

PLANNING MATTERS ALLIANCE TASMANIA

REVIEW OF THE NATURAL ASSETS CODE

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INTRODUCTION

The following submission by Planning Matters Alliance Tasmania (PMAT) on the review of the Natural Assets Code (NAC) is made in the context of the Schedule 1 Objectives of the *Land Use Planning and Approvals Act 1993* (LUPAA). LUPAA is one of the central pieces of legislation governing land use planning in Tasmania, with planning schemes the principal instrument under LUPAA regulating use, development protection of land. Therefore, how LUPAA integrates biodiversity conservation into land use planning is critical to guiding what planning schemes generally, and the NAC specifically, must achieve and include.

One of key objectives of LUPAA as set out in Schedule 1 is to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity. Therefore, at the heart of the LUPAA is promoting and furthering sustainable development, and as an integral part of sustainable development, conserving biodiversity.

PMAT acknowledges that the mere inclusion of sustainable development as a principle within legislation does not necessarily need to result in substantive outcomes for biodiversity, as biodiversity may be viewed as one of many competing issues and there is the potential for social and economic considerations to outweigh biodiversity impacts (Allchin, Kirkpatrick & Kriwoken 2013; Bates 2013; Dwyer & Taylor 2013; England 2005; Farrier, Kelly & Langdon 2007; Farrier, Whelan & Brown 2002; Ives et al. 2010; Peel 2008; Rackemann 2010; Robinson 2009; Taylor & Ives 2009; UNEP 2010, 2012). There is also the potential for consideration of biodiversity to be limited to a procedural matter rather than a substantive one (Dwyer and Taylor, 2013). Procedural integration of biodiversity only requires the principle of biodiversity conservation to be adequately taken into consideration in the process of decision making, not the actual conservation of biodiversity per se. When operating in its substantive sense, integration of biodiversity needs to achieve actual biodiversity conservation outcomes.

Importantly, Tasmania has some of the strongest requirements of any jurisdiction in Australia to promote biodiversity in a substantive sense (Bates, 2013), with s5 of LUPAA placing an obligation on any person on whom a function is imposed, or a power is conferred under this Act to further the objectives set out in Schedule 1. The strong requirements under LUPAA provide an explicit legal foundation for biodiversity conservation as substantive outcome rather than merely a procedural requirement. Further to this, s15 of LUPAA explicitly requires that the SPPS, including the NAC, further the Schedule 1 objectives. Therefore, there is an obligation for planning schemes in Tasmania to further biodiversity conservation in a substantive, not merely procedural, sense, and it is a requirement for planning schemes to include explicit and meaningful standards that go beyond consideration of biodiversity to achieving biodiversity outcomes.

The move to a single Statewide planning scheme with a Natural Assets Code (NAC) firmly establishes planning schemes as one of the key instruments for conserving biodiversity in Tasmania and provides

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an opportunity for a consistent approach to the integration of biodiversity into the statutory planning process. The inclusion of the NAC is supported and considered a vital step towards integrating the conservation of biodiversity into decision-making. It is also acknowledged that the NAC will improve consideration of biodiversity in decision-making in some local government areas, particularly those that do not currently include a Biodiversity Code or equivalent in their interim schemes.

However, as currently drafted, the NAC does not adequately reflect or implement the objectives of LUPAA in promoting sustainable development and conserving biodiversity. The NAC also reduces biodiversity to a procedural consideration and fails to meet its own objectives, the objectives of State Policies and the regional biodiversity policies articulated in the regional land use strategies. There are also potentially significant jurisdictional and technical issues with the Code, including how the Code integrates with other regulations, the Code purpose, which values it does and does not capture and how the Code is triggered and applied. As a consequence, the Code not only fails to further biodiversity conservation, it also fails to achieve its stated purpose. The NAC as drafted also fails to provide an aspiration to improve biodiversity conservation and can only lead to a reduction in biodiversity.

This submission firstly provides a summary of the most critical issues and priority recommendations identified in the submission. The submission then provides an in-depth response to the key questions identified in the scoping paper released by the State Planning Office. This in-depth response follows the structure of the Code and focusses on the issues with, and potential opportunities for amending, the NAC, and providing detailed recommendations which elaborate on the priority recommendations.

SUMMARY OF KEY ISSUES AND PRIORITY RECOMMENDATIONS

Key issues	Priority recommendations
The NAC is limited to managing and minimising loss and fails to improve biodiversity, maintain ecological processes or implement the mitigation hierarchy, with the need to avoid absent and offset severely limited.	Amend the Code, including the purpose, objectives and standards, to improve the condition and extent of natural assets and biodiversity and reflect all stages of the mitigation hierarchy, with the highest priority being to avoid loss and offsets a requirement where loss is unavoidable, and the impact is insignificant.
The scope of natural assets and biodiversity values considered under the NAC is too narrow and will not promote biodiversity conservation or maintain ecological processes, with landscape function and ecosystem services, non-threatened native vegetation, species and habitat, and terrestrial ecosystems sensitive to climate change largely excluded.	Amend the Code, including the purpose, objectives and standards, to apply to natural assets and biodiversity values more broadly, including landscape ecological function, ecosystem services, ecological processes, habitat corridors, genetic diversity, all native vegetation (not just threatened), non-listed species and ecosystems sensitive to climate change.

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Key issues	Priority recommendations
<p>The extensive zone exclusions from a priority vegetation area, and therefore Code application, will result in some of the most significant areas for biodiversity excluded from assessment and consideration. A priority vegetation area needs to be able to be applied within any zone.</p>	<p>Amend the Code to enable consideration and assessment of impacts on biodiversity in all zones, including the agriculture zone and urban-type zones.</p>
<p>Limiting a priority vegetation area and future coastal refugia area to a statutory map based on inaccurate datasets which are not fit for purpose is inconsistent with other regulations and other Codes and will result in the loss of important biodiversity values and refugia areas. A priority vegetation area and future refugia area must relate to where the values actually exist, not just where they are mapped.</p>	<p>Amend the Code to enable priority vegetation and future refugia areas to apply to land outside the statutory map, where the values are shown to exist.</p>
<p>The exemptions are far-reaching, inconsistent with maintaining ecological processes and biodiversity conservation, duplicate the Scheme exemptions and will result in loopholes and the ability for regulations to be played off against each other.</p>	<p>Review the exemptions to remove duplication and loopholes and limit the exemptions to imminent unacceptable risk or preventing environmental harm, water supply protection, Level 2 activities and consolidation of lots.</p>
<p>Consideration and assessment of impacts on terrestrial biodiversity are limited to direct impacts from clearance of priority vegetation and arising from development. The NAC does not enable consideration of impacts arising from use and not involving vegetation clearing, such as collision risk, disturbance to threatened species during breeding seasons, degradation of vegetation and damaging tree roots.</p>	<p>Amend the Code, including the purpose, objectives and standards, to enable consideration of indirect adverse impacts as well as direct impacts and apply to use as well as development.</p>
<p>The NAC provides inadequate buffer distances for waterways in urban areas and tidal waters.</p>	<p>Amend the NAC to apply the appropriate buffer widths in urban areas, rather than reducing them to 10m, and extend the coastal protection buffer into tidal waters.</p>
<p>The NAC reduces natural assets and biodiversity to a procedural consideration and undermines the maintenance of ecological processes and conservation of biodiversity, through the performance criteria only require 'having regard to' a number of considerations rather than satisfying the criteria</p>	<p>Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy'.</p>
<p>The performance criteria are drafted to facilitate development and manage loss rather</p>	<p>Amend the performance criteria to be more prescriptive and establish ecological criteria for when loss is unacceptable for different values,</p>

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Key issues	Priority recommendations
than maintain and improve natural assets, ecological processes and biodiversity.	enable consideration of cumulative impacts, achieve improved management and protection for remaining values, provide for a range of offset mechanisms, including off-site and financial, and enable identification of areas or sites where development is not an option.
Many terms are poorly and narrowly defined, or not defined at all, making the NAC ambiguous and open to interpretation and limiting the scope of the NAC.	<p>Amend the definitions for the following terms, which are defined too narrowly and/or are poorly defined:</p> <ul style="list-style-type: none"> • Future coastal refugia and future coastal refugia area – which needs to include all refugia not just coastal and not just within a statutory map. • Priority vegetation and priority vegetation area – which needs to include all biodiversity values and not just within a statutory map. • Threatened native vegetation community – to include communities listed as endangered under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBCA). • Significant and potential habitat for threatened species – which should be consistent with other regulators. <p>Include definitions for the following terms: native vegetation community; clearance; disturbance; habitat corridor; landscape ecological function; ecological processes; ecological restoration; unreasonable loss; unnecessary or unacceptable impact; and use reliant on a coastal location.</p>
The NAC does not include any requirement or clear ability to request an on-ground assessment of natural values by a suitably qualified person. In the absence of such an assessment, it is generally not possible to adequately determine or assess the impacts of a proposal, including compliance with the Code requirements.	Amend the NAC to specify applications requirements and enable a planning authority to request a natural values assessment by a suitably qualified person.

C7.1 CODE PURPOSE

Scope of values

Under the draft NAC (as exhibited [section 25(2)(a)], 7 March 2016), the terrestrial biodiversity components of the Code were disproportionately focused on threatened species, significant fauna

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habitat and threatened vegetation communities and the Code purpose and objectives did not translate to consideration of biodiversity in decision-making processes. The current NAC (SPPs version 4.0, 20 July 2022) partially addresses the limited application of the Code by including native vegetation of local importance. The recognition and inclusion of future coastal refugia provided in the NAC is also supported, as is the scope of the Code in relation to waterway values.

However, while broadened from the draft NAC, there are still significant limitations with the scope of natural assets and biodiversity values captured under the NAC, including:

- limiting consideration of impacts on threatened species to the direct clearing of threatened flora or significant habitat for threatened fauna and not enabling consideration of potential habitat for threatened fauna or consideration of other threats to threatened species not involving vegetation clearing (such as collision risk and disturbance to threatened species during breeding seasons);
- limiting the scope of the NAC to priority vegetation, which is inconsistent with many interim schemes and other regulations, including EMPCA and the Forest Practices Regulations, which have the head of power to assess impacts on native vegetation and biodiversity broadly and are not restricted to a narrow definition of priority vegetation. While providing valuable habitat and connectivity for many species, native vegetation (not just threatened vegetation) also provides a healthy ecosystem by controlling or reducing erosion and salinity, regulating water flows, ameliorating climate change and facilitating crop pollination. Native vegetation also provides habitat for species that are considered to be secure and that are likely to become threatened if habitat loss continues. Limiting the scope of the Code to priority vegetation also fails to acknowledge that patches of priority vegetation are often surrounded by native vegetation that remains unprotected under the current Code which provides a buffer against threats such as climate effects and weeds. This will lead to erosion of the priority vegetation through development encroachment and result in isolated pockets of priority vegetation becoming even more vulnerable;
- excluding other elements of biodiversity not necessarily linked to threat status or vegetation communities, including landscape ecological function including, condition, connectivity and corridors between natural areas, ecosystem services, genetic diversity and non-listed species species, such as top predators or keystone species which play an important role in seed dispersal and important pollinators; and
- limiting climate refugia to future coastal refugia and excluding other areas important as refugia for non-coastal ecosystems under a changing climate.

Scope of purpose

The purpose of the NAC focuses on minimising impacts but does not specifically identify the cause or source of the impacts to be minimised (i.e. use and development) or acknowledge that impacts may be positive, negative, or neutral.

The NAC purpose also disproportionately focuses on minimisation and does not adequately acknowledge other stages in the mitigation hierarchy, notably avoid, mitigate and offset, despite their broad acceptance internationally, nationally and within Tasmania.

As acknowledged in the consultation draft for Tasmanian Planning Policies and existing State Policies, avoiding, minimising and mitigating impacts from land use and development on natural assets is an important policy. Both the Southern Tasmania Regional Land Use Strategy (STRLUS) and the Northern Tasmania Regional Land Use Strategy (NTRLUS) also specifically identify the mitigation hierarchy as a regional policy (BNV 1.2 in STRLUS and BNV – A02 in NTRLUS). While the Cradle Coast Regional Land Use Strategy does not identify the mitigation hierarchy explicitly, it does identify the need to avoid fragmentation of areas with identified natural conservation values. And yet, implementation of the mitigation hierarchy is missing in the NAC.

A key element of incorporating avoidance and the mitigation hierarchy in the planning decision process is applying the precautionary principles, maintaining resilience in ecosystems and considering impacts beyond the impacts of vegetation clearing on threatened species and communities.

The NAC purpose also fails to promote the aims of sustainable development as defined in Schedule 1 which among other things includes the avoidance, remedying or mitigating adverse effects of activities on the environment. Specifically, there is no requirement for development activities to restore or ameliorate past impacts that may be occurring within a development site. As currently drafted, the NAC is focused on managed decline. The NAC should be aspirational and not only seek to minimise impacts but improve natural assets and aim for a net gain, including in extent and ecological condition.

There is also no recognition in the Code purpose of the responsibility of land use planning decisions to contribute to the protection of natural assets for future generations. Monitoring is a key element of sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water, soil and ecosystem. The purpose of the NAC needs to be expanded to encompass monitoring of impacts and recognition of the role of the NAC in achieving the objectives of the National Forest Policy Statement 1995 (NFPS), which identifies (among other things) the role of state and local government in the maintenance of a permanent native forest estate. In Tasmania, the NFPS is given effect through the Tasmanian Regional Forest Agreement, the Permanent Native Forest Estate Policy (2017) and the Forest Practices System. Despite the role of local government and land use planning being articulated in the NFPS, the Permanent Native Forest Estate Policy (2017) does not apply to vegetation loss regulated via planning schemes.

Therefore, while the Policy intent is to regulate, maintain and monitor the clearance and conversion of native forests, land clearing associated with developments regulated exclusively by planning schemes, or where a planning instrument zones the land for a particular purpose, fall outside the Policy and the associated reporting requirements. The NAC clearly has a role in the delivery of the NFPS objectives and monitoring clearing of native vegetation, especially given clearing for development often results in total and permanent loss of native vegetation cover and has the potential to be of similar or greater magnitude to current rates of clearing reported through the Forest Practices Plans.

Detailed recommendations for Code Purpose

1. Amend the Code purpose statements to apply to adverse direct and indirect impacts of development, not simply impacts and include an additional Code purpose to avoid, minimise and mitigate indirect impacts of development on fauna, where vegetation clearance or disturbance is not involved, including but not limited to collision risk and disturbance during the breeding season.
2. Amend the Code purpose (C7.1.1, C7.1.2, C7.1.4 and C7.1.5) to reflect all stages of the mitigation hierarchy, with the first stage being to avoid impacts, followed by minimise and mitigate and, only as a last resort, to offset where residual impacts cannot be avoided or mitigated.
3. Amend C7.1.3 or include an additional code purpose to include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.
4. Amend C7.1.4 to refer to biodiversity values broadly, not just priority vegetation, including landscape ecological function, ecosystem services, ecological processes, habitat corridors, genetic diversity, listed and non-listed species and native vegetation broadly.
5. Amend C7.1.5 to include direct and indirect impacts on potential and significant habitat.
6. Amend the Code purpose to include additional purpose statements to:
 - a. improve and restore natural assets; and
 - b. monitor impacts of land use decision on natural assets, including loss of native vegetation cover and vegetation communities.

C7.2 CODE APPLICATION

Exclusion of use

The NAC is limited in its application to development and excludes use. While regulating the impacts of use on natural assets and biodiversity is more challenging than development, where a use has the potential to irreversibly and negatively impact upon waterway values, future climate refugia or biodiversity, the Code should apply. The key test is not the undertaking of the use per se, but rather the

impact of undertaking the use over time. Where a land use, such as inappropriate burning, slashing or grazing, is likely to result in the range and species composition of priority vegetation being permanently altered by the land use, this use has an adverse impact and should be subject to the Code. In contrast, where a land use maintains the essential character of the vegetation, the Code should not apply to the use.

A change of use also has the potential to impact on natural values. For example, the change of use from a non-habitable to habitable building may trigger bushfire requirements at the building stage, which in turn may require vegetation removal or works within a waterway and coastal protection area, future climate refugia area or priority vegetation area. While the vegetation removal or works constitute development, it is triggered by the change of use and there needs to be explicit requirements in the Code to enable considerations of the impacts of this change of use.

Zone exclusions

The Explanatory Document accompanying the draft SPPs identified a current regulatory gap created “where planning controls do not capture all applications for clearance” and acknowledges that “clearance of priority vegetation must be assessed in order to address the shift in regulatory control and any ‘regulatory gap’” (Minister for Planning and Local Government, 2016:137). However, C7.2.1(c) goes on to perpetuate this regulatory gap by limiting the application of priority vegetation areas to specified zones and excluding others on the basis that these zones “are a limited and valuable resource that should be protected for their main purpose” (Tasmanian Planning Commission 2017).

These zone exclusions for application of a priority vegetation area preclude the Code from applying in specified zones or limit the Code application to specific types of development within that zone, irrespective of the presence of values, which themselves are limited and valuable. The SPPS broadly and the NAC specifically treat development as an a priori right over biodiversity irrespective of the in-situ natural values in these zones. Given much of the clearing associated with development regulated by planning schemes is in the urban type zones, and this clearing is not restricted to subdivision but includes industrial development, multiple dwellings and commercial development, a priority vegetation area needs to be able to be applied within any zone and to all relevant development types, where the values are present not where they are mapped.

The extent of values in these exempt zones is not insignificant and consequently the potential for loss of priority vegetation without assessment is also not insignificant (see Appendix 1 for analysis of the mapped extent of priority vegetation within each of the excluded zones). Native vegetation and natural assets should be valued across all landscapes and the responsibility for conservation of biodiversity lies with all land uses, especially in the context of natural resource dependent activities. In the case of agriculture, a healthy natural environment, providing critical ecosystem services, is the basis for a productive agricultural landscape. Excluding zones from being included in a priority vegetation area

also excludes the need to undertake surveys which would mean threatened flora species and threatened fauna habitat (i.e wedge-tailed eagle nest, Masked owl hollow trees) would not be surveyed for.

The Agriculture Zone exclusions in particular have the potential to be extensive, with approximately 37% (119, 007 hectares) of the mapped extent of threatened native vegetation communities across the State within areas identified as unconstrained agriculture and considered appropriate for inclusion in the Agriculture Zone (Appendix 1). Similarly, approximately 28% (or 789, 646 hectares) of mapped priority vegetation would be exempt from the NAC across the rural landscape if State agricultural mapping is applied strictly in accordance with the guidelines to determine the Agriculture Zone¹.

As the Tasmanian Planning Scheme (TPS) is now in effect in fourteen local government areas (LGAs), it is possible to examine how the zone exclusions have translated under the TPS. Within those LGAs with the TPS in effect, over 190,109 hectares of mapped priority vegetation is located in zones which are wholly or partially excluded from being within a priority vegetation area, with 185,939 hectares (or 98%) of this in the Agriculture Zone. This represents 20% of all priority vegetation within these LGAs. While this proportion is less than the analysis based on an extrapolation of the State agricultural mapping for these LGAs, a number of these LGAs contain extensive protected areas and limited application of the Agriculture Zone, including Glenorchy City Council and West Coast Council which do not apply the Agriculture Zone, and Tasman, Brighton and Clarence which have limited application.

A useful case study to further illustrate the implications of the Agriculture Zone exclusion is Glamorgan-Spring Bay (GSB) LGA and Cambria Green. Under the TPS, 83,864 hectares of the GSB LGA is now zoned Agriculture Zone, in contrast to 13,878 hectares zoned Significant Agriculture under the Interim Planning Scheme (IPS). Within the Agriculture Zone in GSB, 45,549 hectares (> 50%) is mapped as priority vegetation and automatically excluded from the NAC. In contrast, 34,986 hectares (77%) of this vegetation was subject to the Biodiversity Code under the IPS. Similarly, within Cambria Green specifically, 2,606 hectares is now zoned Agriculture, in contrast to 672 hectares under the IPS. Of this, 1,452 hectares (>55%) is mapped as priority vegetation and excluded from assessment under the NAC, whereas under the IPS, 1,241 hectares (85%) of this vegetation was subject to the Biodiversity Code. Across Cambria Green more broadly, under the TPS, only 436 hectares of priority vegetation is within the statutory Priority Vegetation Area and therefore subject to the NAC. In contrast, under the IPS, 1390 hectares was within a Biodiversity Protection Area and subject to the Biodiversity Code.

As this analysis shows, the extent of vegetation excluded from consideration under the TPS within GSB generally, and Cambria Green specifically, increases significantly when compared to the IPS, as a

¹ These figures are based on analysis of priority vegetation mapping derived from the REM and consistent with Code mapping guidelines undertaken by Dr den Exter as part of her PhD research (den Exter, 2019). The REM model integrates spatial data on the distribution of the major components of biodiversity and models key biodiversity attributes, utilising an extensive range of datasets from range of sources and preferencing field verified data, where available Knight (2016). The REM forms the basis of priority vegetation mapping prepared by most planning authorities as part of their LPS. Given the limitations with the mapping (which is discussed below in relation to the definition of a priority vegetation area), this analysis is indicative only. Notwithstanding, it illustrates the scale of the issue.

consequence of the extensive application of the Agriculture Zone in GSB in conjunction with the zone exclusion under Clause C7.2. Importantly, as the Cambria Green proposal illustrates, there is interest and demand for a range of potential uses and development within land zoned Agriculture. Given the extent and significance of biodiversity values in this zone, it is critical that the impacts of proposals within this zone are assessed as part of the broader consideration of any proposed use or development, including individual development applications and planning scheme amendments. Exclusion of these values from the application of the Code takes them off the table and has the potential to result in significant and irreversible biodiversity loss.

It is acknowledged that much of the land use change in rural areas is controlled under other regulations (principally the Forest Practices Regulations). Furthermore, where clearing in the Agriculture Zone relates to broad-scale clearing for agriculture or forestry and is undertaken in accordance with a certified Forest Practices Plan, it is already exempt from the Code under both Clause 4.4.1(a) and Clause C7.4.1(d), regardless of whether it is within a priority vegetation area. Therefore, the exclusion of the Agriculture Zone from a priority vegetation area is redundant in these instances and the zone exclusion serves no purpose.

However, where development is ancillary to an agricultural use and is otherwise regulated by planning schemes, such farm buildings, residential development and tourism ventures, and a permit has been issued under LUPAA, it is exempt from requiring a Forest Practices Plan and is also excluded from the NAC. Therefore, unless the NAC is amended to enable a priority vegetation area within the Agriculture Zone, the identification, assessment and consideration of the potential impacts of these developments on biodiversity will be precluded under the NAC, will not be addressed via the Forest Practices System and will result in the loss of important values.

As the purpose of the Agriculture Zone is to protect agricultural land for agricultural uses, ancillary development within this zone will be pushed into those parts of a site not utilised for agriculture, namely the areas containing native vegetation, with no consideration of the impact on this vegetation or potential alternative locations for the development. There is the potential for this smaller scale development within the Agriculture Zone to lead to disconnection of areas or impact on important habitat without assessment. A case in point is visitor accommodation, which is a discretionary use class in the Agriculture Zone. Many agriculture enterprises diversify income streams through agri-tourism including visitor accommodation, which requires a BAL 12.5 rating as a deemed-to-satisfy solution under the Building Regulations 2016. This BAL rating, in conjunction with the exclusion of assessment under the priority vegetation provisions of the NAC can lead to significant vegetation impacts, particularly on steeper forested sites.

This issue is exacerbated by the scope of the 'Land Potentially Suitable for Agriculture Zone' mapping, which identifies large areas of land covered with native vegetation as potentially suitable for agriculture

and forms the basis for the application of the Agriculture Zone. To date this mapping has been applied extensively in areas containing significant areas of native vegetation also identified as containing priority vegetation. As illustrated in Glamorgan-Spring Bay and Cambria Green, the extensive application of the Agriculture Zone and the removal of split zones from many titles mean large areas of land containing remnant vegetation are included in an inappropriate zoning and identified as suitable for agriculture.

Whilst a permit may be required to disturb known species under threatened species legislation, it is the unknown values that are at risk. Native vegetation (not just threatened vegetation) not only provides valuable habitat and connectivity for many species, it also provides a healthy ecosystem by controlling or reducing erosion and salinity, regulating water flows, ameliorating climate change and facilitating crop pollination.

These zone exclusions are unjustified and inconsistent with clearing controls for agriculture or forestry, where a Forest Practices Plan is required for any clearance and conversion of vulnerable land, including threatened native vegetation or threatened species habitat (*Forest Practices Regulations* 2007).

Limiting application of a priority vegetation area to specific zones also results in perverse zoning outcomes, with many planning authorities proposing to use the Rural Zone rather than the Agriculture Zone, or applying split-zoning, as a consequence of and means to counter the zone exclusions.

Although the urban-type zone exclusions are smaller in extent than the Agriculture Zone exemptions (Appendix 1), they are of equal if not greater concern. While there is a perception that there is no place for biodiversity in urban areas, research demonstrates urban areas can be hotspots for threatened species (Ives et al. 2016) and some threatened species can persist in small, degraded remnants (Kirkpatrick & Gilfedder 1995) or even highly modified environments (Ives et al. 2016). Ignoring urban biodiversity in the land use planning process therefore has the potential to lead to significant landscape-scale biodiversity loss (Dales 2011). Ignoring urban biodiversity also assumes biodiversity and development are mutually exclusive. This assumption results in lost conservation opportunities (Ives et al. 2016).

Across Tasmania, assuming the interim scheme zoning largely translates to the TPS², the extent of mapped threatened native vegetation which could be cleared in the urban-type zones in conjunction with a planning permit without any assessment of the impact on biodiversity under the TPS, when compared to interim schemes, increases from around 266 hectares to approximately 650 hectares and the extent of mapped native vegetation communities excluded from assessment in these zones increases from 4, 230 hectares to 6, 682 hectares (Appendix 1).³ Analysis of priority vegetation mapping derived

² This assumption is not unreasonable as the development of the LPSs generally requires translation of zones unless such a translation is inconsistent with the zone application guidelines.

³ This is likely to be an underestimate rather than an over-estimate due to the poor scale and accuracies of TASVEG mapping.

from the REM and consistent with Code mapping guidelines⁴ shows that 6,756 hectares identified as priority vegetation will be exempt from consideration within the urban-type zones, increasing the extent of exclusions from 3,603 hectares under interim schemes (Appendix 1). Clearing within the urban-type zones is not restricted to subdivision but includes industrial development, multiple dwellings and commercial development and the likelihood of all of these values being totally lost as a result of development in these zones over time is high if peri-urban and urban zones are excluded from a priority vegetation area. Achieving biodiversity conservation outcomes in peri-urban and urban areas relies on these areas being included in a priority vegetation area. Exclusion of these areas also doesn't provide any aspiration for having natural values around and within our cities. This impacts on wellbeing and makes hotter urban areas in summer.

Restricting application of the Code to the listed zones exempts important and extensive patches of threatened native vegetation and significant threatened species habitat from the Code all together, while requiring immediately adjacent areas to be subject to the Code, or only subject to the Code if for a subdivision (but not multiple dwellings) creating equity issues. There are also situations where the development site itself might not contain the value but, depending on where the development is located and how it is designed, it may impact on adjacent threatened native vegetation communities or significant threatened species habitat. Protection of natural assets across all zones is important for species surety, connectivity and landscape resilience. Ultimately unregulated clearing within particular zones will further compromise the status vegetation types and make it difficult to ensure a representative and spatially fair target is conserved. It also results in partial and fragmented protection for priority vegetation based on the purpose for which land may be used, and not on the extent of a vegetation community or on inherent values of priority vegetation. This approach also ignores vegetation which may not be threatened or habitat for threatened species now but will be of increased importance in the future, including resilience to climate change.

Excluding urban-type and agriculture zones also creates inconsistencies and perpetuates the existing regulatory gaps between the application of the NAC and other regulations. For example, assessment of a Level 2 activity involving clearing of land zoned Industrial is able to consider the impacts of the clearing on threatened native vegetation, but assessment of a Level 1 activity is not. Similarly, the Forest Practices System does not exempt a Private Timber Reserve (which is essentially a form of land use allocation or 'zoning') from meeting the requirements of the Forest Practices Code. Allowing clearance and conversion of any threatened native vegetation, simply because it is located in a particular zone, is in direct conflict with the Nature Conservation Act 2002, EPBCA and the *Forest Practices Act 1985* and Regulations.

⁴ The analysis presented here applies the Code application guidelines to this priority vegetation mapping, as, in the absence of this mapping being finalised by each planning authority, this represents the best approximation of the potential extent of priority vegetation area overlays under the Tasmanian Planning Scheme.

The NAC must be able to be applied and offsets secured within any zone and for all relevant development types if the values are present. A higher degree of certainty around development potential may be appropriate in the urban-type zones. However, this could be better achieved through performance criteria providing a pathway for permitted uses in the urban-type zones whilst still allowing for consideration and offsetting of impacts on priority vegetation. Individual planning authorities may also choose to exclude urban and peri-urban areas from the priority vegetation overlay where they have undertaken the strategic work and determined this vegetation does not require inclusion in the overlay. However, a blanket ban on applying the priority vegetation area to specified zones is widely unsupported and will compromise the conservation of biodiversity.

Detailed recommendations for Code Application

1. Amend C7.2 to:
 - apply to a new use or substantial intensification of an existing use, where the use is likely to result in waterway values, future climate refugia or priority vegetation being negatively impacted by the land use; and
 - apply to a change of use from a non-habitable building to a habitable building or to a new use with a habitable room on land that is in a waterway and coastal protection area, future coastal refugia area or priority vegetation area.
2. Delete the zone limitations from C7.2.1(c) and enable consideration and assessment of impacts on biodiversity in all zones, including the agriculture zone and urban-type zones.

C7.3 DEFINITIONS

Explicit identification, classification and definition of concepts of biodiversity and natural assets are central to establishing whether biodiversity is a relevant matter for consideration and ensuring decisions contribute to biodiversity conservation outcomes (Ives et al. 2010; Wallace 2012). Under interim schemes, concepts of biodiversity and terminology were highly variable and there was an absence of definitions.

The NAC partially addresses the limitations of the interim schemes by delivering consistency in terms and definitions. However, operational definitions of key elements of biodiversity and natural assets specific to local land use planning remain lacking and there are a number of issues with definitions, some of which affect interpretation of the Code and others of which are fundamental to its application and operation. These issues with the definitions undermine the Code purpose and create inconsistencies with other legislation.

Definitions of terms

There are a number of critical terms which are not defined, making application and interpretation of the NAC ambiguous and open to interpretation. Notably, there is no definition of clearance of native

vegetation, making it unclear when whether the Code applies only for the total removal of native vegetation in a priority vegetation area, or for any works that involve the removal or modification of any part of any native vegetation within a priority vegetation area. Similarly, there is no definition of what constitutes a native vegetation community (as distinct from modified land) and no parameters are provided for native vegetation of local importance. This creates uncertainty regarding identification and classification of values and therefore application and interpretation of the Code.

The narrow focus of the NAC on priority vegetation is a major flaw and will compromise the future resilience of our environment as non-listed species and communities become more important. The definition of priority vegetation should be amended to reflect the full scope of the Code, referring to priority biodiversity values rather than being limited to priority vegetation and include potential habitat for threatened fauna, landscape ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

Threatened vegetation communities in the NAC also only include those listed under the *Nature Conservation Act 2002* and does not include those listed under the EPBCA. Although most EPBC listed communities are covered by those under the NCA, the Lowland Grasslands (GTL and GPL) are not.

The NAC provides consideration for vegetation which forms a significant habitat for a fauna threatened species, with the definition of significant habitat broadly consistent with that adopted in the Forest Practices System. However, the definition in C7.3 excludes two critical qualifications including in the Forest Practices definition: (i) it may include areas that do not currently support breeding populations of the species but that need to be maintained to ensure the long-term future of the species; and (ii) significant habitat is determined from published and unpublished scientific literature and/or via expert opinion, agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists. The first additional qualification is critical to ensuring areas not currently known to support a species but with otherwise with the characteristics of significant habitat are also captured by the Code. The second qualification is critical to ensure the determination of what constitutes significant habitat is based on current best practice understanding of each species rather than what is represented in the overlay, noting the overlay itself is predominantly based on modelled data and historic records of species rather than what exists on the ground.

In addition, the following values need to be included in the Code Purpose, defined in the C7.3.1 and included in the definition of natural assets:

- potential habitat, with the definition consistent with the Forest Practices System; and
- habitat corridors, with the definition needing to capture the essence of landscape-scale linkages and connectivity.

Providing for and requiring ecological restoration should also be a key component of the Code and a definition consistent with the Society for Ecological Restoration National Standards for the Practice of Ecological Restoration in Australia should be included in C7.3.

There are also no definitions of clearance, disturbance or unreasonable loss and all terms require definition.

Clauses C7.6.1 P1.2, P2.2 and P4.2 all relate to development involving a use reliant on a coastal location. While clarified under other Codes where referenced, there is no guidance on what uses are reliant on a coastal location for the purposes of this Code. This requires definition in Clause 7.3 or clarification in C7.2.

Definition of a future coastal refugia area and future coastal refugia

The definition of future coastal refugia is limited to sensitive coastal systems and habitats and excludes other areas important as refugia for non-coastal ecosystems under a changing climate. The definition of a future coastal refugia needs to be amended to refer to future refugia and include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.

The definition of a future coastal refugia area is circular and limited to land shown on an overlay as being within a future coastal refugia area. The definition of a future coastal refugia area needs to be amended to refer to future refugia generally and enable identification and consideration of refugia not included in the statutory map (see discussion below on issues with limiting code application to a statutory map).

Definition of a priority vegetation area and limiting code application to a statutory map

Consistent with the definition of priority vegetation, the priority vegetation area overlay is intended to represent native vegetation that: forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A of the *Nature Conservation Act 2002*; is a threatened flora species; forms a significant habitat for a threatened fauna species; or, has been identified as native vegetation of local importance (Tasmanian Planning Commission 2017a).

However, the definition of a priority vegetation area is circular and limited to land shown on an overlay as being within a priority vegetation area. As a result, vegetation meeting the definition of priority vegetation can only be considered where this vegetation is located within the statutory priority vegetation area overlay. Statutory maps have been utilised in a number of Australian States for many years and the limitations of this approach are well documented (Environment Defenders Office (Vic)

2013; Field, Burns & Dale 2012; Port Phillip and Westernport Catchment Management Authority 2008).

Relying on mapping to define a priority vegetation area and therefore trigger the priority vegetation provisions is problematic, as the application of the Code will only be as good as the maps themselves. While the NAC forms part of the State Planning Provisions (SPPs), the overlay triggering the NAC forms part of the Local Provisions Schedule (LPSs) and the statutory maps are prepared by each planning authority rather than the State. Given the inadequacies of statewide datasets and mapping, it is understood that most planning authorities have derived their priority vegetation area overlays from the Regional Ecosystem Model (REM) developed by Natural Resource Planning (NRP) (Knight & Cullen 2012).⁵

While an improvement on statewide datasets for identifying vegetation that may meet the definition of priority vegetation, the REM is still reliant on TASVEG, the Threatened Native Vegetation Communities dataset, known records for threatened species and habitat modelling. Therefore, the overlay is based on predominantly desk-top data, which is not fit-for-purpose at the scale of an individual development and not reliable for indicating the presence or absence of priority vegetation in the absence of field verification by a suitably qualified person (Department of Primary Industries Parks Water and Environment 2013a).

An overlay is static, but vegetation and habitat are dynamic and change with factors such as fire, drought, flooding, climate change, vegetation senescence and regeneration.

Relying exclusively on a static map to define dynamic natural processes is therefore problematic and to adequately reflect and implement the objectives of LUPAA in promoting sustainable development there needs to be consideration of and allowance for the movement of natural values. Such movement has always occurred in any case but will be exacerbated over the coming decades by climate change. For example, on a short-term timescale, the Chaostola skipper may appear within *Gahnia radula* where it was not present six months previously. Similarly, for threatened flora species and other threatened fauna such as the forty-spotted pardalote. On a mid-term timescale, vegetation communities move and regenerate if left undisturbed. Over the longer term, climate change will cause species, communities and ecosystems to move. At the local scale, this is particularly critical for coastal species, hence the need for refugia. It is also critical for the edges of existing vegetation communities and mapped habitats, and for connectivity between habitats. All values generally need 'room to move' to maintain

⁵ The REM is a comprehensive spatial system for storing data on the biodiversity of an area, for examining the relationships between them, and assigning Level of Concern classes to assist prioritising their management. The REM provides a structured classification of biodiversity based around its vegetation and priority species (Biological Significance) and the characteristics of the landscape that determine its ability to sustain the elements of biodiversity it contains (Landscape Ecological Function) (Knight & Cullen 2012:11). The REM model integrates spatial data on the distribution of the major components of biodiversity and models key biodiversity attributes, utilising an extensive range of datasets from a range of sources and preferencing field verified data where available Knight (2016).

biodiversity and viability. Therefore, it is not possible to draw a tight line around values on maps, and to do so may limit their viability.

Datasets relied upon to determine the overlay are also updated daily with more current information. Whereas updating the statutory overlay requires a planning scheme amendment, which can take many months and requires considerable resources. To effectively protect natural assets, up-to-date and accurate data must inform application of the Code and decisions must be made based on what exists on the ground at the time the decision is made, not based on what was in a statutory map at a fixed point in time. In the absence of an accurate mapping database, the NAC needs to have higher capacity to undertake site assessment not less.

Limiting the definition of a priority vegetation area to a statutory overlay creates legal certainty for the landowner or developer but has the potential to result in perverse outcomes for biodiversity by completely missing the values the overlay is trying to protect, undermining the purpose of the Code. Conversely, relying on a statutory overlay may also impose unnecessary costs on developers at the development application stage where land mapped as having 'priority vegetation' is ultimately proven not to be the case.

Limiting the definition of a priority vegetation area to a statutory overlay is also inconsistent with how other natural assets and hazards are applied within the SPPs. Similar to the safety net for native vegetation in the Northern IPSs, a safety net has been provided in the SPPs for waterways, mobile landforms, flooding and landslip, which all enable the relevant code to be applied by either a statutory map or textual application. An equivalent approach needs to be applied to the definition of a priority vegetation area. Limiting consideration of priority vegetation to a statutory map is also inconsistent with other regulations, including the Forest Practices Regulations and Level 2 activities, which are based on reality not a map. All clearing of native vegetation should be required to be assessed regardless of whether it is an overlay or not and regardless of whether it is threatened or not.

Definition of a waterway and coastal protection area

The application of a waterway and coastal protection area via the overlay map or within the relevant distance shown in the table is supported. An equivalent approach needs to be applied to the definition of a priority vegetation area.

Notwithstanding, consideration needs to be given to increasing the buffer distances. Buffer areas provide two purposes, the protection of riparian vegetation (and their associated environmental services to water quality and biodiversity) and the amelioration of impacts generated by land use change in the upslope areas of the catchment. Riparian buffer areas provide an important role in mitigating catchment land use effects by intercepting and retaining pollutants and preventing their transport to waterbodies (Lammers and Bledsoe 2017). In general, the effectiveness of buffer areas to remove nutrients increases

with width, vegetation intactness and maturity (Lammers and Bledsoe 2017). The width of riparian zones is dependent on the interaction of the of the waterbody and the adjacent groundwater with which can be assessed using groundwater hydrology or in most cases changes in vegetation structure and species composition.

There is little evidence that the buffer widths used in the NAC are fit for purpose. The buffer distances for each class of stream are based primarily on the buffers used in production forests where the impact of forestry activities on the adjacent land is sporadic and on a time scale of 10's to 100's of years. In contrast many land use activities that are likely to be impacting the buffer zone and waterways are ongoing and are often subject to intensification over time. Evidence from long term monitoring of waterway health in Tasmania indicate that there has been a general decline in water quality in most areas where land use has led to clearance and conversion of adjacent landscapes.

Detailed analysis of riparian widths is rare but have been found to be highly variable. Mac Nally et al. 2008 measured riparian widths and found that they ranged from 5-55m, 5-35m, 15-85m and 15-55m for 1st to 4th order streams in Victoria and cautioned against fixed prescriptions for buffer widths. Similarly, estimations of impacts of residential development on water quality under base flow conditions indicated that septic tanks were correlated with faecal coliform concentrations (Walsh and Kunapo 2009), with the amount of pollution decreasing with distance from the creek (97% reduction at 47m), this study recommended management of faecal contamination should concentrate on septic tanks located within 100 m of a creek line.

The proposed buffer distances will in some cases reduce current IPS buffer distances around waterways (cf BOD IPS). A precautionary approach would indicate that the class of stream for many stressors does not have relevance to the required buffer zone and in general lower class streams are more likely to be impacted as they occur in steeper and higher precipitation areas leading to more efficient connection of overland flow into the creek system.

Best practice management for the protection of waterway function is based on whole of catchment management (integrated catchment management) with landscape scale impacts often being primary drivers of waterway deterioration. The riparian area of watercourse remains a crucial component of protection of waterway health, so the proposed waterway and coastal protection area is supported, however the potential risks from adjacent land uses remains uncontrolled in the current NAC. Recalibration of the buffer distances and determination of the risk associated with different types of land use in the immediate hinterland (Barmuta et al. 2009) should be a priority process in land use planning and should be incorporated into the NAC.

Table C7.3 Spatial extent of Waterway and Coastal Protection Areas

Buffer width for tidal waters

Under Table C7.3(a)(i), the spatial extent of the coastal protection area is measured from the high water mark of tidal waters. Based on the guidance maps provided to planning authorities, the assumption is that this buffer is applied inland of the high water mark rather than both landward and seaward, and therefore the coastal protection area does not extend into the tidal waters or beyond. Whereas under Table C7.3(a)(ii), the waterway protection area for freshwater systems includes the waterway or wetland itself. This presents a number of issues, as tidal and coastal waters are outside the definition of a waterway and coastal protection area, but a number of development standards specifically relate to development within tidal waters (notably C7.6.1 A1(c)/P1.1) and/or relate to development which extends beyond tidal waters into coastal waters (notably C7.6.1 A1(c)/P1.1 and C7.6.1 A4/P4.1). To give these clauses effect and enable consideration of the impacts of accretions from the sea, dredging and reclamation on coastal values, Table C7.3 needs to include an additional qualification requiring the width of the coastal protection area to be measured both landward and seaward from the mean high water mark and extend into coastal waters in accordance with s7 of LUPAA in relation to accretions from the sea.

Buffer widths for watercourses in urban-type zones

Under Table C7.3, any watercourses adjoining the listed urban type zones is deemed to be a Class 4 watercourse. Presumably this is to enable development to be maximised and not limited by the standard buffer widths. While reduction of the buffer zones to 10m within the specified zones may be convenient for development, these areas contain important natural assets which provide essential ecosystem services. A buffer, by definition, is a natural area retained adjacent to a water course with the primary objective of ‘buffering’ the water course from potential impacts originating from nearby land uses. The buffer width should, therefore, be determined by the nature and intensity of the neighbouring impact. Industrial and commercial uses are high risk when it comes to impacts and degradation to watercourses and should have larger buffers than lower risk uses such as single dwellings in rural zones, not reduced buffers. Buffer determination should also be based on the specific qualities of the watercourse in question. Only requiring a 10m buffer for larger watercourses is grossly insufficient for maintaining water quality and natural assets including native riparian vegetation, river condition and the natural ecological function of watercourses adjacent to high-risk land uses. Reducing the buffer also creates a false perception that these areas are available for development when they are often subject to other constraints, principally flooding.

Maintenance of the buffer distances for the actual class of watercourse rather than reducing this to reflect zoning is not only essential to riparian function but also essential to ensuring there is sufficient space for the multiple economic, infrastructure and social functions of waterways, with detention basins

and other stormwater infrastructure and public linkages often reliant on these buffers. Waterways and their associated riparian vegetation also provide an important linkage between natural areas, reserves, priority vegetation areas and upland areas with generally more protected natural values (Barmuta et al. 2009). Therefore, there should be ability to assess whether the width of the waterway protection should be increased in order to maintain this linkage.

Reducing the buffer distance in urban areas to 10m (with a minimum effective width of 20m) significantly reduces the effectiveness of these corridors. Reserves and retained vegetated areas around creek lines in urban and urbanizing areas become important recreational assets for the community with increased pressure for walking, riding and exercise infrastructure. Reducing the buffer around creeks to 10m concentrates these activities into close proximity of the creek and has the potential to substantially degrade the remaining natural values which is inconsistent with the NAC purpose (as amended).

Importantly, reducing the buffer in specified zones is unnecessary as development within the buffers is not prohibited under the performance criteria. It is also noted that under the definitions in C7.3.1, if an inconsistency for the width exists between Table C7.3 and the area shown on the overlay map, the greater distance prevails. Therefore, individual planning authorities could seek to retain the buffers based on the class of watercourse in the overlay map in order to override Table C7.3 (b), where appropriate. Retention of the qualification that the width in the map overrides the Table C7.3 (b) is supported. However, to avoid misinterpretation and uncertainty regarding application of buffers in urban-type zones, a simpler approach would be to retain the option of reducing the buffer widths in urban-type zones in the guidelines for applying the Waterway and Coastal Protection Area (noting the Section 8A Guidelines already provide for this under NAC 3 (d)) and delete Table C7.3 (b). Under this approach, where it can be demonstrated the buffer distances are appropriately reduced, the statutory map would reflect this and override the standard buffers in Table C7.3.

Detailed recommendations for Code Definitions

1. Amend the definition of future coastal refugia to refer to future refugia and include all vulnerable terrestrial ecosystems and refugia as well as include migration of all vegetation types and habitats sensitive to the impacts of climate change. Vulnerable and sensitive terrestrial biodiversity includes fire sensitive vegetation such as alpine vegetation, peatlands and moorlands and rainforests, and species and communities at the edge of their range.
2. Amend the definition of a future coastal refugia area to enable identification and consideration of refugia not included in the statutory map, where the planning authority reasonably believes, based on information in its possession, that the land contains or has the potential to contain future refugia.
3. Amend the definition of priority vegetation to refer to priority biodiversity values rather than being limited to priority vegetation and include threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function,

ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

4. Amend the definition of a priority vegetation area to reference priority biodiversity area and provide for a priority biodiversity area to apply to land outside the statutory map, where the planning authority reasonably believes, based on information in its possession, that the land contains or has the potential to contain priority biodiversity values or where a suitably qualified person identifies the presence of priority biodiversity values.
5. Amend the definition of a threatened native vegetation community to include EPBCA listed communities.
6. The following existing definitions of significant habitat and potential habitat (which is considered as native vegetation of local importance) endorsed by the Threatened Species Section and the Forest Practices Authority should be used:
 - ‘Significant habitat’ means habitat within the known range of a species that (1) is known to be of high priority for the maintenance of breeding populations throughout the species range and/or (2) conversion, of which, to non-native vegetation is considered to result in a long term negative impact on breeding populations of the species. It may include areas that do not currently support breeding populations of the species but that need to be maintained to ensure the long-term future of the species. Significant habitat is determined from published and unpublished scientific literature and/or via expert opinion, agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists.
 - ‘Potential habitat’ means all habitat types within the potential range of a species that are likely to support that species in the short and/or long term. It may not include habitats known to be occupied intermittently (e.g. occasional foraging habitat only). Potential habitat is determined from published and unpublished scientific literature and/or via expert opinion, is agreed by the Threatened Species Section (DPIPWE) in consultation with species specialists.
7. Include a definition of a native vegetation community, for example: ‘native vegetation community’ means any indigenous plant community containing throughout its growth, the complement of native species and habitats normally associated with that vegetation type, or having the potential to develop these characteristics. It includes vegetation with these characteristics that has been regenerated with human assistance following disturbance. It includes seral stages and disclimax communities. It includes all TASVEG mapping communities excluding those identified as ‘Modified land’ (Codes commencing with ‘F’) or ‘Other Natural Environments’ (Codes commencing with ‘O’).
8. Include a definition of clearance of native vegetation, such as ‘Clearance’ means the deliberate process of removing any native vegetation from an area of land within a priority vegetation area by any direct or indirect means, including but not limited to burning, clear felling, cutting down, drowning, lopping, ploughing, poisoning, ringbarking, injuring, thinning or uprooting.
9. Include a definition of disturbance, such as ‘disturbance’ means:
 - a. the deleterious alteration and degradation of the structure and species composition of a native vegetation community through actions including cutting down, felling, thinning, logging, removing, grazing, slashing or destroying of a native vegetation;

- b. adversely impacting trees through encroachment into the tree protection zone or otherwise lopping, injuring, removing or damaging; and
 - c. disruption to a species during the breeding season, compromising its ability to breed.
10. Reinstate the following definition of ‘habitat corridor’ - to mean an area or network of areas, not necessarily continuous, which enables migration, colonisation or interbreeding of flora and fauna species between two or more areas of habitat.
11. Include a definition of landscape ecological function, for example ‘Landscape ecological function’ means the ability of the landscape to maintain the elements of biodiversity it contains.
12. Include a definition of ecological processes encompassing strongly interactive species, hydro-ecology, long-distance biological movement, ecologically appropriate disturbance regimes, coastal zone fluxes, maintaining evolutionary processes and the geographic and temporal variation of plant productivity (McQuillan et al, 2009).
13. Include a definition of ecological restoration consistent with the Society for Ecological Restoration National Standards for the Practice of Ecological Restoration in Australia.
14. Include a definition for a use reliant upon a coastal location in C7.3 or include guidance in Clause C7.2.
15. Amend Table C7.3 to:
 - delete (b); and
 - include an additional qualification requiring the width of the coastal protection area to be measured both landward and seaward from the mean high water mark and extend into coastal waters in accordance with s7 of LUPAA in relation to accretions from the sea.

Longer-term priorities

Develop definitions specific to land use planning - to address the deficiencies in the NAC, endorsed agreed definitions of biodiversity surrogates are required. The NAC requires amendment to incorporate the endorsed definitions. To enable these definitions to evolve as knowledge improves, LUPAA should also be amended to allow amendment of incorporated documents without requiring a subsequent amendment to the planning scheme.

Review and recalibrate the buffer widths in the statutory maps and Table C7.3 to reflect the geomorphology the specific watercourse and the risk associated with different types of existing or potential adjacent and upstream land uses and provide for wider buffers where required to maintain riparian values.

C7.4 USE OR DEVELOPMENT EXEMPT FROM THE CODE

Exemptions establish which natural assets are beyond consideration and therefore potentially at risk. While fewer in number than the draft NAC, the exemptions under the Code remain extensive and are inconsistent with promoting biodiversity conservation and maintaining ecological processes. The exemptions further exacerbate jurisdictional issues with the Forest Practices System. There is also

duplication between the Code exemptions and the exemptions provided under Table 4.4 of the SPPs. Issues with specific exemptions are detailed below.

C7.4.1(a) Exemptions for Crown, State Authority, or council to remedy unacceptable risk

The exemption is broad and unclear in intent and scope as it has no definition of the remedy of an unacceptable risk. As it stands, examples of works that might occur in proximity to waterway or coastal location to “remedy” an unacceptable risk to public or private safety could be the upgrade or building of roads and bridges to reduce accidents, line or pipe a creek or build a levee to reduce flooding, or build or upgrade water supply infrastructure to protect drinking water quality. The scale of these works is not controlled, and the immediacy of the risk is not determined, as such it could apply to some identified future risk that may or may not occur while also resulting in substantial impacts to natural assets.

The waterway and coastal zones are areas that have often been spared development due to risks of flooding or storm surge that has led to the retention of many natural values and often public ownership. With modern engineering techniques it is possible to use these areas for transport infrastructure or to provide capacity to transport additional stormwater from developing catchments which is generally cheaper than acquiring private land or dealing with additional flows at source. There is also capacity for road or other works to significantly impact on terrestrial natural values such as priority vegetation areas. Overall, this exemption could be used in many circumstances without the requirement for avoidance, mitigation or offsets.

This exemption would be supported if the works were restricted to remedying an immediate or imminent high risk to public or private safety with the minimum disturbance to the priority vegetation area or waterway and coastal protection zone.

C7.4.1(c) Exemptions for pasture, cropping and gardens

The purpose of and merit for Clause C7.4.1(c)(i) is questionable. The exemption is broad, unclear in intent and scope and in many instances, unnecessary. For example, if there are 10 hectares of priority vegetation on a property which also contains an area for cropping, is clearance of this vegetation exempt simply because it is located on a parcel containing an existing crop? If so, the exemption is sweeping and could result in the loss of extensive areas of priority vegetation which may have no implications for or relationship to the productive parts of the land. If the exemption requires the presence of priority vegetation to be in proximity to and embedded within pasture or cropping, and its removal to be necessary for the viability of the existing agricultural enterprise, this is not explicit in the exemption. Whereas if the exemption requires the vegetation to be on the actual crop or pasture, the exemption is redundant, as the definition of priority vegetation excludes crops and pasture. This exemption is also inconsistent with other regulations. For example, clearance and conversion of any area of a threatened vegetation community for agriculture would require assessment under the Forest Practices System,

regardless of the size of the patch or whether it was on pasture or crop production land. While it may be appropriate to exempt such clearing if it is for the purposes of agriculture and in accordance with a certified FPP, there is no clear justification or basis for exempting it simply because it is “on existing pasture or crop production land”.

Clause C7.4.1(c)(ii), exempting clearance of vegetation in a private gardens, public garden or park, national park, or within State-reserved land or a council reserve, should also be deleted. Vegetation adjacent to a house on private land is capable of meeting the definition of priority vegetation and where this is the case, this vegetation should be subject to the NAC, and not excluded simply on the basis that it is located in a garden. Retention of this exemption will have the effect of removing habitat and amenity from urban or semi urban areas. For example, an individual tree within a private garden can provide nesting habitat for the masked owl. Noting that Table 4.4 1 (g) already exempts removal of this tree for safety reasons, removal of this tree for another purpose, including subdivision, multi-unit development or an extension to the dwelling, should be subject to the Code.

The basis for exempting vegetation clearing simply on the basis of tenure (public garden or park, national park, or within State-reserved land or a council reserve) is also unclear, noting removal and management of vegetation in these circumstances is already exempt under Table 4.4 and other exemptions under C7.4.1 for a range of purposes. These purposes include the provision, upgrade and maintenance of public infrastructure, fire hazard management, maintenance and repair of existing infrastructure, safety reasons and remedying unacceptable risk, protection of water supply and landscaping. Clearance of vegetation within National Parks, State-reserved land and council reserves are of particular concern as these areas are owned by the community and generally set aside for protection of their natural values. Beyond the circumstances provided for in Table 4.4 exemptions and C7.4.1 (a) and (e), impacts on values within a national park, or within State-reserved land or a council reserve should be subject to the Code.

C7.4.1(d) Exemption for forest practices plans

Clause 4.4.1(a) of the SPPs provides an exemption from requiring a planning permit for clearance and conversion of a threatened native vegetation community, or the disturbance of a vegetation community, in accordance with a forest practices plan certified under the *Forest Practices Act 1985*, unless for the construction of a building or the carrying out of any associated development.

C7.4.1(d) of the NAC the provides an exemption from the NAC for forest practices or forest operations in accordance with a forest practices plan certified under the *Forest Practices Act 1985*, unless for the construction of a building or the carrying out of any associated development.

C7.4.1(d) essentially duplicates what is already exempt under 4.4.1(a) and the merit of and need for this additional exemption is unclear, noting that:

- both exemptions apply to situations where there is a certified Forest Practices Plan, except where the clearance and conversion/disturbance, or forest practices/forestry operation are for construction of a building or the carrying out of any associated development;
- the clearance and conversion of a threatened native vegetation community and the disturbance of a vegetation community are included in the definition of forest practices and can form part of a forest operation.

The scope and purpose of these exemptions and the differences between them, if any, require clarification.

In addition, while resolving jurisdictional issues and regulatory gaps between the Forest Practices System and planning schemes is welcome and much needed, the exemptions as drafted create jurisdictional uncertainty and have the potential to result in playing off one set of regulations with another. As forest practices include clearance and conversion of vegetation irrespective of the reason for the clearing, applicants could gain approval for vegetation clearing under a FPP and then lodge a development application which does not include but relies upon this clearing. As a consequence, there will be no ability for the planning authority to consider the appropriateness or impacts of the proposal on priority vegetation or other natural assets in the context of the application otherwise being assessed. A Forest Practices Plan exemption needs to be properly defined and measures included to avoid this obvious loophole.

Consideration also needs to be given to the fact that not all impacts on biodiversity and natural assets arising from development regulated under a planning scheme involve the construction of a building or the carrying out of any associated development. Private and public infrastructure projects and visitor accommodation not involving buildings (eg glamping or campgrounds) are two common examples. The status of subdivisions is also unclear under this exemption. The existence of an external approval should not be relied upon, or exclude assessment, where the criteria used in that approval process do not match the expectations or objectives of the NAC and the associated use or development is otherwise regulated under LUPAA.

In order to resolve jurisdictional certainty and close the regulatory gap, the exemption should not simply replicate the exemption from requiring a Forest Practices Plan contained within the Forest Practices Regulations 2017, but rather reflect the nature and scope of development regulated under planning schemes rather than via the Forest Practices System.

Ensuring a planning scheme does not duplicate the Forest Practices system (or other statutes) is supported. However, the proposed exemption goes beyond this by precluding consideration of the impacts of vegetation removal associated with a use or development otherwise regulated under LUPAA. It is not just reasonable for a planning authority to be able to consider the impacts of vegetation removal where the purpose of the clearing has nothing to do with a forestry operation and relates to development of the land, it is central to integrating biodiversity conservation in land use planning decisions. Ensuring vegetation removal associated with a use or development otherwise regulated under LUPAA is assessed

under the NAC also ensures a streamlined and more efficient assessment of proposals and avoids needing to seek permits from multiple regulators. Conversely, leaving the exemption as currently worded is contrary to the Terms of Reference for the preparation of the draft State Planning Provisions as it hinders efficient integration between regulations.

In resolving jurisdictional certainty and closing the regulatory gap, the exemption must also take into consideration the s11 exemptions within LUPAA, which already ensure that nothing in a planning scheme can affect forestry operations conducted on land declared as a private timber reserve (PTR) under the *Forest Practices Act 1985*. Therefore, there is already a mechanism providing an exemption for forestry operations on private land regardless of Code exemptions in a planning scheme. The wording of this exemption extends s11 well beyond the provisions in LUPAA by not just exempting forestry operations within a PTR but all forest practices (including clearing for non-forestry activities) across all zones irrespective of status as a PTR.

C7.4.12(f) Exemption for coastal protection works

C7.4.1(f) allows coastal protection works undertaken by a public authority to proceed in marine and freshwater ecosystems without proper scrutiny and accountability processes. As with any other organisations or individuals, there is a significant variation between public authorities in what is considered acceptable environmental practice in aquatic and marine environments. Over the years some works by public authorities have been high quality while many have also been destructive and unnecessary. Coastal protection works in particular often focus on addressing impacts of coastal erosion on infrastructure without fully considering impact on natural assets and processes. While the exemption requires the works to be designed by a suitably qualified person, there is no definition of what constitutes a suitably qualified person for the purposes of coastal protection works. A civil engineer may be suitably qualified to design a rock wall, however, this does not mean they are suitably qualified to determine whether the rock wall will impact on sand movement or wave action. Coastal protection works also have the potential to impact on other values captured under the NAC, including priority vegetation. Therefore, this exemption not only exempts the works themselves but also the impacts of these works on natural values. This exemption is not supported.

Detailed recommendations for Exemptions

1. Amend exemption C7.4.1(a) to only apply to situations where there is an immediate and imminent unacceptable safety risk.
2. Delete exemption C7.4.1(c).
3. Delete C7.4.1(d) and amend 4.4.1(a) to limit it to forestry operations and potentially also broad-scale clearing for agriculture only, for example ‘vegetation removal if for forestry operations or clearance and conversion of a native vegetation community or native vegetation for agriculture, in accordance with a certified Forest Practices Plan’.

4. Delete C7.4.1(f)

C7.6/C7.7 DEVELOPMENT STANDARDS FOR BUILDINGS AND WORKS/SUBDIVISION

Development standards broadly

Section 3.0 of the SPP's define the 'standard' as "the means for satisfying that objective through either an acceptable solution or performance criterion presented as the tests to meet the objective". Consequently, the wording and scope of development standards is fundamental to promoting biodiversity and achieving the clause objective and Code purpose. Drafting planning scheme ordinance is complex and legalistic and the intent of this submission is not to specify what the development standards should be. Rather it is to identify what the standards need to include to achieve meaningful outcomes and further the Code purpose (noting the Code purpose itself needs to be broadened).

To achieve the Schedule 1 objectives, including promoting biodiversity conservation, and satisfy the clause objective and Code purpose, development standards need to: (i) be satisfied substantively not just procedurally; (ii) establish all stages of the mitigation hierarchy; (iii) achieve real world outcomes; and (iv) be explicit and discoverable whilst still being adaptive to changing knowledge and new information.

Development standards only requiring the decision-maker to 'have regard' to the criteria, as is the case with the majority of the performance criteria in the SPPs generally and in the NAC specifically, limit the consideration of natural assets to a procedural requirement. Whereas, to realise the stated purpose of the Code and objectives of the standards, the decision-maker must be satisfied the development proposal demonstrates it meets the specified criteria and furthers the specified outcomes. Consequently, while the performance criteria as drafted will facilitate consistent procedural integration of natural assets and biodiversity conservation into the decision-making process, they do not require and will not achieve outcomes or further biodiversity conservation. In contrast, whilst variable in their standards, many interim schemes include a substantive requirement to achieve satisfy the criteria and achieve outcomes. Similarly, under the draft NAC (as exhibited [section 25(2)(a)], 7 March 2016), buildings and works in a waterway and coastal protection area, future climate refugia area or priority vegetation area must meet the performance criteria rather than merely 'having regard'. This change in language is a major watering down from the interim schemes and the draft NAC and inconsistent with the Schedule 1 objectives.

All performance criteria also need to be more prescriptive, particularly in relation to values which are so significant and so at risk that development needs to be prohibited. Identifying 'no go' areas is critical to achieving this.

Recommendations

1. Amend all performance criteria to replace the term ‘having regard for’ with ‘must’ or ‘satisfy’.
2. Amend the performance criteria to be more prescriptive and establish ecological criteria for when loss is unacceptable for different values, enable consideration of cumulative impacts, achieve improved management and protection for remaining values, and enable identification of areas or sites where development is not an option.

C7.6.1 Buildings and works within a waterway and coastal protection area or a future coastal refugia area

Clause objective

The objective of this clause is inconsistent with and fails to achieve the Code purpose, with the Code purpose (Clause C7.1.1) seeking to minimise impacts on waterway values, but the purpose of the Clause relating to where buildings and works are within a waterway and coastal protection area or future coastal refugia area. The implication of this objective is that buildings and works within these areas are acceptable and supported. In the first instance, the objective of this clause should seek to ensure development is designed and located to avoid being located within a waterway and coastal protection area or future coastal refugia area. The ongoing viability of waterway and coastal protection and refugia is dependent on adjacent land use practices. Locating development outside the overlay also minimises future flooding risk. Alternatively, the purpose of the standard could be framed more broadly, and as per the Southern IPSs, referring to buildings and works in proximity to a waterway and coastal protection area or future coastal refugia area rather than within. As a general rule, development or works within 100m of a waterway and coastal protection area or future coastal refugia should have to assess potential impacts.

Acceptable solutions

A1(a) and A2 will apply if a subdivision plan approved under this planning scheme creates a building area on a sealed plan. However, there is no requirement in C7.7.1 to define a building area on any lot created on a plan of subdivision and there are no tests to ensure the creation of such a building area, where located within a waterway and coastal protection area or future coastal refugia area, does not have an unnecessary or unacceptable impact on waterway values and future coastal refugia.

The effect of A1(a) and A2 is to allow development within a waterway and coastal protection area or future coastal refugia area without any assessment of likely adverse and potentially unnecessary and unacceptable impact of this development on waterway values. The requirement in A1(a) and A2 is therefore disassociated from purpose of the Code, the objective for the standard and the subdivision standards which may result in the creation of such a building area.

Notwithstanding, A1(a)/A2 are broadly supported, subject to the performance criteria for the subdivision standards in C7.7.1 being amended to include a requirement for a building area to be identified and demonstrate compliance with appropriate criteria to ensure it does not result in an unnecessary and unacceptable impact (see C7.7.1 below).

A1(b) and A1(c) are not supported and such works within a waterway and coastal protection area should be required to demonstrate compliance with the performance criteria, unless exempt. In relation to A1(b), providing a permitted pathway for a small crossing or bridge has the potential to have an unnecessary and unacceptable impact on natural assets and be contrary to the clause objective, through impeding flow and drainage, obstructing fish passage, impacting riparian vegetation, impacting in-stream habitat and increasing the need for future works. A1(b) is also unclear in its scope and potential impact. Although in general, class 4 watercourses are minor streams under Table C7.3(b), all watercourses in a number of zones are deemed to be class 4 regardless of catchment size. Many of these watercourses are in lowland areas and can be substantial in size conveying large amounts of water. Confining a “crossing or bridge to not more than 5m in width” is also unclear - does this relate to the width of the watercourse or the structure? If the structure, is it the bridge span, ford or weir width or length, and where do you measure this from?

Similarly, even a small extension of an existing facility has the potential to cause an unnecessary and unacceptable impact on natural assets and biodiversity. Requiring the impact of these minor works to be assessed enables minor adjustments to the location to avoid impacts. For example, such an extension may be located in an area containing a threatened marine species and there will be no requirement for any assessment of this impact or consideration of design alternatives to avoid this impact. Similarly, a small crossing or bridge could be realigned to avoid a tree with hollows or a devil den. Notwithstanding, A1(c) has merit as an acceptable solution to C7.6.1 P1.2, but not in relation to C7.6.1 as a whole.

Performance criteria

To be consistent with the objectives of LUPAA and achieve the Code purpose and objective (as recommended), the performance criteria in P1.1 need to include a requirement to demonstrate the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use.

In addition, all performance criteria under C7.6.1 need to be framed to require substantive outcomes rather than procedural consideration, for example:

P1.1 ‘Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

- (a) demonstrate the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use;
- (b) avoid, minimise and mitigate adverse impacts on natural assets;
- (c) avoid, minimise and mitigate impacts caused by erosion, siltation, sedimentation and runoff;
- (d) avoid, minimise and mitigate impacts on riparian or littoral vegetation... etc'

Where works encroach into a waterway and coastal protection area, an additional performance criterion should be included requiring an overall improvement in the condition and function of the riparian zone, including ecological restoration where there is the opportunity for improvement.

Providing the performance criteria for P1.1 are reframed to require substantive outcomes, are expanded to reflect the mitigation hierarchy and include the additional criteria proposed above, the scope of the criteria is broadly supported. In particular, the inclusion of an additional criterion enabling consideration of the need for future works for the protection of natural assets, infrastructure and property is supported. However, P1.1(l) needs to be strengthened to require the proposal demonstrates it is not reliant on such future works, as distinct from minimising the need for them.

C7.6.1 A2/P2 is broadly supported, subject to reframing to require substantive outcomes i.e. change 'having regard to' to 'must' or 'satisfy'.

In relation to C7.6.1 A3/P3, the acceptable solution and performance criteria need to explicitly apply to tidal waters, so as to include marine coastal stormwater outfalls. The acceptable solution of allowing increasing and potentially harmful stormwater providing it doesn't involve a new discharge point is also inadequate. The acceptable solution needs to be amended to require the rate of stormwater runoff to be no greater than the pre-existing runoff rate. The performance criteria also have no real requirement for assessing the ecological impacts of stormwater. An additional performance criterion needs to be inserted to cover ecological impacts/biodiversity.

C7.6.1 A4/P4 is broadly supported, subject to reframing to require substantive outcomes and amending the definition of natural assets as proposed above to include ecological function and ecosystem services.

C7.6.1 A5/P5 is broadly supported, subject to reframing to require substantive outcomes and the performance criteria being expanded to require protection works avoid, minimise and mitigate adverse impacts on natural assets as well as coastal processes, noting this standard applies to watercourse erosion and inundation protection works not just coastal protection works.

Detailed recommendations for C7.6.1

3. Amend the objective of this clause to ensure development is designed and located to avoid being located within a waterway and coastal protection area or future coastal refugia area. Alternatively, frame the objective more broadly and as per the Southern IPSs to relate to

buildings and works in proximity to a waterway and coastal protection area or future coastal refugia area.

4. Separate the acceptable solutions for C7.6.1 into A1.1 and A1.2 and applying to P1.1 and P1.12 respectively, with A1(b) and (c) deleted from A1.1 and A1(c) included as the only acceptable solution for A1.2. Alternatively, A1.1 and A1.2 may be more appropriate as two separate standards with associated performance criteria, consistent with the acceptable solutions in the Southern IPSs for Clauses E11.7.1 and E11.7.2.
5. Amend the subdivision standards in C7.7.1 to ensure: (i) a building area provided for in C7.6.1 A1(a)/A2 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values (see discussion and recommendations on C7.7.1 below).
6. Amend all performance criteria to replace the term 'having regard for' with 'must' or 'satisfy' and expand them to reflect the mitigation hierarchy.
7. Include additional criteria requiring that a proposal demonstrates the location of buildings and works within a waterway and coastal protection area or future coastal refugia area is unavoidable and there are no feasible alternative designs and locations, taking into consideration site constraints and the requirements of the proposed use.
8. Strengthen P1.1(l) to require that a proposal demonstrates it is not reliant on future works, as distinct from minimises the need for them.
9. Amend C7.6.1 A3/P3 to explicitly apply to tidal waters, include a new acceptable requiring the stormwater runoff to be no greater than pre-existing runoff and include an additional performance criterion to address ecological impacts/biodiversity.
10. Amend C7.6.1 P5 to require coastal protection works avoid, minimise and mitigate adverse impacts on natural assets.
11. Identify 'no go' riparian and coastal areas and accompanying performance criteria which prohibit development in these sensitive and at risk areas (acknowledging this requires strategic conservation planning, which is discussed below in 'Other matters').

C7.6.2 Clearance within a priority vegetation area

It is widely acknowledged that the priority vegetation provisions in the NAC are particularly unworkable and urgently require review (Tasmanian Planning Commission 2016). Deficiencies in these provisions create legal uncertainty for planning authorities and landowners, increase costs and foster a protracted assessment and decision-making processes, without furthering biodiversity conservation: green tape without green outcomes.

The key issues and concerns with these provisions are detailed below.

Scope of the clause

As currently drafted, C7.6.2 only applies where clearance of priority vegetation is proposed. However, development regulated under LUPAA may not involve the direct clearing or removal of priority

vegetation but can still significantly impact on this vegetation. For example, disturbance within the tree root protection zone of mature trees can kill the tree but the tree may not be proposed for removal per se. In addition, there may be impacts on threatened fauna which do not involve loss of habitat or vegetation clearing, such as collision risk or disturbance during the breeding season.

Consistent with the draft NAC, Clause C7.6.2 therefore needs to be expanded to apply to disturbance as well as clearance and address both direct and indirect adverse impacts of buildings and works on priority biodiversity values, including threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.

Clause objectives

Currently the objectives for a priority vegetation area focus on the undefined concept of ‘unreasonable loss’ and minimisation. However, the concept of ‘unreasonable loss’ is undefined and ambiguous and requires definition. Consistent with the Convention on Biological Diversity and objectives of LUPAA, the clause objectives need to promote the conservation of biodiversity and include the full mitigation hierarchy and achieving a conservation outcome.

The objectives for Clause C7.6.2 also need to be expanded to include adverse indirect impacts of buildings and works on priority biodiversity values and adverse impacts on priority species, including but not limited to threatened species.

Acceptable solutions

As with Clause C7.6.1 A1(a)/A2, this acceptable solution is broadly supported, subject to the performance criteria for the subdivision standards in C7.7.2 being amended to include a requirement for a building area to be identified and demonstrate compliance with appropriate criteria to ensure it does not result in an unreasonable, unnecessary and unacceptable impact. Otherwise, the effect of A1 is to allow development within, or impacting on, a priority vegetation area without any assessment of likely adverse and potentially unnecessary and unacceptable impacts of this development on priority vegetation or priority biodiversity.

Performance criteria

Overall, the performance criteria are weak and will only achieve procedural rather than substantive outcomes, are inconsistent with the Schedule 1 objectives and accepted best practice, are not underpinned by science and are not supported by agreed policies or procedures. These deficiencies create legal uncertainty, increase costs and foster a protracted assessment and decision-making processes, without furthering biodiversity conservation. The performance criteria also fail to satisfy the objectives for the standard, with the provision focused on enabling clearance rather than avoiding it and

no performance criteria which would ensure loss is not unreasonable and priority values are appropriately and adequately protected.

P1.1 appears to be a list of circumstances or types of development where impacts on priority vegetation/biodiversity values may be considered reasonable. This list is extensive and justifies the basis for most impacts. In addition, P1.1(c) also duplicates Clause C7.7.2 P1(c) and is redundant, as C7.7.2 applies to subdivision and includes works associated with subdivision. P1.1 (e) also requires amending to remove the word 'pre-existing' as this wording rewards poor management and degradation and fails to acknowledge that, with appropriate management, many areas of native vegetation are capable of persisting into the future.

P1.2 includes a requirement to minimise the impacts of clearing, having regard to a number of matters. However, there is no requirement to maintain and promote biodiversity or ecological processes as required under s5 and s15 of LUPAA.

C7.6.2 also treats all priority vegetation/biodiversity values equally and fails to include criteria which require consideration of what constitutes an unreasonable loss of priority vegetation/biodiversity value in the context of the conservation significance and requirements of the value. However, the acceptability of impacts (or reasonableness of loss) is species/value and site specific, and scale and context dependent. The loss of a handful of trees on one site may have a significant impact on particular species, whereas the loss of the same number and species of trees at a different site may only have minor impacts on different species. Similarly, a small and highly-disturbed patch of remnant vegetation may be of limited significance in some contexts, but in other contexts can be critical, with some species only found in remnants of poor integrity.

Furthermore, even where the individual impacts of a discrete proposal may be insignificant on their own, the cumulative impacts from multiple developments can potentially degrade critical resources over time. C7.6.2 therefore fails to include performance criteria which establish what level of impact is acceptable for the different categories of priority vegetation/biodiversity value and their relative conservation significance.

This clause also fails to enable consideration of cumulative impacts and fails to identify patches of vegetation or sites where loss is unacceptable and clearing is not an option. As a result, there are no criteria which would enable an application to be refused on the basis that the impact on priority vegetation/biodiversity values was unreasonable, despite this appearing to be one of the objectives of C7.6.2.

The objectives and criteria of the relevant provisions must relate to the significance and requirements of the different categories of priority biodiversity values and guide an outcome that reflects their conservation significance. The structure of the Biodiversity Code under the Southern Interim Schemes provides an example of how this can be achieved, including different performance criteria depending

on the significance of values and including a performance criterion for the highest priority values that enables a development to be refused on the basis that it will substantially impact on the conservation status of biodiversity values in the vicinity of the development. C7.6.2 needs to be amended to provide a similar approach with equivalent requirements.

C7.6.2 P1.2 is also limited to the minimisation and mitigation stages of the mitigation hierarchy, with the avoid stage entirely absent and offsets limited to on-site offsets. This approach is inconsistent with other regulators, the objectives of LUPAA, the precautionary principle and the regional land use strategies and does not reflect current accepted best practice. Any adverse impacts of priority vegetation/biodiversity values should be avoided if there is an alternative, the need for the impact is unreasonable or the impact itself constitutes an unacceptable impact on the value. If it can be demonstrated that no such alternative exists, then the next test is whether the adverse impact is acceptable. Providing an impact is unavoidable, the impact is determined to be for a reasonable purpose and the impact is insignificant, the next steps in the decision-making process should be how to ensure impacts are minimised, mitigated and, as a last resort, offset.

The limitation of offsets to on-site offsets is of particular concern and there should be more options, depending on the scale of the loss. It is acknowledged that implementation of offsets by planning authorities is currently ad hoc and limited, partly as a result of the lack of a coordinated offset program. Notwithstanding, most interim schemes provided for offsets, including offsite and indirect offsets. Given the extent of loss arising from land use planning decisions is often small, protection mechanisms which enable the cumulative impact of small losses to be combined into larger coordinated gains through indirect offsetting is essential. Off-site offsets are also an important mechanism for achieving the clause objective of adequately protecting identified priority vegetation.

Under P1.2, no provision is made for off-site offsets or indirect offsets and no criteria are provided on what constitutes a suitable offset. The implication here is not that a proposal will not be able to proceed where a suitable on-site offset is not available. Rather, the implication is that where an on-site offset is not available or not supported by the applicant, the proposal may proceed without any requirement to offset impacts at all, as long as regard was given to ‘any on-site biodiversity offset’.

It is acknowledged that consistent use of offsetting and protection of values in perpetuity on or off-site as part of the development application process is currently limited to one LGA (Kingborough Council), and not all planning authorities will want to (or have the capacity to) implement offsets. However, an increasing number of planning authorities are requiring offsets and as a minimum, C7.6.2 should provide the opportunity for a range of offset options.

As a function of the narrow definition of priority vegetation and a priority vegetation area, the standards currently only apply to a subset of native vegetation, where this native vegetation is within the statutory overlay. The recommended amendments to definitions and code application go a long way to resolving

this fundamental flaw. However, another approach may be the inclusion of additional standards which enable assessment of native vegetation located outside the statutory overlay, as has been implemented under many of the Northern IPSs.

Detailed recommendations for C7.6.2

1. Amend the scope, objectives and provisions of Clause C7.6.2 to apply to adverse direct and indirect impacts of buildings and works on priority biodiversity values, including threatened native vegetation communities, significant and potential habitat for threatened fauna, threatened flora, ecological function, ecosystem services, habitat corridors, genetic diversity, non-listed species and native vegetation broadly.
2. Amend the objectives to clearly include all stages of the mitigation hierarchy, including first avoiding impacts and demonstrating a net conservation outcome where loss is unavoidable.
3. Amend the subdivision standards in C7.7.2 to ensure: (i) a building area provided for in C7.6.2 A1 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on priority biodiversity values (see discussion and recommendations on C7.7.2 below).
4. Amend the performance criteria to require that the proposal demonstrate compliance with the stated criteria rather than have regard to.
5. Amend and expand the performance criteria to incorporate explicit tests which: (i) establish ecological criteria for when loss is unacceptable for different values, including identification of patches of vegetation, sites or values where loss is unacceptable; (ii) enable consideration of cumulative impacts; (iii) require demonstrated conservation outcomes where loss is unavoidable, including retention, improved management and protection of remaining values; and (iv) provide for a range of offset mechanisms, including off-site and financial, with the offset requirements being a stand-alone clause and expanded.
6. Ensure the standards are applicable to all native vegetation, not just some native vegetation located within the statutory overlay.
7. Amend the standards to apply to disturbance to priority biodiversity values not just clearance of priority vegetation.
8. Include additional standards relating to indirect impacts including collision risk or disturbance during the breeding season.
9. Identify 'no go' biodiversity areas and accompanying performance criteria which prohibit development in these sensitive and at risk areas (acknowledging this requires strategic conservation planning, which is discussed in 'Other matters').

C7.7.1 Subdivision within a waterway and coastal protection area or a future coastal refugia area

Clause objective

While the clause objectives are broadly consistent with those under Southern IPSs, C7.7.1(a) should be amended to relate to works in proximity to rather than works within a waterway and coastal protection area or a future coastal refugia area. The term ‘unnecessary or unacceptable impact’ also requires definition.

Acceptable solutions

The acceptable solutions are generally consistent with those under the Southern IPSs. They have been routinely applied with little ambiguity or issue and are considered reasonable. The only exception is C7.7.1 A1 (d), which is redundant as the consolidation of lots is exempt from the NAC under C7.4.1 (g).

Performance criteria

The performance criteria are insufficient to achieve the stated objective of the clause or establish building areas which are then relied upon to meet the acceptable solution under C7.6.1 A1(a)/A2. As discussed above, for this acceptable solution to function as intended, the subdivision performance criteria need to require a building area be established at the sealed plan stage and the location of this building area must meet the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values. The performance criteria in Clause E11.8.1 P1 of the Southern Interim Schemes achieve this by requiring subdivision within a Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area, must provide for any building area and any associated bushfire hazard management area to be either:

- (i) outside the Waterway and Coastal Protection Area, Future Coastal Refugia Area or Potable Water Supply Area; or
- (ii) able to accommodate development capable of satisfying this Code.

To enable C7.6.1 A1(a)/A2 to function and the standards to achieve the Code purpose and clause objectives, equivalent criteria need to be included in Clause C7.7.1 P1.

In addition, all performance criteria under C7.7.1 need to be framed to require substantive outcomes rather than ‘having regard to’. Again, the Southern IPSs provide a workable example of how this can be achieved.

Detailed recommendations for C7.7.1

1. Define the term ‘unnecessary or unacceptable impact’.

2. Amend C7.7.1(a) to relate to works in proximity to rather than works within a waterway and coastal protection area or a future coastal refugia area will not have an unnecessary or unacceptable impact on natural assets.
3. Delete C7.7.1 (d) and C7.7.2 (d) as the consolidation of lots is exempt from the NAC under C7.4.1 (g).
4. Amend all the performance criteria under C7.7.1 to require the proposal demonstrate compliance with the stated criteria rather than have regard to.
5. Amend the subdivision standards in C7.7.1 to ensure: (i) a building area provided for in C7.6.1 A1(a)/A2 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on waterway values, consistent with Clause E11.8.1 P1 in the Southern IPSs.

C7.7.2 Subdivision within a priority vegetation area

Clause objective

Consistent with the discussion above, the objectives need to be broadened to include all priority biodiversity values rather than be limited to priority vegetation. To achieve Code Purpose C7.1.3, the objectives should also be broadened to ensure any subdivision adversely impacting on priority biodiversity values achieves a conservation outcome. The term ‘unnecessary or unacceptable impact’ also requires definition.

Acceptable solutions

The acceptable solutions are generally consistent with those under the Southern Interim Schemes. They have been routinely applied with little ambiguity or issue and are considered reasonable. The only exception is C7.7.2 A1 (d), which is redundant as the consolidation of lots is exempt from the NAC under C7.4.1 (g).

Performance criteria

The performance criteria are insufficient to achieve the stated objective of the clause or establish building areas which are then relied upon to meet the acceptable solution under C7.6.2 A1. As discussed above, for this acceptable solution to function as intended, the subdivision performance criteria need to require a building area to be established and the location of this building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on biodiversity values.

As with the development standards, the performance criteria focus on enabling subdivision which impacts on priority vegetation rather than avoids it and there no performance criteria which would ensure loss is not unreasonable and priority biodiversity values are appropriately and adequately protected.

P1.1 appears to be a list of circumstances or types of development where impacts on priority vegetation arising from subdivision may be considered reasonable. This list is extensive and justifies the basis for most subdivision. These circumstances require review to ensure they are meaningful and appropriate.

As with C7.6.2, C7.7.2 treats all priority vegetation/biodiversity values equally and fails to include criteria which require consideration of what constitutes an unreasonable impact on priority vegetation/biodiversity value in the context of the conservation significance and requirements of the value. The performance criteria must reflect differences in the significance of priority biodiversity values and set a higher bar for more significant values, including criteria for when impacts on priority biodiversity values arising from subdivision and future development are unacceptable, irrespective of the type of development.

The structure of the Biodiversity Code under the Southern Interim Schemes provides an example of how this can be achieved, including different performance criteria which vary depending on the significance of values and including a performance criterion for the highest priority values that enables a development to be refused on the basis that it will substantially impact on the conservation status of biodiversity values in the vicinity of the development. C7.7.2 needs to be amended to provide a similar approach with equivalent requirements.

C7.7.2 P1.2 is also limited to the minimisation and mitigation stages of the mitigation hierarchy, with the avoid stage entirely absent and offsets limited to on-site offsets. Avoidance and offsetting of impacts is particularly critical at the subdivision stage, as approval of a subdivision with building areas included on the sealed plan will result in a permitted pathway for future development. Therefore, the subdivision provisions need to do the heavy lifting to ensure impacts are avoided where possible, impacts are acceptable, and any conservation outcomes and offsets secured.

Additional performance criteria are also required to achieve Code Purpose C7.1.3 and further the recommended additional objectives, by requiring any subdivision adversely impacting on priority biodiversity values to achieve a demonstrated conservation outcome through the retention and protection of remaining priority biodiversity values outside the area impacted by subdivision works, the building area and the area likely impacted by future bushfire hazard management measures by appropriate mechanisms on the land title.

All performance criteria under C7.7.2 need to be framed to require substantive outcomes rather than 'having regard to'. Again, the Southern IPSs provide a workable example of how this can be achieved.

Detailed recommendations for C7.7.2

1. Define the term 'unnecessary or unacceptable impact'.
2. Amend all performance criteria to require the proposal demonstrates compliance with the criteria rather than 'having regard to'.

3. Amend the subdivision standards in C7.7.2 to ensure: (i) a building area provided for in C7.6.2 A1 is established and created at the subdivision stage; and (ii) any such building area meets the appropriate tests to ensure it does not have an unnecessary or unacceptable impact on priority biodiversity values.
4. Amend the performance criteria to incorporate explicit tests which: (i) establish ecological criteria for when loss is unacceptable for different values, including identification of patches of vegetation, sites or values where impacts on priority biodiversity values arising from subdivision and future development are unacceptable; (ii) reflect the mitigation hierarchy; (iii) enable consideration of cumulative impacts; (iv) require demonstrated conservation outcomes where loss is unavoidable, including retention, improved management and protection of remaining values; and (v) provide for a range of offset mechanisms, including off-site and financial.
5. Include an additional performance criterion requiring any subdivision adversely impacting on priority biodiversity values to achieve a demonstrated conservation outcome through the retention and protection of remaining priority biodiversity values outside the area impacted by subdivision works, the building area and the area likely impacted by future bushfire hazard management measures by appropriate mechanisms on the land title.

OTHER MATTERS

Introduction of use standards

As discussed above, the NAC should apply to use where:

- a new use or substantial intensification of an existing use is likely to irreversibly and negatively impact upon waterway values, future climate refugia or priority vegetation; and
- a change of use from a non-habitable building to a habitable building or to a new use with a habitable room is proposed on land in a waterway and coastal protection area, future coastal refugia area or priority vegetation area.

Therefore, use standards are also required.

Application requirements

Application requirements under the SPPs are specified in Clause 6.0 and Clause 6.1.3(b)(vi). These clauses provide the planning authority with the ability to request a site analysis and site plan of the vegetation types and distribution including any known threatened species, and trees and vegetation to be removed. Such a site analysis falls well short of the DPIPW Guidelines for natural values assessments and the current application requirements included in the Southern and Northern Interim Schemes. The ability to require natural values assessments and field verification under the NAC is unclear as is the requirement for this to be done by a suitably qualified person. The loss of these explicit requirements will decrease clarity around requirements and potentially require these matters to be resolved at appeal. In addition, in the absence of such an assessment, it is generally not possible to

adequately determine or assess the impacts of a proposal, including compliance with the Code requirements.

Explicit application requirements providing a head of power for requiring a natural values assessment need to be reinstated in the NAC.

Policy issues

An integrated and coordinated biodiversity policy framework is an essential component of sustainable development and biodiversity conservation. A consistent biodiversity policy framework across regulators is currently lacking and the NAC has therefore been developed in a policy vacuum. The development of State Planning Policies is critical and a welcome start. However, successful biodiversity policy implementation requires clearly defined and mutually understood objectives and roles and responsibilities across regulators (Clement, Moore & Lockwood 2015:94). To establish consistent policy settings and ensure integration and coordination across regulators, an integrated policy framework for biodiversity and native vegetation is necessary. This policy framework needs to: (i) establish agreed biodiversity conservation objectives and outcomes; (ii) identify scale and value specific surrogates and indicators for biodiversity; (iii) identify the roles and responsibilities of the different regulators; (iv) validate the role of land use planning in biodiversity conservation; (v) directly link to and create obligations under the planning instrument; and, (vi) require reporting on loss and gain by all regulators for all biodiversity surrogates, not just to the Forest Practices Authority for forest communities.

Strategic Planning

Bioregional scale cross tenure strategic planning needs to be undertaken to translate the requirements of Schedule 1 and the broader policy framework into planning schemes and inform identification of areas that are a priority for conservation and protection under the NAC. These plans need to be translated into any reviews of the SPPs, including the NAC, and Local Provisions Schedules and zone application. The Conservation Action Planning process developed the Nature Conservancy is one tool for developing bioregional plans and this approach has been adopted by the North East Bioregional Network in the development of a Land Use Plan for the north east.

Fit-for-purpose decision support tools

The Forest Practices System includes a range of decision-making tools designed to assist the regulators and Forest Practices Officers to comply with the Forest Practices Code and associated regulations. These decision-support tools include Threatened Flora and Fauna Advisors including management prescriptions and species-specific habitat descriptions and technical notes. In contrast, fit-for-purpose decision-support tools specific to land use planning are lacking in Tasmania. Consequently, even where

field verification is undertaken, interpretation of performance criteria is generally reliant on the advice of an expert engaged by applicant.

Development and adoption of agreed definitions, guidelines and management prescriptions specific to land use planning, and which are able to evolve as scientific knowledge changes, are necessary to improve the consistency and reliability of interpretation of performance criteria. These decision-support tools also need to be developed within the broader policy and strategic planning framework discussed above and also be able to be implemented without requiring amendments to the statutory map or NAC.

The agreed procedures and associated management prescriptions and decision-support tools developed by the Forest Practices System (FPS) and their linkage to the Forest Practices Code provide a potential model, subject to review and adaptation for use in a land use planning context. Given the reliance on field verification by a suitably qualified person engaged by the applicant, and the inherent conflict of interest this relationship creates, development of an accreditation system and introduction of formal referral processes would also ensure greater consistency in interpretation and application of performance criteria and improve outcomes for biodiversity conservation.

Other longer term recommendations

As longer-term priorities:

- Amend the performance criteria to be consistent with policy objectives (once established) and give effect to relevant strategic plans, agreed management prescriptions and fit-for-purpose decision-making tools and procedures for specific biodiversity values.
- Introduce an accreditation system for suitably qualified ecologists.
- Introduce formal referral processes for impacts on biodiversity values of Statewide significance, including threatened vegetation communities, threatened species and threatened species habitat.
- Establishment of an independent auditing process to look at how well or not planning laws are protecting biodiversity and more specifically how well Councils are: (a) taking into account biodiversity protection measures in their role as a Planning Authority; (b) how well they are ensuring that the conditions in planning permits are being complied with; and (c) how well they are enforcing breaches of biodiversity related planning matters such as illegal landclearing.

APPENDIX 1 – THE EXTENT (HECTARES) AND PERCENTAGE OF BIODIVERSITY EXCLUDED FROM CONSIDERATION UNDER INTERIM SCHEMES AND THE TPS (DEN EXTER, 2019)

Biodiversity surrogate	Statutory map exclusions				Urban-type zone exclusions				Agricultural zone exclusions				Total Code exclusions			
	Interim		TPS		Interim		TPS		Interim		TPS		Interim		TPS	
	Ha	% statewide total	Ha	% state wide extent	Ha	% urban-type zones total	Ha	% urban-type zone extent	Ha	% state wide total	Ha	% state wide extent	Ha	% state wide extent	Ha	% statewide extent
TNVC	154,809	52	119,657	37	266	39	650	100	n/a	n/a	119,007	37	95,174	29	119,657	37
Native vegetation	4,004,669	81	2,398,685	48.1	4,230	63	6,682	100	n/a	n/a	825,362	16.5	1,649,014	33	2,398,685	48.1
Priority vegetation	2,074,787	75	796,402	29	3,603	23	6,756	100	n/a	n/a	789,646	28	755,373	27	796,402	29

Source: Spatial data analysis conducted in 2017-2018 as part of this research. Data derived from: Department of Primary Industries Parks Water and Environment (2013a); Department of Primary Industries Parks Water and Environment (2014); Knight (2018); The LIST (2015a); The LIST (2015b).

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