

TASMANIAN PLANNING COMMISSION



DECISION

Local Provisions Schedule Devonport

Date of decision 17 September 2020

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

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Ann Cunningham
Delegate (Chair)

Sandra Hogue
Delegate

REASONS FOR DECISION

Background

The Devonport Planning Authority (the planning authority) exhibited the Devonport draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act), from 23 March 2020 until 25 May 2020. It was necessary to extend the exhibition period by 13 working days until 12 June 2020 due to the temporary closure of the exhibition premises in Devonport due to the COVID-19 outbreak in the north west of Tasmania.

On 30 July 2020 the planning authority provided the Commission with a report under section 35F(1) into 18 representations received on the draft LPS. A list of representations is at Attachment 1.

Date and place of hearing

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

A hearing was held at the Paranaple Centre, 137 Rooke Street, Devonport on 26 August 2020 and the Commission's office at Level 3, 144 Macquarie Street, Hobart on 28 August 2020.

Consideration of the draft LPS

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

- (g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and
 - (h) has regard to the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*.
4. The relevant regional land use strategy is the Cradle Coast Regional Land Use Strategy 2011 (regional strategy).
 5. In addition to the LPS criteria, the Commission has considered Guideline No. 1 – Local Provisions Schedule (LPS): zone and code application (Guideline No. 1) issued under section 8A of the Act.
 6. The requirements for making modifications to the draft LPS are set out under section 35K of the Act. The modifications can be broadly categorised as modifications [section 35K(1)(a) and (b)] or substantial modifications [section 35K(1)(c)(ii)].
 7. The Commission may also reject the draft LPS and request that the planning authority prepare a substitute [section 35K(c)(i)].
 8. Where the Commission has determined modifications ought be made, these are set out in a notice under 35K(1)(a) of the Act (see Attachment 2).

Issues raised in the representations

Rural Living Zone – 179 Winspears Road, East Devonport

Representations: Lesley Hall (2) and David Bennett (12)

9. The representors requested a revision to the proposed zoning for a property in East Devonport from the Agricultural Zone to the Rural Living Zone.
10. The reasons include there is excess demand for Rural Living zoned Devonport municipal area, the site adjoins existing Rural Living zoned land, site limitations on agricultural productivity such as soil quality and drainage, and access issues.
11. In the section 35F report, the planning authority responded:
 - that there is insufficient strategic merit in the representation and that the application of the Agricultural Zone to the land is consistent with the instruction contained in the LPS Zone and Code Application Guideline (Guideline No. 1);
 - the planning authority recognises the need for local strategic land use planning such as a residential settlement strategy which will occur separately to the draft LPS process;
 - the representation does not include any discussion against the LPS criteria at section 34(2) of the Act; and
 - in the absence of any localised strategic planning to justify the application of the Rural Living Zone to this site, it cannot be reconciled that the LPS criteria at section 34(2) of the Act are satisfied.

Commission consideration

12. The Commission notes that the planning authority will undertake a residential settlement strategy outside the draft LPS process and accepts there is currently insufficient strategic evidence to justify the application of the Rural Living Zone at this site. For example, how the

proposal meets the LPS criteria, and how the change to zoning would meet relevant regional land use policies to be as far as practicable consistent with the regional land use strategy.

Commission decision

13. The Commission considers that no modifications are required.

Rural Living Zone – 126 Brooke Street, East Devonport

Representation: Veris (4)

14. The representation requests the application of Rural Living Zone (A) to land at Brooke Street, East Devonport instead of the Agricultural Zone. The representation includes an agricultural report, an indicative plan of subdivision and a bushfire hazard management report.

The reasons provided by the representor include:

- the limited value of the land for agricultural use;
 - the constraints shown on the Agricultural Zone guidance mapping on the LIST; and
 - that the Rural Living Zone would provide a buffer between adjacent residential and farming land.
15. In the section 35F report, the planning authority responded that there is no local strategic analysis currently available to inform the application of the Rural Living Zone at this site and the Agricultural Zone is considered appropriate for the following reasons:
- the land is identified as prime agricultural land and is located within the Sassafras Wesley Vale Irrigation District;
 - the planning authority recognises the need for local strategic land use planning such as a residential settlement strategy which will occur separately to the draft LPS process;
 - the representation does not include any discussion against the LPS criteria at section 34(2) of the Act or how the zoning is consistent with how RLZ2 of Guideline No. 1 can be satisfied; and
 - in the absence of any localised strategic planning (such as a residential settlement strategy) to justify the application of the Rural Living Zone, it cannot be reconciled that the LPS criteria at section 34(2) of the Act are satisfied.

Commission consideration

16. The Commission notes that the planning authority will undertake a residential settlement strategy outside the draft LPS process and accepts there is insufficient strategic evidence to justify the application of the Rural Living Zone at this site.

Commission decision

17. The Commission considers that no modifications are required.

Rural Living Zone – 20 Fraser Street, Spreyton

Representation: EnviroPlan (9)

18. The representor requested the application of the Rural Living Zone to 20 Fraser St, Spreyton. The reasons include:

- to enable the land to be used for residential use that contain a rural character;
 - the Rural Living Zone is consistent with an established settlement pattern; and
 - to provide a buffer between the adjoining General Residential Zone and the Rural Zone.
19. At the hearing, Michael Wells of EnviroPlan submitted that there were development constraints on the site, which resulted in this land not being included in the General Residential Zone. Stormwater services were constrained due to the fall of the land, and the site lies within the attenuation buffer of the nearby Fonterra factory. He stated that the land is not suitable for agricultural or rural use.
20. In the section 35F report and in the hearing, the planning authority recommended that the land remain in the Rural Zone. The reasons include:
- the representation does not address how the requirements of the instruction at RL22 of Guideline No. 1 can be satisfied;
 - there is no local strategic analysis (such a residential settlement strategy) currently available to inform the application of the Rural Living Zone at this location;
 - a key consideration is also the proximity of the Fonterra dairy processing facility and the potential for land use conflicts; and
 - in the absence of any localised strategic planning to justify the application of the Rural Living Zone, and potential land use conflict issues with the adjacent Fonterra facility to the north, it cannot be reconciled that the LPS criteria at section 34(2) of the Act are satisfied.

Commission consideration

21. The Commission accepts there is insufficient strategic evidence to justify the application of the Rural Living Zone at this site and notes the planning authority is pursuing local strategic planning such as a residential settlement strategy outside the LPS process. The Commission also notes the planning authority evidence concerning the potential for land use conflict between residential use and the Fonterra factory.

Commission decision

22. The Commission considers that no modifications are required.

Rural Living Zone - Tugrah

Representation: Michell Hodgetts and Associates Pty Ltd (13)

23. The representation is made on behalf of 11 landowners in the Tugrah area for properties primarily located on Tugrah Road and Nielsens Road.
24. The representors have requested that the Rural Living Zone be applied to the land for the following reasons:
- the land is not suitable for agricultural use;
 - it provides a logical extension of the Rural Living Zone to the north and east;
 - access had previously been provided to the land for the eventual and logical conversion to Rural Living; and
 - there is a shortage of Rural Living land in the Devonport municipal area.

25. The representor also queried why the priority vegetation area overlay has been applied, stating that a previous Forest Practices Report had not identified anything of significance in flora or fauna.
26. In the section 35F report, the planning authority did not agree to the application of the Rural Living Zone, but proposed the application of the Rural Zone and priority vegetation area overlay to all the properties, the reasons include:
- the request does not satisfy the requirements of RLZ2 of Guideline No. 1 and there is no local strategic analysis (such as a residential settlement strategy) available to inform the application of the Rural Living Zone at this location;
 - the matters raised in the representation do not reasonably demonstrate a modification to apply the Rural Living Zone to this land is appropriate or necessary;
 - although there is insufficient strategic merit to justify the Rural Living Zone as requested, the properties listed as 1-5 in the representation, currently assigned to the Agriculture Zone, share some similar topographic and vegetation characteristics to the adjacent land (described by site numbers 6-11 in the representation) which is assigned to the Rural Zone;
 - the irregular shape of these lots, and steep topography of the area contribute significant constraints to agricultural use occurring on this land;
 - as part of a standardised/consistent approach across the State, the mapping that informs the priority vegetation area overlay map has sought to identify “priority vegetation areas” in accordance with a Regional Ecosystem Model (REM); and
 - the REM employs a complex layering of biodiversity values to define the importance of vegetation area and there is satisfaction that the Priority Vegetation Area overlay as currently shown is appropriately consistent with the requirements of the State Planning Provisions.
27. At the hearing, Mark McIver representing the planning authority stated the Land Potentially Suitable for Agriculture Zone layer on theLIST identifies the land as potentially constrained. Therefore, the application of the Rural Zone as per guideline RZ2 of Guideline No. 1 is appropriate.
28. Lucy Thorne, on behalf of State Growth, asked to address the Commission on this issue and gave evidence of mining lease 42M/1982 at Tugrah stating that the Department would prefer either the application of the Rural or Agricultural Zone but not the Rural Living Zone as this would potentially fetter the operability of the mining lease.

Commission consideration

29. It was noted that the exhibited draft LPS applied the Agricultural Zone to five of the 11 properties, the Rural Zone to the remaining six properties, and the priority vegetation area overlay to the six properties zoned Rural due to the requirements of clause C7.2.1 of the SPPs.
30. The Commission accepts the planning authority submission that there is currently insufficient strategic evidence to justify the application of the Rural Living Zone at this site and notes the planning authority is pursuing local strategic planning such as a residential settlement strategy outside the LPS process.
31. Further, the Commission considers that the primary objective in applying zones should be to achieve the zone purpose to the greatest possible extent. As such, the Commission agrees

with the planning authority that the application of the Rural Zone is the most appropriate zone. As a result, the application of the priority vegetation area overlay to these properties is consistent with the application requirements of clause C7.2.1 of the SPPs and NAC13 of Guideline No. 1.

Commission decision

32. Modification:

- Revise the zoning of the following properties to the Rural Zone:
 - (a) 44-48 Greenwood Lane, Tugrah (folio of the Register 135299/3);
 - (b) 372 Tugrah Road, Tugrah (folio of the Register 116195/1);
 - (c) 392 Tugrah Road, Tugrah (folio of the Register 235484/1);
 - (d) 381 Tugrah Road, Tugrah (folio of the Register 54117/9);
 - (e) 405 Tugrah Road, Tugrah (folios of the Register 54117/10 and 54117/11);
 - (f) 373 Tugrah Road, Tugrah (folio of the Register 171535/1);
 - (g) 40 Greenwood Lane, Tugrah (folios of the Register 235483/1, 235485/1 and 249158/1);
 - (h) 42 Greenwood Lane, Tugrah (folio of the Register 135299/1);
 - (i) Crown Land parcels described by folios of the Register 27322/2 and 30043/1; and
 - (j) Other cadastral parcels at this specific location not identified by property address, folio of the Register reference or PID number, generally including parcels described as 'Road (type unknown)' and 'Onshore Water Body' as shown in Attachment 1 to the planning authority's further submission dated 10 September 2020.
- Apply the Natural Assets Code – priority vegetation area overlay to the following properties:
 - (a) 44-48 Greenwood Lane, Tugrah (folio of the Register 135299/3);
 - (b) 372 Tugrah Road, Tugrah (folio of the Register 116195/1);
 - (c) 392 Tugrah Road, Tugrah (folio of the Register 235484/1);
 - (d) 381 Tugrah Road, Tugrah (folio of the Register 54117/9);
 - (e) 405 Tugrah Road, Tugrah (folios of the Register 54117/10 and 54117/11);
 - (f) 373 Tugrah Road, Tugrah (folio of the Register 171535/1);
 - (g) 40 Greenwood Lane, Tugrah (folios of the Register 235483/1, 235485/1 and 249158/1);
 - (h) 42 Greenwood Lane, Tugrah (folio of the Register 135299/1);
 - (i) Crown Land parcels described by folios of the Register 27322/2 and 30043/1; and
 - (j) Other cadastral parcels at this specific location not identified by property address, folio of the Register reference or PID number, generally including parcels described as 'Road (type unknown)' and 'Onshore Water Body' as shown in Attachment 1 to the planning authority's further submission dated 10 September 2020.

33. Reason: To apply the Rural Zone and priority vegetation area overlay consistent with guidelines RZ2 and NAC 13 of Guideline No. 1.

Rural Zone – 342 Pumping Station Road, Forth

Representation: Scouts Tasmania (5)

34. The representor requested that the proposed zoning of the land described by folio of the Register 196943/1 be revised from the Environmental Management Zone to the Rural Zone.

The reasons include:

- the zoning would match an adjoining title in the same ownership;
 - the land does not have significant ecological, scientific, cultural or scenic value and is therefore inconsistent with the purpose of the Environmental Management Zone;
 - the reservation of the land under the *Nature Conservation Act 2002* results from a historical proclamation as a sanctuary in 1952 under the *Animals and Birds Protection Act 1928*; and
 - the Environmental Management Zone would restrict the use and development under other ownership should Scouts Tasmania determine to dispose of the property.
35. In the section 35F report, the planning authority recommended the zoning of the land remain as proposed in the draft LPS. The reasons include:
- Guideline No. 1 includes the specific instruction that the Environmental Management Zone be applied to land that is reserved under the *Nature Conservation Act 2002*;
 - irrespective of how this land was brought under the *Nature Conservation Act 2002*, it is land specifically reserved for conservation purposes under this Act; and
 - the application of the Environmental Management Zone to this site does not prevent the continued use of the site by Scouts Tasmania.
36. At the hearing, Anthony MacDonald representing Scouts Tasmania explained that the site is used for Scouting and also non-Scouting purposes such as school camps or whitewater rafting championships and the facilities can sleep and cater up to approximately 100 people across two accommodation blocks.
37. Mr MacDonald stated that the southern block (folio of the Register 196943/1) is land locked and accessed by a right of way and the Scouts do not believe it has environmental values. There is concern that the Environmental Management Zone will restrict the use of the land and would limit future use and development if the land was sold.

Commission consideration

38. The Commission notes the submissions by the representor and planning authority and accepts that the application of the Environmental Management Zone to this land is consistent with guideline EMZ1 of Guideline No. 1.

Commission decision

39. The Commission considers that no modifications are required.

Rural Zone - various areas - Private Timber Reserves

Representation: Department of State Growth (15)

40. The representor queried application of the Agriculture Zone rather than the Rural Zone to the following properties containing private timber reserves:
 - 2 Paloona Reservoir Road, Paloona - folios of the Register 168203/1 and 168208/1;
 - 99 Braddons Lookout Road, Leith - folios of the Register 206727/1 and 124019/1; and
 - 129 Braddons Lookout Road, Leith - folio of the Register 38018/1.
41. In the section 35F report the planning authority recommended that the Agriculture zoning of these properties should be retained because, in each instance, the private timber reserves only covered part of the property and are isolated from other private timber reserves or forestry land.
42. The remainder of each property is otherwise suitable for agriculture, and is located within areas where the prevailing zone is Agriculture.
43. Prior to the hearing, the representor advised that they did not wish to make any further submission in relation to the zoning of these private timber reserves.

Commission consideration

44. The Commission notes the reasons given by the planning authority for application of the Agriculture Zone and accepts that, in the circumstances, the application of the zoning is consistent with Guideline No. 1.

Commission decision

45. The Commission considers that no modifications are required.

Environmental Management Zone – various areas

Representations: June Hilder (10) and Central North Field Naturalists Inc. (11)

46. The representors expressed overall support for the application of the Environmental Management Zone as proposed by the draft LPS.
47. The representors queried the application of the Open Space Zone to the Mersey Bluff and Hiller Flora Reserve (34-44 Lovett Street, Devonport), the Rural Zone to land at Bellamy Road, Forthside (identified in the representation as land covered by PID 774802 and 6380526) and requested that the Environmental Management Zone be applied instead. The reasons include:
 - to provide more protection to land with significant ecological values; and
 - to be consistent with other sites where the Environmental Management Zone has been applied.
48. In the section 35F, report the planning authority recommended that the land remain in the Open Space and Rural Zones. The reasons include:
 - under Guideline No. 1, the Environmental Management Zone is to be applied to land with significant ecological, scientific, cultural or scenic values;
 - the area occupied by the Mersey Bluff reserve includes land that has been modified from its natural state;

- the Hiller Flora Reserve is surrounded by an urbanised environment and is zoned Open Space in the interim planning scheme and this is a translation of that existing zoning;
 - the natural landscape and amenity value of the Mersey Bluff and Hiller Flora Reserve are appropriately recognised by the application of the Open Space Zone;
 - a significant proportion of the land in the Bellamy Road area is occupied by a mining lease and the application of the Rural Zone allows for the achievement of the zone purpose to the greatest degree possible; and
 - the land has been zoned in line with guidelines OSZ1 and RZ1 of Guideline No.1.
49. At the hearing, Lucy Thorne on behalf of State Growth requested to address the Commission on this issue at the hearing and made a submission that some of the land that the representors wanted included in the Environmental Management Zone was subject to mining lease 42M/1982.
50. The planning authority concurred with State Growth that, as the land was subject to a mining lease, it would be most appropriate to apply the Rural Zone.
51. At the hearing, Patricia Ellison representing the Central North Field Naturalists provided further background and detail and outlined the environmental values of the Mersey Bluff and the reasons the application of the Environmental Management Zone to these sites would be appropriate. She also outlined her concerns that riparian reserves on the Don River had not been zoned Environmental in the Bellamy Road area.
52. At the hearing, Mark McIver for the planning authority responded by explaining the process of applying the Environmental Management Zone and the Open Space Zone, and that the Open Space Zone afforded some protection to public spaces by limiting permitted uses and development potential. He also explained that while the Environmental Management Zone had not been applied to some small areas of riparian reserve on the Don River, the waterway and coastal protection area of the Natural Assets Code would apply and this would provide protections from impacts on riparian vegetation, water quality and the like.

Commission consideration

53. The Commission notes that the submissions of the representors provide significant observations regarding the natural values of these areas and the application of the Environmental Management Zone to public reserves.
54. The Commission finds that the application of the Open Space Zone to the Mersey Bluff and Hiller Flora Reserve is appropriate for the reasons outlined by the planning authority and is satisfied that the Rural Zone is appropriate where mining leases occur and generally in the Bellamy Road area. The Commission is further satisfied that the waterway and coastal protection area overlay will provide some protection for environmental values along the Don River in the Bellamy Road area.

Commission decision

55. The Commission considers that no modifications are required.

Light Industrial Zone – Quoiba

Representation: Department of State Growth (15)

56. The representor queried application of the Light Industrial Zone to land at Quoiba which it believes contains a mix of existing uses that are more readily provided for by the provisions of the General Industrial Zone.
57. It was submitted that the concern relates to the additional use standards that would apply in the Light Industrial Zone that would unnecessarily place controls on future use or expansion of existing uses.

In the section 35F report, and in a submission at the hearing (submission C1), the planning authority recommended that the Light Industrial Zone apply because:

- the current mix of uses, and the pattern of subdivision and development is best recognised by the Light Industrial Zone;
 - ‘heavier industrial activities’ are currently situated to the east of Devonport Road, where the land is proposed to be zoned General Industrial; and
 - the area in question currently adjoins existing residential land within the General Residential Zone, and application of the Light Industrial Zone with the use standards that it provides, is its preferred method for managing an evident land use conflict.
58. At the hearing, Lucy Thorne for State Growth stated that industrial land is important for the economy and requested the application of the General Industrial Zone to this land. However, Ms Thorne did accept that it is not ideal that this site is adjacent to the General Residential Zone.
 59. The representor is concerned about the loss of potential for General Industrial Uses and that the Light Industrial Zone would unreasonably constrain uses on this land because of the use standards that apply to land within 50m of the General Residential Zone.
 60. At the hearing, the planning authority reiterated that it believes the Light Industrial Zone is the correct zone under Guideline No. 1 and that the application of the zone would not constrain the exiting uses on the site.

Commission consideration

61. The Commission is satisfied that application of the Light Industrial Zone is consistent with Guideline No. 1. The Commission considers that application of the Light Industrial Zone with the relevant use standards is the best method of planning control in the circumstances, noting the existing mix of uses, patterns of development, potential residential land use conflicts, and that opportunity for unconstrained industrial use exists elsewhere within the planning area.

Commission decision

62. The Commission considers that no modifications are required.

Utilities Zone - electricity infrastructure

Representation: TasNetworks (8)

63. The representor requested that the Utilities Zone be applied to the Kelsey Tier Communication Site at 42A Wrenswood Drive, Quoiba (folio of the Register 162986/1).

64. The reasons for application of the Utilities Zone to the land at 42A Wrenswood Drive, Quoiba are that the zone:
- reflects the primary use of the site and the nature and long lifespan of the asset;
 - allows for the future operation, maintenance modification and development requirements of the asset, particularly in relation to communications sites as these do not have any *Electricity Supply Industry Act 1995* exemptions once established; and
 - sends a clear message to the community about the existing and long term use of the site.
65. In the section 35F report, the planning authority recommended that the zoning of the Kelsey Tier Communication Site at 42A Wrenswood Drive, Quoiba be revised to the Utilities Zone.

Commission consideration

66. The Commission considers that the site at 42A Wrenswood Drive, Quoiba contains major electricity generation, transmission and associated infrastructure, which is used and intended to be used for major utilities infrastructure, consistent with UZ1(d) of Guideline No. 1. The Commission considers that the primary objective in applying zones should be to achieve the zone purpose to the greatest possible extent. As such, the Commission considers that this land should be in the Utilities Zone.

Commission decision

67. Modification:
- Revise the zoning of the Kelcey Tier Communications Site at 42A Wrenswood Drive Quoiba (folio of the Register 162986/1) from Rural Living A to Utilities.
68. Reason: To apply the Utilities Zone consistent with the purpose of the Utilities Zone and Guideline No. 1.

Utilities Zone – rail infrastructure

Representation: TasRail (17)

69. The representor requested that all land in the State Rail Network be included in the Utilities Zone and provided details of seven sites that had been omitted. The reasons include that the railway assets are of critical economic importance and should be protected to ensure that future planning decisions do not impede current and future operations.
70. In the section 35F report, the planning authority recommended the draft LPS be modified to correct any inaccuracy in the application of the Utilities Zone to land within the State Rail Network. The reasons include:
- the draft LPS intends to apply the Utilities Zone to all existing land comprising the State Rail Network; and
 - specific errors are raised by the representor and modifications are recommended.

Commission consideration

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

Commission decision

72. Modification:

- Apply the Utilities Zone to land identified as forming part of the State Rail network, being land described as:
 - (a) folios of the Register 26023/5, 230642/1, 78162/1, 203089/1, 203204/1, 33075/1, and 33075/2; and
 - (b) land not described by folios of the Register that immediately adjoins the western boundary of the land described by folio of the Register 249887/1.
- Apply the Utilities Zone to the ‘gaps’ where the Western Line rail corridor makes the crossing at the rail bridge over the Don River and the road crossing at the Coles Beach Link road. The Utilities Zone should be applied in generally the same alignment as that applied to the rail corridor on either side of the gap.

73. Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.

Particular Purpose Zone – proposed - 17 Devonport Road, Devonport**Representation: Plan Place (7)**

74. The representor advised that an application for a new Particular Purpose Zone – Waterfront Complex had recently been submitted to the planning authority for land at 17 Devonport Road, Devonport and associated Crown land. The representor requested that, as the draft LPS process may conflict with the timelines of the combined rezoning and amendment for the site, the proposed amendment and its implications for zoning are duly considered in the draft LPS process. The reasons include:
- the site is unique and the proposed zone would provide flexibility for future use and development; and
 - the current zone does not reflect the purpose or intent of the site;
75. In the section 35F report, the planning authority recommended that the land remain in the Recreation Zone. The reasons include:
- the representor has made an application to the planning authority for this new Particular Purpose Zone as part of a combined draft amendment and permit process;
 - the Recreation Zone is a direct translation of the existing zoning of the site; and
 - the draft LPS process should not necessarily replace the usual amendment process and may complicate and delay the draft LPS;
76. At the hearing, Heidi Goess of Plan Place explained there were concerns with process and complications at this site with development over a property boundary. As Crown leases apply to the property, Ministerial signatures are required on the application forms and the representor was concerned that, due to the timing of the draft amendment and the LPS process, the Crown approval may lapse.
77. At the hearing the planning authority stated that the new Particular Purpose Zone would require further consideration and that the draft amendment and permit process would be more appropriate in this instance.

Commission consideration

78. The Commission considers the application of the Recreation Zone at this site is appropriate under Guideline No. 1 and notes that the matter is the subject of a draft amendment and permit application that was yet to receive support from the planning authority.

Commission decision

79. The Commission considers that no modifications are required.

Natural Assets Code - waterways and coastal protection area overlay

Representation: Devonport City Council (18)

80. The representor requested that the waterway and coastal protection area overlay be removed from the Devonport Tennis Club facilities at 18-32 North Street, Devonport (part of folio of the Register 156211/1). The reasons include:
- the land has been heavily modified from its natural state; and
 - the overlay is not considered compatible with this circumstance and application may unreasonably constrain the exiting use and development of the tennis club site.
81. In the section 35F report, the planning authority supports the removal of the waterway and coastal protection area overlay. The reasons include:
- guideline NAC3(d) of Guideline No.1 contemplates modifications to the areas shown on theLIST Guidance Map to remove areas of existing development; and
 - the modification is deemed to be of a relatively minor nature and to correct what is perceived to be an anomalous mapping inconsistency.
82. At the hearing, the planning authority submitted further evidence of how the removal of the overlay from this site is consistent with the application of the overlay elsewhere in the municipal area.

Commission consideration

83. The Commission accepts the evidence that the removal of the overlay from this land would provide a consistent approach to application of the overlay in the municipal area.

Commission decision

84. Modification:
- Revise the application of the waterway and coastal protection area overlay to remove that part of the overlay where it overlaps the Devonport Tennis Club facilities at 18-32 North Street, Devonport (folio of the Register 156211/1).
85. Reason: To apply the Waterway and Coastal Protection Area overlay consistent with guideline NAC3(d) of Guideline No. 1.

Natural Assets Code - future coastal refugia overlay

Representation: Vishnu Prahalad (14)

86. The representor requested that the areas mapped under Special Consideration, Case by Case Consideration and Incompatible Zones on the future coastal refugia guidance map are shown and included with particular reference to:

- a large area in Woodrising Golf Course, with potential for wetland retreat; and
 - an area in Don River (south of Bass Highway) mapped as Special Consideration Zone.
87. In the section 35F report the planning authority recommended no modification to the overlay. The reasons include:
- the future coastal refugia overlay includes some modifications where there is variation from the information shown on the LIST Guidance Map; and
 - these modifications were made in accordance with the instruction contained in the LPS Guideline No.1, specifically NAC4 – NAC6 which contemplates modifications so that the overlay is not applied where it would constrain existing or future use and development on the land for which it is zoned.

Commission consideration

88. The Commission accepts the evidence of the planning authority and considers it is unnecessary to modify the overlay. The Commission is satisfied that the future coastal refugia overlay has been applied in accordance with Guideline No. 1, specifically the instruction contained at NAC 6.

Commission decision

89. The Commission considers that no modifications are required.

Natural Assets Code - priority vegetation area overlay – various areas

Representations: June Hilder (10) and Central North Field Naturalists Inc. (11)

90. The representors requested application of the priority vegetation area overlay to the Mersey Bluff reserve area and the Mary Street wetlands. The reasons include:
- to provide more protection to land with significant ecological values; and
 - to be consistent with other sites where the overlay has been applied.
91. In the section 35F report, the planning authority recommended that no modification is required. The reasons include that the representor did not provide sufficient evidence showing how application of the overlay is inconsistent with the standardised Regional Ecosystem Model methodology developed by Natural Resources Management Pty Ltd for the preparation of the overlay or the zone and code application Guideline No. 1.
92. At the hearing, Patricia Ellison representing the Central North Field Naturalists provided some background and detail of the representation and outlined the environmental values of the Mersey Bluff and Mary Street wetlands, also known as the Mary Binks Reserve in East Devonport.

Commission consideration

93. The Commission noted that the Mary Street site was surrounded by urban development and the Mersey Bluff site had been modified from its natural state. Further, the Commission finds that there is insufficient evidence of the natural values of the Mersey Bluff, and the Mary Street wetland to meet the requirements of guidelines NAC7-NAC12 of Guideline No.1.

Commission decision

94. The Commission considers that no modifications are required.

Natural Assets Code - priority vegetation area overlay - electricity infrastructure

Representation: TasNetworks (8)

95. The representor requested that the priority vegetation area overlay be removed from the Kelsey Tier Communication Site at 42A Wrenswood Drive, Quoiba (folio of the Register 162986/1), an electricity substation at 78-80 Stony Rise Road, Miandetta (folio of the Register 132779/1) and an 'asset centre' at 162 Middle Road, Miandetta (folio of the Register) 132779/2.
96. The reasons for requesting removal of the priority vegetation area overlay is on the basis that the clearance of vegetation is required for the safety and maintenance of electricity infrastructure.
97. In the section 35F report, the planning authority recommended that the priority vegetation area overlay be retained on the basis that the representor did not provide sufficient evidence showing how application of the overlay is inconsistent with the standardised Regional Ecosystem Model methodology developed by Natural Resources Management Pty Ltd for the preparation of the overlay or the zone and code application Guideline No. 1.
98. At the hearing, the representor provided evidence that the three sites do not contain any natural values, in particular the two sites at Miandetta which are entirely asphalted within the boundaries of the land, and are fenced.
99. The planning authority agreed that the priority vegetation area overlay should not be applied to 78-80 Stony Rise Road and 162 Middle Road Miandetta as they do not contain any priority vegetation and are developed to an extent that would prevent any priority vegetation occupying the sites in the future

Commission consideration

100. The Commission is of the view that the priority vegetation area overlay should be removed from 78-80 Stony Rise Road and 162 Middle Road Miandetta.
101. However, the Commission is not persuaded that the priority vegetation area overlay should be removed from the land at 42A Wrenswood Drive, Quoiba. The site is not entirely covered by hard surfaces and there remains the possibility that priority vegetation could naturally re-establish. While the *Electricity Supply Industry Act 1995* exemptions provide for clearance of vegetation independent of planning controls, it is just that – independent, and the primary objective in applying code overlays should be to achieve the code purpose irrespective of peripheral rights. Therefore, the Commission considers that the priority vegetation area overlay should continue to be applied to the land at 42A Wrenswood Drive, Quoiba.

Commission decision

102. Modification:
 - Modify the priority vegetation area overlay so that it is removed from the electricity substation at 78-80 Stony Rise Road, Miandetta (folio of the Register 132779/1) and the asset centre at 162 Middle Road Miandetta (folio of the Register 132779/2).
103. Reason: To apply the priority vegetation area overlay consistent with the purpose of the Natural Assets Code and Guideline No. 1.

Flood-Prone Areas Code – flood-prone hazard area overlay

Representation: Department of Police, Fire and Emergency Management (State Emergency Service) (3)

104. The representor requested that flood-prone hazard area overlay be applied for the Mersey and Forth Rivers.
105. The representor noted that there has been modelling undertaken by Entura on behalf of the Latrobe Council that relates to the Mersey River and furthermore, Entura is currently undertaking modelling of the Forth River on behalf of the Central Coast Council.
106. The representor also noted that the State government is undertaking a project (the Tasmanian Flood Mapping Project) to provide statewide flood mapping for implementation in all LPSs.
107. In the section 35F report, the planning authority recommended that flood-prone hazard area overlay should not be applied in the draft LPS at this time on the basis that:
 - the planning authority does not own the information needed to prepare an overlay map; and
 - it does not otherwise have information that could be used to prepare such mapping.
108. At the hearing, the representor stated that the Tasmanian Flood Mapping Project is forecast to be ready for implementation by mid-2021. The representor acknowledged that the time in which it would take for the project to be completed, or for the planning authority to obtain suitable mapping and for it to be incorporated into the draft LPS was likely to be about the same.
109. The representor acknowledged that, if the draft LPS was approved without a flood-prone hazard area overlay, the intervening period would be covered by the provisions of the Code, in particular clause C12.2.4 of the SPPs. This clause would provide the planning authority with the power to require a flood hazard report in the event that an application is received within an area that the authority reasonably believes is subject to risk from flood or the development proposed has the potential to cause increased risk from flood.

Commission consideration

110. The Commission considers that the incorporation of flood-prone hazard area overlay is premature as the planning authority does not own the flood modelling data and the data remains as models only, to which actual mapping has not yet been produced. As a result, there is not enough evidence or information available at this time to show that there should be a map, and where it should be applied.
111. The Commission is satisfied that mitigation can be addressed under clause C12.2.4 of the SPPs, that there is no mapping available and that no modifications are necessary. Nevertheless, the Commission believes that there is value in having a mapped flood-prone hazard area overlay and that the planning authority should maintain an awareness that flooding is possible in certain areas while the statewide mapping is completed.

Commission decision

112. The Commission considers that no modifications are required.

Bushfire-Prone Areas Code - bushfire-prone area overlay

Representation: Tasmanian Fire Service (16)

113. The representor requested that an updated bushfire-prone areas overlay be included in the draft LPS and provided revised maps for this purpose. The revised mapping removes 146 residential lots and some properties in other use from the overlay. The reasons for requesting removal of these sites, include:
- some lots were previously incorrectly mapped as bushfire-prone;
 - subdivisions are now partially constructed and unmanaged Grassland fuels have been removed;
 - development for uses such as workers accommodation or polytunnels means the surrounding land is considered to be adequately managed;
 - firebreaks are managed on either side of reserved land and risk is removed; and
 - there is no need to include an area of saltmarsh/wetland on the Devonport Golf Course.
114. The representor also queried the application of the DEV-S3.0 Devonport Reserved Residential Land Specific Area Plan (SAP) and whether there should be an operational provision inserted to specifically reference the Bushfire-Prone Areas Code.
115. In the section 35F report, the planning authority recommended that the updated overlay be included in the draft LPS. The reasons include that it is logical for the draft LPS overlay maps to have regard to the most up to date bushfire mapping information as prepared and endorsed by the Tasmania Fire Service.
116. In the section 35F report the planning authority also addressed the query relating to the SAP. Consideration has been given to this matter and the planning authority is satisfied that the Bushfire-Prone Areas Code applies irrespective of whether an additional operational provision is inserted or not.

Commission consideration

117. The Commission accepts the evidence of the representor and the advice of the planning authority. Modifications are recommended to incorporate the latest bushfire-prone areas overlay mapping.

Commission decision

118. Modification:
- Insert the revised bushfire-prone areas overlay as supplied by the Tasmania Fire Service and shown on the PDF maps dated 12/06/2020 at Attachment 2 to representation 16.
119. Reason: To apply the bushfire-prone areas overlay consistent with guideline BPAC1 of Guideline No. 1.

Other matters

Matters taken not to be a representation

Representations: Australian Institute of Architects (6), TasNetworks (8) and June Hilder (10)

120. Representors raised matters including:

- requests to modify the provisions of the Particular Purpose Zone - Elimatta Hotel and Devonport Regional Homemaker Centre Specific Area Plan, Devonport Homemaker Service Industrial Centre Specific Area Plan and Devonport Residential Land Specific Area Plan;
- queries about why the application of Local Historic Heritage Code had not been applied to Aboriginal heritage sites;
- why the Parking and Sustainable Transport Code is limited to only a Precinct Parking Plan overlay; and
- exemption provisions at clause 4.0 of the SPPs.

121. In the section 35F report the planning authority:

- advised that the Particular Purpose Zone - Elimatta Hotel and Devonport Regional Homemaker Centre Specific Area Plan, Devonport Homemaker Service Industrial Centre Specific Area Plan and Devonport Residential Land Specific Area Plan are transitioning provisions declared by the Minister for Planning and the recommended modifications extend beyond the permitted alterations allowed by Schedule 6, clause 8C of the Act; and
- the other matters are policy positions in the SPPs, particularly the issues raised by TasNetworks concerning the clause 4.0 exemptions about which the planning authority did not make a recommendation under section 35G of the Act and instead encourages TasNetworks to raise the matter with the Minister for Planning.

Commission consideration

122. 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;
- relevant provisions by the Minister to be transitioning under Schedule 6, Clause 8A(1) or otherwise subject to Schedule 6, Clause 8 of the Act are to be included in an LPS made; and
- during its consideration, it has sought to establish how all the matters raised relate to the draft LPS and if the matters can be included within the draft LPS under section 32 of the Act.

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

Commission decision

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

Matters of a technical nature or relevant to implementation

125. The Commission notes the draft LPS contains, or may contain as a result of the modifications, matters that are relevant to section 35J(2) of the Act, including:

- a slight discrepancy between the Electricity Transmission Infrastructure Protection Code (ETIPC) overlay in the draft LPS and the ETIPC overlay on LISTmap creating an

inconsistency with the requirements under clause LP1.7.3 of the SPPs (raised in the TasNetworks representation); and

- 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.

126. 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

127. The Commission considers that the draft LPS should:

- minimise errors and be consistent with the conventions set out in the Commission Practice Notes; and
- contain zone and overlay maps that reflect current cadastral parcel boundaries, meet the LPS requirements of the SPPs, 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

128. Modification:

- Revise the draft LPS zone and overlay maps to:
 - (a) align zoning and overlays, based on the cadastral parcels dataset, with the most recent version of the cadastral parcels dataset available from theLIST;
 - (b) ensure that the Electricity Transmission Infrastructure Protection Code (ETIPC) overlay from LISTmap is applied in accordance with LP1.7.3 of the SPPs;
 - (c) remove hexagons from within the priority vegetation area overlay;
 - (d) remove the Environmental Management Zone from land outside the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark map on theLIST; and
 - (e) apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset.

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 meet the LPS requirements of the SPPs.

Attachments

Attachment 1 – List of representations

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

Attachment 1

List of Representations

No	Name
1.	TasWater
2.	Lesley Hall
3.	Department of Police, Fire and Emergency Management - State Emergency Service
4.	Veris
5.	Scouts Tasmania
6.	Australian Institute of Architects
7.	Plan Place
8.	TasNetworks
9.	EnviroPlan
10.	June Hilder
11.	Central North Field Naturalists Inc.
12.	David Bennett
13.	Michell Hodgetts and Associates Pty Ltd
14.	Vishnu Prahalad
15.	Department of State Growth
16.	TasFire
17.	TasRail
18.	Devonport City Council

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

17 September 2020

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

1.0 Zone maps and overlays

No.	Description	Direction and Reason
1.1	Revise the zoning of various parcels of land at Tugrah to the Rural Zone and apply the priority vegetation area overlay	<p>Revise the zoning of the following properties to the Rural Zone:</p> <ul style="list-style-type: none"> (a) 44-48 Greenwood Lane, Tugrah (folio of the Register 135299/3); (b) 372 Tugrah Road, Tugrah (folio of the Register 116195/1); (c) 392 Tugrah Road, Tugrah (folio of the Register 235484/1); (d) 381 Tugrah Road, Tugrah (folio of the Register 54117/9); (e) 405 Tugrah Road, Tugrah (folios of the Register 54117/10 and 54117/11); (f) 373 Tugrah Road, Tugrah (folio of the Register 171535/1); (g) 40 Greenwood Lane, Tugrah (folios of the Register 235483/1, 235485/1 and 249158/1); (h) 42 Greenwood Lane, Tugrah (folio of the Register 135299/1); (i) Crown Land parcels described by folios of the Register 27322/2 and 30043/1; and (j) Other cadastral parcels at this specific location not identified by property address, folio of the Register reference or PID number, generally including parcels described as 'Road (type unknown)' and 'Onshore Water Body' as shown in Attachment 1 to the planning authority's further submission dated 10 September 2020. <p>Apply the Natural Assets Code – Priority Vegetation Area overlay to the following properties:</p> <ul style="list-style-type: none"> (a) 44-48 Greenwood Lane, Tugrah (folio of the Register 135299/3); (b) 372 Tugrah Road, Tugrah (folio of the Register 116195/1);

		<p>(c) 392 Tugrah Road, Tugrah (folio of the Register 235484/1);</p> <p>(d) 381 Tugrah Road, Tugrah (folio of the Register 54117/9);</p> <p>(e) 405 Tugrah Road, Tugrah (folios of the Register 54117/10 and 54117/11);</p> <p>(f) 373 Tugrah Road, Tugrah (folio of the Register 171535/1);</p> <p>(g) 40 Greenwood Lane, Tugrah (folios of the Register 235483/1, 235485/1 and 249158/1);</p> <p>(h) 42 Greenwood Lane, Tugrah (folio of the Register 135299/1);</p> <p>(i) Crown Land parcels described by folios of the Register 27322/2 and 30043/1; and</p> <p>(j) Other cadastral parcels at this specific location not identified by property address, folio of the Register reference or PID number, generally including parcels described as 'Road (type unknown)' and 'Onshore Water Body' as shown in Attachment 1 to the planning authority's further submission dated 10 September 2020.</p> <p>Reason: To apply the Rural Zone and priority vegetation area overlay consistent with guidelines RZ2 and NAC 13 of Guideline No. 1.</p>
1.2	Zoning of electricity supply infrastructure	<p>Revise the zoning of the Kelcey Tier Communications Site at 42A Wrenswood Drive Quoiba (folio of the Register 162986/1) from Rural Living A to Utilities.</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the Utilities Zone and Guideline No. 1.</p>
1.3	Zoning of state rail infrastructure	<p>Apply the Utilities Zone to land identified as forming part of the State Rail Network, being land described as:</p> <p>(a) folios of the Register 26023/5, 230642/1, 78162/1, 203089/1, 203204/1, 33075/1, and 33075/2; and</p> <p>(b) land not described by folios of the Register that immediately adjoins the western boundary of the land described by folio of the Register 249887/1.</p> <p>Apply the Utilities Zone to the 'gaps' where the Western Line rail corridor makes the crossing at the rail bridge over the Don River and the road crossing at the Coles Beach Link road. The Utilities Zone should be applied in generally to the same alignment as that applied to the rail corridor on either side of the gap.</p> <p>Reason: To apply the Utilities Zone consistent with the purpose of the zone and Guideline No. 1.</p>
1.4	Revise the application of waterway and coastal protection area overlay	<p>Revise the application of the waterway and coastal protection area overlay to remove that part of the overlay where it overlaps the Devonport Tennis Club facilities at</p>

		18-32 North Street, Devonport (folio of the Register 156211/1). Reason: To apply the waterway and coastal protection area overlay consistent with guideline NAC3(d) of Guideline No. 1.
1.5	Application of priority vegetation area overlay to electricity infrastructure	Modify the priority vegetation area overlay so that it is removed from the electricity substation at 78-80 Stony Rise Road, Miandetta (folio of the Register 132779/1) and the asset centre at 162 Middle Road Miandetta (folio of the Register 132779/2). Reason: To apply the priority vegetation area overlay consistent with the purpose of the Natural Assets Code and Guideline No. 1.
1.5	Application of the bushfire-prone areas overlay	Insert the revised bushfire-prone areas overlay as supplied by the Tasmania Fire Service and shown on the PDF maps dated 12/06/2020 at Attachment 2 to representation 16. Reason: To apply the bushfire-prone areas overlay consistent with guideline BPAC1 of Guideline No. 1.

2.0 Consequential and technical issues

2.1 Revise the draft LPS zone and overlay maps to:

- (a) align zoning and overlays, based on the cadastral parcels dataset, with the most recent version of the cadastral parcels dataset available from theLIST;
- (b) ensure that the Electricity Transmission Infrastructure Protection Code (ETIPC) overlay from LISTmap is applied in accordance with LP1.7.3 of the SPPs;
- (c) remove hexagons from within the priority vegetation area overlay;
- (d) remove the Environmental Management Zone from land outside the municipal area according to the Central Plan Register (CPR) map (including notes) and current low water mark map on LISTmap; and
- (e) apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset.

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