

In the Matter of an amendment to the
Clarence Local Provisions Schedule

And

In the Matter of a Representation on
behalf of Mr Brett McKay

SUBMISSIONS IN SUPPORT OF THE REPRESENTATION

1 Overview of Issue

- 1.1 The Clarence City Council (**Council**) has initiated an amendment to the Local Provisions Schedule applicable within its municipal area (**Draft Amendment**).
- 1.2 The Draft Amendment seeks to rezone land known as 113-119 East Derwent Highway in Lindisfarne from General Residential to Local Business.
- 1.3 The draft amendment was subject to the statutory public exhibition period. During this time, Mr McKay (**Representor**) made a representation in response to the draft amendment. 20 representations were received.
- 1.4 The representations raise a range of issues. The principal concerns for the Representor are:
 - (a) The traffic related impacts associated with the proposed rezoning; and
 - (b) The strategic rationale for the creation of additional local business zoning and consolidation of that zoning in the area of the affected properties.
- 1.5 The key consideration for the Commission is whether the Draft Amendment meets the LPS Criteria. Given the nature of the Draft Amendment, key among those criteria are that the Draft Amendment:
 - (a) As far as practicable, be consistent with the Southern Tasmanian Regional Land Use Strategy (**STRLUS**); and
 - (b) Further the objectives set out in Schedule 1 of the LUPA Act.
- 1.6 The Tasmanian Planning Policies (**TPPs**) have recently come into effect. The LPS Criteria require that the draft amendment satisfy the relevant criteria under the TPPs. Legislation that provides savings and transitional provisions is yet to come into effect.
- 1.7 In the event that the Draft Amendment is assessed against the TPPS, these reinforce the considerations under that already arise under the STRLUS.

Filed on behalf of the Representor, Mr Brett McKay:

- 1.8 Whether LPS Criteria are satisfied requires an evaluative judgement.
- 1.9 In our submission, the Draft Amendment does not meet these criteria. In particular, we submit that:
- (a) The Commission Does not have before it evidence upon which it can be satisfied that the Draft Amendment represents a strategic expansion of commercially zoned land within the municipal area.
 - (b) The Draft Amendment is positioned to deliver a new local activity centre and there is insufficient evidence to demonstrate a demand for the creation of a new activity centre.
 - (c) If such demand did exist, the proposal location is not demonstrated to be strategically planned nor a preferred location for such expansion.
 - (d) A series of local business zoned nodes are present upon the highway corridor. None have the characteristics of an activity centre and instead primarily represent groups of local shops and businesses in existing residential areas where there is a strategic intention to maintain such uses.
 - (e) The proposed rezoning would alter this characteristic and convert the area into a Local Activity Centre.
 - (f) The location of such a centre adjacent the highway adversely impacts the operation of the highway and fails to provide a well-planned, vibrant and accessible activity centre with a high level of pedestrian amenity.
- 1.10 At its core, this is proposal that seeks to benefit from direct access and exposure to the highway for economic benefit of the applicant, but without broader strategic justification.
- 1.11 It is a proposal that is intended to serve a catchment comprised of a number of suburbs which is consistent with the concept of the Neighbourhood Activity Centre under the STRLUS and not a Local Activity Centre as it is otherwise claimed to be.
- 1.12 Ultimately, the proposed rezoning is not, as far as practicable consistent with the STRLUS and does not further the objectives of the RMPS. The Draft Amendment should be refused.
- 1.13 The Commission has requested that the parties address the potential for the Draft Amendment to include provision for a Specific Area Plan (**SAP**). This has been addressed by a separate submission. A SAP cannot be contemplated in this case because the requirements of s.32(4) of the LUPA Act are not demonstrated to have been met.

2 Statutory Process and Criteria

- 2.1 As relevant here, the process for amendment to a local provisions schedule commences with a request made to the planning authority for such amendment; LUPA Act, s.37(1).
- 2.2 Before deciding whether to prepare a draft amendment in accordance with such a request must be satisfied that such a draft amendment will meet the LPS Criteria; LUPA Act, s.38(8).
- 2.3 Upon forming such a state of satisfaction, the planning authority may decide to:
- (a) Agree to the amendment and prepare a draft amendment; or
 - (b) Refuse to prepare the draft amendment; LUPA Act, s.38(1) and (2).

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- 2.4 If the planning authority decides to prepare a draft amendment under s.38(2) of the LUPA Act, it must then prepare the draft amendment and certify that the amendment under s.40F of the LUPA Act within the specified timeframe; LUPA Act, s.40D.
- 2.5 S.40F of the LUPA Act requires that a planning authority that has, in accordance with the preceding process, decided to prepare a draft amendment, must consider whether it is satisfied that the draft amendment meets the LPS criteria, and if satisfied that the criteria are met must certify that the draft amendment meets those criteria; LUPA Act, s.40F(1) and (2)(a).
- 2.6 In the alternative to providing such certification, the planning authority is required to modify the draft amendment so that it meets the LPS criteria and then provide certification; LUPA Act, s.40F(2)(b).
- 2.7 The Commission is required to be provided with a copy of the draft amendment and the certification; LUPA Act, s.40F(4).
- 2.8 The draft amendment is required to be subject to a process of public exhibition; see LUPA Act, ss.40G and 40H.
- 2.9 During the public exhibition period, the planning authority may receive representations in relation to the relevant exhibition documents; LUPA Act, s.40J. The relevant exhibition documents are relevantly, the draft amendment; LUPA Act, s.31.
- 2.10 A representation is defined to include a written statement of facts or reasons in support of or in opposition to the draft; LUPA Act, s.3. There are limitations on what a representation can address; LUPA Act, s.40J (4) and (5).
- 2.11 Following the conclusion of the representation period, the planning authority must provide the Commission with a report in relation to the draft amendment. The report is required to contain a copy of each representation, and, amongst other matters, a statement of the planning authority's opinion as to the merit of each representation and a statement as to whether it is satisfied that the draft amendment meets the LPS Criteria; LUPA Act, s.40K.
- 2.12 The Commission is then required to hold a hearing in relation to the representation; LUPA Act, s.40L.
- 2.13 Following the hearing, the Commission is to consider:
- (a) The report under s.40K of the LUPA Act and the draft amendment to which it relates;
 - (b) Information obtained at the hearings;
 - (c) Whether it is satisfied that the draft amendment meets the LPS Criteria; and
 - (d) Whether modifications ought to be made to the draft amendment; LUPA Act, s.40M.
- 2.14 The Commission is then empowered to:
- (a) Modify the draft amendment or direct the planning authority to do the same;
 - (b) Substantially modify the draft amendment;
 - (c) Reject the draft amendment and direct the planning authority to submit to it a substitute draft amendment;
 - (d) Reject the draft amendment and direct the planning authority to substantially modify part of the draft amendment;
 - (e) Reject the draft amendment; LUPA Act, s.40N.

- 2.15 The Commission must approve a draft amendment where satisfied that the amendment meets the LPS Criteria. Where not so satisfied, the draft amendment must be refused; LUPA Act, s.40Q.

3 LPS Criteria

- 3.1 The LPS Criteria are set out in s.34 of the LUPA Act. Those criteria provide that the LPS is required:
- (a) To contain all the provisions that the SPPs specify must be contained in an LPS;
 - (b) Be in accordance with s.32 of the LUPA Act;
 - (b) Further the objectives set out in Schedule 1 of the LUPA Act;
 - (c) Be consistent with each State policy;
 - (da) Satisfy the relevant criteria in relation to the TPPs;
 - (d) As far as practicable, be 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;
 - (e) To have regard to the strategic plan, prepared under s.66 of the Local Government Act 1993, that applies in relation to the land to which the relevant planning instrument relates;
 - (f) As far as practicable, be 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
 - (g) Have regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019.
- 3.2 S.32 of the LUPA Act relevantly provides that the LPS must provide for the spatial application of the SPPs to land.
- 3.3 Important to the Commission's directs as to the potential inclusion of a SAP, s.32(4) of the LUPA Act provides as follows:

An LPS may only include a provision referred to in subsection (3) in relation to an area of land if –

- (a) a use or development to which the provision relates is of significant social, economic or environmental benefit to the State, a region or a municipal area; or*
- (b) the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.*

4 Hearing

- 4.1 The current process is a hearing by the Commission in relation to the representations.
- 4.2 Consistent with s.40M of the LUPA Act the purpose of the hearing is to enable the Commission to gather information. This information must then be considered by the Commission when determining whether it is satisfied that the LPS Criteria are met; see LUPA Act, s.40M.

- 4.3 As described in *R v Davis*,¹ it is a hearing into the matters raised in the representation. I set out the full passage from His Honour Crawford J's reasoning on this point below:

As I have pointed out more than once, the legislation did not provide that there be a hearing into whether the proposed amendments to the planning scheme should be approved. It required that there be a hearing into the representations by the prosecutors and other representors. Essentially it was to be a hearing into the matters raised by the persons in their representations. Procedural fairness required that the hospital should have a fair opportunity to meet those representations and the evidence the representors would seek to rely on at the hearing, just as much as the representors should have a similar opportunity to meet the hospital's case and evidence in opposition to their representations. I note that in a particular case representors might only make representations raising a small number of discrete issues and it might not be necessary for the Commission to inquire at the hearing into a number of other issues relevant to the question whether a proposed planning scheme, or amendments to a planning scheme, should be approved with or without modification or amendment, or rejected. In a sense, therefore, it is the representors who set the agenda for a hearing by the nature of what is contained in their representations which give rise to the holding of the hearing. In this case the representations have not been put before me.

- 4.4 Viewed against the above dicta, the representations set the agenda for the hearing.
- 4.5 There is no formal onus of proof in the proceedings. Certainly, the representor does not bear an onus to prove a negative and establish that the LPS Criteria are not met. The applicant, as the party seeking to advance the change in zoning of the land, bears a practical onus of establishing the strategic basis for the change.
- 4.6 As observed by Wright J in *M F Cas R v Land Use Planning Review Panel; ex parte M F Cas Pty Ltd*:²

In any event, Mr Armstrong is quite right when he says that a landowner such as M F Cas Pty Ltd does not have the onus of satisfying or discharging a burden of proof in proceedings of this kind. If any such burden exists, and I do not say that it does, logic would seem to suggest that the proponents of change to existing zoning should carry that burden. [my emphasis]

- 4.7 It is observed that the Commission's function is inquisitorial. The procedure at a hearing is determined by the Commission. The Commission may inform itself about any matter in way it thinks fit, may receive oral and written evidence, may consult with such persons as it considers fit, is not bound to act in a formal manner, and is not bound by the rules of evidence. The Commission must also observe the rules of natural justice.³
- 4.8 Ultimately, the Commission is obliged to act upon evidence when reaching the conclusions that are required under s.35.

5 Use of Evidentiary Material

- 5.1 The review of the statutory process identifies that the Commission is required to receive:
- (a) A copy of the draft amendment;

¹ [1999] TASSC 22; (1999) 102 LGERA 88 at [30].

² [1998] TASSC 131

³ Tasmanian Planning Commission Act 1997, s.10

- (b) Certification that the draft amendment meets the requirements of the LUPA Act; and
- (c) A report prepared in accordance with s.40K of the LUPA Act.

- 5.2 These documents together comprise the statutory basis for the amendment.
- 5.3 In addition to these documents, the Commission has received a copy of the original request for the amendment that includes a planning assessment by Mr Frazer Read and a traffic impact assessment from Mr Keith Midson.
- 5.4 It is a complicating feature in these proceedings that the 40K report supplied by the planning authority discloses a conclusion that, taken at face value, appears to be at odds with the reasoning provided within that supporting report as to the merits of the representations.
- 5.5 This can be resolved by reading the report as amended by the conclusion of the planning authority recorded as the reasons for its decision.
- 5.6 This report, and its predecessor from October 2025, are adopted by Mr Read and given force as statements of his opinion. His evidence however clarifies that he adopts the conclusion and the opinions expressed as opposed the reasoning or methodology by which it is reached.
- 5.7 Separate to this this, the opinions expressed within those reports cannot be given weight as the authors of those statements are not present for cross-examination and their opinions are ultimately unable to be tested.

6 Key objections to the amendment

- 6.1 The Representor raises two principal objections to the Draft Amendment:
 - (a) Firstly, the traffic related impacts associated with the proposed rezoning; and
 - (b) Secondly, the strategic rationale for the creation of additional local business zoning and consolidation of that zoning in the area of the affected properties.
- 6.2 In support of this representation, the Representor relies upon the evidence of Mr Hubble and Mr Walker who each provided a written statement and were present for examination before the Commission.
- 6.3 I address each of these key issues below.

7 Traffic

- 7.1 The Draft Amendment is supported by a Traffic Impact Assessment and a further Statement of Evidence prepared by Mr Keith Midson. This material is contrasted with that of Mr Hubble upon whom the Representor relies.
- 7.2 Mr Hubble described the difference between the approach adopted by Mr Midson and himself as Mr Midson having undertaken a compliance assessment whereas his assessment was one of operational risk.
- 7.3 The critical objection taken to Mr Mison's analysis is that it based almost entirely upon a theoretical design that was put forward by the Applicant as a reasonable worst-case development scenario.
- 7.4 However, as was apparent throughout the hearing, that theoretical design does not represent a worst-case development scenario because it:
 - (a) Fails to contemplate the possibility of drive-thru takeaway premises, attributed a no permit required status under the local business zone;

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- (b) Fails to contemplate the increased commercial use available where residential use is not proposed; and
 - (c) Fails to contemplate that the 4 existing lots are each capable of individual development with individual access requirements impacting the highway.
 - 7.5 The assessment provided fails to adequately consider the impact of new use and development that the rezoning proposed would signify as suitable for the Site on the surrounding traffic network.
 - 7.6 Mr Hubble highlighted the following key issues:
 - (a) The proposal is located in an area within the road network that experiences localised congestion and queuing.
 - (b) Traffic on the relevant portion of the highway is controlled by signalised intersections at Ronnie Street to the south and Gordon Hill Road to the north. This causes platooning of traffic with vehicles observed to arrive in clusters. This effect was observed for the existing IGA with 4 vehicles arriving in a row and seeking entry to the IGA.
 - (c) Modelling in support of the application does not consider this effect and assumes a uniform rate of arrival. Clustering of arrivals is likely to result in vehicle queuing on the highway.
 - (d) Traffic generation associated with the IGA was noted to be high, surprising Mr Hubble during his site observations.
 - (e) The rezoning is likely to generate a range of traffic movements, including turning on the highway and lane change manoeuvres close to the pedestrian signal.
 - (f) The highway is itself already operating on minimum design criteria.
 - (g) The existing highway accesses and pedestrian crossing creates an environment that demands a high driver workload.
 - (h) Ballawinnie Road was not observed to carry high volumes of traffic and queuing associated with the IGA appeared to relate to delays caused by vehicles parking.
 - (i) Traffic on Ballawinne Road waiting to enter the highway would block entry to the IGA.
 - (j) Desirable sight distances were not available, with the Traffic Impact Assessment demonstrating compliance for minimum distances.
 - 7.7 In our submission, the Site is not suited to Local Business zoning to provide for increased commercial use. The Site is not strategically located or positioned to facilitate such increased activity nor indeed the creation of a local activity centre. The location detrimentally impacts the existing highway which is a strategically important transport corridor.
 - 7.8 We refer in particular to the following Regional Policies within the STRLUS:
 - 12 *Physical Infrastructure*
 - PI 1 *Maximise the efficiency of existing physical infrastructure.*
 - PI 1.1 *Preference growth that utilises under-capacity of existing infrastructure through the regional settlement strategy and Urban Growth Boundary for metropolitan area of Greater Hobart*

PI 2 Plan, coordinate and deliver physical infrastructure and servicing in a timely manner to support the regional settlement pattern and specific growth management strategies.

PI 2.3 Identify, protect and manage existing and future infrastructure corridors and sites.

- 7.9 While located within an area served by existing infrastructure (including the road network), expansion of commercial zoning (local business) at the Site fails to preference growth so as to utilise under-capacity and protect the existing infrastructure corridor – namely the East Derwent Highway.
- 7.10 In accordance with the STRLUS, infrastructure programs should direct development so as to influence the preferred settlement pattern and urban form. This includes urban infill and activity centres.⁴
- 7.11 The impacts of the increased commercial use of the Site on the highway at this location demonstrate that the proposed rezoning is not consistent with this policy direction.

13 Land Use and Transport Integration

LUTI 1 Develop and maintain an integrated transport and land use planning system that supports economic growth, accessibility and modal choice in an efficient, safe and sustainable manner

LUTI 1.7 Protect major regional and urban transport corridors through the planning scheme as identified in Maps 3 & 4.

- 7.12 The East Derwent Highway is a major regional and urban transport corridor. The Draft Amendment does not demonstrate that expansion of commercial zoning (local business) is integrated with transport to support economic growth and accessibility in an efficient, safe and sustainable manner.
- 7.13 The impacts of the increased commercial use of the Site on the highway at this location demonstrate that the proposed rezoning is not consistent with this policy direction and instead compromises the operation and efficiency of the highway.

8 Strategic Rationale and the Activity Centre Hierarchy

- 8.1 There is a degree of confusion within the supporting rationale as to whether the Site adjoins an existing activity centre and proposes the expansion or consolidation of that centre, or whether the proposal creates a new activity centre.
- 8.2 In our submission, the existing IGA and proximate service station do not constitute an existing activity centre. Consistent with the evidence of Mr Walker, these were existing commercial uses and are best considered as legacy local service nodes. As described by Mr Walker:

... the East Derwent Highway road corridor exhibited a fragmented and intermittent pattern of Local Business zoned land clusters embedded within a broader residential landscape. ...

- 8.3 The STRLUS supports this assessment in its approach to defining the characteristics of different centres with a local activity centre intended to serve a locality, provide a focus for day-to-day life within an urban community and offer at least grocery/convenience store and a range of

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STRLUS, at 12.1, p.50.

small speciality shops. The scale of the existing offering is simply not sufficient to support this classification.

- 8.4 However, it appears almost undoubtable that the provision of 2,948m² of additional commercial zoning would support the establishment of additional uses necessary to support at least a local activity centre. The concept development plan provided by the Applicant evidences this, showing the Site to support at least 5 additional retail and food services spaces.
- 8.5 The principal criticism that is made of the Draft Amendment in this respect is the lack of any strategic analysis, planning or assessment to support the creation of a new activity centre generally or in this location specifically.
- 8.6 In particular, we highlight the following:
 - (a) The Draft Amendment is put forward on the basis of serving a catchment comprised of Rose Bay, Lindisfarne, Geilston Bay and Risdon Vale and further the “under-served” stretch of the East Derwent Highway from the Tasman Bridge/Rose Bay through to Rison Vale.
 - (b) This is a catchment that represents an area greater than a locality and more aptly described as a number of suburbs. The latter is the intended catchment of a Neighbourhood Activity Centre.
 - (c) Evidence of growth has been provided by the Applicant in person and, while perhaps unsophisticated, shows an increase in the residential population in the named suburbs. That same evidence, however, demonstrates the growth is concentrated to the areas of Geilston Bay and Risdon Vale. The Site is remote from these areas.
 - (d) The Applicant contends that commercial growth cannot be accommodated within the existing activity centre of Lindisfarne Village. However, no assessment has been made of opportunities to increase the efficient use of the existing commercial land. Opportunities to expand the footprint of the commercial zoned land are criticised as requiring conversion of residential land, in apparent disregard for the fact that that is exactly what is occurring in the case of the Draft Amendment. Claims that the existing centre is operating at capacity, are not supported for any probative evidence.
 - (e) The Clarence Activity Centre Strategy does not evidence any existing activity centre in the Lindisfarne area aside from Lindisfarne Village nor provide strategic support for the creation of a new centre. This Strategy is, however, recognised to be reaching the end of its operational lifespan.
 - (f) No evidence has been put forward to enable an assessment of how the creation of a new activity centre may impact upon the broader activity centre hierarchy, and in particular the role and operation of Lindisfarne Village within that hierarchy.
- 8.7 The Draft Amendment suffers from a lack of strategic planning as to support its approval.
- 8.8 In summary, it is not open to the Commission on the evidence before it to conclude that there is any need for a new local activity centre – this being the foundation upon which the Applicant advances the Draft Amendment. If, contrary to our submission, a new local activity centre were to be supported, there is no evidence to demonstrate that the Site represents a strategically planned Site for the creation of such a centre, particularly where the Applicant’s own evidence documents the growth in residential population to be remote from this locale.
- 8.9 We refer in particular to the following Regional Policies within the STRLUS:

18 *Activity Centres*

AC 1 *Focus employment, retail and commercial uses, community services and opportunities for social interaction in well-planned, vibrant and accessible regional activity centres that are provided with a high level of amenity and with good transport links with residential areas.*

AC 1.1 *Implement the Activity Centre Network through the delivery of retail, commercial, business, administration, social and community and passenger transport facilities.*

AC 1.2 *Utilise the Central Business, General Business, Local Business Zones as the main zones to deliver the activity centre network through the planning scheme, providing for a range of land uses in each zone appropriate to the role and function of that centre in the network.*

AC 1.3 *Discourage out-of-centre development by only providing for in-centre development within the planning scheme.*

AC 1.4 *Promote a greater emphasis on the role of activity centres, particularly neighbourhood and local activity centres, in revitalising and strengthening the local community.*

AC 2 *Reinforce the role and function of the Primary and Principal Activity Centres as providing for the key employment, shopping, entertainment, cultural and political needs for Southern Tasmania.*

AC 2.4 *Encourage structure and economic development planning for lower level Activity Centres by local planning authorities.*

AC 3 *Evolve Activity Centres focussing on people and their amenity and giving the highest priority to creation of pedestrian orientated environments.*

8.10 The Site and Draft Amendment does not form part of a well-planned Activity Centre Network, with the Draft Amendment best described as ad-hoc. The Draft Amendment is designed to meet the commercial intentions of the Applicant and not as part of a strategic and planned future.

8.11 Structure and management plans have not been prepared as is envisaged by the STRLUS, to strengthen the overall function and operation of the intended centre and to ensure that it is satisfactorily integrated with surrounding uses and the transport network.⁵

8.12 Impacts upon the existing activity centre that serves the suburbs identified as the catchment for the Draft Amendment have not been explored.

8.13 To this, it may be added that the location of the Site directly upon the highway is plainly intended to capture passing trade. This, however, carries with it the detrimental impact upon the future amenity of any activity centre that may be established in this area. The highway environment does not support a pedestrian-oriented and high amenity environment.

8.14 We adopt the evidence and detailed analysis provided by Mr Walker and endorse his assessment to the Commission.

9 RMPS Objectives

⁵ STRLUS, at 18.1 p.74

- 9.1 The draft amendment is required to be consistent with the STRLUS as far as practicable. It must also further the objectives of the RMPS.
- 9.2 We submit that the Draft Amendment fails to further the objectives as follows:

1.(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity

The sustainable development of physical resources is not furthered where the selected siting for the establishment of the new activity centre compromises the operation and efficiency of the highway.

1.(b) to provide for the fair, orderly and sustainable use and development of air, land and water

The Draft Amendment is not fair, orderly and sustainable development of land. It is an ad hoc proposal directed to find a commercial solution that suits the owner. This was his evidence.

2.(a) to require sound strategic planning and co-ordinated action by State and local government

The Draft Amendment is not supported by sound strategic planning co-ordinated by local government. There is no underlying strategy that supports the establishment of a new or extension of any local activity centre. There is not strategy or analysis which contemplates where in the surrounding area any such centre could be proposed in response to the growth claimed by the Applicant or consideration of whether such growth should be served by strengthening the existing Neighbourhood Activity Centre.

There is no combined assessment that interlinks that impacts of the proposed development with necessary highway improvements.

10 Conclusion

- 10.1 In summary, it is submitted that the Draft Amendment is inconsistent with the LPS Criteria and should be refused.
- 10.2 The approach of the Applicant appears to be one of seeking to defer assessment of the impacts associated with the proposed zoning to be addressed upon the presentation of an undisclosed application for future development. This approach cannot be supported.
- 10.3 We refer to the decision of McClennan CJ in *BGP Properties Pty Limited v Lake Macquarie City Council*:⁶

In the ordinary course, where by its zoning land has been identified as generally suitable for a particular purpose, weight must be given to that zoning in the resolution of a dispute as to the appropriate development of any site. ... planning decisions must generally reflect an assumption that, in some form, development which is consistent with the zoning will be permitted. The more specific the zoning and the more confined the range of permissible uses, the greater the weight which must be attributed to achieving the objects of the planning instrument which the zoning reflects (Nanhouse Properties Pty Ltd v Sydney City Council (1953) 9 LGR(NSW) 163; Jansen v Cumberland County Council (1952) 18 LGR(NSW) 167). Part 3 of the EP&A Act provides complex provisions involving extensive public participation directed towards determining the nature and intensity of development which may be appropriate on any site. If the

⁶ [2004] NSWLEC 399 at [117]

zoning is not given weight, the integrity of the planning process provided by the legislation would be seriously threatened.

- 10.4 The deferred assessment process promoted by the Applicant is not consistent with the planning framework promoted under the LUPA Act and the LPS Criteria.
- 10.5 The review undertaken of the Draft Amendment has raised significant issues with the proposed zoning that have not been resolved.
- 10.6 Whether contemplated for rezoning to Local Business or to be subject to a SAP or other specific provisions, the Site is simply not suited to provide and intensification of commercial use or serve the community that it is intended to serve.
- 10.7 We submit that the Commission should reject the draft amendment under s.40N of the LUPA Act.

DATED this 20th day of July 2026.

A black rectangular box redacting the signature of the practitioner.

Practitioner/s for the Representor