


TASMANIAN PLANNING COMMISSION

DECISION

Local Provisions Schedule Clarence

Date of decision 24 June 2021

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



John Ramsay
Delegate (Chair)



Sandra Hogue
Delegate

Disclosure statement

In accordance with Schedule 2, clause 7, of the Tasmanian Planning Commission Act 1997, the Commission delegates considering the draft Clarence LPS disclosed at a hearing held on 3 November 2020 the following interests and associations:

- Mr Ramsay made the following disclosure of past associations:
 - during the 1990s he was Secretary of the Department of Environment and Land Management and representor John Cleary was the Minister responsible for that Department; and
 - when a Departmental Secretary in the Tasmanian Public Service representor Richard McCreddie was also a Departmental Secretary in his role of Commissioner of Police;
- Ms Hogue made the following disclosure of a personal interest:
 - she is a property owner at Opossum Bay and representations have been made about land and issues in the Opossum Bay area.

There were no objections to Mr Ramsay or Ms Hogue determining the matter.

REASONS FOR DECISION

Background

The Clarence Planning Authority (the planning authority) exhibited the Clarence draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act), from 15 January 2020 until 17 March 2020.

On 29 September 2020 the planning authority provided the Commission with a report under section 35F(1) into 93 representations received on the draft LPS. In addition, seven representations, made after the end of the exhibition period, were included by the planning authority in the report under section 35F(2)(b) of the Act. A list of representations is at Attachment 1.

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

Date and place of hearing

A hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on:

- Tuesday, 3 November 2020;
- Wednesday, 4 November 2020;
- Thursday, 5 November 2020;
- Tuesday, 10 November 2020;
- Tuesday, 17 November 2020;
- Wednesday, 18 November 2020; and
- Tuesday, 4 May 2021.

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 Southern Tasmanian Regional Land Use Strategy 2010-2035 (19 February 2020) (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. When considering the requirements of section 35J and whether modifications ought to be made, the Commission must determine, firstly, whether the modification has merit, and secondly, if it is a substantial modification.
 9. Where the Commission has determined modifications ought be made, and these are substantial, these are set out in a notice under 35K(1)(c) of the Act (see Attachment 2).

Issues raised in the representations

General Residential Zone – Lindisfarne Ridge/Flagstaff Gully

10. **Representations:** Christopher Cleary for L and C Cleary, and S Jones and P Emery (4), David Miller (55), M C Jones for Hillmorton (68), John Cleary for T J and V M Cleary, R and S Sammut, G Kregor and A Dunn, C and S Johnston, G B Lane, E Cowley, M C Jones, the Estate of P A Jones, G Young, and H Blackley (83), and John Cleary for D and D Furmage (96).
11. The representors requested that:
 - the land within the Low Density Residential Zone in the Lindisfarne Ridge/Flagstaff Gully area be revised to the General Residential Zone; and
 - 16 Kent Street, Lindisfarne be revised to the General Residential Zone.
12. The reasons include:
 - the land is within the Urban Growth Boundary, is adjacent to land within the General Residential Zone, and is close to both the Lindisfarne Activity Centre and the Rosny Park Principal Activity Centre;
 - the land is either already connected to services, or can be easily connected;
 - the topography, natural values, and bushfire hazard would not be an impediment to the rezoning; and
 - the characteristics of the land are more suited to the General Residential Zone.

13. In the section 35F report, the planning authority recommended:
 - that 16 Kent Street be revised to the General Residential Zone; and
 - that the land within the Low Density Residential Zone be revised to the General Residential Zone, extending along the Lindisfarne Ridge and including 1C Robin Court and 164 Begonia Street.
14. The reasons include:
 - the zone revisions are consistent with the regional strategy because the land is within the Urban Growth Boundary;
 - the land is part of suburbia, has access to all services and public transport, and should not remain underutilised; and
 - the size, location and frontage of 16 Kent Street is not consistent with the Rural Living Zone.
15. At the hearing, the planning authority submitted:
 - the Low Density Residential Zone area of Radiata Drive, Jove Court and Wassell Place is already developed nearly to capacity, with a potential yield of 4 lots if revised to the General Residential Zone;
 - for the area including 9A and 13 Kent Street, the end of Katrina Court, 116 and 164 Begonia Street, and 1C Robin Court, the maximum potential yield is 33 lots; and
 - some lots would be difficult to develop because of frontage widths.
16. Following the hearing, TasWater submitted there were no servicing issues relating to the requested zone revision and Tasmania Fire Service submitted:
 - allowing further infill development could benefit the area in reducing fuel loads associated with remnant bushland without placing new development at unacceptable risk; and
 - the land is effectively within an urban area with limited urban/bush interface and there are unlikely to be any major constraints in terms of occupant evacuation or emergency intervention should further subdivision occur.

Commission consideration

17. The Commission notes the submissions of the parties that the land is able to be fully serviced and has no particular constraints to development. If this is the case, the application of the Low Density Residential Zone is not consistent with LDRZ 1 of Guideline No. 1.
18. The Commission also notes the planning authority's submission that the areas of Jove Court, Radiata Drive, Wassell Place, and the Low Density Residential-zoned part of Katrina Court are already subdivided and nearly fully developed with single dwellings and therefore have little further capacity for development.
19. The Commission therefore considers the existing developed areas within the Low Density Residential Zone at the Lindisfarne Ridge should be revised to the General Residential Zone. The land at 16 Kent Street should also be revised to the General Residential Zone as it is of a size consistent with the General Residential Zone, and is able to be connected to reticulated water and sewerage supply, consistent with GRZ 1 of Guideline No. 1.
20. The Commission considers that, while the undeveloped areas within the Low Density Residential Zone are potentially suitable for the General Residential Zone due to the absence of constraints, it would be premature to revise the zoning to the General Residential Zone without a structure plan in place. The Commission considers a structure plan would allow for a fair, orderly and sustainable use of the land, consistent with the objectives set out in Schedule 1 of the Act.

Landscape Conservation Zone or Rural Living B Zone - Howrah Hills

23. **Representation:** Howrah Hills Landcare Group (34)
24. The representor requested the following modifications:
 - revise portions of the land comprised in folio of the Register 136183 (lots 1 to 7) at Howrah from the Low Density Residential Zone to the most appropriate 'like for like' zone to permit only one dwelling per lot;
 - revise the western portion of the land at 100 Skyline Drive, Howrah (folio of the Register 136183/6) from the Low Density Residential Zone to the Landscape Conservation Zone;
 - revise the land at 5 Zenith Court, 18 New Haven Drive, and 125 Norma Street, Howrah from the Low Density Residential Zone to the Rural Living Zone; and
 - prepare a specific area plan for land at Skyline Drive, New Haven Drive and Norma Street, Howrah.
25. The reasons include:
 - Clarence City Council recorded its long-standing objective to retain the visually important escarpment (Howrah Hills) in 1984;
 - no review of the environmental and landscape qualities has been undertaken that would justify rezoning to a higher density;
 - the western portion of 100 Skyline Drive follows the 120m contour level which contravenes the maximum contour levels for development set down by the Clarence City Council;
 - the Low Density Residential Zone would create conflict with the existing covenants on the titles of the lots; and
 - the Resource Management and Planning Appeals Tribunal endorsed an agreement with Howrah Hills Landcare Group on 16th December 1999 to restrict further development of 100 Skyline Drive.
26. In the section 35F report, the planning authority considered the representations did not warrant modification to the draft LPS. The reasons include:
 - the referenced titles within the Low Density Residential Zone are within the Urban Growth Boundary;
 - the issue was considered by the Commission in the assessment of the interim planning scheme and decided the lots should be within the Low Density Residential Zone;
 - the proposed zoning is therefore a 'like-for-like' translation from the existing zoning, and is consistent with LDRZ1(c) of Guideline No. 1 which recognizes existing areas that do not warrant higher densities;
 - the application of the Low Density Residential Zone is strategically the most appropriate zone, despite some differences in the provisions under the SPPs;
 - the referenced Agreement can and should be managed outside of the development and implementation of the LPS;
 - a specific area plan has not been developed for the area;
 - the relevant landowners are not aware of the request to rezone their land and apply a specific area plan and this raises significant natural justice issues and denial of due process; and
 - it is not appropriate to delay the determination of the LPS pending the development of a potentially suitable specific area plan.

27. In a submission to the hearing, the representor submitted:

- there are significant differences between the interim planning scheme Low Density Residential Zone and the SPPs Low Density Residential Zone, including:
 - the removal of the zone purpose to be a buffer between established urban areas and non-urban areas;
 - the SPPs provide for additional uses in the zone including multiple dwellings, and a number of commercial uses;
 - the wording of the standard for site density for multiple dwellings under the SPPs allows the calculation based on site area rather than the area within the zone, which increases the potential density of the lots;
- the impacts of the differences in the zones includes:
 - the Low Density Residential Zone should not be applied for the purpose of protecting areas of important natural or landscape values, as per LDRZ3 of Guideline No. 1;
 - the SPP's zone allows for a substantial increase in development potential, including an estimated 67 dwellings in the area of Skyline Drive, as opposed to 6 dwellings that was anticipated in the past planning and approvals for the land;
- the Landscape Conservation Zone is preferred for all lots addressed as 100 Skyline Drive, as well as 125 Norma Street, 18 Newhaven Drive, 5 Zenith Court, and 60A, 60B, and 60C Skyline Drive;
- of these lots, the vacant lots will retain a permitted pathway for a single dwelling as each title has a building area shown on the sealed plan;
- the Landscape Conservation Zone would not have a significant impact on the lots already containing a dwelling;
- an alternative zone could be the Rural Living Zone Area B, the application of which is consistent with nearby land at Ormond and Waverley Streets, except for the western triangular area of 100 Skyline Drive, which should be in the Landscape Conservation Zone;
- the land at Ormond and Waverley Streets within the Rural Living Zone is within the Urban Growth Boundary, and therefore a zoning of Rural Living, or Landscape Conservation would be consistent with that application; and
- the Natural Assets Code should be applied to the western triangular portion of 100 Skyline Drive and the western end of 125 Norma Street, as this area was not intended to provide for residential development and contains significant forest communities.

28. The submission included evidence from Dr Rob Wiltshire, a Senior Lecturer in Plant Science at the University of Tasmania who submitted:

- the vegetation at 100 Skyline Drive is almost entirely comprised of Eucalyptus globulus Dry Forest and Woodland, and Eucalyptus risdonii Forest and Woodland, which are threatened vegetation communities;
- the area of the Eucalyptus risdonii is more extensive than indicated on the TasVeg 4.0 layer on theLIST;
- the Eucalyptus risdonii Forest and Woodland community is estimated to cover only 800 hectares, almost all of which is within the Clarence municipality, and only 48 percent of which is in reserves;
- the maintenance of continuity between the small populations is essential for gene flow of the species and other components of these diverse communities, including orchid and rare grasses; and
- the Eucalyptus globulus Dry forest and Woodland is more extensive in eastern Tasmania, however it is still poorly reserved, and highly dissected, it is also habitat for the Critically Endangered swift parrot.

29. In a submission to the hearing, Mr Bruce Chetwynd, a Visual Landscape Planner, also provided evidence for the representor:
 - the land forms part of the native bushland backdrop and is critical to the character of the local precinct;
 - the existing houses on 125 Norma Street, 18 Newhaven Drive, and 5 Zenith Court are seen within the lower edge of the bushland and form a transition to the vegetated slopes above;
 - the allowance of multiple dwellings in the Low Density Residential Zone would result in a much greater density of development and a likely increased residential dominance within the existing semi-natural transition area;
 - lots with a majority slope of 11 degrees or steeper should remain outside of the multiple-dwelling zone, and only single dwelling development should be allowed for on slopes between 8 and 11 degrees to provide opportunity for retention of native vegetation; and
 - driveways and accesses should be shared, follow the contours of the land, and be surfaced with natural-coloured materials, in order to reduce visual impact, and subdivision should not be allowed.
30. At the hearing, the planning authority submitted:
 - the Low Density Residential Zone under the SPPs is significantly different to the zone in the interim planning scheme;
 - the interim planning scheme Low Density Residential Zone reflected the Agreement referenced by the representor, the SPP zone does not;
 - it disagreed with the potential density calculations made by the representor;
 - applying the Landscape Conservation Zone or the Rural Living Zone Area B would result in significantly subminimum lots;
 - the lack of the Natural Assets Code is a legacy of previous planning schemes where such overlays were removed from urban environments and no analysis has been undertaken to consider whether the overlay should be reapplied; and
 - the submission from Mr Chetwynd has no work to do because the scenic protection overlay has not been included in the draft LPS.
31. Following the hearing, the planning authority submitted:
 - an extract of the Clarence Planning Scheme 2007 Vegetation Management Overlay, which was the most recently applying the biodiversity overlay in the area;
 - that the overlay was based on a non-statutory Vegetation Communities Risk Map produced by Entura;
 - a copy of an updated Vegetation Communities Risk Map, and associated Natural Assets Information Manual (Entura, 2011).
32. The Natural Assets Information Manual noted the Vegetation Communities Risk map was created using TASVEG mapping, which was improved using more recent aerial photography, flora and fauna reports and other vegetation mapping available to the Council. Field verification was not undertaken for areas already within residential zones.
33. The representor submitted:
 - the maps provided by the planning authority are broadly consistent with the TASVEG mapping available through theLIST, which identify significant communities present on almost all of the lands identified;
 - the Low Density Residential Zone is inappropriate, and it is appropriate to extend the overlay; and

- if the Commission considers the Low Density Residential Zone is not suitable, an alternative is to apply a specific area plan with:
 - a purpose of the protection of significant natural and scenic values;
 - restrict residential in the Use Table to single dwellings and prohibit other more intensive uses within the use class; and
 - a Use Standard applicable to the Skyline Drive lots to limit the location of dwellings to the building envelopes previously approved.

Commission consideration

34. The Commission accepts the evidence of the representor that the Low Density Residential Zone is not the most appropriate zone for the land due to the high conservation natural values present, due to the potential visual impact of increased density, and because in this instance, the Low Density Residential Zone is not an equivalent translation from the Low Density Residential Zone under the interim planning scheme.
35. The Commission considers the application of the Landscape Conservation Zone to the land is consistent with LCZ1 of Guideline No. 1 in that the land contains threatened vegetation communities identified for protection and conservation.
36. The Commission notes that some parts of the land proposed for the Landscape Conservation Zone are not identified as containing natural vegetation; however, the Commission accepts the evidence of Mr Chetwynd that the land provides a transition to the vegetated slopes of the hillside which is an important visual backdrop to the suburb. This land is therefore also consistent with LCZ1 of Guideline No. 1 in that it is an area of important scenic values.
37. The Commission also agrees with the representor that the supplied Vegetation Communities Risk Map produced by Entura in 2011 is relatively consistent with the TASVEG mapping, except for the land within the General Residential Zone which has already been developed at a high density, and some areas of the Low Density Residential Zone lots on the eastern side of Skyline Drive.
38. The Commission notes that NAC12 of Guideline No. 1 states that the priority vegetation area overlay may include areas of native vegetation which have identified as being of local importance based on field verification, analysis or mapping undertaken by, or on behalf of, the planning authority. The Commission considers the Vegetation Communities Risk Map and associated Natural Assets Information Manual demonstrates the land predominantly contains vegetation of at least local importance, and accepts the evidence of Dr Wiltshire that the vegetation is likely to be of greater significance. The Commission therefore considers that the application of the priority vegetation area overlay is consistent with NAC12 of Guideline No. 1.

Commission decision

39. Modifications:
 - revise the zoning of the following properties from to the Landscape Conservation Zone:
 - (a) 125 Norma Street, Howrah (folio of the Register 26606/146);
 - (b) 18 Newhaven Drive, Howrah (folio of the Register 26629/145);
 - (c) 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - (d) 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6, & 7);
 - (e) 73 Skyline Drive, Howrah (folio of the Register 136183/8);
 - (f) 46 Skyline Drive, Howrah (folio of the Register 48113/13);
 - (g) 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - (h) 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - (i) 60C Skyline Drive, Howrah (folio of the Register 136183/11).

- revise the priority vegetation area overlay to include the following land shown in Figure 2 below:

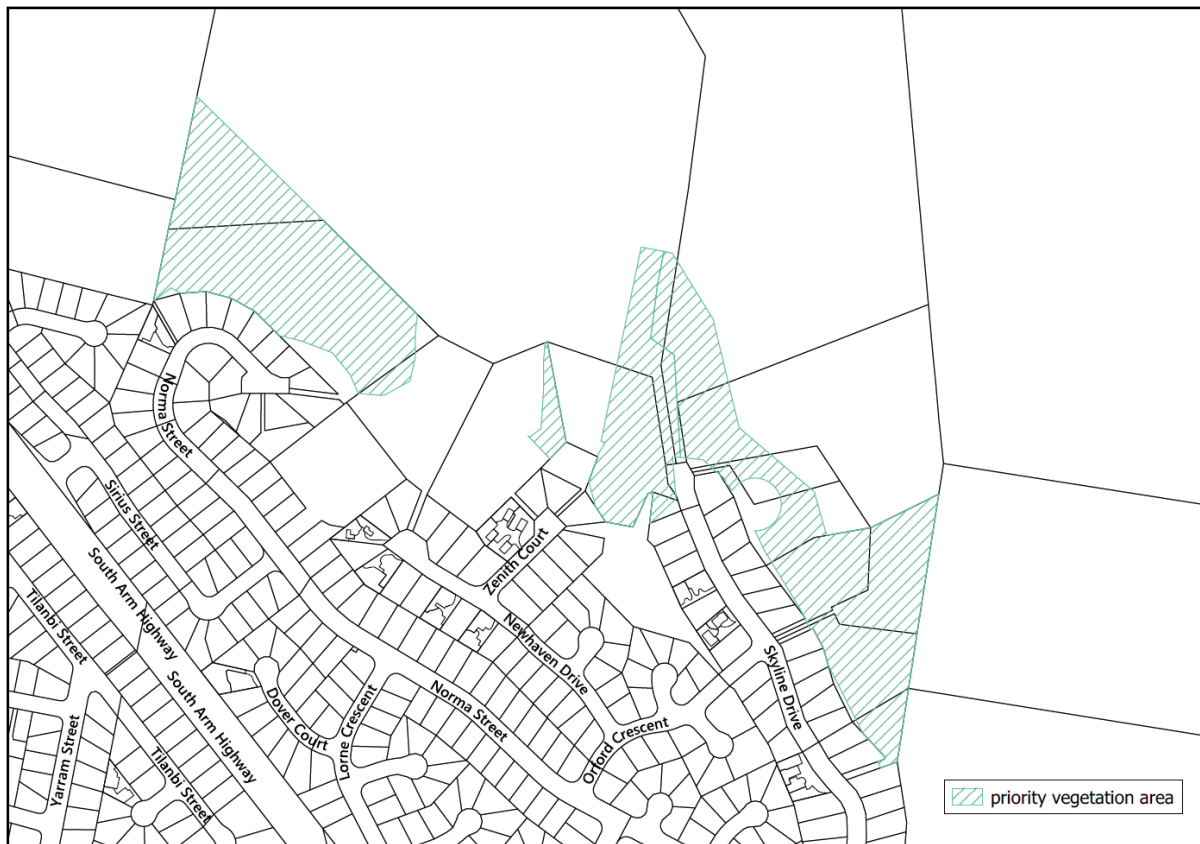


Figure 2: Revision to the priority vegetation area overlay at Howrah

40. Reason:

- To apply the Landscape Conservation 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 in the modification.

Open Space Zone, Landscape Conservation Zone or Environmental Management Zone - Rosny Hill Nature Recreation Area

41. Representations: Jennifer Rayner (2), Denise Hoggan (3), Wilfred John Hodgman (10), M C Jones (13), Catherine Nicholson (19), Ann McCuaig (31), John Counsell (51)
42. The representors requested that the land within the Rosny Hill Nature Recreation Area be revised from the Recreation Zone to the Open Space Zone, the Landscape Conservation Zone, the Environmental Management Zone, or to a zone that will ensure protection of its natural values. Some representors also requested that a specific area plan be applied to the land to provide for the protection of natural vegetation, provide for passive use, and to facilitate visitor services development. The reasons include:
 - the Recreation Zone is inconsistent with the passive recreation use of the land, and its application is in contravention of RecZ4 of Guideline No. 1;
 - the land has similar uses and vegetation to other reserves which are to be within the Open Space Zone; and

- permitted uses within the Recreation Zone are inappropriate for an area with threatened species and high natural values, and fail to enhance the areas status as a Nature Recreation Area.
43. In the section 35F report, the planning authority did not agree with the requested zone revision, but recommended that a site-specific qualification be inserted to allow Visitor Accommodation as a Discretionary use with no qualification, and to provide an additional use standard to ensure any visitor accommodation use complements and enhances the use of the land for recreational purposes. The reasons include:
- the approval of the Rosny Hill Hotel development demonstrates a commitment by the Council to the development of the site, consistent with that allowed under the Recreation Zone in the interim planning scheme;
 - a site-specific qualification should reflect Council's commitment to visitor accommodation development on the site, and include a Use Standard to reflect the current considerations in the interim planning scheme;
 - the public road within the reservation provides a higher level of accessibility than other hill tops within the Open Space Zone; and
 - the proposed modifications meet the tests under section 32(4) as the controls reflect an approved development that will provide for significant social and economic benefit to Clarence and the southern region.
44. At the hearing the planning authority submitted:
- the Recreation Zone is the most appropriate translation from the interim planning scheme, except for the loss of the Visitor Accommodation use;
 - the Recreation Zone for the site meets the tests of Guideline No. 1;
 - a Visitor Accommodation development has been approved for the site, and although it is subject to an appeal, represents a clear commitment of the Council to allow such development on the site;
 - the Council is the managing authority for the reserve and has an obligation to comply with the relevant Act;
 - the current zoning is correct, and that is evidenced by the rigour of assessment undertaken for the proposed hotel development;
 - the code overlays also allowed rigorous assessment of the natural values of the site;
 - it would not be consistent with Schedule 1 of the Act to allow developers to go through a robust planning process and then remove the development rights currently provided in the interim planning scheme; and
 - the planning authority did not propose the Environmental Management Zone for the site because it considers that zone should not be used in urban areas.
45. At the hearing the representors spoke to a number of matters including:
- the purpose of the reserve is as a 'nature recreation area', which is considered to be 'passive recreation';
 - Guideline No. 1 says the Open Space Zone should be used for areas intended for passive recreation, not the Recreation Zone;
 - the road providing access to the top of the hill is not a sufficient difference to justify different zoning to other hill top reserves;
 - there is discrepancy in the use of the Environmental Management Zone between adjacent planning schemes (such as the Environmental Management Zone of Mt Nelson and Knocklofty in the Hobart municipality);
 - the Recreation Zone could allow for an active recreation development on the site;

- the planning authority's response to the requirement of section 32(4) ignores the effects on the environment and the health and wellbeing of the Clarence community;
 - no other Visitor Accommodation developments are located within the Recreation Zone in Clarence;
 - the site contains threatened flora species;
 - concerns that the Scenic Protection Code does not apply; and
 - a specific area plan should be provided to protect natural vegetation and facilitate appropriate visitor development.
46. Following the hearing, the planning authority submitted that its preference was for the Recreation Zone with a site-specific qualification, but that if alternative zones were to be considered then the Environmental Management Zone would be preferred over the Open Space Zone.
47. Following the hearing representors made a number of submissions relating to:
- whether the proposed site-specific qualification meets the tests of section 32(4), particularly relating to social benefits;
 - whether the proposed zoning meets the objectives in Schedule 1 of the Act;
 - stating the zoning is inconsistent with the regional strategy;
 - whether the zoning is consistent with and coordinated with the LPS of adjacent council areas; and
 - discussion of the natural values of the site.

Commission consideration

48. The Commission agrees with the representors that the Recreation Zone is not the most suitable zone for the site under Guideline No. 1. However, the Commission agrees with the submission of the planning authority that the approval of the Visitor Accommodation development on the site represents a clear commitment that the site not be used purely for passive recreation.
49. The Commission notes that the Rosny Hill site has been reserved as a nature recreation area under the *Nature Conservation Act 2002*. The Commission notes that EMZ1(a) of Guideline No. 1 sets out:
- The Environmental Management Zone should be applied to land with significant ecological, scientific, cultural or scenic values, such as:
- (a) land reserved under the *Nature Conservation Act 2002*;...
50. The Environmental Management Zone allows for Visitor Accommodation use as a permitted use if authority is granted by the Managing Authority under the *National Parks and Reserved Land Regulations 2009*. Otherwise the use is discretionary. The Commission therefore considers the Environmental Management Zone is consistent with the site's natural values, as well as the Council's vision for the use and development of the site.
51. The Commission notes that the site is also within the priority vegetation area overlay, and that the Natural Assets Code will also apply to any future use or development.
52. The Commission considers that the proposed zone change has a public interest due to the different allowable uses under the Environmental Management Zone.

Commission decision

53. Modification:

- revise the zoning of folio of the Register 12799/1 to the Environmental Management Zone.

54. Reason:

- To apply the Environmental Management Zone consistent with the purpose of the zone and Guideline No. 1.
- The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

Road and Railway Assets Code – road or railway attenuation area overlay

Representation: Department of State Growth (43)

55. The representor requested that the 50 metre road or railway attenuation area overlay applying to development adjacent to the State Road network under the Road and Railway Assets Code be deleted. The reasons include:

- if the attenuation buffer is mapped and included within a planning scheme, any future changes to the alignment or width of individual roads would require a planning scheme amendment to update the buffer zone; and
- it is administratively simpler to rely on the code provisions.

56. In the section 35F report, the planning authority considered the representation did not warrant modification to the draft LPS. The reasons include:

- the mapped overlay is preferable to using the description within the Road and Railway Assets Code as it is more transparent and less likely to be missed;
- mapping is also less likely to be subject to interpretation and then possible appeal; and
- it is accepted that any new major road or significant realignment will require a future amendment to the LPS.

57. At the hearing, the representor submitted:

- the overlay appears to be mapped 50 metres from the road centreline rather than 50 metres from the boundary of the road; and
- the implication of the inaccuracies would be a reduced buffer, and additional complaints from residents who may build without considering the adjacency of the road.

58. At the hearing, the planning authority submitted that the mapping should be retained, but agreed that if there are inaccuracies then they should be resolved. The planning authority noted that the overlay should be extended to include the recently completed Cambridge Bypass.

59. Following the hearing, the representor submitted:

- the mapped attenuation area reduces the protections that would be available compared to relying on the road definition which extends to the whole width of the reserve “between abutting property boundaries”;
- this is particularly concerning when applied to Category 1 and 2 roads which are wider, multi-lane roads and could lead to development, without attenuation requirements, closer to the boundary;
- maintenance of mapping will be excessively onerous due to projects requiring acquisition of land;

- an amendment to the overlay for each land acquisition in order to maintain its currency is disproportionate, however the Department of State Growth does not wish for attenuation measures to diminish incrementally over time; and
- an example of the inaccuracy of the overlay is at the East Derwent Highway in Geilston Bay, where the mapping provides a reduced buffer to the boundary with the road.

Commission consideration

60. The Commission agrees with the planning authority that the use of the road or railway attenuation area overlay is more transparent to both the planning authority and the public, as opposed to reliance on the definition of the road or railway attenuation area. However, the Commission considers the overlay should be as accurate as possible.
61. The Commission notes that the representor did not provide full details of where the overlay was inaccurate.
62. The Commission further notes that the Cambridge Link Road (the Cambridge Bypass) has recently been completed and should also be included within the road or railway attenuation area overlay.

Commission decision

63. Modification:
 - revise the extent of the road or railway attenuation area overlay so that it applies to:
 - (a) land within 50 metres of the boundary of all major or future roads; and
 - (b) the Cambridge Link Road.
64. Reason:
 - To apply the road or railway attenuation area overlay consistent with Guideline No. 1.
 - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

Natural Assets Code - waterway and coastal protection area overlay

65. **Representation:** Ireneinc for the original landowner/developer of Stanton Place and Loongana Court (22).
66. The representor **requested** that the waterway and coastal protection area overlay be removed from developed areas of Stanton Place and Loongana Court, Cambridge.
67. The reason is that, while the mapping of this overlay has been carried forward from the interim planning scheme, the land within the area is now developed, including the piping of this previous waterway, and would therefore now appear to be no longer relevant to provide protection of natural values as is the objective of this code.
68. In the section 35F report, the planning authority recommended that the waterway and coastal protection overlay mapping be replaced with revised mapping at Attachment 3 to the section 35F report. The reasons include:
 - the Council has reviewed the waterway and coastal protection overlay mapping with a view to remove the overlay from piped/controlled stormwater systems in urban areas;
 - the revised mapping addresses the representor's concern and should replace the preliminary mapping contained in the exhibited draft;
 - the revised mapping is consistent with NAC3 of Guideline No. 1; and

- with few exceptions, the revised mapping results in some properties being removed from the previously mapped areas, and therefore raises no natural justice concerns.

69. At the hearing, no additional information was submitted.

Commission consideration

70. The Commission agrees with the evidence of the planning authority that the removal of the waterway and coastal protection area overlay over piped or controlled systems in urban areas is appropriate and consistent with Guideline No. 1.
71. The Commission notes that the overlay is also proposed to be added to a section of the Coal River at Richmond, and that the overlay will affect at least three private properties.

Commission decision

72. Modification:
- delete the waterway and coastal protection area overlay from all of those areas shown in red in Attachment 3 to the planning authority's section 35F report dated 29 September 2020; and
 - apply the waterway and coastal protection area overlay to all of those areas shown in green in Attachment 3 to the planning authority's section 35F report dated 29 September 2020.
73. Reason:
- To apply the waterway and coastal protection area overlay consistent with Guideline No. 1.
 - The Commission considers that the modification is a substantial modification as there may be a public interest in the modifications.

Flood-Prone Areas Hazard Code – various localities

74. **Representations:** Anthony Mann (40), Bruce Gibbs (77), Michael Figg (85)
75. The representors requested that the flood-prone areas hazard overlay mapping be further justified or revised. The reasons include:
- actual inundation events do not correlate with mapping and filled land heights; and
 - any changes to overlays should have a sound, evidence-based rationale.
76. In the section 35F report, the planning authority recommended the exhibited flood-prone areas hazard overlay mapping be replaced with recently revised mapping. The reasons include:
- post endorsement of the draft LPS, the Council commissioned flood mapping studies in a range of catchments in Clarence; and
 - the revised modelling and mapping is more accurate than the preliminary work used in the development of the draft LPS and should replace that mapping.
77. Prior to the hearing, the planning authority submitted a background report which detailed the methodology used to prepare the new mapping.
78. At the hearing, the planning authority submitted:
- the new mapping applies to all Clarence catchments except for Richmond, the modelling of which is not yet complete;

- the mapping more adequately represents the flood risk and should be incorporated through this process rather than a future amendment; and
- generally the new mapping is more extensive than the exhibited mapping.

79. At the hearing, the representor submitted that the new mapping does not reflect fill works that have occurred in Lauderdale. The planning authority noted that the mapping can only reflect the situation at a point in time.

Commission consideration

80. The Commission agrees with the representor that the mapping may not reflect very recent changes in land levels. However, the Commission accepts the evidence of the planning authority that the new flood prone area overlay mapping is the best information currently available.
81. The Commission notes the proposed changes warrant public exposure and opportunity for comment from affected landowners and occupiers.

Commission decision

82. Modification:
- replace the flood-prone hazard area overlay maps with a new flood-prone hazard area overlay map series using the mapping shown in Attachment 2 to the planning authority's section 35F report dated 29 September 2020.
83. Reason:
- To accurately show the flood-prone areas overlay consistent with Guideline No. 1.
 - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

Potentially Contaminated Land Code – various sites

84. **Representation:** Michael Figg (85)
85. The representor requested that the potentially contaminated land overlay be amended to include the following sites within the overlay:
- 115 Droughty Point Road, Rokeby; and
 - 151A South Arm Road, Rokeby.
86. The reasons include:
- 115 Droughty Point Road is known to contain asbestos; and
 - 151A South Arm Road contains the Rokeby Police Station, Police College, advanced driver training circuit, large ammunitions storage, and a helicopter landing area.
87. In the section 35F report, the planning authority recommended the potentially contaminated land overlay be modified to include 115 Droughty Point Road. The reasons include that 115 Droughty Point Road is known to contain asbestos. The planning authority did not agree to include 151A South Arm Road, Rokeby within the overlay. The reasons include:
- the indoor firing range is within a building, and ammunition is therefore contained, and is removed by a contractor;
 - the indoor firing range uses HEPA filters to remove lead particle build up and dust, and these are cleaned and maintained regularly;

- no refuelling of the helicopter occurs on the site;
 - the driver training skid pan has drainage to a settling pond and appropriate reed management to filter any potential fuel spillage that may occur, before discharging to Ralphs Bay; and
 - the skid pan is water based and the potential of any spillage is very minimal.
88. The planning authority also recommended two other sites, not raised by the representor be included in the overlay:
- 1226 Richmond Road, Richmond; and
 - 52 Richardsons Road, Sandford.
89. The reasons include:
- 1226 Richmond Road, Richmond was previously used as a service station and lawn mower engine maintenance workshop;
 - the Council's Environmental Health Officer advises that the land is likely to contain underground storage tanks and potential hydrocarbon spills from maintenance works; and
 - 52 Richardsons Road is known to contain landfill over the entire site and is currently subject to two Environmental Protection Notices.
90. Prior to the hearing, the planning authority submitted evidence supporting the inclusion of the three additional properties in the potentially contaminated land overlay.
91. At the hearing, the planning authority submitted:
- the landowners of the sites proposed to be added to the overlay are not aware of the proposal; and
 - even if the land is not included in the overlay, the code would still apply because the land is reasonably expected to be contaminated.
92. Following the hearing, the planning authority submitted new mapping detailing the area of each site which should be subject to the overlay.

Commission consideration

93. The Commission considers that the planning authority has provided sufficient evidence to justify the addition of 1226 Richmond Road, 52 Richardsons Road, and 115 Droughty Point Road in the overlay, in accordance with PCLC1 of Guideline No. 1.

Commission decision

94. Modification:
- revise the potentially contaminated land overlay to include parts of the following land as shown within the planning authority's submission of 26 November 2020:
 - (a) 1226 Richmond Road, Richmond (folio of the Register 66106/1);
 - (b) 52 Richardsons Road, Sandford (folio of the Register 158742/9); and
 - (c) 115 Droughty Point Road, Rokeby (folio of the Register 150853/2).
95. Reason:
- To apply the potentially contaminated land overlay consistent with Guideline No. 1.
 - The Commission considers that the modification is a substantial modification as there may be a public interest in the modification.

Safeguarding of Airports Code – Cambridge Airport

96. **Joined party:** Gray Planning for Airlines of Tasmania
97. After the initial hearing, the Commission agreed to a request from Gray Planning for Airlines of Tasmania for a submission about the Cambridge Airport to be considered as part of the assessment into the representations on the draft LPS.
98. The joined party submitted:
 - Airlines of Tasmania were previously under the assumption that Hobart Airport would be providing protections to the Cambridge Airport under the Airports Act 1996;
 - a 15 metre height limit will severely impact the operations of the Cambridge Airport and could cause the airport to close; and
 - evidence that a nine metre height limit should remain in place in the vicinity of the affected runways.
99. Prior to a reconvened hearing, the joined party also submitted obstacle limitation surface mapping for the Cambridge Airport.
100. At the reconvened hearing, the joined party submitted:
 - the Cambridge Airport is not regulated by legislation, but instead follows guidelines produced by the Civil Aviation Safety Authority (CASA);
 - if development occurs within the Cambridge Airport's obstacle limitation surface, the airport would have to reduce its runway and potentially close;
 - if the air traffic that uses Cambridge Airport has to move to Hobart Airport, a cross runway would need to be constructed, which could take several years; and
 - clause C16.6.1 P2 of the Safeguarding of Airports Code in the SPPs may not provide adequate protection as is it performance-based, rather than providing an absolute maximum height.
101. The planning authority submitted:
 - modification of the airport obstacle limitation area overlay mapping to include the submitted Cambridge Airport obstacle limitation surface is supported; and
 - the provisions of the Safeguarding of Airports Code are sufficient, as the planning authority is unlikely to approve a development against the advice of the airport operator.
102. After the hearing, the planning authority and the joined party submitted revised airport obstacle limitation area overlay mapping.

Commission consideration

103. The Commission considers that the Cambridge Airport is of regional and State-significance and it is appropriate that the airport is afforded protections by the Clarence LPS through the airport obstacle limitation area overlay for the reasons provided by the joined party and the planning authority.

Commission decision

104. Modification:
 - revise the airports obstacle limitation area overlay map to include the obstacle limitation surface areas for Cambridge Airport as shown within the planning authority's submission 'Hobart/Cambridge Airport Draft OLS Areas', Gregg Jack, Clarence City Council, 19 May 2021.

105. Reason:

- To apply the airport obstacle limitation area overlay consistent with Guideline No. 1.
- The Commission considers that the modification is a substantial modification as there may be a public interest in the modification.

ATTACHMENT 1**List of Representations**

No	Name	No	Name
1.	Evan Boardman, E3 Planning for 47 landholders in Acton Park	25.	Monica Cameron, ERA Planning & Environment for Monique Anne Little
2.	Jennifer Rayner	26.	Peter McGlone for Tasmanian Conservation Trust
3.	Denise Hoggan	27.	Pip Dennis
4.	Christopher Cleary for L & C Cleary and S Jones & P Emery	28.	Benjamin Buckland
5.	<i>Duplicate of 5</i>	29.	Mat Clark, Johnstone, McGee & Gandy Pty Ltd for Toronto Pastoral Coy Ltd
6.	Luke Clasener for Hobart Airport	30.	Bill Steve Brooks
7.	Paul Boland	31.	Ann McCuaig
8.	Lynne Marie Sparrow and Jonathan Brett Warren	32.	<i>Withdrawn</i>
9.	Mr & Mrs Pawar	33.	Charles Morris
10.	Wilfred John Hodgman	34.	Julie Alexander for Howrah Hills Landcare Group
11.	Rod Mann	35.	<i>Duplicate of 23</i>
12.	Garth Alvares, Prudential Consultants Pty Ltd	36.	Evan Boardman, E3 Planning for Lorentzen's Marine Chandlery
13.	M C Jones	37.	Neil Shephard, Neil Shephard & Associates for Kingdom Purpose Pty Ltd
14.	Neil Shephard, Neil Shephard & Associates for A & R McCreadie	38.	Michael Wadsley
15.	Mat Clark, Johnstone McGee & Gandy Pty Ltd for AJ Carr Development Corporation	39.	Mike McIntyre
16.	Odin Kelly, TasNetworks	40.	Anthony Mann
17.	Alex Brownlie, GHD for Dourias Family Trust, Lambrakis Family Trust and In the Pipeline Pty Ltd	41.	Michael Ball for R E & R D Stanton Pty Ltd
18.	Angela Nichols	42.	Michael Ball for the Royal Hobart Golf Club
19.	Catherine Nicholson	43.	Department of State Growth
20.	John Morris	44.	Sachin Yonzon, Sangey Pty Ltd
21.	Jacqui Blowfield, Ireneinc Planning & Urban Design for Eric Haldane	45.	Phil Gartrell, Ireneinc Planning & Urban Design for Andrew & Kath Glover
22.	Jacqui Blowfield, Ireneinc Planning & Urban Design for landowner/developer of Stanton Place & Loongana Court, Cambridge	46.	Jennifer & David Brown
23.	Evan Boardman, E3 Planning for Nic and Harry Lambrakis and the Oaktree Group	47.	Paul Stokely for himself, Deirdre Stokely, and Patrick Dennis
24.	Jacqui Blowfield, Ireneinc Planning & Urban Design	48.	E M Barsham, M C Jones, and S A Tongue, executors Estate of Paul A Jones
		49.	Stephanie Murfet
		50.	Peter Kay
		51.	John Counsell

No	Name	No	Name
52.	Neil Shephard, Neil Shephard & Associates for M T & J T Carling-Green, P J Ryan, & B Jones	80.	Evan Boardman, E3 Planning for Fenshaw Pty Ltd
53.	<i>Duplicate of 52</i>	81.	Frances Beasley, ERA Planning & Environment for Elizabeth Nichols
54.	Michael Ball for P McKay	82.	Francesca Fisher
55.	David Miller	83.	John Cleary for T J & V M Cleary, R & S Sammut, G Kregor & A Dunn, C & S Johnston, G B Lane, E Cowley, M C Jones, the Estate of P A Jones, G Young, and H Blackley
56.	Robert Neil Ramsay	84.	Gail Dennett, Conservation Landholders Tasmania Trust
57.	Michael Ball for F Coulsen	85.	Michael Figg
58.	Michael Ball for L Varney	86.	Geoffrey Thorp
59.	Michael Ball for N J Studley	87.	Jane and Chris Jamieson
60.	John Gardner	88.	Indra Boss, Johnstone McGee & Gandy Pty Ltd for Kilshi Pty Ltd
61.	Christine and Michael Crisp	89.	Peter Anthony Kube
62.	Wendy Speakman	90.	Christopher Wright
63.	Norman Matthew Brown	91.	Jill Wright
64.	Alistair and Kaye Baker	92.	Richard Gawthorpe
65.	Gary Barnier for Abundant Life Church	93.	Matt Garvin
66.	Phillip Morrisby	94.	Angie Hoffmann
67.	Margot Lampkin	95.	Phillip Bishop
68.	M C Jones for Hillmorton	96.	John Cleary for Denise and David Furmage
69.	TasWater	97.	Brian Bennett
70.	Jonathan Blood, Loci Architecture & Planning for Ruthven Rokeby Road Pty Ltd	98.	Mick and Lisa Verrier
71.	Jacqueline Cherie Jenkins	99.	Murray Studley
72.	Andrew Holmes	100.	<i>Number not used</i>
73.	John Tellyros	101.	Conservation Landholders Tasmania Trust (related to representation 84)
74.	Noel Vollus	102.	Alistair and Linda Primrose
75.	Dean Baird	103.	Lorraine Wallner
76.	State Emergency Service	104.	Mat Clark, Johnstone McGee & Gandy Pty Ltd for Linear Capital Pty Ltd
77.	Bruce Gibbs		
78.	Jeffrey Fisher		
79.	Emma Riley, ERA Planning & Environment for the Cremorne Community Action Group		

Submission from parties accepted by the Commission during the hearing process

Gray Planning for Airlines of Tasmania

ATTACHMENT 2

LAND USE PLANNING AND APPROVALS ACT 1993

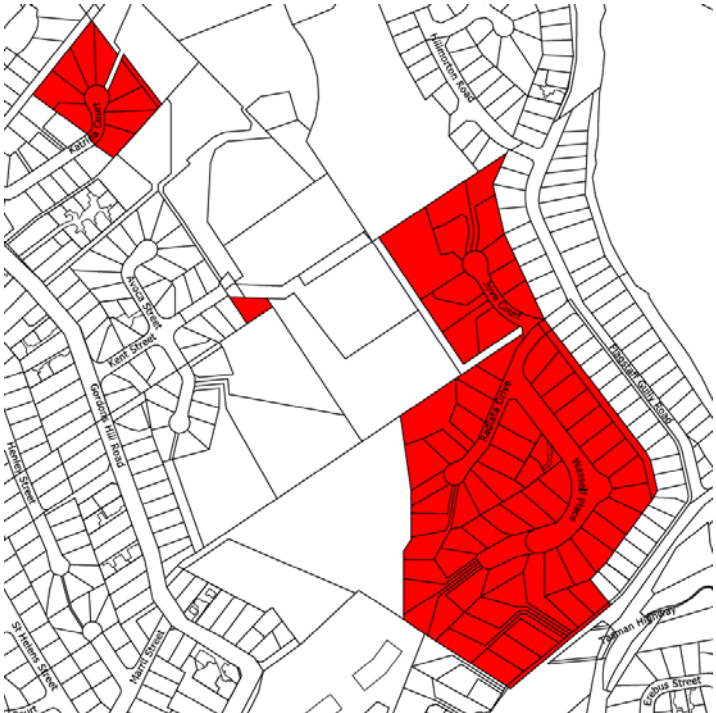
NOTICE UNDER SECTION 35K(1)(C)


CLARENCE DRAFT LPS

24 June 2021

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

1.0 Zone maps and overlays

No.	Description	Direction and Reason
1.1	Lindisfarne Ridge/Flagstaff Gully	<p>Revise the zoning of land from the Low Density Residential Zone and Rural Living Zone to the General Residential Zone shown in Figure 1 below.</p>  <p>Figure 1: Revision to the General Residential Zone at Lindisfarne</p> <p><i>Reason: To apply the General Residential Zone consistent with Guideline No 1.</i></p>
1.2	Howrah Hills	<p>Revise the zoning of the following properties to the Landscape Conservation Zone:</p>

		<p>(a) 125 Norma Street, Howrah (folio of the Register 26606/146);</p> <p>(b) 18 Newhaven Drive, Howrah (folio of the Register 26629/145);</p> <p>(c) 5 Zenith Court, Howrah (folio of the Register 26629/144);</p> <p>(d) 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6, & 7);</p> <p>(e) 73 Skyline Drive, Howrah (folio of the Register 136183/8);</p> <p>(f) 46 Skyline Drive, Howrah (folio of the Register 48113/13);</p> <p>(g) 60A Skyline Drive, Howrah (folio of the Register 104949/6);</p> <p>(h) 60B Skyline Drive, Howrah (folio of the Register 104949/5); and</p> <p>(i) 60C Skyline Drive, Howrah (folio of the Register 136183/11).</p> <p>Revise the priority vegetation area overlay to include the land shown on Figure 2 below:</p>  <p>Figure 2: Revision to the priority vegetation area overlay at Howrah</p> <p><i>Reason:</i> To apply the Landscape Conservation Zone and priority vegetation area overlay consistent with Guideline No. 1.</p>
1.3	Rosny Hill Nature Recreation Area	<p>Revise the zoning of folio of the Register 12799/1 to the Environmental Management Zone.</p> <p><i>Reason:</i> To apply the Environmental Management Zone consistent with the purpose of the zone and Guideline No. 1.</p>

1.4	Road and Railway Assets Code – road or railway attenuation area overlay	<p>Revise the extent of the road or railway attenuation area overlay so that it applies to:</p> <ul style="list-style-type: none"> (a) land within 50 metres of the boundary of all major or future roads; and (b) the Cambridge Link Road. <p><i>Reason: To apply the road or railway attenuation area overlay consistent with Guideline No. 1.</i></p>
1.5	Natural Assets Code - waterway and coastal protection area overlay	<p>Delete the waterway and coastal protection area overlay from all of those areas shown in red in Attachment 3 to the planning authority's section 35F report dated 29 September 2020.</p> <p>Apply the waterway and coastal protection area overlay to all of those areas shown in green in Attachment 3 to the planning authority's section 35F report dated 29 September 2020.</p> <p><i>Reason: To apply the waterway and coastal protection area overlay consistent with Guideline No. 1.</i></p>
1.6	Flood-Prone Areas Hazard Code	<p>Replace the flood-prone hazard area overlay maps with a new flood-prone hazard area overlay map series using the mapping shown in Attachment 2 to the planning authority's section 35F report dated 29 September 2020.</p> <p><i>Reason: To accurately show the flood-prone areas overlay consistent with Guideline No. 1.</i></p>
1.7	Potentially Contaminated Land Code – various sites	<p>Revise the potentially contaminated land overlay to include parts of the following land as shown within the planning authority's submission of 26 November 2020:</p> <ul style="list-style-type: none"> (a) 1226 Richmond Road, Richmond (folio of the Register 66106/1); (b) 52 Richardsons Road, Sandford (folio of the Register 158742/9); (c) 115 Droughty Point Road, Rokeby (folio of the Register 150853/2). <p><i>Reason: To apply the potentially contaminated land overlay consistent with Guideline No. 1.</i></p>
1.8	Safeguarding of Airports Code - Cambridge Airport	<p>Revise the airport obstacle limitation area overlay maps to include the obstacle limitation surface areas for Cambridge Airport as shown within the planning authority's submission 'Hobart/Cambridge Airport Draft OLS Areas', Gregg Jack, Clarence City Council, 19 May 2021.</p> <p><i>Reason: To apply the airport obstacle limitation area overlay consistent with Guideline No. 1.</i></p>