



# LPS Amendment Assessment Report

## Flinders Local Provisions Schedule

AM2023-01 part 2 - Rezone CT's 10875/1,  
169274/101, 169274/102, and reserved road  
dissecting CT169274/101, Harleys Road,  
Whitemark to Rural

April 2023

Prepared by:





## Executive Summary

Part 2 of AM2023-01 seeks to rezone CT's 10875/1, 169274/101, 169274/102, and reserved road dissecting CT169274/101, Harleys Road, Whitemark to Rural.

The subject properties were exhibited in the Landscape Conservation zone during preparation and exhibition of the Flinders Local Provisions Schedule (LPS). They were identified as better suited to the Rural zone in expert assessments prepared by RMCG to support the Rural Enterprise concepts established through the draft Flinders Structure Plan that supported the LPS.

The published decision on the Flinders LPS accepted the expert evidence and opinions from RMCG but then did not specify that the subject properties should be within the Rural zone in the directions on the LPS.

This report considers the merits and statutory requirements of part 2 of AM2023-01.

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## Abbreviations

Act	<i>Land Use Planning and Approvals Act 1993</i>
AM2023-01.2	draft amendment AM2023-01, part 2
Commission	Tasmanian Planning Commission
Council	Flinders Council Flinders Council in its role as a Planning Authority under <i>Land Use Planning and Approvals Act 1993</i>
Guideline No.1	<i>Guideline No. 1 Local Provisions Schedule (LPS): zone and code application</i>
Listmap	<a href="http://www.theList.tas.gov.au">www.theList.tas.gov.au</a>
LPS	Local Provisions Schedule
LPS Decision	<i>Tasmanian Planning Commission Decision – Flinders Local Provisions Schedule, (2022) TASPComm 16</i>
NEPM's	National Environmental Protection Mechanisms
NTRLUS	Northern Tasmanian Regional Land Use Strategy
Strategic Plan	Flinders Council Strategic Plan 2021-2031
Structure Plan	Flinders Structure Plan 2016 (draft)
Subject lands	Harleys Road folios of the Register 169274/101, 169274/102, and the reserved road dissecting folio of the Register 169274/101;
TPS	Tasmanian Planning Scheme
2000 Scheme	<i>Flinders Planning Scheme 2000</i>

## 1 INTRODUCTION

The Flinders Local Provisions Schedule was subject to an extensive approval process that saw representations and expert evidence submitted to the Tasmanian Planning Commission (Commission) regarding the zoning of properties in the Harley's Road area.

The Flinders Planning Authority (Planning Authority) identified a strategic need for use of the Rural zone in areas around Whitemark to accommodate anticipated growth and enable boutique rural industries to established without the limitations of the Agriculture zone under the Tasmanian Planning Scheme (TPS).

The Commission ultimately accepted the strategic position and evidence provided by the Planning Authority and supported use of the Rural zone in areas around Whitemark, as reflected in paragraphs 110 to 113 of the published decision on the LPS, *Tasmanian Planning Commission Decision – Flinders Local Provisions Schedule*, (LPS Decision).

While the evidence and submissions were accepted by the Commission and supported the rezoning of properties in the Harleys Road area (referred to specifically in paragraph 110 of the LPS Decision), the final decision omitted the subject properties from the directed modifications described in paragraphs 114 to 118 inclusive.

AM2023-01.2 seeks to address that anomaly within the decision and have the Rural zone applied to the subject properties.

The following documents support AM2023-01.2 and were provided as a separate attachment to this report:

- *Tasmanian Planning Commission Decision – Flinders Local Provisions Schedule*, (2022), 21 April 2022 (LPS Decision)
- *Addendum to Section 35F Report Rural Enterprise concept Local Provisions Schedule January 2022* (LPS Rural Addendum)
- *RMCG, Rural Enterprise Concept Report* (Rural Enterprise Report)
- *RMCG Enterprise Scale Report* (Scale Report)
- *Copies of titles for the subject lands*

## 2 SITE ANALYSIS & CHARACTERISTICS

The properties subject to AM2023-01.2 are:

- 115 Harleys Road, Whitemark (CT's 10875/1), area 40.63 ha;
- CT's 169274/101 Harleys Road, Whitemark, area 42.07 ha;
- CT 169274/102 Harleys Road, Whitemark, area 42.1 ha; and
- the reserved road dissecting CT169274/101 Harleys Road, Whitemark.

### 2.1 Location

The subject lands are located northwest of the main urban settlement on Flinders Island, Whitemark and adjacent the Cann's Hill area. A copy of the title certificate were provided as part of the separate attachments to this report.

The subject lands are within the red border, as highlighted in Figure 1.



Figure 1 - site and context

### 2.2 Context

The subject lands are located to the east of Memana Rd and accessed by Harleys Road. The wider site conditions are shown at Figure 1, with more detail at Figure 2

RMCG described the general area as follows at the Whitemark North listing in Table 8-3 Assessment Areas on page 21 of the *Flinders LPS Rural Enterprise Concept Report* (Rural Enterprise Report):

*There is land north of Whitemark near the airport that is proposed to be zoned Agriculture. This land is located along Palana Rd and Memana Rd. It appears feasible that the land directly to the west of the airport and along Memana Rd could go into the Rural zone. While this land is utilised for grazing, there are multiple titles under different ownership. It also does not have connectivity with the rest of the Agriculture zone.*

Zoning this land Rural, will still allow the land to be utilised for its current activities, if that is the landowner's desire.

It appears feasible that the land directly to the west of the airport and along Memana Rd could go into the Rural zone. While this land is utilised for grazing, there are multiple titles under different ownership. It also does not have connectivity with the rest of the Agriculture zone. Zoning this land Rural, will still allow the land to be utilised for its current activities, if that is the landowner's desire.

CT 110875/1, CT 169274/101, CT 169274/102 & CT 176057/2 are a cluster of four titles located on Harleys Rd. These titles are currently proposed for the Landscape Conservation Zone. It is our understanding there is an existing mining lease on one of these titles (CT 176057/2), while a further two titles (CT 169274/102 & CT 169274/101) have been purchased to be utilised as part of an existing Bush Pharmacy operation to be utilised for kunzea production for essential oil. Because of this, these titles appear to more suited to the Rural zone.



Figure 2 – existing site conditions

The South Pats River runs along the northern boundary of the subject lands.

## 2.3 Scenic Values

Submissions from the Council to the Commission during the hearings identified that the reasons for application of the Landscape Conservation zone during development of the LPS were not clearly documented.

Visually, the area has some exposure to traffic on Memana Road. The landform of Cann's Hill to Mount Hauland prevents viewing of this part of the landscape from viewing from the east, including the Bluff Road area, Whitemark and the Thule and Lady Barron Roads. The subject lands provide a relatively typical rural landscape within the surrounding area.

The area was not identified for application of the Scenic Protection Area Overlay under the LPS.

## 2.4 Surrounding Facilities

The subject site is connected to Whitemark by road. Whitemark offers primary education, commercial, police and social/recreation facilities.

The subject located approximately 3.2 km from the Flinders Airport, 3.6 km from Whitemark and is located amongst the foothills of the Darling Ranges that form the central spine to Flinders Island.

Extensive recreation facilities are available within the wider area and on Flinders generally.

## 2.5 Land Capability

Land capability of the subject and surrounding area is understood to be class 5, based on mapping provided by the State for the draft Structure Plan. The agricultural value of the land was examined as part of the assessment of the LPS.

As noted in the LPS decision, the area was assessed by RMCG in the Rural Enterprise Report and supported for the Rural zone. The Commission accepted that assessment at paragraphs 112 and 113 of the LPS decision.

The decision to support the RMCG evidence in the Rural Enterprise Report through the LPS confirmed that the land was not considered to be Agricultural under the *State Policy for the Protection of Agricultural Land 2009*.

## 2.6 Natural and Environmental Hazards

Listmap identifies that the site has the following attributes:

- it is wholly within the Bushfire Hazard overlay (not shown for clarity);
- it is wholly within the Airport Obstacle Limitation area overlay (not shown for clarity);
- the small existing dam, South Pats River and an unnamed tributary are within the Waterway & Coastal Protection Area overlay (as shown within CT's 169274/101, 169274/102 and 110875/1);
- CT110875/1 contains two areas of the Landslip Hazard area overlay within the low band;
- The south western corner of CT169274/102 is within the Waterway & Coastal Protection Area overlay; and
- 300 metre Attenuation Area overlays apply for Mining Leases 2098P/M (gravel and sand) and 2032P/M (gravel).

Listmap does not identify the site as subject to any overlays for flood, coastal erosion, priority vegetation or other environmental hazards or values.

An extract of the LISTmap topographic mapping for the area was provided at Figure 3.



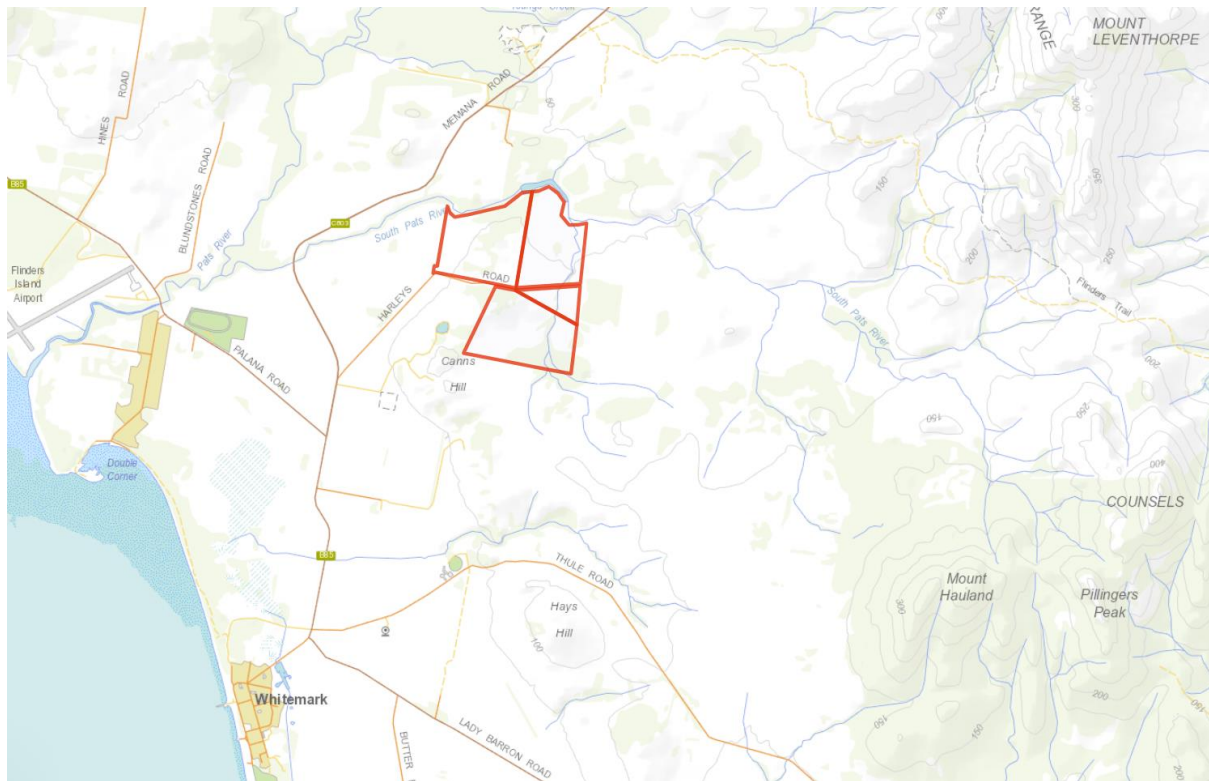


Figure 3 - Extract LISTmap topographic map of area

## 2.7 Special or significant features

Neither Listmap, Council records nor the extensive supporting information for the LPS process identified any known scientific, aesthetic, architectural, historical and cultural values on the land that need consideration with the proposed amendment.

## 2.8 Buildings and other improvements

Listmap and Council records confirm that 115 Harley's Road, CT 110875/1 contains an existing dwelling and outbuildings in the south eastern corner.

The remaining titles subject do not contain any buildings, sheds or other improvements.

## 2.9 Land use history

Available records identify the subject lands have been used for rural purposes and specifically grazing.

## 2.10 Referrals

The subject lands were not identified as with in the Water Serviced Land overlay on LISTmap. There are no reticulated sewer service areas on Flinders. The proposal did not require referral to Taswater under the *Land Use Planning and Approvals Act 1993* or *Water and Sewerage Industry Act 2008*.

Other referrals will be required to relevant agencies if AM2023-01.2 is initiated by the Planning Authority.

### 3 PLANNING CONTROLS

The subject site is located within the Flinders Municipality and therefore subject to the provisions of the Tasmanian Planning Scheme – Flinders(Scheme).

#### 3.1 Zoning

Listmap identifies that the subject land is zoned Landscape Conservation, with a mix of Rural and Agriculture zones over adjoining lands. The zoning of the subject site and surrounding area is shown in Figure 4.

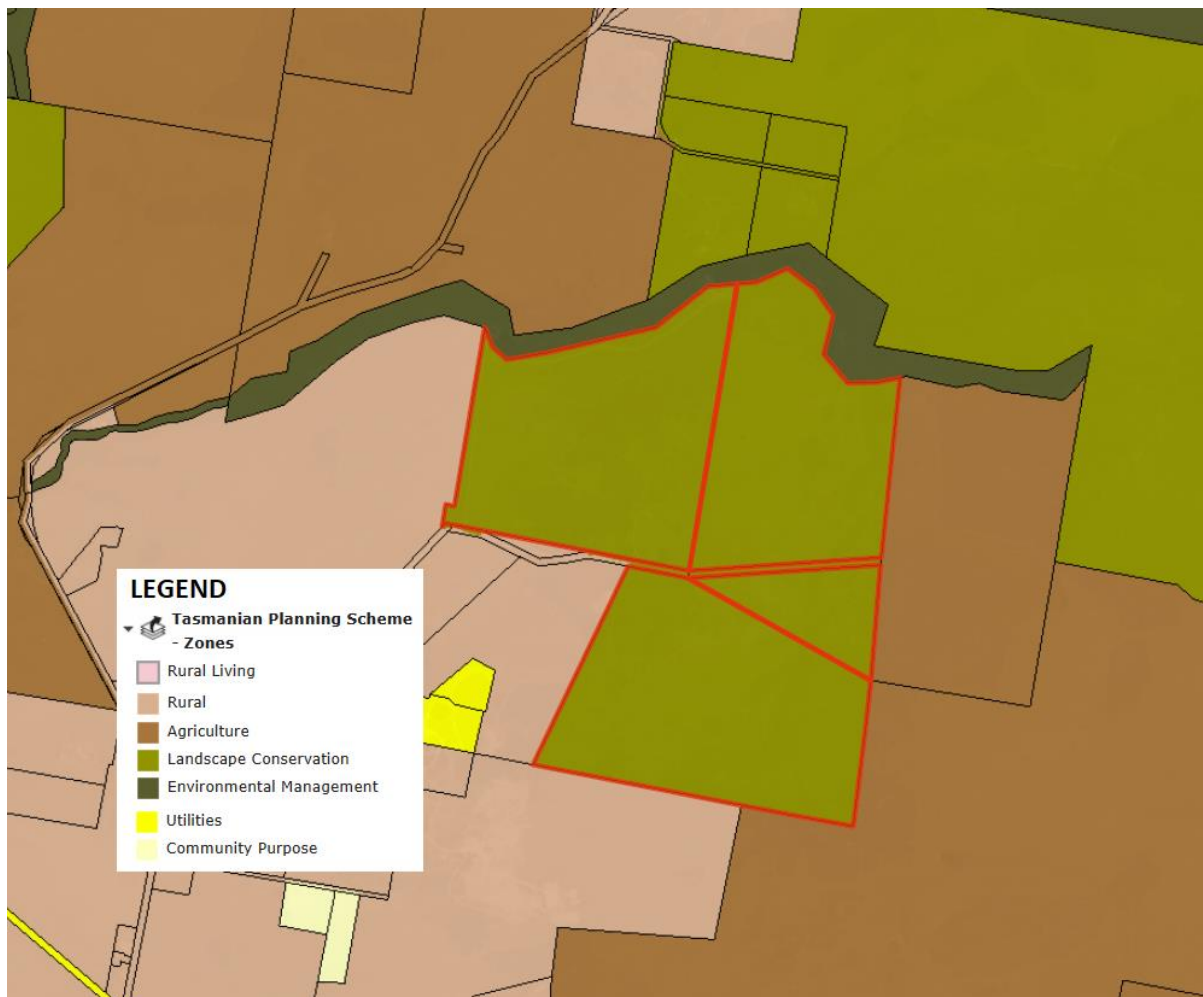


Figure 4 – Zoning extract

#### 3.2 Codes/Overlays

Listmap identifies the following overlays apply within the subject lands:

- it is wholly within the Bushfire Hazard overlay (not shown for clarity);
- it is wholly within the Airport Obstacle Limitation area overlay (Inner horizontal surface 51.5 AHD. not shown for clarity);
- the small existing dam, South Pats River and an unnamed tributary are within the Waterway & Coastal Protection Area overlay (as shown within CT's 169274/101, 169274/102 and 110875/1);
- CT110875/1 contains two areas of the Landslip Hazard area overlay within the low band;
- The south western corner of CT169274/102 is within the Waterway & Coastal Protection Area overlay; and
- 300 metre Attenuation Area overlays apply for Mining Leases 2098P/M (gravel and

- sand) and 2032P/M (gravel).
- An extract of the overlays was provided at Figure 5 , noting that the Bushfire and Airport Obstacle Limitation area overlays were not shown for clarity.

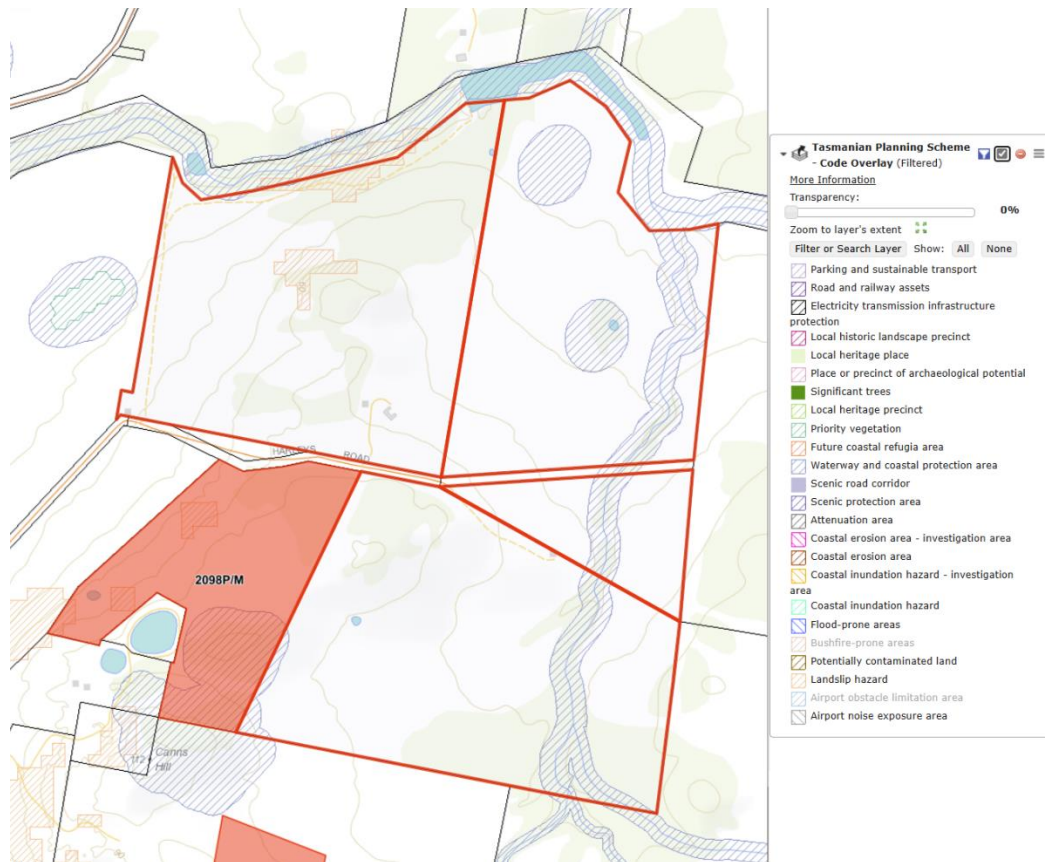


Figure 5 - Extract LPS Overlays from LISTmap

Attenuation buffers under Code C9 – Attenuation Code were shown at Figure 6 based on the Code requirement for buffers to be taken from title boundaries and reflecting the existing mining leases available on LISTmap. It is noted that the Commission accepted the following advice on this issue during the LPS process.

*Advice from council is that mining lease 2032PM does not include approval for crushing activities and that while the former lease 1939PM did include crushing activities, that lease was rescinded and that site has commenced rehabilitation....*

*Mining Lease 2032PM – provides for gravel extraction. The approval documents do not identify crushing, screening or blasting under the processes to be used, which means the applicable buffer under Table C9.1 of the TPS is 300 metres for both level 1 and level 2 activities. Further, advice from Council identifies the following:*

- *that the materials won from 2032PM have almost expired and that they will not be able to extract materials from the site that are fit for purpose; and*
- *Council will be seeking to have lease 2032PM removed within the next 12 months and commence rehabilitation of the site.*

There are no general overlays for Local Area Objectives, Specific Area Plans, Site Specific Qualifications or Precincts or defined areas.

AM2023-01.2 does not seek to alter the zoning or overlays that apply under the LPS.

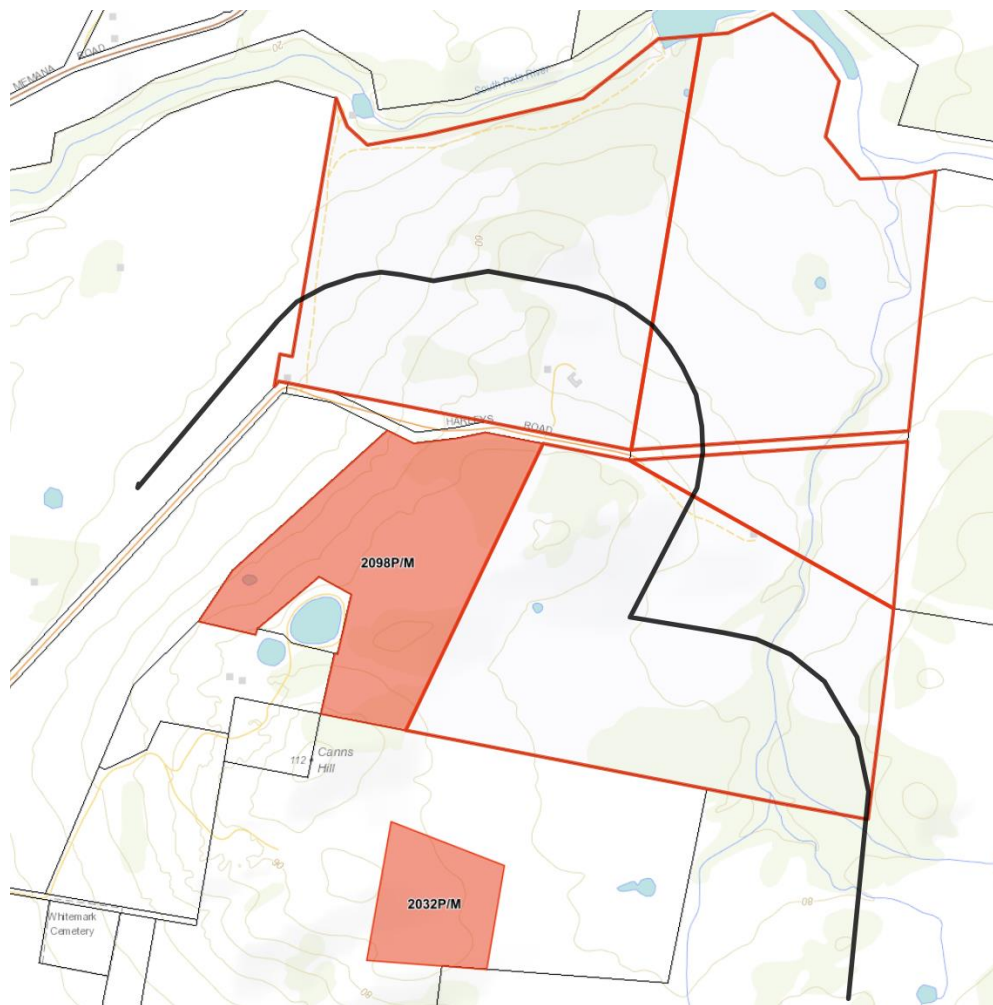


Figure 6 - Approximation of 300m Attenuation area overlays for mining leases

## 4 THE PROPOSAL

### 4.1 Brief description

AM2023-01.2 seeks to apply the Rural zone to the subject properties, consistent with the evidence and submissions that were accepted by the Commission in the LPS Decision, but omitted from the directed modifications.

### 4.2 Reasons for AM2023-01.2

Expert evidence was provided by RMCG on the zoning of various areas in the Rural Enterprise Report. The subject lands were included within the area described as Whitemark North and specifically identified by RMCG as additional titles that were best suited to the Rural zone within the LPS, as noted under the observations section of the report and reproduced at Table 1.

- 8.3 Assessment, Table 8-3 Assessment Areas

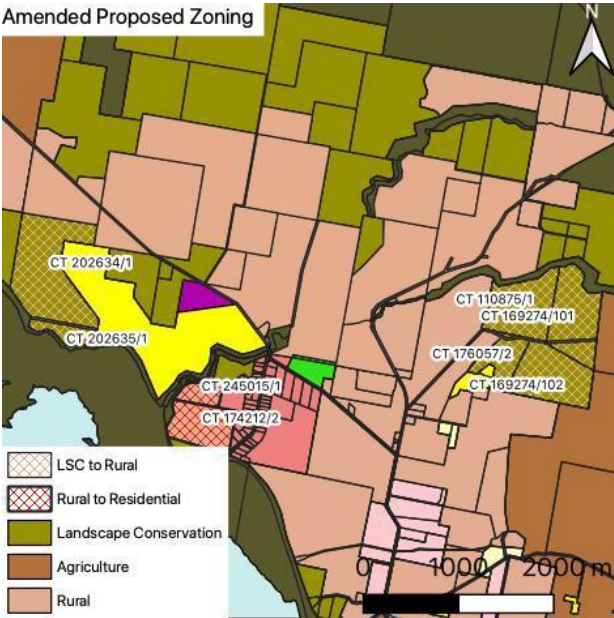
PROPOSED ALTERNATE ZONING	COMMENTS
<p><b>Whitemark - North</b>                      Amended Proposed Zoning</p> 	<p>There is land north of Whitemark near the airport that is proposed to be zoned Agriculture. This land is located along Palana Rd and Memana Rd. It appears feasible that the land directly to the west of the airport and along Memana Rd could go into the Rural zone. While this land is utilised for grazing, there are multiple titles under different ownership. It also does not have connectivity with the rest of the Agriculture zone. Zoning this land Rural, will still allow the land to be utilised for its current activities, if that is the landowner's desire.</p> <p>CT 213669/1 &amp; CT 173164/1 are the two most northern titles recommended for the Rural zone. These titles are under the same ownership as are further two titles to the north. These titles are separated by Palana Road from the northern titles and a visual roadside inspection indicated that these two titles are not as intensively farmed as the two northern titles under the same ownership. While the farm appears to display Commercial scale characteristics, in this instance because of the location and proximity to other titles proposed to be zoned to Rural and Landscape Conservation (LSC), Rural will provide a more logical zoning pattern. Also see further comments below in observations.</p> <p><b>Observations</b>                      CT 202634/1 &amp; CT 202635/1 ...                      CT 110875/1, CT 169274/101, CT 169274/102 &amp; CT 176057/2 are a cluster of four titles located on Harleys Rd. These titles are currently proposed for the Landscape Conservation Zone. It is our understanding there is an existing mining lease on one of these titles (CT 176057/2), while a further two titles (CT 169274/102 &amp; CT 169274/101) have been purchased to be utilised as part of an existing Bush Pharmacy operation to be utilised for kunzea production for essential oil. Because of this, these titles appear to more suited to the Rural zone.                      CT 245015/1 &amp; CT 174212/2 ...</p>

Table 1 -Extract RMCG Rural Enterprise Report, Table 8-3

This assessment was supported by a clear set of recommended zoning changes as a result of the assessment within Appendix 1 to the report, reproduced at Table 2. Within Table 2, existing zoning described the zoning of the (then) current Flinders Planning Scheme 2000.

- Appendix 1 Zoning Recommendations per Title, Table A1-2: Whitemark North

VOLUME	FOLIO	PID	CONSTRAINTS MAPPING	EXISTING ZONING	PROPOSED ZONING	ALTERNATE ZONING
176057	2	9228686	Unconstrained	Rural	Landscape Conservation	Rural
110875	1	2597023	Unconstrained	Rural	Landscape Conservation	Rural
169274	101	3355990	Unconstrained	Rural	Landscape Conservation	Rural
202634	1	6428622	Unconstrained	Rural	Landscape Conservation	Rural
169274	102	3356002	Unconstrained	Rural	Landscape Conservation	Rural
202635	1	6428622	Unconstrained	Rural	Landscape Conservation	Rural

Table 2 -Extract RMCG Rural Enterprise Report, Table A1-2

The RMCG evidence and opinions were accepted by the Council and supported by submissions from the Planning Authority both before and during the hearings that the zoning of the subject lands should be Rural, consistent with the RMCG advice.

This was documented at paragraphs 110, 111, 112 and 113 of the LPS Decision. A full extract of the relevant section of the decision was provided as Attachment 1 to this report, with the key paragraphs reproduced below for convenience:

*110. Prior to the hearing, the planning authority provided an agricultural assessment report that recommended the following land be zoned Rural instead of Agriculture and Landscape Conservation:*

- 127 Memana Road, Whitemark folio of the Register 14670/1;
- 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
- 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
- 159 Blundstone Road, Whitemark folio of the Register 212657/1;
- Blundstone Road, Whitemark folio of the Register 245335/1;
- Palana Road, Whitemark folios of the Register 213669/1, 173164/1, 202634/1, 202635/1 and reserved road between folios of the Register 202634/1 and 202635/1;
- 115 Harleys Road folio of the Register 110875/1;
- Harleys Road folios of the Register 169274/101, 169274/102, and the reserved road dissecting folio of the Register 169274/101; and
- Unidentified Crown land surrounded by folio of the Register 252433/1.

*111. Following the hearing the planning authority provided a diagram that showed how the Priority Vegetation Area overlay would be applied to the land. The area is derived from the REM mapping.*

#### **Commission consideration**

*112. The Commission accepts the expert evidence and advice given in the agricultural assessment and is therefore satisfied that the Rural Zone is supported by Guideline No. 1 and should be applied. In particular, the Zone is supported by RZ 3 and AZ 6, which provide for the Zone to be applied to land identified as unconstrained in the State land potentially suitable for the agriculture zone mapping if supported by detailed local strategic analysis.*

*113. The Commission also considers that the Priority Vegetation Area overlay should be applied to the land as shown in the planning authority's submission.*

The decision and directions regarding modifications omitted the Harley's Road properties at

paragraphs 114 to 118 inclusive.

Omission of the subject properties from the decision and directions for modification was inconsistent with the evidence and submissions that were accepted by the Commission. No justification was provided for the omissions in the LPS Decision.

It is noted that the Regional Ecosystem Model did not identify any areas within Part 2 of AM2023-01.2 that ought to be subject to the Priority Vegetation Overlay.

### 4.3 Request and Supporting Information

AM2023-01.2 resulted from identification of an omission from the LPS Decision by the Planning Authority. No request was required under section 40D(b) of the Act.

### 4.4 Owners Consent

Landowner consent was not required as AM2023-01.2 does not result from a request to amend the LPS under section 37 of the Act.

### 4.5 Land Use Conflict

As noted within the RMCG Rural Enterprise Report, the area adjoining the site contains a mix of rural style uses on larger titles and does not include more intense urban or residential uses.

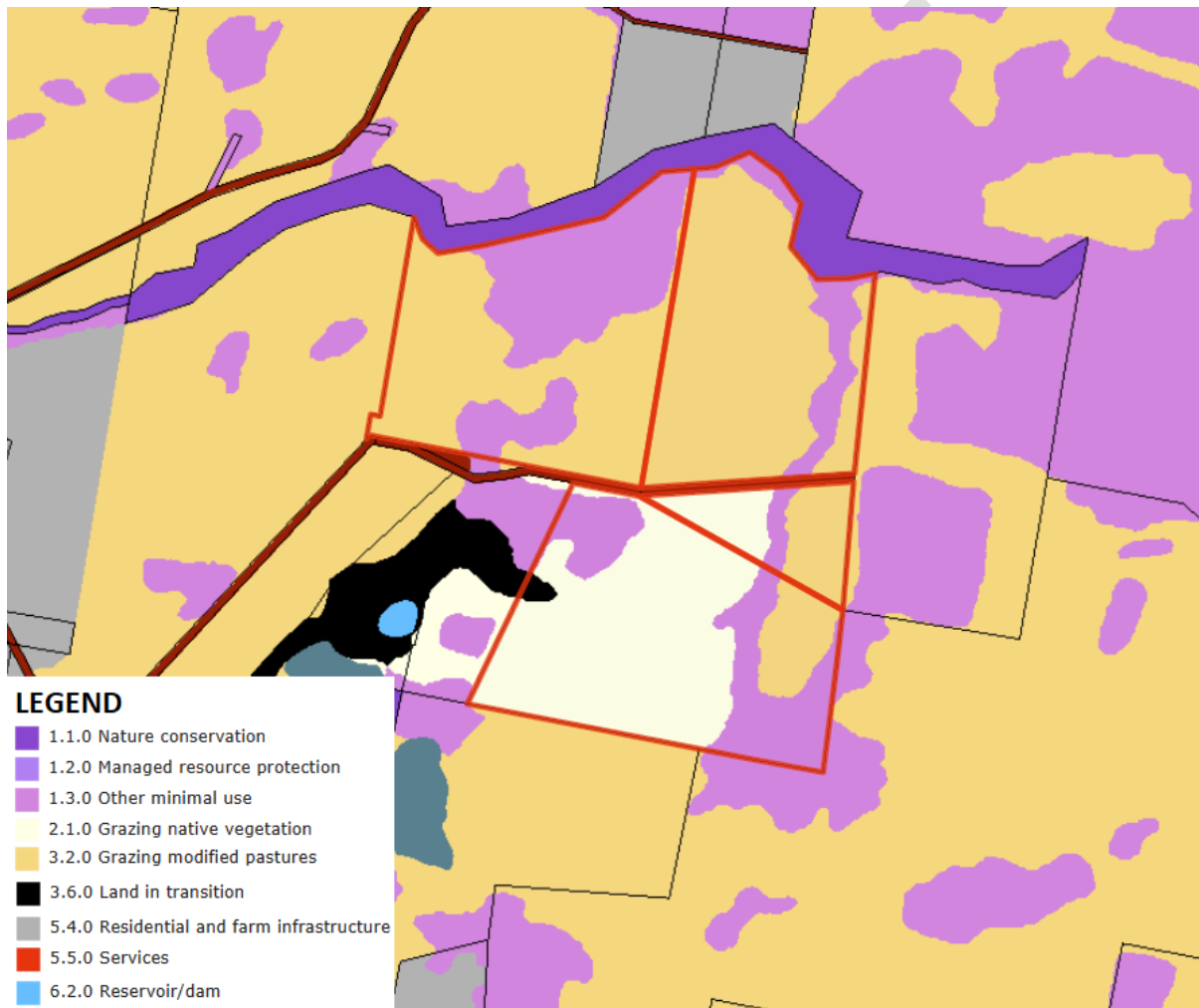


Figure 7- Land Use mapping extract

Adjoining land uses were mapped on LISTmap in 2021 (refer layer *Land Use 2021* as shown in Figure 7) and identified that all adjoining land uses were rural in nature, being grazing (in various forms), native vegetation cover, extractive industries (as noted elsewhere in this

Report) or transition (Taswater storage facilities or other land owned and used by Council in conjunction with the existing mining leases).

The Decision Rules established a broad range of rules to determine suitability for rural and agricultural operations at section 8 of the Rural Enterprise Report and determined that the Rural zone was appropriate.

The Rural zone proposed under AM2023-01.2 is unlikely to result in any significant changes in land use.

The potential for land use conflict as a result of AM2023-01.2 is consistent with existing development patterns in the area and is considered to be acceptable.

#### **4.6 Environmental, Economic and Social impacts**

The environmental, economic and social impacts of the amendment were assessed as part of the consideration of the representation and associated issues within the LPS process and were supported by the Commission through the LPS Decision.

The environmental, economic and social impacts of the amendment are .

In summary, the proposal has significant opportunity to provide positive economic and social impacts for the Flinders community and subject lands through enabling use and development opportunities within the Rural zone of the TPS and subsequent opportunity for use as part of the Rural Enterprise concept that underpins the Flinders Structure Plan and Strategic Plan.

Based on the available information, supporting reports and identification of the land for future development through the LPS process, environmental impacts of the rezoning were considered.

AM2023-01.2 is not expected to create or increase the risk for adverse impacts on the environmental, economic and social conditions within Orford.

#### **4.7 Referral to Government Agencies and authorities**

The statutory referral to Taswater was not required as previously noted.

Other referrals to relevant agencies will be completed if AM2023-01.2 is initiated.



## 5 CONSIDERATIONS FOR THE AMENDMENT

### 5.1 Overview

AM2023-01.2 seeks to rezone the subject lands from Landscape Conservation to Rural following the expert evidence provided to the Commission and decision on the LPS.

### 5.2 Request to amend

Section 37 of the Act was not relevant to AM2023-01.2.

### 5.3 Section 8A Guideline No.1

The Commission publication, Section 8A Guideline No. 1 Local Provisions Schedule (LPS): zone and code application (Guideline No.1) informs the zoning process under the Scheme.

The Rural Enterprise Report provided a comprehensive expert assessment of the suitability of the subject lands.

The LPS Decision addressed assessment considered the requirements of Guideline No.1 and determined that use of the Rural zone was specifically consistent with Guideline RZ3, following the expert evidence provided by RMCG, supported by the Planning Authority and accepted by the Commission (refer paragraph 112 of the LPS Decision).

It is noted that under Paragraph 113 of the LPS Decision, no areas were identified as suitable for the Priority Vegetation Overlay.

AM2023-01.2 is therefore consistent with the requirements of Guideline No.1.

### 5.4 Preparation and Certification

Section 40D(b) allows the Planning Authority to prepare a draft amendment of its own motion. AM2023-01.2 was prepared for the Planning Authority to consider under this section of the Act.

Section 40F requires that the draft amendment is certified as meeting the LPS Criteria.

The LPS Decision provided a complete assessment against all required statutory considerations and accepted the expert evidence and opinions provided by RMCG in the Rural Enterprise Report and as noted within this report.

AM2023-01.2 was therefore considered to be suitable for certification, if supported by the Planning Authority.

### 5.5 Section 32 – Contents of LPS

Section 32 of the Act regulates what a LPS can contain. This was assessed as follows.

- (1) *An LPS is to consist of provisions that apply only to a single municipal area specified in the LPS.*

AM2023-01.2 does not impact compliance with this requirement through the LPS.

- (2) *An LPS –*  
 (a) *must specify the municipal area to which its provisions apply; and*

AM2023-01.2 does not impact the naming of the LPS.

- (b) *must contain a provision that the SPPs require to be included in an LPS; and*

AM2023-01.2 does not impact the SPP provisions required to be included within a LPS.

- (c) *must contain a map, an overlay, a list, or another provision, that provides for the spatial application of the SPPs to land, if required to do so by the SPPs; and*

AM2023-01.2 does not impact the maps, overlays, lists or other provisions that provide for application of the SPP's to land.

- (d) *may, subject to this Act, contain any provision in relation to the municipal area*

*that may, under section 11 or 12 , be included in the Tasmanian Planning Scheme; and*

AM2023-01.2 seeks revisions to the zoning of the subject lands within the LPS. Compliance with sections 11 and 12 of the Act is not impacted.

- (e) *may contain a map, an overlay, a list, or another provision, that provides for the spatial application of the SPPs to particular land; and*

AM2023-01.2 affects the zoning of land through the LPS and does not impact spatial application of the SPP's.

- (f) *must not contain a provision that is inconsistent with a provision of section 11 or 12 ; and*

AM2023-01.2 seeks revisions to the zoning of land under the LPS. Compliance with sections 11 and 12 of the Act is not impacted.

- (g) *may designate land as being reserved for public purposes; and*

AM2023-01.2 does not seek to designate reserve status to land for public purposes.

- (h) *may, if permitted to do so by the SPPs, provide for the detail of the SPPs in respect of, or the application of the SPPs to, a particular place or matter; and*

AM2023-01.2 does not seek to alter the detailed application of the SPP's to a place or a specific matter.

- (i) *may, if permitted to do so by the SPPs, override a provision of the SPPs; and*

AM2023-01.2 does not seek to override any provision of the SPP's through the LPS.

- (j) *may, if permitted to do so by the SPPs, modify, in relation to a part of the municipal area, the application of a provision of the SPPs; and*

AM2023-01.2 does not seek to modify application of the SPP's to a part of the municipal area.

- (k) *may, subject to this Act, include any other provision that –*

- (i) *is not a provision of the SPPs or inconsistent with a provision of the SPPs; and*  
 (ii) *is permitted by the SPPs to be included in an LPS; and*

AM2023-01.2 seeks to rezone the subject lands. Consistency with provisions under the SPP's will not change. The zoning of land is a matter that the SPP's require the LPS to address, through section LP1.2.1.

- (l) *must not contain a provision that the SPPs specify must not be contained in an LPS.*

The zoning of land is enabled through section LP1.2.1 of the SPP's.

- (3) *Without limiting subsection (2) but subject to subsection (4) , an LPS may, if permitted to do so by the SPPs, include –*

- (a) *a particular purpose zone, ...:or*  
 (b) *a specific area plan, being a plan consisting of –*  
 (c) *a site-specific qualification, ....*

AM2023-01.2 does not seek to establish any of the specified mechanisms.

- (4) *An LPS may only include a provision referred to in subsection (3) in relation to an area of land if –*

- (a) *a use or development to which the provision relates is of significant social, economic or environmental benefit to the State, a region or a municipal area; or*  
 (b) *the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.*

AM2023-01.2 does not seek to establish any of the specified mechanisms under subsection (3).

- (5) *An LPS must be in accordance with the structure, if any, that is indicated, or specified, in the SPPs to be the structure to which an LPS is to conform.*

AM2023-01.2 does not seek to alter the requirements for the LPS established under the SPP's.

- (6) *A provision of an LPS must be in the form, if any, that the SPPs indicate a provision of an LPS is to take.*

AM2023-01.2 seeks the rezoning of land and does not seek to establish any provisions within the LPS.

- (7) *A provision of an LPS in relation to a municipal area is not to be taken to have failed to comply with this section, or to be inconsistent with a provision of the SPPs, by reason only that it is inconsistent with a provision of the SPPs that has not come into effect in relation to the municipal area.*

Subsection (7) is not relevant to AM2023-01.2.

The conclusion of this assessment is that AM2023-01.2 complies with section 32 of the Act.

## 5.6 Section 40F – Certification Criteria

Section 40F(1) of the Act requires that draft amendments must meet the LPS criteria at section 34(2) of the Act. This was assessed as follows.

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

AM2023-01.2 contains all the provisions that the SPP's specify must be contained in an LPS.

- (b) *is in accordance with section 32 ; and*

AM2023-01.2 complies with section 32 of the Act, as detailed at section 5.4 of this report.

- (c) *further the objectives set out in Schedule 1 ; and*

A detailed assessment of AM2023-01.2 against the Schedule 1 Objectives was provided at section 5.6 of this report and found to comply.

- (d) *is consistent with each State policy; and*

AM2023-01.2 was assessed against the current State Policies at section 7 of this report and determined to be consistent with them.

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

Tasmanian Planning Policies have not been established and are not relevant to AM2023-01.2.

- (e) *as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates; and*

AM2023-01.2 was assessed against the NTRLUS at section 6.1 of this report and found to comply.

- (f) *has regard to the strategic plan, prepared under section 66 of the Local Government Act 1993 , that applies in relation to the land to which the relevant planning instrument relates; and*

AM2023-01.2 was assessed against the relevant sections of the Council Strategic Plan at section 6.3 of this report and found to comply.

- (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*

AM2023-01.2 proposes to change the zoning of land that is not located near the municipal boundary and adjoining LPS. AM2023-01.2 does not impact the operation of LPS in adjoining

municipal areas. Complies.

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

AM2023-01.2 does not impact lands subject to the *Gas Safety Act 2019* (refer also section 7.5).

AM2023-01.2 complies with the requirements of the certification criteria under the Act.

## 5.7 Objectives of the Land Use Planning and Approvals Act 1993

Schedule 1 establishes the objectives of the Resource Management and Planning system of Tasmania.

Compliance with the Schedule 1 Objectives of the Act was addressed by the Council and assessed by the Commission in the decisions on the LPS and determined to comply. That assessment is supported.

Compliance with Part 1 is further examined as follows.

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

The proposal provides for the rezoning of the subject lands that were previously subject to a detailed assessment by RMCG and the Planning Authority, with the LPS Decision by the Commission ultimately supporting the Rural zone in this location.

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

The proposal follows the expert evidence and submissions by RMCG and the Planning Authority regarding the zoning of the subject lands through the LPS process, and decision by the Commission in the LPS Decision that supported use of the Rural zone.

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

This objective establishes a procedural requirement for consultation and involvement in the development of strategic documents that inform operation of the planning system and the future development within specific areas.

AM2023-01.2 follows identification of the subject lands for the Rural zone through the LPS Decision. Further public involvement forms part of the statutory process under the Act.

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

AM2023-01.2 seeks to enable rezoning of titles in an area that was identified as suitable for the Rural zone by the Commission in the LPS Decision and following expert evidence and submissions by RMCG and the Planning Authority. Rural zoning of the subject lands will enable ongoing economic development through providing opportunity for the Rural Enterprise Concept that supports the Structure Plan, Strategic Plan and LPS (as reflected in the LPS Decision) AM2023-01.2 will enable economic development and consequential impacts those activities generate.

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

This objective is procedural and relates to the system established under the Act and related legislation.

It is submitted that the proposal meets each of the Part 1 Objectives.

The following response is provided to the objectives set out in Part 2 of Schedule 1.

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

AM2023-01.2 provides effect to the decision of the Commission following expert evidence that the subject lands were suitable for the Rural zone through the LPS Decision. The process was

as coordinated as the legislation allowed. AM2023-01.2 could not address legislative change.

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

The Act provides the regulatory systems and decision points to deliver this objective.

- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and*

AM2023-01.2 provides for the rezoning of land that was supported by the Commission as consistent with this objective in the LPS Decision.

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

AM2023-01.2 complies with the framework established under the Act for the integration of environmental, social, economic, conservation and resource management policies between State, regional and municipal levels.

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

This objective is procedural and relates to the legislative system for planning assessments and approvals. It is beyond the scope of AM2023-01.2 to address this objective.

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

This objective is procedural and is beyond the scope of AM2023-01.2 to address.

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

The available records do not identify that the subject site has any such buildings, nor is it a known place, of scientific, aesthetic, architectural or historic interest.

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

The subject lands have limited access to public infrastructure and assets. This objective is beyond the scope of AM2023-01.2.

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

The LPS Decision supported rezoning the land to Rural based on expert agricultural evidence.

The examination of AM2023-01.2 confirmed compliance with the objectives of the Act.

It is submitted that the proposal meets each of the stated objectives, and satisfies the objectives of the Resource Management and Planning System.

## 6. PLANNING STRATEGIES

### 6.1 Northern Tasmanian Regional Land Use Strategy

Section A.1 of the *Northern Tasmanian Regional Land Use Strategy* (NTRLUS) provides the following:

*The Regional Land Use Strategy (RLUS) is the statutory regional plan for Northern Tasmania. It applies to all land in the norther region of Tasmania.*

*It sets out the strategy and policy basis to facilitate and manage change, growth, and development to 2032.*

*Across the Northern Region the RLUS will guide land use, development and infrastructure decisions made by State and local government, and by key infrastructure providers.*

*The RLUS is a living document. As the strategy is implemented and results monitored, this document will be updated to reflect new and revised State, regional and municipal land use, policies, projects and initiatives.*

*(Northern Tasmania Regional Land Use Strategy, amended 23 June 2021, Page 2)*

Compliance with the NTRLUS was addressed by the Council and assessed by the Commission in the decisions on the LPS and determined to comply.

Since that assessment, the NTRLUS was revised to include the Local Provision Schedules Implementation Statement and Part G Local Provisions Schedule Preparation. Implementation Statement establishes that Part G of the NTRLUS does not apply to amendments to LPS. Part G of the NTRLUS is therefore not relevant to AM2023-01.2.

The following NTRLUS provisions were identified as substantially the same to those that informed preparation and assessment of the LPS by the Commission:

- C.1 THE REGION'S VISION
- C.2 STRUCTURE
- C.3 PRINCIPAL UNDERSTANDINGS
- C.4 GOALS AND STRATEGIC DIRECTIONS
- E.2 REGIONAL SETTLEMENT NETWORK POLICY
- E.3 REGIONAL ACTIVITY CENTRE NETWORK POLICY
- E.4 REGIONAL INFRASTRUCTURE NETWORK POLICY
- E.5 REGIONAL ECONOMIC DEVELOPMENT POLICY
- E.6 SOCIAL INFRASTRUCTURE AND COMMUNITY POLICY
- E.7 REGIONAL ENVIRONMENT POLICY

Part D of the NTRLUS is relevant to AM2023-01.2, specifically part D2 Land Use Categories. The following response was provided.

D.2.1 Urban Growth Areas – the subject lands were not identified for Urban Growth and AM2023-01.2 does not seek to change that status. The D2.1 Series are not relevant to AM2023-01.2;

D.2.2 Rural Areas – AM2023-01.2 seeks to increase recognition of the subject lands as suitable for productive rural uses and does not seek to enable rural residential development. Compliance with the D2.2 Rural Areas policy area has not altered from the previous assessment.

D.2.3 Natural Environment Areas – While AM2023-01.2 will rezone land that is currently within the Landscape Conservation zone, it reflects a change that was assessed as part of the LPS Decision and supported by the Commission. Compliance with D2.3 is therefore achieved.

E.2 REGIONAL SETTLEMENT NETWORK POLICY – compliance with the statements and

policies under this section of the NTRLUS has not changed since the previous assessment in the LPS Decision.

The conclusion of this assessment was that AM2023-01.2 has not altered since the LPS Decision was issued and AM2023-01.2 is therefore consistent with the NTRLUS.

## 6.2 draft Flinders Structure Plan 2016

Future growth on Flinders was identified in the draft *Flinders Structure Plan* (Structure Plan), which was adopted by the Planning Authority to support the development and assessment of the LPS. The Structure Plan provided the local strategy for Flinders identified within the NTRLUS and sought to establish a sustainable population and diversity the economic base.

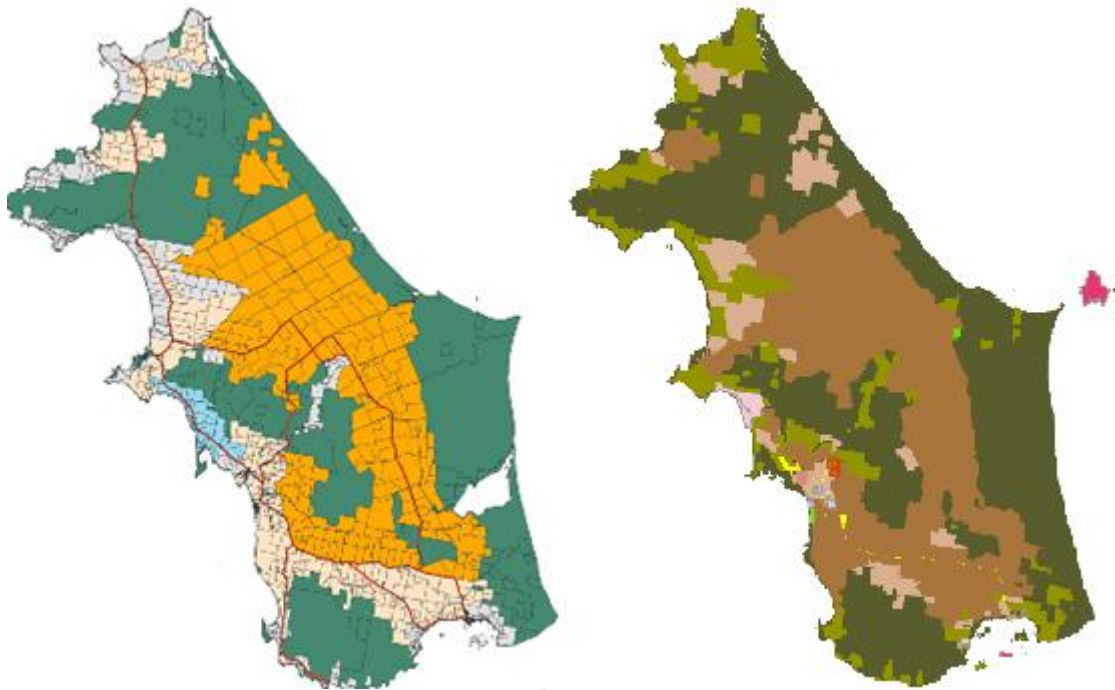


Figure 1 - Comparative diagrams, Structure Plan (left) to LPS zoning regime (right)

The Structure Plan was developed following analysis of the unique circumstances of the Flinders LGA and a review of the earlier strategic work and public consultation supporting the draft *Flinders Interim Scheme in 2012*. In 2016, Council consulted the draft Structure Plan. The consultation supported the four key strategic outcomes:

1. Primary production land is protected for future pastoral use
  - Maintain the pattern of large, connected allotments
  - Retain and enhance environmental services provided by biodiversity
  - Provide for clustering of associated uses within rural activity precincts
  - Address commercial forestry and biosecurity
2. Population growth achieved through rural land diversification
  - Diversify rural land uses on land not required for primary production
  - Facilitate a range of lot sizes
  - Encourage residential use in association with small business and value adding
  - Encourage clustering of dwellings
3. Land use planning contributes to nature-based tourism
  - Identify land for visitor accommodation
  - Integrate networks of walking, cycling and 4wd tracks
  - Minimise impact of development and use on the natural assets making the island unique
4. Planning maintains and enhances liveability
  - Employ principles of sustainable design and siting
  - Establish a public access network

- Integrate biodiversity into decision making
- Manage and facilitate resilience to climate change and natural hazards.

Key drivers for development of the Structure Plan and LPS relevantly recognised the need for diversification of the rural economy as significant.

The Structure Plan identified key zoning initiatives that informed use of the SPP Rural, Agriculture and Rural Living zones under the LPS. These initiatives were described best in Appendix 1, which is reproduced at **Error! Reference source not found.** and produced the following LPS outcomes:

- East coast area - Primary Production Area 1 – Agriculture zone was selected
- Southern coastal plain - Primary Production Area 2 – Agriculture zone south and east of Whitemark, Rural zone surrounding and north of Whitemark;
- Blue Rocks precinct – Rural / Environmental Management zone south of Blue Rocks to PPA2 interface, Rural Living to Blue Rocks / Sawyers Bay;
- Lifestyle precincts – use of Rural Living zone at Blue Rocks, Cooma/Badger Corner, Trousers Point, Emita and Lady Barron.

Compliance with the Structure Plan was addressed by the Council and assessed by the Commission in the decisions on the LPS and determined to comply. That assessment is supported.

As a result, it is submitted that AM2023-01.2 complies with the intent and strategic directions established within the Structure Plan.

### 6.3 Flinders Council Strategic Plan 2021-2031

The *Flinders Council 2021-2023 Strategic Plan* identifies the Council's strategic objectives to grow a sustainable population, improve housing affordability, enhance, maintain and protect the Island's agricultural economy, diversify and support a local economy and preserve the natural environment.

The following focus areas are relevant to AM2023-01.2 as follows:

Liveability:

- Promote the islands' authentic lifestyle, business and entrepreneurial opportunities to attract 'working age' population and families.
- Finalise and promote the Flinders Council Local Provisions Schedule and Zone Strategy as part of the Tasmanian Planning Scheme to ensure sensible and sustainable development.
- Promote and support sustainable activities to conserve the islands' natural and agricultural environments.

Economy/Business:

- Support and encourage innovation and industry through partnerships, infrastructure provision and support services.

AM2023-01.2 was assessed as consistent with Focus Areas for Liveability and Economy/Business. Remaining focus areas were not assessed as relevant to AM2023-01.2.

AM2023-01.2 is considered to be consistent with the Council Strategic Plan.



## 7. STATE POLICIES

### 7.1 State Policy on the Protection of Agricultural Land 2009

The purpose of this Policy is to conserve and protect agricultural land so that it remains available for the sustainable development of agriculture.

As noted within the LPS Decision and following the expert assessment and evidence provided by RMCG, use of the Rural zone for the subject lands was consistent with this Policy.

AM2023-01.2 is considered to comply with this Policy.

### 7.2 State Coastal Policy 1996

The purpose of the policy is to protect the natural and cultural values of the coast, provide for sustainable use and development of the coast, and promote shared responsibility for its integrated management and protection. The subject site is within 1 kilometre of the coast and the Policy therefore applies.

The subject lands are located a minimum of 2.8 km from the coast and are therefore not within the coastal zone defined within this policy. This Policy does not apply to AM2023-01.2.

### 7.3 State Policy on Water Quality Management 1997

The purpose of the Policy is to identify and maintain water quality at appropriate levels to the expected use.

The TPS addressed the requirements of this Policy through the inclusion of zone and codes that addressed the specific requirements of the Policy. AM2023-01.2 does not seek to alter the regime established under the TPS.

AM2023-01.2 is considered to comply with this Policy.

### 7.4 National Environment Protection Measures

Section 12A of the *State Policies and Projects Act 1993* defines that a National Environment Protection Measure (NEPM) are taken to be a State Policy. The following, therefore, require consideration:

- Ambient air quality 2002
- Diesel vehicle emissions 2001
- Assessment of site contamination 1999
- Used packaging materials 1999
- Movement of controlled waste between States and Territories 1998
- National pollutant inventory 2000

The NEPM's were addressed by the Scheme. AM2023-01.2 does not alter the responses through the TPS.

### 7.5 Gas Pipelines Act 2000

The pipeline corridor does not apply on Flinders Island.

The *Gas Pipelines Act 2000* is not a relevant consideration for AM2023-01.2.



## 8. CONCLUSION

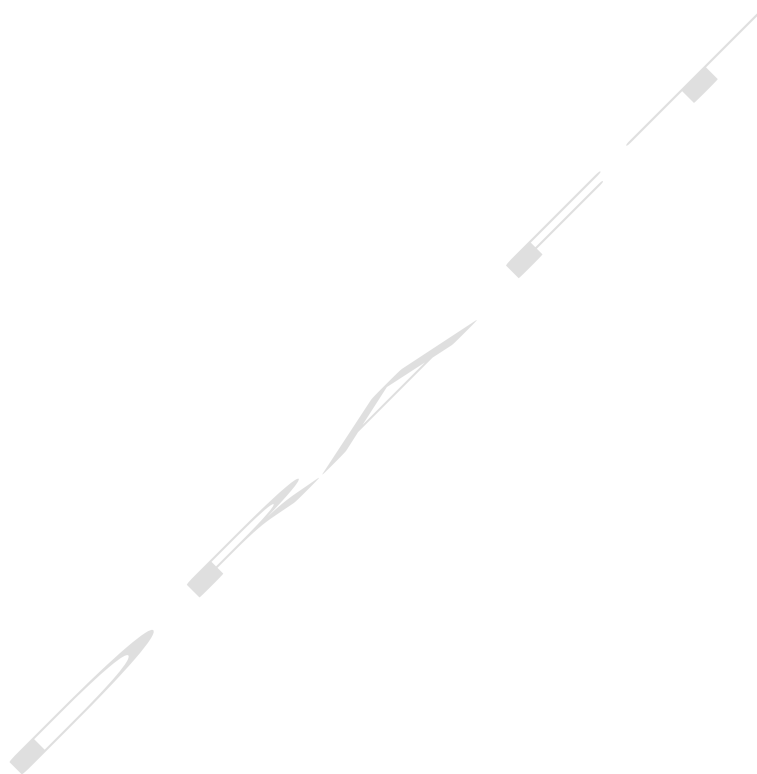
AM2023-01.2 seeks to rezone properties that were supported in the decision on the LPS but omitted from the final directions for a range of reasons.

Assessment against the Act identified that AM2023-01.2 comply with:

- the LPS criteria at section 32 of the Act;
- the certification criteria at section 40F of the Act;
- the Schedule 1 objectives of the Act;
- the Northern Tasmanian Regional Land Use Strategy;
- the Council Strategic Plan 2021-2031; and
- current State Policies.

As demonstrated above, AM2023-01.2 is consistent with the relevant provisions of the Act.

Certification of AM2023-01.2 can be supported, with an appropriate instrument provided as Attachment 1 to this report.



## Attachment 1 – LPS Decision extract

### Rural Zone and Agriculture Zone – Whitemark North

**Representation:** Flinders Council (10), Van Diemen Consulting for David Gibbons (23)

107. The representation made by the Flinders Council requested that land in the Agriculture and Landscape Conservation zones surrounding Whitemark, be revised to the Rural Zone on the basis that the Council’s local strategies established through the Structure Plan intend the land to be zoned same.
108. Alternatively, the representation made by Van Diemen Consulting for David Gibbons requested that the zone of Palana Road, Whitemark folio of the Register 202634/1, be revised from the Landscape Conservation Zone to the Agriculture Zone.
109. In the section 35F report, the planning authority recommended application of the Rural Zone and noted that a further agricultural assessment by a suitably qualified person would be required to support the Zone.
110. Prior to the hearing, the planning authority provided an agricultural assessment report that recommended the following land be zoned Rural instead of Agriculture and Landscape Conservation:
- 127 Memana Road, Whitemark folio of the Register 14670/1;
  - 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
  - 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
  - 159 Blundstone Road, Whitemark folio of the Register 212657/1;
  - Blundstone Road, Whitemark folio of the Register 245335/1;
  - Palana Road, Whitemark folios of the Register 213669/1, 173164/1, 202634/1, 202635/1 and reserved road between folios of the Register 202634/1 and 202635/1;
  - 115 Harleys Road folio of the Register 110875/1;
  - Harleys Road folios of the Register 169274/101, 169274/102, and the reserved road dissecting folio of the Register 169274/101; and
  - Unidentified Crown land surrounded by folio of the Register 252433/1.
111. Following the hearing the planning authority provided a diagram that showed how the Priority Vegetation Area overlay would be applied to the land. The area is derived from the REM mapping.

### Commission consideration

112. The Commission accepts the expert evidence and advice given in the agricultural assessment and is therefore satisfied that the Rural Zone is supported by Guideline No. 1 and should be applied. In particular, the Zone is supported by RZ 3 and AZ 6, which provide for the Zone to be applied to land identified as unconstrained in the State land potentially suitable for the agriculture zone mapping if supported by detailed local strategic analysis.
113. The Commission also considers that the Priority Vegetation Area overlay should be applied to the land as shown in the planning authority’s submission.

### Commission decision

#### 114. Modification:

- Revise the zoning of the following properties to Rural:
  - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
  - b. 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
  - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
  - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
  - e. Blundstone Road, Whitemark folio of the Register 245335/1;
  - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
  - g. Unidentified Crown land surrounded by folio of the Register 252433/1.
- 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 Figure 6 of the planning authority's submission received 15 March 2022:
  - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
  - b. 251 Memana Road, Whitemark folio of the Register 155427/1;
  - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
  - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
  - e. Blundstone Road, Whitemark folio of the Register 245335/1;
  - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
  - g. Unidentified Crown land surrounded by folio of the Register 252433/1.

#### 115. Reason:

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

### Commission consideration under section 35KB

116. 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 Flinders LPS, after it comes into effect.

### Commission decision under section 35KB

#### 117. Draft amendment directed to the Flinders LPS:

- Rezone the following properties to the Rural Zone as shown in Attachment 3:
  - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
  - b. 251 Memana Road, Whitemark folios of the Register 155427/1, 213527/1, 252433/1 and 39638/1;
  - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;

- d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
  - e. Blundstone Road, Whitemark folio of the Register 245335/1;
  - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
  - g. Unidentified Crown land surrounded by folio of the Register 252433/1.
- Apply the Priority Vegetation Area overlay to the following properties as shown in Attachment 3:
    - a. 127 Memana Road, Whitemark folio of the Register 14670/1;
    - b. 251 Memana Road, Whitemark folio of the Register 155427/1;
    - c. 89 Blundstone Road, Whitemark folios of the Register 156154/1, 225623/1, 225624/1, 225625/1, and 220373/1;
    - d. 159 Blundstone Road, Whitemark folio of the Register 212657/1;
    - e. Blundstone Road, Whitemark folio of the Register 245335/1;
    - f. Palana Road, Whitemark folios of the Register 213669/1 and 173164/1; and
    - g. Unidentified Crown land surrounded by folio of the Register 252433/1.

118. 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.

## Attachment 2 – Draft Instrument of Certification

### Amendment AM2023/01 Tasmanian Planning Scheme - Flinders

- 1.2 Apply the Rural zone to Rural zone to CT 10875/1 115 Harleys Road, CT's 169274/101 and 169274/102 Harleys Road, Whitemark, and the reserved road dissecting CT169274/101, as shown in Figure 1 below

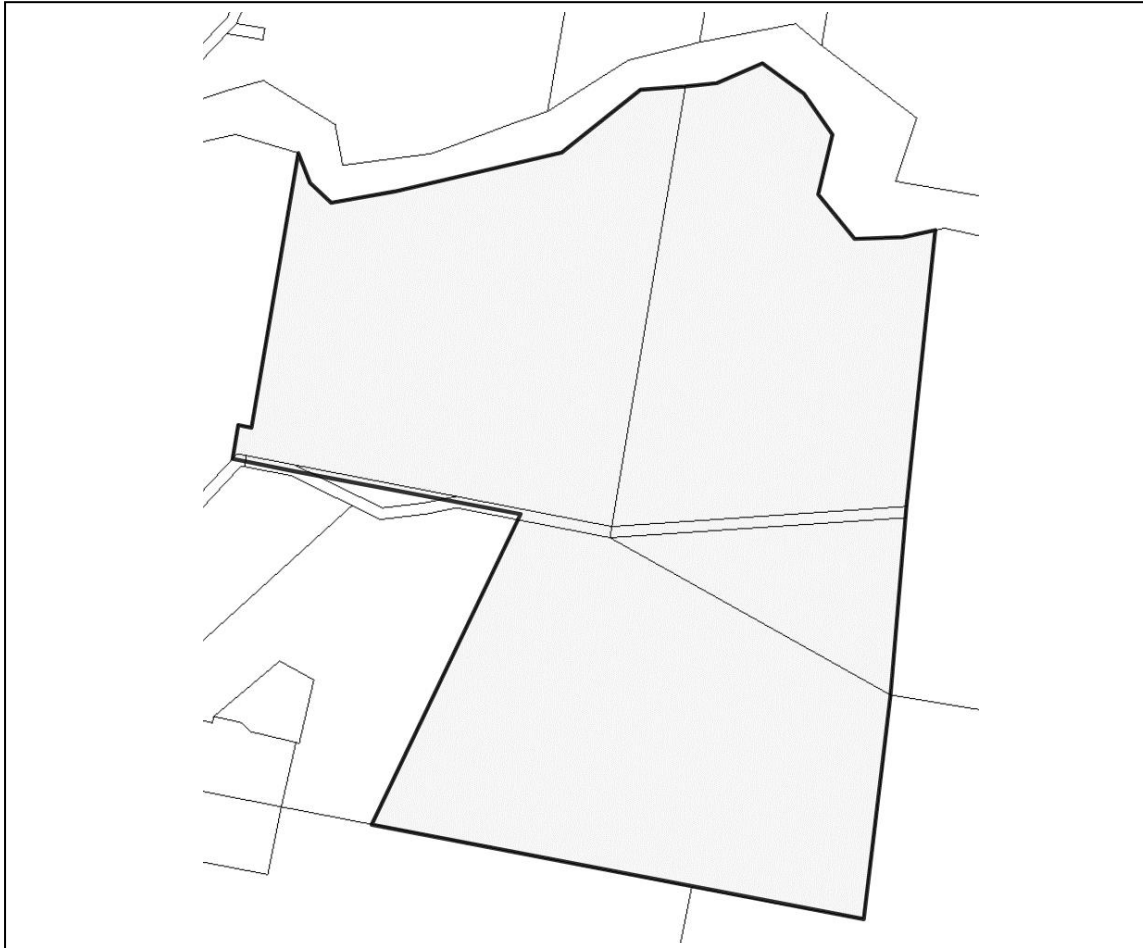


Figure 1 – application of the Rural zone to 115 Harleys Road, Whitemark (CT's 10875/1), CT's 169274/101 and 169274/102 Harleys Road, Whitemark, and the reserved road dissecting CT169274/101, Harleys Road, Whitemark

common seal of Flinders Council  
is affixed below pursuant to the Council resolutions of  
of 26 April 2023 and 20 September 2022 in the presence of:

General Manager (... April 2023)  
(minute reference ??/23)