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Our Ref: DJM:RJH:203218

18 December 2020

Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

By email: tpc@planning.tas.gov.au

Attention: Mr John Ramsay - Delegate (Chair)

Dear Mr Ramsay,

Clarence Local Provisions Schedule (LPS) – Jurisdictional issues arising from the draft Spotted Handfish Conservation Specific Area Plan (SAP)

I refer to your letter dated 25 November 2020 as reissued 8 December 2020 to Mr Peter McGlone and his response on behalf of the Tasmanian Conservation Trust dated 9 December 2020 (“**TCT Submission**”).

The Clarence City Council as the Planning Authority (“**Council**”) agrees with the position of the Commission that it is without jurisdiction to consider the SAP for the reasons outlined in the abovementioned letter to Mr McGlone.

I have carefully reviewed the submission of Mr McGlone. With respect, whilst comprehensive the submission completely misses the point of the submission made on behalf of the Council at the hearing, which is consistent with the position of the Commission. On any proper construction of the relevant provisions in the Act, the municipal boundaries within which zones, overlays, PPZ's and SAP's may exist is confined to above the low water mark.

In simple terms, the SAP to protect the habitat of the spotted hand fish cannot, be inserted into the local provision schedule, because the effect of such insertion would be to impermissibly and unlawfully extend the boundary of the operation of the Scheme beyond the limit of the municipal boundary specifically identified by the provisions of the Act.

Furthermore, as advocated at the hearing, Council accepts that section 7 of the *Land Use Planning and Approvals Act 1993* (“**LUPAA**”) contemplates that in certain circumstances a planning scheme and the Tasmanian Planning Scheme (“**TPS**”) “may apply” to areas beyond the low-water mark. This includes waters

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adjacent to the Council's municipal area as depicted in the central plan register CPR 2976.

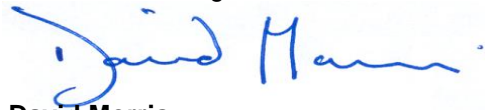
Although it is hard to determine based on the "primary" areas depicted in Figure CLR-S23.9 of the draft SAP, excluding MAST moorings, Council is not aware of any existing accretions from the sea, or any other relevant structures for the purpose of section 7 of LUPAA. It follows that there is no jurisdiction in these circumstances to apply the draft SAP.

Council remains of the position that (excluding existing accretions or structures) the LPS and the TPS cannot contain any zones, overlays or specific area plans that apply below the low-water mark.

Council eschews the further submissions of Mr McGlone at [48]-[49] where it is suggested that Council overlooked the word "relates" in section 7(d) of LUPAA.

For the sake of brevity, in addition to the above the Council also relies on its submissions made at the hearing in relation to the general lack of merit for recommending adoption of the draft SAP into the LPS.

Yours faithfully
Simmons Wolfhagen



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