



Local Government Association Tasmania

17 May 2016

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Mr Greg Alomes
Executive Commissions
Tasmanian Planning Commission
GPO Box 1691, Hobart
Tasmania 7001

By email: tpc@planning.tas.gov.au

Dear Greg

Submission on the Tasmanian Planning Scheme

Thank you for the opportunity to provide a submission on the Tasmanian Planning Scheme. The Local Government Association of Tasmania (LGAT) is incorporated under the Local Government Act 1993 and is the representative body for Local Government in Tasmania.

The objectives of LGAT are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

LGAT is aware of, and fully supports, a number of councils that have made their own submissions to the consultation process. This submission should be read as complimentary to these submissions but does not replace any view expressed by an individual council.

In order to inform this submission LGAT undertook a series of regional workshops with land use planners and other staff of councils, where issues of common concern were discussed and noted.

The Local Government Association of Tasmania looks forward to working with the Tasmanian Planning Commission in resolving the issues highlighted within this submission and the sector more generally.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katrena', written over a light blue horizontal line.

Dr Katrena Stephenson
CHIEF EXECUTIVE OFFICER



Tasmanian Planning Scheme

Submission

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17 May 2016

Introduction

The Local Government Association of Tasmania (LGAT/The Association) is incorporated under the Local Government Act 1993 and is the representative body for Local Government in Tasmania.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
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General Comments

It is acknowledged that commonality in the structure and drafting of general provisions that apply across the state is a positive outcome. However, it must be noted that such an approach assumes that the character of all land that is similarly zoned will be the same.

This, of course, is not the case and the provisions need to accommodate the real need to protect local character.

The standardisation of numerical provisions as acceptable solutions for the entire state is difficult to achieve in a way that will result in positive outcomes in all areas of the state. Failure to do so will inevitably create anomalies or problems for local areas.

This will result in applications that are discretionary, despite matching the prevailing or desired characteristics of the local context; other applications that are permitted despite being at odds with the prevailing or desired characteristics of the local context; or an unnecessary proliferation of local provision variations, contravening the intent of the Tasmanian Planning Scheme (TPS) to reduce unnecessary regulation.

The format and drafting of the TPS is substantially similar to the three Regional Model Planning Schemes, with the main deviation being that 'local issues' are pulled out of the body of the scheme and inserted into a new 'local provisions schedule' that exists separately to the state provisions, yet overrides some of the state provisions.

In some instances they may make the reading of the scheme more complex and an alternative hybrid model is suggested, where certain State Provisions, such as minimum lot size and height provisions for example, are expanded in a tabulated form in order to avoid unnecessary further drafting of local provisions when in fact it is only a single matter that requires variation.

This concept will be expanded on with particular examples later in this submission.

Without exception, the Local Government sector maintains our previously advised concerns about the focus on creating the draft State Planning Provisions (SPPs) prior to the review/development of State policies.

Unfortunately there has been little strategic work completed to inform what outcomes the Tasmanian Planning Scheme should be aiming to achieve. Without a view of what the scheme should be achieving for the State as a whole, it is difficult to determine if the content of the TPS will achieve positive planning outcomes.

To a certain extent many of the concerns raised within this submission, as well as submissions from councils, are directly as a result of this situation, where in the absence of well articulated outcomes, the draft SPPs fail to achieve sound land use planning outcomes.

It is incumbent upon any new planning instrument to demonstrate that it furthers the Objectives of the *Land Use Planning & Approvals Act 1993*, (LUPAA) which is reinforced in the *Terms of Reference for the Preparation of the Draft of the State Planning Provisions*.

However, beyond expressing some 'policy principles' the explanatory document does not provide the policy basis or strategic rationale for what is to be achieved and why. Arguably this does not meet Schedule 1 Part 2 a) and b) of LUPAA:

a) To require sound strategic planning and co-ordinated by state and local Government;

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.

As a sector we look forward to the mooted development of State planning policies and trust that once those policies are complete the State Planning Provisions will undergo a thorough review and updating, to ensure they actually achieve the outcomes expressed within the policy documentation.

Specific Comments

Clause	Issue and Discussion	Possible Resolution
General	<p>The drafting and terminology is inconsistent across different Zones and Codes and there is liberal use of vague, undefined, unmeasurable and alternating terms.</p> <p>For example, the SPPs provide the terms 'land', 'site' or 'lot' to each have a particular meaning in relation to the area on which use or development occurs. While the term 'property' is an undefined term and is used 107 times within the SPPs in a context where one of 'land', 'site' or 'lot' is appropriate.</p> <p>Another example being the use of the term 'neighbouring' (not defined), when the defined terms of 'adjoining' & 'adjacent' could be used.</p>	<p><i>The TPS, as currently drafted, requires a substantial review of the drafting, with a number of amendments required to ensure consistency and ease of interpretation.</i></p>
Administration		
Exemptions, Table 4.1, Visitor accommodation in a dwelling	<p>While many jurisdictions are struggling with the 'sharing economy' and the Airbnb phenomenon, the issue of 'temporary' visitor accommodation has not been addressed in any meaningful way and the exemption proposed is problematic. Will councils be required to monitor properties to determine when the 42 days has been reached? How will this be undertaken without significant additional resourcing?</p> <p>One of the biggest issues that is now occurring with Airbnb is the dichotomy of interests. That is, while some people remain committed to the true sharing economy (they are principally interested in sharing their primary residence and meeting new people) while supplementing their existing incomes in a small way - others are interested in listing properties on such sites as Airbnb primarily for commercial gain.</p>	<p><i>Remove the proposed exemption and include the following at the end of the definition for Visitor Accommodation in Table 6.2:</i></p> <p><i>..., but does not include short term rental (< than 90 days in any one year) of a person's primary residence</i></p>

The sharing economy is increasingly being seen as contributing significantly financially to economic development in communities worldwide. While the two interests can exist side by side, the different drivers tend to have variable impacts and are likely to require different regulatory responses.

There is no doubt that the planning treatment of short-term stay accommodation in private residences (where the host habitually resides in the property) requires attention. There is generally a lack of clarity on whether the provision of accommodation for short term stays within a residential property is a permitted use, resulting in ambiguity for hosts, users, residents and councils.

The alternative is that the accommodation offered by Airbnb be classified as tourist or visitor accommodation. This is a view promoted by other operators in the market place such as hotel and bed and breakfast businesses who seek a level playing field. But classification in this way brings with it a range of required standards and monitoring processes that appear to be overly onerous, costly and unnecessary given the potential risk profile.

A defining point in considering such matters is whether the operation is seen as a sharing economy or a commercial operation. A clarification that short term rental of one's primary residence (say a single room in a home on an ongoing basis or the entire property for a limited period each year) is not a commercial use and is therefore an allowable use, would allow residents who want to participate in the sharing economy to do so without fear of punitive action.

This approach would also allow regulators to focus attention where it really matters – those operators who are focussed primarily on running a business for commercial gain.

6.1 Application Requirements	Why have landscaping provisions been removed? Landscaping provides an important component of quality design and streetscape amenity and should, at the very least, be amongst those additional matters the planning authority considers necessary to satisfy the scheme requirements.	<i>Add the requirement to identify any landscaping areas on the plans in clause 6.1.3 (b)</i>
6.10 Determining Applications	It is not clear why development has not been included within clause 6.10.2. The listed matters remain appropriate to discretionary development issues and would provide some measure to determine the relative merits of why particular discretions ought to be considered when considering development alone.	<i>Include development within clause 6.10.2</i>

Zones		
Absence of noise provisions	<p>Throughout the TPS, there are very limited provisions relevant to the noise generated by a use – noting that councils regularly receive objections to proposed developments on the basis that nearby residents are concerned about the potential for excessive noise. Restrictions on the hours of operation often result. Such noise control measures are included within the existing interim planning schemes.</p> <p>Whilst it is understood there is a process for dealing with noise under the <i>Environmental Management and Pollution Control Act 1993</i>, this is retrospective and is a compliance issue that could have been resolved as part of a more considered design of the proposed development. An approved use or development may not be able to proceed or may need to be substantially amended because it creates an excessive environmental nuisance.</p>	<i>Appropriate noise standards need to be included in the SPPs</i>

<p>Subdivision Standards in the Residential Zones</p>	<p>The subdivision standards do not adequately incorporate the requirements in <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i>, in particular they do not provide enough standards relating to urban design criteria, such as connectivity and Public Open Space.</p> <p>This is an important consideration when dealing with subdivision and a planning scheme ought to implement strategies for the appropriate provision of public open space. The SPPs fail to provide any proper consideration of public open space, appearing to defer to the ambiguous terms under LGBMP which only describes “include or omit”.</p> <p>There are no objectives to be achieved in LGBMP or any policy backup.</p> <p>The failure to consider these matters is inconsistent with the <i>Healthy by Design: A Guide to Planning and Designing Environments for Active Living in Tasmania</i> and the recent amendment to Schedule 1 Part 2 of the <i>Land Use Planning and Approvals Act 1993</i>, which now include as an Objectives of the Act:</p> <p style="padding-left: 40px;"><i>‘ (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’</i></p> <p>In addition each of the three Regional Land Use Strategies variously contains references to facilitating well planned opportunity for recreation and open space land within settlements.</p>	<p><i>The SPPs needs to address the appropriate provision of pedestrian connectivity and public open space.</i></p>
<p>Use tables in the Residential Zones</p>	<p>In many cases the Zone Purpose is undermined by the Use Table. It would appear that expansion of permissible uses within zones has occurred in the absence of reference to the Zone Purpose.</p> <p>For example the increase in business uses in the residential zones expansion of inappropriate commercial uses in the business zones (see further below).</p>	<p><i>These uses should be accompanied by a qualification to prevent displacement of residential uses in residential zones or the inclusion of use standards to address residential displacement given the range of discretionary commercial uses has been expanded.</i></p>

	<p>The expansion of the use options within a zone results in a zone without focus and the absence or limited appropriate use standards will diminish the local amenity and potentially result in land use conflict.</p> <p>Business and Professional Services, General Retail and Hire (including a local shop) and Food Services uses should not displace residential uses in the Residential Zones. The Zone Purpose Statements at clauses 8.1.4, 9.1.3 and 10.1.3 for the General, Inner and Low Density Residential Zones deal with displacement of residential use, however there are no standards within the Use Table or Use Standards indicating how this is to be achieved.</p> <p>It is not considered sufficient to rely on the zone purpose statements to prevent a proliferation of commercial uses in residential zones.</p> <p>If commercial uses remain unqualified as proposed, it would be difficult to refuse individual applications on the grounds of a cumulative effect of non-residential uses in the area. This will ultimately compromise the intent of the zone which is to provide for the efficient utilisation of well-located and serviced land to help achieve residential densification targets.</p> <p>If a mixed use environment is desired for a particular area, the Urban Mixed Use Zone can be applied. Inner residential zones are by definition only located close to existing services, so they don't need an unqualified increase in additional services within the zone itself.</p>	
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<p>Use tables in the Business Zones</p>	<p>The TPS proposes very little variety between the Central Business, General Business and Local Business zones: seven use classes are No Permit Required in each zone, five of the same use classes are permitted and twelve are discretionary in each zone.</p> <p>This makes the commercial zones virtually indistinguishable from each other in terms of use and development permissible in the zone. This will erode the established hierarchy of commercial development in many areas of the State. This does not aid in defining and ensuring the role and function of Tasmania's activity centres.</p> <p>For example, the ability for Bulky Goods Sales, Storage, and Service Industry uses to establish in business zones is likely to reduce the amenity of key business/retail centres. Further this will diminish their ability to become more walkable and active areas leading to the use of land for vehicle sales, trade centres, panel beaters and wholesale storage.</p> <p>It is unclear how such uses will support the function of these zones and achieve a quality pedestrian environment. While these uses should be supported, they need to be located in areas with similar land use needs and impacts. Specific concerns include:</p> <ul style="list-style-type: none"> • 14.2 Use Table (Local Business Zone) – Equipment and Machinery Sales and Hire, Manufacturing and Processing, Service Industry and Storage are all discretionary. These uses are generally not appropriate for local service zones and can be land intensive and of limited local benefit but with more significant amenity impacts. • 15.2 Use Table (General Business Zone) - Bulky Goods Sales up to 3500m² floor area per tenancy is not a desirable use to be permitted in areas that seek “<i>To encourage activity at pedestrian levels with active frontages and shop windows offering interest and engagement to shoppers.</i>”, as per the Zone Purpose. 	<p><i>Amend the relevant use tables, as indicated.</i></p>
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	<ul style="list-style-type: none"> • 16.2 Use Table (Central Business Zone) - Allowing Bulky Goods Sales at ground floor level as a permitted use in any central business area is inconsistent with the zone purpose to provide for a “<i>concentration of higher-order business</i>” and to “<i>encourage activity at pedestrian levels with active frontages and shop windows offering interest and engagement to shoppers</i>”. • It is also noted that there are qualifications for a retail impact assessment as a Performance Criteria for Bulky Goods Sales and General Retail and Hire use classes in the Urban Mixed Use, General and Local Business Zones, however nothing for the Central Business Zone. The highest order zone (Central Business) needs the greatest control on uses which require large site areas and are car-based retail. 	
Central Business Zone	<p>The Explanatory document states the:</p> <p><i>“draft Central Business Zone is aimed at Tasmania’s primary activity centres which service the entire State or region such as Hobart’s CBD, Launceston’s CBD, Devonport’s CBD and Burnie’s CBD. It provides for the concentration of higher order commercial, business, community and administrative functions.”</i></p> <p>However, the City of Hobart proposes to override many of the standards in this zone with a Specific Area Plan (SAP) as they are not appropriate for the Hobart CBD. While the Explanatory document acknowledges this approach, the question should be asked as to what is the purpose of having a Central Business Zone if it needs to be amended via a SAP for the State’s principal central business district. This is particularly pertinent when the Explanatory document indicates the draft Central Business Zone was tested with Hobart City Council to ensure that it was workable and practical.</p> <p>It should also be noted that Launceston Council has indicated the acceptable solution for building height is excessive for Launceston CBD and would erode the local character.</p>	<p><i>Greater attention needs to be paid to the draft of the Central Business Zone to ensure that it truly is a workable and practical zone for the State’s primary activity centres, rather than relying on the augmentation of the zone via Specific Area Plans.</i></p> <p><i>During this process it needs to be recognised that each of the districts that utilise the CBD Zone will require their own specific height restriction to ensure the character of the respective areas are maintained.</i></p> <p><i>It is recommended that there be the allowance for each planning authority to list the required height within the acceptable solution, in a similar fashion to the Rural Living A and B table.</i></p>

<p>Absence of an Environmental Living Zone</p>	<p>The omission of the current Environmental Living Zone (ELZ) and its replacement with the Landscape Conservation Zone (LCZ) will make it difficult to translate the existing areas in the ELZ into the TPS so that similar provisions apply. In the new suite of available zones, this is the only zone appropriate to large lot bushland residential areas that are constrained in terms of significant subdivision.</p> <p>There will be some existing areas of ELZ land that will not be suitable for inclusion within the LCZ as the environmental and conservation value may not be of a 'significant' scale as required by the Zone Purpose Statement.</p> <p>In addition the ELZ provides for a minimum permitted lot size significantly smaller than what is provided for in the LCZ, where the LCZ has a minimum permitted lot size of 50ha (20ha absolute minimum).</p> <p>The change in purpose from the ELZ (residential with conservation values) to the LCZ, which is not a 'living' zone as such (because residential uses are discretionary and landscape conservation issues are given precedence), will have significant implications for many local government areas and their residents.</p> <p>The result will be many ELZ orphaned areas and a likely increase in the use of the Rural Living Zone (RLZ) and Low Density Residential Zone (LDR), with little regard to environmental and landscape value. These 'bush blocks' are numerous across the State and are predominantly residential, however the Landscape Conservation Zone discourages residential uses and the RLZ and LDR zones discourage environmental protection.</p> <p>The Rural Living Zone has a minimum permitted lot size of 1ha or 2ha, providing for significantly greater density than the current ELZ. Further, it does not have significant regard to environmental issues.</p>	<p><i>This can be resolved by the following:</i></p> <ul style="list-style-type: none"> • <i>Expanding the Rural Living Lot sizes beyond A and B which is currently offered, 5ha, 10ha and 15ha are suggested.</i> • <i>Include measures to allow assessment of natural and landscape values in the Rural Living Zone (refer to clause 13.4.3 in the Hobart Interim Planning Scheme for an example) as well as commensurate changes to the Natural Assets Code around the Acceptable Solution related to clearance in the Rural Living Zone (C7.6.2);</i> • <i>Expand the available lot sizes in the Landscape Conservation Zone to include smaller lots (such as 5 and 10 ha).</i> • <i>Include another option for Low Density Residential lots of 5000m².</i>
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	<p>The Low Density Residential Zone's minimum permitted lot size is even smaller and despite the Zones' Purpose Statement including that it is for "residential use and development ... where there are infrastructure, environmental or aesthetic constraints" it has limited controls on vegetation clearance and is exempt from the Natural Assets Code (excepting subdivision).</p> <p>There is therefore no zone that may be appropriate for those areas currently zoned Environmental Living.</p>	
<p>Rural Living and Low Density Residential Lot Sizes</p>	<p>The Rural Living Zone is stated as being for residential and hobby farms; however at 1 or 2 hectares the lots will not be large enough to support small scale rural enterprise. They will in effect be residential use on a bigger lot, and not provide for small enterprise opportunity.</p> <p>As with rural residential land uses, the SPPs only contemplate one type of low density character, that being lots of 1500m². This is a distinctly urban sized lot and will not be an appropriate standard for protecting the existing character of some of the lower density urban areas and other peri-urban in many parts of the State.</p> <p>If such a second category is not available, then it is anticipated that the character of some areas currently zoned LDR, but with larger minimum lot sizes, will change significantly and there will be a strong local community reaction against the adverse impacts on their local values, whether they be coastal, skyline or environmental values.</p> <p>In addition this will attract residential development outside of the established settlement patterns and undermine the land use aim of densification.</p>	<p><i>The differences in settlement patterns are important to local communities and the overall character of Tasmania.</i></p> <p><i>If there is allowance made for a broader range of lot sizes, then councils will be able to reflect their existing and desired characters.</i></p> <p><i>This would still achieve the desired improved consistency across all planning schemes (as the other development standards would remain the same).</i></p> <p><i>Refer to the possible resolution above.</i></p>

<p>Landscape Conservation Zone Use Standards and terminology</p>	<p>Within the Landscape Conservation Zone, Clause 22.3 Use Standards has been included to “manage specific business uses in this Zone” according to the Explanatory document. However it is not clear why these standards have been limited to the particular uses when there are a number of other uses, such as Resource Development, Sports and Recreation and Tourist Operations, that could have a far greater impact.</p> <p>The Zone Application Framework indicates that the additional amenity focused use standards are not required as the zone would be applied to large lots. However, the Zone will likely cover smaller existing EL Zone lots and this assumption fails to account for existing development patterns which may have resulted in clustering of residential use.</p> <p>It is also noted that Natural values’ and ‘landscape values’ are not defined; however both these terms are central to assessing development within this zone. ‘Natural assets’ is a defined term and should be used if it matches the intent. However, if it is not intended that there be duplication of issues considered under the Natural Assets Code, what are the ‘natural values’ intended to be protected under the Landscape Conservation Zone provisions?</p>	<p><i>It is recommended that the list of uses subject to specific use standards be expanded, introduce the same discretionary use standards contained within the proposed Rural Living Zone and either existing defined terms be used in the Zone or terms be included for natural and landscape values.</i></p>
<p>Rural and Agricultural Zones</p>	<p>The issue of distinguishing between the Rural Resource and Significant Agriculture Zones has been vexed and challenging in the recent past. Different regions have taken different approaches to trying to resolve this difficulty.</p> <p>The currently proposed Zone provisions for the Rural Zone and Agriculture Zone fail to resolve this difficulty.</p> <p>As drafted, the Rural Zone is devoid of clear purpose. The provisions are ambiguous, poorly instructive, and inconclusive in terms of strategic outcome.</p>	<p><i>The Rural Zone as drafted serves no obvious strategic purpose, and is not capable of sensible application or enforcement.</i></p> <p><i>It is necessary to review the strategic intentions for both the Agriculture and Rural Zones; and to redraft the provisions in relation to purpose, use and control for land assigned to these zones.</i></p>

	<p>There is no indication of a priority or prevailing purpose for how land is to be utilised.</p> <p>By contrast, each of the other available SPP zones identify purpose for a priority or prevailing form of use – as in residential, business, industry, or agriculture.</p> <p>The Rural Zone is inconclusive and inconsistent. It is not clear whether protection of agricultural land is a purpose of the zone. For example, the statement in 20.1.2 assumes that land assigned to the Rural Zone is not agricultural land. However, subdivision standards for the excision of an existing dwelling or visitor accommodation (20.5.1) expressly require consideration of not diminishing the agricultural productivity of the land.</p> <p>Unless clarified, the Rural Zone appears to function as an all-purpose area within which many uses may occur, subject only to minimising the level of competition with the functions in the settlements which surround the rural area. The removal of residential use from the use standards infers that it is an acceptable use, yet it must be measured against the zone purpose, which provides little guidance.</p> <p>With an Acceptable Solution of 40 hectares for subdivision and no use test for residential use (apart from the requirement to prohibit a future new dwelling if excising an existing dwelling), the zone could be mistaken for being a 'rural residential' zone.</p> <p>It is unclear whether the Agriculture Zone is concerned with the protection of land for agriculture which relies on the soil as a growth medium; or for identification of land on which agriculture is occurring or may occur (including for those forms of agriculture such as aquaculture, controlled environment agriculture and intensive animal husbandry which have no relationship to soil as a growth medium).</p>	
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	<p>Clause 21.3.1 P3 states: <i>“A residential use listed as discretionary in the use table must: a) be required as part of an agricultural use, having regard to ...”</i></p> <p>However, Clause 6.2.2 (Categorising Use of Development) states: <i>“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.”</i></p> <p>By virtue of clause 6.2.2, a residential use cannot ‘be required for an agricultural use’. If it were ‘required’ it would necessarily be directly associated with and subservient to agriculture and would therefore be classified as Resource Development. The clause is legally dysfunctional.</p>	
<p>Use of Part 5 Agreements in the Rural, Agriculture and Landscape Conservation Zones</p>	<p>The provisions in the Rural, Agriculture and Landscape Conservation Zones tend to rely too heavily on a council entering into Part 5 Agreements that they may or may not wish to be party to. This has additional administrative and financial costs. Arguably it is not possible to condition a proposal to meet a Performance Criteria and councils should not have to commit to a Part 5 Agreement prior the submission and determination of a proposal.</p> <p>Examples include Clauses 20.4.3 and 22.4.3 (securing legal access in the Rural and Landscape Conservation Zones), 20.5.1 and 21.5.1 (preventing future residential use following subdivision in the Rural and Agricultural Zones).</p> <p>The latter two examples of these (Development Standards for Subdivision in the Rural and Agricultural Zones) are particularly problematic, as they require a Part 5 agreement preventing future residential use if there is no dwelling on the balance lot. However, should a person seek to apply for a dwelling on the balance lot in the future, council will be bound to consider it and if compliant with the scheme approve it. Council would then need to seek an order enforcing the Part 5 Agreement to prevent the development from going ahead.</p>	<p><i>Standards that require Part 5 Agreements to be entered into prior to development application to satisfy performance criteria are not appropriate and nor are the standards that seek to limit future housing development ;</i></p> <p><i>it is recommended that these requirements be removed. This should be left as a mechanism available to councils should they wish to pursue it.</i></p> <p><i>In addition it has been noted that councils would benefit from the ability to consider existing Part 5 Agreements as part of the development assessment process. It is suggested that a new General provision be inserted, either:</i></p> <p><i>Clause 6.10.1 new (c) “must consider applicable S71 agreement”</i></p>

	This is not an efficient or effective land use planning process. The intent of limiting the proliferation of housing in the Rural and Agricultural Zones is supported, however the mechanism suggested is not.	<i>or 6.9.1 new (d)" the use or development is prohibited under a S71".</i>
Excision of dwellings in the Rural (20.5.1) and Agricultural Zones (21.5.1)	<p>The subdivision provision within the Rural and Agricultural Zone that allows for the excision of an existing dwelling where it can be demonstrated that the balance lot provides for the sustainable operation of a Resource Development Use, appears to be contrary to Zone purpose statements that do not encourage or recognise residential development (acknowledging the uncertainty regarding the Rural Zones purpose discussed above).</p> <p>This excision of existing dwellings creates a significant risk of creating conflict between residential and agricultural and resource development activities.</p>	<i>The provision relating to excision of existing dwellings should be removed.</i>
Minimum lot size in the Agricultural Zone (21.5.1)	<p>It is a serious and unnecessary risk that a minimum subdivision lot size is not set. Even though controls are proposed that will reduce the likelihood of farmland fragmentation for non-farm use, without a minimum size new lots are significantly less likely to be used effectively or efficiently.</p> <p>A minimum lot size supports an objective of seeing lots farmed and reduces the risk of non-agricultural or inefficient rural living uses.</p>	<i>21.5.1 P1 should introduce a new (a) "all new lots must be not less than 10ha in area".</i>

Codes		
Absence of application requirements	<p>Several Code provisions require the submission of an expert report to demonstrate compliance with the Performance Criteria; however, with the removal of application requirements under the various Codes, it is now very vague as to what requirements can be sought.</p> <p>It is considered that this format introduces uncertainty as to what information is required to constitute a valid application under LUPPA. i.e. a Coastal Hazard Erosion Report is not explicitly required, but needed for PC.</p>	<p><i>It is recommended that:</i></p> <ol style="list-style-type: none"> 1. <i>Where appropriate, Codes include a new Application Requirements section; and</i> 2. <i>Clause 6.1.2 (Application Requirements) be updated to include a specific reference to the Application Requirements specified in any applicable Code.</i>
Local Heritage Code	<p>The Local Heritage Code Purpose and definitions should reference the Burra Charter as this is the nationally recognised standard.</p> <p>The Code proposes that significant features of a place must be detailed within the table to the Code. For many councils this is a significant task, as local heritage lists were historically created to identify the location of a place and to serve as a trigger for heritage provisions within the planning scheme, not as an assessment of the heritage elements on the site.</p> <p>It is an unrealistic expectation to expect councils will have the resources and budget to augment the lists with the additional information when their role has only ever been to define a location.</p> <p>If left as currently worded, and the current council heritage lists are translated across to the Local Heritage Place List in the TPS, then really important heritage attributes such as outbuildings, established garden settings containing established trees (and streetscapes) will be at grave risk of unmitigated impact through unregulated development.</p>	<p><i>Update the Code purpose and definitions to be consistent with the Burra Charter.</i></p> <p><i>Remove the requirement for the significant features of a place to be detailed within the Local Heritage Place List.</i></p>

Natural Assets Code		
	<p>While well intended and a significant step forward in achieving a consistent approach to natural assets across all Councils, there are concerns about whether the objectives of the Resource Management and Planning System can be met through the draft Natural Values Code in relation to terrestrial biodiversity, native vegetation, flora and fauna.</p> <p>There are potentially significant jurisdictional and technical issues with the Code, including how the Code integrates with other regulations, the Code purpose and which values it does and does not capture and how the Code is triggered and applied.</p>	<p><i>An alternative draft Natural Assets Code has been developed in response to the issues highlighted and can form the basis of an updated Code.</i></p> <p><i>This Code was drafted by a multi-stakeholder group including Local Government Planners, NRM Officers and other peak bodies, such as the NRM Groups.</i></p> <p>The proposed Code can be found at Attachment A</p>
Integration with the Forest Practices System	<p>The Explanatory Document acknowledges changes to the Forest Practices Regulations in 2009 had the effect of “moving the management of biodiversity for certain forms of development to the permit processes under LUPAA”. The draft TPS includes a blanket exemption for forest practices or forest operations in accordance with a certified forest practices plan. Forest practices include clearance and conversion of vegetation irrespective of the reason for the clearing.</p> <p>This exemption has the potential to enable developers to cherry pick which regulator they go to and potentially play regulators off against each other.</p> <p>This approach also separates the clearing and associated impacts arising from a proposed development from the approval process for the development, such that clearing for a subdivision may be pre-approved by another regulator, leaving the planning authority with no ability to consider the implications as part of the planning application.</p>	

<p>Code Purpose (C7.1) and the biodiversity values protected by the Code</p>	<p>The draft TPS is limited to the protection of some priority vegetation and does not enable consideration of other biodiversity or natural asset issues including bioregionally or locally significant vegetation, potential threatened species habitat (as distinct from significant), connectivity, landscape function, vegetation on steep slopes or threats to threatened species not involving vegetation clearing (such as collision risk and disturbance during breeding seasons).</p> <p>Threatened vegetation communities in the Code also only include those listed under the <i>Nature Conservation Act 2002</i> (NCA) and do not include those listed under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC). Although most EPBC listed communities are covered by those under the NCA, the Lowland Grasslands (GTL and GPL) are not.</p> <p>The Code also doesn't acknowledge that patches of priority vegetation are often surrounded by native vegetation that remains unprotected as the Code is currently drafted. This may lead to erosion of the priority vegetation through development encroachment and result in isolated pockets of priority vegetation becoming even more vulnerable.</p>	
<p>Application of this Code (C7.2) – the exclusion of specific zones or development types</p>	<p>The Explanatory Document identifies 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” (Page 137).</p> <p>However, much of the clearing associated with development regulated by planning schemes is in the urban / peri-urban type zones, and this clearing is not restricted to subdivision.</p> <p>Biodiversity values can occur anywhere and zoning should not make any difference to the application of the Code.</p>	

	<p>In particular the Low Density Residential Zone includes a purpose of applying the zone where there are '<i>environmental or aesthetic constraints that limit density</i>'. However the Code that protects environmental elements cannot be applied (except for subdivision). It is also questionable why it cannot be applied to the Recreation Zone.</p> <p>Another of the exempt zones is 'Agriculture'. Assuming that the Zones of the TPS coincide with Zones of the IPS 2015, there are some significant areas of threatened native vegetation communities within the Agriculture Zone. Allowing clearance and conversion of any threatened native vegetation, wherever it occurs, is in direct conflict with the NCA, EPBC Act and the purpose of the Code itself.</p> <p>The draft Code also proposes an Acceptable Solution for clearing up to 3000m² in the Rural Living Zone, which is not dissimilar to an exemption. Again, there are potentially significant areas of threatened native vegetation communities within the Rural Living zone which could be removed without any justification or requirement that the clearing be avoided where possible. How does this fulfil the LUPAA objectives?</p>	
<p>C7.2 Application of this Code - reliance on statutory mapping provided by the State</p>	<p>The draft Code also only applies within a priority vegetation area, which is defined as "land shown on an overlay map in the relevant Local Provisions Schedule, as within a priority vegetation area". According to the Explanatory Document, these overlay maps should be based on mapping produced by Department of Primary Industries, Parks, Water and Environment (DPIPWE).</p> <p>There are a number of concerns about this approach:</p> <ul style="list-style-type: none"> • The inclusion of only high priority values combined with a reliance exclusively on statutory mapping means that the determination of value, and therefore what will be considered under the Code, is reliant on desk-top data not what actually exists on the ground. <p>This may result in many high priority values being lost without consideration, particularly when relying on data known to be inaccurate.</p>	

	<ul style="list-style-type: none"> • Will the overlay only include the current known locations of threatened flora species. If so, this assumes that all locations of threatened flora are known. This is not the case. New locations are discovered regularly. • Will the overlay be based on point locations from the Natural Values Atlas? If so, this approach is potentially impractical as each plant would presumably need to have some protection buffer mapped around it but this buffer size would depend on various factors such as the species, habitat requirements, regeneration requirements, etc. How is this determined? • The definition and associated mapping of significant habitat for threatened fauna does not take account of new information that comes to light with ongoing research. Significant habitat for some species is well known but for others it is more generalised. • An overlay is static but 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. <p>In other words there are problems creating a Code that relies exclusively on a static map, based on dynamic natural processes.</p>	
Application Requirements in the Code	<p>Application requirements under the draft TPS 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 of the vegetation types and distribution including any known threatened species, and trees and vegetation to be removed. Such a site analysis potentially falls well short of the DPIPWE Guidelines for Natural Values Assessments.</p> <p>In the absence of such an assessment, it is also not possible to adequately determine or assess the impacts of a proposal.</p>	

<p>C7.3 Definition of Terms - related to waterways and watercourses</p>	<ul style="list-style-type: none"> • 'Waterway and coastal protection area' definition - Expand the exclusions to also include newly created drainage lines or watercourse with impervious constructed base and banks, but not re-aligned watercourses. • 'Waterway and coastal protection area' definition – propose the purpose is unclear and should not be a downgrade to Class 4 in these zones so as to enable all waterway to be piped. • 'Watercourse' requires a definition • 'Other wetland' requires a definition. 	
<p>Performance criteria related to Priority Vegetation – inconsistencies with other regulators & the mitigation hierarchy</p>	<p>While the Natural Assets Code contains performance criteria, 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.</p> <p>Under the draft performance criteria for the TPS, a proposal does not need to demonstrate it avoids, minimises and mitigates impacts to the extent practicable if:</p> <ul style="list-style-type: none"> • It is an existing use on the site and the impacts are contained within the area necessary to be cleared to provide adequate bushfire protection; • There is a significant long-term economic benefit to the project; • A report by a suitably qualified person demonstrates there is little potential for long-term persistence; or • A net conservation benefit is achieved through onsite offsetting. <p>Conversely, if you can demonstrate the proposal avoids, minimises and mitigates impacts to the extent practicable, there does not need to be any justification or offset for the impact.</p> <p>The implication of this approach is that a significant project such as the Kingston Bypass could satisfy the performance criteria without any need for mitigation or offset measures.</p>	

	<p>Does this satisfy the Code purpose, when we know that the Kingston Bypass was subject to significant requirements to offset the impact at a Local, State and Federal level?</p> <p>Similarly, a subdivision or other residential development could result in the removal of large areas of priority vegetation without requiring any offset.</p> <p>There are also no explicit special or exceptional circumstances tests, which exist in the Southern and Cradle Coast Interim Planning Schemes, and offsets are also limited to onsite offsets, which may render development of some sites impossible.</p> <p>This approach is inconsistent with the DPIPWE guidelines for the use of offsets under the Resource Management and Planning System.</p>	
<p>C7.6.1 Buildings and works within a Waterway and Coastal Protection Area or a Future Coastal Refugia Area</p>	<ul style="list-style-type: none"> • A1 - The lack of protection of Class 4 waterways is queried, this is not consistent with the Forest Practices Code. Their protection (left un-piped and buffered) improves flood mitigations, fish passage and ground water recharge and improves water quality outcomes in receiving waters. • P1 (d) - The lack of protection of Class 4 waterways is queried. • A2 and P2 - Technical error. Remove referral to 'excluding' Class 1, as the definition of Class 1 includes coastal areas. If the intention of A2 and P2 is to provide provision to coastal areas, then intent of the code is lost without the recommended change. • P2 (a) and (b) - The use of “or” between the performance criteria points is queried and it is recommended that P2 must meet both (a) and (b) • P2 (b) (iv) - It is recommended that works be undertaken in accordance with DPIPWE Acid Sulphate Soil Management Guidelines and DPIPWE Dispersive Soil Management – Technical Reference Manual. The absence of Acid Sulphate soil and Dispersive Soil Codes means these risks will not be assessed. 	

	<p>Without this ability to assess the planning authority is left exposed to legal or financial risk.</p> <ul style="list-style-type: none"> • A4 & P4 - It is proposed that the wording, 'tidal waters' is included after 'point discharge into', so as to include marine coastal stormwater outfalls. • P2 (iv) - It is recommended that the works be undertaken in accordance with DPIPWE Acid Sulphate Soil Management Guidelines and DPIPWE Dispersive Soil Management – Technical Reference Manual. • A5 - The current wording 'no acceptable solution', has no context. It is recommended that 'for dredging and reclamation within a waterway and coastal protection areas of a future coastal refugia area' is added. • P5 - It is recommended that: "<i>(a) be necessary to establish a new development, continue or expand an existing development.</i>" The Acceptable Solution has been taken from Southern interim planning scheme, however, other performance criteria have not been transferred into the state scheme, such that this performance criteria P5 on it's own and as worded in the draft is currently inconsistent with the code purpose C7.1.3. • It is recommended that P5 criteria be expanded to capture points consistent with P3. • It is recommended P5 criteria be expanded to capture points consistent with original Southern Interim Scheme code • A6 - The current wording only 'no acceptable solution', has no context and it is recommended that wording 'for coastal and watercourse erosion or inundation protection works within a waterway and coastal protection area or a future coastal refugia area' be added. 	
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	<ul style="list-style-type: none"> • P6 - It is recommended that the 'coastal' is removed and replaced with 'erosion and inundation'. The word coastal limits the scope too much and does not enable river bank erosion and flooding works to be assessed, • P6 (a) - It is recommended that after 'coastal' ', watercourse' is added. The word coastal limits the scope too much and does not enable river bank erosion and flooding works to be assessed, 	
C7.7.1 Subdivision within a Waterway and Coastal Protection Area or a Future Coastal Refugia Area	<ul style="list-style-type: none"> • P1 (a) - Recommend removal of (a) minimise impact on natural assets. This is not quantifiable as a performance criteria • P1 - It is recommended that the following point be added "(c) be designed and located to minimise impact on natural assets, including the location of boundaries and boundary fences". This will eliminate conflict with land clearance allowed under the Boundary Fence Act 1908, as there is the ability under this act to clear vegetation within 2m on either side of the boundary fence. 	

Scenic Protection Code Application	<p>Scenic values do not stop at zone boundaries. The limitation of the Code's application to certain zones will force some existing areas with scenic protection to be rezoned to allow scenic protection or will require development of a Specific Area Plan. This will particularly be the case for the Low Density Residential Zone (LDR). The purpose of the LDR is to apply it where there are: <i>"environmental or aesthetic constraints that limit density"</i>.</p> <p>It states in the Explanatory document that: <i>"The Code is drafted to adhere to best practice planning and so that its application does not undermine the primary purpose of the Zones."</i></p> <p>The application of this Code to the LDR furthers the primary purpose of the Zone by its sole purpose, being <i>'To recognise and protect landscapes that are identified as important for their scenic values.'</i></p>	<p><i>The Scenic Protection Code should, as a minimum, apply to the Low Density Residential Zone.</i></p>
Scenic Protection Code Exemptions	<p>The Planting or destruction of vegetation within a private garden, public garden, etc is listed as an exemption (C8.4.1 (b)). In addition, there is an exemption in Section 4.0 for landscaping and vegetation management within a private garden, public garden etc. 'Private garden' is not defined under the scheme so there is no control over the extent of the clearing that a landowner might try to apply these exemptions to, which seems to be against the primary purpose of the scheme of maintaining scenic areas. Vegetation retention is presumably a large part of this objective.</p>	<p><i>At the very least a definition of 'private garden' would be useful and the exemptions should be reworded to provide more certainty and to ensure that clearing is not unlimited. This could be spatially defined such as 'private garden within 20m of the existing dwelling at scheme date'.</i></p>
Coastal Erosion and Inundation Hazard Codes	<p>These Codes have been combined, as the issues are common to them both. It is unclear as to why separate codes were required for these issues. These Codes contain a number of definitions and terminology that are inadequate with the potential to create confusion, uncertainty and increased risk of poor outcomes on the ground. Examples include: tolerable risk, actively mobile landforms and the lack of a definition of a suitably qualified person required to complete a coastal erosion hazard report.</p>	<p><i>The definitions within these Codes requires further work and consideration needs to be given to creating some Acceptable Solutions for appropriate small scale developments.</i></p>

	<p>There are no Acceptable Solutions other than for subdivision, and the Performance Criteria all rely on a coastal erosion hazard report, which puts a lot of cost onto the applicant and means that many small scale developments will require unnecessary specialist reports to support their application.</p>	
<p>Riverine Inundation Hazard Code</p>	<p>This Code contains the same definitions as the Coastal Hazard Codes and these have the same shortcomings.</p> <p>C12.2 Application – The Code only applies to mapped areas, however most councils have limited modelling. Councils’ would be grossly negligent in duty of care by issuing permits (planning and building) with no discussion of flood risk, despite known history of flooding or obvious risk.</p> <p>However if councils’ apply a broad ‘indicative’ flood zone based on a standard setback from watercourses (piped or open), developers in this broad swathe who previously would not have been requested for a flood study based on a council’s knowledge of the area and flooding will be required to engage an engineer to provide a report that they are not a flood risk.</p>	<p><i>At the very least, some guidance is required in terms of what size floods should be addressed by the Code (i.e. what areas should be captured by the overlay) to ensure consistency between planning authorities.</i></p>
<p>Potentially Contaminated Land Code C14.6.2, Excavation</p>	<p>It is not clear why the Acceptable Solution allows excavation of up to 250m³ when the Code applies to development disturbing more than 1m². These numbers are extraordinarily out of line with each other and 250m³ seems excessive for an AS. This volume could be achieved whilst exposing a vast area of previously ‘capped’ contamination to be mobilised into the environment from rain infiltration, eg removing hard surfaces.</p>	<p><i>The Acceptable Solution requires amending and should take into account the area exposed and contaminant levels and likely mobility.</i></p>

C7.0 Natural Assets Code

C7.1 Code Purpose

The purpose of the Natural Assets Code is:

C7.1.1 To minimise impacts on water quality, natural assets including native riparian vegetation, river condition and the natural ecological function of watercourses, wetlands and lakes.

C7.1.2 To minimise impacts on coastal and foreshore assets, native littoral vegetation, natural coastal processes and the natural ecological function of the coast.

C7.1.3 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.

C7.1.4 To protect biodiversity values and ecological function including identified threatened native vegetation communities and threatened flora species.

C7.1.5 To manage impacts on threatened fauna species by minimising disturbance of significant habitat.

C7.2 Application of this Code

C7.2.1 This Code applies to development on land within the following areas:

(a) a waterway and coastal protection area;

(b) a future coastal refugia area; and

(c) a priority vegetation area

C7.2.2 This Code does not apply to use.

C7.3 Definition of Terms

C7.3.1 In this Code, unless the contrary intention appears:

Term	Definition
biodiversity offsets	means measures that compensate for the residual adverse impacts of an action on the environment, when: (a) alternatives and options to avoid those impacts have been exhausted; (b) it is still considered desirable for other economic, social or environmental reasons for the action to proceed.
coastal values	means the values of coastal areas derived from their coastal habitat and vegetation, physical elements, landscape values, recreational values and economic values and the processes and functions that underpin them.
disturbance	means the alteration of the structure and species composition of a native vegetation community through actions including cutting down, felling, thinning, logging, removing or destroying of a native vegetation community
forest operations	means work connected with – (a) seeding and planting trees; or (b) managing trees before they are harvested; or (c) harvesting, extracting or quarrying forest products – and includes any related land clearing, land preparation, burning-off or access construction; as defined in the Forest Management Act 2013
future coastal refugia	means land where coastal processes are likely to occur naturally and can continue to occur, including the landward transgression of sand dunes, wetlands, saltmarshes, and other sensitive coastal habitats due to sea-level rise.
future coastal refugia area	means land shown on an overlay map in the relevant Local Provisions Schedule, as within a future coastal refugia area.
habitat corridor	means a link of wildlife habitat, generally native vegetation, which joins two or more larger areas of similar wildlife habitat.
littoral vegetation	means vegetation adjacent to a sea, lake or river that is close to the shore. It includes the intertidal Zone to high water mark and can include wetlands.
natural streambank and streambed condition	means the natural rate of erosion or accretion of the bank and bed of a watercourse and natural hydrological processes, as determined using The Tasmanian River Condition Index (TRCI): Physical Form Field Manual and Hydrology User's Manual (NRM South 2009), as amended from time to time.
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.
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 <i>Nature Conservation Act 2002</i> , vulnerable land under the <i>Forest Practices Act</i> or is a threatened ecological community under <i>Environmental Protection or Biodiversity Conservation Act 1999</i> ; (b) is a threatened flora species; or (c) it forms a significant habitat for a threatened fauna species.

	<p>(d) forms part of a habitat corridor; or</p> <p>(e) forms part of a vegetation community which is threatened at the bioregional scale; or</p> <p>(f) it is local priority vegetation, flora or fauna habitat; or</p> <p>(g) it is an appropriate buffer to minimise impacts on the priority vegetation types above.</p>
priority vegetation area	means land shown on an <u>overlay map</u> in the relevant Local Provisions Schedule, as within a priority vegetation area.
residual impacts	means those environmental effects predicted to remain after the initial effects of development have been avoided or minimised through design.
riparian vegetation	means vegetation found within or adjacent to watercourses, wetlands, lakes and recharge basins.
river condition	means condition of a waterway as determined using the Tasmanian River Condition Index (TRCI) (NRM South 2009), as amended from time to time.
significant habitat	<p>means the habitat within the known, likely or core range of a threatened fauna species, where any of the following applies:</p> <p>(a) is known or likely to be of high priority for the maintenance of breeding populations throughout the species' range; or</p> <p>(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.</p>
special circumstances	<p>means:</p> <p>(a) for an existing use on site, providing any clearance and conversion or disturbance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmanian Fire Service (or delegate); or</p> <p>(b) the use or development will result in significant long term social and economic benefits and there is no feasible alternative location or design; or</p> <p>(c) it is demonstrated that ongoing pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for recruitment or for long term persistence; or</p> <p>(d) the clearance and conversion or disturbance is of limited scale relative to other priority vegetation on the site; or</p> <p>(e) the development is located on an existing title and a for a single dwelling and/or associated outbuilding;</p> <p>(f) for the purposes <u>of multi-unit housing and subdivision</u> in the General Residential, Inner Residential, Village and Urban Mixed Use Zones.</p>
suitably qualified person (biodiversity)	means a person possessing the knowledge, skills and experience to provide advice on ecological issues associated with the use and development of land. The person must be cognisant of current legislation and policy and be mindful of best practice in management and mitigation of potential impacts.
suitably qualified person (waterways)	means a professional engineer currently practising with relevant CPEng or NPER accreditation, or a person who in respect to the type of work to be undertaken can adequately demonstrate relevant academic qualification, and an appropriate level of professional indemnity and public liability insurance.
threatened fauna species	means listed under the <i>Threatened Species Protection Act 1995</i> or listed as threatened or migratory under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .
threatened flora species	means listed under the <i>Threatened Species Protection Act 1995</i> or as threatened under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .

Comment [d1]: The drafting instructions / LPS 3.5.2 should provide for the exclusion of the urban zones (except Low Density Residential) unless a council provides justification otherwise.

Comment [d2]: This special circumstance would allow the efficient development & subdivision of land in these zones providing the other performance criteria were satisfied. Low density residential is not included as this land may be zoned such to retain environmental values

waterway and coastal protection area	<p>means land:</p> <p>(a) shown on an overlay map in the relevant Local Provisions Schedule, as within a waterway and coastal protection area; or</p> <p>(b) within the relevant distance from a watercourse, wetland, lake or the coast shown in the Table 1 below, but does not include a piped watercourse or a newly created drainage line or a watercourse with an impervious constructed base and banks (note: artificially realigned Class 1, 2, 3, 4 watercourses are not exempt from Table 1)</p> <p>Table 1:</p> <table border="1" data-bbox="375 627 1173 1220"> <thead> <tr> <th data-bbox="375 627 973 660">Spatial Extent and Coastal Protection Areas</th> <th data-bbox="981 627 1173 660">Width</th> </tr> </thead> <tbody> <tr> <td data-bbox="375 660 973 795">Class 1: Watercourses named on the 1:100,000 topographic series maps, Lakes, artificial water storages (other than farm dams) and the high water mark of tidal waters</td> <td data-bbox="981 660 1173 795">40m</td> </tr> <tr> <td data-bbox="375 795 973 862">Class 2: Watercourses from the point where their catchment exceeds 100ha</td> <td data-bbox="981 795 1173 862">30m</td> </tr> <tr> <td data-bbox="375 862 973 963">Class 3: Watercourses carrying running water for most of the year between the points where their catchment is from 50ha to 100ha</td> <td data-bbox="981 862 1173 963">20m</td> </tr> <tr> <td data-bbox="375 963 973 1064">Class 4: All other watercourse carrying running water for part or all of the year for most years</td> <td data-bbox="981 963 1173 1064">10m</td> </tr> <tr> <td data-bbox="375 1064 973 1153">Ramsar Wetlands: Wetlands listed under the Convention on Wetlands of International Importance, (the Ramsar Convention)</td> <td data-bbox="981 1064 1173 1153">100m</td> </tr> <tr> <td data-bbox="375 1153 973 1220">Other Wetlands: Wetlands not listed under the Ramsar Convention</td> <td data-bbox="981 1153 1173 1220">50m</td> </tr> </tbody> </table> <p>(a) For the purpose of spatially defining 'width' in Table:</p> <p>(i) Width is measured from the top of bank or high water mark of tidal waters, watercourses or freshwater lakes.</p> <p>(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.</p> <p>If an inconsistency in regards to width exists between Table 1 and the area shown on the overlay map, the greater distance prevails.</p> <p>The depiction of a watercourse, or a section of a watercourse on an overlay map in the relevant Local Provisions Schedule is definitive regardless of the actual area of the catchment.</p>	Spatial Extent and Coastal Protection Areas	Width	Class 1: Watercourses named on the 1:100,000 topographic series maps, Lakes, artificial water storages (other than farm dams) and the high water mark of tidal waters	40m	Class 2: Watercourses from the point where their catchment exceeds 100ha	30m	Class 3: Watercourses carrying running water for most of the year between the points where their catchment is from 50ha to 100ha	20m	Class 4: All other watercourse carrying running water for part or all of the year for most years	10m	Ramsar Wetlands: Wetlands listed under the Convention on Wetlands of International Importance, (the Ramsar Convention)	100m	Other Wetlands: Wetlands not listed under the Ramsar Convention	50m
Spatial Extent and Coastal Protection Areas	Width														
Class 1: Watercourses named on the 1:100,000 topographic series maps, Lakes, artificial water storages (other than farm dams) and the high water mark of tidal waters	40m														
Class 2: Watercourses from the point where their catchment exceeds 100ha	30m														
Class 3: Watercourses carrying running water for most of the year between the points where their catchment is from 50ha to 100ha	20m														
Class 4: All other watercourse carrying running water for part or all of the year for most years	10m														
Ramsar Wetlands: Wetlands listed under the Convention on Wetlands of International Importance, (the Ramsar Convention)	100m														
Other Wetlands: Wetlands not listed under the Ramsar Convention	50m														
waterway values	means the values of watercourses and wetlands derived from their aquatic habitat and riparian vegetation, physical elements, landscape function, recreational function and economic function.														
Watercourse	means a freshwater-dependent ecosystem characterised by flowing water (for all or part of the year) that empties into the ocean, estuaries, lakes and waterbodies or another watercourse.														
Other Wetlands	as described and defined in <i>A Wetlands Strategy for Tasmania</i> (DPIWE) and includes, but is not limited to wetland and saltmarsh TASVEG mapping categories in Harris and Kitchener (2005):														

	<p>Freshwater aquatic herbland (AHF);</p> <p>Freshwater aquatic sedgeland and rushland (ASF);</p> <p>Lacustrine herbland (AHL);</p> <p>Saline aquatic herbland (AHS);</p> <p>Saline sedgeland/rushland (ARS);</p> <p>Saltmarsh (undifferentiated) (AUS);</p> <p>Succulent saline herbland (ASS);</p> <p>Wetland (undifferentiated) (AWU);</p> <p>and associated scrub, forest, woodland communities when occurring in association with wetland and saltmarsh.</p>
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Harris, S and Kitchener, A (2005). *From Forest to Fjaeldmark: Descriptions of Tasmania's Vegetation*. Department of Primary Industries, Water and Environment, Printing Authority of Tasmania. Hobart

C7.4 Development Exempt from this Code

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

- (a) development assessed as a Level 2 Activity;
- (b) forest operations or clearing and conversion for agriculture in accordance with a forest practices plan certified under the *Forest Practices Act 1985*; and,
- (c) consolidation of lots.

C7.5 Application Requirements

C7.5.1 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 natural values determination
- (b) a natural values assessment
- (c) a report detailing how impacts on priority vegetation values will be avoided, minimized, and/or mitigated
- (d) a special circumstances justification report
- (e) a biodiversity offsets plan.

C7.6 Use Standards

C7.6.1 There are no Use Standards in this Code.

C7.7 Development Standards for buildings and works

C7.7.1 Buildings and works within a Waterway and Coastal Protection Area or a Future Coastal Refugia Area

Objective:	To ensure that buildings and works within a waterway and coastal protection area or future coastal refugia area will not have an unnecessary or unacceptable impact on natural assets.
Acceptable Solutions	Performance Criteria
<p>A1</p> <p>Buildings and works within a waterway and coastal protection area must be within a building area on a sealed plan approved under this planning scheme or be a class 4 watercourse crossing (<5m wide) to access a single dwelling development.</p>	<p>P1</p> <p>Buildings and works within a waterway and coastal protection area for a Class 1, 2, 3 or 4 watercourse must:</p> <ul style="list-style-type: none"> (a) avoid or minimise impacts on natural assets; (b) minimise and manage adverse erosion, siltation, sedimentation and runoff impacts on natural assets; (c) avoid or minimise impacts on riparian or littoral vegetation; (d) if within the spatial extent of watercourse, maintain natural streambank and streambed condition (where it exists) except when building a watercourse crossing or bridge, or mitigating erosion hazard to infrastructure or natural assets or preventing erosion near a stormwater outfall; (e) minimise impact on in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation; (f) avoid significantly impeding natural flow and drainage; (g) maintain fish passage where known to exist; (h) avoid land filling of wetlands; and (i) be undertaken generally in accordance with Wetlands and Waterways Works Manual (DPIWE, 2003), as amended from time to time and Tasmanian Coastal Works Manual (DPIPWE, Page and Thorp, 2010), as amended from time to time, and the unnecessary use of machinery within watercourses or wetlands is avoided. (j) minimise the need for future works to ensure protection of natural assets and infrastructure and property.

<p>A2</p> <p>Buildings and works within a waterway and coastal protection area, excluding for a Class 2, 3 or 4 watercourse, must:</p> <p>(a) be within a building area on a sealed plan approved under this planning scheme; or</p> <p>(b) be an extension to an existing boat ramp, car park, jetty, marina, marine farming shore facility or slipway that is not more than 20% of the area of the facility existing at the effective date of this planning scheme.</p>	<p>P2</p> <p>Buildings and works within a waterway and coastal protection area, excluding that for a Class 2, 3 or 4 watercourse, must:</p> <p>(a) satisfy the following:</p> <p>(i) not be for Residential or Visitor Accommodation use and must be for a use which relies upon a coastal location to fulfil its purpose for one or more of the following reasons:</p> <p>a. to access a specific resource, other than land, in a coastal location;</p> <p>b. for a marine farming shore facility;</p> <p>c. to access infrastructure available in a coastal location;</p> <p>d. to service a marine or coastal related activity;</p> <p>e. to provide an essential utility or marine infrastructure; or</p> <p>f. to provide for marine-related educational, research, open space or recreational facilities;</p> <p>(ii) new facilities are grouped with existing facilities, where reasonably practical;</p> <p>(iii) native vegetation is retained, replaced or re-established so that overall impact on native vegetation is negligible;</p> <p>(iv) building design responds to the particular size, shape, contours or slope of the land and minimises the extent of cut and fill; and</p> <p>(v) impacts on coastal processes, including sand movement and wave action, are minimised and any potential impacts are mitigated so that there are no significant long-term impacts; and,</p> <p>(b) satisfy the following:</p> <p>(i) avoid or minimise impacts on natural assets;</p> <p>(ii) minimise and manage adverse erosion, siltation, sedimentation and runoff impacts on natural assets;</p> <p>(iii) avoid land filling of wetlands; and</p> <p>(iv) works are undertaken generally in accordance with Wetlands and Waterways Works Manual (DPIWE, 2003), as amended from time to time and Tasmanian Coastal Works Manual (DPIPWE, Page and Thorp, 2010), as amended from time to time, and the DPIPWE Acid Sulphate Soil Management Guidelines, as amended from time to</p>
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	<p>time and DPIPWE Dispersive Soils and their Management – Technical Reference Manual, as amended from time to time and the unnecessary use of machinery within watercourses or wetlands is avoided.</p>
<p>A3 Buildings and works within a future coastal refugia area must be located within a building area on a sealed plan approved under this planning scheme.</p>	<p>P3 Buildings and works within a future coastal refugia area must:</p> <p>(a) satisfy the following:</p> <ul style="list-style-type: none"> (i) not be for Residential or Visitor Accommodation use and must be for a use which relies upon a coastal location to fulfil its purpose for one or more of the following reasons: <ul style="list-style-type: none"> a. to access a specific resource in a coastal location; b. for a marine farming shore facility; c. to access infrastructure available in a coastal location; d. to service a marine or coastal related activity; e. to provide an essential utility or marine infrastructure; or f. to provide for marine-related educational, research, open space or recreational facilities; (ii) new facilities are grouped with existing facilities, where reasonably practical; (iii) native vegetation is retained, replaced or re-established so that overall impact on native vegetation is negligible; (iv) building design responds to the particular size, shape, contours or slope of the land and minimises the extent of cut and fill; and (v) impacts to coastal processes are minimised and any potential impacts are mitigated so that there are no significant long-term impacts; and <p>(b) satisfy the following:</p> <ul style="list-style-type: none"> (i) allow for the landward colonisation of wetlands and other coastal habitats from adjacent areas; (ii) avoid creation of barriers or drainage networks that would prevent future tidal inundation; (iii) allow the coastal processes of deposition or erosion can continue to occur; (iv) avoid or minimise impacts on natural assets; and (vi) works are undertaken generally in accordance

	<p>with Wetlands and Waterways Works Manual (DPIWE, 2003), as amended from time to time and the Tasmanian Coastal Works Manual (DPIPWE, Page and Thorp, 2010), as amended from time to time and the DPIPWE Acid Sulphate Soil Management Guidelines, as amended from time to time and DPIPWE Dispersive Soils and their Management – Technical Reference Manual, as amended from time to time and the unnecessary use of machinery within watercourses or wetlands is avoided.</p>
<p>A4 Development within a waterway and coastal protection area or a future coastal refugia area must not involve a new stormwater point discharge into tidal waters, a watercourse, wetland or lake.</p>	<p>P4 Development within a waterway and coastal protection area or a future coastal refugia area involving a new stormwater point discharge into tidal waters, a watercourse, wetland or lake must:</p> <ul style="list-style-type: none"> (a) minimise risk of erosion and sedimentation; (b) mitigate and manage any impacts on natural assets likely to arise from erosion, sedimentation and runoff; (c) avoid or reduce adverse impact on natural assets through measures consistent with DPIPWE State Stormwater Strategy; and (d) works are undertaken generally in accordance with Wetlands and Waterways Works Manual (DPIWE, 2003), as amended from time to time and the Tasmanian Coastal Works Manual (DPIPWE, Page and Thorp, 2010), as amended from time to time and the DPIPWE Acid Sulphate Soil Management Guidelines, as amended from time to time and DPIPWE Dispersive Soils and their Management – Technical Reference Manual, as amended from time to time and the unnecessary use of machinery within watercourses or wetlands is avoided.
<p>A5 No Acceptable Solutions for dredging and reclamation within a waterway and coastal protection area or a future coastal refugia area.</p>	<p>P5 Dredging or reclamation within a waterway and coastal protection area or a future coastal refugia area, must:</p> <ul style="list-style-type: none"> (a) be necessary to establish a new development continue an existing development; and (b) minimise and manage potential impacts on coastal and riverine processes that may lead to increased risk of inundation on adjacent land, including-sediment movement, current action, and wave action, so that there are no impacts on

	<p>adjoining or downstream infrastructure; and</p> <p>(c) satisfy the following:</p> <ul style="list-style-type: none"> (i) not be for Residential or Visitor Accommodation use and must be for a use which relies upon a coastal or waterway location to fulfil its purpose for one or more of the following reasons: <ul style="list-style-type: none"> a. to access a specific resource in a coastal or waterway location; b. for a marine farming shore facility; c. to access infrastructure available in a coastal location; d. to provide an essential utility or marine infrastructure; or e. to provide for marine-related educational, research, open space or recreational facilities; (ii) new facilities are grouped with existing facilities, where reasonably practical; (iii) allow for the landward colonisation of tidal wetlands and other coastal habitats in adjacent areas; (iv) avoid creation of barriers or drainage networks that would prevent future tidal inundation on adjacent areas; (v) allow natural coastal processes of deposition or erosion to continue to occur on adjacent areas; (vi) avoid or minimise impacts on natural assets on adjacent land; and (vii) works are undertaken generally in accordance with Wetlands and Waterways Works Manual (DPIWE, 2003), as amended from time to time and the Tasmanian Coastal Works Manual (DPIPWE, Page and Thorp, 2010), as amended from time to time and the DPIPWE Acid Sulphate Soil Management Guidelines, as amended from time to time and DPIPWE Dispersive Soils and their Management – Technical Reference Manual, as amended from time to time and the unnecessary use of machinery within watercourses or wetlands is avoided.
<p>A6</p> <p>No Acceptable Solutions for coastal and watercourse erosion or inundation protection works within a waterway and coastal protection area or a future coastal refugia area.</p>	<p>P6</p> <p>Erosion or inundation protection works within a waterway and coastal protection area or a future coastal refugia area must:</p> <ul style="list-style-type: none"> (a) be designed by a suitably qualified person; and (b) minimise adverse impact on coastal and

	watercourse processes that may lead to increased risk of inundation, including wave action and behaviour, sediment dynamics, current and tidal flows in the area.
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C7.6.2 Clearance and Conversion or Disturbance within a Priority Vegetation Area

Objective:	To ensure that clearance and conversion or disturbance of priority vegetation within a priority vegetation area: (a) does not result in unreasonable loss of priority vegetation; (b) is appropriately managed to adequately protect identified priority vegetation; and (c) minimises and appropriately manages impacts from construction and development activities.
Acceptable Solutions	
Performance Criteria	
A1	P1
Clearance and conversion or disturbance of priority vegetation within a priority vegetation area must be within a building area on a sealed plan approved under this planning scheme	Clearance and conversion or disturbance of priority vegetation within a priority vegetation area must satisfy all of the following: (a) the development is designed and located to minimise impacts, having regard to constraints such as topography or land hazard and the particular requirements of the development; and (b) impacts resulting from bushfire hazard management measures are minimised as far as reasonably practicable through siting and fire-resistant design of habitable buildings; and (c) additional mitigation measures are to be implemented to minimise the remaining impacts on priority vegetation values on the site from the development; and (d) special circumstances exist; and (e) residual adverse impacts are offset in accordance with any relevant policy adopted by Council

C7.7 Development Standards for Subdivision

C7.7.1 Subdivision within a Waterway and Coastal Protection Area or a Future Coastal Refugia Area

Objective:	To ensure that: (a) works associated with subdivision within a waterway and coastal protection area or a future coastal refugia area will not have an unnecessary or unacceptable impact on natural assets; and (b) future development likely to be facilitated by subdivision is unlikely to lead to an unnecessary or
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	unacceptable impact on natural assets.	
Acceptable Solutions	Performance Criteria	
A1 Each lot, wholly or partly within a waterway and coastal protection area or a future coastal refugia area, must: (a) be for the creation of separate lots for existing dwellings; (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 Utilities; (d) be for the consolidation of a lot; (e) not include works, other than boundary fencing, within a waterway and coastal protection area or future coastal refugia area; or (f) have any building area, services, bushfire hazard management area and vehicular access located outside a waterway and coastal protection area or a future coastal refugia area.	P1 Each lot, wholly or partly within a waterway and coastal protection area or a future coastal refugia area, must: (a) minimise impact on natural assets; and (b) provide for any building area and any associated bushfire hazard management area to be outside a waterway and coastal protection area or a future coastal refugia area.	

C7.7.2 Subdivision within a Priority Vegetation Area

Objective:	To ensure that: (a) works associated with subdivision will not have an unnecessary or unacceptable impact on priority vegetation; and (b) future development likely to be facilitated by subdivision is unlikely to lead to an unnecessary or unacceptable impact on priority vegetation.	
Acceptable Solutions	Performance Criteria	
A1 Each lot, wholly or partly within a priority vegetation area, must: (a) be for the purposes of creating separate lots for existing dwellings; (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 Utilities; (d) be for the consolidation of a lot; (e) not include works within a priority vegetation area; or (f) include any building area, bushfire hazard management area, services and vehicular access	P1 Each lot, wholly or partly within a priority vegetation area, must: (a) the development is designed and located to minimise impacts, having regard to constraints such as topography or land hazard and the particular requirements of the development; and (b) impacts resulting from bushfire hazard management measures are minimised as far as reasonably practicable through siting and fire-resistant design of habitable buildings; and (c) additional mitigation measures are to be implemented to minimise the remaining impacts on priority vegetation values on the site from the development; and	

outside the priority vegetation area.	(e) special circumstances exist; and (f) residual adverse impacts are offset in accordance with any relevant policy adopted by Council
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