Tasmanian National Parks Association

An independent Voice for Tasmania's Parks

Review of the State Planning Provisions

Thank you for the opportunity to comment on the State Planning Provisions under the *Land Use Planning and Approvals Act 1993* (the "LUPAA").

A major role of the Tasmanian National Parks Association Inc. (the "TNPA") is to scrutinise development proposals on reserved land, so our comments address those provisions relating to the Environmental Management Zone, other zones adjoining or near the Environmental Management Zone and the Scenic Protection Code.

Environmental Management Zone

The use table (table 23.2) for the Environmental Management zone should be amended to:

a) remove all the permitted uses; and

b) omit all the qualifications for the discretionary uses.

The development standards for buildings, works and subdivision in the Environmental Management Zone should be amended to omit each provision of an "acceptable solution" relating to authority under the *National Parks and Reserves Management Regulations 2019*, the *Nature Conservation Act 2002* or approval under the *Crown Lands Act 1976*.

These amendments are needed to achieve consistency with the objectives of the resource management and planning system of Tasmania (as set out in Schedule 1 to the LUPAA), especially the objectives:

a) to encourage public involvement in resource management and planning (paragraph 1(c) in Part 1 of that Schedule); and

b) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State (paragraph 1(e) in Part 1 of that Schedule).

Making use or development permitted if it is authorised under the *National Parks and Reserves Management Regulations 2019* or *the Nature Conservation Act 2002* or approved under the *Crown Lands Act 1976* is inimical to public involvement in, and the sharing with the community of responsibility for, management and planning of the use or development. This is because there is no requirement in that legislation for public notice of, or an opportunity for public comment on, uses and developments before they are authorised.

Ensuring that a use or development is discretionary for the purposes of the LUPAA has the effect that section 57 of the LUPAA will require notice of the use or development be given (unless a permit for it is to be refused).

Making use or development meet development standards (via an acceptable solution) if it is authorised under the *National Parks and Reserves Management Regulations 2019* or the *Nature Conservation Act 2002* or approved under the *Crown Lands Act 1976* denies the opportunity for a planning authority and the community to contribute their expertise on matters described in performance criteria for meeting the standards. In many cases this expertise may

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well exceed that of the State public service bodies involved in the authorisation or approval process, particularly for uses and developments of kinds that do not commonly occur in the zone.

The TNPA is aware that the Minister for Parks has proposed legislating to deal with what is currently dealt with by informal "reserve activity assessments" of uses and developments. However, the proposal did not indicate that the legislation would include any measures to allow public involvement in assessments or that it would be relevant to authorisation under the *Nature Conservation Act 2002* or approval under the *Crown Lands Act 1976*. Further, the proposal was made nearly a year ago, and there has been no indication of any progress in implementing it, even though public calls for legislation have been made for many years.

Zones adjoining or near the Environmental Management Zone

The Environmental Management Zone contains land with significant ecological, scientific, cultural and scenic values. Those values may be reduced by uses and developments in zones adjoining or near the Environmental Management Zone.

To protect those values of land within the Environmental Management Zone, use standards and development standards should be included in other zones so that uses and developments in those zones do not reduce the ecological, scientific, cultural or scenic values of land in the Environmental Management Zone.

The State Planning Provisions already include development standards for some zones to ensure that development in those zones does not impair the continuing achievement of the purposes of an adjoining zone. (For example, there are development standards for the Rural Living Zone, the Landscape Conservation Zone, the Environmental Management Zone, the Major Tourism Zone and the Future Urban Zone to prevent developments in those zones from conflicting or interfering with agricultural use of the Rural Zone and Agricultural Zone.)

The Attenuation Code, with its focus on the interaction between specified uses (largely industrial) and sensitive uses (by humans, except in the course of employment), is clearly not aimed at the protection of ecological and scientific values of land in the Environmental Management Zone. Further, the code's implicit assumption that a particular distance will sufficiently diminish the effects of a particular use does not adequately reflect the ways in which, and the distances at which, particular uses may affect particular values (especially ecological and scientific values).

Given the diversity of uses and developments, and the different distances at which they may affect the ecological, scientific, cultural or scenic values of land in the Environmental Management Zone it seems inappropriate and impractical to provide for an acceptable solution for the proposed use standards and development standards. Rather, the proposed standards should have performance criteria requiring uses and developments not to reduce the ecological, scientific, cultural or scenic value of land in the Environmental Management Zone.

Scenic Protection Code

The Scenic Protection Code depends for its operation on Local Provisions Schedules identifying scenic protection areas and scenic road corridors and describing the characteristics and features that constitute the scenic value of those areas and corridors.

Given that scenery is a major attraction of Tasmania for residents and visitors, it is extraordinary how few and small the scenic protection areas and scenic road corridors are (even allowing for the fact that Local Provisions Schedules do not yet apply for all municipal

areas of the State). What is even more extraordinary is that parts of the Environmental Management Zone renowned (and heavily promoted) for their scenic attraction (such as The Hazards and Wineglass Bay in Freycinet National Park, and Mt Murchison) have not been identified as scenic protection areas, so the Scenic Protection Code does not apply to them. This suggests that the Scenic Protection Code is fundamentally defective in its dependence on Local Provisions Schedules, and needs to be amended to avoid this dependence.

Given that the Environmental Management Zone applies to areas of land with significant scenic values, it would make sense for the Scenic Protection Code to apply automatically to that zone (without the zone needing to be identified as scenic protection area in Local Provisions Schedules). There may also be other zones (e.g. Landscape Conservation Zone) to which it would make sense to apply the Scenic Protection Code automatically. If the code is applied automatically to a zone, a generic description of the scenic value of the zone could be included in the definition of "scenic value" in the code. Generally, the scenic value of the Environmental Management Zone depends on the natural landscape or Aboriginal cultural landscape it covers, although some parts of the zone will have scenic value reflecting reservation of those parts as historic sites.

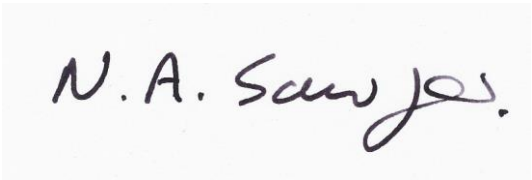
"Acceptable solution" A1 in C8.6.1 (in the Scenic Protection Code) has the effect of allowing in a scenic protection area any development that is less than 500 square metres in area and is more than 50 metres below the skyline. This ignores the fact that scenic values are not limited to areas close to skylines, and denies protection to scenic values from obtrusive developments in parts of a scenic protection area more than 50 metres below a skyline. Lowland scenery will often be enjoyed by looking down from high points (especially in the Environmental Management Zone). The "acceptable solution" should therefore be repealed. The corresponding performance criteria reflect a much more reasonable way of determining whether a development should be allowed, given its effect on scenic value.

Follow-up

The TNPA understands that the State Planning Office is contemplating establishing consultative committees to consider matters raised in the review of the State Planning Provisions. If a committee is established to consider any of the matters raised in this submission (especially the Environmental Management Zone), the TNPA would like to be represented on the committee. The TNPA has extensive experience in planning for reserved lands that make up the bulk of the Environmental Management Zone and associated legal issues.

If you would like to discuss anything in these comments, please contact Stephen Mattingley by email (info@tnpa.org.au) or telephone (0488 787 051).

The TNPA is sending a copy of these comments to the Minister for Planning and his counterparts in other parliamentary political parties.



Nicholas Sawyer, President, TNPA

30 June 2022