



Environmental  
Defenders Office

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

**12 August 2022**

## **About EDO**

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

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

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

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

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

[www.edo.org.au](http://www.edo.org.au)

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

EDO submission on the Scope of the State Planning Provisions Review

## A Note on Language

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

## Acknowledgement of Country

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

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

## Executive Summary

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

The review comes at a time when:

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

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<sup>1</sup> IPCC, 2021: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, at B.2.2 and C.2.4 accessed at <https://www.ipcc.ch/report/ar6/wg1/#SPM>. See also the IPCC *Sixth Assessment Report Regional Factsheet - Australasia*: [https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC\\_AR6\\_WGI\\_Regional\\_Fact\\_Sheet\\_Australasia.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf)

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

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

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

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

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

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

### **Recommendations**

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

environmental justice.

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

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

**Recommendation 4:** The SPPs review, with Tasmanian Aboriginal people, examine opportunities to provide for protection of Aboriginal cultural heritage and provide a self-determined and meaningful decision-making role for Tasmanian Aboriginal people in determining planning decisions that affect their cultural heritage.

**Recommendations 5:** The SPPs review consider how necessary resources, as determined by Tasmanian Aboriginal people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

**Recommendation 6:** The SPPs review consider how the SPPs can better regulate impacts of helicopter and drone landing and take-off.

**Recommendation 7:** The SPPs review consider the need for a separate Stormwater Code to better regulate the environmental and erosion impacts of development and use, or alternatively, the need to significantly strengthen Natural Assets Code provisions relating to stormwater.

**Recommendation 8:** The SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania's coastal waters, including through amendment of clause 7.11.1 and/or the Natural Assets Code.

**Recommendation 9:** The SPPs review consider whether the exemptions provided under Tables 4.3 and 4.4 and in the Natural Assets Code are appropriate and consistent with the objectives of the LUPA Act.

**Recommendation 10:** The SPPs review consider expanding the application requirements under clause 6.1.2 to include reports or assessments required under applicable Codes.

**Recommendation 11:** The SPPs review consider the impact of deference in Environmental Management Zone to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976* on public participation and good planning outcomes, and consider the removal of these provisions, and the strengthening of public participation in decisions relating to public lands.

**Recommendation 12:** The SPPs review consider providing for appropriate standards for all developments and uses provided in the Environmental Management Zone to ensure the Zone purposes are achieved.

**Recommendation 13:** The Natural Assets Code be reviewed in its entirety with a view to ensuring it fulfills the LUPA Act objectives by maintaining (through protection and preserving) ecological processes and diversity for current and future generations and ensuring development is sustainable.

**Recommendation 14:** The SPPs review consider the purpose, provisions and mapping under the Coastal Erosion Hazard and Coastal Inundation Hazard Codes to ensure that they reflect and adapt to the best available science on sea-level rise, coastal inundation and estuarine flooding;

manage the impacts of development on coastal erosion and inundation; and provide for community resilience and safety.

**Recommendation 15:** The SPPs review consider the extent to which land previously zoned Environmental Living has been transitioned to Rural Living, Rural or Landscape Conservation Zoning, and identify options to address any overall drop in protection of natural values as a result of down zoning of Environmental Living to Rural Living, Rural Zone.

**Recommendation 16:** The SPPs review consider the correct classification of extractive industries in the Rural and Agricultural zones.

## **1. The context of SPPs review – are our planning laws meeting their objectives?**

When it announced its plan for the TPS, the Tasmanian Government said the reforms would provide a “fairer, faster, cheaper and simpler” planning system for lutruwita/Tasmania. Yet after the TPS reforms were made 2015, there has been at least nine Acts amending the LUPA Act, many of which have added significant further complexity to the planning and approvals processes and reduced public participation rights.

For example, despite widespread community opposition, the Tasmanian Government pushed through changes to the LUPA Act in 2020 to provide for a new process for the assessment and approval of major projects: a process which sidesteps both planning scheme requirements and councils as planning authorities and significantly weakens public participation rights.

The TPS has still not come into effect across the entire State as 16 Local Provisions Schedules (**LPSs**) remain to be finalised by councils and the Tasmanian Planning Commission (**TPC**). Yet in 2021, the Tasmanian Government introduced complex reforms to LUPA Act allowing the Minister to amend the SPPs without the need for public consultation in a broad range of circumstances. It also brought in reforms to existing interim planning schemes to implement aspects of the SPPs, including wide-ranging exemptions and different standards for residential zones, in those municipalities where the TPS was not yet in effect. It is notable that these aspects of the SPPs were subject to some of the most strident criticism by both the public and councils when they were made, and in part, were subject to a recommendation by the TPC for further detailed review. These, arguably arbitrary, changes to interim planning schemes occurred in the continued absence of strategic or overarching strategic direction for the SPPs due to the lack of clearly stated objectives and Tasmanian Planning Policies.

All these planning reforms have placed considerable pressure on under resourced local councils and on the TPC. Many clients and groups and individuals EDO work with have been engaging in planning reform since the time of interim planning reforms, well before the first draft of the SPPs were released in 2016. After nearly a decade of planning reform, the SPPs review comes at a time of when many in the lutruwita/Tasmanian community, including those within councils who have had to implement and keep abreast of the reforms, are feeling a level of fatigue and exhaustion with planning reform that can only be described as extreme.

While EDO supports the continuation of community consultation and engagement about planning reform and the review of the SPPs, we question whether all this the reform has achieved its originally stated objective of a “fairer, faster, cheaper and simpler” planning system for

lutruwita/Tasmania.<sup>2</sup> But over and above that question, stands a more important one: are our planning laws achieving the RMPS objectives, including for sustainable development and the maintenance of ecological processes and diversity and public participation? One of the key tools that can assist in answering that question, the State of the Environment report, has been in abeyance for more than a decade – despite a statutory requirement for it to be produced every five years – leaving the people of lutruwita/Tasmania largely in the dark as to how our environment is tracking.

Despite this, there are indications lutruwita/Tasmania’s environment and communities under coming under pressure from climate change, increasing land use changes and development and expanding industries. The SPPs review presents a real opportunity to tackle these emerging issues and arrest their impacts before it is too late.

## **2. Matters to be included in the SPPs**

### ***2.1. Planning for climate change***

Anthropogenic climate change is having significant impacts in Australia and across the globe. The annual global temperature in 2019 was 1.1 °C warmer than pre-industrial conditions.<sup>3</sup> Australia’s average annual temperature has warmed by around 1.5°C since 1850,<sup>4</sup> and the best available Western science tells us that average temperatures are projected to rise further. Australia is already experiencing the impacts of climate change, which include increasing temperatures, the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased and more extreme rainfall in the north, longer dry spells, a greater number of extreme heat days and the long-term increase in extreme fire weather. In the future, it is projected lutruwita/Tasmania will experience higher average temperatures all year, with more hot days and warm spells and harsher fire-weather. lutruwita/Tasmania will also experience sea level rise, an increase in extreme rainfall events and flooding, but a decrease in rainfall in spring and with the possibility of less rain in autumn and summer.<sup>5</sup>

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<sup>2</sup> Certainly, if comments by the then-Solicitor General about the contents of the transitional provisions relating to the TPS in LUPA Act are anything to go by the answer to that question would be a resounding “no”. In the [Solicitor-General’s Annual Report 2020-21](#), the then Solicitor General Michael O’Farrell SC said “A statute should communicate the law efficiently and effectively to those who have recourse to it. This does not just mean lawyers, it means citizens and institutions who must obey legal commands. While some laws convey difficult legal concepts that are not capable of expression in simple language, that is not true of all laws. The Parliament’s endeavour should be to make laws that ordinary people can readily understand. The complex and prescriptive nature of the provisions of some Tasmanian statutes do not lend themselves to this aspiration. For example, an ordinary person, unskilled in the law, would have great difficulty understanding Schedule 6 of the Land Use Planning and Approvals Act 1993. I have spent many many hours reading it and I still find some of its provisions very difficult to construe.”

<sup>3</sup>See World Meteorological Organisation, *WMO confirms 2019 as second hottest year on record*, 15 January 2020, accessed at <https://public.wmo.int/en/media/pressrelease/wmo-confirms-2019-second-hottest-year-record>

<sup>4</sup> See CSIRO, *Response to Notice to Give Information 21 April 2020 for the Royal Commission into National Natural Disaster Arrangements*, 21 April 2020, accessed at <https://naturaldisaster.royalcommission.gov.au/system/files/exhibit/CSI.500.001.0001.pdf>

<sup>5</sup> CSIRO, *Climate change in Australia - Projections for Australia’s NRM regions*, accessed on 29 April 2021, accessed at: <https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/>

While climate change will affect all Tasmanians, those impacts will not be felt equally.<sup>6</sup> For example, First Nations peoples, young people and future generations will suffer more under more extreme weather, sea level rise and disasters under climate change than those who have most contributed to the GHG emissions that have ultimately generated or exacerbated those events. For First Nations peoples, climate change impacts can seriously impact the ability to access Country, and practice cultural obligations on and for Country.

Those who are already socially and economically disadvantaged are less able to adapt to a changing climate by, for example, living in housing not designed for extreme weather or in locations vulnerable to bushfires, flooding or droughts.<sup>7</sup> Socially and economically disadvantaged people are also less likely to be insured should they lose or suffer damage from those events, are less likely to have the financial resources to simply move to less disaster-prone areas and they may lack efficient or effective means to escape in the event of emergencies.<sup>8</sup> Older people, pregnant people and children are more likely to suffer adverse health impacts under extreme heat, or with degraded air quality due to bushfire smoke.<sup>9</sup> People from culturally and linguistically diverse backgrounds, or who cannot read or write English, may lack the information or resources to take adaptive actions.<sup>10</sup>

The contribution of urban development to GHG emissions and vulnerability of urban areas to climate change impacts is well established. As Caparros-Midwood, et al. (2019) observed:<sup>11</sup>

*... urban areas are already responsible for approximately 70% of global greenhouse gas emissions and new urban development must reduce greenhouse gas emissions if the Paris Agreement to limit global warming are to be achieved. There is an urgent need for urban development to reduce resource consumption and emissions, whilst also enhancing resilience to climatic risks such as flooding and heatwaves. (Citations omitted)*

It is therefore critical that our land use planning prescriptions effectively address these issues:<sup>12</sup>

*... it must be acknowledged that past and current urban planning activities have resulted in climate change impacts and path dependency. Thus, significant changes to the status quo of*

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<sup>6</sup> For further information on addressing environmental and climate justice issues for disproportionately impacted vulnerable communities, see EDO's report 'Implementing effective independent Environmental Protection Agencies in Australia', available at <https://www.edo.org.au/publication/implementing-effective-independent-environmental-protection-agencies-in-australia/>

<sup>7</sup> Insurance Council of Australia (2022) Building a More Resilient Australia: Policy Proposals for the Next Australian Government, at p 10 accessed at <https://insurancecouncil.com.au/wp-content/uploads/2022/02/220222-ICA-Election-Platform-Report.pdf>.

<sup>8</sup> Ibid. See also Climate Council of Australia, Uninsurable Nation: Australia's most climate-vulnerable places, at p 3. accessible at: <https://www.climatecouncil.org.au/resources/uninsurable-nation-australias-most-climate-vulnerable-places/>

<sup>9</sup> See <https://www.healthdirect.gov.au/bushfires-and-your-health>

<sup>10</sup> See Hansen, A, Bi, P, Saniotis, A, Nitschke, M, Benson, J, Tan, Y, Smyth, V, Wilson, L & Han, G-S 2013, Extreme heat and climate change: Adaptation in culturally and linguistically diverse (CALD) communities, National Climate Change Adaptation Research Facility, Gold Coast, accessible at: <https://nccarf.edu.au/extreme-heat-and-climate-change-adaptation-culturally-and-linguistically-diverse-cald/>

<sup>11</sup> Caparros-Midwood, Dawson, Barr, "Low Carbon, Low Risk, Low Density: Resolving choices about sustainable development in cities", *Cities*, Volume 89, 2019, Pages 252-267, <https://doi.org/10.1016/j.cities.2019.02.018>

<sup>12</sup> Hurlimann, Moosavi & Browne, "Urban planning policy must do more to integrate climate change adaptation and mitigation actions", *Land Use Policy*, Volume 101, 2021 <https://doi.org/10.1016/j.landusepol.2020.105188>



*urban planning activities are required in many locations across the world to achieve the goal of limiting warming to 1.5°C but also to avoid the risk and harm attributable to even this amount of warming. (Citations omitted)*

In lutruwita/Tasmania, much more can and must be done through the SPPs to both mitigate GHG emissions and adapt to climate change risks. This was recognised in the Premier's Economic & Social Recovery Advisory Council (PESRAC) *Final Report* from March 2021 which recommended that among other things, the Government drive forward a sustainable development agenda, including decarbonisation of the economy including through its resource management and planning system.<sup>13</sup> It appears that this proposition has been accepted by the Tasmanian Government, as it has indicated an intention to incorporate climate change considerations into all the Tasmanian Planning Policies.<sup>14</sup> However, there's more work to be done. There remain emissions intensive activities and a dependence on fossil fuels, particularly in the transport sector. The SPPs review should be focussed on the planning needed to transition to a fossil fuel free future.

While EDO encourages moves towards a more sustainable, lower GHG emissions future in planning for lutruwita/Tasmania, it is critical that these changes should occur within a climate justice framework<sup>15</sup> (as recognised in consistent with United Nations Sustainable Development Goals) ensuring that the most affected communities (from both an economic and climate change perspective) are themselves invested in energy transition through equitable and genuine transition investments in these communities. A commitment to achieving GHG emissions reduction targets and staying within a carbon budget that will limit warming to 1.5°C requires commitment to establishing clear policy drivers, incentives and legal mechanisms which are just and equitable. Natural disaster planning and adaptation planning should be on an environmental justice basis, not just an economic one. That is, ensuring that we identify at risk communities and target adaptation responses to those most at risk / disadvantaged by the climate change already locked in.<sup>16</sup>

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

<sup>13</sup> Premier's Economic & Social Recovery Advisory Council (PESRAC) (2021) *Final Report* at p 67, accessible at [https://www.pesrac.tas.gov.au/\\_data/assets/pdf\\_file/0011/283196/Final\\_Report\\_WCAG2.pdf](https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf)

<sup>14</sup> See State Planning Office, Department of Premier and Cabinet (2022) Tasmanian Planning Policies – Report on draft TPP Scoping Consultation, accessed at: <https://www.planningreform.tas.gov.au/planning-reforms-and-reviews/tasmanian-planning-policies>

<sup>15</sup> PESRAC also recommended that the Tasmanian Government's sustainability strategy be aligned with the UN Sustainable Development Goals: Premier's Economic & Social Recovery Advisory Council (PESRAC) (2021) *Final Report* at p 69, accessible at [https://www.pesrac.tas.gov.au/\\_data/assets/pdf\\_file/0011/283196/Final\\_Report\\_WCAG2.pdf](https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf)

<sup>16</sup> For further information on addressing environmental and climate justice issues for disproportionately impacted vulnerable communities, see EDO's report 'Implementing effective independent Environmental Protection Agencies in Australia', available at <https://www.edo.org.au/publication/implementing-effective-independent-environmental-protection-agencies-in-australia/>

### 2.1.1. GHG emissions mitigation

Based on the available data, lutruwita/Tasmania has achieved net zero GHG emissions for the past four reported years.<sup>17</sup> However, we note that this achievement is almost entirely attributable to the carbon stored in forests.<sup>18</sup> Carbon stored in forests falls within the UNFCCC sector described as the land use, land use change and forestry sector (**LULUCF**).<sup>19</sup> Reliance on the LULUCF sector alone to mitigate lutruwita/Tasmania's GHG emissions is risky as it is vulnerable to rapid change, for example through changes to land use practices arising from policies such as the Agri-Vision 2050 and Rural Water Use Strategy,<sup>20</sup> and through the relaxation of planning scheme restrictions on vegetation clearing under the SPPs.<sup>21</sup> Furthermore, reliance on the emissions reductions from the LULUCF sector masks lutruwita/Tasmania's failure to reduce GHG emissions in other sectors such as agriculture, transportation and energy. lutruwita/Tasmania's population, and its associated GHG emissions in transport, stationary energy, and waste, are expected to increase by 2050.<sup>22</sup> Point Advisory has modelled that if lutruwita/Tasmania continued on a "business as usual" path, its emissions could sharply increase to 2050.<sup>23</sup> This modelling underlines the need for the Tasmanian Government to take urgent action to mitigate GHG emissions across all sectors. Land use planning controls provide one of the best opportunities for such action to be taken.

First and foremost, the SPPs should actively recognise and implement lutruwita/Tasmania's overarching climate planning policy by explicitly recognising the soon-to-be legislated GHG emissions reduction target under the *Climate Change (State Actions) Act 2008* (the **Climate Change Act**) and sector-based emissions reduction and resilience plans (**Plans**) created under that Act. The SPPs should do this by including measurable and concrete targets for GHG emission reductions. For example, this could be done by a GHG Emissions Code that requires councils to establish baseline GHG emissions per capita for their municipalities and commit to a target to reduce those per capita GHG emissions levels going forward. This Code could require the assessment of new development or use for consistency with the municipality target. In terms of sector-based targets in Plans, consideration should be given to amendments to the Attenuation

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<sup>17</sup> Australian Government, *State and territory greenhouse gas inventories: annual emissions*, accessed on 21 October 2021, at: <https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/state-and-territory-greenhouse-gas-inventories-annual-emissions>

<sup>18</sup> Tasmania Climate Change Office, *Tasmania's Greenhouse Gas Emissions 2021 Factsheet*, accessed on 29 April 2021 at [http://www.dpac.tas.gov.au/\\_data/assets/pdf\\_file/0004/575392/TCCO\\_Fact\\_Sheet\\_-\\_Tasmanias\\_Greenhouse\\_Gas\\_Emissions\\_-\\_2021.pdf](http://www.dpac.tas.gov.au/_data/assets/pdf_file/0004/575392/TCCO_Fact_Sheet_-_Tasmanias_Greenhouse_Gas_Emissions_-_2021.pdf)

<sup>19</sup> See United Nations Framework Convention on Climate Change webpage: <https://unfccc.int/topics/land-use/workstreams/land-use--land-use-change-and-forestry-lulucf/background>

<sup>20</sup> Ibid. See also DPIPWE (2019) *Tasmanian Sustainable Agri-Food Plan 2019-23*, accessible at <https://dpiipwe.tas.gov.au/agriculture/tasmanias-agri-food-plan>

<sup>21</sup> For example, through the provision of broad exemptions to vegetation clearing restrictions, both in clause 4 and in clause C7.4 of the Natural Assets Code of the SPPs, and through the relaxation of requirements for permits for vegetation clearing under the Natural Assets Code more generally.

<sup>22</sup> Jacobs, *Discussion Paper on Tasmania's Climate Change Act: Independent Review of the Climate Change (State Actions) Act 2008* March 2021 at p 18, accessed at:

[https://www.dpac.tas.gov.au/divisions/climatechange/Climate\\_Change\\_Priorities/review\\_of\\_the\\_climate\\_change\\_act](https://www.dpac.tas.gov.au/divisions/climatechange/Climate_Change_Priorities/review_of_the_climate_change_act)

<sup>23</sup> Point Advisory (2021) *Net Zero Emissions Pathway Options for Tasmania - Background Paper*, accessed on 26 April 2021 at [http://www.dpac.tas.gov.au/\\_data/assets/pdf\\_file/0011/573095/net\\_zero\\_emissions\\_background\\_paper\\_-\\_Final.pdf](http://www.dpac.tas.gov.au/_data/assets/pdf_file/0011/573095/net_zero_emissions_background_paper_-_Final.pdf) at under a "high business as usual" rate outlined in table 1 on p 6.

Code such that it also regulates GHG emissions from certain polluting activities such as landfills and sewage treatment plants.

The SPPs currently do provide some incentives for GHG emissions mitigation, for example through the exemptions from the need for permits for certain renewable energy generation.<sup>24</sup> However, SPPs could result in reductions to the GHG emissions arising from land use and development, for example, by providing:

- stronger regulation of the clearing of native vegetation (including, for example, removing many of the exemptions from the requirement for a permit for this activity) and incentives to provide urban green spaces (including urban food production/farming);
- stronger sustainable transport requirements for new developments and uses, including the planning settings required to incentivise and facilitate the rapid uptake of electric vehicles;
- stronger incentives for densification of development and more affordable housing along public and sustainable transport corridors and services nodes, supporting walkable neighbourhoods and active transport;
- sustainability standards (e.g., energy efficiency and water standards) for new development, and incentives for retrofitting of existing development; and
- a clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure, including, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, Tasmanian Aboriginal heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted Tasmanian Aboriginal communities (for more discussion on this, refer to part 2.2 of this submission).

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

### **2.1.2. Climate change adaptation**

lutruwita/Tasmania's planning system has been taking steps towards planning to adapt a rapidly warming climate: SPPs contains codes for Coastal Erosion Hazards, Coastal Inundation Hazards, Flood-Prone Areas Hazards, and Bushfire-Prone Areas. However, more can and must be done to plan for lutruwita/Tasmania's future and the future of climate affected communities.

For example, the mapping for the Coastal Erosion and Coastal Inundation Codes is based on analysis undertaken by the CSIRO using data from the fifth IPCC report.<sup>25</sup> Further expert analysis of

<sup>24</sup> See clause 4.0 and Table 4.5 of the SPPs.

<sup>25</sup> Tasmanian Climate Change Office, "Coastal Impacts" webpage accessed at [https://www.dpac.tas.gov.au/divisions/climatechange/climate\\_change\\_in\\_tasmania/impacts\\_of\\_climate\\_change/coastal\\_impacts](https://www.dpac.tas.gov.au/divisions/climatechange/climate_change_in_tasmania/impacts_of_climate_change/coastal_impacts); and Tasmanian Planning Commission, *Guideline No. 1 Local Provisions Schedule (LPS): zone and code*

lutruwita/Tasmania's likely coastal erosion and inundation risks should be commissioned based on the sea-level rise information in the sixth IPCC report. Likewise, further investigation of the interaction between coastal inundation and estuarine flooding,<sup>26</sup> and mapping of lutruwita/Tasmania's flood risks in future climate scenarios is required.<sup>27</sup>

The SPPs could be significantly strengthened to, for example, prevent vulnerable development and uses in high-risk bushfire prone and coastal erosion and inundation areas, and actively plan for managed retreat from high-risk locations. This mapping needs to be more holistic and more responsive to the best available science as it develops. Currently, the mapping and SPPs settings places local government and communities at risk and does not allow planning authorities to effectively manage risk, leaving this to a later date to be managed by emergency services. Recent experience in the Black Summer bushfires and the 2022 NSW/Qld floods have shown us the devastating impact of poor planning and the impact of overwhelmed emergency response services on peoples' lives, livelihoods, and the economy.

The SPPs also need to respond to Climate Action Plans (**CAP**) and State-wide climate risk assessments (**CRA**) prepared under the Climate Change Act, with a focus on supporting those communities and people who can least afford to adapt to the impacts of climate change. The SPPs should provide for consideration of climate risk in the placement of critical infrastructure, such as hospitals, schools, aged and disability care, and social and affordable housing.

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

## **2.2. Aboriginal Cultural Heritage protection and management**

In making this submission, EDO acknowledges that it cannot and does not speak on behalf of First Nations peoples. We make the following submissions concerning the better recognition of Aboriginal cultural heritage into the SPPs as experts in planning and environmental Western law with experience in seeking to protect First Nations and Tasmanian Aboriginal cultural heritage through the Western law.

Across Australia, we have worked with First Nations clients who have interacted with cultural heritage laws in many ways, from litigation, engaging in other State/Territory law reform processes, through to broader First Nations-led environmental governance of on Country projects. EDO lawyers have assisted First Nations clients around Australia, including in lutruwita/Tasmania, in their efforts to protect their cultural heritage from destruction. These submissions are based on

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application, June 2018 accessed at [https://www.planning.tas.gov.au/\\_data/assets/pdf\\_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf](https://www.planning.tas.gov.au/_data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf)

<sup>26</sup> See discussion of this in Office of Security and Emergency Management, *Coastal Hazards Package: Summary of Consultation*, undated, accessible at [https://www.dpac.tas.gov.au/divisions/osem/coastal\\_hazards\\_in\\_tasmania](https://www.dpac.tas.gov.au/divisions/osem/coastal_hazards_in_tasmania)

<sup>27</sup> There is currently no statewide mapping of flood prone areas, see Tasmanian Planning Commission, *Guideline No. 1 Local Provisions Schedule (LPS): zone and code application*, June 2018, at p 51 accessed at [https://www.planning.tas.gov.au/\\_data/assets/pdf\\_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf](https://www.planning.tas.gov.au/_data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf)

EDO's experience in working alongside First Nations peoples within the Western legal framework, which is designed to provide some level of protection to cultural heritage

The Tasmanian Government has committed to introducing new legislation to replace the woefully outdated *Aboriginal Heritage Act 1975* (Tas). However, progress to replace that law has historically been slow. The following comments and recommendations are made in the absence of any clarity on the content and timing of a new Aboriginal Cultural Heritage Act.

Currently there is no requirement under the SPPs for Tasmanian Aboriginal cultural heritage to be considered by planning authorities when assessing a new development or use that potentially impacts cultural heritage. The neglect of this issue in the SPPs only compounds the failure of the *Aboriginal Heritage Act 1975* (Tas) to provide any formal opportunity for Tasmanian Aboriginal people to provide their free, prior, and informed consent (**FPIC**) to any development or use that would impact on their cultural heritage, or to determine the arrangements for the management of their cultural heritage. There can be no question that this situation is unacceptable and is inconsistent with Australia's support of the principles outlined in the United Nations Declaration of the Rights of Indigenous Peoples (**UNDRIP**), and as adopted in the Senate Inquiry into the tragedy of the Juukan Gorge.

We understand that the Tasmanian Government has committed to introducing measures to require early consideration of potential Aboriginal heritage impacts in the highest (State and regional) level of strategic planning, and in all assessments of rezoning proposals under the *Land Use Planning and Approvals Act 1993* (**LUPA Act**) to ensure major planning decisions take full account of Aboriginal heritage issues.<sup>28</sup> It is not clear how this commitment will be implemented. However, the recent consultation paper outlining the Government's approach to a new Aboriginal Cultural Heritage Act proposed to provide for a "light touch" integration between the new legislation and the planning system, with no meaningful mechanism for Tasmanian Aboriginal people to have a determining role in planning decisions that affect their cultural heritage<sup>29</sup> In EDO's view, the Government's foreshadowed approach does not provide for adequate involvement of Tasmanian Aboriginal people in decisions that concern their cultural heritage in line with the UNDRIP principles of FPIC and self-determination.

In the absence of a comprehensive Aboriginal Cultural Heritage Act that gives effect to UNDRIP principles, the SPPs can and must provide for the protection and management of impacts of development and use on Tasmanian Aboriginal cultural heritage and provide an effective mechanism for Tasmanian Aboriginal people to determine applications for these proposed developments or uses. The planning system is currently the only legislation that guarantees public participation and review of decisions on the merits in the TasCAT. However, to trigger these rights for Aboriginal people, there must be a Code or standard within the SPPs.

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<sup>28</sup> Jaensch, Roger (2021) *Tabling Report: Government Commitment in Response to the Review Findings, Aboriginal Heritage Act 1975: Review under s.23*. <https://nre.tas.gov.au/Documents/Tabling%20Report%20-%20Review%20of%20the%20Aboriginal%20Heritage%20Act.pdf>

<sup>29</sup> Department of Natural Resources and Environment (2022) *Consultation Paper: A new Aboriginal Cultural Heritage Protection Act*, accessed at: <https://nre.tas.gov.au/about-the-department/aboriginal-legislative-reform/aboriginal-heritage-act>

The SPPs can ensure that potential use or development impacts on Tasmanian Aboriginal cultural heritage are avoided and/or managed through the inclusion of an Aboriginal Heritage Protection Code to provide assessment requirements and prescriptions that explicitly aim to conserve and protect Aboriginal cultural heritage.

While the development of an Aboriginal Heritage Protection Code would have to be done in close consultation with Tasmanian Aboriginal people and recognise Aboriginal cultural landscapes, such as the Western Tasmania Aboriginal Cultural Landscape, in takayna/the Tarkine. The Code must require the proponents of certain proposed developments or uses to seek permission from Tasmanian Aboriginal people about the development or use, compile appropriate surveys and reports and/or prepare Aboriginal cultural heritage management plans the requirements of which could be enforced as conditions of the permit.

Another way the SPPs could better recognise and provide for Aboriginal cultural heritage protection is by the creation of specific zoning for Aboriginal-owned land, developed in consultation with Tasmanian Aboriginal people. The Particular Purpose Zone (PPZ) for truwana/ Cape Barren Island and Outer Islands in the Flinders Local Provision Schedule provides an example of how this might be done, including by giving the Aboriginal Land Council of Tasmania the power to consent to or refuse certain proposed uses within the PPZ.<sup>30</sup> (EDO notes that if PPZ's are Tasmanian Aboriginal peoples' preferred mechanism to provide recognition of Aboriginal ownership in the Tasmanian Planning Scheme, then serious consideration should be given in the SPPs Review to amending clause 5.2.6 of the SPPs to allow for the creation of further PPZ's for Tasmanian Aboriginal land that can override General, Administration and Code provisions of the SPPs on Aboriginal owned land as it is acquired.)

The SPPs review should also consider how necessary resources, as determined by Tasmanian Aboriginal people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

**Recommendation 4:** The SPPs review, with Tasmanian Aboriginal people, examine opportunities to provide for protection of Aboriginal cultural heritage and provide a self-determined and meaningful decision-making role for Tasmanian Aboriginal people in determining planning decisions that affect their cultural heritage.

**Recommendations 5:** The SPPs review consider how necessary resources, as determined by Aboriginal Tasmanian people, can be allocated to Tasmanian Aboriginal people or groups to participate in the development of Codes, Zones, or PPZs, and in planning decision-making under these instruments.

### **2.3. Miscellaneous issues not currently addressed in the SPPs**

There are a range of other matters that currently are not considered or properly regulated under the SPPs.

One issue that EDO receives numerous inquiries and complaints about is helicopter and drone overflights, particularly from people who reside near landing pads who are impacted by the noise

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<sup>30</sup> See FLI-P1.0 here [https://iplan.tas.gov.au/pages/plan/book.aspx?exhibit=tpsfl\\_i](https://iplan.tas.gov.au/pages/plan/book.aspx?exhibit=tpsfl_i).

and disruption of these activities and loss of amenity (including privacy). There have already been moves in other jurisdictions towards the use of drones for delivery of goods,<sup>31</sup> and the use of helicopters and drones for tourism and emergency services and management in lutruwita/Tasmania is growing.<sup>32</sup> Therefore, amenity impacts from helicopters and drones are likely to be increasingly experienced in communities across lutruwita/Tasmania. While there is a “Safeguarding Airports Code” in the SPPs which aims to protect existing Commonwealth airports and other airports identified in LPSs from encroachment from sensitive uses and incompatible development, the SPPs do not explicitly or directly regulate the impacts of the use of land for helicopter or drone take off and landings on natural values or on surrounding land uses. While there are some Commonwealth regulations relating to aircraft noise and impacts while they are in the air, in EDO’s experience these are overwhelmingly ineffective at addressing issues relating to the localised impacts associated with helicopter and drone take-off and landing. We are of the view that many of these issues could be avoided or mitigated if they were considered at the planning stage by the SPPs.

**Recommendation 6:** The SPPs review consider how the SPPs can better regulate impacts of helicopter and drone landing and take-off.

Another issue that is not expressly regulated in the SPPs is stormwater. The *State Policy on Water Quality Management 1997* provides for planning schemes to address stormwater inputs to ensure that environmental nuisance and harm is not caused by stormwater and erosion. However, the SPPs deal only with stormwater in relation to subdivision. Without a Stormwater Code, planning authorities are limited in the information they can request, the issues they can consider and the conditions that they can impose to manage the environmental impacts (including pollution risks) of run-off from development and/or uses which increase paved surfaces or redirect drainage channels. The principles of Water Sensitive Urban Design are not effectively implemented through the provisions of the SPPs. A Stormwater Code could help to remedy that, or alternatively, the Natural Assets Code should be significantly strengthened in respect of the regulation of stormwater.

**Recommendation 7:** The SPPs review consider the need for a separate Stormwater Code to better regulate the environmental and erosion impacts of development and use, or alternatively, the need to significantly strengthen Natural Assets Code provisions relating to stormwater.

### **3. Existing parts of the SPPs that should be prioritised for review and improvement**

#### **3.1. Scope of SPPs and their application to coastal waters**

Under most Interim Planning Schemes across lutruwita/Tasmania, coastal waters from the high tide mark to 200m were zoned Environmental Management. It appeared that this was intended to be carried forward with the Tasmanian Planning Scheme, with the TPC’s *Guideline No 1 Local Provisions Schedule (LPS): zone and code application* dated June 2018 (issued under section 8A of

<sup>31</sup> See the Brisbane Times, ‘Drones deliver from roof of Queensland shopping centre in world first’, dated 6 October 2021, accessible at: <https://www.brisbanetimes.com.au/national/queensland/drones-deliver-from-roof-of-queensland-shopping-centre-in-world-first-20211006-p58xuf.html>

<sup>32</sup> See the Advocate, ‘Drone Use on the Rise in Tasmania’ dated 27 May 2018, accessible at: <https://www.theadvocate.com.au/story/5430653/drone-use-on-rise-in-tasmania/>

the LUPA Act) recommending councils apply the Environmental Management Zone “to land seaward of the high-water mark unless contrary intention applies”.<sup>33</sup>

Regrettably and apparently in contrast to the intention outlined in its own guidelines, the TPC has adopted a restrictive interpretation of section 7 of the LUPA Act, which has led to the removal of Environmental Management Zoning for much of lutruwita/Tasmania’s precious and unique coastal waters under Local Provision Schedules. The overly narrow interpretation of s 7 of the Act, has also meant that the TPC has refused to consider Specific Area Plans or Site-Specific Provisions over coastal waters to, for example, protect important habitat for the critically endangered Spotted Handfish.<sup>34</sup> In circumstances where the Natural Assets Code deals with terrestrial flora, there is no protection for marine dependent species or their habitat.

Clause 7.11.1 of the SPPs provides:

Use or development of a type referred to in section 7(a) to (d) of the Act that is unzoned in the zoning maps in the relevant Local Provisions Schedules must be considered in accordance with:

- (a) the provisions of the zone that is closest to the site; or
- (b) in the case of a use or development that extends from land that is zoned, the provisions of the zone from which the use or development extends.

Simply “considering” the zoning requirements of adjacent zones for proposed developments and uses in coastal waters against is extremely unlikely to protect the unique natural values and features of those areas. This is because, not only will those adjacent zones be unlikely to have specific provisions relating to developments in coastal waters, even if there were some provisions that could be applied by councils to a development the drafting of cl 7.11.1 means that those provisions may simply be “considered” and then put to one side without a determinative role in the council’s decision.<sup>35</sup>

Furthermore, it arguable that the Waterway and Coastal Protection Areas under the Natural Assets Code does not apply to coastal waters, so there are no specific provisions to protect the values of coastal waters in the SPPs notwithstanding their enormous cultural and economic significance to this state. It appears to EDO, that the lack of planning controls that specifically ensure a proposed development’s compatibility with natural landscapes situation is inconsistent with the *State Coastal Policy 1996*.<sup>36</sup>

EDO therefore strongly recommends that the SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania’s coastal waters.

**Recommendation 8:** The SPPs review consider how the SPPs can better apply to and protect the natural values of lutruwita/Tasmania’s coastal waters, including through amendment of clause

<sup>33</sup> [https://www.planning.tas.gov.au/\\_data/assets/pdf\\_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf](https://www.planning.tas.gov.au/_data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf)

<sup>34</sup> See The TPC’s Decision on the Clarence draft Local Provisions Schedule dated 2021 from [444] but especially [448] and [455], accessed here: [https://www.planning.tas.gov.au/\\_data/assets/pdf\\_file/0009/626904/Decision-and-reasons-under-s35K2a-and-s35KB-to-modify-draft-LPS-and-amend-Clarence-LPS-including-notices-1-September-2021.PDF](https://www.planning.tas.gov.au/_data/assets/pdf_file/0009/626904/Decision-and-reasons-under-s35K2a-and-s35KB-to-modify-draft-LPS-and-amend-Clarence-LPS-including-notices-1-September-2021.PDF)

<sup>35</sup> cf with the zoning provisions being “applied”

<sup>36</sup> See clause 1.1.10 of the Policy which states: The design and siting of buildings, engineering works and other infrastructure, including access routes in the coastal zone, will be subject to planning controls to ensure compatibility with natural landscapes.”



7.11.1 and/or the Natural Assets Code.

### **3.2. Exemptions from the SPPs**

In its previous submissions concerning the draft SPPs, EDO raised concerns about the impacts on the environment arising from developments or uses that are exempt from the requirement for planning permits and suggested some ways these developments and uses could be more appropriately regulated.<sup>37</sup> Those concerns have been adequately addressed and consider that all the exemptions under the SPPs should be reviewed, with particular attention being paid to exemptions such as:

- Table 4.3, exempt building and works;
- Table 4.4 relating to vegetation removal; and
- Exemptions from the Natural Assets Code.

**Recommendation 9:** The SPPs review consider whether the exemptions provided under Tables 4.3 and 4.4 and in the Natural Assets Code are appropriate and consistent with the objective of the LUPA Act.

### **3.3. Information required as part of the assessment of an application for use or development**

In EDO's submission to the draft SPPs, we emphasised the importance of applicants being required to provide sufficient information at the outset for the planning authority to assess potential impacts and determine which Codes may apply to a proposed use or development and that the onus should not be on the planning authority to request this information. For example, while it is not appropriate to require all applications to include a coastal hazard assessment or natural values assessment, applicants should be required to provide such an assessment for any use or development that would be subject to the Coastal Inundation Code or the Natural Assets Code. We recommended that any information required by an applicable Code should be included as a mandatory application requirement under clause 6.1.2 and that additional mandatory application requirements should be able to be included in Codes.

We note that in the Commission's Report on the draft SPPs it considered the current approach of not providing for Code-specific information requirements may be worthy of further consideration in future SPP reviews.<sup>38</sup> We believe it would be appropriate to re-consider our recommendation during the current review. Further, if the SPP review proceeds in accordance with recommendation 4 above, consideration would need to be given as to what information needs to

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<sup>37</sup> See, for example, EDO's submission in response to the Draft State Planning Provisions dated 18 May 2016, which can be accessed at <https://www.edo.org.au/wp-content/uploads/2019/12/160518-EDO-Tasmania-submission-on-draft-State-Planning-Provisions.pdf>

<sup>38</sup> Tasmanian Planning Commission, 2016, Draft State Planning Provisions Report, [https://www.planning.tas.gov.au/\\_data/assets/pdf\\_file/0005/588965/Report-on-the-draft-State-Planning-Provisions-and-appendices.-9-December-2016.PDF](https://www.planning.tas.gov.au/_data/assets/pdf_file/0005/588965/Report-on-the-draft-State-Planning-Provisions-and-appendices.-9-December-2016.PDF)

be provided to allow Tasmanian Aboriginal people to properly assess applications relating to Aboriginal cultural heritage.

**Recommendation 10:** The SPPs review consider expanding the application requirements under clause 6.1.2 to include reports or assessments required under applicable Codes.

### **3.4. Environmental Management Zone**

As it currently stands, many uses within the Environmental Management Zone are permitted so long as an authority is granted under the *National Parks and Reserved Land Regulations 2019* or granted by the managing authority or approved by the Director General of Lands under the *Crown Lands Act 1976*. Assessment of such new uses is largely managed through the non-statutory Reserve Activity Assessment (**RAA**) process, administered by the Parks and Wildlife Service within the Department of Natural Resources and Environment.

EDO has previously voiced concerns about the adequacy of the RAA process and the reliance on it for the purposes of planning assessments. As national parks and reserves are a public resource, the public has a legitimate expectation of being able to comment on proposals which may compromise the protection of that resource. EDO does not consider it sufficient for a proponent to rely on the existence of an authority (which may or may not be issued following an RAA) to avoid further scrutiny of a use or development on Crown land by a local council under the SPPs. This is because:

- There are no clear and transparent criteria for decisions relating to the issue of authorities under the *National Parks and Reserved Land Regulations 2019* or by the Director General of Lands under the *Crown Lands Act 1976*, and no opportunities for public comment or merits appeal of those decisions.<sup>39</sup>
- The RAA process has no statutory basis, and therefore has no clear and transparent criteria for decisions, nor are there guaranteed provisions allowing for meaningful public participation in the RAA process. There is no right of merits appeal in respect of a decision to approve an RAA and, if an activity is granted an authority following an RAA, and therefore subsequently characterised as a “permitted use” under clause 23.2 of the SPPs, there will be no public comment or merits appeal rights relating to that proposal.
- There are planning issues related to proposed uses and developments in national parks, reserves and Crown land that are most appropriately considered by a local council, for example, developments in these areas can have a range of impacts both on and off the land that a council is better placed to assess (such as traffic, sanitation, impacts on other uses in the vicinity including amenity impacts on sensitive uses)

Without clear criteria for the decisions to grant authorities under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976*, there can be no guarantee that deferring to

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<sup>39</sup> Given the operation of section 48(5) of the *National Parks and Reserves Management Act 2002*, some developments that are not consistent with the applicable reserved land management objectives and objectives of reserve management plans may be approved in national parks, State reserves, nature reserves, game reserves or historic sites.

these authorities within the SPPs will achieve the Environmental Management Zone purposes of providing for “the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value”; and allowing “for compatible use or development where it is consistent with:

- (a) the protection, conservation, and management of the values of the land; and
- (b) applicable reserved land management objectives and objectives of reserve management plans.”

EDO notes that the Tasmanian Government has signalled it will be replacing the RAA process with a statutory environmental impact and planning assessment process for “major uses and developments”. Without further detail, it is difficult to comment on the implications of these proposed reforms and whether they will effectively address the problems we outline above. However, given there has been no indication of when the RAA reforms will be consulted upon, let alone passed by Parliament, it is EDO’s strong view that all deference in Environmental Management Zone provisions to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976*, such as the Table of Uses and the Performance Criteria for Discretionary Uses outlined in clause 23.3.1 P1 and Acceptable Solutions in clauses 23.4 and 23.5, should be removed and appropriate measures provided to ensure that the Zone objects are achieved.

**Recommendation 11:** The SPPs review consider the impact of deference in Environmental Management Zone to authorities issued under the under the *National Parks and Reserved Land Regulations 2019* or the *Crown Lands Act 1976* on public participation and good planning outcomes, and consider the removal of these provisions, and the strengthening of public participation in decisions relating to public lands.

**Recommendation 12:** The SPPs review consider providing for appropriate standards for all developments and uses provided in the Environmental Management Zone to ensure the Zone purposes are achieved.

### **3.5. Natural Assets Code**

In EDO’s submission, the Natural Assets Code should be reviewed in its entirety, with particular attention paid to the Code’s:

- Purpose
- Application and Exemptions
- Drafting of the applicable provisions
- Mapping

When the draft SPPs were circulated for public comment in 2016, the Natural Assets Code was an area of considerable debate and public concern. EDO’s submission strongly recommended significant changes to the Code, arguing that it would result in the loss and fragmentation of important biodiversity and habitat, particularly where that habitat does not include threatened

species.<sup>40</sup> The TPC ultimately recommended that the Code be removed from the SPPs to allow for proper consideration of the biodiversity implications of the Code, and for the development of more comprehensive mapping to support the application of the priority vegetation area overlay in the Code. While the Minister ultimately decided to ignore this recommendation, much concern about the adequacy of the Natural Assets Code remains, and EDO endorses much of our previous detailed submission in this respect.

The Code's purpose statements lack ambition and fail to acknowledge any role for the Code in *avoiding* impacts of developments and uses on natural values such as waterways and priority habitat, or to *protect* these values in the landscape for the future. The purpose statements (as with the rest of the Code provisions) also do not deal with the need to remedy or restore natural values which have been degraded or offset any impacts that are unavoidable. This is inconsistent with the primary sustainable development objectives of the LUPA Act.

There are also numerous problems with limitations of the application of the Code and the exemptions to it. For example, the Code does not apply to all potential habitat, only that which is identified as priority vegetation. Even so, these priority vegetation areas do not apply across all zones, and even then, for some zones the Code only applies to subdivisions but not to other developments.<sup>41</sup> The definition of Priority Vegetation for the purposes of mapping has also been limited. As already mentioned in our submission above, the Waterway and Coastal Protection Area does not apply to coastal waters, and in urban zones, the extent of these areas is severely curtailed without any provision to ensure developments or uses do not have adverse impacts on the natural values of these areas, including on water quality.<sup>42</sup> There are also many development that are exempted from the Code, many of which could have enormous impacts on natural values that are not adequately regulated under other laws.<sup>43</sup> We also acknowledge that natural values, including those of rivers and vegetated areas may hold cultural values for Aboriginal people, which is explicitly not recognised in the Code or elsewhere in the SPPs.

Fundamentally, the Natural Assets Code misses an opportunity to protect and preserve remnant native vegetation and habitat corridors. Rather than focussed on development control, this Code could be focussed on managing natural assets at a landscape or ecosystem level. Priority vegetation is currently the trigger for whether clearing is assessed at all – indicating that it can be removed, subject to assessment. Rather than this approach, we recommend an approach based on identifying and protecting biodiversity at a landscape scale, taking an approach based on conservation ecology.

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<sup>40</sup> EDO's submission in response to the Draft State Planning Provisions dated 18 May 2016, can be accessed at <https://www.edo.org.au/wp-content/uploads/2019/12/160518-EDO-Tasmania-submission-on-draft-State-Planning-Provisions.pdf>

<sup>41</sup> Refer to clause C7.2.1 (c) of the SPPs.

<sup>42</sup> Refer to Table C7 (b) of the SPPs.

<sup>43</sup> One example of an exemption provided from the Code, where other laws do not adequately provide for consideration and protection of natural values is forest practices or forest operations in accordance with a forest practices plan certified under the *Forest Practices Act 1985* – see clause C7.4.1(d) of the SPPs.

In addition, there is substantial evidence of the climate and ecosystem services provided by intact ecosystems both as carbon sinks and in water cycling etc. These benefits should be recognised in the mapping and controls applying to clearing of vegetation.

Furthermore, the Code fails to regulate the ongoing impacts of uses, such as Resource Development and Extractive Industry, on the natural values. The SPPs review should consider whether it is appropriate that such impacts fall outside the scope of planning decisions.

EDO has previously argued there needs to be a standalone Stormwater Code in the SPPs. While EDO maintains that position, in the absence of such a Code, we consider that the provisions of the Natural Assets Code relating to stormwater can and should be significantly strengthened to ensure both our waterways and communities are protected from stormwater impacts: see Recommendation 7.

**Recommendation 13:** The Natural Assets Code be reviewed in its entirety with a view to ensuring it fulfills the LUPA Act objectives by maintaining (through protection and preserving) ecological processes and diversity for current and future generations and ensuring development is sustainable.

### **3.6. Coastal Erosion Hazard Code and Coastal Inundation Hazard Code**

EDO considers that the purposes of the Coastal Erosion Hazard and Coastal Inundation Hazard Codes should be reviewed to reflect the need to manage and minimise not just the impacts of coastal erosion on development, but the impacts of development on coastal erosion and inundation.

As we have already outlined in part 2.1 above, mapping for these Codes is based on analysis undertaken by the CSIRO using data from the fifth Intergovernmental Panel on Climate Change (IPCC) report.<sup>44</sup> Further expert analysis of lutruwita/Tasmania's likely coastal erosion and inundation risks should be commissioned based on the sea-level rise information in the sixth IPCC report. Likewise, further investigation of the interaction between coastal inundation and estuarine flooding,<sup>45</sup> and mapping of lutruwita/Tasmania's flood risks in future climate scenarios is required.<sup>46</sup>

The Codes should also consider the best approach to adaptation planning for community resilience and safety.

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<sup>44</sup> Tasmanian Climate Change Office, "Coastal Impacts" webpage accessed at [https://www.dpac.tas.gov.au/divisions/climatechange/climate\\_change\\_in\\_tasmania/impacts\\_of\\_climate\\_change/coastal\\_impacts](https://www.dpac.tas.gov.au/divisions/climatechange/climate_change_in_tasmania/impacts_of_climate_change/coastal_impacts); and Tasmanian Planning Commission, Guideline No. 1 Local Provisions Schedule (LPS): zone and code application, June 2018 accessed at [https://www.planning.tas.gov.au/\\_\\_data/assets/pdf\\_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf](https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf)

<sup>45</sup> See discussion of this in Office of Security and Emergency Management, Coastal Hazards Package: Summary of Consultation, undated, accessible at [https://www.dpac.tas.gov.au/divisions/osem/coastal\\_hazards\\_in\\_tasmania](https://www.dpac.tas.gov.au/divisions/osem/coastal_hazards_in_tasmania)

<sup>46</sup> There is currently no statewide mapping of flood prone areas, Tasmanian Planning Commission, Guideline No. 1 Local Provisions Schedule (LPS): zone and code application, June 2018, at p 51 accessed at [https://www.planning.tas.gov.au/\\_\\_data/assets/pdf\\_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf](https://www.planning.tas.gov.au/__data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf)

**Recommendation 14:** The SPPs review consider the purpose, provisions and mapping under the Coastal Erosion Hazard and Coastal Inundation Hazard Codes to ensure that they reflect and adapt to the best available science on sea-level rise, coastal inundation and estuarine flooding; manage the impacts of development on coastal erosion and inundation; and provide for community resilience and safety.

### **3.7. Landscape Conservation Zone**

In its submission on the draft SPPs, EDO raised concerns about the risk that many Councils would resist zoning land that was zoned Environmental Living under the Interim Planning Scheme to Landscape Conservation given the likely response from landowners regarding the additional restrictions. The current review should investigate the extent to which land previously zoned as Environmental Living has been classified as Rural Living, Rural or Landscape Conservation and consider whether there is a need for more options to balance the need for greater protection of natural values with the difficulties councils have experienced in transitioning land previously zoned Environmental Living to Landscape Conservation.

**Recommendation 15:** The SPPs review consider the extent to which land previously zoned Environmental Living has been transitioned to Rural Living, Rural or Landscape Conservation Zoning, an identify options to address any overall drop in protection of natural values as a result of down zoning of Environmental Living to Rural Living, Rural Zone.

### **3.8. Treatment of the Extractive Industry use in the Rural and Agricultural Zones**

Allowing for extractive industry, whether as a Permitted Use in the Rural Zone or as a Discretionary Use in the Agricultural Zone, conflicts with the Purposes of both these zones to minimise conversion of agricultural land for non-agricultural use (see clauses 20.1.2 and 21.1.2 of the SPPs). The review of the SPPs should include consideration of whether Extractive Industry uses should be classed either as a Discretionary use for the Rural Zone, with exceptions such as quarries directly related to agricultural uses, or as a Prohibited use for the Agricultural Zone, with exceptions i.e., quarries related to agricultural production to keep in line with the over-arching objective of protecting land for agricultural use.

**Recommendation 16:** The SPPs review consider the correct classification of extractive industries in the Rural and Agricultural zones.