

TASMANIAN PLANNING COMMISSION



DECISION

Local Provisions Schedule Flinders

Date of decision 21 April 2022

Under section 35K(1)(a) of *Land Use Planning and Approvals Act 1993* (the Act), the Commission directs the planning authority to modify the 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).

The Commission finds that the draft LPS requires substantial modification and accordingly, under section 35KB of the Act, the Commission directs the planning authority to prepare amendments to the LPS under Part 3B of the Act, and to submit the amendments to the Commission after the LPS comes into effect in accordance with the notice in Attachment 3.

Ann Cunningham
Delegate (Chair)

Dianne Cowen
Delegate

REASONS FOR DECISION

Background

The Flinders Planning Authority (the planning authority) exhibited the Flinders draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act), from 2 June 2021 until 2 August 2021.

On 23 November the planning authority provided the Commission with a report under section 35F(1) into 34 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 the report under section 35F(2)(b) of the Act. Furthermore three submissions were accepted by the Commission during the hearing process. A list of representations and submissions is at Attachment 1.

Date and place of hearing

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

Hearings were held at the Flinders Council, 4 Davies Street, Whitemark on the 8, 9 and 10 February 2022.

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 Northern Tasmania Regional Land Use Strategy 2021 (the 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)].
 7. The Commission may also reject the draft LPS and request that the planning authority prepare a substitute draft LPS [section 35K(c)].
 8. Where the Commission has determined modifications ought to be made, these are set out in a notice under sections 35K(1)(a) of the Act (see Attachment 2).
 9. The decisions on relevant modifications considered under section 35KA of the Act are set out below.
 10. Where the Commission has determined substantial modifications ought to be made to the draft LPS and such modifications are suitable to be made as an amendment, under Part 3B, to the LPS, it may direct the planning authority to prepare the amendment and submit to the Commission after the LPS comes into effect. These are set out in a notice under section 35KB of the Act (see Attachment 3).

Issues raised in the representations

Low Density Residential Zone – Gunter and Barr Street, Lady Barron

Representations: Department of Communities Tasmania (7), Flinders Council (10)

11. The representors requested that seven lots on the northern side of Gunter Street and five lots on the southern side of Barr Street, Lady Barron be revised from the Environmental Management Zone to the Low Density Residential Zone. The reasons include:
 - the Department of Primary Industries, Parks, Water and Environment has offered the land to the Director of Housing;
 - the land is intended for public housing, which is in demand at Lady Barron; and
 - the land is zoned Residential under the Flinders Planning Scheme 2000.
12. The planning authority supported the request in its section 35F report.
13. Prior to the hearing, the Planning Authority supplied written evidence from the landowner (the Crown) that it supported the Low Density Residential Zone.

Commission consideration

14. The Commission agrees that the Low Density Residential Zone should be applied to the land. The land is zoned Residential under the Flinders Planning Scheme 2000, is required for public housing, and is suitable for residential use and development.

Commission decision

15. Modification:

- Revise the zoning of the seven lots on the northern side of Gunter Street located directly opposite folio of the Register 213264/14 to folio of the Register 242188/20, and the five lots on the southern side of Barr Street, Lady Barron adjacent to folio of the Register 169294/2 to folio of the Register 238900/10 to Low Density Residential.

16. Reason:

- To apply the Low Density Residential Zone consistent with Guideline No. 1.

Low Density Residential Zone – 4837 Palana Road, Palana and Killiecrankie Road, Killiecrankie folio of the Register 50506/3

Representation: Rebecca Green and Associates for Cohen and Associates Pty Ltd (11 and 12)

17. The representor requested that part of the land at 4837 Palana Road, Palana and part of the land at Killiecrankie Road, Killiecrankie folio of the Register 50506/3 be revised from the Landscape Conservation Zone to the Low Density Residential Zone on the basis that a valid planning permit exists for subdivision of 11 and 3 new lots on each property respectively. The lots were approved under the Village Zone of the Flinders Planning Scheme 2000 and have lot sizes between 3124m² and 1ha, which are generally commensurate with the Low Density Residential Zone, which adjoins each property.
18. In the section 35F report, the planning authority recommended that the land be zoned Low Density Residential and subject to the Coastal Settlements Specific Area Plan.

Commission consideration

19. The Commission agrees that the Low Density Residential Zone should be applied to the land. The land is zoned Village under the Flinders Planning Scheme 2000 and the existence of the current approvals represents clear intent for residential use and development. The Commission also agrees that the Coastal Settlements Specific Area Plan should be applied as intended for the remainder of the land zoned Low Density Residential at the Palana and Killiecrankie settlements.

Commission decision

20. Modification:

- Revise the zoning of 4837 Palana Road, Palana folio of the Register 164143/3 so that it is wholly located in the Low Density Residential Zone and apply the Coastal Settlements Specific Area Plan;
- Revise the zoning of that part of 4837 Palana Road, Palana folio of the Register 164144/1 that is included in lots 4, 5, 6, 7, 8, 9, 10 and 11 on the endorsed plan of subdivision under planning permit DA24/10P as provided in the planning authority's submission received 15 March 2022 so that the lots are wholly located in the Low Density Residential Zone and apply the Coastal Settlements Specific Area Plan; and
- Revise the zoning of Killiecrankie Road, Killiecrankie folios of the Register 182583/1, 182583/2 and 182583/3 to Low Density Residential Zone and apply the Coastal Settlements Specific Area Plan.

21. Reason:

- To apply the Low Density Residential Zone consistent with Guideline No. 1 and to apply the Coastal Settlements Specific Area Plan overlay to areas where subdivision density and the visual bulk and site coverage of buildings needs to be managed.

Low Density Residential Zone – 270 Palana Road, Whitemark

Submission accepted by the Commission: Mick Rose for MJB Tas Pty Ltd

22. The Commission notes that the submission was received after the exhibition of the draft LPS, which closed on 2 August 2021. The submission was received on 7 February 2022 and tabled at the hearing on 10 February 2022, where it was accepted by the Commission with the agreement of the planning authority.
23. The submitter requested that the land at 270 Palana Road, Whitemark be revised from the Rural Zone to the Low Density Residential Zone so that the land could be subdivided into two lots of 7866m² and 6965m².
24. At the hearing, the submitter stated that the owner of the land purchased the land in October 2020 and had believed that the provisions of the Rural Zone under the SPPs were the same as the provisions of the Rural Zone under the Flinders Planning Scheme 2000. This would have provided for subdivision.
25. Following the hearing, the planning authority responded to the submission and advised that it supported the Low Density Residential Zone for the land because it meets the requirements of Guideline No. 1, and because the land is now in private ownership and is otherwise not suitable for the Rural Zone. The planning authority was of the view that the Coastal Settlement Specific Area Plan should be applied to limit site coverage and subdivision potential.

Commission consideration

26. The Commission observes that the land has only recently transferred to private ownership. As a result, the Rural Zone may not be appropriate given the small area of the land (1.48ha). The only suitable alternative appears to be the Low Density Residential Zone given the zone of the land to the south and the opposite side of the showground. It is considered that the land should be grouped with this settlement. The Commission therefore agrees that the Low Density Residential Zone be applied.
27. The Commission also agrees that the Coastal Settlement Specific Area Plan be applied to limit subdivision. This is appropriate for two reasons – it would ensure that the subdivision pattern is coherent with the surrounding Low Density Residential Zone, and would limit vehicle access and movements onto Palana Road, which is considered appropriate given that the submitter has not presented a traffic impact assessment or the like. The combination of the Low Density Residential Zone and the Coastal Settlement Specific Area Plan would limit subdivision potential to approximately 4 new lots.

Commission decision

28. Modification:

- Revise the zoning of 270 Palana Road, Whitemark folio of the Register 220316/1 to Low Density Residential and apply the Coastal Settlements Specific Area Plan.

29. Reason:

- To apply the Low Density Residential Zone consistent with Guideline No. 1 and to apply the Coastal Settlements Specific Area Plan overlay to areas where subdivision density and the visual bulk and site coverage of buildings needs to be managed.

Low Density Residential Zone and Rural Living Zone – Pot Boil Road, Lady Barron

Representation: Rebecca Green and Associates for Dianne Fair (8)

30. The representor requested that the land at Pot Boil Road, Lady Barron folios of the Register 181695/4, 181695/5, 181695/6, 181695/7, 181696/3, 181696/4, 181696/5 and 181696/6, be revised from the Landscape Conservation Zone to the Low Density Residential Zone. The reason was that the parent lot has recently been separated into 14 titles (13 new titles plus the parent lot), under the powers of the *Land Titles Act 1980*, and the land was zoned Residential under the Flinders Planning Scheme 2000. The representor proposed that the remainder of the new lots, namely folios of the Register 181695/1, 181695/2, 181695/3, 181696/1 and 181696/2, be zoned Rural Living A.
31. In the section 35F report, the planning authority recommended that the proposed Low Density Residential Zone be applied, with the land also subject to the Coastal Settlements Specific Area Plan. However, the planning authority did not support application of the Rural Living Zone because the land is not appropriately serviced with a Council maintained road.
32. At the hearing, the representor noted that the Flinders Council had adopted folio of the Register 165274/1 as a local highway under section 6 of *Local Government (Highways) Act 1982* and had agreed to develop a road in the future, which would provide frontage to the lots. The representor also confirmed that Site-specific Qualification FLI-22.2 (public open space contribution to the summit of Vinegar Hill) was proposed to be removed from the land zoned Rural Living.
33. In response, the planning authority noted that there was the potential to create one new lot on each of the titles proposed to be zoned Rural Living if included in the Rural Living A Zone and therefore the Site-specific Qualification should be retained as it would be needed for the assessment of subdivision.
34. Following the hearing, the planning authority confirmed the Council's decision to develop a public road to the lots. As a consequence, the planning authority advised that it was supportive of the Rural Living Zone proposed by the representor, but that the Rural Living B sub-zone be applied so that development of the land through re-subdivision of the existing lots would not be intensified. This would ensure consistency with the local strategies and the intended outcomes of the State Coastal Policy.
35. The planning authority also agreed that Site-specific Qualification FLI-22.2 should be removed after it sought legal advice that questioned whether the provision would operate as intended.

Commission consideration

36. The Commission agrees that the Low Density Residential Zone should be applied to the land fronting Pot Boil Road as sought by the representor. The land is zoned Residential under the Flinders Planning Scheme 2000, has been lawfully subdivided, and is suitable for residential use and development.
37. The Commission also agrees that the Rural Living Zone should be applied to the remainder of the new lots. These lots have also been lawfully established and will be serviced by a public road. The Commission is persuaded by the planning authority's view that the Rural Living B sub-zone be applied as the land is in the coastal zone established by the State Coastal Policy

and may have landscape values (and possibly other natural values) that have not be verified by an expert assessment. It is unclear whether further subdivision of the lots is appropriate.

38. The Commission supports removal of Site-specific Qualification FLI-22.2 as the planning authority has indicated that the provision may not be legally sound.

Commission decision

39. Modification:

- Revise the zoning of Pot Boil Road, Lady Barron folios of the Register 181695/4, 181695/5, 181695/6, 181695/7, 181696/3, 181696/4, 181696/5 and 181696/6 to Low Density Residential;
- Revise the zoning of Pot Boil Road, Lady Barron folios of the Register 181695/1, 181695/2, 181695/3, 181696/1 and 181696/2 be zoned Rural Living B;
- Revise the draft LPS written document by deleting Site-specific Qualification FLI-22.2 as shown in Annexure A to Attachment 2; and
- Revise the Site-specific Qualifications overlay map by deleting Site-specific Qualification FLI-22.2.

40. Reason:

- To apply the Low Density Residential Zone and Rural Living Zone consistent with Guideline No. 1 and to ensure the draft LPS meets section 32 of the Act.

Low Density Residential Zone and Rural Living Zone – Esplanade and 1A Palana Road, Whitemark

Representations: Raoul Harper and Jana Monnone (24), Noel and Vicki Warden (27), Graeme, Warwick and Kelly Blundstone (29)

41. The representors requested that three adjoining properties at Esplanade, Whitemark folios of the Register 15860/1 and 15860/2, and 1A Palana Road, Whitemark be revised from the Landscape Conservation Zone to the Rural Living Zone. The reasons include:
- the land has character that is similar to land contained in the Rural Living Zone (or Low Density Residential Zone);
 - the land is suitable for more dense development as it is directly adjacent to the township;
 - the land is not suitable for the Rural or Agriculture zones, and does not have the characteristics of other land zoned Landscape Conservation; and
 - the Landscape Conservation Zone would increase bushfire risk to the township.
42. In the section 35F report, the planning authority stated that the Landscape Conservation Zone was applied because the land contained intact native vegetation. It recommended that the Rural Living D Zone be applied as the properties are small in area (0.88 to 7.2 hectares), are located adjacent to the township, and because the Zone would be more consistent with the wider strategic aims identified in local strategy to facilitate residential development close to Whitemark and the surrounding area. The planning authority was of the view that the Rural Living D Zone would recognise the location of the land and would prevent further subdivision while further strategic work is undertaken to investigate whether the area could eventually be zoned Low Density Residential.
43. At the hearing, the planning authority stated that it proposed to replace all of the Landscape Conservation Zone bounded by Esplanade, Walker Street, and the Cattle Track with the Low Density Residential and Rural Living D Zone. The intent was to reflect the use and character of the land without providing significant subdivision potential, and also to ensure that zoning was applied outwardly from the centre of the settlement in a logical sequence. The planning

authority opined that although there was some native vegetation on the land, there were other zone and overlay combinations that could provide more appropriate controls given the use and attributes of the land.

44. Following the hearing, the planning authority advised that it proposed to revise the zone of that part of Walker Street, Whitemark folio of the Register 128758/2 zoned Landscape Conservation to the Rural Living D Zone, and the zone of the following properties from Landscape Conservation to Low Density Residential:
- 3 Esplanade, Whitemark of the folio of the Register 67128/3;
 - 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5; and
 - 17 Walker Street, Whitemark folio of the Register 60768/6.
45. The planning authority also advised that it proposed the additional Low Density Residential-zoned properties to be included in the Whitemark and Lady Barron Urban Development Specific Area Plan.

Commission consideration

46. The Commission is persuaded that the Low Density Residential and Rural Living D zones, combined with the Priority Vegetation Area overlay, represent a more logical combination of zones for the land given the location of the land close to the centre of Whitemark. The zones are consistent with the requirements of Guideline No. 1.

Commission decision

47. Modification:
- Revise the zoning of the following properties to Low Density Residential:
 - a. 3 Esplanade, Whitemark of the folio of the Register 67128/3;
 - b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5;
 - c. 17 Walker Street, Whitemark folio of the Register 60768/6; and
 - Revise the zoning of the following properties to Rural Living D Zone:
 - a. Esplanade, Whitemark of the FR 15860/1;
 - b. Esplanade, Whitemark of the FR 15860/2;
 - c. 1A Palana Road, Whitemark FR 53171/5; and
 - d. Walker Street, Whitemark FR 128758/2.
48. Reason:
- To apply the Low Density Residential Zone and Rural Living Zone consistent with Guideline No. 1.

Rural Living Zone and Whitemark Rural Living Specific Area Plan – Whitemark

Representations: Elizabeth Frankham (1), Flinders Council (10), Department of State Growth (14)

49. The representations made by Elizabeth Frankham and Flinders Council were supportive of the Rural Living Zone and Whitemark Rural Living Specific Area Plan to the land at Palana Road, Baileys Lane, Lady Barron Road, and Virieux Road. The representation made by the Department of State Growth was in opposition to the Rural Living Zone and Whitemark Rural Living Specific Area Plan on the basis that a traffic impact assessment had not been provided to demonstrate that the traffic impact of additional dwellings on the State road network (Lady Barron Road and Palana Road) would be reasonable. The representation also questioned the logic behind the application of the sub-zones.

50. The representation made by Flinders Council also requested that the Rural Living Zone be applied to land at Canns Hill bordered by Cemetery Road, Memana Road and Palana Road on the basis that the Zone was supported by the Flinders Structure Plan 2016 and local strategies for residential land supply and dwelling demand.
51. In the section 35F report, the planning authority recommended that the Rural Living Zone be extended towards Canns Hill, that the exhibited area of Rural Living Zone and the application of sub-zones be maintained, and did not agree that a traffic impact assessment should be required. The planning authority made the following comments:
- there is an existing housing availability and affordability problem on Flinders, and little land available for residential development within Whitemark;
 - significant natural hazards and values constrain the expansion of the existing Whitemark settlement;
 - the regional strategy requires that the draft LPS provides residential land for the foreseeable future;
 - the Whitemark Rural Living Specific Area Plan would provide for increased housing options on Flinders Island and would address housing affordability issues; and
 - a traffic impact assessment would need to be provided as part of a future subdivision application as required by the SPPs.
52. Prior to the hearing, the planning authority clarified that the Rural Living A, B and D sub-zones would apply across Memana Road folio of the Register 155692/1, and Palana Road folio of the Register 252518/1 in support of the proposed expansion of the Zone onto Canns Hill.
53. At the hearing, the planning authority contended that the Rural Living Zone would be consistent with Policy G-RSN-P3 in the regional strategy, which defers settlement and activity centre planning to local strategy. It also added that the zoning is supported by the Flinders Structure Plan and LPS discussion papers on dwelling yield analysis and demand. The planning authority detailed the Council's strategy to increase population on Flinders Island, with growth currently limited by housing affordability, lack of residential land, and 40% of the dwellings being holiday homes only occupied on a temporary basis. As a result, local business has difficulty attracting staff because employees have nowhere to live on the Island. Further Rural Living zoning at Canns Hill would provide further opportunity for construction of dwellings.
54. In response, the Department of State Growth raised concern that:
- the sub-zones were applied inconsistently;
 - provision was unusually made for multiple dwellings in a Rural Living Zone through the Specific Area Plan;
 - the land was adjacent to the State road network and additional dwellings would cause unreasonable traffic impact that should be supported by a traffic impact assessment before the land was zoned Rural Living;
 - that traffic increase would be unsafe; and
 - that the Rural Living Zone would be close to two mining leases located at Harleys Road, Whitemark folio of the Register 176057/2 and at Palana Road folio of the Register 252518/1 (part of the subject site), which is a level 1 activity that provides for crushing and screening.
55. Due to staff change during the draft LPS assessment process, the planning authority was uncertain of the reasons for application of the sub-zones. Nevertheless, the Department of State Growth stated that its concern was to ensure that any increase in traffic movements onto State roads caused by an increase in subdivision and dwelling numbers would be safe and functional. The planning authority's view was that matters of traffic impact would be managed as a result of assessment of use or development applications under the Road and

Railway Assets Code of the SPPs, and that it would not be appropriate to require a traffic impact assessment at this stage.

56. In response to the location of the mining leases, the planning authority advised that one of the quarries located on the Council-owned land, is in its final stage of operation and is intended to be decommissioned to provide for the proposed residential use and development of the land. The planning authority indicated that it would be supportive of an Attenuation Area overlay applied around the mining lease to manage impacts from its quarry.
57. Following the hearing, the planning authority reviewed its property records and advised that neither mining lease provided for crushing. Otherwise, any crushing activities outside the area of a mining lease would be classified as 'Manufacturing and Processing,' which is a Permitted use in a Rural Zone.

Commission consideration

58. The Commission finds that there should be no change to the area of the Rural Living Zone, the sub-zones or the Whitemark Rural Living Specific Area Plan for the following reasons:
 - the exhibited area of Rural Living Zone is supported by the 'Identifying Dwelling Demands Discussion Paper, January 2021', and the 'Identifying Potential Lot and Dwelling Yields Discussion Paper, January 2021' that formed part of the supporting report on the draft LPS. These discussion papers, in concert with the Flinders Structure Plan 2016 is the local strategy that acts as an extension of the regional strategy and support application of the Zone;
 - the Specific Area Plan is also supported by the local strategies, which detail unique conditions on Flinders Island. The local strategies explain that there is a shortage of available and affordable housing on the island, a problem which is compounded by a recent increase in dwellings being used as holiday homes and Visitor Accommodation. Land prices are high and this is exacerbated by high building costs caused by difficulties in the availability of materials and labour. The Commission is satisfied that there is a need for flexibility in controls for housing;
 - the application of sub-zones is generally commensurate with existing lot sizes, and while the pattern of the sub-zoning is unusual, it is compliant with RLZ 3 of Guideline No. 1;
 - the Commission agrees with the planning authority that traffic safety and functionality can be adequately considered when a development application is made under the Road and Railway Assets Code of the SPPs. The Commission observes that traffic in the vicinity of the land is very low, that the roads are generally very straight and that the landscape provides vehicle sight distance that is very good; and
 - there is insufficient evidence about the potential impacts of extractive industry within the mining lease at Harleys Road, Whitemark folio of the Register 176057/2 to be satisfied that the Rural Living Zone should be expanded towards Canns Hill. Additionally, the Commission is not satisfied that there is enough evidence to be assured that the Zone is supported by local strategy, in particular the structure plan, which features maps that do not anticipate the Rural Living Zone in that area. The Commission is also of the opinion that further expansion of the zone is not consistent with the objectives set out in Schedule 1 of the Act, in that the draft LPS already makes extensive provision for construction of new dwellings in that area, and that further accrual of dwelling potential at this point in time risks the occurrence of disorderly use and development.

Commission decision

59. The Commission considers that no modifications are required.

Rural Living Zone – 4596 Palana Road, Palana

Representation: Tony Griggs and Linda Nicol (2)

60. The representors requested that 4596 Palana Road, Palana be revised from the Rural Zone to the Rural Living B Zone. The reasons include:
- the land is flat and suitable for residential lots;
 - the land cannot be farmed because of its small area (9.934ha) and the impact that farming activities would have on the nearby settlement at Palana;
 - the Rural Living Zone satisfies Guideline No. 1;
 - the draft LPS supporting report discussion paper on dwelling demands indicates that more land for residential use and development is required; and
 - there is strong demand for residential land and dwellings.
61. In the section 35F report, the planning authority recommended no change to the draft LPS and noted concerns with improvised development at Palana that would result in a spot-zoning. However, the planning authority also noted that the proposal to increase Rural Living-zoned land at Palana had some merit and stated that future strategic planning work should investigate this possibility.
62. At the hearing, the representor, represented by Rebecca Green (Rebecca Green and Associates for Cohen and Associates Pty Ltd) and Jason Barnes (Pinion Advisory) was of the view that the Rural Living Zone would be a logical extension of the existing settlement. An agricultural assessment submitted at the hearing concluded that the land by itself could not form the basis of a viable farming operation and would need significant improvement to at least support livestock.
63. In response, the planning authority did not support rezoning, but was of the opinion that the proposal had merit and that it could be addressed through a future amendment to the draft LPS once in effect.

Commission consideration

64. The Commission is not persuaded that the Rural Living Zone should be applied to the land as there is insufficient evidence that the Zone is supported by a local strategy and further information is needed to demonstrate compliance with RLZ 2(a) of Guideline No. 1. It is noted that the planning authority would be receptive to a draft amendment request to rezone the land in the event that more information is available.

Commission decision

65. The Commission considers that no modifications are required.

Rural Living Zone – 250 Lady Barron Road, Whitemark

Representation: Colin and Patricia Goss (25)

66. The representors requested that the land at 250 Lady Barron Road, Whitemark be revised from the Agriculture Zone to the Rural Living Zone. The representor added that if zoned Rural Living, the Priority Vegetation Area overlay should not apply as the land only contains a domestic garden. The reasons include:
- the land is not suitable for agricultural use because it has a small area of 8690m² and contains a dwelling;
 - the uses provided for by the Rural Living Zone are more appropriate for the land; and
 - the land could be used to provide additional dwellings.

67. In the section 35F report, the planning authority recommended that the land be zoned Rural, as it had also recommended application of the Rural Zone to the surrounding area as a result of other representations. The planning authority recommended against application of the Rural Living Zone as the land is isolated from similar zoning and would therefore result in a spot zone.
68. Following the hearing the planning authority provided a diagram that showed that the Priority Vegetation Area overlay would be applied to the land. The area is derived from the Regional Ecosystem Model (REM) mapping developed by Natural Resources Management Pty Ltd for the preparation of the overlay and application under Guideline No. 1. However, the planning authority was also of the view that the vegetation on the land may not qualify as priority vegetation.

Commission consideration

69. The Commission agrees that the Rural Zone should be applied because the land contains a dwelling, and although it is within a broader Agriculture Zone, it bears relationship to the land on the opposite side of Lady Barron Road zoned Rural Living. The Commission also notes the similarity between the purposes of the Rural and Agriculture zones, and the possible uses in each zone, which would minimise land use conflict. On balance, the Rural Zone is best suited for the land.
70. The Commission also considers that in the absence of any advice from a suitably qualified person about the significance of the vegetation on the land, the Priority Vegetation Area overlay should be applied to the land as identified in the REM mapping.

Commission decision

71. Modification:
- Revise the zoning of 250 Lady Barron Road, Whitemark folio of the Register 27823/1 to Rural and apply the Priority Vegetation Area overlay as shown in the Regional Ecosystem Model mapping and identified in Figure 5 of the planning authority's submission received 15 March 2022.
72. Reason:
- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.

Commission consideration under section 35KB

73. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

74. Draft amendment directed to the Flinders LPS:
- Rezone 250 Lady Barron Road, Whitemark folio of the Register 27823/1 to Rural and apply the Priority Vegetation Area overlay as shown in Attachment 3.

75. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Rural Living Zone – 1106 Palana Road, Blue Rocks

Representation: Colin and Patricia Goss (25)

76. The representors requested that the land at 1106 Palana Road, Blue Rocks be revised from part Rural Living D Zone and part Landscape Conservation Zone to wholly Rural Living D Zone. The reasons include:

- it would be difficult to plan development and undertake cultural management across two zones on one property;
- future subdivision may not be possible; and
- landscape and visual impacts can be managed by the Rural Living Zone and overlays.

77. In the section 35F report, the planning authority recommended no change to the draft LPS and noted that requirements for legal frontage and access would be likely to frustrate subdivision of the land without the cooperation of adjoining land owners.

78. At the hearing, the planning authority noted that the Landscape Conservation Zone was applied to the steep area of land at the rear of the site, which is covered in native vegetation with scenic value. The Rural Living Zone was applied to the area of the land that has characteristics similar to the land to the south and west. The intent of the Landscape Conservation Zone application was to recognise the outstanding landscape value of the top of the site.

79. The representor indicated that they accepted the planning authority’s position.

Commission consideration

80. The Commission accepts the views of the planning authority and agrees that the land should remain split-zoned Rural Living and Landscape Conservation.

Commission decision

81. The Commission considers that no modifications are required.

Rural Living Zone – 689 West End Road, Leeka

Representations: Mike Wortman (35)

82. The representor requested that the land at 689 West End Road, Leeka be revised from the Landscape Conservation Zone to the Rural Living C Zone because it would better reflect the character of the locality. The representor also raised concern that the Low Density Residential Zone applied across the planning area would result in a reduction in development potential, and had a similar concern about the Village Zone at Killiecrankie. Furthermore, the representor raised concern that much of the land zoned Landscape Conservation should be zoned Rural Living to suit rural residential purposes, and that the Agriculture Zone is too restrictive. The representor was otherwise supportive of the draft LPS.

83. In the section 35F report, the planning authority recommended that no changes be made to the draft LPS and made the following comments:

- the Low Density Residential Zone generally replaces the Residential Zone of the Flinders Planning Scheme 2000. The General Residential Zone could not be applied because there is no reticulated sewer service as required by Guideline No. 1;
- the Village Zone is appropriate at Killiecrankie because it would replace the existing Village Zone in the Flinders Planning Scheme 2000;
- that the Agriculture Zone application is required by Guideline No. 1;
- that the Rural Living Zone did not satisfy Guideline No. 1, because it would need to be applied to a broad area that is not appropriate given the landscape value of the area; and
- that the Landscape Conservation Zone satisfied Guideline No. 1.

84. At the hearing, the planning authority also noted that the zoning was not consistent with the Flinders Structure Plan 2016.

Commission consideration

85. The Commission agrees with the planning authority that application of the Rural Zone to 689 West End Road, Leeka or the broader area is not supported by Guideline No. 1 or the Flinders Structure Plan. The Commission additionally notes that zoning of the broader area could not be undertaken without the views of all other affected landowners being sought.
86. The Commission accepts the views of the planning authority and agrees that the land should remain split-zoned Rural Living and Landscape Conservation.

Commission decision

87. The Commission considers that no modifications are required.

Rural Living Zone – Edens Road and North East River Road, Palana

Representations: Flinders Council (10)

88. The representor requested that the land at Edens Road, Palana folio of the Register 159958/1 and North East River Road, Palana folios of the Register 179427/1, 179426/8, and 179426/9, be revised from the Landscape Conservation Zone to the Rural Living D Zone on the basis that a valid planning permit exists for subdivision of 24 lots. The subdivision had been substantially commenced.
89. At the hearing, the planning authority explained that the lots were approved under the Rural Zone of the Flinders Planning Scheme 2000 and have lot sizes between 10ha and 68.1ha, which are generally commensurate with the Rural Living D Zone.

Commission consideration

90. The Commission does not agree that the Rural Living Zone should be applied to the land because there is insufficient evidence to demonstrate that the provisions of the Rural Living Zone would be appropriate in an area with landscape values that are identified by application of the Scenic Protection Area overlay. Although the land has been cleared, the provisions of the Landscape Conservation Zone contain controls on use and exterior building finishes that are considered important. In the event that further details about the scenic and landscape values could be provided, the planning authority or owners of the land could seek to amend the LPS through a draft amendment.

Commission decision

91. The Commission considers that no modifications are required.

Rural Zone – Killiecrankie

Representations: Flinders Council (10), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Tom and Jo Youl (22)

92. The representation made by the Flinders Council (10) requested that the Agriculture Zone be revised to the Rural Zone at Killiecrankie as intended by the Council’s Flinders Structure Plan 2016. The other representors were supportive of the proposed Agriculture Zone.
93. In the section 35F report, the planning authority agreed that the land should remain in the Agriculture Zone.

Commission consideration

94. The Commission agrees that the land should remain in the Agriculture Zone. The land is identified as unconstrained in the State land potentially suitable for the agriculture zone mapping and is supported by the advice of a suitably qualified agricultural expert as detailed in the appendices to the draft LPS supporting report. It is therefore appropriate to retain the land in that zone.

Commission decision

95. The Commission considers that no modifications are required.

Rural Zone – Emita and Mamana

Representations: Kerrie Prescott (5), Flinders Council (10), Mark and Mandy Wales (26)

96. The representors requested the following changes to the zoning at Emita and Mamana:
 - that the zone of Fairhaven Road, Emita folio of the Register 151152/4 (Prescott) be revised from the Agriculture Zone to the Rural Zone because the land is unsuitable for agriculture and the owner intends to build a dwelling on the land;
 - that the zoning of 1813 Palana Road, Emita folio of the Register 158840/1 (Wales) be revised from the Landscape Conservation Zone to the Rural Zone to match the remainder of the farm under the same ownership, which includes folios of the Register 175212/2 and 239241/1; and
 - that the zoning more generally of land in Emita and Memana (Flinders Council) be revised from the Agriculture Zone to the Rural Zone as intended by the Flinders Structure Plan 2016.
97. In the section 35F report, the planning authority recommended application of the Rural Zone and noted that a further agricultural assessment by a suitably qualified person would be required to support the Zone.
98. Prior to the hearing, the planning authority provided an agricultural assessment report that recommended the land at Emita and Memana shown as Agriculture in the exhibited zone maps should remain in the Agriculture Zone. The only exception was a recommendation that 1813 Palana Road, Emita folio of the Register 158840/1 be included in the Rural Zone as requested by representation 26 (Wales).
99. At the hearing, Ms. Kerrie Prescott explained that her land at Fairhaven Road was used for breeding horses and was of the opinion that the land was not class 4 as indicated in the land capability mapping published on the LIST. Her view was that the land was not suitable for cropping and with the exception of some bore water, had no access to irrigation. Ms. Prescott also added that she intends to build a dwelling on the land and submitted letters from three surrounding landowners who were all supportive of the Rural Zone.

100. In response, the planning authority's agriculture experts, RMCG, advised that the land should be zoned Agriculture. This was based on the methodology detailed in the assessment, climate data, irrigation data, the State land potentially suitable for the agriculture zone mapping and land capability mapping. The planning authority accepted the advice of RMCG and added that it was open to a review of the zoning of the area in the future.
101. Mrs. Mandy Wales agreed that the Rural Zone should be applied to folio of the Register 158840/1, but did not agree that the Agriculture Zone should be applied to the remainder of her land. She also queried how the assessment had been completed by RMCG.
102. In response, RMCG advised that for practical reasons, the assessment had been completed by desktop assessment only and the zoning applied on the basis of the methodology it had provided. The planning authority added that it supported application of the Rural Zone because that was the zone identified in the Flinders Structure Plan, however Guideline No. 1 required the Agriculture Zone to be applied for compliance. RMCG was in agreement and stated that it would be very difficult to substantiate any other zone than Agriculture.

Commission consideration

103. The Commission accepts the advice of RMCG and agrees that the Rural Zone be applied to 1813 Palana Road, Emita folio of the Register 158840/1, but that the remainder of the land at Emita and Memana shown as Agriculture Zone in the exhibited draft LPS, should remain. There is insufficient evidence that the Rural Zone should be applied and the Commission agrees with RMCG and the planning authority that notwithstanding the Flinders Structure Plan identifies the area as suitable for the Rural Zone, Guideline No. 1 indicates that the Agriculture Zone is required for compliance. It is further noted that the Structure Plan predates Guideline No. 1, which appears to result in a discrepancy.
104. The Commission acknowledges that the planning authority is open to a review of the zoning of the area in the future.

Commission decision

105. Modification:
 - Revise the zoning of 1813 Palana Road, Emita folio of the Register 158840/1 to Rural.
106. Reason:
 - To apply the Rural Zone consistent with Guideline No. 1.

Rural Zone and Agriculture Zone – Whitemark North

Representation: Flinders Council (10), Van Diemen Consulting for David Gibbons (23)

107. The representation made by the Flinders Council requested that land in the Agriculture and Landscape Conservation zones surrounding Whitemark, be revised to the Rural Zone on the basis that the Council's local strategies established through the Structure Plan intend the land to be zoned same.
108. Alternatively, the representation made by Van Diemen Consulting for David Gibbons requested that the zone of Palana Road, Whitemark folio of the Register 202634/1, be revised from the Landscape Conservation Zone to the Agriculture Zone.
109. In the section 35F report, the planning authority recommended application of the Rural Zone and noted that a further agricultural assessment by a suitably qualified person would be required to support the Zone.

110. Prior to the hearing, the planning authority provided an agricultural assessment report that recommended the following land be zoned Rural instead of Agriculture and Landscape Conservation:
- 127 Memana Road, Whitemark folio of the Register 14670/1;
 - 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
 - 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
 - 159 Blundstone Road, Whitemark folio of the Register 212657/1;
 - Blundstone Road, Whitemark folio of the Register 245335/1;
 - Palana Road, Whitemark folios of the Register 213669/1, 173164/1, 202634/1, 202635/1 and reserved road between folios of the Register 202634/1 and 202635/1;
 - 115 Harleys Road folio of the Register 110875/1;
 - Harleys Road folios of the Register 169274/101, 169274/102, and the reserved road dissecting folio of the Register 169274/101; and
 - Unidentified Crown land surrounded by folio of the Register 252433/1.
111. Following the hearing the planning authority provided a diagram that showed how the Priority Vegetation Area overlay would be applied to the land. The area is derived from the REM mapping.

Commission consideration

112. The Commission accepts the expert evidence and advice given in the agricultural assessment and is therefore satisfied that the Rural Zone is supported by Guideline No. 1 and should be applied. In particular, the Zone is supported by RZ 3 and AZ 6, which provide for the Zone to be applied to land identified as unconstrained in the State land potentially suitable for the agriculture zone mapping if supported by detailed local strategic analysis.
113. The Commission also considers that the Priority Vegetation Area overlay should be applied to the land as shown in the planning authority's submission.

Commission decision

114. Modification:
- Revise the zoning of the following properties to Rural:
 - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
 - b. 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
 - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
 - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
 - e. Blundstone Road, Whitemark folio of the Register 245335/1;
 - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
 - g. Unidentified Crown land surrounded by folio of the Register 252433/1.
 - Revise the Priority Vegetation Area overlay by applying the overlay to the following properties as shown in the Regional Ecosystem Model mapping and identified in Figure 6 of the planning authority's submission received 15 March 2022:
 - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
 - b. 251 Memana Road, Whitemark folio of the Register 155427/1;

- c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
- d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
- e. Blundstone Road, Whitemark folio of the Register 245335/1;
- f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
- g. Unidentified Crown land surrounded by folio of the Register 252433/1.

115. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.

Commission consideration under section 35KB

116. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

117. Draft amendment directed to the Flinders LPS:

- Rezone the following properties to the Rural Zone as shown in Attachment 3:
 - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
 - b. 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
 - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
 - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
 - e. Blundstone Road, Whitemark folio of the Register 245335/1;
 - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
 - g. Unidentified Crown land surrounded by folio of the Register 252433/1.
- Apply the Priority Vegetation Area overlay to the following properties as shown in Attachment 3:
 - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
 - b. 251 Memana Road, Whitemark folio of the Register 155427/1;
 - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
 - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
 - e. Blundstone Road, Whitemark folio of the Register 245335/1;
 - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
 - g. Unidentified Crown land surrounded by folio of the Register 252433/1.

118. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Rural Zone – Butter Factory Road, Whitemark

Representation: Flinders Council (10)

119. The representor requested that the Agriculture Zone applied to land in the vicinity of Butter Factory Road, Whitemark be revised to the Rural Zone on the basis that the Council’s local strategies established through the Structure Plan, intend the land to be zoned the same.
120. In the section 35F report, the planning authority recommended application of the Rural Zone and noted that a further agricultural assessment by a suitably qualified person would be required to support the Zone.
121. Prior to the hearing, the planning authority provided an agricultural assessment report that recommended the following land be zoned Rural:
 - 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
 - 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
 - 28 Butter Factory Road, Whitemark folio of the Register 141953/1;
 - 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
 - 103 Butter Factory Road, Whitemark folio of the Register 10923/1;
 - 119 Butter Factory Road, Whitemark folio of the Register 7488/2;
 - 120 Butter Factory Road, Whitemark folio of the Register 64802/1;
 - 121 Butter Factory Road, Whitemark folio of the Register 7488/1; and
 - Butter Factory Road, Whitemark folio of the Register 249792/1.
122. At the hearing, the planning authority proposed to also include 173 Butter Factory Road, Whitemark folio of the Register 10155/1 and 199 Butter Factory Road, Whitemark folio of the Register 197484/1 in the Rural Zone, because these two titles have high capital value and the owners would have difficulty obtaining finance to develop the land. The planning authority’s agriculture experts, RMCG, advised that including these two properties would amount to spot-zoning of the land, which is generally not supported by its methodology for application of the Rural and Agriculture zone, however application of the Rural Zone would not make much practical difference.
123. Following the hearing the planning authority provided a diagram that showed how the Priority Vegetation Area overlay would be applied to the land. The area is derived from the REM mapping.

Commission consideration

124. The Commission accepts the expert evidence and advice given in the agricultural assessment and is therefore satisfied that the Rural Zone is supported by Guideline No. 1 and should be applied.
125. The Commission does not agree that the Rural Zone should be applied to 173 and 199 Butter Factory Road, Whitemark. These properties are isolated and it is the Commission’s view that priority should be given to the overall zoning pattern guided by sound planning principles. It is also noted that both properties were exhibited as zoned Agriculture and the owner’s did not make a representation to request an alternative zone.
126. The Commission also considers that the Priority Vegetation Area overlay should be applied to 3, 13, 101 and 103 Butter Factory Road as shown in the planning authority’s submission.

Commission decision

127. Modification:

- Revise the zoning of the following properties to Rural:
 - a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
 - b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
 - c. 28 Butter Factory Road, Whitemark folio of the Register 141953/1;
 - d. 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
 - e. 103 Butter Factory Road, Whitemark folio of the Register 10923/1;
 - f. 119 Butter Factory Road, Whitemark folio of the Register 7488/2;
 - g. 120 Butter Factory Road, Whitemark folio of the Register 64802/1;
 - h. 121 Butter Factory Road, Whitemark folio of the Register 7488/1; and
 - i. Butter Factory Road, Whitemark folio of the Register 249792/1.
- Revise the Priority Vegetation Area overlay by applying the overlay to the following properties as shown in the Regional Ecosystem Model mapping and identified in Figure 7 of the planning authority's submission received 15 March 2022:
 - a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
 - b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
 - c. 101 Butter Factory Road, Whitemark folio of the Register 237967/1; and
 - d. 103 Butter Factory Road, Whitemark folio of the Register 10923/1.

128. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.

Commission consideration under section 35KB

129. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

130. Draft amendment directed to the Flinders LPS:

- Rezone the following properties to the Rural Zone as shown in Attachment 3:
 - a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
 - b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
 - c. 28 Butter Factory Road, Whitemark folio of the Register 141953/1;
 - d. 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
 - e. 103 Butter Factory Road, Whitemark folio of the Register 10923/1;
 - f. 119 Butter Factory Road, Whitemark folio of the Register 7488/2;
 - g. 120 Butter Factory Road, Whitemark folio of the Register 64802/1;
 - h. 121 Butter Factory Road, Whitemark folio of the Register 7488/1; and
 - i. Butter Factory Road, Whitemark folio of the Register 249792/1.
- Apply the Priority Vegetation Area overlay to the following properties as shown in Attachment 3:
 - a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
 - b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
 - c. 101 Butter Factory Road, Whitemark folio of the Register 237967/1; and
 - d. 103 Butter Factory Road, Whitemark folio of the Register 10923/1.

131. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Rural Zone – Lady Barron

Representation: Flinders Council (10)

132. The representor requested that the following land be revised from the Agriculture Zone and Environmental Management Zone to the Rural Zone:

- 31 Badger Corner Road, Lady Barron folio of the Register 52591/1;
- 901 Coast Road, Lady Barron folio of the Register 209407/1;
- 927 Coast Road, Lady Barron folio of the Register 25190/1; and
- 972 Coast Road, Lady Barron folio of the Register 25190/2.

133. In the section 35F report, the planning authority recommended application of the Rural Zone and noted that a further agricultural assessment by a suitably qualified person would be required to support the Zone.

134. Prior to the hearing, the planning authority provided an agricultural assessment report by RMCg that recommended the land be zoned Rural.

135. At the hearing, the planning authority advised that it supported the recommendation of RMCg and noted that 972 Coast Road, Lady Barron was private property that was zoned Environmental Management in error.

136. Following the hearing the planning authority provided a diagram that showed how the Priority Vegetation Area overlay would be applied to the land. The area is derived from the REM mapping.

Commission consideration

137. The Commission accepts the expert evidence and advice given in the agricultural assessment and is therefore satisfied that the Rural Zone is supported by Guideline No. 1 and should be applied.

138. In particular, the Zone is supported by RZ 3 and AZ 6 which provide for the Zone to be applied to land identified as unconstrained in the State land potentially suitable for the agriculture zone mapping if supported by detailed local strategic analysis.

139. The Commission also considers that the Priority Vegetation Area overlay should be applied to 901 and 927 Coast Road, Lady Barron as shown in the planning authority's submission.

Commission decision

140. Modification:

- Revise the zoning of the following properties to Rural:
 - a. 31 Badger Corner Road, Lady Barron folio of the Register 52591/1;
 - b. 901 Coast Road, Lady Barron folio of the Register 209407/1;
 - c. 927 Coast Road, Lady Barron folio of the Register 25190/1; and
 - d. 972 Coast Road, Lady Barron folio of the Register 25190/2.

- Revise the Priority Vegetation Area overlay by applying the overlay to the following properties as shown in the Regional Ecosystem Model mapping and identified in Figure 4 of the planning authority’s submission received 15 March 2022:
 - a. 901 Coast Road, Lady Barron folio of the Register 209407/1; and
 - b. 927 Coast Road, Lady Barron folio of the Register 25190/1.

141. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.

Commission consideration under section 35KB

142. The Commission finds that the amendment to 901 and 927 Coast Road, Lady Barron is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

143. Draft amendment directed to the Flinders LPS:

- Rezone the following properties to the Rural Zone as shown in Attachment 3:
 - a. 901 Coast Road, Lady Barron folio of the Register 209407/1; and
 - b. 927 Coast Road, Lady Barron folio of the Register 25190/1.
- Apply the Priority Vegetation Area overlay to the following properties as shown in Attachment 3:
 - a. 901 Coast Road, Lady Barron folio of the Register 209407/1; and
 - b. 927 Coast Road, Lady Barron folio of the Register 25190/1.

144. Reason:

- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Rural Zone – 368 Five Mile Jim Road, Memana

Representations: Van Diemen Consulting for Markarna Grazing Company (30)

145. The representor requested that five parcels of land at 368 Five Mile Jim Road, Memana (folios of the Register 120064/1, 208980/1, 208933/1, 215120/1 and 230282/1) be revised from the Landscape Conservation Zone to the Rural Zone. The reasons include:

- the Landscape Conservation Zone prohibits Extractive Industry;
- earth-based resources are needed to support the broad agricultural operations of Markarna Grazing Company;
- natural and scenic values are managed through the Scenic Protection Area and Priority Vegetation Area overlays;
- the land has agricultural qualities; and
- the Rural Zone satisfies AZ6 of Guideline No. 1.

146. The representor also added that 12 other lots east of Palana Road that are also zoned Landscape Conservation could be revised to the Rural Zone.
147. In the section 35F report, the planning authority recommended that the Landscape Conservation Zone be retained and noted that 368 Five Mile Jim Road, Memana did not contain mining leases.
148. At the hearing, the representor, represented by Naomi Billett, outlined that the Landscape Conservation Zone would be inappropriate for the following reasons:
- the Zone would limit the ability of the landowner to extend agricultural use and mining extraction;
 - the land to the west of Palana Road has a planning permit for granite extraction that is used on the site and that lime sand is intended to be extracted from the land in future;
 - the planning authority had not undertaken any strategic work to justify application of the Landscape Conservation and had not demonstrated how the land had landscape value; and
 - the State Coastal Policy recognises that there are important resources on the coastline and that the needs of people need to be balanced.
149. The representor was also of the opinion that mineral extraction is different from mineral exploration, meaning that while mineral exploration is exempt, a planning permit would be required for mineral extraction; a use that is Prohibited in the Landscape Conservation Zone. The representor also confirmed their view that the Coastal Areas Specific Areas Plan and Scenic Protection Area overlay should not be applied to the land, but that application of the Priority Vegetation Area overlay was supported. In addition, the representor noted that the owner intends to build 2 large sheds on the land west of Palana Road that would be for agriculture use and would be shielded by the sand dunes anyway, therefore making the provisions of the Landscape Conservation Zone, Coastal Areas Specific Areas Plan, and Scenic Protection Area overlay unnecessary.
150. In response, the planning authority reiterated its view expressed in the section 35F report that the Landscape Conservation Zone is compliant with AZ6 and LCZ 1 and LCZ 2 of Guideline No.1. It also expressed its view that the land adjacent to Marshall Bay provides part of the backdrop to the bay, which has outstanding natural values. The land contains unstable sand dunes identified on the LIST as currently mobile landforms.
151. Following the hearing, the planning authority submitted that the overlay should be retained on the land and reconfirmed the views expressed in its supporting report.

Commission consideration

152. The Commission notes the owner's intent to develop the land, however agrees with the planning authority that the land has landscape value that warrants application of the Landscape Conservation Zone. The Commission is of the view that landscape values cannot simply be managed through the Priority Vegetation Area and Scenic Protection Area overlays, as neither the Natural Assets nor Scenic Protection Area codes control use.
153. In particular, the land adjacent to Marshall Bay contributes aesthetically to the appearance of the bay. The Commission is satisfied that the Flinders Structure Plan 2016 indicates a strategic intention to manage the landscape around Marshall Bay, stating the following:
- ‘There are locations where loss of vegetation is unacceptable, for example, Marshall Bay where intensification of development is not warranted. The land adjacent to the length of Marshall Bay is potentially subject to extreme erosion and the Tasmanian land classification (Classification 6-7) confirms its unsuitability for grazing.’

154. While the Structure Plan refers to grazing, the meaning of the statement is that the vegetation which frames Marshall Bay is aesthetically important to its appearance. The scenic and landscape values to which the land contributes, could further suffer from extreme erosion as a result of vegetation removal.
155. The Flinders Structure Plan also indicates an intention to manage impact on the landscape around Marshall Bay through control of use. Use is controlled by zones and the Structure Plan suggests that the use of the area would be limited to dwellings and any other uses the SPPs deem acceptable in areas that require landscape management. Therefore, the Commission considered that the Landscape Conservation Zone is the most appropriate zone for the land and is supported by Guideline No. 1.
156. In the absence of any firm details about the proposed use and development, the Commission is not persuaded that an alternative zone to provide for Extractive Industry should be applied. The Commission otherwise notes the following:
- Resource Development is a Discretionary use in the Landscape Conservation Zone. Extraction of minerals that is directly associated with and a subservient part of an agricultural use of the land must be categorised into the same Use Class under clause 6.2.2 of the SPPs;
 - the Coastal Areas Specific Area Plan only applies 100m from the foreshore boundary and, given the considerable area of each of the three titles on the western side of Palana Road, it is considered unlikely that that area is the only reasonable building site on the land; and
 - the Scenic Protection Area overlay provides for a generous amount of works (up to 500m²), including clearance of vegetation, under the Acceptable Solution of clause C8.6.1 of the SPPs, and also provides for Discretionary assessment of further clearance under the associated performance criteria.

Commission decision

157. The Commission considers that no modifications are required.

Rural Zone – Lady Barron Road, Lady Barron folio of the Register 199735/1

Submission accepted by the Commission: Van Diemen Consulting for Gary and Nola Morrison

158. The Commission notes that the submission was received after the exhibition of the draft LPS, which closed on 2 August 2021. The submission was received on 24 January 2022 and tabled at the hearing on 9 February 2022, where it was accepted by the Commission with the agreement of the planning authority.
159. The submitter requested that the land at Lady Barron Road, Lady Barron folio of the Register 199735/1 be revised from the Landscape Conservation Zone to the Rural Zone. The submitter also requested that the Priority Vegetation Area overlay be revised and raised concern that the Scenic Protection Area overlay through clause FLI-C8.1.10 in Table C8.1, would provide a requirement for public open space on the land. The submitter also raised concern that Site-specific Qualification FLI-22.3, which would apply to the land and require subdivision of the site to provide public access to the summit of Vinegar Hill, would not operate as intended as the summit of Vinegar Hill is not located on the land.
160. At the hearing, the submitter made the following comments in support of the concerns:
- the land forms part of a broader farm that contains uses that are not suitable for the Landscape Conservation Zone;
 - the owner of the land has applied for a mining lease and intends to extract minerals from the land, which is a use unsuitable for the Landscape Conservation Zone;

- the Landscape Conservation Zone provisions are ambiguous, especially as the Priority Vegetation Area and Scenic Protection Area overlays are also proposed to apply;
 - the Priority Vegetation Area overlay is based on information that is unsound and that it should be revised based on accurate site-specific data;
 - the Scenic Protection Area overlay is based on the Visually Sensitive Areas overlay in the Flinders Planning Scheme 2000, which may not have been based on proper strategic analysis of the landscape values;
 - clause C8.1.10 contains information that is not relevant to the assessment of scenic value, such as references to coastal heath and a statement that Vinegar Hill cannot be seen from the entrance to Lady Barron. Therefore, like the Visually Sensitive Areas overlay, the top of the Vinegar Hill should not be included in the Scenic Protection Area overlay; and
 - the land contains a fire break for Lady Barron, but is otherwise private land that does not provide public open space.
161. It is noted that the Department of State Growth, joined by Mineral Resources Tasmania, stated that the Landscape Conservation Zone would prevent a mining lease being granted under the rules for assessment of same.
162. In response, the planning authority remained in support of application of the Landscape Conservation Zone, the Priority Vegetation Area overlay and the Scenic Protection Area overlay and made the following comments:
- the land is zoned Rural under the Flinders Planning Scheme 2000, but the land was identified for Landscape Conservation Zone under the Flinders Structure Plan 2016;
 - the REM was prepared on the basis of a number of approved data sources, but can contain inaccuracies;
 - the Scenic Protection Area overlay is transitioning from the Flinders Planning Scheme 2000, but has been extended to include the summit of Vinegar Hill; and
 - Site-specific Qualification FLI-22.3 only provides guidance for provision of public open space in the event that an application is made for subdivision. In any case, the planning authority is entitled to seek a public open space contribution under the *Local Government (Building and Miscellaneous Provisions) Act 1993*.
163. Following the hearing, the planning authority agreed that Site-specific Qualification FLI-22.3 should be removed after it sought legal advice that questioned whether the provision would operate as intended.
164. Additionally, the submitter provided a revised version of clause FLI-C8.1.10, alternative Scenic Protection Area overlay mapping for the site and alternative Priority Vegetation Area overlay mapping for the site. The revised clause FLI-C8.1.10 included a revised description, scenic values and management objectives with more specific details about the physical attributes of the land, its visibility from surrounding areas and more specific details about the desired design of development to ensure works and buildings are subservient to the overall natural character and scenic values of the area. The revised Scenic Protection Area overlay was limited to the land generally located above the 60m AHD contour, while the amended Priority Vegetation Area overlay was broadly limited to the same area of the land and supported by the advice of a suitably qualified person.
165. In response, the planning authority was supportive of the amended Priority Vegetation Area overlay and the Scenic Protection Area overlay, but was of the view that the overlay would need to be combined with the transitioning part of the overlay. The planning authority reconfirmed its view that the Landscape Conservation Zone should be applied to the property, and was broadly supportive of the amended Clause C8.1.10 in Table C8.1 proposed by

submitter, but sought two additional management objectives that would result in the clause being more similar in structure and requirements to the remainder of Table C8.1.

Commission consideration

166. The Commission is satisfied that the combination of controls proposed by the submitter are appropriate in the circumstances and therefore agrees that the Rural Zone should be applied to the land. While the land has evident landscape values, the planning authority has not demonstrated that those values are of such significance that the uses possible on the land should be constrained to those provided by the Landscape Conservation Zone in order to protect the values. The submitter has demonstrated that there are competing use requirements.
167. The Commission also notes that the land is unconstrained in the State land potentially suitable for the agriculture zone mapping and that the land forms part of a large rural property of approximately 790ha that is otherwise zoned Rural and Agriculture. According to the decision rules for application of the Rural and Agriculture zones given in the Review of Identified Areas Proposed for Tasmanian Planning Scheme Zoning by RMCG dated 27 January 2021, the Rural Zone should be applied to unconstrained land where there are significant natural assets. Those landscape values, and any other natural values can otherwise be managed by the Priority Vegetation Area and the Scenic Protection Area overlays.
168. The Commission therefore agrees that the Scenic Protection Area overlay should be amended to exclude areas of the land that contain existing works, such as the dam and quarry near the southern boundary of the land, but also notes that the overlay must be combined with the part of the overlay that has been declared as a transitioning provision by the Minister for Planning. The Commission also agrees that the Priority Vegetation Area overlay be amended in the manner identified in the mapping prepared by the suitably qualified expert.
169. As a result, this combination of provisions mediates between the balance of the rural property and the land to the east, which features more intact landscape values due to minimal evidence of existing infrastructure and rural use. That land is also connected to a broader area of land zoned Environmental Management Zone and Landscape Conservation to the north and east. The Rural Zone with the overlays would provide a sensible transition.
170. The Commission agrees that Clause C8.1.10 in Table C8.1 Scenic Protection Areas be amended in a similar manner put forward by the submitter, but with minor changes based on those put forward by the planning authority in its final submission. The Commission is of the opinion that the amended description, scenic values and management objectives give a more accurate account of Scenic Protection Area C8.1.10, which is also relevant to the adjacent properties to which the Scenic Protection Area it also applies.
171. The Commission supports removal of Site-specific Qualification FLI-22.2 as the planning authority has indicated that the provision may not be legally sound.

Commission decision

172. Modification:
 - Revise the zoning of Lady Barron Road, Lady Barron folio of the Register 199735/1 to Rural;
 - Revise the Priority Vegetation Area overlay that applies to Lady Barron Road, Lady Barron folio of the Register 199735/1 so that it matches the area shown in Figure D2 of the Van Diemen Consulting submission received 16 March 2022;
 - Revise the Scenic Protection Area overlay that applies to Lady Barron Road, Lady Barron folio of the Register 199735/1 so that it matches the area shown in Figure D3 of the Van

Diemen Consulting submission received 16 March 2022, and combine the overlay with the transitioning Scenic Protection Area overlay mapping for the land as identified in the Minister’s declarations under the Act;

- Revise the draft LPS written document by amending Clause C8.1.10 in Table C8.1 Scenic Protection Areas as shown in Annexure A to Attachment 2;
- Revise the draft LPS written document by deleting Site-specific Qualification FLI-22.3 as shown in Annexure A to Attachment 2; and
- Revise the Site-specific Qualifications overlay map by deleting Site-specific Qualification FLI-22.3.

173. Reason:

- To apply the Rural Zone, Priority Vegetation Area overlay, and Scenic Protection Area overlay consistent with Guideline No. 1, to ensure the draft LPS meets section 32 of the Act, and to be consistent with the Minister’s declaration under Schedule 6 of the Act.

Commission consideration under section 35KB

174. The Commission finds that the amendments to the Rural Zone, the Priority Vegetation Area overlay, Scenic Protection Area overlay, and Clause C8.1.10 in Table C8.1 of the written document is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

175. Draft amendment directed to the Flinders LPS:

- Rezone Lady Barron Road, Lady Barron folio of the Register 199735/1 to the Rural Zone as shown in Attachment 3.
- Apply the Priority Vegetation Area overlay to Lady Barron Road, Lady Barron folio of the Register 199735/1 as shown in Attachment 3.
- Apply the Scenic Protection Area overlay to Lady Barron Road, Lady Barron folio of the Register 199735/1 as shown in Attachment 3.
- Revise the draft LPS written document by amending Clause C8.1.10 in Table C8.1 Scenic Protection Areas as shown in Attachment 3.

176. Reason:

- To apply the Rural Zone, Priority Vegetation Area overlay and Scenic Protection Area overlay consistent with Guideline No. 1, and to meet the requirements of Practice Note 8.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Rural Zone, Agriculture Zone and Landscape Conservation Zone – Mining Leases

Representations: Department of State Growth (14), Van Diemen Consulting obo David Gibbons (23), Van Diemen Consulting for Markarna Grazing Company (30)

177. The representors requested that the zoning of the following properties be revised from the Landscape Conservation Zone to the Rural Zone on the basis that the properties contain mining leases:

- Harleys Road, Whitemark folio of the Register 176057/2 (owned by representor 23);
- 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2; and

- Palana Road, Lughrata folios of the Register 141842/1 and 141842/2.
178. The Department of State Growth proposed the Agriculture Zone for 634 Palana Road, Whitemark folio of the Register 245509/1 on the basis that the zone would be congruent with the surrounding area, while representor 30 (Van Diemen Consulting for Markarna Grazing Company) requested application of the Rural Zone to 634 Palana Road, Whitemark folios of the Register 245509/1 and 173164/3 (that now forms a single title known as folio of the Register 182299/2).
179. The reasons include that:
- mining operations are critical for the ongoing economic growth of the island and provide key construction resources such as sand, stone, clay, and gravel, and also provide critical agricultural products including lime sand; and
 - under the provisions of the Landscape Conservation Zone, 'Extractive Industry' is a Prohibited use, but Permitted in the Rural Zone and Discretionary in the Agriculture Zone.
180. The Department of State Growth also raised concern that areas of land that may contain mineral resources as identified in the draft strategic mineral resources mapping published on the LIST by Mineral Resources Tasmania, were zoned Landscape Conservation.
181. In the section 35F report, the planning authority agreed that the Rural Zone be applied to all titles, except 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2, to which it proposed a site-specific qualification to provide for Extractive Industry as a Permitted use within the mining lease. In addition, the planning authority also recommended the Rural Zone be applied to 634 Palana Road, Whitemark folios of the Register 245509/1 and 173164/3 (now folios of the Register 182299/1 and 182299/2), zoned Landscape Conservation, because it had proposed application of the Rural Zone to the surrounding area as a result of its recommendation on representation 10 (Flinders Council). The planning authority also noted that Section 11(3)(b) of the Act provides protections to investigate and conduct mineral exploration and activities against the provisions of a planning scheme and on that basis no other change to the Landscape Conservation Zone was recommended.
182. Prior to the hearing, the planning authority submitted evidence that the owners of 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2, Palana Road, Lughrata folios of the Register 141842/1 and 141842/2, and 634 Palana Road, Whitemark folio of the Register 182299/2 were all supportive of the Rural Zone being applied to their land.
183. Prior to the hearing, the Commission sought the views of Mineral Resources Tasmania, which submitted that it supported the protection of mineral resources, particularly sand, which is critical for the Flinders Island economy and that the draft strategic mineral layer is intended to be used as a tool to highlight areas of possible mineral resource to assist planning authorities to make zoning decisions.
184. At the hearing, the Department of State Growth, joined by Mineral Resources Tasmania, was generally supportive of the planning authority's recommendation, but raised concern that the Landscape Conservation Zone still proposed for 2270 Palana Road would prevent the mining lease from being expanded. It was not supportive of a Site-specific Qualification to provide for Extractive Industry within the mining lease because it would not allow expansion. It added that its view was that mineral exploration is only exempt under section 11 of the Act if it is within an existing mining lease and that Mineral Resources Tasmania assessment criteria would prevent a mining lease being granted on land zoned Landscape Conservation.
185. In response, the planning authority was of the opinion that mining exploration would be possible on land zoned Landscape Conservation under the provisions of section 11 of the Act and explained that the Zone was warranted because 2270 Palana Road provides part of the

backdrop to Marshall Bay, which has outstanding natural values. The land contains unstable sand dunes identified on the LIST as currently mobile landforms. Its view was that the Landscape Conservation Zone is compliant with AZ6 and LCZ 1 and LCZ 2 of Guideline No.1.

186. Following the hearing, the planning authority submitted that it agreed with the interpretation of section 11 of the Act given by the Department of State Growth.

Commission consideration

187. The Commission agrees that the Rural Zone should be applied to all that land containing existing mining leases. The only exception is the land at 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2, which is located in a broader area zoned Landscape Conservation. This land has competing values as it contributes aesthetically to the appearance of Marshall Bay. The significance of Marshall Bay is prioritised over mineral exploration and extraction beyond the existing mining lease.
188. The Commission is of the view that landscape values cannot simply be managed through the Priority Vegetation Area and Scenic Protection Area overlays, as neither the Natural Assets nor Scenic Protection Area codes control use. The Commission is satisfied that the Flinders Structure Plan 2016 indicates a strategic intention to manage the landscape around Marshall Bay, stating the following:
- ‘There are locations where loss of vegetation is unacceptable, for example, Marshall Bay where intensification of development is not warranted. The land adjacent to the length of Marshall Bay is potentially subject to extreme erosion and the Tasmanian land classification (Classification 6-7) confirms its unsuitability for grazing.’
189. While the Structure Plan refers to grazing, the meaning of the statement is that the vegetation which frames Marshall Bay is aesthetically important to its appearance. The scenic and landscape values to which the land contributes, could further suffer from extreme erosion as a result of vegetation removal.
190. The Flinders Structure Plan also indicates an intention to manage impact on the landscape around Marshall Bay by controlling use. Use is controlled by zones and the Structure Plan suggests that the use of the area would be limited to dwellings and any other uses the SPPs deem acceptable in areas that require landscape management. Therefore, the Commission considered that the Landscape Conservation Zone is the most appropriate zone for the land and is supported by Guideline No. 1.
191. While exceptions are possible in special circumstances, the representors have not provided any firm details about any proposed mineral extraction and exploration activities outside the area of the existing mining lease at 2270 Palana Road. Although land may contain possible mineral resources, prospective mining is not a reason strong enough in and of itself to warrant application of a different zone. Guideline No. 1 does not contain any explicit provisions that allow for zone application to be specifically oriented around mineral exploration and extraction.
192. The Commission notes that section 11(3)(b) of the Act states that nothing in a planning scheme or the Tasmanian Planning Scheme affects *‘the undertaking of mineral exploration in accordance with a mining lease, an exploration licence, a special exploration licence, or a retention licence, issued under the Mineral Resources Development Act 1995.’* The Commission also notes the advice of the Department of State Growth that the Mineral Resources Tasmania assessment criteria would prevent a mining lease being granted on land zoned Landscape Conservation. While this may be the case and a prudent approach, it is not

relevant to application of Guideline No. 1. It is a predicament that would otherwise need to be addressed by a change to the zone through a draft amendment.

193. The Commission considers that the Rural Zone should be limited to that part of 634 Palana Road, Whitemark folio of the Register 182299/2 that was previously contained in folio of the Register 245509/1 as the remainder of the land adhered to that title during the assessment of the draft LPS has qualities of the Landscape Conservation Zone.

Commission decision

194. Modification:

- Revise the zoning of the following properties to Rural:
 - a. 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2;
 - b. Palana Road, Lughrata folios of the Register 141842/1 and 141842/2;
 - c. That part of 634 Palana Road, Whitemark folio of the Register 182299/2 that previously contained in folio of the Register 245509/1; and
 - d. Harleys Road, Whitemark folio of the Register 176057/2.

195. Reason:

- To apply the Rural Zone consistent with Guideline No. 1.

Agriculture Zone – 160 Killiecrankie Road, Killiecrankie

Representation: Tom and Jo Youl (22)

196. The representors requested that the zone of 160 Killiecrankie Road, Killiecrankie folio of the Register 51470/1 be revised from the Landscape Conservation Zone to the Agriculture Zone. The reasons include:

- the land was purchased in 2020 and intended to be used for growing pasture, growing greenhouse vegetables, to harvest kunzea for oil and for use as Visitor Accommodation (removable cabins);
- the land now forms part of the adjoining farm zoned Agriculture, which is used for grazing 800 cattle;
- the land was cleared in the in the 1970s and 1980s;
- a natural values assessment submitted with the representation indicates that the land has native regrowth that follows a long history of primary production at different scales on the land and that no threatened fauna species listed as threatened on the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* or the Tasmanian *Threatened Species Protection Act 1995* were detected; and
- an agronomist assessment shows that the land is suitable for beef production.

197. In the section 35F report, the planning authority recommended that the land be zoned Agriculture.

Commission consideration

198. The Commission accepts the reasons that the representor has put forward in support of the Agriculture Zone and the recommendation of the planning authority. The land clearly has a history of agricultural use and the representor has highlighted an intention to use the land for agricultural use in the future. The Commission notes that the land contains native vegetation that is regrowth only and that the land now forms part of a larger farming property that is identified as unconstrained in the State land potentially suitable for the agriculture zone mapping.

Commission decision

199. Modification:

- Revise the zoning of 160 Killiecrankie Road, Killiecrankie folio of the Register 51470/1 to Agriculture and remove the Priority Vegetation Area overlay.

200. Reason:

- To apply the Agriculture Zone consistent with Guideline No. 1.

Agriculture Zone – 368 and 1297 Five Mile Jim Road, Memana

Representation: Van Diemen Consulting for Markarna Grazing Company (30)

201. The representor requested that the zone of five titles of land at 368 and 1297 Five Mile Jim Road, Memana be revised from the Rural Zone to the Agriculture Zone. The reasons include:

- the State land potentially suitable for the agriculture zone mapping identifies all titles as unconstrained;
- the Agriculture Zone complies with Guideline No. 1; and
- the land has agricultural potential and is part of a large commercial agricultural enterprise, which is a large employer on Flinders Island.

202. In the section 35F report, the planning authority recommended that the land remain in the Rural Zone because it applied the Zone on the advice of a suitably qualified agriculture consultant (RMCG).

203. At the hearing, the representor, represented by Naomi Billett made the following comments in support of the Agriculture Zone:

- the land is unconstrained and the SPPs and Guideline No. 1 intend for the land to be zoned Agriculture. Any departure from the intended zoning should be supported by site-specific assessment of the agricultural potential and the natural and landscape values undertaken by the proponents of an alternative zoning;
- the land is proposed to be zoned Rural on the basis that natural values exist there despite the vegetation not being protected under the Flinders Planning Scheme 2000. The Priority Vegetation Area overlay is not appropriately justified by on-site surveys;
- the land is subject to several forest practices plans that provide for vegetation to be removed from the site without a planning permit; and
- the land is now mostly cleared as a result of recent fire and forest practices. The strategic intent of the land should take precedence over the presence of vegetation.

204. In response, RMCG advised that for practical reasons and primarily the scope of the brief given to it by the planning authority, it had not attended the site and therefore was not aware of the recent fire or removal of vegetation. In support of the application of the Rural Zone with the Priority Vegetation Area overlay, it was of the view that the site contains important natural values recognised by the REM. RMCG was also of the opinion that the burnt vegetation would recover and noted that the land contains a wetland.

205. The representor declined to provide a copy of the forest practices plans.

Commission consideration

206. The Commission prefers the view of RMCG that the Rural Zone should be applied to the land. The representor's view that the land is unconstrained and should therefore be zoned Agriculture as a matter of the intent of Guideline No. 1 and the SPPs is reasonable, however the Commission cannot overlook the advice of experts that are suitably qualified in

agricultural and natural values assessments. Notwithstanding that the assessments were conducted without a site visit, the Commission observes that a significant amount of information is available to experts to make such assessments. Although a site visit is preferred, in this instance it is not critical to the merit of the expert's advice. The representor did not provide counter evidence that the land does not contain important natural values that warrant the Rural Zone being applied in conjunction with the Priority Vegetation Area overlay.

Commission decision

207. The Commission considers that no modifications are required.

Landscape Conservation Zone and Environmental Management Zone – Little Dog Island

Representations: Clem Newton-Brown (3), Wendy Jubb-Stoney (15), Megan Gledden (20), Furneaux Islands Protection Network (28), Aboriginal Land Council of Tasmania (33)

- 208. The representors raised concern about the Environmental Management Zone applied to Little Dog Island, which included three private land titles. Representations 3, 28 and 33 requested that the three private titles on the island be revised from the Environmental Management Zone to the Landscape Conservation Zone. This would be consistent with other private land on similar islands such as Little Green Island and Vansittart Island.
- 209. Representation 15 sought controls that would protect the mutton birds that inhabit the island, while representation 20 opposed the Environmental Management Zone for the island because it would provide for Tourist Operation and Visitor Accommodation uses. Representation 20 raised particular concern about the environmental impacts that such use and development would have on the natural and scenic values of the island.
- 210. In the section 35F report, the planning authority recommended that the three private land titles on Little Dog Island be zoned Landscape Conservation because that zone was been intended to be applied to private land with natural and landscape values in preference to the Environmental Management Zone. The planning authority added that the Landscape Conservation Zone satisfied LCZ 1 and LCZ 2 of Guideline No.1.
- 211. At the hearing, the representors were supportive of the Landscape Conservation Zone being applied to the lots.

Commission consideration

212. The Commission agrees with the planning authority that the Landscape Conservation Zone should be applied because the land is in private ownership.

Commission decision

213. Modification:

- Revise the zoning of Little Dog Island folios of the Register 204139/1, 226682/1, and 204138/1 to Landscape Conservation.

214. Reason:

- To apply the Landscape Conservation Zone consistent with Guideline No. 1.

Commission consideration under section 35KB

215. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the

substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

216. Draft amendment directed to the Flinders LPS:

- Rezone Little Dog Island folios of the Register 204139/1, 226682/1, and 204138/1 to Landscape Conservation as shown in Attachment 3.

217. Reason:

- To apply the landscape Conservation Zone consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Port and Marine Zone – Franklin Parade, Lady Barron

Representations: Department of State Growth (14)

218. The representor supported application of the Port and Marine Zone at Whitemark and Lady Barron and requested that the land at Franklin Parade, Lady Barron PID 6429748 be revised from the Environmental Management Zone to the Port and Marine Zone. The reason was that the land is located between two properties currently zoned Port and Marine and that that the zoning should be contiguous along the foreshore.

219. In the section 35F report, the planning authority recommended that the land be retained in the Environmental Management Zone for the following reasons:

- the land is owned by the Crown and contains foreshore vegetation;
- the land is used for informal community-based activity;
- the Flinders Structure Plan indicates that the land is intended to be used to maintain waterfront access; and
- the shape and location of the land means that it is unlikely to be used for port and marine activity.

Commission consideration

220. The Commission accepts the reasons given by the planning authority to justify its application of the Environmental Management zones and is of the opinion that the application of the zones is in the most practical form in the circumstances, given current uses of the land and the location of property boundaries. It is also noted that the land is outside the proclaimed wharf area and does not contain any significant port and marine infrastructure that would otherwise warrant application of the Port and Marine Zone.

Commission decision

221. The Commission considers that no modifications are required.

Particular Purpose Zone - truwana - Cape Barren Island and outer islands

Representations: Aboriginal Land Council of Tasmania (33)

222. The representor was supportive of the Particular Purpose Zone - truwana - Cape Barren Island and outer islands, and made the following comments:

- the Particular Purpose Zone should also be applied to the land at 371, 401A, and 401B Port Davies Road, Emita (Wybalenna) instead of the Landscape Conservation Zone.

Wybalenna is Aboriginal land that warrants the same provisions as other land within the Particular Purpose Zone, which would provide a high-level of control to the landowner; and

- the truwana gravel pit at Lot 1 Thunder and Lightning Road, Cape Barren Island folio of the Register 143716/1 should not be located within the Environmental and Cultural Protection Precinct.

223. The representor also advised that the Aboriginal land titles subject to the Particular Purpose Zone extend to low water mark and include tidal ranges and questioned whether the Particular Purpose Zone had been applied to low water mark. Furthermore, the representor queried the meaning of the Local Historic Landscape Precinct overlay that would apply to Wybalenna.

224. The planning authority made the following comments in the section 35F report:

- the requested application of the Particular Purpose Zone to Wybalenna has merit, however the Zone was specifically written for the islands and would require modification to apply to Wybalenna. This could be considered in a separate process that follows assessment of the draft LPS;
- Wybalenna is subject to a transitioning heritage listing (FLI-C6.1.36) for 2 burial grounds, 3 structures and 13 foundations of structures that appear to represent European values on the site. The listing is the same as that existing in the Flinders Planning Scheme 2000. Additional work would likely be required to clearly establish the specific values for the listed items to better understand how they should be managed and how those listings may impact the indigenous values for the site. Given that Aboriginal heritage is managed through a separate statutory process, this would occur outside the current draft LPS assessment process;
- the existing gravel pit should be located in the Rural Precinct; and
- the draft LPS zoning has been applied to low water mark and is based on the Central Plan Registry entry for the Local Government Area.

225. At the hearing, the representor generally accepted the response given by the planning authority in its s.35F report. The representor raised a separate concern that the Use Table for the Rural Precinct in the Particular Purpose Zone should be revised so that 'rural industries' are not prohibited and so that the Residential use class qualifications are amended.

226. In response, the planning authority noted that some changes were required to the Particular Purpose Zone to bring forth the intended provisions, which included changes to the Use Table for the Rural Precinct and the Use and Development standards to provide for better assessment of landscape values.

227. Following the hearing, the planning authority provided a diagram that identified the location of the amended Rural Precinct boundary that showed that the boundary would be located 200m further east of the current location to include the gravel pit. The amended boundary was endorsed by the representor.

228. The planning authority also submitted a revised version of the Particular Purpose Zone, but added that the performance criteria of several provisions were still unsettled.

Commission consideration

229. The Commission agrees with the planning authority that application of a particular purpose zone to Wybalenna would need to be customised to suit the needs of the site. The Commission also agrees with the planning authority's response on listing of places of Aboriginal heritage significance and application of zoning to high water mark. Furthermore,

the Commission agrees that the truwana gravel pit should be located in the Rural Precinct of the truwana - Cape Barren Island and outer islands Particular Purpose Zone.

230. The Commission notes the desire of the representor and planning authority to amend the truwana - Cape Barren Island and outer islands Particular Purpose Zone, however also notes the planning authority's advice that further work is required before amendments to several of the provisions can be settled. Therefore, the Commission is of the view that there is insufficient information to be satisfied that the draft LPS should be modified at this time. Nevertheless, the Commission notes that the planning authority or the representor could seek an amendment to the LPS at any time after it has come into effect.

Commission decision

231. Modification:

- Revise the Local Area Objectives overlay by amending the Rural Precinct boundaries so that the Precinct contains the truwana gravel pit as shown in Figure 12 of the planning authority's submission received 15 March 2022.

232. Reason:

- To meet the requirements of section 32(4) of the Act.

Natural Assets Code – Priority Vegetation Area Overlay – Various Properties

Representations: Flinders Council (10), Department of State Growth (14), Annemarie Carnell (21), Paul Carnell (31)

233. The representors sought the following modifications to the Priority Vegetation Area overlay:

- removal of the overlay from titles in the Low Density Residential Zone at Lady Barron and Whitemark that are less than 2400m² or 5000m² if located in the Coastal Areas Specific Area Plan;
- removal of the overlay from areas of the Utilities Zone within the State road casement;
- application of the overlay to a larger area of land adjacent to the west of the main settlement at Killiecrankie; and
- application of the overlay to part of the property known as 'Quoin' on the eastern side of the main settlement at Killiecrankie.

234. The reasons for removal of the overlay was that it would not have any effect in the Low Density Residential Zone at Lady Barron and Whitemark that are less than 2400m² or 5000m² if located in the Coastal Areas Specific Area Plan because it would have no functional purpose in operation where there is no subdivision potential.

235. The reasons for application of the overlay to the two additional areas was that the land contains significant coastal landscape and flora and fauna, including an unrecorded White-bellied Sea-Eagle.

236. In the section 35F report, the planning authority recommended that the overlay be removed from titles in the Low Density Residential Zone at Lady Barron and Whitemark that are less than 2400m² or 5000m² if located in the Coastal Areas Specific Area Plan.

237. The planning authority otherwise noted that the overlay has been applied using the REM mapping that incorporate known species and community records and compliments this with predicted likelihood of species based on informed science. The planning authority did not support modification of the overlay as the proposed changes were not supported by the advice of a suitably qualified person. The planning authority also stated that the overlay could

not be applied to the Quoin property as the land is zoned Agriculture, which is a zone that is incompatible with the overlay.

238. Prior to the hearing the planning authority submitted a diagram to show where the Priority Vegetation Area overlay would be removed. Removal of the overlay from land zoned Low Density Residential within the Coastal Areas Specific Area Plan were not included, because the planning authority proposed to remove the Specific Area Plan from the Low Density Residential at Lady Barron and Whitemark as a result of other representations.
239. At the hearing, the planning authority advised that it supported removal of the overlay from the State road casement.

Commission consideration

240. The Commission notes the following:

- the Priority Vegetation Area overlay has been applied consistent with the REM mapping. It is the Commission's view that any departure from the REM would need to be supported by the advice of a suitably qualified person;
- the Commission does not agree to remove the overlay from the State road casement, but notes that the exemptions in clause 4.4.1 of the SPPs would provide for clearance of vegetation associated with general maintenance and minor road works; and
- the Commission is persuaded that the overlay should be removed from properties at Whitemark and Lady Barron that are zoned Low Density Residential and have an area less than 2400m², or 5000m² if located in the Coastal Areas Specific Area Plan, as the overlay has no practical application under the SPPs or the Specific Area Plan.

Commission decision

241. Modification:

- Revise the Priority Vegetation Area overlay by removing the overlay from all land zoned Low Density Residential at Whitemark and Lady Barron.

242. Reason:

- To apply Priority Vegetation Area overlay consistent with Guideline No. 1

Natural Assets Code – Future Coastal Refugia Area Overlay – State Roads

Representations: Department of State Growth (14)

243. The representor sought removal of the Future Coastal Refugia Area overlay from areas of the Utilities Zone within the State road casement on the basis that its application does not comply with NAC 6 (c) of Guideline No. 1 and could constrain future use and development of major road infrastructure. It added that there are several instances where the Future Coastal Refugia areas encroach on the casement, which would constrain future use and development of the road network.
244. In the section 35F report, the planning authority noted that Guideline NAC 6 (b)(ii) provides that the overlay may applied if it would not constrain the future use and development of major infrastructure. On that basis, the planning authority recommended that no modification of the overlay be made.
245. At the hearing, the planning authority advised that it would support removal of the overlay from the State road casement.

Commission consideration

246. The Commission agrees that the Future Coastal Refugia Area overlay should be removed from the State road casement Utilities Zone, as provided for under NAC 4 of Guideline No.1.

Commission decision

247. Modification:

- Revise the Future Coastal Refugia Area overlay by removing any overlapping with the Utilities Zone within the State road casement.

248. Reason:

- To meet technical requirements of Practice Note 7.

Scenic Protection Code – Scenic Protection Area Overlay – Various Areas

Representations: Craig Smith (9), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Furneaux Islands Protection Network (17), Ken Stockton (18), Eve Schulz (19), Annemarie Carnell (21), Sophie Underwood for The Dock shareholders (34)

249. The representors requested that the Scenic Protection Area overlay be modified to:

- include all land on the east coast of Flinders Island that is proposed to be zoned Landscape Conservation and Environmental Management;
- extend the North East River Scenic Protection Area to include the patriarchs and lagoons;
- extend the Killiecrankie Scenic Protection Area overlay to the back of all building titles in Killiecrankie Village to at least the 20m contour;
- include all open space at Killiecrankie;
- include to the area on the north side of Killiecrankie Road to Palana Road; and
- include all outer islands.

250. Representors also requested that Table C8.1 Scenic Protection Areas be modified by including all the Visually Sensitive Areas objectives listed in clause 7.2.2 of the Flinders Planning Scheme 2000 and references to Killiecrankie Bluff in FLI-C8.1.4.

251. Representors were otherwise supportive of Table C8.1 and the overlay.

252. In the section 35F report, the planning authority recommended that Table C8.1 clause FLI-C8.1.4 be modified to include reference to Killiecrankie Bluff and that all listings be modified to better reflect the Visually Sensitive Areas objectives listed in clause 7.2.2 of the Flinders Planning Scheme 2000.

253. Prior to the hearing, the planning authority submitted a revised version of Table C8.1 that increased and refined the description, scenic value, and management objectives of the listings, in particular by expansion of the management objectives to refer to minimisation of impacts on, and restoration of, native vegetation. The wording use in the revised Table also included statements based on the Visually Sensitive Areas objectives listed in clause 7.2.2 of the Flinders Planning Scheme 2000 as requested by the representors.

254. At the hearing, the planning authority advised that it would consider amendments to the Scenic Protection Area overlay through a draft amendment process once the assessment of the draft LPS was complete.

Commission consideration

255. The Commission agrees that Table C8.1 should be amended and based on the revised table presented by the planning authority in its submission dated 21 January 2022. It is noted that

the planning authority intends to consider changes to the Scenic Protection Area overlay once the LPS is in effect.

Commission decision

256. Modification:

- Revise the draft LPS written document by amending Table C8.1 Scenic Protection Areas as shown in Annexure A to Attachment 2.

257. Reason:

- To meet technical requirements of Practice Note 7.

Landslip Hazard Code – Landslip Hazard Area Overlay – Various Areas

Representations: Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Annemarie Carnell (21)

258. The representors requested that the medium landslip hazard band in the Landslip Hazard Area overlay be extended to include all areas above the 20m contour on the west side of Killiecrankie Road on Killiecrankie Bluff. The representors were concerned that the land would become unstable, particularly after rain, if vegetation is removed from the hillside.

259. In the section 35F report, the planning authority noted that Guideline No. 1 requires the Landslip Hazard Area overlay to be applied based on expert mapping prepared by the Department of Premier and Cabinet. The planning authority also stated that the advice of a suitably qualified person would be required to support a change to the overlay, and as none had been provided, no change to the overlay was supported.

Commission consideration

260. The Commission agrees with the planning authority position and the reasons given in support of its recommendation.

Commission decision

261. The Commission considers that no modifications are required.

Coastal Areas Specific Area Plan

Representations: Judy Cazaly (16), Van Diemen Consulting for David Gibbons (23), Van Diemen Consulting for Markarna Grazing Company (30)

262. The representors had various views on the Coastal Areas Specific Area Plan. The representation made by Judy Cazaly supported the Specific Area Plan, in particular the proposed 5m height limit. Representation 30 proposed removal of the Specific Area Plan, while representation 23 proposed the removal of the SAP from the following properties:

- 16 Barr Street, Lady Barron zoned Village;
- 27 and 29 Esplanade, Whitemark zoned Low Density Residential;
- Palana Road, Whitemark folio of the Register 202634/1 zoned Landscape Conservation; and
- 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2 zoned Landscape Conservation.

263. The reasons include:
- the Low Density Residential Zone and Village Zone should be unencumbered by additional regulatory provisions. The purpose of these zones are to provide for residential and commercial activities;
 - landscape and amenity issues are addressed through the SPPs; and
 - the Crown land that adjoins the Specific Area Plan has zone provisions that would allow taller structures to be built between the land and the foreshore.
264. Representation 23 was otherwise supportive of 169 Port Davies Road, Emita being included in the Coastal Settlement Specific Area Plan.
265. In the section 35F report, the planning authority recommended that the Specific Area Plan be removed the urban areas and zones of Whitemark and Lady Barron altogether, but retained in all other locations.
266. Prior to the hearing, the planning authority submitted diagrams to show where the Coastal Areas Specific Area Plan would be removed from the urban areas at Whitemark and Lady Barron. The maps showed that the Specific Area Plan would be removed from the Low Density Residential Zone, and parts of the Local Business Zone and Environmental Management Zone at Whitemark. The plan would be marginally expanded to include the whole of two properties zoned Landscape Conservation at 3 Esplanade, Whitemark folio of the Register 67128/3, and 9 Walker Street, Whitemark folio of the Register 60768/5 to align the Specific Area Plan with the cadastral boundaries. At Lady Barron, the Specific Area Plan would be removed from the Low Density Residential Zone, Village Zone and parts of the Local Business and Environmental Management Zone.

Commission consideration

267. The Commission agrees that the Coastal Areas Specific Area Plan should be removed from the land as identified by the planning authority in its submission dated 21 January 2022, but that the Specific Area Plan should also be removed from 3 Esplanade and 9 and 17 Walker Street, Whitemark, which the Commission agrees should be zoned Low Density Residential as detailed above.

Commission decision

268. Modification:
- Revise the Coastal Areas Specific Area Plan overlay by removing the overlay from the land identified by the planning authority in its submission dated 21 January 2022 and also removing the Specific Area Plan overlay from the following properties:
 - a. 3 Esplanade, Whitemark of the folio of the Register 67128/3;
 - b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5; and
 - c. 17 Walker Street, Whitemark folio of the Register 60768/6; and
 - Revise the draft LPS written document by making consequential amendments to the operational clauses to reflect the zones to which the Coastal Areas Specific Area Plan applies as shown in Annexure A to Attachment 2.
269. Reason:
- To meet the requirements of section 32(4) of the Act and to meet the requirements of Practice Note 8.

Specific Area Plan – Whitemark and Lady Barron Urban Development Specific Area Plan

Representations: Department of Communities Tasmania (7), Flinders Council (10)

270. The representation made by the Department of Communities Tasmania proposed that a site-specific qualification or specific area plan be applied to ten of its properties at Whitemark and Lady Barron to provide for dwelling and subdivision density that is more commensurate with the provisions of the Flinders Planning Scheme 2000. The reasons include:
- housing affordability on Flinders Island is poor, due to the remote location of the island and the high cost of construction caused by the need to import labour and materials. This could be offset by an improvement in development potential; and
 - clause 10.4.1 (Residential density for multiple dwellings) and clause 10.6.1 (Lot design) of the SPPs would reduce current development potential, which would therefore decrease housing affordability.
271. The representor added that the proposed specific area plan could be applied more broadly across Whitemark and Lady Barron to land currently zoned Residential in the Flinders Planning Scheme 2000. This would result in the specific area plan being applied to land in the Low Density Residential Zone and Village Zone in the draft LPS. The representor proposed that the Village Zone standards (clauses 12.4.1 and 12.5.1) of the SPPs be modified in the same way as clauses 10.4.1 and 10.6.1, but also that site and lot area must be sufficient to provide for on-site wastewater and stormwater disposal.
272. The representation made by the Flinders Council was similar and added that there is an effective prohibition on multiple dwellings at Whitemark and Lady Barron because there is no reticulated sewer service. The absence of reticulated sewer prevented the General Residential Zone being applied under Guideline No 1, however the Flinders Planning Scheme 2000 had provided for higher densities without significant environmental impacts on the local community.
273. In the section 35F report, the planning authority supported application of a specific area plan.
274. Prior to the hearing the planning authority provided a statement to show how the draft LPS written document would be modified, a map to show where the Specific Area Plan would apply and a statement to explain how the Specific Area Plan would comply with section 32(4) of the Act. The Specific Area Plan would provide for dwelling density of 600m², with associated performance criteria to consider higher density and minimum lots of 1500m².
275. At the hearing, the representor and planning authority were both in support of the Specific Area Plan, but noted that a number of drafting improvements were required.
276. Following the hearing, the planning authority provided a revised Specific Area Plan including revised written provisions and revised mapping that included land at Barr and Gunter streets, Lady Barron that would be zoned Low Density Residential as a result of other recommendations. A subsequent submission from the planning authority confirmed its view that the Specific Area Plan should also be applied to 3 Esplanade and 9 and 17 Walker Street, Whitemark, which the planning authority proposed should also be zoned Low Density Residential.

Commission consideration

277. The Commission accepts the planning authority and representor's evidence that customised planning provisions are required for management of dwelling and lot density at Whitemark and Lady Barron and is persuaded that the proposed Specific Area Plan satisfies section 32(4) of the Act. The Commission agrees that both settlements have particular spatial qualities that require unique provisions to apply to the land as both settlements have been developed at

high densities despite the absence of reticulated sewer services. The Commission accepts that provisions are needed to mediate between the General Residential Zone, which cannot be applied given the lack of a reticulated sewer and the Low Density Residential Zone, which reduces capacity for construction of dwellings needed for the supply of housing.

Commission decision

278. Modification:

- Revise the draft LPS written document by inserting FLI-S5.0 Whitemark and Lady Barron Urban Development Specific Area Plan;
- Revise the Specific Area Plan overlay and apply the Whitemark and Lady Barron Urban Development Specific Area Plan as shown in Figure 1 and Figure 2 of the planning authority’s submission received 15 March 2022. The Specific Area Plan must also include the following properties:
 - a. 3 Esplanade, Whitemark of the folio of the Register 67128/3;
 - b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5; and
 - c. 17 Walker Street, Whitemark folio of the Register 60768/6.

279. Reason:

- To meet the requirements of the SPPs and the technical requirements of Practice Note 7.

Commission consideration under section 35KB

280. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Flinders LPS, after it comes into effect.

Commission decision under section 35KB

281. Draft amendment directed to the Flinders LPS:

- Revise the draft LPS written document by inserting FLI-S5.0 Whitemark and Lady Barron Urban Development Specific Area Plan; and
- Revise the Specific Area Plan overlay and apply the Whitemark and Lady Barron Urban Development Specific Area Plan as shown in Attachment 3.

282. Reason:

- To meet the requirements of section 32(4) of the Act.
- The Commission considers that the modification is a substantial modification as there may be a public interest.

Specific Area Plan – Electricity Connections

Representation: Flinders Council (10)

283. The representor requested that the draft LPS be modified to include a specific area plan that would require all new lots on Flinders Island to be connected to the electricity network. The representor contended that such provisions are required due to the high cost of electricity connections.

284. In the section 35F report, the planning authority supported application of a specific area plan.

285. Prior to the hearing, the planning authority advised that it considered the matter to be an issue that would be more appropriately dealt with by amendment to the SPPs and advised that it would consider raising the issue through a notice made under section 35G of the Act.

Commission consideration

286. The Commission notes that the planning authority intends to address the issue through a notice made under section 35G of the Act.

Commission decision

287. The Commission considers that no modifications are required.

Site-specific Qualification – 768 Big River Road, Loccota

Submission accepted by the Commission: Alex and Jenny John

288. The Commission notes that the submission was received after the exhibition of the draft LPS, which closed on 2 August 2021. The submission was received on 26 January 2022 and tabled at the hearing on 9 February 2022, where it was accepted by the Commission with the agreement of the planning authority.
289. The submitter requested a site-specific qualification on land at 768 Big River Road, Loccota folios of the Register 164303/1, 164303/2, and 164303/3 on land zoned Landscape Conservation to provide for the following:
- Resource Processing as a Discretionary use if associated with Resource Development on folios of the Register 164303/1 and 164303/2;
 - General Retail and Hire as a Discretionary use if associated with Resource Development on folios of the Register 164303/1 and 164303/2; and
 - General Retail and Hire as a Discretionary use if associated with ‘art and craft products’.
290. The submitter explained that they had agreed to purchase the property in December 2021 and had therefore acquired an interest in the planning controls that would apply to it. The submitter sought controls that would provide for the following activities that they may want to conduct on the land:
- growing and processing of vegetables, olives (including production of olive oil), avocados, wine, cheese, tea tree oil, and kunzea oil;
 - grazing of small herds of goats, buffalo, or dairy cows for on-site production of cheese;
 - grazing of lamas/alpacas and on-site processing of wool;
 - a micro-brewery/boutique distillery;
 - bee-keeping with boutique on-site production and processing of honey and wax;
 - low-impact tourism, such as walking trails, accommodation, café, art gallery, a sculpture park along walking trails, and an art and craft centre; and
 - specialised medicinal horticulture.
291. At the hearing, the submitter was represented by Jo Oliver of Terra Firma Planning who explained that the prospective owners sought a flexible site-specific qualification for a number of uses. Ms Oliver also made a submission at the hearing that provided a revised site-specific qualification that provided for the controls to be applied across all three titles and explained how the proposal satisfied section 32(4) of the Act.
292. Ms Oliver stated that application of the Landscape Conservation Zone was reasonable and compliant with Guideline No. 1 given the location of the property at the fringe of the Strzelecki National Park and explained that the basis for the request was that the Zone would

diminish the existing use rights possible under the Rural Zone of the Flinders Planning Scheme 2000 that was applied to the land. Ms Oliver added that land has been a standalone farming property and it is reasonable that the planning controls be adapted through site-specific qualifications.

293. Following the hearing, the planning authority submitted that it was in support of the site-specific qualifications and was satisfied that the proposal satisfied the requirements of section 32(4) of the Act.

Commission consideration

294. The Commission affords some weight to the submitter’s argument that special provisions such as site-specific qualifications should apply to the land, however is not persuaded that there is sufficient evidence and firm details about the proposal to be satisfied that the proposed site-specific qualification is appropriate and compliant with section 32(4) of the Act.
295. The Commission notes that ‘Resource Development’ is a Discretionary use in the Landscape Conservation Zone and while clause 6.2.2 of the SPPs allows ‘Resource Processing’ or ‘General Retail and Hire’ to be classified as part of Resource Development where it is a subservient part of that use, the proponent has indicated that the scale of the use would be beyond subservient. On that basis, it is difficult to determine whether the uses and development for which the site-specific qualification would provide for are appropriate, particularly given the important landscape values of the land. Furthermore, without detail of the use and development that might occur, it is not clear whether a site-specific qualification is the ideal method of control and how the control should be designed to ensure that it is constrained to a use or development that would not have an unreasonable impact on landscape values. The Commission notes that the proposal could be resubmitted as a draft amendment should further details about the proposal become evident.

Commission decision

296. The Commission considers that no modifications are required.

Representations in support of the draft LPS

Rural Living Zone – Various Properties

Representation: Clem Newton-Brown (3), Wendy Jubb-Stoney (15)

297. The representors supported application of the Rural Living Zone at Blue Rocks and 180 Badger Corner Road, Lady Barron. Representation 15 was also supportive of Site-specific Qualification FLI-11.2 applied to 180 Badger Corner Road.
298. In the section 35F report, the planning authority noted that the representations did not seek any changes to the draft LPS and on that basis recommended no modifications.
299. No new information was submitted at the hearing.

Commission consideration

300. The Commission notes the representor’s comments are in support of the draft LPS and accepts the planning authority’s response given in the section 35F report.

Commission decision

301. The Commission considers that no modifications are required.

Village Zone – 13-15 Barr Street, Lady Barron

Representation: Department of Communities (7)

302. The representor supported application of the Village Zone to the land at 13-15 Barr Street, Lady Barron for folios of the Register 50144/1, 50143/1 and 50142/1.
303. In the section 35F report, the planning authority noted that the representation did not seek any changes to the draft LPS and on that basis recommended no modifications.
304. No new information was submitted at the hearing.

Commission consideration

305. The Commission notes the representor's support for application of the Village Zone to the land and accepts the planning authority's response given in the section 35F report.

Commission decision

306. The Commission considers that no modifications are required.

Agriculture Zone – 1210 and 1215 Lackrana Road, Lackrana

Representation: Van Diemen Consulting for David Gibbons (23)

307. The representor supported application of the Agriculture Zone to the land at 1210 and 1215 Lackrana Road, Lackrana.
308. In the section 35F report, the planning authority noted that the representation did not seek any changes to the draft LPS and on that basis recommended no modification to it.
309. No new information was submitted at the hearing.

Commission consideration

310. The Commission notes the representor's support for the application of the Agriculture Zone to the land and accepts the planning authority's response given in the section 35F report.

Commission decision

311. The Commission considers that no modifications are required.

Landscape Conservation Zone and Environmental Management Zone – Various Properties

Representations: Conservation Landholders Tasmania (4), Anne Rae and Bronwyn Stubbs (13), Furneaux Islands Protection Network (28), Greg Beeton (32), Sophie Underwood for The Dock shareholders (34)

312. The representors supported application of the Landscape Conservation and Environmental Management zones to various properties, in particular application of the Landscape Conservation Zone to ten properties that contain conservation covenants made under the *Nature Conservation Act 2002* and application of the Environmental Management Zone to the outer islands.
313. In the section 35F report, the planning authority noted that the representors did not seek any changes to the draft LPS and on that basis recommended no modification.
314. At the hearing, Conservation Landholders Tasmania, represented by Mr. John Thompson spoke generally about application of the Landscape Conservation Zone to land that contains conservation covenants made under the *Nature Conservation Act 2002*. Mr. Thompson's view was that although conservation covenants are not listed as a class of reserve under Schedule 1

of the *Nature Conservation Act 2002*, they are still a type of reserve. He noted that Schedule 1 was the same as the corresponding schedule in the preceding *National Parks and Conservation Act 1970*, which was written before conservation covenants were conceived. On that basis, Mr. Thompson was of the opinion that the omission of conservation covenants from Schedule 1 was unintentional and therefore covenanted land is in fact a reserve.

315. Mr. Thompson also stated that conservation covenants are acknowledged by the State and Federal governments as private reserves and as a consequence, should be considered as reserves when applying Guideline No. 1. He further noted that the guidelines for the Landscape Conservation Zone were ambiguous because they referred to both scenic and natural values, such as threatened native vegetation communities.

Commission consideration

316. The Commission's view is that conservation covenants are not reserves. The reason is that conservation covenants are not specifically identified as reserves in the interpretation in Part 3, or Schedule 1 of the *Nature Conservation Act 2002*. These sections list each type of reserve, including private nature sanctuaries and private nature reserves. The definition of 'reserved' (as opposed to the definition for 'reserved land') means land that is 'set aside or acquired for a conservation purpose.' This means that the use of the land must be primarily in effect for conservation purposes.
317. The Commission also notes the different processes prescribed for declaration of reserves (made for private land under section 12 of the *Nature Conservation Act 2002*), versus the process for the Minister to 'enter into' a conservation covenant with a landowner (made as a covenant that 'runs with' the land under section 34 of the *Nature Conservation Act 2002*). Unlike a reserve, a conservation covenant 'runs with' the land like a contract and the land is not 'set aside', meaning that it is not taken to be primarily in effect for conservation purposes.
318. Notwithstanding, the guidelines for the Landscape Conservation Zone do not provide for application of the Zone on the basis of whether it is a reserve under the *Nature Conservation Act 2002* (noting that LCZ 1 does refer to land 'identified for protection and conservation') or whether conservation covenants are acknowledged as 'private reserves' by State and Federal governments. If that were the case, then the most appropriate zone for land with conservation covenants may be the Environmental Management Zone under guideline EMZ 1(a) and (f), which is a zone that is generally not suitable zone for private land. In the event that land with a conservation covenant has values significant enough to satisfy the criteria for one of the reserve types listed in column 2 of Schedule 1 of the *Nature Conservation Act 2002*, then it may be appropriate for it to be declared as a reserve and then the zoning altered to reflect same.
319. The Commission agrees with Mr. Thompson that the Landscape Conservation Zone guidelines do not straightforwardly show the manner in which the Landscape Conservation Zone exists in relationship to the Natural Assets and Scenic Protection codes. In particular, the guidelines do not necessarily help to distinguish when the Landscape Conservation Zone should be applied in preference to another zone that is compatible with the Priority Vegetation Area and Scenic Protection Area overlays. The answer to this problem is coded in the relationship of the guidelines to the zone purpose (see clause 3.4 of Guideline No. 1). In the hierarchy of the planning controls laid out by the SPPs, zone purpose statements are almost exclusively intended to establish what uses are provided for by a zone and by extension, the scale of the use and development that can be tolerated. Therefore, zone application is ultimately driven by use.
320. With that in mind, a sound planning principle is that zones should be applied in congruent zoning patterns. While 'special use' zones, including Utilities, Community Purpose, Recreation

and the like, are often applied to a single site as a consequence of an outstanding and particular use, conservation covenants are independent controls of use (and development) that are not usually significant enough in and of themselves to warrant application of a particular zone.

321. Therefore a question arises as to what degree a conservation covenant identifies a use that should influence zone application. Conservation covenants, like other forms of restrictive covenants, are rules that operate in a different way to planning controls like the SPPs. Conservation covenants are usually born as a result of the specific will of a landowner to manage environmental values of land and therefore provide very particular sets of restrictions on use (such as excluding the use of pesticides in certain areas). Covenants state what cannot be done and how land must be managed (conservation covenants can be expressed positively or negatively), in difference to the controls of the SPPs and the Act, which provide for use and development of land positively (see Schedule 1 - Objectives).
322. The SPPs are therefore intended to liberate rather than restrict use and development i.e. to provide for fair, orderly and sustainable use and development in a manner that ultimately provides for community cooperation. Landowners therefore have all the use and development rights there are, except for those that are expressly forbidden or controlled by the SPPs as an act of minimising land use conflict.
323. It is within this context that peripheral and independent land use controls like covenants are considered and unless it can be demonstrated that a covenant cannot otherwise exist in harmony with a particular zone under the SPPs (as a matter of practicality), the existence of a covenant is of lower status than other land use planning considerations under Guideline No. 1, such as the agricultural potential of land. The corollary is that while it is possible that covenants exist which would warrant consideration as a prime factor in zone choice, the actual characteristics of land and the broader area surrounding it play the foremost role in zone application. For land outside formal settlements and special use zones, zone application is not usually a simple matter of orientation around a single element, such as a conservation covenant; there are a myriad of factors that determine zone choice.
324. The Landscape Conservation Zone guidelines in the context provided by the zone purpose, require the Zone to be applied to land with landscape values. LCZ 1 is the key guideline, and its application is contingent on identification of landscape values. LCZ 2, like LCZ 1 (after it has established landscape values as the condition of its application), lists the types of landscapes that the zone might be applied to i.e. bushland areas, large areas of native vegetation, or other areas of locally or regionally important native vegetation. LCZ 2 also provides for the Zone to be applied to areas of bushland or native vegetation that are 'not otherwise reserved,' but this is dependent on meeting the remainder of LCZ 1, which indicates that the Zone is only appropriate for use and development of a 'small scale.'
325. Landscape is defined in the Macquarie Dictionary as 'a view or prospect of rural scenery, more or less extensive, such as is comprehended within the scope or range of vision from a single point of view.' Value is defined as 'that property of a thing because of which it is esteemed, desirable, or useful, or the degree of this property possessed; worth, merit, or importance.' Therefore, in the context of Guideline No. 1 and the Zone purpose, landscape value is taken to mean that the land must be significantly visible from surrounding areas and must be perceived to have positive value that is important or beneficial to the degree that it warrants specific control of its use. Otherwise the impacts on natural and scenic values can be managed through the Priority Vegetation Area and Scenic Protection Area overlays.
326. Conservation covenants, the Priority Vegetation Area overlay and the Scenic Protection Area overlay all indicate that land might have landscape value. That these provisions routinely overlap with the Landscape Conservation Zone is unsurprising given the Zone is intended to be

applied to areas of bushland and native vegetation. However, the Priority Vegetation Area overlay and the Scenic Protection Area overlay do not control use; that is primarily the domain of zones, so the ultimate question is whether the scale and type of uses provided by a zone are appropriate and necessary if land has landscape value. Unless such values are significant enough to warrant use and development being curtailed to a small scale, then conservation covenants, the Priority Vegetation Area overlay and the Scenic Protection Area overlay, can operate perfectly well under the provisions of another zone, such as the Rural Zone, which provides for a more expansive use and development options.

327. Otherwise, the Commission notes the support of the representors for the application of the Landscape Conservation and Environmental Management zones in the Flinders draft LPS and is satisfied with the planning authority's response in the section 35F report.

Commission decision

328. The Commission considers that no modifications are required.

Landscape Conservation Zone and Environmental Management Zone – Little Green Island

Representations: Furneaux Islands Protection Network (28), Aboriginal Land Council of Tasmania (33)

329. The representors supported application of the Environmental Management Zone to the outer islands surrounding Flinders Island, in particular Little Green Island.
330. In the section 35F report, the planning authority noted that the representations did not seek any changes to the draft LPS and on that basis recommended no modification.
331. No new information was submitted at the hearing.

Commission consideration

332. The Commission notes the representor's comments are in support of the Flinders draft LPS and accepts the planning authority's response given in the section 35F report.

Commission decision

333. The Commission considers that no modifications are required.

Coastal Inundation Hazard Code and Flood-Prone Areas Hazard Code Overlays

Representations: Department of Police, Fire and Emergency Management – State Emergency Service (6)

334. The representor supported application of the zones and the Coastal Inundation Hazard Areas overlay in the draft LPS. The representor also supported Table C11.1 and noted that because the draft LPS did not contain a Flood-Prone Hazard Area overlay, the planning authority would need to rely on the SPPs for application of the Flood-Prone Areas Hazard Code to test the merits of proposed use and development.
335. In the section 35F report, the planning authority noted that the representation did not seek any changes to the draft LPS and on that basis recommended no modification.
336. No new information was submitted at the hearing.

Commission consideration

337. The Commission notes that the representor's comments are in support of the Flinders draft LPS and accepts the planning authority's response given in the section 35F report.

Commission decision

338. The Commission considers that no modifications are required.

Other matters

Matters taken not to be a representation

Representations: Department of Communities Tasmania (7), Flinders Council (10), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Annemarie Carnell (21), Greg Beeton (32), Aboriginal Land Council of Tasmania (33), Sophie Underwood for The Dock shareholders (34)

339. 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;
- light pollution; and
- Aboriginal burial areas.

340. In the section 35F report the planning authority noted the issues and indicated that a notice under section 35G of the Act would be provided to the Commission to make recommendations about modifications to the SPPs.

Commission consideration

341. 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.

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

Commission decision

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

Matters of a technical nature or relevant to implementation

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

- minor numbering and typographical errors in the draft LPS;
- 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;
- instances where the spatial representation of the cadastral parcels dataset have changed after the production of the PDF maps for exhibition, that result in minor misalignment

between cadastral parcel boundaries and zones or code overlays based on those boundaries; and

- instances where a modification to the draft LPS written document or draft LPS maps and overlays requires a consequent modification to the other.

345. 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

346. 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;
- contain zone and overlay maps that reflect current cadastral parcel boundaries and the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark on theLIST, and any areas described by section 35J(2) of the Act; and,
- 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

347. Modification:

- Revise the draft LPS written document to include the technical modifications identified in Annexure A of Attachment 2 to:
 - a. meet the LPS requirements of the SPPs;
 - b. correct references to relevant provisions;
 - c. provide for the effective operation of the provisions;
 - d. reflect the terminology used in the SPPs; and
- Revise the draft LPS zone and overlay maps to:
 - a. reflect modifications consequential to modifications made to the draft LPS written document, such as deletion of site-specific qualifications;
 - b. fill any unzoned gaps in the zoning layer;
 - c. remove any overlaps between adjoining zones;
 - d. apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset;
 - e. some overlays supplied by theLIST have been modified since the original versions were published on LISTmap (e.g. the Electricity Transmission Infrastructure Protection overlay). Make sure to use the most recent version available;
 - f. remove any overlaps between features in the same overlay layer that have different categories (excluding for transitioning local area objectives of SAPs and PPZs), such as: coastal inundation investigation areas and low coastal inundation hazard band;
 - g. aggregate adjoining zone or overlay polygons sharing the same category, such as: zone type, landslip hazard band, and aggregate adjoining overlay polygons that have no required category, such as priority vegetation area;
 - h. align the boundaries of zones and parcel dependant overlays with parcel boundaries, based on the most recent version of the parcels dataset available from theLIST;
 - i. remove any zone or overlay shown outside the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark map on theLIST, and any areas described by section 35J(2) of the Act; and

- j. present all GIS data in the recommended Geodatabase format provided to council by the Commission.

348. Reason:

- To 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 under section 35K(1)(a) to modify draft LPS

Attachment 2 – Annexure A – Modifications to Flinders draft LPS written document

Attachment 3 – Notice under section 35KB to prepare and submit an amendment of the LPS after the LPS comes into effect

Attachment 1**List of Representations and Submissions**

| No | Name |
|-----------|---|
| 1. | Elizabeth Frankham |
| 2. | Linda Nicol and Tony Griggs |
| 3. | Clem Newton-Brown |
| 4. | Conservation Landholders Tasmania |
| 5. | Kerrie Prescott |
| 6. | Department of Police, Fire and Emergency Management (SES) |
| 7. | Department of Communities Tasmania |
| 8. | Rebecca Green and Associates for Dianne Fair |
| 9. | Craig Smith |
| 10. | Flinders Council |
| 11. | Rebecca Green and Associates for Cohen and Associates Pty Ltd |
| 12. | Rebecca Green and Associates for Cohen and Associates Pty Ltd |
| 13. | Anne Rae and Bronwyn Stubbs |
| 14. | Department of State Growth |
| 15. | Wendy Jubb-Stoney |
| 16. | Judy Cazaly |
| 17. | Gerry Willis for Furneaux Islands Protection Network |
| 18. | Ken Stockton |
| 19. | Eve Schulz |
| 20. | Megan Gledden |
| 21. | Annemarie Carnell |
| 22. | Jo and Tom Youl |
| 23. | Van Diemen Consulting for David Gibbons |
| 24. | Jana Monnone and Raoul Harper |
| 25. | Patricia and Colin Goss |
| 26. | Mark and Mandy Wales |
| 27. | Vicki and Noel Warden |
| 28. | Gerry Willis for Furneaux Islands Protection Network |
| 29. | Kelly Blundstone, Graeme Blundstone and Warwick Blundstone |
| 30. | Van Diemen Consulting for Markarna Grazing Company |
| 31. | Paul Carnell |

32. Greg Beeton
33. Aboriginal Land Council of Tasmania
34. Sophie Underwood for The Dock shareholders
35. Mike Wortman

Submissions to the originally exhibited draft LPS accepted by the Commission

- 1 Van Diemen Consulting for Gary and Nola Morrison
- 2 Alex and Jenny John
- 3 Mick Rose

Attachment 2**Land Use Planning and Approvals Act 1993****Notice to modify under sections 35K(1)(a)****Flinders Draft Local Provisions Schedule**

21 April 2022

The Tasmanian Planning Commission (the Commission) directs that the Flinders planning authority modify the Flinders draft Local Provisions Schedule (draft LPS) in accordance with the following:

1.0 Code Lists

- 1.1 Revise clauses FLI-C8.1.1, FLI-C8.1.2, FLI-C8.1.3, FLI-C8.1.4, FLI-C8.1.5, FLI-C8.1.6, FLI-C8.1.7, FLI-C8.1.8, FLI-C8.1.9, FLI-C8.1.11, FLI-C8.1.12, FLI-C8.1.13 and FLI-C8.1.14 of Table C8.1 Scenic Protection Areas as shown in Annexure A.

Reason: To ensure the draft LPS meets section 32 of the Act and to be consistent with the Minister's declaration under Schedule 6 of the Act.

2.0 Site-specific Qualifications

- 2.1 Revise the draft LPS written document by deleting site-specific qualifications FLI-22.2 and FLI-22.3 as shown in Annexure A.

Reason: To ensure the draft LPS meets section 32 of the Act.

3.0 Specific Area Plan

- 3.1 Revise the draft LPS written document by amending the operational clauses in the Coastal Areas Specific Area Plan to reflect the zones to which the Coastal Areas Specific Area Plan applies, as shown in Annexure A.

Reason: To meet the requirements of Practice Note 8.

4.0 Zone maps and overlays

| No. | Description | Direction and Reason |
|-----|--|---|
| 4.1 | Gunter Street and Barr Street, Lady Barron | <p>Revise the zoning of the seven lots on the northern side of Gunter Street located directly opposite folio of the Register 213264/14 to folio of the Register 242188/20, and the five lots on the southern side of Barr Street, Lady Barron adjacent to folio of the Register 169294/2 to folio of the Register 238900/10 to Low Density Residential.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Low Density Residential Zone consistent with Guideline No. 1.</i></p> |
| 4.2 | Palana Road, Palana | (a) Revise the zoning of 4837 Palana Road, Palana folio of the Register 164143/3 so that it is wholly located in the Low Density Residential Zone and apply the Coastal Settlements Specific Area Plan. |

| | | |
|-----|--|--|
| | | <p>(b) Revise the zoning of that part of 4837 Palana Road, Palana folio of the Register 164144/1 that is included in lots 4, 5, 6, 7, 8, 9, 10 and 11 on the endorsed plan of subdivision under planning permit DA24/10P as provided in the planning authority's submission received 15 March 2022 so that the lots are wholly located in the Low Density Residential Zone, and apply the Coastal Settlements Specific Area Plan.</p> <p><i>Reason: To apply the Low Density Residential Zone consistent with Guideline No. 1 and to apply the Coastal Settlements Specific Area Plan overlay to areas where subdivision density and the visual bulk and site coverage of buildings needs to be managed.</i></p> |
| 4.3 | Killiecrankie Road, Killiecrankie | <p>Revise the zoning of Killiecrankie Road, Killiecrankie folios of the Register 182583/1, 182583/2 and 182583/3 to Low Density Residential Zone and apply the Coastal Settlements Specific Area Plan.<i>Reason: To apply the Low Density Residential Zone consistent with Guideline No. 1 and to apply the Coastal Settlements Specific Area Plan overlay to areas where subdivision density and the visual bulk and site coverage of buildings needs to be managed.</i></p> |
| 4.4 | Pot Boil Road, Lady Barron | <p>Revise the zoning of Pot Boil Road, Lady Barron folios of the Register 181695/4, 181695/5, 181695/6, 181695/7, 181696/3, 181696/4, 181696/5 and 181696/6 to Low Density Residential.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Low Density Residential consistent with Guideline No. 1.</i></p> |
| 4.5 | 270 Palana Road, Whitemark | <p>Revise the zoning of 270 Palana Road, Whitemark folio of the Register 220316/1 to Low Density Residential and apply the Coastal Settlements Specific Area Plan.</p> <p><i>Reason: To apply the Low Density Residential Zone consistent with Guideline No. 1 and to apply the Coastal Settlements Specific Area Plan overlay to areas where subdivision density and the visual bulk and site coverage of buildings needs to be managed.</i></p> |
| 4.6 | Esplanade and Walker Street, Whitemark | <p>Revise the zoning of the following properties to Low Density Residential:</p> <ul style="list-style-type: none"> a. 3 Esplanade, Whitemark of the folio of the Register 67128/3; b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5; and c. 17 Walker Street, Whitemark folio of the Register 60768/6. |

| | | |
|------|--|---|
| | | <i>Reason: To apply the Low Density Residential Zone consistent with Guideline No. 1.</i> |
| 4.7 | Pot Boil Road, Lady Barron | <p>Revise the zoning of Pot Boil Road, Lady Barron folios of the Register 181695/1, 181695/2, 181695/3, 181696/1 and 181696/2 to Rural Living B.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Rural Living Zone consistent with Guideline No. 1.</i></p> |
| 4.8 | Esplanade, Palana Road and Walker Street, Whitemark | <p>Revise the zoning of the following properties to Rural Living D:</p> <ul style="list-style-type: none"> a. Esplanade, Whitemark of the folio of the Register 15860/1; b. Esplanade, Whitemark of the folio of the Register 15860/2; c. 1A Palana Road, Whitemark folio of the Register 53171/5; and d. Walker Street, Whitemark folio of the Register 128758/2. <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Rural Living Zone consistent with Guideline No. 1.</i></p> |
| 4.9 | 1813 Palana Road, Emita folio of the Register 158840/1 | <p>Revise the zoning of 1813 Palana Road, Emita folio of the Register 158840/1 to Rural.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Rural Zone consistent with Guideline No. 1.</i></p> |
| 4.10 | Badger Corner Road and Coast Road, Lady Barron | <p>Revise the zoning of the following properties to Rural:</p> <ul style="list-style-type: none"> a. 31 Badger Corner Road, Lady Barron folio of the Register 52591/1; b. 972 Coast Road, Lady Barron folio of the Register 25190/2. <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Rural Zone consistent with Guideline No. 1.</i></p> |
| 4.11 | Palana Road and Harleys Road, Whitemark | <p>Revise the zoning of the following properties to Rural:</p> <ul style="list-style-type: none"> a. 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2; |

| | | |
|------|---------------------------------------|--|
| | | <p>b. Palana Road, Lughrata folios of the Register 141842/1 and 141842/2;</p> <p>c. That part of 634 Palana Road, Whitemark folio of the Register 182299/2 that previously contained in folio of the Register 245509/1; and</p> <p>d. Harleys Road, Whitemark folio of the Register 176057/2.</p> <p>Insert split-zoning annotations at 634 Palana Road, Whitemark in accordance with Practice Note 7.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Rural Zone consistent with Guideline No. 1.</i></p> |
| 4.12 | 160 Killiecrankie Road, Killiecrankie | <p>Revise the zoning of 160 Killiecrankie Road, Killiecrankie folio of the Register 51470/1 to Agriculture and remove the Priority Vegetation Area overlay.</p> <p>Ensure that adjacent roads are appropriately zoned to centrelines in accordance with Practice Note 7.</p> <p><i>Reason: To apply the Agriculture Zone consistent with Guideline No. 1.</i></p> |
| 4.13 | Priority Vegetation Area Overlay | <p>Revise the Priority Vegetation Area overlay by removing the overlay from all land zoned Low Density Residential at Whitemark and Lady Barron.</p> <p><i>Reason: To apply the Priority Vegetation Area overlay consistent with Guideline No. 1.</i></p> |
| 4.14 | Future Coastal Refugia Area Overlay | <p>Revise the Future Coastal Refugia Area overlay by removing any overlapping with the Utilities Zone within the State road casement.</p> <p><i>Reason: To meet technical requirements of Practice Note 7.</i></p> |
| 4.15 | Local Area Objectives Overlay | <p>Revise the Local Area Objectives overlay by amending the Rural Precinct boundaries so that the Precinct contains the truwana gravel pit as shown in Figure 12 of the planning authority's submission received 15 March 2022.</p> <p><i>Reason: To meet the requirements of section 32(4) of the Act.</i></p> |
| 4.16 | Site-specific Qualifications Overlay | <p>Revise the Site-specific Qualifications overlay map by deleting site-specific qualifications FLI-22.2 and FLI-22.3.</p> <p><i>Reason: To ensure the draft LPS is consistent with the draft LPS written document.</i></p> |

| | | |
|------|---|---|
| 4.13 | Coastal Areas Specific Area Plan Overlay | <p>Revise the Coastal Areas Specific Area Plan overlay by removing the overlay from the land identified by the planning authority in its submission dated 21 January 2022 and also removing the Specific Area Plan overlay from the following properties:</p> <ul style="list-style-type: none"> a. 3 Esplanade, Whitemark of the folio of the Register 67128/3; b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5; and c. 17 Walker Street, Whitemark folio of the Register 60768/6. <p><i>Reason: To meet the requirements of section 32(4) of the Act.</i></p> |
| 4.18 | Whitemark Rural Living Specific Area Plan Overlay | <p>Revise the Whitemark Rural Living Specific Area Plan overlay so that the correct Rural Living sub-zones are displayed. Alternatively, the zoning may be removed from the Specific Area Plan overlay mapping.</p> <p><i>Reason: To meet technical requirements of Practice Note 7.</i></p> |

5.0 Consequential and technical issues

5.1 Revise the draft LPS 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.

5.2 Revise the draft LPS zone and overlay maps to:

- (a) reflect modifications consequential to modifications made to the draft LPS written document;
- (b) fill any unzoned gaps in the zoning layer;
- (c) remove any overlaps between adjoining zones;
- (d) apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset;
- (e) remove any overlaps between features in the same overlay later that have different categories (excluding for transitioning local area objectives of SAPs and PPZs), such as: coastal inundation investigation areas and low coastal inundation hazard band;
- (f) aggregate adjoining zone or overlay polygons sharing the same category, including zone type, landslip hazard band, and aggregate adjoining overlay polygons that have no required category, such as priority vegetation area;
- (g) align the boundaries of zones and parcel dependent overlays with parcel boundaries, based on the most recent version of the parcels dataset available from theLIST;

- (h) remove any zone or overlay shown outside the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark map on the LIST, and any areas described by section 35J(2) of the Act; and
- (i) present all GIS data in the recommended Geodatabase format provided to council by the Commission.

Reason: To 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 and to be consistent with Guideline No. 1.

Attachment 2: Annexure A

Modifications to Flinders draft LPS written document

Attachment 3

Land Use Planning and Approvals Act 1993

Notice under section 35KB(1)

Flinders Draft Local Provisions Schedule

21 April 2022

The Tasmanian Planning Commission (the Commission) directs under section 35KB(1) that the Flinders planning authority prepare draft amendments under Part 3B of the Act, of the Flinders draft Local Provisions Schedule (LPS) as follows and must submit the draft amendments to the Commission within 42 days after the LPS comes into effect. The draft amendments are described below.

1.0 250 Lady Barron Road, Whitemark folio of the Register 27823/1

- 1.1 Apply the Rural Zone to 250 Lady Barron Road, Whitemark folio of the Register 27823/1 as shown in Figure 1 below:

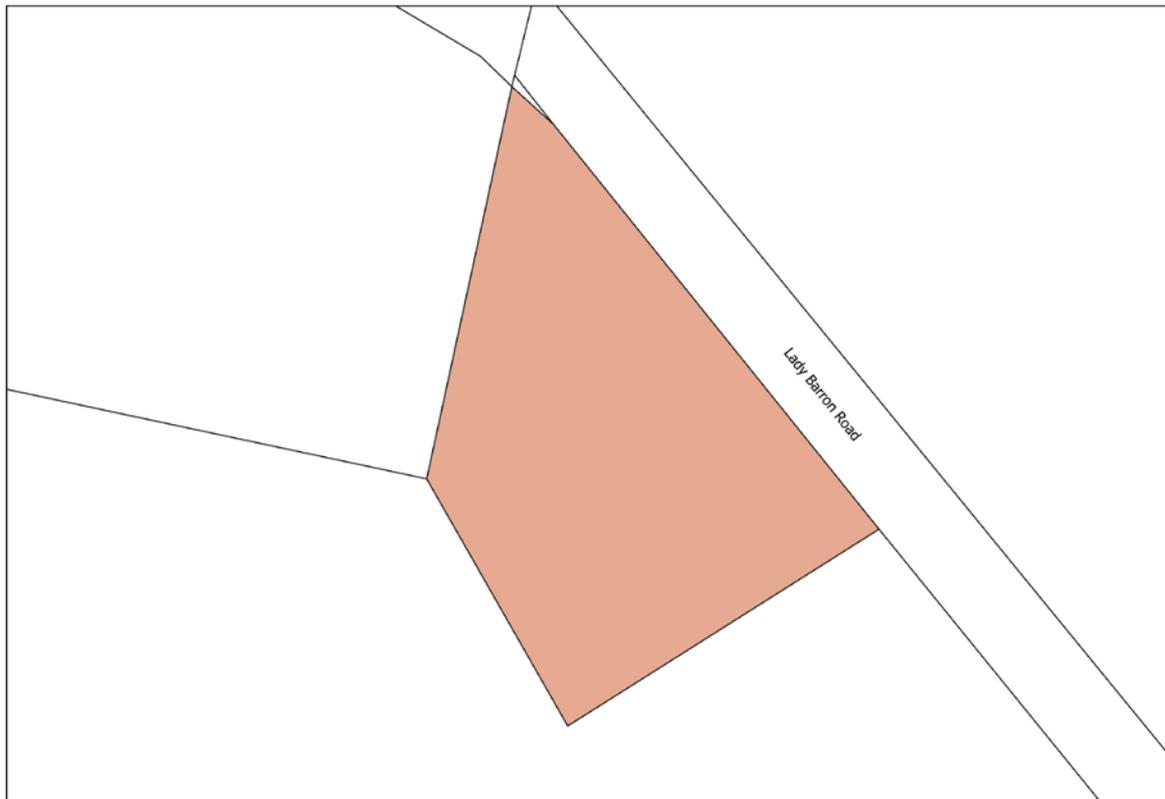


Figure 1 – Application of the Rural Zone at 250 Lady Barron Road, Whitemark folio of the Register 27823/1

- 1.2 Apply the Priority Vegetation Area overlay to 250 Lady Barron Road, Whitemark folio of the Register 27823/1 as shown in Figure 2 below:

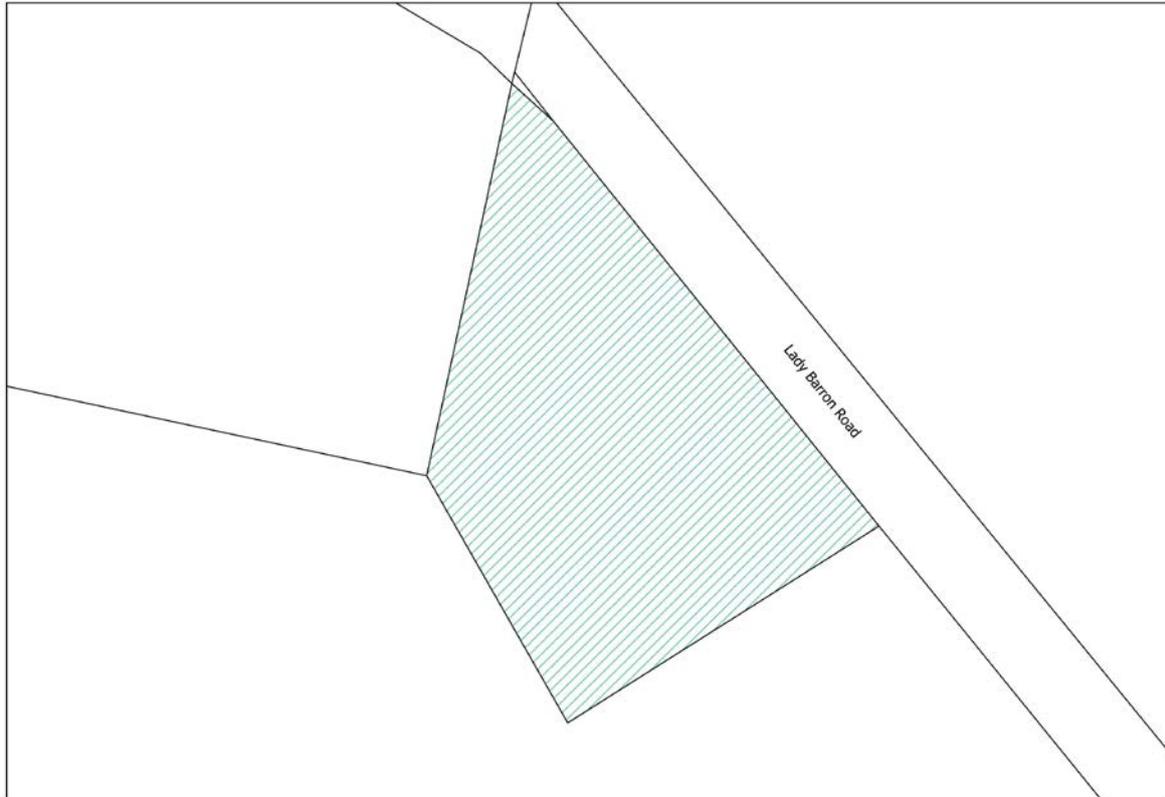


Figure 2 – Application of the Priority Vegetation Area overlay at 250 Lady Barron Road, Whitemark folio of the Register 27823/1

2.0 Memana Road, Blundstone Road and Palana Road, Whitemark

2.1 Apply the Rural Zone to the following properties at Whitemark as shown in Figure 3 below:

- a. 127 Memana Road, Whitemark folio of the Register 14670/1;
- b. 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
- c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1 and 220373/1;
- d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
- e. Blundstone Road, Whitemark folio of the Register 245335/1;
- f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1;
- g. unidentified Crown land surrounded by folio of the Register 252433/1; and
- h. adjoining road centrelines, reserved and acquired roads, as shown in the diagram.

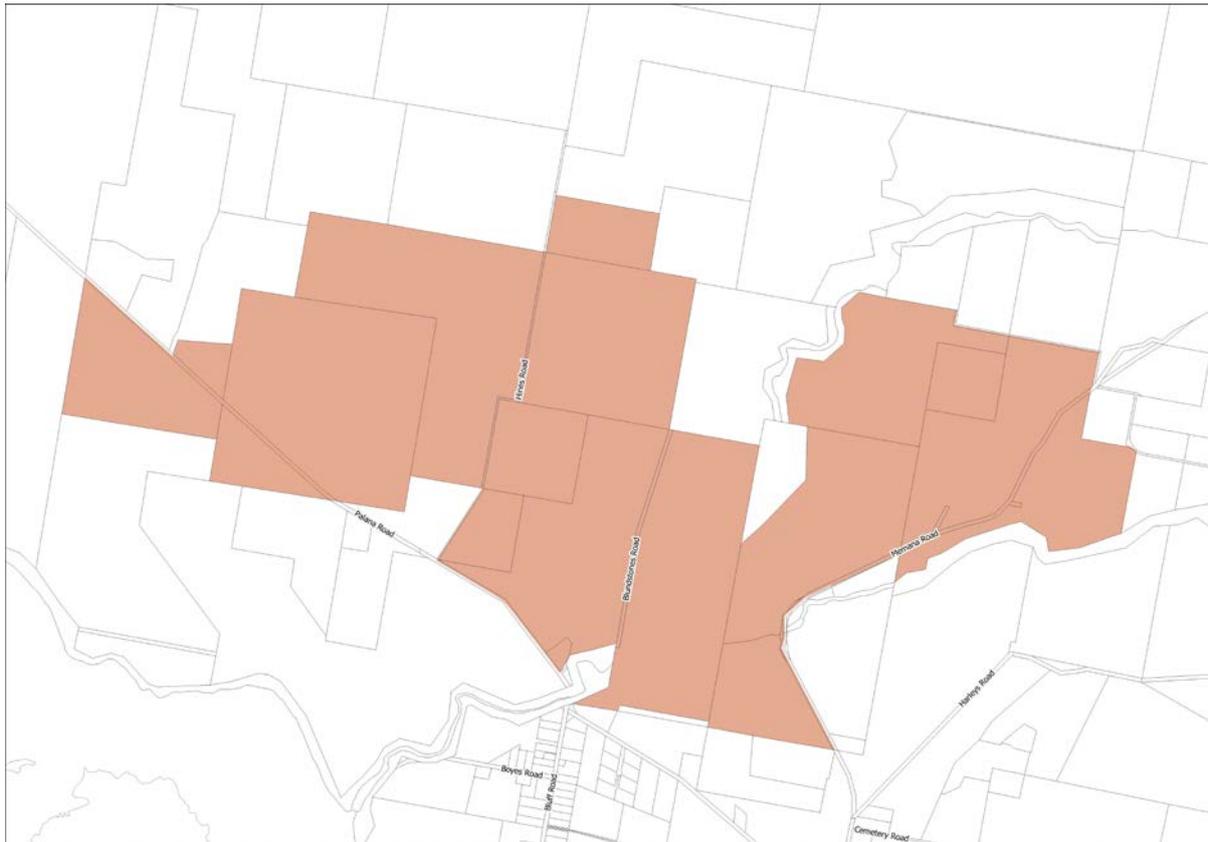


Figure 3 – Application of the Rural Zone at Memana Road, Blundstone Road and Palana Road, Whitemark

2.2 Apply the Priority Vegetation Area overlay to the following properties at Whitemark as shown in Figure 4 below:

- a. 127 Memana Road, Whitemark folio of the Register 14670/1;
- b. 251 Memana Road, Whitemark folio of the Register 155427/1;
- c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1 and 220373/1;
- d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
- e. Blundstone Road, Whitemark folio of the Register 245335/1;
- f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1;
- g. unidentified Crown land surrounded by folio of the Register 252433/1; and
- h. adjoining road centrelines, reserved and acquired roads, as shown in the diagram.

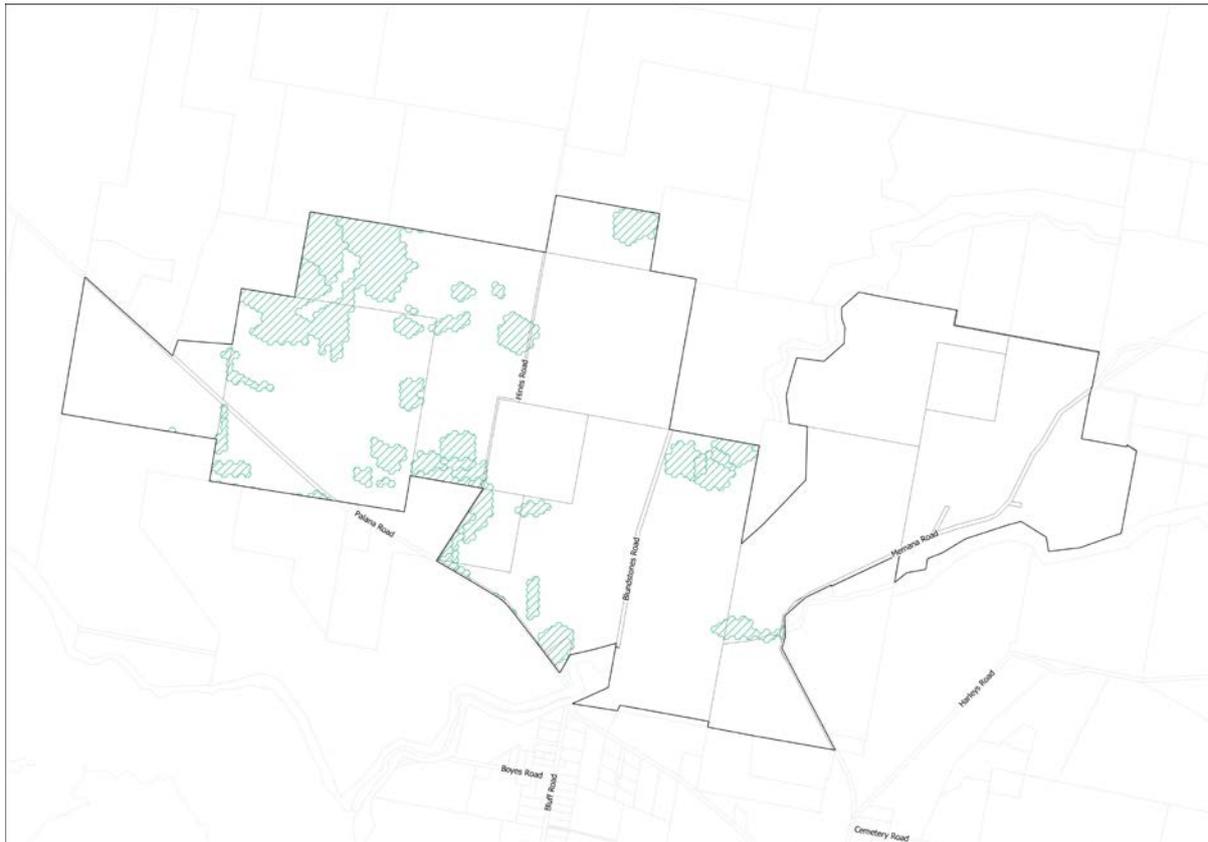


Figure 4 – Application of the Priority Vegetation Area overlay at Memana Road, Blundstone Road and Palana Road, Whitemark

3.0 Butter Factory Road, Whitemark

3.1 Apply the Rural Zone to the following properties at Butter Factory Road, Whitemark as shown in Figure 5 below:

- a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
- b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
- c. 28 Butter Factory Road, Whitemark folio of the Register 141953/1;
- d. 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
- e. 103 Butter Factory Road, Whitemark folio of the Register 10923/1;
- f. 119 Butter Factory Road, Whitemark folio of the Register 7488/2;
- g. 120 Butter Factory Road, Whitemark folio of the Register 64802/1;
- h. 121 Butter Factory Road, Whitemark folio of the Register 7488/1;
- i. Butter Factory Road, Whitemark folio of the Register 249792/1; and
- j. adjoining road centrelines as shown in the diagram.



Figure 5 – Application of the Rural Zone at Butter Factory Road, Whitemark

- 3.2 Apply the Priority Vegetation Area overlay to the following properties at Butter Factory Road, Whitemark as shown in Figure 6 below:

- a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
- b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
- c. 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
- d. 103 Butter Factory Road, Whitemark folio of the Register 10923/1; and
- e. adjoining road centrelines as shown in the diagram.



Figure 6 – Application of the Priority Vegetation Area overlay at Butter Factory Road, Whitemark

4.0 901 and 927 Coast Road, Lady Barron

4.1 Apply the Rural Zone to the following properties at Coast Road, Lady Barron as shown in Figure 7 below:

- a. 901 Coast Road, Lady Barron folio of the Register 209407/1;
- b. 927 Coast Road, Lady Barron folio of the Register 25190/1; and

c. adjoining road centrelines as shown in the diagram.

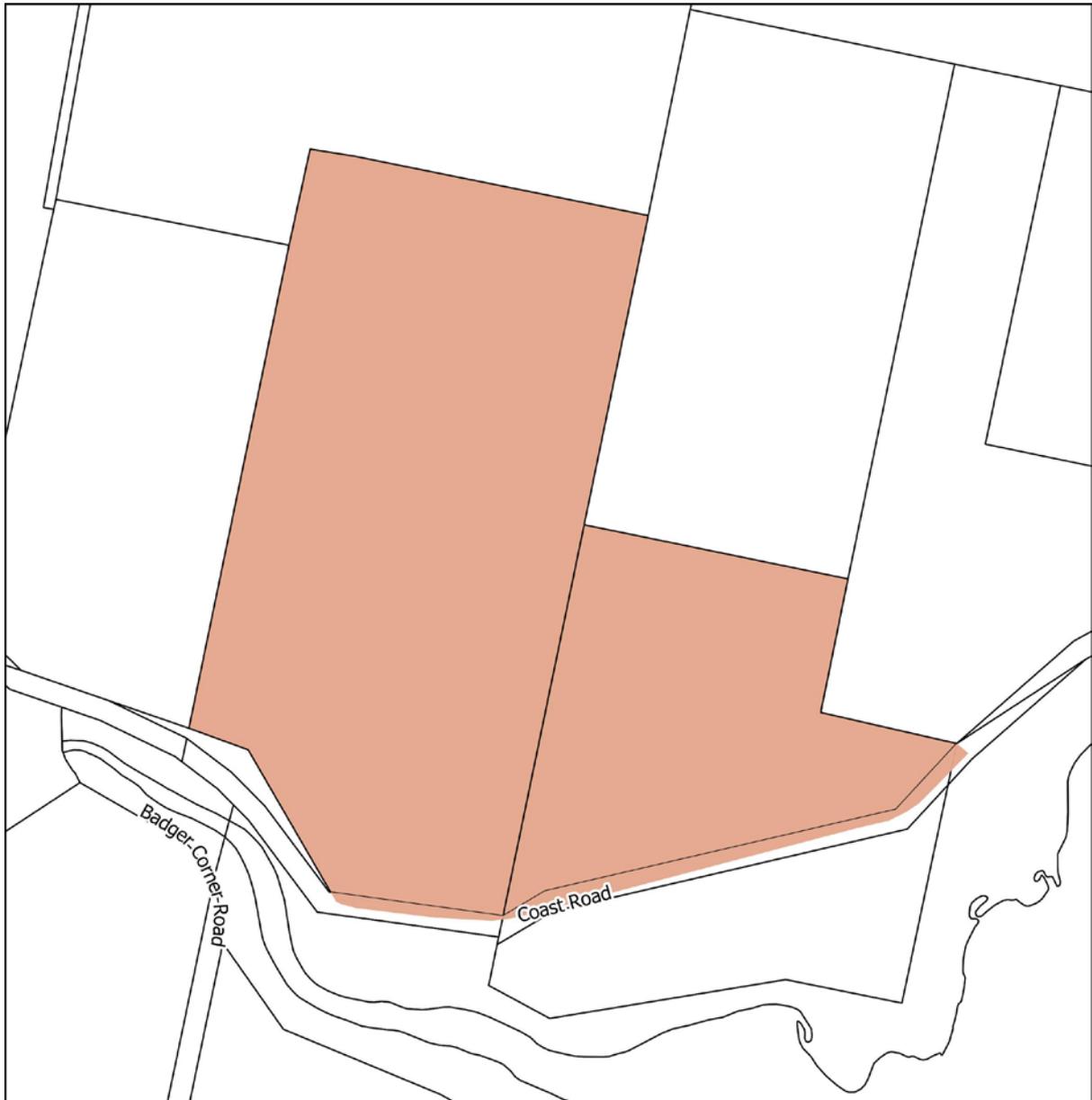


Figure 7 – Application of the Rural Zone at 901 and 927 Coast Road, Lady Barron

- 4.2 Apply the Priority Vegetation Area overlay to the following properties at Coast Road, Lady Barron as shown in Figure 8 below:
- a. 901 Coast Road, Lady Barron folio of the Register 209407/1; and
 - b. 927 Coast Road, Lady Barron folio of the Register 25190/1.



Figure 8 – Application of the Priority Vegetation Area overlay at 901 and 927 Coast Road, Lady Barron

5.0 Lady Barron Road, Lady Barron

- 5.1 Apply the Rural Zone to Lady Barron Road, Lady Barron folio of the Register 199735/1 as shown in Figure 9 below:

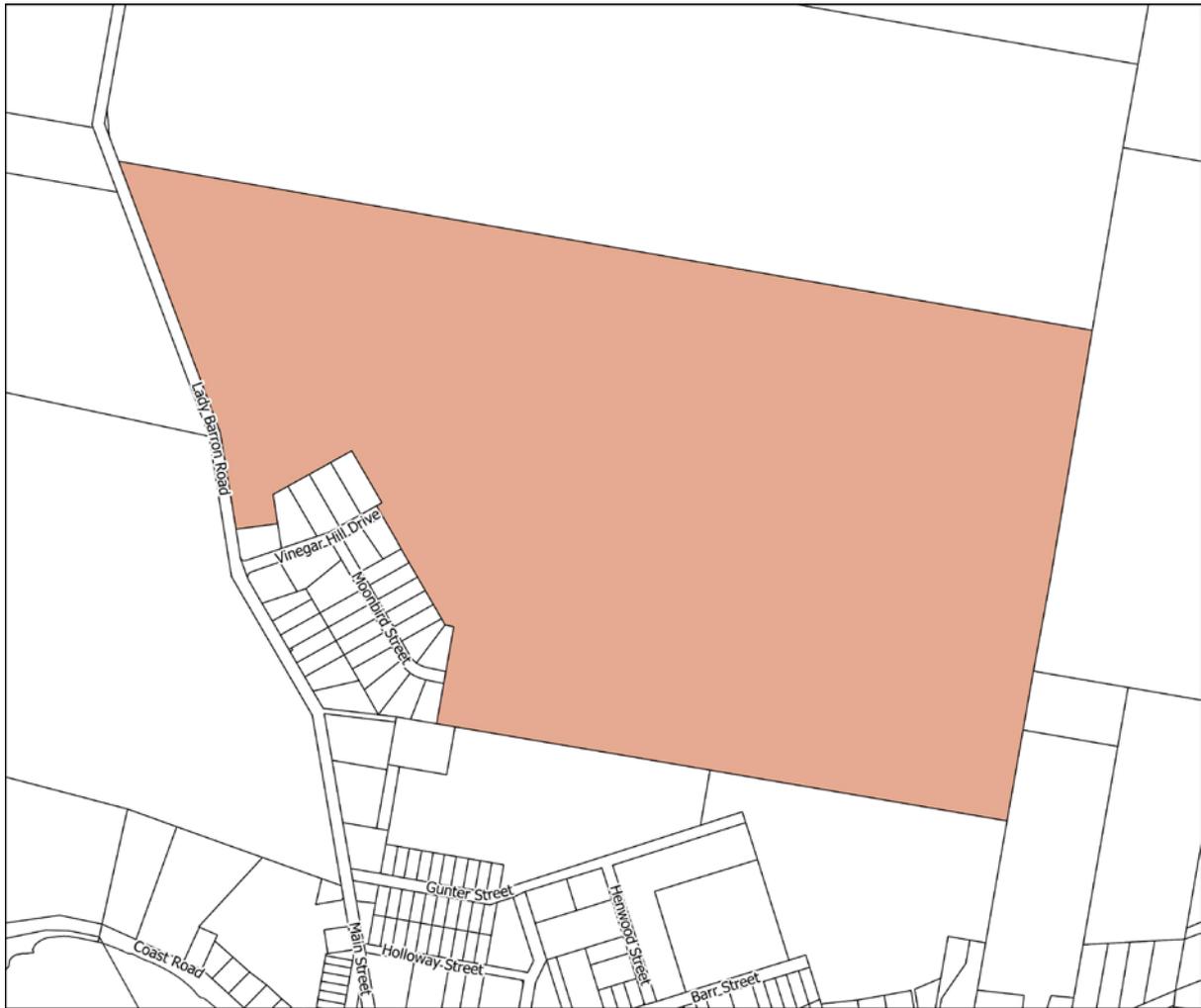


Figure 9 – Application of the Rural Zone at Lady Barron Road, Lady Barron folio of the Register 199735/1

- 5.2 Apply the Priority Vegetation Area overlay to Lady Barron Road, Lady Barron folio of the Register 199735/1 as shown in Figure 10 below:

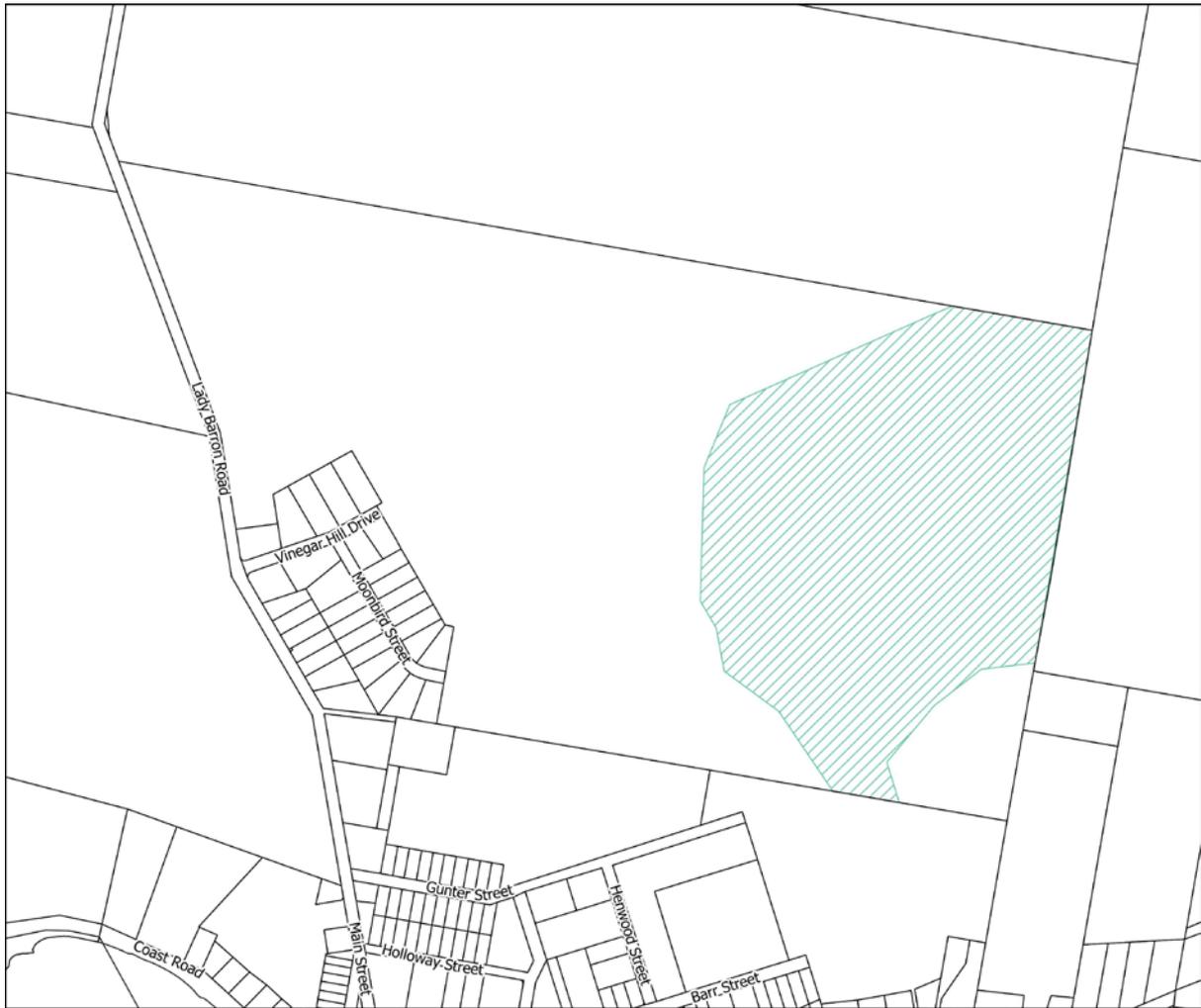


Figure 10 – Application of the Priority Vegetation Area overlay at Lady Barron Road, Lady Barron folio of the Register 199735/1

- 5.3 Apply the Scenic Protection Area overlay to Lady Barron Road, Lady Barron folio of the Register 199735/1 as shown in Figure 11 below:

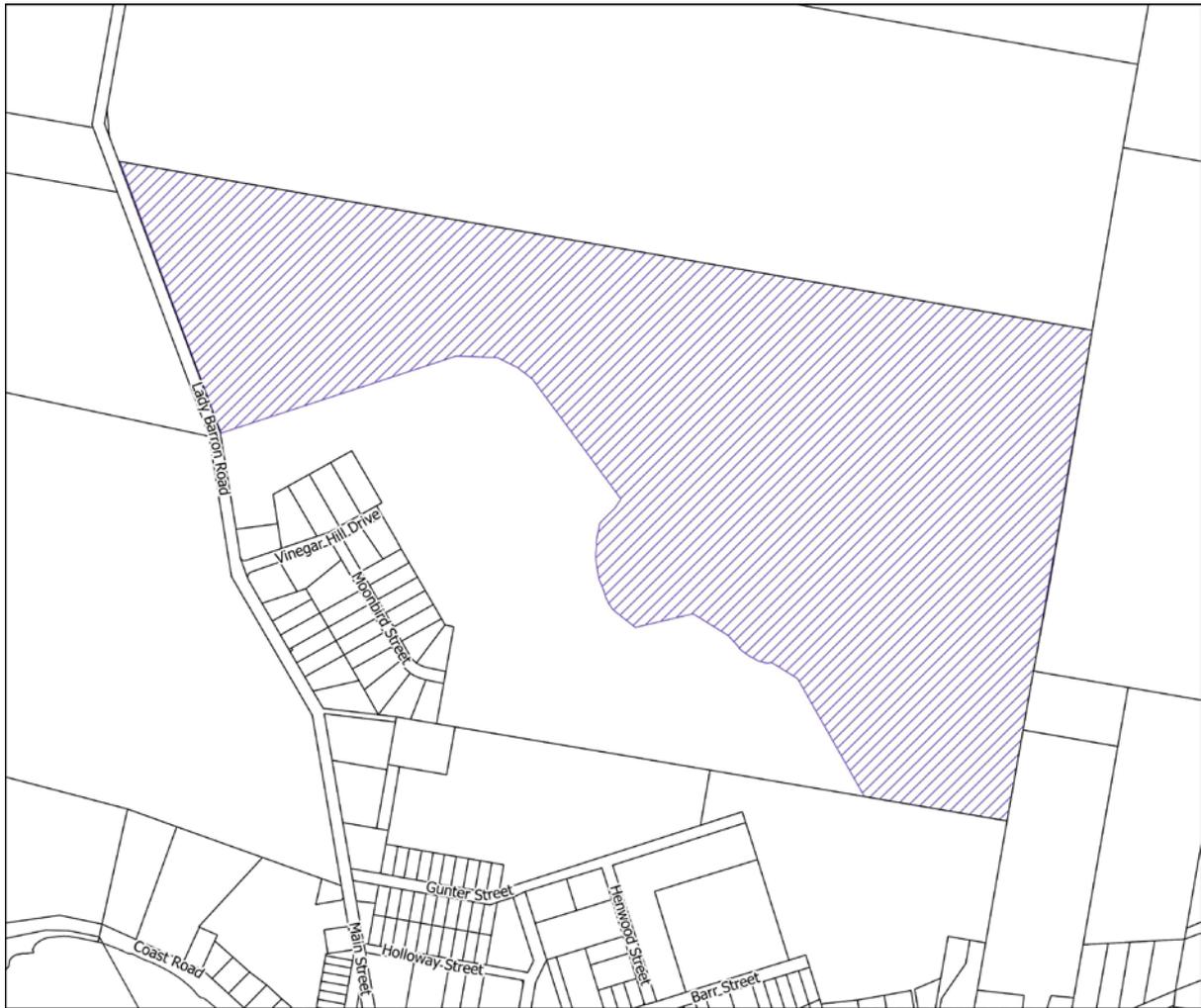


Figure 11 – Application of the Scenic Protection Area overlay at Lady Barron Road, Lady Barron folio of the Register 199735/1

5.4 Insert revised clause C8.1.10 in Table C8.1 Scenic Protection Areas as shown below:

| | | | | |
|-------------------------|---------------------|--|--|--|
| <p>FLI- C8.1.10</p> | <p>Vinegar Hill</p> | <p>Vinegar Hill is distantly visible at Martins Hill heading south-eastwards on Lady Barron Road and is intermittently visible when traversing Lady Barron Road towards Lady Barron township. It can also be viewed intermittently from Coast Road when travelling to Lady Barron from Cooma and Ranga.</p> <p>Vinegar Hill is visible from Adelaide Bay and Franklin Sound as a backdrop to the Lady Barron township. Vegetation covers most of the hill and the ridgeline vegetation is prominent.</p> <p>Existing infrastructure in the viewfield, depending upon where</p> | <p>The vegetated upper slopes and ridgeline of the Vinegar Hill landform create visual interest in an otherwise relatively flat landscape near the Lady Barron township.</p> <p>The ridgeline is a prominent feature of the skyline when viewed from distant locations, such as Adelaide Bay, Ranga,</p> | <p>To:</p> <p>(a) retain the natural appearance of native vegetation and a largely undisturbed landform, when seen from public roads, foreshores and coastal waters;</p> <p>(b) minimise the disturbance of vegetation on the elevated</p> |
|-------------------------|---------------------|--|--|--|

| | | | | |
|--|--|--|----------------------|--|
| | | the landform is viewed, includes houses, quarry, powerlines, roads/tracks and water tank infrastructure. | Cooma, and Lackrana. | parts of the hill that provides scenic value; and (c) provide for development that has appropriate scale, bulk, and external material design to enable it to be subservient to the overall natural character and scenic values of the area. |
|--|--|--|----------------------|--|

6.0 Little Dog Island

- 6.1 Apply the Landscape Conservation Zone to Little Dog Island folios of the Register 204139/1, 226682/1, and 204138/1 as shown in Figure 12 below:

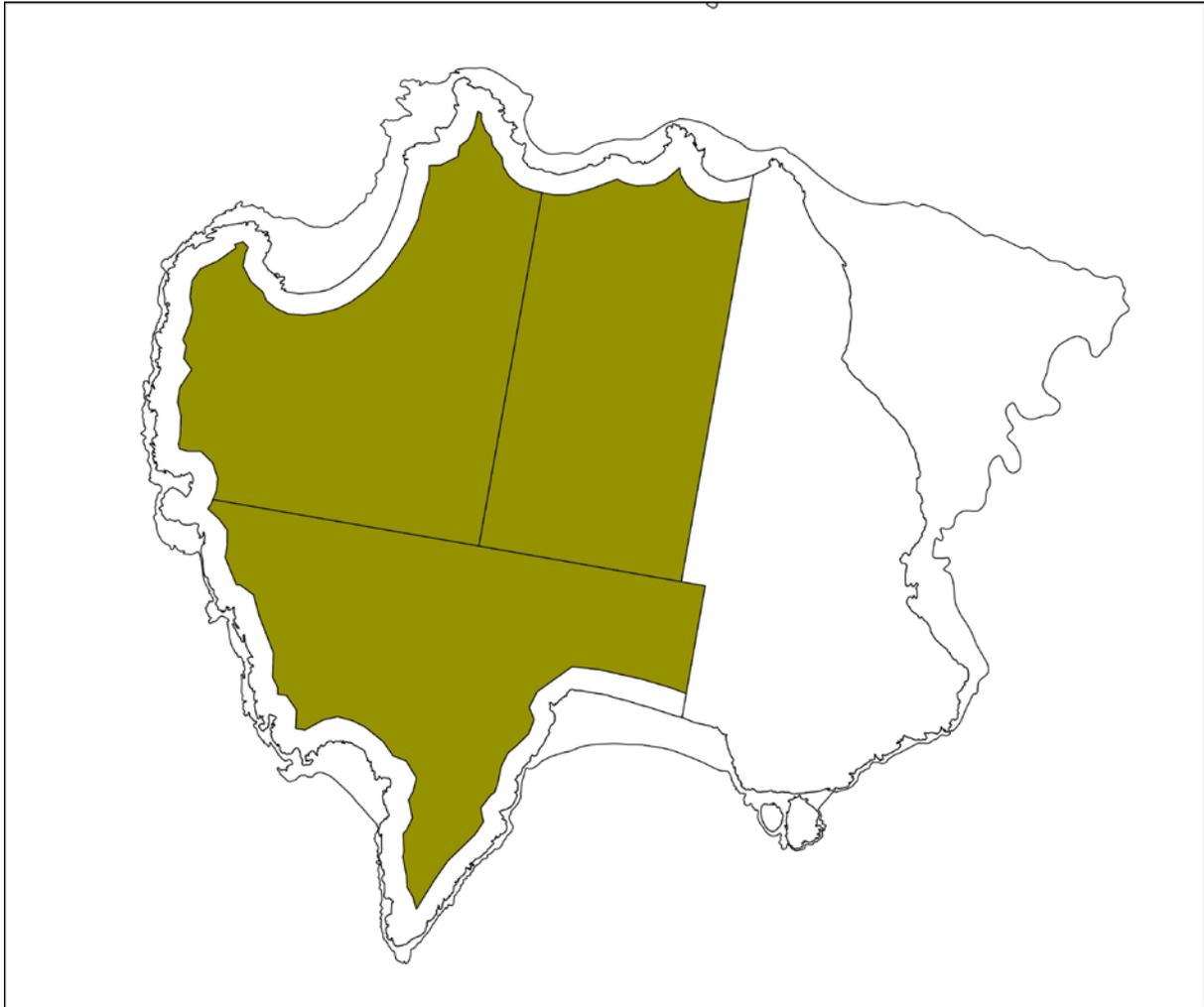


Figure 12 – Application of the Landscape Conservation Zone at Little Dog Island folios of the Register 204139/1, 226682/1, and 204138/1

7.0 FLI-S5.0 Whitemark and Lady Barron Urban Development Specific Area Plan

- 7.1 Insert FLI-S5.0 Whitemark and Lady Barron Urban Development Specific Area Plan into the LPS as set out in Annexure A to Attachment 3.
- 7.2 Apply the Whitemark and Lady Barron Urban Development Specific Area Plan overlay as shown in Figure 13 and Figure 14 below:



Figure 13 – Application of the Whitemark and Lady Barron Urban Development Specific Area Plan overlay at Lady Barron

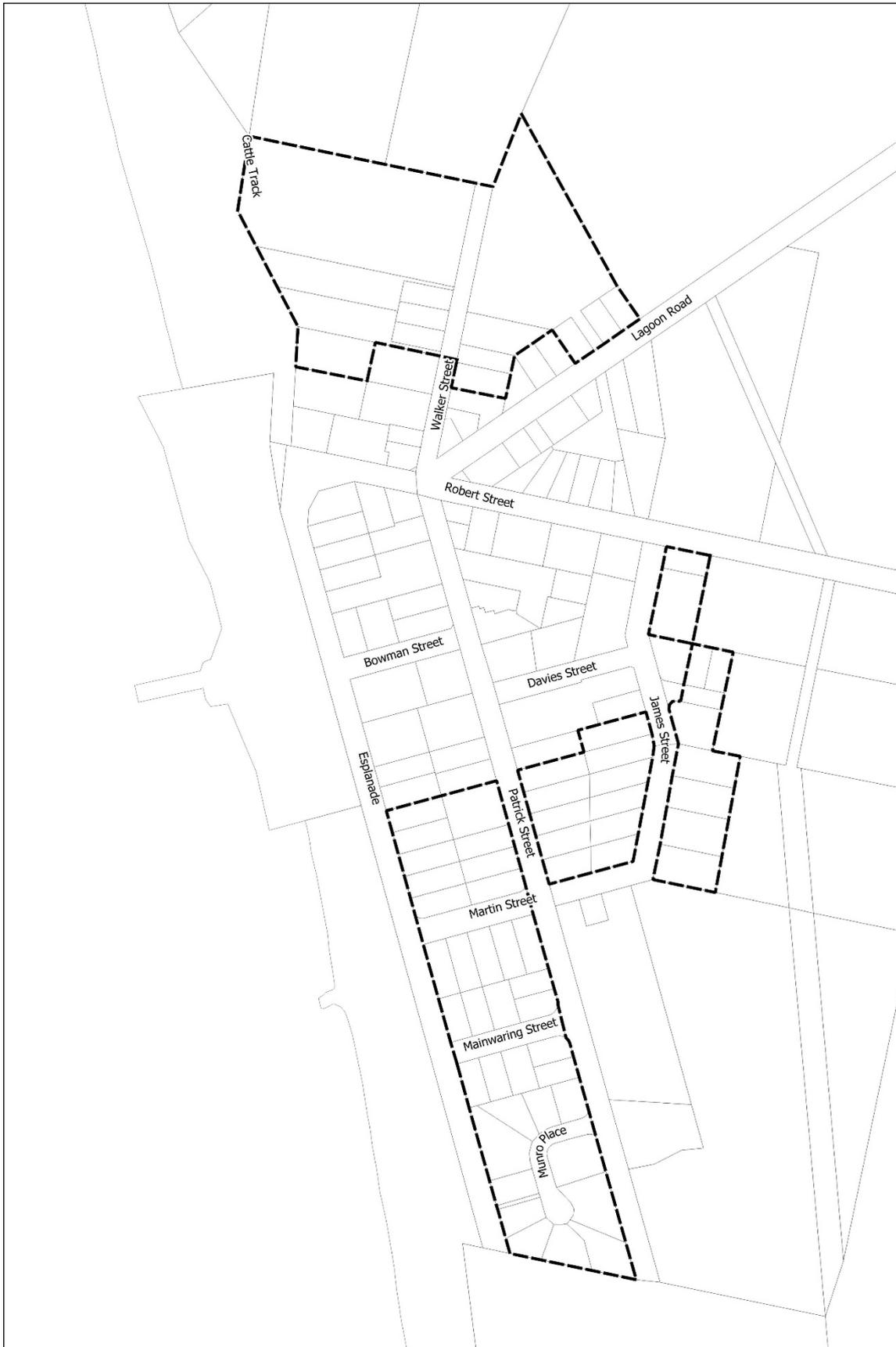


Figure 14 – Application of the Whitemark and Lady Barron Urban Development Specific Area Plan overlay at Whitemark

Attachment 3: Annexure A

Modifications to Flinders LPS written document

FLI-S5.0 Whitemark and Lady Barron Urban Development Specific Area Plan

FLI-S5.1 Plan Purpose

The purpose of the Whitemark and Lady Barron Urban Development Specific Area Plan is:

- FLI-S5.1.1 To provide for multiple dwellings and subdivision at a density that is appropriate to the urban settlements at Whitemark and Lady Barron where there are environmental constraints and no reticulated sewer services.

FLI-S5.2 Application of this Plan

- FLI-S5.2.1 The specific area plan applies to the area of land designated as Urban Development Specific Area Plan on the overlay maps.

- FLI-S5.2.2 In the area of land to which this plan applies, the provisions of the specific area plan are in substitution for the provisions of the Low Density Residential Zone, as specified in the relevant provision.

FLI-S5.3 Local Area Objectives

This sub-clause is not used in this specific area plan.

FLI-S5.4 Definition of Terms

This sub-clause is not used in this specific area plan.

FLI-S5.5 Use Table

This sub-clause is not used in this specific area plan.

FLI-S5.6 Use Standards

This sub-clause is not used in this specific area plan.

FLI-S5.7 Development Standards for Buildings and Works

- FLI-S5.7.1 Residential density for multiple dwellings

This clause is in substitution for Low Density Residential Zone – clause 10.4.1 Residential density for multiple dwellings A1 and P1.1 and P1.2.

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| Objective: | That the density of multiple dwellings: (a) is appropriate to the urban development patterns of Whitemark and Lady Barron; and (b) is consistent with the availability of infrastructure services and any other constraints to development. |
| Acceptable Solutions | Performance Criteria |
| A1 Multiple dwellings must have a site area per dwelling of not less than 600m ² . | P1 Multiple dwellings must only have a site area per dwelling that is less than 600m ² , if the site has a connection to or is capable of being connected to a reticulated stormwater and full water supply service, having regard to: (a) the capacity of the reticulated infrastructure services; and (b) sufficient area being available for on-site wastewater and stormwater disposal and water supply; and (c) the number of dwellings being consistent with the pattern of development on established properties in the area; or (d) the development addressing a specific accommodation need with significant social or community benefit; or (e) the development making adequate provision of private open space, and must have a minimum site area per dwelling of 400m ² . |

FLI-S5.8 Development Standards for Subdivision

FLI-S5.8.1 Lot Design

This clause is in substitution for Low Density Residential Zone – clause 10.6.1 Lot design A1 and P1.

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| Objective: | That each lot: (a) has an area and dimensions appropriate for use and development within the urban settlements at Whitemark and Lady Barron; and (b) contains areas which are suitable for residential development. |
| Acceptable Solutions | Performance Criteria |

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| <p>A1</p> <p>Each lot, or a lot proposed in a plan of subdivision must:</p> <p>(a) have an area not less than 1500m², and:</p> <p style="margin-left: 20px;">(i) be able to contain a minimum area of 10m x 15m with a gradient not steeper than 1 in 5, clear of:</p> <p style="margin-left: 40px;">a. all setbacks required by Low Density Residential Zone - clause 10.4.3 Setback A1 and A2; and</p> <p style="margin-left: 40px;">b. easements or other title restrictions that limit or restrict development; and</p> <p style="margin-left: 20px;">(ii) existing buildings are consistent with the setback required by Low Density Residential Zone - clause 10.4.3 Setback A1 and A2;</p> <p>(b) be required for public use by the Crown, a council or a State authority;</p> <p>(c) be required for the provision of Utilities; or</p> <p>(d) be for the consolidation of a lot with another lot provided each lot is within the same zone.</p> | <p>P1</p> <p>Each lot, or a lot proposed in a plan of subdivision, must have sufficient useable area and dimensions suitable for its intended use, having regard to:</p> <p>(a) the relevant requirements for development of buildings on the lots;</p> <p>(b) the intended location of buildings on the lots;</p> <p>(c) the topography of the site;</p> <p>(d) the presence of any natural hazards;</p> <p>(e) adequate provision of private open space; and</p> <p>(f) the pattern of development existing on established properties in the area.</p> |
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FLI-S5.9 Tables

This sub-clause is not used in this specific area plan.