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Macquarie Point Development Corporation Act 2012

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Division 3 - Planning

39G. Corporation may request Minister to prepare proposed amendments to planning scheme

(1) The Board, by notice to the Minister, may request the Minister to prepare, in accordance with a draft, of the proposed amendments to the planning scheme, attached to the request –

(a) proposed amendments to the relevant planning scheme that are to apply to the area of land that is within the site on the day on which this section commences; or

(b) proposed amendments to the relevant planning scheme that are to apply to an area of land that is within the site but was not within the site on the day on which this section commences.

(2) The Board may only issue –

(a) one request under subsection (1) for the purposes of subsection (1)(a) ; and

(b) one request under subsection (1) for the purposes of subsection (1)(b) in relation to each area of land that is within the site but was not within the site on the day on which this section commences.

(3) If the Board intends to make a request to the Minister under subsection (1) , the Board must give to the relevant planning scheme planning authority, and the owners and occupiers of each area of land, any part of which adjoins the site, a notice –

(a) specifying that the Board intends to make a request to the Minister under subsection (1) ; and

(b) including a copy of the draft, of the proposed amendments to the planning scheme, that it intends to attach to the request under subsection (1) ; and

(c) inviting the authority, owner and occupiers to make, under subsection (4) , within 21 days, representations in relation to the intended request and the draft referred to in paragraph (b) .

(4) The relevant planning scheme planning authority and those owners and occupiers to whom a notice has been given under subsection (3) may, within 21 days, make representations to the Board in relation to the request, and the copy of the draft, included in the notice in accordance with subsection (3)(b) .

(5) Without limiting the generality of subsection (4) , a representation made under that subsection by the relevant planning scheme planning authority may include –

(a) a statement that the authority does not support the proposed request or draft; and

(b) a statement of the amendments that would need to be made to the request and the draft in order for the authority to support them.

(6) If one or more representations have been made under subsection (4) in relation to a request and a draft of amendments, the Board must, after the last day on which a representation may be made under that subsection –

(a) consider the representations; and

(b) determine whether or not to amend the proposed request and the draft of the amendments so as to take into account any of the representations.

(7) If the Board determines under subsection (6)(b) to amend the proposed request and the draft of the amendments so as to take into account a representation made under subsection (4) –

(a) the Board may amend the proposed request and the draft of the amendments so as to take into account the representation; and

(b) the Board may submit to the Minister under subsection (1) the request, as so amended, and the draft of the amendments, as so amended; and

(c) subsection (3) does not apply in relation to the request and the draft of the amendments.

(8) A request under subsection (1) is to include –

(a) a statement as to the consultation that the Board has undertaken in relation to the draft of the proposed amendments to the relevant planning scheme; and

(b) a statement setting out how the draft of the proposed amendments to the relevant planning scheme –

(i) furthers the requirements of the objectives set out in Schedule 1 to the Land Use Planning and Approvals Act 1993 ; and

(ii) is consistent with any applicable State Policy within the meaning of the State Policies and Projects Act 1993 ; and

(iii) is, as far as practicable, consistent with the Southern Regional Land Use Strategy made under the Land Use Planning and Approvals Act 1993 .

39H. Preparation of proposed amendments

(1) The Minister, after receiving a request under section 39G(1) containing a draft of proposed amendments to the relevant planning scheme, must –

(a) prepare proposed amendments to the relevant planning scheme in the form of the draft of the proposed amendments to the relevant planning scheme to which the request relates; or

(b) after consultation with the Board, prepare proposed amendments to the relevant planning scheme in the form of the draft of the proposed amendments to the relevant planning scheme to which the request relates, altered by the Minister as the Minister thinks fit; or

(c) require the Board to amend, in accordance with the requirement, the draft of the proposed amendments to the relevant planning scheme to which the request relates and make a new request under section 39G(1) in relation to the proposed amendments as amended in accordance with the requirement; or

(d) refuse to prepare proposed amendments to the relevant planning scheme.

(2) The Minister must consult with the Planning Minister in preparing under subsection (1) proposed amendments to the relevant planning scheme.

(3) After preparing under subsection (1) proposed amendments to the relevant planning scheme and before complying with subsection (11) , the Minister must provide to the relevant planning scheme planning authority a notice –

(a) containing a copy of the proposed amendments to the relevant planning scheme; and

(b) requesting the authority to give to the Minister, within 14 days, a notice under subsection (4) in relation to the proposed amendments; and

(c) specifying that, if the authority does not give to the Minister a notice under subsection (4)(a) or (c) , the authority may, within 28 days after receiving the notice from

the Minister, make representations in relation to the proposed amendments.

- (4) The relevant planning scheme planning authority must, within 14 days after receiving a notice under subsection (3) in relation to the proposed amendments, give to the Minister –
- (a) a notice specifying that the authority intends to seek representations from the public in relation to the proposed amendments; or
 - (b) a notice specifying that the authority does not intend to seek representations from the public in relation to the proposed amendments; or
 - (c) a notice specifying –
 - (i) why the authority does not support the proposed amendments; and
 - (ii) a statement of the amendments that would need to be made to the proposed amendments in order for the authority to support them.
- (5) If the relevant planning scheme planning authority gives to the Minister a notice under subsection (4)(b), the authority may, within 28 days after receiving the notice from the Minister, make representations to the Minister in relation to the proposed amendments.
- (6) If the relevant planning scheme planning authority gives to the Minister a notice under subsection (4)(a), the planning authority must –
- (a) within 14 days, cause a consultation notice in accordance with subsection (7) to be published in a newspaper published in, and circulating generally in, the State; and
 - (b) cause a copy of the proposed amendments to be made available for viewing by the public at the offices of the authority and at an electronic address of the authority.
- (7) A consultation notice in relation to proposed amendments is to –
- (a) invite persons and bodies to make, within 28 days after a date, specified in the notice, that is after the date on which the notice is published under subsection (6), representations, to the relevant planning scheme planning authority, in relation to the proposed amendments; and
 - (b) specify the address of the offices of the authority, and the electronic address of the authority, at which the proposed amendments are available for viewing; and
 - (c) specify the address, and an electronic address, at which any representations under subsection (8) may be lodged.
- (8) A person or body (other than the relevant planning scheme planning authority) may, if a notice has been published under subsection (6)(a) in relation to the proposed amendments, make to the relevant planning scheme planning authority, within 28 days after the notice is published, representations in relation to the proposed amendments by lodging them at an address specified in the notice.
- (9) If the Minister receives a notice under subsection (4)(c) in relation to the proposed amendments –
- (a) the Minister must provide a copy of the notice to the Board; and
 - (b) the Minister must notify the Board that, if the Board does not take action under subsection (10) in relation to the request to which the proposed amendments relate, the request will be taken to have never been made; and
 - (c) if the Board does not provide to the Minister an amended request and amended draft under subsection (10) within 21 days or a longer period allowed by the Minister, the request under subsection (1) is to be taken to have never been made; and
 - (d) if the Board provides to the Minister an amended request and amended draft under subsection (10) –

- (i) the request and draft of the proposed amendments are to be taken to be the first request and draft prepared under section 39G(1) ; and
- (ii) the requirements of section 39G are to be taken to have been satisfied in relation to the request and the draft of the proposed amendments; and
- (iii) subsection (1) applies in relation to the request and the draft of the proposed amendments.

(10) If the Board receives a notice from the Minister under subsection (9)(b) in relation to a request and the draft of the proposed amendments prepared by the Board under section 39G to which the request relates, the Board may, within 21 days, or a longer period allowed by the Minister, provide to the Minister a copy of the request, and the draft, that the Board has amended in accordance with the statement set out in the notice under subsection (4)(c) in relation to the proposed amendments.

(11) After preparing under subsection (1) proposed amendments to the relevant planning scheme and receiving from the relevant planning scheme planning authority a notice under subsection (4) and before approving the amendments under section 39I(1) , the Minister must provide a notice specifying that the amendments have been prepared, and a copy of the proposed amendments, to –

- (a) the Board; and
- (b) each relevant statutory authority; and
- (c) any Agency that the Minister considers has an interest in the proposed amendments to the relevant planning scheme.

(12) A notice for the purposes of subsection (11) in relation to proposed amendments is to invite the persons or bodies to whom the notice is provided to make to the Minister, within 28 days, representations in relation to the proposed amendments.

(13) A person or body to which a notice under subsection (11) has been provided may make to the Minister, within 28 days after the notice is provided, representations in relation to the proposed amendments.

(14) If a notice has been published under subsection (6)(a) in relation to the proposed amendments, the relevant planning scheme planning authority must, within 21 days after the last day on which a representation may be made under subsection (8) in relation to the proposed amendments, provide to the Minister –

- (a) a copy of all representations received by the authority in relation to the proposed amendments; and
- (b) a copy of the authority's opinion in relation to the representations; and
- (c) a copy of any representations the authority wishes to make in relation to the proposed amendments.

(15) The Minister must, within 21 days after either the last day on which a representation may be made under subsection (13) or, in a case to which subsection (14) applies, the day on which the Minister receives copies of representations under subsection (14) , whichever is the later day, provide to the Commission –

- (a) a copy of the proposed amendments; and
- (b) if the Minister is considering approving under section 39I(1) a copy of the proposed amendments in the form of the proposed amendments altered as the Minister thinks fit – a copy of the proposed amendments as so altered; and
- (c) a copy of all the representations made in relation to the proposed amendments; and
- (d) a notice requesting the Commission to provide to the Minister a notice under subsection (16) in relation to the proposed amendments, if any, provided to the

Commission under paragraph (b) .

(16) The Commission, within 21 days after receiving a notice from the Minister under subsection (15)(d) , may, by notice to the Minister –

(a) advise the Minister that, in the opinion of the Commission, the requirements of section 39G(8)(b)(i), (ii) and (iii) have been –

(i) satisfied in relation to the draft of the proposed amendments to the relevant planning scheme; or

(ii) if a copy of the proposed amendments is provided to the Commission under subsection (15)(b) – satisfied in relation to those proposed amendments; or

(b) provide to the Minister the amendments that, in the opinion of the Commission, are required to be made –

(i) to the draft of the proposed amendments to the relevant planning scheme; or

(ii) if a copy of the proposed amendments is provided to the Commission under subsection (15)(b) – to those proposed amendments –

in order for the requirements specified in section 39G(8)(b)(i), (ii) and (iii) to be satisfied in relation to the proposed amendments, and the reasons why the Commission is of that opinion.

39I. Approval of proposed amendments to relevant planning scheme

(1) The Minister, after considering all representations made under section 39H(5) , (13) or (14) (c) and after altering the proposed amendments in accordance with the amendments, if any, of the Commission provided to the Minister under section 39H(16)(b) , may –

(a) approve proposed amendments to the relevant planning scheme that are to apply to the area of land that is within the site on the day on which section 39G commences; or

(b) approve proposed amendments to the relevant planning scheme that are to apply to the area of land that is within the site but was not within the site on the day on which section 39G commences; or

(c) refuse to approve proposed amendments to the relevant planning scheme.

(2) The proposed amendments to the relevant planning scheme that are approved under subsection (1) are to be –

(a) in the form of the proposed amendments to which the notice under section 39H(11) relates; or

(b) after consultation with the Board, in the form, of the proposed amendments to which the notice under section 39H(11) relates, altered as the Minister thinks fit.

(3) As soon as practicable after approving under subsection (1) proposed amendments to the relevant planning scheme, the Minister must provide to the Commission –

(a) a copy of the approval; and

(b) a copy of the proposed amendments to the relevant planning scheme to which the approval relates; and

(c) a statement setting out how the proposed amendments to the relevant planning scheme –

(i) further the requirements of the objectives set out in Schedule 1 to the Land Use Planning and Approvals Act 1993 ; and

(ii) are consistent with any applicable State Policy within the meaning of the State Policies and Projects Act 1993 ; and

(iii) are, as far as practicable, consistent with the Southern Regional Land Use Strategy made under the Land Use Planning and Approvals Act 1993 ; and

(d) a direction to the Commission to make the proposed amendments to the relevant planning scheme and publish, in the manner that the Commission thinks fit, the statement referred to in paragraph (c) .

39J. Commission to amend relevant planning scheme

(1) Within 14 days, or a longer period approved by the Minister, after the Commission receives under section 39I(3)(d) a direction to make proposed amendments to the relevant planning scheme, the Commission must –

(a) prepare amendments to the relevant planning scheme in the form of the proposed amendments to which the direction relates; and

(b) make the amendments to the relevant planning scheme.

(2) If a direction is given to the Commission under section 39I(3)(d) to make proposed amendments to the relevant planning scheme, the Commission may, under subsection (1) , make the proposed amendments altered so as to correct an anomaly or minor mistake that it is necessary to correct in order for the direction to be effectively implemented.

(3) Without limiting the generality of subsection (2) , the correction of a mistake or anomaly in accordance with that subsection includes the correction of a mistake or anomaly that has arisen by virtue of the relevant planning scheme having been amended in accordance with the direction.

(4) Within 14 days, or a longer period approved by the Minister, after the Commission receives under section 39I(3)(d) a direction to make proposed amendments to the relevant planning scheme, the Commission must notify the Minister of the making of the amendments under subsection (1) .

(5) The Minister must, as soon as practicable after receiving a notice under subsection (4) –

(a) give notice in the *Gazette*, and in a newspaper circulating generally in Tasmania, of the making of the amendments to the relevant planning scheme and the day on which the amendments are to come into effect; and

(b) notify the relevant planning scheme planning authority of –

(i) the making of the amendments; and

(ii) the day on which the amendments come into effect.

(6) Amendments to the relevant planning scheme made under subsection (1) come into effect on –

(a) a day, after the date on which the amendments were made, specified in the notice in the *Gazette* as the day on which they come into effect; or

(b) if no day is specified in the notice in the *Gazette* as the day on which they come into effect – 7 days after the day on which the notice appears in the *Gazette*.

(7) Amendments to the relevant planning scheme that have come into effect under subsection (6) are, despite any provision of the Land Use Planning and Approvals Act 1993 , to be taken to have been made, to the relevant planning scheme, under that Act.

(8) Amendments to the relevant planning scheme made under subsection (1) are not a statutory rule for the purposes of the Subordinate Legislation Act 1992 .

39K. Contents of amendments to relevant planning scheme

(1) In this section –

draft LPS means a draft LPS to which the Land Use Planning and Approvals Act 1993 applies;

LPS has the same meaning as in the Land Use Planning and Approvals Act 1993 ;

site-specific qualification has the same meaning as in Schedule 6 to the Land Use Planning and Approvals Act 1993 .

(2) Proposed amendments to the relevant planning scheme, and amendments to the relevant planning scheme made under section 39J(1) , may only contain –

(a) provisions, regulating the planning of the use or redevelopment of the site and the use or redevelopment of the site, that are to apply under the Land Use Planning and Approvals Act 1993 and the relevant planning scheme; and

(b) any amendments to the relevant planning scheme required in order to give effect to the provisions referred to in paragraph (a) ; and

(c) amendments referred to in section 39J(2) .

(3) A provision that may, in accordance with subsection (2)(a) , be included in proposed amendments to the relevant planning scheme, or amendments to the relevant planning scheme made under section 39J(1) , may consist of a site-specific qualification.

(4) If, in accordance with subsection (3) , amendments to the relevant planning scheme made under section 39J(1) consist of a site-specific qualification –

(a) the site-specific qualification is –

(i) if it is, in accordance with this Division, part of the relevant planning scheme immediately before the day on which an LPS comes into force in relation to the site – to be taken to be a provision that, in accordance with clause 8 of Schedule 6 to the Land Use Planning and Approvals Act 1993 , must be contained in an LPS, but may be amended or revoked in accordance with this Division; or

(ii) if it becomes, in accordance with this Division, part of the relevant planning scheme after the day on which an LPS comes into force in relation to the site – to be taken to be a provision in relation to which a declaration has been given under clause 8A of that Schedule, but may be amended or revoked in accordance with this Division; and

(b) any other provisions, in relation to the site, of the relevant planning scheme, that consist of a site-specific qualification, are not to be taken to be provisions that, in accordance with clause 8 of that Schedule, must be contained in an LPS in relation to the site.

(5) If the Minister has prepared proposed amendments to the relevant planning scheme under section 39H(1) –

(a) before a direction has been issued under section 35B(4) of the Land Use Planning and Approvals Act 1993 in relation to a draft LPS that relates to the site – a direction may not be issued under that section of that Act in relation to a draft LPS that relates to the site; or

(b) after a direction has been issued under section 35B(4) of the Land Use Planning and Approvals Act 1993 in relation to a draft LPS that relates to the site but before an LPS comes into force in relation to the site and amendments – the draft LPS is to be taken for the purposes of that Act not to relate to the site.

(6) Amendments to the relevant planning scheme made under section 39J(1) –

(a) must further the requirements of the objectives set out in Schedule 1 to the Land Use Planning and Approvals Act 1993 ; and

(b) must be consistent with any applicable State Policy within the meaning of the State Policies and Projects Act 1993 ; and

(c) must be, as far as practicable, consistent with the Southern Regional Land Use Strategy made under the Land Use Planning and Approvals Act 1993 ; and

- (d) if the relevant planning scheme is the *Sullivans Cove Planning Scheme 1997* –
- (i) must be consistent with the Sullivans Cove Strategic Framework under Part B of that planning scheme; and
 - (ii) must not amend any listings under Schedule 1 – Conservation of Cultural Heritage Values, of that planning scheme.

39L. Minor amendment of relevant planning amendments

- (1) The Minister may prepare a minor amendment to the relevant planning scheme and, by instrument in writing, approve the making of the minor amendment to the relevant planning scheme.
- (2) An amendment is only to be taken to be a minor amendment under subsection (1) if the amendment –
- (a) is to correct –
 - (i) a clerical mistake, or an accidental omission, in amendments to the relevant planning scheme made under section 39J(1) ; or
 - (ii) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in amendments to the relevant planning scheme made under section 39J(1) ; and
 - (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development that may, or may not, be carried out under the amendments to the relevant planning scheme made under section 39J(1) .
- (3) The Minister may only approve under subsection (1) the making of a minor amendment –
- (a) where the approval relates to a minor amendment of amendments to the relevant planning scheme, made under section 39J(1) , that apply to the area of land that is within the site on the day on which section 39G commences – if the approval is given within 12 months after those amendments came into effect; or
 - (b) where the approval relates to a minor amendment of amendments to the relevant planning scheme, made under section 39J(1) , that apply to an area of land that is within the site but was not within the site on the day on which section 39G commences – if the approval is given within 12 months after those amendments came into effect.
- (4) A minor amendment referred to in subsection (1) may only consist of any one or more of the following:
- (a) an amendment to the amendments to the relevant planning scheme made under section 39J(1) ;
 - (b) the revocation of one or more of the amendments to the relevant planning scheme made under section 39J(1) ;
 - (c) the amendment or revocation of the provisions of the planning scheme necessary to give effect to the amendment to, or revocation of, the amendments to the relevant planning scheme made under section 39J(1) .
- (5) The Minister must consult with the Planning Minister in preparing a minor amendment under subsection (1) .
- (6) Section 39I(3) and section 39J apply in relation to a minor amendment to which an approval under subsection (1) relates as if –
- (a) a reference in either of those sections to the proposed amendments to the relevant planning scheme were a reference to the minor amendment; and
 - (b) a reference in either of those sections to amendments to the relevant planning scheme were a reference to the minor amendment.

(7) An approval of a minor amendment under subsection (1) , or a minor amendment made in accordance with this section, is not a statutory rule for the purposes of the Subordinate Legislation Act 1992 .

39M. Significant amendments to relevant planning amendments

- (1) The Minister may prepare an amendment to the relevant planning scheme and, by instrument in writing, approve the making of the amendment to the relevant planning scheme.
- (2) An approval under subsection (1) of the making of an amendment may only be made –
 - (a) where the approval relates to an amendment of amendments to the relevant planning scheme, made under section 39J(1) , that apply to the area of land that is within the site on the day on which section 39G commences – if the approval is given within 12 months after those amendments came into effect; or
 - (b) where the approval relates to an amendment of amendments to the relevant planning scheme, made under section 39J(1) , that apply to an area of land that is within the site but was not within the site on the day on which section 39G commences – if the approval is given within 12 months after those amendments came into effect.
- (3) An amendment referred to in subsection (1) may only consist of any one or more of the following:
 - (a) an amendment to the amendments to the relevant planning scheme made under section 39J(1) ;
 - (b) the revocation of one or more of the amendments to the relevant planning scheme made under section 39J(1) ;
 - (c) the amendment or revocation of the provisions of the relevant planning scheme necessary to give effect to the amendment to, or revocation of, the amendments.
- (4) The Minister must consult with the Planning Minister in preparing an amendment under subsection (1) .
- (5) If an approval is given under subsection (1) in relation to an amendment under subsection (1) –
 - (a) a reference in section 39G to a request is to be taken to be a reference to the approval under subsection (1) ; and
 - (b) a reference in section 39G , section 39H, section 39I or section 39J to proposed amendments to the relevant planning scheme or a draft is to be taken to be a reference to the amendment under subsection (1) ; and
 - (c) a reference in section 39J or section 39K(6) to amendments to the relevant planning scheme is to be taken to be a reference to the amendment under subsection (1) .
- (6) An approval under subsection (1) is not a statutory rule for the purposes of the Subordinate Legislation Act 1992 .

39N. Amendment under Land Use Planning and Approvals Act 1993 of relevant planning amendments

- (1) Nothing in this Division is to be taken to permit the amendment under this Act of a provision of a planning scheme that is one of the State Planning Provisions, within the meaning of the Land Use Planning and Approvals Act 1993 .
- (2) An amendment under the Land Use Planning and Approvals Act 1993 to provisions amended or inserted by the amendments to the relevant planning scheme made after consultation with the Planning Minister, as amended, if at all, under this Division, may only be made with the approval of the Minister.

(3) Subsection (2) ceases to apply in respect of amendments in relation to an area of land at the end of the period of 2 years after proposed amendments to the relevant planning scheme in relation to the area of land are approved under section 39I(1) .