
From: Naomi Billett [REDACTED]
Sent: Thursday, 1 October 2026 3:39 PM
To: TPC Enquiry
Cc: Adriaan Stander
Subject: Kingborough Draft LPS - Representation 415
Attachments: Final Submissions Following Hearing (Rep. #415 - Direction 145).pdf

Dear Sir

Following the hearing held on 22 May 2026, the delivery of the Council's submission dated 25 June and the Commission's direction 145, please find attached the final submission relating to representation #415.

While it appears that the planning authority and my client are agreed as to the outcome for this land, this submission is provided to facilitate the delegates' deliberations.

While we are content to provide any clarification as may be required, and will attend if requested to do so, we do not seek a further hearing.

Yours faithfully

Naomi Billett
Principal

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In the Matter of the Kingborough Draft
Local Provisions Schedule

And

In the Matter of a Representation
(#415) on behalf of AAD Nominees Pty
Ltd

SUBMISSIONS IN SUPPORT OF THE REPRESENTATION

1 Overview of Issue

1.1 The principal concerns of AAD Nominees Pty Ltd (**AAD Nominees**) are articulated in the representation. In summary, those concerns are two-fold:

- (a) Firstly, AAD Nominees opposes the downzoning of its land, and more specifically, the conversion of Commercial zoned land to the Environmental Management zone under the draft LPS; and
- (b) Secondly, AAD Nominees opposes the application of the Kingston Gateway Specific Area Plan (**Gateway SAP**) to its land.

1.2 The relevant land is described in the representation, comprising:

- (a) [REDACTED] Part of 'Australian Antarctic Division HQ' - [REDACTED], Kingston
- (b) [REDACTED] Part of 'Australian Antarctic Division HQ' - [REDACTED], Kingston
- (c) [REDACTED], Kingston

It is collectively referred to as the **Land** in this submission.

1.3 It is submitted that:

- (a) The evidence before the Commission establishes that there is no strategic basis to support the application of the Environmental Management zone and the effective downzoning of the Land.
- (b) There is no evidence before the Commission that is capable of establishing that s.32(4) of the *Land Use Planning and Approvals Act 1993* (**LUPA Act**) is met as it must be before a specific area plan (**SAP**) may be entertained.

Filed on behalf of AAD Nominees Pty Ltd (Representation #415):

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- (c) That, even if s.32(4) of the LUPA Act was found to be satisfied, the Gateway SAP unreasonably constrains the use and development of the Land and is not supported by any strategic planning rationale.

- 1.4 Putting s.32(4) to one side, the LPS Criteria are met in respect of the Land where the Gateway SAP is not created or applied to the Land and the Land is zoned Commercial.
- 1.5 Having regard to the existing Part 5 Agreement that applies to part of the Land, this portion of the Land may be zoned Environmental Management should the Commission support such an approach.
- 1.6 Following the hearing on 22 May 2026, the planning authority supports the position of the representor in relation to both zoning controls and application of the Gateway SAP to the Land.
- 1.7 In our submission, this is the outcome that the Commission should endorse.
- 1.8 Insofar as the planning authority seeks the capacity for increased building height on the land known as [REDACTED], this does not apply to the Land.

2 Overview of Outcome

- 2.1 In our submission, the requirements of s.32(4) of the LUPA Act constitute a jurisdictional fact, and the failure of the Gateway SAP to satisfy this statutory criterion results in the Commission having no power to approve a draft amendment that includes the Gateway SAP.
- 2.2 It is submitted that the Commission should exercise its power to modify the draft LPS to delete the Gateway SAP and apply the Commercial zone to the relevant portions of the Land.
- 2.3 In the event that the Commission is not satisfied that it is within power to remove the Gateway SAP, the Commission would need to exercise its powers under s.35K(1)(c) of the LUPA Act.
- 2.4 We have given consideration to whether the Commission could, in the alternative to the above, exercise its powers under s.35KB of the LUPA Act and thereby direct the planning authority to prepare a further amendment to the draft LPS as to require a substantial modification to the draft LPS.
- 2.5 However, a direction under s.35KB of the LUPA Act requires that the Commission is satisfied that the substantial modification to be made is suitable to be made by way of an amendment to the LPS after it comes into effect; see sub-s.(2). As such, such a direction does not provide an alternate pathway to that required under s.35K(1)(c). The Commission is only empowered to approve the draft LPS where it is first satisfied that the LPS criteria are met. The requirements of s.34(2) form part of the LPS criteria.
- 2.6 Ultimately, the concerns of AAD Nominees are addressed where the Gateway SAP does not apply to the Land and the Land is zoned Commercial, not Environmental Management as proposed.

3 Statutory Criteria (The Test)

- 3.1 The Commission is empowered to approve the LPS where it is satisfied that the LPS meets the LPS Criteria.
- 3.2 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.

3.3 S.32 of the LUPA Act relevantly provides that the LPS must provide for the spatial application of the SPPs to land and may override or modify the application of the SPPs to a particular part of the municipal area.

3.4 S.32(3) of the LUPA Act allows an LPS to include a SAP, but is subject to s.32(4), which requires that:

An LPS may only include a [SAP] 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 Given that the planning authority has ultimately agreed with the submission of the AAD Nominees that the Gateway SAP not apply and for zoning of the Land, there is little need to provide expansive submissions on the hearing process.
- 4.2 The kernel of the submission is that the hearing provides the opportunity for the Commission to gather evidence and that ultimately, the decision of the Commission is to be based on evidence.
- 4.3 Appended to this submission is a further submission (Appendix A) expanding upon this point in the event that it is of assistance to the delegates' deliberations.
- 4.4 In preparing for the hearing, AAD Nominees proceeded on the basis that the case it needed to meet and the "evidence" in support of the planning authority's position was contained in the Kingborough Local Provisions Schedule Supporting Document (Version 2) (**Version 2 Report**) and further report prepared following the receipt of representations under s.35F of the LUPA Act (**S.35F Report**). This information is summarised in Appendix B to this report.
- 4.5 This material no longer represents the position of the planning authority and was not presented to the Commission as evidence capable of being tested through cross-examination. It cannot be relied upon.

5 S.32(4) of the LUPA Act

5.1 S.32(4) of the LUPA Act is repeated below:

An LPS may only include [a SAP] 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.*

5.2 The planning authority relies upon sub-section (b). Plainly, sub-section (a) is not satisfied.

5.3 Sub-section (b) has two elements:

- (a) The area to which the SAP is to apply must have particular environmental, economic, social or spatial qualities; and
- (b) Those qualities must require provisions that are unique to the area of land.

6 First Element – Particular Qualities

6.1 In this case, the planning authority had asserted that the area of land has particular environmental and spatial qualities.

6.2 Though that position is no longer maintained, the environmental qualities were the identified protected values that include:

- Eucalyptus amygdalina forest and woodland on sandstone (DAS)
- Eucalyptus ovata forest and woodland (DOV)
- Swift Parrot breeding habitat (nesting and foraging)
- Masked Owl breeding habitat (nesting)
- Chaostola skipper habitat

6.3 The spatial qualities are understood to be the spatial qualities of the vegetation insofar as this vegetation is said to provide a functional linkage to other vegetated areas.

6.4 A further environmental and spatial quality appears to be the asserted function of the area as a gateway or southern entrance to the Kingston Central Business District and the scenic values of the area that are derived from the presence of mature trees that form a backdrop to the road corridors.¹

Environmental Qualities – Specific Vegetation and Linkages

6.5 The specific vegetation that was said to be the foundation of the Gateway SAP are identified in the justification report; refer 6.2 above. No spatial distribution of that vegetation is provided beyond a simplified map that shows where the vegetation is collectively described occurs.²

6.6 AAD Nominees relies upon the evidence and analysis from Mr North.

6.7 Mr North has identified the relevant vegetation and its spatial extent across much of the Gateway SAP area. He identifies how the bulk of the natural values that are sought to be protected by the Gateway SAP are already managed under Part 5 Agreements, with limited areas remaining and principal among them the values upon the Land.

6.8 The values that are identified are the same as those to which the priority vegetation overlay would apply, but for the limitation against its application to commercially zoned land.

¹ See Attachment 7 to the Justification Report

² Figure 88 from Justification Report extracted; see page 169.

- 6.9 Such values do not constitute particular environmental values that require unique provisions to apply to the Land.
- 6.10 Mr North's further assessment is that:
- (a) Irrespective of the SAP the relevant priority vegetation is well served under the existing priority vegetation overlay³
 - (b) Much of the undeveloped areas of the SAP that support priority vegetation are protected from future development due to having a Part 5 Agreement between the title owner and Council.⁴
 - (c) The areas that are currently outside the protected umbrella of Part 5 Agreement or Council POS are proportionately small. One of these is at the rear of the AAD site (██████████) and another behind Bunnings (██████████).⁵
 - (d) The largest area supporting a concentration of habitat is at the rear of the AAD site (██████████). The vegetation within this area is significantly modified and of uncertain viability. It is currently used for storage of material and testing of Antarctic bound equipment including vehicles. The ground layer has been largely disturbed and modified by vehicle use and the storage of topsoil, fill and other material. In the period between 2020 and 2025 seven trees have been removed, possibly through windthrow and ten have died.⁶
 - (e) A second smaller area of bushland is located behind Bunnings (██████████). This area is in poor condition and largely encompassed of cleared land supporting just two foraging habitat trees for swift parrot (*Eucalyptus ovata* > 40 cm DSH).⁷
 - (f) Taking into account the small extent and poor condition of the remaining areas of vegetation not currently protected, the provision of a SAP to specifically regulate clearance of these with the specific intent of protection is unwarranted and will have a limited net gain in conserving priority values.⁸
- 6.11 Insofar as the planning authority makes further claims concerning the linkage quality, Mr North assesses this claim relative to the biodiversity values and observes that functional connectivity varies between species groups.⁹ His evidence is that the Gateway SAP does not provide important or significant linkages for the identified species.¹⁰
- 6.12 As opined during the hearing, the removal of this vegetation would constitute a tolerable loss.

Spatial Qualities – Gateway to the Kingston CBD

- 6.13 The Gateway SAP was supported by the planning authority on the basis that the area to which it was to be applied was said to be the southern entrance to the Kingston CBD off the Algona Road Roundabout.
- 6.14 While factually, the area that has been identified to be the subject of the Gateway SAP is located off the Algona Road roundabout, the gateway concept is further described as being an area that acts as the southern entrance to the Kingston CBD.

³ Andrew North, 20 October 2025, at [4.2.5]

⁴ Ibid at [4.2.7]

⁵ Ibid at [4.2.8]

⁶ Ibid at [4.2.9]

⁷ Ibid at [4.2.10]

⁸ Ibid at [4.2.11]

⁹ Ibid at [4.3.7]

¹⁰ Ibid at [4.3.8]-[4.3.11].

6.15 Mr Read has reviewed the “gateway concept” as it was advanced by the planning authority and concludes that the area lacks a clear spatial rationale or definable extent, does not reflect the actual arrival sequence into Kingston, is not supported by strategic or design analysis and relies upon generic vegetation features that are common throughout the broader corridor.¹¹

6.16 In our submission, there is an absence of particular qualities as required by s.32(4)(b) of the LUPA Act.

7 Second Element – Requirement for Unique Provisions

7.1 If particular environmental qualities are identified, it is necessary to then ask whether those qualities require provisions that are unique to the area of land.

7.2 The question may be alternatively stated as whether the provisions of SPPs otherwise provide the mechanisms to address the particular qualities identified.

Environmental and Spatial Qualities – Specific Vegetation and Linkage

7.3 The purpose of the Gateway SAP includes:

To encourage attractive streetscapes that are functional for the types of uses and development in the area and emerging character of the gateway to the Kingston Activity Centre through landscaping; retention and management of prominent trees; and protection, conservation, and management of environmental values within the Kingston Southern Gateway Vegetation Linkage.

7.4 The local area objectives of the Gateway SAP include:

to facilitate use and development consistent with the underlying zone while providing for the protection, conservation, and management of the Kingston Southern Gateway Vegetation Linkage, including threatened native vegetation communities and threatened species habitat.

7.5 It can be seen that the preservation of the so-called Kingston Southern Gateway Vegetation Linkage is a key focus of the Gateway SAP that is founded upon the presence of threatened native vegetation communities and threatened species habitat.

7.6 The designation of allowable uses is reduced to Natural and Cultural Values Management, Passive Recreation, Utilities and Research and Development. The final use class is qualified to the extent that such a use can only occur on a particular title and must be integral to research and development activities undertaken by the Australian Antarctic Division.¹²

7.7 It can therefore be seen that any commercial use of the Land is limited to a single government division.

7.8 Cl.KIN-S1.6.1 provides a performance criterion without a corresponding acceptable solution. It is in the following terms:

A use listed as Discretionary must be compatible with the retention and management of prominent trees and the protection, conservation, and management of environmental values in the Kingston Southern Gateway Vegetation Linkage, having regard to:

¹¹ Frazer Read, 19 May 2026 at [5.12]

¹² Additional qualifications which require that the use is compatible with the retention and management of prominent trees and the protection, conservation and management of the Kingston Southern Gateway Vegetation Linkage are redundant because they are repeated under the subsequent use standard in c.KIN-s1.6.1. P1.

- (a) *the significance of the environmental, scientific, cultural or scenic values;*
- (b) *the specific operational requirements of the use;*
- (c) *the location, intensity, type and scale of the use;*
- (d) *traffic and parking generation;*
- (e) *any emissions and waste produced by the use;*
- (f) *the proposed measures to minimise, mitigate or offset impacts;*
- (g) *the proposed storage and handling of goods, materials and waste; and*
- (h) *any relevant local area objectives.*

- 7.9 KIN-S1.7.6 applies standards for prominent trees and imposes requirements that relate to the tree protection zone and removal or destruction of prominent trees.
- 7.10 It is plain that the identified qualities (biodiversity values) do not require provisions that are unique to the area of land. This is clear from the fact that each of the identified environmental qualities are “protected values” that are identified for the purpose of the application of the Priority Vegetation Overlay under the Natural Values Code.
- 7.11 Unique provisions are not required; it is simply the case that the operation of the State Planning Provisions prevents the application of the Priority Vegetation Overlay to areas that are zoned Commercial.
- 7.12 It is observed that by proposing to zone the land where the identified values occur as Environmental Management, the argument in favour of there being a requirement for unique provisions is further eroded. However, we proceed for the time being on the basis that the Commission would support the allocation of like for like zoning to the Land and therefore apply the Commercial zone as is sought by AAD Nominees. This does not remove the argument as to afford as basis to find that unique provisions are required. It remains the case the environmental qualities that are identified by the planning authority are protected by application of the Priority Vegetation Overlay.
- 7.13 The fact that the State Planning Provisions prevent the application of the Priority Vegetation Overlay to land that is zoned Commercial does not elevate environmental qualities such that they would require unique provisions. Instead, it is simply the case that the State Planning Provisions evidence a policy whereby the allocation of land to urban land use prioritises the realisation of this land for its intended purpose.
- 7.14 It is not the role of a SAP to undermine the policy of the State Planning Provisions by re-introducing the regulation of environmental qualities deliberately excluded by the specific provisions that are intended to provide that regulation.
- 7.15 It is contended by the planning authority that the spatial qualities of the vegetation somehow elevate the environmental qualities such that unique provisions are required. The spatial qualities of the vegetation do not oust the fact that unique provisions are not required in accordance with the preceding argument.
- 7.16 In any event, the spatial qualities that are contended to exist are not proven on the evidence. While the location of the vegetation is such that it fits between the other existing areas of vegetation that are referred to, the central claim is one of providing an important linkage.

- 7.17 As addressed in the evidence of Mr North, the concept of a linkage is not an abstract one. Instead, the way vegetation operates to provide a linkage relates to the nature and role of that vegetation, including consideration of the particular species for which it serves an important habitat value.
- 7.18 In the case of the Land, the key value is the habitat afforded for the swift parrot, however, no concept of serving as a linkage arises because of the nature of this species which flies long distances for foraging resources. More broadly, to the extent that the area within the Gateway SAP may operate as a linkage, particularly for the chaostola skipper, that linkage is already created through the Part 5 Agreements in place.

Spatial Qualities - Gateway to the Kingston CBD

- 7.19 The purpose of the Gateway SAP includes:
- To provide for a range of uses and developments that service Kingston and the surrounds and provide a gateway to the Kingston Activity Centre.*
- 7.20 The local area objectives of the Gateway SAP include:
- to encourage a range of use and development that services Kingston and surrounds and that is compatible with the emerging character of the gateway to the Kingston Activity Centre.*
- 7.21 Despite the above provisions and stated strategic intent of the Gateway SAP, the Table of uses provided by the Gateway SAP applies only to land zoned Environmental Management and operates to confine those uses that are capable of approval.
- 7.22 The use standard supplied in turn focuses upon tree preservation.
- 7.23 Other than providing for an increased “permitted” height applicable in the Urban Mixed use zone, the Gateway SAP includes no standards that are directed to facilitate development.
- 7.24 Provision is made for landscaping requirements between buildings and the relevant frontage, however, no clear direction is provided as to what if any character is intended to define the so-called gateway.
- 7.25 Apart from this, and some disconnected residential development standards, the entire focus of the Gateway SAP appears to be upon vegetation preservation.
- 7.26 Insofar as it suggested that the protection of prominent trees warrants the implementation of the Gateway SAP we refer to Mr Read’s analysis of this issue.
- 7.27 The Gateway SAP lacks any unique provisions that are directed to meet the identified quality that was said by the planning authority to require the implementation of the Gateway SAP.
- 7.28 It follows that s.32(4) of the LUPA Act has not been satisfied.

8 Response to Proposed Zoning

- 8.1 The representation addresses the strategic basis for the proposed zoning, or perhaps more particularly the lack of any strategic basis.
- 8.2 Viewing the information provided in support of the proposed application of the Environmental Management zone, it is apparent that the preservation of natural or biodiversity values upon the Land had been prioritised by the planning authority above all else. Indeed, we submit that tree retention had been prioritised to the exclusion of any other consideration.
- 8.3 We refer again to Mr North’s assessment and in particular his conclusion that:¹³

¹³ Andrew North, 20 October 2025, at [4.3.13]-[4.3.17]

- (a) There is approximately 1.5ha of Eucalyptus ovata forest DOV located on the Land, more particularly at the rear of the Australian Antarctic Division site.
- (b) This area is made up form fragmented patches within which even the areas in the best condition are highly modified with all structural elements absent except for ground covers dominated by introduced grasses.
- (c) The whole area of the Gateway SAP is infested with environmental weeds.
- (d) The condition of the vegetation, though comprising habitat for the swift parrot, does not justify its retention.
- (e) Other regimes apply for the consideration of removal of habitat trees.
- (f) Much of the area of the Gateway SAP is already protected by Part 5 Agreements.

8.4 These factors then need to be considered alongside Mr Read's evidence concerning the importance of the Australian Antarctic Division as a significant employer in the municipality and impact upon the operator of the changes in zoning and the Gateway SAP that are contemplated in combination. Further, is the absence of consideration as to the loss of commercial land that has historically been recognised for its strategic importance.¹⁴

8.5 At the hearing, Mr Stander for the Council agreed with Mr Read and supported both application of the Commercial zoning and the rationale behind it.

8.6 We rely upon Mr Read's assessment against the LPS Criteria and in our submission, this should be preferred for its balanced approach considering the broader strategic rational for the proposed rezoning without overstating the biodiversity values of the Land.

9 Conclusion

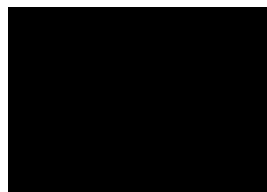
9.1 In summary, it is submitted that the Land should be zoned Commercial, and the Gateway SAP should not be approved.

9.2 The application of the Commercial zone is consistent with the current zoning and supported by the Local Strategy.

9.3 The fact that the provisions of the Tasmanian Planning Scheme prevent the identification of priority vegetation values on Commercial zoned land does not afford a basis to revisit the current zoning of the Land and past strategic decisions in this regard.

9.4 In our submission, the Draft LPS should be modified by applying the Commercial zone to all the Land and removing the Gateway SAP.

DATED this 1st day of October 2026.



Representor

¹⁴ Frazer Read, 9 December 2024.

Appendix ASubmissions Addressing the Nature of the Hearing

- 1 The current process is a hearing by the Commission in relation to the representations.
- 2 Consistent with s.35J 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.35L.
- 3 As described in *R v Davis*,¹⁵ 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 Viewed against the above dicta, the representation has set the agenda as follows:
 - (a) The Environmental Management zone should not be applied to the Land;
 - (b) The Commercial zone should be applied instead; and
 - (c) The Gateway SAP should not be applied to the Land.
- 5 The representation raises these matters through the framework of the LPS Criteria.
- 6 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 planning authority, as the party seeking to advance the change in zoning of the land from Commercial to Environmental Management and establish the Gateway SAP, bears a practical onus of establishing the strategic basis for the change.
- 7 As observed by Wright J in *M F Cas R v Land Use Planning Review Panel; ex parte M F Cas Pty Ltd*:¹⁶

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

¹⁵ [1999] TASSC 22; (1999) 102 LGERA 88 at [30].

¹⁶ [1998] TASSC 131

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]

- 8 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.¹⁷
- 9 However, it is submitted that ultimately, the Commission is obliged to act upon evidence when reaching the conclusions that are required under s.35.
- 10 We refer to the decision of Wright J in *Connelly v. P and O Resorts Pty Ltd T/A Cradle Mount Lodge*¹⁸ there considering a decision of the Workers Rehabilitation and Compensation Tribunal, which, like the Commission, was not bound by the rules of evidence, free to inform itself on any matter as it saw fit and required to conduct proceedings without as little formality and technicality as a proper consideration permitted.
- 11 Having noted, that the relevant provisions that governed the Tribunal's processes afforded "considerable latitude", His Honour reasoned as follows:

... However it does not give the Tribunal carte blanche to act in a completely unfettered manner, in my opinion. At the very least the Tribunal must have before it evidence which is relevant to the issue in dispute. Material which is not logically capable of bearing upon that issue cannot be regarded as relevant evidence.

*It appears to me that it is implicit in s49(1) that the material used by the Tribunal must be capable of being regarded as evidence (see *Cheney v Spooner* [1929] HCA 12; (1929) 41 CLR 532 at 537). This conclusion is strengthened by a consideration of the Act, s56(1) which provides:*

"56 (1) In a proceeding before the Tribunal

- (a) evidence may be taken on oath or affirmation;*
- (b) subject to any lawful claim or (sic) right of (sic) privilege, the Tribunal may, by notice in writing served on a person, require that person to appear before it to give evidence and to produce such documents, books, and things (if any) as are specified in the notice; and*
- (c) evidence may be given orally or in writing."*

Section 56(1) does not seem to contemplate that information may be acquired by the Tribunal which does not meet the description of "evidence".

*Nonetheless "evidence" is a very broad concept. Cross on Evidence, 5 ed, at 1 says, "the evidence of a fact is that which tends to prove it something which may satisfy an enquirer that the fact exists." This is a definition consistent with the judgment of Isaacs and Gavan Duffy JJ in *Cheney v Spooner* (supra). Hearsay evidence would be receivable by the Tribunal. Whilst sometimes cogent and reliable, hearsay is frequently of little, if any, weight, but that is not the determinative factor. So long as the material relied upon satisfies the test of being evidence*

¹⁷ Tasmanian Planning Commission Act 1997, s.10

¹⁸ [1996] TASSC 132 at [19]-[22]

rather than a mere supposition, guess or intuitive hypothesis, it may be received by the Tribunal.

- 12 In our submission, s.11 of the *Tasmanian Planning Commission Act 1997* similarly contemplates that the information acquired at a hearing will meet the description of evidence. As such, it must be more than mere speculation, supposition, guess or intuitive hypothesis.
- 13 The Commission has received evidence from Mr North and Mr Read.
- 14 No evidence has been provided by the planning authority to contradict this material.
- 15 The position of the planning authority and its justification for the Gateway SAP and original zoning had been contained in the Version 2 Report and S.35F Report.
- 16 The opinions expressed within those documents are no longer the opinions of the planning authority and are contrary to the evidence received at the hearing, including that from Mr Stander and Mr Mulcahy.
- 17 To the extent that the Version 2 Report and S.35F Report represent anything more than speculation, supposition, guess or intuitive hypothesis, they cannot be relied upon as they are untested in any event and directly contradicted by the evidence of Mr North and Mr Read.

Appendix 2Framing the Issue: Summary of Justification for the Gateway SAP and Environmental Management Zoning as Distilled from the Version 2 Report and S.35 Report**Original Planning Authority Justification for zoning**

- 1 Distilled from the justification offered for the proposed zoning of the affected land are the following points:¹⁹
 - (a) The area contains approximately 4ha of *Eucalyptus ovata* forest which is a threatened vegetation community. This vegetation is part of a larger patch of threatened vegetation.
 - (b) The priority vegetation overlay cannot be applied to the Commercial zone.
 - (c) The inability to apply the priority vegetation overlay represents a significant departure from earlier planning scheme controls.
 - (d) Existing use rights continue.
 - (e) Split zoning would ensure the significant natural values are afforded protection.
 - (f) To leave the area zoned Commercial would result in the loss of 4 hectares of “*some of the highest priority remnant vegetation in Kingston*”.
 - (g) Commercial zoning would be inconsistent with current requirements and requirements of the adjacent Kingston Green site.
 - (h) The Gateway SAP continues to provide the ability to undertake research and development activities associated with the Antarctic Division.
- 2 The S.35 Report repeats the above points.

Original Planning Authority Justification for SAP

- 3 Distilled from the justification offered for the proposed Gateway SAP are the following points, noting that these generally reflect direct quotes from the supporting documentation:²⁰
 - (a) This area is heavily vegetated with mature native trees, particularly within the less developed areas and along Coffee Creek.
 - (b) The trees have a dominant presence in the landscape and form the backdrop on either side of Channel Highway and Spring Farm Road at the southern entrance to Kingston CBD off the Algona Road Roundabout
 - (c) S.32(4) of the LUPA Act provides an opportunity for the existing characteristics of an area to be protected.
 - (d) While the majority of the area is developed, there are parcels of land that are either vacant, underdeveloped or anticipated to be redeveloped over time.
 - (e) Increased development potential is to be afforded to the area proposed to be zoned Mixed Use and the provision of controls for:

¹⁹ Refer to Version 2 Report, s.2.2.16 .

²⁰ Refer to Version 2 Report, s.3.1.2.1.

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- (i) appropriate height transition compatible with neighbouring buildings and roads;
 - (ii) improved privacy outcomes for residents in the precinct as well as adjoining residential areas; and
 - (iii) solar access design considerations for Multiple Dwelling development.
- (f) Existing development in the precinct is also set amongst vegetated areas and interspersed with bands of vegetation and a treed skyline.
 - (g) The value of the vegetation is recognised for its positive contribution to the streetscape, broader area and as part of the urban environment.
 - (h) The retention of vegetation and encouragement of landscaping in appropriate locations on the site contribute to good urban design which in turn increases the value of the area and encourages further investment by developers and businesses to be within that.
 - (i) This particular area has been recognised as the Southern Gateway to Kingston, and its physical presentation is important to strengthen the character and good urban design.
 - (j) This vegetation has unique spatial qualities in that it provides a functional linkage connecting existing public and private reserves to the east and south (Boronia Hill, Hawthorn Drive, Algona Reserve, Peter Murrell Reserve, Kingston Green and Celery Top) with reserves and extensive areas of vegetation to the west and north (Whitewater Park and Creek and the rural landscape beyond).
 - (k) The SAP area is a unique urban area containing high concentrations of environmental qualities immediately adjacent to and embedded within existing development. These environmental qualities are shown include:
 - 11.35 hectares of native vegetation listed as a threatened native vegetation community under the Nature Conservation Act 2002, including 5.38 hectares of Eucalyptus amygdalina forest and woodland on sandstone (DAS) and 5.97 hectares of Eucalyptus ovata forest and woodland (DOV). DOV is also an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999;
 - 6.1 hectares of medium-high density swift parrot breeding habitat and 6.81 hectares of high-density swift parrot foraging habitat. Importantly, this habitat is located within a Swift Parrot Important Breeding Area (SPIBA) (Hobart);
 - 5.38 hectares of Chaostola skipper habitat, an endangered species with a very limited and highly fragmented distribution and reliant on maintenance of landscape connectivity; and
 - 5.17 hectares of masked owl breeding habitat, with over 39 trees with a diameter at breast height of more than 100cm, some with visible hollows) across the SAP area.
 - (l) Provisions are required in the planning scheme to ensure the unique spatial and environmental qualities of this vegetation are appropriately managed and maintained into the future.
 - (m) Without these controls in place, there is a likelihood that links to the broader environmental corridors will be lost. The SAP will encourage and facilitate the retention of vegetation in this linkage area in a manner that will be complementary to the urban environment.

4 The S.35F Report repeats the above points, but adds the following additional comments:

The SAP has been written in a manner that supports research and development activities associated with the Antarctic Division to continue. Council is open to discussing the

representor's concerns further at the public hearings, including the possibility of retaining the CZ and modifying the SAP to balance the landowner's interests with the broader strategic objective of protect

From: Naomi Billett [REDACTED]
Sent: Friday, 2 October 2026 11:45 AM
To: TPC Enquiry
Cc: Adriaan Stander
Subject: RE: Kingborough Draft LPS - Representation 415

Dear Sir

Further to my submission yesterday, I note the following specifically in relation to the proposed SSQ:

- 1 There appears to be an in the addressing detail.
- 2 Assuming that this is to relate to the adjoining land (Lot 333 - [REDACTED]), we take the view that the provision for 20m height for any building as an acceptable solution is not appropriate, particularly given the absence of any setback requirement.

Further justification of this would be required if it were to be pursued, noting that a 20m building is capable of being considered in any event under the performance criterion. This is likely sufficient.

We would ask that, if it is pursued, the Council undertake this work in the first instance rather than it falling to the representor to address.

I ask that the delegates consider this further submission, and to the extent necessary, ask that the time for making the submission is extended coincident with its delivery.

Yours faithfully

Naomi Billett
Principal

BILLETTLLEGAL

[REDACTED]

PO Box 29, North Hobart, Tas 7002
www.billettlegal.com.au

From: Naomi Billett
Sent: Thursday, 1 October 2026 3:39 PM
To: TPC Enquiry (DoJ) <tpc@planning.tas.gov.au>
Cc: Adriaan Stander <astander@kingborough.tas.gov.au>
Subject: Kingborough Draft LPS - Representation 415

Dear Sir

Following the hearing held on 22 May 2026, the delivery of the Council's submission dated 25 June and the Commission's direction 145, please find attached the final submission relating to representation #415.

While it appears that the planning authority and my client are agreed as to the outcome for this land, this submission is provided to facilitate the delegates' deliberations.

While we are content to provide any clarification as may be required, and will attend if requested to do so, we do not seek a further hearing.

Yours faithfully

Naomi Billett
Principal

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