Outlook

Representation to modifications M-HVC-1 — Blackswan Lagoon Scenic Protection Area – Notice of Exhibition (s40FA)

From Jason Whitehead <[redacted]
Date Mon 28/09/2026 10:06 AM
To Huon Valley Council <hvc@huonvalley.tas.gov.au>
Cc Trent Henderson <[redacted]>; Fiona Taylor <[redacted]>; Olivia Johnson <ojohnson@huonvalley.tas.gov.au>

1 attachment (667 KB)
Leprena Trust & Red Seal HVC Representation 27-9-2026 LPS Scenic Protection.pdf;

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Dear Huon Valley Council staff,

We thank the council elected members for their prior support for the Leprena Trusts *Blackswan Lagoon Scenic Protection Area (SPA)* proposal, and acknowledge that Table C8.1 was originally created with technical input from Mr Trent Henderson (Red Seal Planning), acting on behalf of the Leprena Trust, and Ms Clare Hester (ERA planning) and Ms Jacqui Blowfield (Ireneinc Planning), acting on behalf of the Huon Valley Council. The Tasmanian Planning Commission (TPC) has made substantial modifications to Table C8.1, as advertised. Planning and legal advice obtained by the Leprena Trust indicates that these modifications have rendered the SPA ineffective for the protection of the important scenic values here.

Please see the attached up dated joint submission (as of 27-9-2026) from the Leprena Trust and Red Seal Planning, in representation to the substantial modifications advertised in *M-HVC-1 — Blackswan Lagoon Scenic Protection Area.*

Please acknowledge receipt of our submission.

Kind regards,
Jason Whitehead
Trustee - Leprena Trust - Sullivans Point, Leillateah, Recherche Bay
[redacted]

Mr Trent Henderson
Planner

Dr Jason Whitehead
Trustee – Leprena Trust
(Sullivan's Point, Recherche Bay)
Leillateah

27 September 2026

M-HVC-1 — Blackswan Lagoon Scenic Protection Area

Leprena Trust and Red Seal Planning Representation to Huon Valley Council regarding Tasmanian Planning Commission substantial modifications to Table C8.1.

Dear Huon Valley Council staff,

We thank the council elected members for their prior support for the Leprena Trusts *Blackswan Lagoon Scenic Protection Area (SPA)* proposal, and acknowledge that Table C8.1 was originally created with technical input from Mr Trent Henderson (Red Seal Planning), acting on behalf of the Leprena Trust, and Ms Clare Hester (ERA planning) and Ms Jacqui Blowfield (Ireneinc Planning), acting on behalf of the Huon Valley Council.

The Tasmanian Planning Commission (TPC) has made substantial modifications to Table C8.1, as advertised. Planning and legal advice obtained by the Leprena Trust indicates that these modifications have rendered the SPA ineffective for the protection of the important scenic values here.

- The TPC removed any reference to the scenic values associated with Aboriginal culture and heritage, and dual heritage of the 1792 and 1793 D'Entrecastreaux expeditions.

- The TPC modified the Table C8.1 Management Objectives, allowing visual impact to be 'minimised' rather than 'avoided', which has set a very low threshold for development and works to occur that will result in inappropriate impacts on the significant and important scenic values here.

The TPC response, dated 12 July 2024 (Page 242) within Point 1188, explained the substantial modifications to Table C8.1 as follows:

1188. *The Commission agrees the Scenic Protection Area overlay should be reduced in area in so far that it is not applied outside the municipal boundary. In addition, the Commission considers amendments are required to entry in Table C8.1, particularly the management objectives, to ensure it is suitable for inclusion in the draft LPS. Amendments are required for the following reasons:*

- *the description of the area must be limited to features that contribute to its scenic value;*
- *the scenic values must be limited to natural features of the landscape that collectively contribute to the appearance of the area and must not include references to cultural or heritage values, which are the domain of the Local Historic Heritage Code, Historic Cultural Heritage Act 1995 and the Aboriginal Heritage Act 1975;*
- *the management objectives are high-level local objectives to which the planning authority must have regard when an application for development is considered against the relevant Performance Criteria of the Scenic Protection Code;*
- *the management objectives must not address matters for which specific zone standards are available;*
- *the management objectives must not set out requirements or other explicit criteria to be met; and*
- *the management objectives must not contain statements that can be characterised and applied as additional Acceptable Solutions or Performance Criteria.*

The Leprena Trust engaged a planning lawyer, Ms Sarah Wilson (Page Seager) to review the TPC response and where appropriate redraft the Table C8.1 Management Objectives (**Appendix 1**). Mr Trent Henderson (Red Seal Planning), a qualified planner and a joining party to this submission, has provided additional planning advice to the redrafted Table C8.1 in **Appendix 1**.

In summary, Ms Wilson's legal counsel:

- Confirmed that it is appropriate to include scenic values of Aboriginal heritage and cultural relevance within the Scenic Protection Code.

- Proposed the redrafted Management Objectives in Table C8.1 that provide high-level guidance for the development assessment process, but do not attempt to regulate development directly, which is consistent with the role of such objectives in the planning framework.

- Recommended Management Objective wording replacing the term 'minimise' with 'avoid', 'avoiding', and 'discourage' in relation to the impact of development and works upon scenic values.

- Recommended the inclusion of the word 'enhance', as this sets a higher bar for development standards. In Ms Wilson's legal opinion, 'minimise' suggests a lower threshold that can be easily demonstrated, whereas the new terms more appropriately protect scenic values here.

In summary, Mr Henderson agreed with Ms Wilson's counsel and recommended additional Table C8.1 planning amendments, with inclusion of the following Scenic Values previously drafted in collaboration with Irenic Planning, Huon Valley Council and the Leprena Trust:

- Scenic values and locations associated with Aboriginal culture and heritage and the 1792 and 1793 D'Entrecastreaux expeditions;
- Scenic values and locations associated with wildlife features; and
- Significant scenic viewpoints to provide clarity for the Management Objectives.

Please find attached to this letter:

- A summary response to the TPC proposed substantial modifications advertised by council (**Appendix 2**)

- Detailed technical evidence supporting the Leprena Trust / Red Seal Planning amendments to Table 8.1 (**Appendix 3 and 4**) referring to:
    - TPC planning advice notes,
    - State Planning Provisions (relevant definitions, zones, and codes),
    - TPC approved LPS planning precedents.
    - A review of *Historic Cultural Heritage Act 1995* and *the Aboriginal Heritage Act 1975*, and
    - Other evidence, which collectively contradicts the TPC response (dated 12 July 2024 (Page 242) in Point 1188).

This substantial body of evidence justifies the further amendments made to Table C8.1 (**Appendix 1**).

We request that the Council accept the **Appendix 1** Table C8.1 amendments, as they are in keeping with the prior intent, of the Huon Valley Council and Leprena Trust / Red Seal Planning, co-created and supported Table C8.1.

The amended Management Objectives in **Appendix 1** are consistent with the TPC's *Practice Note 8,* and similar TPC notes for drafting 'Local Area Objectives, as they:

a) are high-level and consistent across the described scenic protection area;

b) do not address matters for which specific zone or code standards are available;

c) have not set out explicit performance criteria to be meet, but instead address general purpose;

d) are not additional performance criteria, but '<u>have regard to</u>' development proposing the destruction of vegetation and building or works, so as to ensure development must not cause an unreasonable reduction of scenic value; and

e) provide detail that has regard for some of the performance criteria sub-criteria, but does not replicate or replace these.

We request that the planning authority and TPC recognise prior supportive submissions from all representors, including those omitted from the TPC response dated 12 July 2024 (Page 238), they include: Mr David Shelley (Honorary Consul for France in Tasmania), South East Tasmanian Aboriginal Corporation, Weetapoona Aboriginal Corporation, and Professor Gregory Lehman.

We request the Council support in full the Leprena Trust / Red Seal Planning proposal for the revised Table C8.1 (**Appendix 1**), which is in keeping with the Management Objective intent previously supported by the Huon Valley Council, Leprena Trust and other representors.

We note that the TPC agreed that the *Blackswan Lagoon Scenic Protection Area* is compatible with the Tasmanian Parks and Wildlife Services Southport Lagoon Conservation Area. The Tasmania Land Conservancy and Leprena Trust landholders are supportive of the *Blackswan Lagoon Scenic Protection Area* amendments proposed in this submission.

Please acknowledge receipt of our representation.

Regards,
Jason Whitehead
Trustee - Leprena Trust - Sullivans Point, Leillateah, Recherche Bay

and

Trent Henderson
Planner – Red Seal Urban and Regional Planning

The Trustees of the Leprena Trust acknowledge that Leillateah, Recherche Bay, and surrounding lands and waters is the Country of the Lyluquonny palawa Nation (the areas First Nation people). We recognize that today's palawa and pakana peoples (First Nations Tasmanians) are the traditional custodians of Lutruwitta, Tasmania, and we pay our respects to elders past, present and emerging.

APPENDIX 1 Table C8.1 - amendments created with Page Seager and Red Seal Planning, legal and planning advice

C8.1 Scenic Protection Area

Reference Number	Scenic Protection Area Name	Description	Scenic Value	Management Objectives
To be determined	Blackswan Lagoon	Low lying coastal peninsular, covered in native forest, moorland and button grass plains and includes coastal dunes, wetlands, scrubland, sandy beaches, rocky shorelines, tidal flats, rivers, streams, and coastal lagoons. Evidence of development on the peninsular is limited to a few revegetated ruins only visible when standing at these locations. The area features a few disused vehicle tracks that are evident from the air but are less visible from coastal and water locations. The area includes: (a) the forested hills north and east of Eliza Point and Bowdens Mistake (up to an elevation of approximately 63m AHD), the connecting saddles and adjacent spurs that descend to sea-level to the south and east, and to open plains to the north and west; (b) an open ridge east of Blackswan Lagoon with an elevation approximately 47 m AHD continues, northward via a forested saddle and then descends north as an open vegetated spur; (c) forested hills north of and west of Blackswan lagoon that continue to Sullivans Point; (d) a forested rise ascending from the coast east of	(a) The natural undeveloped visual aesthetic. (b) Vegetation, water forms and landform features. (c) Undeveloped areas of forest and areas of open vegetation that area visually distinctive. (d) Blackswan Lagoon where there is year-round high abundance of black swans and is a water form and wildlife feature of high scenic value. (e) Areas associated with the 1792 and 1793 D'Entrecastreaux expeditions and ethnographic records were made between the 1790s to 1840s from European contact with Aboriginal people, and contemporary oral histories indicating the location of burials and sites of cultural importance in an area with high scenic aesthetic due to lack of development currently in use; i) The forested areas and foreshore around Blackswan Lagoon, Little Lagoon Beach, Quiet Cove, Pigsties Bay, Bennetts Point and Southport Lagoon are where important French and First Nations interactions occurred in 1793; ii) Bennetts Point where French Astronomical observations occurred in 1792 and important French and First Nations interactions occurred in 1793; iii) Quiet Cove where First Nations houses were drawn in 1792 and important French and First Nations interactions occurred in 1793; iv) The eastern coastline of Pigsties Bay is where the French Garden is located and the d'Entrecasteaux expedition shore-based encampments occurred in 1792; v) Sullivans Point used by the French in 1792 as a coastal surveying location; vi) Type locations for historic plant and animal collections,	**(a)** To ensure that the scenic values associated with landscape, wildlife and cultural-historic features in the Blackswan Lagoon Scenic Protection Area are retained, respected and protected from visual impacts that would alter or degrade these scenic values. **(b)** To manage the Blackswan Lagoon Scenic Protection Area to ensure that the established landscape character is retained, and visual impacts are avoided. **(c)** To avoid potential visual impact of new development or works on scenic values. **(d)** Development within this area should maintain and enhance the scenic values, avoiding any visual impacts that could degrade the landscape through objectives that: i) Protect and maintain the forest canopy and natural vegetation to ensure that any changes do not result in noticeable visual impacts when viewed from sensitive scenic viewpoints; and. ii) Preserve the natural character of the area ensuring that structures or works do not degrade the scenic values, allowing for traditional Aboriginal cultural practices that do not permanently alter the natural environment; and iii) Safeguard the natural coastline and avoid any visual intrusion of marine facilities or infrastructure that could degrade the scenic

		Pigsties Bay and the D'Entrecastreaux River; (e) numerous hills up to 54m AHD in an area of open and forested vegetation; (f) the Little Lagoon Beach dune ridge; (g) the isthmus between Big Lagoon Beach and Southport Lagoon; (h) Blackswan Lagoon; (j) the coastal land and south-eastern foreshore of Southport Lagoon down to the mean high water mark; (k) the coastal land and foreshore from Big Lagoon Beach and around the coast to Pigsties Bay; (l) land to the mean high water mark of the eastern bank of D'Entrecasteaux River to the former Leprena Track Bridge.	including the forested area behind Little Lagoon Beach, the type of location for Tasmania's floral emblem (*Eucalyptus gobulus*); iix) the coastal land and foreshore from Big Lagoon Beach to Pigsties Bay; and ix) cultural landscapes arising from Aboriginal fire management. f) The natural undeveloped visual aesthetic is appreciated by locals and visitors for cultural and passive recreational uses when located at the following viewpoints: i) walking on former vehicle tracks, beaches and rocky foreshores within the scenic protection area, ii) flying over the area typically by people going to or from Melaleuca, iii) boating or kayaking around the coastal shoreline (including Southport Lagoon), iv) anchorages and moorings in Pigsties Bay and Quiet Cove, v) public roadside viewing from Moss Glen, vi) from private properties within the scenic protection area, vii) from private properties in Moss Glen, Finns Beach, Jones Beach and Catamaran, viii) from Finns Beach, Jones Beach and Gillams Beach near public camping grounds, ix) public viewpoints at Cockle Creek, Adams Point, Fishers Point and the walking track joining these locations, and x) the Bruny Island Lighthouse viewpoint.	values of coastal and waterway areas; and iv) Maintain the natural visual continuity of the landscape scenic values by discouraging the creation of new vehicle, bicycle, or walking tracks; and v) Ensure that any necessary signage is not visible from all sensitive scenic viewpoints; and vi) Protect coastal dune systems and associated vegetation from degradation caused by development, maintaining their stability and natural appearance as essential components of the scenic landscape. **(e)** The scenic values of the areas where there are currently existing access tracks are enhanced through objectives that the: i) Upgrade and maintenance of existing access infrastructure should be undertaken with a focus on avoiding any increased visual disturbance and enhance the scenic values and ensure that such works blend seamlessly with the natural landscape; and **ii)** Rehabilitation of former vehicle tracks must be guided by natural recovery processes or active restoration, with the aim of enhancing the natural visual integrity of the landscape and scenic values.

APPENDIX 2.

Summary response to TPC modifications to Table C8.1

1. Legal counsel from Ms Wilson (Page Seager) indicates that the TPC removal of Table C8.1 references to cultural heritage and wildlife Scenic Value features, is not warranted. The TPC response (dated 12 July 2024 (Page 242) in Point 1188, and their Table C8.1 substantial modifications conflicts with the following evidence:

    a. The '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code',* prepared with input from the Southern Technical Reference Group of the Southern Tasmanian Councils Authority, with advice from planning staff from the Policy Planning Unit of the Department of Justice within the State Government indicates:
        i. **Scenic Value** is a combination of Scenic Sensitivity (based on view fields) and Scenic Quality (based on visual quality of landscape features that relate to: landform, vegetation, waterform, **cultural heritage and native wildlife features**.
        ii. The definition of Scenic includes 'specific characteristic' **or** 'features of the landscape' that can include '*cultural heritage and native wildlife features'* as included in the Guidelines:
            1. The *Tasmanian Planning Scheme State Planning Provisions* The C8.3 Definition of Terms
                a. Scenic Value: *means the specific characteristics or features of the landscape that collectively contribute to a scenic protection area …..*
            2. *'*Section *8A Guideline No1 Local Provisions Schedule (LPS) zone and code application' SPC1,* includes '*important scenic values',* which can include 'features of the landscape' such as '*cultural heritage and native wildlife features'*
                a. containing significant native vegetation or bushland areas with important scenic values (such as skyline areas); or
                b. identified for their significant scenic views
            3. *Practice Note 8 'Draft LPS written document: technical advice'*, purpose is "*to provide technical advice on drafting and formatting the written part of the LPS to ensure consistency*";
                a. Scenic Value Advice *" Identify the specific characteristics or features of the landscape that collectively contribute scenic values of the area or corridor".*

b. Scenic Values and locations associated with Aboriginal culture and heritage and the 1792 and 1793 D'Entrecastreaux expeditions should be included in Blackswan Lagoon SPA as they cannot be protected under the *Local Historic Heritage Code.* Half of the Blackswan Lagoon SPA is on the Tasmanian Heritage Register and the *C6.0 Local Historic Heritage Code C6.1 Code Purpose* states:
    i. C6.1.2 This code does not apply to Aboriginal heritage values.
    ii. C6.2.3 This code does not apply to a registered place entered on the Tasmanian Heritage Register, unless for the lopping, pruning, removal or destruction of a significant tree as defined in this code.

c. The *Historic Cultural Heritage Act 1995* does not apply to Scenic Values associated with Aboriginal cultural landscapes and poorly considers scenic values associated with some of the 1792 and 1793 D'Entrecastreaux expeditions sites in the Blackswan Lagoon SPA. The *Historic Cultural Heritage Act 1995* is inadequate:
    i. does not apply to Aboriginal cultural landscapes or scenic values;
    ii. half of the Blackswan Lagoon SPA is not on the Tasmanian Heritage Register and as such the Act does not apply;
    iii. fails to protect Scenic Value impacts arising from works and development minor in nature or exempt from the Act;
    iv. The Management Guidelines fail to provide distinction between the Scenic Values of the developed Ramsgate and Settlement Sites (containing shacks and other infrastructure) versus the Scenic Value of the undeveloped landscape character of the Blackswan Lagoon SPA;
    v. Management Guidelines under the Act: "*S90A (3) (g) are not statutory rules.";* and
    vi. the Tasmanian Governments Minister of Heritage *Statement of Expectation* of the Heritage Council (THC), and the THC response through a *Statement of Intent* provides priority for developments for tourism and visitor services over the protection of Scenic Values.

d. The *Aboriginal Heritage Act 1975* does not apply to Scenic Values of locations associated with Aboriginal culture and heritage:
    i. The Act does not apply to cultural landscapes or Scenic Values;
    ii. *NRE (2022) A new Aboriginal Cultural Heritage Protection Act - Consultation Paper on High-level Policy Directions, "It is the Government's view that Aboriginal cultural heritage should also be included [in the State's Resource Management and Planning System (RMPS)]. It should not be siloed and potentially ignored, nor should decisions about Aboriginal cultural heritage be made in isolation from all other considerations.";*

iii. The Scenic Values of 1792 and 1793 D'Entrecasteaux expeditions sites are of shared European and First Nation heritage significance';
iv. The Act regulates sites and 'artefacts', while the Scenic Protection Code is aimed at preserving the scenic value of the landscape associated with the cultural significance of the site; and
v. Page Seager legal counsel states that scenic protection of Aboriginal cultural landscapes falls within the remit of the Land Use Planning and Approvals Act (LUPAA) Scenic Protection Code.
vi. It is noted that a draft *Aboriginal Heritage Bill 2026* seeks to amend the Act, defines cultural landscapes (Part 3 Clause 11) and says future pathway will exists for registration of cultural landscapes (Part 5 Clause 26). The draft bill is unclear how this will be determined and assessed.

e. Precedents occur within other TPC approved LPS Table C8.1's where 'Scenic Value' descriptions now in effect include associated wildlife features, which the TPC unjustifiably removed from the *Blackswan Lagoon SPA*:
    i. The TPC approved Launceston Council LPS *C8.0 Scenic Protection Code LAU- C8.1.1 Tamar River Scenic Protection Area* Table C8.1 Scenic Values wildlife features: "*The area has a high visual presence of native birds all year round, including swans, ducks and herons.*"

f. Precedents occur within other TPC approved LPS Table C8.1's where 'Scenic Value' descriptions now in effect include associated heritage and culture features, which the TPC unjustifiably removed from the *Blackswan Lagoon SPA*:
    i. The TPC recently approved the Huon Valley Council LPS *C8.0 Scenic Protection Code HUO- C8.2.10 Cockle Creek Road Recherche to Catamaran to Cockle Creek Scenic Road Corridor* Table C8.1 Scenic Values included cultural heritage features: *"(c) The D'Entrecasteaux Expedition Sites contribute historic traces and human context to a predominantly natural landscape."*

2. The TPC modifications to Table C8.1 have seriously weakened the scenic protection afforded through their changes to the Management Objectives. The TPC modifications enable development and works to create impact on the most sensitive areas of High Scenic Value in the *Blackswan Lagoon SPA*, which is an unreasonable impact given the high social significance that the Tasmanian, National and International community places on the Scenic

Values here. The TPC response and modifications conflicts with the evidence below:

a. *C8.0 Scenic Protection Code purpose is "**C8.1.1*** To recognise and **protect landscapes** that are identified as **important for their Scenic Values**."

b. The TPC's *Practice Note 8* states that C8.0 Scenic Protection Area Code Table 8.1 Management objectives **must be consistent with the purpose of the code** and **drafted to provide as much clarity as possible.**

c. The *'*Section *8A Guideline No1 Local Provisions Schedule (LPS) zone and code application'* guideline for the application of the C8.0 Scenic Protection Area Code states that: "**The articulation of specific scenic values and management objectives allow for greater guidance in the assessment of discretionary applications against the code."**

d. The '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code'.* Include a 2018 review of the *C8.0 Scenic Protection Code Provisions* by the Technical Reference Group for the Southern Tasmanian Council Authority and advice from the Department of Justice planning policy staff. They agreed that:
    i. *"a category* [should be created] for *the protection of the high scenic value areas where there would be no Acceptable Solution and thus Performance Criteria would be applied to prevent any unreasonable loss of these high scenic values [page12]."*

    The deficiency in the Code to protect High Scenic Values further justifies the need for protective management objectives that avoids visual impact instead of minimises visual impact.

e. Precedents within other TPC approved LPS Table C8.1's Management Objectives now in effect seek to avoid (as opposed to minimise) impact on scenic value from development and works in areas of High Scenic Value.
    i. The TPC approved the Sorell Council LPS C8.0 *Scenic Protection Code* SOR-C8.1.12. SPA Table C8.1 Management Objective: "*(c) **Discourage development** along significant skylines, ridge lines and visually prominent locations .."*
    ii. The TPC approved the Central Coast Council LPS C8.0 *Scenic Protection Code* CC0-C8.1.1. SPA Table C8.1 Management Objective: "*(b) maintaining skylines and escarpments and*

forested slopes ***free of visible development and fragmentation***"; and

iii. The TPC approved the Northern Midlands Council LPS C8.0 *Scenic Protection Code* SOR-C8.1.12. SPA Table C8.1 Management Objective "*(a)* ***Avoid development and works*** *on the Long Spit that would impact on the scenic values of the coastal dune including coastal vegetation. "*

iv. The Tasmanian Planning Scheme State Planning Provisions use development associated with landscape treatment to 'enhance' visual amenity in the 18.0 Light Industrial Zone and 19.0 General Industrial Zone, where landscaping is used to improve visual amenity. Further development of existing access tracks within the Scenic Protection area should also seek to enhance visual amenity.

f. Precedents within other TPC approved LPS Table C8.1's Management Objectives now in effect seek to enhance scenic value (as opposed to minimise impact) from development and works.
    i. The TPC approved Launceston Council C8.0 *Scenic Protection Code* LAU-C8.2.3. Table C8.1 Management Objectives *"(c) to limit destruction of existing vegetation cover,* ***and enhance native forest coverage in hilltop locations;"***

g. The Leprena Trust / Red Seal Planning amended Management Objectives in **Appendix 1** are consistent with the TPC's *Practice Note 8,* and similar TPC notes for drafting 'Local Area Objectives, as they:
    i. are high-level and consistent across the described scenic protection area;
    ii. do not address matters for which specific zone or code standards are available;
    iii. have not set out explicit performance criteria to be meet, but instead address general purpose; and
    iv. are not additional performance criteria, but 'have regard to' development proposing the destruction of vegetation and building or works, so as to ensure development must not cause an unreasonable reduction of scenic value; and
    v. do not replicate or replace scenic protection performance criteria and sub-criteria.

APPENDIX 3 Detailed technical response to TPC modifications from Leprena Trust and Red Seal Planning

Item 1 TPC response within point 1188: *"the description of the area must be limited to features that contribute to its scenic value" and "the scenic values must be limited to natural features of the landscape that collectively contribute to the appearance of the area…"*

Guidelines relating to scenic value

The *Tasmanian Planning Scheme State Planning Provisions C8.0 Scenic Protection Code purpose is "C8.1.1 is:*

To **recognise and protect landscapes** that are identified as **important for their scenic values.**

The C8.3 Definition of Terms

Scenic Value*: *means the specific characteristics or features of the landscape *that collectively contribute to a scenic protection area or a scenic road corridor, as described in the scenic protection areas list or the scenic road corridors list in the relevant Local Provisions Schedule.*

The *'Section 8A Guideline No1 Local Provisions Schedule (LPS) zone and code application'* purpose is to "is to provide an easy reference guide for the application of all zones and codes for the preparation of draft Local Provisions Schedules (LPSs) and amendments to LPSs" [page 1]. The associated ***Guidelines for applying the Scenic Protection Code overlays*** are:

SPC1 **The scenic protection area** overlay and the scenic road corridor overlay may be **applied to land** identified at the local or regional level as important **for the protection of scenic values**. These may include areas:
(a) containing significant native vegetation or bushland areas with important scenic values (such as skyline areas); or
(b) identified for their significant scenic views.

The Leprena Trust submission to on 29 April 2023 included a detailed assessment of the *Blackswan Lagoon SPA* using the '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code'.* The Guideline was prepared for the Southern Technical Reference Group of the Southern Tasmanian Councils Authority by the consultancies Inspiring Place Pty Ltd and Geoscene International, and was completed 9-9-2018. The Guideline was prepared with input from the Southern Technical Reference Group and advice from planning staff from the Policy Planning Unit of the Department of Justice within the State Government and has a focus on what must be considered when assessing Scenic Value. Scenic Value is a combination of Scenic Sensitivity (based on view fields) and Scenic Quality (based on visual quality of landscape features that relate to: landform, vegetation, waterform, cultural heritage and native wildlife features).

The TPC's *Practice Note 8 'Draft LPS written document: technical advice'*, purpose is "*to provide technical advice on drafting and formatting the written part of the LPS to ensure consistency*". The advice on page 15, point 7.5, for Scenic Protection Code lists- Table C8.1 and C8.2, states:

Description Advice: "These columns provide for the description of the physical context of the scenic values."

Scenic Value Advice: " **Identify** the specific characteristics or **features of the landscape** that collectively contribute scenic values of the area or corridor".

As noted above in the *Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code,* **visual landscape features relate to: landform, vegetation, waterform, cultural heritage and native wildlife features**

It is appropriate that Table C8.1 include in the Scenic Value description of significant landform, vegetation, waterform, cultural heritage and native wildlife visual features, consistent with the '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code',* and *'*Section *8A Guideline No1 Local Provisions Schedule (LPS) zone and code application',* and currently effective LPS C8.1 Tables. There are many precedents where visual landscape heritage and wildlife features are included in Table 8.1 Descriptions and Scenic Values within TPC approved LPS Scenic Protection Areas and Scenic Protection Corridors, such as:

A) The TPC recently approved the C8.0 Scenic Protection Code HUO- C8.2.10 Cockle Creek Road Recherche to Catamaran to Cockle Creek Scenic Road Corridor Table C8.1 Description and Scenic Values include visual landscape heritage features in the Huon Valley Council LPS.

   Description: Several of the D'Entrecasteaux Expedition Sites are located within the Road Corridor. 1792 expedition sites are concentrated around Pigsties Bay at the northern end of Recherche Bay, centred on the northeast peninsula around Bennetts Point, and to the west of Pigsties Bay at Moss Glen. Most of the historical and archaeological sites of French activity related to the 1792 and 1793 visits of D'Entrecasteaux are ephemeral, with no apparent physical evidence today. Some sites have the potential to include the archaeological remains of structures or landforms associated with the activity of the French expeditioners, whilst all sites have some potential to include artefactual material from the expeditions.

   Scenic Values: (c) The D'Entrecasteaux Expedition Sites contribute historic traces and human context to a predominantly natural landscape.

B) The TPC approved C8.0 Scenic Protection Code CIR- C8.1.1 Stanley Peninsula Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage features in the Circular Head Council LPS.

   Scenic Values: Stanley Peninsula has very high landscape values arising from its cultural heritage (Aboriginal and European) and its scenic quality, tourism and nature conservation values.

C) The TPC approved C8.0 Scenic Protection Code CIR- C8.1.3 Coastal Estuaries and Islands Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage features in the Circular Head Council LPS.

Scenic Values: Community feedback and social media speak to the strong cultural heritage (Aboriginal and European), social and recreational connections associated with the islands.

D) The TPC approved C8.0 Scenic Protection Code LAU- C8.1.1 Tamar River Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage and wildlife features in the Launceston Council LPS.

Scenic Values: The area has a high visual presence of waterfowl and native birds all year round, including ducks, swans, egrets, pelicans and the occasional white-bellied sea eagle.

Key scenic points include the Windermere Church and the Native Point Nature Reserve. The church is a major landmark that brings pride to the village of Windermere. Its location at the river edge provides visual prominence. Surrounding dwellings reflect the local and historic rural character.

E) The TPC approved C8.0 Scenic Protection Code LAU- C8.1.2 North Esk Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage and wildlife features in the Launceston Council LPS.

Scenic Values: The area has a high visual presence of native birds all year round, including swans, ducks and herons. It also incorporates local historic sites such as Northcote and Corra Lynn set within the rural landscape.

F) The TPC approved C8.0 Scenic Protection Code LAU- C8.1.3 Rural Hills Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage and wildlife features in the Launceston Council LPS.

Scenic Values: The hillsides are composed of heavily vegetated areas of public and private land that is both historically and ecologically significant.

The TPC approved LPS Tables C8.1 examples A to F (above) are consistent with the *C8.0 Scenic Protection Code C8.1 Purpose* and application of the '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code'.* This is in contrast to the TPC amendment to the *Blackswan Lagoon SPA* Table C8.1, where they have in error removed reference to visual landscape cultural heritage and native wildlife features.

The Leprena Trust submission on the 29 April 2023 included a detailed assessment titled '*Supporting evidence for C8.0 Scenic Protection Area application over the proposed Blackswan Lagoon SPA,* which applied the '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code',* which included High Scenic Value associated with cultural heritage and wildlife features.

Item 2 TPC response within point 1188: *" the scenic values ……must not include references to cultural or heritage values, which are the domain of the Local Historic Heritage Code, Historic Cultural Heritage Act 1995 and the Aboriginal Heritage Act 1975".*

1) Scenic values includes reference to visual landscape cultural, heritage and wildlife features

I believe that the TPC directive that the C8.0 Scenic Protection Code Table C8.1 '*Scenic Values… must not include reference to cultural or heritage values'* or wildlife features is in error.

The *'Section 8A Guideline No1 Local Provisions Schedule (LPS) zone and code application'* purpose is to "is to provide an easy reference guide for the application of all zones and codes for the preparation of draft Local Provisions Schedules (LPSs) and amendments to LPSs" [page 1]. The *C8.0 Scenic Protection Code* purpose is "C8.1.1 To recognise and protect landscapes that are identified as important for their scenic values." The associated ***Guidelines for applying the Scenic Protection Code overlays*** are:

> ***SPC1*** The scenic protection area overlay and the scenic road corridor overlay may be applied to land identified at the local or regional level as important for the protection of scenic values. These may include areas:
>
> (a) containing significant native vegetation or bushland areas with important scenic values (such as skyline areas); or
> (b) identified for their significant scenic views.

The TPC's *Practice Note 8 'Draft LPS written document: technical advice'* purpose is "*to provide technical advice on drafting and formatting the written part of the LPS to ensure consistency*". The advice on page 15, point 7.5, for Scenic Protection Code lists- table C8.1 and C8.2, provides the advice for drafting:

- **Scenic Value Advice** *" **Identify the specific characteristics** or **features of the landscape** that collectively contribute scenic values of the area or corridor".*

The TPC response appears to over compartmentalise the sense of scenic value limiting it to natural features of the landscape. The *Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code,* **visual landscape features relate to**: landform, vegetation, waterform, **cultural heritage and native wildlife feature**. Natural visual features of the landscape can be intrinsically connected to culture and heritage, creating clear connection to scenic value.

The TPC response has removed without justification the visual landscape vegetation and native wildlife features related to scenic value:

- Blackswan Lagoon where there is year-round high abundance of black swans and is a water form and wildlife feature of high scenic value; and the

- type locations for historic plant and animal collections, including the forested area behind Little Lagoon Beach, the type of location for Tasmania's floral emblem (*Eucalyptus gobulus*) collected from a towering coastal gum tree forest of high scenic value that is known to locals as the 'Labillardiere forest', after the 1782-923 French botanist whom collected plants from here.

2) <u>The TPC response has attempted to justify the removal of the visual landscape cultural heritage features related to scenic value by saying this is the domain of the:</u>

a) Tasmanian Planning Scheme C6.0 *Local Historic Heritage Code*,
b) *Historic Cultural Heritage Act 1995, and*
c) *Aboriginal Heritage Act 1975*.

<u>a) Tasmanian Planning Scheme C6.0 *Local Historic Heritage Code*</u>

The *C6.0 Local Historic Heritage Code C6.1 Code Purpose* states:

> C6.1.2 This code does not apply to Aboriginal heritage values.
> C6.2.3 This code does not apply to a registered place entered on the Tasmanian Heritage Register, unless for the lopping, pruning, removal or destruction of a significant tree as defined in this code.

Approximately half of the *Blackswan Lagoon SPA* occurs within the Tasmania Heritage Register (THR) '*D'Entrecasteaux Expedition Sites Recherche Bay'* (THR Identification Number 11018). The *C6.0 Local Historic Heritage Code* cannot be applied to protect the Scenic Value across half of the *Blackswan Lagoon SPA*, unless relating to 'significant trees' as defined by the code (as it occurs on the Tasmania Heritage Register) and the *C6.0 Local Historic Heritage Code* cannot be applied to protect Scenic Values related to Aboriginal Heritage. The TPC response that the Scenic Value visual landscape features relating to cultural heritage can be protected in the *Blackswan Lagoon SPA* through application of *C6.0 Local Historic Heritage Code* is incorrect.

b) *Historic Cultural Heritage Act 1995*

Approximately half of the *Blackswan Lagoon SPA* occurs within the Tasmania Heritage Register (THR) '*D'Entrecasteaux Expedition Sites Recherche* Bay' (THR Identification Number 11018) and the listing recognizes the **'Integrity of the site' as very high, based upon the 'natural landscape setting of the French 1792 and 1793 expedition sites'**. The *Historic Cultural Heritage Act 1995* defines historic cultural heritage significance in relation to a place based upon several criteria such as: significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value of the place.

The Statement of Significance includes reference to the aesthetic (scenic) value, as does the Significance Criterion (f) *It has strong or special meaning for any group or community because of social, cultural or spiritual associations,* on the basis that*:*

> *"The d'Entrecasteaux Expedition Sites have special meaning to our community for their associations with early European settlement and through **the evocative nature of the current landscape setting**, which corresponds closely with the setting of Recherche Bay as viewed by the French in 1792 and 1793."*

Criterion (f)also notes that:

> *"The d'Entrecasteaux Expedition Sites have special meaning for the Tasmanian community, and particularly the Tasmanian Aboriginal community, through their association with the early recording of the Aboriginal occupation of southern Tasmania and early interactions with Europeans."*
>
> *"The d'Entrecasteaux Expedition Sites have special meaning for elements of the French community for its association of French colonial history and exploration during the late C18th."*
>
> *".....and the sites also have contemporary meaning for their association with environmental conservation in southern Tasmania. "*

There are at several deficiencies in the *Historic Cultural Heritage Act 1995* in relation to the protection of Scenic Values, these include:

1. Failure to protect Scenic Values associated with Aboriginal Cultural Heritage.

Section 98 of the *Historic Cultural Heritage Act 1995* notes that the Act "does not apply to a place that is of historic cultural heritage significance only on the ground of its association with – (a) Aboriginal history or tradition; or (b) Aboriginal traditional use". The *Historic Cultural Heritage Act 1995* fails to protect the Scenic Values associated with Aboriginal Cultural Heritage in the Blackswan Lagoon SPA in Table C8.1 (**Appendix 1**).

2. Failure to protect Scenic Value impacts arising from works and development minor in nature or exempt from the *Historic Cultural Heritage Act 1995.*

Section 35(2) of *Historic Cultural Heritage Act 1995 r*equires a discretionary application assessment under the Act, unless minor in nature (no impact on the

heritage significance) or a certificate of exemption is granted by the Tasmanian Heritage Council. The *Heritage Tasmania: Exempt Work Guidelines* indicate that Tasmanian Heritage Council exemptions for works and development include walkways, amongst other developments. Minimised develop and works are in theory allowable through exemptions from *Historic Cultural Heritage Act 1995*, and are not assessed for their impact on Scenic Value.

3. The Guidelines under *Historic Cultural Heritage Act 1995* are inappropriate for protecting the Scenic Values of the *Blackswan Lagoon SPA*

The Tasmanian Heritage Council issued Management Guidelines for part of the Tasmania Heritage Register (THR) '*D'Entrecasteaux Expedition Sites Recherche* Bay' (THR Identification Number 11018), titled '*Management Guidelines for the D'Entrecasteaux Expedition sites and the Ramsgate Whaling Site and Settlement site'*.

The management guidelines conservation objectives include to conserve:

- **the landscape character and visual links between key features**;

The management guidelines management objectives includes:

(i) *'***retain a sense of the natural setting** of *'activity sites'* associated with the d'Entrecasteaux expeditions and Ramsgate whaling and settlement sites. *"*

The '*Management Guidelines for the D'Entrecasteaux Expedition sites and the Ramsgate Whaling Site and Settlement site'* fail to provide distinction between the Scenic Values of the developed Ramsgate and Settlement Sites (containing shacks and other infrastructure) versus the Scenic Value of the undeveloped landscape character of the *Blackswan Lagoon SPA*, the latter warrants stronger protections than are currently in the management guidelines. The Guidelines Management Principles for building and works are inconsistent with the guidelines management objective: *"(i) '**retain a sense of the natural setting** of 'activity sites' associated with the d'Entrecasteaux expeditions and Ramsgate whaling and settlement sites. "* in the **undeveloped landscape** of the Blackswan Lagoon Scenic Protection Area. The Guidelines also excluded the Heritage Listed area (Lot 1 THR Identification Number 11018) at Southport Lagoon within the *Blackswan Lagoon SPA* (D'Entrecasteaux first contact site with Aboriginal Community), and exclude areas not listed.

4. Management Guidelines under *Historic Cultural Heritage Act 1995* are not statutory rules.

The *Historic Cultural Heritage Act 1995* S90A (3) *Guidelines- (g) are not statutory rules*, thus any potential guidelines relating to Scenic Value protection are non-binding on developers.

5. The Tasmanian Governments Minister of Heritage *Statement of Expectation* of the Heritage Council (THC) and the THC response through a *Statement of Intent* provides priority for commercial development over the protection of Scenic Values.

The Tasmanian Governments Minister for Heritage issued a *Statement of Expectation* to the Heritage Council (THC) dated 18 January 2021, which included Government Policies with an 'overarching framework – **balancing competing objectives'**. The expectation on the THC when balancing heritage protection versus commercial development is to give priority to commercial development. The THC is expected to make decisions in favour of "*providing employment and other economic opportunities",* and *"have regard for objectives of the Government*" noting specific policies "*to grow the State's tourism industry and visitor experiences*". This expectation is consistent with the functions of the THC, as specified under s7 of the Act:

> g) to **assist in the promotion of tourism** in respect of places of historic cultural heritage significance;

In response to the Governments *Statement of Expectation* the THC issued in response a *Statement of Intent* dated 31 March 2021, in relation to

> *"We also will continue our commitment to lead and engage stakeholders to generate sustainable heritage outcomes and encourage public and private sector investment in heritage and the visitor economy."*

The Government expectations of the THC, and the THC's intent are at odds with Scenic Value protection within our significant heritage places (especially on public reserved land) when the THC is required to decide upon the competing objectives of Scenic Value protection versus promotion of tourism through commercial and visitor services developments.

c) *Aboriginal Heritage Act 1975*

The Department of Primary Industries, Parks, Water and Environment (DPIPWE 2021) *Review of the Aboriginal Heritage Act 1975 Review Report,* clearly documents the deficiencies of the Act to protect Scenic Values associated with Aboriginal heritage and culture.

The DPIPWE (2021) Review of the Act findings included:

> ***Definition of Aboriginal heritage***
>
> *FINDING #4.* ***The definition of Aboriginal heritage in the Act is limited in scope and does not align with contemporary definitions. As a consequence, not all heritage that is of significance to the Aboriginal people of Tasmania, and to broader society, is currently recognised and afforded appropriate management and protection.***
>
> *FINDING #5. New categories of any expanded definition might* [in a revised Act] *include contemporary Aboriginal heritage, Aboriginal areas and* ***Aboriginal landscapes and seascapes****.*

The Department of Natural Resource and Environment (*NRE 2022) A new Aboriginal Cultural Heritage Protection Act - Consultation Paper on High-level Policy Directions,* highlights the fact the Aboriginal Heritage Act does not protect visual landscape features of Aboriginal cultural heritage.

The NRE (2022) Consultation paper stated that:

> ***"It is the Government's view that Aboriginal cultural heritage should also be included [in the State's Resource Management and Planning System (RMPS)]. It should not be siloed and potentially ignored, nor should decisions about Aboriginal cultural heritage be made in isolation from all other considerations."***

The TPC response is in conflict to the above stated view of the Tasmanian Government Policy position, and as such consideration needs to be given to the inclusion of visual landscape features of Aboriginal cultural heritage within the *Blackswan Lagoon SPA*. It also of technical merit to note that scenic values associated with the 1792 and 1793 D'Entrecasteaux expeditions within the *Blackswan Lagoon SPA* are of heritage and cultural significance to both Europeans and First Nations people and for the broader contemporary Tasmanian community and thus the claims by the TPC that these values are protected under the *Aboriginal Heritage Act 1975* is not correct.

It is noted that a draft *Aboriginal Heritage Bill 2026* seeks to amend the Act and intends to provide a definition of 'cultural landscapes' (Part 3 Clause 11) and a future pathway for the registration of 'cultural landscapes' (Part 5 Clause 26). However, the draft bill is unclear how this will be determined and assessed and for now the *Aboriginal Heritage Act 1975* is the current legislation still in effect.

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).
Approximately half of the *Blackswan Lagoon SPA* also occurs within *National Heritage Register Site number 105665 'Recherche Bay (north east peninsula)'.* The National Heritage Listing for the site includes in the Summary Statement of Significance that the area "***constitutes a significant, 'associative' cultural landscape***" where there were friendly interactions between first Tasmanians Palawa/Pakana, of the Lyluquonny Nation, and the French during 1792 & 1793, and that the **"the predominantly undeveloped character of the landscape contributes to the appreciation of the [National Heritage] values of the site."** Whilst the National Heritage Listing acknowledges the importance of the undeveloped character of the landscape, and the National Heritage management principles are set out in the regulations (schedule 5B) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). There is no National Management Plan for the area, and as such no clear guidance on protection of the areas Scenic Values that have been recognised.

The important Scenic Values associated with cultural heritage wildlife features are intrinsically related to the undeveloped native vegetation or bushland areas, which contributes to the features of the landscape. I believe that the TPC directive that the C8.0 Scenic Protection Code Table C8.1 '*Scenic Values… must not include reference to cultural or heritage values'* is in error.

The Leprena Trust has redrafted Table C8.1 (in **Appendix 1**), to include visual landscape heritage and wildlife features in the *Blackswan Lagoon SPA*. This includes the Scenic Value descriptions co-created by the council and the Leprena Trust and previously submitted to the TPC (12-4-2024). This is consistent with *'Section 8A Guideline No1 Local Provisions Schedule (LPS) zone and code application'*

SPC1 **The scenic protection area** overlay and the scenic road corridor overlay may be **applied to land** identified at the local or regional level as important **for the protection of scenic values**. These may include areas:
(a) containing significant native vegetation or bushland areas with important scenic values (such as skyline areas); or
(b) identified for their significant scenic views.

The Scenic Values in **Appendix 1** Table C8.1 are consistent with the TPC's *Practice Note 8 'Draft LPS written document: technical advice'*

- Scenic Value Advice *" Identify the specific characteristics or features of the landscape that collectively contribute scenic values of the area or corridor".*

Item 3 TPC response within point 1188: "*the management objectives must not address matters for which specific zone standards are available".*

The TPC response that the "*the management objectives must not address matters for which specific zone standards are available"* is inconsistent with the TPC redrafting of Table 8.1 management objectives. The TPC has redrafted the management objectives to allow Scenic Values to be impacted, through allowing unquantified 'minimised' impact in the most highly sensitive Scenic Value locations.

Minimised develop and works are in theory already allowable through exemptions from *Historic Cultural Heritage Act 1995,* and where this Act and the *Aboriginal Heritage Act 1975* does not apply (as demonstrated above)

Minimised develop and works are in theory allowable through exemptions from planning permits for certain development and works under the Tasmanian State Planning Provisions *Part 4 – Exemptions.*

> *Part 4 – Exemptions :* Under Part 4 of the Scheme, pursuant to Clause 4.0.1 *Use or development listed in Tables 4.1 – 4.6 is exempt from requiring a permit provided it meets the corresponding requirements.* That is, if the activity or works is consistent with a matter listed under *Tables 4.1 – 4.6* then that activity or works is not assessed against either the zone or code standards. Additionally, and separate to Part 4, each Code has a set of provisions that list the additional exemptions under the specific Code, although if not exempt under Part 4 it must still be assessed under the zone requirements and any other applicable code.

The *Blackswan Lagoon SPA* is zoned Environmental Management. From a preliminary review, based on the current level of use and development on the site the following matters are exempt, subject to specific requirements:

> Clause 4.3.5 temporary buildings or works,
> Clause 4.3.6 unroofed decks,
> Clause 4.3.7 outbuildings, under a particular size,
> Clause 4.3.11 garden structures,

The Acceptable Solutions in the *23.0 Environmental Management Zone* already allows minimised development that can impact on Scenic Value, due to planning permit exemption:

> **A1** The development area must:
> **(a) be not more than 500m^2;**
> (b) be in accordance with an authority under the *National Parks and Reserved Land Regulations 2009* granted by the Managing Authority or the *Nature Conservation Act 2002;* **or**
> (c) be in accordance with an approval of the Director-General of Lands under the *Crown Lands Act 1976*.

Currently the Tasmanian Planning Scheme *Part 4 – Exemptions* and the Acceptable Solutions within the *23.0 Environmental Management Zone* and the *C8.0 Scenic Protection Code* already enable 'minimised' development and works (up to 500m^2 in extent). This would include *Historic Cultural Heritage Act 1995* exemptions, which includes: walking tracks and vegetation removal, and where the *Historic Cultural Heritage Act 1995* does not apply the Tasmanian Planning Scheme *23.0 Environmental Management Zone* exemptions include: Clause 4.3.5 temporary buildings or works, Clause 4.3.6 unroofed decks, Clause 4.3.7 outbuildings, under a particular size, and Clause 4.3.11 garden structures.

Approximately two thirds of the *Blackswan Lagoon SPA* occurs in the Tasmanian Parks and Wildlife Service (TPWS) managed Southport Conservation Area. The TPWS have failed to previously protect Scenic Values within the *Blackswan Lagoon Scenic Protection Area*, as evident in the Leprena Trust submission dated 12-4-2024.

Those parts of the *Blackswan Lagoon SPA* occurring within the Southport Conservation Area and not Heritage Listed enable TPWS to facilitate un-feted development and works (as a permitted use not open for public comment) up to 500m^2 in size in areas less than 50m in elevation below a skyline (assessed through Tasmanian Parks and Wildlife Service (TPWS) Reserve Activity Assessment (RAA)). This is consistent with Acceptable Solutions within the *23.0 Environmental Management Zone* and the *C8.0 Scenic Protection Code* that already enable 'minimised' development up to 500m^2 in size. Only the application of the *C8.0 Scenic Protection Areas* Table C8.1 *Management Objectives* sets clear standards for the protection of Scenic Values on the TPWS managed land, as specific zone standards under the *Land Use Planning and Approvals Act 1993* do not apply.

It is noted that *23.0 Environmental Management Zone 23.1 Zone Purpose 23.1.1 includes* the protection of scenic value.

> 23.1.1 **To provide for the protection, conservation and management of land with significant** ecological, scientific, cultural or **scenic value**.
> 23.1.2 **To allow for compatible use or development where it is consistent with**:
> (a) the **protection**, conservation and management **of the values of the land;** and
> (b) applicable reserved land management objectives and objectives of reserve management plans.

It is noted that *C8.0 Scenic Protection C8.1 Purpose* **is solely the protection of scenic value**.

> **The purpose of the Scenic Protection Code is:**
>
> C8.1.1 **To recognise and protect landscapes that are identified as important for their scenic values.**

The Huon Valley Council supported the avoidance of impact to the Scenic Values of in the most important and sensitive areas identified in the *Blackswan Lagoon SPA* The TPC amended the *Blackswan Lagoon Scenic Protection* Table C8.1

Management Objectives to enable Visual Impacts arising from works and development in excess of 500m^2 in extent) in all of the most visually significant areas of the *Blackswan Lagoon SPA* by enabling ‘minimised’ visual impact rather than avoiding visual impact.

Planning exemptions and Acceptable Solutions already allow for ‘minimised’ works and development up to 500m^2 in extent; therefore the TPC modifications to Table C8.1 are already address by specific zone, and other standards, therefore the TPC modifications are not justified.

Item 4 TPC response within point 1188: "*the management objectives are high-level local objectives to which the planning authority must have regard when an application for development is considered against the relevant Performance Criteria of the Scenic Protection Code".*

The Performance Criteria within the C8.0 Scenic Protection Area C8.6 Development Standards for Building and Works C8.6.1 are as follows:

C8.6.1 Performance Criteria

P1.1 destruction of vegetation does not cause an unreasonable reduction of the scenic of a scenic protection area, **having regard to:**

(a) the nature of the vegetation to be removed;
(b) the area of the vegetation to be removed;
(c) the topography of the site;
(d) any visual impact on a skyline;
(e) the nature of the reduction of the scenic value; and
(f) **the purpose of any management objectives identified in the relevant Local Provisions Schedule.**

P1.2 building and works do not cause an unreasonable reduction of the scenic value of a scenic protection area, **having regard to**:

(a) the topography of the site;
(b) the location of, and materials used in construction of, driveways or access tracks;
(c) proposed reflectance and colour of external finishes;
(d) design and proposed location of the buildings or works;
(e) the extent of any cut or fill required;
(f) any visual impact on a skyline;
(g) any existing or proposed screening; and
(h) **the purpose of any management objectives identified in the relevant Local Provisions Schedule.**

The TPC's *Practice Note 8 'Draft LPS written document: technical advice'*, purpose is "*to provide technical advice on drafting and formatting the written part of the LPS to ensure consistency*". The advice on page 15, point *7.5 Scenic Protection Code list Table 8.1 and 8.2* states in relation to the Performance Criteria P1.1 (f) and P1.2 (h) "***the purpose of any management objectives identified in the relevant Local Provisions Schedule."*** that:

Management objectives must be:

(a) **consistent with the purpose of the code or the objectives in the development standards**; **and**
(b) **drafted to provide as much clarity as possible** to assist assessing discretionary applications, e.g. 'maintain vegetation as the dominant form, visible along skylines'

The TPC's *Practice Note 8* advice use of the word '**or'** rather than '**and**' means that management objectives need only be **consistent with the purpose of the code and drafted to provide as much clarity as possible**. The purpose of the C8.0 Scenic Protection Code is:

C8.1.1 **To recognise and protect landscapes that are identified as important for their scenic value.**

The TPC's *Practice Note 8* provides for priority to be provided to the protection of scenic value, rather than allowing development and works to cause a reduction in

scenic value. It is noteworthy that the Objectives in the C8.0 Scenic Protection Area *C8.6 Development Standards for Building and Works* include:

> **C8.6.1** Development within a scenic protection area **Objectives**
> That:
> (a) **destruction of vegetation does not cause an unreasonable reduction of the scenic value** of a scenic protection area; and
> (b) **building and works do not cause an unreasonable reduction of the scenic value** of a scenic protection area.

The C8.0 Scenic Protection Code and *Tasmanian Planning Scheme* does not define 'unreasonable reduction in scenic value'. The *Blackswan SPA* scenic value analysis presented to the Huon Valley Council and TPC (Leprena Trust submission 20 April 2023), documented high social value placed on the scenic values here and that **any reduction in scenic value is unreasonable**. This statement can be supported by the large international campaign that successfully resulted in State and National Heritage Listing and fundraising for the purchase of the Tasmanian Land Conservancy property, driven by risks to scenic and heritage values from logging and associated development and works.

It is of critical importance to note that the '*Guidelines for scenic values assessment methodology and local provisions schedules to assist Southern Tasmania Councils with the scenic protection code'* included a 2018 review of the *C8.0 Scenic Protection Code Provisions* by the Technical Reference Group for the Southern Tasmanian Council Authority and advice from the Department of Justice planning policy staff. They agreed that:

- "*The current Acceptable Solutions are considered to be inadequate to prevent unreasonable impact on scenic values*." (page 7) and whilst
- *"The Performance Criteria are considered to be better but Sub-clause d)* [in P1.1and subclause f in P1.2] *refers to any visual impact on a skyline rather than other potential high scenic significant landscape features."* (page 7), and
- *"The Code provisions are generally focused on protection of skylines and road corridors and provide very limited scope for scenic protection within other landscapes including coastal areas, highly scenic rural areas, river estuaries etc. [page 11]",* and
- *"a category* [should have been created] *for the protection of the high scenic value areas where there would be no Acceptable Solution and thus Performance Criteria would be applied to **prevent any unreasonable loss** of these high scenic values." (page 12)*

The TPC's *Practice Note 8* states the Management Objectives referred to in the Performance Criteria, **must be consistent with the purpose of the code**, which is **"*To recognise and protect landscapes** that are identified as **important for their scenic value."*** and be **drafted to provide as much clarity as possible**.

The very high social value placed on the Scenic Values within the *Blackswan Lagoon SPA*, as previously presented through the Scenic Value analysis report presented to the TPC, demonstrated that a very high threshold should determine what is 'unreasonable impact on scenic value' here and that the Management

Objectives should ‘avoid’, rather than ‘minimise’ the impacts of development and work on scenic values in the *Blackswan Lagoon SPA*.

The TPCs substantially modified Management Objectives for developments >500m2 (exceeding the Acceptable Solution size limit of development and works in Scenic Protection Areas) need only meet a low threshold of ‘minimise’ impact, which cannot be defined or quantified. The TPC substantially modified Management Objectives lack clarity and are not consistent with the purpose of the code and will result in unreasonable visual impact.

The amendments made to the Management Objectives in **Appendix 1** (with Page Seager and Red Real Planning advice), are consistent with the Code Purpose and provide greater clarity than the TPC modifications. The amended Management Objectives in **Appendix 1** are consistent with the TPC’s *Practice Note 8,* and similar TPC notes for drafting ‘Local Area Objectives, as they:

a) are high-level and consistent across the described scenic protection area;
b) do not address matters for which specific zone or code standards are available;
c) have not set out explicit performance criteria to be meet, but instead address general purpose;
d) are not additional performance criteria, but ‘have regard to’ development proposing the destruction of vegetation (C8.6.1, **P1.1**) and building or works (C8.6.1, **P1.2**), so as to ensure development must not cause an unreasonable reduction of scenic value; and
e) provide detail that has regard for some of the performance criteria sub-criteria (**P1.1**: a, b, c, d, e) and (**P1.2**: a, b, c, d, e, f, g), but does not replicate or replace these.

Item 5 TPC response within point 1188: *"the management objectives must not set out requirements or other explicit criteria to be met" and "'the management objectives must not contain statements that can be characterised and applied as additional Acceptable Solutions or Performance Criteria"*

The Acceptable Solutions in the *C8.0 Scenic Protection Code* detailed below already allows minimised development to occur that can cause significant impact on scenic value:

> **A1** Buildings or works, including destruction of vegetation, within a scenic protection area must:
> (a) **be on land not less than 50m in elevation below a skyline**; and
> (b) **not total more than 500m^2 in extent**.

A 2018 review of the *C8.0 Scenic Protection Code Provisions* by the Technical Reference Group for the Southern Tasmanian Council Authority and advice from the Department of Justice planning policy staff. agreed that:

"*The current Acceptable Solutions are considered to be inadequate to prevent unreasonable impact on scenic values*."

Developments and work greater than 500m^2 , have the potential to impact greatly on scenic values and as such must have regard to the Performance Criteria, including: P1.1 (f) and P1.2 (h) "***the purpose of any management objectives identified in the relevant Local Provisions Schedule."***

Ms Wilson (Page Seager planning lawyer) has advised that the TPC substantial modifications of Table C8.1, contain Management Objectives that set a very low threshold for scenic protection as development and works (greater than 500m^2) need only show they have '*minimised*' their scenic impact against an unqualified benchmark. For example, Ms Wilson has mentioned that:

*"a developer only need to show the use of natural colour bond claddings to demonstrate '**minimised**' scenic impact from building",* and

*"that the scale of development impact on vegetation was reduced from an 'earlier planned version' to demonstrate '**minimised**' scenic impact from building and works".*

This is not an appropriate level of scenic protection for an area as important as the Blackswan Lagoon SPA as demonstrated in earlier Leprena Trust representations, for example The National Heritage Listing for much of the site includes in the Summary Statement of Significance that the area "***constitutes a significant, 'associative' cultural landscape***" where there were friendly interactions between first Tasmanians Palawa/Pakana, of the Lyluquonny Nation, and the French during 1792 & 1793, and that the: ***"the predominantly undeveloped character of the landscape contributes to the appreciation of the [National Heritage] values of***

the site." Any reduction in scenic value from development and works in this area of socially significant scenic value will be considered unreasonable, and as such should be avoided.

The TPC modified Management Objectives will result in an "unreasonable impact on the scenic values" here, and is inconsistent with the Tasmanian Planning Schemes C8.0 Scenic Protection Code purpose and C8.6.1 Development within a scenic protection area Objectives and Performance Criteria:

> **C8.6.1** Development within a scenic protection area **Objectives**
> That:
> (a) **destruction of vegetation does not cause an unreasonable reduction of the scenic value** of a scenic protection area; and
> (b) **building and works do not cause an unreasonable reduction of the scenic value** of a scenic protection area.
>
> **C8.6.1 Performance Criteria**
> **P1.1 destruction of vegetation does not cause an unreasonable reduction of the scenic** of a scenic protection area, having regard to: ….
> (l) **the purpose of any management objectives** identified in the relevant Local Provisions Schedule.
>
> **P1.2 building and works do not cause an unreasonable reduction of the scenic value** of a scenic protection area, having regard to: …
> (h) **the purpose of any management objectives** identified in the relevant Local Provisions Schedule.

The Management Objectives should prioritise the full protection of scenic value, rather than enabling development and works that can create unquantified '*minimised',* but greater than 500m^2, impact on areas of very high Scenic Values as proposed by the TPC modifications.

It is important to note that there are many precedent examples within TPC approved active LPSs in other municipalities where the *C8.0 Scenic Protection Area Table C8.1 Management Objectives* prioritise the full protection of Scenic Value rather than enabling development and works that can create in excess of 500m^2 impact on areas of Scenic Values inappropriately deemed as a 'minimised' impact by the TPC.

A) The TPC approved C8.0 Scenic Protection Code BUR-C8.1 Burnie Urban Settlement Scenic Protection Area Table C8.1 in the Burnie LPS

   Management Objectives:

   (b) To maintain skylines **free of visible development**

B) The TPC approved C8.0 Scenic Protection Code CC0-C8.1.1 Leven Canyon-Loyetea Peak Scenic Protection Area Table C8.1 in the Central Coast Council LPS

   Management Objectives:

   (b) maintaining skylines and escarpments and forested slopes **free of visible development and fragmentation**;

(c**) retaining the landscape connectivity including the contiguous native forest canopy cover**;

C) The TPC approved C8.0 Scenic Protection Code CIRT-C8.1.2 Marrawah Table C8.1 in the Circular Head Council LPS

Management Objectives:

(a) To ensure the visual composition of the Marrawah Scenic Protection Area is retained and **protected from visual impacts that would permanently alter or degrade its landscape character**;

(c) To **protect the sense of remoteness of the wild coast of the area as a feature of significant scenic, cultural and social interest**;

D) The TPC approved C8.0 Scenic Protection Codes NOR C8.1.1 Mt Arnon, NOR C8.1.2 Gibbet Hill, NOR C8.1.3 Devon Hills, NOR C8.1.4 Evandale, NOR C8.1.5 Great Western Tiers. NOR C8.1.6 O'Connor's Peak and O'Connor's Sugarloaf, NOR C8.1.7 Parnook Hill, NOR C8.1.8 Connorville, NOR C8.1.9 Midland Highway Table C8.1 in the Northern Midlands Council LPS

Management Objectives:

(b) **Development of land does not:**

- **intrude onto skylines or river flood plains**; or

- **change the landscape character** of elevated areas, pastoral scenes or river flood plain views;

E) The TPC approved C8.0 Scenic Protection Code SOR-C8.1.12 Marion Bay- Long Split Table C8.1 in the Sorell Council LPS

Management Objectives:

(a) **Avoid development and works** on the Long Spit **that would impact on the scenic values of the coastal dune including coastal vegetation**.

F) The TPC approved C8.0 Scenic Protection Code SOR-C8.1.12 Ragged Tier, taking in Benders Hill and Eagles Sugarloaf north to Bluff Beach and south along Marion Beach to Marion Bay Road Table C8.1 in the Sorell Council LPS

Management Objectives:

(c) **Discourage development** along significant skylines, ridge lines and visually prominent locations that are visible from main public roads, such as Marion Bay Road Bay Roads.

G) The TPC recently approved the C8.0 Scenic Protection Code HUO- C8.1.1 Mountain River, HUO- C8.1.2 Crabtree 1 (north-east of Crabtree Rivulet), HUO- C8.1.3 Crabtree 2 (Blue Hill), HUO- C8.1.4 Crabtree 3 (Crouchs Hill), HUO- C8.1.5 Ranelagh (Wallers Hill and Newbons Hill) HUO- C8.1.6 Grove (Basin Hill), HUO- C8.1.7 Grove (Paradise Hill), HUO- C8.1.8 Huonville (Paradise Hill), HUO- C8.1.9 Huonville (Shorts Hill), HUO- C8.1.10 Woodstock (Woodstock Hill), HUO- C8.1.11 Cradoc/Cygnet (Balfes Hill), HUO- C8.1.12 Wattle Grove/Lower Wattle Grove, HUO- C8.1.13 Petcheys Bay (Mount Windsor to Black Jack Ridge), HUO- C8.1.14 Lymington (Langdons Hill), HUO- C8.1.15 Deep Bay/ Gardners Bay (Thomas Hill), HUO- C8.1.16 Glen Huon/ Huonville (Cannells Hill), HUO- C8.1.17 Franklin (Lower slopes of Mansfields Hill), HUO- C8.1.18 Port Huon (Hynes Hill and Doodys Hill), HUO- C8.1.19 Geeveston North, HUO- C8.1.20 Geeveston South, HUO- C8.1.21 Port Huon (Whale Point Hill), HUO- C8.1.22 Dover East (Reeves Hill), HUO- C8.1.23 Dover West Table C8.1 in the Huon Valley Council LPS.

Management Objectives:

(b) That **development and works avoids impact** on skylines;

It is noteworthy that within the Tasmanian Planning Scheme State Planning Provisions that the word 'enhance' has been used throughout the 18.0 Light Industrial Zone and 19.0 General Industrial Zone, where landscaping is used to improve visual amenity. For example, any further development of existing access tracks within the Scenic Protection area should also seek to enhance visual amenity. There are precedent examples within TPC approved LPSs in other municipalities where the *C8.0 Scenic Protection Area Table C8.1 Management Objectives* contain the word 'enhance' in relation to scenic value outcomes from development and works.

H) The TPC approved C8.0 Scenic Protection Code HUO-C8.2.1 Huon Highway: Lower Longley to Grove (northern section) Scenic Road Corridor Table C8.1 in the Huon Valley Council LPS

Management Objectives:

(a) To **provide and maintain view corridors** along the road alignment that **enhance** the traveller experience, …

I) The TPC approved C8.0 Scenic Protection Code LAU-C8.2.3 Rural Hills Scenic Protection Area Table C8.1 in the Launceston Council LPS

Management Objectives:

(c) to limit destruction of existing vegetation cover, and **enhance native forest coverage in hilltop locations;**

The proposed Management Objectives (**Appendix 1**) has applied appropriate precedents in word choice and detail and are consistent with the TPC's *Practice Note 8,* and similar TPC notes for drafting 'Local Area Objectives, as they:

a) are high-level and consistent across the described scenic protection area;
b) do not address matters for which specific zone or code standards are available;
c) have not set out explicit performance criteria to be meet, but instead address general purpose;
d) are not additional performance criteria, but 'have regard to' development proposing the destruction of vegetation (C8.6.1, **P1.1**) and building or works (C8.6.1, **P1.2**), so as to ensure development must not cause an unreasonable reduction of scenic value; and
e) provide detail that has regard for some of the performance criteria sub-criteria (**P1.1**: a, b, c, d, e) and (**P1.2**: a, b, c, d, e, f, g), but does not replicate or replace these.

APPENDIX 4 - Table C8.1 Appendix 1- amendments explained

I note that the TPC response (dated 12-7-24) include a redraft of Table C8.1 and Directive to the Huon Valley Council. "*The planning authority has therefore been issued with a notice and must prepare and submit the draft amendments to the Commission under section 35KB(4)(a) of the Act, within 42 days after the Huon Valley LPS comes into effect. If satisfied with the draft amendments, the Commission will require the planning authority to publicly exhibit the draft amendments under section 40G of the Act."*

The TPC response (dated 12-7-24) include reasons for redrafting Table C8.1 within point 1188 (page 242).

Ms Sarah Wilson (Page Seager) has reviewed the Table C8.1 Management Objectives submitted by:

- the Leprena Trust/Huon Valley Council (with input from ERA, Irenic and Red Seal Planning) submitted to the TPC; and
- subsequently modified by the TPC (dated 12-7-24) as advertised by the HVC

Ms Wilson redrafted the Management Objectives on the basis that:

> *a) First Nations Cultural History and the Aboriginal Heritage Act: Referring to the First Nations cultural history in the table is not in conflict with the scope of the Aboriginal Heritage Act 1975. That Act regulates sites and 'artefacts', while this protection is aimed at preserving the scenic value of the landscape associated with the cultural significance of the site. This protection falls within the remit of the Land Use Planning and Approvals Act (LUPAA). By way of example, the Stanley management objectives protect 'cultural scenic values' and these redrafted management objectives seek to achieve the same outcome.*
>
> *b) Alignment with Management Objectives: The current drafting aligns with the intent and purpose of the management objectives by providing high-level guidance for the development assessment process. It does not attempt to regulate development directly within the objective, which is consistent with the role of such objectives in the planning framework.*
>
> *c) Strengthened Language: Replacing the term 'minimise' with 'avoid', 'avoiding', and 'enhance' sets a higher bar for development standards. In my legal opinion, 'minimise' suggests a lower threshold that can be easily demonstrated, whereas the new terms more effectively enforce a stringent approach to protection and enhancement of the landscape if development is proposed. Development would only be allowed in exceptional circumstances and where it can be demonstrated the scenic values will be protected (and in some cases require enhancement).*

On the 1 Oct 2024 a meeting was held between Ms Sarah Wilson (Page Seager), Mr Trent Henderson (Red Seal Planning), Jason Whitehead (Leprena Trust), and staff from the Tasmanian Planning Commission to obtain verbal feedback on the redrafted Table C8.1 Scenic Values and Management Objectives. The TPC feedback encouraged some minor word changes (which has resulted in Table C8.1

in **Appendix 1**), and documentation to validate the amendments. This entire submission provides the required validating documentation for the amended Table C8.1 I request the council's full support for the Leprena Trusts proposal for the Scenic Protection Code Table C8.1 (**Appendix 1**), which is in keeping with the intent of the Management Objective co-created by the council and the Leprena Trust.

Description

The Council advertised modifications (TPC amendments) to the description have been accepted in full and are included in the redrafted Table C8.1 (**Appendix 1**).

Scenic Values

The Leprena Trust submission to the TPC 28 April 2023 include a detailed assessment within the "*Supporting evidence for C8.0 Scenic Protection Area application over the proposed Blackswan Lagoon Scenic Protection Area",* which provided evidence using the **'***Guidelines for scenic values assessment methodology and local provisions schedules for the scenic protection code'* supporting the recognition of scenic values associated with cultural heritage and wildlife features/places in the landscape.

The TPC modifications proposed the scenic values (a), (b) and (c), which have been retained in the **Table C8.1** (Appendix 1).

The amendment includes recognition of scenic values associated with wildlife features (d) were there is a year round abundance of Blackswans occurring in the many hundreds in high density on the small Blackswan Lagoon. The inclusion of the wildlife scenic values features associated with the high number of swans in the *Blackswan Lagoon SPA* is consistent with the **'***Guidelines for scenic values assessment methodology and local provisions schedules for the scenic protection code'* and LPS precedents in other municipalities.

A) The TPC approved C8.0 Scenic Protection Code LAU- C8.1.1 Tamar River Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage and wildlife features in the Launceston Council LPS.

   Scenic Values: The area has a high visual presence of waterfowl and native birds all year round, including ducks, swans, egrets, pelicans and the occasional white-bellied sea eagle.

Detailed evidence in **Appendix 2 and 3** clearly illustrates that cultural heritage associated Scenic Value protection is appropriately included within the Scenic Protection Code and at this location is not possible under *Local Historic Heritage Code* (does not apply to Tasmanian Heritage Listed sites or Aboriginal scenic values)*, Aboriginal Heritage Act 1975* (does not apply to Aboriginal scenic values or dual heritage scenic values) and is poorly protected under the *Historic Cultural Heritage Act 1995* (due to exemptions, does not apply to areas not Tasmanian Heritage Listed, does not apply to Aboriginal Scenic Values, and where it does apply

it is inadequate due to: i) exemptions, is ii) management plan is non-statutory, and iii) the State Government expect the Tasmanian Heritage Council when administrating the act to give preference to visitor and tourism development over protection of cultural heritage values.

The amendment includes recognition of scenic values associated with cultural heritage features (e) associated with dual cultural heritage (Aboriginal and European). The inclusion of the cultural heritage associated scenic values features associated with anthropogenic culturally created fire management landscapes, and natural places and features with scenic aesthetic and cultural heritage meaning in the *Blackswan Lagoon SPA*. The inclusion of these locations is consistent with the '*Guidelines for scenic values assessment methodology and local provisions schedules for the scenic protection code'* and LPS precedents in Huon Valley and other municipalities.

The TPC recently approved the *C8.0 Scenic Protection Code HUO- C8.2.10 Cockle Creek Road Recherche to Catamaran to Cockle Creek Scenic Road Corridor* Table C8.1 Description and Scenic Values include visual landscape heritage features in the Huon Valley Council LPS. The inclusion of culture and heritage scenic values features associated with the D'Entrecasteaux Expedition Sites *Blackswan Lagoon SPA* is consistent with this precedent. There are many precedents within active LPS's where SPA scenic values associated with cultural heritage.

A) The TPC recently approved the C8.0 Scenic Protection Code HUO- C8.2.10 Cockle Creek Road Recherche to Catamaran to Cockle Creek Scenic Road Corridor Table C8.1 Description and Scenic Values include visual landscape heritage features in the Huon Valley Council LPS.

   Description: Several of the D'Entrecasteaux Expedition Sites are located within the Road Corridor. 1792 expedition sites are concentrated around Pigsties Bay at the northern end of Recherche Bay, centred on the northeast peninsula around Bennetts Point, and to the west of Pigsties Bay at Moss Glen. Most of the historical and archaeological sites of French activity related to the 1792 and 1793 visits of D'Entrecasteaux are ephemeral, with no apparent physical evidence today. Some sites have the potential to include the archaeological remains of structures or landforms associated with the activity of the French expeditioners, whilst all sites have some potential to include artefactual material from the expeditions.

   Scenic Values: (c) The D'Entrecasteaux Expedition Sites contribute historic traces and human context to a predominantly natural landscape.

B) The TPC approved C8.0 Scenic Protection Code CIR- C8.1.1 Stanley Peninsula Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage features in the Circular Head Council LPS.

   Scenic Values: Stanley Peninsula has very high landscape values arising from its cultural heritage (Aboriginal and European) and its scenic quality, tourism and nature conservation values.

C) The TPC approved C8.0 Scenic Protection Code CIR- C8.1.3 Coastal Estuaries and Islands Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage features in the Circular Head Council LPS.

Scenic Values: Community feedback and social media speak to the strong cultural heritage (Aboriginal and European), social and recreational connections associated with the islands.

The amendment scenic values includes the recognition of the significant viewpoints (e) from where the scenic values need to be assessed. This has been included in LPS precedents, and planning advise (Irenic, Red Seal Planning and Page Seager) recommend the inclusion of this information on the scenic values so as to provide clarity. There are many precedents within active LPS's , for example:

A) The TPC approved C8.0 Scenic Protection Code LAU- C8.1.1 Tamar River Scenic Protection Area Table C8.1 Scenic Values include visual landscape heritage and wildlife features in the Launceston Council LPS.

Scenic Values: The area has a high visual presence of waterfowl and native birds all year round, including ducks, swans, egrets, pelicans and the occasional white-bellied sea eagle. Key scenic points include the Windermere Church and the Native Point Nature Reserve. The church is a major landmark that brings pride to the village of Windermere. Its location at the river edge provides visual prominence. Surrounding dwellings reflect the local and historic rural character.

B) The TPC approved C8.0 Scenic Protection Code BUR- C8.1 Burnie Urban Settlement Scenic Protection Area Table C8.1 Scenic Values considered from view points

Scenic Values:

(a) Relatively intact native vegetation cover on Round Hill visible from the established residential areas and major road transport routes for the Burnie settlement area.
(b) A coastal escarpment that is prominent to view from the Bass Highway road transport route and the coastal settlement areas of Burnie.

C) The TPC approved C8.0 Scenic Protection Code CIR- C8.1.3 Coastal Estuaries and Islands Table C8.1 Scenic Values considered from view points

Scenic Values: …. The scenic values are viewed by marine and nature-based tour operators (including light aircraft) and commercial and recreational fishing vessels and private yachts.

D) The TPC approved C8.0 Scenic Protection Code CEO- C8.1.1 Tippogoree Hills Table C8.1 Scenic Values considered from view points

Scenic Values: (b) The Tippogoree Hills are a prominent natural feature when viewed from the Batman Highway heading east, Bridport Road, East Tamar Highway and Dalrymple Road.

E) The TPC approved C8.0 Scenic Protection Code GSB- C8.1.3 Hepburn Point, Coles Bay Table C8.1 Scenic Values considered from view points

Scenic Values: The area is a prominent natural feature when viewed from Swanwick, Coles Bay, Coles Bay Road and State waters

F) The TPC approved C8.0 Scenic Protection Code CC0 C8.1.3 Leven Canyon/Loyetea Peak Table C8.1Scenic Values considered from view points

Scenic Values: The Leven Canyon / Loyetea Peak area is: (e) an area that offers natural landscape vistas when viewed from the areas of Gunns Plains, Nietta, South Preston, Preston, Loongana, Black Bluff, the Penguin to Cradle walking trail, and from scenic lookouts; including Loyetea Peak and the Cruickshanks Leven Canyon viewing Platform;

Management Objectives

Amendments have been made to the Management Objectives with legal (Page Seager) and planning (Red Seal Planning) advise and an earlier iteration was discussed with TPC planning advisors (who a verbal provided in-principle support). Much of this submission provides evidence and rationale for the proposed amendments. The information below applies to all the requested amendments and repeats some rational previously discussed (above).

The Leprena Trust's proposed Management Objective is consistent with the original council supported intent to avoid, rather than minimise, impact on High Scenic Values in the *Blackswan Lagoon SPA*. The Management Objective was inappropriately weakened by the TPC directive to allow 'minimised impacts'(ironically any development and works greater than 500m^2 in extent). Planning exempt and works up to 500m^2 in extent (under the *23.0 Environmental Management Zone and C8.0 Scenic Protection* Code Acceptable Solutions) already allow minimised works and developments to occur. The management objective should seek to avoid rather than minimise impact on areas of High Scenic Value in the *Blackswan Lagoon SPA for* works and developments greater than 500m^2 in extent. The proposed Management Objective is consistent with the zone and code purpose, and the TPWS statutory Management Plan ('*Southport Lagoon Conservation Area George III Monument Historic Site and Ida Bay State Reserve Management Plan 2006*') management prescriptions (Section 4.4.17) that states that "***new structures or any other type of development (including new tracks) will not be allowed***."

Ms Wilson's (Page Seager) advised that the TPC use of the word 'minimise' within the modified Management Objectives sets a very low bar for development protection of scenic values. The Management Objectives should 'not degrade' or 'avoid' rather than 'minimise' development impact on scenic value, preferably scenic value should be 'enhanced' by development and works.

Precedents within other TPC approved LPS Table C8.1's Management Objectives now in effect seek to 'enhance' scenic value (as opposed to minimise impact) from development and works. The TPC approved Launceston Council C8.0 *Scenic Protection Code* LAU-C8.2.3. Table C8.1 Management Objectives *"(c) to limit destruction of existing vegetation cover,* ***and enhance native forest coverage in hilltop locations;"*** It is noteworthy that within the Tasmanian Planning Scheme State Planning Provisions that the word 'enhance' has been used throughout the 18.0 Light Industrial Zone and 19.0 General Industrial Zone, where landscaping is used to improve visual amenity. Further development within the Scenic Protection area should also seek to enhance visual amenity.

Other TPC approved LPS Table C8.1's Management Objectives seek to protect and maintain through the use of the words 'discourage' or 'avoid' impacts upon scenic

values, such as: Sorell Council SOR-C8.1.12. SPA Table C8.1 "(a) ***Avoid development and works*** on the Long Spit **that *would impact on the scenic values*** *of the coastal dune including coastal vegetation:* and "*(c)* ***Discourage development…;*** Central Coast Council CC0-C8.1.1. SPA Table C8.1: "(b)*…****free of visible development and fragmentation***"; and Northern Midlands C8.1.12. SPA Table C8.1 "*(a)* ***Avoid development and works*** *…".;*

Protection of the scenic values associated with contiguous forest canopy have also been strongly protected within the TPC approved LPS Central Coast Council CCO C8.1.1. Leven Canyon-Loyetea Peak Scenic Protection Area Table C8.1 Management Objective and "*(b) maintaining skylines and escarpments and* ***forested slopes free of visible development and fragmentation***" and "(c) ***retaining the landscape connectivity including the contiguous native forest canopy cover***, ***free of visible development and fragmentation***".

The amended Management Objectives are consistent with the TPC's *Practice Note 8,* and similar TPC notes for drafting 'Local Area Objectives, as they:

a) are high-level and consistent across the described scenic protection area;
b) do not address matters for which specific zone or code standards are available;
c) have not set out explicit performance criteria to be meet, but instead address general purpose; and
d) are not additional performance criteria, but 'have regard to' development proposing the destruction of vegetation (C8.6.1, **P1.1**) and building or works (C8.6.1, **P1.2**), so as to ensure development must not cause an unreasonable reduction of scenic value; and
e) provide detail that has regard for some of the performance criteria sub-criteria (**P1.1**: a, b, c, d, e) and (**P1.2**: a, b, c, d, e, f, g), but does not replicate or replace these.

The proposed amended Management Objectives have been compared the versions created through TPC substantial modifications, and the original Leprena Trust and Huon Valley Council submission. The amended version has retained the intent of the original Leprena Trust and Huon Valley Council submission, but has addressed those maters raised by the TPC response dated 12 July 2024 (Page 242) Point 1188. Key words or phrases have been high-lighted, as the interpretation of these words within the Tasmanian Planning Scheme determine what is an unreasonable reduction of scenic value arising from development and works greater than 500m^2 in extent. The key words in the proposed amendments provide a more appropriate scenic protection outcome than those in the TPC substantial modification.

Amended Management Objectives (a), (b), (c)

Council & Leprena Trust prior submission	Advertised modification TPC 12-7-24 directive	Leprena Trust & Red Seal Planning proposed Management Objective
(a) Development, excepting works related to currently existing access tracks, must occur so that no visual evidence of development is evident on the peninsular, to respect and enhance the scenic integrity and cultural historic landscape associated with the scenic values, including all the following:	(d) That evidence of development, except for works related to existing access tracks, is minimised.	**a)** To ensure that the scenic values associated with landscape, wildlife and cultural-historic features in the Blackswan Lagoon Scenic Protection Area are retained, respected and protected from visual impacts that would alter or degrade these scenic values. **(b)** To manage the Blackswan Lagoon Scenic Protection Area to ensure that the established landscape character is retained, and visual impacts are avoided. **(c)** To avoid potential visual impact of new development or works on scenic values.

Amended Management Objective (d) i)

Council & Leprena Trust Prior submission	Advertised modification TPC 12-7-24 directive	Leprena Trust & Red Seal Planning proposed Management Objective
i) No vegetation removal or any disturbance to forest canopy cover, including bushfire protection measures related to use or development, that results in visual impact when viewed from a site identified within the Description or Scenic Value of this Scenic Protection Area.	(f) That vegetation removal or any disturbance to forest canopy cover, including that required for bushfire protection measures is minimised	(d) Development within this area should maintain and enhance the scenic values, avoiding any visual impacts that could degrade the landscape through objectives that: i) Protect and maintain the forest canopy and natural vegetation to ensure that any changes do not result in noticeable visual impacts when viewed from sensitive scenic viewpoint; and

Amended Management Objectives (d) ii) and iii)

Council & Leprena Trust Prior submission	**Advertised modification TPC 12-7-24 directive**	**Leprena Trust & Red Seal Planning proposed Management Objective**
ii) Development must not include roofed buildings and if non-roofed buildings or structures are proposed they are only to be located where existing use rights for camping exists under Nature Conservation Covenant at the effective date, excepting traditional Aboriginal huts for the purpose of cultural use and knowledge sharing that does not involve the construction of a permanent structure.	(g)That development of roofed buildings is minimised.	(d) Development within this area should maintain and enhance the scenic values, avoiding any visual impacts that could degrade the landscape through objectives that: ii) Preserve the natural character of the area ensuring that structures or works do not degrade the scenic values, allowing for traditional Aboriginal cultural practices that do not permanently alter the natural environment; and iii) Safeguard the natural coastline and avoid any visual intrusion of marine facilities or infrastructure that could degrade the scenic values of coastal and waterway areas;

Amended Management Objectives (d) iv) and v)

Council & Leprena Trust prior submission	Advertised modification TPC 12-7-24 directive	Leprena Trust & Red Seal Planning proposed Management Objective
iv) New vehicle or bicycle tracks must not be established. v) New walking tracks must not be established around the coastal foreshore, or the foreshore of Blackswan Lagoon, or inland between Quiet Cove and Blackswan Lagoon or Little Lagoon Beach (including parts of CTs 203691/1, 137404/1, 203443/6 and 203411/1), due to the high visual sensitivity and significance of these areas.	(e)That development of new vehicle or bicycle tracks is minimised. (i) That development of new walking tracks around the coastal foreshore, or the foreshore of Blackswan Lagoon, or inland between Quiet Cove and Blackswan Lagoon or Little Lagoon Beach (including parts of folios of the Register 203691/1, 137404/1, 203443/6 and 203411/1) is minimised.	(d) Development within this area should maintain and enhance the scenic values, avoiding any visual impacts that could degrade the landscape through objectives that: iv) Maintain the natural visual continuity of the landscape scenic values by discouraging the creation of new vehicle, bicycle, or walking tracks; and v) Ensure that any necessary signage is not visible from all sensitive scenic viewpoints; and

Amended Management Objective (d) vi)

Council & Leprena Trust prior submission	Advertised modification TPC 12-7-24 directive	Leprena Trust & Red Seal Planning proposed Management Objective
vii) Prevent development on sand dunes that would impact on the scenic values of the coastal dune, including through loss of coastal vegetation and or dune stability.	(l) That development on sand dunes is minimised.	(d) Development within this area should maintain and enhance the scenic values, avoiding any visual impacts that could degrade the landscape through objectives that: vi) Protect coastal dune systems and associated vegetation from degradation caused by development, maintaining their stability and natural appearance as essential components of the scenic landscape

Amended Management Objectives (e) i) and ii)

Council & Leprena Trust prior submission	**Advertised modification TPC 12-7-24 directive**	**Leprena Trust & Red Seal Planning proposed Management Objective**
(b) Development related to currently existing access tracks, must occur in a way which limits visual evidence of development on the peninsular to respect and enhance the scenic values of the area, including all the following: i) The upgrading of existing access tracks must have minimal visual intrusion from the sky and avoid being seen from surrounding coastal and waterway locations. ii) All works related to converting sections of former vehicle tracks into walking tracks must prevent erosion or other damage and must	(f) That evidence of development, except for works related to existing access tracks, is minimised;	**(e)** The scenic values of areas where there are currently existing access tracks and surrounding areas are enhanced through objectives that the: i) Upgrade and maintenance of existing access infrastructure should be undertaken with a focus on avoiding any increase in visual disturbance and enhanced the scenic values and ensure that such works blend seamlessly with the natural landscape; and ii) Rehabilitation of former vehicle tracks must be guided by natural recovery processes or active restoration, with the aim of enhancing the visual integrity of the landscape and scenic values.