State Planning Provisions Review 2022 - Submissions 141-160

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Submission to the State Planning Provisions review

Introduction

Please find following my submission to the SPPs review.

I am writing to provide some perspective on State Planning Reform as an ordinary citizen landholder who has been adversely impacted by the reforms to date.

I will provide context, not simply in terms of the transition from IPS to TPS, but in terms of the change that has occurred for myself and thousands of others in the Huon Valley since Statewide Planning Reform was first implemented with the transition from the *Huon Planning Scheme 1979* to the IPS in mid-2015.

Statewide Planning Reform, whilst promising benefits, has failed to live up to the motto of "Fairer, Faster, Cheaper, Simpler". In fact, the complete opposite could be said for a large cohort of the Huon Valley community and other landholders with the State.

A review of the SPPs and associated planning frameworks needs to urgently address key issues of equity, natural justice and utilisation of land capability in regional areas before significant social and economic damage is done to the Tasmanian Community.

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The impact of Statewide Planning Reform on my situation

Photo (above) – View from house site to the east and Wellington Range

Property description and background

I purchased my property in Lucaston in 2009, with a view to building a house and one day establishing a future business venture using a small portion of the property's 46 acres.

The Huon Planning Scheme applied at the time and fully supported these endeavours. The Sales agent correctly informed me that not only was building a residence a "Permitted" under the planning scheme, but that it would be possible to build a second residential dwelling (i.e. a "Granny flat"). The property was advertised for sale as a "build your dream home" type scenario.

The purchase contract was conditional upon finance. During the contract period I had a discussion with my lender who mentioned that the bank needed to confirm that the property zoning supported residential use as "Permitted" for finance to be provided. This was confirmed and the contract was completed.

The property has varied topography and a pre-established cleared area of about 12%, predominantly to the east of the house site with views over the back of Mount Wellington (as pictured). The house site location was established at time of purchase and sits just below the ridgeline. The vegetation and topography of the site completely obscures the house site and a future dwelling from the view of the surrounding areas and roadways.

The approximate 5 acres of cleared land has a very limited potential use for agriculture given the poor soils and topography. However, other types of business activities could potentially be supported on site.

Whilst my personal circumstances initially delayed a decision to build a residence, I am currently progressing down that path and have engaged various professionals during the past year and a half.

I have made substantial investments in the property over the years including surveys, site assessments, drafting services, security, general maintenance and I have assisted my neighbours with a substantial investment in the access road in order to meet bushfire regulations for housing. I have also paid, as you would expect, not insubstantial amounts of Council Rates and Land Tax over the years.

I purchased the property knowing that a bushfire risk was present and that I would need to build accordingly and be prepared for this scenario.

There are 5 other large “bush block” properties in my vicinity. All of the owners purchased the properties with a view to housing and small business pursuits.

I looked into establishing a Conservation Covenant on my property in around 2015 as I deeply appreciate the natural surroundings and would like to see these values preserved wherever possible. At the time I enquired the scheme was closed and incentives were no longer available.

Whilst the Huon Planning Scheme contained a Hill Top Preservation zoning, this did not apply to my property and there were no other Scenic Codes or related restrictions at the time of purchase. It was not until IPS came into effect in 2015 that a Scenic Code Area and associated restrictions was first placed over my property and the surrounding area.

A look back at historic photographs shows that the property and others in the immediate vicinity were historically subject to logging, clearing and subsistence agriculture and a homestead, with a very notable prominent clearing having occurred up until the 1980s, with significant re-growth having occurred since that time. There are tracks throughout the property and the surrounding area reflecting past historical use.

Impacts - transition from the Huon Planning Scheme to the IPS

The transition to the IPS in 2015 has resulted in:

- **An inability to refinance or borrow –** following the transition to the IPS, I sought to refinance and made several enquiries with mainstream lenders. I was advised that it was no longer possible to obtain finance on my vacant property as Residential Use had moved from a "Permitted" to "Discretionary" under the new IPS "Rural Resource" zone.
- **Additional costs, restrictions, and complexity for new use and development** – the transition to the IPS and the Rural Resource Zone within has brought about:
    - Scenic Code restrictions;
    - Biodiversity overlays and restrictions;
    - Less available residential uses and restrictions on residential development.

  All of the above have introduced significant cost, complexity and time delays for development applications when compared to the much more favourable "Rural" zoning under the former the *Huon Planning Scheme 1979*.

Impacts - proposed transition from IPS to the TPS

Instead of reversing and making good some of the negative impacts of the IPS, I became aware earlier this year that I was going to be impacted again by State Planning Reform, this time through the new Landscape Conservation Zone (LCZ) as per the draft Huon Valley LPS. This is expected to result in:

- **Unnecessary building restrictions** - my primary concern is that the building requirements of the new Zone may prevent me from building a residence on the established building site on my property, due to its proximity to a nearby ridgeline. If the Local Planning Authority rejects my Development Application, then I may be forced to walk away from the project during a Statewide housing crisis and at a significant cost.

- **Significantly reduced usage** – business-related uses have reduced drastically and are all "Discretionary"

- **Property value impacts** – the value of my property and other similar properties and vacant lots are likely to decrease significantly under LCZ - relative to other SPP zones and especially when compared to the original HPS zoning. A land's value is directly related to its utility and the risks and costs of ownership. LCZ significantly decreases utility and increases costs, risks and uncertainties for Development Applications. This situation will be exacerbated by potential property buyers who are unable to obtain finance through mainstream lenders for vacant lots.

In my situation, LCZ achieves absolutely nothing from a community perspective but comes at significant cost to myself. The proposed dwelling will not be visible from any nearby area, prominent location or roadway, however the requirements of LCZ will likely set me in conflict with the Local Planning Authority who have to abide by the Zone requirements and may have a limited appetite to work with me on reasonable solutions given the "Discretionary" nature of the zoning.

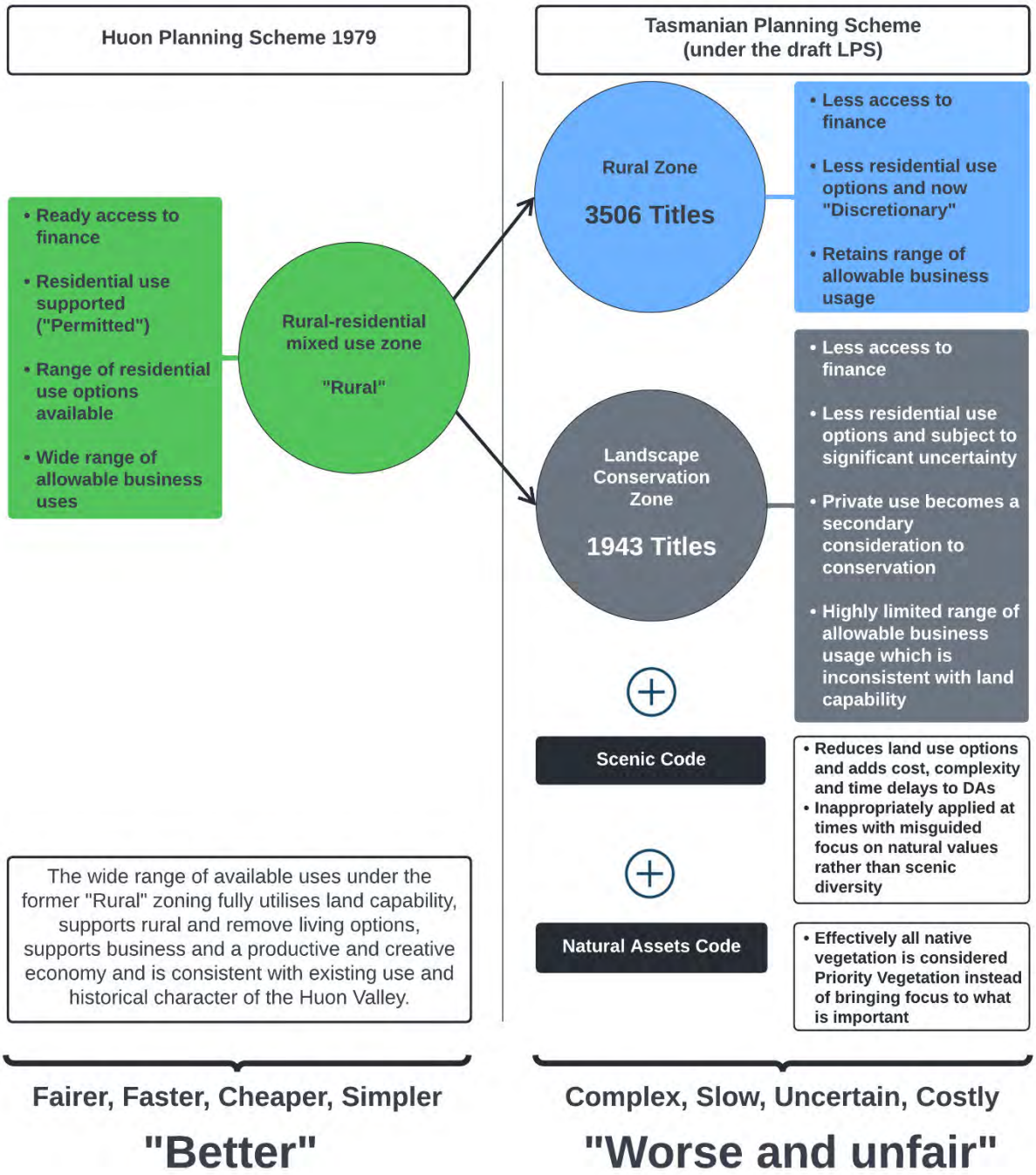
LCZ seeks to protect scenic values, however it is an overly blunt instrument. Large lots often have diverse features and multiple ways to utilise land capability, however LCZ restricts "the whole", rather than "the part". LCZ duplicates many of the protections of the Scenic Code and the Natural Assets code, but in a less nuanced and ultimately destructive manner.

The impact on thousands of property owners in the Huon Valley

Diagram 1 summarises the impact that Statewide Planning Reform will have on thousands of Huon Valley landowners over a period of only seven years in accordance with the current set of SPPs and the Huon Valley Council's draft LPS.

Statewide Planning reform is set to deprive thousands of owners of pre-existing property rights without recognition or compensation and with the potential for severe adverse social and economic impacts. Specific detail on changes in use rights between the HPS and the TPS are provided at Attachment 1.

Diagram 1: The impact of Statewide Planning reform on Huon Valley landowners



General observations in relation to the Landscape Conservation Zone

Matters of principle

My view is that the Landscape Conservation Zone as a concept and in its current form is not fit-for-purpose for use on private land. The zoning should only be used in limited circumstances, where explicitly requested or agreed to by the landowner, or in the case of a new land release or sub-division. Outside of these scenarios, I do not believe that LCZ should not be applied to any property as a matter of principle.

The Zone and the manner in which it has been applied turns the concept of landholder rights and due process upside down. It sits uncomfortably within a liberal democracy.

The LCZ issue highlights severe deficiencies in legislation and other planning frameworks that should work to protect fundamental private property rights, principles of equity, natural justice and land capability. Sometimes public planning policy objectives come into conflict with private property rights and there needs to be mechanisms in place to protect the later.

Matters of application in the Huon Valley

Members of the Huon Valley Community have been trying to get answers on how this situation has come about, insofar as to why is the zoning is being used at all and why has it been used to such an extent. These are reasonable questions that have been put to the Huon Valley Council and the TPC. Each defers to the other and no answers of substance have been provided.

The response from the Council and the lack of transparency on the matter has been particularly concerning. Public Questions at Council meetings and the responses from the Council can be seen on its website. The community would like to give the Council the benefit of the doubt, and assume that the broad scale application of the zoning comes down to an unfortunate case of incompetence or inexperience of its planning staff. If this is the case, then the Council should have been properly resourced by the State Government in order to competently undertake the development of the draft LPS.

What has not been acknowledged by the Council at any point, is the **high level of discretion** that it has in applying the zoning in the draft LPS within the State Government process. The Council has repeatedly stated that it has simply "followed the State Government process". But what is the truth in this?

As I understand it, the Council's role as a Planning Authority has been to construct the draft LPS and to determine the methodology and the extent of LCZ application within the local area. The Tasmanian Planning Commission's role has been to provide guidance, verify drafts of the LPS and advise whether the application is within the acceptable bounds of the S8A Zone Application Guidelines and other frameworks.

It is clear looking at the Zone Application Guidelines that they are lacking in definitions and open to wide interpretation. This is a problem.

LCZ1 states that the zone "**should** be applied to land with landscape values that are identified for protection and conservation". Definitions are absent to explain who "identifies" and what is meant by "protection and conservation". The only logical interpretation for LCZ1 however, is that it is referring to protected land under the *Nature Conservation Act 2002* (e.g. land protected by a Conservation Covenant). This becomes further evident when reading the next guideline, LCZ2 which states that the zoning "**may** be applied to: …. land that has significant constraints on development

through the Natural Assets Code of the Scenic Protection Code". Further, LCZ4 states that the zoning should **not** be used on land where the "priority is for residential use and development". In this case it is not clear who's "priority" is being referred to, however it could relate to either strategic planning frameworks (e.g. the STRLUS) or to the existing use or the intentions of landholder.

In summary, it would appear that the Huon Valley Council had the broad discretion to apply LCZ as follows under the Zone Application Guidelines:

- **at minimum** – the Zone should have been applied to Conservation Covenanted land (where this land is not a priority is not for residential use); and
- **at maximum** - the Zone could have been applied to any land where there is not a "priority for residential use and development" or there is not a "better fit" with another zone under the Guidelines.

The Council indicated that it met with the Tasmanian Planning Commission three times to discuss the draft LPS.

How is it possible that after years of development and consultation between the TPC and the Planning Authority, that the widespread application of LCZ to 2000 properties in the Huon Valley can be considered the best and most appropriate outcome for the landholders and the community, when even a single application of the zoning on a property would not pass a "pub test"? And at what point does the public and the private interest inform important planning decisions? These are serious questions that need to be answered and addressed. Significant amounts of harm, including mental health issues, waste and cost have already been set upon the community just through the inappropriateness of the draft LPS and the exhibition period.

Further, if we accept that LCZ is a zone that has a range of allowable application under the Zone Application Guidelines (which it does), has many issues with respect to landholder rights (which it does) and has the potential to do harm individual landholders and the community (which it does) – then why has the Planning Authority chosen an approach that does harm to the community instead of an approach that does not but is still acceptable under the State Planning framework? How is this not already a contravention of Section 20(1) of *Local Government Act 1993,* which requires the Council to "provide for the health, safety and welfare of the community" and to "represent and promote the interests of the Community"?

Undue influence and the need for appropriate representation

It is hard to imagine that all answers to the above questions relate entirely to carelessness. In the absence of answers, there has been some speculation and information uncovered, suggesting a potential correlation between higher instances of LCZ application in a number of Local Government Areas and the use of certain consultant(s) and individual(s) in the planning system with known conservation group connections and/or prior experience in conservation.

More generally, it is suspected that conservation groups and affiliated individuals, following successful advocacy for the creation of the new zoning have subsequently sought to take advantage of the ambiguity in the S8A Zone Application Guidelines to maximise its application. If this has occurred, then it has involved the pursuit of purely environmental outcomes over and above private property right considerations and with no thought for those impacted or for the broader societal and economic implications.

The above issues raise another important point for the Statewide planning system, in that there should be transparency around key personal and consultants involved in important planning

decisions. Declarations should be signed and made publicly available identifying current and past interests, affiliations and associations for anyone working on key planning related decisions.

In addition, it will be essential to ensure that there is appropriate representation from impacted parties when planning decisions are considered. I am not convinced that there was appropriate representation from a LCZ impacted cohort of landholders during original SPP development.

Whilst I doubt the widespread application was ever the intention of the Government, this is the situation and reality being faced in the Huon Valley and Kingborough, unless appropriate intervention actions are taken now to address the problem.

In Municipalities where full TPS adoption has occurred many private landowners have had their properties drastically “downzoned” to LCZ without their knowledge or consent. This is unacceptable.

It is now incumbent upon the Government to fix the LCZ issue.

As a starting point, it must be acknowledged that LCZ contravenes principles of private property rights and that the zoning has no social licence from those impacted.

Observations in relation to STRLUS and the SPPs

The State Planning Framework (including the SPPs, S8A Guidelines and STRLUS) appears to be strongly focussed on avoiding residential "densification" in areas that are either unserviced or more costly to service. This is understandable and such a focus reflects a solid foundation for land use management.

However, it is one thing to encourage "densification" in target township areas, and another thing altogether to use the planning system to prejudice against rural and remote living options and to significantly reduce land use capability in rural areas – which is what the SPPs in combination with the STRLUS appears to be doing.

The value of mixed-use Rural-Residential Zones, as formerly existed under the *Huon Planning Scheme 1979* needs to be recognised. This type of zoning provides clear support for both residential and business use and when appropriately applied to large rural lots, can bring many benefits to a community.

This zoning not only provides increased support to residential living options, but supports an innovative and productive economy, with lower costs of production. The zoning is particularly good at supporting business creation and start-ups with lower establishment costs and overheads. The zoning can also support a more efficient economy, with less demands for daily commutes for example - thereby reducing congestion and demands on road infrastructure services.

It should be recognised that the Huon Valley has been built upon a mixed use Rural-Residential type of zoning. This goes a long way in explaining its quintessential character, its vibrancy, creativity and self-reliance which is so appealing to so many. It also explains why the area is a leading destination for tourists and for visitor experiences within the State.

The very character and the essence of the Huon Valley, and thereby the tourism industry, is put at risk by the STRLUS "cookie cutter" approach which seeks the delineation of business and living locations, including in rural locations, but ultimately will result in deeply uninspiring suburban sprawl, congested commutes from home to work, greater expenses for business start-ups and the progressive loss of productive agriculture land as town boundaries creep outwards.

The current residential development format primarily involves very small suburban lots with negligible amounts of backyard space. This provides a living experience that is not much different to higher density apartment living, but involves less efficient construction methods, less efficient land utilisation and higher maintenance costs over time. In my opinion it would be preferential for the State Planning Framework to promote higher-density residential developments (including townhouses and low multi-level apartments) to achieve densification and service proximity objectives, including in regional towns. At the same time, consideration should be given to increasing minimum lot sizes in suburban developments to improve the mental health and wellbeing of residents and most notably for families who often choose that style of living.

In general, the STRLUS needs to be more inclusive and sensitive to the different ways that people want to live and work. It needs to ensure that everyone's choices can be supported – because not everyone wants to live within a town boundary or in suburbia. In fact, some people feel incapable of this.

Many people for mental health reasons, or simply out of a choice and the desire to draw inspiration from their surroundings gravitate towards remote locations often in natural settings. These people are often the most creative, productive and self-reliant in our society. Their presence can make our

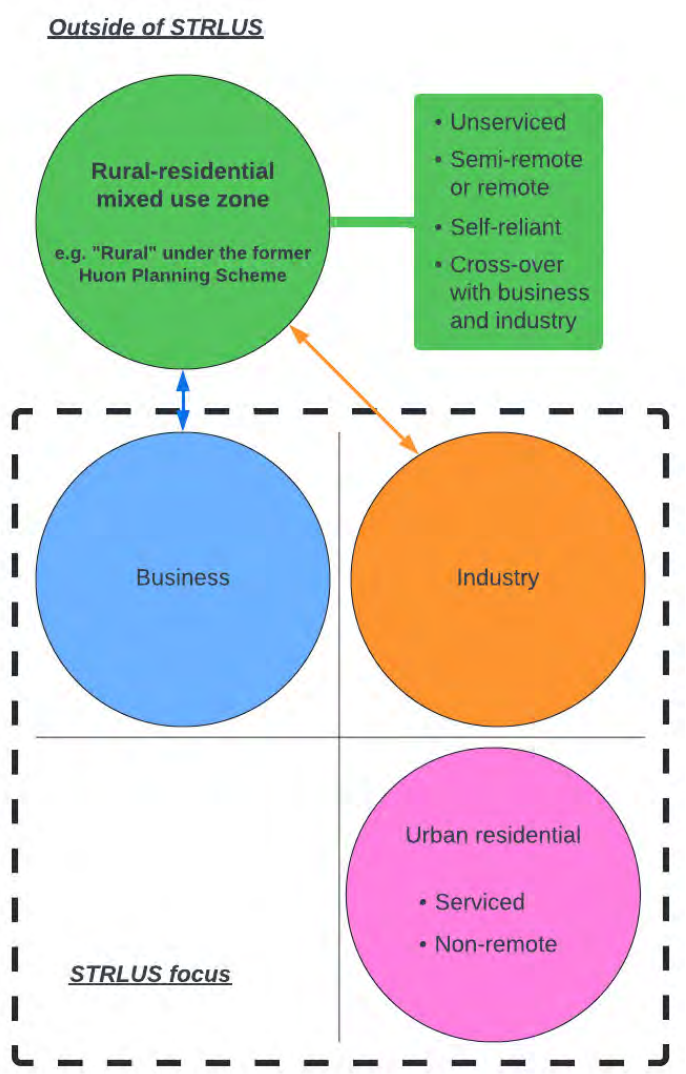
society more diverse, interesting and resilient. The SPPs and STRLUS should be reviewed and updated to provide support for this group of people and remove instances of passive discrimination against them in the planning framework, most notably through “Discretionary” residential dwelling use classes in rural areas and the Codes which can unreasonably restrict reasonable residential development by creating unnecessary cost, complexities, time delays and uncertainty.

The concept of a mixed-use Rural-Residential zone needs to be brought from outside STRLUS and the SPPs (see Diagram 2) to inside STRLUS and the SPPs.

In summary, the STRLUS, the SPPs and the broader planning framework should be updated to:

- introduce a mixed-use Rural-Residential zoning for large lots in rural areas (SPPs update);
- identify the value of mixed-use Rural-Residential zoning and provide support to it through strategy and policy frameworks (including the STRLUS); and
- be more supportive generally of the different ways that people need to live, in particular with respect to rural living options

Diagram 2: The absence of support for a mixed-use Rural-Residential zone in the SPPs and STRLUS



The political environment and the role of Government in setting expectations for servicing and property ownership risks

The demands upon Government appear to be ever-increasing. Looking forward there are serious land management challenges to be faced with respect to climate change, sea level rise, frequency of adverse weather events, flooding, erosion, bushfires etc.

In this environment, the role of Government to protect and serve its citizens often comes into conflict with the personal rights and responsibilities of the individual.

Many people would argue that the Government is already becoming too paternalistic in its approach, whilst other citizens are quick to front the media and make demands of the Government every time something goes wrong.

What is the correct response to this challenge?

I would suggest that expectations management is key to this issue and the State Government should, as a priority, look for increased opportunities to use the planning framework (including the SPPs) to establish clear expectations and delineation between private citizen responsibility and Government responsibility in relation to the risks of property ownership and service levels (or lack thereof) in certain locations.

This initiative could be supported by measures such as:

- updates to zone descriptions and naming
- education/information campaigns; and
- requirements for real estate agents to disclose key planning related information to potential buyers of property.

The overall objective of these endeavours would be to have a better-informed public who are aware of property ownership risks and service expectations and therefore in a position to make their own informed investment decisions. Accordingly, less control and restrictions would be required by Government, thereby limiting interfere with pre-existing property rights and the principle of self-determination.

Recommendations

Please consider the following recommendations when identifying key themes for the upcoming review of the SPPs.

Table 1: Recommendations for SPP Review

#	Recommendation	Description
1	**Recognise that the Landscape Conservation Zone is not fit for purpose for use on private land in a liberal democracy**	The Landscape Conservation Zone was developed without a social licence, without appropriate representation or consultation and has been applied in contravention to natural justice principles. For a multitude of reasons, the Landscape Conservation Zoning is not suitable for use on private land. It has significant issues relating to fairness/equity, fundamental private property rights, failure to utilise productive land capability and cross-over with the Scenic Code and Natural Assets code. LCZ should be removed entirely from the SPPs via the method proposed in Recommendation 3 below.
2	**Use the SPPs as a tool to better manage expectations around service provisioning and risks of property ownership**	To help address future challenges relating to demand on Government services, more emphasis should be placed on utilising the SPP Purpose Statements and Zone Names to set expectations around service delivery and risks of property ownership. This is done to some extent within the Rural Living Zone, but the expectation setting could go further within this zone and extend to other Zones such as the Agricultural and Rural Zones.
3	**Rename the Landscape Conservation Zone to "Landscape Living - Unserviced" and update the Use Tables to significantly increase the range of available uses to better support land use capability**	LCZ should be: • renamed to "Landscape Living - Unserviced" with a minimum lot size of 20ha. • Single Dwelling Residential Use should be made a "Permitted" Use Class. • Other Residential Use options should be provided to support extended family or communal living arrangements. • The use tables for the Zone should be updated with significantly more "Rural" style uses to utilise land capability

4	**Recognise the value of mixed-use Zoning in regional areas**	The STRLUS and the SPPs fail to incorporate and recognise the value of mixed-use Rural-Residential Zones as formerly existed under the *Huon Planning Scheme 1979*. Mixed use zones in regional areas can bring many benefits to a community. They allow not only residential living options, but the ability support a more efficient/productive, lower cost base and more resilient and creative economy. Rural-residential zonings better support business creation and start-ups with lower establishment costs and lower fixed costs for proponents. The reduced need for daily commuting also provides benefits from multiple standpoints. The Huon Valley was built upon a Rural-Residence type land use and this explains much of its character and appeal to locals and tourists alike. My view is that the future of the Huon Valley in terms of its character, vitality and appeal to tourists and visitors is significantly put at risk by the STRLUS approach which involves uninspiring urban sprawl.
5	**Provide increased support for medium to high density housing, including appropriate use in regional town centres**	To better preserve the productive land capability and the character of the sounding areas, the planning framework should encourage greater density and multi-level housing developments around town centres, including in regional locations. The current minimum lot size requirements for suburban lots under the SPPs are such that these houses have little to no outside free space. This results in a living experience that is not much different to apartment living. Meanwhile, the construction method is less efficient, the buildings are more expensive to maintain over time and a larger footprint of utilisable land is taken-up. This land would be

		better utilised as green space or in another productive capacity. In other words, the current day scenario of small lot size suburban dwellings results in poor outcomes in terms of living experience and poor resource utilisation. Higher density developments in township centres would result in superior outcomes in many cases.
6	**Recognise that Rural Living Zone is not necessarily a pathway to densification**	The establishment of a new residential dwelling on a large vacant rural lot does not necessarily represent densification – it reflects utilisation of land capability in line the original investment decision of the landholder. This is different to densification through subdivision which can be appropriately controlled through the planning framework. There are many large rural lots where land capability is limited in the modern day economy and where residential use, combined at times with small business activity, reflects the best use of land capability in accordance with the Schedule 1 - Objectives to the *Land Use Planning and Approvals Act 1993*.
7	**Do not allow the Planning Framework to discriminate against those who seek to live in a self-reliant fashion in more remote areas and locations.**	Not everyone is suited to living in congested urban environments or suburbia. In fact, some people feel incapable of it. Many people for mental health reasons, or simply out of a choice and the desire to draw inspiration from their surroundings gravitate towards remote locations often in natural settings. These people are often the most creative, productive and self-reliant in our society. Their presence can make our society more diverse, interesting and resilient. The SPPs and STRLUS should be reviewed and updated to provide support for the different ways that people need to live and to remove instances of passive discrimination against rural residential developments on large lots.

9	**Better support land capability by making more "Discretionary" Uses available (generally)**	A vibrant, creative and productive economy is held-back when allowable use is unnecessarily restricted to a "short list" of available activities The SPPs should be updated to provide a greater number of available uses, particularly for larger rural properties. The former Huon Planning Scheme contained a Discretionary use of "Miscellaneous". The merits of applying a "Miscellaneous" use on large rural properties, including on the new TPP "Rural" zone should also be considered.
8	**Implement 3-year grace periods for re-zoning, code and planning system updates**	Recognise that zoning and code changes can significantly impact land rights and that these changes can occur at a time when Development Applications are part-way through drafting under pre-existing requirements and frameworks. A 3-year grace period should apply during which a proponent has the option to submit a DA under the old or new planning framework.
10	**Provide better support for communal living arrangements on rural properties**	Many rural properties are perfectly suited to the establishment of communal living arrangements involving extended families or otherwise, however I cannot see explicit support for these arrangements through the current planning framework. Communal living can bring many social and economic benefits and has the potential to decrease reliance on Government services by the social support structures that are created. The current housing crisis would also be assisted by this initiative.
11	**Equity and natural justice principles**	The situation of LCZ shows that there is an urgent need to embody principles of equity and natural justice throughout the Statewide Planning System.
12	**Land capability**	Again, the situation with LCZ shows that there is an urgent need for greater consideration of land capability impacts of State planning decisions, frameworks and policies.

		State Planning Reform does not appear to have given appropriate emphasis to the Schedule 1 - Objectives of the *Land Use Planning and Approvals Act 1993*. The issue of land capability impacts needs to be given greater prominence .
13	**Mandatory notifications**	Changes to zoning can have significant impacts on landholder property rights. Property holders need to be directly notified in all instances where a property is targeted to be rezoned or when a potentially restrictive code is placed upon a property.
14	**Revise the Natural Assets Code**	The Natural Assets code should be updated to protect what is actually important, rather than all native vegetation regardless of its conservation value. The Code should not be used to unnecessarily impede development where there is low priority native vegetation on private land. Rural properties with high vegetation cover that is of low conservation priority should be given allowances to clear up a certain percentage of land area so as to not unreasonably impede development.
15	**Encourage voluntary conservation efforts**	Land tax, Council rate discounts and/or other mechanisms should be used to encourage conservation efforts on private land that contains medium and high conservation assets.
16	**Establish compensation mechanisms for down zoning and restrictive codes**	Compensation mechanisms should be introduced where land use capability for private landholders is significantly reduced through zoning changes, or by the existence of restrictive codes. As part of this it should be recognised that changes in Use Right classes from “No permit required” to “Permitted” and from “Permitted” to “Discretionary” reflect a “down zoning” and a dilution of landholder rights. It should also be recognised that certain Codes (such as Natural Assets and Scenic Codes) are a Private to Public wealth transfer mechanisms

		and there should be compensation mechanisms relating to this. If compensation arrangements are in place under international free trade agreements to account for sovereign and legislative investment risk, then the same mechanisms should be afforded to citizens.
17	**Ensure that the Scenic Code emphasis is not misplaced**	The highest scenic values are often derived from scenic diversity. The Scenic Code application should recognise that cleared areas and developments on hillsides often form an important component of the landscape and add to its diversity and appeal. It is this type of scene that is typically presented in promotional material for the Huon Valley for example. Historical landscape values and land capability is progressively being lost in many places due to vegetation regrowth and the restrictions imposed by the Natural Assets code once regrowth progresses past a certain point. The Huon Valley's scenic areas appear to be focused on natural values and fail to consider historical landscapes and diversity.
18	**Introduce requirements for real estate agents to inform prospective buyers of key property related information**	This will further help establish expectations around allowable land utilisation under current and proposed zoning, ownership risks and service expectations.
19	**Declaration of interests, affiliations and associations**	Zoning decisions can drastically impact peoples lives. Therefore, there should be transparency around key personal and consultants engaged involved in planning decisions and declarations signed relating to the current and past interests, affiliations and associations.

Attachment 1: The change in Huon Valley landholder rights between 2015 and 2022 – detailed zoning information

The following information (refer to Table A.1 and A.2 on the following pages) shows the dramatic loss of private land owner rights and utilisable land capability which is set to occur in the Huon Valley under Statewide Planning Reform.

Approximately two thousand titles in the Huon Valley have been targeted with Landscape Conservation Zoning. The vast majority of these properties were previously zoned "Rural" under the *Huon Planning Scheme 1979*, which was in effect up until mid-2015.

The Rural Zone under the former scheme gave clear support for Residential Use along with a wide variety of business usage which was consistent with the current day and historical character of the Huon Valley. The past zoning supported full utilisation of land use capability (as is an objective under PART 2 of the *Land Use Planning and Approvals Act 1993*), which in turn supported a strong, diverse and productive local economy.

Rural Zoned land in the Huon was recognised as "Rural-Residential" in Government correspondence, including on Land Tax notices and valuations undertaken by the Valuer-General. Many properties changed hands under this zoning, with advertisements enticing potential buyers with words to the effect of "build your dream home here" (on fully or partly vegetated bush-blocks) - often on hillsides or in prominent locations.

The former Rural zoning was fully supported by mainstream banking and lending institutions who would readily provide finance to potential buyers or to existing owners of vacant lots (due to Residential Use being listed as a "Permitted" Use Class). In particular, ready access to finance for owners of vacant lots would allow them to be more productive participants in the Tasmanian economy. Owners would be in a position to lend against, extend or refinance vacant lots, with funds then being available to invest, start a new business or engage in other types of productive enterprise.

The move to the Landscape Conservation Zone under Tasmanian Planning reform involves an unjustified and retrograde step, with no clear benefits and with unconscionable costs for those directly impacted.

Table 1 on the next page provides a clear indication of the loss of land owner rights that is occurring in the Huon Valley under Statewide Planning Reform.

Table A.1: The loss of Land Owner rights in the Huon Valley under Statewide Planning Reform

	Rural Zone **Huon Planning Scheme 1979**	**Landscape Conservation Zone** **Tasmanian Planning Scheme**
Zone purpose	**Not defined – however the zoning is focused on the private interest and clearly supports residential use along with a diverse range of business activities**	**Defined – the zoning is focused on utilising the property as a scenic backdrop for public viewing.** **The private interest is a secondary consideration.**
No Permit required	Agriculture Intensive Agriculture (x)	Natural and Cultural Values Management Passive Recreation
Permitted	**Single Dwelling** (x) **Dwelling and Ancillary Apartment** (x) Market Gardening (x) Woodland (x) Land Clearing (x) Racing Stables (x) Kennels (x) Parks and Playing Fields (x) Play Grounds (x)	Utilities[1]
Discretionary	**Other residential buildings** (x) Motels Health Centre (x) Caravan Park Storage and Depots (x) Special Industry (x) Mining Operations (x) Cottage Industry Rural Industry Timber Mill (x) Fuel Depot (x) Tourist Operation Colleges (x) Primary Schools (x) Clubs and Hotels (x) Recreational Buildings (x) Sporting Grounds and Burial Grounds (x) Car parks and lock-up garages Goods Transit and utilities (x) Public Utilities **Miscellaneous** (x)	Community Meeting and Entertainment[2] Domestic Animal Breeding, Boarding or Training Emergency Services Food Services **Residential**[3] Resource Development[4] Sport and Recreation Tourist Operation Utilities Visitor Accommodation

(x) = Downzoning: this indicates where a Use is either no longer available, the definition has become significantly more restrictive, or the Use Class has changed from a more favourable "Permitted" to "Discretionary".

Notes:

1. If for minor utilities
2. Only for: Place of worship, Art and craft centre, Public Hall
3. Residential use is Permitted only when there is a "single dwelling located within a building area, if shown on a sealed plan". However, the vast majority of LCZ targeted properties do not have a designated building area on title, therefore the "Permitted" usage is not applicable in nearly all instances.
4. If not for intensive animal husbandry or planation forestry

Table A.2: The Rural Zone and definitions under the *Huon Planning Scheme 1979*

No permit required
Agriculture Includes horticulture and forestry, dairy farming and keeping and breeding of livestock, and use as arable land for the growing of fruit, vegetables, grain and other produce.
Intensive Agriculture - means any land used for the farming of animals when feeding is undertaken primarily by hand and/or machinery based practices and includes agricultural practices which involve spraying or a substantial capital investment. **Amendment BF-7 24/1/95**
Permitted
Single Dwelling Means a building designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily appurtenant thereto, but excludes a dwelling in a row of dwellings attached to one another, such as are commonly known as semi-detached, terrace, town or row houses.
Dwelling and Ancillary Apartment - means any land used for a Dwelling, as defined in Part 1.4 (Interpretation) of this Scheme, and an additional dwelling unit that is appurtenant to that Dwelling, provided that the floor area of the additional dwelling unit is not greater than 80m^2, or 50% of the floor area of the Dwelling. **Amendment BH-4 26/9/95 & Amendment BF-7 24/1/95**
Market gardening - use as a market garden or nursery garden not exceeding 1.5ha in extent.
Woodland - use as woodland, but excluding use for tree felling or timber extraction (other than by the collection of forest, waste or firewood from dead or felled trees) where such operations are carried on primarily for purposes within Class 5.5. *Note - Class 5.5 is Land Clearing
Land clearing - use for the purpose of clearing or preparing land for the other purposes or for the exploitation of natural resources other than minerals, including the felling of indigenous trees or shelter belt plantations, the burning of scrub (otherwise than in accordance with recognised fire prevention practices) and the cutting of live timber for firewood or other purposes where not carried on as part of a regular program of forest management.
Racing stables - use as racing stables, private trotting tracks, pony clubs or riding schools; or use as an animal hospital or private menagerie. **Amendment BI-2 26/9/95**
Kennels - means any land used for the boarding or keeping of dogs and/or cats on a commercial basis, but does not include the keeping of working farm dogs.
Parks and playing fields - use for outdoor recreation so far as not included in Class 6.7, including use as a public open space, park, garden, waterside park, playing field, golf course, zoological garden, picnic site, outdoor swimming pool, nature areas, arboretum, or bird or wildlife sanctuary.
Playgrounds, etc - use as a children's playground, a tennis court or a bowling green, or as amenity open space not exceeding 0.4 hectares.
Discretionary
Other residential buildings – use as a boarding house, guest house or lodging house having four or more bedrooms; use as a private hotel or residential club (other than a club or hotel licensed for the sale of intoxicating liquor); use of land for residential aged care, retirement village.
Motels - use as a motel or as overnight accommodation in the form of chalets or cabins, other than use including use as a hotel licensed for the sale of intoxicating liquor.
Health Centre Means a maternal and child welfare centre, a centre for the care of physically handicapped persons, an X-ray centre, a public medical clinic, a nursery or day care centre, creche or kindergarten but does not include consulting rooms.

Caravan Park Includes a camping ground in which facilities are provided for the accommodation of tents and caravans.
Storage and depots - use as a storage warehouse, furniture repository, builders' or contractors' yard, transport or carrier's depot (except so far as included in Appendix 4); use as a government, local government or public authority depot or store; or use as a grain silo, use as a plant hire depot and wood yard.
Special Industry Includes a noxious, hazardous or extractive industry. **Amendment AT-1 19/2/93**
Mining operations - use for the mining, winning or working of minerals or road stone or the removal of topsoil, or use as a site for the deposit of rubble, stone, topsoil or other inoffensive material.
Cottage Industry Means a light industry in which arts or handicrafts, or products of a indigenous nature are made, and includes the sale from the site of such products produced at the site. **Amendment M-1 11/12/86**
Rural Industry Means any industry handling, treating, processing or packing primary products grown reared or produced in the locality of that industry and a workshop servicing plant or equipment used for rural purposes in that locality.
Timber Mill - means land or premises where logs or timber are sawn or chipped or pulped but does not include a joinery works unless logs or large pieces of timber are sawn therein.
Fuel Depot Means a depot or place for storage or bulk sale of solid, liquid or gaseous fuel, but does not include a service station or wood yard.
Tourist Operation Means any premises used principally for tourist purposes, and includes (such developments as) wildlife parks, host farms, country clubs, indoor or outdoor historical or bush displays and the like, but excludes any other tourism facility defined elsewhere in this Scheme. **Amendment M-1 11/12/86**
Colleges, etc - use as a high school, college, university or other educational institution not included in Clause 6.3, or use as an army or service barracks.
Primary schools - use as a primary school, nursery school or kindergarten except where forming part of a school included in Class 6.2.
Clubs and hotels - use as a social club or a licensed club or for the social activities of any institution, or use as a hotel, inn or public house licensed for the sale of intoxicating liquor.
Recreational buildings - use for any of the purposes included in Appendix 1.

APPENDIX 1

PLACES FOR RECREATION AND AMUSEMENT

Including but not necessarily limited to:-

Amusement arcades,

bars or drinking booths (so far as not included in Class 6.5)

betting premises, except where included in premises in Class 2.1,

bowling alleys,

billiards or snooker saloons,

boxing or wrestling rinks or stadia,

casinos or gaming rooms,

cinemas, theatres or concert halls,

dance halls or ballrooms,

discotheques,

gymnasia, judo clubs or karate clubs,

meeting halls or youth clubs (other than halls or clubs used solely for religious, political, philosophical, literary, or educational purposes),

music halls, music clubs, or band rooms,

shooting galleries,

skating rinks,

slot car racing centres,

sports clubs, squash courts, or buildings for any indoor sport,

swimming baths (so far as not included in Class 6.8),

Turkish baths or other foam or vapour baths, sauna baths.

Sports grounds and burial grounds - use as an athletic or sports ground with spectator provision, a drive-in theatre, an amusement park, fairground, race-course, trotting tracks, stadium or showground, or use as a burial ground or cemetery.

Car-parks and lock-up garages - use as a car-park, a taxi rank, a bus loading bay, a lock-up garage or a car shelter unattached to a building of any other use.

Goods transit and utilities - use as transit sheds, good terminals or sidings; use for the purposes of a hydro-electric or water supply undertaking so far as not included in Class 7.3.

Note: 7.3 is Public Utilities

Public Utilities –means any use or development as may be required to provide water, sewerage electricity, gas, oil, drainage, transport, communications or similar services.

Miscellaneous - use for any purpose not specified clearly and included in any other Class in this Table, including unused land, provided that for the purposes of Parts 3 and 7 of this Scheme any use falling within this Class shall be deemed to constitute a separate Use Class of itself.

ireneinc
PLANNING & URBAN DESIGN

18 August 2022

State Planning Office
Department of Premier and Cabinet

By email: yoursay.planning@dpac.tas.gov.au

STATE PLANNING PROVISIONS REVIEW
SUBMISSION - NO TURBINE ACTION GROUP INC (NTAG)

This submission is made on behalf of NTAG a not for profit, community organisation formed in response to shared concerns in relation to the St Patricks Plains Wind Farm proposal.

NTAGs interest in the planning process related to the wind farm has led them to become engaged in the planning process more generally and to take an interest in the statutory planning controls which influence the current and future development, within Tasmania more broadly, and the Highland Lakes area more specifically.

It is understood that the current opportunity to make submissions to the scoping review of the State Planning Provisions (SPPs) is the first stage of the 5 yearly review of the SPPs required by the Land Use Planning & Approvals Act 1993.

This submission is made on the understanding that the review will consider the SPPs component of the Tasmanian Planning Scheme, with all of the SPPs open to review, but that the review does not include the application of zones and codes in Local Provisions Schedules, consideration of Regional Land Use Strategies; State Policies; or the broader planning framework.

RURAL & AGRICULTURE ZONE PROVISIONS

Under the SPPs the purpose of the Rural Zone is as follows:

20.1.1 To provide for a range of use or development in a rural location:

(a) where agricultural use is limited or marginal due to topographical, environmental or other site or regional characteristics;

(b) that requires a rural location for operational reasons;

(c) is compatible with agricultural use if occurring on agricultural land;

(d) minimises adverse impacts on surrounding uses.

20.1.2 To minimise conversion of agricultural land for non-agricultural use.

20.1.3 To ensure that use or development is of a scale and intensity that is appropriate for a rural location and does not compromise the function of surrounding settlements.

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The use table for the zone includes extensive lists of both permitted and discretionary uses. The standards of the zone include use standards related to discretionary uses, no use standards are included for permitted uses, which therefore provides no provisions which consider the intensity of these uses, contrary to the purpose statements.

Development standards for both Rural and Agriculture Zones are restricted to basic height, setback, access as well as subdivision. It is considered that both the zone purpose and standards are lacking in controls which would ensure that in the long term the rural landscape of Tasmania is protected from development that is in appropriately sited, located or designed.

In particular it is noted that the zones currently do not provide for consideration of protection of skylines, landscape or rural character as would have previous iterations of Tasmanian planning schemes, including current interim planning schemes for the Rural Resource and Significant Agriculture Zones.

Scenic Protection Code Provisions

The SPPs include a Scenic Protection Code, the purpose of which is to:

> *To recognise and protect landscapes that are identified as important for their scenic values.*

The application of this Code appears to vary significantly, like the application of the equivalent Code from the interim planning schemes, Municipality to Municipality providing no consistency in approach across the State. This degree of inconsistency is contrary to the intent of the State-wide planning scheme.

However, even when applied there are limitations in the current drafting of the Code which limit its effectiveness and ability to achieve its stated purpose, detailed as follows:

> ***C8.6.1 Development within a scenic protection area***
>
> *A1*
>
> *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; …*

The construction of acceptable solutions do not account for large infrastructure projects including windfarms where the height of infrastructure may significantly exceed 50m in height, resulting in no discretion even being triggered.

With wind turbines now being proposed with heights of 270m, as planned for Robbins Island, provisions which seek to protect landscapes and skylines need to be reconsidered to ensure that these types of development are considered appropriately.

> ***C8.6.2 Development within a scenic road corridor***
>
> *A1*
>
> *Destruction of exotic trees with a height more than 10m, native vegetation, or hedgerows within a scenic road corridor must not be visible from the scenic road.*
>
> *A2*
>
> *Buildings or works within a scenic road corridor must not be visible from the scenic road.*

The Code provides for a corridor of 100m for indicated roads and while this degree of protection may be suitable in some locations, there are areas there the nature of the scenic landscape is such that the character

of wide open landscapes can still be significantly impacts by building or works in excess of 100m of the road, areas of the highland lakes as well as other notable Tasmanian landscapes such as coastal environments would fall within this category, where large buildings or infrastructure could still have a significant negative affect even if outside of the 100m corridor setback.

A more nuanced approach applicable to individual landscape settings would be more appropriate than a nominal 100m.

Revision of the Code to strengthen control would not necessarily impact on agricultural land use and development given the existing exemptions. Along with review of the Code standards it is considered that a State driven project to standardise application of this Code would facilitate better protection of Tasmania's scenic landscape as by doing so protect the significant values appreciated by both Tasmanians, as well as tourists returning to the State in our post COVID economic recovery.

Wind Farm Siting Code

NTAG submit that given the future increase and expansion of wind farms in the State, as part of the necessary increase in development of sustainable energy, that it is both appropriate and necessary for the Tasmanian Planning Scheme to include provisions which guide the location of future developments.

Provisions based on a State-wide consideration of areas appropriate for protection would provide greater certainty for industry and the community as well as protecting existing settlements, natural and cultural values through identifying areas which should be protected from speculative wind farm proposals.

NTAG would welcome the opportunity to be further involved in the SPP review process as matters progress. The State Planning Provisions Review Scoping Paper states that the State Planning Office will establish reference and consultative groups to assist with detailed projects and amendments associated with the SPPs. NTAG, as a main wind farm community group in Tasmania, with over 250 members and supporters, request the opportunity to be on such reference and consultative groups when established.

Yours faithfully

[redacted]

Jacqui Blowfield
SENIOR PLANNER
IRENEINC PLANNING & URBAN DESIGN

[redacted] 11 August 2022	State Planning Office Department of Premier and Cabinet GPO Box 123 Hobart TAS 7001

Dear Sir/Madame

Re: State Provisions Review - Scoping Issues

Background

My name is Bob Simmons. My wife, Sandra, and I operate a beef fattening enterprise on a farm in a Rural Resource Zone (RRZ) of the Kentish Municipality. We own and operate a 250-acre operation involving the buying, grazing and selling beef cattle. We run approximately 180 head of stock and have been operating the farm for over 38 years.

Over the past 15 months my wife and I have been engaged in litigation initiated by ourselves to protect our farming operation from an adjoining property development (also in the RRZ). In their submission to Kentish Council, our neighbours proposed building a function centre and 3 more accommodation units within 20 metres of our common boundary. Their application was based on spurious claims of being a farming operation (30 acres & 16 sheep) to support their "sheep breeding operation of 16 sheep" under the guise of "Farm Stay accommodation".

We would like to outline the processes and the significant issues that our litigation raised and hope that its consequences can help form the basis of better planning rules in particular for Rural Resource land in Tasmania.

Our Farming Operation

Our land has been classified as Assessed Class 3 & 4. Over the years we have invested heavily in the development of an extensive underground water reticulation system to facilitate the water irrigation of our pastures.

Our long term intentions were to continue our operations until a time of our choosing when we will change the operation into a cropping venture through an income producing 3rd party leasing arrangement to supplement our retirement income.

To this end , we had our property assessed by Simplot Ltd who gave the proposal commercial value (completed as a result of the appeal process and given in evidence). This immediately classified our property as "Potential Irrigated Cropping" requiring legislated clearances from our title boundary.

The Council approval process for the development application completely ignored any requirement for the "future potential" of our property to be assessed and categorised it as a grazing operation.

The council planner "in evidence" said that he saw the development as just an extension to the existing 3 accommodation units' presently in place and ignored any issues relating to our operation or the protection of scarce and limited prime rural land for future agricultural purposes.

"His neglect, our future"

The Tribunal Hearing

Citation: RT & SD Simmons v Kentish Council and EJ Worssam [2021] TASRMPAT 31

1. The Second Respondent, EJ Worssam, lodged a development application (DA2021/03) to the First Respondent, Kentish Council (the Council), seeking approval for the conversion of an existing temporary manager's residence to a visitor accommodation unit, the construction of two additional visitor accommodation units, a manager's residence and a function centre at 256 Careys Road, West Kentish (the Proposal)

2. Council resolved to approve the Proposal subject to conditions set out in a development permit dated 18 May 2021.

3. The Appellants, RT & SD Simmons, filed a Notice of Appeal on 3 June 2021, challenging the Council's decision.

Details and Outcome of the Litigation

The property is subject to the provisions of the Kentish Interim Planning Scheme 2013 (the Scheme) and is located within the Rural Resource Zone. There was no dispute that the Proposal was required to be assessed for compliance under Clause 26 of the Scheme. The grounds of appeal specifically call up consideration of Clauses 26.1.1, 26.1.2, 26.3.1, 26.3.2 and 26.4.3.

Without going into the detail of the 5 day hearing involving 5 lawyers and 3 tribunal members 2 planning consultants & 2 farm consultants, the appeal was successful and the permit to build a function centre was overturned, based on Ground 1 (b) –Clause 26.3.1 P! (c) (vi) of the planning scheme "fail to secure".

The cost to complete the appeal action against the development was $130,000.00, borne entirely by myself and my wife.

Subsequent to the decision, the council overturned one of the Tribunal findings, highlighting further faults in the process.

We attached for your further review a copy of the decision.

Considerations for the State Provisions Review

What we gleaned from the whole action was the following summarising points which we feel must be addressed in any improvements to the planning scheme.

1. **Protecting prime rural land**. There is much wisdom in the content of the planning scheme. We refer particularly to the word "**potential**" which must be retained and under no circumstances altered but it needs further clarity and more emphasis on its importance in farm planning processes and in preserving prime agricultural land and its historical diversity for future agricultural purposes.

2. **Is the Tribunal an expensive toothless tiger**?
    a. Our Tribunal hearing involved presentations and questioning of the applicants and respondents as well as experts in agriculture, planning and environment. The Tribunal made its findings taking all parties views and opinions of the experts into consideration. Our costs were $130,000.
    b. We were shocked to find that after a decision was made in our favour, the Kentish Council were advised by their planner that not all of the findings of the Tribunal were enforceable and did not need to be taken into account when making their final decision on the proposed function centre and accommodation unit proposal put forward by our neighbours. We were left wondering why we bothered with the Tribunal at all, when the views of experts were ignored by Kentish Council and their volunteer, mostly non-rural councillors made the final decision based on their own predominantly uninformed and inexpert views.
    c. In relation to the Planning Review we would like to see the legal basis of Tribunal decisions to be reviewed and if relevant, that a clause be inserted into the Planning Laws that makes it clear that all aspects of the decisions of the Tribunal are indeed enforceable.

3. **The definition of a farm** needs to be more clearly defined; there was much time wasted in our trial on the definition of a farm. Every possible configuration of rural activities was examined and argued in detail wasting well over a day at the tribunal hearing. How can this be described with more accuracy and clarity to avoid lengthy legal argument and cost in litigation?

4. **Commercial Intent of Primary Industry**. Paragraph 31 of our RMPAT decision mentions scale and commercial intent to "primary industry": this notion is not supported by the Rural Resource Zone Standards.
    a. Commercial intent of primary industry needs to be clearly defined and linked to a concrete definition such as the definition of a primary producer in the Commonwealth Income Tax Act.
    b. For example, the Australian Tax office compliance rules would need to be satisfied with respect to the operation not being a hobby farm but being a genuine primary producer generating sufficient income from primary production as their "Primary Source of Income" for the taxpayer and dependents.
    c. The ATO has very clear guidelines with respect to the classification of farm incomes.

5. **Farm Stay Accommodation**
    a. **Farm Stay accommodation needs to be more clearly and tightly defined**. The concept of farm stay accommodation was conceived to allow farmers to supplement their income by accommodating guests **in or around the farm homestead with little or no encroachment into the farming operation**.

    b. The ability for people (including farmers) to buy and/or break off parcels of land, obtain Property Identification Code (PIC), agist animals on that parcel, and then call it a farm upon which they are allowed to construct accommodation, must be stopped.

    c. This has now developed into land holders building self-contained accommodation units remote from the main homestead, fettering the farm's productive ability and leading to the eventual subdivision of the complete farming operation.

d. **Impact on 3rd Parties.** There needs to be a mechanism which makes it the responsibility of the proponents of any development to complete an impact assessment of any affected 3rd party at his cost and by a mutually accepted assessor.

6. **Food security.** What price does one put on "food security". The wording "Rural Resource Zone" covers a diverse number of industries such as forests, horticulture, mining and food production. We feel this requires more segregation into particular grades of rural land to further protect food security.

In Conclusion

1. The present planning scheme, as mentioned above should not be weakened in any way but enhanced by more clearly defining the above points which we have mentioned.

2. We feel that any development in a "Rural Resource Zone" should be handled at State Government level to try and eliminate the influence of self-interested parties on local elected councils.
3. Farms are being broken up at an unprecedented rate with no recognition of this fact by local councils who just try to comply with the legislation. Adjoining landholders live under the misconception that their respective local planners know what they are doing, whereas in fact the decisions are made by local councils comprising unqualified, elected council officials, many with scant appreciation of primary producer issues.

We would welcome the opportunity to meet with you to put forward further thoughts on the matter.

Kind regards

[redacted]
Bob Simmons

Tel: [redacted]

Attachment: *Citation: RT & SD Simmons v Kentish Council and EJ Worssam [2021] TASRMPAT 31*

RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

Citation:	RT & SD Simmons v Kentish Council and EJ Worssam [2021] TASRMPAT 31	
Parties:	*Appellant*:	Robert Thomas & Sandra Denise Simmons
	First Respondent:	Kentish Council
	Second Respondent:	Eileen Worssam
Subject Land:	256 Careys Road, West Kentish	
Appeal No:	70/21P	
Jurisdiction:	Planning Appeal	
Hearing Date(s):	26 & 27 August, 1, 2 and 9 September 2021	
Decision Date:	8 October 2021	
Delivered At:	Hobart	
Before:	M Duvnjak, Chairperson ME Ball, Member M Kitchell, Member	
Counsel:	*Appellants*: *First Respondent:* *Second Respondent:*	A Spence SC / M Edwards G Tremayne N Billett
Solicitors:	*Appellants*: *First Respondent:* *Second Respondent:*	Page Seager Tremayne Fay Rheinberger Billett Legal
Catchwords:	Planning Appeal –Kentish Interim Planning Scheme 2013 – Rural Resource Zone – Clause 26.3.1 P1(a), (c)(vi) and (d)(ii) – Clause 26.3.2 – meaning of 'farm stay' – Clause 26.4.3 P1(b).	

REASONS FOR DECISION

Background

1. The Second Respondent, EJ Worssam, lodged a development application (DA2021/03) to the First Respondent, Kentish Council (the Council), seeking approval for the conversion of an existing temporary manager's residence to a visitor accommodation unit, the construction of two additional visitor accommodation units, a manager's residence and a function centre at 256 Careys Road, West Kentish (the Proposal).

2. Council resolved to approve the Proposal subject to conditions set out in a development permit dated 18 May 2021.

3. The Appellants, RT & SD Simmons, filed a Notice of Appeal on 3 June 2021, challenging the Council's decision.

The Site of the Proposed Development

4. 256 Careys Road, West Kentish is a 13.85ha property with direct access to Careys Road. Careys Road is a gravel surfaced local highway. The overall property comprises two titles with an area of 23ha, known as Manna Hill Farm. The site has existing approvals for residential and visitor accommodation use. It currently contains a manager's residence and two visitor accommodation units. The Second Respondent operates a small scale sheep farming and breeding operation at Manna Hill Farm.

5. The Appellants' land at 225 Careys Road adjoins Manna Hill Farm.

Grounds of Appeal

6. On 15 July 2021, the Tribunal granted an application for the Appellants to amend their original grounds of appeal. The amended grounds of appeal are as follows:

> *"1 The proposed multifunctional space, also referred to in the development application as a 'function centre', categorised as 'Community meeting and entertainment' use per clause 8.2 of the Kentish Interim Planning Scheme 2013 (the Scheme) must, but does not, satisfy cl.26.3.1 P1 of the Scheme in that:*
>
> *(a) it must, but does not, satisfy P1 (a) because it is not consistent with the local area objectives set out in cl.26.1.2 of the Scheme, including but not limited to objectives (c)(ii) and (g);*
>
> *(b) it must, but does not, satisfy P1(c) because it has not been (and the Appellant asserts it cannot be) demonstrated that the 'function centre' must be required to locate on rural resource land for operational efficiency in the context of any of the eight matters set out in (i) to (viii) (inclusive); and*
>
> *(c) it must, but does not, satisfy P1(d)(ii) because it has not been (and the Appellant asserts it cannot be) demonstrated that the 'function centre' will minimise the likelihood for constraint or interference to existing and potential primary industry use on the site and on adjacent land, in particular adjacent land owned by the Appellant and situated at 225 Careys Road, West Kentish.*
>
> *PARTICULARS OF GROUND OF APPEAL 1 (c)*

(i) *The relevant 'adjacent land' is the property situated at 225 Careys Road, West Kentish and described as follows:*

(A) *Certificate of Title Volume 209291 Folio 1 of the Register;*

(B) *Certificate of Title Volume 166778 Folio 2 of the Register;*

(C) *Certificate of Title Volume 17376 Folio 1 of the Register;*

(D) *Certificate of Title Volume 249100 Folio 1 of the Register;*

(E) *Certificate of Title Volume 49760 Folio 3 of the Register; and*

(F) *Certificate of Title Volume 30360 Folio 1 of the Register.*

(here referred to collectively as the Land)

(ii) *The relevant existing primary industry use on the Land is:*

(A) *cattle grazing and cattle breeding/husbandry; and*

(B) *irrigated pasture for stock grazing and/or fodder conservation.*

(iii) *The relevant potential primary industry use on the Land is irrigated cropping.*

2 *The proposed Residential use (single dwelling) development referred to in the development application as a 'manager's residence' does not satisfy cl.26.4.3 P1 of the Scheme in that it must, but does not, satisfy P1(b) because it has not been (and the Appellant asserts it cannot be) demonstrated that the development will minimise likely constraint or interference to existing and potential primary industry use on the site and on adjacent land, in particular adjacent land owned by the Appellant and situated at 225 Careys Road, West Kentish.*

<u>PARTICULARS OF GROUND OF APPEAL 2</u>

(i) *The relevant 'adjacent land' is the property situated at 225 Careys Road, West Kentish and described as follows:*

(A) *Certificate of Title Volume 209291 Folio 1 of the Register;*

(B) *Certificate of Title Volume 166778 Folio 2 of the Register;*

(C) *Certificate of Title Volume 17376 Folio 1 of the Register;*

(D) *Certificate of Title Volume 249100 Folio 1 of the Register;*

(E) *Certificate of Title Volume 49760 Folio 3 of the Register; and*

(F) *Certificate of Title Volume 30360 Folio 1 of the Register.*

(here referred to collectively as the Land)

(ii) *The relevant existing primary industry use on the Land is:*

(A) *cattle grazing and cattle breeding/husbandry; and*

(B) irrigated pasture for stock grazing and/or fodder conservation.

(iii) The relevant potential primary industry use on the Land is irrigated cropping.

3 The proposed Visitor accommodation use (change of use and 2 new cabins) referred to in the development application is, as a matter of fact and law, a discretionary use in the Rural Resource zone because at all relevant times the site did not (and presently does not) host a 'farm' capable of meeting the "farm stay accommodation" qualification to Visitor accommodation imposed by Use Table 26.2. As a result:

(a) the proposed Visitor accommodation must be assessed against cl.26.3.1 P1 of the Scheme but cannot satisfy the requirements of that control because:

(i) it must, but does not, satisfy P1(a) because it is not consistent with the local area objectives set out in cl.26.1.2 of the Scheme, including but not limited to objectives (c)(ii) and (g); and

(ii) it must, but does not, satisfy P1(c) because it has not been (and the Appellant asserts it cannot be) demonstrated that the proposed Visitor accommodation must be required to locate on rural resource land for operational efficiency in the context of any of the eight matters set out in (i) to (viii) (inclusive).

(b) The proposed Residential use (single dwelling) development referred to in the development application as a 'manager's residence' must, but cannot, satisfy cl.26.3.2 P1 of the Scheme, in particular P1(c)(i), because:

(i) the use is put forward as a manager's residence required as part of the proposed Visitor accommodation use; however

(ii) the proposed Visitor accommodation use is not a "permitted use" for the purposes of cl.26.3.2 P1(c)(i) - it is a discretionary use."

Planning Controls

7. The property is subject to the provisions of the Kentish Interim Planning Scheme 2013 (the Scheme) and is located within the Rural Resource Zone. There was no dispute that the Proposal was required to be assessed for compliance under Clause 26 of the Scheme. The grounds of appeal specifically call up consideration of Clauses 26.1.1, 26.1.2, 26.3.1, 26.3.2 and 26.4.3.

8. Clause 26.1.1 provides:

26.1.1 - Zone Purpose Statements

26.1.1.1	To provide for sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing.
26.1.1.2	To provide for other use or development that does not constrain or conflict with resource development use.

9. Clause 26.1.2 provides:

26.1.2 – Local Area Objectives

(a) The priority purpose for rural land is primary industry dependent upon access to a naturally occurring resource;

(b) Air, land and water resources are of importance for current and potential primary industry and other permitted use;

(c) Air, land and water resources are protected against –

(i) permanent loss to a use or development that has no need or reason to locate on land containing such a resource; and

(ii) use or development that has potential to exclude or unduly conflict, constraint, or interfere with the practice of primary industry or any other use dependent on access to a naturally occurring resource;

(d) Primary industry is diverse, dynamic, and innovative; and may occur on a range of lot sizes and at different levels of intensity;

(e) All agricultural land is a valuable resource to be protected for sustainable agricultural production;

(f) Rural land may be used and developed for economic, community, and utility activity that cannot reasonably be accommodated on land within a settlement or nature conservation area;

(g) Rural land may be used and developed for tourism and recreation use dependent upon a rural location or undertaken in association with primary industry

(h) Residential use and development on rural land is appropriate only if –

(i) required by a primary industry or a resource based activity; or

(ii) without permanent loss of land significant for primary industry use and without constraint or interference to existing and potential use of land for primary industry purposes.

10. Clause 26.3.1 provides:

26.3.1 – Requirement for discretionary non-residential use to locate on rural resource land

Objective:
Other than for residential use, discretionary permit use of rural resource land is to minimise –
(a) unnecessary loss of air, land and water resources of significance for sustainable primary industry and other permitted use, including for agricultural use dependent on the soil as a growth medium; and
(b) unreasonable conflict or interference to existing or potential primary industry use, including agricultural use, by other land use

Acceptable Solution	Performance Criteria
A1 There is no acceptable solution	**P1** Other than for residential use, discretionary permit use must – (a) be consistent with the local area objectives; (b) be consistent with any applicable desired future character statement; (c) be required to locate on rural resource land for operational efficiency – (i) to access a specific naturally occurring resource on the site or on adjacent land in the zone; (ii) to access infrastructure only available on the site or on adjacent land in the zone; (iii) to access a product of primary industry from a use on the site or on adjacent land in the zone; (iv) to service or support a primary industry or other permitted use on the site or on adjacent land in the zone; (v) if required – a. to acquire access to a mandatory site area not otherwise available in a zone intended for that purpose; b. for security; c. for public health or safety if all measures to minimise impact could create an unacceptable level of risk to human health, life or property if located on land in a zone intended for that purpose; (vi) to provide opportunity for diversification, innovation, and

	value-adding to secure existing or potential primary industry use of the site or of adjacent land; (vii) to provide an essential utility or community service infrastructure for the municipal or regional community or that is of significance for Tasmania; or (viii) if a cost-benefit analysis in economic, environmental, and social terms indicates significant benefits to the region; and (d) minimise likelihood for – (i) permanent loss of land for existing and potential primary industry use; (ii) constraint or interference to existing and potential primary industry use on the site and on adjacent land; and (iii) loss of land within a proclaimed irrigation district under Part 9 Water Management Act 1999 or land that may benefit from the application of broad-scale irrigation development.

11. Clause 26.3.2 provides:

26.3.2 – Required residential use

Objective:	
Residential use – (a) is required as part of a resource development or other non-residential use; and (b) does not confine or restrain use of land for resource development or other non-residential use	
Acceptable Solution	**Performance Criteria**
A1 Residential use required as part of a use must –	P1 Residential use required as part of a use must –

(a) be an alteration or addition to an existing lawful and structurally sound residential building; (b) be an ancillary dwelling to an existing lawful and structurally sound single dwelling; (c) not intensify an existing lawful residential use; (d) replace a lawful existing residential use; (e) not create a new residential use through conversion of an existing building; or (f) be home based business in association with occupation of an existing lawful and structural sound residential building; and (g) there is no change in the title description of the site on which the residential use is located.	(a) be consistent with local area objectives; (b) be consistent with any applicable desired future character statement; (c) be required to locate on rural resource land if – (i) the type, scale, intensity, or operational characteristics of a permitted use make it necessary for a person to live on the site for the purpose of undertaking such use; (ii) residential use will be integral and subservient to the principal use; and (iii) there is no other available dwelling on the site; and (d) if the required residential use relies on land in two or more titles in different ownership, the written consent of the owner of each title to enter into a Part 5 agreement to be registered on the title for each of the lots and providing - (i) the dwelling is required as part of a nominated permitted use; and (ii) the lots are not to be sold separately

12. Clause 26.4.3 provides:

26.4.3 – Location of development for sensitive uses

Objective:
The location of development for sensitive uses on rural land does not unreasonably interfere with or otherwise constrain – (a) agricultural land for existing and potential sustainable agricultural use dependent on the soil as a growth medium,; (b) agricultural use of land in a proclaimed irrigation district under Part 9 Water Management Act 1999 or land that may benefit from the application of broad-scale irrigation development; (c) use of land for agricultural production that is not dependent on the soil as a growth medium, including aquaculture, controlled environment agriculture, and intensive animal husbandry;

(d) conservation management;

(e) extractive industry;

(f) forestry; and

(g) transport and utility infrastructure.

Acceptable Solution	**Performance Criteria**
A1 New development, except for extensions to existing sensitive use where the extension is no greater than 30% of the existing gross floor area of the sensitive use, must – (a) be located not less than – (i) 200m from any agricultural land; (ii) 200m from aquaculture or controlled environment agriculture; (iii) 500m from the operational area boundary established by a mining lease issued in accordance with the Mineral Resources Development Act 1995 if blasting does not occur; or (iv) 1000m from the operational area boundary established by a mining lease issued in accordance with the Mineral Resources Development Act 1995 if blasting does occur; or (v) 500m from intensive animal husbandry; (vi) 100m from land under a reserve management plan; (vii) 100m from land designated for production forestry; (viiii) 50m from a boundary of the land to a road identified in Clause 26.4.2 or to a railway line; and (ix) clear of any restriction imposed by a utility; and	P1 New development, except for extensions to existing sensitive use where the extension is no greater than 30% of the existing gross floor area of the sensitive use, must minimise – (a) permanent loss of land for existing and potential primary industry use; (b) likely constraint or interference to existing and potential primary industry use on the site and on adjacent land; (c) permanent loss of land within a proclaimed irrigation district under Part 9 Water Management Act 1999 or land that may benefit from the application of broad-scale irrigation development; and (d) adverse effect on the operability and safety of a major road, a railway or a utility

(b)	not be on land within a proclaimed irrigation district under Part 9 Water Management Act 1999 or land that may benefit from the application of broad-scale irrigation development	

13. The Use Table at Clause 26.2 is also called up for consideration by the grounds of appeal.

The Evidence

14. The following witnesses gave evidence at the hearing:

For the Appellant:

- Astrid Ketelaar, agriculture / natural resource management;
- Justine Brooks, planning and economic development; and
- Robert Simmons, Appellant who gave evidence on his own behalf.

For the Council:

- Troy McCarthy, planning.

For the Second Respondent:

- Chloe Lyne, planning;
- Jason Lynch, agronomy, irrigated agriculture and pasture production; and
- Simon Worssam, who gave lay evidence.

The area surrounding the site of the Proposal

15. The Scheme provisions called up by the grounds of appeal make relevant those properties which are close to or adjacent to the site of the Proposal. Those properties surrounding the site are usefully set out in table that formed part of Mr McCarthy's evidence, which is reproduced below:

Direction	**Planning Scheme Zone**	**Current Use Class**	**Address**
North West	Rural Resource	Forestry Production	Careys Road, West Kentish
North/North West	Rural Resource	Agricultural purposes	225 Careys Road, West Kentish
South west	Rural Resource	Residential single dwelling with outbuildings and land used for grazing	326 Careys Road, West Kentish

South East	Rural Resource	Agricultural purposes (also owned by the Second Respondents)	256 Careys Road, West Kentish
South East	Rural Resource	Residential, single dwelling with outbuildings	328 Careys Road, West Kentish
South East	Rural Resource	Residential single dwelling with outbuildings and forestry production	345 Careys Road, Claude Road.

Ground 1 – the Function Centre

16. Ground 1 relates to that part of the Proposal referred to as the 'Function Centre'. The Function Centre use best fits within the Community & Entertainment Use class under the Scheme and is a discretionary use in the Rural Resource Zone. As such, Clause 26.3.1 of the Scheme applies. That clause does not provide for an Acceptable Solution, therefore, the relevant Performance Criteria must be met.

17. Clause 26.3.1 P1 provides that the function centre use must comply with subparagraphs (a) to (d) of P1.

Ground 1(a) – Clause 26.1.2 – Local Area Objectives

18. P1(a) provides that the use must be consistent with the Local Area Objectives at Clause 26.1.2. With respect to Ground 1(a), the Appellants' contention is limited to issues of compliance with Local Area Objectives (c)(ii) and (g). It is not a requirement that every one of the Local Area Objectives apply or have relevance to the proposed use[1], rather, the use must not be inconsistent with the relevant objectives.[2]

19. Local Area Objective (c)(ii) provides that *"air, land and water resources are protected against"* use that has the potential to exclude or unduly conflict, constrain, or interfere with the practice of primary industry or any other use dependent upon access to a naturally occurring resource.

20. To assess consistency of the function centre use with Local Area Objective (c)(ii), the Tribunal must first:

    a) Identify the intended uses for the proposed function centre;

    b) Identify the meaning of 'primary industry';

    c) Identify the meaning of 'unduly conflict, constrain or interfere';

    d) Identify the existing and potential primary industry uses on the site;

    e) Identify the existing and potential primary industry uses on the Appellants' land; and

[1] *Starbox Architecture v Latrobe Council and Anor* [2020] TASRMPAT 7 at [17].
[2] Ibid at [16]

f) Determine whether the function centre use excludes or unduly constrains or interferes with the practice of primary industry on the Second Respondent's property or on the Appellants' property.

21. What constitutes 'primary industry' is not defined in the Scheme. The Zone Purpose Statement provides some assistance. At Clause 26.1.1.1, the zone purpose is identified as providing *"for the sustainable use or development of resources for agriculture, aquaculture, forestry, mining and other primary industries, including opportunities for resource processing."*

22. What constitutes 'agricultural use' is defined in the Scheme as meaning the:

> *"use of the land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding pets. It includes the handling, packing or storing of plant and animal produce for dispatch to processors. It includes controlled environment agriculture, intensive tree farming and plantation forestry."*

23. Much of the expert evidence with respect to what constitutes 'primary industry' sought to incorporate a commercial element or a requirement to be commercially viable. That was the position taken in the evidence of both Ms Brooks and Ms Ketelaar.

24. Both Ms Ketelaar and Ms Brooks did not accept that the agricultural activity undertaken by the Second Respondent would qualify as primary industry as to do so required larger scale activities than those carried out on site and must have a commercial intent.

25. Ms Ketelaar adopted the dictionary definition of 'primary industry' but then utilised other dictionary definitions to determine that 'industry' is an activity "*where economics of the activity need to be considered."* Her evidence was that to qualify required a larger scale of 'viable' commercial activity on the proposal site, in order to constitute a primary industry as contemplated by the Scheme. Her evidence was that viability requires the generation of sufficient income to provide for at least one family and full time employment for one person.

26. It is not in dispute the Second Respondent's agricultural activity does not do so.

27. Ms Ketelaar, in consultation with others, has developed what is called the 'Enterprise Scale'. The Enterprise Scale identifies current enterprise activity, land capability, irrigation, water resources and connectivity of a site in order to classify the activity into broad categories with 'commercial', 'hobby', and 'lifestyle' scale characteristics. Based on her use of the Enterprise Scale, she concluded that the proposal site, given it is Class 5 land, and taking into account the existing enterprise (18 breeding ewes grazing upon one hectare of land with some cattle grazing occurring on 13ha) was unlikely to generate more than $10,000 per annum. This agricultural potential land use was classified as 'lifestyle' scale under her Enterprise Scale system.

28. Her evidence was that the current use of the proposal site is "*non-agricultural"* and, at its highest, can be classed as *"Lifestyle scale and not a primary industry use"*. Ms Ketelaar's Enterprise Scale classification for 'Lifestyle' scale characteristics is reproduced below:

Potential Land Use	Definition	Resource (General Characteristics)	Connectivity
'Lifestyle scale' Characteristics	Little or no use for Agriculture.	Generally 1-8 ha in area.	Moderate to significant Constraints.

	Indicative Gross Income < $10 000	Land Capability variable. Water for irrigation unlikely.	Residence on the title. Residences in close proximity. Little or no connectivity to unconstrained titles.

29. The Enterprise Scale adopted by Ms Ketelaar is based on levels of scale, commercial intent and viability not contemplated by the Scheme provisions. For that reason, the Tribunal cannot accept Ms Ketelaar's evidence arising from the Enterprise Scale tool.

30. As noted the Scheme definition of 'agricultural use' does not incorporate a commercial component. The Zone Purpose Statements, at Clause 26.1.1, also do not incorporate any required scale or commerciality of primary industry. The Local Area Objective at Clause 26.1.2(d) provides that "*primary industry is diverse, dynamic and innovative; and may occur on a range of lot sizes and at different level of intensity."* Those Objectives are given meaning by the Scheme Standard providing a minimum lot size in the Rural Resource Zone as one hectare, except for agricultural purposes where no minimum lot size is imposed.[3]

31. As submitted by the Second Respondent, to ascribe scale and commercial intent to 'primary industry' is not supported by the Rural Resource Zone Standards as a whole. Importing concepts of commerciality and scale to determine whether an agricultural activity in the Rural Resource Zone is a primary industry begs the question, where, if an agricultural activity which was once profitable but has operated at a loss for a considerable period, would it lose its status as primary industry and therefore the protection afforded to primary industry uses and development located on Rural Resource land. In the Tribunal's view, this cannot have been the intention of the Scheme drafters.

What current and potential further agricultural activities are/could be carried out on the Appellants' land?

32. The Appellants' evidence about their agricultural activities was as follows:

- The Appellants' land is comprised of five separate titles;
- Prior to 2008, part of the Appellants' farm was a dairy farm;
- Prior to the purchase of part of the land in 1985, that part was operating as a mixed dairy and cropping enterprise with approximately 14.1ha used for potato production.
- There is no current cropping enterprise. Mr Simmons' evidence was that there has been no cropping undertaken since 1995 (Canola). No potato or other crops have been farmed since 1985;
- The Appellants[4] have undertaken considerable works to 'drought proof' the property, including:

[3] Clause 26.4.1 A1
[4] Initially in partnership with a neighbour.

i) Construction of a 60ML compacted earth dam; and

ii) Establishment of a pumping station with underground pipelines to a high point on the land, enabling gravity fed irrigation of approximately 19ha.

- In 2014, further irrigation development and technology occurred which expanded irrigation cover to a further 16ha of pasture. The irrigation system allowed water to be distributed to the entire farm. Current, the Appellants can irrigate 35ha of pasture. The Appellants have been granted a further licence for 230ML of water which will allow irrigation of all pastures on the property.

33. The Appellants currently operate the farm as a commercial operation with 160-200 steers as a 'cattle fattening' operation. There are presently no constraints preventing the farm from being cropped, although the evidence before the Tribunal suggests that due to the topography of the farm, such cropping would be limited to specific areas. Whether the farm is capable of producing crops is relevant to Clause 26.1.2(c)(ii), which requires a consideration of whether the function centre proposal would "*exclude or unduly conflict, constrain or interfere with a practice of primary industry*".

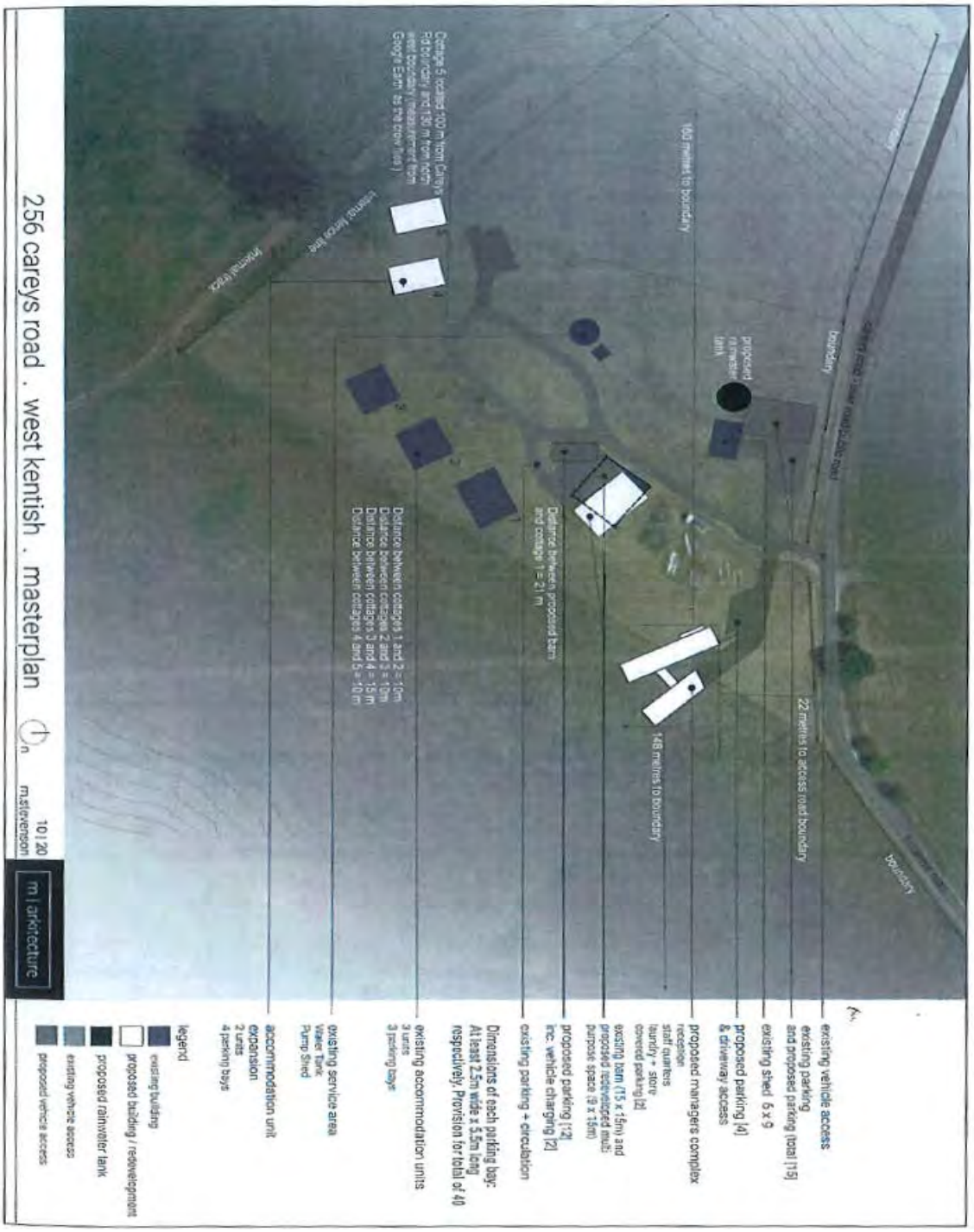
34. The Appellants have had their land recently assessed by Simplot. An assessment report that formed part of Mr Simmons' evidence identified 48ha on the Appellants' land as suitable for cropping and 11.5ha as suitable for potatoes. The author of that assessment did not give evidence before the Tribunal. The nature of the assessment and what inquiries or investigations were undertaken are unknown. The document simply identifies that an assessment of the farm was undertaken that disclosed that the author accepted suitability of part of the Appellants' land for cropping.

35. Ms Ketelaar's evidence identifies that part of the Appellants' property is capable of supporting crop production. Part of that evidence was accepted by Mr Lynch.

36. Access to the site is via a public road (Careys Road). The separation between the Appellants' closest boundary and the proposed function centre is approximately 28m (which includes the road). The Appellants' main access gate is directly opposite the Second Respondent's land.

37. Reproduced below is a copy of the Masterplan that formed part of the Development Application documents before the Council. The Master Plan depicts the location of the proposed function centre, manager's residence and the two new visitor accommodation units. One of the '*existing visitor accommodation units*' is the manager's residence proposed to be converted to visitor accommodation.

Figure 2: Part Site Plan



What current and potential further agricultural activities could be carried out on Manna Hill Farm?

38. The function centre is to be used for incorporating micro-weddings, artist retreats, corporate functions and as a space for the gathering of accommodation guests. The maximum number of guests proposed to use the space is 36, which includes those persons accommodated in the existing and proposed visitor accommodation use, with the occupancy capacity for the proposed and existing visitor accommodation use being 16 persons. It is proposed, therefore, that an additional 20 persons could attend / use the function centre if all of the visitor accommodation is occupied. It is intended that weddings would be limited to 10 times per annum, operating from 9 am to 11 pm. Corporate

functions are intended to occur a maximum of three times per annum, operating from 9 am to 11 pm. The other uses identified, other than use of the function centre by visitor accommodation guests, would be limited to operation from 9 am to 5 pm.

39. A small flock of Dorper sheep are reared and bred on the property with occasional agistment of cattle. The evidence established the 23ha site is predominately Class 5 land with some areas being Class 5 + 6. As set out in Mr Lynch's evidence, the classes are defined as follows:

> *"Class 5 land is defined as:*
>
> *This land is unsuitable for cropping, although some areas on easier slopes may be cultivated for pasture establishment or renewal and occasional fodder crops may be grown. The land may have slight to moderate limitations for pastoral use. The effects of limitations on the grazing potential may be reduced by applying appropriate soil conservation measures and land management practices.*
>
> *Class 5+6 land is defined as:*
>
> *At least 60% land suited to grazing but with moderate limitations, up to 40% land with severe limitations to pastoral use.*
>
> *Class 6 land is defined as:*
>
> *Land marginally suitable for grazing because of severe limitations. This land has low productivity, high risk of erosion, low natural fertility or other limitations that severely restrict agricultural use."*

40. The Tribunal accepts the evidence of Mr Lynch that *"the property is capable of supporting agricultural land use activity that being for pastoral land use activity with typically moderate limitations although the Class 6 land has severe limitations."*

41. The property is not suitable as cropping land.

42. The evidence from Mr Lynch is that the Second Respondents intend to intensify the present Dorper sheep breeding enterprise and that the Second Respondent land has the capability to support an intensification subject to improvements being made to the property.

Unduly conflict, constrain or interfere – Clause 26.1.2(c)(ii) – Local Area Objectives

43. These words are not defined in the Scheme and accordingly must be given their ordinary meaning. To 'unduly conflict, constrain or interfere' is to do so to an "*unwarranted degree or excessively*"[5]. To 'conflict, constrain or interfere' is to "*give rise to an incompatibility, limitation or restraint or to prevent the carrying out of the practice of primary industry."*[6]

Would the function centre constrain the Appellants' potential and existing agricultural use?

44. Mr Simmons gave evidence of constraints that he says may arise as a result of the proposed function centre use. His evidence was that the increased use of Careys Road, which he identifies as essential to existing farming operations, given its use for the movement of cattle, would constitute a constraint. His evidence was that the gravel road would become more compacted by increase use which in turn increases the potential for hoof bruising to his stock.

[5] Online Macquarie Dictionary
[6] Online Macquarie Dictionary

45. Mr Simmons also identifies issues of farm security. His evidence was that functions involving members of the public will increase the likelihood of vandalism and stock theft. Further, he says that the provision of parking bays required by the permit conditions would become a "*siting refuge for thieves*". He cites a potential for direct interference with cattle arising from "*undisciplined and unruly behaviour"* of function centre guests.

46. Other issues identified as constraints related to the impact of "*the constant incursion of transient people in remote areas"* giving rise to potential biosecurity risks and impacting quality and yield, both with respect to the existing operations and potential cropping and poppy production.

47. Other constraints identified with respect to the potential agricultural use were impacts of spray drift to the proposal site and potential issues with respect to harvesting machine access requiring a clear and unimpeded use of Careys Road which, in Mr Simmons' view, would be impacted by the proposed parking bays conditioned to be provided along this road in Council's permit.

48. Mr Simmons' evidence was supported by the evidence of Ms Ketelaar who agreed, under cross examination, that much of her assessment of the impacts of constraints on the existing and potential agricultural use on the Appellants' property was based on instructions provided by Mr Simmons.

49. With respect to the impact of increased traffic, Ms Ketelaar's evidence was:

> *"Traffic volume is modelled by Council in their planning assessment report, to increase from the current annual average of 15 vehicle movements per day to 34 movements per day. With a maximum of 60 movements per day on days that events are held (2 per week). This will result in:*
>
> *(i) Increasing the vehicular traffic impacting on the Simmons farm operations. Traffic will be increased to a level where it will be difficult for traffic and stock to safely negotiate the route along Careys Road and the un-named shared access road between the main farming infrastructure and the western farm access, particularly in summer when the function centre will, presumably, have higher usage and the farming activity is more intense due to irrigation, growing and harvesting activities.*
>
> *(ii) Further increase in road degradation. The current increase in traffic since the existing accommodation was built at Manna Hill has resulted in an increase in road degradation which in turn has resulted in an increase in hoof bruising for the Simmons' stock. I have been instructed (pers. comms. 9th July 2021, Mr Robert Simmons) this has not previously occurred in the 35 years that the Appellant has been utilising the relevant roads for stock movement."*

50. With respect to the issue of security risk, Ms Ketelaar's evidence was that:

> *"(iii) Increasing the security risk through a change in the genre of clientele that patronise the function centre in comparison to those who patronise the accommodation. The function centre is being marketed to regionally based patrons and the type of events being proposed (weddings, family celebrations, retreats, artist workshops, conferences, mountain bike fraternity) are targeting a less transient population. As a result there is greater exposure of the Simmons holdings' more remote part of the farm to a population which has potential to access these areas at a later date when traffic volume is low. The proposed passing bays provide convenient, secluded viewing points for viewing and or accessing the remote parts of the property. The Simmons pump shed on the 60ML dam is in the gully past the Manna Hill entrance. The combination of these factors increases the risk for stock theft and vandalism."*

51. She concluded that:

> *"In my opinion the land associated with the western portion of the Simmons holding is not adequately protected against the constraint and conflict risks presented by the proposed function centre use, and the Proposal is not consistent with the protection afforded by the objective in clause 26.1.2 (c)(ii) of the Scheme."*

52. Mr Lynch's evidence was that the function centre impacts would not exclude or unduly constrain or interfere with the Appellant's current or potential agricultural activities.

53. With respect to the areas of the Appellants' land considered by Mr Lynch, he said there was a low potential risk of constraints on existing and potential agricultural use for the reasons set out in his Table 1, as reproduced below:

Potential Risk to Neighbouring Agricultural Activity	**Extent of Risk & Possible Mitigation Strategy**
1. Trespass	Risk = low. Mitigation measures include maintenance of sound boundary fencing, if applicable lockable gates and appropriate signage to warn visitors about entry onto private land; report unauthorised entry to police.
2. Theft	Risk = low. Ensure there is good quality boundary fencing on neighbouring properties and appropriate signage to deter inadvertent entry to property; report thefts to police.
3. Damage to property	Risk = low. As for theft.
4. Weed Infestation	Risk = low. Risks are expected to be negligible, with the proponents committed to the future development, productivity and sustainability of their property and weed control is a key activity.
5. Fire outbreak	Risk = low. Fire risk can be mitigated by careful operation of outside barbeques and disposal of rubbish, and appropriate management of vegetation around the property to mitigate the risk of fire. If applicable a bushfire management plan would be prepared which covers the proposed development.
6. Noise	Risk = low. Mitigated by separation distances, presence of current vegetation (where applicable) and proposed shelter belts, the restriction of visitor numbers and operating hours as per the description in DA2021/03,

	presence of managers residence on site to assist in enforcing the obeyance of the rules for guests and visitors to the proposed development.
7. Dog menace to neighbouring livestock	Risk = low. Mitigated by ensuring that communication is maintained between the proponents and potential residents of the neighbouring properties. Dogs would be managed as per the regulations determined by the council.
8. Road traffic	Risk = low. Mitigated by the restriction of visitor numbers and operating hours as per the description in DA2021/03 and passing lane as required by the council conditions.

54. With respect to the land on the southern and western boundaries his evidence was:

> *"6.12 Due to the separation distances in conjunction with the elevation and topographic variation and presence of extensive areas of native vegetation the proposed development on the property in question it is not anticipated any negative impacts and/or constraint would be imposed upon land use activity in this area.*
>
> *6.20 Due to the separation distances in conjunction with the elevation and topographic variation and presence of native vegetation the proposed development on the property in question it is not anticipated any negative impacts and/or constraint would be imposed upon land use activity in this area.*
>
> *6.31 Due to the separation distances in conjunction with the topographic variation and presence of native vegetation (on the eastern area of property title 209291/1) and the proposed shelter belts to be implemented at 256 Careys Road the proposed development on the property in question it is not anticipated any negative impacts and/or constraint would be imposed upon the agricultural land use activity in this area.*
>
> *6.33 The separation distance between the nearest boundary of property title 17376/1 and the location of the proposed use and development at 256 Careys Road is approximately 250m at the closest point.*
>
> *6.34 The separation distance between the stockyards and residential dwelling on property title 17376/1 and the location of the development on the property in question is approximately 580m and 710m respectively at the closest point.*
>
> *6.35 The proposed development does not limit road access to property title 17376/1."*

55. With respect to the Appellants' property east of the function centre proposal, Mr Lynch's evidence was:

> *"6.43 The separation distance between the nearest boundary of the eastern area of property title 209291/1 and the location of the closest development (as per the proposed manager's residence) on the property in question is approximately 28m (22m boundary setback plus the 6m wide road reserve).*

6.44 The proponent is keen and willing to establish a mixed species shelter belt along the northern boundary of 256 Careys Road and also to the east of the location of the proposed development to improve the visual screening and strengthen the buffer. The shelter belt should contain a mix of trees and shrubbery, be planted to achieve a 3m wide buffer and reach a height of approximately 10m. See Figure 1 for the location of the proposed shelter belts.

6.45 Currently the eastern area of property 20929111 is subject to southerly winds and cattle grazing on the pastures here would experience a higher exposure to wind chill and therefore a higher portion of their feed intake prioritised to compensate for the greater amount of dietary maintenance energy and subsequently animal performance would be reduced and/or a greater amount of supplementary feed would need to be offered.

6.46 The establishment of a shelter belt along the northern boundary of 256 Careys Road would actually provide environmental benefits to the eastern area of property title 20929111 and subsequently lead to improved livestock performance outcomes when wind chill effects are a factor.

6.47 The potential negative impacts to normal agricultural land use activity on the western area of property title 20929211 and the associated grazing habits and productivity of livestock potential issues which could cause disruption issues are outlined in Table 1.

6.48 Future potential irrigation development could be undertaken, and subsequently irrigated land use activity be conducted on the western area of property title 20929111 without being prejudiced by the proposed development on the property in question, as the potential for irrigation spray crossing the property boundaries and negatively impacting/interfering with the proposed development is negligible due to the separation distances and presence of the proposed shelter belts."

56. Mr Lynch concluded that the whole development forming the development application can be undertaken and operated on the proposal site without causing negative impacts on the current livestock production enterprises carried out by the Appellants and any potential cropping land use activity.

57. Specifically with respect to the constraints identified by Ms Ketelaar, Mr Lynch's evidence was:

"4.2 Domestic Dog

4.3(a) Additional management and logistics issues associated with the domestic dog at Manna Hill.

4.3 This is an existing risk that is unaltered by the proposed function centre or new dwelling. There are a number of properties in the area surrounding the Appellants' property which may accommodate a domestic dog.

4.12 Any farm may be exposed to the risk of agricultural theft, vandalism or trespass. The level of the risk varies dependent upon numerous factors. In my experience, properties which are exposed to a higher security risk where they are located either close to major population centres or are isolated and remote.

4.13 In the West Kentish rural areas such as this, it is reasonable to summarise that the behaviours are more likely to be perpetrated by locals than visitors, such as the theft of a pump which require knowledge to remove, or livestock theft which requires a utility vehicle or truck.

4.14 The potential risk to security typically would rely on an element of criminal intent and it could well be argued that this is very much lower with potential visitors to the 256 Careys Road property than with other members of the general public."

58. Under cross-examination, Ms Ketelaar accepted most of Mr Lynch's evidence as set out in paragraph 57 above.

59. With respect to Ms Ketelaar's evidence in relation to traffic conflicts, Mr Lynch's evidence was:

"4.17 I understand that the Appellant uses Carey's Road and the user road adjacent to Manna Hill Farm to provide access to portions of the farm for machinery and moving livestock. Ms Ketelaar identifies that this occurs both during the day and at night, involves 180 "temperamental young steers" requiring 4 people to herd (Mr Simmons identifies 160-200 cattle on the holding, refer paragraph 3.1), and occurs on average every 3 weeks between September and January and monthly outside of this time (refer paragraph 6.46).

4.18 The presence of additional traffic on the public roads should not alter the management and logistic measures associated with the movement of livestock. Moving livestock on a public road creates a risk to all users of the road and best practice requires that signage is displaced while the road is in use. Cattle must be managed with a farmhand up front of the herd. An additional person is required behind the herd or a sheep or cattle dog.

4.19 The number of vehicles anticipated to be on the road does not dictate whether this practice is adopted. The requirements are determined by the fact that the operation is using a public road upon which vehicles may be present at any time.

4.21 Any increase in traffic associated with the proposed function centre would not be expected to constrain the use of the road for farm or other traffic. It is a public road which serves a number of different properties that support different uses, including forestry and residences."

60. The Tribunal also notes, as identified by the Second Respondent, that the Appellant's movement of cattle on Careys Road would be subject to compliance with the *Road Rules 2019* which place restrictions upon movement of cattle at night[7] as well as imposing other restrictions with respect to movement of livestock on public roads during the day[8]. It appeared that Mr Simmons was not aware of these restrictions.

61. With respect to 'overspray', Mr Lynch's evidence was:

"4.44 The Code of Practice for Ground Spraying requires that only registered chemicals are used and that, when spraying, the applicator must not allow the agricultural chemical product to move off target to the extent that it may adversely affect any people, their land, water, plants or stock. While it is tempting to think that it is the presence of people on the adjacent property that limits the application of agricultural chemicals by spray, the presence of livestock and pasture used for grazing must also be considered. Spraying near livestock or the pasture which they consume needs to be managed to ensure that livestock are moved when spraying occurs and appropriate intervals are provided between risk of overspray and grazing and slaughter. In my experience, the expectation is that when applying agricultural chemicals, overspray beyond property boundaries is not an acceptable practice irrespective of the neighbouring use.

[7] Rules 359.
[8] Rules 356 to 359.

4.46 As per the guidelines stated in the DPIPWE Code of Practice for Ground Spraying, the applications of agricultural chemicals must be in accordance with the label directions (as determined by the APVMA) as well as a number of directions to ensure a high of environmental and human safety is preserved. These guidelines also state commercial growers must notify inhabitants of residential dwellings within 100m of areas to be sprayed. The existing dwelling is within this range. "

62. Mr Lynch concluded that:

"4.53 The proposed development would not be anticipated to result in any areas of the Appellants' property from being able to be used for either grazing and / or cropping land use activity which are already not negatively impacted by existing factors such as land capability, presence of existing residential dwellings, proximity to roads and waterways which cross the property."

63. With respect to issues of noise and, in particular, the Appellants' and Ms Ketelaar's reference to the 'startling of cattle' due to noise generated by the function centre use, Mr Lynch's evidence was:

"4.62 Whether or not the function centre is approved, Carey's Road and the unnamed user road to the west are public roads and people use these roads to access to the south. Eileen and Simon Worssam have advised that in January 2018, the area to the west was logged and logging trucks used the road and locals use the roads on bike, dirt bikes, hors and tractors.

4.63 There is a small airfield located to the south east which likely adds additional noise sources."

64. While Mr Lynch accepted that some cattle could be 'spooked' by noise emanating from the function centre, his view was that this could be managed by limiting the number of attendees and number of events and the provision of screening. As submitted by the Second Respondent, the function centre attendees are limited to 36 with no more than 10 wedding and three corporate functions to occur per annum. The proposed location of a shelter belt that the Appellants are prepared to establish would provide the screening, which Mr Lynch says would further minimise constraints.

65. The Tribunal prefers the evidence of Mr Lynch with respect to whether the function centre has the potential to unduly conflict, constrain or interfere with the agricultural use on the Appellants' land. While Mr Simmons and Ms Ketelaar identify the potential for constraints, as noted by Mr Lynch and accepted by the Tribunal a number of those issues would arise in any event, regardless of whether the proposal is approved.

66. The Tribunal is satisfied that the function centre would not exclude, conflict or unduly constrain or interfere with the Appellants' existing agricultural operations. Even accepting the extent of potential cropping identified by the Appellants to be capable of occurring, the Tribunal is still satisfied the function centre use would not exclude or unduly conflict, constrain or interfere with the Appellants' existing and potential agricultural use. The use is therefore consistent with the Local Area Objective (c)(ii).

Is the function centre dependent upon a rural location or undertaken in association with primary industry? (Clause 26.1.2 (g))

67. Ms Lyne's evidence for the Second Respondent was that the function centre is a tourism use relying upon the rural location to provide a rural setting and experience for guests. That setting incorporates views of Mount Roland in a peaceful and isolated rural setting.

68. Ms Brooks for the Appellant does not accept the function centre is a use dependent upon a rural location. Her evidence was that it could be located elsewhere. Further, her evidence was that there is "*no primary industry"* occurring on the site that the function centre 'was associated' with.

69. Mr McCarthy's evidence on behalf of Council was that "*it is anticipated that users of the function centre will be attracted to the natural landscape values in the area including the rural outlook at the close proximity to Mount Roland while providing another source of income for the existing farm. This use is considered to be dependent upon a rural location and undertaken in association with the developing primary industry."*

70. The Tribunal is satisfied that the function centre proposal is dependent upon the rural location. It has clearly been located to take advantage of the scenic rural landscape and views of Mount Roland. Even if the Tribunal is wrong as to that, the Tribunal is satisfied that the function centre is undertaken in association with primary industry.

71. As already noted 'primary industry' is not defined in this Scheme but includes agricultural use, the Scheme definition of which includes the keeping and breeding of animals. Regarding the Local Area Objectives, Zone Purpose Statements and Scheme definitions, the evidence of Mr Lynch and Mr Worssam establishes that agricultural use is being undertaken on the Manna Hill Farm site. The existing activity involves 18 sheep and two rams with breeding having occurred, which has enabled three new lambs to have been sold. The property is registered under the NLIS[9]. The evidence of Mr Lynch with respect to what was proposed by the Second Respondent is consistent with the development application which, in the Tribunal's view, establishes an intent to grow the Dorper sheep flock structure such that it would allow for an increase in production of lambs annually.

72. The Tribunal prefers the evidence of Mr Lynch and Mr McCarthy and that of Ms Lyne and finds that the function centre would be undertaken in association with primary industry on Manna Hill. The function centre use is consistent with Clause 26.1.2(g). Ground 1(a) is not made out.

Ground 1(b) – Clause 26.3.1 P1(c)(vi)

73. The Tribunal must be satisfied that the proposed function centre must be required to locate on rural resource land for operational efficiency to provide opportunity for diversification, innovation and value adding to secure existing or potential primary industry use of the site or of adjacent land.

74. The words 'must be required to locate' *"do no more than provide that the development will demonstrate operational efficiency for the purpose or condition prescribed in the relevant subparagraph, by locating within the Zone".*[10] In this case, the function centre will demonstrate operational efficiency if subclause (iv) can be met.

75. The Second Respondent relies on the evidence of Mr Lynch, Ms Lyne and Mr Worssam to demonstrate compliance. The Second Respondent submitted that the evidence before the Tribunal was that the proposed function centre intended to rely on meat sourced from the primary industry use (sheep breeding) thereby providing an opportunity to diversify, innovate and value add. While it is at least arguable that the function centre will provide the opportunities contemplated by Clause 26.3.1 P1(c)(iv), the subparagraph requires that these opportunities 'secure' existing or potential primary uses on the site. The Tribunal must determine what is required to meet the test of 'securing' potential primary industry use. Adopting the ordinary dictionary meaning of 'secure' as required by the Scheme, to 'secure' is to "*protect or make safe"*. The Macquarie Dictionary defines 'secure' as:

> *"Free from or not exposed to danger; safe."*

[9] National Livestock Identification System.
[10] *Raff Angus Pty Ltd v Resource Management & Planning Appeal Tribunal* [2018] TASSC 60

76. Mr Worssam's evidence with respect to the farming operations on the Second Respondent's property was:

> *"10. Eileen and I raise Dorper Sheep on the Property.*
>
> *11. In June 2017, we purchased 5 ewe lambs.*
>
> *12. In July 2018, we purchased a young ram.*
>
> *13. The number of sheep has increased through natural reproduction with 18 sheep currently accommodated upon the Property. This includes:*
>
> *a) 2 rams (due for sale and replacement).*
>
> *b) 6 lams from the most recent season comprising 4 males and 2 females.*
>
> *c) 10 other females of varying ages.*
>
> *14. 3 sheep were recently culled for meat.*
>
> *15. 3 newly born male lambs have been sold and will leave the Property once weened.*
>
> *16. 1 ewe and 1 newborn lambs have recently died."*

77. The development application also asserts that the Proposal including the function centre will provide diversification to allow the continuation of the existing "*small scale sheep breeding enterprise"* and identifies the "*existing use on the property as including a 'small scale sheep breeding farm on areas of the land not prone to soil erosion"'.*

78. Mr Lynch's evidence identified fencing, weed management, water tank installation, secure storage shed, small tractor, a sheep handling race and a limited establishment of a shelter belt as infrastructure and equipment improvements that have taken place since the Second Respondent purchased the property. His evidence was that:

> *"5.20 The proponents have been issued a Property Identification Code (PIC), as MEKE1409, for the 256 Careys Road property by the DPIPWE and this allows livestock to be traded off farm and ensure livestock traceability compliance, as per the requirements of the National Livestock Identification System (NLIS)."*

79. There is no evidence that the Second Respondent's proposed function centre use would secure the existing primary industry use. The Tribunal must then consider the potential primary industry use.

Potential agricultural activities on the Second Respondent's land.

80. Mr Lynch's evidence was that:

> *"5.6 The property has a total sustainable carrying capacity of 345 dry sheep equivalents (DSE). A dry sheep equivalent (DSE) is a standard unit used to compare the feed requirements of different classes of livestock or to assess the carrying capacity and potential productivity of a given paddock.*
>
> *5.9 The proponents have extensive experience in agriculture and have been running a 11 breeding ewes, 2 rams and 7 recently born lambs on a small section of the property with*

good success so far. The sheep appeared to be in good health with a number of new and recent lambs were observed.

5.10 An appropriate example of the target flock structure would be:

- *70 Dorper breeding ewes*
- *11 ewe lamb replacements*
- *95 prime lambs*
- *2 rams*

This flock represents 350 DSE."

81. Mr Lynch identified the property improvements required to develop the carrying capacity of the property as including:

- Establish new pasture;
- Dividing and fencing the property into 6 paddocks;
- Application of lime and fertiliser;
- Install a stock water system; and
- Install browsing wildlife proof fencing.

at an anticipated cost of $45,000, the sum which Mr Lynch states could not realistically be paid from income generated from the livestock enterprise.

82. Mr Lynch considered likely timeframes for the Second Respondent to undertake agricultural property improvements as being over a period from 3-10+ years, being dependent upon available finances, scale of activities required, seasonal conditions and prioritisation of the various developments.

83. Ms Ketelaar did not agree with Mr Lynch's assessment of the livestock carrying capacity of the site. She described the current breeding operation as "*lifestyle scale"* based upon an assessment incorporating her Enterprise Scale. Her evidence was that the carrying capacity of sheep grazing to be approximately DSE per hectare which would generate a gross income of $1,200 per annum.

84. The evidence from both Ms Ketelaar and Mr Lynch regarding the assessment of carrying capacity and the consequential income generated revealed that each expert approached their respective assessments and calculations differently. However, those differences and the respective experts' conclusions are not of significance to the Tribunal's consideration of Ground 1.

85. The Appellants submitted that the Tribunal is without evidence to make any findings as to whether the function centre secures potential primary industry. It was submitted that direct evidence is required to demonstrate the actual intention by the Second Respondent to operate primary industry on the site. It was submitted that there being no such direct evidence, that any inference sought to be drawn from the evidence of others should be rejected. It is also asserted that the failure of Mr Worssam to give evidence with respect to the income and expenses associated with the current activity on site, the income derived from the existing visitor accommodation operating on the site, and the potential proposed agricultural activity and the potential earning capability of that potential

activity results in the Tribunal having insufficient direct evidence before it to determine compliance with Clause 26.3.1 P1(c)(iv).

86. The Second Respondent submitted that to achieve the agricultural potential of the land, she seeks the opportunity to diversify and value add. The function centre was described as an 'innovative solution to provide related operations to support the primary industry use. The Second Respondent relies on the evidence of Mr Lynch and Ms Lyne, submitting that 'the use of the property functions as a related whole- raising sheep for meat, providing accommodation and small scale functions.' Such a related entity, it was asserted, is consistent with the requirements of P1(c)(vi). The Tribunal does not agree. Something more than 'supporting' the primary industry use in the manner identified is required by subparagraph (vi).

87. As already stated, the Tribunal is satisfied that there is existing primary industry use being undertaken by the Second Respondent, albeit modest. The Tribunal also accepts Mr Worssam's and Mr Lynch's evidence that there is an intention to expand the current operation. However, the potential primary industry use, as identified to the extent opined by either Mr Lynch or by Ms Ketelaar, as being capable of occurring on site, must still be able to demonstrate that it is secured by the function centre use proposed.

88. In the Tribunal's view, there is insufficient evidence to find that it does so. There is no evidence before the Tribunal as to whether the current visitor accommodation activities could of themselves secure the potential primary industry use given the relatively modest primary industry investment identified by Mr Lynch. Indeed, the evidence before the Tribunal would suggest that sufficient income could be generated from the breeding operation itself following the carrying out of the identified improvements, such that it could be self-sustaining. This appears to be the case even if feed for the animals was required to be purchased.

89. While it may be that issues such as current level of indebtedness[11], or the inability to obtain financing for the identified required improvements for the potential farming operation, could establish that the function centre would secure the potential primary industry use on the site, absent any evidence before the Tribunal to so determine, the Tribunal cannot be satisfied that Clause 26.3.1 P1(c)(iv) is met.

90. Ground 1(b) is made out.

Ground 1(c) – Clause 26.3.1 P1(d)(ii)

91. Clause 26.3.1 P1(d)(ii) provides that the Function Centre use must minimise the likelihood for constraint or interference to existing and potential primary industry use on the site and adjacent land. The requirement to 'minimise' identifies that some constraint or interference is contemplated by the Clause. To 'minimise' is to "*reduce to the smallest possible amount or degree.*"[12] The obligation to minimise is, in the Tribunal's view, a more onerous test than that required under P1(a), with respect to the Local Area Objective at Clause 26.1.2(c)(ii). However, having regard to the evidence of Ms Ketelaar and Mr Lynch already referred to, and preferring the evidence of Mr Lynch, for the same reasons, the Tribunal is satisfied that the function centre will minimise the likelihood for constraint or interference to existing and potential primary industry use on the site and land adjacent to Manna Hill Farm owned by the Appellants. In the Tribunal's view, this is the case regardless of whether Ms Ketelaar or Mr Lynch's evidence is accepted with respect to the potential primary industry use of the Appellants land.

[11] Mortgages are currently registered over the Manna Hill titles.
[12] Online Macquarie Dictionary.

92. Ground 1(c) fails.

Ground 2 – Manager's Residence

93. Ground 2 relates to that part of the Proposal referred to in the development application as the 'manager's residence'. This part of the Proposal is a 'residential' use and is discretionary under the Scheme. The use must comply with Clause 26.4.3 P1 of the Scheme as it is a sensitive use as defined by Clause 4. It is not controversial that the residential use does not comply with Clause 26.4.3 A1 so that the Performance Criteria must be met.

94. The Appellants assert that Clause 26.4.3 P1(b) cannot be met as the residential use does not minimise likely constraints or interference to existing and potential primary industry use on the adjacent land or on the site of the Proposal itself.

95. For the reasons already set out, the Tribunal is satisfied that constraints or interference to the existing and potential primary industry use on the site would be minimised. The proposed manager's residence will be located close to the existing visitor accommodation enclave. The manager's residence is set back 148m from the closest part of the Appellants' land. Regardless of whether the potential primary industry use is that identified by Ms Ketelaar or that identified by Mr Lynch, the Tribunal is satisfied that, for those reasons already set out, that minimisation is achieved. In that respect, the Tribunal prefers the evidence of Mr Lynch and accepts that minimisation may be assisted by the introduction of a shelter belt as referred to in Mr Lynch's evidence[13].

96. The Tribunal is satisfied that compliance with Clause 26.4.3 P1(b) is achieved.

97. Ground 2 of the appeal is, therefore, not made out.

Ground 3 – Visitor Accommodation and Ground 3(a) – Clause 26.3.1 P1(a) and (c)

98. The Appellants assert that the change of use of the existing manager's residence to visitor accommodation and that part of the Proposal for new visitor accommodation cabins on site are a discretionary use under the Rural Resource Zone. The Appellants submit that, as such, Clause 26.3 applies to the visitor accommodation use and that the visitor accommodation use does not satisfy the requirements of Clause 26.3.1 P1(a) or (c).

99. The Second Respondent and Council submitted that the proposed visitor accommodation use is a permitted use, being farm stay accommodation for not more than 16 people.

100. The Use Table for the Rural Resource Zone at Clause 26.2 provides that visitor accommodation is a permitted use if it is 'farm stay accommodation' and provides for accommodation not exceeding 16 people. Unqualified visitor accommodation use is a discretionary use class in the Rural Resource Zone.

101. 'Farm stay accommodation' is not defined in the Scheme, nor is 'farm'. Both Ms Ketelaar and Ms Brooks adopted a definition of 'farm stay' which required elements of commercial farming operations.

102. 'Farm stay' is defined in the Macquarie Dictionary as *"a holiday spent on a farm, learning about life on a farm and taking part in farming activities."* A 'farm' is defined in the Macquarie Dictionary as *"tract of land or water devoted to some other industry, especially the raising of livestock, fish etc"*. Adopting the ordinary meaning as required by Clause 4.1.1 of the Scheme, neither the ordinary meaning of 'farm'

[13] By the imposition of a condition which identifies planting, location, dimension, plantings and species to establish the shelter belt.

or 'farm stay' incorporates any element of commercial intent or any requirement that the farm stay is a secondary business to farming activities.

103. Ms Ketelaar adopted the definition of 'farm stay' from the New South Wales (2006 EPI 155a) Standard Instruments / Principle Local Environmental, which incorporated a requirement for farm stay that it be a "*working farm*" and undertaken as a "*secondary business to primary production"*. Her evidence was that what was required to qualify as a 'farm stay' is that visitors be accommodated at a *"legitimate working farm".* Ms Brooks adopted the evidence of Ms Ketelaar regarding what was required to qualify as a 'farm stay'. Her evidence was that the subject site was *"not operating as a farm, it is a lifestyle block located within a rural environment"*. She otherwise deferred to Ms Ketelaar's evidence on this issue.

104. Ms Lyne considered the meaning of 'farm stay' in the context of the Rural Resource Zone provisions. Her evidence was that:

> *"3.1.6. The Scheme defines Resource Development use as:*
>
> *use of land for propagating, cultivating or harvesting plants or for keeping and breeding of livestock or fishstock. If the land is so used, the use may include the handling, packing or storing of produce for dispatch to processors.*
>
> *Examples include agricultural use, aquaculture, bee keeping, controlled environment agriculture, crop production, horse stud, intensive animal husbandry, plantation forestry and turf growing.*
>
> *3.1.7. There is no threshold as to the level of farming activity required to enable associated visitor accommodation to be classified as 'farm stay.' Some guidance may be taken from the Local Area Objectives which identify that primary industry is diverse, dynamic and innovative and may occur on a range of lot sizes and at different levels of intensity. Not all farms will be regarded as primary industry and primary industry is broader than farming.*
>
> *3.1.8. Whilst not a large flock, the proponent's do have farm animals in the form of Dorper sheep as well as agisted cattle. They are therefore able to afford their guests a rural experience albeit a more boutique one than what would be experienced on a broader scale farming operation. In my opinion, the property can be regarded as accommodating a farm, and the existing and proposed visitor accommodation a farm stay.*
>
> *3.1.9. For the purpose of understanding what is meant by a farm stay, I have considered whether it is necessary that managers offer guests an opportunity to interact with the farm activities in order to be classified or as farm stay accommodation. I do not consider that this is a necessary component of farm stay accommodation. Interactions with animals may be offered on a formal or informal basis. An example of an informal interaction would be the opportunity to walk the paddocks and see the animals. However, farm stay accommodation does not require that interaction and, in my view, accommodation that relies upon the bucolic amenity of the farm and its surrounds is appropriately regarded as farm stay accommodation."*

105. Mr McCarthy also noted the absence of any definition in the Scheme to assist in the interpretation of farm stay. His evidence was:

> *13.5. The Australian Concise Oxford Dictionary defines a "farm" as:*

> *1. An area of land and its buildings used under one management for growing crops, rearing animals, etc. 2. A place or establishment for breeding a particular type of animal, growing fruit, etc (trout farm, blueberry farm) 3 = FARMHOUSE. . .*

13.6. The Macquarie Dictionary (online subscription) defines a "farm" as:

> *1. a tract of land devoted to agriculture. 2. a farmhouse. 3. a tract of land or water devoted to some other industry, especially the raising of livestock, fish, etc.: a chicken farm; an oyster farm.*

13.7. Based on the definitions referred to above the proposed development is a farm. The definitions do not qualify the size of the operation before it can be regarded as a farm.

13.8. According to the Oxford English Dictionary Lexico (online) "farm-stay" is a noun meaning a "farm offering accommodation to paying guests". The proposed visitor accommodation use will be on a farm that offers accommodation to paying guests.

13.9. The site of the proposed development known as "Manna Hill Farm" is a small scale farming operation where guests can sample the produce grown on the land and interact with the flock of sheep and the chickens and view the cattle that graze on the property.

13.10. The proposed visitor accommodation is farm stay accommodation satisfying the qualification to be considered as a Permitted Use."

106. The Tribunal prefers the evidence of Ms Lyne and Mr McCarthy regarding the meaning of 'farm stay'. The ordinary meanings of 'farm' and 'farm stay' do not qualify the size or scale of the agricultural activity before it can become a farm. It does not import a requirement that the accommodation be a secondary business to farming activity on that farm, or incorporate elements of commerciality or viability.

107. The definition relied upon by Ms Ketelaar and Ms Brooks relates to a definition in a planning instrument applicable in a different jurisdiction and, therefore, is not directly applicable.

108. As already noted, the Local Area Objectives for the Rural Resource Zone provide that primary industry, which includes agriculture, the definition of which[14] includes the rearing of animals, may occur on a range of lot sizes and at different levels of intensity. Small scale farming is contemplated to occur in the Rural Resource Zone. The evidence before the Tribunal established that the Second Respondent has a small farming operation.

109. The Tribunal is satisfied that the proposed visitor accommodation use qualifies as a farm stay and would accommodate not more than 16 guests. As such, the proposed visitor accommodation use is a permitted use in the Rural Resource Zone and compliance with Clause 26.3.1 of the Scheme is not required.

110. Ground 3(a) is not made out.

Ground 3(b) – whether visitor accommodation is permitted

111. Given the Tribunal's determination that the proposed visitor accommodation is a permitted use, Ground 3(b) as articulated, need not be further considered.

[14] 'Agricultural use.'

Conclusion

112. The Tribunal has determined that Ground 1(b) of the Appellants' grounds of appeal is made out. The Tribunal is not satisfied the proposed function centre complies with Clause 26.3.1 P1(c)(vi). The appeal must therefore succeed. The Tribunal's decision is:

    a) That the decision of Council to grant a permit with respect to development application DA2021/03 be set aside and replaced with a refusal; and

    b) The Tribunal will entertain any application for an order for costs in this appeal if made to the Tribunal in writing with supporting submissions within the next 21 days. If requested, the Tribunal may reconvene to hear any evidence in respect of any matter bearing upon an order for costs. In the absence of any such application for an order for costs, the order of the Tribunal is that each party bear its own costs.

GLEBE RESIDENTS' ASSOCIATION INC.

(Including Glebe Neighbourhood Watch Group)
email: [redacted]

REVIEW OF STATE PLANNING PROVISIONS (SPPS) –SCOPING ISSUES

GLEBE RESIDENTS' ASSOCIATION SUBMISSION

Introduction

The Glebe Residents' Association (GRA) exists to protect and promote the welfare and interests of the Glebe community. Our suburb is small (about 250 households) but clearly defined, located on the edge of the Hobart CBD, bordered by the *Brooker Avenue* in the west and the *Queen's Domain* in the east and north. It overlooks the city, the river, docklands, the *Regatta Grounds* to the south and *kunanyi*/*Mt Wellington* to the west. The suburb possesses a distinctive historical and cultural heritage and diverse social mix of owner-occupied and tenanted accommodation which the GRA has worked hard to protect.

GRA was formed about thirty years ago (as the Glebe Progress Association) largely in response to planned developments in our area. It has been instrumental in forging close working relationships with key stakeholders like the Hobart City Council, UTAS (Domain Campus) and Macquarie Point Development Corporation, achieving notable agreements to protect community values. As well, it has a strong affinity with the adjoining Queen's Domain and the protection of its natural values.

Early in 2022 The GRA conducted a community survey seeking views on what residents valued about their neighbourhood – and how they would like to see it evolve in the future. Issues of liveability and preserving heritage streetscapes featured strongly in the responses, as did the importance many residents attached to having access to green space. A properly functioning planning system can play a central role in enabling residents' aspirations for Glebe and other communities around the State to be realised. The results of this survey underscore a number of the points made in the remainder of this submission.

State Planning Provisions (SPP) Review in context

The SPPs cannot be considered in isolation and must be looked at as part of the overall Tasmanian Planning System (TPS). *The Land Use Planning* and Approvals Act 1993 (LUPAA) contains objectives for both the resource management and planning systems as a whole and for the planning process itself. The SPPs should be more closely linked to – and support the achievement – of these objectives.

The SPPs have been introduced prior to a broader strategic framework being in place, resulting in poor planning decisions being made at the local level. State Policies were intended to provide high level guidance required, but only a few State Policies have been developed and even these appear to be poorly articulated with the SPPs. It is recognised that a set of Tasmanian Planning Policies (TPPs) is now being developed. While these may assist by providing the vision and principles upon which all planning decisions will be made, the process is flawed when implementation of the SPPs occurs before the TPP framework is in place.

The hurried implementation of the SPPs has contributed to a lack of community consensus about how planning systems should operate. Not only has community participation in individual planning decisions been constrained, but the opportunities for community input in finalising Local Provision Schedules has in effect been pre-empted. This is because the then State Government chose in 2021 to fast track applying elements of the SPP rules before all areas of the State had their Local Provision Schedules in place.

Although the new TPS was launched amid claims it would be faster, cheaper and simpler, there is little evidence that the new System has delivered on any of this. The increased complexity of the planning framework (some 600 pages) and ambiguity in many of the provisions means that planning decisions are often challenged, leading to delays and increased costs for developers and communities.

The GRA is not against sensible and sensitive development, but deplores the manner in which existing planning provisions are weighted against individuals and small community organisations.

The GRA recognises the sound arguments and exhaustive consultation and research underpinning the Planning Matters Alliance Tasmania (PMAT) submission to the State Planning Provisions Review, and strongly endorses its 22 concerns and recommendations to ensure that the SPPs be "values-based, fair and equitable, informed by PMAT's *Platform Principles* and for the SPPs to deliver the objectives of the *Land Use Planning and Approvals Act, 1993*."

Focus of the GRA submission

Given its inner city location with a predominant inner residential zoning at present, Glebe is especially open to development and other pressures such as traffic management and the rise of short-stay accommodation. The SPPs attempt to apply a range of zones and codes to local land use situations around the State – giving rise to many local issues and concerns. The PMAT submission referred to above deals with many of these. The remainder of this submission will concentrate on the following issues of particular relevance to Glebe's situation:

- Residential Standards
- Historic Heritage Code
- Medium Density Zoning and an Apartment Code

Residential Standards:

Currently infill development in our residential zones is not strategically planned but often "as of right", and Councils cannot reject Development Applications even though they may fail community expectations. The residential standards are resulting in an unreasonable impact on residential character and amenity. Additionally, they remove a right of say and appeal rights over what happens next door to home owners, creating a sense of powerlessness. People's homes are often their biggest asset but the values of their properties can be unduly impacted due to loss of amenity. This also affects people's mental health and well-being.

The GRA submits that careful consideration during the review process be given to the following matters:

Local character, amenity and streetscape

Although the 2016 planning reforms were designed to limit local variations around Tasmania, the 'one size fits all' approach has failed to provide the certainty that developers were seeking, while compromising the local character and amenity that is so important to communities and to Tasmania's image and brand.

The Local Provisions Schedule process provides limited scope for councils to take into account properly local difference when making decisions. While there are particular purpose zones (PPZ), specific area plans (SAP) and site-specific qualification (SSQ) tools available, the opportunities for their use are very constrained.

It is extremely disappointing that *Local Area Objectives* and *Desired Future Character Statements* have been removed from the Tasmanian Planning Scheme. Currently, there is nothing to guide Councils when making discretionary decisions, leading to uncertainty and perverse outcomes.

While the GRA accepts that *Desired Future Character Statements and Local Area Objectives* may be hard to provide in the context of SPPs - which by definition apply state-wide - greater latitude could be provided in the SPPs for LPSs to provide these types of statements for each municipality. An alternative – although less optimal - solution is to lower the threshold for using SAP/PPZ/SSQs as a way of preserving character under the TPS. Without a means of allowing the Scheme to meet community expectations around difference, we are at risk of destroying the varied and beautiful character of much of residential Tasmania.

With this in mind the GRA supports the recommendation in the PMAT submission to amend section 6.10.2 of the SPPs to read:

> *6.10.2 In determining an application for a permit for a Discretionary use "**and development**" the planning authority must, in addition to the matters referred to in sub-clause 6.10.1 of this planning scheme, "**demonstrate compliance with"**:*
>
> *(a) the purpose of the applicable zone;*
>
> *(b) any relevant local area objective for the applicable zone;*
>
> *(c) the purpose of any applicable code;*
>
> *(d) the purpose of any applicable specific area plan;*
>
> *(e) any relevant local area objective for any applicable specific area plan; and*
>
> *(f) the requirements of any site-specific qualification, but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised.*

The GRA also supports the inclusion of a *Neighbourhood Character Code* – as set out in the PMAT submission to the Review as a way to protect the pattern of development in older established residential areas by providing buffers and separation between buildings.

Building envelope

Depending on the detail and perspectives provided in development applications it is often difficult to visualise a proposal in relation to the surrounding landscape and structures. The more widespread adoption of improved building envelope diagrams (using, for example, *The Spatial Digital Twin* as described in the PMAT submission – 22.6) could assist visual interpretation of proposed developments

The previous requirement for a 4m minimum rear boundary setback has been removed under the current scheme – with little justification provided. This has resulted in significant negative impacts on neighbouring properties - overshadowing, loss of privacy, reduced sun into habitable rooms and gardens, loss of private open space and increased site coverage/density. The GRA considers that this 4m setback requirement should be restored.

Private open space and solar access

A key element of good urban design is to have adequate separation from neighbours so as to maintain privacy, sunlight onto solar panels and into private open space. Ideally this should allow enough room for garden beds, play and entertaining areas, and this space should be accessible from a living room. The Residential SPPs do not deliver this. There is no guarantee of direct access from habitable rooms to private open space under the acceptable solutions.

Similarly, overshadowing, loss of solar access and privacy issues/overlooking have become a significant problem for people under the exempt 'as-of-right' building envelope. People are denied right to have a say over nearby developments that can have a real, adverse effect on their residential amenity and health. It is recommended that these issues be addressed under the review, with adequate protection being provided for existing neighbouring dwellings and vacant building lots. This should include quantifying requirements for solar access by mandating shadow diagrams.

A related issue is that there is no longer a requirement for a north-facing living room window. A north-facing window assists with passive solar heating and significantly enhances liveability, contributing to the health and well-being of inhabitants. It is understood that this requirement was removed from the SPPs because of a potential conflict with the Building Code. However, the GRA is of the opinion that it is rightly a planning issue and should be reinstated to the SPPs as a principle of good design.

Climate change issues

As the impacts of climate change grow, with urban heat island effects and increasing risk of flood and bushfire, it is important that the planning system acts to prevent and mitigate such risks.

Extreme rainfall events are predicted to become more severe and frequent which compounds the seriousness of properly dealing with stormwater as a planning issue. The lack of a stormwater code effectively shifts responsibility and costs for the issue to councils and the wider community, when the impact would be better considered at the planning stage. It is therefore recommended that a stormwater code be included in the SPPs. The

proposed Code should include a pervious surface requirement to provide for gardens/lawn, play space and some absorption capacity for rainwater.

Good urban design principles dealing with greenspace, urban vegetation/tree cover and building materials should be applied through the SPPs to reduce future urban heating effects and improve urban liveability.

In the view of the GRA, the Natural Assets and Scenic Protection Codes should apply to all zones, but particularly residential zones, in order to enable protection of vegetation on skylines and timbered backdrops around urban areas.

Subjective and ambiguous terminology

There are many specific words in the SPPs, as well as constructs in the language used, that lead to ambiguity of interpretation. This can lead to poor planning outcomes for the community and can contribute to delays, unnecessary appeals and increased costs to developers and appellants. Words like: "provides reasonably consistent separation between dwellings" (SPPs 8.4.2) and "separation between multiple dwellings provides reasonable opportunity for sunlight" (SPPs 8.4.4). Other terms used throughout the SPPs which are highly subjective include "compatible", "tolerable risk", and "occasional visitors" where numbers are not defined.

Similarly, the use of constructs such as 'having regard to' may mean that sub-criteria can effectively be disregarded in decision making. Alternative wording such as 'demonstrate compliance with the following' would provide greater confidence that the intent of such provisions will be realised.

While this ambiguity leads to delays and costs for all parties, it particularly affects individuals and communities where the high costs involved mean they have reduced capacity to participate in the planning process – contrary to the intent of LUPAA objective 1.(c).

The GRA would like to see the terminology in the SPPs reviewed to assist in clearer decision making that more closely aligns with LUPAA objectives.

Heritage Code:

Glebe contains many buildings and streetscapes of significant historic and cultural heritage. We are concerned that present planning laws do not sufficiently protect these valuable private and community assets. The GRA submits that the *Local Historic Heritage Code* in the Tasmanian Planning Scheme should be consistent with the objectives, terminology and methodology of the *Burra Charter* (as described in the PMAT submission). The GRA urges also the adoption of Gray Planning's recommendations regarding the *Local Historic Heritage Code* (as also outlined in the PMAT submission). These recommendations are included as *Attachment 1* to this submission.

Apartment Code

The SPPs Review Scoping Paper stated that an Apartment Code would be implemented in the SPPs to provide a clear pathway for the assessment of apartments and encourage good

quality design and liveable spaces. The Code is to be informed by the SPPs Review, and the associated review of the residential development standards.

The concept of medium density residential development in inner urban areas (including the IRZ) – such as in the Hobart Campbell St/Argyle Street corridor - is supported, particularly where it is replacing existing commercial uses. However, such development must be of a scale and form compatible with existing streetscapes and heritage buildings in the vicinity. It is essential too that best practice urban design principles are applied to both individual apartment projects and overall planning for the areas in which they are to be built. This is important for the residential amenity of those living in these new developments as well as for protecting the character of inner cities and enhancing liveability for everyone.

A Medium Density Code could be applied to appropriate locations where multiple dwellings and apartment living is appropriate, introducing specific controls to support these forms of development in locations where public transportation, public open spaces and social infrastructure is appropriate and supported. This could also set out requirements for social housing, housing affordability and diversification of housing choice.

The insertion of a Neighbourhood Character Code would be to primarily protect established residential areas and could be applied through an overlay over certain spatial areas to guide development in these locations. The Neighbourhood Character Code would provide the opportunity to consider architectural building and roof style, building position in the streetscape, and spacing and separation between buildings.

The GRA supports the introduction of an Apartment Code, provided that the Code:

- *Promotes apartments of good design and build quality.* At a minimum, the Victorian *Better Apartments Design Standards and Design Guidelines* should be adopted (with appropriate adjustments for Tasmanian conditions).
- *Ensures that all new apartment developments have suitable green spaces in each development and/or public green spaces within 500 m, or that the developer contributes an equivalent amount*. It is very important that unit/apartment occupants be able to maintain a healthy lifestyle and this is aided by ready access to suitable open spaces. The Code should also encourage developers to make more use of rooftops, e.g. as gardens and/or additional outdoor living areas.
- *Ensures adequate solar access* to residents – at last 3 hours of sunlight in the middle of the shortest day; and
- *Limits impervious surface* coverage as part of landscaping for developments so as to reduce peak stormwater pressure and improve liveability. Adopting the Victorian apartment standards which include a revised landscaping objective for a minimum soil area and number of canopy trees relative to the lot size - including the retention of existing canopy trees - would help achieve this.

Attachment 1

Gray Planning - Summary of concerns and recommendations with respect to the Local Historic Heritage Code

- The name of the Local Historic Heritage Code should be simplified to 'Heritage Code'. This simplified naming is inclusive of historic heritage and cultural heritage rather than emphasising that heritage is about historic values only.
- Definitions in the Local Historic Heritage Code are currently brief and inexhaustive and do not align with definitions in the Burra Charter.
- There are no clear and easily interpreted definitions for terms repeatedly used such as 'demolition, 'repairs' and 'maintenance'.
- Conservation Processes (Articles 14 to 25) as outlined in the Burra Charter should be reflected in the Local Historic Heritage Code Performance Criteria. Issues covered in the Burra Charter are considered to be very important to maintaining historic and cultural heritage values such as setting, context and use are not mentioned in the Local Historic Heritage Code at all.
- The Local Historic Heritage Code does not deal with any place listed on the Tasmanian Heritage register and there is a hard line separate of local and state listed places. This fails to recognise the complexity of some sites which have documented state and local values.
- Failure to also consider state and local heritage values as part of the Local Historic Heritage Code will result in important issues such as streetscape and setting and their contribution to heritage values not being considered in planning decisions.
- The SPP Code does not provide a summary of application requirements to assist both Councils and developers. This approach results in a failure to inform developers of information that may be required in order to achieve compliance.
- The Objectives and Purpose of the Local Historic Heritage Code is too limited and should align with the *Historic Cultural Heritage Act 1995* in terms of purpose.
- The Exemptions as listed in the Local Historic Heritage Code are in some cases ambiguous and would benefit greatly from further clarification and basic terms being defined under a new Definitions section.
- Previously, some Interim Planning Schemes included special provisions that enabled otherwise prohibited uses or subdivision to occur so long as it was linked to good heritage outcomes. Those have been removed.
- Development standards for demolition are concerning and enable the demolition of heritage places and sites for economic reasons.
- Development standards use terminology that is vague and open to misinterpretation.
- The words and phrases 'compatible' and 'have regard to' are repeatedly used throughout the Local Historic Heritage Code and are considered to be problematic and may result in unsympathetic and inconsistent outcomes owing to their established legal translation.

- Performance criteria do not make definition between ‘contributory’ and ‘non contributory’ fabric. This may result in poor heritage outcomes where existing unsympathetic development is used as justification for more of the same.
- The Local Historic Heritage Code as currently written will allow for unsympathetic subdivision to occur where front gardens can be subdivided or developed for parking. This will result in loss of front gardens in heritage areas and contemporary development being built in front of and to obstruct view of buildings of heritage value.
- The Local Historic Heritage Code as currently written does not place limits on extensions to heritage places which enables large contemporary extensions that greatly exceed the scale of the heritage building to which they are attached to.
- Significant tree listing criteria are not always heritage related. In fact most are not related to heritage. Significant trees should have their own separate code.
- Currently there is no requirement for Councils to populate the Local Historic Heritage Code with Heritage Precincts of Places. Failure to do so is resulting in buildings and sites of demonstrated value being routinely destroyed.

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18 August 2022

State Planning Office
Department of Premier and Cabinet
Tasmanian Government
yoursay.planning@dpac.tas.gov.au

Dear Sir/Madam,

Thank you for the opportunity to comment at this scoping stage of the State Planning Provisions (SPPs), and granting an extension of one week. In preparing this response we have read the Briefing Q&A presentation on the SPO website, the fact sheets and the Report on draft TPP Scoping Consultation.

For background, the South Hobart Sustainable Community (SHSC) is a group of more than 370 residents who work in the community to promote sustainability and strengthen community spirit. We recognise that transitioning to a sustainable way of life is one of the key challenges of the 21st century. Our website contains information on key activities and achievements in our inaugural 12 years.

We would like to start by clarifying the principles behind this submission. They are:

1. **Nature** first,
2. **Community** second, and
3. **Regenerative development** third.

1. If we do as wildlife generally does (in particular what birds and many insects do whilst flying above the ground, i.e. ignore property boundaries), then we would see our world from a clearer viewpoint and with a more holistic understanding of our overall environment.

   If we asked our First Nations people how best to live *here*, how to be a part of *here*, how to care for *here* so that *here* cares for us and provides for our needs, then we would have a very different relationship to *Country*, i.e. our sense of *Place* and its *genius loci* (spirit of place).

   If we imagined that the whole of Tasmania was a National Park, or better still, a UNESCO World Heritage Area, then we could better understand our

relationship with our environment, our inter-dependence upon our environment and *our* responsibility for our environment.

In this way, we see the role of the Tasmanian Planning Scheme through the State Planning Policies as being to ***retain the natural environment*** wherever it still exists, then to ***add to it wherever possible*** BEFORE **considering the needs of the community** which then come BEFORE the need and desire for development, at any scale.

The primary principle is to keep our gaze firmly focussed on the long-term issues of:

- conserving the natural environment;
- increasing and regenerating habitat for biodiversity to thrive within our built environment;
- reducing and then eliminating carbon emissions;
- improving and then maintaining clean air for all life-forms to breathe; clean water to drink and inhabit and clean soil for all plant life to grow;
- mitigating and then resolving climate change and global warming.

2. Our secondary principle must be to ***support strong communities by enabling thriving, resilient communities***.

We can do this by involving them, listening to them and responding to their ever-increasing calls for safer, quieter, cleaner and healthier living, working, learning and playing environments, facilities and infrastructure.

This involves looking towards a long-term future of inclusion, democracy and freedom and includes:

- *affordable and accessible housing for all* (and not on the margins of society);
- *easily accessible nature reserves, public open spaces and community facilities within reach of everyone* (within a 10-15 minute walk), including within new residential subdivisions;
- *high quality, affordable and zero carbon public transport networks everywhere* (including heavy and light rail, *electric* buses [and *electric* ferries wherever possible and appropriate];
- *world-class infrastructure to enable safe and active transport for all* (including pedestrians, bicycles, e-bikes and e-scooters);
- *protecting and valuing the biodiversity of nature within private gardens,* in the same way we currently protect and value cultural and built heritage and significant trees;
- *including Aboriginal cultural heritage assessments* as a requirement for all future development, by engaging our First Nations people to independently carry out such assessments;

- *including archeological assessments* as a requirement for all future development, especially in areas where archeological remains are more than likely to still be present;
- p*rotecting existing streetscapes, landscapes and gardens* where their quality and beauty are already held in high regard by the community;
- *requiring, supporting and rewarding regenerative development* that gives more to the community than it takes;
- *involving the community* in all of the above decisions, by allowing access to and review of, all Development Applications as well as their ability to appeal to the planning authority's decisions if there are genuine grounds and reasons for them to do so (from their perspective). The democratic principle, in this instance, has often been overlooked by the current SPPs, it seems.
- Finally, *the precautionary principle needs to be upheld in all Planning decisions*, where if there is any reasonable doubt about the proposal's benefit to the community, then it must be rejected until the project clearly demonstrates its community benefit, as democratically determined by the community,.

3. Thirdly, the idea of ***regenerative development*** now needs to be included in and required by our SPPs. New legislation is needed in order to require all new development at all scales to adhere to the principles that will help create a positive outcome for nature and for our communities in the long-term.

   Currently, our legislation seeks "sustainability". This is no longer enough to ensure that we don't destroy the liveability and viability of our planet.

   Sustainable design is akin to 'treading water', not going backwards but also not going forwards, just maintaining an equilibrium. This is laudable (in comparison to the prevailing development mindset of profit maximisation with minimal compliance to meet code requirements for sustainability), however, there is now a critical need to aim higher than this "do-no-harm" approach.

   Restorative design is a step forward, fixing that which we have broken but ***Regenerative design*** **seeks a positive path towards a living future for all**, where development gives more than it takes, supports nature and the community above all else, including the profit motive of the individual or the developer's economic desires, and creates zero carbon projects (including zero embodied energy), NOW.

   All new developments need to be formally assessed on their environmental, passive and active solar design, energy use, water use, thermal comfort

conditions, material selection and social health and well-being credentials, including:

- **Solar orientation** (which is very hard to fix once the project is built and remains for decades);
- **Solar access to indoor and outdoor living areas** (residential) or indoor and outdoor break-out spaces (commercial), including roof-tops;
- **Solar access to the rooftop and north-facing walls** (for existing AND, just as critically, future solar PV arrays);
- **Electrification**, of everything (read Saul Griffith's, "The Big Switch - *Australia's electric future*" if you do not know of this approach to radically reducing carbon emissions, all across Australia, irrespective of the climate zone one inhabits);
- **Daylight access** (to reduce/eliminate the need for artificial illumination during daylight hours);
- **Natural ventilation** with cross ventilation/chimney-effect systems, backed-up by mechanical ventilation systems with high-efficiency heat recovery in both hot and cold climates;
- **Use of rooftops as gardens/urban agriculture, co-existing with solar arrays for their mutual benefit** (as demonstrated by recent research at Barangaroo, Sydney by the Institute for Sustainable Futures, the University of Technology Sydney). This is also a mechanism to replace natural habitat destroyed within the footprint of the building by adding the equivalent area of outdoor space with good solar access to the rooftop. Please note that this is now mandatory in some European cities, including Stuttgart, Germany.
- **Food security**, i.e. the availability of areas to grow one's own food, even in multi-storey residences and multi-residential developments.
- **Energy security,** i.e. production of on-site energy using renewable sources only (i.e. solar, wind, micro-hydro, wave, tidal and heat recovery systems). Regenerative projects will produce more energy in this manner than they need on site (per annum) and either store their excess energy for later use or sell their excess energy for the benefit of others, i.e. *giving back to the community*.
- **Light pollution**, i.e. legislate for external lighting to point downwards only.
- **Material selection**, i.e. eliminate the use of construction materials that harm the environment, health or well-being of any lifeforms. By the way, this rules out very many commonly used construction materials including many of the most ubiquitous, e.g. concrete, vinyls, steel, aluminium, … this list is very long … refer to the International Living Future Institute's *Red List* for a full list of the toxic chemicals often found in construction materials.

A less ambitious approach to this principle was introduced in NSW in the form of their Building Sustainability Index (aka BASIX) in 2004. It applies to

all new homes built in NSW and assesses their water use, their energy use and their thermal comfort against benchmarks that pertain to their particular climate zone and region. Most importantly, this is carried out at the Planning (Development Application) stage and then locked-in and checked as part of the Construction Certificate stage by the Building Surveyor.

In the UK (just England and Wales) a *Code for Sustainable Homes* was introduced in 2007 and set a series of ever-increasingly ambitious requirements for all new homes until it reached the then highly ambitious but very possible *Net Zero Home* target for all new homes built after 2016.

Tasmania could show the rest of Australia (and the world) its determination and resolve to reduce its carbon emissions by tackling the worst emitting sector, the construction industry. A progressive and well-educated sector of the industry knows how to achieve this, making this possible, NOW. It only needs the legislation to require it for all new developments. The updated Tasmanian Planning Scheme rollout is the best opportunity to achieve these clear and worthwhile goals.

Controlling building materials would assist in this process by incentivising or even requiring all construction systems and materials to be sustainably-sourced from local manufacturers within a set radius of the construction site. This would boost the economy of Tasmania in the process. As a local South Hobart resident has suggested, "… *could we have a* 'recycled glass for windows' *factory for windows here?*" If the market demands it, of course we can. If the planning legislation required it, all new windows would have recycled glass in them.

If this all sounds far-fetched, be inspired by the many new buildings conforming to the Living Building Challenge requirements which mandate everything mentioned in the list above as well as many more holistic, integrated and often innovative solutions to this epic, world-wide problem.

If we wish to see this level of regenerative design in our new developments at the community scale, including, for example, the many new housing subdivisions being built across and around Tasmania or the University of Tasmania's re-purposed campus at Sandy Bay, then we could adopt and embed the Living Community Challenge in the Tasmanian Planning Scheme, as a ready-made, internationally-recognised and greatly admired framework, immediately.

Contact the Living Future Institute of Australia for more information.

Buildings last a long time and the best time for them to reduce their environmental impact is at the *pre-design* stage.

Specific comments regarding each of the SPPs, and some suggested additional SPPs, are provided below.

The SPPs currently have limited provisions to promote better health for all Tasmanians, such as facilitation of walking and cycling opportunities across suburbs, ensuring local access to recreation areas and public open space and addressing food security.

Recommendations:

Liveable Streets Code - SHSC endorses the Heart Foundation in its '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016*' (attached) which calls for the creation of a new '*Liveable Streets Code*'. In their representation they stated '*In addition to, or as alternative, the preferred position is for provisions for streets to be included in a Liveable Streets code. Such a code would add measurable standards to the assessment of permit applications. An outline for a Liveable Streets code is included at Annexure 1 as at this stage such a code requires further development and testing. For this representation the concept of a Liveable Streets code is advocated as a foreshadowed addition to the SPPs.' Annexure 1 – Draft for a Liveable Streets Code* (page 57) of the '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016'* sets out the code purpose, application, definition of terms, street design parameters, Street connectivity and permeability, streets enhance walkability, streets enhance cycle-ability, and streets enhance public transport. Our streets are also corridors for service infrastructure – such as telecommunications, electricity and water. It is important that placement of these services does not detract from liveable streets design, for example through limiting street trees.

Food security - SHSC also endorses the recommendations within the '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016*' for amendments to the State Planning Provisions, to facilitate food security.

Public Open Space – SHSC recommends creating tighter provisions for the Public Open Space Zone and/or the creation of a Public Open Space Code. The planning system must ensure local access to recreation areas with the provision of public open space. Public open space has aesthetic, environmental, health and economic benefits. The *2021 Australian Liveability Census*, based on over 30,000 responses, found that the number 1 *'attribute of an ideal neighbourhood is where 'elements of the natural environment' are retained or incorporated into the urban*

fabric as way to define local character or uniqueness. In the 2021 Australian Liveability Census 73% of respondents selected this as being important to them. That is a significant consensus.'

SHSC is seeking mandatory provisions and standards for public open space and riparian and littoral reserves as part of the subdivision process. We understand these are not mandated currently and that developers do not have to provide open space as per, for example, the voluntary Tasmanian Subdivision Guidelines.

It may be that mandated provisions of Public Open Space can be addressed adequately in the Open Space Zone already in the SPPs. Very specifically, SHSC is seeking the inclusion of requirements for the provision of public open space for certain developments such as subdivisions and multiple dwellings.

We understand that a developer contribution can be made to the planning authority in lieu of the provision of open space and that those contributions can assist in upgrading available public open space. However, there appears to be no way of evaluating the success of this policy.

Our community has benefitted from the gradual restoration of the Hobart Rivulet and reclaimed landfill sites, such as Wellesley Park, over several decades, which are now cherished parcels of open space. Within the past six years, we have also seen the circumstance where a developer had committed to returning parts of their land to the Council only to later rescind that for their own use in meeting car-parking requirements. In that instance it was a significant missed opportunity to improve the Hobart Rivulet track.

Natural Assets Code – As per Fact Sheet 8, SHSC supports the inclusion of the "waterway and coastal protection areas", "priority vegetation areas", "future coastal refugia areas" and the flexibility with mapping the overlays to address local circumstances.

However, SHSC does not agree that the Natural Assets Code should not be applicable, where relevant, to the urban areas and specifically to the Residential Zones (all four of them), as it is the natural assets of these zones that offers habitat for wildlife, including endangered species, within back gardens, parks and even street verges.

Increasing biodiversity is a critical issue and the urban and suburban zones can contribute to this urgent need in a meaningful way if the existing, and potential future, 'natural assets' are *valued and protected*, in the same way that cultural and built heritage is *valued and protected*.

Neighbourhood Code - SHSC recommends we create a new *Neighbourhood Code* and to this end we offer our support to the formal submission by the Planning Matters Alliance of Tasmania (PMAT).

Medium-density Residential Development Standards (Apartment Code) - SHSC supports creating a new *Medium-density Residential Development Standards (Apartment Code)*, and by doing so, recommends the removal of the densification opportunities that have been inserted into the Residential Zones.

This is in response to the current provisions to increase density in the General Residential Zone (amongst others) by allowing *multiple dwellings* and *visitor accommodation* on existing single dwelling plots with a minimum area even smaller than the minimum requirement for a single dwelling in the existing Inner Residential Zone. This is, in effect, destroying the General Residential Zone's *character and amenity* in the name of increased density (often described as *densification)*.

We strongly recommend that individual Local Government Areas use their planning powers to create medium-density residential areas where densification is most warranted, in accordance with all the other planning issues being carefully considered in their Council area. This would fulfil the need for increased density for the projected population growth but focus it in areas where the infrastructure can already cope or can be upgraded to suit, without damaging the existing General Residential Zone's *character and amenity*.

Transport corridors, local shops, community services and local businesses, car parking facilities and suitable topography would be primary considerations for these medium-density residential areas. As is seen in cities all around the world, these needs are often combined into mixed-use developments acting as hubs, with local shops and community services on the ground floor, underground car parking, local businesses on the first floor and residential apartments on the upper floors, where solar access is increased, noise disturbance is decreased and the public transport is used by all concerned.

We trust this community-based submission is clear and we look forward to reading the summary of consultation in late 2022.

Yours sincerely,

Ben Clark and Tim Williams
for and on behalf of the South Hobart Sustainable Community

Ben Clark
Facilitator and Communications Officer
in collaboration with
Tim Williams LFA, B.Arch.(Hons), M.Sc.(Dist'n) Architecture, Energy & Sustainability
Convenor – Planning group

From: Jenny Cambers-Smith
To: State Planning Office Shared Mailbox
Subject: State Planning Provisions Scoping Review - Submission
Date: Friday, 19 August 2022 10:47:10 AM

Thank you for your invitation to submit more detailed comments regarding the above scoping review by close of business today.

I would like to reiterate my plea for a full and unfettered review of the State Planning Provisions (SPP), for the following reasons:

- Residents of Tasmania were given little or no notice (or provided with the full implications) of the Interim Planning Scheme (IPS) when that came into effect, and the same has happened with the SPP and councils' Local Provisions Schedules (LPS). There remains considerable confusion by landowners and significant misinformation put out by interest groups (eg the anti-Landscape Conservation Zone (LCZ) group down here in the Huon). I would like to see accessible and relevant information put out by the State Planning department and the Tasmanian Planning Commission, for instance comparative tables that show the key differences between zones and also those in the IPS (currently still in force in a number of councils). A timetable of what has occured over recent years would be helpful as well, plus a simple explanation of terms such as 'Acceptable Solution' and 'Performance Criteria'. I found this latter information almost impossible to dig out. In addition, the definitions of various land-use terms, for instance 'Resource Development' and 'Resource Processing', were hard to find and sound quite innocuous until one reads the details. These need highlighting so people truly understand their implications. Case histories and examples would be useful. Few people had the time or wherewithal to read and understand the 500+ SPP, or to realise what it might mean for them and their future plans. I don't know to what extent consultation was carried out when the SPP was first drafted, but it certainly passed me by and I suspect the same could be said for the vast majority of Tasmanians. I'd also like to ensure that a coordinated statewide approach to communications is carried out, to reduce the onus on councils (and consequently their ratepayers). Such communication needs oversight by those not in the planning business, to ensure it is accessible by non-planning professionals.
- I would like to see a roots and branch strategic review of the SPP in accordance with the various land use strategies of Tasmania (and its regions and individual councils) and in the light of (for instance) the current housing crisis and on the other hand, a climate/ extinction crisis, to ensure any revised document adequately meets our long term needs: eg for small business incubators, learning centres, enterprise areas, mixed-use settlements (where light industry, services, entertainment and residences can coexist), for existing unused real estate to be made available for households (eg vacant office space, warehouses and storeys above shops etc), and where transport links and services, water supply and stormwater etc are given greater consideration when allowing new suburbs etc.
- I'm concerned that the SPP allows a number of potentially highly inappropriate (eg noisy, polluting) activities in the Rural Zone, with greatly reduced setbacks (from the IPS) from neighbouring properties, no requirement to install screening (eg vegetation), no discretion by local councils to consider the effects of (for instance) increased freight traffic on small and inadequate roads, little in the way of aesthetic standards, and no right of appeal either by council or neighbours. Perversely, at a time when housing supply is undeniably tight, building a residence is only a discretionary right. The existing Codes are an inadequate protection against such developments.

- Likewise the Agricultural Zone only provides a discretionary right to build a residence, but allows for wholescale clearing of native vegetation, which I believe is quite wrong in today's rapidly warming climate and ever-increasing fragmentation of habitat for our under-pressure wildlife. The Agriculture Zone is excluded from the application of environmental Codes, such that this zone fails to appropriately protect waterways, catchment areas, downstream communities or unique habitats.
- Tourism developments are given exceptions and priority in some zones, but these should be discretionary rather than permitted activities, since once again roads, water, stormwater and sewerage are all issues that councils and neighbours should be given the chance to consider.
- While I am supportive of the Landscape Conservation Zone, building a home that minimises impact on the surrounding natural values, ought to be a permitted activity. Many people over the years have been given misleading information from Real Estate Agents and councils about their right to build in the future. It ought to be a requirement on Real Estate Agents to be transparent about the zone of the title and what that means for a prospective buyer (although I understand this is outside the remit of the SPP).
- There is very little about sustainability in the entire SPP. No consideration is given to the need for us to be linking up stranded habitats, preserving watercourses, mitigating run-off and stormwater effects, and minimising the heat-soak effects of buildings and their environs. In fact, the converse is true, with many zones calling for dark coloured building materials, that actually reduce the earth's albedo effect. All development should be associated with a commensurate amount of vegetation planting, draining, water retention etc, in line with the direction of planning in other jurisdictions. The recent downpours and consequent flooding should be evidence enough that unrestricted concreting and asphalting of land around buildings will only exacerbate the likelihood of homes being inundated.

In conclusion, I call again for a full, transparent and inclusive review of the State Planning Provisions such that all voices can be heard and given similar weighting. It would be ideal if a panel of objective people with no conflict of interest and no prior involvement in the planning industry, was to provide oversight, rather than the entire review being undertaken by interested parties.

With grateful thanks
Jenny Cambers-Smith

Jenny Cambers-Smith for Huon Valley Council
[redacted]
****
Native wildlife videos from our property
Facebook * **YouTube** * **Instagram**

19th August 2022

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001
By email: yoursay.planning@dpac.tas.gov.au

To Whom It May Concern,

RE: STATE PLANNING PROVISIONS (SPPS) REVIEW - SCOPING ISSUES

Thank you for the opportunity to comment on the SPPS review. I welcome the opportunity to suggest improvements to the SPPS and the associated Zones and Codes, particularly as recent land use change has occurred in Tasmania that is not addressed in the SPPS developed five years ago.

My experience involves a good knowledge of wind farms, wind farm practices and the way wind farm developers behave. A new wind farm is planned adjacent to my shack at St Patricks Plains on the Central Plateau (to be my principal place of residence). Therefore I have undertaken research on wind farm practices and impacts, research on the roll out the Government's 200% Renewable Energy Target, input into the Central Highlands Local Provisions, and input into TPC Hearing process. This helps me provide comments on wind farms and the SPPS process. My thoughts on the SPPS Review are outlined below.

SPPS REVIEW PROCESS
This submission covers gaps and indicates shortcomings of the existing SPPS for wind farm developments and recommends it as a significant issue that needs to be addressed in this five yearly review of SPPS. Proper planning for wind farm developments is required to keep SPPS up to date with new planning issues and community needs.

Inclusion of wind farms in an overt way in the Tasmanian Planning Scheme will provide certainty to both the wind farm industry and the community and reduce conflict. It will aid wind farm developers to achieve a social licence to operate in Tasmania.

This submission identifies new State Planning Provisions as well as those that need to be reviewed (such as Zones and/or Codes). The intention to have public hearings by the Tasmanian Planning Commission for any amendments to the SPPS is supported so the Tasmanian community can be involved in such changes.

As wind farms are now a new state-wide land use, inclusion of planning for wind farms in the SPPS is appropriate. SPPS include Zones and Codes**. Zones** outline the planning rules for use and developments that can occur within each Zone (i.e. applicable standards, specific exemptions, and tables showing the land uses allowed, prohibited, and discretionary). Wind Farms Zones are not included in any of the 23 Zones in the current SPPS. There are 16 **Codes** which can overlay Zones and regulate particular types of development that occur across Zone boundaries such as Natural Assets, Scenic Protection, and Attenuation. There is no Wind Farm Code.

Local Provisions Schedule (LPS) apply the SPPS to each Municipal area. They are local planning rules prepared by each Council and determine where Zones and Codes apply in the local area. If a Council decides that areas <u>are not suited</u> to one of the 23 Zones then they apply one of three site specific local planning rules to protect local character – i.e. Particular Purpose Zone (PPZ), Specific Area Plan (SAP), Site Specific Qualification (SSQ). These are not appropriate for wind farm developments - for example,wind farms may cross Municipality boundaries. A standard state-wide approach by a Zone and Codes is more appropriate.

Thus turbines and wind farm developments are <u>not</u> overtly addressed in the current SPPS planning rules and process even though they are a major planning issue. There are no stand-alone planning directions for developers and the community in the current SPPS that allow the right wind farm development in the right location under open and transparent planning processes and with social justice for the developers and the community. Proper planning for wind farms will help provide community support for development of renewables in Tasmania.

UNIQUE NATURE OF WIND FARMS AND GAPS IN CURRENT SPPS.

The Government's 200% renewables target (TRET) is the biggest land use change currently occurring in the Tasmanian rural landscape. It is changing Tasmania forever. It does not have a proper planning base. The roll out of wind farms is opportunistic, impacts the Tasmanian landscape and Brand, and causes unnecessary community angst and division as shown by the Stanley Wind Farm proposal. As Tasmanians we can do better than this – with a fair, equitable and transparent planning regime for renewables.

The unique nature of wind farms from a planning perspective.

From a planning perspective, wind farms have unique characteristics which mean they do not fit easily into the current SPPS.

<u>Wind farms are a new, expanding and an extensive land use not considered in the current SPPS.</u>

The recent Tasmanian Renewable Energy Target of 200% requires 9950MW of new variable energy – 1400MW in the North-East, 5150MW in the North West and 3400 MW in the Central Highlands/Midlands.[1] To put this into some form of context, it equates to about 3000 turbines or about 89 wind farms the size of Granville Harbour Wind Farm[2] across Tasmania (12 in NE, 31 in Central Highlands and 46 in NW). TasNetworks already has plans[3] for new transmission lines and upgraded transmission lines to deliver 1020MW from Central Highlands, 1840MW from North West, and 1300MW from North East. It is an unprecedented change to the Tasmanian landscape, and one that is occurring by 'default' outside an up-to-date Tasmanian Planning Scheme.

<u>Turbines at wind farms are now numerous and high</u>. The current SPPS were designed to consider energy developments that involved few turbines of low height (essentially less than 50m tall). Current wind farm developments are effectively large industrial subdivisions. For example, St Patricks Plains proposed development covers 10 000ha, and has 47 turbines that are 240m tall and with blades 90m long. Robbins Island Wind Farm plans to have 270m high turbines. They are far bigger than imagined in the current SPPS which are now out of date.

[1] Draft Renewable energy Coordination Framework, 2021, p7.

[2] Granville harbour has 112MW capacity.

[3] TasNetworks. 16th Feb 2022 "Tasmanian Transmission Customers Online Forum"

Wind farms are more noisy and intrusive than originally thought in SPPS. Current SPPS are out-of-date and have inappropriate provisions because community impacts from turbines are now far more distant than immediate neighbours. Australia Energy Infrastructure Commissioner (Wind Farm Commissioner) recommends consultation with neighbours and Neighbour Agreements occurs for 5km from the wind farm; and wind farms should be located 5km from township settlements. These recommendations are ignored by wind farm developers and need to be formalised in SPPS such as a Wind Farm Code. A neighbour to a wind farm is more than the immediate adjoining property. Wind farms also impact on local character and SPPS provisions and processes are needed to allow the opportunity to maintain local character.

Wind farms have special planning requirements. As indicated, consultation is required for 5km from the wind farm, 240m turbines dominate the scenic and skyline landscape because of their height, wind farms are mainly developed on Rural and Agriculture Zoned land, and wind farm developments may fall across Municipal boundaries. Rural and Agriculture Zones do not contain skyline and scenic provisions that allow community interest to be considered. Setbacks for such turbines are non-existent in SPPS.

It should be noted that wind farms are a Level 2 activity where a circular argument occurs. For example, Project Specific Guidelines by the EPA require compliance with the Local Council planning scheme but the LPS is silent on skyline impacts and building height controls for wind farms. What was once addressed by discretionary considerations under the Interim Planning Scheme, now no longer apply. It should also be noted the Government intends to identify three Renewable Energy Zones (REZ) in Tasmania. However, this is outside the Tasmanian Planning Scheme and will involve 'educating' the community after spatial mapping has occurred.[4] From a planning sense, the cart is before the horse, community consultation occurs at the end of the process, and natural justice for the community and neighbours is compromised. It appears to be a separate planning scheme operating outside the TPS, SPPS and LPS processes.

Gaps in the current SPPS, Zones and Codes with respect to wind farm developments
The current SPPS and Codes are out of date for wind farm developments. This is illustrated by a few examples below.

Agriculture and Rural Zone
The 'old' Interim Planning Scheme for Central Highlands recognised scenic landscape values as an integral component of Rural Resource Zone so adverse impacts on the rural scenic landscape were minimised - through controls on building height, location of structures on skylines, and clearing of native vegetation.

Consideration of the Central Plateau's greatest asset – its scenic landscape values - does not occur overtly under the 'new' Tasmanian Planning Scheme planned for the Central Highlands. The draft Local Provisions Schedule has not adopted a Scenic Protection Code. What was previously called Rural Resource Zone (with scenic landscape considerations) is now called Rural or Agriculture Zones and does not have the same planning controls. **The translation of Rural Resource Zoning from the 'old' to the 'new' has not maintained these planning controls and therefore unintended and unnecessary impacts on the scenic rural landscape will occur from the new and numerous wind farms planned for the area.** This needs to be fixed.

[4]Renewable Energy Coordination Framework, May 2022, p24.

Advice to the Southern Tasmania Councils has been "*the transition of the previous Rural Resource Zone from within the interim planning schemes to the TPS is considered to be either a Rural Zone or Agriculture Zone.* ***There are no provisions within these two Zones to help reduce impacts of building/works or vegetation destruction on scenic values. Agricultural buildings and works are exempt from these two zones but there remains potential for large scale or poorly located buildings (read turbines) to adversely impact on scenic values***." [5]

The Zone purpose and standards for Agriculture and Rural Zones are lacking in controls that make sure the long-term character of the rural scenic landscape is protected from poorly designed, sited, and located developments.

Scenic Protection Code

SPPS include a Scenic Protection Code that is used to recognise and protect landscapes identified for their important scenic values. The Code can be applied through two overlays: - the scenic road corridor overlay and the Scenic Protection Area overlay. The Scenic Protection Code fails to protect high value scenic landscapes with exemptions for use and development and a failure to recognise buildings 240m tall are detrimental to landscape values. The Code is applied differently from Council to Council and does not have a consistent approach across the State. The nature of wind farms means scenic impacts occur wider than 100m as shown by the Lakes Highway at St Patricks Plains. Adjustment of the Code for scenic impacts by wind farms is required.

Ridgetop location of turbines at St Patricks Plains east of Lakes Highway

[5] Inspiring Places Pty Ltd, 2018 p 18 of "Guidelines for Scenic Values Assessment Methodology and Local Provisions schedules to Assist Southern Tasmanian Councils with the Scenic protection Code".

RECOMMENDATIONS.

It is therefore recommended that:

1. The SPPS Scoping Review recognise changes are needed in SPPS to address wind farm planning as a priority (because it is a gap in the system)

2. Current SPPS Zones and Codes be reviewed and changed to reflect the nature of current wind farm developments (because SPPS are out of date).

3. Amendments are required to Agriculture and Rural Zoning, so they consider landscape and skyline issues (because the transition from Rural Resource under the Interim Planning Scheme did not occur in a seamless manner and failed to transition the skyline provisions).

4. Wind Farm Zoning be adopted to identify where wind farms are allowed as part of the Tasmanian Planning Scheme and SPPS process, in an open and transparent manner, by the Tasmanian Planning Commission (because wind farm roll out is extensive, widespread, intrusive to neighbours, and operates outside the TPS).

5. A Wind farm Code be adopted to address nuances particular to the nature of wind farms and the community such as those outlined above (because wind farms have a unique nature and requirement in planning).

The above is suggested to benefit the wind industry and community by providing known and clear planning arrangements. It will aid investment in renewable energy by providing a sure planning framework and certainty and give 'fair and just' consideration to community concerns. It will help developers secure a social licence to operate a wind farm built in right place. It will help avoid speculative and opportunistic wind farm proposals because a solid development framework will exist.

OTHER COMMENTS FOR A REVIEW OF SPPS

Tasmania's Brand. The Tasmanian Brand requires protection in revised SPPS as Tasmania's natural and cultural heritage underpins our economy and way of life. Inappropriately located wind farms and inappropriate wind farm controls threaten Tasmania's Brand and will make Tasmania 'ordinary'. The Central Plateau's greatest asset is its scenic landscape and "*the state's greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these and the state has no future.*" [6]

Natural Assets Code. The NAC does not adequately protect important natural values and requires a detailed review as part of this SPPS review process. The NAC applies to Rural Zones but is excluded from Agriculture Zone areas. It also uses inaccurate datasets which, according to the author (Knight *pers com*), are not designed for this purpose. The Natural Asset Code does not include scenic or landscape assets (even though they are natural) and does not address ridgeline

[6] Source: Talking Point: *Planning reform the Trojan horse*, The Mercury, Professor Michael Buxton, December 2016.

and skyline issues. The Priority Vegetation Area overlay should apply to the Agriculture Zone but is excluded for some unknown reason. Therefore large areas of the Tasmanian rural landscape misses out.

Amendments to SPPS - 35G of LUPAA. My experience has been that Amendments made under s35G of LUPPA is a confusing process. Legitimate Amendments should not be put off because of lack of available funding by the Planning Authority (for example saying funding is not available for a consultant to do a scenic landscape assessment). A transparent, robust and funded process for dealing with 35G issues is required so the community does not miss out from shortcoming in the SPPS and LPS process.

Thank you for the opportunity to put forward my suggestions and observations. I trust they are helpful.

I understand the State Planning Office will establish reference and consultative groups to assist with detailed projects and amendments associated with the SPPS. I would like to be part of these reference and consultative groups because of my understanding of wind farms from a community, environmental and planning perspective and my pro-development bent from building two mills in Tasmania.

Yours sincerely,

David Ridley

David Ridley
[redacted]

State Planning Provisions 19/8/22

Comments

The North East Bioregional Network is a not for profit community based nature conservation organisation with a long history of participating in all of the facets of land use planning in Tasmania.

As part of our submission we have attached a Talking Point article from a few years ago which summarises our current concerns with regards to the direction of land use planning in Tasmania…….that is a shift towards a neo liberal model which prioritises property development, industry, corporate welfare and growth and development above all else regardless of the consequences for the environment or the community. A model based on deregulation ie the rhetoric of "getting rid of green and red tape" and privatisation.

Due to the unprecedented number of legislative "reforms" being undertaken by the Government it is increasingly difficult for community groups to find the time and resources to thoroughly respond to proposed changes and opportunities to comment on legislation. That is the case in regards to our comments here, however we will seek to highlight where we see the main problems are with the current Statewide Planning Scheme. It should be evident from the comments we make below that the SPP's are inconsistent with the requirements of the objectives of the RMPS Schedule 1 in particular Part 1 1. (a) and (c). Clause 1.(a) is not met because there has been no attempt by the Government or any Local Council that we are aware of to develop an information base and associated planning laws which actually maintain ecological processes and genetic diversity. The State of Environment reporting which would assist in this process has been neglected for over a decade and other relevant documents such as the linked paper below have not been used to incorporate critical conservation planning principles such as landscape connectivity into planning schemes.

(PDF) The importance of ecological processes for terrestrial ...

https://www.researchgate.net › publication › 305063732 ...

22 Aug 2016 — The continental island of *Tasmania* supports an extraordinary biota featuring ancient communities, high levels of endemism and many species

but as a general comment we fully support the comments made by Planning Matters Alliance Tasmania in their submission.

The North East Bioregional Network has produced a number of documents which specifically address Clause 1.(a) and could be used as examples of conservation action plans which seek to reflect the intent of this clause. Land Use Plan East Coast Corridor Conservation Report

Break O Day Priority Habitat Mapping Project Report

In addition we recommend that the SPPS specifically require bioregional plans be developed across Tasmania which then form the basis of specific planning laws in the SPP. For example that in the Natural Assets Code there is specific reference to the bioregional plans and Planning Authorities must ensure the goals and targets in these plans are adhered to and met including maintaining and restoring landscape connectivity and net gain in ecological condition and extent of native vegetation and wildlife habitat. It is also essential that there be no exemptions for any landclearing. For example in the Break O Day Interim Planning Scheme 2013 there were no exemptions in the Biodiversity Code for landclearing and vegetation removal not covered under the Priority Habitat overlay was still subject to assessment.

We also register here the improper use of Forest Practices Plans for non forestry related activities which are then potentially exempted from planning accountability. For example a FPP was produced as part of a DA for vegetation clearing associated with the construction of a Mountain Bike track through Mount Pearson State Reserve in an area identified as being a Phytophthora Management Area. In such cases a FPP should not be considered as way to bypass planning authority and community objections.

Exemptions

One can't start examining the fundamental flaws in the SPP without first addressing the glaringly obvious fact that integrated and holistic land use planning based on the sustainable development principles in the RMPS Schedule 1 cannot be achieved in Tasmania when there is significant and growing number of uses that are completely or partially exempt from LUPA including mining exploration, aquaculture, forestry on public land, forestry on private land if there is PTR, a range of agricultural uses, fire management, roadworks, wind turbines, strata titles etc

Its goes without saying that self regulation in industries such as Aquaculture and Forestry has been a dismal failure and exemption from LUPA has played a big part in the looting of the commons. In one of the few times forestry was

subject to LUPA it was obvious that the RMPS standards were a much higher bar than in house oversight.

Dec Imp 01-2nd - cloudfront.net

Of particular concern in recent years is the rapid emergence of industrial wind turbine developments which have major ecological and scenic impacts. We reject any moves to exempt such development either through LUPA or by bypassing LUPA through the Major Projects legislation

Delegated Authority

Similarly to our concerns about exemptions is the trend towards giving either experts or government agencies/authorities delegated powers to address development criteria as a result of a "expert report" or state agency approval being categorised as an Acceptable Solution meaning that both Councils and the community are unable to object to these reports or approvals regardless of their merit or evidence presented. This denial is contrary to Schedule 1 Part 1 (c) and (e) because it doesn't allow for any ability for either Planning Authorities or the community to respond to such reports or approvals nor does it promote the "sharing of responsibility for resource management and planning between different spheres of Government, the community and industry in the State".

As such we recommend that all expert reports and Govt agency reports and or approvals be categorised as discretionary (ie Performance Criteria) to ensure that there is proper scope for planning authorities and the community to scrutinise and have the necessary powers to in the case of planning authorities refuse development applications and in the case of the community have the requisite third party appeal rights to oppose development applications.

This issue is one that has received much public attention in relation to the possibility of commercial development in protected areas that are supposed to set aside for biodiversity conservation and passive recreation not for the financial gain of property developers and the tourism industry

Performance Based v Prescriptive planning models

After more than two decades of operation in Tasmania it is evident to our group that Performance Based Planning Schemes create a significant financial impost on planning authorities, the community and developers. In rural areas where planning authorities have small rate bases the cost of administration and litigation related to performance based schemes is enormous.

We suggest that where possible clearer and more prescriptive laws be enacted to reduce uncertainty and costs. In Break O Day our group was pivotal in the introduction in 2016 via the RPDC of a prohibition of subdivision within 1km of the coast outside settlements in the municipality. This law has prevented ribbon development along the coast consistent with the objectives of the State Coastal Policy and its very clear prescriptive wording has meant there is no doubt about its definition or meaning. We recommend a similar prohibition be put in place over undeveloped areas of coastline in Tasmania to protect and maintain the natural and scenic values which all Tasmanians and tourists value. This planning law would also need to take into account restrictions on strata and multiple dwellings for tourism accommodation.

Strata/Multiple Dwellings/Stormwater/Site Coverage

One of the biggest threats in relation to coastal development in recent years has been the emergence of strata titles and multiple dwellings across the coastal landscape undermining the intent of subdivision density controls in Planning Schemes.

Planning Directive no 6 was initiated to ensure that there were some criteria that had to be assessed for tourism accommodation but Planning Directive no 6 is a very weak and subjective planning policy that is not sufficiently rigorous to protect sensitive coastal areas from overdevelopment. There are a number of examples in the Break O Day municipalities coastal zone in recent years where tourism accommodation and subsequent strata titling is allowing significantly more dwellings per title than would be permissible under residential and subdivision uses. Ultimately this is undermining the intent of the State Coastal Policy to prevent ribbon development and urban sprawl over the coast.

We recommend that zones such as the Landscape Conservation Zone and Low Density Residential Zone insert measures into the use class tables which only allow one dwelling per lot which can be used for either tourism

accommodation or residential use and that there is also strict limits placed on site coverage.

In regards to site coverage this is particularly relevant to more urban zones. For example unserviced settlements such as Binalong Bay, Ansons Bay, Falmouth etc are located in ecologically sensitive areas in terms of wetlands and waterways. Allowing densification of such settlements via strata/multiple tourism accommodation dwellings can lead to problems with intensification of stormwater and pollution. Likewise even in more urban serviced areas multiple dwellings and or too many impervious surfaces are creating problems with stormwater management.

There is a clear need for a strong Stormwater Code which assists in limiting impervious surfaces and multiple dwellings while also seeking to put in place provisions which protect sensitive coastal wetlands and waterways by demanding high standards of stormwater management to maintain water quality in coastal wetlands and waterways. The Natural Assets Code also needs to guarantee the maintenance of extensive native vegetation buffers wherever possible to maintain ecological values including riparian habitat and water quality for aquatic species. We attach two reports related to water quality issues by Simon Roberts.

Scenic protection

Every municipal planning scheme should be required to have a comprehensive scenic protection overlay which protects scenic values from poorly sited or designed development. It beggars belief in 2022 that this wasn't mandatory many years ago and highlights the massive disconnect between the image and reality of the Tasmanian clean and green "brand".

Scenic Protection Assessment: North East Tasmania

https://www.nebn.org.au › files › reports › ne-tasma...

PDF
Disclaimer: This *report* has been prepared in good faith and with professional care ... Local Planning Schemes (LPS) under Tasmania's new *Scenic Protection*

Fire management

As mentioned previously we don't support Acceptable Solutions which delegate approval of particular planning clause criteria to state agencies or expert reports. As such we recommend that in the Bushfire Prone Areas Code all references to the TFS or an accredited person" be moved from Acceptable Solutions to a Performance Criteria noting that in some cases a "accredited person" may have undertaken as little as a few days training to be become an acceptable person to undertake bushfire risk assessments (BAL).

https://www.thesaturdaypaper.com.au/news/environment/2022/07/16/the-case-against-prescribed-burning-fight-bushfires

As can be seen from the link above the science regarding fuel reduction burning is far from settled and it is clear from our observations that fuel reduction burning is simplifying understorey on public and private land due to burning at too regular intervals or at the wrong intensity. As such we oppose fuel reduction burning being exempt from any planning permits. At a minimum any fuel reduction burn that has the potential to impact on listed State or Federal threatened ecological communities, flora or fauna should require a discretionary permit.

Further in light of increased risk from climate change we believe that residential subdivision and tourism accommodation should be listed as a "vulnerable use" under C 13.3 Definitions which would then lead to under C13.5 for such uses to be required to seek to find locations which are lower risk

Structure Plans/Land Use Strategies and Regional Land Use Strategies

Until such time as the documents listed above are assessed independently by the TPC they should not have any legal weight in planning schemes. It is not acceptable to allow Local Councils to engage private consultants and develop land use strategies for municipalities without any oversight from the TPC as this is obviously fraught with the potential for corruption and conflicts of interest.

Todd Dudley

President

North East Bioregional Network

[redacted]

Review of impacts of residential development on the ecological health of receiving waters

Simon Roberts Nov 2021

1. Introduction

This report reviews the current understanding of the impact of residential development on the ecological health of receiving waters. Most of the literature on the effect of urbanisation has focused on impacts at the stream level as this is the most common surface water directly impacted by changes in land use. Many factors contribute to the quality of a stream and how it is affected by residential development. Fundamentally, stream ecological function is controlled by five variables: climate, geology, soils, land use, and vegetation. These variables directly affect two of the key drivers of change in stream function of discharge and sediment load, which in turn has an impact on the hydrology, morphology and ecology of the stream (Brabec et al., 2002). Of these variables, land use and vegetation are generally the only ones that can be controlled through land use planning and are therefore often the focus of studies examining degradation, protection or rehabilitation of streams.

Studies in the late twentieth century tried to define thresholds of urban development (defined by different measures of urbanisation; see below) where ecological impacts occur. Many of these studies concluded that degradation occurred in a continuous rather than at a defined threshold, although there can be distinct break points and for many indicators a maximum level of impact at low or intermediate levels of land use change. Additionally, the concept of degradation at a particular site in a catchment fails to incorporate potential cumulative or synergistic impacts within a catchment that may be missed by studying a single site at the end of a sub-catchment.

More recent studies have examining the ecological impact of increasing urbanisation on the aquatic values of waterways by examining physical and biological changes in catchments across urban to rural gradients. A common feature of these studies is that biological effects are often observed in streams at very low levels of urban development within catchments. Determining the exact mechanisms of degradation is often confounded by the many correlated landscape changes that disrupt the natural biological and geomorphic processes in streams in urbanising catchments. Key drivers of change have been identified as decreased vegetation cover, a reduction in organic material supply, increased impervious areas, more efficient delivery of stormwater to waterways, increased overland flows, increased catchment erosion and increased nutrients and toxicants (Grimm et al., 2008; Sheldon et al., 2012). Additionally it is also recognised that restoration of these values in previously impacted catchments is often complex and expensive (Hughes et al., 2014; Prosser et al., 2015; Urrutiaguer et al., n.d.) even at low levels of development (Walsh et al., 2015).

Urbanisation exerts a disproportionately large influence compared to most other land use changes on steam function (Paul & Meyer, 2001). Degradation of stream ecological function is driven by increased frequency and magnitude of storm flows, increased total flow, reduced dry-weather flows, changes to riparian and in-stream habitat and increased loads of nutrients and toxicants (Paul & Meyer, 2001; Roy et al., 2009; Urrutiaguer, 2016; Walsh, Roy, et al., 2005). All of the principal

mechanisms by which land use influences stream ecosystems identified by Allan, (2004) in Table 1 are associated with changes driven by urbanisation.

TABLE 1. Principal mechanisms by which land-use activities influence stream ecosystems. (From Allan 2004.)

Environmental factor	*Effect*
Sedimentation	Increases turbidity, scouring, and abrasion; impairs substrate suitability for periphyton and biofilm production; decreases primary production and food quality causing bottom-up effects through food webs; in-filling of interstitial habitat harms crevice-occupying invertebrates and gravel-spawning fishes; coats gills and respiratory surfaces; reduces stream depth heterogeneity leading to decrease in pool species
Nutrient enrichment	Increases autotrophic biomass and production, resulting in changes to assemblage composition, including proliferation of filamentous algae, particularly if light also increases; accelerates litter breakdown rates and may cause decrease in dissolved oxygen and shift from sensitive species to more tolerant, often nonnative species
Contaminant pollution	Increases heavy metals, synthetics, and toxic organics in suspension, associated with sediments, and in tissues; increases deformities; increases mortality rates and impacts to abundance, drift, and emergence in invertebrates; depresses growth, reproduction, condition, and survival among fishes; disrupts endocrine system; physical avoidance
Hydrologic alteration	Alters runoff–evapotranspiration balance, causing increases in flood magnitude and frequency, and often lowers base flow; contributes to altered channel dynamics, including increased erosion from channel and surroundings and less-frequent overbank flooding; runoff more efficiently transports nutrients, sediments, and contaminants, thus further degrading instream habitat. Strong effects from impervious surfaces and stormwater conveyance in urban catchments and from drainage systems and soil compaction in agricultural catchments
Riparian clearing/ canopy opening	Reduces shading, causing increases in stream temperatures, light penetration, and plant growth; decreases bank stability, inputs of litter and wood, and removal of nutrients and contaminants; reduces sediment trapping and increases bank and channel erosion; alters quantity and character of dissolved organic carbon reaching streams; lowers retention of benthic organic matter owing to loss of direct input and retention structures; alters trophic structure
Loss of large Woody debris	Reduces substrate for feeding, attachment, and cover; causes loss of sediment and organic material storage; reduces energy dissipation; alters flow hydraulics and therefore distribution of habitats; reduces bank stability; influences invertebrate and fish diversity and community function

2. Measures of urbanisation

In order to study effects on of urbanisation on waterways a measurement of urbanisation intensity is required. It seems logical that a good measure of urbanisation would be residential density, however there is a general pattern of higher amounts of impervious area per residence as urban density decreases (National Research Council, 2009). Where aquatic ecological impact is concerned the percentage impervious cover in a catchment is commonly used as impervious surfaces (local and regional roads, shops, sheds, driveways and utilities) are the main source of increased runoff, which is implicated in many of the direct biotic and abiotic effects on stream function (Arnold & Gibbons, 1996). The proportion of **Total Impervious** (**TI**) area in a catchment is frequently highly correlated with ecological impacts (Taylor et al., 2004). However some studies have shown that areas of impervious surface directly connected (via pipes or channels), referred to as **Effective Impervious** (**EI**) provides a better fit to some parameters (Hatt et al., 2004). A more sophisticated measure, **Attenuated Impervious** (**AI**) combines both the directly connected surfaces and weights none connected surfaces or ends of pipes according to their distance from the stream. A proxy for directly connected impervious (EI) that is sometimes used is road density, expressed as kilometres of road per square kilometre of land (km/km_2) and is considered appropriate as roads are often the main component of EI (Hopkins et al., 2015; National Research Council, 2009).

3. Hydrology

Urbanisation alters the hydrological function of streams in a number of ways (Hopkins et al., 2015; Vietz et al., 2014). The most common affect is larger and more frequent runoff generated flows primarily from the replacement of previously pervious landscapes (forest and grasslands) with impervious urban surfaces that are in close proximity (<50m) or directly connected to streams. These increased runoff events from urban infrastructure (buildings, driveways, local roads) lead to more frequent and higher peak flows that can modify the stream channel either through the delivery of increased sediment loads or through scouring and transport downstream. Increased flows even after small rainfall events can have profound effects on the water balance of catchments by reducing the amount of water that would have infiltrated into the local groundwater leading to reduced base flows during dry periods. Residential development in forested catchments also leads to a reduction in forest area, through clearing for housing and sheds, bushfire mitigation and increased road access. Replacement of forest cover with grassland or urban infrastructure reduces the rate of transpiration and increases the likelihood of surface flows through reduced interception by vegetation. Removal of streamside vegetation can also lead to bank instability and increased incision of the channel that lowers the groundwater level of the riparian zone.

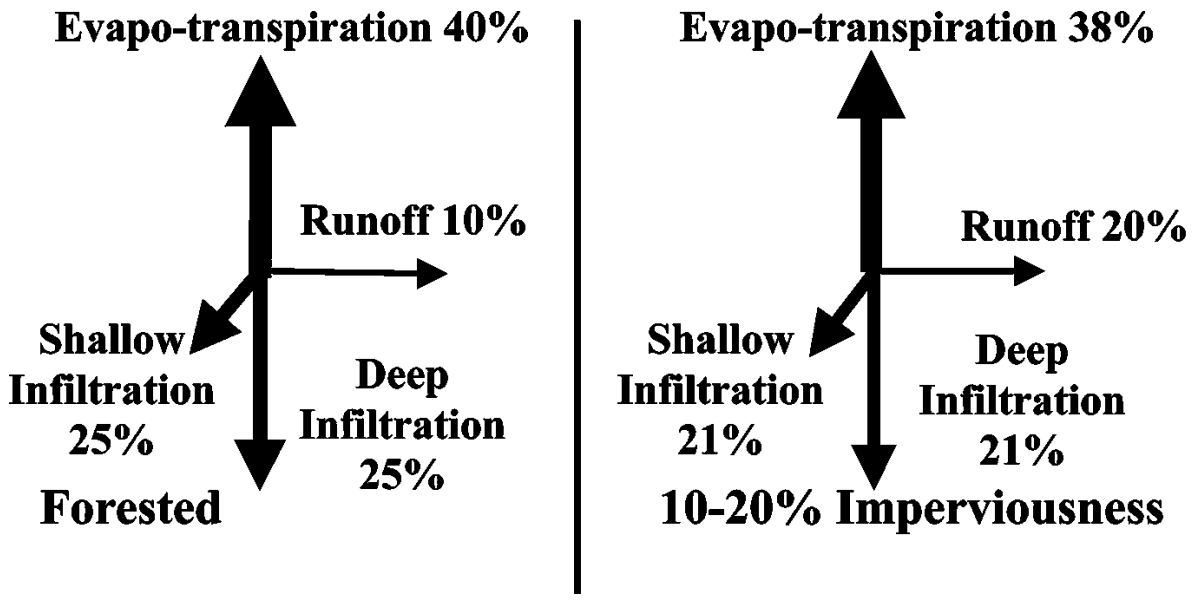

Figure 1. Changes in hydrologic flows with increasing impervious surface cover in urbanizing catchments (after Arnold & Gibbons 1996).

A number of studies have shown linear increases in both the magnitude and frequency of high flow events as the proportion of impervious cover increases in a catchment. Hopkins et al (2015) reported linear increases in high flow events with shorter duration across 8 of 9 urban gradients ranging from 0% to 60% impervious cover in the USA. In Australian cities the volume of runoff is typically 5-10 times the pre-urban volumes (Walsh et al., 2010). Arnold & Gibbens (1996) estimated a doubling in total stream flow with an increase in impervious surfaces from 0% to 20%.(Figure 1). Vietz et al. (2014) studied the effect of increased flow events on geomorphology of streams and estimated that an increase from 0% to 2% EI would increase the duration of discharges likely to transport sediments by 12% in a Melbourne stream. Similarly Vietz et al. (2014) found that urbanisation significantly

impacts a number of geomorphic attributes of streams (presence of bars/benches, bank instability and presence of large wood) at EI values <2% which is equivalent to TI of 4-5%. They concluded that measurable geomorphic change occurs at very low levels of EI (0-3%) and that stream management of degradation should focus on stormwater drainage (Vietz et al., 2014). One study found that a small increase in EI to >3% led to streams being almost entirely scoured to bedrock or clay (Sammonds et al. (2014) cited in (Vietz et al., 2016)).

4. Nutrient cycling

Urbanisation rapidly leads to increased loads of nutrients (primarily nitrogen and phosphorus) that are often drivers of eutrophication in fresh and saline waters (Hatt et al., 2004; Lintern et al., 2018; Taylor et al., 2004). Increased nitrogen loads are derived from increased depositional sources associated with urban land use (fertilizers and atmospheric deposition, domestic animal manure (Bettez & Groffman, 2013; Lintern et al., 2018)) which can be efficiently delivered to streams by storm flows through pipes and channels. Septic tanks deliver most of their nitrogen output as soluble nitrate (NO_3) primarily to groundwater which can be delivered to streams through sub-surface flows (Hatt et al., 2004; Walsh & Kunapo, 2009).

Reduced forest and shrub cover leads to decreased assimilation by vegetation and lower levels of supply of wood and organic carbon to streams (Lammers & Bledsoe, 2017). Reduced in stream carbon cycling can decrease nitrogen (and soluble phosphorus) retention times in the terrestrial and aquatic environment (Grimm et al., 2005). Urban derived hydrological and geomorphic changes (less ground water supply and channel incision) can also disrupt groundwater and flowing water interactions in both the riparian and hyporheic zones of the stream which can decrease the natural loss of nitrogen as N_2 gas through denitrification (Lammers & Bledsoe, 2017; McClain et al., 2003).

Increased soluble phosphorus concentrations in streams come from diffuse and point sources associated with urban land use (septics, sewage treatment plants, fertilizers and organic contaminants such as animal wastes). Reduced riparian vegetation decreases in-stream organic carbon which can decrease phosphorus assimilation (Lammers & Bledsoe, 2017). In many Australian soils phosphorus is a limiting nutrient for plant growth, increased phosphorus supply from urban sources generally promotes weeds which are more adapted to higher nutrient soils (Buchanan, 1989). A large amount of terrestrial and aquatic phosphorus is bound to soil and sediments particles, mostly fine sand, clays and silts (Houshmand et al., 2014) and is typically mobilised to streams from increased erosion of pre-existing upland sources (Lovett et al., 2007). The increased power of storm flows in the stream channel also leads to mobilisation of bank and bed sediment which can have high concentrations of particulate phosphorus (Lammers & Bledsoe, 2017). Most of this particulate phosphorus is delivered to aggrading sections of the stream system or downstream receiving waters (lake, estuary and marine ecosystems).

A large scale study in the Melbourne region measured concentrations (at base flow and during storm events) of a number of nutrients and analysed their distribution in relation to TI (range: 0.1% to 49%) and EI (Hatt et al., 2004; Taylor et al., 2004). These studies only used catchments where land use was either urban or forested land and so removed confounding results that may have been driven by other land use such as industry, agriculture or horticulture. Median concentrations of total phosphorus (particulate and soluble) doubled and soluble phosphate quadrupled (~0.003 to 0.012

mg/L^{-1}) with increases in TI. Further analysis of the this data using step wise regressions indicated that soluble phosphate concentrations were best fitted to EI and that a value of 5% EI represented a break point where concentrations tended to stabilise (Walsh, Roy, et al., 2005). Nitrogen showed a different pattern with dissolved inorganic nitrogen (NO_3, NO_2 and NH_3 combined) and total nitrogen rising with septic tank density (0 to 141 septics/km^2) with highest septic densities between 4-12% TI and very few below 2% TI and above 30% TI as piped sewer systems became more common. Median dissolved inorganic nitrogen concentrations showed a 5 fold increase (0.3 to 1.8 mg/L^{-1}) with increased septic tank density, total nitrogen followed the same trend and doubled in concentration from ~0.8 to 2 mg/L^{-1}. Nearly the entire rise in total nitrogen and dissolved inorganic nitrogen concentration occurred in the range of 0-3.9% TI and 0-0.4% EI.

Although the concentration of nutrients is relevant to in-stream biological function (in particular algal or bacterial production) the sum of concentration and flow (defined as the load) determines the amount of nutrients delivered to downstream habitats. In the Melbourne study there was an increase in load per unit area of catchment as TI and IE increased. Loads of suspended solids, total phosphorus, total nitrogen, soluble phosphate and dissolved inorganic nitrogen increased by around 10 times as TI increased from 0.1 to 49% (Hatt et al., 2004). This data shows that although nutrient concentrations may drop under very high urban densities this may be a consequence of runoff increasing faster than the source of nutrients. An important implication of these results is that with decreased concentrations but higher efficiency of downstream transport nutrients are much less likely to be assimilated or processed in the stream leading to higher loads delivered to downstream water bodies.

5. Pollutants

Urban land use has long been associated with a range of pollutants in surface runoff (Weeks, 1982). Urban drainage from impervious areas has been shown to commonly contain a mixture of oil, grease, polycyclic aromatic hydrocarbons (PAH), polychlorinated biphenyl (PCB) and heavy metals (Allinson et al., 2014). Many of these pollutants are considered as toxicants but heavy metals and PAHs are of greatest concern because of their biological toxicity, persistence in the environment and potential for bio-accumulation. Another group of toxicants of emerging concern are micro-pollutants including pesticides, herbicides, hormones, pharmaceuticals and personal care products which can be biologically active at very low concentrations (Allinson et al., 2014). Many of the hydrological changes associated with urbanisation also increase the efficiency of delivery of these pollutants to streams and downstream receiving waters.

A final area of concern is the contamination of waterways with potential human pathogens sourced from urban infrastructure (primarily septic tanks but also domestic animals). Levels of *E. coli* are used as a tracer for warm blooded animal faecal contamination of water. In developing catchments septic tank density is considered the main potential risk of human faecal contamination. Additional factors that may determine the level of risk are the proximity of the septic tank to a waterway or the integrity and level of maintenance of the septic tank (Walsh & Kunapo, 2009).

6. Algal biomass and composition

As for nutrients benthic algal biomass increased by approximately tenfold (3 to 30 mg/m^2)with increasing TI and EI in the Melbourne study (Taylor et al., 2004). The increase in algal biomass was postulated to be primarily driven by release of filamentous green algae from phosphorus limitation through increased PO_4 concentrations in runoff (Taylor et al., 2004). Further analysis of this data indicated that maximum algal biomass was attained at between 2% and 5% EI depending on season (Walsh, Fletcher, et al., 2005).

Examination of benthic diatom species/taxa across the Melbourne urban gradient showed a clear distinction between sites above and below 1% EI in compositional structure (Newall & Walsh, 2005). European diatom derived indices of water quality showed a strong negative correlation with urbanisation indicating that diatom species/taxa composition was responding to degradation in general water quality (electrical conductivity, temperature, suspended sediments), similarly two other diatom indices designed to detect nutrient enrichment also showed a strong negative relationship with urbanisation (Newall & Walsh, 2005). Overall changes in both the biomass and composition of benthic algae was postulated to be driven by a combination of changes in salinity (measured as electrical conductivity median range across all sites 70-700 $\mu S\ cm^{-1}$ with a break point in diatom composition at ~300 $\mu S\ cm^{-1}$) and increased supply of soluble phosphorus through frequent small flow storm events (Newall & Walsh, 2005; Taylor et al., 2004).

7. Macroinvertebates

Macroinvertebrates species have a central ecological role in many stream ecosystems and may be vital for the "health" of whole river networks (Clarke et al., 2008; Urrutiaguer, 2016). Many studies have shown a decrease in invertebrate diversity and abundance across urban gradients (Paul & Meyer, 2001) and this group of organisms has been considered as one of the most useful for comparing inter-regional responses to urban land use (Walsh, Roy, et al., 2005). In Australia the response of invertebrate communities to urban effects has been extensively used as surrogate for aquatic condition and in particular the SIGNAL score (Stream Invertebrate Grade Number –Average Level) has been used for many decades in the Melbourne region (Urrutiaguer, 2016). Typical responses of invertebrates to urban stress are a loss of taxa sensitive to disturbance and an increase of taxa typical of highly urbanised streams (Walsh et al., 2007).

Two studies of urban and forested land effects around Melbourne have shown rapid decreases in invertebrate diversity at very low levels of impervious cover, with very few sensitive species occurring at levels of TI of 4% in the Yarra River (Walsh et al., 2007) and 6-15% EI in small streams of the Melbourne region (Walsh et al., 2004). A more detailed study of both species and families of macro invertebrates from 572 sites across the Melbourne region (Walsh & Webb, 2016) used a more refined measure of effective impervious which weights the effect of the impervious area by the distance to the nearest stream or drain and is termed **Attenuated Impervious (AI)** (Walsh & Kunapo, 2009). Walsh and Webb (2016) showed a decline in 51 of the 60 families recorded with increasing AI, with 24 families showing a steep decline and their probability of occurrence reducing to near zero at AI values of 3%, three of these families were not found at AI values >1%. A further 6 families showed a steep decline to low or intermediate probability of occurrence at 3% AI. A comparison of the effect of AI on genera/species versus families (figure 2) showed a much greater impact on genera/species

at AI levels above 2.5% with 11 out of 60 families (18%) never recorded at AI >2.5% compared to 296 of 477 (62%) of genera/species (Walsh & Webb, 2016). The sharp decline in the probability of occurrence in whole families of invertebrates at AI values of <1% suggest a lack of resistance to small levels of urban stormwater stress (Walsh & Webb, 2016) with the results indicating that the lowest level of AI that at which a decline in the SIGNAL score could be inferred was 0.1 to 0.3% (equivalent to 1000-3000m^2 of directly connected impervious area per km^2). A comparison of the effect of AI versus **Attenuated Forest Cover (AF)** showed that intact riparian forest can marginally reduce the impact of AI for a small number of families that are tolerant to some level of urban impact, indicating that retaining riparian buffers is only likely to have a small effect on family occurrence if urban-stormwater derived stress is not addressed (Walsh & Webb, 2016).

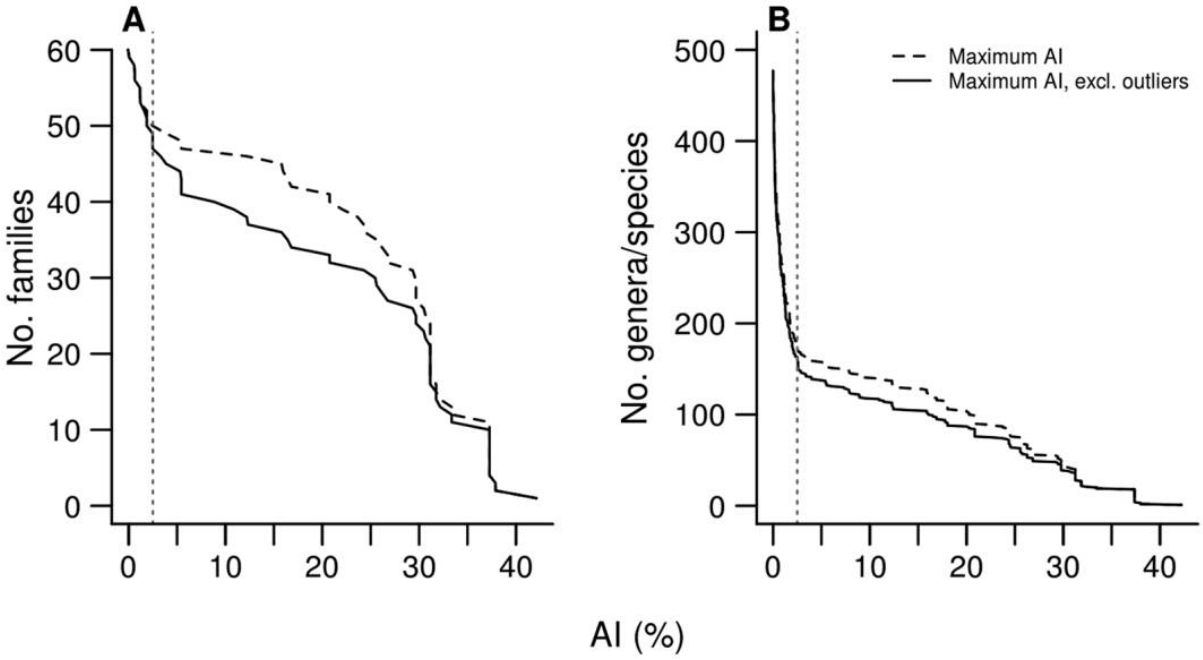

Figure 2. (Figure 7 of (Walsh & Webb, 2016)) Plots of the cumulative number (no.) of taxa that occur up to a particular value of attenuated imperviousness (AI) for family-level records (A) and the same records identified to genus or species (B). Data are for taxa recorded in the Melbourne region from the 60 families modeled in our study including data from additional locations (Fig. S1C). In each plot, taxon occurrences are ordered by the maximum AI value from which they have been recorded (maximum) and the maximum AI value ≤ 1.5× the interquartile range (maximum excluding [excl.] outliers). The plots show that most families were collected from streams with >2.5% AI (dotted vertical line), but that most genera/species were not recorded from streams with >2.5% AI.

8. Indicators of stream ecological condition

A number of water column and stream bed physical, chemical and biological indictors are commonly used to assess stream "health". Many of these indicators have been chosen due to their association with primary drivers to ecological degradation in running waters (Table 2). Increased values of abiotic indicators that typically increase with reductions in ecological values are; nitrate (NO_3), ammonia (NH_4), Total Nitrogen (TN), phosphate (PO_4), total phosphate (TP); dissolved organic carbon (DOC); total suspended solids (TSS); electrical conductivity (EC) and temperature (^oC). Increases in the water column concentration of all of the nutrients (NO_3, NH_4, TN, PO_4 and TP) as well as DOC and TSS generally lead to greater loads of these elements being delivered downstream waters.

Commonly used biotic indicators that often increase in association with decreased ecological function are algal biomass both in the water column and on the stream bed. More sophisticated biotic indicators of biological diversity are benthic algal species composition (Newall & Walsh, 2005) and the presence or absence of macroinvertebrates at the family and order level (Gooderham & Tsyrlin, 2002). All of these indicators have been shown to vary in response to ecological stress and in many cases indicator variables have been selected due to their high sensitivity to impacts of urbanisation (e.g. SIGNAL, the Stream Invertebrate Grade Number –Average Level) (Stewardson et al., 2010).

TABLE 2. The primary threats to streams and rivers. (Modified from (Allan & Ibañez Castillo, 2009).)

	Proximate causes	**Abiotic effects**	**Biotic effects**
Habitat alteration	Land-use change including deforestation, urban development	Loss of natural flow variability, altered habitat. Reduced habitat and substrate complexity, lower base flows Altered energy inputs, increased delivery of sediments and contaminants, flashy flows	Reduced dispersal and migration, changes to water quality and assemblage composition. Reduction in biological diversity favoring highly tolerant species. Changes in assemblage composition, altered trophic dynamics, can facilitate invasions
Invasive species	Aquaculture, sports fishing, pet trade, ornamental plants	Some invasive species modify habitat, otherwise minor	Declines in native biota, biotic homogenization, can result in strong ecosystem-level effects
Contaminants	Nutrient enrichment from agriculture, municipal wastes, urban deposition, atmospheric deposition, waste disposal, organic toxins.	Increased N and P, altered nutrient ratios. Reduced pH. Increased trace metal concentrations (e.g., Hg, Cu, Zn, Pb, Cd). Organic toxins Increased levels of PCB, endocrine disruptors, some pesticides	Increased productivity, algal blooms, altered assemblage composition Physiological and food chain effects Toxic effects through biomagnification Physiological and toxic effects

At higher trophic levels indicators such as the ratio of the sensitive coho salmon to the more tolerant cutthroat trout have been used as indicators of urban stress with in the USA (Kennen et al., 2005; National Research Council, 2009). Similarly the likelihood of encountering male, female or immature platypus in the Melbourne region has been used to indicate urban stress (Martin et al., 2014).

In the USA the Index of Biological Integrity (IBI) is a integrated quantitative measure that has be used to distinguish among a range of aquatic conditions (poor through excellent). It uses a range of data including invertebrate species richness and composition, trophic composition, and fish abundance and condition but also incorporates professional judgment based on the relative sensitivity of each of these parameters to stressors (National Research Council, 2009). IBI indices have been developed

for a number of USA states and are used to detect the effect of non point source stressors to ecosystems that may not be detected by reliance on water quality or a more limited biological indicator alone (Kennen et al., 2005). Figure 1 shows the significant relationship (P <0.0001) between the North Carolina IBI and percent urban land use.

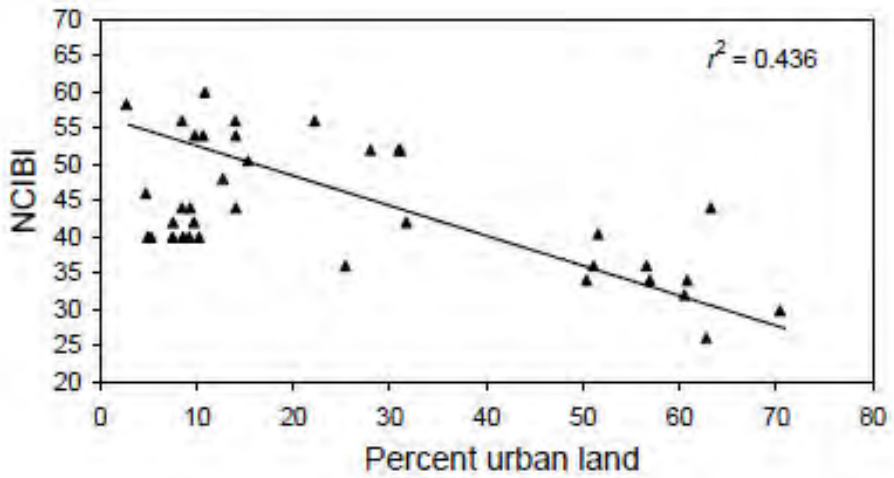

Figure 1. (from (Kennen et al., 2005)) Regression relation between percent urban land and the North Carolina index of biotic integrity (NCIBI).

9. Summary of impacts on steam ecological function of low urban density

Studies in Australia have shown that biological indicators (algal biomass, macroinvertebrate biodiversity and platypus numbers) show steep declines from 0% to <10% TI. Similarly A broad scale study in Connecticut showed that all catchments with TI >12% failed a macro invertebrate index for stream health (Figure 3). Results from the Connecticut study clearly show the high level of variability in stream ecosystem response to TI at low levels of imperviousness. Most streams in the range of 5-12% TI failed the macroinvertebrate index and a substantial proportion of streams at 2-3% TI also had very low scores (Figure 3). All streams with greater than 12% TI failed the index of stream health (Coles, 2012).

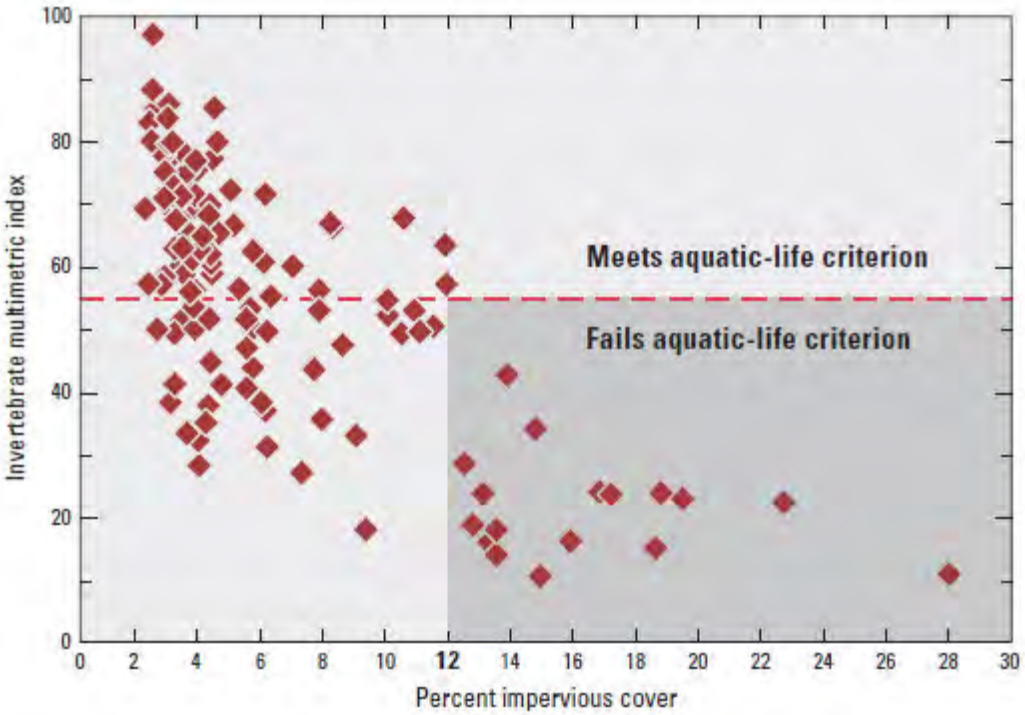

Figure 3. (Figure 7-1 of (Coles, 2012)) The Eagleville Brook impervious cover TMDL(Total Maximum Daily Load) is based on a Connecticut Department of Environmental Protection study that indicated streams in watersheds with impervious cover exceeding approximately 12 percent (the darker area) failed to met the Connecticut aquatic-life criterion for healthy streams.

There is a growing body of literature that has studied the impacts of urbanisation on abiotic and biotic components of steam function. A consistent result of these studies is that stream quality begins to decline from the lowest level of urbanisation measurable by current land use data (Walsh & Webb, 2016) and that degradation of aquatic biological communities begins at the onset of urban development (Coles, 2012). The extent which ecological function is compromised at low levels of urbanisation is not always clear as biological indices of steam health are often designed to detect changes in the occurrence of species known to be sensitive urban stressors. The rapid decline of organisms higher in the food chain (such as platypus) to very low levels of imperviousness (<3%) indicates a substantial change in ecological function. The data shows that macroinvertebrate biodiversity at both the stream reach and catchment level can be severely impacted at very low levels of urban density with macroinvertebrate species richness rapidly declining between 0% and 2.5% AI (King et al., 2011; Walsh & Webb, 2016).

A consistent impact of urbanisation is increases in concentrations of soluble and particulate nitrogen and phosphorus which are detectable at low levels of urbanisation (<2% EI) which are implicated in changed nutrient processing rates in the stream and increased algal biomass. Increased depositional nutrients delivered from impervious surfaces are almost always associated with increased contaminant loads, with many of these contaminants having not been assessed for their aquatic toxicity as they are relatively novel compounds. A study in Melbourne of eight urban sites sampled on two occasions detected 14 metals with copper and zinc found in all samples, in addition 15 herbicides and 93 semi-volatile organic chemicals were found in at least one sample (Allinson et al., 2014). This study also tested all samples against a toxicity bio-assay using bacteria and algae and found that all samples were moderately or strongly toxic to bacteria and all but two sites were toxic to microalgae (Allinson et al., 2014). The close association of a new suite of toxicants with the more

commonly assessed nutrients, sediments, pesticides, metals and physicochemical changes in water quality has not been assessed at low levels of urban impact; however they remain a potentially important stressor to the biotic integrity of streams and receiving waters at very low levels of concentration.

It is still unclear which stressors cause the declines in stream biota observed at low levels of urbanisation. It is quite probable that different stressors may be more important under different catchment conditions and with different types of urbanisation (townships, clustered versus diffuse development). There are a number of commonly measured stressors that can be directly related to changes in biota such as nutrient enrichment leading to increased algal biomass; salinity and toxic metals impacting bacterial, algal or macroinvertebrate survival; or sediment smothering invertebrates or fish gills. Many of these stressors frequently increase together; hence the influence of one factor is often difficult to distinguish from a suite of potential impacts. Similarly there may also be a synergistic effect of multiple stressors or toxicants that lead to a greater impact than would be predicted from each stressor individually.

10. Threats to ecologically sensitive waters

Loads of nitrogen, phosphorus and sediments generated from urban areas delivered to downstream waters shown a linear increase with increasing urbanisation. Increases in upper watershed catchment urbanisation are almost always going to lead to increased loads of nutrients and sediments to slower flowing water bodies (reservoirs, lakes, low land rivers, coastal waters and estuaries). The magnitude of the increased loads will be determined by the level of urbanisation, proximity to watercourses, direct connection of impervious areas, climate, topography, vegetation cover and geomorphology (soils types). Increased loads of both nutrients and sediments to estuaries have been a primary concern for the ecological health of these systems. In particular smaller estuaries are more susceptible to eutrophication due to their low buffering capacity and limited nutrient processing and assimilation rates. This is particularly the case in intermittently open or permanently closed estuaries or coastal lagoons.

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Threats of residential development to aquatic natural values in the Break O'Day Municipality

Simon Roberts Dec 2021

Urban development in proximity to Grants Lagoon, Binalong Bay and Skeleton Bay. Source: LISTmap.

1. Introduction

This report looks at potential nutrient and toxicant issues of aquatic systems in the BOD council area arising from residential development in rural areas (often referred to as exurban development) and townships. There is a trend of expanding exurban development in Australia driven by the desire for both amenity and lifestyle changes. Increasing residential development has led to concern about potential degradation of ecological values in rural areas and in particular the impact on waterways and the coastal environment (Tasmanian Planning Commission 2009). Similarly the desire to live in a coastal location has lead to increased pressure to expand existing townships within the coastal zone which has the potential to lead to ecological degradation of adjacent water bodies and the marine environment (Victorian Coastal Council et al. 2011).

It has been recognised for some time that changes in land use can have profound and often irreversible impacts on both freshwater and estuarine systems. Harris (2001) reported that land clearing in catchments can lead to far reaching "deleterious changes to soil properties, vegetation and surface and ground water quality and quantity"(Harris 2001). Harris (2001) concluded that at 50% vegetation clearance there is a sharp increase in the export of salinity, suspended solids and nutrients to waterways with a corresponding decline in water quality. He also noted that clearing natural vegetation leads to

increased runoff with greater stream power which can cut down into the soil and subsoil of watercourses.

Australian catchments have naturally low levels of export of nutrients to waterways due to low rainfall, generally low relief and low nutrient status of our soils. Freshwater ecosystems, estuarine and coastal lagoons in Australia are therefore particularly susceptible to anthropogenic impacts that can lead to changes in flow or eutrophication (Hadwen and Arthington 2006). Increased nutrient and sediment loads from urban development, waste disposal, agriculture and aquaculture have all been implicated in changes to both river, estuary and coastal lagoon ecology through a deterioration in water quality (Kennish 2002). In general long term water quality monitoring of waterbodies has been restricted to rivers and dams in Tasmania with analysis of land use impacts being mostly attributed to broad scale land use such as grazing, forestry or conservation land (DPIPWE 2020; Hardie and Bobbi 2018; Wagenhoff et al. 2017).

The Resource Management and Planning System (RMPS) of Tasmania has the primary objective of the sustainable development of natural and physical resources and the maintenance of ecological processes. State legislation and State Policies of the RMPS govern the management of freshwater resources and their ecosystems throughout the State. Legislation that contributes to the RMPS shares a common set of high-level objectives (Schedule 1 Objectives of Land Use Planning and Approvals Act 1993). The RMPS also has two State policies that are relevant to protection of both freshwater and marine ecosystems; the Tasmanian State Coastal Policy 1996 and State Policy on Water Quality Management 1997. However, there are few prescriptions within the planning system that consider broadscale ecological impacts of development on aquatic systems.

There is currently a paucity of physical, chemical and benthic invertebrate data from estuaries within the state required to assess the ecological status of these water bodies. This data would be particularly relevant when assessing the potential impacts of current and proposed planning provisions on aquatic environmental values (Edgar, Barrett, and Graddon 1999).

This report details the potential direct and indirect environmental impacts of increased residential development both within and outside established urban zones on waterways in the Break O'day Municipality (see (Roberts 2021) for a more detailed review on residential land use impacts). It summarises the current status and threats to estuaries and coastal lagoons based on reports and studies done to date. Finally it considers various prescriptions that may be considered at the planning level to mitigate or remedy potential impacts of urbanization.

2. Potential direct and indirect environmental impacts of increased residential development on waterways

Increased residential development is a significant driver of decreased aquatic and terrestrial biodiversity (Cuffney et al. 2010; Gagné and Fahrig 2010; King et al. 2011). Urban development or residential development is a considered as one of the most potent land use changes likely to cause degradation to streams on a per area basis (Barmuta et al. 2009; Edgar, Barrett, and Graddon 1999; Urrutiaguer 2016). Increased nutrient, toxicant and sediment loads are highly positively correlated with increases in urban

density (Hatt et al. 2004). Edgar *etal* (1999) calculated an "environmental impact factor (EIF)" for natural lands (unmodified vegetated land and water bodies) of 1, an EIF of 5 for cleared forest and an EIF of 20 for urban land. These EIF values are considered to represent the relative increases in nutrient and sediment loads in runoff from each type of land use (Edgar, Barrett, and Graddon 1999). State wide analysis of broad scale effects of land use on 95 environmental factors in Tasmania found that urban land use ranked in the in the top six factors negatively effecting water quality for four of the six indicators examined (DPIPWE 2020).

Current understanding of the impacts of residential development has lead to the realization that a very small area of impervious area as a percentage of total area of a catchment (<2%) can have significant effects on stream ecology (Urrutiaguer 2016). There is also a clear threshold of ~5% catchment imperviousness beyond which ecosystems are substantially damaged (Ewart 2018). In Tasmania urban land use has been implicated in changes in river water quality indicators whilst representing very low levels of the catchment area (DPIPWE 2020). A key message of the DPIPWE (2020) report was the limited information about factors likely to influence river ecosystem health such as the effect of diffuse pollution or temporal changes in land use.

Estuaries and coastal lagoons are considered as particularly susceptible to impacts from changes in land use as they are generally nitrogen limited and are sensitive to increased inputs of nitrogen from fertilizers, urban run-off and land clearing.(Harris 2001) Increased pollution from both point sources (sewage treatment plants, stormwater outfalls) and non-point sources (septic tanks, fertilizer, urban run-off) lead to higher nutrient and organic carbon loading as well as pathogens and chemical contamination of estuarine waters and sediments (Kennish 2002). Urban runoff can have substantially higher concentrations of phosphorus and has a higher pH which can significantly change the vegetation in impacted areas, a common consequence is the establishment of weed species in formally low nutrient soils (Buchanan 1989). Similarly changes in hydrology either as increased or decreased or altered flow regimes can have profound effects on estuaries and coastal lagoons through increased transport of sediments and shifts in salinity and temperature regimes. Artificial opening or expansion of natural outlets by dredging can also significantly affect the ecology of estuaries and coastal lagoons through increased marine flushing or import of coastal derived organic matter. Artificially changed flushing regimes have been implicated in large changes in fish and invertebrate populations (Clark and Johnston 2016) as well as fish kills brought about by low oxygen concentrations from decomposing plant matter in re-flooded areas of the system (Hadwen and Arthington 2006).

Despite the potential threats to coastal lakes and lagoon ecosystems from antropogenic activities there is still a paucity of data on water quality or inventories of estuarine biota. The latest Australian State of the Environment Report 2016 indicates that the most likely trend is a decrease in the ecological state of coastal lagoons however a robust assessment is difficult due to a lack of baseline data (Clark and Johnston 2016). The State of the Environment Report 2016 concluded that the outlook for lagoons was tightly coupled with human population growth and that current development and land use decisions are likely to lead to ongoing deterioration.

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Examination of trends in long term datasets of six river health indicators across 85 sites in Tasmania has shown a decline in at least one water quality indicator in 41% of the sites (DPIPWE, 2020). Sites with stable or improving trends were typically at higher elevations (ie higher in the catchment) whereas sites with declining trends were at lower elevations. The impacted sites occurred across all the sampled areas of Tasmania (north, east and south of the state). Differences in trends were attributed to the level of development in catchments with upstream sites generally being undisturbed or with low levels of development. Although few of the sites analysed for long term trends in water quality in Tasmania were in th BOD municipality the general trend of increased development in the lower reaches of catchments is typical of most catchments in the municipality.

Cumulative and increasing ecological pressures in coastal environments have been recognized as having direct effects on both estuaries and coastal embayments. The Victorian Coastal Council (Victorian Coastal Council et al. 2011) identified a key issue to be "understanding the cumulative ecological consequences of coastal development", and identified the direct pressures of increased development to be:

- Roads and other infrastructure, which affect runoff, input of toxicants, change access for wildlife, influence patterns of recreational use of undeveloped areas, etc;
- Development places new demands on nutrient management, with an increase in the volume of nutrients that must be accommodated;
- Use of undeveloped land (recreation, access by pets, etc.) and potential impacts on biodiversity (species that use particular coastal habitats, such as dune-or beach-nesting birds);
- Biosecurity issues with transport of marine pest species by recreational activities (boats, trailers, wet gear, etc.);
- Increased pressure on marine resources (e.g. recreational fish stocks);
- Potential impacts to marine environments from increased off-shore activities (e.g. off-shore oil and gas, marine renewable energy); and
- Increased exposure to risk associated with greater population densities being located in current and future hazardous areas.

Potentially important cumulative or broad scale diffuse effects of development is considered a key consideration for landscape planning in coastal areas (Victorian Coastal Council et al. 2011). In Tasmania other than through local planning schemes there is little integration between the management of catchments and the coastal and marine zones. The recently adopted Rural Water Use Strategy had little consideration of catchment water use on the ecological function of estuarine or coastal ecosystems. The strategy stated that;

> "*Whilst water quality is a consideration in executing functions under the WMA, catchment management and management of water quality more generally are principally managed through other suitable frameworks and instruments outside the water management framework as it relates to the Rural Water Use Strategy."*

The "other suitable frameworks and instruments" are not listed in the Rural Water Use Strategy. Land use planning would be one such mechanism that could be used to control broad scale effects on water quality by limiting potentially threatening types of use or development and designating mitigation actions when uses are potentially threatening to ecological function of waterbodies.

3. Status and threats to estuaries and coastal lagoons in the BOD municipality

Apart from threats to the ecological health of streams, rivers and open estuaries by residential development the BOD council area has a large number of intermittently open/closed estuaries and coastal lagoons that are potentially threatened by increased residential activity and development in their catchments (Bushways 2009; Crawford, Ross, and Gibson 2011; Edgar, Barrett, and Graddon 1999; North Barker 2009). Intermittently open and closed estuaries are considered more vulnerable when they are closed as any nutrient or pollutant entering the water body cannot be flushed out by tidal activity (Crawford, Ross, and Gibson 2011; Hadwen and Arthington 2006; Kennish 2002). Similarly permanently closed coastal lagoons have to process any additional nutrient or toxicant loads internally.

Hadwen etal (2006) reviewed threats to intermittently open/closed estuaries in Australia and concluded that "relatively little is known of the ecology of these intermittently open systems" and that "lack of knowledge of how these systems respond to anthropogenic activities threatens their long-term sustainability". Intermittently open/closed estuaries are functionally different to open tidal estuaries as they typically have low tidal ranges with infrequent periods of connection to the sea. During periods of low connection to the marine environment intermittently open/closed estuaries may behave more like saline lakes, but with unique biogeochemical and limnological processes (Hadwen and Arthington 2006). Intermittently open/closed estuaries were found to support a wide array of invertebrate and fish taxa and this diversity was strongly influenced by entrance opening and closing regimes (Hadwen and Arthington 2006).

Hadwen etal (2006) considered the major processes threatening the ecological health of coastal waterways and in particular intermittently open/closed estuaries in Australia where:

- Eutrophication and contamination – excessive nutrient and contaminant inputs from agricultural, industrial and urban sources;
- Fisheries – impacts of excessive harvesting of fish and macroinvertebrates by commercial and recreational fishers;
- Modification of flow regimes, including water allocation to industry, urban settlements and agriculture, and specifically for intermittently open/closed estuaries, the artificial breaching of berms;
- Tourism – increasing tourist and resident recreational demand and use; and
- Coastal development – increasing land clearing for urban, industrial and agricultural land uses, and habitat loss through in-system modifications.

Crawford et al (2011) noted that estuaries on the east coast of Tasmania are predominantly poorly flushed or intermittently open/closed and that these types of estuaries are either moderately or highly susceptible to degradation to nutrient stress derived from catchment agriculture and urban settlement. The East coast of Tasmania was considered to be particularly sensitive to anthropogenic stressors due to generally lower rainfall and a greater variability in river and stream flow, in addition lower tidal ranges and longshore sand transport increased the likelihood of restricted flow or closure of entrances (Crawford, Ross, and Gibson 2011).

There are only a small number of studies that have individually considered the ecological status of estuaries and coastal lagoons in the Break O'Day municipality. Edgar *etal* (1999) reported on 24

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Tasmania estuaries of which three were within the Break O'Day municipality (Grants Lagoon, Templestowe and Douglas). Edgar *etal* (1999) concluded that there were nine major threats to Tasmanian estuaries;

- increased siltation resulting from land clearance and urban and rural runoff,
- increased nutrient loads resulting from sewage and agricultural use of fertilisers,
- urban effluent,
- foreshore development and dredging,
- marine farms,
- modification to water flow through dams and weirs,
- acidification of rivers and heavy metal pollution from mines,
- the spread of introduced pest species, and
- long-term climate change.

Edgar *etal* (1994) reported that virtually all the medium sized typically open mouthed estuaries along the east coast of Tasmania where degraded by pollution, siltation, nutrient loads and shore development.

The most comprehensive analysis of estuaries within the Break O'Day municipality is the North Baker report from 2009 for NRM North and Break O'Day Council (North Barker 2009). This report assessed 22 lagoons and wetlands within the Council area to provide a "health check" and to identify current and future stressors on these water bodies. The North Baker (2009) report considered threats to each water body with particular attention paid to catchment activities and disturbances. Each wetland/lagoon had a 100m buffer area around the perimeter examined in detail. Consistent with previous studies urban development posed a current and potential threat through a number of mechanisms (numbers in brackets refer to wetland/lagoon number in report; see below);

- Increased use of the area by people especially over summer leading to increased impacts, such as rubbish, pollution, weeds and vegetation loss (3, 4, 6)
- Potential spill or leaching from the nearby sewage treatment systems or rubbish dumps (3, 8, 10)
- Vegetation clearance from additional development in buffer zone (3, 4, 6, 8, 10, 11, 14, 15)
- Storm water runoff from currently developed areas and seepage from septic systems (3, 4, 6, 8, 10, 11, 14, 15, 18, 21, 24)
- Runoff from highway or roads (7, 8, 10, 13, 14)
- Additional urban development in buffer and catchment (3, 4, 6, 8, 10, 11, 14, 15, 17, 18, 19, 21)

(3. Moriarty & Windmill Lagoons; 4.Diana's Basin & Crockers Arm; 6. Grants Lagoon; 7. Parkside Lagoon; 8. Chimneys Lagoon; 10. Wrinklers Lagoon; 11. Scamander River Mouth Backwater; 13. Lower Marsh Creek and Chain of Lagoons; 14. Boggy Creek Wetland; 15. Yarmouth Creek; 17. St Helens Point- other lagoons; 18. Upper Medeas Cove Marshes; 19. Onion Creek & St Helens Point (other); 21. Four Mile Creek; 24. Douglas River & wetlands)

Eleven of the water bodies studied by North Baker (2009) were found to be under threat from current urban development with five under high threat, four under moderate threat and two under low threat

in 2009. Two of the remaining eleven water bodies were considered to be under threat from runoff from roads (North Barker, 2009). Significantly the North Baker (2009) report considered future urban development to be an additional threat for twelve water bodies however there has not been any additional assessment of this threat since 2009.

Concomitant with the North Baker study Bushways Environmental Services produced a Falmouth and Henderson Lagoon environmental management plan (Bushways 2009) for the Falmouth Community Centre. This detailed report considered a number of threats and potential management issues in relation to the water bodies including:

- Land use impacts from urban development including large subdivisions.
- Roads increasing stormwater runoff and pollutants.
- Vegetation clearance for new developments, infrastructure and fire hazard reduction.
- Impacts of pets, stormwater pollution and "tidying up" of native vegetation around homes and roads.
- Insufficient information on nutrient and toxicant levels in the systems or their potential sources (septic tanks, fertilizer, herbicide and pesticides from agriculture or residential areas).
- Increased pressure on shore birds and other fauna from visitors or road kill.
- Artificial opening and closing of the lagoon.

All the reports produced to date highlight the threat from urban development on many of the estuaries and coastal lagoons in the Break O'Day municipality. Most of these waterbodies are directly threatened by current or potential urbanization which leads to increased amounts of impervious surfaces—roads, parking lots, roof tops, and so on—and a decrease in the amount of forested lands. Similarly increased recreational or domestic use of these areas also has potentially significant impacts such as rubbish, pollution, weeds and vegetation loss.

Many of the drivers of these ecological threats are relatively simple to quantify (vegetation clearance, new roads, number of dwellings) however their ecological impact is often difficult to assess directly or in combination with other stressors. Cumulative impacts on water bodies such as eutrophication or loss of macro-invertebrate diversity is able to be monitored but very little data is available to make these assessments.

4. Recommendations for avoiding or mitigating impacts from urbanization on estuaries and coastal lagoons

A common feature of all the studies into estuaries and coastal lagoons in the BOD council area is a recommendation for the collection of data to determine the current physical and biological function of these water bodies. Currently there is a lack of data on physio-chemical (salinity, flow, temperature, pH), biodiversity, nutrients or toxicants in either the water column or sediments. Most of the data collected is more than 10 years old has been opportunistic, limited in extent and has not captured seasonal or annual trends.

The hydrology of east coast catchments is more typical of arid areas with long periods of low precipitation with low or zero flow punctuated by very large flow events. The ecology of water bodies

are generally highly attuned to natural flow regimes. Ecological management of flow in rivers and streams primarily tries to mimic or retain the natural variability in flows (Bobbi, Warfe, and Hardie 2014). A near natural flow regime is required to maintain the natural values present in the system (endemic or threatened species, floodplains and riparian communities), however in most of these systems these values have not been assessed with a level of rigour that provides certainty that all the values have been identified. The North Baker (2009) report recommended water quality monitoring over the summer months in order to assess how recreational activities and the increase in local populations are affecting the lagoons.

Restrictions on the level of residential development and the protection of currently undeveloped crown land in proximity to lagoons and wetlands are a common recommendation of the North Barker (2009) report. Similarly, a common recommendation of the North Barker (2009) report was that restrictions on the type and scale of development on private land be put in place in the buffer areas and catchments around many of the lagoons and wetlands; in some cases they also recommended that current zoning that would allow development be changed to a conservation zoning.

There is now a general recognition that residential development will lead to increased stormwater run-off with high levels of associated pollutants. Other jurisdictions have implemented mechanisms to try and mitigate or minimise the effect of residential development (and its associated infrastructure) on water bodies. In Victoria there is now state wide guidance from the EPA in relation to urban stormwater (EPA (Vic) 2021). In Victoria residential developments are encouraged to mitigate the amount of stormwater generated through on-site infiltration or use of stormwater as their "general environmental duty". There is also a required reduction in pollutant loads of 45% for nutrients (nitrogen and phosphorus) and 80% for suspended sediment compared to the untreated runoff (EPA (Vic) 2021). The *Tasmania the State Policy on Water Quality Management 1997* requires that:

> *31.1 Planning schemes should require that development proposals with the potential to give rise to off-site polluted stormwater runoff which could cause environmental nuisance or material or serious environmental harm should include, or be required to develop as a condition of approval, stormwater management strategies including appropriate safeguards to reduce the transport of pollutants off-site."; and*
>
> *33.1 Regulatory authorities must require that erosion and stormwater controls are specifically addressed at the design phase of proposals for new developments, and ensure that best practice environmental management is implemented at development sites in accordance with clause 31 of this Policy.*

There are many high ecological value estuaries and lagoons that are drained by relatively small catchments on the coast of the BOD municipality. The current and potential increase in residential development adjacent too and in the catchment of these waterbodies is highly relevant to the implementation of the planning scheme. Protecting the natural flow regime of adjacent and upstream waterways and ensuring good water quality are critical to maintaining their biodiversity and ecological processes. Residential development should as much as possible be restricted to the current serviced townships with appropriate mitigation of stormwater impacts through water sensitive urban design principles (Fletcher et al. 2015).

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Water sensitive urban design (WSUD) principles can be implemented in any development that has the potential to change the water balance of a parcel of land through the construction of impervious surfaces and/or artificial drainage. The original aims of WSUD where to (cited in (Fletcher et al. 2015)):

1. manage the water balance (considering groundwater and streamflows, along with flood damage and waterway erosion),
2. maintain and where possible enhance water quality (including sediment, protection of riparian vegetation, and minimise the export of pollutants to surface and groundwaters),
3. encourage water conservation (minimizing the import of potable water supply, through the harvesting of stormwater and the recycling of wastewater, and reductions in irrigation requirements), and
4. maintain water-related environmental and recreational opportunities.

A simpler aim for new developments would be to achieve:

- Natural frequency of surface run-off.
- Natural volumes of run-off.
- Natural infiltration rates.
- Natural concentrations of pollutants

These aims are consistent with objectives of the State Policy on Water Quality Management 1997 and would better protect adjacent and downstream water bodies if implemented for new developments.

Varying levels of stormwater infrastructure are in place in many of the townships of the BOD municipality. Traditionally storm water management has been to convey additional flows generated by increased impervious surfaces to the nearest water course in order to reduce the risk of flooding. In most cases this infrastructure increases the risk of environmental damage by reducing the possibility of infiltration or trapping of sediments if this water had followed a natural flow path over pervious areas. Increased connection to current or planned flood mitigation stormwater infrastructure is therefore likely to be an ongoing threat to adjacent water bodies. Potentially mitigation of some of these impacts from “end of pipe” flows from serviced stormwater areas could be directed to appropriately designed retention systems.

A further consideration is the provision of sewage infrastructure including its proximity to water bodies, level of treatment and risk of overflow or leakage. In areas not serviced by sewage pipes septic tanks are the primary waste water treatment. Risks from septic tank to adjacent water bodies are dependent on the proximity to the water course, type and size of system and level of maintenance. An audit of septic systems to check that they are working properly or require upgrading in areas close to sensitive aquatic assets may be appropriate.

5. Planning as a tool to minimise degradation of aquatic resources

The implementation of the planning scheme should further the objective of protection and or enhancement of the ecological function of waterways consistent with the objectives of Schedule 1 of LUPPA; objectives 1 (c) & (e) of the Water Management Act 1999; objectives 3 (a), (c) & (h) of the Environmental Management and Pollution Control Act 1994; and objectives 6.1 (a), (b) & (d) of the State Policy on Water Quality Management 1997.

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Residential development will in many cases be located in the coastal zone. All developments within one kilometer of the coast will be subject to the objectives and principles of the State Coastal Policy 1996 and its outcomes. Of particular relevance are the outcomes;

> *1.1.1 The coastal zone will be managed to ensure sustainability of major ecosystems and natural processes.*
>
> *1.1.5 Water quality in the coastal zone will be improved, protected and enhanced to maintain coastal and marine ecosystems, and to support other values and uses, such as contact recreation, fishing and aquaculture in designated areas.*
>
> *1.1.9. Important coastal wetlands will be identified, protected, repaired and managed so that their full potential for nature conservation and public benefit is realised. Some wetlands will be managed for multiple use, such as recreation and aquaculture, provided conservation values are not compromised.*
>
> *2.1.1. The coastal zone shall be used and developed in a sustainable manner subject to the objectives, principles and outcomes of this Policy. It is acknowledged that there are conservation reserves and other areas within the coastal zone which will not be available for development.*
>
> *2.1.2. Development proposals will be subject to environmental impact assessment as and where required by State legislation including the Environmental Management and Pollution Control Act 1994.*
>
> *2.1.5. The precautionary principle will be applied to development which may pose serious or irreversible environmental damage to ensure that environmental degradation can be avoided, remedied or mitigated. Development proposals shall include strategies to avoid or mitigate potential adverse environmental effects.*
>
> 2.*4.1. Care will be taken to minimise, or where possible totally avoid, any impact on environmentally sensitive areas from the expansion of urban and residential areas, including the provision of infrastructure for urban and residential areas.*
>
> *2.4.2. Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.*
>
> *2.4.3. Any urban and residential development in the coastal zone, future and existing, will be identified through designation of areas in planning schemes consistent with the objectives, principles and outcomes of this Policy.*

There are limited opportunities within the planning scheme to influence changes in land use that may affect water quality within the BOD municipality. One area where the planning scheme has a significant influence is on the type, size and intensity of residential development and where this may occur. Strategies to manage urban development in undisturbed catchments, such as zoning and land use planning can be important tools to prevent or minimise the degradation of aquatic environments. Similarly planning tools have also been used to initiate stream-rehabilitation efforts that can have a positive effect on the biological condition and health of streams (Coles 2012; Prosser, Morison, and Coleman 2015; Vietz et al. 2016). Using impervious cover (or connected impervious cover) as a surrogate for the many correlated stressors driven by urbanisation has the potential to be used as a planning tool to trigger the implementation of “end of pipe” measures to protect the ecological function of water

bodies. Alternately "source control" at the lot or individual development stage using WSUD or other treatment methods to mimic predevelopment conditions is likely to be more effective and consistent with the "user pays" principle. Retrofitting of WSUD measures may also be appropriate when intensification of development is proposed in a semi-developed area.

The most effective method to prevent additional impacts from residential development in sensitive areas is to rezone privately zoned land to zonings where residential use is discretionary and subject to performance standards that will protect or enhance ecological values. Similarly zoning that restricts sub-division or encourages consolidation of lots will generally reduce the pressure for additional residential development and its associated additional infrastructure such as roads and services.

The Break O'Day LPS include a proposed Stormwater Specific Area Plan which has a has an objective that requires; "*That development provides for adequate stormwater management*.". The acceptable solution in this plan is to either (A1) "*be capable of connecting to public stormwater system*" or (P1) "*have regard to*" "*stormwater quality and quantity management targets identified in the State Stormwater Strategy 2010*". The stormwater SAP applies to specific zones within coastal communities that have been identified to have limited stormwater infrastructure, historic flooding, are at risk to due to local topography or have low permeability or erodible soils. All the coastal communities covered by the Stormwater SAP are poorly serviced by the existing infrastructure and the potential for additional environmental impacts from further development of existing properties could be significant. In addition, some of the properties are small may not have sufficient space to absorb additional flows if developed even if appropriate WSUD infrastructure were required.

The Stormwater SAP has been proposed so "*stormwater quality and quantity is managed to protect natural assets, infrastructure and property."* There is no information provided in relation to how it will protect natural assets. The fundamental purpose of the Stormwater SAP appears to be to decrease the impact of additional stormwater flows from development on other infrastructure. The explanatory document provided to support the Stormwater SAP states it has been proposed to "*to protect off site stormwater impacts on both private land and public infrastructure for the benefit of the whole community*."

A key requirement of both the *State Policy on Water Quality Management 1997* and the *State Stormwater Strategy 2010* are the promotion of source control strategies that treat, store and infiltrate stormwater on-site with an aim of reducing flows and decreasing pollutant concentrations. The *State Policy on Water Quality Management 1997* Clause 33.2 requires that:

> *"State and Local Governments should develop and maintain strategies to encourage the community to reduce stormwater pollution at source."*

Section 3 of this report summarises the results of the North Baker (2009) report into 22 wetlands/lagoons in the municipality of which half were considered under threat from urban impacts, it is highly likely that these threats have increased in the past 11 years. The Stormwater SAP does not reflect the potential impact of stormwater flows either through the existing stormwater infrastructure or through development outside the council stormwater system on natural values. The generation of additional stormwater from new developments being connected to the existing stormwater

infrastructure is likely to be detrimental to many of the aquatic assets of the municipality. Additionally extra flows from developments not connected to the stormwater system are also likely to increase pressures on aquatic habitats.

A key objective of a Stormwater SAP should be to reduce the overall quantity and improve the quality of urban stormwater flows to waterbodies as part of a comprehensive stormwater management program that is premised on the identification of important aquatic ecosystem values and the need to avoid or minimise any potential ecological impacts. A priority should be the management of stormwater to reduce overland flow and to increase water quality at source and where this is impractical then as part of a local treatment process incorporated into the council stormwater infrastructure.

Many studies into the effect of urbanisation on aquatic systems have shown that ecological impacts can occur at very low levels of residential development. Overall impacts of new developments on aquatic systems can be much more effectively managed and lead to less cost if these developments are primarily in already serviced areas and are discouraged in unserviced settlements or in cluster developments outside serviced areas.

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Public loses in bold assault on planning

State's environment and democracy under threat from ideological bid to clear way for developers, says **Todd Dudley**

MERCURY 23

IN the early to mid 1990s the Tasmanian Government put in place visionary pieces of legislation including the Land Use and Planning Approvals Act, the State Coastal Policy and the Threatened Species Protection Act.

Despite some flaws in the legislation (such as the exemption of forestry and aquaculture from the LUPA Act), it appeared that Tasmania was heading in a direction where ecological health, integrity and diversity would eventually become an underpinning principle of land use on the island.

Here was some political leadership promoting the long-term public interest over short term private/self interest.

Unfortunately, rather than these laws becoming clearer and more prescriptive over time, successive state governments, under pressure from vested interests including property developers and the resource and primary industry sector, have progressively weakened legislation and reduced enforcement.

About seven years ago a highly organised campaign led in the media by Stuart Clues, from the Housing Industry Association, and Mary Massina, then director of The Property Council of Australia, commenced promoting the idea of "planning reform".

This push included a bid to create one planning scheme for Tasmania statewide and the notion that Tasmania's planning system needed to "catch up" with the mainland states because it was supposedly unworkable.

The main target was the LUPA Act.

Both Labor and Liberal governments have supported this "reform" push to varying degrees.

However, the appointment of Massina in 2014 as head of a Planning Reform Taskforce raised significant questions about the independence of the process to assess planning legislation in Tasmania, given the Property Council of Australia is promoted as the leading advocate for Australia's property investment industry.

The current Land Use and Planning Bill "reforms" are part of a worldwide corporate ideological drive to remove or reduce barriers to unfettered growth and development.

In Tasmania's case the aim has been to increase the Planning Minister's power to intervene in planning matters while at the same time decrease the scope and powers of the independent Tasmanian Planning Commission.

This has come with a concerted push to reduce opportunities for public/community participation and input in planning matters.

This is not only an attack on environmental and planning laws.

Successive state governments, under pressure from vested interests including property developers and the resource and primary industry sector, have progressively weakened legislation and reduced enforcement.

It is also an attack on a key characteristic of democratic societies — that is, the critical role of independent judicial institutions (in this case the Tasmanian Planning Commission) and their ability to make decisions based on evidence and merit, free of interference from government and vested interests.

In addition, the State Government's inability to support a functional Integrity Commission and its policy of seeking to increase Tasmanias population by 150,000 people creates a "perfect storm" for corruption and disastrous planning outcomes.

Successive governments have forgotten that the purpose of planning laws.

These laws are to regulate development by adhering to careful, informed and well considered long-term planning principles rather than to facilitate market-driven ad hoc development for the benefit of developers.

Todd Dudley is president of the North East Bioregional Network.

From:	J Alexander
To:	State Planning Office Your Say
Cc:	Ferguson, Michael
Subject:	State Planning Provisions Review
Date:	Friday, 19 August 2022 2:45:03 PM

Dear Sir / Madam

The members of the Howrah Hills Landcare Group thank you for the opportunity to comment on the State Planning Provisions. We are also grateful for the extension of time allowing us to provide a submission by close of business today.

We submit that the current State Planning Provisions do not further the Objectives in Schedule 1 of the Land Use Planning & Approvals Act 1993 for the following reasons:

1. The State Planning Provisions do not address split zonings.

   The Tasmanian Planning Commission resolved the issue of split zonings in the Clarence Planning Scheme 2007 by including the following clause:

   3.6 Subdivision of Lots in more than one zone

   3.6.1 Land may only be subdivided along the zone boundaries. Any subminimal lot so created may not be the subject of residential development.

   3.6.2 The application must be considered as a Discretionary Development in accordance with Clause 3.1.8. Before deciding on the application, in addition to the General Decision Requirements in Clause 3.3, Council must consider any Specific Decision Requirements of the relevant zones.

When the Clarence Council removed the abovementioned clause from the Clarence Interim Planning Scheme 2015, the Tasmania Planning Commission made an urgent amendment to the Scheme. The urgent amendment (CLA UA5-2017) was added under Clause 9.7 Subdivision as follows:

9.7.3 Land may be subdivided along zone boundaries. Despite clause 8.9.1(b), a subminimum lot created from subdivision along zone boundaries may, after consideration of the matters in clause 8.10, be approved at the discretion of Council. With the exception of subdivision of land abutting Ringwood Road, Lauderdale or Mannata Street, Launderdale, any subminimum lot created may not be the subject of residential development.

To avoid the unintended consequences from split zonings it is important this issue is addressed in the State Planning Provisions and consideration be given to the abovementioned clauses previously endorsed by the Tasmania Planning Commission. Our primary concern is that residential development does not occur on subminimum lots.

2. The Natural Assets Code is ineffective at achieving the stated purposes. Just some examples are as follows:

   - There are currently no measures that provide for the protection of the ecosystem in which priority vegetation is a part (ie there are no measures which take into account that non-priority vegetation is an important part of ensuring the long term survival of threatened vegetation).
   - The type and extent of exemptions in C7.4.1 practically make the Natural Assets Code useless.
   - The words used in the Natural Assets Code need to be tightened up so that they are not open to interpretation.
   - By only allowing the Priority Vegetation Area to be applied in some zones makes a mockery of the purpose of the Code. For example vast areas of Tasmania are used for agriculture. As such by specifically excluding the Priority Vegetation Area from the Agricultural Zone this creates an anomaly whereby large areas of Tasmania which would otherwise have some sort of protection under the State Planning Provisions cannot have any protection due to Clause C.7.2.1(c).

     It is understood that the Codes are meant to operate in addition to the provisions in the Zones. As such we see no reason why the applicable Code overlay should be excluded from certain Zones.

3. In the final version of the State Planning Provisions the Landscape Conservation Zone purpose was altered, without adequate justification, to remove the protection of natural values, including the protection of threatened vegetation, fauna and habitat (ie the provisions of the Landscape Conservation Zone are now intended to protect only scenic values).

   This aspect combined with the current ineffective provisions of the Natural Assets Code means the public can have little confidence that the State Planning Provisions will protect Tasmania's unique natural values.

We would appreciate serious consideration of our input as outlined above.

Yours sincerely

Julie Alexander
Convenor
Howrah Hills Landcare Group Inc.

From:	Sophie Underwood
To:	State Planning Office Your Say
Cc:	Ferguson, Michael
Subject:	RE: State Planning Provisions (SPPs) Review - Scoping Issues
Date:	Friday, 19 August 2022 2:19:06 PM
Attachments:	Outlook-wlitgud1.png Attachment 1 Heart Foundation May 2016.pdf Attachment 2 Heritage Code PMAT Submission.pdf Attachment 4 NAC Review PMAT Submission FINAL.pdf PMAT Submission State Planning Provisions Review 2022 FINAL.pdf Attachmant 3 PMAT Residential Final.pdf

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To Whom It May Concern,

RE: State Planning Provisions (SPPs) Review - Scoping Issues

Phase 2 of the State Government's planning reform is underway and includes a review of the State Planning Provisions (SPPs), introduction of the Tasmanian Planning Policies, the creation of a regional land use planning framework, and a review of the three Regional Land Use Strategies.

The SPPs will also require review for consistency with the Tasmanian Planning Policies once they are finalised.

The Planning Matters Alliance Tasmania (PMAT) thanks you for the opportunity to comment on the review of the SPPs, noting that ALL SPPs are up for review. We also welcome the opportunity to recommend new provisions i.e. new codes and/ zones.

Our submission covers:

- What is PMAT;
- A summary of the SPP Review process;
- An overview of where the SPPs sit in the Tasmanian Planning Scheme;
- PMAT's concerns and recommendations regarding the SPPs; and
- Related general comments/concerns regarding the SPPs.

PMAT's concerns and recommendations regarding the SPPs cover 22 broad issues. PMAT engaged three planning experts to write further detailed submissions regarding three key areas important to PMAT: the *Local Historic Heritage Code* (Attachment 2), *residential standards* (Attachment 3) and the *Natural Assets Code* (Attachment 4). Each of the three detailed submissions have been reviewed with thanks by a dedicated PMAT review volunteer subcommittee involving a total of 15 expert planners, environmental consultants and community advocates with relevant expertise.

PMAT notes that the *State Planning Provisions Review Scoping Paper* states that the State Planning Office will establish reference and consultative groups to assist with detailed projects and amendments associated with the SPPs. PMAT requests in the strongest possible terms that, as we are an alliance representing many communities and groups across Tasmania, we should take part in these reference/consultative groups. It is vital to have a community voice in these processes.

Overall PMAT is calling for the SPPs to be values-based, fair and equitable, informed by PMAT's Platform Principles, and for the SPPs to deliver the objectives of the *Land Use Planning and Approvals Act 1993*.

Planning affects every inch of Tasmania, on both private and public land, and our well-being: our

homes, our neighbour's house, our local shops, work opportunities, schools, parks and transport corridors. Planning shapes our cities, towns and rural landscapes. Well thought through strategic planning can build strong, thriving, healthy and sustainable communities.

See PMAT's most recent opinion piece in Appendix 1, published in The Mercury on the 11 August 2022, which asks us '*Let's imagine a planning system which benefits all the community*".

Yours sincerely,

Sophie

Sophie Underwood
State Coordinator - PMAT
[redacted]

I acknowledge and pay respect to the Tasmanian Aboriginal people as the traditional and original owners of the land on which we live and work. We acknowledge the Tasmanian Aboriginal community as the continuing custodians of lutruwita (Tasmania) and honour Aboriginal Elders past and present. lutruwita milaythina Pakana - Tasmania is Aboriginal land.

#PlanningMatters

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001
By email: yoursay.planning@dpac.tas.gov.au

19 August 2022

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What is PMAT

The Planning Matters Alliance Tasmania (PMAT) is a growing network of almost 70 community groups from across *lutruwita* /Tasmania which is committed to a vision for Tasmania to be a global leader in planning excellence. Our Alliance is united in common concern over the new Tasmanian state planning laws and what they mean for Tasmania's future. The level of collaboration and solidarity emerging within the advocacy campaign of PMAT, as well as the number of groups involved is unprecedented in Tasmania and crosses community group genres: recreation, environment, urban/local community associations, European built heritage, rate payers and Friends of groups.

Land use planning impacts every inch of Tasmania. We hold that good planning is fundamental to our way of life and democracy. PMAT works to raise community awareness about planning and encourages community engagement in the planning process.

PMAT is an independent, apolitical, not-for-profit incorporated association, governed by a skills-based Board. PMAT is crowd funded entirely by donations.

In 2020 PMAT was named Australia's Planning Champion, a prestigious honour awarded by the Planning Institute of Australia that recognises non-planners for their advocacy and for making a significant contribution and lasting presence to the urban and regional environment. PMAT was awarded the Tasmanian Planning Champion title in 2019.

PMAT's purpose is to achieve a values-based, fair and equitable planning scheme implemented across Tasmania, informed by PMAT's Platform Principles and delivering the objectives of the *Land Use Planning and Approvals Act 1993.*

As outlined in PMAT's Strategic Plan 2021–2023, '*PMAT's vision is for Tasmania to be a global leader in planning excellence. We believe best practice planning must embrace and respect all Tasmanians, enhance community well-being, health and prosperity, nourish and care for Tasmania's outstanding natural values, recognise and enrich our cultural heritage and, through democratic and transparent processes, deliver sustainable, integrated development in harmony with the surrounding environment.*'

Planning schemes must offer a balance between development, individual rights and community amenity, and not just make it easier for development and growth at the cost of community well-being and natural and cultural values. PMAT aims to ensure that Tasmanians have a say in a planning system that prioritises the health and well-being of the whole community, the liveability of our cities, towns and rural areas, and the protection of the natural environment and cultural heritage.

PMAT considers that the incoming Tasmanian Planning Scheme will weaken the protections for places where we live and places we love around Tasmania.

SPP Review Process

The Tasmanian Government is currently seeking input to help scope the issues for the five yearly review of the State Planning Provisions (SPPs) in the Tasmanian Planning Scheme, which will be conducted over two stages.

The current review of the SPPs is the best chance the community has now to improve the planning system. The SPPs are not scheduled to be reviewed again until 2027.

As per the State Planning Office website '*The SPPs are the statewide set of consistent planning rules in the Tasmanian Planning Scheme, which are used for the assessment of applications for planning permits. The SPPs contain the planning rules for the 23 zones and 16 codes in the Tasmanian Planning Scheme, along with the administrative, general, and exemption provisions.* ***Regular review of the SPPs is best practice ensuring we implement constant improvement and keep pace with emerging planning issues and pressures.'***

The SPPs are now operational in 14 of Tasmania's 29 local council areas.

The State Planning Provisions Review Scoping Paper outlines the six steps of the review of the SPPs. Broadly speaking the review will be conducted in two stages as outlined below.

SPP Review - Stage 1 – SPP Scoping Issues

Public consultation is open from 25 May to 19 August 2022. This review or scoping exercise phase is known as Stage 1.

The aim of Stage 1 is to identify the State Planning Provisions that may require review, as well as if there is a need for any new State Planning Provisions. E.g. new Zones and/or Codes.

Stage 1 may include some amendments to the SPPs, before Stage 2 goes on to consider more substantive issues and the consistency of the SPPs with the Tasmanian Planning Policies. The State Planning Office may characterise those amendments to the SPPs which occur in Stage 1 (or step 3 in the Scoping paper diagram) as minor amendments not requiring public consultation. PMAT is very interested as to how a "minor amendment" is defined and made.

SPP Review - Stage 2 – SPP Amendments

There is a legislative requirement for the State Planning Provisions to be revised for consistency with the Tasmanian Planning Policies, once approved.

The current Stage 1 scoping exercise, along with the approved Tasmanian Planning Policies, will inform draft amendments to the SPPs, which will be considered through the SPP amendment process prescribed under the *Land Use Planning and Approvals Act 1993*.

This process includes a 42 day period of public exhibition and independent review by the Tasmanian Planning Commission and may also include public hearings. PMAT considers such public hearings

facilitated by the Tasmanian Planning Commission are essential if the Tasmanian community is to be involved and understand our planning laws.

See flowchart for the SPP amendment process here. This review phase is known as Stage 2 and is likely to occur in 2023.

An overview of where the SPPs sit in the Tasmanian Planning Scheme

The State Government's new single statewide planning scheme, the Tasmanian Planning Scheme, will replace the planning schemes in each of the 29 local government areas. The Tasmanian Planning Scheme is now operational in 14 of Tasmania's 29 local government areas.

The new Tasmanian Planning Scheme has two parts:

1. A single set of State Planning Provisions (SPPs) that apply to the entire state on private and public land (except Commonwealth controlled land); and
2. Local planning rules, the Local Provisions Schedule (LPS) which apply the SPPs to each municipal area on both private and public land.

1. State Planning Provisions (SPPs)

The SPPs are the core of the Tasmanian Planning Scheme, they set the new planning rules and in PMAT's view are blunt planning instruments that are more likely to deliver homogenous and bland planning outcomes. The SPPs state how land can be used and developed and outline assessment criteria for new use and development. These rules set out 23 zones and 16 codes that may be applied by Councils under their LPSs. Not all zones or codes will be relevant to all Councils, for example in Hobart there will be no land zoned Agriculture, and in the Midlands there will be no land subject to the Coastal Inundation Hazard Code.

Read the current version of the SPPs here.

- **The Zones**: the 23 zones set the planning rules for use and development that occurs within each zone (i.e. applicable standards, specific exemptions, and tables showing the land uses that are allowed, allowable or prohibited - No Permit Required, Permitted, Discretionary or Prohibited). The zones are: General Residential, Inner Residential, Low Density Residential, Rural Living, Village, Urban Mixed Use, Local Business, General Business, Central Business, Commercial, Light Industrial; General Industrial, Rural, Agriculture, Landscape Conservation, Environmental Management Zone, Major Tourism, Port and Marine, Utilities, Community Purpose, Recreation, Open Space; and the Future Urban Zone.
- **The Codes:** the 16 codes can overlay zones and regulate particular types of development or land constraints that occur across zone boundaries, and include: Signs, Parking and Sustainable Transport, Road and Railway Assets, Electricity Transmission Infrastructure Protection, Telecommunications, Local Historic Heritage, Natural Assets, Scenic Protection, Attenuation, Coastal Erosion Hazard, Coastal Inundation Hazard, Flood-Prone Areas Hazard, Bushfire-Prone Areas, Potentially Contaminated Land, Landslip Hazard and Safeguarding of Airports Code.

In addition to the zone and code provisions, the SPPs contain important information on the operation of the Tasmanian Planning Scheme, including Interpretation (Planning Terms and Definitions), Exemptions, Planning Scheme Operation and Assessment of an Application for Use or

Development. These up-front clauses provide important context for the overall planning regime as they form the basis for how planning decisions are made. The terminology is very important, as often planning terms do not directly align with plain English definitions.

2. Local Planning Rules/Local Provisions Schedule (LPS)

The local planning rules, known as the Local Provisions Schedule, are prepared by each Council and determine where zones and codes apply across each municipality. The development of the LPS in each municipality is the last stage in the implementation of the Tasmanian Planning Scheme. Once the LPS for a municipality is signed off by the Tasmanian Planning Commission, the Tasmanian Planning Scheme becomes operational in that municipality.

One of PMAT's key work areas is encouraging local communities to comment on/engage in how the Tasmanian Planning Scheme is applied in their municipality by encouraging them to engage in their local LPS process in development of their local planning rules. PMAT released a free community guide in March 2020, entitled '*Your Guide to Influencing the Development of Your Local Planning Rules (Local Provisions Schedule)*' to help communities navigate the complex LPS process. PMAT has also hosted or been part of many public community meetings around the state regarding the LPS process.

The LPS comprise:

- maps showing WHERE the SPP zone and codes apply in a local municipal area; and
- any approved departures from the SPP provisions for a local municipal area.

View the Draft LPS approval process here.

If Councils choose to apply a certain zone in their LPS (e.g. Inner Residential, Rural Living or Agriculture Zone), the rules applying to that zone will be the prescriptive rules set out in the SPPs and are already approved by the State Government. **Councils cannot change the SPPs which will be applied. Councils only have control over where they will be applied through their LPS.**

Site Specific Local Planning Rules

If a Council or local community decides that areas within its municipality are not suited to one of the standard 23 zones then they may consider applying one of three site specific local planning rules. These three local planning rules are the only tool the Council/Community has to protect local character. However, from a community point of view, they are disappointingly difficult to have applied (see example outlined under point 8 in the section below entitled '*Related General Comments/Concerns regarding the SPP'*).

The three planning tools are:

- **Particular Purpose Zone (PPZ)** – is a zone that can be created in its own right. It is a group of provisions consisting of (i) a zone that is particular to an area of land; and (ii) the provisions

that are to apply in relation to that zone. It usually will apply to a particular land use (e.g. UTAS Sandy Bay campus or a hospital, Reedy Marsh, Dolphin Sands, The Fisheries).

- **Specific Area Plan (SAP)** - being a plan consisting of (i) a map or overlay that delineates a particular area of land; and (ii) the provisions that are to apply to that land in addition to, in modification of, or in substitution for, a provision, or provisions, of the SPPs. SAPs are specific to that site and sit over the top of a zone. For example, a proposed Coles Bay SAP would have sat over the underlying Low Density Residential Zone and the SAP rules would have allowed for a broader scope of new non-residential uses across the whole of Coles Bay. SAPs can be used for greenfield residential subdivision to allow higher density housing, to plan for roads and to protect areas of vegetation and open space (e.g. SAPs are also proposed for Cambria Green, Huntingfield, Jackeys Marsh, Blackmans Bay Bluff).
- **Site Specific Qualification (SSQ)** is used to facilitate particular types of activities at certain sites (e.g. New Town Plaza Shopping Centre) and sit over the top of a zone.

PMAT's concerns and recommendations regarding the SPPs

In PMAT's view the State Government's Tasmanian Planning Scheme fails to adequately address a range of issues, which will likely result in poor planning outcomes. A planning system that deals effectively with these issues is essential for Tasmania's future and for the well-being of communities across the state.

The SPP review is thus critically important and is a particular priority for PMAT as it is the best chance we have to improve planning outcomes until 2027.

PMAT's key concerns and recommendations cover the following topics:

1. Ensuring the community has the right to have a say and access to planning appeals;
2. Climate Change Adaptation and Mitigation;
3. Planning, Insurance and climate risks;
4. Community connectivity, health and well-being;
5. Aboriginal culture heritage;
6. Heritage buildings and landscapes (Local Historic Heritage Code);
7. Tasmania's brand and economy;
8. Housing;
9. Residential issues;
10. Stormwater;
11. Onsite wastewater;
12. Rural/Agricultural issues;
13. Coastal land issues;
14. Coastal waters;
15. National Parks and Reserves (Environmental Management Zone);
16. Healthy Landscapes (Landscape Conservation Zone);
17. Healthy Landscapes (Natural Assets Code);
18. Healthy Landscapes (Scenic Protection Code);
19. Geodiversity;
20. Integration of land uses;
21. Planning, Loss of Character Statements and Good Design; and
22. Various concerns held by PMAT.

PMAT's concerns and recommendations are outlined in more detail below.

1. Ensuring the community has the right to have a say and access to planning appeals

Land use planning is the process through which governments, businesses, and residents come together to shape their communities. Having a right of say is critical to this.

The current SPPs however, with fewer discretionary developments, and more exemptions, significantly reduce the community's right to have a say and in many instances also removes appeal rights, weakening democracy. **More and more uses and development are able to occur without public consultation or appeal rights.** Without adequate community involvement in the planning process, there is a risk of more contested projects, delays and ultimately less efficient decision-making on development proposals.

The reduction in community involvement is clearly demonstrated by how developments are dealt with in our National Parks and Reserves and residential areas.

National Parks and Reserves and right of say

Commercial tourism development can be approved in most National Parks and Reserves without guarantee of public consultation, and with no rights to appeal. This means that the public has no certainty of being able to comment and no appeal rights over public land covering almost 50% of Tasmania. The State Government has repeatedly stated that that this issue will be dealt with through the review of the Reserve Activity Assessment (RAA) process.

The RAA process is the internal government process by which developments in national parks and reserves are assessed. However, the review has stalled with no apparent progress for at least five years[1].

Community stakeholders are unable to obtain clear information on the review progress, timelines and the formal process regarding consultation. It appears that the State Government has abandoned this critically important review of the RAA. PMAT is concerned that proposed developments can be approved under the existing deeply flawed process without any opportunity for public comment and involvement. This is inconsistent with three of the most fundamental of the objectives of the *Land Use Planning and Approvals Act 1993*: "(a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity… (c) to encourage public involvement in resource management and planning; 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*."

A recent Tasmanian Parliamentary sponsored petition, which closed on the 4 August 2022, entitled: 'Inadequate processes for assessing and approving private tourism developments in Tasmania's national parks' attracted 2673 signatures and demonstrates the level of community concern.

[1]Page 11 of the *Minister's Statement of Reasons for modifications to the draft State Planning Provisions* here states '*…in response to matters raised during the hearings* [of the draft SPPs] *the Government agrees that a review of the RAA (Reserve Activity Assessment) be undertaken*'.

Amongst other concerns, the petition draws to the attention of the Tasmanian Parliament that '*The Reserve Activity Assessment (RAA) process is flawed, opaque and lacks genuine public consultation*' and calls on the '*Government to abandon the Expressions of Interest process and halt all proposals currently being considered under the Reserve Activity Assessment process until a statutory assessment and approval process for private tourism developments in Tasmania's national parks is implemented*'.

In 2016, the Tasmanian Planning Commission via its report, *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016*, identified the level of public concern regarding the RAA process.

In 2017, the then Planning Minister Peter Gutwein stated on page 11 of the Statement of Reasons re Modifications to the provisions of the draft State Planning Provisions that '*…in response to matters raised during the hearings* [of the draft SPPs]*, the Government agrees that a review of the RAA (Reserve Activity Assessment) be undertaken*', but made no amendments to the SPPs in relation to developments in national parks.

In 2019 eleven community groups were so frustrated they could not obtain clarity on the RAA review they resorted to lodging a Right to Information (RTI) request to seek transparency. See PMAT Media Release: Has Hodgman abandoned the review of RAA process for developments in national parks and reserves?

Recommendations:

1. That the State Government move quickly to finalise the RAA Review, including the exemptions and applicable standards for proposed use and development in the Environmental Management Zone. The Environmental Management Zone should be amended to ensure the public has a meaningful right of say and access to appeal rights - in particular by amending what are "permitted" and "discretionary" uses and developments in the Environmental Management Zone.
2. Implement changes for a more open, transparent and robust process that is consistent with the Tasmanian Planning System *Land Use Planning and Approvals Act 1993* objectives.

Residential areas and right of say and access to planning appeals

PMAT commissioned an architectural planning study (Figures 1 and 2) to demonstrate what is permitted in the General Residential Zone to visually demonstrate what can be built without public comment, appeal rights and notification to your adjoining neighbour.

Figure 1 – PMAT's planning study demonstrates what is *Permitted* in the General Residential Zone. This is what is allowed to be built with no notification to your adjoining neighbour, no ability to comment, and no appeal rights.

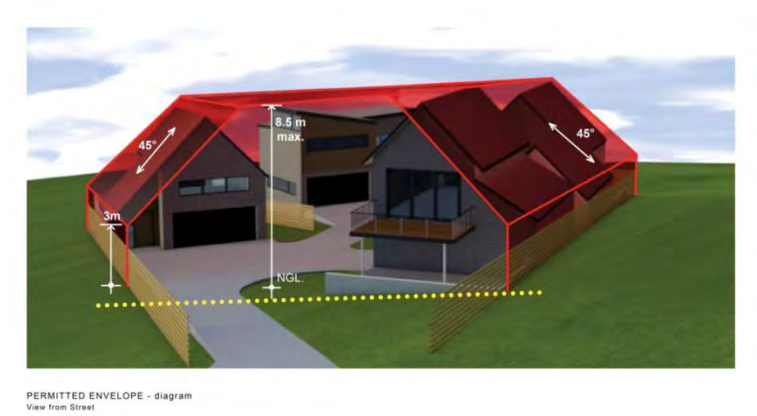

Figure 2 – PMAT's planning study demonstrates what is *Permitted* in the General Residential Zone. This is what is allowed to be built with no notification to your adjoining neighbour, no ability to comment and no appeal rights.

PMAT's planning study helps highlight issues that have led to confusion and anxiety in our communities including lack of say about the construction of multiple and single dwellings(especially by adjoining neighbours), bulk, height, overshadowing, loss of privacy, loss of sunlight/solar access, loss of future solar access for Solar PV arrays and Solar Hot Water panels on, north-east, north, and north-west -facing roofs, lack of private open space and inappropriate site coverage, overlooking private open space and blocking existing views.

Recommendations:

1. The SPPs should be amended to ensure the public has a meaningful right of say and access to appeal rights across the residential zones, in particular by amending what is "permitted" and

"discretionary" use and development. The requirements for notifying an adjoining neighbour that a Development Application has been lodged should be reinstated.

2. Our planning system must include meaningful pubic consultation that is timely, effective, open and transparent.

2. Climate Change Adaptation and Mitigation

Adaptation

Given the likely increased severity and frequency of floods, wildfire, coastal erosion and inundation, drought and heat extremes, PMAT is seeking amendments to the SPPs which better address adaptation to climate change. We need planning which ensures people build out of harm's way.

Mitigation

Climate Change Mitigation refers to efforts to reduce or prevent emissions of greenhouse gases. PMAT would like to see increased opportunity for mitigation by for example embedding sustainable transport, 'green' (i.e. regenerative) design of buildings and subdivisions in planning processes. One current concern is that across residential zones solar panels on adjoining properties are not adequately protected nor the foresight to enable future rooftop solar panel installations with unencumbered solar access.

On the subject of renewable energy, which will become increasingly important as the world moves to Net Zero, we are concerned that there appears to be no strategically planned Wind Farm designated area. PMAT member groups do not want open slather wind farms across the state industrialising our scenic landscapes and impacting biodiversity and Cultural Landscapes. PMAT member groups would like to see appropriately placed wind farms, decided after careful modelling of all environmental and cultural heritage data. This is especially important as based on the *200% Tasmanian Renewable Energy Target*, **PMAT understands that this could equate to approximately 89 wind farms and over 3000 wind turbines**. The new target aims to double Tasmania's renewable energy production and reach 200 per cent of our current electricity needs by 2040.

Recommendations:

1. The SPPs be amended to better address adaptation to climate change, by ensuring Tasmania's risk mapping is based on the best available science and up to date data.
2. The SPPs be amended to better embed sustainable transport, green design of buildings and subdivisions into planning processes, including better protection of solar panels and provision for future solar access.
3. Strategic thinking and modelling to decide where best to place wind farms based on careful modelling of all environmental and cultural heritage data. The SPPs could include a new *No Go Wind Farm Code*.

3. Planning, Insurance and Climate Risks

This year, the Climate Council, an independent, crowd-funded organisation providing quality information on climate change to the Australian public, released a report entitled Uninsurable Nation: Australia's Most Climate-Vulnerable Places and a climate risk map.

Key findings of the Report concluded climate change is creating an insurability crisis in Australia due to worsening extreme weather and sky-rocketing insurance premiums. **It is PMAT's understanding that the modelling found that approximately 2% of homes in Tasmania would be effectively uninsurable by 2030 due to the effects of climate change.** The major risk to the areas of the state are the north east and the east - in Bass, 3.7% of homes and in Lyons, 2.8% of homes.

Risks include flooding, storm surges and wildfires. The SPPs deal with these risks under the following Codes:

- Coastal Erosion Hazard Code
- Coastal Inundation Hazard Code
- Flood-Prone Areas Hazard Code
- Bushfire-Prone Areas Code
- Landslip Hazard Code

However, PMAT understands that the code risk mapping is based on conservative climate data. There is also a concern that the State Government's risk mapping and the insurance sector's risk mapping are inconsistent.

Recommendations:

1. The SPPs Codes be reviewed and updated to ensure they reflect the best available science about current and likely bushfire, flood, landslip and coastal inundation risks.
2. The State Government, through its Tasmanian Planning Scheme, has a responsibility to ensure that the planning system does not allow the building of new homes in areas that will become uninsurable.
3. Consideration should be given as to how the SPPs can ensure that developments and uses approved can be retrofitted to better respond to changing climatic conditions.
4. PMAT would like to know the status of Tasmania's Climate Change Action Plan 2017-2021 which contained a proposal for: "…***land-use planning reforms*** *to manage natural hazards and climate impacts. Instruments under development include a Tasmanian Planning Policy on Hazards and Environmental Risks, and State Planning Provisions for natural hazards*."

4. Community connectivity, health and well-being

The SPPs currently have limited provisions to promote better health for all Tasmanians, such as facilitation of walking and cycling opportunities across suburbs, ensuring local access to recreation areas and public open space and addressing food security.

Recommendations:

1. **Liveable Streets Code** - PMAT endorses the Heart Foundation in its '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016*' (Attachment 1 of this submission) which calls for the creation of a new '*Liveable Streets Code*'. In their representation they stated '*In addition to, or as alternative, the preferred position is for provisions for streets to be included in a Liveable Streets code. Such a code would add measurable standards to the assessment of permit applications. An outline for a Liveable Streets code is included at Annexure 1 as at this stage such a code requires further development and testing. For this representation the concept of a Liveable Streets code is advocated as a foreshadowed addition to the SPPs*.' *Annexure 1 – Draft for a Liveable Streets Code* (page 57) of the '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016'* (Attachment 1) sets out the code purpose, application, definition of terms, street design parameters, Street connectivity and permeability, streets enhance walkability, streets enhance cycle-ability, and streets enhance public transport. Our streets are also corridors for service infrastructure – such as telecommunications, electricity and water. It is important that placement of these services does not detract from liveable streets design, for example through limiting street trees.
2. **Food security** - PMAT also endorses the recommendations '*Heart Foundation Representation to the final draft State Planning Provisions 7 March 2016*' (Attachment 1) for amendments to the State Planning Provisions to facilitate food security. See section 6.10 '*Recommendations for amendments to the State Planning Provisions to facilitate food security*'. This is especially relevant in light of recent findings from The Tasmania Project. The Project was led by the Institute for Social Change at the University of Tasmania, and surveyed Tasmanians from across the State about food access and supply during the COVID-19 pandemic. The survey included a series of questions asking whether Tasmanians had enough healthy food to eat every day. **The survey showed that the most vulnerable groups** were young Tasmanians (18-24 years), single-parent households, those with a disability, Aboriginal and/or Torres Strait Islanders and temporary residents who **experienced levels of food insecurity between 31-59%**.
3. **Public Open Space** - PMAT recommends we create tighter provisions for the Public Open Space Zone and /or the creation of a Public Open Space Code. The planning system must ensure local access to recreation areas with the provision of public open space. Public open space has aesthetic, environmental, health and economic benefits. The *2021 Australian Liveability Census*, based on over 30,000 responses, found that the number 1 *'attribute of an ideal neighbourhood is where 'elements of the natural environment' are retained or incorporated into the urban fabric*

as way to define local character or uniqueness. In the 2021 Australian Liveability Census 73% of respondents selected this as being important to them. That is a significant consensus.'

PMAT is seeking mandatory provisions and standards for public open space and riparian and littoral reserves as part of the subdivision process. We understand these are not mandated currently and that developers do not have to provide open space as per for example the voluntary Tasmanian Subdivision Guidelines. These guidelines are an engineering design and construction resource and as per the Local Government's Association of Tasmania website, '*These guidelines provide information on the minimum standards required by participating Tasmanian Councils for the design and construction of roads and utilities as per the relevant statutory requirements (including the Drains Act 1954 and Local Government Act Highways 1982). Additionally this document outlines the process to be followed during the construction of civil works; audit inspections, practical completion of works, defects liability period and final take-over of the roads and civil works. It is intended that the Guidelines be used by consultants, developers and construction contractors as well as Council professionals.'*

It may be that mandated provisions of Public Open Space can be addressed adequately in the Open Space Zone already in the SPPs. Very specifically, PMAT is seeking the inclusion of requirements for the provision of public open space for certain developments like subdivisions or multiple dwellings.

We understand that a developer contribution can be made to the planning authority in lieu of the provision of open space and that those contributions can assist in upgrading available public open space. However, there appears to be no way of evaluating the success of this policy.

4. **Neighbourhood Character Code** - PMAT recommends we create a new *Neighbourhood Character Code* as a tool to protect/enhance urban amenity. This recommendation will be explained in more detail in Section 9 *Residential Issues* below.

5. Aboriginal Cultural Heritage

The current SPPs have no provision for mandatory consideration of impacts on Aboriginal Heritage, including Cultural Landscapes, when assessing a new development or use that will impact on Aboriginal cultural heritage.

This means, for example, that under current laws, there is no formal opportunity for Tasmanian Aboriginal people to comment on or object to a development or use that would adversely impact their cultural heritage, and there is no opportunity to appeal permits that allow for adverse impacts on Aboriginal cultural heritage values.

While PMAT acknowledges that the Tasmanian Government has committed to developing a new Tasmanian Aboriginal Cultural Heritage Protection Act to replace the woefully outdated *Aboriginal Heritage Act* 1975 (Tas), it is unclear whether the proposed "*light touch*" integration of the new legislation with the planning system will provide for adequate protection of Aboriginal Cultural heritage, involvement of Tasmanian Aboriginal people in decisions that concern their cultural heritage, and consideration of these issues in planning assessment processes.

Indeed, it is unclear if the new Act will "*give effect to the Government's commitment to introducing measures to require early consideration of potential Aboriginal heritage impacts in the highest (State and regional) level of strategic planning, and in all assessments of rezoning proposals under the LUPA Act to ensure major planning decisions take full account of Aboriginal heritage issues*."[2]

One way that the planning scheme and SPPs could ensure Aboriginal cultural heritage is better taken into account in planning decisions, is through the inclusion of an Aboriginal Heritage Code to provide mandatory assessment requirements and prescriptions that explicitly aim to conserve and protect Aboriginal cultural heritage. Assessment under this code could serve as a trigger for assessment under a new Tasmanian Aboriginal Cultural Heritage Protection Act. Until that Review is complete, it will be unclear how the new Act will give effect to the objective of cross reference with the planning scheme. **The Tasmanian Planning Scheme, via the SPPs, should therefore set up a mechanism that ensures maximum assessment, consideration and protection of Aboriginal heritage.**

PMAT recognises this is an imperfect approach in that the proposed Aboriginal Heritage Code may not be able to fully give effect to the *United Nations Declaration of the Rights of Indigenous Peoples* by providing Tasmanian Aboriginal people the right to free, prior and informed consent about developments and uses that affect their cultural heritage or give them the right to determining those applications.

However, while the Tasmanian Government is in the process of preparing and implementing the new Aboriginal Cultural Heritage Protection Act, it will at least allow for consideration and protection of Aboriginal cultural heritage in a way that is not presently provided under any Tasmanian law.

Recommendation:

[2] Jaensch, Roger (2021) *Tabling Report: Government Commitment in Response to the Review Findings, Aboriginal Heritage Act 1975: Review under s.23* – see here: https://nre.tas.gov.au/Documents/Tabling%20Report%20-%20Review%20of%20the%20Aboriginal%20Heritage%20Act.pdf

1. The SPPs must provide better consideration of and protection to Aboriginal cultural heritage such as via the creation of an *Aboriginal Heritage Code* and the cross reference and meaningful connection to a new *Aboriginal Cultural Heritage Protection Act* that will protect Aboriginal Cultural heritage.

6. Heritage Buildings and Landscapes (Local Historic Heritage Code)

PMAT considers that limited protections for heritage places will compromise Tasmania's important cultural precincts and erode the heritage character of listed buildings. PMAT understands that many Councils have not populated their Local Historic Heritage Codes as they are resource and time limited and there is a lack of data.

The disregard of our built heritage and our Heritage Places and Heritage Precincts - is very disappointing not only for Tasmanians but for visitors and people who generally care about built heritage. For example, there is significant interest from our tourism economy, in Tasmania's built heritage. The latest visitor data sourced from Tourism Tasmania's Tasmanian Visitor Survey (TVS) for the year ending September 2021 showed, for the types of activities that visitors to Tasmania reported participating in whilst in Tasmania, that 43 per cent of visitors (YE September 2021) visited Historic sites/attractions. The data also shows that this has remained fairly steady (36-45 per cent of visitors reported this between 2014-2021).

PMAT engaged expert planner Danielle Gray of Gray Planning to draft a detailed review of the Local Historic Heritage Code (see Attachment 2). The input from Gray Planning has provided a comprehensive review of the Local Historic Heritage Code and highlights deficiencies with this Code. There is considerable concern that the wording and criteria in the Local Historic Heritage Code will result in poor outcomes for sites in Heritage Precincts as well as Heritage Places that are individually listed. There is also a lack of consistency in terminology used in the Local Historic Heritage Code criteria that promote and easily facilitate the demolition of and unsympathetic work to heritage places, Precinct sites and significant heritage fabric on economic grounds and a failure to provide any clear guidance for application requirements for those wanting to apply for approval under the Local Historic Heritage Code. The Local Historic Heritage Code also fails to provide incentives for property owners in terms of adaptive reuse and subdivision as has previously been available under Interim Planning Schemes. **It is considered that the deficiencies in the current Local Historic Heritage Code are significant and will result in poor outcomes for historic and cultural heritage management in Tasmania.**

A summary of the concerns and recommendations of the Local Historic Heritage Code by Gray Planning is outlined below with further detail provided in Attachment 2.

Recommendations:

1. PMAT recommends that the *Local Historic Heritage Code* in the Tasmanian Planning Scheme should be consistent with the objectives, terminology and methodology of the Burra Charter. The Burra Charter is a document published by the Australian ICOMOS which defines the basic principles and procedures to be followed in the conservation of Australian heritage places. The Charter was the first national heritage document to replace the Venice Charter as the basis of national heritage practice. The Charter has been revised on four occasions since 1979, and has been internationally influential in providing standard guidelines for heritage conservation practice.

2. PMAT concurs with Gray Planning's concerns and recommendations regarding the *Local Historic Heritage Code* as outlined below and in Attachment 2. PMAT recommends that the Local Historic Heritage Code be amended in response to these concerns and recommendations.

   Gray Planning - Summary of concerns and recommendations with respect to the Local Historic Heritage Code

   - The name of the Local Historic Heritage Code should be simplified to 'Heritage Code'. This simplified naming is inclusive of historic heritage and cultural heritage rather than emphasising that heritage is about historic values only.
   - Definitions in the Local Historic Heritage Code are currently brief and inexhaustive and do not align with definitions in the Burra Charter.
   - There are no clear and easily interpreted definitions for terms repeatedly used such as 'demolition, 'repairs' and 'maintenance'.
   - Conservation Processes (Articles 14 to 25) as outlined in the Burra Charter should be reflected in the Local Historic Heritage Code Performance Criteria. Issues covered in the Burra Charter are considered to be very important to maintaining historic and cultural heritage values such as setting, context and use are not mentioned in the Local Historic Heritage Code at all.
   - The Local Historic Heritage Code does not deal with any place listed on the Tasmanian Heritage register and there is a hard line separate of local and state listed places. This fails to recognise the complexity of some sites which have documented state and local values.
   - Failure to also consider state and local heritage values as part of the Local Historic Heritage Code will result in important issues such as streetscape and setting and their contribution to heritage values not being considered in planning decisions.
   - The SPP Code does not provide a summary of application requirements to assist both Councils and developers. This approach results in a failure to inform developers of information that may be required in order to achieve compliance.
   - The Objectives and Purpose of the Local Historic Heritage Code is too limited and should align with the *Historic Cultural Heritage Act 1995* in terms of purpose.
   - The Exemptions as listed in the Local Historic Heritage Code are in some cases ambiguous and would benefit greatly from further clarification and basic terms being defined under a new Definitions section.
   - Previously, some Interim Planning Schemes included special provisions that enabled otherwise prohibited uses or subdivision to occur so long as it was linked to good heritage outcomes. Those have been removed.
   - Development standards for demolition are concerning and enable the demolition of heritage places and sites for economic reasons.

- Development standards use terminology that is vague and open to misinterpretation.
- The words and phrases 'compatible' and 'have regard to' are repeatedly used throughout the Local Historic Heritage Code and are considered to be problematic and may result in unsympathetic and inconsistent outcomes owing to their established legal translation.
- Performance criteria do not make definition between 'contributory' and 'non contributory' fabric. This may result in poor heritage outcomes where existing unsympathetic development is used as justification for more of the same.
- The Local Historic Heritage Code as currently written will allow for unsympathetic subdivision to occur where front gardens can be subdivided or developed for parking. This will result in loss of front gardens in heritage areas and contemporary development being built in front of and to obstruct view of buildings of heritage value.
- The Local Historic Heritage Code as currently written does not place limits on extensions to heritage places which enables large contemporary extensions that greatly exceed the scale of the heritage building to which they are attached to.
- Significant tree listing criteria are not always heritage related. In fact most are not related to heritage. Significant trees should have their own separate code.
- Currently there is no requirement for Councils to populate the Local Historic Heritage Code with Heritage Precincts of Places. Failure to do so is resulting in buildings and sites of demonstrated value being routinely destroyed.

3. It is important to note that the Tasmanian Planning Commission also recommended a stand-alone code for significant trees in its 2016 recommendations on the draft SPP's outlined on page 63[3] '*a stand-alone code for significant trees to protect a broader range of values be considered as an addition to the SPPs*'.
4. Other recommendations raised by a PMAT member group:
   - In addition to local and State heritage values, consider how national heritage values can be included in the Tasmanian Planning Scheme.
   - Exemptions to be publicly reported.
   - Amend the *Land Use Planning and Approvals Act 1993* to make provision for protection of previously unknown cultural heritage fabric "uncovered" during the course of undertaking works. This process can be triggered in state listed properties by provisional registrations. The only way for this to work for local properties would be to change the *Land Use Planning and Approvals Act 1993.*
   - The definition of the boundary of a listing to extend beyond a Title boundary to allow for setting and extended place.

[3] *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016 – see page 63.*

- Incorporate Burra principle of “do as much as necessary but as little as possible” philosophy. This could be considered for example as part of the Code Objective.
- Ensure that Conservation Management Plans to be a public process with public input.

7. Tasmania's Brand and Economy

PMAT supports the Tasmanian brand noting that a planning system which protects Tasmania's cherished natural and cultural heritage underpins our economy, now and into the future. We consider that the current SPPs threaten Tasmania's brand, as they place our natural and cultural heritage and treasured urban amenity at risk. The current planning system may deliver short-term gain but at the cost of our long-term identity and economic prosperity.

As Michael Buxton, former Professor of Environment and Planning, RMIT University, stated "*The Government argues the new [planning] system is vital to unlock economic potential and create jobs, but the state's greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these and the state has no future*." Source: Talking Point: *Planning reform the Trojan horse*, The Mercury, Michael Buxton, December 2016 (attached as Appendix 2).

As per Brand Tasmania's 2019-2024 Strategic Plan, it could be argued that the SPPs are inconsistent with Brand Tasmania's main objectives which are to: '*To develop, maintain, protect and promote a Tasmanian brand that is differentiated and enhances our appeal and competitiveness nationally and internationally; To strengthen Tasmania's image and reputation locally, nationally and internationally; and To nurture, enhance and promote the Tasmanian brand as a shared public asset.*'

Recommendation:

1. A brand lens should be placed over the top of the SPPs to ensure they are consistent with the objectives of Brand Tasmania. This consistency could also be facilitated via the Tasmanian Planning Policies.

8. Housing

PMAT understands the critical need for housing, including social and affordable housing. One of our founding concerns was that the Tasmanian Planning Scheme contains no provisions to encourage affordable or social housing. We believe that good planning, transparent decision making and the delivery of social and affordable housing need not be mutually exclusive. Good planning can result in delivery of both more and better housing.

Instead of managing housing through Tasmania's key planning document, the Tasmanian Planning Scheme, in 2018 the Tasmanian Government introduced a fast track land rezone process called the Housing Land Supply Orders (e.g. Housing Order Land Supply (Huntingfield). Taking this approach compromises strategic planning and transparent decision making. For example, the State Government is the proponent and the assessor. **Fast-tracking planning, such as through Housing Land Supply Orders for large subdivisions, will not assist with community cohesion and/or trust in both the planning system or social/affordable housing projects.**

Taking zoning and planning assessments outside the Tasmanian Planning System risks an ad hoc approach to housing that makes an integrated approach more difficult. This works against delivering quality housing outcomes.

PMAT supports policies and SPPs which encourage development of well-planned quality social and affordable housing. As mentioned above, one of PMAT's founding concerns was that there is no provision for affordable or social housing within the SPPs. We understand this is also the case with the Subdivision Standards. PMAT is concerned that there are no requirements in the SPPs which require developers to contribute to the offering of social and affordable housing. For example, in some states, and many other countries, developers of large subdivisions or multiple dwellings in certain inner city zones, are required to offer a certain percentage of those developments as affordable housing, or pay a contribution to the state in lieu of providing those dwellings.

Recommendations:

1. **Need to encourage delivery of social and affordable housing** - new developments should contain a proportion of social and/or affordable housing. In the absence of mandatory or opt-in policy targets, affordable housing will continue to be a low priority for developers. Design Policy for Social Housing (2020) should also be incorporated into the SPPs. The Design Policy for Social Housing incorporates contemporary design principles from the Liveable Housing Design Guidelines (4th edition), Residential Development Strategy (July 2013), Universal Design and Sustainability Guidelines (Victoria). Legislative and Policy Framework - This Policy adheres to relevant legislation and overarching policy directions including: • Anti-Discrimination Act 1998 • Building Code of Australia 2011 • Liveable Housing Design Guidelines • Universal Housing Design Principles • Tasmania's Residential Strategy (May 2013) • The Australian Governments Renewable Energy Target (RET) Scheme, and Carbon Pollution Reduction Scheme • Housing

Tasmania's Strategic Asset Management Plan. The Design Policy for Social Housing sets out five standards and detailed elements of design for best practise social housing in Tasmania. While the policy details environmental and Accessibility performance in homes, the first three standards specifically concern the location of proposed social housing developments, their access to services and promotes infill development as opposed to urban sprawl. " The purpose of the policy establishes the design standards for the construction and purchase of homes for social housing tenants by social housing providers. The standards may inform maintenance and upgrades as appropriate. The Policy sets out five standards and detailed elements of design for social housing. This document will become relevant as the Development Application for the social housing component of the HHLSO is made public. The policy context incorporates contemporary design principles from the Liveable Housing Design Guidelines (4th edition), Residential Development Strategy (July 2013), Universal Design and Sustainability Guidelines (Victoria). The standards reflect principles of environmental and energy sustainability, socially inclusive and sustainable communities, universal design principles to support 'ageing in place' and liveable housing design. The standards are consistent with industry best practice including the reduction of home energy use and increasing financial and social viability of social housing stock. The standards encourage the use of new innovative developments in design and building materials, including new smart technologies to assist people living with functional impairment. The standards should also be considered within the context of the anticipated effects of climate change through global warming and the new code for bush fire prone areas, and the current reforms to the Tasmanian planning system.

2. **Best practice house and neighbourhood design -** should be adopted so that housing developments not only provide a place for people to live but result in better amenity, health and environmental outcomes. The SPPs should reflect The *Residential Development Strategy* (2013). In July 2013, a Residential Development Strategy (***this can be made available as it is no longer online***) was developed for Tasmania by the State Architect in consultation with representatives of the Minister for Human Services, Housing Tasmania, Tasmanian Planning Commission, Property Council of Australia (Tasmanian Division), Master Builders of Tasmania, Housing Industry Association plus others. The 2013 Strategy is the most current document on liveability development principles in Tasmania. It has also been cited recently, in the September 2020 Design Policy for Social Housing. The Strategy was developed to ensure that '*Tasmanian Government subsidised social and affordable housing developments do not repeat the mistakes of the past; where disadvantage was entrenched by high density suburban fringe developments'.* The Strategy, adopts a *'long-term integrated approach to the planning and development of Tasmanian communities, and focuses on quality urban design as a catalyst for the achievement of improved social outcomes*'. **The Strategy is the most current document on liveability development principles in Tasmania.** '*The principle of liveability is integral to the Residential Development Strategy. It is a collaborative process that supports good social outcomes through well considered design and quality construction and place making, rather than financial*

investment as the only bottom line. Liveability builds communities which are engaged and where their residents care about where they live'.

3. **Provision of infrastructure to support communities** – including transport, schools, medical facilities, emergency services, recreation and jobs should be part of the planning process and not an afterthought.
4. **Ensure that consideration is given to local values in any new large developments.**

9. Residential Issues

One of PMAT's founding concerns is how residential density is being increased with minimal to no consideration of amenity across all urban environments. PMAT understands that the push for increasing urban density is to support the Tasmanian Government's growth plan to grow Tasmania's population to 650,000 by 2050. In our view, we are not doing density or the provision of public open space well.

Currently infill development in our residential zones is not strategically planned but "as of right", and Councils cannot reject Development Applications even though they may fail community expectations. PMAT considers the residential standards are resulting in an unreasonable impact on residential character and amenity. Additionally, they remove a right of say and appeal rights over what happens next door to home owners, undermining democracy. People's homes are often their biggest asset but the values of their properties can be unduly impacted due to loss of amenity. This also impacts people's mental health and well-being and has the potential to increase conflict between neighbours.

Specifically, the SPPs for General Residential and Inner Residential allow smaller block sizes, higher buildings built closer to, or on site boundary line, and multi-unit developments "as of right" in many urban areas as per the permitted building envelope. In the Low Density Residential Zone multiple dwellings are now discretionary (i.e. have to be advertised for public comment and can be appealed), whereas in the past they were prohibited by some Councils such as Clarence City Council. The Village Zone may not be appropriate for purely residential areas, as it allows for commercial uses and does not aim to protect residential amenity.

Neighbourhood amenity and character, privacy and sunlight into backyards, homes and solar panels are not adequately protected, especially in the General and Inner Residential Zones. Rights to challenge inappropriate developments are very limited. Subdivisions can be constructed without the need for connectivity across suburbs or the provision of public open space. Residential standards do not encourage home gardens which are important for food security, connection to nature, biodiversity, places for children to play, mental health/well-being and beauty.

The permitted building envelope, especially in the General Residential Zone, for both single and multiunit developments, for example has led to confusion and anxiety in the community (as seen by examples in the video PMAT commissioned in Clarence Municipality – watch here) with regards to overshadowing, loss of privacy, sun into habitable rooms and gardens, the potential loss of solar access on an adjoining property's solar panels, height, private open space and site coverage/density. Neighbourly relations have also been negatively impacted due to divisive residential standards.

Since the SPPs were created in 2017, PMAT has done a lot of work on the residential standards which reflects the level of community concern and the need for improvement. This work includes:

- PMAT plays an important role as a contact point and referral agent for individuals and community groups regarding planning issues, including residential issues, within the Tasmanian community. PMAT is contacted very regularly regarding residential issues.
- PMAT Launched two TV ads focusing on planning issues during the 2018 State election, including one on the residential issues of the Tasmanian Planning Scheme. Watch here at the end of the video the TV ad will play.
- PMAT commissioned a video highlighting residential standard planning issues and the emotional and financial stress they place on the community. Watch video here.
- PMAT ran the largest survey of candidates for the 2018 Local Government elections. The survey demonstrated a majority of the candidates surveyed take the planning responsibilities of local government very seriously and believe Councils should have greater capacity to protect local character, amenity and places important to their local communities. There was strong candidate sentiment for local government planning controls that protect local character, sunlight and privacy for our homes. Candidates also agreed with increased public involvement in planning decisions in national parks and reserves.

PMAT concurs with government agencies that have also raised concerns regarding our residential standards:

- In 2016, the Tasmanian Planning Commission via its report, *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016*, recommended to the State Government that the Residential Provisions should be reviewed as a priority. Section 4.1.4 'Residential development standards review' (page 18) stated:

  '*Given residential development is the most commonly occurring form of development subject to the planning scheme, affecting the construction industry, owner builders and home owners, the Commission recommends that the General Residential and Inner Residential Zones be reviewed as a priority.*

  Consistent standards were put in place when Planning Directive 4.1 – Standards for Residential Development in the General Residential Zone was issued in 2014. A sufficient period of time has elapsed since their implementation that it is now appropriate to:

  - *evaluate the performance of the standards and whether the intended outcomes have been realised, including delivering greater housing choice, providing for infill development and making better use of existing infrastructure;*
  - *consider the validity of the claims that the standards are resulting in an unreasonable impact on residential character and amenity; and*
  - *introduce drafting that is more consistent with the conventions that apply to the SPPs generally. '*

  The Minister acknowledged the recommendation, but deferred any review until the five year review of the SPPs.

- In 2018, PMAT strongly supported the Local Government Association of Tasmania's push for review of the residential standards, which it says '*have led to confusion and anxiety in our communities with overshadowing, loss of privacy, solar access, height, private open space and site coverage to name a few. A review will highlight these concerns across the State and give the community some expectation of change that can ensure their concerns are heard*.'
- See Appendix 3 which is a story of "Mr Brick Wall' which was submitted as a submission to the draft SPPs in 2016. This story clearly demonstrates the tragic failing and consequences of our residential standards.

Please see PMAT's detailed submission regarding the residential zones and codes in Attachment 3 which has been prepared with thanks by expert planner Heidi Goess of Plan Place. Attachment 3 has also been reviewed with thanks to PMAT's volunteer *Residential Standards Review Sub-Committee* which comprises planning experts, consultants and community advocates with relevant experience.

Overall, PMAT's submission, outlined in Attachment 3,advocates for improved residential zones/codes in the Tasmanian Planning Scheme in order to:

- Adapt to the impacts of climate change in urban and sub-urban settings
- Increase residential amenity/liveability
- Improve subdivision standards including strata title
- Improve quality of densification
- Improve health outcomes including mental health
- Provide greater housing choice/social justice
- Improve public consultation and access to rights of appeal
- Improve definitions and subjective language used in TPS
- Benchmark the above against world's best practice community residential standards (e.g. The Living Community Challenge).
- Review exemptions to see if they deliver on the above dot points.

Recommendations:

The key issues and recommendation below have been drafted by Plan Place in conjunction with PMAT's volunteer *Residential Standards Review Sub-Committee*.

Summary of Key Issues and Recommendations of the General Residential Zone, Inner Residential Zone, Low Density Residential Zone and Rural Living Zone.

Key issues	Priority recommendations
Clause 6.10.2 does not apply the local area objectives to the assessment of all Discretionary development. The planning authority must only consider the local area objectives where it is a Discretionary use. The local area objectives may relate to both use or development. The limited application	**Consideration of the Local Area Objectives to Discretionary development.** Amend clause 6.10.2 to require the planning authority to consider the local area objectives in relation to all discretionary development. The clause must be amended, inserting the words "and development", after the words

Key issues	Priority recommendations
diminishes the use and purpose of the local area objectives by the planning authority in the assessment of development and this should be corrected.	'Discretionary use'. The words in clause 6.10.2 'must have regard to' are recommended to be substituted with 'demonstrate compliance with'.
Many terms are poorly and narrowly defined, or not defined at all, making certain terms in the residential zones open to interpretation and there is a heavy reliance on the common meaning of a word.	The recommendations concern the definitions within Table 3.1 of the SPPs as they relate to terms used in the GRZ, IRZ, LDRZ and RLZ. **Terms and Definitions** • Amend the definitions for the following terms, which are defined too narrowly: o Amenity, to articulate improved outcomes concerning health and wellbeing for Tasmanians. o Streetscape, to fine-tune the definition, to lift its narrow interpretation. • Insert definitions for the following terms: o Character; and o Primary residential function.
The suite of residential zones: • General Residential Zone (GRZ); • Inner Residential Zone (IRZ); • Low Density Residential Zone (LDRZ); and • Rural Living Zone (RLZ), provides a generic approach to use and development, resulting in bland and homogenous outcomes. The residential zone controls in the SPPs, especially for the GRZ, IRZ and LDRZ fail to strike a balance between urban consolidation and achieving outcomes that support well-being and liveability. Densification, Loss of Character, Climate Change It is evident that approved use and development where the SPPs are applied, is resulting in a changing urban fabric of the established residential areas across the State, irrespective of location. The controls disregard neighbourhood character and natural values. For example, the SPPs do not include controls that provide for: • healthy separation and protecting buffers	The SPPs for the GRZ, IRZ, LDRZ and RLZ must actively enable and enforce the principles of 'sustainable development' at a minimum or better still embrace the principles of 'regenerative development'. The latter seeks to provide for development that gives more than it takes, supports the community above all else, including the profit motive of the individual developer's economic desires, and creates zero carbon projects. With this in mind the recommendations of this submission are as follows: **Review of all standards** Review of all use and development standards of the GRZ, IRZ, LDRZ and RLZ to include requirements for: • Roof design to include adequate size, gradient and aspect of roof plane for solar panels; • Adequate private open space and

Key issues	Priority recommendations
between buildings, and protecting established residential character; and • consideration of built form, architectural roof styles and the streetscape. The statutory controls in the SPPs in relation to the residential zones have become oversimplified moving away from 'Australian Model for Residential Development'. This has led to poor design outcomes. The GRZ, IRZ and LDRZ seek densification through infill development or subdivision but do not provide the rigour in controls to balance the trade-offs for occupants of established use and development, such as: • loss of sunlight to private open space or habitable rooms of adjoining properties; • loss of garden areas and opportunity for food production; • impact on stormwater infrastructure; and • loss of established mature vegetation and trees. These controls also lack rigour to enable 'regenerative development' outcomes to respond to climate change. <u>Housing Affordability and Choice</u> The SPPs do not require any controls that drive housing affordability or inclusionary zoning. <u>Visitor Accommodation</u> Addressed separately below. <u>Subdivision</u> Addressed separately below.	protection of windows of existing and proposed buildings from shadows; • On-site stormwater detention and storage (separately) and public open space for rain infiltration to ground; • Double-glazing and insulation of all buildings; • Passive solar access of existing and new buildings; • Re-instatement of adequate setbacks from boundaries for all new buildings; • Maximising the retention of existing trees and vegetation and provide appropriate trade-off where clearance is proposed; and • Servicing of multiple dwelling development such as waste collection. It is acknowledged that many items listed above are in the National Construction Code, but the thermal efficiency requirements need to be increased radically upfront in the planning process in order to reduce carbon emissions. **<u>Affordable Housing</u>** Insert use and development standards in all residential zones to address housing affordability. **<u>Neighbourhood Character Code</u>** Insert a Neighbourhood Character Code in the SPPs that protect attributes of the established residential areas, maintain separation and buffers as well as promoting food security such as: • roof form and architectural style; • building presentation to the streetscape; • garden area requirements to address separation of buildings but also food security; and

Key issues	Priority recommendations
	• retention of mature trees and vegetation. **<u>Medium Density Zone</u>** Diversify the residential zone hierarchy by inserting an additional zone that specifically provides for medium density development. The zone can be applied strategically to areas connected with public transportation routes and positioned to be close to services (i.e. local neighbourhood centres or parks). An additional zone can provide certainty for community and expectation of medium density development. **<u>Stormwater Management Code</u>** Insert a Stormwater Code to assess impact of intensification of surface water run-off on existing infrastructure and promote water-sensitive design.
Densification between visitor accommodation, multiple dwelling development and subdivision are not aligned.	**<u>Visitor Accommodation</u>** • Amend use standards for Visitor Accommodation in the GRZ, IRZ, LDRZ and RLZ or insert a development standard for visitor accommodation to provide a density control that does not exceed the allowed dwelling density in a zone. For example, the construction of one visitor accommodation unit on a vacant site must have a minimum area of 1200m^2 in the LDRZ. • Insert definitions for the terms 'character' and 'primary residential function' in Table 3.1 to aid interpretation of the use standard as it applies to Visitor Accommodation in the residential zones. • Review the exemption at clause 4.1.6 to limit the number of persons staying at a property instead of the number of bedrooms. • Review the SPPs for all residential zones

Key issues	Priority recommendations
	to limit the number of homes that can be converted to Visitor Accommodation to increase retention of housing stock for the residential market.
The requirement of permeable surfaces has been eliminated for residential dwelling development on a site which could include single detached dwellings or multiple dwelling development. The requirement of a site to retain a percentage free from impervious surfaces in the GRZ and IRZ remains for non-residential development. Impervious surfaces controls are important to mitigating stormwater impacts on the natural environment by slowing run-off.	**<u>Permeable Surfaces, Garden Area & Food Security</u>** • Insert a Stormwater Code (see above). • Insert a requirement for retention of permeable surfaces in the GRZ, IRZ and LDRZ in relation to site coverage for dwelling development to assist with managing stormwater run-off. • Introduce a garden area requirement as applied in the Victorian State Planning Provisions.
The subdivision standards in any of the residential zones are focussed on traffic movement and management rather than all users of streets and the important public open space they provide. The requirements of street trees should not be reliant on a council adopted policy. The controls should impose requirements on both local government and developers.	The recommendations concern Subdivision as provided by the exemptions and standards in GRZ, IRZ, LDRZ and RLZ. **<u>Liveable Streets Code</u>** • Insert a Liveable Streets Code to acknowledge the importance of the streetscape and public space. The purpose of the code is to impose requirements which results in streets supporting the wellbeing and liveability of Tasmanians and increase the urban forest canopy. The code will provide for appropriate standards for development of a streetscape at the subdivision stage or where a government body is constructing a new residential street. • Amend the exemption at clause 4.2.4 to require a government body to apply the Liveable Streets Code. The exemption could remain in place if the requirements of the Liveable Street Code are achieved; otherwise requiring a permit.
Part 2 of Schedule 1, *Objectives of the Planning*	The recommendations seek for the SPPs Review

Key issues	Priority recommendations
Process Established under the *Land Use Planning and Approvals Act 1993 (the Act)* seeks an integrated and coordinated approach to the planning process in Tasmania. The planning process does not provide for a coordinated or integrated approach as various requirements for use and development is spread across several pieces of legislation. <u>Examples:</u> The provision of open space is regulated under the *Local Government (Building and Miscellaneous Provisions) Act 1993.* The SPPs do not provide for any requirements concerning public open space in the assessment of subdivision. The conflict between vegetation retention and bushfire hazard management. For example, an application is approved on the basis that native vegetation is retained on a site and conditioned accordingly. The approved application is potentially modified due to the requirements of a bushfire hazard management plan approved after the planning permit. Addressing the issue of bushfire after the planning stage does not allow these matters to be addressed upfront and adds cost to the developer.	to consider improving the coordinated and integrated approach to the statutory assessment process across different sets of legislation. The recommendations outlined below are a few examples where the planning process is not coordinated or integrated and fails the test of Part 2 of Schedule 1 of the Act. **<u>Public Open Space Code</u>** Insert a Public Open Space Code, requiring consideration of the physical provision of public open space before cash-in-lieu is accepted. The SPPs must prompt assessment of physical provision of open space before cash-in-lieu is considered. **<u>Bushfire-prone Areas Code</u>** Amend the Bushfire-Prone Areas Code in the SPPs to require bushfire hazard management assessment as part of the planning process for all development. **<u>Other Hazards Code</u>** Amend the hazard codes in the SPPs to require assessment of an issue as part of the planning process for use and development.

10. Stormwater

The current SPPs provide no provision for the management of stormwater.

In 2016, the Tasmanian Planning Commission recommended the Planning Minister consider developing a stormwater Code, to ensure Councils have the capacity to consider stormwater runoff implications of new developments (see section 5.15.1 Stormwater Code, page 46). That recommendation was not accepted. The Minister considered that Building Regulations adequately deal with that issue, despite Council concerns that stormwater run-off was a planning issue, not just a building development issue.

PMAT considers that stormwater needs to be managed as part of the SPPs. For example, there is a State Policy on Water Quality Management with which the SPPs need to comply. Relevant clauses include the following:

31.1 - Planning schemes should require that development proposals with the potential to give rise to off-site polluted stormwater runoff which could cause environmental nuisance or material or serious environmental harm should include, or be required to develop as a condition of approval, stormwater management strategies including appropriate safeguards to reduce the transport of pollutants off-site.

31.5 Planning schemes must require that land use and development is consistent with the physical capability of the land so that the potential for erosion and subsequent water quality degradation is minimised.

Recommendation:

1. The SPPs should include a new *Stormwater Code*.

1. On-site Wastewater

The current SPPs provide limited provision for on-site wastewater.

Wastewater issues are currently dealt with under the Building Act. This is an issue that needs to be addressed in the Tasmanian Planning Scheme to ensure that water quality management issues arising from onsite wastewater treatment are properly considered earlier at the planning stage. That is, if a site does not have appropriate space or soils for on-site wastewater treatment system, a use or development that relies on this should not be approved by the planning authority.

PMAT understands that there is limited to no provision for water sensitive urban design within the SPPs.

Water sensitive urban design is an approach to planning and designing urban areas to make use of this valuable resource and reduce the harm it causes to our rivers and creeks. This type of design will become increasingly important under climate change.

Recommendation:

1. On-site wastewater and water sensitive urban design need to be properly addressed in the Tasmanian Planning Scheme.

2. Rural/Agricultural Issues

An unprecedented range of commercial and extractive uses are now permitted in the rural/agricultural zones which PMAT considers will further degrade the countryside and Tasmania's food bowl. Commercial and extractive uses are not always compatible with food production and environmental stewardship. Food security, soil health and environmental and biodiversity issues need to be 'above' short-term commercial and extractive uses of valuable rural/agricultural land resources.

Recommendation:

1. PMAT urges a re-consideration of the rural/agricultural zones with regards to the permitted commercial and extractive uses.

3. Coastal Land Issues

Over time the SPPs will erode the local character of our small coastal towns and settlements.

PMAT considers that weaker rules for subdivisions and multi-unit development will put our undeveloped beautiful coastlines under greater threat. For example, the same General Residential standards that apply to our cities such as Hobart and Launceston also apply to small coastal towns such as Bicheno, Swansea and Orford. The Low Density Residential Zone also has the potential to erode the character of small coastal settlements such as Coles Bay.

Recommendation:

1. PMAT urges stronger protections from subdivision and multi-unit developments to help maintain the character of our small coastal towns and settlements.

4. Coastal Waters

The SPPs only apply to the low water mark and not to coastal waters. The SPPs must be consistent with State Policies including the *State Coastal Policy 1996*. The *State Coastal Policy 1996* states that it applies to the *'Coastal Zone'* which *'is to be taken as a reference to State waters and to all land to a distance of one kilometre inland from the high-water mark.'*[4] *State waters are defined as the waters which extend out to three nautical miles*[5].

Recommendation:

1. The SPPs should again apply to coastal waters e.g. the Environmental Management Zone should be applied again to coastal waters.

[4] https://www.dpac.tas.gov.au/__data/assets/pdf_file/0010/11521/State_Coastal_Policy_1996.pdf
[5] *https://www.ga.gov.au/scientific-topics/marine/jurisdiction/maritime-boundary-definitions*

5. National Parks and Reserves (Environmental Management Zone)

The purpose of the Environmental Management Zone (EMZ) is to '*provide for the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value',* and largely applies to public reserved land. Most of Tasmania's National Parks and Reserves have been Zoned or will be zoned Environmental Management Zone. **PMAT's main concerns regarding the Environmental Management Zone is what is permitted in this zone plus the lack of set-back provisions that supports the integrity of for example our National Parks.**

Permitted Uses

The EMZ allows a range of *Permitted* uses which PMAT considers are incompatible with protected areas. ***Permitted* uses include:** Community Meeting and Entertainment, Educational and Occasional Care, Food Services, General Retail and Hire, Pleasure Boat Facility, Research and Development, Residential, Resource Development, Sports and Recreation, Tourist Operation, Utilities and Visitor Accommodation.

These uses are conditionally permitted, for example they are permitted because they have an authority issued under the *National Parks and Reserves Management Regulations 2019*, which does not guarantee good planning outcomes will be achieved and does not allow for an appropriate level of public involvement in important decisions concerning these areas.

Set Backs

There are no setback provisions for the Environmental Management Zone from other Zones as is the case for the Rural and Agricultural Zones. This means that buildings can be built up to the boundary, encroaching on the integrity of our National Parks and/or coastal reserves.

Recommendations:

1. PMAT recommends all current Environmental Management Zone Permitted uses should be at minimum classed as *Discretionary*, as this will guarantee public comment and appeal rights on developments on public land such as in our National Parks and Reserves.
2. There should be setback provisions in the Environmental Management Zone to ensure the integrity of our National Parks and Reserves.
3. Further to PMAT's submission we also endorse the recommendations made by the Tasmanian National Parks Association as outlined in their submission to the 2022 SPP review here.

6. Healthy Landscapes (Landscape Conservation Zone)

The purpose of the Landscape Conservation Zone (LCZ) is to provide for the protection, conservation and management of landscape values on private land. However, it does not provide for the protection of *significant natural values* as was the original intent of the LCZ articulated on page 79 of the Draft SPPs Explanatory Document. With a Zone Purpose limited to protecting 'landscape values', LCZ is now effectively a Scenic Protection Zone for private land.

Recommendation:

1. PMAT endorses the recommendations in the 2022 SPP review submission: '*State Planning Provisions Scoping Paper re Landscape Conservation Zone provisions by Conservation Landholders Tasmania'* which calls for a Zone to properly protect natural values on private land.

7. Healthy Landscapes (Natural Assets Code)

The Natural Assets Code (NAC) fails to meet the objectives and requirements of the *Land Use Planning and Approvals Act 1993* (LUPAA) and does not adequately provide for the protection of important natural values (particularly in certain zones) and requires detailed review.

A key objective of LUPAA is to promote and further the sustainable development of natural and physical resources, and as an integral part of this, maintain ecological processes and conserve biodiversity. More specifically, s15 of LUPAA requires the SPPS, including the NAC, to further this objective.

As currently drafted, the NAC reduces natural values to a procedural consideration and undermines the maintenance of ecological processes and conservation of biodiversity. As a result, the, NAC fails to adequately reflect or implement the objectives of LUPAA and fails to meet the criteria for drafting the SPPs.

There are also significant jurisdictional and technical issues with the NAC, including:

- poor integration with other regulations, particularly the Forest Practices System, resulting in loopholes and the ability for regulations to be played off against each other;
- significant limitations with the scope of natural assets and biodiversity values considered under the NAC, with landscape function and ecosystem services and non-threatened native vegetation, species and habitat largely excluded;
- wide-ranging exemptions which further jurisdictional uncertainty and are inconsistent with maintenance of ecological processes and biodiversity conservation;
- extensive exclusions in the application of the Natural Assets Code through Zone exclusion relating to the Agriculture, Industrial, Commercial and Residential Zones and limiting biodiversity consideration to mapped areas based on inaccurate datasets which are not designed for this purpose. As a consequence, many areas of native vegetation and habitat will not be assessed or protected, impacting biodiversity and losing valuable urban and rural trees;
- poorly defined terms resulting in uncertainty;
- a focus on minimising and justifying impacts rather than avoiding impacts and conserving natural assets and biodiversity;
- inadequate buffer distances for waterways, particularly in urban areas; and
- watering down the performance criteria to 'having regard to' a range of considerations rather than meeting these requirements, which enables the significance of impacts to be downplayed and dismissed.

As a consequence, the NAC not only fails to promote sustainable development, maintain ecological processes and further biodiversity conservation, it also fails to achieve its stated purpose. The NAC as drafted also fails to provide aspiration to improve biodiversity conservation and can only lead to a reduction in biodiversity and degradation of natural assets.

In 2016, the Tasmanian Planning Commission via its report, *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016*, recommended that the Natural Assets Code be scrapped in its entirety, with a new Code developed after proper consideration of the biodiversity implications of proposed exemptions, the production of adequate, State-wide vegetation mapping, and consideration of including protection of drinking water catchments.

The then Planning Minister Peter Gutwein rejected that recommendation. Some amendments were made to the Code (including allowing vegetation of local significance to be protected), but no review of exemptions was undertaken. PMAT understands that while no state-wide mapping was provided, the Government provided $100,000 to each of the three regions to implement the SPPs – the southern regional councils pooled resources to engage an expert to prepare biodiversity mapping for the whole region.

Note that despite concerns raised by TasWater, no further amendments were made to protect drinking water catchments.

Recommendations:

1. The NAC does not adequately provide for the protection of important natural values (particularly in certain zones) and requires detailed review.
2. PMAT engaged Dr Nikki den Exter to review the NAC in the context of the Schedule 1 Objectives of the *Land Use Planning and Approvals Act 1993 (LUPAA)*. **Please see this important review in Attachment 4.**

   Dr Nikki den Exter completed her PhD thesis investigating the role and relevance of land use planning in biodiversity conservation in Tasmania. Dr den Exter also works as an Environmental Planner with local government and has over 15 years' experience in the fields of biodiversity conservation, natural resource management and land use planning. As both a practitioner and a researcher, Dr den Exter offers a unique perspective on the importance of land use planning in contributing to biodiversity conservation. The detailed submission has also been reviewed with thanks by PMAT's volunteer *Natural Assets Code Review Sub-Committee* which comprises planning experts, consultants and community advocates with relevant experience and knowledge.

   The summary of key issues and priority recommendations as identified by Dr den Exter are outlined below and in more detail in Attachment 4.

Key issues	**Priority recommendations**
The NAC is limited to managing and minimising loss and fails to improve biodiversity, maintain ecological processes or implement the mitigation hierarchy, with the need to avoid absent	Amend the Code, including the purpose, objectives and standards, to improve the condition and extent of natural assets and biodiversity and reflect all stages of the mitigation hierarchy, with the highest priority being to avoid loss and offsets a

Key issues	Priority recommendations
and offset severely limited.	requirement where loss is unavoidable, and the impact is insignificant.
The scope of natural assets and biodiversity values considered under the NAC is too narrow and will not promote biodiversity conservation or maintain ecological processes, with landscape function and ecosystem services, non-threatened native vegetation, species and habitat, and terrestrial ecosystems sensitive to climate change largely excluded.	Amend the Code, including the purpose, objectives and standards, to apply to natural assets and biodiversity values more broadly, including landscape ecological function, ecosystem services, ecological processes, habitat corridors, genetic diversity, all native vegetation (not just threatened), non-listed species and ecosystems sensitive to climate change.
The extensive zone exclusions from a priority vegetation area, and therefore Code application, will result in some of the most significant areas for biodiversity excluded from assessment and consideration. A priority vegetation area needs to be able to be applied within any zone.	Amend the Code to enable consideration and assessment of impacts on biodiversity in all zones, including the agriculture zone and urban-type zones.
Limiting a priority vegetation area and future coastal refugia area to a statutory map based on inaccurate datasets which are not fit for purpose is inconsistent with other regulations and other Codes and will result in the loss of important biodiversity values and refugia areas. A priority vegetation area and future refugia area must relate to where the values actually exist, not just where they are mapped.	Amend the Code to enable priority vegetation and future refugia areas to apply to land outside the statutory map, where the values are shown the exist.
The exemptions are far-reaching, inconsistent with maintaining ecological processes and biodiversity conservation, duplicate the Scheme exemptions and will result in loopholes and the ability for regulations to be played off against each other.	Review the exemptions to remove duplication and loopholes and limit the exemptions to imminent unacceptable risk or preventing environmental harm, water supply protection, Level 2 activities and consolidation of lots.
Consideration and assessment of impacts	Amend the Code, including the purpose, objectives

Key issues	Priority recommendations
on terrestrial biodiversity are limited to direct impacts from clearance of priority vegetation and arising from development. The NAC does not enable consideration of impacts arising from use and not involving vegetation clearing, such as collision risk, disturbance to threatened species during breeding seasons, degradation of vegetation and damaging tree roots.	and standards, to enable consideration of indirect adverse impacts as well as direct impacts and apply to use as well as development.
The NAC provides inadequate buffer distances for waterways in urban areas and tidal waters.	Amend the NAC to apply the appropriate buffer widths in urban areas, rather than reducing them to 10m, and extend the coastal protection buffer into tidal waters.
The NAC reduces natural assets and biodiversity to a procedural consideration and undermines the maintenance of ecological processes and conservation of biodiversity, through the performance criteria only require 'having regard to' a number of considerations rather than satisfying the criteria	Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy'.
The performance criteria are drafted to facilitate development and manage loss rather than maintain and improve natural assets, ecological processes and biodiversity.	Amend the performance criteria to be more prescriptive and establish ecological criteria for when loss is unacceptable for different values, enable consideration of cumulative impacts, achieve improved management and protection for remaining values, provide for a range of offset mechanisms, including off-site and financial, and enable identification of areas or sites where development is not an option.
Many terms are poorly and narrowly defined, or not defined at all, making the NAC ambiguous and open to interpretation and limiting the scope of the NAC.	Amend the definitions for the following terms, which are defined too narrowly and/or are poorly defined: • Future coastal refugia and future coastal refugia area – which needs to include all refugia not just coastal and not just within a statutory map. • Priority vegetation and priority vegetation area – which needs to include all

Key issues	Priority recommendations
	biodiversity values and not just within a statutory map. • Threatened native vegetation community – to include communities listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999* EPBCA). • Significant and potential habitat f or threatened species – which should be consistent with other regulators. Include definitions for the following terms: native vegetation community; clearance; disturbance; habitat corridor; landscape ecological function; ecological processes; ecological restoration; unreasonable loss; unnecessary or unacceptable impact; and use reliant on a coastal location.
The NAC does not include any requirement or clear ability to request an on-ground assessment of natural values by a suitably qualified person. In the absence of such an assessment, it is generally not possible to adequately determine or assess the impacts of a proposal, including compliance with the Code requirements.	Amend the NAC to specify applications requirements and enable a planning authority to request a natural values assessment by a suitably qualified person.

8. Healthy Landscapes (Scenic Protection Code)

The purpose of the Scenic Protection Code is to recognise and protect landscapes that are identified as important for their scenic values.

The Code can be applied through two overlays: scenic road corridor overlay and the scenic protection area overlay.

However, PMAT considers that the Scenic Protection Code fails to protect our highly valued scenic landscapes. There is an inability to deliver the objectives through this Code as there are certain exemptions afforded to use and development that allow for detrimental impact on landscape values. Concerns regarding the Scenic Protection Code have also been provided to the Tasmanian Planning Commission from the Glamorgan Spring Bay Council on the SPPs in accordance with section 35G of LUPAA.

Not only does the Code fail to protect scenic values, PMAT understands that in many instances Councils are not even applying the Code to their municipal areas.

Given that Tasmania's scenic landscapes are one of our greatest assets and point of difference, this is extremely disappointing.

Local Councils should be given financial support to undertake the strategic assessment of our scenic landscapes so they can populate the Scenic Protection Code within their municipal area via either their LPS process or via planning scheme amendments.

In the absence of local Council resources to undertake the strategic assessment work, a community group paid for the strategic work. But because this was not a Council document, it was disregarded during the Local Provisions Schedule process. **This story demonstrates that there is no pathway for the community to advocate for scenic protection, other than through local Councils. If Councils are not doing the work, this gives the community no pathway.**

Figure 3 - Rocky Hills, forms part of the Great Eastern Drive, one of Australia's greatest road trips. The Drive underpins east coast tourism. As per www.eastcoasttasmania.com states '*this journey inspires rave reviews from visitors and fills Instagram feeds with image after image of stunning landscapes and scenery*'. The Rocky Hills section of the road is subject to the Scenic road corridor overlay but has allowed buildings which undermine the scenic landscape values.

Recommendation:

1. The Scenic Protection Code of the SPPs should be subject to a detailed review, with a view to providing appropriate use and development controls and exemptions to effectively manage and protect all aspects of scenic landscape values.
2. Fund local Councils to strategically analyse their scenic values in their municipal area as a pathway to populating the Scenic Protection Code.

9. Geodiversity

The current SPPs have no provision for mandatory consideration of impacts on geodiversity when assessing a new development or use that impacts geodiversity. This means, for example, that under current laws there is no formal opportunity for the public to comment on or object to a development or use that would adversely impact geodiversity, and there is no opportunity to appeal permits that allow for adverse impacts on geodiversity.

The National State of the Environment Report 2021 includes a 'Geoheritage' section that notes the need to better deal with geoheritage – see here[6].

The below section on geodiversity definitions, values, vulnerability and the need to embrace geodiversity in planning has been written by geomorphologist Kevin Kiernan.

'Geodiversity *Definitions*

The terms geodiversity and biodiversity describe, respectively, the range of variation within the non-living and living components of overall environmental diversity. Geodiversity comprises the bedrock geology, landforms and soils that give physical shape to the Earth's surface, and the physical processes that give rise to them[7]. Action to conserve those elements is termed geodiversity conservation/geoconservation and biodiversity conservation/bioconservation. Such efforts may be focused on the full range of that diversity by ensuring that representative examples of the different geo and bio phenomena are safeguarded. In other cases efforts may be focused only on those phenomena that are perceived as being outstanding in some way, such as particularly scenic landforms and landscapes or particularly charismatic animals such as lions or tigers. The term geoheritage describes those elements we receive from the past, live among in the present, and wish to pass on to those who follow us.

Geodiversity Values

The geodiversity that surrounds us sustains and enriches our lives in much the same ways as does biodiversity, indeed there can be no biodiversity without the varied physical environments that provide the essential stage and diverse habitats upon which it depends. Although many of the world's earliest protected areas were established to safeguard landforms and scenery, over recent decades the emphasis has shifted towards living nature. This probably reflects in part such things as more ready human identification with charismatic animals, but existence of the Linnean classification system that facilitates ready differentiation of the varying types of animals and plants has facilitated rapid recognition of the concept of biodiversity. But just as there are different species of plants and animals, so too are there different types of rocks, minerals, landforms and soils, and indeed the need to safeguard this geodiversity was being promulgated several years prior to adoption of the

[6] McConnell A, Janke T, Cumpston Z, Cresswell ID (2021). Heritage: Geoheritage. In: *Australia State of the environment 2021*, Australian Government Department of Agriculture, Water and the Environment, Canberra, https://soe.dcceew.gov.au/heritage/environment/geoheritage, DOI: 10.26194/7w85-3w50

[7] Gray M 2004 *Geodiversity. Valuing and conserving abiotic nature*. Wiley, Chichester UK

international convention on biodiversity[8]. These non-living components of the environment are of value in their own right just as living species are – for their inherent intrinsic value; because they sustain natural environmental process (including ecological processes); or because of their instrumental worth to humankind as sources of scientific, educational, aesthetic scenery, spiritual, inspirational, economic and other opportunities.

Geodiversity Vulnerability

Effective management is required if these values are to be safeguarded[9]. As with plant and animal species, some are common and some are rare, some are robust and some are fragile. There is a common misconception that the prefix "geo" necessarily implies a robust character, but many elements of geodiversity are quite the opposite. For example, stalactites in limestone caves can be accidentally brushed off by passing visitors or seriously damaged by changes to the over-lying land surface that derange the natural patterns or chemistry of infiltrating seepage moisture; various types of sand dunes can readily be eroded away if a binding vegetation cover is removed; artificial derangement of drainage can cause stream channels to choke with debris or be eroded; important fossil or rare mineral sites can be destroyed by excavation, burial or even by increased public to a site where a lack of protective management allows over-zealous commercial or private collection; and larger scale landforms are commonly destroyed by such things as excavation or burial during housing, forestry, quarrying, inundation beneath artificial water storages, or mining.

Damage to geodiversity is not undone simply because vegetation may later re-colonise and camouflage a disturbed ground surface. While some landforms may possess the potential for a degree of self-healing if given sufficient time and appropriate conditions, many landforms are essentially fossil features that have resulted from environmental process that no longer occur, such as episodes of cold glacial era climate – for example, small glacial meltwater channels less than 1 m deep have survived intact in Tasmania through several glacial cycles (over 300, 000 years or more) so there is no justification for assuming that excavations for roadways or driveways will magically disappear any sooner.

For a soil to form requires the process of pedogenesis, which involves progressive weathering, clay mineral formation, internal redistribution of minerals and other material, horizon development and various other processes that require a very long period of time - even where climatic conditions are warm and moist rock weathering rates rock weathering rates may allow no more than 1 m of soil to form in 50,000 years on most rock types[10]. The uppermost horizons of a soil are the most productive part of a profile but are usually the first to be lost if there is accelerated erosion, churning and profile mixing by traffic, compaction, nutrient depletion, soil pollution or other modes of degradation.

[8] Gray M Geodiversity: the origin and evolution of a paradigm. Pp.31-36 in Burek CV, Prosser CD (eds.) *The history of geoconservation*. Geological Society Special Publication 300, London UK.
[9] Kirkpatrick JB, Kiernan K 2006 Natural heritage management. Chap 14 in Lockwood M, Worboys GL, Kothari A (eds.) *Managing protected areas: a global guide*. IUCN/Earthscan, London.
[10] Boyer DG 2004 Soils on carbonate karst. Pp656-658 in Gunn J (ed.) *Encyclopedia of caves and karst science*. Fitzroy Dearborn, New York USA

Hence, soil degradation should be avoided in the first place rather than being addressed by remediation attempts such as dumping loose "dirt" onto a disturbed surface, because a soil is not just "dirt".

Geodiversity and Planning

The need to embrace geodiversity in planning - Sites of geoconservation significance can be valued at a variety of scales, from the global to the very local. Only those sites recognised as important at a state or national scale are ever likely to be safeguarded as protected areas, but many more are nonetheless significant at regional or local level, or even considered important by just a few adjacent neighbours. ***The need for a planning response outside formal protected areas by various levels of government has long been recognised overseas, and also in Tasmania***[11].

The Australian Natural Heritage Charter[12] *provides one very useful contribution towards better recognition and management of geodiversity by various levels of government. Significant progress has already been made in Tasmania where the state government has established a geoconservation database that can be readily accessed by planners and development proponents. The establishment of a geoconservation code within the Tasmanian planning machinery would facilitate utilisation and development of this important tool for planners and development proponents. No impediment to develop generally exists where geoconservation sites are robust or lacking significance, but important and vulnerable sites require higher levels of planning intervention.'*

Tasmanian Geoconservation Database

Further to the above, the **Tasmanian Geoconservation Database** is '*a source of information about geodiversity features, systems and processes of conservation significance in the State of Tasmania. The database is a resource for anyone with an interest in conservation and the environment. However, the principal aim is to make information on sites of geoconservation significance available to land managers, in order to assist them manage these values.* ***Being aware of a listed site can assist parties involved in works or developments to plan their activities. This may involve measures to avoid, minimise or mitigate impacts to geoconservation values.*** *More than a thousand sites are currently listed. These range in scale from individual rock outcrops and cuttings that expose important geological sections, to landscape-scale features that illustrate the diversity of Tasmania's geomorphic features and processes. Many of the sites are very robust and unlikely to be affected by human activities; others are highly sensitive to disturbance and require careful management*.'

Recommendation:

[11] For example see Erikstad L 1984 Registration and conservation of sites and areas with geological significance in Norway. *Norsk Geografisk Tidsskriuft* 38: 200-204; Nature Conservancy Council 1989 *Earth Science Conservation. A draft strategy.* NCC, London, UK; Kiernan K 1991 Landform conservation and protection. pp. 112-129 in *Fifth regional seminar on national parks and wildlife management, Tasmania 1991. Resource document*. Tasmanian Parks, Wildlife & Heritage Department, Hobart.

[12] ACIUCN 1996 *Australian natural heritage charter*. Australian Council for the International Union of Conservation, & Australian Heritage Commission, Canberra

1. The SPPs must provide consideration of and protection of geoheritage via the creation of a Geodiversity Code which could be linked to the *Tasmanian Geoheritage Database*.

10. Integration of Land Uses

Forestry, mine exploration, fish farming and dam construction remain largely exempt from the planning system. There is also a new concerning trend to remove rezone subdivisions from the standard statutory planning process.

Recommendation:

1. PMAT considers that the planning system should provide an integrated assessment process across all types of developments on all land tenures which includes consistent provision of mediation, public comment and appeal rights.

11. Planning and Good Design & Loss of Character Statements

Quality design in the urban setting means "doing density better". We need quality in our back yards (QIMBY), an idea promoted by Brent Toderian, an internationally recognised City Planner and Urban Designer based in Vancouver.

Liveable towns and suburbs: For most people this means easy access to services and public transport, a reduced need for driving, active transport connections across the suburb, easily accessible green public open spaces, improved streetscapes with street trees continually planted and maintained, with species which can coexist with overhead and underground services. This means well designed subdivisions where roads are wide enough to allow services, traffic, footpaths and street trees. Cul de sacs should not have continuous roofs. There should be less impervious surfaces, continuous roofs and concrete.

Dwelling design: Apartment living could allow more surrounding green space, though height and building form and scale become important considerations due to potential negative impact on nearby buildings. Passive solar with sun into habitable rooms is a critical consideration.

Individual dwellings: There must be adequate separation from neighbours to maintain privacy, sunlight onto solar panels and into private open space, enough room for garden beds, play and entertaining areas, and this space should be accessible from a living room. The Residential SPPs do not deliver this. New research confirms, reported here *'Poor housing has direct impact on mental health during COVID lockdowns, study finds'* 13 August 2021, that poor housing has direct impact on mental health during COVID lockdowns: *'Your mental health in the pandemic "depends on where you live", new research suggests, with noisy, dark and problem-plagued homes increasing anxiety, depression, and even loneliness during lockdowns.' And 'Lockdowns are likely to continue through the pandemic and other climate change impacts – thus its critical, our housing policy and standards 'make it safe for everyone … to shelter in place without having poor mental health'.*

Building materials: Low cost development will impact sustainability and increase heating/cooling costs, creating a poor lived experience for future owners. There should be stronger building controls. Consider the heat retention effects of dark roofs. There should be less hard surfaces and increased tree canopy. Too often the effect of a development which changes the existing density of a street is allowed to proceed without any consideration for place. Neighbours have rights not just the developer.

Tasmanian Subdivision Guidelines: These voluntary guidelines are an engineering design and construction resource and only provide information on the minimum standards required by participating Tasmanian Councils for the design and construction of roads and utilities as per the relevant statutory requirements. These Guidelines are used by consultants, developers and construction contractors as well as Council professionals. The guidelines standards should be expanded to include quality urban design considerations.

Recommendation: All residential zones in the SPPs should be rethought to

1. Mandate quality urban design in our subdivisions, suburbs and towns;

2. Improve design standards to prescribe environmentally sustainable design requirements including net zero carbon emissions - which is eminently achievable now;
3. Provide a Zone or mechanism which allows apartment dwellings and/or targeted infill based on strategic planning;
4. Deliver residential standards in our suburbs which maintain amenity and contribute to quality of life. PMAT also recommends that subdivision standards be improved to provide mandatory requirements for provision of public open space for subdivisions and for multiple dwellings; and
5. Improve the Tasmanian Subdivision Guidelines to incorporate the above recommendations.
6. Whilst PMAT accepts that *Desired Future Character Statements* and *Local Area Objectives* may be hard to provide in the context of SPPs, which by definition, apply state-wide, we consider that greater latitude could be provided in the SPPs for LPSs to provide these types of statements for each municipality. It is also extremely disappointing that Local Area Objectives and Character Statements such as Desired Future Character Statements have been removed from the Tasmanian Planning Scheme. Currently, there is nothing to guide Councils when making discretionary decisions, (unless in Discretionary Land Use decision as at 6.10.2b). **PMAT recommend s that the Tasmanian Planning Scheme should be amended**: Amend section 6.10.2 of the SPPs to read:

   6.10.2 In determining an application for a permit for a Discretionary use "**and development**" the planning authority must, in addition to the matters referred to in sub-clause 6.10.1 of this planning scheme, "**demonstrate compliance with"**:

   (a) the purpose of the applicable zone;

   (b) any relevant local area objective for the applicable zone;

   (c) the purpose of any applicable code;

   (d) the purpose of any applicable specific area plan;

   (e) any relevant local area objective for any applicable specific area plan; and

   (f) the requirements of any site-specific qualification, but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised.

22 Various Concerns held by PMAT

- Application requirements in cl 6.1 and the need for planning authorities to be able to require certain reports to be prepared by suitable persons (for example, Natural Values Assessments), or for these reports to be mandatory where certain codes apply.
- General exemptions in cl 4.0 of the SPPs particularly those relating to vegetation removal and landscaping.
- The need to better plan for renewable energy and infrastructure.
- PMAT considers that the SPP Acceptable Solutions (i.e. what is permitted as of right) are not generally acceptable to the wider community.
- It is disappointing also that Local Area Objectives and Character Statements such as Desired Future Character Statements have been removed from the Tasmanian Planning Scheme. The*re is nothing to guide Councils when making discretionary decisions.*

Related General Comments/Concerns regarding the SPPs

PMAT also has a range of concerns relating to the SPPs more broadly:

1. Amendments to SPPs - 35G of LUPAA
2. The Process for making Minor and Urgent Amendments to SPPs
3. The SPPs reliance on outdated Australian Standards
4. The SPPs vague and confusing terminology
5. The SPPs were developed without a full suite of State Policies
6. Increased complexity
7. Tasmanian Spatial Digital Twin
8. Protection of local Character via the LPS process

1. Amendments to SPPs - 35G of LUPAA

Under Section 35 G of the *Land Use Planning and Approvals Act 1993*, see here, a planning authority may notify the Minister as to whether an amendment of the SPPs is required. However, the Act does not set out a process that deals with the 35G issues.

Recommendations:

1. It is PMAT's view that the *Land Use Planning and Approvals Act 1993* should set out a transparent and robust process for dealing with 35G issues.
2. Consistent with the Objectives of the *Land Use Planning and Approvals Act 1993*, communities that are going through their Draft Local Provisions Schedule public consultation process, should be allowed and encouraged by their local Council to comment not only on the application of the SPPs but on any issues they may have in regards to the contents of the SPPs. It is logical that this is when communities are thinking about key concerns, rather than only having the opportunity to raise issues regarding the content of the SPPs during the statutory five year review of the SPPs. **PMAT recommends the *Land Use Planning and Approvals Act 1993* should be amended to reflect this.**

2. Process for Making Minor and Urgent Amendments to SPPs

In 2021, the Tasmanian Government amended the *Land Use Planning and Approvals Act 1993* to change the process for making minor amendments to the SPPs and introduce a separate process for making urgent amendments to the SPPs. These amendments give more power to the Planning Minister with no or a very delayed opportunity for public comment. The definition of both a minor and urgent amendment is also unclear. In PMAT's view, amendment processes provide the Minister with too much discretion to make changes to the SPPs and fail to adopt appropriate checks and balances on these significant powers.

Also, our legal advice is that when the Tasmanian Planning Policies are introduced, the minor amendment process does not allow for changes to bring the SPPs into line with Tasmanian Planning Policies.

Recommendations:

1. Amend the *Land Use Planning and Approvals Act 1993* to provide a clear definition of what constitutes a *minor* and *urgent* SPP amendment.
2. Ensure that the process for creating a minor or urgent amendment includes meaningful public consultation that is timely effective, open and transparent.
3. The State Planning Office/the Tasmanian Planning Commission to provide fact sheets on the various SPP amendment process and in particular highlighting where the community

3. The SPPs reliance on outdated Australian Standards

There is a strong reliance in the Tasmanian Planning Scheme on Australian Standards, many of which we understand are outdated and out of touch.

PMAT understands that it is also not possible to easily access the applied, adopted or incorporated documents via the Tasmanian Planning Scheme. There is no hyperlink to the actual documents themselves; and many, such as the Australian New Zealand standards are accessible only via subscription services. PMAT understands that Councils for example their building and plumbing teams, and the engineering department maybe the only areas that have subscription access. This means that if planners want to check on details they need to ask them to print a copy. Subscriptions are not inexpensive, and it is a barrier for community members to participate in the process and understand the Planning Scheme requirements.

Many of the documents are outdated, ranging in publication dates from 3 years (for the most recent) to 23 years (for the oldest). Whilst these may be the most recent version of the documents, it is difficult to believe that they all represent current international best practice. **This raises an important question: if they are now part of the Tasmanian Planning Scheme, which needs to be reviewed every five years, then where are the resources to review and update all of these documents? Or are they some-how exempt from this legislative requirement?** For example, PMAT understands that the least reflective of current realities are the Australian Standards relating to the Car Parking requirements, especially dimensions.

Recommendation:

1. That any third party documents/standards referred to in the Tasmanian Planning Scheme should be at minimum publicly available.
2. That the Tasmanian Planning Scheme should not rely on outdated standards/third party documents.

4. The SPPs Vague and Confusing Terminology

There are many specific words in the SPPs, as well as constructs in the language used, that lead to ambiguity of interpretation. Often this results in sub-optimal planning outcomes for the community and can contribute to delays, unnecessary appeals and increased costs to developers and appellants. Words like SPPs 8.4.2 "provides reasonably consistent separation between dwellings" 8.4.4 "separation between multiple dwellings provides reasonable opportunity for sunlight". Other terms used throughout the SPPs which are highly subjective include "compatible", "tolerable risk", and "occasional visitors" where numbers are not defined.

Similarly, the use of constructs such as 'having regard to' may mean that sub- criteria can effectively be disregarded in decision making. Alternative wording such as 'demonstrate compliance with the following' would provide greater confidence that the intent of such provisions will be realised.

While this ambiguity leads to delays and costs for all parties, it particularly affects individuals and communities where the high costs involved mean they have reduced capacity to participate in the planning process – contrary to the intent of LUPAA objective 1.(c).

Recommendation:

1. That the terminology and construction of the SPPs be reviewed to provide clearer definitions and shift the emphasis under performance criteria towards demonstrated compliance with stated objectives.

5. The SPPs were developed with few State Policies

The SPPs are not about strategic or integrated planning, but are more aptly described as development controls. The creation of the SPPs should have been guided by a comprehensive suite of State Policies. This did not happen before the development of the SPPs by the Planning Reform Task Force. Hence the SPPs exist without a vision for Tasmania's future.

The SPPs are still not supported by a comprehensive suite of State Policies to guide planning outcomes. In 2016, the Tasmanian Planning Commission acknowledged, in particular, the need to review the State Coastal Policy as a matter of urgency, but no action has been taken. Other areas without a strategic policy basis include integrated transport, population and settlements, biodiversity management, tourism and climate change.

In 2018, instead of developing a suite of State Policies, the State Government created a new instrument in the planning system – the Tasmanian Planning Policies. As at 2022, the Tasmanian Planning Polices are still being developed. The Tasmanian Planning Policies are expected to be lodged with the Tasmanian Planning Commission by the end of 2022. The Tasmanian Planning Commission will undertake its own independent review, including public exhibition and hearings.

PMAT's position has been that we need State Policies rather than Tasmanian Planning Polices because they are signed off by the Tasmanian Parliament and have a whole of Government approach and a broader effect. The Tasmanian Planning Polices are only signed off by the Planning Minister and only apply to the Tasmanian Planning Scheme and not to all Government policy and decisions.

Recommendation:

1. That a suite of State Policies be developed to provide a whole of Government and more transparent approach to Tasmania's future.

6. Increased Complexity

The Tasmanian Planning Scheme is very complex, is only available in a poorly bookmarked pdf and is very difficult for the general public to understand. This creates real difficulties for local communities, governments and developers with the assessment and development process becoming more complex rather than less so. Community members cannot even find the Tasmanian Planning Scheme online because of the naming confusion between the Tasmanian Planning Scheme and the State Planning Provisions. PMAT often fields phone enquiries about how to find the Tasmanian Planning Scheme.

Repeated amendments to Tasmania's planning laws and thus how the Tasmanian Planning Scheme is being rolled out is also unbelievably complicated. From a community advocacy point of view, it is almost impossible to communicate the LPS process to the general public. For example, see PMAT Media Release: Solicitor General's Confusion Highlights Flawed Planning Change Nov 2021.

Recommendations:

1. It is recommended that illustrated guidelines are developed to assist people in understanding the Tasmanian Planning Scheme.
2. The Tasmanian Planning Scheme to be made available as with previous interim schemes through iPlan (or similar) website. This should also link the List Map so there is a graphical representation of the application of the Tasmanian Planning Scheme (which expands when new LPSs come on board). It should also be noted, that for the average person, iPlan is difficult to use.
3. Create a user friendly version of the Tasmania Planning Scheme such as the provision of pdfs for the SPPs plus every LPS and associated maps. **iPlan is impenetrable for many users.**
4. The system and Tasmanian Planning Scheme language is also highly complex and analytical and most of the public are not well informed. More is required in the way of public education, and a user friendly document should be produced, if our planning system is to be trusted by the wider community.

7. Tasmanian Spatial Digital Twin

Digital Twin, a digital story telling tool, would revolutionise planning data and public consultation in Tasmania. The Spatial Digital Twin could bring together data sources from across government including spatial, natural resources and planning, and integrate it with real time feeds from sensors to provide insights for local communities, planners, designers and decision makers across industry and government.

It enables communities, for example, to gain planning information about their streets, neighbourhoods and municipalities. It would allow the general public to visualise how the SPPs are being applied and to how a development looks digitally before it is physically built. This would make it easier to plan and predict outcomes of infrastructure projects, right down to viewing how shadows fall, or how much traffic is in an area.

See a NSW Government media release by the Minister for Customer Service and Digital Government: *Digital Twin revolutionises planning data for NSW*, December 2021.

From a community point of view, it is almost impossible to gain a landscape/municipality scale understanding of the application of the SPPs from two dimensional maps. One of PMAT's alliance member groups, Freycinet Action Network (FAN), requested the shape files of Glamorgan Spring Bay Council's draft LPS but was unable to obtain a copy. This would have enabled FAN to better visualise how the Draft LPS was being proposed to be applied over the landscape and allowed for greater consideration of the implications of the Draft LPS.

Recommendation:

1. To introduce a Tasmanian Spatial Digital Twin to for example aid community consultation with regards to general Development Applications as well as the application of the Tasmanian Planning Scheme via each Council's LPS process and public consultation broadly.

8. Protection of local Character via the LPS process

Whilst uniformity/homogeneity might be efficient for the development sector, the SPPs have the very significant potential to destroy the varied and beautiful character of so much of Tasmania.

In 2016, the Tasmanian Planning Commission via its report, *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016*, acknowledged that the SPPs were designed to limit local variation.

The then Planning Minister Peter Gutwein however promised the community they would be able to protect local character through the application of Particular Purpose Zones (PPZs), Specific Area Plans (SAPs) and Site-Specific Qualifications (SSQs).

However, from a community point of view the process of protecting local variation is difficult to navigate for non-planners. As the SAP/PPZ/SSQ are the only mechanisms the community has to preserve character in the Tasmanian Planning Scheme, it is essential that the process is not a barrier to engagement.

For example, one of PMAT's member groups, the Freycinet Action Network, evocated for the application of a PPZ over a spatial area known as 'The Fisheries' (Figure 4). The Fisheries is visually prominent within the iconic landscape of The Hazards which form part of the globally famous Freycinet National Park on Tasmania's east coast. Under the Draft Local Provisions Schedule, the area was to be zoned Low Density Residential Zone – which over time would have eroded the character of The Fisheries.

Given the visual context and character of The Fisheries, it is disappointing that Freycinet Action Network, and others, had to fundraise approximately $20,000 (to help cover expert planning and mapping advice) and engage in about a two year process to achieve the application of a PPZ over the Fisheries to help maintain its values. This is especially concerning given The Fisheries is one of Tasmania's most iconic local areas where one would think that there would be no need to advocate for the application of a PPZ.

Recommendation:

1. Ensure that the community is more easily able to advocate for areas they care about via a more user friendly process for applying SAPs, PPZs or SSQs.

Figure 4 - Visual perspective of "The Fisheries" in context of the Hazards.

#PlanningMatters

Appendix 1 – PMAT's Talking Point: 'Let's imagine a planning system which benefits all the community", The Mercury 11 August 2022.

THURSDAY, AUGUST 11, 2022
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Inhumane practices

It's unlawful, cruel and incredibly expensive. Why then does Australia persist with its policy of indefinite and arbitrary detention of asylum seekers? asks Andrew Wilkie

A LITTLE girl in a flowery frock and pink tiara enjoying her fifth birthday with a koala-topped cake is an image guaranteed to soften even the hardest of hearts.

But when Tharnicaa Nadesalingam smiled sweetly for the cameras recently in a Queensland park, it also marked the end of a four-year ordeal as it was the first time she had ever celebrated a birthday outside of immigration detention.

Indeed, the federal government squandered more than $7m keeping "Tharni", big sister Kopika, dad Nades and mum Priya behind bars, despite the fact the Queensland community of Biloela was more than happy to continue providing them with a safe haven.

Nades and Priya arrived by boat in Australia separately a decade ago as Tamil asylum seekers fleeing Sri Lanka. They later met in Biloela, married and welcomed two daughters. But when their asylum claims were rejected, authorities tried twice to deport them while detaining the family like criminals.

It took a change of government to enable their recent return to Queensland from Western Australia, where they had been living in legal limbo after Tharni became gravely ill while on Christmas Island and was flown to Perth for emergency treatment.

Showing compassion that was so conspicuously absent during the Coalition's reign, the new Labor government first granted the young family bridging visas followed by permanent residency on August 5.

For his part, Prime Minister Anthony Albanese has described the whole sorry saga as something "Australia can't be proud of". "We are a better country than that, we can do better than that," he said.

He's right, we can do better and it's beyond time we did. No one should have to go through the trauma this Sri Lankan family has faced for simply fleeing danger and seeking to become fully fledged, productive members of our society.

That's why I have reintroduced a private member's Bill to federal parliament designed to end Australia's policy of mandatory detention for asylum seekers and refugees, a practice at odds with numerous international agreements to which Australia is a party. As the Asylum Seeker Resource Centre rightly noted, it's time to put humanity back into home affairs.

According to the most recent government figures, as of March 31, 2022, there were 1512 people held in Australian immigration detention facilities. Another 563 people were living in the community after being approved for a residence determination and 10,993 "Illegal Maritime Arrivals" were living in the community after being granted a bridging visa.

As at June 30, there were 112 people on Nauru. Just last year, Australia signed a new agreement to continue an "enduring" form of offshore processing for asylum seekers on the remote Pacific island – locking us into more of the same out-of-sight, out-of-mind approach.

Australia's regional processing arrangements with PNG, meanwhile, ended on December 31, 2021, and the 105 people who remained in PNG at this date are now considered the responsibility of the PNG government.

Offshore detention is not only cruelty on steroids but staggeringly expensive, with the government blowing $9.65bn of taxpayers' money on the punitive practice since July 2013.

It costs about $360,000 per year to hold someone in immigration detention in Australia and an eye-watering $460,000 to keep a person in hotel detention, as was the case with the poor souls kept in limbo for years on end at Melbourne's Park Hotel. Compare this to $4429 for a refugee or asylum seeker to live in the community on a bridging visa.

My Ending Indefinite and Arbitrary Immigration Detention Bill provides alternatives to detention by moving asylum seekers and refugees into the community almost always in preference to

Let's imagine a planning system which

The current review of the State Planning Provisions closes on August 12, and is the best chance we have for improving our planning system, writes Sophie Underwood


Sophie Underwood

THE Planning Matters Alliance Tasmania's (PMAT) vision is for lutruwita/Tasmania to be a global leader in planning excellence.

We believe best practice planning must embrace and respect all Tasmanians, enhance community wellbeing, health and prosperity, nourish and care for Tasmania's outstanding natural values, recognise, protect and enrich our cultural heritage and, through democratic and transparent processes, deliver sustainable, integrated development in harmony with the surrounding environment.

Contrast this with the vision of vested interests, international and other developers and those who will put profit before people and place. Their aim is to shift planning from local councils and replace them with 'independent' panels, while removing more and more checks and balances, including the public's right to appeal.

The former head of the developer's lobby group, the Property Council, oversaw the creation of the incoming Tasmanian Planning Scheme and delivered a planning system that is skewed towards the development sector at the expense of the whole community. PMAT, an alliance of about 70 community groups, formed in 2016, united by shared concerns with the unbalanced new Tasmanian Planning Scheme.

The current review of the State Planning Provisions (the rules that form the core of the incoming Tasmanian Planning Scheme) closes on August 12 and is the best chance the community has for the next five years to improve our planning system.

Let's imagine lutruwita as a global leader, benchmarking a gold standard in planning.

Let's imagine a planning system which truly benefits all the community, prioritising the special values that underpin our brand and economy and continue to set us apart globally.

This is why PMAT's submission to the State Planning Provisions review is calling for significant improvements to our planning system, and we hope that others will join our call, to:

ENSURE the community has a right of say and access to planning appeals especially in our residential areas and National Parks and Reserves.

ADDRESS adaptation to climate change, by ensuring Tasmania's risk mapping is based on the best available science. The state government has a responsibility to ensure the planning system does not allow the building of homes in areas that will become uninsurable.

PROVIDE greater housing choice including making provision for social and affordable housing, for example by ensuring new developments contain a proportion of social and/or affordable housing.

ONLY consider appropriately placed wind farms, after careful modelling of all environmental and cultural heritage data.

EMBED sustainable transport and green design of buildings and subdivisions into planning processes, including better protection of solar panels and provision for future solar access.

INCLUDE a liveable streets code and a public open space code to promote better physical/mental health for all Tasmanians, such as facilitation of walking and cycling opportunities across

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cannot go on

People gather outside the Park Hotel Immigration detention facility, in Melbourne, to protest against the inhumane practice of detaining asylum seekers indefinitely.
Picture: NCA NewsWire / Andrew Henshaw

being behind bars. It will also ensure they have full access to housing and financial support, education, health care and other government services, as well as the right to work, as is required under international law.

Importantly, the Bill outlines specific conditions on how and why a person can be detained and will rule out long-term and arbitrary detention by setting limited time frames.

I moved a similar Bill during the previous parliament. When considered by the Joint Standing Committee on Migration, it attracted 437 public submissions that were overwhelmingly supportive. Given this appetite for change, why are there still so many people still being held in immigration detention in Australia and more than 100 languishing on Nauru?

The bipartisan policy of mandatory detention is immoral, illegal and should have been ditched years ago. With the Biloela bungle thankfully behind us, let's commit to doing better, Mr Albanese, and never make the same hideous mistake again.

Andrew Wilkie is the federal independent member for Clark.

benefits all the community

suburbs, ensuring local access to recreation areas and public open space. Include a neighbourhood code to protect and enhance urban amenity and liveability.

IMPROVE residential zones/codes to better adapt to the impacts of climate change and improve the quality of densification and health outcomes. Reinstate local area objectives and character statements to guide councils when making discretionary decisions.

INCLUDE an Aboriginal Heritage Code to ensure Tasmanian Aboriginals can comment on or object to a development or use that would adversely impact their cultural heritage, including appeal rights.

ENSURE the local historic heritage code is consistent with the gold standard Burra Charter.

INCLUDE a stormwater code to ensure councils can consider stormwater run-off implications of new developments.

ADDRESS waste water issues – at present there is no provision for on-site waste water.

MAINTAIN Tasmania's countryside and food bowl by not allowing inappropriate commercial and extractive uses.

INCLUDE stronger protections for our beautiful coastlines and small coastal settlements including applying the planning system to coastal waters, rather than just to the low water mark, as used to be the case.

MAINTAIN healthy landscapes by ensuring the Landscape Conservation Zone properly protects natural values on private land; the natural assets code maintains ecological processes and conservation of biodiversity and the scenic protection code actually protects scenic landscape values. Include a significant trees code to protect a broader range of values and a geodiversity code to give better consideration of and protection of geoheritage; and

MAKE it easier for communities to protect/enhance local character.

Planning affects every inch of Tasmania, every title on both private and public land.

Our wellbeing and mental health, our homes, our neighbour's house, our local shops, work opportunities, schools, parks and transport corridors are all influenced, for better or worse, by planning decisions.

Planning shapes our cities, towns and rural landscapes. Well thought through strategic planning can build strong, thriving, healthy and sustainable communities and to achieve it, those communities now have an opportunity to comment and help create the future they desire.

Sophie Underwood is the state co-ordinator of the Planning Matters Alliance Tasmania.

V2 - MEREQU201MA

Police need time to keep us all safe

Police Association hopes the new Commissioner will assist members focus on core responsibilities, says **Colin Riley**

THE outgoing Commissioner of Police Darren Hine has been a member of the Police Association of Tasmania for more than 40 years.

As Commissioner Darren has been closely involved with the Police Association in developing and implementing several key strategies and for that we pay tribute to his service and tenure in this key role for Tasmania.

These have included:

THE Operational Response Model which ensured when police responded to an incident, there was the appropriate dispatch of officers to incidents to ensure the safest possible operational environment.

MANDATED safe staffing levels at the seven 24-hour police stations.

IMPLEMENTED a policy to make sure there were no absences that did not have to be back filled to ensure officer safety – for the 38 police officers at the 28 most remote police stations.

BROAD introduction in the past few years of roster reform.

THE proposed Fatigue Management Policy that has been in the making since 2019 and is now about to be approved.

Darren Hine has always spoken with respect to officers in all his dealings with them. He has always demonstrated empathy and understanding.

The Police Association welcomes the newly appointed Police Commissioner Donna Adams.

We expect that Commissioner Adams will – in consultation with police officers – develop a strategic plan for Tasmania Police.

She will need to engage and empower managers to deliver on the Strategic Plan's outcomes and make them accountable for that delivery.

Other priorities we expect to be included are:

THE management of all assets, providing analysis as to replacement of equipment, forecasting expenditure and spreading costs across financial years.

FULLY deliver on the recruitment of the Liberal government's commitment of a 31 per cent growth in police officer numbers from 2014 to 2026.

SIXTEEN police officers for the full-time Special Operations Group.

TEN police officers for Multi-disciplinary Centres for sexual assault investigations.

SIX police officers for mental health response teams.

THE first 10 of 50 police officers from the 2021 election commitment.

One of the serious issues facing Tasmania Police is understanding and remediating the annual 5 per cent separation rate of police officers.

Commissioner Adams must also implement employment reforms, inclusive of police officers as casuals, identified in the 2019 Tasmania Police Capability Review.

We must also ensure ongoing sustainability of minimum safe staffing levels of 44 police officers on duty at any one time at the state's seven 24-hour police stations.

Tasmania Police needs to implement the government's 2018 commitment of a remote police station relief policy, fully funded with $2.5m a year from 2021.

The association notes that 4.5 per cent, or 63, of all police officers in Tasmania are fully off work incapacitated, with a further 10 per cent of all police officers on open workers compensation claims.

In 2021, Tasmania Police commissioned an independent review into workers compensation and wellbeing – we need to implement the 23 recommendations as soon possible.

We must address police officer wellbeing issues contributing to police suicides, leveraging factors identified from the coronial hearing to be conducted later this year into the four police officer suicides in the past five years.

We must reform the neglected diverse powers spread across more than 50 legislative acts which has already occurred in other states.

One of our priorities is to investigate and implement strategies with other government agencies so that police officers are not being absorbed into the other agencies' core response functions.

We need to free up police time to focus on traffic enforcement and our own core responsibilities – primarily keeping Tasmanians and their families safe.

Colin Riley is president Police Association of Tasmania.

Appendix 2 - Talking Point: *Planning reform the Trojan horse*, The Mercury, Michael Buxton, December 2016

AUSTRALIAN states have deregulated their planning systems using a national blueprint advanced largely by the development industry. Tasmania is the latest.

Planning system change is always disguised as reform, but the real intent is to advantage the development industry.

In Tasmania, this reform introduces a single statewide planning system. This allows the government to dictate planning provisions regardless of differences in local conditions and needs.

State provisions can easily be changed. In some states, standard statewide provisions have been weakened over time to reduce citizen rights and local planning control.

The Tasmanian planning minister will be able to alter them without reference to Parliament, and potentially gain greater power from the Planning Commission and councils. It is yet to be seen whether the government will permit strong local policy to prevail over state policy.

Some states have allowed a wide range of applications to be assessed without need for permits under codes and by largely eliminating prohibited uses. The Tasmanian system has continued much of the former planning scheme content, but introduces easier development pathways.

An application for development or use need not be advertised if allowed without a permit or considered a permitted activity.

Alternative pathways allow public comment and appeal rights, but these often reduce the level of control.

Serious problems are likely to arise from the content of planning provisions.

For example, while the main residential zone, the General Residential Zone, mandates a minimum site area of 325 square metres and height and other controls for multi-dwelling units, no minimum density applies to land within 400m of a public transport stop or a business or commercial zone. This will open large urban areas to inadequately regulated multi-unit development.

The main rural zones allow many urban uses, including bulky goods stores, retailing, manufacturing and processing, business and professional services and tourist and visitor accommodation complexes.

This deregulation will attract commercial uses to the rural edges of cities and the most scenic landscape areas. Such uses should be located in cities or in rural towns to benefit local jobs instead of being placed as isolated enclaves on some of the state's most beautiful landscapes.

Use and development standards will prove to be useless in protecting the agricultural, environmental and landscape values of rural zones from overdevelopment.

Fast tracking inappropriate developments will force the Tasmanian people to pay a high price for the individual enrichment of a favoured few.

Codes are a particular concern. The heritage code is intended to reduce the impact of urban development on heritage values.

However, performance criteria for demolition are vague and development standards criteria do not provide adequate protection.

The nomination of heritage precincts and places is variable, leaving many inadequately protected.

The National Trust and other expert groups have raised similar concerns.

The potential of the Natural Assets and the Scenic Protection codes to lessen the impacts of some urban uses on rural and natural areas also will be compromised by vague language, limitations and omissions.

Interminable legal arguments will erupt over the meaning and application of these codes, with the inevitable result that development proposals will win out.

The State Government can learn from the disastrous consequences of other deregulated planning systems. It should strengthen regulation and listen to the public to ensure a state system does not destroy much that will be vital for a prosperous and liveable future for citizens.

The Government argues the new system is vital to unlock economic potential and create jobs, but the state's greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these and the state has no future.

While planning for the future is complex, the hidden agendas of planning reform are evident from the massive impacts from unregulated development in other states.

Fast tracking inappropriate developments will force the Tasmanian people to pay a high price for the individual enrichment of a favoured few.

Tasmania's cities, towns, scenic landscapes and biodiversity are a state and national treasure. Lose them and the nation is diminished.

Michael Buxton is Professor Environment and Planning, RMIT University, Melbourne.

Appendix 3 – Mr Brick Wall

This tragic story was submitted to the Tasmanian Planning Commission as part of the public exhibition of the draft SPPs in 2016.

PMAT calls it the tragic story of Mr Brick Wall

Mr Brick Wall states:

"*We are already victims of the new planning scheme. We challenged and won on our objection to a large over-height proposed dwelling 3 metres from our back boundary on an internal block under the previous planning scheme. We won on the grounds that the amenity to our home and yard would be adversely affected by this proposed dwelling under the previous planning scheme.*

However, this all changed under the new interim planning scheme and the dwelling was allowed to be constructed. As a result we now have an outlook from our outdoor entertaining area, living room, dining room, kitchen, playroom and main bedroom of a brick wall the full length of our back yard on the maximum new height allowed.

We can see a bit of sky but no skyline as such. The dwelling has obscure windows for our so called privacy, which are absolutely useless as they have been allowed to erect commercial surveillance cameras all around their house, 2 of which are on our back boundary. No problem you think! These cameras can be operated remotely, have 360 degree views at the click of a mouse and we understand they have facial recognition of 4 kilometres distance. So where is our privacy and amenity?

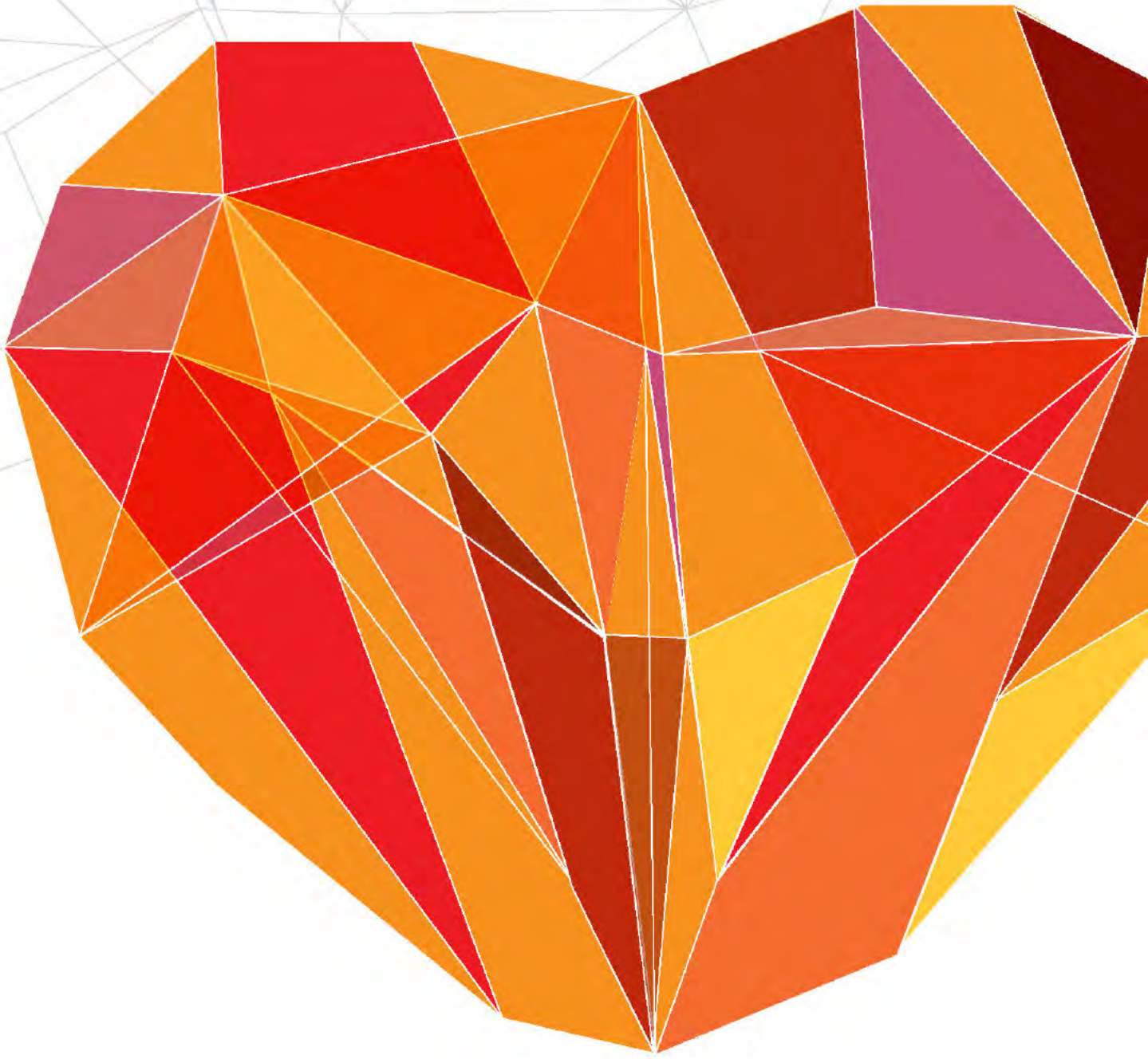
The Council was approached by us and our concerns prior to the new changes proceeding and we were told that there was nothing we or the Council could do to stop these changes as all changes to the planning scheme have to be accepted by Councils and they have no say in the matter. As a result we no longer feel comfortable or relaxed when in our own backyard and our young teenage daughters will not use the yard at all. We also have to keep our blinds drawn on the back of our house to ensure some privacy is maintained.

We also had our house listed for sale for almost 6 months, 8 potential buyers no one bought it because everyone of them sighted that the house next door was too close to our boundary. This is our north facing boundary and as such has all our large windows on this side to take advantage of the sun. '

Mr Brick Wall ends by saying that .the Government needs to realise what's on paper doesn't always work out in the real world and that real people are being adversely affected by their decision making.

Heart Foundation representation to the final draft State Planning Provisions 7 March 2016

18 May 2016



Contents

Glossary

AS	acceptable solution
JSCPH	Joint Select Committee Inquiry into Preventative Health
LPS	Local Provisions Schedules
LUPAA	*Land Use Planning and Approvals Act 1993*
PAL State Policy	State Policy on the Protection of Agricultural Land 2009
PAN	Planning Advisory Note
PC	performance criteria
RMPS	Resource Management and Planning System
SPPs	State Planning Provisions

A. Introduction

The Heart Foundation welcomes the opportunity to submit our representation to the Final Draft State Planning Provisions 7 March 2016 (SPPs).

The object of the representation is to make *health and wellbeing* a key outcome from the operation of the future Tasmanian Planning Scheme.

The rationale and supporting evidence for the recommended amendments is contained in the substantive part of the representation.

Annexure 2 contains the Heart Foundation's recommended amendments to the SPPs in chronological clause number order.

Principal interest of the Heart Foundation

The principal interest of the Heart Foundation is to have the SPPs for the Tasmanian Planning Scheme enhance (and not hinder) physical activity and access to healthy food for community health and wellbeing.

Therefore the Heart Foundation seeks to have *health and wellbeing* a priority outcome from land use planning as regulated through the proposed Tasmanian Planning Scheme.

Why focus on health and wellbeing?

Healthy communities are central to why we plan. Yet there is considerable evidence that our cities and towns are not assisting in improving population health and wellbeing.

Planning schemes primarily concern use and development on land that forms the built environment.

The built environment means the structures and places in which we live, work, shop, learn, travel and play, including land uses, transportation systems and design features; all relevant matters for the proposed Tasmanian Planning Scheme to address.

The link between the built environment and health and wellbeing is well established. The built environment can be an influential determinant on the rate of death and suffering from chronic disease including heart, stroke and blood vessel disease, along with a range of other chronic diseases prevalent in the Tasmanian community.

Planning that delivers thoughtfully designed and built environments can contribute to reduced or deferred incidence of chronic disease and reduce inequities. For instance, provisions in planning schemes relating to density and transport can contribute to realising the health benefits from walking and cycling.

The Tasmanian Planning Scheme needs to be explicit in articulating how the Schedule 1 objectives of LUPAA are furthered with health and wellbeing a clearly identified subject of its provisions.[1]

State Planning Provision's documents

Documents relevant to this representation:

- Draft State Planning Provisions 7 March 2016 (SPPs)
- Terms of Reference issued by The Minister for Planning and Local Government, the Hon. Peter Gutwein 18 December 2015
- *Land Use Planning and Approvals Act 1993* (LUPAA)
- Explanatory Document for the draft of the State Planning Provisions of the Tasmanian Planning Scheme 7 March 2016 (Explanatory Document)

[1] *Adapted from Heart Foundation submissions on the Land Use Planning and Approvals Amendment Tasmanian Planning Scheme) Bill 2015*

Key documents and evidence informing this representation

Schedule 1 of the Resource Management and Planning System (RMPS) with specific reference to LUPAA Schedule 1 Part 2 states the objective:

> *'(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'*

Primary evidence in support of furthering the LUPAA objective for health and wellbeing and in support of this representation is drawn from the following:

1. The report of the Joint Select Committee Inquiry into Preventative Health (JSCPH)[2] that amongst its findings and recommendations are the following:

   Executive summary (page 2)

   'The Committee recognises the link between health and the built environment. Liveability principles must be embedded in all Government policy decisions relating to the built environment including but not limited to transport, infrastructure and land use planning.'

   Recommendation 3 (k) in relation to a preventative health strategy (page 4):

   (k) the importance of active lifestyles, healthy eating and physical activity to improve the health and wellbeing of Tasmanians.

   Recommendation 4 (page 4)

   4. The Government's health and wellbeing policies are reflected in the Tasmanian Planning System and transport infrastructure policy.

   a. Government adopts a state-wide planning policy that ensures liveability principles are embodied in all planning decisions;

   b. Government ensures transport infrastructure planning and policy decisions embody liveability principles; and

   c. Provisions in the new state-wide planning scheme give consideration to active transport links (e.g. walking and cycling), especially within and between urban communities.

   Findings (page 8)**:**

   22. The built environment is a significant contributor to improving longer term health and wellbeing outcomes.

   23. There is a need to recognise the link between health and the built environment, and this needs to be embodied into State policy and the Tasmanian Planning System.

2. Heart Foundation "Healthy by Design"
   Healthy by Design: A guide to planning and designing environments for active living in Tasmania

3. Heart Foundation "The Blueprint"
   Blueprint for an active Australia: Key government and community actions required to increase population levels of physical activity in Australia-2014-2017

4. Heart Foundation "Draft for a State Policy for Healthy Spaces and Places" and supporting documentation

   Heart Foundation (Tasmania) draft State Policy for Healthy Spaces and Places and the Supporting Advocacy Document

5. Heart Foundation "Healthy Active by Design" Healthy Active by Design

[2] *Parliament of Tasmania 2016*

Definitions

The following terms as used in this representation are defined below:

active living means a way of life that integrates physical activity into daily routines.

active travel (transport) means travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling and may allow for integration of multi-modal transport in the course of a day.

health means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

built environment means the structures and places in which we live, work, shop, learn, travel and play, including land uses, transportation systems and design features.

food security means the ability of individuals, households and communities to physically and economically access food that is healthy, sustainable, affordable and culturally appropriate. The domains of food security include supply, demand, utilisation and access (financial and physical).

Principles underpinning the representation

The representation is based on the following health, wellbeing and the built environment principles which form the tests for the examination of the draft SPPs and ultimately whether the SPPs further the objectives of LUPAA and satisfy the criteria under ss. 11, 14 and 15 of LUPAA.

1. Active living: integrating activity into daily routines.
2. Active travel: travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling.
3. Provision of public open space and reserves for aesthetic, environmental, health and economic benefits.
4. Mixed density housing to satisfy life cycle requirements and for walkable neighbourhoods.
5. Compatible mix of land uses to promote active travel
6. Food security and access to healthy food.
7. Buildings and site design actively promotes physical activity.

State Policy

The Heart Foundation's consideration of the draft SPPs is in the vacuum of little policy direction from the State Government in terms of outcomes being sought. The Tasmanian Planning Scheme is responsive to State Policy made under the *State Policies and Projects Act 1993* and not Government policy. The existing State Policies assist in this regard, but are limited in scope and say little about the aspirations for the Tasmanian towns and cities where the bulk of the population live, work, shop, learn, travel and play. A State Policy in the form of the draft *State Policy for Healthy Spaces and Places* as advocated by the Heart Foundation[3] would give the necessary policy context that has the imprimatur of Parliament for application to the SPPs. Therefore this representation needs to be presumptive in advocating the policy, the evidence and deduce the changes required to the SPPs to further the Objectives of the RMPS, particularly in the context of promoting the LUPAA Part 2 Objective, *'the health and wellbeing of all Tasmanians…'*

[3] *See Heart Foundation (Tasmania) draft State Policy for Healthy Spaces and Places and the Supporting Advocacy Document*

About the Heart Foundation

The National Heart Foundation of Australia (Tasmania Division) is a company limited by guarantee. The business is managed by the Chief Executive Officer (CEO) who reports to the Tasmanian Board of Directors. The Board has the responsibility for determining strategy and the corporate governance of the Tasmanian business.

The organisation known as the National Heart Foundation of Australia is a federation of related entities operating together under the provisions of a Federation Agreement. Those entities are the National Heart Foundation of Australia ACN 008 419 761 (National); and the separate National Heart Foundation entities operating in each of the States and Territories of Australia. In 2009 the National Heart Foundation celebrated its fiftieth anniversary. The National Heart Foundation operates under a group services model.

Our purpose is reduce premature death and suffering from heart, stroke and blood disease.

We are currently implementing our five year strategy For all Hearts: Making a difference to Australia's heart health (For all Hearts). For all Hearts focuses our work on four key goals:

- Healthy Hearts
- Heart Care
- Health Equity
- Heart Foundation Research

We will deliver on our strategy through financial strength, our people, advocacy, data and evaluation, reputation and relevance, innovation, integration, business systems and governance.

The Tasmanian Strategic Plan has been developed to align with For all Hearts to provide a strategic focus for the work of the Heart Foundation in Tasmania. Our goal is to deliver the best possible outcomes under the For all Hearts goals within the specific size and cohorts of the Tasmanian population; the local Tasmanian context; and the operational constraints and resources available within the relatively small Tasmanian Division.

The Heart Foundation thanks the Minister for the opportunity to provide this submission and would welcome the opportunity to discuss our submission further.

Contact

Graeme Lynch
CEO Heart Foundation

B. Elements for health and wellbeing for the State Planning Provisions (Rationale and Recommendations)

Clause 2.0

1. Purpose requires a clear set of objectives for use and development of land based on how the LUPAA objectives are furthered and how consistency is found with State Policies.

2. Purpose should include the following objectives:

   - Use and development of land encourages and supports active living for improved health outcomes.
   - Use and development of land encourages and supports active travel for improved health outcomes.
   - Public open spaces and reserves provide a well distributed network of walkable and attractive spaces strategic to local communities for their aesthetic, environmental, health and economic benefits.
   - Mixed density housing and housing that satisfies life-cycle requirements is encouraged to enhance the scope for active living and active travel.
   - Compatible land uses are co-located to promote active travel to, and between different activities.
   - The use or development of land supports a resilient, localised, healthy and sustainable food system.
   - Work places support physical activity through convenient and safe accesses providing for natural surveillance of outside spaces and the street.

Planning Scheme Purpose

The purpose of what is, presumably, to become the Tasmanian Planning Scheme is stated at Clause 2.1 Planning Scheme Purpose. The purpose is stated in terms of:

- Furthering the RMPS objectives
- Consistency with State Policies
- Implementation of regional land use strategies

LUPAA requires a planning scheme to further the objectives, to be consistent with State Policy and for SPPs to be consistent with regional land use strategies. Clause 2.1 as it stands simply repeats the legislative requirements and does not give any indication to how or why subsequent SPPs are included or how they achieve the requirements specified in LUPAA. The Explanatory Document does not assist our understanding, nor why an equivalent clause to 3.0.1 Planning Scheme Objectives in Planning Directive No. 1 is not included. The draft SPPs varies from the structural diagram for the Tasmanian Planning Scheme that had 'purpose and objectives' as part of the State Provisions[4].

The Heart Foundation submits that the zone and code purposes and objectives for each standard do not substitute for a clear set of purpose statements for use and development of land at the front end of the

[4] See *The Tasmanian Planning Scheme Legislative Framework* Tasmanian Government March 2015

Tasmanian Planning Scheme based on how the LUPAA objectives are furthered and how consistency is found with State Policies.

Specifically the Heart Foundation seeks to have the Tasmanian Planning Scheme prescribe objectives for the use and development of land (the 'why do we do it' statements) that embody a structure that is based on health and wellbeing outcomes. Such objectives should set the 'head powers' for subsequent provisions affecting applications for permits, guide subsequent amendments to the SPPs and the settings for the Local Provisions Schedules (LPS).

Objectives oriented to promoting and protecting health and wellbeing should be established with reference to the following principles:

- use and development standards that facilitate mixed land use and mixed density housing in cities and towns to support walkable neighbourhoods.
- use and development standards that facilitate equitable access through active travel that involves travel modes involving physical activity such as walking, cycling, and public transport. There is an emphasis on pedestrian and cyclist connectivity and permeability.
- use and development standards that improve the use, attractiveness and efficiency of the public domain including public streets, public spaces and places through facilitating active living and active travel.
- use and development standards that facilitate food security and access to healthy food.
- use and development standards that require the provision of public open space strategic to local communities for aesthetic, environmental, health and economic benefits.
- use and development standards that facilitate equitable access for buildings and design of sites where there is public access. There is suitable provision for pedestrian and cyclist access and not just requirements for vehicle access and parking.

This representation makes recommendations for the inclusion 'up-front' objectives as part of the examination of subsequent provisions.

Recommendation 1

That there be included in the State Planning Provisions a clear set of objectives for use and development of land at Clause 2.0 based on how the LUPAA objectives are furthered and how consistency is found with State Policies.

1. Active living: integrating activity into daily routines

1.1 Policy

Use and development affecting the structure of cities and towns encourages and supports active living as a normal and preferred activity for improved health outcomes.

1.2 Evidence

The Blueprint for an Active Australia[5] assembles the evidence on the importance of being active in the workplace. The Blueprint asserts:

> *Reshaping the built environments in which most Australians live, work, learn and recreate can significantly increase daily physical activity levels. Community and neighbourhood design impacts on local walking, cycling and public transport use, as well as on recreational walking and physical activity* [6]

The findings of the JSCPH included[7]:

> *22. The built environment is a significant contributor to improving longer term health and wellbeing outcomes*
>
> *23. There is a need to recognise the link between health and the built environment, and this needs to be embodied into State policy and the Tasmanian Planning System.*

1.3 State Planning Provisions relating to active living

SPPs for active living concern setting an objective at 2.0 Planning Scheme Purpose, and a review of zone purpose statements and zone standards.

Active living also strongly relates to the assignment of the zones to land parcels for the LPS and the guidance provided in the Explanatory Document, both outside the scope of representations on the SPPs but, nevertheless, commented upon.

1.4 Purpose

SPPs section 2.1 Planning Scheme Purpose insert the following objective:

> *Use and development of land encourages and supports active living for improved health outcomes.*

1.5 Interpretation

Amenity is defined as:

> *means, in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable.*

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5 *See Blueprint for an active Australia Action area 1 for references on active living and the built environment*
6 *Blueprint for an active Australia page 15*
7 *Parliament of Tasmania 2016 page 8.*

This definition lacks the reason for a concern for amenity, which is for the health and wellbeing of the users of the locality or place. The definition should be amended as follows:

> *means, in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable and adds to the health and wellbeing of the users of the locality, place or building.*

Insert additional interpretations as follows:

> **active living** means a way of life that integrates physical activity into daily routines.
>
> **active travel** means travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling and may allow for integration of multi-modal transport in the course of a day.

1.6 Zones

8.1 General Residential zone - purpose

The draft zone purpose contains terms that are not helpful, omits statements on quality, but supports compatible mixed use. The amendments and reasons are shown below:

The purpose of the General Residential zone is:

> *8.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full infrastructure services are available or can be provided.*

The reference to 'suburban densities' is not helpful and should be deleted. It is contended that the standards for lot sizes and dwelling densities for the General Residential zone are higher than the community would perceive as being a suburban density. The reference to a range of dwelling types is valid and consistent with deleting 'suburban densities'. An additional amendment is to add 'reticulated' to the purpose statement. The addition of '*reticulated*' is to separate the type of infrastructure referred to in 8.1.1 from 8.1.2 and accords with the commentary in the Explanatory Document (page 35).

Clause 8.1.1 should be amended as follows:

> *8.1.1 To provide for residential use or development that accommodates a range of dwelling types ~~at suburban densities~~, where full* reticulated *infrastructure services are available or can be provided.*
>
> *8.1.2 To provide for the efficient utilisation of available and planned social, transport and other service infrastructure.*

This purpose is valid in that it recognises there is a range of infrastructure required for housing areas.

> *8.1.3 To provide for compatible non-residential use that:*
>
> *(a) primarily serves the local community; and*
>
> *(b) does not cause an unreasonable loss of amenity, through noise, activity outside of business hours, traffic generation and movement, or other off site impacts.*

This purpose is valid being consistent with providing for community needs ideally within walking or cycling distances of residences.

> *8.1.4 To ensure that non-residential use does not unreasonably displace or limit Residential use.*

This purpose should be deleted because of the unquantifiable '*unreasonably*'. The use table and use and development standards should be sufficient to prevent '*unreasonably displace*'.

Clause 8.1.4 should be deleted:

~~*8.1.4 To ensure that non residential use does not unreasonably displace or limit Residential use*~~

In addition it would be helpful if the purpose for the General Residential zone suggested something of a qualitative focus for improved townscape. Insert (new) clause at 8.1.4 as follows:

8.1.4 To ensure the use and development of land promotes the health, safety and amenity of residential areas.

8.3.1 General Residential zone - Use Standards for discretionary uses.

The objective of this standard is stated as:

To ensure that all discretionary uses, do not cause an unreasonable loss of amenity.

The focus of the clause should be changed from '*unreasonable'* to '*compatible'* so that discretionary uses are required to be relevant to the residential use. This contrasts with the purpose as drafted which could allow, within the available discretionary use classes, a use unrelated to residential use but simply does not cause a loss of amenity. The restated objective is consistent with the use of terms 'compatible' and 'amenity' for the zone purpose at 8.1.3 and that residential is the primary use for the zone. The objective at clause 8.3.1 should be restated in the positive as follows:

8.3.1 To ensure that all discretionary uses are compatible with residential use

9.1 Inner Residential zone - Purpose

Clause 9.1.3(c) states '*does not unreasonably displace or limit residential use.'* For reasons given for the deletion of clause 8.1.4, this clause should similarly be deleted.

Clause 9.1.3(c) should be deleted:

~~9.1.3(c) does not unreasonably displace or limit residential use.~~

Turning to the commentary on the allocation of the Inner Residential zone in the Explanatory Document under '*zone purpose'*, there are conflicting statements (page 39) that should be deleted:

The Zone has limited application within serviced residential areas,

…this Zone should be well utilised where appropriate.

Within the Inner Residential Zone there should be a reduced expectation on suburban residential amenity,…

The Explanatory Document also refers to *'reducing the footprint of urban sprawl and providing high quality residential living in close proximity to services and the city*'. With a focus on these outcomes the Inner Residential zone should not '*have limited application*' or necessarily a reduction in residential amenity. The references to limited application and reduced amenity should be deleted from the Explanatory Document before this document becomes the basic guidance for the allocation of zones for the LP.

9.3.1 Inner Residential zone - Use Standards for discretionary uses

The objective of this standard is stated as:

To ensure that all uses listed as discretionary within the Use Table do not unreasonably impact on amenity.

For the reasons given for the recommended change to clause 8.3.1 this objective should be restated in the positive:

9.3.1 To ensure that all discretionary uses are compatible with residential use.

13.1 Urban Mixed Use zone - Zone Purpose

The Explanatory Document draws on the similarities of the Village and Mixed Use zones. The similarities should be extended as follows with an additional clause drawn from 12.1.2 for the Village zone, as follows:

The purpose of the Urban Mixed Use Zone is stated as:

13.1.1 To provide for a mix of residential, retail, community services and commercial activities in urban locations.

13.1.2 To provide for a diverse range of uses or developments that are of a type and scale that support and do not compromise the role of surrounding activity centres.

Add new clause 13.1.3 drawn from clause 12.1.2:

13.1.3 To provide amenity for residents appropriate to the mixed use characteristics of the Zone.

13.2 Urban Mixed Use zone - Use Table

Residential use in the Urban Mixed Use zone is limited to above ground floor level or to the rear of a premises. Residential use class as a stand-alone use is not available. Residential use should be added as discretionary with the qualification *'if not listed as permitted'* as follows.

13.2 Use Table (Urban Mixed zone)

(Use class) Discretionary	**Qualification**
Residential	If not listed as permitted

13.3 Urban Mixed Use zone - Use Standards for all uses

The Urban Mixed Use zone objective should say something about amenity between different uses within the zone, not just for adjoining zones. Drawing on the objective for the Village zone at clause 12.3.1 the objectives for the standard at 13.3.1 should be omitted and the following substituted:

13.3.1 To ensure that non-Residential use:

(a) is compatible with the adjoining uses;

(b) does not cause unreasonable loss of residential amenity; and

(c) does not cause unreasonable loss of amenity to adjoining residential zones. (existing clause)

1.7 Recommendations for amendments to the State Planning Provisions to facilitate active living

1. SPPs section 2.1 Planning Scheme Purpose, insert the following:

   Use and development of land encourages and supports active living for improved health outcomes.

2. Clause 3.1.3 Interpretation insert and amend as follows:

   ***amenity** means, in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable and adds to the health and wellbeing of the users of the locality, place or building.*

   ***active living** means a way of life that integrates physical activity into daily routines.*

   ***active travel** means travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling and may allow for integration of multi-modal transport in the course of a day.*

3. Amend the purpose of the General Residential zone as follows:

   8.1.1 To provide for residential use or development that accommodates a range of dwelling types at suburban densities, where full reticulated infrastructure services are available or can be provided.

   ~~*8.1.4 To ensure that non-residential use does not unreasonably displace or limit Residential use.*~~

   8.1.4 To ensure the use and development of land promotes the health, safety and amenity of residential areas.

4. Omit the objective at clause 8.3.1 and substitute:

   8.3.1 To ensure that all discretionary uses are compatible with residential use.

5. Amend the purpose of the Inner Residential zone to delete clause 9.1.3(c) as follows:

   9.1.3(c) does not unreasonably displace or limit residential use.

6. Omit the objective at clause 9.3.1 and substitute:

   9.3.1 To ensure that all discretionary uses are compatible with residential use.

7. Insert additional clause 13.1.3 for the purpose of the Urban Mixed Use zone as follows:

   13.1.3 To provide amenity for residents appropriate to the mixed use characteristics of the zone.

8. Insert at clause 13.2 Use Table for the Urban Mixed zone the following:

(Use class) Discretionary	**Qualification**
Residential	If not listed as permitted

9. Omit the objective for the Urban Mixed Use zone at clause 13.3.1 and substitute the following:

   13.3.1 To ensure that non-Residential use:

   (a) is compatible with the adjoining uses;

   (b) does not cause unreasonable loss of residential amenity; and

   (c) does not cause unreasonable loss of amenity to adjoining residential zones.

2. Active travel: travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling.

2.1 Policy

Use and development affecting the structure of cities and towns encourages and supports active travel for improved health outcomes.

2.2 Evidence

The Blueprint for an Active Australia [8] assembles the evidence on the importance of creating built environments that support active living. The Blueprint asserts:

> *Reshaping the built environments in which most Australians live, work, learn and recreate can significantly increase daily physical activity levels. Community and neighbourhood design impacts on local walking, cycling and public transport use, as well as on recreational walking and physical activity.'*[9]

The recommendations and findings of the JSCPH referred to active transport, including[10]:

> *4.c. Provisions in the new state-wide planning scheme give consideration to active transport links (e.g. walking and cycling), especially within and between urban communities.*

The State Government has adopted the *Positive Provision Policy for cycling infrastructure*.[11] The Policy primarily shifts the onus on the State Road Authority to show why cycling infrastructure should not be provided.

Planning Advisory Note (PAN) 11 Integration of Land Use Planning and Transport in Planning Schemes[12] contends:

> *Integration of land use planning and transport is a major means for furthering sustainable development, securing a pleasant, efficient and safe environment, and protecting public infrastructure in accordance with Schedule 1 Part 1 Objectives and Part 2 Objectives (f) and (h) of the Land Use Planning and Approvals Act 1993.*
>
> *Planning schemes can play an important part in promoting more sustainable use of land and transport resources.*

The resource '*Streets for People, Compendium for Australian Practice*' developed by the Government of South Australia, Heart Foundation and others, provides a comprehensive resource on the design of street that focus on user requirements.[13]

Currently, despite numerous documents defining the planning context for streets such provisions have been absent in planning instruments. The absence of provisions relating to streets have meant various guidelines have filled the void[14]. These guidelines have generally been focussed on engineering standards which have been motor vehicle centric and have done little to promote the broader community function of streets as places for people, including suitable provision for walking, cycling and

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[8] *See Blueprint for an active Australia, Action area 1 for references on active living and the built environment*
[9] *Blueprint for an active Australia page 15*
[10] *Parliament of Tasmania 2016 page 8*
[11] *DIER Positive Provision Policy for cycling infrastructure October 2013, adopted policy as stated in the draft Climate Change Action Plan 2016-2021*
[12] *Planning Advisory Note 11 Tasmanian Planning Commission September 2009. PAN 11 is a document to have regard to as specified in the Minister's Terms of Reference for the draft State Planning Provisions, December 2015.*
[13] *Streets for People Compendium for South Australian Practice: Government of South Australia, Heart Foundation and others 2012.*
[14] *See for instance LGAT Tasmanian Subdivision Guidelines October 2013 and Tasmanian Standard Drawings.*

public transport. It is contended that functioning streets are a major determinant of health and wellbeing as well as the economic value of adjoining properties.

2.3 State Planning Provisions relating to active travel

SPPs for active travel concern setting an objective at 2.0 Planning Scheme Purpose, a review of zone purpose statements and zone standards and an advocacy for a Liveable Streets code.

The challenge is to have the SPPs and LPS translate health and wellbeing into statutory provisions and standards where they affect the design of streets and particularly where the use and development for roads and streets have hitherto mostly not been the concern of planning schemes.

2.4 Purpose

SPPs section 2.1 Planning Scheme Purpose insert the following:

> *Use and development of land encourages and supports active travel for improved health outcomes.*

2.5 Interpretation

Road: The interpretation for 'road' needs to include '*street'* to be consistent with the application of '*street'* in the various standards for the SPPs. Alternatively there is a need for separate interpretations '*road'* and '*street*'. In this regard the *Local Government (Building and Miscellaneous Provisions) Act 1993* is instructive. That Act separates '*road'* from '*street'* but with '*street'* being a sub-set of road.

The interpretation for '*road'* should be amended to include '*street'* as follows:

> ***road****: means land over which the general public has permanent right of passage, including the whole width between abutting property boundaries, all footpaths and the like, and all bridges over which such a road passes and as the context requires road includes street.*

As concepts such as '*streetscape'* (a defined term in the SPPs), '*complete streets'*, '*walkable streets'*, etc. do not similarly apply to roads, and to refocus on the function of urban streets, separate road and street definitions are required. Possible definition splits could be urban/rural or by state/local government road authority or by road hierarchy.

The State Road Hierarchy[15] provides a potential split between roads and streets with the State Hierarchy of Categories 1 – 4 being classed as road and all other roads classed as streets. A State roads, local streets separation is consistent with the structure of the Road and Rail Assets Code in the SPPs. Amended interpretations to be inserted at Clause 3.1.3 are as follows:

> **road**: means land over which the general public has permanent right of passage, including the whole width between abutting property boundaries, all footpaths and the like, and all bridges over which such a road passes and includes all State roads.
>
> **street**: means a road that is not a State road.

Separate interpretations for '*road'* and '*street'* is preferred as it enables particular requirements of streets to be separately addressed.

2.6 Exemptions

The interpretation '*minor utilities*' interfaces with the use class '*utilities'*. Where minor utilities appears in a zone use table as a qualified 'no permit required' use this contrasts with the exemptions (see below) for '*minor infrastructure'*. The implication is that for a no permit required use or development, there are

[15] *Roads for our Future - State Road Hierarchy Department of State Growth Tasmania, undated.*

additional tests through provisions of the planning scheme whereas for exemptions nothing in the planning scheme applies.

There is therefore a need to clarify the application of the SPPs to roads and streets through a review of interpretation, exemptions and use class definitions and, in addition, to amend the exemptions such that the provision and upgrading of roads and streets is not *exempt* or '*no permit required*' use or development.

The exemption for '*minor infrastructure'* covers '*provision … of footpaths, cycle paths…'*. In comparison, the exemption for '*road works'* includes footpaths. Whilst the listed items in the two exemptions are presumably inclusive rather than exclusive lists, nevertheless the interpretations need to be reviewed such that the design and planning of roads, footpaths, cycle paths etc are not exempt from the provisions of the planning scheme and permits arising. The capacity for a planning scheme assessment is required for new road and street infrastructure, including upgrading, discrete from the exemption for maintenance and repair.

The fundamental position is that design and planning as in upgrading and initial provision should not be exempt as new road and street infrastructure is critical to planning, including realising the strong nexus between transport and land use.

Turning to the exemption for minor infrastructure this covers the provision, maintenance and modification of footpaths, cycle paths, playground equipment, seating, shelters, bus stops and bus shelters, street lighting, telephone booths, public toilets, post boxes, cycle racks, fire hydrants, drinking fountains, rubbish bins, public art, associated signs and the like on public land. The exemption should be modified to delete the provision of foot paths and cycle paths.

With the above changes, works involving provision and upgrading of road, street and path infrastructure will be a matter for the SPPs as determined by the zoning and codes.

Also to be noted is that clause *7.2.1 Development for Existing Discretionary Uses* may change the status of development for a road where there is no change of use or intensification of an existing use.

Amendments to the exemptions to separate '*provision'* from '*maintenance and repair*' as well as a definitional separation between '*road'* and '*street'* are as follows:

Use or Development	**Qualifications**
road works	Maintenance and repair of roads and streets ~~upgrading~~ by or on behalf of the road authority which may extend up to 3m outside the road reserve including: (a) widening or narrowing of existing carriageways; (b) making, placing or upgrading kerbs, gutters, ~~footpaths~~, shoulders, roadsides, traffic control devices, line markings, street lighting, safety barriers, signs, fencing and landscaping unless subject to the Local Historic Heritage Code; or (c) repair of bridges, or replacement of bridges of similar size in the same or adjacent location.

Use or Development	Qualifications
minor infrastructure	(a) ~~Provision~~, Maintenance and modification of footpaths, cycle paths. (b) Provision, maintenance and modification of playground equipment, seating, shelters, bus stops and bus shelters, street lighting, telephone booths, public toilets, post boxes, cycle racks, fire hydrants, drinking fountains, rubbish bins, public art, associated signs and the like on public land.

2.7 Zones

The draft SPPs provide standards for roads as development associated with subdivision in the General Residential, Inner Residential, Low Density Residential zones and a truncated standard in the Village zone. The remaining zones particularly the Urban Mixed Use, and Business and Commercial zones make no provisions for roads.

The Heart Foundation contends that to realise the intrinsic value of roads and streets as they contribute to equitable access, economic, environmental and amenity values and health benefits to be gained the simple association with subdivision must be removed. This can be starting with the General Residential Zone, as follows:

> Delete clause 8.6.2 Roads except for standard A2/P2.
>
> Relocate standard 8.6.2 A2/P2 to clause 8.6.1 where it is a better fit as the subject is '*lot orientation*' not '*roads'*.

Insert (new) standard as clause 8.7 being a modification from existing clause 8.6.2 as follows:

8.7 Development Standards for Streets

Objective	To ensure that ~~the arrangement of new~~ development for ~~roads~~ streets ~~within a subdivision~~ provides for: (a) a legible road hierarchy that sets the function of streets based on through traffic, the requirements for public transport, the adjoining land use and the connectivity and permeability for pedestrian networks and cycle ways; (b) safe, convenient and efficient connections to assist accessibility and mobility of the community; (c) the adequate accommodation of vehicular, pedestrian, cycling and public transport traffic; and (d) the efficient subdivision development of the entirety of the land and of surrounding land; and (e) the efficient ultimate development of the entirety of the land and of surrounding land; and the integration of land use and transport.

Acceptable Solutions	Performance Criteria
A1 There are no acceptable solutions. ~~The subdivision includes no new roads.~~	**P1** ~~The arrangement and construction of roads~~ Development for streets ~~within a subdivision~~ must satisfy all of the following: (a) the route and standard of ~~roads~~ streets accords with any relevant road network plan adopted by the Planning Authority; (b) the appropriate and reasonable future subdivision of the entirety of any balance lot is not compromised; (c) the future subdivision of any adjoining or adjacent land with subdivision potential is facilitated through the provision of connector roads and pedestrian paths, ~~where appropriate~~, to common boundaries; (d) an acceptable level of access, safety, convenience and legibility is provided for all street users through a consistent road function hierarchy; (e) connectivity with the neighbourhood ~~road~~ street network through streets and paths is ~~maximised~~ maximized. Cul-de-sac and other non-through streets are minimized; (f) the travel distance for walking and cycling between key destinations such as shops and services is minimised; (g) walking, cycling and the efficient movement of public transport and provision of public transport infrastructure is facilitated; (h) provision is made for bicycle infrastructure on new arterial and collector roads in accordance with Austroads Guide to Road Design Part 6A as amended; and (i) any adjacent existing grid pattern of streets is extended, where there are no significant topographical constraints.

Based on the amendments sought for clause 8.6.2 and to insert new clause 8.7, the same provisions for streets should be duplicated for the following zones:

Zone	Existing clause	New clauses	Notes
Inner Residential	9.6.2	9.7	Zone currently contains standards as per the General Residential zone.
Low Density Residential	10.6.2	10.7	Zone currently contains standards as per the General Residential zone.
Rural Living	11.5.2	11.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.

Zone	Existing clause	New clauses	Notes
Village	12.5.22	12.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.
Urban Mixed Use	No provision	13.6	Provisions extended to the Urban Mixed Use zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Local Business	No provision	14.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
General Business	No provision	15.6	Provisions extended to the General Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Central Business	No provision	16.6	Provisions extended to the Central Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Commercial	No provision	17.6	Provisions extended to the Commercial zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Light Industrial	No provision	18.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.

2.8 Liveable Streets Code

In addition to, or as alternative, the preferred position is for provisions for streets to be included in a Liveable Streets code. Such a code would add measurable standards to the assessment of permit applications. An outline for a Liveable Streets code is included at Annexure 1 as at this stage such a code requires further development and testing. For this representation the concept of a Liveable Streets code is advocated as a foreshadowed addition to the SPPs.

2.9 Recommendations for amendments to the State Planning Provisions to promote active travel

1. SPPs section 2.1 Planning Scheme Purpose insert the following:

   Use and development of land encourages and supports active travel for improved health outcomes.

2. Amend the interpretation for '*road*' and to insert an interpretation for '*street*' as follows:

   ***road**: means land over which the general public has permanent right of passage, including the whole width between abutting property boundaries, all footpaths and the like, and all bridges over which such a road passes and includes all State roads.*

   ***street**: means a road that is not a State road.*

3. Amend the exemption for '*road works*' and '*minor infrastructure*' as follows:

Use or Development	**Qualifications**
road works	Maintenance and repair of roads and streets ~~upgrading~~ by or on behalf of the road authority which may extend up to 3m outside the road reserve including: (a) widening or narrowing of existing carriageways; (b) making, placing or upgrading kerbs, gutters, ~~footpaths~~, shoulders, roadsides, traffic control devices, line markings, street lighting, safety barriers, signs, fencing and landscaping unless subject to the Local Historic Heritage Code; or (c) repair of bridges, or replacement of bridges of similar size in the same or adjacent location.
minor infrastructure	(a) ~~Provision~~, Maintenance and modification of footpaths, cycle paths. (b) Provision, maintenance and modification of playground equipment, seating, shelters, bus stops and bus shelters, street lighting, telephone booths, public toilets, post boxes, cycle racks, fire hydrants, drinking fountains, rubbish bins, public art, associated signs and the like on public land.

4. Amend the General Residential Zone to provide for streets, as follows:

   (a) Delete clause 8.6.2 Roads except for standard A2/P2.

   (b) Relocate standard 8.6.2 A2/P2 to clause 8.6.1.

   (c) Insert (new) standard for streets as clause 8.7 being a modification from existing clause 8.6.2 as follows:

8.7 Development Standards for Streets

Objective:	To ensure that ~~the arrangement of new~~ development for ~~roads~~ streets ~~within a subdivision~~ provides for:

	(a) a legible road hierarchy that sets the function of streets based on through traffic, the requirements for public transport, the adjoining land use and the connectivity and permeability for pedestrian networks and cycle ways; (b) safe, convenient and efficient connections to assist accessibility and mobility of the community; (c) the adequate accommodation of vehicular, pedestrian, cycling and public transport traffic; ~~and~~ (d) the efficient ~~subdivision~~ development of the entirety of the land and of surrounding land; and (e) the efficient ultimate development of the entirety of the land and of surrounding land; and the integration of land use and transport.

Acceptable Solutions	**Performance Criteria**
A1 There are no acceptable solutions. ~~The subdivision includes no new roads.~~	**P1** ~~The arrangement and construction of roads~~ Development for streets ~~within a subdivision~~ must satisfy all of the following: (a) the route and standard of ~~roads~~ streets accords with any relevant road network plan adopted by the Planning Authority; (b) the appropriate and reasonable future subdivision of the entirety of any balance lot is not compromised; (c) the future subdivision of any adjoining or adjacent land with subdivision potential is facilitated through the provision of connector roads and pedestrian paths, ~~where appropriate~~, to common boundaries; (d) an acceptable level of access, safety, convenience and legibility is provided for all street users through a consistent road function hierarchy; (e) connectivity with the neighbourhood ~~road~~ street network through streets and paths is ~~maximised~~ maximized. Cul-de-sac and other non-through streets are minimized; (f) the travel distance for walking and cycling between key destinations such as shops and services is minimised; (g) walking, cycling and the efficient movement of public transport and provision of public transport infrastructure is facilitated; (h) provision is made for bicycle infrastructure on new arterial and collector roads in accordance with Austroads Guide to Road Design Part 6A as amended; and (i) any adjacent existing grid pattern of streets is extended, where there are no significant topographical constraints.

5. Amendment the following zones to be consistent with the provisions proposed for clause 8.6.2 and new clause 8.7 as follows:

Zone	**Existing Clauses**	**New Clauses**	**Notes**
Inner Residential	9.6.2	9.7	Zone currently contains standards as per the General Residential zone.
Low Density Residential	10.6.2	10.7	Zone currently contains standards as per the General Residential zone.
Rural Living	11.5.2	11.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.
Village	12.5.22	12.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.
Urban Mixed Use	No provision	13.6	Provisions extended to the Urban Mixed Use zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Local Business	No provision	14.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
General Business	No provision	15.6	Provisions extended to the General Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Central Business	No provision	16.6	Provisions extended to the Central Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Commercial	No provision	17.6	Provisions extended to the Commercial zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Light Industrial	No provision	18.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.

6. Foreshadow the inclusion of a future Liveable Streets Code.

3. Provision of public open space and reserves for aesthetic, environmental, health and economic benefits.

3.1 Policy

Parks, reserves and other public spaces impact positively on health. Green public spaces can encourage a range of physical as well as challenging activities and provide opportunities for social interaction, food growing and improved environmental quality.

All public spaces and places are part of the public realm. Streets form some 80% of the public realm in cities and towns. Streets provide opportunities as a component of the public open space to deliver environmental improvement (eg street trees for improved air quality, to enhance amenity and add to the value of adjoining properties). Streets are the main component for informal physical activity e.g. walking, shopping socialising.

3.2 Evidence

A considerable body of literature exists on the role and provision of parks and green open spaces and its impact upon and correlation with increased physical activity.

The evidence on the health benefits of public open space suggests there are a range of factors that contribute to their effectiveness and impact for encouraging physical activity and healthy eating behaviours. Factors include access to parks and public open space (proximity and size), park quality, aesthetics and attractiveness, children's play areas in parks and community gardens.[16]

3.3 State Planning Provisions relating to public open space and reserves

SPPs for public open space concern use classes and their allocation to zones including the Open Space zone. Absent from the Draft SPPs is the planning framework for public open space and reserves that relate to and support the provisions for taking public open space in the *Local Government (Building and Miscellaneous Provisions) Act 1993.*

3.4 Purpose

SPPs section 2.1 Planning Scheme Purpose insert the following objective:

> *Public open spaces and reserves provide a well distributed network of walkable and attractive spaces strategic to local communities for their aesthetic, environmental, health and economic benefits.*

3.5 Interpretations

Interpretations relevant to public open space are:

> **Public open space.** This is a rather limited interpretation of public open space based on the *Local Government (Building and Miscellaneous Provisions) Act 1993.*
>
> **Streetscape**. The quality of the street is important in seeing streets as part of the recreation-physical activity environment.

[16] *See Heart Foundation 'Healthy Active by Design' a web based resource at http://www.healthyactivebydesign.com.au/evidence-2*

3.6 Use classes

Use classes relevant to public open space are:

Passive recreation

Sports and recreation: whilst providing facilities for physical activity, structures that limit access and focus on spectators limit the health value to be gained from public open space.

3.7 Zones

The use class passive recreation where appearing in zones as no permit required is supported.

The use class sports and recreation where appearing in zones as discretionary is supported.

The Development Standards for Subdivision in zones omits reference to the provision of public open space. Whilst the provisions for public open space at the time of subdivision are enabled by the *Local Government (Building and Miscellaneous Provisions) Act 1993* these provisions do not cover the planning for public open space.

Standards in the SPPs are required for the provision of public open space and riparian and littoral reserves as contemplated by s.83(1A) of the *Local Government (Building and Miscellaneous Provisions) Act 1993.*

The creation of riparian and littoral reserves is consistent with a principle of the *State Coastal Policy 1996* to recognise 'the importance of public access to and along the coast consistent with protection of natural coastal values, systems and processes' and as necessary to give priority to coastal dependent use and development[17].

Provisions and standards are required for public open space and riparian and littoral reserves as part of the subdivision process with an additional standard at clauses 8.6 and equivalent provisions in all other zones except the Port and Marine zone and the Utilities zone as follows:

x.6.2, x.5.2 public open space and reserves (clause numbering as applicable for each zone)

Objective:	To ensure subdivision delivers a well distributed network of walkable and attractive public open spaces and reserves strategic to local communities.

Acceptable Solutions	**Performance Criteria**
A1 Subdivision provides a minimum land area of 5% for public open space.	**P1** Payment instead of public open space is taken where: (a) a strategic plan for public open space and reserves provides for the acquisition of public open space at alternative sites in the vicinity of the subdivision; or (b) a strategic plan for public open space and reserves specifies requirements for the improvement on existing public open space land in the vicinity of the subdivision.

[17] *State Coastal Policy1996 clause 2.1.6.*

A2 (a) Subdivision provides a minimum width of riparian reserve of 30m from the bank of a water course (non-tidal) for the length of the common boundary with the water course.	**P2** (a) A riparian reserve of less the 30m is provided or dispensed with where there is a common boundary with a minor water course; and (b) A riparian reserve is not required to link to adjoining reserves, or (c) A riparian reserve is not required as part of a strategic plan for public open space and reserves.
A3 (a) Subdivision provides a minimum width of littoral reserve of 30m from the bank of a river or coast for the length of the common boundary with the river or coast.	**P3** (a) The requirement to provide a littoral reserve of 30m may only be reduced or dispensed with where existing buildings or features do not allow for the full or partial reserve width to be provided; or the area is required for coastal dependent activities.

3.8 Recommendations for amendments to the State Planning Provisions to provide public open spaces and reserves

1. Amend SPP section 2.1 Planning Scheme Purpose to insert the following:

   Public open spaces and reserves provide a well distributed network of walkable and attractive spaces strategic to local communities for their aesthetic, environmental, health and economic benefits.

2. Insert provisions and standards for public open space and riparian and littoral reserves as part of the subdivision process clauses 8.6 and equivalent provisions in all other zones except the Port and Marine zone and the Utilities zone as follows:

   x.6.2, x.5.2 public open space (clause numbering as applicable for each zone)

Objective:	To ensure subdivision delivers a well distributed network of walkable and attractive public open spaces and reserves strategic to local communities.
Acceptable Solutions	**Performance Criteria**
A1 Subdivision provides a minimum land area of 5% for public open space.	**P1** Payment instead of public open space is taken where: (a) a strategic plan for public open space and reserves provides for the acquisition of public open space at alternative sites in the vicinity of the subdivision; or (b) a strategic plan for public open space and reserves specifies requirements for the improvement on existing public open space land in the vicinity of the subdivision.

A2 (a) Subdivision provides a minimum width of riparian reserve of 30m from the bank of a water course (non-tidal) for the length of the common boundary with the water course.	**P2** (a) A riparian reserve of less the 30m is provided or dispensed with where there is a common boundary with a minor water course; and (b) A riparian reserve is not required to link to adjoining reserves, or (c) A riparian reserve is not required as part of a strategic plan for public open space and reserves.
A3 (a) Subdivision provides a minimum width of littoral reserve of 30m from the bank of a river or coast for the length of the common boundary with the river or coast.	**P3** (a) The requirement to provide a littoral reserve of 30m may only be reduced or dispensed with where existing buildings or features do not allow for the full or partial reserve width to be provided; or the area is required for coastal dependent activities.

4. Mixed density housing to satisfy resident life cycle requirements and for walkable neighbourhoods

4.1 Policy

Mixed density housing is facilitated to provide a wider choice of housing, enhance the development of compact cities, accommodates life cycle requirements and promotes walkable neighbourhoods.

The benefits of a range of housing types at higher densities in local communities contrasts with low density settlement patterns that do not support active travel and can raise patterns of car dependency that are not health promoting. In addition mixed density housing engenders walkable neighbourhoods and supports the provision of local shops and facilities to serve daily needs.

The opportunity to have housing satisfy life-cycle requirements will allow residents to remain in their neighbourhood as age and circumstances change their housing requirements.

4.2 Evidence

The Blueprint for an Active Australia[18] assembles the evidence on the importance of creating built environments that support active living. The Blueprint asserts:

> *Providing diverse housing in walkable environments can help older adults to 'age in place'. Safe neighbourhoods with connected street networks and local shops, services and recreational facilities are associated with more walking in older adults, and may protect against a decline in physical activity over time.*
>
> *Emerging evidence suggests that urban sprawl is also associated with coronary heart disease in women; living in more walkable neighbourhoods is associated with lower cardiovascular disease risk factors such as obesity and type 2 diabetes mellitus (men only).*
>
> *There appears to be growing consumer demand for more walkable neighbourhoods.*

Heart Foundation research projects '*Does Density Matter The role of density in creating walkable neighbourhoods*[19]', '*Low density development: Impacts on physical activity and associated health outcomes*'[20] and *'Increasing density in Australia: maximising the health benefits and minimising the harm'*[21] canvas the evidence that higher density housing, increases the ability to walk to destinations together with the associated health benefits.

4.3 State Planning Provisions relating to mixed density housing

SPPs for mixed density housing concern setting an objective at 2.0 Planning Scheme Purpose, a review of zone purpose statements and zone standards and an advocacy for a Liveable Streets code (see Annexure 1 Draft for a Liveable Streets code).

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[18] *See Blueprint for an active Australia Action area 1 for references on active living and the built environment*
[19] *See Udell T, Daly M, Johnson B, Tolley Dr R Does Density Matter 'Does Density Matter The role of density in creating walkable neighbourhoods' National Heart Foundation 2014*
[20] *See Giles-Corti B, Hooper P, Foster S, Koohsari MJ, Francis J 'Low density development: impacts on physical activity and associates health outcomes' National Heart Foundation 2014. The report found, on the available evidence, a minimum net density threshold of 20 dwellings per hectare (18 dwellings per gross hectare) was required to encourage some transport-related walking. For viable public transport, densities of 35-43 net and 32-40 gross dwellings per hectare were required where based on dwelling occupancy rates of 2.6 persons per dwelling.*
[21] *See Giles-Corti B, Ryhan K, and Foster S 'Increasing density in Australia: maximising the health benefits and minimising the harm' National Heart Foundation 2012*

4.4 Purpose

SPPs section 2.1 Planning Scheme Purpose insert the following objective:

> *Mixed density housing and housing that satisfies life-cycle requirements is encouraged to enhance the scope for active living and active travel.*

4.5 Assessment of an Application for Use or Development

SPPs Clause 6.2.6 Categorising Use or Development provides that:

> *… development which is for subdivision,… does not need to be categorised into one of the Use Classes*.

The separation of land use from development for subdivisions means that lots are created without assessment of future use. Whilst the zoning determines the potential array of uses, draft clause 6.2.6 avoids the finer grained assessment arising from the certainty over intended use as nominated in the permit application. This is particularly relevant when dealing with medium density low-rise housing as in terrace housing with each house on a separate lot and where elements such a walls to boundaries, infrastructure services and vehicle access are critical to realising good design. In addition the interest only in the development for subdivision is inconsistent with assessment requirements in zones (eg 8.6.1 objective for lot design for the General Residential zone) that requires a lot to have the:

> … area and dimensions appropriate for use … in the Zone;

Then in the PC for 8.6.1 and equivalent PC in comparable standards for other zones we find a requirement to assess an application against the proposed use as follows:.

> *Each lot, excluding for public open space, a riparian or littoral reserve or Utilities, must have sufficient useable area and dimensions suitable for its intended use having regard to:…*

In most zones the available uses are many and varied setting an impossible assessment task to ensure objectives are satisfied.

To enhance the prospect of combined subdivision and housing development and to reduce the impossible task of assessing a permit, that requires a PC assessment against all the available uses in the zone then Clause 6.2 *Categorising Use or Development*, must be amended to delete 'subdivision' from sub-clause 6.2.6.

4.6 Zones

8.4.1 General Residential zone – Development Standards for Dwellings

Clause 8.4.1 Development standards, Residential density for multiple dwellings, P1(a) requires a:

> *residential density consistent with the density of existing development on established properties in the area*

The Performance Criterion presupposes that existing density is appropriate for the intended purpose for the zone at clause 8.1.2 which requires *'….efficient utilisation of available and planned social, transport and other service infrastructure*'. The provision P1(a) is not only a difficult Performance Criteria (PC) to assess it also serves to prevent intensification of housing contrary to the zone purpose.

Clause 8.4.1 should be amended to delete P1(a) as follows:

P1

Multiple dwellings must only have a site area per dwelling that is less than 325m2, if the development will not exceed the capacity of infrastructure services and:

(a) ~~is consistent with the density of existing development on established properties in the area; or~~

(b) provides for a significant social or community benefit and is:

(i) wholly or partly within 400m walking distance of a public transport stop; or

(ii) wholly or partly within 400m walking distance of an Inner Residential Zone,

Objectives such as: '*consistent with the amenity and character of the area'* can serve to prevent intensification and renewal and lock assessments of applications into that which exists. The additional difficulty with such objectives is that it presupposes and reinforces that there is an existing amenity and character of a quality that should be respected. In the same vein statements such as *'…consistent with the form and scale of residential development existing on established properties…'* requires the existing scale to be replicated, perhaps not always an appropriate requirement or result. The alternative is for objectives and clauses that promote improvement in residential environments that can be found with the intensification of dwellings.

Clauses in the General Residential zone that should be deleted for reasons of preventing intensification and that create uncertainty are as follows:

Clause	**Provision showing parts for deletion**
Setbacks and building envelope for all dwellings clause 8.4.2 A2(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Site *coverage and private open space for all dwellings* clause 8.4.3 objective	'To ensure that dwellings ~~are consistent with the amenity and character of the area and~~ provide:'
Site *coverage and private open space for all dwellings* clause 8.4.3 P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development clause 8.5.1 A1 (c)	~~if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of those dwellings.~~
Non dwelling development clause 8.5.1 P3	A building that is not a dwelling, must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have reasonable space for the planting of gardens and landscaping.

8.5.1 General Residential zone – Development Standards for non-dwellings

Clause 8.5.1 Non-dwelling development A1 requires street setbacks of 4.5m and 3.0m for a building that is not a dwelling. The purpose of the objective refers to *'…all non-dwelling development is sympathetic to the form and scale of residential development and does not cause a loss of amenity.'* It is contended that a setback of itself does not deliver amenity. The real issue is the use of land within the setback. Land simply allocated to hardstand vehicle parking would do little to improving amenity. The Acceptable Solution (AS) should require the setback to be developed for gardens and landscaping. The corresponding PC can provide for alternatives such as car parking so long as the PC requirement for '*compatible streetscape*' is satisfied.

Clause 8.5.1 Non-dwelling development A1 should be amended to omit existing sub-clause (c) (as proposed above) and to substitute: (c) developed for gardens and landscaping as follows:

8.5.1

Objective:	To ensure that all non-dwelling development is sympathetic to the form and scale of residential development and does not cause a loss of amenity.

Acceptable Solutions	**Performance Criteria**
A1 A building that is not a dwelling, excluding for Food Services, local shop and excluding protrusions that extend not more than 0.6m into the frontage setback, must have a setback from a frontage that is: (a) not less than 4.5m, if the frontage is a primary frontage; (b) not less than 3.0m, if the frontage is not a primary frontage; and (c) developed for gardens and landscaping.	**P1** A building that is not a dwelling must have a setback from a frontage that is compatible with the streetscape.

8.6.1 General Residential zone – Development Standards for subdivision

Clause 8.6.1 Lot design sets a minimum AS lot size (single dwelling density) for the General Residential zone at 450m^2. In contrast the AS dwelling density for multiple dwellings is 325m^2 (clause 8.4.1 A1). This places a disincentive AS on other forms of housing such as house/land packages on smaller lots such as terrace and other forms of low rise medium density housing that still fall in the use definition - 'single dwelling'.

To not disadvantage higher density for single dwellings, provision could be made for integrated house/land development[22] or alternatively have a single housing density standard as the AS such as 400m^2 then the issue is about housing and not minimum lot sizes divorced from what might go on the subdivided lot. In addition it would mean that lots in the 650m^2+ (325m^2 by 2) range will not be under pressure for backyard strata housing.

A single house density approach is preferred and should still lead to achieving the minimum of 15 dwellings per hectare as suggested in the Explanatory Document (page 33)[23]. A single housing AS density could best be achieved by making the AS dwelling density for the General Residential zone at 400m2 and

[22] *See standards proposed in TASCORD Department of Environment and Land Management 1997.*
[23] *Development allowing nominal 5% public open space and 25% roads etc and a lot density at 450m^2 provides a net density = 15 du/ha. At 400m^2 = 17.5 du/ha).*

the PC amended accordingly. It is also to be noted that the provisions for the Inner Residential and Village zones do not distinguish between AS densities for multiple dwellings and minimum lot areas for subdivision.

Clauses 8.4.1 A1 and P1 and 8.6.1 A1 should be amended to omit 325m^2 and 450m^2 respectively and substitute 400m^2 for all forms of housing.

Clauses 8.4.1 A1 and P1 and 8.6.1 A1 should be amended to omit 325m^2 and 450m^2 respectively and substitute 400m^2 for all forms of housing.

9.4.2 Inner Residential zone – Setback and building envelopes for all dwellings (and related provisions)

Clauses that serve to prevent intensification and renewal and lock assessments of applications into objectives concerning existing amenity and character as is advocated for the General Residential zone should be deleted as follows:

Clause	**Provisions showing parts for deletion**
Setbacks and building envelope for all dwellings clause 9.4.2 A1(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Site *coverage and private open space for all dwellings* clause 9.4.3 objective	'To ensure that dwellings ~~are consistent with the amenity and character of the area and~~ ~~provides~~ provide:'
Site *coverage and private open space for all dwellings* clause 9.4.3 P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development clause 9.5.1 A1 (c)	~~if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Non dwelling development clause 9.5.1 P3	Buildings must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have a reasonable space for the planting of gardens and landscaping.

4.7 Recommendations for amendments to the State Planning Provisions to promote mixed density housing

1. SPPs section 2.1 Planning Scheme Purpose insert the following:

   Mixed density housing and housing that satisfies life-cycle requirements is encouraged to enhance the scope for active living and active travel.

2. Delete '*subdivision'* from clause 6.2.6 Categorising Use or Development.

3. Delete clause 8.4.1 P1(a) Development standards for multiple dwellings as follows:

P1

Multiple dwellings must only have a site area per dwelling that is less than 325m2, if the development will not exceed the capacity of infrastructure services and:

(a) ~~is consistent with the density of existing development on established properties in the area; or~~

(b) provides for a significant social or community benefit and is:

(i) wholly or partly within 400m walking distance of a public transport stop; or

(ii) wholly or partly within 400m walking distance of an Inner Residential Zone,

4. Delete clauses in the General Residential zone that prevent intensification and that create uncertainty as follows:

Clause	**Provision showing parts for deletion**
Setbacks and building envelope for all dwellings clause 8.4.2 A2(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Site coverage and private open space for all dwellings clause 8.4.3 objective	'To ensure that dwellings ~~are consistent with the amenity and character of the area and~~ provide:'
Site coverage and private open space for all dwellings clause 8.4.3 P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development clause 8.5.1 A1 (c) omit and substitute	~~(c) if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of those dwellings.~~ (c) developed for gardens and landscaping
Non dwelling development clause 8.5.1 P3	A building that is not a dwelling, must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have reasonable space for the planting of gardens and landscaping.

5. Amend Clauses 8.4.1 A1 and P1 and 8.6.1 A1 to omit 325m2 and 450m2 respectively and substitute 400m^2 for all forms of housing

6. Delete clauses in the Inner Residential zone that prevent intensification and that create uncertainty are as follows:

Clause	**Provisions showing parts for deletion**
Setbacks and building envelope for all dwellings clause 9.4.2 A2(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Site *coverage and private open space for all dwellings* clause 9.4.3 objective	'To ensure that dwellings ~~are consistent with the amenity and character of the area and provides~~ provide:'
Site *coverage and private open space for all dwellings* clause 9.4.3 P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development clause 9.5.1 A1 (c)	~~if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Non dwelling development clause 9.5.1 P3	Buildings must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have a reasonable space for the planting of gardens and landscaping.

5. Compatible mix of land uses to promote active travel

5.1 Policy

A greater integration of compatible land uses can reduce the separation between where we live, work, shop, learn, travel and play and enhance the opportunities for active living and active travel.

A mix of compatible land uses; residences, shops, schools, offices and public open space sensitive to the local environment allows for convenient and proximate access to destinations and adds to the walkability of neighbourhoods. A mix of land uses can offer better access to healthy foods within walking distance of residents. Mixed land uses invite spaces and places to become destinations and, irrespective of size, centres of activity.

5.2 Evidence

Research evidence indicates that mixed land use (i.e., the presence of multiple destinations) is a key factor influencing neighbourhood walkability. There is a consistent and large body of cross-sectional evidence indicating that greater land use mixes (or numbers of destinations) and shorter distances to destinations (i.e., within close proximity from home) is associated with greater amounts of walking. Measures of land use mix are positively associated with walking for transport in adults, though evidence is more inconsistent for children and older adults. The research evidence suggests there are a range of factors that contribute to the effectiveness of mixed-use and its impact on encouraging walking and physical activity behaviours including access to destinations or land uses, access to schools, access to sport and recreation centres, density and connectivity.[24]

5.3 State Planning Provisions relating to mixed land use

SPPs for mixed land use concern setting an objective at 2.0 Planning Scheme Purpose, and a review of zone purpose statements and zone standards covering amenity considerations for mixed use.

5.4 Purpose

SPP section 2.1 Planning Scheme Purpose insert the following objective:

> *Compatible land uses are co-located to promote active travel to, and between different activities.*

5.5 Zones

The available use classes in the use table for each zone provide for a range of uses that should be compatible with the primary use for the zone. No issues are raised on the use classification in each zone.

14.3.1 Local Business zone - Use Standards – all uses

The objective for the standard confines the amenity issue to adjoining residential zones despite residential use being permitted and discretionary in the zone. In addition the zone purpose at 14.1.5 refers to '*encouraging residential …use if it supports the viability of the activity centre…'*. The objective for the standard should be amended as follows:

Clause 14.3.1

Objective:	To ensure that non-residential uses do not cause unreasonable loss of amenity to adjoining residential uses and residential Zones.

[24] *See Heart Foundation 'Healthy Active by Design' a web based resource at http://www.healthyactivebydesign.com.au/evidence-2*

14.4.1 Local Business zone – Building height

At clause 14.4.1 building height, the objective should also cover residential amenity within the Local Business zone as follows:

Clause 14.4.1

Objective:	To ensure building height: (a) contributes positively to the streetscape; and (b) does not cause an unreasonable loss of amenity to adjoining residential uses and residential Zones.

14.4.2 Local Business zone – Setbacks

At clause 14.4.2 Setbacks, the objective should also cover residential amenity within the Local Business zone as follows:

Clause 14.4.2

Objective:	To ensure that building setback: (a) contributes positively to the streetscape; and (b) does not cause an unreasonable loss of amenity to adjoining residential uses and residential Zones.

Whilst similar provisions for residential use and development standards are applied in the General Business zone maintenance of residential amenity within the zone is probably unreasonable despite the intent of the zone.

5.6 Other matters – frontage windows business premises and Signs code

Clause 13.4.3 Design for the Urban Mixed Use zone and equivalent design standards in business and commercial zones for the acceptable solutions there are provisions for windows in ground floor facades. These provisions are supported as providing interest and variety that enhance walkability. However the merit of the provision for windowed facades is lost where the window is covered with advertising. The signs code helps in specifying a maximum window sign of not more than 25% of each window assembly. This representation supports provisions relating to windows in facades and provisions relating to limiting window signs.

5.7 Recommendations for amendments to the State Planning Provisions to facilitate mixed land use.

1. At Clause 2.1 insert the following purpose:

   Compatible land uses are co-located to promote active travel to, and between different activities.

2. Amend clause 14.3.1 Local Business zone, Use Standards – all uses, follows:

Clause 14.3.1

Objective:	(a) To ensure that non-residential uses do not cause unreasonable loss of amenity to adjoining residential uses and residential Zones.

3. Amend Clause 14.4.1 Local Business zone building height, as follows:

Clause 14.4.1

Objective:	To ensure building height: (b) contributes positively to the streetscape; and (c) does not cause an unreasonable loss of amenity to adjoining residential uses and residentialZones.

4. Amend Clause 14.4.2 Local Business zone – Setbacks as follows:

Clause 14.4.2

Objective:	To ensure that building setback: (d) contributes positively to the streetscape; and (e) does not cause an unreasonable loss of amenity to adjoining residential uses and residentialZones.

6. Food security and access to health food

6.1 Policy

Tasmanians at all times have food security through ready and equitable access to healthy food. The Heart Foundation contends that the Tasmanian Planning Scheme should support the three domains of food security; utilisation; supply; and access.

6.2 Evidence

Food security has both social and spatial dimensions. About 5 to 10% of Tasmanians do not have food security[25].

The Tasmanian Population Health Survey relating to access to food, found:[26]

Reason why food of adequate quality or variety is not available	**Persons ages 18 years and over**
Foods are too expensive	22.4%
Cannot obtain food of the right quality	22.0%
Cannot obtain adequate variety of food	9.3%
Inadequate and unreliable transport makes it difficult to get to the shops	5.6%

The 2014 Tasmanian Healthy Food Access Basket Survey found inter alia[27]:

> *Of the 353 shops that sell healthy food across Tasmania (this includes supermarkets, general stores and fruit and vegetables shops) only 19 are located in the areas that Tasmanians with the lowest household income (lowest 1/3) live. So 5% of shops are located where 30% of Tasmanians live.*
>
> *Affordability varies across locations in Tasmania. Low income Tasmanians are most at risk of not being able to purchase healthy food. Depending on your household income and the shops available where you live it may take up to 40% of your income to eat according to the Commonwealth Governments Guide to Healthy Eating. Households relying on the Newstart payment are particularly vulnerable.*

Additional evidence on food and in social and spatial contexts see:

- *Food Sensitive Planning and Urban Design*[28]
- *Food for all Tasmanians a food security strategy*[29]
- *Spatial Planning as a Tool for Improving Access to Healthy Food for the Residents of Clarence*[30]

[25] *Tasmanian Food Security Council Food Security in Tasmania fact Sheet July 2011. (OECD 10% of Australians do not have food security).*
[26] *Tasmanian Population Health Survey 2013; DHHS Public Health Services Epidemiology Unit.*
[27] *Murray S., Ahuja KDK., Auckland S., Ball MJ 2014 The 2014 Tasmanian Healthy Food Access Basket Survey. School of Health Sciences. University of Tasmania.*
[28] *Food Sensitive Planning and Urban Design. https://www.vichealth.vic.gov.au/media-and-resources/publications/food-sensitive-planning-urban-design David Lock Associates, University of Melbourne and Heart Foundation of Australia 2011.*
[29] *Tasmanian Food Security Council Food for all Tasmanians A food security strategy 2012*
[30] *Clarence City Council and Heart Foundation Spatial Planning as a Tool for Improving Access to Healthy Food for the Residents of Clarence December 2015*

As peri-urban areas are critical for food production and to be consistent with the *State Policy for the Protection of Agricultural Land 2009* (PAL State Policy), the primary zoning must protect agricultural land for agricultural use. In reference to the PAL State Policy it is contended that the State Policy concerns the intrinsic value of agricultural land and its protection for agricultural use. The retention of agricultural land for agricultural use is part of food security as it provides the means for producing food, but does not directly concern the delivery of healthy, sustainable, and affordable food to Tasmanian communities. The PAL State Policy does not enter into the realm of urban agricultural such as community gardens that are specifically excluded by the definition of agriculture land, hence the request for an interpretation and use class qualification for *local food production or processing.* However whilst the PAL State Policy primarily concerns the intrinsic value of agricultural land and its protection for agricultural use an adaptive response to the criterion in the definition of agricultural land is required. An adaptive response is required because of the definition for agricultural land states, '*has not been zoned or developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses*'.

The SPPs need to go beyond the limitations of the PAL State Policy to enable activities related to food production and access to be qualified use or development in most zones.

The following seeks to discover how the draft SPPs affect the production, distribution and access to (healthy) food for all zones. Food production can include mostly small scale production nominally no greater in scale than incidental to a non-agriculture use. Urban and peri-urban agriculture plays a significant role in local food production and the supply of fresh food.

6.3 SPPs relating to the production, distribution and access to (healthy) food

SPPs relating to food concern setting an objective at 2.0 Planning Scheme Purpose, and a review of zone purpose statements and zone standards particularly to facilitate food production and access from urban agriculture. The merit of separate Agriculture and Rural zones is questioned, primarily on the basis of the difficulty of defining the Tasmanian agriculture estate and to be consistent with the PAL State Policy.

6.4 Purpose

SPP section 2.1 Planning Scheme Purpose insert the following objective:

> The use or development of land supports a resilient, localised, healthy and sustainable food system.

6.4 Interpretation

The qualified uses (sub-sets of use classes) as provided in the interpretation section of the SPPs that are relevant to food production and access to food are:

> agricultural land
>
> agricultural use
>
> animal saleyard
>
> aquaculture
>
> controlled environment agriculture (agricultural use within a built structure)
>
> crop production
>
> home based business (if amended to confirm that gross floor area of the dwelling does not limit whole site from being used for food production or processing, see below).
>
> local shop

marine farming shore facility

market

out building

primary production sales

prime agricultural land

take away food premises

winery

Additional interpretations or clarifications are required to represent local urban and peri-urban food production. Insert an interpretation for '*healthy food*' and '*local food production or processing*' and review to clarify the application of home-based business, as follows:

healthy food: means food which is required for a healthy and nutritious diet and is adequate, safe and culturally appropriate and sufficient to live an active healthy life.

local food production or processing: means food grown or reared on a site primarily for local consumption and where there has been minimum processing of the products.

A review of the interpretation for '*home-based business'* is required to confirm or amend accordingly the interpretation such that a home-based business for local food production or processing is not confined to just part of a dwelling and does include the whole site so long as the qualifications to the definition are met. Clearly local food production or processing cannot be confined to the dwelling and needs to extend to the whole site.

6.6 Exemptions

The following exemptions are supported with clarifications and amendments:

Home occupation exemption as it applies to all zones as proposed in the SPPs. As for the interpretation for home-based business (above) confirm or amend accordingly that home occupation includes food production or processing over the whole site and is not solely limited to '*no more than 40m^2 gross floor area of the dwelling*'. Clearly local food production or processing cannot be confined to the dwelling and needs to extend to the whole site.

Community gardens on a public land in all zones, but amended to reflect a broader application covering urban agriculture, as follows:

use or development in a road reserve or on public land	outdoor dining facilities, signboards, roadside vendors and stalls on a road that have been granted a licence under a relevant Council By-Law; or urban agriculture including a community garden and a market on a public land.

Outbuildings and garden structures, as qualified, in all zones.

Outbuildings, as qualified, in rural zones.

Agricultural buildings and works, as qualified, in rural and agriculture zones.

6.7 Use classes

Use classes applicable to food security are:

food services (cafes, take-away etc)

general retail and hire (market, primary produce sales, shop, local shop etc)

resource processing (processing, packing etc of produce).

resource development (agricultural use etc)

transport depot and distribution (transport and distribution of food.)

6.8 Zones

8.0 to 29.0 Zones (all) and use classifications

Under the SPPs food production would, presumably be classified as 'agricultural use'[31] in the use class 'resource development'. There is no reference to scale of operation unless qualified. Resource development is prohibited in most urban zones. Provisions that accommodate (small scale) agriculture are required to provide the opportunity for food production in urban areas. Presumably home-based business and home occupation will cover some small-scale food production. However where food production is classified as 'agricultural use' then, for instance, urban agriculture including community gardens (on land other than public land) and food production on vacant land would be prohibited in most urban zones.

Applicable use classes relating to food in zones (use classes as identified above) as proposed in the draft SPPs are displayed in the table below. Proposed changes shown in green in the table would enable local food production or processing to be permitted in a range of urban zones. In some respects the addition of local food production or processing mirrors the discretion for the use class '*resource processing*' in certain urban zones where it involves the processing of select foods, being *'a distillery, brewery or cidery*', but no other food processing is allowed.

To extend the availability of local food, the use for a market should be classified as permitted in the Community Purpose and Recreation zones, also shown in the following table.

Table: use classes relating to food in zones

Key to table: NP no permit, P permitted, D discretionary, (…) identifies qualifications related to the use, Uses not listed are prohibited.

Zones	**Use classes and classification**				
	Food services	General retail & hire	Resource development	Resource processing	Transport depot and distribution
General residential Low density residential	D (if not for take away food premises with a drive through facility)	D (if for a local shop)	P (If for local food production or processing)		

[31] *Agricultural use as defined in the State Policy for the Protection of Agriculture Land 2009:-'Agricultural use' means use of the land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding domestic animals and pets. It includes the handling, packing or storing of produce for dispatch to processors. It includes controlled environment agriculture and plantation forestry.*

Zones	Use classes and classification				
Inner residential	D (if not for take away food premises with a drive through facility)	D			
Rural living zone	D (if for a gross floor area of no more than 200m^2)	D (if for: primary produce sales; sales related to resource development use or for a local shop)	P (If for local food production or processing) D (If not for an abattoir, animal saleyards or sawmilling)		
Village	P	P	P (If for local food production or processing)	D (If not for an abattoir, animal saleyards or sawmilling)	D
Urban mixed use	P	P	P (If for local food production or processing)	D (If for a distillery, brewery or cidery).	D if for public transport facility
Local business	NP	NP	P (If for local food production or processing)	D (If for a distillery, brewery or cidery)	D if for public transport facility or distribution of goods within the zone
General business	NP	NP	P (If for local food production or processing)	D (If for a distillery, brewery or cidery)	D if for public transport facility or distribution of goods within the zone
Central business	NP	NP	P (If for local food production or processing)	D (If for a distillery, brewery or cidery)	D if for public transport facility
Commercial	D	D	P (If for local food production or processing)	D (If for a distillery, brewery or cidery)	D

Zones	Use classes and classification				
Environmental living	D (max 200m^2 gross floor area)		P (If for local food production or processing) D (not for intensive animal husbandry or plantation forestry)		
Light industrial	D	D (if for alterations or extensions to an existing use),	P (If for local food production or processing)	D	P
General industrial	D			P	P
Rural	D	D	NP	P	D
Agriculture	D	D	NP (restrictions on prime agric land). All other D	D	D for the transport and distribution of agricultural produce and equipment
Landscape conservation	D (If for a gross floor area of not more than 200m$^{2)}$	D (If associated with a Tourist Operation).	P (If for local food production or processing) D (If not for intensive animal husbandry or plantation forestry)		
Environmental management	P (if accord with reserve management plan), Otherwise D	P (if accord with reserve management plan), otherwise D	P (If for local food production or processing) Otherwise D	D	
Major Tourism	P (if not a take-away food premises), otherwise D	D	P (If for local food production or processing)	D (If for a distillery, brewery or cidery).	D
Port & marine	D	P (If for chandlers and other shipping and transport related goods.)		D (if for aquaculture)	P

Zones	Use classes and classification				
Utilities					P
Community Purpose		~~D~~ P (if for a market)	P (If for local food production or processing)		
Recreation	D	P (if for a market) D (If: for clothing, equipment or souvenirs for a Sports and Recreation use; ~~or (b) for a market.~~)	P (If for local food production or processing)		
Open space	D	D	P (If for local food production or processing)		D associated with wharf, water taxis, commuter or passenger ferry terminals

6.9 Zoning of non-urban land, the agricultural estate

20.1 Rural zone

The purpose of the Rural Zone is stated as:

> *To provide for a range of use or development that requires a rural location for operational, security or impact management reasons.*
>
> *To provide for use or development of land where agricultural use is constrained or limited due to topographical, environmental or other site characteristics.*
>
> *To ensure that use or development is of a scale and intensity that is appropriate for a rural area and does not compromise the function of surrounding settlements.*

21.0 Agriculture zone

The purpose of the Agriculture zone is stated as:

> *To provide for the sustainable development of land for agricultural use.*
>
> *To protect land for the sustainable development of agricultural use by minimising:*
>
> *(a) conflict with or interference from other uses; and*
>
> *(b) non-agricultural use or development that precludes the return of the land to agricultural use.*
>
> *To provide for other use or development that supports the use of the land for agricultural use.*

The Heart Foundation supports the purposes of the rural and agriculture zones except the need for the two zones appears an artificial construct.

The Explanatory Document contends: (pages 71 & 72)

> *Requirements for protecting agricultural land for agricultural uses are not applicable to the Rural Zone, as the PAL Policy will be implemented entirely through the Agriculture Zone.*
>
> *In addition, a thorough review of the PAL Policy has also been undertaken to identify the Principles relevant to the new Agriculture Zone.*
>
> *It is acknowledged that mapping of Tasmania's agricultural estate will be critical to support the recalibration of the two rural Zones as it will provide the necessary guidance for planning authorities to apply the Agriculture Zone.*
>
> *The Rural Zone is intended for the rural areas of the State where the opportunities for agricultural use are generally constrained or limited as a consequence of the site characteristics. These are the areas that will support agricultural use but not at a scale and intensity that could be expected in the core agricultural areas. The core agricultural land will be contained within the Agriculture Zone.*

In comparison, as quoted in the Explanatory Document (page 71) the Cradle Coast Region submitted:

> *The Significant Agricultural zone* [sic] *is not a viable substitute for the* [Rural Resource Zone] *because it has a very particular purpose for agricultural use on higher productivity land, and therefore excludes the broad scale variation and multiplicity of primary industries in the nature of aquaculture, extensive agriculture, forestry, and mining as occurs on rural land. It is also problematic in that it assumes a sufficient and cohesive spatial manifestation of land which a common and consistent high production value can be conveniently and practically mapped as a distinct productive unit, whereas the reality of the Tasmanian agricultural estate is that it is comprised of a mosaic of relatively small-scale and variable productive classifications. The zone also fails to accommodate the larger portion of the State's agricultural land which is comprised of lower productivity classes, but upon which the greater part of agricultural activity occurs to produce the majority of agricultural outputs.*

The above quoted section from the Cradle Coast Region identifies the difficulty of differential zoning for our rural non-urban lands. The sentiments expressed have validity in the state-wide context.

It is contended the quoted section preceding the Cradle Coast submission and other like statements in the Explanatory Document are not consistent with the PAL State Policy. The Explanatory Document appears to be presuming or will encourage the presumption that agricultural land, as defined, is predominately 'prime land'. At least the Explanatory Document acknowledges the difficulty of establishing the Tasmania's agricultural estate. Where the agriculture estate is to be the proposed basis for determining which lands are zoned rural or agriculture.

To avoid either a patchwork of zoning as determined by the identified Tasmanian agricultural estate or significant areas being excluded from agriculture zoning to maintain the integrity of the two zones, the preferred position is for one rural or resource management zone. The concept of an agricultural estate could still be pursued as an overlay to the underlying zoning. Under a single zone scenario there is still a number of other zones available for lands with particular characteristics in non-urban areas, being the Landscape Conservation, Environmental Management and Recreation zones.

The next matter concerns residential use in the (draft) Agriculture zone. SPPs, clause 21.3 1 Use Standards P3 for a residential use is classified as discretionary and qualified at sub-section (a) which states:

(a) *be required as part of an agricultural use, having regard to*:

This standard appears to conflict with clause 6.2.2 that deals with categorizing uses '*where directly associated with and a subservient part…'*. Whilst sub-clause P3 applies an appropriate set of tests for residential use on agricultural land there does appear to be two entry points for approval of a residential use. The potential for residential use to be classified as subservient to, say resource development, where classified as *'no permit required'* and residential use as a '*discretionary qualified use'* should be clarified.

6.10 Recommendations for amendments to the State Planning Provisions to facilitate food security

1. SPP clause 2.0 Planning Scheme Purpose

   Amend SPP section 2.1 Planning Scheme Purpose to insert the following:

   'The use or development of land supports a resilient, localised, healthy and sustainable food system.'

2. Clause 3.1.3 clarify and insert the following interpretations:

   home-based business (confirm or amend accordingly the interpretation such that a home-based business for local food production or processing is not confined to just part of a dwelling and does include the whole site).

   healthy food: means food which is required for a healthy and nutritious diet and is adequate, safe and culturally appropriate and sufficient to live an active healthy life.

   local food production or processing: means food grown or reared on a site primarily for local consumption and where there has been minimum processing of the products.

3. Table 4.1 clarify and amend the following exemptions:

   home occupation confirm or amend accordingly that home occupation includes food production or processing over the whole site and is not solely limited to 'no more than 40m^2 gross floor area of the dwelling.

   Amend the qualification to the exemption for use or development in a road reserve or on public land to broaden the reference to community garden as follows:

use or development in a road reserve or on public land	outdoor dining facilities, signboards, roadside vendors and stalls on a road that have been granted a licence under a relevant Council By-Law; or <u>urban agriculture including</u> a community garden <u>and a market</u> on a public land.

4. Insert and clarify the use class 'resource development' with the qualification 'If for local food production or processing', as permitted use and development in the following zones:

Zone	**Qualification**
General Residential, Low Density Residential, Rural Living, Village, Urban Mixed Use, Local Business, General Business, Central Business, Commercial, Light Industrial, Environmental Living, Landscape Conservation, Environmental Management, Major Tourism, Community Purpose, Recreation, Open Space	P (If for local food production or processing)

5. Amend the qualifications for the use class 'general retail and hire' in the Community Purpose zone and Recreation zone to make a 'market' permitted as follows:

Zone	**Qualification**
Community Purpose	~~D~~ P (if for a market)
Recreation	P (if for a market) D (If for clothing, equipment or souvenirs for a Sports and Recreation use; ~~or~~ ~~(b) for a market.~~)

6. Clause 21.3.1/P3(a) Agriculture zone – Use Standards (discretionary uses Residential use) clarify where it refers to a residential use 'must be part of an agricultural use…' compared with housing classified under clause 6.2.2 that deals with categorizing uses 'where directly associated with and a subservient part…'.

7. Amend the Rural and Agriculture zones by combining into a single Rural Resource zone and draft a code incorporating an overlay to spatially define the Tasmanian agricultural estate.

7. Buildings and site design actively promotes physical activity

7.1 Policy

Work places support increased levels of physical activity through the design of a building's circulation system, encouragement of stair use, the provision of end-of-trip facilities, (such a secure bicycle storage and change facilities) and there is convenient and safe access to public transport. Safe access to work places by active travel is enhanced where buildings provide for natural surveillance of outside spaces and the street.

It is submitted that the interface between buildings and health and wellbeing relative to the remit of the Tasmanian Planning Scheme should be found in the use classifications and use and development standards, particularly for urban based zones, and the assignment of business and commercial zones in areas of good transport access.

7.2 Evidence

Workplace and activity

The Blueprint for an Active Australia [32] assembles the evidence on the importance of being active in the workplace. The Blueprint asserts:

> *The workplace is increasingly being recognised (nationally and internationally) as a priority high-reach setting for health behaviour interventions, extending from a labour-based approach to a public health 'healthy workers' approach.*
>
> *In general, a physically active workforce can improve physical and mental health, reduce absenteeism and increase productivity, thereby providing important benefits to individuals and workplaces. Workplaces should see the implementation of physical activity programs as a strategic business enhancement opportunity.*

Car parking and activity

A planning requirement for car parking is emerging as an issue with concerns about the amount of urban space dedicated to storing cars during work times and then the space is vacant and essentially unproductive at other times. In essence car parking can dictate many decisions on use and development. The proposition is that car parking is a commercial interest of business owners rather than a community planning issue. Car parking can have major adverse impacts on amenity, the streetscape and walking, particularly through the number of crossings of footpaths found in the urban environment. Central business areas generally do not require parking as part of a permit application with often the onus being on the applicant to show reason for the provision of parking. Is it timely to take the same principle to other business and commercial areas?

A Victoria Walks review of car parking and walking found[33]:

> *In 2009 the Department of Transport commissioned an international review of the literature regarding techniques to promote walking and cycling. This review found that the availability of free car parking was one of the key factors that promoted driving over other forms of transport* (Krizek, Forsyth and Baum 2009).
>
> A more recent review of international literature reached a similar conclusion. *"Hindsight shows that minimum parking requirements have had hugely negative consequences... Travel behaviour*

[32] *See Blueprint for an active Australia Action area 2 for references on health and the work place*
[33] *Victoria Walks: Car parking and walking perceptions of car parking http://www.victoriawalks.org.au/parking/*

> *studies show a strong link between the availability and cost of parking and people's tendency to drive."* (Donovan and Munro 2013, p.50)
>
> The significance of car parking for walking in particular relates to the fact that, in addition to promoting vehicle use, when provided in the form of large scale ground level parking lots, it actively discourages walking. *"Not only does ample and free parking provide an easy excuse for auto travel, vast parking areas are also the bane of pedestrian travel."* (Krizek, Forsyth and Baum 2009, p.15).
>
> *Despite limited changes to Victorian parking requirements made in mid-2012, the Victoria Planning Provisions (VPPs) still require car parking beyond the levels that business would naturally supply, promoting vehicle use at the expense of other transport modes. A fundamental review of Victorian car parking requirements is needed.*

Heart Foundation "Healthy Active by Design"[34] has assembled evidence relating to physical activity and car parking for big-box centres finding:

> *Big-box, car-park dominated retail shopping centres with large car park areas and all shops facing inside, increase car reliance whilst simultaneously constraining pedestrian activity through a failure to provide a pleasant or easy walking or cycling environment. This increases motivation to drive to the centre, even if people live within a close and comfortable walking distance. In contrast, more traditional, main-street centres, - where pedestrian-scaled, street-fronting mixed-use buildings with small setbacks and 'active' ground floor uses that extend onto the street (i.e., café seating areas, external shop displays) encourages walking and cycling access.*

7.3 SPPs relating to building and site design

Provisions in the draft SPPs relevant to work place health primarily apply to business and commercial zones and the Parking and Sustainable Transport code.

7.4 Purpose

SPP section 2.1 Planning Scheme Purpose insert the following objective:

> *Work places support physical activity through convenient and safe accesses providing for natural surveillance of outside spaces and the street.*

7.5 Zones

12.3.1 Village zone and other zones - External lighting standards

External lighting standards (eg clause 12.3.1 A2/P2 for the Village zone) need to address the adequacy of lighting for the 'public' areas for gaining access to a commercial premises and not to solely concern light spillage on to adjoining properties and zones. This requirement for appropriate external lighting for health and safety reasons is, however, covered with enhanced requirements in the 'Design' standards applying to the business/commercial zones.

13.4.3 Urban Mixed Use zone and other zones - Design

Design standards at clause 13.4.3 (Urban Mixed Use zone) and equivalent clauses in the other business and commercial zones cover access to and surveillance of pedestrian areas. These standards are supported particularly for the objective to the standard being:

[34] *Heart Foundation "Healthy Active by Design" http://www.healthyactivebydesign.com.au/evidence-1*

To ensure that building facades promote and maintain high levels of pedestrian interaction, amenity and safety.

Nevertheless the following amendments to clause 13.4.3 and equivalent clauses in the other business/commercial zones are necessary to enhance the objective for the standard and for work place health. Amend sub clause (a) as follows:

13.4.3 Design

Acceptable Solutions	**Performance Criteria**
A1 Buildings must be designed to satisfy all of the following: (a) *provide the main pedestrian entrance to the building that is visible and accessible from the road or publicly accessible areas of the site;*	

(ii) At A1(g) the option to provide an awning based on what is existing or on adjacent sites should be revised to make sun and rain protection mandatory along with an equivalent PC to require appropriate weather protection for the pedestrian areas. Proper provisions for weather protection of the public realm adds to walkability and consequently health benefits.

Amend sub clause (g) as follows:

Clause 13.4.3 Design

Acceptable Solutions	**Performance Criteria**
A1 (g) provide awnings over a public footpath ~~if existing on the site or adjoining properties~~, and to the pedestrian entrance to the building excluding for a Residential use; and	**P1** (g) provide awnings over a public footpath, excluding for a Residential use, unless: ~~the site does not have existing awnings~~; there is no benefit for the streetscape or pedestrian amenity; or it is not possible to provide an awning due to physical constraints of the site or building; and

The draft SPPs standards for the Village zone do not cover design standards as is the case for the Urban Mixed Use zone (clause 13.4.3) and other commercial/business zoning. The Explanatory Document justification for this exclusion states:

There are no design standards within the Village Zone which reflects the use of the Zone in smaller rural settlements.

This justification is not acceptable. The fact that the zone is applied to smaller rural settlements misrepresents the need for good design and potential public interface with buildings and uses in villages together with the prospect of smaller rural settlements not always being small and rural. The design standards at clause 13.4.3 should be inserted for the Village zone at (new) clause 12.4.3 and existing clauses renumbered accordingly.

The amendments to the standards for design at 13.4.3 need to be repeated for equivalent clauses in the following zones: Local Business, General Business, Central Business and Commercial as well as for the Village zone.

17.4.2 Commercial zone and other zones - setbacks and design

The building setback for the Commercial zone at clause 17.4.2 has the AS (A1) at 5.5m setback. The corresponding performance criteria (P1) appears to imply the setback in the Commercial zone is to provide, primarily, for vehicle access and parking. The objective for the setback standard refers to:

(a) contributes positively to the streetscape; and

(b) does not cause an unreasonable loss of amenity to adjoining residential Zones

And then at clause 17.4.3, Design, there is a similar objective for streetscape. It is contended that assigning the frontage of a commercial site to vehicle access and parking is contrary to making a positive contribution to the streetscape.

The attraction of vehicle parking within the frontage setbacks of buildings is understood and will possibly continue to be the preferred position for building owners and occupiers. However a nil setback does not preclude a larger setback, but in doing so, particularly if the performance criteria are triggered as an alternative to A1 (b) and (c), then streetscape and pedestrian safety and amenity can be given proper consideration.

The preferred position is as for the General Business zone at clause 15.4.2/A1 with the setback for the Commercial zone to based on a nil setback. The performance criteria clause 17.4.2 /P1 can remain but with an addition to sub clause (c) of '*and amenity of pedestrian and other'*. The design standards will then add to the streetscape and pedestrian environment considerations as follows.

17.4.2 Setbacks

Acceptable Solutions	**Performance Criteria**
A1 Buildings must have a setback from a frontage ~~of~~ that is (a) ~~not less than 5.5m~~ built to the frontage; or (b) ~~not less than existing buildings on the site or~~ not more or less than the maximum and minimum setbacks of the buildings on adjoining properties.	**P1** Buildings must have a setback from a frontage that provides adequate space for vehicle access, parking and landscaping, having regard to: (a) the topography of the site; (b) the setback of buildings on adjacent properties; and (c) the safety of pedestrian and other road users.

7.6 Codes

C2.0 Parking and Sustainable Transport code

The Parking and Sustainable Transport code (C2.0) has direct relevance to enhancing work place health and wellbeing.

Clause C2.1 Code Purpose, requires amending to better reflect the quest for sustainable transport and to reflect comments in the Explanatory Document that states at page 18:

> *Parking, access and sustainable transport are fundamental to the liveability of the Tasmanian community…*

And

> *The provision of car parking for uses and developments can impact on the viability of public transport services in activity centres and reduce the area of land available for other uses potentially affecting the efficiency and characteristics of cities and towns. The ability for central business areas to be exempt from car parking requirements is an important policy consideration and has historically been included in many Planning Schemes. In these areas, an intensity of development is required which would be compromised if car parking was provided on every site. Accordingly a more strategic approach to parking in central business areas should be applied.*
>
> *Sustainable transport is also an important factor in relation to facilitating public transport, cycling and walking.*

The amendments the Heart Foundation seeks to the code purpose follow:

C2.1 Code Purpose

The purpose of the Parking and Sustainable Transport Code is:

C2.1.1 To ensure that an appropriate level of parking facilities is provided to service use and development.

C2.1.2 To ensure <u>that the provision of infrastructure facilitates</u> cycling, walking and public transport ~~are encouraged~~ ~~transport~~ in urban areas.

C2.1.3 To ensure that access for pedestrians, <u>cyclists and other</u> low-powered vehicles ~~and cyclists~~ is safe and adequate.

C2.1.4 To ensure that parking does not cause an unreasonable loss of amenity to a locality.

C2.1.5 To ensure that parking spaces and accesses meet appropriate standards.

C2.1.6 To provide for the implementation of parking precinct plans.

The above amendments to the code purpose are to focus the code on the provision of infrastructure for active travel; not to just '*encourage*'.

Turning to policy, the need and merit for a parking code is questioned. The above quotes from the Explanatory Document raises the question for central business areas. Indeed the merit of a parking numbers standard should be reviewed for all areas. Apart from the difficulty of settling on suitable numbers for parking spaces for particular uses, parking spaces are expensive, intrude considerably on the urban fabric and can constitute avoidable regulation. The theory is that where parking is provided by the applicant of their own volition there will be greater rationality of parking provision and a better representation of costs over benefits. A potential benefit from a rational policy on car parking numbers is for greater physical activity from reducing the ability for door-to door car travel[35].

To follow this line, clauses C2.5.1, C2.5.2, C2.5.3, C2.5.5 and Table C2.1 covering car, bicycle and motor cycle parking would be deleted. Some consequential amendments would also be necessary where a standard refers to a requirement for a certain number of spaces as in clause C2.6.5 A1.1. In those instances to 'require' (as in number of spaces) should be omitted and 'provide' substituted as follows:

> *Uses that ~~require~~ <u>provide</u> 10 or more car parking spaces must*

[35] *Heart Foundation 'Healthy Active by Design' http://www.healthyactivebydesign.com.au/evidence-2*

And in clause C2.6.7/A1:

'Within the General Business Zone and Central Business Zone, bicycle parking for uses that ~~require~~ provide 5 or more bicycle spaces in Table C2.1 must:'

Turning to the Explanatory Document 16.0 Zone Application Framework (p100), the guidelines for the business and commercial zones are supported from a work place health perspective.

7.7 Recommendations for amendments to the State Planning Provisions to enhance work place health

1. SPP section 2.1 Planning Scheme Purpose insert the following:

   Work places support physical activity through convenient and safe accesses providing for natural surveillance of outside spaces and the street.

2. Amend clause 13.4.3 Design as follows:

Acceptable Solutions	**Performance Criteria**
A1 Buildings must be designed to satisfy all of the following: (a) *provide the main pedestrian entrance to the building that is visible and accessible from the road or publicly accessible areas of the site;*	
A1 (a) provide awnings over a public footpath ~~if existing on the site or adjoining properties~~, and to the pedestrian entrance to the building excluding for a Residential use; and	**P1** (a) provide awnings over a public footpath, excluding for a Residential use, unless: (b) the site does not have existing awnings; (c) there is no benefit for the streetscape or pedestrian amenity; or (d) it is not possible to provide an awning due to physical constraints of the site or building; and

3. Apply and insert the amended design standards at clause 13.4.3 Urban Mixed Use zone to the Village zone at (new) clause 12.4.3 and existing clauses renumbered accordingly.

4. Apply the amended design standards of clause 13.4.3 to the Local Business, General Business, Central Business and Commercial zones.

5. Amend clause 17.4.2 A1/P1 as follows:

Acceptable Solutions	**Performance Criteria**
A1 Buildings must have a setback from a frontage ~~of~~ that is (a) ~~not less than 5.5m~~ built to the frontage; or	**P1** Buildings must have a setback from a frontage that provides adequate space for vehicle

(b) ~~not less than existing buildings on the site or~~ not more or less than the maximum and minimum setbacks of the buildings on adjoining properties.	access, parking and landscaping, having regard to: (a) the topography of the site; (b) the setback of buildings on adjacent properties; and (c) the safety <u>of pedestrian and other</u> road users.

6. Amend clause C2.1 for the Parking and Sustainable Transport Code as follows:

   C2.1.2 To ensure <u>that the provision of infrastructure facilitates</u> cycling, walking and public transport ~~are encouraged~~ ~~transport~~ in urban areas.

   C2.1.3 To ensure that access for pedestrians, <u>cyclists and other</u> low-powered vehicles ~~and cyclists~~ is safe and adequate.

7. Delete the numerical standards for parking provision at clauses C2.5.1, C2.5.2, C2.5.3, C2.5.5 and Table C2.1 of the Parking and Sustainable Transport Code.

8. In clause C2.6.5/A1.1 omit 'require' (as in number of spaces) and substitute 'provide' as follows:

   'Uses that ~~require~~ <u>provide</u>10 or more car parking spaces must'

9. In clause C2.6.7/A1 omit 'require' (as in number of spaces) and substitute 'provide' as follows:

   'Within the General Business Zone and Central Business Zone, bicycle parking for uses that ~~require~~ <u>provide</u> 5 or more bicycle spaces in Table C2.1 must:'

C. Annexures

Annexure 1 - Draft for a Liveable Streets Code

Cx.0 Liveable Streets Code

Cx.1 Code Purpose

The Purpose of the Liveable Streets Code is:

To establish a legible street hierarchy that sets the function of streets based on through traffic, the requirements for public transport, the adjoining land use and provision of pedestrian networks and cycle ways.

To ensure that cycling, walking and public transport are supported as a means of transport in urban areas.

To establish the design criteria for streets that set the speed environment and amenity for new and retrofitted streets including recognising the public open space opportunities within the street environment.

To establish the design criteria for local streets that embody passive speed measures including, change of surface materials, limited visual length of street segments, and reduced carriage widths.

To establish the design criteria for streets to provide for connectivity and permeability for pedestrian and bicycle access.

To establish the design criteria for streets to provide for equitable access with features that are barrier free for people with disabilities.

To establish the design criteria for a minimum width and maximum cross-fall and the provision of a consistent, connecting walkable surface.

Cx.2 Application of this Code

This Code applies to development for new streets or a change of use or development (other than maintenance and repair) of existing streets for the General Residential, Low Density Residential, Rural Living, Village, Urban Mixed Use, Local Business, General Business, Central Business, Commercial, and Light Industrial zones.

Cx.3 Definition of Terms

Definitions inserted as required

Cx.4 Development Exempt from this Code

Cx.4.1 There are no exemptions from this Code.

Cx.5 Use Standards

Cx.5.1 Use standards inserted as required

Cx.6 Development Standards for Liveable Streets

Cx.6.1 Street hierarchy

Objective:	To establish a street hierarchy that sets the function of streets based on through traffic, the requirements for public transport, the adjoining land use and provision of pedestrian networks and cycle ways.

Acceptable Solutions	**Performance Criteria**
A1 Access to a higher speed street is within 500m from anywhere on the low speed street network. Street interruptions are place at regular intervals of approximately 100m for 30km/h and 150m for 40km/h streets. The street hierarchy facilitate bus public transport where bus routes determine street widths and grades.	**P1** To be drafted

Cx.6.2… Street Design Parameters

Objective:	To establish street design parameters that set the speed environment and amenity for new and retrofitted streets including recognising the public open space opportunities within the street environment. Paths are designed to standards that avoid exclusion for people with disabilities

Acceptable Solutions	**Performance Criteria**
A1 Local streets with a speed limit not exceeding 40km/h have a maximum carriage width of 5.6m. Paths satisfy AS1428 parts 1&2 to provide a continuous path of travel. Footpaths have a minimum cross falls of <2.5% (1:40) with no vertical drops or steps. Footpaths are provided on both sides of all streets. Street landscaping maintains clear sightlines on walking and cycling routes with low vegetation (<0 700mm) and/or trees with clear stems (up to 2.4m).	**P1** Street/road reserves are of a width and alignment that can: provide for safe and convenient movement and parking of projected volumes of vehicles and other users. provide for footpaths, cycle lanes and shared-use paths for the safety and convenience of residents and visitors. allow vehicles to enter or reverse from an allotment or site in a single movement allowing for a car parked on the opposite side of the street. accommodate street tree planting, landscaping and street furniture. accommodate the location, construction and maintenance of stormwater drainage and public Utilities. accommodate service and emergency vehicles. traffic speeds and volumes are restricted where appropriate by limiting street length and/or the distance between bends and slow points.

	sight distances are adequate for motorists at intersections, junctions, and at pedestrian and cyclist crossings to ensure the safety of all road users and pedestrians. existing dedicated cycling and walking routes are not compromised. sufficient on-street visitor car parking is provided for the number and size of allotments, taking account of: (a) the size of proposed allotments and sites and opportunities for on-site parking (b) the availability and frequency of public and community transport

Cx.6.3 Street connectivity and permeability

Objective:	Streets provide for connectivity and permeability for pedestrian and bicycle access through: small street block sizes; and paths that connect streets
Acceptable Solutions	**Performance Criteria**
A1 Walking and cycling paths are provided to link heads of culs de sac and dead-end streets to other streets.	P1 Streets facilitate the most direct route to local facilities for pedestrians and cyclists and enable footpaths, cycle lanes and shared-use paths to be provided of a safe and suitable width and reasonable longitudinal gradient.

Cx.6.4 Streets enhance walkability

Objective:	To enhance walkability through inviting, safe and secure streets and paths
Acceptable Solutions	**Performance Criteria**
A1 Footpaths are of minimum widths: generally > than 2m. (2m+ allows 2 wheelchairs to pass and for pram and dog walking) >3.5m for shopping strips. >3m along bus stops and near schools A >0.5m buffer eg a nature strip is provided between moving vehicles and pedestrians.	**P1** Pedestrians are given priority of movement. There are limited interruptions to progress along footpaths and path width comfortably accommodates the number of pedestrians.

Cx.6.5 Streets enhance cycle-ability

Objective:	To enhance cycling for daily requirements, including journey to work or school through available safe and convenient routes.
A1 Motorised vehicles and cyclists occupy shared street space for streets with <3000vpd & < 30kmph design speed environment. Separated bicycle facilities are provided where motorised vehicles exceed 3000vpd. Bicycle lanes are provided on higher order faster streets >40km/h & >5000vpd. Bicycle lanes are provided where it is strategic to provide bicycle routes and where there is high volumes of bicycles.	**P1** To be drafted

Cx.6.6 Streets enhance public transport

Objective:	To ensure that maintenance and repair of buildings and structures are undertaken to be sympathetic to and not detract from the local historic heritage significance of local heritage places.
Acceptable Solutions	**Performance Criteria**
A1 The preferred distance of housing to a bus stop is <400m The maximum distance from housing to a public transport route is 500m.	**P1** Street width, construction and, grades facilitate bus public transport.

Annexure 2 - Summary of Recommendations by Clause Number

The consolidated recommended amendments to the draft SPPs are presented below in chronological clause number order, where possible.

Clause 2.0

1. Purpose insert a clear set of objectives for use and development of land based on how the LUPAA objectives are furthered and how consistency is found with State Policies.

2. Purpose includes the following objectives:

   - Use and development of land encourages and supports active living for improved health outcomes.
   - Use and development of land encourages and supports active travel for improved health outcomes.
   - Public open spaces and reserves provide a well distributed network of walkable and attractive spaces strategic to local communities for their aesthetic, environmental, health and economic benefits.
   - Mixed density housing and housing that satisfies life-cycle requirements is encouraged to enhance the scope for active living and active travel.
   - Compatible land uses are co-located to promote active travel to, and between different activities.
   - The use or development of land supports a resilient, localised, healthy and sustainable food system.
   - Work places support physical activity through convenient and safe accesses providing for natural surveillance of outside spaces and the street.

Clause 3.1.3

3. Interpretation - amend, clarify and add to the interpretations as follows:

Term	**Definition**
active living	means a way of life that integrates physical activity into daily routines.
active travel	means travel modes that involve physical activity such as walking and cycling and includes the use of public transport that is accessed via walking or cycling and may allow for integration of multi-modal transport in the course of a day.
amenity	means, in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable and adds to the health and wellbeing of the users of the locality, place or building.
home based business	Confirm or amend accordingly the interpretation such that a home-based business for local food production or processing is not confined to just part of a dwelling and does include the whole site.

healthy food	means food which is required for a healthy and nutritious diet and is adequate, safe and culturally appropriate and sufficient to live an active healthy life.
local food production or processing	means food grown or reared on a site primarily for local consumption and where there has been minimum processing of the products.
road	means land over which the general public has permanent right of passage, including the whole width between abutting property boundaries, all footpaths and the like, and all bridges over which such a road passes and includes all State roads.
street	means a road that is not a State road.

Clause 4.0.1

4. Table 4.1 Exemptions - amend, clarify and add to the exemptions as follows:

Use or Development	**Qualifications**
home occupation	Confirm or amend accordingly that home occupation includes food production or processing over the whole site and is not solely limited to 'no more than 40m^2 gross floor area of the dwelling'
road works	Maintenance and repair of roads and streets ~~upgrading~~ by or on behalf of the road authority which may extend up to 3m outside the road reserve including: (a) widening or narrowing of existing carriageways; (b) making, placing or upgrading kerbs, gutters, ~~footpaths~~, shoulders, roadsides, traffic control devices, line markings, street lighting, safety barriers, signs, fencing and landscaping unless subject to the Local Historic Heritage Code; or (c) repair of bridges, or replacement of bridges of similar size in the same or adjacent location.
minor infrastructure	(a) ~~Provision~~, Maintenance and modification of footpaths, cycle paths. (b) Provision, maintenance and modification of playground equipment, seating, shelters, bus stops and bus shelters, street lighting, telephone booths, public toilets, post boxes, cycle racks, fire hydrants, drinking fountains, rubbish bins, public art, associated signs and the like on public land.
use or development in a road reserve or on public land	outdoor dining facilities, signboards, roadside vendors and stalls on a road that have been granted a licence under a relevant Council By-Law; or urban agriculture including a community garden and a market on a public land.

Clause 6.2

5. Categorising use or development delete 'subdivision' from clause 6.2.6.

Clause 8.1

6. Amend, omit and substitute the purpose of the General Residential zone as follows:

8.1.1 To provide for residential use or development that accommodates a range of dwelling types ~~at suburban densities~~, where full reticulated infrastructure services are available or can be provided.

~~*8.1.4 To ensure that non-residential use does not unreasonably displace or limit Residential use.*~~

8.1.4 To ensure the use and development of land promotes the health, safety and amenity of residential areas.

Clause 8.2

7. Use Table - General Residential zone and for other zones insert for the use class 'resource development' the qualification 'If for local food production or processing', as permitted use and development in the following zones:

Zone	**Qualification**
General Residential, Low Density Residential, Rural Living, Village, Urban Mixed Use, Local Business, General Business, Central Business, Commercial, Light Industrial, Environmental Living, Landscape Conservation, Environmental Management, Major Tourism, Community Purposes, Recreation, Open Space	P (If for local food production or processing)

Clause 8.3.1

8. General Residential zone – use standards discretionary uses, omit the objective and substitute:

8.3.1 To ensure that all discretionary uses are compatible with residential use.

Clause 8.4.1

9. General Residential zone - Development standards for multiple dwellings delete the performance criterion P1(a) as follows:

P1

Multiple dwellings must only have a site area per dwelling that is less than 325m2, if the development will not exceed the capacity of infrastructure services and:

(a) ~~*is consistent with the density of existing development on established properties in the area; or*~~

(b) provides for a significant social or community benefit and is:

(i) wholly or partly within 400m walking distance of a public transport stop; or

(ii) wholly or partly within 400m walking distance of an Inner Residential Zone,

Clauses 8.4.1 A1 and P1 and 8.6.1 A1

10. General Residential zone omit 325m2 and 450m2 respectively and substitute 400m2 for all forms of housing.

Clauses 8.4.2 A2(c) and others

11. General Residential zone delete or amend as follows:

Clause	**Provision showing parts for deletion**
Setbacks and building envelope for all dwellings **Clause 8.4.2** A2(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings~~ on ~~the adjoining sites on the same street.~~
Site *coverage and private open space for all dwellings* **Clause 8.4.3** objective	'To ensure that dwellings ~~are consistent with the amenity and character of the area and~~ provides~~:~~'
Site *coverage and private open space for all dwellings* **Clause 8.4.3** P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development **Clause 8.5.1** A1 (c)	~~(c) if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of those dwellings.~~ (c) developed for gardens and landscaping.
Non dwelling development **Clause 8.5.1** P3	A building that is not a dwelling, must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have reasonable space for the planting of gardens and landscaping.

Clause 8.6

12. Development Standards for subdivision and for other zones insert provisions and standards for public open space and riparian and littoral reserves at clause 8.6 and equivalent provisions in all other zones except the Port and Marine zone and the Utilities zone as follows:

x.6.2, x.5.2 public open space (clause numbering as applicable for each zone)

Objective:	To ensure subdivision delivers a well distributed network of walkable and attractive public open spaces and reserves strategic to local communities.
Acceptable Solutions	**Performance Criteria**
A1 Subdivision provides a minimum land area of 5% for public open space.	**P1** Payment instead of public open space is taken where: (a) a strategic plan for public open space and reserves provides for the acquisition of public open space at alternative sites in the vicinity of the subdivision; or (b) a strategic plan for public open space and reserves specifies requirements for the improvement on existing public open space land in the vicinity of
A2 (a) Subdivision provides a minimum width of riparian reserve of 30m from the bank of a water course (non-tidal) for the length of the common boundary with the water course.	**P2** (a) A riparian reserve of less the 30m is provided or dispensed with where there is a common boundary with a minor water course; and (b) A riparian reserve is not required to link to adjoining reserves, or (c) A riparian reserve is not required as part of a strategic plan for public open space and reserves.
A3 (a) Subdivision provides a minimum width of littoral reserve of 30m from the bank of a river or coast for the length of the common boundary with the river or coast.	**P3** (a) The requirement to provide a littoral reserve of 30m may only be reduced or dispensed with where existing buildings or features do not allow for the full or partial reserve width to be provided; or the area is required for coastal dependent

Clause 8.6 and others

13. General Residential Zone, amend to provide for streets, as follows:

(a) Delete Clause 8.6.2 Roads except for standard A2/P2.

(b) Relocate standard 8.6.2 A2/P2 to clause 8.6.1.

(c) Insert (new) standard for streets as clause 8.7, being a modification from existing clause 8.6.2, as follows:

Development Standards for Streets

Objective	To ensure that ~~the arrangement of new~~ development for ~~roads~~ streets ~~within a subdivision~~ provides for: a) a legible road hierarchy that sets the function of streets based on through traffic, the requirements for public transport, the adjoining land use and the connectivity and permeability for pedestrian networks and cycle ways; b) safe, convenient and efficient connections to assist accessibility and mobility of the community; c) the adequate accommodation of vehicular, pedestrian, cycling and public transport traffic; ~~and~~ d) the efficient ~~subdivision~~ development of the entirety of the land and of surrounding land; and e) the efficient ultimate development of the entirety of the land and of surrounding land; and the integration of land use and transport.
Acceptable Solutions	**Performance Criteria**
A1 There are no acceptable solutions. ~~The subdivision includes no new roads.~~	**P1** ~~The arrangement and construction of roads~~ Development for streets ~~within a subdivision~~ must satisfy all of the following: (a) the route and standard of ~~roads~~ streets accords with any relevant road network plan adopted by the Planning Authority; (b) the appropriate and reasonable future subdivision of the entirety of any balance lot is not compromised; (c) the future subdivision of any adjoining or adjacent land with subdivision potential is facilitated through the provision of connector roads and pedestrian paths, ~~where appropriate~~, to common boundaries; (d) an acceptable level of access, safety, convenience and legibility is provided for all street users through a consistent road function hierarchy; (e) connectivity with the neighbourhood ~~road~~ street network through streets and paths is ~~maximised~~ maximized. Cul-de-sac and other non-through streets are minimized; (f) the travel distance for walking and cycling between key destinations such as shops and services is minimised; (g) walking, cycling and the efficient movement of public transport and provision of public transport infrastructure is facilitated; (h) provision is made for bicycle infrastructure on new arterial and collector roads in accordance with Austroads Guide to Road Design Part 6A as amended; and (i) any adjacent existing grid pattern of streets is extended, where there are no significant topographical constraints.

Clauses to insert provisions for streets

14. Amend to provide for streets as per Clause 8.7 of the General Residential zone as follows:

Zone	Existing clauses	New clauses	Notes
Inner Residential	9.6.2	9.7	Zone currently contains standards as per the General Residential zone.
Low Density Residential	10.6.2	10.7	Zone currently contains standards as per the General Residential zone.
Rural Living	11.5.2	11.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.
Village	12.5.22	12.6	The performance criteria are expanded from the draft SPPs to reflect the residential intent for the zone.
Urban Mixed Use	No provision	13.6	Provisions extended to the Urban Mixed Use zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Local Business	No provision	14.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
General Business	No provision	15.6	Provisions extended to the General Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Central Business	No provision	16.6	Provisions extended to the Central Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Commercial	No provision	17.6	Provisions extended to the Commercial zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.
Light Industrial	No provision	18.6	Provisions extended to the Local Business zone as there are no similar provisions in the draft SPPs. The standards have application to new streets as well as retrofitting existing streets.

Clause 9.1.3(c)

15. Inner Residential zone, delete as follows:

~~9.1.3(c) does not unreasonably displace or limit residential use.'~~

Clause 9.3.1

16. Inner Residential zone omit the objective and substitute:

9.3.1 To ensure that all discretionary uses are compatible with residential use.

Clauses 9.4.2 A2(c) and others

17. Inner Residential zone delete or amend clauses as follows:

Clause	**Provisions showing parts for deletion**
Setbacks and building envelope for all dwellings clause 9.4.2 A1(c)	~~if for a vacant site and there are existing dwellings on adjoining sites on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Site *coverage and private open space for all dwellings* clause 9.4.3 objective	'To ensure that ~~dwellings are consistent with the amenity and character of the area and provides~~ provide:'
Site *coverage and private open space for all dwellings* clause 9.4.3 P1(a)	~~site coverage consistent with that existing on established properties in the area;~~
Non dwelling development clause 9.5.1 A1 (c)	~~if for a vacant site and there are existing dwellings on adjoining properties on the same street, not more than the greater, or less than the lesser, setback for the equivalent frontage of the dwellings on the adjoining sites on the same street.~~
Non dwelling development clause 9.5.1 P3	Buildings must ~~be consistent with the form and scale of residential development existing on established properties in the area and~~ have a reasonable space for the planting of gardens and landscaping.

Clause 13.1.3

18. Urban Mixed Use zone insert additional zone purpose as follows:

13.1.3 To provide amenity for residents appropriate to the mixed use characteristics of the Zone.

Clause 13.2

19. Urban Mixed Use zone, use Table insert the following:

(Use Class) Discretionary	**Qualification**
Residential	If not listed as permitted

Clause 13.3.1

20. Urban Mixed Use zone - Use Standards omit objective and substitute the following:

13.3.1 To ensure that non-Residential use:

(a) is compatible with the adjoining uses;

(b) does not cause unreasonable loss of residential amenity; and

(c) to ensure that uses do not cause unreasonable loss of amenity to adjoining residential Zones.

Clause 13.4.3

21. Urban Mixed Use zone - Design amend provisions as follows:

Acceptable Solutions	**Performance Criteria**
A1 Buildings must be designed to satisfy all of the following: (a) *provide the main pedestrian entrance to the building that is visible and accessible from the road or publicly accessible areas of the site;*	
A1 (g) provide awnings over a public footpath ~~if existing on the site or adjoining properties~~, and to the pedestrian entrance to the building excluding for a Residential use; and	**P1** (g) provide awnings over a public footpath, excluding for a Residential use, unless: ~~the site does not have existing awnings~~; there is no benefit for the streetscape or pedestrian amenity; or it is not possible to provide an awning due to physical constraints of the site or building; and

Clauses 13.4.3 and 12.4.3

22. Urban Mixed Use zone and Village zone, apply and insert the amended design standards at clause 13.4.3 to (new) clause 12.4.3 and existing clauses renumbered accordingly.

Clause 13.4.3 and others

23. Apply the amended design standards to the Local Business, General Business, Central Business and Commercial zones.

Clause 14.3.1

24. Local Business zone, Use Standards – all uses amend the objective as follows:

14.3.1

Objective:	To ensure that non-residential uses do not cause unreasonable loss of amenity to adjoining residential uses and residential Zones.

Clause 14.4.1

25. Local Business zone, Development Standards – Building height amend the objective as follows:

14.4.1

Objective:	To ensure building height: (a) contributes positively to the streetscape; and (b) does not cause an unreasonable loss of amenity to adjoining residential uses and residential Zones.

Clause 14.4.2

26. Local Business zone, Development Standards – Setbacks amend the objective as follows:

14.4.2

Objective:	To ensure that building setback: (a) contributes positively to the streetscape; and (b) does not cause an unreasonable loss of amenity to adjoining residential uses and residential Zones.

Clause 17.4.2

27. Commercial zone, Development Standards – Setbacks amend A1/P1 as follows:

Acceptable Solutions	Performance Criteria
A1 Buildings must have a setback from a frontage ~~of~~ that is: (a) ~~not less than 5.5m~~ built to the frontage; or (b) not more or less than the maximum and minimum setbacks of the buildings on adjoining properties.	**P1** Buildings must have a setback from a frontage that provides adequate space for vehicle access, parking and landscaping, having regard to: (a) the topography of the site; (b) the setback of buildings on adjacent properties; and (c) the safety of pedestrian and other road users.

Clause 21.3.1/P3(a)

28. Agriculture zone – Use Standards (discretionary uses Residential use) clarify where it refers to a residential use 'must be part of an agricultural use…' compared with housing classified under clause 6.2.2 that deals with categorizing uses 'where directly associated with and a subservient part…'.

Clause 20.0 and 21.0

29. Amend the Rural and Agriculture zones by combining into a single Rural Resource zone and make provision for a code incorporating an overlay to spatially define the Tasmanian agricultural estate.

Clause 27.2

30. Community Purpose zone - Use Table and Clause 28.2 Recreation zone amend the qualifications for the use class 'general retail and hire' to make a 'market' permitted as follows:

Zone	Qualification
Community Purposes	~~D~~ P (if for a market)
Recreation	P (if for a market) D (If for clothing, equipment or souvenirs for a Sports and Recreation use; ~~or~~ ~~(b) for a market.~~)

Clause C2.1

31. Parking and Sustainable Transport Code amend the code purpose as follows:

C2.1.2 To ensure <u>that the provision of infrastructure facilitates</u> cycling, walking and public transport ~~are encouraged~~ ~~transport~~ in urban areas.

C2.1.3 To ensure that access for pedestrians, <u>cyclists and other</u> low-powered vehicles ~~and cyclists~~ is safe and adequate.

Clauses C2.5.1, C2.5.2, C2.5.3, C2.5.5 and Table C2.1 1

32. Parking and Sustainable Transport Code delete the numerical standards for parking provision.

Clause C2.6.5/A1.1

33. Parking and Sustainable Transport Code – Pedestrian Access omit 'require' (as in number of spaces) and substitute 'provide' as follows:

'Uses that ~~require~~ <u>provide</u> 10 or more car parking spaces must'

Clause C2.6.7/A1

34. Parking and Sustainable Transport Code – Bicycle Parking and Storage Facilities

omit 'require' (as in number of spaces) and substitute 'provide' as follows:

'Within the General Business Zone and Central Business Zone, bicycle parking for uses that ~~require~~ <u>provide</u> 5 or more bicycle spaces in Table C2.1 must:'

Liveable Streets Code

35. Make provision in the SPPs codes for a future Liveable Streets Code.

Explanatory Document

It is requested that the following conflicting statements (page 39) be deleted from the Explanatory Document for the Inner Residential zone under 'zone purpose', as follows:

~~*'The Zone has limited application within serviced residential areas',* and~~

~~*'…this Zone should be well utilised where appropriate'.*~~

~~'Within the Inner Residential Zone there should be a reduced expectation on suburban residential amenity,…'~~

Representation Author Background

I have a Bachelor of Environmental Design (Architecture) and Master of Town Planning from the University of Tasmania. My Masters degree majored in historic and cultural heritage focussing on the study of heritage focussed controls in the form of development standards in Planning Schemes and the resulting designs, architectural styles and development.

My Master of Town Planning thesis entitled Aesthetic Control in Inner City Area Planning specifically investigated the link between historical mimicry and statutory heritage controls for development in Planning Schemes for Heritage (precinct) Areas. The study area was Battery Point (Tasmania) and the heritage controls studied were those contained within the *Battery Point Planning Scheme 1979*.

I have 25 years of experience in statutory and strategic planning in Tasmania, of which 17 years (2003 to present day) has significantly focussed on statutory planning with respect to development to locally listed places ('Heritage Places') and heritage areas and heritage precincts ('Heritage Precincts') under Planning Schemes.

As a Council officer from September 2003-December 2017, I undertook all duties within Kingborough Council related to historic and cultural heritage management for the Kingborough municipality as part of my formal duties and responsibilities. These duties included management of all Works Applications submitted to Council involving development to Places on the Tasmanian Heritage Register included within the Planning Scheme, assessment of all development applications submitted to Council for development and works to Heritage Places of local value within the *Kingborough Planning Scheme 1988*, *Kingborough Planning Scheme 2000* and the *Kingborough Interim Planning Scheme 2015*, assessment of all development applications submitted to Council for development and works to properties within Heritage Areas and then Heritage Precincts within the *Kingborough Planning Scheme 1988, Kingborough Planning Scheme 2000* and the *Kingborough Interim Planning Scheme 2015*.

As a Council officer from September 2003 until November 2017 I undertook Council management of the Kingborough Heritage Review 2006 with the engaged consultants, from 2015 onwards I undertook all management and all assessments related to the Kingborough Local Heritage Review 2016 (including all historical research and identification of new Heritage Places), assisting in the writing of the heritage provisions and development standards for the Heritage Code in the *Kingborough Planning Scheme 2000*, assisted in the identification and extent of new areas for inclusion as Heritage Precincts in the *Kingborough Interim Planning Scheme 2015*, identified and mapped amended boundaries for existing Heritage Areas in the *Kingborough Planning Scheme 2000* which were then accordingly expanded as Heritage Precincts in the *Kingborough Interim Planning Scheme 2015*.

As a Council officer from 2010 until November 2017 I facilitated the development of a Significant Tree assessment panel within Kingborough Council and undertook the review and assessment of all nominations with respect to matters of historic and cultural heritage significance and values.

Since December 2017, I have worked as a private consultant where a significant proportion of my workload involves providing assistance and review of development proposals to

private clients and developers involving development to Heritage Places and sites within Heritage Precincts in Planning Schemes.

As a private consultant from late 2017 to the present day, I am engaged by Kingborough Council on an 'as needed' basis to provide heritage assessments and decisions for development applications under the E13.0 Historic Heritage Code in the *Kingborough Interim Planning Scheme 2015*.

As a private consultant in 2018, I was engaged by Huon Valley Council to undertake a local heritage review for the municipality to assist in identifying new Heritage Places and new Heritage Precincts. This review also involved assisting Council to develop and write Statements of Historic Cultural Heritage Significance.

As a private consultant from late 2017 to the present day I have been engaged by Derwent Valley Council, City of Hobart, Huon Valley Council, Northern Midlands Council and Southern Midlands Council to provide advice and heritage assessments for development applications and development applications subject to appeals under the E13.0 Historic Heritage Code for Local Places and sites in Heritage Precincts and also listed as a Heritage Place on the Tasmanian Heritage Register in respective Planning Schemes.

As a private consultant from late 2017 to present I have been engaged by private clients to provide heritage assessments for proposed development applications under the Historic Heritage Code in respective Interim Planning Schemes and also the SPP heritage code for development and works involving Local Places and properties within Heritage Precincts for sites within Sorell Council, Clarence City Council, Huon Valley Council, Kingborough Council, Glenorchy City Council, City of Hobart, Southern Midlands Council, Brighton Council, Derwent Valley Council, Glamorgan Spring Bay Council, Northern Midlands Council and Launceston City Council municipal areas.

Since September 2017 as a Council officer and then as a private consultant, I have undertaken the drafting and provision of advice with respect to nominations for listing on the Tasmanian Heritage Register which has included producing written documentation to address HERCON based criteria under the *Historic Cultural Heritage Act 1995*.

I am a Corporate Member of the Planning Institute of Australia (PIA), a recent previous Board Member of the Tasmanian Heritage Council (member nominated by the Local Government Association of Tasmania with expertise in planning from 2015 until January 2020) and have been a previous Associate Member of the International Council of Monuments and Sites (ICOMOS).

The following representation outlines concerns with the current Local Historic Heritage Code which is Code C6.0 in the State Planning Provisions dated 19 February 2020.

It should be noted that where the term 'contributory' has been used, the intent and generally accepted definition of this wording in heritage practice is that a contributory building etc is one which positively contributes to the historic and cultural heritage values and significance of the place/precinct/surrounding area.

Name of the Code

For reasons as outlined in this representation the name of the code as 'Local Historic Heritage Code' is not supported.

Some Councils still have dual listed properties which will apparently carry across to the LPS and SPP when applicable to their municipal area.

As outlined further in this representation some state listed properties also have both local and state level values. These properties are generally complex sites that have been developed over a long period of time and are able to demonstrate a range of values.

Therefore, the Code and issues covered by the Code such as streetscape and landscape impacts will unavoidably be applicable to some properties currently listed on the Tasmanian Heritage Register.

The proposed naming of the Code also implies that values and significance relate only to historic matters with respect to age or history.

Conversely, the value and significance of some places may relate to intangible and cultural values such as association with an event, person or artistic or technological achievements as per standardised heritage criteria with the HERCON criteria adopted in 1998 which also include consideration of cultural values. (The HERCON values are reflected in the 7 criteria outlined in the *Historic Cultural Heritage Act 1995* which is the overarching Act for historic and cultural heritage management in Tasmania. Section 16 of the HCHA1995 provides these criteria for the assessment of places to be entered onto the Tasmanian Heritage Register and these include consideration of cultural significance).

Heritage by its very nature is often a complex relationship of interlinking values where a site may have significance across both state and local levels.

Furthermore, the objectives of the Act (LUPAA) include under (g) *to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value*.

It is recommended instead that the Code be renamed to '*Historic Cultural Heritage Code'* instead or quite simply: '*Heritage Code'*.

Terminology and definitions within the Code

Definitions are contained under part C6.3.1 as a Definition of Terms.

The extent of definitions is considered to be brief and is not exhaustive. Items such as 'Conservation Management Plan' and 'Heritage Impact Assessment' or more general terms such as 'pruning' and 'demolition' are not included.

The *Burra Charter* contains Definitions contained within Article 1. These definitions should be included as part of C6.3.2 as they include basic and widely used terms in heritage practice such as 'maintenance' 'conservation' etc.

The inclusion of terms such 'maintenance', 'repairs' and 'pruning' are particularly pertinent as these are used repeatedly in *C6.4 Development Exempt from this Code*.

Given that Significant Trees and vegetation are both included within the Code, a clear line needs to be established as what constitutes 'pruning'. One person's interpretation could involve minor trimming of tree canopy resulting in less than 5% of the overall canopy being removed. For another, this could result in significant extents of canopy being removed. Pruning and also demolition by their nature, and the extent to which they are undertaken, can vary significantly and therefore have significantly varied outcomes depending on their extent. Where pruning has been included as being able to be exempt, the extent of pruning as a measurable and quantitative amount such as a percentage of tree/shrub cover or extent of overall width and height of affected tree/vegetation should be confirmed as outlined above.

Therefore, clear definitions are necessary particularly when it comes to Exemptions so that the extent of works and to what fabric it is happening to (original contributory fabric versus non original and non-contributory fabric) needs to be clearly outlined so there is less chance of misinterpretation.

In general, definitions should align with those used in the Burra Charter and also J.S. Kerr's *The Conservation Plan*. Variance of basic definitions of widely used terms in heritage practice should not occur.

The issue of demolition and adequate management of demolition is affected by there being no definition of 'demolition'. For example, demolition in terms of the removal of non-original and non-contributory fabric could well be dealt with an exemption rather than automatic discretion. But for this to occur, clear definitions need to be provided with respect to demolition and possibly 'partial demolition' or 'minor demolition (non contributory fabric removal)'.

Local Heritage and state listed Heritage on the Tasmanian Heritage Register

The current Code in the SPP's under clause C6.2.3 specifically states that the Code does not apply to a registered place entered on the Tasmanian Heritage Register.

This approach to enact a very hard line into the separation of local versus state is considered to be extremely problematic as heritage values of a Place can include both state and local significance.

It is also unclear what will happen to dual listed sites that are still contained with Interim Planning Schemes. For example, of the list of Places in the *Kingborough Interim Planning Scheme 2015* 80-90% are also listed on the Tasmanian Heritage Register. Many of these places have both state and local significance.

In 2015, the Tasmanian Heritage Council undertook a process of 'delisting' dual listed properties. It is the understanding of the representation author who was a Member of the Tasmanian Heritage Council at that time (2015-2020) that the avoidance of dual listed places was to remove listings where a place has no state significance at all and all values and significance were ascribed to local level only. For example, such 'delisted' places included residential dwellings (such as an 1880s Victorian dwelling at 23 Hill Street West Hobart) which was originally on the Council local heritage list as a locally listed place and also was listed on the Tasmanian Heritage Register. The rationale for being listed on a state level was entirely unclear as the noted significance of the place was a Victorian dwelling. There were no identified or obvious values of a state level and as the building was already protected as a Place on the local register in the Council planning scheme, the decision was made to remove the property from the THR. The majority of delisted properties removed from the THR were understood to be along these lines.

A current example of a dual listed place with both state and local values is Huntingfield House at 1179 Channel Highway, Huntingfield. The THR listing does not include both titles of this property. The Council listing does include the vacant title as this title was part of the original property and includes the location of the original access and retains original frontage to the Channel Highway. Failure to consider this frontage and access as part of a consideration of setting and impact of landscape values may result in a loss of significance for Huntingfield House.

The Tasmanian Heritage Council assessment of an application for a state listed place cannot consider directly associated issues such as setting, streetscape, landscape or in general groups of buildings that have significance as a related and associated group. There are a few exceptions of THR listed groups such as Arthur Circus and Salamanca Place but in general, the consideration of streetscape, related groups of buildings and impact on properties outside the specific extent as noted in the data sheet on state listed places does not form part of the Tasmanian Heritage Council's assessment.

Dual listing across both the THR and SPP heritage code should generally be avoided but should not be definitively ruled out either. This is because there are complex and substantial sites across the state that do clearly have both state and local values. On that basis, the SPP code for heritage should not have a blanket exclusion of state listed places on the THR.

The *Burra Charter*

The *Burra Charter* (2013) is a standard of practice for those working with, managing and dealing with historic and cultural heritage in Australia. It is used by heritage practitioners and those making decisions above, and providing advice for places of heritage value.

The *Burra Charter* provides a set of definitions for general heritage terms and also provides practice notes and guidance for best practice heritage and conservation management in Australia.

As a result, the *Burra Charter* is considered the preeminent document for historic and cultural management in Australia and therefore unusual that it is not referenced in any way in the SPP heritage code. There is no reference at all.

Definitions provided in the code do not align at all with those in the *Burra Charter*.

The code purpose does not align with the principles and practices of the *Burra Charter* and does not reference the *Burra Charter* in any way.

Practices involving maintenance, demolition, fabric disturbance, new work, etc. in the *Burra Charter* are not reflected at all in Performance Criteria in the code. It is considered very important that Conservation Processes (Articles 14 to 25) as outlined in the *Burra Charter* should be reflected in code Performance Criteria.

Issues covered in the *Burra Charter* are considered to be very important to maintaining historic and cultural heritage values such as setting, context and use are not mentioned in the SPP code at all.

Application Requirements

Unlike current and now redundant Interim Planning Schemes (such as Hobart, Kingborough and formerly Glenorchy) the SPP code does not specify application requirements. This approach is not supported.

This is considered a significant weakness in the code where requests for information currently reference application requirements as part of further information requests where a Council is concerned about an application for development having a significant adverse impact and/or where insufficient information is lodged as part of an application.

A list of application requirements provides for a faster and more efficient assessment process and may reduce the likelihood for requests for further information from planning authorities.

The failure to list any application requirements is not supported and is detrimental to facilitating well supported applications as well as providing advice on requirements for planning applications to heritage places and precincts to prospective developers as well as home owners.

The failure to list application requirements also may give a false impression that there is not real need to provide substantive supporting information in complex, potentially detrimental or contentious applications for development where assessment under the code is required.

It is considered an appropriate list of Application Requirements can be found in clause E13.5.1 of the *Hobart Interim Planning Scheme 2015* and similar should be included in the SPP code.

For information, clause E13.5.1 of the *HIPS2015* is as follows:

E13.5.1
In addition to any other application requirements, the planning authority may require the applicant to provide any of the following information if considered necessary to determine compliance with performance criteria:

(a) a conservation plan;

(b) photographs, drawings or photomontages necessary to demonstrate the impact of the proposed development on the heritage values of the place;

(c) a statement of significance;

(d) a heritage impact statement;

(e) a statement of compliance;

(f) a statement of archaeological potential;

(g) an archaeological impact assessment;

(h) an archaeological method statement;

(i) a report outlining environmental, social, economic or safety reasons claimed to be of greater value to the community than the historic cultural heritage values of a place proposed to be demolished or partly demolished, and demonstrating that there is no prudent and

feasible alternative;

(j) for an application for subdivision, plans showing :

(i) the location of existing buildings; and

(ii) building envelopes on the relevant lots, including the balance lot.

Objectives and Purpose of the Code

The SPP Code purpose in C6.1 simply states that it seeks to 'recognise and protect'.

This is considered too limited and makes no mention of assessment, conservation or management.

The *Historic Cultural Heritage Act 1995* states the following: *An Act to promote the identification, assessment, protection and conservation of places having historic cultural heritage significance and to establish the Tasmanian Heritage Council*.

The *Land Use Planning and Approvals Act 1993* Part 2 Objectives of the Planning Process includes:

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;

It is considered that the overall purpose of the Code should include a reference to the assessment process ensuring the proper management and protection of historic and cultural heritage significance of local places, precincts, landscapes and areas of archaeological potential in terms of their management, conservation and development.

Objectives are included for each development standard in the SPP Code. The wording of these are considered to be extremely problematic as the terms 'compatible' is widely used. The term 'unacceptable' is also used.

'Compatible' is a word loaded with meaning and legal interpretation in the planning sphere. There have been multiple appeals where the meaning of 'compatible' has been confirmed as not meaning 'consistent'. RMPAT appeal 50/20P commented on the term 'compatible' as follows: *What constitutes compatibility is not defined in the Scheme. Compatible must be given its ordinary meaning. To be compatible is defined in the Macquarie Dictionary as being "capable of existing together in harmony". This is consistent with a number of earlier Tribunal decisions.* The Tribunal further stated that compatibility was considered to be a consideration of 'similar to or broadly correspond to, consistency is not a requirement'.

It is considered that the term 'compatible' is therefore an entirely inappropriate term to be included in a heritage code where often good heritage outcomes often require consistency, subservience and sympathy.

Exemptions

The exemptions as listed in the SPP Code are in some cases ambiguous and would benefit greatly from further clarification and basic terms being defined under Definitions.

Comments are provided accordingly:

Development within a local heritage place:

(a) There is no definition of what constitutes 'temporary'. There should be a definitive timeframe given as part of a definition of 'temporary'. For example 'temporary' works are those in pace for a period not exceeding 6 months. There should also be the ability to extend this period by Council's General Manager to a maximum period not exceeding 2 years.
(b) To 'maintain' should also include 'conserve, restore or rehabilitate'.
(c) Should include as long as there is no detrimental impact on historic cultural heritage significance and should not result in the demolition or detrimental impact of any fabric or features that contribute to the historic and cultural heritage significance.
(d) Pruning is not defined. As already noted, the ambiguity of the word 'pruning' needs to be defined to give clarification as to the acceptable extent. The word 'appearance' can be extremely subjective and should be removed. 'Retarded' should be replaced with 'is maintained'.

Development within a local heritage place, local heritage precinct or local historic landscape precinct:

(a) 6m is too high. No other measurable dimensions are proposed. No necessarily required for a flagpole but maximum dimensions should be provided for an antenna.
(b) Side and rear boundary fences should not be exempt from demolition if they are contributory fabric. 'Garden and grounds' should instead be reworded to listed extent.
(c) Clearing and modification of vegetation should not include contributory vegetation in the form of plantings that contribute to the setting or landscape values. Under this exemption, old plantings of poplars or hawthorn hedges could be removed.
(d) No changes recommended.
(e) After 'external' the words 'original or contributory' fabric.
(f) Separate clauses should be given for painting and rendering to avoid any likelihood of them being exchanged. No exemptions should be given to repainting existing colours if not in a colour scheme appropriate for the period of development for the primary building. Rendering exemptions should be given only for re-rendering in the same like-for-like finish. Otherwise, this could result in characteristic period architectural renderings such as roughcast rendering being replaced with contemporary rendering for reasons of economy, or traditional lime finishes being replaced by modern (and damaging) cementitious coatings.
(g) Needs further clarification on the meaning of 'aligned'.
(h) Satellite dishes should freestanding and not be physically attached to any heritage place or any building noted as part of the listing.

(i) Minor upgrades should not detrimentally impact on any Significant Tree or result in the 'pruning' (to be further defined) of any Significant Tree.

Development involving a place or precinct of archaeological potential:

(a) 'ground disturbance' needs to be clearly defined.
(b) The assessment must have been by a suitably qualified person. 'Excavation' should also include 'ground disturbance'.
(c) 'Minor' excavations should be defined. 'Significant archaeological values' should be linked to historic and cultural heritage significance of the place.
(d) 'deposits' should be defined.
(e) Should also include a contributory site within a Precinct. Many sites of value are not being listed by Councils owing to resourcing issues. A suitably qualified person can confirm if a site or building is contributory and gives such contributory items a layer of protection rather than an 'all or nothing' approach (listed versus not listed).
(f) 'minor building works and structures' need to be defined. 20sqm is far too large an area.

Presently significant archaeological remains within major centres (excepting perhaps Hobart) or associated with significant historic places (many not on the THR) are not recognised in planning scheme. This has led to the loss of significant heritage and/or significant delays in developments and needs to be better addressed. Archaeological overlays regarding significant heritage need to be better provided for in planning schemes or sites like the Kings Meadows Probation Station site will continue to be lost.

Involving development to significant trees:

(a) Pruning should be defined and a measurable extent provided. 'Appearance' is too subjective a term. 'Retarded' should be replaced with 'is maintained'.

Signs:

(a) Name plaques of maximum dimensions should be exempt. Otherwise, small and appropriate house name plaques commonly applied to residential properties measuring approximately 0.2sqm require a planning permit.

Additional exemptions or special provisions with respect to Heritage Places (subdivision and use)

Some Interim Planning Schemes and Planning Schemes prior to the introduction of Interim Planning Schemes gave special exemptions to listed places in terms of use and subdivision.

These exemptions resulted in prohibited uses in a zone being instead a discretionary use for a heritage listed place or prohibited subdivision that did not meet minimum lot sizes being able to be considered for a heritage listed place so long as the subdivision process result in the conservation and management of the Place without any adverse impact on values or significance.

Such exemptions have been known to be used by Southern Midlands for the subdivision of buildings (one example is Kenmore Arms near Oatlands) and also Kingborough Council with respect to use.

The *Kingborough Interim Planning Scheme 2015* currently contains the following under Part 9.0 Special Provisions with respect to use;

9.5 Change of Use of a Place listed on the Tasmanian Heritage Register or a heritage place

9.5.1
An application for a use of a place listed on the Tasmanian Heritage Register or as a heritage place in a code relating to historic heritage values that would otherwise be Prohibited is Discretionary.

9.5.2
The planning authority may approve such an application if it would facilitate the restoration, conservation and future maintenance of:

(a) the local historic heritage significance of the heritage place; or

(b) the historic cultural heritage significance of the place as described in the Tasmanian Heritage Register.

9.5.3
In determining an application the planning authority must have regard to:

(a) any statement of historic cultural heritage significance for the place, as described in the Tasmanian Heritage Register;

(b) any statement of local historic heritage significance and historic heritage values, as described in a code relating to historic heritage values;

(c) any heritage impact statement prepared by a suitably qualified person setting out the effect of the proposed use and any associated development on:

(i) the local historic heritage significance of the heritage place or heritage precinct; and

(ii) the historic cultural heritage significance of the place as described in the Tasmanian Heritage Register;

(d) any conservation plan prepared by a suitably qualified person in accordance with The Conservation Plan: A guide to the preparation of conservation plans for places of European cultural significance 7th edition, 2013;

(e) the degree to which the restoration, conservation and future maintenance of the heritage significance of the place is dependent upon the establishment of the proposed use;

(f) the likely impact of the proposed use on the amenity, or operation, of surrounding uses;

(g) any Heritage Agreement that may be in place, in accordance with the provisions contained in the Historic Cultural Heritage Act 1995;

(h) the purpose and provisions of the applicable zone; and

(i) the purpose and provisions of any applicable code.

Adaptive reuse of heritage places and sites is not just sustainable but also extremely important and can readily facilitate the ongoing conservation and management of listed places that would otherwise not occur.

The Heritage Council of NSW and the Royal Australian Institute of Architects (RAIA) believe that historic buildings are not a constraint but an opportunity for creative endeavour, which results in the whole being greater than the sum of the parts and actively encouraged adaptive reuse of buildings and sites for uses not comparable to their original intended use. The Tasmanian Heritage Council has likewise specifically referenced and encouraged adaptive reuse in Works Guidelines and Practice Notes.

It is considered that the SPP Code should include such special provisions that encourage adaptive reuse and which are strongly subject to the demonstrated ongoing conservation, management, maintenance and restoration of a Place.

C6.6 Development Standards for Local Places

Comments are provided under each clause with respect to wording, intent, etc.

C6.6.1 Demolition

Demolition is not defined. There is a sliding scale of demolition. The term '*unacceptable*' is also problematic. The clause should instead state that demolition must not cause a detrimental impact on the historic and cultural heritage value and significance of the place or the loss of contributory fabric (including internal elements). The terminology '*having regard to*' is extremely problematic in a heritage Code. There are legal ramifications for the wording '*having regard to'* and the implications of this wording is that the sub criteria can be effectively disregarded. Wording should instead state '*and must demonstrate compliance with the following*' instead of '*having regard to'*.

Sub clauses (a), (b) and (c) are extremely concerning and give the ability for demolition of heritage listed places to be allowed on the basis of their dilapidated condition. This approach will encourage some owners of such places to avoid maintenance in order to achieve a permit for demolition.

Sub clause (h) should be removed entirely with respect to economic considerations. Economic reasons should never be a justification for the loss of listed buildings and/or significant fabric. The Natural Values Code C7.0 under clause C7.6.2.P1 allows the loss of priority vegetation on economic grounds but is coupled with social considerations as well as a requirement to demonstrate there is no feasible alternative location or design: *with use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design.* The bar for removal of priority vegetation (despite being able to be regenerated, regrown or resown) is significantly harder than the demolition of heritage buildings and fabric.

C6.6.2 Site coverage

The clause needs to make reference to the proposed new site coverage versus the existing site coverage of buildings comprising the heritage listed place. As noted elsewhere in this representation, there are concerns about the scale and extent of extensions to heritage listed places and contributory buildings in precincts where the new extension far exceeds the listed building in terms of scale, height, floor area, mass, bulk, etc.

As already noted, the word '*compatible*' is extremely problematic and needs to be replaced with '*consistent with'* or '*sympathetic to'*.

It is further recommended that an extension to a listed heritage place should not exceed the gross floor area of the listed place and this should be mandated in Performance Criteria.

Again, the wording '*having regard to'* should be replaced with '*must demonstrate compliance with*' or similar mandatory wording.

C6.6.3 Height and bulk

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

The sub criteria (b) regarding '*the character and appearance of the existing building or place*' needs to instead make reference to the existing height and bulk of the heritage listed place.

The sub criteria (c) regarding '*the height and bulk of other buildings in the surrounding area*' should be removed altogether. This clause gives the ability to consider substantially out of scale and overbearing extensions to heritage listed places on the basis that there are other such examples in the surrounding area.

The sub criteria (d) '*the setting of the local heritage place'* needs to be reworded. 'Setting' is not defined. Reference to the retention of the visual prominence and significant views to and from the heritage listed place should instead be included as a sub criteria.

C6.6.4 Siting of buildings and structures

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

The sub criteria (d) '*the setbacks of other buildings in the surrounding area'* needs to be reworded. Replication of the setbacks of other buildings in the surrounding area should only apply to contributory buildings that are in keeping with patterns or development and the building typology of the listed place. Reference to the retention of the visual prominence and significant views to and from the heritage listed place should also be included as a sub criteria.

C6.6.5 Fences

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

The sub criteria (b) '*the architectural style of the buildings on the site'* should instead be reworded to make reference to the architectural style of the dominant heritage listed building on the site.

The sub criteria (c) '*the dominant fencing style in the setting'* should be deleted entirely. Setting is not defined and it is unclear what is meant. The dominant fencing

in the surrounding area may be of a style completely inappropriate for a heritage listed place and therefore this subclause should be deleted entirely.

C6.6.6 Roof form and materials

The A1 Acceptable Solution must also reference pitch in addition to form and materials with respect to matching the original roof. '*Existing*' should be reworded to '*original*' as the current wording ensures a permitted pathway to replacing non original inappropriate roof forms with like-for-like. The Code should strive for non-contributory fabric and alterations to be replaced with more complimentary/sympathetic replacements.

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

The sub criteria (c) '*the dominant roofing style and materials in the setting'* should be deleted entirely. '*Setting*' is not defined and it is unclear what is meant or intended by the use of this word. The dominant roofing style and materials in the surrounding area may be of styles and materials completely inappropriate for a heritage listed place and therefore this subclause should be deleted entirely.

The sub criteria (d) simply makes reference to '*the streetscape'*. Clarification needs to be made on what this sub clause is trying to achieve. Perhaps reference should be given to contributory and similar periods of development in the streetscape that positively contribute to the character and amenity of the area.

C6.6.7 Building alterations excluding roof form and materials

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

The sub criteria (c) '*the dominant external building materials in the setting'* should be deleted entirely. '*Setting*' is not defined and it is unclear what is meant. The dominant external building materials in the surrounding area may be of styles and materials inappropriate or indeed detrimental to the particular heritage listed place in question and therefore this subclause should be deleted entirely.

The sub criteria (d) simply makes reference to '*the streetscape'*. Clarification needs to be made on what this sub clause is trying to achieve. Perhaps reference should be given to the original external building materials of contributory and similar periods of development in the streetscape that positively contribute to the character of the area.

C6.6.8 Outbuildings and structures

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

As part of the Performance Criteria, the combined area of all outbuildings should not exceed the gross floor area of the heritage listed residential dwelling for sites located in General Residential, Inner Residential and Low Density Residential zones.

Reference also needs to be made to colours, materials and finishes being sympathetic and appropriate to the original external cladding materials of the heritage listed place.

C6.6.9 Driveways and parking for non residential purposes

A1 is problematic as it enables parking to be located in front of residences. It is recommended that the A1 Acceptable Solution should instead require that all parking for all uses should occur behind the frontage building line.

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

Sub clause (b) should reference the avoidance of the loss of any contributory building fabric.

Sub clause (c) should reference that the loss of gardens and landscaping forward of the building line should not result in a complete loss of such garden and landscaping and should only occur where there is no feasible alternative for parking elsewhere on the site.

Sub clause (d) with respect to parking availability in the surrounding area should not be used as justification for the loss of front gardens and replaced with hard stand car parking. This sub clause should be deleted entirely.

The sub criteria (f) simply makes reference to '*the streetscape'*. Clarification needs to be made on what this sub clause is trying to achieve. Perhaps reference should be given to contributory and similar periods of development in the streetscape that positively contribute to the character of the area with respect to the inclusion of landscaping in the form of front gardens.

C6.6.10 Vegetation lopping et al

As already noted, the words '*compatible*' and '*having regard to'* are problematic and should be replaced with wording as recommended in this representation.

This clause should also include reference to pruning (with a definition for pruning provided in the Code).

The Performance Criteria of this clause should also make mention of the contribution for such vegetation in the streetscape that makes a positive contribution to the character and amenity of the streetscape.

Safety should also be considered. It is interesting to note that safety is currently considered as justification for the demolition of a heritage listed place but not

vegetation. This should be reversed. The word '*unreasonable*' should be replaced with '*detrimental impact'*.

C6.7 Development standards for local heritage precincts and local historic landscape precincts

Comments are provided under each clause with respect to wording, intent, etc.

C6.7.1 and C6.7.1 Demolition et al

The Acceptable Solution of both clauses should make reference to contributory items to the Precinct.

With respect to the Performance Criteria, the words '*unacceptable*' and '*having regard to*' should be replaced with more appropriate wording as already noted in this representation.

Sub clauses (a) and (b) should be deleted entirely. As already noted under clause C6.6.1 of this representation, such justifications based on condition and rate of deterioration give the ability for the demolition of contributory buildings, works, structures and landscaping to be removed/demolished on the basis of the dilapidated condition. This approach will encourage some owners of such places in precincts to avoid maintenance in order to achieve a permit for demolition or removal.

Likewise, sub clause (h) with respect to '*economic considerations'* should be deleted entirely. Economic reasons should never be a justification for the loss of contributory buildings and/or significant fabric, landscaping and structures that contribute positively to the historic and cultural values of a precinct. The Natural Values Code C7.0 under clause C7.6.2.P1 allows the loss of priority vegetation on economic grounds but is coupled with social considerations as well as a requirement to demonstrate there is no feasible alternative location or design: *with use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design.* The bar for removal of priority vegetation (despite being able to be regenerated, regrown or resown) is significantly harder than the demolition of buildings, structures, fabric and landscaping in a precinct of heritage value and significance.

C6.7.3 Buildings and works excluding demolition

As already noted elsewhere in this representation, the word '*compatible*' is problematic when used in a heritage assessment context. More appropriate wording is '*consistent with'*, '*subservient to'*, '*sympathetic to'*.

With respect to the Performance Criteria, the words '*having regard to*' should be replaced with more appropriate wording as already noted in this representation.

Sub clause (b) for P1.1 and P1.2 should be amended to make reference to the prevailing character and pattern of development for contributory elements in the precinct.

Sub clause (c) for P1.1 and P1.2 as already noted elsewhere in this representation, the height of other buildings in the precinct should make reference to contributory

and listed buildings in the surrounding area. Otherwise, out of character and detrimental buildings can be considered as justification for further such deleterious development.

The same comments for sub clause (d) for P1.1 and P1.2 with regard to setbacks is applicable as that above for heights under (c).

Statements of Significance for precincts should be referenced.

C6.8 Development standards for places of Archaeological Potential

C6.8.1 Building and Works

As already noted in this representation the word '*unacceptable*' should be replaced with more appropriate terminology such as '*detrimental'* or '*not result in any partial or entire loss of*'.

Sub clause (e) should be a statement of archaeological potential from a suitably qualified person.

Significant Trees

Significant trees are not always listed for historic heritage or cultural heritage reasons. The listing criteria used by the City of Hobart include:

CATEGORY 1: Trees of outstanding aesthetic significance;

CATEGORY 2: Trees of outstanding dimensions in height, trunk circumference or canopy spread;

CATEGORY 3: Trees that are very old or venerable;

CATEGORY 4: Trees that commemorate, or are reminders of, cultural practices, historic events or famous people.

CATEGORY 5: Trees that are recognised as a significant component of a natural landscape, historic site, town, park or garden.

CATEGORY 6: Trees that have local significance.

CATEGORY 7: Trees of a species or variety that is rare or of very localised distribution.

CATEGORY 8: Trees that are of horticultural or genetic value.

CATEGORY 9: Trees that have a significant contribution to the integrity of an ecological community.

CATEGORY 10: Trees that are significant for reasons that are difficult to categorise.

Of the above criteria, only four of the categories are linked to historic or cultural heritage values. These are category 3, 4, 5 and potentially 6.

It is considered that Significant Trees warrant their own specific Code with standardised listing criteria and also a standard data sheet with standardised information requirements for each listing.

With respect to the development standards for Significant Trees the following comments are offered:

C6.9 Significant Trees

C6.9.1 Significant Trees

No issues with A1 and P1.

P2 Performance Criteria: Sub clause (b) needs to remove references to environmental and economic but retain safety reasons to the community.

C6.10 Development standards for subdivision

Comments are provided under each clause with respect to wording, intent, etc.

C6.10.1 Lot Design on a Local Heritage Place

Again, the words '*unacceptable*' and '*having regard to'* should be replaced with more appropriate wording as noted elsewhere in this representation.

Sub clause (c) stating '*the separation of buildings or structures from their original setting*' should instead be worded that '*the separation of buildings or structures from their original setting must be avoided*'.

Sub clause (f) that states '*the removal of vegetation, trees or garden settings'* should instead be worded to: '*the removal of contributory vegetation, trees or garden settings that positively contribute to the place or precinct must be avoided*'.

As already noted elsewhere in this representation, the setting and historic curtilage of contributory sites and heritage listed place buildings must be maintained and wording should be included to this effect.

Subdivision that results in a new lot in front of the building line of a contributory place or heritage listed place must be avoided and wording should be included to this effect in the Performance Criteria.

There should be an exemption from minimum and maximum lot sizes for applicable zones for sites that are located in precincts or for heritage listed places as already noted in this representation.

C6.10.2 Precincts

Again, the words '*compatible*' and '*having regard to'* should be replaced with more appropriate wording as noted elsewhere in this representation.

A sub clause stating: '*the separation of contributory buildings or structures from their original setting must be avoided'* should be included.

A sub clause stating: '*the removal of contributory vegetation, trees or garden settings that positively contribute to the place or precinct must be avoided'* should be included.

As already noted elsewhere in this representation, the setting and historic curtilage of contributory buildings must be maintained and wording should be included to this effect.

Subdivision that results in a new lot in front of the building line of a contributory building must be avoided and wording should be included to this effect in the Performance Criteria.

There should be an exemption from minimum and maximum lot sizes for applicable zones for sites that are located in precincts or for heritage listed places as already noted in this representation.

C6.10.3 Archaeological potential

Again, the words '*compatible*' and '*having regard to'* should be replaced with more appropriate wording as noted elsewhere in this representation.

With respect to sub clause (e), a statement of archaeological potential must be from a suitably qualified person.

LPS Code lists with respect to the Local Historic Heritage Code

It is acknowledged that few Councils have the ability to prepare, provide and regularly maintain data sheets for listed heritage places of a comparable extent and depth to recent data sheets for places on the Tasmanian Heritage Register, despite the fact that councils have an obligation to further the objectives of LUPAA, including the objective (g) to conserve special places.

However, the recommended layout of tables for Local Places and Precincts should include basic information to aid the identification of the listed Place or Precinct, clearly state its values important for protection and conservation, any particular exempt development and the extent of the place in terms of entire title area or otherwise.

Basic information in table form for each listing should include:

Reference number:

THR number:

Address:

Title reference:

Property name:

Description:

Statement of Significance:

Particular values/attributes:

Exempt development:

Specific Extent of listing:

Significant interior features:

Heritage Precincts (including landscape and archaeological) should include the following basic information:

Reference number:

Precinct name:

Description:

Statement of Significance:

Particular values/attributes:

Exempt development:

Specific Extent of listing (map):

Most Councils in the Launceston area do not want local heritage codes, although it is understood Launceston are planning to populate their LPS overlay with heritage precincts but as in past cases this may not actually happen.

The local heritage code is no use unless Council's populate their overlay with places of local and archaeological significance. Many say it is a state issue and they do not want to become involved because they are poorly informed, ignorant or show a deliberate avoidance of their obligations or potential future issues regarding local heritage and potential archaeological sites. Stakeholder dealings with Meander Valley to include some sites of local heritage significance at the LPS stage were initiated but Council refused saying whilst the places had significance they believed it was a state issue and not a local issue. Until it becomes compulsory for Councils to populate their local heritage code with sites the Code will not have any effect on the protection and management of historic and cultural heritage that despite demonstrated value, remains unlisted.

Heritage issues common to the Interim Planning Scheme development standards that are likely to continue or be exacerbated under the SPP Local Historic Heritage Code

Issues of concern about the wording and interpretation of the draft SPP in 2016 as raised by representors appear to have materialised in development outcomes. The primary one of concern is facadism or the creation of heritage shells.

This occurs where contributory sites in Heritage Precincts or Places where the street facing facades are the focus of heritage protection owing to a complete lack of protection of interiors and also a lack of consideration of sites as an entity. Heritage Precincts concentrate on the impact of development on a streetscape per se. The impact of a development on existing contributory places is not considered unless that place is listed in and of itself. This has resulted in significant demolition to cottages and residences in Heritage Precincts where internal works also remove contributory and original fabric. There appears to be an attitude of assessing authorities that as long as the front street facing primary façade remains intact and the visual impact of the new development on streetscape is minimal, that widespread demolition of contributory buildings in Heritage Precincts is acceptable and is being widely approved. In some cases, the front two rooms are retained and the remainder of cottages are demolished and replaced with contemporary and often large scale extensions. Similarly, traditional timber flooring might be replaced by new concrete slab flooring, with devastating long-term results to the original building.

Another issue of concern that is being exacerbated by the wording of the SPP are extensions to, and alterations to both listed Places and also contributory buildings in Heritage Precincts.

There is currently no effective wording used in the SPP Code with respect to a sympathetic comparison in terms of the scale, height, site coverage and extent of new extensions to contributory buildings and listed Places. Double storey and large contemporary extensions to single storey diminutive residential buildings is relatively widespread. There is no consideration that requires new development to an existing building to be sympathetic to, and consistent with the scale, site coverage, height and extent or a heritage place. The wording ‘consistent’ and ‘sympathetic’ have completely different legal meanings and interpretations to commonly used words such as ‘compatible’ and therefore result in completely different outcomes.

Requirements to sites in Heritage Precincts fail to recognise the contribution of individual sites and buildings as being either being non-contributory or contributory. If a building or place is not individually listed as a heritage Place, there is often the attitude that it is ‘open slather’ in terms of the ability to develop. Contributory buildings and sites should be specifically mentioned under the Acceptable Solution of Buildings and Works development standards in precincts. Currently the wording only considers listed heritage places, being visible from a public location or being a ‘feature, value or characteristic specifically part of a local heritage precinct’ – the latter is too open ended and far too open to interpretation.

Another issue of concern is the ability to subdivide land from a listed place or a contributory building in a precinct that will result in its setting, views to and from the building and historic curtilage being detrimentally impacted. None of the wording contained in the SPP for 6.10 Development Standards for Subdivision specifically mentions curtilage, significant

views, setting or landscape values. This omission has resulted in historic curtilages, significant views and the setting of listed places and contributory buildings being under significant threat.

Summary of concerns and recommendations with respect to the current SPP Heritage Code

The name of the SPP Code should be simplified to 'Heritage Code'. This simplified naming is inclusive of historic heritage and cultural heritage rather than emphasising that heritage is about historic values only.

Definitions in the Code are currently brief and inexhaustive and do not align with definitions in the Burra Charter.

There are no clear and easily interpreted definitions for terms repeatedly used such as 'demolition, 'repairs' and 'maintenance'.

Conservation Processes (Articles 14 to 25) as outlined in the *Burra Charter* should be reflected in code Performance Criteria. Issues covered in the *Burra Charter* are considered to be very important to maintaining historic and cultural heritage values such as setting, context and use are not mentioned in the SPP code at all.

The Code does not deal with any place listed on the Tasmanian Heritage register and there is a hard line separate of local and state listed places. This fails to recognise the complexity of some sites which have documented state and local values.

Failure to also consider state and local heritage values as part of the Code will result in important issues such as streetscape and setting and their contribution to heritage values not being considered in planning decisions.

The SPP Code does not provide a summary of application requirements to assist both Councils and developers. This approach results in a failure to inform developers of information that may be required in order to achieve compliance.

The Objectives and Purpose of the Code is too limited and should align with the *Historic Cultural Heritage Act 1995* in terms of purpose.

The Exemptions as listed in the SPP Code are in some cases ambiguous and would benefit greatly from further clarification and basic terms being defined under a new Definitions section.

Previously, some Interim Planning Schemes included special provisions that enabled otherwise prohibited uses or subdivision to occur so long as it was linked to good heritage outcomes. Those have been removed.

Development standards for demolition are concerning and enable the demolition of heritage places and sites for economic reasons.

Development standards use terminology that is vague and open to misinterpretation.

The words and phrases 'compatible' and 'have regard to' are repeatedly used throughout the Code and are considered to be problematic and may result in unsympathetic and inconsistent outcomes owing to their established legal translation.

Performance criteria do not make definition between 'contributory' and 'non contributory' fabric. This may result in poor heritage outcomes where existing unsympathetic development is used as justification for more of the same.

The Code as currently written will allow for unsympathetic subdivision to occur where front gardens can be subdivided or developed for parking. This will result in loss of front gardens in heritage areas and contemporary development being built in front of and to obstruct view of buildings of heritage value.

The Code as currently written does not place limits on extensions to heritage places which enables large contemporary extensions that greatly exceed the scale of the heritage building to which they are attached to.

Significant tree listing criteria are not always heritage related. In fact most are not related to heritage. Significant trees should have their own separate code.

Currently there is no requirement for Councils to populate the Code with Heritage Precincts of Places. Failure to do so is resulting in buildings and sites of demonstrated value being routinely destroyed.

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Planning Matters Alliance Tasmania
Sent via email

State Planning Provisions review

Introduction

Planning Matters Alliance Tasmania, in their platform seek to improve the liveability and wellbeing of all Tasmanians, has engaged Plan Place Pty Ltd to prepare a submission to the State Planning Provisions (SPPs) 5-year review concerning the following zones:

- General Residential Zone (GRZ);
- Inner Residential Zone (IRZ); and
- Low Density Residential Zone (LDRZ).

The terms of reference of the submission considers these zones and their statutory function in the context of:

- Adapting provisions to respond to climate change in urban and sub-urban settings;
- Improving residential amenity and the liveability for Tasmanians;
- Subdivision standards and improving the quality of new residential lots through the provision of street trees;
- Improving the quality of densification;
- Improving health outcomes, including mental health for Tasmanians;
- Facilitating an increased supply of housing choice and social justice;
- Achieving a higher standard of building design, to provide community with more certainty in the planning process;
- Supporting and encouraging the long-term security of natural biodiversity, regenerate native endemic habitat, protect old-growth trees, bush and forests, and value and encourage space for gardens, food security and nature, by offering incentives and planning gains, as appropriate;
- Improving terms and definitions within the SPPs;
- Benchmark the above against the world's best practice residential standards (e.g.The Living Community Challenge); and
- Exemptions at Clause 4.0 of the SPPs.

In context of the terms of reference, this submission calls on the review to modify the SPPs, highlighting the need for action. Recommendations are stated in each section and in the conclusion. The submission recommends changes to the SPPs for the four residential zones to improve integration of liveability principles and to respond appropriately to climate change.

Liveability, Wellbeing and the State of the Environment Report

The State of the Environment Report 2021[1] (SOE), released by the Commonwealth in July 2022, made a key observation from its findings, noting the *'rapidly changing climate, with unsustainable development and use of resources, the general outlook for our environment is deteriorating.'*

The SOE report reiterates the urgency to implement policy changes and the importance of embodying 'sustainable development', the fundamental principle of the *Objectives of the Resource Management and Planning System of Tasmania* and as documented within Schedule 1 of the core legislation, the *Land Use Planning and Approvals Act 1993 (the Act)*.

In fact, 'sustainable development' is now the very least we can aim for under this existential, planetary, ecological crisis. Forward-looking leaders are saying that 'sustainable development' is akin to 'treading water'. Doing 'less harm' to balance the wholesale damage of the natural environment, upon which human existence depends, is no longer adequate to halt and reverse the increasingly evident mass extinction, including of Australia's unique, iconic, and diverse native species. Nor will it prevent the global average temperature exceeding our current pledge under the Paris Agreement[2], of less than 1.5°C above pre-industrial levels.

This submission calls on the State Government to significantly improve the response to climate change through the SPPs, and also seeks provisions that will nurture and foster the 'liveability' and 'wellbeing' of Tasmanians. The terms' liveability' and 'wellbeing' feature in section 12B of the Act and is also referenced in sub-clause (f) of *Part 2 – Objectives of the Planning Process Established by this Act*, Schedule 1 of the Act. These terms signal their importance and relevance to current policy-making, whether at a higher strategic level through the Tasmanian Planning Policies or regional land use strategies, or at a statutory level.

The current provisions that apply to the suite of SPPs residential zones (as referred to above) are changing the underlying fabric of residential areas across the State through incremental use and development change. This is an observation made from not only interactions with the public, but the statutory assessment undertaken against the SPPs as a planner through my planning consultancy.

The rate of development is a complex matter influenced by many economic, social, and environmental factors. By no means is the submission intended to be an analysis that considers these aspects comprehensively. The submission merely notes that a range of variables such as the COVID-19 pandemic, government incentives for housing development, and the surge in housing prices within the real estate market has collectively influenced the rate of development. In the last few years, the development rate has driven the take-up of greenfield sites, including isolated spot expansion of the urban growth boundary, and seen the intensification of residential uses in established areas.

The submission calls on the review to modify the SPPs in the context of the terms of reference in this submission.

SPPs 5 Year Review

The State Planning Review Scoping Paper sets clear direction and parameters of the review on pages 9 of 14. The Review focuses on statutory controls and does not consider a 'particular purpose zone',

[1] Australia State of the Environment Report |

[2] COP 21 Paris France Sustainable Innovation Forum 2015 working with UNEP formed on 12 December 2015.

'specific area plan' or 'site-specific qualification' introduced as part of a local provisions schedule. However, these should **not** be excluded as the review could learn from these provisions to assist in fine-tuning the SPPs.

It is acknowledged that at the outset of developing the SPPs, there was a mandate to create planning rules across the State that result in a more consistent and efficient assessment of use and development. The SPPs must strive to improve the liveability for Tasmanians, respond to climate change, and be underpinned by the principles of 'sustainable development', or better still 'regenerative development'[3]. While a consistent approach is important, it should not come at the expense of compromising the attributes, values, and characteristics of residential areas that Tasmanians currently enjoy and wish to pass on to future generations

Additionally, it is acknowledged that statutory controls are not the only means of addressing climate change, liveability, and wellbeing. Other mechanisms also drive change in the land use planning context. Nevertheless, statutory controls are an essential and effective vehicle to implement the Objectives of Schedule 1 of *the Act and* are instrumental for improved balance between new development and established homes.

Adapting for Climate Change, Liveability and Wellbeing

The urgency of climate change is widely reported globally, with the United Nations calling on all levels of government to act and implement the Sustainable Development goals[4]. The SOE[5], recently released in 2022, reiterates the urgency, reporting, *"the State and trend of the environment of Australia are poor and deteriorating as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction. Changing environmental conditions mean that many species and ecosystems are increasingly threatened. Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years".*

The report's release is a timely reminder of the importance of planning policy and statutory regulation and the purpose the SPPs play in shaping our towns, settlements, broader landscapes, and, more importantly, protecting the natural environment. **Integrating strategic objectives in statutory controls to provide the desired outcomes is vital for mitigating climate change and other environmental outcomes.**

The principle of sustainable development is at the core of the *Objectives of the Resource Management and Planning System of Tasmania* as set out in Schedule 1 of the Act.

Schedule 1 of the Act is underpinned by the principles of sustainable development and is defined in the legislation to mean -

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

[3] The term "regenerative" describes processes that restore, renew or revitalize their own sources of energy and materials. Regenerative design uses whole systems thinking to create resilient and equitable systems that integrate the needs of society with the integrity of nature." Source: https://en.wikipedia.org/wiki/Regenerative_design. For more information, refer to the Living Building Challenge - https://living-future.org.au/living-building-challenge

[4] Take Action for the Sustainable Development Goals - United Nations Sustainable Development

[5] Australia state of the environment 2021 (dcceew.gov.au)

and communities to provide for their social, economic and cultural wellbeing 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

The SPPs must be at the very least be underpinned by this principle and preferably move beyond to integrate principles of 'regenerative development'. In addition, the SPPs must encompass statutory controls that provide the liveability and wellbeing for all Tasmanians as called on by sub-clause (f) of Part 2, Schedule 1 Objectives

Fundamentally, the SPPs, as it applies to all existing and future residential zones, must aim to create and support '*Communities*' and enable them to thrive well into the foreseeable future**.**

What the SPPs consider?

The SPPs can consider a range of controls to facilitate an improved response to climate change. Buildings and development embody significant energy from manufacturing and processing building materials to on-the-ground development, conversion of open land, all impacting greenhouse gas emissions.

In terms of energy, the Clean Energy Finance Corporation[6] says:

The Australian Sustainable Built Environment Council estimates that the property sector accounts for about 23 per cent of Australia's greenhouse gas emissions. About half of those emissions come from residential buildings – largely from heating, ventilation and air conditioning (40 per cent), appliances (25 per cent) and hot water systems (23 per cent). Measures to address these include adopting energy efficiency building design and construction, along with supporting the widespread inclusion of renewable energy and energy storage solutions.

Buildings and development have a long life span, and the controls can reduce environmental impact at the design stage.

New buildings, if poorly designed or orientated do not to maximise passive solar energy, potentially increase energy consumption and heating and cooling costs. Recent reports on the rental stock have highlighted that those tenants in older housing cannot achieve an ambient temperature of 18 degrees in their homes[7] which has a substantial impact on living expenses and wellbeing.

As more infill development occurs, the predominant pattern of building spacing and separation between houses across our residential areas is threatened. Loss of separation and spacing indirectly drives up energy costs and reduces passive solar access for established homes.

While densification is an indirect response to climate change (to reduce infrastructure and transport costs), it also brings with it adverse consequences including an 'urban heat island effect' and reduced opportunities for passive solar design and residential amenity.

[6] https://www.cefc.com.au/where-we-invest/built-environment/housing/
[7] Cold and costly: Renter Researchers' experiences of Winter 22 (betterrenting.org.au)

Therefore a balance must be struck in the SPPs between a policy of urban consolidation and retention of values and attributes of these established residential areas. These aims are not mutually exclusive.

Some specific matters in the standards that are missing from the SPPs are:

- Roof design to include adequate size, gradient and aspect of roof plane for solar panels;
- Adequate private open space and protection of windows from shadows of proposed buildings;
- On-site stormwater detention and storage (separately) and public open space for rain infiltration to ground;
- Double-glazing and insulation for homes and buildings;
- Source of heating of homes, such as preventing wood heaters in new dwellings;
- Passive solar access requirement for homes and buildings;
- Adequate setbacks from all boundaries;
- Servicing multiple dwelling development for waste collection;
- Noise criteria and assessment methodology with direction on how to solve (with permanent measures) increased density along transport corridors;
- Reduced concrete use with more sustainable alternatives and re-use supported; and
- Principles of protecting, in perpetuity, our natural heritage[8].

Trees & Urban Heat Island

Average temperatures are rising across Tasmania, and with this will come warmer summers, more extended periods of hot and dry weather, more intense storms and more frequent bushfires. The forecast rise in temperature will be particularly noticeable in urbanised areas, where the 'urban heat island' effect will be more pronounced[9].

Studies[10] show the effects of shade on cooling and protection from UV rays. Shade reduces urban heat island effect. Well-shaded neighbourhoods with street trees can be up to 6 - 10 degrees cooler than residential areas without, reducing the need for energy needs for cooling by individual occupants. The 'urban heat island effect' has a compounding effect on global warming and therefore, increases the severity of future climate change.

In recognition of benefits of the urban forest concept, development of strategies is underway for the main cities of Tasmania. The forerunner to the urban forest strategy currently being prepared for Hobart is the City of Hobart Street Tree Strategy 2017. The vision arising for the City of Hobart Street Tree Strategy is that- *"Hobart is a city where tree-lined streets are a valued component of our quality of life - achieved through excellence in planning, design, installation and care by the City's workers and our community".*

[8] It is acknowledged that many items listed above are in the National Construction Code, but the thermal efficiency requirements need to be increased radically upfront in the planning process in order to reduce carbon emissions.

[9] City of Hobart, Street Tree Strategy 2017, Trees and green infrastructure - City of Hobart, Tasmania Australia (hobartcity.com.au)

[10] www.canopy.org

The City of Hobart Street Tree Strategy 2017 guides the planting and management of Hobart's public trees and sets an ambitious target to increase the canopy cover across Hobart's urban areas from 16.7% to 40% by 2046.

Landscaping provisions, including the retention of existing trees and vegetation on private land and requirement for street trees in subdivision controls and reduction of dark roofs and pavements need to be implemented to achieve the ambitious targets and to combat rising temperatures in urban areas.

Greening neighbourhoods, suburbs and settlements is a fundamental component of improving liveability. Reliance on the provision of public open space to respond to climate is not adequate and a 'greening cities' agenda must include consideration of private land. The SPPs must integrate controls, especially for subdivisions requiring street trees and greening in the streetscape. It must also extend beyond subdivision and introduce controls that maximises the retention of existing healthy trees and retain garden areas with solar access in mid-winter on private land where public open space is absent in a residential area. Wall to wall hard surfaces, as currently allowed under the SPPs, also does not assist with greening residential areas.

Liveability and Wellbeing

The Heart Foundation[11] has a comprehensive array of literature and studies and has previously provided a submission on the draft SPPs in 2016. The Heart Foundation has extensive evidence of the benefits for adapting the built environment for improved health and wellbeing outcomes and the review must have a high regard for this information.

The Living Community Challenge, International Living Future Institute, also calls on action from all governments, planners, developers and neighbourhood groups to assist with greening our neighbourhoods, not only in response to climate change but to strengthen overall wellbeing and health[12].

Since the COVID-19 pandemic, mental health issues for Tasmanians are rising. Planning for a built environment designed to address these issues is vital to wellbeing.

Land use planning policy plays a significant role in shaping cities, towns and settlements across the State. The four residential zones of the SPPs, GRZ, IRZ, LDRZ and RLZ in addition to the codes, can empower liveability for and wellbeing of all Tasmanians. Statutory controls have the capacity to implement a policy setting which achieves strategic objectives and densification:

- Ensures separation and buffers between buildings, protecting established residential character is protected;
- Target locations for growth, ensuring that densification is in locations supported by transport, services and other infrastructure;
- Influence the provision of affordable housing;
- Require the provision of public open space;
- Integrate trees, street furniture and social infrastructure in the streetscape, as important public spaces, where new roads are proposed; and

[11] www.heartfoundation.org.au
[12] https://living-future.org/lcc

- Integration of nature, bush, gardens and food-growing areas into the residential environment and then valued and protected as “Natural Heritage”.

The State of Place 2021 Liveability Census[13] (the Liveability Census) provides evidence that integrating these principles into the SPPs is necessary and best practice.

Healthy urban neighbourhoods include:

- Access to public transport and public open spaces for play and recreation;
- Tree canopies in the streetscape and on private lots providing comfort and shelter;
- Accessible and networked footpaths;
- Affordable housing;
- Appropriate relationships of building form and scale with the streetscape, and neighbourhood character; and
- Useable private open space, privacy, and building orientation to maximise solar access.

The investment into public open spaces, walkability and tree canopy relates to a higher strategic planning policy and is often difficult to enforce through the process where there is an absence of statutory controls, improved SPPs are therefore required. Often the provision of social and physical infrastructure is left to the asset and infrastructure planning of a council, especially in established residential areas. **The SPPs must drive the provision of improved social and physical infrastructure by raising the design standard and requirements for the built form. The SPPs currently undermine achieving liveability and wellbeing goals through the low bar settings for of use and development standards in the residential zones.**

The controls of the GRZ and IRZ of the SPPs seek to facilitate infill development to reduce urban sprawl. It is a policy mechanism in the SPPs to reduce the urban footprint and transportation energy. However, the policy of densification also plays a critical role and undermines the character of our established residential areas.

Most of the older established residential areas in Tasmania have single detached dwellings interspersed with a small proportion of multiple dwellings. Increased multiple dwelling development is changing the separation of buildings, building presentation to the streetscape and impacting the character of the established residential areas in the State.

The subdivision standards provide a Permitted pathway for the excision of small lots with areas less than 400m^2 from parent titles with areas more than 900m^2. The incremental subdivision pattern means that the buffers and separation between houses that provide for existing residential amenity, is being rapidly eroded. The efficient use of land and increasing dwelling density is not opposed in principle - the concern is that the existing SPPs do not provide statutory controls that enable a planning authority to accurately evaluate the impact of proposed use and development on the amenity to neighbours and the neighbourhood.

The incremental changes to development patterns through the application of the current SPPs fail to protect the character and function of residential areas. Statutory controls must be amended to require the integration of liveability principles in residential areas. Failing this, the valued attributes of residential areas, once changed, are near impossible to reinstate.

[13] Place Score (2021) State of Place, 2021 Australian Liveability Census

The continuation of a one-size-fits-all approach to the wide-ranging geographical areas of residential zones is contrary to the principles of 'sustainable development' and results in homogenous and bland development.

This submission calls on the review to amend and revise all of the standards of the residential zones.

Learnings from Particular Purpose Zones and Specific Area Plans

Some councils have proposed new particular purpose zones and/or specific area plans in the local provisions schedules to overcome the shortcomings of the SPPs. The wide-ranging use and introduction of these in the local provisions schedule requires investigation and exploration if the SPPs require adjustment to provide a more consistent approach to statutory controls.

As the SPPs are the statutory planning controls that must positively shape Tasmanian settlements, towns, and cities, this submission calls on the review to consider the tailored controls introduced into the local provisions schedules to see if these have relevance to the SPPs and could be more widely applied.

Residential Zones

General Residential Zone (GRZ) and Inner Residential Zone (IRZ)

The provisions with the GRZ and IRZ of the SPPs are derived from Planning Directive 4.1 (PD4.1). PD4.1 were derived from the 'Australian Model Code for Residential Development' and the Tasmanian Code for Residential Development in the 1990s. These provisions were introduced across the interim planning schemes in 2014 and are integrated into the SPPs, shaping our cities, towns and settlements and impacting on Tasmania's liveability.

The standards within the SPPs of the General Residential Zone and Inner Residential Zone are now in operation through Planning Directive No. 8[14] (PD8), and also apply to the interim planning schemes. PD8 was initially brought into effect through the Interim Planning Directive No. 4 in early 2021.

Over time the statutory controls have been diluted, removing opportunity for Public Notification, and using open terms to allow a broad interpretation – reducing certainty.

Low Density Residential Zone (LDRZ) and Rural Living Zone (RLZ)

The provisions within the SPPs for the LDRZ and RLZ are derived from the previous iterations on the various planning schemes, providing for residential use on large lots. The LDRZ is contained within settlements or towns, usually at the periphery of urban areas. Although this is not always the case as there are ample examples of the application of the LDRZ being applied in coastal areas and small towns and settlements.

The RLZ is usually outside of townships and settlements but this also not true in every instance and at times the zone is used as a transition space between a township and agricultural area.

One of the major concerns is that the SPPs seek densification in the LDRZ. The LDRZ is applied in many coastal locations and outer lying areas across the State. The LDRZ density provisions enable multiple dwelling development, providing a permit pathway for a dwelling to be contained on 1200m^2.

[14] Planning Directive No 8. – Exemptions, Application Requirements, Special Provisions and Zone Provisions

Additionally, the provisions can result in visitor accommodation development that exceed the density provisions in the LDRZ. The latter also is a concern of the RLZ provisions of the SPPs.

Terms in the Residential Zones

Recommendations	
1.	Insert a definition for 'character' in the SPPs in Table 3.1.
2.	Fine-tune the definition of 'amenity' and 'streetscape' in Table 3.1.

Three widely used terms applied in the zone purposes, objectives, acceptable solutions or performance criteria across the four residential zones that a planning authority must consider in assessing use and development:

- Amenity;
- Character; and
- Streetscape.

The terms 'amenity' and 'streetscape' are defined by the SPPs in Table 3.1. However, the interpretation of the term character is usually taken to be the common meaning of the word defined in the Macquarie Concise Dictionary. The defined terms in Table 3.1 -

amenity	*means, in relation to a locality, place or building, any quality, condition or factor that makes or contributes to making the locality, place or building harmonious, pleasant or enjoyable.*
Streetscape	*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.* *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 may be determined by the relevant precinct provisions.*

The term 'amenity' does **not** consider health and wellbeing of the users of the locality, place or building and this paramount in the assessment of use and development, especially for non-residential development in a residential area. The term 'amenity' is recommended to be modified to include 'health and wellbeing' in the definition which is a consistent with the Schedule 1 of the Act.

Additionally the consideration of 100m on either side of each side boundary in the term 'streetscape' must be reviewed to consider the implication of this statement.

The term 'character' should be defined in the SPPs to provide guidance to the meaning to shape use and development.

The Macquarie Concise Dictionary defines 'character' –

[1] the aggregate of qualities that distinguishes one person or a thing from others.

The definition does not provide guidance or understanding of the importance of the elements that the SPPs should consider in assessing the character of a residential area. The SPPs must consider the term 'streetscape' and 'character' to ensure that these terms can work harmoniously together in the assessment process.

The term 'character' should be defined to capture the attributes the term considers such as established pattern of development, the built form and scale, architectural form, detail and roof styles and the streetscape. The definition of 'character' should also distinguish itself from the terms and definitions associated with heritage values which are determined by set criteria with reference to the Burra Charter[15].

The submission calls for the SPPs to define 'character'. A definition provides clarity and improves certainty to the intent of any provision in the SPPs which refers to the term 'character'. Therefore, the submission recommends the insertion of a definition for character into the SPPs.

Local Area Objectives and Discretionary Development.

Recommendations	
1.	Amend clause 6.10.2 to require the planning authority to consider the local area objectives in relation to all discretionary development. The clause must be amended, inserting the words "and development", after the words 'Discretionary use'. The words in clause 6.10.2 'must have regard to' are recommended to be substituted with 'demonstrate compliance with'

Clause 6.10.2 does not apply the local area objectives to the assessment of all Discretionary development. The planning authority must only consider the local area objectives where it is a Discretionary use.

The local area objectives may relate to both use or development. The limited application diminishes the use and purpose of the local area objectives by the planning authority in the assessment of development and this should be corrected through the review process.

Visitor Accommodation – GRZ, IRZ, LDRZ, RLZ

Recommendations	
1.	Amend use standards for Visitor Accommodation in the GRZ, IRZ, LDRZ and RLZ or insert a development standard for visitor accommodation to provide a density control that does not exceed the allowed dwelling density in a zone. For example, the construction of one visitor accommodation unit on a vacant site must have a minimum area of 1200m^2 in the LDRZ.
2.	Insert definitions for the terms 'character' and 'primary residential function' in Table 3.1 to aid interpretation of the use standard as it applies to Visitor Accommodation in the residential zones.
3.	Review the exemption at clause 4.1.6 to limit the number of persons staying at a property instead of the number of bedrooms.
4.	Review the SPPs for all residential zones to limit the number of homes that can be converted to Visitor Accommodation to increase retention of housing stock for the residential market.

[15] Burra Charter Archival Documents | Australia ICOMOS

Conversion of single dwellings

The Visitor Accommodation use standards across the four residential zones were drafted to facilitate the visitor economy and to drive the increase in visitation rates to Tasmania as desired by the T21 Strategy[16]. While not all municipalities have the Tasmanian Planning Scheme in effect, the policy has been applied widely in interim planning schemes via Planning Directive No. 6 (PD6), which came into operation in August 2018. The PD6 is integrated into the use standards of the four residential zones of the SPPs, including the GRZ, IRZ, LDRZ and RL.

The SPPs do not require a permit for a change of use for Visitor Accommodation. Clause 4.1.6 exempts the requirement of a permit for the use of a dwelling, if:

> *(a) the dwelling is used by the owner or occupier as their main place of residence, and only let while the owner or occupier is on vacation; or*
> *(b) the dwelling is used by the owner or occupier as their main place of residence, and visitors are accommodated in not more than 4 bedrooms.*

The exemption is not disputed as it does not modify, in principle, the established housing supply. The concern arises from the use standards for Visitor Accommodation, allowing the conversion of an existing habitable building without Public Notification due to the Permitted status. The policy does not impose limitations, and all houses with a gross floor area of 200m^2 or less can be converted without notice to any adjoining property. This quantifiable approach is applied in all four zones and there are no limitations to the number of persons which can stay at a property.

The housing shortage continues to be a prevalent issue for the State. Many Tasmanians, dependent on the rental housing market, cannot secure properties at an affordable rental rate. This is widely reported by many not-for-profit organisations, local councils and substantiated by the Australian Bureau of Statistics data.

The conversion of single houses to visitor accommodation incentivises property owners to convert their surplus dwellings instead of retaining them in the rental market. Another side effect of applying this policy is that permanent resident's dependent on the rental economy are displaced to new locations due to the diminishing supply within areas close to services in a city, town or settlement. The displacement of residents impacts housing security and affordability and may affect individuals' mental health and wellbeing. Displacement of a tenant away from the services can also impose additional living costs by heavier reliance on transportation for travel to employment and limited available services within short distances from their home.

The SPPs in the residential zones could limit the opportunity for conversion of dwellings from Residential use to Visitor Accommodation. The issue arises from accumulative impact of the use standards for Visitor Accommodation, not necessarily from the conversion of a single dwelling in the street but instead the compounding effect of the conversion of several houses in one location. The readjusting of the policy in the SPPs could lead to a more balanced and equitable approach to the housing supply.

[16] T21 Action Plan 2020-2022 (https://www.t21.net.au/)

The SPP review must consider redrafting the acceptable solution for all residential zones concerning Visitor Accommodation.

At very least, the SPPs review must consider an amendment to the exemption at clause 4.1.6 which is problematic in that it does not prescribe or limit the number of persons that can stay at the property, instead limits it to the number of bedrooms. By limiting the number of persons under the exemption, this could potentially reduce the impact on traffic generation and car parking in a residential area.

Visitor Accommodation, Densification Undermined

The Performance Criteria P1 for the Use Standard, Clauses 8.3.2, 9.3.2, 10.3.2 and 11.3.2 apply the same test in each zone. The Performance Criteria P1 of all standards provides a permit pathway to consider new visitor accommodation development and does not limit it to be within existing buildings.

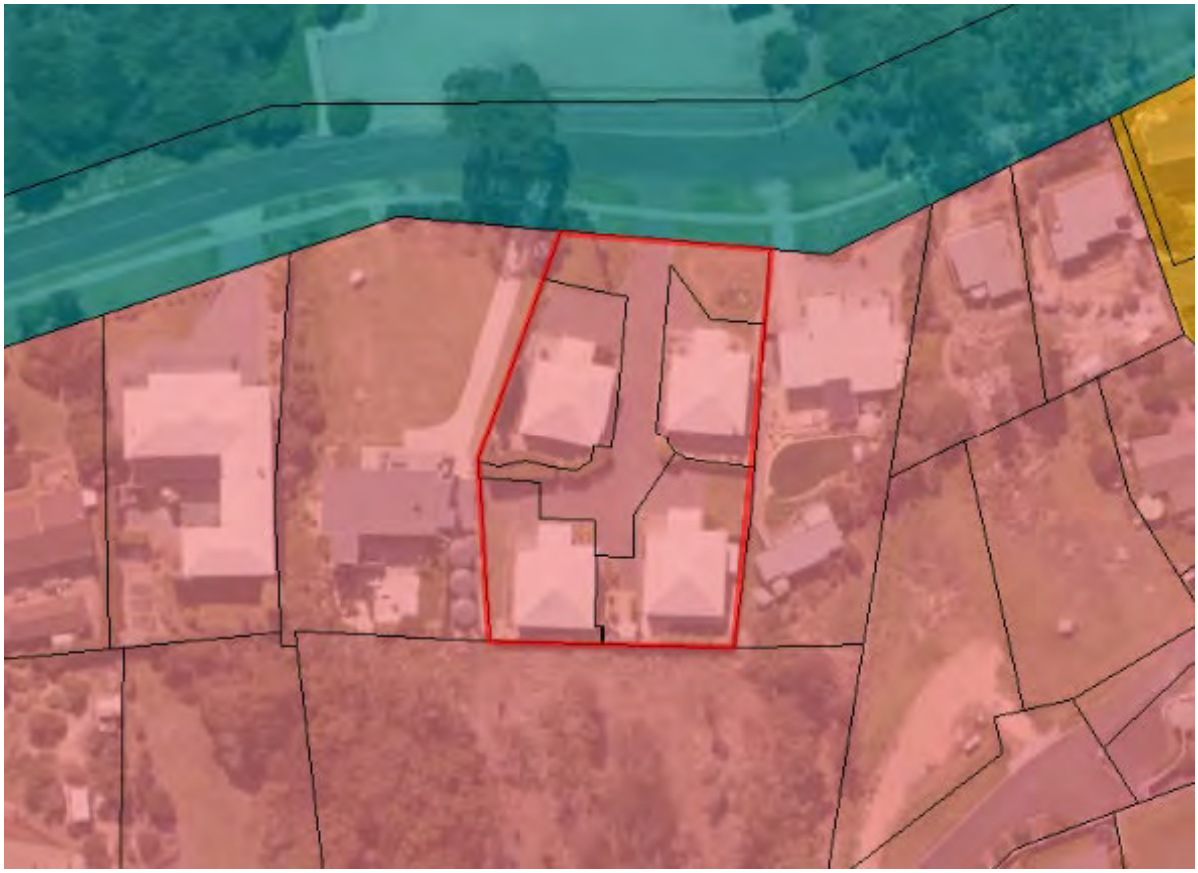

Figure 1: Example of development in a coastal location zoned Low Density Residential. The site (outlined in red) has an area of approximately 1800m^2 and has a site area per dwelling of approximately 450m^2. The established density on the site is comparable to a density allowed in the General Residential Zone. The performance criteria in residential zones for Visitor Accommodation do not provide enough rigour for a planning authority to potentially refuse an application without challenge of an appeal.

The Performance Criteria requires a planning authority in its assessment of the standard to have regard to the criteria set out at (a) to (f). PC 1 provides a permit pathway for a planning authority to consider a proposal for the use of Visitor Accommodation. While in addition to the use standards for Visitor Accommodation, a site coverage test is also applied in all four residential zones where new

buildings are proposed. The combination of the standards in the assessment process can undermine the intent of densification that is allowable for residential uses, especially in the LDRZ and RLZ.
The sub-clauses applied across the zones use undefined terms by the SPPs and therefore leave many of the sub-clauses open to interpretation. The absence of any definitions of terms used creates challenges, as there are no defined parameters of the term 'character' or the meaning of 'primary residential function' to guide the assessment of a proposal. The open-ended nature of the criteria in determining 'unreasonable loss of residential amenity' or 'compatible with the character' is fraught, not providing clear parameters to the development of Visitor Accommodation and what is acceptable.

It can also lead to further issues down the track when the Visitor Accommodation use lapses and in effect we end up with "empty dwellings" given Multiple Dwellings are prohibited in the Rural Living Zone and Discretionary in the Low Density Residential Zone.

Without specific controls concerning Visitor Accommodation to guide appropriate development, the standards lead to intensification, which is not sustainable and diminishes the character of residential areas in sensitive environmental settings. For example, the use and development standards in the LDRZ of the SPPs can create densities comparable to the outcomes achieved for Multiple Dwellings in the GRZ of the SPPs (refer to Figure 1). The opportunity for this development is alarming and it undermines densification set across all four zones. Additionally, the other concern is that legally approved used and development for Visitor Accommodation enables a strata scheme under the *Strata Titles Act 1998* to be created.

Densification, Housing Choice, Private Open Space, Solar Access

Recommendation	
1.	Diversify the residential zone hierarchy by inserting an additional zone that specifically provides for medium density development. The zone can be applied strategically to areas connected with public transportation routes and positioned to be close to services (i.e. local neighbourhood centres or parks). An additional zone can provide certainty for community and expectation of medium density development.
2.	Insert a Neighbourhood Character Code in the SPPs that protect attributes of the established residential areas, maintain separation and buffers as well as promoting food security such as: • roof form and architectural style; • building presentation to the streetscape; • garden area requirements to address separation of buildings but also food security; and • retention of mature trees and vegetation.
3.	Insert use and development standards in all residential zones to address housing affordability.
4.	Review of all use and development standards of the GRZ, IRZ, LDRZ and RLZ to include requirements for: • Roof design to include adequate size, gradient and aspect of roof plane for solar panels; • Adequate private open space and protection of windows of existing and proposed buildings from shadows;

	• On-site stormwater detention and storage (separately) and public open space for rain infiltration to ground; • Double-glazing and insulation of all buildings; • Passive solar access of existing and new buildings; • Re-instatement of adequate setbacks from boundaries for all new buildings; • Maximising the retention of existing trees and vegetation and provide appropriate trade-off where clearance is proposed; and • Servicing of multiple dwelling development such as waste collection. It is acknowledged that many items listed above are in the National Construction Code, but the thermal efficiency requirements need to be increased radically upfront in the planning process in order to reduce carbon emissions.
5.	Redraft Clause 8.4.3 and 8.4.4 to apply a consistent approach to the test of sunlight to private open space of multiple dwellings, requiring that private open space receive at least 3 hours of sunlight to more than 50% of the area on 21 June.
6.	Redraft Clause 8.4.3 and 8.4.4 to apply a consistent approach to the test of the private open space being directly accessible from the living areas of the dwelling.
7.	Consistently apply the requirement that all habitable room windows, private open space of adjoining properties receive at least 3 hours of sunlight on 21 June.
8.	Review the building envelope, reducing its size by imposing stricter setback controls from side boundaries and re-introducing a 4m rear setback requirement for the building envelope as it applies to IRZ and GRZ. Increasing setback requirements is especially important on sites where the topography is not flat.
9.	Insert a requirement for limiting impervious surfaces on a site in the IRZ, GRZ and LDRZ.
10.	Insert a requirement for the north-facing roof area of any existing neighbouring residence not to be overshadowed by any new development.
11.	Prohibit multiple dwelling development in the LDRZ.
12.	Insert a Stormwater Management Code to promote water sensitive design and appropriately manage surface water run-off from development.

Densification, area for private open space and passive solar access in the GRZ and IRZ is determined by a range of use and development standards, concerning:

- Visitor Accommodation;
- Residential density for multiple dwellings;
- Setbacks and building envelopes for all dwellings;
- Site coverage and private open space;
- Sunlight to private open space for all dwellings; and
- Privacy for all dwellings.

While the GRZ and IRZ specially have controls to consider aspects of the built form, the LDRZ and RLZ do not impose the same level due to the minimum lot sizes being much larger than in the GRZ and IRZ. The LDRZ, however, does provide for Multiple Dwellings which is not considered appropriate in this zone.

Residential Density, Eroding Neighbourhood Character

The Acceptable Solution A1, Clauses 8.4.1 and 9.4.1 Residential density for multiple dwellings, provides the density controls for the GRZ and IRZ respectively. The site area per dwelling is 325m^2 and 200m^2 for each zone.

The LDRZ of the SPPs allows for multiple dwelling development with a site area per dwelling of 1500m^2 where access to reticulated infrastructure services are available. Where a proposal cannot connect to reticulated water, sewerage system or public stormwater system, the minimum lot size is set at 2500m^2. A proposed lot can be reduced under the Performance Criteria to 1200m^2 where a full complement of reticulated services are available.

The term 'site area per dwelling' is defined in Table 3.1 of the SPPs to mean -

Site area per dwelling	*means the area of a site, excluding any access strip, divided by the number of dwellings on that site.*
Access strip	*Access strip means the narrow part of an internal lot to provide access to a road.*

The GRZ is spatially applied to various locations in different environmental settings ranging from urban areas, and townships such as Currie, Wynyard and Swansea to outer lying areas settlements such as Carrick. As a general rule, the GRZ is applied to any area where all infrastructure services (such a sewer and water) are available. The application of the IRZ is typically applied in major service centres such as Hobart and Launceston. The IRZ does not commonly feature, if at all, outside of these major centres in the State.

There are many examples across the State where the pattern of development in established urban areas replicate the pattern shown in Figures 2(a) and (b). Many of these lots have generous backyards, creating buffers and separation between houses along their long axis of a site. Buffers and separation between lots provide amenity for the occupants of these houses, ensuring access to sunlight, occasionally to the rear of the buildings.

The SPPs provide a Permitted pathway for infill development which threaten this pattern of development by allowing infill development through the intensification of existing developed sites or demolition of buildings to enable a multiple dwelling development across several lots. While these areas hold no specific local heritage values and are not subject to Table C6.1 to C6.3 as called on by the C6.0 Local Heritage Code, the character established in these areas contain characteristics that can quickly be lost if disregarded.

The neighbourhood character of a spatial area can be defined by a pattern of development, the built form and scale, architectural form, details and roof styles, and streetscape. Neighbourhood character should not be confused with being of heritage significance which is determined by criteria with reference to the Burra Charter[17]. Nevertheless, neighbourhood character deserves consideration when new uses and development are considered in established residential areas.

[17] Burra Charter Archival Documents | Australia ICOMOS

As a general rule, the same provisions are applied irrespective of location, enabling Multiple Dwellings to occur in any location, irrespective of character or environment. Many of the spatial locations of the residential zones contain development with identifiable building rhythms, separation and spacing,

Figure 2(a): Historical development pattern in areas zoned General Residential, predominant character is single detached dwellings with separation maintained on the long access through front and rear setback requirements

Figure 2(b): Historical development pattern in areas zoned General Residential, predominant character is single detached dwellings with separation maintained on the long axis through front and rear setback requirements

which are easily modified by infill development, either through multiple dwelling development or subdivision provisions.

For example, a site with an area of 1500m^2 under the Acceptable Solution A1 would allow four dwellings in the GRZ and seven dwellings in the IRZ, assuming that it is not an internal lot, and the calculated area does not include an access strip. There are several sites, developed with a single dwelling that can easily be converted to multiple dwellings where space to the rear of the dwelling is available for development under the SPPs.

The development density provided for in the SPPs is eroding in residential amenity and character in many areas (refer to Figure 3). The current approach appears to be 'developer' and 'profit-led' rather than community minded or environmentally sensitive.

Figure 3: Example of infill development of an established inner residential area of Launceston.

The concern commonly raised in representations received on an application for infill development are that it is eroding the attributes of the neighbourhood and streetscape, diminishing the use of private open space and access to sunlight of adjoining properties, and lacks landscaping or garden areas in multiple dwelling developments. For the community, this creates the feeling of 'negative development' where the profit motive outweighs the timeless principles of 'community' and 'nature'. **Creating conditions for positive developments where the project gives back to the community and the environment, would be a higher aim to which the SPPs could aspire. In this way, Tasmania can**

lead the whole of Australia in its forward-looking approach. This review is an opportunity to modify the SPPs to introduce appropriate and targeted approaches to densification.

Accordingly, to mitigate the loss of neighbourhood character across the older established residential zones in the State, the recommendation is to introduce into the SPPs:

1. A 'Medium Density' zone, applied to targeted location where higher density development can be provided in areas that have a high level of servicing and public infrastructure; and

2. A 'Neighbourhood Character Code', to protect older established residential areas pattern of development by protecting the buffers and separation between buildings.

A 'Medium Density' zone could be applied to appropriate locations where multiple dwellings and apartment living is appropriate, introducing specific controls to support these forms of development in locations where public transportation, public open spaces and social infrastructure is already existing or able to exist, appropriate and supported. This also has the opportunity to provide specific requirements for social housing, housing affordability and diversification of housing choice.

The insertion of a 'Neighbourhood Character Code' would primarily be to protect the established residential areas that could be applied through an overlay across certain spatial areas to guide development in these locations. The 'Neighbourhood Character Code' would provide the opportunity to consider architectural building form, detail and roof style, building position in the streetscape, and spacing and separation between buildings. Any infill development could be specifically guided to maintain the character of the surrounding areas both architecturally and in its response to the landform, landscape and 'sense of place'.

For example, to assist with maintaining separation between the built form in residential areas, it is recommended that the code apply a garden area as a minimum standard. A garden area provision brings a positive approach to limiting impervious surfaces on a site and at the same time integrates liveability principles. The Victorian State Planning Provisions introduced a provision for garden area around 2018. The Victorian State Planning system provides for assessment of neighbourhood character. This submission recommends that a similar approach be adopted in the SPPs.

Setbacks and building envelope for all dwellings

PD4.1 was reviewed as the standard in relation to setbacks and building envelopes. The three-dimensional building envelope as in PD4.1 was amended to remove the requirement of the 4m rear setback. The rationale for its removal was that it often made applications for outbuildings within the four metre rear boundary setback, Discretionary[18].

Typically, in the residential areas comprising single detached dwellings, it is common for an outbuilding to be located at the rear portion of a site. However, the removal of any required rear setback does not consider the bulk and scale of outbuildings proposed in residential areas and eliminates the opportunity for separation of multiple dwellings from buildings and private open space on adjoining land.

[18] State Planning Office (May 2022) Review of Tasmania's Residential Development Standards.

The location of large outbuildings within the four metre rear setback is not supported for the following reasons:

- outbuildings with footprints equivalent to established houses are becoming more frequent;
- they can impact access to sunlight of adjoining properties; and
- they erode the pattern of development which erodes neighbourhood character.

The exemptions of the SPPs in clause 4.3.7 could be adjusted to enable an outbuilding within the four metre rear setback to be assessed where it is an outbuilding within the parameters of the clause. However, the building envelope requiring a four metre setback from the rear boundary must be reinstated as it forms an important function to maintaining separation and spatial and privacy (visual and aural) buffers between buildings as well as rear gardens.

Permeable surfaces & Private Open Space

Development Standards for Dwellings regulate site coverage for all zones and private open space for the GRZ and IRZ.

The Acceptable Solutions A1 of Clause 8.4.3 and Clause 9.4.3, before the operation of PD8, included a requirement limiting the percentage of impervious surfaces on a site. The Review of Tasmania's Residential Development Standards[19] (RTRDS) resulted in the relaxation of this control, eliminating the requirement that a site must have a minimum of 25% of its area free from impervious surfaces. Equivalent restrictions should also be integrated into the LDRZ.

Impervious surfaces is not defined in the SPPs, and therefore the common meaning of the two words apply. The Macquarie Concise Dictionary, Seventh Edition, defines

impervious to mean –

[1] not pervious; impermeable: impervious to water.

surfaces

[1] the outer face, or outside, of a thing

[2] any face of a body or thing

The impervious surfaces on a site excluding roofed buildings (site coverage) and refers to the area used for sealed internal driveways or paved areas.

The terms 'site coverage' is defined in Table 3.1 of the SPPs to mean -

Access strip	*Means the narrow part of an internal lot to provide access to a road.*
Site coverage	*the proportion of a site, excluding any access strip, covered by roofed buildings*

The function and purpose of inserting an impervious surface requirement could:

1. mitigate impact on stormwater infrastructure; and

[19] , Issues Paper published in May 2022,

2. minimising the potential negative ecological impacts arising from increased stormwater flows from a site[20] whilst minimising replenishment of the ground water system and removing the natural irrigation of the soil and garden plants.

The control was removed as it was asserted by council planners that the impervious surface requirement was too difficult to enforce and that there was a lack of any demonstrated benefit from imposing this provision. Whilst it was not inserted for the purpose of stormwater management, it could be an effective to minimise hard surfaces on a site and have the potential to manage stormwater run-off and surges during rain events, reducing impact on existing infrastructure but by passing it on 'downstream'.

From an environmental perspective, C7.0 Natural Assets Code assesses the impact of a new stormwater discharge point to a waterway and coastal protection area. However, this control does not necessarily apply in residential areas and therefore alternative mechanisms must be introduced into the SPPs. Several residential areas, particularly in an urban setting close to the coastline, will increase surface run-off to waterways where impervious surfaces are created. This increases flood risks downstream wherever and whenever stormwater is discharged into local waterways.

A planning authority has an inability to potentially prevent a developer from constructing impervious surfaces on the area outside of the site coverage requirement for a single dwelling.

For Multiple Dwellings, there is a requirement for retaining 60 square meters of private open space for each dwelling on the site. However, the control is not adequate as the Performance Criteria P1 provides opportunity to reduce this area if it can demonstrate it satisfies sub-clauses (a), (b) and (c).

The SPPs make an underlying assumption that a site will retain land areas for landscaping and gardens if it is a single dwelling. A control is necessary to impose restrictions for the creation of impervious surfaces. Permeable surfaces retained assist with slowing of water flows and reduces pressure on ageing infrastructure and waterways.

The recommendation is to reinstate the requirement for impervious surfaces as it applies to all dwellings in the GRZ and IRZ.

Useable Private Open Space

The SPPs require the provision of private open space for all dwellings.

Multiple Dwelling and Single Dwelling development must provide each dwelling with private open space in one location, unless not at ground level, with:

- a minimum area of 24m^2;
- a horizontal dimension of not less than 4m; and
- a gradient not steeper than 1 in 10.

The test in the SPPs does not provide any requirement for private open space under the Performance Criteria in the GRZ and IRZ does not trigger a requirement to achieving three hours of sunlight on 21st of June where a proposal fails the test of the Acceptable Solution.

[20] Aquatic Natural Values and Residential Development

Figure 4: Multiple dwelling development example where useable private open space is next to the internal driveway. The private open space is shown by the orange hatched areas.

The useable open space for multiple dwelling developments is diminished. Typically, dwelling development repeats a pattern which provides for detached buildings around the outer perimeter of a site. Dwellings proposed on a site are often pushed to the outer edges of a site to make way for an internal drive, parking and circulation spaces as required by the C2.0 Carparking and Sustainable Transport Code. Consequently, this approach can diminish the useable private open space, and often forces it to be sited in locations that do not primarily serve the occupants of a home (refer to Figure 4).

While the use and developments standards of both the GRZ and IRZ consider the space relationship of multiple dwellings on the same site, the test under the performance criteria does not stipulate a habitable room window or private open space receive at least 3 hours of sunlit on 21st of June. The

submission recommends that all residential zones require this test as a minimum under each of the applicable performance criteria.

Subdivision and Streetscape - GRZ, IRZ, LDRZ and RLZ

Lot Design

Recommendation	
1.	Insert a Liveable Streets Code to acknowledge the importance of the streetscape and public space. The purpose of the code is to impose requirements which results in streets supporting the wellbeing and liveability of Tasmanians and increase the urban forest canopy. The code will provide for appropriate standards for development of a streetscape at the subdivision stage or where a government body is constructing a new residential street.
2.	Amend the exemption at clause 4.2.4 to require a government body to apply the Liveable Streets Code. The exemption could remain in place if the requirements of the Liveable Street Code are achieved; otherwise requiring a permit.
3	Insert a Public Open Space Code, requiring consideration of the physical provision of public open space before cash-in-lieu is accepted. The SPPs must prompt assessment of physical provision of open space before cash-in-lieu is considered.

The SPPs provide permit pathways for subdivision in all the four residential zones, with the minimum lot sizes correlated to zone and dependent on infrastructure services.

The GRZ and IRZ are typically in fully serviced infrastructure areas where access and residential support services is available. The LDRZ is applied in areas where some services may be available, and it is desirable that large lot sizes are preferred. The RLZ provides for residential development on lots ranging from 1 ha to 10 ha.

The act to subdivide, as defined in Table 3.1 means:

> *to divide the surface of a lot by creating estates or interests giving separate rights of occupation otherwise than by:*
>
> *(a) a lease of a building or of the land belonging to and contiguous to a building between the occupiers of that building;*
> *(b) a lease of airspace around or above a building;*
> *(c) a lease of a term not exceeding 10 years or for a term not capable of exceeding 10 years;*
> *(d) the creation of a lot on a strata scheme or a staged development scheme under the Strata Titles Act 1998; or*
> *(e) an order adhering existing parcels of land.*

The SPPs are structured so that a proposal for subdivision does not require it to be categorised into one of the Use Classes as set out in clause 6.2.6. The Development Standards for Subdivision in the residential zones apply a test concerning lot design and roads. In the case of the IRZ, LDRZ and RLZ, services including provision of a water supply, wastewater disposal and stormwater are also considered. Where this approach is applied, the General Provisions at Clause 7.10, a planning authority may consider subdivision at their discretion.

The acceptable solutions of clauses 8.6.1 and 9.6.1 provide for minimum lot sizes of 450m^2 and 200m^2, respectively. The concern is that the GRZ and IRZ across the State are spatially applied to a mix of locations with varied environmental attributes and landscape values. The pattern of development varies across these areas. Nevertheless, the SPPs through the residential zones apply a generic approach to all areas irrespective of their attributes with some exceptions applied if a scenic management area or priority vegetation area provided for in the codes applies. Even if codes apply, the development pattern in the neighbourhood character context is not considered.

Typically, development in the outer older residential areas is characterised by single detached dwellings interspersed with multiple dwelling development.

The SPPs provide opportunity to excise lots with areas of 400m^2 in GRZ and 200m^2 in the IRZ from the parent title without any requirement of Public Notification. The subdivision controls do not provide any regard to neighbourhood character as mostly these are considered as arbitrary lines on a plan. Where there is no road proposed, it is difficult to refuse an application based on clause 7.10 even if the outcome is inappropriate. The recommendation in this submission is to tighten the controls by inserting a 'Neighbourhood Character Code' that also applies to subdivision standards to mitigate adverse impact on neighbourhood character .

Provision of Roads and Liveability

The development standard concerned with the provision of new roads in a plan of subdivision does not integrate the principles of liveability. The streetscape forms part of public open space and serves as a critical function for pedestrians and cyclists to move through residential areas. The standard concerning the provision of road is focussed on connectivity, safety, and convenience without defining basic requirements for pedestrians.

The requirements of footpath width have traditional applied the Tasmanian Standards for road design. The SPPs should place requirements on providing particular attributes in the streetscape and provide for a street design that considers:

- All accessible footpaths;
- Bicycle path infrastructure;
- Water sensitive urban stormwater design to slow surface water run-off;
- Street tree planting;
- Reconsider the road carriageway width;
- Safe pedestrian crossing facilities;
- Traffic calming measures in residential street;
- Solar lighting; and
- Sufficient space for underground service.

The current test for new roads in the four residential zones does not raise the standard sufficiently. The submission recommends that specific criteria be inserted in the way of a 'Liveable Streets Code' into the SPPs to achieve best practice design, integrate liveability, and stipulate minimum requirements for the provisions of improved greening and infrastructure in streets.

It is intended that the 'Liveable Streets Code' also apply to government bodies undertaking the construction or repair of roads. Currently the exemptions at clause 4.2.4 exempts a government body from requiring a permit or adhere to any standard within the SPPs. The exemption could remain, but

it should be linked with the 'Liveable Streets Code' to ensure government is required to meet the same standard.

Public Open Space

Public open space provision is paramount for Tasmanians' future liveability and wellbeing. There is an absence of public open space provision in the SPPs. Currently, the requirement of public open space provision is set out by the *Local Government and Building Miscellaneous Act 1993* as provided by sections 116 and 117.

The absence of policy in the SPPs does not provide any parameters for the physical provision of open space versus cash-in-lieu. The absence of any provisions in the SPPs creates a disconnect between the integration of liveability principles and statutory controls.

The SPPs should include public open space provisions rather than a planning authority relying on separate legislation. The submission recommends that the SPPs, as they apply to the four residential zones, insert provisions to assess public open space requirements as part of a proposal concerning subdivision where it intends to construct a new road.

Coordinated and Integrated Planning Process

Recommendation	
1.	The recommendations seek for the SPPs review to consider improving the coordinated and integrated approach to the statutory assessment process across different sets of legislation. The recommendations outlined below are a few examples where the planning process is not coordinated or integrated and fails the test of Part 2 of Schedule 1 of the Act. <u>Public Open Space Code</u> Insert a Public Open Space Code, requiring consideration of the physical provision of public open space before cash-in-lieu is accepted. The SPPs must prompt assessment of physical provision of open space before cash-in-lieu is considered. <u>Bushfire-prone Areas Code</u> Amend the Bushfire-Prone Areas Code in the SPPs to require bushfire hazard management assessment as part of the planning process for all development. <u>Other Hazards Code</u> Amend the hazard codes in the SPPs to require assessment of an issue as part of the planning process for use and development.

Part 2 of Schedule 1, *Objectives of the Planning Process Established* under the *Land Use Planning and Approvals Act 1993 (the Act)* seeks an integrated and coordinated approach to the planning process in Tasmania.

The planning process does not provide for a coordinated or integrated approach under the SPPs as various requirements for use and development is spread across several pieces of legislation. Examples that demonstrate the lack of coordination or integration are as follows:

- The provision of open space is regulated under the *Local Government (Building and Miscellaneous Provisions) Act 1993.* The SPPs do not provide for any requirements concerning public open space in the assessment of subdivision and it continues to rely on the Local Government (Building and Miscellaneous Provisions) Act 1993.

- The conflict between vegetation retention and bushfire hazard management. For example, an application is approved on the basis that native vegetation is retained on a site and conditioned accordingly. The approved application is potentially modified due to the requirements of a bushfire hazard management plan approved after the planning permit. Addressing the issue of bushfire after the planning stage does not allow these matters to be addressed upfront and adds cost to the developer.

The recommendations calls on the SPPs review to consider improving the coordinated and integrated approach to the statutory assessment process across different sets of legislation. This is important to provide clear signals and expectations to the community. The SPPs currently fails the test of Part 2 of Schedule 1 of the Act.

Conclusion

The suite of residential zones:

- General Residential Zone (GRZ);
- Inner Residential Zone (IRZ);
- Low Density Residential Zone (LDRZ); and
- Rural Living Zone (RLZ),

provides a generic approach to use and development, resulting in bland and homogenous outcomes. The residential zone controls in the SPPs, especially for the GRZ, IRZ and LDRZ fail to strike a balance between urban consolidation and achieving outcomes that support well-being and liveability.

It is evident that approved use and development where the SPPs are applied, is resulting in a changing urban fabric of the established residential areas across the State, irrespective of location.

The controls disregard neighbourhood character and natural values. For example, the SPPs do not include controls that provide for:

- healthy separation and protecting buffers between buildings, and protecting established residential character; and
- consideration of built form, architectural roof styles and the streetscape.

The statutory controls in SPPs in relation to the residential zones have become oversimplified moving away from AMCORD. This has led to poor design outcomes.

The GRZ, IRZ and LDRZ seek densification through infill development or subdivision but do not provide the rigour in controls to balance the trade-offs for occupants of established use and development, such as:

- loss of sunlight garden areas, private open space or habitable rooms of adjoining properties;
- loss of garden areas and opportunity for food production;
- impact on stormwater infrastructure; and
- loss of established mature vegetation and trees to develop a site.

These controls also lack rigour to enable ‘regenerative development’ outcomes to respond to climate change. This submission seeks the introduction of a ‘Medium Density Development’ zone and a ‘Neighbourhood Character Code’ to respond to key concerns raised by this submission.

The subdivision controls as it applies to residential areas have minimal requirements, not requiring any specific attributes that must be provided in the streetscape when development is approved. While this is a failing of the SPPs, this submission recommends the introduction of a Liveable Streets Code to address this very issue.

The SPPs must not only provide a response to climate change but must take an equitable approach to housing affordability and inclusionary zoning. The SPPs review must carefully consider the principles outlined in this submission and develop statutory controls to improve outcomes aligned with community aspirations sought by Planning Matters Alliance Tasmania.

Yours sincerely

Heidi Goess

Director, Plan Place.

Summary of Key Issues and Recommendations of the General Residential Zone, Inner Residential Zone, Low Density Residential Zone and Rural Living Zone.

Key issues	Priority recommendations
Clause 6.10.2 does not apply the local area objectives to the assessment of all Discretionary development. The planning authority must only consider the local area objectives where it is a Discretionary use. The local area objectives may relate to both use or development. The limited application diminishes the use and purpose of the local area objectives by the planning authority in the assessment of development and this should be corrected.	**<u>Consideration of the Local Area Objectives to Discretionary development.</u>** Amend clause 6.10.2 to require the planning authority to consider the local area objectives in relation to all discretionary development. The clause must be amended, inserting the words "and development", after the words 'Discretionary use'. The words in clause 6.10.2 'must have regard to' are recommended to be substituted with 'demonstrate compliance with'.
Many terms are poorly and narrowly defined, or not defined at all, making certain terms in the residential zones open to interpretation and there is a heavy reliance on the common meaning of a word.	The recommendations concern the definitions within Table 3.1 of the SPPs as they relate to terms used in the GRZ, IRZ, LDRZ and RLZ. **<u>Terms and Definitions</u>** • Amend the definitions for the following terms, which are defined too narrowly: o Amenity, to articulate improved outcomes concerning health and wellbeing for Tasmanians. o Streetscape, to fine-tune the definition, to lift its narrow interpretation. • Insert definitions for the following terms: o Character; and o Primary residential function.
The suite of residential zones: • General Residential Zone (GRZ); • Inner Residential Zone (IRZ); • Low Density Residential Zone (LDRZ); and • Rural Living Zone (RLZ), provides a generic approach to use and development, resulting in bland and homogenous outcomes. The residential zone controls in the SPPs, especially for the GRZ, IRZ and LDRZ fail to strike a balance between urban consolidation and achieving outcomes that support well-being and liveability. <u>Densification, Loss of Character, Climate Change</u> It is evident that approved use and development where the SPPs are applied, is resulting in a changing urban fabric of the	The SPPs for the GRZ, IRZ, LDRZ and RLZ must actively enable and enforce the principles of 'sustainable development' at a minimum or better still embrace the principles of 'regenerative development'. The latter seeks to provide for development that gives more than it takes, supports the community above all else, including the profit motive of the individual developer's economic desires, and creates zero carbon projects. With this in mind the recommendations of this submission are as follows: **<u>Review of all standards</u>** Review of all use and development standards of the GRZ, IRZ, LDRZ and RLZ to include requirements for:

Key issues	Priority recommendations
established residential areas across the State, irrespective of location. The controls disregard neighbourhood character and natural values. For example, the SPPs do not include controls that provide for: • healthy separation and protecting buffers between buildings, and protecting established residential character; and • consideration of built form, architectural roof styles and the streetscape. The statutory controls in the SPPs in relation to the residential zones have become oversimplified moving away from 'Australian Model for Residential Development'. This has led to poor design outcomes. The GRZ, IRZ and LDRZ seek densification through infill development or subdivision but do not provide the rigour in controls to balance the trade-offs for occupants of established use and development, such as: • loss of sunlight to private open space or habitable rooms of adjoining properties; • loss of garden areas and opportunity for food production; • impact on stormwater infrastructure; and • loss of established mature vegetation and trees. These controls also lack rigour to enable 'regenerative development' outcomes to respond to climate change. <u>Housing Affordability and Choice</u> The SPPs do not require any controls that drive housing affordability or inclusionary zoning. <u>Visitor Accommodation</u> Addressed separately below. <u>Subdivision</u> Addressed separately below.	• Roof design to include adequate size, gradient and aspect of roof plane for solar panels; • Adequate private open space and protection of windows of existing and proposed buildings from shadows; • On-site stormwater detention and storage (separately) and public open space for rain infiltration to ground; • Double-glazing and insulation of all buildings; • Passive solar access of existing and new buildings; • Re-instatement of adequate setbacks from boundaries for all new buildings; • Maximising the retention of existing trees and vegetation and provide appropriate trade-off where clearance is proposed; and • Servicing of multiple dwelling development such as waste collection. It is acknowledged that many items listed above are in the National Construction Code, but the thermal efficiency requirements need to be increased radically upfront in the planning process in order to reduce carbon emissions. **<u>Affordable Housing</u>** Insert use and development standards in all residential zones to address housing affordability. **<u>Neighbourhood Character Code</u>** Insert a Neighbourhood Character Code in the SPPs that protect attributes of the established residential areas, maintain separation and buffers as well as promoting food security such as: • roof form and architectural style; • building presentation to the streetscape; • garden area requirements to address separation of buildings but also food security; and • retention of mature trees and vegetation.

Key issues	Priority recommendations
	<u>Medium Density Zone</u> Diversify the residential zone hierarchy by inserting an additional zone that specifically provides for medium density development. The zone can be applied strategically to areas connected with public transportation routes and positioned to be close to services (i.e. local neighbourhood centres or parks). An additional zone can provide certainty for community and expectation of medium density development. **<u>Stormwater Management Code</u>** Insert a Stormwater Code to assess impact of intensification of surface water run-off on existing infrastructure and promote water-sensitive design.
Densification between visitor accommodation, multiple dwelling development and subdivision are not aligned.	**<u>Visitor Accommodation</u>** • Amend use standards for Visitor Accommodation in the GRZ, IRZ, LDRZ and RLZ or insert a development standard for visitor accommodation to provide a density control that does not exceed the allowed dwelling density in a zone. For example, the construction of one visitor accommodation unit on a vacant site must have a minimum area of 1200m^2 in the LDRZ. • Insert definitions for the terms 'character' and 'primary residential function' in Table 3.1 to aid interpretation of the use standard as it applies to Visitor Accommodation in the residential zones. • Review the exemption at clause 4.1.6 to limit the number of persons staying at a property instead of the number of bedrooms. • Review the SPPs for all residential zones to limit the number of homes that can be converted to Visitor Accommodation to increase retention of housing stock for the residential market.
The requirement of permeable surfaces has been eliminated for residential dwelling	**<u>Permeable Surfaces, Garden Area & Food Security</u>**

Key issues	Priority recommendations
development on a site which could include single detached dwellings or multiple dwelling development. The requirement of a site to retain a percentage free from impervious surfaces in the GRZ and IRZ remains for non-residential development. Impervious surfaces controls are important to mitigating stormwater impacts on the natural environment by slowing run-off.	• Insert a Stormwater Code (see above). • Insert a requirement for retention of permeable surfaces in the GRZ, IRZ and LDRZ in relation to site coverage for dwelling development to assist with managing stormwater run-off. • Introduce a garden area requirement as applied in the Victorian State Planning Provisions.
The subdivision standards in any of the residential zones are focussed on traffic movement and management rather than all users of streets and the important public open space they provide. The requirements of street trees should not be reliant on a council adopted policy. The controls should impose requirements on both local government and developers.	The recommendations concern Subdivision as provided by the exemptions and standards in GRZ, IRZ, LDRZ and RLZ. **Liveable Streets Code** • Insert a Liveable Streets Code to acknowledge the importance of the streetscape and public space. The purpose of the code is to impose requirements which results in streets supporting the wellbeing and liveability of Tasmanians and increase the urban forest canopy. The code will provide for appropriate standards for development of a streetscape at the subdivision stage or where a government body is constructing a new residential street. • Amend the exemption at clause 4.2.4 to require a government body to apply the Liveable Streets Code. The exemption could remain in place if the requirements of the Liveable Street Code are achieved; otherwise requiring a permit.
Part 2 of Schedule 1, *Objectives of the Planning Process Established* under the *Land Use Planning and Approvals Act 1993 (the Act)* seeks an integrated and coordinated approach to the planning process in Tasmania. The planning process does not provide for a coordinated or integrated approach as various requirements for use and development is spread across several pieces of legislation. Examples: The provision of open space is regulated under the *Local Government (Building and Miscellaneous Provisions) Act 1993.* The SPPs	The recommendations seek for the SPPs Review to consider improving the coordinated and integrated approach to the statutory assessment process across different sets of legislation. The recommendations outlined below are a few examples where the planning process is not coordinated or integrated and fails the test of Part 2 of Schedule 1 of the Act. **Public Open Space Code** Insert a Public Open Space Code, requiring consideration of the physical provision of public open space before cash-in-lieu is accepted. The

Key issues	Priority recommendations
do not provide for any requirements concerning public open space in the assessment of subdivision. The conflict between vegetation retention and bushfire hazard management. For example, an application is approved on the basis that native vegetation is retained on a site and conditioned accordingly. The approved application is potentially modified due to the requirements of a bushfire hazard management plan approved after the planning permit. Addressing the issue of bushfire after the planning stage does not allow these matters to be addressed upfront and adds cost to the developer.	SPPs must prompt assessment of physical provision of open space before cash-in-lieu is considered. **Bushfire-prone Areas Code** Amend the Bushfire-Prone Areas Code in the SPPs to require bushfire hazard management assessment as part of the planning process for all development. **Other Hazards Code** Amend the hazard codes in the SPPs to require assessment of an issue as part of the planning process for use and development.

PLANNING MATTERS ALLIANCE TASMANIA

REVIEW OF THE NATURAL ASSETS CODE

Author: Dr Nikki den Exter, August 2022

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INTRODUCTION

The following submission by Planning Matters Alliance Tasmania (PMAT) on the review of the Natural Assets Code (NAC) is made in the context of the Schedule 1 Objectives of the *Land Use Planning and Approvals Act 1993* (LUPAA). LUPAA is one of the central pieces of legislation governing land use planning in Tasmania, with planning schemes the principal instrument under LUPAA regulating use, development protection of land. Therefore, how LUPAA integrates biodiversity conservation into land use planning is critical to guiding what planning schemes generally, and the NAC specifically, must achieve and include.

One of key objectives of LUPAA as set out in Schedule 1 is to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity. Therefore, at the heart of the LUPAA is promoting and furthering sustainable development, and as an integral part of sustainable development, conserving biodiversity.

PMAT acknowledges that the mere inclusion of sustainable development as a principle within legislation does not necessarily need to result in substantive outcomes for biodiversity, as biodiversity may be viewed as one of many competing issues and there is the potential for social and economic considerations to outweigh biodiversity impacts (Allchin, Kirkpatrick & Kriwoken 2013; Bates 2013; Dwyer & Taylor 2013; England 2005; Farrier, Kelly & Langdon 2007; Farrier, Whelan & Brown 2002; Ives et al. 2010; Peel 2008; Rackemann 2010; Robinson 2009; Taylor & Ives 2009; UNEP 2010, 2012). There is also the potential for consideration of biodiversity to be limited to a procedural matter rather than a substantive one (Dwyer and Taylor, 2013). Procedural integration of biodiversity only requires the principle of biodiversity conservation to be adequately taken into consideration in the process of decision making, not the actual conservation of biodiversity per se. When operating in its substantive sense, integration of biodiversity needs to achieve actual biodiversity conservation outcomes.

Importantly, Tasmania has some of the strongest requirements of any jurisdiction in Australia to promote biodiversity in a substantive sense (Bates, 2013), with s5 of LUPAA placing an obligation on any person on whom a function is imposed, or a power is conferred under this Act to further the objectives set out in Schedule 1. The strong requirements under LUPAA provide an explicit legal foundation for biodiversity conservation as substantive outcome rather than merely a procedural requirement. Further to this, s15 of LUPAA explicitly requires that the SPPS, including the NAC, further the Schedule 1 objectives. Therefore, there is an obligation for planning schemes in Tasmania to further biodiversity conservation in a substantive, not merely procedural, sense, and it is a requirement for planning schemes to include explicit and meaningful standards that go beyond consideration of biodiversity to achieving biodiversity outcomes.

The move to a single Statewide planning scheme with a Natural Assets Code (NAC) firmly establishes planning schemes as one of the key instruments for conserving biodiversity in Tasmania and provides

an opportunity for a consistent approach to the integration of biodiversity into the statutory planning process. The inclusion of the NAC is supported and considered a vital step towards integrating the conservation of biodiversity into decision-making. It is also acknowledged that the NAC will improve consideration of biodiversity in decision-making in some local government areas, particularly those that do not currently include a Biodiversity Code or equivalent in their interim schemes.

However, as currently drafted, the NAC does not adequately reflect or implement the objectives of LUPAA in promoting sustainable development and conserving biodiversity. The NAC also reduces biodiversity to a procedural consideration and fails to meet its own objectives, the objectives of State Policies and the regional biodiversity policies articulated in the regional land use strategies. There are also potentially significant jurisdictional and technical issues with the Code, including how the Code integrates with other regulations, the Code purpose, which values it does and does not capture and how the Code is triggered and applied. As a consequence, the Code not only fails to further biodiversity conservation, it also fails to achieve its stated purpose. The NAC as drafted also fails to provide an aspiration to improve biodiversity conservation and can only lead to a reduction in biodiversity.

This submission firstly provides a summary of the most critical issues and priority recommendations identified in the submission. The submission then provides an in-depth response to the key questions identified in the scoping paper released by the State Planning Office. This in-depth response follows the structure of the Code and focusses on the issues with, and potential opportunities for amending, the NAC, and providing detailed recommendations which elaborate on the priority recommendations.

SUMMARY OF KEY ISSUES AND PRIORITY RECOMMENDATIONS

Key issues	**Priority recommendations**
The NAC is limited to managing and minimising loss and fails to improve biodiversity, maintain ecological processes or implement the mitigation hierarchy, with the need to avoid absent and offset severely limited.	Amend the Code, including the purpose, objectives and standards, to improve the condition and extent of natural assets and biodiversity and reflect all stages of the mitigation hierarchy, with the highest priority being to avoid loss and offsets a requirement where loss is unavoidable, and the impact is insignificant.
The scope of natural assets and biodiversity values considered under the NAC is too narrow and will not promote biodiversity conservation or maintain ecological processes, with landscape function and ecosystem services, non-threatened native vegetation, species and habitat, and terrestrial ecosystems sensitive to climate change largely excluded.	Amend the Code, including the purpose, objectives and standards, to apply to natural assets and biodiversity values more broadly, including landscape ecological function, ecosystem services, ecological processes, habitat corridors, genetic diversity, all native vegetation (not just threatened), non-listed species and ecosystems sensitive to climate change.

Key issues	Priority recommendations
The extensive zone exclusions from a priority vegetation area, and therefore Code application, will result in some of the most significant areas for biodiversity excluded from assessment and consideration. A priority vegetation area needs to be able to be applied within any zone.	Amend the Code to enable consideration and assessment of impacts on biodiversity in all zones, including the agriculture zone and urban-type zones.
Limiting a priority vegetation area and future coastal refugia area to a statutory map based on inaccurate datasets which are not fit for purpose is inconsistent with other regulations and other Codes and will result in the loss of important biodiversity values and refugia areas. A priority vegetation area and future refugia area must relate to where the values actually exist, not just where they are mapped.	Amend the Code to enable priority vegetation and future refugia areas to apply to land outside the statutory map, where the values are shown the exist.
The exemptions are far-reaching, inconsistent with maintaining ecological processes and biodiversity conservation, duplicate the Scheme exemptions and will result in loopholes and the ability for regulations to be played off against each other.	Review the exemptions to remove duplication and loopholes and limit the exemptions to imminent unacceptable risk or preventing environmental harm, water supply protection, Level 2 activities and consolidation of lots.
Consideration and assessment of impacts on terrestrial biodiversity are limited to direct impacts from clearance of priority vegetation and arising from development. The NAC does not enable consideration of impacts arising from use and not involving vegetation clearing, such as collision risk, disturbance to threatened species during breeding seasons, degradation of vegetation and damaging tree roots.	Amend the Code, including the purpose, objectives and standards, to enable consideration of indirect adverse impacts as well as direct impacts and apply to use as well as development.
The NAC provides inadequate buffer distances for waterways in urban areas and tidal waters.	Amend the NAC to apply the appropriate buffer widths in urban areas, rather than reducing them to 10m, and extend the coastal protection buffer into tidal waters.
The NAC reduces natural assets and biodiversity to a procedural consideration and undermines the maintenance of ecological processes and conservation of biodiversity, through the performance criteria only require 'having regard to' a number of considerations rather than satisfying the criteria	Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy'.
The performance criteria are drafted to facilitate development and manage loss rather	Amend the performance criteria to be more prescriptive and establish ecological criteria for when loss is unacceptable for different values,

Key issues	Priority recommendations
than maintain and improve natural assets, ecological processes and biodiversity.	enable consideration of cumulative impacts, achieve improved management and protection for remaining values, provide for a range of offset mechanisms, including off-site and financial, and enable identification of areas or sites where development is not an option.
Many terms are poorly and narrowly defined, or not defined at all, making the NAC ambiguous and open to interpretation and limiting the scope of the NAC.	Amend the definitions for the following terms, which are defined too narrowly and/or are poorly defined: • Future coastal refugia and future coastal refugia area – which needs to include all refugia not just coastal and not just within a statutory map. • Priority vegetation and priority vegetation area – which needs to include all biodiversity values and not just within a statutory map. • Threatened native vegetation community – to include communities listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999* EPBCA). • Significant and potential habitat f or threatened species – which should be consistent with other regulators. Include definitions for the following terms: native vegetation community; clearance; disturbance; habitat corridor; landscape ecological function; ecological processes; ecological restoration; unreasonable loss; unnecessary or unacceptable impact; and use reliant on a coastal location.
The NAC does not include any requirement or clear ability to request an on-ground assessment of natural values by a suitably qualified person. In the absence of such an assessment, it is generally not possible to adequately determine or assess the impacts of a proposal, including compliance with the Code requirements.	Amend the NAC to specify applications requirements and enable a planning authority to request a natural values assessment by a suitably qualified person.

C7.1 CODE PURPOSE

Scope of values

Under the draft NAC (as exhibited [section 25(2)(a)], 7 March 2016), the terrestrial biodiversity components of the Code were disproportionately focused on threatened species, significant fauna

habitat and threatened vegetation communities and the Code purpose and objectives did not translate to consideration of biodiversity in decision-making processes. The current NAC (SPPs version 4.0, 20 July 2022) partially addresses the limited application of the Code by including native vegetation of local importance. The recognition and inclusion of future coastal refugia provided in the NAC is also supported, as is the scope of the Code in relation to waterway values.

However, while broadened from the draft NAC, there are still significant limitations with the scope of natural assets and biodiversity values captured under the NAC, including:

- limiting consideration of impacts on threatened species to the direct clearing of threatened flora or significant habitat for threatened fauna and not enabling consideration of potential habitat for threatened fauna or consideration of other threats to threatened species not involving vegetation clearing (such as collision risk and disturbance to threatened species during breeding seasons);
- limiting the scope of the NAC to priority vegetation, which is inconsistent with many interim schemes and other regulations, including EMPCA and the Forest Practices Regulations, which have the head of power to assess impacts on native vegetation and biodiversity broadly and are not restricted to a narrow definition of priority vegetation. While providing valuable habitat and connectivity for many species, native vegetation (not just threatened vegetation) also provides a healthy ecosystem by controlling or reducing erosion and salinity, regulating water flows, ameliorating climate change and facilitating crop pollination. Native vegetation also provides habitat for species that are considered to be secure and that are likely to become threatened if habitat loss continues. Limiting the scope of the Code to priority vegetation also fails to acknowledge that patches of priority vegetation are often surrounded by native vegetation that remains unprotected under the current Code which provides a buffer against threats such as climate effects and weeds. This will lead to erosion of the priority vegetation through development encroachment and result in isolated pockets of priority vegetation becoming even more vulnerable;
- excluding other elements of biodiversity not necessarily linked to threat status or vegetation communities, including landscape ecological function including, condition, connectivity and corridors between natural areas, ecosystem services, genetic diversity and non-listed species species, such as top predators or keystone species which play an important role in seed dispersal and important pollinators; and
- limiting climate refugia to future coastal refugia and excluding other areas important as refugia for non-coastal ecosystems under a changing climate.

Scope of purpose

The purpose of the NAC focuses on minimising impacts but does not specifically identify the cause or source of the impacts to be minimised (i.e. use and development) or acknowledge that impacts may be positive, negative, or neutral.

The NAC purpose also disproportionately focuses on minimisation and does not adequately acknowledge other stages in the mitigation hierarchy, notably avoid, mitigate and offset, despite their broad acceptance internationally, nationally and within Tasmania.

As acknowledged in the consultation draft for Tasmanian Planning Policies and existing State Policies, avoiding, minimising and mitigating impacts from land use and development on natural assets is an important policy. Both the Southern Tasmania Regional Land Use Strategy (STRLUS) and the Northern Tasmania Regional Land Use Strategy (NTRLUS) also specifically identify the mitigation hierarchy as a regional policy (BNV 1.2 in STRLUS and BNV – A02 in NTRLUS). While the Cradle Coast Regional Land Use Strategy does not identify the mitigation hierarchy explicitly, it does identify the need to avoid fragmentation of areas with identified natural conservation values. And yet, implementation of the mitigation hierarchy is missing in the NAC.

A key element of incorporating avoidance and the mitigation hierarchy in the planning decision process is applying the precautionary principles, maintaining resilience in ecosystems and considering impacts beyond the impacts of vegetation clearing on threatened species and communities.

The NAC purpose also fails to promote the aims of sustainable development as defined in Schedule 1 which among other things includes the avoidance, remedying or mitigating adverse effects of activities on the environment. Specifically, there is no requirement for development activities to restore or ameliorate past impacts that may be occurring within a development site. As currently drafted, the NAC is focused on managed decline. The NAC should be aspirational and not only seek to minimise impacts but improve natural assets and aim for a net gain, including in extent and ecological condition.

There is also no recognition in the Code purpose of the responsibility of land use planning decisions to contribute to the protection of natural assets for future generations. Monitoring is a key element of sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water, soil and ecosystem. The purpose of the NAC needs to be expanded to encompass monitoring of impacts and recognition of the role of the NAC in achieving the objectives of the National Forest Policy Statement 1995 (NFPS), which identifies (among other things) the role of state and local government in the maintenance of a permanent native forest estate. In Tasmania, the NFPS is given effect through the Tasmanian Regional Forest Agreement, the Permanent Native Forest Estate Policy (2017) and the Forest Practices System. Despite the role of local government and land use planning being articulated in the NFPS, the Permanent Native Forest Estate Policy (2017) does not apply to vegetation loss regulated via planning schemes.

Therefore, while the Policy intent is to regulate, maintain and monitor the clearance and conversion of native forests, land clearing associated with developments regulated exclusively by planning schemes, or where a planning instrument zones the land for a particular purpose, fall outside the Policy and the associated reporting requirements. The NAC clearly has a role in the delivery of the NFPS objectives and monitoring clearing of native vegetation, especially given clearing for development often results in total and permanent loss of native vegetation cover and has the potential to be of similar or greater magnitude to current rates of clearing reported through the Forest Practices Plans.

Detailed recommendations for Code Purpose

1. Amend the Code purpose statements to apply to adverse direct and indirect impacts of development, not simply impacts and include an additional Code purpose to avoid, minimise and mitigate indirect impacts of development on fauna, where vegetation clearance or disturbance is not involved, including but not limited to collision risk and disturbance during the breeding season.
2. Amend the Code purpose (C7.1.1, C7.1.2, C7.1.4 and C7.1.5) to reflect all stages of the mitigation hierarchy, with the first stage being to avoid impacts, followed by minimise and mitigate and, only as a last resort, to offset where residual impacts cannot be avoided or mitigated.
3. Amend C7.1.3 or include an additional code purpose to include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.
4. Amend C7.1.4 to refer to biodiversity values broadly, not just priority vegetation, including landscape ecological function, ecosystem services, ecological processes, habitat corridors, genetic diversity, listed and non-listed species and native vegetation broadly.
5. Amend C7.1.5 to include direct and indirect impacts on potential and significant habitat.
6. Amend the Code purpose to include additional purpose statements to:
    a. improve and restore natural assets; and
    b. monitor impacts of land use decision on natural assets, including loss of native vegetation cover and vegetation communities.

C7.2 CODE APPLICATION

Exclusion of use

The NAC is limited in its application to development and excludes use. While regulating the impacts of use on natural assets and biodiversity is more challenging than development, where a use has the potential to irreversibly and negatively impact upon waterway values, future climate refugia or biodiversity, the Code should apply. The key test is not the undertaking of the use per se, but rather the

impact of undertaking the use over time. Where a land use, such as inappropriate burning, slashing or grazing, is likely to result in the range and species composition of priority vegetation being permanently altered by the land use, this use has an adverse impact and should be subject to the Code. In contrast, where a land use maintains the essential character of the vegetation, the Code should not apply to the use.

A change of use also has the potential to impact on natural values. For example, the change of use from a non-habitable to habitable building may trigger bushfire requirements at the building stage, which in turn may require vegetation removal or works within a waterway and coastal protection area, future climate refugia area or priority vegetation area. While the vegetation removal or works constitute development, it is triggered by the change of use and there needs to be explicit requirements in the Code to enable considerations of the impacts of this change of use.

Zone exclusions

The Explanatory Document accompanying the draft SPPs identified a current regulatory gap created "where planning controls do not capture all applications for clearance" and acknowledges that "clearance of priority vegetation must be assessed in order to address the shift in regulatory control and any 'regulatory gap'" (Minister for Planning and Local Government, 2016:137). However, C7.2.1(c) goes on to perpetuate this regulatory gap by limiting the application of priority vegetation areas to specified zones and excluding others on the basis that these zones "are a limited and valuable resource that should be protected for their main purpose" (Tasmanian Planning Commission 2017).

These zone exclusions for application of a priority vegetation area preclude the Code from applying in specified zones or limit the Code application to specific types of development within that zone, irrespective of the presence of values, which themselves are limited and valuable. The SPPS broadly and the NAC specifically treat development as an a priori right over biodiversity irrespective of the in-situ natural values in these zones. Given much of the clearing associated with development regulated by planning schemes is in the urban type zones, and this clearing is not restricted to subdivision but includes industrial development, multiple dwellings and commercial development, a priority vegetation area needs to be able to be applied within any zone and to all relevant development types, where the values are present not where they are mapped.

The extent of values in these exempt zones is not insignificant and consequently the potential for loss of priority vegetation without assessment is also not insignificant (see Appendix 1 for analysis of the mapped extent of priority vegetation within each of the excluded zones). Native vegetation and natural assets should be valued across all landscapes and the responsibility for conservation of biodiversity lies with all land uses, especially in the context of natural resource dependent activities. In the case of agriculture, a healthy natural environment, providing critical ecosystem services, is the basis for a productive agricultural landscape. Excluding zones from being included in a priority vegetation area

also excludes the need to undertake surveys which would mean threatened flora species and threatened fauna habitat (i.e wedge-tailed eagle nest, Masked owl hollow trees) would not be surveyed for.

The Agriculture Zone exclusions in particular have the potential to be extensive, with approximately 37% (119, 007 hectares) of the mapped extent of threatened native vegetation communities across the State within areas identified as unconstrained agriculture and considered appropriate for inclusion in the Agriculture Zone (Appendix 1). Similarly, approximately 28% (or 789, 646 hectares) of mapped priority vegetation would be exempt from the NAC across the rural landscape if State agricultural mapping is applied strictly in accordance with the guidelines to determine the Agriculture Zone[1].

As the Tasmanian Planning Scheme (TPS) is now in effect in fourteen local government areas (LGAs), it is possible to examine how the zone exclusions have translated under the TPS. Within those LGAs with the TPS in effect, over 190,109 hectares of mapped priority vegetation is located in zones which are wholly or partially excluded from being within a priority vegetation area, with 185,939 hectares (or 98%) of this in the Agriculture Zone. This represents 20% of all priority vegetation within these LGAs. While this proportion is less than the analysis based on an extrapolation of the State agricultural mapping for these LGAs, a number of these LGAs contain extensive protected areas and limited application of the Agriculture Zone, including Glenorchy City Council and West Coast Council which do not apply the Agriculture Zone, and Tasman, Brighton and Clarence which have limited application.

A useful case study to further illustrate the implications of the Agriculture Zone exclusion is Glamorgan-Spring Bay (GSB) LGA and Cambria Green. Under the TPS, 83,864 hectares of the GSB LGA is now zoned Agriculture Zone, in contrast to 13,878 hectares zoned Significant Agriculture under the Interim Planning Scheme (IPS). Within the Agriculture Zone in GSB, 45,549 hectares (> 50%) is mapped as priority vegetation and automatically excluded from the NAC. In contrast, 34,986 hectares (77%) of this vegetation was subject to the Biodiversity Code under the IPS. Similarly, within Cambria Green specifically, 2,606 hectares is now zoned Agriculture, in contrast to 672 hectares under the IPS. Of this, 1,452 hectares (>55%) is mapped as priority vegetation and excluded from assessment under the NAC, whereas under the IPS, 1,241 hectares (85%) of this vegetation was subject to the Biodiversity Code. Across Cambria Green more broadly, under the TPS, only 436 hectares of priority vegetation is within the statutory Priority Vegetation Area and therefore subject to the NAC. In contrast, under the IPS, 1390 hectares was within a Biodiversity Protection Area and subject to the Biodiversity Code.

As this analysis shows, the extent of vegetation excluded from consideration under the TPS within GSB generally, and Cambria Green specifically, increases significantly when compared to the IPS, as a

[1] These figures are based on analysis of priority vegetation mapping derived from the REM and consistent with Code mapping guidelines undertaken by Dr den Exter as part of her PhD research (den Exter, 2019). The REM model integrates spatial data on the distribution of the major components of biodiversity and models key biodiversity attributes, utilising an extensive range of datasets from range of sources and preferencing field verified data, where available Knight (2016). The REM forms the basis of priority vegetation mapping prepared by most planning authorities as part of their LPS. Given the limitations with the mapping (which is discussed below in relation to the definition of a priority vegetation area), this analysis is indicative only. Notwithstanding, it illustrates the scale of the issue.

consequence of the extensive application of the Agriculture Zone in GSB in conjunction with the zone exclusion under Clause C7.2. Importantly, as the Cambria Green proposal illustrates, there is interest and demand for a range of potential uses and development within land zoned Agriculture. Given the extent and significance of biodiversity values in this zone, it is critical that the impacts of proposals within this zone are assessed as part of the broader consideration of any proposed use or development, including individual development applications and planning scheme amendments. Exclusion of these values from the application of the Code takes them off the table and has the potential to result in significant and irreversible biodiversity loss.

It is acknowledged that much of the land use change in rural areas is controlled under other regulations (principally the Forest Practices Regulations). Furthermore, where clearing in the Agriculture Zone relates to broad-scale clearing for agriculture or forestry and is undertaken in accordance with a certified Forest Practices Plan, it is already exempt from the Code under both Clause 4.4.1(a) and Clause C7.4.1(d), regardless of whether it is within a priority vegetation area. Therefore, the exclusion of the Agriculture Zone from a priority vegetation area is redundant in these instances and the zone exclusion serves no purpose.

However, where development is ancillary to an agricultural use and is otherwise regulated by planning schemes, such farm buildings, residential development and tourism ventures, and a permit has been issued under LUPAA, it is exempt from requiring a Forest Practices Plan and is also excluded from the NAC. Therefore, unless the NAC is amended to enable a priority vegetation area within the Agriculture Zone, the identification, assessment and consideration of the potential impacts of these developments on biodiversity will be precluded under the NAC, will not be addressed via the Forest Practices System and will result in the loss of important values.

As the purpose of the Agriculture Zone is to protect agricultural land for agricultural uses, ancillary development within this zone will be pushed into those parts of a site not utilised for agriculture, namely the areas containing native vegetation, with no consideration of the impact on this vegetation or potential alternative locations for the development. There is the potential for this smaller scale development within the Agriculture Zone to lead to disconnection of areas or impact on important habitat without assessment. A case in point is visitor accommodation, which is a discretionary use class in the Agriculture Zone. Many agriculture enterprises diversify income streams through agri-tourism including visitor accommodation, which requires a BAL 12.5 rating as a deemed-to-satisfy solution under the Building Regulations 2016. This BAL rating, in conjunction with the exclusion of assessment under the priority vegetation provisions of the NAC can lead to significant vegetation impacts, particularly on steeper forested sites.

This issue is exacerbated by the scope of the ‘Land Potentially Suitable for Agriculture Zone’ mapping, which identifies large areas of land covered with native vegetation as potentially suitable for agriculture

and forms the basis for the application of the Agriculture Zone. To date this mapping has been applied extensively in areas containing significant areas of native vegetation also identified as containing priority vegetation. As illustrated in Glamorgan-Spring Bay and Cambria Green, the extensive application of the Agriculture Zone and the removal of split zones from many titles mean large areas of land containing remnant vegetation are included in an inappropriate zoning and identified as suitable for agriculture.

Whilst a permit may be required to disturb known species under threatened species legislation, it is the unknown values that are at risk. Native vegetation (not just threatened vegetation) not only provides valuable habitat and connectivity for many species, it also provides a healthy ecosystem by controlling or reducing erosion and salinity, regulating water flows, ameliorating climate change and facilitating crop pollination.

These zone exclusions are unjustified and inconsistent with clearing controls for agriculture or forestry, where a Forest Practices Plan is required for any clearance and conversion of vulnerable land, including threatened native vegetation or threatened species habitat (*Forest Practices Regulations* 2007).

Limiting application of a priority vegetation area to specific zones also results in perverse zoning outcomes, with many planning authorities proposing to use the Rural Zone rather than the Agriculture Zone, or applying split-zoning, as a consequence of and means to counter the zone exclusions.

Although the urban-type zone exclusions are smaller in extent than the Agriculture Zone exemptions (Appendix 1), they are of equal if not greater concern. While there is a perception that there is no place for biodiversity in urban areas, research demonstrates urban areas can be hotspots for threatened species (Ives et al. 2016) and some threatened species can persist in small, degraded remnants (Kirkpatrick & Gilfedder 1995) or even highly modified environments (Ives et al. 2016). Ignoring urban biodiversity in the land use planning process therefore has the potential to lead to significant landscape-scale biodiversity loss (Dales 2011). Ignoring urban biodiversity also assumes biodiversity and development are mutually exclusive. This assumption results in lost conservation opportunities (Ives et al. 2016).

Across Tasmania, assuming the interim scheme zoning largely translates to the TPS[2], the extent of mapped threatened native vegetation which could be cleared in the urban-type zones in conjunction with a planning permit without any assessment of the impact on biodiversity under the TPS, when compared to interim schemes, increases from around 266 hectares to approximately 650 hectares and the extent of mapped native vegetation communities excluded from assessment in these zones increases from 4, 230 hectares to 6, 682 hectares (Appendix 1).[3] Analysis of priority vegetation mapping derived

[2] This assumption is not unreasonable as the development of the LPSs generally requires translation of zones unless such a translation is inconsistent with the zone application guidelines.

[3] This is likely to be an underestimate rather than an over-estimate due to the poor scale and accuracies of TASVEG mapping.

from the REM and consistent with Code mapping guidelines[4] shows that 6,756 hectares identified as priority vegetation will be exempt from consideration within the urban-type zones, increasing the extent of exclusions from 3,603 hectares under interim schemes (Appendix 1). Clearing within the urban-type zones is not restricted to subdivision but includes industrial development, multiple dwellings and commercial development and the likelihood of all of these values being totally lost as a result of development in these zones over time is high if peri-urban and urban zones are excluded from a priority vegetation area. Achieving biodiversity conservation outcomes in peri-urban and urban areas relies on these areas being included in a priority vegetation area. Exclusion of these areas also doesn't provide any aspiration for having natural vales around and within our cities. This impacts on wellbeing and makes hotter urban areas in summer.

Restricting application of the Code to the listed zones exempts important and extensive patches of threatened native vegetation and significant threatened species habitat from the Code all together, while requiring immediately adjacent areas to be subject to the Code, or only subject to the Code if for a subdivision (but not multiple dwellings) creating equity issues. There are also situations where the development site itself might not contain the value but, depending on where the development is located and how it is designed, it may impact on adjacent threatened native vegetation communities or significant threatened species habitat. Protection of natural assets across all zones is important for species surety, connectivity and landscape resilience. Ultimately unregulated clearing within particular zones will further compromise the status vegetation types and make it difficult to ensure a representative and spatially fair target is conserved. It also results in partial and fragmented protection for priority vegetation based on the purpose for which land may be used, and not on the extent of a vegetation community or on inherent values of priority vegetation. This approach also ignores vegetation which may not be threatened or habitat for threatened species now but will be of increased importance in the future, including resilience to climate change.

Excluding urban-type and agriculture zones also creates inconsistencies and perpetuates the existing regulatory gaps between the application of the NAC and other regulations. For example, assessment of a Level 2 activity involving clearing of land zoned Industrial is able to consider the impacts of the clearing on threatened native vegetation, but assessment of a Level 1 activity is not. Similarly, the Forest Practices System does not exempt a Private Timber Reserve (which is essentially a form of land use allocation or 'zoning') from meeting the requirements of the Forest Practices Code. Allowing clearance and conversion of any threatened native vegetation, simply because it is located in a particular zone, is in direct conflict with the Nature Conservation Act 2002, EPBCA and the *Forest Practices Act 1985* and Regulations.

[4] The analysis presented here applies the Code application guidelines to this priority vegetation mapping, as, in the absence of this mapping being finalised by each planning authority, this represents the best approximation of the potential extent of priority vegetation area overlays under the Tasmanian Planning Scheme.

The NAC must be able to be applied and offsets secured within any zone and for all relevant development types if the values are present. A higher degree of certainty around development potential may be appropriate in the urban-type zones. However, this could be better achieved through performance criteria providing a pathway for permitted uses in the urban-type zones whilst still allowing for consideration and offsetting of impacts on priority vegetation. Individual planning authorities may also choose to exclude urban and peri-urban areas from the priority vegetation overlay where they have undertaken the strategic work and determined this vegetation does not require inclusion in the overlay. However, a blanket ban on applying the priority vegetation area to specified zones is widely unsupported and will compromise the conservation of biodiversity.

Detailed recommendations for Code Application

1. Amend C7.2 to:
    - apply to a new use or substantial intensification of an existing use, where the use is likely to result in waterway values, future climate refugia or priority vegetation being negatively impacted by the land use; and
    - apply to a change of use from a non-habitable building to a habitable building or to a new use with a habitable room on land that is in a waterway and coastal protection area, future coastal refugia area or priority vegetation area.
2. Delete the zone limitations from C7.2.1(c) and enable consideration and assessment of impacts on biodiversity in all zones, including the agriculture zone and urban-type zones.

C7.3 DEFINITIONS

Explicit identification, classification and definition of concepts of biodiversity and natural assets are central to establishing whether biodiversity is a relevant matter for consideration and ensuring decisions contribute to biodiversity conservation outcomes (Ives et al. 2010; Wallace 2012). Under interim schemes, concepts of biodiversity and terminology were highly variable and there was an absence of definitions.

The NAC partially addresses the limitations of the interim schemes by delivering consistency in terms and definitions. However, operational definitions of key elements of biodiversity and natural assets specific to local land use planning remain lacking and there are a number of issues with definitions, some of which affect interpretation of the Code and others of which are fundamental to its application and operation. These issues with the definitions undermine the Code purpose and create inconsistencies with other legislation.

Definitions of terms

There are a number of critical terms which are not defined, making application and interpretation of the NAC ambiguous and open to interpretation. Notably, there is no definition of clearance of native

vegetation, making it unclear when whether the Code applies only for the total removal of native vegetation in a priority vegetation area, or for any works that involve the removal or modification of any part of any native vegetation within a priority vegetation area. Similarly, there is no definition of what constitutes a native vegetation community (as distinct from modified land) and no parameters are provided for native vegetation of local importance. This creates uncertainty regarding identification and classification of values and therefore application and interpretation of the Code.

The narrow focus of the NAC on priority vegetation is a major flaw and will compromise the future resilience of our environment as non-listed species and communities become more important. The definition of priority vegetation should be amended to reflect the full scope of the Code, referring to priority biodiversity values rather than being limited to priority vegetation and include potential habitat for threatened fauna, landscape ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

Threatened vegetation communities in the NAC also only include those listed under the *Nature Conservation Act 2002* and does not include those listed under the EPBCA. Although most EPBC listed communities are covered by those under the NCA, the Lowland Grasslands (GTL and GPL) are not.

The NAC provides consideration for vegetation which forms a significant habitat for a fauna threatened species, with the definition of significant habitat broadly consistent with that adopted in the Forest Practices System. However, the definition in C7.3 excludes two critical qualifications including in the Forest Practices definition: (i) it may include areas that do not currently support breeding populations of the species but that need to be maintained to ensure the long-term future of the species; and (ii) significant habitat is determined from published and unpublished scientific literature and/or via expert opinion, agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists. The first additional qualification is critical to ensuring areas not currently known to support a species but with otherwise with the characteristics of significant habitat are also captured by the Code. The second qualification is critical to ensure the determination of what constitutes significant habitat is based on current best practice understanding of each species rather than what is represented in the overlay, noting the overlay itself is predominantly based on modelled data and historic records of species rather than what exists on the ground.

In addition, the following values need to be included in the Code Purpose, defined in the C7.3.1 and included in the definition of natural assets:

- potential habitat, with the definition consistent with the Forest Practices System; and
- habitat corridors, with the definition needing to capture the essence of landscape-scale linkages and connectivity.

Providing for and requiring ecological restoration should also be a key component of the Code and a definition consistent with the Society for Ecological Restoration National Standards for the Practice of Ecological Restoration in Australia should be included in C7.3.

There are also no definitions of clearance, disturbance or unreasonable loss and all terms require definition.

Clauses C7.6.1 P1.2, P2.2 and P4.2 all relate to development involving a use reliant on a coastal location. While clarified under other Codes where referenced, there is no guidance on what uses are reliant on a coastal location for the purposes of this Code. This requires definition in Clause 7.3 or clarification in C7.2.

Definition of a future coastal refugia area and future coastal refugia

The definition of future coastal refugia is limited to sensitive coastal systems and habitats and excludes other areas important as refugia for non-coastal ecosystems under a changing climate. The definition of a future coastal refugia needs to be amended to refer to future refugia and include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.

The definition of a future coastal refugia area is circular and limited to land shown on an overlay as being within a future coastal refugia area. The definition of a future coastal refugia area needs to be amended to refer to future refugia generally and enable identification and consideration of refugia not included in the statutory map (see discussion below on issues with limiting code application to a statutory map).

Definition of a priority vegetation area and limiting code application to a statutory map

Consistent with the definition of priority vegetation, the priority vegetation area overlay is intended to represent native vegetation that: forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the *Nature Conservation Act 2002*; is a threatened flora species; forms a significant habitat for a threatened fauna species; or, has been identified as native vegetation of local importance (Tasmanian Planning Commission 2017a).

However, the definition of a priority vegetation area is circular and limited to land shown on an overlay as being within a priority vegetation area. As a result, vegetation meeting the definition of priority vegetation can only be considered where this vegetation is located within the statutory priority vegetation area overlay. Statutory maps have been utilised in a number of Australian States for many years and the limitations of this approach are well documented (Environment Defenders Office (Vic)

2013; Field, Burns & Dale 2012; Port Phillip and Westernport Catchment Management Authority 2008).

Relying on mapping to define a priority vegetation area and therefore trigger the priority vegetation provisions is problematic, as the application of the Code will only be as good as the maps themselves. While the NAC forms part of the State Planning Provisions (SPPs), the overlay triggering the NAC forms part of the Local Provisions Schedule (LPSs) and the statutory maps are prepared by each planning authority rather than the State. Given the inadequacies of statewide datasets and mapping, it is understood that most planning authorities have derived their priority vegetation area overlays from the Regional Ecosystem Model (REM) developed by Natural Resource Planning (NRP) (Knight & Cullen 2012).[5]

While an improvement on statewide datasets for identifying vegetation that may meet the definition of priority vegetation, the REM is still reliant on TASVEG, the Threatened Native Vegetation Communities dataset, known records for threatened species and habitat modelling. Therefore, the overlay is based on predominantly desk-top data, which is not fit-for-purpose at the scale of an individual development and not reliable for indicating the presence or absence of priority vegetation in the absence of field verification by a suitably qualified person (Department of Primary Industries Parks Water and Environment 2013a).

An overlay is static, but vegetation and habitat are dynamic and change with factors such as fire, drought, flooding, climate change, vegetation senescence and regeneration.

Relying exclusively on a static map to define dynamic natural processes is therefore problematic and to adequately reflect and implement the objectives of LUPAA in promoting sustainable development there needs to be consideration of and allowance for the movement of natural values. Such movement has always occurred in any case but will be exacerbated over the coming decades by climate change. For example, on a short-term timescale, the Chaostola skipper may appear within *Gahnia radula* where it was not present six months previously. Similarly, for threatened flora species and other threatened fauna such as the forty-spotted pardalote. On a mid-term timescale, vegetation communities move and regenerate if left undisturbed. Over the longer term, climate change will cause species, communities and ecosystems to move. At the local scale, this is particularly critical for coastal species, hence the need for refugia. It is also critical for the edges of existing vegetation communities and mapped habitats, and for connectivity between habitats. All values generally need 'room to move' to maintain

[5] The REM is a comprehensive spatial system for storing data on the biodiversity of an area, for examining the relationships between them, and assigning Level of Concern classes to assist prioritising their management. The REM provides a structured classification of biodiversity based around its vegetation and priority species (Biological Significance) and the characteristics of the landscape that determine its ability to sustain the elements of biodiversity it contains (Landscape Ecological Function) (Knight & Cullen 2012:11). The REM model integrates spatial data on the distribution of the major components of biodiversity and models key biodiversity attributes, utilising an extensive range of datasets from a range of sources and preferencing field verified data where available Knight (2016).

biodiversity and viability. Therefore, it is not possible to draw a tight line around values on maps, and to do so may limit their viability.

Datasets relied upon to determine the overlay are also updated daily with more current information. Whereas updating the statutory overlay requires a planning scheme amendment, which can take many months and requires considerable resources. To effectively protect natural assets, up-to-date and accurate data must inform application of the Code and decisions must be made based on what exists on the ground at the time the decision is made, not based on what was in a statutory map at a fixed point in time. In the absence of an accurate mapping database, the NAC needs to have higher capacity to undertake site assessment not less.

Limiting the definition of a priority vegetation area to a statutory overlay creates legal certainty for the landowner or developer but has the potential to result in perverse outcomes for biodiversity by completely missing the values the overlay is trying to protect, undermining the purpose of the Code. Conversely, relying on a statutory overlay may also impose unnecessary costs on developers at the development application stage where land mapped as having 'priority vegetation' is ultimately proven not to be the case.

Limiting the definition of a priority vegetation area to a statutory overlay is also inconsistent with how other natural assets and hazards are applied within the SPPs. Similar to the safety net for native vegetation in the Northern IPSs, a safety net has been provided in the SPPs for waterways, mobile landforms, flooding and landslip, which all enable the relevant code to be applied by either a statutory map or textual application. An equivalent approach needs to be applied to the definition of a priority vegetation area. Limiting consideration of priority vegetation to a statutory map is also inconsistent with other regulations, including the Forest Practices Regulations and Level 2 activities, which are based on reality not a map. All clearing of native vegetation should be required to be assessed regardless of whether it is an overlay or not and regardless of whether it is threatened or not.

Definition of a waterway and coastal protection area

The application of a waterway and coastal protection area via the overlay map or within the relevant distance shown in the table is supported. An equivalent approach needs to be applied to the definition of a priority vegetation area.

Notwithstanding, consideration needs to be given to increasing the buffer distances. Buffer areas provide two purposes, the protection of riparian vegetation (and their associated environmental services to water quality and biodiversity) and the amelioration of impacts generated by land use change in the upslope areas of the catchment. Riparian buffer areas provide an important role in mitigating catchment land use effects by intercepting and retaining pollutants and preventing their transport to waterbodies (Lammers and Bledsoe 2017). In general, the effectiveness of buffer areas to remove nutrients increases

with width, vegetation intactness and maturity (Lammers and Bledsoe 2017). The width of riparian zones is dependent on the interaction of the of the waterbody and the adjacent groundwater with which can be assessed using groundwater hydrology or in most cases changes in vegetation structure and species composition.

There is little evidence that the buffer widths used in the NAC are fit for purpose. The buffer distances for each class of stream are based primarily on the buffers used in production forests where the impact of forestry activities on the adjacent land is sporadic and on a time scale of 10's to 100's of years. In contrast many land use activities that are likely to be impacting the buffer zone and waterways are ongoing and are often subject to intensification over time. Evidence from long term monitoring of waterway health in Tasmania indicate that there has been a general decline in water quality in most areas where land use has led to clearance and conversion of adjacent landscapes.

Detailed analysis of riparian widths is rare but have been found to be highly variable. Mac Nally et al. 2008 measured riparian widths and found that they ranged from 5-55m, 5-35m, 15-85m and 15-55m for 1st to 4th order streams in Victoria and cautioned against fixed prescriptions for buffer widths. Similarly, estimations of impacts of residential development on water quality under base flow conditions indicated that septic tanks were correlated with faecal coliform concentrations (Walsh and Kunapo 2009), with the amount of pollution decreasing with distance from the creek (97% reduction at 47m), this study recommended management of faecal contamination should concentrate on septic tanks located within 100 m of a creek line.

The proposed buffer distances will in some cases reduce current IPS buffer distances around waterways (cf BOD IPS). A precautionary approach would indicate that the class of stream for many stressors does not have relevance to the required buffer zone and in general lower class streams are more likely to be impacted as they occur in steeper and higher precipitation areas leading to more efficient connection of overland flow into the creek system.

Best practice management for the protection of waterway function is based on whole of catchment management (integrated catchment management) with landscape scale impacts often being primary drivers of waterway deterioration. The riparian area of watercourse remains a crucial component of protection of waterway health, so the proposed waterway and coastal protection area is supported, however the potential risks from adjacent land uses remains uncontrolled in the current NAC. Recalibration of the buffer distances and determination of the risk associated with different types of land use in the immediate hinterland (Barmuta et al. 2009) should be a priority process in land use planning and should be incorporated into the NAC.

Table C7.3 Spatial extent of Waterway and Coastal Protection Areas

Buffer width for tidal waters

Under Table C7.3(a)(i), the spatial extent of the coastal protection area is measured from the high water mark of tidal waters. Based on the guidance maps provided to planning authorities, the assumption is that this buffer is applied inland of the high water mark rather than both landward and seaward, and therefore the coastal protection area does not extend into the tidal waters or beyond. Whereas under Table C7.3(a)(ii), the waterway protection area for freshwater systems includes the waterway or wetland itself. This presents a number of issues, as tidal and coastal waters are outside the definition of a waterway and coastal protection area, but a number of development standards specifically relate to development within tidal waters (notably C7.6.1 A1(c)/P1.1) and/or relate to development which extends beyond tidal waters into coastal waters (notably C7.6.1 A1(c)/P1.1 and C7.6.1 A4/P4.1). To give these clauses effect and enable consideration of the impacts of accretions from the sea, dredging and reclamation on coastal values, Table C7.3 needs to include an additional qualification requiring the width of the coastal protection area to be measured both landward and seaward from the mean high water mark and extend into coastal waters in accordance with s7 of LUPAA in relation to accretions from the sea.

Buffer widths for watercourses in urban-type zones

Under Table C7.3, any watercourses adjoining the listed urban type zones is deemed to be a Class 4 watercourse. Presumably this is to enable development to be maximised and not limited by the standard buffer widths. While reduction of the buffer zones to 10m within the specified zones may be convenient for development, these areas contain important natural assets which provide essential ecosystem services. A buffer, by definition, is a natural area retained adjacent to a water course with the primary objective of 'buffering' the water course from potential impacts originating from nearby land uses. The buffer width should, therefore, be determined by the nature and intensity of the neighbouring impact. Industrial and commercial uses are high risk when it comes to impacts and degradation to watercourses and should have larger buffers than lower risk uses such as single dwellings in rural zones, not reduced buffers. Buffer determination should also be based on the specific qualities of the watercourse in question. Only requiring a 10m buffer for larger watercourses is grossly insufficient for maintaining water quality and natural assets including native riparian vegetation, river condition and the natural ecological function of watercourses adjacent to high-risk land uses. Reducing the buffer also creates a false perception that these areas are available for development when they are often subject to other constraints, principally flooding.

Maintenance of the buffer distances for the actual class of watercourse rather than reducing this to reflect zoning is not only essential to riparian function but also essential to ensuring there is sufficient space for the multiple economic, infrastructure and social functions of waterways, with detention basins

and other stormwater infrastructure and public linkages often reliant on these buffers. Waterways and their associated riparian vegetation also provide an important linkage between natural areas, reserves, priority vegetation areas and upland areas with generally more protected natural values (Barmuta et al. 2009). Therefore, there should be ability to assess whether the width of the waterway protection should be increased in order to maintain this linkage.

Reducing the buffer distance in urban areas to 10m (with a minimum effective width of 20m) significantly reduces the effectiveness of these corridors. Reserves and retained vegetated areas around creek lines in urban and urbanizing areas become important recreational assets for the community with increased pressure for walking, riding and exercise infrastructure. Reducing the buffer around creeks to 10m concentrates these activities into close proximity of the creek and has the potential to substantially degrade the remaining natural values which is inconsistent with the NAC purpose (as amended).

Importantly, reducing the buffer in specified zones is unnecessary as development within the buffers is not prohibited under the performance criteria. It is also noted that under the definitions in C7.3.1, if an inconsistency for the width exists between Table C7.3 and the area shown on the overlay map, the greater distance prevails. Therefore, individual planning authorities could seek to retain the buffers based on the class of watercourse in the overlay map in order to override Table C7.3 (b), where appropriate. Retention of the qualification that the width in the map overrides the Table C7.3 (b) is supported. However, to avoid misinterpretation and uncertainty regarding application of buffers in urban-type zones, a simpler approach would be to retain the option of reducing the buffer widths in urban-type zones in the guidelines for applying the Waterway and Coastal Protection Area (noting the Section 8A Guidelines already provide for this under NAC 3 (d)) and delete Table C7.3 (b). Under this approach, where it can be demonstrated the buffer distances are appropriately reduced, the statutory map would reflect this and override the standard buffers in Table C7.3.

Detailed recommendations for Code Definitions

1. Amend the definition of future coastal refugia to refer to future refugia and include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.
2. Amend the definition of a future coastal refugia area to enable identification and consideration of refugia not included in the statutory map, where the planning authority reasonably believes, based on information in its possession, that the land contains or has the potential to contain future refugia.
3. Amend the definition of priority vegetation to refer to priority biodiversity values rather than being limited to priority vegetation and include threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function,

ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

4. Amend the definition of a priority vegetation area to reference priority biodiversity area and provide for a priority biodiversity area to apply to land outside the statutory map, where the planning authority reasonably believes, based on information in its possession, that the land contains or has the potential to contain priority biodiversity values or where a suitably qualified person identifies the presence of priority biodiversity values.
5. Amend the definition of a threatened native vegetation community to include EPBCA listed communities.
6. The following existing definitions of significant habitat and potential habitat (which is considered as native vegetation of local importance) endorsed by the Threatened Species Section and the Forest Practices Authority should be used:
    - 'Significant habitat' means habitat within the known range of a species that (1) is known to be of high priority for the maintenance of breeding populations throughout the species range and/or (2) conversion, of which, to non-native vegetation is considered to result in a long term negative impact on breeding populations of the species. It may include areas that do not currently support breeding populations of the species but that need to be maintained to ensure the long-term future of the species. Significant habitat is determined from published and unpublished scientific literature and/or via expert opinion, agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists.
    - 'Potential habitat' means all habitat types within the potential range of a species that are likely to support that species in the short and/or long term. It may not include habitats known to be occupied intermittently (e.g. occasional foraging habitat only). Potential habitat is determined from published and unpublished scientific literature and/or via expert opinion, is agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists.
7. Include a definition of a native vegetation community, for example: 'native vegetation community' means any indigenous plant community containing throughout its growth, the complement of native species and habitats normally associated with that vegetation type, or having the potential to develop these characteristics. It includes vegetation with these characteristics that has been regenerated with human assistance following disturbance. It includes seral stages and disclimax communities. It includes all TASVEG mapping communities excluding those identified as 'Modified land' (Codes commencing with 'F') or 'Other Natural Environments' (Codes commencing with 'O').
8. Include a definition of clearance of native vegetation, such as 'Clearance' means the deliberate process of removing any native vegetation from an area of land within a priority vegetation area by any direct or indirect means, including but not limited to burning, clear felling, cutting down, drowning, lopping, ploughing, poisoning, ringbarking, injuring, thinning or uprooting.
9. Include a definition of disturbance, such as 'disturbance' means:
    a. the deleterious alteration and degradation of the structure and species composition of a native vegetation community through actions including cutting down, felling, thinning, logging, removing, grazing, slashing or destroying of a native vegetation;

b. adversely impacting trees through encroachment into the tree protection zone or otherwise lopping, injuring, removing or damaging; and

c. disruption to a species during the breeding season, compromising its ability to breed.

10. Reinstate the following definition of 'habitat corridor' - to mean an area or network of areas, not necessarily continuous, which enables migration, colonisation or interbreeding of flora and fauna species between two or more areas of habitat.
11. Include a definition of landscape ecological function, for example 'Landscape ecological function' means the ability of the landscape to maintain the elements of biodiversity it contains.
12. Include a definition of ecological processes encompassing strongly interactive species, hydro-ecology, long-distance biological movement, ecologically appropriate disturbance regimes, coastal zone fluxes, maintaining evolutionary processes and the geographic and temporal variation of plant productivity (McQuillan et al, 2009).
13. Include a definition of ecological restoration consistent with the Society for Ecological Restoration National Standards for the Practice of Ecological Restoration in Australia.
14. Include a definition for a use reliant upon a coastal location in C7.3 or include guidance in Clause C7.2.
15. Amend Table C7.3 to:
    - delete (b); and
    - include an additional qualification requiring the width of the coastal protection area to be measured both landward and seaward from the mean high water mark and extend into coastal waters in accordance with s7 of LUPAA in relation to accretions from the sea.

Longer-term priorities

Develop definitions specific to land use planning - to address the deficiencies in the NAC, endorsed agreed definitions of biodiversity surrogates are required. The NAC requires amendment to incorporate the endorsed definitions. To enable these definitions to evolve as knowledge improves, LUPAA should also be amended to allow amendment of incorporated documents without requiring a subsequent amendment to the planning scheme.

Review and recalibrate the buffer widths in the statutory maps and Table C7.3 to reflect the geomorphology the specific watercourse and the risk associated with different types of existing or potential adjacent and upstream land uses and provide for wider buffers where required to maintain riparian values.

C7.4 USE OR DEVELOPMENT EXEMPT FROM THE CODE

Exemptions establish which natural assets are beyond consideration and therefore potentially at risk. While fewer in number than the draft NAC, the exemptions under the Code remain extensive and are inconsistent with promoting biodiversity conservation and maintaining ecological processes. The exemptions further exacerbate jurisdictional issues with the Forest Practices System. There is also

duplication between the Code exemptions and the exemptions provided under Table 4.4 of the SPPs. Issues with specific exemptions are detailed below.

C7.4.1(a) Exemptions for Crown, State Authority, or council to remedy unacceptable risk

The exemption is broad and unclear in intent and scope as it has no definition of the remedy of an unacceptable risk. As it stands, examples of works that might occur in proximity to waterway or coastal location to "remedy" an unacceptable risk to public or private safety could be the upgrade or building of roads and bridges to reduce accidents, line or pipe a creek or build a levee to reduce flooding, or build or upgrade water supply infrastructure to protect drinking water quality. The scale of these works is not controlled, and the immediacy of the risk is not determined, as such it could apply to some identified future risk that may or may not occur while also resulting in substantial impacts to natural assets.

The waterway and coastal zones are areas that have often been spared development due to risks of flooding or storm surge that has led to the retention of many natural values and often public ownership. With modern engineering techniques it is possible to use these areas for transport infrastructure or to provide capacity to transport additional stormwater from developing catchments which is generally cheaper than acquiring private land or dealing with additional flows at source. There is also capacity for road or other works to significantly impact on terrestrial natural values such as priority vegetation areas. Overall, this exemption could be used in many circumstances without the requirement for avoidance, mitigation or offsets.

This exemption would be supported if the works where restricted to remedying an immediate or imminent high risk to public or private safety with the minimum disturbance to the priority vegetation area or waterway and coastal protection zone.

C7.4.1(c) Exemptions for pasture, cropping and gardens

The purpose of and merit for Clause C7.4.1(c)(i) is questionable. The exemption is broad, unclear in intent and scope and in many instances, unnecessary. For example, if there are 10 hectares of priority vegetation on a property which also contains an area for cropping, is clearance of this vegetation exempt simply because it is located on a parcel containing an existing crop? If so, the exemption is sweeping and could result in the loss of extensive areas of priority vegetation which may have no implications for or relationship to the productive parts of the land. If the exemption requires the presence of priority vegetation to be in proximity to and embedded within pasture or cropping, and its removal to be necessary for the viability of the existing agricultural enterprise, this is not explicit in the exemption. Whereas if the exemption requires the vegetation to be on the actual crop or pasture, the exemption is redundant, as the definition of priority vegetation excludes crops and pasture. This exemption is also inconsistent with other regulations. For example, clearance and conversion of any area of a threatened vegetation community for agriculture would require assessment under the Forest Practices System,

regardless of the size of the patch or whether it was on pasture or crop production land. While it may be appropriate to exempt such clearing if it is for the purposes of agriculture and in accordance with a certified FPP, there is no clear justification or basis for exempting it simply because it is "on existing pasture or crop production land".

Clause C7.4.1(c)(ii), exempting clearance of vegetation in a private gardens, public garden or park, national park, or within State-reserved land or a council reserve, should also be deleted. Vegetation adjacent to a house on private land is capable of meeting the definition of priority vegetation and where this is the case, this vegetation should be subject to the NAC, and not excluded simply on the basis that it is located in a garden. Retention of this exemption will have the effect of removing habitat and amenity from urban or semi urban areas. For example, an individual tree within a private garden can provide nesting habitat for the masked owl. Noting that Table 4.4 1 (g) already exempts removal of this tree for safety reasons, removal of this tree for another purpose, including subdivision, multi-unit development or an extension to the dwelling, should be subject to the Code.

The basis for exempting vegetation clearing simply on the basis of tenure (public garden or park, national park, or within State-reserved land or a council reserve) is also unclear, noting removal and management of vegetation in these circumstances is already exempt under Table 4.4 and other exemptions under C7.4.1 for a range of purposes. These purposes include the provision, upgrade and maintenance of public infrastructure, fire hazard management, maintenance and repair of existing infrastructure, safety reasons and remedying unacceptable risk, protection of water supply and landscaping. Clearance of vegetation within National Parks, State-reserved land and council reserves are of particular concern as these areas are owned by the community and generally set aside for protection of their natural values. Beyond the circumstances provided for in Table 4.4 exemptions and C7.4.1 (a) and (e), impacts on values within a national park, or within State-reserved land or a council reserve should be subject to the Code.

C7.4.1(d) Exemption for forest practices plans

Clause 4.4.1(a) of the SPPs provides an exemption from requiring a planning permit for 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 *Forest Practices Act 1985*, unless for the construction of a building or the carrying out of any associated development.

C7.4.1(d) of the NAC the provides an exemption from the NAC for forest practices or forest operations in accordance with a forest practices plan certified under the *Forest Practices Act 1985*, unless for the construction of a building or the carrying out of any associated development.

C7.4.1(d) essentially duplicates what is already exempt under 4.4.1(a) and the merit of and need for this additional exemption is unclear, noting that:

- both exemptions apply to situations where there is a certified Forest Practices Plan, except where the clearance and conversion/disturbance, or forest practices/forestry operation are for construction of a building or the carrying out of any associated development;
- the clearance and conversion of a threatened native vegetation community and the disturbance of a vegetation community are included in the definition of forest practices and can form part of a forest operation.

The scope and purpose of these exemptions and the differences between them, if any, require clarification.

In addition, while resolving jurisdictional issues and regulatory gaps between the Forest Practices System and planning schemes is welcome and much needed, the exemptions as drafted create jurisdictional uncertainty and have the potential to result in playing off one set of regulations with another. As forest practices include clearance and conversion of vegetation irrespective of the reason for the clearing, applicants could gain approval for vegetation clearing under a FPP and then lodge a development application which does not include bur relies upon this clearing. As a consequence, there will be no ability for the planning authority to consider the appropriateness or impacts of the proposal on priority vegetation or other natural assets in the context of the application otherwise being assessed. A Forest Practices Plan exemption needs to be properly defined and measures included to avoid this obvious loophole.

Consideration also needs to be given to the fact that not all impacts on biodiversity and natural assets arising from development regulated under a planning scheme involve the construction of a building or the carrying out of any associated development. Private and public infrastructure projects and visitor accommodation not involving buildings (eg glamping or campgrounds) are two common examples. The status of subdivisions is also unclear under this exemption. The existence of an external approval should not be relied upon, or exclude assessment, where the criteria used in that approval process do not match the expectations or objectives of the NAC and the associated use or development is otherwise regulated under LUPAA.

In order to resolve jurisdictional certainty and close the regulatory gap, the exemption should not simply replicate the exemption from requiring a Forest Practices Plan contained within the Forest Practices Regulations 2017, but rather reflect the nature and scope of development regulated under planning schemes rather than via the Forest Practices System.

Ensuring a planning scheme does not duplicate the Forest Practices system (or other statues) is supported. However, the proposed exemption goes beyond this by precluding consideration of the impacts of vegetation removal associated with a use or development otherwise regulated under LUPAA. It is not just reasonable for a planning authority to be able to consider the impacts of vegetation removal where the purpose of the clearing has nothing to do with a forestry operation and relates to development of the land, it is central to integrating biodiversity conservation in land use planning decisions. Ensuring vegetation removal associated with a use or development otherwise regulated under LUPAA is assessed

under the NAC also ensures a streamlined and more efficient assessment of proposals and avoids needing to seek permits from multiple regulators. Conversely, leaving the exemption as currently worded is contrary to the Terms of Reference for the preparation of the draft State Planning Provisions as it hinders efficient integration between regulations.

In resolving jurisdictional certainty and closing the regulatory gap, the exemption must also take into consideration the s11 exemptions within LUPAA, which already ensure that nothing in a planning scheme can affect forestry operations conducted on land declared as a private timber reserve (PTR) under the *Forest Practices Act 1985*. Therefore, there is already a mechanism providing an exemption for forestry operations on private land regardless of Code exemptions in a planning scheme. The wording of this exemption extends s11 well beyond the provisions in LUPAA by not just exempting forestry operations within a PTR but all forest practices (including clearing for non-forestry activities) across all zones irrespective of status as a PTR.

C7.4.12(f) Exemption for coastal protection works

C7.4.1(f) allows coastal protection works undertaken by a public authority to proceed in marine and freshwater ecosystems without proper scrutiny and accountability processes. As with any other organisations or individuals, there is a significant variation between public authorities in what is considered acceptable environmental practice in aquatic and marine environments. Over the years some works by public authorities have been high quality while many have also been destructive and unnecessary. Coastal protection works in particular often focus on addressing impacts of coastal erosion on infrastructure without fully considering impact on natural assets and processes. While the exemption requires the works to be designed by a suitably qualified person, there is no definition of what constitutes a suitably qualified person for the purposes of coastal protection works. A civil engineer may be suitably qualified to design a rock wall, however, this does not mean they are suitably qualified to determine whether the rock wall will impact on sand movement or wave action. Coastal protection works also have the potential to impact on other values captured under the NAC, including priority vegetation. Therefore, this exemption not only exempts the works themselves but also the impacts of these works on natural values. This exemption is not supported.

Detailed recommendations for Exemptions

1. Amend exemption C7.4.1(a) to only apply to situations where there is an immediate and imminent unacceptable safety risk.
2. Delete exemption C7.4.1(c).
3. Delete C7.4.1(d) and amend 4.4.1(a) to limit it to forestry operations and potentially also broad-scale clearing for agriculture only, for example ‘vegetation removal if for forestry operations or clearance and conversion of a native vegetation community or native vegetation for agriculture, in accordance with a certified Forest Practices Plan’.

4. Delete C7.4.1(f)

C7.6/C7.7 DEVELOPMENT STANDARDS FOR BUILDINGS AND WORKS/SUBDIVISION

Development standards broadly

Section 3.0 of the SPP's define the 'standard' as "the means for satisfying that objective through either an acceptable solution or performance criterion presented as the tests to meet the objective". Consequently, the wording and scope of development standards is fundamental to promoting biodiversity and achieving the clause objective and Code purpose. Drafting planning scheme ordinance is complex and legalistic and the intent of this submission is not to specify what the development standards should be. Rather it is to identify what the standards need to include to achieve meaningful outcomes and further the Code purpose (noting the Code purpose itself needs to be broadened).

To achieve the Schedule 1 objectives, including promoting biodiversity conservation, and satisfy the clause objective and Code purpose, development standards need to: (i) be satisfied substantively not just procedurally; (ii) establish all stages of the mitigation hierarchy; (iii) achieve real world outcomes; and (iv) be explicit and discoverable whilst still being adaptive to changing knowledge and new information.

Development standards only requiring the decision-maker to 'have regard' to the criteria, as is the case with the majority of the performance criteria in the SPPs generally and in the NAC specifically, limit the consideration of natural assets to a procedural requirement. Whereas, to realise the stated purpose of the Code and objectives of the standards, the decision-maker must be satisfied the development proposal demonstrates it meets the specified criteria and furthers the specified outcomes. Consequently, while the performance criteria as drafted will facilitate consistent procedural integration of natural assets and biodiversity conservation into the decision-making process, they do not require and will not achieve outcomes or further biodiversity conservation. In contrast, whilst variable in their standards, many interim schemes include a substantive requirement to achieve satisfy the criteria and achieve outcomes. Similarly, under the draft NAC (as exhibited [section 25(2)(a)], 7 March 2016), buildings and works in a waterway and coastal protection area, future climate refugia area or priority vegetation area must meet the performance criteria rather than merely 'having regard'. This change in language is a major watering down from the interim schemes and the draft NAC and inconsistent with the Schedule 1 objectives.

All performance criteria also need to be more prescriptive, particularly in relation to values which are so significant and so at risk that development needs to be prohibited. Identifying 'no go' areas is critical to achieving this.

Recommendations

1. Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy'.
2. Amend the performance criteria to be more prescriptive and establish ecological criteria for when loss is unacceptable for different values, enable consideration of cumulative impacts, achieve improved management and protection for remaining values, and enable identification of areas or sites where development is not an option.

C7.6.1 Buildings and works within a waterway and coastal protection area or a future coastal refugia area

Clause objective

The objective of this clause is inconsistent with and fails to achieve the Code purpose, with the Code purpose (Clause C7.1.1) seeking to minimise impacts on waterway values, but the purpose of the Clause relating to where buildings and works are within a waterway and coastal protection area or future coastal refugia area. The implication of this objective is that buildings and works within these areas are acceptable and supported. In the first instance, the objective of this clause should seek to ensure development is designed and located to avoid being located within a waterway and coastal protection area or future coastal refugia area. The ongoing viability of waterway and coastal protection and refugia is dependent on adjacent land use practices. Locating development outside the overlay also minimises future flooding risk. Alternatively, the purpose of the standard could be framed more broadly, and as per the Southern IPSs, referring to buildings and works in proximity to a waterway and coastal protection area or future coastal refugia area rather than within. As a general rule, development or works within 100m of a waterway and coastal protection area or future coastal refugia should have to assess potential impacts.

Acceptable solutions

A1(a) and A2 will apply if a subdivision plan approved under this planning scheme creates a building area on a sealed plan. However, there is no requirement in C7.7.1 to define a building area on any lot created on a plan of subdivision and there are no tests to ensure the creation of such a building area, where located within a waterway and coastal protection area or future coastal refugia area, does not have an unnecessary or unacceptable impact on waterway values and future coastal refugia.

The effect of A1(a) and A2 is to allow development within a waterway and coastal protection area or future coastal refugia area without any assessment of likely adverse and potentially unnecessary and unacceptable impact of this development on waterway values. The requirement in A1(a) and A2 is therefore disassociated from purpose of the Code, the objective for the standard and the subdivision standards which may result in the creation of such a building area.

Notwithstanding, A1(a)/A2 are broadly supported, subject to the performance criteria for the subdivision standards in C7.7.1 being amended to include a requirement for a building area to be identified and demonstrate compliance with appropriate criteria to ensure it does not result in an unnecessary and unacceptable impact (see C7.7.1 below).

A1(b) and A1(c) are not supported and such works within a waterway and coastal protection area should be required to demonstrate compliance with the performance criteria, unless exempt. In relation to A1(b), providing a permitted pathway for a small crossing or bridge has the potential to have an unnecessary and unacceptable impact on natural assets and be contrary to the clause objective, through impeding flow and drainage, obstructing fish passage, impacting riparian vegetation, impacting in-stream habitat and increasing the need for future works. A1(b) is also unclear in its scope and potential impact. Although in general, class 4 watercourses are minor streams under Table C7.3(b), all watercourses in a number of zones are deemed to be class 4 regardless of catchment size. Many of these watercourses are in lowland areas and can be substantial in size conveying large amounts of water. Confining a "crossing or bridge to not more than 5m in width" is also unclear - does this relate to the width of the watercourse or the structure? If the structure, is it the bridge span, ford or weir width or length, and where do you measure this from?

Similarly, even a small extension of an existing facility has the potential to cause an unnecessary and unacceptable impact on natural assets and biodiversity. Requiring the impact of these minor works to be assessed enables minor adjustments to the location to avoid impacts. For example, such an extension may be located in an area containing a threatened marine species and there will be no requirement for any assessment of this impact or consideration of design alternatives to avoid this impact. Similarly, a small crossing or bridge could be realigned to avoid a tree with hollows or a devil den. Notwithstanding, A1(c) has merit as an acceptable solution to C7.6.1 P1.2, but not in relation to C7.6.1 as a whole.

Performance criteria

To be consistent with the objectives of LUPAA and achieve the Code purpose and objective (as recommended), the performance criteria in P1.1 need to include a requirement to demonstrate the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use.

In addition, all performance criteria under C7.6.1 need to be framed to require substantive outcomes rather than procedural consideration, for example:

P1.1 'Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

(a) demonstrate the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use;

(b) avoid, minimise and mitigate adverse impacts on natural assets;

(c) avoid, minimise and mitigate impacts caused by erosion, siltation, sedimentation and runoff;

(d) avoid, minimise and mitigate impacts on riparian or littoral vegetation… etc'

Where works encroach into a waterway and coastal protection area, an additional performance criterion should be included requiring an overall improvement in the condition and function of the riparian zone, including ecological restoration where there is the opportunity for improvement.

Providing the performance criteria for P1.1 are reframed to require substantive outcomes, are expanded to reflect the mitigation hierarchy and include the additional criteria proposed above, the scope of the criteria is broadly supported. In particular, the inclusion of an additional criterion enabling consideration of the need for future works for the protection of natural assets, infrastructure and property is supported. However, P1.1(l) needs to be strengthened to require the proposal demonstrates it is not reliant on such future works, as distinct from minimising the need for them.

C7.6.1 A2/P2 is broadly supported, subject to reframing to require substantive outcomes i.e. change 'having regard to' to 'must' or 'satisfy'.

In relation to C7.6.1 A3/P3, the acceptable solution and performance criteria need to explicitly apply to tidal waters, so as to include marine coastal stormwater outfalls. The acceptable solution of allowing increasing and potentially harmful stormwater providing it doesn't involve a new discharge point is also inadequate. The acceptable solution needs to be amended to require the rate of stormwater runoff to be no greater than the pre-existing runoff rate. The performance criteria also have no real requirement for assessing the ecological impacts of stormwater. An additional performance criterion needs to be inserted to cover ecological impacts/biodiversity.

C7.6.1 A4/P4 is broadly supported, subject to reframing to require substantive outcomes and amending the definition of natural assets as proposed above to include ecological function and ecosystem services.

C7.6.1 A5/P5 is broadly supported, subject to reframing to require substantive outcomes and the performance criteria being expanded to require protection works avoid, minimise and mitigate adverse impacts on natural assets as well as coastal processes, noting this standard applies to watercourse erosion and inundation protection works not just coastal protection works.

Detailed recommendations for C7.6.1

3. Amend the objective of this clause to ensure development is designed and located to avoid being located within a waterway and coastal protection area or future coastal refugia area. Alternatively, frame the objective more broadly and as per the Southern IPSs to relate to

buildings and works in proximity to a waterway and coastal protection area or future coastal refugia area.

4. Separate the acceptable solutions for C7.6.1 into A1.1 and A1.2 and applying to P1.1 and P1.12 respectively, with A1(b) and (c) deleted from A1.1 and A1(c) included as the only acceptable solution for A1.2. Alternatively, A1.1 and A1.2 may be more appropriate as two separate standards with associated performance criteria, consistent with the acceptable solutions in the Southern IPSs for Clauses E11.7.1 and E11.7.2.
5. Amend the subdivision standards in C7.7.1 to ensure: (i) a building area provided for in C7.6.1 A1(a)/A2 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values (see discussion and recommendations on C7.7.1 below).
6. Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy' and expand them to reflect the mitigation hierarchy.
7. Include additional criteria requiring that a proposal demonstrates the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use.
8. Strengthen P1.1(l) to require that a proposal demonstrates it is not reliant on future works, as distinct from minimises the need for them.
9. Amend C7.6.1 A3/P3 to explicitly apply to tidal waters, include a new acceptable requiring the stormwater runoff to be no greater than pre-existing runoff and include an additional performance criterion to address ecological impacts/biodiversity.
10. Amend C7.6.1 P5 to require coastal protection works avoid, minimise and mitigate adverse impacts on natural assets.
11. Identify 'no go' riparian and coastal areas and accompanying performance criteria which prohibit development in these sensitive and at risk areas (acknowledging this requires strategic conservation planning, which is discussed below in 'Other matters').

C7.6.2 Clearance within a priority vegetation area

It is widely acknowledged that the priority vegetation provisions in the NAC are particularly unworkable and urgently require review (Tasmanian Planning Commission 2016). Deficiencies in these provisions create legal uncertainty for planning authorities and landowners, increase costs and foster a protracted assessment and decision-making processes, without furthering biodiversity conservation: green tape without green outcomes.

The key issues are concerns with these provisions are detailed below.

Scope of the clause

As currently drafted, C7.6.2 only applies where clearance of priority vegetation is proposed. However, development regulated under LUPAA may not involve the direct clearing or removal of priority

vegetation but can still significantly impact on this vegetation. For example, disturbance within the tree root protection zone of mature trees can kill the tree but the tree may not be proposed for removal per se. In addition, there may be impacts on threatened fauna which do not involve loss of habitat or vegetation clearing, such as collision risk or disturbance during the breeding season.

Consistent with the draft NAC, Clause C7.6.2 therefore needs to be expanded to apply to disturbance as well as clearance and address both direct and indirect adverse impacts of buildings and works on priority biodiversity values, including threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

Clause objectives

Currently the objectives for a priority vegetation area focus on the undefined concept of 'unreasonable loss' and minimisation. However, the concept of 'unreasonable loss' is undefined and ambiguous and requires definition. Consistent with the Convention on Biological Diversity and objectives of LUPAA, the clause objectives need to promote the conservation of biodiversity and include the full mitigation hierarchy and achieving a conservation outcome.

The objectives for Clause C7.6.2 also need to be expanded to include adverse indirect impacts of buildings and works on priority biodiversity values and adverse impacts on priority species, including but not limited to threatened species.

Acceptable solutions

As with Clause C7.6.1 A1(a)/A2, this acceptable solution is broadly supported, subject to the performance criteria for the subdivision standards in C7.7.2 being amended to include a requirement for a building area to be identified and demonstrate compliance with appropriate criteria to ensure it does not result in an unreasonable, unnecessary and unacceptable impact. Otherwise, the effect of A1 is to allow development within, or impacting on, a priority vegetation area without any assessment of likely adverse and potentially unnecessary and unacceptable impacts of this development on priority vegetation or priority biodiversity.

Performance criteria

Overall, the performance criteria are weak and will only achieve procedural rather than substantive outcomes, are inconsistent with the Schedule 1 objectives and accepted best practice, are not underpinned by science and are not supported by agreed policies or procedures. These deficiencies create legal uncertainty, increase costs and foster a protracted assessment and decision-making processes, without furthering biodiversity conservation. The performance criteria also fail to satisfy the objectives for the standard, with the provision focused on enabling clearance rather than avoiding it and

no performance criteria which would ensure loss is not unreasonable and priority values are appropriately and adequately protected.

P1.1 appears to be a list of circumstances or types of development where impacts on priority vegetation/ biodiversity values may be considered reasonable. This list is extensive and justifies the basis for most impacts. In addition, P1.1(c) also duplicates Clause C7.7.2 P1(c) and is redundant, as C7.7.2 applies to subdivision and includes works associated with subdivision. P1.1 (e) also requires amending to remove the word 'pre-existing' as this wording rewards poor management and degradation and fails to acknowledge that, with appropriate management, many areas of native vegetation are capable of persisting into the future.

P1.2 includes a requirement to minimise the impacts of clearing, having regard to a number of matters. However, there is no requirement to maintain and promote biodiversity or ecological processes as required under s5 and s15 of LUPAA.

C7.6.2 also treats all priority vegetation/biodiversity values equally and fails to include criteria which require consideration of what constitutes an unreasonable loss of priority vegetation/biodiversity value in the context of the conservation significance and requirements of the value. However, the acceptability of impacts (or reasonableness of loss) is species/value and site specific, and scale and context dependent. The loss of a handful of trees on one site may have a significant impact on particular species, whereas the loss of the same number and species of trees at a different site may only have minor impacts on different species. Similarly, a small and highly-disturbed patch of remnant vegetation may be of limited significance in some contexts, but in other contexts can be critical, with some species only found in remnants of poor integrity.

Furthermore, even where the individual impacts of a discrete proposal may be insignificant on their own, the cumulative impacts from multiple developments can potentially degrade critical resources over time. C7.6.2 therefore fails to include performance criteria which establish what level of impact is acceptable for the different categories of priority vegetation/biodiversity value and their relative conservation significance.

This clause also fails to enable consideration of cumulative impacts and fails to identify patches of vegetation or sites where loss is unacceptable and clearing is not an option. As a result, there are no criteria which would enable an application to be refused on the basis that the impact on priority vegetation/biodiversity values was unreasonable, despite this appearing to be one of the objectives of C7.6.2.

The objectives and criteria of the relevant provisions must relate to the significance and requirements of the different categories of priority biodiversity values and guide an outcome that reflects their conservation significance. The structure of the Biodiversity Code under the Southern Interim Schemes provides an example of how this can be achieved, including different performance criteria depending

on the significance of values and including a performance criterion for the highest priority values that enables a development to be refused on the basis that it will substantially impact on the conservation status of biodiversity values in the vicinity of the development. C7.6.2 needs to be amended to provide a similar approach with equivalent requirements.

C7.6.2 P1.2 is also limited to the minimisation and mitigation stages of the mitigation hierarchy, with the avoid stage entirely absent and offsets limited to on-site offsets. This approach is inconsistent with other regulators, the objectives of LUPAA, the precautionary principle and the regional land use strategies and does not reflect current accepted best practice. Any adverse impacts of priority vegetation/biodiversity values should be avoided if there is an alternative, the need for the impact is unreasonable or the impact itself constitutes an unacceptable impact on the value. If it can be demonstrated that no such alternative exists, then the next test is whether the adverse impact is acceptable. Providing an impact is unavoidable, the impact is determined to be for a reasonable purpose and the impact is insignificant, the next steps in the decision-making process should be how to ensure impacts are minimised, mitigated and, as a last resort, offset.

The limitation of offsets to on-site offsets is of particular concern and there should be more options, depending on the scale of the loss. It is acknowledged that implementation of offsets by planning authorities is currently ad hoc and limited, partly as a result of the lack of a coordinated offset program. Notwithstanding, most interim schemes provided for offsets, including offsite and indirect offsets. Given the extent of loss arising from land use planning decisions is often small, protection mechanisms which enable the cumulative impact of small losses to be combined into larger coordinated gains through indirect offsetting is essential. Off-site offsets are also an important mechanism for achieving the clause objective of adequately protecting identified priority vegetation.

Under P1.2, no provision is made for off-site offsets or indirect offsets and no criteria are provided on what constitutes a suitable offset. The implication here is not that a proposal will not be able to proceed where a suitable on-site offset is not available. Rather, the implication is that where an on-site offset is not available or not supported by the applicant, the proposal may proceed without any requirement to offset impacts at all, as long as regard was given to ‘any on-site biodiversity offset’.

It is acknowledged that consistent use of offsetting and protection of values in perpetuity on or off-site as part of the development application process is currently limited to one LGA (Kingborough Council), and not all planning authorities will want to (or have the capacity to) implement offsets. However, an increasing number of planning authorities are requiring offsets and as a minimum, C7.6.2 should provide the opportunity for a range of offset options.

As a function of the narrow definition of priority vegetation and a priority vegetation area, the standards currently only apply to a subset of native vegetation, where this native vegetation is within the statutory overlay. The recommended amendments to definitions and code application go a long way to resolving

this fundamental flaw. However, another approach may the inclusion of additional standards which enable assessment of native vegetation located outside the statutory overlay, as has been implemented under many of the Northern IPSs.

Detailed recommendations for C7.6.2

1. Amend the scope, objectives and provisions of Clause C7.6.2 to apply to adverse direct and indirect impacts of buildings and works on priority biodiversity values, including threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.
2. Amend the objectives to clearly include all stages of the mitigation hierarchy, including first avoiding impacts and demonstrating a net conservation outcome where loss is unavoidable.
3. Amend the subdivision standards in C7.7.2 to ensure: (i) a building area provided for in C7.6.2 A1 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on priority biodiversity values (see discussion and recommendations on C7.7.2 below).
4. Amend the performance criteria to require that the proposal demonstrate compliance with the stated criteria rather than have regard to.
5. Amend and expand the performance criteria to incorporate explicit tests which: (i) establish ecological criteria for when loss is unacceptable for different values, including identification of patches of vegetation, sites or values where loss is unacceptable; (ii) enable consideration of cumulative impacts; (iii) require demonstrated conservation outcomes where loss is unavoidable, including retention, improved management and protection of remaining values; and (iv) provide for a range of offset mechanisms, including off-site and financial, with the offset requirements being a stand-alone clause and expanded.
6. Ensure the standards are applicable to all native vegetation, not just some native vegetation located within the statutory overlay.
7. Amend the standards to apply to disturbance to priority biodiversity values not just clearance of priority vegetation.
8. Include additional standards relating to indirect impacts including collision risk or disturbance during the breeding season.
9. Identify ‘no go’ biodiversity areas and accompanying performance criteria which prohibit development in these sensitive and at risk areas (acknowledging this requires strategic conservation planning, which is discussed in ‘Other matters’).

C7.7.1 Subdivision within a waterway and coastal protection area or a future coastal refugia area

Clause objective

While the clause objectives are broadly consistent with those under Southern IPSs, C7.7.1(a) should be amended to relate to works in proximity to rather than works within a waterway and coastal protection area or a future coastal refugia area. The term 'unnecessary or unacceptable impact' also requires definition.

Acceptable solutions

The acceptable solutions are generally consistent with those under the Southern IPSs. They have been routinely applied with little ambiguity or issue and are considered reasonable. The only exception is C7.7.1 A1 (d), which is redundant as the consolidation of lots is exempt from the NAC under C7.4.1 (g).

Performance criteria

The performance criteria are insufficient to achieve the stated objective of the clause or establish building areas which are then relied upon to meet the acceptable solution under C7.6.1 A1(a)/A2. As discussed above, for this acceptable solution to function as intended, the subdivision performance criteria need to require a building area be established at the sealed plan stage and the location of this building area must meet the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values. The performance criteria in Clause E11.8.1 P1 of the Southern Interim Schemes achieve this by requiring subdivision within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area, must provide for any building area and any associated bushfire hazard management area to be either:

(i) outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area; or

(ii) able to accommodate development capable of satisfying this Code.

To enable C7.6.1 A1(a)/A2 to function and the standards to achieve the Code purpose and clause objectives, equivalent criteria need to be included in Clause C7.7.1 P1.

In addition, all performance criteria under C7.7.1 need to be framed to require substantive outcomes rather than 'having regard to'. Again, the Southern IPSs provide a workable example of how this can be achieved.

Detailed recommendations for C7.7.1

1. Define the term 'unnecessary or unacceptable impact'.

2. Amend C7.7.1(a) to relate to works in proximity to rather than works within a waterway and coastal protection area or a future coastal refugia area will not have an unnecessary or unacceptable impact on natural assets.
3. Delete C7.7.1 (d) and C7.7.2 (d) as the consolidation of lots is exempt from the NAC under C7.4.1 (g).
4. Amend all the performance criteria under C7.7.1 to require the proposal demonstrate compliance with the stated criteria rather than have regard to.
5. Amend the subdivision standards in C7.7.1 to ensure: (i) a building area provided for in C7.6.1 A1(a)/A2 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values, consistent with Clause E11.8.1 P1 in the Southern IPSs.

C7.7.2 Subdivision within a priority vegetation area

Clause objective

Consistent with the discussion above, the objectives need to be broadened to include all priority biodiversity values rather than be limited to priority vegetation. To achieve Code Purpose C7.1.3, the objectives should also be broadened to ensure any subdivision adversely impacting on priority biodiversity values achieves a conservation outcome. The term 'unnecessary or unacceptable impact' also requires definition.

Acceptable solutions

The acceptable solutions are generally consistent with those under the Southern Interim Schemes. They have been routinely applied with little ambiguity or issue and are considered reasonable. The only exception is C7.7.2 A1 (d), which is redundant as the consolidation of lots is exempt from the NAC under C7.4.1 (g).

Performance criteria

The performance criteria are insufficient to achieve the stated objective of the clause or establish building areas which are then relied upon to meet the acceptable solution under C7.6.2 A1. As discussed above, for this acceptable solution to function as intended, the subdivision performance criteria need to require a building area to be established and the location of this building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on biodiversity values.

As with the development standards, the performance criteria focus on enabling subdivision which impacts on priority vegetation rather than avoids it and there no performance criteria which would ensure loss is not unreasonable and priority biodiversity values are appropriately and adequately protected.

P1.1 appears to be a list of circumstances or types of development where impacts on priority vegetation arising from subdivision may be considered reasonable. This list is extensive and justifies the basis for most subdivision. These circumstances require review to ensure they are meaningful and appropriate.

As with C7.6.2, C7.7.2 treats all priority vegetation/biodiversity values equally and fails to include criteria which require consideration of what constitutes an unreasonable impact on priority vegetation/biodiversity value in the context of the conservation significance and requirements of the value. The performance criteria must reflect differences in the significance of priority biodiversity values and set a higher bar for more significant values, including criteria for when impacts on priority biodiversity values arising from subdivision and future development are unacceptable, irrespective of the type of development.

The structure of the Biodiversity Code under the Southern Interim Schemes provides an example of how this can be achieved, including different performance criteria which vary depending on the significance of values and including a performance criterion for the highest priority values that enables a development to be refused on the basis that it will substantially impact on the conservation status of biodiversity values in the vicinity of the development. C7.7.2 needs to be amended to provide a similar approach with equivalent requirements.

C7.7.2 P1.2 is also limited to the minimisation and mitigation stages of the mitigation hierarchy, with the avoid stage entirely absent and offsets limited to on-site offsets. Avoidance and offsetting of impacts is particularly critical at the subdivision stage, as approval of a subdivision with building areas included on the sealed plan will result in a permitted pathway for future development. Therefore, the subdivision provisions need to do the heavy lifting to ensure impacts are avoided where possible, impacts are acceptable, and any conservation outcomes and offsets secured.

Additional performance criteria are also required to achieve Code Purpose C7.1.3 and further the recommended additional objectives, by requiring any subdivision adversely impacting on priority biodiversity values to achieve a demonstrated conservation outcome through the retention and protection of remaining priority biodiversity values outside the area impacted by subdivision works, the building area and the area likely impacted by future bushfire hazard management measures by appropriate mechanisms on the land title.

All performance criteria under C7.7.2 need to be framed to require substantive outcomes rather than ‘having regard to’. Again, the Southern IPSs provide a workable example of how this can be achieved.

Detailed recommendations for C7.7.2

1. Define the term ‘unnecessary or unacceptable impact’.
2. Amend all performance criteria to require the proposal demonstrates compliance with the criteria rather than ‘having regard to’.

3. Amend the subdivision standards in C7.7.2 to ensure: (i) a building area provided for in C7.6.2 A1 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on priority biodiversity values.
4. Amend the performance criteria to incorporate explicit tests which: (i) establish ecological criteria for when loss is unacceptable for different values, including identification of patches of vegetation, sites or values where impacts on priority biodiversity values arising from subdivision and future development are unacceptable; (ii) reflect the mitigation hierarchy; (iii) enable consideration of cumulative impacts; (iv) require demonstrated conservation outcomes where loss is unavoidable, including retention, improved management and protection of remaining values; and (v) provide for a range of offset mechanisms, including off-site and financial.
5. Include an additional performance criterion requiring any subdivision adversely impacting on priority biodiversity values to achieve a demonstrated conservation outcome through the retention and protection of remaining priority biodiversity values outside the area impacted by subdivision works, the building area and the area likely impacted by future bushfire hazard management measures by appropriate mechanisms on the land title.

OTHER MATTERS

Introduction of use standards

As discussed above, the NAC should apply to use where:

- a new use or substantial intensification of an existing use is likely to irreversibly and negatively impact upon waterway values, future climate refugia or priority vegetation; and
- a change of use from a non-habitable building to a habitable building or to a new use with a habitable room is proposed on land in a waterway and coastal protection area, future coastal refugia area or priority vegetation area.

Therefore, use standards are also required.

Application requirements

Application requirements under the SPPs are specified in Clause 6.0 and Clause 6.1.3(b)(vi). These clauses provide the planning authority with the ability to request a site analysis and site plan of the vegetation types and distribution including any known threatened species, and trees and vegetation to be removed. Such a site analysis falls well short of the DPIPWE Guidelines for natural values assessments and the current application requirements included in the Southern and Northern Interim Schemes. The ability to require natural values assessments and field verification under the NAC is unclear as is the requirement for this to be done by a suitably qualified person. The loss of these explicit requirements will decrease clarity around requirements and potentially require these matters to be resolved at appeal. In addition, in the absence of such an assessment, it is generally not possible to

adequately determine or assess the impacts of a proposal, including compliance with the Code requirements.

Explicit application requirements providing a head of power for requiring a natural values assessment need to be reinstated in the NAC.

Policy issues

An integrated and coordinated biodiversity policy framework is an essential component of sustainable development and biodiversity conservation. A consistent biodiversity policy framework across regulators is currently lacking and the NAC has therefore been developed in a policy vacuum. The development of State Planning Policies is critical and a welcome start. However, successful biodiversity policy implementation requires clearly defined and mutually understood objectives and roles and responsibilities across regulators (Clement, Moore & Lockwood 2015:94). To establish consistent policy settings and ensure integration and coordination across regulators, an integrated policy framework for biodiversity and native vegetation is necessary. This policy framework needs to: (i) establish agreed biodiversity conservation objectives and outcomes; (ii) identify scale and value specific surrogates and indicators for biodiversity; (iii) identify the roles and responsibilities of the different regulators; (iv) validate the role of land use planning in biodiversity conservation; (v) directly link to and create obligations under the planning instrument; and, (vi) require reporting on loss and gain by all regulators for all biodiversity surrogates, not just to the Forest Practices Authority for forest communities.

Strategic Planning

Bioregional scale cross tenure strategic planning needs to be undertaken to translate the requirements of Schedule 1 and the broader policy framework into planning schemes and inform identification of areas that are a priority for conservation and protection under the NAC. These plans need to be translated into any reviews of the SPPs, including the NAC, and Local Provisions Schedules and zone application. The Conservation Action Planning process developed the Nature Conservancy is one tool for developing bioregional plans and this approach has been adopted by the North East Bioregional Network in the development of a Land Use Plan for the north east.

Fit-for-purpose decision support tools

The Forest Practices System includes a range of decision-making tools designed to assist the regulators and Forest Practices Officers to comply with the Forest Practices Code and associated regulations. These decision-support tools include Threatened Flora and Fauna Advisors including management prescriptions and species-specific habitat descriptions and technical notes. In contrast, fit-for-purpose decision-support tools specific to land use planning are lacking in Tasmania. Consequently, even where

field verification is undertaken, interpretation of performance criteria is generally reliant on the advice of an expert engaged by applicant.

Development and adoption of agreed definitions, guidelines and management prescriptions specific to land use planning, and which are able to evolve as scientific knowledge changes, are necessary to improve the consistency and reliability of interpretation of performance criteria. These decision-support tools also need to be developed within the broader policy and strategic planning framework discussed above and also be able to be implemented without requiring amendments to the statutory map or NAC.

The agreed procedures and associated management prescriptions and decision-support tools developed by the Forest Practices System (FPS) and their linkage to the Forest Practices Code provide a potential model, subject to review and adaptation for use in a land use planning context. Given the reliance on field verification by a suitably qualified person engaged by the applicant, and the inherent conflict of interest this relationship creates, development of an accreditation system and introduction of formal referral processes would also ensure greater consistency in interpretation and application of performance criteria and improve outcomes for biodiversity conservation.

Other longer term recommendations

As longer-term priorities:

- Amend the performance criteria to be consistent with policy objectives (once established) and give effect to relevant strategic plans, agreed management prescriptions and fit-for-purpose decision-making tools and procedures for specific biodiversity values.
- Introduce an accreditation system for suitably qualified ecologists.
- Introduce formal referral processes for impacts on biodiversity values of Statewide significance, including threatened vegetation communities, threatened species and threatened species habitat.
- Establishment of an independent auditing process to look at how well or not planning laws are protecting biodiversity and more specifically how well Councils are: (a) taking into account biodiversity protection measures in their role as a Planning Authority; (b) how well they are ensuring that the conditions in planning permits are being complied with; and (c) how well they are enforcing breaches of biodiversity related planning matters such as illegal landclearing.

APPENDIX 1 – THE EXTENT (HECTARES) AND PERCENTAGE OF BIODIVERSITY EXCLUDED FROM CONSIDERATION UNDER INTERIM SCHEMES AND THE TPS (DEN EXTER, 2019)

Biodiversity surrogate	Statutory map exclusions				Urban-type zone exclusions				Agricultural zone exclusions				Total Code exclusions			
	Interim		TPS		Interim		TPS		Interim		TPS		Interim		TPS	
	Ha	% statewide total	Ha	% state wide extent	Ha	% urban-type zones total	Ha	% urban-type zone extent	Ha	% state wide total	Ha	% state wide extent	Ha	% state wide extent	Ha	% statewide extent
TNVC	154, 809	52	119,657	37	266	39	650	100	n/a	n/a	119, 007	37	95, 174	29	119,657	37
Native vegetation	4, 004, 669	81	2, 398, 685	48.1	4, 230	63	6, 682	100	n/a	n/a	825, 362	16.5	1, 649, 014	33	2, 398, 685	48.1
Priority vegetation	2, 074, 787	75	796,402	29	3, 603	23	6,756	100	n/a	n/a	789 646	28	755,373	27	796,402	29

Source: Spatial data analysis conducted in 2017-2018 as part of this research. Data derived from: Department of Primary Industries Parks Water and Environment (2013a); Department of Primary Industries Parks Water and Environment (2014); Knight (2018); The LIST (2015a); The LIST (2015b).

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19 August 2022

Mr Brian Risby
Director State Planning Office, Department of Premier and Cabinet
GPO Box 825
HOBART TAS 7001

Dear Mr Risby,

SCOPING PAPER FOR THE TASMANIAN STATE PLANNING PROVISIONS (SPPs)

Thank you for the opportunity to provide input on the scoping of the issues to be considered in the review of the State Planning Provisions.

Please find attached the issues Kingborough Council would like to be considered. The comments are provided in 2 parts, namely:

Part 1 - Strategic considerations for the planning scheme.
Part 2 - Statutory issues in relation to the day-to-day application of the planning scheme.

Council would be willing to participate in further workshops in relation to the above review.

Yours sincerely,

[redacted]
ADRIAAN STANDER
STRATEGIC PLANNER

State Planning Provisions (SPPs) Review

Scope of Issues – Kingborough Council

Part 1 – Strategic Issues	
Issue	Discussion
Complexity and illustrations	The SPPs are complex and often lends itself to different interpretations. If the intention is to have a more contemporary planning scheme and to make the provisions easier to understand, consideration should be given to more illustrations.
Infrastructure contributions	There is no single, coherent legislative framework in Tasmania for applying infrastructure contributions. Instead, powers to levy charges for infrastructure are dispersed across a number of Acts and they are isolated from the planning process. An investigation into infrastructure contribution charging (LGAT has completed work on this) and implementation through the planning framework is therefore urgently required. Infrastructure delivery is fundamental to activating development, ensuring equitable cost distribution and better infrastructure outcomes. Infrastructure charging could also be used to steer the right type of development to the right locations. It is often argued that infrastructure charging is not required, as development will contribute to increased revenues. Even though new development may contribute to increased revenues, rates are traditionally linked to the ongoing provision of recurrent services, facilities, and asset maintenance, and do not enable significant surplus for the provision of new capital works or the more substantial renewal of existing assets, impacted by new subdivisions. It is recommended that the scope includes consideration of provisions in the TPS that will allow the application of infrastructure contributions.
Densification strategies	The Southern Tasmanian Regional Land Use Strategy (STRLUS) provides targets for infill and greenfield development. The plan also identifies targeted areas for densification. However, over the last 10 years, the majority of infill development occurred outside these identified areas or have not been developed in those areas in a manner that support the densification objectives of the strategy. The Draft 30-Year Greater Hobart Plan aims to further the densification objectives of the STRLUS by increasing the infill ratio. The plan recommends a review of the residential provisions to ensure that those densification outcomes are achieved. It is therefore recommended that the scope includes an investigation into the limitation of residential provisions to achieve the densities sought by STRLUS. Part 2 of this table suggest changes that can be made to the zone provisions to increase densification in the targeted densification areas. However, the suggested changes will need to ensure that where

	densification occur, it does not deter from neighbourhood character or result in poor development outcomes. It may be appropriate to consider incentives (for example increased density) for development that goes above the minimum requirements of the SPPs to provide quality design outcomes. Those outcomes should be pitched through a development design guide (refer to comments about improved development design and better neighbourhoods further below).
Housing choice and diversity	Even though the SPPs allow for a range of housing types across the different residential zones, there is not much in the SPPs to encourage housing diversity at a more localised level. Specific Area Plans can be used for this purpose, however Specific Areas Plans that have tried to introduce housing diversity provisions, have not been supported by the TPC in the past. It is recommended that the scope includes consideration of residential provisions that will encourage and facilitate housing choice and diversity at a more localised level (without the need for a SAP). This could include the introduction of inclusionary zoning requirements for affordable housing (see comments below)
Housing affordability	There are currently no mechanisms in Tasmania to encourage housing affordability through the planning framework. Promoting new sources of affordable housing means encouraging provision through the private market of housing options that are more likely to meet the needs of low to moderate-income households now and in the future. Councils in other parts of Australia have introduced requirements in their planning schemes to encourage diverse housing forms. For example: - Leichhardt Council enforces mandatory requirements for diverse multi-unit configurations. - Blue Mountains Council have developed specific development controls for accessible housing, including residential care facilities, hostels, or groups of two or more self-contained units intended to be used for older people or people with a disability. These controls include requirements to ensure that such housing is fully adaptable. - Waverley Council encourages shop top or mixed commercial / residential developments through floor space incentives. Council recommends that the scope includes consideration of: - Overall planning objectives to promote diversity in housing supply; and - Incentives or mandatory provisions for affordable housing allocation in new developments (i.e., a threshold that would require certain sized developments to provide a percentage of affordable housing).

Improved development design and better neighbourhoods	It is important that the SPPs have provisions to encourage liveability and good neighbourhood character. Consideration must be given to an illustrated design guide for residential development that can be implemented through the SPPs. The aim of the guidelines would be to encourage improved development and neighbourhood outcomes specifically in relation to: *Context and neighbourhood character***-** To encourage development that responds to the local context. This is important for all sites, including sites in established areas and those undergoing or identified for change. *Built form and streetscape*- To encourage a built form which exhibits good proportions and a balanced composition of elements that responds to the public domain and contributes to the character of streetscapes. *Density*- To encourage densities that are consistent with the area's existing or projected population. This include consideration if densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment. *Sustainability***-** To encourage development that provides positive environmental, social and economic outcomes. *Landscaping* -To encourage development where landscaping and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. Guidance specifically in relation to the provision of street tree planting as part of subdivision design is required. *Housing diversity***-** To encourage a mix of dwelling sizes at a more localised level, providing housing choice for different demographics, lifestyles and household budgets.
Stormwater management	The SPPs lacks stormwater management provisions. LGAT recently developed a *Tasmanian Stormwater Policy Guidance and Standards for Development* that can be used by Councils under its regulatory powers through both LUPAA and the Urban Drainage Act 2013. However, provisions in the SPPs are required to communicate the Policy and Standards. Without reference to the policy in there SPPs, there is no ability to refuse applications based on inadequate stormwater measures. The Urban Drainage Act also includes a level of uncertainty as to whether it can be applied to non-urban areas. It is recommended that the scope includes consideration of provisions that support the application the *Tasmanian Stormwater Policy Guidance and Standards for Development*.
Vegetation management in urban zones	The SPPs does not allow for the application of the Natural Assets Codes in excluded zones. It is understood that the intention of this restriction is to ensure that land in these zones will be able to be developed primarily consistent with the underlying zone objectives. However, some larger parcels of urban land may often naturally lend itself to the establishment of broader environmental corridors without significantly impacting on the development potential of the land. Similarly, land in the agriculture zone is still capable of being utilised for agricultural or consistent uses whilst still retaining and considering native vegetation.

	Where it is not possible to avoid vegetation and this vegetation is of conservation significance, application of vegetation provisions within urban zones enables the securing of off-site or financial offsets to mitigate the loss. These losses are often small and while seemingly insignificant, the cumulative impact can be considerable. Between 2000 and 2018 over 123 hectares of native vegetation cover has been lost within Urban Zones in the Kingston/Blackmans Bay area. The majority of the losses since 2003 have been offset, resulting in the direct protection of approximately 30 hectares of native vegetation retained and protected under Part 5 Agreements or in new bushland reserves within the urban growth boundary and financial contributions of over $600,000. These financial offsets have now contributed to the protection of a further 69 hectares and revegetation of 6 hectares via the Kingborough Environmental Fund. While offsets were required, no land was unable to be developed for its intended purpose, although in some circumstances the extent and location of development was amended to enable retention of the most significant values. A further 123 hectares remains at risk and vulnerable to loss within Urban Zones. Under the SPPs, the loss of these values is unable to be considered (excluding subdivision in the Low Density and General Residential Zones). It is recommended that the scope of a Priority Vegetation Area is not limited by zone and includes consideration of vegetation management provisions in urban and rural zones where the location of vegetation provides critical links or buffers to broader significant and protected environmental corridors. The intention would not be to sterilise the use the land, but instead to consider complimentary design outcomes that would encourage the retention of those important links and provide for a range of offset options where it is not feasible to retain these values. This issue is further discussed in relation to specific zone provisions in the Low Density, Rural Living, Rural and Landscape Conservation Zone and the Natural Assets Code.
Active travel	Even though the SPPs include requirements for bicycle parking in new developments, it is recommended that the scope include a more detailed investigation to look at ways the SPPs can increase the uptake of active travel options in new subdivisions and developments. The SPPs are not doing enough to reduce private car use to support more sustainable travel options. The SPPs must have a stronger focus on alternative transport modes, specifically to encourage cycling and walking to link new growth areas with urban centres or places of employment. One of the key aspects to consider with cycling in particular, is the provision of bicycle parking and of end-of-trip facilities in new developments. Please refer to the comments under the General Residential and Inner Residential Zone provisions as well as the Parking and Sustainable Transport Code.
Drafting of performance criteria	Throughout the SPPs, the performance criteria are drafted such that complying with the criteria only requires ‘having regard to’ a range of considerations in the exercise of the discretion. This reduces key tests within the performance criteria to a

	procedural consideration and reduces certainty for the applicant and the community. It is recommended that the Performance Criteria are drafted to ensure the criteria and tests are satisfied rather merely considered.
The role and scope of the planning scheme v building regulations	The introduction of Interim Planning Directive 1, which saw the removal of habitable buildings and visitor accommodation as a vulnerable use from the Bushfire-Prone Areas Code, was the first step in removing responsibility for addressing hazards and wastewater from the planning stage and devolving it to the building stage. The SPPs continue this approach, increasing the reliance on the Building Regulations and the National Construction Code (NCC) to address a range of hazards and in doing so largely devolve responsibility to building surveyors. While the design detail is appropriately dealt with at the building (and plumbing) stage, issues relating to bushfire, coastal erosion, inundation/flooding, stormwater, on-site wastewater and trade waste need consideration at the planning stage. Relying on building approvals to identify these issues is problematic as: • the building surveyor may not have access to the relevant information to identify the issues, resulting in the hazard not being addressed; • solutions to these issues often trigger the need for further planning approvals, which did not form part of the original planning permit e.g. vegetation removal, works in a waterway, works on land external to the subject land; • solutions may be costly and make the development unviable; • solutions may not be available. For example, some business activities may not be able to pre-treat waste to levels required to prevent harm to the receiving environment. Early identification of these issues is necessary at the planning stage to prevent duplication of effort for consumers having to go back through the planning stage or to avoid investment in approvals where the development is not feasible or incapable of addressing the risk. Planning policy and planning strategic direction can be developed for the above matters to enable the application of development controls based on the big picture for a particular area to ensure use and development is appropriate and sustainable for the specific location. The Building Act and NCC are not catered to perform these functions. The NCC is a performance-based code that sets the minimum requirements in relation structure, fire safety, access and egress, accessibility, health and amenity, and sustainability. Expecting Building Surveyors to address any of the above is setting unreasonable and unrealistic expectations with the net outcome being the progressive, unchecked erosion of natural values. We urge you to please consider amending the SPPS to enable assessment of all hazards and storm/waste water issues at the planning stage, including: Deleting the following exemptions: C10.4.1 (a); C11.4.1 (a); C15.4.1 (d); amending Code E13.0 to apply to habitable buildings (see submission on E13.0 below); and

	reinstating a stormwater code.	
Part 2 – Statutory Issues		
Section	Clause/Provision	Issue(s) Raised
4.0 Exemptions	4.1.4 home occupation	Please include *'cause interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise'*.
	4.5.1 ground mounted solar energy installations	Please include a height restriction.
	4.2.2-4.6.16	Please include limitations on exemptions which limits the exemptions to buildings and works which do not have the potential to impact on important natural and landscape values, heritage values or be exposed to natural hazards. Currently limitations on exemptions are varied, with many (but not all) not applicable where the Heritage Code and some hazard code apply or the buildings and works are within 30m of a waterway or threatened vegetation. However, these limitations appear ad hoc and there is no logic to why or when the exemptions are limited. Apart from unacceptable risk, emergency works or where the development is appropriately and fully assessed under other legislation, development should be limited to where there is not: (a) a code relating to local historic heritage or significant trees applies and requires a permit for the use or development; (b) a code in this planning scheme which expressly regulates impacts on natural values and requires a permit for the use or development; (c) a code in this planning scheme which expressly regulates impacts on scenic or landscape values and requires a permit for the use or development; (d) a code relating to coastal erosion hazard applies and requires a permit for the use or development; (e) a code relating to coastal inundation hazard applies and requires a permit for the use or development; (f) a code relating to flood-prone hazard applies and requires a permit for the use or development; (g) a code relating to bushfire hazard applies and requires a permit for the use or development; and

		(h) a code relating to landslip hazard applies and requires a permit for the use or development. Therefore, the following exemptions should all include a qualifier where the exemptions do no apply in the above circumstances: 4.2.2; 4.2.3; 4.2.4; 4.2.5; 4.2.7; 4.2.8; 4.2.9; 4.3.3; 4.3.5; 4.3.6; 4.3.7; 4.3.8; 4.3.9; 4.3.11; 4.4.2; 4.4.3; 4.5.1; 4.5.3; 4.6.3; 4.6.4; 4.6.5; 4.6.6; 4.6.7; 4.6.8; 4.6.9; 4.6.10; 4.6.13; 4.6.14; 4.6.15; and 4.6.16.
	4.4.1 vegetation removal for safety or in accordance with other acts	Please review the exemptions contained within 4.4.1. While the intent of many of these exemptions is understood and supported, the scope of the exemptions goes beyond safety and in accordance with other acts and creates broad-ranging exemptions which have the potential to create jurisdictional issues and impact on important vegetation. Of particular concern are the following exemptions: (a) *'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 Forest Practices Act 1985, unless for the construction of a building or the carrying out of any associated development*' – this exemption applies irrespective of why the vegetation is being cleared and enables applicants to play one system off against another, even where vegetation removal is for the purposes of enabling a development regulated under the planning scheme or the use resulting from the vegetation removal is otherwise prohibited. Two examples are provided below: (i) obtaining an FPP to clear and convert a site for a commercial development on land zoned Landscape Conservation prior to obtaining permits under LUPAA, only to apply to rezone and develop the site and use the FPP and subsequent clearing to justify the rezoning. This is not hypothetical and such situations have already arisen in Kingborough; (ii) obtaining a certified FPP to clear and convert a threatened vegetation community within the Landscape Conservation Zone for plantation forestry, despite the use being prohibited in the Zone. As the clearance and conversion is not for the purposes of the construction of a building or the carrying out of any associated development, the exemption applies. Therefore, providing a certified FPP is obtained, plantation forestry benefits

		from this exemption and there are no controls on the use even where prohibited. Ensuring a planning scheme does not duplicate the Forest Practices system (or other statues) is supported. However, the proposed exemption goes beyond this by precluding consideration of the impacts of vegetation removal in zones such as the Landscape Conservation Zone where the basis for the clearing is discretionary or even prohibited. Where a Council has applied this zone, it is reasonable for them to be able to consider the impacts of vegetation removal on the zone objectives and against the zone standards, especially where the purpose of the clearing may have nothing to do with a forest operation and may in fact relate to the future use and development of the land. It is also reasonable that where a use is prohibited, such as plantation forestry, an exemption cannot be relied upon to enable this use to proceed without needing a permit at all. The scope of the exemption is also unclear, being limited to clearance and conversion of a threatened native vegetation community or disturbance of a native vegetation community. This suggests that clearance and conversion of a non-threatened native vegetation community is not covered by the exemption and nor is disturbance of a threatened native vegetation community. As a threatened native vegetation community is of much higher conservation status than a non-threatened vegetation community, it seems perverse the exemption would apply to the higher conservation community but not the lower. Please consider amending this exemption to read: *'vegetation removal if for forestry operations or clearance and conversion of a native vegetation community or native vegetation for agriculture, in accordance with a certified Forest Practices Plan, unless the proposed use or development is discretionary or prohibited under the Zone'.* (b) *'harvesting of timber or the clearing of trees, or the clearance and conversion of a threatened native vegetation community, on any land to enable the construction and maintenance of electricity infrastructure in accordance with the Forest Practices Regulations 2017'* – this exemption is simply cross-referencing the exemption provided

		for in (4)(l) of the *Forest Practices Regulations 2017* and is essentially saying that as long as the Forest Practices Regulations exempt this vegetation removal, it is also exempt under the planning scheme. provides an exemption relying on an exemption under the Forest Practices Regulations to exempt vegetation. However, the relevant act exempting vegetation removal for electricity infrastructure is the *Electricity Supply Industry Act 1995*. This legislation provides a range of exemptions for vegetation removal required for the installation, maintenance and repair of electricity on public land or where the electricity entity proposes to carry out the work and vegetation removal is necessary for the protection of the infrastructure or public safety. The exemptions under the Electricity Supply Act 1985 adequately provide for what is necessary and duplicating the exemption under the Forest Practices Regulations 2017 and applying them via the SPPs is inappropriate. Where the installation of new private electricity infrastructure is proposed or required as part of a development otherwise regulated under the planning scheme, this vegetation removal is appropriately exempt from requiring an FPP but should be subject to assessment under the scheme. Please consider deleting this exemption. See also the discussion on C7.4 exemptions.
	4.4.2'landscaping and vegetation management'	Please consider including an additional limitation to the application of this exemption, where the Natural Assets Code applies and requires a permit for the use or development. Significant habitat for threatened species can occur within private gardens, such as individual trees which can provide nesting habitat for the masked owl. Where landscaping or vegetation management negatively impacts on important vegetation otherwise subject to the NAC, these impacts require consideration against the requirements of the Code. State reserved land and Council reserves are public assets and often reserved because of their important natural values. Internal government processes are not appropriately relied upon where landscaping or vegetation management negatively impacts on these values.
	4.4.3 'vegetation rehabilitation works'	Please consider including a limitation to the application of this exemption, where the Natural Assets Code applies and requires a permit for works. Stream bank protection works should also be limited to works required to address an imminent safety risk or emergency situation. Such works, if not appropriately designed, can have a significant impact on waterways, including

		water quality, streambed and stream bank stability and condition downstream, riparian vegetation and aquatic species.
5.0 Planning Scheme Operation		Please include a section about the operation of the incorporated documents and how they can be updated. The LPSs are likely to include reference to Council Policies that are reviewed and updated regularly and the only way to update them in the planning, is through a planning scheme amendment. This process is considered onerous, and it is requested that an alternative and more simplified process be introduced to deal with this matter. It is understood that the main reason for the planning scheme amendment process is to ensure that an opportunity for public input is provided. If this is the only reason, a section can be included to require that incorporated documents may updated without the need for a planning scheme amendment if documents have been subject of public consultation. It may be appropriate to set some guidance around those public exhibition requirements. Alternatively, provide confirmation that that the urgent amendment process can be used for this purpose.
6.0 Assessment of an Application for Use or Development	6.1 Application Requirements	Please consider including specialist reports addressing the relevant standards as one of the forms of additional information the planning authority may require. Within each Code, the specifics of specialist reports which may be required should also be detailed, consistent with the Southern Interim Schemes.
	Table 6.2 Use Classes	Please consider use class for '*artisan food and drink industry'* to support the growing artisan and craft food and drink industry in Tasmania. This will provide clarity for operators like microbreweries or cheese makers by establishing a new definition that reflects the nature of these uses which does not always neatly fit into the use classes. These uses have a component of manufacturing, but often also includes a retail area for the sale of the products, a restaurant or cafe, or facilities for holding tastings, tours or workshops. Please consider a use class for *'shacks'* or accommodation not intended for commercial hire and also not intended to have be permanently occupied or used as a dwelling also needs consideration. Currently if someone wishes to have low key accommodation for their own enjoyment, they are forced to either construct a full dwelling or hire it out as visitor accommodation. There is a place for small, low-key, sensitive holiday accommodation which should not have to meet the same requirements as a dwelling.

7.0 General Provisions	S7.3 Adjustment of a Boundary	Please consider a new section or reference to the re-organizing of lots in the Rural Zone (i.e., where the adjustment is not minor, but will not create additional parcels of land). In addition to the tests in the Rural Zone, such a provision should also enable consideration of natural values and hazards and contain performance criteria similar to the Rural Resource Zone in the Southern Interim Planning Schemes.
All Zones	Discretionary use standards	All zones should have discretionary uses standards specific to each Zone to ensure discretionary uses are consistent with the Zone Purpose e.g., 20.3.1 and 21.3.1.
	Access requirements	The Rural, Agriculture and Landscape Protection zones include a clause requiring a new dwelling has appropriate vehicular access to a road maintained by Council. The intent of this clause is supported. However, it is unclear why it is only included in these two zones when the issue is relevant to all zones, or why it is limited to new dwellings, when ensuring compliant practical and legal access is relevant to all development regulated under the Scheme. To limit it as currently drafted suggests otherwise and will result in uncertainty regarding access requirements for other zones and other types of development. Please include an equivalent requirement in all zones and amend the objective and standards to reference development rather than 'new dwelling'.
8.0 General Residential Zone	8.4.1 Residential Density	Please consider changing A1 as follows: *Multiple dwellings must have a site area per dwelling of not less than 325sqm unless it is located in a targeted densification area identified by a regional strategy'* As mentioned in Part 1, please consider incentivising development that goes beyond the minimum requirements of the SPPs to improve development outcomes.
	8.4.3 Site coverage and private open space for all dwellings	Under the discretionary provisions, consider a reduction of the private open space requirements per dwelling where a proportion of the private open space is provided as part of

		a communal private open space area. The provision should clearly state that the communal private open space area to be accessible to all residents at all times.
	8.6.2 Roads	The performance criteria require to be broadened to provide better guidance for active travel options within subdivisions. Please consider the following changes under P1. Change (a) to any road network plan *and cycle network plan* adopted by Council. Under (h) also refer to *"Cycling Aspects of Austroads Guide".*
9.0 Inner Residential Zone		Please consider a review of the Inner Residential Zone in its entirety. The development outcomes that can be achieved under the SPPs are not that different from the General Residential Zone. The Inner Residential Zone is likely to be applied to areas that are earmarked by STRLUS as densification areas and even though the current provisions allow for smaller lot sizes, they are often developed with larger dwellings with poor development outcomes. Please consider making Multiple Dwellings permissible and Single Dwellings discretionary in this zone. Also, where small lots are introduced, consider a smaller site coverage to encourage multi story development, with improved amenity outcomes in relation to the overall bulk and scale of development but also with the intent to improve residential amenity in terms of solar access, private open space, landscaping and parking/cycling facilities. Once again, it may be appropriate to link development outcomes in this zone to development guidelines which promote outcomes over and above the minimum standards of the SPPs.
	9.6.2 Roads	The performance criteria require to be broadened to provide better guidance for active travel options within subdivisions. Please consider the following changes under P1. Change (a) to any road network plan *and cycle network plan* adopted by Council. Under (h) also refer to *"Cycling Aspects of Austroads Guide"*
10.0 Low Density Residential Zone		Please consider extending the Zone purpose to include natural and scenic landscape values and include of vegetation management provisions in the Low-Density Residential Zone. The Low-Density Residential Zone is commonly applied to larger residential lots that are often heavily vegetated. The vegetation on these lots often provides critical links to much broader and protected environmental corridors as well as scenic landscape and amenity values.

		Development could still occur on those lots in a manner that support the underlying development, but in a manner that encourage and compliments those corridors.
11.0 Rural Living Zone	11.4.1 Extent of development	Please consider inclusion of general native vegetation removal and cut and fill provisions. While there is a broad requirement to have regard to the need to remove vegetation where the area of site covered by roofed buildings exceeds 400m^2, the site coverage of roofed buildings is only a small component of development within this zone, cut and fill and vegetation removal associated with access, works, buildings and bushfire hazard management all key components of development. However, there is no requirement for consideration of cut and fill or vegetation removal where site coverage is less than 400m^2 or for purposes other than the footprint of a roofed building. As a result, the objectives of this clause will not be met through A1/P1. Under the current Southern Interim Schemes, buildings and works in the Environmental Living Zone are discretionary where they require removal of native vegetation and complying with the performance criteria require: (i) there are no sites clear of native vegetation and clear of other significant site constraints such as access difficulties or excessive slope, or the location is necessary for the functional requirements of infrastructure. (ii) the extent of clearing is the minimum necessary to provide for buildings, associated works and associated bushfire protection measures. There are also design criteria for cut and fill. These criteria work well and ensure development in this zone does not unnecessarily impact native vegetation, land stability or amenity. While some native vegetation and land stability issues will be subject to the NAC and Landslip Hazard Code, not all native vegetation is priority vegetation and not all significant cut and fill is within a Landslip Hazard Area. In addition, native vegetation also provides other functions and services in the Rural Living Zone, including the character and amenity of the area.
13.0 Urban Mix Use Zone		If the intention of the zone is to provide for a mix of uses, the provisions should be adjusted to ensure that it occurs. For example, where a property is located in the Urban Mix Use Zone, it should not be able to be developed solely for residential purposes unless it forms part of a broader development project to provide mixed uses. Please include provisions that will ensure the land in the Urban Mix Use zone is developed consistent with the objectives of the zone. Where a permit application is for a single purpose in the zone, it should be discretionary.

20.0 Rural Zone	Additional extent of development provisions – vegetation removal	Please consider inclusion of general native vegetation removal provisions. There are no requirements for buildings and works or subdivision to have any regard to native vegetation. Under the current Southern Interim Schemes, buildings and works in the Rural Resource Zone are discretionary where they require removal of native vegetation and complying with the performance criteria require: (i) there are no sites clear of native vegetation and clear of other significant site constraints such as access difficulties or excessive slope, or the location is necessary for the functional requirements of infrastructure. (ii) the extent of clearing is the minimum necessary to provide for buildings, associated works and associated bushfire protection measures. These criteria work well and ensure development in this zone does not unnecessarily impact native vegetation, noting there are also considerable exemptions for vegetation removal on existing pasture and cropping land and in accordance with a certified Forest Practices Plan. While some native vegetation will be subject to the NAC, not all native vegetation is priority vegetation. In addition, native vegetation also provides other functions and services in the Rural Zone, including screening and soil retention.
	Setbacks	Please consider more generous setbacks, noting that for the Rural Resource Zone under the Southern Interim Schemes the front setback is 20m and side and rear setbacks is 50m, whereas under the SPPs it is only 5m. A 5m setback in a zone which allows an extensive range of uses often accompanied by large outbuildings, is grossly inadequate to allow ensure these uses do not fetter or impact on adjacent existing uses or maintain any meaningful buffer or screening. A building within 5m of the boundary also has the potential to impact on vegetation located on adjacent land through the severing of the root zones (which can extend out to 15m). A minimum setback of 20m should be considered for this zone.
21.0 Agriculture Zone	Additional extent of development provisions – vegetation removal	Please consider inclusion of general native vegetation removal provisions. There are no requirements for buildings and works or subdivision to have any regard to native vegetation. This is of particular concern given a Priority Vegetation Area cannot apply to the Agriculture Zone.

		Under the current Southern Interim Schemes, buildings and works in the Significant Agricultural Zone are discretionary where they require removal of native vegetation and complying with the performance criteria require: (i) there are no sites clear of native vegetation and clear of other significant site constraints such as access difficulties or excessive slope, or the location is necessary for the functional requirements of infrastructure. (ii) the extent of clearing is the minimum necessary to provide for buildings, associated works and associated bushfire protection measures. The criteria in the Southern Interim Schemes work well and ensure development in this zone does not unnecessarily impact native vegetation, noting there are also considerable exemptions for vegetation removal on existing pasture and cropping land and in accordance with a certified Forest Practices Plan. In addition, native vegetation also provides other functions and services in the Agriculture Zone, including screening and soil retention.
	Setbacks	Please consider more generous setbacks, noting that for the Rural Resource Zone under the Southern Interim Schemes the front setback is 20m and side and rear setbacks is 100m, whereas under the SPPs it is only 5m. A 5m setback in a zone which allows an extensive range of uses often accompanied by large outbuildings, is grossly inadequate to allow ensure these uses do not fetter or impact on adjacent existing uses or maintain any meaningful buffer or screening. A building within 5m of the boundary also has the potential to impact on adjacent uses including shading of agricultural crops. A minimum setback of 20m should be considered for this zone to enable adequate screening and buffers.
22.0 Landscape Conservation Zone	General comment	The removal of the Environmental Living Zone has caused the residential use class to become discretionary in the Landscape Conservation Zone. Kingborough Council strategically placed land zoned Environmental Living, similar to Rural Living, as land suitable for providing different housing choice such as rural living or lifestyle housing in the IPS. The Environmental Living Zone provides greater lifestyle choice and previously, the zone provided for permitted residential use and development whilst considering site constraints. The SPP now has a considerable gap in the residential suite of zones and in particular that which caters for lifestyle lots and recognition of natural values. Please consider reintroducing the Environmental Living Zone.

		This would also allow the Landscape Conservation Zone to achieve its intended purpose of providing stronger protections on private land. Alternatively, it is recommended that consideration be given to reinstating the Environmental Living Zone, removing the Landscape Conservation Zone and including provisions in the Environmental Management Zone which are applicable to private land.
	Discretionary uses	Please consider amending the objective of this clause to requirement discretionary uses to provide for the protection, conservation and management of landscape values and amending the performance solution to include a requirement that discretionary uses further the zone purpose and clause objective. In the absence of this amendment, there is no mechanism for the zone purpose to be fully realised.
	Setbacks	Please consider more generous setbacks, noting that for the Environmental Living Zone under the Southern Interim Schemes the setback is 30m, whereas under the SPPs it is only 5m in the Landscape Conservation Zone, which in our understanding is intended to prioritise conservation over development. A 5m setback is grossly inadequate to ensure development meets the Zone purpose or the objectives of Clause 22.4.2. A building within 5m of the boundary also has the potential to impact on vegetation located on adjacent land through the severing of the root zones (which can extend out to 15m). A minimum setback of 20m should be considered for this zone.
	Landscape protection	The intent of this clause is supported. However, it does not achieve its objective (or the zone purpose) as the performance criteria do not include any requirement for protection of the landscape values and balance of the site, only management. Please consider amending the performance criteria to achieve this.
	Lot design	A1 (a) (i) is supported in its intent. However, the wording is ambiguous and suggests that to satisfy this acceptable solution the applicant simply needs to remove the native vegetation cover prior to lodging the application. For clarity, please consider amending to state the building area does not contain native vegetation or where native vegetation cover has been lawfully removed, even where the building area does not impact on native vegetation, the bushfire hazard management, access and services may impact on native vegetation and these impacts require consideration against the performance criteria. Therefore, (a) (i) should be

		amended to ensure the building area, access, bushfire hazard management and services are located outside of and do not impact on areas containing native vegetation. In addition, the requirement for the building area and bushfire hazard management to be clear of native vegetation should also be a performance solution not just the acceptable solution, as reducing the minimum lot size to 20 hectares should only be possible where there is existing cleared land to contain the development. In the absence of this requirement, there will be significant fragmentation across the landscape. Please consider these amendments.
23.0 Environmental Management Zone	Setbacks	Please consider more generous setbacks, noting that for the Environmental Management Zone under the Southern Interim Schemes the setback is 30m, whereas under the SPPs it is only 5m. A 5m setback is grossly inadequate to ensure development meets the Zone purpose or the objectives of Clause 23.4.2. A building within 5m of the boundary also has the potential to impact on vegetation located on adjacent land through the severing of the root zones (which can extend out to 15m). A minimum setback of 20m should be considered for this zone.
30.0 Future Urban Zone		Please reconsider this zone in its entirety. The zone can currently only be applied to areas inside the Urban Growth Boundary. Please consider changing the zone provisions or introduce a new zone which specifically aims to reserve land for future development outside the UGB where it has been identified by a local land use strategy for future development, but where further investigation, studies, structure planning and an amendment to the UGB is required. The intention of the zone would be to avoid fragmentation of the land until the UGB is amended.
C1.0 Signs Code		There should be a greater emphasis on consolidation of signs. Please consider rationalisation provisions through the use of common directory pylon signs for multi-occupancy developments and by limiting the number of signs that may be erected on a building or site.
C2.0 Parking and Sustainable Code	C2.6.7	A1- please consider removing or lowering the 5-bicycle trigger to comply with acceptable solutions (a) to (d). The solutions should apply to all bicycle facilities regardless the number of

		spaces. Under (d) also include reference to the *"Austroads Parking Facilities – Updating the Austroads Guide to Traffic Management".*
	Table C2.1	The bicycle requirements should be increased, particularly in urban areas where sustainable transport options are encouraged. Please consider increasing the number of bicycle parking spaces in in more urbanised centres, particular in employment centres and areas that are specifically identified for increased densities as per the Regional Land Use Strategy. Please consider including bicycle parking requirements for Multiple Dwellings.
C7.0 Natural Assets Code	C7.1 Code Purpose	While broadened from the draft NAC, there are remain significant limitations with the scope of natural assets and biodiversity values captured under the NAC, with landscape function and ecosystem services and non-threatened native vegetation, species and habitat largely excluded. The NAC also limits consideration of impacts to the direct clearing of priority vegetation and does not enable consideration of other threats to biodiversity not involving vegetation clearing (such as collision risk and disturbance to threatened species during breeding seasons). The NAC purpose also emphasises minimisation and does not acknowledge other stages in the mitigation hierarchy, notably avoid, mitigate and offset, despite their broad acceptance internationally and within Tasmania. Please consider amending the purpose to provide for the following: • address adverse indirect impacts of development including collision risk and disturbance during breeding. • reflect all stages of the mitigation hierarchy in the Code Purpose, Clause objectives and standards, with the first stage being to avoid impacts, followed by minimise and mitigate and, only as a last resort, to offset where residual impacts cannot be avoided or mitigated. • biodiversity values broadly, not just priority vegetation, including landscape ecological function, ecosystem services, habitat corridors, genetic diversity, listed and non-listed species and native vegetation broadly.

	C7.2 Code application	The limited application of a Priority Vegetation Area to specified zones is not supported and contrary to the Schedule 1 objectives. Given much of the clearing associated with development regulated by planning schemes is in the urban type zones, and this clearing is not restricted to subdivision but includes industrial development, multi-unit housing and commercial development, the NAC should be able to be applied within any zone and to all relevant development types if the values are present. Within Kingborough, priority vegetation as currently defined under the NAC, exists within most zones, including General Residential, Low Density Residential, Inner Residential, Commercial, Local Business, Light Industrial and Urban Mixed-Use zones. Therefore, applying the NAC only to the listed zones would exempt important patches of threatened native vegetation and significant threatened species habitat from the Code all together while requiring immediately adjacent areas to be subject to the Code, or only subject to the Code if for a subdivision (but not multi-unit housing?) creating equity issues. There are also situations where the development site itself might not contain the value, but depending on where the development is located and how it is designed, it may impact on adjacent threatened native vegetation communities or significant threatened species habitat. It is acknowledged that a higher degree of certainty around development potential may be required in the urban-type zones and this can be achieved through establishing clear special circumstances, which provide a pathway for multi-unit housing and subdivision in the General Residential, Inner Residential, Village, Industrial, Commercial and Urban Mixed Use Zones whilst still allowing for consideration of impacts on priority vegetation. There are also considerable concerns around the exclusion of the Agriculture Zone from a Priority Vegetation Area. It is acknowledged that much of the land use change in rural areas is controlled under other regulations (principally the Forest Practices Regulations). Furthermore, where clearing in the Agriculture Zone relates to broad scale clearing for agriculture or forestry and is undertaken in accordance with a certified Forest Practices Plan, it is already exempt from the Code under both Clause 4.4.1(a) and Clause C7.4.1(d), regardless of whether it is within a priority vegetation area. Therefore, the exclusion of the Agriculture Zone from a priority vegetation area is redundant in these instances.

		However, where development is ancillary to an agricultural use and is otherwise regulated by planning schemes, such farm buildings, residential development and tourism ventures, and a permit has been issued under LUPAA, it is exempt from requiring a Forest Practices Plan and excluded from the NAC. Therefore, unless the NAC is amended to enable a priority vegetation area within the Agriculture Zone, the identification, assessment and consideration of the potential impacts of these developments on biodiversity will be precluded under the NAC and will not be addressed via the Forest Practices System. As the purpose of the Agriculture Zone is to protect agricultural land for agricultural uses, ancillary development within this zone will be pushed into those parts of a site not utilised for agriculture, namely the areas containing native vegetation, with no consideration of the impact on this vegetation or potential alternative locations for the development. While providing valuable habitat and connectivity for many species, native vegetation (not just threatened vegetation) also provides a healthy ecosystem by controlling or reducing erosion and salinity, regulating water flows, ameliorating climate change and facilitating crop pollination. Excluding zones also creates inconsistencies between regulations and perpetuates the existing regulatory gaps between the application of the NAC and other regulations. For example, assessment of a Level 2 activity involving clearing of land zoned Industrial is able to consider the impacts of the clearing on threatened native vegetation. Similarly, the Forest Practices System does not exempt a Private Timber Reserve (which is essentially a form of land use allocation or 'zoning') from meeting the requirements of the Forest Practices Code. Allowing clearance and conversion of any threatened native vegetation, wherever it occurs, is in direct conflict with the NCA, EPBC and the Forest Practices Act 1985 and Regulations. Limiting application of a priority vegetation area to specific zones also results in perverse zoning outcomes, with many planning authorities proposing to use the Rural Zone rather than the Agriculture Zone, or applying split-zoning, as a consequence of the zone exclusions. We therefore urge you to consider enabling a priority vegetation area to apply to all zones.
	C7.3 Definitions – priority vegetation area	The definition of a priority vegetation area is limited to land shown on an overlay as being within a priority vegetation area. As a result, vegetation meeting the definition of priority

		vegetation can only be considered where this vegetation is located within the statutory priority vegetation area overlay. As a result, what can be considered under the Code is reliant on desk-top data not what actually exists on the ground. This may result in many high priority values being lost without consideration, particularly when relying on data known to be inaccurate. An overlay is also static whereas habitat is dynamic, with factors such as fire, drought flooding, climate change, vegetation senescence and regeneration. These factors can also vary in scale, intensity and duration. It is inherently problematic to limit the definition of a priority vegetation area to a statutory overlay, which is a static map, based on dynamic natural processes. Relying on a statutory map to identify where values do and do not exist is also inconsistent with regulation of vegetation removal under the Forest Practices System, for Level 2 activities and under the EPBC Act 1999. While limiting the definition of a priority vegetation area to a statutory overlay creates legal certainty for the landowner or developer, it also has the potential to result in perverse outcomes for biodiversity by completely missing the values the overlay is trying to protect, undermining the purpose of the Code. Conversely, relying on a statutory overlay may also impose unnecessary costs on developers at the development application stage where land mapped as having 'priority vegetation' is ultimately proven not to be the case. Consistent with the definitions of a waterway and coastal protection area, landslip hazard area, coastal erosion hazard area, flood prone area, we urge you to please consider amending both the Code application and definition of a priority vegetation area to apply to land outside the statutory map where the planning authority reasonably believes, based on information in its possession, that the land contains or has the potential to contain priority vegetation.
	C7.3 Definitions	There are a number of critical terms which are not adequately defined, making application and interpretation of the NAC ambiguous, open to interpretation and inconsistent with other regulations, including significant habitat and threatened native vegetation community. Other terms lack definition in the context of the NAC, including use reliant on a coastal location,

		unreasonable loss, native vegetation community and clearance of native vegetation. Additional terms should be included in the NAC and defined, including disturbance, potential habitat, habitat corridor and landscape ecological function.
	Table C7.3 – spatial extent of waterway and coastal protection areas	Under Table C7.3(a)(i), the spatial extent of the coastal protection area is measured from the high-water mark of tidal waters and does not extend into tidal and coastal waters. This presents a number of issues, as tidal and coastal waters are outside the definition of a waterway and coastal protection area but a number of development standards specifically relate to development within tidal waters (notably C7.6.1 A1(c)/P1.1) and/or relate to development which extends beyond tidal waters into coastal waters (notably C7.6.1 A1(c)/P1.1 and C7.6.1 A4/P4.1). To give these clauses effect and reduce any uncertainty, please consider 3 needs to include an additional qualification requiring the width of the coastal protection area to be measured both landward and seaward from the mean high-water mark and extend into coastal waters in accordance with s7 of LUPAA in relation to accretions from the sea. Under Table C7.3, any watercourses adjoining the listed urban type zones is deemed to be a Class 4 watercourse. Only requiring a 10m buffer for larger watercourses in urban type zones is grossly insufficient for maintaining water quality and natural assets including native riparian vegetation, river condition and the natural ecological function of watercourses adjacent to high-risk land uses. Reducing the buffer also creates a false perception that these areas are available for development when they are often subject to other constraints, principally flooding and providing sufficient space for the multiple economic, infrastructure and social functions of waterways, with detention basins and other stormwater infrastructure and public linkages often reliant on these buffers. As the guidelines already provide for reducing buffer widths under NAC 3 (d) where appropriate, to enable the standard buffer widths to apply in urban type zones please consider deleting Table C7.3 (b).
	C7.4 - Exemptions	The exemptions under the NAC remain extensive and are inconsistent with biodiversity conservation. The exemptions further exacerbate jurisdictional issues with the Forest Practices System and there is also duplication between the Code exemptions and the exemptions provided under Table 4.4 of the SPPs.

		Specific exemptions of concern include: • C7.4.1(c) - Beyond the circumstances provided for in Table 4.4 and C7.4.1 (a) and (e), impacts on values within a national park, or within State-reserved land or a council reserve should be subject to the Code. • C7.4.1(d) – this exemption essentially duplicates what is already exempt under 4.4.1(a) and the merit of and need for this additional exemption is unclear. The exemption should also not simply replicate the exemption from requiring a Forest Practices Plan contained within the Forest Practices Regulations 2017, but rather reflect the nature and scope of development regulated under planning schemes rather than via the Forest Practices System. Please consider deleting C7.4.1(d) and amending 4.4.1(a) to limit it to forestry operations and broad-scale clearing for agriculture only (unless discretionary or prohibited in the zone), such as 'vegetation removal if for forestry operations or clearance and conversion of a native vegetation community or native vegetation for agriculture, in accordance with a certified Forest Practices Plan, unless the proposed use or development is discretionary or prohibited under the zone provisions'. • C7.4.1(f) - allows coastal protection works undertaken by a public authority to proceed in marine and freshwater ecosystems without proper scrutiny and accountability processes. Coastal protection works in particular often focus on addressing impacts of coastal erosion on infrastructure without fully considering impact on natural assets and processes. While the exemption requires the works to be designed by a suitably qualified person, there is no definition of what constitutes a suitably qualified person for the purposes of coastal protection works. Please consider deleting this exemption.
	All standards	The clause objectives and standards disproportionately focus on minimisation and need to be amended to reflect the mitigation hierarchy and avoiding impacts. All performance criteria need to be drafted to require the tests and considerations to be satisfied. As discussed above under 'Strategic Issues', 'having regard to' a range of tests and considerations is grossly inadequate to meet the Schedule 1 objectives, Code purpose and Clause objectives.

	C7.6.1 A1/P1	A1(b) – providing a permitted pathway for a small crossing or bridge has the potential to have an unnecessary and unacceptable impact on natural assets and be contrary to the clause objective, through impeding flow and drainage, obstructing fish passage, impacting riparian vegetation, impacting in-stream habitat and increasing the need for future works. Please consider deleting this acceptable solution. A1(c) - even a small extension of an existing facility has the potential to cause an unnecessary and unacceptable impact on natural assets. For example, such an extension may be located in an area containing a threatened marine species and there will be no requirement for any assessment of this impact or consideration of design alternatives to avoid this impact. Please consider deleting this acceptable solution. P1 – to meet the Schedule 1 objectives, please consider including an additional criterion requiring a proposal demonstrates the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use.
	C7.6.2 A1/P1	Clause C7.6.2 broadly needs to be expanded to apply to disturbance as well as clearance and address both direct and indirect adverse impacts of buildings and works on priority biodiversity values, including threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly. There are considerable deficiencies in the performance criteria, which are focused on enabling clearance rather than avoiding it. There are no performance criteria which would ensure loss is not unreasonable and priority values are appropriately and adequately protected. As currently drafted P1 does not meet the Schedule 1 objectives. The standards also treat all priority vegetation/biodiversity values equally and fails to include criteria which require consideration of what constitutes an unreasonable impact on priority vegetation/biodiversity value in the context of the conservation significance and requirements of the value. The performance criteria must reflect differences in the significance of priority biodiversity values and set a higher bar for more significant values, including criteria for when

		impacts on priority biodiversity values are unacceptable, irrespective of the type of development. In conjunction with focussing on minimisation rather than avoidance, limiting offsets to having regard to any on-site offsets is also of particular concern. Kingborough Council have been successfully implementing a range of offset options for over 20 years and as a result have achieved the following outcomes: • protection of over 150 hectares under Part 5 Agreements on-site; • protection of 9.5 hectares under Part 5 Agreements off-site; • >22 hectares transferred to Council as bushland reserves; • 12 hectares protected under a Conservation Covenant off-site; • 1.9 hectares replanted on-site; • Payment of over $1, 162, 000 in financial contributions which to date have resulted in: — 69 hectares secured under conservation covenants off-site; — a further 454 hectares in negotiation for protection under a conservation covenant off-site and — 6 hectares of revegetation off-site. It is acknowledged that Kingborough's approach to offsetting is not reflective of other Council's and implementation of offsets by planning authorities is currently ad hoc and limited, partly as a result of the lack of a coordinated offset program. However, a number of Council's have or are looking to develop offset policies and most interim schemes provided for offsets, including offsite and indirect offsets. Given the extent of loss arising from land use planning decisions is often small, protection mechanisms which enable the cumulative impact of small losses to be combined into larger coordinated gains through indirect offsetting is essential. Off-site offsets are also an important mechanism for achieving the clause objective of adequately protecting identified priority vegetation. Under P1.2, no provision is made for off-site offsets or indirect offsets and no criteria are provided on what constitutes a suitable offset. The implication here is not that a proposal will not be able to proceed where a suitable on-site offset is not available. Rather, the implication is that where an on-site offset is not available or not supported by the applicant, the proposal

		may proceed without any requirement to offset impacts at all, as long as regard was given to 'any on-site biodiversity offset'. As a minimum C7.6.2 needs to be amended to enable a range of offset options.
	C7.7.1 and C7.7.2	One of the acceptable solutions for buildings and works within a waterway and coastal protection area, future coastal refugia area or a priority vegetation area is where they are located within a building area on a sealed plan of subdivision approved under this planning scheme (C7.6.1 A1(a) and A2 and C7.6.2 A1). While the intent of these acceptable solutions is supported, there is no requirement in C7.7.1 or C7.7.2 to define a building area on any lot created on a plan of subdivision and there are no tests to ensure the creation of such a building area, where located within a waterway and coastal protection area, future coastal refugia area or priority vegetation area, does not have an unnecessary or unacceptable impact on waterway values, future coastal refugia or priority vegetation. Therefore, the effect of these acceptable solutions is to allow development within a waterway and coastal protection area, future coastal refugia area and priority vegetation area without any assessment of likely adverse and potentially unnecessary and unacceptable impact of this development on waterway values. The requirement in A1(a) and A2 is therefore disassociated from purpose of the Code, the objective for the standard and the subdivision standards which may result in the creation of such a building area. To address this issue, please consider additional performance criteria for the subdivision standards in C7.7.1 and C7.7.2 requiring a building area be established at the sealed plan stage and the location of this building area to meet the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values. The performance criteria in Clause E11.8.1 P1 of the Southern Interim Schemes achieve this by requiring subdivision within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area, must provide for any building area and any associated bushfire hazard management area to be either: (i) outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area; or (ii) able to accommodate development capable of satisfying this Code.

		To enable C7.6.1 A1(a)/A2 to function and the standards to achieve the Code purpose and clause objectives, please consider equivalent criteria in Clauses C7.7.1 P1 and C7.7.2 P1.
	C7.7.2 P1	As with C7.6.2, all priority vegetation is treated equally and the criteria do not adequately address the avoid and offset stages of the mitigation hierarchy. The performance criteria must reflect differences in the significance of priority biodiversity values and set a higher bar for more significant values, including criteria for when impacts on priority biodiversity values arising from subdivision and future development are unacceptable. A range of offset options also need to be provided for. To achieve conservation outcomes through planning decisions and meet the Schedule 1 objectives, additional performance criteria are also required. Consistent with many Southern Interim Schemes, these criteria should require any subdivision adversely impacting on priority biodiversity values to achieve a demonstrated conservation outcome through the retention and protection of remaining priority biodiversity values outside the area impacted by subdivision works, the building area and the area likely impacted by future bushfire hazard management measures by appropriate mechanisms on the land title.
C8.0 Scenic Protection Code	C8.2	The limitation of applying the Scenic Protection Code to only specified zones is not supported. The Low-Density Residential Zone is often used for larger lots which provide the back drop to higher density settlements and often contains landscapes important for their scenic vales. Similarly, some land zoned Utilities, Industrial, Community Purpose, Recreation contains vegetated buffers which are important for scenic values and screening the development. The application of the Scenic Protection Code should not be limited by zone but rather apply where there are landscapes identified as important for their scenic values.
	C8.3	The terms unreasonable impact and unreasonable reduction require definition, noting these are the test that must be satisfied in order to meet the performance criteria.
C10.0 Coastal Erosion Hazard Code	C10.4.1	As discussed earlier in the submission, reliance on the *Building Regulations 2016* (and building surveyors) to address coastal erosion hazard issues is inappropriate. Please delete C10.4.1 (a).

C11.0 Coastal Inundation Code	C11.4.1	As discussed earlier in the submission, reliance on the *Building Regulations 2016* (and building surveyors) to address coastal erosion inundation issues is inappropriate. Please delete C11.4.1 (a).
	C11.5	Use standards are required for all hazard bands in both urban and non-urban areas.
C12.0 Flood-Prone Areas Code	C12.2.5	This clause excludes application of the Flood-Prone Areas Code where land is subject to Coastal Inundation Hazard. This exclusion is inappropriate and precludes consideration of coincident flooding (riverine and coastal). Please consider deleting C12.2.5.
C13.0 Bushfire Prone Areas Code	C13.0	Please consider amending the application and scope of the Bushfire-Prone Areas Code. Clause C13.2.1 limits the application of the Bushfire-Prone Areas Code to subdivision or a use that is vulnerable or hazardous. Implicit in the limited Code application is the assumption that habitable buildings within a bush-fire prone area are adequately and appropriately dealt with under the *Building Regulations 2016*. This approach is mis-guided as many bushfire issues are planning matters, including removal of native vegetation and reliance on land external to the subject land. The Code needs to complement other development controls in the scheme relating to these matters – such as the assessment of a proposal against environmental standards within the Natural Assets Code. For example, unless a Bushfire Hazard Assessment (BHA) is provided at the planning assessment stage, there is no way to quantify the area of clearance and conversion of priority vegetation required to carry out a proposed development. If approvals are given without this information, then the risk is that further planning approval may be required for the development once the BHA is carried out and identifies the extent of clearing required. This risk is borne by the developer as it is their responsibility to ensure that they have valid planning approval for all aspects of the development. The BHA may also identify that other development is necessary for which further planning approval is required. For example, the BHA may identify that the provision of vehicular access on land other than the subject property is required. The BHA could also require that clearing on another property is necessary. The developer would not have planning approval for either the access or for clearing on adjoining land if these issues are not identified at the planning assessment stage. There is also no mechanism available through the building process to ensure the ongoing management of external land is secure and can be relied upon. Whereas, when

		assessed as part of a development application, conditions requiring Part 5 Agreements or fire easements. Bushfire hazard management (as distinct from the construction standards) is best dealt with by planning schemes and the Code needs to provide the necessary guidance in assessing bushfire-prone habitable development. If the BHA for a habitable building is only required at the Building Permit assessment stage, then a developer is likely to be faced with a choice between two undesirable outcomes – either seek further planning approval to relocate the development to reduce the BAL or to wear the additional costs associated with complying with construction requirements that increase exponentially and commensurately with the BAL. In some instances, it may only become evident at the building stage that the development is unable to proceed at all due to reliance on external land, with no consent from the adjoining landowner forthcoming or management of vegetation on adjacent land for bushfire hazard management prohibited under the Scheme requirements. The BHA should inform the initial siting of habitable development on a bushfire prone site as this is often the determining factor in establishing its BAL. This information should be available to the developer from the outset to allow informed decisions to be made regarding the siting of the development and to reduce costs associated with bushfire hazard management. It is not only in the interests of best practice planning that the Bushfire-Prone Areas Code is amended to apply to habitable buildings, but also in the interests of a simpler, fairer, faster and cheaper planning system.
C15.0 Landslip Hazard Code	C15.4.1	As discussed earlier in the submission, reliance on the *Building Regulations 2016* (and building surveyors) to address coastal erosion inundation issues is inappropriate. Please delete C15.4.1 (d).

[redacted]

[redacted]

Fri 19 Aug 2022

[redacted]

Dear State Planning Office,

REVIEW of STATE PLANNING PROVISIONS – SCOPING PAPER

It is suggested here that one discussion worth having over the next 12 months of workshops may be around targeted development to provide variety of housing stock.

Specifically, in the Residential Zones, linking particular dwelling types to the zones as follows:

a) Low Density Residential Single Dwelling (No permit required) but Multiple dwellings (prohibited)

b) General Residential Zone Single dwellings (No Permit Required) and Multiple Dwellings (Discretionary)

c) Medium Density Zone/Apartment Code area Single Dwellings (possibly Prohibited) and Multiple dwellings or apartments (Permitted) – which could then link to different building envelopes and specify building styles e.g. co-joined townhouses etc.

I trust you can accept this short submission despite the late date, and thank you for the chance to comment. I look forward to discussing this further.

Thank you and regards,

Anne Harrison

[redacted]

19th August 2022

Department of Premier and Cabinet
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Submissions to State Planning Provisions review - Scoping Issues

Dear State Planning Office,

BirdLife Australia welcomes the opportunity to provide input on the scope of the State Planning Provisions review, ahead of the Tasmanian Planning Scheme coming fully in effect across the State.

BirdLife Australia is an independent non-partisan grassroots charity with over 300,000 supporters throughout Australia. Our primary objective is to conserve and protect Australia's native birds and their habitat. Our organisation is the national partner of BirdLife International, the world's largest conservation partnership.

BirdLife Australia has played a major role in the conservation and monitoring of Australia's bird life throughout our almost 120-year history. We have invested in long-term threatened bird conservation programs, often in partnership with other organisations and communities, bringing together research, education, on-ground remediation, advocacy and campaigning.

Tasmania is home to fifty-eight threatened birds, some species found nowhere else in the world. These precious species are highly threatened through the loss, degradation and fragmentation of their habitat, the impacts of invasive species and inappropriate fire regimes.

Planning laws have a very significant impact on the habitats of birds. To secure the future of Tasmania's biodiversity, particularly in the face of a changing and more erratic climate, it is critical that planning laws have strong provisions for the protection and restoration of vegetation, waterways, coastal environments and natural connectivity in landscapes.

BirdLife Australia understands the rationale for creating a state-wide set of consistent planning rules, however BirdLife Australia believes that many aspects of the State Planning Provisions, without reform, pose significant risks to birds and to the integrity and interconnectivity of habitats for birds.

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BirdLife Australia believes the review of the State Planning Provisions should be wide-ranging. We have concerns in relation to the following areas and thus we recommend detailed consideration of these issues within the scope the review:

- The Natural Asset Code is our greatest area of concern. Exemptions for any planning zones must be removed and the code must be strengthened or overhauled to ensure full protection of threatened bird species and the habitat on which they depend
- Inadequate protection of National Parks and reserves from commercial developments and lack of community consultation required in such developments in Environmental Management Zones
- Inadequate protection of native vegetation, waterway bodies and other natural values in landscapes in Landscape, Coastal, Residential, Rural and Agricultural Zones
- Lack of planning for climate change mitigation activities and adaptation
- Lack of protection for Aboriginal cultural heritage values.

Please find attached a more detailed explanation of the issues of concern and recommendations regarding the scope of the review.

Should you have any questions or require more information please contact [redacted]

Yours sincerely,

[redacted]

Samantha Vine
Head of Conservation
BirdLife Australia

Overhaul the Natural Assets Code to improve protection of birds and their habitat

The purpose of the Natural Assets Code (NAC) is:

- 'To minimise impacts on water quality, natural assets including native riparian vegetation, river condition and the natural ecological function of watercourses, wetlands and lakes.
- To minimise impacts on coastal and foreshore assets, native littoral vegetation, natural coastal processes and the natural ecological function of the coast.
- To protect vulnerable coastal areas to enable natural processes to continue to occur, including the landward transgression of sand dunes, wetlands, saltmarshes and other sensitive coastal habitats due to sea-level rise.
- To minimise impacts on identified priority vegetation. To manage impacts on threatened fauna species by minimising clearance of significant habitat.'[1]

This code is of critical importance to the protection of birds in Tasmania. It is the overarching mechanism to protect bird habitats across the different planning zones. Yet, there are many shortfalls that mean it is not fulfilling the function of properly protecting important natural values including habitats, coastlines and threatened species.

The NAC's aim to 'minimise' a range of impacts in practice means it does allow negative impacts on the environment and loss of habitat, albeit incrementally. The NAC provides a long list of exemptions to the code that fundamentally weaken the code, including allowing forestry operations and the clearing of native vegetation within a priority vegetation area in certain circumstances, for example.

The NAC also fails to provide measures to improve habitat and connectivity, which is essential for future-proofing our landscapes in the face of climate change, invasive species and other pressures.

Most importantly, the NAC does not apply to all planning zones. It does not apply to the Inner Residential Zone, Business or Industrial Zones, or in the Agriculture Zone. The exemption of these zones from the NAC allows for the loss of the important refuges of vegetation that might remain in urban areas, for the clearing of important habitat in rural areas, and fails to protect the ecological function of waterways and their riparian vegetation, which provide critical habitat for birds.

Birdlife Australia's case study of King Island (Box 1) illustrates the significant risk posed

[1] Tasmanian Planning Scheme, State Planning Provisions, July 2022. https://www.planningreform.tas.gov.au/planning/scheme/state_planning_provisions

to threatened species by the exemption of certain zones from the NAC.

Box 1: King Island threatened bird species and the risk posed by the new State Planning Provisions.

King Island Brown Thornbill. Image by Barry Baker

Tasmania is home to twelve endemic birds, nine of which are only found on King Island. Five King Island endemic birds are threatened; three of which are critically endangered[2]. A systematic assessment has ranked the King Island Brown Thornbill and King Island Scrubtit as the first and third most likely of all Australian birds to go extinct by 2038[3]. There are less than 100 individuals of each of these taxa left and without intervention they are facing imminent extinction.

Land clearing for agriculture is a key threat to King Island birds[4]. This includes habitat loss caused by smallholder agriculture, land clearance for grazing, and ongoing impacts of historical clearing for large scale agriculture on nest hollow availability[5].

King Island Council is currently in the process of developing their Local Provisions Schedule. The application of the State Planning Provision's zones and codes on King Island are likely to have a significant impact on the recovery of King Island's birds and the forest systems on which they depend.

This is particularly the case should large areas be declared Agricultural Zones. Given the NAC does not apply to agriculture zoned land, the risk of loss of native vegetation on land within that zone is likely to significantly increase. For native vegetation on

[2] Garnett, S.T., 2021. The Action Plan for Australian Birds 2020. CSIRO publishing.
[3] Geyle et al. (2018). Quantifying Extinction Risk and Forecasting the Number of Impending Australian Bird and Mammal Extinctions. Pacific Conservation Biology 24:157–167
[4] BirdLife Australia, 2021. Threatened King Island Birds Conservation Action Plan; Garnett, S.T., 2021. The Action Plan for Australian Birds 2020. CSIRO publishing.
[5] Garnett, S.T., 2021. The Action Plan for Australian Birds 2020. CSIRO publishing.

land where the Natural Assets Code does apply, the risks to threatened birds and their habitat remains due to the inadequacy of the Code in protecting important natural values.

If the NAC is not strengthened, we risk losing the habitat of and thus the threatened and critically endangered species such as the King Island Brown Thornbill and King Island Scrubtit in the coming years.

The recently released Australia State of the Environment 2021, reports that the state and trend of our environment is poor and deteriorating and that continued environmental degradation will affect our communities, economy and way of life. Much of King Island's economy, particularly agriculture and tourism, relies on a healthy natural environment. The commitment of King Islanders to their unique environment is demonstrated by King Island winning the 2022 Australian Sustainable Communities – Tidy Towns Award, as well as a number of other sustainability awards. The shortfalls in the State Planning Provisions threaten the natural environment on which these awards are founded.

BirdLife Australia's deep concerns about the failures of the NAC are shared amongst the community, conservationists and indeed amongst planning experts. In 2016, the Tasmanian Planning Commission recommended that the "Natural Assets Code be scrapped in its entirety, with a new Code developed after proper consideration of the biodiversity implications of proposed exemptions, the production of adequate, State-wide vegetation mapping, and consideration of including protection of drinking water catchments"[6]. In response to this the then Planning Minister made some amendments to the Code, (including allowing vegetation of local significance to be protected), but no review of exemptions was undertaken.

Recommendation: The Natural Assets Code must be included in the review of the State Planning Provisions. The NAC must be overhauled, or fundamentally strengthened and exemptions for zones must be removed in order to protect Tasmania's threatened bird species and to prevent the loss of habitat that many bird species rely on for survival.

Protecting National Parks and Reserves

According to the Tasmanian Planning Scheme, the purpose of the Environmental

[6] '*Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993'*, *2016.*

Management Zone (EMZ) is to 'provide for the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value'[7]. This zone is mostly applied to National Parks, reserves and some sites identified for their high conservation value. Birdlife Australia is concerned that permitted uses within this EMZ can include a range of commercial tourism developments that may have negative impacts on birds and their habitats. Permitted uses can include Community Meeting and Entertainment, Educational and Occasional Care, Food Services, General Retail and Hire, Pleasure Boat Facility, Research and Development, Residential, Resource Development, Sports and Recreation, Tourist Operation, Utilities and Visitor Accommodation.

Further, these commercial developments can be approved without guarantee of public consultation, and with no rights to appeal.

National Parks, reserves and conservation areas are the stronghold of habitat critical for the survival of many bird species. With fifty-eight threatened bird species listed in Tasmania[8], each and every development within these conservation areas must be subject to detailed assessment by experts to ensure there will be no adverse impacts on habitats and threatened species.

Recommendation: Review the Environmental Management Zone provision to exclude permitted uses that might pose significant risks to bird populations and ensure any non-conservation uses are subject to transparent, open and meaningful public consultation.

Protecting Landscapes

According to the Tasmanian Planning Scheme, the Landscape Conservation Zone (LCZ) applies to 'provide for the protection, conservation and management of landscape values. To provide for compatible use or development that does not adversely impact on the protection, conservation and management of the landscape values'[9].

While this provision does provide some limit on subdivisions and developments, there are no direct provisions for protection of vegetation, waterways or other habitat values. Nor are there provisions for restoration of riparian areas of waterways or other natural assets that can provide critical habitat corridors for birds and other species.

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[7] Tasmanian Planning Scheme, State Planning Provisions, July 2022. https://www.planningreform.tas.gov.au/planning/scheme/state_planning_provisions

[8] Department of Natural Resources and Environment Tasmania, List of Threatened Species, current 24 November 2021, https://nre.tas.gov.au/conservation/threatened-species-and-communities/lists-of-threatened-species/full-list-of-threatened-species

[9] Tasmanian Planning Scheme, State Planning Provisions, July 2022. https://www.planningreform.tas.gov.au/planning/scheme/state_planning_provisions

Loss of habitat through land clearing is the biggest threat to birds and commonly this is occurring on private lands in more natural landscapes, such as those intended for protection in the LCZ. Protection and restoration of large-scale connectivity in the landscape is critical to ensure resilient bird populations are sustained and able to adapt to changing climatic conditions.

It was the original intent of the LCZ articulated on p 79 of the Draft State Planning Provisions Explanatory Document that natural values would be protected, but the provisions as they stand do not include any such restrictions. And as articulated above, the NAC, which does apply in the LCZ, has too many exemptions and is failing to provide the promised protections.

Recommendation: Review the Landscape Conservation Zone to include provisions to protect native vegetation, waterways and other natural values to secure the long term survival of local bird populations on private land.

Protecting Regional Coastal Areas

Birdlife has particular concerns about the potential impacts of development in small coastal villages on coastal bird species.

Tasmania provides important habitat for both resident and migratory shorebird species, and research indicates that the biggest threat to Australia's migratory shorebirds is habitat loss. We therefore believe that we need stronger protections from subdivision, multi-unit development and stronger General Residential standards for Tasmania's undeveloped and beautiful coastlines.

Recommendation: Review the various Residential Zones to ensure that coastal habitat and shorebird populations are protected from inappropriate development.

Protecting Rural and Agricultural Areas

Under current State Planning Provisions, Rural and Agricultural zones will be open to an unprecedented range of commercial and extractive uses. With agricultural areas also being exempt from the NAC, BirdLife is concerned about the lack of safeguards to prevent the degradation of waterways and natural assets.

Recommendation: review the permitted commercial and extractive uses in Rural and Agricultural Zones with consideration to the impacts on waterways and habitat refuges for birds.

Protecting Public Open Space

BirdLife Australia supports review of the Public Open Space Code to strengthen provisions to require public open space and protect riparian and littoral reserves as part of new developments and subdivision processes.

Many bird species can live and bring joy in urban settings with the right protections to reduce loss of mature trees and vegetation, and to protect refugia such as vegetated creek lines.

Recommendation: Strengthen the Public Open Space Code to ensure public open space is protected and required in new developments and sub-divisions processes, and to protect mature trees and waterways.

Climate Change Adaptation and Mitigation

BirdLife Australia recognises the impact of, and threat posed by, climate change to Australia's birds and biodiversity. We support strong action to reduce carbon emissions, protect natural carbon stores, and to restore habitat on a large scale through revegetation programs.

We believe the State Planning Provisions needs to better consider the impacts of climate change on habitats and better plan for landscape connectivity and resilience to secure the future of birds and our biodiversity in the face of the inevitable climate change impacts we now face.

BirdLife is supportive of the 200% Tasmanian Renewable Energy Target. However, the scale of wind farms this might involve, perhaps 89 wind farms and over 3000 wind turbines, requires strategic and sound planning processes with input from experts to ensure they are appropriately placed and do not present a significant risk to threatened bird populations.

Recommendation: Ensure climate change mitigation and adaptation considerations are included in the review. Develop expert informed planning strategies for mitigation activities and for adaptation that protect and strengthen the resilience of bird populations.

Aboriginal Cultural Heritage

BirdLife Australia recognises the deep importance of protecting Aboriginal cultural heritage and that the Traditional Owners of the land have been custodians of Country

for tens of thousands of years.

We are concerned that there are currently no provisions in the Tasmanian Planning Scheme for mandatory consideration of the impacts of new developments on Aboriginal Cultural Heritage. This means there is currently no formal opportunity for Traditional Owners to comment on or object to a development that might adversely impact Aboriginal Cultural Heritage.

Recommendation: The state planning provisions provide better protection of Aboriginal cultural heritage and that the state consult with Tasmanian Aboriginal communities to develop appropriate provisions.

[redacted]

[redacted]

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19 August 2022

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Dear Sir/Madam

Review of the State Planning Provisions – Scoping Paper and Consultation – Terra Firma Town Planning Submission

Thank you for the opportunity to submit to the scoping exercise to review the State Planning Provisions. The government is to be commended for its approach and commitment to achieving improved, fit-for purpose and contemporary planning provisions for the State, particularly as numerous Local Provisions Schedules are now in operation and a number of issues are emerging in regard to the efficacy of the existing provisions.

Having had a long involvement in the process to develop and implement the first iteration of the SPP's through Council representation, it is important to note that in approaching this review, that the recognition of issues that are tabled by the local government sector as well as the private development sector does not represent a failure of the system. It was a significant and novel project for Tasmania and it is fair and reasonable to appreciate that it would not necessarily achieve all of its goals in its first iteration due to the provisions not having been tested through appeals to RMPAT/TASCAT or the courts.

However, now that several LPS's are in operation and there is some experience with how the provisions are being interpreted by planning authorities, the legal profession and TASCAT, it is important to revisit some fundamental aspects of what was intended in regard to the policy behind some of the provisions to avoid unecessary conflicts when decisions are made. Conflict around the intent of the provisions inevitably leads to considerable expense at TASCAT or the courts to deduce what the intention of the provision is in order to determine how the specific text of the standard takes effect. There are numerous ambiguities and conflicts in the standards throughout various zones and codes that do not serve efficient or clear decision making. This is particularly true for rural localities, the most difficult parts of Tasmania to effect the 'balancing act' between resource protection and progressive, contemporary economic development …

noting that this is a stated objective of the Tasmanian Government, and despite the often negative portrayal of local Councils … it is their objective as well, as this directly supports socially healthy communities.

In approaching this review it is important that the goodwill of local government and the private sector in being involved is not taken lightly. The SPP's do not yet achieve the stated ambitions for land use and development, including process, however in my experience the SPP's, together with provisions under the LUPAA for localisation, are not too far off the mark, noting also that the degree of dysfunction of some provisions is variable.

In undertaking this review is important that we do not kick the can down the road and relegate matters to the 'too hard basket', as has been a past tendency. There were numerous operational matters and queries submitted by local government in the initial consultation phase of the SPP's that were never addressed in the TPC report when the SPP's were made, and still haven't. Many of those issues have now eventuated in operational LPS's, which were entirely avoidable by applying greater attention to intent and expression. The costs of not addressing ambiguities is being carried by local government and the private sector through applications and appeals and ultimately acts against the government's objectives for economic development.

In making this submission I recognise that there is a lot of detail being submitted by Councils around the State and LGAT, in regard to the specifics of the standards. I do not seek to duplicate those submissions, however outline some higher order issues that I have experienced in working with a number of Councils in the preparation of their LPS's and impediments to exercising their rights under the LUPAA for localised provisions and also some matters that have arisen in the preparation of some development applications.

3.0 Interpretation:

There are ambiguities in regard to some uses being defined and not others, that affect the categorisation of use which can result in fundamental and significant complications in the legal veracity of the application process. *MVC vs RMPAT* [2018] *(TASSC 9 March 2018)*

4.0 Exemptions:

Exemptions that are excluded by virtue of the application of the Local Heritage Code, also need to include local character precincts included in a PPZ or SAP, in order to manage streetscape impacts that are not always solely a heritage focus.
If the justification under S32(4) for a PPZ or SAP stands, then it should not be undermined by exemptions because the focus is too narrow.

There are loopholes in minor infrastructure exemptions that compromise the ability to manage streetscape impacts.

5.2 Operation of Zones:

The amendment of the LUPAA to enable the approval and bringing into effect of a LPS, prior to the process to consider and determine 'Substantial Modifications' identified through the public notification process, failed to concurrently amend the SPP's such that a fundamental right under the LUPAA for provisions to be included in a Particular Purpose Zone has now been curtailed.

The original drafting of clause 5.2.6 which prevents a PPZ from overriding code provisions (unless specifically provided for) after the effective date, assumes that the effective date would be at the conclusion of the LPS assessment process, including the consideration of any substantial modifications that may arise through public notification and hearing.

The Act was changed to enable a more rapid implementation of LPS's around the State, with the process for considering substantial modifications effectively deferred to a subsequent process. The problem with the retention of clause 5.2.6(c) as drafted, is that it effectively prohibits the ability to consider those parts of Particular Purpose Zones that override code provisions, irrespective of a successful justification of the merits of those provisions under section 32(4) of the LUPAA.

In consideration of the requirements to justify a case for a PPZ, SAP or SSQ under section 32(4), there is no credible reason why a PPZ, at any point in time, cannot override the provisions of a code if justification can be supported under section 32(4). The onus of demonstration of appropriateness under section 32(4) is high and is technical in nature, not temporal.

The temporal limitations relating to the effective dates of LPS's conflict with entitlements for demonstrating appropriateness of localised provisions contained in the Act. As currently written, natural justice and procedural fairness are abrogated for those parties that participate through the process of public exhibition if they seek, and appropriately justify, localised provisions that override codes, due to a legislative change that was politically motivated to accelerate the implementation of LPS's.

A review of sections 5.2 to 5.4 is necessary, particularly in light of changed legislation, to question whether the intended outcomes of the Tasmanian Planning Scheme are being achieved, particularly in regard to reducing 'red tape' and whether efficient outcomes are actually being stymied because of these arbitrary, temporal limitations.

7.10 Development not required to be categorised into a use class:

The application and relevance of the provisions of this section are too complicated in the cross referencing of standards to determine applicability and result in perverse outcomes for the preparation of development applications in having to address irrelevancies. As this section apparently applies to 'discretionary' aspects of use and development, it opens a door to misuse in decision making and the exercise of discretion.

A recent example for a very large subdivision in Prospect Vale…

7.10.2 requires that an application must only be approved under 7.10.1 if there is no unreasonable detrimental impact on adjoining uses or the amenity of the surrounding area.

7.10.3 then requires in exercising discretion under the prior clause, the planning authority must have regard to … the purpose of the zone and any applicable code.

When considering that subdivisions are assessed under standards relating to lot size, orientation, frontage, access, roads and services, this section introduces a 'general discretion' that is so broad as to be meaningless.

When applicable codes are technical in nature, such as the Natural Assets Code which is ecological in purpose, not directed at adjoining uses or amenity, this section creates significant complexity for the assessment of subdivision because there is no relevance between the mandatory instruction in the text and the purpose of the code. When considering contended

applications, it is simply not appropriate to default to a position of it 'not being relevant so is not considered'. This section opens a chasm of legal uncertainty in terms of how the text is to be interpreted and for political misuse in the making of decisions.

It also significantly undermines the intended structure of the planning scheme, that being focussed, issues-based standards, as additional ambiguous or irrelevant matters are introduced for any discretion invoked for use or development that is not categorised, subdivision being the most significant and highest risk. This is the opposite of simplification.

A subdivision could comfortably comply with all of the performance criteria in the standards but may still be refused on dubious grounds because of the breadth and ambiguity of this section. It creates a significant legal and procedural conflict in regard to the principle of specific provisions overriding the general, when you have two separate sections addressing discretions and differing procedural instructions in the administrative provisions of the planning scheme.

As I recall, there was discussion at the time of assessment of the SPP's in regard to correlation with the matters set out in Part 3 - Division 2 of the *Local Government (Building & Miscellaneous Provisions) Act* 1993. However, that Act has since changed to recognise permitted and discretionary processes for subdivision. In any respect, the provisions of section 7.10 do not address any legislative inconsistencies in regard to subdivision. It, in fact, creates them.

Given the current issues with land supply shortages, reasonably compliant subdivisions should not be subject to this uncertainty.

Other Matters of Note

Review of Tasmania's Residential Development Standards:

The discussion in the Issues Paper May 2022 is noted and contains many of the matters that require reconsideration.

Ultimately it needs to be recognised that as currently drafted, the provisions are resulting in poor development outcomes … likened to 'contemporary slums'. There are loopholes that need closing and improvements made to the outcomes experienced by residents and adjoining landowners. However not all of the matters raised in the paper are supported for a standardised intervention due to the breadth of the intervention described … such as streetscape. However, issues such as streetscape, are those of local values and should work in concert with the ability in the legislation to support a case for localised provisions, should a community wish to protect local character or promote a better outcome for its new neighbourhoods.

It is apparent that this issue still requires attention and a higher degree of sophistication, which does not necessarily mean broader discretions across the board.

Public Open Space:

This is still a significant omission from the Tasmanian Planning Scheme. The practice is to default to the LG(BMP) Act 1993, however this Act does not resolve expectations for public open space, it only provides for the ability to refuse a subdivision if Council considers that it should be provided.

There is no policy framework or supporting regulation to provide for safe spaces in accordance with CPTED principles and poor open space outcomes are the result.

I have had recent experience with a very large 'gated community' proposal in a Strata Scheme of 450 dwellings, whereby there was no obligation for the developer to contribute to public open space as it was not a subdivision. Whereas the 90 lot subdivision next door had to provide the 5% open space contribution.

Clearly there are significant deficiencies and inequities in this space and it is time to deal with them properly.

Rural Provisions:

The approach to the provisions for non-primary industry uses in the Rural and Agriculture zones must be reviewed for intent and outcome.

The 'requirement' test for rural land is too high a bar for proposals that may be reasonable. To date these provisions have not been thoroughly tested in TASCAT, noting that I have been involved in preliminary TASCAT proceedings whereby reasonable proposals have been withdrawn and abandoned due to legal advice that they will not get through this standard. The lack of a clear interpretive decision does not mean that reasonable economic development is not being impeded.

The range of considerations in criteria are generally appropriate, it is the mandatory structure that places too high an onus on proposals of merit. The provisions require revision to implement a more sophisticated consideration of each case on its merits, in recognition of the high degree of diversity throughout Tasmania's rural areas. The intent should be clear and not left to TASCAT to deduce policy.

Seasonal Worker Accommodation – the broad difficulties in securing permits for this use requires review and individualised provisions. It is a significant economic issue for the State and one in which the system is failing.

Attenuation Code:

With the benefit of hindsight, the operational effect of this code was not given enough attention during the formative stages of the SPP's. Now in operation, it is apparent that its reach and resultant cost for proponents both in reporting and unnecessary discretions, along with the very difficult position in which it places planning authorities as the assessors, is not reasonable.

This code requires review to recognise operating constraints on emitters through permits or EPN's. There are inherent conflicts in applying substantive buffers to uses that are not permitted to cause a nuisance beyond the boundaries of their site. The reach of this code is having a significant impact on development in urban zones.

Natural Assets Code:

The Meander Valley Council section 35G notice and subsequent TPC report in regard to the provisions relating to the Priority Vegetation Area must now be considered as part of this review. Local government cannot continue to carry such poorly structured provisions.

I look forward to future participation in the process of more detailed review.

Yours faithfully

Jo Oliver
Director and Town Planner

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19th August 2022

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To Whom It May Concern,

RE: State Planning Provisions (SPPs) Review

Introduction

PDA Surveyors, Engineers and Planners (**PDA**) thank you for the opportunity to participate in the process by providing feedback on the State Planning Provisions (**SPP's**). We also thank the State Planning Office for granting an extension of time to lodge this submission. We wanted to ensure it captured many of the recurring issues that our clients were facing, and as a result, the document is quite substantial.

PDA is a multi-disciplinary consultancy specialising in land-based development. We assist developers (corporations and individuals) with a broad range of land use development projects, including subdivisions, commercial and residential development and land rezoning projects. We are also receiving increasing requests by clients to assist with enforcement issues that have arisen due to a general lack of understanding or confusion regarding the statutory requirements associated with the land use planning system.

This submission is presented from the developer's perspective, as we advocate for our clients and staff tasked with navigating a complicated system. It is not an exhaustive submission in that it does not methodically review all matters pertaining to the SPP's. Instead, it raises points that have caused repeated issues for our clients that we believe should be reviewed and amended as part of this process.

In 2015, the then Minister for Planning, the Honourable Peter Gutwein, provided the Ministers message on the *Tasmanian Planning Scheme Fact Sheet* (attached). The message heralded a new era for Planning in Tasmania. Planners and developers alike were to be enthused by a new state wide planning scheme that promised, amongst other things, to *be **fairer**, **faster**, **cheaper** and **simpler**.* It was intended to revolutionise development by making *it **easier to invest in Tasmania, encouraging more economic development and job creation**.*

The State Planning provisions came into effect in March 2017. Five years later, only half of the 29 Tasmanian Councils have transitioned their planning schemes to the new State-wide scheme, creating additional complexities and confusion for those navigating the system.

This submission follows a non-conventional format. Where appropriate, real examples and accounts of issues experienced by PDA clients are provided to support each submission point.

The language will be simple. The submission does not attempt to impress you with our intellectual knowledge of planning law and policy drafting, we will leave that to our learned friends in law. That said, in 2021, the Solicitor General indicated that Tasmania's Planning system and laws were 'complex' and 'prescriptive' asking: "*How can a citizen, without the means or desire to consult a lawyer, be expected to obey the law?*"

The issues our submission raises will not ponder such difficult questions. Instead, we ask that you attempt to understand how the Scheme is practically administered by local Councils and the extent applicants need to go to meet the ever-growing list of criteria.

Planning is meant to be about the 'what, why and where', but increasingly, Council's are now requiring developers to expend significant funds to prove the 'how' upfront, with no guarantee of a permit. This has led to a notable increase in expense, complexity and delays. More concerningly, we have witnessed several applications where the Council has required the applicant to obtain the full suite of reports, only to later refuse the application based on something completely unrelated. For example, one of our developers was asked to provide a complete stormwater modelling report, a traffic impact and parking assessment and a long/ cross-section of a road, only to have their application refused due to overshadowing.

Planning under the TPS has resulted in a significant rise in the requirement for additional specialist reports, removing the opportunity for trained and qualified planning staff to make educated assessments. Under the TPS/SPP's, not only are more applications discretionary, but the level of complexity has also increased to the point where confident developers, who would have once lodged their own applications, are now seeking assistance from planning practitioners because they find themselves in a never-ending cycle of requests for further information.

The Submission

Given that the Tasmanian public was promised a fairer, faster, cheaper and simpler system, arranging the issues points in this submission into those same categories seems befitting.

Consider this submission a performance review against those promised KPI's. Please also note that many of the examples I provide under one category could also easily sit under multiple headings.

Fairer

adjective

comparative adjective: **fairer**
treating people equally without favouritism or discrimination.
"the group has achieved fair and equal representation for all its members"

Boat and Caravan Storage	Defined in the scheme *as using land to store boats, caravans, vehice-towed boat trailers and the like*. Storage within the Residential zone is prohibited, however, Council staff interpret the storage of boats and caravans/RV's as 'ancillary use' to the existing residential use. As residential zoned land gets smaller (325m2 or even 200m for the inner residential zone) and RV's and Boats get bigger, they are starting to impact on adjoining residential uses. It is our opinion that an ancillary use ought only to be applied to something that is used on the site for which it supports or is pertinent to the primary use. An example might be farm worker accommodation or food services in a hotel. Boats, caravans and RV's are not ancillary to residential use. They are used off-site and associated with other uses, such as recreation and/or visitor accommodation. To put it into context, when approval is sought for a new dwelling, the application must demonstrate capacity for and have parking approved, it is not classified as 'ancillary' to the residential use. In fact, Councils have refused applications that cannot demonstrate sufficient parking – and yet, you can build a large structure to store a boat or caravan on your land, sometimes impacting the neighbouring residential amenity, and it does not need a planning permit. A client recently came to us for assistance. Their neighbour was intending on building a 14m long, 3.8m high structure (4.3m high when the difference in ground levels between the adjoining properties was taken into account) in which they intended to store their caravan/ RV. The building was to be located adjacent to our client's frequently used outdoor living area. The Council did not classify it as 'storage' but ancillary to the existing residential use. The planner made a recommendation to approve, but thankfully the Councillors disagreed with that recommendation.
Ancillary Use *Adjective-* ancillary *providing necessary support to the primary activities or operation of an organisation, system, etc.*	Following on from the issue raised above. Councils regularly allow discretionary or prohibited uses (as was the case above) to occur under the guise of being 'ancillary' to the primary use. Yet, the term 'ancillary' does not appear in the TPS anywhere. This is a carry-over from earlier schemes. Either the definition is included with some clear application guidelines and limitations OR, it needs to be made clear that each use proposed on a site needs to be categorised and assessed against correctly assessed against the standards.

Boundary Adjustments Cl.7.3	If a land owner owns multiple parcels of land zoned the same and wants to rearrange the boundaries, they should have the option through boundary adjustment. Some earlier schemes facilitated this, and it was beneficial. Cl.7.3 is an important, practical inclusion in the planning scheme but is unnecessarily prescriptive and subjective, open to varying interpretations across Councils. In the absence of clarification, Councils have arbitrarily adopted quantitative measures to apply the 'minor' test. One recent PDA development application sought to rearrange the boundaries between three titles owned by a client; each title differed in size and had a dwelling built on them. One of the dwellings was built across the title boundary, which needed rectifying. One of the properties also utilised the garden that was technically on another title. The application, if approved, would have rectified a land use anomaly and brought development on the site into greater conformity with the Planning Scheme and Building regulations. Unfortunately, in the absence of guidelines to indicate what constitutes a minor boundary adjustment, the relevant Council refused the application because it did not meet the 10% rule. However, this only works when dealing with titles of similar sizes because if you make a boundary adjustment between a large title and a small title, the large title might meet the 10% rule, but the small title will not. <u>Issues and Questions</u> 7.3 (b) why does a boundary adjustment need to be minor if the land is reorganised in a way that results in better planning outcomes and developability? PDA believes this needs review. Planning schemes previously provided for reorganising boundaries in certain zones, with positive outcomes. If there is no support for the 'minor' element to be removed, it would ideally be defined in a manner that developers can rely on. 7.3 (e) if a title is already smaller than the current TPS zone Acceptable Solution (AS) and the resultant title remains less than the AS, this should not preclude it from being reorganised, particularly if it results in improved planning outcomes and useability/ developability. 7.3 (f) Clarification is required on the interpretation of this clause. PDA determine it to mean that the boundary adjustment between titles must not create a new title across two zones/ with dual zoning. The proposed new title boundaries need to align with existing zone boundaries. However, some Councils interpret this to mean that if any of the existing title boundaries happen to adjoin another zone, cl 7.3 cannot be used. There seems to be no logical explanation as to why this interpretation would be relevant. For example, suppose you start with three Rural titles adjoining another zone and rearrange those

	three titles. In that case, the resultant outcome is that the combined external outline of the three titles does not change where it adjoins a different zone. If the land being reorganised adjoins a different zone, this should not preclude boundary adjustments.
Recognising the use of 'Balance lots' in subdivisions. Permitted applications are being refused due to dual zoning. Example: cl.22.5 P1 Landscape conservation (but also applicable	Due to minimum lot sizes, PDA has had several applications involving dual zoned land where subdivision is permitted in one of the zones but not the other. In those circumstances, residentially zoned land was located at the front and an alternative zone, such as landscape conservation (or other non-residential zones), at the rear. The issue is that, despite it being permitted,, Councils are not allowing the gen res zone to be separated through subdivision from the alternate zone. This is due to the drafting of the clause, example Cl22.5 P1 – applying to 'each lot on a plan of subdivision.....' A residential title could be 2000m2 and able to be subdivided into 5x 400m2 lots through the residential zone, but because the alternate zone is already less than 20ha, Council deems the whole application to be prohibited. PDA believes that this situation can be resolved by leaving the alternate zone as the balance. The size of the alternate zone does not change from which it started; it is just being reorganised onto its own title, freeing up the land owner to develop the residential land.
Protection of views to be included in 'Amenity'	Suppose you own a lovely heritage townhouse in the middle of the city with a small courtyard for a backyard as your only open space. A place where for years you have sat and had your morning coffee, pottered around in container garden and entertained your family when they visit. Then a large commercial entity builds an 8 m tall black wall along your back boundary, completely removing your view of everything. The Council determined that the overshadowing is not relevant because your little cottage is already overshadowed by other adjoining buildings that have been constructed over the last 40 years, and there are no other provisions in the scheme considered relevant because there is no qualitative or quantitative way of determining 'bulk and scale'. OR Perhaps you spent your life working towards owning your dream home, which is positioned on a hill with lovely water or mountain views. You might have lived in your house for decades, or perhaps you just purchased it, paying a premium for the outlook and view. Then the planning zones change, and the land in your area can be further subdivided in front of you, and the new buyer wants to build something that obliterates your view and leaves you looking at a wall. These are examples of two submissions that PDA have assisted clients with, with little to no effect because our planning system fails to recognise just how important 'views' are. Imagine being one of those people and reading the Council report, which dismisses your

	concerns with four abrupt words: "*Not a planning matter".* Planning has been deemed a matter of 'first in, best dressed' in many other areas. In other words, if you are there first, the subsequent development must ensure it doesn't infringe on your amenity, privacy or sunlight exposure. So why not views? While it might be reasonable to expect some intrusion or change to the skyline, it is not judicious to completely block someone's view, leaving them looking at a Masonite wall. PDA clients have been left distraught, to the point of selling their homes after losing their view. The impact on a person's mental health and well-being after changing a person's attachment to their home life so significantly should not be underestimated. Scenic management provisions are made within the scheme to protect the view of skylines or hillsides or even tourist routes for visitors driving along our roads, but we make no effort to protect the views of our own community members in the space where they spend the majority of their time. Tasmania could show leadership to the rest of the Country, by advocating for a new system that drives more considerate, innovative design outcomes and brings neighbours together.
Implementing First Nations Land Use Management principles	Consideration should be given to our First Nations heritage as cultural and tied to Country/the environment rather than the European view of heritage which is physical, man-made objects. Perhaps the addition of another Code to include First Nations cultural values could assist with making sure that the values of First Nations people are protected and included in land use and development decision-making.

Faster

adjective

comparative adjective: **faster**

performing or able to perform a particular action quickly.
"a fast reader"

PDA recently assisted a client with a compliance notice from a Southern Council, indicating the intent to carry out enforcement because she had undertaken development that they say required a planning permit. Our client had dug a trench (20cm at its deepest point) along the back of her rural zoned property to stop her house from flooding when a dam on another property above hers overflowed. Unfortunately, the overflow water was of such a volume that when redirected, it inadvertently flowed onto a neighbour's property. This was a genuine error, and our client rectified it immediately once she became aware.

However, the Council wrote to our client advising that she ought to have sought a planning permit before carrying out the works and would need to obtain one retrospectively. She was advised that not only did she need to address the planning scheme zone clauses for development but that she also needed to address four codes that were overlaid on her land.

At the same time, this enforcement was happening; parts of Southern Queensland and New South Wales were underwater.

Emergency Works Exemptions Cl. 4.3.1	The TPS provides exemptions for urgent works required to protect property, public safety and the environment in an emergency situation. However, this is only if they are required or authorised on behalf of the Crown, Council or a State Authority. These exemptions should be extended to include everyone. Suppose a land owner is able to clearly demonstrate that they have taken evasive action to protect their property. In that case, they should not be expected to apply for a retrospective planning application or threatened with enforcement action. Just as a landowner would not be expected to obtain a planning application because they needed to remove native vegetation to create a fire break during a bushfire, a landowner should be expected to first check with the Council if they needed to protect their home during a flood event.
Relocatable / Temporary Homes	At present, there are no clear guidelines or pathways for temporary accommodation or relocatable homes. PDA are frequently contacted by clients who want to put a temporary/ relocatable dwelling, sometimes even caravans or RV's, on their land for family or friends to live in. They don't know how long for, only that it will not be permanent. Enquiry responses with Council staff across the State range from, "We don't know, just park it there and we will deal with it if someone complains', right through to requiring a planning permit for a multiple dwelling or remote extension to the existing dwelling (granny flat). If the Planning scheme is meant to be faster, cheaper , fairer, particularly in a period of unprecedented housing crisis, there needs to be policy reform reflected in the planning scheme around this issue.
Minor Amendments	This issue is linked to LUPAA but included in the submission to make the State Planning Office aware of significant cost implications to developers. We recently had a minor amendment take 97 days to receive approval from the Council. When following it up with the Council, the planning officer told us they were under-resourced with a huge amount of work on their schedule. They went on to say : '*due to there not being any appeal provisions for the Councils failing to determine a minor amendment within the Act, the application 'was not a priority'*. This resulted in the client not being able to commence their application because the condition needing altering, while minor, needed to occur before the client could issue their start work notice. It also resulted in additional contractor costs and extended delays due to the ripple effect it had on contractors who had to start work elsewhere while our client waited.

Cheaper

adjective

comparative adjective: **cheaper**

low in price, especially in relation to similar items or services.
"local buses were reliable and cheap"

Public Open Space Contribution	There is an opportunity within the SPP review to resolve this increasingly problematic issue. PDA has been advised for several years that the Justice Department are/ are going to review this issue. At present, there are significant differences between the way POS associated with subdivision is applied between Councils. Some Councils are reasonable and use a fair methodology – such as 5% of the government valuation of the unimproved land. Others apply the 5% contribution to the improved value of the land. PDA have applied the different methodologies to a hypothetical subdivision within a variety of Councils, and the difference can be in the hundreds of thousands. PDA has many examples of this and can provide additional detail upon request. For the planning system outcomes to be cheaper and fairer, this issue MUST be resolved by implementing a standardised methodology that all Councils must use. Ideally, this would be done in consultation with all key stakeholders.
Inclusion of option for developers to choose to donate a title for social/ affordable housing instead of POS. (The methodology of application to be explored through community consultation)	While it is noted that this suggestion would require an amendment to LUPPA, most of our clients have wondered where their open space contributions are spent or whether they just go into the Councils operational accounts. Several have also commented that they would prefer to be given the option of providing the equivalent contribution of funds or land to be put toward social/ affordable housing. Other States are currently reviewing similar ideas as a possible means of addressing housing affordability. This would also result in a dispersion of social/ affordable housing, which is an essential element of social inclusion and community development.
C2: Parking and Sustainable Transport Code C2.1 Parking table calculating parking spaces on site area instead of building	The parking provisions require review, particularly within non-residential zones. One PDA client in a Southern Industrial estate was required to put ten times more parking than was needed by the development because the Performance Criteria is written for residential areas. The client runs a recycling plant, which is predominantly automated but located on a large title. As a result, the relevant Council required 20+ spaces for a site that

size (as Interim schemes did)	had 2 or 3 staff and no clients or customers accessing the site. The client was required to meet the Acceptable Solution because the Performance Criteria is not suitably drafted/ relevant. The scenario: Table C2.1 requires 1 space per 500m2 of site area plus one space per employee. The business has 3 employees and is located on a 1ha title resulting in the need for 23 spaces. The business does not have customers or clients attending the site as the recycling material is brought in through commercial delivery. An attempt to meet the Performance criteria failed due to the following: *C2.5.1 Car parking Spaces* *P1.1 The number of on-site car parking spaces for uses, excluding dwellings, must meet the reasonable needs of the use, having regard to:* *(a) the availability of off-street public car parking spaces within reasonable walking distance of the site;* *(b) the ability of multiple users to share spaces because of: (i) variations in car parking demand over time;* *or (ii) efficiencies gained by consolidation of car parking spaces; (c) the availability and frequency of public transport within reasonable walking distance of the site;* *(d) the availability and frequency of other transport alternatives; (e) any site constraints such as existing buildings, slope, drainage, vegetation and landscaping;* *(f) the availability, accessibility and safety of on-street parking, having regard to the nature of the roads, traffic management and other uses in the vicinity;* *(g) the effect on streetscape; and* *(h) any assessment by a suitably qualified person of the actual car parking demand determined having regard to the scale and nature of the use and development.* When the application was lodged, predominantly addressing the performance criteria as 'not relevant', against most clauses (for example, its unlikely that someone would catch public transport or walk from a nearby parking area to a recycling factory with their bag of recycling?) It was deemed that it did not meet the PC and needed a traffic impact assessment report to determine whether the discretion on parking was acceptable. Our frustrated client decided in the end to just show the 23 spaces on the site rather than obtain the $3000 parking report. Of course, they now need to build it.The change in the TPS toward site area, rather than floor area of a building is flawed. This become

	particularly evident when the subject title is large. More generally, it is noted that this Code is quite difficult to read/ follow and should be simplified.
Change of Use Some Changes of Use should be exempt. For example, changing from a use with a higher or similar occupation / use standard.	PDA currently has an application where a client is attempting to convert approved visitor accommodation into residential use. The property comprises four self-contained apartments within walking distance to the town centre. It is located in a coastal tourism town that currently has 0% residential properties for rent. The client wanted to do the 'right thing' and applied for a planning application which resulted in requests from the Council to reconstruct the car parking to squeeze in more parking spaces for visitors to 'Australian standards' (when there is more than sufficient on-street parking). They also require the property owner to somehow, retrospectively create private open space, which will likely result in putting insertions in what is currently a wrap-around verandah, forcing the installation of several new steps of stairs and completely ruining a beautiful Homestead style façade.Furthermore, to argue for a reduced parking requirement, the Council requires the client to get a traffic impact assessment at $2500+. Since visitor accommodation and residential use are both sensitive uses, shouldn't a conversion to residential use from visitor accommodation be exempt? If both buildings have certificates of occupation, why should a planning scheme require an applicant to retrospectively apply development standards for multiple dwellings?
Overlays	The application of overlays (eg: natural values / bushfire etc) at a desk top level only without sufficient ground truthing has significantly increased planning application costs. In order to prove that the overlay has been incorrectly applied, a developer needs to obtain a specialised report. Just getting an exemption report can cost upwards of $1000. Furthermore, the specialist consultants who prepare these reports are now inundated with work as a result of the increased demand the TPS has created. This adds additional delay to the planning application process. Some specialist reports can take up to 12 weeks to obtain. Anecdotally, while note related to an overlay as such, one PDA client has just waited four months for an environmental report that the Council required for a development application that simply involves sorting out skip bins from deceased estates and office renovations. The report writer indicated that he has been inundated with requests triggered by the TPS and simply cant process them. Insufficient specialists are operating in each relevant field, and PDA clients are experiencing long delays (6 – 14 weeks) waiting for the

	following specialist required by the TPS. Some examples of specialist reports include (but are not limited to): Bushfire Hazard Management Plans Natural Values Assessments Agricultural Assessments Landslip Flood modelling Acoustic/ Noise Traffic Impact and Parking Assessments Scenic Management impact plans If a Council determines that insufficient evidence is provided with the application and asks for the report under request for further information, this is adding many months onto the application time frames. PDA have several examples where the information our Planning team has provided, but not accepted by the Council, is near identical to that which a 'specialist consultant' later provides, resulting in unnecessary costs and delays for the developer.

Simpler

adjective
comparative adjective: **simpler**
easily understood or done; presenting no difficulty.
"a simple solution"

When the State Planning Scheme was being developed, two technical reference task forces were created to inform the development of the planning scheme. I sat on the Planning task force (PTF). The other was designed specifically for Infrastructure providers such as TasNetworks, TasWater, State Growth et.al.

Administration 3.0 - Interpretation	Lack of Reference Guide resulting in inconsistent interpretation One of the most vital pieces of advice the PTF provided was that the SPS needed to have a user manual or reference guide written for it so that people could understand how to interpret various clauses and what the intention was when a clause was drafted.Without that, we advised that despite the scheme being rolled out across the state, there would still be different interpretations and requirements by Councils. We were informed that the information was being collated and would be produced as a reference guide to consistently interpreting

	and administering the scheme. While definitions have been provided within the scheme, these do not go far enough and are not always consistent. For example:
Stormwater Management	The absence of a Storm Water Code has resulted in some unorthodox development approaches to applications, particularly by Southern Councils who have previously relied on the code in the Interim schemes to assist them through the assessment process. Under the TPS, PDA clients have been required to carry out the FULL engineering design and modelling, costing tens of thousands, only to have the application refused on another matter. Requirements such as demonstrating pre and post-development flows require significant work, resulting in high costs. One PDA client, utilising a specialist firm, incurred a consultant engineering fee of over $ 50,000 in order to resolve a single request for information. PDA would advocate for an improved process that requires a client only to outline a feasible storm water mitigation and management model as part of the planning process. Once a permit is granted, and the developer is provided with more confidence regarding the application, that level of engineering detail is more appropriate. This can be achieved through permit conditions. PDA would be happy to share more detailed examples and suggested resolutions, should the State Planning
Landscaping – General Industrial Zones Cl. 19.4.3	A1 requires 6m (minimum) of landscaping 'if a building is set back from the road'. This clause is both confusing and excessive. It doesn't indicate how far the building can be set back so as not to trigger 6m of landscaping . Also 6m is an excessive amount of landscaping for any zone. Some clarification is needed about how far the buiding has to be set back for the clause to apply, and it is recommended that the width be reduced to 2m. The Performance Criteria also using the same terminology. Does it mean for any building that is not built to the boundary, or any building that's setback further than 6m? Our Industrial clients generally leave 1.5 – 2m along the front boundary to plant a combination of low shrubs interspersed with trees. This creates a uniform look that is an effective screen while also offering passive surveillance.
Drafting	A thorough review is required to pick up issues with drafting, particularly around the use of 'And' / 'Or'. There are several sections where it is assumed that one or the other is missing causing a completely different planning outcome or assessment than what is likely intended. One such example is found in the Natural Assets Code- C7

	C7.7.2 P1 (a) through (f) currently reads as though you must meet all of the performance criteria, although logically, that is unlikely?
Natural Assets Code Raised by Scott Livingston or Livingston Natural Resource Services	*The Natural Assets Code refers to "clearance" of native vegetation, the closest I can find for a definition of "clearance" is Clearance and conversion" in the scheme definitions.* *clearance and conversion* *means as defined in the Forest Practices Act 1985* *Forest Practices Act 1985* *3A. Meaning of "clearance and conversion"* *(1) In this Act –* *clearance and conversion, of a threatened native vegetation community, means the deliberate process of removing all or most of the threatened native vegetation community from an area of land and –* *(a) leaving the area of land, on a permanent or extended basis, in an unvegetated state; or* *(b) replacing the threatened native vegetation so removed, on a permanent or extended basis, with any, or any combination of, the following:* *(i) another community of native vegetation;* *(ii) non-native vegetation;* *(iii) agricultural works;* *(iv) residential, commercial or other non-agricultural development; or* *(c) doing a combination of any of the things referred to in paragraphs (a) and (b) .* *The Forest Practices Act only refers to threatened native vegetation community, to me that mean non threatened native vegetation is not covered by the clearance and conversion,?* *Does that then extend to not being covered by the word "clearance" in the Code? clearance implies the removal of a "forest" and conversion to a non forest use.* *I started looking to try and figure out if partial harvesting of an area actually triggered the Code, can someone thin an area of forest, its still forest and not converted to another land use. The other part of the question I've been asked does cleaning up storm damaged trees constitute clearance and require a DA, my though would be that as long as you did nothing deliberate following that to change the use , cultivate, sow grass seed etc its not clearance.*
Natural Assets Code C7.4.1 Clarification required submitted by Scott Livingston No definition provided in the scheme (or the Act) for 'pasture'	*C7.4.1c(i), there is no definition of "pasture" that I can see. The intent with the added cropped production was I assume grazed pastures on farms. This definition would exempt native grasslands. There is a lot of pasture with priority habitat overlay in the rural zone!* *The grassed areas meet the definition of " an area covered with grass or other plants used or suitable for the grazing of livestock " the word suitable is the difference from a narrower definition where it is used for grazing livestock.* *For example :Are road verges pasture?*

As mentioned earlier in this submission, PDA's submission is an advocacy document prepared on behalf of our clients and planning staff. The matters raised are not exhaustive, but it is hoped they relay some of the challenges our clients have experienced, resulting in high development costs, long delays and unnecessary frustrations.

I invite the State Planning Office to contact me should they require clarification or further detail on any matter raised within this submission.

Yours sincerely,

Justine Brooks

Director | Planning Manager

[redacted]

PDA Surveyors Engineers and Planners

The Natural Assets Code of Tasmanian Planning Scheme includes prescriptions for Acceptable Solutions and Performance Criteria for clearance of native vegetation within what is termed in the scheme as Priority Habitat Area. A Priority Habitat Area is defined within the Code as "means land shown on an overlay map in the relevant Local Provisions Schedule, as within a priority vegetation area." That definition is clear not consider ambiguous, the code applies in mapped priority habitat areas, unless exempt, and does not apply in areas not mapped whatever Natural Values are present.

The Code Purpose refers to Priority Vegetation which is defined as:

means native vegetation where any of the following apply:

a. it forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the Nature Conservation Act 2002;

b. is a threatened flora species;

c. it forms a significant habitat for a threatened fauna species; or

d. it has been identified as native vegetation of local importance.

Clauses a-b are reasonably easily understood and unlikely to require clarification. Clause c, uses the term "significant" habitat which is defined within the Code as:

means the habitat within the known or core range of a threatened fauna species, where any of the following applies:

a. is known to be of high priority for the maintenance of breeding populations throughout the species' range; or

b. the conversion of it to non-priority vegetation is considered to result in a long-term negative impact on breeding populations of the threatened fauna species.

This definition relies on there being a defined known or core range for a particular species, while some threatened species have range boundaries established this does not apply to all species. The precautionary principal would be an assumption that no defined range boundary meant the definition applied to all areas of the municipality, the alternate choice being no defined range boundary means that significant habitat does not occur. The definition also means that a new occurrence of a threatened species that is outside the known or core range cannot be considered as significant habitat for the purposes of assessment under the Code.

The key wording in the definition is "breeding habitat" for many species this limits "significant" habitat to sites with specific attributes, and does not include the foraging area of wide ranging species. Devils and quolls range over extended areas and potential habitat includes all but extensive urban areas, denning sites

for these species are however much more restricted, the presence or absence can only be established by site inspection.

The Code Purposes final clause (d) cites areas identified as locally important. There is no definition of local importance within the Code, Scheme or Act that I am aware of. The Planning Scheme terms and definitions state that where not defined the “ordinary meaning” of a term applies. “local importance” does not to my knowledge have an ordinary meaning in isolation, the meaning of local and importance requires context, does local refer to a neighbourhood, a municipality, region? Important for what? Native vegetation can be important for a diverse range of uses, not restricted to its biodiversity values. Is the local illegal dumping site “important” to those that use it? Assuming importance is meant in the context of biodiversity values there needs to be some clarification on how this is deemed. While there are areas that common local knowledge would identify as locally important, there is not to my knowledge any register where a proponent or their advisers can establish this as fact. A representor objection to a development may well cite local importance, however I do not believe that can be considered as part of an assessment by council, they should only consider facts known to them at the time of application. It is unclear whether an assessment of biodiversity values by a suitably qualified person is constitutes “identified as locally important”, or if there is any obligation on a proponent to have such surveys undertaken or if undertaken is required to provide evidence of values outside the mapped priority habitat area, if they occur.

Locally important - Maybe an area where the local Landcare group has done some work, maybe an area where there has been NRM funding, maybe anywhere a NIMBY has expressed concern over what their neighbour has done.

Spatially defined
Environmental Management Zone?
Landscape Conservation Zone?

The Regional Ecosystem Model (REM) that form the basis for the Priority Habitat Area in Planning Scheme Overlays is, by the authors description, a conceptual (simple) model that is based on potentially inaccurate data at a regional level. Its use in planning Scheme overlays is applied at a municipal level. The REM relies on remotely sensed /modelled data (eg Tasveg), threatened species locations that may be inaccurate threatened species data includes observations that are historic rather than contemporary, and potential habitat models that are likely to include totally unsuitable areas due to modelling constraints. While the models may produce useful models for use in broadscale planning at a regional level, at a local / site specific level it may be a useful guide to areas where the natural values of a site need to be assessed. The REM it is not an overriding, conclusive measure of a sites meeting the definition of priority habitat or a reasonably applicable measure for

identification of locally important vegetation, where native vegetation relies on that to be included in an assessment as priority habitat.

Priority Vegetation

C7.6.2 applies to clearance of native vegetation within a Priority Habitat Area for building and works. The objectives list criteria under which such clearance can occur, they imply that reasonable loss and minimisation can be used to meet assessment criteria. Acceptable Solutions only can be met by " clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved under this planning scheme". I believe this excludes building areas on plans approved under previous planning schemes meeting Acceptable solutions.

Performance criteria P1.1 for the clearance of native vegetation within a priority vegetation list a number of clauses of which only 1 needs to be satisfied. Several of these are poorly defined, however in the majority of cases are easily met by proposing a single dwelling. It is unclear whether construction of a single dwelling and an associated outbuilding, fails to meet this criteria as they are shown as an or statement.

The term clearance of native vegetation within the code differs significantly from previous planning scheme requirements, where the term clearance or disturbance was used. The term clearance is not defined in the Code, Scheme or Act to my knowledge. Clearance and conversion are defined in the Scheme by reference to the Forest Practices Act. The Forest Practices Act definition of clearance and conversion applies only to Threatened Native Vegetation communities and does not apply to native vegetation in the broader sense. It is therefore unclear if clearance applies only to Threatened Native Vegetation Communities. P1.1 &2 contain criteria for assessment of proposed clearance of native vegetation within a priority habitat area, however the criteria relate to potential impacts on priority vegetation. By definition not all native vegetation within a priority habitat area is deemed priority vegetation, it must meet "significance" criteria previously discussed to be priority habitat. Many developments will meet P1.2 with a simple statement tat there is no priority habitat as defined, therefore there are no relevant clauses, any proposed clearance of native vegetation does not trigger Performance Criteria unless it is also priority habitat. There is a notable difference between the wording of requirements under Acceptable Solutions which covers all native vegetation clearance while performance criteria only apply to native vegetation that is deemed priority habitat.

C7.7.2 applies to clearance of native vegetation within a Priority Habitat Area for subdivision. The majority of subdivisions are unlikely to meet Acceptable

Solutions. A single criteria only needs to be met for P1.1 and for the majority of subdivision this will be easily achieved under P1.1 b where each lot will be for construction of a single dwelling or associated outbuilding, as with C7.6.1 it is unclear whether the or between building or associated outbuilding precludes the construction of both, however at subdivision this intent cannot be determined. Clearing undertaken for construction of a single dwelling is undefined in scope if that clearing was of native vegetation that was not priority habitat assuming that clearing of non priority vegetation does not trigger P1.2. as the is no priority vegetation and no option to minimise adverse impact on something that does not exist.

Performance criteria P1.2e refers to on site biodiversity offsets, there is no specific reference to potential off site offsets, however I believe there use is still possible if proposed as part of mitigation measures proposed to meet P1.2.d

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[redacted]

21st August 2022

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State Planning Provisions Review – Comment on and Review of Scoping Issues

Thank you for providing permission to allow consideration of this late submission. I realise the deadline I was given was to Friday the19th but write and explained the reason for not being able to provide this document until the Monday the 22nd. I hope and seek confirmation you will consider my submission.

I have been working on and advocating for a system of sane, responsible and ecologically sustainable land use planning in Tasmania for over 30 years now, shortly after moving to the State of Tasmania from New South Wales in 1988.

In that time progress and improvement over ecologically sustainable land use planning has been depressingly slow, inept and inexplicably gormless, unless one forms the view that the state of Tasmania would prefer that the dominant paradigm of an open-slather would remain precious and thus totally out of reach for any genuine reform agenda. In some instances outcomes have definitely worsened over time.

Introduction

Voltaire (in Candide) states:

> *"it is the folly of maintaining that everything is right when it is wrong."*

Voltaire must have been thinking the Tasmanian Planning Scheme, when he wrote Candide.

The Tasmanian Planning Scheme (TPS) is comprised primarily, as its foundation, the State Planning Provisions (SPP), currently July 2022 version. These SPPs (Provisions) were formally called the Common Key Elements Template.

Under the tutelage of Ms Massina, was bastardised into an open-slather system of land use planning, using the Tasmanian Planning Reform Taskforce, which instead of attempting to achieve the stated Schedule 1 Objectives of the LUPAA and RMPS legislation the resultant

SPPs currently provides administrative discretion, seeks to diminish rights of appeal, enhances rights of development almost everywhere and ignores pressing environmental and heritage and amenity priorities, in favour of the developer regardless, regardless, regardless.

Unlike Voltaire, the Tasmanian Planning Scheme (and hence the underlying SPPs) are not content with the world as it is. The TPS is instead, I maintain, an instrument of open-slather because that is how the SPPs are engineered. Currently the SPPs are an engine of unsustainability but then sustainability has not even been transparently defined other than briefly in the Schedule 1 Objectives themselves.

The TPS itself, comprised at its heart by the SPPs is simply a neo-liberal artifice, which was constructed out of the mindless rhetorical loins of the Property Council, which when it came down to achieving something genuinely based on a set of policies and principles, its operative failed however. Now it is the Tasmanian community, who will suffer poor planning and who has to deal with the magnitude of that failure.

It is that absence of policies and principles which are playing out right now and have been neglected and avoided for well over 25 years. Land use planning happens slowly but inexorably. The absence of policies and principles is a fundamental aspect of the day to day operation of the Tasmanian Planning Commission, whom, I allege, replaces a proper consideration of the Objects of the underpinning legislation, with a calculated administrative discretionary weaselling over any aspect, regardless of how minute, so as to retain and enhance the open-slather aspects of land use planning in Tasmania. Tasmania has long adopted a mentality of development at any and all costs.

The Tasmanian Planning Commission is in essence the captive bureaucracy of the 29 Planning Authorities, operated as an intrinsic part of the 29 local government administrations, spread across the State of Tasmania.

This submission will reflects a number of instances where poor decisions result in the avoidance of dealing with genuine problems in the creation of the Tasmanian Planning, which uses the template of the State Planning Provisions. This problem of course is actually a combination of the State Planning Provisions and 29 separate, geographically separate, administratively separate, philosophically separate Local Provisions Schedules, all being bound up into a rhetorical nonsensical lie, known as the single Tasmanian Planning Scheme. There are obviously going to be 29 planning schemes, just as previously with the IPS process.

The way in which the Local Provisions Schedule, under the control of the 29 local planning authorities, can obviate the intention of the State Planning Provisions, because there is no compulsion to implement crucial aspects of State Planning Provisions, therefore there is no consistency or reliability within the local planning scheme. The intention of the Tasmanian Planning Scheme carried out for the common good and the benefit of the populace of Tasmania is often missed, but rather a pseudo-benefit is given precedence, that being the Local Planning Authority, of which there are 29 presently.

There has been no proper assessment of whether or not there should be 29 Planning Authorities, whether those Planning Authorities within administrative areas, comprising as fewer as 2,500 people, should have a separate Local Provisions Schedule with the same status as a Planning Authority with 70,000 people.

Only in Tasmania, a state of about 540,000 people, would there be 29 Planning Authorities with such a disparate spread of population and area, and legacy and artifice of the past.

The potential for the 29 Planning Authorities to subvert the genuine intent of the Tasmanian Planning Scheme and its SPP is simply massive and must represents a significant challenge for the government of Tasmania.

Hence, I characterise the Tasmanian Planning Commission, as a captive bureaucracy of the 29 local governments, operating the 29 Planning Authorities. The notion that the State Government of Tasmania is developing a Tasmanian Planning Scheme based on the set of SPPs is rather amusing and hard to believe or take seriously.

I would, were I designing such a system of land use planning, consider a separation of the Planning Authorities from the Local Governments. The design and make up of such Authorities would be crucial. I cannot see a need for 29 of them but rather, fewer, perhaps only 3 to 6 in number.

At its heart the Tasmanian Planning Scheme is a relic of the Common Key Elements Template which was repurposed into the State Planning Provisions by Massina's Planning Reform Taskforce, a one sided pro development ad-hoc affair. That change has not dealt with the important issues which beset and beleaguered land use planning in Tasmania.

Hence it is easy to accurately claim that the problems and inadequacies of land use planning in Tasmania certainly extend well beyond what could be achieved with a review of the State Planning Provisions. Indeed I do not see such a review as the primary priority at all. This Review of SPPs simply has an underlying ulterior motive which will become clear, I assert.

To compartmentalise or seek to solve the problems by having a review into the State Planning Provision, as if this should be the priority, would be a massive error, as Voltaire has already stated.

The open-slather planning scheme, known as the Tasmanian Planning Scheme, achieves its open slather character and purpose, in the face of the Objectives of the Land Use Planning Approvals Act (LUPAA) and the Resource Management Planning System (RMPS), and does so for the purpose of achieving an unfettered allowance for an extractive, liquidating, intensifying sort of planning instrument, which hides such open-slather characteristics, through a volume of minutia that allows certain land uses to continue unfettered whilst making others very difficult with only a convoluted rationale.

There is no underpinning rationale or set of reasons which support the selection of any particular unfettered land use, because there is no suite of land use policies (State Policies or Tasmanian Planning Policies) based on a set of logical decisions supporting the Objectives of the various RMPS legislations. This is a massive catastrophic failure.

There was a promise that shortly after the Liberals would come to power in 2013 that State Policies would be created for the land use planning system. This promise has not been kept, I assert it is a broken promise.

I also assert that there is little evidence that the State Planning Office (SPO) is going to be allowed to create a proper suite of State Planning Policies or Tasmanian Planning Policies except as a mere confirmation of the status quo.

The planning system of Tasmania, originally from 1993, known as the Resource Management Planning System (RMPS) of Tasmania was always intended to be supported and philosophically underpinned with State Planning Policies, which have their own legislation which is now being ignored, though there appears no moves to remove the small number of state policies, which have been created.

The fact that Tasmanian Planning Policies, promised from 2013, would appear to have less priority than a review of the State Planning Provisions, which have only been enlivened for about two years now, would be a fairly good indicator that the current Liberal government has very little understanding about the significant benefits of a suite of land use policies.

There is no attempt in Tasmania to achieve Ecological Sustainable Development (ESD).

The fact that the proposition for a suite of Tasmanian Planning Policies (TPP) does not include a proposition for a TPP policy over climate change, shows the immense inadequacy of the proposition espoused by SPO for the Tasmanian Planning Policies to date.

The fact that the draft Tasmanian Planning Policies do not include a proposition for a policy over threatened species, shows again the immense inadequacy of the proposition espoused by the Tasmanian Planning Policies to date. How silly to not consider having a Policy to support the species which are in the middle of going extinct; only in Tasmania!

Climate change is the urgent existential threat to our existence. Yet Tasmania cannot even create a Tasmanian Planning Policy to ensure that a cohesive approach that absolutely and automatically considers and mitigates against climate change in land use planning. Not only is this inadequate, it is pathetic.

It is not even logical to create a suite of Tasmanian Planning Policies which avoid crucial issues such as climate change. Who came up with this rubbish? Another crucial issue facing Tasmania is that of threatened species and I note that there is no inclusion or mention of threatened species in the suite of Tasmanian Planning Policies which are proposed at present.

I do support the notion of a suite of Tasmanian Planning Policies if their policy intent is mandatory upon Councils and planning authorities. I am uncertain about the interaction between the existing State Policies and the more recently initiated and yet to be created Tasmanian Planning Policies. I was not aware until recently that compliance with the Tasmanian Planning Policies would be mandatory but anything less of than that would be in essence utterly useless.

State Planning Provisions – Massina's Pro-Development Planning Scheme

The Government states:

> *"The Government has been undertaking planning reform to ensure planning in Tasmania will be simpler, fairer and more efficient."*

The mantra of "simpler fairer and more efficient", was included in a Liberal party promise prior to the 2013 election.

Prior to the 2013 election the Property Council's operator, Mary Massina had whipped up a frenzy over land use planning matters in Hobart, with claims which extended well beyond the facts of the matter. She was rewarded with a couple of plum jobs, in the Tasmanian tradition.

For its part the Government simply wished to remove the opportunity for opposition to planning developments, basically regardless of their quality or impact, I assert.

These claims run by the Property Council were carefully, accurately and studiously refuted by people in the government planning bureaucracy, who knew the claims of Massina were not factual, but nonetheless the Liberal party embraced Massina's mantra and after it came to power, the government simply installed Massina as head of the Planning Reform Task Force. It was as simple as that. It was considered to be a wrecking ball and that remains my view to this day.

The Tasmanian Planning Reform Taskforce was never interested in respecting Local Government or the LUPAA Objectives or indeed any community views, which may be

expressed through the Regional Strategies or in any other manner such as through the SPPs themselves. They did not even want to be honest and fair about Polices.

Rationale for a Review Now.

It has been stated by the State Planning Office:

> *"Regular review of the SPPs is best practice ensuring we implement constant improvement and keep pace with emerging planning issues and pressures. While the SPPs are not yet in effect across all areas of the State, a suitable period has now passed since the SPPs were drafted to initiate a review. The full suite of SPPs have been in effect in some local government areas for nearly two years. Some parts of the SPPs are also already in effect in the remaining interim planning schemes. This provides enough information and experience for conducting the review.*
>
> *The SPPs will also require review for consistency with the Tasmanian Planning Policies (TPPs) once they are made."*

Timeline for the SPP Review.

It has been claimed that because the SPP were created and finalised 5 years ago they should be reviewed now, in the absence of any Tasmanian Planning Policies and then re-reviewed once those are created.

But the SPPs have only been enlivened for about 2 years and so there is little practical experience of how things are working. A review after the logical creation of TPPs would make far more sense.

The failure to create Tasmanian Planning Polices remans a broken promise and an illogical avoidance. TPPs should be carefully created now after the circulation of a background report.

Promises for and Precedence of Tasmanian Planning Policies before any Review of the SPPs is Proposed

The Liberal State Government made a number of promises over planning matters in seeking the power of Government but has reneged on what I regard as the most important.

It is my view that the Liberal promise, prior to the election in 2013, promised as a priority, was an immediate introduction of State Planning Policies.

I can accept that what may have been intended was a policy which was limited to land use planning issues rather than the State Policies. I enclose the 2013 Liberal policy document, as evidence of the promise over the priority to introduce State Policies.

The Government is continuing to fail to deliver on its promises over State Policies but so far they have got away with this aspect. I explain the relevance below.

State Policies and Strategies should be created and have a comment opportunity before State-wide style planning schemes are introduced, were it to be done competently and fairly under the RMPS legislation. This would be Fairer because it would be far more transparent as to the particular Policy shifts and introductions that are otherwise untransparently embedded in the State Planning Provisions, which is the case today.

Insisting on State Polices coming before the review Statewide Planning Provisions would be reasonable and fair and would save significant funds.

The State Policies and Projects Act though State Polices is the legal instrument by which Statewide consistency was intended to be achieved. Simple as that. The Liberal Government is still trying to understand the fundamental concept of how the RMPS planning system should work under the various RMPS legislations.

I claim there remains an intent to ditch The State Policies and Projects Act.

In December 2015 Planning Minister Gutwein started prattling on about State Policies and second level ones in the PIA Newsletter but the Minister who does Polices was meant to be Premier William Hodgeman not Planning Minister Gutwein. Planning Minister Gutwein was acting well and truly beyond his remit.

The idea of the RMPS is that State Polices are there to provide consistency and that legislation has been there since 1993. There was, of course, no legislative mandate for second level policies. I argue it is a second rate idea. It was not consistent with the Liberal's promise of State Policies. But it is now legislated and it is clear the Government, seeking to have one State Tasmanian Planning Scheme would be underpinned now, perhaps in 2022 or 2023 by two levels of Policy, in the circumstance where the RMPS has been operating for almost 30 years. It must be seen as a sick joke.

The Liberals made promises to get elected in 2013. What did the Liberals promise before the election regarding Policies but have never ever had the integrity to carry out their promise? Hear it is!

> *"A fairer, faster, cheaper, simpler planning system"*
>
> *"A Majority Liberal Government has a plan to fix the Labor-Green planning mess:"*
>
> *"State policies for consistency"*
>
> *"Immediately after the election, a majority Liberal Government will provide the leadership and consistency that has been lacking under Labor and the Greens. We will commence drafting state policies to provide the necessary guidance to councils on how to implement the single state-wide planning scheme and plan for Tasmania's future land use needs."*
>
> *"These policies will make clear the government's intention to once again make Tasmania 'Open for Business' and provide certainty to both investors and the community about how the planning scheme will work."*
>
> *"State policies will include, for example, objectives such as:*
>
> > *- Planning and land use is to be geared toward facilitating economic growth and investment;*
> >
> > *- Planning and land use is to take into account future needs of the community and potential growth; and*
> >
> > *- Sustainable and sensible development is to be encouraged to assist in conserving and allowing access to Tasmania's parks and reserves.*
>
> *"All state policies will be drafted pursuant to relevant laws and regulations."*

Was there a *"mess"?* Was any of the Interim Planning Schemes a *"mess"?* Is the Southern Regional Land Use Strategy a *"mess"?*

What does the word *"Immediately"* actually mean?

Has the *"necessary guidance"* to Councils been provided in advance of the Statewide Planning Scheme?

Has anyone seen any evidence that Policy drafting has *"commenced"?*

NB. The use of the term by the Liberals *"State Policies"* in the above extract from the dishonest Liberal's planning promise. What relevant laws for State Policies would apply other than the State Policies and Projects Act?

I am left wondering when someone is going to call this state government to account over this deception and dishonesty.

I am left wondering how the PIA can be so weak over one of their core positions, being that of a suite of State Policies.

What I cannot accept is the ongoing deceit and deliberate broken promise, now nine years old. I call upon the Minister to honour the promise of a suite of Tasmanian Planning Policies, (perhaps what was intended) at the earliest possible opportunity. There can be no excuse.

In saying that I reject completely and utterly the description of the Tasmanian Planning system which has relegated Tasmanian Planning Policies to phase 2 of a so called New Tasmanian Planning System.

There is a one-page document suggesting Tasmania is to have a "New Planning System" on the State Planning Office website. (That is I have only found one document.) There has been no proper proposal to have a new planning system, of which I am aware. I can recall no mandate for this proposition whatsoever. I claim the proposition itself is a nonsense, belongs in the fiction section of the local library. My understanding that Tasmania continues with land use planning created under the RMPS system.

I regard this "New Planning System" as a fake type fraud, a pseudo-manifesto promotional tool and egregious breach of the Liberal promise, which was made in 2013 to create Policies, as it relegates them once more to the future. There is no excuse for such a disgraceful flagrant breach of promise regarding Policies not being attended to immediately. Shame!

It is ridiculous and massively irresponsible, that after almost 30 years of operating the RMPS, there remain no suite of land use planning policies to underpin and enliven the objects of the land use planning system of Tasmania, the RMPS.

It is highly convenient for the Tasmanian Planning Commission and the State Planning Office to ignore the objects of the planning system, the LUPAA Schedule I Objectives, simply because there is no policy framework which interprets and supports the objects of the act. This Policy avoidance of an interpretation of the objects of the act is unacceptable and grossly unfair. Indeed it is simply stupid

<u>Regional Land Use Strategies Diminished by SPPs</u>

The Liberal's Election Commitment to the RLUS was:

"To ensure that the single statewide planning scheme is fairer, faster, cheaper, and simpler for all Tasmanians, the Planning Reform Taskforce will be instructed ensure that:

- *The work already undertaken to create the three Regional Land Use Strategies is taken into account;"*

In my firm view, regarding the Draft State Planning Provisions, the stated Purpose of Section 2.1, clearly means that for most of the *"single statewide planning scheme"* the three Regional Land Use Strategies will not be a relevant consideration.

The more one considers the State Planning Provisions the more I am of the view that it is designed to negate the RMPS intent to allow participation in land use planning in Tasmania. It does this in several ways. It does not do this by solving any of the age-old problems of the LUPAA planning schemes.

The infinitesimal amount of legislation devoted to Regional Land Use Strategies and the ease with which the intent can be rorted, weaselled or otherwise avoided by Local Governments and their Planning Authorities, and especially the Tasmanian Planning Commission. In fact the ease with which they can be altered so as to overcome any SPP driven demand or requirement makes the whole Regional Strategy process a pathetic joke.

A separation of Regional Land Use Strategies and the bodies that creates them urgently is required. Currently Planning Authority

The Myriad of Failures to be Addressed and Incorporated

One of the massive failures is of the Tasmanian Planning Scheme, which promised a consistent and fairer planning scheme for Tasmanians is the fact that despite having Codes within the State Planning Provisions, which look as if a holistic approach is being taken, in reality, the situation is that a local government Planning Authority, which does not wish to put in place holistic consideration of all the relevant matters, which a responsible local government should consider, when pursuing sustainable development, can in fact simply refuse to use that part of the State Planning Provisions in creating its version of the Tasmanian Planning Scheme. This population of Codes is a part of the scheme included in the State Planning Provisions but the Codes when populated become a Local Provision. It (the planning authority) is supported in its desire to have a more open slather style of Scheme through avoidance and weakness of the Tasmanian Planning Commission, who fail to enforce the adoption of and the use of SPP Codes, which clearly apply and would be relevant to various municipal areas. This disgraceful state of affairs deserves to be addressed without delay and local governments who are refusing to apply and enliven certain Codes within the SPPs, deserve to be forced to do so now.

I provide the specific examples in relation to my local government area, Meander Valley Council, which refused to populate the local Heritage list, under the Heritage Code within the SPPs, despite having an existing heritage report, which was produced by one of Australia's expert heritage planners, Mr Davies, which was work done with public money and despite there being over 600 heritage properties within the Municipality. When this matter was raised with the Tasmanian Planning Commission, the pathetic response was that they could not force Meander Valley Council to populate its Local Heritage list created under the SPP Coder provisions.

Tasmania the second oldest settlement of Australia and as such, happen to be the custodian of almost 50% of the whole of Australia's built heritage. The issue of Heritage protection is a part of the Schedule 1 Objectives of the LUPAA and the RMPS.

For this very significant cultural built heritage to be not adequately protected under the system which is known as the State Planning Provisions, simply because a Municipal Council doesn't wish to implement any local heritage protection, is absolutely disgraceful. It is strongly criticised. It is a betrayal of future generations. It is a betrayal of notion of sustainability.

It is noted as well that Heritage Tasmania and the Heritage Council has been a weak pathetic organisations that have repeatedly failed heritage in Tasmania. So when a useless Bogan Meander Valley Council failed to introduce a local Heritage list, within the State Planning Provisions, no representation from the miserable Heritage Council over Meander Valley Council's draft Local Provisions Schedule, seeking to ensure that Meander Valley Council would establish a local Heritage list in its new planning scheme, ever materialised. Generally when a private landowner with heritage buildings under their custodianship, seeks the support of heritage Tasmania, they are often enveloped by a vacuum.

The Davies report clearly identifies those properties that deserve to be on the state list and those that deserve to be on the local list. Mr Davies expertise is beyond question in my view. But land use planning in Tasmania comprises of a cultural process of weaselling which allows and facilitates administrative discretion. On the occasion of the hearing into the Meander Valley Local Provisions Schedule, a week and vacillating Tasmanian Planning Commission walked away from an insistence on the population of the local Heritage list in the hearing process.

Meander Valley Council, through the Davies' report, is aware that there is over 600 heritage properties scattered across the Meander Valley Municipality. These 600 properties, sometimes comprising multiple buildings, and do not count cultural heritage landscapes, which were never addressed either, and did not include significant heritage trees, which again were never addressed. The municipality clearly has a very significant amount of built heritage. This is undeniable, yet in Tasmania, the notion of private property rights trumps the public interest every time. I call this cultural phenomena, peculiar to Tasmania, the land of the thylacine killers. The term applies to matters other than extinct species such as the Thylacine.

It is my view is that if Meander Valley Council doesn't want populate its Local Heritage List then it doesn't deserve to be a Planning Authority. That function should be removed from the Meander Valley Council and it should simply become a useless manager of local roads.

There is no point having State Planning Provisions which are optional for their application because the Local Provisions decisions are left up to some backward local government which cannot read or understand the LUPAA Objectives.

A second example which again relates to Meander Valley Council, where the Council refused to adopt the Scenic Protection Code and thus failed to better protect important scenic landscapes across the Meander Municipality.

The rationale given by the senior strategic planner of Meander Valley Council, prior to her leaving the Council and joining Mr Ramsay's outfit, the Forest Practices Authority, was that most of the municipality has high scenic value.

Instead of seeing this as a rationale for better identifying the scenic priorities and the scenic protection areas within the municipality, it was seemingly trotted out as an excuse for not doing this scenic management work.

Yet the Meander Valley Council has already commission a competent scenic landscape strategy produced by the respected planning firm Inspiring Place and this is enclosed to

show the State Planning Office just what a useless pile of rubbish Councils like Meander Valley are in failing to take note and implement the State Planning Provisions.

There is absolutely no point in having State Planning Provisions, which are optional, simply so that any one of the 29 local governments can thumb their nose at the State Government of Tasmania and its State Planning Office.

Perhaps the State Planning Office actually needs to become a State Planning Authority. Clearly there is a lack of State based authority that forces inept and intellectually bereft Local Governments and Local Planning Authorities to toe the line.

It is noted that Tasmania supposedly has Local Planning Authorities which are ostensibly controlled by a Tasmanian Planning Commission and a State Planning Office, so as to meet the Objectives of LUPAA. Now in my view this is currently dysfunctional.

I claim that to be serious about having State Planning Provisions, these urgently and as a priority need a useful and reliable degree of compulsion, for the purpose of compelling local governments to mandatorily implement in a consistent manner the State Planning Provisions, including all the relevant Codes, so that a consistent and sustainable Tasmanian Planning Scheme can be created.

Avoidance of this fundamentally important issue would mean is that the notion of a Tasmanian Planning Scheme is a shambolic piece of drivel, which currently obviously it is the case.

Relevant Matters to be Included in The Review

There are a variety of matters which should underpin the Review of the SPP and thus be Scoped to be included in any Terms of Reference and such scoping should cause the State Planning Provisions to be assessed against standards which are established which clearly and irrefutably support the legislative obligations, not only of the RMPS but within the variety of legislation under the RMPS, including Threatened Species, pollution, Heritage, as well as Australia's National and International Obligations

Objectives of the RMPS and the LUPAA

The objectives of the RMP S and of the LUPAA are crucial aspects which should underpin in land use planning Tasmania. The system of land use planning in Tasmania does not actually take account of these objectives. This is a massive failure of the State Planning Provisions. The objectives state:

SCHEDULE 1 - Objectives

Sections 5, 8, 20, 32, 44, 51, and 72

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

The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule –

(a) *to require sound strategic planning and co-ordinated 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 secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; 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.*

It would be crucial and essential that any review of SPPs fully and properly considers carefully and in full an assessment against the schedule one objectives above.

Additionally the objective of the precautionary principle, contained within some of the RMPS legislation would also be important and relevant in any review of SPPs.

Matters affecting Climate Change

Climate change is widely recognised as an existential threat, indeed an urgent and pressing threat to our common future. It is essential that we make changes to reduce our consumption and liquidation and the extraction and combustion of nonrenewable fossilised carbon at the earliest opportunity. This pressing task will become more widely accepted, more logically implemented and more effectively achieved with a Tasmanian Planning Policy or state policy. Indeed it would appear to justify a State Policy. The avoidance of this highly important issue in the Tasmanian Planning Policies document is strongly criticised.

Land Clearance

land clearance is a nationally listed EPBC threatening process which exacerbates climate change and which is widely regarded as totally unsustainable. Land clearance continues to be implemented, seemingly with relish, even by Parliamentary members. Land clearance urgently needs a new policy and to be included and more effectively achieved with a Tasmanian Planning Policy or State Policy. Indeed again it would appear to justify a State Policy

Matters of the Influence of State Government Agencies

Earlier I claimed that the Tasmanian Planning Commission was the captive bureaucracy of the 29 local Planning Authorities.

Now I also wish to claim that the State Planning Provisions, or rather certain parts of the State Planning Provisions, are the captive parts of land use planning considered to be owned by certain State Government agencies.

The way it works is that the State Planning Provisions are given to the Various Agencies, which clearly have a vested interest, with an invitation to write up the provisions that they want. Previously there was some arms-length distance between State Government agency and the State Planning Provision. That arms-length distance, through the Tasmanian Planning Scheme process, possibly under Ms Massina's tutelage, has been destroyed.

If one looks at the Environmental Management Zone (a part of the SPP) as an example. This used to be quite a sensible Zone under the Interim Planning Scheme process. Now that Zone

has become a plaything of the Parks and Wildlife Service. The Zone has accordingly been debased.

Gone is any Planning independence, replaced with a complicit drafting, probably directly by the Parks and Wildlife Service of the Environment Management Zone, purely for the benefit of the Parks and Wildlife Service, rather than for the benefit of nature or the greater public good. This subjugation of the Environment Management Zone to the business purposes of the Parks and Wildlife Service is a disgraceful shitty betrayal of the Tasmanian component of the National Reserve System.

It is my proposal that should this disgraceful circumstance continue that there is no other option than to seek to list the Tasmanian Planning Scheme as a Nationally Listed Threatening Process under the EPBC legislation.

It has to be said that the Parks and Wildlife Service have even failed to honour their obligations under the Regional Forest Agreement to create Statutory Management Plans for over 600 secure in perpetuity public conservation reserves.

So on the one hand the Parks and Wildlife Service sought and gained significant commercial opportunity through the State Planning Provision and the Tasmanian Planning Scheme and on the other it was patently unwilling to do the fundamental work to ensure that its public reserve properties were adequately protected by proper management plans.

I see this problem both from the point of view of the State Planning Provisions, which were rorted by the Parks and Wildlife Service, as well as a process problem where the Environment Management Zone of the State Planning Provisions were considered to be the wholly owned province of the PWS aided and abetted, I allege by the Tasmanian Planning Commission and probably by Massina's Planning Reform Task Force, which through some slightly obtuse means became the precursor of the Planning Policy Unit, the precursor of the State Planning Office.

Heritage and National Reserve System Matters

Heritage Code matters are particularly problematical. Strong consideration within the SPPs should be given to an adoption of the Burra Charter, including the principles and processes which have been embraced by charter. The State Planning Provisions as they currently operate represents a considerable threat to heritage in Tasmania.

The avoidance of cultural landscapes and the deliberate deregulation of landscape areas surrounding heritage properties and buildings by Heritage Tasmania including properties on the Register of the National Estate is highly concerning.

Given the parlous state of heritage in Tasmania, the SPPs should be scoped to consider the Register of the National Estate.

Likewise any world Heritage properties, their values and the protection of or threat to those by way of the SPPs should be scoped as a relevant consideration and the process should be structured to consider such matters in a precautionary way.

The National Reserve System of conservation reserves, totalling over 850 public land reserves and over 900 private land covenants and reserves, their conservation purpose and especially where there is an absence of any Management plan, should influence and be considered in any review of theSPPs.

Local Character Statements and Desired Future Character Statements

The Tasmanian Planning Scheme and its State Planning Provisions, stupidly, is the purveyor of death for local amenity and character. The SPPs removal of the provision for Local Character Statements and Desired Future Character Statements which would be populated within a local provisions schedule represents a significant loss for the protections of local community's amenity and in fact will become more recognised widely as one of the primary drivers of a major diminution of amenity and sustainability. This in itself is a disgrace, in know how to plan better, but it seems some in the Property Council are just too greedy.

The SPPs deliberately intended to avoid important local character statements and desired future character statements, which would make the qualitative intent and standards of any particular zone far less clear and indeed it is intended to pave the way for gormless characterless suburban sprawl, what will be seeing in the future as our modern slums. This absence of crucial Local Character Statements and Desired Future Character Statements would lead to greater debate and greater appeal and greater potential for judicial review type challenges. It would be less fair and would involve Council in more disputes, not less.

All of us in Tasmania cherish the special characteristics of our local areas. I am sure you cherish yours too. Tasmania is a very locally proud place. Everybody does cherish their area or else they leave. Part of the reason Tasmania is intensely parochial is because of the pride they have in their beautiful local places.

This Tasmanian Planning Scheme and its current underpinning SPPs has already started damaging the special places which we cherish, diminishing Tasmanian fundamental and special qualities, turning the landscape to intensified suburbia's where the natural world is relegated to the small spaces between rows and rows of housing. The absence of adequate urban growth boundaries, limiting development, especially across many towns all over Tasmania is a retrograde step which was never properly explained to the Tasmanian public.

More importantly perhaps, this Tasmanian Planning Scheme and its current underpinning SPPs threatens the ability of all of us to defend and retain the cherished character of Tasmania's local areas. Is that what Tasmanians want, and inept and impotent scheme, captured by the developers' greed?

Responsible land use planning is not a prohibition but rather a set of adequate standards and consideration that effectively and properly protects the environment, our heritage, the landscape, our amenity and local character. These public interest matters are required to balance and provide ecological sustainability in the face of private property and indeed public land development. Currently the SPPs do not achieve this outcome in any reasonable and proper manner. I consider that this is a deliberate result and as such it is strongly criticised.

Appeal Rights

I consider the issue of adequate appeal rights to be a vital and central right to protecting what local communities cherish. It has been and I argue remaining the Government's undeniable intention to debase and reduce appeal rights. It is clear that is against the RMPS and its Schedule 1 sustainability objectives, which commit to encouraging involvement and I believe the foundation of this approach is already embedded, as a nun spoken untransparent policy position which is incorporated within and carefully, assiduously and deliberately permeates the very pores of the State Planning Provisions. The people who do this work have been carefully chosen. Of course it is beyond any transparent job description.

I believe that the democratic and public interest issues at stake are far more important than private property rights and that position is indeed reflected clearly and unambiguously in

LUPAA's Schedule 1 objectives, which commits to such concepts as intergenerational equity. We as a society are surely not so selfish that we must studiously avoid achieving intergenerational equity.

This Tasmanian Planning Scheme will in many ways become the end of meaningful local government planning.

Indeed people who wish to enhance private property rights to develop are being given everything they want by this state-wide planning scheme and its SPPs to the disadvantage of the community and the organisations whose role it should be to protect the community – Local Government.

There will likely be an expression of community outrage over what will eventually be a set of planning schemes with many more 'as of a right' land uses, which will not be able to be modified and improved, where people's ability to appeal is intentionally diminished and diminished unfairly.

It is not so much the state-wide consistency aspect of the SPPs, but the watering down of planning controls, which is being done to enhance the open slather development at all cost and drive down the rights of local communities to appear the amenity destroying developments. This is intentionally incorporated into all zones of the SPPs.

Already appeals are a very small proportion of development permit applications, so why should the Property Council so strongly influence the Liberal Government to further reduce people's rights?

Indeed it is obvious that the single state-wide Tasmanian Planning Scheme and its SPPs will reduce Local Government planning to a shadow of its current operation. Instead of proper functional land use planning, local governments will be reduced largely to a Permit processing function. The important local planning functions would likely fall away under the state-wide SPP driven scheme and with that local areas will see their local character and amenity irrevocably driven into the ground under the predictable and foreseeable state-wide effect of the Tasmanian planning scheme, underpinned by the SPPs.

My admittedly sceptical view is that the TPS process and its SPPs has been designed by a hater of local government, for an understated purpose to limit the planning schemes' ability to have any influence in protecting amenity, heritage, scenic and cultural heritage landscapes, the natural environment, threatened species and all those things which make Tasmania so special.

The Environmental Living Zone

Finally, I mention one particular zone issue, the loss of the Interim Planning Scheme's (IPS) Environmental Living Zone and its ostensible replacement with another completely different Zone, the Landscape Conservation Zone, in the SPPs, which completely misunderstands the reasons for having an Environmental Living Zone and misunderstands the obligations under the RFA for private land covenants.

The fact is that the Environmental Living Zone was interpreted in a variety of ways in the various IPS and that problem required solution. This is understood and the issue could have been more fairly and reasonably resolved.

Nonetheless Tasmania has a lot of private covenanted land some 900 private conservation reserves where the land use is significantly different and unique. Linking some such areas

into the planning system via such a Zone is meeting the LUPAA objectives and is desirable especially in circumstances where multiple reserves are adjoining.

The fact is that removing without adequate cause the Environmental Living Zone of the IPS, caused the writer a vast amount of work and disadvantage. Most of you may not want to live in such a Zone but for those who do the strategic destruction of the Zone is abhorrent and financially disadvantaging.

The Liberal party/government appears to hate the very word "Environment". This was explained to me by one of the Tasmanian Planning Commission operatives. I think shortly after the person concerned was banished for his sins, cast out, transported to the windswept wilds of Bass Strait. I consider this hard working senior officer was correct.

Some of his suggestions would have saved the State of Tasmania a significant amount of money, but instead Massina, whom I believe had no training in land use planning prevailed, to the cost of the Tasmanian taxpayer.

The Australian State of the Environment Report

This far-reaching report on the condition of Australia's natural environment should be a consideration in any review of Tasmania's State Planning Provisions.

Australia's National and International Obligations

Australia's National and International obligations are a relevant consideration in the development of a planning scheme for any part of Tasmania and hence for the SPPs.

Such obligations are relevant to the State Planning Provisions and the commitments Australia has made, as they relate to Tasmania should be included in the scope of any review of the SPPs.

This is especially the case should the State Planning Office and the Minister go down the path of refusing to implement the Tasmanian Planning Policies prior to this SPP review, as I have requested above.

Create a Suite of Tasmanian and State Planning Policies before reviewing SPPs

I have sought to demonstrate the reasons that the Government promises to create planning policies as a priority, should be honoured right now. It is my opinion that the absence of honouring those promises represents a complete and utter destruction of public confidence in sound and fair land use planning Tasmania. I urge the government to reconsider and to honour its promises.

Any SPP Review Should Do Codes First not Last

In that the event the State Planning Office and Minister for Planning seeks especially to disaggregate the SPP's in the consultation process, then it is my recommendation to tackle a review of the SPP Codes first rather than last. This suggestion would accompany a review of the purposes of the SPPs which should have a primacy.

After reviewing the codes then one would review the Zones.

The section of the state planning provisions which should receive attention at the end of the process would be the Administration and Exemptions.

The review process of the SPPs should not attempt to include other matters. Such as giving the Table of Contents some page numbers.

Summary Document of issues previously raised on the SPPs

I support the inclusion of issues previously raised over SPPs within the scope of the SPP review. My problem with the summary document however is that it is simply not complete all inclusive.

Indeed it is my view that because of the way in which the SPPs supplanted the interim planning schemes, that issues raised by community members over interim planning schemes should also be relevant to any review.

Conclusion

I consider Land Use Planning is the most important development portfolio area for Government; it affects all land in Tasmania, public and private, has 29 separate Local Government Councils operating at least 29 local schemes which will ostensibly become within the control of the SPPs under the Tasmanian Planning Scheme.

Land use planning is not treated with the priority it deserves by any political party, including the current government. I am highly concerned over the design and implementation of the so called Statewide Tasmanian Planning Scheme that is now underpinned by the SPPs and what it means for local land use planning and our cultural amenity as well; as the rights of other species to survive.

I do not claim this to be an encyclopaedic assessment of the local government planning reform problem, indeed I have unfortunately not had the capacity to complete a comprehensive document but rather I have sought to touch on some fundamental concerns, which at this stage over which I hope you may agree.

END

Yours sincerely,

Andrew Ricketts

From:	Gayle Newbold
To:	State Planning Office Shared Mailbox
Subject:	Saved to CM: New state planning provisions
Date:	Monday, 22 August 2022 7:14:30 PM

To whom it may concern,

It has come to my attention that the latest Tasmanian Planning Scheme's State Planning Provisions (SPP) have been made with minimal consultation/communication to the residents affected by these plans.

For the general public to better understand zoning decisions that affect them, information from the State Planning Department and the Tasmanian Planning Commission should be easily accessible and detail the main differences between the zones.

A simple explanation of terms such as 'Acceptable Solution', 'Performance Criteria' and the definitions of various land-use terms, for instance 'Resource Development' and 'Resource Processing', would also be very helpful. The information needs to be communicated at a state-wide level to ensure consistency and in plain English so everyone can understand it.

When deciding what is an appropriate use of land in each zone, future planning with respect to climate change, mitigating against severe weather events and providing biodiversity and habitat for wild animals is paramount. Ensuring that people can also live in smaller dwellings and off-the-grid dwellings with minimal disruption to the environment is also important. In fact, all development should be future-oriented and include the use of native vegetation, preservation of watercourses etc as much as possible.

I hope that future iterations of the State Planning Provisions will be more inclusive, communicated more widely, and give full consideration to the impact of development on the environment, preserving or creating as much natural environment as possible.

Yours sincerely
Gayle Newbold

Clarence... a brighter place

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26 August 2022

Reference # REQ2022-062383

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001
Via Email at: yoursay.planning@dpac.tas.gov.au

Dear Sir / Madam,

Thank you for the opportunity to provide input into the review of the State Planning Provisions (SPPs).

As this is the first significant review of the SPPs, a staged approach to the review is supported. It is recommended that the review be undertaken in stages being:

- Operational issues to improve effectiveness and more consistent interpretation; and
- Policy issues – that require a more rigorous process of engagement with local government to resolve. Depending of the timing of the development of the Tasmanian Planning Policies (TPPs), amendments to reflect the TPPs could also be included in this stage.

This would provide short term benefits to address operational issues rather than delay these outcomes to deal with more complex matters.

The response, for clarity and convenience, is separated into the three (3) sections:

- Operational issues on the Scheme **(Attachment 1)**.
- Policy issues **(Attachment 2)**.
- Response to direct questions raised as part of the scoping paper **(Attachment 3)**.

This response has been formed in consultation with Council's development assessment officers.

Clarence Council are supportive of the review and offer any support that can be provided, including representation in working groups to further the process.

If you would like to discuss this matter further, please contact Shannon McCaughey, Strategic Planner on [redacted] or via email at [redacted]

Yours sincerely,

[redacted]

Shannon McCaughey
STRATEGIC PLANNER

Attachment 1 – Drafting Inconsistency and Operation Ambiguity

<table>
<tr><th>Section / Clause</th><th>Item</th><th>Comment</th></tr>
<tr><td>3.0 Interpretation</td><td>Table 3.1 Planning Terms and Definitions – Missing terms</td><td>The inclusion of the following definitions in Table 3.1 to provide assessment weight and elimination of ambiguity:

Articulation – means the arrangement of building elements such as windows and doors, variations in the wall plane, roof form, horizontal or vertical wall features and materials that make up a building and affect its relationship to the streetscape and neighbouring properties.

Passive Surveillance – means the location and design of use or developments to maximize visibility by passers-by or casual onlookers from adjoining sites to reduce opportunities for crime and anti-social behaviour to the detriment of community welfare.

Public Domain – means the public use of the land and includes streets, plazas, parks and public infrastructure.</td></tr>
<tr><td>8.0 General Residential Zone</td><td>Landscaping within the front setback</td><td>Landscaping provisions throughout the Scheme do not require a satisfactory level of landscaping within front setbacks within all residential zones. In contrast, landscaping clauses (Clause 17.4.6) within the Commercial Zone of the TPS require landscaping within the front setback (see below).

17.4.6 Landscaping
Objective:
That Landscaping enhances the amenity and appearance of the streetscape where buildings are setback from the frontage.

<table><tr><th>Acceptable Solutions</th><th>Performance Criteria</th></tr><tr><td>A1

If a building is set back from a road, Landscaping treatment must be provided along the frontage of the site:

(a) to a depth of not less than 5.5m; or

(b) not less than the frontage of an existing building if it is a lesser distance.</td><td>P1

If a building is setback from a road, Landscaping treatment must be provided along the frontage of the site, having regard to:

(a) the width of the setback;

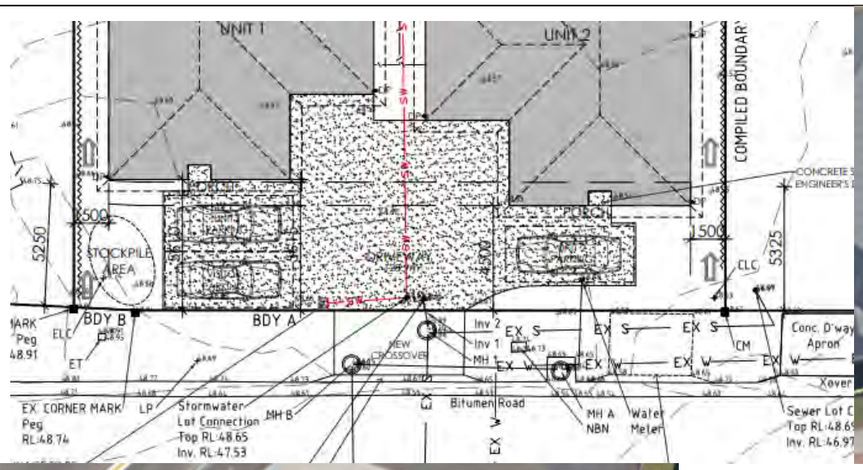
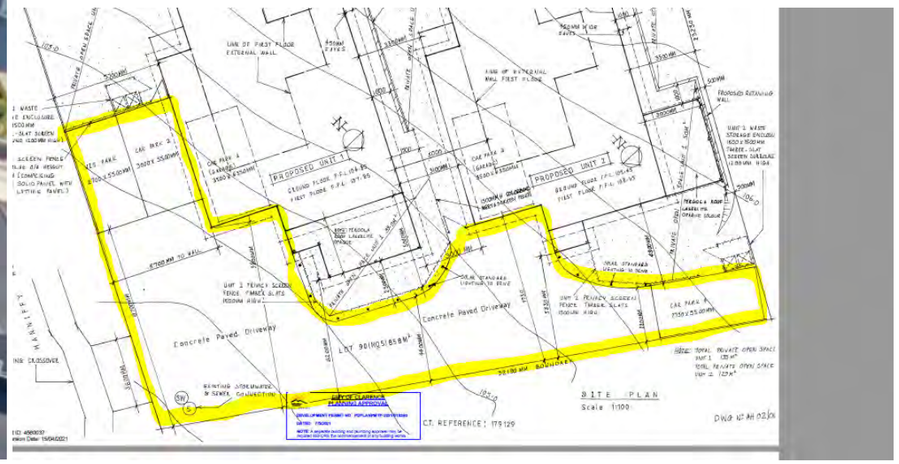
(b) the width of the frontage;

(c) the topography of the site;

(d) existing vegetation on the site;

(e) the location, type and growth of the proposed vegetation; and

(f) the character of the streetscape and surrounding area.</td></tr></table>
Providing adequate landscaping is often the defining factor for a residential development that contributes to the streetscape. Unfortunately, many current residential developments are permissible without adequate landscaping and poor front setback outcomes dominated by hard surfaces. Please see the following poor examples of recent permissible development within the General Residential Zone below:</td></tr>
</table>

		    Review of the current the residential landscaping controls should be undertaken and requirements for both soft and deep soil planting within the front setback to avoid excessive non-permeable hard surfaces should be introduced.
General Residential Design Provisions	General Residential Permeability Objectives	The provision for impervious surfaces to reduce stormwater run-off and pressure on existing infrastructure is absent from the General Residential controls. Permeability objectives and controls improve the amenity of residential development and are present in many other planning jurisdictions where they have been demonstrated to result in established beneficial design principles. The Victorian Planning Provisions (VPP) successfully includes permeability controls within residential developments in areas of established density, and a similar control should be considered to be introduced.

<table>
<tr><td></td><td></td><td>54.03-4
15/07/2013
VC100

Permeability objectives

To reduce the impact of increased stormwater run-off on the drainage system.

To facilitate on-site stormwater infiltration.

Standard A6

The site area covered by pervious surfaces should be at least:

■ The minimum area specified in a schedule to the zone; or

■ If no minimum area is specified in a schedule to the zone, 20 per cent of the site.</td></tr>
<tr><td>15.0 General Business Zone</td><td>15.4.3 Design</td><td>The Acceptable Solution (A1) prohibits new buildings from including security shutters or grilles over windows, in order to promote active frontages. However, Acceptable Solution (A2) which considers alterations to an existing façade appears to allow for security shutters and grilles to be installed.

(c) not include security shutters or grilles over windows or doors on a façade facing the frontage or other public places; and

The ambiguity should be removed by prohibiting security shutters and grilles within the Acceptable Solution (A2) for development to an existing façade.</td></tr>
<tr><td>18.0 Light Industrial Zone</td><td>18.2 Use Table</td><td>Vocational training by way of ‘Educational and Occasional Care Use’ should be permissible in a Light Industrial Zone as it is in the General Industrial Zone.

<table><tr><td>Vehicle Fuel Sales and Service</td><td></td></tr><tr><td colspan="2">Discretionary</td></tr><tr><td>Bulky Goods Sales</td><td>If for:

(a) a supplier for Resource Development, Extractive Industry or Resource Processing;

(b) a garden and landscape, trade or hardware supplier; or

(c) a timber yard.</td></tr><tr><td>Crematoria and Cemeteries</td><td>If for a crematorium.</td></tr><tr><td>Educational and Occasional Care</td><td>If for an employment training centre.</td></tr><tr><td>Food Services</td><td></td></tr></table>
Educational and Occasional Care is prohibited in the Light Industrial Zone unless it is for alterations or extensions to an existing use for this purpose.

It is practical and appropriate for some training centres to be located in the Light Industrial Zone, particularly where the training relates to industrial activities, such as mechanics or trades. The impacts from such a use would be similar to those anticipated in the Light Industrial Zone.</td></tr>
<tr><td>20.0 Rural Zone</td><td>Setbacks</td><td>More appropriate setbacks should be considered, noting that for the Rural Resource Zone under the Southern Interim Schemes, the front setback is 20m and side and rear setbacks are 50m, whereas, under the SPPs, it is only 5m. A 5m setback in a zone that allows an extensive range of uses, often accompanied by large outbuildings, is grossly inadequate to ensure these uses do not fetter or impact adjacent existing uses or maintain any meaningful buffer or screening. A building within 5m of the boundary also has the potential to impact vegetation located on adjacent land through the severing of the root zones (which can extend to 15m). A minimum setback of 20m should be considered for this zone.</td></tr>
<tr><td>21.0 Agricultural Zone</td><td>Setbacks</td><td>More appropriate setbacks should be considered, noting that for the Rural Resource Zone under the Southern Interim Schemes, the front setback is 20m and side and rear setbacks are 100m, whereas under the SPPs it is only 5m. A 5m setback in a zone that allows an extensive range of uses, often accompanied by large outbuildings, is grossly inadequate to ensure these uses do not fetter or impact adjacent existing uses or maintain any meaningful buffer or screening. A building within 5m of the boundary also can impact adjacent uses, including shading of agricultural crops. A minimum setback of 20m should be considered for this zone to enable adequate screening and buffers.</td></tr>
</table>

21.0 Agriculture Zone	21.2 Use Tables	Multiple dwellings are discretionary in the Agriculture Zone but only should be when proposed dwellings are directly related to supporting agricultural activities on the site, for example - farm worker's accommodation. Multiple dwellings are an urban land use/development and are considered inappropriate within an agricultural zone. Currently, there does not appear to be strong grounds to refuse an application for multiple dwellings, particularly if on a lot that is not big enough to support a sustainable farming enterprise or where the land does not have high agricultural values. Zone appropriate controls and clarity should be provided to preserve the primary purpose of the zone while also providing better assessment guidance.
Codes		
C2.0 Parking and Sustainable Transport Code	Landscaping requirement for car parks should be required.	Landscaping requirements for larger parking areas have been omitted from the TPS. The Interim Planning Scheme was previously provided for landscaping requirements (see below). **E6.7.8 Landscaping of Parking Areas** **Objective:** To ensure that large parking and circulation areas are landscaped to: (a) relieve the visual impact on the streetscape of large expanses of hard surfaces; (b) screen the boundary of car parking areas to soften the amenity impact on neighbouring properties; (c) contribute to the creation of vibrant and liveable places; (d) reduce opportunities for crime or anti-social behaviour by maintaining clear sightlines. **Acceptable Solutions** **Performance Criteria** **P1** Landscaping design provisions are essential to reduce the negative amenity impacts resulting from large car parking areas. The current SPP doesn't require appropriate landscaping, and design provisions should be reintroduced.
		The current TPS, having the provision of 'cash in lieu' as an acceptable solution instead of performance criterion, does not allow Council to fully consider a reduction sought in car parking when a cash-in-lieu solution may be a more appropriate outcome. By only having this as an acceptable solution, the opportunity for negotiation between council and applicant is degraded. An issue arises whereby an application must be refused because of a reluctance from owners to pay for cash-in-lieu where an application cannot demonstrate compliance with the parking space requirements. The consideration of cash-in-lieu within the performance criteria allows Council to apply a car parking variation when parking cannot be supplied, and it is appropriate. The current omission of a cash-in-lieu discount from the Performance Criteria currently leaves Council with little option but to refuse an application if the required car parking numbers are not supplied. A cash-in-lieu and car parking reduction should be reinstated into the Performance Criteria as it was previously included within the Interim Scheme.
Omitted / Exempted Codes	**Wastewater Management Code** **Stormwater Management Code**	Numerous Codes have either been removed or exempted from assessment with the introduction of the TPS. The result has been that many issues are not appropriately addressed at the development assessment stage, resulting in amendments and additional permits having to be sought, costing time, money, and resources to both developers and planning authorities. It is acknowledged that many items previously dealt with under the Interim Planning Scheme are also currently assessed at the building approval stage. However, removing these items from the planning assessment process has resulted in avoidable design issues later in the development process.

	Bushfire-Prone Area Code **Coastal Erosion Hazard Code** **Coastal Inundation Hazard Code** **Landslip Hazard Code**	This is considered unfair to developers and Council as these issues should be addressed at the initial planning assessment stage to minimise design adjustments and to ensure thorough consideration of all relevant planning issues. For example, a development permit may be issued for a dwelling in the coastal erosion hazard area and susquently at building stage, the dwelling may be found to require coastal protection works that may require further approvals and/or a complete redesign of the origional design rendering the original development permit useless. A further example, while wastewater management is assessed later in the plumbing permit stage, sites impacted by flooding and inundation mapping should be considered at the development application stage so there is an opportunity to mitigate issues that will inevitability arise later on. Most systems cannot be placed within inundation or flood zone mapped areas, meaning Council may issue development permits for which a plumbing permit cannot be practically achieved.

Attachment 2 – Policy Issues

Issue / Item	Comment
Density (Clarification) Expectations	Currently the density assessment for multiple dwellings is strictly quantitative within the acceptable solution for the standard, and exclusively qualitative in the assessment of the performance criterion. Ambiguity exists where in decisions from TASCAT, direction has been given to set aside any quantitative assessment and consider only qualitative factors like streetscape or design. This has resulted in there being little room for planning authorities to refuse high density multiple dwelling applications, and 'rezoning by stealth' with some areas of the general residential zone having higher densities than Inner Residential zoned areas. One such example was the T Pain v Clarence City Council [2021] TASRMPAT 28 (24 August 2021). If the performance criteria had regard to intensity of use and floor area rather than land or building size a more meaningful assessment could be undertaken that promotes quality design of multiple dwelling development, rather than profit driven design.
Street Layout and Lot Design	Current subdivision provisions do not allow for good neighbourhood design principles to be implemented. Subdivision design should be recognised as building blocks of good neighbourhood design. Currently, residential zones do not have adequate urban design principles. Lot design and layout in conjunction with urban design principles such as a grid-like street network, a quality streetscape and a movement network that affords convenient pedestrian movement while integrating with the surrounding area and the endemic characteristics should be prioritised

	Street blocks provide a mid-block path for human-scale pedestrian movement and subdivision prescriptive standards should be employed within the State Planning Provisions, to provide guidance for developers and planning authorities. In particular, it is considered that clauses 8.6.1 and 8.6.2 do not provide adequate design guidelines to provide for well designed neighbourhoods. This is an important area that requires attention to deliver better urban design outcomes It is also an area where interstate planning agencies have undertaken significant work and have implemented many important design initiatives over a number of years, resulting in neighbourhoods offering far greater level of sustainability and quality of life. By brief literature review of these initiatives, it would be well within scope to introduce appropriate performance criteria to provide better design and decision making guidelines
Established Parking Standards / Controls	There appears to be an issue regarding the validity of the current quantitative car parking standards within the SPP. Car parking standards and numbers are difficult to apply and maintain, with no supporting evidence base data supplied. No certainty can be applied to development in terms of a required car parking provision at appeal with no established referenced data. As such the standards are always challenged at appeal and often compared specifically to the NSW standards that are not necessarily relevant to Tasmania. Direct referencing to evidenced-based car parking data within the SPP is required.
Material Standards – Industrial	The TPS does not provide for material standards within industrial zones. Issues have arisen in the City of Clarence where developers have used substandard or dilapidated materials that detract from the streetscape and undermine other controls (i.e. Landscaping) applied to maintain and improve local amenity.

Attachment 3 - State Planning Office Summary of issues previously raised on the SPPs – with Relevant City of Clarence Comments

Section	Clause/Provision	Issues Raised	Clarence Council Comments

	Various – Landscaping requirements	Landscaping is critical for a high quality built environment and liveable communities and needs to be a development standard in the SPPs for all multiple unit, commercial and industrial development and subdivision with new roads. Suggest including landscaping provisions similar to those existing in the commercial zones and Parking and Access Code in the Southern Region Interim Schemes in the Subdivision Standards for the following SPPs zones: • General Residential; • Inner Residential; • Low Density Residential; • Village; • Urban Mixed Use; • Local Business General Business; • Central Business; • Commercial; • Light Industrial; • General Industrial	**Supported** - Considerations should be given to 'deep soil planting' to ensure landscaping requirements are not tokenistic resulting in a consider cost of providing landscaping for development, including the loss of otherwise useable land. See comments above with regards to landscaping within the front setback above.
	Various - Road connectivity provisions in subdivision standards	Suggest including threshold standards to determine if additional road connectivity is required in a subdivision proposal.	**Supported** - Incorporating an additional urban design criteria into the subdivision standards should exist to ensure there are a variety of lot sizes, well designed streetscapes and with sufficient infrastructure to support walkable communities. See comments above
	Various – Stormwater management	Suggest including the Stormwater Management Code from the Southern Region's interim planning scheme into the SPPs.	**Supported** – See comments above.
	Various – Light pollution	Suggest including provisions for management of light pollution impact on sensitive/significant or iconic landscapes.	No Comment.
	Aboriginal heritage	Suggest including a separate Aboriginal Heritage Code in consultation with the aboriginal community.	**Supported.**
	Application requirements	In some interim planning schemes, an application requirements section was included in all Codes and Specific Area Plans to provide clarity on what was required for all, or some, applications that are assessed under that Code. Suggest including an application requirements section for each Code in the SPPs and in the template for Specific Area Plans.	No Comment.
	Private garden	Definition requires clarification as it is unclear how far a private garden extends. Implications for vegetation clearing exemption.	**Supported –** Clarity required with regards with the provision to allow for a prescriptive consistent approach to assessment.
	Employment training centre	Suggestion to broaden the definition to also allow for "training in specialised or technical skills".	**Supported -** See above.

	Secondary residence	Suggest limiting secondary residences to single storey buildings and deleting the reference to laundry facilities.	**Not supported -** Zones contain maximum height standards and limiting them to a single storey is unnecessary. While the reference to laundry facilities may be unnecessary, it does provide certainty that they can be included given previous planning schemes did not permit laundry facilities in a secondary residence.
	Additional term and definition – passive surveillance	Suggest an additional definition for the term 'passive surveillance'. The term is used in front fence performance criteria and would provide more clarity to developers.	**Supported** - See response above.
	4.0.3 actively mobile landforms	Unclear what actively mobile landforms are, particularly in limiting the exemptions.	**Supported.**
	4.1.4 home occupation	Concerned with removing the limitation of 'occasional visitors' as it could cause significant amenity impacts (e.g. yoga classes or lessons or therapy with traffic and noise impacts). Limited to a 'dwelling' therefore cannot be in a shed, outbuilding or garden.	**Supported –** No current floor area restriction relative to a home-based business results in confusion about the intensity and scale of such proposals. For example, a joinery business occupying a shed 100m2, with two employees, with no regard to noise nuisance, could potentially fit the definition of a home-based business under the scheme, provided there was some dwelling type on the site. Under this circumstance, no regard for amenity impacts upon neighbouring properties is considered may be 'permitted'. Additionally, visitors/customers to the property should be restricted, as there is little scope for dealing with parking, circulation areas, and impacts associated with groups associated with group business models like fitness classes/studios. When considering these applications, there should be greater consideration to either floor area or use intensity restriction.
	4.1.5 markets	Exempting markets is problematic if insufficient parking is provided.	**Not supported -** Markets are often 'pop up' and considered local community initiatives leading to vibrancy. Local pedestrian traffic should be encouraged not be negatively impacted by viability constraints such a carparking.
	4.5.1 ground mounted solar energy installations	Concerned there is no height limit for ground mounted solar energy installations, with potential amenity and solar access issues for neighbours, and no heritage considerations.	**Supported.**
	4.6.2 use or development in a road reserve or on public land	No consideration of impacts of outdoor seating and impacts on car parking requirements. Unclear why reference to council by-laws have been removed.	No Comment.
	4.6.3 fences within 4.5m of a frontage	Exemption fences should be limited to 1.2m in height. Concerned that a fence up to 1.8m with 30% transparency will result in poor outcomes. Suggest incorporating an exception to the exemption for and any applicable standard in a Particular Purpose Zone or Specific Area Plan. This could enable an LPS to address front fencing as appropriate to an area.	No Comment.
	4.6.5 fences for security purposes	Whilst there may be reasons for a security fence to be solid, solid fences have a significant impact on the streetscape and should not be exempt. A solid fence also directly conflicts with the	**Supported**

		objective for landscaping in clauses 19.4.3 and 18.4.5 of the SPPs.	
	4.6.6 fences in the Rural Zone or Agriculture Zone	The exemption should be amended to avoid solid fences. Solid fencing in these zones has a significant impact on the rural character, particularly if above 1.2m and across large frontages. The exemption should not allow native vegetation to be removed.	**Supported**
6.0 Assessment of an Application for Use or Development	**6.1.2 Application requirements**	All Councils have direct access to all title information and therefore no title information should be required. The provision of title information makes that information public and there is no public benefit or need for that.	**Not Supported -** Land ownership and encumbrances pertaining to land is in the public interest and should be 'actively' made available when pertaining to any development that has an impact on the local community.
7.0 General Provisions	**7.1 Changes to an Existing Non-conforming Use**	Unclear if you can change to another non-conforming use.	**Supported –** Clarity needs to be provided to eliminate ambiguity.
	7.4 Change of Use of a Place listed on the Tasmanian Heritage Register or a Local Heritage Place	Should require the preparation of a heritage impact statement and conservation management plan.	No Comment.
	7.12 Sheds on vacant sites	Need to clarify how sheds on vacant sites are intended to be assessed if they do not meet the requirements in clause 7.1.2. Also unclear how this provision works with regard to the use of the shed. These provisions should also apply to the General Residential Zone.	**Supported -** Clause 7.12 Provides for a shed in certain zones as a permitted application however it does not clarify what the use of that shed should be. There is also no clear pathway for sheds on vacant lots that don't comply with the criteria. For example (f) requires that all relevant acceptable solutions are complied with. If the setbacks are not complied with, the proposal would therefore not be permitted. A shed on a vacant lot is defined as Storage. Storage is prohibited in the Low-Density Residential Zone, Rural Living Zone and Landscape conservation zone. Residential is defined as 'use of land for self-contained or shared accommodation'. As a class 10a shed on a vacant site is not habitable and not associated with a dwelling, it cannot be considered residential. **Note:** that applying the clause in the General Residential Zone is not supported.
Zones	**General – fence requirements**	Front fencing requirements should be provided in all residential and commercial zones.	**Supported.**
	General – vegetation requirements	Suggest including vegetation clearing requirements in the Rural Living Zone and Rural Zone.	No Comment.
11.0 Rural Living Zone	**11.4.2 A4(b) – setbacks for sensitive uses**	Suggest this should be limited to "an existing building **for a sensitive use on the site** is within 200m"	No Comment.
	11.5.1 Lot design	Suggestion to include a 5000m^2 minimum lot size for subdivision. Question whether the 10ha minimum lot size is necessary.	No Comment.
	New standard – building design	Suggest including design standards to maintain character and minimise visual impact of development.	No Comment.

Industrial Zones (Light Industrial Zone and General Industrial Zone)	**New development standard - fencing**	A fencing standard should also be inserted into the Light Industrial Zone and General Industrial Zone similar to those in the interim schemes for those zones.	**Supported** - See comments above.
	New development standard – building design	There should be building design requirements to deliver quality design for industrial buildings.	**Supported** - See comments above.
Rural Zone and Agriculture Zone		Concerned that the Rural Zone and Agriculture Zone provide for an unlimited number of sheds.	No Comment.
21.0 Agriculture Zone	**21.3.1 Discretionary uses**	Further guidance should be provided for when a dwelling is appropriate in the Agriculture Zone.	**Supported** – See comments above with regards to multiple dwellings.
	21.5.1 Lot design	Suggest excluding the ability for the excision of Visitor Accommodation and dwellings in the Agriculture Zone.	**Not Supported –** See comments above with regards to multiple dwellings.
C1.0 Signs Code	**Table C1.3 Real estate sign**	There are no dimensions limiting the size of exempt real estate signs. With real estate agents being extremely competitive, real estate signs are getting bigger and more plentiful and creating excessive visual clutter with a number of complaints received. Suggest limiting them to an area of 3m2.	No Comment.
	C1.4 Development exemption from this Code	Limitation should be included in the Signs Code exemptions to restrict signs being changed to a third party sign.	**Supported.**
	C1.6.1 A3 Design and siting of signs	Unclear how many signs are permitted for each business. How can you have one for each window when under A3(a) only one "Window Type sign' is permitted?	**Supported** - Window signage often results in significant loss of passive surveillance and a negative relationship between the built form and the adjacent streetscape. Stricter window sign controls are strongly encouraged.
	C1.6.2 - Illuminated signs	Suggest changes to performance criteria in subclause C1.6.2 Pl(j): whether the sign is visible from the road and if so the impact on drivers of motor vehicles and other road users as assessed by a suitably qualified person.	No Comment.
	C1.6.3 & Table C 1.6	Issues regarding number of ground-based signs per frontage: Table C1.6 allows 1 ground-based sign per 20m of frontage. Clause C1.6.1 A3 (d) allows six signs per business if the frontage is more than 20m in length; not reasonable for Rural Zone or Agriculture Zone.	**Supported**.
C3.0 Road and Railway Assets Code	**C3.2 – application of the code**	Suggest applying the noise attenuation provisions in the Code based on mapped overlays or more accurate on-ground information for situations where road infrastructure has been upgraded.	No Comment.
C6.0 Local Historic Heritage Code	**Application of Code - significant trees**	Suggest creating a standalone Code for Significant Trees.	No Comment.
C8.0 Scenic Protection Code	**C8.6.1 Development within a scenic protection area**	Suggest modifying provisions to allow for the protection to scenic coastal and rural areas, not just ridgelines and skylines.	No Comment.
	General	Suggest fully revising C8.0 Scenic Protection Code addressing the particular issues:	No Comment.

		• A focus on skylines and not all scenic landscapes, in that the Code does not adequately provide for landscapes in coastal areas, river estuaries, or highly scenic rural areas. There is also no definition for skyline. • Improve the ability of the code to comply with strategies identified in the Regional Land Use Strategies for management of scenic resources and the Objectives of the Resource Management and Planning System and the LUPA Act for sustainable development, management of resources and consideration of intergenerational impacts. • There are difficulties in interpreting and applying the Scenic Road Corridor provisions, and limited ability to provide scenic protection in any instance. • There is limited scenic protection within Rural and Agricultural Zones. • The intent to protect hedgerows and exotic trees close to scenic road corridors under the Code is effectively removed by the vegetation removal exemption at Clause 4.4.1 or Clause 4.4.2. • Consider the impacts of the exemptions on the function and purpose of the Code. • Provide recognition for the significance of scenic values (such as national, state and local) and the impacts of development on them. • provide recognition for the significance of scenic values (such as national, state and local) and the impacts of development on them.	

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Response to the State Planning Provisions Review Scoping Paper

Thank you for the opportunity to comment on the five-yearly review of the State Planning Provisions (SPPs).

I understand the State Planning Office (SPO) is seeking broad feedback at this stage, to assist in identifying key issues and those provisions within the SPPs that require review, to inform future amendments.

The Department of State Growth has undertaken a review of the SPPs as these relate to our portfolio interests, including the State Road network, passenger and active transport infrastructure and services, extractive industries and landslide. For some areas, we have been able to identify specific changes to the SPPs, while for others we have undertaken a high-level review only, with the intent to provide further detailed input as the review process progresses.

The following areas are recommended for inclusion within the review of the SPPs -

State Road network

The State Road network carries Tasmania's highest freight and passenger volumes. It connects all major population and industrial centres, major sea and airports. It is critical that the SPPs support a safe and efficient State Road network, protect existing and future State Road infrastructure from encroachment by incompatible use and development, and facilitate efficient project delivery.

In this context, the review of the SPPs should -

- Review existing use definitions for road, vehicle crossing and vehicle access.

- Review the existing exemptions relating to roadworks, including to:
    - Provide a standalone exemption for maintenance and repair.
    - Provide an exemption for minor upgrades that reinstates the intent of the exemption at Clause 5.2.8 in the Interim Planning Schemes. The current SPP exemption has resulted in permit applications that were not required under the Interim Planning Schemes. These minor upgrade works have minor to negligible planning impacts and require little assessment by planning authorities.
    - Amend and clarify the exemption for vehicle crossings, junctions or level crossings.

- Review the Road and Rail Assets Code for currency, including to clarify that:
    - The application of a road attenuation area as it applies to the State Road network is primarily via written description, with a mapped overlay allowed only where it is warranted by local circumstances.
    - Both the written description and the overlay map may apply concurrently within a municipal area and where there is a conflict, the mapped overlay applies.

  The Code should also be reviewed to ensure it -
    - aligns with the legal and regulatory framework governing operations on the State Rail network, and
    - protects rail land, assets and operations from inappropriate development.

- Review Table C6.4.1 Exempt Development, Qualification (i) of the Local Historic Heritage Code as it relates to minor upgrades of roads.

Further detail on the specific provisions requiring review in relation to the State Road network is provided at Attachment 1.

Passenger transport

The Tasmanian Government has a strong focus on encouraging increased active and public transport use. The SPPs should -

- encourage supportive land uses that make it easier for people to use public and active transport
- improve infrastructure and facilities to support walking and cycling to bus stops, and to and within activity centres
- improve the amenity and visibility of bus stops
- improve public transport reliability, and
- improve safety for pedestrians and cyclists.

In relation to public transport, potential provisions to introduce or amend include -

- exemptions for bus stop signage and infrastructure
- review of existing carparking requirements (for example, the application of maximum carparking requirements in certain zones)
- improved subdivision design (for example, the provision of footpaths on both sides of a street and through links to increase walking/cycling catchments; road networks that support bus access)
- review the definition of access and access requirements (for example, minimise the number of vehicle accesses to single properties on major passenger transport corridors), and
- support infill opportunities by allowing residential development within the Commercial Zone under certain circumstances (e.g. above ground floor).

In relation to active transport, potential provisions to introduce or amend include -

- improved integration of bicycle network plans into the SPPs
- require bicycle parking requirements across a broader range of commercial, community and major residential developments
- require end of trip facilities within major developments, and
- improve the attractiveness and accessibility of end of trip facilities.

Mineral resources

Extractive industries, such as local quarries, are a critical part of Tasmania's resources sector and are often most impacted by the planning system in terms of adjacent land uses and buffer zones.

The application of the Attenuation Code should be strengthened to ensure prohibition of development within the extent of a mapped or defined attenuation area, where that use or development has the potential to be impacted by, or impact on, the existing extractive industry use. The encroachment of sensitive uses, and other uses, within this important buffer zone leads to land use conflict and potential fettering of existing operations.

The definition of sensitive use should be expanded to include other uses such as tourist accommodation and uses where there is the potential for conflict between the expectations of the users of the use or development (eg tourists) and an existing use, including extractive industries. These uses should be prohibited from location within an attenuation zone.

It is recommended that the Utilities Zone include extractive industries as a discretionary use. There are some potential synergies between the use of land for waste disposal and the extraction of clay and other materials from land close to the primary use.

Landslide

The risk of landslide is an issue across Tasmania. The use and development of land directly impacts the likelihood and severity of landslide, and it is important the SPPs take a precautionary approach to development within areas at risk of landslide, including in relation to the type of use and development undertaken, utilities provision, vegetation removal and water storage.

In relation to the definition of tolerable risk under Planning Terms and Definitions (3.1), we recommend a change in language to comply with the International Standard for Risk Management, which Australia has adopted. While Tasmania has not defined its tolerance to risk, there are default schemas that could be adopted.

In relation to the Landslip Hazard Code (C.15), review the following clauses; -

- 15.3.1 – Amend the definition of geotechnical practitioner from 'a person holding a building services license issued under the Occupational Licensing Act 2005 in the class of engineer-civil' to 'a person holding a building services license issued under the Occupational Licensing Act 2005 in the class of engineer-civil within their area of competence.'
- 15.3. – Review the existing hazard band classifications to determine whether there is a more appropriate or effective classification system.
- 15.3.1 – Review the definition of significant works with respect to vegetation removal and water storage thresholds within a landslide hazard area.
- Clause 15.4 (g) – Review the definition of minor works with regards to water services.
- Clause 15.4.1 (c) (iv) – If it is intended to provide a blanket exemption for all utility uses, it may be appropriate to exclude some uses related to sewer, water and stormwater utilities.
- Generally, replace landslip with landslide throughout the SPPs.

In terms of next steps, I understand the State Planning Office will establish reference groups to assist in progressing specific amendments to the SPPs. The Department would welcome involvement in these groups as these relate to or impact on our portfolio interests, together with the opportunity to discuss

We look forward to working with you further to progress the review of the SPPs.

Please contact Di Gee, Manager, Transport Systems Planning, at [redacted] or [redacted] should you require further clarification.

Yours sincerely

[redacted]

Brett Stewart
Acting Secretary

25 August 2022

Attachment 1 – Detailed review of State Planning Provisions affecting the State Road Network

Section	Clause/Provision	Issue
3.1 Planning Terms and Definitions	Road	Review the definition in the context of the term 'road reserve', which is used in the SPPs but is not defined.
	Vehicle crossing	Definition requires clarification in relation to the defined term 'vehicular access' as their difference may be unclear.
	Vehicular access	Definition requires clarification as the terms 'access', 'access driveway', 'access to a lot', 'driveway', 'site access' and 'vehicle access' are also used in the SPPs to mean vehicular access.
Table 4.2 Exempt Infrastructure Use and Development	General	General review of exemptions to ensure that the terms and clauses correspond to planning terms and definitions contained in Clause 3.1.
	Clause 4.2.2 Stormwater	Exemption could potentially be expanded to allow stormwater detention basins by, or on, behalf of the Crown, council or State authority.
	Clause 4.2.4 roadworks	Exemption requires clarification and refinement to: • Provide a standalone exemption for maintenance and repair of existing roads that is not limited by 3m from the boundary of a road reserve, similar to Interim Planning Schemes. Examples include routine drainage works (i.e. maintenance) or landslip and erosion works (i.e. repair) that may extend beyond the 3m. These works are not considered to qualify for the emergency works exemption at Clause 4.3.1 as they are undertaken to avoid emergency situations such as road collapse or landslides/rockfalls. • Provide an exemption for minor upgrades by, or on behalf of, the road authority that are not limited to 3m beyond the road reserve, to reinstate the intent of the exemption at Clause 5.2.8 in the Interim Planning Schemes. The current SPP exemption has resulted in permit applications being lodged that were not required under the Interim Planning Schemes. These upgrade works have minor or negligible planning impacts and require little assessment by the planning authority. Examples include curve realignment and road widening for safety, junction realignment for sightline improvements, extension of on/off ramps, turning facilities due to installation of a central median safety barrier, and additional lanes at roundabouts including slip lanes. The equivalent exemption in

Section	Clause/Provision	Issue
		the Interim Planning Schemes has been operating effectively for a number of years and has allowed minor upgrade works by State Growth, councils and other entities to occur for the benefit of all Tasmanians without lengthy delays or cost to the community through unnecessary planning regulation. • Clarify whether 'replacement of bridges in an adjacent location' would allow works beyond 3m of the boundary of a road reserve. If it is not, then the exemption is illogical. • Clarify whether (a), (b) and (c) should be read separately or in conjunction. • Review the list of example works to ensure they are not in conflict and consider additional examples that better indicate the scope of works allowed by the exemption.
	Clause 4.2.5 vehicle crossing, junctions or level crossing	• Amend Clause 4.2.5 (a)(i) to be: 'by or on behalf of the road or rail authority'. • Clarify that the exemption will allow for both new vehicle crossings, junctions or rail crossing on existing roads and upgrade of existing vehicle crossings, junctions or rail crossings.
C3.0 Road and Railway Assets Code	General	Undertake a general review of the Code with input from road authorities and TasRail to ensure the standards are achieving the Objective of the Code.
	Clause 3.2 Application of the Code	Review Clause 3.2.1 in the context of applying the exemption at Clause 4.2.5 relating to vehicle crossings, junctions and level crossings, and clarify the wording within (a).
	Clause 3.3 Definition of Terms	Undertake a general review of definitions for currency, including 'traffic impact assessment' and 'vehicular traffic'. The definition of road attenuation area should be clarified to confirm that: • The road attenuation area is primarily applied by description but may be applied by a mapped overlay where local circumstance warrants the application of an overlay. • Both written description and overlay map application of the road attenuation area can apply concurrently within a municipal area. • Where there is a conflict between a mapped overlay area and the written description of the road attenuation area, the mapped area prevails, similar to 'attenuation area' within the C9.0 Attenuation Code.
C6.0 Local Historic Heritage Code	General	Review Table Clause 6.4.1 Exempt Development, Qualification (i) as it relates to minor upgrades in the context of the examples for exempt road works under Clause 4.2.4 and minor infrastructure.

Section	Clause/Provision	Issue
		Clause 4.2.7 should include infrastructure such as bus stops and pavement rehabilitation. For exemptions in a place of archaeological potential, consider the inclusion of 'minor upgrades, by or on behalf of a State authority or council, where a suitably qualified person has prepared an archaeological assessment and determined that there is no chance of disturbance to significant archaeological values.' For exemptions 'involving development to significant trees' include "minor upgrades, by or on behalf of a State authority or council, where a suitably qualified person has prepared an arborist assessment and determined that tree health can be maintained".
LP1.7 Code Overlay Maps LP1.7.2	Road and Railway Assets Code	Review LP1.7.2 (b) to clarify that both the written description and the overlay map can apply concurrently within a municipal area, and where there is a conflict, whether a mapped overlay applies. The frequency of upgrades to State roads, which alter the road boundary means that a mapped road attenuation area can quickly become redundant and will require frequent amendments to maintain the currency of the layer. This is a lengthy and resource intensive requirement, has the potential to create land use conflicts. A road attenuation area should only be mapped where there is a particular local circumstance, or where it is supported by an assessment undertaken by a suitable qualified person to determine that the 50m attenuation area that applies by description may be increased or decreased for a local circumstance (it is noted that the Code considers noise, vibration, light and air emissions). For example, there may be occasions when impacts affecting a 'local circumstance' need to be assessed by a suitably qualified person, such as a noise practitioner when noise impacts might justify a decreased or increased buffer area.

29 August 2022

Brian Risby
The Director, State Planning Office
Department of Premier and Cabinet
GPO Box 123
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Via email: yoursay.planning@dpac.tas.gov.au

Dear Brian,

Planning Institute of Australia (TAS) - State Planning Provisions Review - Scoping Issues

As the key professional organisation in Tasmania representing planners, the Planning Institute of Australia (Tasmanian Division) (PIA) appreciate the opportunity to make the following submission with respect to the *State Planning Provisions (SPP) review - scoping issues*.

The PIA Policy and Advocacy Committee offered our local members a survey to inform this submission. Responses were obtained across the three regions within Tasmanian and both local government and consultancy sectors and informed this submission.

PIA commends the Government undertaking the scoping review

PIA commends the State Planning Office on their consultation with respect to the scoping of the SPP review. It is appreciated that the SPP are the first statewide set of consistent planning rules to guide land use planning and development in Tasmania, and that their ongoing review is a critical part of ensuring that they are responsive to industry and community concerns.

PIA acknowledges that the five-year review of the provisions is a statutory obligation. This scoping review is being undertaken prior to the completion and implementation of the Tasmanian Planning Policies and the delivery of a comprehensive regional strategic planning framework for the state. PIA respects that the SPPs will become critical tools for the translation of the directions of the Planning Policies and regional plans into actual land use and development outcomes.

It is noted that 15 of the 29 municipalities are currently operating under the SPP, including Launceston, which has recently been asked to operate as if the SPP was in effect. As over half of the municipalities have not yet, or only recently implemented the SPP it is anticipated that the next review will provide a more comprehensive response on the implementation of the

provisions. Nevertheless, the lessons gained so far can lead to early improvements in the clarity and practicality of the SPP.

PIA insights on scope for a 'streamlined' SPP review

PIA supports the State Planning Office taking a streamlined approach to the current review focusing more narrowly on priority issues that are either:

1. Directly relevant to the effective operation of provisions in the current SPP
2. Represent a clear gap that should be addressed whatever arises from subsequent Tasmanian Planning Policies and Regional Land Use Strategies (this includes issues relevant to achieving RMPS objectives)

A streamlined SPP review scope would enable the Government to focus on their priorities under the comprehensive work program for the Tasmanian Planning System. PIA understands this would optimize resourcing towards Phase 2 Planning Reforms, and ensure that a robust state policy and strategy platform can then inform a more comprehensive and complementary review of SPP regulatory provisions.

PIA appreciates that the growth pressures impacting Tasmanian cities highlights the need for comprehensive Regional Land Use Strategies to be in place – informed by high level Tasmanian Planning Policies for how we plan growth sustainably. PIA

PIA support for 'Climate Conscious Planning Systems' reforms

Nationally, PIA has taken the initiative to recommend specific changes for Tasmania to achieve *Climate-Conscious Planning Systems*[1]. While some of the measures relate to strategic mechanisms, the SPP is the delivery mechanism for many of the advocacy issues. PIA supports all elements of planning reform agenda from State Policies, Regional Plans through to the State Planning Provisions rapidly embedding the tools and decision criteria needed to improve resilience and deliver deep reductions in operational and embodied carbon. Using the State Planning Provisions to enable an increasingly urgent response to a changing climate is a theme of our submission.

Delivery of RMPS Objectives

The SPPs are a key mechanism for delivery of the Resource Management and Planning System (RMPS) objectives. The SPPs will ultimately be a vehicle for achieving Tasmanian planning policies and land use strategies. In the meantime, there is a need to articulate the linkage between the RMPS objectives and their delivery through policy and in this review, regulation within the SPPs. We submit this could significantly improve both the linkage between the SPP and the RMPS objectives, and the quality of outcomes delivered by the SPPs. The issues and policy resources PIA have highlighted to progress planning reform are listed in *Attachment B* and include a focus on health, liveability, climate change resilience, agricultural protection, infrastructure, sustainable transport, housing choice, urban renewal and state settlement.

[1] https://www.planning.org.au/documents/item/11375

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PIA responses to mechanisms, zones and codes in the SPP

Attachment A includes curated responses to the PIA survey on the SPP review. The responses are of particular significance as they have been identified by the professional membership responsible for regular application and implementation of the scheme. Some responses have elucidated fine grain issues with standards of the SPP, which we recommend are considered in detail. Other responses highlight broader for delivering a land use planning system that responds to the objectives of the *Land Use Planning and Approvals Act 1993.*

PIA key issues and recommendations

The key issues and recommendations derived from member feedback (expanded in *Attachment A*) include the following:

- **Prioritise progress on *Phase 2* Planning Reform and streamline the scope of the SPP review** to address the critical concerns with the current SPP, while addressing reform opportunities that have a high likelihood of arising from the development of the Tasmanian Planning Policies and Regional Land Use Strategies.
- **Consider early progress to develop two new codes**:
    - **Stormwater** –sufficient to enable coherent terminology and concepts while allowing for locally different approaches.
    - **Infrastructure Contributions** – needed to build a consistent implementation framework for RLUS plan delivery.
- **Consider the need for principles on how the planning scheme will further objectives of RMPS** to explain why SPP approaches are adopted. This could be in the context of Tasmanian Planning Policy Development.
- **Ensure resilience to climate change permeates all codes and standards.** There are opportunities to respond to climate change via adaptation pathways and the reduction of carbon.
- **Address the way residential zones facilitate strategic planning for infill and the availability of diverse and affordable housing in urban centres.** Especially for amenity and sustainable development at higher densities and for multiple dwellings, open space requirements including the use of tailored diagrams for attached development in different urban settings.
- **Review the protection of residential amenity in residential zones and relevant codes,** including improved landscape and open space outcomes; and provision of public open space.
- **Consider incorporating 'liveable streets'** and 'parking as a tool to manage travel demand' in the Parking and Sustainable Transport Code.
- **Enable consideration of Aboriginal heritage** through the land use planning regime.
- **Review delivery of RMPS sustainable development objectives of natural assets code.** Consider applying priority vegetation area(s) in all zones and reduce the scope for exemptions.
- **Consider a broader review of flood prone land** policy in a changing climate especially regarding the relevance of the flood 1% AEP as a parameter.

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- **Ensure planning approval cannot be granted for development that cannot comply with bushfire building requirements**. Review Bush fire Prone Areas Code accordingly.
- **Consider the specific PIA suggestions** and clarification requests on the SPP in *Attachment A*.

Please call me for any clarification or input that PIA could offer in the next stage of the review process. We deeply appreciate the effort and direction of reform. Thank you for your consideration.

Kind Regards,

Mick Purves MPIA
PIA (TAS) State President

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ATTACHMENT A – PIA MEMBER SURVEY RESPONSES

1. Responses to the mechanism provisions 1.0 through to 7.0

- **Consider the need for principles on how the planning scheme will further objectives of RMPS**. At 2.0 provide a clear set of principles for use and development based on how the RMPS objectives are to be furthered and consistency found on State Policies by the TPS. Up-front set of principles would determine the provisions included in the SPPs and provide a values check on those provisions. The difficulty with the SPPs now is that the high-level 'of why do we do it' is not sufficiently described.
- **Consider whether determination of discretionary 'development' should have regard to the same additional matters as discretionary 'uses'**. This could also be considered 6.10.2 - this clause could be revised to include consideration of development, in addition to use. It makes many of the provisions more effective at dealing with impacts.
- **Consider enabling other statutory agencies to include conditions**. 6.11 - this clause should be expanded to include other statutory agencies that have legislative input to decisions (Tasnetworks, Taswater, DSG, etc).
- **Definition of 'hazardous materials' needed regarding home-based businesses.** Table 3.1 – For home-based businesses, the requirement in (e) should be accompanied by a definition of what is meant by 'hazardous materials' or clarify if what is meant by this is 'hazardous chemicals of a manifest quantity'.
- **Consider the practicality of provision for 'decks'**. 4.3.6 – Decks are usually attached or attached to or abutting a habitable building, so it might be worth reviewing whether the requirement in (a) is a practical one or not. Unroofed decks with a finished floor level of less than 1m above the existing ground level are highly unlikely to create amenity or privacy issues.
- **Query the need for submission of a copy of certificate of title.** 6.1.2 – Is the application requirement in (d) necessary or can this be considered red tape. Council´s planning officers can easily access certificates of titles, so why should applicants be required to provide them?
- **Definition needed for 'minor change' to size of lot.** 7.3.1 – For boundary adjustments, the requirement in (b) should be accompanied by a definition of what is meant by a minor change to the relative size of the existing lots (e.g., Up to 10% of the land area of the smaller lot). The second part of this requirement is problematic because it doesn´t define what is meant by a minor change to the relative shape and orientation of the existing lots (e.g., should the new boundary run parallel to the old boundary? What sort of leniency can be provided?). If the intention is to make the planning scheme more user-friendly, this should be considered.
- **Definition of 'Seasonal Worker Accommodation' needed -** in Table 3.1 Planning Terms and Definitions. Also define whether Seasonal Worker Accommodation is a Residential use or Visitor Accommodation use in Table 6.2 Use Classes.
- **Reconsider whether any substantial road works should be exempt uses**. In Cl 4 Exemptions, reconsider the breadth of exemptions relating to roads and streets and remove items beyond maintenance and repair from the exempt list.

2. Responses to the zone standards 8.0 to 30.0

Residential Zones

- **The scope of the review should address the way residential zones facilitate strategic planning directions for infill** – especially for high amenity and sustainable development at higher densities. The scope of the review should address the amenity of multiple dwellings, open space requirements, application of the code and use of tailored diagrams for attached development.
- **Review the capacity of Inner Residential Zone to facilitate quality higher density infill.** 9.0 Inner Residential Zone - There are many business/commercial zones, but there are only two urban residential zones and from development approved since the Inner Residential came into effect it does not seem to be achieving the 'higher densities' required in inner urban areas. In part this is due to building envelope that is not effective for the smaller lot size that is facilitated by the zones. The building envelope form is a slightly higher version of the General Residential Zone, and does not facilitate innovation in design and form suitable for an inner urban location. The Inner residential zone needs to facilitate a diversity of housing types (medium density housing should be the focus - not detached dwellings) The height of buildings should be reviewed in inner residential zones.
- **Adapt residential zones to meet different strategic infill needs in different settings**. In Launceston areas identified in the Regional Land Use Strategy as priority consolidation have been back zoned to General Residential due to concerns for the expansion on non-residential land uses facilitated by 9.2 Use Table. The Inner Residential Zone does not seem to be achieving greater residential densities, or protection of residential amenity. Either the zone should be modified or another zone would be effective in achieving quality inner urban residential development to achieve greater housing choice and amenity in appropriate locations.
- **Strengthen sustainability incentives**. Review the extent to which the SPP encourage development with sustainability, climate adaptation and carbon reduction features. This may extend to reconsidering parking requirements and promotion of active or public transport requirements (associated with an active transport policy).
- **Review implications of short stay visitor accommodation in Residential zones generally** - a review will be required on the impact of the visitor accommodation reforms to identify how they have affected housing availability within Tasmania.
- **Review amenity of any 'multiple dwellings' in LDRZ**. 10.4 LDRZ now allows multiple dwellings with no requirements for open space or other amenity-based issues.
- **Consider strengthening setback and envelope controls**. 8.4.2 A3, 8.5.1 A2, 9.4.2 A3, 9.5.1 A2 – These clauses include the conjunction 'or' between the allowances in (b)(i) and (b)(ii), but it makes more sense to include the conjunction 'and' given their objective. Moreover, the fact that the allowance in (b)(ii) only applies to the side boundary (not to the rear boundary) seems arbitrary.
- **Recognise solar access impacts of own dwelling**. 8.4.4 A1/P1, 9.4.4 A1/P1 – The way this clause is written is problematic because it gives the idea that the reduction in sunlight must be generated by a different dwelling to which the private open space (POS)

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belongs. Thus, recognising that a dwelling can fully overshadow its own POS, this clause should be amended.

- **Privacy / overlooking should also consider impacts on open space.** 8.4.6 A2, 9.4.6 A2 – The allowance in (b)(i) only considers overlooking to a habitable room of another dwelling. This allowance should be amended to also consider overlooking to the POS of another dwelling.
- **Common waste storage areas should have sufficient setbacks.** (8.4.8 P1 9.4.8 P1) not only from dwellings on site but from any dwelling. Thus, literal (c) should be amended to replace 'separated from dwellings on the site' for 'separated from any dwelling'.
- **Review acceptable frontages for properties affected by bushfire overlay.** 8.6.1 P2, 9.6.1 A2, 10.6.1 P2, 11.5.1 P2, 12.5.1 P2, 13.5.1 A2, 14.5.1 A2, 15.5.1 A2, 16.5.1 A2, 22.5.1 P2, 23.5.1 P2, 24.5.1 A2, 26.5.1 A2, 28.5.1 A2. A 3.6m wide frontage might be insufficient for some uses and properties affected by a bushfire-prone areas overlay. Thus, the minimum frontage width outlined by the above clauses should consider the access width requirements in tables C2.2 and C13.2.
- **Include a standard for landscaping regarding 'multiple dwellings' in residential zones.** The General Residential Zone (GRZ) and Inner Residential Zone (IRZ) should include a standard for landscaping for multiple dwellings.
- **Require structure plans for sub-divisions greater than 40 lots** to ensure open space, stormwater and public transport etc is provided. Predominately in the residential zones and to varying degrees in all zones make proper provisions for roads and streets providing for not only different travel modes but, particularly streets as places we recreate, make social contacts, and be a bit more friendly for the young, old, with disabilities etc.
- **Include public open space considerations in subdivision standards.** Public Open Space needs to be brought back into the subdivision standards - LGAs can potentially issue a permit for approval of a subdivision design, then refuse to seal it as inadequate POS has been provided under LG(BMP).

Other

- **Strengthen the prohibition of 'multiple dwellings' in Rural Living (AZ/RZ) land**. Revise 11.3.2 to avoid the potential use of this clause to get around the prohibition of developing multiple dwellings in Rural Living-zoned land. 11.4.2 A4, 30.4.2 A3 – The allowance in (b) should be amended to clarify that it only applies when there is already an existing building for sensitive use on-site within 200m of the Agricultural Zone (AZ) or Rural Zone (RZ). Otherwise, these clauses' wording opens a door for a person to develop an exempted outbuilding near a boundary adjoining the AZ or RZ and, subsequently, apply for planning approval for a dwelling within the same distance complying with the required setback.
- **Review Seasonal Worker Accommodation** so that references to be Discretionary or prohibited depending on zone. Address development standards for Seasonal Worker Accommodation such as adequate private open space.
- **Provide for urban agriculture in urban zones -** and review provisions that do not support food security.

- **Business zones need to include standards that require residential uses to 'self-protect' from noise impacts** so that employment and night-time activities are not subject to noise complaints from residents (pulling out relevant planning matters simply because they are dealt with under other legislation - ie EMPCA) means we are no longer planning.
- **Industrial zones need provisions on design and layout of outdoor working areas** to mitigate impacts where industrial and residential zones share an interface
- **Review EMZ to enable transparent assessment of uses on public / reserve lands.** 23.0 Environmental Management Zone - Use and development standards that permit development that has been approved by authority under separate acts is contrary to Objective 1(c) of LUPA 'to encourage public involvement in resource management and planning', this removes public involvement in applications on land predominantly on public land. Furthermore, as there is no statutory process established for the assessment it is contrary to Objective 2(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'. The first concern is that this Zone does not allow an open and transparent assessment of use and development within Reserve Land including National Parks and it also does not allow for appeal rights. Secondly, Parks and Wildlife do not necessarily have the skills, capacity or resources to act as an assessing authority.

3. Responses to the code standards C1.0-C16.0

Need to explicitly address climate change in all codes

- **There are opportunities to respond to climate change via adaptation pathways and the reduction of carbon** (in operational or embodied emissions). This is a cross cutting theme that should be addressed now – but which should be assisted by further guidance in State Policies. It is not an issue to be only addressed in hazard related codes.

Need for a stormwater code

- **Consider the need for a coherent stormwater code that enables different approaches in different settings** – not prescriptively uniform noting different needs and regional issues.

Need for infrastructure contributions guidance

- **Consider the need for an infrastructure contributions framework** - for the consistent application of methods and inclusions for development contributions to support the early delivery of infrastructure to sustain orderly urban growth and infill. This will become an increasingly important delivery mechanism for future land use strategy.

Parking and Sustainable Transport

- **Consider a 'Liveable Streets' code**. Alter the car parking requirements in the Parking and Sustainable Transport Code to better reflect the desire for liveable streets and higher density living whilst minimising the required amount of car parking on smaller residential lots..

- **Consider whether minimum parking standards encourage unnecessary private vehicle use and emissions.** C2.5.1 and Table C2.1 – The use of minimum parking standards, particularly for residential use and in urban areas, does not discourage private transportation and contributes to inefficient land use and carbon emissions. Members have questioned the value of parking minima in situations where higher densities and inner-city living is encouraged as transit-oriented development and to reduce strain on the road network.
- **Minimum car parking codes can encourage inefficient use of land and building resources**. Reducing congestion and CO2 emissions would be greatly assisted by reducing the number of private vehicles and enable market demand for how land could be better utilised. This would assist in achieving reduced transport emissions consistent with the Government's Climate Action Plan.
- **Increase the bike parking requirements and change facilities** in commercial and office use.
- **Consider inner urban context**. Table C2.1 does not allow for sufficient flexibility and response to market demand for parking. In inner urban areas the calculation of parking spaces can greatly reduce the ability commercial premises to change use and residential requirements significantly impact on the affordability of housing.
- **Review discretion introduced by term 'equivalent material'.** C2.6.1 A1 – Acceptable Solutions are objective and measurable. Therefore, including the words 'or equivalent material' in (c) introduces a level of subjectivity that is uncommon for Acceptable Solutions.
- **Address 'seasonal worker' parking**. Table C2.1 to include parking requirements for Seasonal Worker Accommodation.

Local Historic Heritage

- **Resolve and explain why the code does not apply to Tasmanian Heritage Register**. Remove C6.2.3 of the Local Historic Heritage Code which states the code does not apply to a registered place entered on the Tasmanian Heritage Register.
- **Reconcile code where exemptions are already given**. Local Historic Heritage Code and Scenic Protection Code would benefit from review as some elements are difficult to implement (especially if already given exemptions - eg vegetation protection and setting of heritage buildings).
- **Enable consideration of Aboriginal heritage**. The review should progress consideration of aboriginal heritage under the land use planning system, including consideration of what is addressed through the SPP's and how those issues would operate. Consultation with Aboriginal people needs to be central to this reform.

Natural Assets

- **Review delivery of RMPS sustainable development objectives of natural assets code.** C7 – This code should contribute considerably to delivery on the RMPS objectives for sustainable development. A review should consider whether the State should take over and maintain the Regional Ecosystem Model that underpins the Priority Vegetation Overlay under LPS's.

- **Consider applying priority vegetation area in all zones**. Review the rationale for applying the code in only certain zones C7.2.1 (c). It is unclear why other zones would be mapped and then not have the Code applied. The Code does not adequately encourage assessment of removal of native vegetation that may be subject to other acts at planning stage.
- **Reduce the scope for exemptions**. C7.4.1 Exemptions from the code are reported as confusing. C7.4.1 (c) clearance of native vegetation in a national park should not be exempt. This removes public involvement in decision making in relation to public land.

Flood-prone areas

- **A broader review of flood prone land** policy in a changing climate should consider the outcomes of recent inquiries around Australia that have found fixed reliance on 1% AEP parameters to be increasingly less suitable in a changing climate. Considerations of safety regarding human life and evacuation are becoming more critical parameters.
- **Reconsideration of where development should occur**. Many of the hazards codes allow for development in respect to a tolerable risk and need to be redrafted with the focus on whether the development should occur in that location at all. Future generations would be exposed to significant risk from climate change if there is less ability to fully consider the impacts of the risk involved from a public perspective.
- **Refine definition of intended life of use of building** - Clauses C12.5.1 P1.2 (b); C12.5.2 P1 (b) (ii); and C12.6.1 P1.2 (b) eg. to read "The use can achieve and maintain a tolerable risk from a 1% annual exceedance probability flood event in (eg 2100 or next 80 year) for the intended life of the use without requiring any flood protection measures" consistent with Codes C10 and C11.
- **Allow councils some discretion on when flood reports are required** to take into account local circumstances.

Bushfire-prone areas

- **Review Bush fire Prone Areas Code to ensure planning approval cannot be granted for development that cannot comply with bushfire building requirements.** C13.2.1 Application of this Code - The scope of the Code was amended in 2016 to remove its application to habitable buildings and transfer these requirements into the building regulatory framework. This has created a situation whereby planning approval can (and regularly is) granted for development that cannot comply with bushfire building requirements. This has resulted in inefficiencies in the approvals process when the issues are detected because of the need to redesign and obtain further planning consents. When the compliance issues are overlooked prior to building approval, it has also led to non-compliant fire safety outcomes. The considerations for vegetation management, access and building location has implications on other aspects of planning approval and should be considered at the same time. Applicants will otherwise have to reapply for their development, which undermines the effectiveness of the planning process.
- **Address how different forms of visitor accommodation are addressed where vulnerable to bushfire.** C13.3 Definition of Terms – The scope of the defined 'vulnerable uses' was

amended in 2016 to remove Visitor Accommodation and transfer these requirements into the building regulatory framework. This has created a regulatory gap for certain types of Visitor Accommodation. For example – campgrounds and 'glamping' facilities that do not involve any building classes that trigger bushfire requirements for building compliance are now effectively unregulated for bushfire protection. 'Eco-tourism' projects can also be problematic under the current framework. These projects are often exposed to significant bushfire risks and are often designed based on an incorrect assumption that it is not necessary to remove any vegetation for bushfire protection. For these types of projects, there is no practical advantage in not considering bushfire protection and its associated impacts on natural values as early as possible in the approvals process. It is noted that the scope of defined vulnerable uses must be considered in conjunction with the relevant bushfire requirements applicable for building compliance to ensure appropriate alignment.

- **Align bushfire vulnerable uses with incoming NCC**. C13.5.1 Vulnerable uses – The National Construction Code 2022 will introduce more stringent bushfire requirements for certain types of buildings. This will have implications for the siting of certain vulnerable use buildings (e.g. schools). It is recommended that the vulnerable use standards of the Code be reviewed to ascertain whether there is a need for improved alignment between the Code and the incoming NCC requirements.

Potentially Contaminated Land

- **Clarification of exemption of different site disturbance volumes**. C14.4.1 exempts excavation for less than $1m^3$ of area, however in accordance with C14.6.1 excavation up to $250m^3$ is permitted. It is unclear why the code would apply in this instance.
- **Clarification of application of code to sensitive uses**. C14.5.1 Suitability for intended use. The objective describes the standard as applying to a sensitive use, however the name of the standard and the criterion do not refer to the sensitive use. It is not clear whether this standard is supposed to apply to all uses. C14.5.1 A1/P1 – This clause's objective refers to 'sensitive use or a Use Class listed in Table C14.1', but there is no mention of this in A1 or P1. Thus, the objective does not align well with A1 and P1.
- **Clarification of discretion to proceed without testing.** If land is known to be contaminated and there are reasonable measures that are determined by a suitably qualified person to mitigate the impacts the standards should be worded to explain any discretion to enable development and use to proceed without testing required as part of an ESA.

ATTACHMENT B - RELEVENT ISSUES AND PIA POLICY POSITIONS

The issues and policy resources PIA have highlighted to progress planning reform are listed below:

- RMPS Objective Part 2(f) for health and wellbeing, noting PIA Position Statement on Planning for Healthy Communities;
- The RMPS definition of sustainable development and its delivery through strategic and regulatory outcomes;
- Planning in a Changing Climate (PIA Position Statement) In addition to: National Land Use Planning Guidelines for Disaster Resilient Communities;
- Planning for urban vegetation in adapting to a changing climate and urban heat;
- Regional Land Use Strategies (Climate Change)
- State Policy on the Protection of Agricultural Land (2009)
- The link between historical development patterns and climate impacts, such as mandated car parking requirements;
- The alignment of housing options and proximity to transport and jobs; and
- The delivery of national and state-based settlement strategy.

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