

George Town Local Provisions Schedule

SUBMISSIONS ON BEHALF OF AUSTRAK TAS 1 PTY LTD

1. Introduction and Summary

- 1.1. As the Commission is aware, this firm acts for Austrak Tas 1 Pty Ltd (**'Austrak'**). Austrak, via GHD Pty Ltd submitted what was subsequently identified as representation 19 dated 31 August 2022 (**'Representation'**) relating to the draft George Town Local Provisions Schedule (**'LPS'**).
- 1.2. In summary, the Representation relates to Certificate of Title 152001 Folio 1 and the area of untitled land adjoining the kanamaluka / River Tamar (together the **'Site'**) that is subject to Crown Lease 46962,¹ shown below in Figure 1. It requests rezoning to the Port and Marine Zone (**'PMZ'**) to facilitate use and development for a wharf (**'Rezoning'**).
- 1.3. This modification to the draft LPS to facilitate the Rezoning is supported by George Town Council's (**'Council'**) Planning Authority.²

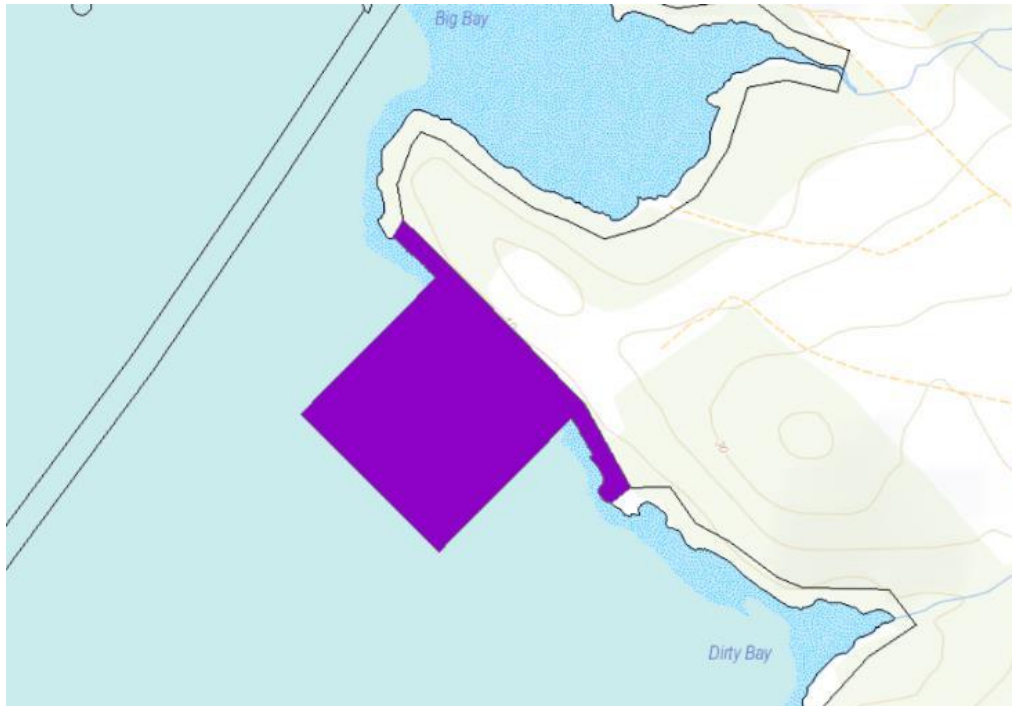


Figure 1: Extent of land subject to Rezoning to PMZ³

- 1.4. In summary, we submit that the Rezoning has significant merit, meets the relevant requirements of the Act and is in accordance with the TPC Guidelines. After the hearings the Commission should modify the draft LPS to incorporate the Rezoning in accordance with section 35K of the Act.

¹ Noting a copy of this lease is provided as Attachment "B" of Samuel Martinello's Statement of Evidence dated 16 March 2023 pp 12-41.

² See, eg, Planning Authority section 35F Report on representations dated 3 November 2022 pp 41-45.

³ Extracted from Planning Authority section 35F Report on representations dated 3 November 2022 pg 45.

2. Background of the Site

- 2.1. For simplicity, we refer to details of the Site and its relevant background as summarised in part 1 of the Representation.
- 2.2. As further detailed in Mr Kyron Johnson's statement of evidence, the Site was previously approved in 2007 as part of the former Gunns Pulp Mill proposal to include wharf facilities ('Permit').⁴
- 2.3. The construction and operation of the approved wharf facilities was subject to detailed surveys, analysis and evaluation.⁵ This included potential environmental impacts and management measures. Those studies were subsequently peer reviewed as part of the approval process which concluded there were no concerns or compliance issues relating to the wharf facility.⁶
- 2.4. The Permit runs with the land and was substantially commenced on or about 28 September 2011.⁷ Accordingly, it remains valid and permits the use and development of a wharf facility.⁸
- 2.5. We note that the area approved for a wharf facility by the Permit was also granted a Crown Lease on 24 September 2008.⁹ The "permitted purpose" is to "accommodate the construction and operation of the Wharf on the Land, and reasonably necessary ancillary purposes."¹⁰ This wharf area is identified in plan number 8313 of the lease, shown below as Figure 2.

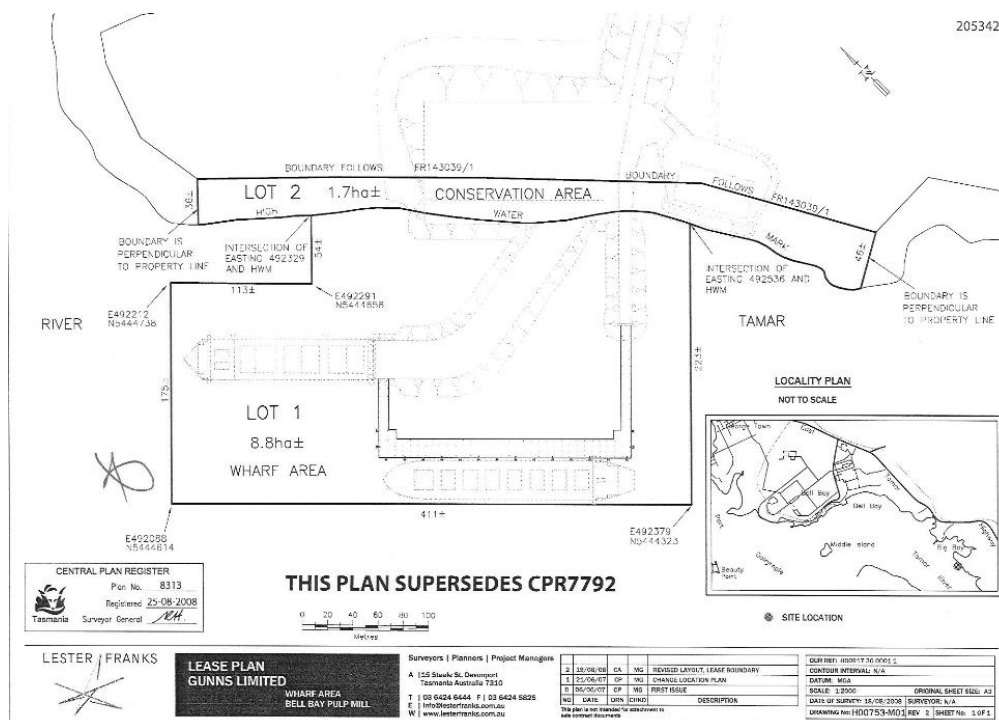


Figure 2: Extent of wharf area subject to lease¹¹

⁴ Kyron Johnson Statement of Evidence dated 16 March 2023 pts 3-5.

⁵ See, eg, Kyron Johnson Statement of Evidence dated 16 March 2023 pp 7-9 [5.5]-[5.18].

⁶ See, eg, Kyron Johnson Statement of Evidence dated 16 March 2023 pg 9 [5.19]-[5.20].

⁷ See, eg, *Hilpalm Pty Ltd v Heaven's Door Pty Ltd* [2004] HCA 59; (2004) 220 CLR 472 at [88] & Kyron Johnson Statement of Evidence dated 16 March 2023 Annexure J.

⁸ See, eg, *Pulp Mill Assessment Act* 2014 s 8(4).

⁹ Noting a copy of this lease is provided as Attachment "B" of Samuel Martinello's Statement of Evidence dated 16 March 2023 pp 12-41.

¹⁰ Samuel Martinello's Statement of Evidence dated 16 March 2023, Attachment B pg 4 (pdf pg 18).

¹¹ Extracted from Samuel Martinello's Statement of Evidence dated 16 March 2023, Attachment B (pdf pg 37).

- 2.6. We understand the facilitation of a pulp mill on the Site has **not** been considered by Austrak. We simply refer to the existing Permit and lease to highlight the existing approvals and possible potential future use for a wharf facility.
- 2.7. As detailed below, it is submitted that the Rezoning of the land to PMZ that was previously approved and granted a lease for that purpose has significant merit and should be adopted by the Commission.

3. General Planning Considerations

- 3.1. The Rezoning seeks to change the land to PMZ. The purpose of the PMZ is:

25.1.1 To provide for major port and marine activity related to shipping and other associated transport facilities and supply and storage.

25.1.2 To provide for use or development that supports and does not adversely impact on port and marine activities.

- 3.2. The current zoning of relevant land under the *George Town Interim Planning Scheme 2013* ('IPS') is the Environmental Management Zone ('EMZ'). Austrak's land (Certificate of Title 152001 Folio 1) is in the General Industrial Zone.
- 3.3. The draft LPS as exhibited does not propose any relevant changes to this zoning.
- 3.4. In accordance with clause 7.11.1 of the State Planning Provisions ('SPP') the land outside of the Council's municipal district that has not been mapped would be considered within the closest zone being the EMZ.
- 3.5. However, as noted in the Representation:¹²

*As development and activities on the General Industrial land will potentially require separate approvals for a variety and number of leaseholders, approval for the wharf infrastructure will need to be independent and not directly associated with these activities. **An application for a wharf would most clearly fit within the Port and Shipping use class of the SPP** where the definition is as follows:*

use of land for:

(a) berthing, navigation, servicing and maintenance of marine vessels which may include loading, unloading and storage of cargo or other goods, and transition of passengers and crew; or

(b) maintenance dredging.

Examples include berthing and shipping corridors, shipping container storage, hardstand loading and unloading areas, passenger terminals, roll-on roll-off facilities and associated platforms, stevedore and receipt offices, and a wharf.

Both the IPS and SPP prohibit the use of Port and Shipping in the Environmental Management Zone. Furthermore, Use and Development Standards of the Zone are prohibitive to the operation and development of the land for wharf infrastructure servicing a substantial industrial estate.

The most appropriate Zone for development of wharf infrastructure from the SPP is the Port and Marine Zone, as reflected in the Zone Purpose. This would be consistent with existing wharf infrastructure in Bell Bay and Long Reach. [emphasis added]

¹² Representation pp 3-4 at 2.1.

- 3.6. Accordingly, the Commission should recommend that the draft LPS be modified to incorporate the Rezoning.

4. Framework for Assessment

- 4.1. Part 3A of the *Land Use Planning and Approvals Act 1993* ('**Act**') deals with Local Provision Schedules. Within that part, section 35J(1) of the Act states:

(1) As soon as practicable after receiving a report under section 35F(1) in relation to a draft LPS and holding any hearings under section 35H, the Commission must consider –

(a) the report and the draft LPS to which it relates; and

(b) the information obtained at the hearings; and

(c) whether it is satisfied that the draft LPS meets the LPS criteria; and

(d) whether modifications ought to be made to the draft LPS.

- 4.2. In accordance with section 35J(1)(c) of the Act, the Commission must be satisfied that the draft LPS meets the LPS criteria. In our opinion for the purpose of section 35J(1)(b) of the Act, this includes the consideration of the Rezoning as relevant information obtained at the hearings.

- 4.3. The relevant LPS criteria are provided sections 32 and 34 of the Act. Section 34(2) of the Act states:

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

(a) contains all the provisions that the SPPs specify must be contained in an LPS; and

(b) is in accordance with section 32; and

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

(d) is consistent with each State policy; and

(da) satisfies the relevant criteria in relation to the TPPs; 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

(g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and

(h) has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019.

- 4.4. In addition to subsection 34(2)(c), section 5 of the Act also confers an obligation on the Commission to "further the objectives set out in Schedule 1." Those objectives in Schedule 1 of the Act are divided into two parts as follows:

PART 1 - Objectives of the Resource Management and Planning System of Tasmania

1. *The objectives of the resource management and planning system of Tasmania are*

—

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

...

PART 2 - Objectives of the Planning Process Established by this Act

The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule –

(a) to require sound strategic planning and co-ordinated action by State and local government; and

(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and

(c) to 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; and

(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and

(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and

(i) to provide a planning framework which fully considers land capability.

- 4.5. In these circumstances section 35K of the Act relevantly deals with modifications to the draft LPS that in our submission, should include the Rezoning.
- 4.6. Detailed submissions addressing this assessment framework insofar as it relates to the Rezoning are provided below.

5. Assessment of the Rezoning

- 5.1. This part considers the proposed Rezoning against the relevant requirements of the Act.

Section 34(2)(c) – Objectives in Schedule 1 of the Act

- 5.2. Section 32(4)(c) requires that the draft LPS must further the objectives of the resource management and planning system as set out in schedule 1 of the Act. Those objectives are set out above at paragraph [4.4].
- 5.3. It is submitted that modifying the draft LPS to include the Rezoning would further the objectives contained in schedule 1 part 1 of the Act for the following reasons:
- (a) It will promote sound strategic planning and co-ordinated action by State and local government insofar as it will zone land which has previously been approved (following significant assessments) and granted a Crown lease for a wharf development as PMZ. As noted by Ms Jen Welch in her evidence:¹³

A large scale wharf facility has previously been approved for the land as demonstrated in the evidence of Mr Johnson. As described in Section 2.1 of the Representation the landowners have been pursuing development options for a substantial industrial estate on the adjoining 590.7Ha of General Industrial Zone. Connectivity to strategic rail, road and water infrastructure will be essential to the operation and development of the industrial estate, and is dependant on the development of wharf facilities on the Crown lease area. This is consistent with Strategic Planning for the region discussed in Section 2.3 of the Representation.

- (b) Furthermore, Ms Welch also notes in the Representation:¹⁴

The Northern Tasmania Industrial Land Supply identifies the subject site as part of the Bell Bay Industrial precinct, which is of Regional significance. Bell Bay is recognised as Tasmania's primary deep-water port and largest heavy industrial estate, with available room to expand (p 29). Recommendations (p 52) for the precinct include 'ensure these precincts allow for a range of uses' and the following:

Bell Bay: the national and international connectivity of the port is an existing and well documented issue. For the precinct's future development opportunity this remains a key issue, as well as rail connectivity to the precinct and its port. It is recommended to continue to undertake actions to enhance these connectivity issues

The rezoning of the Crown lease is considered as far as practicable to be consistent with the RLUS and the subsequent industrial land use strategy that it refers to.

.... Facilitation of the effective use of the Industrial land on the Subject site is consistent with the prosperity directions that recognise 'The Bell Bay Advanced Manufacturing Zone and associated port facilities is a state level asset and potential source of future industrial and business diversification'. The rezoning of land is consistent with the local Government strategic plan.

¹³ Statement of Evidence of Jen Welch dated 16 March 2023 at [4.3.3].

¹⁴ Representation at pg 5 2.3-2.4.

- (c) It will provide for fair, orderly and sustainable use and development of air, land and water insofar as it would recognise the previous approvals for the Site relating to a wharf and accordingly zone that land as PMZ;
- (d) Importantly, enabling the Rezoning will facilitate economic development in accordance with the objectives, namely (a) and (b) discussed above; and
- (e) It will still ensure that any effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the future use and development of land. To this end, the Rezoning does not in any way prevent a future application for the use and development of a wharf and associated infrastructure at the Site from being assessed pursuant to state and federal environmental legislation, including the Act.

Section 34(2)(d) – Consistency with State Policies

- 5.4. It is submitted that based on the evidence of Ms Welch, the Commission can be satisfied that the Rezoning is consistent with relevant state policies. As noted in her Representation:¹⁵

The Subject site is not prime agricultural land and is not within an irrigation district, as coastal area that does not adjoin agricultural land rezoning of the land will not result in any loss of agricultural land, consistent with the State Policies for the Protection of Agricultural Land.

The Subject site is within the Coastal Zone and therefore subject to the Tasmanian State Coastal policy. Future development on the land is dependant on the coastal location (policy 2.1.5) and aligns with existing specified industrial zones (policy 2.1.7).

Future use and development will be required to be prepared with respect to the regulatory standards for water quality management [in accordance with the State Policy on Water Quality Management].

Section 34(2)(e) - As far as Practicable, Consistent with the Regional Strategy

- 5.5. For the purpose of this section, the applicable 'regional strategy' is the *Northern Tasmanian Regional Land Use Strategy* ('**RLUS**'). We note the RLUS was first declared in October 2011, only a short period of time after the approval of the Permit and has most recently been amended on 3 June 2021.
- 5.6. As noted by Ms Welch the RLUS does not specifically reference the Site, but does recognise it as an urban area.¹⁶ The RLUS also includes specific strategic directions that specifically deal with the importance of freight and connectivity. Specifically, strategic direction G1.3 refers to developing a thorough understanding of key industry needs, including future demand and location requirements. Strategic direction G.13(d) and (e) of the RLUS states (respectively):

d) Support industrial development, including freight distribution and logistics by:

- **Identifying the growth and infrastructure needs of the key transport hubs of Bell Bay and the Launceston Airport precinct; and**
- *Identifying key intra-regional freight links to outside the region (south and north-west).*

e) Provide a sufficient supply of appropriately zoned and serviced land ready for development in strategic locations to advance employment and a variety of industrial and commercial land uses. [emphasis added]

¹⁵ Representation at pg 4 2.2.2-2.2.3.

¹⁶ Representation at pg 4 2.3.

- 5.7. Strategic direction G3.2(c) of the RLUS also deals with integrating sustainable transport design by “*planning for residential and freight transportation needs when locating new development.*”
- 5.8. E.4.4 of the RLUS provides specific policies that shall be applied to infrastructure network planning, including action RIN-A5 that requires providing “*appropriate planning mechanisms ... in place to facilitate the potential Bell Bay Port Intermodal Expansion ...*”.
- 5.9. We also refer to the Commission to the statements of Ms Welch, as already set out above at paragraph [5.3(b)], that relate to the regional significance of Bell Bay which is recognised as Tasmania’s primary deep-water port and largest heavy industrial estate with room to expand.
- 5.10. It is submitted that the Rezoning is an entirely appropriate planning mechanism that the Commission should adopt to support potential industrial development and provide a sufficient supply of appropriately zoned land ready for development at the strategic location of Bell Bay. As noted by Ms Welch, the Rezoning is as far as practicable, consistent with the RLUS and the industrial land use strategy that it refers to.¹⁷

Section 34(2)(f) - Have Regard to the Strategic Plan

- 5.11. For the purpose of this section, the applicable strategic plan is the *George Town Strategic Plan 2020-2030*. This plan was certified by the Council and provides the following ‘*future direction*’:¹⁸

The Bell Bay Advanced Manufacturing Zone and associated port facilities is a state level asset and potential source of future industrial and business diversification. As the large-scale electricity driven industries approach the end of their life cycle, the Bell Bay Advanced Manufacturing Zone Committee is steering a course towards a future circular economy approach for local, regional and state growth. A future hydrogen production facility at Bell Bay will deliver renewable energy, direct jobs and facilitate business start-up opportunities. The aim is to be a centre of excellence in clean green technologies and sustainable waste management. [emphasis added]

- 5.12. The strategic plan also provides the following ‘*strategic priorities*’:¹⁹

Taking pride in, advocating for and promoting the Bell Bay Advanced Manufacturing Zone [and] securing the hydrogen production facility.

- 5.13. We understand these statements directly relate to the future hydrogen production facility that Austrak intends to develop. As noted by Mr Samuel Martinello, Austrak’s Commercial Manager:²⁰

Austrak has reached agreement with Woodside Energy Limited which secures a portion of Austrak’s land for a proposed hydrogen plant. ... I am able to confirm on behalf of Austrak the stated imperative for access to wharf infrastructure in order to facilitate the intended and proposed operations on the site and to facilitate the export of ammonia to Japan from the Bell Bay area

- 5.14. The Rezoning will help facilitate this and is therefore consistent with the Council’s strategic plan.

Section 34(2)(g) – As far as Practicable, Consistent with the West Tamar LPS

- 5.15. This section requires the draft LPS to be, as far as practicable, consistent and co-ordinated with the West Tamar LPS as the relevant planning instrument of the adjacent municipal area.
- 5.16. As noted by Ms Welch in the Representation:²¹

¹⁷ Representation at pg 5 2.3.

¹⁸ At pg 15.

¹⁹ At pg 16.

²⁰ See, eg, Samuel Martinello Statement of Evidence dated 16 March 2023 at pg 4 [3.1.3].

²¹ Representation at pg 5 [2.5].

The Crown Lease is on the edge of the George Town municipal area and relies on section 7 of the Act for consideration of any future use and development for the entirety of the lease area. The municipal area on the other side of Kanamaluka is around a kilometre away and is in the West Tamar municipal area. Zoning of land is Environmental Management Zone for the coastal foreshore and Agriculture Zone behind.

Rezoning of the land is not considered to be inconsistent with the zoning of the adjoining municipal LPS. It is well co-ordinated with road, rail and shipping infrastructure to facilitate the efficient transport and distribution of agricultural produce. [emphasis added]

Section 34(2)(h) – Gas Safety Act 2019

- 5.17. This section requires having regard to the safety requirements of the *Gas Safety Act 2019*. There is only a very small portion of land that is subject to the Rezoning that partially encroaches into the declared gas pipeline planning corridor.²²
- 5.18. The relevant authority for the gas pipeline planning corridor was contacted on behalf of Austrak in November 2022, however no response was received.²³
- 5.19. It is submitted that the Rezoning in itself, would not impact on the safety requirements of the *Gas Safety Act 2019*.²⁴ Furthermore, any future use and development of the Site can and will be prepared to respect the requirements of the operator of the pipeline in accordance with the safety requirements of the *Gas Safety Act 2019*.²⁵

Conclusion

- 5.20. For all of the above reasons, the Commission can be satisfied that the Rezoning complies with the relevant requirements of the Act. Accordingly, following the hearings the Commission should modify the draft LPS to incorporate the Rezoning in accordance with section 35K of the Act.²⁶

6. Assessment of the Rezoning against the TPC Guidelines

- 6.1. We note that while section 34 of the Act does not directly refer to section 8A in the LPS criteria, the section 8A Guidelines provide assistance to authorities when preparing and amending LPS. In particular, section 8A Guideline No. 1 dated 6 June 2018 ('**TPC Guidelines**') which provides a reference guide for the application of all zones in the LPS.
- 6.2. For the present purposes, this requires the Commission to consider whether to apply the PMZ, or EMZ zoning as part of the LPS.

PMZ Guidelines

- 6.3. The TPC Guidelines provide three (3) zone application guidelines. Here PMZ 1 is not relevant for the reasons outlined by Ms Welch.²⁷
- 6.4. However, PMZ 2 of the TPC Guidelines relevantly provides:

PMZ 2 The Port and Marine Zone may be applied to land seaward of the high water mark where it includes existing, or is intended for, large scale port and marine activities or facilities.

²² See, eg, Representation pg 6 Figure 6.

²³ Jen Welch Statement of Evidence dated 16 March 2023 at pg 5 [3.4.2].

²⁴ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pg 5 [3.4.3].

²⁵ See, eg, Representation at pg 6 [2.6].

²⁶ Noting in our view the Rezoning does not amount to a 'substantial modification' and therefore would not require the operation of section 35KB of the Act.

²⁷ Jen Welch Statement of Evidence dated 16 March 2023 at pg 7 [4.4.3].

- 6.5. There can be no doubt that PMZ 2 supports the Rezoning of the land to PMZ.²⁸
- 6.6. The previous approvals for a wharf as part of the Permit, as well as the lease both demonstrate that the land seaward of the high water mark is intended for large scale port and marine facilities. There is also evidence of Austrak's clear intentions and steps already taken, including the filing of the Representation and participation in this hearing, to develop a wharf facility in the area that is subject to the Rezoning.²⁹
- 6.7. As noted in Ms Welch's evidence:³⁰

PMZ 2 supports the rezoning of the land to Port and Marine Zone. As per discussions in relation to EMZ 2 above, the land seaward of the high water mark has demonstrated existing and intended use of the land as a large scale wharf facility.

Council supports this interpretation in its response to representations:

*It is Councils view that as the Crown lease is for the purpose of providing a wharf, that **there is a clear intention to provide for port and marine activities and facilities within this location.** The approval of the pulp mill permit in 2011 included wharf facilities within the Crown lease area. [emphasis added]*

- 6.8. PMZ 3 also states:

PMZ 3 The Port and Marine Zone should not be applied to land only intended for small scale or minor port and marine facilities, such as boat ramps, or small scale marinas or jetties.

- 6.9. PMZ 3 also supports the Rezoning to PMZ. As the Permit and lease documents detail, along with Mr Martinello's evidence, infrastructure to support the Austrak industrial land is clearly not small in scale as it is for a wharf to support a deep water port.³¹ Accordingly, the land subject to the Rezoning is not intended (historically or into the future) for a boat ramp, marina or jetty.

EMZ Guidelines

- 6.10. EMZ 1 of the TPC Guidelines provides the default position as follows:

EMZ 1 The Environmental Management Zone should be applied to land with significant ecological, scientific, cultural or scenic values, such as:

- (a) land reserved under the Nature Conservation Act 2002;*
- (b) land within the Tasmanian Wilderness World Heritage Area;*
- (c) riparian, littoral or coastal reserves;*
- (d) Ramsar sites;*
- (e) any other public land where the primary purpose is for the protection and conservation of such values; or*
- (f) any private land containing significant values identified for protection or conservation and where the intention is to limit use and development*

²⁸ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pp 7-8 [4.5.1]-[4.5.4].

²⁹ See, eg, Samuel Martinello Statement of Evidence dated 16 March 2023 at pg 4 [3.1.4]-[3.1.5].

³⁰ Jen Welch Statement of Evidence dated 16 March 2023 at pp 7-8 [4.5.3]-[4.5.4].

³¹ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pg 8 [4.6.2] & Samuel Martinello Statement of Evidence dated 16 March 2023 at pg 4 [3.1.3].

6.11. However, as noted by Ms Welch:³²

There is no evidence that demonstrates the land has significant ecological, scientific, cultural or scenic values. Evidence, as prepared by Mr Johnson, finds that a permit was issued following significant impact assessments demonstrating that the land was approved for the development of a substantial wharf development.

It is acknowledged that specialist surveys would need to be revisited at such time as a permit application is made for use and development, these would also be subject to separate legislative controls, including further assessment of the application in accordance with State and Federal environmental legislation.

For the application of the EMZ1 it is considered the land satisfies (a) and (c). It does not satisfy (b), (d), (e) or (f).

In response to (a), the land is reserved as a Conservation Area under the Nature Conservation Act 2002 ('NCA'), Schedule 1 defines the purpose of the reservation as follows:

The protection and maintenance of the natural and cultural values of the area of land and the sustainable use of the natural resources of that area of land including special species timber harvesting.

The status of the reserve does not prohibit the potential for use or development of the land.

*Prior to issuing consent for future permits for use and development in accordance with Section 52 of the Act, [Tasmania Parks and Wildlife Service] would make a determination through the Reserve Activity Assessment (Environmental Impact Assessment) process to take into account requirements of the NCA in its decision making. Therefore, **application of standards of the EMZ1 is not necessary to protect these values and would duplicate assessment processes.***

*In response to (c), the land is in a coastal reserve, however, as discussed in Section 2.2.2 of the Representation the **proposed development of the land as a wharf is supported by objectives of the Tasmanian State Coastal Policy 1996 as it is dependant on the coastal location and aligns with existing specified industrial zones.** [emphasis added]*

6.12. EMZ 2 of the TPC Guidelines similarly provides:

EMZ 2 The Environmental Management Zone should be applied to land seaward of the high water mark unless contrary intention applies, such as land with existing, or intended for:

- (a) passive recreation opportunities (see Open Space Zone);*
- (b) recreational facilities (see Recreation Zone);*
- (c) large scale port and marine activities or facilities (see Port and Marine Zone);*
- (d) industrial activities or facilities (see industrial zones); or*
- (e) major utilities infrastructure (see Utilities Zone)*

6.13. Again, as noted by Ms Welch:³³

³² Jen Welch Statement of Evidence dated 16 March 2023 at pg 6 [4.2.2]-[4.2.8].

³³ Jen Welch Statement of Evidence dated 16 March 2023 at pg 7 [4.3.2]-[4.3.3].

Guideline EMZ 2 supports the rezoning of the land to Port and Marine Zone, as it has been demonstrated in the previous approvals and the intentions of Austrak that the land is to be developed as a large scale wharf facility.

A large scale wharf facility has previously been approved for the land as demonstrated in the evidence of Mr Johnson. As described in Section 2.1 of the Representation the landowners have been pursuing development options for a substantial industrial estate on the adjoining 590.7Ha of General Industrial Zone. Connectivity to strategic rail, road and water infrastructure will be essential to the operation and development of the industrial estate, and is dependant on the development of wharf facilities on the Crown lease area. This is consistent with Strategic Planning for the region discussed in Section 2.3 of the Representation. [emphasis added]

- 6.14. For the above reasons, it is submitted that the Commission can be further satisfied that the Rezoning is appropriate and entirely consistent with the TPC Guidelines, in particular PMZ 2, PMZ 3 and EMZ 2(c).

7. Position of the Tasmania Parks and Wildlife Service as the Landowner

- 7.1. The Tasmanian Parks and Wildlife Service ('PSW') are currently responsible for the management of the land that is subject to the Rezoning request.
- 7.2. We note there is no statutory requirement that an owner be notified of or party to a Representation, nor explicit requirement to take into account the landowner's position in relation to zoning of land. In any event, any future application for an amendment or permit would be required to be accompanied by the written permission of PWS as the relevant administrator of land pursuant to section 52 of the Act.
- 7.3. As a courtesy, PWS were contacted on 30 September 2022 for a response to the Representation. The PWS indicated via email on 2 December 2022 that:³⁴

... PWS supports the zoning 'Environmental Management Zone' and notes the following:

- The previously existing lease agreement for the Gunns LTD pulp mill proposal is considered an arrangement separate to the assessment and approval process for any future development/enterprise proposed for the Longreach site and indeed to this planning process*
- Whilst the George Town Interim Scheme doesn't appear to allow for a wharf at the site there is an approval pathway provided in the draft LPS through the application of the draft Clause "Access and provision of infrastructure across land in another zone" (Clause 7.6)*
- 'EMZ' zoning is considered appropriate to support a strategic approach to assessing use and development, and the conservation of the values of kanamaluka/Tamar River considering there is currently no Management Plan for the Conservation Area and the presence of the Conservation Covenant*
- Given the lack of detail available regarding the Austrak proposal the precautionary principle applies per the Schedule 1 Objectives of the Land Use Planning and Approvals Act 1993*

- 7.4. For the following reasons, we submit that PMS's position is misconceived and should be disregarded by the Commission:

³⁴ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pg 4 [3.3.2].

- (a) In relation to dot point one (1), PWS seemingly has not had regard to the Permit that allows for the use and development of a wharf. In any event, any future application for a permit for use and development of the land that is subject to the lease area will be considered at that time.³⁵ The Rezoning in no way changes this, as confirmed by the Planning Authority's section 35F Report which notes:³⁶

Despite the zoning, Parks and Wildlife, as the administrators of the land ultimately have control over approval to use the land for any purpose and the degree of environmental assessments required to make them comfortable with such a development.

- (b) In relation to dot point two (2), PWS's position in relation to the application of clause 7.6 of the SPP must be rejected for the detailed reasons outlined by Ms Welch and the Council.³⁷ If the Austrak industrial estate is to accommodate multiple tenancies, then the wharf facility would not be directly associated with or subservient to other users on the same site and would need to be individually categorised. Accordingly, the use would not be able to satisfy clause 7.6 of the SPP. The Rezoning is necessary to facilitate the use of the land as a wharf.
- (c) In relation to dot point three (3):
- (i) As discussed above, EMZ zoning is contrary to the TPC Guidelines;
 - (ii) In comparison, the PMZ zoning sought is consistent with local and regional strategic planning and should be supported by the Commission;³⁸
 - (iii) Any future application for use and development of a wharf would require the consent of PWS and be subject to assessment under relevant legislation, including the Act; and
 - (iv) The relevant nature conservation covenant C934275 does not include the area subject to the crown land lease.³⁹
- (d) In relation to the final dot point:
- (i) We note that PWS did not request any further additional information regarding Austrak's intended future uses at the Site, including those relating to the development of a wharf;
 - (ii) It is reasonable to assume that as a signatory to the lease, PWS are aware of its contents as well as the previous Permit approval process;
 - (iii) The application of the 'precautionary principle' was considered by his Honour Justice Cox (as he then was) in the Tasmanian Supreme Court decision of *R v Resource Planning & Development Commission; Ex parte Aquatas Pty Ltd*⁴⁰ stating at page 14:

The precautionary principle prohibits the postponement of measures to prevent environmental degradation merely because there is no scientific certainty as to the likelihood of serious or irreversible damage being caused by a development. In the application of the principle, decisions must be guided by a proper process of evaluation to avoid damage and of assessment of the consequences of possible choices.

³⁵ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pp 4-5 [3.3.3].

³⁶ Planning Authority section 35F Report on representations dated 3 November 2022 pg 43.

³⁷ Jen Welch Statement of Evidence dated 16 March 2023 at pp 8-9 [5.1.1]-[5.1.6].

³⁸ See, eg, Jen Welch Statement of Evidence dated 16 March 2023 at pg 5 [3.3.6] & Representation at pts 2.3-2.4.

³⁹ See, eg, Samuel Martinello Statement of Evidence dated 16 March 2023 at pg 4 [3.1.5].

⁴⁰ (1998) 100 LGERA 1 at pp 13-15.

- (iv) There is simply no basis to apply the precautionary principle here as the Rezoning will not in any way prevent a proper process of evaluation to avoid damage and assessment of the possible consequences of a future application for a wharf in that area. Furthermore, the land has already been considered and approved for a wharf facility pursuant to the Permit, which considered environmental impacts.

8. Conclusion

- 8.1. In conclusion, the Rezoning has significant merit, meets the relevant requirements of the Act and is in accordance with the TPC Guidelines.
- 8.2. For all of the above reasons, following the hearings the Commission should modify the draft LPS to incorporate the Rezoning in accordance with section 35K of the Act.

Dated: 22 March 2023

SIMMONS WOLFHAGEN

Per:

A handwritten signature in blue ink, appearing to read "David Mann".A handwritten signature in blue ink, appearing to read "Rob Brook".

and

Counsel for Austrak Tas 1 Pty Ltd