

13.1 PSA-2021-1: PROPOSED AMENDMENT TO THE KINGBOROUGH INTERIM PLANNING SCHEME 2015 - REZONING FROM RURAL RESOURCE ZONE TO ENVIRONMENTAL LIVING ZONE AT 2015 AND 2187, BRUNY ISLAND MAIN ROAD, GREAT BAY.

File Number: PSA-2021-1
Author: Adriaan Stander, Strategic Planner
Authoriser: Tasha Tyler-Moore, Manager Development Services

EXECUTIVE SUMMARY

Applicant: PDA Surveyors
Owners: 2015 Bruny Island Main Road – Erhard Vinkman
 2187 Bruny Island Main Road – Bob Elliston
Zoning: Rural Resource Zone
The purpose: The purpose of this report is to consider an application made for a planning scheme amendment to rezone land located at 2015 and 2187, Bruny Island Main Road, Great Bay from the Rural Rezone Zone to the Environmental Living Zone. The intention of the rezoning is to align the zoning with the current land use practises in the area and also to facilitate a three-lot subdivision (creating 2 new lots) at 2015 Bruny Island Main Road under DAS-2021-3.
Representations: This report is pre-public exhibition, and therefore the proposed amendment has not been advertised yet. Draft amendments are advertised for a minimum period of 28 days for public comment following initiation by the Planning Authority. Another report will be presented to Council after the exhibition period to consider any representations received.
Summary of assessment: The application meets all the considerations required under the *Land Use Planning and Approvals Act 1993* and is recommended for approval.
Recommendation: That Council resolves to initiate Amendment PSA-2021-1 to the *Kingborough Interim Planning Scheme 2015*.

1. INTRODUCTION

- 1.1 Council is in receipt of an application by PDA Surveyors on behalf of Erhard Vinkman and Bod Elliston to amend the *Kingborough Interim Planning Scheme 2015* (KIPS 2015) in accordance with section 33(1) of the former provisions of the *Land Use Planning and Approvals Act 1993* (LUPAA). The application is to rezone land located at 2015 and 2187, Bruny Island Main Road, Great Bay from the Rural Resource Zone to the Environmental Living Zone.
- 1.2 The intention of the rezoning is to align the zoning with the current land use practises in the area and also to facilitate a three-lot subdivision (creating 2 new lots) at 2015 Bruny Island Main Road under development application (DAS-2021-3).

- 1.3 The application was submitted under section 43A of the former provisions of the *Land Use Planning and Approvals Act 1993* (LUPAA). These provisions provide a mechanism for the planning authority to consider an application for a combined permit for a use or development that cannot be approved unless the planning scheme is amended. The application for rezoning (this application) must therefore be approved for the subdivision application under DAS-2021-2 to proceed.

2. SITE AND CONTEXT

- 2.1 The subject site is located on North Bruny Island, on the southern side of the Bruny Island Main Road, halfway between the Blyth Parade and Bruny Island Neck. The subject land consists of two lots with a combined area of approximately 127ha and is zoned Rural Resource. Bruny Island Honey is located to the north of the site, opposite Bruny Island Main Road. The two properties are separated by a carpark and access strip to the Cape Queen Elizabeth Walking Track, located to the south.

Figure 1. Locality map



- 2.2 The eastern side of 2015 Bruny Island Main Road (CT 46800/1) contains relatively steep forested land with a westerly aspect, including areas of threatened silver peppermint (*Eucalyptus tenuiramis*) forest on mudstone (DTO). The balance of the property is very flat land and contains a mix of exotic pasture, coastal scrub and *Eucalyptus amygdalina* coastal forest and woodland. This vegetation is contiguous with, and provides a buffer to, Bruny

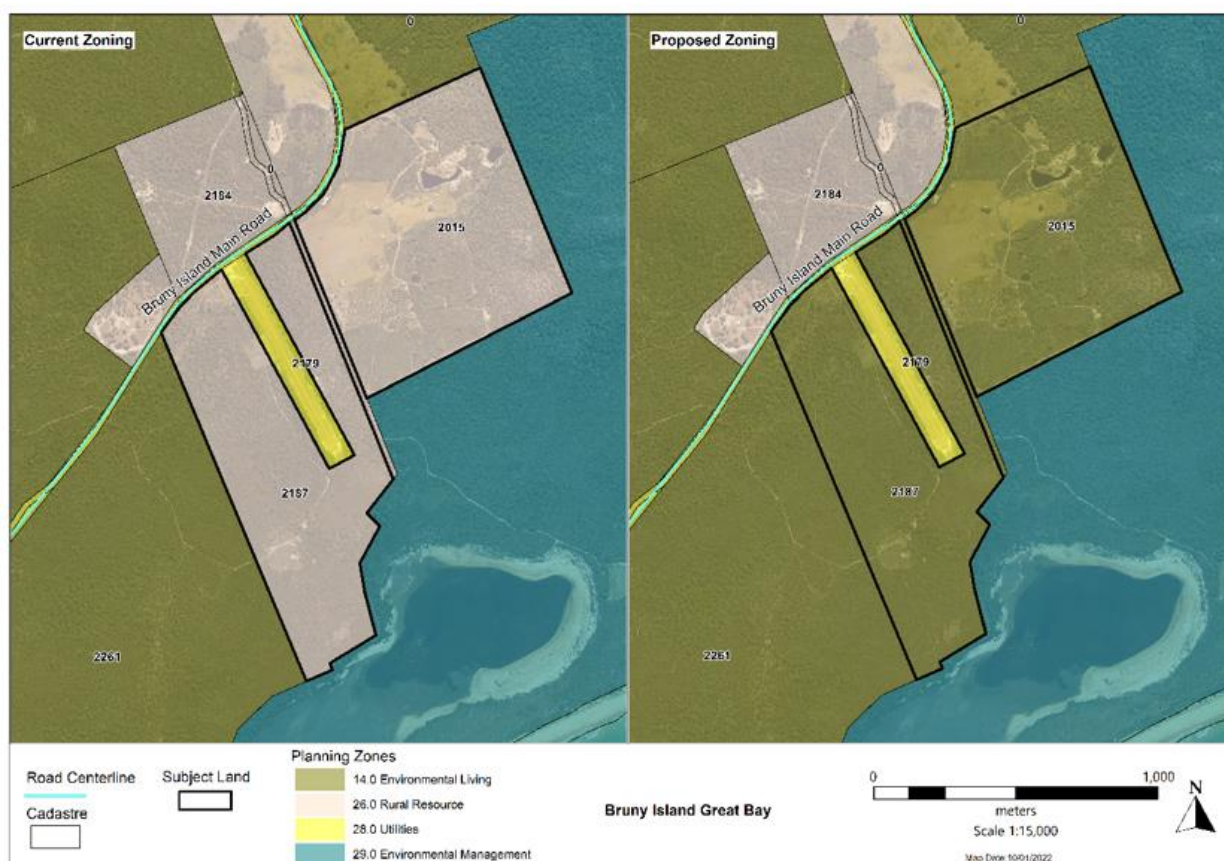
Island Neck Game Reserve. There is an existing dwelling and large dams on the north-eastern side of the property. The current land use could be described as 'hobby-farming', with small numbers of goats, pigs and emus being farmed in fenced paddocks.

- 2.3 2187 Bruny Island Road (CT 167611/2) wraps around the Great Bay Airstrip. The north-west of the property was managed as pasture in the past and is currently occupied by a mix of exotic pasture and regenerating cleared land. The eastern edge of the property contains healthy mature forest, including areas of endangered black gum (*E. ovata*) forest. The balance of the property contains a mix of coastal woodland, scrub, heath and wetlands. The current land use is as a 'private reserve' for the purposes of nature conservation and recreation.

3. PROPOSAL IN DETAIL

- 3.1 The proposed rezoning from the Rural Resource Zone to the Environmental Living Zone is depicted in Figure 2. A copy of the application is provided in Annexure 1.

Figure 2 – Proposed rezoning



- 3.2 The proponent has put forward the following justification for the proposed zoning change:

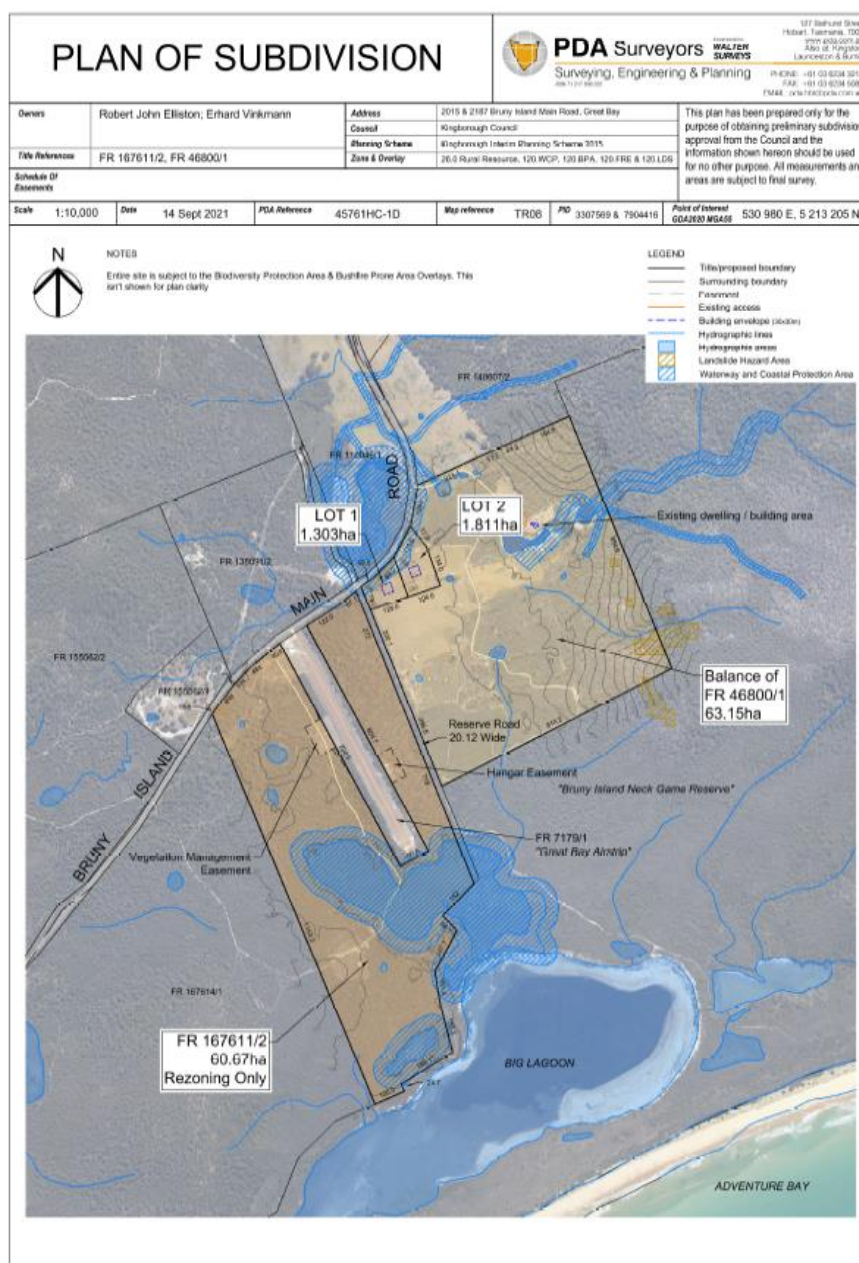
The subject land is poorly suited to agricultural pursuits. This is well understood by the current owners, whose long association with their respective blocks has included attempts at farming which have yielded poor economic returns and resulted in degraded environmental and landscape values. As a result, one of the blocks is currently managed as an informal private reserve and the other could be characterised as a large 'hobby farm'.

The current Rural Resource zoning for the subject land looks somewhat incongruous in the context of surrounding land (which is mostly zoned Environmental Living). An analysis of the zone mapping guidelines applied in implementation of the current Scheme reveals that the zoning for the subject land was dictated primarily by 'like-for-like' considerations and

relatively arbitrary decision points around the scale of the property, relative percentages of cleared land and bushland and the perceived priority of any natural/landscape values present.

- 3.3 The proposal also involves application for subdivision (DAS-2021-3). The subdivision application seeks a 3-lot subdivision of 2015 Bruny Island Main Road, creating 2 new lots (Lot 1 of 1.303ha and Lot 2 of 1.811ha) and a balance lot of 63.15ha. The proposed subdivision plan is provided in Figure 3. The new lots are provided with a relatively small building envelopes to accommodate future dwellings. Access to the lots will be off Bruny Island Main Road.
- 3.4 A detailed assessment of the subdivision application is provided under a separate report to Council for consideration, however it is worth noting that the proposed subdivision application is recommended for approval as is it able to meet all the relevant subdivision provisions of the Environmental Living Zone. As previously mentioned before, the subdivision can only proceed if the proposed rezoning to the Environmental Zone is approved.

Figure 3 – Proposed subdivision under DAS-2021-3



4. ASSESSMENT

- 4.1 The planning report submitted by PDA surveyors (dated 20 Sept 2021) is supported with the following supplementary documents:
- Land Capability Assessment by Enviro-Dynamics (dated March 2020)
 - Bushfire Hazard Report by Enviro-Dynamics (Version 1.1, dated Sept 2021)
 - Traffic Impact Assessment; and
 - Natural Values Assessment, by Enviro-Dynamics (Version 1.1, dated Sept 2021)
- 4.2 The application to amend the planning scheme has been assessed by having regard to the following:
- Existing situation under the Kingborough Interim Planning Scheme 2015;
 - Proposed situation under the Kingborough Interim Planning Scheme 2015;
 - Alignment with the Kingborough Draft Local Provision Schedule;
 - Compatibility with surrounding zoning and land uses.
 - Environmental impacts;
 - Infrastructure and service provision;
 - Strategic alignment, with particular reference to the consistency of the proposal with the *Southern Tasmania Regional Land Use Strategy 2010-2035*, *Kingborough Land Use Strategy 2019* and *Council's Strategic Plan 2015-2025*; and
 - Statutory compliance with the requirements of the former provisions of LUPAA and state policies.

Existing situation under the Kingborough Interim Planning Scheme 2015

- 4.3.1 The subject land is currently zoned Rural Resource. This zone is generally applied to land outside the main settlements that is suitable for broad scale agricultural purposes. Some activities, other than agriculture, can occur in this zone, but these uses must be compatible with primary industry activities, environmental and landscape values.
- 4.3.2 The application indicates that the subject land is poorly suited to agricultural pursuits and that past attempts at farming have yielded poor economic returns and resulted in degraded environmental and landscape values. As a result, one of the blocks is currently managed as an informal private reserve and the other could be characterised as a large 'hobby farm'. The Land Capability Report submitted with the application considers the limitations to sustainable agricultural use of the land, including soil quality and depth, the risk of erosion or other hazards, water security, climate change and topography. The land is identified as Class 6 in terms of its capability for agricultural pursuits which in simple terms means that the land that is 'marginally suited to grazing due to severe limitations.'
- 4.3.3 Due to size of the lots, subdivision under the current zoning is not possible as a minimum lot size requirement of 40 hectares applies (to clarify, each lot must be at least 80 hectares to be subdivided).

Proposed situation under the Kingborough Interim Planning Scheme 2015

- 4.3.4 The proposal is to rezone the land to Environmental Living. The Environmental Living Zone mainly provides for residential options in rural areas and is generally applied to un-serviced, residential 'bush blocks' that contain native vegetation. This vegetation contributes to overall biodiversity and/or landscape values (that may not be otherwise reserved or protected). Some activities, other than residential, can occur in this zone, but these uses must be compatible with the rural residential amenity and respect the environmental values present.

- 4.3.5 The Natural Values Report submitted with the application indicates that the land contains environmental and landscape assets that are worthy of being protected. The proposed rezoning has the potential to deliver a significant net conservation gain through application of Clause 14.5.1 P1 (c) and (d) of the Kingborough interim Planning Scheme 2015. In short, those provisions require that when a subdivision is proposed in the Environmental Living Zone, it must provide a net conservation benefit through mechanisms on titles that manage natural values on private land outside those areas required for building areas, private open space and bushfire protection measures. The application for subdivision has demonstrated that this is possible for 2015 Bruny Island Main Road, and this is discussed in more detail in the associated subdivision report.
- 4.3.6 The subdivision provisions of the Environmental Living Zone allow for 1 lot per 20 hectares. The subdivision application under DAS-2021-3 will create two additional lots at 2015 Bruny Island Main Road. In this context, the creation of smaller environmental living lots is not incongruous and could support a range of uses compatible with the emerging character of the area, including residences, holiday homes, accommodation for workers in nearby businesses, home-based businesses or visitor accommodation whilst still providing a net conservation benefit as explained above. While no subdivision is proposed for 2187 Bruny Island Main Road as part of DAS-2021-3, there is also the potential for two additional lots on this title under Clause 14.5.1 P1 (a), subject to compliance with all other relevant subdivision standards.

Alignment with Kingborough Draft Local Planning Provision Schedule

- 4.3.7 The Rural Resource Zone will cease to exist under the Tasmanian Planning Scheme. For this reason, Council had to consider a similar zone for the land, being the Rural Zone. The Rural Zone under the Tasmanian Planning Scheme will not allow subdivision of the land. If the proposed rezoning to the Environmental Living is approved, the Landscape Conservation Zone will be applied to the land when the Tasmanian Planning Scheme comes into force for Kingborough.
- 4.3.8 The subdivision provisions under the Landscape Conservation Zone of the Tasmanian Planning Scheme will allow 1 lot per 40 hectares as the acceptable solution. Subdivision to 20ha is possible under the performance criteria subject to compliance with the relevant criteria. Therefore, the maximum number of lots possible under the LPS is consistent with the number of lots possible under KIPS 2015. However, KIPS 2015 provides for variation in lot sizes, clustering of lots and ensures a net conservation outcome, whereas the LPS requires 20-hectare minimum lot sizes without clustering or requiring a net conservation outcome.

Compatibility with surrounding zoning and land uses

- 4.3.9 In order to minimise land use conflicts, isolated amendments to the planning scheme or 'spot-rezonings' are generally not encouraged, however the proposed rezoning of the land to the Environmental Living Zone is considered a logical extension of the adjoining Environmental Living Zone and will also facilitate development that is compatible existing land use practices in the area.
- 4.3.10 While the proposed rezoning may facilitate residential development outside settled areas, the additional two lots proposed at this location is not incongruous. The proposal meets environmental, conservation and resource management imperatives without significantly altering or affecting settlement patterns on the island.

Consideration of environmental impacts

- 4.3.11 The eastern side of 2015 Bruny Island Main Road contains relatively steep forested land with a westerly aspect, including areas of threatened silver peppermint (*Eucalyptus tenuiramis*) forest on mudstone. The balance is very flat land and contains a mix of exotic pasture and coastal scrub. The proposal will contribute to the protection of large areas of

native vegetation containing both threatened vegetation communities and threatened species habitat, including the forty-spotted pardalote, swift parrot and other hollow dwelling bird species. This vegetation is also contiguous with and provides an important buffer to the Bruny Island Neck Game Reserve. Given the location and extent of existing cleared and regenerating land, combined with the existing approved dwelling and associated hobby farm infrastructure, there is ample opportunity for future use and development compatible with the Environmental Living zone negligible impacts on environmental values.

- 4.3.12 2187 Bruny Island Main Road is predominantly native vegetation with healthy mature forest, including areas of endangered black gum (*E. ovata*) forest and a mix of coastal woodland, scrub, heath and wetlands. Areas of regenerating cleared land provide opportunities for future development compatible with the Environmental Living zone to be located with minimal impact environmental values.
- 4.3.13 The proposed Environmental Living zoning will provide increased protection of biodiversity values which is likely to reduce threats to significant values on the subject land, whereas the current Rural Resource zoning may invite agricultural aspirations which may increase threats. The associated subdivision application, if approved and acted upon, will facilitate a Part 5 Agreement which will be attached to title of 2015 Bruny Island Main Road to protect the environmental values of the land into perpetuity.

Infrastructure and service considerations

- 4.3.14 One of the key considerations with planning scheme amendments is the impact a proposal has on existing infrastructure and the ability of existing networks to cope with increased demands. There is a steady albeit limited demand for additional residential development on Bruny Island however this is constrained because of the limited capacity of Bruny Island to accept many more tourists or residents. There are no reticulated water or sewerage services on Bruny Island. All dwellings and businesses rely on tank water for their domestic water supplies. Similarly, all dwellings and businesses rely on the on-site treatment and disposal of wastewater.
- 4.3.15 The proposed rezoning and associated subdivision application will facilitate two additional lots. If the subdivision application is approved, the planning permit will have a set of approval conditions to ensure that the development complies with all relevant subdivision and infrastructure requirements.

Strategic alignment

- 4.3.16 The [Southern Tasmania Regional Land Use Strategy 2010-2035 \(STRLUS\)](#) has been implemented to provide guidance and direction for future development and use in the southern region. The STRLUS contains a number of regional policies that are in place to support strategic directions for the southern region. The applicant has provided a detailed response to each of the relevant policy directions. The proposal meets all the relevant policy outcomes sought and is therefore considered consistent with the overarching strategic planning directions of this strategy.
- 4.3.17 The [Kingborough Land Use Strategy, dated May 2019](#) provides the justification for the way that land is to be zoned in the planning scheme and provides the necessary background to assist in the assessment of future planning scheme amendment applications. The applicant has provided a detailed response to how the proposal aligns with the land use strategy, in particular how it will retain and protect the natural and landscape values of Bruny Island.
- 4.3.18 The [Kingborough Council Strategic Plan 2020-2025](#) provides the direction for the future delivery of services by Kingborough Council, which influence the quality of life for residents and businesses. The proposal aligns with the strategic plan, specifically those strategic outcomes that seek to improve environmental assets whilst facilitating development outcomes.

Statutory requirements

4.3.19 Pursuant to section 32(1) of the former provisions of LUPAA, a draft amendment of a planning scheme must address the following:

4.3.19.1 Section 32(e) of the former provisions of LUPAA requires that planning scheme amendments must avoid the potential for land use conflicts in adjacent planning scheme areas. The proposed rezoning will result in an extension of the Environmental Living Zone which will allow for development outcomes consistent with existing land practises in the area. Land use conflicts are therefore unlikely to occur. Even though the zoning change will result in the potential to subdivide, the associated development application for subdivision will only create 2 additional lots with building envelopes for future dwellings. The location of the building envelopes will assist in reducing the risk of potential land use conflicts.

4.3.19.2 Section 32(ea) of the former provisions of LUPAA requires that planning scheme amendments must not conflict with the requirements of section 30O of the former provisions of LUPAA. In turn, Section 30O of the former provisions of LUPAA requires that an amendment to an interim planning scheme must as far as practicable be consistent with the regional land use strategy. Strategic alignment with the *Southern Tasmania Regional Land Use Strategy* is addressed in clause 4.2.16 of this report. The proposal is aligned with the strategic outcomes sought.

4.3.19.3 Section 32(f) of the former provisions of LUPAA requires that planning scheme amendments must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms. The proposed rezoning will deliver better environmental and landscape outcomes for the subject land; in doing so, the proposal is unlikely to have any negative social and economic effects and may deliver some economic benefits.

4.3.20 In addition to the above, Section 33(2B)(ab) of the former provisions of LUPAA requires that any representations made under section 30I of the former provisions of LUPAA, and any statements in a report under section 30J of the former provisions of LUPAA as to the merit of a representation, that may be relevant to the amendment application, must be considered. No representations were received during the exhibition of the Scheme which are relevant to the proposed amendment, therefore sections 30I and 30J of the former provisions of LUPAA have been satisfied.

4.3.21 LUPAA requires that planning scheme amendments must seek to further the objectives of Schedule 1 of the former provisions of LUPAA. The applicant has provided a detailed response to each of the objectives contained in Schedule 1 and an assessment of application has determined that the proposal meets all the objectives.

State Policies

4.3.22 The applicant has addressed the proposal's alignment with the *State Coastal Policy 1996*, *State Policy on Water Quality Management 1997* and *State Policy on the Protection of Agricultural Land 2009*. The proposal is not inconsistent with the outcomes sought by the relevant state policies.

Other Matters

4.3.23 Aboriginal heritage

There are four recorded Aboriginal heritage sites within 2187 Bruny Island Main Road. The four Aboriginal heritage sites were recorded in the 1980s and are part of an assessment focussed on the Bruny Island Neck Game Reserve; the freehold property

does not appear to have been comprehensively assessed. The four recorded Aboriginal heritage sites therefore are highly unlikely to reflect the full extent of Aboriginal heritage across this property. Similarly, there are no recorded Aboriginal heritage sites within 2015 Bruny Island Main Road (subject land), but this property appears to never have been assessed at all and there is thus very likely to be undetected Aboriginal heritage on this property.

The applicant advised Aboriginal Heritage Tasmania that the development areas are in close proximity to Bruny Island Main Road and are contained to land that has been previously cleared and converted to farming land with various types of livestock being run over this land at various times and has been maintained in this state for many decades. The rezoning does not involve works and the works required for the associated subdivision application, will be the new access points which are contained within the already highly disturbed road corridor of Bruny Island Main Road. As the vast majority of the land would remain undisturbed by the associated subdivision application, an Unanticipated Discovery Plan process would be appropriate given the particular circumstances.

This approach was agreed by Aboriginal Heritage Tasmania, and is to be further considered during the future development of the land should the subdivision be approved. Accordingly, an advice clause to the above effect is recommended in the associated subdivision permit if the subdivision is supported.

5. PUBLIC CONSULTATION

- 5.1 If Council initiates the proposed amendment, it must also certify the draft amendment in accordance with section 35 of the former provisions of LUPAA. Section 38 of the former provisions of LUPAA requires that the proposal be advertised for a period of between 3 weeks and 2 months, as determined by the planning authority.
- 5.2 It is proposed to publicly exhibit the planning scheme amendment for a minimum period of 28 days with notification:
 - a) on the Kingborough Council website;
 - b) twice in a newspaper circulating in the area, with one notice to be on a Saturday; and
 - c) a site notice during the public exhibition period;
 - d) in writing to owners and occupiers for the property and adjoining properties.
- 5.3 A full package of exhibition material will be made available for viewing on the Kingborough Council website and at Customer Service at the Civic Centre in Kingston and the Council Service Centre in Alonnah. This package will include:
 - Attachment 1: Submitted application;
 - Attachment 2: Instrument of Certification; and
 - Attachment 3: Draft Kingborough Interim Planning Scheme 2015
- 5.4 All attachments have been provided to Council as additional information to this report.
- 5.5 Council will review all submissions to the planning scheme amendment and report them to the Tasmanian Planning Commission. The report would include the planning authority's views on the merit of each representation, whether the amendment should be modified and the impact of the representation on the amendment.

6. CRITICAL DATES / TIME FRAMES

- 6.1 If Council supports the amendment and initiates and certifies the amendment for public exhibition, it must advise the Commission within seven days.
- 6.2 Post-public exhibition, Council has 35 days from the close of the notification period to forward its report to the Commission. The Commission may grant an extension of time if requested.
- 6.3 The Commission must complete its consideration and decision process within three months of receiving Council's report on the representations, unless an extension of time has been agreed by the Minister.
- 6.4 If the Commission approves the amendment, the amendment takes effect seven days after being signed by the Commission, unless a date is specified.

7. CONCLUSION

- 7.1 The proposal is consistent with the long-standing land use, which is best described as 'environmental living', 'rural living' or 'hobby farming'. The proposal represents a logical extension of the existing Environmental Living Zone in the area, particularly in light of the strategic imperatives for protection of natural and landscape values.
- 7.2 The application is considered to demonstrate compliance and consistency with the requirements and the considerations of the State's Land Use Planning system. On this basis, the proposed application to rezone the land to the Environmental Living Zone is supported.

8. RECOMMENDATION

That Council resolves that:

- (a) Pursuant to section 34(1) (b) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council initiates Amendment PSA-2021-1 to the *Kingborough Interim Planning Scheme 2015* as per Attachment 2.
- (b) Pursuant to section 35 of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council certifies that Amendment PSA-2021-1 to the *Kingborough Interim Planning Scheme 2015* meets the requirements of section 32 of the former provisions of the *Land Use Planning and Approvals Act 1993* and authorises the General Manager to sign the Instrument of Certification provided in Attachment 3
- (c) Pursuant to section 35(4) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council will forward a copy of the draft amendment and the Instrument of Certification to the Tasmanian Planning Commissions within 7 days of certification;
- (d) Pursuant to section 56S of the Water and Sewer Industry Act 2008, Council will refer Amendment PSA-2021-1 to TasWater; and
- (e) Pursuant to section 38 of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council will place Amendment PSA-2021-1 to the *Kingborough Interim Planning Scheme 2015* on public exhibition for a period of at least 28 days following certification.

ATTACHMENTS

1. **PSA-2021-1 - Submitted application**
2. **PSA-2021-1 - Proposed Amendment to the Kingborough Interim Planning Scheme**
3. **PSA-2021-1 - Instrument of Certification**