

22 September 2023

Our Ref: PSA-2022-3

The Executive Commissioner  
Tasmanian Planning Commission  
GPO Box 1691  
HOBART TAS 7001

Dear Madam/Sir

**PSA-2022-3 - Amendment to the Kingborough Interim Planning Scheme 2015 to Update Incorporated Documents**

I refer to your letter of 7 September and 15 September 2023, seeking a response from the Planning Authority on the following late submissions published on the Tasmanian Planning Commission's (the Commission) website:

- Amy Robertson, dated 29 August 2023;
- Charles Biggins, dated 28 August 2023;
- Jo Landon, dated 30 August 2023; and
- Doreen Czaplinski dated 5 September 2023.

In previous correspondence to the Planning Authority, dated 1 February 2023, the Commission confirmed that:

*'The Commission can only consider the issues around whether the updated policies should be incorporated into planning scheme and the changes to update the references to the policies in the planning scheme. We cannot consider changes to the policies themselves as these are Council documents'.*

Further to this, in correspondence to the Planning Authority, dated 17 August 2023, the Commission confirmed that:

*'The Commission notes that section 20(2)(g) of the Land Use Planning and Approvals Act 1993 that applies in the Kingborough Municipality, enables documents to be applied, adopted or incorporated in the planning scheme which deal with the use, development, or protection of land. The hearing will focus on consideration of the policies in light of what is enabled by this provision and the effect of the application of the policies in the planning system in the Kingborough municipality'.*

Based on the above advice, the Planning Authority is unclear on the relevance of the above submissions to the scheme amendment as they are all principally about the content and operation of the policies. Further to this, the Planning Authority has already provided detailed responses to submissions made by these representors. In the absence of any clarification from the Commission on the relevance of the matters raised in these additional submissions, the Planning Authority does not consider addressing these submissions in any substantial detail is warranted. As such, the Planning Authority will focus on the 'assessment criteria' the Commission delegates provided during the hearing on 5 September 2023, and limit addressing the above-mentioned submissions to some of the related matters. If there is anything in the submissions the Commission would like the Planning Authority to further address, we would be happy to provide that to the Commission before a decision is made.

## Assessment criteria as described at the hearing

During the hearing, the Commission provided detailed 'assessment criteria' for consideration of the incorporated documents. These criteria have not been provided in writing; however, the Planning Authority's understanding is that the criteria were as follows:

1. *Is there a head of power in an act of Parliament or the planning scheme?*
2. *Do the terms of the policy effectively supplement the practical operation of the scheme?*
3. *Are the terms of the policy consistent with the planning scheme and specifically the biodiversity code?*
4. *Are the terms of the policy clear and understandable? Is it a usable document?*
5. *Are the documents in the policy readily accessible to the public? If documents are referred to in the policy, are they acceptable?*
6. *Are criteria for decision making in the policy clear?*

As the Planning Authority has not been afforded the opportunity to provide a considered response to the above questions and given these criteria have been put forward by the Commission as central to consideration of the amendment, we would like to take this opportunity to make the following submission.

1. *Is there a head of power in an act of Parliament or the planning scheme?*

Yes, both policies meet this requirement.

Under section 20(2)(g) of the *Land Use Planning and Approvals Act 1993*, a planning scheme may apply, adopt or incorporate any document which relates to the use, development or protection of land. Both the Open Space Policy and Biodiversity Offset Policy are existing incorporated documents.

The *Local Government (Buildings and Miscellaneous Provisions) Act 1993* provides a head of power for public open space contributions. The Kingborough Interim Planning Scheme 2015 (KIPS 2015) also includes numerous clauses which provide a head of power for public open space contributions or offsets (they are listed in clause 2 of the Draft Planning Scheme Amendment as initiated by the Planning Authority on 21 November 2022). To this effect, it should be noted that the outdated versions of the two policies are already incorporated into the planning scheme and are mentioned in those clauses. If the planning scheme amendment is not supported by the Commission, the scheme will continue to operate with the two outdated versions of the policies that have a head of power.

2. *Do the terms of the policy effectively supplement the practical operation of the scheme?*

Yes, both policies meet this requirement.

While the legislation and scheme provide a head of power for public open space contributions and biodiversity offsets, they do not provide the procedural detail on how these requirements are satisfied. The policies provide guidance on how public open space contributions or offset requirements are calculated in a strategic, transparent and consistent manner. The planning scheme amendment will ensure that the updated versions of the two Council policies will continue to supplement the scheme as the previous versions did in the past.

The Planning Authority is of the opinion that without the policies, the provisions relating to public open space contributions and biodiversity offsets in the planning scheme (and how the Planning Authority would apply those), will not be clear. The aim of the policies is therefore to supplement the practical operation of the scheme. It should also be noted that the policies are also used outside the parameters of the planning scheme. Subsequently, there are matters that are referred to in the policies that may not directly link to the planning scheme requirements. The policies also aim to provide guidance to the Council (as opposed to the Planning Authority) on decisions relating to its operational functions. For example, the Public Open Space Policy aims to provide a strategic approach to the provision of public open space in the municipality, whereas the planning scheme merely provides the requirement to provide open space.

By not having a policy in place to supplement the planning scheme, it could be argued that there will be poor public open space outcomes in the municipality as no strategic considerations have been applied in requiring public open space contributions.

3. *Are the terms of the policy consistent with the planning scheme and specifically the biodiversity code?*

Yes, both policies are generally consistent with this requirement and where required can be easily modified to meet this requirement. We believe the changes would be administrative in nature and can be provided to the Commission prior to a final decision being made.

During the hearing, clarification was sought in relation to differences in definitions between KIPS 2015 and the Biodiversity Offset Policy for:

- “Priority species”,
- “Special circumstances”.
- New definitions in the policy that aren’t in the Code, including “substantially detract from” and “Vicinity”.
- High priority biodiversity values in the code and high and very high priority values in the policy.

‘Priority species’	<p>Under Clause E10.3 of KIPS 2015:</p> <p><i>‘priority species means non-listed taxa identified in the Tasmanian RFA (Commonwealth of Australia and State of Tasmania 1997, as amended) as requiring some form of protection or further research, non-listed species identified as poorly reserved in Tasmania, type localities and edge-of-range populations’.</i></p> <p>Further to this, Table E10.1, a moderate priority biodiversity value includes ‘Other priority species that are not listed but are considered of conservation significance in the municipal area’.</p> <p>While the terminology varies between Clause E10.3 and Table E10.1, the definition provided in Clause E10.3 clarifies when non-listed species are considered of conservation significance in the municipal area and therefore meet the threshold of a priority species.</p> <p>Under the Biodiversity Offset Policy 6.10, August 2022:</p> <p><i>“Priority Species” means a species that is not listed in the Threatened Species Protection Act 1995 or the Environment Protection and Biodiversity Conservation Act 1999 (Cth) but is considered of conservation significance in the municipal area as determined by the Council. An example of this is candlebark (Eucalyptus rubida) which has been found to occur in very restricted pockets of Kingborough’.</i></p> <p>This definition is generally consistent with the description of ‘other priority species’ in Table E10.1 but specifies the legislation which lists species as threatened and provides an example of a priority species. The definition in the Policy and in Table E10.1 are further clarified by, not inconsistent with, the definition in Clause E10.3 of the Code.</p>
‘Special circumstances’	<p>Under Clause E10.3 of the Code:</p> <p><i>‘Special circumstances means particular circumstances associated with the proposed use or development that justify loss of high priority biodiversity values.</i></p> <p><i>Special circumstances are considered to exist if one or more of the following apply:</i></p> <p>(a) <i>the use or development will result in significant long term social or economic community benefits and there is no feasible alternative location;</i></p>

- (b) *ongoing management cannot ensure the survival of the high priority biodiversity values on the site and there is little potential for recruitment or for long term persistence;*
- (c) *the extent of proposed removal of high priority biodiversity values on the site is insignificant relative to the extent of that community elsewhere in the vicinity;*
- (d) *the development is located on an existing title within the Inner Residential, General Residential, Low Density Residential, Rural Living or Environmental Living Zone and is for a single dwelling and/or associated outbuilding’.*

Under the Biodiversity Offset Policy 6.10, August 2022:

*“Special circumstances” means particular circumstances associated with the proposed use or development that may justify reduction in biodiversity. Special circumstances are considered to exist if one or more of the following apply:*

- 2.8.1 the use or development will result in significant long term social or economic community benefits and there is no feasible alternative location or design;*
- 2.8.2 ongoing management cannot ensure the survival of the biodiversity values on the site and there is little potential for recruitment or for long term persistence irrespective of long-term management;*
- 2.8.3 the extent of proposed removal of the biodiversity values on the site is insignificant relative to the extent of the values elsewhere on site; and/or*
- 2.8.4 the development is located on an existing title for a single dwelling and/or associated outbuilding’.*

It is acknowledged that these definitions are largely the same, however there are a few differences, including:

- 2.8.1 of the Policy including a consideration of alternative design;
- 2.8.2 of the Policy including the words ‘irrespective of long-term management’
- 2.8.3 of the Policy limiting this special circumstance to ‘elsewhere on site’ rather than ‘elsewhere in the vicinity’.
- 2.8.4 of the Policy not limiting this special circumstances to the specified zones.

In terms of any perceived inconsistencies arising from these differences, firstly it is important to understand how these criteria are applied. Under the code, special circumstances must be demonstrated to satisfy Clause E10.7.1 P1 (c) (iv) and E10.8.1 P1 (c) (iv), where applicable. Therefore, under the code this criterion must be satisfied separately to any offset requirements under other clauses. In the context of the policy, special circumstances relate to both the procedure for determining when offsets are considered under 5.2 and the types of offsets that are appropriate in particular circumstances, under 6.3 and 6.4. Therefore, the definition of special circumstances in the policy does not affect or alter the definition in the code or how and when it is applied.

Notwithstanding, the concept of special circumstances in the code is considered to be consistent with the concept in the policy, noting that:

- The requirement for design to be considered as part of special circumstances in the policy is consistent with the code, which includes a requirement that all development is designed and located to minimise impacts. Achieving this requires consideration of not just alternative locations but also alternative designs.

	<ul style="list-style-type: none"> <li>Special circumstances (b) in the code requires two things to be satisfied: (i) ongoing management cannot ensure the survival of the values on the site; <u>and</u> (ii) there is little potential for recruitment or for long term persistence. The definition in the policy is simply making it explicit that the potential for recruitment and long-term persistence needs to take into consideration long-term management, which is already a necessary consideration in order to satisfy (i).</li> <li>While clause 2.8.3 narrows this special circumstance to the site rather than the vicinity, this is in the context of offsets specifically, not meeting the special circumstances requirements of the code.</li> <li>Clause 2.8.4 removes references to specific zones as this special circumstance was considered to be relevant regardless of zone. Notwithstanding, 6.4 of the policy cross-references 2.8.4 and requires offset option (a) (i.e., on-site offsets) to be used to the extent practicable, where this special circumstance is relied upon and the development is located in the Low Density Residential, Rural Living, Environmental Living, Landscape Conservation, Rural Resource or Rural Zone. This requirement is consistent with and reflective of 6.13 of the policy and Principle 6 of the Regional Offset Guidelines. The definition of special circumstances in KIPS 2015 is still applicable to the assessment of applications involving clearance and conversion or disturbance of high priority biodiversity values under KIPS 2015.</li> </ul>
<i>'Substantially detract from' and "vicinity"</i>	There are two new definitions in the policy that do not appear in the code but relate to terms used on the code. These include definitions for "Substantially detract from" and "Vicinity". Within the code, these terms are used in the context of Clauses E10.7.1 P1 (c) (vi) and E10.8.1 P1 (c) (vi) and the term "vicinity" also appears in the definition of special circumstances in Clause E10.3. The inclusion of these definitions in the policy is intended to assist with interpretation of the policy, as distinct from the scheme. For clarity, including a definition of "Substantially detract from" was recommended by the Department of Natural Resources and Environment (NRE) and the Forest Practices Authority (FPA). In response, the Policy now includes a definition derived from the Significant Habitat Planning Guidelines (Forest Practices Authority, Revised October 2013).
High priority biodiversity values in the code and high and very high priority values in the policy	<p>The 2016 version of the policy included categories of high, moderate and low as per the code and rather than detailing what was in each category, Table 3 defined these categories by the relevant tables in the planning scheme. As part of the review of the 2016 policy, two changes were made. The first was to distinguish between high and very high priority values through the introduction of a new category of 'very high'. The purpose of this distinction in the policy was to acknowledge that threatened species and communities which are endangered or critically endangered or mainly occur within Kingborough are more at risk and impacts are more difficult to offset. To reflect this, the replacement ratio for these values has been increased from 5:1 to 6:1. However, the distinction between high and very priority values only relate to determining replacement ratios for the purposes of the policy. Those values defined as very high in the policy fall within the category of high under the code and are assessed as such for the purposes of the code.</p> <p>The second change to Table 3 was to include definitions of what each category of value included rather than cross-referencing the scheme. The reason for this was two-fold. Firstly, it ensures the values identified in the policy for the purposes of replacement ratios are not confused with how values are classified in the code for the purposes of determining the applicable standards. Secondly, it enables priority vegetation as defined in the Natural Assets Code (NAC) of the State Planning</p>

	<p>Provisions to be prioritised for the purposes of offsets, where provided for under the NAC. As currently drafted, the NAC does not identify the conservation status of the different categories of vegetation which are included in the definition of priority vegetation.</p> <p>Defining these all as high priority values under the policy as per the 2016 policy is not reflective of their relative significance. Finally, defining the values and their associated replacement ratios by the definition of the value rather than cross-referencing a planning scheme in effect ensures the policy does not become redundant where a planning scheme is amended to use different terms e.g., priority biodiversity value becomes priority vegetation. Notwithstanding, it is acknowledged that the offset policy is only applicable to the extent to which any scheme in effect at the time provides a head of power for it to be applied, adopted, or incorporated.</p>
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4. *Are the terms of the policy clear and understandable? Is it a usable document?*

Yes, even though the policies are technical in nature, they are useable and provide guidance on how public open space contributions and biodiversity offsets will be required and calculated in a strategic, transparent, and consistent manner. The Planning Authority is of the opinion that without the policies, the provisions in the planning scheme (and how the Planning Authority would apply those), would not be clear or understandable. It is acknowledged that more information could be provided to the public on the operation of both policies and for example how the Biodiversity Offset Policy is linked to the Kingborough Environmental Fund. The Council will undertake steps to improve communication in this regard.

During the hearing clarification was sought by the Commission on several terms in the Biodiversity Offset Policy, as well as in relation to some typographical errors. These include:

Clause 5.4 - what does 'delivers a new benefit for biodiversity conservation' mean?	<p>Applying the Guidelines section of the policy clarifies what constitutes a new benefit. Specifically:</p> <ul style="list-style-type: none"> <li>• 6.1, Table 1 and 6.3-6.5, which detail the acceptable offset options available to deliver a new benefit;</li> <li>• 6.2, which requires offsets achieve the replacement ratios in Table 3;</li> <li>• 6.6 which clarifies specific situations where an offset can be considered, as where 6.6.1-6.6.4 cannot be satisfied, the vegetation is already secure, and any offset proposal would be considered double dipping.</li> </ul> <p>Where an offset cannot meet the above criteria, it does not achieve a new benefit of sufficient scale, scope and suitability.</p>
Table 1. (c) - the first dot point is missing the word 'high' and should read 'very high conservation'.	Noted. This constitutes an administrative error (it's not changing the intent or the meaning in the policy) and as such can be amended without the need to go to a Council meeting. An updated version of the policy, with this change, will be provided to the Commission before a final decision is made.
Table 1. (e) - what does 'is restoration 'is not applicable to areas directly or indirectly impacted by the proposed development' mean?	Noted. This wording was recommended to be included by NRE and means that a proponent cannot count the reinstatement or rehabilitation of areas towards a restoration offset, where the requirement for reinstatement or rehabilitation arises as the result of direct or indirect disturbance during construction activity or as part of the development.

Clause 2.3. and 2.7 Remove reference to DPIPWE– references to DPIPWE come from definitions in code, which are derived from definitions in FPA documents.	Noted. While DPIPWE is now NRE, for consistency with the source documents and in recognition that government departments change names on a regular basis, it is submitted that the references to DPIPWE do not need to be amended and the document is still usable with the references to a former department name.  Notwithstanding, this constitutes an administrative error (it's not changing the intent or the meaning in the policy). An updated version of the policy, with this change, can be provided to the Commission before a final decision is made.
Clause 2.10 requires amending to read 'what is in the vicinity is relatively localised for this species'. This can be rectified by an administrative process.	Agreed. This constitutes an administrative error (it's not changing the intent or the meaning in the policy). An updated version of the policy, with this change, can be provided to the Commission before a final decision is made.

During the hearing, the Commission provided the following advice in relation to Public Open Space Contribution Policy.

Clause 4.4 Reference to the planning scheme is redundant.	Agreed. This constitutes an administrative error (it's not changing the intent or the meaning in the policy). An updated version of the policy, with this change, can be provided to the Commission before a final decision is made.
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5. *Are the documents in the policy readily accessible to the public? If documents are referred to in the policy, are they acceptable?*

Yes, they are. However, as detailed below the Planning Authority has significant concerns that the proposed Commission approach in relation to reference to documents within the incorporated documents.

During the hearing, the Commission raised a number of documents referenced in the Biodiversity Offset Policy, and whether they were accessible to the public and/or acceptable.

Guidelines for the Use of Biodiversity Offsets	The Guidelines for the Use of Biodiversity Offsets in the local planning approval process in 5.2.1 and 9.1, it was noted that this referencing was incorrect. The policy cites this document as Pitt & Sherry 2011. The correct citation is Southern Tasmanian Councils Authority, April 2013. This error also exists in the 2016 version of the Policy and can be rectified. An updated version of the policy, with this change, will be provided to the Commission.
Guidelines for Natural Values Surveys, Natural and Cultural Heritage Division, 2015) (referred to as the RMPS Offset Principles)	Clause 5.2.2. currently also refers to the Guidelines for Natural Values Surveys, Natural and Cultural Heritage Division, 2015) (referred to as the RMPS Offset Principles) as amended from time.  The Commission advised that this approach is unacceptable, and any document referred to must be a specific document, at a specific point in time. The Planning Authority was advised this uncertainty would need to be deleted. It is appreciated that the wording 'as amended from time to time' is not consistent with current drafting conventions (Practice Note 5, Tasmanian Planning Commission, May 2017). However, these conventions apply to the drafting of planning schemes, not drafting of incorporated or referenced documents. To apply the same conventions to incorporated or referenced documents is

	<p>unreasonable and impractical, noting there are 29 documents currently incorporated into the State Planning Provisions, which themselves reference hundreds of other documents. It is also important to note that these drafting conventions also include a section on ‘Applied, adopted and incorporated documents’.</p> <p>This section reads: <i>‘Any specific planning requirements that originate in external documents must be included in the planning scheme as standards or reflected in zoning or overlays. In some instances it is necessary or appropriate that a document is applied, adopted or incorporated in the planning scheme. If so, the document becomes part of the planning scheme by being referenced in the planning scheme.’</i></p> <p><i>Applied, adopted or incorporated documents must be:</i></p> <ul style="list-style-type: none"> <li>• <i>relevant to the use, development or protection of land;</i></li> <li>• <i>identifiable by including its whole title, and be italicized;</i></li> <li>• <i>accessible; and</i></li> <li>• <i>included and available when exhibiting amendments to the SPPs, a draft LPS or amendments to a LPS.</i></li> </ul> <p><i>Only the relevant parts of applied, adopted or incorporated documents must be identified in the SPPs or LPS for clarity of application and interpretation.</i></p> <p><i>Applied, adopted or incorporated documents should be prepared by a recognised authority or body that has endorsed the document such as a State Government Department or Standards Australia.</i></p> <p>In their feedback, NRE also highlighted that their guidelines were due for review and recommended there is an ability for the Biodiversity Offset Policy to be updated as required should the referred documents in the section be modified over time. To require a policy amendment followed by a planning scheme amendment every time this occurs is impractical, unnecessary and inconsistent with expectations of other regulators, noting NRE and FPA are not subject to such requirements in order to update and use the guidelines.</p> <p>In relation to clause 5.4 the Commission advised that the wording should be amended to replace the words <i>‘in accordance with’</i> in relation to the Regional Offset Guidelines and RMPS Offset Principles, as <i>‘in accordance’</i> requires the Commission to also consider the content of this document. This advice is somewhat confusing, noting the Commission also advised the RMPS Offset Principles need to be included as an incorporated document and the Regional Offset Guidelines are already incorporated.</p> <p>In consideration of both pieces of advice, it is assumed that if the policy is amended to only require the Planning Authority to have regard to the RMPS Offset Principles when assessing each offset, this document does not need to be formally incorporated. While the Regional Offset Guidelines are already incorporated into the planning scheme, the Planning Authority is also supportive of only requiring it to have regard to the Regional Offset Guidelines when assessing each offset. An updated version of the policy, with this change, can be provided to the Commission before a final decision is made.</p>
<p>Clause 6.6.1. The Commission advised that the policy should add a reference to what the Tasmanian Reserve Estate is.</p>	<p>While this could be achieved through a reference to the LIST, this is not considered necessary the meaning of ‘Tasmania Reserve Estate’ is easily accessible and discoverable through typing these words into a search engine.</p>



Clause 6.12. The Commission advised that the full reference needed to be included in relation to the vegetation condition assessment method so the community can access it.	This constitutes and administrative change and the policy could be revised accordingly before a final decision is made. Notwithstanding, the method is easily discoverable and accessible through typing these words into a search engine.
The cross referencing in clause 6.3 needs to be updated from (iii) to 2.8.3.	The constitutes and administrative change and the policy could be revised accordingly before a final decision is made.
The cross referencing in 6.4 needs to be updated from (iv) to 2.8.4.	The constitutes and administrative change and the policy could be revised accordingly before a final decision is made.
Clause 6.9. requires implementation of the management plan to be costed and bonded. The Commission sought clarification on Council's head of power with respect to bonding and the process for taking bonds.	<p>Bonding is provided for under s73 of LUPAA and s86 of LG(BMP)A. Council has a 'Bonding of Works Policy', however this is not applicable to bonds for implementing an offsetting plan as it relates to circumstance under which the General Manager will accept security for completion of infrastructure works. While Council does not have a bonding policy in relation bonding for offsetting plans, the process for bonding occurs through 6.9 of the Offset Policy, conditions of approval requiring payment of the bond prior to a specified hold point (either start of works or sealing of the Final Plan of Survey) and setting out the terms for refund of the bond. The costings are based on the costs of implementing the offsetting plan and are detailed within the terms of the offsetting plan and Part 5 Agreement (where applicable).</p> <p>These costs generally relate to the actions necessary to improve the condition of the offset area, address any threats and achieve the proposed gain, including weed management, fencing and rubbish removal. Please see Attachment 1 for Council's standard condition regarding bonding associated with a Part 5 Agreement.</p>
Guidelines for Expenditure of the Kingborough Environmental Fund	Clause 6.15 refers to the Guidelines for Expenditure of the Kingborough Environmental Fund. These guidelines were not available on the website at the time of the hearing. This has been rectified.
Incorporation of reference documents	<p>Further to the above, the Commission suggested at the hearing that any document referenced in an incorporated document needed to be separately incorporated into the planning scheme. This suggestion goes beyond the drafting conventions, is completely unmanageable and has not been applied to any other incorporated documents in any planning scheme in the state.</p> <p>It is also inconsistent and unequitable to require a planning authority to go through a planning scheme amendment to be able to reference a State Government policy that itself wasn't required to go through any legislative process to be adopted by the State Government. For example, it is noted that the FPA Policy references the DPIPWE Guidelines in effect at the time.</p>

6. Are criteria for decision making in the policy clear?

During the hearing the Commission had several questions in relation to the Biodiversity Offset Policy:

<p>Clause 6.13.2. The Commission sought clarification on how the Planning Authority assessed whether the scale of loss is small with regards to the conservation status and specific characteristics of the value(s) being impacted.</p>	<p>This is determined with regard to current specialist advice, including Natural Values Assessments submitted with the application, Recovery Plans and Listing Statements, informal referral of the proposal to the Conservation Assessment Branch of NRE for advice and recognised species specialists.</p>
<p>Table 1 of the Policy details financial offset rates, including a rate of up to \$570 per tree of very high conservation value and up to \$340 for high conservation value. The Commission sought clarification on how the Planning Authority applies the different rates for individual trees.</p>	<p>Table 1 of the Policy details financial offset rates, including a rate of up to \$570 per tree of very high conservation value and up to \$340 for high conservation value. The Commission sought clarification on how the Planning Authority applies the different rates for individual trees.</p> <p>Generally speaking, where a tree meets the threshold for a very high or high conservation value tree and the removal of the tree requires a development application, the maximum amount is charged. Where tree removal is exempt from requiring a development application but still otherwise requires Council approval under a covenant on the title, Part 5 Agreement or By-Law, the required offset is at the lower end of the scale, as these situations generally do not involve new development and the tree removal is necessary to protect and maintain existing development.</p> <p>However, it is important that there is a level of flexibility in the offset rates to provide for situations where a tree may technically meet the threshold of a high or very high conservation value tree but there are characteristics which reduce its conservation value, such as its declining health or poor form. In these situations, a lower offset rate can be considered.</p>
<p>Table 2. Clarification was sought on:</p> <ul style="list-style-type: none"> <li>• where the 5,000m threshold for forty-spotted pardalote is derived from;</li> <li>• how the Planning Authority determine priority species.</li> </ul>	<p>In relation to <i>E. viminalis</i> within 5,000m of forty-spotted pardalote habitat, <i>E. viminalis</i> trees meeting this threshold of a high conservation value tree are by definition also potential habitat for a threatened species. Therefore, the characteristics of what makes an <i>E. viminalis</i> tree a high conservation value tree and specified in Table 2 is consistent with the definition of potential habitat in the policy and the scheme. Under this definition, potential habitat is determined from published and unpublished scientific literature and/or via expert opinion, is agreed by the Threatened Species Section, DPIPW in consultation with species specialists, and endorsed by the Scientific Advisory Committee under the <i>Threatened Species Protection Act 1995</i>.</p> <p>In the case of potential habitat for the forty-spotted pardalote, the published literature identifies the potential range of the species as 5km from the coast (FPA, 2022, <i>Threatened fauna species range boundaries and habitat descriptions</i>, v1.29 June 2022; Threatened Species Section (2012), <i>Listing Statement for Pardalotus quadragintus (Forty-spotted Pardalote)</i>. Department of Primary Industries, Parks, Water and Environment, Tasmania). Specialist advice obtained as part of the technical consultation confirmed that a distance of 5km from areas with known pardalote occupancy was appropriate (Dejan Stojanovic and Fernanda Alves, Postdoctoral Fellows, Fenner School of Environment and Society Australian National University).</p> <p>In relation to priority species, determining whether a species meets the criteria in</p>

	<p>the Table and in the definition requires an assessment by a suitably qualified person and consideration by the Planning Authority. This assessment is not undertaken as part of an individual application but rather a separate conservation assessment. Any decision resulting in the identification of a new priority species is communicated to relevant ecological experts so they are aware of the classification and can address any impacts on these species as part of their assessment. This process has been followed in relation to <i>E. rubida</i>, currently the only identified priority species in Kingborough.</p> <p>The source of the characteristics in Table 2 can be included as a footnote to the table for clarification purposes. This can be rectified and submitted to the Commission before a final decision is made.</p>
<p>Table 3. The Commission sought clarification on what governs the decision-making process around offsets. Determination of offsets and any exercise of discretion by Council occurs as part of the development approval process.</p>	<p>Determination of offsets and any exercise of discretion by the Planning Authority occurs as part of the development approval process. For simple offsets, this is generally a matter of obtaining sufficient information to: (i) enable classification of the values as per Table E10.1 of the code and Table 3 of the policy; (ii) confirm the extent of impact; (iii) confirm which special circumstances apply; (iv) confirm the appropriate offset option(s) and replacement ratios; (iv) calculate the offset requirements; and (v) apply the relevant and standard conditions. Examples of offset assessments and standard conditions are provided in Attachment 1.</p> <p>The Natural Values Assessment (NVA) is relied upon to inform classification of the values, appropriate offset options and extent of impact, however the final assessment by the Planning Authority may differ from the original assessment undertaken by the consultant. This generally occurs where:</p> <ul style="list-style-type: none"> <li>the full extent of impact has not been determined at the time the NVA is undertaken, as details on access arrangements, onsite wastewater, cut and fill and bushfire may not be available at this time;</li> <li>changing knowledge about species habitat requirements. This does not often occur, however a recent example is the grey goshawk. Until recently, habitat descriptions have been specific to the north west of the State but applied to the south east. When these habitat descriptions are applied, grey goshawk habitat is not identified as being present. An interim technical note has now been developed for the south east, however it has taken time for consultants to become aware of current knowledge around this species and apply it as part of their assessments;</li> <li>there are multiple values on a site which affect the priority and the associated offset requirements, and the Natural Values Assessment hasn't accounted for the multiple values. For example, where swift parrot foraging habitat is present on a site and there are no other values present, the vegetation meets the definition of potential habitat for the swift parrot (a moderate priority biodiversity value). However, where swift parrot foraging habitat occurs and this community also contains large trees with potential hollows, this habitat contains both potential foraging and potential breeding habitat. The vegetation then meets the definition of significant habitat for the swift parrot and is a high priority biodiversity value under Table E10.1 and a very high priority value in relation to Table 3 and replacement ratios for offsetting. This distinction may be missed as part of Natural Values Assessments.</li> </ul> <p>Where classification of values differs, the extent of impact is unclear, or offsets are more complex, further information is requested. More complex offsets are also often discussed with the ecological consultant acting engaged by the applicant to confirm the offset proposal makes sense and is consistent with their understanding. Examples of offset assessments and standard conditions are</p>

	provided in Attachment 1.
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In terms of the Public Open Space Policy, the Commission sought clarification in relation to the following:

Clause 3.1 What is the intention of “environmental management” under the objectives?	<p>The objectives in the Public Open Space Contribution Policy should be read in conjunction with the Public Open Space dedication guidelines under clause 6.2. Clause 6.2 provides for the criteria that must be considered by the Planning Authority in deciding whether land dedication or a monetary contribution will be required. The policy aims to ensure where land is provided for Public Open Space, it is genuinely used for that purpose, but it also allows public open space to be provided in a manner that enhances habitat corridors, particularly where it has special environmental values.</p> <p>While recreation areas provide some shared benefits, like community health, passive recreational opportunities may also offer some unique benefits, like the protection of natural resources and the restoration of ecosystem services.</p> <p>For clarity, the decision must have regard <u>to all the matters</u> under 6.2 of which environmental management is just one aspect and in all instances a recreation benefit must be provided. The intent is not to ‘double dip’ by seeking Biodiversity Offsets and then on top of that require Public Open Space to improve environmental outcomes, but instead to allow some flexibility to provide offsets in Public Open Space areas where it adds to the overall functionality and amenity of the area as well improving environmental outcomes. This contemporary and flexible approach is not unique to Kingborough and can be found in other jurisdictions across Australia and elsewhere in the world.</p>
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### Summary statement

The *Kingborough Public Open Space Policy, Policy 6.3 (dated May 2019)* and the *Kingborough Biodiversity Offset Policy, Policy 6.1 (dated November 2016)* are two of eight existing incorporated documents listed and referenced in the Kingborough Interim Planning Scheme 2015. Over the years the two policies have been subject to reviews and updates, with the planning scheme amended to incorporate these changes in 2020. Throughout these reviews, the intention of the policies remains the same as to when they were introduced.

The proposed amendment does not introduce new development standards or policies but is rather to update the list of supplementary documents in Appendix 1 in the of the Kingborough Interim Planning Scheme 2016 to reflect Council’s Public Open Space Contribution Policy, Policy 6.3, dated November 2021 and Biodiversity Offset Policy 6.1 dated August 2022.

The updated policies are to improve consistency and clarify terms and definitions. While there are minor errors requiring rectification, these can be made through an administrative process and provided to the Commission before a final decision is made. It is the Planning Authority’s submission that the documents both comply with the requirements of LUPAA, the drafting conventions and the criteria provided by the Commission and the proposed regulatory change is appropriate as a matter of planning policy.



TASHA TYLER-MOORE  
ACTING DIRECTOR ENVIRONMENT, DEVELOPMENT AND COMMUNITY

## Attachment 1

### Examples of offset calculations and associated permit conditions

Please note:

- These are real examples but identifying information has been removed.
- These examples were assessed under the previous policy as the current policy is not yet in effect.

#### Financial offset (individual trees)

##### *Assessment*

The proposal will result in the clearance of 3000m<sup>2</sup> of native vegetation, *Eucalyptus obliqua* dry forest and woodland (DOB), including 1900m<sup>2</sup> for the establishment of the Bushfire Hazard Management Area and 1100m<sup>2</sup> for upgrades to the access. This vegetation is a low priority biodiversity value under Table E10.1 and does not require offsetting to meet the requirements of Clause E10.7.1 P1 (a). Notwithstanding, within the area to be cleared, one (1) very high conservation value *Eucalyptus globulus* with a 81cm DBH and two (2) high conservation value *Eucalyptus globulus* with 54cm and 62cm DBH require removal. Under Table E10.1 of the code, these high and very conservation value trees are a moderate priority biodiversity value and their loss requires offsetting to meet the requirements of Clause E10.7.1 P1 (b) (iv).

The proposal meets special circumstances (iv) of the policy, as the purpose of the tree removal is development of an existing title within the Low Density Residential Zone and is for a single dwelling. with the extent of values impacted insignificant relative to the extent of the values elsewhere on site.

The clearance and conversion will not substantially detract from the conservation status of the biodiversity values in the vicinity of the development, providing the impacts are adequately offset.

As the loss is limited to individual trees of high and very high conservation value, consistent with 5.11 and Table 1 of the policy, a financial contribution of \$500/tree of very high conservation value and \$250/tree of high conservation values is considered appropriate.

Providing a condition is included in any permit issued requiring the financial contribution, the offset proposal is in accordance with the Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process, Southern Tasmanian Councils Authority 2013 and Council Policy 6.10.

##### *Condition*

To offset the loss of three (3) trees of high conservation value (comprising one very high conservation value *Eucalyptus globulus* tree with a DBH >70cm and two high conservation value *Eucalyptus globulus* trees with a DBH 40cm - <70cm) an offset of \$500/very high conservation value tree and \$250/high conservation value tree (\$1000 in total) must be paid into Council's Environmental Fund, to be used to manage and conserve the habitat of the swift parrot in the vicinity of Middleton/Gordon.

This offset must be paid prior to the issue of a Building Permit and removal of the trees.

### Financial offset (per hectare rate)

Approximately 0.3 hectares of *Eucalyptus ovata* forest and woodland (DOV) and will require removal to accommodate the proposed development. This vegetation is a high priority under Table E10.1 of the planning scheme as it is listed as endangered under *Nature Conservation Act 2002*. All of this vegetation is proposed for removal. The vegetation on the site also contains potential habitat for the Chaostola skipper and individual trees of high and very high conservation value. These habitat values are moderate priority biodiversity values under Table E10.1. All Chaostola skipper habitat is proposed for removal and 13 trees of high conservation value tree and 3 trees of very high conservation value are proposed for removal.

Given the poor condition of the values, the lack of management options and the small size of the patch, special circumstances (ii) are satisfied. The conversion and disturbance of the DOV, Chaostola skipper habitat and high conservation value trees will not substantially detract from the conservation status of the biodiversity values in the vicinity of the development, providing the impacts are adequately offset.

As the extent of impact is small, there is no potential for on-site offsets and a more strategic outcome can be achieved by pooling resources, consistent with 5.11, the loss of DOV, Chaostola skipper habitat and trees of high conservation value are able to be offset via a financial contribution (Table 1, option (c)). Consistent with Table 1 (c) and Table 3, the financial offset for the DOV, a high priority biodiversity value, is calculated at a rate of \$12,000/hectare and a replacement ratio of 5:1. As the impact involves multiple values, to offset the loss of Chaostola skipper habitat (a moderate priority biodiversity value), the offset ratio is increased by a factor of 1. Therefore, the financial offset for the loss of DOV and Chaostola skipper habitat is  $0.3 \times \$12,000 \times 6$  and totals \$21,600.

Consistent with Table 1 (c) and Table 3, the financial offset for the loss of individual trees of high and very high conservation value is \$250/tree and \$500/tree respectively.

### Conditions

The loss of 0.3 hectares of *Eucalyptus ovata* forest with Chaostola skipper habitat must be offset by a financial contribution totalling \$21,600 paid to Council's Environmental Fund prior to the removal of the vegetation and the commencement of works on the site. This contribution must be used solely for the protection and management of *Eucalyptus ovata* forest and Chaostola skipper habitat in the vicinity of Kingston/Blackmans Bay.

To offset the loss of thirteen (13) trees of high conservation value and three (3) trees of very high conservation value, an offset of \$250-\$500/tree and totalling \$4750, must be paid into Council's Environmental Fund. This offset must be used to manage and conserve the habitat of the swift parrot in the vicinity of Kingston.

This \$4750 offset must be paid prior to the removal of the vegetation and the commencement of works on the site.

### Multiple values with Part 5 Agreement and financial contribution

### Assessment

The site contains 2.318 hectares of *Eucalyptus globulus* dry forest and woodland (DGL) and 750m<sup>2</sup> of potential swift parrot foraging habitat. The proposal involves the loss of 0.5415 hectares of DGL and 0.075 hectares of potential swift parrot foraging habitat. DGL is a high priority biodiversity value under Table E10.1 and requires offsetting to meet the requirements of Clause E10.7.1 P1 (c) (v). Potential swift parrot foraging habitat is a moderate priority

biodiversity value and requires offsetting to meet the requirements of Clause E10.7.1 P1 (b) (iv).

The proposal meets special circumstances (iii) of the policy, with the extent of values impacted insignificant relative to the extent of the values elsewhere on site. The conversion and disturbance of the DGL and swift parrot foraging habitat will not substantially detract from the conservation status of the biodiversity values in the vicinity of the development, providing the impacts are adequately offset.

The required offset ratio for the loss of DGL under Table 3 of the policy is 5:1. Therefore, with an impact of 5415m<sup>2</sup>, the required offset is the protection of 27075m<sup>2</sup> of DGL. As the proposal relies upon special circumstances (iii) of the policy, under 5.3 of the policy, a substantial proportion of the offset must be achieved via option (a) to the extent practicable, with any residual loss offset via options (b)-(e). Consistent with 5.3 of the policy, a Part 5 Agreement was proposed to protect the remaining DGL and offset the impacts on priority biodiversity values. The area subject to the Part 5 was identified in a plan submitted to Council. However, there is only 1.7765 hectares of DGL available on site and of this, 0.121 hectares is proposed to be excluded from the offset area to enable future extensions to the dwelling. Therefore, the proposed conservation zone does not offset the full impacts and leaves a shortfall in the required offset of 1.052 hectares. Consistent with 5.3 and Tables 1 and 3 of the policy, this shortfall requires offsetting via a financial contribution totaling \$12,624.

The required offset ratio for the loss of potential swift parrot foraging habitat under Table 3 of the policy is 3:1. Therefore, with an impact of 0.075 hectares, the required offset is the protection of 0.225 hectares of potential swift parrot foraging habitat. As the proposed Part 5 offset area contains 1.6555 hectares of swift parrot foraging habitat, the proposed offset is adequate to offset any loss of swift parrot foraging habitat without requiring any additional financial offsets.

Providing a condition is included in any permit issued requiring the proposed Part 5 Agreement and financial contribution, the offset proposal is in accordance with the Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process, Southern Tasmanian Councils Authority 2013 and Council Policy 6.10.

### *Condition*

To offset the loss of 0.5415 hectares of a threatened vegetation community (*Eucalyptus globulus* dry forest and woodland) containing potential swift parrot breeding and foraging habitat, one of the following offsets must be secured:

- (a) payment of a financial contribution of \$12, 624 prior to commencement of on-site works and approval of building documentation. This offset must be paid to Council's Environmental Fund and used solely for the protection and management of *Eucalyptus globulus* dry forest and woodland and swift parrot foraging habitat in Kingborough; and
- (b) execution and registration of a Part 5 Agreement under the *Land Use Planning and Approvals Act 1993* with and to the satisfaction of Kingborough Council to retain and protect the remaining vegetation and habitat values in a conservation zone.

This Part 5 Agreement must:

- (i) verify the extent of the conservation zone, which must encompass all native vegetation contained within the conservation area identified in Council Plan Reference No. PX submitted on XXXXXX;
- (ii) provide for the protection and management of all native vegetation and habitat values within the conservation zone;

- (iii) identify management prescriptions to ensure that environmental values are managed for their long term survival, generally in accordance with the Environmental Management Plan prepared by XXX, including monitoring and reporting. These management prescriptions must be drafted by a suitably qualified person and include a schedule of works with timeframes and details for each action for a minimum of five years where required; and
- (iv) be drafted using Council's template Part 5 Agreement.

All costs associated with drafting and registering the Part 5 Agreement on the title are to be borne by the developer. All terms of this Agreement must be complied with once executed.

Ongoing management of the site must be in accordance with the Part 5 Agreement. *Please note, planning permits containing a requirement for a Part 5 Agreement are not effective until such time as the Agreement is executed, as specified in s53(6) of the Land Use Planning and Approvals Act 1993. Therefore, the above Agreement must be signed and sealed, and proof of lodgement of the Agreement with the Land Titles Office for registration on the property title provided to Council, prior to building approval and commencement of any further on-site works. The template, and a checklist for the process of drafting and lodging such an Agreement, may be obtained from Council's planning team.*

#### Standard bond condition for offsets

Red text is amended depending on the situation.

*'Prior to commencement of works/sealing of the Final Plan of Survey, a bond must be paid to Council for the cost of five years of monitoring and implementation of the Part 5 Agreement, excluding any initial actions already undertaken. Reporting to Council on compliance with and implementation of the Agreement must be undertaken by a suitably qualified consultant and not less than once annually for a minimum period of 5 years. The bond will be repaid to the payer in stages on an annual basis once each annual report is received and satisfactory implementation of works demonstrated, in accordance with the cost schedule identified in the Agreement'.*