

Practice Note 1

Subject: Planning Scheme Amendments

Purpose: To provide information about planning scheme amendments under former sections 33, 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* (the Act) is relevant [[sections 32 to 42](#)].

This is a guide to ordinary amendments. See **Practice Note 3 – Combined Permits and Amendments** for more information on combined permits and amendments [[section 43A](#)].

This Practice Note should be read in conjunction with the Act.

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\(2A\)](#)]. The Commission's owners' consent form must be completed and accompany the request to the planning authority.

Documentation explaining the rationale and providing evidence addressing matters relevant to 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 300](#)];
- 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, and 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 regional land use strategy.

This should identify those parts of the regional land use strategy that are relevant to the amendment and on what basis the amendment is, as far as is practicable, consistent with those parts of the regional land use strategy. Where there are inconsistencies with the regional land use strategy, the reasons should be explained.

The planning authority may request further information after the application has been made [[section 33A](#)]. If requested, the Commission may review the process by which the planning authority requested further information [[section 33B](#)].

3.0 Initiating and certifying a draft amendment

If the planning authority supports the amendment, it resolves to initiate it under section 34 (1)(a) or (b). The subsections distinguish whether the amendment is of the planning authority's own motion or in response to a request.

If the planning authority supports a requested amendment but on the basis that amendment is modified, it should consider whether it is preferable to initiate the amendment with the modifications incorporated, as its own.

If the planning authority considers the amendment meets the requirements of section 32 and is ready for wider scrutiny, it certifies the amendment [[section 35](#)] either at the same time as it initiates the draft amendment or at a later date. It then applies its seal to the amendment document.

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

The planning authority must:

- refer the draft amendment to TasWater [[section 56S](#) *Water and Sewerage Industry Act 2008*] when it is initiated under section 34; and
- advise the Commission that it has initiated and certified the draft amendment within 7 days and provide the relevant documents [[section 35](#)].

See the checklist of information required at Appendix 1.

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

A person requesting an amendment cannot request the planning authority to consider an amendment that is substantially the same for two years after if the planning authority decides not to initiate it [\[section 33\(4\)\]](#).

If requested, the Commission can review such a decision if a request is made within 14 days of the planning authority decision. The review is limited to the planning authority 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 the matters specified when it made its decision [\[section 33\(3D\)\]](#).

5.0 Exhibition

After certifying the draft amendment and providing a copy to the Commission, the planning authority must exhibit the draft amendment. The period for making representations is 28 days, unless the Commission agrees to a longer period. The planning authority must also advertise the exhibition of the draft amendment [\[section 39\(1\)\]](#).

The requirements for advertising are set out in the *Land Use Planning and Approvals Regulations 2014* [\[regulation 7\]](#).

The exhibition of the draft amendment is advertised twice in a newspaper circulating in the area. At least one notice must be on a Saturday. If the draft amendment relates only to an individual parcel of land, then the owner of the land, and neighbouring owners and occupiers must also be notified of the exhibition.

6.0 Report on the representations

After the exhibition 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 39 of the Act. The TasWater advice is to be considered by the planning authority and reported in the same way as other representations [\[section 39\(2\)\(b\)\]](#).

Where no representations are received, the planning authority (or a delegated officer) must still report on 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 publishes details of the draft amendment, relevant documents and the hearing under 'assessments and hearings' on www.ipan.tas.gov.au. These include planning authority reports under section 35 and 39; any application and supporting reports and documents; representations; hearing directions 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 Commission consideration and decision

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

The Commission must complete the process within three months of receiving the planning authority 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.ipan.tas.gov.au. In due course, it can also be found on the case law website [AustLII](#).

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 alter to a substantial degree, or, require the planning authority to modify, or alter to a substantial degree, the draft amendment [[section 41](#)].

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

If the planning authority has been directed to make modifications or alterations, it has 28 days to return the modified or altered amendment to the Commission. If the draft amendment has been altered to a substantial degree, the Commission then has 28 days to certify the amendment and direct the planning authority to exhibit it, inviting representations again.

After the close of the exhibition 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 exhibition period, whether or not there have been any representations.

10.0 Approval of the amendment

The Commission approves the amendment [[section 42](#)] and the planning authority gives notice in the newspaper. Notice of the approval is also to be displayed at the planning authority 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 7 days after being signed by the Commission, unless a date is specified.

Further information

For further information contact the Tasmanian Planning Commission:

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

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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 seal in PDF format and a word version of the draft amendment document and GIS files in MapInfo or ArcInfo for any mapping amendments. See Appendix 3 for guidance on drafting and setting out the amendment document.
4. Copy of the application (if requested by an individual), as well as any application material, including expert reports and the planning authority form if applicable.
5. Copy of the planner's report to the planning authority, including their recommendations.
6. 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, comments from relevant agencies, etc.
7. Completed owner's consent form if the request is made by a person other than the owner.
8. Title references, area, dimensions, and copy of the title if the amendment is for a specific site or title.
9. Copies of the newspaper notices (copy of the ad in the newspaper is preferable to proofs), including the dates the notices appeared (these may be sent separately following notification).
10. Copy of the notification letters and list of persons notified.
11. Copy of the referral to TasWater [[section 56S of the Water and Sewerage Industry Act 2008](#)] (this may be sent separately after the referral has been made).

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 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).
4. A copy of the TasWater response to the referral [section 56S of the *Water and Sewerage Industry Act 2008*] or confirmation that TasWater did not respond.
5. A copy of the planning authority report about the representations 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 a copy of the delegated decision, if determined under officer delegation (confirmation of the scope and date of delegation should also be supplied).
7. Fees payable under [regulation 11](#) of the *Land Use Planning and Approvals Regulations 2014* paid by cheque or EFT to the Commission. Remittance advice should also be supplied.

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 (sometimes called instruments) must clearly and accurately describe the draft amendment. The following is recommended:

1. Numbering

The amendment document should be numbered, with reference to the relevant planning scheme. For example:

Draft Amendment [NUMBER] to the [NAME] Interim Planning Scheme [YEAR]

Each draft amendment should be given a unique number reference, taking the next number in the sequence, regardless of whether the previous amendment has been approved. The numbering format is not critical. Some planning authorities use number/year format and others use a simple number sequence.

2. Scope

An amendment can be for a specific matter or for more than one, related matter. For example, a map change and related text changes. However, unrelated matters should not be contained within a single amendment.

3. Expression of amendment document

Expression should be consistent in the amendment document. The following expression is suggested:

Amend:	Use the term 'amend' to describe a change, modification or revision of the text and maps in the planning scheme. e.g. 'Amend clause 10.3 by .' Rather than the terms 'modify', 'revise' or 'change'.
Apply:	Use 'apply' to describe the inclusion of land in an overlay. e.g. 'Apply the airport obstacle limitation area to the land . . .'
Delete:	Use the term 'delete' to describe the removal of text, maps or spatial information from the planning scheme. e.g. 'Delete clause 10.3 . . .'; 'Delete map 13 – Specific Area Plan Precincts' or 'Delete the boundary of the Mt Field Specific Area Plan from the maps' or 'Delete clause 10.3 (a) and renumber the following clauses.

Rather than the terms 'remove', 'omit' or 'substitute with'

Insert: Use 'insert' to describe the addition, introduction or inclusion of text and maps to the planning scheme. e.g. 'Insert clause 10.3 (k) after 10.3 (j).'

Rather than the terms 'add' or 'include'.

Delete and insert: Use 'insert' in conjunction with 'delete'. e.g. 'Delete F1.0 Mt Field Specific Area Plan and insert the following: . . .', 'Delete 'single dwelling' and insert 'dwelling unit'.

Rather than the terms 'substitute' or 'replace'

Only refer to clause numbers, not page numbers as these can vary.

Include a clear statement describing what is to be deleted. For example:

- 'delete the words 'use or development' from clause 5.4.2';
- 'at subclause 14.4.1, delete the word 'site' and insert 'place'';
- 'delete clause 11.3 and insert a new clause 11.3, as follows . . .'; or
- 'at clause 12.2, insert 'amenity' after the words 'unreasonable loss of''.

If the words being amended occur more than once in the clause, specify which occurrence. For example:

- 'delete the second occurrence of the word 'use' in clause 5.4.2'; or
- 'delete the word 'use' from the second sentence in clause 5.4.2.'

If there are a number of rewording changes required in the same clause, it is recommended that the clause be deleted and a new clause inserted to avoid confusion.

Numbering and formatting conventions should be suitable for publication on-line (refer www.iplan.tas.gov.au) as the amendment will be transcribed into the online version once approved if the planning scheme is on iplan.

Mapping

Begin by generating the mapping using data from the latest version of theLIST.

Clearly identify the area in question spatially and textually. e.g. Rezone 14 Piper Place from Light Industrial to Commercial as follows: (insert the mapping)'.

Include an extract from the planning scheme maps showing the extent of the amendment. This may be a single or multiple sheets depending on whether the mapping changes are extensive, or the amendment includes zoning and overlays.

If the extent of an overlay is to be reduced, include an extract from the planning scheme maps showing that area to be deleted from the overlay.

Mapping must be at a readable scale or include an inset to aid interpretation. It must include enough information to identify the subject 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 the current zoning, overlays or other detailed mapping information.

If the boundary of the amendment does not follow the cadastre, it is important to include mapping coordinates. The zoning or overlay boundary should be capable of being 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.