

4 April 2024

Reference: 1819-070

Michael Hogan, Delegate (Chair)
Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

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

Dear Michael,

**RESPONSE TO TPC DIRECTIONS
SUBSTITUTE DRAFT AMENDMENT PSA-LLP00002 AND PERMIT DA0439-2022**

I refer to your letter dated 28 March 2024 directing the planning authority to provide comment on the site-specific qualifications (SSQs) drafted by the Commission. As applicant, ERA Planning and Environment (ERA) has also considered the matters raised and provides the following response.

1. Need for SSQs

As the site is known to be contaminated, development is subject to the requirements of the Potentially Contaminated Land Code (the code). The code provides for assessment against all manner of contaminated land at all levels of potential risk. Therefore, in my opinion, it is questionable in the least, whether the SSQ meets the assessment test at s32(4) of the *Land Use Planning and Approvals Act 1993* as there is fundamentally no need for a SSQ to apply to this site. Rather, the proposed SSQs infers that the State Planning Provisions insufficiently address the National Environmental Protection Measures for site contamination.

We note that the Commission across a range of decisions issued by a variety of panels in the last 12 months has taken a consistent approach with the application of this test a s32(4) and the proposed approach under this matter is in our opinion a departure from that approach. While we appreciate that each panel is empowered to make an assessment in its own right, general consistency in the interpretation of legislative requirements and decision making is a fundamental principle in ensuring a fair and equitable planning system.

2. Comments on draft SSQs

Notwithstanding ERAs position expressed above in relation to the s32(4) test, the following comments are provided in response to each individual SSQ drafted.

LAU-8.2

ERA has no objections to the draft site-specific qualification LAU-8.2. The intent to optimise the residential yield on the site by restricting the development of single dwellings is supported.

LAU-C14.1

The draft site-specific qualification LAU-C14.1 appears to be a duplication of the assessment test at clause C14.5.1 A1/P1 in the Potentially Contaminated Land Code, albeit with the permitted pathway removed. Removing the acceptable solution pathway places the contamination assessment risk on Council, who during the hearing expressed concerns with their technical expertise and resourcing needed to undertake a performance-based assessment for this site. By retaining an acceptable solution pathway for certification by

a contaminated land auditor, as existing for clause C14.5.1 A1/P1, there remains an opportunity for the assessment risk to rest with the auditor, who is a suitably qualified person. If this SSQ is implemented as drafted, the applicant is of the opinion that it will create an effective impasse at the development assessment stage due to the risks imposed on Council.

LAU-C14.2

ERA has no objections to the draft site-specific qualification LAUC14.2. The intent to restrict subdivision where it may adversely affect site remediation and/or protection measures is supported.

We welcome the opportunity to clarify matters further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M O'Brien', with a long horizontal flourish extending to the right.

Mark O'Brien
Principal Planner