

DRAFT BURNIE LOCAL PROVISIONS SCHEDULE

**Supplementary Report to the Tasmanian
Planning Commission in accordance with Section
35F *Land Use Planning and Approvals Act 1993***

20 February 2020

Executive Summary

The purpose of this report is to provide the Tasmanian Planning Commission with a supplementary report containing the Burnie planning authority's opinions and recommendations in accordance with section 35F of the *Land Use Planning and Approvals Act 1993* in relation to a representation from the Department of State Growth in relation to the draft Burnie Local Provisions Schedule.

1.0 Background

The planning authority publicly exhibited a draft Burnie Local Provisions Schedule (BUR LPS) in the period from 21 October 2019 to 20 December 2019, and invited representations in relation to any matter in the draft LPS.

A number of representations were received during the exhibition period.

The Council considered each matter in each representation at its meeting of 28 January 2020.

A report under section 35F of the *Land Use Planning and Approvals Act 1993* was provided to the Tasmanian Planning Commission on 29 January 2020 in accordance with the decision of that meeting.

The Department of State Growth subsequently advised concern that matters contained in a representation said to be made on 19 December 2019 by the agency in relation to the draft BUR LPS have not been addressed by the planning authority.

The planning authority has no record of having received a representation from the agency, either during or after the end of the exhibition period.

The agency has since established that a representation dated 18 December 2019 was sent by email on 19 December 2019 to an incorrect email address, and was therefore not received by the planning authority.

The Department of State Growth provided the planning authority with a copy of the representation on 6 February 2020, and has requested that the planning authority consider the representation and advise its views and opinions to the Tasmanian Planning Commission.

A copy of the representation is attached, together with emails dated 6 February 2020 from the Department to the planning authority.

The planning authority has discretion under section 35F(2)(b) to address a representation in relation to a draft LPS that is made after the end of the exhibition period.

The planning authority considered the representation at its meeting of 18 February 2020.

It is evident that the Department of State Growth had endeavoured to make a representation during the exhibition period. Transmission of that representation on 19 December 2019 to the planning authority's nominated email address was not successful.

The State agency appears to have made a typographical error in entering the email address, and the message was therefore not received by the planning authority.

The planning authority is satisfied of an intention by the Department to make a representation within the exhibition period, and has determined it reasonable to receive and deal with the representation.

2.0 Opinions and Recommendations in relation to matters in the representation made by Department of State Growth

The representation made by the Department of State growth may be identified as **Representation No 11**.

The representation addresses matters relevant to the application of the State Planning Provision (SPP) zones to land within the Burnie municipal area

a) Application of Agricultural zone and Rural zone to land containing a private timber Reserve

The Department seeks an explanation for why the draft BUR LPS has not applied the SPP Rural zone to all land containing a Private Timber Reserve, noting that while the zone will apply to the majority of land subject to a PTR, there are smaller areas of land subject to a PTR to which the draft LPS applies the Agricultural zone.

Planning authority's views and opinions

A 'private timber reserve' or PTR is a mechanism available under the Tasmanian *Forest Practices Act 1985* to register and protect the exclusive use of privately owned land of not less than 5 ha for establishing, growing or harvesting timber from a native or plantation forest in accordance with the Forest Practices Code and such other activities which the Forest Practices Authority considers to be compatible with growing or harvesting timber.

Section 11(3)(a) of the *Land Use Planning and Approvals Act 1993* excludes application of the provisions in a planning scheme to the use and development for forestry operations conducted on land declared to be a PTR.

The zone applied by a planning scheme is therefore irrelevant if land declared to be a PTR is used for forestry purposes.

The Supporting Report for the draft BUR LPS provides explanation for how the draft BUR LPS has applied the SPP Rural zone and the SPP Agricultural zone to land within the Burnie municipal area in accordance with the criteria in Guideline No 1 issued by the Tasmanian Planning Commission for application of the SPP zones.

Guideline No 1 intends an LPS will apply –

- i. the Agricultural zone to land identified by the State as potentially suitable for agricultural use; and
- ii. the Rural zone to land in non-urban areas with limited or no potential for agriculture, including land set aside for existing and future forestry purposes under a legislated forest management classification

The rural land areas respectively suitable and not suitable for agricultural use within the municipal area do not occur as a neatly defined and homogenous unit. There are small land areas embedded within each category that have the features of the other.

The draft BUR LPS takes an approach in which it seeks to apply each zone on the basis of the land areas that are in general suitable to agriculture and the areas that are not.

The approach means that there will be areas of land within the area to which the Agricultural zone applies that are for one or more reasons not suitable or available for agricultural use. Likewise, there will be small areas of land within the areas to which the Rural zone applies that may be suitable for agriculture on the criteria set out in Guideline No 1. However, the scale and intensity of such areas means it is not practical from a zone mapping or planning scheme operation perspective to isolate these lands and apply an alternate zone.

The draft BUR LPS recognises land declared as a PTR to be land that is not suitable for agriculture, and to which the Rural zone should apply. There are areas of declared PTR land that form a cohesive and identifiable large scale geographical unit, particularly in the western and southern part of the municipal area, to which the draft BUR LPS has applied the Rural zone.

There are also smaller and isolated land areas declared as a PTR located within the land areas generally suited to agriculture. The draft BUR LPS does not apply the Rural zone to these individual areas.

It is recommended that no modification be made to the draft BUR LPS to apply the Rural zone to all land declared as a Private Timber Reserve and to which the draft BUR LPS applies the Agricultural zone.

b) Identification and protection of resources under a Mining Lease or Exploration Licence

DSG advise the opportunities available under a planning scheme should be consistent with other interests in land, including for land to which a mining lease or exploration licence applies.

In this regard –

- (i) Land in CT 101004 and CT 129680/1 off Menne Road, Highclere is subject in part to Mining Lease 1929P/M.

The draft BUR LPS applies the Agricultural zone to land in CT101004/1 and the Rural zone to land in CT 129680.

It is suggested the Rural zone be applied to all the land within 1929P/M.

Planning authority's views and opinions

Practice Note 7- Draft LPS mapping : technical advice issued by the Tasmanian Planning Commission states -

“Minimise the use of zone boundaries that do not align to the cadastral parcel boundaries or road centrelines.

"Where use of other zone boundaries is necessary for planning reasons, the zone boundaries must be based on features that are identifiable on the ground. Avoid using datasets with variable spatial accuracy, currency or attribute accuracy to underpin zone boundaries (such as geology, Tasveg, threatened species, etc)."

The draft BUR LPS has set the boundary between application of the Agricultural zone and the Rural zone on the boundary between CT 101004/1 and CT 129680/1.

The boundaries of mining lease 1929P/M do not accord with the cadastre, and straddles the boundaries between CT 101004/1 and CT 129680/1.

The features of a mining lease may not be visible on the ground because the extent of mining activity may not include the whole of the site or the surface of the land.

While the lease area may be identified by a cartographic description and lease diagram, the lease is for a term commensurate with the life of the mining project and not the life of the planning scheme.

It is recommended that no modification be made to the draft BUR LPS to apply the Rural zone to that part of the land in CT 101004/1 at Highclere subject to mining lease 1919P/M and to which the draft BUR LPS applies the Agricultural zone.

- (ii) DSG advise continued access to future mineral resources and construction materials across the rural landscape is critical in supporting economic development and employment growth.

It is noted land at Hampshire and Natone to which the draft BUR LPS applies the Rural Living zone are each subject to an Exploration Licence.

In the context of these licences Mineral Resources Tasmania support reduction in the boundaries of the Rural Living zone as proposed by the draft BUR LPS.

Planning authority's views and opinions

There are a number of exploration licences application to land within the Burnie municipal area, the extent of which overlay land for which the draft BUR LPS will provide opportunity for a range of land use and development.

Section 11(3)(b) of the Act provides nothing in a planning scheme or the Tasmanian Planning Scheme affects "*a mining lease, an exploration licence, a special exploration licence, or a retention licence, issued under the [Mineral Resources Development Act 1995](#), provided that any mineral exploration carried out is consistent with the standards specified in the Mineral Exploration Code of Practice, published by Mineral Resources Tasmania, as in force from time to time*

The Act protects mining and exploration activity against the provisions of a planning scheme.

Exploration does not of itself result in a subsequent conduct of mining activity.

It would be impractical to the objectives of the planning process, and inconsistent with the pattern of established long-term opportunity for use of land, for the draft BUR LPS to restrict use and development to purposes consistent with a possible future access to minerals and other resources within a current exploration area.

The draft BUR LPS proposes minor adjustment in the boundaries of the land area at Hampshire and Natone to which the Rural Living zone applies under the current Burnie Interim Planning Scheme. The adjustment are to align zone boundaries to cadastre. Any ability to protect mining resources is coincidental.

It is recommended that no modification be made to the draft BUR LPS to apply the Rural zone to land within the municipal area that is subject to an exploration licence under the *Mineral Resources Development Act 1995* and to which the draft BUR LPS applies an alternate zone.

c) *Application of the SPP Utilities zone to land within the State road network*

- (i) Guideline No 1 requires the SPP Utilities zone be applied to all land containing a State road and identified as a road casement on the State road network map published on the LIST.

DSG identifies application of the Utilities zone to State roads in the Burnie municipal area is not in accordance with Guideline No 1 in that application of the Utilities zone is not entirely consistent with the State road casement data published on LIST.

The land excluded includes land under a bridge where the State road crosses Cam River, Cooee Creek, Emu River, and Blyth River; Mount Street from the bass Highway to Old Surrey Road; and four (4) small areas of land along the Ridgley Highway.

DSG require that the draft BUR LPS zone map be modified to accurately apply the Utilities zone to all the land within a State road casement.

Planning authority's views and opinions

The draft BUR LPS zone map is not entirely consistent with the State road casement map, and will require correction to apply the Utilities zone to all land in the State road casement.

The Utilities zone does not apply for the following lengths of the Bass Highway and the Ridgley Highway shown shaded red on the following figures-

- a) Bass Highway bridge over the Cam River at Camdale



- b) Bass Highway bridge over Cooee Creek at Cooee



- c) Bass Highway bridge over the Emu River at South Burnie and at the junction of the Bass Highway and River Road at Wivenhoe



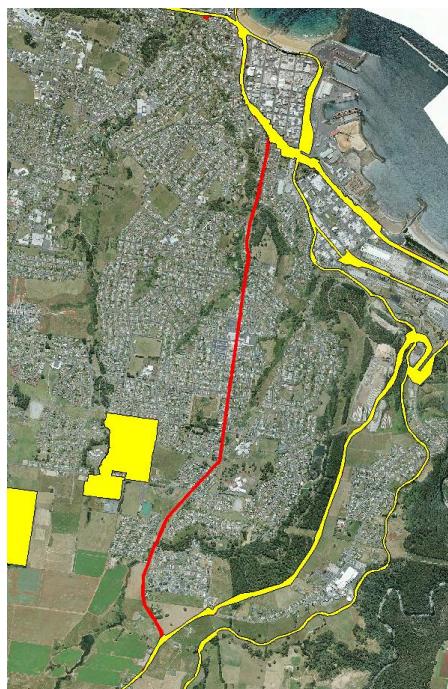
d) Bass Highway bridge over the Blyth River at Heybridge



e) Bass Highway at South Burnie adjoining Oakleigh Park



f) Mount Street between Bass Highway and Ridgley Highway



g) The junction of Bass Highway and West Park Grove, Burnie



h) Junction of Massey Green Drive and Old Surrey Road, Romaine



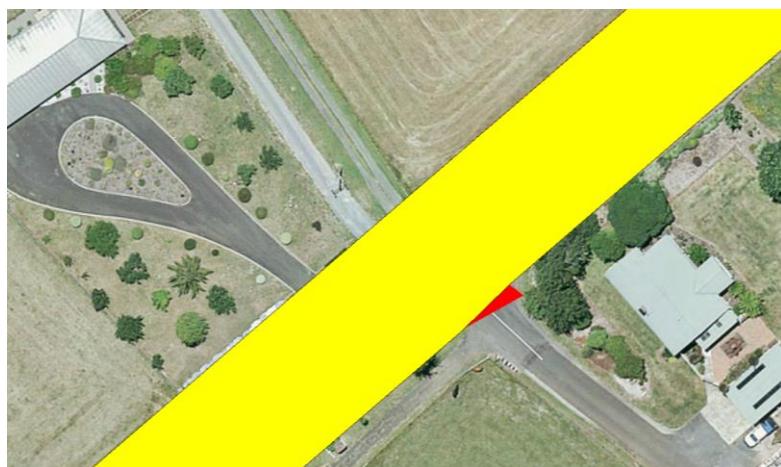
i) Ridgley Highway (west side) adjacent 160 Ridgley Highway (CT 163018/1)



j) Ridgely Highway adjacent Cascade Road junction



k) Ridgely Highway adjacent junction with Emu Vale Road



l) Ridgely Highway – adjacent junction with Mooreville Road and Laoona Road



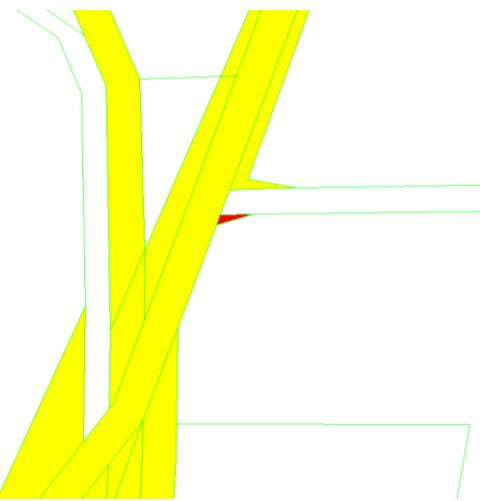
m) Ridgley Highway, Ridgley



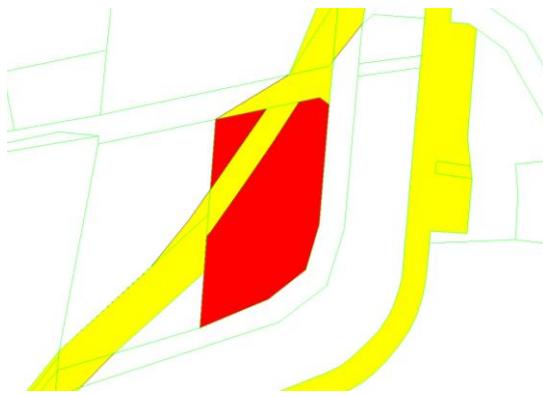
n) Ridgley Highway - at the junction with Pet Road



o) Ridgley Highway – inside junction with Kingsclere Road



p) Ridgley Highway - land in CT 6131 as part of the road area at Hampshire

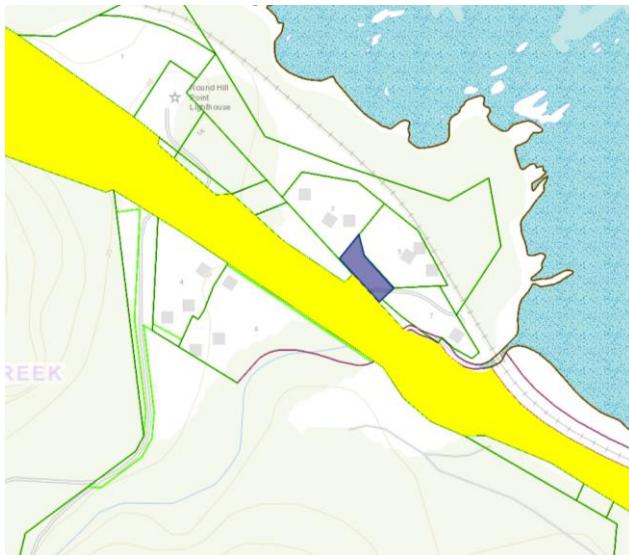


It is recommended that the draft BUR LPS be modified to correct drafting errors in the BUR LPS zone map and apply the Utilities zone to all of the land contained within the State Road network shown on the State road casement map published on LIST and to which the draft BUR LPS applies an alternate zone, being –

- a. those lengths of the Bass Highway where the road passes over the Cam River, Cooee Creek, Emu River, and Blyth River;
- b. the lower length of West Park Grove now forming part of the intersection with the Bass Highway;
- c. the length of Mount Street from the junction with the Bass Highway south to the junction with the Ridgley Highway; and
- d. various lengths within the Ridgely Highway from Mount Street to the southern municipal boundary

(ii) DSG has indicated the Utilities zone should not apply to two small areas of land outside the State road casement at Chasm Creek -

- a. Land north of the Bass Highway acquired for road purposes by the Crown but not functionally part of the Bass Highway and not included in the State road casement be assigned instead to the Environmental Management zone.



Planning authority's views and opinions

The BIPS applies the Utilities zone.

The zone is not applicable for purposes of identifying the State road.

The land contains sections of an internal driveway servicing three existing and separate residential use on land at 3, 5 and 7 Bass Highway to which the draft BUR LPS applies the Environmental Management zone.

The access ways may be described as minor utilities, and do not qualify for application of the Utilities zone. It is not possible to otherwise provide access to the land at 3, 5 or 7 Bass Highway, and the land cannot be independently developed.

The draft BUR LPS can be modified to apply the Environmental Management zone instead of the Utilities zone

It is recommended that the draft BUR LPS be modified to apply the Environmental Management zone the land at Chasm Creek north of the bass Highway that gives access to land at 3, 5 and 7 Bass Highway and to which the draft BUR LPS applies the Utilities zone.

- b. Land south of the Bass Highway adjacent to the junction with Sea Eagle Street on CT 128752/2 was acquired for road purposes by the Crown, however, is now surplus to need and is outside the State road casement.



DSG advise the adjoining private landowner for 1-2 Sea Eagle Street (CT 116428/1) on which there is an existing single dwelling has an interest to acquire the land, and the draft BUR LPS should instead apply the General residential zone

Planning authority's views and opinions

The land forms part of a larger lot outside the State road casement and on which a section of Sea Eagle Street is constructed.

It also appears the land contains a small section of the Bass Highway construction

The current BIPS 2013 applies the Utilities zone to the land.

The part of CT 128752/2 proposed for disposal by the Crown has an area of approximately 1,200 m².

The SPP General Residential zone permits residential use and development at a density of one dwelling per 325 m² of site area. The site has potential for an additional three (3) dwellings.

The SPP General residential zone also requires all residential development must be connected to a reticulated water supply, sewerage system and stormwater system. The availability of services to the land is not known.

Preparation of the draft BUR LPS did not address an alternate zone for this part of the land in CT 128752/2; and therefore has not examined whether a change to apply the SPP General Residential zone will meet the LPS criteria.

If the zone is to be changed, then the draft BUR LPS should take a precautionary approach and apply instead the Environmental Management zone as it applies for the adjoining and larger area of elevated land above the highway.

It is recommended that the draft BUR LPS be modified to apply the Environmental Management zone to that part of CT 128752/2 which is not required for State road purposes

A further issue has been identified in relation to accuracy of the State road casement map. It appears that portions of the carriageway and verge immediately west of the junction with Sea Eagle Street may have been excluded.



Yellow shading shows State road casement, and indicates section of the southern or west bound carriageway at Chasm Creek is not included within the casement.

3.0 Conclusion

The planning authority is satisfied after considering the matters in the Department of State Growth representation that the draft BUR LPS meets the LPS criteria in section 34 for the reasons set out in the Draft Burnie Local Provision Schedule Supporting Report dated 11 October 2019

The planning authority makes the following recommendations in accordance with section 35F(2)(e) of the Act in relation to the draft BUR LPS as a whole –

- i) there is no requirement to modify the draft BUR LPS other than to correct drafting errors in the zone maps and apply the Utilities zone to all of the land within the State road casements identified on the maps published on the LIST;**
- ii) the recommended modifications in (d)(i) are amendments of a kind to which section 40I of the Act applies and will therefore have no effect on the purpose, content, and compliance of the draft BUR LPS as a whole;**
- iii) the provisions of the draft BUR LPS are not inconsistent with a provision of the SPPs;**
- iv) other than to correct an error on the BUR LPS maps for the application of the Utilities zone to land within a State road casement, there is no requirement for the draft BUR LPS to add to, modify, or substitute the application of an SPP provision to an area of land within the Burnie municipal area; and**

- v) *there are no matters in addition to those matters contained in the exhibited instrument for which the draft BUR LPS should, or should not, contain a provision of a kind permitted by section 32.*

This report is submitted in accordance with a decision of the Burnie City Council acting as Planning Authority for the Burnie municipal area recorded in Minute AO047-20 of 18 February 2020

Dated - 19 February 2020