

Kangaroo Bay Hotel Major Project

CLOSING SUBMISSIONS ON BEHALF OF THE CITY OF CLARENCE

1. Summary

- 1.1. Following the hearing into the Kangaroo Bay Hotel Major Project ('**Project**'), the Development Assessment Panel ('**Panel**') must, pursuant to section 60ZZM(1) of the *Land Use Planning and Approvals Act 1993* ('**LUPA Act**') decide whether to grant or refuse a permit. Relevantly, the Panel can only grant a permit if satisfied the Project:
- (a) Is an effective and appropriate use or development of 78 Cambridge Road, Bellerive¹ – herein simply referred to as the '**Land**';²
 - (b) Satisfies the assessment criteria;³
 - (c) Would be consistent with furthering the objectives specified in schedule 1 of the LUPA Act;⁴
 - (d) Does not contravene a State Policy or the Tasmanian Planning Policies ('**TPPs**');⁵ and
 - (e) Would not be inconsistent with the *Southern Regional Land Use Strategy 2010-2035* dated 19 May 2025 ('**STRLUS**').
- 1.2. Consistent with the City of Clarence ('**Council**') representation dated 1 July 2026 ('**Representation**'), the Council's primary submission is that the Panel should refuse to grant a permit for the Project.
- 1.3. For reasons outlined below, the Panel cannot be positively satisfied that the statutory preconditions for the grant of a permit are met, principally because the Project fails to satisfy key assessment criteria and is inconsistent with the objectives in schedule 1 of the LUPA Act.
- 1.4. In relation to criterion 1.4, the public domain and active transport arrangements are deficient insofar as the proposed pathway does not provide a sufficiently clear, safe and legible public connection between the Village and Kangaroo Bay Drive, including by reason of its constrained width, cyclist safety issues and unresolved right of way matters.
- 1.5. In relation to criterion 2.1, the car parking and access arrangements are not shown to be convenient, safe or efficient, including because of the unresolved parking shortfall, reliance on unsupported demand reductions, layout deficiencies, loading and manoeuvring conflicts, and the limited availability of public parking.
- 1.6. In relation to the objectives of the LUPA Act, there remains material uncertainty as to whether the Project can lawfully and practically be implemented, including because of unresolved easement, access, title consolidation/subdivision and adjoining land issues that cannot safely be deferred to post-approval processes. Those deficiencies are not merely matters of detail - they

¹ Certificates of Title 173171/7, 173171/8 and 173171/11.

² LUPA Act s 60ZZM(3).

³ LUPA Act s 60ZZM(4)(a).

⁴ LUPA Act s 60ZZM(4)(b), see also s 5.

⁵ LUPA Act s 60ZZM(4)(c)-(d).

go to whether the proposal represents fair, orderly and sustainable planning, and whether it is an effective and appropriate use and development of the Land.

- 1.7. If, contrary to Council's primary submission, a permit is granted, any conditions must be framed to provide genuine certainty, be within power, and address the identified deficiencies before the Project is acted upon. Further submissions are provided about this below in part 4.

2. Framework for Assessment

- 2.1. In deciding whether to grant a permit for the Project, in accordance with section 60ZZM of the LUPA Act and in addition to the matters outlined above at [1.1], the Panel must also:⁶

- (a) Have regard to the matters specified in section 60ZM(6), namely:
 - (i) The *Tasmanian Planning Scheme – Clarence* ('**Scheme**') that applies to the Land;
 - (ii) Whether carrying out the Project is inconsistent with the Scheme, the merit of any changes to the Scheme required for the Project to be lawfully carried out; and
 - (iii) The STRLUS.
- (b) Consider the representations made in relation to the Project, including the Council's Representation; and
- (c) Consider any matters raised in hearings in relation to the Project; and
- (d) Consider all final advices from TasWater as the participating regulator.

3. Assessment of the Project

- 3.1. Clearly assessing section 60ZZM of the LUPA Act is not a box-ticking exercise. Rather, it requires the Panel to be positively satisfied of the relevant requirements before a permit may issue. Where the Panel cannot be so satisfied — whether because the evidence is absent, inconsistent or unresolved — refusal follows as a matter of law.
- 3.2. This part considers the Project broadly against the requirements of the LUPA Act that the Council seeks to make submissions on.

Section 60ZZM(3) – Effective and appropriate use and development of the Land

- 3.3. The Council does not oppose development on this prominent waterfront site and acknowledges that a well-designed hotel development could make a positive contribution to the City of Clarence.
- 3.4. However, Council submits that this Project, as presented, should be refused based on the information and evidence presented to the Panel. The Panel simply cannot be satisfied that the Project as put forward, is an effective and appropriate use and development of the Land.

Section 60ZZM(4)(a) – Satisfaction of the Assessment Criteria

- 3.5. Pursuant to section 60ZM of the LUPA Act, the Panel determined the assessment criteria for the Major Project on 25 February 2025. As required by section 60ZZA of the LUPA Act, the Panel then published the Initial Assessment Report ('**IAR**') on 19 May 2026.
- 3.6. These submissions focus on the assessment criterions 1.4(b) and 2.1.

⁶ LUPA Act s 60ZZM(2).

- 3.7. For the avoidance of doubt, the Council otherwise relies on the material it has already provided to the Panel, including its Representation (including the summary of the peer review of the Proposal reports provided as Attachment 1), particularly insofar as it concerns other assessment criterion such as Council identifies further technical deficiencies under criterion 3.1, 3.3, 4.3 and 4.4.

Criterion 1.4 – Public domain and passive surveillance

- 3.8. This criterion provides:

“The siting and design of the proposed development creates publicly accessible spaces and improves the passive surveillance of the project site and surrounding area, by:

- (a) providing a publicly accessible space through the western or central part of the project site;*
- (b) maintaining an actual and legible network of publicly accessible pathways (pedestrian and cycle) between the Village and Kangaroo Bay Drive; and*
- (c) avoiding the creation of concealment and entrapment spaces;*

to an acceptable level.” [emphasis removed]

- 3.9. Relevantly, the Panel may have regard to the extent to which the proposed development:

- (a) Responds to advice from the Council; and
- (b) “[C]learly defines the publicly accessible spaces and pedestrian accessway”.

- 3.10. The direction “to have regard to” elements does not raise them to the equivalent of standards, but that the Panel is directed to take them into account as a fundamental element of its decision-making.⁷

- 3.11. Building Tasmania’s representation of 7 July 2026 notes:

“The provision of a continuous active transport pathway through the site is critical to allowing continued public access to the foreshore and supporting connectivity to the Bellerive and Kangaroo Bay areas. It also aligns with existing strategic cycling plans (for example, the Greater Hobart Cycling Plan and Clarence Cycling Strategy).

We encourage the Commission to clarify the inclusion of an active transport pathway through the site, ensuring improved connectivity and adequate space and safety for all pedestrians and cyclists, and include this as a requirement in the final permit.”

- 3.12. To the extent Council’s Representation raises issues about the alignment of the existing right of carriageway “C” on Lot 8 and the proposed design and width more generally, it is submitted this can be considered as advice from the Council on this important matter.
- 3.13. Section 8 of Mr Petrusma’s evidence also provides a detailed analysis of the Clarence Foreshore Trail which relevantly provides a critical link between the Village and Kangaroo Bay Drive through the Land.⁸ Specifically in response to this (a) and (b) of this criterion, Mr Petrusma’s evidence provides:⁹

*“The **proposed width** of the shared user path is 3.0 metres. In my opinion, this **is deficient** and should be widened to provide a minimum width of 4.0 metres between vertical obstructions either side in order to provide an acceptable outcome for cyclists.*

⁷ See, eg, *Hobart City Council v Rich Tapestry Pty Ltd* (ACN 667 999 055) [2024] TASSC 54 [36] & *Acts Interpretation Act* 1931 s 10A(1)(b).

⁸ Mark Petrusma Statement of Evidence dated 28 July 2026 pp 42-47.

⁹ *Ibid* at [276]-[279].

*...it is my opinion that **access for cyclists** through the site (via Right of Way “E”) is **deficient and should be improved**.*

*In particular, this route would be attractive to cyclists due to a lack of obstruction from pedestrians and a direct path through the site between Kangaroo Bay Drive and the Marina. The **current design and layout of parking presents a significant safety hazard for cyclists** due to 90-degree angle parking accessed directly from the accessway and risk of conflict due to vehicles reversing.*

... this statement recommends that a substantial redesign of the proposed carpark is required to resolve major layout issues, and a key consideration in that design will be the provision of safe cycling access.” [emphasis added]

3.14. Mr Petrusma also refers to the latest *Tasmanian Cycling Infrastructure Design – Tasmanian Walk, Wheel, Ride Guidance*, published by the then Department of State Growth in February 2025¹⁰ and notes it provides a preferred width of 4 metres or more.¹¹

3.15. Mr Petrusma’s analysis of this part of the Project also concludes by recommending that:¹²

- (a) The proposed shared path to be a minimum of 4.0 metres in width between vertical obstructions either side;
- (b) Further path widening should be considered around the bend due to the proposed 15 metre radius; and
- (c) Improvements to the carpark design and layout to support safe cycling through the Land.

3.16. Contrary to the IAR, it is submitted the Panel should find that elements (a) and (b) of the assessment criterion have not been satisfied as publicly accessible space through the western or central part of the Land and maintaining a publicly accessible pathway between the Village and Kangaroo Bay Drive has not been provided to an acceptable level.

Criterion 2.1 – Car Parking and Access

3.17. This criterion provides:

“Car parking and access is:

- (a) provided to meet the needs of the proposed uses, including adequate access for goods and delivery collection;*
- (b) designed and constructed to be convenient, safe, and efficient, including associated areas for access, manoeuvring and circulation;*
- (c) designed and sited to not have a significant adverse impact on the streetscape; and*
- (d) designed to achieve public vehicular access and connectivity between the Marina and Kangaroo Bay Drive, within the project site.*

to an acceptable level.”

3.18. The Panel may have regard to several matters when assessing this criterion. Relevant to the Council’s Representation and submissions we draw the Panel’s attention to the following matters:

¹⁰ Noting a copy was provided to the Panel on 5 August 2026.

¹¹ Mark Petrusma Statement of Evidence dated 28 July 2026 at [198]-[199].

¹² Mark Petrusma Statement of Evidence dated 28 July 2026 at [216].

- (a) The provision, availability, and sustainability of off-street and on-street public car parking nearby the project site;
- (b) The anticipated volume of people and vehicles accessing the project site;
- (c) How the proposal provides public vehicular connectivity to the Marina;
- (d) The need for any rights of way or easements on the project site to facilitate the car parking, access, or connections to adjacent land, existing or proposed; and
- (e) Advice from Council as the road authority.

3.19. As above, the direction “*to have regard to*” elements does not raise them to the equivalent of standards, but that the Panel is directed to take them into account as a fundamental element of its decision-making.¹³

3.20. It is emphasised that the assessment criteria do not necessitate compliance with the parking space requirements as set out in Table C2.1 of the Scheme, or any of the acceptable solutions or performance criteria set out in the Parking and Sustainable Transport Code. Similarly, the question of whether particular uses are ancillary is not determinative. These are simply matters that the Panel may have regard to.

3.21. Rather, the criterion directs attention to whether the parking and access arrangements provided meet the needs of the proposed uses. The only credible evidence the Panel have on this point is provided in the assessment undertaken by Mr Petrusma. His evidence is founded on a first principles analysis, focusing on the number of people who will actually be using the site.

3.22. In comparison, the analysis provided by Ms Ram applies unjustified reductions in calculating the required parking provision. In particular, her evidence is predicated on the assumption that a significant mode-share shift will occur. As the Panel observed during the hearing, that assumption appears aspirational. There is a material risk that the anticipated mode-share shift will not occur, with the result that actual parking demand will exceed the levels assumed in Ms Ram’s assessment. In those circumstances, the already significant parking shortfall is likely to be further exacerbated.

3.23. Council’s Representation generally raises concern regarding uncertainty as to the actual number of parking spaces proposed, arising from inconsistencies between the application documents. It further challenges a number of the assumptions underpinning Chambroad’s TIA, particularly in relation to:

- (a) the use of 30 Kangaroo Bay Drive as overflow parking, noting this area will not be available for public use into the future;
- (b) the cumulative and compounding of non-independent assumptions resulting in a reduction of car parking allowance to 50%, noting there is a lack of evidence-based justification

3.24. Overall, as articulated in Council’s Representation:

“It is our position that the proposal has not provided sufficient parking on site and/or demonstrated that sufficient carparking is readily available nearby to accommodate the reasonable use of the site. In addition, the MPIS does not clearly demonstrate how the development’s transport demand relates to network capacity or supports the conclusions drawn.”

¹³ See, eg, *Hobart City Council v Rich Tapestry Pty Ltd* (ACN 667 999 055) [2024] TASSC 54 [36] & Acts Interpretation Act 1931 s 10A(1)(b).

3.25. Section 9 of Mr Petrusma 's evidence provides a detailed analysis of matter 2.1. While some of the matters specifically identified by the Panel have been addressed by Chambroad's Representation of 30 June 2026, Mr Petrusma states that:

- (a) there remain discrepancies between various plans and reports in relation to the proposed layout of the parking spaces;¹⁴ and
- (b) there remains no evidence to support the car parking reductions applied, the information provided with respect to the Food and Beverage uses remains deficient, and a discount of 20-25% is more appropriate in the circumstances.¹⁵

3.26. Mr Petrusma has approached his evidence on the basis that 91 car parking spaces are provided.¹⁶ The issues he identifies may be summarised as follows:

- (a) carpark redesign is required in order to resolve major layout issues;¹⁷
- (b) dimensions of the car park are deficient and do not comply with the relevant Australian Standards (eg. deficient car park width and length);¹⁸
- (c) as the publicly accessible portion of the carpark does not provide for on-site turning, the parallel parking spaces and loading zone cannot be accessed without reliance on neighbouring land over which the Site has no right of carriage way;¹⁹
- (d) the proposed loading bay access arrangement creates multiple points of conflict between pedestrians, vehicles, and cyclists which have not been adequately addressed;²⁰
- (e) the likely actual parking demand is between 178 and 241 parking spaces yet only 91 parking spaces are provided.²¹ Importantly, of those 91 spaces, only 30 will be available to the public, with the rest being locked behind a boom gate;²²
- (f) this issue is further exacerbated by shortcomings in the proposed parking layout. In particular, access between the two car parking areas appears to be insufficient for B99 vehicles given the requirement to house boom gate infrastructure within a central median.²³ As a consequence, there is a risk that spaces behind the boom gate will be unutilised as they are not accessible;
- (g) parking supply needs to be increased as there is insufficient capacity in the surrounding area to accommodate overflow demand on weekdays and Saturdays;²⁴
- (h) there has been a failure to consider that, at some point in the future, the parking demand currently accommodated at 30 Kangaroo Bay Drive will be displaced. While the parking supply provided by the site will ultimately be lost, the demand it currently serves will remain;²⁵
- (i) the Chambroad Representation does not adequately justify the parking demand assumptions applied to the Food and Beverage components of the project, nor

¹⁴ Mark Petrusma Statement of Evidence dated 28 July 2026 at [219].

¹⁵ Mark Petrusma Statement of Evidence dated 28 July 2026 at [220]-[227].

¹⁶ Mark Petrusma Statement of Evidence dated 28 July 2026 at [229].

¹⁷ Mark Petrusma Statement of Evidence dated 28 July 2026 at [119] and [229].

¹⁸ Mark Petrusma Statement of Evidence dated 28 July 2026 at [70]-[85] and [243].

¹⁹ Mark Petrusma Statement of Evidence dated 28 July 2026 at [86]-[98] and [243].

²⁰ Mark Petrusma Statement of Evidence dated 28 July 2026 at [243].

²¹ Mark Petrusma Statement of Evidence dated 28 July 2026 at [162]-[182] and [238]-[239].

²² Mark Petrusma Statement of Evidence dated 28 July 2026 at [160].

²³ Mark Petrusma Statement of Evidence dated 28 July 2026 at [243].

²⁴ Mark Petrusma Statement of Evidence dated 28 July 2026 at [229].

²⁵ Mark Petrusma Statement of Evidence dated 28 July 2026 at [124]-[161] and [230]-[234].

does it adequately justify the parking demand reduction assumptions applied in the TIA; and ²⁶

- (j) there remain issues with the alignment of the site plan and access to the Bellerive Yacht Club in relation to Right of Carriageway “E” on Lot 11, which would result in substantial interference with the Right of Carriage Way.²⁷

3.27. Collectively, these issues have a significant and compounding effect, such that the proposed car parking and access arrangement are inadequate to meet the needs of the proposed uses and cannot be regarded as convenient, safe, or efficient.

3.28. Specifically in response to (a), Mr Petrusma’s evidence provides:²⁸

“The MPIS has failed to demonstrate that there is sufficient car parking to meet the reasonable needs of the proposed use...”

There is effectively no spare capacity of public parking facilities within a reasonable walking distance of the Site.

Access to parallel on-site car parking spaces (and the parallel loading bay) is unacceptable because it relies on neighbouring land over which the Site has no right of carriageway.

The proposed access to the loading bay introduces several conflicts to the carpark and accessway which are not appropriately mitigated. The expected frequency of access, combined with these inherent risks in the carpark, warrant a more substantial impact mitigation plan in order to maintain a safe environment for all road users...

In my opinion, the Project does not provide sufficient car parking and access to meet the needs of the proposed uses.”

3.29. Mr Petrusma’s analysis in relation to matter (a) concludes by recommending that conditions be placed on the development including:²⁹

a. Preparation of a detailed Waste Management Plan and Loading Management Plan for endorsement by the relevant authority.

b. A cash contribution towards Council to be calculated based on the ultimate car parking deficiency, to assist Council to develop additional public parking facilities in the local area.

3.30. Specifically in response to (b), Mr Petrusma’s evidence provides:³⁰

“In my opinion, the carpark as designed is not convenient, safe or efficient. There are numerous deficiencies in the current layout with respect to the relevant Australian Standards....

This statement has recommended that the carpark be substantially redesigned in order to resolve major layout issues.”

3.31. Specifically in response to (c), Mr Petrusma’s evidence provides:³¹

“I have not addressed this limb of the test as streetscape and urban design are not within my specific area of expertise.”

²⁶ Mark Petrusma Statement of Evidence dated 28 July 2026 at [235], and [237].

²⁷ Mark Petrusma Statement of Evidence dated 28 July 2026 at [99]-[111] and [239]-[240].

²⁸ Mark Petrusma Statement of Evidence dated 28 July 2026 at [245]-[248].

²⁹ Mark Petrusma Statement of Evidence dated 28 July 2026 at [250].

³⁰ Mark Petrusma Statement of Evidence dated 28 July 2026 at [251]-[252].

³¹ Mark Petrusma Statement of Evidence dated 28 July 2026 at [253].

3.32. Specifically in response to (d), Mr Petrusma's evidence provides:³²

"While vehicular access is provided, in my opinion it is not provided to an acceptable level..."

The proposed design of the carpark presents several conflicts, obstructions and deficiencies with respect to access to the Marina...

The carpark also presents an unsafe environment for cycling through the site."

3.33. Overall, Mr Petrusma recommends that;³³

- (a) a redesign of the proposed car park is necessary;
- (b) Taswater access requirements need to be confirmed;
- (c) a detailed waste management plan should be prepared and endorsed by the relevant authority;
- (d) options to increase the on-site parking supply should be explored, including, if necessary, the provision of a multi-level car park; and
- (e) if the project is approved, a cash contribution to Council may be warranted, given the car parking deficiency and the need to assist Council in developing additional public parking facilities.

3.34. While Mr Petrusma states a car park redesign is possible and may provide a satisfactory carpark design outcome, he cautions that any such redesign is likely to affect and potentially reduce, the total number or parking spaces that can be provided.³⁴ Given the existing shortfall in parking provision, any further reduction would only exacerbate the deficiency identified in the proposal.

3.35. Ms Ram properly accepted at the hearing that the swept path analysis prepared by Mr Petrusma for B99 vehicles³⁵ demonstrates that there is insufficient space for those vehicles to turn into and access the private parking spaces. Further, the proposed median was of insufficient width to accommodate the boom gate infrastructure. These examples are illustrative of the overall design deficiencies of the parking and associated access layouts advanced by Chambroad.

3.36. In circumstances where the proposal already exhibits a significant parking deficit, the critical question becomes whether the redesign measures necessary to achieve a safe and workable car park will result in an even greater parking shortfall, such that the deficit can no longer be regarded as reasonable. There remains significant uncertainty in this regard, given the incremental but cumulative changes that are likely to be required.

3.37. While the various revised parking layouts provided by Chambroad as part of the hearing go some way to addressing some of the critical deficiencies identified by Mr Petrusma, as he explained during the hearing on 7 August 2026, they do not resolve all of his concerns. We will seek to address the latest Plans provided on 16 August 2026 at the upcoming hearing.

3.38. Accordingly, contrary to the IAR it is submitted that the Panel should find that elements (a), (b), and (d) of the assessment criterion 2.1 have not been satisfied as car parking and access have not been provided to an acceptable level.

Section 60ZZM(4)(b) - It is not consistent with furthering the objectives in schedule 1 of the LUPA Act

³² Mark Petrusma Statement of Evidence dated 28 July 2026 at [254]-[256].

³³ Mark Petrusma Statement of Evidence dated 28 July 2026 at [119]-[121] and [191]-[192].

³⁴ Mark Petrusma Statement of Evidence dated 28 July 2026 at [122].

³⁵ As provided on 4 August 2026.

3.39. As noted in Council's Representation, ownership of the Land remains the subject of ongoing Supreme Court proceedings. We understand the matter is likely to be heard in early 2027. If the Council succeeds with the proceedings, it will resume ownership of the Land. That would render this whole process nugatory. We understand the Panel holds a different view, but the Council submits continuing assessment at this stage is both premature and an inefficient use of resources. This is contrary to key objectives in the LUPA Act, namely to:

- (a) Provide for the fair, orderly and sustainable use and development of air, land and water;³⁶ and
- (b) Require sound strategic planning and co-ordinated action by State and local government.³⁷

3.40. Unresolved issues also remain concerning the location and alignment of existing easements affecting the Land. While the Panel generally has the power to require certain easements to be created on the Land, it cannot modify the existing easements on the Land, nor require the creation of new corresponding easements on 64A and 64 Cambridge Road.

3.41. We refer the Panel to the memo prepared by Mr Marr on behalf of the Council in relation to the current lease and licencing arrangements for 64A Cambridge Road provided on 6 August 2026, as well as the Council's representation that noted:

"The site plan does not align the access to the Bellerive Yacht Club with the Right of Carriageway "E" on Lot 11 and appears to shift it to the west and locates carparking, loading areas and overhead supporting structures within this area which will fundamentally interfere with Right of Carriageway. The proposed boardwalk (and public access) does not align with the Right of Carriageway "C" on Lot 8. In addition, the cut for the lower carpark and the location of the Plant Room adjacent to Cambridge Road appear to ignore the drainage easement "D" on Lot 7.

...

We note that, despite consultation with the adjacent landowner – the Bellerive Yacht Club - no consultation has occurred with council over the proposed use of this area and the assumption of its inclusion as proposed is inappropriate. In addition, the development, through enclosure of this space and signage effectively seeks to privatise a public space. The reliance on this right of carriageway to enable the Bellerive Yacht Club to remove their Cambridge Road access has been recognised in the consent agreement for Bellerive Yacht Club Inc. v Clarence City Council [2024] TASCAT 75 as well as the prior planning permit D-2018/469."

3.42. Despite the TIA stating "[c]oordination with Bellerive Yacht Club will need to take place to ensure the car park layouts can function with respect to each other³⁸", Ms Ramm confirmed at the hearings she was unaware of the approvals for that land and associated approved layouts. The apparent lack of enquiries in this regard is astonishing, particularly given a co-ordinated approach in relation to these matters is crucial as the Land is intended to provide the only access to 64A and 64 Cambridge Road.

3.43. It is submitted there is a real dearth of clear information provided by Chambroad on this critical matter.

3.44. The existing corresponding rights of access/carriageway are particularly important in this regard and should not readily be ignored. Indeed, as noted by Justice Porter in *Pearson v Richardson*:³⁹

"... It is well-established that the Court should approach an application for extinguishment of an easement on the footing that it is a serious inroad upon the proprietary right which is vested in the owner of the dominant tenement.

³⁶ LUPA Act sch 1 pt 1 cl1(b).

³⁷ LUPA Act sch 1 pt 2(a).

³⁸ At pg 53 pt 4.3.

³⁹ [2012] TASSC 71 at [47]-[48] &[78], citations omitted.

In Re Henderson's Conveyance [1940] Ch 835 at 846, Farwell J said in a much quoted passage:

"... I do not view [the provision] as designed to enable a person to expropriate the private rights of another purely for his own profit. I am not suggesting that there may not be cases where it would be right to remove or modify a restriction against the will of the person who has the benefit of that restriction, either with or without compensation, in a case where it seems necessary to do so because it prevents in some way the proper development of the neighbouring property, or for some such reason of that kind; but in my judgment this section of the LUPA Act was not designed, at any rate prima facie, to enable one owner to get a benefit by being freed from the restrictions imposed upon his property in favour of a neighbouring owner, merely because, in the view of the person who desires the restriction to go, it would make his property more enjoyable or more convenient for his own private purposes. I do not think the section was designed with a view to benefiting one private individual at the expense of another private individual."

.... The extinguishment of the interest is the deprivation of the proprietary right. "Great caution is required in acceding to an application."

- 3.45. Although Justice Porter in that case was considering an application to extinguish a restrictive covenant, it is submitted the reasoning remains apposite. While largely matters for another place, the Council reserves its rights in respect of its existing interests under the various rights of access/carriageways over the Land and adjacent property. In this regard, the Panel's decision can in no way bind or guide how the Council may pursue those rights.
- 3.46. Accordingly, to further the abovementioned objectives of the LUPA Act, it is submitted these important matters ought to be addressed now. Given the Panel's limitations in this regard, including that it cannot provide any certainty of corresponding easements being created on 64A or 64 Cambridge Road, it is submitted this factor also weighs heavily in favour of refusing to grant a permit for the Project.
- 3.47. A further issue raised in Council's Representation is that the declaration of the Project did not identify the subdivision or consolidation of the Land as part of it. In this regard it is important that section 60Q(1)(d)(ii) of the LUPA Act requires a declaration to specify the proposed uses and development associated with the project. While the description of the project could potentially be amended if a Major Project Permit is granted, this does not cure the present deficiency in the Project.
- 3.48. This issue requires careful consideration because:
 - (a) Under the *Local Government (Building and Miscellaneous Provisions) Act 1993* ('**LGBMP**') the sealing of a final plan is predicated on approval of a plan of subdivision by Council, not a major project permit by the Panel; and
 - (b) Section 60S(1) of the LUPA Act, the Council in its capacity as the Planning Authority, is unable to approve applications for the Land, including for consolidation or subdivision if subject to a Major Project Permit.

Conclusion

- 3.49. In conclusion, for all of the above reasons, it is submitted that the Panel should refuse to grant the Project a permit as:
 - (a) The assessment criterion 1.4 and 2.1 have not been satisfied; and
 - (b) The Project is not consistent with furthering the objectives specified in schedule 1 of the LUPA Act.

4. Permit Conditions

- 4.1. Council's primary position is that the Panel should refuse to grant a permit for the reasons as set out above. However, if the Panel is against us, the Council makes the following submissions in respect of the latest draft set of draft conditions provided by Chambroad on 16 August 2026 ('**Draft Conditions**').

Conditioning Powers Generally

- 4.2. Section 60ZZP(2) of the LUPA Act relevantly provides "*the Panel may, subject to subsection (5), impose under subsection (1) any conditions or restrictions that, in the opinion of the Panel, are necessary or desirable for the effective and appropriate use or development of land.*" The Panel must also consider the matters set out in section 60ZZP(3) when deciding whether to impose any conditions or restrictions.
- 4.3. Given the Panel's obligations to seek to further the objectives of the LUPA Act,⁴⁰ they are also relevant when determining whether to impose conditions or restrictions.⁴¹
- 4.4. As set out in often cited decision of the High Court of Australia in *Western Australian Planning Commission v Temwood Holdings Pty Ltd*⁴² ('**Temwood**') a permit condition is valid and within power to be made if it is one that:
- (a) is for a planning purpose and not for any ulterior purpose. A planning purpose is one that implements a planning policy whose scope is ascertained by reference to the legislation that confers planning functions on the authority, not by reference to some preconceived general notion of what constitutes planning;
 - (b) reasonably and fairly relates to the development permitted; and
 - (c) is not so unreasonable that no reasonable authority could have imposed it.
- 4.5. In the Tribunal decision of *Julfran Pty Ltd v Sorell Council*⁴³ the argument that there was an additional test other than Temwood, namely the need created by the development and measures to satisfy the need, must be adequately identified and that there needed to be a reasonable nexus between the development and the need satisfaction measures was rejected.⁴⁴ Rather it was held that those considerations are already captured by the second and third limbs of Temwood.
- 4.6. Whether or not there is a connection between the planning purpose and the proposed use and/or development is a question of fact in the circumstances.⁴⁵ It is submitted these principles are equally applicable to the Panel's conditioning powers.

Draft Conditions 5 and 8 – Design Plans

- 4.7. These conditions both generally refer to documents that do not form part of the Project application. The Council's position is that any document referred in any permit should be endorsed and made available to the public.
- 4.8. The second dot point in draft condition 5 should refer to "*Alignment to other plans **and conditions** as required by this permit.*"

Draft Condition 6 – Engineering Plans

- 4.9. This condition is drafted such that it needs to be provided to the satisfaction of the Commission. The Council's position is that this ought to be to the satisfaction of the Council in its capacity as

⁴⁰ Ss 5 & 60ZZM(4)(b).

⁴¹ See, eg, *Northern Midlands Council v Smith* [2021] TASSC 8 at [10]-[11].

⁴² (2004) 221 CLR 30 at [57].

⁴³ [2024] TASCAT 177.

⁴⁴ At [60]-62].

⁴⁵ See, eg, *Reid v Western Australian Planning Commission* [2016] WASCA 181 at [27] & [42].

the Planning Authority given it has the appropriate engineering expertise to assess this type of documentation. Such a condition being to the satisfaction of the Planning Authority is expressly permitted by section 60ZMM(10) of the LUPA Act.

- 4.10. To the extent that the last dot point refers to “*Details of the proposed structure(s) required ...*”, the Panel should consider section 9(3) of the *Building Act* 2016 which provides:

“A condition that relates to the technical requirements of the design or construction of a building, building work or plumbing work may not be imposed on a permit issued under the Land Use Planning and Approvals Act 1993 without the approval of the Minister unless that Act expressly provides to the contrary.”

- 4.11. To that end, we note section 60ZMM(10) expressly contemplates that conditions can specify that plans and the other like, can be provided to the planning authority

Draft Condition 7 - Car Parking Layout and Access Plan

- 4.12. For the same reasons set out above in relation to condition 6, the Council submits this condition should be to the satisfaction of the Planning Authority, rather than the Commission. To that end, the Council agrees with the inclusion of the note proposed by Chambroad.
- 4.13. It is submitted that condition 7.1 should also refer to ‘Kangaroo Bay Hotel – MPIS - Car Park General Arrangement – Option **B**: Drawing No. S-P.23.0373-00-CIV-SKT-5003’, rather than ‘option a’.

Draft Condition 12 – Stormwater Management Plan

- 4.14. For the same reasons set out above in relation to conditions 6 and 7, the Council submits this condition should be to the satisfaction of the Planning Authority, rather than the Commission.

Draft Condition 19 – Pedestrian / Cycling Pathway Availability

- 4.15. The Council submits an access right is necessary to enable public use of this part of the pathway. To that end, the Council submits the alternate condition proposed by Chambroad ought be imposed, together with an ongoing maintenance requirement such as “*The boardwalk needs to be maintained in good condition suitable for the intended use at all times.*”

Draft Condition 20 – Right of Access

- 4.16. This condition is drafted to simply provide a right to the Crown owned land, being CT 173171/9. However, this is insufficient and does not provide the necessary certainty that the public would have a right to use this part of the land to pass and re-pass.
- 4.17. Accordingly, the condition should require an easement to facilitate public access over that land, similar to condition 19 and the existing rights of access. Importantly, this will also ensure that users of the Bellerive Yacht Club land also have the benefit of that right.
- 4.18. Consistent with [4.13] above, it is submitted this condition should also refer to ‘option b’, rather than ‘option a’.

Draft Condition 22 – Cash in Lieu Contribution for Parking

- 4.19. As previously discussed at the hearing, the Council maintains that a condition of this nature is necessary and appropriate here in the event a permit is granted.
- 4.20. The Council submits the actual parking shortfall cannot be readily confirmed until the updated plans required by draft condition 7 are provided to the satisfaction of the Planning Authority.

- 4.21. Chambroad has suggested that the parking shortfall should be limited to be in the order of 20 spaces.⁴⁶ For the reasons generally advanced above in relation to criterion 2.1, it is submitted that does not reflect the actual shortfall. Rather, based on the latest carparking design 'option a' advanced by Chambroad that provides 89 parking spaces, it is submitted the actual shortfall is between 89-152 spaces.
- 4.22. It is agreed that Council's Clarence Car Parking Plan⁴⁷, referred to by the Scheme in clause C2.5.1 A1(a) does not provide an independent source of power to impose the condition. That is grounded in section 60ZZP of the LUPA Act. However, as discussed at the hearing and seemingly agreed by Chambroad, it can provide a methodology for the calculation of any contribution, noting that the \$10,000 per space aligns with the policy.
- 4.23. For the following reasons, the Council strongly opposes the inclusion of the proposed note seeking to require funds paid to be applied to facilitate the development of additional offsite car parking within 400m of the site. Any such restriction is invalid and contrary to law.
- 4.24. Chambroad's outline of submission contends that the decision of *DOMA Pty Ltd v The City of Hobart*⁴⁸ ('DOMA') "*is not a case of general application*" but that it "*stands for the proposition that it is necessary to identify the area to be benefited by the contribution sought such that the necessary nexus between the contribution and expenditure can be drawn*".⁴⁹ The Council does not agree.
- 4.25. The background of that case is as follows. DOMA had been granted an approval by the City of Hobart to change an existing use of a building to an office use and extend a building on the adjoining lot on the periphery of the central business area. Relevantly, a condition imposed by the Council provided:
- "The payment by the developer of \$6,000 calculated at \$750 per vehicle space in lieu of providing 8 car parking spaces required under the Draft Planning Scheme provisions."*
- 4.26. DOMA paid the \$6,000 to the Council as required by the condition "*under protest*" and then sought repayment of that money on the ground the condition was invalid. The Council justified the imposition of the condition as an exercise of its town planning powers. Notably the money received was not held in a separate bank account and there was no formal mechanisms or special machinery for how such monies would be expended.
- 4.27. At first instance,⁵⁰ Justice Everett had to determine, inter alia, whether those conditions were validly imposed pursuant to what was then section 734 of *Local Government Act 1962*, which effectively provided the Council with the power to refuse or grant conditionally its consent to development and in doing so take into account, inter alia, draft planning schemes it had prepared.
- 4.28. Justice Everett ultimately found condition 1 "*was within the power conferred by s. 734(4)*"⁵¹ and went on to state:⁵²

"The provision of parking space for motor vehicles in an inner city area cannot be regarded as unnecessary or unreasonable as an element in a planning scheme. If a developer cannot provide such a space on land which it owns, then it is common and logical for an impost to be made in order to generate funds to assist the local authority to provide such space for public use, provided, of course, there is legal power to do so."

⁴⁶ Outline of Submission on behalf of Chambroad dated 24 August 2026 at [6.21].

⁴⁷ Available via: <https://assets.ccc.tas.gov.au/uploads/2023/07/CLARENCE-CAR-PARKING-PLAN.pdf>

⁴⁸ [1983] Tas R 132.

⁴⁹ At [14.19].

⁵⁰ *Doma Pty Ltd v Hobart City of Hobart* (1981) 50 LGRA 286.

⁵¹ Ibid at 298.

⁵² Ibid at 299.

... s. 734 of the Act is a special source of power. It is deliberately designed to protect a planning scheme in its transitional stages; in this case the scheme provided expressly for "payment in lieu of parking spaces" in these perms (par. 4.13):

The corporation, as it shall in any particular case determine, may either reduce the number of such parking spaces or accept payment in lieu of the provision of any or all of the parking spaces required by the development under the provisions of the scheme. The amount payable shall be determined by the corporation and stated on the 'permit' as a condition of approval of the 'development' and shall be paid before the 'permit' is issued by the corporation."

4.29. That decision was then appealed to the Full Court of the Supreme Court of Tasmania in DOMA, in which a majority of Chief Justice Green and Justice Cosgrove held the condition was valid. Justice Nettlefold dissented.

4.30. Relevantly, Chief Justice Green stated:

"I do not accept the appellant's submission that any condition imposed by the respondent under s 734 which required the payment of money would necessarily be ultra vires. There is nothing in the Local Government Act 1962 nor in the general statements of principle made in the cases cited above which lead to such a conclusion..."

...the same principles are applicable to the determination of the validity of conditions involving the payment of money as are applicable to the determination of the validity of any other conditions.

... Although it appears that the moneys paid by the appellant were not impressed with a trust, it may be the case that an attempt by the respondent to use the money in the Reserve Account for a purpose other than the provision of car parking space would be ultra vires or in breach of its duty as a public authority. But the actual use to which the money paid by the appellant was put cannot retroactively affect the validity of the condition under which it was paid. The validity of the condition is to be resolved by an examination of the purpose for which the condition was imposed ...

*As I understand his reasons for judgment, the learned trial judge was satisfied that the respondent's purpose in imposing the condition with which we are concerned was "in order to generate funds to assist the (respondent) to provide (parking) space for public use" in the city area and that the respondent took the view that in the absence of such a condition the appellant's proposed development would contravene the Draft Planning Scheme. I am not persuaded that there is any justification for disturbing those findings. **I am not persuaded that the appellant has demonstrated that the conditions imposed by the respondents were not reasonably capable of being regarded as related to the purpose for which the respondent was exercising its function, namely to assist in the provision of public parking with a view to compensating for the effect of the appellant's failure to provide the minimum number of vehicle parking spaces required by the Draft Planning Scheme.** Nor am I persuaded that the condition imposed was of a class which was not in the contemplation of Parliament when it enacted s 734, or that the decision which led to the imposition of the condition was not made bona fide, or was otherwise unreasonable. In my view, the imposition of the condition was not ultra vires the respondent." [emphasis added]*

4.31. Justice Cosgrove similarly stated:

"Did this condition fairly and reasonably relate to the permitted development? Was it so unreasonable as to be beyond the contemplation of a reasonable Parliament?"

These questions cannot be answered without some general consideration of the problems which city councils face in controlling development. It is obvious that a city

cannot live without car parking. It is equally obvious that, as a general rule, development increases the demand for car parking space. If that increased space is not provided, the commercial and professional attractiveness of the city will suffer and its capacity to serve the public, which it needs as well as serves, will dwindle. But not every development is reasonably capable of providing space equivalent to that which it generates.

The Council, as the governing body of the city, must provide general public car space to serve the city as a whole, thereby doing what it can to make up the individual deficiencies of supply in each city building. Some of these deficiencies will be created by the use of old buildings continuing to generate increases in demand. Some deficiencies will arise in new developments like this one. The provision of the general public spaces will cost money. There is no easy, and certainly no uniquely right, way of apportioning the cost.

The Council sought to recoup some of the cost from developers in some sort of relation to the need which they created. The method which it employed was obviously not perfect nor was it equitable in any more than a rough, almost token sense. The contributions of developers are added to the profit from parking meters to provide, at a loss, general off-street public parking. But the whole operation was accounted for as one, and the public made aware of it. With all its defects, it seems, generally speaking, to be a not unreasonable method of dealing with the problem.

... I return to the appellant's contentions and summarise my conclusions:

1. The Council has power to impose as a condition of development the payment to it of a sum of money, provided that it does so bona fide and for purposes reasonably seen to be contemplated by the statute.
2. The Council did act bona fide.
3. **The condition imposed was for a purpose, namely to assist in the provision in the general area of the appellant's business of public off-street parking, which, in general terms, related to the proposed development.**
4. The condition is not so unreasonable as to be outside the contemplation of the enacting Parliament.
5. **The almost total lack of precision in defining the area to be benefited by the money paid is regrettable, but it is not a fault which invalidates the Council's decision.** Because of it, the purpose of the condition presents a somewhat blurred picture, but one which is nevertheless identifiable. It seems to me that: the Council, seeing (a) an existing need for public off-street parking, and (b) the inhibiting effect of requiring each new development to be self-fulfilling in terms of parking, determined upon a compromise whereby developers would be permitted some shortfall in the provision of parking if they made a special contribution to the cost of public parking in the general area of the development. The purpose may perhaps be formally stated as that of offering developers a compromise which would enable them to proceed with a development which left a shortfall in the provision of parking space on their land if they were prepared to make a special contribution to the provision of public space in that general area.
6. The accounting provisions, although also imprecise, are not such as to invalidate the Council's decision.

It follows that, in my opinion, Everett J's decision was correct and the appeal should be dismissed." [emphasis added]

- 4.32. It is submitted the reasoning of firstly Justice Everett, and then Chief Justice Green and Justice Cosgrove is equally apposite here. Just as in those cases, there is no requirement for a condition of this nature to specify that the funds paid be applied within 400m of the Land for it to be valid. In this regard, the note is seeking to impose an additional nexus test that was expressly rejected in *Julfran Pty Ltd v Sorell Council* referred to above in [4.5].

- 4.33. In *Gunns Limited v Kingborough Council and Stuart Young*⁵³ Justice Evans cited both DOMA decisions and observed:

“Generally in the context of legislation and planning schemes governing development, it is recognised that a condition requiring the payment of money is not, for that reason alone, ultra vires; Doma v City of Hobart [1983] Tas R 132 (Full Court) and Doma v City of Hobart A35/1981 (Everett J). For quite understandable reasons, a levy of money as a condition of the exercise of a statutory discretion is regarded with suspicion and may be closely scrutinised to ensure that it is a lawful exercise of a conferred power, not a tax; Jumal Developments Pty Ltd v Parramatta City Council (1969) 17 LGRA 111 at 113. Obviously enough, this concern really only arises when the beneficiary of the levy of money is the entity that imposes the condition; that is not the case in relation to the condition under consideration.”

- 4.34. Here, if draft condition 22 is imposed, it would not give rise to this concern as it would be the Panel imposing the condition, not the Planning Authority.
- 4.35. Mr Marr also explained at the hearing how monies collected in accordance with the Car Parking Plan are effectively held on trust for future car parking development in the area. While at this stage no specific budgetary allocations have been made, Council’s City Heart Plan dated September 2025⁵⁴ identifies opportunities for carparking improvements which would also look at increasing public spaces in both the Bellerive and Rosny areas. The Panel also has copies of the permits associated with 64A Cambridge Road provided as part of the memo on 6 August 2026. There is an intention of public carparking on that land, although negotiations with the Crown as to the final design are ongoing.
- 4.36. Accordingly, it is submitted the Panel can be satisfied that draft condition 22, without the note, is valid and satisfies the Temwood test as:
- (a) it would be imposed for a planning purpose – being to assist in the provision of public parking with a view to compensating for the effect of Chambroad’s failure to provide the number of parking spaces needed to meet the needs of the proposed uses. That purpose is readily ascertainable from assessment criterion 2.1 and the LUPA Act more broadly;
 - (b) it reasonably and fairly relates to the use and development that could be permitted as part of the Project. In the circumstances, there is no need to provide a nexus between the contribution and its expenditure for it to satisfy this limb. The contribution would reasonably and fairly relate to the shortfall in parking spaces that are otherwise required for the use and development to meet the reasonable needs of the proposed uses; and
 - (c) the condition is not so unreasonable that no reasonably authority could have permitted it. The amount calculated for each parking space here reasonably aligns with the Council’s Car Parking Plan, which provides a fair basis upon which costs for future development are apportioned.
- 4.37. Contrary to what is provided by the note, the Panel cannot bind how and where the Council may lawfully resolve in the future to expend the monies held on trust for parking. To impose the note would make an otherwise lawful condition invalid.

5. Conclusion

- 5.1. In conclusion, for all of the above reasons the Panel should refuse to grant a permit for the Project because:
- (a) The assessment criteria 1.4 and 2.1 have not been satisfied; and

⁵³ [2003] TASSC 44 at [6].

⁵⁴ Available via: <https://resources.ccc.tas.gov.au/public/f6d5d576df38>

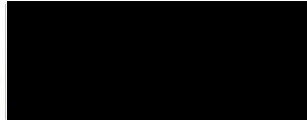
(b) It is not consistent with furthering the objectives in schedule 1 of the LUPA Act.

5.2. In the alternative, any permit that issues for the Project should align with the submissions provided above in part 4.

Dated: 26 August 2026

SIMMONS WOLFHAGEN

Per:

A large black rectangular redaction box covering the signature of the first person.

&

A large black rectangular redaction box covering the signature of the second person.

for the City of Clarence