

# Statement of Reasons

**Modifications to the provisions of the draft State Planning Provisions in accordance with s.28(1)(b) and s.28(1)(c) of the *Land Use Planning and Approvals Act 1993***

I have made the State Planning Provisions in accordance with section 27(1)(b) of the *Land Use Planning and Approvals Act 1993* (the Act).

In accordance with s.28(1)(b) and s.28(1)(c) of the Act, my reasons for modifying the provisions of the draft State Planning Provisions are set out in the attached Schedule.

Dated 22 February 2017.



PETER CARL GUTWEIN  
MINISTER FOR PLANNING AND LOCAL GOVERNMENT

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## SCHEDULE

### **Minister's reasons for modifying the provisions of the draft State Planning Provisions in accordance with s.28(1)(b) and s.28(1)(c) of the *Land Use Planning and Approvals Act 1993***

#### **Background**

Amendments to the Act that came into effect in January 2016 established the legislative framework for a single planning scheme for Tasmania, known as the Tasmanian Planning Scheme.

The Tasmanian Planning Scheme consists of State Planning Provisions (SPPs) that establish consistent state-wide provisions and Local Provisions Schedules (LPSs) that apply the state-wide provisions to each municipal area.

The draft SPPs were prepared in accordance with the Terms of Reference, required by section 17 of the Act.

The Commission publicly exhibited the draft SPPs for a 60 day period, from 12 March until 18 May 2016, as required by section 22 of the Act. There were 294 representations received in that time and a further nine late representations were accepted.

After considering the representations, the Commission held a total of 25 hearings in Burnie, Launceston and Hobart, between July and October 2016.

In accordance with section 25 of the Act, the Commission provided a report to me on 9 December 2016, which included a number of recommended modifications to the draft SPPs and a copy of the draft that included its recommended modifications.

Section 27 of the Act requires me to consider the Commission's report and authorises me to take into account any other matters that I think fit before deciding whether to make the SPPs in either the form originally exhibited, or as modified, or to not make the SPPs.

I have determined to accept the Commission's recommended modifications to the exhibited draft SPPs for the reasons specified in its report of 9 December 2016, with the exception of the following matters:

- (a) modifications agreed to by the Commission in response to the clarifications I sought under s.26(3); and
- (b) modifications as set out below, based on the consolidated advice from the Taskforce and the SPIDC on select matters; and including minor editorial modifications identified by the Department of Justice's Planning Policy Unit.

## Minor modifications to exhibited draft SPPs

The draft SPPs as modified by the Commission in accordance with its recommendations include many changes to the drafting style, wording and other minor changes that do not in my opinion change the fundamental settings of the SPPs and improve its functionality and clarity.

While there are a number of changes they are not key modifications to the effect of the SPPs or the planning outcomes that would follow.

## Key modifications to exhibited draft SPPs

### Natural Assets Code

#### *Introduction*

The exhibited draft SPPs proposed a Natural Assets Code which covered waterway and coastal protection, future coastal refugia, and priority vegetation. Priority vegetation was limited to:

- threatened native vegetation communities;
- threatened flora species; and
- significant habitat for threatened fauna species.

The draft SPPs required a priority vegetation map to be prepared by the Department of Primary Industries, Parks, Water and Environment (DPIPWE) based on a range of existing data sources. It was intended that the future coastal refugia and waterway and coastal protection mapping was to be based on the mapping prepared by the Derwent Estuary Program at a state-wide level.

The Commission recommended the Natural Assets Code be omitted from the making of the SPPs and revised for consideration as a future amendment, based on the following terms of reference:

- *potentially disaggregating the code to more clearly address the values of waterways and coastal protection, future coastal refugia, priority vegetation, and potentially drinking catchments in separate codes;*
- *confirming the state-wide mapping to be used as a basis for overlays and providing the methodology or parameters that are to be applied for variation of the overlay mapping by planning authorities;*
- *application of the code or codes, including whether the values must be mapped comprehensively or by reference to, or exclusion from, zones;*
- *the scope of priority vegetation values and standards for its protection and management;*
- *developing standards for buildings and works that are self-contained without reference to incorporated documents, or that refer to specific standards in any incorporated document;*
- *any relevant Commonwealth and State legislation, regulation and policies, and regional land use strategies to ensure broad consistency to avoid duplication;*

- *the objectives of the Act; and*
- *the need for any consequential amendments to other parts of the SPPs.*

### **Discussion**

I do not accept that the Natural Assets Code needs to be substantially modified and re-exhibited as part of a future amendment following the making of the SPPs.

I have sought further advice from the SPIDC and the Taskforce on the scope of the Natural Assets Code. I consider it necessary to include the Natural Assets Code in the final SPPs. The Code forms part the integrated package of the SPPs, which collectively must meet the criteria under section 15 of the Act. This includes furthering the objectives outlined in Schedule 1 of the Act.

Omission of the code from the suite of provisions forming the SPPs will create uncertainty for local councils as there are a number of other provisions, including decisions on the strategic application of certain zones (particularly peri-urban zones), which hinge on the finalisation of the Code.

I am satisfied that the Natural Assets Code as exhibited in the draft SPPs must be modified, as follows:

- broaden the scope of priority vegetation to include native vegetation of local importance;
- delete the permitted allowance to clear up to 3000m<sup>2</sup> of native vegetation in the Rural Living Zone;
- deliver improvements to the drafting of the provisions of the code ensuring that appropriate protection is afforded to natural values; and
- clarify how the overlay maps in the code are to be prepared.

Broadening the scope of priority vegetation better reflects the current approach in many Interim Planning Schemes and addresses some of the concerns raised at the public hearings. The deletion of the permitted allowance to clear up to 3000m<sup>2</sup> of native vegetation in the Rural Living Zone encourages the use of already cleared land as a first priority instead of providing an 'as of right' allowance to clear priority vegetation in the Rural Living Zone.

I am satisfied that the modified Natural Assets Code does not require re-exhibition. While the scope of priority vegetation is broadened, this reflects the concerns of numerous representations and the scope of many equivalent codes in Interim Planning Schemes.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

## ***Direction***

That the final SPPs include:

- a modified Natural Assets Code; and
- consequential modifications to clarify how the overlay maps in the code are to be prepared.

## **Visitor accommodation in a dwelling**

### ***Introduction***

The exhibited draft SPPs proposed an exemption from the requirement for a planning permit where a dwelling is used for Visitor Accommodation for no more than 42 nights in any calendar year. For uses that extend beyond the 42 days, an assessment would need to be made against the zone and code provisions. The draft SPPs also included Visitor Accommodation as a permitted use in the main residential zones provided it did not exceed a gross floor area of 160m<sup>2</sup>.

The Commission recommended replacing the exemption for 'visitor accommodation in a dwelling' by an alternative exemption for 'home stay'.

The 'home stay' exemption would allow short term accommodation in an existing dwelling (not restricted to the main place of residence), if it has 4 bedrooms or less, with no limit on the number of nights. The Commission further recommended that this new exemption, if accepted, warranted re-exhibition prior to being included within the SPPs. I have not accepted the Commission's recommendation as I am of the view that this would create in effect a completely deregulated market with the only controls being the number of lettable bedrooms in any single dwelling, whether a main place of residence or not.

### ***Discussion***

In addition to seeking further advice from the SPIDC and the Taskforce, further policy analysis has occurred having regard to:

- the most recent trends and administrative arrangements interstate and overseas;
- key stakeholder consultation within Tasmania, including Airbnb, Stayz and tourist operators; and
- the relevant building regulations for Visitor Accommodation developments.

I support the policy position that if you live in an area zoned for residential use and you wish to rent your home as 'visitor accommodation' for up to four bookable rooms to others, while you are present or away on holiday, then you should be able to do so without planning restriction. It is acceptable that this scenario be exempt from requiring a planning permit under the SPPs.

However, if you wish to rent your own home as 'visitor accommodation' with more than four bookable rooms, or a property that is not your primary place of residence (such as an investment

property or shack) with a floor area of less than 300m<sup>2</sup> in these zones, then it is appropriate for this type of use to be permitted and assessed through a permitted pathway in the SPPs. If you wish to rent out your investment property over 300m<sup>2</sup>, then this requires discretionary approval under the SPPs.

The threshold of 300m<sup>2</sup> better reflects the size of an average 4 bedroom dwelling.

I also accept that to remove confusion about the use of shacks by their owners or friends being classified as 'visitor accommodation', a consequential amendment is required to the Use Class description to specify that unless payment is involved for staying in the shack it does not constitute a change in use.

I am satisfied that these modifications to provisions in the SPPs in relation to the exemption and the permitted standards in residential zones adequately address the concerns of the community and relevant industry groups and are of a relatively minor change, and therefore do not require re-exhibition.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That the final SPPs include modified provisions, as follows:

- provide an exemption for 'Visitor accommodation in a dwelling (including a secondary residence)' if:
  - the dwelling is used by the owner or occupier as their main place of residence, and only let while the owner or occupier is on vacation; or
  - the dwelling is used by the owner or occupier as their main place of residence, and visitors are accommodated in not more than 4 bedrooms;
- increase the Acceptable Solution gross floor area from 160m<sup>2</sup> to 300m<sup>2</sup> for permitted Visitor Accommodation within an existing building in the relevant residential zone standards, to provide a better reflection of the size of an average 4 bedroom dwelling.; and
- make consequential amendment to Visitor Accommodation use class description to ensure the use of holiday homes or shacks by the owners or by non-paying guests of the owners does not constitute a change of use.

## **Local Historic Heritage Code – significant trees**

### ***Introduction***

The exhibited draft SPPs in the Local Historic Heritage Code proposed provisions for the protection of 'significant trees' which would not necessarily be restricted to those with 'heritage' values. This accommodated provisions in a number of interim planning schemes in the form of separate significant tree codes.

The Commission has recommended removing the specific provisions relating to significant trees in the SPPs (C.6.9) indicating that trees associated with heritage values could be managed as a type of 'place' under the broader provisions. They also recommended that consideration be given to whether a stand-alone code for significant trees to protect other values should be added to the SPPs by a future amendment.

### ***Discussion***

If the Commission's recommended modification was accepted it would create an unintended policy gap as the scope of the code would exclude trees currently protected but not specifically of historic heritage value.

I have sought further advice from the SPIDC and the Taskforce, and I am satisfied that the provisions relating to significant trees in the Local Historic Heritage Code as originally exhibited should be retained in the final SPPs. This includes the requirement to list significant trees in the relevant Local Provisions Schedule. I am also satisfied that such trees may also be shown in the overlay maps.

I am satisfied that with the inclusion of provisions relating to significant trees in the Local Historic Heritage Code and modifications to relevant Local Provisions Schedule requirement clauses, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That:

- specific provisions for significant trees in the Local Historic Heritage Code and in the relevant Local Provisions Schedule requirement clauses be retained in the final SPPs, as originally exhibited; and
- the final SPPs include the option for LPSs to map significant trees in the overlay maps .

## **Attenuation Code – separation distances (attenuation distances)**

### ***Introduction***

The exhibited draft SPPs included a set of separation distances in the Attenuation Code for activities that may cause environmental harm in line with the equivalent codes in place in interim planning schemes across the state.

A revised table of separation distances was tabled by the Department of Justice Planning Policy Unit (PPU) at the public hearings following further review undertaken in conjunction with the EPA Division to clarify the scope of the listed activities.

The Commission recommended a number of modifications to clarify the scope of the Attenuation Code to improve its operation. The Commission recommended adopting the majority of the revised table of separation distances tabled at the hearing.

However, the Commission also recommended:

- deleting the separation distances for effluent irrigation schemes from Table C9.2 indicating further policy work was required to establish suitable requirements beyond that contained in the *Environmental Guidelines for the Use of Recycled Water in Tasmania*; and
- not adopting the full description for the ‘waste depot’ activity in Table C9.1 as tabled at the hearing, specifically by deleting the words “at residential premises”.

Additionally, the Commission recommended relocating the provisions in the Attenuation Code relating to protection of airports, to form a separate code. This matter is discussed under a separate heading.

### **Discussion**

I accept the majority of the modifications to the Attenuation Code recommended by the Commission for the reasons outlined in their report, including relocating the airport provisions to a separate code as outlined above. However, I have concerns with the deletion of the separation distance requirements for effluent irrigation schemes and the modified description for ‘waste depot’.

The Attenuation Code must contain separation distances for effluent irrigation schemes as these are currently contained in interim planning schemes and a firm policy position has been established with the adoption by DPIPWE of the *Environmental Guidelines for the Use of Recycled Water in Tasmania*. However, I accept that further clarification needs to be provided on the nominated separation distances for the different activities associated with effluent irrigation schemes. On further advice from the PPU and the EPA Division, I am satisfied that the relevant buffer distances nominated in DPIPWE’s guidelines should be adopted for use in the Attenuation Code along with the 200m separation distance for spray irrigation contained in current interim planning schemes.

The modified description for ‘waste depot’ in Table C9.1 as recommended by the Commission requires further clarification, specifically the exclusion contained in subclause (c). The Commission’s recommended wording will have an unintended consequence of excluding waste depots handling domestic waste. Subclause (c) as drafted in the revised version of the separation distances tabled at the hearing read as “storage, treatment or disposal of domestic waste at residential premises”. This aligns with the description of ‘waste depot’ under Schedule 2 of the *Environmental Management and Pollution Control Act 1994* (EMPCA) and should be included in the code.

I am satisfied that with these modifications to the Attenuation Code, the final SPPs meet the SPPs criteria under section 15 of the Act and do not require re-exhibition.

### **Direction**

That the final SPPs include a modified Attenuation Code, as per the Commission’s recommendations, with the inclusion of:

- nominated separation distances for effluent irrigation schemes in accordance with the DPIPWE’s *Environmental Guidelines for the Use of Recycled Water in Tasmania* and current interim planning schemes; and
- clarification of the scope of the waste depot activity in Table C9.1 in accordance with Schedule 2 of the *Environmental Management and Pollution Control Act 1994*.



## **Attenuation Code – provisions for the protection of Airports**

### ***Introduction***

The exhibited draft SPPs included a set of provisions for the protection of airport operations within the Attenuation Code.

The Commission recommended the Attenuation Code be modified to remove the airport provisions and that a separate code be prepared and titled the Safeguarding of Airports Code and for it to be subject to a future amendment after the SPPs have been made. The Commission recommended the Safeguarding of Airports Code be prepared with reference to:

- the National Airports Safeguarding Framework (NASF), including its guidelines A-F;
- the Commonwealth Airports Act 1996 and any relevant regulations (to avoid duplication);
- any approved Airport Master Plans;
- Australian Standards relevant to mitigating impacts from airport noise for sensitive uses; and
- any consequential amendments to other parts of the SPPs.

The Commission indicated that the mapping of airport overlays should be done at a state-wide level.

### ***Discussion***

I have sought further advice from the SPIDC and the Taskforce on the exhibited airport provisions. I note that a variety of alternate codes for the protection of airports were raised with the Commission in the public hearings from airport operators, but that the core provisions of these are generally consistent with those in the exhibited version of the Attenuation Code and similar to those operating in current interim planning schemes.

I accept that the airport provisions are better contained in a separate code to provide the necessary emphasis for the protection of Tasmania's airports. However, I do not accept that the airport provisions, as contained in the exhibited version of the Attenuation Code, require substantial modification and re-exhibition as part of a future amendment following the making of the SPPs.

I am satisfied that the airport provisions are well advanced and discrete in nature and consider that the additional time required to assess them further is unnecessary.

I acknowledge the COAG agreement in place to implement the NASF guidelines and I am satisfied that the exhibited airport provisions adequately address a large proportion of these requirements. I also note that some requirements in the NASF guidelines are not covered by the airport provisions however, these are also not matters currently addressed in interim planning schemes. Any additional provisions to implement the NASF guidelines would require further consideration, consultation and testing to ensure they are necessary, provide appropriate certainty, and deliver the desired outcomes. To this end the Government will liaise with relevant operators and the Commonwealth to ensure that the Code is appropriately amended over time to reflect other aspects of the NASF guidelines.

I consider there is a need to make some modifications to the airport provisions to improve the operation of the code. However, I am satisfied that these modifications are minor and do not require re-exhibition.

I have taken in account advice from the SPIDC, the Taskforce and matters raised at the public hearings in modifying the airport provisions.

I do not consider it necessary for State-based overlay maps to be prepared for the operation of the airport provisions. Overlay maps will need to be based on relevant mapping approved as part of a statutory airport master plan or otherwise adopted by the airport operator for noise and obstacle limitations. Directions for preparing the relevant overlay maps can be provided in the SPPs and further information provided through future guidance material.

I am satisfied that with the modified airport provisions as contained in the Safeguarding of Airports Code, the final SPPs meet the SPPs criteria under section 15 of the Act and do not require re-exhibition.

### ***Direction***

That the final SPPs include modified provisions:

- for the protection of airports as a separate Safeguarding of Airports Code; and
- to clarify how the overlay maps in the code are to be prepared.

## **Environmental Management Zone – permitted pathway for state-reserved land**

### ***Introduction***

The exhibited draft SPPs proposed in the Environmental Management Zone to provide a permitted pathway for use and developments, for which an authority is granted under the *National Parks and Reserved Land Regulations 2009* (NP&RL Regs) or approved by the Director of Lands under the *Crown Lands Act 1976* (CL Act). While not specifically stated in the exhibited draft SPPs, the Environmental Management Zone was only intended for application to public land.

This approach aligns with the general policy intention to not duplicate other assessment processes. It also supports the position that planning authorities should not be responsible for the assessment of use and development on reserved land, in accordance with reserve management plans and the reserve objectives administered under separate legislation by DPIPW.

The exhibited draft SPPs adopted a similar approach to that already operating in a number of Interim Planning Schemes across Tasmania, which defer all assessment of use and development to the managing authorities if located on Crown land whether through a permitted use status, or a discretionary use status but with an Acceptable Solution use standard that is met if a State approval is given.

The Commission recommended a number of modifications to the Environmental Management Zone, including:

- removing the restriction of this zone to public land on the basis that the tenure of land is not a matter that zoning should be guided by; and
- broadened the permitted pathway for use, which operates in conjunction with a new standard for 'Use of State-reserved land' which sets out an Acceptable Solution that is based on an approval or authority granted by a managing authority under a number of acts and regulations.

### ***Discussion***

I have sought further advice from the SPIDC and the Taskforce on the Commission's recommended modifications to the Environmental Management Zone. Further consideration of this matter has identified that the Acceptable Solution in the new standard as proposed by the Commission would introduce a range of other Acts and legislation, beyond developments approved under the NP&RL Regs and CL Act. This would introduce other authorities that do not utilise a similar process to that of the Reserved Activity Assessment process and in situations where there is no equivalent management planning process in place by which an authority under the regulations is granted. This goes beyond the scope originally intended.

The Taskforce maintains its position that the Zone should only apply to public land as the use of the zone on private land requires unique circumstances, and the Zone provisions were drafted accordingly and intentionally. The Taskforce specifically supports providing a permitted pathway for use on state-reserved land, but not the Commission's proposed Acceptable Solution which introduces a range of other acts and legislation, beyond the NP&RL Regs and CL Act. Authorities granted under all other Acts and regulations do not utilise a similar process to that of the Reserved Activity Assessment process (by which an authority under the NP&RL Regs is granted by Parks and Wildlife Services).

I consider it necessary to maintain the scope of the permitted pathway for use on state-reserved land in the Environmental Management Zone to that as originally set out in the draft SPPs as exhibited. However in response to matters raised during the hearings the Government agrees that a review of the RAA (Reserve Activity Assessment) process be undertaken.

I accept the Commission's recommendation to allow the Environmental Management Zone to be applied to private land where appropriate but note that this does not require any specific redrafting.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act and do not require re-exhibition.

### ***Direction***

That the permitted pathway for use in the Environmental Zone provisions on state-reserved land be retained in the final SPPs, as originally exhibited in the draft SPPs.

## **Agriculture Zone – multiple dwellings**

### ***Introduction***

The exhibited draft SPPs made specific provision for multiple dwellings in the Agriculture Zone to accommodate workers or farm managers in separate dwellings. These would be subject to strict controls to ensure that they are necessary for the agricultural activity.

The Commission has recommended deleting this specific provision for multiple dwellings as a discretionary use in the Agriculture Zone.

### ***Discussion***

I have sought advice from the SPIDC and the Taskforce and I am satisfied there is a need to provide for the consideration of multiple dwellings in the Agriculture Zone where necessary for the agricultural activity to accommodate workers or farm managers. I am also satisfied that provisions of the Agriculture Zone are appropriate for the consideration of legitimate uses to support agricultural uses.

I am satisfied that with these modifications relating to multiple dwellings in the Agriculture Zone, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That specific provision for multiple dwellings as a discretionary use in the Agriculture Zone be retained in the final SPPs, as originally exhibited in the draft SPPs.

## **Scenic Protection Code – application to Low Density Residential Zone**

### ***Introduction***

The exhibited draft SPPs proposed to restrict the application of the Scenic Protection Code to certain zones and specifically excluded the Low Density Residential Zone on the basis that it might undermine the primary purpose of the zone for residential development.

The Commission recommended extending the application of the Scenic Protection Code to the Low Density Residential Zone noting that some existing Interim Planning Schemes already apply such controls over this type of zone.

### ***Discussion***

I have sought further advice from the SPIDC and the Taskforce on the application of the Scenic Protection Code. I accept the Taskforce's concerns about the potential for the purpose of the Low Density Residential Zone to be undermined if the Scenic Protection Code is applied inappropriately, and the difficulty of protecting scenic values when the strategic decision has been made to zone the land for residential purposes. The Low Density Residential Zone provides for single dwellings as No Permit Required and minimum lot sizes of 1500m<sup>2</sup> (i.e. equivalent to 2-3 normal lots).

I acknowledge that some Interim Planning Schemes currently apply a Scenic Protection Code, or equivalent, to some areas of Low Density Residential Zone, however I am concerned with the contradictory message that this sends to the broader community.

I am satisfied that the exclusion of the Low Density Residential Zone should be retained in the Scenic Protection Code in the final SPPs.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That specific provisions that exclude the Low Density Residential Zone from applying under the Scenic Protection Code be retained in the final SPPs, as originally exhibited in the draft SPPs.

## **Coastal Hazard, Riverine Inundation Hazard, Landslip Hazard and Potentially Contaminated Land Codes**

### ***Introduction***

The exhibited draft SPPs included codes for Coastal Erosion, Coastal Inundation, Riverine Inundation, and Landslip Hazards. These codes were based on the relevant hazard areas being mapped. The exhibited draft SPPs also included a Potentially Contaminated Land Code.

The Coastal Inundation Hazard Code included a coastal inundation investigation area. A similar investigation area was erroneously omitted from the Coastal Erosion Hazard Code.

The Commission recommended a number of modifications to clarify the operation of the codes, in addition to:

- providing 'call-in' powers where the hazard might be evident on land that has not been mapped; and
- renaming the Riverine Inundation Hazard Code as the Flood-Prone Areas Hazard Code

Despite submissions from the PPU at the public hearings in respect of the omission of the investigation area in the Coastal Erosion Hazard Code, the Commission did not recommend including this aspect.

### ***Discussion***

I accept the Commission's recommendations on the majority of the modifications to the Coastal Erosion Hazard Code, Coastal Inundation Hazard Code, Riverine Inundation Hazard Code, Landslip Hazard Code, and the Potentially Contaminated Land Code, including the renaming of the Riverine Inundation Hazard Code, for the reasons outlined in its report.

I have sought advice from the SPIDC and the Taskforce on the Commission's recommended 'call-in' powers and consider there is a need for revisions to provide that the planning authority must be of

the opinion that a risk exists rather than that it must be an 'objective fact' to avoid creating a legal issue that provides for this 'fact' to be contested.

Based on advice from the Taskforce, I also consider it necessary to make some further modifications to the codes, specifically to:

- remove the need for a suitably qualified person to demonstrate an appropriate level of indemnity insurance in preparing a hazard report, as the appropriateness, or otherwise, of any indemnity insurance is not a planning matter; and
- refer to "building area" instead of "an area" in the Commission's modified clause C11.7.1 A1(a) in the Coastal Inundation Hazard Code to clarify the operation of the standard.

The Coastal Erosion Hazard Code must also include provisions relating to a coastal erosion investigation area as this is consistent with the Government's coastal hazards policy framework.

Further minor modifications are also necessary to improve the clarity of the codes and provide corrections to issues outlined in the further information provided by the Commission under section 26(3) of the Act.

I am satisfied that with these modifications to the relevant codes, the final SPPs meet the SPPs criteria under section 15 of the Act and do not require re-exhibition.

### ***Direction***

That the final SPPs include a modified Coastal Erosion Hazard Code, Coastal Inundation Hazard Code, Flood-Prone Areas Code, Landslip Hazard Code and Potentially Contaminated Land Code as per the Commission's recommendations, with:

- the inclusion of revised provisions to manage the 'call-in' powers under the codes;
- the deletion of the requirements for a suitability qualified person to demonstrate an appropriate level of indemnity insurance in preparing a hazard report; and
- minor modifications to clarify the operation of the codes.

### **Subdivision standards – vehicular access requirements**

The exhibited draft SPPs propose the Parking and Sustainable Transport Code and the Road and Railway Assets Code to address all access requirements for development, however there is no specific standard in zones relating to requirements of vehicular access for subdivisions.

The Commission within their modifications to the SPPs recommended a new standard relating to the requirements of vehicular access for subdivisions in a number of zones, excluding the Landscape Conservation and Port and Marine Zone. The standard effectively makes all subdivision Discretionary as there is no Acceptable Solution.

## ***Discussion***

I have sought further advice from the SPIDC and the Taskforce on the Commission's recommended standard. The Taskforce, while acknowledging the lack of specific requirements for vehicular access in the subdivision standards, disagreed with the Commission's recommended approach of making all subdivision Discretionary for the assessment of vehicular access. The Taskforce recommends the inclusion of an Acceptable Solution allowing for a permitted subdivision if in accordance with the requirements of the relevant road authority.

The Taskforce further recommends inclusion of the same standard in the Landscape Conservation Zone and the Port and Marine Zone. This approach will allow for a permitted pathway for subdivisions, noting the *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGMBP) allows for a permitted pathway for subdivisions in planning schemes. The Commission has confirmed that the exclusion of the standard from the Landscape Conservation and Port and Marine Zones was an error.

I am therefore satisfied that further modifications are required to the new standard, as recommended to me by the Taskforce. Subject to these modifications I am also satisfied with the Commission's recommendation that this new standard should also apply to the Landscape Conservation and Port and Marine zones.

I am satisfied that these modifications to provisions in the SPPs adequately address the concerns of the community and relevant industry groups and therefore do not require re-exhibition.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

## ***Direction***

That the final SPPs include modified provisions, which:

- adopt the Commission's recommended new standard relating to requirements of vehicular access for subdivisions, if in accordance with the requirements of the relevant road authority in the relevant zones, with refinements as recommended by the Taskforce to ensure that the Acceptable Solution allows for a permitted pathway; and
- introduce the above standard in the Landscape Conservation and Port and Marine zones.

## **Zone standards for water supply connection**

### ***Introduction***

The Rural Living Zone in the exhibited draft SPPs provides for larger lots that may not be serviced by a reticulated water supply. There are also a number of other zones that provide for circumstances where lots may not be serviced. These include the Low Density Residential Zone, Village Zone, Local Business Zone, Light Industrial Zone, General Industrial Zone, Major Tourism Zone, Port and Marine Zone, Community Purpose Zone, and Recreation Zone.

The Commission recommended a revised water supply servicing standard to address issues raised by TasWater at the public hearings which requires new lots be connected to a full water supply, or have a frontage that is within 30m of an existing full or limited water supply service.

### ***Discussion***

I accept that it is reasonable for lots to be connected to an existing reticulated water supply system if the area is already serviced. However, the Commission's recommended approach may create an expectation that all lots in these zones will be serviced.

I have sought advice from the SPIDC and the Taskforce on the matter and consider that an alternate approach is necessary by requiring the necessary connection if the lot is within 30m of an existing reticulated water supply service. The standard should also provide flexibility to take into account advice from TasWater if a connection is unable to be provided. This is consistent with TasWater's role as a referral entity under the *Water and Sewerage Industry Act 2008*.

I am satisfied that with the modified water supply servicing standards, the final SPPs meet the SPPs criteria under section 15 of the Act and do not require re-exhibition.

### ***Direction***

That the final SPPs include modified water supply service standard to provide clarity for when infrastructure is required at the subdivision stage in the Low Density Residential Zone, Rural Living Zone, Village Zone, Local Business Zone, Light Industrial Zone, General Industrial Zone, Major Tourism Zone, Port and Marine Zone, Community Purpose Zone, and Recreation Zone.

## **References to Utilities**

### ***Introduction***

The exhibited draft SPPs referred inconsistently to 'Utilities' and 'public utilities' in the lot design standards in some zones.

The Commission did not recommend any changes to the inconsistent references to 'Utilities' and 'public utilities' in A1 of the Lot design standard in the zones.

### ***Discussion***

I have sought further advice from the Taskforce which has recommended that the references to utilities in the lot design standards in the zones should consistently refer to 'Utilities' instead of 'public utilities', noting there are some private entities that provide utilities, e.g. TasGas.

I am satisfied that the provisions of the draft SPPs should be modified, so that reference to 'Utilities' in the subject zone standards are consistently applied in the relevant zone standards. I am also satisfied these modifications are minor in nature, and therefore do not require re-exhibition.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.



### ***Direction***

That the final SPPs include modified provisions that replace reference to ‘public utilities’ with ‘Utilities’ in the relevant zone standards.

## **Macquarie Point Site – special provision for contaminated land**

### ***Introduction***

The *Sullivans Cove Planning Scheme 1997* (SCPS) has recently been amended by the Commission to provide for provisions that reflect the requirements of the *Macquarie Point Development Corporation Act 2012* (MPDC Act), which includes section 39F that prescribes a specific process for certifying remediation of contaminated land on the site.

### ***Discussion***

I have sought advice from the SPIDC and the Macquarie Point Development Corporation, and from the PPU regarding the provisions of the Potentially Contaminated Land Code in the draft SPPs.

The recently amended provisions of the SCPS and section 39F of the MPDC Act differ to those in the Potentially Contaminated Land Code.

I am satisfied that the provisions in the draft SPPs should be modified to ensure remediation works on the site can be undertaken in accordance with the requirements of section 39F of the MPDC Act and the recently approved amendments to the SCPS.

I am satisfied that these modifications to provisions in the SPPs reflect legislated provisions that specifically address this matter and also adequately address the concerns of the community and relevant industry groups and therefore do not require re-exhibition.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That the final SPPs include modified provisions, as referred to above.

## **Resource Processing – small-scale food and beverage production**

### ***Introduction***

The exhibited draft SPPs define the Resource Processing use class as:

*use of land for treating, processing or packing plant or animal resources. Examples include an abattoir, animal saleyard, cheese factory, fish processing, milk processing, winery, brewery, cidery, distillery, and sawmilling.*

Technically any manufacture of food, irrespective of the scale, would be classified as Resource Processing if not ancillary to the Food Services use class.

The exhibited draft SPPs provide for small scale breweries, cideries and distilleries as discretionary uses by qualification of the Resource Processing use class in a number of zones and then relying on the discretionary use standards in those zones and the requirements of the Attenuation Code to manage the impacts of larger manufacturing operations.

### ***Discussion***

A specific case has recently been brought to my attention of a small scale confectionary manufacturer which is unable to be established in an existing commercial kitchen by virtue of the Resource Processing use class being prohibited in the Commercial Zone under a current interim planning scheme.

The exhibited draft SPPs established a clear policy to treat small scale breweries, cideries and distilleries differently in terms of use. I understand this approach was strongly supported by local councils and industries through the Commission hearing process. I consider it appropriate to apply this approach to similarly scaled food production operations that represent very low risks to amenity but would be prohibited in some zones by virtue of being categorised as Resource Processing. I consider it reasonable that the same qualifications for beverage manufacture should apply to these smaller scale food manufacturers.

I am satisfied that with the modified qualification for the Resource Processing use class, the final SPPs will meet the SPPs criteria under section 15 of the Act and they do not require re-exhibition.

### ***Direction***

That the final SPPs include modifications to provide for “food and beverage production” as a discretionary qualification for the Resource Processing use class in the Urban Mixed Use, Local Business, General Business, Central Business, Commercial Zone and Major Tourism Zones.

## **Electricity Transmission Infrastructure Protection Code – airborne contaminants**

### ***Introduction***

The exhibited draft SPPs included two standards for the management of “airborne contaminants” from specific uses in proximity to an electricity transmission corridor and a substation facility.

The Commission recommended changing the references to “airborne contaminants” to “dust” as it was considered this adequately covered the issue.

### ***Discussion***

I understand that the Commission has recommended that the relevant provisions refer to “dust” instead of “airborne contaminants” in an attempt to clarify the scope of the standards. While I accept that the word “dust” covers a range of airborne particulates by way of the Macquarie Dictionary definition, which includes “a cloud of finely powdered earth or other matter in the air”, I

am concerned that most people would not appreciate that the scope of provision was meant to apply to all 'airborne particulates'.

I have sought advice from TasNetworks in considering modified wording for the provisions in the code. I consider it necessary to refer to "dust or other airborne particulates" to clarify the scope of the standards.

I am satisfied that with these modified provisions, the final SPPs meet the SPPs criteria under section 15 of the Act and they do not require re-exhibition.

#### ***Direction***

That the final SPPs are modified to refer to "dust or other airborne particulates" in clauses C4.5.2 and C4.5.3 and Table C4.1.

### **Bushfire Prone Areas Code**

#### ***Introduction***

The exhibited draft SPPs included a Bushfire-Prone Areas Code consistent with *Interim Planning Directive 1 – Bushfire-Prone Areas Code* (IPD1). The Commission undertook an assessment of the Bushfire-Prone Areas Code in the draft SPPs in parallel to IPD1.

The Commission recommended various modifications to the Bushfire-Prone Areas Code to improve the operation of the provisions. The Commission advised of some further modifications to the code in their further information under section 26(3) of Act. These include a range of other modifications to improve the operation of the code and to align with the future Director's Determination under the Building Regulations.

#### ***Discussion***

I accept the Commission's recommended modifications to the Bushfire-Prone Areas Code for the reasons given in their report and the further information provided in accordance with section 26(3) of the Act.

I am satisfied that with the modified Bushfire-Prone Areas Code, the final SPPs meet the SPPs criteria under section 15 of the Act and they do not require re-exhibition.

#### ***Direction***

That the final SPPs include the Commission's recommended modifications to the Bushfire-Prone Areas Code.

## **Overlay Maps**

### ***Introduction***

In the Requirements for Local Provisions Schedules clauses, the exhibited draft SPPs proposed various directions for overlay maps to be produced in accordance with particular base maps as at an unspecified date. Such directions were included for the Electricity Transmission Infrastructure Protection Code, Natural Assets Code, Coastal Erosion Hazard Code, Coastal Inundation Hazard Code and the Landslip Hazard Code.

The Commission recommended minor modifications to the provisions relating to overlay maps, mainly to improve their operation.

### ***Discussion***

I accept the Commission's recommendation to modify wording of the provisions specifying how the overlay maps are to be produced. This will improve their operation.

However, I am also satisfied that all references to a specified date for the base mapping should be removed. It is unnecessary to specify a date as the mapping will be that provided by the relevant agency, and such information can be provided in future guideline documentation.

Consequential modifications are necessary to deliver the revised approach and scope for mapping the overlays for the modified Natural Assets Code. Mapping of priority vegetation areas will need to be based on the current TASVEG and Natural Values Atlas data. The modified provisions also need to provide the scope for the mapping of native vegetation of local significance.

I accept that the mapping produced by the Derwent Estuary Program should inform the mapping for future coastal refugia areas and for waterway and coastal protection areas, but the directions should not require planning authorities to strictly adhere to such mapping as it has not been prepared as a statutory overlay map. Again, such mapping information can be appropriately managed through further guidance material on the application of the code.

I am satisfied that these modifications to provisions in the SPPs do not require re-exhibition.

I am also satisfied that with these modifications, the final SPPs meet the SPPs criteria under section 15 of the Act.

### ***Direction***

That the final SPPs include modified provisions relating to overlay maps, as set out above.

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