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Guide to the Resource Management and Planning System

March 2003 Resource Planning and Development Commission

ISBN 0 7246 7403 9

Produced by the Resource Planning and Development Commission

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144-148 Macquarie Street
GPO Box 2036
Hobart, Tasmania 7001

Production by Artemis Publishing Consultants, Hobart, Tasmania

This report is available on the Internet. The Internet address is:
www.rpdc.tas.gov.au

Printed on environmentally friendly paper

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1. Meaning of key terms

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal.

Agricultural uses means animal or crop production, including intensive tree farming and plantation forestry. It excludes intensive animal uses such as feedlots, piggeries and poultry farms and plant nurseries based on either hydroponics or imported growth media.

BEMPC means the Board of Environmental Management and Pollution Control.

Council means a planning authority.

Development includes:

- the construction, exterior alteration or exterior decoration of a building;
- the demolition or removal of a building or works;
- the construction or carrying out of works;
- the subdivision or consolidation of land, including buildings or airspace;
- the placing or relocation of a building or works on land; and
- the construction or putting up for display of signs or hoardings;

but does not include any development of a class or description, including a class or description mentioned in paragraphs (a) to (f), prescribed by the regulations for the purposes of this definition.

Director means the Director of Environmental Management.

EIA means Environmental Impact Assessment.

EMPCA means the *Environmental Management and Pollution Control Act 1994*.

EPN means an environmental protection notice issued under EMPCA.

HCHA means the *Historic Cultural Heritage Act 1995*.

Heritage Council means the Tasmanian Heritage Council established under the HCHA.

Heritage Register means the Tasmanian Heritage Register kept under the HCHA.

Historic Cultural Significance, in relation to a place, means significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value of the place.

Land includes:

- buildings and other structures permanently fixed to land;
- land covered with water;
- water covering land; and
- any estate, interest, easement, servitude, privilege or right in or over land.

LUPAA means the *Land Use Planning and Approvals Act 1993*.

NEPM means a National Environment Protection Measure issued under the *National Environment Protection Council Act 1994*.

Person includes department, or other agency of Government of the State or the Commonwealth and an authority of the State or the Commonwealth.

Planning authority means a council.

Planning permit means a permit issued under the *Land Use Planning and Approvals Act 1993*.

Prime agricultural land means agricultural land classified, or capable of being classified as Class 1, 2 or 3 and using the Class Definitions and methodology from the Land Capability Handbook, KE Noble, 1992, Department of Primary Industries, Water and Environment.

RMPAT means the Resource Management and Planning Appeal Tribunal.

RMPAT Act means the *Resource Management and Planning Appeal Tribunal Act 1993*.

RMPS means the Resource Management and Planning System.

RPDC means the Resource Planning and Development Commission.

Sustainable development means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- avoiding, remedying or mitigating any adverse effects of activities on the environment.

Use (in relation to land) includes the manner of utilising land but does not include the undertaking of development.

2. Introduction

Purpose of the Guide

The Guide outlines the processes and instruments that make up Tasmania's Resource Management and Planning System (RMPS). This system is supported by:

- *Land Use Planning and Approvals Act 1993;*
- *Resource Planning and Development Commission Act 1997;*
- *Resource Management and Planning Appeal Tribunal Act 1993;*
- *State Policies and Projects Act 1993;*
- *Environmental Management and Pollution Control Act 1994;*
- *Historic Cultural Heritage Act 1995;* and
- *Major Infrastructure Development Approvals Act 1999.*

Other legislation that is relevant to the operation of the RMPS, but not dealt with in this Guide, includes:

- *Approvals (Deadlines) Act 1993;*
- *Crown Lands Act 1976;*
- *Gas Act 2000;*
- *Gas Pipelines Act 2002;*
- *Living Marine Resources Management Act 1995;*
- *Local Government Act 1993;*
- *Marine Farming Planning Act 1995;*
- *Mineral Resources Development Act 1995;*
- *National Parks & Reserves Management Act 2002*
- *Nature Conservation Act 2002;*
- *Public Land (Administration and Forests) Act 1991;*
- *Strata Titles Act 1998;*
- *Sullivans Cove Planning Act 1995;*
- *Threatened Species Protection Act 1995;*
- *Water Management Act 1999;* and
- *Wellington Park Act 1993.*

How to use the Guide

The Guide is designed for use by planning authorities, any person having an interest in planning administration and any person interested in understanding planning matters and processes generally.

The Guide provides an overview of:

- the operations of the RMPS;
- the objectives of the planning process; and
- the objectives of the environmental management and pollution control system.

The Guide includes a Section on each Act and advice on the processes established by each of those Acts.

Further information

Further information can be obtained from:

Resource Management and Planning System

Resource Planning and Development Commission
3rd Floor
144-148 Macquarie Street
GPO Box 1691
Hobart Tasmania 7001
Phone: 03 6233 2795
Fax: 03 6233 5400
Email: enquiry@rpdc.tas.gov.au

Environmental Management and Pollution Control

Board of Environmental Management & Pollution Control (Chairperson)
GPO Box 44
Hobart Tasmania 7001

Environment Division

Department of Primary Industries, Water and Environment
Lands Building
134 Macquarie Street
GPO Box 44
Hobart Tasmania 7001
Phone: 03 6233 6518
Fax: 03 6233 6800

19 Brisbane Street
Launceston Tasmania 7250
Phone: 03 6336 2228
Fax: 03 6336 2691

Appeals

Resource Management and Planning Appeal Tribunal (Chairperson)
GPO Box 2036
Hobart Tasmania 7001

3. Overview of Tasmania's Resource Management and Planning System

3.1 Overview

The Resource Management and Planning System (RMPS) was established in 1994. The aim of the RMPS is to achieve sustainable outcomes from the use and development of the State's natural and physical resources.

Several pieces of legislation embody the aims of the RMPS. The *Land Use Planning and Approvals Act 1993* is the principal planning Act.

3.2 Objectives of the RMPS

The concept of sustainable development provides overall direction for the RMPS. The objectives of the RMPS are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with the objectives set out above; and
- promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

In the objectives, "sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- avoiding, remedying or mitigating any adverse effects of activities on the environment.

3.3 What does this mean?

As can be seen by these objectives, decisions by local planning authorities and State Agencies taken within the RMPS on the use and development of resources need to take into account wider economic, social and environmental implications. In doing so, decisions are more concerned with **how** use or development occurs rather than what it is or even where it is located.

3.4 Principles involved in applying the RMPS

Fundamental to the question of how the use or development of resources is to occur are a number of important principles. These include:

- **Inter-generational equity:** Resource use decisions should be made taking into account the needs of future generations. In short, the long-term rather than the short-term view prevails;
- **Conservation of biodiversity:** This requires that we maintain species and genetic diversity;
- **Precautionary approach:** Decisions should err on the side of caution where there is uncertainty surrounding the potential impact upon the environment;
- **Social equity:** The private use or development of resources must consider the wider social costs;
- **Efficiency:** Resources must be used efficiently; and
- **Community participation:** The community should be involved in establishing the parameters for the use and development of resources.

3.5 Applying the RMPS

There are several essential elements in ensuring the RMPS is applied effectively. These are:

1. **Strategic planning:** Strategic planning allows government, industry and the community to agree on common strategies for resource use and development, reducing the likelihood of conflict over individual developments. It also ensures that short-term decisions are consistent with long-term goals. This allows the needs of future generations to be taken into account when providing for the resource development needs of existing communities.
2. **Flexibility and currency:** Moves towards a performance-based approach is consistent with achieving outcomes rather than adherence to inflexible prescriptive standards. This needs to be balanced against the need for such prescription to provide certainty for system users.
3. **Whole of government approach:** An integrated approach by the different sections and levels of government promotes the efficient management and planning of resources. This is also essential for the consolidation and co-ordination of planning approvals.
4. **Public participation:** Public participation allows the community to establish an agreed direction for the use and development of resources and the appropriate parameters to achieve it.
5. **Monitoring the state of the environment:** Decisions have to be made with as complete knowledge of the environment and its condition as possible. Monitoring of the environment will allow strategies, planning schemes and ultimately decisions to be adjusted in response to changes to, or new knowledge about the environment.

4. Land Use Planning and Approvals Act 1993

4.1 Overview

The *Land Use Planning and Approvals Act 1993* (LUPAA) is the central legislation underpinning the RMPS. Broadly it provides for:

- the making and amendment of planning schemes;
- the assessment of planning directives;
- development control and enforcement and agreements between planning authorities and landowners; and
- RMPAT to hear appeals into specific development control matters.

The Resource Planning and Development Commission (RPDC), established under the *Resource Planning and Development Commission Act 1997*, performs a number of functions under LUPAA. These include:

- the certification and approval of planning schemes;
- the approval of amendments to planning schemes;
- the assessment of planning directives;
- the conduct of hearings on representations regarding planning schemes and amendments to planning schemes; and
- the approval of special planning orders.

Under LUPAA, councils are designated as planning authorities. Their role is:

- the preparation and administration of planning schemes;
- the certification of amendments to planning schemes;
- the assessment and approval of applications for planning permits for the use and development of land; and
- the enforcement of planning scheme provisions and permit conditions.

Planning controls determine what uses or developments can be undertaken within a specified area. These controls are applied through:

- planning schemes;
- planning directives; and
- special planning orders.

4.2 Planning controls

4.2.1 Planning schemes

Planning schemes are regulatory instruments. They set out the requirements that apply to new use and development. Planning schemes do not affect existing land use and development and they cannot make new development happen. Planning schemes are important to the delivery of sustainable development at the local level.

A planning scheme has two parts:

- a map, the 'plan,' which divides the planning authority area into different land use zones, precincts or overlays; and
- a written document, the 'ordinance,' which sets out the conditions under which use and development can take place in different zones, precincts and overlays.

What are zones, precincts and overlays?

Each planning authority area may be covered by one or more planning schemes. Planning schemes divide the area they cover into smaller areas, usually called zones. Each zone will have its own particular planning controls. Planning controls for a given activity will often be different in different zones.

Zones on planning scheme maps reflect either the main existing character of land, or its desired future character – such as residential, industrial, rural and so on. The planning scheme then sets out the kinds of land uses that are allowable in that zone, and the controls that will be applied to them. For example, a planning scheme will usually not allow an industry to set up in a residential area. The break-up of the planning scheme area into zones will generally be complete – there will be no gaps, and zones will not overlap.

Some schemes have a further subdivision of zones into smaller sub-areas. Usually these are called precincts. This subdivision provides a further level of refinement of the controls that apply.

Some planning schemes have an additional layer of controls, usually called overlays. As their name suggests, these lie over the top of zones and precincts and they add additional controls or modify those already applying underneath in the zones and precincts.

Overlays usually designate areas for which special planning considerations apply – for example, areas subject to airport noise, where bush-fire management issues must be considered or that are flood prone or landslip prone. Overlays can cover multiple zones and precincts.

What must be considered when developing a planning scheme?

A planning scheme for an area:

- must seek to further the objectives of the RMPS;
- must seek to further the objectives of the planning process established by LUPAA;

- must be prepared in accordance with State Policies made under the *State Policies and Projects Act 1993*;
- may make provisions relating to the use, development, protection or conservation of any land (including water) in the area;
- must have regard to the strategic plan of a planning authority (referred to in the *Local Government Act 1993*) as adopted by the planning authority at the time the planning scheme is prepared;
- must have regard to the use and development of the region as an entity in environmental, economic and social terms; and
- be consistent and co-ordinated with planning schemes applying to adjacent areas.

What can a planning scheme provide for?

A planning scheme may:

- set out policies and specific objectives;
- regulate or prohibit the use or development of any land;
- designate land as being reserved for public purposes;
- set out the requirements for the provisions of public utility services to land;
- require specified things to be done to the satisfaction of the RPDC, relevant agency or planning authority;
- apply, adopt or incorporate any document which relates to the use, development or protection of land;
- provide that any use or development of land is conditional on an agreement being entered into under Part 5 of LUPAA;
- set out the provisions relating to the implementation in stages of uses or developments;
- provide for any other matter to which LUPAA refers as being included in a planning scheme; and
- provide for an application to be made to a planning authority to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme.

Who is affected by a planning scheme?

A planning scheme is binding on:

- all members of the public;
- State Government agencies;
- public authorities; and
- planning authorities.

A planning scheme or special planning order does not affect:

- forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985*;
- the undertaking of mineral exploration in accordance with an exploration licence, or retention licence, under the *Mineral Resources Development Act 1995*;
- fishing as defined in the *Living Marine Resources Management Act 1995* and conducted in accordance with the Act;
- marine farming in State waters as defined in the *Marine Farming Planning Act 1995* and conducted in accordance with that Act and the *Living Marine Resources Management Act 1995*. This does not apply to:
  - any bridge, jetty, boathouse, shed, pipeline or other structure used in connection with marine farming that is constructed wholly or in part on, or above, the high water mark; or
  - a use or development on any accretion from the sea; or
- other legal obligations such as the prevention of environmental harm under the *Environmental Management and Pollution Control Act 1994* (EMPCA).

What is the effect of a planning scheme on existing uses?

Planning schemes apply to all private and public lands including lands covered by water.

A planning scheme cannot prevent:

- the continuance of the use of any land, building or works lawfully established before the scheme came into effect; or
- a development, which was lawfully commenced but not completed before the scheme came into effect, from being completed within:
  - 3 years of that coming into operation; or
  - any lesser or greater period specified in respect of the completion of that development under the terms of a permit granted before the coming into operation of the scheme; and
- the completion of a development lawfully commenced, but not completed, before a planning scheme came into effect.

Existing use rights do not apply when:

- a use of land has stopped for a continuous period of 2 years;
- a use of land has stopped for 2 or more periods that together total 2 years in any 3 year period;
- to the extension or transfer from one part of a parcel of land to another of a use previously confined to the first-mentioned part of that parcel of land;
- a use of any land, building or work is substantially intensified; or
- in the case of a use that is seasonal in nature, if the use does not take place for 2 years in succession.

Failure to comply with a planning scheme

If a person contravenes, or fails to comply, with the provisions of a planning scheme or special planning order, an application may be made to the RMPAT for a civil enforcement order.

Applications may be made by the following:

- the RPDC;
- a planning authority; or
- a person with a proper interest.

Who administers a planning scheme?

The administration and enforcement of a planning scheme is the responsibility of the relevant planning authority.

A planning authority that does not take all reasonable steps to ensure that a planning scheme or special planning order is complied with is guilty of an offence punishable on summary conviction.

Where are planning schemes available for inspection?

Planning schemes are available for inspection at the offices of the relevant planning authority and at the RPDC.

Who can prepare a planning scheme?

A planning authority may prepare a draft planning scheme concerning any portion of its municipal area.

The RPDC may, with the approval of the Minister, direct a planning authority to prepare a draft planning scheme concerning a particular area. The direction may require a planning authority to prepare a draft planning scheme jointly with one or more planning authorities if the RPDC considers such a requirement would promote a regional approach to planning.

4.2.2 Approval and amendment of planning schemes

Both planning authorities and the RPDC are involved in the processes for the approval of new planning schemes and the amendment of existing schemes. These processes are relatively similar, however, some different timelines and procedures apply.

Figure 1 provides a broad overview of the approval and amendment processes for planning schemes set out by LUPAA.

Figure 1: Process for preparing/amending planning schemes

Intent to prepare/amend	A planning authority may make a decision to prepare or amend a planning scheme. An amendment to a planning scheme can be initiated by: • a person; • a planning authority; or • a planning authority on the direction the RPDC (with the approval of the Minister). Where a person requests an amendment to a planning scheme, the planning authority must decide whether or not to initiate an amendment within 42 days.
Certification	Once it has been prepared: • a new draft planning scheme must be certified by the RPDC as suitable for public exhibition; or • a draft planning scheme amendment must be certified by the relevant planning authority as meeting specified requirements. Within 7 days of certifying an amendment, a planning authority must forward a copy to the RPDC.
Public exhibition	Once certified, the relevant planning authority must advertise the draft planning scheme or amendment and place it on public exhibition for a minimum of 2 months or 21 days respectively. During this period, persons may submit representations to the planning authority regarding the draft scheme or amendment. At the conclusion of the period, the planning authority must prepare a report and forward it to the RPDC commenting on the merits of any representation received, including whether the draft planning scheme or amendment requires modification.
Public hearings	As soon as practicable following the receipt of the report from planning authority, the RPDC must hold a public hearing into representations. The RPDC has the option to dispense with holding a hearing if: • all the representations are in support of the amendment; or • the representors have advised that they do not wish to attend a hearing.
Decision	The RPDC, after considering the report submitted by a planning authority and any hearings conducted in respect to the draft planning scheme or amendment, can either: • require the planning authority to modify or alter to a substantial degree the draft planning scheme or amendment; • modify the draft planning scheme; • direct that a specified part of the draft planning scheme be done again by the planning authority; • reject it; or • if it is satisfied that it is in order, approve it. There are no rights of appeal against the RPDC's decision.

4.2.2.1 Approval of a planning scheme

What is the process for approving a planning scheme?

There are three stages in the process for approving a planning scheme:

- Stage 1 – Initiating and certifying a draft planning scheme;
- Stage 2 – Public exhibition; and
- Stage 3 – Determination of RPDC.

Stage 1 – Initiation and certification of a draft planning scheme

Step 1 – Notification of intent

A planning authority must notify the RPDC of its decision to prepare a draft planning scheme not later than 14 days after making the decision.

Step 2 – Certification of draft planning scheme

A planning authority must submit a copy of the draft planning scheme to the RPDC within 12 months of the planning authority making the decision to prepare the scheme. This period may be extended by the RPDC.

Not later than 6 weeks after the submission of a draft planning scheme (or such longer period as the Minister may allow), the RPDC must either:

- certify that the scheme is suitable for exhibition and direct the planning authority to publicly exhibit it; or
- notify the planning authority that the scheme is not suitable, and either amend the draft planning scheme or direct the planning authority to revise the scheme and resubmit it within a specified time.

A draft scheme is suitable for exhibition if it:

- meets the requirements of Section 20 of LUPAA; or
- the RPDC directs a planning authority to exhibit the draft planning scheme, together with a notice from the RPDC indicating that its approval of the draft planning scheme will be conditional on issues identified in the notice being dealt with to the satisfaction of the RPDC.

Stage 2 – Public exhibition

Step 1 – Public exhibition of draft planning scheme

The planning authority must advertise the draft scheme and place it on public exhibition for 2 months. A copy of the draft planning scheme is to be made available to the public in the office of the RPDC. Public representations must be submitted to the planning authority during the exhibition period.

Step 2 – Representations in respect of draft planning scheme

Not later than 3 months after the exhibition period, the planning authority must forward to the RPDC a report that includes:

- a copy of each representation received and a statement of the merits of each representation;
- any recommended changes to the draft planning scheme that the planning authority considers necessary; and
- if approval of the scheme is conditional, a statement on how the issues identified in the RPDC's notice have been or may be dealt with by the planning authority.

Withdrawal of a draft planning scheme

A planning authority may, with the approval of the RPDC, withdraw a draft planning scheme that has been submitted for certification and must give public notice of the withdrawal. A planning authority may only make an application to withdraw a draft planning scheme if:

- a report under Section 26(2) has not been forwarded to the RPDC; and
- the planning authority proposes to prepare a further draft planning scheme for an area, the same as, or greater than, the area to which the scheme to be withdrawn relates; and
- the planning authority has notified its intention to withdraw the planning scheme by notice in a daily newspaper circulating generally in the area.

Step 3 – Consideration of draft planning scheme and representations

As soon as practicable after the receipt of the planning authority's report, the RPDC must consider the draft planning scheme and the representations, statements and recommendations made and must hold a public hearing in relation to each representation.

Stage 3 – Determination of RPDC

Step 1 – Modification or rejection of draft planning scheme before approval

The RPDC, after considering the report submitted by a planning authority and any hearings conducted in respect to the draft planning scheme, can either:

- require the planning authority to modify the draft scheme, or reject it;
- modify the draft scheme; or
- direct the planning authority to do certain parts of the scheme again within a specified time.

Step 2 – Approval of draft planning scheme

Not later than 6 months after the receipt of the Section 26(2) report, the RPDC must:

- give its approval to the draft planning scheme; and
- specify the date that the scheme is to come into effect.

The period for approving a planning scheme may be extended by the Minister. If no commencement date is specified, the planning scheme comes into operation 7 days after the date that the RPDC gives its approval.

Failure to comply with legislative requirements

Where a planning authority fails to comply with legislative requirements in the preparation of a planning scheme, the RPDC may assume the responsibilities of the authority and charge to the authority all costs incurred in assuming this responsibility. Such failure to comply does not invalidate a planning scheme approved by the RPDC.

4.2.2.2 Review of planning schemes

What are the obligations for review?

A planning authority must keep its planning scheme or schemes under regular and periodic review to ensure that the objectives of the RMPS are achieved to the maximum extent possible.

4.2.2.3 Amending a planning scheme

What are the requirements for the preparation of an amendment?

An amendment of a planning scheme:

- must seek to further the objectives set out in Schedule 1 of LUPAA;
- must be prepared in accordance with State Policies made under Section 11 of the *State Policies and Projects Act 1993*; and
- may make any provision that relates to the use, development, protection or conservation of any land.

A planning scheme amendment may revoke all or part of a planning scheme, or alter the area covered by the planning scheme.

Who can request an amendment?

An amendment can be:

- requested by a person;
- initiated by a planning authority of its own motion; or
- initiated by a planning authority on the direction of the RPDC (with the approval of the Minister).

If a person requests an amendment and it relates to one or more parcels of land that person does not own, the request must be signed by the owner or owners of the land, or be accompanied by the written permission of the owner or owners to the making of the request.

What is the process for amending a planning scheme?

There are three stages in the process of amending a planning scheme:

- Stage 1 – Initiating and certifying a planning scheme amendment;
- Stage 2 – Public exhibition; and
- Stage 3 – Determination of RPDC.

Stage 1 – Initiating and certifying a planning scheme amendment

Step 1 – Notification of intent

A request for an amendment to a planning scheme is lodged with the relevant planning authority. A planning authority has 42 days following the receipt of the request to determine whether or not to initiate an amendment of the planning scheme. Within 7 days of its determination, the planning authority must notify the person who made the request of its decision.

In its determination, a planning authority must consider whether the amendment seeks to further the objectives set out in Schedule 1 of LUPAA and has been prepared in accordance with State Policies.

Where a planning authority resolves not to initiate an amendment, the decision is final although the RPDC can be requested by the applicant to review the process by which a planning authority reached its decision. This request must be made within 14 days of the planning authority reaching its decision.

Step 2 – Certification of amendments

After preparing a draft amendment to a planning scheme, a planning authority must determine whether the draft meets the requirements specified under Section 32 of LUPAA. If a planning authority is satisfied that the amendment meets the requirements, it is 'certified.' If the draft amendment does not meet the requirements, a planning authority must proceed to modify the draft. Within 7 days after certifying the draft amendment, a planning authority must forward a copy of the draft amendment and the instrument containing that certification to the RPDC.

Stage 2 – Public exhibition

Step 1 – Public exhibition of draft amendment

The draft amendment must go on public exhibition for a period specified by a planning authority (minimum of 21 days).

Step 2 – Consideration of draft amendment and representations

Representations in relation to the draft amendment are made to a planning authority. A planning authority is then required to prepare a report and forward it to the RPDC commenting on the merits of each representation including whether it considers the draft amendment requires modification in light of the representations. Copies of the representations must also be sent to the RPDC. Where it has received no representations, a statement to this effect is required. The report is commonly known as

the Section 39 report. The planning authority must forward this report to the RPDC not later than 35 days after the exhibition period. This period may be extended by the RPDC. The planning authority may make any recommendations it considers necessary in relation to the draft amendment in the Section 39 report.

The RPDC must hold a public hearing into representations although there is an option for the RPDC to dispense with holding a hearing if all the representations are in support of the amendment or the representors have advised that they do not wish to attend a hearing.

Stage 3 – Determination of RPDC

The RPDC, after considering the Section 39 report submitted by a planning authority and any hearings conducted in respect to the draft amendment, can either:

- require a planning authority to modify or alter to a substantial degree the draft amendment;
- modify, or alter to a substantial degree, the draft amendment;
- by notice in writing given to the planning authority, reject the draft amendment; or
- if it is satisfied that it is in order, approve the draft amendment.

Not later than 3 months after its receipt of the Section 39 report, the RPDC must give its approval to the draft planning scheme and specify the date that the amendment is to come into effect. If a date is not specified, the amendment comes into operation 7 days after the date that the RPDC gives approval.

There are no rights of appeal against the RPDC's decision.

Alteration process

If a draft amendment is required to be modified, or altered to a substantial degree, the RPDC, by written notice to the planning authority, must:

- direct that it undertake the modification or alteration; and
- specify the manner in which the draft amendment is to be modified or altered.

A planning authority must undertake a modification, or an alteration to a substantial degree to a draft amendment in accordance with a direction by the RPDC and submit the modified or altered amendment to the RPDC within 28 days from the receipt of that direction or such longer period as the RPDC may allow. Where the amendment is altered to a substantial degree it must be re-exhibited for public comment (refer stage 2).

Amendments to a planning scheme – review of planning authority's decision

Where a planning authority decides not to initiate an amendment, the person who requested the amendment may, within 14 days of being notified of that decision, request the RPDC to review the process by which the planning authority reached its decision. The RPDC may request the planning authority to provide it with any material relevant to that review.

Within 28 days of receiving the material requested by it (or longer period as the Minister may allow), the RPDC must:

- direct the planning authority to reconsider the amendment; or
- confirm the planning authority's decision.

The RPDC must then notify the planning authority and the person who requested the review within 7 days.

Where a planning authority decides not to initiate an amendment, no person may request the planning authority to initiate an amendment that is substantially the same as the first-mentioned amendment for a period of 2 years from the date that the planning authority made its decision.

Where the RPDC, with the approval of the Minister, gives a written direction to a planning authority to initiate an amendment of a planning scheme, the authority must initiate the amendment in accordance with the direction within 10 weeks after receiving the direction or such longer period as the RPDC allows.

4.2.3 Planning directives

The purpose of planning directives is to ensure planning authorities apply consistent approaches to certain planning issues. Planning directives may cover:

- land use issues requiring consistency for all municipal areas;
- land use issues unique to one municipal area or only some municipal areas;
- procedural matters arising from the operation of LUPAA or a State Policy;
- the application of a State Policy; and
- any other matter the Minister considers appropriate.

4.2.3.1 Creating and implementing planning directives

Who can prepare a draft planning directive?

Draft planning directives may be prepared by:

- the RPDC;
- a planning authority;
- a State Service agency; or
- any other person.

What is the process for assessing a draft planning directive?

The following steps are undertaken in the assessment process:

- Step 1 – Lodgment of draft planning directive;
- Step 2 – Notification by Minister;
- Step 3 – Assessment by RPDC; and
- Step 4 – Approval of planning directive.

Step 1 – Lodgment of draft planning directive

A draft planning directive is to be lodged with the RPDC. The RPDC must forward the draft planning directive to the Minister, together with a recommendation as to whether or not an assessment of the draft planning directive should be undertaken.

Step 2 – Notification by Minister

The Minister then provides written notice either:

- directing the RPDC to undertake an assessment of the draft planning directive; or
- indicating that no further proceedings are to be undertaken in respect of the draft planning directive. Written notice will be given to the person who prepared the draft planning directive.

Step 3 – Assessment by RPDC

Prior to undertaking the assessment the RPDC must:

- notify in writing the person who prepared the draft planning directive and any planning authority or State agency likely to be affected by the planning directive, if issued;
- invite representations from those persons and bodies; and
- publish a notice in a newspaper that it will be undertaking the assessment.

Step 4 – Approval of planning directive

On the completion of an assessment, the RPDC must provide to the Minister a report of its findings and its recommendations for approval.

Who issues a planning directive?

After considering the report and recommendations of the RPDC, the Minister may:

- issue a planning directive; or
- determine not to issue a planning directive.

If the Minister issues a planning directive, the Minister must:

- give written notice of the planning directive to the RPDC and all planning authorities affected by the planning directive; and
- publish notice of the issue of the planning directive in the *Gazette*.

If the Minister determines not to issue a planning directive, the Minister must:

- give written notice of that determination to the person who prepared the draft planning directive and the RPDC; and
- publish notice of that determination in the same newspaper in which notice of the assessment of the draft planning directive was published.

When does a planning directive take effect?

A planning directive takes effect on the day on which notice of its issue is published in the *Gazette*, or on a later day specified in the planning directive.

What is the effect of a planning directive?

A planning authority is bound by a planning directive and must take all necessary steps to comply with it.

If compliance with a planning directive requires a planning scheme to be modified, the RPDC may modify the planning scheme to ensure that the planning scheme complies with the planning directive. The scheme amendment process does not apply to such a modification.

4.2.4 Special planning orders

Special planning orders are used to override provisions of an existing planning scheme or where there are no planning controls in place. A special planning order may be made by the RPDC, or by the RPDC at the request of a planning authority, where:

- there are contradictions in, or inconsistencies between, the provisions of a planning scheme; or
- it is necessary to introduce planning provisions for an area where a planning scheme is not in force or will cease to operate; or
- there would be an unacceptable delay in using the planning scheme or amendment preparation and approval powers.

The RPDC cannot make a special planning order unless it considers that it is in the public interest to do so.

What can be provided under a special planning order?

A special planning order may accommodate any of the matters that a planning scheme may provide and must:

- seek to further the objectives set out in Schedule 1 of LUPAA; and
- be prepared in accordance with State Policies.

Who administers a special planning order?

The relevant planning authority is responsible for the administration of a special planning order.

How does a special planning order come into operation?

The making of a special planning order must be published in the *Gazette* and in a daily newspaper published in Tasmania and circulating generally in the area to which the order relates.

A special planning order comes into operation from a date specified in the *Gazette* notice.

When does a special planning order cease to operate?

A special planning order ceases to operate if:

- the RPDC, by notice published in the *Gazette*, revokes the order; or
- if either House of Parliament passes a resolution disallowing it; or
- when a planning scheme or amendment to a planning scheme applying to the area subject to the special planning order comes into operation.

Who and what are affected by a special planning order?

A special planning order is binding on:

- all members of the public;
- State Government agencies;
- public authorities; and
- planning authorities;

except those considerations listed under Section 20(7) of LUPAA:

- forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985;*
- the undertaking of mineral exploration in accordance with an exploration licence, or retention licence, under the *Mining Act 1929;*
- fishing; or
- marine farming in State waters.

4.2.5 Planning permits

Generally, planning approval is required if a person proposes to undertake a development, or change the use to which they are putting their land. Planning approval is obtained by seeking a planning permit from the local planning authority.

A planning permit means any permit, approval or consent required by a planning scheme or special planning order to be issued or given by a planning authority for a use or development.

Any proposed use or development should be checked against the planning scheme to determine whether a planning permit is required.

If a permit is required, the applicant will need to determine which category applies to the proposed development. Division 2 of Part 4 of the *Land Use Planning and Approvals Act 1993* establishes the process for lodging a planning permit application under an existing planning scheme. Planning permit application forms are available from the relevant planning authority offices.

The planning scheme is the instrument under which a planning authority issues a planning permit. A planning scheme can categorise development as either:

- exempt;
- permitted;
- discretionary; or
- prohibited.

The process for obtaining a planning permit is illustrated in Figure 2.

4.2.5.1 Applying for a permit

How is a permit obtained?

A permit is obtained by applying to the relevant planning authority proposing a use or development.

An application for planning permit comprises:

- a completed application form;
- copies of plans (as stated on the application form); and
- other attachments as per planning authority requirements.

What if additional information is required?

A planning authority may, within 21 days from the day that it receives an application for a permit, require the applicant to provide it with additional information before it considers the application.

If the planning authority requires the applicant to provide additional information, approval periods do not run while the request for information has not been answered to the satisfaction of the planning authority.

An applicant may appeal to the Resource Management and Planning Appeal Tribunal against a requirement of a planning authority for additional information (refer Section 6.1, page 54)

Figure 2: Planning permit approval process

Lodgment	Once completed, the planning permit application form, with all the relevant information, must be lodged with the planning authority. It is recommended that applicants consult with the planning authority prior to lodging their application form.
Advertisement	The planning authority must publicly advertise discretionary applications under consideration.
Public exhibition	Any person wishing to make a representation may write to the relevant planning authority within the time frame advertised in the public advertisements (generally 14 days). Representations are only available to discretionary applications.
Decision	After any representations are lodged, the application is considered by the planning authority. All representations are considered, as well as the requirements of the planning scheme, and a decision is made.
Representations	Within 7 days of making a decision, the planning authority must notify the applicant of the result, whether a permit has been granted or the application has been refused.
Public exhibition	Appeals against a decision of a planning authority can be made to the Resource Management and Planning Appeal Tribunal.
Representations	Once appeals have been received by the Resource Management and Planning Appeal Tribunal, a 'Directions Hearing' is held, which involves the Registrar of the Appeal Tribunal and those people taking part in the appeal. If it is deemed that the appeal cannot be resolved through a mediation process, a full hearing of the Tribunal is arranged in which formal submission may be made to members of the Tribunal.
Decision	After the hearing process has been completed, the Tribunal makes a decision on the appeal. This decision is legally binding on all parties involved.

What if the applicant is not the owner of the land?

If the applicant for a permit is not the owner of the land in respect of which the permit is required, and the land is not:

- Crown land; or
- land owned by a planning authority; or
- land administered by the Crown or a planning authority; and
- the planning scheme or special planning order does not provide for otherwise,

the applicant must include in the application for the permit a declaration that the applicant has notified the owner of the intention to make the application.

This does not apply to an application to carry out mining operations if a mining lease has been issued under the *Mineral Resources Development Act 1995*.

What if the land is Crown land or council land?

If the land that is the subject of a permit application is:

- Crown land;
- is owned by a council; or
- is administered or owned by the Crown or a council

and a planning scheme or special planning order does not provide otherwise, the application must:

- be signed by the Minister of the Crown responsible for the administration of the land or by the general manager of the council; and
- be accompanied by the written permission of that Minister or general manager for the making of the application.

Is a permit required for projects of State significance?

A planning application to a planning authority is not needed for projects of State significance (level 3 activities under EMPCA). The assessment process for such projects is separate and is outlined in Section 1 of this Guide. The RPDC carries out a fully integrated assessment of projects of State significance that includes issues ordinarily considered by the planning authority.

4.2.5.2 Categories of uses and developments

What is an exempt use or development?

All planning schemes contain a list of uses and developments that are exempt from the requirement of an application for a permit. For example, garden landscaping at an existing residence may not require a planning permit.

What is a permitted use or development?

A planning authority must issue a permit for a use or development that, under the provisions of a planning scheme or special planning order, it is bound to grant either unconditionally or subject to conditions as long as it meets the requirements of the planning scheme and the objectives of the RMPS.

In such cases a planning authority must grant the application either unconditionally or subject to conditions or restrictions not later than:

- 42 days from the day on which the authority received the application; or
- such further period as is agreed to, in writing, by the planning authority and the applicant before the expiration of that 42 day period.

Where an application is referred to the Board for Environmental Management and Pollution Control for an environmental assessment, the planning authority is to deal with it as a discretionary use or development (refer Section 8).

Where a planning authority grants a permit, it must advise the applicant within 7 days.

The applicant may lodge an appeal to the RMPAT against a planning authority's decision if the permit contains conditions that are not to the satisfaction of the applicant.

What is a discretionary use or development?

A discretionary use or development is where, under the provisions of a planning scheme or special planning order, the application for a planning permit for a proposed use or development:

- is classed as one for which the planning authority has a discretion to refuse or permit; or
- may not proceed as proposed by the applicant unless a planning authority waives, relaxes or modifies a requirement of the scheme or order, or otherwise in its discretion consents to the use or development proceeding.

A planning authority must give notice of applications for discretionary uses or developments by advertisement in a major newspaper that circulates in the area. This notice must name a place where a copy of the application, plans and relevant documents submitted with the application may be inspected by the public. Any person wishing to make a representation relating to the application may do so in writing to a planning authority within the specified time frame after the notice of application (generally 14 days).

A planning authority must grant or refuse the permit after the expiration of the advertising period and within 42 days of the application or such further period as is agreed to, in writing, by the planning authority and the applicant before the expiration of that 42 day period.

As for a permitted development, the process varies if the Board of Environmental Management and Pollution Control must consider the permit application.

Within 7 days of making a decision, written notice of a planning authority's decision must be served on:

- the applicant; and
- any person who made a representation, (if any).

Any person who lodged a representation during the public exhibition period may make an appeal to the RMPAT against the decision of the planning authority. The applicant may also lodge an appeal against a planning authority's decision if the permit is refused or contains conditions that are not to the satisfaction of the applicant.

A permit is deemed effective 14 days after the decision has been served providing an appeal has not been lodged with the RMPAT.

What is a prohibited use or development?

A proposed development may be categorised as prohibited if it does not comply with the provisions under the relevant planning scheme.

If the proposed development is 'prohibited' then the development cannot be undertaken, unless:

- the planning scheme is amended; and
- as a consequence of this, a planning permit is obtained.

4.2.5.3 Assessment of a permit application

What must a planning authority consider?

In determining an application for a permit, a planning authority:

- must seek to further the objectives of the RMPS;
- must take into consideration such of the prescribed matters as are relevant to the use or development that is the subject of the application; and
- must take into consideration the matters set out in any representations relating to an application, under Section 57 of LUPAA, that are made during the public exhibition period.

The planning authority should consider what level of activity (defined under Section 3 of EMPCA) the use or development must be categorised under.

The planning authority should also identify if the property is on the Heritage Register of the Tasmanian Heritage Council. If the property is on the Register, the planning authority may need to obtain a completed Heritage Works Application from the applicant and promptly forward this to the Heritage Council. Further details of this process can be found in this document under Section 9.5, page 82.

What if there are environmental effects involved?

The planning authority is responsible for conducting an assessment of environmental effects for proposals which are not level 2 activities.

A use or development that is classified as a level 2 activity, by inclusion in Schedule 2 of the *Environmental Management and Pollution Control Act 1994*, must be referred to the Board of Environmental Management and Pollution Control, BEMPC which will carry out a formal environmental impact assessment. The BEMPC's assessment may result in a requirement that specified conditions are to be included on any permit issued by the planning authority, or it may result in a directive that the planning authority is to refuse the application. The BEMPC's requirement/directive must be complied with.

Using mediation in relation to an application for a discretionary permit

Prior to the planning authority reaching a decision on the application for a discretionary permit, any of the following persons (forming the 'parties' to mediation) may seek mediation to be conducted in relation to the application:

- the applicant for a discretionary permit;
- the planning authority to whom the application was made; or
- any person who made a representation in relation to the application.

If the applicant for a discretionary permit or any person who has made a representation requires mediation, the applicant or other person must notify the planning authority in writing.

If the planning authority receives notification from any other party or itself wishes mediation to be conducted in relation to an application for a discretionary permit, it must notify in writing any other party and seek the agreement of that party for mediation to be conducted in relation to the application.

If 2 or all parties agree that mediation should be conducted in relation to an application, the parties must agree on the person who is to conduct the mediation and on any other terms or conditions in relation to the conduct of the mediation.

If 2 or all parties agree that mediation should be conducted in relation to an application, the period within which the planning authority must make its decision in relation to the application may be extended by written agreement between the planning authority and applicant.

4.2.5.4 Granting of a permit

When does a permit take effect?

Where a planning authority grants a permit, it takes effect on the day that it is granted by the planning authority, or, where there is a right of appeal against the granting of the permit, at the end of 14 days from the day that the notice of the granting of the permit was served on the person who has a right of appeal.

If the applicant is the only person with a right of appeal, the use or development may be commenced before the expiry of the 14 day period and the applicant must notify the planning authority of their intention to commence and will forfeit their right of appeal in relation to the permit.

Where an appeal has been instituted against the planning authority's decision to grant a permit, the permit does not take effect until the determination or abandonment of the appeal.

Where any other approvals are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.

If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.

Can a permit be corrected or amended?

A planning authority may correct a permit it has already granted if the permit contains:

- a clerical mistake or an error arising from any accidental slip or omission; or
- an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the approval.

The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit that applies to that land.

The planning authority may amend the permit if it is satisfied that the amendment:

- does not change the effect of any decision of the RMPAT;
- will not cause an increase in detriment to any person; and
- does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.

The planning authority must give written notice of the amendment to:

- the person who requested the permit to be amended;
- if that person is not the owner of the land, the owner;
- the owner or occupier of any property which adjoins the land (limited to discretionary permits);
- any representor to the application for the permit (limited to discretionary permits); and
- the BEMPC where the permit contains a condition or restriction required under Section 25(5) EMPCA.

Can a planning authority's decision regarding an amendment to a permit be appealed against?

Within 14 days of the planning authority giving written notice of an amendment made to a permit, any person to whom the planning authority is required to give notice of the amendment may appeal to the RMPAT against the decision.

After hearing an appeal, the RMPAT may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* direct the planning authority to amend the permit in the manner specified by the RMPAT.

When do amendments to permits take effect?

If a planning authority amends a permit, the amendment takes effect on the day on which it is made by the planning authority or, if there is a right of appeal against the amendment, at the expiration of 14 days from the day on which the notice of the amendment was served on the person who has the right of appeal.

If the person who requested an amendment to a permit is the only person with a right of appeal in relation to the amendment and does not intend to exercise that right, the use or development in respect of which the amendment is made may be commenced before the expiration of the 14 day notice period.

If the person who requested an amendment to a permit proposes to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period, the person must notify the planning authority in writing of his or her intention to commence that use or development.

If the person who requested an amendment to a permit notifies the planning authority of their intention to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period, the person is taken to have forfeited the right to appeal in relation to the amendment.

If an appeal has been instituted against the planning authority's decision to amend a permit, the amendment does not take effect until the determination or abandonment of the appeal.

If the amendment requires an agreement to be entered into, the amendment does not take effect until the day on which the agreement is executed.

Varying permit conditions through an environmental protection notice

The Director of Environmental Management may issue an Environment Protection Notice (EPN) when satisfied that it is desirable to vary the conditions of a permit for an activity that may cause environmental harm, including environmental nuisance.

A planning authority officer may issue and serve an EPN where the officer is satisfied that in relation to a level 1 activity or an environmental nuisance it is desirable to vary the conditions of a permit. The EPN is to be served on the person who is or was responsible for the Level 1 activity or environmental nuisance.

What happens if a planning authority fails to determine an application for a permit?

Where a planning authority fails to determine an application for a permit within the required time, a permit is deemed to be granted subject to conditions to be determined by the RMPAT, unless the application is referred to the BEMPC for assessment as a permissible level 1 activity or as a level 2 activity. Time limits specified under LUPAA in this case do not apply.

Where a permit is deemed to be granted, the planning authority must, within 7 days of the expiry of the period or any applicable extension, advise the applicant and any person who has made a representation.

If a planning authority fails to determine an application, the applicant may apply to the RMPAT for an order determining the conditions that the permit is granted.

The RMPAT may grant the permit either unconditionally or subject to specified conditions, or in the case of a discretionary use or development, refuse the permit.

A planning authority may make a decision on an application for a permit at any time before the lodging of an application to the RMPAT by the applicant for an order determining the conditions for a permit. The planning authority must serve notice of its decision on the applicant and on everyone who made a representation within 7 days.

Does a permit lapse?

A permit lapses after a period of 2 years from the date that it was granted if the use or development is not substantially commenced within that period.

Can a permit be extended?

If the use or development is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse, a planning authority may grant (once only) an extension of the period during which that use or development must be substantially commenced.

If the planning authority has granted an extension of the permit, the permit lapses after a further period of 2 years if the use or development has not been substantially commenced.

If a fee (eg annual charge) owed to the BEMPC is not paid, the permit does not lapse. The BEMPC may recover the monies as an unpaid debt.

4.2.6 Agreements

LUPAA provides that planning authorities can enter into certain agreements with owners or developers of land. An agreement is a legal contract between a planning authority and an owner of land. An agreement ensures the achievement of specific planning objectives for an area that may not be possible by relying on other statutory processes.

Who can enter into an agreement?

An agreement may be entered into by a planning authority with an owner of land in an area covered by a planning scheme or special planning order. A planning authority may enter into the agreement:

- on its own behalf;
- jointly with any other person; or
- with a person in anticipation of that person becoming the owner of the land. The planning authority is not entitled to apply to have the agreement registered until the person becomes the owner of the land but the agreement is binding on the parties.

What is the effect of an agreement?

An agreement is binding on the parties to the agreement on the day that it is executed.

What can an agreement provide for?

An agreement must be under seal and binds the owner to the covenants specified in the agreement.

An agreement may provide for any one or more of the following matters:

- the prohibition, restriction or regulation of use or development;
- the conditions subject to which the use or development may be undertaken;
- any matter intended to achieve or advance:
  - the objectives listed in Schedule 1 of the LUPAA;
  - any State Policy or draft State Policy upon which a report has been submitted to the Minister;
  - the objectives of the planning scheme or special planning order, or a draft planning scheme that has been publicly exhibited or any amendment to the planning scheme that has been publicly exhibited; or
- any matter incidental to any one or more of the matters listed above.

An agreement must not require or allow anything to be done that would contravene or not comply with a planning scheme, a special planning order or a permit.

What bonds and guarantees are applicable?

An agreement may include a condition that the owner is to deposit with the planning authority:

- a sum of money fixed by or determined in accordance with the agreement; or
- an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement.

The agreement may provide that the sum or part of the sum is forfeited if there is any failure by the owner to carry out the agreement to the satisfaction of the planning authority.

Any money paid must be returned to the owner on a date or dates specified in the agreement to the extent that it has not been forfeited.

Any money payable under this Section is a charge on any land that is the subject of the agreement.

An agreement may include a provision for a payment or other contribution for infrastructure to be made by any party to the agreement.

An agreement may provide that the agreement itself or any specified provision of the agreement comes into operation on or after:

- the coming into operation of a specified amendment to a planning scheme;
- the granting of a permit allowing use or development for a specified purpose;

- the happening of a specified event;
- a specified time; or
- the start or completion of a use or development or a specified part of a use or development.

Lodgment of agreements

The planning authority must lodge a copy of the agreement at the office of the RPDC and must keep a copy of each agreement.

Registration of agreements

A planning authority may lodge with the Recorder of Titles an executed copy of an agreement, together with particulars of title to the land to which the agreement relates.

Where an agreement is registered, the planning authority must, as soon as practicable, lodge with the Recorder notification, in a form approved by the Recorder, of the amendment or ending of the agreement, together with particulars of title to any land to which the agreement relates.

The Recorder must register each agreement and each notification of the amendment or ending of the agreement.

The Recorder may require the planning authority to deposit with the Recorder a plan of any land or part of any land to which an agreement relates.

After the registration of an agreement, any covenant in the agreement runs with the land and the agreement is enforceable between the parties.

When does an agreement end?

An agreement may provide that the agreement ends on or after:

- the happening of any specified event;
- a specified time; or
- the cessation of a use or development for a specified purpose.

An agreement may be ended by the planning authority with the approval of the RPDC or by agreement between the authority and all persons who are bound by any covenant in the agreement.

Can agreements be amended?

An agreement may be amended by agreement between the planning authority and all persons who are bound by any covenant in the agreement.

Where are agreements available for public inspection?

The planning authority must keep a copy of each agreement, indicating any amendment made to it, available at its office for any person to inspect during office hours free of charge.

4.2.7 Combined permit/amendment of planning scheme – Section 43A process

A proposed development may be categorised as a 'prohibited' development under a planning scheme. If the proposed development is 'prohibited' then the development cannot be undertaken, unless:

- the planning scheme is amended; and, as a consequence of this,
- a planning permit is obtained.

Where an application for a permit would not be allowed if the planning scheme were not amended, LUPAA allows a person to request a planning authority to both amend the planning scheme and consider an application for a permit subject to that amendment.

The combined permit and amendment process is commonly referred to as the 'Section 43A process'.

The process removes the need to undertake what are normally two separate processes by combining the planning scheme amendment process with the assessment of an application for a planning permit. The intent of the Section 43A process is to avoid duplication[1] and reduce the assessment time.

The process does not give the development any greater status in that its approval is reliant upon a successful amendment to a planning scheme. All the normal considerations in the planning scheme amendment process are present in the Section 43A process. The Section 43A process simply allows the separate processes to be undertaken concurrently. In fact, the two processes only effectively come together when an application for a permit and the scheme amendment are jointly advertised.

Figure 3 provides a broad overview of the Section 43A process.

4.2.7.1 Section 43A process

How is the Section 43A process initiated?

The process is initiated by a written application to a planning authority requesting that it consider an application for a planning permit at the same time as an amendment to a planning scheme.

[1] In some circumstances an advertising period (where the public has the right to make representation) would be available in each separate process. Under the Section 43A process only one advertising period is necessary.

Figure 3: Process for the concurrent approval of a planning permit and an amendment of a planning scheme

Application	If the proposed development is 'prohibited' then a person can request the planning authority to: • initiate a planning scheme amendment that enables the granting of a planning permit; and • grant a planning permit. The request can be dealt with under a combined permit and amendment process that is commonly referred to as the 'Section 43A process.'
Initiation of amendment	If the planning authority decides to support the proposed amendment, it must initiate it in the normal manner.
Approval of planning permit	Before a draft amendment is publicly exhibited, the planning authority must: • grant the permit unconditionally or subject to conditions or restrictions; or • refuse to grant the permit. The planning authority must consider the granting of a permit in the normal manner (including reference to the Board of Environmental Management and Pollution Control if appropriate), except that it shall do so as if the required planning scheme amendment has been approved. In this case, any approval of a permit by the planning authority is conditional on the planning scheme amendment being approved by the RPDC.
Concurrent assessment	Within 7 days of making its decision to grant or refuse to grant a permit concurrent to a draft amendment, the planning authority must forward details of its decision to the RPDC. The normal exhibition arrangements for a planning scheme amendment apply, but with both the amendment and the permit being concurrently exhibited.
Decision	The RPDC, after considering the report submitted by a planning authority and any hearings conducted in respect to the draft amendment and permit, must: • confirm the planning authority's decision in relation to the permit; or • if the planning authority's decision was to grant a permit: – refuse the permit; or – modify or delete conditions or restrictions attached to the permit or add new conditions or restrictions to the permit; or • if the planning authority's decision was to reject the permit, grant a permit subject to such conditions or restrictions as the RPDC thinks necessary; or • if the RPDC's decision is to reject the draft amendment, refuse the permit. The RPDC reviews the planning authority's decision at the same time it makes its decision to approve, modify, or reject the draft amendment. There are no rights of appeal against the RPDC's decision.

What is the process for a concurrent assessment?

Stage 1 – Planning authority assessment

Planning scheme amendment

Upon receipt of a request to amend a planning scheme, a planning authority has 42 days to determine whether or not to initiate an amendment. In its determination, a planning authority must consider whether the amendment seeks to further the objectives set out in Schedule 1 of LUPAA and has been prepared in accordance with State Policies (Section 32 of LUPAA).

If a planning authority is satisfied that the amendment meets the requirements specified in Section 32, it is 'certified' as meeting those requirements. Within 7 days of certifying the amendment, a planning authority must forward a copy of the amendment to the RPDC.

Where a planning authority resolves not to initiate an amendment the decision is final, but the person who requested the amendment may request the RPDC to review the process by which the planning authority reached its decision.

Application for a planning permit

On receipt of the permit application, a planning authority can (within 28 days of receipt) request additional information regarding the application. Once a planning authority is satisfied that the application is in order, it is then required to determine the application, taking into account:

- the objectives set out in Schedule 1 of LUPAA;
- prescribed matters that are relevant to the use and development; and
- relevant planning scheme provisions.

A planning authority may grant a planning permit for the development subject to such conditions or restrictions it may impose, or refuse the application. The permit will have no effect until it has been confirmed by the RPDC later in the process.

Within 7 days of its decision, a planning authority must forward a copy to the RPDC together with a copy of the permit application, any documentation submitted with the application and if a permit was issued, a copy of that permit.

This process varies if the permit application is one that must be considered by the BEMPC (in accordance with Sections 24 and 25 of the *Environmental Management and Pollution Control Act 1994*). In this case, a planning authority must incorporate any conditions of the BEMPC in the permit. However, if the BEMPC resolves that the application should not proceed, then a planning authority must refuse the permit application.

Where the application for a permit concurrent to a draft amendment has been referred to the BEMPC under Section 24 or Section 25 of EMPCA:

- the planning authority must, not later than 7 days after the expiration of the exhibition period of the draft amendment, forward copies of all representations received in relation to the application for the permit and the planning authority's decision to the BEMPC; and

- the BEMPC must, within 28 days of receiving the representations in relation to the application for the permit and the planning authority's decision, provide a report to the RPDC containing a statement on the merit of each representation and such recommendations in relation to the planning authority's decision that the BEMPC considers necessary.

Stage 2 – Advertising of amendment and permit application

The application and the planning authority's decision (ie a permit and attached conditions, or a decision to refuse a permit) are placed on public exhibition together with the draft amendment of the planning scheme. The planning authority specifies the advertising period (minimum of 21 days).

Representations in relation to both the permit and the planning scheme amendment are made to the planning authority. A planning authority is then required to prepare a report and forward it to the RPDC commenting on the merits of each representation. In particular, a planning authority is required to provide its opinion on whether the decision in regard to the permit application or the draft amendment requires modification in light of the representations. Where there are no representations, a statement to this effect is required.

A copy of the representations must also be sent to the BEMPC if involved. The BEMPC must provide a report to the RPDC within 28 days of receiving representations.

Stage 3 – Determination by the RPDC

The RPDC is required to consider both the draft amendment and the decision of a planning authority in relation to the permit application. If representations are received during the advertising period, the RPDC may hold a hearing into those representations prior to making a decision. The hearing process is the same as for a normal amendment of a planning scheme.

The RPDC, if it is to give its approval to a draft amendment, is required to do so within 3 months of receipt of a planning authority's report.

The RPDC's decision to reject, confirm or amend a planning authority's decision on the permit is made at the same time as a decision to reject, modify, or approve the planning scheme amendment. If the RPDC rejects the draft amendment, the permit application is also rejected. Where the RPDC directs a planning authority to substantially alter the planning scheme amendment, the revised amendment must be certified and advertised again.

A permit issued under this Division takes effect on the date of the RPDC's decision. There is no right of appeal against the RPDC's decision.

What if additional information is required?

A planning authority may, within 28 days from the day that it receives an application for a permit concurrent to a draft amendment, require the applicant to provide it with additional information before it considers the application.

If the planning authority requires the applicant to provide additional information, approval periods for the amendment to the planning scheme do not run while the request for information has not been answered to the satisfaction of the planning authority.

Where an application for a permit has been referred to the Board of Environmental Management and Pollution Control for assessment under Sections 24 and 25 of the *Environmental Management and Pollution Control Act 1994*, the BEMPC may, by written notice to the applicant within 28 days of the referral date, require the applicant to provide it with additional information.

The 10 week assessment period for a referral of such a permit to the BEMPC, or such longer period as the Minister may allow, does not run while the request for information has not been answered to the satisfaction of the BEMPC.

When does a permit concurrent to an amendment take effect?

Where the RPDC makes a decision which confirms, or results in, a permit being granted, the permit takes effect on the date of the RPDC's approval of the draft amendment. The day on which the permit takes effect may be specified in the permit as being a day later than the day on which the permit would otherwise have taken effect.

Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.

A permit lapses after a period of 2 years from the date on which it was granted if the use or development in respect of which it was granted is not substantially commenced within that period.

If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.

Can a permit be corrected or amended?

A planning authority may correct a permit determined concurrently with an amendment to a planning scheme, if the permit contains:

- a clerical mistake or omission; or
- a miscalculation of figures or mistake in the description of any person, thing or property referred to in the permit.

The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit determined concurrently with an amendment to a planning scheme.

The planning authority may amend the permit if it is satisfied that the amendment:

- does not change the effect of any decision of the RPDC;
- will not cause an increase in detriment to any person; and

- does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.

The planning authority must give written notice of the amendment to:

- the person who requested the permit to be amended;
- if that person is not the owner of the land, the owner;
- the owner or occupier of any property which adjoins the land;
- any representor to the application for the permit; and
- the Board of Environmental Management and Pollution where the permit contains a condition or restriction required under Section 25(5) EMPCA.

When do amendments to permits take effect?

If a planning authority amends a permit, the amendment takes effect on the day on which it is made by the planning authority or, if there is a right of appeal against the amendment, at the expiration of 14 days from the day on which the notice of the amendment was served on the person who has the right of appeal.

If the person who requested an amendment to a permit:

- is the only person with a right of appeal in relation to the amendment and does not intend to exercise that right, the use or development in respect of which the amendment is made may be commenced before the expiration of the 14 day notice period;
- proposes to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period, the person must notify the planning authority in writing of his or her intention to commence that use or development; and
- notifies the planning authority of their intention to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period, the person is taken to have forfeited the right to appeal in relation to the amendment.

If an appeal has been instituted against the planning authority's decision to amend a permit, the amendment does not take effect until the determination or abandonment of the appeal.

If the amendment requires an agreement to be entered into, the amendment does not take effect until the day on which the agreement is executed.

4.2.8 Appeals

LUPAA provides a right of appeal to a range of administrative decisions, including those concerning:

- planning permits;
- environmental protection notices;
- agreements between planning authorities and applicants for permits; and
- requirements for additional information.

Appeals are heard by the Resource Management and Planning Appeal Tribunal (RMPAT). The appeal process and the role of the Tribunal are outlined in detail in Section 6, page 53 of this Guide.

4.2.8.1 Appeals against permits

Can a planning authority's decision regarding a permit be appealed against?

If a planning authority refuses to grant a permit, or grants a permit subject to conditions or restrictions, the applicant for the permit may appeal to the RMPAT against the decision of the planning authority within 14 days of the notice being served.

If a planning authority grants a permit, any person who has made a representation, under Section 57(5) of LUPAA, may appeal to the RMPAT against the grant of the permit within 14 days after either:

- the day that the notice of the planning authority's decision was served on that person; or
- the day that notice was served on that person before the lodging of an application to the RMPAT for an order determining the conditions on which the permit is granted.

Any conditions, restrictions or direction by the BEMPC to refuse a permit are incorporated into the planning authority's decision. Any appeal is initially against the planning authority, which may request assistance of the BEMPC for any of its directions.

If an appeal has been instituted, any other person whose interests are affected may apply, in writing, to the RMPAT to be heard despite not having submitted a representation.

Determination of appeals against permits

After hearing an appeal against a grant of a permit, a refusal to grant a permit or a grant of a permit subject to conditions or restrictions, the RMPAT may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993:*

- direct the planning authority to grant the permit;
- direct the planning authority to grant the permit and direct the planning authority that the permit must or must not contain any specified conditions; or
- direct the planning authority not to grant the permit.

Where the RMPAT has determined an appeal, an application for a permit in respect of a use or development that is substantially the same as the use or development to which the appeal related may not, without the leave of the RMPAT, be made within a period of 2 years from the date that the RMPAT made its decision.

Can a planning authority's decision regarding an amendment to a permit be appealed against?

Within 14 days of the planning authority giving written notice of an amendment made to a permit, any person to whom the planning authority is required to give notice of the amendment may appeal to the RMPAT against the decision.

Determination of appeals against an amendment to a permit

After hearing an appeal against the amendment of a permit, the RMPAT may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993:*

- direct the planning authority not to amend the permit; or
- direct the planning authority to amend the permit in the manner specified by the RMPAT.

Failure of planning authority to determine an application for a permit

Where a planning authority fails to determine an application for a permit within the required time, a permit is deemed to be granted subject to conditions to be determined by the RMPAT, unless the application is being assessed as a Level 2 activity under the *Environment Protection and Pollution Control Act 1995*. The applicant may apply to the RMPAT for an order determining the conditions on which the permit is granted if the planning authority fails to determine an application.

The RMPAT may grant the permit unconditionally or subject to specified conditions or in the case of a discretionary use or development, refuse the permit.

4.2.8.2 Appeals against environment protection notices

Can an environment protection notice be appealed against?

A person who is served an environment protection notice has 14 days from the date that the notice is served to appeal to the RMPAT. This right of appeal also applies to persons who are served a notice amending or revoking any requirement or condition of an environment protection notice.

When a copy of an environment protection notice has been served by the Director on a person or forwarded to the owner of the land, or when a planning authority officer serves an environment protection notice on a person, the person or landowner may appeal to the RMPAT against the notice or any requirement contained in the notice within 14 days.

Determination of appeals against the issue, amendment or revocation of an environment protection notice

After hearing an appeal against the issue, amendment or revocation of an environment protection notice, the RMPAT may:

- affirm the decision appealed against; or
- vary the decision appealed against; or
- set aside the decision appealed against, and:
  - make a decision in substitution for the decision appealed against; or
  - require the relevant authority to reconsider their decision in accordance with any directions or recommendations of the RMPAT.

4.2.8.3 Appeals against agreements

Can an agreement be appealed against?

An owner of land may apply to the RMPAT for an amendment to a proposed agreement if:

- under a planning scheme or special planning order, use or development for specified purposes is conditional upon an agreement being entered into; and
- the owner objects to any provision of the agreement.

Determination of the appeal

The RMPAT may approve the proposed agreement with or without amendment.

4.2.8.4 Appeals against a requirement for additional information

Can an applicant appeal against a requirement for additional information?

An applicant for a permit may appeal to the RMPAT against a requirement by a planning authority for additional information within 14 days after the day that notice was served.

Determination of appeals against a requirement for additional information

After hearing an appeal, the RMPAT may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993*, direct that additional information be supplied or that the authority proceed on the basis that the information was supplied.

4.2.9 Enforcement of planning controls

Planning authorities are responsible for enforcing the planning controls specified in planning schemes or special planning orders. These controls determine all uses and developments that may be undertaken within the area to which the planning scheme or special planning order relates. The controls must be applied whether the use or development is undertaken by the planning authority or by any other person.

The Director of Environmental Management has primary responsibility for the enforcement of conditions required by the EMPC Board to be included on a planning authority permit.

The reasonable costs and expenses incurred in taking action may be recovered as a debt from the person who failed to comply with the requirements of the environment protection notice.

4.2.9.1 Contravention of planning controls

What uses and developments are considered contraventions?

A person must not use land in a way, or undertake development or do any other act, that:

- is contrary to a State Policy, a planning scheme or special planning order;
- impedes or obstructs the execution of any such scheme or order; or
- constitutes a breach of a condition or restriction of a permit imposed by a planning authority pursuant to any such scheme or order or a determination of the RMPAT.

A person who contravenes is guilty of a punishable offence.

Where a person is convicted of an offence, the court may, in addition to any fine imposed:

- order that the person pay to the planning authority any reasonable costs incurred by the authority to ensure that the use or development is in accordance with the relevant planning scheme, special planning order, permit or determination; and
- direct that payment of the amount so ordered be paid in accordance with the *Justices Act 1959*.

The application extends to a permit, condition or restriction attaching to a permit under a planning scheme or special planning order where the scheme or order was in force immediately before the commencement of this Act and notwithstanding that the permit or the condition or restriction, if any, was imposed before the commencement.

Nothing is to be construed as rendering unlawful any use or development that was completed pursuant to a permit in force before the commencement of LUPAA.

4.2.10 Enforcement orders

Who can apply for a civil enforcement order?

Where a person contravenes or fails to comply with the planning controls under LUPAA, the RPDC, a planning authority or a person who has, in the opinion of the RMPAT, a proper interest in the subject matter, may apply to the RMPAT for an order.

The application for an order may be made ex parte and, if the RMPAT is satisfied that there are sufficient grounds, it must issue a summons requiring the respondent to appear before the RMPAT to show cause why an order should not be made.

If an application under this section is made by a person other than the planning authority in whose municipal area is situated the land to which the application relates, the planning authority is taken to be a party to the application.

At any time after receiving an application made under this section by a person other than the planning authority in whose municipal area is situated the land to which the application relates, the RMPAT may direct that the planning authority be made an applicant in the application.

At any time after receiving an application made under this section by a person other than the RPDC, the RMPAT on the request of the RPDC may direct that the RPDC be made an applicant in the application.

Enforcement order process

The RMPAT hears the applicant, the respondent and any other person who has a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings.

If the RMPAT is satisfied that the respondent has breached a provision, or if the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard, the RMPAT may make an enforcement order.

What can an enforcement order do?

An enforcement order can:

- require the respondent to temporarily or permanently refrain from the act, or course of action, that constitutes a breach of LUPAA;
- preclude the respondent from carrying out any use or development in relation to the land to which the breach relates for a period specified by the RMPAT;
- require the respondent to make good the contravention or default in a manner, and within a period, specified by the RMPAT; and
- require a number of additional actions if issued under EMPCA.

Any person with a legal or equitable interest in land to which an application relates is entitled to appear and be heard in proceedings based on the application before a final order is made.

Can the RMPAT make a temporary civil enforcement order?

If the RMPAT is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make a temporary order, the RMPAT may make such an order.

A temporary order:

- may be made on a ex parte application before summons has been issued;
- may be made subject to such conditions as the RMPAT thinks fit; and
- is not to operate after the proceedings in which it is made are finally determined.

The Tribunal will require an undertaking from the applicant in relation to any costs or damages that may arise as a result of a temporary order being granted when the activities being undertaken were in fact lawful.

Contravention of an enforcement order

A person who contravenes, or fails to comply with, an enforcement order or a temporary enforcement order is guilty of an offence.

Where the RMPAT makes an enforcement order and the respondent fails to comply with the order within the period specified by the RMPAT, the RPDC or a planning authority may, by leave of the RMPAT, cause any work contemplated by the order to be carried out, and recover the costs of that work, as a debt, from the respondent. There is a one year time limit for commencing proceedings under LUPAA.

The Director of Environmental Management may carry out works and recover the costs of that work.

Civil enforcement proceedings under EMPCA may be commenced at any time within 3 years of the date of the relevant event.

The RMPAT may, if it thinks fit, adjourn proceedings under this section in order to allow the respondent to make an application for a permit that should have been but was not made, or to remedy any other default.

What is the role of the RMPAT?

The RMPAT may exercise the powers conferred on it in relation to any use or development of land as if the application was the hearing of an appeal.

For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application for a civil enforcement order is deemed to be an appeal.

The RMPAT must make such orders in relation to the cost of proceedings under this section as it thinks fit and in making such orders must take into account:

- the result of the proceedings;
- whether a party has raised frivolous or vexatious issues at the hearing;
- whether any party has unnecessarily or unreasonably prolonged the hearing or increased the costs of it; and
- the capacity of the parties to meet an order for costs.

If the RMPAT believes that an application is frivolous or vexatious, the RMPAT must dismiss the application and order the applicant to pay an amount determined by the RMPAT as being the costs of the proceedings in relation to the application and the costs of any person who has, in the opinion of the RMPAT, proper interest in the subject matter of the proceedings and desires to be heard.

An order for costs may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the order.

Proceedings for the enforcement of an order may be taken as if the order were a judgment of the court in which the order is registered.

Proceedings may be commenced at any time within 12 months after the date of the alleged contravention of, or failure to comply with, a provision of part 4 of LUPAA.

Can an appeal be made against a decision of the RMPAT with regard to a civil enforcement order?

Subject to the Rules of the Supreme Court, an appeal can be made to the Supreme Court against:

- an order of the RMPAT made in the exercise of civil enforcement orders; or
- a decision by the RMPAT not to make a civil enforcement order.

An appeal must be instituted within 30 days of the date of the decision or order subject to appeal or such longer periods as may be allowed by the Supreme Court.

4.2.11 Compensation

In some circumstances, compensation is available to those affected by decisions related to planning schemes, special planning orders and permits.

Specifically, the owner or occupier of any land may claim compensation from a planning authority for financial loss suffered as the natural, direct and reasonable consequence of:

- the land being set aside for a public purpose under a planning scheme or special planning order;
- the land being shown as set aside for a public purpose in a proposed amendment to a planning scheme that has been publicly exhibited;
- access to land being restricted by the closure of a road by a planning scheme or special planning order; or

- a failure by the planning authority to grant a permit for the land on the ground that the land is or will be needed for a public purpose.

A person cannot claim compensation under LUPAA if the planning authority has purchased or compulsorily acquired the land or part of the land.

Where a person would be entitled to claim compensation in respect of any matter or thing under LUPAA and also under any other enactment, the person is not entitled to receive compensation both under LUPAA and under the other enactment. Nor is a person entitled to receive any greater compensation under LUPAA than the person would be entitled to receive under the other enactment.

4.2.11.1 Provisions relating to compensation

What power does the planning authority have to withdraw or modify a planning scheme after compensation is determined?

At any time within 1 month after the determination of the compensation, the planning authority may give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the planning scheme or special planning order that gave rise to the claim for compensation.

Not later than 3 months after giving notice, the planning authority must:

- where the notice relates to a planning scheme, submit an amendment of the planning scheme for the approval of the RPDC, carrying into effect the withdrawal or modification; and
- where the notice relates to a special planning order, make a substitute special planning order in accordance with the notice.

On the coming into operation of the amendment of the planning scheme or the substitute special planning order, and on payment by the planning authority of the claimant's costs of and in connection with the making of the claim or award for compensation, the judgment, order or award for payment of compensation is to be discharged without prejudice to the right of the claimant to make a further claim for compensation in respect of the planning scheme as amended or the substitute special planning order.

Enforcement of judgments for compensation

Compensation is not to be enforced before the expiration of 1 month from the date of the determination, or if a notice has been given by the planning authority of its intention to withdraw or modify planning scheme or special planning order provisions, until after the expiration of 3 months from the date of the notice or, if within that period a variation of the scheme is submitted to the RPDC, until that variation has either come into operation or been disapproved by the RPDC.

When is a planning authority indemnified for liability to pay compensation?

Where an entitlement to compensation arises out of the inclusion in a planning scheme or special planning order, at the written request, or with the written consent, of a relevant agency, of a provision reserving land for a public purpose, the planning authority is entitled to be indemnified by the State or the relevant agency, for the payment of that compensation.

Any sum to which an authority is entitled may be recovered as a debt due to the planning authority in any court of competent jurisdiction.

The role of the RMPAT

An owner of land may apply to the RMPAT for an amendment to a proposed agreement if:

- under a planning scheme, a special planning order or a permit, use or development for specified purposes is conditional upon an agreement being entered into; and
- the owner objects to any provision of the agreement.

The RMPAT may approve the proposed agreement with or without amendments.

For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993* an application for an amendment to a proposed agreement is deemed to be an appeal.

4.2.11.2 Transitional provisions

A number of transitional provisions apply regarding the application of LUPAA. These are outlined below.

References to the Environment Protection Act 1973

Any reference, in any law, instrument, or document, to the *Environment Protection Act 1973* is to be taken as a reference to EMPCA. This would affect planning schemes, special planning orders and permits.

Registration of licences

A licence or registration current at the commencement of EMPCA is taken to be a permit under LUPAA. Any conditions on the licence become permit conditions.

If there is inconsistency between a permit condition (previously a scheduled premises licence condition) and a condition on a previously issued permit, the condition from the previous scheduled premises licence will prevail.

Any reference in a previous scheduled premises licence condition to the Director of Environmental Control is to be taken as a reference to the Director of Environmental Management.

5. Resource Planning and Development Commission Act 1997

5.1 Overview

The Resource Planning and Development Commission (RPDC) is established as an independent statutory body under the *Resource Planning and Development Commission Act 1997*. The RPDC plays an important role in the resource management and planning system. Its principal functions are:

- to assess and approve Local Government planning schemes and planning scheme amendments;
- to assess projects of State significance;
- to assess draft State Policies;
- to prepare the Tasmanian State of the Environment Report; and
- to conduct inquiries into the use of public land.

The planning responsibilities of the RPDC are centred around Local Government planning schemes. In particular, the RPDC has a statutory obligation to encourage public involvement and public representations on planning scheme proposals, and planning scheme amendments.

In exercising its functions, the RPDC, when required, conducts public hearings. These hearings address representations that were lodged by the public to either a draft amendment or draft planning scheme that had been placed on exhibition.

Constitution of the RDPC

Membership of the RPDC represents a range of community, industry, conservation and Local and State Government interests and is headed by a full-time Executive Commissioner and five part-time Commissioners.

The Governor appoints the members of the RPDC.

What are the functions of the RPDC?

The RPDC has functions imposed and powers conferred on it under a number of Acts.

Land Use Planning and Approvals Act 1993:

- the assessment and approval of planning schemes and planning scheme amendments; and
- the assessment of Section 43A applications; and
- the assessment and approval of special policy orders; and
- the assessment of planning directives.

State Policies and Projects Act 1993:

- the assessment of projects of State significance;
- the assessment of draft State Policies and amendments to State Policies; and
- the preparation of the Tasmanian State of the Environment Report.

Public Land (Administration and Forests) Act 1991:

- conduct of inquiries into the use of public land.

National Parks and Reserves Management Act 2002:

- review of draft management plans

The RPDC also has minor functions imposed under the following Acts:

- *Aboriginal Lands Act 1995;*
- *Conveyancing and Law of Property Act 1884;*
- *Forestry Act 1920;*
- *Local Government (Building and Miscellaneous) Act 1993;* and
- *Marine Farming Planning Act 1995.*

Directions of the Minister

The Minister may give directions in writing to the RPDC. The RPDC must perform its functions and exercise its powers in accordance with those directions.

The Minister may not give directions to the RPDC in relation to the outcome of the performance of any function which requires it to inquire, advise, make recommendation, report or make a determination following a public hearing.

The Minister must cause the directions to be published in the *Gazette* within 14 days from the date on which they were given.

Delegation of functions

The RPDC may delegate any of its functions or powers which relate to a particular region of the State to a prescribed body. The RPDC may not delegate its power of delegation.

5.2 Functions of the RPDC

Integrated assessment of projects of State significance

A project of State significance takes a major development proposal outside the planning process established under the *Land Use Planning and Approvals Act 1993*.

The RPDC is responsible for making recommendations on whether the project should proceed, and if so, on what conditions.

Although the RPDC makes recommendations to government about a project of State significance, it is the government of the day that makes the final decisions.

Assessment of draft planning schemes and planning scheme amendments

This process is outlined in the previous section on the *Land Use Planning and Approvals Act 1993*.

Assessment of Section 43A (LUPAA) applications

This process is outlined in the previous section on the *Land Use Planning and Approvals Act 1993*.

Assessment of and approval of special planning orders

This process is outlined in the previous section on the *Land Use Planning and Approvals Act 1993*.

Assessment of planning directives

This process is outlined in the previous section on the *Land Use Planning and Approvals Act 1993*.

Public land use inquiries

The Government may direct the RPDC to conduct inquiries into the use of public land.

In conducting an inquiry the RPDC investigates the resources of the land and publishes reports for public comment.

Once the inquiry has been completed, the RPDC makes its recommendations to the Government.

Review of draft management plans

By virtue of the *National Parks and Reserves Management Act 2002*, the Minister for Tourism, Parks, Heritage and the Arts may direct the Commission to review representations received on a draft management plan for reserved land, and the report prepared by the Director of National Parks and Wildlife.

The Commission may conduct a hearing if it considers that a hearing would assist its consideration of the representations.

The Commission is required to submit a report to the Minister and give public notice in the *Gazette* of the locations at which copies of the report are available for public inspection.

Hearings conducted by the RPDC

A hearing conducted by the Commission is subject to Part 3 of the *Resource Planing and Development Commission Act 1997*.

The hearing process is the vehicle by which the Commission seeks to be better informed and gain further information about the issues raised in representations. The hearing process is also an opportunity for representors to present their argument to the Commission. It is intended to be exploratory and constructive with adversarial behaviour minimised. The hearings are inquisitorial by nature, which means that the Commission is at liberty to ask questions and seek the necessary information required. However, being inquisitorial in nature does not preclude parties from being cross-examined by other parties.

People are encouraged to represent themselves and to be present at the hearing. A party to the hearing may appear in person or be represented by some other person. However, the Commission may refuse to allow a party to the hearing to be represented if the Commission is satisfied that another party to the hearing would be significantly disadvantaged by that representation.

The Commission has the flexibility to determine the procedure of the hearings. Hearings are conducted in an informal manner. The rules of natural justice must be observed, however, the Commission is not bound by the rules of evidence.

Prior to some hearings the Commission will hold a short hearing to deal with preliminary matters. This is commonly called a 'directions hearing.' A directions hearing is an administrative process to assist in the preparation and organisation of the hearing.

If a representor objects to making a submission in public and the Commission is satisfied that the submission is of a confidential nature, and the interest in confidentiality is greater than the interest in having the evidence taken in public, the Commission may take the evidence in private.

Representation at hearings

A party to a hearing may appear in person or be represented by some other person.

The RPDC has the power to refuse to allow representation if the RPDC is satisfied that another party to the hearing would be significantly disadvantaged by that representation.

6. Resource Management and Planning Appeal Tribunal Act 1993

The Resource Management and Planning Appeal Tribunal (RMPAT) is an independent statutory body set up under the *Resource Management and Planning Appeal Tribunal Act 1993*.

The RMPAT resolves appeals against a wide range of administrative acts and decisions. The RMPAT can also make orders protecting environmental or planning rights and values.

The objectives of the RMPAT are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with these objectives; and
- promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in Tasmania.

The Tribunal hears appeals under the following Tasmanian Acts:

- *Land Use Planning and Approvals Act 1993;*
- *Environmental Management and Pollution Control Act 1994;*
- *Historical Cultural Heritage Act 1995;*
- *Living Marine Resources Management Act 1995;*
- *Marine Farming Planning Act 1995;*
- *Public Health Act 1997;*
- *Strata Titles Act 1998;*
- *Threatened Species Protection Act 1995;* and
- *Water Management Act 1999*.

Appeals must be lodged with the correct body:

- appeals under the *Strata Titles Act 1998* are lodged with the Recorder of Titles; and
- all other notices of appeal are lodged with the RMPAT.

The time for appealing a planning permit or other relevant decisions is set by the Act under which an appeal is brought. If that Act does not set the time, then the period is 14 days from the date on which the decision was notified to the applicant or other person.

The appeal process administered by the RMPAT is illustrated in Figure 4.

Figure 4: Overview of the RMPAT appeal process

Lodge appeal ↓	Appeals must be lodged with the correct body. • appeals under the *Strata Titles Act 1998* must be lodged with the Recorder of Titles; • all other notices of appeal are lodged with the Tribunal.
Directions hearing	A directions hearing will normally be held by the Tribunal approximately 2 weeks after the notice of appeal is lodged. At this hearing the Tribunal will issue directions relating to the parties to the appeal and the process to be followed. The hearing also clarifies the issues for the appeal and seeks grounds for possible mediation.
Mediation	Most appeals to the Tribunal are resolved by mediation. Only a minority go to a contested hearing. The Tribunal provides expert and experienced mediators to help the parties resolve the difference between them as far as possible.
Contested hearing	A contested appeal hearing is held when mediation fails or the nature of the appeal is such that mediation is not appropriate or possible. In a contested appeal hearing the Tribunal hears evidence from all parties to the appeal. The Tribunal makes its decision on this evidence.
Decision	The Tribunal must provide each party with written notification of the reason for its determination of an appeal. The Tribunal will consider any written agreement that may result from the mediation conference. If the terms of the agreement are within the Tribunal's power, it will ratify the agreement without requiring a formal appeal hearing. Tribunal decisions can be appealed to the Supreme Court only on questions of law. Such appeals must be made within 28 days of the Tribunal's decision.

6.1 Types of appeals

Appeals against a requirement for additional information

An applicant for a permit may appeal to the RMPAT within 14 days against a requirement by a planning authority for additional information.

After hearing an appeal, the RMPAT may direct that additional information be supplied or that the planning authority proceed with the information already supplied.

Permit appeals

Where a planning authority fails to determine an application for a permit within the required time, a permit is deemed to be granted subject to conditions to be determined by the RMPAT, unless the application is being assessed as a level 2 activity under the *Environment Protection and Pollution Control Act 1995*.

The applicant may apply to the RMPAT for an order determining the conditions on which the permit is granted if the planning authority fails to determine an application.

The RMPAT may grant the permit unconditionally or subject to specified conditions or in the case of a discretionary use or development, refuse the permit.

If a planning authority refuses to grant a permit or grants a permit subject to conditions or restrictions, the applicant for the permit may appeal to the RMPAT.

If a planning authority grants a discretionary permit, any person or relevant agency who has made a representation, may appeal to the RMPAT.

After hearing an appeal, the RMPAT may, in the case of an appeal against a grant of a permit, a refusal to grant a permit or a grant of a permit subject to conditions or restrictions:

- direct the planning authority to grant the permit;
- direct the planning authority to grant the permit and direct the planning authority that the permit must or must not contain any specified conditions; or
- in the case of an application for a discretionary permit, direct the planning authority that a permit must not be granted.

Where the RMPAT has determined an appeal, an application for a permit in respect of use or development that is substantially the same as the use or development to which the appeal related may not, without the leave of the RMPAT, be made within a period of 2 years from the date that the RMPAT made its decision.

Appealing a planning authority's notification of an amendment made to a planning permit

Within 14 days of the planning authority giving written notice of an amendment made to a permit, any of the following persons may appeal to the RMPAT against the decision:

- the person who requested the permit to be amended;
- if that person is not the owner of the land, the owner;
- the owner or occupier of any property which adjoins the land;
- any representor to the application for the permit; and
- the Board of Environmental Management and Pollution where the permit contains a condition or restriction required under Section 25(5) EMPCA.

After hearing an appeal, the RMPAT may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* direct the planning authority to amend the permit in the manner specified by the RMPAT.

Appealing an environmental protection notice

Where the Director or a planning authority causes an environment protection notice to be served, the person or landowner has 14 days to appeal to the RMPAT.

A person aggrieved by a decision of the Board of Environmental Management and Pollution Control may appeal to the RMPAT.

Heritage works

The applicant or any person who made a representation may appeal against the approval or refusal of a heritage works application.

The appeal must be made within 14 days of a notice given of the approval or refusal by the planning authority, or after 42 days from the date of lodgment of the application with the planning authority if a decision has not been made.

The RMPAT may:

- confirm the approval or refusal;
- vary or substitute any condition or restriction of the approval;
- set aside the decision to approve or refuse; or
- remit the matter to the Heritage Council or planning authority for reconsideration.

The RMPAT may make any order or give any direction or recommendation when determining an appeal.

Appeals to the RMPAT may also be made against:

- entry in or removal from the Heritage Register; or
- a notice to take or stop specified actions.

Civil enforcement order appeals

The RPDC, a planning authority or a person who has a proper interest in the subject matter may apply to the RMPAT for an order where a person contravenes or fails to comply with a provision of LUPAA.

Where a person has engaged, is engaging or proposing to engage in conduct in contravention of the EMPCA, or has refused or failed, or is refusing or failing, or is proposing to refuse or fail to take a required action, or has caused environmental harm, then the Director of Environmental Management, a planning authority or a person who has a proper interest in the subject matter, may apply to the RMPAT for an order.

Civil enforcement proceedings under EMPCA may be commenced at any time within three years of the date of the relevant event.

An application for a civil enforcement order is deemed to be an appeal under the RMPAT Act.

Amendments to a proposed agreement appeals

An owner of land may apply to the RMPAT for an amendment to a proposed agreement. The RMPAT may approve the proposed agreement with or without amendments.

An application for an amendment to a proposed agreement is deemed to be an appeal under the RMPAT Act.

6.2 *Lodging an appeal*

Persons who may lodge an appeal are specified by the Act under which the appeal is brought. Any person whose interests are affected by a decision may apply to the RMPAT to be made a party to an appeal.

What is the time frame for lodging an appeal?

The time for appealing a decision is set by the Act under which the appeal is brought. If the Act does not specify the time, the period is 14 days from with the decision was served.

How is an appeal lodged?

An appeal must be lodged in writing and, to be valid, be accompanied by the required fee which is subject to variation on a yearly basis. Application forms are available from the RMPAT.

Who are the parties to an appeal?

The parties to an appeal are:

- the person who seeks a review of the original decision;
- the person who made the decision appealed against;
- the person whose initial action gave rise to the decision appealed against; and
- any other person who has been made a party to the appeal following application to the RMPAT.

If an appeal has been instituted, any other person whose interests are affected may apply, in writing, to the RMPAT to be heard despite not having submitted a representation.

Is representation required?

At the hearing of an appeal before the RMPAT, a party to the appeal may appear in person or be represented by some other person.

In exceptional circumstances the RMPAT may refuse to allow a party to the appeal to be represented if it is satisfied that another party to the appeal would be significantly disadvantaged by that representation.

Notification of appeals

The RMPAT will notify each party to an appeal by letter. In addition, the RMPAT will publish a notice of the appeal and the date for the directions hearing in the local newspaper.

6.2.1 The appeal process

Directions hearing

A directions hearing will normally be held by the RMPAT approximately 2 weeks after the notice of appeal is lodged.

Applicants are required to submit a list of the issues that they wish to raise in the appeal. This list is to be in summary form and 5 copies are required by the RMPAT.

At a directions hearing the RMPAT makes directions as to the following matters:

- applications to be joined as a party;
- the issues that may be raised in the appeal;
- whether, when and where a mediation conference will be held;
- the date, time and place for the final hearing of the appeal are set;
- the necessity for the parties to put their evidence in writing, and to give copies of that evidence to the other parties and to the RMPAT; and
- the provision of documents or other information to the RMPAT and to each other party.

Mediation conference

Before hearing an appeal, the RMPAT must consider whether the appeal could be settled expeditiously by the use of mediation.

The RMPAT may, on its own motion or on the motion of a party to the appeal, direct the parties to the appeal to mediation using the services of an approved mediator.

Proceedings on an appeal may be delayed until any mediation has been completed.

Contested hearings

The chairperson of the RMPAT may direct that a conference of the parties to an appeal be held. A conference is presided over by a presiding member or another person performing duties on behalf of the RMPAT.

If a conference is held and agreement is reached between the parties, and the terms of the agreement are written and signed by the parties, and if the RMPAT is satisfied that those terms are within its powers, the RMPAT may make a decision in accordance with those terms without holding a hearing.

At the hearing of an appeal before the RMPAT, evidence about anything that happens at a conference in relation to the appeal is inadmissible.

If a conference in relation to an appeal is presided over by a member, and a party to the appeal who was present at the conference notifies the RMPAT before, or at the start of, the hearing that the party objects to the member participating in the hearing, the member is not entitled to be a member of the RMPAT for the purposes of that appeal.

Determination of appeals

The RMPAT must make a decision in writing that affirms, varies, or sets aside the decision appealed against. If a decision is set aside, the RMPAT may make a decision in substitution or remit the matter for reconsideration in accordance with any direction or recommendation of the RMPAT.

Each party to the appeal will be notified of the decision as soon as practicable after the making of the decision. The RMPAT must provide each party with written notification of the reasons for its determination of an appeal.

How long will the appeal process take?

The RMPAT must hear and determine an appeal within 90 days of the appeal being instituted or within a longer period with the approval of the Minister.

6.3 *Decisions of the RMPAT*

What is the effect of a decision?

Decisions of the RMPAT are legally binding. A decision will come into effect 10 days after it is made or on a later day as specified in the decision.

Appealing a decision of the RMPAT

Decisions of the RMPAT may be appealed to the Supreme Court. Such appeals can only be made on questions of law and must be instituted within 28 days of the RMPAT making its final decision. The Supreme Court may extend this period.

The Supreme Court must hear and determine an appeal and may make such orders as it considers appropriate. The orders that may be made by the Court include:

- affirming the decision of the RMPAT;
- setting aside the decision of the RMPAT and making a decision in substitution; and
- remitting the matter for reconsideration in accordance with any directions of the Supreme Court.

7. State Policies and Projects Act 1993

7.1 Overview

The *State Policies and Projects Act 1993* provides for the making of State Policies (Tasmanian Sustainable Development Policies), the integrated assessment of projects of State significance and for State of the Environment Reports.

The RPDC has the statutory responsibility for the assessment of draft State Policies, projects of State significance and production of consolidated State of the Environment Reports.

7.2 State Policies

State Policies are the key to resolving the longer-term issue of developing resources and policy making for the benefit of the State. State Policies can be made only in relation to issues of genuine State significance, so they cannot be used simply to override local government decisions. They must seek to ensure a consistent and co-ordinated approach throughout the State, and must incorporate the minimum amount of regulation necessary to achieve their objectives.

The *State Policies and Projects Act 1993* establishes the process to put in place State Policies in relation to the Resource Management and Planning System of Tasmania.

A State Policy:

- must seek to further the objectives of the RMPS;
- may be made only where there is a matter of State significance to be addressed;
- must seek to ensure that a consistent and co-ordinated approach is maintained throughout the State; and
- must incorporate the minimum amount of regulation necessary to achieve its objectives.

State policies may relate to:

- sustainable development of natural and physical resources;
- land use planning;
- land management;
- environmental management;
- environmental protection; or
- any other matter that may be prescribed.

What can a State Policy provide for?

A State Policy may be made for any issue that is of State significance and is consistent with the objectives of the RMPS.

Who can prepare a State Policy?

A draft State Policy can be prepared by any person or any Minister in relation to their proposal. The person or Minister must forward the draft State Policy to the responsible Minister who may refer it to the RPDC.

How is a State Policy approved?

The responsible Minister gives a written direction to the RPDC to prepare a report on the draft State Policy.

Agencies may give their views to the RPDC on any matters they wish to be incorporated into the State Policy.

The RPDC must place on public exhibition for a minimum period of 8 weeks a copy of the draft State Policy and its report on agencies' views. Representations may be made in relation to the draft State Policy. The RPDC considers the representations and may hold public hearings.

The RPDC may make modifications to the draft State Policy.

The RPDC submits its report on the draft State Policy to the responsible Minister and makes its report publicly available.

The responsible Minister (in consultation with Cabinet) may recommend to the Governor that the State Policy be made.

When the Governor has made the State Policy, it is publicly notified. It has no effect until it has been approved by both Houses of Parliament.

What is an interim State Policy?

On the advice of the responsible Minister that a State Policy should come into operation without delay, the Governor may declare that the draft State Policy operate on a temporary basis at any time from the draft State Policy being placed on public exhibition.

Who implements a State Policy?

The responsible Minister may delegate, in writing, the implementation of a State Policy to another Minister.

Who administers a State Policy?

A State Policy may be administered by the agency that prepared the draft State Policy or as otherwise stated in the Policy.

Who is affected by a State Policy?

A State Policy is binding on any person, State Government agencies, public authorities and planning authorities.

What effect does a State Policy have on planning schemes and special planning orders?

Planning schemes are void to the extent of any inconsistency with the State Policy, and must be amended if such inconsistency arises. New planning schemes must be prepared in accordance with State Policies.

Contravention of a State Policy

A person contravening or failing to comply with a State Policy may be convicted of an offence.

Review of State Policies

The responsible Minister must review State Policies at least once every five years to ensure that the objectives of the Resource Management and Planning System of Tasmania are achieved to the maximum extent possible in light of changing circumstances.

Amendment of State Policies

Where on the advice of the RPDC the responsible Minister determines that a proposed amendment does not constitute a significant change to the State Policy, the Minister must:

- give notice in the *Gazette* specifying the details of the proposed amendment and that the Minister considers that it does not constitute a significant change to the State Policy; and
- lay before each house of Parliament the notice and the advice provided to the Minister by the RPDC.

Where on the advice of the RPDC the responsible Minister determines that a proposed amendment constitutes a significant change to the State Policy, the amendment is subject to the same approval process as a draft State Policy.

A proposed amendment is taken to be a significant change to a State Policy if it is a change which substantially alters the content or effect of the State Policy.

7.3 Current State Policies

The following policies apply as State Policies under the *State Policies and Projects Act 1993:*

- State Policy on Agricultural Land; and
- State Policy on Water Quality Management.

A brief overview of each State Policy is provided below.

7.3.1 State Policy on agricultural land

What is the purpose of the policy?

The State Policy on the Protection of Agricultural Land is to foster sustainable agriculture in Tasmania by ensuring the continued productive capacity of the State's agricultural land resource.

What are the objectives of the policy?

The primary objectives of this policy are to:

- provide a consistent framework for planning decisions involving agricultural land by ensuring that the productive capacity of agricultural land is considered in all planning decisions; and
- foster the sustainable development of agriculture in Tasmania by:
  - enabling farmers to undertake agricultural activities without being unreasonably constrained by conflicts with adjoining non-agricultural land users; and
  - providing greater direction and certainty for landowners, developers, land managers and the community in planning decisions involving agricultural land.

What is the application of the policy?

This policy applies to all agricultural land in Tasmania.

What are the main principles of the policy?

Seven principles guide the outcomes of the Policy. These are:

- prime agricultural land is a resource to be protected from conversion to non-agricultural use and development;
- houses and other non-agricultural use and development and some intensive agricultural industries alienate prime agricultural land. A dwelling or other use or development may only be permitted on prime agricultural land where the provisions of a planning scheme have been reviewed to ensure it properly reflects the intent of the State Policy. The review is to be carried out by the planning authority, in conjunction with the Resource Planning and Development Commission.

- use or development of any building that is an integral part of an agricultural use on prime agricultural land will be determined to be consistent with this policy;
- provision of public utilities or other infrastructure or a proposal of significant economic benefit to the region may cause prime agricultural land to be converted to non-agricultural use. Such conversion must:
  - comply with the planning scheme or amendment; and
  - have the Resource Planning and Development Commission confirm that there is an overriding need for a use or development for community benefit and a suitable alternative site is not available;
- all agricultural land is a valuable resource for Tasmania. The protection of other than prime agricultural land from conversion to non-agricultural use will be determined through planning schemes;
- adjoining non-agricultural use and development should not unreasonably fetter agricultural uses; and
- planning schemes will make provisions for the appropriate protection of the range of non-prime agricultural lands within a specified irrigation scheme.

How is the policy implemented?

The policy is implemented through planning schemes, catchment management plans, and programs undertaken by the Department of Primary Industries, Water and Environment.

What is the impact on planning schemes?

Planning authorities are required to have regard to the policy in the preparation of planning schemes and in all planning decisions.

Planning schemes are required to ensure that agricultural land is protected from conversion to nonagricultural uses and that prime agricultural land is available to be used for agricultural uses.

7.3.2 State Policy on Water Quality Management

What is the purpose of the policy?

The purpose of the Policy is to achieve the sustainable management of Tasmania's surface water and groundwater resources by protecting or enhancing their qualities while allowing for sustainable development in accordance with the objectives of Tasmania's RMPS.

What are the objectives of the policy?

The objectives of the policy are to:

- focus water quality management on the achievement of water quality which will maintain or enhance water quality and further the objectives of Tasmania's RMPS;
- ensure that diffuse source and point pollution does not prejudice the achievement of water quality objectives and that pollutants discharged in waterways are reduced as far as it is reasonable and practical by the use of best practice environmental management;
- ensure that efficient and effective water quality monitoring projects are carried out and that the responsibility for monitoring is shared by those who use and benefit from the resource, including polluters, who should bear an appropriate share of the costs arising from their activities, water resource managers and the community;
- facilitate and promote integrated catchment management through the achievement of the above; and
- apply the precautionary principle to Part 4 of this policy.

What is the application of the policy?

This policy applies to all surface waters, including coastal waters, and groundwaters, other than:

- privately owned waters that are not accessible to the public and are not connected to, or flow directly into, waters that are accessible to the public; or
- waters in any tank, pipe or cistern.

7.3.3 National Environment Protection Measures

National Environment Protection Measures are automatically adopted as State Policies. The National Environment Protection Council (NEPC) is a statutory body established under the *National Environment Protection Council Act 1994* (Commonwealth) and the equivalent provisions of the corresponding Acts in each jurisdiction. The objective of the Act is to ensure, by means of the establishment and operation of the NEPC, that:

- people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia; and
- decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.

The NEPC has two primary functions:

- to make National Environment Protection Measures (NEPMs); and
- to assess and report on their implementation and effectiveness in the other jurisdictions.

NEPMs are broad framework-setting statutory instruments defined in the NEPC legislation. They outline agreed national objectives for the protection or management of particular aspects of the environment. A NEPM may relate to any one or more of the following:

- ambient air quality;
- ambient marine, estuarine and fresh water quality;
- the protection of amenity in relation to noise (but only if differences in environmental requirements relating to noise would have an adverse effect on national markets for goods and services);
- general guidelines for the assessment of site contamination;
- environmental impacts associated with hazardous wastes; or
- the re-use and recycling of used materials.

A NEPM will become law in each participating jurisdiction once it is made by the NEPC. Implementation of NEPMs is the responsibility of each participating jurisdiction. The following National Environment Protection Measures have been adopted as State Polices and have application in Tasmania:

- National Environmental Protection (Used Packaging Materials) Measure;
- National Environmental Protection (Ambient Air Quality) Measure ;
- National Environmental Protection (Movement of Controlled Waste Between States and Territories) Measure;
- National Environmental Protection (National Pollutant Inventory) Measure; and
- National Environmental Protection (Assessment of Site Contamination) Measure.

7.3.4 National Environmental Protection (Used Packaging Materials) Measure

What are the objectives of this NEPM?

The objective of this NEPM is to reduce environmental degradation from the disposal of used packaging. The measure is limited to the recovery, re-use and recycling of used consumer packaging materials.

7.3.5 National Environmental Protection (Ambient Air Quality) Measure

What are the objectives of this NEPM?

The desired environmental outcome of this NEPM is external air quality that allows for the adequate protection of human health and well-being.

7.3.6 National Environmental Protection (Movement of Controlled Waste Between States and Territories) Measure

What are the objectives of this NEPM?

The objective of this NEPM is to provide a national framework for developing and integrating State and Territory systems for the management of the movement of controlled wastes between States and Territories originating from commercial, trade, industrial or business activities.

7.3.7 National Environmental Protection (National Pollutant Inventory) Measure

What are the objectives of the NEPM?

The desired environmental outcomes of this NEPM are:

- the maintenance and improvement of:
  - ambient air; and
  - ambient marine, estuarine and fresh water quality;
- the minimisation of environmental impacts associated with hazardous wastes; and
- an expansion in the re-use and recycling of used materials.

The national environment protection goals established by this NEPM are to assist in reducing the existing and potential impacts of emissions of substances and to assist government, industry and the community in achieving the desired environmental outcomes set out above by providing for:

- the collection of a broad base of information on emissions of substances on the reporting list to air, land and waters; and
- the dissemination of information collected to all sectors of the community in a useful, accessible and understandable form.

7.3.8 National Environmental Protection (Assessment of Site Contamination) Measure

What are the objectives of this NEPM?

The objective of this NEPM is to establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, environmental auditors, land owners, developers and industry.

The NEPM requires planning authorities to ensure that a site, which is being considered for a change of land use, and which planning authorities ought reasonably to have known to have a history of use that is indicative of potential contamination, is suitable for its intended use.

7.4 Projects of State significance

The Act provides the minimum procedural requirements for the undertaking of an integrated assessment of a project of State significance. These minimum requirements can be supplemented by guidelines published by the Minister in a specific case or generally, and by a direction given by the minister to the RPDC in undertaking an integrated assessment.

In no circumstances can the Minister override or subvert the legislatively guaranteed minimum process.

The *State Policies and Projects Act 1993* provides for the integrated assessment of projects considered by the responsible Minister to be of State significance.

When is a project of State significance declared?

If the responsible Minister considers that a project is of State significance, the Minister may recommend the Governor make an order declaring a Project of State Significance. The order must be published in the Government Gazette and has no effect until it has been approved by both Houses of Parliament.

7.4.1 Approval and assessment of a project

The declaration of a project of State significance takes a major development proposal outside the planning process established under the *Land Use Planning and Approvals Act 1993*. Part 3 of the *State Policies and Projects Act 1993* sets out the statutory assessment process for a project of State significance. The Premier is the Minister responsible for administering the Act in respect of projects of State significance.

There are four stages involved in the assessment and approval of a project:

- Stage 1 – Obtaining project of State significance status;
- Stage 2 – Preliminary matters;
- Stage 3 – Assessment process; and
- Stage 4 – Decision-making process.

How is a project approved?

Stage 1 – Obtaining Project of State significance status

A project is eligible to be a project of State significance if it possesses at least two of the following attributes:

- significant capital investment;
- significant contribution to the State's economic development;

- significant consequential economic impacts;
- significant potential contribution to Australia's balance of payments;
- significant impact on the environment;
- complex technical processes and engineering designs; and/or
- significant infrastructure requirements.

To have a project declared a project of State significance the Minister must make a decision supporting the declaration; the Minister will then recommend to the Governor the making of an order declaring the project to be a project of State significance. Following the making of the order by the Governor the order must be laid before each House of Parliament (State) for its approval.

The effect of the order declaring a project of State significance is that all statutory functions of various agencies that would otherwise have been involved in assessing or approving the proposed development vests in the RPDC. All approvals, licences, permits etc that are required to enable the project to proceed are dealt with under the project of State significance process. However, the RPDC's role is not to determine the matter. It is to make recommendations to the government. It is the Government that finally determines whether the project proceeds, and if so, on what terms and conditions.

Stage 2 – Preliminary matters

Once the Governor has made the order the Minister is required to give a written direction to the RPDC to undertake an integrated assessment of the project. The Act defines the term "integrated assessment," in relation to a project of State significance, as meaning the consideration of environmental, social, economic and community issues relevant to that project. The Proponent is required to prepare an Integrated Impact Statement (IIS) to enable the RPDC to assess the project. An IIS is a combined environmental impact statement and social, economic and community impact study. The IIS should contain sufficient information for the RPDC to carry out an independent integrated assessment of all the likely impacts of the project. The IIS is a document that describes to the RPDC and the community what the Proponent wants to do, what the environmental impacts will be and how the Proponent plans to manage the proposal. It should also demonstrate how negative social, economic and community impacts can be avoided, remedied or mitigated and how the positive impacts can be enhanced.

Prior to the commencement of the assessment the RPDC prepares a set of guidelines to be followed by the Proponent in the preparation of the IIS. Draft guidelines are placed on public exhibition and written comments are invited. The RPDC considers the submissions, amends the guidelines where appropriate, finalises the guidelines and provides them to the Proponent.

Stage 3 – Assessment process

The assessment formally commences when the Proponent submits the IIS to the RPDC. The RPDC must notify a planning authority in the area where the project is located and each agency that has an interest in the project that an integrated assessment has commenced (within 14 days). A planning authority and agencies have an opportunity to make submissions to the RPDC setting out their views in relation to the project (within 28 days of notification).

The RPDC is required to prepare a draft integrated assessment report in consultation with the relevant planning authority and agencies. The draft report is an assessment of the project and its likely impacts as described in the IIS. The draft report includes draft recommendations on whether or not the proposed development should proceed, and if so, any conditions that should apply. This report, together with the IIS, is placed on public exhibition and anyone who has an interest in the project is invited to make a written submission in response to the draft integrated assessment report. The Act requires the report to be placed on public exhibition for at least 28 days.

The RPDC considers all submissions received. The RPDC may direct hearings where witnesses are invited to present their views to better inform the RPDC on issues raised in submissions or on any other matter. These hearings are public but can be conducted in camera if a case for confidentiality is established.

The RPDC then finalises the assessment report and submits the report to the Minister. The report must contain recommendations on whether the project should proceed, and if so, on what conditions. Where the report recommends the project proceed it must specify:

- the conditions;
- the Act, licence or other approval under which the conditions would normally have been imposed; and
- the agency responsible for the enforcement of each condition.

This report is made available for public inspection.

Due to the nature of certain types of projects the RPDC may make recommendations on conditions in two stages. The first stage is when the RPDC reports to the Minister with a recommendation that the project proceed and the conditions that should apply. After the Governor makes an order enabling the project to proceed the RPDC may submit a report to the Minister recommending an order be made specifying additional conditions subject to which the project should proceed. An example of when the RPDC may recommend additional conditions is where a project requires building approvals. It is not unreasonable that a Proponent obtain an order enabling the project to proceed before incurring the costs associated with the preparation of detailed plans for building approvals.

Stage 4 – Decision-making process

The Minister must make a decision within 28 days of receiving the RPDC's report.

There are three options available to the Minister:

- if the Minister accepts the RPDC's recommendations the Minister may recommend to the Governor the making of an order in accordance with the report of the RPDC;
- if the Minister does not accept the RPDC's recommendations the Minister may recommend to the Governor the making of an order enabling the project to proceed on conditions specified by the Minister; and
- the Minister may take no action.

Under the second option the Governor's order is of no effect until it has been approved by resolution of each House of Parliament.

Limitation on rights of appeal

The project of State significance process does not provide for an appeal to the Resource Management and Planning Appeal Tribunal or a court in respect of the conditions specified in an order of the Governor enabling the project to proceed.

7.5 State of the Environment reporting

A State of the Environment Report is a process that describes, analyses and presents scientifically based information on environmental conditions, trends and their significance. It looks at the effects of human activities on the environment, as well as the implications for human health, the status of ecosystems and economic wellbeing.

A State of the Environment report relates to:

- the condition of the environment;
- trends and changes in the environment;
- the achievement of resource management objectives; and
- recommendations for future action to be taken in relation to the management of the environment.

What is the purpose of a State of the Environment report?

The purpose of State of the Environment report is primarily to promote improved decision-making leading to sustainable development outcomes and to monitor the success of policies and programs. It has a key role in helping to target environmental expenditure in order to maximise over time the environmental returns on investment.

Who prepares a State of the Environment report?

The RPDC prepares a State of the Environment report. The RPDC submits it to the responsible Minister. It is available to the public.

How often is a State of the Environment report prepared?

A State of the Environment report is prepared every 5 years.

8. Environmental Management and Pollution Control Act 1994

8.1 Overview

The objective of the *Environmental Management and Pollution Control Act 1994* (EMPCA) is to provide for the management of the environment and the control of pollution in the State. The Act:

- provides for the control of all activities that might lead to environmental harm;
- encourages best practice environmental management by industry, planning authorities and State agencies; and
- facilitates a co-ordinated approach by planning authorities for planning assessment and environmental management.

These objectives are integrated into planning processes and are taken into consideration by planning authorities when carrying out environmental assessment of new planning schemes, amendments to existing planning schemes and when assessing and approving applications for planning permits.

The Act also provides for:

- integrated Environmental Impact Assessments by a planning authority and the Board of Environmental Management and Pollution Control, for level 2 planning applications; and when a planning application is not necessary: environmental impact assessments by the Board;
- environment protection notices;
- environmental auditing and monitoring environmental agreements;
- environmental improvement programs;
- enforcement measures;
- common appeal process; and
- the charging of fees.

A Board of Environmental Management and Pollution Control is established under the Act. The Board performs a number of functions, including:

- protecting the environment of Tasmania;
- furthering the objectives of this Act;
- ensuring the prevention or control of any act or omission that causes, or is capable of causing, pollution;
- co-ordinating all activities, whether Governmental or otherwise, as are necessary to manage the use of, protect, restore or improve the environment of Tasmania; and
- ensuring that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues.

The Board undertakes the assessment of level 2 activities and is involved in environmental impact assessments, environmental agreements, environmental audits, environment protection notices, environmental infringement notices and environmental improvement programmes.

The Act defines and deals with three main classifications of activities that may cause environmental harm:

- **Level 1:** An activity/development/use which requires a permit under the *Land Use Planning and Approvals Act 1993* and which may cause environmental harm (but does not include a level 2 or 3 activity);
- **Level 2:** An activity listed in Schedule 2 of the Act (the activity often has a stated minimum production threshold). Most level 2 activities require a permit under the *Land Use Planning and Approvals Act 1993*, although there are some that do not.
- **Level 3:** An activity declared to be a project of State significance under the *State Policies and Projects Act 1993*.

New proposals are assessed in accordance with environmental impact assessment principles. The assessment and decision-making procedure for these proposed activities is primarily the responsibility of either the planning authority and/or the Board of Environmental Management and Pollution Control, depending on the level of classification. The process for undertaking an assessment is outlined below.

8.2 *Assessment of activities*

Activities that may cause environmental harm must be assessed under the Act. The approval and assessment of these activities is integrated into the planning process established by the *Land Use Planning and Approvals Act 1993*. If a joint assessment is required, the planning aspects of the application are assessed by a planning authority and the environmental aspects are assessed by the Board of Environmental Management and Pollution Control.

Level 1 activities

Planning Authorities, as part of their permit approvals, assess the environmental impacts of level 1 activities and assessment at a State Government level is usually not required.

If significant environmental harm might occur, however, the State government's Director of Environmental Management may nevertheless 'call in' the project and refer it to the Board of Environmental Management and Pollution Control for assessment.

In these cases, the planning authority is obliged to include in any permit it issues conditions set by the BEMPC which has the authority to direct a planning authority to grant a permit with or without conditions, or not to grant a permit. Planning authorities may include planning conditions in the permit.

Level 2 activities

Activities that are included on Schedule 2 of EMPCA are 'level 2' activities, and must be subject to a formal EIA, in accordance with s.74 of the Act, by the BEMPC.

If a planning authority receives a development application that deals with a level 2 activity, the planning authority must refer it to the BEMPC for assessment. The BEMPC has the authority to direct a planning authority to include specified conditions on any permit it may grant, and it also has the authority to direct the planning authority to refuse the permit. A planning authority may include planning conditions in the permit.

Where an application is referred to the BEMPC for assessment:

- the BEMPC is to determine whether it needs to assess the activity to which the application relates within 14 days of receipt of the application;
- the BEMPC is taken to have determined that it needs to assess the activity if it has not notified the planning authority to the contrary within the 14 day period;
- if the BEMPC determines that it needs to assess the activity then, unless the application is refused, it is to do the assessment in accordance with the Environmental Impact Assessment Principles and in consultation with the planning authority;
- the planning authority must not advertise the application until it has received written notice from the Director that the BEMPC has received sufficient information to satisfy requirements of Section 74(3) of EMPCA;
- the planning authority must provide the BEMPC with copies of representations received in relation to the application;
- the period for obtaining additional information referred to in Section 54(1) of the *Land Use Planning and Approvals Act 1993* is extended to 42 days;
- the period that a planning authority has to determine an application under Section 57(6) of the *Land Use Planning and Approvals Act 1993* does not apply;
- the planning authority is not required to assess any matter addressed by the BEMPC in its assessment but if it does so, it is not entitled to recover the cost from any person;
- if the BEMPC determines that it does not need to assess the activity the planning authority may process the application without further references to the BEMPC.

There are some level 2 activities for which a permit from a planning authority is not required. On this rare occurrence, the onus is on the developer to refer the case to the BEMPC directly.

Level 3 activities

These activities relate to projects of State significance. These are assessed according to the processes outlined in Section 1 of this document – *State Policies and Projects Act 1993*.

Other activities

There are certain other activities which may be environmentally relevant (other than a level 1, 2, or 3 activity) which do not require a permit under LUPAA. Where the Director of Environmental Management decides that it is in the public interest to do so, the Director can cause such a proposed activity to be referred to the BEMPC. Examples of such developments include, but are not limited to:

- major roads or railways;
- large marinas;
- wilderness resorts and other tourist developments in parks or reserves;
- large dams; and
- communication installations.

8.3 Environment Protection Notices (EPNs)

An Environment Protection Notice (EPN) may be issued by:

- the Board of Environmental Management and Pollution Control for activities that may cause environmental harm; and
- planning authorities for level 1 activities and environmental nuisances.

EPNs place obligations on the person on whom they are served, with the objective of avoiding or remedying environmental harm. A notice has effect as a binding contract on the parties of the agreement.

An EPN may be also used to vary environmental conditions of an existing planning permit.

There is a right of appeal against both the issue of an EPN and the requirements contained in the EPN.

8.4 Environmental agreements

The Board of Environmental Management and Pollution Control, on its own initiative, or at the request of another person:

- may enter into an environmental agreement with an operator of premises in respect of those premises;
- may approve an agreement entered into between persons as an environmental agreement; and
- may prepare an environmental agreement to be entered into between parties.

Environmental agreements may be made in respect of individual operations, premises, areas or regions and may apply to industry or activity groups. An agreement must specify the management, investment and monitoring functions which the parties to the agreement consider necessary to ensure environmental performance beyond that required to ensure compliance with the Act.

An agreement must not require or allow anything to be done which would contravene a planning scheme, special planning order or a permit.

An agreement remains in force for a maximum period of 5 years from the date of its commencement.

8.4.1 Civil enforcement orders

Where a person is engaging, or is proposing to engage, in conduct in contravention of EMPCA, or has refused or failed or is refusing or failing to take a required action, or has caused environmental harm, the Director, a planning authority, or a person who has, in the opinion of the RMPAT, a proper interest in the subject matter may apply to the RMPAT for a civil enforcement order. The conditions attached to an order may be appealed and failure to comply with an order is an offence.

9. Historic Cultural Heritage Act 1995

9.1 Overview

The *Historic Cultural Heritage Act 1995* (HCHA) aims to promote the identification, assessment, protection and conservation of places having historic cultural heritage significance. The Act establishes the Tasmanian Heritage Council and the Tasmanian Heritage Register.

This Act does not apply to a place that is of historic cultural heritage significance only on the ground of its association within:

1. Aboriginal history or tradition; or
2. Aboriginal traditional use.

It provides an arrangement by which proposals for works involving registered places or heritage areas are assessed to ensure that they do not adversely affect the historic cultural heritage significance of those places or areas.

Further objectives of the Act include:

- establish and maintain the Tasmanian Heritage Register;
- provide for a system of approvals for work on places on the Register;
- provide for Heritage Agreements and assistance to property owners;
- provide for the protection of shipwrecks; and
- provide for control mechanisms and penalties for breaches of the Act.

9.2 Tasmanian Heritage Council

What is the Tasmanian Heritage Council?

The Council is a statutory body consisting of 15 members who are appointed by the Minister for Tourism, Parks and Heritage.

Apart from the Chairperson and the Director of National Parks and Wildlife, who is an ex officio member, six members represent different organisations – these are the National Trust, the Local Government Association of Tasmania, the Tasmanian Farmers and Graziers Association, the Tourism Council of Australia and the Tasmanian Council of Churches.

The Local Government Association has two representatives, one representing the Association and one who must have expertise in architecture, archaeology, engineering, history, planning or building surveying. The Farmers and Graziers representative must not only have agricultural expertise or experience but must also own a place of historic cultural heritage significance.

In addition, there are representatives of conservation interests, community interests, the building development industry and the mining industry. The remaining three members must have expertise in

one of the following areas – architecture, archaeology, engineering, history, planning or building surveying.

The functions of the Heritage Council are:

- to advise the Minister on matters relating to Tasmania's historic cultural heritage and the measures necessary to conserve the heritage for the benefit of the present community and future generations;
- to work within the planning system to achieve the protection of Tasmania's historic cultural heritage;
- to co-ordinate and collaborate with Federal, State and Local authorities in the conservation of places of historic cultural heritage significance;
- to encourage and assist in the proper management of places of historic cultural heritage;
- to encourage public interest in, and understanding of, issues relevant to the conservation of Tasmania's historic cultural heritage;
- to encourage and provide public education in respect of Tasmania's historic cultural heritage significance;
- to assist in the promotion of tourism in respect of places of historic cultural heritage significance;
- to keep proper records, and encourage others to keep proper records, of places of historic cultural heritage significance; and
- to perform any other functions the Minister determines.

The definition of "conservation," in relation to a place, includes:

- the retention of the historic cultural heritage significance of the place; and
- any maintenance, preservation, restoration, reconstruction or adaptation of the place.

9.3 *Tasmanian Heritage Register*

What is the heritage register?

The Tasmanian Heritage Register is a public register of those places in Tasmania that are of historic cultural heritage significance.

These places are important to Tasmania and Tasmanians because of their contribution to our culture and society. They are also important as part of the cultural fabric of the State that is so much a part of our tourism industry.

The register is maintained by the Tasmanian Heritage Council and details:

- any place entered provisionally;
- any place entered permanently;
- heritage areas;
- details of any heritage agreement;

- any heritage orders;
- shipwrecks;
- protected zones; and
- heritage certificates.

There are over 5000 properties entered on the register.

What information is included on the heritage register?

To satisfy legal requirements each entry in the register must contain the following four elements.

1. Grid co-ordinates or latitude and longitude.
2. Land title or registered plan. Where one title covers many hundreds of hectares as well as the buildings with which the Act is concerned an exclusion agreement or statement of heritage interest is drawn up between the owner and the Heritage Council. The agreement states which parts of the property or title are of heritage significance for registration purposes.
3. A description of the property. This need only be brief but needs to be sufficient to enable the significance of the place to be understood. The many different styles of architecture may lead to confusing and conflicting descriptions, thus the Council at an early stage in the registration process adopted the standard definitions contained in 'Identifying Australian Architecture,' Styles and Terms from 1788 to the present, Apperly, Irving & Reynolds 1989, to avoid confusion. This publication is used to provide the style description in all cases where the registration is primarily for architectural reasons.
4. A statement of historic cultural heritage significance. The statement of historic cultural heritage significance must address one of the following criteria:
    - it is important in demonstrating the evolution or pattern of Tasmania's history;
    - it demonstrates rare, uncommon or endangered aspects of Tasmania's heritage;
    - it has potential to yield information that will contribute to an understanding of Tasmania's history;
    - it is important as a representative in demonstrating the characteristics of a broader class of cultural places;
    - it is important in demonstrating a high degree of technical achievement;
    - it has a strong or special meaning for any group or community because of social, cultural or spiritual associations;
    - it has special association with the life or work of a person, group or an organisation that was important in Tasmania's history.

The Council does not have to address all the criteria comprehensively for each place prior to entering it on the provisional register. It is only necessary for the Council to identify and substantiate one criterion to enable the Council to enter a place on the provisional register. This does not mean that in subsequent proceedings the Council may not add other criteria, or that in considering a works

application other criteria may not be the subject of consideration by the Council, and on appeal by the RMPAT.

Entries may also include other information.

What is historic cultural heritage significance?

Historic cultural heritage significance, in relation to a place, means significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value of the place.

Requirements for entry in the register

The Heritage Council may enter a place of historic cultural heritage significance in the heritage register if it meets one or more of the following criteria:

- it is important in demonstrating the evolution or pattern of Tasmania's history;
- it demonstrates rare, uncommon or endangered aspects of Tasmania's heritage;
- it has potential to yield information that will contribute to an understanding of Tasmania's history;
- it is important as a representative in demonstrating the characteristic of a broader class of cultural places;
- it is important in demonstrating a high degree of creative or technical achievement;
- it has special association with the life or work of a person, a group or an organisation that was important to Tasmania's history.

What does being on the register mean to an owner?

Being on the register will have little or no effect on most property owners. All that being on the register means is that the issue of the significance of the place will be considered when the time comes for any modifications to be made to the place. This will be considered as part of any normal building or development application that is lodged with the local planning authority.

It will not restrict it in any way if the use does not require modifications to the significant elements of the property.

Who can object to entry on or removal from the heritage register?

The owner or any person may object to the Heritage Council's decision to enter on to or remove an entry from the heritage register.

9.4 Heritage areas

What is a heritage area?

Areas which may contain any place of historic cultural significance may be declared to be a heritage area.

Declaration of a heritage area

The Minister, by order, may declare an area to be a heritage area if it is an area which may contain any place of historic cultural significance:

- on the Heritage Council's advice; and
- after consulting with any relevant planning authority and any other relevant body.

The Heritage Council is required to publish the order in the *Gazette* and in a daily newspaper circulating in the area. The order takes effect on the day on which it is published in the *Gazette* and remains in force for a period of 2 years or any further period, not exceeding 5 years, that the Minister specifies in the order.

Notification of heritage areas

The Heritage Council is required to provide written notice to owners of properties within an area declared to be a heritage area. The notice states:

- the order;
- the reasons for declaring the area to be a heritage area; and
- the rights and duties of the owner under the *Historic Cultural Heritage Act 1995*.

What is the effect of an order declaring an area to be a heritage area?

A person must not carry out any works within a heritage area which may affect the historic cultural heritage significance of that area unless:

- the Heritage Council has granted an exemption; or
- the works are approved by the Heritage Council.

9.5 Works applications

When is a works application required?

A person must not carry out any works in relation to a registered place or a place within a heritage area which may affect the historic cultural heritage significance of the place unless the works are approved by the Heritage Council.

Works are defined as:

- any development;
- any physical intervention, excavation or action which may result in a change to the nature or appearance of the fabric of a place;
- any change to the natural or existing condition or topography of land;
- any removal, destruction or lopping of trees otherwise than in accordance with forest practices as defined in the *Forest Practices Act 1985*; and
- any removal of vegetation or topsoil.

Development is defined as:

- the construction, exterior alteration or exterior decoration of a building;
- the demolition or removal of a building;
- the subdivision or consolidation of land, including buildings or airspace;
- the placing or relocating of a building; and
- the construction, or putting up for display, of signs or hoardings.

Any activity that falls within the above definitions must be the subject of an application to the Heritage Council unless some form of exemption has been granted or some other agreement is in place. The works may be internal as well as external. The removal of interior features such as original fireplace surrounds would affect the significance of the place and thus would require an application to be made.

The Heritage Council may not require an application for some minor works and may grant an exemption from lodging an application for those works. Contact the Heritage Council to determine whether an application is required before lodging a formal application with the local planning authority.

Applications are lodged with the local planning authority and a one page form is available at any planning office. The application is made as part of the normal planning application.

Lodging a works application

In most circumstances, the heritage works application process will be triggered when a planning authority is approached by an applicant presenting an application for a planning or building permit.

Application for approval to carry out works

A person is required to lodge an application with the appropriate planning authority for approval to carry out works, in relation to a place entered in the Heritage Register or in a Heritage Area, if the works affect the historic cultural heritage significance of the place. The Act has a definition of works and development which can be found in Section 3 HCHA. These are broadly similar to those which can be found in the *Land Use Planning and Approvals Act 1993*.

Exemptions for obtaining works approval

An exemption is provided for works which are solely for liturgical purposes within a church and written notice is given to the Heritage Council at least 28 days prior to works being carried out.

Prior to lodging an application

The Heritage Council prefers to hold informal discussions with the applicant prior to the lodgment of a (Heritage) works application in order to assist in the design process at an early stage.

The Heritage Council may be contacted at the Lands Building, Macquarie Street, Hobart, by telephone on 6233 2037, or fax on 6233 3186.

Who assesses a works application?

Application for approval to carry out works

The planning authority is required to refer all heritage works applications to the Heritage Council unless it has a delegated power from the Heritage Council to deal with such applications.

Notice of application

The planning authority must provide a public notification of a works application, or require the applicant to carry out a public notification complying with the requirements of Section 34(2) HCHA.

Who can make a submission in relation to a works application?

Submissions relating to works application

Any person may make a submission to the planning authority within the 14 day consultation period, or further period as determined by the Heritage Council.

Referral to Heritage Council

Copies of these submissions must be provided by the planning authority to the Heritage Council where the planning authority is required to refer the works application. The submission must be received within 3 days after the 14 day consultation period has ended.

Approval to carry out works

Approval of works application by Heritage Council

Having considered any submissions and made any necessary consultation in respect of a works application referred to it, the Heritage Council must approve (subject to any condition or restriction)

or refuse to approve the works application within 42 days of lodgement. This period may be extended with the agreement of the applicant.

Approval without determination

An application is taken to have been approved if it is not determined within the 42 day period or agreed extension period.

Notification of decision by Heritage Council

The Heritage Council must notify the planning authority of its decision and any conditions or restrictions imposed on approvals. The planning authority must notify the applicant, and any person who made a submission, of the Heritage Council's decision

Notification of a decision by a planning authority

The planning authority must notify the Heritage Council of its decision and any condition or restriction it imposed on the approval of a works application as soon as practicable.

The planning authority must notify the applicant, and any person who made a submission, of its decision.

Supervision and standards

The Heritage Council conditions of approval may include:

- standards for the works;
- engagement of suitably qualified persons to supervise or undertake works; or
- appropriate preservation and storage of removed items.

Revocation of approval to carry out works

The Heritage Council may revoke, by written notice, any approval to carry out works if any condition, restriction, requirement or standard is not complied with.

Can a determination be appealed against?

Appeal against approval to carry out works

Any person may appeal in writing to the RMPAT against the approval of or refusal to approve a 'Heritage' works application. The appeal must be lodged with the RMPAT within 14 days of a notice given of the decision to approve or refuse, or, if a decision has not been determined, after 42 days from the date of lodgement of the application. Further details are provided within this document under Part 4 of this Guide – *Resource Management and Planning Appeal Tribunal Act 1993*.

Appeals to the Tribunal may also be made against:

- entry in, or removal from, the Heritage Register;
- enforcement orders; or a
- notice to take or stop actions.

What is the effect of a stopwork orders?

Where a planning authority issues a planning permit for a place on the Heritage Register, this permit does not take effect until any necessary 'Heritage' works approval is granted (s53(4) *Land Use Planning and Approvals Act 1993*). Where this approval has not been sought or given, the Heritage Council may issue a stopwork order if the works proceed on a registered place to protect its historic cultural heritage significance.

Duration of stopwork order

Stopwork orders, unless they are revoked earlier, remain in force for up to 14 days or any further period the Appeal Tribunal allows.

Who can revoke stopwork orders?

The Heritage Council may, of its own initiative, or on application to it by any other person, revoke a stopwork order.

9.6 *Heritage Agreements*

What are the provisions of heritage agreements?

A heritage agreement may include provisions relating to any or all of the following:

- the conservation of the place;
- the financial, technical or other professional advice or assistance required for the conservation of the place;

- the review of the valuation of the place;
- the restriction of the use of the place;
- the requirement to carry out specified works or works of a specified kind;
- the standards by which the works are to be carried out;
- the restriction on the kind of works that may be carried out;
- the exemption of specified works or works of a specified kind;
- the public appreciation of the historic cultural heritage of significance of the place;
- the availability for public inspection; and
- the charges made for admission.

10. Major Infrastructure Development Approvals Act 1999

10.1 Overview

The objective of this Act is to make special provision in relation to the approval of major linear infrastructure projects.

This Act provides a framework for the acquisition of the land by the Crown, by making a declared project a 'public purpose' for the purposes of the *Land Acquisition Act*. While parliamentary approval will still be needed, it can be given in a simpler way than having a full legislative procedure for every new project.

A major infrastructure project is defined as a project that wholly or principally comprises the construction of one or more of the following:

- a road;
- a railway;
- a pipeline;
- a powerline within the meaning of the *Electricity Supply Industry Act 1995*;
- a telecommunication cable or link; or
- such other linear infrastructure as may be prescribed.

10.2 Approval of a major infrastructure project

The assessment and approval of a project is the responsibility of a planning authority (council or combination of councils). The principal Act relevant to the assessment and approval of a project is the *Land Use Planning and Approvals Act 1993*.

The Minister for Primary Industries, Water and Environment is the Minister responsible for administering the Act in respect of major infrastructure projects.

There are four stages in the approval of a project. These are:

- Stage 1 – Obtaining major infrastructure project status;
- Stage 2 – Establishment of the combined planning authority;
- Stage 3 – Development of planning criteria; and
- Stage 4 – Assessment process.

Stage 1 – Obtaining major infrastructure project status

To have a project declared a major infrastructure project the Minister must recommend to the Governor the making of an order.

Before a recommendation can be made to the Governor that a project be declared a major infrastructure project, the Minister must:

- receive a report from a proponent for a project to be declared a major infrastructure project, accompanied by a report on the project prepared in accordance with the *Major Infrastructure Development Approvals Regulations 2000*. The report must provide a comprehensive description of the project;
- if the Minister agrees in principle with the project, send a draft order to all affected planning authorities seeking their views. Planning authorities have 21 days to respond;
- review comments received from planning authorities and if some decide they don't support the proposed declaration, decide whether to continue with a combined planning authority or ask the RPDC to administer the approval process. The Minister has at least 7 days to make his decision; and
- be satisfied that the declaration is in the public interest.

Following the making of the order by the Governor, it is gazetted and laid before each House of Parliament (State) for their approval. The Minister must also notify all affected parties, including relevant planning authorities, of the making of the order and advertise it in the relevant daily newspapers.

The effect of the order declaring a major infrastructure project in terms of the assessment and approval process, is that the provisions of any relevant planning scheme are substituted by a set of planning criteria which is determined under the *Major Infrastructure Development Approvals Act 1999*.

Content of an order

An order made by the Governor is to identify the proponent and define the major infrastructure project by specifying the nature and location of each component that is comprised in the project. The location of each component may be described by reference to a corridor between two places. Under this scenario, the exact location of each component does not have to be indicated within the corridor.

An order may also:

- declare that property owners need only be notified (as opposed to obtaining their written consent) that an application for a permit is to be lodged in respect to their land;
- declare that the planning approval process is to be administered by a combined planning authority if it involves more than one planning authority area;
- declare that the RPDC will administer the planning approval process;
- require the Crown or the planning authority to provide the proponent with certain information. For example, if the application is one which is to be considered by the Board of Environmental

Management and Pollution Control, the BEMPC will provide environmental guidelines to the proponent by a specified date;

- require the proponent to lodge a financial assurance with the Crown which is to be forfeited on failure to comply with the terms and conditions of the order;
- require the proponent to pay to the Crown an amount to cover costs incurred by the Crown or any other person involved in the assessment of the project;
- require compliance by the proponent with the terms and conditions of the order; and
- authorise the sale by the Crown to the proponent of any land specified in the order.

Stage 2 – Establishment of the combined planning authority

If the order declares that the assessment and approval process of the project is to be administered by a combined planning authority, relevant planning authorities have 28 days to nominate persons (and a deputy) to be appointed to the authority.

The Minister has 14 days to establish the combined planning authority from receipt of the nominations.

Stage 3 – Development of planning criteria

Once the combined planning authority is established, it has 42 days to develop draft planning criteria against which the project is to be assessed. The planning criteria are intended to be a replacement single planning scheme, which is effective across all planning authorities affected by the project.

The combined planning authority must refer the planning criteria to the RPDC and the proponent within the 42 day period. The RPDC must publicly exhibit the draft criteria for at least 14 days, and advertise that exhibition in relevant daily newspapers.

Following the exhibition period, the RPDC has at least 7 days to finalise the criteria and inform the combined planning authority. On receipt of the finalised criteria, the combined planning authority must, within 7 days, provide the criteria to the proponent, make them available for public inspection and advertise their availability.

Permit application lodgment

The proponent has 12 months to complete the permit application and refine the proposed corridor if applicable. The Minister can extend this period by no more than 12 months.

The proponent submits a permit application to the combined planning authority, which is dealt with in accordance with the normal assessment process under the *Land Use Planning and Approvals Act 1993* and if applicable, the *Environmental Management and Pollution Control Act 1994*.

The proponent must also notify all owners within the corridor, at least 14 days prior, that a permit application is to be submitted. This only applies if written consent from property owners has not already been obtained.

Corridors

If a corridor is defined in the order, the proponent must lodge a plan of the proposed corridor with the Minister as soon as practicable after the order has taken effect. The plan is to identify the boundaries of the corridor with sufficient accuracy to enable an owner of the land to determine whether or not that land is affected by the corridor.

On receipt of the plan, the Minister must notify the RPDC, relevant planning authorities and each landowner within the corridor. This notice must be served no later than the time at which notice of the making of an application for a permit in respect of that land is served. The effect of the notification is as follows:

- the RPDC and any relevant planning authority must have regard to the notice when undertaking their functions;
- a permit application may seek and be granted for any component of the project to occur anywhere within the corridor;
- compensation for any injurious effect to land within the corridor can be claimed;
- no permanent improvement may be made on land within the corridor without the consent of the Minister; and
- the corridor is registered on relevant titles.

Stage 4 – Assessment process

On receipt of the permit application, the combined planning authority can (within 28 days of receipt) request additional information regarding the application. Once the planning authority is satisfied that the application is in order, the application is advertised for a minimum of 14 days.

Representations in relation to the permit application are made to the combined planning authority.

The planning authority is then required to determine the application taking into account:

- the objectives set out in Schedule 1 of the Act;
- prescribed matters (eg planning scheme provisions) that are relevant to the use and development; and
- any representations received during the advertising period.

The planning authority may grant a permit for the project subject to such conditions or restrictions as they consider necessary or refuse the project. The conditions and restrictions are limited to those matters specified in the planning criteria.

This process varies if the permit application is one that is to be considered by the Board of Environmental Management and Pollution Control (in accordance with Sections 24 and 25 of the

Environmental Management and Pollution Control Act 1994). Firstly, the application is not advertised until the BEMPC is satisfied that there is sufficient information to assess the project. Secondly, the planning authority is required to refer any representations to the BEMPC for their consideration.

The planning authority must also incorporate any conditions of the BEMPC in the permit and if the BEMPC resolves that the application should not proceed, refuse the permit application.

The planning authority's decision is subject to appeal to the RMPAT.