

TASMANIAN PLANNING COMMISSION



DECISION

Local Provisions Schedule Launceston

Date of decision 21 July 2022

Under section 35K(1)(a) of *Land Use Planning and Approvals Act 1993* (the Act), the Commission directs the planning authority to modify the draft LPS in accordance with the notice at Attachment 2.

When the directed modifications have been undertaken under section 35K(2), the Commission is satisfied that the LPS meets the LPS criteria and is in order for approval under section 35L(1).

The Commission finds that the draft LPS requires substantial modification and accordingly, under section 35KB of the Act, the Commission directs the planning authority to prepare an amendment, under Part 3B, of the LPS and to submit the amendment to the Commission after the LPS comes into effect, in accordance with the notice in Attachment 3.

Ann Cunningham
Delegate (Chair)

Dianne Cowen
Delegate

Pam Allan
Delegate

Disclosure statement

Pam Allan, a Commission delegate disclosed at a hearing held on 27 April 2022 that she is a resident of the City of Launceston Municipality.

There were no objections to Ms. Allan determining the matter.

REASONS FOR DECISION

Background

The Launceston Planning Authority (the planning authority) exhibited the Launceston draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act), from 21 July 2021 until 18 September 2021.

On 27 January 2022 the planning authority provided the Commission with a report under section 35F(1) into 56 representations received on the draft LPS. In addition, eight representations, made after the end of the exhibition period, were included by the planning authority in the report under section 35F(2)(b) of the Act. A list of representations is at Attachment 1.

Date and place of hearing

The Commission must hold a hearing into representations to the draft LPS under section 35H of the Act.

Hearings were held at The Tramsheds, 4 Invermay Road, Invermay on 27, 28 and 29 April, and 12 and 13 May 2022 and the Tasmanian Planning Commission, Hearing Room, Level 3, 144 Macquarie Street, Hobart on the 17 of May 2022.

Consideration of the draft LPS

1. Under section 35J(1) of the Act the Commission must consider:
 - the planning authority section 35F(1) report and the draft LPS to which it relates;
 - the information obtained at the hearings;
 - whether it is satisfied that the draft LPS meets the LPS criteria under section 34; and
 - whether modifications ought to be made to the draft LPS.
2. Under section 35J(2) of the Act the Commission may also consider whether there are any matters that relate to issues of a technical nature or may be relevant to the implementation of the LPS if the LPS were approved.
3. The LPS criteria to be met by the draft LPS are:
 - (a) contains all the provisions that the SPPs specify must be contained in an LPS;
 - (b) is in accordance with section 32 of the Act;
 - (c) furthers the objectives set out in Schedule 1 of the Act;
 - (d) is consistent with each State policy;
 - (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;
 - (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;
 - (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 Pipelines Act 2000*.
4. The relevant regional land use strategy is the Northern Tasmania Regional Land Use Strategy 2021 (the regional strategy).
 5. In addition to the LPS criteria, the Commission has considered Guideline No. 1 – Local Provisions Schedule (LPS): zone and code application (Guideline No. 1) issued under section 8A of the Act.
 6. The requirements for making modifications to the draft LPS are set out under section 35K of the Act. The modifications can be broadly categorised as modifications [section 35K(1)(a) and (b)].
 7. The Commission may also reject the draft LPS and request that the planning authority prepare a substitute draft LPS [section 35K(c)].
 8. Where the Commission has determined modifications ought to be made, these are set out in a notice under sections 35K(1)(a) of the Act (see Attachment 2).
 9. The decisions on relevant modifications considered under section 35KA of the Act are set out below.
 10. Where the Commission has determined substantial modifications ought to be made to the draft LPS and such modifications are suitable to be made as an amendment, under Part 3B to the LPS, it may direct the planning authority to prepare the amendment and submit to the Commission after the LPS comes into effect. These are set out in a notice under section 35KB of the Act (see Attachment 3).

Representations: Craig McKenzie (34)

161. The representor requested that the zoning of 2147 East Tamar Highway, Mount Direction be revised from the Agriculture Zone to the Rural Zone because the provisions of the Agriculture Zone are too restrictive and the land contains native bushland, which is not suitable for agriculture. The representor wished to subdivide the land to allow his children to build a dwelling.
162. The planning authority opposed the request in its section 35F report on the basis that its agriculture consultant indicated that the land should remain in the Agriculture Zone. However the agriculture consultant's report appended to the section 35F report stated that the representor's land, as well as five other adjoining properties should be zoned Rural or Rural Living. The additional properties were:
- 58 Swan Drive, Swan Bay folio of the Register 169223/1;
 - 2235 East Tamar Highway, Mount Direction folio of the Register 131672/1;
 - 2203 East Tamar Highway, Mount Direction folio of the Register 144205/3;

- 2205 East Tamar Highway, Mount Direction folio of the Register 144205/2; and
 - 2287 East Tamar Highway, Dilston folio of the Register 86593/1.
163. The agricultural consultant's assessment noted that the land has limited potential for agricultural use, was predominantly mapped as land capability Class 6, with an area of Class 7 and that the Rural Zone would be consistent with the zoning and use of the surrounding area.
164. Prior to the hearing, the planning authority in response to a Commission direction, clarified that its recommendation was that the land identified by RMCG, including the representor's land, should be zoned Rural. Furthermore, the planning authority provided a map of the area that showed how the Priority Vegetation Area overlay should be applied in the event that the land was zoned Rural.
165. Following the hearing, the planning authority was directed to seek the opinion of the owners of the each property to confirm whether they would support application of the Rural Zone and Priority Vegetation Area overlay, however no responses from the landowners were forthcoming.

Commission consideration

166. The Commission accepts the expert evidence and advice given by the planning authority's agriculture consultant and consequently agrees that the Rural Zone should be applied in accordance with Guideline No. 1. In particular, the Commission is satisfied that the Rural Zone complies with RZ 3 and AZ 6 of Guideline No. 1, which provides for land identified as unconstrained in the State land potentially suitable for the agriculture zone mapping to be zoned Rural if supported by detailed local strategic analysis.

Commission decision

167. Modification:
- Revise the zoning of the following properties to Rural:
 - a. 2147 East Tamar Highway, Mount Direction folio of the Register 153121/1;
 - b. 58 Swan Drive, Swan Bay folio of the Register 169223/1;
 - c. 2235 East Tamar Highway, Mount Direction folio of the Register 131672/1;
 - d. 2203 East Tamar Highway, Mount Direction folio of the Register 144205/3;
 - e. 2205 East Tamar Highway, Mount Direction folio of the Register 144205/2;
 - f. 2287 East Tamar Highway, Dilston folio of the Register 86593/1; and
 - g. User road adjacent to the East Tamar Highway and surrounded by folio of the Register 153121/1.
 - Revise the Priority Vegetation Area overlay by applying the overlay to the following properties as shown in the Regional Ecosystem Model mapping and identified in Attachment 11 of the planning authority's submission received 13 April 2022:
 - a. 2147 East Tamar Highway, Mount Direction folio of the Register 153121/1;
 - b. 58 Swan Drive, Swan Bay folio of the Register 169223/1;
 - c. 2235 East Tamar Highway, Mount Direction folio of the Register 131672/1;
 - d. 2203 East Tamar Highway, Mount Direction folio of the Register 144205/3;
 - e. 2205 East Tamar Highway, Mount Direction folio of the Register 144205/2;
 - f. 2287 East Tamar Highway, Dilston folio of the Register 86593/1; and
 - g. User road adjacent to the East Tamar Highway and surrounded by folio of the Register 153121/1.

168. Reason: To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.

Commission consideration under section 35KB

169. The Commission finds that the amendment is a substantial modification as there may be a public interest in the amendment. Under section 35KB, the Commission considers the substantial modifications required are suitable to be made by way of an amendment, under Part 3B of the Act, of the Launceston LPS, after it comes into effect.

Commission decision under section 35KB

170. Draft amendment directed to the Launceston LPS:
- Rezone the following properties to the Rural Zone as shown in Attachment 3:
 - a. 2147 East Tamar Highway, Mount Direction folio of the Register 153121/1;
 - b. 58 Swan Drive, Swan Bay folio of the Register 169223/1;
 - c. 2235 East Tamar Highway, Mount Direction folio of the Register 131672/1;
 - d. 2203 East Tamar Highway, Mount Direction folio of the Register 144205/3;
 - e. 2205 East Tamar Highway, Mount Direction folio of the Register 144205/2;
 - f. 2287 East Tamar Highway, Dilston folio of the Register 86593/1; and
 - g. User road adjacent to the East Tamar Highway and surrounded by folio of the Register 153121/1.
 - Apply the Priority Vegetation Area overlay to the following properties as shown in Attachment 3:
 - a. 2147 East Tamar Highway, Mount Direction folio of the Register 153121/1;
 - b. 58 Swan Drive, Swan Bay folio of the Register 169223/1;
 - c. 2235 East Tamar Highway, Mount Direction folio of the Register 131672/1;
 - d. 2203 East Tamar Highway, Mount Direction folio of the Register 144205/3;
 - e. 2205 East Tamar Highway, Mount Direction folio of the Register 144205/2;
 - f. 2287 East Tamar Highway, Dilston folio of the Register 86593/1; and
 - g. User road adjacent to the East Tamar Highway and surrounded by folio of the Register 153121/1.
171. Reason:
- To apply the Rural Zone and Priority Vegetation Area overlay consistent with Guideline No. 1.
 - The Commission considers that the modification is a substantial modification as there may be a public interest.