



Draft Amendment 05-2024 of the State Planning Provisions - Agricultural Worker Accommodation

Explanatory Document under section 16(5) of the Land Use Planning and Approvals Act 1993, including SPPs criteria assessment

June 2024

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Explanatory information

This document is the explanatory document for draft amendment 05-2024 of the State Planning Provisions for the purposes of section 16(5) of the *Land Use Planning and Approvals Act 1993* (LUPA Act).

Background

The State Planning Provisions (SPPs) were made on 22 February 2017 and came into effect on 2 March 2017 as part of the Tasmanian Planning Scheme. The SPPs are now in effect in 23 municipalities with the remaining municipalities to follow when each Local Provisions Schedule is approved.

The LUPA Act requires that the SPPs are kept under regular review to ensure they remain contemporary and fit-for-purpose. A comprehensive review of the SPPs commenced in March 2022 as part of the 5-yearly statutory review required under the LUPA Act.

The purpose of draft Amendment 05-2024 of the State Planning Provisions (SPPs) is to improve the requirements in the Rural Zone and Agriculture Zone for the assessment of agricultural worker accommodation.

The Agriculture Zone already provides for the approval of agricultural worker accommodation, specifically residential use where required as part of an agricultural use. This can be for seasonal and permanent workers, and in a variety of accommodation types, such as short-term, modular, transportable or permanent buildings. It also enables the approval of accommodation that is self-contained (e.g. multiple dwellings) or with shared facilities (e.g. communal residences).

Issues raised from the SPPs Review scoping process and recent workshops with council planners has identified concerns with the lack of certainty in the current planning requirements. This often leads to inconsistent advice and decision making. There is an opportunity to provide greater consistency and certainty, and also extend the requirement to the Rural Zone.

This draft amendment has been developed in response to issues raised from the SPPs Review initiated under section 30T(1)(a) of the Land Use Planning and Approvals Act 1993 (LUPA Act). The draft amendment has been informed by written feedback and a workshop undertaken with council planners during 2024.

The Minister for Housing and Planning (the Minister) has prepared a Terms of Reference for draft amendment 03-2024 of the SPPs (Appendix A) and given notice in the three main Tasmanian newspapers.

The draft amendment has been prepared in accordance with the Term of Reference issued by the Minister for Housing and Planning.

For the purposes of the SPPs Criteria, draft amendment 05-2024 of the SPPs is a relevant planning instrument, and the SPPs Criteria apply (refer to section 15 of the LUPA Act).

For the reasons set out in this document, draft amendment 05-2024 of the SPPs is considered to meet the SPPs Criteria and, if approved, will not cause the SPPs to cease to meet the SPPs Criteria.

Current provisions in the Rural and Agriculture Zones

The Agriculture Zone in the SPPs was drafted to enable the approval of agricultural worker accommodation on farms, whether seasonal or permanent. It currently enables the Discretionary approval of agricultural worker accommodation, along with other forms of residential development like farmhouses or farm managers residences, that are required as part of an agricultural use.

Feedback received during the SPPs Review scoping process suggested a need to further clarify the residential use requirements in the Agriculture Zone, particularly to confirm the permissibility of agricultural worker accommodation. More recent correspondence received by the State Planning Office has raised similar issues.

The Rural Zone in the SPPs currently only allows single dwellings, which effectively prohibits agricultural worker accommodation. This differentiation between the Rural Zone and Agriculture Zone was intentional because most of the agricultural land was expected to be in the Agriculture Zone. This can now be reviewed with the knowledge of how zones are being allocated through Local Provision Schedules. It is now considered necessary to enable agricultural worker accommodation in the Rural Zone.

Tasmanian Government's 2030 Strong Plan for Tasmania's Future

The Tasmanian Government is seeking to introduce improvements for the approval of agricultural worker accommodation on farms as a priority in the [2030 Strong Plan for Tasmania's Future – First 100](#) Days following the 2024 election. The 2030 Strong Plan identifies a commitment to:

“Address restrictions that apply to the development of housing on agricultural land, including an option for more than one dwelling on a single title (either temporary or permanent). This will make it possible for short term, modular or transportable housing solutions to be used on farms as agricultural workforce accommodation.”

The Tasmanian Government intends to improve current requirements for approving on agricultural worker accommodation, specifically options for a Permitted approval pathway in both the Rural Zone and Agriculture Zone.

General purpose and terms of the draft amendment

The proposed amendments are not intended to cover all possible variations of agricultural worker accommodation, only accommodation situated in the Rural Zone or Agriculture Zone.

It is noted that not all agricultural workers can be accommodated on farms. Some will be in neighbouring towns in a variety of accommodation types, including houses, hostel-type accommodation and visitor accommodation.

The amendments are also not attempting to cover key workers accommodation for other uses in regional or remote industries. This will be considered under a separate policy issue.

The focus is on improving the approval pathways for agricultural worker accommodation in the rural zones. The proposed amendment adds a Permitted approval pathway for modest

scale accommodation for workers employed on-site in both the Rural Zone and Agriculture Zone. It retains the current Discretionary approval pathway for the Agriculture Zone and adds this to the Rural Zone. Accommodation of workers employed off-site would be considered through the Discretionary approval pathway, as would other forms of accommodation that do not meet the Permitted thresholds.

The proposed amendments provide flexibility for the operator to provide short-term, modular, transportable, or permanent buildings for either seasonal or permanent workers. They may also be self-contained or include shared facilities.

The recent reforms in Victoria and Queensland form the basis for the proposed amendments, particularly scoping the Permitted pathway. The recent Victorian and Queensland reforms provide a planning exemption for rural workers' accommodation in certain circumstances. It is considered best to implement the improvements in Tasmania through a Permitted pathway, rather than an exemption or No Permit Required pathway. This provides a clear paper trail with the issuing of a permit, providing certainty to both the applicant and the council, particularly for compliance purposes.

The proposed amendments include the following parts:

- Inclusion of a new term and definition for 'agricultural worker accommodation' in Planning Terms and Definition in Table 3.1 of the SPPs.

Reasons: Inclusion of a definition enables tailored planning requirements to be introduced into the Rural Zone and Agriculture Zone, providing greater certainty to applicants for seeking approval and for council planners in undertaking the assessment. The proposed definition is based on similar definitions implemented in Victoria, Queensland and New South Wales. The definition is intentionally limited to accommodation located in the Rural Zone or Agriculture Zone as opposed to more generic accommodation located in towns or other areas.

- Exclusion of 'agricultural worker accommodation' from the 'sensitive use' definition in Table 3.1 of the SPPs.

Reasons: Exclusion of agricultural worker accommodation from the sensitive use definition avoids the accommodation being unnecessarily constrained by setbacks in the Rural Zone and Agriculture Zone, or limited by proximity to industrial or agricultural activities listed in the Attenuation Code. While a Residential use is normally considered to be sensitive to activities that are undertaken in rural areas (e.g. mining and quarrying, agricultural and resource processing uses), workers accommodation is directly associated with an agricultural use and less likely to be impacted by, or constrain, other rural activities. The workers are more likely to be accepting of activities that occur in rural areas, being directly employed in these industries. Creating a clear separation from other sensitives uses also provides a clear differentiation and justification for having a Permitted pathway in the rural zones.

- Inclusion of 'agricultural worker accommodation' as an example of a use in the Residential use class description in Table 6.2 of the SPPs.

Reasons: Recent feedback has demonstrated that agricultural worker accommodation has in the past been classified as either ancillary and subservient to an agricultural use (the Resource Development use class), or as a Residential use or a Visitor Accommodation use. Inclusion of agricultural worker accommodation as an example in Residential use class description clarifies how it should be classified and provides greater consistency and certainty.

While there are many instances where workers will be accommodated away from their normal place of residence (e.g. seasonal workers), agricultural worker accommodation is different to standard short stay or holiday accommodation (the Visitor Accommodation use class). Agricultural worker accommodation is more aligned to the Residential use class. The State Policy on the Protection of Agricultural Land 2009 also excludes Residential use from other uses that may be ancillary and subservient to an agricultural use (see Principles 3 and 5), implying that it should be classified in the Residential use class in the planning scheme.

- Creation of a Permitted approval pathway for agricultural worker accommodation in the Rural Zone and Agriculture Zone by:
 - including ‘agricultural worker accommodation’ in the Permitted qualification for the for the Residential use class in the Rural Zone and Agriculture Zone use tables (clauses 20.2 and 21.2);
 - including a new use standard in the Rural Zone and Agriculture Zone (proposed clauses 20.3.2 and 21.3.2) with:
 - Acceptable Solutions to enable the Permitted approval of agricultural worker accommodation; and
 - accompanying Performance Criteria to enable the Discretionary approval of agricultural worker accommodation beyond the Acceptable Solutions thresholds.
- The requirements in the Acceptable Solutions in proposed clauses 20.3.2 and 21.3.2 limit the Permitted pathway to agricultural worker accommodation that meets the following:
 - accommodates not more than 20 workers;
 - the workers are employed on the site or an adjoining site in the same ownership;
 - the accommodation is located on the same lot as either:
 - an existing dwelling and it shares the vehicular access and electricity connections with that dwelling; or
 - an existing building or facility where the workers are employed and it shares the vehicular access with that building or facility;
 - the accommodation is on a lot, or is part of a farm, that is not less than 40 hectares in area.

Reasons: The proposed qualification in the Use Tables and the Acceptable Solutions in the proposed use standard enable the Permitted approval of modest-scale

agricultural worker accommodation. The thresholds in the Acceptable Solutions are based on those recently introduced in Victoria and Queensland. They aim to manage the scale and grouping of development to minimise impacts and provide suitable thresholds for a Permitted pathway. Agricultural worker accommodation can still be approved if it does not meet these requirements and will be assessed against the performance-based requirements in the corresponding Performance Criteria. The following provides further background on the Acceptable Solution requirements:

- The limit of 20 workers is based on the threshold for the exemption recently introduced in Queensland.
 - Workers must at a minimum be employed on the site on which the accommodation is provided, or on an adjoining site that is the same ownership (i.e. still part of the farm on which they are accommodated). This acknowledges that many farms comprise of multiple titles in the same ownership. Additionally, it enables workers to be employed on other sites provided they remain employed on the farm on which they are accommodated. This acknowledges that some agricultural businesses have multiple sites where they employ their workers.
 - The accommodation must be located on the same lot as an existing dwelling and share its vehicular access and electricity connection, or it can be located on the same lot as a building or facility where the workers are employed (e.g. glasshouses, dairy sheds) provided it shares the vehicular access. This encourages the grouping or co-location of buildings, minimising the conversion of agricultural land in accordance with the State Policy on the Protection of Agricultural Land 2009.
 - The 40 hectare minimum lot size/farm area is based on the threshold for the exemption recently introduced in Victoria. It also corresponds with a common minimum lot size for rural zones in Tasmania for many years, being roughly 100 acres. The minimum area is considered to provide a suitable threshold, and indicator of farm requiring on-site workers, without the need for further justification. Other thresholds were also considered, including minimum areas based on different types of agricultural uses, or different regions or localities, or a financial turnover threshold for the business. For simplicity, the 40 hectare threshold has been proposed.
- The requirements in the corresponding Performance Criteria enable the Discretionary approval of agricultural worker accommodation that does not meet the Acceptable Solutions requirements.

Reasons: The Performance Criteria is based on the current requirements in clause 21.3.1 P4 for approving Discretionary Residential use in the Agriculture Zone. This enables agricultural worker accommodation that is beyond the Acceptable Solutions requirement to be considered on its merits by justifying the need for the accommodation to be provided on this site. For example, this could be:

- to accommodate more than 20 workers;
- for workers that aren't employed on the site; or

- for a site that is smaller than the 40 hectare threshold.

Assessment against the Performance Criteria will likely require a farm or business plan to demonstrate the need for the workers being accommodated on the site.

- Revisions to the access requirements for new dwellings (clauses 20.4.3 and 21.4.3) in the Rural Zone and Agriculture Zone to enable the agricultural worker accommodation Permitted under proposed clauses 20.3.2 and 21.3.2 to utilise the current legal access to the site.

Reasons: It is considered unnecessary to apply the same requirements for vehicular access for new dwellings to agricultural worker accommodation. For accommodation that meets the Acceptable Solutions in proposed clauses 20.3.2 and 21.3.2, the proposed revisions enable it to use the existing legal access to site, if there is no direct frontage to the public road.

- The added requirements in the subdivision standards performance criteria (clauses 20.5.1 P1 and 21.5.1 P1) in the Rural Zone and Agriculture Zone are to prohibit excision of the land containing agricultural worker accommodation from the farm.

Reasons: It is considered necessary to ensure that the agricultural worker accommodation continues to be used in association with agricultural production as intended and does not create a loophole for establishing separately owned residential development in the Rural Zone or Agriculture Zone. This prevents constraining surrounding agricultural use consistent with the principles of the State Policy on the Protection of Agricultural Land 2009.

- Amendments to Table C2.1 in the Parking and Sustainable Transport Code to specify that there are no minimum car parking space or bicycle parking space requirements for agricultural worker accommodation.

Reasons: Consistent with any agricultural use (the Resource Development use class), there is not considered a need to set a minimum car parking or bicycle parking space requirement for agricultural worker accommodation in the Rural Zone or Agriculture Zone. There would be ample space within these zones to provide any necessary parking. The parking needs would likely vary for place to place and depend on how they are operated. Evidence suggests that many farm business owners organise minibuses or coaches to transport workers. It is considered best for the accommodation provider to determine what is best for their needs.

Agricultural worker accommodation will need to comply with any other relevant Codes as normal. Consideration has been given to whether agricultural worker accommodation should be classified as a vulnerable use in the hazard codes. Vulnerable uses in the Residential use class are limited to those who may have limited mobility or require extra care or assistance. Agricultural workers are not considered to fit this category.

Legislative requirements

Part 3, Division 2 of the LUPA Act sets out the statutory requirements for making amendments to the SPPs.

To make an amendment of the SPPs, the Minister must be satisfied that it meets the SPPs Criteria in section 15 of the LUPA Act.

The SPPs Criteria are established in section 15 of the LUPA Act, as follows:

- (1) In this section –

relevant planning instrument means a draft of the SPPs, the SPPs, a draft amendment of the SPPs and an amendment of the SPPs.
- (2) The SPPs criteria to be met by a relevant planning instrument are that the instrument –
 - (a) only contains provisions that the SPPs may contain under section 14; and
 - (b) furthers the objectives set out in Schedule 1; and
 - (c) is consistent with each State Policy; and
 - (ca) is consistent with the TPPs that are in force before the instrument is made; and
 - (d) has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019.
- (3) An amendment of the SPPs, or a draft amendment of the SPPs, is taken to meet the SPPs criteria if the amendment of the SPPs, or an amendment of the SPPs made in the terms of the draft amendment of the SPPs, will not have the effect that the State Planning Provisions, as amended, will cease to meet the SPPs criteria.

An assessment against each of the SPPs Criteria is made below. In accordance with section 15(3) of the LUPA Act, draft amendment 05-2024 will not cause the SPPs to cease to meet the SPPs Criteria.

Contents of SPPs

Under section 14 of the LUPA Act, the SPPs may contain the following:

- (1) The SPPs –
 - (a) may contain any provision that may, under section 11, be included in the Tasmanian Planning Scheme; and
 - (b) may not contain a provision that is inconsistent with section 11 or, if the Tasmanian Planning Scheme were in effect in relation to a municipal area, would be inconsistent with a provision of section 12; and
 - (c) may contain a provision indicating or specifying the structure to which an LPS is to conform and the form that a provision of an LPS is to take; and

- (d) may contain a provision permitting an LPS to provide for the detail of the SPPs in respect of, or the application of the SPPs to, a particular place or matter; and
 - (e) may contain a provision permitting a provision of an LPS to override a provision of the SPPs; and
 - (f) may contain a provision permitting the modification, in relation to a part of a municipal area, of the application of a provision of the SPPs; and
 - (g) may contain a provision requiring, or permitting, an LPS to contain a map, an overlay, a list, or another provision, that provides for the spatial application of the SPPs to land; and
 - (h) may contain a provision requiring an LPS to contain a provision of a kind specified or referred to in the SPPs.
- (2) The SPPs may contain a provision permitting an LPS to include –
- (a) a particular purpose zone, being a group of provisions consisting of –
 - i. a zone that is particular to an area of land specified in the LPS; and
 - ii. the provisions that are to apply in relation to that zone; or
 - (b) a specific area plan, being a plan consisting of –
 - i. a map or overlay that delineates a particular area of land; and
 - ii. the provisions, specified in the LPS, that are to apply to that land in addition to, in modification of, or in substitution for, a provision, or provisions, of the SPPs; or
 - (c) a site-specific qualification, being a provision, or provisions, that are specified, in relation to a particular area of land, in the LPS and that modify, are in substitution for, or are in addition to, a provision, or provisions, of the SPPs.

Response: The SPPs have already been assessed as being in accordance with the Contents of SPPs in section 14 of the LUPA Act. The draft amendment does not impact this and only contains provisions that the SPPs are able to contain.

Land Use Planning and Approvals Act 1993 – Schedule 1

Objectives

Under Schedule 1 of the LUPA Act outlines the following:

Part 1 - Objectives of the Resource Management and Planning System of Tasmania

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.
2. In clause 1 (a), 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 –
 - (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Part 2 - Objectives of the Planning Process Established by this Act

1. The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule to –
 - (a) to require sound strategic planning and coordinated action by State and local government; and

- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- (d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and
- (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and
- (f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and
- (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- (i) to provide a planning framework which fully considers land capability.

Response: Draft amendment 05-2024 will enable the SPPs as whole to continue to further the Schedule 1 objectives of the LUPA Act. In particular, the draft amendment will continue to provide for the fair, orderly and sustainable use and development of land (Part 1(b)), and also fully considers the land capability in accordance with the State Policy for the Protection of Agricultural Land 2009.

State Policies

Tasmania's State Policies are created under Part 2 of the State Policies and Projects Act 1993. Also, under section 12A of that legislation, all National Environment Protection Measures (NEPM) established by the Australian Government are taken to be State Policies.

There are currently three State Policies and seven NEPMs in place:

1. State Coastal Policy 1996 (SCP)
2. State Policy on the Protection of Agricultural Land 2009
3. State Policy on Water Quality Management 1997
4. National Environment Protection (Air Toxics) Measure 2004

5. National Environment Protection (Ambient Air Quality) Measure 1998
6. National Environment Protection (Assessment of Site Contamination) Measure 1999
7. National Environment Protection (Diesel Vehicle Emissions) Measure 2001
8. National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998
9. National Environment Protection (National Pollutant Inventory) Measure 1998
10. National Environment Protection (Used Packaging Materials) Measure 1998

Response: The State Policy on the Protection of Agricultural Land 2009 (the PAL Policy) is considered most relevant to draft amendment 05-2024. The draft amendment is consistent with PAL Policy, specifically Principle 5, as it only enables residential use to occur on agricultural land where it is required as part of an agricultural use. By its very nature, agricultural worker accommodation is only provided where required as part of an agricultural use. The requirements for both the Permitted and Discretionary pathway in proposed clauses 20.3.2 and 21.3.2 also ensure this outcome.

The SPPs have already been assessed as being consistent with the other State Policies. Draft Amendment 05-2024 will enable the SPPs as a whole to continue to be consistent with these State Policies.

Draft Tasmanian Planning Policies

At the time of preparing the draft amendment, the draft Tasmanian Planning Policies (TPPs) were yet to take effect. It is expected that they will take effect before the draft amendment is approved. Consequently, the draft TPPs (exhibited March 2023) have been considered for assessment purposes.

Section 4.1 (Agriculture) of the draft TPPs is most relevant to the draft amendment, specifically strategy 9 under section 4.1.3, which currently reads:

9. Allow residential use where it is part of, or supports, an agricultural use, such as workers' accommodation, where it does not unreasonably fetter, fragment or convert agricultural land uses.

Response: The draft amendment is consistent with this draft strategy. By its very nature, agricultural worker accommodation is only provided where required as part of an agricultural use. Agricultural worker accommodation will also not unreasonably fetter, fragment or convert agricultural land or uses.

Gas pipeline safety

The LUPA Act currently refers to the safety requirements set out in the standards prescribed in the Gas Safety Act 2019. This legislation appears to provide for safety requirements in relation to individual appliances and the like, and not gas safety as it relates to Tasmania's major gas infrastructure. Under this legislation, there is scope for the relevant Minister to issue determinations in respect of any matter to do with gas safety, but at present it does not appear that any determinations in this regard have been issued.

On this basis, any SPPs amendment or planning scheme amendment would only have the potential to affect the risk level of the major gas infrastructure if an individual development, arising from that amendment, was located inside the declared gas pipeline corridor. If that were the case, the development application would be referred to the gas pipeline licensee for comment under the Gas Industry Act 2019 at the development application stage.

Response: Draft amendment 05-2024 is unlikely to directly affect the risk levels of the main gas pipelines in Tasmania. Any specific issues would be expected to be managed through individual development applications if they are located within the declared gas pipeline corridor.

Appendix A: Terms of Reference