

Tasman Council
 1713 Nubeena Road
 Nubeena

Council Staff Representation – draft Tasman Local Provisions Schedule (LPS)

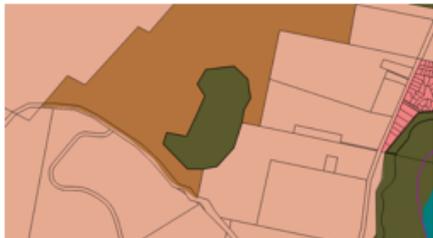
This representation addresses:

- Part A - Errors and omissions in the draft LPS;
- Part B - The directions of the Tasmanian Planning Commission (TPC) to modify the draft LPS prior to exhibition;
- Part C – Concerns with provisions contained or missing from the SPPs.

Part A – Inconsistencies and omissions in the draft LPS

1. Zoning of isolated Crown parcels

There are a number of small Crown parcels through the municipal area, which are typically quarry or water reserves. The TPC directions to modify the draft LPS required some, but not all, of such parcels to not be spotted zone, including the following.

7.35	<p>Land adjacent to 180 Coal Mine Road (240468/1), Sloping Main.</p> 	<p>Revise the zoning of folio of the Register 240468/1 to Rural.</p> <p><i>Reason: To apply the zones consistent with Guideline No. 1 (RZ 1).</i></p>
------	----------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------

For consistency, it is requested that the following be including in the rural zone:

- **Title (with no PID or CT) surrounded by PID 2302547 and owned by Sustainable Timbers Tasmania**

2. Refugia Overlay

The exhibited overlay map is inconsistent with the associated spatial data set and substantially more areas included in the overlay. This overlay map does not comply with the Guidelines as a result.

It is requested that the overlay be reduced in extent to match the spatial data set.

3. Inconsistent High Water Mark Boundary in State Government Data

There are substantial inconsistencies across the State Government supplies overlays for waterways, coastal erosion and coastal inundation, as outlined in the following images.

It is requested that the Tasmanian Planning Commission align these overlays.

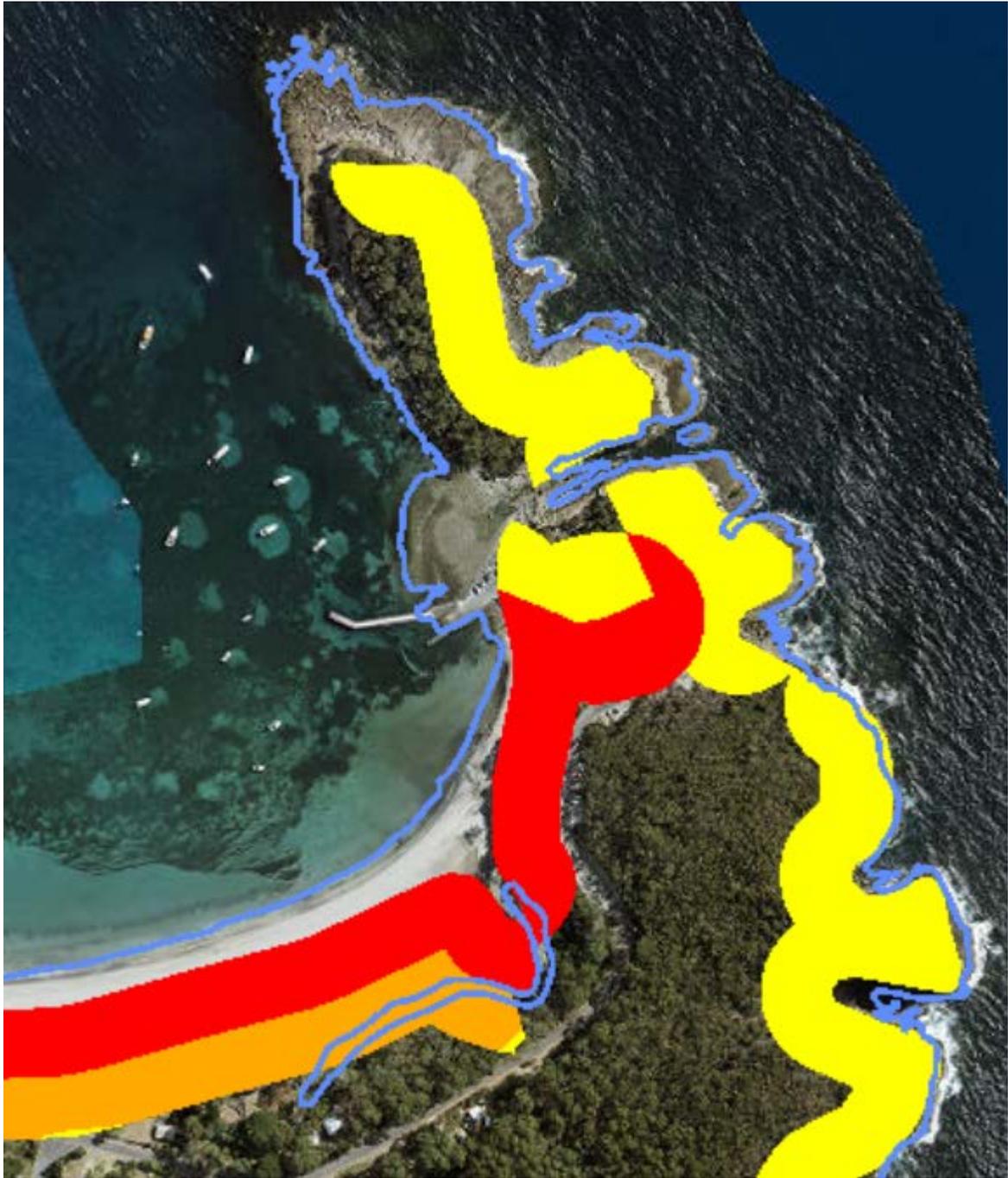


Figure 1. Coastline (Blue) and Erosion Overlay. Note erosion overlay is setback from the coastline.

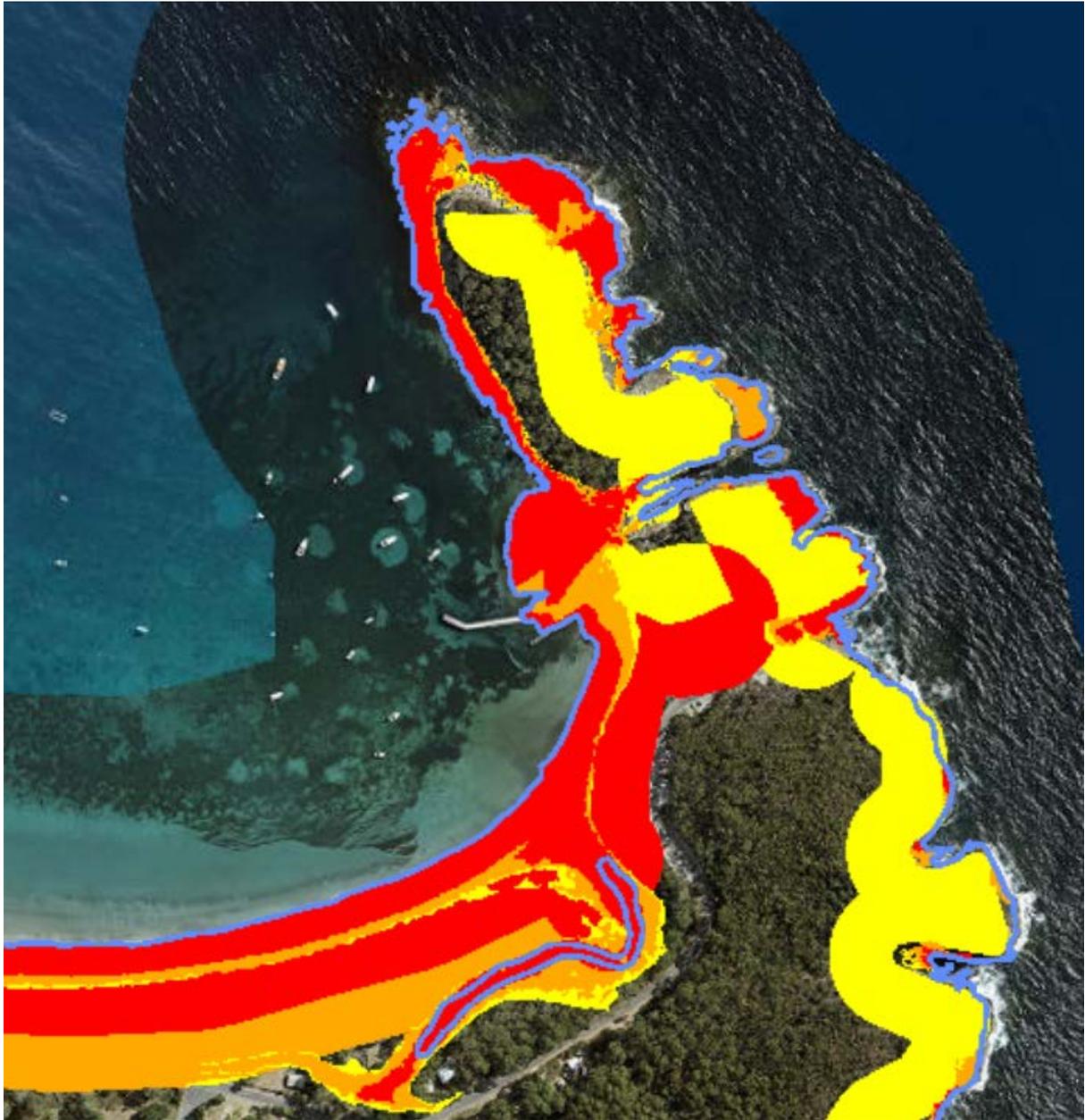


Figure 2. Coastline (Blue), Erosion Overlay and Inundation Overlay. Note, inundation overlay is to the coastline.

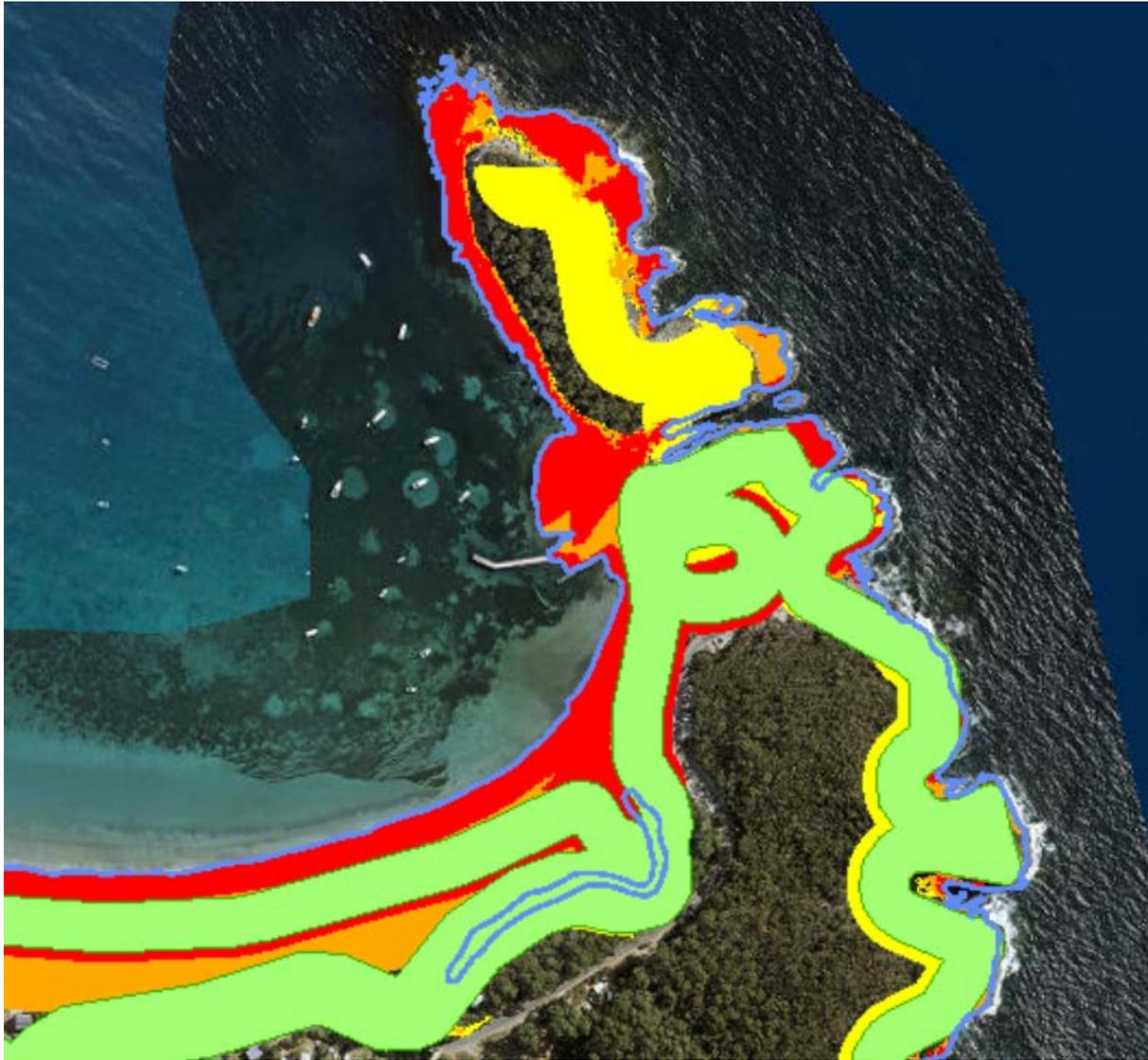


Figure 3. Coastline (Blue), Waterway and Coastal Protection Overlay (Green), Erosion Overlay and Inundation Overlay. Note, waterway overlay is setback in from coastline.

4. Out of Date Waterway and Coastal Protection Overlay

The dataset specified for the waterway overlay is not the most current or most accurate. The image below shows the required dataset (green) against the LISTmap hydrographic lines.



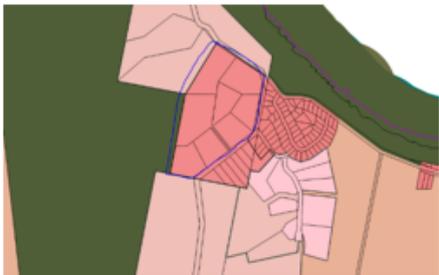
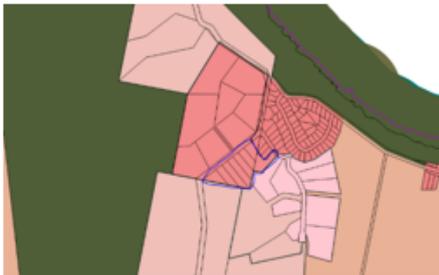
Figure 4. Inconsistent waterway spatial data. Overlay in Green. More accurate hydroline in blue.

It is requested that the Tasmanian Planning Commission produce a revised waterway overlay dataset based on the most accurate information available.

Part B - The directions of the Tasmanian Planning Commission (TPC) to modify the draft LPS prior to exhibition

1. Eaglehawk Neck Zoning

The TPC provided the following direction:

No.	Description	Direction and Reason
7.1	<p>178 Blowhole Road (FR 11988/8) and 4 Waterfall Bay Road (FR 11988/7), 16 Waterfall Bay Road FR (11988/6), 30 Waterfall Bay Road (FR 11988/5), 32 Waterfall Bay Road (FR 11988/4), 34 Waterfall Bay Road (FR 11988/3), 42 Waterfall Bay Road (FR 11988/2) and 46 Waterfall Bay Road (FR 11988/1), Eaglehawk Neck</p> 	<p>Revise the zoning of folios of the Register 11988/8, 11988/7, 11988/6, 11988/5, 11988/4, 11988/3, 11988/2 and 11988/1 to Rural Living A.</p> <p><i>Reason: To be, as far as practicable, consistent with the regional land use strategy and the zone application guidelines (RLZ 1 (a) and RLZ 3 (a)).</i></p>
7.2	<p>31 Waterfall Bay Road (FR 9258/1), 33 Waterfall Bay Road (FR 9258/2), 37 Waterfall Bay Road (FR 9258/3), 39 Waterfall Bay Road (FR 9258/4), 41 Waterfall Bay Road (FR 9258/5), 43 Waterfall Bay Road (FR 9258/6), 47 Waterfall Bay Road (FR 9258/7), and 9 Olsons Road (FR 140643/4), Eaglehawk Neck</p> 	<p>Revise the zoning of folios of the Register 9258/1, 9258/2, 9258/3, 9258/4, 9258/5, 9258/6, 9258/7, and 140643/4 to Rural Living A.</p> <p><i>Reason: To be, as far as practicable, consistent with the regional land use strategy and the zone application guidelines (RLZ 1 (a) and RLZ 3 (a)).</i></p>

A substantial amount of evidence was provided to the TPC that demonstrated compliance with the STRLUS growth management strategies (irrespective of how the strategies may be interpreted). It is considered that the direction is incorrect, however, the absence of detail makes it difficult to precisely say how the direction is incorrect.

It is considered that 9258/1-7 (inclusive), 140643/4, and 11988/1-8 (inclusive) be included in the Low Density Residential Zone.

2. Zoning of jetties and accretions

The interim planning scheme applies the Environmental Management Zone to 200m beyond high water mark. The draft LPS must not zone State Water other than in specific purposes, but this decision was made late in the process and consequentially the draft LPS required modification to remove zoning from waters. The Directions required that only three areas of water be zoned (Nubeena Jetty, Blowhole Road Jetty and Tassal shore base at Roaring Beach Road). However the intent was that existing jetties would be zoned as well using lease boundaries.

It is considered that a consistent zoning approach is taken to existing jetties and accretions and that either all, or none, are zoned.

Part C - Concerns with provisions contained or missing from the SPPs

1. Road connectivity in bushfire-prone areas

Subdivision standards in the SPPs inadequately deal with the issue of road connectivity. This is because such tests are contained within a performance criteria which only applies if a new road is proposed. If no road is proposed (but should be) the acceptable solution is satisfied.

Because the threshold question of should a new road be provided or not is not addressed in the SPPs, the test at section 85(d) of *Local Government (Building and Miscellaneous Provisions) Act 1993* apply. It is considered that this however should be included in the planning scheme.

It is notable that the road design standard of the interim planning scheme has a criteria for multiple escape routes in a bushfire-prone area is not carried forward to the SPPs as either a zone or code Standard. This clause has been problematic to apply as accredited bushfire hazard practitioners have not been required to consider it. It creates a challenging position where a PA has a report stating that a site is sufficiently protected from bushfire risk, notwithstanding opportunities to provide a higher standard of safety through connectivity. It is submitted that there is a gap in the scheme by failing to consider the need for road connectivity, particularly in a bushfire-prone area.

2. Wastewater

The omission of wastewater is considered a significant gap. The specific area plan included in the draft LPS is a partial response to this issue and utilises the planning system to ensure that wastewater is factored into the design process.

A simple and effective SPP provision would be to expand the performance criteria for site coverage the Low Density Residential such that criteria b) read “the capacity of the site to absorb runoff **and manage wastewater**”. Site coverage is a relevant clause as a greater proportion of built form on a lot the greater the design challenge of managing wastewater. This is directly link to the greater risk of failure or inadequate design. The clause would be a head of power to require detail if necessary.

Alternatively, LUPPA could be amended to expand the TasWater and Tasmanian Heritage Council referral mechanism to the Stormwater Service Provider and the Council Environmental Health Officer for onsite wastewater applications. This would formalise existing practice and provide a more streamlined and integrated development system.

3. Exemption for front fences

Under the SPPs, front fences are exempt subject to height and transparency standards. There is an exception to the exemption if for a heritage listed place.

The exception to the exemption for heritage listed sites should be expanded to any content in a local provisions scheme that regulations fencing and that would require a permit for the development of the fence proposed. This could enable particularly streetscape qualities to be regulated. For instance, there could be a mechanism, such as a specific area plan, to apply a no front fences acceptable solutions to areas characterised by the absence of front fencing. This may be appropriate for some shack settlements or other areas with an established pattern is for no front fencing.

4. Fencing in the Rural Zone or Agriculture Zone

The exemption does not address, by way of a limitation, new fencing that requires the removal of native vegetation. As it reads, a person could rightfully remove vegetation in the processes of establishing fencing. There is an exemption for vegetation clearance associated with fencing a boundary however this exemption applies irrespective of the boundary. As drafted, the exemption is open to misuse.

5. Exemption for roadworks (4.2.4)

There is an exemption for maintenance and repair of roads which may extend up to 3m outside the road reserve including the replacement of bridges in the same or adjacent position. Subject to the width of a road reserve in any one location, it will generally not be possible to place a new bridge adjacent to an existing bridge and still be within 3m of the road reserve. This provision does not appear to be workable. Is the intent of the exemption to allow a Road Authority to first acquire a larger road reservation and then obtain the exemption or is the exemption limited to the road reservation at the effective date of the LPS?

6. Exemptions for vehicle crossings (4.2.5)

The exemption is not adequately linked to the provisions of the Road and Rail Asset Code. As one hand, a new vehicle crossing is exempt. On the other hand, clause C3.2.1 states that the Road and Railway Assets Code applies to new vehicle crossings.

One could expect road authorities to apply the exemption in varied manners leading to inconsistencies and confusion. Some road authorities could also refuse to grant authority prior to a planning permit being issued.

The exemption should be reduced in scope to vehicle crossings that demonstrate compliance with the Road and Railway Assets Code.

7. Natural Asset Code

LGAT and Meander Valley Council in their representation on the draft Meander Valley LPS, identified that the inability to measure many of the terms in the Natural Assets Code, mean that the Code is unworkable. This view is supported

The exclusion of the priority vegetation area from the Agriculture Zone is not supported.

This exclusion does not support agriculture as clearing for agricultural purposes is regulated by the Forest Practices Authority. What the exclusion means is that clearing for non-agricultural purposes is not regulated at all. This will have an impact on agricultural uses by preferencing non-agriculture use for spatially and financially, unless the purpose is to create the potential to game the system. That is, it will be simple to remove vegetation for non-agricultural purposes that would not be capable of being approved by the Forest Practices Authority. All land uses should have a level playing field in terms of regulatory requirements.

8. Scenic Protection Code

The draft LPS does not apply Scenic Protection Areas. Council intends to undertake a review of scenic landscapes as a standalone project following completion of the LPS task.

Tasman Council contains a rich and diverse array of landscape values; from forested coastlines, ridgelines and rural settings that display the influence of convict and post-convict agricultural use and which have evolved to be of significance to owners and visitors.

In its current form the Scenic Protection Code will be ineffectual in protecting scenic qualities once identified and codified by Council. As such, Council will look to Specific Area Plan mechanism for implementation. This is not ideal and the Scenic Protection Code should be thoroughly revised.

9. Mapping of hazards, potentially contaminated land and attenuation areas

The draft LPS does not include overlays for flood hazard, potentially contaminated land or attenuation buffers.

The Flood Prone Areas Code and the Potentially Contaminated Land Code can apply either based on a mapped overlay or where the hazard is known to apply if not mapped. The Attenuation Code applies based on proximity to listed land uses, but could also apply by a mapped overlay.

The difficulty of mapping potentially contaminated land and attenuation areas is a lack of certainty as to the extent of the hazard and a lack of permanency as the extent of the hazard will change overtime. For instance, attenuation buffers change based on the intensity and specific nature of the activity.

The SPPs emphasis mapping. If hazards are mapped owners, or future owners, in their due diligence could be led to understand that the absence of mapping means the absence of an issue. This is not the case. Planning Authorities require extensive detail to accurately map a hazard on the overlay.

There have been instances under the interim planning scheme where mapped hazard overlays have proved to be inaccurate, with investment decisions made to acquire land shown to be free of a hazard when in fact this is not the case.

The EPA publishes to LISTmap all of its level 2 sites. This assists in due diligence.

There is no consistent method available for Council's to disclose their own internal information to interested parties.

A mechanism should exist, within or outside the SPPs, to map likely or suspected hazard areas. This could involve an overlay within the LPS or regularly updated to LISTmap that shows both known and suspected areas of potentially land contamination, flooding or attenuation buffers.

10. Low Density Residential Zone Setback

The LPS provides significantly larger front and side setbacks compared to the interim planning scheme. With an acceptable solution for side setback of 5m, there will be an increase in the number of applications that require a variation.

A 10m setback is provided for the Rural Living Zone at a 1ha minimum lot size. To apply a 5m setback in a zone where the minimum lot size is one-sixth the size is not reasonable.

A staggered side and rear boundary setback is considered appropriate such that:

- 1.5m if less than 1200m²,
- 3m if between 1200 and 2500m²,
- 5m otherwise.

11. Low Density Residential Zone Use Table

General retail and hire is limited to a local shop only. This precludes tourism related retail or hire use which is concerning given the structure of the local economy. The General retail and hire use class should be qualified by a maximum floor area as opposed to the limitation to local shop only.

12. Access to a dwelling from a Crown reserved road.

The SPPs include the following standard which prohibits access from a Crown road reserve. This is not supported by Council. It represents a substantial, and unjustified, policy change to preclude access licences over Crown road reserves. It will force owners to purchase Crown land

20.4.3 Access for new dwellings

Objective:	That new dwellings have appropriate vehicular access to a road maintained by a road authority.	
Acceptable Solutions		Performance Criteria
<p>A1 New dwellings must be located on lots that have frontage with access to a road maintained by a road authority.</p>	<p>P1 New dwellings must have legal access, by right of carriageway, to a road maintained by a road authority that is appropriate, having regard to:</p> <ul style="list-style-type: none"> (a) the number of users of the access; (b) the length of the access; (c) the suitability of the access for use by the occupants of the dwelling; (d) the suitability of the access for emergency services vehicles; (e) the topography of the site; (f) the construction and maintenance of the access; (g) the construction, maintenance and usage of the road; and (h) any advice from a road authority. 	

13. Siting and Scale of Outbuildings

It is considered important that the SPPs include provisions similar to the interim planning scheme that given consideration to particularly large or high outbuildings in residential environments.

14. Lack of public open space design considerations

The omission within the SPPs of criteria with respect to public open space is concerning. Planning Authorities will be forced to utilise the provisions in the *Local Government (Building and Miscellaneous Provisions Act) 1993* notwithstanding relatively recent changes to that act to allow for a planning scheme to override. The back to the future basis of this omission is confusing and will not lead to better outcomes or simpler processes.

15. Agriculture Zone house excision and visitor accommodation excision

Council does not support the excision of existing visitor accommodation and dwellings in the Agriculture Zone. There is a distinct lack of any policy position behind this provision that provides any justification for the clause or any consideration of its potential impacts.

Agricultural and rural land across the municipality is fragmented.

The provisions allow an existing house or visitor accommodation use to be separated from the balance of the land subject to a perpetual prohibition on a new dwelling on the balance. Rather than protecting agricultural land and agriculture use it may significant impact it. A house on an agricultural site is often necessary for there to be any agricultural use. With a fragmented land base, farming the balance 'off-site' may not be viable. Without the capacity to invest in a dwelling there may be a disincentive to invest in agricultural use. Moreover,

visitor accommodation in these zones is appropriate to diversify income streams in support of agricultural use. Separating such visitor accommodation use is illogical.

The provision may be appropriate in some regions in Tasmania, but not where the original granting of land produced what is now a fragmented land pattern.

16. Exemptions – Generally

The Exemptions, or at least the majority of exemptions, be:

- Contained in a self-executing section of the planning scheme
- Wherever possible, be aligned with Building Act 2016 exemptions.

Many could and should be entirely self-executing and express in the following form:

Rain water tanks	Exempt if, (a) ... (b) ...	Permitted if, (a) ... (b) ...	Otherwise discretionary and assessed having regard to: (a) ... (b) ...
------------------	----------------------------------	-------------------------------------	------------------------------------------------------------------------------

These reason for this is that some discrete activities in the exemptions can lack directly relevant use or development standards that can inform the exercise of discretion when the exemption does not apply. For instance, it is not clear how a non-exempt heat pump or air conditioning unit would be assessed in a zone without any relevant standard.

17. Number of signs per frontage

Table C1.6 allows 1 ground based sign per 20m of frontage. C1.6.1 A3 (d) allows six signs per business if the frontage is more than 20m in length. This clause is not reasonable for Rural Zone or Agriculture Zone.

18. Car parking for Food Services

The car parking requirement for a café is 15 spaces for each 100m² of floor area or 1 space per three seats. The requirement provides a base number of 15 spaces for a new café irrespective of its scale. For a restaurant, the ratio is one space for 15m² which is far more reasonable. The difference for a small, 60m² café is four spaces versus 15 spaces. The terms café and restaurant are not defined in the planning scheme. Whilst it would seem that the SPPs are drafted to have a distinct meaning between the two, the common meaning is interchangeable.

19. Table C2.2 Internal Access Way Widths

The widths specified for access ways are inconsistent with the bushfire requirements and with the Australian standards. For uses that require 1 to 5 spaces, the passing bay width is not actually wide enough for two vehicles to pass. The table applies to internal access ways but specifies dimensions from the carriageway (and outside the property).

20. Demolition in the Heritage Code

Clause P1 (h) of C6.6.1 Demolition has regard to “any economic considerations”.

This terminology is very broad and all encompassing and far beyond the “no prudent and feasible alternatives” and would require consideration of the economic costs and benefit of the demolition. Economic considerations are not the financial considerations of the application. Expanding the test beyond a “no prudent and feasible alternatives” substantially adds to the scope and cost of assessment at the expense of a relatively narrow assessment whereby demolition should not occur if there is a prudent and feasible alternative.