

APPENDIX 16: ATTENUATION AREAS & BUFFERS PROJECT REPORT

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Contents

- 1.0 INTRODUCTION2**
 - 1.1 Project Scope2
 - 1.2 Tasmanian Planning Scheme.....3
- 2.0 ATTENUATION CODE.....3**
 - 2.1 Comparison of Codes.....4
 - 2.1.1 Sensitive Use5
 - 2.1.2 Subdivision for Sensitive Use.....5
 - 2.1.3 Activities Listed in the Tables.....6
 - 2.1.4 Exemptions6
 - 2.1.5 The Tables.....7
- 3.0 OVERLAY MAPS7**
- 4.0 CONCLUSION11**

1.0 INTRODUCTION

The State Planning Provisions (SPP's) provide an Attenuation Code (the Code) that is relatively similar to the Attenuation Code currently within the Launceston Interim Planning Scheme 2015 (interim scheme). Essentially, the Code seeks to minimise the opportunity for conflict between sensitive uses and uses that may emit smoke, noise, dust, odours and the like (emitting activities).

The Code provides an extensive list of activities that may cause such emissions and prescribes an attenuation distance. With some exemptions (i.e. level 2 activities and limited extension to an existing sensitive use), where a sensitive use seeks to locate within the prescribed attenuation distance or alternatively, an emitting activity seeks to locate where there are existing sensitive uses within that prescribed distance, the Code will apply to ensure the potential for conflict is appropriately considered.

Given the scope of the list of potentially emitting activities and the range of attenuation areas that may apply, it is necessary to consider how these areas will be identified to ensure their consideration at the time of application for planning approval.

Currently, the interim scheme contains an overlay map that identifies only wastewater treatment sites, some mineral extraction sites and the foundries at Franklin village. Clearly this is not intended to be comprehensive. The existing Environmental Impacts and Attenuation Code in the interim scheme applies to sensitive uses located within the buffer areas shown on the overlay map and to the uses shown in the table to that code and any sensitive uses located within the prescribed distances.

An inclusive solution is required to offer a level of certainty that the application of the Code is identified early in the process.

This report seeks to identify a comprehensive list of premises to be considered as potentially emitting activities and provide a resource that can be utilised to ensure potential conflict between such activities and sensitive uses is appropriately considered in the future. Additionally, such a resource must be capable of being kept current in an efficient and effective manner as potentially emitting activities come and go over time

1.1 Project Scope

The report seeks to:

- Review current uses in Launceston against Table C9.1 and C9.2 in the Code;
- Review the existing overlay map of the interim scheme;
- Create an appropriate overlay map;
- Identify existing uses listed in the code; and

- Address an efficient and effective means of their identification during the application process.

1.2 Tasmanian Planning Scheme

It is the Tasmanian government's policy for a single planning scheme for Tasmania, known as the Tasmanian Planning Scheme, to provide consistent state-wide provisions. The Tasmanian Planning Scheme consists of SPP's, which were endorsed by the Minister of Planning and Local Government on 22 February 2017, Local councils are required to prepare their Local Provision Schedules (LPSs) in accordance with Guideline No.1 Local Provisions Schedule (LPS): zone and code application.

2.0 ATTENUATION CODE

The purpose of the Attenuation Code is:

- C9.1.1 *To minimise adverse impacts on the health, safety and amenity of sensitive use from activities which have the potential to cause emissions; and*
- C9.1.2 *To minimise the likelihood for sensitive use to conflict with, interfere with, or constrain, activities which have the potential to cause emissions.*

Some realistic limitations are placed on the application of the Code and it will not apply to:

- Areas between emitting activities within the Light and General Industrial zones, the Port and Marine zone and the Utilities zone;
- Sensitive uses occurring within these four zones; and
- Any plant nursery or controlled environment agriculture within the Rural or Agricultural zones.

Relevantly, the Code provides the following definitions:

Attenuation area: *means land that is:*

(a) *within the boundary of an attenuation area shown on an overlay map in the relevant Local Provision Schedule; or*

(b) *within the relevant attenuation distance from an activity listed in Table C9.1 or C9.2, which is an existing activity or an activity for which a planning permit is in force.*

If an inconsistency exists between the relevant attenuation distance in Tables C9.1 or C9.2, and an attenuation area shown on an overlay map in the relevant Local Provisions Schedule, the distance shown on the overlay map applies.

Attenuation distance: *means the distance listed in Tables C9.1 and C9.2 for the relevant activity measured as the shortest distance from the boundary of the site on which the activity is located.*

The Code provides standards dealing with:

- Activities with potential to cause emissions - to be located not to cause an unreasonable impact on an existing sensitive use;
- Sensitive use within an attenuation area - not to interfere with or constrain the operation of an existing potentially emitting activity. There is no acceptable solution for this standard; and
- Subdivision lot design - to avoid and not conflict with, interfere or constrain an existing potentially emitting activity.

2.1 Comparison of Codes

Both codes have purpose statements which seek to protect both uses that are sensitive and uses that have the potential to cause environmental harm (e.g. noise, smoke, dust, vibration or the like) from causing conflict with or harm to, each other.

The current code applies to:

- i. a comprehensive list of activities deemed to have the potential to cause environmental harm;
- ii. sensitive uses located within the attenuation distance prescribed in that list; and
- iii. sensitive uses within a buffer area shown on the scheme overlay maps.

Whilst it is considered that the intent was for points (ii) and (iii), above, to be mutually exclusive (e.g. the buffer area around the foundry at Franklin Village is shown on the scheme overlay significantly reduced as a result of a past planning scheme amendment providing for the establishment of the Glenara retirement village), the current drafting of the code is not succinct.

This intent is clarified in the SPP where, in the definition of 'attenuation area' it specifically states:

If an inconsistency exists between the relevant attenuation distance in Tables C9.1 or C9.2, and an attenuation area shown on an overlay map in the relevant Local Provisions Schedule, the distance on the overlay map applies.

Therefore, using the example above, the reduced buffer area surrounding the foundry, as shown on the overlay map, overrides and limits the otherwise 1000 metre radius of the attenuation area.

The SPP Code is both broader and more limiting in its application. It applies to an expanded list of activities; to subdivision that creates lots with the potential to be used for sensitive uses within an attenuation area; and to sensitive uses.

Whilst it could be argued that the intent was to limit the application of the code to sensitive uses within an attenuation area, as it does with subdivision, this is not how the clause is drafted. Rather, it is broadly applied to all sensitive uses and thus seeks to ensure that consideration is given to the potential existence of attenuation areas that may affect a given site.

This approach is considered appropriate as most of the activities listed in the Tables are not currently shown on an overlay map and similarly, will not be shown in the overlay maps to the new scheme. Given that the standard dealing with sensitive uses is itself limited to those within an attenuation area, this precautionary application of the Code will act as a safeguard without placing any additional burden or requirement upon sensitive uses not within such an attenuation area.

Both Codes have standards addressing sensitive uses, subdivision for sensitive use, and uses listed in the Tables.

2.1.1 Sensitive Use

Both codes provide only performance criteria for sensitive uses within an attenuation area. Thus, all such applications are discretionary. Both Codes require consideration of essentially the same matters (e.g. the nature of the prescribed activity, its potential to emit pollutants, the degree of encroachment, mitigating measures, advice from the EPA, advice from the Director of Mines [SPP only], and advice from the owner or operator [current Code only]). The only significant difference between the two is that the current code requires an environmental Impact Assessment carried out by a suitably qualified person, whereas the SPP Code is potentially satisfied by the proponents own assessment.

Clearly, the extent to which an applicant will be required to address these matters will be determined on a case by case basis during the assessment process.

2.1.2 Subdivision for Sensitive Use

The current Code provides only performance criteria for subdivision for sensitive uses within an attenuation area and requires the provision of a site specific study prepared by a suitably qualified person.

The SPP Code provides acceptable solutions allowing a permitted pathway where the proposed lots are:

- *For existing buildings;*
- *Where building for sensitive use can be entirely outside the attenuation area; or*
- *Not intended for sensitive uses.*

Performance criteria provide the opportunity to demonstrate that, having regard to the nature of the activity and the intended use of the lot, sensitive uses will not be impacted by emissions.

2.1.3 Activities Listed in the Tables

Both Codes provide a permitted pathway with acceptable solutions, providing that:

- There is not an existing sensitive use within the attenuation area that would apply;
- That there is not a planning permit for a sensitive use within that area (SPP only);
- The attenuation area does not include land within a residential zone, the village zone or the urban mixed zone. The current Code also includes the business, commercial and major tourism zones.

Both Codes provide performance criteria addressing matters such as the nature of the activity; its likely emissions; proximity to sensitive uses and mitigating measures. Again, the current Code, requires the higher standard of evidence through the provision of an Environmental Impact Assessment.

2.1.4 Exemptions

Use or development, assessed as a level 2 activity, is exempted by both Codes. The EPA assessment of such applications is considered to comprehensively address all relevant issues.

The SPP Code provides an exemption for extensions to existing sensitive uses within an attenuation area, provided such extensions do not increase the gross floor area by more than 100m² or 50% from that existing at the effective date (i.e. when the Code comes into effect).

The current Code also exempts non-habitable buildings associated with sensitive uses and extensions to existing sensitive uses within attenuation areas shown on the overlay maps. This exemption does not apply to the majority of attenuation areas as they are not shown on the overlay maps.

2.1.5 The Tables

Both Codes provide tables of attenuation distances which list activities with the potential to create environmental harm or impact upon sensitive uses. The Tables list the required attenuation distance for each activity type. These distances are to be measured from the boundary of the site rather than from any particular point within the site.

The current Code provides a broad list of thirty activities deemed to be of a type likely to cause emissions that may impact adversely upon the amenity of sensitive uses. The SPP Code is significantly more expansive in its list, which sixty-seven such activity types.

Whilst both Codes, with their respective lists, are attached, some of the notable inclusions are:

- Abrasive Blasting;
- Beverage Production (non-alcoholic);
- Brewing or Distillery;
- Cidery;
- Dog Kennels;
- Horse Stables (commercial only);
- Joinery;
- Motor Body works (e.g. panel beating, spray painting); and
- Winery.

The introduction of attenuation areas for wineries, distilleries, breweries and cider production is likely a reflection of the changing times and industries within Tasmania, which has seen rapid growth in these industries. Many boutique breweries and distilleries have established in close proximity to sensitive uses across the State.

Of potentially greater impact within Launceston and no doubt many other major centres, is the introduction of attenuation areas around joineries and motor body works. These have historically established throughout the city without such attenuation areas and in many cases sensitive uses have established (e.g. the student accommodation complex at Newstead College is within the attenuation area of two joineries). Owners of existing properties, who may have an expectation for further residential development, will need to address the relevant performance criteria.

3.0 OVERLAY MAPS

Currently, the scheme overlay map for attenuation shows only:

- Level 2 Mining and quarry sites;
- The refuse disposal site at Remount Road;
- Waste water treatment sites; and

- Youngtown foundries, adjacent to the Glenara retirement village.

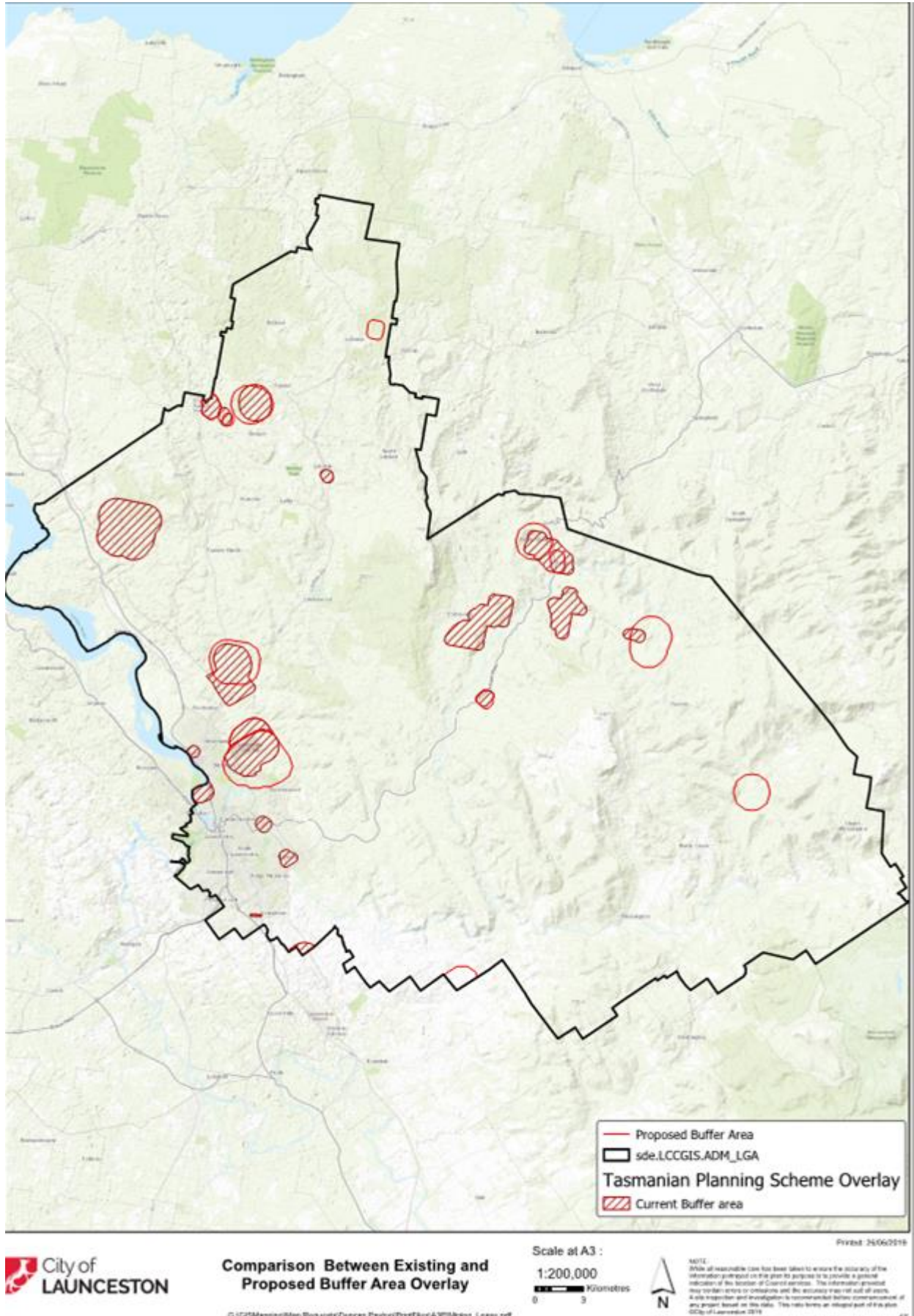
All other activities that are listed in the Tables have the attenuation area as prescribed in the Tables. These activities are deliberately not shown on the overlay maps as the maps form part of the planning scheme and a formal amendment is required to alter them.

In other words, if it were the case that all such activities were to be represented on the overlay maps, it would be necessary to amend the planning scheme every time a new activity proposed to establish or an existing activity closed or relocated. The time and costs involved with scheme amendment could act as a disincentive to prospective new businesses. In the event of closure of an existing activity, the burden of amendment to remove the attenuation area would inevitably fall to council.

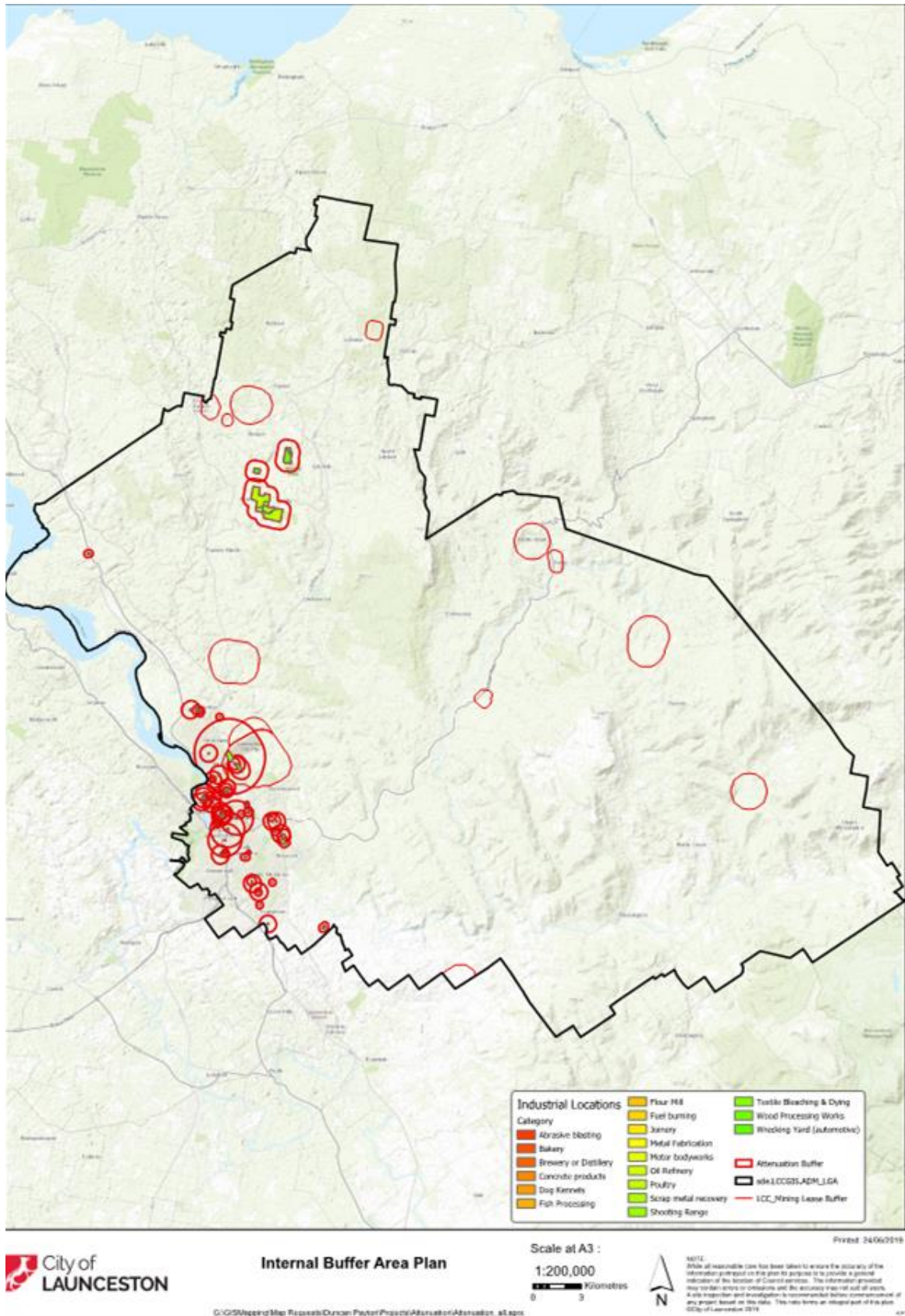
Consequently, it is proposed to continue the current practice of mapping only those activities that have an attenuation area that differs from that prescribed in the Tables:

- TasWater have advised that they do not require their waste water treatment sites to be individually shown on the overlay maps and that they are satisfied with the attenuation areas prescribed by the Tables.
- The foundry sites in Youngtown, adjacent to the Glenara retirement village, will remain as currently mapped.
- The existing quarry and refuse disposal site at Remount Road will remain as currently mapped reflecting the previous site specific study.
- Mineral Resource Tasmania have advised that the current mapping of mining sites is inconsistent with what is required and have provided up to date mapping for inclusion on the overlay map. The attenuation distances for these sites are measured from the boundary of the lease area rather than from the site boundary, which could have resulted in unreasonably large attenuation areas.

The Mineral Resources Tasmania mapping has resulted in the following changes:



Additionally, it is proposed to prepare an internal or informal overlay map that will show the relevant attenuation distances of all listed activities, similar to the current overlay mapping for potentially contaminated sites.



The benefit of such an overlay is that it provides an instant assessment reference to determine if a site is affected by an attenuation area and it can easily be altered to maintain currency in the event of change.

4.0 CONCLUSION

The desire to protect sensitive uses (predominately residential) from conflict with more commercial and industrial activities is one of the underlying objectives of the planning process. Placement of attenuation areas prescribed around activities considered likely to emit pollutants such as noise, dust, odours and the like, has long been used in planning schemes as a measure to mitigate likely conflict.

With the coming introduction of the Tasmanian Planning Scheme, a revised Attenuation Code will be included in the SPP's. As discussed above, the new Code is broader in its application than the existing Code, in that it significantly increases the range of activities to have a prescribed attenuation area. However, it requires a lesser burden of proof when addressing a proposal against the standards, where, unlike the existing Code, the applicant is not required to provide a site specific study or environmental impact assessment prepared by a suitably qualified person.

The SPP Code will result in an overlay map showing fewer sites than currently shown following advice from TasWater that their sites do not need to be mapped. Additionally, it is the catalyst for the preparation of an updated list of all such activities within the municipal area and the preparation of an internal mapping layer to promote accurate and consistent application of the Code.