

14 March 2021

REPRESENTATION – RESPONSE TO TASMAN COUNCIL’S EXHIBITION OF THE DRAFT LOCAL PROVISIONS SCHEDULE (LPS)

The following comments constitute the representation of Robin Blau and M. Pamille Berg AO, permanent residents and landowners in Eaglehawk Neck, in response to Tasman Council’s exhibition of its draft *Local Provisions Schedule* (LPS) for the Tasmanian Planning Scheme’s *State Planning Provisions* (SPPs).

1. Introductory comments: the LPS’s role

Our deep interest in the contents of the SPPs and the draft Tasman LPS is due **to the unique and irreplaceable characteristics of the Tasman Peninsula and the responsibility of all Tasmanians to protect, preserve, and enhance them.**

The State Planning Provisions and the Tasman LPS with their respective zones and codes have a fundamental role in determining whether the regionally, nationally, and internationally recognised cultural heritage of the Peninsula is able to be preserved and perpetuated for the short and long term in the midst of the existence of healthy, viable, active communities of residents and visitors.

The way in which the Planning Provisions apply to the incredibly varied areas comprised within the Peninsula must be highly considered and particular, rather than generic, if the natural, cultural, heritage, and economic values are to remain intact and be enhanced.

The Peninsula’s remarkable natural configuration, biodiversity, geodiversity, and cultural heritage are unique circumstances which the land use Planning Provisions and Tasman LPS must successfully address and preserve. As DPIPWE has described,

The Tasman Peninsula is approximately 465 km² in area with approximately 240 km of coastline. A narrow isthmus at Eaglehawk Neck links it to the Forestier Peninsula and the Forestier Peninsula is itself joined to mainland Tasmania by a narrow neck at Dunalley. The two peninsulas project south from the mainland, protecting the coastal waters to the north and west...

The climate of the Tasman and Forestier Peninsulas varies with altitude, from humid and warm near sea level, to moist sub-humid and cool in areas exposed to the southerly winds, and humid and cool at high altitudes...

The entire Tasman Peninsula is listed on the Register of the National Estate for its historical significance. The reserves are also listed for their natural and geoconservation values.

In much of the Tasman National Park, the diversity of flora and fauna is high and in a relatively natural state with several species being endemic to the peninsulas. Although the

area of the reserves is less than one per cent of Tasmania it contains more than one third of the plant species found in the State.

The range of habitats present, given the small area and insular nature of the peninsulas has provided a diversity of animal species, including several birds listed on the threatened species list.

Past use of the reserves by Aborigines and Europeans has left a series of sites, buildings, and relics, cultural landscapes and records that form a cultural resource and provide source material for educative and interpretative programs.

The Aboriginal sites and areas in the reserves are particularly diverse, with both coastal and inland sites; they are generally well preserved.

The Tasman and Forestier Peninsulas are well known for their spectacular coastal scenery, the high-cliffed coastline, unique erosion features and the internationally significant Tessellated Pavement. These visually obvious features accompanied by a vast cultural landscape, including relics from the convict era and more recently the timber harvesting industry, and a diverse natural landscape, are valued experiences... (DPIPWE, Management Plan 2011. Tasman National Park and Reserves, pp. 2 – 3).

While the Park's *Management Plan* outlines these remarkable inherent values and characteristics, they do not exist simply within the boundaries of the National Park and Crown land reserves. What the Plan refers to as "a vast cultural landscape" and its "diversity of flora and fauna" exist on both public and privately-owned land throughout the Peninsula and in both residential and agricultural areas. Native vegetation of considerable significance for preservation is often located on private land, not only within reserves.

Due to that fact, it will be the land use processes determined by the provisions of the SPPs and the Tasman LPS which will either preserve and enhance the Peninsula's remarkable characteristics, or will allow their ongoing degradation through human actions over time. This is what makes the SSPs' and LPS's broad planning approach and their individual details of the application of zones and codes so important to all of us.

These facts make it clear that landowners and residents of the Peninsula **need to understand fully and be able to evaluate in detail** whether and how the planning scheme allows sustainable development and prosperous communities while protecting and conserving the myriad aspects of this complex and fragile place.

For a layperson landowner or resident to read and understand the 493 pages of the *Tasmanian Planning Scheme State Planning Provisions* and the 75-page *LPS Supporting Report*, let alone all of the attachments and other relevant legislation, is extremely challenging.

Unless we are mistaken, Tasman Council has provided **no public information sessions or workshops** to guide interested residents through these complex documents and to answer their questions during the two-month period of the exhibition of the draft LPS. Such workshops and guidance provided by Council in locations around the Peninsula should have been **an essential part of the public exhibition process** for the draft LPS.

In the absence of any such information sessions, our representation in the form of the comments below on various key elements of the LPS reflects our best efforts to comprehend these planning documents on our own, but may contain errors.

2. Local Area Objectives (LAO)

We note with considerable concern that there are no Local Area Objectives included within Section TAS-S2.3 of this LPS.

In the *Supporting Report*, Council states that:

The current interim planning scheme provides local area objectives for the Low Density Residential Zone, Environmental Living Zone and Local Business Zone. These local area objectives are written in a general, high-level fashion and add little value to the assessment process, which requires more specific and more measurable outcomes. [Tasman Council, Local Provisions Schedule (LPS) Supporting Report, Version 2, n.d., p. 16.]

The Local Area Objectives (LAOs) included in the *Interim Planning Scheme* defined the commercial and educational hubs on the Peninsula, as compared to the holiday settlements, and they specified what type of development is to be avoided and what is preferred. The LAOs highlighted the value of protecting amenity, privacy, and ecological and aesthetic values, and how this would be achieved in specific zones.

In its *Supporting Report*, Council stated its conclusion that:

At this stage, local area objectives are not proposed for the LPS. Local area objectives could be added through later amendments to the LPS but would require careful consideration and drafting to ensure that the[y] value add to the process. [Tasman Council, Local Provisions Schedule (LPS) Supporting Report, Version 2, n.d., p. 16.]

We disagree. In our view, stated objectives **are essential** in any planning document.

Given the complexity of issues which must be governed by the planning controls for the Tasman Peninsula, local area objectives are especially important in defining the starting points--the "why" -- in keeping with which the application of the LPS's zones and codes is to be defined. The fact that the Tasman LPS references other State statutory planning documents which contain objectives does not mean that local objectives are not required.

For example, as the *Supporting Report* notes, the *Land Use Planning & Approvals Act (1993)* (LUPAA) emphasises sustainable development, which is defined as:

...managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- a) Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and*
- b) Safeguarding the life supporting capacity of air, water, soil and ecosystems; and*

- c) *Avoiding, remedying or mitigating the adverse effects of activities on the environment.*
[as quoted in the *Tasman Draft LPS Supporting Report*, p. 55]

This sets a strong starting point for the overarching LUPAA objectives, stated later in the LUPAA document (objectives which the draft LPS notes that the planning scheme must meet as a priority).

In a similar way, it is our view that the underlying objectives that the Tasman LPS has for addressing environmental, social, and cultural sustainability, and what the Schedule's corresponding definition of sustainability is (and where appropriate, other similar definitions under Section TAS-S2.4, "Definition of Terms"), are all essential to be included from the outset as Local Area Objectives within the LPS in aid of the understanding of performance criteria and discretionary elements.

We also believe that the Local Area Objectives to be included in the Tasman LPS need to identify and support the visual built-form character of the Peninsula as a valued characteristic for the ongoing interpretation of the LPS's codes. The small blocks with proportionately small houses or holiday shacks which create the building fabric of many of the Peninsula's villages and occupation zones is an important element of the Peninsula's character.

The inclusion of a LAO which recognizes that characteristic of modest buildings and site occupation and identifies its future interpretation as a positive contribution to sustainable living over time would help to ensure that this characteristic, where it occurs on the Peninsula, is not progressively erased.

This representation strongly requests that the draft LPS be amended to include appropriate Local Area Objectives (LOAs).

3. Zones

3.a Low Density Residential Zones (LDRZs) at Eaglehawk Neck: Eaglehawk Neck Specific Area Plans (SAPs) for On-site Waste Water Management

The draft LPS includes a Specific Area Plan (SAP) for on-site waste water management in certain Low Density Residential Zone (LDRZ) areas of Eaglehawk Neck/Penzance [see the *Tasman Local Provisions Schedule – Specific Area Plans*, Tas-S2.0].

From the *Supporting Report* it is difficult to ascertain exactly what is being proposed. It appears to provide for centralised water and sewage services by Taswater for properties that are 1000m² or smaller in these designated Eaglehawk Neck locations (as well as other all populated settlements on the Tasman Peninsula).

We strongly support Council's requirements that all Eaglehawk Neck residential blocks must have adequate approved wastewater and stormwater management systems in place to ensure that the pollution of the fragile ecosystem along the shorelines does not increase.

However, if we understand the SAPs correctly, by Council's LSP providing for reticulated sewage and water, residents on these designated blocks will be able to increase the size of their dwellings by more than 30% of their property, as they will no longer require the open space for septic systems and absorption trenches or grey water reticulation. It is not stated directly, but it also appears that an underlying planning incentive in this provision is to allow for greater infill development in the identified areas on the SAPs, thus increasing the density of these areas.

This representation strongly expresses our concern with the unspecified aspects of this new reticulated water and sewage provision to the designated small-block areas of Eaglehawk Neck, and we request the provision of adequate information from Council on how the infrastructure costs will be covered and how an inappropriate densification, not in keeping with the unique “small lot/small house” character of Eaglehawk Neck, is to be prevented by means of the LSP.

Once again, this points out the extreme importance of the insertion into the Tasman LSP of the Local Area Objectives (LOAs) which clearly set out the Plan’s intentions with regard to the unique visual character appropriate to be maintained in the Peninsula. As the Tasmanian Planning Scheme states,

Local character will also be protected through the Tasmanian Planning Scheme through the application of the Local Historic Heritage Code and local area objectives. [see the Tasmanian Planning Scheme – Residential Development, Fact Sheet 3, p. 2]

These carefully-written Local Area Objectives must be an essential part of determining what is acceptable on the Peninsula as housing character and density in contrast to the generic and potentially undistinguished “accepted solutions” for suburban housing promulgated through the SPPs’ standard planning provisions.

3.b Landscape Conservation Zones (LCZs)

We are attempting to understand and respond to the planning implications of the new Landscape Conservation Zone (LCZ) for the visual and biodiversity connectivity of Eaglehawk Neck (as well as elsewhere on the Peninsula).

According to the Tasmanian Government Planning Reform website, this new zone is the result of

...the recalibration of the interim planning scheme Environmental Living Zone. The Environmental Living Zone was first used in interim planning schemes, and it provides for residential development in areas characterized by native vegetation cover and other landscape values. This established competing priorities between residential development and the protection of natural and landscape values.

The Tasmanian Planning Scheme avoids the competing priorities of the Environmental Living Zone through the creation of the Landscape Conservation Zone.

*The Landscape Conservation Zone instead provides **a clear priority for the protection of landscape values** with residential development largely being discretionary. [see Fact Sheet 6, pp. 1 – 2.]*

As an example of the application of this new zone to existing residential properties, we live on a 16-acre block above Blowhole Road which is primarily a densely forested mountainside, and are flanked by several other hillside blocks of similar or larger size, all heavily forested with native vegetation. A continuous band of Low Density Residential Zone (LDRZ) blocks with small houses flank Blowhole Road below.

Our reason for purchase of the large block 17 years ago for our residence was to live quietly within a precious densely-forested zone across the continuously-forested lower slopes of Arthur’s Peak and Cash’s Lookout fronting Pirates Bay, and to participate in the care and preservation of the relatively

continuous and dramatic forest habitat which frames Eaglehawk Neck. These large privately-owned forest blocks back onto a continuous band of Crown reserve land.

The new LCZ “Zone Purpose” as stated in the Tasman Planning Scheme SPPs is:

22.1.1 To provide for the protection, conservation and management of landscape values.

22.1.2 To provide for compatible use or development that does not adversely impact on the protection, conservation and management of the landscape values. [see 22.0 Landscape Conservation Zone: 1]

The quality of the vegetation across this continuous area of private forested blocks and adjacent Crown reserve is documented by its general inclusion in the Natural Assets Overlay’s “Priority vegetation map” within the draft LPS (see Map 5 of 25).

The Tasmanian Planning Scheme defines the purpose of the ‘priority vegetation area’ application as follows:

The ‘priority vegetation area’ provides for the protection of:

- *Threatened native vegetation communities listed under the Nature Conservation Act 2002;*
- *Threatened flora species;*
- *Significant habitat for threatened fauna species; and*
- *Other locally important native vegetation,*

in conjunction with other State legislation such as the Nature Conservation Act 2002, Threatened Species Protection Act 1995 and the Forest Practices Act 1995. [Tasmanian Planning Scheme – National Assets, Fact Sheet 8, pp. 1 – 2.]

In keeping with the stated goals of the conservation of landscape values in both the zone and the priority vegetation area mapping, the permitted uses within the LCZs are “passive recreation, natural and cultural values management, minor utilities and additions to dwellings”, all of which we believe are consistent with the zone purpose as stated.

However, given the stated goals and landscape management values, we are extremely surprised to see that the “Discretionary Uses” stated in the Use Table for these Landscape Conservation Zone (LCZ) blocks (including our own) include:

- *Community meeting & entertainment*
- *Animal breeding and boarding*
- *Emergency services*
- *Food services up to 200m²*
- *General retail & hire associated with tourist operation*
- *Resource development*
- *Outdoor recreation area*
- *Tourist operation*
- *Visitor accommodation [Tasman Local Provisions Schedule, Attachment 2, “Differences between the State Planning Provisions and current planning scheme”, p. 9].*

We do not regard **any** of these discretionary uses as appropriate to the long-term preservation of the continuous forest habitat which occupies these Local Conservation Zone (LCZ) blocks at Eaglehawk Neck and which is contiguous with the Crown reserve forests framing Eaglehawk Neck.

From our very limited understanding of the SPPs, these discretionary uses can only be prevented from applying to future development proposals for these blocks through the application of a Specific Area Plan (SAP), the inclusion of the area under the Scenic Protection Code, and through the inclusion of carefully-formulated Local Area Objectives (LOAs) in the Tasman LCP. These LOAs would state the high value placed on the relatively unbroken continuous forest landscape as habitat and as the backdrop to views of Eaglehawk Neck seen from key vantage points such as Pirates Bay, the Blowhole jetty, and the mountaintop lookouts.

This representation strongly requests that the draft LPS uses all of the means available within its Schedule to prevent the discretionary uses listed in the Landscape Conservation Zone from applying to blocks with these vegetation and visual framing characteristics at Eaglehawk Neck and in similar circumstances throughout the Peninsula.

4. Codes

4.a The Local Historic Heritage Code in relation to the draft LPS

As noted briefly above, the Tasman Peninsula has important heritage features classified at all four levels of governance – international, national, state and local.

Despite this, as we read it, the draft LPS gives almost no recognition or protection to local heritage.

We have read the report on the draft LPS's heritage provisions which was commissioned by Premadena resident Anna Pafitis from expert planner Danielle Gray of Gray Consulting, submitted as part of Ms. Pafitis's representation, and we endorse the report's comments.

It is our understanding that the recent changes in the planning scheme will mean there will be no duplication of heritage listings at a state and local level. State listings will be reserved for buildings with state significance, and local government will be responsible for listings of local significance.

The draft Tasman LPS currently recognises only two local heritage places for heritage protection. The TAS-Table C6.1, "Local Heritage Places", references only two cemeteries.

We note that the TAS-Table C6.2, "Local Heritage Precincts", TAS-Table C6.3, "Local Historic Landscape Precincts", and "TAS-Table C6.4, "Places or Precincts of Archaeological Potential", have no entries and are marked as "not used in the Local Provisions Schedule".

This is in no way in keeping with the reality of what needs to be protected through zoning and planning on the Peninsula. As early as the 1980s, extensive scholarly documentation already presented the evidence for the **interlaced and inseparable** cultural, historical, archaeological, and scenic values on the Peninsula of the highest order which require protection for residents and visitors on a broad scale through land use and development rules. For example, 36 years ago, J. A. Russell wrote:

Not only is Eaglehawk Neck a dramatic point of entry in scenic terms. In cultural and historical terms, it presents drama at levels which are probably [not] evident to most people

because the National Parks and Wildlife Service has never had the resources to place them before the public eye at Eaglehawk Neck itself. Firstly, the isthmus and its near vicinity are the sites of a guard station and military barracks established largely to prevent convicts who escaped from one or another of the prison stations from leaving Tasman Peninsula.

Secondly, travelling across Eaglehawk Neck could mean a lot more to modern visitors than passing these sites (if, indeed, they were known) or merely heading towards Port Arthur: this phase of the journey could be presented as the first experience of the area which has been described by Professor R.I. Jack as 'the most significant specimen of penal archeology in Australia' and 'a site-complex of international importance'.

The potential for drama does not even end there. The landscape itself could add a third dimension to this initial experience of the Peninsula. Its coastal cliffs and forests, at once grand and forbidding, have the power to impress upon visitors a degree of understanding of the intentions of the prison builders that would be hard to achieve by any other means. Those intentions included the idea of locking convicts away in terrain that was terrible both for its isolation and for its reputation as a natural prison which prevented escape by the very ferocity of its landscape.

Eaglehawk Neck is a superb example of an (albeit forbidding) heritage landscape. The challenge is how to care for it. [Russell, J. A., 1985, Tasman Peninsula Landscape Development Manual: Eaglehawk Neck to Port Arthur, Research Report No. 6, National Estate Grants Program, Project No. 27; Centre for environmental Studies, University of Tasmania, Hobart, pp. 17 – 19.]

The possible consequences of the paucity of heritage references within the draft LPS are likely to be the degradation, loss, and destruction of places, buildings, remains, settings and areas that clearly have historic and cultural values and are likely to have such values in the future.

The Gray Consulting report is highly critical of Tasman Council's failure to manage and protect historic and cultural heritage at a local government level. In doing so, the report points out that the Council is consequently failing to act in accordance with the Resource Management and Planning System and the COAG Agreement on the Environment 1997.

Gray notes that Tasman Council has proposed a Specific Area Plan (SAP) that pertains to the heritage for Port Arthur and the Coal Mines. However, the SAP has a complete absence of standards. As a result, it is unclear what the actual purpose of the SAP is, or how it will be a meaningful contribution to the management and protection of heritage at a local level. Ms. Gray concludes that the SAP is "thus useless in practice and application".

This representation concurs with Ms. Pafitis' representation which calls for the Tasman Council to rectify these matters in the LPS by undertaking the necessary heritage surveys and reviews, engaging with local communities and community groups already well-versed on heritage matters, and engaging a heritage officer or consultant to populate the LPS heritage codes with listings.

4.b Planning Protections for Aboriginal Heritage on the Peninsula

The Tasman Planning Scheme State Planning Provisions omit Aboriginal heritage as a separate required code for the LPS. As a result, it appears that any protections for Aboriginal heritage must occur through the application of the State Planning Provisions' Local Historic Heritage Code.

The references in DPIPWE's statements quoted above make clear the extensive presence and rich evidence of Aboriginal cultural heritage and archaeological remains on both public and private land throughout the Peninsula which require ongoing protection in land use decisions.

In terms of how Aboriginal heritage is to be protected, the Tasmanian Planning Scheme states that this code

...provides certainty in regulating development which may impact on the values, features and characteristics of places and precincts of recognised local heritage significance.

The Local Historic Heritage Code applies to:

- *Local heritage places;*
- *Heritage precincts;*
- *Historic landscape precincts;*
- *Places or precincts of archaeological potential; and*
- *Significant trees.*

This code provides each planning authority with the flexibility to populate the respective place and precinct lists and apply to overlay maps in their relevant Local Provisions Schedule, which forms part of the TPS.

Aligning with the current approach in planning schemes, each planning authority will be responsible for identifying places and precincts suitable for listing, many of which can be transferred from existing planning schemes.

This approach maintains local government's important role in identifying heritage values, features and characteristics of local significance. [see "Tasmanian Planning Scheme – Heritage", Fact Sheet 7, p. 1.]

The SPPs therefore appear to place primary responsibility on Tasman Council for the clear identification in the LPS of the many locations and precincts throughout the Peninsula where Aboriginal heritage occurs as the means for its protection. Given that the TAS-Table C6.2, "Local Heritage Precincts", TAS-Table C6.3, "Local Historic Landscape Precincts", and "TAS-Table C6.4, "Places or Precincts of Archaeological Potential", have no entries, let alone entries defining the presence of Aboriginal heritage, and are marked as "not used in the Local Provisions Schedule", this essential role is not being performed.

The absence of any provisions in the draft LPS for protection and preservation of Aboriginal cultural heritage in relation to land use and development proposals is unacceptable. To our astonishment, as we understand the SPPs and draft LPS, there is no provision for impacts on Aboriginal heritage to be considered in a development assessment.

The evidence and presence of Aboriginal cultural heritage on the Peninsula is a **highly positive asset** in economic, social, environmental, and cultural terms, not a burden to be ignored.

This representation believes it is essential that the Council includes Aboriginal heritage and the clear provisions for its protection in the LSP, prior to its finalization, through the mechanisms specified within the State Planning Provisions.

4.c Scenic Protection Codes

The Scenic Protection Code of the Statewide Planning Provision (SPP) provides that a scenic road corridor can be applied to land, identified at the local or regional level, as important for protection of scenic values.

There is no question that the views to and from the Peninsula's turquoise bays, beaches, mountain lookouts, wild coastline, and historic farming paddock landscapes are among its most valuable assets which must be preserved for its residents and visitors.

However, to our considerable surprise, the draft Tasman LPS does not propose any scenic protection areas or scenic protection corridors. Without protection, the scenic beauty of the Tasman is at risk of being significantly eroded by land use and development decisions, thus damaging the experience of the place for locals and visitors, on whom much of our local economy is dependent.

The Tasman Council's *Supporting Report* recognises that the identification of scenic values requires a site specific report in which "landscape values are identified, described and prioritised and for specific management objectives for each instance to be prepared."

This representation supports the need for urgent completion of the scenic assessment report, specific to the Tasman, to be undertaken as a matter of priority to identify all of the key scenic corridors for protection in the final version of the LPS.

We thank you for the opportunity to comment on the draft Tasman Local Provisions Schedule.

Yours sincerely,



M. Pamille Berg (and Robin Blau)