



**SUBSTANTIALLY MODIFIED AMENDMENT
PDPSAMEND-2021/022802 HOWRAH HILLS,
UNDER SECTION 40N OF THE LAND USE PLANNING
AND APPROVALS ACT 1993**

PROPOSAL: The Tasmanian Planning Commission (the Commission) has considered draft amendment PDPSAMEND-2021-022802 – Howrah Hills: Application of Natural Assets Code and rezoning to the Landscape Conservation Zone, and determined that the draft amendment is to be substantially modified in accordance with section 40N(1)(d) of the *Land Use Planning and Approvals Act 1993* as outlined below.

LOCATION: Various

Amendment (apply)	Address	Title Reference (Register/Folio)
Landscape Conservation Zone	125 Norma Street, Howrah 18 Newhaven Drive, Howrah 5 Zenith Court, Howrah 100 Skyline Drive, Howrah 46 Skyline Drive, Howrah 60A Skyline Drive, Howrah 60B Skyline Drive, Howrah 60C Skyline Drive, Howrah	26606/146 26629/145 26629/144 136183/2, 3, 4, 5, 6 and 7 48113/13 104949/6 104949/5 136183/11
General Residential Zone	100 Skyline Drive, Howrah	136183/1
Open Space Zone	73 Skyline Drive, Howrah	136183/8
Natural Assets Code – Priority Vegetation Overlay	125 Norma Street, Howrah 5 Zenith Court, Howrah 100 Skyline Drive, Howrah 73 Skyline Drive, Howrah 46 Skyline Drive, Howrah 60A Skyline Drive, Howrah 60B Skyline Drive, Howrah 60C Skyline Drive, Howrah	26606/146 26629/144 136183/1, 2, 3, 4, 5, 6 and 7 136183/8 48113/13 104949/6 104949/5 136183/11
Natural Assets Code – Waterway and Coastal Protection Overlay	100 Skyline Drive, Howrah 73 Skyline Drive, Howrah 5 Orford Court, Howrah	136183/5, 6 and 7 136183/8 28383/301
CLA-S23.0 Howrah Hills Residential Specific Area Plan	125 Norma Street, Howrah 18 Newhaven Drive, Howrah 5 Zenith Court, Howrah 100 Skyline Drive, Howrah 46 Skyline Drive, Howrah 60A Skyline Drive, Howrah 60B Skyline Drive, Howrah 60C Skyline Drive, Howrah	26606/146 26629/145 26629/144 136183/ 1, 2, 3, 4, 5, 6, and 7 48113/13 104949/6 104949/5 136183/11

RELEVANT PLANNING SCHEME: Tasmanian Planning Scheme - Clarence

ADVERTISING EXPIRY DATE: 15 July 2024

The relevant plans and documents can be inspected at the Council offices, 38 Bligh Street, Rosny Park, during normal office hours until 15 July 2024. In addition, plans and documents can also be viewed and downloaded at www.ccc.tas.gov.au until 15 July 2024.

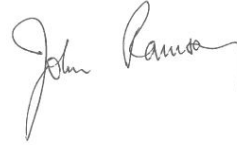
Any person may make representations about the application to the Chief Executive Officer, by writing to PO Box 96, Rosny Park, 7018 or by electronic mail to clarence@ccc.tas.gov.au. Representations must be received by Council on or before 15 July 2024.

To enable Council to contact you, if necessary, would you please also include a day time contact number in any correspondence you may forward.

Any personal information submitted is covered by Council's privacy policy, available at www.ccc.tas.gov.au or at the Council offices.

**TASMANIAN
PLANNING COMMISSION**

Certified



Date: 1 June 2024

TASMANIAN PLANNING COMMISSION

**Substantially modified amendment PDPSAMEND-2021/022802
Tasmanian Planning Scheme – Clarence**

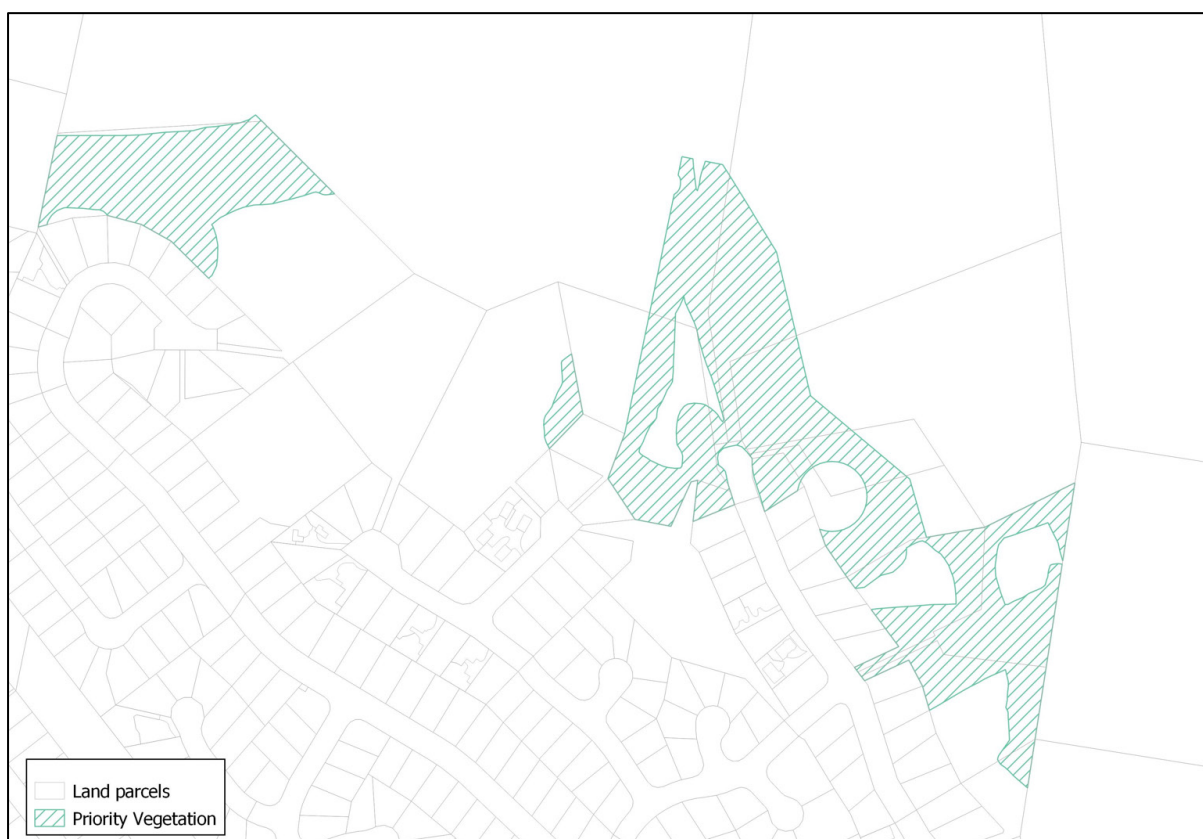
1. Zone the following properties to the Landscape Conservation Zone, as shown below:
 - 125 Norma Street, Howrah (folio of the Register 26606/146);
 - 18 Newhaven Drive, Howrah (folio of the Register 26629/145);
 - 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6, & 7);
 - 46 Skyline Drive, Howrah (folio of the Register 48113/13);
 - 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - 60C Skyline Drive, Howrah (folio of the Register 136183/11).

2. Zone 100 Skyline Drive, Howrah (folio of the Register 136183/1) to the General Residential Zone, as shown below.
3. Zone 73 Skyline Drive, Howrah (folio of the Register 136183/8) to the Open Space Zone, as shown below.



4. Apply the priority vegetation area overlay of the Natural Assets Code to portions of the following properties, as shown below:

- 125 Norma Street, Howrah (folio of the Register 26606/146);
- 5 Zenith Court, Howrah (folio of the Register 26629/144);
- 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6 & 7);
- 73 Skyline Drive, Howrah (folio of the Register 136183/8);
- 46 Skyline Drive, Howrah (folio of the Register 48113/13);
- 60A Skyline Drive, Howrah (folio of the Register 104949/6);
- 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
- 60C Skyline Drive, Howrah (136183/11).



5. Apply the Waterway and Coastal Protection Area overlay of the Natural Assets Code to portions of the following properties, as shown below:
- 100 Skyline Drive, Howrah (folios of the Register 136183/5, 6 and 7);
 - 73 Skyline Drive, Howrah (folio of the Register 136183/8); and
 - 5 Orford Court, Howrah (folio of the Register 28383/301).



6. Insert CLA-S23.0 Howrah Hills Residential Specific Area Plan, as follows.

CLA-S23.0 Howrah Hills Residential Specific Area Plan

CLA-S23.1 Plan Purpose

CLA-S23.1.1 The purpose of the Howrah Hills Residential Specific Area Plan is to protect the natural and scenic values of the Howrah Hills while allowing low density residential infill.

CLA-S23.2 Application of this Plan

CLA-S23.2.1 This specific area plan applies to the areas of land designated as the Howrah Hills Residential Specific Area Plan on the overlay maps.

CLA-S23.2.2 In the area of land to which this plan applies, the provisions of the specific area plan are in substitution, modification, or addition to the provisions of the Landscape Conservation Zone, as specified in the relevant provision.

CLA-S23.3 Local Area Objectives

CLA-S23.3.1 Local Area Objectives

Sub-clause	Area description	Local Area Objective
CLA-S23.3.1.1	Precinct A within the area shown on an overlay map as CLA-S23.2.1.1 and shown as A in Figure CLA-S23.1.	The local area objectives for Precinct A are to: (a) Facilitate residential development that conserves the visual landscape values of the mid-slopes of Howrah hills. (b) Allow for a low density and scale of residential infill development in a visually sensitive location within an existing modified landscape.
CLA-S23.3.1.2	Precinct B within the area shown on an overlay map as CLA-S23.2.1.1 and shown as B in Figure CLA-S23.1.	The local area objective for Precinct B is to allow for a low density and scale of residential infill development that acts as a transition area between the existing Howrah urban residential area and native bushland on Howrah hills.

CLA-S23.4 Definition of Terms

This sub-clause is not used in this specific area plan.

CLA-S23.5 Use Table

This use table is in substitution of clause 22.2 of the Landscape Conservation Zone.

Use class	Qualification
No Permit Required	
Natural and Cultural Values Management	
Passive Recreation	
Permitted	
Residential	If for: (a) a home-based business (b) a single dwelling, with all roofed buildings located within Precincts A or B; or (c) multiple dwellings, with all roofed buildings located within Precincts A or B.
Utilities	If for minor utilities.
Discretionary	
Residential	If for a single dwelling.
Utilities	If not listed as Permitted.
Visitor Accommodation	
Prohibited	
All other uses	

CLA-S23.6 Development Standards for Dwellings

CLA-S23.6.1 Residential density for multiple dwellings

This clause is in addition to clause 22.4 of the Landscape Conservation Zone.

Objective:	That the density of multiple dwellings: (a) is appropriate for the natural and visual values of Howrah Hills; and (b) provides for low density residential infill development.	
Acceptable Solutions	Performance Criteria	
A1 Within a site the maximum density of multiple dwellings must be 3,000m ² per	P1 No Performance Criterion.	

dwelling in Precinct A and 2,000m ² per dwelling in Precinct B.	
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CLA-S23.6.2 Site coverage

This clause is in substitution of clause 22.4.1 of the Landscape Conservation Zone.

Objective:	That the site coverage is compatible with the protection, conservation and management of the landscape values of the site and surrounding area.
Acceptable Solutions	Performance Criteria
<p>A1</p> <p>Site coverage for uses other than multiple dwellings must not be more than 350m².</p>	<p>P1</p> <p>Site coverage must be compatible with the landscape values of the site and surrounding area, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) the capacity of the site to absorb run-off; (c) the size and shape of the site; (d) the existing buildings and any constraints imposed by existing development; (e) the need to remove vegetation; (f) the location of development in relation to cleared areas; and (g) the location of development in relation to natural hazards.
<p>A2</p> <p>Site coverage for multiple dwellings must be not more than:</p> <ul style="list-style-type: none"> (a) 600m² for two dwellings, plus an additional 250m² for each additional dwelling where the site does not contain an existing dwelling; or (b) 250m² for each additional dwelling where a site contains an existing single dwelling. 	<p>P2</p> <p>Site coverage must no more than 20% greater than the area required by the acceptable solution and be compatible with the landscape values of the site and surrounding area, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) the capacity of the site to absorb run-off; (c) the size and shape of the site; (d) the location and scale of existing buildings and any constraints imposed by existing development; (e) the need to remove or retain vegetation; (f) the location of development in relation to cleared areas and natural hazards; and (g) the scale, form and visibility of the development on the site.

CLA-S23.6.3 Setback

This clause is in substitution of clause 22.4.2 A2/P2 and A3/P3 of the Landscape Conservation Zone.

Objective:	That the siting of dwellings is compatible with the landscape and natural values of the site.	
Acceptable Solutions	Performance Criteria	
A1 Buildings must have a setback from all boundaries not less than 10m.	P1 Building setbacks must be compatible with the landscape values of the surrounding area, having regard to: (a) the topography of the site; (b) setbacks of adjacent buildings; (c) the height, bulk and form of existing and proposed buildings; (d) the appearance when viewed from roads and public places; (e) the safety of road users; and (f) the retention of vegetation.	

CLA-S23.6.4 Landscape protection

This clause is in substitution to clause 22.4.4 of the Landscape Conservation Zone.

Objective:	That the landscape values of the site and surrounding area are protected or managed to minimise adverse impacts.	
Acceptable Solutions	Performance Criteria	
A1 Building and works are within a building area shown on a sealed plan that has been created after June 2024.	P1 Buildings and works must be located to minimise native vegetation removal and the impact on landscape values, having regard to: (a) the extent of the area from which native vegetation has been removed; (b) the extent of native vegetation to be removed; (c) any remedial or mitigation measures or revegetation requirements; (d) provision for native habitat for native fauna; (e) the protection and management of native vegetation associated with the riparian area adjacent to the waterway flowing to Bandicoot Reserve; (f) the protection of patches and individual <i>Eucalyptus risdonii</i> trees;	

	<p>(g) the management and treatment of the balance of the site or native vegetation areas;</p> <p>(h) the type, size, and design of development; and</p> <p>(i) the landscape values of the site and surrounding area.</p>
<p>A2 Buildings and works, for all uses excluding multiple dwellings must:</p> <p>(a) be located within a building area shown on a sealed plan that has been created after June 2024; or</p> <p>(b) be an alteration or extension to an existing building providing it is not more than the existing building height;</p> <p>(c) not include cut and fill greater than 1m; and</p> <p>(d) be not less than 10m in elevation below a skyline or ridgeline</p>	<p>P2.1 Buildings and works for all uses must be located to minimise impacts on landscape values, having regard to:</p> <p>(a) the topography of the site;</p> <p>(b) the size and shape of the site;</p> <p>(c) the proposed building height, size and bulk;</p> <p>(d) any constraints imposed by existing development;</p> <p>(e) visual impact when viewed from roads and public places; and</p> <p>(f) any screening vegetation.</p> <p>P2.2 Building and works for all uses are less than 10m in elevation below a skyline or ridgeline, unless there are no other suitable building areas.</p>

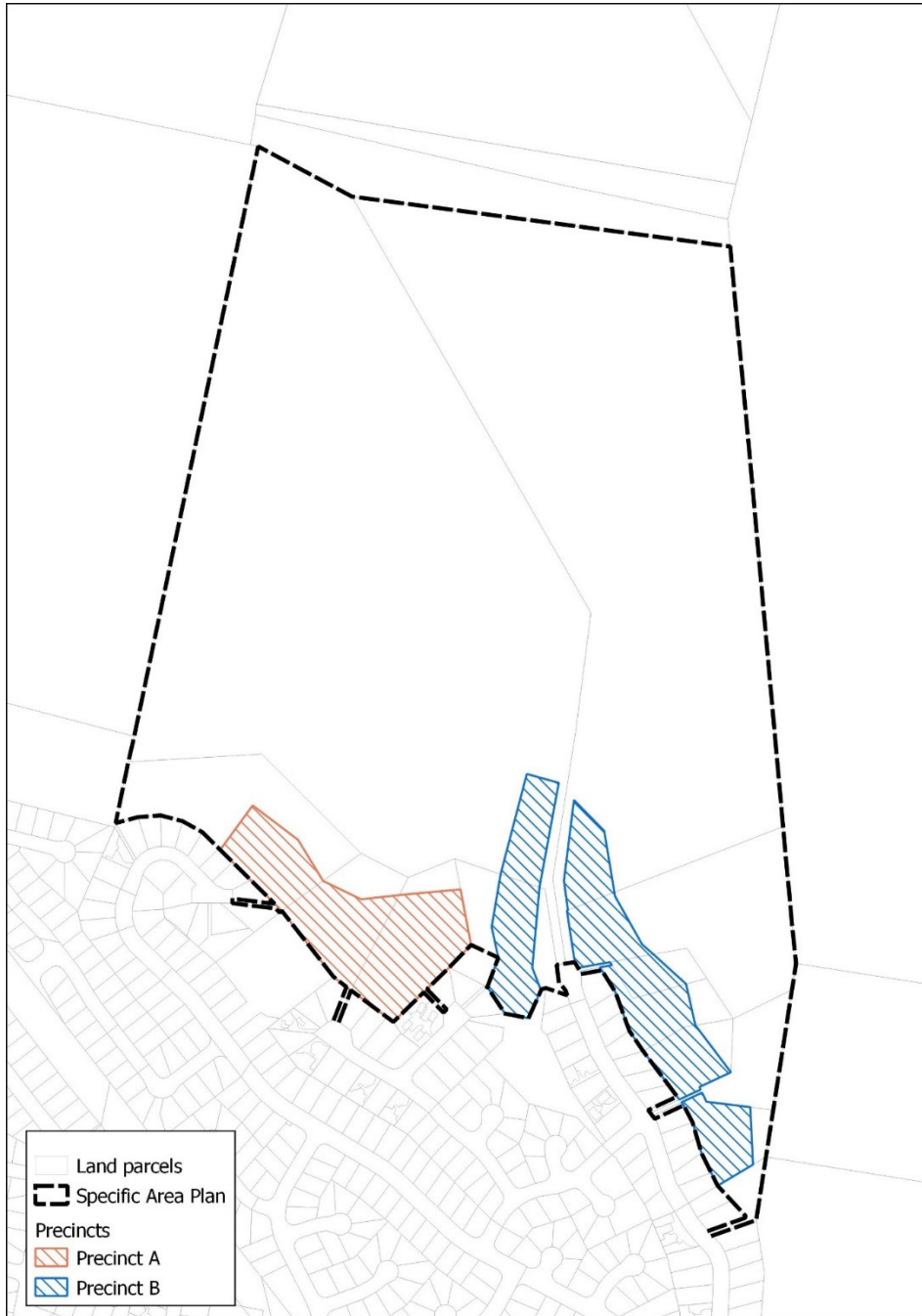
CLA-S23.6.5 Clearance within a priority vegetation area

This clause is in substitution of clause C7.6.2 of the Natural Assets Code.

<p>Objective:</p>	<p>That clearance of native vegetation within a priority vegetation area:</p> <p>(a) does not result in unreasonable loss of priority vegetation;</p> <p>(b) is appropriately managed to adequately protect identified priority vegetation.</p>
<p>Acceptable Solutions</p>	<p>Performance Criteria</p>
<p>A1 Clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved after June 2024.</p>	<p>P1.1 Clearance of native vegetation within a priority vegetation area must be for:</p> <p>(a) an existing use on the site, provided any clearance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmania Fire Service or an accredited person;</p>

	<ul style="list-style-type: none">(b) buildings and works associated with the construction of a single dwelling, multiple dwellings or an associated outbuilding on the site;(c) use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design;(d) clearance of native vegetation where it is demonstrated that on-going pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for long-term persistence; or(e) the clearance of native vegetation that is of limited scale relative to the extent of priority vegetation on the site. <p>P1.2</p> <p>Clearance of native vegetation within a priority vegetation area must minimise adverse impacts on priority vegetation, having regard to:</p> <ul style="list-style-type: none">(a) the design and location of buildings and works and any constraints such as topography or land hazards;(b) any particular requirements for the buildings and works;(c) minimising impacts resulting from bushfire hazard management measures through siting and fire-resistant design of habitable buildings;(d) any mitigation measures implemented to minimise the residential impacts on priority vegetation;(e) any on-site biodiversity offsets;(f) any existing cleared areas on the site(g) the protection and management of native vegetation associated with the riparian area adjacent to the waterway flowing to Bandicoot Reserve; and(h) the protection of patches and individual <i>Eucalyptus risdonii</i> trees.
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Figure CLA-S23.1 Howrah Hills Residential Specific Area Plan



TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Tasmanian Planning Scheme - Clarence
Amendment	PDPSAMEND-2021-022802 - Zone multiple properties at Howrah the Landscape Conservation Zone and apply the priority vegetation area overlay
Planning authority	Clarence City Council
Date of decision	30 May 2024

Decision

The draft amendment is substantially modified under section 40N(1)(d) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A.

John Ramsay
Delegate (Chair)

Michael Hogan
Delegate

Land Use Planning and Approvals Act 1993

**Erratum under section 81AA(1)
Decision on Tasmanian Planning Scheme - Clarence
Draft amendment PDPSAMEND-2021-022802**

Dated 30 May 2024

Table 1 - list of corrections to the decision and certified instrument

Page	Paragraph	Correction	Approved
11 and 12	68, 69 and 70	Delete 60C Skyline Drive and replace with 60B Skyline Drive	John Ramsay Executive Commissioner
22		In substantially modified amendment PDPSAMEND-2021-022802, item 4, insert '& 7' at the end of the list of titles for folio of the Register 136183.	John Ramsay Executive Commissioner

REASONS FOR DECISION

Background

On 24 June 2021, the Commission modified the draft Clarence Local Provisions Schedule (draft LPS). The Clarence LPS (as modified) became effective on 13 October 2021.

The site was discussed as part of the draft LPS process, where the Howrah Hills Landcare Group submitted that the land contains visual and conservation values that require protecting, and the land is better suited to the Rural Living and Landscape Conservation zones.

The draft amendment is the result of the LPS process, in which the Commission directed the planning authority to prepare the draft amendment under section 35KB of the Act.

As part of its decision, the Commission found that the draft LPS required substantial modification and accordingly, under section 35KB of the Act, the Commission directed the planning authority to prepare a draft amendment to the Clarence LPS and to submit the draft amendment to the Commission after the LPS came into effect.

This draft amendment is one of eight draft amendments to the Clarence LPS prepared in response to the Commission's direction. The Clarence planning authority has publicly exhibited the draft amendment in accordance with section 40G and provided the Commission with its section 40K report.

Amendment

The draft amendment proposes to zone the following properties the Landscape Conservation Zone and apply the priority vegetation area overlay:

- 125 Norma Street, Howrah (folio of the Register 26606/146);
- 18 Newhaven Drive, Howrah (folio of the Register 26629/145);
- 5 Zenith Court, Howrah (folio of the Register 26629/144);
- 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6, and 7);
- 73 Skyline Drive, Howrah (folio of the Register 136183/8);
- 46 Skyline Drive, Howrah (folio of the Register 48113/13);
- 60A Skyline Drive, Howrah (folio of the Register 104949/6);
- 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
- 60C Skyline Drive, Howrah (folio of the Register 136183/11).

Site information

The site contains all properties listed above, noting that only a portion of 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6, and 7) is included. The site is located on the slopes below the Knopwood Hill Nature Recreation Area.

The site contains residential development, except 73 and 100 Skyline Drive, Howrah which are undeveloped.

The land has a combined area of approximately 10.5658ha. The site is generally steep with the degree of gradients ranging on each title.

Most of the titles that form the site are considered internal lots, which have access strips running along other properties. In most cases, the adjoining properties are in the General Residential Zone.

100 Skyline Drive, Howrah is split zoned as the Low Density Residential Zone and the Landscape Conservation Zone. It is the Low Density Residential Zone portions of the site that are subject to the rezoning.

The following overlays apply to portions of the site:

- Airport obstacle limitation area;
- Landslip hazard area (low);
- Bushfire-prone areas; and
- Priority vegetation area.

Land south of the site is in the General Residential, Utilities and Open Space zones. Land to the north and east is in the Landscape Conservation Zone. Land to the north west is in the Open Space Zone. Developed land near the site is predominantly used as residential. Land north of the site is undeveloped.

Issues raised in representations

Two representations were received during the exhibition period. The representations were in support of the draft amendment.

The draft amendment was referred to TasWater under section 56S of the *Water and Sewerage Industry Act 2008*. In response TasWater made a representation stating no objection to the draft amendment and that TasWater did not wish to attend any hearing.

Planning authority's response to the representations

The planning authority considered the representations and advised the Commission that it does not recommend that any modifications be made to the amendment.

Procedural fairness

The planning authority exhibited the draft amendment from 17 November 2021 to 14 December 2021. The exhibition requirements of the Act do not require specific notification to those landowners potentially affected by the amendment.

In order to ensure procedural fairness, the Commission invited landowners to make a submission and attend a hearing into the draft amendment.

The notification to affected landowners resulted in a number of those landowners participating in the hearing process.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart. The hearing was held on the following dates:

- 11 August 2022;
- 8 and 9 June 2023; and
- 30 April 2024.

Appearances at the hearing

Planning authority: Mr Evan Boardman, consultant planner for Clarence City Council

Representors/experts: **On behalf of MS Cas Pty Ltd:**

Mr Peter Montgomery

Mr James Groom, Groom Kennedy

Ms Kirrily Leader, Groom Kennedy

Mr Frazer Read, All Urban Planning

Mr Richard Barnes, Van Diemen Consulting

Mr Colin McCoull, Van Diemen Consulting

Mr Chris Goss, Orbit Solutions

On behalf of Howrah Hills Landcare Group:

Ms Julie Alexander

Ms Mea Quartararo, Abetz Curtis Lawyers (hearing of 11 August 2022, and 8 and 9 June 2023)

Mr Christian Street, Ogilvie Jennings Lawyers (hearing of 30 April 2024)

Mr Andrew North, North Barker Ecosystem Services

Ms Jacqui Blowfield, Ireneinc Planning and Urban Design

Mr Bruce Chetwynd

Landowners:

Mr Nigel Barling

Mr Phillip Hutcheon

Mr Mark and Ms Louise Chesterman

Consideration of the draft amendment

1. Under section 40M of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the draft amendment to the Local Provisions Schedule (LPS) and the representations, statements and recommendations contained in the planning authority's section 40K report and any information obtained at a hearing.
2. A hearing was convened to assist the Commission consider the issues in the representations.
3. The Commission must also consider whether the draft amendment meets the LPS criteria as set out under section 34(2) of the Act:
 - (a) contains all the provisions that the SPPs specify must be contained in an LPS; and
 - (b) is in accordance with section 32; and
 - (c) furthers the objectives set out in Schedule 1; and
 - (d) is consistent with each State policy; and
 - (da) satisfies the relevant criteria in relation to the TPPs; and

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

Natural values

4. Expert evidence on the natural values of the land was provided by Mr Andrew North on behalf of the Howrah Hills Landcare Group, and Dr Richard Barnes on behalf of MS Cas Pty Ltd. Both experts were present at the hearing.
5. Mr North of North Barker Ecosystem Services submitted a Statement of Evidence, 22 February 2023 in support of the Landscape Conservation Zone. Mr North advised that a site inspection was completed on 10 January 2023, and the following properties were inspected at ground level:
 - 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6 and 7);
 - 73 Skyline Drive, Howrah (folio of the Register 136183/8);
 - 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - 60C Skyline Drive, Howrah (folio of the Register 136183/11).
6. Vegetation communities were mapped using the TAS VEG 4 classification.
7. Mr North identified threatened flora species, threatened fauna species, and native vegetation of local significance at the site, which is discussed below. Based on his findings, Mr North concluded that the Landscape Conservation Zone should apply to the site as this would ensure that future planning applications must address the Natural Assets Code if development is proposed within the priority vegetation area overlay. Mr North advised that this is because if the land remained in the Low Density Residential Zone, the Natural Assets Code would only apply if subdivision is proposed. Mr North provided the Commission with an alternative priority vegetation area overlay for consideration.
8. Dr Barnes of Van Diemen Consulting submitted a Flora and Fauna Assessment and Planning Comment, 28 February 2023 (flora and fauna assessment). Dr Barnes assessment was focussed on 100 Skyline Drive, Howrah (all titles except folio of the Register 136183/1).
9. Dr Barnes advised that the flora and fauna assessment was based on a desktop study and site visits in January and February 2023 to 100 Skyline Drive, Howrah (all titles except folio of the Register 136183/1). Dr Barnes also used the TAS VEG mapping classification.
10. In response to Mr North's Statement of Evidence, Dr Barnes prepared a Response Ecological Comment, 16 May 2023 (the response). In the response, Dr Barnes advised that a field survey was conducted for the following properties:
 - 125 Norma Street, Howrah (folio of the Register 26606/146);

- 18 Newhaven Drive, Howrah (folio of the Register 26629/145);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6, and 7);
 - 73 Skyline Drive, Howrah (folio of the Register 136183/8);
 - 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - 60C Skyline Drive, Howrah (folio of the Register 136183/11).
11. Dr Barnes noted that 46 Skyline Drive, Howrah (folio of the Register 48113/13) was observed from 60A Skyline Drive, Howrah.
12. Dr Barnes also identified threatened flora species and threatened fauna species at the site, but disagreed on the presence of native vegetation of local significance. Dr Barnes stated that while the site contains threatened vegetation communities, this is irrelevant to the application of the Landscape Conservation Zone. This is because Dr Barnes considered in his flora and fauna assessment that:
- Landscape values are the driver for the zone; there are no provisions or references to 'biodiversity', 'natural values' or 'threatened vegetation communities identified for protection and conservation' in the objectives of the zone nor the Guideline. (p. 75)
13. Dr Barnes concluded that 100 Skyline Drive, Howrah should remain in the Low Density Residential Zone.
14. Both experts generally agreed that the same species and habitat were present at the site, but the extent and location of these matters were disputed. Each matter is discussed below.

Threatened flora species

15. Mr North identified one threatened flora species, being *Eucalyptus risdonii* in various locations of the site. This species is protected under Schedule 5 of the *Threatened Species Protection Act 1995*. Mr North identified this species as predominantly located at 100 Skyline Drive, Howrah (folio of the Register 136183/2), which forms a scatter of individual trees. The second location is in the northeast corner of 60B Skyline Drive, Howrah (folio of the Register 104949/5).
16. In addition to the threatened flora species, two threatened communities under Schedule 3A of the *Nature Conservation Act 2002* was observed. These communities include *Eucalyptus risdonii* forests and woodland (DRI) and *Eucalyptus globulus* dry forest and woodland (DGL). Based on the site inspection, the DRI community was located at 100 Skyline Drive, Howrah (folio of the Register 136183/2). The DGL community was located on portions of:
- 125 Norma Street, Howrah (folio of the Register 26606/146);
 - 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/6 and 7); and
 - 73 Skyline Drive, Howrah (folio of the Register 136183/8).
17. Mr North noted that:
- 2.2.3 ... All emerging *Eucalyptus globulus* are dead and the canopy she oaks (*A. verticillate*) has closed preventing recruitment. This outcome is a function of previous disturbances, a particular fire regime and drought stress. It is likely irreversible without significant management intervention. (p. 9)

18. Dr Barnes identified two threatened flora species at the site, including *Eucalyptus risdonii* and *Austrostipa bigeniculata*. Of these, 22 *Eucalyptus risdonii* plants were observed on land subject to the rezoning at 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6 and 7). Dr Barnes considered that *Austrostipa bigeniculata* was excluded from the analyses because it is not specific to any habitat type.
19. Dr Barnes agreed with Mr North that the DRI and DGL communities are located at the site. However, the location of the DRI community varied between experts. Mr North identified the species as extending further east onto 60C Skyline Drive and 100 Skyline Drive, Howrah (folio of the Register 136183/1), whereas Dr Barnes focussed on the Low Density Residential Zone section of the remaining titles of 100 Skyline Drive.
20. Dr Barnes stated that he has discussed the trees with the owner of 60C Skyline Drive who advised that the trees were planted from seed. He considered that these trees should be classified as a domestic garden which does not meet the definition of priority vegetation. However, given the uncertainty of the plantings, Dr Barnes suggested no changes to the priority vegetation area overlay suggested by Mr North in relation to the location of *Eucalyptus risdonii*.

Threatened fauna species

21. Mr North considered whether habitat for threatened fauna was present at the site. Mr North identified that there is habitat on various locations of the site for swift parrots, which are listed as endangered on the *Threatened Species Protection Act 1995*, and eastern barred bandicoots, which are listed as vulnerable under the *Environment Protection and Biodiversity Conservation Act 1999*. Details of these habitats are below.
22. *Eucalyptus globulus* form habitat for swift parrots. The trees provide for foraging and potential nesting habitat. Mr North notes that the habitat is considered significant fauna habitat as the site is close to an important swift parrot breeding area at Meehan Range.
23. A gully running north to south through 100 Skyline Drive (folios of the Register 136183/5, 6 and 7) was identified by Mr North as providing excellent quality habitat for eastern barred bandicoots. Mr North advised that the significance of this gully has been noted by several wildlife biologists as it provides secure shelter. At the hearing, Mr North explained that the gully's attributes include providing a good water source, damp and lush grassland, lots of worms and deep soils. It should therefore be considered as priority vegetation.
24. Mr North also identified that grassy lawns at 125 Norma Street, 18 Newhaven Court and 5 Zenith Court provide good quality habitat for eastern barred bandicoot foraging. He stated that having a mixture of native and exotic plants creates good foraging habitat as it also provides shelter. At the hearing, Mr North noted that a lot of the grasses at the site are native grasses.
25. Despite these observations, no comprehensive search for eastern barred bandicoot diggings nor a deployment of cameras were included in the site inspection.
26. Dr Barnes identified three threatened fauna species habitat at the site. This included the spotted-tailed quoll, swift parrot and eastern barred bandicoot. It was noted in the flora and fauna assessment that less than 10% of significant habitat at 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6 and 7) is in the Low Density Residential Zone. For swift parrot habitat, that number is less than 5%.
27. Dr Barnes considered that significant habitat for the spotted-tailed quoll is present in a technical sense but in practicality, is absent or sporadic. That is, while no dens or scatts were observed, the site contains habitat in the form of rocky areas of steep slopes, small woodpiles and fallen tree trunks.

28. Dr Barnes considered that the site contains significant habitat for the swift parrot for the same reasons as Mr North.
29. Dr Barnes also considered that there is significant habitat at 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6 and 7) for the eastern barred bandicoot. This habitat includes tussock grass-sagg sedge swards, piles of coarse woody debris and dense patches of low shrubs.
30. The area of disagreement was in relation to the significant habitat for the eastern barred bandicoot.
31. Dr Barnes considered that native vegetation excludes non-indigenous species. That is, plants that are not native to Tasmania. He also considered that only native vegetation can be considered as priority vegetation. Mr North's Statement of Evidence considered non-indigenous species, such as grassland, as priority vegetation due to it being foraging habitat for the eastern barred bandicoot. As such, Dr Barnes considered that the habitat mapped by Mr North for the eastern barred bandicoots on 125 Norma Street, 18 Newhaven Drive and 5 Zenith Court, Howrah to be an inaccurate depiction of significant habitat.
32. At the hearing, Mr Colin McCoull on behalf of MF Cas Pty Ltd advised that eastern barred bandicoots are attracted to both native and non-indigenous vegetation. The Commission asked if hypothetically, would more eastern barred bandicoots be present at the site if more native grasses were in the area. Mr McCoull advised that it is unknown what specifically attracts eastern barred bandicoots to a site. Two landowners at the site advised that they had not seen bandicoots on their property.

Native vegetation of local importance

33. Mr North identified *Eucalyptus amygdalina* forest on mudstone (DAM) as being a native vegetation community of local significance at the site. This is due to the South East 'Interim Biogeographic Regionalisation for Australia' bioregion reserve target for the DAM community.
34. In his response, Dr Barnes noted that the definition for local importance is unclear but considered that entire forest vegetation types do not qualify under local importance. This is because if the vegetation community is considered as locally important, they would usually qualify under threatened vegetation or significant habitat for fauna.
35. At the hearing, the Commission asked Dr Barnes to further explain why he considered that the DAM community is not of local significance. Dr Barnes advised that each municipality should create a list of what it considered is of local importance. He provided an example of rainforest communities found outside their normal range. That is, for a species to be of local significance it should be recognised as a separate entity and not widespread.
36. On the contrary, at the hearing Mr North considered that the DAM community is an ecological community that is under threat and should be considered of local significance in lieu of a state listing.

Commission consideration

37. The Commission agrees with the experts that there is threatened vegetation and significant habitat at the site that requires protecting through the planning scheme.
38. As mentioned, while the experts generally agreed on the findings, there was disagreement on the location of *Eucalyptus risdonii*, and whether the DAM community and grassland for eastern barred bandicoots should be included in the priority vegetation area overlay.

39. While anecdotal evidence purported that the *Eucalyptus risdonii* may have been planted by seed at 60C Skyline Drive, this was not supported by the evidence from Mr North or from the Commission's site inspection. Mr North's evidence noted:
- the presence of very mature trees in the area; and
 - the presence of seedlings and saplings which were most likely grown naturally from the seeds of other trees.
40. The Commission agrees with these observations and finds that it is likely that this patch of *Eucalyptus risdonii* has the capacity to grow and expand naturally. The Commission considers that this patch of tress has local significance and should be included in the priority vegetation area overlay.
41. In addition to the significance of the *Eucalyptus risdonii*, Mr North considered that the gully and grassland are important habitat for eastern barred bandicoots.
42. The Commission considers that the grassland is not significant habitat for the purposes of the priority vegetation area overlay, as it is common throughout residential areas. The Commission considers that the draft amendment should be modified to remove the priority vegetation area overlay from areas of the site containing dwellings and their immediate surrounds.
43. The Commission agree with Mr North that the gully forms important habitat for eastern barred bandicoots. The Commission considers that the gully, in addition to providing potential habitat, is also a waterway that requires protecting under the waterway and coastal protection overlay. This is discussed further under the 'Regional land use strategy' section.
44. The Commission heard from Mr North on the local significance of the DAM community. The Commission considers that the DAM community does have local significance and that it is appropriate for these patches of vegetation to be included in the priority vegetation area.
45. The draft amendment proposes to apply the priority vegetation area overlay to portions of the site. The extent of this area was based on desktop data, not field studies, and covered areas of titles that were already cleared for development.
46. Evidence has now been received from two experts who are in general agreement with the exception of the above matters. Based on this expert evidence, the Commission finds that there is planning merit in applying the priority vegetation area overlay to portions of the site, providing it is modified to address the matters raised by Mr North and Dr Barnes.
47. As a result of the natural values considerations at the site, the Commission considers that there is planning merit in the following modifications to the draft amendment.
48. The Commission modifies the draft amendment to remove the priority vegetation area overlay over portions of the site that have been cleared for development. This includes the southern and eastern corners of 125 Norma Street, and 60B and 60C Skyline Drive, Howrah.
49. The Commission also modifies the draft amendment to include the priority vegetation area overlay to areas of the DAM community identified by Mr North as native vegetation of local significance.
50. The Commission notes that the draft amendment already includes the gully within the priority vegetation area overlay. In addition, the Commission modifies the draft amendment to insert the waterway and coastal protection area overlay of the Natural Assets Code. The Commission inserts this overlay over the gully to provide a buffer between the waterway and future development. This matter is discussed further under the 'Regional land use strategy' section.

51. The Commission considers that the Landscape Conservation Zone is appropriate for the site, except for 73 Skyline Drive and 100 Skyline Drive (folio of the Register 136183/1), which is discussed below. This zone is appropriate as it allows assessment under the Natural Assets Code for use and development.

Visual landscape

52. Expert evidence on the visual landscape values of the land was provided by Mr Bruce Chetwynd on behalf of the Howrah Hills Landcare Group, and Mr Chris Goss on behalf of MS Cas Pty Ltd. Both experts were present at the hearing.
53. Mr Chetwynd submitted a Statement of Evidence titled Visual Values Assessment of the Knopwood Hill Slopes, 28 February 2023.
54. Mr Chetwynd considered that the Landscape Conservation Zone is appropriate for the site as the zone provisions contain requirements for building colour, height and bulk to ensure development is appropriate for the site. In addition to the appearance of development, Mr Chetwynd considered that allowing multiple dwellings at the site, as a consequence of the Low Density Residential Zone allocation, has the potential to impact the visual character of the area. This is predominantly due to vegetation clearing associated with bushfire mitigation requirements and earthworks to allow buildings to be constructed on steep slopes.
55. At the hearing, Mr Chetwynd provided examples of where some minor development may be accommodated at the site. This was predominantly due to existing clearing and areas on titles that are lower on the landscape than existing development. Mr Chetwynd reiterated that retaining strips of native vegetation between development and the skyline is an important element of Hobart's visual landscape.
56. Mr Goss of Orbit Solutions Pty Ltd submitted a Visual Impact Assessment, 8 March 2023.
57. Mr Goss considered that the Low Density Residential Zone would create an appropriate buffer between the General Residential Zone to the south and the Landscape Conservation Zone to the north. Mr Goss considered that the Low Density Residential Zone would provide a lot size large enough to be developed and also retain vegetation. This would reduce the impact on the visual character of the area.
58. Discussions at the hearing identified that both experts agreed that the site contains important visual landscape values, which are seen from various areas around Hobart. However, their opinion on what zone should apply differed, as mentioned above. The difference between the two opinions is the degree of extra development that may be appropriate for the site.

Commission consideration

59. The Commission agrees with both experts that the site is visually prominent from many areas in Hobart. Furthermore, the Commission notes the comments by Mr Chetwynd about the potential impact from development at a density allowable under the Low Density Residential Zone, such as the clearing of vegetation for bushfire purposes, and the colour and bulk of buildings. This is particularly relevant given the natural landscape values of the site, which form part of the mid-slopes of Knopwood Hill.
60. The Commission does not agree with Mr Goss that the Low Density Residential Zone provides an appropriate transition between the General Residential Zone and the Landscape Conservation Zone. However, the Commission agrees that some infill development is appropriate on portions of the site, such as areas below existing development or areas that are already clear of vegetation.

61. The Commission considers that while the Low Density Residential Zone allows for infill development, which was supported to a degree by both experts, it would not provide adequate provisions in protecting the visual landscape values of the site. For example, there are no provisions to restrict the colour and scale of buildings in the Low Density Residential Zone. In addition, the higher density allowed under the Low Density Residential Zone may increase the amount of clearing undertaken at the site for development due to multiple dwellings being an allowable use in the zone at a density of 1,500m².
62. The Commission notes that the Landscape Conservation Zone includes a provision at clause 22.4.2 A5/P5 that provides for exterior building colours to not detract from the landscape. However, it does not allow for infill development, as the only residential use allowable under the zone is single dwellings as a discretionary use.
63. As a result of the visual landscape considerations at the site, the Commission considers that there may be planning merit in the following modifications to the draft amendment.
64. The Commission considers that the Landscape Conservation Zone is appropriate for the site, except for 73 Skyline Drive and 100 Skyline Drive (folio of the Register 136183/1), which is discussed below. This zone is appropriate as its purpose is to protect, conserve and manage landscape values, which is reflected in the zone provisions.
65. The Commission notes that infill development would not be possible under the Landscape Conservation Zone. As such, the Commission modifies the draft amendment to insert a specific area plan (SAP) to allow multiple dwellings in the Landscape Conservation Zone. The Commission includes two precincts in the SAP to identify appropriate density for the site. The Commission considers that this will address the need for protecting the visual landscape while also allowing some infill residential development. Details of the precincts are below.
66. Precinct A was included based on the visibility of development and existing character of the area. Precinct A has a slightly lower density at 3,000m² per dwelling than Precinct B, which is 2,000m². It is located on the western side of the gully and includes 125 Norma Street, 18 Newhaven Drive and 5 Zenith Court. These titles generally contain large dwellings with associated outbuildings. Precinct A forms the highest point of development which is visible on the mid-slopes of Knopwood Hill. This will assist in the transition between the General Residential Zone and Landscape Conservation Zone. The titles contain large areas of grassland below the existing development which could accommodate infill residential development without detracting from the character of the area or requiring the need to clear excessive areas of native vegetation. For this reason, the Commission modifies the draft amendment to apply a SAP over these titles.
67. Precinct B is located on titles along and to the eastern side of the gully. This includes 100 Skyline Drive (folios of the Register 136183/2, 3, 4, 5, 6, 7), 60A and 60B Skyline Drive. Many titles in Precinct B are undeveloped. Titles that are developed contain single dwellings with mature native vegetation. The titles are generally large enough to accommodate an additional one or two dwellings below the 90m contour line. For titles that are already developed, the precinct generally applies to areas below the existing dwelling.
68. At the hearing, Mr Barling noted that 60B Skyline Drive was omitted from the SAP and requested that it be included in Precinct A. Mr Barling stated that this is because the property has the same visibility rating by Mr Goss as the titles in Precinct A. 60B Skyline Drive is an internal lot adjacent to titles in Precinct B on the eastern side of the gully.
69. The Commission considers that 60B Skyline Drive is not appropriate for inclusion in the SAP as the proposed boundary for Precinct B provides an appropriate upper limit for the development of further multiple dwellings. The Commission determined the precincts based on the surrounding character of the area, natural values on the site, visibility and topography.

70. The Commission considers that 60B Skyline Drive is also not appropriate for inclusion in Precinct B as the site sits higher than the other titles in Precinct B. This results in development extending up the hill, which was identified by Mr Chetwynd as something that should be avoided.
71. In addition to the precincts, the Commission includes a provision in the SAP that substitutes a provision in the Landscape Conservation Zone. This provision relates to landscape protection. This provision particularly relates to the clearing of vegetation and the level of cut and fill required for development. The reason for substituting this provision is due to the existing building envelopes associated with many titles at the site, which is unique for a site with landscape values.

Planning scheme provisions

72. Expert evidence on the planning merit of the site was provided by Ms Jacqui Blowfield on behalf of the Howrah Hills Landcare Group, and Mr Frazer Read on behalf of MS Cas Pty Ltd. Both experts were present at the hearing.
73. Ms Blowfield of Ireneinc Planning and Urban Design prepared a Statement of Evidence, 27 February 2023. In this statement, Ms Blowfield considered that the Low Density Residential Zone of the State Planning Provisions (SPPs) differs significantly from the zone of the same name in the Clarence Interim Planning Scheme 2015. For example, under the SPPs, the Low Density Residential Zone allows a broader range of uses and contains provisions for multiple dwellings. It also has a focus on protecting residential amenity rather than landscape values, which is reflected in the Performance Criteria under clauses 10.3.1 and 22.3.3 of the SPPs.
74. Ms Blowfield provided a theoretical number of dwellings that could be developed should the site remain in the Low Density Residential Zone. This number exceeded 200 dwellings, noting that it included the whole site area for the large titles of 100 Skyline Drive (folios of the Register 136183/4, 5 and 6). At the hearing, Ms Blowfield advised that this was a theoretical yield, and the practical number of dwellings for the large lots of 100 Skyline Drive would be much less. For these three titles, the number was calculated at approximately 62 dwellings.
75. Ms Blowfield concluded that the Landscape Conservation Zone is appropriate for the site as it provides a suitable density for the area and allows for consideration against the Natural Assets Code at the development stage.
76. Mr Read of All Urban Planning prepared a Statement of Evidence, 18 May 2023. In this statement, Mr Read considered that the site is suitable for the Low Density Residential Zone as it is intended for residential development, which is evident when looking at the character of Howrah.
77. Mr Read identified that in the Low Density Residential Zone, the permitted density for multiple dwellings is one dwelling per 1,500m², if capable of being connected to reticulated services. If it can't be connected to reticulated services, the permitted density is one dwelling per 2,500m². Based on an assumption that the site can be connected to reticulated services, Mr Read considered that the site could accommodate an additional 65 dwellings at 1,500m² each.
78. The minimum permitted lot size for subdivision is 1,500m², with an absolute minimum of 1,200m². The permitted frontage for subdivision is 20m with an absolute minimum of 3.6m. Based on these provisions, Mr Read considered that there is limited potential for further subdivision of the site due to the existing lot sizes and frontages.
79. Mr Read further noted that the Natural Assets Code only applies to subdivision in the Low Density Residential Zone. Furthermore, as 100 Skyline Drive is split zoned, any clearing

required in the Landscape Conservation Zone section of the site to support development in the Low Density Residential Zone would be subject to clause C7.6.2 of the Natural Assets Code.

80. Mr Read considered that this clearing would generally be prevented by clause C7.6.2 P1.1 and P1.2. As such, development in the Low Density Residential Zone would require further setback from the split zone boundary to allow for the bushfire hazard management areas to be wholly contained in the Low Density Residential Zone. Mr Read considered that this would assist with the transition between the General Residential Zone to the south and the Landscape Conservation Zone to the north.
81. Mr Read concluded that the Low Density Residential Zone should apply to all titles subject to the draft amendment except the western most triangular portion of land forming 100 Skyline Drive, Howrah (folio of the register 136183/6). Mr Read considered that this area should be in the Landscape Conservation Zone based on the evidence provided by Dr Barnes. Mr Read also considered that 73 Skyline Drive, Howrah should be in the Open Space or Landscape Conservation zones as the intended use of the site is for open space.
82. At the hearing, the relationship between the provisions of the Low Density Residential Zone in the SPPs and the impact on site values was discussed.
83. Ms Blowfield advised that the Low Density Residential Zone in the SPPs does not provide for provisions that regulate the colour and finishes of buildings or protect native vegetation, which were raised as potential mechanisms to reduce visual impact from future development.
84. In relation to protecting native vegetation, Ms Blowfield advised that she had completed a desktop assessment of the potential vegetation clearing required for building in a bushfire-prone area. Based on this desktop assessment, if the vegetation was classified as woodland, a clearance of 10m upslope would be required. If it was classified as forest, a clearance of 16m upslope would be required.
85. Mr Read noted that while the Landscape Conservation Zone contains provisions for visual amenity, it does not allow for the development of multiple dwellings, which would be required to allow for infill development.
86. While there was disagreement between the experts on what zone should apply, it was agreed that the SPPs do not provide adequate provisions for this site.
87. In a submission dated 22 April 2024, Mr Christian Street on behalf of the Howrah Hills Landcare Group advised that various building envelopes and covenants apply to titles subject to this draft amendment. Mr Street advised that these building envelopes and covenants apply restrictions on the limit of development at the site.
88. The building envelopes apply to 100 Skyline Drive, Howrah, which restricts development to a small portion of the overall lot size. The covenants apply to 5 Zenith Court and 18 Newhaven Drive, Howrah, which restricts development on each title to a single dwelling.

Commission consideration

89. The Commission heard from experts that the site contains natural and visual values that need protecting. However, it was also identified that some areas of the site could accommodate infill development. Information received from Ms Blowfield and Mr Read identified that the provisions in the Low Density Residential Zone may not allow for appropriate development to proceed while maintaining these values. This is predominantly due to the inability to consider the Natural Assets Code for development in the Low Density Residential Zone, and the lack of colour or scale provisions for buildings.

90. The Commission considers that due to the lack of natural and visual values provisions under the Low Density Residential Zone and the inability to apply the Natural Assets Code for development, the site is appropriate for rezoning. However, the Commission also agree that the SPPs provide inadequate provisions for this site.
91. The Landscape Conservation Zone allows consideration of development against the Natural Assets Code while also including provisions for reducing impacts on visual amenity. However, the Landscape Conservation Zone is restrictive in the density of residential development that may be allowable at the site. As mentioned, the Landscape Conservation Zone only allows a single dwelling as a discretionary use. Mr Read stated that the land is intended for residential use.
92. To address this matter, the Commission considers that there may be planning merit in rezoning the site to the Landscape Conservation Zone and inserting a SAP over a portion of the site to allow some infill development.
93. The Commission notes that most properties within the site have some form of covenant restricting the location of buildings. While consideration has been given to these restrictions, they do not form part of the planning scheme. Nevertheless, the Commission has considered these matters which are discussed below.
94. 125 Norma Street, 18 Newman Drive and 5 Zenith Court, Howrah have a covenant that states structures must not be built above a specific contour level.
95. The titles that form 100 Skyline Drive, Howrah have two forms of building area. One is related to the construction of dwellings, and another refers to the construction of other buildings.
96. The covenants are in effect a private treaty between the subdivider and landowners. The planning authority is not a party to the covenants and does not have a role in applying the requirements of the covenants.
97. The planning provisions that are part of the Natural Assets Code and Landscape Conservation Zone refer to 'building areas' in different ways.
98. The acceptable solutions related to the waterway and coastal protection area and the priority vegetation area of the Natural Assets Code require buildings and works, and the clearance of native vegetation to be within a building area on a sealed plan approved under this planning scheme. In this case, it means a sealed plan approved under the Tasmanian Planning Scheme – Clarence.
99. The acceptable solutions under clause 22.4.4 Landscape Protection of the Landscape Conservation Zone refer to building and works being located within a building area when it is shown on a sealed plan. It omits 'approved under this planning scheme'.
100. The Commission considers that the various covenants and building areas on the titles, would not be considered as building areas as identified in the acceptable solutions under either the Zone or Code provisions. That is, the works and buildings associated with the development of a dwelling would not be capable of meeting the acceptable solutions due to the nature of covenants/building areas on those titles.
101. To partially address this matter, the proposed SAP includes precincts. These precincts will enable dwellings to be built in areas that largely correspond to the building area/contour levels that are referred to in covenants. The main difference is the western part of Precinct A, which has been moved to the west in comparison with the building area in the covenant. This is to avoid and minimise adverse effects on the riparian area of the waterway that runs down to Bandicoot Reserve.

102. Within the proposed SAP, the acceptable solutions that refer to building areas would have no statutory effect. This creates an unnecessary ambiguity, as the SAP would contain provisions in relation to a specific area where titles contain covenants and building areas but these covenants cannot satisfy the acceptable solution.
103. The Commission considers that the SAP should enable the planning authority to approve the creation of building areas on a sealed plan that can provide an acceptable solution for these sections of the SAP.
104. It is proposed that the SAP substitute provisions relating to landscape protection provisions of the Landscape Conservation Zone and priority vegetation provisions of the Natural Assets Code to state that 'building and works are within a building area shown on a sealed plan that has been created after June 2024'.
105. The Commission advises that covenants on titles is a matter that the Commission cannot assess. While the Commission has tried to align the covenants with the planning scheme provisions, covenants are a matter that require addressing by landowners through a separate process.
106. In addition to clarifying the building areas, the SAP substitutes the use table in the Landscape Conservation Zone. This is because the intent of the site is for residential use. Visitor Accommodation is included as a discretionary use as it is sometimes present in residential areas.
107. The proposed density in the SAP for each precinct aligns with the values of the site. It is estimated that titles subject to the SAP could accommodate approximately one to three additional dwellings. The Commission considers that the introduction of this SAP may assist in achieving the intended outcome of the draft amendment, noting that a large portion of the site will be in the Landscape Conservation Zone without application of the SAP.
108. The Commission agrees with Mr Read that 73 Skyline Drive, Howrah should be zoned to Open Space, as the intended use of the site is for open space associated with a previous subdivision.
109. In addition, the Commission finds that 100 Skyline Drive, Howrah (folio of the Register 136183/1), which has a site area of 975m² contains similar characteristics to adjoining land in the General Residential Zone. The Commission considers that there is planning merit in rezoning the site to the General Residential Zone. The Commission includes this as a substantial modification to the draft amendment.

Regional land use strategy

110. The relevant regional land use strategy is the Southern Tasmania Regional Land Use Strategy 2010-2035, 17 May 2023 (regional strategy).
111. In his statement, Mr Read considered that the site is appropriate for the Low Density Residential Zone, and that being in this zone does not conflict with the regional strategy.
112. Particularly, Mr Read considered that the Low Density Residential Zone meets the regional policies for biodiversity and geodiversity, cultural values, physical infrastructure, and settlement and residential development as follows:
 - The Low Density Residential Zone would provide for low rather than higher density development;
 - Dr Barnes identified that there is limited threatened vegetation, flora and fauna species at the site. Furthermore, he suggested that the vegetation at the site is not of local significance and therefore the priority vegetation area overlay shouldn't apply to those areas;

- The Natural Assets Code will apply to subdivision under the Low Density Residential Zone;
- Existing controls under the Low Density Residential Zone are appropriate for managing future development on the slopes of Knopwood Hill and Glebe Hill. Furthermore, the site is below the upper slopes, ridgeline and skyline;
- Retaining the Low Density Residential Zone will maximise use of existing infrastructure;
- The site is entirely within the Urban Growth Boundary. This boundary has been mapped on the basis of known constraints. It is therefore the expectation that the site be developed; and
- The site is suitable for the Low Density Residential Zone rather than the General Residential Zone due to the site constraints.

113. In relation to the Water Resources regional policies, at the hearing the Commission heard from parties about the importance of the riparian area of the waterway that runs down to Bandicoot Reserve. Mr North identified this area as being important for eastern barred bandicoot habitat.

Commission consideration

114. The Commission notes the opinions of Mr Read and make the following further observations.

115. Regional policy BNV 1.4 of the regional strategy states:

BNV 1.4 Manage clearance of native vegetation arising from use and development in a manner that is generally consistent across the region but allowing for variances in local values. (p. A-1)

116. The Commission finds that if the site was to be zoned the Low Density Residential Zone, no provisions would apply to the site to manage the clearance of native vegetation from use and development. This is predominantly due to the operation of the Natural Assets Code, which as identified by Mr Read only applies to the Low Density Residential Zone if subdivision is proposed.

117. Regional policy WR 1.3 of the regional strategy states:

WR 1.3 Include buffer requirements in the planning scheme to protect riparian areas relevant to their classification under the Forest Practices System. (p. A-3)

118. The Commission finds that in addition to the riparian area (gully) of the site being important habitat for eastern barred bandicoots, it is also identified as a tributary watercourse. The Commission considers that this watercourse requires protection through the planning scheme by applying a buffer zone of 20m.

119. The Commission finds that applying the waterway and coastal protection area overlay to the watercourse may provide this protection.

120. Regional policy PI 1.1 of the regional strategy states:

PI 1.1 Preference growth that utilises under-capacity of existing infrastructure through the regional settlement strategy and Urban Growth Boundary for metropolitan area of Greater Hobart. (p. A-14)

121. The site is fully serviced with existing infrastructure in the immediate area. The Commission considers that rezoning the site to the Landscape Conservation Zone without specific provisions would be inconsistent with the regional strategy for Physical Infrastructure. This is

due to the lack of infill development that could occur in areas capable of accommodating additional dwellings.

122. Regional policy LUTI 1.1 of the regional strategy states:

LUTI 1.1 Give preference to urban expansion that is in physical proximity to existing transport corridors and the higher order Activity Centres rather than Urban Satellites or dormitory suburbs. (p. A-15)

123. While public transport is not located in the road network near the site, it is located near an existing transport corridor, being the South Arm Highway. The site is also close to the Howrah and Rosny Park activity centres.

124. Regional policy SRD 1.6 of the regional strategy states:

SRD 1.6 Utilise the Low Density Residential Zone only where it is necessary to manage land constraints in settlements or to acknowledge existing areas. (p. A-25)

125. As stated above, the Low Density Residential Zone can be applied where land constraints are present. The site contains constraints such as the access to internal lots and the topography. However, as identified by experts engaged by the Howrah Hills Landcare Group and MS Cas Pty Ltd, the site contains natural and visual values that require protecting.

126. In this scenario, the Commission considers that neither the Landscape Conservation Zone nor Low Density Residential Zone is appropriate for the site without specific provisions added.

127. Regional policy SRD 2.1 of the regional strategy states:

SRD 2.1 Residential growth for Greater Hobart is to occur through 50% infill development and 50% greenfield development. (p. A-26)

128. As identified by Mr Read, the site is within the Urban Growth Boundary of the regional strategy. If considering this regional policy in isolation, the General Residential Zone may be suitable for the site. However, if the regional strategy is considered in its entirety and as identified above there are natural and visual values that require protecting.

129. The Commission finds that rezoning the site to the Landscape Conservation Zone is not, as far as practicable, consistent with the regional strategy. This is because it fails to allow residential infill development in appropriate locations at the site, which is in a well serviced area within the Urban Growth Boundary.

130. It further considers that the Low Density Residential Zone is not, as far as practicable, consistent with the regional strategy. This is because this zone fails to provide for natural and visual values to be assessed under the scheme provisions.

131. The Commission finds that there may be planning merit in making modifications to the draft amendment to meet the regional strategy objectives. These modifications include rezoning the site to the Landscape Conservation, General Residential and Open Space zones, applying the waterway and coastal protection area overlay, and the priority vegetation area overlay, and inserting a SAP to a portion of the site to allow infill development. These matters are discussed in various sections above.

State Policies

132. The Commission finds that the *State Coastal Policy 1996* and *State Policy on Water Quality Management 1997* apply to the site. The Commission considers that the draft amendment is consistent with these State Policies.

Resource Management and Planning System Objectives

133. The Commission considers that the draft amendment, as certified, does not further the Objectives set out in Schedule 1 of the Act when read in its entirety. Rather, the draft amendment satisfies some individual Objectives.
134. To address this, the Commission modifies the draft amendment for the reasons mentioned above. By modifying the draft amendment, the Commission considers that the amendment may further the Objectives as follows.
135. Applying the Landscape Conservation Zone to the site allows each title to apply for a single dwelling, should they wish to use the site for residential purposes. Areas within each title that are identified as having capacity to accommodate additional dwellings are included in the proposed SAP. When choosing these areas, an in-depth review of the site was undertaken. This included specific consideration on the values of the land and the information provided by experts. The modification would allow some infill development in an accessible area that is in a well serviced location. This may further Objectives Part 1 (b) and (d), and Part 2 (a) of the Act.
136. In addition, the Commission considers that the application of the priority vegetation area overlay to reflect the experts findings, and the waterway and coastal protection overlay to the existing waterway may be appropriate in assisting to protect the natural values of the site. The Commission considers that this may further Objective 1 (a) of the Act.

Modifications required to draft amendment

137. Under section 40M of the Act the Commission must consider whether modifications to a draft amendment of an LPS ought to be made.
138. It was identified through submissions and discussions at the hearing that the provisions under the SPPs are not adequate in addressing the natural and visual values of the site, while allowing some infill residential development.
139. To address this matter, the Commission prepared a direction that provided modifications to the draft amendment for review by all parties. The proposed modified draft amendment comprised of the following changes.
 - A. Zone the following properties to Landscape Conservation:
 - 125 Norma Street, Howrah;
 - 18 Newhaven Drive, Howrah;
 - 5 Zenith Court, Howrah;
 - 100 Skyline Drive, Howrah, except folio of the Register 136183/1;
 - 60A Skyline Drive, Howrah;
 - 60B Skyline Drive, Howrah;
 - 60C Skyline Drive, Howrah; and
 - 46 Skyline Drive, Howrah.
 - B. Zone 73 Skyline Drive, Howrah to the Open Space Zone.
 - C. Zone 100 Skyline Drive, Howrah (folio of the Register 136183/1) to the General Residential Zone.
 - D. Apply the Priority Vegetation Area overlay to portions of the following properties:

- 125 Norma Street, Howrah;
 - 5 Zenith Court, Howrah;
 - 100 Skyline Drive, Howrah;
 - 73 Skyline Drive, Howrah;
 - 60A Skyline Drive, Howrah;
 - 60B Skyline Drive, Howrah;
 - 60C Skyline Drive, Howrah; and
 - 46 Skyline Drive, Howrah.
- E. Apply the Waterway and Coastal Protection Area overlay to the following properties:
- 100 Skyline Drive, Howrah (folios of the Register 136183/5, 6, 7);
 - 73 Skyline Drive, Howrah; and
 - 5 Orford Court, Howrah.
- F. Insert C23.0 Howrah Hills Specific Area Plan to the Clarence Local Provisions Schedule.
140. Under section 32(4) of the Act, an LPS may only include a specific area plan 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.
141. The Commission considers that a SAP at the site is consistent with section 32(4)(b) of the Act for the following reasons.
142. The Commission considers that the site has significant qualities as it:
- holds visual landscape values that are visible, particularly the western side of the Derwent River. Much of these visual landscape values are in relation to the topography of the site, being on the mid-slopes of Knopwood Hill, and the dense vegetation found on undeveloped portions of the site. In addition, the site contains an existing development footprint to allow for an increase in dwellings. To retain both the values of the site and the additional dwellings, specific provisions are required;
 - contains significant threatened flora species and locally significant vegetation communities; and
 - is within the Urban Growth Boundary of the regional strategy and close to urban services.
143. The Commission considers that the Low Density Residential Zone provisions allowed for a density too high for the area, and that the Landscape Conservation Zone did not allow for multiple dwellings.
144. As the SPPs do not provide standards that can adequately address the values of the site, a SAP is appropriate to provide unique provisions specific to the site. For this site, the unique provisions are to allow multiple dwellings at the site while protecting natural and visual values. The provisions were drafted based on agreed evidence between experts, which

concluded that while the site contains natural and visual values, some additional development could be accommodated.

145. The hearing was reconvened to discuss the proposed modifications, where it was considered by parties professionally represented that the modifications proposed would result in a substantial modification to the draft amendment. The Commission agrees with the parties that these modifications are substantial.
146. Due to this, the Commission substantially modifies the draft amendment and notifies the planning authority under section 40N(d) of the Act. The Commission requests the planning authority to place to substantially modified draft amendment on exhibition under section 40H of the Act.

Decision on draft amendment

147. The Commission considers that there may be planning merit in the modifications listed above.
148. The Commission substantially modifies the draft amendment under section 40N(1)(d) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A.

Attachments

Annexure A – Substantially modified amendment

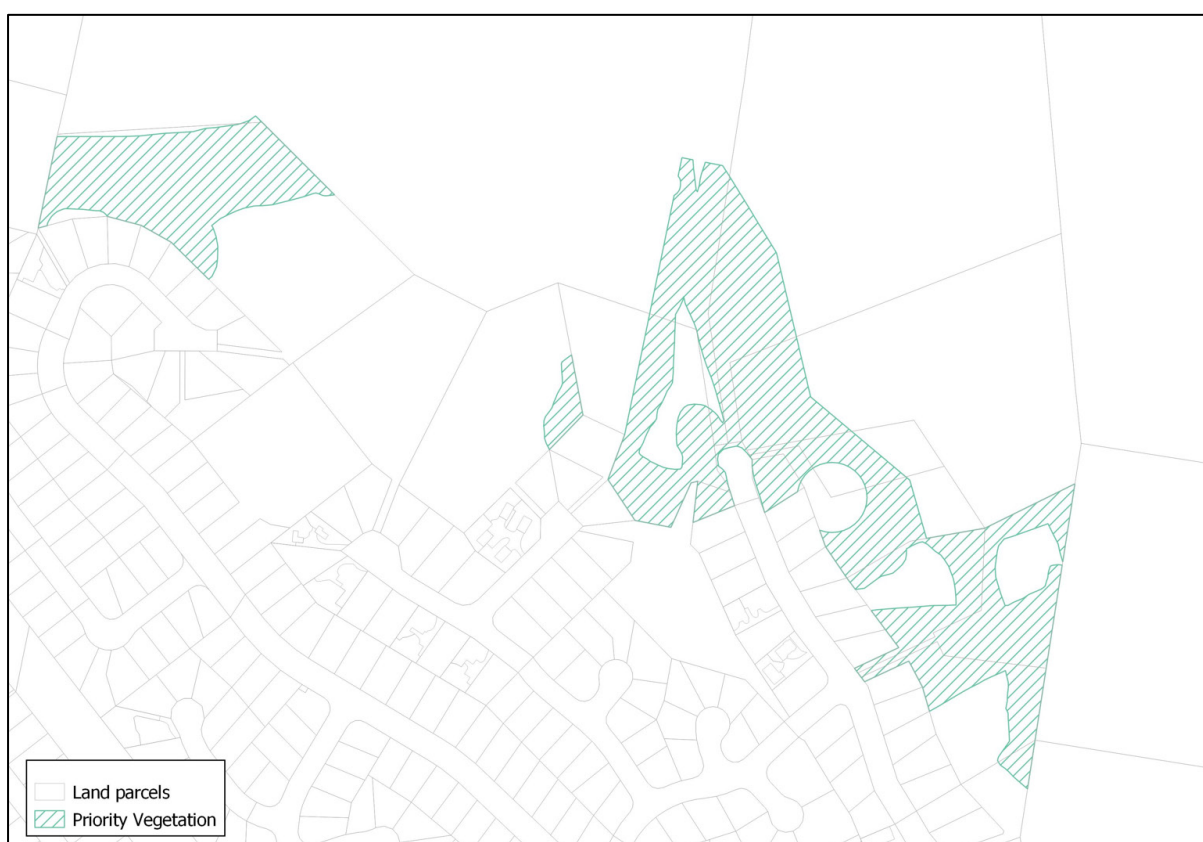
Annexure A

Substantially modified amendment PDPSAMEND-2021-022802 to the Tasmanian Planning Scheme – Clarence.

1. Zone the following properties to the Landscape Conservation Zone, as shown below:
 - 125 Norma Street, Howrah (folio of the Register 26606/146);
 - 18 Newhaven Drive, Howrah (folio of the Register 26629/145);
 - 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/2, 3, 4, 5, 6, & 7);
 - 46 Skyline Drive, Howrah (folio of the Register 48113/13);
 - 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - 60C Skyline Drive, Howrah (folio of the Register 136183/11).
2. Zone 100 Skyline Drive, Howrah (folio of the Register 136183/1) to the General Residential Zone, as shown below.
3. Zone 73 Skyline Drive, Howrah (folio of the Register 136183/8) to the Open Space Zone, as shown below.



4. Apply the priority vegetation area overlay of the Natural Assets Code to portions of the following properties, as shown below:
- 125 Norma Street, Howrah (folio of the Register 26606/146);
 - 5 Zenith Court, Howrah (folio of the Register 26629/144);
 - 100 Skyline Drive, Howrah (folios of the Register 136183/1, 2, 3, 4, 5, 6 & 7);
 - 73 Skyline Drive, Howrah (folio of the Register 136183/8);
 - 46 Skyline Drive, Howrah (folio of the Register 48113/13);
 - 60A Skyline Drive, Howrah (folio of the Register 104949/6);
 - 60B Skyline Drive, Howrah (folio of the Register 104949/5); and
 - 60C Skyline Drive, Howrah (136183/11).



5. Apply the Waterway and Coastal Protection Area overlay of the Natural Assets Code to portions of the following properties, as shown below:

- 100 Skyline Drive, Howrah (folios of the Register 136183/5, 6 and 7);
- 73 Skyline Drive, Howrah (folio of the Register 136183/8); and
- 5 Orford Court, Howrah (folio of the Register 28383/301).



6. Insert CLA-S23.0 Howrah Hills Residential Specific Area Plan, as follows.

CLA-S23.0 Howrah Hills Residential Specific Area Plan

CLA-S23.1 Plan Purpose

CLA-S23.1.1 The purpose of the Howrah Hills Residential Specific Area Plan is to protect the natural and scenic values of the Howrah Hills while allowing low density residential infill.

CLA-S23.2 Application of this Plan

CLA-S23.2.1 This specific area plan applies to the areas of land designated as the Howrah Hills Residential Specific Area Plan on the overlay maps.

CLA-S23.2.2 In the area of land to which this plan applies, the provisions of the specific area plan are in substitution, modification, or addition to the provisions of the Landscape Conservation Zone, as specified in the relevant provision.

CLA-S23.3 Local Area Objectives

CLA-S23.3.1 Local Area Objectives

Sub-clause	Area description	Local Area Objective
CLA-S23.3.1.1	Precinct A within the area shown on an overlay map as CLA-S23.2.1.1 and shown as A in Figure CLA-S23.1.	The local area objectives for Precinct A are to: (a) Facilitate residential development that conserves the visual landscape values of the mid-slopes of Howrah hills. (b) Allow for a low density and scale of residential infill development in a visually sensitive location within an existing modified landscape.
CLA-S23.3.1.2	Precinct B within the area shown on an overlay map as CLA-S23.2.1.1 and shown as B in Figure CLA-S23.1.	The local area objective for Precinct B is to allow for a low density and scale of residential infill development that acts as a transition area between the existing Howrah urban residential area and native bushland on Howrah hills.

CLA-S23.4 Definition of Terms

This sub-clause is not used in this specific area plan.

CLA-S23.5 Use Table

This use table is in substitution of clause 22.2 of the Landscape Conservation Zone.

Use class	Qualification
No Permit Required	
Natural and Cultural Values Management	
Passive Recreation	
Permitted	

Residential	If for: (a) a home-based business; (b) a single dwelling, with all roofed buildings located within Precincts A or B; or (c) multiple dwellings, with all roofed buildings located within Precincts A or B.
Utilities	If for minor utilities.
Discretionary	
Residential	If for a single dwelling.
Utilities	If not listed as Permitted.
Visitor Accommodation	
Prohibited	
All other uses	

CLA-S23.6 Development Standards for Dwellings

CLA-S23.6.1 Residential density for multiple dwellings

This clause is in addition to clause 22.4 of the Landscape Conservation Zone.

Objective:	That the density of multiple dwellings: (a) is appropriate for the natural and visual values of Howrah Hills; and (b) provides for low density residential infill development.	
Acceptable Solutions	Performance Criteria	
A1 Within a site the maximum density of multiple dwellings must be 3,000m ² per dwelling in Precinct A and 2,000m ² per dwelling in Precinct B.	P1 No Performance Criterion.	

CLA-S23.6.2 Site coverage

This clause is in substitution of clause 22.4.1 of the Landscape Conservation Zone.

Objective:	That the site coverage is compatible with the protection, conservation and management of the landscape values of the site and surrounding area.	
Acceptable Solutions	Performance Criteria	
A1 Site coverage for uses other than multiple dwellings must not be more than 350m ² .	P1 Site coverage must be compatible with the landscape values of the site and surrounding area, having regard to: (a) the topography of the site; (b) the capacity of the site to absorb run-off;	

	<ul style="list-style-type: none"> (c) the size and shape of the site; (d) the existing buildings and any constraints imposed by existing development; (e) the need to remove vegetation; (f) the location of development in relation to cleared areas; and (g) the location of development in relation to natural hazards.
<p>A2 Site coverage for multiple dwellings must be not more than:</p> <ul style="list-style-type: none"> (a) 600m² for two dwellings, plus an additional 250m² for each additional dwelling where the site does not contain an existing dwelling; or (b) 250m² for each additional dwelling where a site contains an existing single dwelling. 	<p>P2 Site coverage must no more than 20% greater than the area required by the acceptable solution and be compatible with the landscape values of the site and surrounding area, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) the capacity of the site to absorb run-off; (c) the size and shape of the site; (d) the location and scale of existing buildings and any constraints imposed by existing development; (e) the need to remove or retain vegetation; (f) the location of development in relation to cleared areas and natural hazards; and (g) the scale, form and visibility of the development on the site.

CLA-S23.6.3 Setback

This clause is in substitution of clause 22.4.2 A2/P2 and A3/P3 of the Landscape Conservation Zone.

Objective:	That the siting of dwellings is compatible with the landscape and natural values of the site.
Acceptable Solutions	Performance Criteria
<p>A1 Buildings must have a setback from all boundaries not less than 10m.</p>	<p>P1 Building setbacks must be compatible with the landscape values of the surrounding area, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) setbacks of adjacent buildings; (c) the height, bulk and form of existing and proposed buildings; (d) the appearance when viewed from roads and public places; (e) the safety of road users; and (f) the retention of vegetation.

CLA-S23.6.4 Landscape protection

This clause is in substitution to clause 22.4.4 of the Landscape Conservation Zone.

Objective:	That the landscape values of the site and surrounding area are protected or managed to minimise adverse impacts.
Acceptable Solutions	Performance Criteria
<p>A1 Building and works are within a building area shown on a sealed plan that has been created after June 2024.</p>	<p>P1 Buildings and works must be located to minimise native vegetation removal and the impact on landscape values, having regard to:</p> <ul style="list-style-type: none"> (a) the extent of the area from which native vegetation has been removed; (b) the extent of native vegetation to be removed; (c) any remedial or mitigation measures or revegetation requirements; (d) provision for native habitat for native fauna; (e) the protection and management of native vegetation associated with the riparian area adjacent to the waterway flowing to Bandicoot Reserve; (f) the protection of patches and individual <i>Eucalyptus risdonii</i> trees; (g) the management and treatment of the balance of the site or native vegetation areas; (h) the type, size, and design of development; and (i) the landscape values of the site and surrounding area.
<p>A2 Buildings and works, for all uses excluding multiple dwellings must:</p> <ul style="list-style-type: none"> (a) be located within a building area shown on a sealed plan that has been created after June 2024; or (b) be an alteration or extension to an existing building providing it is not more than the existing building height; (c) not include cut and fill greater than 1m; and (d) be not less than 10m in elevation below a skyline or ridgeline 	<p>P2.1 Buildings and works for all uses must be located to minimise impacts on landscape values, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) the size and shape of the site; (c) the proposed building height, size and bulk; (d) any constraints imposed by existing development; (e) visual impact when viewed from roads and public places; and (f) any screening vegetation. <p>P2.2 Building and works for all uses are less than 10m in elevation below a skyline or ridgeline, unless there are no other suitable building areas.</p>

CLA-S23.6.5 Clearance within a priority vegetation area

This clause is in substitution of clause C7.6.2 of the Natural Assets Code.

Objective:	That clearance of native vegetation within a priority vegetation area: (a) does not result in unreasonable loss of priority vegetation; (b) is appropriately managed to adequately protect identified priority vegetation.
Acceptable Solutions	Performance Criteria
<p>A1 Clearance of native vegetation within a priority vegetation area must be within a building area on a sealed plan approved after June 2024.</p>	<p>P1.1 Clearance of native vegetation within a priority vegetation area must be for:</p> <ul style="list-style-type: none"> (a) an existing use on the site, provided any clearance is contained within the minimum area necessary to be cleared to provide adequate bushfire protection, as recommended by the Tasmania Fire Service or an accredited person; (b) buildings and works associated with the construction of a single dwelling, multiple dwellings or an associated outbuilding on the site; (c) use or development that will result in significant long term social and economic benefits and there is no feasible alternative location or design; (d) clearance of native vegetation where it is demonstrated that on-going pre-existing management cannot ensure the survival of the priority vegetation and there is little potential for long-term persistence; or (e) the clearance of native vegetation that is of limited scale relative to the extent of priority vegetation on the site. <p>P1.2 Clearance of native vegetation within a priority vegetation area must minimise adverse impacts on priority vegetation, having regard to:</p> <ul style="list-style-type: none"> (a) the design and location of buildings and works and any constraints such as topography or land hazards; (b) any particular requirements for the buildings and works; (c) minimising impacts resulting from bushfire hazard management measures through siting and fire-resistant design of habitable buildings; (d) any mitigation measures implemented to minimise the residential impacts on priority vegetation;

	<p>(e) any on-site biodiversity offsets; (f) any existing cleared areas on the site; (g) the protection and management of native vegetation associated with the riparian area adjacent to the waterway flowing to Bandicoot Reserve; and (h) the protection of patches and individual <i>Eucalyptus risdonii</i> trees.</p>
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Figure CLA-S23.1 Howrah Hills Residential Specific Area Plan

