



**MINUTES OF THE PLANNING COMMITTEE MEETING
OF THE CENTRAL HIGHLANDS COUNCIL HELD
IN THE BOTHWELL COUNCIL CHAMBERS
AT 9.05AM ON TUESDAY 12TH JANUARY 2021**

1.0 PRESENT

Clr Allwright (Chairperson), Mayor Triffitt, Clr Poore & Clr Cassidy

IN ATTENDANCE

Mrs L Eyles (General Manager), Mr G Rogers (Manager DES), Mr D Mackey (Southern Midlands Council) & Mrs K Bradburn (Minutes Secretary)

2.0 APOLOGIES

Clr Bailey (Proxy) & Clr Honner

3.0 PECUNIARY INTEREST DECLARATIONS

In accordance with Regulation 8 (7) of the Local Government (Meeting Procedures) Regulations 2015, the Chairman requests Councillors to indicate whether they or a close associate have, or are likely to have a pecuniary interest (any pecuniary or pecuniary detriment) in any item of the Agenda.

Nil

4.0 CONFIRMATION OF MINUTES

Moved **Clr Poore**

Seconded **Clr Cassidy**

THAT the Draft Minutes of the Planning Committee Meeting of Council held on Tuesday 13th October 2020 to be confirmed.

Carried

For the Motion: Clr Allwright, Mayor Triffitt, Clr Poore & Clr Cassidy

5.0 QUESTION TIME & DEPUTATIONS

Nil

6.0 DISCUSSION PAPER: DRAFT CENTRAL HIGHLANDS LOCAL PROVISIONS SCHEDULE – FURTHER FEEDBACK FROM THE TASMANIAN PLANNING COMMISSION.

Report By

Planning Consultant (SMC) Damian Mackey

Purpose

The purpose of this report is to consider Council's response to the latest feedback from the Tasmanian Planning Commission (TPC) regarding Council's draft Local Provisions Schedule for the Tasmanian Planning Scheme.

Following the Planning Committee meeting a more complete report, with recommendations, will be formulated for the next council meeting.

Background

As Councillors are aware, the Tasmanian Planning Scheme will consist of the State Planning Provisions (SPPs) and the Local Provisions Schedules (LPSs) from individual Councils.

Council's initial draft LPS was submitted to the TPC in late 2019. In early July 2020 a conference was held by the TPC with council planning officers to discuss the issues. In late July the TPC provided Council with its response, detailing a list of issues that it considered needed to be further addressed before it would recommend to the Minister that the draft is suitable for public exhibition.

Council formulated its response to most of these matters at its October 2020 meeting, with the final matter - the Lake Meadowbank Specific Area Plan - being considered at its December meeting.

Following a second conference in mid-December, the TPC provided further feedback, which is set out in the enclosed correspondence and attachments thereto.

Issue 1 – Zone Mapping:

Agriculture verses Rural Zone Allocation:

The only major change in zoning from the existing Interim Planning Schemes in the southern region to the State Planning Scheme is the way rural areas are zoned.

Currently there is the Significant Agriculture Zone which only applies to the relatively small, well defined areas of high-quality agricultural land, and the Rural Resource Zone which is applied almost everywhere else and includes dry-land cropping, pasture land, summer grazing land, native pasture, grazing land under forest cover, forestry land and mining areas.

Under the new State Planning Scheme there will be the Agriculture Zone covering almost all agricultural land and the Rural Zone covering forestry land, major mining operations, and the like.

The allocation of the Rural and Agriculture Zones is very different to the allocation of the Significant Agriculture and Rural Resource Zones and has been a major task for councils.

To assist in this process the State Government undertook an exercise to map the '*Land Potentially Suitable for the Agriculture Zone*'. This map is known as the LPSAZ.

The makers of the LPSAZ utilised generic decision rules and desktop GIS analysis to generate the layer. It did not include local on-ground verification. The constraints analysis that was utilised in the LPSAZ mapping was not designed to provide a comprehensive analysis of all the factors that may contribute to the constraint of agricultural land as it was not feasible to develop a model at the state-wide scale that could incorporate all factors of each individual title that need to be considered.

Fundamentally, therefore, the LPSAZ is a broad-brush tool and not necessarily correct at the property level. Its outcomes are merely a starting suggestion and, whilst correct in the majority of cases, the proposed zoning therein needs to be tested against more detailed local-level analysis.

To provide a more refined property-level methodology, the Southern councils (with State Government funding) engaged a firm called AK Consultants to develop the '*Decision Tree & Guidelines for Mapping the Agriculture and Rural Zones*'. This document takes the LPSAZ as a base and adds a standard methodology to enable planners to consider the facts on the ground and to decide whether land should be Rural or Agriculture Zone. It clearly sets out the circumstances in which land in the LPSAZ should in fact be zoned Rural and, conversely, where land not in the LPSAZ should be zoned Agriculture.

The Decision Tree document states that only if, after its guidelines have been applied, it is still uncertain which zone should be used, it would be necessary for an expert consultant to be engaged to make a determination.

The Decision Tree document is given substantive weight by the State's Guideline No.1 as *an agricultural land analysis undertaken at the regional level which incorporates more recent analysis, better aligns with on-ground features and addresses inaccuracies in the LPSAZ, and which is prepared by a suitably qualified person and adopted by all the Southern Councils*, (Guideline AZ1(a)).

Furthermore, AZ6(a) of Guideline No.1 provides for alternative zoning *if local or region strategic analysis has identified or justifies the need*. The application of the Decision Tree rules enables this.

In addition, at the time the Southern councils initially proposed to organise the creation of the Decision Tree, the idea was put to the TPC and the State Government and received endorsement for the idea.

However, since the December conference with the TPC, it has become apparent that the TPC now gives no weight at all to the Decision Tree document. It has adopted the position that land in the LPSAZ should be zoned Agriculture and land not in the LPSAZ should be zoned Rural, and if a council considers it appropriate to deviate from this it must engage an external consultant to verify it.

This has given rise to the situation where the TPC is insisting that areas clearly dominated by forestry be zoned Agriculture, and that areas clearly used for agriculture should be zoned Rural.

Data sources used by Council to allocate zoning include, (in addition to the LPSAZ), the Land Use 2015 LIST layer, the Agricultural Land Capability layer (i.e. Class 1 to 7 under the Protection of Agricultural Land State Policy), aerial photography layers, Private Timber Reserves, Conservation Covenants, Mining Leases, landownership, local knowledge and site inspection, as per the Decision Tree guidelines. The TPC, in taking the LPSAZ at face value and not utilising the Decision Tree guidelines, has concluded that Council has applied the Rural and Agricultural zones inconsistently.

For example; in regard to Private Timber Reserves, (PTRs), Council's position is that the existence of a PTR should not carry determining weight to zone a piece of land Rural. For example, a PTR making up a small part of a working farm ought to be zoned Agriculture along with the rest of the farm. However, in case of multiple PTRs in an area, along with aerial photographic evidence of forestry land use and predominantly forestry company land ownership indicates an area should be zoned Rural even though it may be mapped in the LPSAZ. The Decision Tree provides the rigour for planners / planning authorities to make this decision. The advice of an external consultant ought not be necessary.

Council has three options to resolve this matter:

1. Zone all land in the unconstrained layer of the LPSAZ as Agriculture and all land not in the unconstrained layer of the LPSAZ as Rural.

Such a blanket adoption of this desk-top broad-brush data set will result in clear instances of the wrong zones being applied.

2. Engage an external consultant to assess all the instances where Council (using the AK Consulting Decision Tree Guidelines) believes it is appropriate to depart from the LPSAZ.

This will require financial resources and delay the progression of the LPS by six or twelve months.

3. Seek clarification from the TPC, and from the State Government if necessary, as to why the AK Consulting Decision Tree Guidelines document appears to have now been dismissed by the TPC, and request that it be given the function and weight it was originally intended to have, and accorded to it by the State's Guidelines No.1 AZ1(a) and AZ6(a).

Zoning of Mining Leases:

Many mining operations in the Central Highlands are small quarries on farms and have been zoning Agriculture along with the rest of the farm and surrounding land. The TPC have requested that Council liaise with Mineral Resources Tasmania (MRT) to seek confirmation that the mines are not of regional significance, and therefore appropriate to be zoned this way.

If a mining operation is considered to be of regional or state significance, it would be appropriate to consider a 'spot zoning' on "Rural Zone" applying to the mining lease area.

MRT has been contacted and provided with the details of the mining leases in Central Highlands, and feedback is expected by the end of January.

Issue 2 – Listings for Heritage Places:

The TPC's position:

The TPC continues to insist that the current heritage place list in the Central Highlands Interim Planning Scheme be transitioned into the LPS without any amendments to remove superfluous titles. (It is assumed it will allow correction of incorrect title references and addresses).

Council's position, adopted at the October meeting, was to seek to amend the heritage list to bring the listings in line with the revised Tasmanian Heritage Register listings, which have mostly been amended by the Tasmanian Heritage Council to remove superfluous titles. If the TPC did not consider this to be possible, Council's position was that it would ask the Minister to allow an amended heritage list under Schedule 6, Clause 8D of the *Land Use Planning & Approvals Act 1993* - as per advice contained in the TPC's late-July 2020 response.

However, the TPC has now advised that such an amended list would need to comply with the new information requirements for listed places. This would involve Council engaging a suitably qualified person to create data sheets of all listed places, (amended or not), including a detail description and list of heritage values, etc. for each place. This would take considerable time and financial resources.

How did superfluous titles come to be listed in the planning scheme?

The situation has arisen through a series of 'accidents of history':

- In the 1970s and 1980s planning schemes listed heritage properties simply by name (if there was one) and address. The spatial extent of the listing was not defined. This was not generally a problem for listings in cities and towns - on small urban titles. However, for large rural properties, there was always some doubt as to the spatial extent of the listing.
- In the 1990s the Tasmanian Heritage Register (THR) was established. It was created 'overnight' by collating existing listings in council planning schemes and other lists such as the Register of the National Estate and that of the National Trust.

- The legislation underpinning the Tasmanian Heritage Register stated that the spatial extent of each listing must be defined. The default was the title on which the place was located. The title was almost invariably adopted as there were no resources at the time to for expert examination of thousands of listings to define a spatial extent other than the titles. Again, this was not generally a problem for listings in cities and towns.
- However, for large rural properties containing many titles, all the titles within a landholding were often adopted. Therefore, whilst the principle title containing, for example, a heritage house, barn and other historic outbuildings was rightfully included, also included were the property's other titles containing hundreds or even thousands of hectares.
- Many planning schemes drafted after the Tasmanian Heritage Register came into being adopted the same spatial definition as the matching THR listing, including that of Central Highlands Council.
- Thus, properties made up of multiple titles, such as Norton Mandeville in the Central Highlands, now find themselves with hundreds of hectares unintentionally encumbered by a statutory heritage listing.
- In recent years the Tasmanian Heritage Council has been expending considerable resources to review Tasmania's rural listings and make amendments to the THR to remove superfluous titles. Most THR listings in Central Highlands have thus been corrected.
- Such corrections, however, do not automatically flow through to the local listing in the local planning scheme.

Council's Position:

Central Highlands Council's long-held position is that it's local list in the planning scheme should just mirror that of the THR.

It could well be argued that the removal of superfluous titles should be seen in exactly the same light as the correction of incorrect title references or street addresses and allowed in the LPS heritage list.

This would remove the unnecessary encumbering of 'heritage listing' from thousands of hectares of Central Highlands land where there is, and never has been, a deliberate decision to list the land.

Councils Options:

There appears to be three options available to Council to progress this matter:

1. Transition the current list into the LPS list with no amendments (other than correction of incorrect title references and street addresses), as per the direction of the TPC. This would mean many rural titles will continue to be unnecessarily heritage-listed. This will result in additional expense and time delays in the development application process for future proposed developments on this land.

Clearly, this would run counter to the State Government's declared aims for the whole planning reform process "*to ensure planning in Tasmania will be simpler, fairer and more efficient*" and provide "*greater certainty to investors and the community*".

2. Engage a suitably qualified expert to review the entire heritage list and create the necessary data sheets to enable them to be included in the LPS list as 'new listings', and in the process remove the superfluous titles.

This would require financial resources and would delay the progression of the LPS by six or twelve months, or more.

3. Remove the heritage list from the LPS entirely. The TPC has advised that this option is allowable. This option works with Council's long-held position that it only list properties that are also on the Tasmanian Heritage Register. The heritage values of these properties would still be protected by virtue of the THR.

In fact, the State Planning Provisions explicitly state that the Heritage Code does not apply if a listed property is also listed on the THR. In other words, in the case of 'dual listed' properties, a heritage assessment and decision to approve or refuse would only be done by the Tasmanian Heritage Council. There is to be no 'double assessment' (and potentially conflicting decision) by the local council and the Heritage Council.

Because of this, if the current Council listings are translated straight into the LPS heritage list, the ridiculous situation will arise in which the local planning authority (Council) would only deal, in a heritage assessment sense, with the superfluous titles on its LPS heritage list. This is because the actual principle heritage titles would be also listed on the THR and therefore the Tasmanian Heritage Council would undertake the assessment of development applications on these titles.

Other Tasmania Councils have adopted the policy position that they will not have locally-listed heritage places, as they prefer to simply rely on the THR to protect the heritage values in their municipal areas. Meader Valley Council is one such example.

Issue 3 – The Lake Meadowbank Specific Area Plan (SAP):

The TPC has sought explanation on how the SAP meets Section 32(4) of the Act and what Council's policies are behind the SAP. Section 32(4) sets out the reasons necessary to justify the existence of the SAP. Council has already provided the TPC with extensive explanation regarding why it believes Section 32(4) of the Act has been met and has detailed its underlying policies supporting the SAP.

As per Council's December 2020 resolution, these are:

1. *Lake Meadowbank is the premier water-skiing facility in Tasmania. Council wants to allow this recreation facility of state-wide strategic importance to expand, both on and off the water. This includes clubrooms and other shore-based facilities, water-edge facilities such as jetties, pontoons, boat ramps and on-water recreational infrastructure. For these reasons the SAP is necessary pursuant to Section 32(4)(a) of the Act.*
2. *These water-edge and on-water facilities, however, also need to be shared and consolidated so that the current unsystematic proliferation trend is halted and potentially reversed. For this reason, the SAP is necessary pursuant to Section 32(4)(b) of the Act.*
3. *As the lake's status as the State's premier water-skiing location grows, more accommodation will need to be allowed around the lake, over a range of modes including camping, caravans and holiday cabins. This needs clear siting criteria to ensure the lake's landscape values are not destroyed by, for example, numerous buildings close to the water's edge. For this reason, the SAP is necessary pursuant to Section 32(4)(b) of the Act.*
4. *Many operational Hydro lakes and have a degree of recreational use. The difference with Lake Meadowbank is the high degree of recreational use arising from its close proximity to greater Hobart, the specific nature of that use (predominantly; the State's premier water-skiing facility) and associated pressures for more accommodation / housing / camping and aquatic structures. A SAP is required to do this. For this reason, the SAP is necessary pursuant to Section 32(4)(a) of the Act.*
5. *This high-level of specific water-based recreational activities and development pressures pose particular management challenges for Hydro Tasmania, over and above that which exist for other lakes where water-based recreation occurs. Development applications for sites close to the foreshore*

should be referred to Hydro Tasmania for comment. For this reason, the SAP is necessary pursuant to Section 32(4)(b) of the Act.

6. *The agricultural value of the land is not highly significant, whilst the economic and social values of the lake as the State's premier water-skiing facility are highly significant. The scheme provisions should lean in favour of the recreational use within the SAP area. The SAP is necessary to do this.*
7. *The land around the lake contains highly significant Aboriginal heritage sites. Development applications involving buildings and works should be referred to AHT for comment. The SAP is necessary to do this. For this reason, the SAP is necessary pursuant to Section 32(4)(a) of the Act.*
8. *The Landscape Conservation Zone is not used in the Central Highlands LPS and, in any case, would not suit this special area. The proposed SAP, in part, introduces some aspects of this zone. For this reason, the SAP is necessary pursuant to Section 32(4)(b) of the Act.*

The TPC has not provided any comment on these reasons, either negative or positive, and has simply asked (again) "how the SAP meets 32(4) of the Act".

Council cannot further progress this matter until the TPC provides its rationale for, presumably, rejecting Council's existing justification for the SAP under Section 32(4).

There are several other matters raised by the TPC regarding the Lake Meadowbank SAP. The TPC has requested that Council liaise with interested parties to resolve these issues. The interested parties include:

- Hydro Tasmania.
- TasWater
- The Aboriginal Heritage Council
- Marine and Safety Tasmania
- The Lake Meadowbank Water Ski Club

Initial contact has been made with most of these parties and it is anticipated their feedback will be obtained during January.

Issue 4 – Drafting:

Under this heading the TPC has reiterated its comments regarding the Lake Meadowbank SAP and the local heritage places list, referred to above.

Issue 5 – Supporting Justification Report:

Under this heading the TPC has essentially pointed out that Council's LPS Supporting Report will need to be amended once all of the above issues are resolved.

This, in and of itself, is quite routine. However, it raises the issue of what the Supporting Report should ultimately say in circumstances where as parts of the Draft Local Provisions Schedule have been imposed by the TPC and are at odds with Council's views.

The purpose of the Supporting Report is to provide the general public with an explanation of all the elements in the LPS, including the proposed zoning of land, the contents of the local heritage list and the provisions of the Lake Meadowbank Specific Area Plan. Fundamental democratic principles would insist that the general public is made aware of what their local elected representatives are responsible for in the LPS and what their State elected representative are ultimately responsible for.

Issue 6 – Process for Further Clarifications:

Under this section the TPC has flagged that the proposed removal of the now-redundant Attenuation Area Overlay over the now-removed Great Lake Hotel sewerage treatment ponds, which Council endorsed at its October 2020 meeting, cannot happen.

This means that Council, and the Great Lake Hotel owners, will have to allocate significant financial resources and time in the future to undertake and planning scheme amendment to remove this now useless element of the planning scheme.

Community Consultation

When directed to do so by the TPC the Central Highlands Draft Local Provisions Schedule will be publicly exhibited in accordance with statutory requirements.

This will involve:

- The statutory requirements of Division 4 of the Act. These are, in summary:
 - A 60-day exhibition period.
 - Notification of adjacent Councils and Councils in the region; and
 - Notification of State Service Agencies and Authorities as directed by the TPC;
 - Newspaper notice of the exhibition;
 - The exhibition of the draft LPS for public viewing within the municipal area;
 - The exhibition of the draft LPS by the TPC;
 - The opportunity for members of the public to lodge representations on the draft LPS;
 - Consideration of representations by the Council (acting as a Planning Authority).
- Use of Council resources to exhibit and communicate the draft - Council website, and readily available information at Bothwell and Hamilton Offices;
- Information Sessions at key locations (i.e. dedicated drop-in session);
- Officers available to discuss matters with the public and stakeholders.

Proposed details of the mechanics of the public exhibition process (dates, times, locations, displays, etc.) will be subject of a separate report for Council consideration once it is clear when the TPC/Minister will endorse the LPS as suitable for public consultation.

As indicated above, Council will need to give consideration to the explanations provided in the Supporting Report in regard to elements of the LPS that have been imposed by the TPC.

External Referrals

As indicated above, the draft Lake Meadowbank SAP has been referred to a range of interested parties and the mining lease areas have been referred to Mineral Resources Tasmania for comment. For many other issues relevant to State agencies, input has already taken place at the statewide level.

The draft LPS will nevertheless be referred to all State agencies once the formal exhibition period commences.

Council Strategic Plan (and Local Planning Strategy)

The draft LPS is considered to be consistent with the Central Highlands Strategic Plan and local planning objectives and plans, as detailed in the Supporting Report considered at the August 2019 Council meeting.

Timeframe

A timeframe for the exhibition of the draft LPS is dependant on the resolution of the abovementioned matters with the TPC.

Financial Implications

Continuing with the preparation and exhibition of the draft is a core requirement of Council and duty of the Planning Authority. It carries a low financial liability but overall is a resource intensive exercise for the Planning Department.

That said, there are several instances highlighted in this report where compliance with the TPC's requirements would entail very significant expenditure of Council finances in the engagement of a range of external consultants. As explained above, this is considered not necessary, as the reasonable exercise of planning judgement by planning officers, Council acting as a planning authority and the Tasmanian Planning Commission should suffice for the matters at hand.

Moved **Mayor Triffitt**

Seconded **Clr Poore**

THAT Council:

A. Respond to the 23 December 2020 correspondence from the Tasmanian Planning Commission pertaining to the Central Highlands Draft Local Provisions Schedule, advising the following:

1. In regard to the allocation of the Rural and Agriculture Zones, Council cannot respond to the Commission's questions until the status of the AK Consulting '*Decision Tree & Guidelines for Mapping the Agriculture and Rural Zones*' is clarified. Whilst Council representatives have been verbally advised that this report does have standing, the Commission's questions indicates it does not.

If it does not have standing in the Commission's eyes, Council seeks an explanation. This report was funded by the State at the express request of the Southern Councils to guide the allocation of the Rural and Agriculture Zones in the formulation of their Local Provisions Schedules. At the time, this approach was endorsed by Government and Commission representatives.

If the AK Consulting Decision Tree cannot be used, Council will be forced to expend considerable financial resources to engage consultants, (which in its view would be unnecessary), and the progression of the draft LPS will be further delayed.

2. In regard to the spatial extent of heritage place listings on rural properties, Council seeks a full explanation as to why the removal of superfluous titles, that have now been removed from the corresponding Tasmanian Heritage Register listings, cannot be allowed in the LPS. These listings unnecessarily encumber thousands of hectares of the Central Highlands. This is land where there is, and never has been, a deliberate decision to list the land.

It could well be argued that the removal of superfluous titles should be seen in exactly the same light as the correction of incorrect title references or street addresses that is being allowed by the Commission in the LPS heritage list.

Noting that Council's policy is that its local heritage list is to only include properties that are on the Tasmanian Heritage Register, Council foreshadows that if its list cannot be corrected as outlined above, it will remove the list entirely from the draft LPS.

3. In regard to the Draft Lake Meadowbank Specific Area Plan, Council cannot respond to the Commission's request that Council provide justification for its inclusion in the LPS until the Commission provides feedback on the rationale Council has already provided.
- B. Consult with the Southern Region's Technical Reference Group (Planning) to establish how similar issues are being dealt with by the Tasmanian Planning Commission in other municipal areas, with a view to potentially pursuing areas of common interest jointly with other councils.
- C. Seek advice from the Office of the Coordinator General regarding the above.

Carried

For the Motion: Clr Allwright, Mayor Triffitt, Clr Poore & Clr Cassidy

7.0 OTHER BUSINESS

Nil

8.0 CLOSURE

There being no further business the meeting closed at 10.36am
