

**Minister for Housing, Planning and Consumer Affairs**  
**Amendment 03-2024 of the State Planning Provisions**

**Statement of Reasons**

After considering the advice received under sections 30NA(2) and (4) of the *Land Use Planning and Approvals Act 1993* (LUPA Act), I have determined to make amendment 03-2024 of the State Planning Provisions (SPPs) as a minor amendment of the SPPs in accordance with section 30NA of the LUPA Act. In accordance with section 30NA(7)(b) of the LUPA Act, my reasons for making amendment 03-2024 of the SPPs are set out in the attached Schedule 1. The amendment is made in accordance with Schedule 2.

Dated: 4 December 2024

  
**FELIX ASHTON ELLIS**

**MINISTER FOR HOUSING, PLANNING AND CONSUMER AFFAIRS**

## **Schedule 1**

### **Minister's reasons for making amendment 03-2024 of the State Planning Provisions in accordance with section 30NA(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, 10 May 2023, 24 January 2024, 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. Another amendment was 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.

Minor 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. The Action Group 1 project is to prepare batches of SPPs amendments to address stand-alone or well resolved issues such as operational matters and clarifying and improving requirements. This amendment is for those minor amendments that the Minister is required to consult upon with local councils, and relevant State agencies and authorities under section 30NA(2)(a) of the LUPA Act.

The former Minister for Planning prepared Terms of Reference for Amendment 02-2023 of the SPPs and gave notice in the three main Tasmanian newspapers.

#### **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 minor amendments of the SPPs to be made without going through the normal public consultation and assessment processes provided they are for any of the following purposes outlined in section 30NA(1):

- (i) correcting a clerical mistake, an error arising from any accidental slip or omission, an evident miscalculation of figures, or an evident material mistake, in a provision of the SPPs;
- (ii) removing an anomaly in the SPPs;
- (iii) clarifying or simplifying the SPPs;
- (iv) removing an inconsistency in the SPPs;
- (v) removing an inconsistency between the SPPs and the LUPA Act or any other Act;
- (vi) bringing the SPPs into conformity with a State Policy;

- (vii) bringing the SPPs into conformity with a planning directive which the Minister has, under section 30BA of the LUPA Act, determined should be reflected in the SPPs;
- (viii) changing provisions of the SPPs that indicate or specify the structure to which an LPS is to conform or the form that a provision of an LPS is to take;
- (ix) a purpose prescribed by regulation.

For an amendment to be considered as a minor amendment of the SPPs, it must also not prejudice the public interest if the normal SPPs amendment processes under the LUPA Act are not followed.

Section 30NA(2) requires that draft minor amendments for the purposes of subsections 30NA(1)(a)(iii), (vi), (vii), (viii) or (ix) of the LUPA Act listed above, must be consulted with all planning authorities (councils) and relevant State Service Agencies and State authorities, whereas no consultation is required for amendments for purposes of the remaining subsections under 30NA(1)(a).

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.

After giving notice on the terms of reference in accordance with section 30C(2) of the LUPA Act, the Minister for Housing and Planning consulted with councils and Department of State Growth, the Department of Natural Resources and Environment, the Environment Protection Authority, and Homes Tasmania as the relevant stakeholders to inform the proposed changes. The Minister also sought the opinion of the Tasmanian Planning Commission (the Commission) on whether the amendment 03-2024 of the SPPs met the criteria for minor amendments under section 30NA(1) of the LUPA Act.

### **Reasons for my decision**

I have determined to accept the Commission's advice on amendment 03-2024 as contained in their letter to me, and I have determined to make the Amendment 03-2024 as drafted in Parts 1 – 4 and with modification to Part 5 concerning C9.0 Attenuation Code.

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 proposes minor amendments to the current SPPs, and also aligns the SPPs with a planning directive determined under section of the LUPA Act to be reflected in the SPPs. 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*. These minor amendments do not affect compliance with these criteria. The Tasmanian Planning Policies (TPPs) are not yet in effect.

These amendments are considered to be minor in nature and are capable of being made without the need for public exhibition of the draft amendment.

## Schedule 2

### Amendment 03-2024 of the State Planning Provisions with Minister's Reasons

No	Clause	Amendment	Reason			
1.	Exemptions - 4.1 – Exempt uses	<p>In Table 4.1, amend the exempt uses to insert a new row for clause 4.1.7 to provide an exemption for display homes as shown below:</p> <table><tr><td>4.1.7</td><td>display homes</td><td>The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.</td></tr></table>	4.1.7	display homes	The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.	<p>I agree with the Commission’s recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically section 30NA(1)(a)(vii) of the LUPA Act.</p> <p>The amendment brings the SPPs into conformity with <i>Planning Directive No. 10 – Exemption for Display Homes</i> which the former Minister has determined should be reflected in the SPPs in accordance with section 30BA of the LUPA Act.</p> <p><i>Note: The element of Planning Directive No. 10 that revises the Residential Use Class by inserting display home as an example, is not required to be carried forward into the SPPs because the Signs Code operates differently to that in the Interim Planning Schemes (IPs). This element was only needed to manage the operation of the Signs Code in IPs which require signs to be allocated a use class.</i></p>
4.1.7	display homes	The use of an existing dwelling as a display home for a period of up to 3 years. This includes the use of part of the dwelling as an office for home sales, displays and administration.				
2.	Exemptions - 4.4 – Vegetation exemptions	<p>In Table 4.4, amend the exemption at clause 4.4.1(a) by deleting the text shown as strikethrough and inserting the text shown underlined:</p> <p>(a) <u>harvesting of timber, clearing of trees, clearance and conversion of a threatened native vegetation community, or the disturbance of a vegetation community in accordance with a forest practices plan certified under the <i>Forest Practices Act 1985</i>, unless for the construction of a building or the carrying out of any associated development associated with the construction of a building;</u></p>	<p>I agree with the Commission’s recommendation that these amendments meet the criteria for making minor amendments of the SPPs, specifically section 30NA(1)(a)(iii) and (v) of the LUPA Act.</p> <p>The amendment Part 2 together with Part 4 clarifies the SPPs and removes an inconsistency between the SPPs and the LUPA Act and the <i>Forest Practices Act 1985</i> because they more accurately reflect the operation of a forest practices plan as described in section 18(2) of the <i>Forest Practices Act 1985</i>.</p> <p>The original purpose of the exemption was to enable works authorised by a certified forest practices plan (FPP) to be undertaken without a planning permit. This includes works in connection with the clearing of vegetation authorised under an FPP, such as road</p>			

No	Clause	Amendment	Reason
			<p>construction and quarrying road materials. The proposed changes aim to better align the exemption with the terms used in the definition of 'forest practices' in the <i>Forest Practices Act 1985</i>.</p> <p>The exemption is not intended to provide for the 'establishing of forests', only vegetation clearing as described under the definition of 'forest practices'.</p> <p><i>Note: amendments are also proposed to clause C7.4.1(d) to remove a potential inconsistency with the Forest Practices Act 1985.</i></p>
3.	6.0 Assessment of an Application for Use or Development – 6.8 Discretionary Use or Development	<p>In clause 6.8.2:</p> <p>a) delete subclause (a) and (b), and insert a new subclause (a) as follows:</p> <p style="padding-left: 40px;">(a) there are no applicable standards that apply to the development, or the development relies on any Performance Criteria to demonstrate compliance with an applicable standard; and</p> <p>b) renumber subclause (c) to "(b)" accordingly.</p>	<p>I agree with the Commission's recommendation that these amendments meet the criteria for making minor amendments of the SPPs, specifically section 30NA(1)(a)(iii) of the LUPA Act.</p> <p>The amendment clarifies the operation of the clause and avoids having both an 'or' and an 'and' for linked subclauses.</p> <p>Clause 6.8.2 (a) and (b) both relate to the use of discretion for development that is not required to be categorised into a Use Class and (c) relates to matters distinct from this. Also, deleting 'use' clarifies that the clause is providing for discretion to refuse or permit development.</p>
4.	C7.0 Natural Assets Code – C7.4 Use or Development Exempt from this Code	<p>In clause C7.4.1(d), amend by deleting the text shown as strikethrough and inserting the text shown underlined:</p> <p>(d) forest practices <del>or forest operations</del> in accordance with a forest practices plan certified under the <i>Forest Practices Act 1985</i>, unless for the construction of a building or the carrying out of any <del>associated</del> development <u>associated with the construction of a building</u>;</p>	<p>I agree with the Commission's recommendation that these amendments meet the criteria for making minor amendments of the SPPs, specifically section 30NA(1)(a)(iii) and (v) of the LUPA Act.</p> <p>The amendment Part 4 together with Part 2 clarifies the SPPs and removes an inconsistency between the SPPs and the LUPA Act and the <i>Forest Practices Act 1985</i> because they more accurately reflect the operation of a forest practices plan as described in section 18(2) of the <i>Forest Practices Act 1985</i>.</p> <p>The amendment removes a potential inconsistency with the <i>Forest Practices Act 1985</i> by only referring to 'forest practices' as works that are authorised by a certified</p>

No	Clause	Amendment	Reason
			forest practices plan. Forest operations are referred to in the separate <i>Forest Management Act 2013</i> . It also clarifies the scope of the exemption consistent with the proposed amendment to the exemptions in clause 4.4.1(a) of the SPPs.
5.	C9.0 Attenuation Code – C9.2 Application of this Code	In clause C9.2, insert a new clause C9.2.5 as follows:  C9.2.5 The code does not apply between a sensitive use and an attenuation area for an activity listed in Tables C9.1 or C9.2 if the sensitive use and the activity are located on the same site.	<p>I accepted the Commission's advice that the intent of this amendment is accepted but the drafting required clarification in order to meet the criteria for making minor amendments of the SPPs. I have decided that Part 5 modified as shown addresses the Commission's drafting concerns, and meets the criteria for making minor amendments of the SPPs, specifically section 30NA(1)(a)(iii) of the LUPA Act.</p> <p>The amendment clarifies the operation of the Attenuation Code and its defined terms by confirming that the code only applies to sensitive uses and activities that are not located on the same site. For example, the code was not intended to apply to a residential use located on a farm that includes listed activities with attenuation areas, such as operating a piggery, poultry farm, or winery, or on a farm that applies biosolids to the land.</p>