section 39 report on the representations.
2. A copy of the unredacted representations, either as an appendix to the report or separately.
3. A copy of the names and addresses of those who made representations (such as planning authority mail merge or email list of representors to assist the Commission in contacting parties for hearings).
5. A copy of planning authority decision about the representations reported under section 39. (A formal decision under delegation or by resolution is required even where there are no representations received).
6. A copy of the planning authority minutes including reasons for the decision or delegated decision, if determined under officer delegation (confirming the officer is acting under delegation).
7. Fees which are payable under the Land Use Planning and Approvals Regulations 2014 – Regulation 11 paid by cheque or EFT to the Commission.

NOTES: Please provide the information above by email to tpc@planning.tas.gov.au. Where attachments are too large for email, please contact the Commission for assistance with accessing Dropbox.

The Commission keeps electronic records and does not require hard copy documents.
Appendix 3: Guide to setting out amendment documents

Amendment documents (or instruments) must clearly and accurately describe the draft amendment. Set out recommendations include:

**Numbering**
- Each draft amendment should be given a unique number reference, taking the next number in sequence for the relevant year, regardless of whether the previous amendment has been approved.

**Text**
- Changes should refer only to clause numbers, not page numbers as these can vary.
- For minor changes, expression may be in terms of ‘delete’ and ‘replace’ but for more extensive change, deletion and replacement of the entire clause is recommended.
- Numbering and formatting conventions should be suitable for publication on-line (see the planning schemes on www.iplan.tas.gov.au) as the amendment will be transcribed into the online version once approved if the scheme is on iplan.

**Plans**
- Clearly identify the area in question either spatially or textually or both.
- If shown spatially, the amendment document should include a map extract at a readable scale. It should include enough information to identify the affected area, e.g. street names, title references etc.
- Only include the proposed zoning or overlay details relevant to the land within the amendment. Show surrounding cadastre and place names but do not include their current zoning, overlays or other detailed mapping information.
- If the boundary of the amendment does not follow the cadastre, it is important to have clear descriptors of proposed zoning or overlay boundaries e.g. a natural feature or distance in metres to a measurable point. The zoning or overlay boundary should be able to be interpreted accurately from the plans.

**Seal**
- The amendment document must include the council seal [section 35(2)]. Apply it to both text and plans if both form part of the amendment.