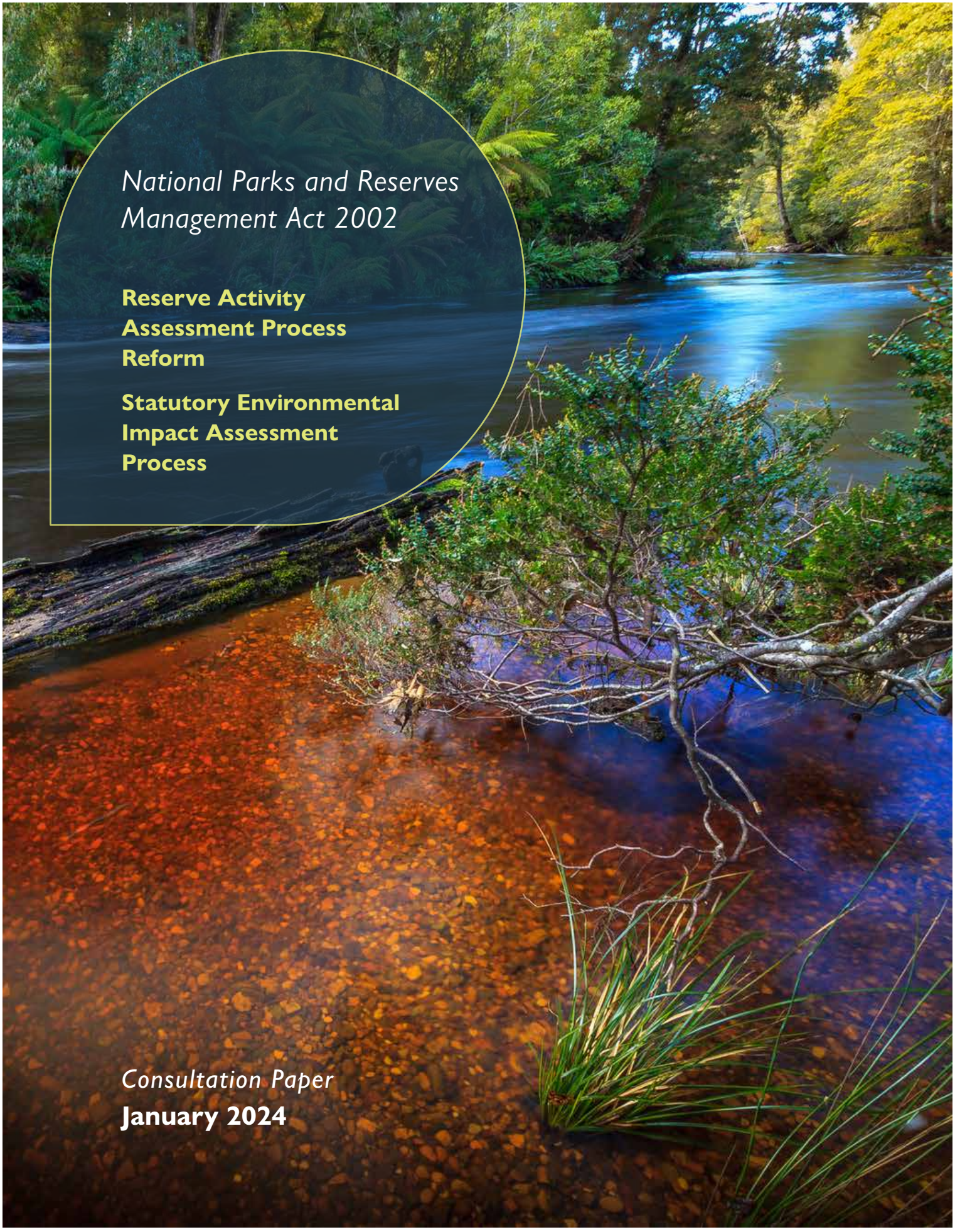


National Parks and Reserves Management Act 2002

Reserve Activity Assessment Process Reform

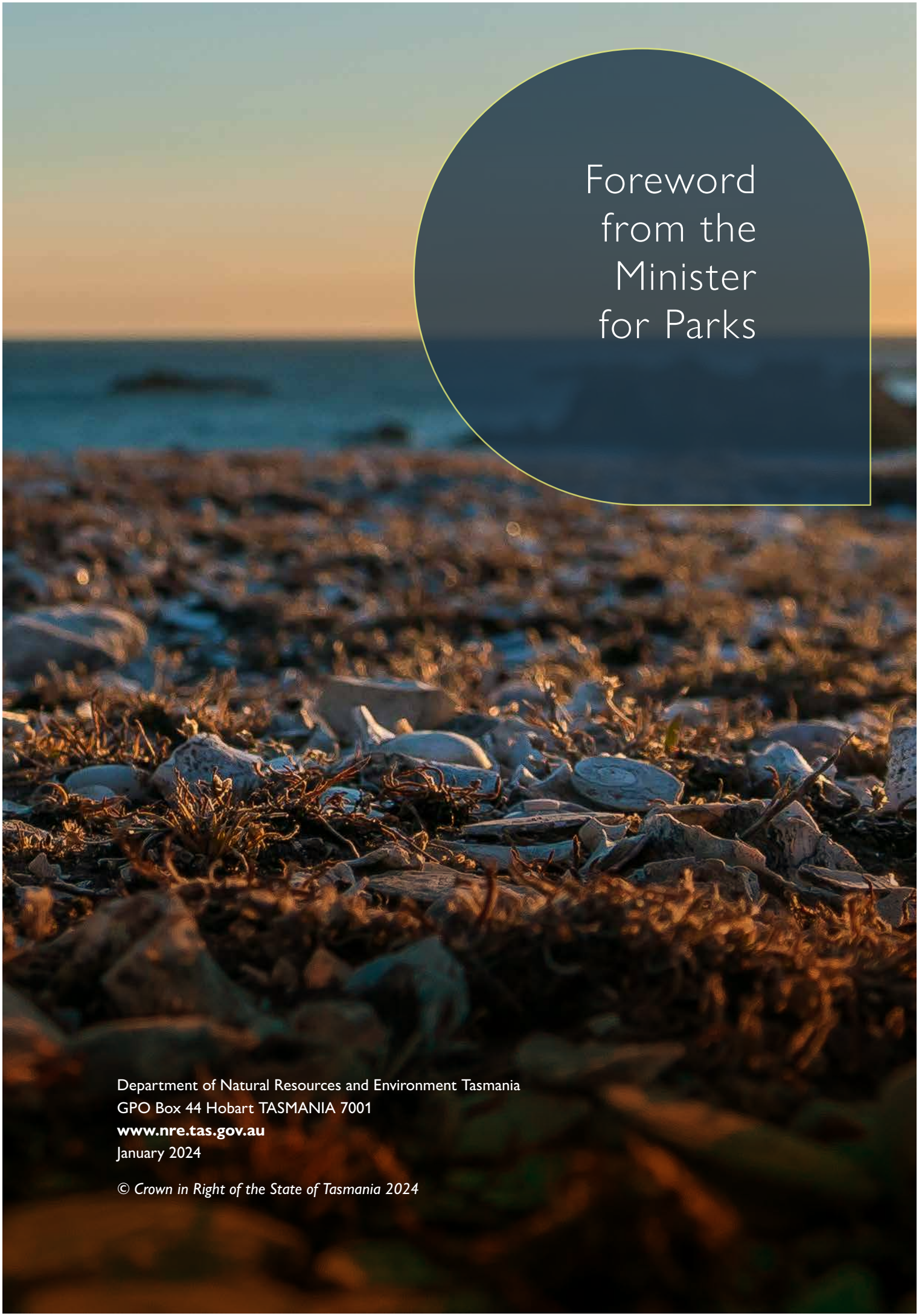
Statutory Environmental Impact Assessment Process

Consultation Paper

January 2024

Department of
Natural Resources and Environment Tasmania

Tasmanian Government



Foreword from the Minister for Parks

Department of Natural Resources and Environment Tasmania
GPO Box 44 Hobart TASMANIA 7001
www.nre.tas.gov.au
January 2024

I am pleased to release the '*National Parks and Reserves Management Act 2002* – Reserve Activity Assessment Process Reform – Statutory Environmental Impact Assessment Process - Consultation Paper' as part of the Reserve Activity Assessment (RAA) Process Reform.

Implemented in 2005, the current RAA process is underpinned by an extensive policy-based framework and is used to assess potential environmental impacts of use or developments on reserves managed by the Tasmania Parks and Wildlife Service (PWS). During 2019, PWS conducted a review of the RAA process and implemented a range of amendments that has delivered more consistent and accountable assessment outcomes.

This next stage of the reform will be to build on these improvements and ensure greater transparency along with independent decision making. To achieve this, the Tasmanian Government intends to deliver a dedicated statutory environmental impact assessment process within the *National Parks and Reserves Management Act 2002 (NPRMA)*.

The Government intends to draft amendments to the NPRMA to provide for the following:

- A statutory environmental impact assessment process for proposed use or development on reserved land that meet the eligibility criteria.
- An independent and transparent assessment process and accountable decision making on use or development proposals.
- Cost recovery for assessments.
- Removal of duplication with assessment processes under the *Land Use Planning and Approvals Act 1993*.
- Public access to copies of leases and licences issued over reserves through a Head of Power to publish active leases and licenses issued on reserves.
- Additional reserve management planning processes.

Through these reforms we will deliver:

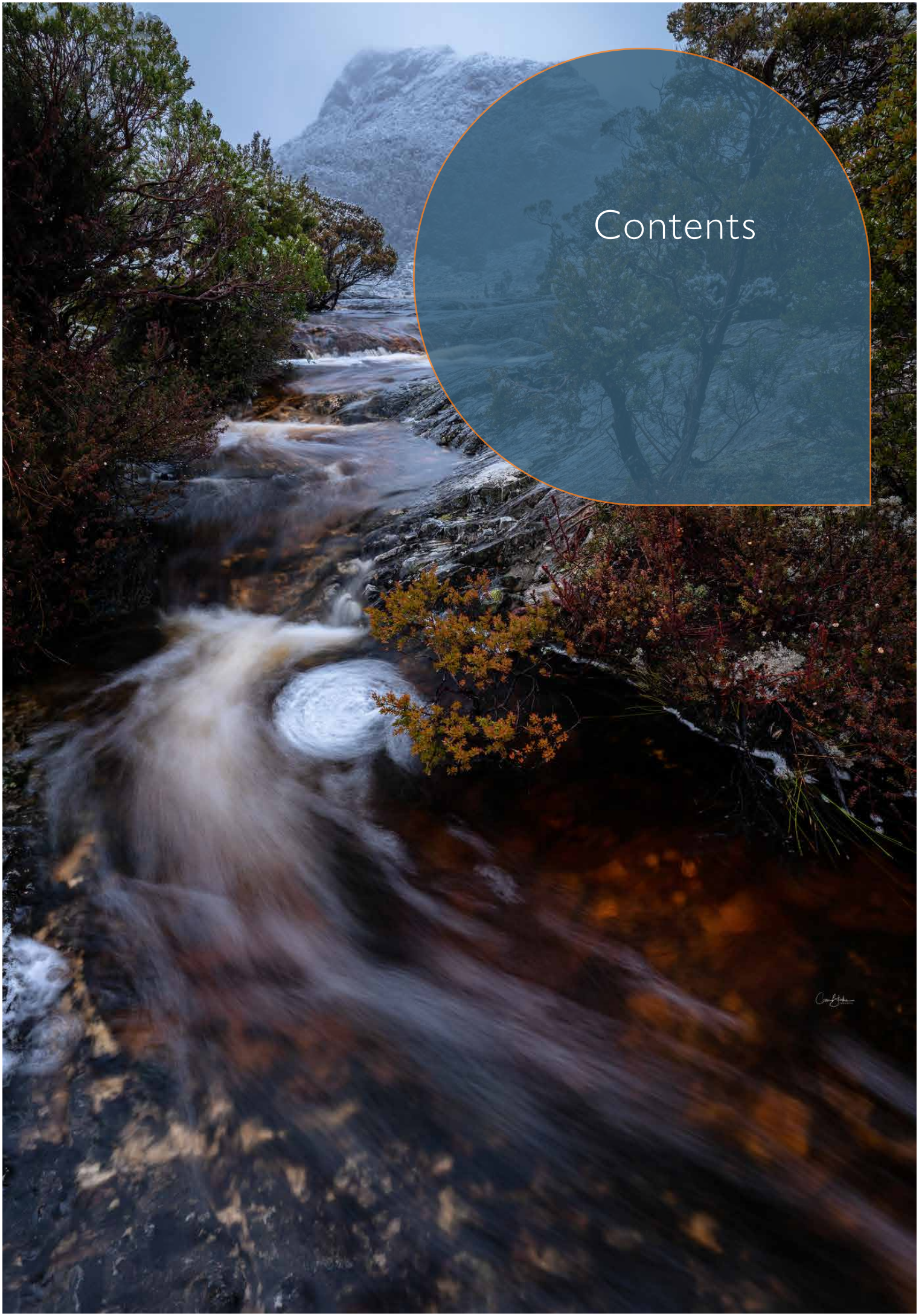
- independent assessment and decision making;
- more efficient assessment processes by reducing regulatory and administrative duplication;
- greater understanding and transparency of the process with key elements being enshrined in legislation;
- easier public access to lease and licence documentation; and
- agile and responsive reserve management planning.

In addition to seeking written feedback on this Paper, there has already been preliminary engagement with key stakeholders. This engagement will continue as part of this next phase with important feedback from this process used to inform the drafting of the legislative amendments. It is anticipated that a draft Bill will be released for further consultation in late 2024.

The Tasmanian Government remains committed to continuous improvement through increased transparency and a more robust process, with these reforms designed to deliver on those important commitments.

Hon Nick Duigan MP
Minister for Parks

The Department of Natural Resources and Environment Tasmania acknowledges and pays respect to Tasmanian Aboriginal people as the traditional and original owners and continuing custodians of this land, and acknowledges Elders past, present and emerging.



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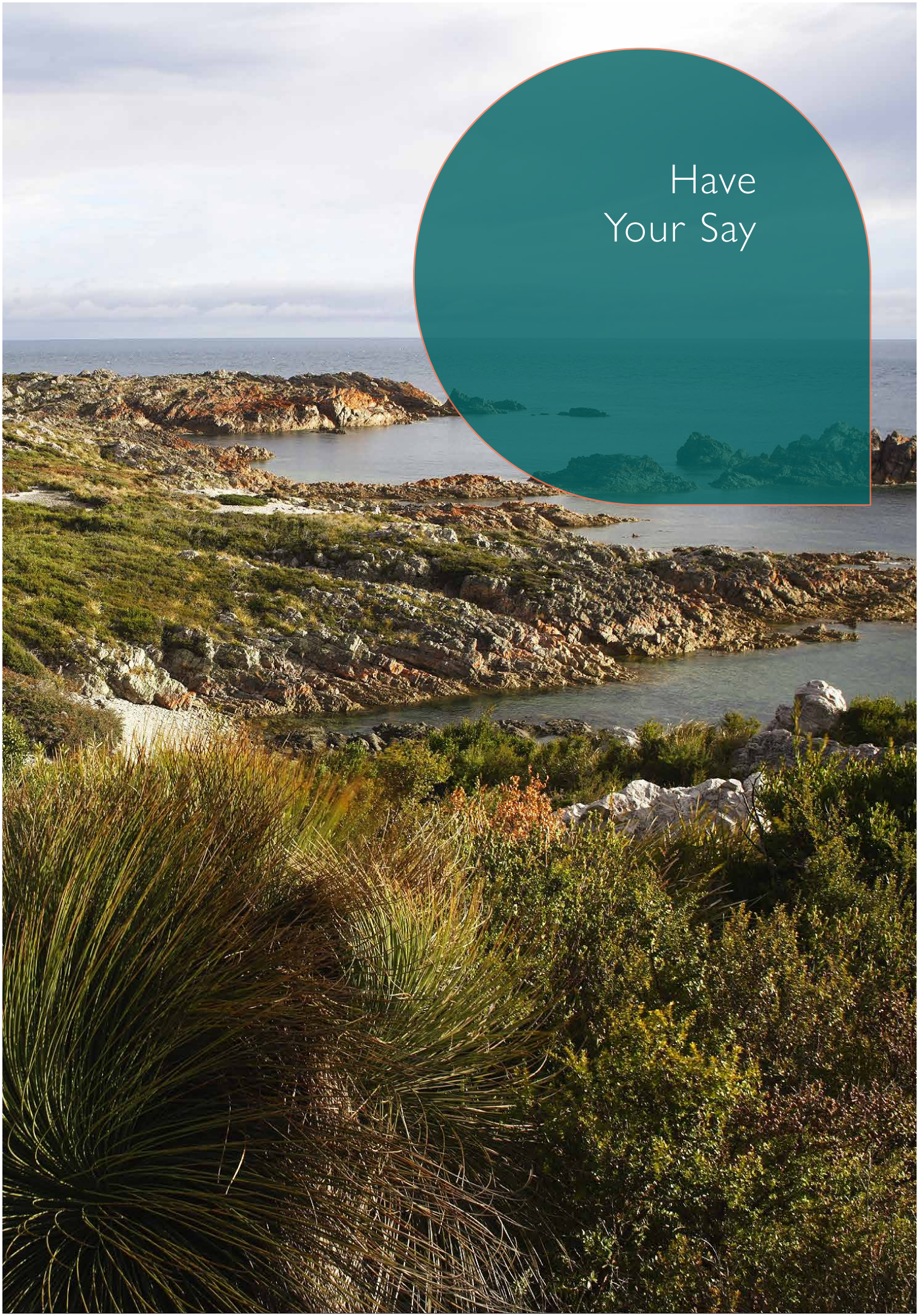

Have
Your Say

This Consultation Paper (Paper) seeks public submissions on a proposal to develop a statutory assessment process to consider proposed use or development on reserve land.

The Tasmanian Government announced in September 2021 that amendments to the *National Parks and Reserves Management Act 2002* (NPRMA) would be undertaken to establish a statutory assessment process as a means of increasing transparency and independent decision making.

The NPRMA is the principal Act under which national parks and reserved land is managed. The NPRMA is one act in a suite of legislation, including the *Land Use Planning and Approvals Act 1993* (LUPAA), that sits within the Resource Management and Planning System.

The Minister for Parks and the Director of National Parks and Wildlife have decision making responsibilities in accordance with the requirements of the NPRMA for reserved land that is managed by the Tasmania Parks and Wildlife Service.

Currently, to determine whether any proposed use or development is consistent with the requirements of the NPRMA and the Resource Management and Planning System's objectives, a Reserve Activity Assessment (RAA) is undertaken. Although applied to support decision making under the NPRMA, the RAA process is a non-statutory, or administrative, assessment process.

The current RAA process is underpinned by an extensive policy-based framework and is a rigorous and effective process of assessment that has functioned well over many years, having assessed hundreds of proposed activities.

During 2019, PWS conducted a review of the RAA process and made a range of changes that has delivered more consistent and accountable assessment outcomes. This next stage of the RAA review will be to build on these improvements and ensure greater transparency along with independent decision making by incorporating the assessment of significant proposals under the RAA process into a statutory process under the NPRMA.

The proposed changes to the RAA process and amendments to the NPRMA are intended to provide greater confidence to both proponents and the broader community that complex, and ecologically and culturally significant proposals will receive fair, objective and transparent consideration.

This Paper is structured around the key phases of an assessment process and presents information on the corresponding amendments to the NPRMA that are proposed to establish a statutory assessment process including:

- The criteria that would determine whether a proposed use or development on reserve land requires assessment under the proposed statutory assessment process.
- Establishment of an Independent Assessment Panel.
- Transparency of process and decision making.
- Appeal rights.
- Recovery of costs.

Further information is available on the RAA Reform webpage:
https://parks.tas.gov.au/about-us/managing-our-parks-and-reserves/reserve-activity-assessment

How to make a submission

Submissions can be made by completing and submitting the form at the following address: **https//nre.tas.gov.au/conservation/reserve-activity-assessment-reform/have-your-say-on-reserve-activity-assessment-reform**

If attachments are necessary, please provide them in Microsoft Word format (or equivalent) or pdf.

The Government cannot take responsibility for the accessibility of documents that are provided by third parties.

Submissions may also be emailed to: **RAAReform@nre.tas.gov.au**

Submissions must be received by **11.59 PM on 8 March 2024.**

Other than indicated below, submissions will be treated as public information and will be published on the Department of Natural Resources and Environment Tasmania (NRE Tas)'s website.

No personal information other than an individual's name or the organisation making a submission will be published.

Accessibility of submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring that government information is accessible and easily understood by people with diverse communication needs.

Please contact NRE Tas at **RAAReform@nre.tas.gov.au** if you require assistance with making a submission.

Important information

Confidentiality

Your name (or name of organisation) will be published unless you request otherwise.

If you would like your submission treated as confidential, whether in whole or in part, place the confidential comments into the *'Confidential comments'* box on the submission form. Your submission should also explain the reasons why you wish for all or part of the submission to remain confidential.

In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), NRE Tas will treat the submission as public.

Copyright in submissions remains with the author(s), not with the Tasmanian Government.

NRE Tas will not publish, in whole or in part, submissions containing defamatory or offensive material. If your submission includes information that could enable the identification of other individuals, then either all or parts of the submission will not be published.

Personal Information

Personal information collected from you will be used by NRE Tas for the purpose of acknowledging and publishing your submission. Your submission may be published unless it is marked 'confidential'. Personal information will be managed in accordance with the *Personal Information Protection Act 2004*.

Right to Information Act 2009

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish for all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to disclose the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide your views on the disclosure of the information.

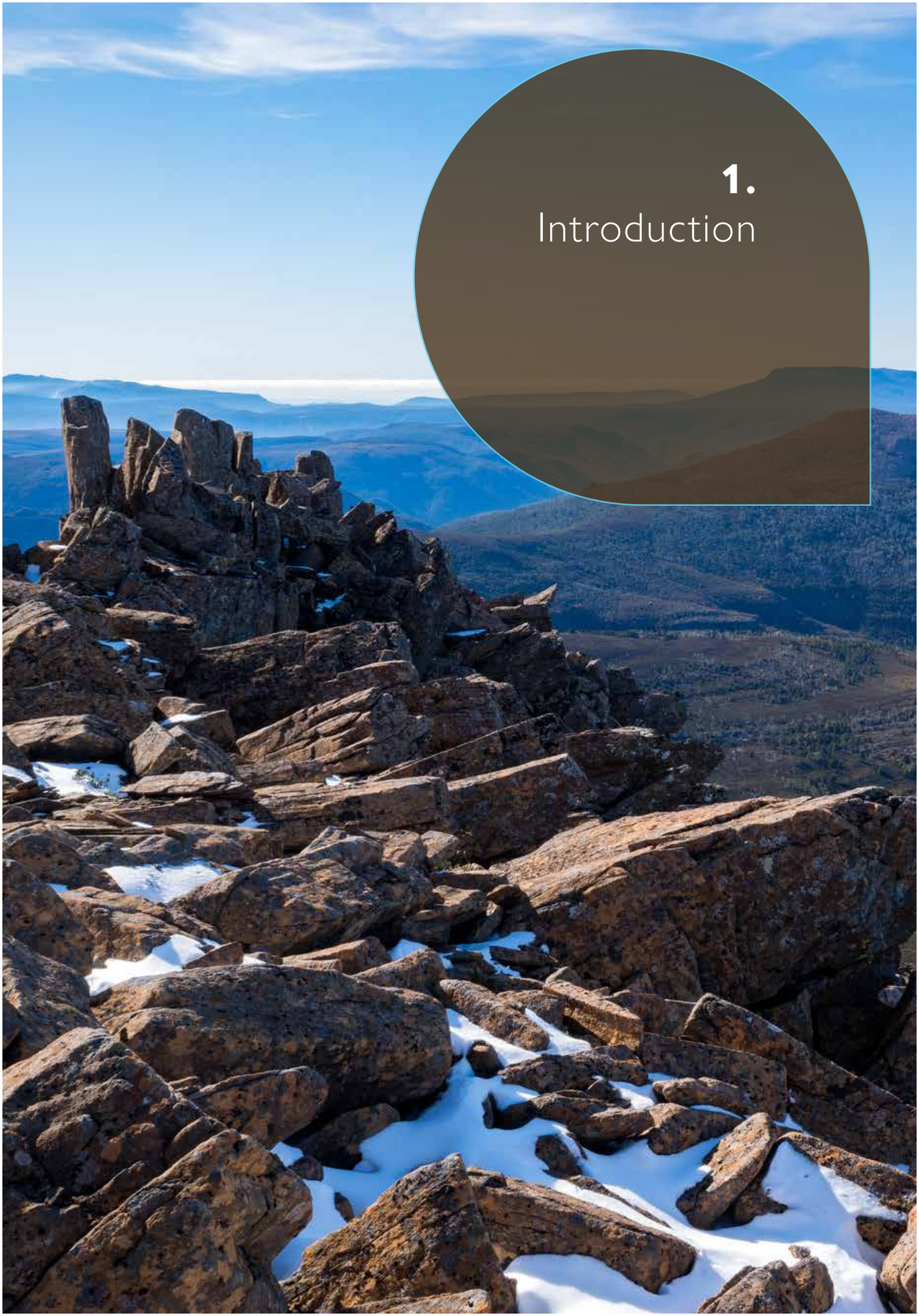
Next Steps

The submissions received as part of this Paper will be used to inform the drafting of the legislative amendments, which will be released in the form of a draft Bill for further consultation. The draft Bill will contain the finer technical and legal detail.

The intention is to release the draft Bill for comment in mid 2024, with a view to its introduction in Parliament in late 2024.

Timeline

Release and comment on this Paper	**January - 8 March 2024**
Summary Report on comments and issues identified through comment on this Paper and by other stakeholders.	**May 2024**
Public consultation on the draft Bill	**Mid 2024**
Delivery of the **draft Bill** to the Government	**Late 2024**



1.
Introduction

The Reserve Activity Assessment (RAA) process used by the Tasmania Parks and Wildlife Service (PWS) is equivalent to an environmental impact assessment process. PWS has adopted the term 'RAA process' to clearly identify assessment processes for proposals on reserved land and waters managed by PWS under the *National Parks and Reserves Management Act 2002* (NPRMA). Reserved land includes national parks, conservation areas, nature reserves, nature recreation areas, state reserves, regional reserves and marine reserves.

The RAA process, while non-statutory, is intended to ensure that approval and conditioning of proposals is consistent with reserve management plans, reserve management objectives and the Resource Management and Planning System objectives, which relate to sustainable development.

The Tasmanian Government announced in September 2021 that amendments to the NPRMA would be undertaken to establish a statutory assessment process as a means of increasing transparency and independent decision making.

This Paper, and the consultation process that accompanies it, is designed to facilitate a conversation with interested parties, including Tasmanian Aboriginal people, non-government organisations, local government, reserve visitors, tourism operators and proponents, and the broader Tasmanian community. It summarises the key elements of the Government's proposed approach to establishing a legislated environmental impact assessment process and seeks feedback to assist in the development of a draft Bill to amend the NPRMA.

1.1 Why create a new statutory impact assessment process?

1.1 Why create a new statutory impact assessment process?

A statutory use and development assessment process tailored to the management of the reserve estate that provides for certainty, statutory timeframes, public representation, independent decision making, and review opportunities is essential.

Reserves managed by PWS are subject to the provisions of LUPAA which is the key legislation in Tasmania relating to use and development of land. Proposals under LUPAA are assessed against the relevant local government planning scheme. Planning schemes regulate the use, development, protection and conservation of land within a specific geographical area by dividing land into specific zones and setting out objectives and development standards for land uses within each zone. For each zone, planning schemes identify land uses and developments that are exempt, permitted, discretionary or prohibited.

In December 2015, changes to LUPAA provided for the establishment of a single planning scheme for Tasmania, known as the Tasmanian Planning Scheme. Changes to the Tasmanian Planning Scheme allowed the Director of National Parks and Wildlife (Director NPW) to authorise use and development (which is currently assessed through the RAA process) on reserves managed by PWS which could then be deemed a 'permitted' activity under LUPAA. Councils, as the relevant planning authority under LUPAA, must approve permitted activities, provided they meet relevant development standards. A development application for a permitted use is not open for public comment, however conditions may be imposed under the planning permit.

While significant proposals subject to the RAA process are released for public feedback as a matter of policy, they are not subject to the same statutory requirements under LUPAA for public advertising and representations as 'discretionary' activities.

The intent of the proposed amendments is to create a statutory process under the NPRMA for significant proposals to ensure that those proposals are subject to a statutory assessment

process that provides for similar processes to that required for discretionary use and development under the LUPAA, including a public representation process.

Approval of significant proposals considered through the RAA process, while informed by expert advice, is ultimately a matter for the Director and, in considering the granting of licence and leases subsequent to that assessment, the Minister. In some instances, significant proposals are initiated by PWS.

The proposed amendments will establish an Independent Assessment Panel (the Panel) for significant proposals. The Panel will determine the matters that will be required to be considered in the assessment and will function as an independent decision maker. Importantly, this will ensure that significant proposals initiated by the PWS will be subject to independent assessment.

The Panel will be an independent body, prescribed in legislation, convened to assess any referred proposal. It will ensure independent review and oversight. It is proposed that the Panel will be established by the Tasmanian Planning Commission. The Panel will consist of members with qualifications and expertise relevant to the assessment process.

In addition to the establishment of zones, planning schemes also apply codes. A code provides controls for dealing with land use issues. An example of a code that applies across reserved land is the Bushfire Prone Areas Code, which is intended to ensure that use and development is appropriately designed, located, serviced, and constructed, to reduce the risk to human life and property, and the cost to the community, caused by bushfires.

Codes have been drafted to regulate the general use of land and may not always be a good fit for a proposal on reserved land, which has specific management objectives. Compliance with the Bush Fire Areas Code for example, may require clearing of vegetation that may not be appropriate within reserved land. Another example is the Parking and Sustainable Transport Code, which may apply to proposals remote from vehicle access.

Where a proposal on reserved land does not satisfy the requirements of a code, that part of the proposal is then subject to assessment under the LUPAA as a discretionary activity. Under the proposed statutory assessment process, this outcome would lead to duplication, whereby a proposal would be considered in its entirety through the statutory RAA process under the NPRMA while discrete elements would be considered as a discretionary use under the LUPAA.

The proposed amendments will remove the application of the planning scheme codes to proposals assessed through this process. The Panel may consider which requirements of any code should be considered in the assessment in consultation with the relevant councils. The intention is that proposals approved under the statutory process would not require a planning permit under LUPAA.

1.2 Current RAA process

PWS manages 806 reserves covering approximately 2.86 million hectares, or around 40% of Tasmania's land area. These reserves have been declared under the Nature Conservation Act 2002 (NCA) which sets out the values and purposes of each reserve class and how they are managed under the NPRMA according to the management objectives for each class of reserve.

The reserves have significant values that are protected under a range of legislation, including the NPRMA. These values include sites/areas of cultural significance, biological diversity, geological diversity, water quality, and areas of high wilderness quality.

In tandem with maintaining the reserve values, PWS is also charged under the NPRMA with encouraging certain forms of use within reserves. These include research, education, tourism and recreational use and enjoyment. The use of reserves, particularly for recreation, is highly valued by the community. In some classes of reserves other activities, such as grazing, apiculture, forestry, mining, marine farming and hunting, may also occur under certain conditions. The management objectives for each reserve class are not ranked and must be balanced when a determination is made regarding an activity. In reserves where a management plan applies, the management plan may set out how those objectives are to be applied and met.

PWS is responsible for ensuring use and development in reserved areas is in accordance with approved Management Plans or the reserve objectives listed in the NPRMA and the Resource Management and Planning System objectives.

PWS has developed the RAA process to guide decisions about appropriate use or development and the management and mitigation of associated environmental impacts in Tasmania's reserves within the context of that responsibility.

Activities that require assessment via the RAA process are all works, developments, or activities that, over a period of time, have the potential for environmental, social or economic impacts. Cumulative impacts are also a consideration.

The RAA process applies equally to both PWS and external proponent's activities in parks and reserves. Any person or entity, including PWS, other government departments and organisations, private entities, or infrastructure providers, proposing activities in parks and reserves may be subject to a RAA.

There are three environmental impact assessment levels in the current RAA process.

PWS determines whether assessment via the RAA process is required and if so what level of assessment is appropriate. Proposals are assessed in accordance with PWS's policies and guidelines. PWS determines the level of assessment required based on the proposal's scale, location, degree of public and stakeholder interest and consistency with approved Management Plans or the reserve objectives listed in the NPRMA and risk to any natural or cultural reserve values. PWS may seek advice from other agencies, for example the Department of Premier and Cabinet's Aboriginal Heritage Tasmania, to assist in making a determination.

The three assessment levels currently used are:

Level 1 RAA process– proposals subject to this assessment process would be minor in scale, the site's environmental values would be well known, there would be no evidence of Aboriginal heritage at the site, and any environmental impacts would likely be very low with standard management practices applicable. Community interest would not be likely to be significant. Example proposals that may be subject to a Level 1 RAA process might include upgrades to an existing road, minor repairs to existing infrastructure; small scale new infrastructure such as a toilet pod; or short-term events or volunteering activities in a discrete area.

Level 2 RAA process – proposals subject to this assessment process would be subject to specialist studies, Aboriginal heritage might be present but would not be expected to require further assessment or management interventions. Impacts to environmental values would also be manageable through implementation of an environmental management plan, and there may be some level of local community interest. Example proposals might include major repairs or renewal of existing assets; new boardwalks, bridges, lookouts and communications infrastructure; feral animal control programs; or activities held over large areas over multiple days.

Level 3 RAA process – proposals subject to this assessment process would be those requiring a detailed publicly available Environmental Impact Statement (EIS), informed by multiple specialist studies. These proposals would typically attract a high level of community interest. Example proposals subject to this environmental assessment process might include construction and operation of new infrastructure or uses that have a high potential for significant environmental or social impacts.

The process stages for a Level 3 RAA are as follows:

Stage 1

The proponent prepares the draft EIS to a standard acceptable for public consultation. The draft EIS is developed in accord with project specific guidelines issued by the PWS.

Stage 2

Public consultation by the proponent including publishing the draft EIS, advertising in three regional papers, posting of the draft EIS on the PWS 'Have you say' web page for a minimum of four weeks. The PWS may also seek specialist advice.

Stage 3

PWS collate public and agency submissions and advise the proponent. The proponent prepares the final EIS including a Submissions Report addressing comments received during the public consultation process.

Stage 4

PWS assessment of the final EIS is completed. PWS prepares an Environmental Assessment Report (EAR) including submissions report, statement of reasons and public submissions.

Stage 5

Final EIS and EAR published on the PWS website

Where an external assessment is required under another Act, such as the *Environmental Management and Pollution Control Act 1994* (EMPCA) if that external process is assessing the same impacts and values, PWS identifies where there is potential for duplication and adjusts the requirements for proponents to provide this duplicate information.

Examples of proposals that have undergone the current Level 3 process include PWS proposals such as the Maria Island critical infrastructure upgrades, the shared use track in the Freycinet National Park and the Cockle Creek campgrounds upgrade. PWS projects undertaken in the Tasmanian Wilderness World Heritage Area by PWS that have also been through the Level 3 process include the Dove Lake Shelter, the Kia Ora and Windemere hut upgrades and the Walls of Jerusalem Recreation Zone Plan implementation project.

Proposals by external proponents, including other government departments, local government and private enterprises, may also be subject to the Level 3 process. Recent proposals by the Department of State Growth that have undergone a Level 3 assessment process include the Eaglehawk Neck safety upgrade and the New Bridgewater Bridge; local government proposals including the Tippogoree Hills Mountain Bike Trails; and private enterprise proposals including the Discovery Holiday Park Cradle Mountain Expansion and the Ida Bay State Reserve Destination Public Artwork and Visitor Centre.

It is important to note that the PWS has already undertaken an extensive review of the RAA system in recent years, progressively implementing improvements to the system for greater transparency and consistency. These improvements focused on administrative aspects; increasing opportunity for public consultation and comment; and providing a formal decision report in respect of decisions made. The RAA is a robust process successfully applied to hundreds of proposals over many years.

Further information on the existing RAA process can be found on the PWS website which provides an RAA Process overview:
https://parks.tas.gov.au/Documents/Guideline%20RAA%20process%20overview.pdf

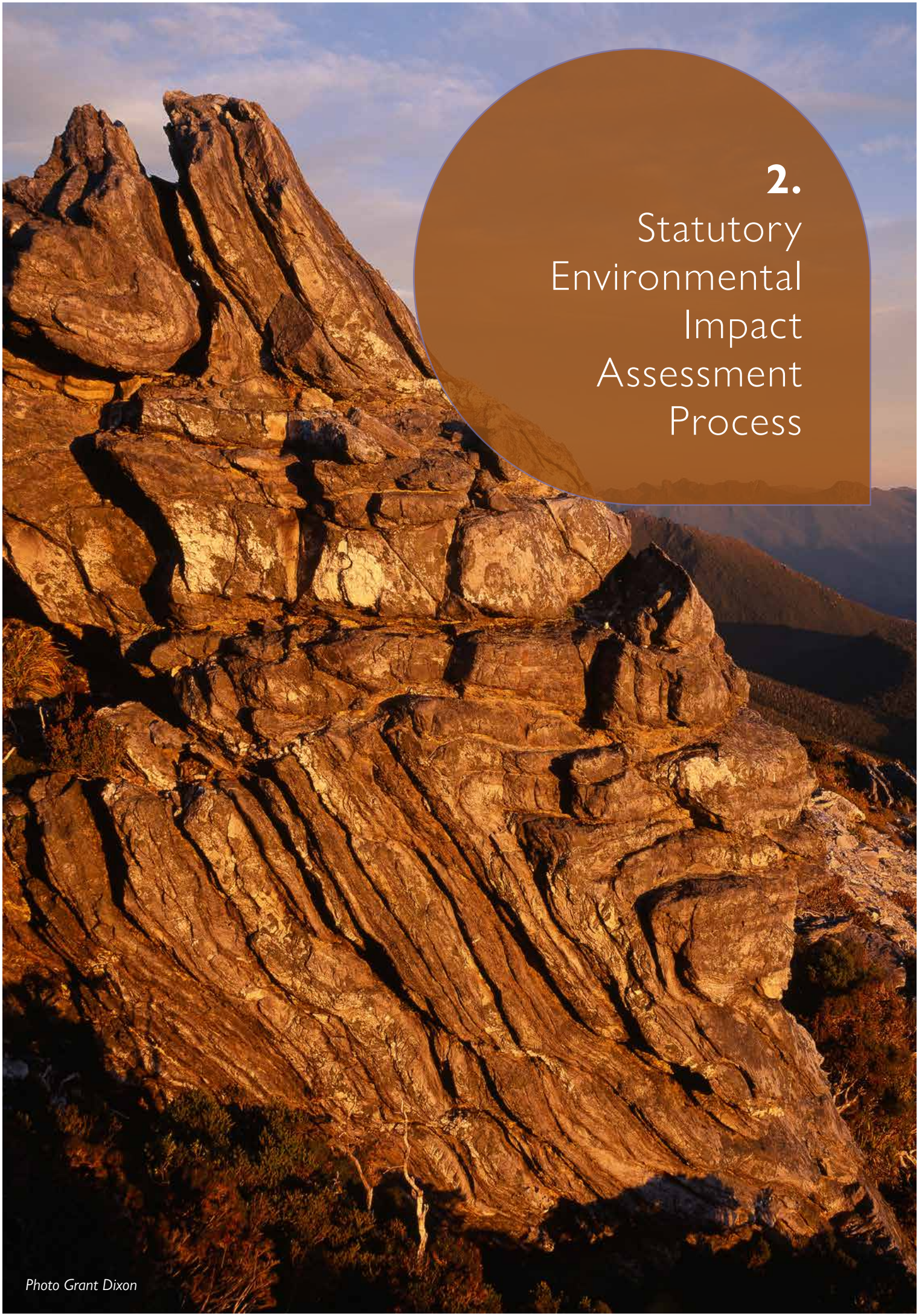
1.3 Which Proposals would be subject to a statutory RAA process?

A statutory process brings significant checks and balances and independence to the decision making around a proposal. It also adds additional time and effort for government, the applicant and the community.

Making all RAAs across all levels subject to a statutory process is not in the public interest and risks significantly delaying essential and time critical works that are typically low impact and a regular part of the management reserved land (i.e., Level 1 and Level 2 proposals).

Some of the proposals currently assessed as Level 3 in the RAA process would be expected to meet the criteria for assessment under the statutory assessment process.

It is therefore desirable to develop threshold criteria that will give the community confidence that proposals are correctly determined to be eligible to follow a statutory assessment process (refer to Section 3.1.1).



2. Statutory Environmental Impact Assessment Process

Photo Grant Dixon

The current RAA process is non-statutory and is a policy position of the government. It is therefore not legislated and able to be enforced. A statutory process provides certainty to government; the community and proponents about how certain proposals will be assessed and the timelines that apply. It will deliver on the Government's commitment for all significant RAA decisions to be more informed, justified, transparent and accountable.

2.1 Assessment principles

The proposed statutory assessment process will be in accordance with best practice. The statutory process will specifically improve the current RAA process by:

- clarifying the eligibility criteria around proposals that are eligible for the statutory process;
- formalising public exhibition so that stakeholders have the opportunity to be informed, participate, and decisions are explained;
- providing assessment criteria and information requirements that are tailored to the proposal and commensurate with potential risks;
- establishing an Independent Assessment Panel (the Panel) and using expert advice to inform decision making;
- removing duplications with other assessment processes such as LUPAA;
- providing for administrative appeals of assessment processes and authority decisions;
- providing a consistent assessment process, timelines and outcomes;
- providing for assessment outcomes to be incorporated into management of the reserve to ensure reserve objectives/management plan objectives are achieved; and
- providing for the payment of fees (cost recovery) associated with impact assessment for proposals subject to the statutory process.

2.2 Fit with other statutory assessment processes

The proposed statutory assessment process will need to consider the roles and responsibilities of those involved in the process including the proponent, the Minister for Parks, the Director NPW, other management authorities, the proposed Independent Assessment Panel (the Panel), relevant Ministers, Tasmanian Aboriginal people, specialists, and other stakeholders, including other assessment agencies and statutory authorities.

The major challenge with designing a new statutory assessment process is that there are other statutory assessment processes relevant on reserved land. The intent is that the new statutory NPRMA assessment process should not duplicate or replace a suitable assessment process that is undertaken by persons with relevant expertise.

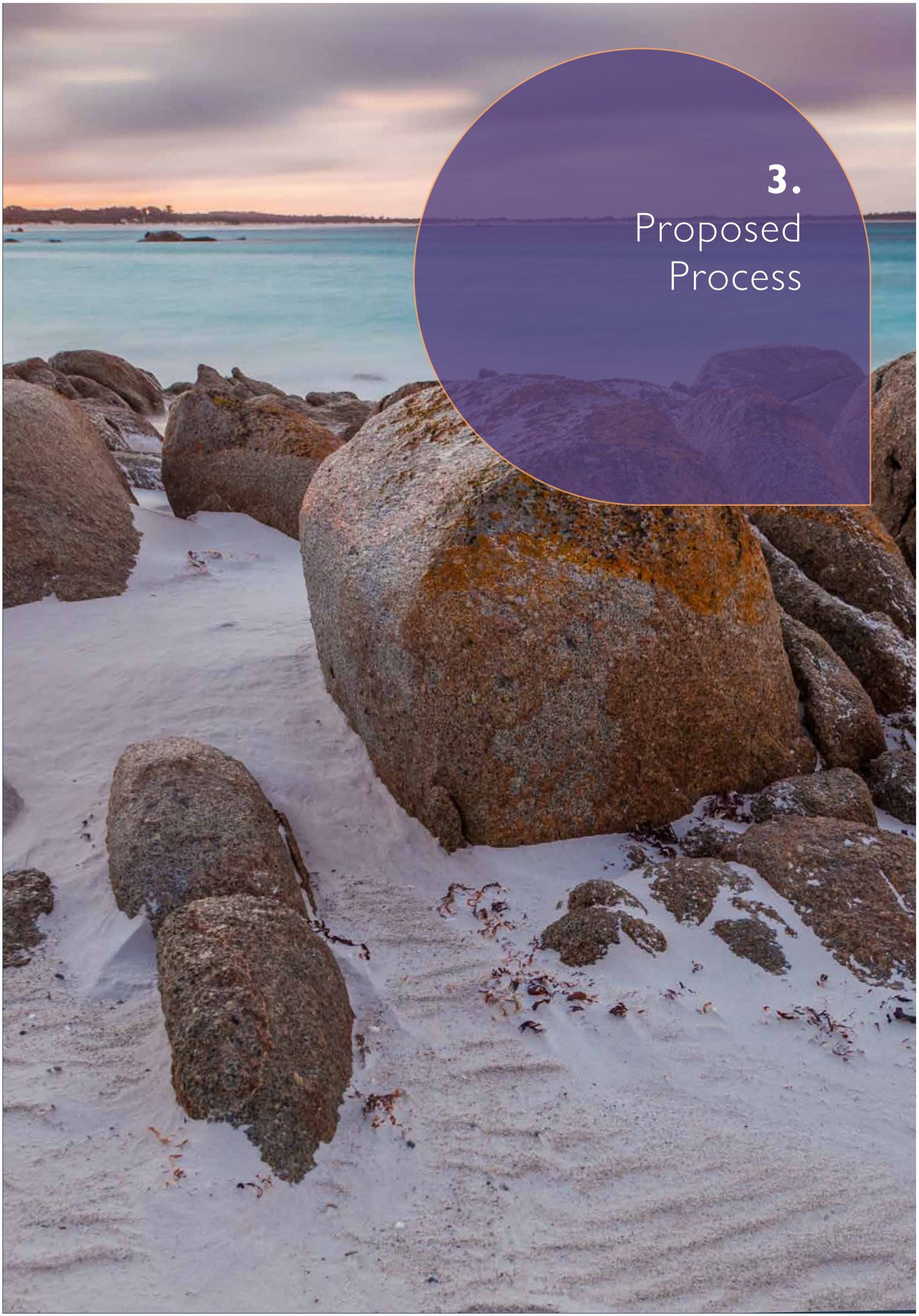
The following needs to be taken into consideration in designing the assessment process if this outcome is to be achieved:

- Involvement of local planning authorities during the assessment phase, particularly where reserve use or development directly impacts on local communities.
- Referral and early advice of agencies and bodies with expertise in management of Aboriginal heritage and carriage of the *Aboriginal Heritage Act 1975*.
- Referral and early advice of agencies and bodies with expertise in management of historic heritage (*Historic Cultural Heritage Act 1995*) or threatened species (*Threatened Species Protection Act 1995*).
- Activities that will also require assessment under EMPCA by the Environment Protection Authority.
- A proposal that is declared a Major Project under section 60 of LUPAA or a Major Infrastructure Project under the *Major Infrastructure Development Approvals Act 1999*. The statutory RAA assessment would not apply for a proposal declared as a major project under LUPAA.
- A proposal that will be subject to a determination by an independent Development Assessment Panel appointed by the Tasmanian Planning Commission should proposed amendments be made to LUPAA via the Land Use Planning and Approvals (Development Assessment Panel) Amendment Bill 2024.
- A proposal that needs assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA) (Cwlth).

Aboriginal heritage considerations

There is an explicit need to give appropriate and early consideration to the management and protection of Tasmania's significant Aboriginal cultural heritage, including incorporating acknowledgement that Tasmania's Aboriginal people are the custodians of their cultural heritage.

Early engagement with Tasmanian Aboriginal people and any statutory Aboriginal representative body will be a key consideration in the determination of acceptance of a proposal for assessment.



3. Proposed Process

The key components of the statutory impact assessment process proposed to be captured in the proposed amendments are outlined below and have been divided into distinct phases:

1. **Eligibility phase**, whereby a proposal is assessed as to whether it is acceptable under existing legislation, plans or policy. In addition, only those activities that are significant would be considered for assessment under the statutory assessment process. Eligibility criteria and guidelines would set out the terms and conditions for proposals to meet before they can be considered.
2. **Determining assessment criteria**, where the Panel determines what factors would be considered in assessing the proposal. It is proposed that the draft assessment criteria would be provided for public comment with the final criteria determined after consideration of public comments.
3. **Preliminary Assessment**, where the Panel would consider the impacts and actions to minimise adverse impacts documented in the draft EIS prepared by the proponent and make a preliminary assessment against the assessment criteria and draft an assessment report.
4. **Final consultation and assessment**, which includes public exhibition of the EIS and draft EAR prepared by the Panel. The Panel would then consider any public submissions and would have the discretion to hold public hearings after which the Panel would prepare the final report and make a recommendation.

3.1 Eligibility Phase

It is intended that proposals for use or development will be received by the Director NPW. The proposal is then subject to a preliminary assessment to determine if it is permissible under current legislation or is in accordance with an approved Management Plan.

As part of the initial assessment, the proposal will be referred to other relevant authorities to determine if it requires assessment under other statutory processes, e.g., EMPCA.

As part of the eligibility phase the activity must be of sufficient scale, complexity and present a level of risk that would require a statutory assessment. This involves consideration of the type, size and characteristics of the proposed activity; the sensitivity of the receiving environments and types of likely impact. Cumulative impacts can also be taken into account, as well as the level of public interest.

The decision as to whether a proposal is eligible to be assessed to go through the statutory process is proposed to be based on criteria set out in the NPRMA and any statutory guidelines developed.

Potential eligibility criteria could be any proposal that:

- will require significant leasing of, or a significant occupation of, a reserve or reserves in a particular class (e.g., National Park, State Reserve, Nature Reserve, Game Reserve, Historic Site); or
- is likely to generate a very high level of public interest; or
- possesses one or more of the following criteria:
  - is a large scale development or comprises a series of stages or separate developments that cumulatively would be of a large scale,
  - has the potential for environmental and/or cultural impacts across a wide area,
  - proposes activities in locations that contain cultural[1] or natural values that may be vulnerable to a proposed use or development,
  - has the potential to have a significant impact on a threatened species[2] and/or threatened native vegetation communities[3],
  - are developments that have an intense impact in a small area (e.g., towers).

The Minister for Parks will make a decision about whether a proposal meets the eligibility criteria. Minister notifies with reasons whether the proposal is eligible for the statutory process, and this is publicly exhibited.

3.2 Determining Assessment Criteria

Once the Minister has determined that a proposal is eligible to be assessed under the statutory process it will be referred to the Panel.

This phase details what the impact assessment should include and describes the expected outputs. It ensures the impact assessment focuses on the key issues and establishes assessment criteria to review the quality of the impact assessment and guide the final report.

In this stage it is expected that the Panel would prepare appropriate assessment criteria which the Panel members will use to determine whether the proposal is acceptable or not. The NPRMA requires any use and development to be consistent with any approved Management Plan, or in the absence of a Management Plan, management objectives listed for a particular type of reserve and finally, the Resource Management and Planning System objectives. These requirements would form the high-level basis for appropriate assessment criteria. However, there would usually be other policies and standards that apply depending on the type of development or use, including relevant use and development provisions of the applicable planning scheme. In practice it would be expected that standard assessment criteria would always be applied, with specific criteria as required for individual proposals.

It is proposed that the Panel would undertake a consultation process with relevant regulators and authorities and receive advice to determine the draft assessment criteria. The draft criteria would be released for public comment prior to being finalised.

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1 Cultural values have the same meaning as defined in the Burra Charter and encompass places, areas, objects, spaces and views of aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Consequently, it includes Aboriginal, historic and natural places.

2 As defined by the *Threatened Species Protection Act 1995.*

3 As listed in Schedule 3A of the *Nature Conservation Act 2002.*

3.3 Preliminary Assessment

Once the Panel has issued the assessment criteria, the proponent would be required to prepare a draft EIS and associated documentation, within a timeframe determined by the Panel, to enable the Panel to assess the proposal against the assessment criteria

3.4 Final Consultation and Assessment

The draft EIS would be assessed by the Panel and other relevant regulators and authorities. A draft EAR would be prepared by the Panel.

The Panel would advertise the draft EIS and draft EAR and invite public submissions.

Any submissions would be received and reviewed by the Panel. It is proposed that the Panel could determine that hearings may be held to provide the opportunity for persons to present information to the Panel.

The Panel would invite the proponent to prepare and submit the final EIS taking into account any public submissions. All submissions would be made public, and the proponent's response would be made public following approval by the Panel. The Panel would assess the final EIS and make a decision as to whether the proposal should be rejected, approved, approved with conditions or not approved. The Panel would then prepare a final EAR which would outline the Panel's decision and reasoning for that decision. The decision and final EAR would be published.

The assessment outcome decision may also include recommendations to amend the existing Management Plan (MP), or resource the implementation of parts of an existing MP or advance the development of a new MP or management statement [see Discussion Paper 1].

To maintain the independence of the Panel, the statutory process would not provide any role for the Minister in assessing the proposal. The decision of the Panel is final but still could be subject to challenge under judicial review.

It is proposed that the Panel would inform the Minister for Parks, the Director NPW or, if applicable, any other reserve managing authority as to the decision, all of which would be bound by that decision.

If the proposal was approved or approved subject to conditions, the Minister for Parks, Director NPW or other managing authority would issue either a lease, licence or authority providing approval to the proponent inclusive of any conditions determined by the Panel. A range of other permits and approvals may still be required including building approval.

3.5 Transparency and Opportunities for Public Comment and Submissions

The Government recognises the importance of involving Aboriginal people and local communities in the assessment of proposals for use and development of reserve land. One of the objectives of the new statutory process is to enhance the role of communities' involvement in the impact assessment process. It is proposed that community participation will start early and continue through the process to integrate public input at each step of the process.

The proposed amendments to the legislation should provide for Tasmanian Aboriginal people, the broader

public, relevant State agencies, environmental non-government organisations and other key stakeholders involvement as early as possible during decision-making and impact assessment processes.

In addition, it is proposed that the Panel must consult with relevant local councils during the preparation of the assessment criteria and also during the final assessment of the proposal.

This proposed statutory process enables local government councillors to advocate issues on behalf of their community across a range of matters, including engineering issues, planning issues, social/community issues and political issues.

The following measures are proposed to increase transparency and to provide multiple opportunities for public comment and submissions, including:

- Minister notifies with reasons whether proposal is eligible for the statutory process.
- Draft Assessment Criteria made are released for public comment.
- Final Assessment Criteria are released.
- Draft EIS and draft EAR are publicly exhibited inviting comments.
- Public hearings may be conducted by the Panel.
- An additional management plan process would include public consultation and direct stakeholder engagement.
- Final Decision of the Panel including EAR published.

3.6 Appeal rights

There is currently limited ability to seek a review of, or to appeal, decisions made under the RAA process. The proposed amendments to the legislation would provide for administrative appeals of the Panel's environmental impact assessment processes and authority decisions. Appeal rights would relate to matters such as whether a proposal's assessment process has been undertaken in keeping with the process set out in the NPRMA.

It should be noted that when a proposal requires other approvals, such as under the EPBCA (Cwlth) then appeal processes on those decisions are provided under that legislation.

The 'decision making model' of the Panel proposed under the statutory process would be similar to that of the Tasmanian Civil and Administrative Tribunal (TASCAT). It would be an expert independent body like TASCAT that could hold hearings into the proposal and its impact assessment before determining the final decision. Due to the independence of the Panel, merit based appeals against determinations of the Panel are not appropriate by TASCAT.

The proposed statutory process would not provide any role for the Minister for Parks in the assessment of the proposal.

Importantly, the process for administrative review under the *Judicial Review Act 2000* will remain.

3.7 Cost recovery and financial risks

Cost recovery

PWS bears all costs for its own assessments under the RAA process. These are often delivered internally using PWS staff and resources from across NRE Tas. From time to time, external consultants are used where specialist internal expertise does not exist. Given that the majority of PWS RAAs are to deliver on the desired objectives for reserve land, it is appropriate that the costs of these assessments are absorbed by NRE Tas and government.

PWS does not prepare assessments for external proponents but does provide guidance and advice about what the assessment requirements will be. PWS undertakes the assessment of external proponent proposals once they have submitted the final RAA documents. Apart from application fees associated with a lease or licence, external proponents do not currently pay for the assessment of proposals under the RAA process. Depending on the significance of the proposal, this assessment may consume considerable departmental resources.

The NPRMA does not currently contain provisions for charging for EIAs.

It is proposed that a 'recovery of costs' model be applied to the statutory assessment process. This is to ensure that the costs of administration and environmental assessments are appropriately borne by the proponent, rather than by government and the Tasmanian public more broadly.

Cost recovery may also be applied to the NPRMA authorities that direct payments for reserve management using a pre-determined formula.

A potential model is provided within the *Land Use Planning and Approvals Regulations 2014* for major projects under LUPAA. This provides for a cost recovery model with fees associated with the following steps:

- lodging the proposal,
- preparation and determination of assessment criteria,
- consideration of the draft EIS,
- final assessment of EIS including conducting hearings, and
- decision to grant or refuse a permit and any future amendments to the permit.

Another model is provided in the *Environmental Management and Pollution Control (General) Regulations 2017* which prescribes the **fees charged** for environmental assessments conducted by the EPA Board. This structure allows for a fixed component and variable fee component (including an hourly rate for staff time) based on the level of complexity of the proposal.

Bonds

The financial risk associated with a proposal should also be considered as a proposal would be undertaken on, and may potentially occupy, public land. This risk includes the financial capacity of the proponent to undertake and complete the project and address any environmental harm caused from the activity, or to remove the assets on default or termination of the lease.

Covering the risk could involve a requirement that the proponent lodge a bond or bank guarantee for the life of the lease or licence. The amount could be based on a percentage of the likely costs, expenses, loss and damages that might be incurred if the government needed to step in to address any environmental harm associated with or arising from the activities proposed.

3.8 Leases and licences

A further outcome of this reform is to ensure that a Head of Power is created under the NPRMA to enable all future leases and licence agreements for reserves can be made public.

The Lease and Licence Portal has also been developed to provide a platform to publicly release all active agreements. The Portal can be used to find and download active agreements on reserve land.

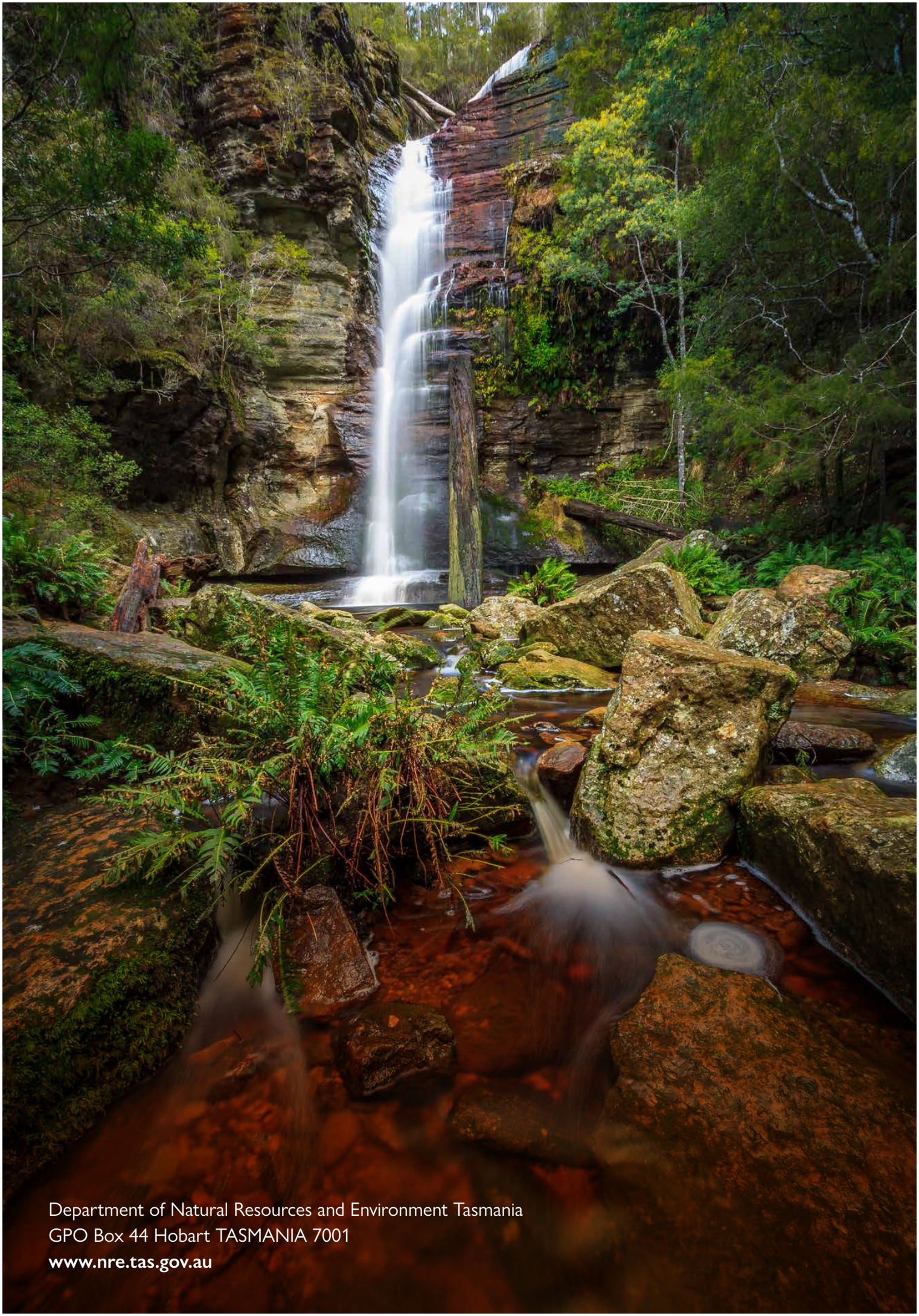
The Portal contains a redacted copy of the active agreements so that we can protect the personal information of the agreement holder in accordance with the *Personal Information Protection Act 2004*.

New agreements will be loaded into the Portal on a regular basis and existing agreements are regularly reviewed and updated as required. PWS is continually updating agreements as they expire. While an Agreement is undergoing renewal it will be removed from the webpage and then reloaded once a new agreement is released.

The Lease and Licence Portal can be accessed here: **https://leaseslicences.nre.tas.gov.au**

Glossary

Director NPW	Director of National Parks and Wildlife
EAR	Environmental Assessment Report
EIS	Environmental Impact Statement
EMPCA	*Environmental Management and Pollution Control Act 1994*
EOI	Expression of Interest
EPA	Environment Protection Authority Tasmania
EPBCA (Cwlth)	*Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth)
LUPAA	*Land Use Planning and Approvals Act 1993*
NCA	*Nature Conservation Act 2002*
NPRMA	*National Parks and Reserves Management Act 2002*
NRE Tas	Department of Natural Resources and Environment Tasmania
Panel	Independent Assessment Panel
PWS	Tasmania Parks and Wildlife Service
RAA	Reserve Activity Assessment
RTI	*Right to Information Act 2009*
TASCAT	Tasmanian Civil and Administrative Tribunal



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