

## Practice Note 12

# Subject: Local Provisions Schedule Amendments

**Purpose:** To provide information about amendments to Local Provisions Schedules in the Tasmanian Planning Scheme under sections 37 to 40S of the *Land Use Planning and Approvals Act 1993*.

## 1.0 Introduction

While similar to the process for amendments to interim planning schemes and section 26 planning schemes, there are some important differences for preparing an amendment to a Local Provisions Schedule (LPS).

Together with the State Planning Provisions (SPPs), LPSs form the Tasmanian Planning Scheme (TPS).

Part 3B - Divisions 2 and 3 of the *Land Use Planning and Approvals Act 1993* (the Act) are relevant to LPS amendments [[sections 37 to 40S](#)].

This is a guide to ordinary amendments. See Practice Note 13 – Combined Permits and Amendments for more information on combined permits and amendments [[section 40T](#)].

For draft amendments directed by the Commission under section 35KB(1) this Practice Note applies from 6.0 Exhibition onwards. See Practice Note 11 – Direction to prepare a draft amendment to a Local Provisions Schedule requiring substantial modification for information on the process of directed amendments prior to exhibition.

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

## 2.0 Getting started

Any person may request a planning authority to amend an LPS [[section 37](#)], or the planning authority may of its own motion decide to amend its planning scheme [[section 40D](#)].

Owner's consent is required if the amendment is requested by a person who is not the owner of the land [[section 37](#)]. An [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. The planning authority must satisfy itself that the draft amendment will meet the LPS criteria [[section 38](#)].

A draft amendment that meets the LPS criteria:

- contains all the provisions that the SPPs specify must be in an LPS;
- is in accordance with [section 32](#) which specifies what may be contained in an LPS;
- furthers the Schedule 1 objectives;

- is consistent with each State policy;
- satisfies the relevant criteria in relation to the Tasmanian Planning Policies<sup>1</sup>;
- as far as is practicable, is consistent with the regional land use strategy;
- has regard to the strategic plan prepared under section 66 of the *Local Government Act 1993*;
- as far as practicable, is consistent with and coordinated with any LPS applying to adjacent municipal areas; and
- has regard to the safety requirements in standards prescribed by the *Gas Safety Act 2000*. [[section 34](#)]

In addition to meeting the LPS criteria the LPS amendment should be consistent with zone and code application guidance provided in **Guideline No. 1 – Local Provisions Schedule (LPS): zone and code application**.

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 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 40](#)]. If requested, the Commission may consider whether the planning authority ought to have requested further information [[section 40A](#)].

### 3.0 Preparing and certifying a draft amendment

A planning authority may prepare a draft amendment if agreeing to a request for an amendment [[section 38\(2\)\(a\)](#)] or, may of its own motion prepare an amendment [[section 40D](#)]. Planning authorities are encouraged to refer to the relevant sections of the Act in their recommendations and minutes for clarity.

If the planning authority supports a requested amendment subject to the amendment being modified, it should consider whether it is more appropriate that the modified amendment be prepared of its own motion under [section 40D](#).

If the planning authority is satisfied the draft amendment meets the LPS criteria it must:

- certify the draft amendment [[section 40F](#)]; and
- apply the planning authority's seal to an amendment instrument.

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<sup>1</sup> Tasmanian Planning Policies (TPPs) are made under Part 2A of the Act. No TPPs are in effect at the time of writing.

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

The planning authority must advise the Commission that it has certified the draft amendment within 7 days and provide the relevant documents [[section 40F\(4\)](#)].

See the checklist of information required at Appendix 1.

#### **4.0 Withdrawal of a draft amendment to an LPS**

A planning authority can withdraw a draft amendment to an LPS at any time but it requires the agreement of the person who requested the draft amendment if it was prepared in response to a request [[section 40E](#)].

#### **5.0 If request for a draft amendment is declined**

A person requesting a draft amendment cannot request the planning authority to consider an amendment that is substantially the same for two years if the planning authority does not agree to prepare the draft amendment.

However, they may apply to the Commission to seek leave to make a new request. The Commission may agree if the SPPs or the relevant regional land use strategy have been changed and that change may be relevant to the planning authority's consideration [[section 39](#)].

#### **6.0 Exhibition**

After preparing the draft amendment and providing a copy to the Commission, or receiving a notice under section 35KB(4)(b)(i) (see Practice Note 11), the planning authority must give notice and exhibit the draft amendment.

The planning authority is also to notify State agencies and authorities that may have an interest in the draft amendment of the date the exhibition starts [[section 40FA](#)] and must refer the draft amendment to TasWater [[section 56S Water and Sewerage Industry Act 2008](#)].

The public exhibition is notified once before, and once within 14 days of the first notice, in a newspaper circulating in the area, inviting representations during a 28 day exhibition period. The documents are to be available for viewing at the premises notified, and available for viewing and downloading online [[section 40H](#)]. For exhibition of amendments directed under section 35KB (see Practice Note 11) it is recommended that the Commission's decision and reasons directing preparation of the draft amendment(s) to the LPS is referred to as the relevant supporting documentation, to explain the evidence and reasons for the amendment(s), and is made available during the exhibition period.

#### **7.0 Representations**

During the exhibition any person or body may make a representation [[section 40J\(1\)](#)]. However, there are matters specified in section 40J that are not taken to be representations.

Matters not taken to be representations include:

- (a) a representation to the effect that the content of a provision of the SPPs should be altered [[section 40J\(4\)](#)];
- (b) a matter that does not relate to the contents or merit of the draft LPS amendment [[section 40J\(5\)\(a\)](#)]; and
- (c) a matter not specifically listed that a representation can be made about [[section 40J\(3\)](#)].

## **8.0 Report on the representations**

Following exhibition, the planning authority must consider any representations and provide a report to the Commission. The report must include [[section 40K](#)]:

- (a) a copy of each representation, including any agreed to be accepted after the end of the exhibition period;
- (b) the planning authority's views on the merit of each representation;
- (c) a recommendation as to whether the draft amendment should be modified to take into account the representation and the effect on the LPS as a whole in implementing the recommendation; and
- (d) a statement as to whether the planning authority is satisfied that the draft amendment meets the LPS criteria; and
- (e) any other recommendations in relation to the draft amendment.

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 40J of the Act. The TasWater advice is to be considered by the planning authority and reported in the same way as other representations.

Where no representations are received, the planning authority (or a delegated officer) must still report to the Commission, stating that no representations were received and making any recommendations it considers necessary [[section 40K\(2\)](#)]. 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 exhibition period to forward its report to the Commission. The Commission may grant an extension of time if requested. Requests should set out the reasons an extension is sought and how much additional time is required.

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

## **9.0 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 40L](#)].

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 may dispense with holding a hearing if TasWater has advised that it does not wish to be heard.

The Commission must give 14 days' 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 the Commission website. These include planning authority reports under section 40F and 40K; 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.

## **10.0 Commission consideration**

After completing its consideration of the planning authority's report into the representations and any information from the hearing and whether the LPS criteria is met [[section 40M](#)], the Commission must consider whether to modify, reject or refuse the draft amendment. If rejected, the Commission can direct a substantial modification to part of the draft amendment or preparation of a substitute draft amendment. [[section 40N](#)].

Modifications or a substitute draft amendment may be prepared by the Commission itself or by the planning authority if directed by the Commission.

If directed to make a modification or prepare a substitute or substantially modified draft amendment, the planning authority has 28 days or such longer period as the Commission allows to submit it to the Commission.

A substantially modified or substitute draft amendment is then certified by the Commission and the planning authority directed to give notice and re-exhibit the draft amendment [[section 40P](#)]. After re-exhibition the process of reporting on representations and holding a hearing begins again.

If the Commission is satisfied the draft amendment meets the LPS criteria it must approve it, otherwise it must refuse to approve it [[section 40Q](#)].

The Commission must complete the process within 90 days of receiving the planning authority report on the representations, unless an extension of time has been agreed by the Minister. The 90 day period does not include the time required to submit a modification or substitute draft amendment.

## **11.0 Approval of amendment to LPS**

The Commission's decision and reasons will be issued to all parties at the same time. It will be available on the [Commission's website](#) and later also on the case law website [AustLII](#).

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

The planning authority must give notice of the approval of the amendment [[section 40S\(3\)](#) and [regulation 8A](#)].

### **Further information**

For further information contact the Tasmanian Planning Commission:

**Telephone:** (03) 6165 6828  
**Email:** [tpc@planning.tas.gov.au](mailto:tpc@planning.tas.gov.au)  
**Website:** [www.planning.tas.gov.au](http://www.planning.tas.gov.au)

John Ramsay  
**Executive Commissioner**  
**Tasmanian Planning Commission**

22 November 2021

## Appendix 1: Checklist for planners [[section 40F](#)]

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 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](#) approved by the Commission 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 advertisement in the newspaper is preferable to proofs), including the dates the notices appeared (these may be sent separately following notification).
10. Copy of the referral to TasWater [[section 56S of the Water and Sewerage Industry Act 2008](#)] and notification of State agencies and authorities that may have an interest (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](mailto: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 40K](#)]

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

1. A copy of the planning authority decision about the representations under [section 40K](#). (A formal decision under delegation or by resolution is required even where there are no representations received).
2. 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).
3. A copy of the planner's [section 40K](#) report on the representations.
4. A copy of the unredacted representations, either as an appendix to the report or separately.
5. 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).
6. 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.
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](mailto: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 (called instruments) must clearly and accurately describe the draft amendment. The following is recommended:

### 1. Numbering

The amendment document should be numbered, with reference the relevant LPS. For example:

Draft Amendment [NUMBER] to the [NAME] Local Provisions Schedule

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).'
Delete and insert:	Rather than the terms 'add' or 'include'. 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 the Commission's website as the amendment will be transcribed into the online version once approved.

#### **4. Mapping**

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

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 LPS 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 LPS 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 maps.

#### **5. Seal**

The amendment document must include the council seal [[section 40F\(3\)](#)]. Apply it to both text and plans if both form part of the amendment.