State Planning Provisions Review 2022 - Submissions 121-140

Submission No:	Name	Organisation
121	Sam Humphries	
122	John Toohey	
123	Robin Thomas	
124	Helen Tait	
125	Lionell Morrell	Heritage Protection Society (Tasmania) Incorporated
126	Austra Maddox, Rosemary Scott & Margaret Taylor	
127	Claire Bookless	Environmental Defenders Office
128	Natasha Whiteley	Meander Valley Council
129	Dr Belinda Yaxley	Huon Valley Zoning Association
130	Mel O'Keefe	
131	David Allingham	Brighton Council
132	Ashley Thornton	Waratah-Wynyard and Circular Head Councils
133	Victoria Onslow and William Phipps Onslow	
134	Mary McNeill	
135	Christina Bishop	
136	Dom Fowler	
137	Michael Pervan	Department of Communities Tasmania
138	Jennifer Jarvis	TasRail
139	Anne McConnell	Cultural Heritage Practitioners Tasmania (CHPT)
140	Patty Chugg	Shelter Tas

From:	Sam Humphries
To:	State Planning Office Shared Mailbox
Subject:	State Planning Provisions
Date:	Friday, 12 August 2022 3:22:19 PM

Submission on State Planning Provisions.

To whom it may concern.

As a resident of Stanley running a couple of successful small business enterprises, I am rather concerned about the proposal of two wind farms in the area.

These industrial parks are at odds with the scenic and community values of Circular Head, particular the coastal regions.

It beggars belief that two landholders can ride roughshod, with overseas corporate backing, over community concerns, with little to no benefit to the community other than a few paltry bribes in the disguise of grants.

A concerted effort under state planning provisions to develop Go and No Go Zones, taking in to consideration community consultation, scenic values and direct impact on population, would go far in gaining support for industrial wind parks.

It should not be up to citizens to have to oppose such projects, that they deem inappropriate to their region, and with limited resources and time.

Sincerely.

Sam Humphries.

[redacted]

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

12 August 2022

STATE PLANNING PROVISIONS

I wish to make a submission on the proposed State Planning Provisions and in particular the lack of any provisions dealing with industrial windfarms.

In my opinion the very public and expensive planning battles in Tasmania since 1993 have been over uncertainty, that is the common occurrence of discretionary powers in planning schemes e.g., Hobart building heights. Millions of dollars have been wasted in fights over uncertainty.

Why windfarms? Windfarms involve the modification of thousands of hectares of Tasmania compared to a typical development dedicating or modifying perhaps only thousands of square metres.

There are several new windfarms currently in the development proposal stage, at least two of which St Patricks Plains in the Central Highlands and Stanley are causing considerable stress to immediate neighbours and visitors to these high-profile regions. They have attracted significant objections that are highly likely to follow through to expensive appeals if development permits are issued.

In my view neither of these proposals should have been permitted under the land use planning legislation to reach the stage where they are being considered by the local government councils and the Environment Protection Authority (EPA). There should be pre-determined zoning and codes that apply with basic "rules" that provide some certainty to developers, nearby residences and regular visitors escaping the intensity of cities and industry.

Turbines are now planned with heights of 270 metres plus and the physical mass is increasing proportionately with dramatic impacts on precious Tasmanian landscapes.

In contrast to the two proposals mentioned above, the development approval processes for the existing windfarms – Musselroe Bay, Granville Harbour, Woolnorth and Cattle Hill – proceeded with little objection and it appears that the proposals for Guildford and Hellyer are following a similar path. The question is why ?

The simple answer – Stanley and St Patricks Plains are the wrong locations for windfarms and both will impact residential and tourist amenity and enjoyment.

In my opinion there must be a wind farm zoning and windfarm code in the new State Planning Provisions addressing at least the following: -

1. No wind turbines within say 10 kilometres of clusters of residences where a cluster is two or more without the formal written consent of the residential owners prior to exploratory work commencing. These are the people that will be subjected to the noise impact of the operating windfarm. Their position should take precedence. They lose any right to silence from industry. I note that the Cattle Hill turbines can be heard at Penstock Lagoon around seven kilometres away in various weather directions. There have been and are proposed Court actions over windfarm noise in other States of Australia.

The neighbours are also the landowners likely to experience a diminution of property value due to the presence of the windfarm. (A NSW valuation study did cite a lack of empirical data at the time to arrive at definitive response).

2. Social licence from the neighbourhood should take precedence over commercial interests. This approach would save developers risk money and stress in the neighbourhood.
3. Development proposals to address landscape and skyline impacts must include accurate in scale photo montages from a multitude of vantage points, near and far. Tasmanians value the differing landscapes which are also an attraction to tourists.
4. Make it clear that impacts on endangered species will have a significant bearing on development approvals or otherwise. Cumulative impacts on endangered species must be considered. Cash off-sets are not acceptable.
5. Public availability and transparency of methodology and data collected during investigative works is imperative in establishing social licence.
6. End of life. There must be provision for end-of-life removal and rehabilitation of windfarm sites with all components recycled. Note blades across the world are currently buried in landfill. While landowners who host windfarms will pocket revenue from the operations, they are highly unlikely to have the financial resources in the $millions to rehabilitate their land when windfarm operators (perhaps deliberately) cease to exist through bankruptcy. The liability must not rest with the State. Irrevocable bank guarantees are a must to ensure redevelopment or rehabilitation.

Thank you for the opportunity to comment.

[redacted]

John G Toohey

[redacted]

From: Robin Thomas
To: State Planning Office Your Say
Subject: State Planning Provision Review Submission
Date: Friday, 12 August 2022 5:00:04 PM

Please accept the following as my submission.
[redacted]

Re the Natural Assets Code:
There seems a limitation of the Code to managing and minimising loss of biodiversity, without the objective of its improvement. Please amend Code purpose, goals and standards, to cover improvement of, extent and condition of our existing natural assets, with biodiversity as a guiding criterion.

Too narrow a scope is considered, effectively not protecting biodiversity from present and future climate changes. A broadening of the Code's ecological purview is needed, including our non-threatened native flora and fauna species.

A Code amendment is needed to consider and assess ANY areas of native vegetation, regardless of whichever Zone it may occupy,this being the main criterion for its biodiversity protection, rather than a prime assessment criterion being its Zone occurrence.

Dependence on old and outdated info necessary to justify our public monies' usage upon such a vital need in Tasmania (for ultimately tourism/economic reasons alone), the Code needs amendment to demand a basis of up-to-date surveyance. (I believe a 5-yearly govt provision of info for planning review is now already a few years overdue.)

I thoroughly agree with and endorse PMAT's submitted wonderful and constructive points and suggested amendments to the NAC. Thank you very much. R. Thomas.

Representation to the 2022 State Planning Provisions Review
From: Helen Tait, Launceston, Tasmania

Introduction:
I have a BSC from UTAS. I worked with the Tamar Regional Master Planning Authority in the 1970's as an assistant to the landscape planner. The planning work at TRMPA began from the geology up, with successive overlays of climate, topography and natural systems. TRMPA planning was thus, strongly and innovately grounded in understanding ecological processes.

I am a member of PMAT as are many of the natural history, heritage and land conservation, and citizen science groups that I belong to.

- **I fully endorse PMAT's submission**
- **I require that the PMAT submission, with its professional grasp of the language of planning matters, sits firmly beside my submission.**
- I likewise endorse the submission of John Thompson and Conservation Landholders Tasmania
- I also endorse the representation by Peter Voller and the Tamar Landcare group.
- I make special reference to the fact that the Heart Foundation have previously made representation addressing a critical need for planning responsibility to embrace citizen's health and well-being.
- **My concerns are deeply for the conscious provision, and protection, in our planning processes to support live-ability for our State's residents especially in regard to; human scale, local heritage and landscape character, and every day residential amenity.**
- **My further concerns are about securing provisions for the protection, and rehabilitation of natural ecosystems and the coordination with Local State and Federal legislation that applies to them.**
- Appendix A and B of my representation provide details for two DA's recently put to the Launceston City Council. These cases outline and emphasise the concerns of my submission (NB To be forwarded seperately)

Notes of concern for the SPP review:

Sunlight to life is critical and wondrous and access to it must continue to be recognised, protected and provided for in our planning provisions.

- Access to sunlight and view is too often undervalued and misunderstood.
- Measuring its value is in poor repute due to tedious, often misrepresented, and incomplete sun-shadow diagrams, and mismanaged analysis.
- This provision is in grave danger of being absent or put aside in the too hard basket in current planning provisions but is important to be included in our future schemes.
- In cold climate Tasmania access to the winter sun is critical for passive heating of our houses, our laneways and highways on frosty mornings and throughout our daylight hours.
- It is the basis for domestic solar power generation and investment is dependant on good solar access
- Sunlight dances; It bounces, reflects, penetrates and warms in wonderful and often intangible ways.
- The view of the sky is essential for humans to feel free and verified.
- The neurosis and the consequences from feeling entrapped and in the dark for example are damaging and dire.
- The phenomena of the mental health related to living environment has been starkly

established with the arrival of the corona pandemic. It heralded debilitating aspects of isolation, while at the same time highlighting the value our immediate physical surrounds, our neighbours and our local community.

- Sunlight provision, and more critically the provisions that allow removal of it from established homes, requires a much more nuanced approach. The test of 'reasonable' or 'unreasonable' loss of the amenity of sunlight is poorly understood and poorly applied.
- While planners might hesitate for a moment on adverse decisions for sunlight loss, it is the health care providers doctors and the paramedics who pick up on the consequent of a poorly designed and approved DA that does not respect and honour the value that sunlight provides to a residence.
- Sunlight warms and enlivens people and in their gardens and in their lifestyles.
- Loss of access to sunlight and outlook diminishes the value of a place. Sun access provisions are made for new developments but are mostly slanted towards the new at the detriment to places already established.
- Planning provisions mostly do not recognise the value and joy of sunshine; in the bedroom in the morning, at the table at breakfast, in the living room all day, in the window seat when the children arrive home from school, the last rays of sun that reach the old person sitting in the chair watching the sunset.
- Planners often defer to a 'like it or lump' retort and/or the 'you will soon get used to it' attitude towards an objecting resident distraught and shocked about what new planning laws, removed from 'discretion', bring into an established neighbourhood
- While the live-ability, monetary value and sale-ability of the diminished house lowers, and the new development soars, without recognition in the planning provisions we are left with great hurts, antagonisms and injustices in our community.

Protection of open space provisions,

- Often it is public open space which allows sunlight and views into a locale.
- Provides a breathing space, a break from the urban whether from a private or public park or open space
- Prescriptions for ensuring open space zones for passive and active recreation must be strongly maintained for the protection for the amenity and live-ability for any developing settlement.

Protecting biodiversity and natural ecological systems (See case study Appendix A)

- The promising sensitivity for recognising living systems as the basis of Tamar Regional Master Planning Authority in the 1970's seems to be somewhere lost in current education and planning policy.
- Ecological terms are of often too narrowly defined and legalistic in interpretation. Biodiversity in planning provisions must be recognised in its fullness rather the limitation to provisions for single species listed as threatened or vulnerable.
- Development in sensitive areas should be limited rather than precious bushland raised and biodiversity destroyed.

Bush Fire Codes

- The blanket bush fire risk mitigation provisions and legislations for prescribed burning are causing havoc to the health and biodiversity of some of our public reserves, and bush-land on private property
- Fuel reduction burns should not be exempt from requiring a permit.
- Prescribed burning regimes must be better appraised for risk of biodiversity loss and soil damage before making them mandatory.

- The approval for subdivisions that require bush fire risk management should be much more closely regulated.
- Parks and Wildlife Service itself is majorly compromised by having required burnt hectare targets, often burning unnecessarily in Nature Reserves where protection from fire is a National priority requirement.
- Subdivision should be listed as a sensitive use in the Bushfire Code areas with requirements that new development be located away from high risk areas.

Riparian stream-side protection and enhancement critical for;
Intrinsic values, pleasure, biodiversity, ecosystems services to human habitation- eg slowing and holding rainwater run-off , flood mitigation, carbon sequestration, clean air, beauty and bird song.
Riparian areas;

- Often pushed aside or bulldozed away and concretised.
- Could be better recognised and valued
- Could be included as part of a developers' 5% contribution towards compulsory Pubic Open space provision.
- SPPS should ensure rigourous rehabilitated after disturbance from development

Protecting History and Heritage Buildings

- Again the essence of this protection is often lost in vague definitions, or in over-precise legalistic interpretations
- Protection provisions must be strengthened to keep our heritage values protected.
- Values of Heritage Tasmania should be more robust in the SPPs to provide adequate, more nuanced guidance to citizens, developers and planners in protecting heritage values.
- Street-scapes and heritage precincts should be given greater protective provisions than currently afforded.

Opportunity for a citizen's voice to planning

- Should be upheld
- New State wide building codes for heights, reduced set back, changed building envelopes, multi units on single blocks etc could significantly interfere with local character
- The provisions 'as of right' and 'non-discretionary' will likely come as a shock to people living in established suburbs.
- In many cases bringing very different provisions to that expected, has great risk of bringing discomfort and damaging dissonances into established communities
- For building developments in established suburbs eg say pre 1970's, SSP provisions should remain 'discretionary' for the outcome of new planning process to operate justly and fairly.
- A citizen's right of appeal MUST remain accessible and affordable

In submitting this representation I remain fully appreciative of the opportunity to make this representation to the Tasmanian Planning Commission for their consideration in review of the SPP.

Faithfully

Helen M Tait

Includes
Appendix A
Conservation land zoning status and biodiversity protection – Amendment 68 to LCC for Rezoning and development on the Launceston Golf Club (2021/2022)

Appendix B

Personal experience of potential loss of sunlight and outlook, diminution of living amenity, and insufficient regard to protection of heritage building and heritage precincts – DA 0427

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Appendix A
Conservation land zoning status and biodiversity protection – Amendment 68 to LCC for Rezoning and development on the Launceston Golf Club (2021/2022)

The DA for rezoning of the Launceston golf course for residential subdivision has been approved by LCC and accepted after the planning commission hearing.
The area applied for is an area of good quality mixed aged vegetation with an abundance of birds and other wildlife typical of this vegetation community.

The vegetation type is that of only small patches in existence around Launceston and in the northern midlands. It is listed under our Forest Practices Act as a threatened vegetation community. The golf course site especially valuable as it is of mixed age with significant large old 'Habitat trees' and a typical density of mixed species understory. It is a prime area for bird breeding important to recruitment to nearby reserves where breeding habitat is compromised. 52 species of endemic, native, migratory and introduced birds are known from the golf course land.

- Plants an animals listed under the federal EPBCA Act are known from this site and sites adjacent. Listings under the natural values atlas are incomplete as this private and unsurveyed bushland
- The land has been known and respected as a Wildlife Sanctuary since 1934
- put under NPWS listings in 1977
- On the Tas Government List Maps website as a Private Sanctuary (Perpetual) under the Tasmanian Nature Conservation Act 2002

Yet even so the planners and the Commission have no, or have ignored, planning provisions to protect such a valuable and precious urban biodiversity asset.

- The ecologist's brief and assessment task was simply to declare if he found any threatened species present. Well, for one, Brunonia is listed under the Natural Values Atlas for this land. However it is ephemeral and not always seen.
- The local area and the vegetation type is a hot spot for the threatened Eastern barred bandcoots <u>but 'not found' because a survey was not done for the animals and birds on site.</u>

A groaning aspect of the DA process in response to 12 objections about the loss of wildlife with this DA is that the planner included a farcical requirement to re-home all the wildlife from the felling of the bushland for the new houses, and for the provisions of bush fire mitigation.
This was a condition that Councillors voted on but was simply later removed by council officers removed when raised as being ludicrous and unachievable.

The crucial connectivity of urban remnant vegetation is evident in the photo above. The first subdivision approved for 14 lots would cut into the middle adding hard surfaces, cats and dogs, humans and noise into this declared wildlife sanctuary land and connector corridor.

The second DA and amendment 71 for further rezoning and subdivision for the golf course is currently on its way to the planning Commission hearing. Again, for immediate financial gain, the recreational land is being progressively reduced. The opportunity on the golf course to retain adequate recreational land and especially to retain natural areas is being diminished. The the opportunity for Council or others to retrieve recreational land, when the golf course moves off to another site with bigger potential, is lost in the infeasibility of changing new settled 'residential' land back to 'recreational' zoning!

Even with all the legal reserve status strongly in its favour for the retention of this bushland in recreational zoning no provisions were strong enough to protect this declared Wildlife Sanctuaryat the very least for connectivity through the golf course course with adjacent vulnerable Punch bowl and Carr Villa bushland reserves this retention was forgone. The area is more rightly crying out for the application of Special Area Conservation Provisions.

This case has shown that the current SPPs are failing modern demands to respect and protect nature and its biodiversity and the ecosystem services it provides.

Oh and I forgot to add that the big trees and pretty bushland to be trashed consequent to this rezoning for housing are in a scenic protection zone

- In the absence of better protection provisions for natural areas, Scenic protection zoning has had provided some level effect to protection
- Scenic protection provisions generally are lacking in rigour and effect.

Appendix B over page

Appendix B.

Personal experience of potential loss of sunlight and outlook, diminution of living amenity, and insufficient regard to protection of heritage building and heritage precincts – DA 0427 (2020)

- This DA was for a neighbour to demolish and rebuild a heritage brick wall and build for a high addition to a heritage listed 19th C school house right on my NNW boundary fence
- The proposal would have blocked sunlight and outlook from the living place that I had created to bring sunlight and warm into a cold and damp 1860's colonial cottage. The 5m high wall of the schoolhouse on the boundary already blocked sun and outlook from 2 rooms of my house to the NNW for 9m, and the lower proportion of the wall for 6m.
- Because there is also a house built on the boundary line to the south, 7 of the rooms of my house have outlook onto walls 1m and 2m from my windows.
- I have mitigated the effect by replacing old poor quality added-on bathroom utilities with a living room with sunlit windows; one that works as a ventilation window and one as an all day sun access bay window. See photo below

- The DA had many discretionary elements and the developer submitted an application that said all performance criteria and acceptable solutions could be met and that the effect on my amenity was not unreasonable.
- The planning report seemed to ignore serious concerns on the discretionary aspects of its determination citing that the DA was prepared by a professional company.
- Comment from Heritage Tas was some how limited to only the part of the wall that comprised the built wall of the school house rather than the wall's full integration with the porch and the lower wash-house of that listed building.

The concerns;

- I had two weeks to verify and clarify the details of the DA and submit an objection to something that I had worked on for 25 years to achieve live-ability in a compromised 1860's house.
- It was confronting and nerve racking in the extreme.

- I took leave from work that contributed to an on going and deteriorating situation.
- My mental stability was compromised

I was;

- Taxed to argue my case to the planner
- Exasperated that the sun diagrams and the analysis was grossly wrong
- Annoyed that the details in the DA was misleading and misrepresented
- Appalled that Heritage Tas was hamstrung on a technicality
- Distraught that Heritage precinct and heritage fabric for this 7 house section of old Bourke St with 3 buildings listed with not considered.

With an in-ordinate amount of work by me some Councillors were convinced to vote against the planners recommendation to approve the DA resulting in a tied decision. THEN the Councillor who at the meeting proposed the approval in the first instance moved a motion to disapprove the DA on discretionary provisions around heritage, building envelope and unreasonable interference with my living amenity. This motion was passed unanimously in my favour.

No appeal was entered into by the proponent who immediately put the house on the market, sold within a month and moved to another immediately one home. It was clearly a DA sought to market a property with a DA approved. Leaving my family and I with the diminution of our home and them with the on going effects of my distress.

The new opportunistic purchaser is a building company owner, and a property manager and developer. His daughter moved in and immediately began demolition work in the building with her father declared forcefully to that he was going to do the development any way, if not right now when his time was up to put in a new DA.

And that similar DA, under the new SPPs will;

- **likely not have the same discretions that exist now**
- **Nor will I have the requirement of being notified**
- **Nor will I have a manageable opportunity for appeal**

HERITAGE PROTECTION SOCIETY (TASMANIA) INC.
P.O. Box 513 Launceston Tasmania 7250

12 August 2022

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

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

To Whom It May Concern,

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

We thank you for the opportunity to comment on the review of the SPPs, noting that ALL SPPs are up for review. We also welcome the opportunity to recommend new provisions i.e. new codes and/ zones.

As contributors to Planning Matters Alliance Tasmania, we also endorse the Planning Matters Alliance Tasmania's (PMAT) submission, currently being completed for Local Historic Heritage Code, and more generally to the review of all of the other State Planning Provisions including which includes detailed submissions compiled by their expert planners regarding three key areas: the *Natural Assets Code*, the *Local Historic Heritage Code* and the residential standards.

We further note that the *State Planning Provisions Review Scoping Paper* states that the State Planning Office will establish reference and consultative groups to assist with detailed projects and amendments associated with the SPPs.

We request in the strongest possible terms that we should take part in these reference/consultative groups because the strength in a community relies on the degree to which a democratic and truly consultative process has occurred and will continue to occur during the period of operation. It is vital to have a community voice in these processes.

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

Planning affects every inch of Tasmania, on both private and public land, and our well-being: our homes, our neighbour's house, our local shops, work opportunities, schools, parks and transport corridors. Planning shapes our cities, towns and rural landscapes. Well thought through strategic planning can build strong, thriving, healthy and sustainable communities.

SPP Review Process

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

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

As per the State Planning Office website '*The SPPs are the statewide set of consistent planning rules in the Tasmanian Planning Scheme, which are used for the assessment of applications for planning permits. The SPPs contain the planning rules for the 23 zones and 16 codes in the Tasmanian Planning Scheme, along with the administrative, general, and exemption provisions.*

Regular review of the SPPs is best practice ensuring we implement constant improvement and keep pace with emerging planning issues and pressures.'

The SPP review is thus critically important and is a particular priority for Heritage Protection Society (Tasmania) Inc. as it is the best chance we have to improve planning outcomes until 2027.

Our key concerns and recommendations cover the following topics:

1. Ensuring the community has the right to have a say;
2. Community connectivity, health and well-being;
3. Aboriginal cultural heritage;
4. Heritage buildings and landscapes (Local Historic Heritage Code);
5. Tasmania's brand and economy;
6. National Parks and Reserves (Environmental Management Zone);
7. Healthy Landscapes (Landscape Conservation Zone);
8. Healthy Landscapes (Natural Assets Code);
9. Healthy Landscapes (Scenic Protection Code);
10. And, the additional provision for a code regulating ACCESS TO HERITAGE BUILDINGS FOR PEOPLE WITH DISABILITIES

1. Ensuring the community has the right to have a say

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

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

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

National Parks and Reserves and right of say

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

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

Community stakeholders are unable to obtain clear information on the review progress, timelines and the formal process regarding consultation. It appears that the State Government has abandoned this critically important review of the Reserve Activity Assessment.

Heritage Protection Society (Tasmania) Inc is concerned that proposed developments can be approved under the existing deeply flawed process without any opportunity for public comment and involvement. This is inconsistent with three of the most fundamental of the objectives of the *Land Use Planning and Approvals Act 1993*: "(a) *to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity… (c) to encourage public involvement in resource management and planning; and (e) to promote the sharing of responsibility for resource management and planning*

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

between the different spheres of Government, the community and industry in the State."

There is a current Petition (closing 4 August 2022) before the Tasmanian Parliament: 'Inadequate processes for assessing and approving private tourism developments in Tasmania's national parks' which has already attracted 2609 signatures and demonstrates the level of community concern. Amongst other concerns, the petition draws to the attention of the Tasmanian Parliament that '*The Reserve Activity Assessment (RAA) process is flawed, opaque and lacks genuine public consultation*' and calls on the '*Government to abandon the Expressions of Interest process and halt all proposals currently being considered under the Reserve Activity Assessment process until a statutory assessment and approval process for private tourism developments in Tasmania's national parks is implemented*'.

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

In 2017, the then Planning Minister Peter Gutwein acknowledged that the RAA process "needs review", but made no amendments to the SPPs in relation to developments in national parks.

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

Recommendation: That the State Government move quickly to **1.** finalise the RAA Review, including the exemptions and applicable standards for proposed use and development in the Environmental Management Zone **2.** To implement changes for a more open, transparent and robust process that is consistent with the Tasmanian Planning System *Land Use Planning and Approvals Act 1993* objectives. **3**. The Environmental Management Zone should be amended to ensure the public has a meaningful right of say and access to appeal rights - in particular by amending what are "permitted" and "discretionary" uses and developments in the Environmental Management Zone.

Residential areas and right of say

PMAT commissioned an architectural planning study (Figures 1 and 2) to demonstrate what is permitted in the General Residential Zone to visually demonstrate what can be built without public comment, appeal rights and notification to your adjoining neighbour.

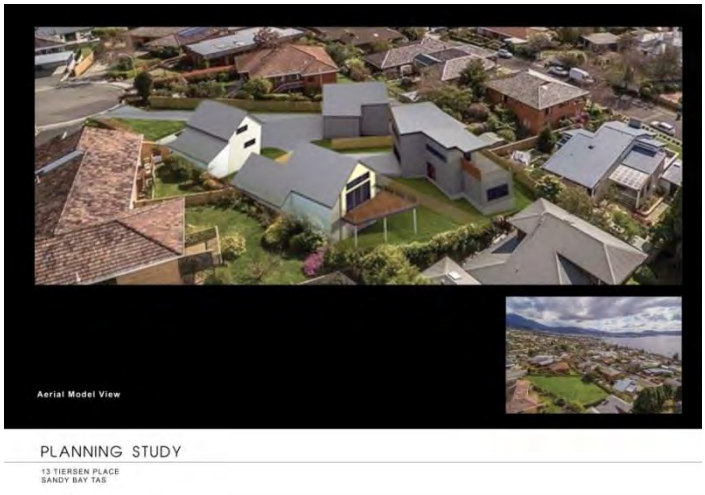

Figure 1 – PMAT's planning study demonstrates what is *Permitted* in the General Residential Zone. This is what is allowed to be built with no notification to your adjoining neighbour, no ability to comment, and no appeal rights.

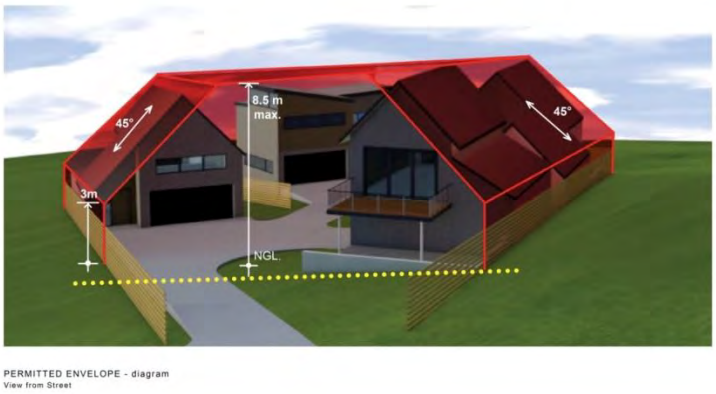

Figure 2 – PMAT's planning study demonstrates what is *Permitted* in the General Residential Zone. This is what is allowed to be built with no notification to your adjoining neighbour, no ability to comment and no appeal rights.

PMAT's planning study helps highlight issues that have led to confusion and anxiety in our communities including lack of say about the construction of multiple and single dwellings(especially by adjoining neighbours), bulk, height, overshadowing, loss of privacy, loss of sunlight/solar access, loss of future solar access for Solar PV arrays and Solar Hot Water panels on, north-east, north, and north-west -facing roofs, lack of private open space and inappropriate site coverage, overlooking private open space and blocking existing views

Recommendation: The SPPs should be amended to ensure the public has a meaningful right of say and access to appeal rights across the residential zones, in particular by amending what is "permitted" and "discretionary" use and development. Our planning system must include meaningful public consultation that is timely effective, open and transparent.

2. Aboriginal Cultural Heritage

The current SPPs have no provision for mandatory consideration of impacts on Aboriginal Heritage, including Cultural Landscapes, when assessing a new development or use that will impact on Aboriginal cultural heritage.

This means, for example, that under current laws, there is no formal opportunity for Tasmanian Aboriginal people to comment on or object to a development or use that would adversely impact their cultural heritage, and there is no opportunity to appeal permits that allow for adverse impacts on Aboriginal cultural heritage values.

While we acknowledge that the Tasmanian Government has committed to developing a new Tasmanian Aboriginal Cultural Heritage Protection Act to replace the woefully outdated *Aboriginal Heritage Act* 1975 (Tas), it is unclear whether the proposed "*light touch*" integration of the new legislation with the planning system will provide for adequate protection of Aboriginal Cultural heritage, involvement of Tasmanian Aboriginal people in decisions that concern their cultural heritage, and consideration of these issues in planning assessment processes.

We believe that the best efforts to achieve reconciliation in Tasmania will not be best-served by creating separate legislative protections and separate administration and assessment systems and procedures for aboriginal cultural heritage. Until all levels and categories of cultural heritage is identified, assessed and administered under a single unified and respectful system, it will never bring together the parties that will be necessary to create equality and reconciliation in Tasmania.

Indeed, it is unclear if the new Act will "*give effect to the Government's commitment to introducing measures to require early consideration of potential Aboriginal heritage impacts in the highest (State and regional) level of strategic planning, and in all assessments of rezoning proposals under the LUPA Act to ensure major planning decisions take full account of Aboriginal heritage issues*."[2]

If one must adopt the government's approach to separatist legislation and management, one way that the planning scheme and SPPs could ensure Aboriginal cultural heritage is better taken into account in planning decisions, is through the inclusion of an Aboriginal Heritage Code to provide mandatory assessment requirements and prescriptions that explicitly aim to conserve and protect Aboriginal cultural heritage. Assessment under this code could serve as a trigger for assessment under a new Tasmanian Aboriginal Cultural Heritage Protection Act. Until that Review is complete, it will be unclear how the new Act will give effect to the objective of cross reference with the planning scheme. **The planning scheme should therefore set up a mechanism that ensures maximum assessment, consideration and protection of Aboriginal heritage.**

We recognise that even this is an imperfect approach in that the proposed Aboriginal Heritage Code may not be able to fully give effect to the *United Nations Declaration of the Rights of Indigenous Peoples* by providing Tasmanian Aboriginal people the right to free, prior and informed consent about developments and uses that affect their cultural heritage or give them the right to determining those applications.

However, while the Tasmanian Government is in the process of preparing and implementing the new Aboriginal Cultural Heritage Protection Act, it will at least allow

[2] Jaensch, Roger (2021) *Tabling Report: Government Commitment in Response to the Review Findings, Aboriginal Heritage Act 1975: Review under s.23* – see here: https://nre.tas.gov.au/Documents/Tabling%20Report%20-%20Review%20of%20the%20Aboriginal%20Heritage%20Act.pdf

for consideration and protection of Aboriginal cultural heritage in a way that is not presently provided under any Tasmanian law.

Recommendation: The SPPs must provide better consideration of and protection to Aboriginal cultural heritage, at least such as via the creation of an *Aboriginal Heritage Code* and the cross reference and meaningful connection to a new Aboriginal Cultural Heritage Protection Act that will protect Aboriginal Cultural heritage.

3. **Heritage Buildings and Heritage Landscape Issues (**Local Historic Heritage Code)

Heritage Protection Society (Tasmania) Inc considers that limited protections for heritage places will compromise Tasmania's important cultural precincts and erode the heritage character of listed buildings. We understand that many Councils have not populated their Local Historic Heritage Codes as they are resource and time limited and there is a lack of data.

In addition to Local and State values, what about National values?

There are many sites with a range of heritage-type overlays – Natural, Aboriginal-Built/cultural, Landscape/significant trees/hedgerows, Archaelogical, AND at National, State and Local levels. The SPP's do not deal with how all of this can be co-ordinated and what the hierarchical/ranking situation is.

The National Heritage Convention (HERCON) conducted with the enthusiastic of Council of Australian Governments (COAG), produced12 ***Australian Heritage Places Principles*** and a series of ***Australian Heritage Standards*** designed to achieve a comprehensive heritage system, and a consistency for identifying, listing, protecting, and managing natural and cultural heritage places. Cultural heritage must include aboriginal heritage.

Importantly, roles and responsibilities of government and heritage agencies would ***Provide for and maintain a single point of public access to information about heritage places that have been identified and listed in an agreed format that needs minimum data, documentation and confidentiality requirements.***

The identification and recording processes must be separate processes to management considerations. There must be an ability for owners, custodians and community to be involved in key stages of the heritage listing of places, including the ***free*** ability to nominate places for independent assessment.

And, the establishment of a ***Heritage Ombudsman.***

PMAT engaged expert planner Danielle Gray of Gray Planning to draft a detailed submission on the Local Historic Heritage Code. The input from Gray Planning has provided a comprehensive review of the Local Historic Heritage Code and highlights deficiencies with this Code. There is considerable concern that the wording and criteria in the Local Historic Heritage Code will result in poor outcomes for sites in Heritage Precincts as well as Heritage Places that are individually listed. There is

also a lack of consistency in terminology used in the Local Historic Heritage Code criteria that promote and easily facilitate the demolition of and unsympathetic work to heritage places, Precinct sites and significant heritage fabric on economic grounds and a failure to provide any clear guidance for application requirements for those wanting to apply for approval under the Local Historic Heritage Code. The Local Historic Heritage Code also fails to provide incentives for property owners in terms of adaptive reuse and subdivision as has previously been available under Interim Planning Schemes. It is considered that the deficiencies in the current Local Historic Heritage Code are significant and will result in poor outcomes for historic and cultural heritage management in Tasmania.

A summary of the concerns and recommendations with respect to the review of the Local Historic Heritage Code by Gray Planning is outlined below.

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

- The name of the Local Historic Heritage Code should be simplified to 'Heritage Code'. This simplified naming is inclusive of historic heritage and cultural heritage rather than emphasising that heritage is about historic values only.
- Definitions in the Local Historic Heritage Code are currently brief and inexhaustive and do not align with definitions in the Burra Charter.
- There are no clear and easily interpreted definitions for terms repeatedly used such as 'demolition, 'repairs' and 'maintenance'.
- Conservation Processes (Articles 14 to 25) as outlined in the Burra Charter should be reflected in the Local Historic Heritage Code Performance Criteria. Issues covered in the Burra Charter are considered to be very important to maintaining historic and cultural heritage values such as setting, context and use are not mentioned in the Local Historic Heritage Code at all.
- The Local Historic Heritage Code does not deal with any place listed on the Tasmanian Heritage register and there is a hard line separate of local and state listed places. This fails to recognise the complexity of some sites which have documented state and local values.
- Failure to also consider state and local heritage values as part of the Local Historic Heritage Code will result in important issues such as streetscape and setting and their contribution to heritage values not being considered in planning decisions.
- The SPP Code does not provide a summary of application requirements to assist both Councils and developers. This approach results in a failure to inform developers of information that may be required in order to achieve compliance.
- The Objectives and Purpose of the Local Historic Heritage Code is too limited and should align with the *Historic Cultural Heritage Act 1995* in terms of purpose.

- The Exemptions as listed in the Local Historic Heritage Code are in some cases ambiguous and would benefit greatly from further clarification and basic terms being defined under a new Definitions section.
- Previously, some Interim Planning Schemes included special provisions that enabled otherwise prohibited uses or subdivision to occur so long as it was linked to good heritage outcomes. Those have been removed.
- Development standards for demolition are concerning and enable the demolition of heritage places and sites for economic reasons.
- Development standards use terminology that is vague and open to misinterpretation.
- The words and phrases 'compatible' and 'have regard to' are repeatedly used throughout the Local Historic Heritage Code and are considered to be problematic and may result in unsympathetic and inconsistent outcomes owing to their established legal translation.
- Performance criteria do not make definition between 'contributory' and 'non contributory' fabric. This may result in poor heritage outcomes where existing unsympathetic development is used as justification for more of the same.
- The Local Historic Heritage Code as currently written will allow for unsympathetic subdivision to occur where front gardens can be subdivided or developed for parking. This will result in loss of front gardens in heritage areas and contemporary development being built in front of and to obstruct view of buildings of heritage value.
- The Local Historic Heritage Code as currently written does not place limits on extensions to heritage places which enables large contemporary extensions that greatly exceed the scale of the heritage building to which they are attached to.
- Significant tree listing criteria are not always heritage related. In fact most are not related to heritage. Significant trees should have their own separate code.
- Currently there is no requirement for Councils to populate the Local Historic Heritage Code with Heritage Precincts of Places. Failure to do so is resulting in buildings and sites of demonstrated value being routinely destroyed.

Recommendation:

Burra Charter: Heritage Protection Society (Tasmania) Inc. recommends that the *Local Historic Heritage Code* in the Tasmanian Planning Scheme should be consistent with the objectives, terminology and methodology of the Burra Charter. We also generally endorse Gray Planning's recommendations regarding the *Local Historic Heritage Code as outlined above.*

Significant trees: Consistent with the Tasmanian Planning Commission's 2016 recommendations on the draft SPP's outlined on page 63[3] '*a stand-alone code for significant trees to protect a broader range of values be considered as an addition to the SPPs*'.

[3] *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016 – see page 63.*

4. Tasmania's Brand and Economy

We support the Tasmanian brand noting that a planning system which protects Tasmania's cherished natural and cultural heritage underpins our economy, now and into the future. We consider that the current SPPs threaten Tasmania's brand, as they place our natural and cultural heritage and treasured urban amenity at risk. The current planning system may deliver short-term gain but at the cost of our long-term identity and economic prosperity.

As Michael Buxton, former Professor of Environment and Planning, RMIT University, stated "*The Government argues the new [planning] system is vital to unlock economic potential and create jobs, but the state's greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these and the state has no future.*" Source: Talking Point: *Planning reform the Trojan horse*, The Mercury, Michael Buxton, December 2016 (attached in Appendix 1).

As per Brand Tasmania's 2019-2024 Strategic Plan, it could be argued that the SPPs are inconsistent with Brand Tasmania's main objectives which are to: '*To develop, maintain, protect and promote a Tasmanian brand that is differentiated and enhances our appeal and competitiveness nationally and internationally; To strengthen Tasmania's image and reputation locally, nationally and internationally; and To nurture, enhance and promote the Tasmanian brand as a shared public asset.*'

Recommendation: A brand lens should be placed over the top of the SPPs to ensure they are consistent with the objectives of Brand Tasmania. This consistency could also be facilitated via the Tasmanian Planning Policies.

5. Coastal land Issues

We consider that weaker rules for subdivisions and multi-unit development will put our undeveloped beautiful coastlines under greater threat. For example, the same General Residential standards that apply to Hobart and Launceston cities also apply to small coastal towns such as Bicheno, Swansea and Orford. The SPPs are not appropriate for small coastal settlements and will damage their character.

Recommendation: We urge stronger protections from subdivision, multi-unit development and all relevant residential standards that cover Tasmania's undeveloped and beautiful coastlines and small coastal settlements.

6. Coastal Waters

The SPPs only apply to the low water mark and not to coastal waters. The SPPs must be consistent with State Policies including the *State Coastal Policy 1996*. The *State Coastal Policy 1996 states that it applies to the 'Coastal Zone' which 'is to be taken as a reference to State waters and to all land to a distance of one kilometre*

inland from the high-water mark.'[4] *State waters are defined as the waters which extend out to three nautical miles*[5]*.*

Recommendation: The SPPs should again apply to coastal waters e.g. the Environmental Management Zone should be applied again to coastal waters.

7. National Parks and Reserves (Environmental Management Zone)

The purpose of the Environmental Management Zone (EMZ) is to '*provide for the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value',* and largely applies to public reserved land. Most of Tasmania's National Parks and Reserves have been Zoned or will be zoned Environmental Management Zone. Tasmanian Ratepayers Association Inc.'s main concerns regarding the Environmental Management Zone is what is permitted in this zone plus the lack of set-back provisions that fail to protect the integrity of for example our National Parks.

Permitted Uses

The EMZ allows a range of *Permitted* uses which we consider are incompatible with protected areas. ***Permitted* uses include:** Community Meeting and Entertainment, Educational and Occasional Care, Food Services, General Retail and Hire, Pleasure Boat Facility, Research and Development, Residential, Resource Development, Sports and Recreation, Tourist Operation, Utilities and Visitor Accommodation.

These uses are conditionally permitted, for example they are permitted because they have an authority issued under the *National Parks and Reserves Management Regulations 2019*, which does not guarantee good planning outcomes will be achieved and does not allow for an appropriate level of public involvement in important decisions concerning these areas.

Set Backs

There are no setback provisions for the Environmental Management Zone from other Zones as is the case for the Rural and Agricultural Zones. This means that buildings can be built up to the boundary, encroaching on the integrity of our National Parks and/or coastal reserves.

Recommendation: We recommend: **1.** All current Environmental Management Zone Permitted uses should be at minimum *Discretionary*, as this will guarantee public comment and appeal rights on developments on public land such as in our National Parks and Reserves. **2.** There should be setback provisions in the Environmental Management Zone to ensure the integrity of our National Parks and Reserves. Further to our **submission we also endorse the recommendations made by the Tasmanian National Parks Association as outlined in their submission to the 2022 SPP review here.**

[4] https://www.dpac.tas.gov.au/__data/assets/pdf_file/0010/11521/State_Coastal_Policy_1996.pdf
[5] *https://www.ga.gov.au/scientific-topics/marine/jurisdiction/maritime-boundary-definitions*

8. Healthy Landscapes (Landscape Conservation Zone)

The purpose of the Landscape Conservation Zone (LCZ) is to provide for the protection, conservation and management of landscape values on private land. However, it does not provide for the protection of *significant natural values* as was the original intent of the LCZ articulated on p 79 of the Draft SPPs Explanatory Document. With a Zone Purpose limited to protecting 'landscape values', LCZ is now effectively a Scenic Protection Zone for private land.

Recommendation: We endorse the recommendations in the 2022 SPP review submission: '*State Planning Provisions Scoping Paper re Landscape Conservation Zone provisions by Conservation Landholders Tasmania'* which calls for a Zone to properly protect natural values on private land.

9. Healthy Landscapes (Natural Assets Code - NAC)

The Natural Assets Code (NAC) fails to meet the objectives and requirements of the *Land Use Planning and Approvals Act 1993* (LUPAA) and does not adequately provide for the protection of important natural values (particularly in certain zones) and requires detailed review.

A key objective of LUPAA is to promote and further the sustainable development of natural and physical resources, and as an integral part of this, maintain ecological processes and conserve biodiversity. More specifically, s15 of LUPAA requires the SPPS, including the NAC, to further this objective.

As currently drafted, the NAC reduces natural values to a procedural consideration and undermines the maintenance of ecological processes and conservation of biodiversity. As a result, the, NAC fails to adequately reflect or implement the objectives of LUPAA and fails to meet the criteria for drafting the SPPs.

There are also significant jurisdictional and technical issues with the NAC, including:

- poor integration with other regulations, particularly the Forest Practices System, resulting in loopholes and the ability for regulations to be played off against each other;
- significant limitations with the scope of natural assets and biodiversity values considered under the NAC, with landscape function and ecosystem services and non-threatened native vegetation, species and habitat largely excluded;
- wide-ranging exemptions which further jurisdictional uncertainty and are inconsistent with maintenance of ecological processes and biodiversity conservation;
- extensive exclusions in the application of the Natural Assets Code through Zone exclusion relating to the Agriculture, Industrial, Commercial and Residential Zones and limiting biodiversity consideration to mapped areas based on inaccurate datasets which are not designed for this purpose. As a consequence, many areas of native vegetation and habitat will not be

assessed or protected, impacting biodiversity and losing valuable urban and rural trees;
- poorly defined terms resulting in uncertainty;
- a focus on minimising and justifying impacts rather than avoiding impacts and conserving natural assets and biodiversity
- inadequate buffer distances for waterways, particularly in urban areas; and
- watering down the performance criteria to 'having regard to' a range of considerations rather than meeting these requirements, which enables the significance of impacts to be downplayed and dismissed.

As a consequence, the NAC not only fails to promote sustainable development, maintain ecological processes and further biodiversity conservation, it also fails to achieve its stated purpose. The NAC as drafted also fails to provide aspiration to improve biodiversity conservation and can only lead to a reduction in biodiversity and degradation of natural assets.

In 2016, the Tasmanian Planning Commission via its report, *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016*, recommended that the Natural Assets Code be scrapped in its entirety, with a new Code developed after proper consideration of the biodiversity implications of proposed exemptions, the production of adequate, State-wide vegetation mapping, and consideration of including protection of drinking water catchments.

The then Planning Minister Peter Gutwein rejected that recommendation. Some amendments were made to the Code (including allowing vegetation of local significance to be protected), but no review of exemptions was undertaken. We understand that while no state-wide mapping was provided, the Government provided $100,000 to each of the three regions to implement the SPPs – the southern regional councils pooled resources to engage an expert to prepare biodiversity mapping for the whole region.

Note that despite concerns raised by TasWater, no further amendments were made to protect drinking water catchments.

Recommendation: The NAC does not adequately provide for the protection of important natural values (particularly in certain zones) and requires detailed review.

We support PMAT's detailed submission, that will be attached to the broad submission, regarding the *Natural Assets Code* which has been prepared by expert environmental planner Dr Nikki den Exter. Nikki den Exter completed her PhD thesis investigating the role and relevance of land use planning in biodiversity conservation in Tasmania. Nikki also works as an Environmental Planner with local government and has over 15 years' experience in the fields of biodiversity conservation, natural resource management and land use planning. As both a practitioner and a researcher, Nikki offers a unique perspective on the importance of land use planning in contributing to biodiversity conservation. The detailed submission has also been

reviewed by PMAT's *Natural Assets Code Review Sub-Committee* which comprises planning experts, consultants and community advocates with relevant experience and knowledge.

10. Healthy Landscapes (Scenic Protection Code)

The purpose of the Scenic Protection Code is to recognise and protect landscapes that are identified as important for their scenic values. The Code can be applied through two overlays: scenic road corridor overlay and the scenic protection area overlay. However, We consider that the Scenic Protection Code fails to protect our highly valued scenic landscapes. There is an inability to deliver the objectives through this Code as there are certain exemptions afforded to use and development that allow for detrimental impact on landscape values. Concerns regarding the Scenic Protection Code have also been provided to the Tasmanian Planning Commission from the Glamorgan Spring Bay Council on the SPPs in accordance with section 35G of LUPAA.

It should also be noted, that not only does the Code fail to protect scenic values, we understand that in many instances Councils are not even applying the Code to their municipal areas. Given that Tasmania's scenic landscapes are one of our greatest assets and point of difference, this is extremely disappointing. Local Councils should be given financial support to undertake the strategic assessment of our scenic landscapes so they can populate the Scenic Protection Code within their municipal area via either their LPS process or via planning scheme amendments.

Figure 3 - Rocky Hills, forms part of the Great Eastern Drive, one of Australia's greatest road trips. The Drive underpins east coast tourism. As per www.eastcoasttasmania.com states '*this journey inspires rave reviews from visitors*

and fills Instagram feeds with image after image of stunning landscapes and scenery'. The Rocky Hills section of the road is subject to the Scenic road corridor overlay but has allowed buildings which undermine the scenic landscape values.

Recommendation: The Scenic Protection Code of the SPPs should be subject to a detailed review, with a view to providing appropriate use and development controls and exemptions to effectively manage and protect all aspects of scenic landscape values.

11. Access to Heritage Buildings for People with Disabilities

The current SPPs have no provision for mandatory consideration of impacts on heritage buildings to provide sensitive designs to allow access for people with disabilities.

The need to provide access to buildings for people with disabilities is a requirement under the Disability Discrimination Act, but there is also a need to conserve our heritage places and not to alter them in a way that adversely affects their significance.

This conflict is capably illustrated with appropriate solutions in the National publication ***ACCESS TO HERITAGE BUILDINGS FOR PEOPLE WITH DISABILITIES*** by Eric. J. Martin of COX Architects and Planners Ref. ISBN 0-646-34978-3

Related General Comments/Concerns regarding the SPPs

Heritage Protection Society (Tasmania) Inc. also supports others with a range of concerns relating to the SPPs more broadly:

1. Amendments to SPPs - 35G of LUPAA
2. The Process for making Minor and Urgent Amendments to SPPs
3. The SPPs reliance on outdated Australian Standards
4. The SPPs vague and confusing terminology
5. The SPPs were developed without a full suite of State Policies
6. Increased complexity
7. Tasmanian Spatial Digital Twin
8. Difficult to Protect local Character via the LPS process

1. Amendments to SPPs - 35G of LUPAA

Under Section 35 G of the *Land Use Planning and Approvals Act 1993*, see here, a planning authority may notify the Minister as to whether an amendment of the SPPs is required. However, the Act does not set out a process that deals with the 35G issues.

Recommendation: 1. It is our view that the *Land Use Planning and Approvals Act 1993* should set out a transparent and robust process for dealing with 35G issues. **2.**

Consistent with the Objectives of the *Land Use Planning and Approvals Act 1993* communities that are going through their local LPS process, should be allowed and encouraged by their local Council to comment not only on the application of the SPPs but on any issues they may have in regards to the contents of the SPPs. It is logical that this is when communities are thinking about key concerns, rather than only having the opportunity to raise issues regarding the content of the SPPs during the statutory five year review of the SPPs we recommend the *Land Use Planning and Approvals Act 1993* should be amended to reflect this.

2. Process for Making Minor and Urgent Amendments to SPPs

In 2021, the Tasmanian Government amended the *Land Use Planning and Approvals Act 1993* to change the process for making minor amendments to the SPPs and introduce a separate process for making urgent amendments to the SPPs. These amendments give more power to the Planning Minister with no or a very delayed opportunity for public comment. The definition of both a minor and urgent amendment is also unclear. In our view, amendments processes provide the Minister with too much discretion to make changes to the SPPs and fail to adopt appropriate checks and balances on these significant powers.

Also, legal advice is that when the Tasmanian Planning Policies are introduced, the minor amendment process does not allow for changes to bring the SPPs into line with Tasmanian Planning Policies.

Recommendation: 1. Amending the *Land Use Planning and Approvals Act 1993* to provide a clear definition of what constitutes a *minor* and *urgent* SPP amendment. 2. Ensure that the process for creating a minor or urgent amendment includes meaningful public consultation that is timely effective, open and transparent.

3. The SPPs Vague and Confusing Terminology

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

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

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

Recommendation: That the terminology and construction of the SPPs be reviewed to provide clearer definitions and shift the emphasis under performance criteria towards demonstrated compliance with stated objectives.

4. **The SPPs were developed with few State Policies**

The SPPs are not about strategic or integrated planning, but are more aptly described as development controls. The creation of the SPPs should have been guided by a comprehensive suite of State Policies. This did not happen before the development of the SPPs by the Planning Reform Task Force. Hence the SPPs exist without a vision for Tasmania's future.

The SPPs are still not supported by a comprehensive suite of State Policies to guide planning outcomes. In 2016, the Tasmanian Planning Commission acknowledged, in particular, the need to review the State Coastal Policy as a matter of urgency, but no action has been taken. Other areas without a strategic policy basis include integrated transport, population and settlements, biodiversity management, tourism and climate change.

In 2018, instead of developing a suite of State Policies, the State Government created a new instrument in the planning system – the Tasmanian Planning Policies. As at 2022, the Tasmanian Planning Polices are still being developed. The Tasmanian Planning Policies are expected to be lodged with the Tasmanian Planning Commission by the end of 2022. The Tasmanian Planning Commission will undertake its own independent review, including public exhibition and hearings.

Heritage Protection Society (Tasmania) Inc.'s **position has been that we need State Policies rather than Tasmanian Planning Polices** because they are signed off by the Tasmanian Parliament and have a whole of Government approach and a broader effect. The Tasmanian Planning Polices are only signed off by the Planning Minister and only apply to the Tasmanian Planning Scheme and not to all Government policy and decisions.

5. Increased Complexity

The Tasmanian Planning Scheme is very complex, is only available in a poorly bookmarked pdf and is very difficult for the general public to understand. This creates real difficulties for local communities, governments and developers with the assessment and development process becoming more complex rather than less so. Community members cannot even find the Tasmanian Planning Scheme online because of the naming confusion between the Tasmanian Planning Scheme and the

State Planning Provisions. PMAT often fields phone enquiries about how to find the Tasmanian Planning Scheme.

Repeated amendments to Tasmania's planning laws and thus how the Tasmanian Planning Scheme is being rolled out is unbelievably complicated. From a community advocacy point of view, it is almost impossible to communicate the LPS process to the general public. For example, see PMAT Media Release: Solicitor General's Confusion Highlights Flawed Planning Change Nov 2021.

Recommendations: It is recommended that illustrated guidelines are developed to assist people in understanding the Tasmanian Planning Scheme. It would be helpful if the Tasmanian Planning Scheme could also be made available as with previous interim schemes through iPlan (or similar) website. This should also link the List Map so there is a graphical representation of the application of the Tasmanian Planning Scheme (which expands when new LPSs come on board). It should also be noted, that for the average person, iPlan is difficult to use.

Recommendations: Create a user friendly version of the Tasmania Planning Scheme such as the provision of pdfs for every LPS and associated maps. IPlan is impenetrable for many users.

6. Tasmanian Spatial Digital Twin

Digital Twin, a digital story telling tool, would revolutionise planning data and public consultation in Tasmania. The Spatial Digital Twin could bring together data sources from across government including spatial, natural resources and planning, and integrate it with real time feeds from sensors to provide insights for local communities, planners, designers and decision makers across industry and government.

It enables communities, for example, to gain planning information about their streets, neighbourhoods and municipalities. It would allow the general public to visualise how the SPPs are being applied to how a development looks digitally before it is physically built, making it easier to plan and predict outcomes of infrastructure projects, right down to viewing how shadows fall, or how much traffic is in an area.

See a NSW Government media release by the Minister for Customer Service and Digital Government: *Digital Twin revolutionises planning data for NSW*, December 2021.

From a community point of view, it is almost impossible to gain a landscape/municipality scale understanding of the application of the SPPs from two dimensional maps. One of PMAT's alliance member groups, Freycinet Action Network, requested the shape files of Glamorgan Spring Bay Council's draft LPS but was unable to obtain a copy. This would have enabled FAN to better visualise how the LPS is being applied over the landscape.

Recommendation: To introduce a Tasmanian Spatial Digital Twin to aid community consultation with regards to the application of the Tasmanian Planning Scheme via each Council's Local Provisions Schedule process and public consultation more broadly.

7. Difficult to Protect local Character via the LPS process

In 2016, the Tasmanian Planning Commission acknowledged[6] that the SPPs were designed to limit local variation, but queried whether a "one-size fits all" model will deliver certainty:

"*If local character is a point of difference and an attribute of all Tasmanian places, unintended consequences may flow from denying local differences. The 'one size fits all' approach is likely to result in planning authorities seeking more exceptions through the inclusion of particular purpose zones, specific area plans and site-specific qualification*."

In My/our community group name *view the SAP/PPZ/SSQ threshold are too high. As the SAP/PPZ/SSQ are the mechanisms to preserve character, possibly the only way to preserve character, in the Tasmanian Planning Scheme, it is essential that they or like mechanisms, are available to maintain local character. Common standards across the Zones whilst being efficient, could destroy the varied and beautiful character of so much of this state.*

It is also extremely disappointing that Local Area Objectives and Character Statements such as Desired Future Character Statements have been removed from the Tasmanian Planning Scheme. Currently, there is nothing to guide Councils when making discretionary decisions, (unless in Discretionary Land Use decision as at 6.10.2b).

Recommendation: Amend section 6.10.2 of the SPPs to read:

6.10.2 In determining an application for a permit for a Discretionary use "**and development**" the planning authority must, in addition to the matters referred to in sub-clause 6.10.1 of this planning scheme, "**demonstrate compliance with"**:

(a) the purpose of the applicable zone;

(b) any relevant local area objective for the applicable zone;

(c) the purpose of any applicable code;

(d) the purpose of any applicable specific area plan;

(e) any relevant local area objective for any applicable specific area plan; and

(f) the requirements of any site-specific qualification, but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised.

[6] See page 17: *Draft State Planning Provisions Report: A report by the Tasmanian Planning Commission as required under section 25 of the Land Use Planning and Approvals Act 1993, 9 December 2016.*

Yours sincerely,

Lionel J. Morrell Architect
President, Heritage Protection Society (Tasmania) Incorporated
Email: [redacted] Mobile: [redacted]

Enc, by separate cover

ACCESS TO HERITAGE BUILDINGS FOR PEOPLE WITH DISABILITIES

Curriculum Vitae Lionel J. Morrell

Appendix 1 - Talking Point: *Planning reform the Trojan horse*, The Mercury, Michael Buxton, December 2016

AUSTRALIAN states have deregulated their planning systems using a national blueprint advanced largely by the development industry. Tasmania is the latest.

Planning system change is always disguised as reform, but the real intent is to advantage the development industry.

In Tasmania, this reform introduces a single statewide planning system. This allows the government to dictate planning provisions regardless of differences in local conditions and needs.

State provisions can easily be changed. In some states, standard statewide provisions have been weakened over time to reduce citizen rights and local planning control.

The Tasmanian planning minister will be able to alter them without reference to Parliament, and potentially gain greater power from the Planning Commission and councils. It is yet to be seen whether the government will permit strong local policy to prevail over state policy.

Some states have allowed a wide range of applications to be assessed without need for permits under codes and by largely eliminating prohibited uses. The Tasmanian system has continued much of the former planning scheme content, but introduces easier development pathways.

An application for development or use need not be advertised if allowed without a permit or considered a permitted activity.

Alternative pathways allow public comment and appeal rights, but these often reduce the level of control.

Serious problems are likely to arise from the content of planning provisions.

For example, while the main residential zone, the General Residential Zone, mandates a minimum site area of 325 square metres and height and other controls for multi-dwelling units, no minimum density applies to land within 400m of a public transport stop or a business or commercial zone. This will open large urban areas to inadequately regulated multi-unit development.

The main rural zones allow many urban uses, including bulky goods stores, retailing, manufacturing and processing, business and professional services and tourist and visitor accommodation complexes.

This deregulation will attract commercial uses to the rural edges of cities and the most scenic landscape areas. Such uses should be located in cities or in rural towns to benefit local jobs instead of being placed as isolated enclaves on some of the state’s most beautiful landscapes.

Use and development standards will prove to be useless in protecting the agricultural, environmental and landscape values of rural zones from overdevelopment.

Fast tracking inappropriate developments will force the Tasmanian people to pay a high price for the individual enrichment of a favoured few.

Codes are a particular concern. The heritage code is intended to reduce the impact of urban development on heritage values.

However, performance criteria for demolition are vague and development standards criteria do not provide adequate protection.

The nomination of heritage precincts and places is variable, leaving many inadequately protected.

The National Trust and other expert groups have raised similar concerns.

The potential of the Natural Assets and the Scenic Protection codes to lessen the impacts of some urban uses on rural and natural areas also will be compromised by vague language, limitations and omissions.

Interminable legal arguments will erupt over the meaning and application of these codes, with the inevitable result that development proposals will win out.

The State Government can learn from the disastrous consequences of other deregulated planning systems. It should strengthen regulation and listen to the public to ensure a state system does not destroy much that will be vital for a prosperous and liveable future for citizens.

The Government argues the new system is vital to unlock economic potential and create jobs, but the state's greatest economic strengths are the amenity and heritage of its natural and built environments. Destroy these and the state has no future.

While planning for the future is complex, the hidden agendas of planning reform are evident from the massive impacts from unregulated development in other states.

Fast tracking inappropriate developments will force the Tasmanian people to pay a high price for the individual enrichment of a favoured few.

Tasmania's cities, towns, scenic landscapes and biodiversity are a state and national treasure. Lose them and the nation is diminished.

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ACCESS TO HERITAGE BUILDINGS FOR PEOPLE WITH DISABILITIES

Prepared by
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APPENDICES:

1. INTRODUCTION

1.1 BACKGROUND

Access to heritage properties should be about a commitment to create an integrated use and enjoyment of heritage places for all people, including people with mobility or sensory impairments, the elderly, parents with small children, and anyone who is temporarily disabled as a result of illness of injury.

The need to provide access to buildings for people with disabilities is a requirement under the Disability Discrimination Act, but there is also a need to conserve our heritage places and not alter them in such a way that adversely affects their significance. There is a potential conflict between these two requirements which initiated this report. The study is in an endeavor to set down some principles and policies that assist people in meeting both requirements of providing access, but preserving our heritage.

This report is being funded by a National Estate Grant from the Australian Heritage Commission. It is being auspiced by ACROD. It is intended for use by all people associated with access and heritage buildings including authorities, community groups, architects, owners, managers and users.

The terms of reference for this report were:

- to prepare a report setting out the research undertaken;
- to develop a set of principals and guidelines for the sympathetic adaptation of heritage buildings for access and use by people with disabilities.

The methodology used was to

- set out responsibilities under the Australian Heritage Commission (AHC) Act and the Disability Discrimination Act (DDA), what has precedence and how conflicts will be resolved;
- study overseas work in the area especially England the United States from reports and contact with them;
- involve contact with key players such as AHC, Disability Discrimination Commissioner, ACROD:
- produce a research report that sets down principles and guidelines on the issue and how to resolve it;
- be circulated through RAIA, ACROD, AHC, NT plus state heritage and ACROD authorities.

1.2 KEY DEFINITIONS

The following key definitions are used throughout this report. Further definitions and abbreviations refer to Appendix 1.

Disability — any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being *(International Classification of Impairment, Disabilities & Handicaps)*

Place — means a site, area, building or other work, group of buildings or other works together with associated contents and surroundings *(Australia ICOMOS 'Burra Charter' Article 1)*

Heritage — refers to cultural significance which is "aesthetic, historic, scientific or social value for past, present or future generations" which has been recognized by inclusion in a register such as the Australian Heritage Commission's Register of the National Estate or a State/Territory Register of significant places.

1.3 TYPES OF DISABILITY

The DDA uses a very broad definition of 'disability' and covers disabilities which are physical, intellectual, psychiatric, sensory and neurological. *(Ref 15 p.18)*

This report includes access requirements for people with:

Physical Disabilities: These are users of wheelchairs, walking aids or those who are restricted from travelling long distances.

Vision Impairments: These include people who are blind or having varying degrees of impaired vision.

Impaired Hearing: These include people who are deaf or have impaired hearing.

Intellectual and Psychiatric Disabilities: These are people with any form of mental disorder.

The 1993 Australian Bureau of Statistics provided the following data on disabilities. These are useful figures to appreciate the number of people in our community with some kind of disability.

Relevant Figures *(Based on a population of 17,648,000)*

Total number of people with a disability in Australia 1993	3,176,700 (18% population)
Total number with a handicap	2,500,200 (14.2%)
Total number with a mobility handicap	1,827,500 (10.4%)
Number of users of all mobility aids (including wheelchairs) (approximately 1 in 36 people)	499,300 (2.8%)

Number using sticks, frames, crutches (An indicator of people with ambulatory disabilities)	336,500 (1.9%)
Number of wheelchair users n Australia (Approximately 1 in 200 people)	84,000 (.48%)
Number using hearing aids (Approximately 1 in 69 people)	259,500 (1.5%)
Number of people with hearing impairments	999,800 (5.7%)
Number of people with sight disability (17,000 total loss, 261,700 partial)	278,700 (1.6%)
Number using white or laser canes	3,340
Number guide dogs	620

Trends

1981 13.2% had a disability, 8.6% a handicap;
1988 15.6% had a disability, 13% a handicap;
1993 18% have a disability, 14.2% a handicap

The largest part of this increase is due to the ageing of the Australian population, though the Australian Bureau of Statistics suggest that some of the increase between 1981 and 1988 may have been due to attitudinal change.

Disability Increases with Age

Disability and handicap are strongly related to age:

- Between 15-25 years, 7.4% have a disability;
- Of 15-64 year olds (working age), 15% have a disability;
- By 60-64 years, 36.4% have a disability;
- By 75 years and over, the rate has risen to 66.7%.

State Variations

Because of the strong relationship between age and disability, there are state variations. However, for this study the differences are not relevant.

1.4 NATIONAL & STATE REQUIREMENTS

The report only discusses the National requirements set down in the Disability Discrimination Act (DDA) and the Australian Heritage Commission Act (AHCA). Within each state/territory in Australia there are similar legislation usually through Human Rights & Equal Opportunities Authorities and Heritage Authorities. Although the legislative base differs with each state/territory, the principles and guidelines set down in this report should apply to both the National and State/Territory levels. For precise legal interpretation and application at state/territory level relevant local Acts and authorities should be contacted.

1.5 ACKNOWLEDGMENTS

There have been numerous people and organisations who have assisted in the production of this report. These are listed in Appendix 2.

The organisations who reviewed the draft report and provided comments are also thanked. These are also listed in Appendix 2.

In particular the Australian Heritage Commission is thanked for making the grant available and ACROD for supporting the report.

1.6 DISCLAIMER

The report represents the views of its author Eric J. Martin of Cox Architects & Planners.

The inclusion of comments, interpretations, recommendations are the views of the author and are not necessarily those of either Cox Architects & Planners, the Australian Heritage Commission, ACROD or any other authority.

2. LEGISLATION

2.1 GENERAL

This chapter outlines current provisions of Australian Government legislation, then by way of information refers to some overseas legislation.

It is not uncommon that there is some latitude in or limitations on the accessibility of places of identified and listed heritage value where access provisions would threaten or destroy the significance of the heritage place. In some cases any relaxation of legislation is restricted to places where the primary purpose of the building is preservation. *(Ref 30 p.60)*

The Building Codes and Australian Standards apply to new building work and changes to existing buildings.

Such buildings are required to be accessible especially if they are public buildings. There are therefore situations where changes to heritage buildings need to comply with the Building Code of Australia (BCA) and be accessible.

Alternative methods to provide access but retain the significance of a place may need to be investigated.

2.2 DISABILITY DISCRIMINATION ACT (DDA)

The Disability Discrimination Act 1992 is a piece of Commonwealth legislation which creates a new context for service provision. The Act requires that people with disabilities be given equal opportunity to participate in and contribute to the full range of social, political and cultural activities. The DDA is not about limited or parallel access, but promotes and protects equality of access - physical, informational and attitudinal.*(Ref 14 p. iii)*

The DDA "makes it unlawful to discriminate against a person on the basis of a disability that he or she has, had, may have in the future or is assumed to have. It also makes it unlawful to discriminate against a person on the basis that his or her associate (partner, carer, friend or family member) has a disability." *(Ref 15 p.8)*

It also makes it unlawful to discriminate in the provision of goods and services or facilities against people on the basis that they have or may have a disability. *(Ref 14 p.3)*

Disability ***(Ref 15 p.39)***

Under the DDA Section 4, disability in relation to a person means:

a) total or partial loss of the person's bodily or mental functions; or

b) total or partial loss of a part of the body; or

c) the presence in the body of organisms causing disease or illness; or

d) the presence in the body of organisms capable of causing disease or illness; or

e) the malfunction, malformation or disfigurement of a part of the person's body; or

f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behavior; and includes a disability that:

(i) presently exists; or
(ii) previously existed but no longer exists; or
(iii) may exist in the future; or
(iv) is imputed to a person.

Action Plans (sometimes referred to as an Access Plan)

It is not a requirement of the DDA that Action Plans are prepared. However, if they are, then the DDA (Section 61) specifies that the Plan must include provisions relating to:

(a) the devising of policies and programs to achieve the objects of this Act; and

(b) the communication of these policies and programs to persons within the service provider; and

(c) the review of practices within the service provider with a view to the identification of any discriminatory practices; and

(d) the setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed; and

(e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph a); and

(f) the appointment of persons within the service provider to implement the provision referred to in paragraphs a) to e) (inclusive).

Also Section 62 of the DDA states:

The action plan of a service provider may include provisions, other than those referred to in Section 61, that are not inconsistent with the objects of this Act.

2.3 AUSTRALIAN HERITAGE COMMISSION ACT 1975 (AHCA)

The Australian Heritage Commission

The Australian Heritage Commission identifies the National Estate and is the Commonwealth Government's adviser on the protection of Australia's National Estate.

This term, 'National Estate', comprises those places in the natural,. Historic, Aboriginal or Torres Strait Islander environments which have aesthetic, historic, scientific or social significance, or other special value, for present and future generations.

The Register of the National Estate

The Register is the national inventory of places which have been identified as components of the National Estate.

Entry in the Register gives some protection to a place under Section 30 of the Act. This Section, which is issued in detail below, aims to ensure that the Federal Government does not unnecessarily damage Australia's heritage.

Section 30 however only applies to the Federal Government, and listing a place in the Register does not provide any direct legal constraints or controls over the actions of State or local government, or of private owners.

Section 30

Section 30 of the Australian Heritage Commission Act imposes several obligations on Commonwealth Ministers, department, authorities and companies owned by the Commonwealth to protect places in the Register of the National Estate. It comes into force when a place is either in the Register of the National Estate, or is on the Interim List of the Register.

30(1) Each Minister shall give all such directions and do all such things as, consistently with any relevant laws, can be given or done by him for ensuring that the Department administered by him or any authority of the Commonwealth in respect of which he has ministerial responsibilities does not take any action that adversely affects, as part of the national estate, a place that is in the Register unless he is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken and shall not himself take any such action unless he is so satisfied.

30(2) Without prejudice to the application of subsection (1) in relation to action to be taken by an authority of the Commonwealth, an authority of the Commonwealth shall not take any action that adversely affects, as part of the national estate, a place that is in the Register unless the authority is satisfied that there is no feasible and prudent alternative, consistent with any relevant laws, to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken.

30(3) Before a Minister, A Department or an authority of the Commonwealth takes any action that might affect to a significant extent, as part of the national estate, a place that is in the Register, the Minister, Department or authority, as the case may be, shall inform the Commission of the proposed action and give the Commission a reasonable opportunity to consider and comment on it.

30(3a) Where the Commission is informed of a proposed action by a Minister, Department or authority, the Commission shall, as soon as practicable, provide its comments on the proposed action to the Minister, Department or authority (as the case may be).

30(4) For the purposes of this section, the making of a decision or recommendation (including a recommendation in relation to direct financial assistance granted, or proposed to be granted to a State) the approval of a program, the issue of a licence or the granting of a permission shall be deemed to be the taking of action and, in the case of a recommendation, if the adoption of the recommendation would adversely affect a place, the making of the recommendation shall be deemed to affect the place adversely.

Conservation Obligation 1

Commonwealth agencies, including Ministers, departments and authorities must not take any action that has an averse effect on any part of the National Estate unless there is no feasible and prudent alternative. The decision whether an action can be taken or not is a decision for the agency, not the Commission. (Refer to subsection 30(1) or 30(2)).

Conservation Obligation 2

If a Commonwealth agency finds that it must take an action which will have an adverse effect on part of the National Estate, because there is no feasible and prudent alternative, then the agency must take all reasonable measures to minimise the adverse effect. (Refer to subsection 30(1) or 30(2)).

Referral Obligation

Before a Commonwealth agency takes any action that might affect to a significant extent a place which is part of the national estate, it must advise the Commission and give the Commission a reasonable opportunity to consider and comment on it. The commission's role is to provide expert advice, it does not take the decision-making role away from the agency (Refer to subsection 30(3)).

What is an 'adverse' or 'significant' affect?

An action is considered to have an adverse affect on a place in the Register if it diminishes or destroys any of the national estate values which have led to its inclusion in the Register.

It is often more difficult to assess whether an action will affect the national estate values of a place in the Register to a significant extent. The Commission, however, advises Commonwealth bodies to err on the side of caution when assessing the potential impact of actions on registered place. It must be remembered here too that a 'significant extent' does not necessarily have to be something bad to warrant consideration under the Act.

2.4 ANALYSIS OF ADA & AHCA

The view of the Human Rights and Equal Opportunities Commission (HREOC) is "that the Disability Discrimination Act 1992 will override commonwealth/state/territory heritage legislation in the event of any inconsistencies". *(Ref 8)*

Detailed advice from the Attorney General's Department on the implications of trying to meet both the DDA and AHCA is outlined below: *(Ref 2)*

2.4.1 The DDA

The objects of the DDA, as stated in section 3, are:

a) to eliminate, as far as possible, discrimination against persons on the grounds of disability in the areas of:

   i. work, accommodation, education, access to premises, clubs and sport; and
   ii. the provision of goods, facilities, services and land; and
   iii. the existing laws; and
   iv. the administration of Commonwealth laws and programs; and

b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and

c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

To achieve these statutory objects, the DDA contains a number of strategies. These include:

- making discrimination on the basis of disability unlawful;
- providing for independent investigation and conciliation and determination of complaints about discrimination;
- the development of Disability Standards (see s.31);
- the development of Action Plans (see Part 3).

Discrimination on the basis of disability is made unlawful in a range of areas. In terms of the issues arising here, the relevant areas of discrimination include:

- access to premises (s.23);
- employment (s.15);
- access to goods, services and facilities (s.24).

2.4.2 DDA & Access

The provision of greatest importance in relation to the AHCA is of course section 23 of the DDA, dealing with access to premises. That section provides as follows:

> 23(1) It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates:
>
> a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or

The parliamentary debates following the second reading of the Bill indicate the legislation was generally favoured by all Ministers who saw it as giving legislative substance to the National Estate by setting up the Commission on a broad and representative basis to:

- advise the Commonwealth Government and the Parliament on the condition of the National Estate and how it should be protected;
- establish and maintain a register of the things that make up the National Estate; and
- require that the Australian Government, its Departments and agencies and all those acting on its behalf respect the National Estate and do all things that they can to take no action to adversely affect it.

The Commission was and is seen as a policy and advisory body arranging and sponsoring research giving advice to the Government of the day on matters relating to the preservation of the National Estate and leaving the detailed administration to other Commonwealth Departments.

2.4.5 Section 30

Section 30 of the AHCA is the main 'enforcement' section. Its provisions are central to the consideration of the main issues dealt with in this advice (Refer Section 2.3).

This section places an obligation on the Federal Government, Ministers, Departments and authorities not to take any action that adversely affects, as part of the National Estate, a place that is listed on the Register, unless no feasible and prudent alternative exists to the taking of that action (sub-ss. 30(1) and (2)).

Further, before a Minister, Department or an authority of the Commonwealth takes any action that "might affect to a significant extent," as part of the National Estate, a place that is in the Register, the Minister, Department or authority must inform the Commission of the proposed action and give the Commission a reasonable opportunity to consider and comment upon it (sub-s.30(3)). The obligation arises whenever there might be a *significant* effect even though such an effect might not be *adverse.*

Under section 3 of the AHCA, the term "authority of the Commonwealth" includes:

a) all authorities and bodies (not being companies or societies) established or appointed under the laws of the Commonwealth or of a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island; and

b) a company in which the whole of the shares or stock, or shares and stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth.

Where the effect is considered to be unavoidable, there is an obligation that action be taken to minimise the effect of the activities. The Commission must be informed and be given a reasonable opportunity to consider and comment on any action that might affect the National Estate item to a significant extent. The Act does not make the Australian Heritage Commission's views on these issues legally conclusive, though in practice, it may be prudent for a decision-maker to give substantial weight to the Commission's assessment.

Mr. Colin Griffiths (Director) and Mr. Robert Bruce (Officer-in-Charge of the Register of the Commission) addressed issues of importance concerning the work of the Commission in an article edited by Associate Professor Ben Boer, published in June 1985 in the Environmental and Planning Law Journal. In that article, the Commission acknowledged that 'there are no provisions in the Act (which) require the Commonwealth to preserve places in the Register'. The Commission has also stated that 'the Register is an inventory that identifies places of National Estate significance and requires Commonwealth Ministers and agencies to complete a process that ensures that their adverse actions do not unnecessarily damage a place in the Register'. The Director of the Commission in this article clearly went on to state that the Commission's role is to provide information only and not to make decisions on development or weigh competing interests. It is the role of other Commonwealth Departments and agencies and private interest groups to inform those same decision-makers of other attributes and significant National Estate issues to ensure that all matters are taken into account in any final decision.

2.4.6 Section 30 and the Building Code of Australia (BCA) revision process

The effect of an action need not be direct in order to attract the operation of s.30. Davies J, in Australian Conservation Foundation v Minister for Resources (1989) 19 ALD 70 at 75-76 came to the conclusion that action which adversely affects the National Estate could include action which has a tendency *indirectly* to impact adversely on the National Estate. Similarly, Wilcox J in Yates Security Services v Keating (1990) 98 ALR 21 (Yates No. 1) (at 51) took a broad view of sub-s.30(1), in that he considered that the whole point of s.30 is to require consideration by Commonwealth authorities of the consequences, for any place on the Register, of the exercise of their powers.

Where the action concerned is a recommendation, then if adoption of the recommendation would adversely affect a place, the making of the recommendation is deemed to adversely affect a place (sub-s.30(4)). This is to say, in considering the effects of a recommendation it is necessary to take into account the effects of the adoption of the recommendation.

The modification of National Estate premises to provide access for people with a disability will be, in may cases, an 'action' which might 'affect to a significant extent' a place that is in the Register or the Interim List; see section 30 of the AHCA. Recommendations and other actions concerning the adoption of the revised BCA may in many cases also be sufficient to trigger the obligations under s.30. Identification of particular properties or places on the Register is not a pre-requisite under s.30; a tendency *indirectly* (i.e. through the adoption of the revised BCA in each State and Territory) to impact upon the National Estate is sufficient - see Australian Conservation Foundation case, above.

Notwithstanding the intention that the revised BCA apply only to new buildings, situations may well arise (for example, where a new building is built on or around a place entered on the Register, perhaps incorporating a listed building or part thereof in its overall design) where consultation with the Commission is appropriate. Further, in view of the anticipated modification of the application of the revised BCA to existing buildings in due course, it would be advisable to consult the Commission in relation to the present BCA revision exercise. Certainly the Attorney-General himself would be required to so consult with the Commission, and explore feasible and prudent alternatives and take the other steps referred to in sub-s.30(1) of the AHCA, before the revised BCA could be called up as a Disability Standard in relation to access to Commonwealth premises under s.31 of the DDA.

2.4.7 "Feasible and prudent alternatives"

In summary, section 30 of the AHCA states that the responsibility of the Federal Government Ministers, Departments and authorities is not to take any action that adversely affects the National Estate. However, it should be clearly noted that the Minister's responsibility in sub-s.30(1) of the Act is qualified by the words 'unless he is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken and shall not himself take any such action unless he is so satisfied'. Subsection 30(2) (in relation to the similar obligations of authorities of the Commonwealth) contains a similar qualification.

The issue of whether a perceived alternative is 'feasible and prudent' is a matter for the decision-maker to consider in light of the particular facts and circumstances. In the absence of any express guidance in the AHCA as to the ambit of the expression, the words 'feasible' in the Shorter Oxford Dictionary is as follows: "Capable of being done, carried out or dealt with successfully in any way; possible, practicable". The word 'prudent' requires that a proposed alternative action should proceed from 'sound judgement' or 'practical wisdom'.

It would be relevant for the decision-maker to consider a range of matters in assessing whether an alternative is 'feasible and prudent' for example, economic commercial and social interests, the national interest and the views of interested parties (such as relevant Commonwealth and State authorities); see Australian Conservation Foundation v Minister for Resources (above). However, it is clear that the potential effect on national estate values should be given significant weight.

In relation to the issue of feasible and prudent alternatives to the grant of a licence to export woodships, Davies J stated at 76 in the Australian Conservation Foundation case:

> "The question of what was a prudent and feasible alternative was a matter of value judgement and what judgement was reposed in this case in the Minister. In my opinion, it was open for him to conclude that the only feasible and prudent course was to give HDA a long-term assurance in December 1988. It was open and indeed necessary for the Minister to take into account the economic interests of the timber industry. It was relevant to take into account the views of the New South Wales Government and of the New South Wales Forestry Commission. It was the Mninister's satisfaction as to the existence of any feasible and prudent alternative that mattered. The evidence before the Court does not show that the Minister was not genuinely satisfied that there was no reasonable long-term assurance as to the export of the current level of woodchips."

Whether an alternative is a 'feasible and prudent alternative' was discussed by Wilcox J in Yates No. 1. Although the decision by Wilcox J was reversed in Yates Security Services v Keating (1990) 98 ALR 68 (Yates No. 2), the issue of what constitutes a 'feasible and prudent alternative' was not discussed on appeal. The decision in Yates No. 1 makes the following points:

- a decision-maker could not be satisfied that no feasible and prudent alternative existed if the existence of such alternatives had not been considered;

- an alternative could not properly be regarded as 'infeasible or imprudent simply because it is more costly or less profitable' that the proposed action;

- an alternative is not 'feasible' if it is not legally possible; i.e. if it is prohibited by relevant legislation.

It is not possible to set out a list of steps that must be carried out before the decision maker could be satisfied that there is no 'feasible and prudent alternative'. This because, depending on the circumstances and on questions of degree for the judgement of the decision-maker, there are various paths by which that conclusion might be reached. In order to determine whether an alternative is 'feasible and prudent' it is necessary to consider the particular facts and circumstances associates with each proposal. This may require consideration of:

- *the nature of the heritage values;*
- the economic and social costs and benefits associated with maintaining the premises as they currently are;
- the cost to those who are unable to access the premises;
- the cost, benefits and other relevant factors associated with providing alternative access; and
- relevant legislative requirements, including those under s.23 of the DDA (see above).

2.4.8 Precedence of legislation

There is a general legal principal that a later Act will impliedly repeal an earlier inconsistent Act dealing with the same subject. In Goodwin v Phillip (1908) 7 CLR 1 (at 7), Griffith CJ stated that:

> "... where the provisions of a particular Act of Parliament dealing with a particular subject matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject matter, then the earlier Act is repealed by implication ... [however] ... if the provisions are not wholly inconsistent, but may become inconsistent in their application to particular cases, then to that extent, the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act".

The courts have resisted arguments of an implied repeal by a later Act unless the indications are very clear. Where it is not clear, the courts have indicated that they favour a strong presumption that the legislature does not intend to contradict itself, intending rather that both Acts operate within their given sphere where possible. The courts have therefore adopted an approach of reading the two competing statutes together, attempting to ascertain how both Acts might operate concurrently.

It is likely that such an approach would be adopted in resolving any apparent conflict between the DDA and the AHCA. Neither Act purports to exhaustively detail the range of issues that need to be considered in ascertaining whether either disabled access should be provided, or heritage values preserved. The provisions in the AHCA are discretionary, and the Act does not limit the matters that may be taken into account when considering whether to alter registered buildings.

The interpretation of what is sympathetic or non-invasive is an issue in the design of each detail but items such as general form, material, finish and working with the general architectural details and philosophy of the original design are guiding principles. The final result should be visually compatible.

Where a new item is constructed to be integral with the existing fabric (eg a new staircase embedded in an existing stairwell that replaces a former inadequate staircase) then the new should closely follow the original in style and detail.

Where a new item is articulated, or stands relatively independently of the original structure (eg a ramp) then that item can adopt a design that is contemporary to the time of its own construction, not of the host structure.

The other design principal is to make the alterations reversible wherever possible with the minimum change to original fabric. This will enable an easy return to the original form in the future if desired.

With any design problem there is usually more than one solution. These alterations should be discussed with heritage authorities to confirm the minimum impact on the significance of the building and endorse the final proposals.

Final design details must also comply with the detailed provision of BCA and Australian Standards as access can be impeded if any detail in the total access pathway does not meet these requirements.

4.12 FUNDING POSSIBILITIES

Sometimes for work on heritage properties there are funding opportunities or incentives. Details are usually available through State Heritage Authorities. These opportunities include heritage grants (national and state) and taxation incentives. There may be some grants to provide access that are available through government and disability organisations but check with ACROD in each state to ascertain what may exist.

5.0 SOLUTIONS

As mentioned under Guidelines, there is no one solution for each place. However, set out below are a range of solutions, some of which will assist in resolving access to heritage places. These have been developed from the information and details provided in the references used and from experience. For places with specific opening times a management option can sometimes be implemented. However, access for staff who have disabilities must be considered.

For details of what is required for access refer to BCA and Australian Standards in Appendix 3. This is particularly for paths, ramps, space requirements, controls and facilities. Advice from specialist disability organisations (refer Appendix 3) should also be sought to assist with specific details.

The ideas mentioned below are illustrated from overseas, Australian and hypothetical examples. However, there is scope to develop a library of examples on the internet based on best practices and make them available for everyone.

5.1 PROGRAMMATIC

Alternative methods of providing services, information and experiences when physical access cannot be provided. This may be by offering an audio-visual program showing the inaccessible areas, providing interpretative panels or creating a tactile model of the place.

Other ideas can include:

- Special narrow wheelchair with attendant available to access narrow corridors and doors (note this may not be suitable for some users);
- Use of equipment aids such as headsets, binoculars, magnifying glasses;
- Use of special printed material including large print or Braille;
- Use of modern technology such as virtual reality to recreate inaccessible spaces and experiences;
- Use of internet to expand the audience for visual and written material.

5.2 PARKING

This should be convenient, designated and large enough . Signage should designate the parking space.

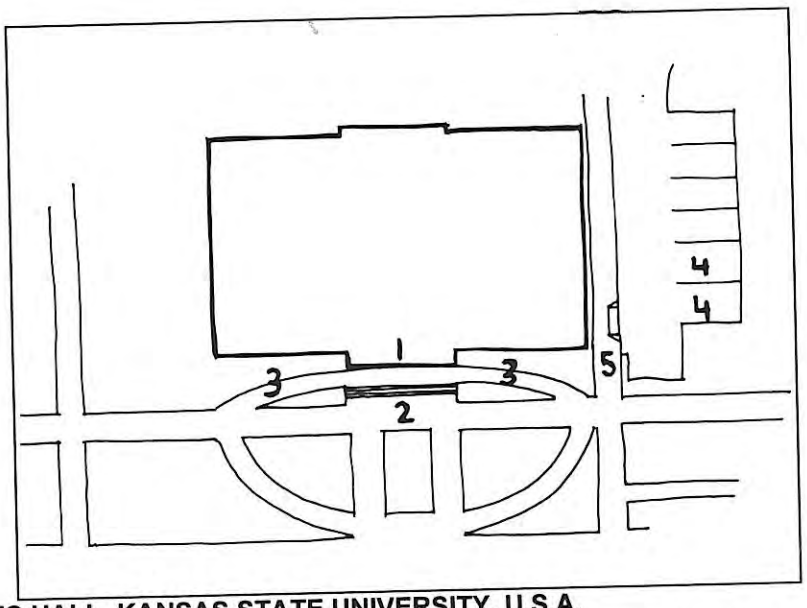
5.3 ACCESSIBLE ROUTE

An accessible route from the vehicle park or public street to the entrance to the place is essential and a requirement under AS1428.1. The circulation route should be that used by the general public. Critical aspects are no steps, widths, gradient, cross slopes and surface texture.

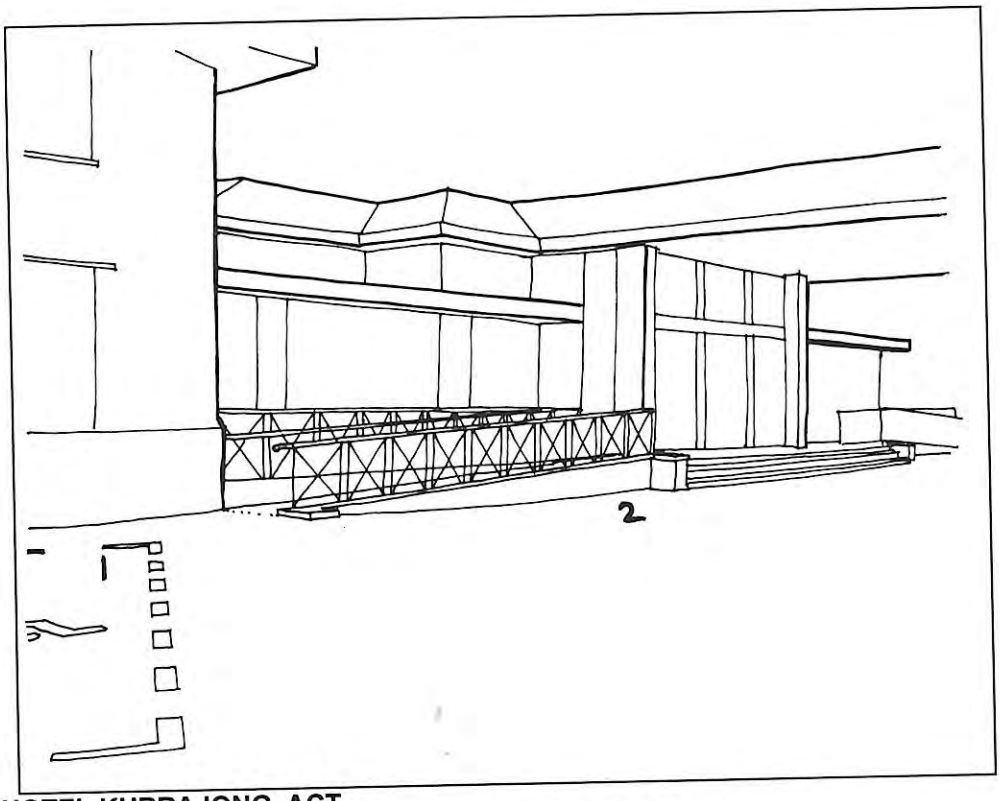
This should be wide enough, of suitable material, low grades and as short as possible. Paving materials should be firm, stable and slip resistant.

Clear directional signs should mark the path from arrival to destination.

Tactile indicators and colour contrast are useful to indicate changes in level, gradient and direction.



DICKENS HALL, KANSAS STATE UNIVERSITY, U.S.A.
Portico floor level was extended (1) and steps moved outwards (2). Two ramps were added, one each side (3) to maintain symmetry. Two designated car parking spaces (4) are located near front entry and along an acessible path (5).
(Drawn from reference 23, Figure 17 p.29)



HOTEL KURRAJONG, ACT
Convenient parking (1) accessible route and ramps (2) to front entrance.

5.4 ENTRANCES

The access issues which need to be addressed are what entry to access, access to it and access through it.

Where possible, access should be through the primary public entrance which is not always the original "front" entry.

Where access to the main or prominent entrance presents particular difficult problems with respect to heritage, solutions should nevertheless seek a dignified access even if this is not thorough the main or prominent entry.

Often during redesign, upgrading or adaptation of buildings the primary entrance is relocated to another entrance. This can assist in resolving accessible entrance if considered as part of the design.

If the accessible entrance is not the primary public entrance, directional signage should indicate the accessible entrance.

A rear or service entry should be avoided.

Whatever entrance is resolved, access is required into the foyer or key public space available for the public.

Creating an accessible entrance in heritage buildings usually involves overcoming a change in level due particularly to steps, and thresholds. This may include ramps, lifts, new entrances, modifying doors, or thresholds.

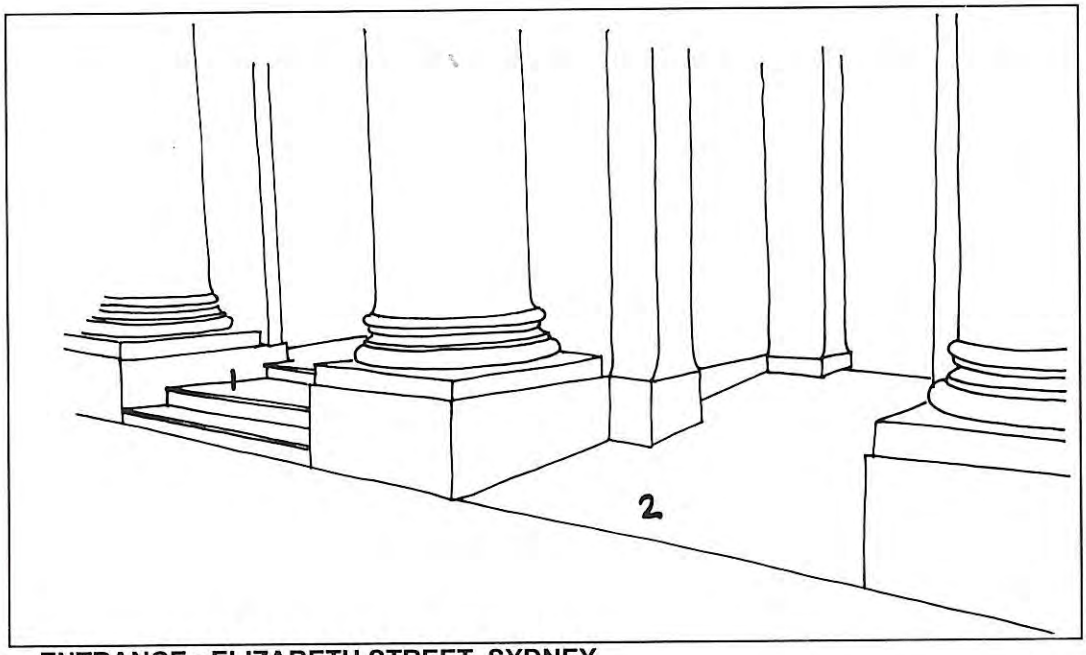
It may be possible to regrade an entrance if the landscape features are not highly significant. If steps are original and they need to be buried then they should not be removed.

Permanent ramps are the most common means to make entrances accessible. They need to be carefully designed to be sympathetic, simple and yet distinguishable from original elements.

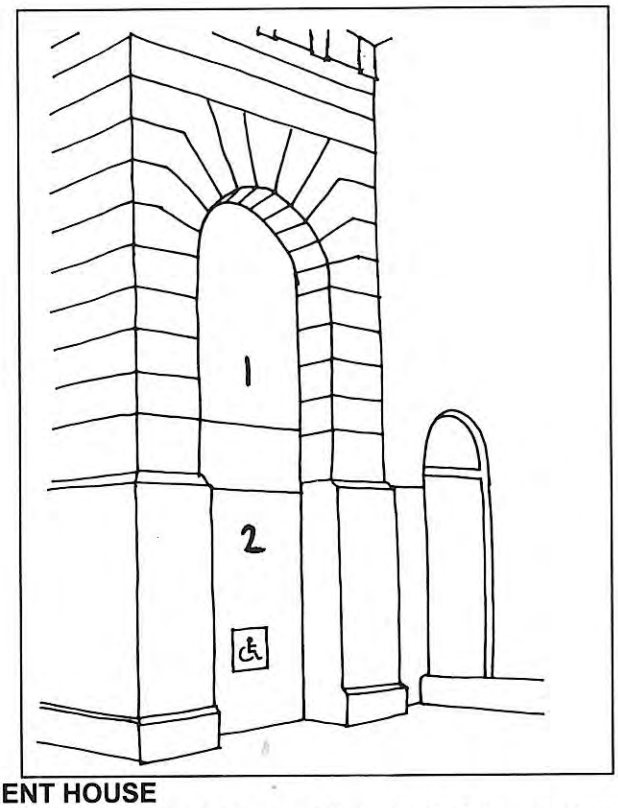
Locate entrances to minimize the loss of original elements such as porch railings, steps and windows and preserve the overall setting and character of the place. Designs can incorporate a range of materials but should be sympathetic but simple and distinguishable from other original elements. They can often form part of the architecture by extensions of balustrades, walls etc.

Temporary ramps are sometimes unstable and not very safe as well as possibly being visually incompatible with heritage places. They also don't provide independent access and require a management process to install/remove them. However, if there is no other feasible alternative it may be acceptable with good design and excellent management. One possibility is that they are installed when the heritage place is open and removed at other times.

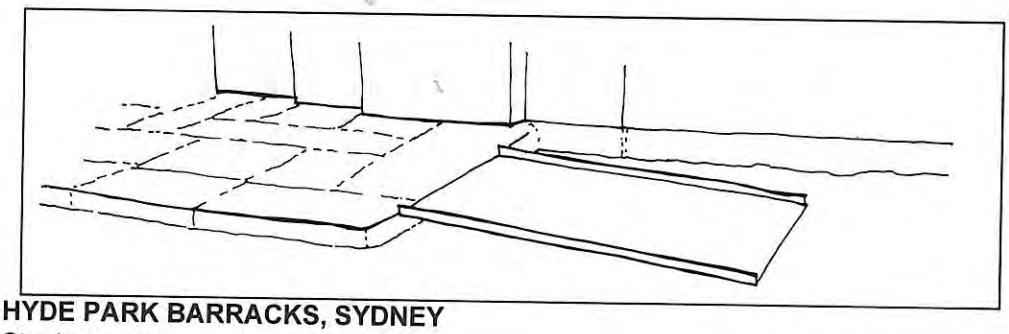
Creating totally new entrances may be necessary but they should only be considered after exhausting other possibilities as the impact is usually greater.



ENTRANCE : ELIZABETH STREET, SYDNEY
Former steps removed (1) and ramp added (2).

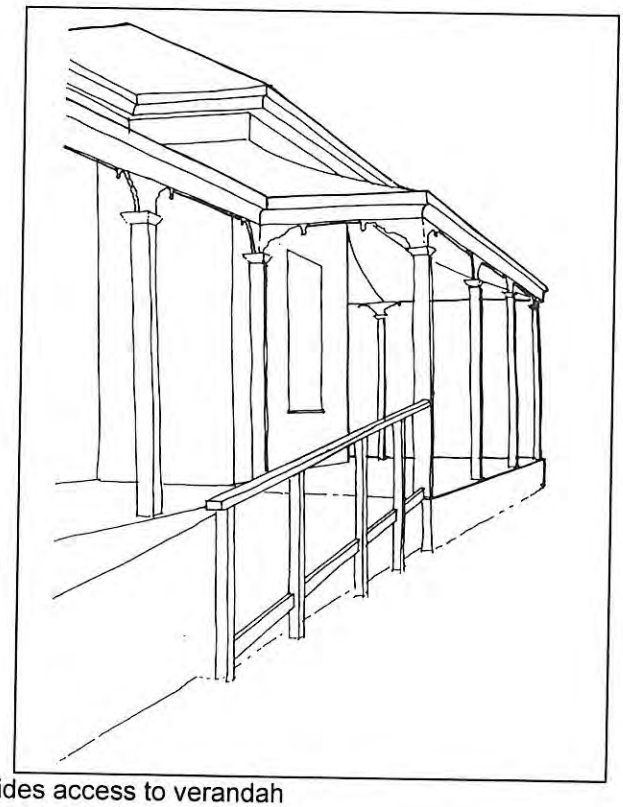


NSW PARLIAMENT HOUSE
To overcome a large flight of stairs an adjacent window opening (1) was extended to the ground to provide level access to a lift (2).



HYDE PARK BARRACKS, SYDNEY
Steel temporary ramp.

CLARKE HOUSE, WHANGAREI, NEW ZEALAND



Timber ramp provides access to verandah

5.5 LEVEL CHANGE

In addition to ramps (refer 5.4) a range of lifting devices are available to accommodate changes in level. These include:

- platform lifts - an open platform that travels vertically;
- stair lift - an open platform that follows the stairs;
- standard lift - an enclosed lift that travels vertically;
- small wheelchair lifts - a small enclosed lift that travels vertically specifically designed for wheelchairs.

These can involve a greater impact on the heritage place and usually cost more than ramps.

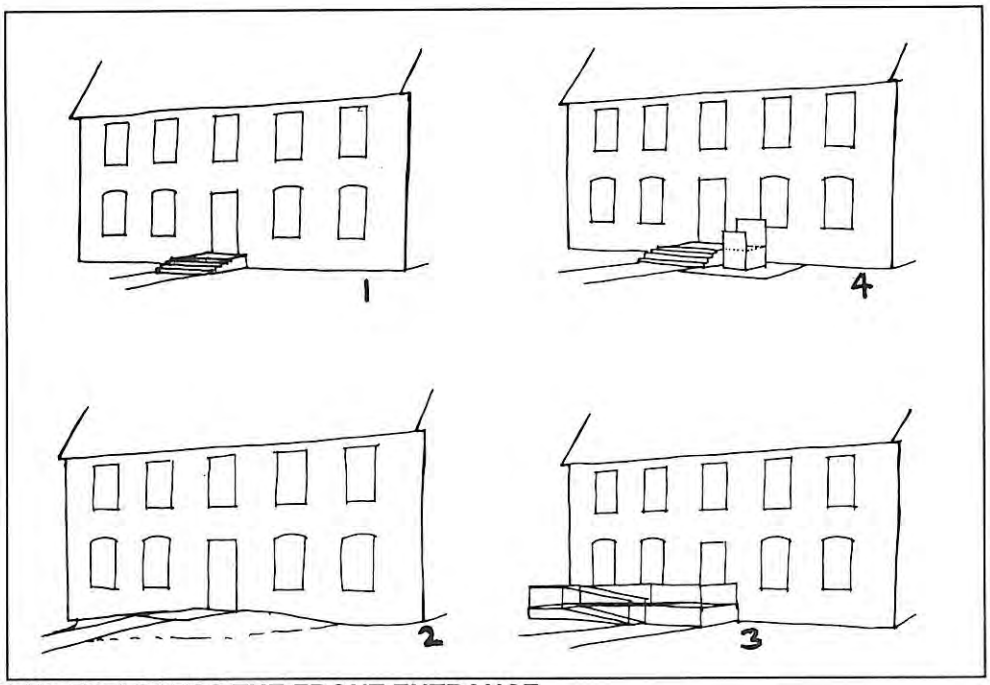
Platform lifts and stair lifts are often for restricted use and, therefore, may not provide the best solution for accessibility or heritage purposes.

Stair lifts can restrict access on stairs or visually intrude into significant elements such as hallways and stairways.

Any lift should be located as an addition in a less significant room but still needs to retain dignified access and be easily identified.

Some places have significant lifts which are not adequately accessible for people with disabilities because of their size, location, control method or detailing. These may be modified with remote control or portable controls to make them accessible.

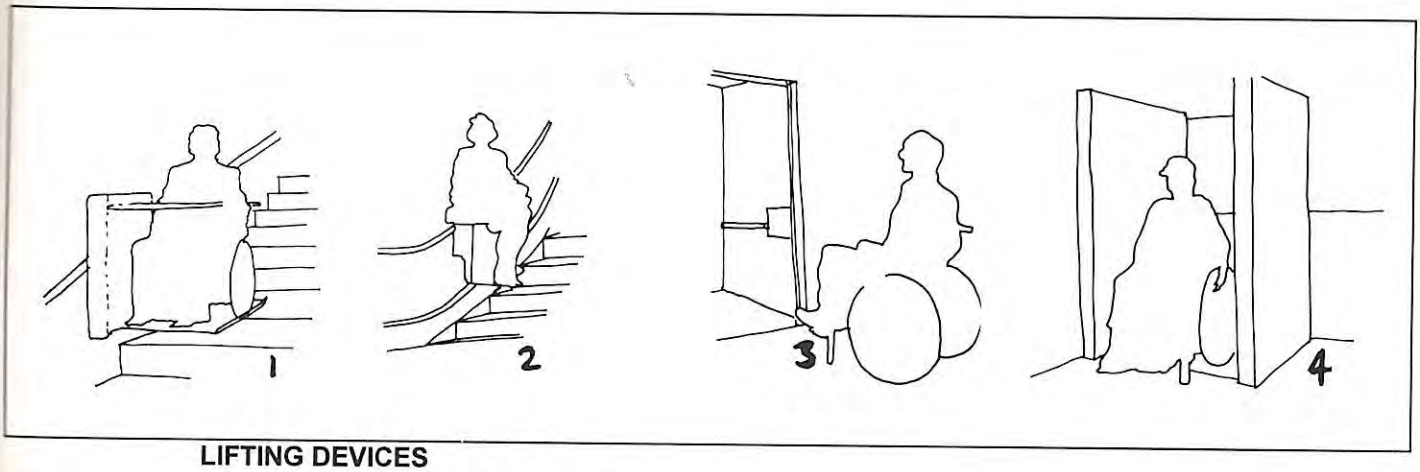
In general, the leveling or alteration of historic floors should be avoided if possible.



OPTIONS TO ACCESS THE FRONT ENTRANCE

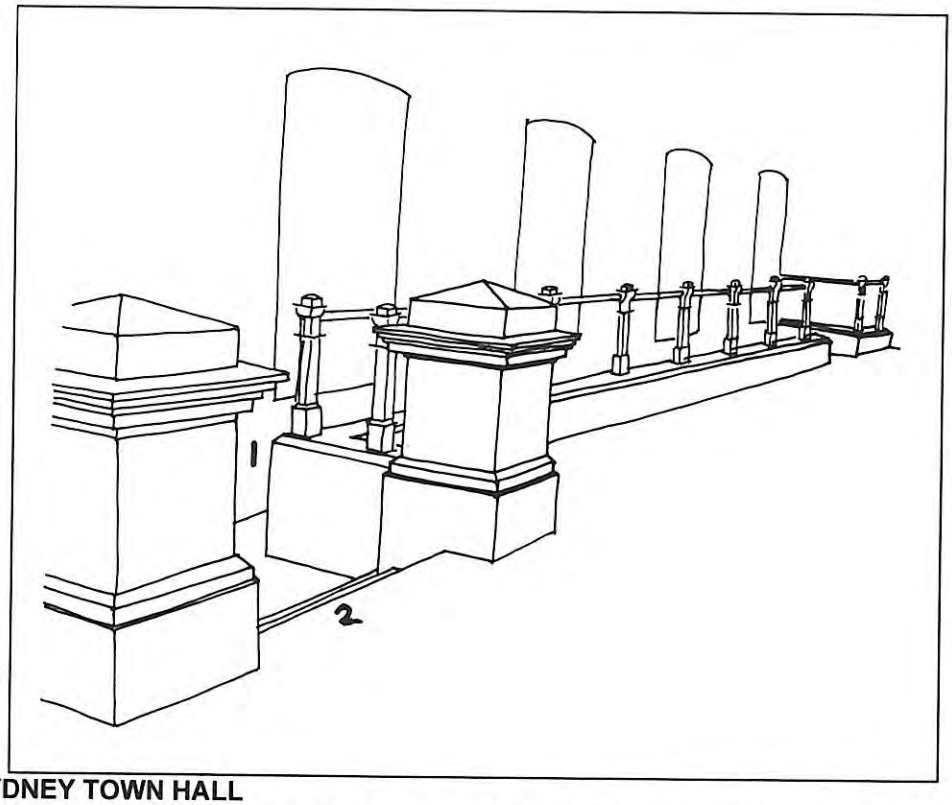
1. Existing building with steps.
2. Regrade area in front to remove steps.
3. New ramp constructed up to entrance.
4. Lifting device added beside entrance.

(Drawing from reference 32, Figure 3, P.3)



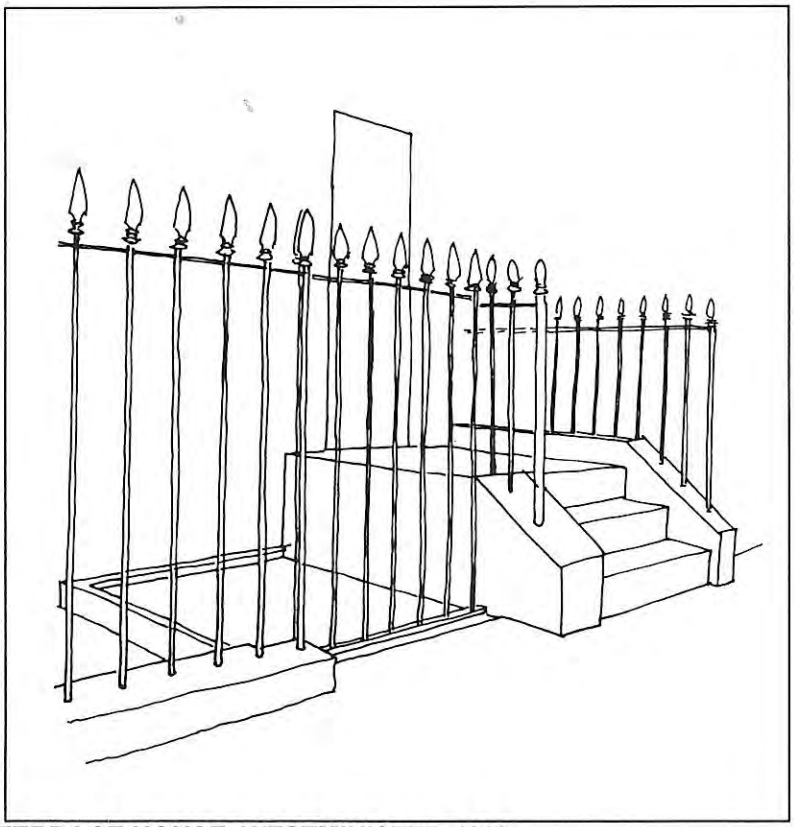
LIFTING DEVICES

1. Stair lift for wheelchairs.
2. Stair lift for ambulant disabled.
3. Standard lift.
4. Platform lift.



SYDNEY TOWN HALL

A former light well (1) was used to provide a ramp access into a main side entry and overcome steps (2).

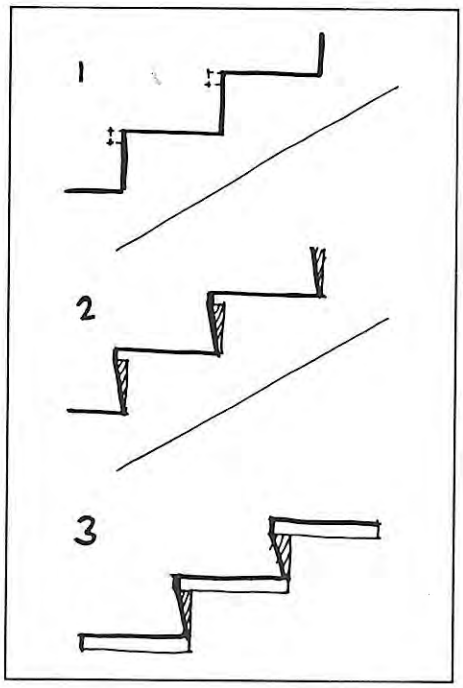


GEORGIAN TERRACE HOUSE, WESTMINISTER, U.K.
A hydraulic platform lift over part of a lightwell provides access to front door. The lift sits level with the footpath and is unobtrusive *(sketched from photograph from reference 9, p.9)*

5.6 STAIRS

These are usually major barriers and significant elements in heritage places. The addition of a lift (refer 5.5) is one solution but may not always be possible. However, it may be possible to modify stairs to make them more accessible such as adding handrails, colour contrasting of nosings, slip resistant strips to nosings or closure of open stairs, but these must be considered in the context of the impact they have on the significance of the place.

Sometimes a less significant stair could be replaced with a more accessible stair. If all else fails alternative means of inspection may be necessary (Refer 5.11).



STAIR NOSING

To reduce incidence of tripping on stairs, modification may be necessary such as:

1. Cut back nosings.
2. Insert wedge to give a smooth transition.
3. Angled wedge inserted into open stairs.

5.7 DOORS

Original doors and door frames should not be replaced and doors on the primary elevation should not be widened as they can alter a significant aspect of the place.

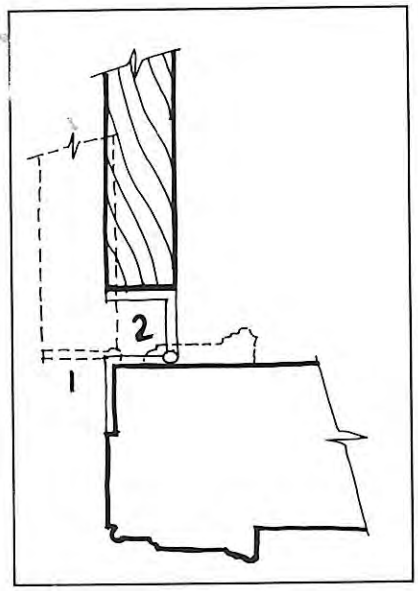
However, if the doors are not original, there may be greater latitude in designing a compatible new entrance or improving accessibility.

Heavy doors can usually be assisted with one of several devices such as automatic door openers, power assisted closures, pressure mats, electric eye or push button control.

A review of door hardware can also assist accessibility such as off set hinges to increase the effective width of a doorway or ball bearing hinges and adjusting closures to make doors easier to open can be connected

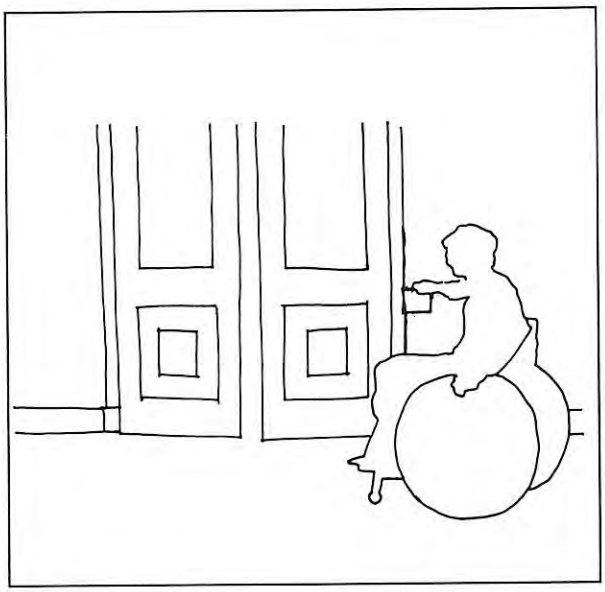
Original hardware should be retained in-situ even if not effectively used. If original hardware is retained and new hardware added it should obvious which hardware is to be used.

Historic door knobs are usually circular and more difficult to grip and turn. Rather than replace the knob with level handles, doors can be left open during operating hours or power assisted door openers can be installed.



OFFSET HINGES

Replace standard butt hinges (1) with offset hinges (2) to increase the width of the opening by up to 50mm. *(Drawn from reference 23 Figure 35 p.49)*



DOORS

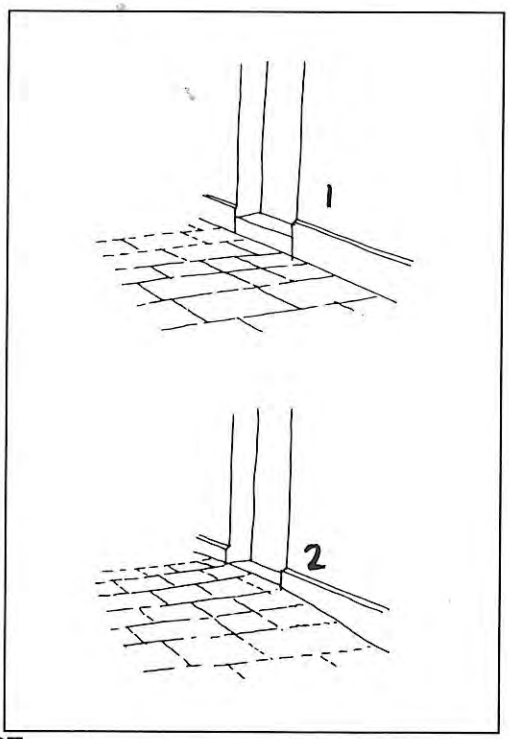
A push plate can engage an authomatic door or the two leaves can be joined together to provide a wider single accessible door.

5.8 THRESHOLDS

Thresholds that exceed height allowed in the BCA or Australian Standards need to be adjusted, altered or removed to ensure it meets accessibility standards.

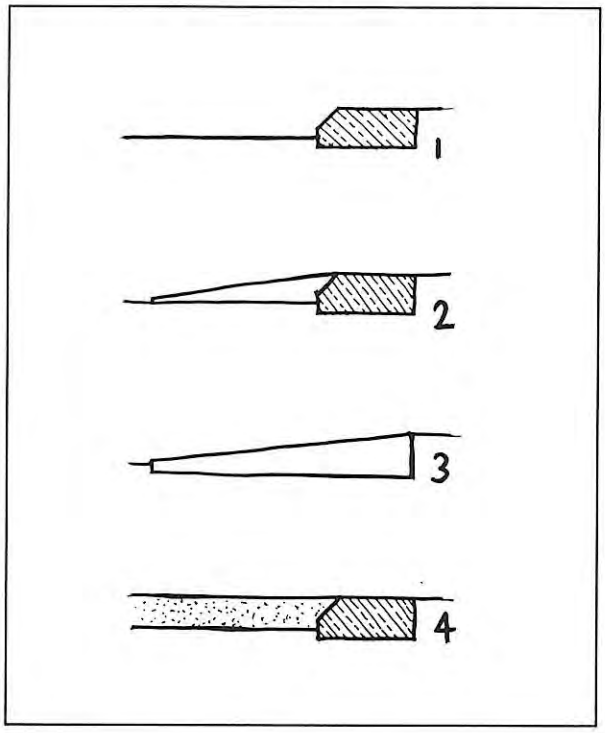
If the threshold is part of the original fabric a transition can be added either side to reduce its height and still be visually compatible.

If thresholds are high a ramp or even a lifting device may be necessary.



DUNTROON HOUSE, ACT

An existing step (1) was overcome by relaying flagstone paving up to the threshold (2).



THRESHOLD MODIFICATIONS

1. Existing threshold.
2. Additional threshold to provide a threshold ramp.
3. Replace threshold with a threshold ramp.
4. Raise floor to overcome threshold.

(Drawn from reference 32, Figure 17, p.88)

5.9 INTERIORS

People with disabilities should have independent access to all public areas and facilities within heritage places. The extent with which an interior can be modified depends on the significance of the materials, plan, spaces, elements and finishes.

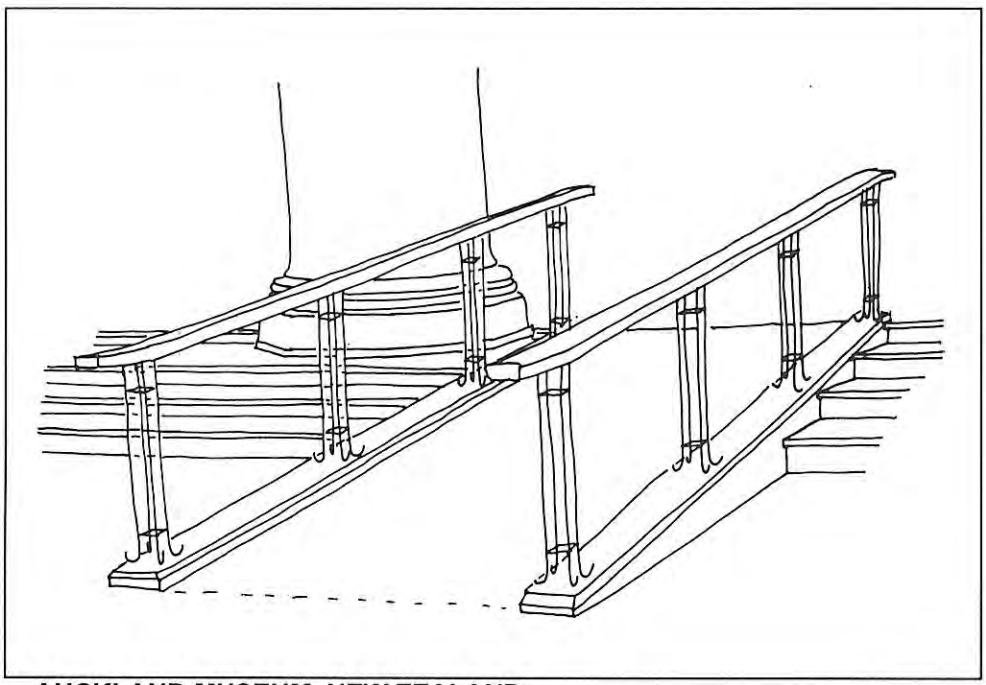
More significant spaces are more difficult to modify without affecting the significance. Less significant spaces may be changed without compromising a building's significance.

Signage should identify the route to accessible toilets, telephones and other accessible areas. Signs need to be clear, easily seen with good contrast between letters and background. (Refer ref35)

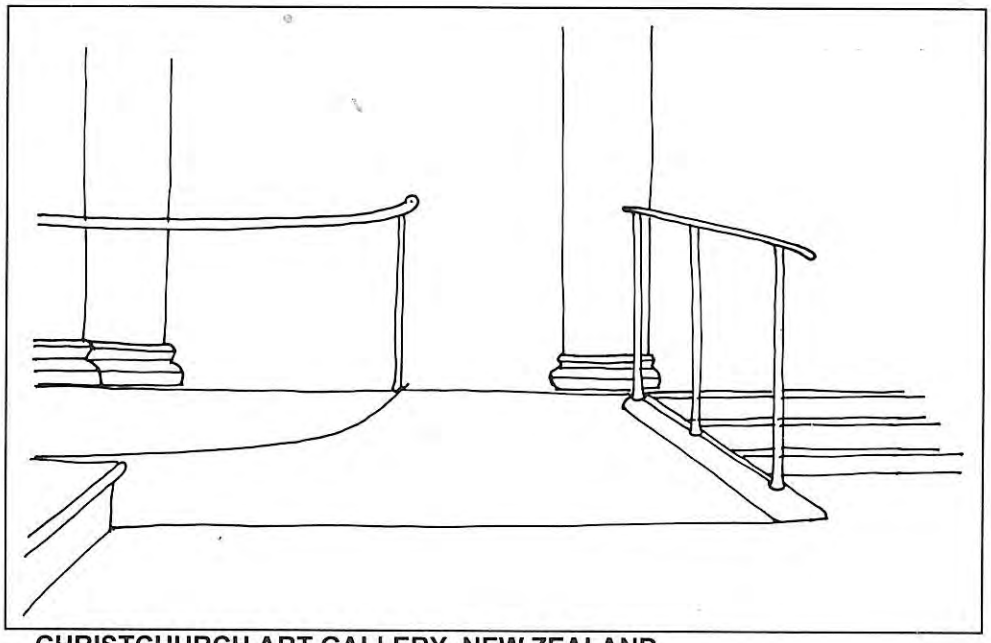
Illumination levels are also critical to ensure clear legibility of the spaces and any interpretive material.

The issue of egrees for people with disabilities has only recently been proposed for the BCA. The proposal is for independent access to outside or to a safe refuge. It is likely that in the near future provisions will also need to be considered.

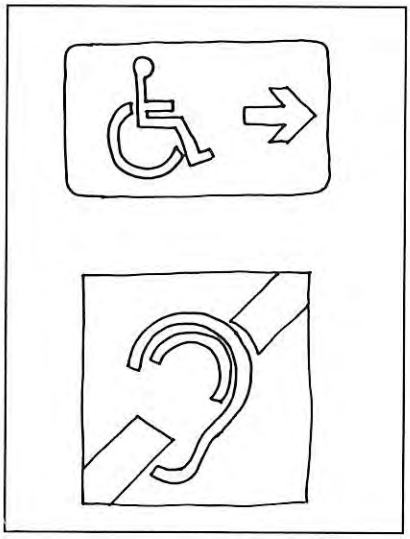
The issue regarding ramps and lifts are discussed earlier under entrance and level changes.



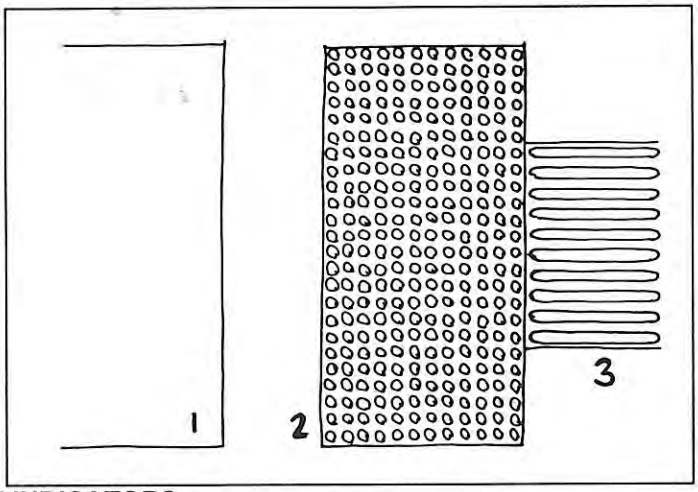
AUCKLAND MUSEUM, NEW ZEALAND
A new ramp was added in the centre of the foyer while retaining the two side bays with steps. Balustrade is modern but appropriate.



CHRISTCHURCH ART GALLERY, NEW ZEALAND
Foyer ramp with glass balustrade.



SIGNS
International signage and clear signage is essential.
(Refer reference 35)



TACTILE INDICATORS
Ramp or step (1).
Type A or B alerting indicators (2).
Type C directional indication (3)

5.10 AMENITIES

This includes toilets (WC and handbasins), seats, telephones, drinking fountains, counters and interpretation displays. Access requirements for each one are set down in Australian Standards.

If the amenities contribute to the significance of the place, it is more appropriate to supplement the existing rather than changing or removing them. The location of new facilities should be in less significant spaces and be clearly signposted.

Larger toilets may be reconfigured reusing original elements to create an accessible toilet. The addition of grab rails may also be feasible.

Minor changes such as protecting dangerous items (e.g. covering and insulating hot water pipes) or providing a sink, mirror or paper dispenser at an accessible height can often be easily undertaken.

Theatres may require the removal of some seats (temporarily or permanently) to provide access or new seating that are more accessible. Wheelchairs must be located not to restrict safe egrees.

If a significant item such as a drinking fountain or counters should be conserved, another one can be added which is accessible.

Public phones, if installed, should consider all users such as people in wheelchairs, hearing impaired people, children etc., and be appropriately designed.

Other controls that are able to be used may need to be considered such as switches, heating/ventilation controls and window hardware. If public access to these is appropriate then accessibility and use of them must be considered.

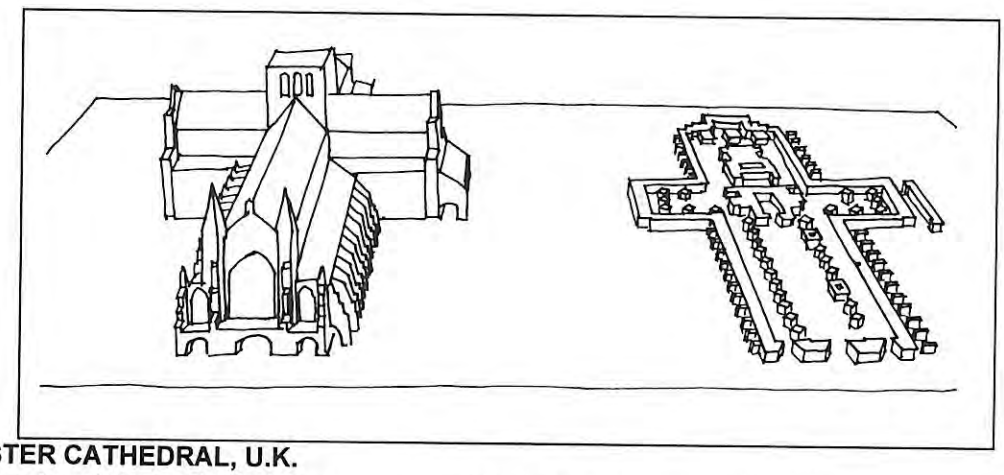
5.11 INTERPRETATIVE MATERIAL

To cater for people with a range of disabilities interpretative material can be presented in a variety of methods. These methods include the use of:

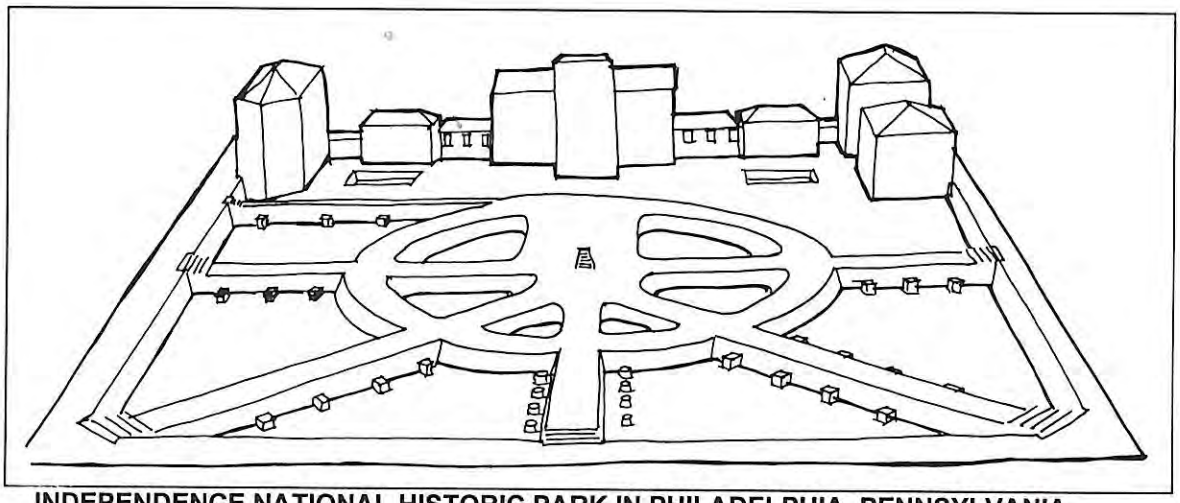
- clear and concise language
- large print format
- audio cassette
- computer disc format
- visual and even interactive displays
- tactile models and aids
- braille
- virtual reality displays
- well illuminated material
- models

Information in different languages can also be desirable for those whose first language is not English and cater for the widest possible audience in Australia's multicultural society.

Hearing augmentation systems, such as induction loops, infra red systems can be used to assist people with hearing aids and therefore their interpretation in individual rooms and general assembly areas.



WINCHESTER CATHEDRAL, U.K.
A tactile model of the cathedral is a permanent installation for partially sighed and blind visitors *(copied from ref 9, p.10)*



INDEPENDENCE NATIONAL HISTORIC PARK IN PHILADELPHIA, PENNSYLVANIA
Small sale site model for general interpretation and tactile interpretation. *(Drawn from reference 23 Figure 11 p.24)*

5.12 STAFF TRAINING

It is important to ensure staff are aware of and understand the needs of people with disabilities. This can be achieved by training staff so that they are aware of the range of disabilities people have, what this means when trying to access heritage places and the ways access can be improved.

There is also a need to train staff to assist and communicate with people with a range of disabilities to ensure maximum benefit is offered to them.

A lack of training in this area can create an unconscious attitudinal barrier which is based on ignorance or misunderstanding. The provision of education in this area is essential.

Training may be available through tourism or similar courses or can be specifically set up as required using organisations involved with people from a range of disabilities (Refer Appendix 3).

The encouragement of feedback from users either by direct comment, a suggestion box or questionnaire can also be adopted. These ideas need to be collated, reviewed and acted upon as required.

5.13 PATRONS FROM ABORIGINAL, TORRES STRAIT ISLANDER AND NON ENGLISH SPEAKING BACKGROUNDS *(Ref 15 p.10)*

People with disabilities from Aboriginal, Torres Strait Islander and non-English speaking backgrounds often encounter additional barriers in attempting to access services. Access is made difficult not only because of the potential patrons disability, but also because services are not offered in a way which is culturally and/or linguistically appropriate.

An access plan and therefore the potential changes in presenting heritage places will need to consider the following issues:

- collection of data on customers and potential customers with disabilities from Aboriginal, Torres Strait Islander and non-English speaking backgrounds, particularly information which enables the service offered to patrons visiting the heritage place to address the specific needs of these communities;

- ways of distributing information about services offered - simple translation of information into other languages may not be sufficient. Minority communities have different yet well established networks, which could be accessed to promote and effectively distribute information about the heritage place.

- familiarity with working with interpreters and translators;

- employee attitudes, including ignorance of different cultures and possible racism;

- development of employee policies and provision of employee training to ensure effective delivery of services to the whole community, particularly people from Aboriginal, Torres Strait Islander and non-English speaking backgrounds;

- involvement of people from Aboriginal, Torres Strait Islander or non-English speaking backgrounds in the development of strategies to make services accessible for people from these communities; and

- evaluation of strategies to ensure their effectiveness in making services accessible.

5.14 LANDSCAPES

Principals

To successfully incorporate access into historic landscapes, the planning process is similar to that of other historic places. Careful research and inventory should be undertaken to determine which materials and features convey the landscape's significance. As part of this evaluation, those features that are character-defining (topographical variation, vegetation, circulation, structures, furnishings, objects) should be identified. Historic finishes, details, and materials that also contribute to a landscape's significance should also be documented and evaluated prior to determining an approach to landscape accessibility. For example, aspects of the pedestrian circulation system that need to be understood include walk width, pavement pattern, texture, relief and joint details. The context of the walk should be understood including its edges and surrounding area. Modifications to surface textures or widths of pathways can often be made with minimal effect on significant landscape features.

Additionally, areas of secondary importance such as altered paths should be identified - especially those where the accessibility modifications will not destroy the landscape's significance. By identifying those features that are contributing or non-contributing, a sympathetic circulation experience can then be developed.

After assessing a landscape's integrity, accessibility solutions can be considered. Full access throughout a historic landscape may not always be possible. Generally, it is easier to provide accessibility to larger, more open sites where there is a greater variety of public experiences. However, when a landscape is uniformly steep, it may only be possible to make discrete portions of a historic landscape accessible, and viewers may only be able to experience the landscape from selected vantage points

along a prescribed pedestrian or vehicular access route. When defining such a route, the interpretative value of the user experience should be considered; in other words, does the route provide physical or visual access to those areas that are critical to understand the meaning of the landscape?

In the final design for access other factors to consider include overhanging barriers, seating and shade.

Examples
The following accessibility solutions address three common landscape situations *(Ref 32 p.10)*:

1) structures with low integrity landscapes;
2) structures and landscapes of equal significance; and
3) landscapes of primary significance with inaccessible terrain.

1. The Hunnewell Visitors Center at the Arnold Arboretum in Jamaica Plain, Masachusetts, was constructed in 1892. Its immediate setting has changed considerably over time. Since the existing landscape immediately surrounding this structure has little remaining integrity, the new accessibility solution has the latitude to integrate a broad program including site orientation, circulation, interpretation, and maintenance.

   The new design, which has few ornamental plants, references the original planting design principles, with a strong emphasis on form, colour and texture. In contrast with the earlier designs, the new plantings were set away from the facade of this historic building allowing the visitor to enjoy its architectural detail. A new walk winds up the gentle earth berm and is vegetated with plantings that enhance the interpretative experience from the point of orientation. The new curvilinear walks also provide a connection to the larger arboretum landscape for everyone.

2. The Eugene O'Neill National Historic Site overlooks the San Ramon Valley, twenty-seven miles east of San Francisco, California. The thirteen-acre site include a walled courtyard garden on the southeast side of the Tao House, which served as the O'Neill residence from 1937-44. Within this courtyard are character-defining walks that are too narrow by today's accessibility standards, yet are a character-defining element of the historic design. To preserve the garden's integrity, the scale and the characteristics of the original circulation were maintained by creating a wheelchair route which, in part, utilizes reinforced turf. This route allows visitors with disabilities to experience the main courtyard as well.

3. Morningside Park in New York City, New York, designed by Frederick Olmstead, Sr., and Calvert Vaux in 1879, is sited on generally steep, rocky terrain. Respecting these dramatic grade changes, which are only accessible by extensive flights of stone stairs, physical access cannot be provided without destroying the park's integrity. In order to provide some accessibility, scenic overlooks were created that provide broad visual access to the park.

Summary

These examples illustrate some of the principles and details that should be followed which are summarized as:

1. With an existing landscape that has changed over time then the new accessible solution has the latitude to include a greater extent of change to make the place accessible. This could include changes to orientation, circulation, interpretation and maintenance to assist accessibility.

2. Difficult surfaces may be overcome by special treatment such as reinforced turf.

3. Respecting the steep terrain which is only accessible with extensive stone steps there may be opportunities to provide scenic overlooks to enable broad visual access and interpretation of the landscape.

5.15 NEW ADDITIONS

Many new additions are constructed to incorporate modern amenities, new mechanical equipment and additional space. These additions often create opportunities to incorporate access for people with disabilities and be linked to the heritage building.

Any new addition should be designed to be sympathetic to and compatible with the original significant place but clearly identifiable as new work. Linkages to original building should be carefully located to minimize change to significant fabric. New additions must be accessible and they should be used as an opportunity to improve access to heritage places rather than altering significant heritage places.

5.16 SUMMARY OF PRINCIPALS

Each case must be individually and carefully assessed. However a summary of the general principals are outlined:

GENERAL APPROACH

1. Review the significance of the place and identify the elements of greatest significance.
2. Undertake an access audit to determine the places existing and required level of accessibility.
3. Evaluate accessible options within a conservation context.
4. Establish a policy on access and heritage and prepare an access plan.
5. Implement the access plan.

TO CONSERVE THE HERITAGE SIGNIFICANCE

1. Make alternations sympathetic to the original building.
2. Designs to be reversible.
3. New material to be evident on close inspection.
4. Preserve items of higher significance if a compromise is required.

TO PROVIDE ACCESS

1. To make the main a major public entrance accessible where possible.
2. Ensure a clear path of travel to all areas and facilities.
3. Where toilets and facilities are provided at least one should be accessible.
4. Consider methods of interpretation and communication for all users with a range of disabilities.

5. Comply with Australian Standards particularly AS1428.1 for details.
6. Be innovative using modern technology and methods.
7. Train staff to understand people with disabilities and best means to ensure the appreciation of the place.

APPENDIX 1

ABBREVIATIONS & DEFINITIONS

AHC

Australian Heritage Commission
MTA House
39 Brisbane Avenue
BARTON ACT 2600
(GPO Box 1567, CANBERRA, ACT 2601)

Ph. (06) 271 2111 Fax (06) 273 2395

AHCA

Australian Heritage Commission Act 1975

ACROD

ACROD Ltd
(National Industry Association for Disability Services)
ACROD House
33 Thesiger Court
DEAKIN ACT 2600
(GPO Box 60, CURTIN, ACT 2605)

Ph. (06) 282 4333 Fax (06) 281 3488

NT

National Trust
Branches in each state and territory.
National co-ordination through:

Australian Council of National Trusts (ACNT)
PO Box 1002
CIVIC SQUARE ACT 2608

Ph. (06) 247 6766 Fax (06) 249 1395

DDA

Disability Discrimination Act 1992
Administered through the:

HREOC

Human Rights & Equal Opportunity Commission
Disability Discrimination Commission (HREOC)
Level 8 Picadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
(GPO Box 5218, SYDNEY, NSW 2001)

Ph. (02) 9284 9600 Fax (02) 9284 9611

RAIA Royal Australian Institute of Architects
National Headquarters
2a Mugga Way
RED HILL ACT 2603
(PO Box 3373, MANUKA, ACT 2603)

Ph. (06) 273 1548 Fax (06) 273 1953

For definitions and interpretations of Conservation terms refer to the "Burra Charter" Australian ICOMOS Charter for the Conservation of Places of Cultural Significance (Appendix 4).

Impairment refers to an abnormality in the way organs or systems function. It usually refers to a medical or organ condition e.g., short sightedness, heart problems, cerebal palsy, down syndrome, spina bifida, deafness etc.

Disability was defined as in the International Classification of Impairments, Disabilities and Handicaps as "any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being."

Handicap was defined as a limitation to perform certain tasks associated with daily living, due to a disability. The areas of self-care, mobility, verbal communication, schooling, and employment are covered.

A **mobility handicap** (profound, severe or moderate) relates to a person who has difficulties in going places away from home, moving about the house, or transferring to and from bed or chair. A mild mobility handicap relates to a person who has difficulties in using public transport, walking 200 metres, or walking up and down stairs.

Equitable access means providing access to the full range of social, political, and cultural activities and includes access to buildings and facilities to the same extent of people without disabilities.

APPENDIX 2

REFERENCES

A. PUBLISHED & WRITTEN DOCUMENTATION:

1. **ACT GOVERNMENT PLANNING & LAND MANAGEMENT** Building Note 13, March 1995 "Access for People with Disabilities".

2. **AUSTRALIAN GOVERNMENT,** Attorney General's Department, Central Office. Letter of 8/8/96 from Civil Law Division on "Guidelines for Disabled Persons Access to heritage Buildings - Australian Heritage Commission Act and the Disability Discrimination Act".

3. **AUSTRALIAN HERITAGE COMMISSION,** 1983 Manual Section 3.16 "Adaptation of places of National Estate significance to provide access for the disabled".

4. **AUSTRALIAN STANDARDS** AS 1428 - Design for Access & Mobility Parts:

AS1428.1	General requirements for access - buildings
AS1428.2	Enhanced and additional requirements - Buildings & Facilities.
AS1428.3	Requirements for children & adolescents with physical disabilities.
AS1428.4	Tactile ground surface indicators for the orientation of people with vision impairment

5. **BALLANTYNE, DUNCAN S. and HAROLD RUSSELL ASSOCIATES INC**, "Accommodation of Disabled Visitors at Historic Sites in the National Park System. Washington", DC, Park Historic Architecture Division, National Park Service, US Department of the Interior, 1983.

6. **COMMONWEALTH OF AUSTRALIA** Australian Building Codes Board - Building Code of Australian 1996.

7. **CSIRO** Notes on the Science of Building No. 200-207.

8. **DPA (NZ)** The Assembly of People with Disabilities "Access Guidelines", Wellington, N.Z. A commentary on access and facilities for people with disabilities under the Building Act 1991. 1994.

9. **ENGLISH HERITAGE,** "Easy Access to Historic Properties"; October 1995.

10. **ENGLISH HERITAGE** "Street Improvements in Historic Areas" August 1993.

11. **GOLDMAN, NANCY**, Ed. "Readily Achievable Checklist: A Survey for Accessibility". Boston: Adaptive environments Center, 1993.

12. **HAYWARD, JUDITH L. and THOMAS C. JESTER,** compilers. "Accessibility and Historic Preservation Resource Guide". Windsor, Vermont: Historic Windsor, Inc., 1992, revised 1993.

13. **HEITZMAN, FRANK AND MIKE JACKSON.** "Justification for equivalent facilitation in historic buildings under the proposed Historic Preservation regulations of the Illinois Accessibility Code". Details to Claire Gibson 12/7/96 (available through Internet).

14. **HUMAN RIGHTS & EQUAL OPPORTUNITY COMMISSION.** Disability Discrimination Act Action Plans; A Guide for Non Government Organisations.

15. **HUMAN RIGHTS & EQUAL OPPORTUNITY COMMISSION.** Disability Discrimination Act Action Plans; A Guide for State and Territory Government Departments and Agencies.

16. **HUMAN RIGHTS & EQUAL OPPORTUNITY COMMISSION.** Letter of 19/3/96 from Elizabeth Hastings, Disability Discrimination Commission.

17. **HREOC** Draft Guidelines on Access to Premises. Document circulated for public comment by 26/2/97.

18. **JESTER, THOMAS C.** "Preserving the Past and Making it Accessible for People with Disabilities", Washington, DC: Preservation Assistance Division, National Park Service, US Department of the Interior, 1992.

19. **LESTER, JOHN;** "Accessing the Past", Article in Canadian Heritage May-June 1987 pages 14-18.

20. **LISA FOSTER OF ENGLISH HERITAGE** reports on "Monumental Changes Ahead?" an article in Access by Design 65, page 14-16.

21. **NATIONAL TRUST OF AUSTRALIA (VICTORIA).** Letter of 30/4/96 with comments on access to Victorian National Trust properties.

22. **NATIONAL TRUST OF AUSTRALIA (WA)** Disability Service Plan as submitted to the Disability Services Commission; Draft December 1995.

23. **PARROTT, CHARLES.** "Access to Historic Buildings for the Disabled". Washington,DC: US Department of Interior, 1980.

24. "Secretary of the Interior's Standards for the Treatment of Historic Properties". Washington, DC: Preservation Assistance Division, National Park Service, US Department of the Interior, 1993.

25. **SMITH, WILLIAM D and TARA GOODWIN FRIER** "Access to History: A Guide to Providing Access to Historic Buildings for People with Disabilities". Boston: Massachusetts Historical Commission, 1989.

26. "Standards for Accessible Design: ADA Accessibility Guidelines" (ADAAG), Washington, DC: US Department of Justice, 1991.

27. **ST JAMES THEATRE CONSERVATION PLAN, N.Z.**, Clause 2.6.4 Access for People with Disabilities. p.11-13

28. **U.S. ARCHITECTURAL & TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB).** Americans with Disabilities Act, Accessibility Guidelines, Checklist for Buildings & Facilities. Accessible Buildings - Historic Preservation Minimum requirements Summary Sheet J.

29. **U.S. ARCHITECTURAL & TRANSPORTATION BARRIER COMPLIANCE BOARD** Final Report on recommendations for a new ADAAG, 30 September 1996.

30. **U.S. DEPARTMENT OF JUSTICE : EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.** Americans with Disabilities Act Handbook, October 1991.

31. **U.S. DEPARTMENT OF JUSTICE**, Civil Rights Division, Disability Rights Section; Report compiled by Frank Heitzman on 19/4/96 on examples of settlement of legal cases under their ADA (Discrimination Act) involving access to buildings. (Available through Internet).

32. **U.S. DEPARTMENT OF THE INTERIOR** "Making Historic Properties Accessible", Preservation Briefs 32 by Thomas C. Jester & Sharon C. Park AIA, 1993.

33. **DEPARTMENT OF THE INTERIOR, HERITAGE CONSERVATION & RECREATION SERVICE.** "Access to Historic Buildings for the Disabled - Suggestions for Planning & Implementation" prepared by Charles Parrott 1980.

34. **WESTERN AUSTRALIAN DISABILITY SERVICES COMMISSION** "Access Resource Kit" with checklists for people with disabilities, June 1996.

35. **CSIRO BUILDING TECHNOLOGY FILE NUMBER 11** "Access for people with disabilities: signs", August 1996.

36. **KERR, JAMES SEMPLE** "The Conservation Plan" - The National Trust of Australia (NSW), Edition 4, December 1996.

B. PERSONAL COMMUNICATIONS

1.	Quentin Angus	DPA, NZ (The Assembly of People with Disabilities)
2.	Greg Bowran	Building Officer, NZ Historic Places Trust
3.	Terrence Broad	Deputy Works Registrar, Victoria University, Wellington, NZ
4.	Janet Burne	National Trust of Australia (Victoria)
5.	Michael Hartfield	Policy Analyst (Heritage), Wellington City Council, NZ.
6.	Greg Heesan & Kym Duggan	Attorney General's Department, Canberra
7.	John Kennedy	Australian Building Code Board
8.	Helen McAuley	ACROD Policy Officer, National Office
9.	Thomas Perrizo	National Trust of Australia (WA)
10.	Judy Peters	Education Manager, NSW Association of Occupational Therapists
11.	Anne Robertson	Australian Heritage Commission
12.	Hannah Sharpe	Disability Services Section, Leichardt City Council, NSW
13.	Pip Daly Smith	Disability Services Commission, Perth, WA
14.	Geoffrey Whitehead	Director, NZ Historic Places Trust

C. ORGANISATIONS WHO COMMENTED ON THE DRAFT REPORT

1. ACROD National Office (2 submission)
2. Australian Heritage Commission (2 submission)
3. ACROD WA Division
4. Commonwealth Department of Health and Family Services: Office Disability MDP113
5. Australian Council of National Trust
6. Disability Services Commission WA
7. Australian Quadriplegic Association Head Office

APPENDIX 3

LIST OF DISABILITY ORGANISATION CONTACTS

1. National Federation of Blind Citizens of Australia
   (03) 9521 3433

2. Deafness Forum
   (06) 281 3934

3. National Council on Intellectual Disability
   (06) 282 5624

4. Speech Pathology Association of Australia
   (02) 9975 8264

5. ACROD (National Industry Association for Disability Services)
   (06) 282 4333

6. Physical Disability Council of Australia
   (07) 3267 1057

For general information on assisting people with disabilities, contacts include:

1. Office of Disability
   (06) 289 1555

2. National Caucus of Disability Consumer Organisations
   (06) 282 5624

3. Australian Psychiatric Disability Coalition
   (06) 286 2022

4. Head Injury Council of Australia
   (06) 290 2253

5. National Ethnic Disability Alliance
   (06) 290 2061

6. Women with Disabilities
   (06) 242 1310

For further details consult the telephone directory

LIST OF AUSTRALIAN STANDARDS FOR PEOPLE WITH DISABILITIES

ACCESS AND MOBILITY STANDARDS

- AS 1428.1 - 1993, Design for access and mobility, Part 1: General requirements for access - Buildings.
- AS 1428.1 Supplement 1 - 1993, Design for access and mobility, Part 1: General requirements for access - Buildings - Commentary (Supplement to AS 1428.1 - 1993)
- AS 1428.2 - 1992, Design for access and mobility, Part 2: Enhanced and additional requirements - Buildings and facilities
- AS 1428.3 - 1992, Design for access and mobility, Part 3: Requirements for children and adolescents with physical disabilities

- AS 1428.4 - 1992, Design for access and mobility, Part 4: Tactile ground surface indicators for the orientation of people with vision impairment
- As 1735.8 - 1986, Lifts, escalators and moving walks (known as the SAA lift code), Part 8: Inclined lifts
- AS 1735.12 - 1994, Lifts, escalators and moving walks, Part 12: Facilities for persons with disabilities
- AS 1735.13 - 1986, Lifts, escalators and moving walks, Part 13: Lifts for persons with limited mobility - Manually powered
- AS 1735.15 - 1990, Lifts, escalators and moving walks, Part 15: Lifts for people with limited mobility - Restricted use - Non-automatically controlled
- AS 1735.16 - 1993, Lifts, escalators and moving walks, Part 16: Lifts for persons with limited mobility - Restricted use - Automatically controlled
- AS 1735.17 - 1995, Lifts, escalators and moving walks, Part 17: Lifts for people with limited mobility - Restricted use - Water-drive
- AS 2890.1 - 1993, Parking facilities, Part 1: Off-street car parking
- AS 2942 - 1994, Wheelchair occupant restraint assemblies for motor vehicles
- AS 2999 - 1989, Alarm systems for the elderly and other persons at risk
- AS 3695 - 1992, Wheelchairs - Product requirements
- AS 3856.1 - 1991, Hoists and ramps for people with disabilities - Vehicle mounted, Part 1: Product requirements
- AS 3856.2 - 1991, Hoists and ramps for people with disabilities - Vehicle mounted, Part 2: Installation requirements
- AS 3954.1 - 1991, Motor vehicle controls - Adaptive systems for people with disabilities, Part 1: General requirements
- AS 3954.2, - 1991, Motor vehicle controls - Adaptive systems for people with disabilities, Part 2: Hand controls - product requirements
- AS 3973 - 1991, Mobile shower/toilet chairs
- AS/NZS 4277:1995, Text telecommunications - user interface requirements - For deaf people and people with hearing and speech disabilities
- AS 4299 - 1995, Adaptable housing

THE AUSTRALIA ICOMOS CHARTER FOR THE CONSERVATION OF PLACES OF CULTURAL SIGNIFICANCE (THE BURRA CHARTER)

Preamble

Having regard to the International Charter for the Conservation and Restoration of Monuments and Sites (Venice 1966), and the Resolutions of the 5th General Assembly of the International Council on Monuments and Sites (ICOMOS) (Moscow 1978), the following Charter was adopted by Australia ICOMOS on 19th August 1979 at Burra Burra. Revisions were adopted on 23rd February 1981 and on 23 April 1988.

Definitions

ARTICLE 1. For the purpose of this Charter:

1.1 ***Place*** means site, area, building or other work, group of buildings or other works together with associated contents and surrounds.

1.2 ***Cultural significance*** means aesthetic, historic, scientific or social value for past, present or future generations.

1.3 ***Fabric*** means all the physical material of the *place*.

1.4 ***Conservation*** means all the processes of looking after a place so as to retain its *cultural significance*. It includes maintenance and may according to circumstance include *preservation*, *restoration*, *reconstruction* and *adaptation* and will be commonly a combination of more than one of these.

1.5 ***Maintenance*** means the continuous protective care of the *fabric*, contents and setting of a *place*, and is to be distinguished from repair. Repair involves *restoration* or *reconstruction* and it should be treated accordingly.

1.6 ***Preservation*** means maintaining the *fabric* of a *place* in its existing state and retarding deterioration.

1.7 ***Restoration*** means returning the EXISTING *fabric* of a *place* to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.

1.8 ***Reconstruction*** means returning a *place* as nearly as possible to a known earlier state and is distinguished by the introduction of materials (new or old) into the *fabric*. This is not to be confused with either recreation or conjectural reconstruction which are outside the scope of this Charter.

1.9 ***Adaptation*** means modifying a *place* to suit proposed compatible uses.

1.10 ***Compatible use*** means a use which involves no change to the culturally significant fabric, changes which are substantially reversible, or changes which require a minimal impact.

Conservation Principles

ARTICLE 2. The aim of *conservation* is to retain the *cultural significance* of a *place* and must include provision for its security, its *maintenance* and its future.

ARTICLE 3. *Conservation* is based on a respect for the existing *fabric* and should involve the least possible physical intervention. It should not distort the evidence provided by the *fabric*.

ARTICLE 4. *Conservation* should make use of all the disciplines which can contribute to the study and safeguarding of a *place*. Techniques employed should be traditional but in some circumstances they may be modern ones for which a firm scientific basis exists and which have been supported by a body of experience.

ARTICLE 5. *Conservation* of a *place* should take into consideration all aspects of its *cultural significance* without unwarranted emphasis on any one aspect at the expense of others.

ARTICLE 6. The conservation policy appropriate to a *place* must first be determined by an understanding of its *cultural significance*.

ARTICLE 7. The conservation policy will determine which uses are compatible.

ARTICLE 8. *Conservation* requires the maintenance of an appropriate visual setting: e.g., form, scale, colour, texture and materials. No new construction, demolition or modification which would adversely affect the setting should be allowed. Environmental intrusions which adversely affect appreciation or enjoyment of the *place* should be excluded.

ARTICLE 9. A building or work should remain in its historical location. The moving of all or part of a building or work is unacceptable unless this is the sole means of ensuring its survival.

ARTICLE 10. The removal of contents which form part of the *cultural significance* of the *place* is unacceptable unless it is the sole means of ensuring their security and *preservation*. Such contents must be returned should changed circumstances make this practicable.

Conservation Processes

Preservation

ARTICLE 11. *Preservation* is appropriate where the existing state of the *fabric* itself constitutes evidence of specific *cultural significance*, or where insufficient evidence is available to allow other conservation processes to be carried out.

ARTICLE 12. *Preservation* is limited to the protection, *maintenance* and, where necessary, the stabilisation of the existing *fabric* but without the distortion of its *cultural significance*.

Restoration

ARTICLE 13. *Restoration* is appropriate only if there is sufficient evidence of an earlier state of the *fabric* and only if returning the *fabric* to that state reveals the *cultural significance* of the *place*.

ARTICLE 14. *Restoration* should reveal anew culturally significant aspects of the *place*. It is based on respect for all the physical, documentary and other evidence and stops at the point where conjecture begins.

ARTICLE 15. *Restoration* is limited to the reassembling of displaced components or removal of accretions in accordance with Article 16.

ARTICLE 16. The contributions of all periods to the place must be respected. If a *place* includes the *fabric* of different periods, revealing the *fabric* of one period at the expense of another can only be justified when what is removed is of slight *cultural significance* and the *fabric* which is to be revealed is of much greater *cultural significance*.

Reconstruction

ARTICLE 17. *Reconstruction* is appropriate only where a *place* is incomplete through damage or alteration and where it is necessary for its survival, or where it reveals the *cultural significance* of the *place* as a whole.

ARTICLE 18. *Reconstruction* is limited to the completion of a depleted entity and should not constitute the majority of the *fabric* of the *place*.

ARTICLE 19. *Reconstruction* is limited to the reproduction of *fabric*, the form of which is known from physical and/or documentary evidence. It should be identifiable on close inspection as being new work.

Adaptation

ARTICLE 20. *Adaptation* is acceptable where the *conservation* of the *place* cannot otherwise be achieved, and where the *adaptation* does not substantially detract from its *cultural significance*.

ARTICLE 21. *Adaptation* must be limited to that which is essential to a use for the *place* determined in accordance with Articles 6 and 7.

ARTICLE 22. *Fabric* of *cultural significance* unavoidably removed in the process of *adaptation* must be kept safely to enable its future reinstatement.

Conservation Practice

ARTICLE 23. Work on a *place* must be preceded by professionally prepared studies of the physical, documentary and other evidence, and the existing *fabric* recorded before any intervention in the *place*.

ARTICLE 24. Study of a *place* by any disturbance of the *fabric* or by archaeological excavation should be undertaken where necessary to provide data essential for decisions on the *conservation* of the *place* and/or to secure evidence about to be lost or made inaccessible through necessary *conservation* or other unavoidable action. Investigation of a *place* for any other reason which requires physical disturbance and which adds substantially to a scientific body of knowledge may be permitted, provided that it is consistent with the conservation policy for the *place*.

ARTICLE 25. A written statement of conservation policy must be professionally prepared setting out the *cultural significance* and proposed *conservation* procedure together with justification and supporting evidence, including photographs, drawings and all appropriate samples.

ARTICLE 26. The organisation and individuals responsible for policy decisions must be named and specific responsibility taken for each such decision.

ARTICLE 27. Appropriate professional direction and supervision must be maintained at all stages of the work and a log kept of new evidence and additional decisions recorded as in Article 25 above.

ARTICLE 28. The records required by Articles 23, 25, 26 and 27 should be placed in a permanent archive and made publicly available.

ARTICLE 29. The items referred to in Articles 10 and 22 should be professionally catalogued and protected.

Words in italics are defined in Article 1.

APPENDIX 5

ACCESS AUDIT CHECKLIST

A range of checklists are available from disability organisations.

The checklists listed below are part of the Western Australian Disability Services Commission Access Resource Kit. A full copy of the Access Resource Kit is required for the detailed understanding and use of the checklists. Copies of the Resource Kit are available from:

Access Improvement Branch
Disability Services Commission
53 Ord Street
WEST PERTH WA 6872

Telephone: (09) 426 9384
TTY: (09) 426 9226
Facsimile: (09) 426 9302

The checklists within the Resource Kit cover a range of issues relevant to access to heritage buildings and are useful documents.

P30 - 88 Buildings and Facilities Checklist;
P89 - 99 Information Checklist;
P100 - 115 Staff Access Awareness Checklist;
P116 - 125 Public Participation Checklist;
P126 - 132 Adaptation Services Checklist.

A consideration of other relevant provisions of the AHCA supports this view. Section 4(3) states that a place may form part of the national estate for the purposes of [the AHCA] notwithstanding that the conservation, improvement or presentation of the place is dealt with by another Act. "Presentation" is defined in section 3 to include the provision of access to places included in the National Estate.

Further, the DDA indicates that a range of competing social and economic considerations are relevant to determining whether the objects of the legislation are to be promoted in any given case. The discussion on the concepts of "reasonableness" in the indirect discrimination test and of "unjustifiable hardship" (see paragraphs 7-12 above) illustrate this flexibility.

In the present context, an apparent conflict between the DDA and the AHCA is most likely to arise when a complaint of discrimination has been made alleging that premises on the National Register are inaccessible. The Human Rights and Equal Opportunity Commission, or relevant decision-maker, must then determine whether:

(i) the means of current access are reasonable, and

(ii) whether modifications to the premises are likely to constitute an unjustifiable hardship on the person required to provide access.

In such circumstances, the weight to be given to the competing concerns will depend on the facts in each case. It may be that in some cases (after taking the Australian Heritage Commission's views on the matter, along with all other relevant considerations) heritage values will outweigh the requirement for a particular form of access, but not another which affects, to a lesser extent, the heritage value of the premises. An example of such a situation might be where a particular building is listed on the National Register because the front facade has particular significance. While that significance may preclude modifications to allow access through the front facade, an alternative entrance, such as a side entrance, may provide adequate access under the DDA. It should be noted that access through a trade entrance or delivery bay is unlikely to be considered appropriate.

It is however impossible to set out an exhaustive list of the issues to be considered or the relative weights assigned to each matter. This remains a question of fact and degree which can only be ascertained by looking at the particular building in question.

Finally, in terms of reconciling the operation of the two Acts, it is important to observe the qualification that the obligations of Ministers and authorities under sub-ss.30(1) and (2), respectively, are required to be carried out "consistently with any relevant laws" (see the terms of s.30 set out earlier in this advice). Ministers must give all directions and do all things as, "consistently with any relevant laws," can be given or done to protect the National Estate. Authorities of the Commonwealth must not take any action that adversely effects the National Estate unless the authority is satisfied that there is no feasible and prudent alternative "consistent with any relevant laws" to the taking of that action.

It is not immediately clear what the phrase "consistent with any relevant laws" in sub-s.30(2) adds to the requirement that alternative actions be "feasible" (this extra qualification does not appear in the equivalent part of sub-s.30(1). In any event it would seem (both in sub-ss.30(1) and (2) that this phrase is intended to complement the limitation inherent in s.30 that it must be legally practicable for matters affecting the National Estate to be examined and taken into account for these to be within the object of the Act.

Thus wherever there is a relevant law (such as s.23 of the DDA) that, on its proper interpretation or in any particular application, is inconsistent with the obligations under s.30 of the AHCA, the other law (in this example, s.23 of the DDA) will prevail. As to what constitutes an "inconsistency" for these purposes, the better view is probably that a relatively narrow test is appropriate, with the result that a "clear conflict of statutory authority" is required before a relevant inconsistency is said to exist - see e.g. G Kelly, "Commonwealth Legislation Relating to Environmental Impact Statements"(1976) 50 ALJ 498 at 500 and 505.

For the reasons given above, having particular regard to the non-prescriptive content and flexible application of relevant provisions of the DDA and AHCA, it is difficult to conceive of situations where inconsistencies between the two Acts, in a relevant sense, will arise. There is ample scope for the DDA and the AHCA each to operate without conflict in matters concerning physical access to places on the Register of the National Estate.

2.5 UNITED STATES OF AMERICA

2.5.1 Legislation

In addition to local and State accessibility codes, the following federal accessibility laws are currently in effect *(Ref 32 p.13)*

Architectural Barriers Act (1968)

The Architectural Barriers Act stipulates that all buildings designed, constructed, and altered by the Federal Government, or with federal assistance, must be accessible. Changes made to federal buildings must meet the Uniform Federal Accessibility Standards (UFAS). Special provisions are included in UFAS for historic buildings that would be threatened or destroyed by meeting full accessibility requirements.

Rehabilitation Act (1973)

The Rehabilitation Act requires recipients of federal financial assistance to make their programs and activities accessible to everyone. Recipients are allowed to make their properties accessible by altering their building by moving programs and activities to accessible spaces, or by making other accommodations.

Americans with Disabilities Act (1990)

The ADA 1990 states that access to properties open to the public is a civil right. The ADA Accessibility Guidelines (ADAAG) set down details for general accessibility *(Ref 32 p.1)*

Historic properties are not exempt from the Americans with Disabilities Act (ADA) requirements. To the greatest extent possible, historic buildings must be accessible as non-historic buildings. However, it may not be possible for some historic properties to meet the general accessibility requirements.

Under Title II of the ADA, State and local governments must remove accessibility barriers either by shifting services and programs to accessible buildings, or by making alterations to existing buildings. For instance, a licensing office may be moved from a second floor to an accessible first floor space, or if this is not feasible, a mail service might be provided. However, State and local government facilities that have historic preservation as their main purpose - State owned historic museums, historic State capitols that offer tours - must give priority to physical accessibility.

Under Title III of the ADA, owners of "public accommodations" (theaters, restaurants, retail shops, private museums) must make "readily achievable" changes; that is, changes that can be easily accomplished without much expense. This might mean installing a ramp, creating accessible parking, adding grab bars in bathrooms, or modifying door hardware. The requirement to remove barriers when it is "readily achievable" is an ongoing responsibility. When alterations, including restoration and rehabilitation work, are made, specific accessibility requirements are triggered.

Recognizing the national interest in preserving historic properties, Congress established alternative requirements for properties that cannot be made accessible without "threatening or destroying" their significance. A consultation process is outlined in the ADA's Accessibility Guidelines for owners of historic properties who believe that making specific accessibility modifications would "threaten or destroy" the significance of their property. In these situations, after consulting with persons with disabilities and disability organization, building owners should contact the State Historic Preservation Officer (SHPO) to determine if the special accessibility provisions for historic properties may be used. Further, if it is determined in consultation with the SHPO that compliance with the minimum requirements would also "threaten or destroy" the significance of the property, alternative methods if access, such as home delivery and audio-visual programs may be used.

2.5.2 Requirements for Heritage Buildings *(Ref 30 p.13)*

Accessible Buildings : Historic Preservation

1. Applicability

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application section 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior) ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature.

EXCEPTION: [reserved].

(b) Definition. A qualified historic building or facility is a building or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

2. Procedures:

(a) Alterations to Qualified Historic Buildings and Facilities Subject to section 106 of the National Historic Preservation Act.

(i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effect of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

(ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 16 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.

(b) Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

(c) Consultation With Interested persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organisations representing individuals with disabilities.

(d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5) the responsibility may be carried out by the appropriate local government body or official.

3. Historic Preservation : Minimum Requirements

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610mm) may be used as part of an accessible route to an entrance.

(b) At least one accessible entrance complying with 4.14 which is used by the public shall be provided.

EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.

(c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.

(d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

e) Displays and written information, documents, etc. should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g. open books) should be no higher than 44 inches (1120mm) above the floor surface.

Minimum requirement Guidelines are detailed in the Guidelines Section 3.2.

2.6 NEW ZEALAND

The Disabled persons Community Welfare Act 1975 makes general requirements of Disabled Persons.

The Building Act 1991 and NZ Standards have been prepared to meet the requirements of Section 25 of the Act. *(Ref 8 p.30)*

2.6.1 Legislation for Access

The Building Act 1991 in its purposes Section 6(2)(e) refers to the need to provide access for people with disabilities to all buildings. *(Ref 8 p.30)*

Access includes "access, parking provision by way of access, parking provisions, and sanitary conveniences: for disabled persons who may be expected to visit or work in that building and carry out normal activities and processes in that building". *(Ref 27 p.11)*

Clause 47A(2) offers a waiver or modification from all or any of the requirements for alternating existing buildings if the Building Industry Authority determines that it is reasonable to grant it. *[Under Clause 37(7)] (Ref 8 p.7)*

This waiver or modification of access requirements is not available to territorial authorities which means that the (National) Building Industry Authority itself is the only organization with this power. *(Ref 8 p.11)*

One example of grounds to seek a waiver is if the modification will be unreasonably costly. *(Ref 8 p.41)*

With existing buildings, the onus is on the owner to ensure that provisions for access are implemented "as nearly as is reasonably practicable". (Refer Clauses 38 & 45). *(Ref 8 p.12)*

2.6.2 Requirements for Heritage Buildings

Notes associated with a checklist used to assess building plans states:

(j) In the case of an existing building, any special historical or cultural value of that building emphasizes the need to ensure that alterations to meet the requirements relating to access by people with disabilities are properly designed. *(Ref 8 p.41)*

However, factors considered in determining the need for access is use of the building, the need for access and quantum of public visitation.

2.7 ENGLAND

2.7.1 Legislation

Under Part III of the Disability Discrimination Act 1995 (the Act) it is unlawful to discriminate against disabled people in connection with the provision of goods, facilities and services. *(Ref 9 p.2)*

Where a physical feature, including one related to the design or construction of a building, or the approach or access to it, makes it impossible or unreasonably difficult for disabled people to make use of a particular service, the service-provider will have a duty to take such steps as are reasonable, in all the circumstances of the case, to:

- remove the feature;
- alter it so that it no longer has that effect;
- provide a reasonable means of avoiding the feature;
- provide a reasonable alternative way of making the service in question available to disabled people.

2.7.2 Heritage Buildings

The Government recognises that there will be circumstances in which it will be impossible, or unreasonable, to provide access to a historic property without excessive expense or radical alteration. Regulations to be introduced during the Act's phasing-in period will offer further guidance on this.

All work on listed buildings and places require special approval by local planning authorities (or its ecclesiastical equivalent), including Greater London Council or the Secretary of State for the Environment on appeal.

2.8 OTHER COUNTRIES

No detailed information has been researched on other countries but some pertinent comments are made below.

2.8.1 Canada

In 1985 standards for barrier free access was integrated into various sections of the National Building Code of Canada. However, this applies mainly to new buildings, whereas heritage sites need to be individually assessed.

Application of the code lies ultimately in the hands of the provinces and each has allowed its own exceptions. In British Columbia, Saskatchewan and Ontario access is required for major renovations as well as for new buildings. *(Ref 19 p.16)*

2.8.2 China

From a visit to China, it appears that the issue of appropriate access has yet to be realized and fully legislated, especially in respect to heritage places. However, access to heritage places are current issues being considered especially with the opportunities of increased tourism.

2.8.3 Others

The issues of access especially to heritage places are an international issue regardless of legislation for accessibility or conserving heritage places.

3. EXISTING GUIDELINES

3.1 INTRODUCTION

While DDA (or similar) legislation exists in a few places throughout the world, there is some latitude or flexibility in the application of the legislation. Some guidelines already exist in the application of access to heritage places as outlined below.

3.2 United States of America

In meeting the requirements of the ADA in historic preservation, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of (impact on the significance of the property), alternatives methods of achieving program accessibility include *(Ref 30 p.II-59)*:

(i) Using audio visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise to be made accessible; or

(iii) Adopting the innovative methods.

The following extract from the ADA Accessibility Guidelines of the US Architectural & Transportation Barriers Compliance Board outlines their approach to heritage buildings. *(Ref 28)*

Alterations to a qualified historic building or facility must comply with the minimum requirements for alterations in 4.1.6.

If it is determined, in accordance with the required procedures in 4.1.7(2), that the proposed alterations would threaten or destroy the historic significance of the building or facility, the following alternative requirements in 4.1.7(3) may be utilized.

- **Site Accessible Route - Minimum Number:** At least one accessible route complying with 4.3 must be provided from a site access point to an accessible entrance.

- **Ramps - Slope and Rise:** A ramp with a slope no steeper than 1:6 may be used as part of an accessible route to an entrance but the run must not exceed 2 feet (610mm).

- **Entrances - Minimum Number and Primary Entrance:** At least one accessible entrance complying with 4.14 and which is used by the public must be provided. If no public entrance can be made accessible, then access may be provided at any entrance which is open (unlocked) when directional signage is provided at the primary public entrance. The alternative accessible entrance must have a notification system and where security is a concern, remote monitoring may be used.

- **Building Accessible Route - Access to other Floors:** Accessible routes from an accessible entrance to all publicly used spaces must be provided at least on the accessible entrance level. Access must be provided in compliance with 4.1 to all levels of a building and facility whenever practicable.

- **Toilet Rooms - Unisex:** If toilets are provided, then at least one toilet facility, which may be unisex in design, complying with 4.22 and 4.1.6, must be provided on an accessible route.

- **Displays:** Displays and written information should be located so as to be seen by a seated person.

If it is determined, in accordance with the required procedures in 4.1.7(2), that it is not feasible to provide physical access to a qualified historic building or facility using the alternative requirements in 4.1.7(3) without threatening or destroying the historic significance of the building or facility, alternative methods of access must be provided. See 36 CFR §36.405(b).

These guidelines were reviewed in 1996 and will probably be amended. *(Ref 29).* From the final report it is likely that the exceptions relating to qualified historic buildings appear similar to the above provisions.

United States : Case Studies

Legal case studies indicated "an historic hotel in Colorado agreed to make its secondary entrance accessible by regrading the adjacent sidewalk (historical preservation authorities argued that making the hotel's main entrance accessible would destroy the hotel's historic significance), arranging for bell assistance at the secondary entrance when necessary and installing an accessible unisex restroom in the hotel lobby". *(Ref 31 Case 20)*

The Illinois Accessibility Code offers the following modifications to standard requirements when alterations to fully comply will adversely affect the significance of a heritage building:

- doors can be 29" (737mm) wide
- heights of storage shelves can be higher
- operating force of controls can be heavier if operable by the tour guide
- detectable warnings such as treatment of stair nosings
- if signage not in raised letters or Braille, then the tour guide will need to explain
- kerb ramps at 1:10 for maximum 150mm rise
- ramps at 1:8 for maximum 75mm rise
- full extension of stair handrails not required
- accessible seats in assembly areas can be clustered rather than dispersed.

3.3 New Zealand

The DPA Access Guidelines report does offer suggestions and solutions to access problems for existing buildings. *(Ref 8 p.14)* Some general questions are offered as a means to solving problems:

- Can an inaccessible object be relocated?
- Can the building be made accessible?
- Can furniture be moved to provide access space?
- Can doors be widened or removed?
- Can lighting be improved?

Other suggestions include:

- Alternative most direct practical route to the space served by the principal entrance shall be used. The route shall have signs complying with NZBCF8. *(Ref 8 p.20)*

3.4 England

English Heritage Draft Guideline starts with a statement of traditional conservation philosophy familiar to conservation professionals that alterations should:

- involve no loss or minimum loss of significant historic fabric;
- be reversible and not affect the character of the building or its setting;
- form part of a long term use for the property.

In trying to reconcile access objectives with traditional conservation philosophy one principle is to look for administrative solutions which avoid the need for change to the fabric of the building. This could include moving the services or functions to accessible places. *(Ref 20 p.16-17)*

3.5 Current Reviews in Australia

There are current reviews and changes underway which will have an impact on the detailed requirement of codes and standards.

For new buildings the ABCB circulated a Regulation Document RD97/01 "Provisions for People with Disabilities" in June 1997 which will lead to amendments to BCA in early 1998. Amendments to associated Australian Standards (AS1428.1, AS1735.12 and AS1735.14) are also to be released with the objective of being resolved by early 1998 to coincide with BCA amendments. DDA standards are likely to follow the BCA and AS amendments.

Application to existing buildings, heritage buildings and residential buildings will be addressed at a later stage by all authorities.

These reviews will not result in change to the principles outlined in this report but will change the details.

4. GUIDELINES

4.1 INTRODUCTION

These guidelines provide the overall framework for access to heritage places. It sets down the principals for the benefit of all people associated with access for people with disabilities and heritage places.

If real improvement in accessibility of heritage buildings is to occur, there must be a shift in conservation philosophy which takes into account the social duty to provide access and facilities for people with disabilities. This social duty is set out in the DDA and other legislation. There are situations within the BCA or when a successful compliant is lodged under the DDA where access is mandatory.

For some heritage buildings, value exists in the evidence they display of change. Further change to accommodate accessibility can reflect a change in attitude towards accommodating the needs of people with disabilities. This could be another step in the history of the building and will be evidence of a social attitude of today for future generations.

By its very nature, building conservation poses unique problems. Standard design guidelines are not always applicable but a policy of dignified easy access is possible.

Good access will also ensure heritage places are accessible for all people. Barriers to people with a disability will not only limit access to people with reduced mobility or other impairments, it will also limit accessiblity by carers, family and friends of those individuals plus young children, parents with strollers and elderly people.

Improved access can open up wider markets for owners and managers which could be promoted to increase visitation. However increased visitation needs to be managed to ensure it does not cause increased deteriation of original fabric.

Some flexibility in application of regulations in respect to access is not different to the flexibility in application of fire safety requirements for heritage places that has operated for many years. There usually is a means to solve the problem by careful analysis. Each case needs to be considered individually although general principles can apply.

Implicit in any guideline is the idea that each situation presents its own unique opportunities and limitations. Integrated and independent access may be the ideal objective but in practice, different degrees of integration or independence may be obtained.

4.2 GENERAL

These guidelines address the need to balance accessibility and preservation. It provides guidance on making heritage properties accessible while conserving their heritage character and value. Detailed options and a range of solutions are provided in Section 5.

Independent physical access can be achieved with careful planning, consultation and sensitive design.

The guidelines will assist heritage property managers, design professionals and administrators in evaluating their heritage properties so that the highest level of accessibility can be provided while minimizing changes to significant materials and features.

However, many projects are complex and experts in the fields of building conservation and accessibility should be consulted before proceeding with permanent changes to the heritage properties.

4.3 ACCESS POLICY

Organizations or Authorities who own or manage heritage places that are open to the Public should establish a policy and program to make the places accessible.

An example of a policy is that adopted by the National Trust of Australia (WA) in their Disability Services Plan which states that the National Trust "is committed to consulting with people with disabilities, their families and carers and where required, disability organisations to ensure that barriers to access are removed or minimized as appropriate". To achieve this policy the National Trust set out a number of outcomes to achieve and a strategy to achieve them. (Ref 22).

The access policy requires

- undertaking access audits of the building to identify areas needing improvement;
- agree with HREOC what is acceptable and reasonable to do;
- set down a program to implement changes and have HREOC agree to the program;
- Implement the changes.

Such a policy is suggested in the DDA but if a complaint is lodged under the DDA it could be legally mandatory. Furthermore legislation in NSW and WA require that certain Government departments and agencies prepare and implement Disability Service Plans. *(Ref 15 p.7)* It is important then to establish an implementation plan to ensure the actions required by an access policy are realized.

Any solution should be part of the long term conservation and use of the place.

4.4 SPECIAL ASPECTS WITH HERITAGE PLACES

Heritage places are distinguished by features, materials, spaces and spatial relationships that contribute to their significance. Often, these significant elements such as steep terrain, monumental steps, narrow or heavy doors, decorative ornamental hardware, narrow pathways and corridors, pose barriers for people with disabilities especially wheelchair users.

There will be some sites where the nature, or fragility, of their structure make it impossible to provide physical access without endangering their special historic or architectural interest, or the safety of their visitors. The objective is to carefully resolve difficult situations and innovative interpretation of such sites may be necessary.

4.5 ACCESS FOR PEOPLE WITH DISABILITIES

As mentioned previously, people who have a full range of disabilities need to be considered in providing access.

People with mobility impairment include those in wheelchairs. Account must be taken of their needs which are usually the most demanding on space and their difficulties when changing levels. There are also semi ambulatory people who must use an aid when they walk and people with co-ordination difficulties who have impaired balance or muscle control who can walk unaided but with some difficulty.

People with vision impairment have different needs to enable them to experience heritage buildings. Blind people may need audible interpretation or tactile indicators. People with moderate vision impairments need clear, easy to read signage and well lit displays.

People with hearing impairments require special interpretative programs or visual interpretative material.

People with intellectual and psychiatric disabilities require plain english signage and interpretative material.

Further details are provided under the detailed guidelines provided in Clause 4.8.

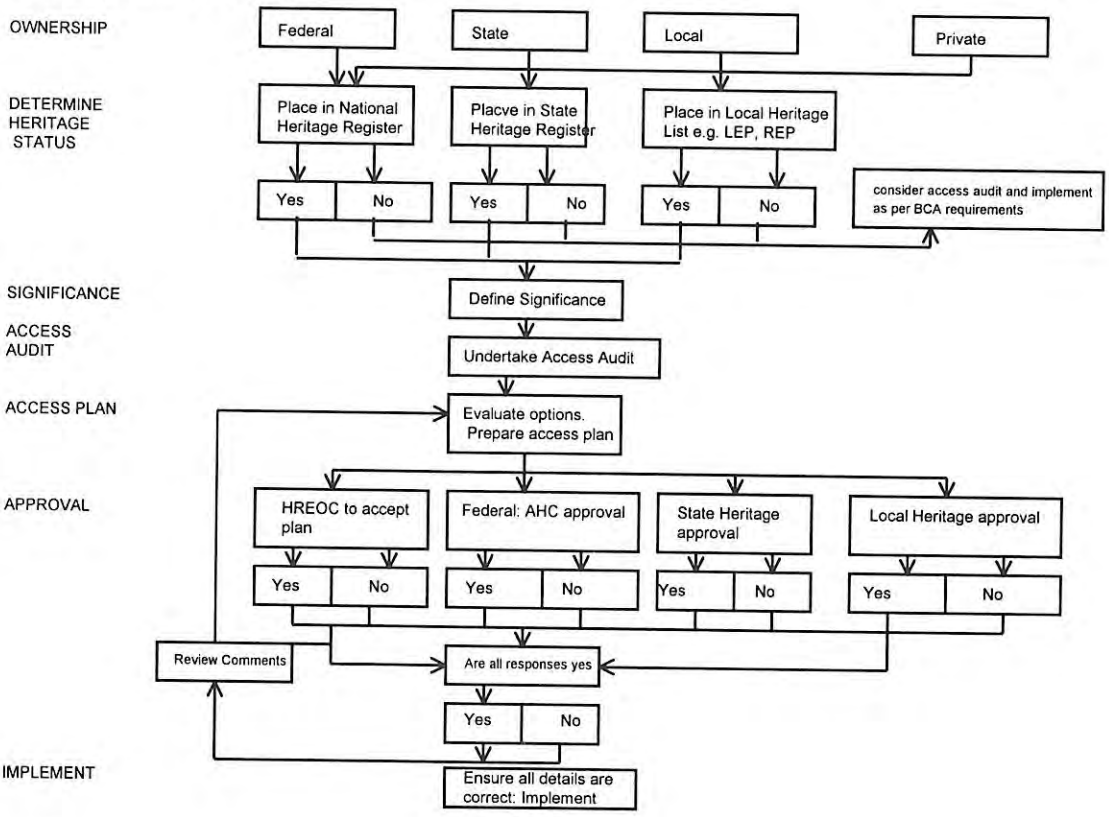
4.6 GENERAL APPROACH

A three step approach is recommended to identify and implement accessible modifications that will protect the integrity and significance of heritage properties.

1. Review the significance of the place and identify the elements of greatest significance.
2. Undertake an Access Audit to determine the place's existing and required level of accessibility.
3. Evaluate accessible options within a conservation context then implement the necessary actions. This process includes consultation with authorities. A progress flow diagram is set out below.

PROCESS FLOW DIAGRAM

To improve access to buildings



4.7 REVIEW SIGNIFICANCE

If a Conservation Plan exists then the significance of the place and the elements should be adequately defined.

If a Conservation Plan does not exist then it is important to identify the significance and significant elements the best way possible.

Options for this include:

- Prepare a Conservation Plan. (Refer ref.36)
- Obtain details of the significance from Authorities (Local Council, State/Territory Heritage Council, Australian Heritage Commission).
- Obtain details of the significance from community organisations such as the National Trust or Historical Society.
- Seek advice from a Conservation professional.

Review of any documentary evidence should be supplemented with physical evidence on site to confirm the elements of high significance and what must be protected from change.

For most heritage places the construction materials, the style of the place, principal elevations, the major architectural or landscape features and the principal public spaces usually constitute some of the elements to be protected.

Every effort should be made to minimize damage to original materials, fabric and elements that contribute to the significance of the place. Alterations should, as far as possible, be reversible, especially if alterations involve change to original fabric.

Secondary spaces and elements that may be less significant should also be identified as these may be able to be altered without adversely affecting the significance of a place.

Items of low significance are more available to be altered without affecting the significance of a place.

4.8 LEVEL OF ACCESSIBILITY

Physical

A building survey or assessment needs to be undertaken to thoroughly evaluate the place's accessibility.

Surveys or audits need to identify accessibility barriers for people with different disabilities. In considering the total access pathway all aspects from parking, site entry, access to the building, access into the building, circulation within the building plus access and use of all facilities need to be assessed.

Issues such as surface textures, widths, gradient, steps, weight of doors, restrictions on access, signage, clarity of interpretation material, visual and audible material need to be considered.

To assist in the building survey, a series of checklists are available from ACROD or selected publications. *(Refer Appendix 5)* The use of the Australian Standard (AS 1428-1) or the support of a professional experienced in access issues or a person with disabilities can also assist in determining the level of accessibility required.

It is important to consider independent and dignified access to the building as a fundamental objective.

The detailed requirements of the Building Code of Australia, Australian Standards (Refer Appendix 3) and the DDA Standards administered by the HREOC need to be considered in finalizing the access details.

Communication

A fundamental aspect of understanding and appreciating heritage places is the means to communicate information about the place to visitors.

The whole method of interpretation needs to be carefully considered and thought given to such issues as:

- availability of information in alternative formats, including large print, Braille, computer disc and audio tape;
- availability of information in plain english and other languages;
- captioning on videos;
- use of telephone typewriters and audio induction loops;
- appropriate use of sign language;
- make information available through signage or other non verbal means such as computer technology so patrons with disabilities affecting their capacity to communicate verbally can obtain information without the need for personal communication;
- use of graphic signs such as international symbols;
- need for appropriate staff training.

4.9 EVALUATE ACCESSIBLE OPTIONS

Once the significance is defined and accessibility required is set down, solutions can be developed.

Solutions should provide the greatest level of accessibility without adversely affecting the significance.

Implementation may be phased over time if funds are limited and interim solutions can be considered until more permanent solutions are able to be provided.

Experienced professionals in accessibility, conservation, plus people with disabilities and authorities should be consulted as solutions are being developed.

Modifications should generally be based on the following priorities.

1. Making the main or prominent public entrance and primary public spaces accessible, including a path to the entrance.

2. Providing access to goods, services and programs.

3. Providing accessible toilets.

4. Create access to other amenities and secondary spaces.

Solutions should protect the significance of a place, especially elements of higher significance, they should be sympathetic alterations and reversible if feasible. New work should be evident on close inspection.

- Sympathetic means that the alterations should be visually compatible in scale with the place and not intrusive.

- Reversible means that the new work can be relatively easily removed and the essential form and integrity of the place is not altered.

- New features should also be able to be distinguished from the original fabric so that the evolution and change of the place is evident.

With any problem there is usually more than one option. These should be fully explored and the impact of each option assessed before selecting a final solution.

4.10 ACCESS PLANS

The solution should form part of an access plan which is site specific. The access plan is sometimes called an action plan or implementation plan. The access plan provides the opportunity to establish priorities and timescales.

It should also define the management arrangements for implementation and provide for periodic review as access requirements may change over time, or new technology becomes available.

The access plan should be presented to authorities, particularly HREOC for endorsement as this can reduce potential action under the DDA. Approval of heritage authorities is usually required.

4.11 DESIGN PRINCIPALS

With any proposed change, the detailed design must be resolved. Any change to improve accessibility must meet accessibility standards. To protect the significance of a place a question is raised should the alterations:

- match precisely the original details or
- be an obvious modern design

The objective is to "be sympathetic" but new material should be evident as such on close inspection so as not to be confused with the original fabric.

Curriculum Vitae

LIONEL J. MORRELL BA Env. Des, Dip Arch, Cert B, Registered Architect No. 392 (Tasmania),

1. Personal: Date of Birth - 16 May 1954
   Place - Launceston Tasmania Australia
   Citizenship - Australia
   Marital Status - Married 1984,
   Meredith Morrell, Music Teacher, Director of Music 1995-2015, Scotch Oakburn College, Launceston; Teacher Riverside High School; Teacher St Patrick's College, College Launceston - present.
   Family - Daughter, Hannah Morrell, Musician and Commonwealth public servant.
   Travel - All States & Territories of Australia, New Zealand, Fiji, Tonga, New Caledonia, Singapore, Malaysia, Hong Kong, China, United Arab Emirates, Egypt, United Kingdom, Ireland, Belgium, France, Italy, Greece, Germany, Austria, Russia, Spain, Morocco, Netherlands, Czech Republic, Croatia, Montenegro.

2. Education:
   Glen Dhu School (Primary), Launceston Tasmania.
   Kings Meadows School (Secondary), Launceston Tasmania.
   Launceston Technical College, Launceston Tasmania.
   University of Tasmania (TCAE & TSIT), Hobart Tasmania.

3. Qualifications:
   Bachelor of Arts (Environmental Design) UTAS (TCAE)
   Graduate Diploma in Architecture UTAS (TSIT)
   Certificate in Building LTC

4. Honours, Awards, Prizes:
   Most Deserving Student in Building (LTC) 1973
   National Trust Restoration Award (Tasmania) 1994
   Nominee Winston Churchill Fellowship 2000
   Honorary Life Membership, National Trust of Australia (Tasmania) 2005
   Silver Pin Award by Members of the National Trust of Australia (Tasmania) for distinguished voluntary service & valuable achievement prospering the work of the National Trust 2005
   Entered *Who's Who in Australia* 2008
   Honorary Life Membership, Eskleigh Foundation Incorporated 2010
   Nominee *Australian of the Year 2015*

5. Occupation:
   Architect (Refer to separate Statement of Experience for details if required).

6. Career History:

Principal (Architect), Lionel Morrell Associates 1985 - present.
Partner, Bush Parkes Shugg & Moon, architects 1981 - 1984.
Partner, The Good Design Company 1978 - 1981.
Technician, Lawrence H. Howroyd & Associates 1973 - 1978.
Storeman, Clerk & Factory Production, Nylex Corporation & Olex Cables, Launceston & Burnie 1969 -1973.

7. Corporate & Professional positions:

Director (Past Chairman) Eskleigh Foundation Incorporated 1982 - 2020
Director (Chairman) Lionel Morrell Pty Ltd 1981 - present.
Director Crown Mills Pty Ltd 1978 - 2004
Member Royal Australian Institute of Architects 1985 - 2002.
Lic. Member Royal Australian Institute of Builders 1981 - 2004.

8. Honorary/Voluntary roles:

•Eskleigh Foundation Inc., Caring for Tasmanian adults with disabilities (Director 1982-2020, Board Chairman, 3 terms) Life Member.
•Tasmanian Art Award at Eskleigh, (Chairman 1991-2004, 2010-2017)
•Eskleigh Development Committee, (Chairman 2008-2021)
•Eskleigh Management Committee, (1982-2019)
•Eskleigh Finance & Audit Committee, (2010-2019)
•Eskleigh Promotions & Fundraising Committee, (2013-2019)
•East Launceston Primary School Parents & Friends Assoc Inc, Member (No.5) 1994 - 2019
•Launceston Cataract Gorge Protection Association Inc., (Committee Chair 2006-2012)
•Tasmanian Ratepayers Association Incorporated (Committee 2007-present, President 2009-present)
•Launceston City Council Cataract Gorge Reserve Advisory Committee (Committee, Community Representative 2007-2015)
•Launceston City Council Heritage Advisory Committees (various) 1981-2006
•National Trust of Australia (Tasmania) Classification & Building Advisory Committee 1984-2005, (Chairman 2002-2005)
•National Trust of Australia (Tasmania) Northern Regional Committee 1988-2005, (Chairman 1995-1998)
•National Trust of Australia (Tasmania) State Council 1988-2005 (State Treasurer 1995-1997 & 2001-2005, State President 1997-2000) Life Member, Silver Pin Award.
•National Trust of Australia (Tasmania) Clarendon Homestead Committee
•National Trust of Australia (Tasmania) Franklin House Committee
•National Trust of Australia (Tasmania) Launceston Group 1991-2008 (Founding Chairman 1991-1996)
•National Trust of Australia (Tasmania) Dalrymple Group 2005-2008
•Australian Council of National Trusts (Director 1997-2000)
•Heritage Protection Society (Tasmania) Incorporated (Founding Chairman 2009 – present)
•State Government Environment & Historic Heritage Consultative Group, Tasmanian Planning Reform Taskforce (Appointed 2015 - 2016)

We are a group of friends who live in Hobart and welcome the opportunity to contribute to the review of State Planning Provisions (SPPs). We want to see sustainable development that protects Tasmanian assets for the future. Sound planning provides healthy, liveable homes that enhance the quality of life in the state. It protects agricultural land to provide food security into the future. It protects natural assets and wild places so that water catchments provide clean, fresh water to the community

We are concerned that the SPPs fail to provide Sound strategic Planning for Tasmania. The Schedule 1 Objectives of The *Land Use Planning and Approvals Act 1993* (LUPAA)[1] provide a sound base from which to work. We believe the SPPs and other planning documents must prioritise these objectives of LUPAA:

- The requirement for sound strategic planning by State and local government;
- Ensuring that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;
- The requirement for land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;
- The promotion of the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation;
- The conservation of those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- The provision of a planning framework which fully considers land capability.

The SPPs and associated Planning Policies, Codes and Regulations must give equal weight to environmental, social, health and economic needs of the community. Short term economic concerns must be subservient to sound strategic planning for community needs into the future.

Climate Change

The effects of a changing climate require new thinking and planning. The Tasmanian branch of the Planning Institute of Australia has developed proposals *'to preserve areas with high biodiversity values and protect non-human species while creating strategic and statutory planning processes to improve climate-responsiveness. These changes would both improve the livability of our urban centres and protect our natural environment'*[2]

We support the PIA proposal to '*Establish State Policies and state planning policies that include best available science to inform expected climate impacts (e.g. regional downscaled projections on bushfire, heatwaves, flooding, landslide, coastal inundation and erosion) to provide clarity in assessment in both strategic and statutory planning.*'[3]

The SPPs and relevant codes must ensure that the planning system does not allow the building of homes in areas that will become uninsurable. Planning Authorities should have to consider this at the Development Application stage.

The SPPs should respond to the scientific recommendations by establishing requirements for bushland retention and urban vegetation cover. Vegetation is known to reduce carbon pollution, cool urban areas and protect waterways. Tasmania may not reach mainland temperatures but an extended period of above average temperatures would still create serious heat problems for the community.

The SPPs should be altered so that Residential Zones require either private green space or in multiple developments or apartments provision for access to nearby off-site green spaces, if

[1] https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1993-070#JS1@HS1@EN
[2] Climate Conscious Planning Systems https://www.planning.org.au/documents/item/11375
[3] P16 Climate Conscious Planning Systems https://www.planning.org.au/documents/item/11375

necessary, by providing additional green spaces. Ideally apartments or multiple developments would provide larger areas which could be used by all occupants i.e., common ground.

Current SPP standards enable developers to make all ground level surfaces impervious. The lack of pervious surfaces results heavy rainfall putting more pressure on the stormwater system. The resultant stormwater peaks can result in flooding of the collecting property as well as other properties. The SPPs should regulate that any residential or industrial property must provide a certain percentage of impervious space.

The SPPs removed the amenity provisions from planning. This means that in residential zones solar panels on adjoining properties are not adequately protected. The SPPs should protect solar access not only for future solar panels but also to allow light and warmth into residences.

We recommend that the SPPs

(i) reflect the best scientific knowledge re risk
(ii) ensure Natural Hazards are part of the Development Approval Phase
(iii) Maintenance of vegetative cover to prevent erosion, protect waterways and cool urban areas.
(iv) Limit the percentage of impervious surface
(v) Provide solar access for light and warmth

We support PMAT recommendations**:**

(i) The SPPs be amended to better address adaptation to climate change, by ensuring Tasmania's risk mapping is based on the best available science and up to date data.
(ii) The SPPs be amended to better embed sustainable transport, green design of buildings and subdivisions into planning processes, including better protection of solar panels and provision for future solar access.
(iii) Strategic thinking and modelling to decide where best to allow wind farms. The SPPs could include a new *No Go Wind Farm Code.*

National Parks

We are seriously concerned by the Expression of Interest process with regard to National Parks. Tasmania needs a statutory process to control development on reserved land. The process needs to be open and transparent with all information including a detailed description of the proposal and the assessment documentation readily available. It needs to provide for public comment and require a considered response to this comment. This provides the opportunity for the planning authority to respond in detail to particular concerns and sometimes public comment may raise new issues that had not been considered.

This is public land and if it is to remain an asset in perpetuity measures should be implemented to keep commercial developments out especially when claims are made that details cannot be revealed because they are 'commercial in confidence'.

The State Planning Provisions allow many land uses and developments in the Environmental Management Zone if they have been approved under the *National Parks and Reserves Management Act 2002*, so that the public need not even be informed of proposals for the uses or developments, let alone given the chance to comment on them. We recommend changing the provisions so that such uses and developments must be publicly notified, and local councils can decide whether to permit them or not.

We strongly recommend that where the Environmental Management Zone is concerned the public be given a timely and meaningful right to comment and access to appeal rights - in particular by amending what are "permitted" and "discretionary" uses and developments in the Environmental Management Zone.

The Environmental Management Zone contains land with significant ecological, scientific, cultural and scenic values. Those values may be reduced by uses and developments in zones adjoining or near the Environmental Management Zone.

To protect those values of land within the Environmental Management Zone, use standards and development standards should be included in other zones so that uses and developments in those zones do not reduce the ecological, scientific, cultural or scenic values of land in the Environmental Management Zone.

The State Planning Provisions already include development standards for some zones to ensure that development in those zones does not impair the continuing achievement of the purposes of an adjoining zone.

It is vital that the SPPs and other planning codes and legislation protect these areas. If the EMZ is to satisfy the objectives of LUPAA it must

- provide for the protection, conservation and management of areas with significant ecological, scientific, cultural or aesthetic vales or with a significant likelihood of risk from a natural hazard.
- only allow for complementary use or development where consistent with any strategies for protection and management.
- facilitate passive recreational opportunities which are consistent with the protection of natural values in bushland areas.
- recognise and protect reserved natural areas as great natural assets.

Natural Assets Code

We have read the *Review of the Natural Assets Code* prepared by Dr Nikki den Exter, for the Planning Matters Alliance and strongly support its considerations and recommendations.

We are concerned that the SPPs broadly and the NAC specifically treat development and the short-term economy as the more important considerations at the expense of sustainability and biodiversity irrespective of the in-situ natural values in these zones.

Given much of the clearing associated with development regulated by planning schemes is in the urban type zones, and this clearing is not restricted to subdivision but includes industrial development, multiple dwellings and commercial development, a priority vegetation area needs to be able to be applied within any zone and to all relevant development types, where the values are present not where they are mapped.

It is vital for our future that the SPPs develop strategic planning to protect our natural assets and fulfill the objectives of LUPAA

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
(c) to encourage public involvement in resource management and planning.[4]

The SPPs must recognize that natural assets protect and beautify our landscapes and provide protection as climate change effects become more prominent

Residential Standards in the SPPs

We support the TasPIN submission on issues with Residential Standards in the SPPs.

All residential zones in the SPPs should be rethought to

[4] Part 1 Objectives LUPAA 1993 [4] https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1993-070#JS1@HS1@EN

(i) Mandate quality urban design in our subdivisions, suburbs and towns,
(ii) Improve design standards to prescribe environmentally sustainable design requirements including net zero carbon emissions - which is eminently achievable, now
(iii) Provide a Zone or mechanism which allows apartment dwellings and/or targeted infill based on strategic planning,
(iv) Deliver residential standards in our suburbs which maintain amenity and contribute to quality of life.
(v) Subdivision standards be improved to provide mandatory requirements for provision of public open space for subdivisions and for multiple dwellings.
(vi) Residential standards do not encourage home gardens which are important for food security, connection to nature, biodiversity, places for children to play, mental health/well-being and beauty.
(vii) Increased density should only be allowed as part of strategic, quality planning

Heritage

Heritage is an essential element of living in Tasmania.

We hope to see the recommendations of the PMAT report on Heritage and the SPPs prepared by Danielle Gray incorporated into the SPPs. Protecting the built heritage in the state values our past traditions, supports the character of our towns and cities and provides an impetus to tourists to visit the state. Height setbacks and

Aboriginal Heritage is an increasingly important part of our community. We leave it to the Aboriginal Community to make recommendations on this but expect the SPPs to provide transparent and honest protection of this heritage.

The third aspect is environmental heritage and we consider it vitally important if our communities are to deal with a changing climate and its associated risks. All aspects of planning should protect our natural heritage.

In conclusion the SPPs should
(i) increase public consultation and access to rights of appeal
(ii) reinstate residential amenity/liveability standards
(iii) improve subdivision standards including strata title
(iv) develop standards for quality densification
(v) improve health outcomes including mental health
(vi) provide greater housing choice/social justice
(vii) clarify definitions and subjective language used in TPS

Austra Maddox [redacted]
Rosemary Scott [redacted]
Margaret Taylor [redacted]

Environmental Defenders Office

Submission on the Scope of the State Planning Provisions Review (lutruwita/Tasmania)

12 August 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the Western law and how it applies to the environment. We help the community to solve environmental issues by providing Western legal and scientific advice, community legal education and proposals for better Western laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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EDO thanks Kate Johnston for her assistance with the preparation of this submission.

EDO submission on the Scope of the State Planning Provisions Review

A Note on Language

EDO acknowledges that there is a legacy of writing about First Nations peoples without seeking guidance about terminology. In this submission, we have chosen to use the term "First Nations" to refer to Aboriginal and Torres Strait Islander peoples across Australia. We also acknowledge that where possible, specificity is more respectful. When referring to Tasmanian Aboriginal / palawa / pakana people in this submission we have used the term "Tasmanian Aboriginal". We acknowledge that not all Aboriginal people may identify with these terms and that they may instead identify using other terms.

Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledges and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws.

In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

While the Environmental Defenders Office (**EDO**) welcomes the opportunity to help scope the issues for the first five yearly review of the State Planning Provisions (**SPPs review**), we note the context of the review is important to understanding the opportunity it presents.

The review comes at a time when:

- the Tasmanian Planning Scheme (**TPS**) is still not in effect across the State
- there is no strategic direction for planning in the form of detailed objects in the SPPs or through Tasmanian Planning Policies
- there have been numerous complex reforms to the *Land Use Planning and Approvals Act 1993* (Tas) (**LUPA Act**), which have had the effect of curtailing public participation in the Resource Management and Planning System (**RMPS**)
- there has been no State of Environment report published since 2009 to provide a clear indication of whether lutruwita/Tasmania's RMPS laws are achieving their objectives, including the maintenance of ecological processes and diversity.
- the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (**IPCC**) has provided an urgent warning that time is running out to take action to halt runaway global heating and keep the world to the Paris Agreement target of 1.5° degrees Celsius (°C) above pre-industrial levels, and that with "every additional increment of global warming, changes in extremes, continue to become larger", resulting in increased bushfire weather, floods, droughts, sea-level rise and heatwaves[1]

[1] IPCC, 2021: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, at B.2.2 and C.2.4 accessed at https://www.ipcc.ch/report/ar6/wg1/#SPM. See also the IPCC *Sixth Assessment Report Regional Factsheet - Australasia*: https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf

- lutruwita/Tasmania's Aboriginal cultural heritage protection legislation remains woefully inadequate and provides no role for Tasmanian Aboriginal people to determine the management and protection of their cultural heritage

The SPPs review presents a real opportunity to address the urgent need to mitigate greenhouse gas (**GHG**) emissions across all sectors in lutruwita/Tasmania and prepare communities to respond to and prepare for climate change while providing for a more sustainable, equitable and just society; and to provide a self-determined and meaningful decision-making role for Tasmanian Aboriginal people concerning decisions that affect their cultural heritage. The SPPs review also provides an important opportunity to correct some of the most egregious problems with the SPPs before they have taken effect in many places.

The SPPs Review Scoping Paper notes that many issues have been raised about the operation, scope, and effect of the SPPs since that they were first circulated in 2015. EDO's submission will not exhaustively address each of those issues previously raised. We understand there will be more detailed submissions made by other groups with respect to how the SPPs review should address issues such as residential zoning standards, sustainable transport and built historic heritage. Without detracting from the undoubted importance of those matters, in this submission, EDO focuses on several issues that EDO considers should be included in the current SPP review.

In the following submission, EDO provides "high-level" comments on:

1. The context of SPPs review – are our planning laws meeting their objectives?
2. Those matters that ought to be included in the SPPs, but are presently not or not fully provided
   - 2.1. planning for climate change
     - 2.1.1. greenhouse gas (**GHG**) emissions mitigation
     - 2.1.2. climate change adaptation
   - 2.2. Aboriginal cultural heritage protection and management
   - 2.3. Other matters such as stormwater, helicopter, and drone landing pad regulation
3. Existing parts of the SPPs that should be prioritised for review and improvement
   - 3.1. The scope of SPPs and their application to coastal waters
   - 3.2. Exemptions from the SPPs
   - 3.3. Information required as part of the assessment of an application for use or development
   - 3.4. Environmental Management Zone
   - 3.5. Natural Assets Code
   - 3.6. Coastal Erosion Hazard Code and Coastal Inundation Hazard Code
   - 3.7. Landscape Conservation Zone
   - 3.8. Treatment of the Extractive Industry use in the Rural and Agricultural Zones

A summary of EDO's recommendations with respect to these issues can be found below.

Recommendations

Recommendation 1: The SPPs review explore how the SPPs can better provide for climate change mitigation, in line with the Paris Agreement goal of limiting warming to 1.5℃, and climate change adaptation. The measures should be based on the best available science and be in accordance with the United Nations Sustainable Development Goals, and the principals of climate and

environmental justice.

Recommendation 2: The SPPs review examine opportunities for land use planning regulation to effect reductions in GHG emissions across sectors, including through a new GHG Emissions Code and/or amendments to the Natural Assets and Attenuation Codes.

Recommendation 3: The SPPs review examine how land use planning can effectively respond to and prepare communities for climate change impacts, including through the alleviation of, and adaptation to floods, bushfires, droughts, and heatwaves caused or exacerbated by human induced climate change.

Recommendation 4: The SPPs review, with Tasmanian Aboriginal people, examine opportunities to provide for protection of Aboriginal cultural heritage and provide a self-determined and meaningful decision-making role for Tasmanian Aboriginal people in determining planning decisions that affect their cultural heritage.

Recommendations 5: The SPPs review consider how necessary resources, as determined by Tasmanian Aboriginal people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

Recommendation 6: The SPPs review consider how the SPPs can better regulate impacts of helicopter and drone landing and take-off.

Recommendation 7: The SPPs review consider the need for a separate Stormwater Code to better regulate the environmental and erosion impacts of development and use, or alternatively, the need to significantly strengthen Natural Assets Code provisions relating to stormwater.

Recommendation 8: The SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania's coastal waters, including through amendment of clause 7.11.1 and/or the Natural Assets Code.

Recommendation 9: The SPPs review consider whether the exemptions provided under Tables 4.3 and 4.4 and in the Natural Assets Code are appropriate and consistent with the objectives of the LUPA Act.

Recommendation 10: The SPPs review consider expanding the application requirements under clause 6.1.2 to include reports or assessments required under applicable Codes.

Recommendation 11: The SPPs review consider the impact of deference in Environmental Management Zone to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976* on public participation and good planning outcomes, and consider the removal of these provisions, and the strengthening of public participation in decisions relating to public lands.

Recommendation 12: The SPPs review consider providing for appropriate standards for all developments and uses provided in the Environmental Management Zone to ensure the Zone purposes are achieved.

Recommendation 13: The Natural Assets Code be reviewed in its entirety with a view to ensuring it fulfills the LUPA Act objectives by maintaining (through protection and preserving) ecological processes and diversity for current and future generations and ensuring development is sustainable.

Recommendation 14: The SPPs review consider the purpose, provisions and mapping under the Coastal Erosion Hazard and Coastal Inundation Hazard Codes to ensure that they reflect and adapt to the best available science on sea-level rise, coastal inundation and estuarine flooding;

manage the impacts of development on coastal erosion and inundation; and provide for community resilience and safety.

Recommendation 15: The SPPs review consider the extent to which land previously zoned Environmental Living has been transitioned to Rural Living, Rural or Landscape Conservation Zoning, an identify options to address any overall drop in protection of natural values as a result of down zoning of Environmental Living to Rural Living, Rural Zone.

Recommendation 16: The SPPs review consider the correct classification of extractive industries in the Rural and Agricultural zones.

1. The context of SPPs review – are our planning laws meeting their objectives?

When it announced its plan for the TPS, the Tasmanian Government said the reforms would provide a "fairer, faster, cheaper and simpler" planning system for lutruwita/Tasmania. Yet after the TPS reforms were made 2015, there has been at least nine Acts amending the LUPA Act, many of which have added significant further complexity to the planning and approvals processes and reduced public participation rights.

For example, despite widespread community opposition, the Tasmanian Government pushed through changes to the LUPA Act in 2020 to provide for a new process for the assessment and approval of major projects: a process which sidesteps both planning scheme requirements and councils as planning authorities and significantly weakens public participation rights.

The TPS has still not come into effect across the entire State as 16 Local Provisions Schedules (**LPSs**) remain to be finalised by councils and the Tasmanian Planning Commission (**TPC**). Yet in 2021, the Tasmanian Government introduced complex reforms to LUPA Act allowing the Minister to amend the SPPs without the need for public consultation in a broad range of circumstances. It also brought in reforms to existing interim planning schemes to implement aspects of the SPPs, including wide-ranging exemptions and different standards for residential zones, in those municipalities where the TPS was not yet in effect. It is notable that these aspects of the SPPs were subject to some of the most strident criticism by both the public and councils when they were made, and in part, were subject to a recommendation by the TPC for further detailed review. These, arguably arbitrary, changes to interim planning schemes occurred in the continued absence of strategic of overarching strategic direction for the SPPs due to the lack of clearly stated objectives and Tasmanian Planning Policies.

All these planning reforms have placed considerable pressure on under resourced local councils and on the TPC. Many clients and groups and individuals EDO work with have been engaging in planning reform since the time of interim planning reforms, well before the first draft of the SPPs were released in 2016. After nearly a decade of planning reform, the SPPs review comes at a time of when many in the lutruwita/Tasmanian community, including those within councils who have had to implement and keep abreast of the reforms, are feeling a level of fatigue and exhaustion with planning reform that can only be described as extreme.

While EDO supports the continuation of community consultation and engagement about planning reform and the review of the SPPs, we question whether all this the reform has achieved its originally stated objective of a "fairer, faster, cheaper and simpler" planning system for

lutruwita/Tasmania.[2] But over and above that question, stands a more important one: are our planning laws achieving the RMPS objectives, including for sustainable development and the maintenance of ecological processes and diversity and public participation? One of the key tools that can assist in answering that question, the State of the Environment report, has been in abeyance for more than a decade – despite a statutory requirement for it to be produced every five years – leaving the people of lutruwita/Tasmania largely in the dark as to how our environment is tracking.

Despite this, there are indications lutruwita/Tasmania's environment and communities under coming under pressure from climate change, increasing land use changes and development and expanding industries. The SPPs review presents a real opportunity to tackle these emerging issues and arrest their impacts before it is too late.

2. Matters to be included in the SPPs

2.1. Planning for climate change

Anthropogenic climate change is having significant impacts in Australia and across the globe. The annual global temperature in 2019 was 1.1 °C warmer than pre-industrial conditions.[3] Australia's average annual temperature has warmed by around 1.5°C since 1850,[4] and the best available Western science tells us that average temperatures are projected to rise further. Australia is already experiencing the impacts of climate change, which include increasing temperatures, the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased and more extreme rainfall in the north, longer dry spells, a greater number of extreme heat days and the long-term increase in extreme fire weather. In the future, it is projected lutruwita/Tasmania will experience higher average temperatures all year, with more hot days and warm spells and harsher fire-weather. lutruwita/Tasmania will also experience sea level rise, an increase in extreme rainfall events and flooding, but a decrease in rainfall in spring and with the possibility of less rain in autumn and summer.[5]

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[2] Certainly, if comments by the then-Solicitor General about the contents of the transitional provisions relating to the TPS in LUPA Act are anything to go by the answer to that question would be a resounding "no". In the Solicitor-General's Annual Report 2020-21, the then Solicitor General Michael O'Farrell SC said "A statute should communicate the law efficiently and effectively to those who have recourse to it. This does not just mean lawyers, it means citizens and institutions who must obey legal commands. While some laws convey difficult legal concepts that are not capable of expression in simple language, that is not true of all laws. The Parliament's endeavour should be to make laws that ordinary people can readily understand. The complex and prescriptive nature of the provisions of some Tasmanian statutes do not lend themselves to this aspiration. For example, an ordinary person, unskilled in the law, would have great difficulty understanding Schedule 6 of the Land Use Planning and Approvals Act 1993. I have spent many many hours reading it and I still find some of its provisions very difficult to construe."

[3] See World Meteorological Organisation, *WMO confirms 2019 as second hottest year on record, 15 January 2020*, accessed at https://public.wmo.int/en/media/pressrelease/wmo-confirms-2019-second-hottest-year-record

[4] See CSIRO, *Response to Notice to Give Information 21 April 2020 for the Royal Commission into National Natural Disaster Arrangements*, 21 April 2020, accessed at https://naturaldisaster.royalcommission.gov.au/system/files/exhibit/CSI.500.001.0001.pdf

[5] CSIRO, *Climate change in Australia - Projections for Australia's NRM regions*, accessed on 29 April 2021, accessed at: https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/

While climate change will affect all Tasmanians, those impacts will not be felt equally. [6] For example, First Nations peoples, young people and future generations will suffer more under more extreme weather, sea level rise and disasters under climate change than those who have most contributed to the GHG emissions that have ultimately generated or exacerbated those events. For First Nations peoples, climate change impacts can seriously impact the ability to access Country, and practice cultural obligations on and for Country.

Those who are already socially and economically disadvantaged are less able to adapt to a changing climate by, for example, living in housing not designed for extreme weather or in locations vulnerable to bushfires, flooding or droughts.[7] Socially and economically disadvantaged people are also less likely to be insured should they lose or suffer damage from those events, are less likely to have the financial resources to simply move to less disaster-prone areas and they may lack efficient or effective means to escape in the event of emergencies.[8] Older people, pregnant people and children are more likely to suffer adverse health impacts under extreme heat, or with degraded air quality due to bushfire smoke.[9] People from culturally and linguistically diverse backgrounds, or who cannot read or write English, may lack the information or resources to take adaptive actions.[10]

The contribution of urban development to GHG emissions and vulnerability of urban areas to climate change impacts is well established. As Caparros-Midwood, et al. (2019) observed:[11]

> *… urban areas are already responsible for approximately 70% of global greenhouse gas emissions and new urban development must reduce greenhouse gas emissions if the Paris Agreement to limit global warming are to be achieved. There is an urgent need for urban development to reduce resource consumption and emissions, whilst also enhancing resilience to climatic risks such as flooding and heatwaves.* (Citations omitted)

It is therefore critical that our land use planning prescriptions effectively address these issues:[12]

> *… it must be acknowledged that past and current urban planning activities have resulted in climate change impacts and path dependency. Thus, significant changes to the status quo of*

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[6] For further information on addressing environmental and climate justice issues for disproportionately impacted vulnerable communities, see EDO's report 'Implementing effective independent Environmental Protection Agencies in Australia', available at https://www.edo.org.au/publication/implementing-effective-independent-environmental-protection-agencies-in-australia/

[7] Insurance Council of Australia (2022) Building a More Resilient Australia: Policy Proposals for the Next Australian Government, at p 10 accessed at https://insurancecouncil.com.au/wp-content/uploads/2022/02/220222-ICA-Election-Platform-Report.pdf.

[8] Ibid. See also Climate Council of Australia, Uninsurable Nation: Australia's most climate-vulnerable places, at p 3. accessible at: https://www.climatecouncil.org.au/resources/uninsurable-nation-australias-most-climate-vulnerable-places/

[9] See https://www.healthdirect.gov.au/bushfires-and-your-health

[10] See Hansen, A, Bi, P, Saniotis, A, Nitschke, M, Benson, J, Tan, Y, Smyth, V, Wilson, L & Han, G-S 2013, Extreme heat and climate change: Adaptation in culturally and linguistically diverse (CALD) communities, National Climate Change Adaptation Research Facility, Gold Coast, accessible at: https://nccarf.edu.au/extreme-heat-and-climate-change-adaptation-culturally-and-linguistically-diverse-cald/

[11] Caparros-Midwood, Dawson, Barr, "Low Carbon, Low Risk, Low Density: Resolving choices about sustainable development in cities", *Cities*, Volume 89, 2019, Pages 252-267, https://doi.org/10.1016/j.cities.2019.02.018

[12] Hurlimann, Moosavi & Browne, "Urban planning policy must do more to integrate climate change adaptation and mitigation actions", *Land Use Policy,* Volume 101, 2021 https://doi.org/10.1016/j.landusepol.2020.105188

urban planning activities are required in many locations across the world to achieve the goal of limiting warming to 1.5◦C but also to avoid the risk and harm attributable to even this amount of warming. (Citations omitted)

In lutruwita/Tasmania, much more can and must be done through the SPPs to both mitigate GHG emissions and adapt to climate change risks. This was recognised in the Premier's Economic & Social Recovery Advisory Council (PESRAC) *Final Report* from March 2021 which recommended that among other things, the Government drive forward a sustainable development agenda, including decarbonisation of the economy including through its resource management and planning system.[13] It appears that this proposition has been accepted by the Tasmanian Government, as it has indicated an intention to incorporate climate change considerations into all the Tasmanian Planning Policies.[14] However, there's more work to be done. There remain emissions intensive activities and a dependence on fossil fuels, particularly in the transport sector. The SPPs review should be focussed on the planning needed to transition to a fossil fuel free future.

While EDO encourages moves towards a more sustainable, lower GHG emissions future in planning for lutruwita/Tasmania, it is critical that these changes should occur within a climate justice framework[15] (as recognised in consistent with United Nations Sustainable Development Goals) ensuring that the most affected communities (from both an economic and climate change perspective) are themselves invested in energy transition through equitable and genuine transition investments in these communities. A commitment to achieving GHG emissions reduction targets and staying within a carbon budget that will limit warming to 1.5°C requires commitment to establishing clear policy drivers, incentives and legal mechanisms which are just and equitable. Natural disaster planning and adaptation planning should be on an environmental justice basis, not just an economic one. That is, ensuring that we identify at risk communities and target adaptation responses to those most at risk / disadvantaged by the climate change already locked in.[16]

Recommendation 1: The SPPs review explore how the SPPs can better provide for climate change mitigation, in line with the Paris Agreement goal of limiting warming to 1.5°C, and climate change adaptation. The measures should be based on the best available science and be in accordance with the United Nations Sustainable Development Goals, and the principals of climate and environmental justice.

[13] Premier's Economic & Social Recovery Advisory Council (PESRAC) (2021) *Final Report* at p 67, accessible at https://www.pesrac.tas.gov.au/__data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf

[14] See State Planning Office, Department of Premier and Cabinet (2022) Tasmanian Planning Policies – Report on draft TPP Scoping Consultation, accessed at: https://www.planningreform.tas.gov.au/planning-reforms-and-reviews/tasmanian-planning-policies

[15] PESRAC also recommended that the Tasmanian Government's sustainability strategy be aligned with the UN Sustainable Development Goals: Premier's Economic & Social Recovery Advisory Council (PESRAC) (2021) *Final Report* at p 69, accessible at https://www.pesrac.tas.gov.au/__data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf

[16] For further information on addressing environmental and climate justice issues for disproportionately impacted vulnerable communities, see EDO's report 'Implementing effective independent Environmental Protection Agencies in Australia', available at https://www.edo.org.au/publication/implementing-effective-independent-environmental-protection-agencies-in-australia/

2.1.1. GHG emissions mitigation

Based on the available data, lutruwita/Tasmania has achieved net zero GHG emissions for the past four reported years.[17] However, we note that this achievement is almost entirely attributable to the carbon stored in forests. [18] Carbon stored in forests falls within the UNFCCC sector described as the land use, land use change and forestry sector (**LULUCF**).[19] Reliance on the LULUCF sector alone to mitigate lutruwita/Tasmania's GHG emissions is risky as it is vulnerable to rapid change, for example through changes to land use practices arising from policies such as the Agri-Vision 2050 and Rural Water Use Strategy,[20] and through the relaxation of planning scheme restrictions on vegetation clearing under the SPPs.[21] Furthermore, reliance on the emissions reductions from the LULUCF sector masks lutruwita/Tasmania's failure to reduce GHG emissions in other sectors such as agriculture, transportation and energy. lutruwita/Tasmania's population, and its associated GHG emissions in transport, stationary energy, and waste, are expected to increase by 2050.[22] Point Advisory has modelled that if lutruwita/Tasmania continued on a "business as usual" path, its emissions could sharply increase to 2050.[23] This modelling underlines the need for the Tasmanian Government to take urgent action to mitigate GHG emissions across all sectors. Land use planning controls provide one of the best opportunities for such action to be taken.

First and foremost, the SPPs should actively recognise and implement lutruwita/Tasmania's overarching climate planning policy by explicitly recognising the soon-to-be legislated GHG emissions reduction target under the *Climate Change (State Actions) Act 2008* (the **Climate Change Act**) and sector-based emissions reduction and resilience plans (**Plans**) created under that Act. The SPPs should do this by including measurable and concrete targets for GHG emission reductions. For example, this could be done by a GHG Emissions Code that requires councils to establish baseline GHG emissions per capita for their municipalities and commit to a target to reduce those per capita GHG emissions levels going forward. This Code could require the assessment of new development or use for consistency with the municipality target. In terms of sector-based targets in Plans, consideration should be given to amendments to the Attenuation

[17] Australian Government, *State and territory greenhouse gas inventories: annual emissions*, accessed on 21 October 2021, at: https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/state-and-territory-greenhouse-gas-inventories-annual-emissions

[18] Tasmania Climate Change Office, *Tasmania's Greenhouse Gas Emissions 2021 Factsheet*, accessed on 29 April 2021 at http://www.dpac.tas.gov.au/__data/assets/pdf_file/0004/575392/TCCO_Fact_Sheet_-_Tasmanias_Greenhouse_Gas_Emissions_-_2021.pdf

[19] See United Nations Framework Convention on Climate Change webpage: https://unfccc.int/topics/land-use/workstreams/land-use--land-use-change-and-forestry-lulucf/background

[20] Ibid. See also DPIPWE (2019) Tasmanian Sustainable Agri-Food Plan 2019-23, accessible at https://dpipwe.tas.gov.au/agriculture/tasmanias-agri-food-plan

[21] For example, through the provision of broad exemptions to vegetation clearing restrictions, both in clause 4 and in clause C7.4 of the Natural Assets Code of the SPPs, and through the relaxation of requirements for permits for vegetation clearing under the Natural Assets Code more generally.

[22] Jacobs, *Discussion Paper on Tasmania's Climate Change Act: Independent Review of the Climate Change (State Actions) Act 2008* March 2021 at p 18, accessed at: https://www.dpac.tas.gov.au/divisions/climatechange/Climate_Change_Priorities/review_of_the_climate_change_act

[23] Point Advisory (2021) *Net Zero Emissions Pathway Options for Tasmania - Background Paper*, accessed on 26 April 2021 at http://www.dpac.tas.gov.au/__data/assets/pdf_file/0011/573095/net_zero_emissions_background_Paper_-_Final.pdf at under a "high business as usual" rate outlined in table 1 on p 6.

Code such that it also regulates GHG emissions from certain polluting activities such as landfills and sewage treatment plants.

The SPPs currently do provide some incentives for GHG emissions mitigation, for example through the exemptions from the need for permits for certain renewable energy generation.[24] However, SPPs could result in reductions to the GHG emissions arising from land use and development, for example, by providing:

- stronger regulation of the clearing of native vegetation (including, for example, removing many of the exemptions from the requirement for a permit for this activity) and incentives to provide urban green spaces (including urban food production/farming);
- stronger sustainable transport requirements for new developments and uses, including the planning settings required to incentivise and facilitate the rapid uptake of electric vehicles;
- stronger incentives for densification of development and more affordable housing along public and sustainable transport corridors and services nodes, supporting walkable neighbourhoods and active transport;
- sustainability standards (e.g., energy efficiency and water standards) for new development, and incentives for retrofitting of existing development; and
- a clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure, including, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, Tasmanian Aboriginal heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted Tasmanian Aboriginal communities (for more discussion on this, refer to part 2.2 of this submission).

Recommendation 2: The SPPs review examine opportunities for land use planning regulation to effect reductions in GHG emissions across sectors, including through a new GHG Emissions Code and/or amendments to the Natural Assets and Attenuation Codes.

2.1.2. Climate change adaptation

lutruwita/Tasmania's planning system has been taking steps towards planning to adapt a rapidly warming climate: SPPs contains codes for Coastal Erosion Hazards, Coastal Inundation Hazards, Flood-Prone Areas Hazards, and Bushfire-Prone Areas. However, more can and must be done to plan for lutruwita/Tasmania's future and the future of climate affected communities.

For example, the mapping for the Coastal Erosion and Coastal Inundation Codes is based on analysis undertaken by the CSIRO using data from the fifth IPCC report.[25] Further expert analysis of

[24] See clause 4.0 and Table 4.5 of the SPPs.
[25] Tasmanian Climate Change Office, "Coastal Impacts" webpage accessed at https://www.dpac.tas.gov.au/divisions/climatechange/climate_change_in_tasmania/impacts_of_climate_change/coastal_impacts; and Tasmanian Planning Commission, *Guideline No. 1 Local Provisions Schedule (LPS): zone and code*

lutruwita/Tasmania's likely coastal erosion and inundation risks should be commissioned based on the sea-level rise information in the sixth IPCC report. Likewise, further investigation of the interaction between coastal inundation and estuarine flooding,[26] and mapping of lutruwita/Tasmania's flood risks in future climate scenarios is required.[27]

The SPPs could be significantly strengthened to, for example, prevent vulnerable development and uses in high-risk bushfire prone and coastal erosion and inundation areas, and actively plan for managed retreat from high-risk locations. This mapping needs to be more holistic and more responsive to the best available science as it develops. Currently, the mapping and SPPs settings places local government and communities at risk and does not allow planning authorities to effectively manage risk, leaving this to a later date to be managed by emergency services. Recent experience in the Black Summer bushfires and the 2022 NSW/Qld floods have shown us the devastating impact of poor planning and the impact of overwhelmed emergency response services on peoples' lives, livelihoods, and the economy.

The SPPs also need to respond to Climate Action Plans (**CAP**) and State-wide climate risk assessments (**CRA**) prepared under the Climate Change Act, with a focus on supporting those communities and people who can least afford to adapt to the impacts of climate change. The SPPs should provide for consideration of climate risk in the placement of critical infrastructure, such as hospitals, schools, aged and disability care, and social and affordable housing.

Recommendation 3: The SPPs review examine how land use planning can effectively respond to and prepare communities for climate change impacts, including through the alleviation of, and adaptation to floods, bushfires, droughts, and heatwaves caused or exacerbated by human induced climate change.

2.2. Aboriginal Cultural Heritage protection and management

In making this submission, EDO acknowledges that it cannot and does not speak on behalf of First Nations peoples. We make the following submissions concerning the better recognition of Aboriginal cultural heritage into the SPPs as experts in planning and environmental Western law with experience in seeking to protect First Nations and Tasmanian Aboriginal cultural heritage through the Western law.

Across Australia, we have worked with First Nations clients who have interacted with cultural heritage laws in many ways, from litigation, engaging in other State/Territory law reform processes, through to broader First Nations-led environmental governance of on Country projects. EDO lawyers have assisted First Nations clients around Australia, including in lutruwita/Tasmania, in their efforts to protect their cultural heritage from destruction. These submissions are based on

application, June 2018 accessed at https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

[26] See discussion of this in Office of Security and Emergency Management, *Coastal Hazards Package: Summary of Consultation*, undated, accessible at https://www.dpac.tas.gov.au/divisions/osem/coastal_hazards_in_tasmania

[27] There is currently no statewide mapping of flood prone areas, see Tasmanian Planning Commission, Guideline No. 1 *Local Provisions Schedule (LPS): zone and code application*, June 2018, at p 51 accessed at https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

EDO's experience in working alongside First Nations peoples within the Western legal framework, which is designed to provide some level of protection to cultural heritage

The Tasmanian Government has committed to introducing new legislation to replace the woefully outdated *Aboriginal Heritage Act 1975* (Tas). However, progress to replace that law has historically been slow. The following comments and recommendations are made in the absence of any clarity on the content and timing of a new Aboriginal Cultural Heritage Act.

Currently there is no requirement under the SPPs for Tasmanian Aboriginal cultural heritage to be considered by planning authorities when assessing a new development or use that potentially impacts cultural heritage. The neglect of this issue in the SPPs only compounds the failure of the *Aboriginal Heritage Act 1975* (Tas) to provide any formal opportunity for Tasmanian Aboriginal people to provide their free, prior, and informed consent (***FPIC***) to any development or use that would impact on their cultural heritage, or to determine the arrangements for the management of their cultural heritage. There can be no question that this situation is unacceptable and is inconsistent with Australia's support of the principles outlined in the United Nations Declaration of the Rights of Indigenous Peoples (***UNDRIP***), and as adopted in the Senate Inquiry into the tragedy of the Juukan Gorge.

We understand that the Tasmanian Government has committed to introducing measures to require early consideration of potential Aboriginal heritage impacts in the highest (State and regional) level of strategic planning, and in all assessments of rezoning proposals under the *Land Use Planning and Approvals Act 1993* (***LUPA Act***) to ensure major planning decisions take full account of Aboriginal heritage issues.[28] It is not clear how this commitment will be implemented. However, the recent consultation paper outlining the Government's approach to a new Aboriginal Cultural Heritage Act proposed to provide for a "light touch" integration between the new legislation and the planning system, with no meaningful mechanism for Tasmanian Aboriginal people to have a determining role in planning decisions that affect their cultural heritage[29] In EDO's view, the Government's foreshadowed approach does not provide for adequate involvement of Tasmanian Aboriginal people in decisions that concern their cultural heritage in line with the UNDRIP principles of FPIC and self-determination.

In the absence of a comprehensive Aboriginal Cultural Heritage Act that gives effect to UNDRIP principles, the SPPs can and must provide for the protection and management of impacts of development and use on Tasmanian Aboriginal cultural heritage and provide an effective mechanism for Tasmanian Aboriginal people to determine applications for these proposed developments or uses. The planning system is currently the only legislation that guarantees public participation and review of decisions on the merits in the TasCAT. However, to trigger these rights for Aboriginal people, there must be a Code or standard within the SPPs.

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[28] Jaensch, Roger (2021) *Tabling Report: Government Commitment in Response to the Review Findings, Aboriginal Heritage Act 1975: Review under s.23*. https://nre.tas.gov.au/Documents/Tabling%20Report%20-%20Review%20of%20the%20Aboriginal%20Heritage%20Act.pdf

[29] Department of Natural Resources and Environment (2022) *Consultation Paper: A new Aboriginal Cultural Heritage Protection* Act, accessed at: https://nre.tas.gov.au/about-the-department/aboriginal-legislative-reform/aboriginal-heritage-act

The SPPs can ensure that potential use or development impacts on Tasmanian Aboriginal cultural heritage are avoided and/or managed through the inclusion of an Aboriginal Heritage Protection Code to provide assessment requirements and prescriptions that explicitly aim to conserve and protect Aboriginal cultural heritage.

While the development of an Aboriginal Heritage Protection Code would have to be done in close consultation with Tasmanian Aboriginal people and recognise Aboriginal cultural landscapes, such as the Western Tasmania Aboriginal Cultural Landscape, in takayna/the Tarkine. The Code must require the proponents of certain proposed developments or uses to seek permission from Tasmanian Aboriginal people about the development or use, compile appropriate surveys and reports and/or prepare Aboriginal cultural heritage management plans the requirements of which could be enforced as conditions of the permit.

Another way the SPPs could better recognise and provide for Aboriginal cultural heritage protection is by the creation of specific zoning for Aboriginal-owned land, developed in consultation with Tasmanian Aboriginal people. The Particular Purpose Zone (PPZ) for truwana/ Cape Barren Island and Outer Islands in the Flinders Local Provision Schedule provides an example of how this might be done, including by giving the Aboriginal Land Council of Tasmania the power to consent to or refuse certain proposed uses within the PPZ.[30] (EDO notes that if PPZ's are Tasmanian Aboriginal peoples' preferred mechanism to provide recognition of Aboriginal ownership in the Tasmanian Planning Scheme, then serious consideration should be given in the SPPs Review to amending clause 5.2.6 of the SPPs to allow for the creation of further PPZ's for Tasmanian Aboriginal land that can override General, Administration and Code provisions of the SPPs on Aboriginal owned land as it is acquired.)

The SPPs review should also consider how necessary resources, as determined by Tasmanian Aboriginal people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

Recommendation 4: The SPPs review, with Tasmanian Aboriginal people, examine opportunities to provide for protection of Aboriginal cultural heritage and provide a self-determined and meaningful decision-making role for Tasmanian Aboriginal people in determining planning decisions that affect their cultural heritage.

Recommendations 5: The SPPs review consider how necessary resources, as determined by Aboriginal Tasmanian people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

2.3. Miscellaneous issues not currently addressed in the SPPs

There are a range of other matters that currently are not considered or properly regulated under the SPPs.

One issue that EDO receives numerous inquiries and complaints about is helicopter and drone overflights, particularly from people who reside near landing pads who are impacted by the noise

[30] See FLI-P1.0 here https://iplan.tas.gov.au/pages/plan/book.aspx?exhibit=tpsfli.

and disruption of these activities and loss of amenity (including privacy). There have already been moves in other jurisdictions towards the use of drones for delivery of goods,[31] and the use of helicopters and drones for tourism and emergency services and management in lutruwita/Tasmania is growing.[32] Therefore, amenity impacts from helicopters and drones are likely to be increasingly experienced in communities across lutruwita/Tasmania. While there is a "Safeguarding Airports Code" in the SPPs which aims to protect existing Commonwealth airports and other airports identified in LPSs from encroachment from sensitive uses and incompatible development, the SPPs do not explicitly or directly regulate the impacts of the use of land for helicopter or drone take off and landings on natural values or on surrounding land uses. While there are some Commonwealth regulations relating to aircraft noise and impacts while they are in the air, in EDO's experience these are overwhelmingly ineffective at addressing issues relating to the localised impacts associated with helicopter and drone take-off and landing. We are of the view that many of these issues could be avoided or mitigated if they were considered at the planning stage by the SPPs.

Recommendation 6: The SPPs review consider how the SPPs can better regulate impacts of helicopter and drone landing and take-off.

Another issue that is not expressly regulated in the SPPs is stormwater. The *State Policy on Water Quality Management 1997* provides for planning schemes to address stormwater inputs to ensure that environmental nuisance and harm is not caused by stormwater and erosion. However, the SPPs deal only with stormwater in relation to subdivision. Without a Stormwater Code, planning authorities are limited in the information they can request, the issues they can consider and the conditions that they can impose to manage the environmental impacts (including pollution risks) of run-off from development and/or uses which increase paved surfaces or redirect drainage channels. The principles of Water Sensitive Urban Design are not effectively implemented through the provisions of the SPPs. A Stormwater Code could help to remedy that, or alternatively, the Natural Assets Code should be significantly strengthened in respect of the regulation of stormwater.

Recommendation 7: The SPPs review consider the need for a separate Stormwater Code to better regulate the environmental and erosion impacts of development and use, or alternatively, the need to significantly strengthen Natural Assets Code provisions relating to stormwater.

3. Existing parts of the SPPs that should be prioritised for review and improvement

3.1. Scope of SPPs and their application to coastal waters

Under most Interim Planning Schemes across lutruwita/Tasmania, coastal waters from the high tide mark to 200m were zoned Environmental Management. It appeared that this was intended to be carried forward with the Tasmanian Planning Scheme, with the TPC's *Guideline No 1 Local Provisions Schedule (LPS): zone and code application* dated June 2018 (issued under section 8A of

[31] See the Brisbane Times, 'Drones deliver from roof of Queensland shopping centre in world first', dated 6 October 2021, accessible at: https://www.brisbanetimes.com.au/national/queensland/drones-deliver-from-roof-of-queensland-shopping-centre-in-world-first-20211006-p58xuf.html

[32] See the Advocate, 'Drone Use on the Rise in Tasmania' dated 27 May 2018, accessible at: https://www.theadvocate.com.au/story/5430653/drone-use-on-rise-in-tasmania/

the LUPA Act) recommending councils apply the Environmental Management Zone "to land seaward of the high-water mark unless contrary intention applies".[33]

Regrettably and apparently in contrast to the intention outlined in its own guidelines, the TPC has adopted a restrictive interpretation of section 7 of the LUPA Act, which has led to the removal of Environmental Management Zoning for much of lutruwita/Tasmania's precious and unique coastal waters under Local Provision Schedules. The overly narrow interpretation of s 7 of the Act, has also meant that the TPC has refused to consider Specific Area Plans or Site-Specific Provisions over coastal waters to, for example, protect important habitat for the critically endangered Spotted Handfish.[34] In circumstances where the Natural Assets Code deals with terrestrial flora, there is no protection for marine dependent species or their habitat.

Clause 7.11.1 of the SPPs provides:

> Use or development of a type referred to in section 7(a) to (d) of the Act that is unzoned in the zoning maps in the relevant Local Provisions Schedules must be considered in accordance with:
>
> (a) the provisions of the zone that is closest to the site; or
> (b) in the case of a use or development that extends from land that is zoned, the provisions of the zone from which the use or development extends.

Simply "considering" the zoning requirements of adjacent zones for proposed developments and uses in coastal waters against is extremely unlikely to protect the unique natural values and features of those areas. This is because, not only will those adjacent zones be unlikely to have specific provisions relating to developments in coastal waters, even if there were some provisions that could be applied by councils to a development the drafting of cl 7.11.1 means that those provisions may simply be "considered" and then put to one side without a determinative role in the council's decision.[35]

Furthermore, it arguable that the Waterway and Coastal Protection Areas under the Natural Assets Code does not apply to coastal waters, so there are no specific provisions to protect the values of coastal waters in the SPPs notwithstanding their enormous cultural and economic significance to this state. It appears to EDO, that the lack of planning controls that specifically ensure a proposed development's compatibility with natural landscapes situation is inconsistent with the *State Coastal Policy 1996*.[36]

EDO therefore strongly recommends that the SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania's coastal waters.

Recommendation 8: The SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania's coastal waters, including through amendment of clause

[33] https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf
[34] See The TPC's Decision on the Clarence draft Local Provisions Schedule dated 2021 from [444] but especially [448] and [455], accessed here: https://www.planning.tas.gov.au/__data/assets/pdf_file/0009/626904/Decision-and-reasons-under-s35K2a-and-s35KB-to-modify-draft-LPS-and-amend-Clarence-LPS-including-notices-1-September-2021.PDF
[35] cf with the zoning provisions being "applied"
[36] See clause 1.1.10 of the Policy which states: The design and siting of buildings, engineering works and other infrastructure, including access routes in the coastal zone, will be subject to planning controls to ensure compatibility with natural landscapes."

7.11.1 and/or the Natural Assets Code.

3.2. Exemptions from the SPPs

In its previous submissions concerning the draft SPPs, EDO raised concerns about the impacts on the environment arising from developments or uses that are exempt from the requirement for planning permits and suggested some ways these developments and uses could be more appropriately regulated.[37] Those concerns have been adequately addressed and consider that all the exemptions under the SPPs should be reviewed, with particular attention being paid to exemptions such as:

- Table 4.3, exempt building and works;
- Table 4.4 relating to vegetation removal; and
- Exemptions from the Natural Assets Code.

Recommendation 9: The SPPs review consider whether the exemptions provided under Tables 4.3 and 4.4 and in the Natural Assets Code are appropriate and consistent with the objective of the LUPA Act.

3.3. Information required as part of the assessment of an application for use or development

In EDO's submission to the draft SPPs, we emphasised the importance of applicants being required to provide sufficient information at the outset for the planning authority to assess potential impacts and determine which Codes may apply to a proposed use or development and that the onus should not be on the planning authority to request this information. For example, while it is not appropriate to require all applications to include a coastal hazard assessment or natural values assessment, applicants should be required to provide such an assessment for any use or development that would be subject to the Coastal Inundation Code or the Natural Assets Code. We recommended that any information required by an applicable Code should be included as a mandatory application requirement under clause 6.1.2 and that additional mandatory application requirements should be able to be included in Codes.

We note that in the Commission's Report on the draft SPPs it considered the current approach of not providing for Code-specific information requirements may be worthy of further consideration in future SPP reviews.[38] We believe it would be appropriate to re-consider our recommendation during the current review. Further, if the SPP review proceeds in accordance with recommendation 4 above, consideration would need to be given as to what information needs to

[37] See, for example, EDO's submission in response to the Draft State Planning Provisions dated 18 May 2016, which can be accessed at https://www.edo.org.au/wp-content/uploads/2019/12/160518-EDO-Tasmania-submission-on-draft-State-Planning-Provisions.pdf

[38] Tasmanian Planning Commission, 2016, Draft State Planning Provisions Report, https://www.planning.tas.gov.au/__data/assets/pdf_file/0005/588965/Report-on-the-draft-State-Planning-Provisions-and-appendices,-9-December-2016.PDF

be provided to allow Tasmanian Aboriginal people to properly assess applications relating to Aboriginal cultural heritage.

Recommendation 10: The SPPs review consider expanding the application requirements under clause 6.1.2 to include reports or assessments required under applicable Codes.

3.4. Environmental Management Zone

As it currently stands, many uses within the Environmental Management Zone are permitted so long as an authority is granted under the *National Parks and Reserved Land Regulations 2019* or granted by the managing authority or approved by the Director General of Lands under the *Crown Lands Act 1976*. Assessment of such new uses is largely managed through the non-statutory Reserve Activity Assessment (**RAA**) process, administered by the Parks and Wildlife Service within the Department of Natural Resources and Environment.

EDO has previously voiced concerns about the adequacy of the RAA process and the reliance on it for the purposes of planning assessments. As national parks and reserves are a public resource, the public has a legitimate expectation of being able to comment on proposals which may compromise the protection of that resource. EDO does not consider it sufficient for a proponent to rely on the existence of an authority (which may or may not be issued following an RAA) to avoid further scrutiny of a use or development on Crown land by a local council under the SPPs. This is because:

- There are no clear and transparent criteria for decisions relating to the issue of authorities under the *National Parks and Reserved Land Regulations 2019* or by the Director General of Lands under the *Crown Lands Act 1976*, and no opportunities for public comment or merits appeal of those decisions. [39]
- The RAA process has no statutory basis, and therefore has no clear and transparent criteria for decisions, nor are there guaranteed provisions allowing for meaningful public participation in the RAA process. There is no right of merits appeal in respect of a decision to approve an RAA and, if an activity is granted an authority following an RAA, and therefore subsequently characterised as a "permitted use" under clause 23.2 of the SPPs, there will be no public comment or merits appeal rights relating to that proposal.
- There are planning issues related to proposed uses and developments in national parks, reserves and Crown land that are most appropriately considered by a local council, for example, developments in these areas can have a range of impacts both on and off the land that a council is better places to assess (such as traffic, sanitation, impacts on other uses in the vicinity including amenity impacts on sensitive uses)

Without clear criteria for the decisions to grant authorities under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976*, there can be no guarantee that deferring to

[39] Given the operation of section 48(5) of the *National Parks and Reserves Management Act 2002*, some developments that are not consistent with the applicable reserved land management objectives and objectives of reserve management plans may be approved in national parks, State reserves, nature reserves, game reserves or historic sites.

these authorities within the SPPs will achieve the Environmental Management Zone purposes of providing for "the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value"; and allowing "for compatible use or development where it is consistent with:

(a) the protection, conservation, and management of the values of the land; and
(b) applicable reserved land management objectives and objectives of reserve management plans."

EDO notes that the Tasmanian Government has signalled it will be replacing the RAA process with a statutory environmental impact and planning assessment process for "major uses and developments". Without further detail, it is difficult to comment on the implications of these proposed reforms and whether they will effectively address the problems we outline above. However, given there has been no indication of when the RAA reforms will be consulted upon, let alone passed by Parliament, it is EDO's strong view that all deference in Environmental Management Zone provisions to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976,* such as the Table of Uses and the Performance Criteria for Discretionary Uses outlined in clause 23.3.1 P1 and Acceptable Solutions in clauses 23.4 and 23.5, should be removed and appropriate measures provided to ensure that the Zone objects are achieved.

Recommendation 11: The SPPs review consider the impact of deference in Environmental Management Zone to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976* on public participation and good planning outcomes, and consider the removal of these provisions, and the strengthening of public participation in decisions relating to public lands.

Recommendation 12: The SPPs review consider providing for appropriate standards for all developments and uses provided in the Environmental Management Zone to ensure the Zone purposes are achieved.

3.5. Natural Assets Code

In EDO's submission, the Natural Assets Code should be reviewed in its entirety, with particular attention paid to the Code's:

- Purpose
- Application and Exemptions
- Drafting of the applicable provisions
- Mapping

When the draft SPPs were circulated for public comment in 2016, the Natural Assets Code was an area of considerable debate and public concern. EDO's submission strongly recommended significant changes to the Code, arguing that it would result in the loss and fragmentation of important biodiversity and habitat, particularly where that habitat does not include threatened

species.[40] The TPC ultimately recommended that the Code be removed from the SPPs to allow for proper consideration of the biodiversity implications of the Code, and for the development of more comprehensive mapping to support the application of the priority vegetation area overlay in the Code. While the Minister ultimately decided to ignore this recommendation, much concern about the adequacy of the Natural Assets Code remains, and EDO endorses much of our previous detailed submission in this respect.

The Code's purpose statements lack ambition and fail to acknowledge any role for the Code in *avoiding* impacts of developments and uses on natural values such as waterways and priority habitat, or to *protect* these values in the landscape for the future. The purpose statements (as with the rest of the Code provisions) also do not deal with the need to remedy or restore natural values which have been degraded or offset any impacts that are unavoidable. This is inconsistent with the primary sustainable development objectives of the LUPA Act.

There are also numerous problems with limitations of the application of the Code and the exemptions to it. For example, the Code does not apply to all potential habitat, only that which is identified as priority vegetation. Even so, these priority vegetation areas do not apply across all zones, and even then, for some zones the Code only applies to subdivisions but not to other developments.[41] The definition of Priority Vegetation for the purposes of mapping has also been limited. As already mentioned in our submission above, the Waterway and Coastal Protection Area does not apply to coastal waters, and in urban zones, the extent of these areas is severely curtailed without any provision to ensure developments or uses do not have adverse impacts on the natural values of these areas, including on water quality.[42] There are also many development that are exempted from the Code, many of which could have enormous impacts on natural values that are not adequately regulated under other laws.[43] We also acknowledge that natural values, including those of rivers and vegetated areas may hold cultural values for Aboriginal people, which is explicitly not recognised in the Code or elsewhere in the SPPs.

Fundamentally, the Natural Assets Code misses an opportunity to protect and preserve remnant native vegetation and habitat corridors. Rather than focussed on development control, this Code could be focussed on managing natural assets at a landscape or ecosystem level. Priority vegetation is currently the trigger for whether clearing is assessed at all – indicating that it can be removed, subject to assessment. Rather than this approach, we recommend an approach based on identifying and protecting biodiversity at a landscape scale, taking an approach based on conservation ecology.

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[40] EDO's submission in response to the Draft State Planning Provisions dated 18 May 2016, can be accessed at https://www.edo.org.au/wp-content/uploads/2019/12/160518-EDO-Tasmania-submission-on-draft-State-Planning-Provisions.pdf

[41] Refer to clause C7.2.1 (c) of the SPPs.

[42] Refer to Table C7 (b) of the SPPs.

[43] One example of an exemption provided from the Code, where other laws do not adequately provide for consideration and protection of natural values is forest practices or forest operations in accordance with a forest practices plan certified under the *Forest Practices Act 1985* – see clause C7.4.1(d) of the SPPs.

In addition, there is substantial evidence of the climate and ecosystem services provided by intact ecosystems both as carbon sinks and in water cycling etc. These benefits should be recognised in the mapping and controls applying to clearing of vegetation.

Furthermore, the Code fails to regulate the ongoing impacts of uses, such as Resource Development and Extractive Industry, on the natural values. The SPPs review should consider whether it is appropriate that such impacts fall outside the scope of planning decisions.

EDO has previously argued there needs to be to be a standalone Stormwater Code in the SPPs. While EDO maintains that position, in the absence of such a Code, we consider that the provisions of the Natural Assets Code relating to stormwater can and should be significantly strengthened to ensure both our waterways and communities are protected from stormwater impacts: see Recommendation 7.

Recommendation 13: The Natural Assets Code be reviewed in its entirety with a view to ensuring it fulfills the LUPA Act objectives by maintaining (through protection and preserving) ecological processes and diversity for current and future generations and ensuring development is sustainable.

3.6. Coastal Erosion Hazard Code and Coastal Inundation Hazard Code

EDO considers that the purposes of the Coastal Erosion Hazard and Coastal Inundation Hazard Codes should be reviewed to reflect the need to manage and minimise not just the impacts of coastal erosion on development, but the impacts of development on coastal erosion and inundation.

As we have already outlined in part 2.1 above, mapping for these Codes is based on analysis undertaken by the CSIRO using data from the fifth Intergovernmental Panel on Climate Change (IPCC) report.[44] Further expert analysis of lutruwita/Tasmania's likely coastal erosion and inundation risks should be commissioned based on the sea-level rise information in the sixth IPCC report. Likewise, further investigation of the interaction between coastal inundation and estuarine flooding,[45] and mapping of lutruwita/Tasmania's flood risks in future climate scenarios is required.[46]

The Codes should also consider the best approach to adaptation planning for community resilience and safety.

[44] Tasmanian Climate Change Office, "Coastal Impacts" webpage accessed at https://www.dpac.tas.gov.au/divisions/climatechange/climate_change_in_tasmania/impacts_of_climate_change/coastal_impacts;and Tasmanian Planning Commission, Guideline No. 1 Local Provisions Schedule (LPS): zone and code application, June 2018 accessed at https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

[45] See discussion of this in Office of Security and Emergency Management, Coastal Hazards Package: Summary of Consultation, undated, accessible at https://www.dpac.tas.gov.au/divisions/osem/coastal_hazards_in_tasmania

[46] There is currently no statewide mapping of flood prone areas, Tasmanian Planning Commission, Guideline No. 1 Local Provisions Schedule (LPS): zone and code application, June 2018, at p 51 accessed at https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

Recommendation 14: The SPPs review consider the purpose, provisions and mapping under the Coastal Erosion Hazard and Coastal Inundation Hazard Codes to ensure that they reflect and adapt to the best available science on sea-level rise, coastal inundation and estuarine flooding; manage the impacts of development on coastal erosion and inundation; and provide for community resilience and safety.

3.7. Landscape Conservation Zone

In its submission on the draft SPPs, EDO raised concerns about the risk that many Councils would resist zoning land that was zoned Environmental Living under the Interim Planning Scheme to Landscape Conservation given the likely response from landowners regarding the additional restrictions. The current review should investigate the extent to which land previously zoned as Environmental Living has been classified as Rural Living, Rural or Landscape Conservation and consider whether there is a need for more options to balance the need for greater protection of natural values with the difficulties councils have experienced in transitioning land previously zoned Environmental Living to Landscape Conservation.

Recommendation 15: The SPPs review consider the extent to which land previously zoned Environmental Living has been transitioned to Rural Living, Rural or Landscape Conservation Zoning, an identify options to address any overall drop in protection of natural values as a result of down zoning of Environmental Living to Rural Living, Rural Zone.

3.8. Treatment of the Extractive Industry use in the Rural and Agricultural Zones

Allowing for extractive industry, whether as a Permitted Use in the Rural Zone or as a Discretionary Use in the Agricultural Zone, conflicts with the Purposes of both these zones to minimise conversion of agricultural land for non-agricultural use (see clauses 20.1.2 and 21.1.2 of the SPPs). The review of the SPPs should include consideration of whether Extractive Industry uses should be classed either as a Discretionary use for the Rural Zone, with exceptions such as quarries directly related to agricultural uses, or as a Prohibited use for the Agricultural Zone, with exceptions i.e., quarries related to agricultural production to keep in line with the over-arching objective of protecting land for agricultural use.

Recommendation 16: The SPPs review consider the correct classification of extractive industries in the Rural and Agricultural zones.

Review of the State Planning Provisions

Huon Valley Zoning Association
11 August 2022
Authorised on behalf of Huon Valley Zoning Association President, Dr. Belinda Yaxley

Contents

Executive Summary

This submission provides feedback to the Tasmanian government's scoping of a five-year review into the State Planning Provisions, from the point of view of community members experiencing the application of these SPPs during preparation of the Huon Valley draft LPS.

The community engagement process in particular has highlighted some serious natural justice and ethical issues. These issues can also be extended State-wide where our Association (Huon Valley Zoning Association or HVZA) is aware of other councils that have not adequately informed their rate payers of zoning changes to their property. Specific issues extends to the SPP areas of:

- Ensure accessibility and improve education and awareness of proposed LPS zoning changes that may affect landholders.
- Recognise and respect rights of landowners.
- Refine the definition of Landscape Conservation Zone to recognise its scenic focus and community contribution
- Natural assets code and inaccurate information used to inform natural values
- Natural justice issues
- Equity issues
- Council approach to informing community and developing the 35F - the LCZ debacle
- Ensuring councils have the skills and expertise to apply amendments and planning
- Non bias third party help in strategic planning of municipalities
- Standardised as much as possible in the approach to the process of drafting the LPS

1. The Land Owner - the Major Stakeholder

Adequate engagement process

The engagement process with landowners whose property has been changed under a draft LPS needs to have clearer guidance and ensure it is an aligned approach across the State. The SPP claims that natural justice issues are addressed but this is the first and most obvious natural justice issue to the current process of rezoning land in Tasmania. By definition "natural justice" ensues where there is perceived or actual negative impact to a person; it cannot occur without their knowledge or input. The lack of engagement with the landholder through the rezoning process and making these people aware of the zoning changes is the first key issue that needs reviewing and changing for the better to ensure every landholder that is impacted is aware of the zone change and what this means to their property.

The current approach by the Huon Valley Council created the following issues:

- a community that was not aware of the rezoning of their property (this is not supposition - objective evidence indicating this can be supplied)
- Ratepayers that did find out, found out or, late in the public consultation period
- Council encouraged people to use consultants but not everyone can afford this

- When ratepayers were made aware they did know how or what to do
- a distrust for government where the ratepayer feels like the lack of engagement was deliberate to push the LPS through without disapproval from the ratepayer

Adequate engagement process means involving all ratepayers in a community that are impacted, it means catering for the different ways people educate themselves and how they gain access to information to learn about what impacts them. Councils need a guideline on this.

Ensuring effective landowner participation

Ratepayers affected by change need to know about it. Due to the lack of guidance provided by the State government to council as to what effective landholder participation looks like through the SPP process and drafting of the LPS, many councils were able to do what we define as a very "hands off" approach to engaging the ratepayer in the process. Effective landholder participation can only be that if the landholder actually knows they can participate. Advertising of workshops regarding the SPPs and LPS process were done via the councils website and community hub but this was a too short sighted approach, assuming that everyone in the community actually looks at the website or visits the hub is an error. Letters regarding the new zoning should have been posted to all ratepayers regarding the changes, there should be advertising at well-frequented businesses in business centres of communities such as the Huon Valley like the post office, supermarket, banks and medical centres. Furthermore, phone calls could be made to those identified in older age groups or challenged groups with respect to literacy. A State that cares about its communities cares about ensuring adequate participation in such processes that have great impacts to peoples lives and livelihoods. We conclude in our review that the SPP process does not have adequate guidance on ensuring effective landholder participation.

The following recommendations are made to address adequate stakeholder engagement:

- TPC to create a guideline with instruction on how the community is to be engaged and insist on:
    - initial community consultation about the LPS process and what are the potential impacts on title owners.
    - 60 day period with first 15 days a notice goes out to each ratepayer who has a proposed change of zoning and what that zone is and include links to Section 8a, the draft LPS and the SPP.
    - adequate outreach to enable those with literacy issues aware of the changes
    - Council presentation on LPS and SPP within the first two weeks of the draft LPS being released for comment to include education on the system
    - accessible information at council chambers, website, local frequented businesses and council advice being delivered by skilled people.
    - Councils must establish a mechanism to provide low cost and unbiased support to title holder who want to make submissions
    - People should be made aware when someone is making a representation on their property
    - no LCZ without landowner agreement (consistent with previous Tasmanian Planning Commission decisions).

- recognise that not all people are able to afford a planner and make allowances for that and offer solutions when making a representation

While some zoning changes in the transition from interim to statewide schemes are relatively benign and in name only, other changes have a massive impact on future land use. The SPP should identify zonings that have significant impact and these should be treated with much greater attention to land holder opinions and future plans. We would go so far as to say there should be no change to Agriculture or Landscape Conservation zonings without landowner agreement. Recent (consistent with previous Tasmanian Planning Commission) hearing decisions have reinforced this principle for the application of LCZ.

Establishing landholders rights and state recognition

The landholders rights appear to have been overlooked by the State and council. The rights of landholders must be at the centre of all planning decisions. We believe that an organised and structured land use planning system is essential in civil society. As such a Planning System should not be at the expense of an individual's expectation that they can reasonably enjoy the use of their land. The current planning process is too focused on broad principals - at the expense of reasonable landowner rights.

Government Rules, Control, and the Rights of Landowners
While an organised approach to land use and building in Tasmania is supported, landowners need to know that if they purchased land with a certain zoning there are things that they are allowed to use that land for and things they cannot. These rules are generally clear in the definitions of Zones. The State Planning Provisions (SPP) documents these land uses and we support a statewide approach.

Zones define what land uses are permitted, discretionary or not permitted. If a land use is discretionary, it means that Local Planning Authorities (in most cases Councils) must assess a Development Application (DA) and ensure the proposal meets a range of additional conditions applied in the Zone. This can apply to large scale land use (eg building a factory) right down to the colour of the material individual landowners can build their home from. The Authority can reasonably refuse a DA if they believe the proposal is not consistent with the Zoning definition. Local Planning Authorities (LPA) must apply the zones to each land title in their area. When a new planning scheme is introduced with new zone definitions the LPA develops a Local Provisions Scheme (LPS) that defines how these zones are applied to each title. It is in the applications of these zones where landowner rights are either protected or ignored.

How to Protect Landowner Rights
No new zone should be applied to a title without the consent of the landholder. We all want to understand the planning expectations for our and our neighbours properties. However we also want to know that if we purchase a block with certain land use rights attached to it these rights cannot be taken away without our knowledge, approval or compensation. The current legislation has only very minimal consultation processes and it is NOT a requirement that landowners are consulted about changes to their individual titles.
When new planning schemes are introduced there should be a clear and like for like and provisions table that gives land owners security that their current zonings will default to a new zoning. This can only be changed with landholder consent.

Reasonable and Gradual Change

We understand that over time factors will influence planning rules. Climate change, for instance, will influence how close houses should be built to rivers or the ocean. Rooftop solar and battery storage are new uses landowners have embraced. As new planning schemes are introduced rules will be updated to take these influences into account. As a collective of landowners we become neighbourhoods and the preferences of neighbourhoods change over time. These changes should be considered, but individual landowner rights must also be respected.

Any new rules should only be introduced with broad community consent and should be done with landholder consent. But they also must be done with an eye on protecting long standing individual landholder rights.

Gradual change can allow time for people to adapt, but it can also be a form of stealth. It must include engagement at each change. There are examples of vacant land that has been purchased for future individual residential use that have moved from rural -> Environmental Living -> Landscape Conservation without the title holder knowledge. Title holders only find these changes when they go to commence their building process.

Compensation for Major Change and Other Equity Issues

From time to time the State must radically change the use of land or even take land from the landowner. There are rules in place for when, how and why this is done. We believe that in the very rare cases that a changed zoning is applied and land use is significantly reduced (or downzoned) landholders should be reasonably compensated. This should either be through a compulsory sale mechanism or application of a reduced value and compensation payment.

Making many more activities subject to discretionary approval will significantly increase the workload on Council Planners and we struggle to employ sufficient planners already. It will also substantially add to the red tape and endless consultant reports that ratepayers will be required to provide. We believe this will turn people off living on these blocks, reduce interest in living in the Huon and result in the loss of property value for anyone zoned LCZ.

The application of the new zones such as Landscape Conservation Zone to so many titles is a burdensome weight on the community and Council staff. The State government has stated that the policy behind the drafting of the SPP is to apply regulation only to the extent necessary, thereby decreasing regulatory controls by ‘cutting red tape’. The purpose of doing this is to facilitate economic development and certainty. The SPPs have not prevented our Huon Valley LPS from doing neither of these things.

2. Definition of LCZ

The application of the Landscape Conservation Zone to the Huon Valley has provided a good example of where the SPP process and application has left a community terribly confused about the intended management of their land. This may be due to the lack of definition of “landscape values” and “scenic values” under Section 8a Guideline No. 1 Local Provisions Schedule (LPS): zone and code application. It needs to be recognised that Guideline 1

specifies a focus on scenic, visual landscape NOT a biodiversity prerequisite, with associated recognition of community benefit and landholder imposition.

This is distinct from the LPS focus on "landscape values", and appears to be a misinterpretation arising from:

- no clear identification of "landscape values" as being scenic or visual landscape values in either the Zone Purpose statement or the first definitional point in the Zone Application Guidelines. "Landscape values" as used in the SPP system may easily be confused with "landscape-scale biodiversity values", an understandable situation given the scarcity of visual landscape management practitioners in Tasmania.
- The LCZ1 Application Guideline gives an instruction "should be applied to land with landscape values that are identified for protection and conservation", which then flows into a series of examples "such as bushland areas, large areas of native vegetation, or areas of important scenic values", making it easy to confuse these as being of primary importance in the decision-making process for LCZ application, rather than as illustrative examples of potential sites (as used in LCZ2). It would be much clearer if LCZ1 stayed focussed on defining LCZ application to areas with scenic/visual landscape values that are identified for protection and conservation".

The term "significant" is used in the similar zone 23 Environmental Management to note that the values being protected and conserved are of greater priority than relevant overlays provide for. The consequent impact on private owners is also recognised in EMZ1(f) "any private land containing significant values identified for protection or conservation and where the intention is to limit use and development".

There is no requirement for Planning Authorities to apply a scenic protection assessment methodology (such as that developed by Inspiring Places - Guidelines for Scenic Assessment Methodology). There is no evidence that any Scenic Assessment was applied to the over 3,000 titles proposed for LCZ by the Huon Valley Council.

Looking broadly across the State, data for Huon Valley Council's approach to Landscape Conservation Zone (LCZ) shows a distinct divergence from the generally applied norm. A sample of three other Local Government Authorities (LGAs) shows the following proposed/ratified LCZ rates of application in of the list below:

Huon Valley 13.4%[1]
Derwent Valley 1.9%[2]
Central Highlands 0%[3]
Southern Midlands 0%[4] *

[1] Data Source: Appendix 61 of the LGA's LPS-Draft supporting documentation.
[2] Data Source: Appendix 29 of the LGA's LPS-Draft supporting documentation.
[3] Data Source: Discovercommunities LGA's Interactive Map.
[4] Data Source: LGA's Zones 17 June 2021 LPS-Draft Maps. *LGA's 35f, TPC's 35k resolved to apply LCZ to ~8 titles see below * for details.
Note: Data only accounts for LCZ zoning over the whole of a title. No split zoning. So the rate in Huon/Derwent may be higher.

- When looking at the factors that informed Southern Midlands to apply LCZ to the ~8 titles within their area of oversight, the LGA mostly did so at the explicit request of the landowner, and where a formalised Conservation Covenant exists. Instances where LCZ was called for over a land title where a landowner objected to the proposal, the LGA sided with the landholder to apply an alternative zone. These decisions were in general agreement with the TPC.
- Many LGAs like Central Highlands and Southern Midlands have started with little to no use of LCZ and only applied it when explicitly requested for by a landowner and where the case has merit.

The HVC's draft LPS Supporting Report outlines that LCZ application was driven initially by selection of broadscale (>20ha) native vegetation areas, followed by a check for corroboration of perceived "natural and landscape values" by coincident coverage of Natural Assets Code and Scenic Landscape Code overlays.

In a recent decision on the West Tamar LPS the Commission was very clear about the unique nature of LCZ - in point 275 wrote to quote "*To reiterate, the purpose of the Landscape Conservation Zone is for the management of landscape values, not biodiversity values. The presence of biodiversity values is not irrelevant, however representors have not necessarily demonstrated the foremost requirement i.e. that each property has landscape value. In the event that land has biodiversity value, but no landscape value, then it is more likely that a zone such as the Rural Zone would need to be applied in combination with the Priority Vegetation Area Overlay in order to meet the requirements of Guideline No. 1. The presence of relevant overlays does not automatically mean LC zoning. Previous decisions of the Tasmanian Planning Commission make this very clear*."

Guideline No. 1 directs that the "primary objective in applying a zone should be to achieve the zone purpose to the greatest extent possible". The primary purpose of a 15 hectare paddock with a house and shed on it is not landscape conservation - it is rural living. Yet many such properties have been caught up in the proposed Huon Valley LCZ - refer to the later case study for more detail on this.

A further aspect of zone application that appears inconsistently applied is split zoning.

3. Priority vegetation overlay and data derivation

The SPPs definition of 'priority vegetation' is reflected in *Guideline No. 1 - Local Provisions Schedule (LPS): zone and code application*, which states that "The priority vegetation overlay is intended for native vegetation that:

a. forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the Nature Conservation Act 2002;
b. is a threatened flora species;
c. forms a significant habitat for a threatened fauna species; or

d. has been identified as native vegetation of local importance."

It is worth noting that the greatest source of the most contemporary information on locations of the threatened species or communities referenced in points (a)-(c) are the state government's Natural Values Atlas (NVA) and Tasveg mapping tools, both publicly accessible through TheLIST.

Point (d) above references a process of identification at a local scale, providing for more tailored solutions outside conventional threatened species definitions. An example could be a hypothetical Geeveston community plan to protect streamside vegetation of the Kermandie River and its tributaries to a greater extent than provided by standard Codes, in order to ensure the health of the town's iconic platypus population. It does not refer to conceptual or modelled habitat values at a strategic level.

All three sources above consistently agree that the Code's purpose relates to **threatened** flora/fauna/communities, and to **identified** native vegetation of **local importance** (key words highlighted in bold).

It is clear from the SPPs and LPS guideline referenced above that the Planning Scheme system is intended to relate to existing systems of prioritisation, with additional locally important areas being added where they are identified – identifying being a decision-based scoping and verification process. This is not delivered by the proprietary Regional Ecosystem Model (REM) tool.

The proprietary Regional Ecosystem Model (REM) does not an adequately resource a Priority Vegetation Area Overlay for a number of reasons:

1. it incorporates issues beyond the intent of the SPPs by including values such as low-occurrence, poorly-reserved and remnant patches: in some cases these might be "locally important" but these also may be so broad-scale or out of context for a particular area that they don't justify Priority Vegetation status.
2. modelling potential habitat reaches well beyond the SPP intent of addressing identified values. The role of Priority Vegetation Area Overlay is outlined as being for threatened species recorded presence (data from the state's Natural Values Atlas), threatened native vegetation communities (TNVCs) best available mapping, and "identified as being of local importance based on field verification, analysis or mapping".
3. input data of varying accuracy is combined to put so many concepts together that the output model loses both accuracy and information to become a hexagonally gridded risk rating, far from the SPP goal of "identified" values and often covering beyond – or less than – the "native vegetation" intended. Accuracy and accessibility is lost, and the result may well 'not make sense'.
4. the model is not adaptive or regularly updated, therefore losing currency and accuracy and adding a bureaucratic step rather than empowering the integrated, accessible Natural Values Atlas system the state already has, and enabling consistent adaptation as species status or management recommendations change.

These issues undermine the prioritisation process and effective management of issues.

System objectives set out in Part 1 Schedule 1 of the Land Use Planning and Approvals Act 1993 include "1(c) to encourage public involvement in resource management and planning". To enable this public involvement the system must be simple and understandable – not just for the qualified town planners and consultants using it, but for the Councillors, land owners and broader community whose interests it protects and serves.

This poses both a disincentive to potentially suitable development sites, and risks avoidance by unauthorised activities where landowners 'drop out' of the system due to its difficulty. It also potentially diverts Planning Scheme business into other systems not designed to deal with these issues – for example, the Forest Practices system for clearing prior to development or a costly compliance route for those avoiding approvals altogether.

4. Resourcing strategic planning at Council level (how to maintain vs short-term goals, use of consultants/externals)

Lack of adequate resourcing of strategic planning at the council level can have major impacts to the SPP process and we have seen what this can do using the Huon Valley LPS as an example. The lack of skills and expertise in the planning department of this council is a major issue we identify when reviewing the SPP process, evidence of this can be seen by council staffs' allocation of LCZ using natural assets and not understanding that 8a details LCZ as a zone to be applied for landscape and scenic values and not biodiversity - the TPC should be ensuring that the SPP is adequately supported at the local government level and if not then provisions or guidance/guidelines should be provided on how to address the lack of resourcing of strategic planning in councils.

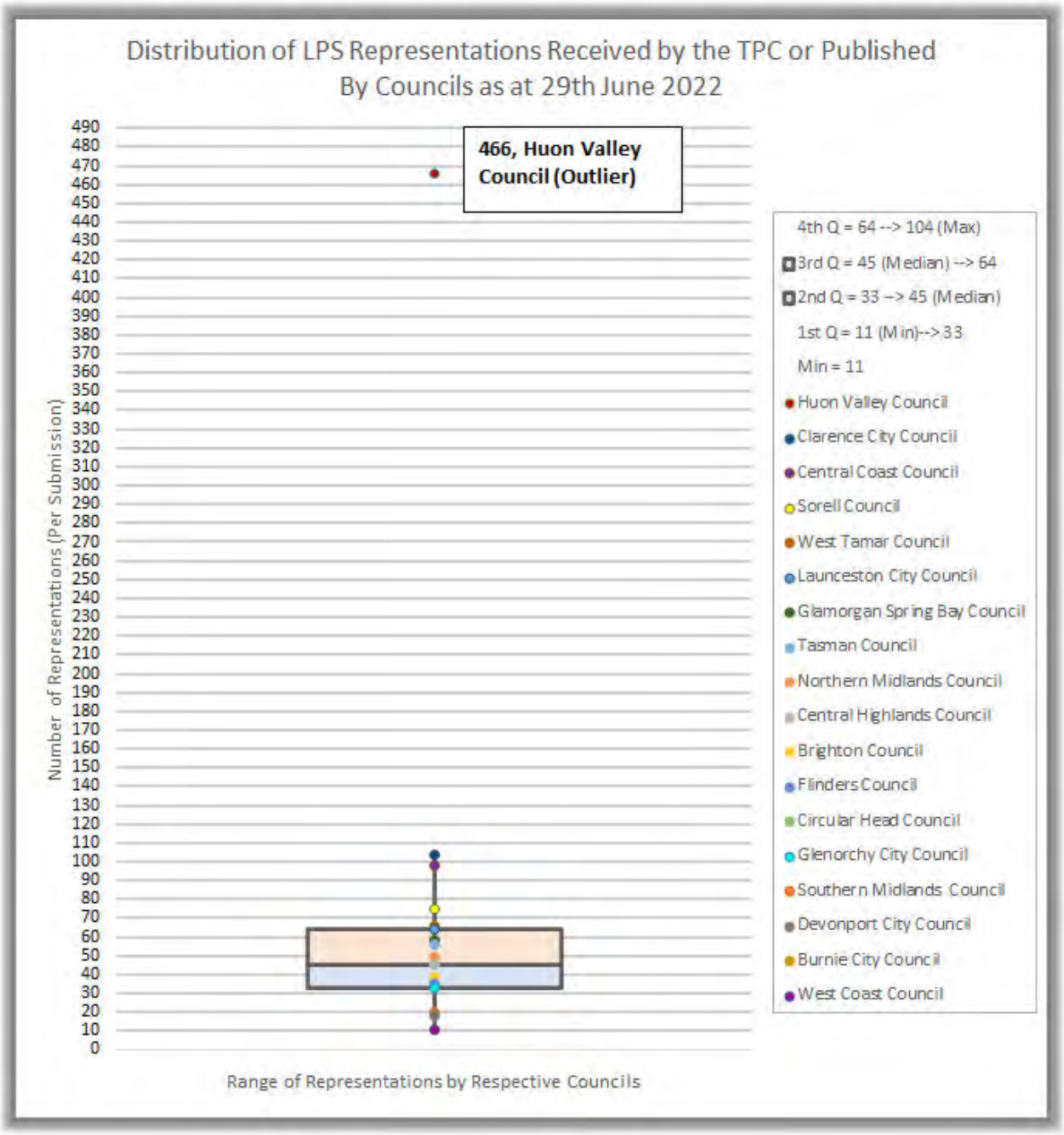
One solution, which has been the approach of the HVC is to employ consultants/contractors for the duration of developing an LPS (35F) and interpreting the SPPs and associated guidelines (such as Section 8a Guideline 1). If consultants are used then they must not be biased (e.g. environmentalists) nor have a conflict of interest. We have heard information that suggests a consultancy firm has prepared representations aimed at influencing the LPS on behalf of a stakeholder and has simultaneously been providing services to prepare/revise the LPS for that local government. This would constitute a great bias and conflict of interest throughout the application of the SPPs to that region. In summary a review of the SPP process makes the following recommendations:

- ensuring adequately skilled planning staff are involved in the SPPs at the Council level and making this policy
- councils have enough skilled staff in the planning department
- where consultants are used in the strategic planning of municipalities then they must not be biased or have a conflict of interest

5. A Case for Concern: A Data Driven Approach

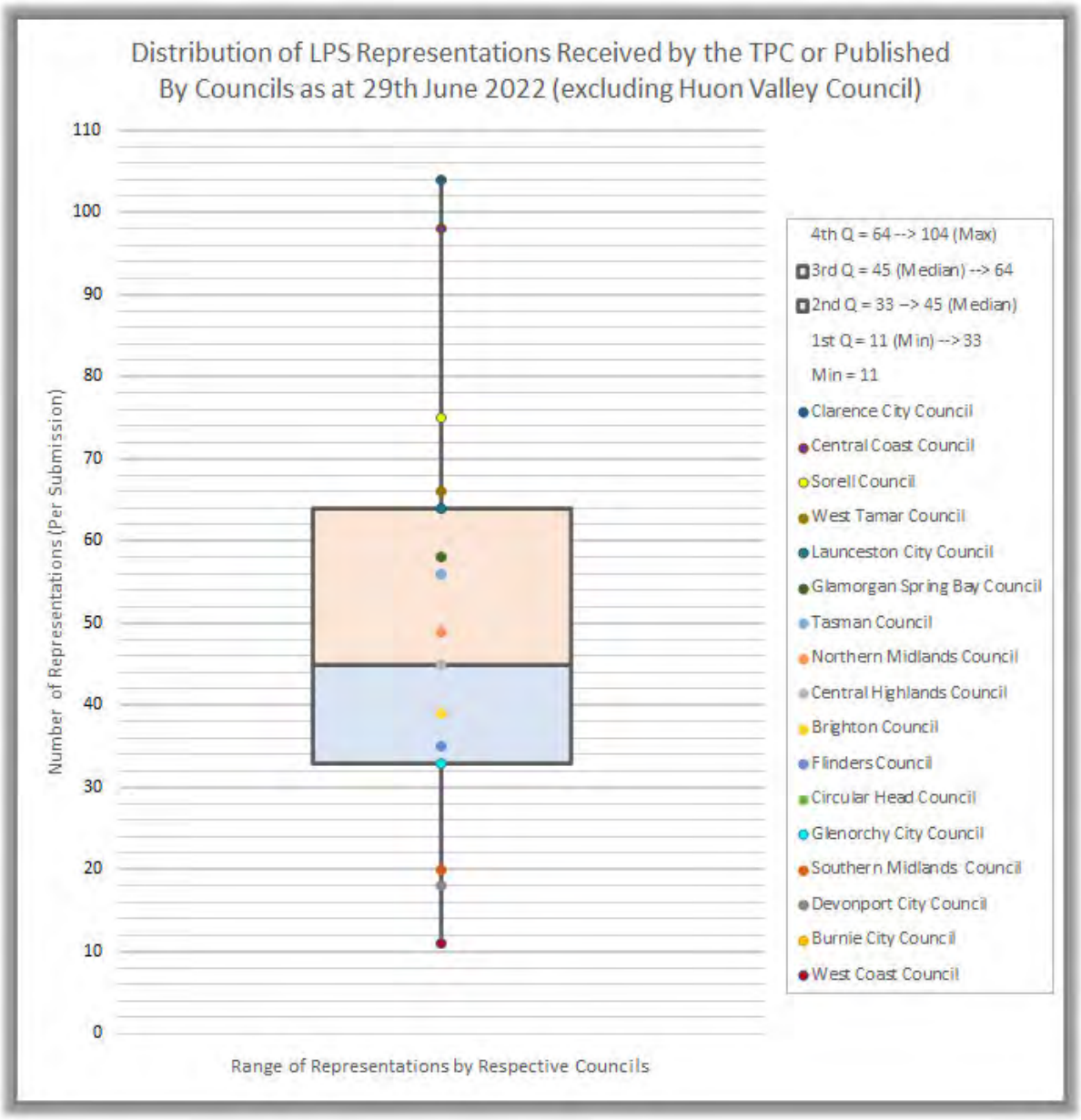
Prior to transitioning across to the state-wide Tasmanian Planning Scheme, each Municipal Area had installed, as their respective names would suggest, a temporary *Interim Planning Scheme*. For our particular foci, the HVZA is mostly speaking from a Huon Valley Perspective. That is to say HVZA has been uniquely positioned to engage with the Huon Valley Council's (HVC) progressing of the move from the *Huon Valley Interim Planning Scheme 2015 (IPS)* to the Tasmanian Planning Scheme (TPS). Although the SPPs were formalised in March of 2017, some two years after many of the IPS formalised dates, HVC were afforded an opportunity of around five years to prepare and draw from other Councils' moves from their respective IPS to the 'new' state planning scheme.

Throughout this period of time HVC went through a number of revisions of their pre-proposed Draft Local Provisioning Scheme (LPS) before being given a directive by State to progress with the exhibition of their finalised Draft LPS late 2021. At this point in time over 58% of the municipal areas had finalised their draft LPS exhibition stages. A number of those had concluded their transition to the TPS. HVC went on to exhibit their Draft LPS in early 2022 and after a number of public encouraged extensions, Council received 466 representations. The below plot shows HVC's number of representations compared to the other municipalities that had received representations in response to their own exhibited Draft LPS:



Data Source: Tasmanian Planning Commission (TPC) available documentation.
https://www.planning.tas.gov.au/assessments-and-hearings/current-assessments-and-hearings

Huon Valley Council, has attracted many times more (almost four and a half times more, 348%) than the next highest representations received by a council for their Draft LPS. Typically, councils who have completed their Draft LPS Exhibition stage usually receive around 45 representations with the majority of representations received to be seen to fall within 33-64. The distribution of representations received by councils, excluding HVC can be seen in the below box and whisker plot:



Data Source: Tasmanian Planning Commission (TPC) available documentation.
https://www.planning.tas.gov.au/assessments-and-hearings/current-assessments-and-hearings

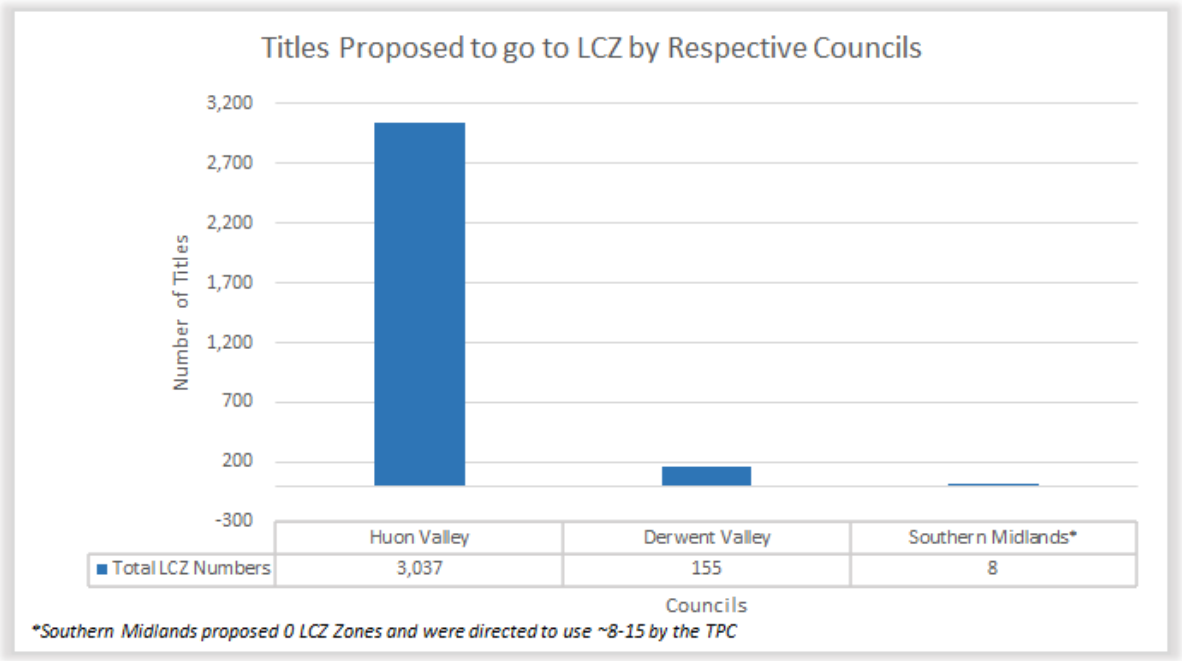
Whilst much speculation could be had around, "Why HVC received a tremendous number of representations?", further analysis could reveal a number of factors that resulted in that figure.

It could be argued that such numbers were due to Council's self-proclaimed comprehensive community engagement program in regard to the zoning process. Afterall, according to Council's official numbers, there were 42 attendees at the January 2022 Information Sessions (split across three meeting areas of Cygnet, Dover, and Huonville), and 84 attendees at a follow up March 2022 Information Session in Huonville. A total of 126 attendees. Council also uploaded a few videos to youtube with the main presentation gaining 229 views from its first upload on the 24th of February 2022, until now (11th August 2022). Council, after much public pressure, did to their credit hold that final follow up Information Session and send official correspondence to each affected landowner informing them of the proposed zone changes. It should be noted that despite all of this is possibly, 'going beyond the legislative

requirements', elements of Council's engagement should in fact be a standard and not done because of public pressure.

That being said, beneath it all was a deep undercurrent of community engagement from public who were upset and made anxious by a zoning change that didn't consult or explicitly inform landowners by way of direct correspondence until the very end of the exhibition period, and that a large number of landowners were being moved across from their current zone to something that wasn't a 'like for like' transition. At the forefront of this was the over zealous application of the contentious zone, the *Landscape Conservation Zone (LCZ),* that some saw as the demonstrable downzoning that has been exacerbated from the *Huon Valley Planning Scheme 1979*, to the *HVC IPS 2015*, to that of a zone like LCZ as proposed by HVC's Draft LPS.

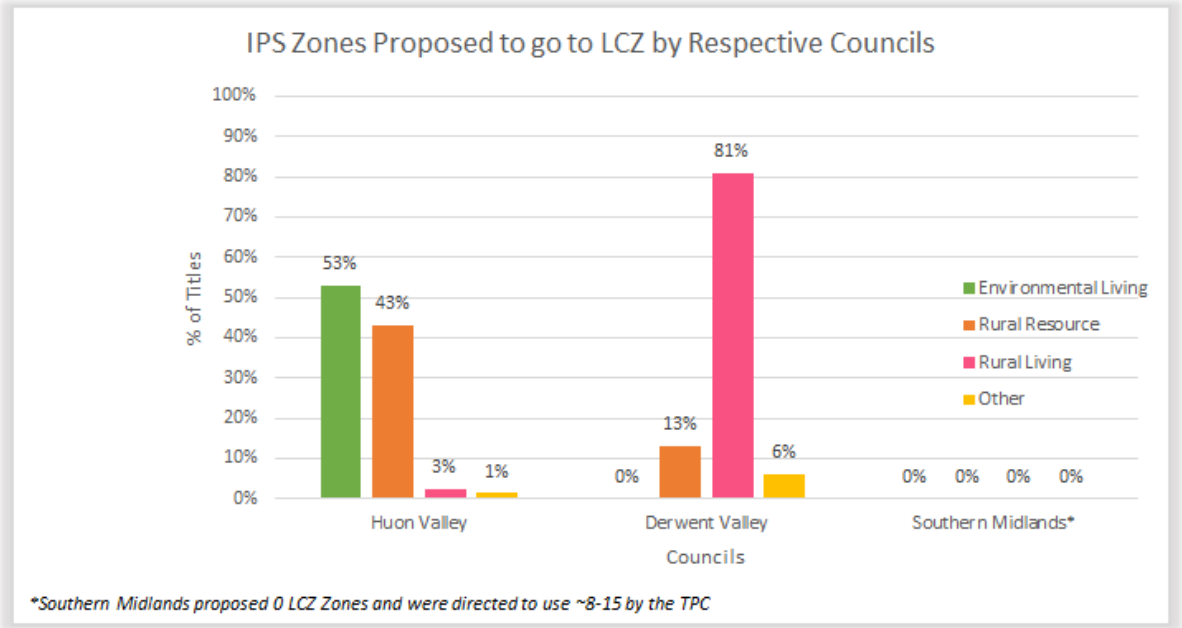
As previously mentioned, HVC positioned themselves to generously apply the contentious zone of LCZ to a number of titles within their municipal area. To be precise, over three thousand titles. By placing this figure into context with a sample of two other municipal areas the data shows perhaps a more robust picture coming into focus that supports the justification of so much community upset and anxiety.



1 Data Source: Appendix 61 of the LGA's LPS-Draft supporting documentation (HVC).
2 Data Source: Appendix 29 of the LGA's LPS-Draft supporting documentation (Derwent Valley Council). Pending Exhibition.
3 Data Source: Discovercommunities LGA's Interactive Map.
4 Data Source: LGA's Zones 17 June 2021 LPS-Draft Maps. LGA's 35f, TPC's 35k resolved to apply LCZ to ~8-15 titles see above * for details (Southern Midlands Council).
Note: Data only accounts for LCZ zoning over the whole of a title. No split zoning. So the rate in Huon/Derwent may be higher. Data is only a small sample. Further analysis is to be seen in a later discussion paper.

It is immediately apparent that HVC has proposed LCZ across titles under its jurisdiction rather, excessively. When compared to the closer neighbouring Council of Derwent Valley (DVC), HVC applied LCZ over 19.5 times, 1,859% more than DVC proposed. Juxtaposed with Southern Midlands Council (SMC), HVC has applied LCZ 201-380 times more, 20,147-37,862%

more than SMC. Additional analysis reveals the distribution of LCZ proposed across the previous IPS zones.



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HVC had elected to propose LCZ predominantly over Rural Resource, and Environmental Living Zoned titles (~1,306 and ~1,610 titles respectively). This constitutes 96% of LCZ proposed titles by HVC, with the remaining 4% (~120 titles) originating from a Rural Living or other Zone under the IPS. It should be noted that even the 4% of Rural Living and Other Zone categories that were proposed to be assigned LCZ represents just over 77% of the whole of DVC's proposed cohort of titles (155 titles) to be zoned to LCZ.

DVC has in their initial Draft LPS, not yet in the official exhibition stage, has a drastic divergence from HVC by quantity of titles set to go to LCZ and in terms of what IPS Zone the titles were originally zoned as. The vast majority of titles in DVC proposed to go to LCZ come from the IPS's Rural Living Zone, 81% with only 13% of Rural Resource and 0% of Environmental Living Zone titles projected to be moved across to LCZ. Although, DVC has proposed 155 titles to be rezoned to LCZ, much lower that HZC's proposal, it should be understood that even this is a higher than average application of the zone. DVC is yet to exhibit their LPS and hence is yet to receive formal representations by their constituents in regards to this.

SMC, conversely initially disregarded LCZ in their Draft LPS. However, they reconsidered it in their 35f and were directed by the TPC to use LCZ across ~8-15 of titles under their municipal area of governance. SMC received only 20 representations from their Draft LPS Exhibition stage. Generally, LCZ was applied where the landholders were in agreement, the property

had prominent landforms, natural values, proximity to reserved land in the Environmental Management Zone. Where there was lack of written landowner consent, the TPC was less inclined to direct the use of LCZ. Further details can be found within sections 61-83 of the TPC's Decision for SMC under their 35K, 35KB document dated 21st April 2021.

IPS Zones Proposed to go to LCZ by Respective Councils			
Zone	Huon Valley[1,3]	Derwent Valley[2,3]	Southern Midlands*,[3,4]
Environmental Living	53%	0%	0%
Rural Resource	43%	13%	0%
Rural Living	3%	81%	0%
Other	1%	6%	0%
Total LCZ Numbers	3,037	155	~8-15

[1] Data Source: Appendix 61 of the LGA's LPS-Draft supporting documentation (HVC).
[2] Data Source: Appendix 29 of the LGA's LPS-Draft supporting documentation (Derwent Valley Council). Pending Exhibition.
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Note: Data only accounts for LCZ zoning over the whole of a title. No split zoning. So the rate in Huon/Derwent may be higher. Data is only a small sample. Further analysis is to be seen in a later discussion paper.

The above table provides for a side-by-side comparison of the two examined councils' (HVC DVC) proposed use of LCZ and that of SMC's directed and finalised use of LCZ. Problematically, both HVC and DVC have proposed LCZ over zones that already have a 'like-for-like' zone in the new TPS. Rural Resource could go to Rural, Rural Living could go to Rural Living, and Environmental Living, which ELZ is not a 'like for like' zone for, as mentioned in the TPC's infosheet, could also go to Rural Living. Over page is diagram that demonstrates how, despite the zone's name, the new Rural Living Zone could be used in instances where a title is currently zoned as Environmental Living.

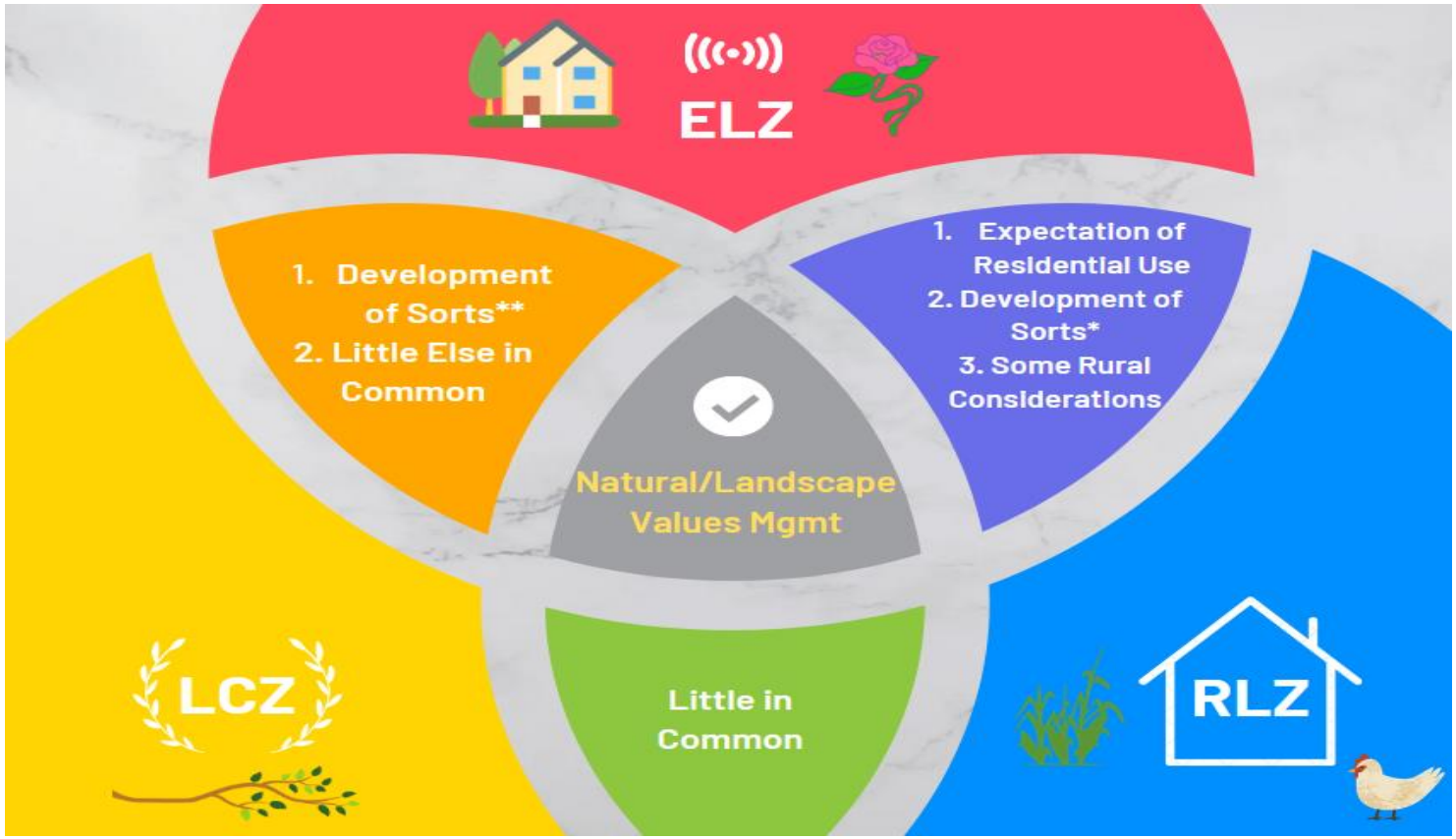

Figure 6: Thematic/Concepts of ELZ, LCZ, and RLZ Purpose Statements as they Intersect.

** Development solutions are further expanded on within use tables. Although RLZ is more 'rural' focused in its ancillary intent, it is guided by landscape and natural value considerations. Further development 'like for like'/similarities can be found in the minimum lot size outcomes of from RLZ A-D, 1 ha to 10 ha blocks. Where ELZ 14.5.1 A1 has min. lot size solutions in ELZ A1 of 6 ha*

*** Development solutions are further expanded on within use tables. Residential use is mentioned within the use table but only holds a discretionary basis unless over sealed site plans. This is a far reach from any explicit residential intent/expectation. Further departure for residential use is the restriction of subdivision possibilities. LCZ 22.5 A1 requires min. lot sizes of 50 ha [P1 20 ha] each compared with ELZ 14.5.1 A1 of 6 ha each.*

Data Indicated Areas for Investigation

From analysing elements of a small sample of Councils it is clear that the SPPs and related processes involved require re-assessment. Current and emerging data indicates that Councils are applying zones and overlays inconsistently in comparison with each other, despite having official guidelines, correspondence with the TPC etc. This indicates deficiencies in potential areas like that of the guidelines, what is communicated or understood to be communicated between Council and State planning correspondence/expectations/resources. Potential lack of planning expertise/training from within some local council planning departments. Potential lack of clarity within SPP definitions and guidelines. This is also exacerbated by lack of community/landowner engagement where written invitation to make representation should be sent to the affected landowner with sufficient time and a mechanism where the landowner can make a straightforward, in plain English, comment and recommendation to a zoning proposal over their land. Further improvements would be to make available historical zoning data on theLIST where landowners could compare and contrast historical and proposed zones without having to marry up multiple data sources.

Meander Valley Council
Working Together

12 August 2022

State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

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

Dear Sir/Madam

Submission on the State Planning Provisions Review Scoping Paper

Thank you for the opportunity to provide input into the review of the State Planning Provisions (SPPs).

Please find attached Meander Valley Council's response to the scoping paper.

We have identified that there are many administrational and operational matters in the SPP's that require review and welcome the opportunity to explore these further.

Meander Valley Council is seeing proposals that are not resulting in desirable outcomes, specifically in the General Residential Zone and believe that the provisions require review to ensure good development outcomes and improved standard of living, including density, amenity, private open space, separation, privacy and streetscape.

Meander Valley Council are looking forward to participating in this review process.

If you would like to discuss this matter further please contact me on 6393 5320 or via email at planning@mvc.tas.gov.au.

Kind Regards

[redacted]

Natasha Whiteley
Team Leader, Town Planning

Section	Clause/Provision	Issues Raised
3.0 Interpretation	Table 3.1 Planning Terms and Definitions	
	• Sensitive Use	• Definition of Sensitive use to be better defined. This definition is not clear especially with reference to caravan park. • Is Visitor Accommodation a sensitive use? It's suggested that a caravan park is a sensitive use because it could have permanent residences. However, Visitor Accommodation that is transient is not because different people come and go. If this is the case, then visitor accommodation in the Agriculture Zone could be 5m off the boundary rather than 200m, and which could impact adjoining agricultural uses. • What does 'the presence of people for extended periods except in the course of their employment' mean? • The existing definition requires the use of punctuation. • Should the definition perhaps include uses that it does not apply to?
	• Secondary Residence	How does the definition of Secondary Residence work in consideration of areas that are not connected to reticulated sewer, water and stormwater? Is it reasonable that a secondary residence in zones such as Low Density Residential, Village, Rural Living, Rural, and Agriculture be connected to the existing on-site wastewater system. Could they not install a specific system to that residence, rather than the need to upgrade the existing system? Can a secondary residence be located away from the existing cluster/proximity of buildings on the property or is the emphasis on sharing services? This definition does not offer much flexibility for those zones that have larger site area than those in the General Residential Zone. Can you have more than one secondary residence? This question

Section	Clause/Provision	Issues Raised
		was asked on multiple occasions, especially in consideration of the incentive offered by the State Government. Gross floor area of 60m^2 is small. Does this include, deck, verandah's, carports, etc. Should it be net of the liveable area and therefore exclude verandah, deck etc.
	• Dwelling	Should this definition include reference to a pool, like an outbuilding is referred to?
	• Amenity	This could be better defined or qualified.
	• Private Open Space	This should consider if areas of roofed or unroofed areas are considered in the definition. We are seeing many alfresco areas that are roofed making up the majority of the private open space area for multiple dwellings, and this is minimising the area of unroofed area that makes up the private open space. In terms of low density residential area, whilst there may be principle areas that are enjoyed by occupants, there is still the opportunity for the wider private open space area to be unreasonably overshadowed, ie garden area. Should this definition consider those principle areas, or does the standards in for example the Low Density Residential Zone and Village Zone need to be specified to focus on the principle areas of use as these lots are typically larger.
	• Intensive animal husbandry	This definition has caused much discussion especially in regarding to chickens that are free range and shelter in caravans that are moved around properties. The chickens graze and received minimal feeding with imported feed such as grain. Can this definition be qualified or further considered.
	• Major sporting facility	There are many venues that provide for national standard sporting competition with associated spectator facilities. However, they are minimally used for national competition. This definition could see

Section	Clause/Provision	Issues Raised
		more venues called in as Major Sporting Facility purely because the venue is capable of providing the sport at the national standard. , when it is in fact really just Sport and Recreation.
	• Vehicle Crossing and Vehicular Access	These are used differently in the standards, i.e. 4.2.5 refer to vehicle crossing; C2.6.3 – refers to number of accesses; C3.5.1 refers to vehicle crossing.
	• Watercourse	It is noted that the definition of a watercourse differs to that provided by the Director Determination for assessment of onsite Wastewater.
	• Site Coverage	Should this definition include swimming pools (in ground) if they are not roofed? In the Rural Living Zone can items such as animal shelters, (pony shelters, goat shelters) be excluded from the site coverage calculation (and potentially setback requirements)?
4.0 Exemptions	Table 4.2 Exempt infrastructure use or development	
	4.2.3 Irrigation Pipes	• Does this include the intake and pump?
	4.2.5 – Vehicle crossings, junctions and level crossings	• Heading of the table 'Exempt infrastructure use or development' • (a) exempts the development of vehicle crossings if relevant consent is given by the road authority. • (b) exempts the use of a vehicle crossing by a road authority. • Should there be an exemption for the use of the vehicle crossings by property owners if consent is granted by the road authority • There is confusion in the application of the above exemptions and then the application of Standard C3.5.1 and also C2.6.3. If Council consents, in accordance with C3.5.1 A1 (b) to the development of a vehicle crossing do

Section	Clause/Provision	Issues Raised
		these standards (C3.5.1 and C2.6.3) are then not applicable. Or do they still require assessment for the use of the vehicle crossing? • This exemption could be better explained. Is there any connection to the heading of the table and the provision with clearly states development in (a) and use in (b).
4.0 Exemptions	4.3.10 demolition of exempt buildings	• No Permit Required buildings that are to be demolished are not clearly dealt with here or within the General Provision. How are they considered for demolition?
	4.5.1 – ground mounted solar energy installations	Should include a larger size for in the rural living, rural or agriculture zone, unless a code or SAP applies and requires a permit for the use or development. This is an interesting point. As ground mounted solar energy installations could be considered either a Utilities or if it's directly related to an agricultural use (ie a dairy) subservient to Resource development. The similar example could be said for if they were subservient to a residential use.
	4.6.3 – fences within 4.5m of a frontage	Many people who want to build front fences ask if the 30% transparency can be applied in one portion of the fence to enable a solid 1.8m height for the remaining 70% of length of front fence. Council applies this exemption to be for that part of the entire fence that exceeds 1.2m in height, then from the height between 1.2m and 1.8m the fence must have 30% transparency. Can the 30% be provided in one chunk? That is a fence can be solid to1.6m high as it provides 33% transparency (the portion between 1.6m and 1.8m).
4.0 Exemptions	Table 4.6 Miscellaneous Exemptions	

Section	Clause/Provision	Issues Raised
	4.6.13 – Rain-water Tanks & 4.6.14 – Rain-water tanks in Rural Living Zone, Rural Zone, Agricultural Zone or Landscape Conservation Zone	• How are bushfire water tanks to be dealt with? These are often showing up in front of the building line for dwellings and some with a reduced setback. Should this exemption be broadened to include tanks for comply with BHMP, if compliant with setbacks as required by the scheme. • Can tanks be located to meet only the acceptable solution for setback in the Agriculture and Rural zones? Or is the intent to maintain streetscape by having them co-located with a building and not the front? Many farmers wish to have stand-alone tanks in paddocks to provide water to troughs.
	4.6.8 – Retaining Walls	Should the retaining wall exemption consider if the wall is required for cut or fill purposes. Ie, if its retaining cut, then could the retaining wall be located closer to the boundary with minimal impact on the adjoining property? Retaining walls are considered a wall within the application of the building envelope of the General Residential Zone. As such, wall length comes in to play regardless of the retaining walls height and length.
Assessment of an Application for Use or Development	6.2 Categorising Use or Development	• 6.2.2 seems to conflict with the application of Rural and Agriculture Zone in terms of dwellings. Planners are applying this differently based on their own interpretation. 6.2.2 requires 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*. However when you consider dwellings in the rural or agriculture zone, dwellings tend to fall neatly under the Residential Use Class and not qualified in the Resource

Section	Clause/Provision	Issues Raised
		Development Use Class. There are then also specific discretionary standards that exclude residential, and the applicable residential standard (ie P4 of 21.3.1) considers the relationship of the residential use with the resource development activity – specifically the 'agricultural 'use'. Therefore, the use standards in the zones seems at odds with 6.2.2 as the standards categorically place dwellings as a Residential Use rather than Resource Development. This is further challenged when people are looking at developing managers residences or cottages for workers. Does this mean that additional dwellings demonstrated as required for the resource development activity are effectively considered multiple dwellings and applied a residential use?
	6.2.6	States 'does not need to be categorised into one of the use classes'. This suggests that there is choice to apply a use class, especially for subdivisions. If a use class is applied then 7.10 of the scheme does not need to be considered, but if a use class is not applied then an assessment of 7.10 needs to be undertaken. Not applying a use class does cause confusion in the assessment of the car parking code and therefore the use standards are no considered.
	Table 6.2 Use Classes	• Domestic Animal Breeding, Boarding or Training – Council received an enquiry from a person who wanted to breed dogs in their home. Their proposal could also meet the home – based business. Even though they were breeding domestic animals they were breeding from their pet dogs. This definition seems to be more at a commercial scale,

Section	Clause/Provision	Issues Raised
		rather than home breeders? How does this interrelate with kennel licences required for keeping of three or more dogs on a property. This definition could imply that a kennel licence under the Dog Control Act could also require a Planning Permit for Domestic Animal Breeding, Boarding or Training. This use is prohibited in General Residential and Low Density Residential Zones.
7.0 General Provisions	7.3 – Adjustment of a boundary	• 7.3.1(b) What is a 'minor change'? Can this be qualified? Surveyor's often have a different opinion as to what a minor change is. • 7.3.1(c) Consider rewording to say 'no setback from an existing building will be further reduced…' Need to consider if the existing setback is being increased, but could still be below the Acceptable Solution. • 7.3.1(d) Consider rewording to say no frontage is further reduced below the relevant Acceptable Solution…'
7.0 General Provisions	7.9 Demolition	• 7.9.1 – this clause is confusing and not clear in its application. • How are 'no permit required' buildings that are to be demolished treated? Could these be specified in this this provision? Specifically in regards to the demolition of Residential outbuildings.
7.0 General Provisions	7.12 – Sheds on Vacant Sites	• What is the intent of this? It may need to be further explored. • Can you consider a shed on a vacant site as a residential use if there is no dwelling located on the site? If so, this

Section	Clause/Provision	Issues Raised
		could enable a no permit required pathway for garages. Yet the General provision is providing for a permitted pathway, requiring compliance with setbacks, specific overall height and wall height and a maximum floor area. • What do you call sheds on vacant sites that are intended to be associated with a future residential use? Can it be called Residential or does it need to be considered as Storage?
8.0 General Residential Zone		• Meander Valley Council is concerned regarding the minimum lot size for subdivision in the General Residential Zone. 450m^2 is not large enough to guarantee good development outcome. It is considered that better development outcomes can be generated through Multiple Dwelling and resulting strata tittles to achieve an appropriate density. • Subdivision provisions require some more work so that they are orientated to design outcomes. • In regards to density provisions, Meander Valley Council has had multiple dwelling applications resulting with a unit squashed into the back of a lot and the standards of the scheme are not considered strong enough to support a refusal of this type of application. The separation of dwellings provision is weak as the dwelling definition includes an outbuilding, and because outbuildings are generally located to the rear of the properties, this sets the precedent for units to be located close to rear boundaries, minimising the separation of dwellings. What is a reasonable amount of breathing space around a dwelling?

Section	Clause/Provision	Issues Raised
		The need for fencing has been removed from the SPP's, yet the market generally demands fencing between units, and therefore, units are becoming 'boxed in'. • There is also concern that multiple dwellings are not being provided with reasonable amounts of unroofed usable private open space areas. A 1m walkway around the a dwelling is not really usable but is included in the 60m2 calculation for the overall area of private open space. • The standards need to be considered to better manage density and bulk within multiple dwelling development. Multiple dwelling development is creating building bulk that has minimal separation and the eaves of units are almost touching. Windows are not receiving sunlight (or receiving very minimal amount of sunlight) as are the private open space areas. It's considered development is producing a minimal standard of amenity. • Unless the market is forced to meet a minimum standard, it won't. Currently, the standards are considered too low for multiple dwellings to create an appropriate standard for multiple dwelling living. This is resulting in a low standard of living, minimal access to sun, privacy concerns, and usable outdoor space that is not under an alfresco area. Some multiple dwelling developments have required significant cutting, and with a fence erected at the top of the retaining wall, significantly impacting solar access. • Query regarding the standard regarding the 24m2 private open space dimension. Some planners believe that only one dimension needs to be a minimum of 4m, whereas others enforce that all dimensions are a minimum of 4m. This could result in an unusable private open space area of

Section	Clause/Provision	Issues Raised
		for example 12m by 2m, partially overshadowed by eaves. • Should private open space be provided within the frontage and if so, should it be required to be fenced to make it private? • Internal fencing of units is not considered in the overshadowing of units. And the overshadowing provisions for multiple dwelling development is only considered when a unit is to the north of another unit. This provision needs to be reconsidered. Perhaps there needs to be absolute minimal amount of sunlight received to a multiple dwelling on the same site and also an adjoining property. • Concerns raised that there is no standard requiring a dwelling to not unreasonably over shadow its own Private Open Space (POS), both in terms of a single dwelling but also when in multiple dwellings. The focus has been on dwellings not overshadowing other dwelling's POS in a multiple dwelling scenario. Need to consider the risk of a dwelling overshadowing its own POS and how liveable this is. • Also there is a risk of privacy fence solutions between dwellings leading to shadowing impacts on POS. • The standards exclude minor protrusions, however, some eaves that meet this minor protrusion affects the overall bulk and form of the development. • It is recommended that there should be a provision that considers the amount of the site to be covered by impervious surface, as this impacts the amount of stormwater captured and directed to the stormwater system. This should enable the management of stormwater,

Section	Clause/Provision	Issues Raised
		• Review Clause 8.4.2A3(b), how does this operate in regards to the rear boundary? (ii) refers to side boundary only. Can you have a setback of less than 1.5m for the rear boundary? Should (ii) refer to rear boundary as well? Refer to 8.5.1 A2(b)(ii) where it does refer to both side and rear. • The densification that is resulting from multiple dwellings and also smaller lot sizes for subdivisions, is also resulting in car parking issues and more car parking is proposed on-street, especially within cul-de-sacs. Refer to Parking Code for further discussion.
10.0 Low Density Residential		• No ability to prevent unreasonable overshadowing to vacant land. • Concern regarding the minimum lot size of the area being too small at 1500m2. This lot size is changing the density and character of areas zoned Low Density Residential, and minimises separation of dwellings between lots.
11.0 Rural Living Zone		• Consider amending the site coverage to be reflective of the zones a-d. Recommend each zone be qualified, rather that a one size suits all. We are seeing larger developments on large rural living lots being captured for site coverage. • By comparison development in the Low Density Residential Zone on a lot size of 2000m^2 can have 600m^2 site coverage (30%) while the AS for Rural Living is capped at 400m^2 for lot sizes which are a hectare to several hectares.
12.0 Village Zone		• Use table need to be reviewed and better qualified. Some uses may be better suited as discretionary.
20.0 Rural Zone		• Review standards for considering dwellings, including replacement dwellings. • Review standards for subdivision.
21.0 Agricultural		• Review standards for considering dwellings, including

Section	Clause/Provision	Issues Raised
Zone		replacement dwellings or relocation of dwellings on-site. • Review standards for subdivision. Do both lots need to be for an agricultural use? • Reorganisation of titles. Performance criteria is too restrictive and requires compliance with the Acceptable Solution for setbacks. • Consider a reasonable rearrangements for existing setback for flexibility for a minor relaxation. • The wording of the setback provision implied that if one setback is reduced they can all be. • Better consideration of Visitor Accommodation.
2.0 Parking and Sustainable Transport Code	C2.5.1	• There are some scenarios where on-street parking should not be acceptable under the Performance Criteria. On-street parking reliance should not be allowed in cul-de-sacs or at least within a set distance of the end of the street. The cluster of driveways typically seen at the end of Cul-de-sacs prohibits the ability to successfully provide on-street parking. • Reliance on on-street parking should also be prohibited when there are other constraints such as road width is not to the minimum requirement or the road verge provides for open stormwater drainage.
	C2.6.1	• Several applications have been received where the sole discretion triggered is P1 of clause C2.6.1 as the driveway is unsealed. These developments are typically in the Low Density Residential, and Rural Living Zones. Lot sizes here

Section	Clause/Provision	Issues Raised
		are typically larger and require extended driveways. Often aesthetically, economically and environmentally an unsealed driveway is a better outcome. The list of zones to which a sealed driveway is required should be extended to include at least the Rural Living Zone and potentially the Low Density Residential Zone.
	C2.6.3	• P1 include having regard to advice from the road authority.
	C2.6.8 Siting of parking and turning areas	• Acceptable solution A1 does not provide for the opportunity to place a garage on the site without encroaching the building line. Clause 4.3.7 – outbuildings states '(*a) it is not between a frontage and the building line, or if on a lot with no buildings, the setback from the frontage is not less than the relevant Acceptable Solution requirement; and'*. Perhaps wording similar to this could be included.
C7.0 Natural Assets Code		• This code is not operating as its intended. Refer to Meander Valley Council 35(G) report on issues and recommendations raised regarding this code. The recommendations from the TPC need to be addressed again, as this hasn't been furthered since that point in time. • Is there a way to maintain some vegetation identified as priority habitat from removal to facilitate development in the General Residential and Low Density Residential Areas?
	Table C7.3 Spatial Extent of Waterway and Coastal Protection Areas	(a) The is inconsistency in application from planners regarding determining the width for the watercourse protection area. The wording needs to be amended so that it can be clearly interpreted as being from the top of the bank on each side outward, and includes the area within the banks.
C9.0 Attenuation	C9.5.2 & C9.6.1 Attenuated activities	• Break attenuated activities into intensities.

Section	Clause/Provision	Issues Raised
Code		• Speedway attenuation distance of 3000m is excessive when applied to smaller facilities used 10-15 times per year. Suggest major event facilities continue to have a 3000m distance but that others have less. • Under clause C9.6.1 when assessing subdivision, if there is suitable building area outside of extent of attenuation distance, acceptable solution is satisfied. However under clause C9.5.2, when developing on the lot, even if the development on the lot is outside of the attenuation distance it cannot satisfy the Acceptable Solution (there is no Acceptable Solution). Apply the same Acceptable Solution to C9.5.2 as done for C9.6.1.
		• Map the attenuation distance for TasWater assets.
C12.0 Flood Code		• Exemption for Class 10a buildings. What about class 10b?
		• Under the current requirements, if an in-ground swimming pool is installed or alfresco outdoor area is developed, if these were greater than 20m^2 a flood report would be required. Questions from property owners as to why a flood report is required in these scenarios.
C15.0 Landslip Hazard Code	C15.4 Use or Development Exempt from this Code	• (d) what is meant by 'authorisation under the Building Act 2016'?
Other Considerations	Treatment of swimming pools.	• Should the SPP consider how swimming pools for private usage are treated? • Are they included in the site coverage calculation? • Should there be a general provision or exemption for swimming pool? • Should they be treated differently if in ground or above ground? • How should they be assessed in non-residential areas, such as Rural or Agricultural Zone?

Section	Clause/Provision	Issues Raised
		• They are considered to be an extension to the Residential Use so therefore they could require a Permitted Application in these zones if for private usage.
	Land Filling	This exemption is understood, but how do you consider land fill if it exceeds the exemption.
	General Industrial, Rural and Agricultural Zones	Standard provides the requirement for a Right of Way to be established over Crown Reserved Road. This process is very long and can take up to 18 months for the Right of Way to be created. Is it expected that the Right of Way is created prior to the lodgement of an application, or can an application be submitted with consent from Crown granting to the creation of a Right of Way and a subsequent permit condition for the right of way be formally established prior to the commencement of works/use? This need for the right of way is demonstrated to be prohibitive to development.
	Climate Change	Is the 'heat island effect' being considered in the SPPs. Can the inclusion of more greenspaces be considered into the SPPs.
	Stormwater Code	Council is generally supportive of the inclusion of a Stormwater Code. However, do not want this to be too excessive. This should include the ability to take a contribution for detention. It may also consider the ability for Council consider install stormwater detention as some sites are not able to provide on-site detention. There is a trend towards densification of existing suburbs. Standards need to deal with the impacts of increased stormwater for the systems that were initally not designed for this densification.
	Public Open Space	Council is supportive of inclusion of a private open space code as

Section	Clause/Provision	Issues Raised
		this is not dealt with in the SPP's. Currently relies on LG(BMP)A. There is therefore no open transparent process or consistency though the different Council's in its application. No clear parameters regarding this and its application. Former code in Northern Region Scheme was appropriate but did not consider how to apply it. It did stipulate the zones that were applicable. Should also consider how you deal with public open space if the developer provides POS and it's well placed. What standard does the public open space need to be at to be taken over by Council. Is there some middle ground here that could also be factored in?
	Change of Use	When considering a change of use the development standards are not applied. Ie an outbuilding to a house or a house to a multiple dwelling. Should the development standards not be considered to ensure levels of servicing or amenity are provided and/ or maintained?
	Setbacks	Setbacks prescribed in the Acceptable Solutions are constantly being reduced. Could the Performance Criteria provide an absolute minimum setback requirement in addition to the consideration of the current performance criteria standard?

Mel O'Keefe
[redacted]
[redacted]

12 August 2022

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cc: Jo Westwood [redacted]

Transition to Tasmanian Planning Scheme

My understanding is that the state is being progressively transitioned to the Tasmanian Planning Scheme (TPS), municipality by municipality. I understand that in addition to the TPS, each council has submitted its own draft Local Provisions Schedule (LPS), inclusive of proposed land zoning, with the Tasmanian Planning Commission who will assess the LPS to determine whether it meets the requirements of the *Land Use Planning and Approvals Act 1993*, noting it does not assess the LPS's compliance with other legislation. If assessed as meeting the LUSA Act, the LPS is then exhibited for public comment, at which time representations can be made for a period of 60 days.

I see merit in having a statewide planning scheme, however the same zoning in different municipalities remain treated differently, some of which are manifestly advertorial and will have significant negative outcomes for property owners.

I am deeply concerned about the inconsistent application of the LPS throughout the various municipalities and in particular, Kingborough here I reside, and the negative impacts to property owners. Kingborough Council have proposed to apply LCZ zoning to almost all properties currently zoned Environmental Living, without assessing each property, they have not considered the current land use, they have not considered vegetation loadings via LiDAR, they have deviated from the Kingborough Land Use Strategy (May 2019), are failing to meet their obligations under Section 20 of the Local Government Act and .

Zoning

As per the Tasmanian Planning Scheme Information Sheet – Landscape Conservation Zone (TPS Information Sheet), issued by State Planning Office, Department of Premier and Cabinet (link), local councils initially determine the rezoning of current Environmental Living (EL) properties. Councils have the option of rezoning such properties as Rural Living Zone (RLZ) or the newly introduced Landscape Conservation Zone (LCZ).

- ***Environmental Living (EL) – current zoning***

In relation to EL, the TPS Information Sheet advises (p1) *"The **LCZ is not a like-for-like replacement for the Environmental Living Zone**. The two zones **differ in their main purpose**."*

In relation to EL, the TPS Information Sheet advises (p2) *"The Environmental Living Zone was first introduced in interim planning schemes. Its **primary purpose was for rural living development in areas characterised by native vegetation cover and other landscape values.**"* I note that residential development was a permitted, not discretionary use.

The *TPS Information Sheet* also states "*The Environmental Living Zone also set up a **conflict in its purpose,** particularly when **requiring vegetation management to reduce bushfire hazard**."*

- ***Rural Living Zone (RLZ) – option for rezoning***

The 'Guideline No 1, Local Provisions Schedule (LPS): Zone and code application' issued by the Tasmanian Planning Commission (link) states:

> *"The purpose of the Rural Living Zone is:*
>
> *11.1.1 To provide **for residential use or development in a rural setting** where:*
>
> *(a) services are limited; or*
>
> *(b) **existing natural and landscape values are to be retained**.*
>
> *11.1.2 To provide for compatible **agricultural use and development** that does not adversely impact on residential amenity.*
>
> *11.1.3 To provide for **other use or development that does not cause an unreasonable loss of amenity**, through noise, scale, intensity, traffic generation and movement, or other off site impacts.*
>
> *11.1.4 To provide for Visitor Accommodation that is compatible with residential character."*

Supporting this, the Tasmanian Planning Scheme Information Sheet advises: *"The Rural Living **Zone may contain areas of natural or landscape values subject to the Natural Assets Code or Scenic Protection Code** in the Tasmanian Planning Scheme. However, the main purpose of the Rural Living Zone is to provide for rural residential use and development."*

- ***Landscape Conservation Zone (LCZ) – option for rezoning***

The 'Guideline No 1, Local Provisions Schedule (LPS): Zone and code application' (link) states:

> *"The purpose of the Landscape Conservation Zone is:*
>
> *22.1.1 To provide for the **protection, conservation and management of landscape values**.*
>
> *22.1.2 To provide for **compatible use or development that does not adversely impact on the protection, conservation and management of the landscape values**."*

Further is states:

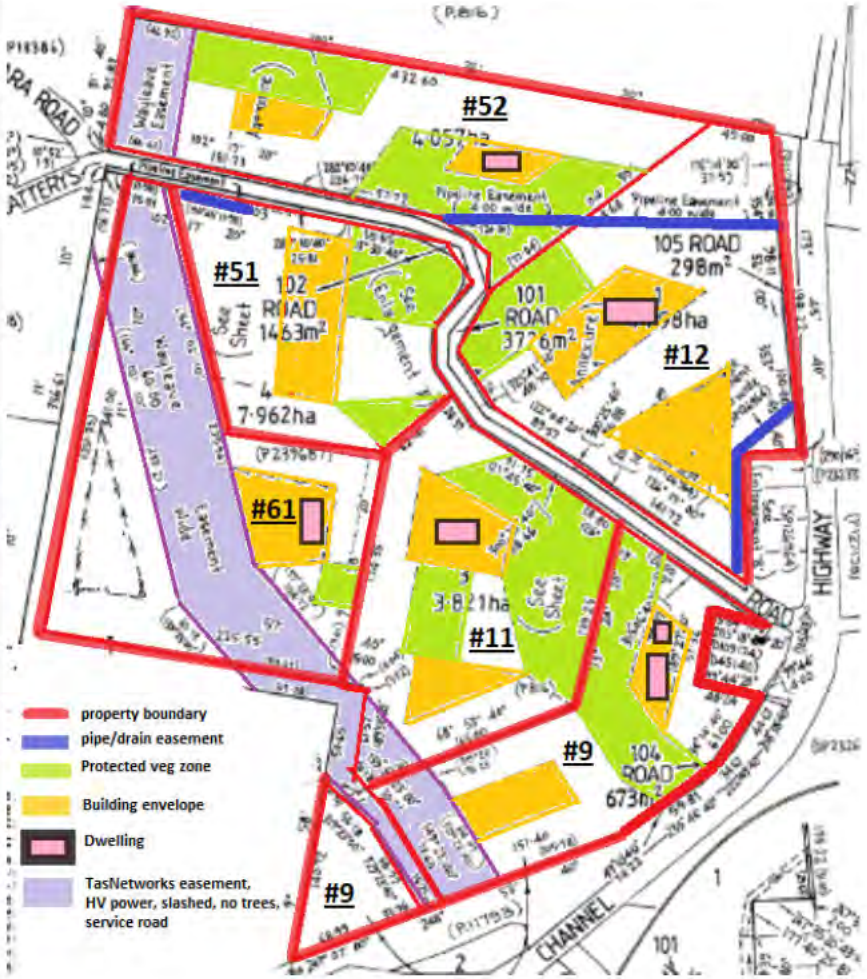
> *"The **Landscape Conservation Zone is not a replacement zone for the Environmental Living** Zone in interim planning schemes. There are **key policy differences between the two zones**.*
>
> *The **Landscape Conservation Zone is not a large lot residential zone**, in areas characterised by native vegetation cover and other landscape values. Instead, the Landscape Conservation Zone provides a **clear priority for the protection of landscape values** and for complementary use or development, with **residential use largely being discretionary**. "*

Current land use – 9, 11 , 12, 51, 52 and 61 Slatterys Road

Properties situated at 9, 11, 12, 51, 52 and 61 Slatterys Road, Electrona are currently zoned Environmental Living under the Kingborough Interim Planning Scheme. As zoned EL in the Interim Planning Scheme, they are to be rezoned either RLZ or LCZ.

Current use, services and easements	#9	#11	#12	#51	#52	#61
Existing residential dwelling	✓	✓	✓	✓	✓	✓
Dual occupancy with second residence	✓					
Detached garage or large sheds		✓	✓	✓	✓	✓
Two building envelopes	✓	✓	✓		✓	
TasWater potable reticulated water	✓	✓	✓	✓	✓	✓
TasWater Sewerage connection	✓		✓			
Onsite waste water treatment (septic/enviro cycle)		✓		✓	✓	✓
Gravel road	✓	✓	✓	✓	✓	✓
Footpath, curbs, street lights	×	×	×	×	×	×
Hobby farming			✓			
Largely cleared			✓	✓		
Waterpipe easement (4m wide)			✓	✓	✓	
Drainage easement (5m wide)			✓			
TasNetworks easement containing high voltage power infrastructure, service/access road, slashed vegetation	✓	✓		✓	✓	
KC rubbish/recycling collection	✓	✓	✓	✓	✓	✓
Bushfire Prone Area overlay	✓	✓	✓	✓	✓	✓
Priority Vegetation Area overlay	✓	✓	✓	✓	✓	✓
Scenic Protection Area overlay	×	×	×	×	×	×

The figure below shows the properties, their boundaries, building envelopes, dwellings, easements and protected vegetation zones as per the titles sealed plan.



As per the table above, these residential properties are all serviced with TasWater potable reticulated water, two are connected to TasWater reticulated sewerage connections, all have KC rubbish and recycling service - the services expected of *residential properties in a rural environment*. With the exception of #51 and #61, all properties have two building envelopes, clearly demonstrating the residential intent of the properties. Properties #51 and #61 were formerly one lot with three building envelopes, until subdivided by Rob Wisby approximately 20 years ago. One envelope remained on what is now #51, and two on #61, however this was reduced to one due to the expansion of the easterly most building envelope when the existing residence was built.

The property at #12 undertakes hobby farming (potatoes crops for income), which Mrs Coad advised she has been doing for some 20 years. Mrs Coad informed me that her property was zoned rural residential when purchased, but was later rezoned without consultation nor her knowledge at the time. Photos taken of 12 Slatterys Road from Channel Highway on 29 May 2022 (below) demonstrate the cleared nature of the property.

Current easements, overlays, protected vegetations zones: 9, 11 , 12, 51, 52 and 61 Slatterys Road

In summary, each of the six properties have a bushfire prone area overlay and priority vegetation overlay. Five of the properties have a TasNetworks easement and four have pipeline and/or drain easements.

Fire prone area - as mentioned, all properties have a bushfire prone area overlay. As required as part of the DA process, I engaged Tasmanian Property Services (TPS) to prepare a 'Bushire Hazard Assessment incorporating BAL rating'. TPS' Mark Florusse, duly accredited to report on bushfire hazards under Part IVA of the Fire Service Act, prepare a report in March 2017 To provide some context, the summary of the report states:

> *This report details the risk and means of protection from Bushfires to the development detailed herein, and is prepared in accordance with AS 3959, the BCA Vol 2 clause 3.7.4, Tasmanian Building Act Amendment Bushfire Prone Areas Code 2016 March 2016, Tasmanian Building Act 2000 Determination 1 1[1] – Requirements for Building in Bushfire Prone Areas in conjunction with Draft Interim Planning Directive IPD1.1[2]. . This report*

[1] Building Act 2000 Determination Requirements for Building in Bushfire Prone Areas Version 1 March 2016
[2] Draft Interim Planning Directive IPD1.1 - E01 Bushfire-Prone Areas Code

complies with the requirements of schedule 1 and Schedule 2 of the Chief Officers Approved Form of a Bushfire Management Plan.

My property (#11) was assessed at BAL19. The HMA for my residence, in accordance with the requirements detailed in AS3959-2009 Construction of Buildings in Bushfire Prone Areas, are a *minimum* of:

	North	East	South	West
Required Separation	23m	23m	23m	18m

The report advises:

"Landowners have a responsibility to not increase the bushfire risk to adjoining landowner's property. As such, the boundary zone, HMA and conditions in the area of influence observed at the time of this survey are deemed to remain unchanged, unless required in this report. Increases in bushfire hazard due to adjoining landowner's lack of maintenance, shall be subject to council hazard abatement notices under provisions in the Local Government Act Division 6 – 199(d) to enforce property safety."

HMAs are *not* optional, they are mandatory and enforceable. HMAs are in conflict with LCZ and have been recorded as creating a a conflict to the EL zone.

Priority vegetation overlay covers the six properties. I note with interest that the priority vegetation layers cover the majority of the cleared TN easement (720m long) and extends over at least 50% of the developed General Residential Zoned Peggys Beach area.

Google Street view from location of red star to the left, which is subject to Priority Vegetation overlay.

In the Natural Values Assessment and Environmental Management Plan I had commissioned in August 2018 and submitted as part of the DA process for my property, the Ecological Consultant advised:

"Threatened flora

No threatened flora species listed under the Threatened Species Protection Act 1995 or the Environmental Protection and Biodiversity Conservation Act 1999 were recorded during the survey.

A search of the Natural Values Atlas (DPIPWE database) revealed that one threatened flora species have been recorded within 500m of the site. A further three threatened flora species have been recorded within 2 km of the site. "

In relation to flora, the Ecological Consultant advised:

"Threatened fauna

No threatened fauna species listed under Schedule 3, 4 or 5 of the Threatened Species Protection Act 1995 or under the Environmental Protection and Biodiversity Act 1999 were recorded during the survey."

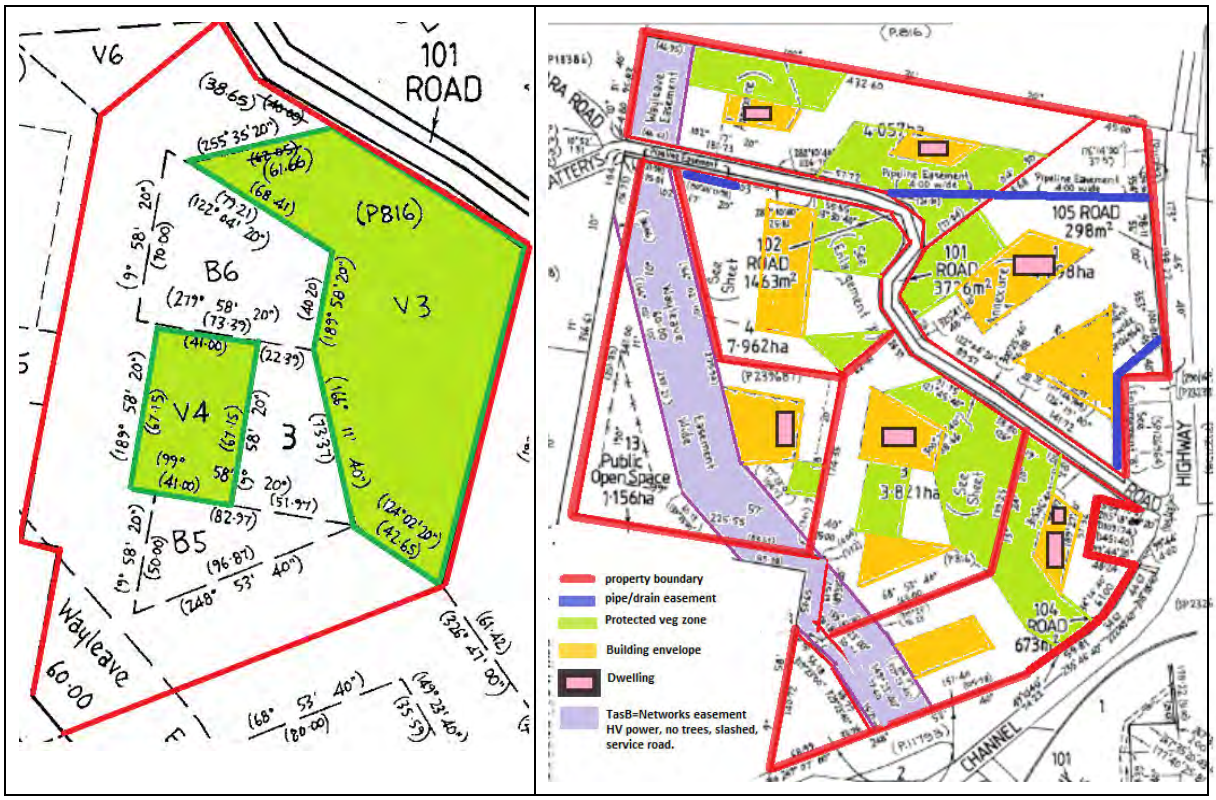
In relation to the conservation of vegetation communities, the Ecological Consultant, Andrew Welling of Enviro-Dynamics advised:

"Conservation status of the vegetation communities

DAS is a threatened vegetation community and listed under Schedule 3A of the Nature Conservation Act 2002. As such it is considered to be of high priority biodiversity value under the Kingborough Interim Planning Scheme 2015 (Biodiversity Code).

DOB is a common and well reserved community within south east Tasmania and is not listed under the Nature Conservation Act 2002 as threatened. It is of low priority biodiversity value under the KIPS."

As per the Natural Values Assessment, stands of Oyster Bay Pine trees (Callitris rhomboidea) are located the vegetation zones marked V3 and V4. As noted in the Natural Values Report, "*while this species is not listed as threatened, the population is considered to be significant due to its southerly distribution*". The vegetations zones, in form of easement on (SP139847) provide protection.



Each of the six properties is protected under TPS C7.0 Natural Assets Code:

> *"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 minimise impacts on identified priority vegetation****.*
>
> *C7.1.5* ***To manage impacts on threatened fauna species*** *by minimising clearance of significant habitat."*

Easements - as noted in the 'Current uses, services and easement ' table, four of the six properties are impacted by the TasNetworks easement, which can be seen in purpose in the figure above.

The easement is periodically slashed by TN and a service/access road maintained to enable inspection of the high voltage power infrastructure that occupies the easement. This easement is a significant size, 720m in length with the slashing a cleared area of approximately 68,643m^2 (6.8ha). The image above clearly demonstrates the slashed vegetation of the easement, while the images below show length, width and area of the easement.


Barretta
Electrona
S2
S1
I2
I1
Electrona
Measurement
Meters
720.9 Mete
Measurement
Sq Meters
68,643.3 Sq M
Clear

Zone of best fit: 9, 11 , 12, 51, 52 and 61 Slatterys Road

With EL zone being discontinued, properties currently zoned EL will be rezoned either Rural Living Zone (RLZ) or the newly introduced Landscape Conservation Zone (LCZ).

As previously established, the current primary use of the six properties is residential in a rural setting, with the addition of agriculture at #12.

Services to the properties demonstrate a clear intent of residential use - reticulated water, multiple building envelopes, rubbish and recycling services. Due to the rural nature, some services are limited, gravel road only, no curb, footpath or street lighting and four of the six properties having onsite wastewater treatment.

None of the properties have Scenic Protection Area Overlay. All properties have a Priority Vegetation overlay, which is offers protection by the multiple vegetation zones on the title together with the Natural Assets Code within the TPS.

Rural Living Zone

These properties undeniably meet the purpose of Rural Living Zone as detailed in 'Guideline No 1, Local Provisions Schedule (LPS): Zone and code application' issued by the Tasmanian Planning Commission:

> *"The purpose of the Rural Living Zone is:*
>
> *11.1.1 To provide **for residential use or development in a rural setting** where:*
>
> *(a) services are limited; or*
>
> *(b) **existing natural and landscape values are to be retained**.*
>
> *11.1.2 To provide for compatible **agricultural use and development** that does not adversely impact on residential amenity.*
>
> *11.1.3 To provide for **other use or development that does not cause an unreasonable loss of amenity**, through noise, scale, intensity, traffic generation and movement, or other off site impacts.*
>
> *11.1.4 To provide for Visitor Accommodation that is compatible with residential character."*

Zone Application Guide (Tasmanian Planning Commission's Guideline No 1 LSP zone and code application).	**Comment**
RLZ1: The Rural Living Zone should be applied to: (a) residential areas with larger lots, where **existing and intended use is a mix between residential and lower order rural activities** (e.g. hobby farming), but priority is given to the protection of residential amenity; **or** (b) land that is currently a Rural Living Zone within an interim planning scheme or a section 29 planning scheme, unless RLZ 4 below applies.	(a) The six properties at Slatterys Road are larger lots, where existing and intended use is a mix of residential and hobby farming. (b) N/A

The Rural Living Zone should not be applied to land that is not currently within an interim planning scheme Rural Living Zone, unless: (a) consistent with the relevant regional land use strategy, or supported by more detailed local strategic analysis consistent with the relevant regional land use strategy and endorsed by the relevant council; or (b) the land is within the Environmental Living Zone in an interim planning scheme and the primary strategic intention is for residential use and development within a rural setting and a similar minimum allowable lot size is being applied, such as, applying the Rural Living Zone D where the minimum lot size is 10 ha or greater.	(a) RLZ is consistent with the proposed zone in Kingborough Land Use Strategy (May 2019). Refer to map on page 201. (b) The six properties are zoned EL in the interim planning scheme. Each of the properties was proposed to be zoned RLZ as per map on P201 of the Kingborough Land Use Strategy.
The differentiation between Rural Living Zone A, Rural Living Zone B, Rural Living Zone C or Rural Living Zone D should be based on : (a) a reflection of the existing pattern and density of development within the rural living area; **or** (b) further strategic justification to support the chosen minimum lot sizes consistent with the relevant regional land use strategy, or supported by more detailed local strategic analysis consistent with the relevant regional land use strategy and endorsed by the relevant council.	(a) similarly properties west of Margate are zoned RL B. There would be opportunity for a mix of RL B and RL C. See image following this table.
The Rural Living Zone should not be applied to land that: (a) is suitable and targeted for future greenfield urban development; (b) contains important landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values (see Landscape Conservation Zone), unless the values can be appropriately managed through the application and operation of the relevant codes; or (c) is identified in the 'Land Potentially Suitable for Agriculture Zone' available on the LIST (see Agriculture Zone), unless the Rural Living Zone can be justified in accordance with the relevant regional land use strategy, or supported by more detailed local strategic analysis consistent with the relevant regional land use strategy and endorsed by the relevant council.	(a) the six properties are not greenfield sites. (b) the six properties do **not** have a Scenic Protection Zone overlay. The land has significant clearing owning to TasNetworks easement (6.6ha). Property 61 has significant clearing due to TasNetworks easement. Properties 12 is substantially cleared dating back to when it was zoned rural residential. The remaining bushland has protection via the many vegetation zones on the respective titles. All six properties have a Priority Vegetation overlay, which enacts protection via the Natural Assets Code. (c) This six properties do not have the 'Land Potentially Suitable for Agriculture Zone' overlay as per LIST.

Landscape Conservation Zone (LCZ)

Guideline No 1, Local Provisions Schedule (LPS): Zone and code application' issued by the Tasmanian Planning Commission:

> *"The purpose of the Landscape Conservation Zone is:*
>
> *22.1.1 To provide for the protection, conservation and management of landscape values.*

22.1.2 To provide for compatible use or development that does not adversely impact on the protection, conservation and management of the landscape values."

As previously established, the current and ongoing land use of these six properties is that of a residential use or development in a rural setting, with some hobby farming. The six properties total 26.8ha of which 25% (6.8ha) is covered by a TasNetworks easement. The area within the easement is devoid of any trees and the remaining vegetation is periodically slashed by NT to enable inspection and maintenance of the high voltage infrastructure that occupies this space.

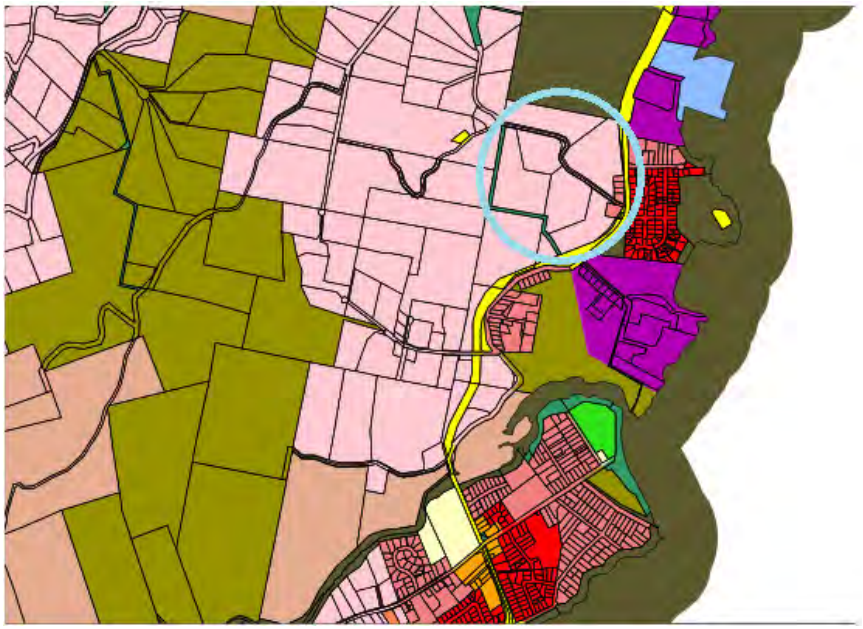
The current and ongoing use of the properties and LCZ's purpose do not align.

Zone Application Guide (Tasmanian Planning Commission's Guideline No 1 LSP zone and code application).	**Comment**
LCZ 1: The Landscape Conservation Zone should be applied to land with landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values, where some small scale use or development may be appropriate.	The six properties do **not** have a Scenic Protection Zone overlay. The six properties have a Priority Vegetation overlay. All properties have existing residential developments, detached garages or large sheds. One has a second dwelling. There is a mandatory and enforceable requirement for hazard management areas – which is in conflict with this zone. 25% of the area of these six properties is covered by NT easement, which as noted has no trees and vegetation is periodically slashed – in conflict with the protection and conservation purpose of this zone.
LCZ 2 The Landscape Conservation Zone ***may*** be applied to: (a) large areas of bushland or large areas of native vegetation which are not otherwise reserved, but contains threatened native vegetation communities, threatened species or other areas of locally or regionally important native vegetation; (b) land that has significant constraints on development through the application of the Natural Assets Code or Scenic Protection Code; or (c) land within an interim planning scheme Environmental Living Zone and the primary intention is for the protection and conservation of landscape values.	(a) Property #12 is largely cleared, dating back to when it was zoned rural residential. The majority of #61 is cleared of trees and periodically slashed by TasNetworks in the large easement. The easement results in an area 25% of the size of the six properties being periodically slashed to enable inspection and maintenance of the high voltage infrastructure and access road in the easement. (b) Residential development is currently a permitted use of the land. The most recent house was built in 2019 and in compliance with the Natural Assets Code. (c) current zoning is ELZ, however the primary current use and ongoing intention of the land is for residential – as previously identified. The KC Land Use Strategy proposed these properties be RLZ.
LCZ 3 The Landscape Conservation Zone may be applied to a group of titles with landscape values that are less than the allowable minimum lot size for the zone.	The group of properties total 26ha. The minimum size for LCZ is 50ha. When subdividing, this can be reduced to 20ha under Performance Criteria (discretionary), however this land is not the subject of a subdivision. Further, with the 6.8ha discounted for the NT easement that has

	no trees, the properties fail to even meet the smaller discretional – which I would argue is not applicable in this situation
The Landscape Conservation Zone should **not** be applied to: (a) land where the priority is for residential use and development (see Rural Living Zone); or (b) State-reserved land (see Environmental Management Zone).	(a) as clearly demonstrated, the current use is for residential use, with some hobby farming. The intent for the land, as per the Kingborough Land Use Strategy is for the land to be Rural Living.
Note: The Landscape Conservation Zone is not a replacement zone for the Environmental Living Zone in interim planning schemes. There are key policy differences between the two zones. **The Landscape Conservation Zone is not a large lot residential zone, in areas characterised by native vegetation cover and other landscape values**. Instead, the Landscape Conservation Zone provides a clear priority for the protection of landscape values and for complementary use or development, with **residential use largely being discretionary**. Together the Landscape Conservation Zone and the Environmental Management Zone, provide a suite of environmental zones to manage use and development in natural areas.	The current use of the land is that of a large residential zone, in an area characterised by interrupted vegetation cover. These six properties do align with the purpose of LCZ.

Kingborough Land Use Strategy – May 2019

Kingborough Land Use Strategy (May 2019) provides a map showing the proposed zoning for Electrona, Snug and Conningham (p201). A copy of the map is below, with the addition of an blue circle for easy identification of the Slatterys Road properties. Note the six properties have been proposed for RLZ:



Now note the proposed zoning as per the KC's interactive GIS map (link), again with blue locator circle. The zoning differs to that of the Kingborough Land Use Strategy, showing LCZ:

The following map shows, in red, the variances between the Kingborough Land Use Strategy proposed rezoning and the KC's interactive GIS map. The land with yellow boundaries marked appears to be an anomaly. While this land is cleared, I would suggest it does not have residential intent in the absence of reticulated water, sewer, power, garbage collection nor even a Council maintained road, which ceases hundred metres earlier, shown with a yellow star.

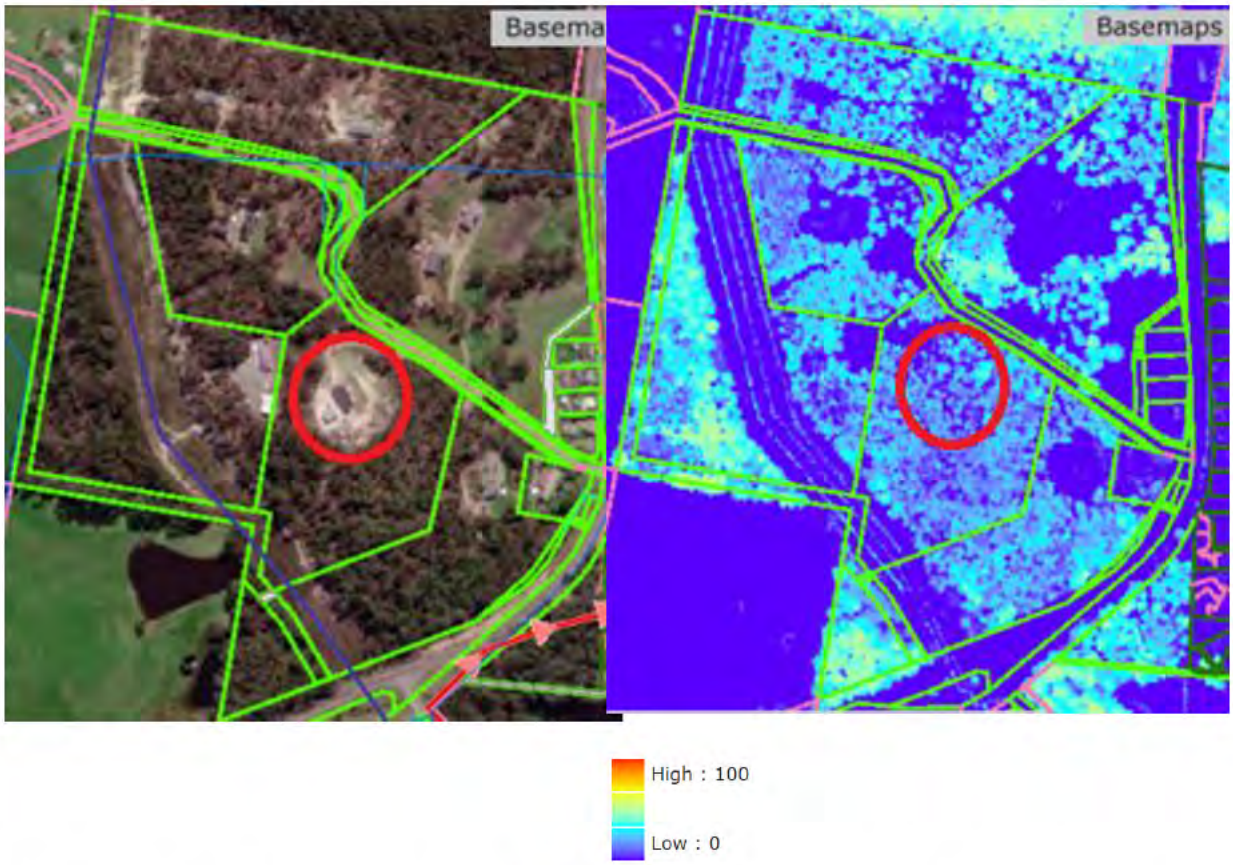
I note further inconsistencies in Margate and Leslie Vale where properties identified for transition to LCZ are instead being transferred to RLZ. These properties have less services and a greater number of overlays than the properties in Slatterys Road and are more suited to LCZ than the Slatterys Road properties. This demonstrates again the lack of assessment on a property by property basis.

Inconsistent application - Margate (Land Use Strategy says LCZ, proposed RLZ)

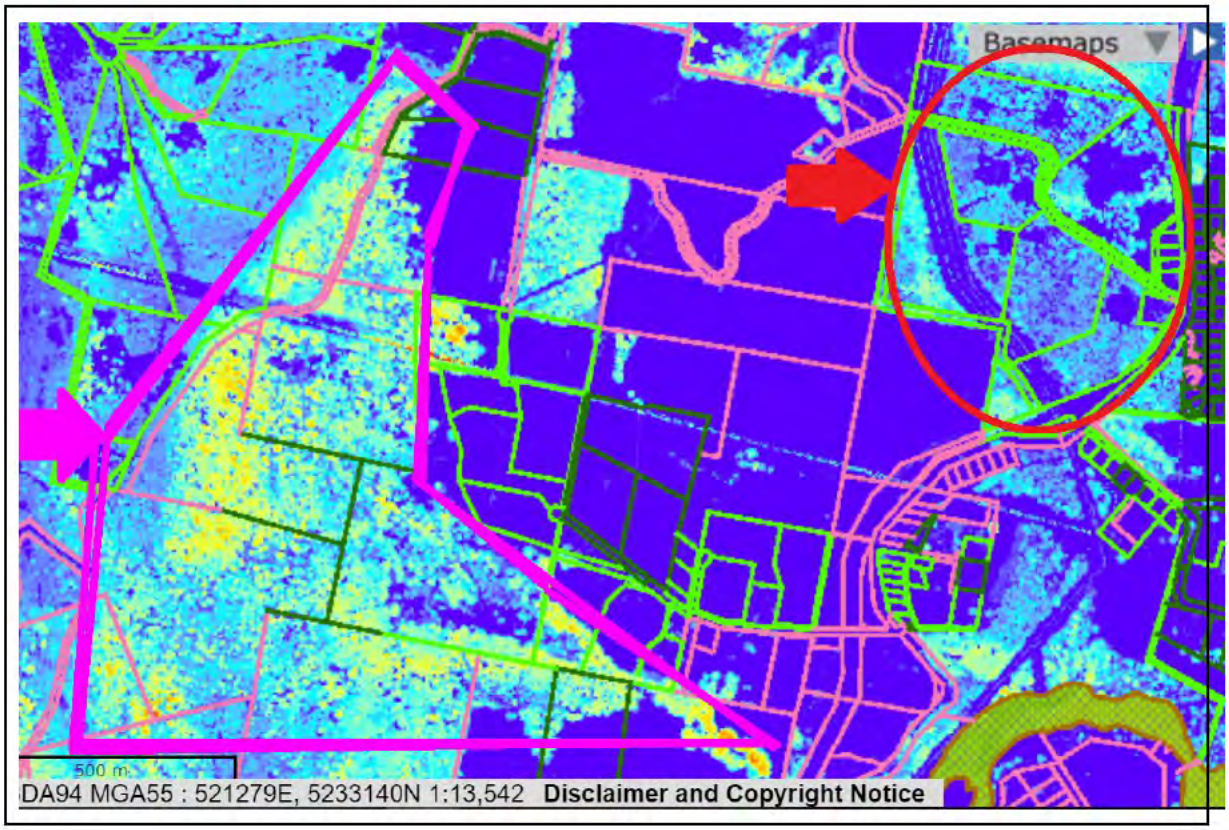
Inconsistent application - Leslie Vale properties (Land Use Strategy says LCZ, proposed RLZ)

LiDAR survey

It needs to be noted that the last LiDAR survey for this areas was conducted in 2013 – some nine years ago. We build our home in 2019, yet the LiDAR shows there to be trees where our home and HMA are located. The LiDAR very clearly shows the slashed TN easement, the minimal vegetation on #12 and #61, with the balance having vegetation low in height.



By contrast, the tree canopy height overlay below demonstrates the low height, sparse nature of bush in of the six subject Slatterys Road properties (identified with red circle), compared with the hills behind these properties and south toward Snug.



LiDAR clearly demonstrates the predominate sparse, low volume and low height vegetation on the Slatterys Road properties. I note that properties at Margate and Leslie Vale which have been proposed to transition from Environmental Living to RLZ, have taller and greater volume of vegetation, however due to having been overseas for the last two weeks, and submissions due today, I have insufficient time to add in the relevant imagery. I will do so with my submission in opposition to Kingborough Council's LPS.

Application of LCZ in KC's draft LPS

Myself and others in community have significant concern as to the appropriateness and consistency of KC's application of LCZ in its draft LPS.

The manner in which Kingborough Council propose to apply zoning does not align with the current use of properties, in places it deviates from its Land Use Strategy (May 2019), an almost entire blanket application of LCZ has been applied to Environmental Living zones properties with inconsistencies of application to some properties in Margate and Leslie Vale. Properties have not been assessed individually as to their zone of best fit, there has been inappropriate, large scale transition to LCZ proposed and not only have property owners not been consulted, when people have tried to bring this matter to public attention via local community social media pages, the Mayor has advised that it is like for like rezoning - this is outright propaganda! The Kingborough Land Use Strategy states:

> *"This will result in **significant zoning changes across the municipality and some community unrest**, in that the Environmental Living Zone was previously quite well received and understood. **It provided a good description of what the land was actually being used for, whereas the replacement options do not."***

Please note the land sentence in the quote above, Kingborough Council acknowledge that the proposed zoning does not reflect what the land is actually being used for. The zoning needs to reflect the current use, not a lazy blanket approach.

As previously noted, the Tasmanian Planning Scheme Information Sheet, issued by State Planning Office states "*the **LCZ is not a like-for-like replacement for the Environmental Living Zone**. The two zones differ in their main purpose.*", and that "*the **Environmental Living Zone** was first introduced in interim planning schemes. Its **primary purpose was for rural living development in areas characterised by native vegetation cover and other landscape values***" and further "*the Environmental Living Zone also set up a **conflict in its purpose, particularly when requiring vegetation management to reduce bushfire hazard**.*"

Impacts to landowners and community

The State Government, in response to the housing crisis, has announced grants for the construction of ancillary buildings (link). The highly restrictive nature of LCZ is unlikely to permit this discretional use, as it would result in an increase to the hazard management area. KC's broad-brush application of LCZ does not align with State Government's efforts to ease the housing crisis.

Property owners seeking development or additional development of land zoned LCZ will be subjected to a longer, more expensive, complex approvals pathway. Kingborough risks becoming a less desirable area to live due to its level of bureaucracy.

I am aware of two landowners in Huon Municipality who have sought to use their land as security for a loan and had it declined by CBA. One man (name available upon request) had paid off the mortgage on his vacant land, sought a new mortgage over the property only to have CBA decline stating that as his land has been proposed for LCZ where development is discretionary, they will not accept it as collateral/security. This will create significant problems for owners of vacant LCZ land, not only to secure someone willing to purchase land where development is discretionary and the council opposed to mandated hazard management areas, but then to find a cash buyer. Some people will have spent $600-700K on land, which become worthless, potentially leading to bankruptcy and poor mental health outcomes. I can attest to the mental anguish this is causing me.

I do not believe broad stroke application of LCZ aligns with the Local Government Act:

Section 20 of the Local Government Act

20. Functions and powers

(1) In addition to any functions of a council in this or any other Act, a council has the following functions:

(a) to provide for the **health, safety and welfare of the community**;

(b) to **represent and promote the interests of the community**;

(c) to provide for the **peace, order and good government** of the municipal area.

(2) In performing its functions, a council is to **consult, involve and be accountable to the community**.

I consider that the broad stroke application of LCZ will result in a reduced level of **safety** due to higher fuel loadings due to KC's noted opposition to Hazard Management Areas, this is **not in the best interests of the community**. The **health** of members of the community will be adversely affected by the financial strain brought about by loss of value and amenity for properties rezoned LCZ. In terms of **peace, order and good government**, KC acknowledges in its Land Use Strategy that:

> *"This will result in **significant zoning changes across the municipality and some community unrest**, in that the Environmental Living Zone was previously quite well received and understood. **It provided a good description of what the land was actually being used for, whereas the replacement options do not."***

The current application of rezoning needs to be revisited and the zoning reflect the current use of the land.

Your faithfully

Melissa O'Keefe

Officer: David Allingham
Direct ☎ (03) 6268 7041

Date: 12/08/2022

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001

Dear Sir/Madam,

RE: State Planning Provisions Review - Scoping issues

1. Introduction

Brighton Council staff welcome the opportunity to comment on the five yearly review of the State Planning Provisions (SPP's).

Whilst we consider that a review of the SPP's is necessary to identify obvious operational issues that are leading to poor planning outcomes, this process must in no way be a substitute for a comprehensive review of Tasmania's land use planning policies at the State and regional levels.

The review of the State and regional planning policies is critical as the SPPs are the key planning instrument in Tasmania which implement State, Regional and local planning policies, and strategies.

This brief submission consists of a statement addressing the questions provided in the Scoping Issues paper and a spreadsheet addressing some of those standards in the SPPs that Council staff considers require attention to achieve better planning outcomes.

2. Scoping Paper Response

It is understood that the purpose of the review is to seek feedback on the SPPs as part of a statutory review of the SPP's under section 30T of the *Land Use Planning and Approvals Act 1993*.

2.1. Questions to Consider

a) Which parts of the SPPs do you think work well?

The key benefit of a consistent, state-wide planning scheme is that developers and the community do not have to be familiar with every municipality's planning ordinance.

b) *Which parts of the SPPs do you think could be improved/ What improvements do you think should be prioritised?*

In achieving high quality, sustainable planning, and development outcomes in urban, peri-urban, rural, and commercial/ industrial areas across the State, the SPPs are flawed.

A spreadsheet is provided at attachment A which provides a more detailed response on what could be improved in the SPPs.

More generally, Council staff have reviewed planning instruments and best practice guides for residential design and subdivision from different States across the Country. It is difficult to see that what is included in the SPP residential zones (including the Rural Living Zone) standards achieve current best practice when it comes to issues such as:

- Dwelling and subdivision design that have regard to climate change (i.e., solar orientation of dwellings and lots, landscaping, vegetation controls, active transport etc.).
- Dwelling design that seeks to achieve high quality design outcomes that:
  - [redacted]ent and enhance the built environment
  - [redacted]to site conditions
    - provides high levels of residential amenity
    - encourages innovation and diversification in site layout/ building design
    - promotes principles of Crime Prevention through Environmental Design
- Subdivision standards provide little guidance on:
    - design of future street networks, connectivity, active transport and healthy by design principles
    - requirements for quality, accessible and diverse open space
    - landscaping
    - lot layout and design to achieve orderly settlements (such as encouraging a 'grid' layout, or allowing for future connectivity)

The residential zones are almost void of any planning purpose / policy or development standards which encourages ecologically sustainable design, especially in regard to protecting and improving existing natural habitat and encouraging innovation in design in areas of energy efficiency.

The Natural Assets Code is significantly flawed and requires a complete review (See Meander Valley Council's s.35G submission). As it stands, there a far too many loopholes to facilitate development over the protection of natural values.

The priority vegetation area should be able to be shown on Agricultural zoned land. There was an assumption that vegetation clearance could be addressed under the Forest Practices Act.

However, this Act only deals with threatened communities that involve standing trees and doesn't consider threatened communities of grasslands, shrubs, etc.

It is understood the SPPs were developed when the Tasmanian economy had stagnated, and development was required to stimulate economic growth and activity. However, as pointed out above, the SPPs do not achieve the core Objectives of Part 1 of the Resource Management and Planning System of Tasmania which is to facilitate such economic development which:

- *promotes the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*
- *provides for the fair, orderly and sustainable use and development of air, land, and water.*

Another obvious issue with the SPPs is that in many instances they are not consistent with, or do not promote, the Southern Tasmanian Regional Land Use Strategy. For example, there is

[redacted]onal Policies for Recreation and Open Space (Policy 10);

[redacted]y targets under SRD 1.5 and LUTI 1.2; and

- encourage a greater mix of housing types under SRD 2.8.

Further, there is a clear absence of controls that relate to stormwater management and to Aboriginal Heritage.

It is recommended that the following matters be priorities in the SPP review:

- the SPP review considers in much more detail how the provisions achieve the objectives of the Resource Management and Planning System of Tasmania as they relate to sustainable development
- the SPPs are consistent with the regional land use strategies
- the completion of the 'Review of Tasmania's Residential Development Standards' and the "Medium Density Residential Development Standards and Apartment Code' projects with a focus on best practice from other municipalities interstate
- residential subdivision standards with a focus on healthy by design principles and best practice from other municipalities interstate
- a review of the natural assets code and the exemptions as they relate to vegetation clearance.

Please see appendix A which supplies more specific examples of where selected standards/ provisions could be improved.

c) Are there additional requirements that you think should be included in the SPPs?

Please refer to spreadsheet in Appendix A.

d) *Are there any issues that have previously been raised on the SPPs that you agree with or disagree with?*

Many of the issues raised previously are still relevant. Refer to spreadsheet in Appendix A.

e) *Are there any of the issues summarised in the Review of Tasmania's Residential Develop*

Refer table in Attachment B.

If you have any queries regarding this submission, please contact the Council on (03) 6268 7041, between 8:15 a.m. and 4:45 p.m. Monday to Friday or by email at development@brighton.tas.gov.au.

Yours faithfully,

[redacted]

David Allingham
Manager Development Services

Enclosed:

Appendix A – Selected SPP issues spreadsheet

Appendix B – Review of Tasmania's Residential Development Standards

Section/Zone	Clause	Issue	Possible Solution
General - Codes in LPS	N/A	The LPS should be able to include Codes. Currently all local overriding provisions must be applied spatially. Councils should have the ability to include local overriding provisions to uses and development. E.g. multiple dwelling design guidelines, energy efficiency targets for certain uses, special controls for caravan parks, car washes etc.	Amend s.32 (3) of LUPAA to allow for an LPS to include Codes
General - Strategic guidance	N/A	The SPPs are not informed by any comprehensive strategy. The Tasmanian Planning Policies need to be created and regional land use strategies implemented as a matter of urgency. This should be followed by a comprehensive review of the SPPs	As stated in issues column. Amend s.15 of LUPAA to include the TPPs and RLUS' as part of the SPPs Criteria so that the proposed planning reform framework is legislated.
		General Provisions - General provision relating to subdivision on split-zoned lots allowing for sub minimum balance in zones such as Rural Living or Landscape Conservation should be added.	
General - Landscaping	N/A	Landscaping is only in the Industrial Zones Landscaping is critical for a high quality built environment and liveable communities and needs to be a development standard in the SPPs for all multiple unit, commercial and industrial development and subdivision with new roads	Provide landscaping standards in all the zones or alternatively create a Landscaping Code. The IPS' had landscaping within the Parking & Access Code which could be reinstated although not ideal.

Section/Zone	Clause	Issue	Possible Solution
Vegetation exemptions	Table 4.4	Provide greater clarity about when vegetation clearing is exempt. Does "landscaping and vegetation management" include blanket clearing of sites when a dwelling exists? Clause 4.4.2 - 'Private Garden' is defined as "means land adjacent to a dwelling that has been modified with landscaping or vegetation, including ornamental or edible plants, or the like". Does this include native bushland on a residential zoned lot that has natural values, is under 1ha (forest practices), but is not included in the NVA code mapping? Clause 4.4.2 - if significant veg clearance is proposed that is not mapped under the Nat Values Code then what are the standards that apply in the zones? No standards in any zone apart from landscape conservation zone. Further, established trees and vegetation can often form part of a character of an area that should be able to protected by an overriding provision. If vegetation clearing is not exempt standards must be provided in the SPP's.	Vegetation clearance needs more thought in the Planning system. At a minimum the exemption should be qualified by "unless a SAP or Code applies that requires vegetation to be retained." and SAP's be allowed to provide standards around veg removal where a bushland or garden character is already established or part of the desired character. Need standards for veg clearance that isn't 'exempt', and isn't mapped under Scenic Code, Heritage Code, NV Code etc.
Clearance of veg for safety	Table 4.4	The test under (g) - safety reasons where the work is required for the removal of dead wood, or treatment of disease, or required to remove an unacceptable risk to public or private safety, or where the vegetation is causing or threatening to cause damage to a substantial structure or building - needs a qualification when the veg is in the scenic, NV or heritage code area.	Amend (g) to say that: clearance when subject to codes be based on advice from a suitably qualified person.
Sheds in rural/ ag zone	Table 4.4	Need some controls on when a shed requires removal of vegetation.	
retaining walls	4.6.8	What are the standards for non-exempt works? What is the head of power?	
Unroofed decks	4.3.7	Unroofed decks exemption – delete (a) if not attached to or abutting a habitable building.	
land filling	4.6.9	What are the standards for non-exempt works? What is the head of power?	Disc under 6.8.2 - are conditions 6.11.2 enough?

Clause	Issue	Possible Solution
Zone Purpose lacking in detail with respect to design	The purpose does not specifically mention how the zone ***encourages quality residential development*** that, for example: - complements and enhance the built environment/ existing amenity. - responds to site conditions - encourages innovation and diversification in site layout/ building design - ensure landscaping is appropriate etc. - encourages active transport etc.	Update purpose to be more aimed at good design outcomes or 'quality' and diverse development.
General definition	What does 'requirements of the road authority' mean to achieve the AS in Clause 8.6.1? Standard drawings? How do you 'trigger' the PC?	Clarify Clause 8.6.1 A3/P3.
8.2	Large multiple dwelling developments (5 or more) have the ability to impact on neighbourhoods and should be discretionary. Additional design standards should apply.	Amend Use Table as follows: Permitted - Residential "only if listed as NPR or Discretionary" Discretionary - Residential "only if 5 or more multiple dwelling unit" Multiple dwelling design standards also need to be improved. Could be resolved through having a multiple dwelling design code or Multiple dwelling Use standards that relate to: o Articulation o Diversity in built form, colours materials, bedrooms o Landscaping o Address street frontage o Break up large expanses of blank wall etc
8.4	Residential density for multiple dwellings P1(b) is problematic. Defining a significant social or community benefit is hard to define. The combination of (I) or (ii) should be reason enough to allow higher densities. However residential amenity should also be considered.	Amend P1 (b): Is: (I) wholly or partly within 400m walking distance of a public transport stop with; **or** (ii) wholly or partly within 400m walking distance of an Inner Residential Zone, Village Zone, Urban Mixed Use Zone, Local Business Zone, General Business Zone, Central Business Zone or Commercial Zone. Add (c): not cause an unreasonable loss of residential amenity having regard to : a)visual impacts caused by the apparent scale, bulk or proportions of the building when viewed from an adjoining property; b) the existing character of the streetscape; c) etc.

8.6	Setting a 450m2 min. lot size creates homogenous development which lacks diversity. The Interim Schemes provided for some flexibility, but this should go further. The key outcomes should be promoting lot diversity in appropriate locations and also achieving the 15 dwellings/ha in the RLUS. Illogical for units to be developed at 325m2 and lots at 450m2.	Remove universal density and subdivision standards and allow graduated approach to planned density in order to preference unit development in proximity to activity centre, consistent with township structure plans, and to recognise the established character and best manage change that will occur. Multiple unit developments should be encouraged to be subdivided where possible. Keep 8.6.1 A1 for subs involving no new roads (provide a maximum lot size), but allow a min. l Lots approved as part of a consolidated application with residential development. Re-instate 10.6.1 A2, A3 & A4 from Interim Schemes. Amend P5 from IPS to include diversity and density outcomes. For example: Arrangement and provision of lots must satisfy all of the following; a) Have a minimum net density of 15 dwellings/ha. b) provide a range of lot sizes to suit a variety of dwelling and household types. c) provide higher net density of dwellings along; (I) public transport corridors; (ii) adjoining or opposite public open space, except where the public open space presents a hazard risk such as bushfire; (iii) within 200 m of business zones and local shops; etc.
8.6	Need to Reintroduce public open space standards, particularly mechanism to require POS as land or cash-in-lieu in accordance with council policy.	Re-instate 10.6.3 of IPS.
8.6.2	The current SPP road standards don't provide sufficient emphasis on providing connectivity and discouraging cul-de-sacs which will result in poorly connected and less walkable neighbourhoods. Street trees should also be considered for subdivisions and a head of power is needed	Re-instate 10.6.2 of IPS and include a requirement for street trees.
Common Open Space	Need communal open space provisions for multiple dwellings for over a certain amount (I.e. 15).	Introduce provisions in open space standards for communal open space above a certain threshold. Include requirements relating to Crime Prevention through Enviro Design, centrally located with opportunities for surveillance from habitual windows of nearby dwellings etc. Include sufficient area to meet needs of residents = BBQ, shelters etc.
POS and solar access	Solar access to POS, habitable rooms and solar panels needs to be considered.	Northerly facing open space provision reinstated. Need a maximum gradient for principle POS.
8.4.2 A3 8.5.1 A2 9.4.2 A3 9.5.1 A2	These clauses include the conjunction 'or' between the allowances in (b)(i) and (b)(ii), but it makes more sense to include the conjunction 'and' given their objective. Moreover, the fact that the allowance in (b)(ii) only applies to the side boundary (not to the rear boundary) seems arbitrary.	Amend as follows: "A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions that extend not more than 0.9m horizontally beyond the building envelope, must: (a)be contained within a building envelope (refer to Figures 8.1, 8.2 and 8.3) determined by: (i)a distance equal to the frontage setback or, for an internal lot, a distance of 4.5m from the rear boundary of a property with an adjoining frontage; and (ii)projecting a line at an angle of 45 degrees from the horizontal at a height of 3m above existing ground level at the side and rear boundaries to a building height of not more than 8.5m above existing ground level; and (b)only have a setback of less than 1.5m from a side or rear boundary if the dwelling: (i)does not extend beyond an existing building built on or within 0.2m of the boundary of the adjoining property; and (ii)does not exceed a total length of 9m or one third the length of the side or rear boundary (whichever is the lesser)."

8.4.4 A1/P1 9.4.4 A1/P1	The way these clauses are written gives the idea that overshadowing to the private open space (POS) of a dwelling must come from another dwelling on-site. This is problematic as it may be interpreted that nothing further is required if the overshadowing comes from the dwelling to which the POS belongs.	Amend to consider the scenario previously described.
8.4.6 A2/P2 9.4.6 A2/P2	The allowance in A2(b)(i) is, in our opinion, too relaxed to achieve this clause's objective. While a horizontal offset of 1.5m from a habitable room of another dwelling may be sufficient to provide some privacy, this allowance does not seem to take into account overlooking to adjoining POSs.	Eliminate this allowance, or, at least, modify it to consider overlooking to POSs as well.
8.4.8 P1 9.4.8 P1	Common waste storage areas should have sufficient setbacks not only from dwellings on site but from any dwelling. Thus, literal (c) should be amended to replace ‘separated from dwellings on the site’ for ‘separated from any dwelling’.	Amend as follows: "A multiple dwelling must have storage for waste and recycling bins that is: (a)capable of storing the number of bins required for the site; (b)screened from the frontage and dwellings; and (c)if the storage area is a common storage area, separated from any dwelling to minimise impacts caused by odours and noise."
Development standards - landscaping	Need a landscaping standard with a minimum landscaped area in accordance with the size of the lot (i.e. not for single dwellings). Landscaping should require certain amount of native veg.	Landscaping standard with a definition of landscaping plan provided in SPP.
Development standards - earthworks	Need to encourage development that responds to topography and respects existing topography character of neighbourhood etc. reduces risk of erosion etc.	Reinstate earthworks standards.
Development standards - rear boundary	Reinstate rear boundary setback to allow room for landscaping and visual articulation.	Reinstate rear setback standards.
Subdivision standards - general	What does 'requirements of the road authority' mean? Lots not meeting orientation standards having greater dimensions to accommodate a dwelling to achieve sunlight. Standards for internal lots? landscaping standards and include street tree requirements for subdivisions.	Re-draft subdivision standards.

Section/Zone	Clause	Issue	Possible Solution
RLZ	11.5.1	Brighton has a longstanding land-use pattern of 5000m2 on the urban fringe, which is not provided for in the SPP's Further, an aim of the RLUS is to increase densities in RLZ to 1ha.	Amend able 11.1 to allow for 5000m2 lots where reticulated water supply available. Are 10ha lots necessary??
RLZ	11.4	The RLZ development standards have been reduced to site coverage, height and setbacks and no design standards. The design standards from the IPS played an important role in maintain the character and minimising visual impact of development on these areas. A number of RLZ area's have a bushland character or are set on areas with steep topography. Arguably design standards are even more important with larger lots added to the RLZ	Re-instate the Design standards 13.4.3 A1, A2 & A from IPS; or Provide the ability to provide an overlay for sites within the zone where skyline or native vegetation warrant consideration.
RLZ	11.4	The RLZ is often occupied by people wishing to have large outbuildings. The scale and siting of outbuilding is an important factor for outbuildings not dominating the landscape	Provide a siting and scale standard for outbuildings similar to IPS
RLZ	11.3.2	Some people appear to be using this clause to get around the prohibition of developing multiple dwellings in Rural Living-zoned land.	Regulate better visitor accommodation in the Rural Living Zone.
RLZ & FUZ	11.4.2 A4 30.4.2 A3	The allowance in (b) should be amended to clarify that it only applies when there is already an existing building for sensitive use on-site within 200m of the Agricultural Zone (AZ) or Rural Zone (RZ). Otherwise, these clauses' wording opens a door for a person to develop an exempted outbuilding near a boundary adjoining the AZ or RZ and, subsequently, apply for planning approval for a dwelling within the same distance complying with the required setback.	
RLZ	Zone purpose not currently aligned with development standards. Additional zone purpose + development standards.	Purpose statement 11.1.1 (b) doesn't currently align with the development standards in terms of 'retaining' existing natural and landscape values. Need to add a zone purpose statement which acknowledges that future development respects the rural landscape and character of the surrounding area and is in harmony with the natural environment. Suggest that the following matters be included in the development standards to further the purpose/s of the zone. - reflectivity/ colours and materials restrictions - ridgeline/ skyline standards for buildings - vegetation removal standards + new plantings to not include invasive species. - clustering existing buildings (i.e. on valley floor) and encouraging similar roof shapes/ materials as what is already on site. - earthworks standards (i.e. reducing visual impacts and encouraging development that responds to slope - e.g. split level dwellings). - landscaping (i.e. visual buffers + natural values) - Driveways following contours - Fencing - conventional plain wire fences House orientation and energy conservation	Re draft RLZ purpose statements and standards.

RLZ	Subdivision standards - objectives	The objective of the sub standards need to acknowledge that the lots are: - be in harmony with landscape and natural values - ensure building envelopes are appropriately positioned to maximise solar access opportunities and energy efficiency for future dwellings - minimise fragmentation of land	Re draft sub standards objectives.
RLZ	Subdivision standards - Clause 11.5.1 - slope and native vegetation	The AS of Clause 11.5.1 A1 - could include reference to not having a building envelope on a slope > 10% etc. and not requiring the clearance of native vegetation.	Add to clause 11.5.1 A1 (a) (I) to include 'clear of': - 10% gradient; inherent site constraint(s) (e.g. flooding, geotechnical constraints etc) or contains significant remnant vegetation, any threatened flora species, endangered ecological community etc
RLZ	Subdivision standards - Internal lot	Insert standard requiring, as a PC, that internal lots be 'reasonably required for the efficient use of land as a result of a restriction on the layout of lot' - as per Burnie IPS.	Re-draft sub standard to make internal lots discretionary.
RLZ	Subdivision standards - Clause 11.5.1 - averaging	Lot averaging rather than minimum lot sizes = achieve landscape and native values objectives. Add Objective to Clause 11.5.1 = minimise the fragmentation of land etc.	Investigate lot averaging.
RLZ	Subdivision standards Clause 11.5.1 - solar orientation	Future dwellings can achieve northerly aspect etc.	Sub standards to require northerly aspect.
RLZ	Subdivision standards Clause 11.5.1 A2/P2 - Access	Insert a sub standard that Battle-axe arrangements involving more than two access legs will not be accepted unless there are exceptional circumstances to justify such an arrangement. If more than 2 access legs - a road must be constructed in accordance with Standard drawings etc.	Limit on battle axe (max 2) using same frontage - relate back to purpose.
RLZ	Subdivision standards Clause 11.5.1 A3/P3 - Access	Need to define what is 'in accordance with the requirements of the road authority'?	What does 'in accordance with the requirements of the road authority' actually mean?

Section/Zone	Clause	Issue	Possible Solution
CZ, LIZ & GIZ	17.4.6 A1/P1 18.4.5 A1/P1 19.4.3 A1/P1	Landscaping is only required for applications that involve developing a building that is set back from a road.	It could be beneficial to extend this requirement to applications for use, recognising that some uses are significantly detrimental to the amenity and appearance of the streetscape if landscaping is not provided. Need a more stringent landscaping standard.

Section/Zone	Clause	Issue	Possible Solution
Definition	C2.3.1	The definition of 'floor area' in the code references 'gross floor area' which skews the calculation for parking for uses such as Hotel Industry/ food services where there may be large outdoor dining/ 'beer garden' area.	
Definition	C2.3.1	Need to define ' durable all weather pavement'.	
Lighting	C2.6.4	Need to include provisions for lighting in multiple dwelling developments	
General	C2.5.1 & Table C2.1	The use of minimum parking standards, particularly for residential use and in urban areas, does not discourage private transportation and contributes to inefficient land use and carbon emissions	
Construction of parking areas	C2.6.1 A1	Acceptable Solutions are objective and measurable. Therefore, including the words ‘or equivalent material’ in literal (c) introduces a level of subjectivity that is uncommon for Acceptable Solutions.	

Section/Zone	Clause(s)	Issue	Possible Solution
Definition of Terms	C3.5.1	Is 'written consent' from the road authority the same as road owners consent to lodge a DA (for works in road reserve) ? When would the PC actually be triggered.	Define written consent from road authority.

Section/Zone	Clause	Issue	Possible Solution
Code Purpose	Clause 7.1.1 & Clause 7.1.1.2	The wording should be to 'protect' rather than 'minimise' impacts.	The natural assets code needs a comprehensive review based on best practice natural values planning principles. Does not achieve any level of protection of natural values at the development or subdivision stage. Needs to include at a minimum words such as protect, conserve, restore biodiversity and ecological processes and recognise recreation.
Code Application	Clause 7.2 - application	The code should have a trigger that allows an RFI/ the code application to be 'called in' based on mapping or other info that Council has. (e.g. a site containing native veg but isn't mapped). The current mapping is conceptual and biodiversity values in Tasmania are clearly not limited to what is mapped.	Insert in application for the Code: b)use or development of land identified in a report, that is lodged with an application, or required in response to a request under section 54 of the Act, as having the potential to impact natural assets etc. The code should apply to all zones. Redefine priority vegetation area in lieu of the above. Redefine priority vegetation to also include wildlife corridors etc.
Definitions and application requirements		Need to define a natural values assessment. What is native vegetation of local importance?	
Exemptions	Clause C7.4.1	Too broader exemption for removing priority veg in 'gardens'.	Remove Clause C7.4.1 (c) (ii) exemptions for clearance of native vegetation. Any clearance of vegetation on private land should be subject to PC.

Clearance within a priority vegetation area	C7.6.2 Clearance within a priority vegetation area	Objectives need to be focused on protecting and conserving natural values. Clause C7.6.2 P1.1 is almost non existent in terms of it's protections on natural values. P1.1 does not require a natural values assessment or any other type of study to comply with the PC. P1.1 (d) is not consistent with the principles of principles of ecologically sustainable development) (i.e. development cannot only be for economic gain). P1.2 only refers to minimising 'adverse' impacts on priority veg. Onsite biodiversity offsets have had issue in Planning Appeals. Need a policy background.	Re-draft Clause C7.6.2 based on best practice principles for land use planning in natural areas.
Development Standards for Subdivision	C7.7.1 Subdivision within a waterway and coastal protection area or a future coastal refugia area	Objectives and clauses need to be focused on protecting and conserving natural values. All subdivisions in priority veg areas not meeting (a) - (d) must be discretionary.	Remove 'unnecessary or unacceptable impact' and replace with preserve natural values etc.
Development Standards for Subdivision	Subdivision within a priority vegetation area	Objectives and clauses need to be focused on protecting and conserving natural values. All subdivisions in priority veg areas not meeting (a) - (d) must be discretionary.	Remove 'unnecessary or unacceptable impact' and replace with preserve natural values etc.

Appendix B

Review of Tasmania's Residential Development Standards

Section	Clause/ provision	Issue	Agree	Disagree
3.2	Planning Directive No. 4.1. and the SPPs	Limitation on impervious surfaces providing no benefit.		Having such a standard allows for stormwater management and encourages grassed/ landscaped areas on sites – especially multiple dwellings (including common areas for multiple dwellings).
		Open space not required to be accessed from habitable rooms of dwellings.		Such a standard encourages better design outcomes, especially for multiple dwellings.
		Northerly facing windows.		There is no policy basis to remove this requirement which is a fundamental principle of planning for energy efficiency and sustainability. This type of standard was in every planning ordinance that was reviewed from interstate.
3.2	General Drafting	Drafting too complex.		After reviewing a suite of residential development ordinances/ guidelines from municipalities across the Country, it is clear the drafting of the residential standards in the SPPS are very minimal and simplified.
4.3.1	General Issues	Objectives, acceptable solutions, and performance criteria should be redrafted to better protect local character, amenity, sunlight, and privacy.	Agreed. All aspects of the zone purposes, objectives need to be redrafted to be aspirational in achieving good design outcomes.	

Section	Clause/ provision	Issue	Agree	Disagree
4.3.2	Multiple dwellings	Complexity in determining compatibility of density in surrounding area.	Determining multiple dwelling density should have more provisions explaining what will achieve being 'compatible with surrounding area,' having regard to (for example): o Density of development nearby o Streetscape qualities o Form of development nearby etc. Recent TASCAT decisions have gone beyond a simple quantitative assessment of this standard - i.e., M Cubitt and T Powell v Launceston City Council and Ors [2022] TASCAT 47. The standard should have regard to those matters raised in this case.	
		Clarity in assessing social/ community benefit.	Social/ community benefit could be specifically redefined based on a specific type of social housing provider or a more subjective test based on decision of C & H Margetts v Burnie City Council [2017] TASRMPAT 18: *The Tribunal considers that community benefit required to be demonstrated is the advancement of the general community interest. It requires the production (by way of evidence) of objectively defensible results based upon disclosed methods, producing analysis capable of being understood and tested. The question is whether or not the contents of the submitted material constitutes evidence which demonstrates either of the*	

Section	Clause/ provision	Issue	Agree	Disagree
			outcomes required for the application of the performance criterion at P1 (b). The test is an objective one…. *The required social housing benefit must be more than a marginal impact on house prices through the release of a few extra lots onto the market and the requirement is not demonstrated by the testimonials of individual "not for profit" housing providers. These are in the nature of assertions, they articulate conclusions, and they are not evidence which sets out any objectively ascertainable community benefit or social housing benefit.* Perhaps requiring a report by a suitably qualified person.	
4.3.3	Setbacks	Various	• Loss of solar access due to no standards for northerly windows combined with a minimal subdivision standard. • Restore rear setbacks for dwellings only to enable solar access, visual relief, and opportunities for landscaping/ shading and character. • Parking areas/ garages should maintain/ improved streetscape – not make a historic decision worse. • Could have an 'averaged' front setback as an additional frontage setback acceptable solution (I.e., more flexible AS)	

Section	Clause/ provision	Issue	Agree	Disagree
4.3.4	Site coverage/ POS	Various	• Site coverage PC is too easy to meet. Does not align with standard. This has been shown in various RMPAT cases. Does not align with best practice based on review of interstate ordinances. • 'Reasonable space' too subjective. • Privacy in open space unclear • Need impervious areas controls to encourage landscaping and improve appearance / design (especially with multiple dwelling). • POS must have high solar access.	
4.3.5	Sunlight to POS	Various	• Reinstate standard regulating sunlight to habitable room of a dwelling on same site. No policy basis to remove it. Encourages sustainable design etc.	
4.3.7	Privacy	Various	• Need to clarify overlooking from windows into POS of adjoining lot.	
4.4.	Other issues		• Landscaping needed. • Investigate 'averaging' lot sizes.	

From:	Ashley Thornton
To:	State Planning Office Shared Mailbox
Cc:	Shane Crawford; Vanessa Adams; Jenny Donovan
Subject:	State Planning Provisions Review
Date:	Friday, 12 August 2022 4:07:02 PM
Attachments:	image001.png SPP submission.pdf

To the State Planning Office,

Thank you for the opportunity to provide input into the review of the State Planning Provisions (SPPs).

Circular Head Council have been operating under the Tasmanian Planning Scheme since May 2021, while Waratah-Wynyard are still in the process of having their LPS adopted. The Councils also were a representative on the working group when the SPPs were drafted. During these processes we have picked up on some potential improvements to be made to the SPPs. These are addressed in the attachment to this submission.

We have noted that the comments guiding the submissions have identified that the SPPs need to be relevant across the State. As regional and rural councils, we agree with this and would like it to be a key focus in this review. Too often in the planning reforms to date, it has felt like decisions and changes have been made to suit most of the state, being the more populated areas, and not been relevant or in the best interests of all of the state. We believe there are examples where provisions may suit urban centres, but don't work for regional and rural centres. We acknowledge that it is a difficult balance, but the regional and rural councils shouldn't have to wear the same clothes of our urban cousins when they simply don't fit. We would instead seek an approach where we are team mates, and the uniform comes in different sizes.

Our submission and comments highlight provisions that are proving difficult to implement in assessing development applications, and hope that our suggestions will work for all councils, and not just our corner of the state. If our suggested changes do not achieve this, we are happy to work with the SPO to try and determine alternative solutions to the issues raised, rather than they be set aside. This was unfortunately the experience when participating in drafting the SPPs.

Please feel free to contact me should you have any questions or require any further details.

Thanks,
Ashley

Ashley Thornton
MANAGER DEVELOPMENT AND REGULATORY SERVICES
Waratah-Wynyard and Circular Head Councils
6443 8340 (Wynyard) [redacted]
[redacted]

Waratah-Wynyard and Circular Head Councils take our responsibility to our community seriously. For accurate and up-to-date information regarding the current COVID-19 Pandemic please visit one of the following websites.
Australian Government Coronavirus website at
https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert

Tasmanian Department of Health updates are at
https://www.dhhs.tas.gov.au/news/2020/coronavirus_update

Ashley Thornton
Manager Development & Regulatory Services

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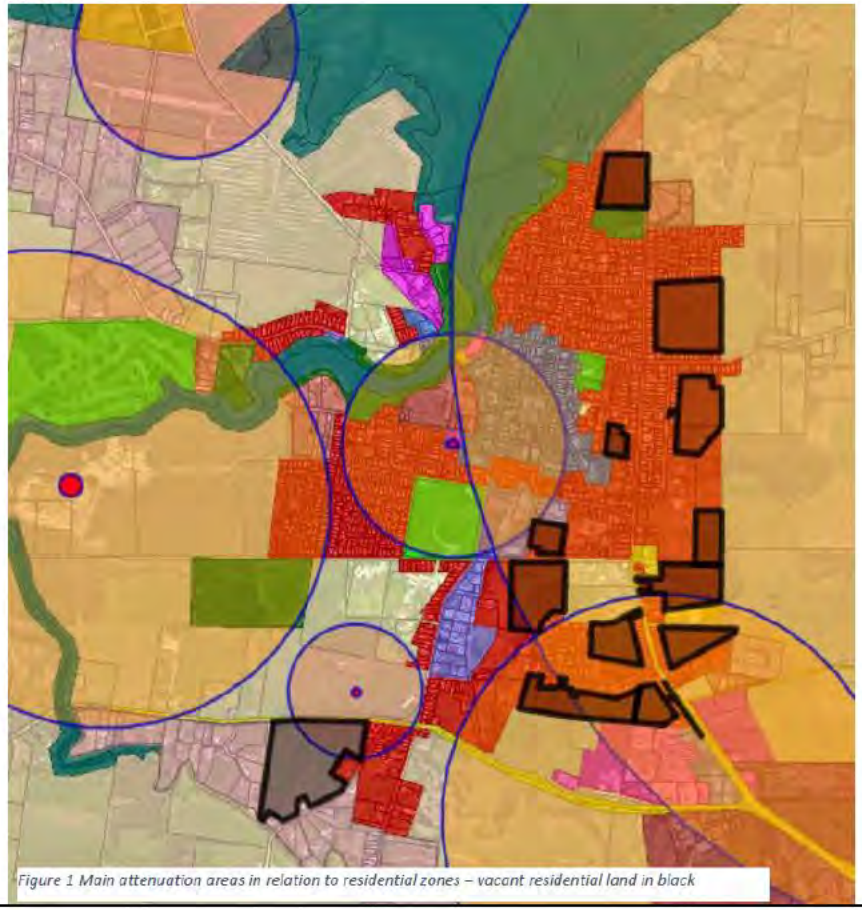
Attachment 1: Requested amendments to the SPPs

Section	Clause	Issue
Attenuation Code	C9.2	Attenuation code does not work for regional and Rural Centres. The small regional centres of Smithton and Stanley both contain a mix of uses including *activities with potential to cause emissions* within close proximity of the key residential areas. The Town have developed around long standing industries, particularly in the processing of primary industry goods such as vegetables, meat, timber, dairy and seafood. A small snapshot is provided in Figure 1 showing theoretical attenuation areas created by just some of the main emitting activities in the Smithton area. It should be noted that there is a substantial amount of undeveloped Residential Zoned land within these areas.  *Figure 1 Main attenuation areas in relation to residential zones – vacant residential land in black*

		We are now experiencing some residential growth within the municipality, with new dwellings on established but vacant General Residential zoned blocks. This code means that the applications for dwellings that would otherwise be no permit required are now discretionary because of the application of the code. This is despite dozens, if not hundreds of existing residences closer to the emitting development. We would like to suggest that the Attenuation Code operates similar to the Bushfire-Prone Areas Code, and only considers new subdivisions in the residential zones. Therefore, we request that C9.2.1(b) be deleted. Please also refer to the Circular Head Council 35G report for further details.
Potentially Contaminated Land Code	C14.6	Potentially Contaminated Land Code is applicable in many instances, the net is casts it quite wide. However, the focus of the use and development standards is quite narrow. So whilst the code is applicable, in many instances there will be nothing relevant to consider a development against. The balance of the code is not right. C14.2 Application of the Code is supported, however, additional development standards are recommended in order to assess applicable developments against.
5.0 Exemptions	5.6.2	Exemption for fences in Port and Marine Zone should be expanded to include industrial zones. Most industrial sites require security fencing.
5.0 Exemptions	5.2.10	Exemption should include signage
Development standards for subdivision	8.6.1 P2, 10.6.1 P1 & P2, 11.5.1 P1 & P2 etc	Performance criteria should not be prescriptive. As an example, there should not be absolute minimum lot sizes. Example below. **P1** Each lot, or a lot proposed in a plan of subdivision, excluding for public open space, a riparian or littoral reserve or Utilities, must have sufficient useable area and dimensions suitable for its intended use, having regard to: (a) the relevant requirements for development of existing buildings on the lots; (b) the intended location of buildings on the lots; (c) the topography of the site; (d) any natural or landscape values; (e) adequate provision of private open space; and (f) the pattern of development existing on established properties in the area, ~~and must be no more than 20% smaller than the applicable lot size required by clause 11.5.1 A1.~~

<table>
<tr><td>Rural Living Zone Code</td><td>11.4.1 A1</td><td>Site coverage in the RLZ should be increased to 500m^2. The right number was debated in drafting the SPPs. The current site coverage is catching too many proposals, causing them to be discretionary for an outbuilding. Comparison with surrounding area always identifies other properties with greater floor areas.</td></tr>
<tr><td>Zone codes</td><td>11.4.2 A3</td><td>Acceptable solution for setbacks should include option of no closer than an existing building on the site. Typically dwelling extensions in line with the existing building a triggered for a discretion as the existing dwelling does not meet the setbacks.
Amend all setback clauses to the effect of
Or
not less than the setback of any existing building on the site</td></tr>
<tr><td>Interpretation</td><td>Dwelling</td><td>The definition of dwelling includes an outbuilding and other works normally forming part of a dwelling. However, it is unclear if an outbuilding can precede the dwelling, and still be defined as a dwelling? If it does, then this can create confusion and compliance issues with people converting sheds into dwellings. They will have a permit for a residential Use, being an outbuilding, but then the outbuilding can be defined as a dwelling, so then the permit is for a dwelling.
Suggest the outbuilding isn’t defined as a dwelling if it comes first, but amend residential zones use tables to allow an outbuilding, as currently would be Prohibited under the Rural Living Zone. Suggested amendment highlighted in yellow.
11.2 Use Table
<table>
<tr><td>Use Class</td><td>Qualification</td></tr>
<tr><td colspan="2">No Permit Required</td></tr>
<tr><td>Natural and Cultural Values Management</td><td></td></tr>
<tr><td>Passive Recreation</td><td></td></tr>
<tr><td>Residential</td><td>If for a single dwelling and/or outbuilding</td></tr>
<tr><td>Resource Development</td><td>If for grazing.</td></tr>
<tr><td>Utilities</td><td>If for minor utilities.</td></tr>
</table>
<table>
<tr><td colspan="2">Permitted</td></tr>
<tr><td>Residential</td><td>If for a home-based business.</td></tr>
<tr><td>Visitor Accommodation</td><td></td></tr>
</table>
<table>
<tr><td>Discretionary</td></tr>
</table></td></tr>
</table>

		Business and Professional Services	*If for a veterinary centre.*
		Community Meeting and Entertainment	*If for a place of worship, art and craft centre or public hall.*
		Domestic Animal Breeding, Boarding or Training	
		Education and Occasional Care	*If for:* *(a) a childcare centre or primary school; or* *(b) an existing respite centre.*
		Emergency Services	
		Food Services	*If for a gross floor area of not more than 200m².*
		General Retail and Hire	*If for:* *(a) primary produce sales;* *(b) sales related to Resource Development; or* *(c) a local shop.*
		Manufacturing and Processing	*If for alterations or extensions to existing Manufacturing and Processing.*
		Resource Development	*If:* *(a) not for intensive animal husbandry or plantation forestry; or* *(b) not listed as No Permit Required.*
		Resource Processing	*If not for an abattoir, animal saleyards or sawmilling.*
		Sports and Recreation	*If for an outdoor recreation facility.*
		Utilities	*If not listed as No Permit Required.*
		Vehicle Fuel Sales and Service	
		Prohibited	

<table>
<tr><td></td><td></td><td>All other uses</td></tr>
<tr><td>Zone codes</td><td>e.g. 11.4.2 A4</td><td>Development standards relating to a sensitive use are better located within Use Standards, as the focus of the clause is the sensitive use, not the development.</td></tr>
<tr><td>Scenic Protection Code</td><td>C8.0</td><td>Revise the term Scenic Protection to Scenic Management. It is more in keeping with the intent of the development standards. The term Protection suggests some form of constraint or prohibition, which is then expected by the community. Management is more considerate of tailoring a development to limit impacts upon a declared scenic value that warrants preservation.</td></tr>
<tr><td>C.7.0 Natural Assets Code - Future Coastal Refugia Area:</td><td>C7.2.1</td><td>The Future Coastal Refugia area component of C.7.0 Natural Assets Code should not apply to the Open Space zone. In most cases, public open space is highly managed/landscaped areas and are also zoned Open Space zone. They usually feature public facilities and in many cases either already contain, or have the potential to host a wider range of commercial uses which might include Food Services, Tourist operations, Community meeting and entertainment, and Visitor Accommodation.
It is recommended that the Application of the Code be amended to exclude the Open Space Zone.
Please also refer to the Circular Head Council 35G report for further details.</td></tr>
<tr><td>3.0 Interpretation</td><td>Table 3.1 Planning Terms and Definitions

Sensitive use</td><td>The punctuation in the definition of Sensitive Use introduces ambiguity. Suggest amending the definition to:
<table><tr><td>Sensitive Use</td><td>means a residential use or a use involving the presence of people for extended periods except in the course of their employment<u>.</u>
<u>Examples include</u> <s>such as</s> a caravan park, childcare centre, dwelling, hospital or school.</td></tr></table>This will add certainty that uses like Visitor Accommodation are sensitive uses.</td></tr>
<tr><td>4.0 Exemptions</td><td>4.2.4 road works</td><td>The exemption should include building new roads by or on behalf of the road authority.

The Local Government (Highways) Act 1982 requires suitable standards to be met.

The exclusion of new roads from the exemptions unnecessarily restricts road authorities by requiring, in some circumstances, a discretionary application for infrastructure they are responsible for building and maintaining.</td></tr>
<tr><td>Agriculture Zone</td><td>21.5.1 P1(b)(iii)</td><td>Being rural councils, we consider many subdivision applications to reconfigure boundaries of farming properties that have multiple titles. While the subdivision provisions under clause 21.5.1 P1(b) address boundary reorganisation, it requires sensitive uses to achieve a 200m setback, or no less than the existing setback. However if you were to apply for a new sensitive use you can reduce the 200m setback through 21.4.2, P2. Reorganisation quite often means putting any dwellings on smaller titles to provide larger lots for the useable agricultural land. This often requires reducing the setbacks to the dwellings for a better outcome for the agricultural use.

A modification to clause 21.5.1, P1(b)(iii) to replicate P1(c)(iii) is requested.</td></tr>
</table>

<table>
<tr>
<td>8.0 General Residential Zone</td>
<td>8.4.8 Waste storage for multiple dwellings</td>
<td>
With an increase in infill development, there is often not capacity for standard kerbside waste collection when multiple dwellings are developed. That is, there is not sufficient space on the footpath to place bins for collection.

Similar to the role of a road authority in providing advice about access to a road, it is recommended that an additional acceptable solution and performance criteria be added, for example:
<table>
<tr>
<td>A2

Where the local authority advises that it is impractical to provide a standard kerbside waste collection, a waste collection area is to be provided on site that is serviced by an independent waste services provider where the waste collection vehicle can enter and exit the site in a forward direction.</td>
<td>P2

Waste management is safe, convenient and efficient having regard to:

(a) Access to the bin storage and collection areas;

(b) Acoustic, odour or visual impacts on the development, surrounding properties and the streetscape;

(c) Practical and efficient supply and servicing of bins;

(d) Safety of road users; and

(e) Topography of the site.</td>
</tr>
</table>
</td>
</tr>
<tr>
<td>20.0 Rural Zone</td>
<td>20.3.1 Discretionary use</td>
<td>
Single dwellings are discretionary in the Rural Zone.

There are many existing vacant lots in the Rural Zone. Having a residence on the property is known to improve land management outcomes relating to weed management and bushfire mitigation.

An assessment category of discretionary is considered to unnecessarily regulate the use of the land for a single dwelling. Inclusion in the Rural Zone rather than the Agriculture Zone is an acknowledgement that non-agricultural uses are appropriate. Single dwellings on existing lots are appropriate for a rural location.

It is recommended that a single dwelling be no permit required or permitted in the Rural Zone.
</td>
</tr>
<tr>
<td>20.0 Rural Zone</td>
<td>20.3 Use Standards</td>
<td>The Rural Zone and Agriculture Zone provisions do not include standards that address potential environmental impacts from proposed activities.</td>
</tr>
</table>

<table>
<tr>
<td>20.1 Agriculture Zone</td>
<td>21.3 Use Standards</td>
<td>
There is a wide range of permitted and discretionary uses in the zones that should appropriately be located in these areas because of their size, impacts or association with rural activities. However, the potential environmental impacts cannot be fully considered under the zone provisions.

For example, unless works are within a waterway and coastal protection area, there are no clear provisions to address potentially contaminated run off or how waste from the use will be managed. This could include effluent or hard waste.

The Attenuation Code addresses impacts on sensitive uses, but not impacts on the land or receiving water. The Attenuation Code is also restricted to impacts from activities listed in tables C9.1 and C9.2 which does not anticipate all potential activities.

Permitted and Discretionary uses can result in environmental impacts that are not addressed through the Attenuation Code and are more appropriately managed through a Planning Permit than through an Environment Protection Notice.

It is recommended that an additional use standard that would apply to permitted and discretionary uses be included that addresses impacts on the environment. The draft provisions below are included as an example of how this matter could be addressed.

20.3.2 and 21.3.2 Impacts on the environment
<table>
<tr><td>Objective:</td><td colspan="2">The location, scale and intensity of uses avoids or mitigates harm to the natural environment and adjacent sensitive land uses.</td></tr>
<tr><td colspan="2">Acceptable Solutions</td><td>Performance Criteria</td></tr>
<tr><td colspan="2">A5

Uses, excluding Residential or Resource Development (where not intensive animal husbandry):

(a) occupy a maximum site area of 50%;

(b) do not include a new discharge point or increase the volume of discharge into a watercourse, wetland, lake or dam; and

(c) waste, including effluent, is removed from site or managed on site through an appropriate wastewater</td><td>P5

Uses:

(a) do not cause environmental harm to any surface water, groundwater or waterways; and

(b) do not cause significant impact on soil resources;

(c) Minimise impacts on sensitive uses such as noise, dust and lighting; and

(d) are located on lots of sufficient size to provide necessary infrastructure to service the use.</td></tr>
</table>
</td>
</tr>
</table>

		treatment and disposal system.		

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

12 August 2022

To Whom It May Concern,

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

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

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

We thank you for the opportunity to comment on the review of the SPPs, noting that ALL SPPs are up for review. We also welcome the opportunity to recommend new provisions i.e. new codes and/ zones.

Our family has a long history spanning 6 generations of pioneering, living, working and fishing in the Derwent Valley and Central Highlands of Tasmania. We are now retired, having respectively held senior management positions in agriculture and education in the Derwent Valley for over forty years. Our principal residence is in Ouse and we have a shack at Penstock Lagoon, both are in the Central Highlands Municipality. We are passionate about the area and are concerned there is no effective planning tool to manage and protect the unique characteristics that make our region so special.

The deficit in planning provisions has come to our attention with the current transition process from the Central Highlands Interim Planning Scheme to the Local Provisions Schedule under the Tasmanian Planning Scheme. We have become acutely aware, with the plethora of developments being proposed recently and into the future that the scenic beauty and landscape values and the amenity of residents in many places have no protection under the current State Provisions, Zones and Codes.

For example, the proposed St Patricks Plains Wind Farm includes 10,000ha of land with giant turbines lining a large section (on both sides) of the Highland Lakes Road between Bothwell and Miena would have a transformational effect on the landscape and heritage values of iconic locations. The St Patricks Plains Wind Farm would destroy the visual and noise amenity of hundreds of residents who seek the tranquility and natural beauty of the area. This is not an appropriate location for a wind farm for many reasons, however, in the absence of specific planning guidelines opportunistic developers have been able to choose a site based primarily on fiscal and convenience criteria.

The Central Highlands is the largest municipality in Tasmania most of which is included in the Government's Midlands Renewable Energy Zone for Tasmania. There is a strong possibility that up to thirty more wind farms could be proposed and developers can currently choose the locations that best suit them - regardless of visual aspects; turbine heights; shadow flicker; distances of turbines from roads, dwellings, reserves, or heritage sites; neighbour disturbance etc.

The current SPS Agriculture and Rural Zones do not consider landscape and skyline issues. There needs to be a requirement for wind farm developers to address a Code which has landscape and skyline issues

The Tasmanian Highlands has a world-wide reputation for the quality and scenic beauty of its many lakes and tarns that contain magnificent brown and rainbow trout. The range of opportunities is endless from the huge yingina/Great Lake to the land of the Thousand Lakes in the western part of the plateau to the spectacular fly-fishing lakes such as Little Pine and Penstock Lagoon which hosted the World Fly Fishing Championships in 2019 with 23 countries competing. The international teams were captivated by the Highland Lakes' beauty and challenging conditions. A huge part of the fishing experience and attraction of the Highlands is in the enjoyment of the natural landscapes and the skyline with each lake having its own special environmental features.

The Government's 200% renewables target needs to have a proper planning base for wind farm locations and transmission lines. Renewable energy installations and infrastructure represent the biggest change to land use in Tasmania and it is crucial that Wind Farm Zoning and a Wind Farm Code are adopted in the Tasmanian Planning Scheme. Developers need clear guidelines to invest with confidence in sites that complement the Tasmanian brand. Communities need assurance that our assets and iconic places will be protected rather than plundered.

We also endorse the Planning Matters Alliance Tasmania's (PMAT) submission to the review of the State Planning Provisions including which includes detailed submissions compiled by expert planners regarding three key areas: the *Natural Assets Code*, the *Local Historic Heritage Code* and the residential standards. Each of the three detailed submissions, have also been reviewed by a dedicated PMAT review subcommittee involving a total of 15 expert planners, environmental consultants and community advocates with relevant expertise.

We note that the *State Planning Provisions Review Scoping Paper* states that the State Planning Office will establish reference and consultative groups to assist with detailed projects and amendments associated with the SPPs. We request in the strongest possible terms that we be included in these reference/consultative groups because of our background and interest in preserving the unique character of the Central Highlands. It is vital to have a community voice in these processes.

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

Planning affects every inch of Tasmania, on both private and public land, and our well-being: our homes, our neighbour's house, our local shops, work opportunities, schools, parks and transport corridors. Planning shapes our cities, towns and rural landscapes. Well thought through strategic planning can build strong, thriving, healthy and sustainable communities.

Yours sincerely,

Victoria Onslow [redacted]

William Phipps Onslow [redacted]

CC: michael.ferguson@dpac.tas.gov.au

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

From: Mary McNeill
To: State Planning Office Your Say
Subject: State Planning Provisions review
Date: Friday, 12 August 2022 11:56:09 PM

I share with you my concern that the State Planing Provisions have created a depleted planning system and that the standards cannot deliver outcomes for which they have supposedly been created. If the objectives of the system as set out in the LUPAA 1993 are, amongst other things, to be fair and orderly, the process of planning reform has taken us backwards.

In general, it could be considered that the SPP's are a backward step in development control at a time where communities are more likely to be at risk from impacts of climate change including more severe and frequent bushfires, flooding, coastal erosion events, etc. Environmental protections should be strengthened across all zones. A set of rules that offers few protections for natural values cannot be seen as promoting sustainability or maintaining ecological processes. There is no rational reason to remove protections for natural values in any zone. Genetic diversity and ecological processes do not just occur in areas of identified priority vegetation or known habitat for threatened fauna species. There is no rational reason not to have a requirement for pervious surfaces in residential developments. There is no rational reason not to require windows to habitable rooms with a northern orientation in residential developments - it is not just about energy efficiency. It is about quality of life.

There is no logical reason that residential use should be excluded from the Bushfire-Prone Areas Hazard Code. If the code seeks to "reduce risks to human life and property", surely residential use is high on the list of priorities. Similarly, with the Landslip Hazard Code, any report required should be done at Planning stage to save time and money for applicants. Otherwise, there is a risk that they may not have a valid Planning Permit, and another application may then be necessary.

A number of useful additions to the Provisions could be considered such as a broadening of residential development models that the Provisions consider, allowing for a greater diversity of dwelling types and better utilisation of land and infrastructure.

If the SPP's have been drafted by professionals with a high level of planning experience and expertise, the intent of the SPP's may be considered questionable, as they do not appear fit for purpose to deliver a sustainable, orderly, or fair planning system.
I suggest that the Minister may wish to consider whom the State Planning Provisions serve. as they do not appear to serve the community of Tasmania, now, or into the future.

Yours,
Mary McNeill

From:	Robyn Bishop
To:	State Planning Office Shared Mailbox
Subject:	State planning scheme
Date:	Saturday, 13 August 2022 9:29:21 PM

The new planning scheme overall has a lot of merit. Having a scheme that works across every municipality benefits land owners and real estate sales greatly.
However, the application of zones is done in an inequitable and unethical manner, totally overlooking the rights of land owners and without any consultation with them.
For many property owners in Tasmania, the new zoning was finalized without them even being aware of the changes. This applies to many different zones but particularly difficult is the new Landscape Conservation zone.

Landscape Conservation zoning restrictions on property owners is having a huge impact financially and has greatly restricted their rights to use their land for the purpose they intended.
Landscape Conservation zoning should only be applied with the written consent of the property owner and should not have a discretionary use for building.

At a time when housing has become critical in our state, one would hope our government would be implementing plans to make things easier for construction, the new Landscape Conservation zone, not only restricts land use but puts extra council charges on top of an already outrageously expensive approval process.
I

I hope you will take these issues into consideration in your review process.

Yours truly
Christina Bishop
Nicholls Rivulet

From: Dom Fowler
To: State Planning Office Your Say
Subject: State Planning Provision
Date: Sunday, 14 August 2022 8:59:52 PM

Hi State Government,

I refer to Section 8A Guideline No 1 - Local Provision Schedule (LPS) zone and code application guidelines [1] provided by the Tasmania Planning Commission (TPC) which states under the zone application guidelines on page 20:

"The Landscape Conservation Zone is not a replacement zone for the Environmental Living Zone in interim planning schemes. There are key policy differences between the two zones. The Landscape Conservation Zone is not a large lot residential zone, in areas characterised by native vegetation cover and other landscape values. Instead, the Landscape Conservation Zone provides a clear priority for the protection of landscape values and for complementary use or development, with residential use largely being discretionary."

Landscape Conservation Zone (LCZ) is an optional zoning under State Government guidelines. The way that LCZ has been applied by Kingborough Council to thousands of properties in the Kingborough region in the draft LPS is clearly NOT a part of the Government process. This discretionary application of LCZ by council is expected to cause a high level of harm and distress to a large proportion of Kingborough residents (many of whom are blissfully unaware due to the lack of communication) in terms of property devaluations, potential financing/refinancing issues, new restrictions, and national parks style zoning applied to private land - to name a few. It is not like for like rezoning – it's not even close.

With the above in mind – I have two questions/requests.

1. As a matter of priority, I'm asking the Tasmanian State Planning Office to immediately withdraw the application of LCZ to privately owned land – unless the landholder has specifically requested it be applied. Councils have taken an inconsistent scattergun approach in recommending LCZ with blatant disregard for the devastating impacts it will have on landowners. The Tasmanian State Planning Office has an obligation to rectify this wrong.

2. If the State Government is not prepared to take the proactive action of withdrawing and correcting the inappropriate and detrimental application of LCZ in the LPS whilst it's in a draft state, I'd like to hear the reasons WHY. Does the State Government think it's fair and appropriate to allow the incorrect draft to run its course with the TPC therefore placing the onerous task of protecting our fundamental property rights back on to individual residents during the public consultation process? If the answer is yes, you are expecting residents to spend hours of their own time on research and submissions, plus wear the potential costs associated with engaging planners, engineers etc to support submissions to defend our properties. This expectation is nothing short of outrageous and could

be avoided if the Government were to take proactive steps to correct its disastrous and negligent recommendations of LCZ saving residents stress, time, and money. The question is - will you?

Regards,
Dom Fowler

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[1] https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

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Best Regards

Dom Fowler

a'ranger job
[redacted]

Department of Communities Tasmania

GPO Box 65, HOBART TAS 7001 Australia
Ph: 1300 135 513
Web: www.communities.tas.gov.au

Contact: [redacted]
Phone:
E-mail:

The Hon. Deputy Premier Ferguson MP
Minister for Planning

Michael.Ferguson@parliament.tas.gov.au

Dear Deputy Premier Premier

Subject: State Planning Provisions Review Scoping Paper – Response

I refer to your letter dated the 25 May 2022 regarding the Scoping the State Planning Provisions Review – Have Your Say.

The Department of Communities Tasmania welcomes the opportunity to participate in the review of the State Planning Provisions and notes the work program commenced to date by the State Planning Office, including the Review of Tasmania's Residential Development Standards Issues Paper (May 2022).

Tasmania's Affordable Housing Strategy 2015-2025 identifies the need to provide affordable housing for low to moderate income Tasmanians. Increasing the supply of housing options for those on the Housing Register is a key element of the Affordable Housing Action Plan 2 (AHAP2).

The Department, on behalf of the Director of Housing, has identified key themes for review:

- Reducing the car parking requirements for social and affordable housing developments;
- Changing the use category for visitor accommodation in residential zones from permitted to discretionary;
- Updated mapping to inform the application of the priority vegetation overlay;
- Accurate flood risk mapping included as an overlay for ease of accessibility;
- Prioritisation of social and affordable housing in residential zones by considering increased densities and heights for these developments;
- Future work to consider the inclusion of performance criteria to allow the piping of waterways minimising adverse impacts on natural assets where there is social benefit provided.

The Department would also like to note that numerous changes from the Interim Planning Schemes have supported the work of the Director of Housing including lower minimum site area per dwelling where a social benefit is provided in the General Residential Zone, and the inclusion of assisted housing in the Residential Use Class.

Should you require any additional information, please do not hesitate to contact [redacted], [redacted], within Communities Tasmania.

Yours sincerely

[redacted]

Michael Pervan
Secretary
12 August 2022

TASRAIL

SAFETY INTEGRITY RESPECT BEING REMARKABLE

State Planning Office
Dept of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Stateplanning@dpac.tas.gov.au

Re: Scoping the State Planning Provisions Review - Consultation

Dear State Planning Office

TasRail welcomes the opportunity to provide a submission to the consultation phase of the '*Scoping the State Planning Provisions Review*" and commends the initiative to undertake the first comprehensive review of the State Planning Provisions **[SPPs]**.

The '*Scoping the State Planning Provisions Review* is timely given a majority of the State's local councils have adopted or are in the final phase of finalising their respective Local Provisions Schemes. This has enabled TasRail to gain a much broader exposure to the practical implementation of the Road and Rail Assets Code. This experience has consolidated TasRail's understanding of the Code and identified opportunities for improving its efficiency and effectiveness.

TasRail acknowledges that since the Road and Rail Assets Code was developed, the legal, regulatory and administrative environment that governs rail operations in Tasmania has changed considerably to the point that many of the elements covered by this Code are not in alignment with Rail Safety National Law **[RSNL]** and the requisites and expectations of the Independent Office of the National Rail Safety Regulator **[ONRSR].**

Accreditation to operate a railway and/or rollingstock in Tasmania and elsewhere in Australia can only be issued by the ONRSR. The ONRSR is responsible for determining if a Rail Infrastructure Manager **[RIM]** or Rollingstock Manager **[RM]** has the capacity and competency to operate demonstrated by the efficacy of its Safety Management System **[SMS].** The SMS covers multiple elements including (but not limited to) technical and operating standards; safety and network operating rules; work instructions, procedures and policies; management of rail crossings with road owners; mandated competencies, training and assessments; incident management and investigation; identification and control of risk and mitigation etc..

The ONRSR is also responsible for oversight of performance and compliance audit of a RIM or RM. Penalties apply for non-compliance.

Other changes that have occurred since the Road and Rail Assets Code was developed have included:

- the establishment of TasRail as a State-Owned Company. TasRail being the Rail Infrastructure Owner (RIO);

- TasRail being the RIM and the Rail Infrastructure Owner (RIO) of the Tasmanian Rail Network in accordance with Part 2 of the *Rail Infrastructure Act 2007 (Tas)*.

- the advent of the *Strategic Infrastructure Corridors (Strategic and Recreational Use) Act (Tas) 2016*. Notably this legislation provides for eligible Tourist and Heritage [T&H] rail operations within a declared Strategic Infrastructure Corridor [SIC]. The eligible T& H rail organisation typically becomes the Corridor Manager for the SIC under arrangements between the Crown but with the T&H Rail operations governed by the same legal and regulatory framework that applies to any other rail operator – i.e. RSNL and ONRSR. It is important to note that a SIC is not part of the Tasmanian Rail Network. The SIC operates outside of, and separate to the Rail Infrastructure Act although many of its provisions are mirrored in the SIC Act. The interested party for planning matters relevant to the SIC is therefore the applicable SIC Manager or T&H rail operator, not TasRail.

- the advent of the Tasmanian Rail Access Framework Policy which operates in parallel with the legislative requirements under RSNL and sets out the responsibilities of TasRail in its capacity as the Below Rail Operator as well as the roles and responsibilities of 3rd party access seekers that will be responsible for their own Above Rail operations. In most cases the Above Rail operator will be accredited as the RM by ONRSR. Under this scenario, it is likely that both TasRail as the RIM for the Tasmanian Rail Network and the 3rd party RM would have interest in the implementation of the Road and Rail Assets Code and other relevant planning matters.

Despite these changes, the overall purpose of the Road and Rail Assets Code as set out in C3.1.1 and C3.1.2 remains valid. It is TasRail's view however, that the content which guides the Code's practical application needs revision to ensure alignment with the contemporary legal and regulatory framework that governs rail operations including ONRSR's rail accreditation expectations and obligations.

For example, it is widely recognised that level crossings present the highest risk exposure to a RIM or RM hence they are a priority focus for TasRail and ONRSR. A number of the legal obligations set out in the RSNL and RSNL Regulations apply equally to public and private road owners as well as the RIM including (but not limited to) an obligation to undertake joint risk assessment of a railway crossing where there is a proposed or actual change in conditions at a level crossing.

The ONRSR preferred risk assessment tool is ALCAM (Australian Level Crossing Assessment Methodology). By contrast, local planning authorities interpret the Road and Rail Assets code as only applying to private level crossings, and/or a reliance on a Traffic Impact Assessment (TIA). TasRail asserts that a TIA is insufficient for the assessment of level crossings as the TIA and the TIA guidelines do not consider railway crossings and do not assess risk.

TasRail recognises the importance of its engagement in the planning process and is currently in the throes of recruiting in-house town planning expertise to bolster its capacity in response to the exponential increase in planning and development activity over the past 18 months.

In the interim, TasRail has prepared the attached table to highlight some of the priority issues it has encountered with the current Road and Rail Assets Code to illustrate what we believe are inconsistencies with RSNL, ONRSR accreditation and other safety and operating parameters.

The table also includes additional requirements TasRail believes would enhance the operation of the Code and result in a more streamlined process for applicants wanting to build on/develop land within 50 metres of a rail corridor.

Should you wish to discuss or clarify the contents of this submission, please don't hesitate to contact me on [redacted] or email [redacted]

TasRail welcomes the opportunity to further discuss and expand on the matters raised in this submission as the '*Scoping the State Planning Provisions Review*' progresses.

Yours sincerely

[redacted]

Jennifer Jarvis
Group Manager – Property & Compliance

Attachment: Summary Issues Table

4.0 Exemptions

Table Reference	Clause	Recommended Amendments/Improvements	Notes
Table 4.2. Stormwater	Clause 4.2.2 Stormwater	Exemption to be expanded to include allowance for stormwater detention basins by, or on, behalf of the Crown, council, rail authority or other State authority.	Stormwater is a significant issue for TasRail with many Councils continuing to rely on legacy installations within the Rail Corridor. TasRail is working with Councils to progressively resolve the issue. From a planning context, TasRail would like to see a referral in cases where 'connect to existing' involves an installation within the Rail Corridor so that TasRail can request confirmation that the existing has capacity to accept the additional oading noting that water poses a significant risk to the safety and integrity of the railway.
	Clause 4.2.5 Vehicle crossings, junctions and level crossings	Amendment to (a) (ii) so that it reads: (ii) in accordance with the written consent of the relevant road and the Rail Infrastructure Manager;	Change will achieve alignment with some of the RSNL obligations that apply to both the RIM and the relevant road manager. Note change of term from rail authority to Rail Infrastructure Manager (RIM). This will also provide for a Tourist and Heritage Rail operator who will be a RIM over a Strategic Infrastructure Corridor.
Table 4.4 Vegetation Removal	Clause 4.4.1	Amendment – insert a new (i) to read: (f) rail safety reasons including the need for train drivers and road users to have good lines of sight in and around the rail network, particularly near level crossings for which AS1742:7 mandates required sighting distances	Change will achieve alignment with RSNL obligations; the Rail Infrastructure Act and AS1742:7 Manual of Uniform Traffic Control Devices/Railway Crossings.
Table 4.6	Clause 4.6.2 Use or development in a road reserve or on public land	This particular clause should specifically exclude State Rail Network land from being considered public land under clause 4.6.2.	State Rail Network land is exclusively for rail operations and activities. It is not public land nor is it available for non-rail activities. This continues to be an area of conflict with Councils and other Community Organisations who consider the rail corridor public land.

Community Zones

- It is important to acknowledge that in accordance with RSNL and its ONRSR approved Rail Safety Accreditation to operate, TasRail is required to identify and control risk. This includes assessment of risks associated with the development and/or use of adjoining land.

- TasRail supports the provision of community and recreational zones and open space zones but is seeking to ensure that such developments consider potential risks associated with these zones and spaces being located next to State Rail Network land. TasRail encourages parties responsible for such developments engage with the railway as early as possible to enable joint risk assessment and identification of appropriate controls which may be as simple as boundary fencing to separate incompatible activities.

- Additionally, the risk assessment process needs to consider access arrangements as part of the design and development approvals phase to minimise potential for unlawful (and unsafe) crossings over the rail tracks are not created. ONRSR Policy upholds that no new level crossings should be constructed. The Policy states that if it is unavoidable that road and railway lines must cross, then grade separation is the most effective option for minimising risks to safety. RSNL requires the RIM and the road owner to undertake ALCAM assessment to identify and control risk that may be triggered by any proposed, actual or planned change in conditions at a level crossing (including private crossings and pedestrian rail crossings).

- With regards the Open Space Zoning which is almost exclusively applied to land in public ownership and used for passive recreation, TasRail is seeking to ensure that through the Tasmanian Planning Scheme, and particularly the SPPs, State Rail Network land is excluded from the definition of public land. This will minimise potential for conflict of the type that has been experienced in recent years as Councils and other organisations and authorities seek to expand networks of recreational pathways and open space areas.

Road and Rail Asset Code

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
C3.0 Road and Railway Assets Code	General	Undertake a general review of the Road and Rail Assets Code with input from road authorities and TasRail and potentially Tourist & Heritage Rail operators who may be operating on declared Strategic Infrastructure Corridors. The review should ensure the Standards are achieving the Objective of the Code and are aligned to Rail Safety National Law and Rail Safety Accreditation Obligations of both Rail Infrastructure Managers (RIM) and Road Owners.	Road owners will include both public roads and private roads. All public roads with level crossings are subject to the requirement for Safety Interface Agreements with the RIM. All private roads with level crossings are subject to licence agreements (Safety Interface Agreements) with the RIM. Compliance audits of safety interface agreements are conducted at least annually by the independent Office of the National Rail Safety Regulator (ONRSR).
	Clause C3.1 Code Purpose	Amendment to C3.1.1 to include level crossings so that it reads: 3.1.1 To protect the safety and efficiency of the road and railway networks including level crossings; and	The RSNL definition of a level crossing includes public, private and pedestrian rail crossings as well as road bridges over a railway, rail bridges over a roadway and a rail siding that may be located alongside a road.
	Clause 3.2 Application of the Code	Amendment of C.3.2.1 so that it reads: (a) Will change the amount of traffic including by the type and number of movements using an existing road crossing or level crossing; (b) Has potential to change the risk profile of a level crossing and requires assessment by the Rail Infrastructure Manager; (c) Will require a new vehicle crossing or junction (d) Involves an application to the rail authority for a new level crossing; (e) Involves a subdivision or habitable building within a road or railway attention area	ONRSR Policy upholds that no new level crossings should be constructed. The Policy states that if it is unavoidable that road and railway lines must cross, then grade separation is the most effective option for minimising risks to safety. RSNL requires the RIM and the road owner to undertake ALCAM assessment to identify and control risk that may be triggered by any proposed, actual or planned change in conditions at a level crossing (including private crossings and pedestrian rail crossings). Note there is no legal right for a road to be constructed over the railway. Any new crossing must be assessed and agreed by TasRail.

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Clause 3.3 Definition of Terms	Undertake a general review of definitions to remove ambiguity and to achieve alignment with contemporary laws and regulations. *Examples* of amendments required include: • Delete future railway. • Delete private level crossing. • Add a new definition for level crossing and adopt the same definition as set out in RSNL • Amend road or railway attenuation area so that (b) reads 'State Rail Network Land' and delete (d). • Add a new definition for 'State Rail Network Land'. • Delete the definition of 'Rail Authority" and replace with a new definition for Rail Infrastructure Manager (RIM). Adopt the same definition of RIM as set out in RSNL • Add a new definition for Strategic Infrastructure Corridor (SIC) Manager and adopt the same definition as applies in the SIC Act 2016. Note • Add a new definition for ALCAM and adopt the industry definition. • Add a new definition for Safety Interface Agreement (SIA) and adopt the same definition as set out in RSNL • Amend the reference used in the definition of traffic impact assessment noting the reference quoted is no longer available. • Add a new definition for RSNL • Add a new definition for the SIC Act • Add a new definition for AS1742:7 being the Australian Standard for uniform traffic devices at Railway Crossings	State Rail Network land is for the exclusive purpose of supporting current and future rail operations. There is no overlay or land title for future railway. The RSNL definition of a level crossing includes public, private and pedestrian rail crossings as well as road bridges over a railway, rail bridges over a roadway and a rail siding that may be located alongside a road. Where Tourist & Heritage Rail operates on a SIC, it must hold ONRSR Rail Safety Accreditation. Under its ONRSR accreditation, the T&H Rail operator will be known as the RIM. TasRail asserts that a TIA alone is insufficient as it rarely identifies or considers railway crossings and it does not specifically assess risk. The objective of a TIA does not satisfy the legal obligation of the RIM as per RSNL. The ONRSR preferred risk assessment tool is ALCAM assessment of a level crossing where a proposed or actual change in conditions is triggered. ALCAM – Australian Level Crossing Assessment Methodology.

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Clause 3.5 Use Standards	Undertake a general review of the Acceptable Solutions and Performance Criteria (in parallel with a general review of C3.3) to achieve alignment with RSNL, ONRSR Rail Safety Accreditation requisites and any other contemporary laws and regulations that apply. This should potentially include a reference to the requirement for TasRail Access or Works Permits and potentially Track Protection Services for access or works State Rail Network land. This is particularly relevant to works at level crossings. TasRail would also like to see the Performance Criteria amended so that in addition to having regard to items (a) to (g), it is necessary to obtain the written advice from the rail and/or road authority is required. It is TasRail's experience that some local planning authorities are requesting written advice from the railway however they are seeking to this before an application will be accepted. This places TasRail in a difficult position of being asked to provide advice outside of the planning process which is problematic because the railway cannot know if what it is being asked to approve is consistent with documents to be submitted with the application; and in many cases TasRail may have issue with other aspects of an application including for example stormwater. TasRail's preference is that the written advice of the railway is sought after the application is received and accepted by the planning authority.	

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Table C3.1 Acceptable increase in annual average daily traffic to and from the site (Total of ingress and egress)	Undertake a general review of the objective of this table and contents to ensure that the focus is broader than road traffic and takes into account obligations for the identification and management of risk at level crossings - being all level crossings as defined by RSNL. It is important that the direction and application of Table 3.1 is aligned to the legal and regulatory obligations of Rail Infrastructure Managers and relevant road owners including as per RSNL and AS1742:7. There will inevitably be differences in the risk appetite and profile for a road versus a railway. For a road owner, an acceptable solution may be capping the increase in average daily traffic. But for a level crossing, RSNL requires joint risk assessment by the RIM and the relevant road owner at any time there is a proposed or actual change in conditions. For example, this could be triggered by an increase in traffic type and volume or the introduction of a single vehicle longer than 5.5m which may necessitate an upgrade in level crossing controls such as an increase in sighting distances or upgrade from passive to active signals. It could also be that the addition of a bike lane or pedestrian crossing has changed the risk profile of a crossing or a combination of changes over time has resulted in the existing crossing not being compliant with AS1742:7. Similarly, if TasRail was to increase the speed or frequency of trains through particular rail crossings this also triggers the need for ALCAM assessment.	The RSNL definition of a level crossing includes public, private and pedestrian rail crossings as well as road bridges over a railway, rail bridges over a roadway and a rail siding that may be located alongside a road. The RSNL compels the RIM and a public road owner to have a safety interface agreement in place for all shared rail/road crossings. The obligation states they must identify the risks to safety, determine measures to minimise the risks so far as is reasonably practical, and seek to enter into a safety interface agreement. Where that fails, they must seek intervention from ONRSR to direct the parties where necessary.

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Clause 3.6 Development Standards for Buildings or Works	Undertake a general review of the acceptable solutions and performance criteria. The reference document listed under A1(c) of the Acceptable Solutions for this Clause is *'Part D of the Noise Measurement Procedures Manual 2nd edition, July 2008'*. TasRail acknowledges that Section 19 of this document covers Railways but it is important to note that the document does not specifically reference train horn noise. This is likely because the EPA accepts the train horn as a safety device. TasRail protocols mandate the train horn be sounded twice per level crossing and at any time a train driver perceives risk. Rail noise complaints are exclusively related to exposure to train horn noise, generally exacerbated by the number and frequency of level crossings in urban areas and the reality that rail freight services operate 24/7 often late at night or early hours of the morning. For this reason TasRail is of the view that Clause 3.6 should include a direct reference to consideration of train horn noise and the inclusion of specific mitigations be considered for the Performance Criteria. TasRail will request train vibration and noise assessments for certain developments in close proximity to the railway – for example sub-division of land for housing. In some cases TasRail has requested Part V Agreements to acknowledge exposure to train horn noise to ensure future owners of habitable buildings are made aware before they purchase and in an effort to minimise potential for future horn related disputes. Similar to Clause 3.5 TasRail's preference is that the written advice of the railway is sought but as part of the planning process and not before the application is received and accepted by the planning authority.	

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Table C3.2 Acceptable noise levels within a road or railway attenuation area	As per TasRail's comments on Clause 3.6 our concern is the referenced noise level for railways is listed at 65 db(a) and 87 dB(a) assessed as a single event maximum sound pressure level. TasRail asserts these levels only apply to train operating noise only and are not representative of train horn emissions which are much higher, albeit for very short durations. TasRail operates a high note horn during regular operating hours but the low note is applied between the hours of 10pm and 6am. Based on the current TasRail locomotive fleet, the measured train horn noise emissions for the high note horn can be as high as 105 dB(a) but the distance. Actual exposure to train horn noise emissions will also vary depending on topography, weather conditions, proximity to other level crossings and general background noise levels which are generally lower during off peak hours. TasRail recommends Table C3.2 be amended to reflect noise level ranges for train operating noise and a separate note acknowledging the train horn is a safety device that is required to be sounded twice per level crossing and at any time a train driver perceives risk. Similar to Clause 3.5 TasRail's preference is that the written advice of the railway is sought but as part of the planning process and not before the application is received and accepted by the planning authority.	

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
	Clause C3.7 Development Standards for Subdivision	Undertake a general review of the acceptable solutions and performance criteria. The Acceptable Solution set out in A1 is sound and supported by TasRail. However, the reality is that many subdivisions are approved within the railway attenuation area. It is recognised that the availability of residential land and housing stock is an issue in Tasmania and TasRail endeavours to accommodate approval of subdivisions but balanced with management of risk. Generally speaking, TasRail seeks to achieve the following for subdivisions within the rail attenuation area: • Acknowledgement that no new level crossing will be approved. Access should be managed via existing crossings or grade separation. • A requirement for physical separation of the subdivision land from the railway, typically with the installation of appropriate fencing. • A Part V Agreement acknowledging that housing lots will be exposed to train horn noise etc • Acknowledgement that stormwater or other run-off cannot be discharged into the rail drainage system or rail corridor. In some cases hydrology modelling may be required to ensure existing stormwater infrastructure has capacity to manage additional stormwater loadings. Similar to Clause 3.5 TasRail's preference is that the written advice of the railway is sought but as part of the planning process and not before the application is received and accepted by the planning authority.	

Table Reference	Clause	Recommended Amendments/Improvements	Additional Notes
LP1.7	Code Overlay Maps	It is TasRail's experience that some local planning authorities did not support or include Code Overlay Maps in Draft Local Provisions Schemes. The requirement for Code Overlay Maps should therefore be reassessed as part of this review. TasRail supports the inclusion of Code Overlay Maps as an informative reference for developers and planning applicants but believes it important to understand the perspective of local planning authorities who may not share this view.	
	LP1.7.2	TasRail suggests that LP1.7.2 (a) (ii) be amended to simply recognise State Rail Network land instead of 'a future railway'. TasRail is not aware of any land being reserved for 'a future railway'.	State Rail Network land is for the exclusive purpose of supporting current and future rail operations. There is no overlay or land title for future railway.

ENDS

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15th August 2022

State Planning Office
Department of Premier and Cabinet
Hobart, Tasmania.

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TASMANIAN STATE PLANNING PROVISIONS REVIEW (SCOPING PAPER STAGE) - SUBMISSION

Dear Madam/Sir,

We thank you for the opportunity to make comment on the Tasmanian Planning Scheme State Planning Provisions Review as provided for through the May 2022 *Tasmanian State Planning Provisions Review Scoping Paper*. This correspondence constitutes Cultural Heritage Practitioners Tasmania's submission on this matter.

Cultural Heritage Practitioners Tasmania is a non-profit group comprising heritage practitioners from a range of disciplines. Formed in 1995, Cultural Heritage Practitioners Tasmania has an expert and long-term perspective on historic heritage management in Tasmania, and an interest in the long-term protection of significant cultural heritage in Tasmania.

Cultural Heritage Practitioners Tasmania (CHPT) has a strong interest in the protection of heritage through legislation and other statutory protections including through the *Land Use and Planning Approvals Act 1993* and related policy and instruments. We made a major submission in 2016 on the then Draft State Planning Provisions.

In making this submission CHPT has largely restricted itself to matters of cultural heritage, which is the organisation's key expertise. In making comment we have used as the key basis:

- The objectives of the *Land Use and Planning Approvals Act 1993*, in particular the objectives of Schedule 1, part 2 (g) which indicates the objective and intent of planning schemes in Tasmania in relation to cultural heritage. [1]
- *The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (The Burra Charter)* (Australia ICOMOS 2013), widely regarded as the standard for heritage practice in Australia.

Having considered the development and operation of the State Planning Provisions, in tandem with the Local Planning Provisions, in relation to cultural heritage, CHPT is of the opinion that the current provisions continue to fail to adequately provide for cultural heritage protection at the local government level in Tasmania. Significant amendment of

[1] The objective of the *Land Use and Planning Approvals Act 1993* in relation to historic heritage is "to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value" (Schedule 1, part 2 (g)). We understand this objective has been retained in the recently amended LUPAA.

the State Planning Provisions will be required to provide for this. The protections for cultural heritage, in particular historic heritage, are inadequate and, taken in the context of the complexity of provisions in the planning scheme generally, are often ambiguous and/or difficult to interpret. The lack of obligation to understand, and take account, of the heritage values of an area subject to a planning matter, is a particular problem for cultural heritage protection. The linkage to Local Provision Schedules, including Particular Purpose Zones and Specific Area Plans, and linkages with various state legislation also require revising to avoid unacceptable impacts to Tasmania's extremely significant and valuable Aboriginal and historic cultural heritage.

In considering statutory planning and heritage protection, it is also important to recognise, as noted in the Australian 2021State of the Environment report, that strong protections at the local level are essential to protect historic heritage from the widespread redevelopment that is occurring in urban, rural and regional areas of Australia. Also, that a key issue in this regard is the general approach of local government planning schemes as a development control aimed at allowing development and new use, rather than environmental and heritage conservation control (McConnell 2021, 83)[2]. This means that providing heritage protection via local government level planning, such as the Tasmanian State Planning Provisions, requires both carefully thought-out planning provisions that can ensure cultural heritage values are identified and are adequately protected in a development context, and also strategic level planning approaches. The increasing impacts from climate change on the natural and cultural heritage, and issues of sustainability, also demand that local government level strategic planning and planning provisions consider these and contain appropriately responsive heritage protective approaches.

CHPT's specific comment on the State Planning Provisions and cultural heritage are provided below. Given that there are a number of cultural heritage issues of concern that were not addressed in finalising the Draft State Planning Provisions, we also refer the State Planning Office to our 2016 submission on the Draft State Planning Provisions.

1 STATE PLANNING PROVISIONS - GENERAL

Protection of heritage, although a clear objective under the *Land Use Planning and Approvals Act 1993*, through Part 2 of Schedule 1, is relatively invisible in the State Planning Provisions, except through the Local Historic Heritage Code (C6). To ensure adequate heritage protections, it is important that cultural heritage, and heritage generally, is more broadly considered. Recommended general amendments to the State Planning Provisions to achieve this include the following:

1. **General Application:** Historic heritage (i.e., historic heritage values) should be treated as an overlay that must be considered in all zones in all new uses and development applications and approvals, including for actions undertaken by the local government authority, regardless of whether they are allowed or discretionary (note – this has implications for Sections 6.7, 6.8 and 6.9 of the State Planning Provisions). The same treatment should also apply to Aboriginal

[2] McConnell, A., Janke, T., Cumpston, Z. & Cresswell, I., 2021, *Heritage, a chapter of the Australia 2021 State of the Environment Report*, Department of Agriculture, Water and the Environment, Canberra, ACT (release date July 2022).

Heritage, Geoheritage and Landscape Character – see recommendations below for additional Codes for these values.

2. **Purpose (2.0)**: Amend 2.1.1 (b) to "making provisions for the use, development, protection and conservation of land and heritage".

3. **Planning Terms & Definitions (3**.1): 1. Add a definition for heritage or definitions for Aboriginal, historic and geo- heritage. 2. Amend the definition of 'environmental harm' to include harm to heritage, or add a new term and definition for 'harm to heritage', and apply it as appropriate (i.e., in similar, relevant contexts to 'environmental harm'). 3. Add a definition of 'landscape'. This term, which is ambiguous, is used widely, but not defined. In CHPT's view the term should apply to landscape and landscape values broadly.

4. **Exemptions (4.0)**: There should be no use, development or other works exemptions in relation to Aboriginal or historic heritage as many of the exempted activities have the potential to cause harm to this heritage. A new 4.0.4 should be added that, similarly to 4.0.3, provides for no development listed in Tables 4.1 - 4.6 to be exempt from the planning scheme if it is to be undertaken in an area of cultural heritage identified in the planning scheme or on a State heritage register, with any development in an area of identified cultural heritage to meet the requirements of the Local Historic Heritage Code and the Aboriginal Heritage Code (if adopted).

5. **Application requirements** (6.1): In relation to 6.1.3 (b), historic (and Aboriginal) heritage values should be included as a new class of information that the planning authority can require in order to enable it to consider an application.

6. **Categorising Use or Development (6.2):**

   1. In Table 6.2 in relation to the Use Class 'Natural and Cultural Values Management', to ensure that the use is genuinely for natural and cultural values management, the Description should be amended to "Use of land to protect, conserve or manage ecological systems, habitat, species, cultural sites or landscapes. This may include track work and maintenance, park management outbuildings and offices, park entry signs, visitor information signs, information and interpretation booths where this does not lead to harm to the natural and cultural values".

   2. CHPT queries the inclusion of a 'Passive Recreation' use class, but the lack of an 'Active Recreation' use class in Table 6.2. Since pedestrian and bicycle tracks and other active recreational infrastructure can cause harm to cultural heritage, CHPT recommends that 'active recreation' be included as an additional use class or the 'passive recreation' use class be revised to a 'recreation' use class that includes both passive and active recreation.

7. **Change of use of a listed heritage place (7.4):**

   1. In clause 7.4.3, to ensure that other heritage that might be potentially impacted is considered, a requirement that the planning authority must have regard to the likely impact of the proposed use on the heritage values of adjacent listed historic heritage should be included.

   2. Also in relation to clause 7.4.3, to improve heritage outcomes and to give planning authorities confidence in the assessments that they must have regard to, in relation to items (a) to (d), the wording should qualify that the documents being considered are competent, by inserting 'competent' after 'any'.

8. **Zoning (7.4):** This submission does not consider the zones and zone provisions in detail. CHPT however recommends:

   1. That all 'zone purposes' for all zones be reviewed and a cultural heritage and/or landscape character conservation purpose be added as relevant and appropriate if it is not already present. This particularly applies to the General, Inner and Low Density Residential, Rural Living, Village, Rural, Landscape Conservation, Major Tourism, Community Purpose, Recreation, Open Space and Future Urban zones. This recommendation is aimed at making cultural heritage and landscape character more evident in the planning scheme. Currently natural and/or general landscape values are included in various purposes, but there is little inclusion of cultural heritage and landscape character.

   2. In relation to the Environmental Management Zone, the Zone Purpose 23.1.2 be amended to include conservation management plans and heritage management plans as well as reserve management plans, as the bulk of recognised cultural heritage is not managed within the state protected area system. The Use Table (23.2) and Standards also need to be amended to reflect this.

   3. In relation to the Environmental Management Zone, the Use Table (23.2) needs to be amended to remove extractive industry, resource development and resource processing from being discretionary, and explicitly add these to the prohibited category, as these functions are inconsistent with the purposes of the zone.

   4. In relation to the Landscape Conservation Zone it is critical that 1. Landscape be defined (see above), and that the cultural landscape values be considered as part of landscape conservation, and this be made explicit.

9. **Local Historic Heritage Code (C6)**: *See comment in next Section below*.

10. **Scenic Landscape Code (C8)**: 1. C8.2.2 - As changed uses can have a significant impact on scenic landscape values, the Code needs to apply to use. 2. C8.4.1 – All current exemptions require removal as all these actions can negatively impact on scenic landscape value, hence are inappropriate.

11. **Addition of an Aboriginal Heritage Code**: Currently there is no explicit linkage between Aboriginal heritage protection through the state legislation (i.e., via the *Aboriginal Heritage Act 1975*) and local government statutory planning, yet significant damage and destruction of Aboriginal heritage occurs, and can occur, through use and development approved at the local government level. Although many local planning authorities request Aboriginal heritage impact evaluations before deciding on a development application, this is rarely a statutory requirement. This often leads to Aboriginal heritage assessments being carried out at the last minute, where there is little opportunity to modify developments to protect Aboriginal heritage, and to a significant financial input being made by the developer by this stage. Adding an Aboriginal Heritage Code will ensure that appropriate and more timely consideration of Aboriginal heritage can be given. It is recommended that the Code be simple, in essence requiring as part of a development application that any land use development applicant 1. carry out an Aboriginal heritage impact assessment as per the requirements of the *Aboriginal Heritage Act 1975;* 2. consult with the relevant Aboriginal representatives to ensure all Aboriginal heritage values are identified and significant values will be protected; and 3. that building and works will not cause an illegal or unacceptable impact on Aboriginal heritage values.

12. **Addition of a Geoheritage Code**: Currently in Tasmania there is no explicit statutory protection for geoheritage (except for some limited industry protection such as through the Forest Practices system), although Tasmania has a wealth of geoheritage (see for example the *Tasmanian Geoconservation Database*) and much of this heritage is at risk from development and use that is subject to local government level planning approvals. Geoheritage is largely invisible and not considered when considering natural heritage, nor is it part of cultural heritage. It therefore needs to be recognised separately where planning protections are needed. Adding a Geoheritage Code will ensure that appropriate consideration of geoheritage is given, thereby allowing the protection of all types of heritage at the same level (i.e., via Codes). CHPT does not offer comment on what the content of a Geoheritage Code might be, but notes that it will need to include lists of geoheritage sites and landscapes, which will need to be populated.
13. **Addition of a Landscape Character Code**: Landscape character is a socially held value of place and its preservation contributes to wellbeing. It also influences the choices people make about where they live. Landscape character does not equate to 'amenity', rather it results from a combination of characteristics of the local landscape including topography, the built environment, the natural elements of an area, and the patterning of these. Although historic attributes can contribute to landscape character, landscape character is not a heritage value. Specific provisions for 'landscape character' to be recognised and preserved where valued therefore need to be included in the State Planning Provisions. Such provisions should not be included in the Heritage Code, or confused with provisions for scenic landscape. A new Landscape Character Code is therefore seen as the most appropriate approach.
14. **LP1.0 Local Provisions Schedule Requirements (LP1.8 Code Lists in Tables):** The way in which Local Historic Heritage is treated in relation to its inclusion in Local Provisions Schedules is variable. Given that these schedules are the only place in which Local Historic Heritage is listed or spatially represented, then all identified local historic heritage (i.e., local heritage places, local heritage precincts, local heritage landscape precincts, and places or precincts of archaeological potential) must be documented in the Local Provisions Schedules. To have this as optional is highly inappropriate. This also applies to LP1.8.1. For the same reason, it is inappropriate to have as optional the inclusion of local heritage places, local heritage precincts, local heritage landscape precincts, and/or places or precincts of archaeological potential in the Local Provisions Schedules. The inclusion of these heritage aspects must be mandatory (see also – 'State Planning Provisions - Other Historic Heritage Considerations'. Below).
15. **State Planning Provisions - Applied, Adopted or Incorporated Documents**: CHPT notes with disappointment that *The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (The Burra Charter)* (Australia ICOMOS, 2013) has not been incorporated into the State Planning Provisions as a guiding document, despite CHPT's recommendation for its incorporation in 2016. To ensure that heritage protection occurs and is to an adequate standard, it is highly desirable that the Australia ICOMOS (2013) *Burra Charter* be included in the State Planning Provisions as a standard for heritage identification, assessment and impact assessments. This will also assist in terminological clarity. This should be an explicitly required standard of practice in the Local Historic Heritage Code.

2 LOCAL HISTORIC HERITAGE CODE

The following highlights key general issues with the Local Historic Heritage Code (C6.0) (the Code). It is not an exhaustive review of the Code as, in CHPT's view, there are a large number of issues with this Code, and in our view the key framework issues need to be addressed before the details of the Code Standards can be properly addressed. Many of these issues were noted in CHPT's 2016 submission on the Draft State Planning Provisions, but were not addressed. This document should be referred to for detail.

1. **General approach**: The Code suffers from a general lack of pertinent definitions, and lack of use of standard heritage definitions, practice and approach. This results in ambiguity and a lack of clarity, which can only lead to inadequate heritage protection, and a failure to meet the relevant objectives of LUPAA. All definitions in the Code need to reflect standard, accepted heritage practice, and use the definitions in the Australia ICOMOS (2013) *Burra Charter* where available, in particular in relation to C6.3. The definitions of 'local historic heritage significance' and 'local heritage place' are of particular concern. Also of concern is that the only living elements routinely recognised in the Standards as having heritage significance are trees, whereas the appropriate terminology is 'plantings' in order to recognise the range of introduced or modified natural elements.
2. **Re C6.1.1**: As noted in the CHPT 2016 submission, the inclusion of 'recognising' heritage in the purpose is extremely important, but the Code fails to address how this will be done. This needs addressing (see also State Planning Provisions - Other Historic Heritage Considerations, below).
3. **Re C6.1.1**: 1. As noted in the CHPT 2016 submission, the inclusion of 'significant trees' in the Local Historic Heritage Code is a poor fit and causes additional confusion, and makes the Code less workable. Plantings that have historic heritage significance can, and should, be included as local heritage places. However, a 'significant trees' as defined in the Code are not historic heritage. Significant trees as currently defined in the Code (as noted in 2016 and still required) need to be given their own separate Code (as has been the case in earlier planning schemes). Also, as noted in 2016 and still required, 'local heritage places' also needs to be modified to provide for the inclusion of archaeological structures (built and landscape) with local heritage significance.
4. **Re C6.2.1**: The heritage category 'place or precinct of archaeological potential' currently only provides for subsurface archaeological remains, and does not include landscape modifications or surface structures, all of which in standard practice are regarded as archaeological remains (we note that there is a definition for 'archaeological evidence which is comprehensive, but this does not appear to apply to any category of heritage in the Code). The category needs to be amended to include the full range of archaeological heritage, and the provisions for this category modified to reflect this; or the currently unrecognised archaeological aspects recognised and provided for as 'local heritage places' (see also above).
5. **Re C6.2.2**: This clause should be removed. If a place is included in a heritage precinct (or heritage landscape precinct) it is included because its relationship to other heritage is important and/or its setting is important in relation to its significance. This must be respected. However, the current clause does not allow for this. The Code overall gives little consideration to the setting of heritage places and this needs addressing.

6. **Re C6.2.3**: This clause should be removed. As noted in State Planning Provisions - Other Historic Heritage Considerations, below, a heritage place or precinct or area of archaeological potential can have both local and state level significance, which may be different, and local level significance is not able to be protected under the *Historic Cultural Heritage Act 1995*.
7. **Re C6.2.4**: The inclusion of this clause is extremely concerning and the clause should be removed, as 1. changed use can adversely impact on the heritage significance of local historic heritage; and 2. particular uses can be part of the heritage significance of local historic heritage.
8. **Re C6.4**: There should be no development exemptions in the Code. The circumstances under which historic heritage may be adversely impacted are highly variable and heritage significance is unique to each heritage place or precinct. It is therefore not possible to identify classes of development (work) that will not adversely impact historic heritage. Almost all exempted development in Table 6.4.1 can result in harm to local historic heritage in particular situations.
9. **Re C6**.5: Use standards are required in the Code – see item 7, above).
10. **Re C6.6**: Although these standards are an improvement on those that were contained in the Draft State Planning Provisions, the standards remain complex, especially the performance-based criteria, and are inadequate for realising the purpose of the Code, hence the objective for cultural heritage protection under LUPAA, Schedule 1, part 2 (g). Further review of the standards is required to ensure they provide for heritage protection for the range of heritage types recognised under the Heritage Code. To the extent possible these should be revised and minimised to provide effective, and simple and easily understood, tests.
11. **Standards**: As part of the review of the Standards, including the development of Use standards, the critical importance of use, setting, views and related places (recognised in the Australia ICOMOS (2013) *Burra Charter* as critical elements of heritage places and/or cultural significance) must be given greater consideration, and significant such aspects must be protected.

3 STATE PLANNING PROVISIONS - OTHER HISTORIC HERITAGE CONSIDERATIONS

1. **Specific Area Plans and cultural heritage**: The recent approval process for the Cambria Specific Area Plan, an area with extensive cultural heritage values, has shown that the identification and adequate protection of cultural heritage values where a Specific Area Plan is developed for purposes other than natural and cultural values protection is poor. Changes to the *Land Use and Planning Approvals Act 1993* (LUPAA) are required to ensure that Specific Area Plans recognise the need for cultural heritage protection, and changes are required to the State Planning Provisions to ensure that cultural heritage protection can be met, and the needs and approaches to this are explicit. This is complex and requires expert consideration.
2. **The treatment of cultural heritage within Local Planning Schedules**: It is essential that all types of heritage recognised in the State Planning Provisions Local Historic Heritage Code (i.e., local heritage places, local heritage precincts, local heritage landscape precincts, and places or precincts of archaeological potential) are included in Local Planning Schedules where such

heritage has been identified. There should be no allowance for planning authorities to choose to not consider any of the recognised types of heritage. Not including all types of recognised heritage enables local planning authorities to ignore local historic heritage values, which means they cannot be protected. In a system where cultural heritage protection is based on identifying and listing recognised types of heritage, it is inconceivable to CHPT that identified heritage can be voluntarily omitted from planning scheme lists.

3. **Identification of Local Historic Heritage**: Related to the above, the ability of the State Planning Provisions to meet the LUPAA objectives in relation to historic heritage is entirely dependent on local historic heritage being identified. There must therefore be an inbuilt obligation in either LUPAA or the State Planning Provisions for planning authorities to undertake identification of local historic heritage and include identified heritage in the planning scheme (presumably in the current system via the Local Planning Schedules) in a timely manner and ensure this is regularly reviewed. If a direct obligation is not able to be built in, then an explicit requirement for proponents to assess the historic heritage values of their application area where there has been no previous comprehensive heritage assessment is an alternative approach, but is less suitable than local area or regional studies as it is difficult to assess the heritage in context where small area assessments are used.

4. **Inclusion of all historic heritage with local heritage values**: As noted in CHPT's 2016 submission on the Draft State Planning Provisions, it is extremely important to include all historic heritage with local heritage significance, even where it is listed on the Tasmanian Heritage Register. This is because heritage places, precincts and cultural landscapes frequently have both local and state level significance; the local and state level values may be quite different, yet the Tasmanian heritage Council is unable to consider local level significance and protect it under the *Historic Cultural Heritage Act 1995*.

4 STATE PLANNING PROVISIONS – REVIEW PROCESS

1. CHPT understands from the May 2022 Scoping Paper that the State Planning Provisions Review scoping process will include the establishment of reference groups and consultative groups to work through aspects that require more detailed consideration. CHPT endorses this approach and suggests that reviewing the cultural heritage provisions will require this approach. In fact, in our 2016 submission on the Draft State Planning Provisions, we recommended that the government review the approach to, and provisions for, heritage prior to finalising the State Planning Provisions using a working group with acknowledged broad based heritage expertise, including long term experience working in local government and a practitioner with planning expertise and experience in heritage matters. This would still seem to be desirable.

CHPT is happy to further discuss our comment, or this matter more generally, if desired.

Yours sincerely,

Anne McConnell

Coordinator
Cultural Heritage Practitioners Tasmania (CHPT)

STATE PLANNING PROVISIONS REVIEW - SCOPING ISSUES
SHELTER TAS SUBMISSION, AUGUST 2022

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SUPPORTED BY

Tasmanian Government

Shelter Tas is supported by the Department of Communities Tasmania.

Shelter Tasmania acknowledges the Traditional Owners of country throughout Tasmania and their continuing connection to the land, sea and community. We pay our respects to them and their cultures, and to elders past and present.

Shelter Tas welcomes and supports people of diverse genders and sexual orientations.

August 2022
By email to yoursay.planning@dpac.tas.gov.au

About Shelter Tas

Shelter Tas is Tasmania's peak body for housing and homelessness services. We are an independent not-for-profit organisation representing the interests of low to moderate income housing consumers, community housing providers and Specialist Homelessness Services across Tasmania. We provide an independent voice on housing rights and a link between governments and the community through consultation, research and policy advice. We work towards a fairer and more just housing system. Our vision is affordable, appropriate, safe and secure housing for all Tasmanians, and an end to homelessness. As a member of the Ministerial Housing Reference Group, Shelter Tas is highly aware of the important connections between the development of the *Tasmanian Housing Strategy* and reforms to Tasmania's planning system.

Our submission

Shelter Tas welcomes the opportunity to respond to the *State Planning Provisions Review scoping paper.* This is an opportunity to make an important difference to Tasmania's planning rules. Good planning is essential to ensure that all Tasmanians can find the homes they need, including facilitating an adequate supply of social and affordable homes. With the current twenty-year *Tasmanian Housing Strategy (2022-2042)* now under development, it is essential to include supporting the construction of social and affordable housing as an urgent priority.

Our Submission recommends that a thorough review of the residential standards is undertaken to ensure that the Tasmanian Planning System can address Tasmania's chronic shortage of social and affordable rental housing in the future.

In Tasmania, as in other parts of Australia, there is a chronic shortage of affordable rental options for people on low and moderate incomes. Tasmania has seen unprecedented growth in both purchase prices and rental prices. Hobart has been Australia's least affordable capital city since 2018, on the standard measure that compares income to rental cost.[1] Hobart has, indeed, been in the top two capitals for unaffordable rentals since the National Rental Affordability Index began in 2015. This chronic lack of affordable rental housing leads to increasing numbers of people experiencing housing stress and

[1] https://www.sgsep.com.au/projects/rental-affordability-index

homelessness across the state. Our planning system needs to play its part in reversing this trend.

Tasmania's housing crisis is not being solved by the current planning approach. The latest report on housing market trends from the University of Tasmania's Housing and Community Research Unit (HACRU) shows that Tasmania's housing market continues to be under extreme pressure.[2] House prices and rents remain high, while the private rental vacancy rate remains very low. Increasing the supply of affordable and social rental housing is essential to meet the housing needs of all Tasmanians, as well as the State Government's economic and social objectives. The planning system needs to clearly identify social and affordable housing and provide a pathway for planners, decision-makers and developers to build more of this type of housing in all suburbs and towns across Tasmania. The residential standards can be updated to encourage and facilitate the construction of social and affordable housing, and to encourage a constructive approach to higher density and inclusionary zoning to meet the community's increasing need for homes.

Tasmania continues to face a critical shortage of affordable rental accommodation. The waiting list for social housing in Tasmania is growing, reflecting increasing demand. In June 2022, over 4 453 Tasmanian households are on the waiting list for social housing. Residential planning standards need to be fit for purpose to alleviate this chronic shortage of safe, secure and affordable homes.

Areas where the State Planning Provisions can better facilitate the delivery of social and affordable housing include:

- Reducing car parking requirements for social/affordable housing developments
- Changing the use category for visitor accommodation in residential zones from permitted to discretionary (enabling local planners to maintain levels of residential housing stock)
- Prioritisation of social/affordable housing in residential zones by considering increased densities and heights for these developments.

As Shelter Tas stated in our submission to the Premier's Economic and Social Recovery Advisory Council (2020) process:

> *The planning system has long needed to adapt to facilitate the timely development of affordable housing. Planning the road to recovery will need to ensure a consistent pipeline of employment and housing supply to keep the economy moving, support our communities and*

[2] https://www.utas.edu.au/__data/assets/pdf_file/0005/1475465/UOTBR210619-Tasmanian-Housing-Update_vFinal.pdf

keep people in jobs. We need to respond quickly by reforming the planning system to ensure continued productivity, investment and community wellbeing.

At present the planning system needs to be modernised to recognise the importance of social housing and treat it as an urgent priority. Recent case studies (which we can supply) show developments have been recommended by local government planning professionals but blocked by elected Councillors. This impedes and slows the building pipeline for much needed social housing, in an environment where housing everyone needs to be a priority for public health as well as people's rights to a safe home.

There are multiple recent cases where local resistance (nimbyism) to the building of new affordable housing and homelessness initiatives presents a significant barrier to new developments. This creates delays, meaning that people are waiting longer for the homes they need, and establishes a 'stop-start' flow of employment for the construction industry. At worst, the backlash means that a proposal is abandoned, and a process of finding another appropriately located site has to start again. Better planning, where expert recommendations are followed rather than overturned by local councillors will enable consistent employment.

As Shelter Tas has long argued in our submissions to the state budget process, the planning system needs to be updated to encourage construction of the social and affordable housing that is greatly needed across Tasmania. In short, there is a need to cut red tape and fast-track assessment processes to boost the construction pipeline and accelerate new affordable social housing projects. This will create and support construction jobs and allow work to continue wherever possible while avoiding constraints and delays that could undermine government investment in much-needed social and affordable housing.

We note that Queensland has a system for approval of public housing developments that does not require development approval from local government.[3] Shelter Tas would be happy to see reforms to the Tasmanian planning system include such a measure for public housing and for social housing, delivered by registered Tier One Community Housing Providers when funded by the Department of Communities.[4]

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[3] Public housing in Queensland is considered 'accepted development' under the Queensland Planning Act and Planning Regulation. As long as the development is in accordance with the planning scheme it does not require development approval from local government. (See Schedule 6 Part 5 of the Planning Act, proposals for public housing are required to be considered against the relevant local government planning scheme at https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2017-0078)
The Director-General, Department of Housing and Public Works, makes a determination about the level of compliance with the relevant planning scheme. When a public housing development proposal is considered 'substantially inconsistent with the relevant planning scheme', DHPW will publish notification online and in relevant newspapers, and notify adjoining landowners. Following the end of the public notification, the Director-General will have regard to any submissions received when deciding whether or not to proceed with the proposed development. (see https://www.yoursayhpw.engagementhq.com/public-housing-developments)
Information sourced from Queensland Shelter.

[4] https://sheltertas.org.au/wp-content/uploads/2020/06/Shelter-Tas-Response-to-PESRAC_June2020_FINAL.pdf

Thank you for the opportunity to contribute to the consultation on the *State Planning Provisions Review.* Planning for social and affordable housing within the residential standards is essential for good housing outcomes for all Tasmanians.

Please note our 2021 submission to the Tasmanian Planning Policies is available at https://sheltertas.org.au/wp-content/uploads/2021/10/ShelterTasSub_TPP-scoping-paperF.docx.pdf.

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