

Tasman Council
Section 35G Notice 30 June 2021

Pursuant to the decision of the Tasman Council on 23 June 2021, the following notice is provided pursuant to section 35G of the *Land Use Planning and Approvals Act 1993*.

1.0 SPPs Administration

1.1 Exemption for front fences

Under the SPPs, front fences are exempt subject to height and transparency standards. There is an exception to the exemption if for a heritage listed place.

The exception to the exemption for heritage listed sites should be expanded to incorporate any Standard in a local provisions scheme that regulates fencing and that would require a permit for the development of the fence proposed. This could enable a specific area plan to address front fencing as appropriate to an area.

1.2 Exemption for fencing in the Rural Zone or Agriculture Zone

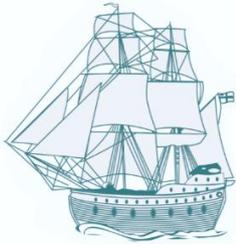
The exemption does not address, by way of a limitation, new fencing that requires the removal of native vegetation. As it reads, a person could rightfully remove vegetation in the processes of establishing fencing. There is an exemption for vegetation clearance associated with fencing a boundary however this exemption applies irrespective of if the fencing is along a boundary. The vegetation removal could occur without assessment and could be used to circumvent assessment. As drafted, the exemption is open to misuse. The exemption should be limited to no native vegetation removal being required.

1.3 Exemption for roadworks

There is an exemption for maintenance, repair and upgrades of roads which may extend up to 3m outside the road reserve including the replacement of bridges in the same or adjacent position.

There are some issues of policy and drafting with this clause:

- RMPAT have determined that the Hobart Airport upgrades which replace a roundabout with a flyover and two roundabouts is to be described as a upgrade, and not new. Upgrade is therefore clearly a broad term. Practically, the clause could replace maintenance, repair and upgrade with simply roadworks as any road related construction within a road reservation will be exempt. Further, (a), (b) and (c) appear unnecessary.
- If a road authority wishes to undertake a major upgrade beyond 3m it could either utilise the planning process or acquire the necessary road reservation. The clause is not limited to the road reservation existing at the effective date or some other point in time. Is the intent of the exemption to allow a Road Authority to first acquire a



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road reservation and then obtain the exemption or should the exemption be limited to the road reservation at the effective date of the LPS?

- Subject to the width of a road reserve in any one location, it will generally not be possible to place a new bridge adjacent to an existing bridge and still be within 3m of the road reserve. This provision does not appear to be workable.
- 'Carriageways' is not a defined term, but 'road' is.

1.4 Local Area Objectives

The planning reform website states the following with respect to Local Area Objectives¹:

The State Planning Provisions have retained the intent of these but sensibly merged them into a single concept called Local Area Objectives. The application of these in the State Planning Provisions will be exactly the same as in interim planning schemes.

Local Area Objectives can be prepared by a local council for any zone of specific area plan for inclusion in the Local Provisions Schedule. They may be used to assess a discretionary use in any zone, not just those that have a reference to them in the performance criteria. They may be also used to assess a discretionary development when specifically referred to in the Performance Criteria.

There are six standards, of more than 100 standards in the SPPs, that refer to Local Area Objectives in the Performance Criteria.

The SPPs should be amended to either specific Local Area Objectives in all instances or provide a general ability to consider Local Area Objectives for any Standard. Local Area Objectives could be an important way to apply the general provisions of the SPPs in a way that remains consistent with local strategy without applying Site Specific Qualifications or Specific Area Plans.

2.0 SPPs Zones

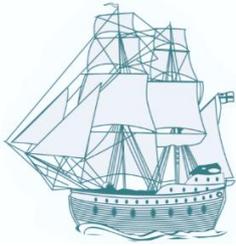
2.1 Low Density Residential Zone

2.1.1 Use Table

General retail and hire is limited to a local shop only. This precludes tourism related retail or hire use which is concerning given the structure of the local economy. The General retail and hire use class should be qualified by a maximum floor area as opposed to the limitation to local shop only.

2.1.2 Side Setback

¹ <https://www.planningreform.tas.gov.au/facts/state-planning-provisions> Accessed 29 July 2021



The acceptable solution for side setback of 5m is excessive and will increase in the number of applications that require a variation.

A 10m setback is provided for the Rural Living Zone at a 1ha minimum lot size. To apply a 5m setback in a zone where the minimum lot size is one-sixth the size is not reasonable.

A staggered side and rear boundary setback is considered appropriate such that:

- 1.5m if less than 1200m²,
- 3m if between 1200 and 2500m²,
- 5m otherwise.

2.1.3 Site Coverage

- The omission of wastewater is considered a significant gap. The specific area plan included in the draft LPS is a partial response to this issue. A simple and effective SPP provision would be to expand the performance criteria for site coverage the Low Density Residential and modify criteria b) to “the capacity of the site to absorb runoff **and manage wastewater**”. Site coverage is a relevant clause as a greater proportion of built form on a lot the greater the design challenge of managing wastewater. This is directly link to the greater risk of failure or inadequate design. The clause would be a head of power to require detail if necessary.
- Alternatively, LUPPA could be amended to expand the TasWater and Tasmanian Heritage Council referral mechanism to the Stormwater Service Provider and the Council Environmental Health Officer for onsite wastewater applications. This would formalise existing practice and provide a more streamlined and integrated development system.

2.2 Rural Zone

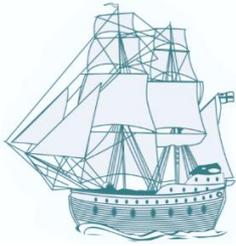
2.2.1 Access for new dwellings

The prohibition on access from a Crown road reserve is unjustified and does not serve a proper planning purpose.

2.2.2 Agriculture Zone

Council does not support the excision of existing visitor accommodation and dwellings in the Agriculture Zone. There is a distinct lack of any policy position behind this provision that provides any justification for the clause or any consideration of its potential impacts. Agricultural and rural land across the municipality is fragmented.

The provisions allow an existing house or visitor accommodation use to be separated from the balance of the land subject to a perpetual prohibition on a new dwelling on the balance. Rather than protecting agricultural land and agriculture use it may significant impact it. A house on an agricultural site is often necessary for there to be any agricultural use. With a fragmented land base, farming the balance ‘off-site’ may not be viable. Without the capacity to invest in a dwelling there may be a disincentive to invest in agricultural use. Moreover, visitor accommodation in these zones is appropriate to diversify income streams in support of agricultural use. Separating such visitor accommodation use is illogical.



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The provision may be appropriate in some regions in Tasmania, but not where the original granting of land produced what is now a fragmented land pattern.

2.3 Landscape Conservation Zone

2.3.1 Residential Amenity

The Landscape Conservation Zone applies to areas where residential use is the most prevalent use, which is in part due to the translation of the Environmental Living Zone. There is no consideration of residential amenity and the potential impacts of discretionary use to established residential amenity.

3.0 SPPs Codes

3.1 C1 Signs Code

3.1.1 Number of signs per frontage

Table C1.6 allows 1 ground based sign per 20m of frontage. C1.6.1 A3 (d) allows six signs per business if the frontage is more than 20m in length. This clause is not reasonable for Rural Zone or Agriculture Zone.

3.2 C2 Parking and Sustainable Transport Code

3.2.1 Car parking for Food Services

The car parking requirement for a café is 15 spaces for each 100m² of floor area or 1 space per three seats. The requirement provides a base number of 15 spaces for a new café irrespective of its scale. For a restaurant, the ratio is one space for 15m² which is far more reasonable. The difference for a small, 60m² café is four spaces versus 15 spaces. The terms café and restaurant are not defined in the planning scheme. Whilst it would seem that the SPPs are drafted to have a distinct meaning between the two, the common meaning is interchangeable. There should be a consistent car parking requirement for café and restaurant with a ratio of 1 space per 15m².

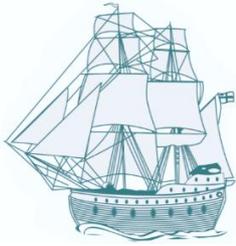
3.2.2 Table C2.2 Internal Access Way Widths

The widths specified for access ways are inconsistent with the bushfire requirements and with the Australian standards. For uses that require 1 to 5 spaces, the passing bay width is not actually wide enough for two vehicles to pass. The table applies to internal access ways but specifies dimensions from the carriageway (and outside the property).

3.3 C3 Road and Rail Assets Code

3.3.1 Noise Attenuation

The application of noise attenuation provisions should apply based on mapped overlays or more accurate on ground information to balance the transparency of mapped overlays and



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the flexibility to apply the provisions accurately as road infrastructure is upgraded. The Flood Prone Areas Code provides an equivalent approach.

3.4 C6 Local Historic Heritage Code

3.4.1 Demolition in the Heritage Code

Clause P1 (h) of C6.6.1 Demolition has regard to “any economic considerations”.

This terminology is very broad and all encompassing and far beyond the “no prudent and feasible alternatives” and would require consideration of the economic costs and benefit of the demolition. Economic considerations are not the financial considerations of the applicant. Expanding the test beyond a “no prudent and feasible alternatives” substantially adds to the scope and cost of assessment. This additional cost is at the expense of an appropriate and relatively narrow assessment whereby demolition should not occur if there is a prudent and feasible alternative.

3.5 C7 Natural Values Code

3.5.1 Application of Priority Vegetation Overlay

The Priority Vegetation Overlay should apply to the Agriculture Zone. Clearing for agricultural purposes is not regulated by LUPAA. To exclude clearing for non-agricultural purposes within the Agriculture Zone is to preference non-agricultural use of agriculture.

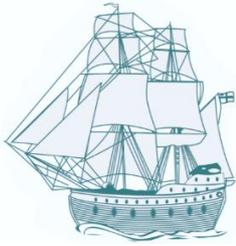
3.5.2 Provisions relating to Priority Vegetation

The objective at C7.6.2 requires that there is no unreasonable loss of priority vegetation, meaning that there is no unreasonable loss to a particular vegetation community. This is problematic to apply to individual sites and applications as:

- there are multiple jurisdictions regulating native vegetation at local at State level,
- native vegetation communities extend across multiple Planning Authority jurisdictions, and
- vegetation losses through LUPPA are not documented or reported as per other regulatory regimes.

The SPPs require impact minimisation irrespective of the relative scarcity or importance of the community being impacted is. This is a significantly different approach to the interim planning scheme and the hierarchy of avoid, minimise and offset. Across the Priority Vegetation Area, there are vegetation communities that are more scarce and the code should emphasis avoidance; whilst for most vegetation communities minimisation will be acceptable. The high, medium and low classification of vegetation in the interim scheme is essential to distinguish between appropriate outcomes that are to be achieved.

3.6 C8 Scenic Landscape Code



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The Scenic Landscape Code requires substantial revision so that it may be applied to scenic landscapes other than vegetated ridgeline.

3.7 C14 Potentially Contaminated Land Code

Applying a mapped overlay provides greater certainty and transparency but also requires some degree of confidence that the issue is relevant to a site. This confidence exists for some sites, but not for others leading to a situation where a mapped overlay could be applied to some sites. This, however, may create the impression that the issue does not apply if not mapped. As a result, a mapped overlay is not a reasonable approach to apply the code.

A non-statutory mapped overlay published to LISTmap would allow the level of confidence (e.g., suspected, likely, known) to be known, and for greater certainty and transparency to users of the planning system.

3.8 Bushfire Prone Areas Code

The Code requires a BHMP for all subdivisions. Subdivisions in the Agriculture Zone however are not for residential purposes. A house excision subdivision would require a BHMP even if residential use is prohibited. The Code should not require a BHMP to consider the suitability for a house where the subdivision is not to facilitate residential use.

4.0 General

4.1 Road Connectivity

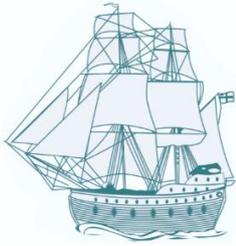
Subdivision standards in the SPPs inadequately address whether additional road connectivity is appropriate. The SPPs zones consider road design through performance criteria that address the adequacy of a proposed road. If no road is proposed (but should be) the acceptable solution is satisfied.

Because the threshold question of should a new road be provided or not is not addressed in the SPPs, the test at section 85(d) of *Local Government (Building and Miscellaneous Provisions) Act 1993* apply. It is considered that this however should be included in the planning scheme.

4.2 Siting and Scale of Outbuildings

It is considered important that the SPPs include provisions similar to those in the interim planning scheme that give consideration to particularly large or high outbuildings in residential environments.

4.3 Omission of public open space design considerations



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The omission within the SPPs of criteria with respect to public open space is concerning. Planning Authorities will be forced to utilise the provisions in the *Local Government (Building and Miscellaneous Provisions Act) 1993* notwithstanding relatively recent changes to that act to allow for a planning scheme to override. The back to the future basis of this omission is confusing and will not lead to better outcomes or simpler processes.