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Subject: PSA 2023/1 Representation Received [ID:1507135]
Attachments: Case in support of Draft Amendment to CH LPS to include four coastal SPAs - 23Nov23.pdf

PSA 2023/1 Representation Received [ID:1507135]

Planning Scheme Amendment to LPS (PSA2023/1) Representation Form

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Attach File Case in support of Draft Amendment to CH LPS to include four coastal SPAs -
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#QAP PSA 2023/1 LPS Amendment - Scenic Protection

Representation in support of Circular Head LPS Draft Amendment No. PSA 2023/1 with respect to the inclusion of the four coastal Scenic Protection Areas

Summary

CIR-C8.1.3 Coastal Estuaries and Islands

The inclusion of CIR-C8.1.3 Coastal Estuaries and Islands Scenic Protection Area (SPA) in the Circular Head LPS will ensure that all future coastal and island development between Cape Grim and Smithton will need to comply with the provisions of the Scenic Protection Code.

The proposal to protect the scenic values of this land using the Scenic Protection Code was the subject of two representations during the Draft Circular Head LPS Exhibition in 2020 but Council resolved to defer consideration of this and other meritorious SPA proposals 'so as not to delay the adoption of the LPS'.

The Circular Head Municipality Scenic Values Assessment and Management Report (the Report) has verified that the scenic values of the Coastal Estuaries and Islands between Cape Grim and Smithton, identified by two representations during the Draft LPS Exhibition, warrant protection under the Scenic Protection Code.

Under the TPS, Codes are intended to be applied to use or development on land across zone boundaries and their provisions override zone provisions. In the proposed Coastal Estuaries and Islands SPA, all the land is zoned Environmental Management except for Robbins and Walker Islands that are zoned Rural.

The Zone Purpose for Environmental Management includes 'the protection, conservation and management of land with significant ... scenic value' and only allows development compatible with this.

The Zone Purpose for Rural provides no such protection and lists major Utilities as a Permitted Use. The complete lack of consideration of scenic values by Rural Zone justifies the application of the Coastal Estuaries and Islands SPA to Robbins and Walker Islands to ensure such consideration for future development applications.

CIR-C8.1.4 Eastern Gateway

The inclusion of CIR-C8.1.4 Eastern Gateways SPA will ensure that the coastal land within the Rocky Cape National Park including the Sisters Hills and the agricultural land to the south of the National Park will be protected from development that would compromise the important scenic values identified in the Report.

The proposed SPA includes a large area of land zoned Agriculture, the Rocky Cape National Park zoned Environmental Management, and a small area of land zoned Rural. Like Rural Zone, Agriculture Zone provides no provisions for the protection of scenic values, so protection by the Scenic Protection Code across the variously zoned land is essential.

CIR-C8.1.2 Marrawah

The inclusion of CIR-C8.1.2 Marrawah SPA will ensure that the coastal land at Marrawah including Mount Cameron West, Green Point Beach, Green Point and Pavement Point will be protected from inappropriate development.

This SPA also includes a small area of land zoned Rural Living which contains provisions for the protection of landscape values. However the great majority of the land is zoned Agriculture or Rural so protection by the Scenic Protection Code across the variously zoned land is again essential.

CIR-C8.1.1 Stanley Peninsula

The inclusion of CIR-C8.1.1 Stanley Peninsula SPA will ensure that all the coastal land between Duck Bay in the west and Port Latta in the east, including The Nut, will be protected from development that would impact the various scenic values identified in the Report.

The SPA includes a mix of Zones but will only apply to land zoned Rural, Agriculture, Landscape Conservation, Environmental Management and Open Space as per C8.2.1 in the SPPs. Because the majority of the land is zoned Agriculture or Rural, protection of the scenic values by the Scenic Protection Code is essential.

Compliance with applicable LPS Criteria

The proposed inclusion of the four coastal SPAs also meets the applicable LPS Criteria as required by LUPAA Section 40M(1)(c) as follows:

- They further the objectives set out in Schedule 1 of LUPAA by ensuring that the effects of development on the environment are necessarily considered within the landscape included in the proposed SPAs (Schedule 1 Part 2 (c)).
 - They are consistent with the *State Coastal Policy 1996* particularly with respect to the 'Protection of Natural and Cultural Values of the Coastal Zone', particularly policies 2.1.3 and 2.1.5.
 - They are consistent with the Cradle Coast regional land use strategy in that the addition of the SPA is supported by the strategy when read in its entirety (CCRLUS 2022 Part C 1.6 (a)).
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Strong case for the four coastal SPAs in the Circular Head Municipality Scenic Values Assessment and Management Report

The multiple high scenic quality characteristics of the proposed SPAs are described in detail on pp 108, 110, 115, 122, 128 and 129 of the Report. The inclusion of these SPAs in the Circular Head LPS will recognise these characteristics in the LPS and ensure that all future coastal and island development between Cape Grim and Smithton, as well as coastal development at Marrawah, Stanley and Rocky Cape National Park will need to comply with the provisions of the Scenic Protection Code.

Why a Coastal Estuaries and Islands SPA is required

Under the State Planning Provisions (SPPs), Codes are intended to be applied to use or development on land across zone boundaries and their provisions override zone provisions.

In the proposed Coastal Estuaries and Islands SPA, all the land is zoned Environmental Management except for Robbins and Walker Islands that are zoned Rural (refer Map 4.3 on p 123 of the Report).

The Zone Purpose for Environmental Management (SPPs 23.1) includes 'the protection, conservation and management of land with significant ... scenic value' and only allows development compatible with this.

The Zone Purpose for Rural (SPPs 20.1) provides no such protection. The complete lack of consideration of scenic values by the Rural Zone justifies the application of the Coastal Estuaries and Islands SPA to Robbins and Walker Islands to ensure such consideration for future development applications.

The Scenic Protection Code does not apply to use so the application of the SPA to Robbins and Walkers Islands, which are zoned Rural, has no impact on the use of this land for agriculture.

Why an Eastern Gateway SPA is required

In the proposed SPA a large area of land to the south of the Rocky Cape National Park is zoned Agriculture, a small area is zoned Rural, whereas the Rocky Cape National Park which spans the coast and the part of the Shakespeare Hills Regional Reserve to the south are zoned Environmental Management (refer Map 4.4 on p 130 of the Report).

Like Rural Zone, Agriculture Zone provides no provisions for the protection of scenic values, so protection by the Scenic Protection Code across the variously zoned land is essential. Furthermore, the Priority Vegetation Area provisions of the Natural Assets Code do not apply in Agriculture Zone.

Why a Marrawah SPA is required

This SPA includes a small area of land zoned Rural Living (refer Map 4.2 on p 116 of the Report) which contains provisions for the protection of landscape values. The Rural Living Zone Purpose allows for residential development where 'natural and landscape values are to be retained' (SPPs 11.2.2(b))

However, the great majority of the land is zoned Agriculture or Rural so, as explained above for the Coastal Estuaries and Islands SPA and Eastern Gateway SPA, protection by the Scenic Protection Code across the variously zoned land is again essential.

Why a Stanley Peninsula SPA is required

The SPA includes a large mix of Zones (refer Map 4.1 on p 109 of the Report) but will only apply to development on land zoned Rural, Agriculture, Landscape Conservation, Environmental Management and Open Space as per C8.2.1 in the SPPs. It will not apply to development on land in and around the township of Stanley that is zoned General Residential, Local Business, Utilities or Recreation.

Because the majority of the land is zoned Agriculture or Rural, protection of the scenic values by the Scenic Protection Code is essential.

LPS Criteria applicable to the proposed amendment

Section 40M of LUPAA, Approval of amendments of LPS, requires the following:

(1) As soon as practicable after receiving a report under section 40K in relation to a draft amendment of an LPS and holding any hearings under section 40L, the Commission must consider –

...

(c) whether it is satisfied that the draft amendment of an LPS meets the LPS criteria;

The applicable LPS criteria under Section 34 of LUPAA in this case are listed below:

The LPS criteria to be met by a relevant planning instrument are that the instrument –

...

(c) further the objectives set out in Schedule 1; and

(d) is consistent with each State policy; and

...

(e) as far as practicable, is 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; and

(f) has regard to the strategic plan, prepared under section 66 of the Local Government Act 1993, that applies in relation to the land to which the relevant planning instrument relates; and

...

Compliance with Schedule 1 of LUPAA

Under Part 1 the description of sustainable development includes 'avoiding, remedying or mitigating any adverse effects of activities on the environment' (2(c)).

And under Part 2 (c) the objectives of the planning process must

ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;

The inclusion of the proposed five SPAs will ensure that the social (visual amenity) and economic (tourism) benefits are protected for future generations, consistent with the Schedule 1 objectives.

Compliance with the State Coastal Policy 1996

The *State Coastal Policy 1996* is the only applicable State Policy in this case.

Two policies of particular relevance under 2.1 Coastal Uses and Development are:

2.1.3. Siting, design, construction and maintenance of buildings, engineering works and other infrastructure, including access routes within the coastal zone will be sensitive to the natural and aesthetic qualities of the coastal environment.

2.1.5. The precautionary principle will be applied to development which may pose serious or irreversible environmental damage to ensure that environmental degradation can be avoided, remedied or mitigated. Development proposals shall include strategies to avoid or mitigate potential adverse environmental effects.

The inclusion of the four coastal SPAs in the Circular Head LPS will ensure that the scenic values of this land identified in the Report will be protected consistent with the *State Coastal Policy 1996*.

Compliance with the Cradle Coast Regional Land Use Strategy 2010-2030

While the Cradle Coast Regional Land Use Strategy 2010-2030 (CCRLUS) highlights the importance of a transition to renewable energy including the use of land within the region for this purpose it also makes clear that land use planning in the Cradle Coast must not cherry pick elements of the CCRLUS.

Under Part C 1.6 of the CCRLUS it states on p 123 that:

Implementation requires coordinated understanding that –

a. The Strategy is to be read and applied in its entirety and all applicable policies are to be applied

...

The inclusion of the proposed four coastal SPAs is consistent with the CCRLUS when read in its entirety because it allows for the continued use of land for agriculture (Resource Development) while protecting the scenic values of that land for existing social and economic benefits.

Compliance with the Circular Head strategic plan

While the *Circular Head Council 10 Year Corporate Strategic Plan* is a relatively high level document, Goal 7 (Environment) includes:

7.4 The use of land reflects a balance of environmental and community needs.

Strategy Promote sustainable land management and development through our role in strategic land use planning and development control.

The inclusion of the five SPAs is consistent with this stated goal.