

TASMANIAN PLANNING COMMISSION



DECISION

Local Provisions Schedule Burnie

Date of decision 11 May 2020

Under section 35K(1)(a) of *Land Use Planning and Approvals Act 1993*, the Commission directs the planning authority to modify the Burnie draft LPS in accordance with the notice at Attachment 2.

When the directed modifications have been undertaken under section 35K(2), the Commission is satisfied that the LPS meets the LPS criteria and is in order for approval under section 35L(1).

Sandra Hogue
Delegate (Chair)

Roger Howlett
Delegate

REASONS FOR DECISION

Background

The Burnie Planning Authority (the planning authority) exhibited the Burnie draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act), from 21 October 2019 until 20 December 2019.

On 29 January 2020 the planning authority provided the Commission with a report under section 35F(1) into 10 representations received on the draft LPS. In addition, one representation, made after the end of the exhibition period, was included by the planning authority in a supplementary section 35F report provided to the Commission on 19 February 2020. A list of representations is at Attachment 1.

Date and place of hearing

The Commission must hold a hearing in relation to representations to the draft LPS under section 35H of the Act.

A hearing was held at the Burnie City Council, 80 Wilson Street, Burnie on 17 and 18 March 2020.

Consideration of the draft LPS

1. Under section 35J(1) of the Act the Commission must consider:
 - the planning authority section 35F(1) report and the draft LPS to which it relates;
 - the information obtained at the hearings;
 - whether it is satisfied that the draft LPS meets the LPS criteria under section 34; and
 - whether modifications ought to be made to the draft LPS.
2. Under section 35J(2) of the Act the Commission may also consider whether there are any matters that relate to issues of a technical nature or may be relevant to the implementation of the LPS if the LPS were approved.
3. The LPS criteria to be met by the draft LPS are:
 - (a) contains all the provisions that the SPPs specify must be contained in an LPS;
 - (b) is in accordance with section 32 of the Act;
 - (c) furthers the objectives set out in Schedule 1 of the Act;
 - (d) is consistent with each State policy;
 - (e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates;
 - (f) has regard to the strategic plan, prepared under section 66 of the *Local Government Act 1993*, that applies in relation to the land to which the relevant planning instrument relates;

- (g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and
 - (h) has regard to the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*.
4. The relevant regional land use strategy is the Cradle Coast Regional Land Use Strategy (regional strategy).
 5. In addition to the LPS criteria, the Commission has considered Guideline No. 1 – Local Provisions Schedule (LPS): zone and code application (Guideline No. 1) issued under section 8A of the Act.
 6. The requirements for making modifications to the draft LPS are set out under section 35K of the Act. The modifications can be broadly categorised as modifications [section 35K(1)(a) and (b)] or substantial modifications [section 35K(1)(c)(ii)].
 7. The Commission may also reject the draft LPS and request that the planning authority prepare a substitute [section 35K(c)(i)].
 8. Where the Commission has determined modifications ought be made, these are set out in a notice under 35K(1)(a) of the Act (see Attachment 2).

Issues raised in the representations

Light Industrial Zone and Low Density Residential Zone - southeast Wivenhoe

Representation: Debbie Thomas (1)

9. The representor requested a revision to the proposed zoning for numerous properties in south east Wivenhoe from the General Industrial Zone:
 - to the Light Industrial Zone between Smith Street and Stowport Road; and
 - to the Low Density Residential Zone from the Western Line rail corridor and the Leighland Christian School in the north, along Stowport Road and incorporating both sides of the eastern end of Anglesea Street.

The reasons include:

- the planned transition to industrial use has not occurred due to incompatible lot sizes, steep terrain, the availability of more suitable industrial land elsewhere, environmental constraints, a greater need for residential use, and the residential appeal of easy access to shops, schools, and public transport.
10. In the section 35F report the planning authority acknowledged some merit in the proposition that elevated land is unsuited to industrial development and that established residential use is unlikely to change but recommended that the land remain in the General Industrial Zone. The reasons include:
 - several State, regional and municipal research and policy statements have repeatedly advocated the importance of Wivenhoe as an area for manufacturing, processing, storage and transport use;
 - the relatively low demand for industrial land, and a residual presence of residential use, does not of itself evidence a failure of strategic purpose;
 - there is no articulated reason to reduce the amount of land zoned for general industrial use and development at Wivenhoe;

- the representation does not address the LPS criteria;
 - there is insufficient information currently available to the planning authority on which to support a modification of the draft Burnie LPS through the representation and hearing process; and
 - there is adequate protection for existing lawful residential use under the Act and the matter of whether to change the zone applied to the elevated land south can be separately dealt with outside the current LPS process.
11. At the hearing the representor reaffirmed the matters raised in the representation.
12. At the hearing the planning authority additionally submitted:
- the planning authority is satisfied with the current planning scheme and therefore prefers a direct translation;
 - industrial zoning in Wivenhoe has been supported since the 1950s and more recently in studies such as the 2015 SGS Economics and Planning, *Industrial Land Study North West Tasmania*;
 - as the transition is incomplete and industrial land is limited, the planning authority prefers to retain industrial zoning;
 - applying a residential zone won't create the opportunity for residential use but rather acknowledges existing use; and
 - a change of zone must address the LPS criteria in the Act and, as a significant body of work and resource would be required to support the proposed change, the planning authority would prefer to continue with a direct translation approach and conduct a more thorough review of the Wivenhoe area after the LPS process is complete.

Commission consideration

13. The Commission accepts there is insufficient evidence to determine whether the proposal meets the LPS criteria, for example, how the change to zoning would meet relevant regional land use policies to be as far as practicable consistent with the regional land use strategy. The proposal would also require review against the Industrial Land Study and other relevant council strategies.
14. The Commission notes that the planning authority understands the issues and will undertake a strategic review of the Wivenhoe area following the completion of the LPS process.

Commission decision

15. The Commission considers that no modifications are required.

Low Density Residential Zone – West Mooreville Road, East Cam

Representation: GHD for Michael and Frances Jack, Colin and Jacqueline Margetts, Marie Redman, and Derek Howard (2)

16. The representor requested that the proposed zoning of four parcels of land along West Mooreville Road in East Cam be revised from the Rural Living Zone A to the Low Density Residential Zone. The reasons include:
- the site presents a development ready infill opportunity, and the Rural Living Zone is inappropriate, due to availability of reticulated and civic services, proximity to higher density residential areas, and direct access to West Mooreville Road;
 - the proposal does not constitute urban expansion or change the existing use;

- the proposal provides the opportunity for differentiation in residential lot sizes and development options within the urban area given the limited amount of land in the Low Density Residential Zone elsewhere in municipality;
 - applying the Low Density Residential Zone is consistent with the objectives of the Act, zone purpose, and LDRZ 1(a) of Guideline No 1;
 - application of the Rural Living Zone is not appropriate given the presence of reticulated services, allows the opportunity to achieve the highest and best use of the subject site facilitating a greater density of residential development for which the Low Density Residential zone is considered the most appropriate;
 - while supply of residential land is well in excess of 20 years forecast, there is currently a shortage of development ready land;
 - applying the Low Density Residential Zone will not frustrate other residential development opportunities as the lot size and density would constitute a different market offering; and
 - lot sizes in the immediate locality range from 1,900m² to 21,000m² and no conflict with surrounding uses is anticipated.
17. In the section 35F report the planning authority recommended that the land remain in the Rural Living Zone. The reasons include:
- the proposal is not supported by any current land use strategy and does not specifically address the LPS criteria in section 34;
 - the proposal is contrary to the instructions for application of the Low Density Residential Zone in Guideline No. 1;
 - the proposal is inconsistent with the established characteristics of the locality described as providing large residential lots in a rural setting; and
 - a lack of evidence to support the availability and capacity of a water supply, availability of a connection to a sewage and stormwater drainage system sufficient to service potential future use, or of the capability of the land to accommodate on-site waste water disposal area at the permitted dwelling density.
18. At the hearing, the representor queried the planning authority opinion that the proposal seeks to establish an isolated pocket of low density residential use and development within an established area of rural living lots, stating that the site is not isolated due to proximity to higher density residential development and availability of services. The representor also disagreed with the planning authority view on servicing of the site, submitting that other than a lack of stormwater pipes, upgrades in recent years have enabled the servicing of 1500m² lots. The Low Density Residential Zone purpose, a lack of environmental constraints, and no conflict with nearby agriculture uses were also discussed.
19. The planning authority submitted that the application of the Low Density Residential Zone had been reduced in the draft LPS reflecting the objectives of the zone and the urban nature of Burnie.

Commission consideration

20. The Commission prefers the planning authority interpretation of Guideline No. 1 as it relates to the application of the Low Density Residential Zone, and notes the proposal does not meet the guideline or the purpose of the proposed zone due to the level of servicing and lack of environmental constraints.
21. Following a site visit, the Commission considers that the site is clearly characterised as residential living in a rural setting and therefore meets the purpose of the Rural Living Zone.

Commission decision

22. The Commission considers that no modifications are required.

General Residential Zone – Massey Greene Drive, South Burnie

Representation: Plan Place for Railpine (3)

23. The representor requested that the proposed zoning of a portion of folio of the Register 134067/2, adjacent to land in the General Residential Zone along Singline Avenue, be revised from the Rural Zone to the General Residential Zone. The reasons include:

- the site is within the town boundaries of Burnie, which is identified within the regional strategy as having a medium growth scenario and being suitable for infill development;
- a recent decision by the Tasmanian Planning Commission (2019-1) recognises the suitability of the site for residential expansion but rejected the proposal on the grounds that there is an oversupply of General Residential land within the municipal area;
- if an oversupply of General Residential land is sufficient to refuse logical expansion of the zone within the town boundaries, a like for like translation from the interim scheme to the draft LPS is no longer appropriate and results in land being allocated to this zone without strategic oversight;
- much of the land zoned for General Residential (current and proposed) requires extensive supporting infrastructure to be implemented prior to any development occurring; and
- the LPS process provides a unique opportunity to achieve strategic oversight and provide land able to be developed for affordable residential development.

24. In the section 35F report the planning authority recommended that the land remain in the Rural Zone. The reasons include:

- that, while the site provides opportunity for additional residential land within the Burnie settlement boundaries where there is a logical expansion from an established suburban residential estate, infrastructure services are available, and there are no economic, cultural or environmental limitations for residential use and development, the Commission has determined that application of a residential zone is premature for the reasons that there is an existing over-supply of zoned residential land in Burnie relative to the criteria for land supply contained in the regional strategy; and
- release for residential use would fail the statutory objective for land use planning to provide for the fair, orderly and sustainable use and development of air, land and water.

25. At the hearing, the representor additionally submitted that:

- the supporting report did not include any consideration of the proposal;
- the site in question and adjoining land owned by the company is part of a 99 hectare property over three titles and is a former plantation testing site;
- the plantation is a remnant land use in an urban area where it is not desirable to manage the land as per standard forestry operations;
- the owner is seeking to achieve the best use for the land, initially through residential use and development on the subject portion and would like to continue the process; and
- oversupply of general residential zoned land should not preclude sensible development that satisfies regulatory requirements.

26. At the hearing, the planning authority submitted that:

- the proposal to amend the interim planning scheme was not addressed in the supporting report because it was lodged after initiation of the LPS process and the decision on the amendment was made during exhibition of the LPS;
- the planning authority supports the creation of an additional 3 hectares of residential land as a logical extension of the Singline Estate as road access and services are established; however, the proposal is not consistent with regional strategy policy 4.3.1;
- determining consistency with the regional strategy needs to consider the strategy in its entirety as, while some policies appear to conflict, some policies are more relevant than others to particular proposals – for instance this proposal is consistent with regional strategy policy 4.7a and this policy is more relevant to this proposal than regional strategy policy 4.3.1;
- several regional strategy policies address supply, however zoning creates an opportunity not supply - supply is produced by the market; and
- while the planning authority supports the representation, it chose not to recommend changing the proposed zone due to the Commission’s previous decision and the planning authority approach to treat representations seeking amendments as an amendment proposal requiring an equivalent level of detail as a standard application, therefore it is preferred to consider this proposal after the LPS process.

Commission consideration

27. It is open to the Commission to consider afresh this representation based on submissions and information presented as part of the LPS process. The Commission notes the evidence provided by the parties; however, the Commission considers there is insufficient evidence to determine whether the proposal meets the LPS criteria, for example, how the proposed zone change would be as far as is practicable consistent with the regional strategy. The Commission also notes the planning authority’s preference to consider this proposal in more detail after the LPS approval process has concluded.

Commission decision

28. The Commission considers that no modifications are required.

Low Density Residential Zone – 443-473 Mount Street, Romaine

Representation: EnviroPlan for Suzanne Townsend, Christopher McCrae, Frederick McCrae, and Alister McCrae (4)

29. The representors requested that 443-473 Mount Street be revised from the Rural Zone to the Low Density Residential Zone. The reasons include:
- the proposed zoning of the land will enable the land to be utilised for future residential use and development on the lower portion of the hillside whilst retaining the upper hillside rural activities;
 - the proposal would accommodate the expansion of residential use and development in the Romaine area that:
 - is consistent with an established settlement development pattern;
 - provides for the appropriate arrangement and juxtaposition of zoning;
 - would support a transition in densities that responds to bushfire risk;
 - utilises existing reticulated services, access to transport networks, and municipal infrastructure;
 - does not create additional conflict with adjoining rural activities; and
 - does not detriment the road network with the area.

- the proposal is broadly consistent with Schedule 1 and 2 objectives, and consistent with the *State Policy on Water Quality Management, State Policy on the Protection of Agricultural Land, Making Burnie 2030*, and the guiding principles and local settlement strategy within the regional strategy;
 - the site is not suitable for rural use and development as existing residential uses adjacent to the site constrain rural activity, there is limited water availability, and there are major roads to the west and south;
 - the site has limited importance in a natural values context; and
 - that a lack of consistency with the regional strategy should be seen in the context of the strategy being outdated and useful as a guide only that must be considered together with data that reflects the current situations, current growth rates and population expansions seen on the North West Coast.
30. In the section 35F report the planning authority recommended that the land remain in the Rural Zone. The reasons include:
- the representation does not allow the planning authority to be satisfied the application of the Low Density Residential zone will meet the LPS criteria as:
 - this area of Low Density Residential zone would create an isolated pocket of residential use contrary to objectives of the Act and the regional strategy;
 - the representation acknowledges there is no published strategic reason, including in the regional strategy, for including this site within residential zoning;
 - there is no strategic or practical explanation against the criteria in Guideline No 1; and
 - the Commission has recently determined that there is an over-supply of residential zoned land in Burnie relative to the criteria for land supply contained in the regional strategy and that the release of additional land for residential use would fail the statutory objective for land use planning to provide for the fair, orderly and sustainable use and development of air, land and water.
31. At the hearing no other evidence or information was submitted.

Commission consideration

32. The Commission prefers the planning authority interpretation of Guideline No. 1 and the zone purpose as it relates to the application of the Low Density Residential Zone and notes the proposal does not meet the guideline or the purpose of the proposed zone. Therefore, the Commission considers that the proposal does not meet the LPS criteria.

Commission decision

33. The Commission considers that no modifications are required.

Utilities Zone - electricity infrastructure

Representation: TasNetworks (7)

34. The representors requested that the zoning of the Emu Bay and Hampshire substations and the Round Hill and Companion Hill communications sites be revised to the Utilities Zone.
35. The reasons include that the Utilities Zone:
- reflects the primary use of the site and the nature and long lifespan of the asset;

- allows for the future operation, maintenance modification and development requirements of the asset, particularly in relation to communications sites as these do not have any *Electricity Supply Industry Act* exemptions once established; and
 - sends a clear message to the community about the existing and long term use of the site.
36. In the section 35F report the planning authority recommended that the zoning of the Emu Bay and Hampshire substations be revised to the Utilities Zone and that the Round Hill and Companion Hill communications sites remain in the proposed LPS zones. The reasons include:
- application of the Utilities Zone to major substations is consistent with the instructions contained in Guideline No. 1;
 - communication towers are not major utility infrastructure within the meaning of UZ1 of Guideline No 1;
 - UZ6 applies to communication towers instead and requires such facilities be included within the surrounding zone;
 - consistency and fairness would require that communication, telecommunication, and data transmission infrastructure associated with the operations of other service providers be included in the Utilities Zone;
 - the impracticality of the proposition is recognised in UZ6 of Guideline No. 1;
 - State Planning Provisions (SPP) Code C4.0 – Electricity Transmission Infrastructure Protection Code applies to each of the TasNetworks communication sites to create a buffer area within which building and other works are regulated for the purpose of managing risk of adverse impact on the safety, operation, and access to communication towers - the Code provision is a level of protection not available to the operators of other communication facilities;
 - application of Code C4.0 and the Utilities Zone do not provide any advantage for protection of communication infrastructure to the land on which a tower is located; and
 - it is inappropriate to contemplate application of the Utilities Zone for the purpose of avoiding application of any Code applicable to land within the municipal area.
37. At the hearing the representor submitted they were satisfied with the planning authority agreement to modify the proposed zoning for the substations; however, the request to modify the zoning of the Round Hill and Companion Hill communication sites still stands. The reasons include:
- applying the Electricity Transmission Infrastructure Protection Code to electricity communications towers acknowledges these are different to ordinary communications sites as they are strategically located to use microwave technology to communicate between substations; however, application of the overlay but not the Utilities Zone will result in the need to lodge development applications to conduct works; and
 - communications sites are considered major infrastructure as they are part of a broader electricity transmission network rather than being for local community distribution and they do not neatly fit the SPP definition of minor utilities.
38. The representor also submitted that the Companion Hill communications site has a distinct title and the Round Hill site does not. Where communication towers are not on a distinct title, TasNetworks proposes the application of a 20m radius from the centre of tower for application of the Utilities Zone.

Commission consideration

39. The Commission considers that the electricity generation, transmission and associated infrastructure detailed in the representations is used and intended to be used for major

utilities infrastructure, consistent with UZ1(d) of Guideline No. 1. It is agreed that the two sites at Round Hill and Companion Hill form part of a regional network of communications facilities and could be considered to be major utilities infrastructure.

40. The Commission considers that the primary objective in applying zones should be to achieve the zone purpose to the greatest possible extent. As such, the Commission considers that the sites containing electricity generation, transmission and associated facilities should be in the Utilities Zone. However, where there is no distinct title for the asset there could be unintended consequences of applying the Utilities Zone on other land owners or infrastructure providers. Therefore, the Commission considers that the Utilities Zone should be applied to the Companion Hill site and not to the Round Hill site.

Commission decision

41. Modification:

- revise the zoning of the Emu Bay Substation (folios of the Register 109072/1 and 251613/1), Hampshire Substation (part folio of the Register 164460/1), and Companion Hill Communications Site (folio of the Register 164459/1) to the Utilities Zone.

42. Reason:

- To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.

Utilities Zone - State roads

Representation: Department of State Growth (11)

43. The representor requested:

- the correction of zoning of State roads;
- folio of the Register 87055/5 on the Bass Highway at Chasm Creek be revised to the Environmental Management Zone from the Utilities Zone; and
- part of folio of the Register 128752/2 on Sea Eagle Street, Chasm Creek be revised to the General Residential Zone from the Utilities Zone.

44. The reasons include:

- to be consistent with the State Road Casement Layer on theLIST;
- folio of the Register 87055/5 is not functionally part of the Bass Highway and is not included in the State Road Casement; and
- folio of the Register 128752/2 is not included in the State Road Casement and the land is only suitable for sale to an adjoining owner due to lack of access potential.

45. In the section 35F report the planning authority recommended that land identified in the State road casement data be revised to the Utilities Zone, that folio of the Register 87055/5 and a portion of folio of the Register 128752/2 be revised to Environmental Management Zone from the Utilities Zone. The reasons include that:

- the draft LPS zone map is not entirely consistent with the State road casement map, and will require correction to apply the Utilities Zone to all land in the State road casement;
- folio of the Register 87055/5 contains access ways to properties in the Environmental Management Zone and may be described as minor utilities; and
- applying the General Residential Zone to the subject portion of folio of the Register 128752/2 creates potential for an additional three dwellings and, as the availability of services to the land is not known and changing the zone may not meet the LPS criteria,

the draft LPS should take a precautionary approach and apply the Environmental Management Zone as it applies for the adjoining and larger area of elevated land above the highway.

46. At the hearing the representor submitted that they were satisfied with the response by the planning authority in the section 35F report. No further information was raised at the hearing or in submissions.

Commission consideration

47. The Commission considers that the primary objective in applying zones should be to achieve the zone purpose to the greatest possible extent. As such, the Commission considers that the sites containing the State roads, including any bridges, should be zoned Utilities, consistent with Guideline No. 1. The Commission also considers that folios of the Register 87055/5 and 128752/2 should be zoned Environmental Management for the reasons given by the planning authority.

Commission decision

48. Modification:
- revise the zoning of Mount Street to the Utilities Zone;
 - revise the zoning of the Hampshire section of Ridgely Highway to the Utilities Zone;
 - revise the zoning of the Cam River Bridge, Cooe Creek Bridge, Emu River Bridge, and Blyth River Bridge along the Bass Highway to the Utilities Zone; and
 - revise the zoning of folios of the Register 87055/5 and part folio of the Register 128752/2 to the Environmental Management Zone.
49. Reason:
- To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.

Utilities Zone - water infrastructure

Representation: TasWater (8)

50. The representor requested that the zoning of 9 sites containing reservoir tanks be revised to the Utilities Zone. The reason includes that the facilities listed are in accordance with the SPP definition of utilities.
51. In the section 35F report the planning authority recommended that the properties remain in the zones proposed by the draft LPS. The reasons include that the sites identified by TasWater are defined as minor utilities under the SPPs and Guideline No. 1, and application of the Utilities Zone is contrary to the instruction contained in criteria UZ1, UZ4, and UZ6 in Guideline No. 1.
52. Prior to the hearing TasWater provided further information as to the capacity and role in the water distribution system of each facility listed in the representation.
53. At the hearing, the Commission noted the purpose of the Utilities Zone is to provide for major utilities and therefore it is necessary to determine whether these assets are major utilities for application of the zone, having regard to the definition of minor utilities in the SPPs. The representor submitted that TasWater:
- is relying on the Use Class definition of Utilities at Table 6.2 of the SPPs;

- is only raising this matter in relation to sites with a defined boundary; and
- requests all such properties be included in the Utilities Zone so that works are permitted rather than discretionary.

54. At the hearing the planning authority submitted that:

- the Utilities Zone has been applied to major water infrastructure sites;
- distribution reservoirs have had surrounding zoning applied as small sites; and
- applying the Utilities Zone to the listed facilities sets a precedent for zoning of other minor infrastructure such as mobile phone towers.

Commission consideration

55. The Commission concludes that the subject sites are considered to be major utilities and therefore the Utilities Zone should be applied consistent with Guideline No. 1.
56. The Commission considers that the primary objective in applying zones should be to achieve the zone purpose to the greatest possible extent. As such, the Commission considers that the sites containing reservoirs should be in the Utilities Zone. However, while there is a separate PID for the Wivenhoe Reservoir, it is noted that this land is not owned by TasWater and, therefore, natural justice issues could result from applying the Utilities Zone to this land. Therefore, the Commission considers that the Utilities Zone should be applied to all proposed sites excluding the Wivenhoe Reservoir.

Commission decision

57. Modification:

- Revise the zoning of folios of the Register 115016/1, 148941/1, 83960/1, 151107/1, 151108/1, 66260/1, 197043/1, and 15624/1.

58. Reason:

- To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.

Utilities Zone - rail infrastructure

Representation: TasRail (10)

59. The representor requested that all land in the State Rail Network, including sidings and terminals, be included in the Utilities Zone. The reasons include that the Melba and Western Line railways are of critical economic importance and should be protected to ensure that future planning decisions do not impede current and future operations.
60. In the section 35F report the planning authority recommended the draft LPS be modified if necessary to correct any inaccuracy in the application of the Utilities Zone to land within the State Rail Network and requested TasRail be requested to provide details of any. The reasons include:
- the draft LPS intends to apply the Utilities Zone to all existing land comprising the State Rail Network; and
 - TasRail do not identify any specific error in application of the Utilities Zone to land within the State Rail Network.

61. Prior to the hearing TasRail was directed to provide maps indicating any sites within the State Rail Network that have not been included in the Utilities Zone.
62. TasRail provided a submission that folios of the Register 131919/5 and 169800/1 are part of the State Rail Network and ought be revised to the Utilities Zone.
63. At the hearing the planning authority confirmed that it supported zoning the two sites to the Utilities Zone.

Commission consideration

64. The Commission agrees that the two sites form part of the State Rail Network and as such the Utilities Zone should be applied.

Commission decision

65. Modification:
 - Revise the zoning of folios of the Register 131919/5 and 169800/1 to the Utilities Zone.
66. Reason:
 - To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.

Rural Zone – various areas (Private Timber Reserves)

Representation: Department of State Growth (11)

67. The representor indicated their preference that land set aside for forestry purposes be included in the Rural Zone.
68. In the section 35F report the planning authority recommended that the zoning of land set aside for forestry purposes remain as proposed in the draft LPS. The reasons include:
 - the draft LPS has applied the Rural Zone to areas of declared Private Timber Reserve (PTR) land that form a cohesive and identifiable large scale geographical unit;
 - smaller and isolated land areas declared as a PTR located within areas generally suited to agriculture are included in the Rural Zone;
 - the zoning of PTRs is not relevant as the Act excludes planning schemes from applying to forestry; and
 - the draft LPS proposed zoning is consistent with Guideline No. 1.
69. At the hearing no further submissions were received about the planning authority recommendation.

Commission consideration

70. The Commission notes the submissions by the representor and planning authority and accepts that the application of the zoning is consistent with Guideline No. 1.

Commission decision

71. The Commission considers that no modifications are required.

Various zones – mineral resources

Representation: Department of State Growth (11)

72. The representor requested:

- the zoning of land under mining lease 1929P/M at Highclere be revised to apply the Rural Zone to the entire lease area;
- a reduced application of the Rural Living Zone at Hampshire; and
- a reduced application of the Rural Living Zone at Natone.

73. The reasons include:

- to reflect the zoning in the interim planning scheme; and
- exploration licenses apply over the entirety of both the Hampshire and Natone settlements and continued access to future resources across the rural landscape is critical to supporting economic development and employment growth.

74. In the section 35F report the planning authority recommended no change to the proposed zoning. The reasons include:

- split zoning of individual titles has been avoided in accordance with Practice Note 7 and the boundaries of the mining lease at Highclere do not match the cadastre;
- mining activity may not include the entire site or surface of the land;
- while the lease area may be identified by a cartographic description and lease diagram, the lease is for a term commensurate with the life of the mining project and not the life of the planning scheme; and
- for the Hampshire and Natone area the Act sufficiently protects mining and exploration activity against the provisions of a planning scheme.

75. At the hearing no further submissions were received about the planning authority recommendation.

Commission consideration

76. The Commission notes submissions by the representor and planning authority and accepts that the application of the zoning is consistent with Guideline No. 1.

Commission decision

77. The Commission considers that no modifications are required.

Heybridge Residential Nature Reserve Specific Area Plan - electricity infrastructure subdivision provisions

Representation: TasNetworks (7)

78. The representor requested that the Heybridge Residential Nature Reserve Specific Area Plan (the SAP) be revised to include subdivision for the provision of utilities as an Acceptable Solution to be consistent with the standard SPP drafting.

79. In the section 35F report the planning authority recommended that no modification be made. The reasons include:

- the SAP is intended to require all distribution and reticulation cables for electricity supply within a lot be installed underground and the terms are self-explanatory and not intended to apply for network distribution and reticulation cables of an electricity supply entity;
- the provision does not apply for the prescribed minor environmental impact works by TasNetwork because of the exemptions created under the *Electricity Supply Industry Act* or minor communications infrastructure; and

- the proposed text would have no operation within the SAP as the SAP intends for there to be no further subdivision within the area to which the SAP applies.
80. At the hearing the representor submitted that subdivision for the provision of utilities is included in all SPP zones, TasNetworks are of the view that it should also be in all SAP subdivision requirements, and the intention is to avoid a situation where utilities are prohibited.
81. At the hearing the planning authority submitted:
- the SAP relies on approved plans and applies to a development permit that does not need extra utilities;
 - including subdivision for the provision of utilities creates no advantage, and not including the requested text creates no disadvantage to TasNetworks; and
 - including subdivision for the provision of utilities would require amendment of the approved plan of subdivision and of the development permit.
82. The representor further submitted that not including subdivision for the provision of utilities may be satisfactory if all electricity needs have been taken into account in the previous approval process.

Commission consideration

83. The Commission notes that the SAP is unique in being based on an approved subdivision.
84. The Commission accepts the planning authority submission that including subdivision for the provision of utilities would result in the need to amend the approved plan of subdivision and the development permit, and considers that it is not necessary to modify the drafting of the Heybridge Residential Nature Reserve SAP.

Commission decision

85. The Commission considers that no modifications are required.

Road and Rail Assets Code – attenuation area overlay

Representation: TasRail (10)

86. The representor requested application of the Road and Rail Assets Code across the State Rail Network including sidings and terminals. The reasons include that the Melba and Western Line railways are of critical economic importance and should be protected to ensure that future planning decisions do not impede current and future operations.
87. In the section 35F report the planning authority recommended that no modification be made as the draft LPS includes the required overlay maps.
88. At the hearing, the planning authority submitted that the land to which the road or railway attenuation area applies is defined through the Utilities Zone and therefore the overlay only needs to be applied if it is necessary to change the width of the attenuation area.
89. The representor submitted that interpretation of the SPPs would be simpler if the road or railway attenuation area overlay could be utilised in the LPS.

Commission consideration

90. The Commission considers the Road and Rail Assets Code has been applied in accordance with the SPPs as the application of the code is by description and that the requirements of the SPPs and Guideline No. 1 are met.

Commission decision

91. The Commission considers that no modifications are required.

Electricity Transmission Infrastructure Protection Code – substation mapping

Representation: TasNetworks (7)

92. The representor requested:

- the Substation Facility and Substation Facility Buffer Area overlays be amended to apply to the entire Emu Bay substation site (15 and 17 Devon Street); and
- removal of the communications station buffer area from folio of the Register 129871/6 and application of the buffer to the Hampshire substation site.
- In the section 35F report the planning authority recommended the Electricity Transmission Infrastructure Protection Code overlay map be modified to correct any inaccuracy identified by TasNetworks in the location and application of electricity transmission corridors, communication station buffer areas, and substation facility buffer areas. The reasons include the SPPs and Guideline No. 1 require the LPS to include an overlay map prepared in accordance with the information published on theLIST.

93. At the hearing the representor submitted that they were satisfied with the planning authority response to correct overlay anomalies.

Commission consideration

94. The Commission accepts the planning authority recommendation for application of the Electricity Transmission Infrastructure Protection Code overlays for the subject sites consistent with ETIPC 1 of Guideline No. 1 noting that modifications are limited to addressing anomalies or inaccuracies.

Commission decision

95. Modification:

- revise the Substation Facility and Substation Facility Buffer Area overlays to apply to the entire Emu Bay Substation, including folios of the Register 109072/1 and 251613/1; and
- remove the Communications Station Buffer Area from folio of the Register 129871/6 and apply it to the Hampshire Substation site.

96. Reason:

- To apply the Electricity Transmission Infrastructure Protection Code overlays consistent with Guideline No. 1.

Natural Assets Code - electricity infrastructure

Representation: TasNetworks (7)

97. The representor requested that the priority vegetation area overlay be removed from the Round Hill Communications Site. The reasons include:

- to recognise that vegetation management and clearance is required as a critical function of maintaining the safety of TasNetworks assets;
- to recognise that vegetation removal is already approved under other Acts;

- application of the priority vegetation area overlay on this site is inconsistent with the *Electricity Supply Industry Act 1996* and SPP vegetation exemptions and more broadly Schedule 1 of the Act; and
 - clause 4.4.1 of the SPPs recognises that vegetation removal by TasNetworks is undertaken in accordance with an Environmental Management Systems (EMS) endorsed by the Forest Practices Authority, which is sufficient to minimise the need for clearance and conversion of threatened native vegetation communities with respect to the construction and maintenance of infrastructure.
98. In the section 35F report the planning authority recommended no change to the priority vegetation area overlay. The reasons include:
- the overlay is required by the LPS requirements of the SPPs; and
 - exemptions within the SPPs are sufficient to provide TasNetworks with certainty it will not be subject to any requirement on priority vegetation.
99. At the hearing, the representor submitted that they would like the overlay removed from the 20m radius requested for modification to the Utilities Zone at the Round Hill Communications Site and that this area is already cleared.
100. At the hearing, the planning authority submitted that the exemptions under the *Electricity Supply Industry Act* allow for maintenance and various other works to occur and are largely replicated in the SPP exemptions, therefore the code would only apply if a new infrastructure site were to be developed in an area to which the overlay applies.
101. The representor advised they no longer sought removal of the overlay from any sites.

Commission consideration

102. The Commission notes that the SPPs and the *Electricity Supply Infrastructure Act 1996* provide exemptions for maintenance of vegetation in proximity to infrastructure and that, as the land is cleared, the code will not be triggered. The Commission considers it is unnecessary to modify the overlay for maintenance of vegetation.

Commission decision

103. The Commission considers that no modifications are required.

Other matters

Matters taken not to be a representation

Representations: Debbie Thomas (1), Department of Communities (5), Department of Police, Fire and Emergency Services (6), TasNetworks (7), and Leigh Knight (9)

104. Representors raised matters including:
- the SPPs should include certain provisions or otherwise be revised;
 - the SPPs failed to consider matters or otherwise provided too much or too little discretion;
 - querying how the LPS and/or SPP provisions should be interpreted or how discretion in provisions should be exercised in relation to the future implementation of the Tasmanian Planning Scheme;
 - that the format or provisions permitted to be included in the LPS by the SPPs should be changed or otherwise revised; and
 - that the regional strategy was not valid or otherwise should be revised.

105. In the section 35F report the planning authority made no recommendations on these matters.

Commission consideration

106. The Commission notes that:

- section 35E of the Act sets out the matters not to be taken to be a representation;
- other matters not subject to Part 3A of the Act cannot be considered as part of its consideration under section 35J; and
- during its consideration, it has sought to establish how all raised matters relate to the draft LPS and if the matter can be included within the draft LPS under section 32 of the Act.

107. The Commission considers that the parts of representations listed above are outside the considerations under section 35J.

Commission decision

108. The Commission considers that it does not have jurisdiction to assess these matters.

Matters of a technical nature or relevant to implementation

109. The Commission notes the draft LPS contains matters that are relevant to section 35J(2) of the Act, including:

- minor numbering and typographical errors;
- instances where the draft LPS, or proposed modifications, do not apply the writing style and conventions set out in Practice Note 5: Tasmanian Planning Scheme drafting conventions or Practice Note 8: Draft LPS written document - technical advice;
- instances where the draft LPS zone and overlay maps or Geographic Information System (GIS) datasets contain overlaps, gaps and errors, or do not apply the technical advice or conventions set out in Practice Note 7 - Draft LPS mapping: technical advice; and
- instances where a modification to the draft LPS written document or draft LPS maps requires a consequential modification to the other.

110. The Commission further notes that Division 1 – Electronic database and documents of Part 6 of the Act, requires the Commission to maintain a database containing an electronic planning map.

Commission consideration

111. The Commission considers that the draft LPS should:

- minimise numbering and typographical errors and be consistent with the conventions set out in the Commission Practice Notes; and
- contain zone and overlay maps that are free from errors, reflect current cadastral parcel boundaries, be free from technical anomalies such as gaps and overlaps and be provided in a form suitable for being made under section 35L of the Act and inclusion in an electronic database.

Commission decision

112. Modification:

- revise the draft LPS written document to include the technical modifications identified in Annexure A to the section 35K(1)(a) notice to:

- meet the LPS requirements of the SPPs;
 - correct references to relevant provisions;
 - provide for the effective operation of the provisions; and
 - reflect the terminology used in the SPPs; and
- revise the draft LPS zone and overlay maps to:
 - apply the Open Space Zone to part of folio of the Register 40951/5 in accordance with approved urgent amendment 'BUR UA1-2019' to correct an error in the zone mapping;
 - correct the arrangement of layers over Emu Bay, Hampshire, and Burnie Substations, noting the presence of dark brown lines where the transmission corridor and substation buffer area meet;
 - align zoning and overlays, based on the cadastral parcels dataset, with the most recent version of the cadastral parcels dataset available from theLIST;
 - remove the Environmental Management Zone and Safeguarding of Airports Code overlays from land outside the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark map on theLIST; and
 - apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset.

113. Reason:

- To be consistent with Guideline No. 1, and make modifications of a technical nature or relevant to the implementation of the Local Provisions Schedule if the Local Provisions Schedule were approved under section 35L of the Act.

Attachments

Attachment 1 – List of representations

Attachment 2 – Notice to modify under section 35K(1)(a)

Attachment 1

List of Representations

No Name

1. Debbie Thomas
2. GHD for Michael and Frances Jack, Colin and Jacqueline Margetts, Marie Redman, and Derek Howard
3. Plan Place for Railpine
4. EnviroPlan for Suzanne Townsend, Christopher McCrae, Frederick McCrae, and Alister McCrae
5. Department of Communities
6. Department of Police, Fire and Emergency Services
7. TasNetworks
8. TasWater
9. Leigh Knight
10. TasRail
11. Department of State Growth

Attachment 2**Land Use Planning and Approvals Act 1993****Notice to modify under section 35K(1)(a)****Burnie Draft LPS**

11 May 2020

The Tasmanian Planning Commission (the Commission) directs that the Burnie planning authority modifies the Burnie draft Local Provisions Schedule (draft LPS) as follows:

1.0 Zone maps and overlays

No.	Description	Direction and Reason
1.1	Zoning of electricity supply infrastructure	<p>Revise the zoning of the following properties to the Utilities Zone:</p> <p>(a) Emu Bay Substation, 15 and 17 Devon Street, South Burnie (folios of the Register 109072/1 and 251613/1);</p> <p>(b) Hampshire Substation, 2753 Ridgley Highway, Hampshire (part folio of the Register 164460/1); and</p> <p>(c) Companion Hill Communications Site, within 2753 Ridgley Highway, Hampshire (folio of the Register 164459/1).</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.</p>
1.2	Zoning of state roads	<p>Revise the zoning of the following State roads or State road segments to the Utilities Zone:</p> <p>(a) Mount Street;</p> <p>(b) the Hampshire section of Ridgely Highway; and</p> <p>(c) the Cam River Bridge, Cooee Creek Bridge, Emu River Bridge, and Blyth River Bridge along the Bass Highway.</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.</p>
1.3	Zoning of water reservoirs	<p>Revise the zoning of folios of the Register 115016/1, 148941/1, 83960/1, 151107/1, 151108/1, 66260/1, 197043/1, and 15624/1.</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.</p>
1.4	Zoning of rail infrastructure	<p>Revise the zoning of folios of the Register 131919/5 and 169800/1 to the Utilities Zone.</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.</p>
1.5	C4.0 Electricity Transmission Infrastructure Protection Code	<p>(a) Revise the Substation Facility and Substation Facility Buffer Area overlays to apply to the entire Emu Bay Substation, including folios of the Register 109072/1 and 251613/1; and</p>

		<p>(b) Remove the Communications Station Buffer Area from folio of the Register 129871/6 and apply it to the Hampshire Substation site.</p> <p>Reason: To apply the Electricity Transmission Infrastructure Protection Code overlays consistent with the SPPs LPS requirements and Guideline No. 1.</p>
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2.0 Consequential and technical issues

2.1 Revise the draft LPS written document to include the technical modifications identified in Annexure A to:

- (a) meet the LPS requirements of the SPPs;
- (b) correct references to relevant provisions;
- (c) provide for the effective operation of the provisions; and
- (d) reflect the terminology used in the SPPs.

2.2 Revise the draft LPS zone and overlay maps to:

- (a) apply the Open Space Zone to part of folio of the Register 40951/5 in accordance with approved urgent amendment 'BUR UA1-2019' to correct an error in the zone mapping;
- (b) correct the arrangement of layers over Emu Bay, Hampshire, and Burnie Substations, noting the presence of dark brown lines where the transmission corridor and substation buffer area meet;
- (c) align zoning and overlays, based on the cadastral parcels dataset, with the most recent version of the cadastral parcels dataset available from the LIST;
- (d) remove the Environmental Management Zone and Safeguarding of Airports Code overlays from land outside the municipal area according to the Central Plan Register (CPR) map (including notes) and current low water mark map on LISTmap; and
- (e) apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset.

Reason:

To be consistent with Guideline No. 1, and make modifications of a technical nature or relevant to the implementation of the Local Provisions Schedule if the Local Provisions Schedule were approved under section 35L of the Act.

BUR-Applied, Adopted or Incorporated Documents

Document Title	Publication Details	Relevant Clause in the LPS
This table is not used in this Local Provisions Schedule.		