

Contact: David Morris
Our Ref: DJM:KLC:203218

21 April 2021

Mr John Ramsay - Delegate (Chair)
Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

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

Dear Mr Ramsay,

Clarence Draft Local Provisions Schedule

Safeguarding of Airports Code Mapping

I refer to your letter to the General Manager of the Clarence City Council dated 16 April 2021 providing notification that the hearing into the Clarence Draft Local Provisions Schedule ("LPS") is to be reconvened to consider the following matters:

- (a) The Planning Authority's request to reconvene to consider the Commonwealth Government's advice about the Hobart Airport – Airport Obstacle Limitation Area Overlay (representation 6);
- (b) Airlines of Tasmania's request via Gray Planning for protection of flight paths at Cambridge Airport; and
- (c) Proposed drafting changes to the Clarence Heights Specific Area Plan (representation 80).

The purpose of this letter is to draw your attention to the email dated 7 April 2021 which Mr Ford of the Council provided to the Commission attaching a copy of a letter from the Acting Director of the Australian Government Department of Infrastructure, Transport, Regional Development and Communications advising that an application to endorse a blanket approval for intrusion into prescribed airspace was rejected. I **attach** that letter for your ease of reference (Attachment "A").

The Council receipt of this letter follows in chronological sequence from the matters listed in the chronology set out in my letter of application to the Delegates dated 29 March 2021.

The federal department rejection based on a construction of the ambit of federal legislation has profound consequences for the process that has been embarked

Hobart Office

Address Level 4, 99 Bathurst Street
Hobart TAS 7000
GPO Box 146
Hobart TAS 7001

Phone +61 3 6226 1200
DX 114 Hobart

Launceston Office

Address 45 Cameron Street
Launceston TAS 7250
PO Box 379
Launceston Tas, 7250

Phone +61 3 6338 2390

ABN 31 635 248 976
Email info@simwolf.com.au
Web www.simwolf.com.au

Lawyers specialising in

- › Business Acquisitions, Partnerships, Company & Commercial Law
- › Conveyancing, Property Development, Easements & Subdivisions
- › Family & De Facto Relationship Law
- › Wills, Estate Planning & Administration of Estates
- › Commercial Litigation, General Litigation & Dispute Resolution
- › Local Government, Environment & Planning Law
- › Employment & Workplace Relations Law
- › Bankruptcy, Insolvency & Securities Enforcement
- › Insurance Law, Personal Injury Law
- › Building, Construction & Engineering Law

upon during the LPS hearing process and detailed in my letter to the Delegates dated 29 March 2021. In short, the effect of the letter is to quash the substantial effort made by both Council and Hobart Airport to resolve the matter through the generation of well-rationalised obstacle limitation mapping. Council's submission to the Delegates is that it is unable to manage an outcome beyond this point given the intransigent position of the federal department and that, cognisant of the parameters dictating the development of the Safeguarding of Airports Code (SPP text and associated LPS mapping), the Scheme will become an unworkable, red-tape infected, impractical instrument. Not to mention an outcome that development permission in many parts of the municipality will be at the whim of a federal department. To coin a phrase, "*a law unto itself*" in terms of timeframes for such consent.

It will be the Council's submission that to permit such a consequence would be contrary to the statements of principle set out in Schedule 1 of the *Land Use Planning & Approvals Act 1993*.

To summarise:

- (a) The SPP provides a range of limited exemptions at section 4.0.
- (b) Other than height (expressed in terms of AHD & not height above NGL) no additional exemptions are provided for in the Code.
- (c) In the circumstances where a development does not meet the Code's height exemptions, a development application must be accompanied by the approval of the relevant Commonwealth Department (Canberra). There is no Performance Criteria.
- (d) Given the relatively elevated and undulating topography in Clarence the exhibited draft Obstacle Limitation Code Mapping intersects with and is below the natural ground level in many areas. Any development in these areas that is not otherwise exempt will require the submission of a development application accompanied by the approval of the federal department. This will be onerous for those landowners, introduce additional red tape, fees, time delays and uncertainty.
- (e) The impact the Code has on those properties above the Obstacle Limitation Code Mapping is significant and it effectively changes use status - i.e. single dwelling "NPR" under the zone to one that requires Commonwealth consent.
- (f) The required Commonwealth consent may or may not be granted and there is no statutory timeframes for a response.
- (g) The map **attached** (Attachment "B") identifies those properties above the exhibited Obstacle Limitation Code Mapping. In terms of land area, the

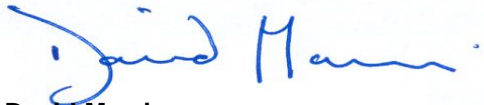
mapping represents over 30% of Clarence and includes approximately 900 privately owned properties and a further 250 publicly owned land and road reservations.

- (h) This represents approximately 3% of the properties in Clarence that would no longer enjoy the normal range of planning exemptions. To provide context, based on the number of development applications received last year, this is likely to result in at least 30 additional developments that will be unnecessarily burdened by the process; a process that requires Commonwealth consent to be pursued by private individuals in isolation with limited to no development experience.
- (i) As articulated at previous Commission hearings this issue could be resolved through either one or a combination of the following:
 - Modification of the SPP ordinance to provide additional exemptions;
 - Modification to the Guidelines to provide the flexibility for the Commission to approve reasonable alternative mapping; or
 - The consent of the relevant airport.
- (j) Given the limitations afforded to the Commission through the LPS hearing process, the only option available to Council has been to pursue the consent the Hobart Airport.
- (k) While the Hobart Airport have actively cooperated in the development of revised mapping, for their own reasons they require the approval of the federal department before they will consent to any changes to in the mapping.
- (l) This is not a requirement under the Guidelines and it is noted that it is most unusual for a third party with no statutory planning function to have the final determination on what plans must be included in a planning instrument.
- (m) In all of the above circumstances, the content of the letter from the federal department has significant ramifications for the process of approval of the Draft LPS to include airport mapping overlay having regard to the SPP Safeguarding of Airports Code.

On behalf of the Council, I have been instructed in all of the above circumstances to submit to the Delegates that the presence of the author of the federal department letter or his representative ought be requested/directed at the hearing on 4 May 2021. I would most certainly wish to ask questions in relation to the

matters that have been set out in that letter, and the Delegates may well be assisted by exploring the response from the federal department and further options that might be available.

Yours faithfully
Simmons Wolfhagen



David Morris

Director | Local Government, Environment, Planning & Development Law
david.morris@simwolf.com.au



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

File Reference: F17/417-13

Mr Dan Ford
Clarence City Council
dford@ccc.tas.gov.au

Dear Mr Ford

**Airports (Protection of Airspace) Regulations 1996 - Rural and Residential
Development at various locations within the Clarence City Council area**

I refer to the request from Clarence City Council, received by the Department of Infrastructure, Regional Development and Communications (the Department) on 1 February 2021 from Hobart International Airport Pty Ltd. This request sought a 'blanket' approval of potential controlled activities under the Airports (Protection of Airspace) Regulations 1996 (the Regulations) for developments up to 15 metres above ground level for multiple areas where the ground intrudes the airspace which, under the Regulations, is prescribed airspace for Hobart Airport (the airport).

Under regulation 6(1), 'prescribed airspace' includes 'the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport'.

As the terrain intrudes the OLS at a number of locations, any proposed development or other controlled activities will result in an intrusion into prescribed airspace for Hobart airport, and require an approval under the Regulations.

In accordance with regulation 8, as the relevant local government body, if you receive a proposal for an individual dwelling development or other controlled activity that would intrude into prescribed airspace, the proposal is ordinarily referred through the airport operator company to the Department. The Department acknowledges the intended process simplification and administrative benefits that Clarence City Council wishes to realise through the proposed 'blanket' approval for controlled activities in areas where the terrain intrudes the OLS.

However, under the Regulations, it is the proponent of a controlled activity who is required to seek approval for an intrusion into prescribed airspace. Proponent is defined in the Regulations as 'the person that proposes to carry out the controlled activity'. In the case of the request for a 'blanket' approval submitted by Clarence City Council, there does not appear to be a 'proponent' within the meaning of the Regulations (i.e. there is no person that proposes to carry out any specific controlled activity). Therefore, the request from Clarence City Council is unable to be considered or approved under the Regulations as they currently stand.

As the Regulations are due to cease to have effect (sunset) in April 2024, the Department will soon be undertaking a thorough review of the Regulations to determine whether they should be re-made and if so, if changes should be made. I encourage you to engage with the review process regarding requirements for where terrain penetrates prescribed airspace, and any other matters of interest to you, as it will provide an opportunity for stakeholders to explore and inform any reforms.

If you have queries or wish to discuss the matter further, please contact me on 02 6274 6125 or via email Flysafef@infrastructure.gov.au.

Yours sincerely



Callan Langlands
Acting Director
Demand Management and Protection of Airspace
Aviation and Airports

31 March 2021

cc Sam Merlo, Hobart Airport
smerlo@hobartairport.com.au

Civil Aviation Safety Authority
airspace.protection@casa.gov.au

Airservices Australia
airport.developments@airservicesaustralia.com

Parcels Affected by Draft Modified Airport Overlay

