

# TASMANIAN PLANNING COMMISSION



## DECISION

**Local Provisions Schedule** Brighton

**Date of decision** 26 February 2020

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

Roger Howlett  
**Delegate (Chair)**

Claire Hynes  
**Delegate**

### Disclosure statement

Claire Hynes, a Commission delegate considering the draft Brighton LPS, disclosed at the hearing held on 15 November 2019 her interest in representation 31 as having a close relationship with the Emma Riley, ERA Planning acting for Cooltrans Pty Ltd. The representor and the planning authority were content for her to decide the matter, and no other submissions were made.

## REASONS FOR DECISION

### Background

The Brighton Planning Authority (the planning authority) exhibited the Brighton draft Local Provisions Schedule (the draft LPS), under section 35D of *Land Use Planning and Approvals Act 1993* (the Act) from 8 April until 11 June 2019.

On 26 September 2019, the planning authority provided the Commission with a report under section 35F(1) into the 39 representations received on the draft LPS. A list of representations is at Attachment 1.

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

### Date and place of hearing

A directions hearing was held at the Commission's office at Level 3, 144 Macquarie Street, Hobart on 18 October 2019.

A hearing was held at the Commission's office at Level 3, 144 Macquarie Street, Hobart on 14, 15, 19 and 20 November 2019.

### 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 Local Provision Schedule (LPS) criteria under section 34 of the Act; 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 that 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 State Planning Provisions (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 Southern Tasmania Regional Land Use Strategy 2010-2035 (regional strategy).
  5. In addition to the LPS criteria, the Commission has considered Guideline No. 1 – Local Provision Schedule: 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)] or substantial modifications [section 35K(1)(c)(ii)].
  7. The Commission may also reject the draft LPS and request that the planning authority prepare a substitute [section 35K(c)(i)].
  8. When considering the requirements of section 35J and whether modifications ought to be made, the Commission must determine, firstly, whether the modification has merit, and secondly, if it is a substantial modification.
  9. Where the Commission has determined modifications ought be made, and these are substantial, these are set out in a notice under 35K(1)(c) of the Act (see Attachment 2).

## Issues raised in the representations

### Rural Zone - 20 Dokdo Rise, Honeywood

10. Representations: JMG Engineers and Planners for Dong and Young Pty Ltd (25)
11. The representor requested that the land at 20 Dokdo Rise, Honeywood be revised from the Agriculture Zone to the Rural Zone.
12. The reasons include the site is unsuitable for agriculture due to its sloping topography, vegetation cover, lack of irrigation and isolation from larger areas where the Agriculture Zone is applied.
13. In the section 35F report, the planning authority recommended the following changes:
  - 20 Dokdo Rise, Honeywood – the land be revised to the Rural Zone and the priority vegetation area overlay be applied, considering AZ6 (c) and (e), RZ1, RZ3 (a) and (b), LCZ1 and LCZ2 of Guideline No.1 due to the significant agricultural constraints and priority vegetation area mapping for the site based on the Regional Ecosystem Modelling (REM) mapping that has been accepted for use in the LPS;
  - 530B Baskerville Road, Honeywood – the land be revised to the Rural Zone and the priority vegetation area overlay be applied, considering the recommendation for 20 Dokdo Rise would isolate this parcel from nearby land zoned Agriculture Zone, the potential for grazing, and priority vegetation area mapping for the site based on the Regional Ecosystem Modelling (REM) mapping that has been accepted for use in the LPS; and

- 813 Back Tea Tree Road, Honeywood - the north-western part of the land that is not covered by the priority vegetation area overlay be revised from the Landscape Conservation Zone to the Rural Zone.
14. The planning authority provided a further submission on 7 November 2019 which updated their recommendation about 813 Back Tea Tree Road, Honeywood, supporting the entirety of the land to remain in the Landscape Conservation Zone, which is consistent with the current zoning (Environmental Living Zone) under the interim planning scheme.

#### **Commission consideration**

15. The Commission accepts the planning authority's further submission recommending that 813 Back Tea Tree Road, Honeywood remain in the Landscape Conservation Zone.
16. The Commission acknowledges the recommendations by the planning authority in the section 35F report and further information and considers that the proposed zone changes for 20 Dokdo Rise and 530B Baskerville Road have merit. The Commission accepts that the recommended zone and overlay changes for 20 Dokdo Rise and 530B Baskerville Road are consistent with the relevant guidelines in Guideline No. 1.

#### **Commission decision**

17. Modification:
- revise the zoning of 20 Dokdo Rise, Honeywood to the Rural Zone;
  - apply the priority vegetation area overlay to 20 Dokdo Rise, Honeywood, as shown in the map on page 6 of the planning authority's further submission of 7 November 2019;
  - revise the zoning of 530B Baskerville Road, Honeywood to the Rural Zone; and
  - apply the priority vegetation area overlay to 530B Baskerville Road, Honeywood, as shown in the map on page 6 of the planning authority's further submission of 7 November 2019.
18. Reasons:
- To apply the Agriculture Zone and the Landscape Conservation Zone consistent with Guideline No. 1.
  - To apply the priority vegetation area overlay consistent with Guideline No. 1.
  - To apply zoning at boundaries consistent with Practice Note 7 - Draft LPS mapping: technical advice.
  - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

#### **Agriculture Zone – part of 232 Boyer Road, Bridgewater**

19. Representation: Shan and Debbie Chaplin (8)
20. The representors requested that the land at 232 Boyer Road, Bridgewater be revised so that the split zone boundary between the Agriculture Zone and the Landscape Conservation Zone is moved further north, which will result in a larger area of land zoned Agriculture Zone.
21. The reasons include:
- a conservation covenant is registered on the title;

- an area of bushland was intentionally left out of the conservation covenant to allow optimal grazing conditions by providing shelter for stock; and
  - an area around the dwelling and sheds needs to remain cleared of vegetation to manage fire safety.
22. In the section 35F report, the planning authority recommended the zone boundary between the Agriculture Zone and the Landscape Conservation Zone should be revised to align with the conservation covenant boundary on all three titles (232 and 246 Boyer Road and 31 Cobbs Hill Road) subject to the covenant, except on part of 31 Cobbs Hill Road where the split zoning between the Future Urban Zone and the Agriculture Zone should remain the same. The reasons include:
- the conservation covenant was not considered when preparing the draft LPS;
  - the Landscape Conservation Zone is the appropriate zone for land where a conservation covenant applies;
  - there are conservation covenants over a series of properties through this area as shown on the map provided in the section 35F report;
  - the area zoned Future Urban Zone (part of 31 Cobbs Hill Road, Bridgewater) is identified within the regional strategy as a Greenfield development precinct. It is unlikely that any significant assessment of the land was undertaken as part of the regional strategy; and
  - whilst it seems inappropriate for land subject to a conservation covenant to be zoned Future Urban Zone, the application of the zone is consistent with Guideline No.1.
23. The planning authority provided a further submission on 7 November 2019, including:
- a map showing the recommended revised zone boundary between the Agriculture Zone and the Landscape Conservation Zone that aligns with the conservation covenant boundary at 232 Boyer Road, Bridgewater; and
  - confirmation that the revised zone boundary affects land beyond the representor's land, and includes 246 Boyer Road, Bridgewater and 31 Cobbs Hill Road, Bridgewater.
24. At the hearing, the planning authority noted there was an error in the map provided in the further submission and the zone applied to 56 Cobbs Hill Road, Bridgewater (folio of the Register 156299/1) containing a water tank is not intended to be changed, and this land should remain in the Utilities Zone.

#### **Commission consideration**

25. The Commission supports the planning authority's recommendation in the section 35F report to align the zone boundary between the Agriculture Zone and the Landscape Conservation Zone with the boundary of the conservation covenant at 232 and 246 Boyer Road, Bridgewater and part of 31 Cobbs Hill Road, Bridgewater, excluding where the Future Urban Zone is applied.
26. The Commission considers the boundaries of the Future Urban Zone should be maintained to reflect the zone boundary in the interim planning scheme.
27. According to NAC 13 of Guideline No. 1, the priority vegetation area overlay should not be applied to the land to be revised to the Agriculture Zone.

28. The Commission notes the error in the planning authority's further submission about the zoning of 56 Cobbs Hill Road, Bridgewater, and accepts no modification is required as the Utilities Zone reflects the zoning in exhibited draft LPS.

### **Commission decision**

29. Modification:

- revise the zone boundary between the Agriculture Zone and the Landscape Conservation Zone at 232 and 246 Boyer Road, Bridgewater (folios of the Register 172452/2 and 169759/1) so that the zone boundary aligns with the area of the conservation covenant registered on the titles, including the area of the pipeline easement shown on the conservation covenant in the Landscape Conservation Zone, as shown in the map on page 7 of the planning authority's further submission of 7 November 2019, and annotate the split zone boundary consistent with the Commission's Practice Note 7 – Draft LPS mapping: technical advice;
- revise the zone boundary between the Agriculture Zone and the Landscape Conservation Zone at 31 Cobbs Hill Road, Bridgewater (folio of the Register 152364/2) so that the zone boundary aligns with the area of the conservation covenant registered on the titles, as shown in the map on page 7 of the planning authority's further submission of 7 November 2019;
- delete the priority vegetation area overlay from part of 232 and 246 Boyer Road, Bridgewater where the revised Agriculture Zone applies; and
- apply the priority vegetation area overlay to part of 232 and 246 Boyer Road, Bridgewater, and 31 Cobbs Hill Road, Bridgewater where the revised Landscape Conservation Zone applies.

30. Reasons:

- To apply the Agriculture Zone and the Landscape Conservation Zone to reflect the conservation covenants applying to the land.
- To apply zoning at boundaries consistent with the Commission's Practice Note 7 - Draft LPS mapping: technical advice.
- To apply the 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 in the modification.

### **Rural Living Zone - 5, 9, 11 Melane Road, Old Beach (and other properties 'east of Cassidy's Bay')**

31. Representations: Vik and Kim Saulis (2), Trevor and Catherine Jones (3), Mark and Cindy Johnston (21)
32. The representors requested that land at east of Cassidy's Bay, including Melane Road be revised from the Landscape Conservation Zone to the Rural Living Zone.
33. The reasons include:
- the allowable uses should remain similar to the current zoning under the interim planning scheme;
  - the lot size of properties on Cassidy's Road is 2ha or 3ha or smaller;

- the 20ha min lot size in the existing Environmental Living Zone under the interim planning scheme is inappropriate and will cause unintended consequences;
  - the land has been subdivided and developed for residential use;
  - development of existing vacant lots for a dwelling will be discretionary under the Landscape Conservation Zone;
  - services to Melane Road are limited, there is reticulated water but no sewerage services, stormwater drainage or street lighting and the street is not maintained by Council;
  - application of the Landscape Conservation Zone is not consistent with LCZ 4 of Guideline No.1;
  - the Rural Living Zone purpose statements better reflects the existing uses and development on the land, and application of this zone is consistent with Guideline No. 1; and
  - the priority vegetation area overlay applied to the land is sufficient to manage vegetation values.
34. In the section 35F report, the planning authority recommended the zoning of the area to the east of Cassidy's Bay be revised from the Landscape Conservation Zone to the Rural Living Zone B. The reasons include:
- the Environmental Living Zone currently applies to the land under the interim planning scheme;
  - the dominant use of the area is residential;
  - the area has a bushland character and existing natural and landscape values, however these are largely fragmented by the lot sizes and existing development;
  - Guideline LCZ4 (a) of Guideline No. 1 suggests the land should not be zoned Landscape Conservation Zone and instead the Rural Living Zone should be applied;
  - application of the Rural Living Zone is consistent with RLZ2(b) of Guideline No. 1;
  - the Rural Living Zone B (having a minimum lot size of 2ha) is appropriate as it reflects the existing pattern of density and development consistent with RLZ3(a) of Guideline No. 1; and
  - the landscape values can be managed through the application of the priority vegetation area overlay.
35. The planning authority provided a further submission, including:
- a map showing the intended Rural Living Zone B application to 20 properties, at 34 and 40 Baskerville Road, Old Beach and all of the properties at Cassidy's Road, Old Beach, and Melane Road, Old Beach;
  - a map showing the priority vegetation area overlay applying to the land; and
  - confirmation that the recommended revised zone will affect land beyond the three representors' land.
36. At the hearing no other evidence or information was submitted.

### **Commission consideration**

37. The Commission considers the issues raised by the representors have merit.
38. The Commission accepts the planning authority's recommendation in the section 35F report and further submission which supports application of the Rural Living Zone B to the land, which is consistent with the existing characteristics and pattern and density of development of the area.

### **Commission decision**

39. Modification:
  - revise the zoning of the following properties to the Rural Living Zone B:
    - 34 and 40 Baskerville Road, Old Beach;
    - 1, 2, 3, 5, 6, 7, 8 Cassidy's Road, Old Beach; and
    - 1, 2, 3, 4, 5 (folios of the Register 102907/1 and 102908/1), 8, 8B, 9, 11 (folios of the Register 161430/2 and 161430/1) Melane Road, Old Beach.
40. Reasons:
  - To apply the Rural Living Zone consistent with Guideline No. 1.
  - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

### **Rural Zone and Rural Living Zone - 720, 754, 757 and 770 Boyer Road, Dromedary**

41. Representation: Billet Legal for Phill Smith (16)
42. The representor requested that land at part of 754 and 757 Boyer Road, Dromedary be revised from the Landscape Conservation Zone to the Rural Zone or the Rural Living Zone (C or D), and the larger part of the land be revised to the Rural Living Zone B.
43. The reasons provided by the representor include:
  - the Landscape Conservation Zone should not be applied to farm land and is incompatible with the historic and current land use;
  - the Rural Living Zone purpose statements provide for residential use development where existing natural and landscape values are to be retained and to provide for compatible agricultural use;
  - the land shares a boundary with an existing quarry and the same gravel deposits are located on the subject land, and consideration should be given to expansion of the Rural Zone to accommodate a future quarry;
  - the split zone boundary does not respond to the topography, cleared areas or existing developments on the site;
  - the Rural Living Zone B land ends approximately 170m further north that corresponds to the existing cleared land; and
  - the mapped attenuation area overlay for the Dromedary Quarry is supported as it provides certainty to surrounding landowners.
44. In the section 35F report, the planning authority recommends a large part of the land remain in the Landscape Conservation Zone, but the zoning boundary be revised to expand the Rural

Living Zone B to the north on 754, 757, and 770 Boyer Road, Dromedary (folios of the Register 21919/1, 167426/1, and 167425/1) where the priority vegetation area overlay does not apply. The reasons include:

- the submission about the extent of the Rural Living Zone B is generally supported;
- there are an existing dwelling, outbuildings, and established agricultural use within the cleared area on folios of the Register 21919/1, 167426/1, and 167425/1 where the landscape is more consistent of that in the Rural Living Zone B; and
- the small expansion of the Rural Living Zone B is considered to be consistent with RLZ 1(a), RLZ 2(b), RLZ4 (a), (b) and (c) of Guideline No. 1.

45. In the section 35F report, the planning authority also recommended the zoning of 720 Boyer Road, Dromedary be revised from the Rural Zone to split zoned along the equivalent boundaries used in the interim planning scheme, to part in the Landscape Conservation Zone, part in the Rural Living Zone B and with the Rural Zone to remain applied to the area of the mining lease for the quarry. The reasons include:

- the assessment documented in the supporting report did not consider the suite of other discretionary uses that are afforded to the land under the Rural Zone that might be incompatible with the surrounding area; and
- it is more appropriate to split zone the parcel to reflect the current zoning in the interim planning scheme to avoid conflicts between land uses in the adjoining zones.

46. The planning authority provided a further submission on 7 November 2019, including a map showing the intended zone modification to land at 754, 757, and 770 Boyer Road, Dromedary (folios of the Register 21919/1, 167426/1, and 167425/1), and also a map showing the intended zone modification to 720 Boyer Road, Dromedary which includes the mining lease area zoned Rural Zone.

47. At the hearing no new information was submitted during discussion of these matters.

#### **Commission consideration**

48. The Commission accepts the planning authority submission about application of the Landscape Conservation Zone to the northern part of 754 and 757 Boyer Road, Dromedary, and agrees the natural and landscape values of the land and surrounding area are strategically important.

49. Justification for application of the Landscape Conservation Zone to the Dromedary area has been provided in the supporting report. Application of the Landscape Conservation Zone is generally consistent with Guideline No. 1.

50. The Commission agrees with the planning authority's comments in the section 35F report and further submission that the zone boundary between the Landscape Conservation Zone and the Rural Living Zone B at 754, 757 and 770 Boyer Road, Dromedary should be modified and moved further north.

51. The Commission notes that the planning authority's recommendation to modify the zoning at 720 Boyer Road, Dromedary is not the result of a request by the representor.

52. The planning authority submission and recommendation on the zoning for the Dromedary quarry and surrounding land at 720 Boyer Road, Dromedary is accepted.

### **Commission decision**

53. Modification:

- revise the zoning of part of 754, 757 and 770 Boyer Road, Dromedary (folios of the Register 21919/1, 167426/1, and 167425/1) to the Rural Living Zone B as shown on page 16 in the planning authority's further submission of 7 November 2019, and annotate the split zone boundary based on the location of the priority vegetation area overlay and consistent with the Commission's Practice Note 7 – Draft LPS mapping: technical advice; and
- revise the zoning of 720 Boyer Road, Dromedary to the Landscape Conservation Zone, the Rural Living Zone B, and the Rural Zone consistent with the proposed zoning map on page 15 in the planning authority's further submission of 7 November 2019, and annotate the split zone boundary for the Rural Zone based on the mining lease boundaries, consistent with the Commission's Practice Note 7 - Draft LPS mapping: technical advice.

54. Reasons:

- To apply the Landscape Conservation Zone and the Rural Living Zone B to 754, 757 and 770 Boyer Road, Dromedary consistent with the purpose of the zone and Guideline No. 1.
- To apply the Landscape Conservation Zone, the Rural Living Zone B, and the Rural Zone to 720 Boyer Road, Dromedary consistent with the purpose of the zone and Guideline No. 1.
- To meet technical requirements consistent with Commission Practice Note 7 - Draft LPS mapping: technical advice.
- The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

### **Rural Living Zone – 110, 160 and 166 Baskerville Road, Old Beach**

55. Representations: Michael Ball (18) for SM Roberts, Mark Jakins (20) and Jenna Pogorzelski (27)

56. The representors requested that land at 110 Baskerville Road, Old Beach be revised from the Agriculture Zone to the Rural Living Zone.

57. The reasons include:

- the land is subject to subdivision permit SA2003/00013 for 14 lots and balance;
- the lot sizes are between 2.3ha and 5.9ha;
- a balance lot of 26ha is to become future open space;
- the owner has substantially commenced the development and at least one title has been issued;
- the lots were subdivided for residential use and are not suitable or viable for agricultural use; and
- the subdivision is consistent with the Rural Living Zone applied to the surrounding area.

58. In the section 35F report, the planning authority recommended to revise the zoning of the area shown on the approved subdivision plan as Lots 1 -14 from the Agriculture Zone to the

Rural Zone, and also revise the priority vegetation area overlay to apply to the land consistent with the Regional Ecosystem Modelling (REM) mapping that has been accepted for use in the LPS, except in zones required by NAC13 of Guideline No. 1, which includes the Agriculture Zone.

59. The reasons include:
- the subdivision has substantially commenced however there have been no lots created for 10 years;
  - a map showing the approved subdivision layout;
  - 26.8ha of land in the southwest and the riparian strip along Clarries Creek is to be provided to Council as Public Open Space;
  - Council has no strategic impetus for this land to be developed for rural living;
  - the planning authority supports modifying the zoning from the Agriculture Zone to the Rural Zone to provide more flexibility for residential use and prevent a revised subdivision plan from being submitted;
  - the land is mapped as potentially unconstrained on the LIST layer however the land is constrained by steep topography and environmental characteristics, and the small lot size (provided the subdivision is progressed), it is not part of a larger farm holding in the Agriculture Zone; and
  - application of the Rural Zone is consistent with RZ1, RZ2, and RZ3 of Guideline No. 1.
60. At the hearing, the planning authority submitted that, in current circumstances a residential subdivision of this land would not be supported. However if the subdivision was completed, the Rural Living Zone would be applied to the 14 lots and the Open Space Zone or the Environmental Management Zone applied to the two areas of the subdivision to be transferred to Brighton Council. The planning authority submitted that it does not want the zone application to encourage further subdivision of the land.
61. At the hearing the representor advised that, other than the two separate titles in the process of being issued, the land is in one ownership, and the road needs to be built before the final plan can be submitted to the titles office.
62. The planning authority provided a further submission on 3 December 2019, including:
- if the land is rezoned from the Agriculture Zone to the Rural Living Zone the recommended subdivision minimum lot size would be the Rural Living Zone C to prevent any further subdivision of the land;
  - a map showing the area where the Rural Living Zone C should be applied and the two areas where the Environmental Management Zone should be applied (consistent with the two areas shown with yellow hatching on the diagram on page 18 of the section 35F report);
  - the consequential split zone boundary should be located to align with the future cadastral boundaries of the areas shown with yellow hatching in the approved subdivision layout plan under permit SA2003/13;
  - a map showing the recommended application of the priority vegetation area overlay to 160 and 166 Baskerville Road, Old Beach; and

- clarification that the recommendation in the section 35F report and the further submission applies to land other than the land at 110 Baskerville Road, Old Beach of interest to the 3 representors, specifically 160 and 166 Baskerville Road, Old Beach.

#### **Commission consideration**

63. The Commission notes that the subdivision has substantially commenced as allowed by permit SA2003/13.
64. The Land Potentially Suitable for Agriculture Zone layer on theLIST does not reflect the approved status of the subdivision layout of the land.
65. The Commission accepts the planning authority's further submission of 3 December 2019 which recommends application of the Rural Living Zone C is consistent with RLZ3 of Guideline No. 1, and application of the Environmental Management Zone to the proposed open space areas show on the approved subdivision plan.
66. As a consequence of the revised zoning the priority vegetation area overlay should be applied to the land consistent with the Regional Ecosystem Modelling mapping as shown in Figure 3 on page 4 of the planning authority's further submission of 3 December 2019.

#### **Commission decision**

67. Modification:
  - revise the zoning of 110, 160 and 166 Baskerville Road, Old Beach to the Rural Living Zone C and the Environmental Management Zone as shown in Figure 2 on page 3 of the planning authority's further submission of 3 December 2019;
  - annotate the split zone boundaries based on the subdivision layout boundaries and zone boundaries shown in Figure 2 on page 3 of the planning authority's further submission of 3 December 2019, consistent with the Commission's Practice Note 7, Draft LPS mapping: technical advice; and
  - apply the priority vegetation area overlay to 110, 160 and 166 Baskerville Road, Old Beach as shown in Figure 3 on page 4 of the planning authority's further submission of 3 December 2019.
68. Reasons:
  - To apply the Rural Living Zone, and the Environmental Management Zone to 110, 160 and 166 Baskerville Road, Old Beach to reflect the approved subdivision on the land.
  - To meet technical requirements consistent with Commission Practice Note 7 - Draft LPS mapping: technical advice.
  - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.

#### **Attenuation area – proposed - Brighton industrial estate and transport hub**

69. Representations: Department of State Growth (32), and Boral Property Group (38)
70. The representors requested that the Attenuation Code is applied via a mapped attenuation area for an area around and including the Brighton Industrial Estate and Transport Hub as provided in the interim planning scheme.
71. The reasons provided by the representors include:

- the Brighton industrial area contains the Brighton Transport Hub central to the functions of a regionally significant, high standard, purpose built, road, rail and freight distribution network;
  - sensitive uses will be allowed to locate in the area more easily and cause land use conflicts because sensitive uses will no longer be prohibited;
  - in the interim planning scheme, there are 2 separate attenuation areas that overlap, the Industrial Precinct Buffer Area and the Bridgewater Quarry Attenuation Area. It is thought that the definition of the buffer area in the interim planning scheme comes from the noise and air quality impacts modelling undertaken for the Bridgewater quarry; and
  - impacts of quarry operations may be experienced to the east beyond the Bridgewater Quarry Attenuation Area the quarry attenuation area needs to be reviewed before removing or relaxing the Industrial Precinct Attenuation Area.
72. In the section 35F report, the planning authority recommended, in response to Department of State Growth (32) that no modification is required, and in response to Boral Property Group (38) that the application of the Bridgewater Quarry Specific Area Plan (SAP) and mapped Attenuation Area overlay is expanded to align with the existing Industrial Precinct Attenuation Area in the interim planning scheme. The reasons include:
- the mapped Industrial Precinct Attenuation Area in the interim planning scheme is not used in the draft LPS because the Attenuation Codes in the SPPs and the interim planning scheme operate differently;
  - application of the attenuation distances in Table C9.1 of the SPPs is a better way to address potential land use conflicts for uses within the Industrial Hub where there is likely to be a range of uses with different attenuation requirements;
  - the definition of an attenuation area in the Attenuation Code of the SPPs means the code will not operate outside a mapped area;
  - the attenuation area in the interim planning scheme does not cover the Rural Living Zone to the south of the industrial estate and transport hub where land use conflicts are most likely to occur; and
  - in comments about representation Boral (38), and concerns about sensitive uses establishing within the Industrial Precinct Buffer Area mapped in the interim planning scheme, the planning authority recommended expanding the Bridgewater Quarry SAP and mapped attenuation area overlay to align with the existing Industrial Precinct Attenuation Area in the interim planning scheme.
73. The planning authority provided a further submission including:
- an updated recommendation to insert a new Industrial Precinct SAP into the draft LPS, including the proposed draft Industrial Precinct SAP; and
  - a map showing the proposed draft Industrial Precinct SAP is to be applied to the same area of land where the Industrial Precinct Buffer Area overlay applies in the interim planning scheme.
74. At the hearing no new information was submitted.

### **Commission consideration**

75. The Commission considers the Brighton Industrial Hub has economic significance to the State, region and municipal area, and accordingly the proposed new SAP meets section 32(4)(a) of the Act.
76. In these circumstances the Commission is satisfied that there is an argument for special provisions to deal with potential land use conflicts, particularly sensitive uses in the area that surround the Industrial Hub as proposed in the planning authority's further submission.
77. The Commission considers the area proposed for the draft SAP is appropriate as it spatially aligns with the area that is shown as an attenuation area in the interim planning scheme.
78. The drafting of the proposed draft SAP in the planning authority's further submission requires modifications to:
  - clarify that the purpose and objectives of the SAP to protect the Brighton Industrial Hub from sensitive use establishing in the area;
  - provide a revised name for the SAP that reflects its location and intent; and
  - include numbering consistent with the structure of the draft LPS required by clause LP1.0 Local Provisions Schedule Requirements of the SPPs.
79. The Commission considers that modifications to the proposed new SAP is an appropriate mechanism to address the identified issues, and no modification to the application of the Bridgewater Quarry SAP and mapped attenuation area overlay are required.

### **Commission decision**

80. Modification:
  - insert BRI-S10.0 Brighton Industrial Hub Specific Area Plan into the Brighton draft LPS, as set out in Attachment 2, Annexure A; and
  - insert the BRI-S10.0 Brighton Industrial Hub Specific Area Plan overlay into the SAP overlay map, consistent with the area shown on page 21 of the planning authority's further submission of 7 November 2019, with the relevant annotation consistent with the Commission's Practice Note 7 Draft LPS mapping: technical advice.
81. Reasons:
  - To insert a new SAP and meet the LPS requirements of the SPPs.
  - To apply the SAP overlay consistent with the Commission's Practice Note 7 - Draft LPS mapping: technical advice.
  - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications

### **Bushfire-Prone Areas overlay - 36 Killarney Road, Bridgewater**

82. Representations: Ned Kelly (15)
83. The representor requested that land at 36 Killarney Road, Bridgewater is not subject to the bushfire-prone areas overlay.
84. The reasons include the land does not accommodate vegetation characterised as bushland or long grass etc.

85. In the section 35F report, the planning authority recommended no modification to the bushfire-prone areas overlay. The reasons include:
- the bushfire-prone area overlay was provided by the Tasmanian Fire Service consistent with BPAC 1 of Guideline No. 1;
  - the representation was referred to the Tasmanian Fire Service and it advised that a number of properties, shown on a map provided with the submission, can be removed from the bushfire-prone areas overlay based on a site visit and our maintenance schedule; and
  - a map showing a number of properties outlined in red.
86. The planning authority provided a further submission on 7 November 2019, revising its recommendation including:
- a copy of the advice from Tasmanian Fire Service, referred to on page 36 of the section 35F report; and
  - a map identifying 14 properties at Bridgewater, including the representor's land, where the Tasmanian Fire Service support removal of the bushfire-prone areas overlay, and advice that the planning authority also support removal of the bushfire-prone areas overlay from these properties.
87. At the hearing no new information was submitted.

#### **Commission consideration**

88. The Commission accepts the Tasmanian Fire Service evidence and the planning authority's recommendation provided in its further submission.
89. The Commission considers that the bushfire-prone areas overlay should be revised to remove all of the properties identified on the map in the further submission.

#### **Commission decision**

90. Modification:
- delete the bushfire-prone areas overlay from all of the properties outlined in red and listed in the note on Figure 1 on page 23 of the planning authority's further submission of 7 November 2019.
91. Reasons:
- To apply the bushfire-prone areas overlay consistent with Guideline No. 1.
  - The Commission considers that the modifications are a substantial modification as there may be a public interest in the modifications.