

Minister for Planning

Amendment 02-2023 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* (the LUPA Act), I have determined to make amendment 02-2023 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 02-2023 of the SPPs are set out in the attached Schedule 1. The amendment is made in accordance with Schedule 2.

Dated: 6 June 2024



FELIX ASHTON ELLIS

MINISTER FOR HOUSING AND PLANNING

Schedule 1

Minister's reasons for making amendment 02-2023 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, and 20 July 2022 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 not required to consult upon.

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.

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 former Minister for Planning sought the opinion of the Tasmanian Planning Commission (the Commission) on whether the amendment 02-2023 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 02-2023 as contained in their report, and I have determined to correct some minor technical drafting errors as outlined in Attachment 1, specifically to:

- Amendment 1(b) – correct the spelling of eligible 'persons' to 'person', and change the legislation reference to section 5 of the *Homes Tasmania Act 2022*
- Amendment 2 – correct an error in the proposed text in the definition of hazardous chemical of manifest quantity to reflect the current definition so that only the reference to the Work Health and Safety Regulations is changed by updating the year from 2012 to 2022.

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

Amendment 02-2023 of the State Planning Provisions with Minister's Reasons

No	Clause	Amendment	Minister's Reasons						
1.	Administration – Planning Terms and Definitions – Table 3.1	<p>In Table 3.1 Planning Terms and Definitions:</p> <p>(a) Delete the entire row for the term “Director of Housing” and insert, in alphabetical order, a term and definition as follows:</p> <table><tr><td>Homes Tasmania</td><td>means as defined in the <i>Homes Tasmania Act 2022</i>.</td></tr></table> <p>(b) For the following terms, amend the definitions by inserting the text shown underlined and deleting the text as shown strikethrough:</p> <table><tr><td>eligible person</td><td>means eligible person as defined in <u>section 5 of the Homes Act 1935</u> <i>Homes Tasmania Act 2022</i>.</td></tr><tr><td>housing support provider</td><td>means as defined in the <i>Homes Act 1935</i> <i>Homes Tasmania Act 2022</i>.</td></tr></table>	Homes Tasmania	means as defined in the <i>Homes Tasmania Act 2022</i> .	eligible person	means eligible person as defined in <u>section 5 of the Homes Act 1935</u> <i>Homes Tasmania Act 2022</i> .	housing support provider	means as defined in the <i>Homes Act 1935</i> <i>Homes Tasmania Act 2022</i> .	<p>I agree with the Commission’s recommendation that these amendments meet the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(v) of the LUPA Act.</p> <p>The amendment removes an inconsistency between the reference to old legislation in the SPPs which has been superseded by other legislation.</p> <p>The SPPs definition for Director of Housing refers to the <i>Homes Act 1935</i> which has been replaced with the <i>Homes Tasmania Act 2022</i>.</p> <p>The relevant authority is now generally referred to as ‘Homes Tasmania’ in keeping with the <i>Housing Land Supply Act 2018</i>, instead of referring to the ‘Director of Housing’.</p> <p>The <i>Homes Tasmania Act 2022</i> provides split definitions for eligible person, the definition in section 5 is specified as the most convenient for interpretation. I agree with the Commission’s recommendation for modifying this definition.</p> <p>Note: amendment 4 below describes consequential amendments to clauses 7.13 regarding the definition for Homes Tasmania.</p>
Homes Tasmania	means as defined in the <i>Homes Tasmania Act 2022</i> .								
eligible person	means eligible person as defined in <u>section 5 of the Homes Act 1935</u> <i>Homes Tasmania Act 2022</i> .								
housing support provider	means as defined in the <i>Homes Act 1935</i> <i>Homes Tasmania Act 2022</i> .								
2.	Administration – Planning Terms and Definitions – Table 3.1	In Table 3.1 Planning Terms and Definitions, for the term hazardous chemical of manifest quantity, amend the	I agree with the Commission’s recommendation that this amendment meets the criteria for making minor						

No	Clause	Amendment	Minister's Reasons		
		<div>definition by inserting the text shown underlined and deleting the text as shown strikethrough:</div> <table><tr><td>hazardous chemical of manifest quantity</td><td>means a hazardous chemical, as defined in the <i>Work Health and Safety Regulations 2012 2022</i>, if the amount of hazardous chemical stored exceeds the manifest quantity as specified under the <i>Work Health and Safety Regulations 2012 2022</i>.²</td></tr></table>	hazardous chemical of manifest quantity	means a hazardous chemical, as defined in the <i>Work Health and Safety Regulations 2012 2022</i> , if the amount of hazardous chemical stored exceeds the manifest quantity as specified under the <i>Work Health and Safety Regulations 2012 2022</i> . ²	<p>amendments of the SPPs, specifically s.30NA(1)(a)(v) of the LUPA Act.</p> <p>I have modified the proposed amendment to correct an error in the version that was provided to the Commission. The proposed amendment was only intended to update the year of the <i>Work Health and Safety Regulations</i>.</p> <p>The amendment removes an inconsistency between the reference to old legislation in the SPPs which has been superseded by other legislation.</p> <p>The SPPs definition for hazardous chemical of manifest quantity refers to the <i>Work Health and Safety Regulations 2012</i> which has been replaced with the <i>Work Health and Safety Regulations 2022</i>.</p> <p>Note: There are no changes in the drafting or operation of the superseding regulations in relation to a hazardous chemical or the manifest quantity for that chemical, therefore the operation of the SPPs definition does not require revision. The associated footnote will also be retained.</p>
hazardous chemical of manifest quantity	means a hazardous chemical, as defined in the <i>Work Health and Safety Regulations 2012 2022</i> , if the amount of hazardous chemical stored exceeds the manifest quantity as specified under the <i>Work Health and Safety Regulations 2012 2022</i> . ²				
3.	Administration – Planning Terms and Definitions – Table 3.1 – plantation forestry.	<div>In Table 3.1 Planning Terms and Definitions, for the term plantation forestry, amend the definition by inserting the text shown underlined and deleting the text shown strikethrough:</div> <table><tr><td>plantation forestry</td><td>means the use of land for planting, management and harvesting of trees <u>predominantly</u> for commercial wood production, including the preparation of land for planting but does not include the</td></tr></table>	plantation forestry	means the use of land for planting, management and harvesting of trees <u>predominantly</u> for commercial wood production, including the preparation of land for planting but does not include the	<p>I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) of the LUPA Act.</p> <p>The amendment corrects a clerical error in the definition for plantation forestry, so that it accurately aligns with the drafting of the definition for plantation forestry in the <i>State Policy on the Protection of Agricultural Land 2009</i> (PAL Policy).</p>
plantation forestry	means the use of land for planting, management and harvesting of trees <u>predominantly</u> for commercial wood production, including the preparation of land for planting but does not include the				

No	Clause	Amendment		Minister's Reasons
			milling or processing of timber, or the planting or management of areas of land for shelter belts, firewood <u>woodlots</u> , erosion or salinity control or other environmental management purposes, or other activity directly associated with and subservient to another form of agricultural use.	
4.	7.0 General Provisions – 7.13 Temporary Housing	In clauses 7.13.1(b), 7.13.2(b), 7.13.2(c), 7.13.3, and 7.13.4(a), delete 'Director of Housing' and insert 'Homes Tasmania'.		<p>I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(v) of the LUPA Act.</p> <p>The amendment corrects the reference to "Director of Housing".</p> <p><i>Note: these are consequential amendments resulting from amendment 1 to Table 3.1 definition above.</i></p> <p>In Table 3.1, the SPPs refers to the <i>Homes Act 1935</i> which has been replaced with the <i>Homes Tasmania Act 2022</i> and relevant authority is now generally referred to as 'Homes Tasmania' in keeping with the <i>Housing Land Supply Act 2018</i>, instead of referring to the 'Director of Housing'.</p>
5.	Low Density Residential Zone – 10.3.1 Discretionary uses	In clause 10.3.1, amend A2(a) by inserting text shown underlined and deleting text shown strikethrough:		I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) of the LUPA Act.

No	Clause	Amendment	Minister's Reasons
		(a) must <u>not operate</u> be within the hours of 7.00pm to 7.00am, excluding any security lighting; and	The amendment corrects an error. It makes the drafting consistent with the equivalent standards in the General Residential Zone and Inner Residential Zone.
6.	Rural Living Zone – 11.3.1 Discretionary uses	In clause 11.3.1, amend A2(a) by inserting text shown underlined and deleting text shown strikethrough: (a) must <u>not operate</u> be within the hours of 7.00pm to 7.00am, excluding any security lighting; and	I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) and (ii) of the LUPA Act. The amendment corrects an error. It makes the drafting consistent with the equivalent standards in the General Residential Zone and Inner Residential Zone.
7.	Rural Zone – 20.1 Zone Purpose	In clause 20.1.1(c), after 'land;' insert 'and'.	I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) of the LUPA Act. The amendment corrects a clerical error.
8.	Rural Zone – 20.5.1 Lot Design	In clause 20.5.1, amend P1(b) by inserting text shown underlined and deleting text shown strikethrough: (b) be for the excision of an existing a dwelling or Visitor Accommodation <u>existing at the effective date</u> that satisfies all of the following:	I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i), (ii) and (iv) of the LUPA Act. The amendment corrects an error. It makes the drafting consistent with the equivalent standard in the Agriculture Zone in relation to the effective date.

No	Clause	Amendment	Minister's Reasons
9.	Signs Code – Table C1.6	<p>In Table C1.6 Sign Standards, in the row for roof sign and the row for sky sign, in the Sign Standards subclause (c) insert the text shown underlined as follows:</p> <p>(c) have a <u>maximum</u> horizontal dimension of 4.5m; and</p>	<p>I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) of the LUPA Act.</p> <p>The amendment is an error correction to indicate the permitted limit consistent with the drafting of limits for other dimensions in the table.</p>
10.	Parking and Sustainable Transport Code – Table C2.1	<p>In Table C2.1 Parking Space Requirements, in the row for Tourist Operation, in the bicycle parking space requirements, after 'per' delete '500m²' and insert '2,500m²'.</p>	<p>I agree with the Commission's recommendation that this amendment meets the criteria for making minor amendments of the SPPs, specifically s.30NA(1)(a)(i) and (ii) of the LUPA Act.</p> <p>The amendment corrects an error and removes an anomaly. To be consistent with the drafting in the former <i>Launceston Interim Planning Scheme 2015</i> on which the provision was based.</p>