

Opinion of the Tasmanian Planning Commission

Section 35G(2) of the Land Use Planning and Approvals Act 1993

Content of the SPPs – C7.0 Natural Assets Code – clauses C7.3, C7.6.2 and C7.7.2

Notice of advice from the Meander Valley Planning Authority

Opinion summary

- i. There is some merit in the reasons contained in the notice issued by the Meander Valley Planning Authority (MVPA Notice) that the provisions of C7.6.2 and C7.7.2 of the Natural Assets Code should be altered.
- ii. While the rationale for a proposed alteration to the SPPs is generally supported, any change to the SPPs requires consideration of the planning outcomes sought to be achieved by the inclusion of standards for the clearance of native vegetation for development, or subdivision purposes, within a priority vegetation area.
- iii. The MVPA notice proposes alternative C7.6.2 and C7.7.2 standards. The planning policy and outcome sought to be achieved by the alternative standards, reflects an approach different to the approach contained in the current provisions.
- iv. The MVPA approach might be characterised as ‘species protection and management’ approach to the clearance of priority vegetation, whereas the existing provisions might be characterised as a ‘development purpose and impacts management’ approach.
- v. Different planning policy purposes and outcomes are inherent in the two approaches.
- vi. Resolution of planning policy is not currently a matter for the Commission but there is merit in the further consideration of the policy matters raised in the MVPA notice.
- vii. However if it is intended that the current ‘development purpose and impacts management approach’ contained in the current standards is to be retained, the drafting of the provisions should be reviewed. The review should consider the achievement of greater consistency, between the code purposes related to priority vegetation and minimising the clearance of significant habitat (C7.1.4 and C7.1.5), the objective of the standards, and the performance criteria in the standards.
- viii. Further the language used to establish and enable discretionary decision making should be reviewed to ensure that the standard objectives and performance criteria that are to be taken into account in that decision making, include consideration of the best available quantitative scientific and ecological advice or opinion on the impacts on species (both flora and fauna) of the clearance of native vegetation within a priority vegetation area.

Background

1. Section 35G(1) of the *Land Use Planning and Approvals Act 1993* (the Act) enables a planning authority by notice, having considered representations made in relation to its draft LPS, to advise the Tasmanian Planning Commission (the Commission) of the authority's opinion that the content of the SPPs should be altered.
2. Section 35G(2) requires the Commission to consider the advice and if it considers that the advice has merit, provide that advice to the Minister together with the Commission's opinion in relation to the advice.
3. Following consideration of the representations in relation to its draft LPS, the MVPA provided a section 35G notice of advice to the Commission on 10 April 2019. That advice dealt with two matters - that provisions in clause 4 of the SPPs - Exemptions, and provisions in C7.0 the Natural Assets Code (the Code), should be altered.
4. This Opinion concerns the content of the notice in relation to the C7.0 Natural Assets Code – provisions for native vegetation clearance and subdivision within the priority vegetation area.

The MVPA notice and the issues

5. The principal representation was from the MVPA with a supporting representation from the Local Government Association of Tasmania (LGAT), and mention is made of the issue in the representation from the Tasmanian Environment Association (TEA).
6. A copy of the complete MVPA notice is at Attachment 5.
7. The opinion of the MVPA as outlined in the notice is that the following provisions of the code should be altered –
 - C7.3 Definition of terms
 - C7.6.2 Clearance within a priority vegetation area
 - C7.7.2 Subdivision within a priority vegetation area
8. The notice (at page 3) provides a summary of the key issues drawn from the representations. Although listed in dot point form in the notice, the key issues are listed for convenience by number below. It is submitted by MVPA that the SPPs as written –
 - (1) fail the objectives of the Act to maintain ecological processes and genetic diversity;
 - (2) fail to deliver its stated code purpose to '*minimise impacts on identified priority vegetation*' and '*to manage impacts on threatened fauna species, by minimizing clearance of significant habitat*';
 - (3) fail to implement a cogent division of responsibility between agencies charged with the responsibility of regulating the management of native vegetation through the interaction between the Forest Practices System and the planning scheme and does not account for the different overarching objectives of scale, the land use practices under each system or a hierarchy of controls;
 - (4) fail to outline clear responsibilities and expectations for land owners and developers so that in proposing land use and development, it is understood what the code purpose of 'minimising impacts' and 'minimising clearance' actually means. In particular, there is no foundation in data or scientific practice to determine what "unreasonable loss of priority vegetation", the fundamental premise for the operation of Section C7.6.2, actually is. Section C7.6.2 is inoperable, as it is without meaning and has no prospect of measurement.

This will inevitably end in confused, inconsistent and inconclusive administration of the planning scheme provision.

9. While the notice canvasses a number of matters in relation to the priority vegetation provisions of the Code, the proposed alterations focus on the matters outlined in (4) above.
10. Attachment 1 sets out the current SPP provisions and the difficulties with their application, as drawn from the MVPA notice.
11. Attachment 2 sets out the alterations proposed by the MVPA to the SPPs provisions with MVPA comments on the changes.
12. Attachment 3 is an extract from a critical analysis on interpretation and application difficulties with the current NAC provisions prepared by Mr Patrick Earle a senior experienced local government planner.

Commission process and consultations

Process

13. Section 35G(2) of the Act is silent on any process for the Commission to follow in the formation of its opinion on the merit or otherwise of a planning authority's notice. The Commission may thus form its opinion in the manner that it considers appropriate to assess the merits of the notice.
14. Relying on its functions and powers in section 6(1A) of the *Tasmanian Planning Commission Act 1997*, the Commission decided that it would be informative to undertake wider consultations on the issues raised.

Consultations

15. The Commission undertook a consultation with representatives of the MVPA, LGAT and other planning authorities with an interest in the issues raised. The consultation with representatives of MVPA, LGAT, four planning authorities, the TEA, and Rod Knight (Regional Ecosystem Model expert) took place on 6 June 2019.
16. There was general agreement at the meeting that the current standards were not appropriate and that there was a need to review the effectiveness of the operation of the standard. However, there were a range of views on what changes were desirable.

17. The Commission also sought advice on the issues raised by the MVPA notice from representatives of the Forest Practices Authority (FPA) and the Department of Primary Industries, Parks, Water and Environment (DPIPWE). Both agencies have practical statutory experience in the assessment and decision making in relation to natural values and thus addressing issues similar to those engaged by the NAC priority vegetation provisions.
18. A meeting was held with representatives of the FPA on 6 August 2019. The consultation with the FPA representatives indicated that any assessment process against the current standards would most likely require scientific and ecological specialist advice. Further, that the assessment process would be assisted by reference to appropriate criteria or benchmarks for flora and fauna species.
19. Following a telephone briefing with a representative of DPIPWE, the department provided written advice on the issues in a letter dated 1 November 2019. The DPIPWE advice does not support the need to review the provisions at the present time. A copy of the advice is at Attachment 4.
20. Key parts of the DPIPWE on the merits of the proposed changes below –
 - ‘DPIPWE’s viewis that the NAC and its provisions are adequate for Local Government planners to make informed decisions to protect natural values when undertaking assessments of development applications.
 - It is important that such assessments impose restrictions, or permit modification of natural values, in accordance with existing policy and legislation, and that they do not go beyond these thresholds.’
 - ‘In terms of the proposed revised NAC produced by the MVPA, I do not believe that it is a better model than the one currently in effect. Many of the additions proposed are already matters considered by planners, or are matters that DPIPWE would provide advice on if it was requested.’

Commission Opinion

Is a review of the standards premature?

21. A preliminary issue for consideration by the Commission, raised in the consultation by DPIPWE, is whether a review of the NAC and the relevant standards is premature.
22. DPIPWE states –
 - ‘.....this is one of the first planning authorities LPSs to be scrutinised closely by the TPC, and that advice to the Minister for Planning may also be made to the TPC concerning modifications to the SPPs. For this reason, it is my preference to hear the views of other local planning authorities on the NAC prior to considering detailed changes to the code from the first assessment of it.’
23. The DPIPWE observation about the MVPA draft LPS being the first LPS to be assessed is correct. However, the comment concerning the preference to hear from other planning authorities needs to be considered in the context of an expressed wider local government concern about the operation of the NAC.
24. There is an indication of a widely held local government view about the content of the priority vegetation provisions of the NAC and the ability of local government to effectively apply the provisions.

25. This view is best indicated by reference to the representation made to the MV draft LPS, by LGAT (Representation 7). LGAT states –

‘It is unusual for LGAT to provide a submission on an individual council’s draft planning scheme, however the unique circumstances and in light of the broader Local Government feedback we believe it is warranted.’

26. The submission further states –

‘In the absence of the [State Government] mapping and the blunt nature of the State Government’s prescribed data for overlay map preparation, Local Government engaged Rod Knight of Natural Resource Management Pty Ltd to produce a more comprehensive and robust product on behalf of the sector. The resultant ‘Regional Ecosystem Model’ (the model) was produced and is referenced in the [MV] Draft LPS supporting report and informs the Natural Assets Code overlay.’

‘....the development of the Regional Ecosystem Model has demonstrated that there are potentially significant technical issues with the Code; including, but not limited to, the Codes’ purpose, how the Code is triggered and applied, which value it does and does not capture and how impact on these values is assessed.’

‘.....Local Government does not have the technical capacity or available supporting documentation to adequately determine what an “unreasonable loss of priority vegetation” is. Without specific guidance from the State Government on how each of the values that make up the priority vegetation layer are to be assessed, the Code’s operation is severely undermined.’

27. For the reasons that follow, the Commission considers that there are valid issues associated with the potential operation of the identified provisions of the NAC to warrant the review and alteration of the provisions.

The issues

28. The responsibility of the Commission is to provide its opinion on the merit of the matters contained in the MVPA section 35G(1) notice related to alterations to the SPPs. This opinion therefore does not comment of the merit or otherwise of the matters raised in para 8(1)-(3) above.

29. The Commission is of the opinion that the general rationale for the alterations proposed by the MVPA has some merit and that the provisions of the SPPs in C7.6.2 and C7.7.2 should be reviewed and altered.

30. However, before any alteration is made to the provisions, the Commission is of the opinion that a number of matters require review:
- (a) the planning policy and desired planning outcomes needs to be considered to determine whether the current approach to the clearance of native vegetation is to be retained in the code, or whether an alternative approach proposed by the MVPA is to be adopted;
 - (b) if the current approach is to be retained:
 - (i) the drafting of the current provisions should be reviewed and the provisions revised to achieve consistency between the relevant code purposes, the objective of the standards and the performance criteria; and
 - (ii) the drafting review should include consideration of inclusion of performance criteria which enable specialist quantitative advice or opinion to be provided to a planning authority on any adverse impacts on native vegetation and fauna as a result of development or subdivision in areas of priority vegetation and how to minimise those impacts.

The planning policy issues

31. The MVPA notice proposes new clauses for native vegetation clearance and subdivision within a priority vegetation area.
32. The MVPA proposed new clauses might be characterised as a 'species protection and management' approach to the clearance of priority vegetation, whereas the existing provisions might be characterised as a 'development purpose and impacts management' approach.
33. The two approaches are reflective of different planning policy approaches to the issue of native vegetation protection and management in priority vegetation areas.
34. The 'development purpose and impacts management' approach in the existing provisions (C7.6.2 P1) indicates that to gain the benefit of the exercise of a discretion to enable the removal of native vegetation in a priority vegetation area, the clearance of that vegetation must be for one of the six specified purposes. The purposes vary, some being relatively straightforward matters of fact, whereas others require economic or social or ecological judgments, which may be challenging to establish and determine.
35. Having met a prerequisite for clearance under C7.6.2 P1, the existing provisions require clearance of the native vegetation in a way which minimises adverse impacts on priority vegetation having regard to a range of criteria related to the physical circumstances of the site, the proposed development and its location.
36. The 'species protection and management' approach proposed by MVPA has as its primary objective the appropriate protection of native vegetation for the benefit of the ongoing viability of both threatened flora and fauna. The criteria against which discretionary decision making must be considered focus on the locational status and quality of habitat and its capacity to support threatened flora and fauna and the impacts of any development on that flora and fauna. It also includes consideration of similar socio-economic benefits and no feasible alternate location and design tests that are contained in the 'development purpose and impacts management' test.

Review of the existing provisions

37. An outcome of the section 35G process has been the identification of a number of shortcomings with the drafting of the existing provisions.

38. In its notice the MVPA asserts that:

‘.....there is no foundation in data or scientific practice to determine what “unreasonable loss of priority vegetation”, the fundamental premise for the operation of Section C7.6.2, actually is. Section C7.6.2 is inoperable, as it is without meaning and has no prospect of measurement. This will inevitably end in confused, inconsistent and inconclusive administration of the planning scheme provision.’

39. While this assertion goes to support the MVPA recommendation for significantly altered provisions, from a technical drafting perspective, the Commission commends consideration of the critical analysis of the shortcomings of the provisions provided by the senior experienced local government planner. The critique is at Attachment 3. This analysis was provided to the Commission as a result of documentation provided following the consultation with MVPA and local government representatives in June 2019.

40. This critique supports the view of the MVPA of the shortcomings of the provisions and the difficulty for planning authorities to apply the standards. The critique at sections D and E is particularly insightful.

Conclusion

41. The Commission is of the opinion, that if any planning policy review supports a change to the ‘species protection and management’ approach to the priority vegetation provisions of the NAC, then the MVPA proposed alterations have merit.

42. If there is no change on the planning policy approach reflected in the current standards, the Commission is of the opinion, that the effective operation of the standards requires review.

43. The review should consider the achievement of greater consistency, between the code purposes related to priority vegetation and minimising the clearance of significant habitat (C7.1.4 and C7.1.5), the objective of the standards, and the performance criteria in the standards.

44. Further the language used to establish and enable discretionary decision making should be reviewed and altered to ensure that the standard objectives and performance criteria that are to be taken into account in that decision making, include consideration of the best available quantitative scientific and ecological advice or opinion on the impacts on species (both flora and fauna) of the clearance of native vegetation within a priority vegetation area.



John Ramsay
Delegate (Chair)



Roger Howlett
Delegate

29 June 2020

Attachment 1

CURRENT PROVISIONS OF SPP THE NATURAL ASSETS CODE and MVPA COMMENTS

This attachment sets out the current provision of the Natural Assets Code that relate to priority vegetation. It also contains MVPA comments on the inadequacy of the provisions and why the provisions in the SPPs should be altered.

The comments have been located with the existing provisions for ease of reconciliation of the provisions and the MVPA comments.

C7.0 NATURAL ASSETS CODE

C7.3.1 Definition of Terms

Priority Vegetation	means native vegetation where any of the following apply: (a) it forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the <i>Nature Conservation Act 2002</i> ; (b) is a threatened flora species; (c) it forms a significant habitat for a threatened fauna species; or (d) it has been identified as native vegetation of local importance.
---------------------	---

C7.6.2 Clearance within a priority vegetation area

Objective:	That clearance of native vegetation within a priority vegetation area: (a) does not result in unreasonable loss of priority vegetation; (b) is appropriately managed to adequately protect identified priority vegetation; and (c) minimises and appropriately manages impacts from construction and development activities..
Acceptable Solutions	Performance Criteria
A1 Clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved under this planning scheme.	P1.1 Clearance of native vegetation within a priority vegetation area must be for: (a) an existing use on the site, provided any clearance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmanian Fire Service or an accredited person; (b) buildings and works associated with the construction of a single dwelling or an associated outbuilding;

	<ul style="list-style-type: none"> (c) subdivision in the General Residential Zone or Low Density Residential Zone; (d) use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design; (e) clearance of native vegetation where it is demonstrated that on-going pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for long-term persistence; or (f) the clearance of native vegetation that is of limited scale relative to the extent of priority vegetation on the site. <p>P1.2</p> <p>Clearance of native vegetation within a priority vegetation area must minimise adverse impacts on priority vegetation, having regard to:</p> <ul style="list-style-type: none"> (a) the design and location of buildings and works and any constraints such as topography or land hazards; (b) any particular requirements for the buildings and works; (c) minimising impacts resulting from bushfire hazard management measures through siting and fire-resistant design of habitable buildings; (d) any mitigation measures implemented to minimise the residual impacts on priority vegetation; (e) any on-site biodiversity offsets; and (f) any existing cleared areas on the site.
--	---

C7.7.2 Subdivision within a priority vegetation area

Objective:	That: (a) works associated with subdivision will not have an unnecessary or unacceptable impact on priority vegetation; and (b) future development likely to be facilitated by subdivision is unlikely to lead to an unnecessary or unacceptable impact on priority vegetation.
Acceptable Solutions	Performance Criteria
<p>A1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must:</p> <ul style="list-style-type: none"> (a) be for the purposes of creating separate lots for existing buildings; (b) be required for public use by the Crown, a council, or a State authority; (c) be required for the provision of Utilities; (d) be for the consolidation of a lot; or (e) not include any works (excluding boundary fencing), building area, bushfire hazard management area, services or vehicular access within a priority vegetation area. 	<p>P1.1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must be for:</p> <ul style="list-style-type: none"> (a) subdivision for an existing use on the site, provided any clearance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmanian Fire Service or an accredited person; (b) subdivision for the construction of a single dwelling or an associated outbuilding; (c) subdivision in the General Residential Zone or Low Density Residential Zone; (d) use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design; (e) subdivision involving clearance of native vegetation where it is demonstrated that on-going pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for long-term persistence; or (f) subdivision involving clearance of native vegetation that is of limited scale relative to the extent of priority vegetation on the site. <p>P1.2</p> <p>Works association with subdivision within a priority vegetation area must minimise adverse impacts on priority vegetation, having regard to:</p> <ul style="list-style-type: none"> (a) the design and location of any works, future development likely to be facilitated by the

	<p>subdivision, and any constraints such as topography or land hazards;</p> <p>(b) any particular requirements for the works and future development likely to be facilitated by the subdivision;</p> <p>(c) the need to minimise impacts resulting from bushfire hazard management measures through siting and fire-resistant design of any future habitable buildings;</p> <p>(d) any mitigation measures implemented to minimise the residual impacts on priority vegetation;</p> <p>(e) any on-site biodiversity offsets; and</p> <p>(f) any existing cleared areas on the site.</p>
--	---

MVPA Comments

- The SPPs as written fail to outline clear responsibilities and expectations for land owners and developers so that in proposing land use and development, it is understood what the code purpose of 'minimising impacts' and 'minimising clearance' actually means.
- There is no foundation in data or scientific practice to determine what 'unreasonable loss of priority vegetation', the fundamental premise for the operation of section C7.6.2, actually is.
- Section C7.6.2 is inoperable, as it is without meaning and has no prospect of measurement. This will inevitably end in confused, inconsistent and inconclusive administration of the planning scheme provision.
- Sections C7.6.2 and C7.7.2 are drafted in a manner that is inconsistent with the balance of the SPPs, which does not assist understanding their operation.
- The objectives for clearance of native vegetation in C7.6.2 includes preventing 'unreasonable loss of priority vegetation' to 'adequately protect identified priority vegetation' and 'minimise and appropriately manage impacts from construction and development activities'.
 - C7.6.2 P1.1 goes on to mostly specify a list of scenarios that the clearance 'must be for', rather than provide a range of matters to be considered to determine if the objective is met.
 - When considering the data that is required to be included in the overlay, there are not many potential circumstances where complying with one of the scenarios will not automatically protect priority vegetation or minimise impacts. There will also be reasonable circumstances for vegetation removal that do not fall into the scenarios described and will therefore be prohibited.
 - C7.6.2 P1.2 requires the 'minimisation' of adverse impacts on priority vegetation having regard to various aspects of development and works, but does not make the appropriate distinction between minimising and adequate protection when the two are at odds.
 - These illogical outcomes are a result of a failure to provide performance criteria that are consistent with the objective and the failure to connect the objective to the data that is its foundation.
 - In practical terms, the provisions should just seek to answer the question...'should this native vegetation be cleared'? It does not need to confine what it is for as this is not an influencing factor in the elements that enable biodiversity.
 - The provision should be about the maintenance of habitat where it is required to provide the best circumstance possible for the ongoing survival of priority species. There will be a multitude of ways that this objective may be met and the provisions need to describe the matters to be looked at with relevance to the data in the overlay, so that the question can be answered on a site-specific level with sufficient flexibility for the proposed development that avoids illogical outcomes and unnecessary intervention, yet ensures there is proper process to intervene when the objective is jeopardised.

SUGGESTED ALTERATIONS TO THE SPPs and MVPA COMMENTS

MVPA Background Comment

- Proposed amendments to provisions of C7.6.2 and C7.7.2 provide a direct and assessable link between the data and methodology that underpins the priority vegetation area overlay and appropriate outcomes on the ground.
- There are scientifically recognised habitat attributes associated with vegetation type. Condition and distribution that qualified persons draw on to assess whether vegetation is viable as a habitat for priority species.
- Tasmania is party to various agreements and thresholds for the maintenance of particular priority biodiversity that the State practices through numerous regulatory systems associated with forestry, dam construction, threatened species permits and Environment Protection Authority assessment.
- It is noted that the State data and science is not perfect, with available resources being unable to accurately capture detailed habitat data due to the sheer scale of the task.
- The State information, together with the methodology behind the Regional Ecosystem Model, at least provides some guidance on the intended outcomes, rather than relying on vague and indefinable terms.
- The proposed SPP amendments use terminology that more closely aligns with the assessment practices of State systems and the available State information.

MVPA recommends that provisions C7.3, C7.6.2 and C7.7.2 be amended as follows:

C7.3 Definition of Terms:

Add the following definition:

Clearance of native vegetation	means the removal of native vegetation by cutting, pushing or otherwise removing or destroying the vegetation.
--------------------------------	--

Reason:

The provisions at C7.6.2 and C7.7.2 use the term 'clearance' as the principal action that requires assessment under the standard, however there is no clear, corresponding definition in the ordinance. Common meaning could be used, however the inclusion of the Forest Practices Act definition of 'clearance and conversion' in Section 3 creates an inconsistency in the operation of these standards. This is also the case if the SPP's are not amended. This is due to the term 'clearance and conversion' only being related to the clearance of a Threatened Native Vegetation Community, whereas the PVA overlay includes other types of native vegetation for assessment which is captured by the action that activates the performance criteria. The proposed definition draws from the definition for the 'Clearing of Trees' in the Forest Practices Act 1985.

Delete the following definition:

Priority Vegetation	<p>means native vegetation where any of the following apply:</p> <ul style="list-style-type: none"> (a) it forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the <i>Nature Conservation Act 2002</i>; (b) is a threatened flora species; (c) it forms a significant habitat for a threatened fauna species; or (d) it has been identified as native vegetation of local importance.
---------------------	--

Reason:

The definition does not appropriately relate to the components of the data that make up the Priority Vegetation Area overlay. There is no need to define priority vegetation due to the overlay being the expression of the aggregated data. The provision should express the action without further question of its meaning within the operation of the objective and performance criteria.

C7.6 Development Standards for Buildings and Works

Replace provisions C7.6.2 and C7.7.2 as follows:

C7.6.2 Native vegetation clearance within a priority vegetation area

Objective:	<p>To provide for appropriate protection and management of native vegetation:</p> <ul style="list-style-type: none"> (a) that is important for the viability of threatened flora and fauna populations in an area; (b) that is important for the ecological viability of a Threatened Native Vegetation Community or vegetation communities that are rare or poorly reserved; and (c) that is important for the maintenance of species populations by providing for species movement across the landscape. 	
Acceptable Solution		Performance criteria
<p>A1</p> <p>Clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved under this planning scheme.</p>		<p>P1.1</p> <p>Clearance of native vegetation within a priority vegetation area must not diminish the viability of threatened flora and fauna populations in the area having regard to:</p> <ul style="list-style-type: none"> (a) whether the habitat has been compromised to extent that it is unlikely to continue to support threatened flora or fauna species populations; (b) whether the habitat has particular locational or physical features that are important to the viability of threatened flora or fauna species

	<p>populations, including but not limited to:</p> <ul style="list-style-type: none"> (i) vegetation condition; (ii) riparian areas; (iii) tree hollows, burrows or dens; (iv) contiguous extent of native vegetation; and (v) connectivity and configuration of native vegetation in the landscape; <p>(c) the scale and extent of clearance; and</p> <p>(d) where there is an adverse impact on the viability of threatened flora or fauna populations in an area, whether:</p> <ul style="list-style-type: none"> (i) there is an alternate location for the use and development on the site that meets the objective; or (ii) the use and development will result in significant long term social and economic benefits and there is no feasible alternate location or design.
	<p>P1.2</p> <p>Clearance of a Threatened Native Vegetation Community, poorly reserved or rare vegetation community must not diminish the ecological viability of the community in the area having regard to:</p> <ul style="list-style-type: none"> (a) the measured extent of the community within the bio-region; (b) the extent of the community that is under reservation; and (c) the condition of the vegetation community.

C7.6.2 Subdivision within a priority vegetation area

Objective:	<p>That works associated with subdivision and lots created for future development, provide for appropriate protection and management of priority vegetation:</p> <ul style="list-style-type: none"> (a) that is important for the viability of threatened flora and fauna populations in an area; and (b) that is important for the ecological viability of a Threatened Native Vegetation Community or vegetation communities that are rare or poorly reserved.
Acceptable Solution	Performance criteria
<p>A1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must:</p> <ul style="list-style-type: none"> (a) be for the purposes of creating separate lots for existing buildings; (b) be required for public use by the Crown, a council, or a State authority; (c) be required for the provision of Utilities; (d) be for the consolidation of a lot; or (e) not include any works (excluding boundary fencing), building area, bushfire hazard management area, services or vehicular access within a priority vegetation area. 	<p>P1</p> <p>Subdivision within a priority vegetation area must not diminish the viability of threatened flora and fauna populations in the area having regard to:</p> <ul style="list-style-type: none"> (a) whether the habitat has been compromised to extent that it is unlikely to continue to support threatened flora or fauna species populations; (b) whether the habitat has particular locational or physical features that are important to the viability of threatened flora or fauna species populations, including but not limited to: <ul style="list-style-type: none"> (i) vegetation condition; (ii) riparian areas; (iii) tree hollows, burrows or dens; (iv) contiguous extent of native vegetation; and (vi) connectivity and configuration of native vegetation in the landscape; (c) the scale and extent of clearance required for subdivision works; (d) the scale and extent of clearance required for likely future development or hazard management areas; and (e) where there is an adverse impact on the viability of threatened flora or fauna populations in an area, whether:

	<ul style="list-style-type: none"> (i) there are locations for likely future use and development that can be confined to areas on the site that meet the objective; or (ii) the subdivision will result in use and development that will have significant long term social and economic benefits and there is no feasible alternate location or design.
	<p>P1.2</p> <p>Subdivision within a priority vegetation area must not diminish the ecological viability of a Threatened Native Vegetation Community, poorly reserved or rare vegetation community in the area having regard to:</p> <ul style="list-style-type: none"> (a) the measured extent of the community within the bio-region; (b) the extent of the community under reservation; and (c) the condition of the vegetation community; (d) the scale and extent of clearance required for subdivision works; (e) (j) the scale and extent of clearance required for likely future development or hazard management areas.

Senior Local Government Representative Critique

Clauses priority vegetation provisions of the Natural Assets Code

[Note – Headings designation A to E have been inserted into the Critique
for reference purposes]

SPP Code C7 – Natural Assets Code

Issues with Natural Assets Code

The following comments relate only to the practical operation of the code.

The observations do not address a range of strategic, policy, and purpose considerations relevant to the role of the Tasmanian Planning Scheme in assisting the broader arrangements applying in Tasmania for the protection and conservation of native vegetation. These matters are of equal and initial importance, and need be resolved before reason for the Code can be explained and accepted.

The observations do not address the data base and methodology required to identify priority vegetation areas, particularly the extension of the test to include vegetation of local significance.

A. C7.1 Code Purpose

C7.1.4 is the applicable purpose statement in relation to priority vegetation.

C7.1.4 states purpose of the Code is “to minimise impacts on identified priority vegetation”.

(a) The Code only applies for priority vegetation that is known and identified

A planning scheme must therefore indicate the priority vegetation to which the Code applies.

LP 1.7.5(b) requires each LPS “must contain an overlay map showing priority vegetation areas, produced in accordance with sub-clauses LP1.7.5(c) and (d), for the application of the Natural Assets Code”.

Priority vegetation is defined in C7.3.1 to mean –

“native vegetation where any of the following apply:

- (a) it forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the Nature Conservation Act 2002;
- (b) is a threatened flora species;
- (c) it forms a significant habitat for a threatened fauna species; or
- (d) it has been identified as native vegetation of local importance”

LP 1.7.5(c) provides –

“The priority vegetation area must:

- (i) include threatened native vegetation communities as identified on TASVEG Version 3 mapping, as published on the Department of Primary Industries, Parks, Water and the Environment’s website and available on the Land Information System Tasmania;*
- (ii) be derived from threatened flora data from the Natural Values Atlas, as published on the Department of Primary Industries, Parks, Water and the Environment’s website and available on the Land Information System Tasmania; and*
- (iii) be derived from threatened fauna data from the Natural Values Atlas, as published on the Department of Primary Industries, Parks, Water and the Environment’s website for the identification of significant habitat for threatened fauna species”*

LP 1.7.5(d) provides –

“the planning authority may modify the priority vegetation area derived under clause LP1.7.5(c) based on field verification, analysis or mapping undertaken by, the planning authority or a suitably qualified person on behalf of the planning authority, at a local or regional level, which:

- (i) addresses any anomalies or inaccuracies in the mapping and data in sub-clause LP1.7.5(c);*
- (ii) (provides more recent or detailed local assessment of the mapping and data in subclause LP1.7.5(c); or*
- (iii) identifies native vegetation of local importance, including habitat for native fauna of local importance.*

The instructions in LP 1.7.5(c) are mandatory, and are sufficiently detailed to provide a clear indication of the conditions on which to establish a priority vegetation area.

The definition in C7.3.1 simply restates the instruction in LP 1.7.5.

The existence of two or more provisions within a regulatory instrument to define a term or to specify the circumstances in which a rule is to apply has potential to cause confusion for the manner in which the regulation is interpreted and applied, particularly if each definition or instruction is differently expressed.

Delete the definition for “priority vegetation” in C7.3.1.

- (b) *The purpose statement does not specifically identify the cause or source of the impacts to be minimised.***

The term “Impact” in the context of the purpose statement is taken to mean the influence or effect exerted by something on priority vegetation.

C7.2.1 and C7.2.2 allow the Code is concerned only with the impact of “development” on identified priority vegetation.

For clarity, **insert the words “of development” after the word “impacts”**

- (c) *There is no direction specified in relation to impact.***

Impacts may be positive, negative, or neutral.

The term “minimise” means to reduce to the smallest possible amount or degree.

The purpose statement therefore requires development must have the least possible impact on priority vegetation, including any impact that may be positive and enhance the extent, value or protection of the priority vegetation area.

Modify the purpose statement to insert the word “adverse” next after the word “minimise”

The purpose statement to read –

C7.1.4 To minimise adverse impacts of development on identified priority vegetation

B. C7.2 Code Application

The Code applies to development on land within a priority vegetation area if within one of the zones specified in C7.2.1.

- (a) *The statement implies priority vegetation has been identified for the entire or a greater part municipal area, but that the Code applies to impose controls only where one of the specified zones has been applied.***

The approach provides a partial and fragmented protection for priority vegetation based on the purpose for which land may be used, and not on the extent of a vegetation community or on inherent values of priority vegetation; and is confusing for the community.

The PPU recently noted that some planning authorities were considering use of the Rural rather than the Agriculture zone in order to provide protection for priority vegetation under the Code, and suggested the concern was unfounded because the Forest Practices Act would apply for clearing of land outside the areas to which the Code applies.

The observation highlights the level of uncertainty associated with operation of the Code.

If the FPA can function to protect priority vegetation on land to which the specific zones do not apply, then why is the Code required?

It is necessary to provide absolute clarity between purpose and operation of the Code and the purpose and operation of other regulation to control the clearing of native vegetation.

- (b) *Delete C7.2.1(c) and insert instead – “a priority vegetation area”***

The balance of the qualification in C7.2.1 is better included in LP 1.7.5 as part the instructions for application of Code C7.

Removal of the zone specification would simplify understanding of the Code as applying to any land shown on an overlay map as being in a priority vegetation area. The approach is consistent with the definition for priority vegetation area in C7.3.1.

- (c) *C7.2.2 states “This Code does not apply to use”.***

However, C7.4.1 states “The following use or development is exempt from this code:”

There is an inconsistency with drafting that will lead to confusion.

C7.4.1 should be modified to delete the words “use or”

C. C7.3 Definition of Terms

- (a) *Delete the definition for “priority vegetation” because the instruction for application of the Code is adequately contained in LP 1.7.5.*
- (b) *Insert definition for “clearance” or an alternate term to describe with certainty the circumstances in which the Code applies.*

Clearance is the act of clearing. Clearing is the process of removing in whole or part sufficient vegetation to create an open space.

It is not clear whether the code applies only for the total removal of native vegetation in a priority vegetation area, or for any work that involves the removal or modification of any part of any native vegetation.

A definition is required to unambiguously describe the actions controlled by the Code.

The exemptions in C7.4.1 do not assist understanding of the circumstances in which the Code will apply.

The Forest Practices Act separately defines harvest in relation to timber to mean to cut and remove timber from a forest timber; and clearing of trees to mean the removal of trees by clearing, cutting, pushing of otherwise removing; or destroying the trees in any way.

The Act also defines clearance and conversion of vegetation to mean the deliberate process of removing all or most of a threatened species vegetation community from an area of land so as to leave the land on a permanent or extended basis in an unvegetated state or to replace native vegetation with another form of vegetation or development.

“Remove” is described to mean by any direct or indirect means or combination of means , including but not limited to burning; clear felling; cutting down; drowning; lopping; ploughing; poisoning; ringbarking; thinning; and uprooting.

Clearance could be defined to mean –

Clearance means the deliberate process of removing any native vegetation from an area of land within a priority vegetation area by any direct or indirect means, (including but not limited to burning, clear felling, cutting down, drowning, lopping, ploughing, poisoning, ringbarking, thinning or uprooting), so as to leave all or part of the land on a permanent or extended basis in a non-vegetated state or to the replace the native vegetation community with any, or any combination of, another community of native vegetation, non-native vegetation, agricultural use, or any other use or development

D. C7.6.2 Clearance within a priority vegetation area

- (a) *There is need to define the term “clearance” and provide clarity for when the Code applies.*
- (b) *The objective indicates the standard is to apply for any development or work that involves the clearance of native vegetation on land within a priority vegetation area.*

However, the relevant compliance tests are concerned with the merits for how the land is used or developed after the clearing has occurred.

- (c) *There are three outcomes intended for development that will involve the removal of priority vegetation.*

Each is measured by reference to a subjective test.

- What is the measure for unreasonable loss?
- How is clearance to be appropriately managed?
- Is there a connection between clearance of priority vegetation and the impact (positive or negative) of construction and development activity?

The subjective nature of the objectives renders it difficult to determine what is required for compliance, and when it is achieved.

- (d) *A1 will apply only if a subdivision plan creates a building area on a registered plan.*

There is no requirement in C7.7.2 to define a building area on any lot created on a plan of subdivision.

There is no general requirement in any other provision of the SPPs to require creation of a building area on a sealed plan on considerations for management of priority vegetation.

There is no test in C7.7.2 that specifically requires consideration for where a building area may be located within a lot intended for development of a building.

The requirement in A1 is disassociated from purpose of the Code and the objective for the standard.

The effect of A1 is to potentially allow compliance to the objective in C7.6.2 in the absence of any assessment for likely impact of clearance to create a building area on the retention and intactness of a priority vegetation community or for the impact of new development on that vegetation.

- (e) *P1.1 details the purposes for which the clearance of native vegetation within a priority vegetation area may be justified.*

The connection between the objective and the compliance test is not established.

The Code says that while native vegetation in a priority vegetation area is worth keeping, any of the undertakings described in P1.1 may provide a reason for clearing it.

The test is concerned with whether there is a reason to clear vegetation as opposed to whether the vegetation should be protected against clearing. It is an enabling provision and not a protection provision.

- (f) *The test in P1.2 for deciding whether clearance will have adverse impacts on native vegetation are almost exclusively concerned with promoting the development that will occur after clearance rather than with protecting the values of the native vegetation within the priority vegetation area.*

The characteristics of the development and how it will be managed and protected are priority considerations. There are no questions which go to the features and values of the vegetation itself.

The nexus between objective and compliance tests is unclear. The former seek to avoid unreasonable loss and adequate protection of native vegetation. The tests establish the circumstances in which development can justify adverse impact on priority vegetation.

Again, the provision appears to enable clearance rather than to avoid it.

E. C7.7.2 Subdivision

(a) *The objective is philosophically and operationally flawed against the purpose of the Code.*

The test is whether subdivision and any subsequent development will lead to an unnecessary and unacceptable impact on priority vegetation.

The terms “unnecessary” and “unacceptable” are not quantitative, and invite value judgement.

The compliance tests in P1.1 and P1.2 suggest the consideration is whether the clearance of native vegetation is unnecessary or inappropriate from the perspective of whether the proposed development will succeed.

(b) *It is unclear why subdivision by the Crown or for a utility should be entitled to a permit if clearance of native vegetation in a priority vegetation area will occur.*

The acceptance of a regulation is in large part determined by how equitably it is applied.

(c) *The requirement in A1(e) should be mandatory to all of the situations described in (a) to (d) inclusive (if retained) and not one of the options for compliance.*

Amend A1 by deleting the word “or” occurring last in A1(d) and inserting instead the word “and”

(d) *The requirements in P1.1 and P1.2 suffer the same shortcoming as described above for C7.6.2 in that the measure for determining whether clearance should be permitted is the purpose, characteristics and requirements of the proposed development, and not what is required to minimise adverse impact on native vegetation.*

Department of Primary Industries, Parks, Water and Environment Advice

Review of Natural Assets Code – 1 November 2019

Department of Primary Industries, Parks, Water and Environment

OFFICE OF THE SECRETARY

Hobart GPO Box 44, Hobart, Tasmania, 7001
Launceston PO Box 46, Kings Meadows, Tasmania, 7249
Devonport PO Box 303, Devonport, Tasmania, 7310
Ph 1300 368 550
Web www.dpipwe.tas.gov.au



John Ramsay
Roger Howlett
Delegate (Chair)
TASMANIAN PLANNING COMMISSION

tpc@planning.tas.gov.au

Meander Valley Draft Local Provisions Schedules – Natural Assets Code

Dear John and Roger

I refer to your correspondence of 25 June 2019 to Louise Wilson (General Manager- Natural and Cultural Heritage Division), Department of Primary Industries, Parks, Water and Environment (DPIPWE), regarding matters raised by the Meander Valley Planning Authority (MVPA) in relation to the Natural Assets Code (NAC).

In response to the MVPA's representations you have sought advice on the following:

1. **Exemptions** – What is the practical application and operation of the exemptions in the State Planning Provisions (SPPs) that concern vegetation removal, and are there any potential gaps or overlaps with other State decision makers in relation to vegetation protection or removal?
2. **Decision making in relation to priority vegetation** – What is the practical effectiveness of the current provisions in the NAC concerning decision making on the removal of priority vegetation taking into account accepted science and methodologies for decision making on such matters?

Do the revised standards proposed by MVPA in section 35G of the report provide a more effective basis for decision making by planning authorities in relation to priority vegetation based on accepted science and methodology?

These questions arise as a result of the Tasmanian Planning Commission's (TPC) assessment of the MVPA draft Local Provisions Schedules. The MVPA have considered aspects of implementing the NAC and the workability of the Priority Vegetation provisions.

The issues raised by the MVPA were also raised during drafting of the NAC. DPIPWE's view at that time and currently is that the NAC and its provisions are adequate for Local Government planners to make informed decisions to protect natural values when undertaking assessments of development applications.

It is important that such assessments impose restrictions, or permit modification of natural values, in accordance with existing policy and legislation, and that they do not go beyond these thresholds.

In answer to your questions above, I believe that there are no gaps or overlaps with other decision makers. The vast majority of exemptions are provided through the *Forest Practices Regulations 2017* – legislation not administered by DPIPWVE.

In terms of the proposed revised NAC produced by the MVPA, I do not believe this is a better model than the one currently in effect. Many of the additions proposed are already matters considered by planners, or are matters that DPIPWVE would provide advice on if it was requested. The Regional Ecosystem Model is not something that we have a policy on and is not utilised by DPIPWVE.

My understanding is that this is one of the first planning authorities LPS's to be scrutinised closely by the TPC, and that advice to the Minister for Planning may also be made by the TPC concerning potential modifications to the SPPs. For this reason, it is my preference to hear the views of other local planning authorities on the NAC prior to considering detailed changes to the code from a first assessment of it.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Whittington', with a stylized flourish at the end.

John Whittington
SECRETARY

1 November 2019

C7.0 Natural Assets –

Provisions for vegetation clearance and subdivision within the Priority Vegetation Area

Representor/s: Meander Valley Council
Local Government Association of Tasmania (LGAT)
The Environment Association

Planning Authority Submission:

Meander Valley Council, together with LGAT on behalf of member Councils, raised in their representations numerous operational inconsistencies between the data that is prescribed to make up the Priority Vegetation Area (PVA) in section LP1.7.5(c) of the SPP's and the objectives and performance criteria relating to the clearance of native vegetation contained in C7.6.2 Clearance within a priority vegetation area and C7.7.2 Subdivision within a priority vegetation area.

The representations submit that the SPP's as written:

- fail the objectives of LUPAA to maintain ecological processes and genetic diversity;
- fail to deliver its stated Code purpose to *“minimise impacts on identified priority vegetation” and “to manage impacts on threatened fauna species, by minimizing clearance of significant habitat ;*
- fail to implement a cogent division of responsibility between agencies charged with the responsibility of regulating the management of native vegetation through the interaction between the Forest Practices System and the planning scheme and does not account for the different overarching objectives of scale, the land use practices under each system or a hierarchy of controls;
- fail to outline clear responsibilities and expectations for land owners and developers so that in proposing land use and development, it is understood what the code purpose of ‘minimising impacts’ and ‘minimising clearance’ actually means. In particular, there is no foundation in data or scientific practice to determine what “unreasonable loss of priority vegetation”, the fundamental premise for the operation of Section C7.6.2, actually is. Section C7.6.2 is inoperable, as it is without meaning and has no prospect of measurement. This will inevitably end in confused, inconsistent and inconclusive administration of the planning scheme provision.

In the first instance, the objectives and criteria of the relevant provisions must relate in purpose and expression to the overlay map that initiates consideration of the issue and, in particular, should relate to the data that underpins the overlay to guide an outcome that can be interpreted or expressed ‘on the ground’. Too often, planning authority decisions, RMPAT appeals or court proceedings are frustrated by circular arguments due to vague expressions of intended outcomes.

The prescribed data requirements for the PVA overlay map at LP1.7.5(c) include the State datasets for Threatened Native Vegetation Communities, scheduled under the Nature Conservation Act 2002, threatened flora data and data for threatened fauna and associated significant habitat. Council's supporting report describes the very blunt, far reaching and unworkable nature of the prescribed data and also describe the adoption by 28 of the 29 Councils in the State of the *Regional Ecosystem Model* as the basis of the PVA under LP1.7.5(d). The model, developed by Rod Knight, effectively refines the prescribed State data into a comprehensive spatial model of biodiversity values through components that can be more readily interrogated for values, and subsequently assessed for actual

impact in regard to use and development. The summary explanation of the *Regional Ecosystem Model* was appended to Council's supporting report to its LPS.

Sections C7.6.2 and C7.7.2 of the SPP's are drafted in a manner that is inconsistent with the balance of the SPP's, which does not assist understanding of their operation and no guidance in policy or intended outcome has yet been provided by the State to date. LPS drafting instructions require that planning scheme standards are to be set out with clear objectives for a matter, with a preference for separating matters to assist clarity, with measurable acceptable solutions that automatically achieve the objective and the performance criteria being the "*range of matters that are to be considered in making a discretionary decision. The Acceptable Solutions and Performance Criteria must be consistent with the objective for the standard*" (TPC Practice Note 8). Section 3.0 of the SPP's define the 'standard' as "*the means for satisfying that objective through either an acceptable solution or performance criterion presented as the tests to meet the objective*".

The objectives for the clearance of native vegetation in C7.6.2 includes preventing 'unreasonable loss of priority vegetation' (refer comments above), management to "adequately protect identified priority vegetation" and "minimise and appropriately manage impacts from construction and development activities". P1.1 then goes on to mostly specify a list of scenarios that the clearance 'must be for', rather than provide a range of matters to be considered to determine if the objective is met. When considering the data that is required to be included in the overlay, there are many potential circumstances where complying with one of the scenarios will not automatically protect priority vegetation or minimise impacts. There will also be reasonable circumstances for vegetation removal that do not fall into the scenarios described and will therefore be prohibited. P1.2 requires the 'minimisation' of adverse impacts on priority vegetation having regard to various aspects of development and works, but does not make the appropriate distinction between minimising and adequate protection for when the two are at odds. These illogical outcomes are a result of a failure to provide performance criteria that are consistent with the objective and the failure to connect the objective to the data that is its foundation.

In practical terms, the provision should just seek to answer the question ... 'should this native vegetation be cleared'? It does not need to confine what it is for as this is not an influencing factor in the elements that enable biodiversity. The provision should be about the maintenance of habitat where it is required to provide the best circumstances possible for the ongoing survival of priority species. There will be a multitude of ways this objective can be met and the provisions need to describe the matters to be looked at with relevance to the data in the overlay, so that the question can be answered on a site-specific level with sufficient flexibility for the proposed development that avoids illogical outcomes and unnecessary intervention, yet ensures there is proper process to intervene when the objective is jeopardised. Many of the considerations contained in P1.2 are incidental to the assessment of development against the performance criteria and objectives, with the Act providing an appropriate head of power to apply conditions to manage works. Irrespective of the performance criteria, there are statutory limitations on the extent of change to an application that can be required by conditions to address compliance with the performance criteria and objective.

A question of law exists in regard to the powers of a planning scheme to regulate off-site offsets. By its very nature, an offset is most logically an off-site mechanism. P1.2 refers only to an 'on-site bio-diversity offset', however with the proper construction of planning scheme criteria and objective, the on-site biodiversity values are protected if they are of a level that site assessment determines they should be protected. If they are not, there is no purpose in requiring retention. An offset is effectively a 'trade' for securing values in perpetuity in exchange for the loss of values on a development site. It should be an action of last resort, however the State incorporates offset principles and practice in other systems requiring natural values assessment such as dams and forestry and the matter is worthy of consideration for development assessment.

Ideally, the SPP's should close the substantive loophole for certified forest practices plans in the exemption from the Code that defeats the purpose of the provision. The purpose of this exemption is to prevent the duplication of assessment, however it fails to account for the different appreciation of scale of forestry practices compared to development practices and the differing assessment models. An example of this would be in the Rural Living or Landscape Conservation Zones and the consideration of future development areas and biodiversity values in co-existence. The provisions should provide for considered solutions. Council's recommended amendments to the SPP's below do not include a suggested solution to this issue, however raise it as an important element to be discussed further with agencies and individuals that are qualified to explain the nature of assessment and the objectives to be achieved in order to properly investigate whether the systems align, or if in fact there exists a gap that results in potentially irreparable impacts.

In describing the components that make up the Regional Ecosystem Model, there are elements that can be drawn on that have established scientific parameters represented in State data, policies and commitments that align with intergovernmental agreements such as the Regional Forest Agreement, EPBC Act, Comprehensive, Adequate and Reserved (CAR) priorities. Whilst not perfect science, and the variable accuracy of State data (including that prescribed by LP1.7.5(c)) is well known, these components have physical characteristics on the ground that can be assessed for their contribution to important landscape conditions that support priority species. The table below describes the components of the Regional Ecosystem Model that makes up the Priority Vegetation Area and expands on the outcomes that the model represents in regard to its purpose of refining habitat identification and subsequent analysis of actual value on the ground.

Priority Vegetation Area – Components of objectives and criteria

Component	What	What are we trying to do with it? Objective	Criteria
Biological significance	A combination of threatened species and the native vegetation that supports those species and Threatened Native Vegetation Communities	<p>Identify whether on-ground extent and condition of vegetation are important to the maintenance of threatened flora or fauna species.</p> <ul style="list-style-type: none"> • Determine whether the removal of vegetation can occur without compromising the viability of threatened flora or fauna species populations in an area. • Determine whether the removal of TNVC's can occur without compromising the representation of the community in the bio-region or the ecological viability of the community. • If assessment under objectives above finds that there is an adverse impact on important vegetation, is a site of 'least impact' available on the land that would provide an alternative? 	<ul style="list-style-type: none"> • The habitat has been compromised to the extent that it is unlikely to continue to support threatened flora or fauna species or maintain the ecological viability of TNVC's in the area. • The habitat has been compromised to the extent that any further loss of vegetation will result in the habitat being unlikely to continue to support threatened flora or fauna species or maintain the ecological viability of TNVC's in the area. • That the ecological viability of TNVC's in the area is maintained having regard to: <ul style="list-style-type: none"> a) the measured extent of the community

			<p>within the bio-region;</p> <p>b) the extent of the community within reservations; and</p> <p>c) the condition of the vegetation community.</p> <ul style="list-style-type: none"> Does the habitat have particular locational or physical features that are important to the viability of threatened flora or fauna species populations or the ecological viability of TNVC's in the area, including but not limited to: <ul style="list-style-type: none"> a) vegetation condition; b) riparian areas; c) tree hollows, burrows or dens; d) contiguous extent of native vegetation; and e) connectivity and configuration of native vegetation in the landscape; f) the measured extent of the TNVC within the bio-region
Landscape ecological function	Characteristics of the landscape at multiple scales and its ability to maintain elements of biodiversity	<ul style="list-style-type: none"> Minimise broad scale habitat loss Maintain vegetation connectivity and configuration in the landscape. Maintain vegetation condition that is important for localized populations of threatened flora and fauna species. 	<ul style="list-style-type: none"> Is the vegetation important for threatened species movement, particularly between patches of remnant vegetation and/or through riparian environments? Is the vegetation condition important for the viability of threatened flora or fauna species populations or the ecological viability of TNVC's in the area, having regard to: <ul style="list-style-type: none"> a) Structure;

			b) Composition; c) Intactness of natural ecological presentation. (Repeat criteria under Biological Significance)
TNVC's	Veg communities listed under Tas NCA 2002 & EPBC Act 1999	<ul style="list-style-type: none"> State objectives for conservation of TNVC's 	<ul style="list-style-type: none"> That the ecological viability of TNVC's in the area is maintained having regard to: <ul style="list-style-type: none"> a) the measured extent of the community within the bio-region; b) the extent of the community within reservations; and c) the condition of the vegetation community.
Relative Reservation	CAR reserve system % extent of community within a bio-region that is poorly reserved or not in reserves.	<ul style="list-style-type: none"> To maintain geographical and bio-physical representation in the landscape. 	<ul style="list-style-type: none"> That the ecological viability of the community in the area is maintained having regard to: <ul style="list-style-type: none"> a) the measured extent of the community within the bio-region; b) the extent of the community within reservations; and c) the condition of the vegetation community.
Relative Rarity	< 2000Ha of veg community in bio-region (FPA threshold – Permanent Forest Estate Policy)	<ul style="list-style-type: none"> To maintain recognized geographical and bio-physical representation in the landscape 	<ul style="list-style-type: none"> Is the community important to representation in the bio-region? That the ecological viability of the community in the area is maintained having regard to: <ul style="list-style-type: none"> a) the measured extent of the community within the bio-region; b) the extent of the community within reservations; and

			c) the condition of the vegetation community.
Threatened Species	Threatened flora and fauna species listed under Threatened Species Protection Act 1995 or Environment Protection & Biodiversity Conservation Act 1999	<ul style="list-style-type: none"> • Occurrence informs modelled habitat • Identify whether on-ground extent and condition of vegetation are important to the maintenance of threatened flora or fauna species. • Determine whether the removal of vegetation can occur without compromising the viability of threatened flora or fauna species populations in an area. 	<ul style="list-style-type: none"> • The habitat has been compromised to the extent that it is unlikely to continue to support threatened flora or fauna species in the area. • The habitat has been compromised to the extent that any further loss of vegetation will result in the habitat being unlikely to continue to support threatened flora or fauna species in the area. • Does the habitat have particular locational or physical features that are important to the viability of threatened flora or fauna species populations in the area, including but not limited to: <ul style="list-style-type: none"> a) vegetation condition; b) riparian areas; c) tree hollows, burrows or dens; d) contiguous extent of native vegetation; and e) connectivity and configuration of native vegetation in the landscape.
Remnant Vegetation	'Islands' of vegetation < 200Ha within cleared landscape (>70% clearance of land system components)	<ul style="list-style-type: none"> • Maintain vegetation connectivity and configuration in the landscape that is important for localized threatened fauna species. • Maintain vegetation condition that is important for localized threatened flora and fauna species and ecological viability of TNVC's. 	<ul style="list-style-type: none"> • Is the scale/size/condition of vegetation patch important to support the species population? • Is the vegetation important to maintain threatened fauna species movement between patches of remnant vegetation?

Resources

- Tasmanian Natural Values Atlas (NVA)
- Tasmanian Threatened Species Handbook
- DPIPWE Threatened Species Link
- TASVEG Vegetation Condition Manual 2006 (under review for updates)

Recommended Amendment to SPP:

The proposed amendments to provisions C7.6.2 and C7.7.2 provide a direct and assessable link between the data and methodology that underpins the Priority Vegetation Area overlay and appropriate outcomes on the ground. There are scientifically recognized habitat attributes associated with vegetation type, condition and distribution that qualified persons draw on to assess whether vegetation is viable as habitat for priority species. Tasmania is party to various agreements and thresholds for the maintenance of particular priority biodiversity values that the State practices through numerous regulatory systems associated with forestry, dam construction, threatened species permits and EPA assessment. Noting that the State data and science is not perfect, with available resources being unable to accurately capture detailed habitat data due to the sheer scale of the task, The State information, together with the methodology behind the Regional Ecosystem Model, at least provides some guidance on the intended outcomes, rather than relying on vague and indefinable terms. The proposed SPP amendments uses terminology that more closely aligns with the assessment practices of State systems and the available State information.

It is recommended that provisions C7.3, C7.6.2 and C7.7.2 are amended as follows:

C7.3 Definition of Terms:

Add the following definition:

Clearance of native vegetation	means the removal of native vegetation by cutting, pushing or otherwise removing or destroying the vegetation.
--------------------------------	--

Reason:

The provisions at C7.6.2 and C7.7.2 use the term 'clearance' as the principal action that requires assessment under the standard, however there is no clear, corresponding definition in the ordinance. Common meaning could be used, however the inclusion of the Forest Practices Act definition of 'clearance and conversion' in Section 3 creates an inconsistency in the operation of these standards. This is also the case if the SPP's are not amended. This is due to the term 'clearance and conversion' only being related to the clearance of a Threatened Native Vegetation Community, whereas the PVA overlay includes other types of native vegetation for assessment which is captured by the action that activates the performance criteria. The proposed definition draws from the definition for the 'Clearing of Trees' in the Forest Practices Act 1985.

Delete the following definition:

Priority Vegetation	<p>means native vegetation where any of the following apply:</p> <ul style="list-style-type: none"> (a) it forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the <i>Nature Conservation Act 2002</i>; (b) is a threatened flora species; (c) it forms a significant habitat for a threatened fauna species; or (d) it has been identified as native vegetation of local importance.
---------------------	--

Reason:

The definition does not appropriately relate to the components of the data that make up the Priority Vegetation Area overlay. There is no need to define priority vegetation due to the overlay being the expression of the aggregated data. The provision should express the action without further question of its meaning within the operation of the objective and performance criteria.

C7.6 Development Standards for Buildings and Works

Replace provisions C7.6.2 and C7.7.2 as follows:

C7.6.2 Native vegetation clearance within a priority vegetation area

Objective:	<p>To provide for appropriate protection and management of native vegetation:</p> <ul style="list-style-type: none"> (a) that is important for the viability of threatened flora and fauna populations in an area; (b) that is important for the ecological viability of a Threatened Native Vegetation Community or vegetation communities that are rare or poorly reserved; and (c) that is important for the maintenance of species populations by providing for species movement across the landscape. 	
Acceptable Solution		Performance criteria
<p>A1</p> <p>Clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved under this planning scheme.</p>		<p>P1.1</p> <p>Clearance of native vegetation within a priority vegetation area must not diminish the viability of threatened flora and fauna populations in the area having regard to:</p> <ul style="list-style-type: none"> (a) whether the habitat has been compromised to extent that it is unlikely to continue to support threatened flora or fauna species populations; (b) whether the habitat has particular locational or physical features that are important to the viability of threatened flora or fauna species

	<p>populations, including but not limited to:</p> <ul style="list-style-type: none"> (i) vegetation condition; (ii) riparian areas; (iii) tree hollows, burrows or dens; (iv) contiguous extent of native vegetation; and (v) connectivity and configuration of native vegetation in the landscape; <p>(c) the scale and extent of clearance; and</p> <p>(d) where there is an adverse impact on the viability of threatened flora or fauna populations in an area, whether:</p> <ul style="list-style-type: none"> (i) there is an alternate location for the use and development on the site that meets the objective; or (ii) the use and development will result in significant long term social and economic benefits and there is no feasible alternate location or design.
	<p>P1.2</p> <p>Clearance of a Threatened Native Vegetation Community, poorly reserved or rare vegetation community must not diminish the ecological viability of the community in the area having regard to:</p> <ul style="list-style-type: none"> (a) the measured extent of the community within the bio-region; (b) the extent of the community that is under reservation; and (c) the condition of the vegetation community.

C7.6.2 Subdivision within a priority vegetation area

Objective:	<p>That works associated with subdivision and lots created for future development, provide for appropriate protection and management of priority vegetation:</p> <ul style="list-style-type: none"> (a) that is important for the viability of threatened flora and fauna populations in an area; and (b) that is important for the ecological viability of a Threatened Native Vegetation Community or vegetation communities that are rare or poorly reserved.
Acceptable Solution	Performance criteria
<p>A1</p> <p>Each lot, or a lot proposed in a plan of subdivision, within a priority vegetation area must:</p> <ul style="list-style-type: none"> (a) be for the purposes of creating separate lots for existing buildings; (b) be required for public use by the Crown, a council, or a State authority; (c) be required for the provision of Utilities; (d) be for the consolidation of a lot; or (e) not include any works (excluding boundary fencing), building area, bushfire hazard management area, services or vehicular access within a priority vegetation area. 	<p>P1</p> <p>Subdivision within a priority vegetation area must not diminish the viability of threatened flora and fauna populations in the area having regard to:</p> <ul style="list-style-type: none"> (a) whether the habitat has been compromised to extent that it is unlikely to continue to support threatened flora or fauna species populations; (b) whether the habitat has particular locational or physical features that are important to the viability of threatened flora or fauna species populations, including but not limited to: <ul style="list-style-type: none"> (i) vegetation condition; (ii) riparian areas; (iii) tree hollows, burrows or dens; (iv) contiguous extent of native vegetation; and (vi) connectivity and configuration of native vegetation in the landscape; (c) the scale and extent of clearance required for subdivision works; (d) the scale and extent of clearance required for likely future development or hazard management areas; and (e) where there is an adverse impact on the viability of threatened flora or fauna populations in an area, whether:

	<ul style="list-style-type: none"> (i) there are locations for likely future use and development that can be confined to areas on the site that meet the objective; or (ii) the subdivision will result in use and development that will have significant long term social and economic benefits and there is no feasible alternate location or design.
	<p>P1.2</p> <p>Subdivision within a priority vegetation area must not diminish the ecological viability of a Threatened Native Vegetation Community, poorly reserved or rare vegetation community in the area having regard to:</p> <ul style="list-style-type: none"> (f) the measured extent of the community within the bio-region; (g) the extent of the community under reservation; and (h) the condition of the vegetation community; (i) the scale and extent of clearance required for subdivision works; (j) the scale and extent of clearance required for likely future development or hazard management areas.

Opinion of the Tasmanian Planning Commission
Section 35G(2) of the Land Use Planning and Approvals Act 1993
Content of the SPPs – Clause 4 - Exemptions
Notice of advice from the Meander Valley Planning Authority

Background

1. Section 35G(1) of the *Land Use Planning and Approvals Act 1993* (the Act) enables a planning authority by notice, having considered representations made in relation to its draft LPSs, to advise the Tasmanian Planning Commission (the Commission) of the Authority's opinion that the content of the SPPs should be altered.
2. Section 35G(2) requires the Commission to consider the advice and if it considers that the advice has merit, provide that advice to the Minister together with the Commission's opinion in relation to the advice.
3. Following consideration of the representations in relation to its draft LPS, the Meander Valley Planning Authority (MVPA) provided notice of advice to the Commission on 10 April 2019 that provisions in clause 4 of the SPPs - Exemptions, and provisions in C7.0 the Natural Assets Code should be altered.
4. This opinion concerns the content of the notice in relation to the Exemptions - Clause 4.

The MVPA Notice and the Issues

5. Essentially the advice is that the existence of a number of development exemptions listed in Clause 4 of the SPPs has the potential to impact on the electricity transmission assets of TasNetworks, which may cause human safety issues in some situations and/or have the potential to compromise TasNetworks essential infrastructure.
6. This can occur because the exemptions mean that the developments which are exempt, can be located wherever the landowner wishes, without the need for any planning approval to be considered. That location may result in development that conflicts with the TasNetworks essential infrastructure, and may also result in the need to remove the development, at a financial and operational cost and inconvenience, to both a landowner and TasNetworks.
7. As a result TasNetworks seeks to have those exemptions qualified so that the exemptions do not have unlimited application.
8. The following clause 4 SPP exemptions are those identified as requiring the qualification:
 - unroofed decks (4.3.6)
 - outbuildings (4.3.7)
 - outbuildings in the Rural Living, Rural and Agriculture Zones (4.3.8)
 - agricultural buildings and works in the Rural and Agriculture Zones (4.3.9)
 - garden structures (4.3.11)
 - ground mounted solar energy installations (4.5.1)
 - roof mounted solar energy installations (4.5.2)
 - retaining walls (4.6.8)
 - land filling (4.6.9)
 - rain-water tanks (4.6.13)

- rain-water tanks in the Rural Living, Rural, Agriculture and Landscape Conservation Zones (4.6.14)
 - fuel tanks in the Light Industrial, General Industrial, Rural, Agriculture and Port and Marine Zones (4.6.15)
 - fuel tanks in other zones (4.6.16).
9. The recommendation for the change to the SPPs in the MVPA notice of advice is that the identified exemptions should be qualified by the words '*unless the Electricity Transmission Corridor or an Inner Protection Area of the Electricity Transmission Protection Code applies and requires a permit for the use and development*'. It is the essential infrastructure in these areas, identified by the planning scheme code which TasNetworks seeks to have regulated by the planning provisions.
 10. The section 35G(1) notice from the MVPA incorporates an Appendix from the TasNetworks representation. That Appendix details the exemptions that should be qualified, the safety and or asset protection issues involved, and lists the benefits that can be realised if the potential impacts on electricity transmission assets are considered in the planning process.
 11. The section MVPA 35G notice recommends that all the exemptions listed should be qualified.
 12. For convenience, the MVPA notice, which incorporates Appendix 7.1 from the TasNetworks representation has been consolidated in the attached notice document.

Commission Opinion

13. Section 35G(2) of the Act is silent on any process for the Commission to follow in the formation of its opinion on the merit or otherwise of a planning authority's notice. The Commission may thus form its opinion in any way it considers appropriate.
14. In relation to the MVPA notice, the Commission decided that it would be appropriate to undertake a consultation with the MVPA and TasNetworks on the issues raised and suggested benefits detailed in the MVPA notice. It undertook this consultation relying on its functions and powers in section 6(1A) of the *Tasmanian Planning Commission Act 1997*. The consultation with MVPA and TasNetworks took place on 5 June 2019.
15. At the consultation, a detailed presentation from TasNetworks representatives confirmed to the satisfaction of the Commission, the potential safety risks to the community and the risks to essential electricity infrastructure of the continuation of the listed exemptions, without the qualification proposed.
16. The Commission is of the opinion that the MVPA opinion that the exemptions to the SPPs in clause 4, as listed above in paragraph 8 has merit for the reasons outlined in the MVPA notice. Those exemptions should be qualified by the words '*unless the Electricity Transmission Corridor or an Inner Protection Area of the Electricity Transmission Protection Code applies and requires a permit for the use and development*'.



John Ramsay
Delegate (Chair)



Roger Howlett
Delegate

29 June 2020

Notice of advice under section 35G(1) – Meander Valley Planning Authority

Issue: Exempt Development in conflict with Electricity Infrastructure Corridors and Easements

Representor: TasNetworks

SPP Provision: 4.0 Exemptions

Planning Authority Submission:

The TasNetworks representation has highlighted potential conflicts arising from development that is exempt from consideration under the Electricity Transmission Infrastructure Protection Code (ETIPC) due to Section 4 of the SPPs, which exempt assessment of some development under the planning scheme. TasNetworks describe how there are circumstances where development that is not subject to planning approval is wrongly interpreted to be free from obligation to seek the approval of the electricity authority when located within an actual or implied easement, resulting in numerous circumstances where development must be relocated after construction. This is a situation that is likely to be exacerbated by the SPPs now that electricity infrastructure is recognized in the planning scheme and the type and size of development that is exempt is expanded under the SPPs.

Removing buildings and service infrastructure etc. after construction is a very costly exercise for both the landowner and TasNetworks and is a situation that is ideally avoided in the first instance. Particularly if there is a safety risk in the interim period before discovery of the hazard.

The TasNetworks representation in Appendix 1 provides a table of examples where exempt development would conflict with transmission infrastructure. This could be alleviated by using the ETIPC as a mechanism to provide a qualification in the exemption that if the development is located within the Electricity Transmission Corridor or an Inner Protection Area that the development is not exempt and is subject to an assessment. The most likely outcome is that this qualification will act as an early incentive to locate the development outside of these overlay areas to avoid the need for a permit. Where this is not the case, the development would be subject to liaison with TasNetworks and the critical safety issues will be identified early before the landowner spends money on development that may need to be removed. A qualification on the exemptions will act as a pause to properly consider the electricity infrastructure and prevent wasted expense. This is a consistent approach to some exemptions that are qualified to apply other Codes such as the Safeguarding of Airports and Local Historic Heritage Codes.

Recommended amendment to SPPs:

Include a qualification in section 4.0 Exemptions for the development listed at Appendix 1 of the TasNetworks representation as follows:

‘unless the Electricity Transmission Corridor or an Inner Protection Area of the Electricity Transmission Infrastructure Protection Code applies and requires and a permit for use and development’.

TasNetworks Representation Appendix 1 Table

7. Appendix

7.1. Appendix 1 SPP Issues

Benefits of considering electricity transmission assets in the planning process for new development

The following benefits can be realised if impact on electricity transmission assets are considered in the planning process. (See Table 1 for the list of relevant exemptions):

- Removes the incorrect perception that buildings and other works exempt under the SPPs can safely occur in a transmission line or underground cable easements without the need to consider asset easement rights or operational requirements.
- Empowers the Planning Authority to request further information, condition or refuse a development that conflict with the Code requirements and Purposes.
- Saves developers, Councils, TasNetworks and the community time, cost and distress associated with easement right enforcement after a building, structure or other works have either commenced construction or have been built.
- Reflects the reality with respect to what can and cannot safely occur in an electricity easement.
- Saves developers project delay and cost required as a result of reworking proposals to ensure easement rights are not compromised later in the process.
- Increases the chances of considering the impact of new development on electricity assets early in the planning assessment process, before significant expenditure on project preparation has occurred.
- Prevents land use conflict between existing critical electricity transmission assets and new development.
- Protects human safety.
- Aligns the planning considerations and electricity easement rights.
- Avoids increased acquisition or construction cost for future assets as a result of encroachment (eg: dwelling encroachments within strategically beneficial easements may not cause operational issues for existing assets. However, dwelling acquisition and increased community and social impact of processes required to remove dwellings in the easement if it is required later can be avoided if encroachment is prevented in the first place.
- Supports compliance with AS 7000.
- The strategic benefit of existing electricity easements and the strategic purpose of the Code is preserved.

Conflict Examples

Table 1 presents examples of exempt development where TasNetworks believes conflict with easement rights can occur.

Colour coding indicates the following:

Conflicts with easement rights and may be capable of management to ensure appropriate alignment with easement rights.

Conflicts with easement rights. In almost all cases, this exemption will pose a safety and operational hazard for overhead and underground transmission lines and cables.

Table 1 Exemptions and land use conflict with electricity transmission assets

SPP exemption	Comment
4.3.6 unroofed decks	<p>If not attached to a house and floor level is less than 1m above ground level.</p> <p>A deck of this nature can pose an impediment to safe access and due to other exemptions can be roofed without further assessment which is in conflict with easement rights and could compromise safety.</p> <p>A deck over the operational area required for an underground cable would always be unacceptable.</p>
4.3.7 outbuildings	<p>One shed: up to 18m², roof span 3m, height 2.4m, fill of up to 0.5m. Up to two shed: 10m², sides 3.2m, height 2.4m.</p> <p>Similar to PD1.</p> <p>This type of building almost always poses a safety and operational hazard for transmission lines, cables and human safety.</p> <p>This type of building over the operational area required for an underground cable always poses an unacceptable safety risk.</p>
4.3.8 outbuildings in Rural Living Zone, Rural Zone or Agriculture Zone	<p>4.3.8</p> <p>Provides for an unlimited number of outbuilding per lot as follows:</p> <p>Floor area 108m², height 6m, wall height 4m.</p>
4.3.9 agricultural buildings and works in the Rural Zone or Agriculture Zone	<p>Already subject to the Local Historic Heritage Code.</p> <p>Slightly broader than PD1.</p> <p>4.3.9</p> <p>New and broader than PD1 exemptions.</p>

SPP exemption	Comment
	<p>Provides for unlimited number of outbuilding per lot as follows:</p> <p>Must be for agricultural use, floor area 200m², height 12m.</p> <p>Already subject to the Local Historic Heritage Code and the Scenic Protection Code.</p> <p>TN COMMENT:</p> <p>These exemptions create a new and potentially more dangerous conflict with electricity transmission lines and cables where a larger and higher building can be constructed in an electricity transmission easement without the need for planning approval.</p> <p>Buildings of this nature can severely impede TasNetworks' ability to safely access, operate and maintain electricity transmission lines. If built, these buildings could also present a threat to human safety.</p> <p>As a result, in almost all cases, if built, buildings covered by these exemptions would necessitate the enforcement of easement rights, either during or after construction and after the planning and building (exemption), process has occurred. This will likely mean relocating the proposal, a further planning assessment and added cost and time to a development.</p> <p>The nature of electricity transmission line assets (ie: running from isolated generation locations into populated areas) means the zones mentioned in this exemption are almost certain to contain (and appropriately so) electricity transmission assets. The cost of removing substantial agricultural buildings from easements required for new assets also adds to future asset construction costs.</p>
4.3.11 garden structures	<p>Unlimited number, 20m², 3m height max. Already subject to the Local Historic Heritage Code.</p> <p>If not managed appropriately, this type of structure has the potential to compromise clearances and the safe and reliable operation of transmission lines and underground cables. Depending on location within an easement, could also present a threat to human safety.</p> <p>Cost of removal is limited, however still requires post breach enforcement of easement rights.</p>
4.5.1 ground mounted solar energy installations	<p>Each installation can be 18m² area. Already subject to the Local Historic Heritage Code.</p> <p>This type of activity has the potential to compromise clearances or adversely impact easement access (especially during emergency repair conditions).</p>
4.5.2 roof mounted solar energy installations	<p>Already subject to the Local Historic Heritage Code. This would likely only apply to existing buildings within easements.</p> <p>Encroachment is likely existing, however, this exemption has the potential to compromise clearances in what may be a compliant situation.</p>

SPP exemption	Comment
4.6.8 retaining walls	<p>4.6.8 Allows for retaining 1m difference in ground level. This exemption is already subject to the Local Historic Heritage Code and the Landslip Hazard Code. Reflects what was in PD1.</p> <p>4.6.9 Allows for filling of up to 1m above ground level. This exemption is already subject to the Natural Assets Code, Coastal Erosion Hazard Code, Coastal Inundation Hazard Code, Flood-Prone Areas Hazard Code and Landslip Hazard Code. Reflects what was in PD1.</p> <p>TN COMMENT:</p> <p>This type of activity has the potential to compromise ground clearances for existing transmission lines and safe operational separation for underground transmission cables. Subject to appropriate management, this type of activity can usually occur within transmission line easements, however, may pose a more challenging risk for underground cables.</p>
4.6.9 land filling	
<p>4.6.13 rain-water tanks</p> <p>4.6.14 rain-water tanks in Rural Living Zone, Rural Zone, Agriculture Zone or Landscape Conservation Zone</p> <p>4.6.15 fuel tanks in the Light Industrial Zone, General Industrial Zone, Rural Zone, Agriculture Zone or Port and Marine Zone</p> <p>4.6.16 fuel tanks in other zones</p>	<p>Rainwater, hot water & air conditioner exemptions with the 1.2m stand were already included in PD1 and were carried through to the draft and finalised SPPs.</p> <p>This was one exemption in the draft SPPs and was modified by the Commission into four exemptions. TasNetworks requested the original exemption be subject to the Code.</p> <p>4.6.13: attached or located to the side or rear of a building and can be on a stand height 1.2m high. Subject to the Local Historic Heritage Code.</p> <p>4.6.14 attached or located to the side or rear of a building with no height limit. Subject to the Local Historic Heritage Code.</p> <p>4.6.15 no height limit, no requirement is be located near a building. Limited when storage of hazardous chemicals is of a manifest quantity and Coastal Erosion Hazard Code, Coastal Inundation Hazard Code, Flood-Prone Areas Hazard Code, Bushfire-Prone Areas Code or Landslip Hazard Code, applies and requires a permit for the use or development.</p> <p>4.6.16 must be attached or located to the side or rear of a building, max 1kL capacity, on a stand up to 1.2m high and subject to the Local Historic Heritage Code.</p> <p>TN COMMENT:</p> <p>These exemptions allow for water tanks on stands and some have no height limit. These developments have the potential to compromise access to the easement, compromise ground clearances for existing transmission lines and safe operational separation for underground transmission cables. Depending on location in the easement, these developments could pose a threat to human safety. Subject to appropriate management, this type of activity may occur within transmission line easements, however, may pose a more challenging risk for underground cables.</p>