

## **Minister for Planning**

### **Interim Amendment 01-2024 of the State Planning Provisions**

#### **Statement of Reasons**

After considering the advice received under section 30NB(2) of the *Land Use Planning and Approvals Act 1993* (LUPA Act), I have determined to make Interim Amendment 01-2024 of the State Planning Provisions (SPPs) in the terms of the draft amendment 01-2024 of the SPPs in accordance with section 30NB(3)(a) of the LUPA Act. In accordance with section 30NB(7)(b) of the LUPA Act, my reasons for making Interim Amendment 01-2024 of the SPPs are set out in the attached Schedule 1. The amendment is made in accordance with Schedule 2.

Dated: 2 October 2024



FELIX ASHTON ELLIS

MINISTER FOR HOUSING AND PLANNING

## **Schedule 1**

### **Minister's reasons for making Interim Amendment 01-2024 of the State Planning Provisions in accordance with section 30NB(7)(b) of the *Land Use Planning and Approvals Act 1993***

#### **Background**

The State Planning Provisions (SPPs) were made on 22 February 2017 and came into effect on 2 March 2017. The SPPs are now in effect in the majority of municipalities in the State with the remaining municipalities to follow when each Local Provisions Schedule is approved. It is important that the SPPs are kept under regular review. Previous amendments of the SPPs were made on 19 April 2018, 19 February 2020, 20 July 2022 and 26 June 2024 for a number of minor amendments including correcting drafting errors and anomalies, clarifying provisions and alignment with legislation and previously approved or modified planning directives. An interim SPPs amendment was made on 10 May 2023 followed by another corresponding amendment of the SPPs made on 24 January 2024 to introduce exemptions and special provisions for the State's Container Refund Scheme.

A comprehensive review of the SPPs commenced in March 2022 as part of the 5-yearly statutory review required under the LUPA Act. Amendments have been identified through scoping consultation for the SPPs Review and resulting work program and 163 submissions to the scoping consultation. The SPPs Review work program categorised issues into Action Groups and projects for preparation of SPPs amendments or for issues that require further investigation. Draft amendment 01-2024 is part of the Action Group 1 SPPs Amendments to address stand-alone or well-resolved issues, specifically in the operation of the landslip, coastal inundation, and coastal erosion codes.

Concurrent with the SPPs review, the Department of Premier and Cabinet (DPAC) has been supporting West Tamar Council and Mineral Resources Tasmania in the management of active landslips at Legana and Brickmakers Point along the Tamar River. While providing this support, improvements to the operations of the exemptions in the Landslip Code in relation to assessment of 'significant works' were identified.

The proposed amendment responds to specific issues raised about the interpretation and operation of the exemptions in the Landslip Hazard Code and extends to improve equivalent drafting found in the Coastal Erosion Hazard Code and Coastal Inundation Hazard Code. These amendments can be made without affecting other aspects of the codes or the planning scheme generally.

The remaining more complex issues raised through the SPPs Review regarding these hazard codes will be dealt with through Action Group 2 projects, which are intended to implement new statewide landslide and flood hazard mapping and any related improvements to these codes. A more detailed review of the hazard codes will also be undertaken as an Action Group 2 project to deliver any additional improvements to their operation. There are also ongoing Action Group 6 projects for developing improved guidance material to assist with SPPs implementation and interpretation.

## **Legislative requirements**

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

The LUPA Act enables interim SPP amendments to be made to bring amendments into effect sooner while assessment of a draft amendment of the SPPs continues to be undertaken by the Commission.

Under section 30 NB(4) of the LUPA Act, the Minister may make an interim SPPs amendment in the terms of the provisions of a draft amendment of the SPPs if the Minister is satisfied that:

- (a) it is necessary or desirable to make the interim SPPs amendment in order to urgently address issues relating to a natural or environmental hazard, public health, public safety or a prescribed circumstance or matter; and
- (b) it is in the public interest to give effect as soon as practicable to the provisions of the draft amendment of the SPPs contained in the interim SPPs amendment.

A draft amendment of the SPPs must be prepared in accordance with the terms of reference to which notice has been given under section 30C(2) of the LUPA Act. It must also meet the SPPs criteria outlined in section 15 of the LUPA Act.

The former Minister for Planning prepared Terms of Reference for draft amendment 01-2024 of the SPPs and gave notice in the three main Tasmanian newspapers according to sections 30C of the LUPA Act. The former Minister also prepared and consulted on Draft Amendment 01-2024 of the SPPs according to section 30D of the Act.

As Minister for Housing and Planning, I approved public exhibition of draft amendment 01-2024 of the SPPs for assessment by the Tasmanian Planning Commission (the Commission) under section 30G of the LUPA Act and sought the opinion of the Commission on whether the draft amendment 01-2024 of the SPPs should become an interim amendment under section 30NB(2) of the LUPA Act.

## **Reasons for my decision**

I have determined to accept the Commission's advice contained in their letter to me providing their opinion that the draft amendment 01-2024 of the SPPs should become an interim SPPs amendment and I have determined to make Interim SPPs Amendment 01-2024 in the terms of the draft amendment 01-2024 of the SPPs.

I consider that the proposed changes to the relevant hazards codes are intended to provide clarity and consistency with other development legislation in Tasmania, and to correct errors related to the exemption of subdivision in certain landslip hazard bands consistent with section 30NB(4)(a) and (b) of the Act.

I consider it necessary to urgently correct the error and clarify matters relating to assessment of exemptions for application of the Landslip Hazard Code, Coastal Erosion Hazard Code, and Coastal Inundation Hazard Code. This will lead to an improvement in the operation of the relevant codes which I consider to be in the broader public interest by addressing issues relating to development in areas where a natural hazard is present.

The SPPs criteria require an amendment of the SPPs to comply with the following:

- (a) only contains provisions that the SPPs may contain under section 14 of the LUPA Act;
- (b) furthers the objectives set out in Schedule 1 of the LUPA Act;

- (c) is consistent with each State Policy;
- (d) is consistent with the TPPs that are in force before the instrument is made; and
- (e) has regard to the safety requirements set out in the standards prescribed under the *Gas Safety Act 2019*.

The draft amendment only contains provisions that section 14 of the LUPA Act allows the SPPs to contain. It intends to clarify the relationship with the *Building Regulations 2016* and clarify that the form and scope of significant works are matters to be considered as part of the planning process to ensure that land use and development in coastal and landslip hazard areas are undertaken in a fair, orderly and sustainable manner. The SPPs have already been determined as meeting the criteria in section 15 of the LUPA Act, including furthering the objectives in Schedule 1 of the LUPA Act, consistency with State Policies and having regard to the safety requirements in the *Gas Safety Act 2019*. The proposed changes do not intend to alter the original policy intent of the relevant hazard codes, they will ensure that subdivisions in areas of medium to high landslide risk do not create a future development right which is beyond the capacity of the land to support avoiding risk to human life and property, and will clarify the relationship between planning approvals under the SPPs and the related approvals under the *Building Act 2016*. The Tasmanian Planning Policies (TPPs) are not yet in effect however the amendment is consistent with the draft policies on environmental hazards which aim to minimise the risk associated with development in proximity to the relevant environmental hazard areas.

## **Schedule 2**

### **Interim SPPs Amendment 01-2024**

#### **C10.0 Coastal Erosion Hazard Code**

**Delete clause C10.4.1(a) and replace with:**

- (a) use or development that is building work or plumbing work as defined in the *Building Act 2016*, excluding:

**Delete clause C10.4.1(d)(iv) and replace with:**

- (iv) Resource Development, excluding use or development in the high coastal erosion hazard band that is building work or plumbing work as defined in the *Building Act 2016*; or

#### **C11.0 Coastal Inundation Hazard Code**

**Delete clause C11.4.1(a) and replace with:**

- (a) use or development that is building work or plumbing work as defined in the *Building Act 2016*, excluding:

#### **C15.0 Landslip Hazard Code**

**Delete clause C15.4.1(b) to and replace with:**

- (b) use or development of land for Extractive Industry if on a mining lease that is in force under the *Mineral Resources Development Act 1995*, excluding a hazardous use;

**Delete clauses C15.4.1(d), (e), (f), (g), (h) and (i) and replace with:**

- (d) development (including subdivision) on land:
  - (i) within a low landslip hazard band, if for:
    - a. building work or plumbing work as defined in the *Building Act 2016* including significant works related to the building work and plumbing work, or
    - b. works if it does not involve significant works; or
  - (ii) within a medium landslip hazard band, if for:
    - a. building work or plumbing work as defined in the *Building Act 2016* including significant works related to the building work and plumbing work;
    - b. subdivision if no additional lots are created, if it does not involve significant works;
    - c. Resource Development, if it does not involve significant works;

- d. minor utilities or utilities associated with sewer, water, stormwater systems, electricity, gas, telecommunications and roads infrastructure, if it does not involve significant works; or
- e. any other works, if it does not involve significant works.