
From: Naomi Billett <naomi@billettlegal.com.au>
Sent: Tuesday, 30 June 2026 5:18 PM
To: TPC Enquiry
Cc: frazer@allurbanplanning.com.au; Jack Tammens
Subject: AM-CLA-PDPSAMEND-2025-054641 -Scheme Amendment - 113-119 East Derwent Highway, Lindisfarne
Attachments: Submission - Matters for a SAP - 113-119 East Derwent Highway, Lindisfarne.pdf
Categories:

Attention Delegates

Please find attached a submission on behalf of the Representor, Mr Brett McKay.

Yours faithfully

Naomi Billett
Principal

BILLETTLEGAL



naomi@billettlegal.com.au

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

In the Matter of an amendment to the
Clarence Local Provisions Schedule

And

In the Matter of a Representation on
behalf of Mr Brett McKay

SUBMISSION: MATTERS FOR POTENTIAL SAP

Summary of Position – No Power to Entertain a SAP

- 1 The Commission has directed that the parties provide submissions addressing matters that may be addressed by a Specific Area Plan (**SAP**). These submissions are limited to this issue.
- 2 The primary position of the Representor is that a SAP cannot be entertained because s.32(4) of the *Land Use Planning and Approvals Act 1993* (**LUPA Act**) is not met. It follows that there are no matters that may be addressed by a potential SAP.

Jurisdictional Fact

- 3 S.32(4) of the LUPA Act creates a limitation on when a SAP can be included in a planning scheme. In essence, it creates two preconditions, each provided in the alternative to the other. One of those preconditions must be satisfied before a SAP can be considered.
- 4 In our submission, s.32(4) of the LUPA Act creates a jurisdictional fact which, if not satisfied, deprives the Commission of the power to entertain a SAP.

First Precondition Not Met – Use or Development of Significant Benefit

- 5 The first precondition is that the use or development to which the SAP relates is required to be of significant social, economic or environmental benefit to the State, a region or a municipal area.
- 6 Key to satisfying this requirement is that there must be a use or development presented and able to be assessed. The provisions of the SAP are then directed to deliver that specific use and development as the intended future of the relevant land.
- 7 Once a use or development is identified, it must be assessed to identify a significant benefit in one or more of the relevant categories.
- 8 As submitted, the Draft Amendment does not propose a particular use or development. As such, it is not surprising that no case has been made as to the significance of any benefit associated with such use or development.

Filed on behalf of the Representor, Mr Brett McKay:

- 9 The Applicant has presented evidence that assesses the suitability of the Site for the proposed zoning in reliance upon a concept design and in reliance upon the general proposition that the road corridor and road catchment are under-served by commercial development.
- 10 However, these are general claims at best, and fall far short of demonstrating that a general commercial type use, even if limited to particular uses, are of significant benefit to the State, region or municipal area.
- 11 While it may be that the matters addressed within the SAP may operate to create a particular use or development, it remains the case that there is no evidence to support a finding that cl.32(4)(a) is met.

Second Precondition Not Met – Particular Qualities of the Site

- 12 The second, alternate precondition, focuses instead upon the relevant land. It does not require that a particular use or development is contemplated. The provision requires that the area of land, here 113-119 East Derwent Highway (**Site**) possesses particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land.
- 13 Breaking this down, s.32(4)(b) requires that it is the particular qualities of the Site that require unique provisions.
- 14 Again, the evidence does not demonstrate that the area of land possesses particular qualities of the kind referred to. It follows that there is no link to be drawn between such qualities and the potential for provisions which are unique to the area of land.
- 15 The Site is identified, on the evidence of all parties as being adjacent to one of several existing local business nodes. It, like each of the others, is sited adjacent the East Derwent Highway. As described by Mr Walker:

... the East Derwent Highway road corridor exhibits a fragmented and intermittent pattern of Local Business zoned land clusters embedded within a broader residential landscape. The assessment identifies no evidence that these isolated Local Business zoned sites were intended to operate collectively and independently as a separate activity centre under the STRLUS. ...

- 16 Discussion throughout the hearing compared these clusters with the arrangement of local business zoned clusters along Clarence Street in Bellerive. As such it is readily apparent that there exist numerous local business clusters or zoned areas along major roads.
- 17 Equally, the evidence demonstrates that the Site has, and continues, to function to provide residential accommodation. There is nothing inappropriate about the current zoning. Indeed, there are many examples of residential zoned land up and down the highway.
- 18 Viewed in this manner, it is difficult to conclude that the Site possesses particular qualities, whatever they may be, that require unique provisions. The Site is no different to other land located adjacent the highway.

Conclusion

- 19 In our submission, s.32(4) of the LUPA Act is not enlivened.
- 20 The matters identified by Commission as the potential basis for a SAP do not provide for a use or development that has significant benefit to the State, region or municipal area. Likewise, they are not the basis of unique provisions that are required because of particular environmental, economic, social or spatial qualities of the Site.
- 21 In this circumstances, there are no matters to be addressed by a potential SAP.

DATED this 30th day of June 2026.

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Pra  e Representor
