

Planning Authority draft LPS Preparation

Emerging Key Issues for Compliance

Tasmanian Planning Commission Presentation Notes

August 2018

Background

Preparing a draft LPS suitable for public exhibition requires significant work and is a process in which planning authorities (PAs) and the Commission have common statutory compliance obligations.

Essential for the Minister's approval for the Commission to direct public exhibition of a draft LPS, is that the Commission is satisfied that a draft LPS meets the LPS criteria. (s35B(2))

PA has the same obligation prior to sending a draft LPS to the Commission. (s35(7))

LPS criteria requirements in s34(2) engage a comprehensive set of requirements:

- the SPP requirements;
- section 32 requirements (which includes the s32(4) tests for new PPZs, SAPs and SSQs);
- objectives of the Act;
- State policies;

- Regional Land Use Strategy;
- Council Strategic Plan;
- neighbouring Municipalities LPSs; and
- Gas Pipeline Act Safety requirements.

Those requirements must all be addressed for the Commission to be satisfied that the LPS criteria have been met.

Also added to the list for Commission review are:

- application of section 8A Guidelines approved by the Minister; and
- rules for transitioning PPZs, SAPs and SSQs and code-applying provisions as set out in Schedule 6 of the Act.

Preparing documentation to demonstrate these matters have been addressed in relation to a draft LPS, is a significant undertaking and compliance task, for a PA and the Commission.

Commission now worked through these requirements with 2 PAs and has undertaken a preliminary examination of 2 other PAs draft LPS.

These notes aim to share with PAs (as at August 2018), what the Commission notes to be the:

- key compliance issues to emerge; and

- documentation necessary to demonstrate compliance.

On the current information available to the Commission, there are 10 key areas on which to focus. The areas are addressed through a series of questions listed below.

1. Applying the SPP zones

- (a) Have the section 8A Guidelines been followed in relation to the application of the SPP zones?
- (b) What zoning changes have been made to apply the SPP zones and are the changes, and the reasons for the changes, or the reasons for not following the guidelines, documented in the Supporting Report? The documentation should include a rationale for applying the zoning that that area and outline the planning outcome to be achieved. The extent of the documentation should be linked to the relative significance or simplicity of the zoning change. Is there any supporting Council documentation eg structure plans etc? Are any strategic zoning changes consistent with the regional land use strategy?
- (c) If there has been a simple spatial translation of the zones in the IPS to comparable zones in the LPS, has that been noted in the Supporting Report?

- (d) Has the rationale for the application of the new Landscape Conservation Zone been documented?
- (e) Has the changed zoning of IPS land which was Environmental Living, Rural Living, Significant Agriculture, and Rural Resource, been identified and justified in the supporting report?
- (f) Has the application of the 'Land Potentially Suitable for Agriculture Zone' layer been modified, as permitted by the SPPs and advised in the section 8A Guidelines, and have the changes been identified in the Supporting Report?
- (g) Has the Utilities Zone been applied using the state road casement data layer available on the LIST?

2. Applying the SPP Codes

- (a) Has the application of the state based data sets in relation to the following codes been varied?
 - Electricity Transmission
 - Natural Assets – waterway and coastal protection area, and future coastal refugia
 - Coastal Erosion
 - Coastal Inundation
 - Landslip

- (b) If so, are the variations supported with appropriate advice as determined by the SPP provisions and advised in the section 8A Guidelines, and is that advice noted in the Supporting Report?
 - (c) Some Codes cannot apply in certain zones. Have the Code maps been prepared to reflect that requirement, by omitting application to the zones? This is relevant for priority vegetation area overlay (NAC13) and scenic protection area and scenic road corridor overlays (SPC3)
3. New PPZs, SAPs and SSQs
- (a) Are new PPZs, SAPs and SSQs proposed to be included in the draft LPS?
 - (b) Why can't the SPPs be applied to the land covered by the proposed PPZs, SAPs, and SSQs? Are the reasons for non-application of the SPPs documented in the Supporting Report?
 - (c) Which section 32(4) tests are relied on to support a new PPZ, SAP or SSQ?
 - (d) Are the arguments that support application of a section 32(4) test documented in the Supporting Report?
 - (e) Are the modification, substitution or addition of provisions by a SAP or SSQ, to the provisions in

the SPPs clearly identified in the text of the SAP or SSQ, drafted in accordance with the advice provided on the Planners Portal, and documented in the Supporting Report?

4. Transitioning PPZs, SAPs and SSQs

- (a) Are the changes made to an existing IPS PPZ, SAP (including a Code to a SAP) or SSQ, identified to be transitioned in the Minister's draft determination, in accordance with the permitted alterations tests in Schedule 6, clause 8C(3) of the Act?
- (b) Are the permitted alterations identified in accordance with the advice provided on the Planners Portal?
- (c) Are the modification, substitution or addition of provisions by a SAP or SSQ, to the provisions in the SPPs, clearly identified in the text of the SAP or SSQ and documented in the Supporting Report?
- (d) Is the modification, substitution or addition of provision by a PPZ to SPP Code provisions, clearly identified in the text of the PPZ and the documented in the supporting report?

5. Transitioning code-applying provisions
 - (a) Are code-applying provisions, identified to be transitioned in the Minister's draft determination, modified in accordance with the test in Schedule 6, clause 8D(8)?
 - (b) Is there a draft Ministerial declaration about non-compliance with the SPPs in relation to the code-applying provisions? Is the detail of the declaration identified in the supporting report?
 - (c) Are the modifications to code-applying provisions identified in accordance with clause 8D(8)?
6. Regional Land Use Strategy Consistency
 - (a) Does the documentation in the Supporting Report indicate how the draft LPS is consistent with the provisions of the RLUS?
 - (b) Have all the relevant regional policies/actions been addressed?
7. Council Strategic Plan Consistency
 - (a) Does the documentation in the supporting report indicate how the draft LPS is consistent with the provisions of the Council strategic plan?

8. Supporting Report

- (a) Has the Supporting Report been prepared to address the matters outlined in Practice Note 6.

9. Drafting

- (a) Have the drafting conventions outlined in Practice Note 5 been followed?

- (b) Are the planning policies and requirements sought to be applied, consistently and clearly expressed and linked through:

- PPZ or SAP purpose statements;
- any Local Area Objectives (LAOs);
- use tables;
- the objectives in the standards; and
- the Acceptable Solutions and Performance Criteria?

- (c) Does the clarity of the drafting of purpose statements, LAOs and the objectives in the standards enable clear and effective decision making when making discretionary decisions on use, or where LAOs are a relevant criterion in development standards?

- (d) If LAOs have been included in a PPZ or SAP, is it clear how the LAOs will be called up and applied in the decision making process?

10. Submission checklist

- (a) Has the draft LPS been prepared as a separate instrument, to accompany the submission of the Supporting Report?
- (b) Have the requirements of the draft LPS submission checklist outlined in Practice Note 6, Appendix B been followed?