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03 SEP 2018

Councillor David Downie
Mayor
Northern Midlands Council
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Dear Mayor

Preparation of Draft Amendment 01/2018 of the State Planning Provisions

I recognise the importance of keeping the State Planning Provisions (SPPs) under regular review to ensure the intended planning outcomes are delivered.

With planning authorities currently in the process of preparing and having their Local Provisions Schedules (LPSs) assessed, this provides an opportunity to address any issues that are identified in the SPPs prior to them becoming operative in each municipality.

In accordance with section 30C of the Act, I have prepared Terms of Reference (Attachment 1) in relation to the preparation of draft amendment 01/2018 of the SPPs, which will be subject of a public notice and published in relevant newspapers on Saturday, 8th September 2018.

I have also prepared draft amendment 01/2018 of the SPPs that is in accordance with the terms of reference (Attachment 2), and an accompanying draft explanatory report (Attachment 3).

In accordance with section 30D(2) of the Act, I wish to consult with your council in relation to draft amendment 01/2018 of the SPPs, and request your feedback by Monday, 15th October 2018.

Yours sincerely

Hon Roger Jaensch MP
Minister for Human Services
Minister for Housing
Minister for Planning

cc Mr Des Jennings, General Manager

Attachment 1 – Draft amendment 01/2018 of SPPs – Terms of Reference.
Attachment 2 – Draft amendment 01/2018.
Attachment 3 – Draft amendment 01/2018 of the SPPs – Explanatory Document.

Draft Amendment 01/2018 of the State Planning Provisions

Terms of Reference

I, Roger Charles Jaensch, Minister for Planning, pursuant to section 30C(1) of the *Land Use Planning and Approvals Act 1993* ("the Act"), hereby issue these Terms of Reference for the preparation of draft amendment 01/2018 to the State Planning Provisions (SPPs).

Background

The State Planning Provisions were made on 22 February 2017 and came into effect on 2 March 2017. An amendment came into effect on 19 April 2018 which addressed a number of minor drafting errors and anomalies in the SPPs. It also updated the SPPs to align amendments made to the transitional provisions under Schedule 6 of the Act and the approved *Planning Directive 5.1 – Bushfire-Prone Areas Code*.

It is important that the SPPs are kept under regular review to ensure the intended planning outcomes are delivered. There is an opportunity to address any issues that are identified in the SPPs prior to the provisions becoming operative in each municipality.

Scope of the draft amendment

The draft amendment should be limited to those matters that are capable of meeting the tests for not requiring public exhibition under section 30H(3) of the Act.

SPP draft amendment 01-2018 is to make any necessary minor amendments to the SPPs to:

- correct any errors;
- remove any anomalies;
- improve clarity of interpretation; and
- address any other matters that are capable of meeting the tests for not requiring public exhibition under section 30H(3) of the Act.

Statutory requirements for the draft amendment

The draft amendment is to be prepared in accordance with the requirements in Part 3, Division 2 of the Act.

Draft Amendment 01/2018 of the State Planning Provisions

No	Clause	Amendment	Reason
1.	Administration – Table 3.1	<p>In Table 3.1, 'modify the definition of 'streetscape' by inserting text shown as underlined:</p> <p>means the visual quality of a street depicted by road width, street planting, characteristics and features, public utilities constructed within the road reserve, the setback of buildings and structures from the property boundaries, the quality, scale, bulk and design of buildings and structures fronting the road reserve.</p> <p>For the purposes of determining streetscape for a particular site, the above matters are relevant when viewed from either side of the same street within 100m of each side boundary of the site, unless for a local heritage precinct or local historic landscape precinct listed in the relevant Local Provisions Schedule, where the extent of the streetscape is to be determined by the relevant precinct provisions.</p>	<p>To clarify that the streetscape for a local heritage precinct and a local historic landscape precinct is not limited to being within 100m of the site boundary. The extent of the streetscape is to be determined by the relevant provisions of the relevant precinct.</p> <p>Capable of meeting s.30H(3)(b)(iii) of LUPAA.</p>
2.	Administration – 4.2.6	<p>In clause 4.2.6, modify the requirements in subclause (a) by deleting '1997' and replacing with '2018':</p>	<p>The <i>Telecommunications (Low-Impact Facilities) Determination 1997</i> has been superseded by the <i>Telecommunications (Low-Impact Facilities) Determination 2018</i>.</p> <p>Capable of meeting s.30H(3)(b)(v) of LUPAA.</p>
3.	Administration – 4.6.1	<p>Delete the requirements in clause 4.6.1 and replace with the following: If listed in, and meeting the requirements of, clause C1.4 in the Signs Code.</p>	<p>To clarify that a sign listing in clause C1.4 of the Signs Code is exempt from the planning scheme if it meets the relevant requirements in that clause. To also correct an error by deleting the reference to the Local Historic Heritage Code, as the requirements in clause C1.4 in the Signs Code identify the requirements in relation to the Code.</p> <p>Capable of meeting s.30H(3)(b)(i) and (iii) of LUPAA.</p>

No	Clause	Amendment	Reason
4.	Administration – 4.6.10	Delete the requirements in clause 4.6.10 and replace with the following: If for: (a) minor communications infrastructure exempt under clause 4.2.6; or (b) all other antennas, masts, flagpoles and satellite dishes, unless: (i) the Electricity Transmission Infrastructure Protection Code, Local Historic Heritage Code, or Safeguarding of Airports Code applies and requires a permit for the use or development; or (ii) for facilities as defined under the Telecommunications Code.	The purpose of this amendment is to clarify that antennas, masts, flagpoles, and satellite dishes that relate to telecommunications infrastructure are only exempt if they relate to minor communications infrastructure that are exempt under clause 4.2.6. This was the original intent. The current wording states that antennas, masts, flagpoles and satellite dishes are exempt if the Telecommunications Code does not apply. The Telecommunications Code applies to all development for telecommunications facilities, unless exempt under clause 4.2.6. The current exemption could create ambiguity if a PPZ applied alternate provisions to telecommunications facilities. Capable of meeting s.30H(3)(b)(i) and (iii) of LUPAA.
5.	Administration – 5.2.6	Delete clause 5.2.6 and replace with the following: 5.2.6 After the effective date, a particular purpose zone is not permitted to override the: (a) administration provisions in clauses 3.0 - 6.0; (b) general provisions in clause 7.0; or (c) provisions in a code, unless specifically provided for in that code.	To remove an inconsistency in the SPPs as the Signs Code, Parking and Sustainable Transport Code and Telecommunications Code allow for a particular purpose zone to override. Capable of meeting s.30H(3)(b)(iv) of LUPAA.
6.	General Industrial Zone – 19.2 Use Table	In clause 19.2 Use Table, modify the Discretionary qualification for the Crematoria and Cemeteries use class by replacing 'crematoria with 'crematorium'.	To correct a drafting error by replacing the plural reference with a singular reference. Capable of meeting s.30H(3)(b)(i) of LUPAA.
7.	Recreation Zone – 28.2 Use Table	In clause 28.2 Use Table, modify the Discretionary qualification for Crematoria and Cemeteries use class by replacing 'Crematoria or Cemetery' with 'crematorium or cemetery'.	To correct a drafting error by replacing the plural reference with a singular reference and drafting in lower case. Capable of meeting s.30H(3)(b)(i) of LUPAA.

No	Clause	Amendment	Reason
8.	Recreation Zone – 28.3.1	In clause 28.3.1, modify the heading to delete the words ‘, excluding Emergency Services or Visitor Accommodation’.	To correct a drafting error. The heading is misleading as not all provisions under in clause 28.3.1 exclude Emergency Services or Visitor Accommodation. Capable of meeting s.30H(3)(b)(i) of LUPAA.
9.	Parking and Sustainable Transport Code – C2.2.1	In clause C2.2.1, modify by inserting text shown as underlined: C2.2.1 Unless stated otherwise in a particular purpose zone, or sub-clause C2.2.2, C2.2.3 or C2.2.4, this code applies to all use and development.	To clarify the operation of the clause. Capable of meeting s.30H(3)(b)(iii) of LUPAA.
10.	Road and Railway Assets Code – C3.6.1	In clause C3.6.1 A1, modify by inserting text shown as underlined: Unless within a building area on a sealed plan approved under this planning scheme, habitable buildings for a sensitive use <u>within a road or railway attenuation area</u> must be: In clause C3.6.1 P1, modify by inserting text shown as underlined: Habitable buildings for sensitive uses <u>within a road or railway attenuation area</u> must be sited, designed or screened to minimise adverse effects of noise, vibration, light and air emissions from the existing or future major road or rail network, having regard to:	To clarify that the standard relates to habitable buildings for sensitive uses ‘within a road or railway attenuation area’ as identified in the heading. Capable of meeting s.30H(3)(b)(iii) of LUPAA.
11.	Electricity Transmission Infrastructure Protection Code – Table C4.1	In Table C4.1, modify the qualification for the Crematoria and Cemeteries use class by replacing ‘crematoria’ with ‘crematorium’.	To correct a drafting error by replacing the plural reference with a singular reference. Capable of meeting s.30H(3)(b)(i) of LUPAA.
12.	Local Historic Heritage Code – C6.7.1	In clause C6.7.1 A1, modify by inserting text shown as underlined: Within a local heritage precinct, demolition of a building, works or fabric, including trees, fences, walls and outbuildings must: (a) not be on a local heritage place; (b) not be visible from any road or public open space; and (c) not involve a value, feature or characteristic specifically part of a precinct listed in the relevant Local Provisions Schedule.	To correct a drafting error. This modification aligns with the wording in standards C6.7.2 A1 and C6.7.3 A1. Capable of meeting s.30H(3)(b)(i) of LUPAA.

No	Clause	Amendment	Reason
13.	Local Historic Heritage Code – C6.7.3	<p>In clause C6.7.3 P1.2, modify by inserting text shown as underlined and deleting text shown as underlined:</p> <p>Within a local heritage precinct, extensions to existing buildings must be compatible with the local heritage precinct, having regard to:</p> <ul style="list-style-type: none"> (a) the streetscape or townscape values identified in the local historic heritage significance of the local heritage precinct, as identified in the relevant Local Provisions Schedule; (b) the character and appearance of the surrounding area; (c) the height and bulk of other buildings in the surrounding area; and (d) the setbacks of other buildings in the surrounding area; and (e) <u>any relevant design criteria or conservation policies for the local historic landscape precinct, as identified in the relevant Local Provisions Schedule.</u> 	<p>To correct a drafting error. This approach aligns with the discretionary considerations in clause C6.7.3 P1.3 (b) which relates to local historic landscape precincts.</p> <p>Capable of meeting s.30H(3)(b)(i) of LUPAA.</p>
14.	Scenic Protection Code – C8.3.1	<p>In clause C8.3.1, delete the definition of 'scenic road corridor' and replace with:</p> <p>means:</p> <ul style="list-style-type: none"> (a) an area shown on an overlay map in the relevant Local Provisions Schedule, as within a scenic road corridor; or (b) the area of land that is within: <ul style="list-style-type: none"> (i) 100m of the frontage to a road shown on an overlay map in the relevant Local Provisions Schedule as a scenic road; or (ii) where there is no frontage, 120m of the edge of the carriageway of a road shown on an overlay map in the relevant Local Provisions Schedule as a scenic road, <p>and is listed and described in the scenic road corridors list in the relevant Local Provisions Schedule.</p>	<p>To correct an error and clarify the original intent which was to provide the option for the planning authority to apply an overlay for the extent of the scenic road corridor, or to identify a scenic road and have a set distance apply for the extent of the scenic road corridor.</p> <p>Capable of meeting s.30H(3)(b)(i) and (iii) of the LUPAA.</p>

No	Clause	Amendment	Reason
15.	Scenic Protection Code – C8.6.1	In clause C8.3.1 A1, modify by inserting text shown as underlined: Buildings or works, including destruction of vegetation, within a scenic protection area must: (a) be on land not less than 50m in elevation below a skyline; and (b) not total more than 500m ² in extent per lot.	To clarify that the extent of buildings and works is limited to 500m ² per lot. This was the original intention. Capable of meeting s.30H(3)(b)(iii) of LUPAA.
16.	Landslip Hazard Code – C15.4.1	In clause C15.4.1(b), delete the word “and” between the words “ <i>Mineral Resources</i> ” and “ <i>Development Act 1995</i> ”.	To correct a drafting error. Capable of meeting s.30H(3)(b)(i) of LUPAA.
17.	Local Provisions Schedule Requirements – Table LP1.0 Local Provisions Schedule Numbering	In Table LP1.0, modify the prefix for Glamorgan-Spring Bay by deleting ‘GLA’ and replacing with ‘GSB’.	To change the clause prefix for the Glamorgan-Spring Bay Local Provisions Schedule to match the typical abbreviation used by the council. Capable of meeting s.30H(3)(b)(viii) of LUPAA.

Explanatory Document

Draft Amendment 01/2018 of the State Planning Provisions

Background

The State Planning Provisions (SPPs) were made on 22 February 2017 and came into effect on 2 March 2017. An amendment came into effect on 19 April 2018 which addressed a number of minor drafting errors and anomalies in the SPPs. It also updated the SPPs to align with the amendments made to the transitional provisions under Schedule 6 of the Act and the approved *Planning Directive 5.1 – Bushfire-Prone Areas Code*.

It is important that the SPPs are kept under regular review to ensure the intended planning outcomes are being delivered. There is an opportunity to address any further issues that have been identified in the SPPs prior to the provisions becoming operative in each municipality.

Some further minor drafting errors and opportunities for clarification have been identified since the approval of the previous amendment to the SPPs. A draft amendment of the SPPs has been prepared to address these matters.

These matters are minor in nature and do not propose any change to the policy settings in the SPPs. There is capacity in the Act for the public notification processes to be suspended where no major changes to the SPPs are proposed.

Division 2 of the *Land Use Planning and Approvals Act 1993* (the Act) sets out the statutory requirements for making amendments to the SPPs.

The timing of a draft amendment of the SPPs is important to the delivery of the intended planning outcomes as part of the Government's planning reforms.

The draft amendment will need to be in effect before any Local Provisions Schedules (LPSs) are approved. For example, the draft amendment of the SPPs includes revisions to address drafting errors and clarify provisions in the Local Historic Heritage Code and the Scenic Protection Code. These revisions are necessary to allow the codes to operate as intended and need to be in place before any LPSs are approved.

Scope of the draft amendment

The proposed modifications in the draft amendment of the SPPs are considered minor in nature and are limited to those matters that are capable of meeting the tests for not requiring public exhibition under section 30H(3) of the Act, as they are limited to revisions that:

- correct an error in the SPPs;
- clarify or simplify the SPPs;
- remove an inconsistency in the SPPs;
- remove an inconsistency between the SPP and another Act; or
- change provisions of the SPPs that specify the structure to which an LPS is to conform,

and the public interest will not be prejudiced.

The draft amendment consists of a number of minor revisions to the SPPs, shown in tabular format with a documented reason for each revision. These revisions are considered to be consistent with the SPP Criteria in s.15 of the Act and consistent with s.30B of the Act, which sets out what an amendment of the SPPs may consist of.

In summary, the draft amendment comprises:

- A minor revision to the definition of 'streetscape' in Table 3.1 to clarify how the extent of the streetscape is to be determined for the purposes of a local heritage precinct or local historic landscape precinct assessed under the Local Historic Heritage Code.
- A minor revision to the exemption for 'minor communications infrastructure' in clause 4.2.6 to update the reference to the current Telecommunications (Low-Impact Facilities) Determination 2018.
- Minor revisions to the exemptions in Table 4.6 to clarify the exemptions for 'signs' and 'antennas, masts, flagpoles, and satellite dishes' and correct minor errors.
- Minor revisions to clause 5.2.6 to remove an inconsistency in the SPPs relating to the operation of particular purpose zones.
- A minor revision to clause C2.2.1 to clarify the operation of the Parking and Sustainable Transport Code.
- Minor revisions to the Local Historic Heritage Code to correct drafting errors and anomalies.
- Minor revisions to the Scenic Protection Code to clarify and correct errors in the definition of 'scenic road corridor' and to clarify the extent of buildings or works under clause C8.3.1 A1.
- Various other minor revisions to correct minor drafting errors and to change a provision that specifies the structure of an LPS.

The draft amendment is considered to be in accordance with the terms of reference for draft amendment 01/2018 to the SPPs, prepared by the Minister for the purposes of section 30C(1) of the Act.