

Flinders Local Provisions Schedule

Summary of TPC decisions

Decisions and Directions on the Flinders LPS were issued by the Commission on 21 April 2022. The decisions and directions are summarised in this advice for convenience, where the published decision should be read to fully understand the outcome.

Key Points

Representation or submission

The decision identified that the submissions that were received during the process and identified by the Commission were accepted through the process.

In this summary, Representations were accepted by Council and addressed in the Section 35F Report. Submissions were accepted by the Commission after the 35F Report was submitted.

Challenges to decisions

Various parties will not be happy with the decisions that were issued by the Commission. The only opportunity to challenge these decisions is on points or errors of law through the Supreme Court.

Unless parties are willing to resource and complete that process, the Commission decisions are taken to be legally binding.

Process from here

Directions and decisions were issued by the Commission on 21 April, so the LPS and decisions start operating from 28 April under section 51 of the Act until finally approved.

Council's GIS consultant is required to modify the mapping for the LPS to comply with the decision. This process will take some weeks and includes Quality Assurance review of the mapping by the Commission.

Once that is completed, the Commission will refer the LPS to the Minister for Planning, Hon Michael Ferguson, for final approval. This will be on a Wednesday, when the Government Gazette is published.

Once that is completed, Council then has 6 weeks to deal with substantial modifications.

Substantial modifications

The Commission identified a range of matters as substantial modifications, which requires Council to prepare and submit planning scheme amendments once the LPS has received final approval and become effective. These are identified as substantial modifications in the following summary and the decision:

1. Rezone 250 Lady Barron Road from Agriculture to Rural and apply Priority Vegetation Overlay;
2. Rezone various properties at Memana, Blundstone & Palana Roads to Rural and apply Priority Vegetation Overlay;

3. Rezone various properties at Butter Factory Road to Rural and apply Priority Vegetation Overlay;
4. Rezone 901 & 927 Coast Road, Lady Barron to Rural and apply Priority Vegetation Overlay;
5. Rezone Morrison title at Lady Barron Road to Rural and revise Priority Vegetation and scenic protection Overlays;
6. Rezone 3 private titles Little Dog Island to Landscape Conservation; and
7. Establish and apply *Whitemark and Lady Barron Urban Development Specific Area Plan*

A key consideration for the Commission on whether something is a substantial modification is whether it has the potential to impact other parties, ie there is or may be a public interest in the change. All substantial modifications were identified to have a public interest.

Further information is provided on these in Attachment 3 pages 60-74 of the decision.

Contested issues in the LPS

Low Density Residential Zone – Gunter and Barr Street, Lady Barron

Representations: Department of Communities Tasmania (7), Flinders Council (10)
 Paragraphs: 11-15
 Final decision: Rezone the lots to Low Density Residential.

Low Density Residential Zone – 4837 Palana Road, Palana and Killiecrankie Road, Killiecrankie folio of the Register 50506/3 & Coastal Settlements Specific Area Plan

Representation: Rebecca Green and Associates for Cohen and Associates Pty Ltd (11 and 12)
 Paragraphs: 16-23
 Final decision: Rezone the lots to Low Density Residential and apply Coastal Areas SAP.

Low Density Residential Zone – 270 Palana Road, Whitemark

Submission accepted by the Commission: Mick Rose for MJB Tas Pty Ltd

Paragraphs: 22-29
 Final decision: Rezone the lots to Low Density Residential and apply Coastal Areas SAP.

Low Density Residential Zone and Rural Living Zone – Pot Boil Road, Lady Barron

Representation: Rebecca Green and Associates for Dianne Fair (8)

Paragraphs: 30-40

Final decision:

- Low Density Residential to lots fronting Pot Boil Road, Rural Living B to the balance of the lots
- Removal of Site Specific Qualification FLI-22.2 for access to Vinegar Hill Lookout following legal advice

Low Density Residential Zone and Rural Living Zone – Esplanade and 1A Palana Road, Whitemark

Representations: Raoul Harper and Jana Monnone (24), Noel and Vicki Warden (27), Graeme, Warwick and Kelly Blundstone (29)

Paragraphs: 41-48

Final Decision:

- Rezone the following properties to Low Density Residential:
 - a. 3 Esplanade, Whitemark of the folio of the Register 67128/3;
 - b. 9 Walker Street, Whitemark folios of the Register 60768/1 and 60768/5;
 - c. 17 Walker Street, Whitemark folio of the Register 60768/6; and

- Rezone the following properties to Rural Living D Zone:
 - a. Esplanade, Whitemark of the FR 15860/1;
 - b. Esplanade, Whitemark of the FR 15860/2;
 - c. 1A Palana Road, Whitemark FR 53171/5; and
 - d. Walker Street, Whitemark FR 128758/2.

Rural Living Zone – 250 Lady Barron Road, Whitemark

Representation: Colin and Patricia Goss (25)

Paragraphs: 66-75

Final decision: Rezone to Rural Living and apply Priority Vegetation Overlay from Regional Ecosystem Model (REM).

Substantial Modification: Yes, separate rezoning process is required.

Rural Living Zone and Whitemark Rural Living Specific Area Plan – Whitemark

Representations: Elizabeth Frankham (1), Flinders Council (10), Department of State Growth (14)

Paragraphs: 49-59

Final decision: No modifications (retain Rural zone).

NOTE: this includes refusal of Council submissions for expansion of the Rural Living zone at Cann's Hill. Reasons are provided at the final dot point in paragraph 58. In short – they consider the following:

- there is opportunity for land use conflict with the existing quarry leases;
- the LPS makes substantive provision for subdivision/additional dwellings; and
- establishing additional rural living areas was considered excessive and risks disorderly use and development.

Rural Living Zone – 4596 Palana Road, Palana

Representation: Tony Griggs and Linda Nicol (2)

Paragraphs: 60-65

Final decision: No modifications (inconsistent with local strategy and Guideline RZ2(a)).

Rural Living Zone – 1106 Palana Road, Blue Rocks

Representation: Colin and Patricia Goss (25)

Paragraphs: 76-80

Final decision: No modifications (retain split zone Rural Living and Landscape Conservation).

Rural Living Zone – 689 West End Road, Leeka

Representations: Mike Wortman (35)

Paragraphs: 81-87

Final decision: No modifications (retain Landscape Conservation).

Rural Living Zone – Edens Road and North East River Road, Palana

Representations: Flinders Council (10)

Paragraphs: 88-91

Final decision: No modifications (retain Landscape Conservation).

Rural Zone – Killiecrankie (Cnr Palana & Killiecrankie Roads)

Representations: Flinders Council (10), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Tom and Jo Youl (22)

Paragraphs: 9 2-95

Final decision: No modifications (retain Agriculture Zone).

Rural Zone – Emita and Mamana

Representations: Kerrie Prescott (5), Flinders Council (10), Mark and Mandy Wales (26)

Paragraphs: 96-106

Final decision: Rezone 1813 Palana Road, Emita FR 158840/1 to Rural (balance retaining Agriculture zone).

Rural Zone and Agriculture Zone – Whitemark North

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

Paragraphs: 107-106

Final decision: Rezone the zoning of the following properties to Rural and establish Priority Vegetation Overlay under REM:

- 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.

Substantial Modification: Yes, separate rezoning process is required.

Rural Zone – Butter Factory Road, Whitemark

Representation: Flinders Council (10)

Paragraphs: 119-131

Final decision: Rezone the following properties to Rural and apply the Priority Vegetation Overlay under the REM:

- a. 3 Butter Factory Road, Whitemark folio of the Register 9254/1;
- b. 13 Butter Factory Road, Whitemark folio of the Register 68563/1;
- c. 28 Butter Factory Road, Whitemark folio of the Register 141953/1;
- d. 101 Butter Factory Road, Whitemark folio of the Register 237967/1;
- e. 103 Butter Factory Road, Whitemark folio of the Register 10923/1;
- f. 119 Butter Factory Road, Whitemark folio of the Register 7488/2;
- g. 120 Butter Factory Road, Whitemark folio of the Register 64802/1;
- h. 121 Butter Factory Road, Whitemark folio of the Register 7488/1; and
- i. Butter Factory Road, Whitemark folio of the Register 249792/1.

Substantial Modification: Yes, separate rezoning process is required.

Rural Zone – Lady Barron

Representation: Flinders Council (10)

Paragraphs: 143 - 157

Final decision: Rezone the following properties to Rural and apply the Priority Vegetation Overlay under the REM:

- a. 901 Coast Road, Lady Barron folio of the Register 209407/1; and
- b. 927 Coast Road, Lady Barron folio of the Register 25190/1.

Substantial Modification: Yes, separate rezoning process is required.

Rural Zone – 368 Five Mile Jim Road, Memana

Representations: Van Diemen Consulting for Markarna Grazing Company (30)

Paragraphs: 153-157

Final decision: Retain exhibited Landscape Conservation zoning and overlays

Rural Zone – Lady Barron Road, Lady Barron folio of the Register 199735/1

Submission accepted by the Commission: Van Diemen Consulting for Gary and Nola Morrison

Paragraphs: 158 - 176

Final decision: Rezone Lady Barron Road, Lady Barron to Rural and;

- apply the Priority Vegetation Area overlay per Van Diemen Consulting submissions;
- Revise the Scenic Protection Area to match the area shown in Figure D3 of the Van Diemen Consulting submission received 16 March 2022, and combine the overlay with the transitioning Scenic Protection Area overlay mapping for the land as identified in the Minister's declarations under the Act;
- Revise Clause C8.1.10 in Table C8.1 in the Scenic Protection Areas;
- Delete Site-specific Qualification FLI-22.3 and associated overlay map.

Substantial Modification: Yes, separate rezoning process is required.

Rural Zone, Agriculture Zone and Landscape Conservation Zone – Mining Leases

- Representations: Department of State Growth (14), Van Diemen Consulting obo David Gibbons (23), Van Diemen Consulting for Markarna Grazing Company (30)
- Paragraphs: 177 - 195
- Final decision: Rezone the following properties to Rural:
- a. 2270 Palana Road, Lughrata folios of the Register 160313/1 and 154620/2;
 - b. Palana Road, Lughrata folios of the Register 141842/1 and 141842/2;
 - c. That part of 634 Palana Road, Whitemark folio of the Register 182299/2 that previously contained in folio of the Register 245509/1; and
 - d. Harleys Road, Whitemark folio of the Register 176057/2.

Agriculture Zone – 160 Killiecrankie Road, Killiecrankie

- Representation: Tom and Jo Youl (22)
- Paragraphs: 196 - 200
- Final decision: Rezone 160 Killiecrankie Road, Killiecrankie to Agriculture and remove the Priority Vegetation Area overlay.

Agriculture Zone – 368 and 1297 Five Mile Jim Road, Memana

- Representation: Van Diemen Consulting for Markarna Grazing Company (30)
- Paragraphs: 201 - 207
- Final decision: No change (retain Rural zone).

Landscape Conservation Zone and Environmental Management Zone – Little Dog Island

- Representations: Clem Newton-Brown (3), Wendy Jubb-Stoney (15), Megan Gledden (20), Furneaux Islands Protection Network (28), Aboriginal Land Council of Tasmania (33)
- Paragraphs: 208 - 7
- Final decision: Rezone private lands on Little Dog Island FR's 204139/1, 226682/1, and 204138/1 from Environmental Management to Landscape Conservation.
- Substantial Modification: Yes, separate rezoning process is required.

Port and Marine Zone – Franklin Parade, Lady Barron

- Representations: Department of State Growth (14)
- Paragraphs: 218 - 221
- Final decision: No change (retain Environmental Management zone).

Particular Purpose Zone - truwana - Cape Barren Island and outer islands

- Representations: Aboriginal Land Council of Tasmania (33)
- Paragraphs: 222 - 232
- Final decision: Retain exhibited PPZ with the gravel Pit in the Rural precinct per submissions.

Natural Assets Code – Priority Vegetation Area Overlay – Various Properties

Representations: Flinders Council (10), Department of State Growth (14), Annemarie Carnell (21), Paul Carnell (31)

Paragraphs: 233 – 242

Issues:

- removal of the overlay from titles in the Low Density Residential Zone at Lady Barron and Whitemark that are less than 2400m² or 5000m² if located in the Coastal Areas Specific Area Plan;
- removal of the overlay from areas of the Utilities Zone within the State road casement;
- application of the overlay to a larger area of land adjacent to the west of the main settlement at Killiecrankie; and
- application of the overlay to part of the property known as 'Quoin' on the eastern side of the main settlement at Killiecrankie.

Final decision: Remove the Priority Vegetation Area overlay from all land zoned Low Density Residential at Whitemark and Lady Barron.

Natural Assets Code – Future Coastal Refugia Area Overlay – State Roads

Representations: Department of State Growth (14)

Paragraphs: 243 - 248

Final decision: Remove the Future Coastal Refugia Area overlay within the Utilities Zone and State Road casement

Scenic Protection Code – Scenic Protection Area Overlay – Various Areas

Representations: Craig Smith (9), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Furneaux Islands Protection Network (17), Ken Stockton (18), Eve Schulz (19), Annemarie Carnell (21), Sophie Underwood for The Dock shareholders (34)

Paragraphs: 249 - 257

Issues:

- include all land on the east coast of Flinders Island that is proposed to be zoned Landscape Conservation and Environmental Management;
- extend the North East River Scenic Protection Area to include the patriarchs and lagoons;
- extend the Killiecrankie Scenic Protection Area overlay to the back of all building titles in Killiecrankie Village to at least the 20m contour;
- include all open space at Killiecrankie;
- include to the area on the north side of Killiecrankie Road to Palana Road; and
- include all outer islands.

Final decision: Minor amendments to Table C8.1 Scenic Protection Areas as shown in Annexure A.

Landslip Hazard Code – Landslip Hazard Area Overlay – Various Areas

Representations: Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Annemarie Carnell (21)

Paragraphs: 256-261

Final decision: No modification.

Coastal Areas Specific Area Plan

Representations: Judy Cazaly (16), Van Diemen Consulting for David Gibbons (23), Van Diemen Consulting for Markarna Grazing Company (30)

Paragraphs: 262 – 269

Final decision: Remove Coastal Areas Specific Area Plan from land identified by the planning authority and 3 Esplanade and 9 and 17 Walker Street, Whitemark, which the Commission agrees should be zoned Low Density Residential as detailed above

Specific Area Plan – Whitemark and Lady Barron Urban Development Specific Area Plan

Representations: Department of Communities Tasmania (7), Flinders Council (10)

Paragraphs: 270 - 282

Final decision: Insert and apply the Whitemark and Lady Barron Urban Development Specific Area Plan.

Substantial Modification: Yes, separate rezoning process is required.

Specific Area Plan – Electricity Connections

Representation: Flinders Council (10)

Paragraphs: 283 - 287

Final decision: Council to address electricity connections through subdivision in Section 35G Notice.

Site-specific Qualification – 768 Big River Road, Loccota

Submission accepted by the Commission: Alex and Jenny John

Paragraphs: 288 - 296

Final decision: No change.

Matters supporting the LPS:

Rural Living Zone – Various Properties

Representation: Clem Newton-Brown (3), Wendy Jubb-Stoney (15)
Paragraphs: 297 - 301
Final decision: No change.

Village Zone – 13-15 Barr Street, Lady Barron

Representation: Department of Communities (7)
Paragraphs: 302 - 306
Final decision: No change.

Agriculture Zone – 1210 and 1215 Lackrana Road, Lackrana

Representation: Van Diemen Consulting for David Gibbons (23)
Paragraphs: 307 - 311
Final decision: No change.

Landscape Conservation Zone and Environmental Management Zone – Various Properties

Representations: Conservation Landholders Tasmania (4), Anne Rae and Bronwyn Stubbs (13), Furneaux Islands Protection Network (28), Greg Beeton (32), Sophie Underwood for The Dock shareholders (34)
Paragraphs: 312 - 328
Final decision: No change.

Landscape Conservation Zone and Environmental Management Zone – Little Green Island

Representations: Furneaux Islands Protection Network (28), Aboriginal Land Council of Tasmania (33)
Paragraphs: 329 - 333
Final decision: No change.

Coastal Inundation Hazard Code and Flood-Prone Areas Hazard Code Overlays

Representations: Department of Police, Fire and Emergency Management – State Emergency Service (6)
Paragraphs: 334 - 338
Final decision: No change.

Matters that were not a representation

Representations: Department of Communities Tasmania (7), Flinders Council (10), Anne Rae and Bronwyn Stubbs (13), Judy Cazaly (16), Annemarie Carnell (21), Greg Beeton (32), Aboriginal Land Council of Tasmania (33), Sophie Underwood for The Dock shareholders (34)

Issues:

- the SPPs should include certain provisions or otherwise be revised;
- the SPPs failed to consider matters or otherwise provided too much or too little discretion;
- light pollution; and
- Aboriginal burial areas.

Paragraphs: 339 - 343

Final decision: The Commission determined it did not have jurisdiction to assess these matters.

Technical or implementation issues

Paragraphs: 344 – 348

Issues:

- minor numbering and typographical errors in the draft LPS;
- instances where the draft LPS, or proposed modifications, do not apply the writing style and conventions set out in Practice Note 5: Tasmanian Planning Scheme drafting conventions or Practice Note 8: Draft LPS written document - technical advice;
- instances where the draft LPS zone and overlay maps or Geographic Information System (GIS) datasets contain overlaps, gaps and errors, or do not apply the technical advice or conventions set out in Practice Note 7 - Draft LPS mapping; technical advice;
- instances where the spatial representation of the cadastral parcels dataset have changed after the production of the PDF maps for exhibition, that result in minor misalignment

Final decision: Revise the draft LPS zone and overlay maps to:

- a. reflect modifications consequential to modifications made to the draft LPS written document, such as deletion of site-specific qualifications;
- b. fill any unzoned gaps in the zoning layer;
- c. remove any overlaps between adjoining zones;
- d. apply the schema set out in Appendix B of Practice Note 7 to each relevant GIS dataset;
- e. some overlays supplied by theLIST have been modified since the original versions were published on LISTmap (e.g. the Electricity Transmission Infrastructure Protection overlay). Make sure to use the most recent version available;
- f. remove any overlaps between features in the same overlay layer that have different categories (excluding for transitioning local area objectives of SAPs and PPZs), such as: coastal inundation investigation areas and low coastal inundation hazard band;
- g. aggregate adjoining zone or overlay polygons sharing the same category, such as: zone type, landslip hazard band, and aggregate adjoining overlay polygons that have no required category, such as priority vegetation area;

- h. align the boundaries of zones and parcel dependant overlays with parcel boundaries, based on the most recent version of the parcels dataset available from theLIST;
- i. remove any zone or overlay shown outside the municipal area according to the Central Plan Register (CPR) map (including notes), current low water mark map on theLIST, and any areas described by section 35J(2) of the Act; and
- j. present all GIS data in the recommended Geodatabase format provided to council by the Commission.