Comments on draft State Planning Provisions

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Authored by: Jamie Kirkpatrick, Nicki den Exter, Indra Boss

The following response to the draft State Planning Provisions for the single Tasmanian Planning Scheme has been prepare by:

Dr Jamie Kirkpatrick – Distinguished Professor (J.Kirkpatrick@utas.edu.au)

Nicole Den Exter - PhD Student, Environmental Planning, UTAS (nicole.denexter@utas.edu.au)

Indra Boss – PhD Student, Environmental Planning, UTAS (indra.boss@utas.edu.au)

The following people have provided input to and support the submission:

Dr Michael Lockwood - Associate Professor (Michael.Lockwood@utas.edu.au)

Dr Stewart Williams – Senior Lecturer (Stewart.Williams@utas.edu.au)

Dr Emma Pharo – Senior Lecturer (Emma.Pharo@utas.edu.au)

Dr Kate Booth – Lecturer in Human Geography (Planning) (Kate.Booth@utas.edu.au)

Vishnu Prahalad – Lecturer in Environmental Management (vishnun@utas.edu.au)

Marisa Field – Mstr Env Plng (field.marisa@gmail.com)

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Introduction

The comments on the draft State Planning Provisions (SPPs) of the Tasmanian Planning Scheme (TPS) made in this document focus on matters that in the authors' opinions are particularly relevant to sustainable development and delivering best practice planning outcomes for Tasmania with regard to the Schedule 1 (Part A and B) Objectives of the *Land Use Planning and Approvals Act 1993* (LUPAA).

It is noted that LUPAA defines representation

> "in relation to –
>
> (a) A draft of the SPPs…..
>
> includes a written statement of facts or reasons in support of or in opposition to the draft,…"

Accordingly the document draws on the expertise of staff and students at University of Tasmania (UTAS), peer reviewed research, best practice documents and guidelines relevant to environmental planning and sustainability, as well as submissions to the draft SPPs made by other parties.

The authors are appreciative of the "Explanatory Document for the draft of the State Planning Provisions of the Tasmanian Planning Scheme" which has served as a useful guide for navigating the draft State Planning Provisions (SPPs); in particular the summary of 'general policy principles' (p8), deletions, new inclusion, changes to definitions and implementation recommendations for Planning Authorities. We commend the Minister and the Planning Reform Taskforce for providing such a useful overview document.

However it is noted that LUPAA specifies under s23 (3) "…any matter, contained in a representation under subsection (1) in relation to a draft of the SPPs, that does not relate to the contents or merits of the draft is not to be taken to be part of the representation."

The authors acknowledge the limited scope of the consideration powers provided to the Tasmanian Planning Commission (the Commission) under section 23 and section 24 of LUPAA.

However the authors are of the opinion that the methodology; SPP drafting guidelines and conventions; general policy principles; zone and code application framework; and the State Governments overarching goals to make the Planning System "Faster, Simpler, Cheaper and Fairer" that have led to the preparation of the draft SPPs are material considerations and critically relevant

in assessing whether the draft SPPs actually deliver on the Schedule 1 Objectives of LUPAA especially with respect to Part 1 (c) "to encourage public involvement in resource management and planning" and submit that section 18 of LUPAA and sections 23 and 24 , by limiting the scope of consideration of representations appears to be legislating against its own objectives.

The authors' overarching concerns are with the explicit prioritisation of development rather than conservation that is evidenced throughout the draft SPPs. Implementing such explicit and detailed pro-development provisions in the absence of a comprehensive set of State Policies or up to date Regional Land Use Strategies (RLUS) is highly likely to achieve sub-optimal planning outcomes. Furthermore such an approach is not in accordance with the Act Schedule 1 Objectives, specifically Part 1, 1 (a), (b), (c), (d) and 2 (a), (b) (c) and Part 2 (a), (d), (g) and (i).

We strongly suggest that focus is given to updating the RLUS to address the following critical issues:

- coordination with resource constrains (e.g. water);
- consideration of ecological hazard and changes (climate change, landslip);
- consideration of major development areas through limitation of topography, urban sprawl, public utilities and infrastructure and encroachments into production areas;
- social, environmental and economic impacts of decentralised urban forms and activity centre duplication; and
- social living needs (access to parks, waterways, recreations areas, wilderness etc.).

Once the above has been completed the draft SPPS need to be made consistent with the revised RLUS. Planning Authorities can then focus on achieving environmentally sustainable development (ESD) by focusing on the following matters when preparing Local Provision Schedules:

- correlating zone controls with environmental impacts (e.g. emissions/pollution);
- zone designation of transition zones (e.g. rural/rural residential/agriculture);
- verifying the implications of a like-for-like translation of the existing zones; and responding to challenges such as rezoning to hill faces;
- subdivision standards within hill face zones and conservation zone (Environmental Management/Landscape conservation etc.); and
- providing measures that will result in actual vegetation protection.

This representation commences with general comments on the draft SPPs, followed by a section on concerns relating to specific sections of the draft SPPs, before providing concluding remarks.

The authors have focused specifically on the aspects of the draft SPPs that are perceived to have significant consequences for the natural and social capital of the state. It has not been possible to review all zone and code provisions in detail and we request the ability to make further submissions in relation to the draft SPPs.

Comments - Sections 1 to 7

Structure of the draft SPPs

The authors support the following structural aspects of the draft SPPs:

- consistent template for all planning scheme instruments in Tasmania;
- consistent terminology and definitions;
- applying consistent drafting conventions; and
- consistent zones and codes for spatial application by Planning Authorities.

The above standardisation will improve the ease with which all parties can locate the relevant use and development standards applicable to their situation.

However – the authors are concerned that several of the Applied, Adopted or Incorporated Documents mentioned in the draft SPPs are only accessible via licence payments; specifically the Standards Australia documents. Such an arrangement creates a barrier to participation for the general public. Whilst the Commission has made hard copies available during the consultation period, it is not reasonable to expect that individuals travel to the Commission premises to view these documents on an ongoing basis.

Such an arrangement is considered a denial of natural justice and at odds with the Act objectives specifically Schedule 1, Part 1 Objective 1 (c).

2.0 Planning Scheme Purpose

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2.1 Purpose

2.1.1 The purpose of this planning scheme is:

(a) To further the Objectives of the Resource Management and Planning System and of the Planning Process as set out in Parts 1 and 2 of Schedule 1 of the Act.

(b) To provide for planning controls consistent with State Policies in force under the State Policies and Projects Act 1993.

(c) To enable the implementation of declared Regional Land Use Strategies, as amended by the Minister from time to time, through the Local Provisions Schedules.

The above purpose is supported.

However - by removing the commentary of how the planning scheme seeks to deliver the outcomes of the declared Regional Land Use Strategy (RLUS) from Zone and Code purpose statements, (to avoid duplication) the audit trail showing the linkages from LUPAA via State Policies via RLUSs is lost. The resultant lack of transparency of the linkages between the various levels of the Planning System will make it more difficult to:

- update the TPS in response to new economic, social and environmental information and data; and
- ensure that desired planning outcomes are achieved.

Specifically, the ability for Planning Authorities to deliver on the objectives of RLUS will be severely constrained by:

- removing the RLUS objectives from Zone objective in the desire to avoid 'duplication';
- preventing Local Area Objectives in the Local Planning Provisions (LPPs) from applying tighter use and development controls than those for the corresponding Zone in the SPPs; and
- restricting Planning Authorities to only consider the LUPAA objectives and the Zone Objectives when determining permit applications.

Planning for Resilience and Climate Change adaptation will be seriously compromised under a TPS framework relying on the provisions of the current draft SPPs. The Productivity Report (March 2013) "Barriers to Effective Climate Change Adaptation Inquiry Report" identified Local Government as often being in the best position to respond to the challenges of Climate Change[1].

The draft SPPs propose that Planning Authorities prepare Specific Area Plans (SAP) where variation to the State Provision is required but such SAPs "must be consistent with a local land use strategy or structure plan approved for the area and not inconsistent with the declared RLUS".[2]

However –the current declared RLUS are due for revision and updating. Hence whilst the intent of the draft SPPs is supported, the TPS implementation timeline precludes such revisions. Accordingly Planning Authorities will again be constrained in comprehensively responding to the needs of their local areas; resulting in suboptimal planning outcomes.

3.0 Interpretation

General comments

Definitions for all terms would benefit from:

- addressing common aspects in their definition – such as, ownership, purpose and legislation if any; and
- referencing National or International Standards wherever possible.

A number of the defined terms in the draft SPPs are not scientifically accurate or lack specificity. In the interest of providing clarity the following table outlines specific concerns and suggests alternatives where such have been identified.

Term	Definition	Issue/Concerns	Suggested Alternative
native vegetation	*means plants that are indigenous to*	Vegetation is an assemblage of individual	***'means vegetation in which more than 50% of the biomass consists***

[1] http://www.pc.gov.au/inquiries/completed/climate-change-adaptation/report
[2] Minister for Planning and Local Government, 2016, Explanatory Document for a draft of the SPPs, p192,

Term	Definition	Issue/Concerns	Suggested Alternative
	Tasmania including trees, shrubs, herbs and grasses that have not been planted for domestic or commercial purposes.	plants, not individual plants. There are indigenous plants that have been cultivated for purposes not listed in the definition (e.g. botanical; garden plantings, scientific plantings, municipal amenity plantings). Suggest excising 'for domestic or commercial purposes'.	***of self-established individual plants indigenous to Tasmania'***
office	*means use of land for administration, or clerical, technical, professional or other similar business activities.*	This definition excludes the many offices used for public or charitable purposes.	Perhaps remove the term business to make the purpose more generic: ***Suggest -*** ***means use of land for administration, or clerical, technical, professional or other similar activities.***
primary frontage	*means:* *(a) where there is only a single frontage, the frontage; or* *(b) where there are 2 or more frontages, the frontage with the shortest dimensions measured parallel to the road irrespective of minor deviations and corner truncations.*	Surely, would be better to allow it to be chosen, rather than have this lawyer's playground. Why the shortest? Primary Frontage' – the definition refers to the shortest frontage, which can cause issues – particularly in cases where multiple dwellings are proposed on corner lots or a house addresses the longer frontage.	***Suggest acknowledging the frontage of an existing house addresses/faces the main entry point and in the case of vacant lots, whichever street is referred to in the address of the lot.***
public open space	*means land for public recreation or public gardens or for similar purposes.*	This definition could be interpreted to include parts of privately owned malls and other private property such as gardens that allow access to the public.	***Suggest*** ***land owned by a government entity and provided for public uses such as public recreation or public gardens or for similar purposes.***
public reserved land	*means land reserved for any purpose under the Nature Conservation Act 2002, the National Parks and Reserves Management Act 2002, or the Crown*	This is possibly not a comprehensive list (e.g. Forest Reserves may not be accounted for). We are aware that all forest reserves have been or are in the process of being transferred to DPIPWE but	*means land reserved for:* *a) any purpose under the Nature Conservation Act 2002, the National Parks and Reserves Management Act 2002, or the Crown Lands Act 1976; or*

Term	Definition	Issue/Concerns	Suggested Alternative
	Lands Act 1976.	are unsure whether the Forest Management Act 2013 has been updated to reflect this change. Which means that Forest Reserves could still be created?	b) *any purpose under the Forest Management Act 2013, the Forest Practices Act 1985, or Forest Practices regulations.* ***Suggest a new definition for private reserved land needs to be included***
private reserved land		Currently missing.	***Suggest*** ***Means privately owned land that has been reserved for conservation purposes via covenant or Part 5 Agreements and includes land identified as private reserve or private sanctuary as defined by the Nature Conservation Act 2002.***
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.*	There are many roads that do not fit this definition, because they are privately owned, or controlled by an agency, and can be closed at will. Even public roads are frequently closed to passage. We support the HCC submission comments: "Road' – this definition should include 'user roads' which are highway reservations which are used by the public but are in the title of the property. 'Road' - this definition should also include areas the general public does not have permanent right of passage such as nature strips"	***Suggest different definitions for public and private roads.***
skyline	*means a line along the top of a hill or mountain that forms an outline against the sky.*	These cover most of the State, as geometry tells us that the line depends on the viewpoint. This is not a specifically useful definition. It generally also extends some distance below and above the actual 'line' (given trees protrude above the ground and in	***Suggest*** ***means that section of the land close to the sky along the top of a hill or mountain that forms an outline against the sky as viewed from built up areas, highways, walking tracks and lookouts'.***

Term	Definition	Issue/Concerns	Suggested Alternative
		fact form a 'fuzzy' outline against the sky.)	
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 lot boundaries, the quality, scale, bulk and design of buildings and structures fronting the road reserve.* *For the purposes of determining streetscape with respect to a particular site, the above features are relevant if within 100m of the site in the same street.*	100 m is not a meaningful length for determining streetscape. Constraining consideration to such a short distance would result in the urban equivalent of a 'death by a thousand cuts' as the first divergence from the existing streetscape then sets the trend for its immediate neighbourhood. Clarity is also required to identify from where the distance should be assessed: Is it from the centre of the site for which the development proposal pertains, or the centre of its frontage on the street, or the edge of its frontage on the street?	***Suggest*** ***…… For the purposes of determining streetscape with respect to a particular site, the above features are relevant if within 500m of either side of the site in the same street.***
subdivide	*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*	d) has been widely used to circumvent reasonable planning restrictions. It should be removed.	***Suggest*** ***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; or*** ***(d) an order adhering existing parcels of land.***

Term	Definition	Issue/Concerns	Suggested Alternative
	or a staged development scheme under the Strata Titles Act 1998; or *(e) an order adhering existing parcels of land.*		
threatened native vegetation community	*means as defined under the Nature Conservation Act 2002.*	There are communities listed under Commonwealth *EPBC Act (1999)* that are not listed under the local act and vice-versa. There should be alternative sources of listing, as they are both legally relevant to development approval processes. The definition does not cater for endangered, vulnerable and rare species under the Threatened Species Protection Act – as these are not considered a community. This may result in confusion.	***Suggest*** ***means as defined under the Nature Conservation Act 2002 <u>and</u> the Commonwealth EPBC Act (1999)*** ***We suggest the inclusion of a separate definition for threatened species. (see next entry)***
Threatened native species		Currently missing (see above)	***Suggest*** ***means as defined in the Threatened Species Protection Act1995 and species defined as partly protected wildlife and protected plant under the Nature Conservation Act 2002.***
water sensitive urban design (WSUD)	*means the integration of urban planning with the management, protection and conservation of the urban water cycle to ensure that urban water management is sensitive to natural hydrological and ecological cycles.*	This definition lacks specifics.	***Suggest*** ***urban design processes that reduce the possibility of flood damage and marine/riverine pollution by means such as reducing runoff and slowing flows.*** ***Or also*** ***Refer to the National Water Commission*** ***http://www.newwaterways.org.au/About-Us/What-is-water-sensitive-urban-design*** ***to provide context to the current***

Term	Definition	Issue/Concerns	Suggested Alternative definition.
wetland	*means a depression in the land, or an area of poor drainage, that holds water derived from ground water and surface water runoff and supports plants adapted to partial or full inundation and includes an artificial wetland.*	This definition includes most farm dams and a large area of the State's forests dominated by black gum, swamp peppermint and cider gum, but excludes flowing wetlands No problem with including farms dams and sewage ponds in the definition.	***Suggest 'an area of land that is both continuously inundated, on average, for more than one month of the year and that supports macrophytes (plants one can see with the naked eye) when inundated and/or dry'. OR Use the definition of wetlands as provided under Article 1 of the Ramsar Convention, "wetlands are areas of marsh, fen, peatland, or water, whether natural or artificial, permanent, or temporary, with water that is static or flowing, fresh, brackish, or salt, including areas of marine water the depth of which at low tide does not exceed six metres."[3]***

As each of these terms is used throughout the SPPs, the issues raised above will apply to all sections of the draft SPPs containing these terms. In the interest of readability the issues will not be repeated and we will refer readers back to this section.

4.0 Exemptions

We generally support the inclusion of uses or developments as exempt where they are of small or limited impact and contribute to key strategic priorities in the declared RLUS.

Hence the ***renewable energy exemptions*** and the ***vegetation rehabilitation works exemptions*** are welcome and supported.

However – some concerns arise with:

[3] This definition includes rivers, lakes, and estuaries (among others) that are traditionally considered to be separate from wetlands. However, for the purposes of conservation and natural resource management, most of these water dependent ecosystems are interrelated and hence have merit to be classified under an all-encompassing term—wetlands. Such an approach is consistent with Act, specifically Schedule 1 Objectives, Part 1; 1(a) and 2 (b).

1) bee keeping in this category without any qualification as to scale of the use or location of the use. As currently written the draft SPPs make no distinction between a commercial or domestic scale use. It is not clear where or by whom the activity is regulated at all. This raises a number of questions including:

- if the exemption results in an increase of bee keeping within residential zones, what is the increased risked to people in those zones who are allergic to beestings?
- what assurance does the public have that bee hives will be properly managed and not be allowed to go wild?
- will the introduced bee species (generally used in bee keeping) become so numerous that they will outcompete native bees for food sources, thereby negatively impacting on biodiversity and ecosystems health?

As currently written the bee keeping exemption does not satisfy the Act, specifically Schedule 1 Objectives, Part 1; 1(a) and Part 2 (f).

2) the limited qualification of occasional use in this category; would benefit from providing objective, specific temporal limits. What about sporting, social and cultural events or markets on private land? How are the latter treated by the draft SPPs?

3) road works – providing an exemption for "maintenance and repair… up to 3m outside the road reserve.." implies that works can be carried out on private land and or damage private assets without a permit. The way the current exemption is written also has the potential to significantly impact vegetation along road reserves, which often provide critical habitat corridors.

The qualifications for this exemption should be revisited to address the above concerns. As currently written the exemption does not satisfy the Act, specifically Schedule 1 Objectives, Part 1; 1 (a) and (b).

4) minor telecommunications – the qualifications for this exemption would appear to allow installation of microwave towers, which may be vehemently opposed by nearby land holders. To exempt such potentially divisive infrastructure from public consultation processes appears to be a case of privileging commercial interests over public interests. It would appear that as currently written the exemption does not satisfy the Act, specifically Schedule 1 Objectives, Part 1; 1 (b) and Part 2 (f).

5) <u>temporary buildings or works</u> – qualification (a) raises the same concerns as outlined in 2) above as it relies on 'occasional use exempt under this part'. Hence the two exempt uses or developments need to be revised together and for the same reasons.

6) <u>demolition of exempt buildings</u> - qualification is not well written and does not readily convey the intended meaning. We suggest "demolition of buildings which are categorised as development exempt from requiring a permit under this part (Table 4.1) …."

7) <u>vegetation removal for safety or in accordance with other statutes</u> – this is a very broad exemption.

The authors accept that human safety is a paramount objective- but question why use and development is occurring in or near threatened vegetation when such proximity poses a risk to safety. Surely this again reflects a lack of consideration for Land Capability and ignores the Act objectives, specifically Schedule 1 Objectives, Part 1; 1 (a) to (d).

Similarly there are many statutes that have nothing to do with safety or security, given the qualifications mention specific Acts that do relate to safety and security – the authors suggest that a more appropriate label would be "***<u>vegetation removal for safety"</u>***

8) <u>landscaping and vegetation management</u> –the qualifications as currently written refers to reserves, a term not defined in the daft SPPs. For consistency it is suggested that the qualification use the term reserved land (as per the suggested modification in Section 3 above), so that the following substantive concerns with the qualification may be resolved.

The exemption in relation to parks and reserves should be restricted to those reserves with a management plan that provides policies and procedures for vegetation management or to those management actions that are subject to a broader plan that covers policies and procedures.

Most parks and reserves, do not have such a plan and would therefore be negatively impacted by the exemption. Parks and reserves should be extended to private reserves (e.g. those of the Tasmanian land Conservancy). The exemption should remain for landscaped areas.

Suggest alternate qualification is as follows:

> ***Landscaping and vegetation management within a private garden, public garden or park, or within reserved land if:***
> ***(a) a management plan exists that provides policies and procedures for vegetation management or to those management actions that are subject to a broader plan that covers policies and procedures;***
> ***(b) the vegetation is not protected by legislation, a permit condition, an agreement made under Part 5 of the Act, or a covenant;***
> ***(b) the works are not subject to the Natural Assets Code; and***

(c) the vegetation is not listed as a significant tree, or specifically listed and described as part of a Local Heritage Place in the relevant Local Provisions Schedule and subject to the Local Historic Heritage Code, unless they are incidental to the general maintenance.

9) Strata Division – in keeping with the concerns raised in relation to the term subdivision (as per the suggested modification in Section 3 above) the authors strongly believe this use or development should not be exempt from requiring a permit. Whilst the buildings may be approved or previously granted a permit, such division has implications to common areas, including private open space, access and parking provisions. Such changes are likely to impact on neighbouring properties and hence the use or development should be subject to requiring a planning permit. Inclusion as an exemption does not satisfy the Act, specifically Schedule 1 Objectives, Part 1; 1 (b) and Part 2 (c), (e).

5.0 Planning Scheme Operations

In principles the proposed operation of the TPS appears to align with historical operations of Planning Schemes.

However – the authors note the significant constraints with certain Codes applying only to certain Zones and conditions; the extensive use of exemptions to developments within some Codes and the fact that use is not subject to Code provisions.

The rationale for these exemptions is given as,

> *"• Ensuring that Codes do not impose undue constraints on those uses which are consistent with the Zone purpose.*
>
> *• Targeting the application of particular Codes to specific Zones where the purpose of the Code does not undermine the Zone purpose. "(Explanatory Document, p8 and 9)*

And thereby specifically undermine the whole philosophy of codes as outlined in 5.3 Operations of Codes. It also implies that fundamentally zones provisions are inappropriately scoped and spatially applied.

Limiting the application of Codes to only certain zones suggest that land capability is not a core consideration in the draft SPP provisions and this aspect in particular is counter to the Act, specifically Schedule 1 Objectives, Part 2, 2 (i).

It is unclear how such an operational approach to Codes is capable of satisfying the Act provisions, specifically Schedule 1 Objectives, Part 1; 1 (a) ,(b), (c) and 2 (a), (b), (c).

The precautionary principle is the most prominent legal consideration that arises from the sustainable development objective of the Act and places the evidentiary burden on proponents (Stein, 2007). The proposed operation of Codes within the draft SPPs appear to ignore the precautionary principle. Instead private property rights are privileged over the public interest in maintaining natural assets and ecosystem services.

6.0 Assessment of an Application for Use or Development

The mandatory application requirements as described in 6.1.2 appear to be a very minimum set, yet given that the type of use and development that require a permit are generally of such scale that the information as outlined in 6.1.3 becomes necessary for the planning authority to make an assessment; it makes little sense to delay the permit process by placing the onus on the planning authority to request it, rather than making it part of the mandatory application information.

Suggest that 6.1.2. (e) be updated to specify what is meant by “a full description” and items listed in 6.1.3 should be included.

In relation to 6.1.3 (b) (vi) should be amended to read -

“vegetation types and distribution including any known threatened communities, threatened species, habitat for threatened species, and trees and vegetation to be removed”

6.2 Categorising Use or Development

6.2.2 States that,

> *“A use or development that is directly associated with and a subservient part of another use on the same site must be categorised into the same Use Class as that other use.”*

How does this stipulation interact with the exempt uses under Section 4.0? For Example, if bee keeping is carried out on a residential site does it also become a residential use and if so what impact does that have on its exempt status?

Furthermore in Table 6.2 Use Classes – bee keeping is listed as an example of Resource Development, how does that relate to its status as an exempt use?

Suggest some further explanation to clarify the apparent inconsistencies in the way bee keeping is addressed as a use.

In Table 6.2 Extractive Industry is described as,

"use of land for extracting or removing material from the ground, other than Resource development, and includes the treatment or processing of those materials by crushing, grinding, milling or screening on, or adjoining the land from which it is extracted. Examples include mining, quarrying, and sand mining. "

In the interest of providing certainty and full disclosure it is suggested that the example of coal seam gas extraction be included here; given that *LUPAA 1993* s52 (1A) does not require the consent of the property owner on applications for production licences issued under the Mineral Resources and Development Act 1995.

See also concerns raised under Rural Zone.

6.10 Determining Applications

6.10.3 States:

In determining an application for any permit the planning authority must not take into consideration matters referred to in subclauses 2.1.1(b) and 2.1.1(c) of this planning scheme.

This clause says that State policies and RLUS should be ignored even though they are explicit elements of the Purpose of the Planning Scheme! This does not make a lot of sense given the present disconnects of 'content currency' among the various documents. In addition the lack of 'traceability' of objectives from the higher to lower level instruments provides no certainty that the draft SPPs will actually deliver on the policy or RLUS objectives.

We therefore suggest that ***all matters referred to in subclause 2.1.1 must be taken into consideration in determining an application for any permit.***

Not amending the current provision appears to be evidence of a clear intent to pervert the planning system to allow all developments, no matter their impact on people, the rest of nature and the future prosperity of Tasmania.

7.0 General Provisions

The authors note that terms such as 'minor', 'substantially' and 'unreasonable' are used in a number of the General Provisions. In the interest of providing clear guidelines and removing potential appeals based on interpretation, it is suggested that such terms be replaced with quantifiable or objectively measurable terms. Examples are provided for clauses 7.2 and 7.3 below:

7.2 Development of Existing Discretionary Use

Notwithstanding clause 6.8.1 of this planning scheme, proposals for development (excluding subdivision), associated with a Use Class specified in an applicable Use Table, as a Discretionary use, must be considered as if that Use Class had Permitted status in that Use Table, where the proposal for development does not establish a new use, or substantially intensify the existing use.

Suggest the following for greater clarity:

Notwithstanding clause 6.8.1 of this planning scheme, proposals for development (excluding subdivision), associated with a Use Class specified in an applicable Use Table, as a Discretionary use, must be considered as if that Use Class had Permitted status in that Use Table, where the proposal for development does not establish a new use, or does not intensify the existing use.

7.3 Adjustment of a Boundary

7.3.1 (b) there is only minor change to the relative size, shape and orientation of the existing lots;

Suggest the following for greater clarity:

7.3.1 (b) there is only less than 10% change to the relative size, shape and orientation of the existing lots;

7.6 Access Across Land In Another Zone and 7.7 Buildings Projecting onto Land in a Different Zone

These two general provisions give cause for concern as they in effect allow developers to encroach into areas that have been judged to be not appropriate for their developments. Clauses 7.6.1 and 7.7.1 will allow roads to be built through reserves irrespective of their internal zoning or values and will allow buildings on adjacent properties to project over reserves.

We strongly recommend that the Environmental Management Zone is exempt from clauses 7.6.1 and 7.7.1.

We also suggest that for other zones the provisions as they are currently written need qualification, so that they only apply where the access or projection is into another Zone that is for an equivalent or more intense use and development purpose and where there are no Code constraints on the 'second zone'.

For example – development in Industrial Zone, is not able to access across Land that is in the following zones:

- all residential living zones;
- environmental management zone;

- landscape conservation zone;
- community purposes zone; and
- open space zone.

Similarly projections from development in General Residential are not allowed into land that is zoned:

- low density residential zone;
- rural living zone;
- environmental management zone;
- landscape conservation zone;
- community purposes zone; and
- open space zone.

The next section will address priority concerns within zones and codes. It has not been possible to review all zone and code provisions in detail and we request the ability to make further submissions in relation to the draft SPPs.

Specific Zone and Code Concerns

Residential Zones

General Comments:

The reduced minimum lot sizes in Inner Residential and General Residential zone indicate a clear strategic intent to encourage more infill development.

A significant concern with the provisions of the draft SPP is that single dwellings have a 'no permit required' status and if all the acceptable solutions are met then the development will only be assessed at the building stage. However densification is proposed to only occur in locations where the existing infrastructure services have spare capacity.

It is not clear who or when such a capacity assessment would be made when development is progressed on a dwelling by dwelling basis.

It is also not clear whether all Planning Authorities have the resources and means of making such an assessment during the development of the LPSs so as to spatially allocate zones in the optimal areas within their council area.

Similarly – multiple developments are a permitted use in the above residential zones as well as in Low Density Residential; and are likely to be favoured by developers due to the removal of the Stormwater Management Code and inapplicability of the Open Space Provisions.

It is these kinds of scheme settings that have been found to have adverse impacts to the Liveability of suburbs in Western Australia. Duckworth-Smith (2015, p310) identified a number of problems with infill development including:

- *lack of housing diversity;*
- *indiscriminate clearing & excessive paving/impermeable surface areas impacting on groundwater health & microclimate;*
- *excessive building bulk;*
- *cross over creep (aggregate width of driveways impacting on street scapes)*
- *proliferation of unusable residual areas on sites;*
- *streets underutilised as communal space and sites for common infrastructure.*

The research has resulted in the development of refinements to existing planning controls but also some new criteria. One of the new criteria with particular relevance to the Tasmanian context (where we value our green cities and suburbs) is the design provision for "a deep planting zone (DPZ) to encourage soil and groundwater health and the retention and provision of mature vegetation to help mitigate poor environmental outcomes of current practice. These areas must be uncovered, distributed evenly across the site, fully permeable and have a requirement for planting/retention of advanced trees."(Duckworth-Smith, 2015, p311)

It is strongly suggested that the draft SPP provisions for all residential zones be reviewed against such current research to ensure that Liveability of residential areas is maintained.

The authors note that specific provisions for this are lacking, given the obsession with the codified standard for building envelopes but little attention to quality parameters especially with regard to the Public Realm. It is not clear why best practice documents such as:

- Creating Places for People – an Urban Design Protocol for Australian cities (http://urbandesign.org.au);
- Tasmanian Subdivision Guidelines (LGAT 2013);
- Healthy Spaces and Places (Heart Foundation); and
- Social Inclusion Principles for Spatial Planning (TasCoss 2011)

are not referenced in the draft SPPs and included in the Applied, Adopted or Incorporated Documents. The lack of reference to best practice urban design guidelines seems like a major missed opportunity.

The authors support the submission by the Bicycle Network, which highlights the need for more specific active transport provisions in Subdivision Standards, as well as parking standards, and end of ride facilities such as change rooms. The latter are linked to building standards and highlight that in a

complex urban system – many levers must be activated and relying on planning to achieve all outcomes is not realistic. We note the Building Code of Australia is only referenced for the purpose of Classification Summary of Buildings and Structures (3.1.3). We suggest that referring to Green Building Guidelines and Standards would be one way of driving innovation into new developments and increasing the climate change adaptation capacity of our cities.

We also note that whilst the Acceptable Solutions for the Residential Zones may be suitable for Greenfield development – they are unlikely to provide equivalent amenity for infill development.

It is therefore suggested that development standards and provisions for infill development in each residential zone be modified to reflect the need to blend into the character of existing areas so as to maintain the amenity of existing residents.

Finally by making many residential uses permit exempt or permitted it continues to erode community input into the look and feel of their local area. We view this as a denial of natural justice and counter to the Act objectives, specifically Schedule 1 Objectives, Part 1; 1 (b), (c) and Part 2 (f).

20.0 Rural Zone

The zone purpose statement includes:

20.1.3 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.

Extractive Industry (is defined as including such activities as mining, quarrying, and sand mining).

However, as highlighted in Section 6 above, it is the use category that would apply to coal seam gas extraction.

It is unclear how 20.1.3 will be met when Extractive Industry is categorised as a permitted use – without any qualifications. How will decisions be made whether the use compromises the function of surrounding settlements?

The development standards 20.4 only refer to buildings (20.4.1 Building height; 20.4.2 Setbacks; and 20.4.3 Access to new dwellings) with no Acceptable Solutions or Performance Criteria for works. It would make more sense for the Section heading to read 20.4 Development Standards for buildings.

The authors are aware that land located within the Rural Zone may currently fall outside the standards set for Agricultural land by the Land Capability Handbook. However – it is noted that irrigation schemes and potential other future technological improvements may modify the land capability to bring it up to a level where agricultural uses are possible.

Given the above we strongly suggest that:

a) ***Extractive Industry be moved into the discretionary use category and Use Standard 20.3.1 P1 be expanded with two criteria***

    (c) …..

(vi) the likelihood and extent of any adverse impacts on the ground water and surface water on other users and uses in the surrounding area reliant on said water sources; and

(vii) minimise the likelihood of conflict or interference to existing or potential agricultural use of the site or adjoining properties.

22.0 Landscape Conservation Zone

22.1 Zone Purpose

The purpose of the Landscape Conservation Zone is:

22.1.1 To provide for the protection of significant natural and landscape values.

It is not clear to the authors how the term significant is defined; the draft SPPs do not provide a definition for natural and landscape values.

We view this as a significant gap that may lead to erroneous spatial application of the Landscape Conservation Zone. Especially given the Zone Application Guidelines (Explanatory Document, 2016, p105) advise that the zone should be applied to “Bushland areas with significant landscape of biodiversity values….”.

There are many non-bushland landscapes that have significant biodiversity value for example, native grasslands, wetlands, alpine meadows, coastal heathlands and many more.

We strongly suggest the draft SPP develop and include a standard term for natural and landscape values so as to include landscapes of value other than bushland.

22.2 Use Table

The use classes are too broad for a zone that is meant to prioritise the protection of bushland and biodiversity values as the first priority. Under the draft SPP any resource development is discretionary except intensive animal husbandry or plantation forestry. This opens up to potential for clearance and modification of bushland for resource development in a zone that is intended to protect bushland and biodiversity. ***If land is appropriately used for resource development the appropriate zone is Rural and the Landscape Conservation Zone needs to provide tighter controls on resource development.***

22.4 Development Standards for buildings and works

22.4.4. Vegetation Management

A1	***P1***
Development must be located on land where native vegetation cover has been lawfully removed.	*Development must be located to minimise native vegetation removal and the impact on natural and landscape values, having regard to:* *(a) the extent of native vegetation to be removed;* *(b) any remedial or mitigation measures or revegetation requirements;* *(c) provision for native habitat for native fauna;* *(d) the management and treatment of the balance of the site or native vegetation areas; and* *(e) the type, size, and design of development.*

It is inappropriate to allow development to replace native vegetation in this zone. The provisions under P1 would allow anything to happen given that one of the criteria is the development itself.

A2	*P2*
Buildings and works must: *(a) be located within a building area, if provided on the title;* *(b) be an addition or alteration to an existing building; or* *(c) be not less than 10m in elevation below a skyline or ridgeline.*	*The location of buildings and works must only be less than 10m in elevation of a skyline or ridgeline if:* *(a) there are no other sites suitable for development due to access difficulties or excessive slope;* *(b) building height, size and bulk are minimised; and* *(c) any screening vegetation is maintained.*

P2 allows any development, given that no constraints are given on 'no other sites suitable for development', minimisation is a weak conditioning word, and it is impossible to maintain screening vegetation under the fire regulations. Ten metres is a pathetic protection of scenic values given that the minimum lot size in this zone is 50he.

Suggest alternatives are:

A2	***P2***
Buildings and works must: ***(a) be located within a building area, if provided on the title;*** ***(b) be an addition or alteration to an existing building; or*** ***(c) be not less than 50 m in elevation below a skyline or ridgeline.***	***None***

22.5 Development Standards for Subdivision

22.5.1 Lot Design Objective:
To ensure each lot:
(a) has an area and dimensions appropriate for use and development in the Zone;
(b) contain building areas which are suitable for development, located to avoid hazards and areas of significant natural and landscape values; and
(c) is provided with appropriate access to a road.

Acceptable Solutions	*Performance Criteria*
A1 *Each lot:* *(a) have an area of not less than 50ha and:* *(i) be able to contain a minimum building area of 25m x 25m, with a gradient not steeper than 1 in 5, clear of:* *a. all setbacks required by clause 22.4.2 A2, A3 and A4; and* *b. easements or other title restrictions that limit or restrict development; and* *(ii) existing buildings are consistent with the setback required by clause 22.4.2 A2, A3 and A4;* *(b) be required for public use by the State Government, a Council, a statutory authority, or a corporation all the shares of which are held by or on behalf of the State, Council or by a statutory authority;* *(c) be required for the provision of public utilities; or* *(d) be for the consolidation of a lot with another lot provided each lot is within the same Zone.*	*P1* *Each lot must have sufficient useable area and dimensions suitable for its intended use having regard to:* *(a) the relevant Acceptable Solutions for development of buildings on the lots;* *(b) existing buildings and the location of intended buildings on the lot;* *(c) the ability to retain vegetation and protect other natural and landscape values on each lot;* *(d) the topography of the site;* *(e) the presence of any natural hazards; and* *(f) the pattern of development existing on established properties in the area;* *and must have an area not less than 20ha.*

It is stated in the Explanatory document that the zone purpose of the Landscape Conservation Zone should be for the protection of bushland and biodiversity values as the first priority. However the acceptable solutions and performance standards are such that it would be possible to subdivide

large bush blocks into 50 hectare lots without any regard for the impact on environmental or landscape values (beyond that provided for in any Codes). Under the performance criteria, the lot size could be reduced to 20 hectares as long as the proposal "has regard to" matters such as "the ability to retain vegetation and protect other natural and landscape values on each lot". These performance criteria are highly subjective, set no clear direction for what is or are not acceptable solutions and could quite feasibly result in the subdivision of large bush blocks with highly significant biodiversity values into smaller 20 hectare lots as long as some native vegetation was retained on each lot.

While the Natural Assets Code will provide some constraints on the location of building envelopes and ensure there is some security for high priority vegetation being retained, it will not necessarily constrain the extent of subdivision and is limited only to priority vegetation. Furthermore it is the zone that should provide the clear signal on what is acceptable and necessary to achieve the zone purpose. The current standards do not even come close to achieving this.

The provisions as currently written do not achieve the Act Schedule 1 Objectives, specifically all of Part 1 and Part 2 (c) and (i).

We strongly recommend a full review of the provisions in the Landscape Conservation zone.

23.0 Environmental Management Zone

23.1 Zone Purpose

The purpose of the Environmental Management Zone is:
23.1.1 To provide for the protection, conservation and management of areas with significant ecological, scientific, cultural or aesthetic value or with a significant likelihood of risk from a natural hazard.
23.1.2 To only allow for complementary use or development where it is consistent with relevant strategies for protection and management of the land.

The draft SPPs place all reserves controlled by the Director of Parks and Wildlife and Director of Crown Land Services, and no others, in an Environmental Management Zone, which is exempted from the proposed Natural Assets Code. The effect of this proposed change to planning procedures is that developments in the reserve estate will no longer be subject to approval within LUPAA. Given the limited planning capacity in DPIPWE, and the lack of any prescribed mechanism for public contestation of proposals and planning decisions (these depend on inclusion in management plans or administrative processes), the public will have a strongly reduced capacity to contribute to development decision-making within their reserve estate, while the potential for undue political influence will be heightened. This is contrary to widely-accepted governance principles, which require inclusive and meaningful stakeholder participation, as well as transparent and evidence-based decision making processes.

Under the proposed reforms, the process for gaining development approval in parks and reserves does not require public participation unless an amendment to a statutory management plan is involved. And as there are no prescribed assessment criteria, the basis on which decisions will be

made is unclear. Further, most parks and reserves do not have a statutory management plan, so developments in this significant proportion of reserve estate will only be subject to the internal departmental Reserve Activity Assessment process, with any public participation at the discretion of the Director of Parks and Wildlife.

We perceive this as being totally at odds with the Act Schedule 1 Objectives, specifically Part 1, 1 (c).

We strongly recommend that assessment under LUPAA continue to be required for developments in the reserve estate.

Furthermore the zone application guidelines (Explanatory Document, 2016, p105 -106) advise that the zone should be applied to primarily public land. The one exception being land "with a significant likelihood of risk from natural hazard (e.g. coastal erosion, storm surge, landslip, flooding)".

It is not clear from the latter whether the purpose as outlined in 23.1.1 would allow for the climate change impacts such as shifting habitat and species ranges, which are already being observed. It would be a logical place to capture this future requirement and including specific spatial criteria in the zone application guidelines to assist planning authorities to develop their LPS.

We suggest that the purpose of this zone be expanded to clearly identify that it should also be used to identify areas required for future habitat so as to enable species range shift in response to climate change.

C6.0 Local Historic Heritage Code

C6.2.3 This Code does not apply to internal building or works as exempt under Clause 4.0 of this planning scheme.

This is a major concern as internal fixtures and features are just as valuable from a heritage perspective as the exterior.

The extensive use of vague qualifying terms such as reasonable throughout this provision is of concern.

The authors support the submission made by the Hobart City Council with respect to this code and particularly endorse the reference to the Burra Charter and the recommendation to rename the code to Heritage Code.

C7.0 Natural Assets Code

The authors have a number of concerns in relation to this Code including applicability, definitions (see table below) and exemptions.

C7.2 Application of this Code

Zones that have important natural assets that need protection within them have been omitted from the list, most notably the agricultural zone and most urban and suburban zones.

Suggest the code be updated to apply to these zones.

Term	Draft SPP definition	Comment
natural assets	*means biodiversity, environmental flows, natural streambank and stream bed condition, riparian vegetation, littoral vegetation, water quality, wetlands, river condition and waterway and/or coastal values.*	Omits geodiversity (e.g. Karst)
priority vegetation	*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; or* *(c) it forms a significant habitat for a threatened fauna species.*	Needs to include *EPBC Act* listings. Vegetation cannot be a species. (b) should read 'has populations of rare or threatened flora species'.
riparian vegetation	*means vegetation found within or adjacent to watercourses, wetlands, lakes and recharge basins.*	It is actually the vegetation extending to the high water line of streams, which can be defined hydrologically.
Waterway and coastal protection area	*Table 1…..* *(a) For the purpose of spatially defining 'width' in Table 1:* *(i) Width is measured from the top of bank or high water mark of tidal waters or freshwater lakes.* *(ii) In the case of watercourses, the waterway and coastal protection area includes the waterway itself, being between the top of the banks on either side.*	Table 1 confines itself to named streams on 1:100,000 maps, which are not consistent between maps in their hydrological characteristics. There are better data available. (a) (ii) appears to read as if the width of the stream itself is counted in determining the spatial extents, which would leave parts of streams outside the zone. Under (b) under Table 1 mysteriously confines class 4 streams to urban areas.

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C7.4.1 The following development is exempt from this Code:

(a) works by or on behalf of a relevant agency or Council to remedy an unacceptable risk to public or private safety or to mitigate or prevent environmental harm;

(b) development assessed as a Level 2 Activity;

(c) clearance and conversion or disturbance of non-priority vegetation within a priority vegetation area;

(d) clearance and conversion or disturbance of priority vegetation within a priority vegetation area,

(i) on pasture or crop production land, vineyard or orchard land; or
(ii) if the vegetation is within a private garden, public garden or park, national park, or within reserves under State Government or Council ownership provided the vegetation is not protected by a permit condition, an agreement made under Part 5 of the Act or a Covenant in Gross;

(e) forest practices or forest operations in accordance with a forest practices plan certified under the Forest Practices Act 1985;

(f) works by or on behalf of a relevant agency or Council for the protection of a water supply, watercourse, lake, wetland, or tidal waters or coastal assets as part of an endorsed or approved management plan;

(g) coastal protection works by or on behalf of a relevant agency or Council that have been designed by a suitably qualified person; and

(h) consolidation of lots.

The provisions in this code will not achieve the Code purpose. Despite making clearance and conversion of priority vegetation exempt from the code, we have a series of detailed prescriptions for such clearance and conversion, including a limit of 3000 m^2without a permit, and a series of standards, including offsetting, for making a decision beyond this limit. Even if clearance of priority vegetation were not exempt, it is hard to see how these vaguely worded standards would prevent the clearance of anything significant. Offsetting as practiced is a smokescreen for destruction (like this code), not a means of maintaining values.

We strongly recommend a full review of the Natural Asset Code, as it is currently written it does not satisfy the Act provisions, specifically Schedule 1 Objectives, Part 1.

C8.0 Scenic Protection Code

The concerns in relation to this Code relate to applicability and exemptions.

C8.2.1 This Code applies to development on land within a scenic protection area or scenic road corridor and only if within the following Zones:
(a) Landscape Conservation Zone;

(b) Rural Living Zone;

(c) Rural Zone;

(d) Agriculture Zone;

(e) Environmental Management Zone; or

(f) Open Space Zone.

Why restrict it to these zones? Scenery does occur outside them. For example, one of the most commonly painted scenes in Tasmania is the view from Battery Point to Mt Wellington.

Suggest the code be updated to apply to urban zones.

C8.4.1 The following development is exempt from this Code:
(a) planting or destruction of vegetation on existing pasture or crop production land, unless for the destruction of the following:

> *(i) exotic trees, other than part of an agricultural crop, more than 10m in height within a scenic road corridor; or*
>
> *(ii) hedgerows immediately adjacent to a scenic road within a scenic road corridor,*

(b) planting or destruction of vegetation within a private garden, public garden, public park, national park, or State-reserved land;

(c) agricultural buildings and works, including structures for controlled environment agriculture, irrigation and netting, on land within an Agriculture Zone or Rural Zone;

(d) alterations or extensions to an existing building if:

> *(i) the gross floor area is increased by not more than 25% from the effective date;*
>
> *(ii) there is no increase in the building height; and*
>
> *(iii) external finishes are the same or similar to the existing building;*

(e) subdivision not involving any works;

(f) development subject to the Telecommunications Code; and

(g) any development or works associated with road maintenance and construction within a scenic road corridor.

Similar concerns as with the natural assets code exemptions, why should scenery-destroying telecommunications and road-building activities be exempt or indeed public reserves and private gardens!

We strongly recommend a full review of the Scenic Protection Code, as it is currently written it does not satisfy the Act provisions, specifically Schedule 1 Objectives, Part 2 (f) and (g).

Summary Remarks - Relationship of the TPS to other statutes regulating natural assets

The TPS and the Forest Practices System

The draft briefing paper on the Natural Assets Code acknowledged the intention of the provisions in *the Forest Practice Act 1985* and Regulations is to shift the onus of managing biodiversity for certain forms of development to Local Government. While it is appropriate that clearance and conversion of native vegetation, including threatened vegetation, should not be regulated by planning schemes where it is dealt with in other statutes (including the Forest Practices Act 1985, the Water Management Act 1999 or EMPCA), the way in which the exemptions and provisions are worded within the draft TPS is problematic and creates jurisdictional uncertainty by allowing clearing associated with developments regulated under LUPAA to be assessed under the Forest Practices system.

Of particular concern are vegetation exemption (a) in Table 4.1 and exemption C7.4.1 (e) in Code C7.0. Given the TPS is required to deal with biodiversity assets and therefore the clearance of priority vegetation must include assessment or consideration of this issue, where significant biodiversity values are identified in a priority vegetation overlay and the basis for impacting on these values is the development being assessed under the planning scheme, the Natural Assets Code appropriately applies. It is therefore inconsistent and inappropriate that the draft TPS simply exempts vegetation removal in accordance with a certified FPP (except in an area subject to the Scenic Protection Code) irrespective of why the vegetation is being cleared and whether or not the vegetation is subject to the Natural Assets Code. At the very least, such clearing, should be subject to assessment under the Natural Assets Code, where it is for the purposes of enabling a development regulated under LUPAA (i.e. for everything other than forest operations).

To keep the wording of both exemptions as they are enables applicants to choose to go via the Forest Practices System rather than LUPAA, creates ambiguity in responsibilities and undermines the intent of the amendments to the Forest Practices Regulations to shift the onus of managing biodiversity for certain forms of development to Local Government. It also sets up a situation where applicants could play one system off against another – for example obtaining an FPP to clear and convert a site for a commercial development on land zoned Landscape Conservation prior to obtaining permits under LUPAA to rezone and develop the site and using the FPP and subsequent clearing to justify the rezoning. This is not hypothetical and such situations have already arisen in Kingborough.

There is also an issue regarding the operation of the TPS arising from the wording of the vegetation exemption (a) in Table 4.1 and zoning. Under the previous Kingborough Planning Scheme (KPS 2000) forest operations were discretionary in the Environmental Management zone and required assessment by Council. Under the Kingborough Interim Planning Scheme 2015, forest operations are prohibited in the Environmental Living and Environmental Management zones. Under the TPS, forest operations are discretionary in all zones and the vegetation removal component would be exempt from consideration where there is a certified Forest Practices Plan.

LUPAA already includes provisions which ensure that nothing in a planning scheme can affect forest operations conducted on land declared as a private timber reserve (PTR) under the *Forest Practices Act 1985*. Therefore, there is already a mechanism providing for forest operations on private land regardless of zoning or the provisions in a planning scheme. And yet the wording of this exemption essentially goes beyond the provisions in LUPAA by not just exempting forest operations within a PTR but all forest operations (including clearing for non-forestry activities) across all zones irrespective of status as a PTR.

Again, 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 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, 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 resource development use (and therefore

forest operations) in the General Residential zone, an exemption cannot be relied upon to enable this use to proceed without needing a permit at all.

These jurisdictional ambiguities could be readily resolved by extending the limitations in the general exemption in Table 4.1 to include the Natural Assets Code along the lines of the following:

> "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 the proposed use or development is discretionary or prohibited under the zone provisions or subject to the Natural Assets Code or Scenic Protection Code"

And wording the exemption C7.4.1 (e) in the Natural Assets Code as follows:

> "forest operations, including clearing for agriculture, in accordance with a certified Forest Practices Plan".

Note, while the latter recommendation only proposes the removal of the term 'forest practices', this change is significant, as under the definitions in the *Forest Practices Act 1985*, any native vegetation clearing can be considered forest practices. Therefore leaving this term in the exemption enables applicants to bypass the Code simply by obtaining an FPP, even where the clearing is for a commercial development. Whereas removing the term means development is subject to the Code where the clearing is for non-forestry operations (unless it is subject to another exemption), which is entirely consistent with the intent of the Forest Practices Regulations.

Offsetting

While the Natural Assets Code contains offset provisions, these provisions are very limited and do not follow the mitigation hierarchy, are not consistent with the use of offsets by other regulators and do not reflect current accepted best practice. All development should have to demonstrate it avoids and minimise impacts to the extent practicable and offsets should only be a last resort, not as a justification in their own right for a development proceeding - in other words, C7.6.2 P1 (a) and (b) and C7.7.2 (a) and (b) should be an 'and' not an 'or'. Offsets should also be required even when a project has significant long term social and economic benefits or where the value is in poor condition – in other words, C7.6.2 P1 (b) (i) (d) and C7.7.2 (b) (i) (d) should be an 'and' not an 'or'. The Department of Primary Industries, Parks, Water and Environment have a set of guidelines for the use of offsets under the Resource Management and Planning System (RMPS). As LUPAA is part of the RMPS, any integration of offsets into the TPS should be consistent with these guidelines and achieving a net conservation benefit should be a requirement of any impact on a priority vegetation area. Demonstration of whether development achieves a net conservation benefit should not be determined by a suitably qualified person engaged by the developer.

Zones

The proposed changes to the zones resolve some limitations with the existing zones, particularly in relation to larger lots containing significant environmental values on private land. However, they also create new issues. Of particular concern are the inflexible minimum lots sizes within the Low Density and Rural Living zones. Both of these zones can appropriately include lots that have

environmental constraints and the specified minimum lot sizes do not enable sufficient area to enable development of these lots whilst retaining a reasonable proportion of these values.

Conclusion

We are of the view that in order to satisfy the Act Objectives, Schedule 1, Part 1 and Part 2 a number of key issues with the draft SPPs need to be addressed.

Overall the draft SPPs would benefit from more specific qualifications and eliminating the use of subjective terms such as 'reasonable', 'significant', 'minor', 'minimise' and so on. Such clarification will increase clarity and reduce the probability of appeals based on interpretation matters.

There are some key definitional issues with the defined terms that need to be addressed, including the omission of some such as natural and landscape values.

A major rethink is required in relation to the Natural Asset Code, Vegetation Clearance Exemptions and the interaction of the TPS with the Forest Practices Act. The many inconsistencies and concerns raised in relation to this topic attest to the inability of the draft SPP to deliver sustainable development.

The attempt to apply blanket zone provisions across existing urban areas will result in suboptimal planning outcomes, significantly impacting on the liveability of our state. It is strongly recommended that separate development standards be defined for Greenfield and infill development. A review of experiences and lessons learnt from other Australian jurisdictions is strongly recommended so that we may benefit from such knowledge to avoid repeating negative planning outcomes.

Finally the changes being proposed are significant and require greater explanation and clarification with the wider community. Allowing additional time for such engagement would provide the opportunity to review and update the RLUSs and develop state policies that will deliver better integrated planning outcomes.

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