

SOUTHERN  
MIDLANDS  
COUNCIL



# **AGENDA**

## **ORDINARY COUNCIL MEETING**

---

Wednesday, 19<sup>th</sup> February 2020  
10.00 a.m.

Tunbridge Hall  
99 Main Street, Tunbridge

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Dear Sir/Madam

## NOTICE OF MEETING

Notice is hereby given that the next ordinary meeting of Council will be held on

**Date:** Wednesday, 19<sup>th</sup> February 2020  
**Time:** 10.00 a.m.  
**Venue:** Tunbridge Hall, 99 Main Street, Tunbridge

*The Local Government Act 1993 section 65 provides the following:*

1. *A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.*
2. *A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless –*
  - (a) *the general manager certifies, in writing –*
    - (i) *that such advice was obtained; and*
    - (ii) *that the general manager took the advice into account in providing general advice to the council or council committee; and*
  - (b) *a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.*

*I therefore certify that with respect to all advice, information or recommendation provided to the Council in or with this Agenda:*

- (1) *The advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation; and*
- (2) *Where any advice is directly given by a person who does not have the required qualification or experience, that person has obtained and taken into account in that person's general advice, the advice from an appropriately qualified or experienced person.*

***Councillors please note:***

- Representatives from the Department of State Growth & Pitt & Sherry will address Council regarding the Concept Design Report for the Blackman River Bridge at 10.15 a.m.
- Public Question Time has been scheduled for 10.30 a.m.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tim Kirkwood', written in a cursive style.

Tim Kirkwood  
**GENERAL MANAGER**

# OPEN COUNCIL AGENDA

## 1. PRAYERS

Rev Dennis Cousens to recite prayers.

## 2. ATTENDANCE

## 3. APOLOGIES

## 4. MINUTES

### 4.1 ORDINARY COUNCIL MINUTES

The Minutes (Open Council Minutes) of the previous meeting of Council held on the 22<sup>nd</sup> January 2020, as circulated, are submitted for confirmation.

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

## 4.2 SPECIAL COMMITTEES OF COUNCIL MINUTES

### 4.2.1 SPECIAL COMMITTEES OF COUNCIL - RECEIPT OF MINUTES

The Minutes of the following Special Committee of Council, as circulated, are submitted for receipt:

- Minutes – Woodsdale Hall Management Committee – 3<sup>rd</sup> February 2020.
- Minutes – Parattah Railway Station Management Committee – 30<sup>th</sup> January 2020.

### RECOMMENDATION

**THAT the minutes of the above Special Committees of Council be received.**

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     |          |              |
| Deputy Mayor E Batt |          |              |
| Clr A Bantick       |          |              |
| Clr A E Bisdee OAM  |          |              |
| Clr K Dudgeon       |          |              |
| Clr D F Fish        |          |              |
| Clr R McDougall     |          |              |

### 4.2.2 SPECIAL COMMITTEES OF COUNCIL - ENDORSEMENT OF RECOMMENDATIONS

The recommendations contained within the minutes of the following Special Committee of Council are submitted for endorsement.

- Minutes – Woodsdale Hall Management Committee – 3<sup>rd</sup> February 2020.
- Minutes – Parattah Railway Station Management Committee – 30<sup>th</sup> January 2020.

### RECOMMENDATION

**THAT the recommendations contained within the minutes of the above Special Committees of Council be endorsed.**

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     |          |              |
| Deputy Mayor E Batt |          |              |
| Clr A Bantick       |          |              |
| Clr A E Bisdee OAM  |          |              |
| Clr K Dudgeon       |          |              |
| Clr D F Fish        |          |              |
| Clr R McDougall     |          |              |

**4.3 JOINT AUTHORITIES (ESTABLISHED UNDER DIVISION 4 OF THE LOCAL GOVERNMENT ACT 1993)**

**4.3.1 JOINT AUTHORITIES - RECEIPT OF MINUTES**

The Minutes of the following Joint Authority Meetings, as circulated, are submitted for receipt:

- Southern Tasmanian Councils Authority – Minutes – Nil.
- Southern Tasmanian Councils Authority (Waste Strategy South) – Nil.

**DECISION NOT REQUIRED**

**4.3.2 JOINT AUTHORITIES - RECEIPT OF REPORTS (ANNUAL & QUARTERLY)**

Reports prepared by the following Joint Authorities, as circulated, are submitted for receipt:

- Southern Tasmanian Councils Authority – Nil.

**DECISION NOT REQUIRED**



## 5. NOTIFICATION OF COUNCIL WORKSHOPS

In accordance with the requirements of the *Local Government (Meeting Procedures) Regulations 2015*, the Agenda is to include details of any Council workshop held since the last meeting.

One workshop has been held since the last Ordinary Meeting.

A workshop was held on the 11<sup>th</sup> February 2020 at the Council Chambers, Oatlands commencing at 9.30 a.m.

Attendance: Mayor A O Green, Clrs A Bantick, K Dudgeon, D Fish and R McDougall.

Apologies: Deputy Mayor E Batt and Clr A E Bisdee OAM.

Also in Attendance: T Kirkwood and G Green.

The purpose of the workshop was to consider and discuss the following items:

### a) Climate Change

The following documents were circulated in relation to this issue:

1. Southern Midlands Council - Climate Change Action Plan (revised draft February 2020); and
2. Southern Midlands Council – Climate Change Adaptation Plan 2020 Review

Graham Green provided an overview of the amendments made to the Action Plan resulting from the initial workshop. Following this, the key components of the Climate Change Adaptation Plan were presented.

As an outcome of the workshop, it was requested that Councillors review the draft Climate Change Adaptation (as circulated) and provide any additional feedback by 3<sup>rd</sup> March 2020. This feedback will be reflected in further revisions of the Plan.

The updated Plan would then be submitted to the Council Meeting scheduled for 25<sup>th</sup> March 2020 for formal consideration by Council.

In terms of the Climate Change Action Plan, this will be put up for endorsement at a later date. In the interim a cost benefit analysis will be undertaken on some of the actions with a view to having them ready for discussion at budget workshops.

### b) High Street, Oatlands – Bus Shelter

Councillors attended an on-site inspection of the proposed site for the Bus Shelter. The main focus of the discussion was the actual siting of the Shelter, and the need to be DDA compliant. It was acknowledged that the location of the Shelter be moved slightly to the south for the following reasons:

- a) The shelter will not impact on the view of the 40 km per hour School Zone sign;
- b) Parking will be retained in the vicinity of Cellabrations and opposite the Kentish;
- c) The footpath in the proposed location warrants reconstruction as there are trip hazards associated with a previous ramped entry onto the footpath.

The footpath (including gravel edge) is approximately 2.90 metres in this location. It is proposed that the Bus Shelter be placed on the road side of the footpath which will provide protection against the prevailing weather. The footpath will then remain on the fence side of the shelter (i.e. hard-up on the school property boundary).

The shelter itself is 1.50 metres wide and to retain the minimum footpath width of 1.80 metres, the concrete pad will extend into the verge by approximately 300 mm for the length of the shelter (i.e. 3.50 metres long). At the southern side of the shelter the concrete pad will extend further into the roadway by an additional 350 mm - providing a total distance of 3.55 metres from the school boundary. The 3.55 metres is the minimum to be DDA compliant. The length of the actual Shelter (i.e. 3.50 metres) will allow for the installation of an appropriate seat and allow room for a wheelchair.

The Workshop concluded at approximately 11.50 a.m.

## RECOMMENDATION

**THAT the information be received.**

| <b>DECISION</b>     |                 |                     |
|---------------------|-----------------|---------------------|
| <b>Councillor</b>   | <b>Vote FOR</b> | <b>Vote AGAINST</b> |
| Mayor A O Green     |                 |                     |
| Deputy Mayor E Batt |                 |                     |
| Clr A Bantick       |                 |                     |
| Clr A E Bisdee OAM  |                 |                     |
| Clr K Dudgeon       |                 |                     |
| Clr D F Fish        |                 |                     |
| Clr R McDougall     |                 |                     |

## **6. COUNCILLORS – QUESTION TIME**

### **6.1 QUESTIONS (ON NOTICE)**

Regulation 30 of the *Local Government (Meeting Procedures) Regulations 2015* relates to Questions on notice. It states:

- (1) *A councillor, at least 7 days before an ordinary council meeting or a council committee meeting, may give written notice to the general manager of a question in respect of which the councillor seeks an answer at that meeting.*
- (2) *An answer to a question on notice must be in writing.*

## 6.2 QUESTIONS WITHOUT NOTICE

Section 29 of the *Local Government (Meeting Procedures) Regulations 2015* relates to Questions without notice.

It states:

**“29. Questions without notice**

(1) *A councillor at a meeting may ask a question without notice –*

- (a) of the chairperson; or*
- (b) through the chairperson, of –*
  - (i) another councillor; or*
  - (ii) the general manager.*

(2) *In putting a question without notice at a meeting, a councillor must not –*

- (a) offer an argument or opinion; or*
- (b) draw any inferences or make any imputations – except so far as may be necessary to explain the question.*

(3) *The chairperson of a meeting must not permit any debate of a question without notice or its answer.*

(4) *The chairperson, councillor or general manager who is asked a question without notice at a meeting may decline to answer the question.*

(5) *The chairperson of a meeting may refuse to accept a question without notice if it does not relate to the activities of the council.*

(6) *Questions without notice, and any answers to those questions, are not required to be recorded in the minutes of the meeting.*

(7) *The chairperson of a meeting may require a councillor to put a question without notice in writing.*

An opportunity is provided for Councillors to ask questions relating to Council business, previous Agenda items or issues of a general nature.

## **7. DECLARATIONS OF PECUNIARY INTEREST**

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2015*, the chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the Agenda.

Accordingly, Councillors are requested to advise of a pecuniary interest they may have in respect to any matter on the agenda, or any supplementary item to the agenda, which Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the *Local Government (Meeting Procedures) Regulations 2015*.

## 8. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA

In accordance with the requirements of Part 2 Regulation 8 (6) of the *Local Government (Meeting Procedures) Regulations 2015*, the Council, by absolute majority may decide at an ordinary meeting to deal with a matter that is not on the agenda if the General Manager has reported –

- (a) the reason it was not possible to include the matter on the agenda; and
- (b) that the matter is urgent; and
- (c) that advice has been provided under section 65 of the Act.

### RECOMMENDATION

**THAT the Council resolve by absolute majority to deal with any supplementary items not appearing on the agenda, as reported by the General Manager in accordance with the provisions of the *Local Government (Meeting Procedures) Regulations 2015*.**

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     |          |              |
| Deputy Mayor E Batt |          |              |
| Clr A Bantick       |          |              |
| Clr A E Bisdee OAM  |          |              |
| Clr K Dudgeon       |          |              |
| Clr D F Fish        |          |              |
| Clr R McDougall     |          |              |

## 9. PUBLIC QUESTION TIME (SCHEDULED FOR 10.30 A.M.)

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2015*, the agenda is to make provision for public question time.

In particular, Regulation 31 of the *Local Government (Meeting Procedures) Regulations 2015* states:

- (1) *Members of the public may give written notice to the General Manager 7 days before an ordinary meeting of Council of a question to be asked at the meeting.*
- (2) *The chairperson may –*
  - (a) *address questions on notice submitted by members of the public; and*
  - (b) *invite any member of the public present at an ordinary meeting to ask questions relating to the activities of the Council.*
- (3) *The chairperson at an ordinary meeting of a council must ensure that, if required, at least 15 minutes of that meeting is made available for questions by members of the public.*
- (4) *A question by any member of the public under this regulation and an answer to that question are not to be debated.*
- (5) *The chairperson may –*
  - (a) *refuse to accept a question; or*
  - (b) *require a question to be put on notice and in writing to be answered at a later meeting.*
- (6) *If the chairperson refuses to accept a question, the chairperson is to give reasons for doing so.*

Councillors are advised that, at the time of issuing the Agenda, the following questions on notice (see over) had been received from a member of the public.

Mayor A O Green to then invite questions from any members of the public in attendance.

### 9.1 Permission to Address Council

Permission has been granted for the following person(s) to address Council:

- Representatives from the Department of State Growth & Pitt & Sherry will address Council regarding the Concept Design Report for the Blackman River Bridge at 10.15 a.m.

*Note: It is confirmed that the Local Government (Highways) Order 1994 (Schedule 2) includes the Blackman River Bridge, Main Road, Tunbridge (Bridge No 599) as being within the Northern Midlands Council area. This schedule lists the Bridges that are to be maintained or renewed by the State.*

**From:** Griggs Family <>  
**Sent:** Sunday, 2 February 2020 5:44 PM  
**To:** SMC Mail <mail@southernmidlands.tas.gov.au>  
**Subject:** Questions For Next Council Meeting

Hi All,

Thank you to all your indoor and outdoor staff on the job they are doing it is greatly appreciated and is providing good value for ratepayers money. (Can you pass these comments to all staff and General Manager + Elected Members).

1) With the current hotter weather conditions and this being the norm into the future, can council in its next budget and subsequent budgets put aside funds to do advanced tree plantings in all council owned and maintained reserves and parks. Also some small amount of funds for watering to get them growing successfully. Eg Colebrook, Campania, Oatlands, Bagdad etc.

Using deciduous tree species, with the consideration to their drought tolerance, also getting advice on the best options for this.

**General Manager's response:**

*Council as part of reviewing its Climate Change Action Plan, has specifically identified tree planting projects as an action with the classification 'Landcare Initiatives'. This includes the desire to plant more trees within the community, and also support the activities undertaken by the Midlands Tree Committee. Council, as part of its forthcoming Budget process, will also be considering the possibility of allocating additional resources to ensure plantings can be adequately watered and maintained.*

2) On the same budget type issue.

Rhyndaston Road from railway crossing around 299 Rhyndaston Road up to where road edge protective barrier ends, can this be included for a chip seal surface to be put down in the 2020 - 2021 budget, subject to budget allocation.

**General Manager's response:**

*This request will be submitted for consideration as part of the 2020/21 Budget process.*

3) How much actual usage do the lights at the Campania and Oatlands Oval get each financial year and can this be examined to increase usage. Also what is the amount of money owing on these borrowings for these assets, and what is the annual repayment amounts required.

**General Manager's response:**

*Council does not maintain actual usage records for the lights at the Campania and Oatlands Recreation Grounds. Both grounds are continually used by the respective Football Clubs, with training taking place twice per week at evenings. In addition, both Football Clubs schedule night games in consultation with the Association. The grounds are used by other Football Clubs for practices matches etc. on an irregular basis, but this is strongly encouraged to maximise use of the infrastructure. In relation to the Campania Recreation Ground, the local Cricket Club has held night cricket games as the lighting at this Ground is suitable for night Cricket.*



*In terms of the Loan, as at 31<sup>st</sup> December 2019, a total of \$197,300 remains payable. Loan servicing costs (i.e. principal and interest) are \$22,417 per annum, and the Loan will be repaid in July 2030.*

Regards and Thank You  
David Griggs.

## 10. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN UNDER REGULATION 16 (5) OF THE LOCAL GOVERNMENT (MEETING PROCEDURES) REGULATIONS 2015

### MOTION 10.1 – OAM RECIPIENTS

Clr Karen Dudgeon has submitted the following Notice of Motion:

**“THAT the Southern Midlands Council formally recognise and congratulate Mr Colin Howlett and Mr Paul Wilson for both receiving Medals (OAM) of the Order of Australia in the General Division in the 2020 Australia Day Honours”.**

Comments provided by Clr K Dudgeon:

*Mr Paul Wilson – for service to the community of Oatlands.*

- *Oatlands Municipal Ambulance Service – Volunteer Ambulance Officer 1973-2013 (40 years).*
- *Dulverton Bowls Club – Life Member 2008; Former President; Current Committee Member and Player; Current Green Keeper.*
- *Founding member of Oatlands Christmas Pageant since 1986 and still the main organiser.*
- *Life Member of Oatlands RSL Club.*
- *Awards and recognition include:-*
  - *National Certificate of Commendation – Australasian Institute of Emergency Service 2018*
  - *Emergency Services Volunteer of the Year 2015*
  - *Returned Services League Tasmania 2015.*

*Mr Colin Howlett – for service to local government and the community of the Southern Midlands.*

- *Southern Midlands Council Mayor 1994-2006.*
- *Former member of various Council committees including former Chairman Australia Day Awards Committee; Tourism Advisory Board; Southern Regional Irrigation Development Board and the Midlands Multi-Purpose Health Centre Committee.*
- *Richmond Town Council Councillor 1983-1993 and held the position of Deputy Warden for quite a few years.*
- *Chairman Tasmanian Transport Council (11 years) and various other truck and operator associations.*
- *Involved with the Tasmanian Greyhound Association.*
- *Former President and Life Member of Bridgewater Speedway.*
- *Former President of Australian National Speedway Federation.*
- *Foundation Member of Sandy Bay Lions Club (12 years).*
- *Member of Clarence Masonic Lodge (8 years).*
- *Chairman of Combined Planning Association (8 years).*
- *Justice of the Peace (21 years).*

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

## MOTION 10.2 – MAY 2020 COUNCIL MEETING

Mayor Alex Green has submitted the following Notice of Motion:

**“THAT Council consider changing the May 2020 Council meeting venue to the Broadmarsh Community Hall (instead of Kempton Municipal Office) on the 27<sup>th</sup> May 2020”.**

*Further comment will be provided by Mayor Green at the meeting.*

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

## **11. COUNCIL ACTING AS A PLANNING AUTHORITY PURSUANT TO THE LAND USE PLANNING AND APPROVALS ACT 1993 AND COUNCIL'S STATUTORY LAND USE PLANNING SCHEME**

*Session of Council sitting as a Planning Authority pursuant to the Land Use Planning and Approvals Act 1993 and Council's statutory land use planning schemes.*

### **11.1 DEVELOPMENT APPLICATIONS**

#### **11.1.2 DEVELOPMENT APPLICATION (DA 2019/87) FOR MODIFICATION TO OPERATION OF EXISTING EXTRACTIVE INDUSTRY (LEVEL 2 QUARRY) AT 1356 TEA TREE ROAD, CAMPANIA, OWNED BY C & S WILLIAMS**

*File Ref: T 2941285*

**Author:** SENIOR PLANNING OFFICER (JACQUI TYSON)

**Date:** 12 FEBRUARY 2020

**Attachment(s):**

- 1. Development Application documents*
- 2. EPA determination Permit Part B – 1356 Tea Tree Road*
- 3. EPA Environmental Assessment Report – Williams Quarry*
- 4. Representations*

### **PROPOSAL**

The Applicant, Craig Williams, has submitted a Development Application to the Southern Midlands Council seeking a Permit under the *Land Use Planning and Approvals Act 1993* ("the Act") to change the operation conditions of the existing Level 2 rock/gravel quarry at 1356 Tea Tree Road, Campania.

The quarry currently operates as a Level 2 Activity under an existing permit (DA2015/122) which was granted in 2017 following a decision of the Resource Management and Planning Appeals Tribunal (RMPAT). This appeal is discussed further in the background section of this report. The operation is currently limited to extraction of 10,000 cubic metres of material, and crushing (no screening) of 2,500 cubic metres of material per year. The current permit requires that crushing must take place on 5 consecutive days per year. Notification to Council and neighbours of the planned crushing days is also required by existing conditions.

The proposed modification involves extraction of the same volume of material, 10,000 cubic metres, and crushing and/or screening of 2,500 cubic metres of material per year. The proposed changes to the operation of the quarry include:

- Allowing for screening as well as crushing of up to 2,500 cubic metres of material per year, using an independent mechanised screening unit;
- Removing the restriction on number of crushing days per year and the need to notify neighbours and Council prior to crushing;
- Changes to the operational hours to be in line with the Quarry Code of Practice; and
- Relocation of part of the access road to the quarry.

The application has been lodged under the *Southern Midlands Interim Planning Scheme 2015* (“the Planning Scheme”).

The environmental effects of a Level 2 Activity are assessed by the Environmental Protection Authority (“EPA”). Accordingly, the Development Application has been referred to the EPA for assessment in accordance with the requirements of EMPCA. Council officers made a submission to the EPA during the consultation process to ensure that the history of this matter, including the appeal regarding DA2015/122 and the amendment of the Scheme, was on record. The EPA Board approved the proposal on the 29 January 2020, subject to conditions addressing environmental matters including operating hours, noise levels, noise management and reporting, dust control, hazardous material handling and decommissioning and rehabilitation requirements. The EPA conditions must be included in any permit issued by the Council.

The land is zoned Rural Resource and is covered by an Attenuation Area associated with the quarry and partly covered by a Landslide Hazard Area overlay and Waterway Protection Area overlay.

Under the Planning Scheme the proposal is defined as use and development of an “Extractive Industry”. A permit for this type of development is considered at the discretion of Council.

The Council gave notice of the application for public comment for 14 days. During the notification period two (2) representations were received. The representations were provided to the EPA for consideration in their assessment, as detailed in the Environmental Assessment Report (attached).

This report will assess the proposal against the relevant provisions of the Act and the Scheme. It is recommended that Council approve the proposal.

## **BACKGROUND**

### Level 1 Approval – DA2014/64

The Williams Quarry was initially approved by Council as a Level 1 operation in 2014 (DA2014/64), with extraction limited to less than 5,000 cubic metres per annum and no crushing onsite.

### Level 2 Application – DA2015/122

In 2015 application was made to expand the quarry operation to Level 2 to allow for the extraction of up to 10,000 cubic metres of material per annum and crushing of up to 2,500 cubic metres of material per annum.

Council refused the application in March 2016, due to concerns including noise impacts and the encumbrance to neighbouring properties that would be created by the Attenuation Area overlay under the Attenuation Code of the Scheme. The standard Attenuation area would apply to all land within the Standard Recommended Attenuation Distance (SRAD) - which is 750m for a quarry with crushing.

### RMPAT Appeal and Permit DA2015/122

The Council decision to refuse the application was appealed to RMPAT. The appeal progressed to a partial hearing on the 21 June 2016 which was then adjourned to allow the parties to attempt to resolve the appeal.

Ultimately, after lengthy negotiation and evidence, a mediated outcome was able to be reached with a consent agreement signed by all parties to the appeal including Council, EPA, the proponent (Craig and Sally Williams) and Representors (neighbours). RMPAT issued a determination concluding the appeal and a permit was issued accordingly.

The agreement between the parties and the subsequent RMPAT decision included:

- Amendment of the Southern Midlands Interim Planning Scheme 2015 to insert an agreed Attenuation Area (see below);
- Conditions to specifically manage noise and other impacts to neighbours including:
  - EPA condition N7, that the sound power output of any crusher used on the site be limited to 118 db (A);
  - EPA condition N5, limiting crushing to five consecutive days each calendar year, to limit impact on neighbours;
  - EPA condition N6, requiring notification to the Director, Council and neighbours of the dates of crushing activity at least 72 hours before crushing commencing; and
  - Council condition 2 acknowledging that screening was not included in the quarry operation.

#### Planning Scheme Amendment

In conjunction with the RMPAT appeal, the Southern Midlands Interim Planning Scheme 2015 was amended to include the specific Attenuation overlay for the quarry, which modified the standard 750m Attenuation overlay to a custom size and shape based on evidence regarding the noise emission levels of the crusher (without screening).

Specifically, the Attenuation area maps the 47db(A) Sound Pressure Level created by the noisiest component of the quarry operation (the crusher) when the sound power output of the crusher does not exceed 118db(A).

Outside this area the noise impact of the quarry operation is low enough to allow for sensitive uses (such as residential use) to occur without impediment.

#### Attempt to Amend 2015/122

In 2017 the proponents made an application to amend the permit conditions of DA2015/122 through an Application for Minor Amendment under Section 56 of the *Land Use Planning and Approvals Act 1993*, with the proposed amendments essentially the same as the proposal now considered in DA2019/87.

The Permit DA2015/122 could not be amended under Section 56 as the conditions were imposed as the result of an appeal, which would offend 56 (2)(a) and (aa):

#### **Section 56. Minor amendments of permits issued by a planning authority**

- (1) *The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit which applies to that land and which is a permit issued by the planning authority.*
- (2) *The planning authority may amend the permit if it is satisfied that the amendment –*
  - (aa) *is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and*
  - (a) *does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and*
  - (b) *will not cause an increase in detriment to any person; and*

*(c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.*

The Proponent then lodged an application under Section 23 (6) of the *Resource Management and Planning Appeal Tribunal Act 1993* seeking to remove conditions of the permit DA2015/122. Section 23 (6) allows for RMPAT to amend a decision on an appeal if it is satisfied that the amendment does not change the effect of any condition required by the Appeal Tribunal and will not cause an increase in detriment to any person.

The changes applied for were also consistent with the amendments applied for in DA2019/87.

RMPAT determined that the proposed changes were not in accordance with Section 23 (6) and refused the application.

#### Current Application - DA2019/87

Subsequently, the proponent lodged a Notice of Intent with the EPA and a Development Application with Council for the proposal now considered as DA2019/87. Per Section 62 (2) of the Act:

*(2) Where the Appeal Tribunal has determined an appeal, an application for a permit in respect of a use or development which is substantially the same as the use or development to which the appeal related may not, without the leave of the Appeal Tribunal, be made within a period of 2 years from the date on which the Appeal Tribunal made its decision.*

The current application was lodged outside of the two (2) year period from the date of the RMPAT decision and therefore the Applicant has avoided any potential complications or need to seek leave of the Appeal Tribunal in order to lodge the application.

## **THE SITE**

The property is located at 1356 Tea Tree Road. The property is developed with a range of improvements relating to the existing uses carried out by the owners, including the existing quarry, a single dwelling, a workshop and farm buildings, dam and other farming improvements.

The quarry is located on the northern side of a small hill, at an elevation of approximately 200m. The quarry is approximately 450m south of Tea Tree Road and 150m south of the dwelling on the site. The land generally slopes up from Tea Tree Road, with flatter land to the north of the site towards the road and then rising more quickly in the southern section, with undulations at various levels. There is remnant bushland on the site south of the quarry, which forms part of a belt of native vegetation across the hills of the site and nearby properties.

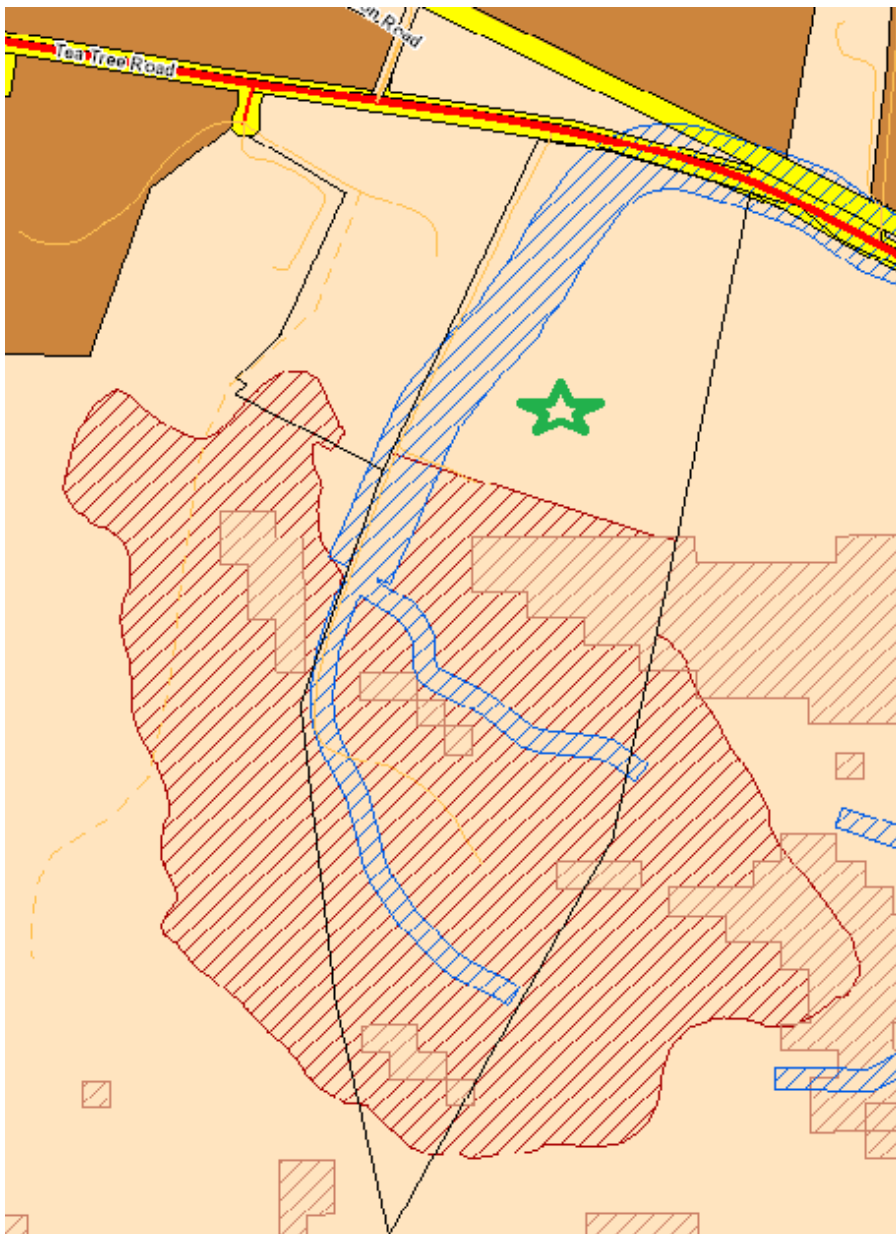
The access to the land is from Tea Tree Road, which is a Category Two (2) road. The Road Authority is the Department of State Growth. The existing access to the land is used to serve all the uses on the site, including the quarry, dwelling, farm and a workshop. The access was upgraded to the current form as part of the approvals for the existing quarry. The quarry operations area is accessed via internal roads and tracks.



The property is surrounded by other farms, former farms and titles used as rural lifestyle land. The adjoining private land is currently in the Rural Resource Zone (at the time of writing) and the Tea Tree Road is in the Utilities Zone.

The adjoining land to the east of the site has recently been subject of a successful application to amend the Scheme, to introduce the Particular Purpose Zone 3 – Tasmanian Buddhist Cultural Park. This amendment was approved by the Tasmanian Planning Commission on the 24 January 2020 and will be active from the 14 February 2020.

Map 1 below demonstrates the zoning (at the time of writing).



Map 1\_ The subject land and surrounding properties are in the Rural Resource Zone (cream), Significant Agriculture Zone (brown) and Utilities Zone (yellow). The Code overlays are the Attenuation Area associated with the quarry (red hatch), Landslide Hazard Area (brown hatch) and Waterway Protection Areas (blue hatch).



Map 2 \_ Aerial image of the subject land and surrounding area. The quarry is circled in green.

## THE APPLICATION

The Applicant has submitted an Environmental Effects Report (“EER) prepared by the consultant Van Diemen Consulting to accompany the Development Application.

The EER contains a comprehensive description of the proposal and information required for assessment against the Scheme and addresses environmental matters as required by the EPA. The EER appendices include the Planning Permit DA2015/122 and related documents including a Landscape Plan, Noise Profiles, Noise Assessment and Crusher Noise Test. Appendix 9 is a Noise Survey and Assessment for the proposed screening and modified access spur road, dated 2019. A Supplement to the EER was also provided in response to a request from the EPA.

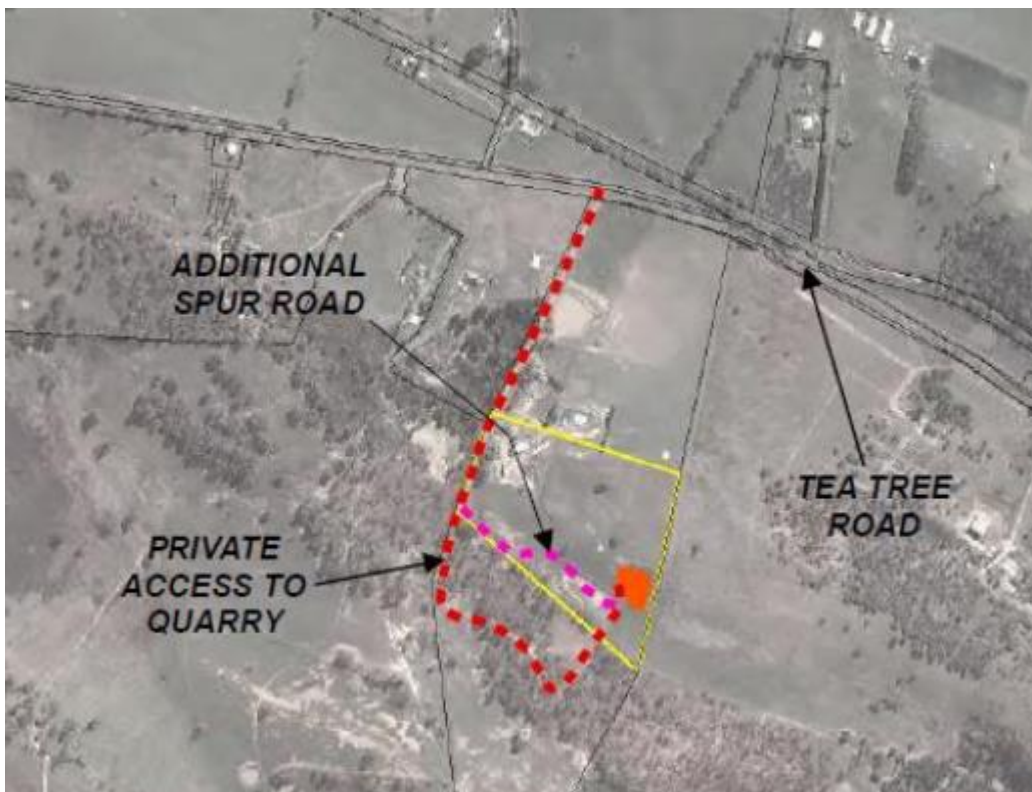
The EER indicates that the quarry will be operated by the landowner. The major equipment to be used includes a bulldozer, loader, excavator and 10 tonne truck. A track mounted, noise shielded, mobile and jaw type crusher will be brought to the quarry when required. A mobile vibratory screen will be used independently of the crusher. All of the machinery except the crusher and screen are owned and maintained by the proponent onsite.

The application indicates that cartage of material from the site will be capped at 15 10 tonne trucks per day or 30 traffic movements, which is consistent with the current approval.

The proposed new operating hours for all quarry operations are those recommended in the Quarry Code of Practice, being:

*7am to 7 pm Monday to Friday  
 8am to 4pm Saturday  
 No operations on Sunday or public holidays*

The proposed change to the access road involves the addition of a spur road, which will shorten the distance that trucks need to travel to access the quarry, as illustrated in the image below (taken from the EER):



Map 2 \_ Proposed spur road shown in pink, existing access in red  
 (Source: Figure 3: Mining lease and road network, EER Van Diemen Consulting, 21/9/2019)

The proposed changes to the quarry operation are summarised in the Table 1, comparing the existing conditions of operation to what is proposed and the relevant condition(s) of the 2020 EPA Permit Part B:

| Element | Proposed Operation<br>DA2019/87 | Current Permit<br>(DA2015/122) | Requirement |
|---------|---------------------------------|--------------------------------|-------------|
|---------|---------------------------------|--------------------------------|-------------|

|                                  |  |   |
|----------------------------------|--|---|
| Quarry activities                | Extraction<br>Crushing<br>Screening<br>No blasting   | Extraction<br>Crushing<br>No screening separate to crushing<br>No blasting  |
| Extraction and Processing Limits | Extraction - 10,000m <sup>3</sup><br><br>Crushing – 5,000m <sup>3</sup> and/or Screening   | Extraction - 10,000m <sup>3</sup><br><br>Crushing – 5,000m <sup>3</sup>   |
| Operating Hours                  | <u>All activities:</u><br>7am to 7pm Monday to Friday<br><br>8am to 4pm Saturday<br><br>No operations on Sunday or public holidays | <u>Extraction:</u><br>7am to 6pm Monday to Friday<br><br>8am to 4pm Saturday<br><br><u>Crushing:</u><br>8am to 5pm Monday to Friday only<br><br>No operations on Sunday or public holidays  |
| Crushing days                    | No limit to crushing days.   | Crushing limited to 5 consecutive days of each calendar year  |
| Notification of crushing         | No notification required.  | Notification to the Director EPA, General Manager Council and occupants of adjoining land containing a residence must be notified in writing of the dates on which crushing/screening plant will be operated.<br><br>Notification at least 72 hours prior to commencement of crushing or screening. |
| Access road                      | Addition of spur road  | Existing roads/tracks   |

## EPA ASSESSMENT AND CONDITIONS

The EPA assessment report (EAR) details the reasons for the approval of the proposed changes including operating hours, addition of screening and the removal of the notification requirements.

With regard to operating hours, the EPA state that compliance with the Quarry Code of Practice is the standard requirement and there is no reason to restrict hours at this quarry beyond those limits. In any case, the proposed change to the hours is relatively minor – only adding one additional hour on week days.

In regard to noise attenuation, it is noted that the required maximum noise emission limits are the same in the new permit conditions (N2) as in the current permit, specifically:

*Daytime (7am to 7pm ) - 47 dB(A)*  
*Evening (7pm – 10pm) - 40 dB(A)*  
*Night time (10pm – 7am) - 35 dB(A)*

Or, no greater than 5 dB(A) above background noise.

Additionally, the maximum sound power output of the crushing and screening units must not exceed 118 dB(A) (Condition N3), consistent with the previous permit. As no specific model of machinery has been nominated in the application, the EPA condition N3 requires

that two weeks before any plant for crushing and/or screening is operated on the site the sound power output for that particular machinery must be provided in writing to the Director to demonstrate compliance with this requirement.

Critically, these Noise Control conditions imposed by the EPA mean that the level of noise from the quarry operation will not exceed what was modelled in the original approval and the current Attenuation area will continue to operate effectively.

Other EPA conditions relating to amenity of surrounding properties include:

- A noise attenuation screen constructed from rock and earth must be maintained along the northern and western sides of the quarry working area. The screen must ensure there is no line of sight at any time between machinery operating in the quarry working area and any existing residence in other ownership (OP4). This condition is a revision of the previous permit condition OP6 which required an attenuation screen in the form of an earth bund.
- All quarry operations including crushing and screening must take place in the specified working area (OP3).
- The Director may require a noise survey at any time (N5).
- The quarry operator must report any noise complaints to the Director within 24 hours (N4) and a complaints register must also be maintained by the operator (G6).
- Dust must be controlled from the quarry operations and transport (Conditions A1-A4)

## **USE/DEVELOPMENT DEFINITION**

The proposed use and development is defined, under the Planning Scheme, as an 'Extractive Industry':

### **Extractive Industry**

use of land for extracting or removing material from the ground, other than Resource development, and includes the treatment or processing of those materials by crushing, grinding, milling or screening on, or adjoining the land from which it is extracted. Examples include mining, quarrying, and sand mining.

## **Use/Development Status under the Planning Scheme**

Under the Scheme, a Development Application to intensify an 'Extractive Industry' in the Rural Resource Zone must be considered at the discretion of Council.

As a discretionary development, the application was advertised in accordance with Section 57 of the Act. Accordingly Council has the discretion to grant a permit or refuse to grant a permit.

## PUBLIC NOTIFICATION AND REPRESENTATIONS

The application was advertised on the 12<sup>th</sup> October 2019 for twenty eight (28) days. During this period Council received two (2) representations, as detailed in the table below.

| <b>Representation 1</b>  | <b>Council Officer Comment</b>  |
|--|---|
| <p>I oppose the modification sought for the Level 2 Quarry at 1356 Tea Tree Road on the basis that current conditions of the quarry were raised, discussed &amp; agreed by all the registered parties during the current operating level 2 quarry application Resource Management and Planning Appeals Tribunal hearing.</p> <p>Surely where the tribunal approves operating and management conditions the justification for future changes/modifications should require substantiated reasons and evidence for such change.</p>   | <p><i>The Applicant has lodged an entirely new development application for the proposed changes.</i></p> <p><i>The Applicant had previously attempted to modify the current existing permit through a minor amendment process. This however was unsuccessful as those conditions, which the Applicant sort to modify, were imposed by RMPAT in the previous DA. Section 56 (2) (aa) and (a) specifically disallows Council from amending a permit condition that was imposed or amended by the Appeal Tribunal.</i></p> <p><i>A new DA however avoids the Section 56 amendment process altogether.</i></p> <p><i>This has allowed for full consideration by the EPA and Council as well as public advertising and appeal rights for representors.</i></p> |
| <p>- Crushing any day Quarry permitted to operate:-<br/>It was confirmed during Tribunal process that a crusher would be hired for crushing and that it would only be financially viable to crush the allowable yearly volume in one go and agreed crushing could be completed in a 5 day period. Mr Tearts noise surveys are also based on a hired jaw-type crusher.</p> <p>No crusher has been listed as equipment owned and no increase in amount of material crushed so what viable reason exists for open ended crushing.</p> | <p><i>The details provided to the EPA specify that a jaw type crusher will continue to be used.</i></p> <p><i>Given that the amount of material to be crushed has not increased, it is likely that the overall amount of time spent crushing will be similar to the 5 day limit currently imposed, however the operator will now have more flexibility on when it occurs and can screen separately.</i></p> <p><i>EPA condition N3 requires that two weeks before any plant for crushing and/or screening is operated on the site the sound power output for that particular machinery must be provided in writing to the Director to demonstrate compliance with this requirement.</i></p>   |
| <p>- No neighbour notification would be provided prior to any crushing/and screening:-<br/>This condition was discussed and agreed by all parties to the Tribunal hearing on the basis of the acceptable noise levels identified. The Condition was approved by the Tribunal.</p> <p>As there is no change to the identified noise levels &amp; vehicle movements under which this condition was imposed there is</p>  | <p><i>The EPA has considered this matter in the EAR assessment.</i></p> <p><i>The EPA assessment indicates that as appropriate noise levels can be achieved there is no need to limit crushing/screening days and by extension neighbour notification is not required. See page 13 of the EAR for discussion.</i></p>   |

|   |  |
|---|--|
| <p>no viable reason for removing this condition.</p>  |  |
| <p>-An added access spur road is proposed near the quarry:-<br/>                 The quarry has been operating with the current approved access road and as it is a "1 man" operation this should be sufficient. No details or evidence provided on why a 2nd road is necessary.</p> <p>Figure 5 in EER does not show full length of spur road ie where does it begin and it appears that it is coming up over the front of the hill from the Machinery/ home area. If I'm right this will have additional visual &amp; noise impact which I can find no evidence of noise testing being conducted for this.</p> <p>B.11.3 states " Appendix 8 and 9 provide more recent information about noise compliance monitoring for the initial crushing event at the quarry (in 2017) and the predicted noise impact of introducing screen (vibratory) and added access spur road to the activity". I perused both these documents and could not see any mention of vehicular noise testing on the spur road.</p> <p>Application states that this is an existing farm track however only noticeable activity prior to quarry operation was for picking up rocks &amp; ploughing the paddock and just recently substantial work of laying rock along so call farm track.</p> <p>Substantial noise levels have been emitted especially when the front end loader is used in the paddock and on the hill behind machinery shed/house as it is constantly revved not smoothly driven.</p> | <p><i>It is understood that the new access spur road is requested as it will reduce the distance travelled by trucks and machinery on the site.</i></p> <p><i>The spur road is shown in Map 3 above, it doesn't come over the hill from the dwelling.</i></p> <p><i>The EPA assessment includes consideration of noise levels from transport on the internal roads and time limits for these activities to address concerns.</i></p> |
| <p>-Operating hours would conform to those stipulated in the Quarry Code of Practice:-<br/>                 This condition was discussed and agreed to by all parties of the Tribunal hearing on the basis of the identified acceptable noise level &amp; vehicle movement numbers. The condition was approved by the Tribunal.</p> <p>As there is no change to the identified noise level and vehicle movements conditions under which this was initially imposed by the Tribunal there is no viable reason for removing this condition.</p>   | <p><i>The EPA has considered this matter in the EAR assessment.</i></p> <p><i>The proposed operating hours are one hour longer on week days.</i></p>   |
| <p>-Addition of Screening</p>   | <p><i>The EPA has considered this matter in the EAR assessment.</i></p>  |

|  |  |
|--|--|
| <p>Required end product was discussed and agreed during the Tribunal process and confirmed by Mr Williams that it was a niche product for farm roads and that screening and blasting not required.</p> <p>If Mr Williams now has a market for screened product I have no objection to screening being undertaken within the currently approved 5 day crushing period as long as there is absolute acceptable evidence supporting that there is no increased noise or dust produced from the screening process.</p> | <p><i>The EAR indicates that screening can occur within the imposed noise level limits.</i></p>  |
| <p><b>Representation 2 (summary)</b></p>   | <p><b>Council Officer Comment</b></p>  |
| <p>The (representor) objects to the granting of a permit on the terms sought because:<br/>1.1. the application seeks to subvert a previous agreement between the quarry operator, Council and neighbours in which the effected parties agreed to a permit issuing for the Level 2 quarry subject to conditions.</p>  | <p><i>The proponent has been required to go through a full application process for the proposed changes because they involve amendment of conditions imposed by RMPAT in the previous DA.</i></p> <p><i>This has allowed for full consideration by the EPA and Council as well as public advertising and appeal rights for representors.</i></p> |
| <p>1.2. there is no rationale presented for: the extended operating hours, or for crushing and screening beyond the five days previously conditioned by the EPA and agreed by the parties.</p>   | <p><i>These are matters for the EPA to consider and are addressed in the EAR.</i></p>  |
| <p>1.3. the application contains insufficient information to determine the impacts on neighbouring sensitive uses.<br/>This is a critical issue under the Quarry Code of Practice 1999.<br/>There is inadequate information in relation to the crushing and screening as well as the additional access road.</p>   | <p><i>These are matters for the EPA to consider and are addressed in the EAR.</i></p>  |

## ASSESSMENT - THE SOUTHERN MIDLANDS INTERIM PLANNING SCHEME

### Rural Resource Zone

The subject site is in the Rural Resource Zone. The proposal must satisfy the requirements of the following relevant development standards of this zone:

|  |  |   |
|--|--|---|
| <p><b>Use Standard</b><br/><b>26.3.3 Discretionary Use</b><br/>To ensure that discretionary non-agricultural uses do not unreasonably confine or restrain the agricultural use of agricultural land.</p> |  |   |
| <p><b>Acceptable Solutions</b></p>   | <p><b>Performance Criteria</b></p>   | <p><b>OFFICER COMMENT</b></p>   |
| <p>A1<br/>No acceptable solution.</p>  | <p>P1<br/>A discretionary non-agricultural use must not conflict with or fetter agricultural use on the site</p> | <p><i>The proposal is for changes to the operation of the existing Williams Quarry.</i></p> |



|  |  |   |
|--|--|---|
|  | <p>or adjoining land having regard to all of the following:</p> <p>(a) the characteristics of the proposed non-agricultural use;</p> <p>(b) the characteristics of the existing or likely agricultural use;</p> <p>(c) setback to site boundaries and separation distance between the proposed non-agricultural use and existing or likely agricultural use;</p> <p>(d) any characteristics of the site and adjoining land that would buffer the proposed non-agricultural use from the adverse impacts on amenity from existing or likely agricultural use.</p> | <p><i>The area of the site to be used for the quarry operation will not be substantially increased. The only addition included in the proposal is the access spur road, which the applicant indicates is located over existing farm tracks.</i></p> <p><i>The site is used for a range of purposes, including some farming in the form of small crops (potatoes) and grazing, particularly on the flatter parts of the site towards the frontage. The proposal will not impact the continuation of agricultural use of the land.</i></p> <p><i>There is no evidence to indicate that the existence of the quarry has not limited these activities to date and therefore it is not expected to do so in the future. Similarly, the quarry operation is not impacted by the existing or potential future agricultural uses on the surrounding land.</i></p> |
|--|--|---|

### **Landslide Code**

The site has a low risk Landslide Hazard Area close to the quarry operations area.

Clause E3.4.1 (g) of the Code exempts use or development of land for Extractive industry where a mining lease is in place.

Further assessment against this Code is not required.

### **Road and Railway Assets Code**

The proposal does not include any new or altered access from Tea Tree Road and does not increase the number of traffic movements from the current level for the quarry, which is up to 30 per day.

Assessment against the Road and Railway Assets Code is therefore not required.

### **Attenuation Code**

The Attenuation Code applies to applications for impacting uses (such as quarries) and sensitive uses (such as dwellings) occurring within an established Attenuation area.

In this case the quarry is existing and already has a specific mapped Attenuation area. It has been demonstrated that the existing Attenuation area is sufficient to accommodate the proposed changes to the operation of the quarry.

There are no modifications to the existing Attenuation Area required.

Clause E9.4.1 (a) of the Code exempts development of land for a Level 2 Activity.

Further assessment against this Code is not required.

### **Waterway and Coastal Protection Code**

There are Waterway Protection Areas mapped on the land around drainage lines. The proposed spur road crosses land covered by the overlay.

Clause E11.4.1 (a) of the Code exempts development of land for a Level 2 Activity.

Further assessment against this Code is not required.

### **CONCLUSION**

The report has assessed a Development Application for the proposed change to operation conditions of the existing Level 2 quarry at 1356 Tea Tree Road, Campania.

The proposal has been approved by the EPA subject to condition that must be included with any Council permit.

Two (2) representations were received from adjoining owners with concerns about the proposed changes to operating conditions, particularly given the history of the operation and RMPAT appeal regarding the initial expansion to a Level 2 activity. Most of the matters raised fall within the jurisdiction of the EPA assessment and are addressed in the Environmental Assessment Report.

Council officers were also concerned given the long and expensive process for all parties to the appeal (detailed in the Background section above). The critical matter of concern for Council officers was that the proposed changes would not require any alteration to the existing Attenuation area for the quarry, which is based on actual noise levels from the operation. The applicant and EPA assessment has demonstrated that the existing maximum noise levels will not be exceeded and therefore the Attenuation area does not require amendment.

The proposal has been found to comply with all the relevant standards of the Rural Resource Zone. Assessment is not required against any Codes.

It is recommended that the Application be approved and a Permit issued with conditions and advice.

### **RECOMMENDATION**

**THAT, in accordance with the provisions of the *Southern Midlands Interim Planning Scheme 2015* and section 57 of the *Land Use Planning & Approvals Act 1993*, Council APPROVE the Development Application (DA 2019/87) for Modification to Operation of Existing Extractive Industry (Level 2 Quarry) at 1356 Tea Tree Road, Campania, owned by C & S Williams and that a permit be issued with the following conditions:**

## CONDITIONS

### *General*

- 1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- 2) The person responsible for the activity must comply with the conditions contained in Schedule 2 of Permit Part B, which the Board of the Environment Protection Authority (EPA) has required the Planning Authority to include in the permit, pursuant to section 25(5) of the Environment Management and Pollution Control Act 1994. Please find enclosed with this permit 'Permit Part B, including Schedules 1, 2 and 3 dated 29 January 2020.

### *Access*

- 3) The quarry shall be operated to ensure that no more than thirty (30) vehicle movements are generated by quarry operations in any one day.

### *Services*

- 4) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.

The following advice applies to this permit:

- A. This permit does not imply that any other approval required under any other legislation has been granted.
- B. Any addition to signage on the land requires separate approval from Council.

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     |          |              |
| Deputy Mayor E Batt |          |              |
| Clr A Bantick       |          |              |
| Clr A E Bisdee OAM  |          |              |
| Clr K Dudgeon       |          |              |
| Clr D F Fish        |          |              |
| Clr R McDougall     |          |              |

## 11.2 SUBDIVISIONS

### 11.2.1 DEVELOPMENT APPLICATION (SA 2019/13) FOR SUBDIVISION (ONE LOT AND BALANCE) AT 31 HALL LANE, BAGDAD OWNED BY J HAIG & L VAN BEEK

*File Ref:* T 5018760

**Author:** SENIOR PLANNING OFFICER (JACQUI TYSON)

**Date:** 11 FEBRUARY 2020

**Enclosure(s):**

*Development Application documents*

*TasWater Submission to Planning Authority Notice*

*Representations*

## PROPOSAL

The applicant JMG Engineers and Planners on behalf of the landowners, John Haig and Laga Van Beek, have applied to the Southern Midlands Council for a Permit under the *Land Use Planning and Approvals Act 1993* (“the Act”) to subdivide the property at 31 Hall Lane, Bagdad.

The application seeks to create one vacant lot with an area of 1.02ha as Lot 1, leaving the existing house and the remainder of the land on the balance lot with an area of 3.18ha. Lot 1 will encompass most of the front (northern) section of the existing title, with around 90m of frontage to Hall Lane. The balance lot will become an internal lot, with an access strip providing frontage of 11.5m to Hall Lane.

The balance lot will be serviced by the existing water connection and onsite wastewater system and accessed using the existing driveway. Lot 1 will require a new access to be constructed from Hall Lane and will be provided with a water connection to the reticulated supply. The application has been referred to Taswater and a SPAN with conditions has been issued. A geotechnical assessment has been provided to demonstrate that Lot 1 is suitable for onsite wastewater disposal to service a future dwelling.

The application has been lodged under the *Southern Midlands Interim Planning Scheme 2015* (“the Planning Scheme”).

The land and is zoned Rural Living and is currently developed with a single dwelling, outbuildings and associated improvements. The area that will be Lot 1 is a cleared paddock. The balance land is a mix of cleared land and areas of remnant native vegetation.

Under the Planning Scheme subdivision is defined as development. The proposal is to be assessed against the development standards of the zone and the development standards of the applicable Codes. These matters are described and assessed in this report.

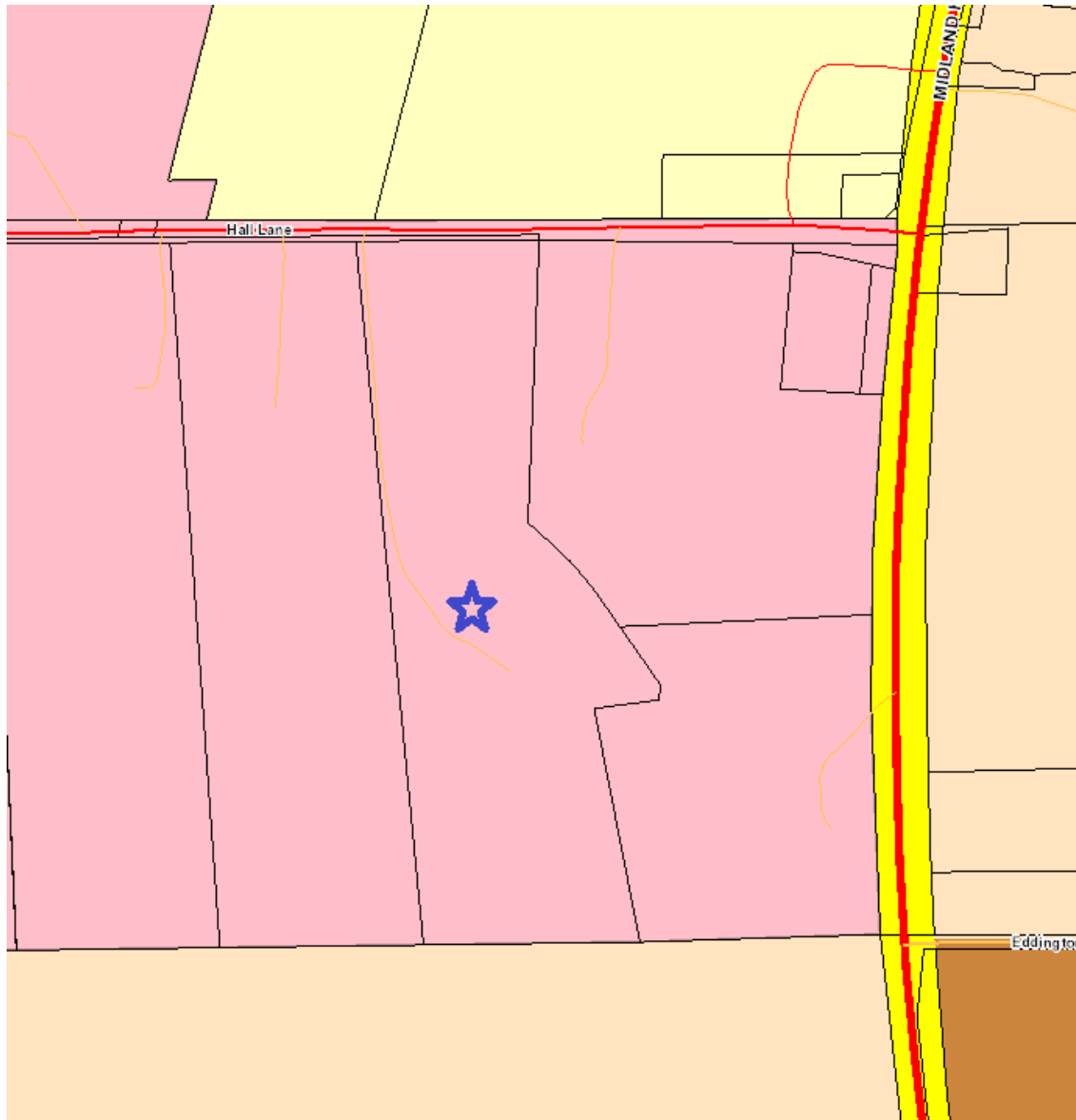
A permit for this type of development is considered at the discretion of Council.

The Council gave notice of the application for public comment for 14 days. During the notification period four (4) representations were received.

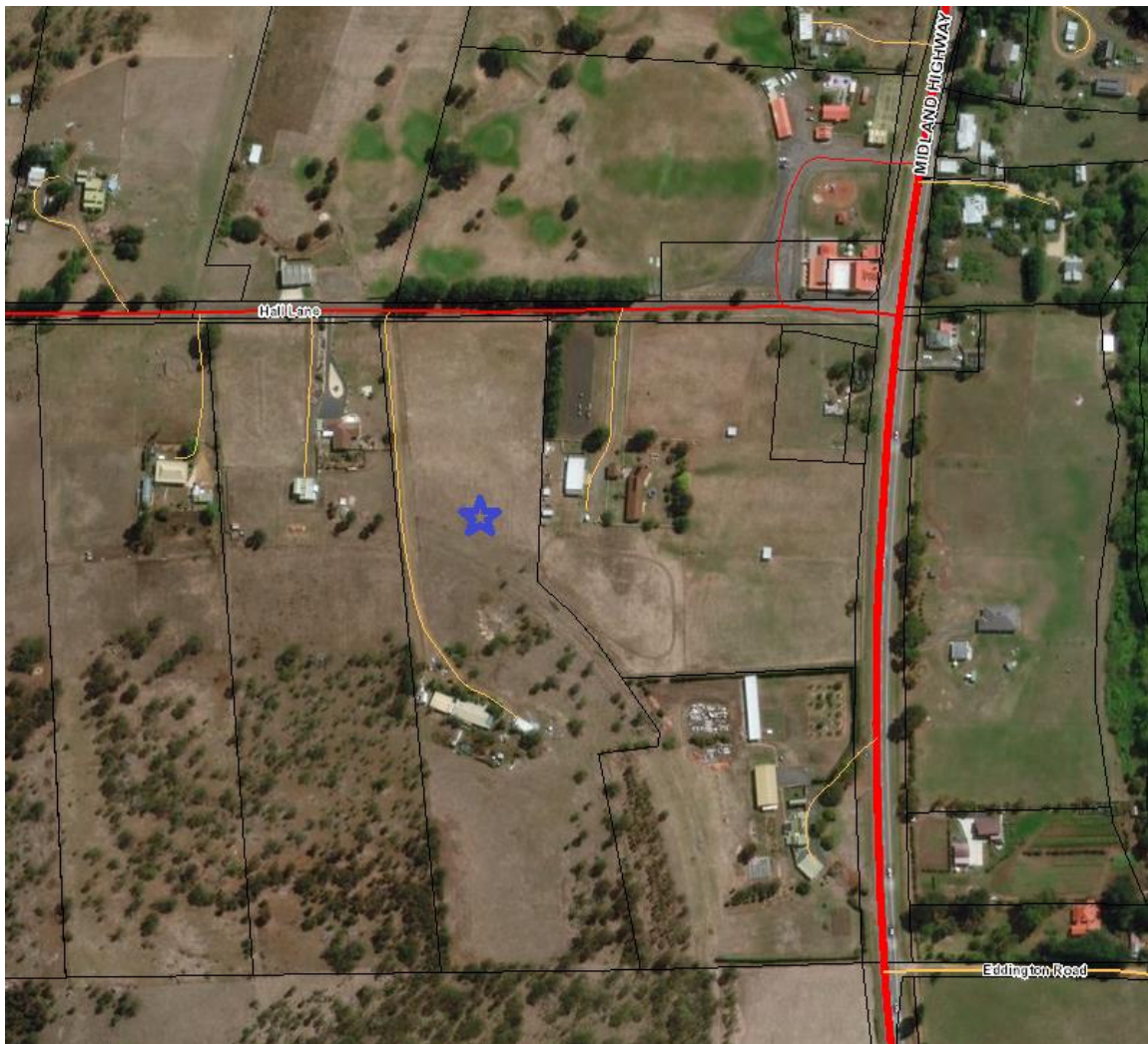
This report will assess the proposal against the relevant provisions of the Act and the Scheme. It is recommended that Council approve the proposal.

## THE SITE

Map 1 below shows the land zoning and location of the property.



Map 1\_The subject land and adjoining properties to the east and west are in the Rural Living Zone (pink). Land to the south and on the eastern side of the Midland Highway is zoned Rural Resource (light brown). The Bagdad Community Centre land to the north is zoned Community Purpose (cream) and the Midland Highway is zones Utilities (yellow). The subject land is marked with a blue star. Source: theLIST



Map 2 \_ Aerial image of the subject land and surrounding area.

## THE APPLICATION

The Applicant has submitted the attached Plans and reports to accompany the Development Application form.

The Application documents include a planning report, a geotechnical report and a bushfire assessment and management plan, all by appropriately qualified people.

## USE/DEVELOPMENT DEFINITION

The proposed use and development is defined, under the Planning Scheme, as development for Subdivision, which is Discretionary in accordance with Clause 9.7.2 of the Southern Midlands Interim Planning Scheme 2015.

## Use/Development Status under the Planning Scheme

As a discretionary development, the application was advertised in accordance with Section 57 of the Act.

Council has the discretion to grant a permit for this proposal with or without conditions, or refuse to grant a permit.

## PUBLIC NOTIFICATION AND REPRESENTATIONS

The application was advertised on the 7<sup>th</sup> December 2019 for fourteen (14) days. During this period Council received four (4) representations, as detailed in the table below.

| <i>Representation 1</i>   | <i>Council Officer Comment</i>   |
|---|--|
| <p>I OBJECT to this application for the following reasons:<br/>The properties on Hall Lane are rural residential allotments and having smaller sub-divisions is not in keeping with the zoning in this area.<br/>With the new proposed sub-division, it allows for a further 2 dwellings to be built. Taking the number to a total of 3 residential buildings on the current block.</p>   | <p><b><i>The proposed subdivision is in accordance with the Rural Living Zone standards, which allows for minimum lots of 1ha.</i></b></p> <p><b><i>The proposed subdivision will create one (1) additional vacant lot (Lot 1). The balance lot (Lot 2) is already developed with a single dwelling (including ancillary dwelling).</i></b></p> <p><b><i>It is not possible to construct multiple dwellings in the Rural Living Zone, so there will only be one additional house (on Lot 1).</i></b></p> <p><b><i>The subdivision plan shows an indicative envelope on Lot 2 near the proposed boundary. This is a theoretical illustration to show compliance with the development standards, it does not reflect an intent to build another dwelling on Lot 2.</i></b></p> |
| <p>The issue of a sub-division decreases the privacy I have on from my property. The plans also provide another proposed dwelling to be built on the proposed “New Lot 2”, if this went ahead then that would further impede on privacy.</p>  | <p><b><i>The proposed subdivision will allow for construction of a new dwelling on Lot 1, which is closer to neighbouring properties than the existing dwelling. However, Lot 1 is over 1.02ha in size and the minimum setback to boundaries for future development is 10m. Neighbouring dwellings are sited more than 10m from the existing boundaries, so there will be a reasonably large separation (25m or more) to any future dwelling, limiting impacts to privacy. There is also plenty of opportunity to ensure a high level of privacy is maintained through use of landscaping, fencing and the like.</i></b></p>   |
| <p>The Visual amenity will ruin the views from the east side of my house, our outlook will not be rural anymore. When a further 2 dwellings are built on the block, instead of looking out our lounge room window and seeing agriculture land, we will be looking into someone’s house and ‘garden.<br/>The development is a high contrast to the area’s rural character. This specific block is surrounded by large rural blocks, 10 acres or more, with natural landscaping and agriculture. The proposed development is suburban in nature and is lacking any sympathy with its surrounds. This development is in high contrast to this area’s neighborhood, as this application allows for a further 2 dwellings to be built on</p> | <p><b><i>Views are not protected by the planning scheme. This is a rural residential area on the edge of the Bagdad township.</i></b></p> <p><b><i>As addressed above, the subdivision only provides opportunity for one additional dwelling.</i></b></p> <p><b><i>Under the previous Southern Midlands Planning Scheme 1998, parts of Hall Lane, including the subject land, were subject to a 2ha minimum lot size, so there has been some change from previous standards.</i></b></p> <p><b><i>However, the current lot size of 1ha is still a typical rural residential density and allows for continuation of the existing lifestyle and</i></b></p>  |

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| <p>the existing land. Having a smaller subdivision is not in keeping with zoning and impedes on the community.</p>   | <p><b>amenity of the area, while also making more efficient use of land and services.</b></p> <p><b><i>In this case, the balance lot will still exceed 3ha, so the average density of this subdivision is around 2ha overall.</i></b></p> <p><b><i>A 1ha lot is not a suburban density. It is a typical Rural Living density, particularly in an area with reticulated water services and close to local services and amenities.</i></b></p>  |
| <p>Traffic generation will significantly increase in the area, the vehicle movements will be well above 10 vehicle movements per day as documented in E5.5.1 and Hall Lane does not have a speed limit of more than 60km/hr.</p>   | <p><b><i>The subdivision will result in one additional dwelling, which typically will generate around 10 vehicle movements per day. This is well within the capacity of Hall Lane and the surrounding road network.</i></b></p>   |
| <p>We live within view of the proposed development, on the road to and from the proposed development and often use this area for recreation. It will impact directly on us and our neighbors specifically in the forms of traffic, light pollution, noise pollution and a degradation of the natural environment within which we live sympathetically.</p>     | <p><b><i>As mentioned above, the traffic generation from the additional lot will be relatively minor and within capacity of the local road network.</i></b></p> <p><b><i>Light and noise pollution to neighbouring properties are not expected to be a problem with the separation provided by a 1ha lot.</i></b></p> <p><b><i>Lot 1 is a cleared paddock, with no evidence of particular natural values. A geotechnical assessment has been provided to indicate that Lot 1 can be developed and serviced onsite safely and without impacting the environment.</i></b></p> |
| <p><i>Representation 2</i></p>   | <p><b>Council Officer Comment</b></p>   |
| <p>Has a thorough inspection been done on the land? The proposed site of a further dwelling on “the balance lot” is situated where a quarry was and was filled in with rubbish prior to sale.</p>  | <p><b><i>As mentioned above, there is no additional dwelling proposed on Lot 2/balance lot.</i></b></p> <p><b><i>A geotechnical assessment of Lot 1 has been provided which does not indicate any fill or the like in the area tested.</i></b></p>  |
| <p>There is no mention that the block currently has a house and a self-contained unit on it, the plans only mention current house and outbuilding. If the land is subdivided and the further 2 dwellings are built, that makes 4 dwellings on it, and in no way has the application addressed this, all it talks about is the dwelling on the front block.</p> | <p><b><i>It is understood that the property is developed with a dwelling and ancillary dwelling, which is considered to be part of the single dwelling use in accordance with the definitions of the planning scheme.</i></b></p> <p><b><i>As explained above, the subdivision only creates the opportunity for one (1) additional dwelling on Lot 1.</i></b></p>   |
| <p>The area floods through to neighbouring property to the East, with inadequate drainage on #31 and they don't care that neighbours property is flooded out.</p>  | <p><b><i>It is understood that natural overland drainage from Stamford Hill passes through 31 Hall Lane during rain events. This is not relevant to the consideration of the subdivision proposal.</i></b></p>  |
| <p>There has been inadequate information provided to residents on Hall Lane and no “RED” public notice has been placed on the front of their property as is required by law.</p>   | <p><b><i>The proposal was advertised in accordance with the statutory regulations.</i></b></p>  |



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| <p>Where is the new access to the proposed sub-division going to be, there is no reference on the plans, and who pays for this and the upgrade to the corrugated asphalt road outside this property.<br/>                 What about the traffic increase and vehicle access for another dwelling on the balance lot.</p>  | <p><b><i>The exact location of the new access to Lot 1 will be determined by way of engineering plans after approval. The developer must pay for this work.</i></b></p> <p><b><i>Upgrading the road is not considered necessary for a one lot subdivision.</i></b></p> <p><b><i>Traffic is addressed above.</i></b></p> |
| <p>The issue of a sub-division decreases the privacy I have on from my property. The plans also provide another proposed dwelling to be built on the proposed “New Lot 2”, if this went ahead then that would further impede on privacy.</p>   | <p><b><i>This matter is addressed in answers to Representation 1 above.</i></b></p>   |
| <p>The Visual amenity will ruin the views from the east side of my house, our outlook will not be rural anymore. When a further 2 dwellings are built on the block, instead of looking out our lounge room window and seeing agriculture land, we will be looking into someone’s house and ‘garden’.<br/>                 The development is a high contrast to the area’s rural character. This specific block is surrounded by large rural blocks, 10 acres or more, with natural landscaping and agriculture. The proposed development is suburban in nature and is lacking any sympathy with its surrounds. This development is in high contrast to this area’s neighborhood, as this application allows for a further 2 dwellings to be built on the existing land. Having a smaller sub-division is not in keeping with zoning and impedes on the community.</p> | <p><b><i>This matter is addressed in answers to Representation 1 above.</i></b></p>   |
| <p>Traffic generation will significantly increase in the area, the vehicle movements will be well above 10 vehicle movements per day as documented in E5.5.1 and Hall Lane does not have a speed limit of more than 60km/hr.</p>   | <p><b><i>This matter is addressed in answers to Representation 1 above.</i></b></p>   |
| <p>We live within view of the proposed development, on the road to and from the proposed development and often use this area for recreation. It will impact directly on us and our neighbors specifically in the forms of traffic, light pollution, noise pollution and a degradation of the natural environment within which we live sympathetically.</p>   | <p><b><i>This matter is addressed in answers to Representation 1 above.</i></b></p>   |

| <i>Representation 3</i>   | <b>Council Officer Comment</b>  |
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| <p>We object to this proposed planning application on the following grounds. We moved to Bagdad because of the peaceful rural setting and country environment.</p> <p>31 Hall Lane already has two residential dwellings not one as stated in the application.</p>  | <p><b><i>These matters are addressed in answers to Representations 1 and 2 above.</i></b></p>   |
| <p>The hazardous state of Hall Lane due to its narrowness and also the damage caused to the road surface by the roots of the trees adjacent to the golf course.</p> <p>Hall Lane is recognised by many local residents as a safe and quiet road who use it regularly to exercise or walk together with their children, grand children or pets including myself and my wife along with our grand children.</p> <p>We believe there is already more than enough traffic on Hall Lane unless major road reconstruction is under taken.</p>   | <p><b><i>Hall Lane is a local road providing access to a relatively small number of properties.</i></b></p> <p><b><i>The additional traffic generated by one additional lot is considered to be within the capacity of the road and surrounding network.</i></b></p>                          |
| <i>Representation 4</i>   | <b>Council Officer Comment</b>  |
| <p>I personally object to any form of subdivision on Hall Lane, as there has been limited information on how far this will go.</p>  | <p><b><i>As discussed above, the minimum lot size for Rural Living zoned land in Hall Lane and other areas is 1ha. This means that there is some potential for additional subdivisions in the area, but this is really limited to land close to services and the Midland Highway.</i></b></p> |
| <p>I consider it is environmentally unstable, unviable ground due to no infrastructure to cope with a normal wet year when all properties in the upper side of Hall Lane have a big problem with water that comes from Stamford Hill range behind the existing homes. Block 31 floods water through the neighbouring property land.</p>   | <p><b><i>These matters are addressed in answers to Representations 1 and 2 above.</i></b></p>   |
| <p>It is not just the immediate neighbours of block 31 who are impacted by an unwelcome subdivision. It was designated at semi-rural or rural residential. Previous purchasers of land in Hall Lane were told it would never be considered for subdivision, so residents have over a period of time chosen their blocks for the rural setting and privacy and to enjoy our horses, sheep, dogs, chooks and gardens.</p> <p>Why would Council even consider an application so inept and unpractical? Is the Council going to be responsible for the definite problems that are going to come</p> | <p><b><i>These matters are addressed in answers to Representations 1 and 2 above.</i></b></p>   |

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| from the subdivision and no doubt future subdivisions?   |  |
| The people who have submitted this application to Council are not in tune with the rural lifestyle and have not personally lived in this district long enough to know that Hall Lane is not the place for a suburban environmental disaster! | <b><i>The application for a Rural Living subdivision of one additional lot is made in accordance with the planning scheme.</i></b> |

## ASSESSMENT - THE SOUTHERN MIDLANDS INTERIM PLANNING SCHEME

### Rural Living Zone

The subject site is in the Rural Living Zone. The proposal must satisfy the requirements of the following relevant development standards of this zone:

| <b>Development Standards - Subdivision</b>   |  |   |
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| <b>13.5.1 Lot Design</b>   |  |   |
| To provide for new lots that:  |  |   |
| (a) have appropriate area and dimensions to accommodate development consistent with the Zone Purpose and any relevant Local Area Objectives or Desired Future Character Statements;  |  |   |
| (b) contain building areas which are suitable for residential development, located to avoid hazards and values and will not lead to land use conflict and fettering of resource development use on adjoining rural land;   |  |   |
| (c) are not internal lots, except if the only reasonable way to provide for infill development in existing subdivided areas.   |  |   |
| <b>Acceptable Solutions</b>  | <b>Performance Criteria</b>  | <b>OFFICER COMMENT</b>  |
| <b>A1</b><br>The size of each lot must be no less than the following, except if for public open space, a riparian or littoral reserve, or a Utilities, Emergency services, or Community meeting and entertainment use class, by or on behalf of the State Government, a Council, a statutory authority, or a corporation all the shares of which are held by or on behalf of the State or by a statutory authority:<br><br>1ha minimum lot size. | <b>P1</b><br>No Performance Criteria.  | <i>Both of the proposed lots are more than 1ha, complying with the Acceptable Solution A1.</i>                                      |
| <b>A2</b><br>The design of each lot must provide a minimum building area that is rectangular in shape and complies with all of the following, except if for public open space, a riparian or littoral reserve or utilities;<br><br>(a)   | <b>P2</b><br>The design of each lot must contain a building area able to satisfy all of the following:<br><br>(a)<br>is reasonably capable of accommodating residential use and development; | <i>Both of the proposed lots can accommodate a building area that complies with the requirements of the Acceptable Solution A2.</i> |

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| <p>clear of the frontage, side and rear boundary setbacks;</p> <p>(b) not subject to any codes in this planning scheme;</p> <p>(c) clear of title restrictions such as easements and restrictive covenants;</p> <p>(d) has an average slope of no more than 1 in 5;</p> <p>(e) has a separation distance no less than:</p> <p>(i) 100 m from land zoned Rural Resource;</p> <p>(ii) 200 m from land zoned Significant Agriculture;</p> <p>(f) has a setback from land zoned Environmental Management no less than 100 m.</p> <p>(g) is a minimum of 30 m x 30 m in size.</p> | <p>(b) meets any applicable standards in codes in this planning scheme;</p> <p>(c) enables future development to achieve reasonable solar access, given the slope and aspect of the land;</p> <p>(d) minimises the requirement for earth works, retaining walls, and cut &amp; fill associated with future development;</p> <p>(e) is sufficiently separated from the land zoned Rural Resource and Significant Agriculture to prevent potential for land use conflict that would fetter non-sensitive use of that land, and the separation distance is no less than:</p> <p>(i) 40 m from land zoned Rural Resource;</p> <p>(ii) 80 m from land zoned Significant Agriculture;</p> <p>(f) is setback from land zoned Environmental Management to satisfy all of the following:</p> <p>(i) there is no significant impact from the development on environmental values;</p> <p>(ii) the potential for the spread of weeds or soil pathogens onto the land zoned Environmental Management is minimised;</p> <p>(iii) there is minimal potential for contaminated or sedimented water runoff impacting the land zoned Environmental Management;</p> |  |
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|  | (iv) there are no reasonable and practical alternatives to developing close to land zoned Environmental Management.  |   |
| <p><b>A3</b><br/>                 The frontage for each lot must be no less than the following, except if for public open space, a riparian or littoral reserve or utilities and except if an internal lot:</p> <p>40 m.</p> | <p><b>P3</b><br/>                 The frontage of each lot must provide opportunity for reasonable vehicular and pedestrian access and must be no less than:</p> <p>6m.</p>  | <p><i>The proposed Lot 1 has frontage to Hall Lane in of around 90m, which complies with the Acceptable Solution A3.</i></p> <p><i>The balance lot will have an access strip with 11.5m of frontage to Hall Lane, which complies with the Performance Criteria P3.</i></p>  |
| <p><b>A4</b><br/>                 No lot is an internal lot.</p>   | <p><b>P4</b><br/>                 An internal lot must satisfy all of the following:</p> <p>(a) access is from a road existing prior to the planning scheme coming into effect, unless site constraints make an internal lot configuration the only reasonable option to efficiently utilise land;</p> <p>(b) it is not reasonably possible to provide a new road to create a standard frontage lot;</p> <p>(c) the lot constitutes the only reasonable way to subdivide the rear of an existing lot;</p> <p>(d) the lot will contribute to the more efficient utilisation of rural living land;</p> <p>(e) the amenity of neighbouring land is unlikely to be unreasonably affected by subsequent development and use;</p> <p>(f) the lot has access to a road via an access strip, which is part of the lot, or a right-of-way, with a width of no less than 3.6m;</p> | <p><i>The proposed balance lot is an internal lot so is assessed against Performance Criteria P4.</i></p> <p><i>(a) Hall Lane is an existing road.</i></p> <p><i>(b) It is considered unreasonable and unnecessary to provide a new road when adequate frontage can be provided as proposed.</i></p> <p><i>(c) The proposal is the only reasonable way to subdivide without creating new roads.</i></p> <p><i>(d) The proposal will result in a lot serviced with water and located close to community services becoming available for development, which represents a more efficient utilisation of rural living land and infrastructure.</i></p> <p><i>(e) Lot 1 is over 1ha in area and development of it is unlikely to impact the amenity of neighbouring land to an unreasonable extent.</i></p> <p><i>(f) The balance lot will have suitable access to Hall Lane via the access strip, which encompasses the existing driveway.</i></p> <p><i>(g) The access strip is wide enough to accommodate passing bays.</i></p> <p><i>(h) The access strip will only be used by one lot..</i></p> |

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|  | <p>(g) passing bays are provided at appropriate distances along the access strip to service the likely future use of the lot;</p> <p>(h) the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road;</p> <p>(i) a sealed driveway is provided on the access strip prior to the sealing of the final plan.</p> <p>(j) the lot addresses and provides for passive surveillance of public open space and public rights of way if it fronts such public spaces.</p> | <p>(i) A condition is included in the recommendation to require the access to be sealed in accordance with this standard.</p> <p>(j) The lot does not front public open space or rights of way.</p>   |
| <p><b>A5</b><br/>Setback from a new boundary for an existing building must comply with the relevant Acceptable Solution for setback.</p> | <p><b>P5</b><br/>Setback from a new boundary for an existing building must satisfy the relevant Performance Criteria for setback.</p>   | <p><i>The existing dwelling on the balance lot is setback more than 10m from the proposed new lot boundary.</i><br/><i>This complies with the Acceptable Solution for setback in the Rural Living Zone, which is 10m to all boundaries.</i></p> |

### Bushfire Prone Areas Code

The Bushfire Prone Areas Code applies to subdivision of land in a bushfire prone area. The proposal must satisfy the requirements of the following relevant development standards of this Code:

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| <p><b>E1.6.1 Subdivision: Provision of hazard management areas</b><br/>Subdivision provides for hazard management areas that:</p> <p>(a) facilitate an integrated approach between subdivision and subsequent building on a lot;</p> <p>(b) provide for sufficient separation of building areas from bushfire-prone vegetation to reduce the radiant heat levels, direct flame attack and ember attack at the building area; and</p> <p>(c) provide protection for lots at any stage of a staged subdivision.</p> |  |   |
| <b>Acceptable Solutions</b>   | <b>Performance Criteria</b>  | <b>OFFICER COMMENT</b>  |
| <p><b>A1</b><br/>(a) TFS or an accredited person certifies that there is an insufficient increase in risk from bushfire to warrant the provision of hazard management areas as part of a subdivision; or</p>  | <p><b>P1</b><br/>A proposed plan of subdivision shows adequate hazard management areas in relation to the building areas shown on lots within a bushfire-prone area, having regard to:</p> | <p>A bushfire report by an accredited person (Dana Elphinstone) has been provided with the development application, certifying that the proposal complies with this standard, including achieving BAL of 19 or less for all lots.</p> |

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| <p>(b) The proposed plan of subdivision:</p> <p>(i) shows all lots that are within or partly within a bushfire-prone area, including those developed at each stage of a staged subdivision;</p> <p>(ii) shows the building area for each lot;</p> <p>(iii) shows hazard management areas between bushfire-prone vegetation and each building area that have dimensions equal to, or greater than, the separation distances required for BAL 19 in Table 2.4.4 of Australian Standard AS 3959 – 2009 Construction of buildings in bushfire-prone areas; and</p> <p>(iv) is accompanied by a bushfire hazard management plan that addresses all the individual lots and that is certified by the TFS or accredited person, showing hazard management areas equal to, or greater than, the separation distances required for BAL 19 in Table 2.4.4 of Australian Standard AS 3959 – 2009 Construction of buildings in bushfire-prone areas; and</p> <p>(c) If hazard management areas are to be located on land external to the proposed subdivision the application is accompanied by the written consent of the owner of that land to enter into an agreement under section 71 of the Act that will be registered on the title of the neighbouring property providing for the affected land to be managed in</p> | <p>(a) the dimensions of hazard management areas;</p> <p>(b) a bushfire risk assessment of each lot at any stage of staged subdivision;</p> <p>(c) the nature of the bushfire-prone vegetation including the type, fuel load, structure and flammability;</p> <p>(d) the topography, including site slope;</p> <p>(e) any other potential forms of fuel and ignition sources;</p> <p>(f) separation distances from the bushfire-prone vegetation not unreasonably restricting subsequent development;</p> <p>(g) an instrument that will facilitate management of fuels located on land external to the subdivision; and</p> <p>(h) any advice from the TFS..</p> | <p>The Acceptable Solution is satisfied.</p> |
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| accordance with the bushfire hazard management plan. |  |  |
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**E1.6.2 Subdivision: Public and fire fighting access**

Access roads to, and the layout of roads, tracks and trails, in a subdivision:

- (a) allow safe access and egress for residents, firefighters and emergency service personnel;
- (b) provide access to the bushfire-prone vegetation that enables both property to be defended when under bushfire attack and for hazard management works to be undertaken;
- (c) are designed and constructed to allow for fire appliances to be manoeuvred;
- (d) provide access to water supplies for fire appliances; and
- (e) are designed to allow connectivity, and where needed, offering multiple evacuation points.

| <b>Acceptable Solutions</b>   | <b>Performance Criteria</b>  | <b>OFFICER COMMENT</b>  |
|---|--|---|
| <p><b>A1</b></p> <p>(a) TFS or an accredited person certifies that there is an insufficient increase in risk from bushfire to warrant specific measures for public access in the subdivision for the purposes of fire fighting; or</p> <p>(b) A proposed plan of subdivision showing the layout of roads, fire trails and the location of property access to building areas is included in a bushfire hazard management plan that:</p> <p>(i) demonstrates proposed roads will comply with Table E1, proposed private accesses will comply with Table E2 and proposed fire trails will comply with Table E3; and</p> <p>(ii) is certified by the TFS or an accredited person.</p> | <p><b>P1</b></p> <p>A proposed plan of subdivision shows access and egress for residents, fire-fighting vehicles and emergency service personnel to enable protection from bushfires, having regard to:</p> <p>(a) appropriate design measures, including:</p> <ul style="list-style-type: none"> <li>(i) two way traffic;</li> <li>(ii) all weather surfaces;</li> <li>(iii) height and width of any vegetation clearances;</li> <li>(iv) load capacity;</li> <li>(v) provision of passing bays;</li> <li>(vi) traffic control devices;</li> <li>(vii) geometry, alignment and slope of roads, tracks and trails;</li> <li>(viii) use of through roads to provide for connectivity;</li> <li>(ix) limits on the length of cul-de-sacs and dead-end roads;</li> <li>(x) provision of turning areas;</li> <li>(xi) provision for parking areas;</li> <li>(xii) perimeter access; and</li> <li>(xiii) fire trails;</li> </ul> <p>(b) the provision of access to:</p> <ul style="list-style-type: none"> <li>(i) bushfire-prone vegetation to permit the</li> </ul> | <p>A bushfire report by an accredited person (Dana Elphinstone) has been provided with the development application, certifying that access for the proposal complies with this standard.</p> <p>The Acceptable Solution is satisfied.</p> |



|  |   |  |
|--|---|--|
|  | <p>undertaking of hazard management works; and<br/>(ii) fire fighting water supplies; and</p> <p>(c) any advice from the TFS.</p> |  |
|--|---|--|

**E1.6.3 Subdivision: Provision of water supply for fire fighting purposes**

Adequate, accessible and reliable water supply for the purposes of fire fighting can be demonstrated at the subdivision stage and allow for the protection of life and property associated with the subsequent use and development of bushfire-prone areas.

| <b>Acceptable Solutions</b>   | <b>Performance Criteria</b>                   | <b>OFFICER COMMENT</b>   |
|---|---|--|
| <p><b>A1</b><br/>In areas serviced with reticulated water by the water corporation:</p> <p>(a)<br/>TFS or an accredited person certifies that there is an insufficient increase in risk from bushfire to warrant the provision of a water supply for fire fighting purposes;</p> <p>(b)<br/>A proposed plan of subdivision showing the layout of fire hydrants, and building areas, is included in a bushfire hazard management plan approved by the TFS or accredited person as being compliant with Table E4; or</p> <p>(c)<br/>A bushfire hazard management plan certified by the TFS or an accredited person demonstrates that the provision of water supply for fire fighting purposes is sufficient to manage the risks to property and lives in the event of a bushfire.</p> | <p><b>P1</b><br/>No Performance Criteria.</p> | <p>While the area is supplied with reticulated water, it is not close enough to be relied upon for fire fighting purposes.</p> <p>Assessment is against A2 below.</p>  |
| <p><b>A2</b><br/>In areas that are not serviced by reticulated water by the water corporation:</p> <p>(a)<br/>The TFS or an accredited person certifies that there is an insufficient increase in</p>   | <p><b>P2</b><br/>No Performance Criteria.</p> | <p>A bushfire report by an accredited person (Dana Elphinstone) has been provided with the development application, certifying that static water supply for the proposal complies with this standard.</p> <p>The Acceptable Solution is satisfied.</p> |

|  |  |  |
|--|--|--|
| <p>risk from bushfire to warrant provision of a water supply for fire fighting purposes;</p> <p>(b)<br/>The TFS or an accredited person certifies that a proposed plan of subdivision demonstrates that a static water supply, dedicated to fire fighting, will be provided and located compliant with Table E5; or</p> <p>(c)<br/>A bushfire hazard management plan certified by the TFS or an accredited person demonstrates that the provision of water supply for fire fighting purposes is sufficient to manage the risks to property and lives in the event of a bushfire.</p> |  |  |
|--|--|--|

### Road and Railway Assets Code

The proposal includes a new access for Lot 1, which requires assessment against the relevant parts of this Code.

The proposed access is suitably located to achieve the required sight distance. The design and construction of the Lot 1 access will need to be in accordance with the recommended conditions.

### Parking and Access Code

The Parking and Access Code applies to all use and development.

In this case the proposed subdivision of one lot and balance, with Lot 1 to be provided with a new access and the balance to be accessed via the existing crossover and driveway.

As mentioned above, the access strip will be required to be sealed in accordance with the subdivision standards of the zone.

The dwelling on the balance lot is provided with sufficient parking in accordance with the Code requirements.

The location and design of the access complies with the requirements of the Code.

## CONCLUSION

The report has assessed a Development Application for a subdivision of one lot and balance at 31 Hall Lane, Bagdad.

Four (4) representations were received in regard to the proposal, raising concerns as addressed above.

The proposal has been found to comply with all the relevant standards of the Rural Living Zone and the applicable Codes.

It is recommended that the Application be approved and a Permit issued with conditions and advice.

## RECOMMENDATION

**THAT, in accordance with the provisions of the *Southern Midlands Interim Planning Scheme 2015* and section 57 of the *Land Use Planning & Approvals Act 1993*, Council APPROVE the Development Application (SA 2019/13) for Subdivision of one lot and balance at 31 Hall Lane, Bagdad, owned by J Haig and L Van Beek and that a permit be issued with the following conditions:**

## CONDITIONS

### *General*

1. The subdivision layout or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.

### *Public open space*

2. As insufficient provision has been made for recreational space, and having formed the opinion that such a provision should be made in respect of the proposal, Council requires that an amount equal to five percent (5%) of the unimproved value of Lot 1 must be provided as cash-in-lieu of public open space in accordance with the provisions of Section 117 of the *Local Government (Building & Miscellaneous Provisions) Act 1993*. The subdivider must obtain a valuation for the unimproved value of the subdivision from a registered Valuer.

### *Easements*

3. Easements must be created over all drains, pipelines, wayleaves and services in accordance with the requirements of the Council's Municipal Engineer. The cost of locating and creating the easements shall be at the subdivider's full cost.

### *Endorsements*

4. The final plan of survey must be noted that Council cannot or will not provide a means of drainage to all lots shown on the plan of survey.

### ***Covenants***

5. **Covenants or other similar restrictive controls that conflict with any provisions or seek to prohibit any use provided within the planning scheme must not be included or otherwise imposed on the titles to the lots created by this permit, either by transfer, inclusion of such covenants in a Schedule of Easements or registration of any instrument creating such covenants with the Recorder of Titles, unless such covenants or controls are expressly authorised by the terms of this permit or the consent in writing of the Council's Manager Environment and Development Services.**

### ***Final plan***

6. **A final approved plan of survey and schedule of easements as necessary, together with two (2) copies, must be submitted to Council for sealing for each stage. The final approved plan of survey must be substantially the same as the endorsed plan of subdivision and must be prepared in accordance with the requirements of the Recorder of Titles.**
7. **A fee of \$250.00, or as otherwise determined in accordance with Council's adopted fee schedule, must be paid to Council for the sealing of the final approved plan of survey for each stage.**
8. **Prior to Council sealing the final plan of survey for each stage, security for an amount clearly in excess of the value of all outstanding works and maintenance required by this permit must be lodged with the Southern Midlands Council. The security must be in accordance with section 86(3) of the *Local Government (Building & Miscellaneous Provisions) Council 1993*. The amount of the security shall be determined by the Council's Municipal Engineer.**
9. **All conditions of this permit, including either the completion of all works and maintenance or payment of security in accordance with this permit, must be satisfied before the Council seals the final plan of survey for each stage. It is the subdivider's responsibility to notify Council in writing that the conditions of the permit have been satisfied and to arrange any required inspections.**
10. **The subdivider must pay any Titles Office lodgment fees direct to the Recorder of Titles.**

### ***Property Services***

11. **Property services must be contained wholly within each lots served or an easement to the satisfaction of the Council's Municipal Engineer or responsible authority.**

### ***Existing services***

12. **The Subdivider must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the proposed subdivision works. Any work required is to be specified or undertaken by the authority concerned.**

### ***Telecommunications, electrical and gas reticulation***

13. **Electrical and telecommunications services must be provided to each lot in accordance with the requirements of the responsible authority and the satisfaction of Council's Municipal Engineer.**

### ***Drainage***

14. Stormwater from the development is to be connected to the Council's existing reticulation system using a single point of discharge to the satisfaction of Council's Municipal Engineer.

### ***TasWater***

15. Pursuant to the Water and Sewerage Industry Act 2008 (TAS) Section 56P (2) (b) TasWater impose conditions on the permit as per the SPAN TWDA 2020/00029-STM (attached).

### ***Access***

16. A separate vehicle access must be provided from the road carriageway to each lot. The access must comply with the standards shown on standard drawings TSD-R03-v1 Rural Roads Typical Property Access, TSD-R04-v1 Rural Roads Typical Driveway Profile prepared by the IPWE Aust. (Tasmania Division), or as otherwise required by this permit, and the satisfaction of Council's General Manager. The accesses should include:
  - The access must have a minimum width of 6m for a sufficient length to allow for vehicles to pass at the property boundary without encroaching on the public road.
  - The access strip to the balance lot is to be sealed from Hall Lane to the lot proper; and
  - Include stormwater drainage as required.
17. The subdivider must provide not less than 48 hours written notice to Council's Works Manager before commencing access works in order to arrange an onsite meeting to finalise the required works.

### ***Engineering***

18. The subdivision must be carried out in accordance with the Tasmanian Subdivision Guidelines October 2013 (attached).
19. Engineering design drawings to the satisfaction of the Council's General Manager must be submitted to and approved by Council before development of the land commences.
20. Engineering design drawings are to be prepared by a qualified and experienced civil engineer, or other person approved by Council's General Manager, and must show -
  - (a) all existing and proposed services required by this permit;
  - (b) all existing and proposed roadwork required by this permit;
  - (c) measures to be taken to provide sight distance in accordance with the relevant standards of the planning scheme;
  - (d) measures to be taken to limit or control erosion and sedimentation;
  - (e) any other work required by this permit.
21. Approved engineering design drawings will remain valid for a period of 2 years from the date of approval of the engineering drawings.
22. The developer shall appoint a qualified and experienced Supervising Engineer (or company registered to provide civil engineering consultancy services) who will be required to certify completion of subdivision construction works.

The appointed Supervising Engineer shall be the primary contact person on matters concerning the subdivision.

**Construction amenity**

23. The development must only be carried out between the following hours unless otherwise approved by the Council's Manager Environment and Development Services:
- Monday to Friday 7:00 AM to 6:00 PM
  - Saturday 8:00 AM to 6:00 PM
  - Sunday and State-wide public holidays 10:00 AM to 6:00 PM
24. All subdivision works associated with the development of the land must be carried out in such a manner so as not to unreasonably cause injury to, or unreasonably prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of -
- (a) Emission from activities or equipment related to the use or development, including noise and vibration, which can be detected by a person at the boundary with another property.
  - (b) Transport of materials, goods or commodities to or from the land.
  - (c) Appearance of any building, works or materials.
25. Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Municipal Engineer.
26. Public roadways or footpaths must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.

**THE FOLLOWING ADVICE APPLIES TO THIS PERMIT: -**

- A. This permit does not imply that any other approval required under any other legislation has been granted.
- B. The owner is advised that an engineering plan assessment and inspection fee must be paid to Council in accordance with Council's fee schedule.
- C. This permit does not ensure compliance with the Aboriginal Heritage Act 1975. It is recommended that you conduct a property search with Aboriginal Heritage Tasmania prior to commencing works – see this website for further details: <https://www.aboriginalheritage.tas.gov.au/assessment-process>
- D. A declared weed Paterson's Curse (*Echium plantagineum*) is known to occur in this area. The prevention of spread of any declared weeds from your site is legal requirement under the Weed Management Act 1999. Follow the guidelines of the *Weed and Disease Planning and Hygiene Guidelines - Preventing the spread of weeds and diseases in Tasmania* to ensure you are meeting this requirement. This can be found at [www.dpipwe.tas.gov.au](http://www.dpipwe.tas.gov.au).

For information on specific weed management please discuss with councils Weed Officer (Jennifer Milne, 6254 5046) or DPIPWE - <https://dpiipwe.tas.gov.au/invasive-species/weeds>.

- E. This planning approval shall lapse at the expiration of two (2) years from the date of the commencement of planning approval unless the development for which the approval was given has been substantially commenced or extension of time has been granted. Where a planning approval for a development has lapsed, an application for renewal of a planning approval for that development may be treated as a new application.

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

**11.3 MUNICIPAL SEAL (Planning Authority)**

Nil.



## 11.4 PLANNING (OTHER)

### 11.4.1 DRAFT PLANNING SCHEME AMENDMENT (RZ2020/01) FOR BUSHFIRE PRONE AREAS OVERLAY

**Author:** SENIOR PLANNING OFFICER (JACQUI TYSON)

**Date:** 11 FEBRUARY 2020

**Enclosure(s):**

1. *Planning Report - Bushfire-Prone Area Overlay Southern Midlands LGA (Tasmanian Fire Service, December 2019)*
2. *Bushfire Prone Areas Overlay – FAQs (Tasmanian Fire Service)*

## PROPOSAL

It is proposed that Council initiate an amendment to the Southern Midlands Interim Planning Scheme 2015 (the Scheme) in accordance with Section 34 of the *Land Use Planning and Approvals Act 1993* (the Act) to insert Bushfire Prone Areas Overlay maps as recommended by the Tasmanian Fire Service (TFS).

The maps are provided in Appendix A of the Attachment 1.

Under the current Scheme bushfire prone areas are defined by the following terms in section E1.3 of the Bushfire Prone Areas Code:

*Bushfire- prone area*

- (a) *land that is within the boundary of a bushfire-prone area shown on an overlay on a planning scheme map; or*
- (b) *where there is no overlay on a planning scheme map, land that is within 100m of an area of bushfire-prone vegetation equal to or greater than 1ha.*

*Bushfire- prone vegetation*

*means contiguous vegetation including grasses and shrubs but not including maintained lawns, parks and gardens, nature strips, plant nurseries, golf courses, vineyards, orchards or vegetation on land that is used for horticultural purposes.*

The proposed amendment does not change whether or not land is considered bushfire prone, it simply provides a map of all the land that is described by the current definition.

This will provide greater certainty for Council, property owners and practitioners in the application of the Bushfire-Prone Area Code under the Scheme and the *Building Act 2016*.

Council have already endorsed this mapping as part of the Southern Midlands Local Provision Schedule.

This report will assess the requested amendment against the relevant provisions of the Act and the Scheme.

If Council agree to initiate the amendment it will be advertised for public comment and referred to the Tasmanian Planning Commission for their consideration and decision.

It is recommended that Council agree to initiate the planning scheme amendment.

## BACKGROUND

The Tasmania Fire Service (TFS) has been working with Local Government over several years to prepare and implement Bushfire-Prone Areas mapping for Tasmania. The process for developing the maps is described in the TFS document attached.

It was initially intended to introduce the mapping as part of the future Tasmanian Planning Scheme, however as the assessment of Local Provision Schedules is taking longer than expected most Councils are now moving forward with amendments to their current Interim Schemes to add the Bushfire Prone Areas Overlay.

The mapping has been incorporated into the Interim Schemes of 11 Councils so far, with a further 5 underway.

## LEGISLATIVE REQUIREMENTS

The proposed amendment is considered under section 34 (1) (b) of the Act which reads:

*34. Amendment of planning scheme*

*(1) A planning authority may-*

*(a) In response to a request under Section 33; or*

*(b) Of its own motion –*

*Initiate an amendment of a planning scheme administered by it.*

The matters which Council must consider when making a decision whether to reject or exhibit the application are listed in sections 32 and 33 of the Act and are set out in detail in the body of this report.

## PUBLIC NOTIFICATION

Section 38 of the Act sets out that after making a decision to initiate a planning scheme amendment it is to be publicly advertised for a minimum period of 28 days or longer period agreed to by the Council and the Planning Commission.

Following the advertising period a report will be presented to Council addressing any representations received which will then be provided to the Tasmanian Planning Commission along with the representations.

## ASSESSMENT – PROVISIONS OF THE ACT

### 5.1 Section 32 of the Act

The requirements for amendment of a planning scheme under Section 32(1) of the Act are addressed in the table below (Table 1).

| Act Section  | OFFICER COMMENT  |
|--|--|
| <p><b>32 (1) (e)</b> must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area;</p>   | <p><i>The proposed amendment will not create any land use conflicts.</i></p>   |
| <p><b>32 (1) (ea)</b> must not conflict with the requirements of Section 300</p>   | <p><i>Assessment against Section 300 is provided in Table 2 below.</i></p>   |
| <p><b>32 (1) (f)</b> 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.</p>  | <p><i>The draft amendment will not change the use and development permissible under the Bushfire-Prone Areas Code.</i></p> <p><i>The introduction of the proposed overlay will clarify the application of existing requirements – no new requirements will be introduced.</i></p>  |
| <p><b>Section 32(2) - Considerations of Section 20 (2), (3), (4), (5), (6), (7), (8), (9).</b><br/>This Part of the Act does the following:</p> <ul style="list-style-type: none"> <li>• Prescribes what a Planning Scheme can provide for.</li> <li>• Prescribes requirements and protection for the continuation of a lawfully established use or development</li> <li>• Provides the scope of the planning system</li> </ul>  | <p><i>The proposed amendment does not conflict with the requirements of Section 20.</i></p>  |
| <p><b>Section 20 (1)</b></p> <p>a) seek to further the objectives set out in Schedule 1 within the area covered by the scheme; and</p> <p>b) prepare the scheme in accordance with State Policies made under section 11 of the State Policies and Projects Act 1993 ; and</p> <p>c) . . . . .</p> <p>d) have regard to the strategic plan of a council referred to in Division 2 of Part 7 of the Local Government Act 1993 as adopted by the council at the time the planning scheme is prepared; and</p> <p>e) have regard to the safety requirements set out in the standards prescribed under the Gas Pipelines Act 2000 .</p> | <p><i>Assessment against the objectives of the Act is provided in Table 3 and Table 4 of this report.</i></p> <p><i>Assessment against the State Policies are provided in Part 6 and 7 of this Report.</i></p> <p><i>Assessment against the Strategic Plan is provided in Part 9 of this Report.</i></p> <p><i>In regard to the Gas Pipeline, the proposed amendment will not impact the pipeline.</i></p> |

Table 1 – Section 32 of the Act

## 5.2 Section 30O of the Act

The requirements of Section 30O of the Act are addressed in the Table (Table 3) below.

| Act Section   | OFFICER COMMENT  |
|---|--|
| <p><b>30O (1)</b><br/>An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker within the meaning of section 20(2A), practicable, consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the scheme applies.</p>  | <p><i>The proposed amendment is consistent with the Southern Regional Land Use Strategy (STRLUS).</i></p>                              |
| <p><b>30O (2)</b><br/>An amendment, of a planning scheme, that would amend a local provision of the scheme or insert a new provision into the scheme may only be made under Division 2 or 2A if –</p> <p>(a) the amendment is not such that the local provision as amended or inserted would be directly or indirectly inconsistent with the common provisions, except in accordance with section 30EA, or an overriding local provision; and</p> <p>(b) the amendment does not revoke or amend an overriding local provision; and</p> <p>(c) the amendment is not to the effect that a conflicting local provision would, after the amendment, be contained in the scheme.</p> | <p><i>The proposal does not include any changes that conflict with, or override, the common provisions of the Planning Scheme.</i></p> |
| <p><b>30O (3)</b><br/>Subject to section 30EA, an amendment may be made to a local provision if –</p> <p>(a) the amendment is to the effect that a common provision is not to apply to an area of land; and</p> <p>(b) a planning directive allows the planning scheme to specify that some or all of the common provisions are not to apply to such an area of land.</p>   | <p><i>The proposed amendment is not inconsistent with and does not change any common provisions.</i></p>                               |

Table 2 – Section 30 of the Act

### 5.3 Objectives of the Act

The objectives of Schedule 1, Part 1 of the Resource Management and Planning System (RMPS) are addressed in the Table (*Table 4*) below.

| Objective   | OFFICER COMMENT  |
|---|--|
| (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;                         | <p><i>The proposed amendment will support the application of existing regulations and provide clarity to all users regarding bushfire prone areas.</i></p> <p><i>The proposal is consistent with this objective.</i></p>   |
| (b) to provide for the fair, orderly and sustainable use and development of air, land and water;  | <p><i>The proposed amendment will support the application of existing regulations and provide clarity to all users regarding bushfire prone areas.</i></p> <p><i>The proposal is consistent with this objective.</i></p>   |
| (c) to encourage public involvement in resource management and planning;  | <p><i>Should the Council decide to initiate the amendment and proceed to exhibit the application then the public will have the opportunity to comment on this proposal during the exhibition period,</i></p> <p><i>The public will have the opportunity to lodge a written representation during the public exhibition period.</i></p> <p><i>The Tasmanian Planning Commission may also hold a public hearing to consider the representations if any are received.</i></p> |
| (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c);  | <p><i>The proposed amendment will support the application of existing regulations regarding bushfire prone areas.</i></p> <p><i>This will assist and provide clarity for the building industry and landowners.</i></p> <p><i>The proposal is consistent with this objective.</i></p>   |
| (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State. | <p><i>The application represents a shared responsibility for resource management and planning by Council, the Commission, the TFS and the community.</i></p> <p><i>All relevant bodies and individuals will have either a formal role or an opportunity to participate in the approval process.</i></p> <p><i>The proposal is consistent with this objective.</i></p>  |

Table 3 – Objectives of the Act Part 1

The objectives of Schedule 1, Part 2 of the Planning Process established by the Act are addressed below.

| Objective  | OFFICER COMMENT   |
|--|---|
| (a) to require sound strategic planning and co-ordinated action by State and local government;   | <p><i>The proposal is consistent with the Southern Regional Land Use Strategy and will be assessed by local and State government authorities.</i></p> <p><i>The proposal is consistent with this objective.</i></p> |
| (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land;  | <p><i>Objectives, policies and controls are set by Planning directives, the Act and the Scheme as considered in this report.</i></p> <p><i>The proposal is consistent with this objective.</i></p>                  |
| (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;            | <p><i>The proposal will provide economic and social benefit by improving the clarity of the Bushfire Prone-Areas Code.</i></p> <p><i>The proposal is consistent with this objective.</i></p>                        |
| (d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; | <p><i>The proposal represents an integrated approach to land use planning and is consistent with this objective.</i></p>  |
| (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals;   | <p><i>The proposal is for a planning scheme amendment only and is consistent with this objective.</i></p>   |
| (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;   | <p><i>The proposal is consistent with this objective.</i></p>   |
| (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;   | <p><i>The proposal will not impact these values and is consistent with this objective.</i></p>  |
| (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;                              | <p><i>The proposal will not impact public infrastructure and is consistent with this objective.</i></p>   |
| (i) to provide a planning framework which fully considers land capability.   | <p><i>The proposed amendment does not impact land capability and is consistent with this objective.</i></p>   |

Table 4 – Objectives of the Act Part 2

## State Policies

The current State Policies under the State Policies and Projects Act 1993 are:

- State Policy on the Protection of Agricultural Land 2009 (“PAL Policy”);
- State Coastal Policy 1996;
- State Policy on Water Quality Management 1997; and
- National Environmental Protection Measures (NEPMs).

The proposed amendment to introduce Bushfire Prone Areas mapping does not change the current use and development standards under the Code or the Scheme more broadly. It will simply provide a clear communication method for showing if land is bushfire prone, in the form of a Scheme overlay.

The proposed amendment is not considered to conflict with any of the State Policies.

## Southern Tasmania Regional Land Use Strategy 2010–2035

The Southern Tasmania Regional Land Use Strategy (“STRLUS”) is a strategic land use plan for the twelve (12) Council areas in the southern region of Tasmania. It has a 25 year planning time horizon to 2035 for integrated infrastructure, land use and transport planning.

The proposed amendment must as far as practicable be consistent with the STRLUS in accordance with Section 30O of the Act. This is typically considered through assessment of the policies of STRLUS.

Assessment against the relevant regional policies within STRLUS are provided in Table 5 below.

| Regional Policy – Managing Risks and Hazards  | OFFICER COMMENT   |
|---|---|
| <p><b>MRH 1.1</b><br/>                     Provide for the management and mitigation of bushfire risk at the earliest possible stage of the land use planning process (rezoning or if no rezoning required; subdivision) by the identification and protection (in perpetuity) of buffer distances or through the design and layout of lots.</p> | <p><i>Incorporation of the proposed overlay in the Scheme will mean that bushfire-prone land will be easily identifiable early in the land use planning process by owners, Council and practitioners and ensure that the requirements of the Code are addressed as early as possible.</i></p> |
| <p><b>MRH 1.4</b><br/>                     Include provisions in planning schemes for use and development in bushfire prone areas based upon best practice bushfire risk mitigation and management.</p>   | <p><i>Mapping bushfire prone areas is considered to be best practice and directly furthers this policy.</i></p>   |

Table 5 – STRLUS

## Southern Midlands Council Strategic Plan

Section 20(d) of the Act requires consideration of the Council's Strategic Plan, as adopted in accordance with Division 2 of Part 7 of the *Local Government Act 1993*.

The Southern Midlands Council Strategic Plan 2014 to 2023 provides strategic goals and operational actions arranged under six (6) themes:

- **Infrastructure:** The need to maintain, improve and maximise the Community benefit from infrastructure provided by Council.
- **Growth:** The need to increase the population in the municipality and to grow the level of agricultural, commercial and industrial activity.
- **Landscapes:** The need to maintain, improve and maximise the benefits of the existing heritage, natural and cultural landscapes of the Southern Midlands.
- **Lifestyle:** The need to increase the opportunities for improved health and well-being of those that live in the Southern Midlands.
- **Community:** The need to retain and build on the strong sense of Community that exists within the Southern Midlands.
- **Organisation:** The need to monitor and continuously improve the efficiency and effectiveness of the way the Council provides services to the Community.

The proposed amendment is considered to be consistent with all relevant sections of the Strategic Plan.

## CONCLUSION

This report has assessed a proposal to initiate an amendment to the Southern Midlands Interim Planning Scheme 2015 (the Scheme) in accordance with Section 34 of the *Land Use Planning and Approvals Act 1993* (the Act) to insert Bushfire Prone Areas Overlay maps as recommended by the Tasmanian Fire Service (TFS).

If Council agree to initiate the amendment the proposal will be exhibited for public comment and referred to the Tasmanian Planning Commission.

The proposal has found to be consistent with the applicable objectives and sections of the Act, State Policies and the Southern Tasmanian Regional Land Use Strategy.

It is recommended that the Council agrees to initiate the planning scheme amendment and exhibit it for public comment.

## RECOMMENDATION

### THAT Council:

1. Pursuant to Section 34(1)(b), former provisions, of the *Land Use Planning & Approvals Act 1993*, the Planning Authority, of its own motion, initiate draft Planning Scheme Amendment RZ2020/01 by inserting a Bushfire Prone Areas Overlay map as shown in Appendix A of the Planning Report Bushfire-Prone Areas Overlay Southern Midlands LGA (Tasmanian Fire Service, December 2019).
2. Pursuant to Section 35(1), former provisions, of the *Land Use Planning & Approvals Act 1993*, resolves that draft Planning Scheme Amendment



**RZ2020/01 meets the requirements specified under Section 32 former provisions of the Act.**

**Pursuant to Section 35(2) of the *Land Use Planning & Approvals Act 1993*, former provisions, resolves to prepare and certify draft Planning Scheme Amendment RZ2020/01 and sign and seal the instrument as required.**

- 3. Pursuant to Section 35(4) of the *Land Use Planning & Approvals Act 1993*, former provisions, that a copy of draft Planning Scheme Amendment RZ2020/01 and certified instrument be provided to the Tasmanian Planning Commission.**
- 4. Pursuant to Section 38 of the *Land Use Planning & Approvals Act 1993*, former provisions, resolves to place the draft Planning Scheme Amendment RZ2020/01 on public exhibition for a period of 28 days.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

**ENCLOSURE**

*Agenda Item 11.4.1*

**PLANNING REPORT**



Tasmania Fire Service

**Bushfire-Prone Areas Overlay  
Southern Midlands LGA**

December 2019

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Bushfire Risk Unit**

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**Appendix A – Bushfire-Prone Areas Overlay**

## Executive Summary

The Tasmania Fire Service ('TFS') is working with Local Government to prepare and implement bushfire-prone areas mapping for Tasmanian Local Government Areas ('LGA'). Draft mapping for the Southern Midlands LGA has now been completed following collaborative work between TFS and Council officers.

The purpose of the bushfire-prone area mapping is to spatially define land where potential exposure to bushfire hazard is sufficient to warrant a building and/or planning response to achieve a tolerable level of residual risk. The mapping does not imply that there is nil risk to use and development outside of the overlay, rather that residual risk to use and development outside of the overlay is deemed to be tolerable through reliance on other external measures, such as firefighter intervention.

The starting point for the map preparation was the production of a 'modelled overlay' that was generated by applying a 100m buffer to existing vegetation map data. The overlay was then progressively refined based on assessment of local conditions including bushfire behaviour and fuel management regimes. The local knowledge provided by Council officers was critical to this process.

By spatially defining bushfire-prone areas the mapping will provide clarity for permit authorities, landowners, developers, consultants and the broader community with respect to the application of existing statutory requirements for bushfire protection. The process of reviewing local conditions has also allowed for some areas that would currently trigger bushfire requirements to be 'mapped-out', thereby reducing compliance and development costs for the local community.

For the mapping to serve its intended function it needs to be incorporated within the relevant planning instrument established under the *Land Use Planning and Approvals Act 1993* ('LUPAA'). It is anticipated that the mapping will be incorporated into Council's Local Provision Schedules, which will form part of the Tasmanian Planning Scheme.

To introduce the overlay sooner, Council may initiate a draft amendment to the Southern Midlands Interim Planning Scheme 2015. In this transitional period before the Tasmanian Planning Scheme is enacted, Schedule 6 of LUPAA provides the statutory basis for amending interim planning schemes under the 'former provisions'.

Adoption of the bushfire-prone areas overlay is consistent with the Schedule 1 Objectives of the *Land Use Planning and Approvals Act 1993*, the State Policies created under the *State Policies and Projects Act 1993* and the relevant regional land use strategy.

## 1. Introduction

### 1.1 Purpose of this Report

This report has been prepared in support of the bushfire-prone areas mapping for the Southern Midlands LGA and provides the following information:

- The background and context of the mapping;
- Description of the mapping process;
- Consideration of overlay implementation;
- Consideration of the relevant statutory planning requirements and strategic planning framework.

### 1.2 Background

The Tasmania Fire Service is working with Local Government to produce and deliver the bushfire-prone area mapping for Tasmania. Once completed for each municipality the mapping is intended to be integrated within the relevant planning instrument to formally identify 'bushfire-prone areas' for the purpose of planning and building control.

Bushfire has been a constant, natural phenomenon in Australia for thousands of years and south-eastern Australia is one of the most bushfire-prone regions in the world. Whilst fire has important ecological functions in the Australian context, its effects on human life, built assets and economic resources can be catastrophic if risk is not adequately managed. Not surprisingly, bushfire is identified in the Tasmanian Emergency Management Plan as Tasmania's most prominent natural hazard due to its prevalence and historical impacts on communities<sup>1</sup>. Recent analysis of climate data confirms that this is unlikely to change with fire danger in some parts of Tasmania expected to progressively increase over the course of this century<sup>2</sup>.

Managing bushfire risk to communities requires a multifaceted approach that considers all aspects of the potential emergency (i.e. Prevention, Preparedness, Response and Recovery). Government interventions accordingly include a combination of measures including land use and development control, community education, fuel reduction, firefighter response and emergency management. Regulation of land use and development aims to improve the resilience of communities and their built assets when exposed to a bushfire hazard.

Planning and building controls are now recognised in Australia as an important tool that can be used to facilitate more resilient and sustainable communities. Bushfire protection requirements are applied to use and development for the purpose of ensuring a tolerable level of residual risk is achieved. It is essentially a form of market intervention that seeks to achieve a better outcome for society than the market would otherwise deliver. Numerous public enquiries have recognised the importance of planning and building as a means for supporting community fire safety, most notably the 2004 National Enquiry on Bushfire Mitigation and Management and the 2009 Victorian Bushfires Royal Commission.

---

<sup>1</sup> Department of Police and Emergency Management 2015, *Tasmanian Emergency Management Plan - Issue 8*, DPEM, Hobart.

<sup>2</sup> Fox-Hughes P, Harris RMB, Lee G, Jabour J, Grose MR, Remenyi TA & Bindoff NL (2015) *Climate Futures for Tasmania future fire danger: the summary and the technical report*, Antarctic Climate & Ecosystems Cooperative Research Centre, Hobart, Tasmania

The Tasmanian Government responded to the 2009 Victorian Bushfires Royal Commission by initiating significant planning and building reforms, including the introduction of Planning Directive No.5 Bushfire-Prone Areas Code within planning schemes in 2012 and state variations to the Building Code of Australia. This provided – for the first time – state-wide consistency in relation to use and development standards for bushfire protection. The importance of these reforms was confirmed by the 2013 Tasmanian Bushfires Inquiry, which recommended that the Tasmanian Government make land use planning and building construction for bushfire a high priority and that it progress improvements in this area<sup>3</sup>.

The planning and building regulatory system in Tasmania includes bushfire protection requirements to mitigate risk to communities and assets in bushfire-prone areas. The existing framework includes:

- The Bushfire-Prone Areas Code, which applies through local planning schemes under the *Land Use Planning and Approvals Act 1993*; and
- The Director's Determination – Requirements for Building in Bushfire-Prone Areas, which applies through the *Building Regulations 2016* and *Building Act 2016*.

This framework is structured in a way that enables application of bushfire controls through the planning approvals process for proposals involving land subdivision, vulnerable and hazardous uses. Bushfire requirements for other types of use and development are applied through the building approvals process.

For the purposes of both planning and building permit approvals it is necessary to determine whether proposed works are located within a 'bushfire-prone area'. This term is currently defined as follows:

*Bushfire-prone area*  
*Means:*  
(a) Land that is within the boundary of a bushfire-prone area shown on an overlay on a planning scheme map; or  
(b) Where there is no overlay on a planning scheme map, land that is within 100m of an area of bushfire-prone vegetation equal to or greater than 1 hectare.

In the absence of mapping, planning authorities, permit authorities, landowners and developers are reliant on interpretation of subclause (b).

Incorporation of the mapping within the relevant local planning scheme overlay map will enable the use of subclause (a) of the abovementioned definition, thereby reducing the amount of assessment required to determine applicability.

The 100m rule that forms the basis of the abovementioned definition has historically been accepted as a benchmark for the application of development control for bushfire and is the maximum distance considered in Australian Standard 3959-2009. Post-fire investigations have indicated that 85% of building loss resulting from major bushfires has historically occurred at distances within 100m of the urban interface<sup>4</sup>. Notwithstanding this, bushfire

<sup>3</sup> Department of Premier and Cabinet, 2013 Tasmanian Bushfires Inquiry, DPAC, Hobart.

<sup>4</sup> Ahern, A., and M. Chladil (1999), *How far do bushfires penetrate urban areas?* paper presented at 1999 Australian Disaster Conference, Emergency Manage. of Aust., Canberra, A. C. T.

behaviour is not uniform across all situations some circumstances application of a 'blanket' 100m buffer is considered unnecessarily conservative.

## 2. Study Area

The study area for the purpose of this mapping project is the Southern Midlands Local Government Area ('LGA') as shown in Figure 1. Southern Midlands is located in the Southern Tasmania region and adjoins Northern Midlands, Glamorgan-Spring Bay, Sorell, Clarence, Brighton and Central Highlands.

A number of rural townships and villages are located within the Southern Midlands with the largest activity centres being Oatlands, Kempton, Colebrook, Campania, Bagdad/Mangalore and Tunbridge. Residential growth in recent years has focused in Oatlands, Campania, Bagdad/Mangalore.



Figure 1 – Southern Midlands LGA location map



### 3. Bushfire-Prone Area Overlay

The draft Bushfire-Prone Area Overlay for Southern Midlands has been completed following collaborative work between the Tasmania Fire Service and Council officers. The draft maps are enclosed as **Appendix A** to this report.

#### 3.1 Purpose of Overlay

The bushfire-prone area overlay primarily relates to use and development control. Its purpose is to spatially define areas where risk is sufficient to require specific bushfire protection measures in order to achieve a tolerable level of residual risk. The mapping will provide a definitive trigger for assessment under the existing planning and building requirements for bushfire protection. Spatially defining bushfire-prone areas is consistent with the approach adopted for other natural hazards within Tasmanian planning schemes (inundation, landslip hazard).

The mapping is not intended to identify all land that may be impacted by bushfire hazard, nor does it imply that there is nil residual risk to use and development outside of the overlay. Rather, residual risk to use and development outside of the mapped areas is deemed to be tolerable through reliance on other external measures, such as firefighter intervention.

By removing the need to evaluate whether vegetation is 'bushfire-prone' before confirming whether a site is within a 'bushfire-prone area', the mapping will remove ambiguity and improve the development assessment process to the benefit of permit authorities, land owners and developers.

The mapping also provides a more sophisticated mechanism than the standard 100m rule trigger that is currently relied upon. Evaluation of local conditions and likely bushfire behaviour has informed the mapping process and has allowed for some reductions to the standard 100m buffer in situations where it has been determined that the risk does not warrant application of planning or building standards to achieve a tolerable level of residual risk. In doing so, the mapping will refine application of bushfire requirements and reduce circumstances whereby a bushfire report is required for low-risk development.

The overlay can also have other uses. It can be used to support community education in support of community fire safety as it will be accessible through multiple websites including the LIST, iplan, and the TFS website. Additionally, TFS will use the map as the basis for issuing fire permits and when advising the community about using fire and burning off. TFS will not issue Fire Permits outside bushfire-prone areas and will advise the community to not use fire for fire hazard removal outside bushfire-prone areas. Council staff will be able to use the mapped areas when dealing with hazard complaints and abatement issues.

#### 3.2 Mapping Process

The process that has been followed in preparing the draft overlay and that will be followed for implementation is summarised conceptually in Figure 2. The draft overlay has been prepared by the TFS in collaboration with Council's planning officers.

The starting point for the mapping was the generation of a 'modelled overlay', which was created by applying a 100m buffer to all TASVEG 3.0 vegetation communities, excluding those types deemed to be 'low threat' and exclusions as specified under AS 3959-2009.

The mapping provided in TASVEG 3.0 provides high-level guidance with respect to vegetation distribution and as such, its accuracy is limited when applying it to individual properties. The modelled overlay was therefore based on imperfect spatial data and it was important to verify

the boundaries that were produced and adjust accordingly. An initial desktop assessment was undertaken to identify obvious discrepancies and ascertain any key areas that required closer examination.

Verification of specific areas was completed through physical inspection and/or enquiries into the development status and management regime of particular properties where necessary. As discussed previously, bushfire impact is not uniform across all situations and in some cases, relaxation of the standard 100m buffer has been adopted where site characteristics will effectively limit fire intensity, spread and subsequent impact on surrounding development. Relevant factors include the total area, type and location of vegetation, fire run potential, effective slope, prevailing wind and the use, development or land management status of the property.

The overlay was then aligned with cadastral title boundaries. This was necessary to ensure that application of the overlay to specific properties and future developments can be easily determined. For urban lots in particular there is little merit in mapping a property as partially bushfire-prone, hence this has been avoided as far as possible. For lots 2,000sqm (or less) in area the overlay was aligned to include the entire title if an area of 15% (or greater) was affected. For these lots, it is considered increasingly unlikely that a future development on the site would be able to wholly avoid the overlay and - as vegetation communities are not static - the actual separations from hazardous vegetation should be verified at the time a development is proposed. Where the overlay covered less than 15% of an urban title, the title was generally excluded entirely from the overlay, as it is considered increasingly likely that future development will be 100m or further from the hazard source.

The approach used is consistent with that used for the existing bushfire-prone areas overlays within the Clarence Interim Planning Scheme 2015 and the Hobart Interim Planning Scheme 2015. Furthermore, in preparing the overlay TFS has sought to ensure consistency with Tasmanian Planning Commission's *Practice Note 7: Draft LPS Mapping Technical Advice*.

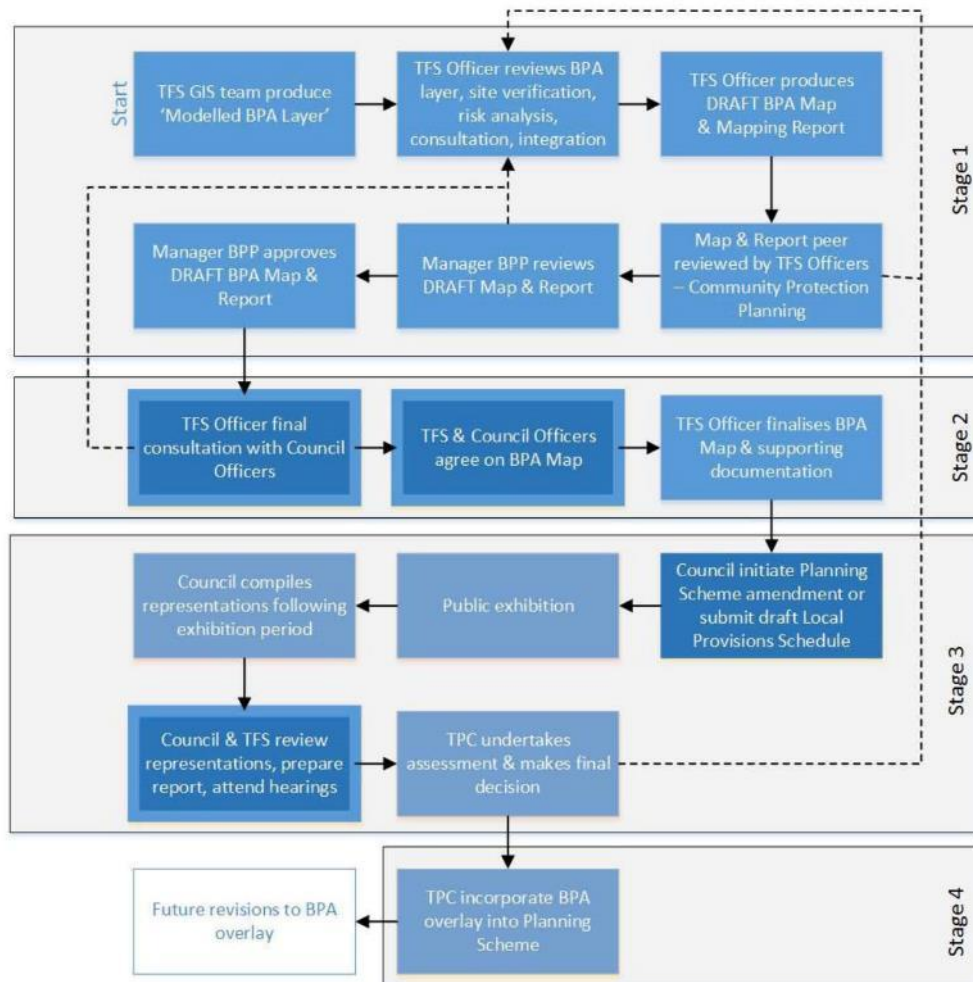


Figure 2 – Overview of mapping preparation and implementation

### 3.3 Overlay Refinement

As discussed previously, refinement of the original ‘modelled overlay’ into the final draft overlay has been informed by evaluation of local conditions.

A significant portion of the Southern Midlands is vegetated with improved pasture. Where Grassland fuels are predominant the overlay has been limited to include properties within a maximum of 50m (a relaxation from the standard 100m). This relaxation reflects the reduced ember potential associated with Grassland fuels and is consistent with the minimum distance required for a BAL-LOW rating under AS 3959-2009.

A number of approved greenfield subdivisions have been identified through consultation with Council. These include:

- Reeve Street, Campania – Permit SA2010/37 (75 lots in Village Zone. Stage 4 of 7 completed - final stage expected to be completed by late 2019);
- Main Street, Kempton – Permit DA2007-3009 (45 lots in Village Zone – no lots created as yet);
- Iden Road, Bagdad – Permit SA1986/GP102 (17 lots in Village Zone remaining to be created in old subdivision).

Each of the above developments are located centrally within their respective townships and have received substantial commencement. In each case the balance land is currently vegetated with remnant pasture (grassland fuel). Council has confirmed that these properties will be monitored through its hazard abatement program with abatement notices issued if required until such time as the balance land is subdivided and developed in a way that mitigates the potential for grassfire hazard.

The existing titles that have been created in each development have been excluded from the overlay on the basis that Grassland within at least 50m of the existing lots will be maintained at <100mm height during bushfire season.

### 3.4 Outcome of Mapping

The draft overlay confirms that the majority of land within Southern Midlands is designated as bushfire-prone.

Table 1 provides a comparison of the number of lots that intersect with the computer generated modelled overlay versus the final draft overlay. The modelled overlay more closely reflects the number of lots that would currently be subject to bushfire requirements under the current 100m rule that operates in the absence of the overlay as it is based on a 100m buffer from TASVEG mapping. The statistics show that the overall number of properties affected has been reduced as the overlay has been refined.

Table 1 - Comparison of properties affected by modelled overlay versus final draft overlay

| Cadastral type ('CAD_TYPE1') | Final draft Overlay (n) | Modelled overlay (n) |
|------------------------------|-------------------------|----------------------|
| Authority Land               | 462                     | 485                  |
| Local Government Reserve     | 5                       | 7                    |
| Private Parcel               | 4,676                   | 5,006                |
| Public Land Classification   | 187                     | 188                  |
| <b>Total intersected</b>     | <b>5,330</b>            | <b>5,686</b>         |

Of most significance in Table 1 are the statistics for private parcels. The mapping process has enabled TFS to identify approximately 330 private properties that will no longer require further bushfire assessment, should they be developed or redeveloped in future.

To illustrate the benefit of the overlay to these mapped out properties, if each of the properties were to be developed/redeveloped at some stage in the future, the mapping at a minimum would deliver an economic benefit to private landowners within the municipality in the range of approximately \$130K-310K from the avoided cost of bushfire assessment fees alone. Further economic benefit is derived from the reduced time required for building work to be designed, documented and approved and potentially also avoided constructions costs for some of the excluded properties (if an exemption were not obtained).

## 4. Implementation Options

For the mapping to serve its intended statutory function it is necessary to incorporate it within the relevant planning instrument established under the *Land Use Planning and Approvals Act 1993* ('LUPAA').

### 4.1 Tasmanian Planning Scheme

All Tasmanian Councils are required to transition into the Tasmanian Planning Scheme ('TPS') as part of the Government's reform agenda.

The TPS will be comprised of the State Planning Provisions ('SPP') and Local Planning Schedules ('LPS'), the latter of which is to be prepared by Local Government. It is understood that Council's draft LPS includes the bushfire-prone areas overlay.

Once the public exhibition and hearing process is completed and the Commission completes its assessment, the TPS will become active and will supersede Council's interim planning scheme. This timing of this process is unclear at present and may not be completed until late 2020.

### 4.2 Southern Midlands Interim Planning Scheme 2015

To introduce the overlay sooner, there is provision to amend the Southern Midlands Interim Planning Scheme 2015 under the Savings and Transitional Provisions of the *Land Use Planning and Approvals Act 1993*.

Schedule 6 of the *Land Use Planning and Approvals Act 1993* provides the statutory mechanisms to amend interim planning schemes under the former provisions. Council may initiate a Draft Amendment of its own motion under s.34(1)(b) of the former provisions.

Amending the interim planning scheme will allow for the benefits of the overlay to be delivered within a relatively short timeframe and would avoid unnecessary delay. Accordingly, this is TFS's preferred mode of implementation.

## 5. Statutory Planning Requirements

### 5.1 Requirements for Local Provision Schedules

It is anticipated that the overlay will be included as part of Council's draft Local Provision Schedules that will form part of the Tasmanian Planning Scheme. At that time, the overlay will need to be considered under s.34(2) of the *Land Use Planning & Approvals Act 1993* (current provisions).

S.34(2) states:

|   |
|---|
| <p><b>34. LPS criteria</b></p> <p>(1) ...</p> <p>(2) <i>The LPS criteria to be met by a relevant planning instrument are that the instrument –</i></p> <p>(a) <i>contains all the provisions that the SPPs specify must be contained in an LPS; and</i></p> <p>(b) <i>is in accordance with section 32 ; and</i></p> <p>(c) <i>furtheres the objectives set out in Schedule 1 ; and</i></p> <p>(d) <i>is consistent with each State policy; and</i></p> <p>(e) <i>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</i></p> <p>(f) <i>is consistent with 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</i></p> <p>(g) <i>as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and</i></p> <p>(h) <i>has regard to the safety requirements set out in the standards prescribed under the Gas Pipelines Act 2000 .</i></p> <p>(3) ...</p> |
|---|

Incorporating the mapping as an overlay is consistent with the relevant provisions of the State Planning Provisions (specifically clause 1.2.3 and the definition of 'bushfire-prone area' in clause C13.3.1). The overlay is therefore consistent with s.34(2)(a).

Relevant to s.32, the map overlay will provide for the spatial application of the State Planning Provisions to particular land and is accordingly consistent with s.34(2)(b).

With respect to the strategic considerations referred to in s.34(2)(c),(d),(e) and (f):

- The Schedule 1 Objectives of the *Land Use Planning & Approvals Act 1993* are considered in section 6.2.1 of this report;
- The State policies are considered in section 6.2.2 of this report;
- The Regional Land Use Strategy is considered in section 6.2.3 of this report; and
- Council's Strategic Plan is considered in section 6.2.4 of this report.

The overlay has been designed to integrate with the draft mapping completed for adjoining LGAs. The overlay accordingly satisfies s.34(2)(g).

The overlay will not introduce any new development standards, rather it will support the application of an existing Code. As such, it is not considered to be in conflict with the *Gas Pipelines Act 2000* and therefore satisfies s.34(2)(h).

The overlay will not introduce any new development standards, rather it will support the application of an existing Code. As such, it is not considered to be in conflict with the *Gas Pipelines Act 2000* and therefore satisfies s.34(2)(h).

## 5.2 Requirements for Interim Planning Scheme Draft Amendments

Section 34 (1) of the former provisions of the *Land Use Planning & Approvals Act 1993* is relevant to an amendment of an interim planning scheme and allows a planning authority to initiate such an amendment of its own motion.

Prior to certifying a draft amendment, s.35 of the former provisions requires that the planning authority be satisfied that it meets the requirements of s.32, which states:

### 32. Requirements for preparation of amendments

(1) A draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A) –

(a) – (d) ...

(e) must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and

(ea) must not conflict with the requirements of section 300 ; and

(f) 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 introduction of the proposed overlay will clarify the application of existing planning and building requirements – no new requirements will be introduced. Accordingly, a draft amendment that introduces the overlay will not create any new land use conflict issues and is considered to satisfy (e).

With regards to (ea):

- s.300(1) requires consistency with the relevant regional land use strategy. As is discussed further in this report, the overlay is consistent with the relevant regional land use strategy;
- s.300(2)-(5) relates to conflict between local and common provisions. No changes to any development standards are proposed.

The draft amendment will therefore satisfy (ea).

Introduction of the overlay will provide a range of social and economic benefits, as discussed previously in this report. As it relates to existing development standards, it will have no significant environmental effects. The draft amendment will therefore satisfy (f).

## 6. Strategic Considerations

### 6.1 LUPAA Schedule 1 Objectives

Schedule 1 of the *Land Use Planning and Approvals Act 1993* specifies the strategic objectives for the Resource Management and Planning System and for the planning process established by the Act.

The Schedule 1 Objectives are considered in Table 2 and Table 3.

Table 2 - Schedule 1, Part 1 Objectives

| Objective  | Response  |
|--|---|
| <i>(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and</i> | Adoption of the overlay will support the application of existing regulations. It will not facilitate any loss of natural values, nor any development of physical resources.<br><br>The overlay is accordingly considered to be consistent with (a).   |
| <i>(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and</i>  | The proposed overlay will improve clarity for the community, for developers and for authorities responsible for regulating planning and building matters.<br><br>In developing the mapping, the Tasmania Fire Service has excluded some areas that could currently be considered as being within a 'bushfire-prone area' but which have been deemed to be suitably low threat. This was based on expert judgement in bushfire behaviour and evaluation of local conditions. By refining the application of the bushfire requirements in this way, the planning scheme amendment will facilitate fairer outcomes for landowners.<br><br>The overlay is accordingly considered to be consistent with (b). |
| <i>(c) to encourage public involvement in resource management and planning; and</i>  | In developing the overlay the Tasmania Fire Service has sought and considered input from Council's officers. This dialogue has provided important local knowledge into the project, in relation to land use practices and management of specific sites.<br><br>The general public will have an opportunity to review the draft overlay and submit a representation on any aspect they would like the Planning Authority to consider. This is a requirement of the statutory approvals process.<br><br>The overlay is accordingly considered to be consistent with (c).  |
| <i>(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and</i>                                | Incorporation of the overlay within Council's planning provisions will improve clarity with respect to whether a site is within a 'bushfire-prone area'. This supports the property industry in the following ways: <ul style="list-style-type: none"> <li>It will ensure landowners and developers can easily determine whether their site is in a bushfire-prone area early in the development process and therefore factor this into concept design and feasibility assessments;</li> </ul>  |



|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>By removing areas from the mapping that have been deemed to be suitably low threat by the Tasmania Fire Service, the overlay will reduce costs and delays from the approvals process for applicants (e.g. costs of engaging a bushfire hazard practitioner to certify an exemption, delays associated with s.54 requests).</li> </ul> <p>As stated previously, the overlay will not facilitate any loss of natural values, nor any development of physical resources.</p> <p>The overlay is accordingly considered to be consistent with (d).</p>                                 |
| <p><i>(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.</i></p> | <p>The Tasmania Fire Service has collaborated with Council officers in preparing the draft overlay to ensure that it is technically sound and appropriate to local circumstances.</p> <p>By incorporating the overlay within local planning provisions it will support the application of the Bushfire-Prone Areas Code and Building Regulations, which Local Government is obliged to enforce.</p> <p>The approvals process requires the support of both Council and the Tasmanian Planning Commission for the overlay to become effective.</p> <p>The overlay is accordingly considered to be consistent with (e).</p> |

Table 3 - Schedule 1, Part 2 Objectives

| Objective   | Response   |
|---|--|
| <p><i>(a) to require sound strategic planning and co-ordinated action by State and local government; and</i></p>  | <p>The introduction of the Bushfire-Prone Areas Code as a state-wide Planning Directive was a strategic response by the Tasmanian Government to the recommendations produced by the Victorian Bushfires Royal Commission. Incorporating the bushfire-prone areas mapping as part of Council's planning instrument will support the application of the Bushfire-Prone Areas Code.</p> <p>The approach used in developing the mapping is consistent with that used for Clarence and Hobart's interim planning schemes. Tasmania Fire Service seeks to maintain a consistent approach as it progresses mapping for remaining Local Government Areas.</p> <p>As is discussed further in this report, the overlay is consistent with current State Policies and the Regional Land Use Strategy.</p> <p>The overlay is accordingly considered to be consistent with (a).</p> |
| <p><i>(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and</i></p> | <p>As discussed previously in this report, the proposed overlay will support the efficient application of existing regulations by clearly identifying which land is subject to bushfire requirements.</p> <p>The overlay is accordingly considered to be consistent with (b).</p>  |
| <p><i>(c) to ensure that the effects on the environment are considered</i></p>  | <p>The overlay will not facilitate any loss of biodiversity or any other impacts on natural values.</p>  |

|  |  |
|--|--|
| <p><i>and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and</i></p>   | <p>The social and economic benefit of the mapping will be to improve clarity with respect to what land is considered bushfire-prone and to avoid application of the planning/building regulations to land that has insufficient risk to warrant planning or building control.</p> <p>The overlay is accordingly considered to be consistent with (c).</p>  |
| <p><i>(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and</i></p> | <p>As occurs at present, future development in bushfire-prone areas will be required to comply with all other applicable planning and environmental requirements. The overlay is not considered to be in conflict with any environmental, social, economic, conservation or resource management policies.</p> <p>The overlay is accordingly considered to be consistent with (d).</p>  |
| <p><i>(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and</i></p>   | <p>At present, bushfire requirements are triggered through either the planning approvals process or the building approvals process, depending on the type of development proposed. Under each process the definition of 'bushfire-prone area' refers to planning scheme overlay mapping (where available). The completion of the mapping will ensure that assessments as to whether a site is bushfire-prone will be consistent throughout the entire process.</p> <p>Single dwellings, visitor accommodation and some other types of buildings are triggered through the building approvals process and not at planning. This can give rise to situations whereby a development may receive planning approval that does not account for the vegetation removal required to comply with the bushfire requirements at the building approvals stage. Inclusion of the mapping will ensure that assessing planning officers and developers consider at the development application stage of any requirement to consider vegetation removal.</p> <p>The overlay is accordingly considered to be consistent with (e).</p> |
| <p><i>(f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and</i></p>                                    | <p>The overlay will support the application of planning and building requirements for bushfire protection, the key purpose of which are to reduce risk to life and property. The overlay will accordingly support the aim of securing a safe environment for working, living and recreation.</p> <p>The overlay is accordingly considered to be consistent with (f).</p>   |
| <p><i>(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and</i></p>   | <p>The overlay is not considered to be in conflict with the conservation of any places identified as holding heritage, aesthetic, architectural or other cultural value.</p> <p>The overlay is accordingly considered to be consistent with (g).</p>   |
| <p><i>(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for</i></p>  | <p>Introduction of the overlay will simply focus the application of existing regulations. Standards for water and access infrastructure in bushfire-prone areas will remain unchanged. The overlay is therefore not considered to be in conflict with public infrastructure</p>  |

|   |  |
|---|--|
| <i>the benefit of the community; and</i>  | and will not compromise the orderly provision and co-ordination of public utilities.<br>The overlay is accordingly considered to be consistent with (h).                   |
| <i>(i) to provide a planning framework which fully considers land capability.</i> | Incorporation of the proposed mapping will have no significant effect on agricultural land capability.<br>The overlay is accordingly considered to be consistent with (i). |

## 6.2 State Policies

Current State Policies created under the *State Policies and Projects Act 1993* include:

- State Policy on the Protection of Agricultural Land 2009;
- State Coastal Policy 1996; and
- State Policy on Water Quality Management 1997.

Adoption of the draft overlay does not introduce any new development standards, rather, it will improve the application of the Bushfire-Prone Areas Code. It will accordingly not facilitate the loss of productive agricultural land, nor the degradation of coastal land or water resources. The overlay is accordingly not considered to be in conflict with any of the existing State Policies.

Section 12A of the *State Policies and Projects Act 1993* also requires that a national environment protection measure is taken to be a State Policy. The current NEMPs provide objectives for the protection of air, land and water quality, the protection of amenity from noise, the control of hazardous wastes and recycling of used materials. The adoption of the bushfire-prone areas overlay is considered to have no impact with respect to compliance with the current NEPMs.

## 6.3 Southern Tasmania Regional Land Use Strategy

Local Provision Schedules must be consistent with the relevant regional land use strategy. For Kingborough, this is the Southern Tasmania Regional Land Use Strategy ('STRLUS').

The key section of STRLUS is Section 8, which provides regional policies for managing risks and hazards. The majority of the policies pertaining to bushfire hazard relate to ensuring that planning schemes provide suitable requirements for vegetation removal and subdivision design and therefore do not directly relevant to the overlay. The relevant policies are considered in Table 4.

Table 4 - Regional Policies

| Regional Policy  | Response   |
|--|--|
| <i>MRH 1.1 Provide for the management and mitigation of bushfire risk at the earliest possible stage of the land use planning process (rezoning or if no rezoning required; subdivision) by the identification</i> | Incorporation of the proposed overlay will mean that bushfire-prone land will be easily identifiable early in the land use planning process. In doing so, it will help signal to developers that there are Code requirements that require consideration when looking at subdivision or rezoning opportunities. |

|  |  |
|--|--|
| <i>and protection (in perpetuity) of buffer distances or through the design and layout of lots.</i>  | The overlay is accordingly considered to be consistent with MRH 1.1.   |
| <b>MRH 1.4</b> <i>Include provisions in planning schemes for use and development in bushfire prone areas based upon best practice bushfire risk mitigation and management.</i> | The existing '100m from 1ha' trigger for determining application of bushfire requirements is a simplistic approach that is used in the absence of mapping. The proposed mapping will provide a more refined mechanism for triggering the bushfire requirements as the spatial extent of the overlay has been adjusted based on expert judgement.<br><br>The overlay is accordingly considered to be consistent with MRH 1.4. |

#### 6.4 Southern Midlands Council Strategic Plan 2014-2023

The Southern Midlands Council Strategic Plan 2014-2023 is the relevant strategic plan prepared under s.66 of the *Local Government Act 1993*. It provides high-level guidance in the form of municipal goals, supporting strategies and key project that seek to guide Council's delivery of services to the community.

Table 5 - Regional Policies

| Action   | Response  |
|--|---|
| <i>2.1.1.1 Seek opportunities to increase the number of subdivisions providing affordable land in areas that can utilise the existing water, sewer and road infrastructure within the framework of the Planning Scheme</i>         | It has been possible to map out land that has been approved for future land release as part of the mapping process on the basis of Council's ongoing commitment to hazard abatement. In doing so, introduction of the overlay will reduce development costs associated with new residential development in the municipality, thereby supporting Action 2.1.1.1. |
| <i>3.4.1.1 Continue to support the State Government's Regional Planning Initiative and to work in co-operation within the Southern Tasmanian region to finalise a new planning scheme</i>  | The proposed overlay is a required part of Council's Local Provisions Schedule, therefore supports Action 3.4.1.1.  |
| <i>3.4.1.2 Encourage the State Government to provide more direction to the planning system through the introduction of more State Planning Policies, State Planning Directives and common statewide planning scheme provisions</i> | The proposed overlay will provide clear direction for the application of the Bushfire-Prone Areas Code, which was introduced through a State Planning Directive. The overlay supports Action 3.4.1.2.   |
| <i>3.5.1.3 Establish collaborative partnerships with other Councils, key stakeholders and other tiers of government, that</i>  | Building and planning are important tools for improving the resilience of townships and communities to bushfire hazard, particularly in the context of climate change and worsening fire danger. Production of the draft overlay through collaboration  |

|   |   |
|---|---|
| <i>strengthen Council's response to climate change</i>  | between Council and the Tasmania Fire Service will improve the application of existing bushfire standards and will inform other risk mitigation strategies, thereby supporting Action 3.5.1.3.                            |
| <i>5.3.1.7 Work in partnership with the Tasmania Fire Service to keep Southern Midlands fire safe</i> | Collaboration between Council and TFS has led to important refinements of the final draft overlay and confirmation of hazard abatement commitments. Production and implementation of the overlay supports Action 5.3.1.7. |

## 7. Future Revisions

The Bushfire-Prone Areas Overlay should be reviewed and updated periodically to ensure it remains accurate. This will logically occur as part of Council's periodic review of their Local Provision Schedules under the Tasmanian Planning Scheme. Section 350 of the *Land Use Planning & Approvals Act 1993* requires that this review occur every five years at a minimum, however a draft amendment may be prepared at any time.

In the situation where a scheme amendment is required to facilitate a new development (e.g. a combined rezoning and greenfield subdivision proposal) it may be appropriate to review and modify the overlay as part of the amendment process. It is anticipated that TFS will be consulted as part of this process.

TFS is committed to working with Council as part of any future review of the overlay.

## 8. Conclusion

The Tasmania Fire Service in collaboration with Council officers have completed a draft bushfire-prone areas overlay for the Southern Midlands.

The overlay identifies land where potential exposure to bushfire hazard is considered sufficient to warrant a planning or building response to reduce risk to life and property. In doing so, it will ensure reliability, certainty and simplicity of process to the benefit of landowners, designers, the planning authority, the permit authority and the wider community.

In the process of developing the overlay, a significant number of properties have been able to be mapped out on the basis of insufficient risk to warrant a built response. Introduction of the overlay thereby presents an economic benefit to those landowners should they seek to develop their site in future.

The overlay will also support community education on community fire safety and will provide a useful resource for the administration of the fire permit system and hazard abatement programs.

For the overlay to serve its statutory purpose it must be incorporated into Council's planning provisions. This can be achieved through an amendment to the Southern Midlands Interim Planning Scheme 2015 or through the Tasmanian Planning Scheme process. Due to the timeframes associated with the Tasmanian Planning Scheme process, TFS recommends that Council consider initiating an amendment to the Interim Planning Scheme.

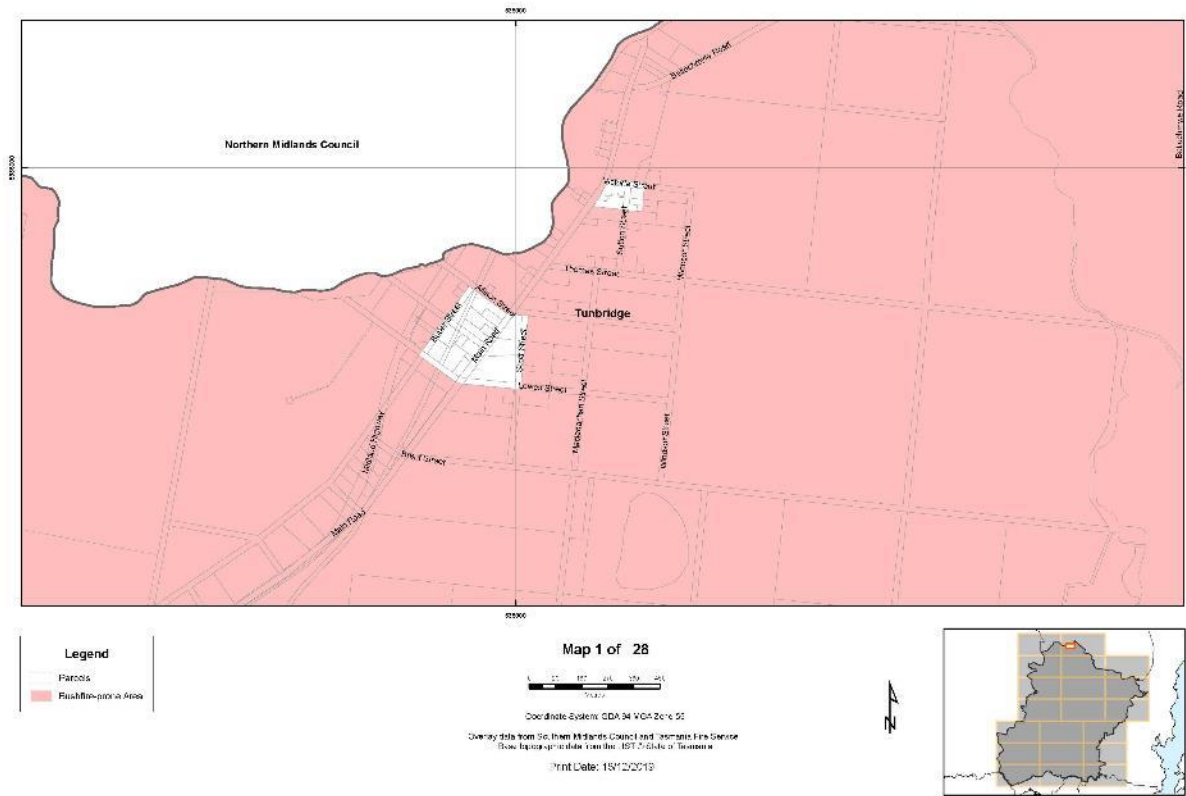
Implementing the overlay as part of Council's planning provisions is considered to be consistent with all relevant strategic planning considerations.

## **APPENDIX A**

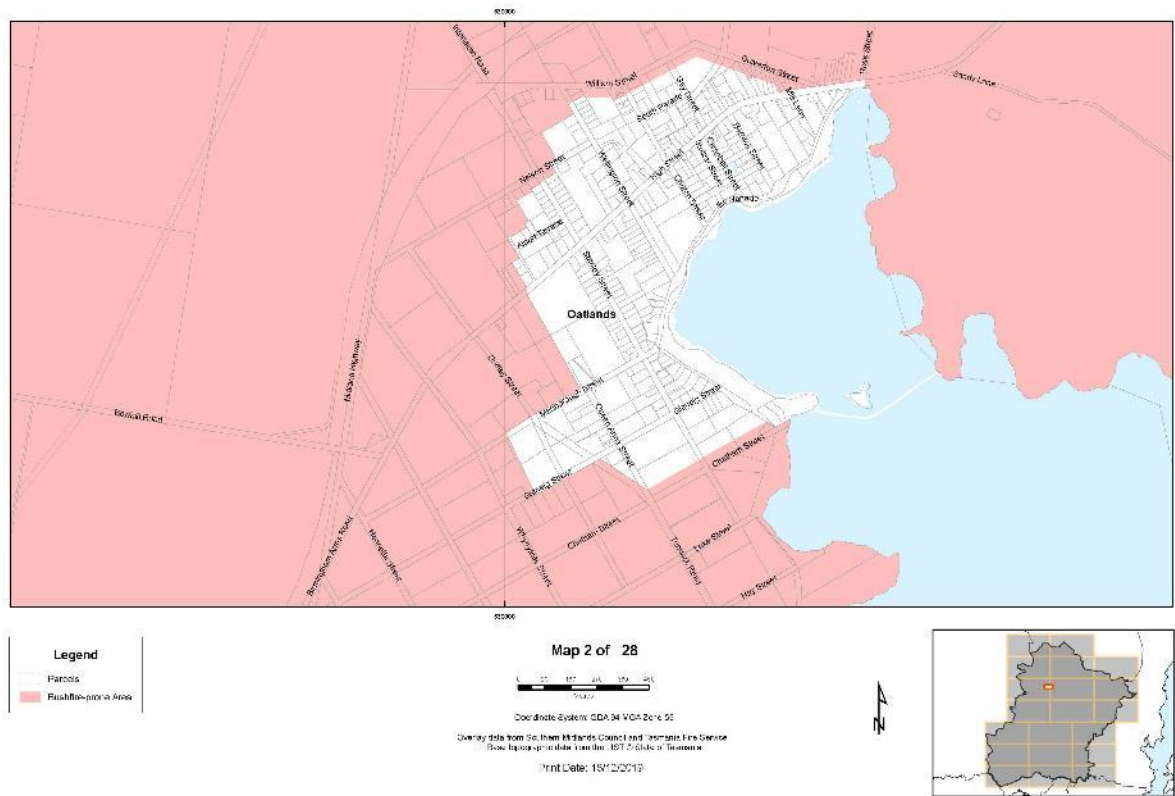
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### **Bushfire-Prone Areas Overlay**

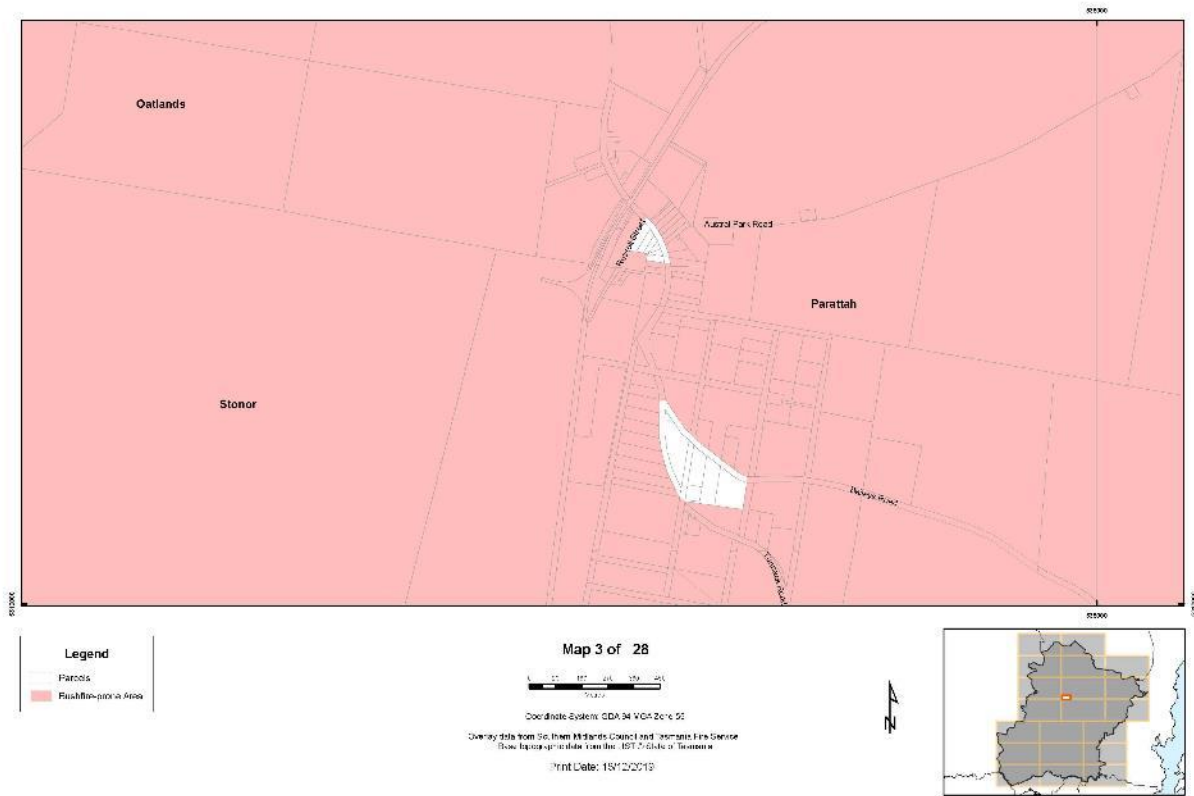
Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay



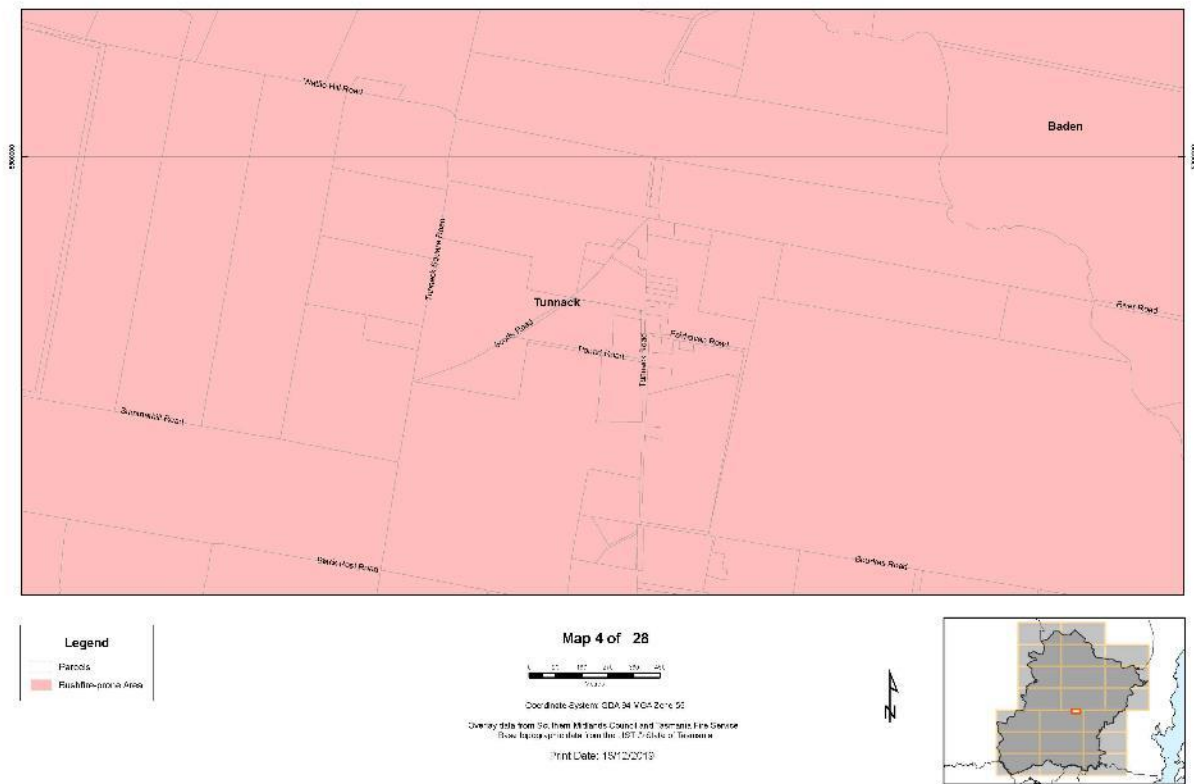
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Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay

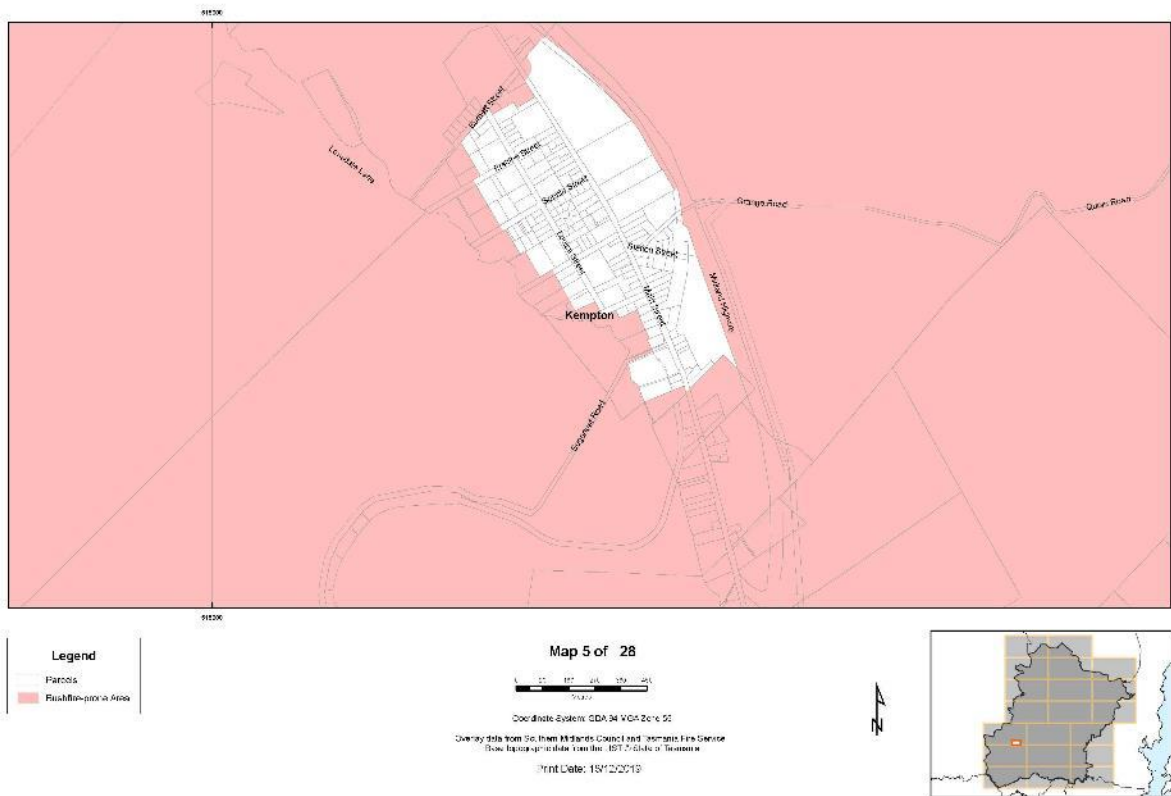


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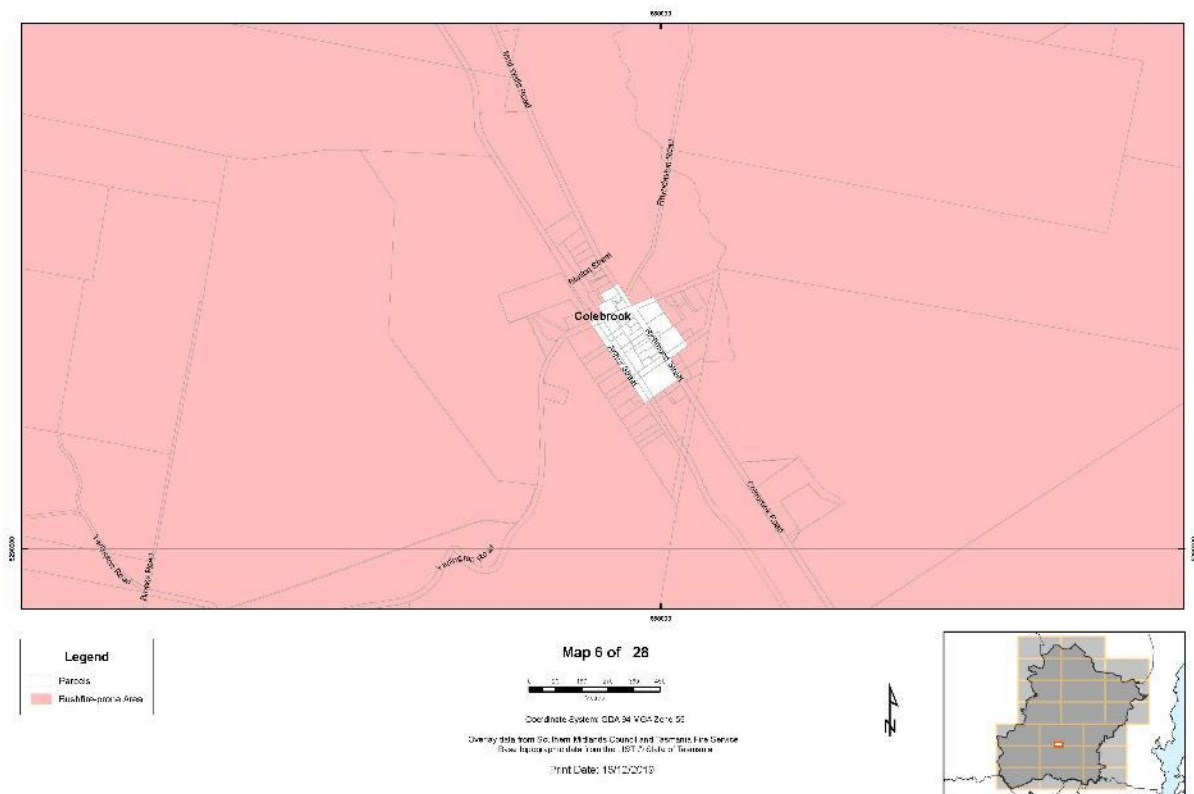




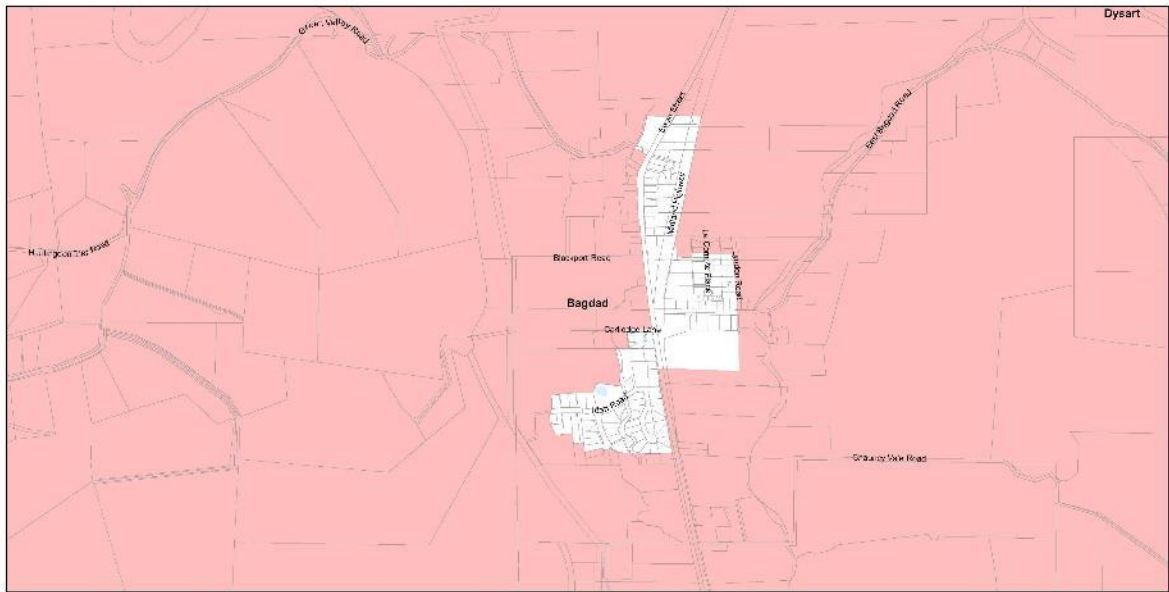
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Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay



Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay

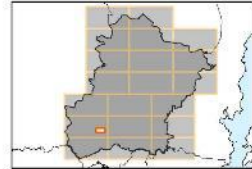


**Legend**

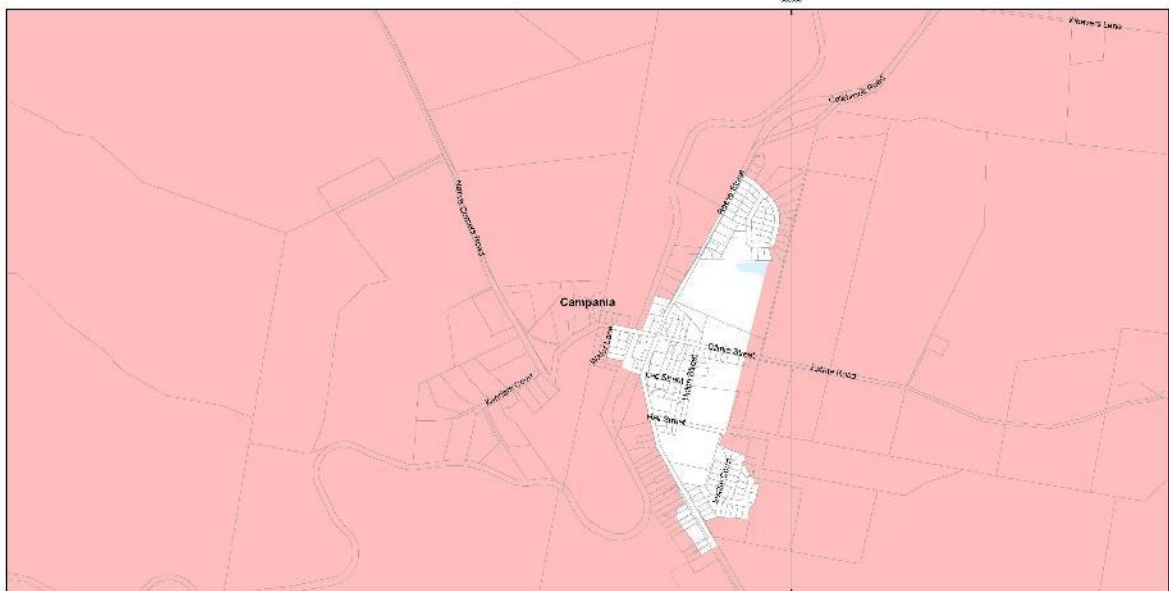
- Parcels
- Bushfire-prone Area

**Map 7 of 28**

Coordinate System: GDA 94 WGA Zone 56  
 Overlay data from Southern Midlands Council and Geomatics Fire Service  
 Base layer provided from the 1:50,000 State of Tasmania  
 Print Date: 15/12/2019



Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay

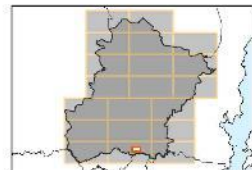


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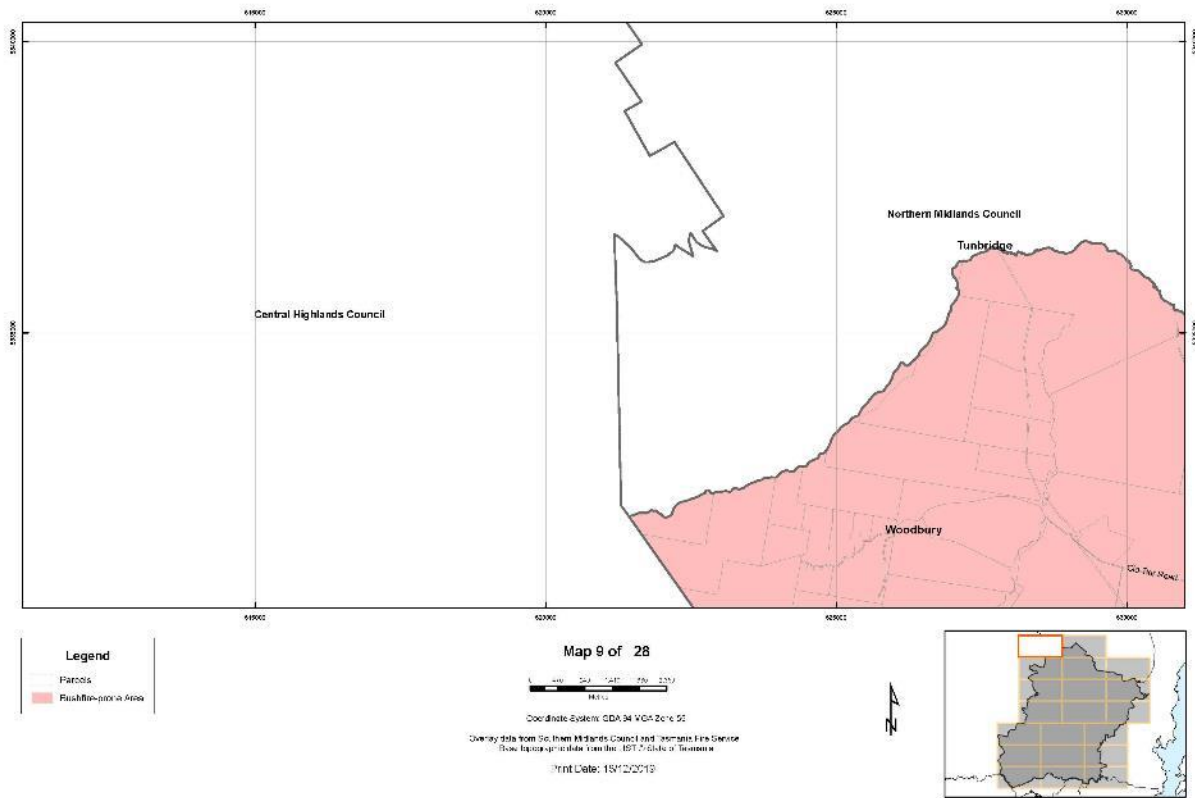
- Parcels
- Bushfire-prone Area

**Map 8 of 28**

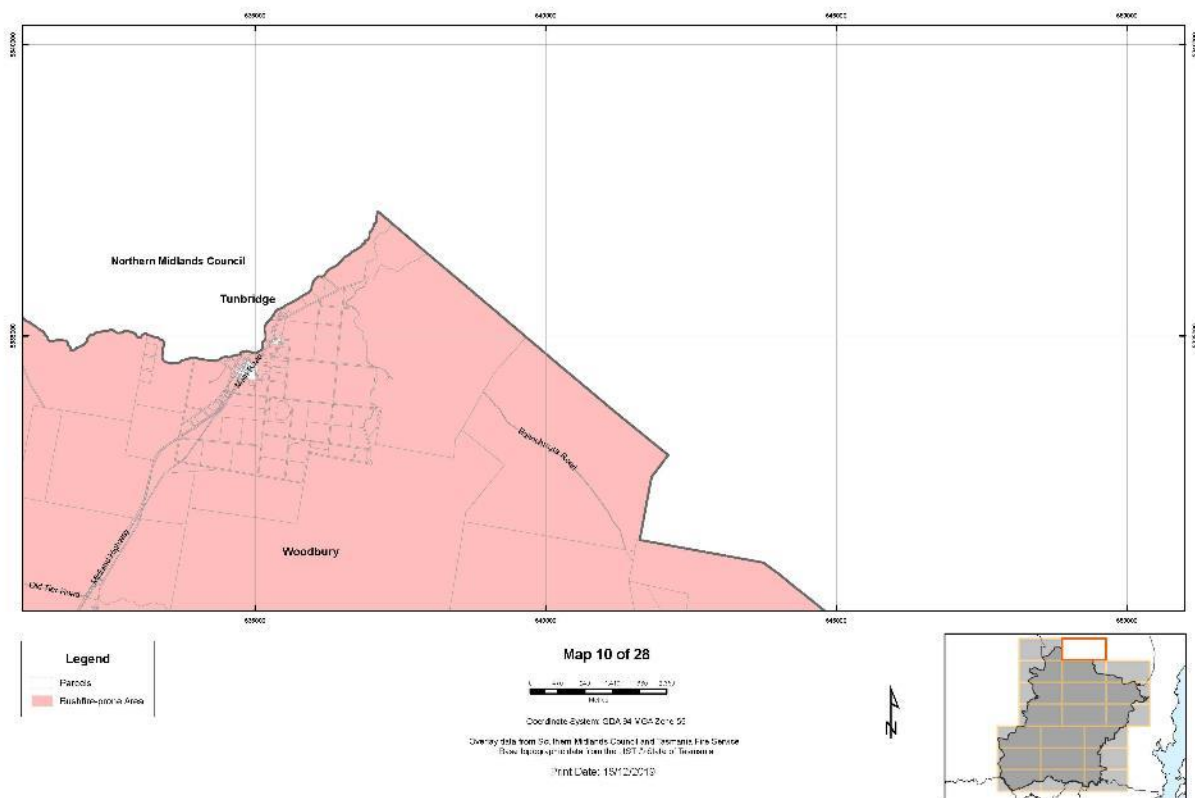
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 Base layer provided from the 1:50,000 State of Tasmania  
 Print Date: 15/12/2019



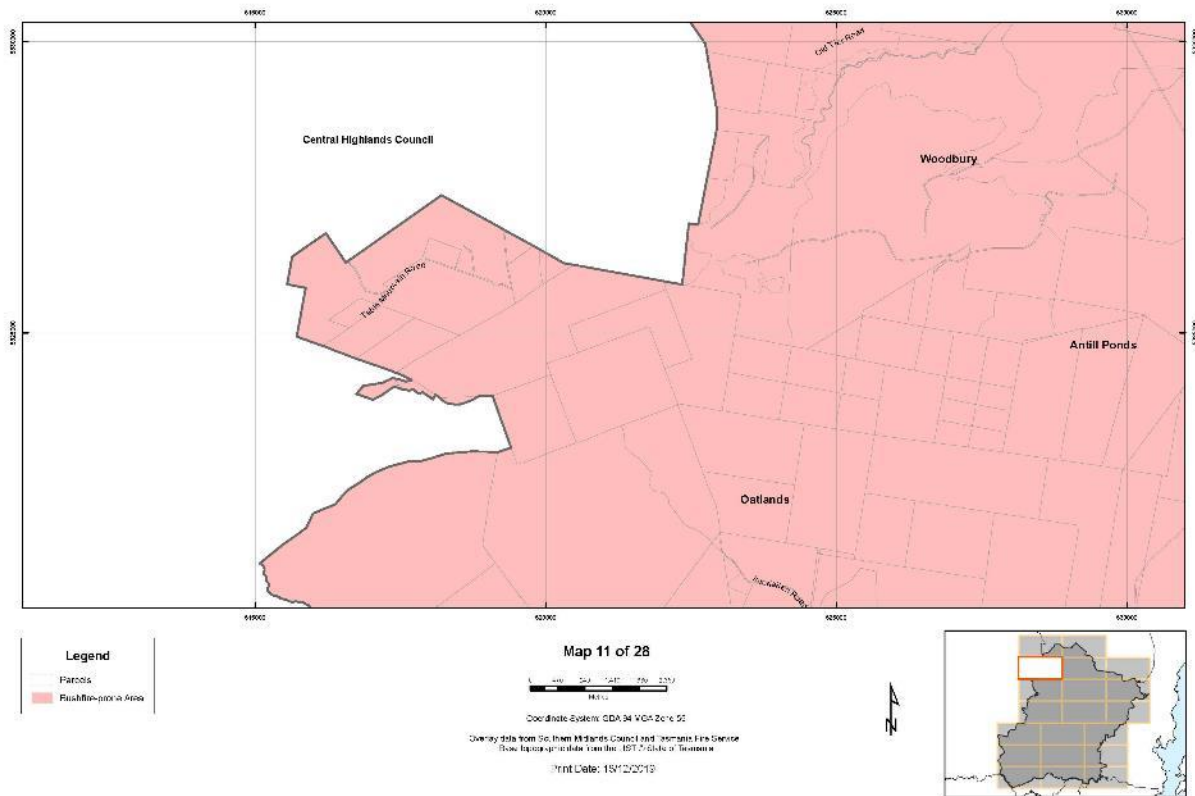
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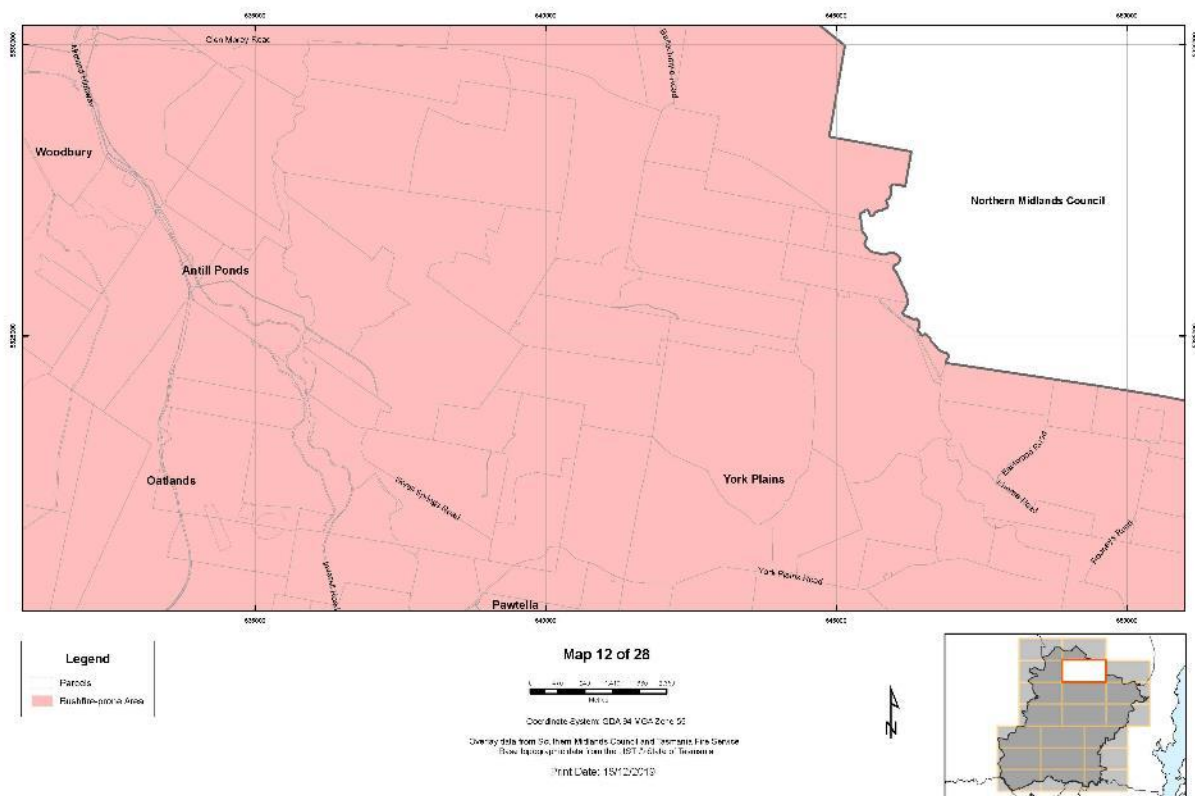
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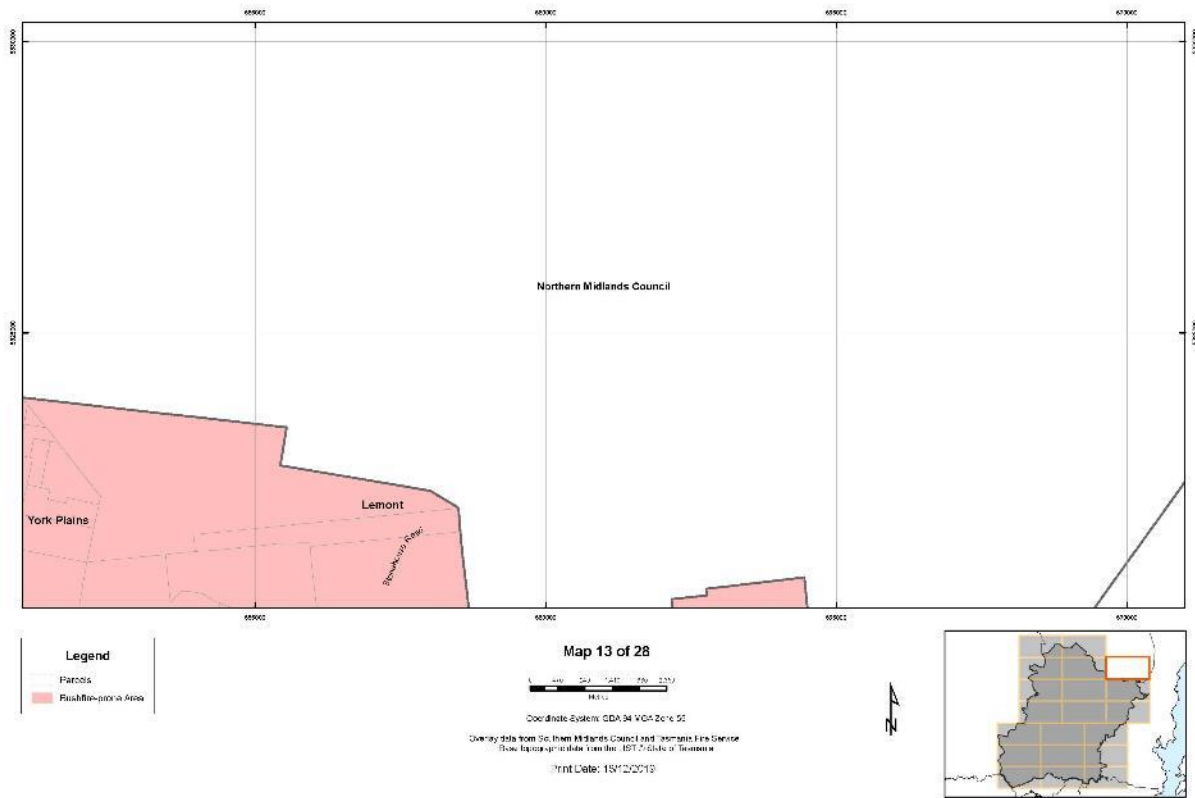
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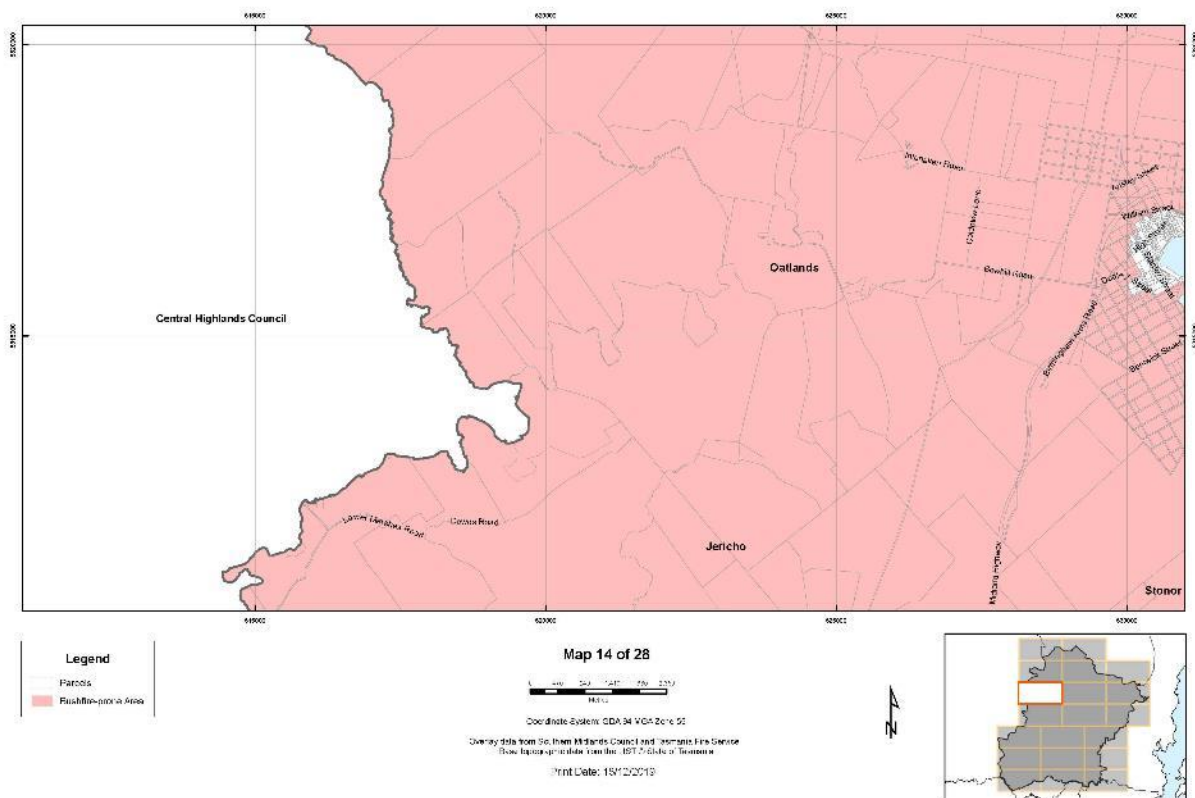
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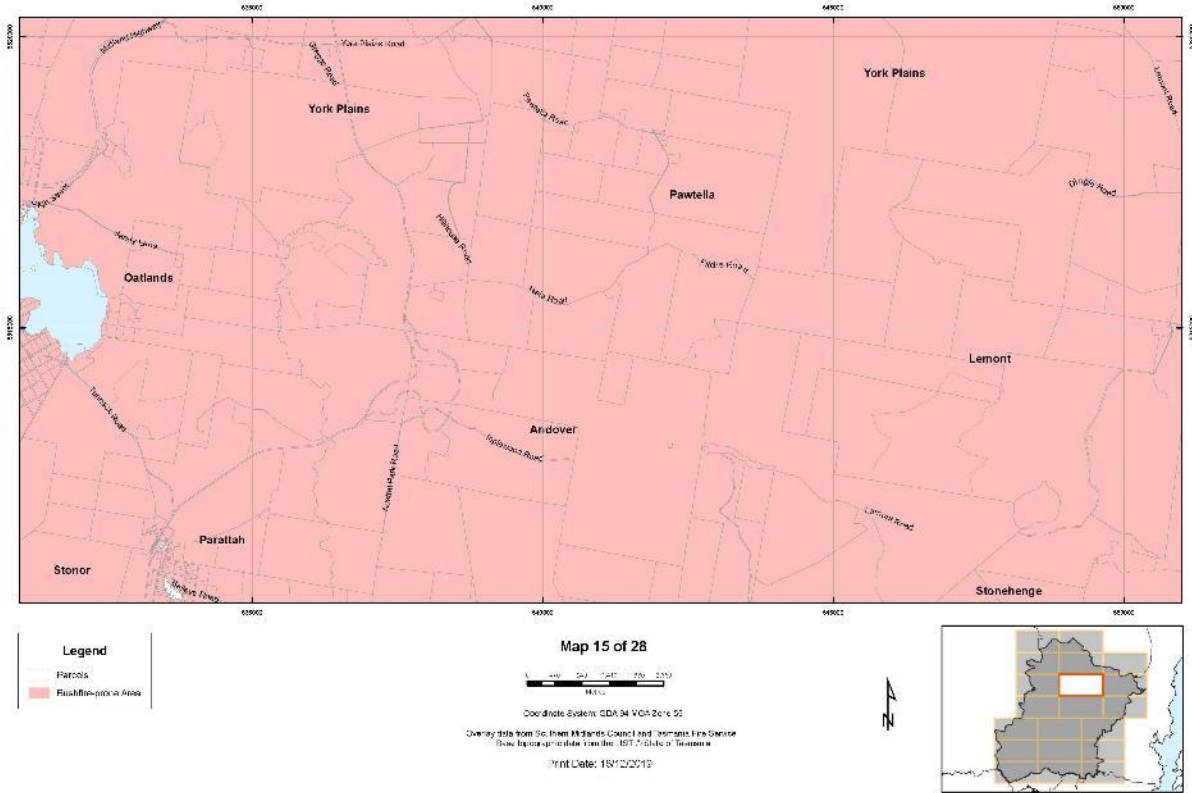
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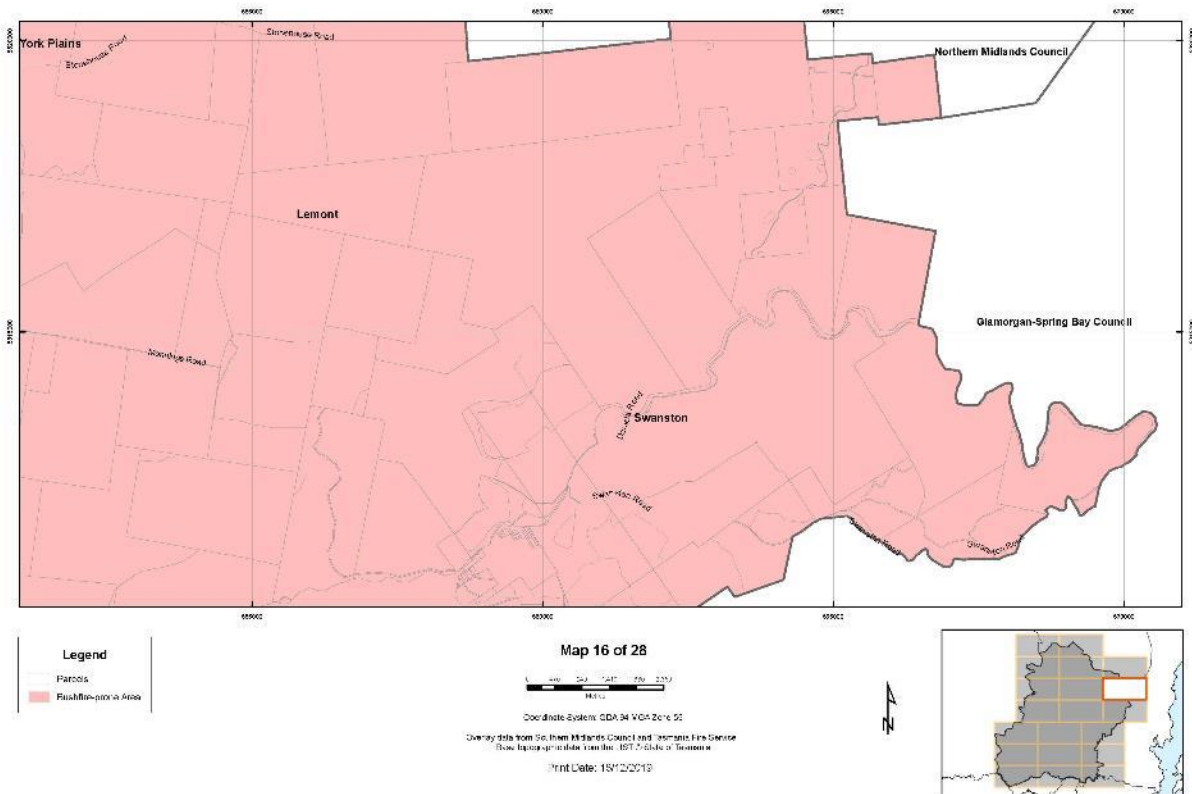
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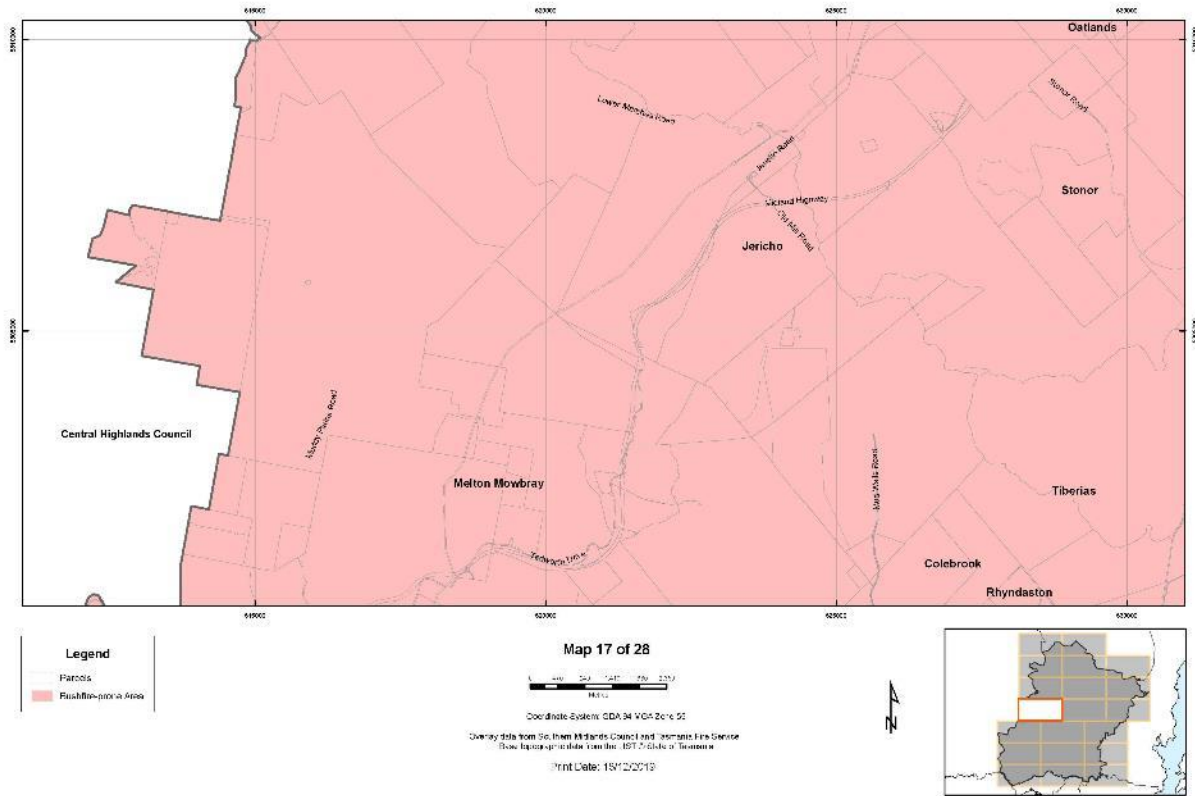
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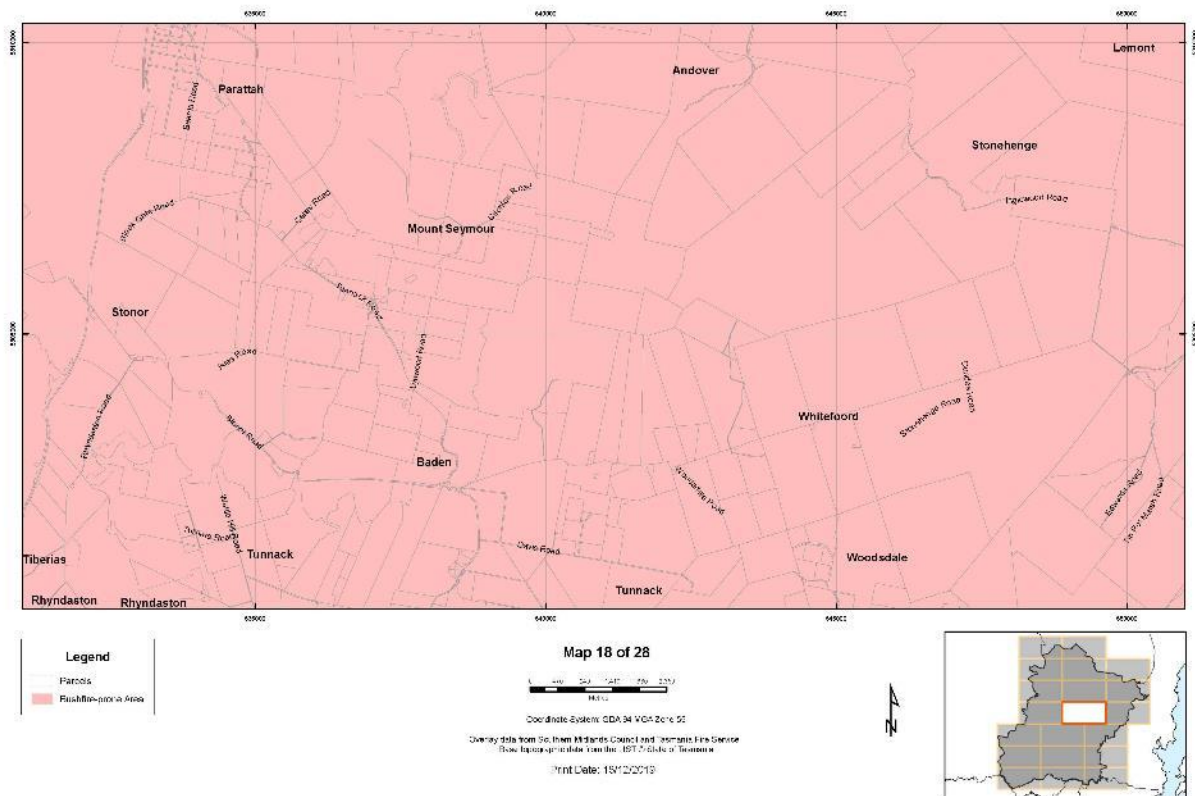
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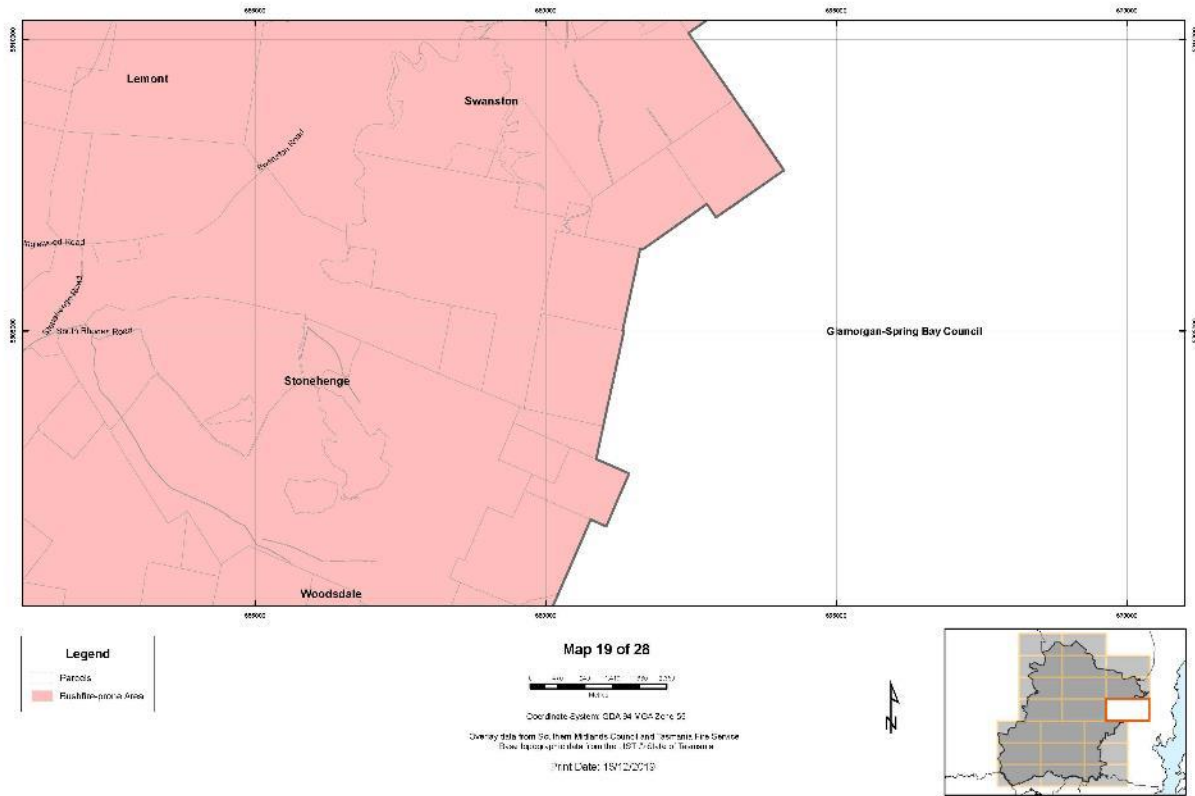
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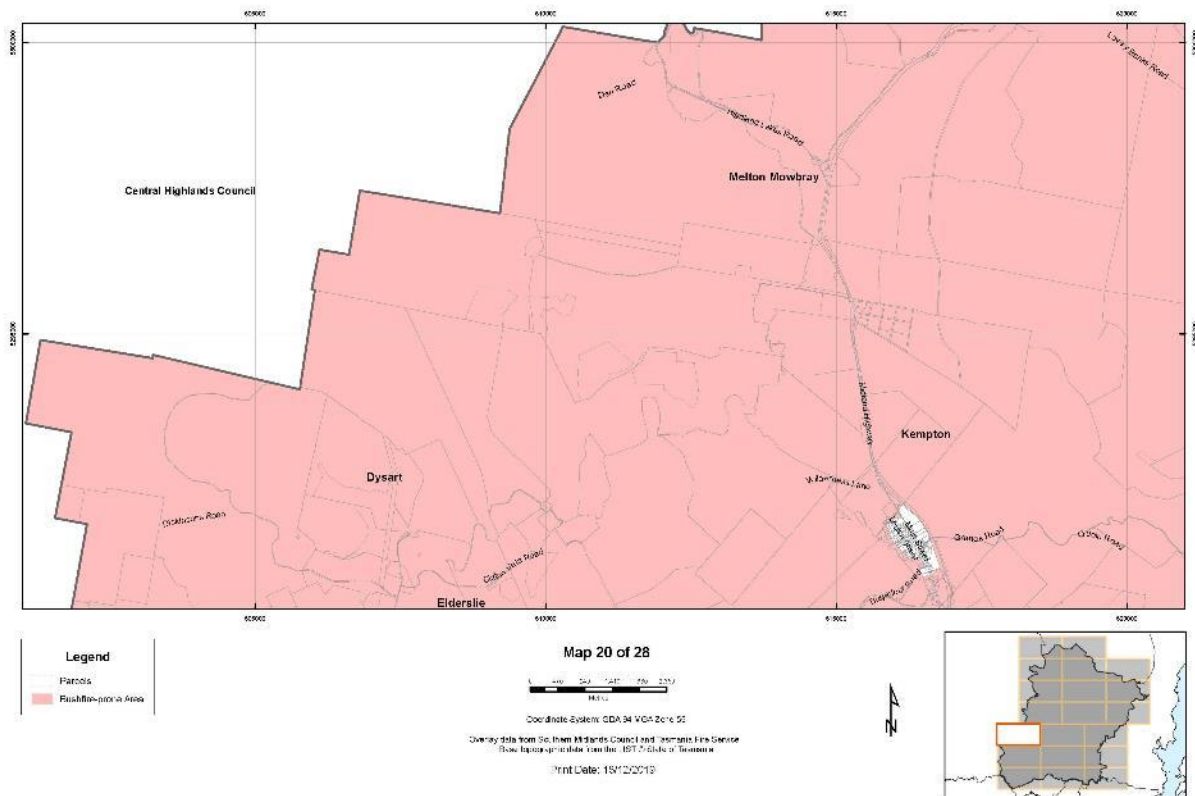
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Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay

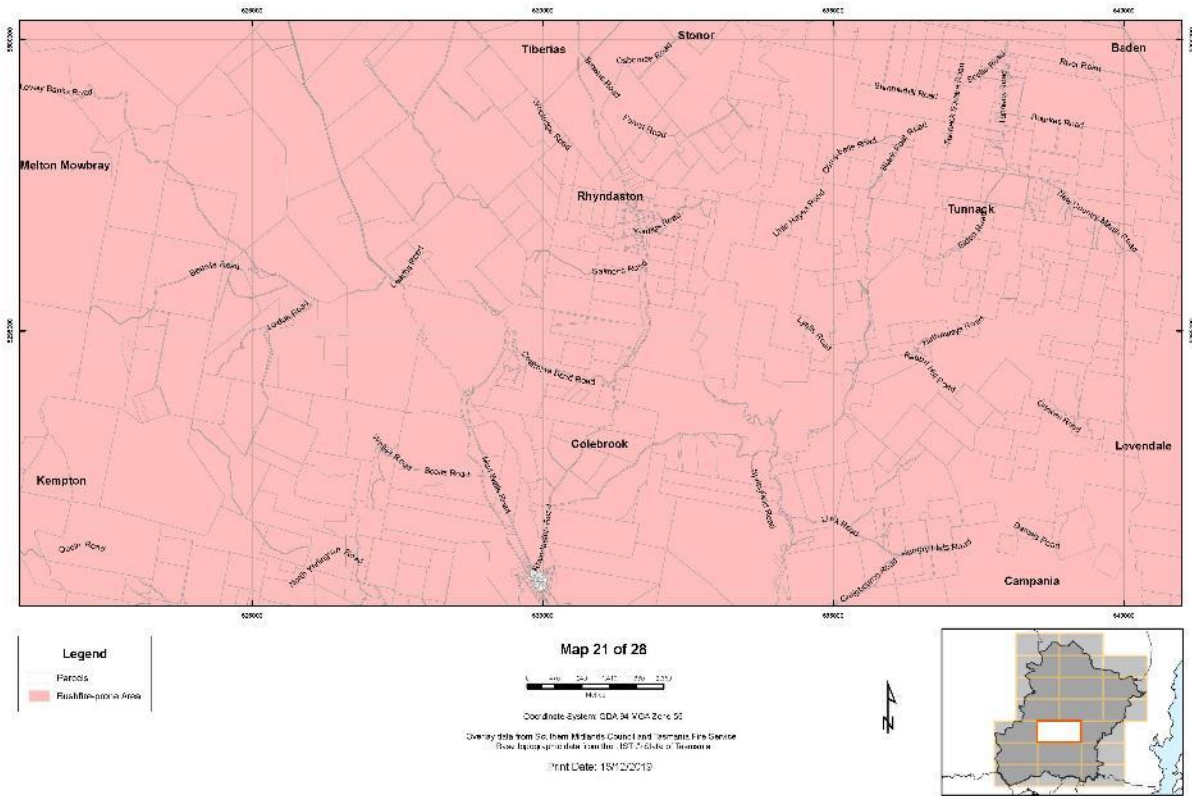


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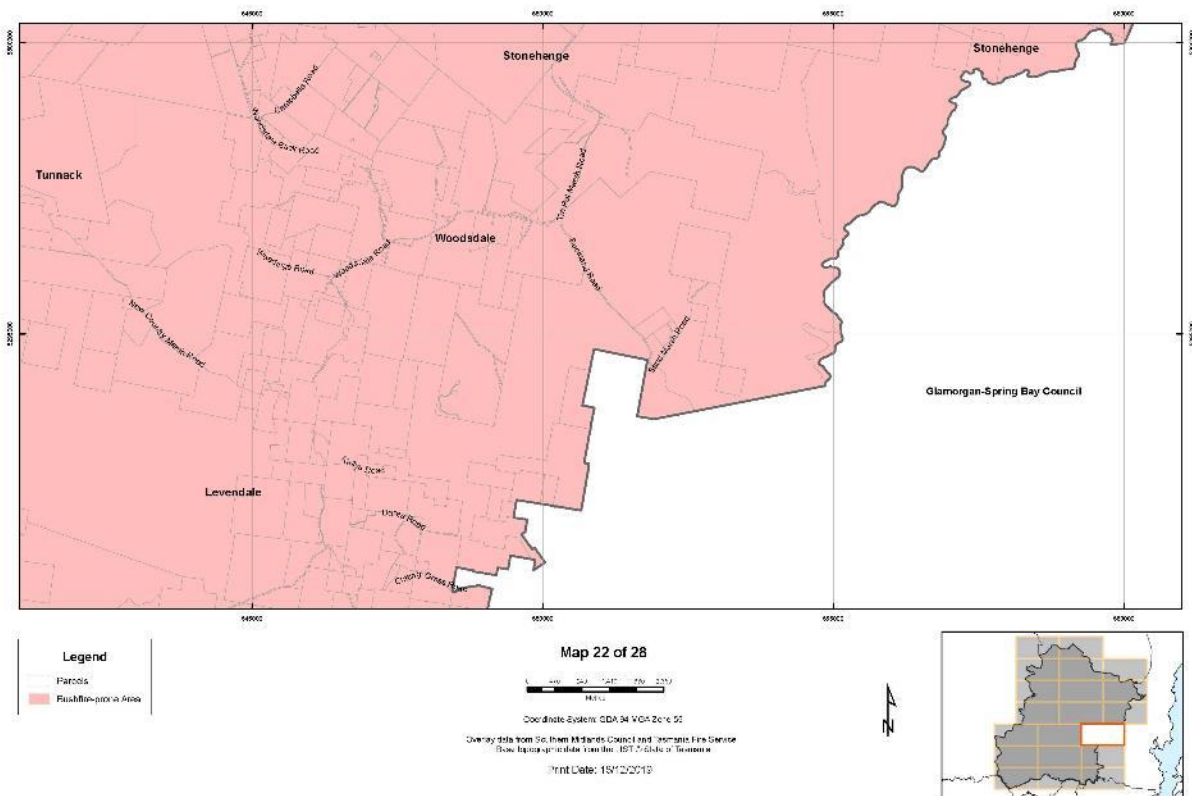




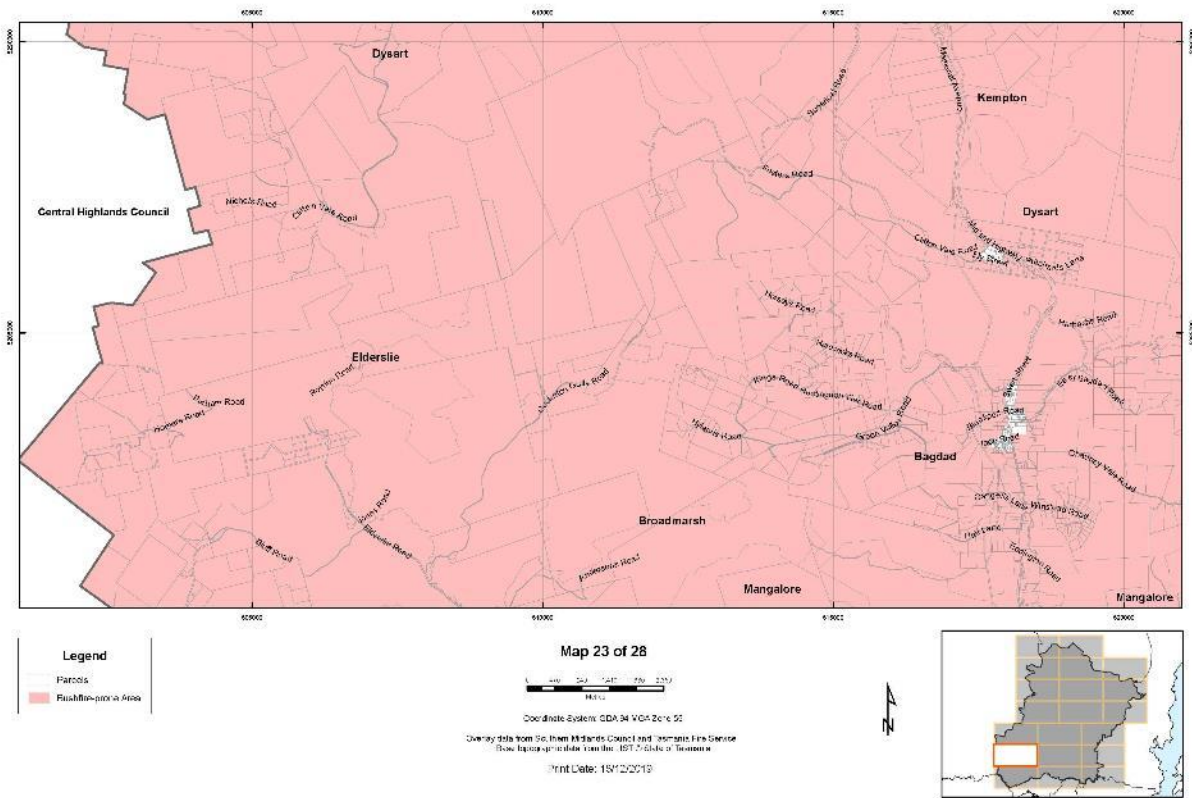
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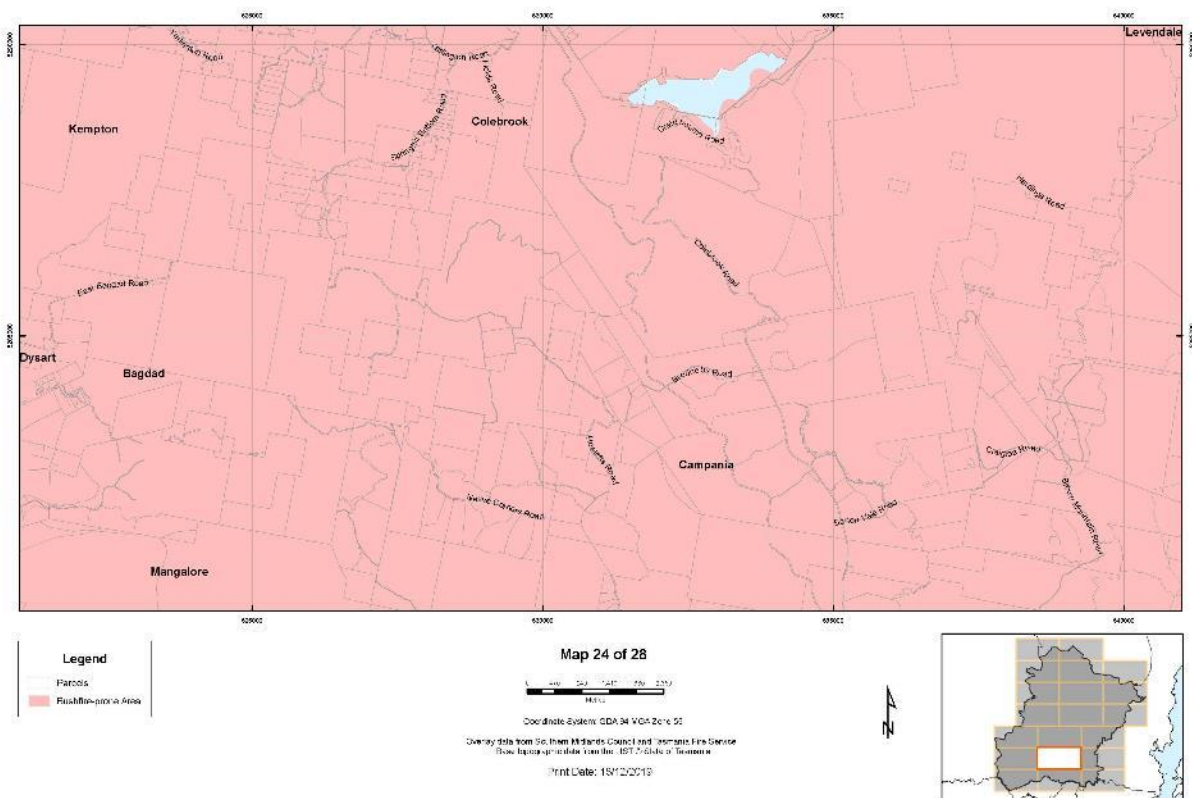
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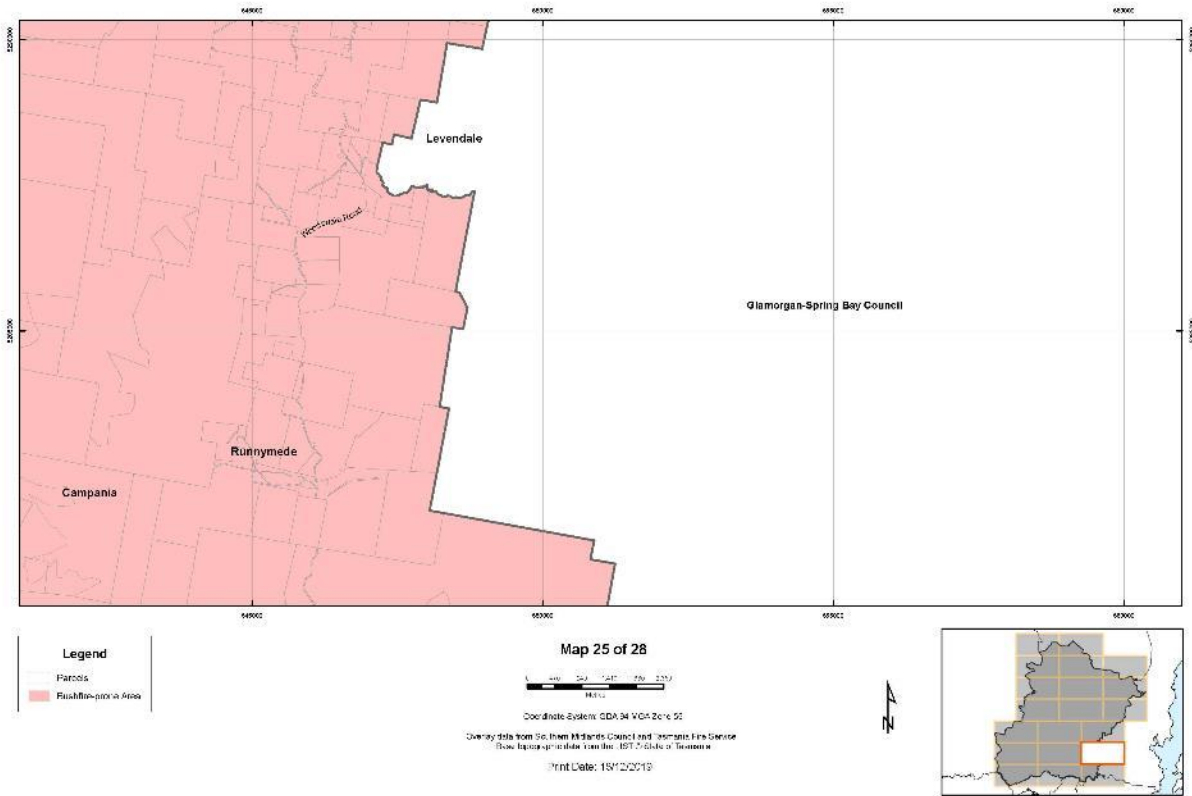
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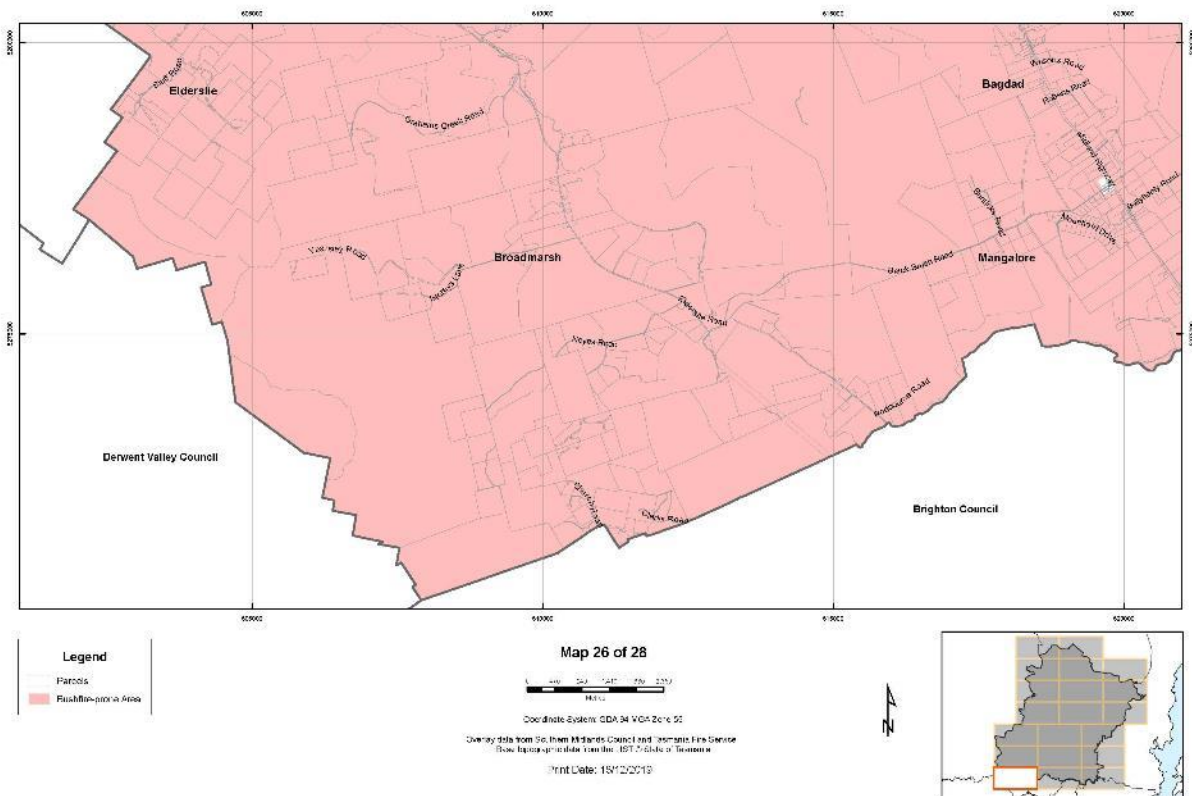
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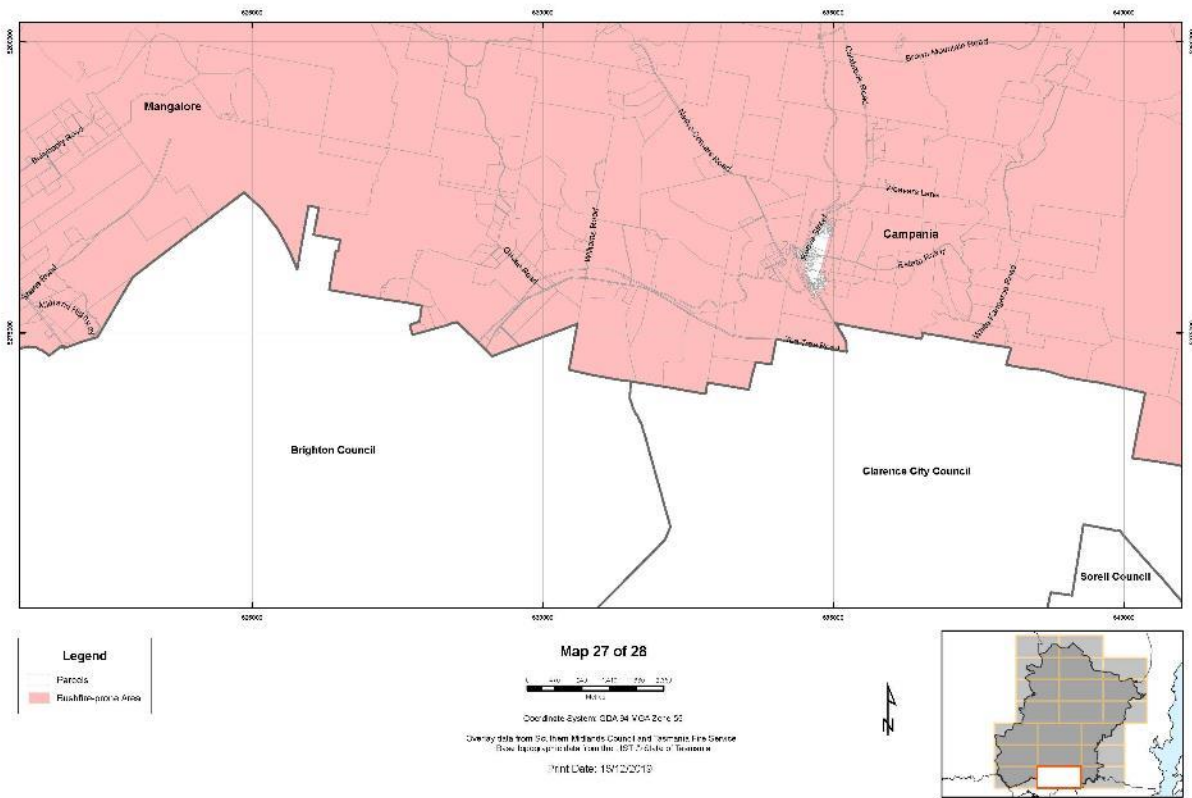
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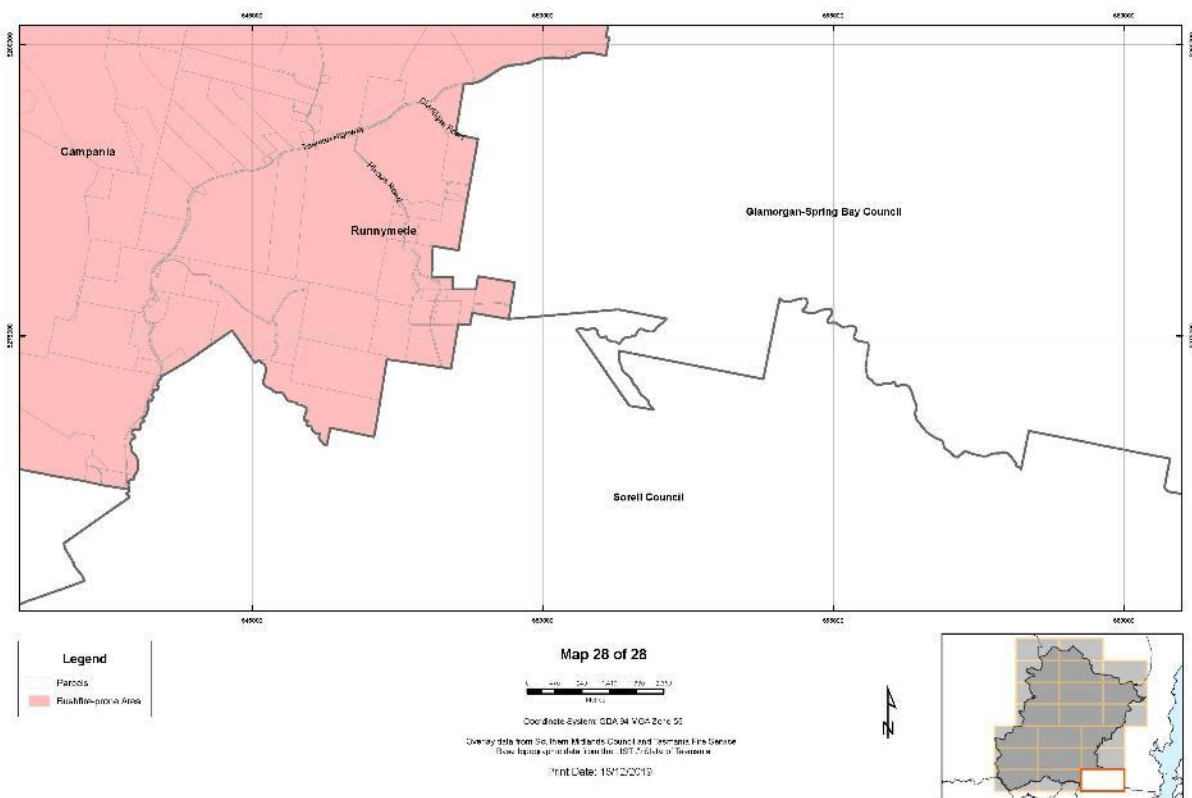
Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay



Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay



Southern Midlands Interim Planning Scheme 2015 - Bushfire-Prone Areas Overlay





## BUSHFIRE-PRONE AREAS OVERLAY

### Frequently Asked Questions

#### **1. *Why do we need a bushfire-prone areas overlay?***

The key function of the overlay is to spatially define areas that are considered 'bushfire-prone' for planning and building compliance purposes.

Since 2012 Tasmanian planning and building legislation has required certain land uses, subdivision and building work within a 'bushfire-prone area' to satisfy minimum safety standards. In the absence of an overlay however, there is sometimes ambiguity in relation to what is or isn't considered to be a 'bushfire-prone area'. The overlay will provide landowners, regulators, developers and designers with much needed certainty with regards to application of these requirements.

It is noted that stakeholders including the Housing Industry Association and the Master Builders Association actively participated in the development of the current regulatory system and have strongly urged government to have suitable mapping of bushfire-prone areas provided as soon as possible.

All Tasmanian Councils will be required eventually to have a bushfire-prone areas overlay as part of the Tasmanian Planning Scheme. To avoid unnecessary delay, TFS recommends that Councils introduce their overlays sooner by amending their existing planning scheme where it is feasible to do so. In doing so, the benefits of the overlay can be delivered sooner rather than later.

#### **2. *Can the overlay be amended?***

As with any planning scheme overlay, Council may initiate an amendment at any time if there is good reason to do so. Also the overlay may be amended in conjunction with future combined rezoning and subdivision proposals.

It is anticipated that the overlay will also be periodically reviewed and updated as part of Local Government's routine review of its Local Provision Schedules once the transition to the Tasmanian Planning Scheme is complete.

#### **3. *Will the overlay affect insurance premiums for property owners?***

The insurance industry has its own long standing risk mapping products which inform their premiums.

If insurance providers choose to base their premiums on whether or not land is classed as 'bushfire-prone' within the planning scheme, this still would be of no real significance given the overlay will not result in any additional properties being classed as 'bushfire-prone' that aren't already .

To the contrary, the overlay will actually reduce the number of properties that are classified as 'bushfire-prone' for the purposes of planning and building compliance.

It is noted that Clarence introduced their bushfire-prone areas overlay in 2015 and Hobart in 2017. TFS is not aware of any evidence of resultant effects on insurance premiums in either local government area.

**4. *Will the overlay negatively affect property values?***

All properties that are mapped within a draft overlay are already 'bushfire-prone' under existing planning and building legislation. The overlay does not introduce any new development standards - it simply clarifies the application of existing requirements. Therefore, it is highly unlikely that the overlay has any effect on property value. Given that so much of Tasmania is identified as bushfire-prone any effect would be widespread and have minimal effect between similar properties.

It is noted that Clarence introduced their bushfire-prone areas overlay in 2015 and Hobart in 2017. TFS is not aware of any evidence of resultant effects on property values in either local government area.

**5. *Will the overlay increase the cost of land development?***

Complying with the existing planning and building requirements for bushfire protection inevitably adds cost to development. There are two cost elements, firstly the costs of assessment and secondly the costs of the bushfire mitigation measures. The extensive consultation that occurred when the Bushfire-Prone Areas Code was introduced concluded that the compliance costs are outweighed by the benefit of increased community safety.

All properties that are within the draft overlay are already considered 'bushfire-prone' under existing planning and building legislation. As such, introduction of the overlay will have no effect on the cost of land development. The introduction of the overlay will actually reduce the number of properties that are classified as 'bushfire-prone' for the purposes of planning and building compliance. These properties will no longer require the expenditure of the costs of the assessment and the overlay will therefore actually reduce compliance costs to the Tasmanian community as a whole.

**6. *My property is in a residential area and adjoins farmland – why is it within the bushfire overlay?***

Grasslands are a commonly underestimated fire hazard but present a significant risk to Tasmanian communities. Furthermore, living in a suburban street is not a guarantee that nearby fuels are being adequately managed and that the suburban home is appropriately prepared for a bushfire event.

Clearly risk profiles will vary across the landscape depending on a range of factors, as does the perception of risk perception within affected communities. In some areas

and to some people being located within a bushfire-prone area may not be consistent with their own perceptions, in other areas it will confirm existing perceptions. It is worth noting that the overlay does not delineate between 'high', 'medium' and 'low' risk.

**7. Will Council be exposed to litigation if it approves building work on land outside the overlay area that is subsequently damaged in a bushfire?**

The overlay is not intended to comprehensively identify all land that may be subject to bushfire attack in all scenarios. It identifies land where the risk is considered high enough during a 'design bushfire' scenario to warrant a built response.

The overlay is similar in some ways to other hazard maps used in planning schemes, such as those for flood-prone areas and landslip. These overlays are also applied to land where risk exposure is considered sufficient to warrant a built response but none imply that there is no risk to properties in rarer events that are outside of the overlays.

The bushfire-prone areas overlay does not apply to properties further than 100m from a potential fire front. This reflects the maximum distance considered in Australian Standard 3959 Construction of buildings in bushfire-prone areas. History has shown that ember attack can impact properties several hundred metres from a fire front although the probability of loss of life and built assets decreases with increased distance. There always will be some level of risk to properties outside of the overlay however it is considered tolerable without requiring landowners to go to the added expense of building for bushfire protection.

The overlay has been prepared in good faith and informed by expert judgement and it is highly unlikely that Council would be subject to successful litigation as a result of property loss outside of the overlay area.

**8. Being on a town water supply means there is no bushfire risk doesn't it?**

The greatest component of bushfire risk is the location of the property in relation to bushfire fuels. Having water available for firefighting is an important protection measure but it does not mean the threat from the fuels is removed.

**9. We have had our block for years and there's never been a fire so why worry now?**

Tasmania is well known for very infrequent but very severe fires. If bushfire protection measures only have to be tested once every few decades it is still a good investment in community safety to have development on the urban fringe and in rural areas resilient to bushfires.

## **12. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – INFRASTRUCTURE)**

### **12.1 Roads**

#### **Strategic Plan Reference 1.1.1**

*Maintenance and improvement of the standard and safety of roads in the municipal area.*

#### **12.1.1 CRAIGBOURNE ROAD, COLEBROOK – NORTH-EASTERN SECTION ACCESSED VIA LINK ROAD, COLEBROOK – PART ROAD CLOSURE**

**Author:** SPECIAL PROJECTS OFFICER (D MACKEY)

**Date:** 13 JANUARY 2020

**Enclosure(s):**

*Simmons Wolfhagen – Letter dated 30<sup>th</sup> January 2020 (incl. Listmap attachment)*

*Extract from Council Minutes held 22<sup>nd</sup> January 2020.*

*F Miller – Email dated 9<sup>th</sup> December 2019*

*Simmons Wolfhagen – Letter dated 4<sup>th</sup> December 2019*

*F Miller – Email dated 1<sup>st</sup> December 2019*

*Extract from Council Minutes held 23<sup>rd</sup> January 2019 (includes extracts from the Council Meetings held 24<sup>th</sup> October 2018; Legal Advice from Abetz Curtis dated 6<sup>th</sup> November 2018; and Extract from Council Minutes held 28<sup>th</sup> November 2018)*

*Survey Plans*

### **ISSUE**

Council to formally consider the submissions regarding the future of the north-eastern section of Craighourne Road, Colebrook, received from Simmons Wofhagen, acting on behalf of the abutting property owners (F Miller and M Nardi), dated 4<sup>th</sup> December 2019, associated emails received from Mr F Miller dated 1<sup>st</sup> & 9<sup>th</sup> December 2019 and verbal request made by the property owners and their legal representative at the Council meeting of 22<sup>nd</sup> January 2020.

### **BACKGROUND**

Council considered this matter at the 22<sup>nd</sup> of January Council meeting, at which further verbal submissions were received from the abutting property owners and their legal representative (subsequently provided in writing – refer letter dated 30<sup>th</sup> January 2020 – attached).

At the meeting, the owners and their legal representative proposed that Council close the road to enable the possibility of the matter being determined by a magistrate. They also requested that Council further consider whether the road is unsafe and therefore should be closed pursuant to S.42 of the Local Government (Highways) Act 1982.

It was resolved to delay a determination so that advice could be sought on these matters, and on the status of those sections of the road formation that lie outside the road reservation.

Council is fully aware of the background associated with this issue.



Copies of previous Council Reports including other relevant documentation (listed above), are included as enclosures.

Council's current position is that:

1. it has formed the opinion that there are insufficient grounds to satisfy closure of the road for the public benefit in the interests of public safety; and
2. Council require that unrestricted access be maintained to the Craighourne Dam via the north-eastern section of the Craighourne Road (accessed via Link Road, Colebrook).

Formal notice to remove the farm gate obstructing the use of Craighourne Road was given pursuant to section 49(3) of the *Roads and Jetties Act 1935* in June 2019, however this was subsequently challenged on the basis that the General Manager did not have the delegated authority to issue such a Notice. This has since been addressed by Council, but further Notice has been withheld pending consideration of these latest submissions.

## DETAIL

### **General**

In summary, the intent of the various correspondence and verbal submission listed above received from Simmons Wolfhagen and the abutting landowners is to request Council to reconsider its position regarding the closure of the north-eastern section of Craighourne Road.

The submissions seek to provide Council with a proper understanding of the impact that the decision not to close this section of Craighourne Road is having on the adjoining landowners.

In reference to the letter and emails, circumstances are detailed which relate to trespass on the property which adjoins the Craighourne Dam.

From a Council perspective, previous discussions relating to alleged trespassing can be addressed through fencing of the property along its Craighourne Road frontage. In this regard, Council engaged (and funded) a Surveyor to 're-peg' the relevant boundaries between the road reservation, the Craighourne Dam land and the private property. Mr Miller has been provided with a copy of the Survey Plan in an endeavour to address this very concern.

A copy of the Survey Plan is included as an attachment to this Report.

### **The Road**

The survey found that sections of the actual formed road are outside the road reservation. This has led the adjoining landowners, through their solicitor, to:

1. Request that, if the road is not closed, it be reconstructed within the road reservation, and

2. Claim that the road, in its current form, is a risk to public safety as vehicles should be driving on the unformed sections of the road in places where the formed road is outside the road reservation. Therefore, they claim, the road is unsafe and should be closed pursuant to S.42 of the *Local Government (Highways) Act 1982*.

Portions of public roads lying outside road reservations are not an unusual occurrence in rural areas. Such sections of road are nevertheless legitimate public roads under common law.

Section 9 of the Highways Act 1951 defines the width of the 'road reserve' applying to such common law roads, as being the land between the fences where the width is not excessive and, where such roads are not fenced, the boundary is 2.5 metres from the edge of earthworks (in the absence of evidence to the contrary). If there is debate about where the boundary lies, there is provision for a determination to be made by a magistrate.

Therefore, there is no need for the road formation to be rebuilt within the road reservation indicated on the title plans and it cannot be argued that users must travel on this road reservation and therefore the road is unsafe.

#### ***The 4 December 2019 Submission***

The following comments are provided in response to other specific issues raised in the Letter:

- Page 1 – 4<sup>th</sup> Paragraph – the letter makes reference to the Craighourne Road which passes over their land. It is important to note that the Craighourne Road is a Council-maintained public road. Their private property abuts the road.
- At the base of Page 1 of the letter, it makes reference to a Council concern relating to the cost of funding an application to the Magistrates Court if the Council decides to close Craighourne Road.

Whilst the issue of costs was raised in the report to the January 2019 Council Meeting, mainly in relation to the closure process (i.e. advertising etc.) and responding to any subsequent appeals that may be referred through to the Magistrates Court (Administrative Appeals Division) under section 14 of the *Local Government (Highways) Act 1982*, to the best of my knowledge, this has not been an influencing factor underlying Council's decision not to close the road.

- Background Section: - on the construction of the Craighourne Dam in 1986, the relevant Council was Richmond Council, which was mostly absorbed into Clarence Council. It is on the creation of the Southern Midlands Council in April 1993 that the area around Craighourne Dam fell within the municipal area of the Southern Midlands. Council has not taken any steps to close that that part of the road that is unpassable. However, it can be assumed that this did occur following, or at the time, the Craighourne Dam was constructed although Council holds no record of this.
- Background Section – Public Access Point (north-eastern section of the Dam).

The Southern Midlands did write to the Minister for Primary Industries and Water (Hon G Barnett MHA) as his portfolio includes responsibility for Inland Fisheries. The intent of that submission was to seek assistance from the State Government to construct some form of basic infrastructure (and installation of signage) which clearly identifies the property boundaries and provides an area whereby vehicles can park; turn around; and be directed to the Dam without trespassing. This action was consistent with Council's earlier decision to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.

- Page 3 – final paragraph – Road reservation. It is acknowledged that the Survey Plan shows:
  - a) that there are some minor deviations where the road, in its existing position, is not wholly within the surveyed road reservation; and
  - b) That in some locations, the existing wire fence on the eastern side of the road encroaches into the road reserve.

This was highlighted in a letter dated 8<sup>th</sup> March 2019 to F Miller and M Nardi, which included a comment that the most practical solution is to simply erect a fence on the western side of the road in its present location and avoid the need to relocate any fences on the eastern side.

As mentioned above, those sections of the formed road lying outside the road reservation are nevertheless sections of public road at common law, and if a new fence is erected along the road frontage where none has existed before, it should be setback 2.5 metres from earthworks (in the absence of evidence to the contrary).

- Page 7, Point 1: The landowners are not powerless to prevent significant financial impacts if the road remains open. They have the same option as all other property owners in rural areas, of fencing their public road frontage.
- Page 7, Point 2: Tasmania Police can provide the same level of support that they provide to other property owners in rural areas.
- Page 7, Point 3: The fencing of road frontage boundaries is not the responsibility of local government. Council must treat all property owners equally. To construct and maintain one owners' fence would, firstly, be unfair to other property owners and, secondly, set a precedent that would have enormous financial implications for Council.
- Page 7, Point 4: It is not accepted that the abutting landowners "will not gain anything" by the closure of the road and "there is no private benefit" to them. If the road were closed, they would not have to incur the cost of fencing the road and they would also have exclusive private access to the eastern side of Craighourne Dam, a significant public asset for which Inland Fisheries expends considerable resources to maintain its status as one of the key components of Tasmania's world renowned trout fishery.
- Page 7, Point 5: It is acknowledged that the closure of the road would, from a practical point of view, be a simple and cheap thing to do.

- Page 7, Point 6: The public consultation process carried out by Council revealed very strong support for the retention of the road. Whilst traffic counts have not been done, it is clear that the fishing fraternity, and others, greatly value public access to the eastern side of Craighourne Dam. Given Tasmania's international reputation as one of the best trout fisheries in the world, it is not surprising that some overseas submissions were received.
- Page 8, Point 7: The vast majority of members of the public are respectful of private property. Unfenced land adjacent to water bodies is usually public land, and assumed to be such by members of the public. This is not an unreasonable assumption. The existence of a fence not only creates a physical barrier to unauthorised entry, it sends a clear message that the land is in fact private land.

### ***Closure of the Road to Prompt a Possible Determination by Magistrate***

The verbal submission received at the 22<sup>nd</sup> of January 2020 Council meeting included the suggestion that Council close the road to open-up the possibility that the matter will ultimately be determined by a magistrate.

A decision by Council to refuse a request to close a public road cannot be then appealed before a magistrate. However, a decision to grant such a request can be, if members of the public choose to launch such an appeal.

If it is Council's view that the road remain open, (which is the currently the case), then it would be inappropriate to determine to close the road, on the basis that such a decision would enable the possibility that the matter be ultimately determined by a magistrate. This course of action is not recommended.

### **CONCLUSION**

Reference is made to past Council Reports, including the Report (and attachments) submitted to the Council Meeting held in January 2019. This was the basis for determining Council's current position.

Council, Inland Fisheries and Tasmanian Irrigation remain committed to formalising a parking area and fishing access at the end of Craighourne Road on Tasmanian Irrigation land, including signage and physical barriers to prevent unauthorised vehicular access to private land. However, this can only be done in cooperation with the abutting landowners who, crucially, would need to fence their road frontage at the same time.

**Human Resources & Financial Implications** – Refer comment above.

**Community Consultation & Public Relations Implications** – Reference is made to the Council Report dated 15<sup>th</sup> January 2019 which detailed the outcomes of the public consultation process which was initiated in December 2018.

The consultation process included publishing a Notice in the Mercury Newspaper on 1<sup>st</sup> December 2018, and notifications were provided through the Southern Midlands Council's website and Facebook page.

For information, the following is an extract from the Minutes of the Council Meeting held in January 2019:

*In terms of opposition to the permanent closure, the comments made are too numerous and varied to report on all of them but the most common matters raised include the following:*

- *Highly popular public fishery destination due to close proximity to Hobart and high level stocking policy;*
- *Primary cause of problems being experienced by the property owner by a small minority are a direct result of their failure to properly fence their property which would deter any unauthorised access;*
- *Council should remove the illegal gate which is frequently locked that obstructs access to the public road and reinstate a cattle grid or have the owner erect proper fencing;*
- *This area is the best sheltered access for people to fish from shore (for those that don't own a boat) and to utilise kayaks and canoes – also ideal access point to fish from for the elderly, those with mobility issues, young families etc;*
- *Closure will damage the efforts of Inland Fisheries Service to promote the lake as a tourism drawcard and economic benefits for Southern Midlands lost;*
- *Disagree with public safety aspect of closure, any trespassing/anti-social issues experienced are a police matter and would be dealt with accordingly;*
- *Believe the closure will solely benefit one property owner only but in the process will disadvantage thousands of recreational anglers; the vast majority of anglers who visit this area do the right thing and shouldn't be disadvantaged by a very small minority who may do the wrong thing;*
- *Dam used to access water for firefighting purposes;*
- *Craigbourne Road is a public road, the property was purchased knowing this road was public access - urge Council to maintain its status as a public road.*

*It was also noted that among the submissions against closure the following were received:*

- *Submission from Inland Fishers – acting in the interests of 26,407 licensed anglers;*
- *Anglers Alliance Tasmania – representing some 27,000 freshwater anglers;*
- *Submission from 'change.org' which includes the names and addresses of 200 individuals;*
- *Petition letter containing 577 signatories.*

*In terms of support for the permanent closure, the following comments capture the sentiments contained therein:*

- *Express support for the permanent closure of Craigbourne Road as I am satisfied that this road serves no public use and does not impact my ability to use the Craigbourne Dam for recreational pastimes as I can use the public carpark and facilities on the southern end of the Dam – 9 signatories;*
- *Person has witnessed continued vandalism and trespass on the Mt Baines and adjoining property; seen fences damaged and cut as people use this road to illegally*

- hunt and fish the dam; person has been verbally abused and physically assaulted when asking people to leave his property (and Mt Baine's property);*
- *Witnessed drunken persons illegally hunting and discharging firearms; only a matter of time before someone is seriously injured or killed; have seen the dangers first hand of people putting themselves in danger trying to launch boat in the Dam from the shoreline; witnessed antisocial behaviour and for the safety of the public close the road.*
  - *Person has lived in close proximity for some years and has had nothing but concern for their property's safety and the poor livestock that call this area home. The traffic and action of many at all hours on this road it is clear that it is not being used for its intended use and is cause for concern or all.*
  - *Seen burn out circles on pasture; rubbish, broken bottles etc.; cutting down anything that will burn. Has been informed that a person must be on the property every night to prevent break-ins; state of the dam foreshore shows what goes on at night after the people who follow the rules leave.*
  - *Agrees with the property owners, access to the dam over their land should be restricted. Council either buys the land to make it public access or (support the landowners) fence so that fishers must drive to the ramp. To be intimidated and suffer damage on your own land is insufferable.*

**Policy Implications – Policy position.**

**Priority - Implementation Time Frame – N/A.**

## **RECOMMENDATION**

**THAT Council:**

- 1. Maintain its position that the north-eastern section of Craighourne Road (accessed via Link Road) remain open;**
- 2. Maintain its offer to work with Inland Fisheries and Tasmanian Irrigation to develop a formal area at the end of the road on Tasmanian Irrigation land for vehicle parking and access to Craighourne Dam, including signs and physical barriers to prevent access to private land, in conjunction with the fencing of the Craighourne Road road frontage by the abutting landowners.**

| <b>DECISION</b>     |                 |                     |
|---------------------|-----------------|---------------------|
| <b>Councillor</b>   | <b>Vote FOR</b> | <b>Vote AGAINST</b> |
| Mayor A O Green     |                 |                     |
| Deputy Mayor E Batt |                 |                     |
| Clr A Bantick       |                 |                     |
| Clr A E Bisdee OAM  |                 |                     |
| Clr K Dudgeon       |                 |                     |
| Clr D F Fish        |                 |                     |
| Clr R McDougall     |                 |                     |

**ENCLOSURE**

*Agenda Item 12.1.1*



Contact: Adam Eason  
Our Ref: ARB-NAB-192490

30 January 2020

Mr R Curtis  
Abetz Curtis Lawyers  
83 Davey Street  
HOBART TAS 7000

By email: [rcurtis@abetzcurtis.com.au](mailto:rcurtis@abetzcurtis.com.au)

Dear Mr Curtis

**Closure of Craighourne Road**

I refer to the Council meeting which took place on 22 January 2020 at the Colebrook Memorial Hall.

Firstly, could you please pass on our thanks to the councillors for their attention during our presentation.

This letter provides our understanding of the outcome of the meeting and next steps in this process.

During the meeting Councillor Bisdee asked my client about the photographic evidence of the vandalism and other unlawful behaviour which is regularly taking place on his property due to the relevant Council road being open. He also referred to a chronology of events.

My client will prepare a document which sets out the chronology and provides photographic material to assist the councillors to understand the scale of the issue confronting my client.

The Deputy Mayor raised the issue of actual use of the road in terms of weighing its benefit against Council's costs of realignment, making safe and maintenance. The prospect of installation of a vehicle counter was raised.

My client strongly supports an assessment of actual use. Having reflected on the best means to get good information on this, he is concerned that a vehicle counter in isolation may not provide reliable data. Persons may seek to inflate the results during the measurement period. To ensure verifiable data, a motion sensing

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- Commercial Litigation, General Litigation, Dispute Resolution
- Local Government, Environmental, Planning Law
- Employment & Industrial Relations Law
- Regulatory, Insurance, Intellectual Property
- Environmental, Planning & Energy Law
- Building, Construction & Engineering Law

SIMMONS WOLFHAGEN

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camera should be installed to photograph vehicles as they cross the counter. These cameras are in regular use and are not expensive.

Further to that a camera should also be placed at the end of the Council road where the Tasmanian Irrigation land commences. Responsible use of the Council road occurs when it is used to access the dam (to fish or for other recreational activities) from the Tasmanian Irrigation land.

My client's experience is many users leave the Council road before the dam (meaning they are immediately trespassing) and go north. A camera placed at the end of the Council road will enable verification as to which users actually traverse the road in the intended and appropriate fashion.

It should also be noted some road users continue beyond the end of the Council road and trespass and vandalise property to the south. A camera in this area will enable the number of vehicles doing this to be determined.

For clarity we **enclose** a map showing the suggested location for these devices.

The presentation to Council included reference to section 42 of the *Local Government (Highways) Act 1982*. My client believes the road is unsafe and that pursuant to section 42, the road should be closed until it is made safe. The safety issues arise from:

- 1) The gravel surface is not entirely within the road reserve meaning people (to lawfully use the Council road) must leave the surface and travel across an unmade section.
- 2) At the west end of the Council road there is a steep slope and precipitous drop with no barrier or signage. If vehicles entered that area, property damage and personal injury is very likely.
- 3) There is also nothing preventing persons continuing to drive along a very dangerous and rough stretch of road along the dam edge. My client has evidence that people drive along this road. It is apparent unauthorised persons have removed obstructions put in place by previous landowners and also large boulders that have fallen onto the road from the road cut.

Under section 42, Councils engineer, or an authorised officer is tasked with considering whether a local highway is unsafe to traffic or a particular class of traffic.

It was indicated during the meeting that Council would consider this safety issue and have the necessary assessment conducted by its engineer and authorised officer.

That assessment may benefit from an understanding of the use of the road from my client. I would encourage Council's engineer to contact Mr Miller directly. My client also gives his permission for Councils engineer or authorised officer to enter



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his property in the area where the road is currently aligned outside the road reserve. If access into my client's property is otherwise required, Mr Miller consents to that, subject to being given 24 hours prior notice of the time and place the officer(s) intend to enter the land.

We understand that following the use and safety assessment Council will again consider whether the road should be closed under section 14 and whether it should be closed under section 42.

If the process and actions summarised above are inaccurate, please let me know.

Please contact me if you would like to discuss this letter.

Yours faithfully  
Simmons Wolfhagen



**Adam Beeson**

Senior Associate | Local Government, Environment, Planning & Development Law  
adam.beeson@simwolf.com.au

Listmap

www.thelist.tas.gov.au

Land Tasmania

Generated at: 9:15 on 24-January-2020

User: Public

Page: 1 of 1



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Southern Midlands Council  
DRAFT Minutes – 22 January 2020                      EXTRACT

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**12.1.1      CRAIGBOURNE ROAD, COLEBROOK – NORTH-EASTERN SECTION  
                  ACCESSED VIA LINK ROAD, COLEBROOK – PART ROAD CLOSURE**

**Author:**    SPECIAL PROJECTS OFFICER (D MACKEY)

**Date:**        13 JANUARY 2020

**Enclosure(s):**

*F Miller – Email dated 9<sup>th</sup> December 2019*

*Simmons Wolfhagen – Letter dated 4<sup>th</sup> December 2019*

*F Miller – Email dated 1<sup>st</sup> December 2019*

*Extract from Council Minutes held 23<sup>rd</sup> January 2019 (includes extracts from the Council Meetings held 24<sup>th</sup> October 2018; Legal Advice from Abetz Curtis dated 6<sup>th</sup> November 2018; and Extract from Council Minutes held 28<sup>th</sup> November 2018)*  
*Survey Plans*

**ISSUE**

Council to formally consider the submission received from Simmons Wolfhagen, acting on behalf of the property owners (F Miller and M Nardi), including associated Email correspondence received from Mr F Miller.

**BACKGROUND**

Council is fully aware of the background associated with this issue.

Copies of previous Council Reports including other relevant documentation (listed above), are included as an enclosure.

In terms of Council's current position:

1. it has formed the opinion that there are insufficient grounds to satisfy closure of the road for the public benefit in the interests of public safety; and
2. Council require that unrestricted access be maintained to the Craighbourne Dam via the north-eastern section of the Craighbourne Road (accessed via Link Road, Colebrook).

Formal notice to remove the farm gate obstructing the use of Craighbourne Road was given pursuant to section 49(3) of the *Roads and Jetties Act 1935* in June 2019, however this was subsequently challenged on the basis that the General Manager did not have the delegated authority to issue such a Notice. This has since been addressed by Council, but further Notice has been withheld pending consideration of these latest submissions.

**DETAIL**

In summary, the intent of the letter received from Simmons Wolfhagen dated 4<sup>th</sup> December 2019 is to request Council to reconsider its position regarding the closure of the north-eastern section of Craighbourne Road which passes through the land owned by F Miller and M Nardi.

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The letter seeks to provide Council with a proper understanding of the impact that the decision not to close this section of Craighourne Road is having on their clients. In reference to the letter, circumstances are detailed which relate to trespass on the property which adjoins the Craighourne Dam.

From a Council perspective, previous discussions relating to alleged trespassing can be addressed through fencing of the roadway and property boundary. In this regard, Council has already engaged (and funded) a Surveyor to 're-peg' the relevant boundaries between the public road; the Craighourne Dam; and private property. Mr Miller has been provided with a copy of the Survey Plan in an endeavour to address this very concern.

The following comments are provided in response to other specific issues raised in the Letter:

- Page 1 – 4<sup>th</sup> Paragraph – the letter makes reference to the Craighourne Road which passes over their land. It is important to note that the Craighourne Road is a Council maintained Road, with a surveyed Road Reservation. Their private property adjoins the Road.
- At the base of Page 1 of the Letter, it makes reference to a Council concern relating to the cost of funding an application to the Magistrates Court if the Council decides to close Craighourne Road.

Whilst the issue of costs was raised in the report to the January 2019 Council Meeting, mainly in relation to the closure process (i.e. advertising etc.) and responding to any subsequent appeals that may be referred through to the Magistrates Court (Administrative Appeals Division) under section 14 of the *Local Government (Highways) Act 1982*, to the best of my knowledge, this has not been an influencing factor underlying Council's decision not to close the road.

- Background Section: - on the construction of the Craighourne Dam in 1986, the relevant Council was Richmond Council, which was mostly absorbed into Clarence Council. It is on the creation of the Southern Midlands Council in April 1993 that the area around Craighourne Dam fell within the municipal area of the Southern Midlands. Council has not taken any steps to close that part of the road that is unpassable. However, it can be assumed that this did occur following, or at the time, the Craighourne Dam was constructed although Council holds no record of this.
- Background Section – Public Access Point (north-eastern section of the Dam).  
The Southern Midlands did write to the Minister for Primary Industries and Water (Hon G Barnett MHA) as his portfolio includes responsibility for Inland Fisheries. The intent of that submission was to seek assistance from the State Government to construct some form of basic infrastructure (and installation of signage) which clearly identifies the property boundaries and provides an area whereby vehicles can park; turn around; and be directed to the Dam without trespassing. This action was consistent with Council's earlier decision to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.

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- Page 3 – final paragraph – Road reservation. It is acknowledged that the Survey Plan shows:
  - a) that there are some minor deviations where the road, in its existing position, is not wholly within the surveyed road reservation; and
  - b) That in some locations, the existing wire fence on the eastern side of the road encroaches into the road reserve.

This was highlighted in a letter dated 8<sup>th</sup> March 2019 to F Miller and M Nardi, which included a comment that the most practical solution is to simply erect a fence on the western side of the road in its present location and avoid the need to relocate any fences on the eastern side. Whilst this was put forward as a possible solution, the letter advised that it was the property owner's decision as to the preferred course of action.

A copy of the Survey Plan is included as an enclosure to this Report.

To conclude, reference is made to past Council Reports, including the Report (and attachments) submitted to the Council Meeting held in January 2019. This was the basis for determining Council's current position.

**Human Resources & Financial Implications** – Refer comment above.

**Community Consultation & Public Relations Implications** – Reference is made to the Council Report dated 15<sup>th</sup> January 2019 which detailed the outcomes of the public consultation process which was initiated in December 2018.

The consultation process included publishing a Notice in the Mercury Newspaper on 1<sup>st</sup> December 2018, and notifications were provided through the Southern Midlands Council's website and Facebook page.

For information, the following is an extract from the Minutes of the Council Meeting held in January 2019:

*In terms of opposition to the permanent closure, the comments made are too numerous and varied to report on all of them but the most common matters raised include the following:*

- *Highly popular public fishery destination due to close proximity to Hobart and high level stocking policy;*
- *Primary cause of problems being experienced by the property owner by a small minority are a direct result of their failure to properly fence their property which would deter any unauthorised access;*
- *Council should remove the illegal gate which is frequently locked that obstructs access to the public road and reinstate a cattle grid or have the owner erect proper fencing;*
- *This area is the best sheltered access for people to fish from shore (for those that don't own a boat) and to utilise kayaks and canoes – also ideal access*

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- point to fish from for the elderly, those with mobility issues, young families etc;*
- *Closure will damage the efforts of Inland Fisheries Service to promote the lake as a tourism drawcard and economic benefits for Southern Midlands lost;*
- *Disagree with public safety aspect of closure, any trespassing/anti-social issues experienced are a police matter and would be dealt with accordingly;*
- *Believe the closure will solely benefit one property owner only but in the process will disadvantage thousands of recreational anglers; the vast majority of anglers who visit this area do the right thing and shouldn't be disadvantaged by a very small minority who may do the wrong thing;*
- *Dam used to access water for firefighting purposes;*
- *Craigbourne Road is a public road, the property was purchased knowing this road was public access - urge Council to maintain its status as a public road.*

*It was also noted that among the submissions against closure the following were received:*

- *Submission from Inland Fishers – acting in the interests of 26,407 licensed anglers;*
- *Anglers Alliance Tasmania – representing some 27,000 freshwater anglers;*
- *Submission from 'change.org' which includes the names and addresses of 200 individuals;*
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*In terms of support for the permanent closure, the following comments capture the sentiments contained therein:*

- *Express support for the permanent closure of Craigbourne Road as I am satisfied that this road serves no public use and does not impact my ability to use the Craigbourne Dam for recreational pastimes as I can use the public carpark and facilities on the southern end of the Dam – 9 signatories;*
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- *Witnessed drunken persons illegally hunting and discharging firearms; only a matter of time before someone is seriously injured or killed; have seen the dangers first hand of people putting themselves in danger trying to launch boat in the Dam from the shoreline; witnessed antisocial behaviour and for the safety of the public close the road.*
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*The traffic and action of many at all hours on this road it is clear that it is not being used for its intended use and is cause for concern or all.*

- *Seen burn out circles on pasture; rubbish, broken bottles etc.; cutting down anything that will burn. Has been informed that a person must be on the property every night to prevent break-ins; state of the dam foreshore shows what goes on at night after the people who follow the rules leave.*
- *Agrees with the property owners, access to the dam over their land should be restricted. Council either buys the land to make it public access or (support the landowners) fence so that fishers must drive to the ramp. To be intimidated and suffer damage on your own land is insufferable.*

**Policy Implications – Policy position.**

**Priority - Implementation Time Frame – N/A.**

Southern Midlands Council  
DRAFT Minutes – 22 January 2020

EXTRACT

## RECOMMENDATION

THAT the information be received and Council determine its position following the presentations(s) made.

*Note: Should any legal argument be submitted during the presentation(s), it may be necessary for Council to defer any decision pending receipt of qualified advice in response to any issue raised.*

### Permission to Address Council

Permission was granted for the following person(s) to address Council:

- Mr Fraser Miller and his legal representative.

Mr Miller addressed Council advising that no progress has been made and no solution has been provided. Mr Miller highlighted ongoing cases of vandalism, trespass, illegal hunting, stock losses and illegal 'rave parties' on his property.

He is concerned that Craighourne Road is not being used responsibly and he is being denied lawful use of a significant part of his land. He believes that now is the time to act and resolve the ongoing issues that have been occurring for many years for this section of the road.

Mr Miller's legal representative then addressed Council. It was requested that Council reconsider its decision not to close this section of the road. He understands the public benefit in access to the dam but there is an escalation of problems being experienced on his client's property. Police are unable to help in this situation due to lengthy response times given the remote location of the road. Fencing is not a realistic option as the length is approximately 2.4 kims, and there is an alternative access to the Dam.

It was commented that the best way forward is for council to have an independent third party resolve the matter (i.e. Magistrate) noting that to go down this pathway Council would need to decide to close the road. Any objections can then be referred to the Court to decide. Mr Miller has offered to make a contribution for Councils reasonable legal fees if this course of action is undertaken.

Reference was also made to Section 42 of the *Local Government (Highways) Act 1982* which enables Council to close a 'dangerous highway' following report by an engineer or an officer authorised to prepare a report as provided in section 41 of that Act.



Southern Midlands Council  
DRAFT Minutes – 22 January 2020

EXTRACT

### DECISION

*Moved by Cllr A E Bisdee OAM, seconded by Cllr R McDougall*

**THAT, in light of the issues raised during the presentation by the property owner and the representative from Simmons Wolfhagen, Council defer a decision at this meeting pending receipt of further qualified advice.**

**CARRIED**

| Councillor          | Vote FOR | Vote AGAINST |
|---------------------|----------|--------------|
| Mayor A Green       | √        |              |
| Deputy Mayor E Batt | √        |              |
| Cllr A Bantick      | √        |              |
| Cllr A E Bisdee OAM | √        |              |
| Cllr K Dudgeon      | √        |              |
| Cllr D Fish         | √        |              |
| Cllr R McDougall    | √        |              |

## Timothy Kirkwood

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**From:** Alexander Green  
**Sent:** Monday, 9 December 2019 9:26 AM  
**To:** Timothy Kirkwood  
**Subject:** Fwd: Trespass and Vandalism w/e 8th December 2019

Sent from my iPhone

Begin forwarded message:

**From:** "Fraser Miller" <fraser@mtbaines.com>  
**To:** "Alexander Green" <agreen@southernmidlands.tas.gov.au>  
**Subject:** Trespass and Vandalism w/e 8th December 2019

Alex,

Further to our conversation this afternoon please see attached a picture of the dead calf which has a broken neck. This has occurred as a vehicle has driven close by and causing the calf to fall down the embankment. The tracks of the vehicle are clearly evident in the pasture which are well within our property. The picture obviously does not take into account the distress caused to the calves mother who is pining for her lost calf.

This is the second cow we have lost in as many weeks again at a substantial cost of \$3,000 bringing out livestock losses to \$6,000 in the past two weeks alone.

Whilst I was down there I also witnessed further trespass, this time a fisherman, who had travelled well into my property with his vehicle, again through my cattle. There was also evidence of a campfire and empty beer cans left behind.

I have reported these matters to the police.

It is completely and utterly unacceptable that we as private citizens should be put in this position where we are suffering financial loss in order to provide a public facility that is so routinely abused and in the process being denied the use of our land. It has been nearly 12 months since the Council rescinded the decision to close the Road and nothing has changed and there has been no meaningful dialogue to resolve these issues. Yet we are \$000s out of pocket and have spent countless hours trying to resolve this issue. It is clear that unless the road is closed these issues will continue as the public simply cannot be trusted to respect our property and the overly simplistic solutions proposed by the Council will not address the issues, a fact also acknowledged by the Council on many occasions.

Can you please draw attention to the Council on this latest incident ahead of the meeting on the 11th.

Cheers,

Fraser





Contact: Karen Abey  
Our Ref: KMA/NAB:192490

4 December 2019

Nathan Street  
Abetz Curtis

By email: [nstreet@abetzcurtis.com.au](mailto:nstreet@abetzcurtis.com.au)

Dear Mr Street,

#### Closure of Craighourne Road

We refer to your letter dated 1 October 2019, which provided some information and documentation on behalf of the Council regarding Craighourne Road.

As discussed, on the weekend, there was a further trespass on our clients' land. Some members of the public passed onto our clients' land on dirt bikes. They drove through cattle owned by our clients, one of whom suffered a broken leg and had to be euthanised. The value of that stock was \$3,000. The matter has been reported to Tasmania Police.

In addition, there was damage to pasture, destroying valuable and scarce feed, two groups of fisherman who let themselves into our clients' property, well beyond the obvious roadway end to launch boats (leaving gates open and destroying pasture) and illegal hunters on the property at 2:45am.

While there is not a weekend which passes without incident, the loss of valuable stock over the past weekend has prompted our clients to again request the Council to consider closing the part of Craighourne Road which passes over their land. The background to this matter and the impact of having the Road on their land is detailed below, so that the Council has a proper understanding of the impact on our clients.

We note the Council's concerns about funding an application to the Magistrates Court if the Council decides to close Craighourne Road. Our client is prepared to pay the Council's reasonable legal fees of any such application.

#### Hobart Office

**Address** Level 4, 99 Bathurst Street  
Hobart TAS 7000  
03 6244 1145

#### Launceston Office

**Address** 45 Cameron Street  
Launceston TAS 7250  
08 3444 3300

**ABN** 31 635 248 976

**Phone** 03 6244 1145

#### Lawyers specialising in

- Business Acquisitions, Partnerships, Company & Commercial Law
- Conveyancing, Property Development, Easements & Subdivisions
- Family & De Facto Relationship Law

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SIMMONS WOLFHAGEN

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### Background

Historically, Craighourne Road allowed for travel between Hungry Flats Road to Colebrook Road. This changed in 1986, with the creation of the Craighourne Dam which flooded some land which had been part of Craighourne Road. You have indicated that it is assumed the relevant parts of Craighourne Road were closed at the time, but we have not seen any documentation to support this assumption. We would be grateful if further efforts were made to locate this documentation so that there is a clear understanding of what has occurred.

A public access point for Craighourne Dam has been created to allow for fishing and other leisure activities, accessible from Colebrook Road. This area has proper facilities, including parking, public toilets, a boat ramp and rubbish collection points and we understand it is well used.

Craighourne Road passes through our clients' land and abruptly stops at the Dam. The Road is in poor condition, particularly where it meets the Dam.

No works have been undertaken to create a public access point for Craighourne Dam where it meets our clients' land, yet it continues to be accessed by some members of the public. These works have been proposed by the Mayor to the Minister for Primary Industries. Our clients are disappointed that this step was taken without consultation with them, and despite having already indicated to the Council that this would exacerbate the instances of trespass by directing more people to the area.

### Impacts

The impacts on our clients having Craighourne Road on their land are as follows:

1. members of the public trespass onto their land on a regular basis;
2. illegal logging for firewood is often carried out on our clients' land, including up a treacherous track which is very dangerous when wet, posing serious risks to those who do so;
3. illegal hunting is also carried out on our clients' land, which poses a serious risk to the public and our clients, who face the risk that they could potentially be shot at;
4. damage is caused to pasture with vehicles driving across the property in particular dirt bikes which cause significant damage;

SIMMONS WOLFHAGEN

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5. rubbish and waste is regularly dumped on the property, with trespasser's regularly defecating on my land and in my buildings;
6. damage is caused to fencing and other infrastructure, again on a regular basis; and
7. costs are incurred and time is spent by our clients to repair fencing and other infrastructure, and to recover stock which has escaped due to this damage.

A significant part of our clients' land – approximately 20% – is rendered unusable because of the public incursions, which prevent our clients from planting new pasture which is necessary to feed livestock. This impacts on the overall carrying capacity of the property, the ability to rotate stock across the property and exposes our clients' livestock to theft, escape and being killed either by shooting or being run over as has happened in the past.

Unfortunately, for practical reasons (limited staffing and travel times) the Tasmania Police are of no assistance to our clients to resolve these issues. Tasmania Police are supportive of the Road being closed, which is an acknowledgement that there is nothing the Police can do to prevent the activities on our clients' land.

#### Council Response

The position of the Council as we understand it is, in summary:

1. members of the public have the right to travel on the section of Craighourne Road which is on our clients' land;
2. the Council has no obligation to fence the Road; and
3. the Council has no obligation to take any other steps to inform members of the public as to the extent of our clients' land or to prevent trespasses onto our clients' land.

Your letter states that "your clients fencing their boundary is an obvious and simple solution to their concerns".

Aside from this, the Council has acknowledged that the Road is outside the road reservation, as shown on the survey which was provided to us. If the Road is not closed then our clients will request the Council to realign the Road so that it is within the road reservation.

SIMMONS WOLFHAGEN

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### Ongoing Concerns

Unfortunately, this response fails to take into account the fact that existing fencing which has been erected has been damaged, over and over again. Vehicles have travelled well inside our clients' land – clearly outside the road reservation – to destroy fencing, camping and lighting fires, carry out illegal shooting activities and to remove firewood without permission.

Attempts to lock gates on our clients' land have resulted in the gates being driven through and destroyed, which impacts on the efficiency with which they can farm their land.

The damage is clearly caused deliberately and most likely by vehicles being driven at the fencing. The destruction of fencing seems to be carried out for reasons which can only be explained through boredom or vindictiveness, or trying to gain access further into the property to shoot, camp, log, dump rubbish etc; the damage to the fencing makes no practical difference to the ability to access the Dam.

Given these circumstances, it is impossible to create fencing which is resistant to this type of interference.

You have suggested some sort of physical barrier such as large boulders so that the public cannot pass onto our clients' land, yet this would also effectively prevent our clients from using their own land.

Our clients have already incurred significant expense to repair existing fencing and it seems utterly pointless to spend tens of thousands of dollars to erect further fencing which it is assumed will be damaged or destroyed for similar reasons.

We acknowledge that the *Boundary Fences Act 1908* does not apply to roads, pursuant to s.7. There is no other statutory power to require the Council to erect or contribute to the cost of erecting fences on either side of a road such as this. Even if there were and the Council erected fencing, this would be of no value to our clients unless there was an undertaking or requirement to continually repair the damage which is expected to be caused to the fences.

In essence, the legislation does not respond to the current scenario and provides no protection to our clients from members of the public who are prepared to trespass onto their land.

There are no physical measures, no assistance from Police, no assistance from the Council and no legislative framework upon which our clients can rely to balance their interests against the people who use this Road.

SIMMONS WOLFHAGEN

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#### Closure of part of Craighourne Road

On 24 October 2018, the Council considered whether to close the part of Craighourne Road on our clients' land and passed a resolution pursuant to the *Local Government (Highways) Act 1982* to do so for reasons of public benefit and in the interests of public safety.

Rather than follow the statutory processes to close the relevant part of the Road, the Council sought further public input on the closure. The Council also sought legal advice on the ability to close the Road pursuant to s.14, from your firm. That advice concluded, in summary, that the requirements of s.14 were met and the Road could be closed, but that the Council could take into account matters such as the number of complaints made to the Police and the costs of closing the Road if there was opposition (which was very likely) as a basis not to close the Road.

Having acknowledged the extensive issues faced by our clients if the Road remains open, the Council was advised that it had two options:

1. proceed to close the road in accordance with the *Local Government (Highways) Act 1982*; or
2. resolve not to close the road and continue to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.

The decision to close the Road was rescinded on 23 January 2019.

Despite the acknowledgement that the Council should consult with the property owners to implement measures that will address the issues being experienced, it is our clients' position that there are no measures to implement that will address the issues they are experiencing, other than for them to abandon 20% of their land.

We understand that the Council has appointed a consultant to try and achieve a solution to the ongoing issues. This consultant has yet to contact our clients and it is unclear what his role and remit is in this matter, but our clients are concerned that there are discussions being had without their input as the main stakeholder in this matter.

The Council has suggested the "simple solution" for our clients to fence the Road, which is completely at odds with the practical reality of what has happened on the land and is likely to continue if further fencing is erected. The Council's decision on

SIMMONS WOLFHAGEN

23 January 2019 without proper regard to the ongoing impact of the Road staying open and the risks that this poses to both members of the public and our clients.

**Outcome Sought**

Ultimately, our clients' position is that the part of Craighourne Road which is on their land should be closed. It is our view that the requirements of s.14 of the *Local Government (Highways) Act 1982* (the Act) are met and that the Council should reconsider this matter again, taking into account the matters raised in this letter.

For convenience, s.14(1) is as follows:

*If, in the opinion of the corporation, a local highway or part of a local highway should be diverted or closed for the public benefit, in the interests of public safety or because of lack of use...*

The most thorough analysis of the meaning of this section is by then Chief Magistrate Shott in *Listers Land and Golconda Road*.<sup>1</sup>

With respect to the Chief Magistrate, it is our opinion that the parts of this decision dealing with whether this is a two limbed test or a three limbed test, would not be followed today. As you would know, there has been a substantial shift in the authorities from the High Court regarding statutory interpretation subsequent to the *Listers Land and Golconda Road* decision.<sup>2</sup> The focus is now on the text, context and purpose of legislation.<sup>3</sup> An historical review of past legislation is no longer encouraged as an approach to the interpretation of current legislation.

It follows, in our firm view, that only one of the three matters listed in s.14 must be satisfied in order to close a highway.<sup>4</sup> Regardless, we say that there are two of the

<sup>1</sup> Reference pursuant to the *Local Government (Highways) Act 1982* section 14: *Listers Lane and Golconda Road, Scottsdale, Tasmania* [2006] TASMC 4

<sup>2</sup> Including *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27; *Zheng v Cai* (2009) 239 CLR 446; *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573; *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2012) 248 CLR 378

<sup>3</sup> *Sultan Holdings Pty Ltd v John Fuglsang Developments Pty Ltd* [2017] TASFC 14 at [49]

<sup>4</sup> We have successfully made an application for a road to be closed for the Break O'Day Council based only on the public benefit limb. (Magistrates Court of Tasmania, Administrative Appeals Div, file no. M/2018/1371). An order was made in those proceedings on 27 June 2018, providing the Court's authorisation to close part of Parkside Avenue. The justification provided was that closure of that road would allow a development to take place on that land, which would encourage tourism and provide a boost to the community.



SIMMONS WOLFHAGEN

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matters in s.14 which are satisfied: public benefit and public safety. Your firm has already acknowledged in the advice provided by your firm to the Council on 6 November 2018, at [5.4], that there is a sufficient basis to close the road on these grounds.

Clearly, the “public benefit” element in s.14 is broad. In every other respect, the Council (as “the corporation”) under the Act has broad powers to open, maintain and regulate “highways” as it sees fit. It follows that the phrase “public benefit” should be interpreted in that context. The Council is the entity which is best suited to assess the needs and requirements of the public, and to assess the costs and benefits of keeping the relevant part of Craighourne Road open.

It should, in our view, take into account the fact that:

1. keeping the Road open has a significant financial impact on our clients which they are powerless to prevent in a practical way;
2. our clients are not able to be supported in any meaningful way by Tasmania Police, and the law of trespass provides no effective control for the actions which have taken place on their land;
3. the legislative regime provides our clients with no power to require the Council to take steps to fence and maintain that fencing – it is their burden alone;
4. our clients will not gain anything, as such, by the closure of the Road – other than to be able to enjoy the rights to use their land as any landowner should be able to do. To this extent, there is no private benefit to them by the Road being closed, merely removing the negative impacts of the Road remaining open;
5. the closure of the Road could be carried out by our clients by placing a physical barrier which could not be crossed, at the point of entry;
6. while there was a substantial resistance to the closure of the Road presented to the Council,<sup>5</sup> it is understood that this level of interest is not reflected in the number of people who actually use the Road;<sup>6</sup>

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<sup>5</sup> Our clients are concerned about the impact of some incorrect information which was circulating, including that the road closure would prevent access to the Dam entirely – we can address this further, if required

<sup>6</sup> For example, there were people who reside in Canada who signed the petition

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SIMMONS WOLFHAGEN

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7. members of the public have not respected our clients' private land rights and it is unreasonable for them to push for the Road to remain open while having the intention to continue to abuse that right.

We note the Council's concerns about funding an application to the Magistrates Court if the Council decides to close Craighourne Road. Our client is prepared to pay the Council's reasonable legal fees.

Could you please pass on this request to the Council. We understand that this matter is already on the agenda to be discussed on 11 December 2019.

If you would like to discuss this matter further, please contact us.

Yours faithfully  
Simmons Wolfhagen



**Karen Abey**  
Managing Associate | Local Government, Planning & Development Law  
karen.abey@simwolf.com.au

**From:** Fraser Miller  
**Date:** 1 December 2019 at 6:10:27 pm AEDT  
**To:** Alexander Green <[agreen@southernmidlands.tas.gov.au](mailto:agreen@southernmidlands.tas.gov.au)>  
**Subject:** Trespass and Vandalism 1 Dec 2019

Alex,

Further to our conversation this afternoon about ongoing and continual vandalism to our property as afforded by the access of Craigbourne Road I wish to draw yours and Councils attention to the issues we have faced this weekend alone. I have reported these issues to the police.

- Trespassers who were riding their dirt bikes amongst my cattle who have new born calves and still in calf. This caused one of them to break their leg and had to be put down at a cost of \$3,000.
- In addition there was significant damage to pasture which as you and the Council will be aware is in short supply given the lack of rain
- There have been at least 2 groups of fisherman driving through my property to launch boats, leaving gates open and allowing cattle to escape.
- There have been illegal shooters on the property last night at 2:45am

Obviously these issues are just related to this weekend but are by no means the only instances of trespass over the preceding months to which Council seeks to ignore and deflect onto the Tasmanian Police to resolve.

The overly simplistic approach of fencing the road reserve is not something that will work as both you and Council have acknowledged previously and I would request that Council revisit its decision to close this road as it is the only practical solution to these ongoing issues.

It is simply unacceptable that I as a private citizen should have to bear these costs particularly when Council has within its power to resolve this issue once and for all.

I would welcome you and Council to attend the property on the weekend so you can see first hand these issues of trespass so you can gain a better understanding of these issues.

Cheers,  
|  
Fraser

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## 12.1 Roads

### Strategic Plan Reference 1.1.1

Maintenance and improvement of the standard and safety of roads in the municipal area.

#### 12.1.1 CRAIGBOURNE ROAD, COLEBROOK – NORTH-EASTERN SECTION ACCESSED VIA LINK ROAD, COLEBROOK – PROPOSED PART ROAD CLOSURE

**Author:** GENERAL MANAGER (TIM KIRKWOOD)

**Date:** 15 JANUARY 2019

**Enclosure(s):**

*Map of proposed road closure point*

*Extract from Council Minutes held 24<sup>th</sup> October 2018*

*Legal Advice from Abetz Curtis dated 6<sup>th</sup> November 2018*

*Extract from Council Minutes held 28<sup>th</sup> November 2018*

**Attachment:**

*Submissions received regarding proposed closure.*

### ISSUE

To:

- a) Report on the outcomes of the public consultation process relating to the proposed closure of the north-eastern section of the Craighourne Road (beyond No 38 and extending through to the Dam); and
- b) Council to determine its final position in respect to this matter.

*Note: Reference is now made to No 38 - as opposed to No 32 which was the original proposed closure point. This being the property owned by J & G Bailey. A discrepancy has been detected between the Council Property System (showing their property as being No 32) and the actual Rural Address affixed to their property. It is agreed that the Council Property System should align with the nominated Rural Address. The Council system has since been amended.*

*Irrespective, it was always intended that any road closure would be beyond the property owned by J & G Bailey.*

### BACKGROUND

Council, at its meeting held on 24<sup>th</sup> October 2018, considered a Notice of Motion submitted by then Deputy Mayor Alex Green relating to the proposed closure of the Craighourne Road (north-eastern section) between 32 Craighourne Road and the Craighourne Dam.

An extract from the Minutes of that meeting is enclosed. This includes all the background information.

Council resolved as follows:

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**THAT:**

- a) the Southern Midlands Council as per the provisions of the *Local Government (Highways) Act 1982* s.14 ss. (1) close for reasons of public benefit and in the interests of public safety that section of Craighourne Road, Colebrook, situated between 32 Craighourne Road and Craighourne Dam; and
- b) Prior to proceeding further, Council seek advice in terms of:
  - (1) what constitutes 'public benefit' and whether there is sufficient grounds for Council to rely upon in this case; and
  - (2) being able to justify the decision to close the road based on the interests of public safety.

Following that decision, legal advice was sought from Abetz Curtis (enclosed) in relation to the provisions contained within section 14 of the *Local Government (Highways) Act 1982*, and specifically in regard to the following:

- a) What constitutes 'public benefit; and whether, in this case, there is sufficient grounds for Council to rely upon; and
- b) Being able to justify the decision to close the road based on the interests of public safety.

A further report was submitted to the Council Meeting held 28<sup>th</sup> November 2018. A full copy of the advice received from Abetz Curtis was included with that report.

An extract from the Minutes of that meeting (i.e. 28<sup>th</sup> November 2018) is also included as an enclosure to complete the record.


Council resolved as follows:

**THAT prior to making a formal decision to close the road, Council seek prior input from the broader public (via a Public Notice published in the Mercury Newspaper on Saturday, 1<sup>st</sup> December 2018). The aim would be to seek written submissions in response to the possible closure of the road. Council to further consider its position following consideration of submissions received.**

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## DETAIL

The following Notice was published in the Mercury Newspaper on 1<sup>st</sup> December 2018, and notifications were provided through the Southern Midlands Council's website and Facebook page.

  
**SOUTHERN  
MIDLANDS  
COUNCIL**

**Access to Craigbourne Dam, Colebrook  
(via the north-eastern section of Craigbourne Road - off Link Road, Colebrook).**

Due to issues being experienced by the adjacent landowner(s), and in the interests of public safety, the Southern Midlands Council has been requested to consider a permanent closure of the Craigbourne Road extending from No 32 Craigbourne Road (i.e. approx. 320 metres from the junction with Link Road) extending through to the Dam.

Prior to making a decision in respect to this matter, Council seeks feedback from the broader community in terms of how any proposed closure may impact on users of the road.

Written submissions can be sent to the General Manager, 71 High Street, Oatlands or can be emailed to [mail@southernmidlands.tas.gov.au](mailto:mail@southernmidlands.tas.gov.au). Written submissions will be received up until close of business on 17<sup>th</sup> December 2018.

TF Kirkwood  
**GENERAL MANAGER**

In summary, 948 names have been recorded as providing a response to the request for feedback – 933 of which object to the closure and 15 support the closure.

It is confirmed that elected members have been provided with a full copy of all submissions received, and an electronic copy has been placed on Council's website as an attachment to this Council Agenda (refer [www.southernmidlands.tas.gov.au](http://www.southernmidlands.tas.gov.au))

In terms of opposition to the permanent closure, the comments made are too numerous and varied to report on all of them but the most common matters raised include the following:

- Highly popular public fishery destination due to close proximity to Hobart and high level stocking policy;
- Primary cause of problems being experienced by the property owner by a small minority are a direct result of their failure to properly fence their property which would deter any unauthorised access;
- Council should remove the illegal gate which is frequently locked that obstructs access to the public road and reinstate a cattle grid or have the owner erect proper fencing;
- This area is the best sheltered access for people to fish from shore (for those that don't own a boat) and to utilise kayaks and canoes – also ideal access point to fish from for the elderly, those with mobility issues, young families etc;

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- Closure will damage the efforts of Inland Fisheries Service to promote the lake as a tourism drawcard and economic benefits for Southern Midlands lost;
- Disagree with public safety aspect of closure, any trespassing/anti-social issues experienced are a police matter and would be dealt with accordingly;
- Believe the closure will solely benefit one property owner only but in the process will disadvantage thousands of recreational anglers; the vast majority of anglers who visit this area do the right thing and shouldn't be disadvantaged by a very small minority who may do the wrong thing;
- Dam used to access water for firefighting purposes;
- Craigbourne Road is a public road, the property was purchased knowing this road was public access - urge Council to maintain its status as a public road.

It was also noted that among the submissions against closure the following were received:

- Submission from Inland Fishers – acting in the interests of 26,407 licensed anglers;
- Anglers Alliance Tasmania – representing some 27,000 freshwater anglers;
- Submission from 'change.org' which includes the names and addresses of 200 individuals;
- Petition letter containing 577 signatories.

In terms of support for the permanent closure, the following comments capture the sentiments contained therein:

- Express support for the permanent closure of Craigbourne Road as I am satisfied that this road serves no public use and does not impact my ability to use the Craigbourne Dam for recreational pastimes as I can use the public carpark and facilities on the southern end of the Dam – *9 signatories*;
- Person has witnessed continued vandalism and trespass on the Mt Baines and adjoining property; seen fences damaged and cut as people use this road to illegally hunt and fish the dam; person has been verbally abused and physically assaulted when asking people to leave his property (and Mt Baine's property);
- Witnessed drunken persons illegally hunting and discharging firearms; only a matter of time before someone is seriously injured or killed; have seen the dangers first hand of people putting themselves in danger trying to launch boat in the Dam from the shoreline; witnessed antisocial behaviour and for the safety of the public close the road.
- Person has lived in close proximity for some years and has had nothing but concern for their property's safety and the poor livestock that call this area home. The traffic and action of many at all hours on this road it is clear that it is not being used for its intended use and is cause for concern or all.
- Seen burn out circles on pasture; rubbish, broken bottles etc.; cutting down anything that will burn. Has been informed that a person must be on the property every night to prevent break-ins; state of the dam foreshore shows what goes on at night after the people who follow the rules leave.

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- Agrees with the property owners, access to the dam over their land should be restricted. Council either buys the land to make it public access or (support the landowners) fence so that fishers must drive to the ramp. To be intimidated and suffer damage on your own land is insufferable.

**General Managers' Comments:**

Following analysis of each of the comments and feedback received through the public consultation process (noting confirmation that all submissions have been circulated to elected members), further reference is made to section 14 of the *Local Government (Highways) Act 1982*.

To address this matter, Council must determine whether it is of the opinion that the road should be closed for the public benefit, in the interests of public safety or because of lack of use.

Note: It has generally been accepted that there is no basis to argue that the Road should be closed due to lack of use.

In reference to the 'Summary of Advice' provided by Abetz Curtis, the following comments are provided:

- a) The advice indicates that there is a basis to argue that it is in the public benefit in the interests of public safety to close the Road, but there is also an argument against this.

Additional commentary is provided later in the advice, and raises such issues as '*net public benefit*' which is influenced by the extent of use of the road. In this regard, it is apparent that the road is still frequently used, which is evidenced by the number (and timing) of complaints received when a lock has been placed on the gate across the road.

The advice also suggests that it would be reasonable for Council to require that it be further persuaded by the owners (with reference to supporting evidence) before making a final decision to close the road. In this regard, it is unknown how many formal police reports have been made in relation to the alleged offences which would provide such evidence.

- b) The exercise of Council's discretion should keep in mind the associated costs with closing the Road (and the costs of keeping the Road open), together with the possibility of opposing legal action if an 'interested person' is aggrieved by the Road closure.

The cost of keeping the road open is considered to be irrelevant, as it is a Council maintained road for which we have a responsibility to maintain.



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In relation to closing the road, advertising costs are estimated at \$1,200 (i.e. two advertisements). Other administrative costs, including notification of owners and occupiers, and other stakeholders nominated in the Act would be minimal.

It is not possible to estimate the costs that may be incurred in responding to any subsequent appeals that may be referred through to the Magistrates Court (Administrative Appeals Division) under section 14 of the *Local Government (Highways) Act 1982*. Based on past complaints, and feedback received since Council's decision made at the last meeting, it would need to be assumed that opposition to closure will be guaranteed. It follows that Council will need to be prepared to accept the cost of defending its decision which will be significant.

Having sought input from the broader public, there are now two options available to Council:

1. Proceed to close the road in accordance with the *Local Government (Highways) Act 1982*; or
2. Resolve not to close the road and continue to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.

The following comments are provided and considered to be relevant to Council reaching an opinion:

- a) There is clearly no dispute regarding this section of road being a Council maintained road and members of the public are legally entitled to use the road without any restrictions.
- b) Access to the Craigbourne Dam via this section of road has raised many issues over a considerable period of time. Primarily the issues have related to vehicles straying onto private property (noting that the roadway is not fenced beyond the point where it enters the Mt Baines property), and more recently there have been reports of vandalism; damage to buildings located on the property; illegal shooting activities and non-approved removal of firewood.
- c) in so far as being in the interests of public safety, the question arises whether the issues being raised by those seeking a road closure are 'policing matters' and not necessarily public safety issues that can be addressed through closure of a road.
- d) There are numerous other instances within the Southern Midlands Council area where the roadway is not fenced and there is no physical barrier preventing vehicles from straying onto private property (for whatever purpose).
- e) Can the situation be adequately addressed by fencing of the road reserve? This being the responsibility of the property owner.

Note: Section 7 of the *Boundary Fences Act 1908* states that no local body having the administration, management, or control of any road shall be liable to make any contribution towards the erection or repair of any dividing fence between any road and the land of any occupier of land adjoining such road.

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- f) It is confirmed that a check Survey has been completed and marker pegs have been installed. The Survey shows that there is an 18 metre wide reservation. Pending a site visit, it is unclear whether there is sufficient room to construct a small parking bay/turning circle within the land owned by Tas Irrigation (as owner of the Dam);
- g) Overall there is insufficient evidence that the public benefit is best served by road closure given the vast majority of the use of the road occurs in a lawful manner and that other options exist such as fencing, to address the concerns raised in the main by the adjoining landowner.
- h) Council may consider that in further discussions with the landowner, given the unique circumstances that exist, it may offer to make a contribution towards the cost of fencing if the decision is that the road is to remain open.

In conclusion, and in reference to the recommendation provided, it is considered appropriate that Council should formally rescind part (a) of the Motion passed at the meeting held 24 October, 2018. Whilst there was a proviso included in that Motion, the wording did suggest that the Council will close the road.

Recognising that the Motion was passed prior to the recent election, only a simple majority is required to rescind the original decision.

In reference to the *Local Government (Meeting Procedures) Regulations 2015*, any report provided by the General Manager to a council in respect of a proposed motion to overturn a decision of the council, or that will result in the overturning of a decision of the council, wholly or partly, is to include the following detail:

- (a) Confirmation that the proposed motion, if resolved in the affirmative, would overturn that previous decision or part of that previous decision whichever is the case;
- (b) The details of that previous decision, or the part of that previous decision, that would be overturned – refer following:

**THAT:**

- a) **the Southern Midlands Council as per the provisions of the *Local Government (Highways) Act 1982 s.14 ss. (1) close for reasons of public benefit and in the interests of public safety that section of Craighourne Road, Colebrook, situated between 32 Craighourne Road and Craighourne Dam; and***
- b) .....
- (c) Whilst this part of the decision directed that certain action be taken, part (b) of the Motion included a requirement to seek prior legal advice; and
- d) Pending further direction, no action has been taken in respect to part (a) of the Motion.

**Human Resources & Financial Implications** – Refer comment above.

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**Community Consultation & Public Relations Implications** – Refer detail provided.

**Policy Implications** – Policy position.

**Priority - Implementation Time Frame** – N/A.

#### RECOMMENDATION

THAT:

- a) In accordance with Regulation 18 of the *Local Government (Meetings Procedures) Regulations 2015*, Council formally rescind part (a) of the Motion passed at its meeting held 24 October 2018;
- b) Council form the opinion that there are insufficient grounds to satisfy closure of the road for the public benefit in the interests of public safety;
- c) Council require that unrestricted access be maintained to the Craighourne Dam via the north-eastern section of the Craighourne Road (accessed via Link Road, Colebrook); and
- d) Council continue to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.

#### DECISION

*Moved by Cllr A Bisdee OAM, seconded by Deputy Mayor E Batt*

THAT

- a) **In accordance with Regulation 18 of the *Local Government (Meetings Procedures) Regulations 2015*, Council formally rescind part (a) of the Motion passed at its meeting held 24 October 2018;**
- b) **Council form the opinion that there are insufficient grounds to satisfy closure of the road for the public benefit in the interests of public safety;**
- c) **Council require that unrestricted access be maintained to the Craighourne Dam via the north-eastern section of the Craighourne Road (accessed via Link Road, Colebrook); and**
- d) **Council continue to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced.**

#### CARRIED

| Councillor          | Vote FOR | Vote AGAINST |
|---------------------|----------|--------------|
| Mayor A O Green     | √        |              |
| Deputy Mayor E Batt | √        |              |
| Cllr A Bantick      | √        |              |
| Cllr A Bisdee OAM   | √        |              |
| Cllr K Dudgeon      | √        |              |
| Cllr D F Fish       | √        |              |
| Cllr R McDougall    | √        |              |

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**ENCLOSURE(S)**  
Item 12.1.1



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**[EXTRACT - MINUTES OF COUNCIL MEETING HELD 24 OCTOBER 2018]**

**10. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN UNDER REGULATION 16 (5) OF THE LOCAL GOVERNMENT (MEETING PROCEDURES) REGULATIONS 2015**

**10.1 CRAIGBOURNE ROAD, COLEBROOK**

***Deputy Mayor Alex Green has submitted the following Notice of Motion:***

"That Southern Midlands Council as per the provisions of the *Local Government (Highways) Act 1982 s.14 ss. (1)* close for reasons of public benefit and in the interests of public safety that section of Craigbourne Road, Colebrook, situated between 32 Craigbourne Road and Craigbourne Dam".

**BACKGROUND (Comments provided by Deputy Mayor A Green)**

Supporting comments to be provided at the meeting.

**General Manager's Comments:**

*The Notice of Motion makes reference to the Local Government (Highways) Act 1982. The following is an extract from the Act (Division 2, Part II – section 14) relating to the permanent closure of highways.*

*Note: For clarification, reference to a highway includes a Council maintained road.*

**"14. Closure and diversion of highways**

*(1) If, in the opinion of the corporation, a local highway or part of a local highway should be diverted or closed for the public benefit, in the interests of public safety or because of lack of use, it may –*

*(a) if it is satisfied, in the case of a diversion of a highway, that standard requirements, if applicable, have been complied with; and*

*(b) not less than 28 days after a written notice of its intention to do so –*

*(i) has been served on each of the owners and occupiers affected;*

*(ii) has been served on the Transport Commission;*

*(iii) has been displayed in a prominent position at each end of the highway; and*

*(iv) has been published twice in separate issues of a local newspaper circulating in the municipality in which the highway is situated –*

*close or divert the highway in respect of all traffic or particular types of traffic or subject to the reservation of a footpath or some other highway that may be used only for limited purposes.*

*(2) A notice under [subsection \(1\)](#) may apply to 2 or more highways that are connected with one another.*

*(3) Subject to [subsection \(4\)](#), a notice under [subsection \(1\)](#) shall contain a map or plan showing the proposed closure or diversion to which it relates.*

*(4) A notice under [subsection \(1\)](#) that is required to be published in a newspaper may, instead of containing such a map or plan as is referred to in [subsection \(3\)](#), contain a*

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statement of a place in the municipality in which the highway is situated where the plan may be inspected free of charge at all reasonable hours.

(5) An interested person may, before the expiration of a notice under [subsection \(1\)](#), give written notice to the corporation of his objection to the proposed closure or diversion.

(6) The corporation is to refer each objection that it is notified of under [subsection \(5\)](#) to the Magistrates Court (Administrative Appeals Division).

(7) The Magistrates Court (Administrative Appeals Division) has power to receive and determine the objection as if it were an application to review the decision relating to the proposed closure or diversion and, in addition to its powers under the [Magistrates Court \(Administrative Appeals Division\) Act 2001](#), the Court may make a local highway order –  
(a) upholding the objection; or  
(b) authorizing the proposed closure or diversion.

(8) An order under [subsection \(7\)\(b\)](#) may prohibit, in whole or in part, the closure or diversion authorized by the order until such conditions as may be specified in the order have been fulfilled, being conditions that the Magistrates Court (Administrative Appeals Division) considers proper to impose for the provision or preservation of the means of communication by highway or the means of access to a highway.

(9) Where the Magistrates Court (Administrative Appeals Division) makes an order under [subsection \(7\)\(b\)](#), the Minister shall, as soon as possible after the making of the order, cause a notice containing particulars of the order to be published in the Gazette.

(10) A diversion of a highway that is opened under this section by a corporation is maintainable by the corporation.”

For information purposes, a full extract of Division 2, Part II is included as an attachment.

### **Craigbourne Road**

The section of Craigbourne Road that is the subject of this Motion is the north-eastern section of the road that is accessed via Link Road, Colebrook.

Note: Prior to the construction of the Craigbourne Dam, the Craigbourne Road extended from the Colebrook Road through to the junction of Hungry Flats Road and Link Road. Construction of the Dam split the road into two separate sections and the Dam creates a physical break in the road.

It should be further noted that Council, at its meeting held 26<sup>th</sup> September 2018, resolved to request the Nomenclature Board to rename the south-western section of the Road as Craigbourne Dam Road.

A map has been included to show the section of Road situated between 32 Craigbourne Road and Craigbourne Dam. It is an approximate distance of 1.1 kilometres.

### **Background Comments**

Access to the Craigbourne Dam via this section of road has raised many issues over a considerable period of time. Primarily the issues have related to vehicles straying onto private property (noting that the roadway is not fenced beyond the point where it enters the Mt Baines property i.e. No 32), and more recently there have been reports of

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vandalism; damage to buildings located on the property; illegal shooting activities and non-approved removal of firewood.

Following an approach by the new owners (F Miller & M Nardi) of the Mt Baines property in early 2018, an initial site meeting was arranged to gain a full understanding of the issues and determine a suitable course of action. Suggestions arising from that initial meeting included:

- a) Fencing of the road reserve. This obviously creates an issue whereby vehicles are unable to turn or park (i.e. in a designated parking area);
- b) Construct a parking bay at the boundary of the Mount Baines property and restrict access to pedestrians only beyond that point. Whilst this means that any boat access would be restricted to the entry off Colebrook Main Road, it would prevent vehicles entering private property and therefore discourage illegal shooting activities and removal of firewood; and
- c) Go through a formal road closure process and close the road at the boundary of the Mount Baines property. This would mean that public access to this part of the Dam (other than by boat) ceases.

Due to the complexity of issues which had the potential to impact on a range of stakeholders, a further on-site meeting was held with the property owner/s and officers from Inland Fisheries; Tasmania Police; Tas Irrigation (as owner of the Dam) and Council.

This meeting was held on 12<sup>th</sup> June 2018 and the following outcomes of the discussion were recorded and circulated to all present:

1. Southern Midlands Council - It was confirmed that the Craighourne Road is a Council maintained road which provides access to the Dam. From a Council perspective it is apparent that there are three options:
  - (B) Maintain the status quo;
  - (C) Maintain the status quo and property owners fence the Road reserve. Note: Council has no obligation to contribute towards the cost of fencing between road and private property. This would prevent vehicles straying onto private property. Depending on where the road actually ends (i.e. enters the Dam), turning and parking of vehicles may become an issue;
  - (D) formal Road closure (it is assumed that this would be at the point where the road enters the Mt Baines property). This process is undertaken in accordance with the provisions of the Local Government (Highways) Act 1982 – refer extract from the Act attached – Section 14.
  - (E) Change the status of the road to pedestrian traffic only (again assumed to be at the point where the road enters the Mt Baines property). The property owner indicated that no land would be made available to construct a parking area where vehicles could park at that point and walk to the Dam. This process is undertaken in accordance with the provisions of the Local Government (Highways) Act 1982 – refer extract from the Act attached – Section 31.
2. Property Owners – their strongly preferred option is to close the road and purchase the reservation. There is good access to the Dam from Colebrook Main Road end where there is a boat ramp and other infrastructure.
3. Tasmania Police – they experience policing difficulties due to lack of delineation of property boundaries. They would strongly support a road closure (or restriction) to prevent

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vehicle access. Unfortunately they are the agency that has to respond to the type of incidents that have been reported in previous communications.

4. *Inland Fisheries – don't support closure of the road. Previous email correspondence indicates that access to the Dam via Craighourne Road was guaranteed by the government of the day when it was constructed (1986) as the public had previously enjoyed access to the Coal River for fishing and other recreation.*

**Notes:**

*It was acknowledged that no formal check survey has been undertaken to confirm the exact boundary between road reservation / private property and property owned by Tas Irrigation.*

**Actions:**

*Recommended that there was a need to do a check survey to confirm property boundaries (i.e. both TI and private property) and end of Council maintained road. SMC to obtain a quote to survey and consult with TI and property owner re: possibility of sharing costs;*

*Research background relating to the guaranteed access to the Dam given by the State Government. Was this included in any legislative provision or other documentation?*

*Tas Irrigation – unsure whether they had any obligation to fence their property? To be clarified."*

**[End – Site Meeting Notes]**

*Following from the above, I can confirm that a check Survey has been completed. Marker pegs have been installed and a full copy of the survey diagram has only recently been received. The Survey shows that there is an 18 metre wide reservation. Pending a site visit, it is unclear whether there is sufficient room to construct a turning circle within the land owned by Tas Irrigation.*

*The next proposed course of action was to reconvene the group of representatives that attended the above meeting and determine the strategy going forward.*

**Concluding Comments**

*In order to close a 'highway', Council must be satisfied that there is a public benefit; it is in the interests of public safety or because of lack of use.*

*In this case, lack of use can be discounted. Whilst there are no detailed traffic numbers available, there is certainly evidence that the road is frequently used.*

*The Notice of Motion specifically refers to the public benefit and in the interests of public safety.*

*At this stage, no advice has been sought in terms of what constitutes 'public benefit'. In this instance, it is difficult to qualify the public benefit of closing the road as there is evidence that the road is still being used.*

*In so far as being in the interests of public safety, the question arises whether the issues being raised by the property are 'policing matters' and not necessarily public safety issues that can be addressed through closure of a road.*



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**RECOMMENDATION**

For discussion.

**DECISION**

*Moved by Deputy Mayor A Green, seconded by Cllr R Campbell*

**THAT:**

- a) the Southern Midlands Council as per the provisions of the *Local Government (Highways) Act 1982 s.14 ss. (1)* close for reasons of public benefit and in the interests of public safety that section of Craighbourne Road, Colebrook, situated between 32 Craighbourne Road and Craighbourne Dam; and
- a) Prior to proceeding further, Council seek advice in terms of:
- 1) what constitutes 'public benefit' and whether there is a sufficient grounds for Council to rely upon in this case; and
  - 2) being able to justify the decision to close the road based on the interests of public safety

**CARRIED**

| Councillor           | Vote FOR | Vote AGAINST |
|----------------------|----------|--------------|
| Mayor A E Bisdee OAM | √        |              |
| Dep. Mayor A O Green | √        |              |
| Cllr A R Bantick     | √        |              |
| Cllr E Batt          | √        |              |
| Cllr R Campbell      | √        |              |
| Cllr D F Fish        | √        |              |

[END EXTRACT - MINUTES OF COUNCIL MEETING HELD 24 OCTOBER 2018]

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6 November 2018

General Manager  
Southern Midlands Council  
PO Box 21  
OATLANDS TAS 7120

ATTENTION: Mr T Kirkwood  
BY EMAIL: [tkirkwood@southernmidlands.tas.gov.au](mailto:tkirkwood@southernmidlands.tas.gov.au)

Dear Tim,

#### CRAIGBOURNE ROAD CLOSURE

Thank you for your instructions on this matter.

#### 1. Your Instructions

- 1.1 At the most recent Council meeting, Deputy Mayor Alex Green submitted a Notice of Motion proposing to close the section of Craighourne Road, Colebrook between 32 Craighourne Road and Craighourne Dam ("Road").
- 1.2 You have asked the following questions:
  - (a) For the purposes of s. 14 of the *Local Government (Highways) Act 1982*, what constitutes "public benefit"?
  - (b) Is there sufficient grounds for Council to rely on "reasons of public benefit" to close the Road?
  - (c) Is there sufficient grounds for Council to rely on the "interests of public safety" to close the Road?
- 1.3 I assume you accept there is no basis to argue that the Road should be closed due to "lack of use",<sup>1</sup> so I have not explored this in detail.

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<sup>1</sup> It is the use of the road that is causing the public safety issues.

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2. Summary of Advice

- 2.1 There are only two circumstances in which a Council can justify the closure of a road, rather than three. “Public benefit” is a necessary element of both options, rather than being a separate option itself. This means the two options are:
- (a) When it is for the public benefit, in the interests of public safety; or
  - (b) When it is for the public benefit, because of lack of use.
- 2.2 In my view, there is a basis to argue that it is in the public benefit in the interests of public safety to close the Road, but there is also an argument against this.
- 2.3 Even if Council are satisfied that closure of the Road is for the public benefit in the interests of public safety, it is important to note that Council is not then automatically obligated to close the Road. Council has a discretion which it can exercise as it sees fit.
- 2.4 The exercise of Council’s discretion should keep in mind the associated costs with closing the Road (and the costs of keeping the Road open), together with the possibility of opposing legal action if an “interested person” is aggrieved by the Road closure. The likelihood of opposing legal action depends on who is using the Road and why.
- 2.5 It is worth noting that there is no basis to appeal a decision not to close the road.
- 2.6 It would be reasonable for Council to require that it be persuaded further before making a final decision regarding the closure of the Road.
- 2.7 If you would like detailed advice about the balancing exercise required by s. 14 of the Act, please provide further instructions about how the public use the Road and the full extent of the risks to public safety asserted by the owners.

3. Background

- 3.1 Council are looking to close a 1.1 kilometre section of road between 32 Craighourne Road and Craighourne Dam (‘Dam’). This is at the north-east of the Dam.
- 3.2 Prior to the construction of the Dam in 1986, Craighourne Road continued from Colebrook through to Hungry Flats Road. Now the road ceases at both ends of the Dam, but the north-eastern end is still used as an access road by some people to the Dam itself. There is no boat ramp at the north-east end of the Dam, and the only access for boats is at the south-west end (off Colebrook Road).
- 3.3 There are no issues with the state of the Road itself. The issues are with the inappropriate use of the Road by the public to access the Dam, which has caused the following problems:
- (a) Vehicles stray onto private property; and

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(b) Reports of vandalism, damage to buildings on the property, illegal shooting activities and the non-approved removal of firewood.

3.4 These concerns appear to affect the owners of the property surrounding the Road only. A number of options, alternative to closing the Road, have been discussed with the owners, although presumably none have been deemed suitable.

4. The Law

4.1 Section 14 of the *Local Government (Highways) Act 1982* ('Act') prescribes as follows:

*14. Closure and diversion of highway*

*(1) If, in the opinion of the corporation, a local highway or part of a local highway should be diverted or closed for the public benefit, in the interests of public safety or because of lack of use, it may*

*(subject to formal requirements)*

*...close or divert the highway in respect of all traffic or particular types of traffic or subject to the reservation of a footpath or some other highway that may be used only for limited purposes.*

4.2 One reading of s. 14 of the Act suggests that it prescribes three separate circumstances that could justify diversion or closure, being

- (a) for the public benefit;
- (b) in the interests of public safety; and
- (c) because of lack of use.

4.3 However, Chief Magistrate A G Shott in *Listers Lane and Golconda Road*<sup>2</sup> determined that there were in fact only two circumstances in which diversion or closure could be justified. He said as follows:

*"In my view, when one has regard to the words of section 14(1) when read in context, the legislative history and the extrinsic material to which I have referred, it contains only two grounds, both qualified by a concept of 'public benefit.'*"<sup>3</sup> [my emphasis]

4.4 He said that the only bases upon which diversion or closure could be justified are:

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<sup>2</sup> REFERENCE pursuant to the *Local Government (Highways) Act 1982* section 14: *Listers Lane and Golconda Road, Scottsdale, Tasmania* [2006] TASM 4

<sup>3</sup> I note that this was the subject of argument from three highly experienced counsel, all of whom submitted that there were three rather than two circumstances. Chief Magistrate Shott reviewed the legislative history of s. 14 of the Act at length and reached the opposite conclusion.

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- (a) When it is for the public benefit in the interests of public safety; or
  - (b) When it is for the public benefit because of lack of use.
- 4.5 This means that the public benefit and public safety must be considered together rather than separately. Chief Magistrate Shott made the following comments about the “public benefit” in *Listers Lane and Colconda Road*:
- (a) The “public” refers to all people who could be directly or indirectly affected by the change.
  - (b) What may be a benefit to some members of the public may be a detriment to others. Therefore, public benefit means “net public benefit” after completing a balancing process.
  - (c) This can include economic, social, cultural and political aspects of “benefit” and perhaps others.
  - (d) This is a question of fact to be determined on the evidence provided to the Court.
- 4.6 Chief Magistrate Schott did not expressly define “public safety”, but his comments regarding the “public” are clearly applicable to that term too.
- 4.7 I emphasise that s. 14 uses the word “may” rather than “must”. This provides Council with an unfettered discretion to close the road, and means it is not mandatory to close a road, even if either or both of the above two circumstances are met.<sup>4</sup>

5. Application of the Law to the Facts

- 5.1 All previously published decisions of the Magistrates Court of Tasmania applying the “public safety” consideration in s. 14 of the Act address a risk to public safety inherent in the road itself.<sup>5</sup>
- 5.2 On your instructions, the question is not whether the Road itself is a risk to public safety, but whether activities of the public arising as a consequence of the use of the road are a risk to public safety.
- 5.3 It appears that the only people exposed to this risk are the current owners. However, the owners are members of the public, and in my view there is a strong argument that vandalism, damage to buildings, illegal shooting activities and the non-approved removal of firewood are of a risk to their safety, as is the potential access to their property.
- 5.4 This provides a basis to argue that it is in the interests of public safety to close the road.

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<sup>4</sup> The Court has this same discretion when reviewing a decision to close a road, s. 26(2) of the *Magistrates Court (Administrative Appeals Division) Act 2001*. Chief Magistrate Schott in *REFERENCE pursuant to the Local Government (Highways) Act 1952 section 14: Strickland Road at Porky Creek Bridge, King Island, Tasmania* [2009] TASMIC 25 at paragraph [16].

<sup>5</sup> Such as, for example, the dangers inherent in a road in a state of poor repair.

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- 5.5 However you could also argue that these risks are best left to be addressed by the law of trespass, rather than justifying the closure of the Road. It is also unclear whether closure of the Road would effectively prevent the risk from arising.<sup>6</sup>
- 5.6 The public safety risks to the owners are to be weighed up against the public benefit in the Road remaining open.
- 5.7 Whilst my instructions do not extend to the reasons why the Road is still accessed by the public, I would assume it is used to access the Dam for fishing<sup>7</sup> from the north-eastern side, rather than driving 13 kilometres to the south-western side.
- 5.8 The full extent of this benefit (and whether it would be in the “*net public benefit*” to close the road in light of the above) requires more detailed instructions as to how and why the Road is still used.
6. Advice
- 6.1 There are factors in support of, and in opposition to closing the Road. It is, in my view, at least arguable that the public safety risk outweighs the public benefit in keeping the Road open, however there is also an argument to the contrary. The argument to the contrary may be stronger if further instructions suggest that the use of the Road to access the Dam is still widespread.
- 6.2 Importantly, Council are provided a discretion by s. 14 of the Act. Council are not obligated to close the Road even if Council were satisfied that the risks to public safety outweighed the public benefit of keeping the Road open.
- 6.3 It is worth noting that if Council were to close the Road, any interested person could then object to the closure by written notice to the Council, after which Council would have to refer the objection to Magistrates Court (Administrative Appeals Division). The Court would then review the objection and either uphold the objection or authorise the closure.
- 6.4 It is worth noting that there is no power within the Act for an interested person to appeal a decision by Council not to close a Road.
- 6.5 This should be taken into account when conducting the balancing exercise prescribed by s. 14 of the Act, as should costs factors associated with closing the Road (or not closing the Road).
- 6.6 Given the above, it would be reasonable for Council to require that it be persuaded further by the owners (with reference to supporting evidence) before making a final decision regarding the closure of the Road.

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<sup>6</sup> Closing the road would not prevent access by foot as Hungry Flats Road is only 1.1 km from the Dam.

<sup>7</sup> I am aware that the Dam is open for fishing all year, and the Inland Fisheries Service regularly stock the Dam with Atlantic Salmon.

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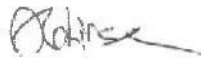
- 6.7 If you would like detailed advice about the balancing exercise required by s. 14 of the Act, please provide further instructions about how the public use the Road and the full extent of the risks to public safety asserted by the owners.

If you have any further queries please do not hesitate to contact Roger or myself.

Yours faithfully

**ABETZ CURTIS**

Per:



**OLIVER ROBINSON**

email: [orobinson@abetzcurtis.com.au](mailto:orobinson@abetzcurtis.com.au)  
file ref: 180561

Southern Midlands Council  
Minutes – 23 January 2019

**[EXTRACT - MINUTES OF COUNCIL MEETING HELD 28 NOVEMBER 2018]**

**12.1.1 CRAIGBOURNE ROAD – PROPOSED ROAD CLOSURE**

**Author:** GENERAL MANAGER (TIM KIRKWOOD)

**Date:** 15 NOVEMBER 2018

**Enclosure:**

*Legal Advice from Abetz Curtis dated 6<sup>th</sup> November 2018*

*Extract from Council Minutes held 24<sup>th</sup> October 2018*

**ISSUE**

To provide Council with advice (i.e. legal) in relation to the proposed closure of the Craigbourne Road (north-eastern section) between 32 Craigbourne Road and the Craigbourne Dam.

*Note: The section of Craigbourne Road that is the subject of this Motion is the north-eastern section of the road that is accessed via Link Road, Colebrook.*

**BACKGROUND**

Council, at its meeting held on 24<sup>th</sup> October 2018, considered a Notice of Motion submitted by Deputy Mayor Alex Green relating to the proposed closure of the Craigbourne Road (north-eastern section) between 32 Craigbourne Road and the Craigbourne Dam.

An extract from the Minutes of that meeting is attached. This includes all the background information.

Council resolved as follows:

**“THAT:**

- a) *the Southern Midlands Council as per the provisions of the Local Government (Highways) Act 1982 s.14 ss. (1) close for reasons of public benefit and in the interests of public safety that section of Craigbourne Road, Colebrook, situated between 32 Craigbourne Road and Craigbourne Dam; and*
- b) *Prior to proceeding further, Council seek advice in terms of:*
  - (1) *what constitutes ‘public benefit’ and whether there is a sufficient grounds for Council to rely upon in this case; and*
  - (2) *being able to justify the decision to close the road based on the interests of public safety.”*



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#### DETAIL

Advice has since been sought from Abetz Curtis in relation to the provisions contained within section 14 of the *Local Government (Highways) Act 1982*, and specifically in relation to the following:

- a) What constitutes 'public benefit; and whether, in this case, there is sufficient grounds for Council to rely upon; and
- b) Being able to justify the decision to close the road based on the interests of public safety.

A full copy of the Abetz Curtis advice is included as an attachment.

In reference to the 'Summary of Advice', the following comments are provided:

- a) The advice indicates that there is a basis to argue that it is in the public benefit in the interests of public safety to close the Road, but there is also an argument against this.

Additional commentary is provided later in the advice, and raises such issues as '*net public benefit*' which is influenced by the extent of use of the road. In this regard, it is apparent that the road is still frequently used, which is evidenced by the number (and timing) of complaints received when a lock has been placed on the gate across the road.

The advice also suggests that it would be reasonable for Council to be further persuaded by the owners (with reference to supporting evidence) before making a final decision to close the road. In this regard, it is unknown how many formal police reports have been made in relation to the alleged offences which would provide such evidence.

- b) The exercise of Council's discretion should keep in mind the associated costs with closing the Road (and the costs of keeping the Road open), together with the possibility of opposing legal action if an 'interested person' is aggrieved by the Road closure.

The cost of keeping the road open is considered to be irrelevant, as it is a Council maintained road for which we have a responsibility to maintain.

In relation to closing the road, advertising costs are estimated at \$1,200 (i.e. two advertisements). Other administrative costs, including notification of owners and occupiers, and other stakeholders nominated in the Act would be minimal.

It is not possible to estimate the costs that may be incurred in opposing legal action. Based on past complaints, and feedback received since Council's decision made at the last meeting, it would need to be assumed that opposition to closure will be guaranteed. It follows that Council will need to be prepared to accept the cost of defending its decision.

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It is apparent that there are three options available to Council:

1. Proceed to close the road in accordance with the *Local Government (Highways) Act 1982*, acknowledging the potential issues and costs associated with this course of action;
2. Resolve not to close the road and continue to consult with the property owner(s) (and other stakeholders) to implement measures that will address the issues being experienced; or
3. Prior to making a formal decision to close the road, seek prior input from the broader public (via a Public Notice published in the Mercury Newspaper). The aim would be to seek written submissions in response to the possible closure of the road. Council to further consider its position following consideration of submissions received.  
*(This process would precede any formal advertising process under the Local Government (Highways) Act 1982).*

Note: The following is a draft Notice that could be placed in the newspaper:



DRAFT

**Access to Craigbourne Dam, Colebrook  
(via the north-eastern section of Craigbourne Road - off Link Road, Colebrook).**

Due to issues being experienced by the adjacent landowner(s), and in the interests of public safety, the Southern Midlands Council has been requested to consider a permanent closure of the Craigbourne Road extending from No 32 Craigbourne Road (i.e. approx. 320 metres from the junction with Link Road) extending through to the Dam.

Prior to making a decision in respect to this matter, Council seeks feedback from the broader community in terms of how any proposed closure may impact on users of the road.

Written submissions can be sent to the General Manager, 71 High Street, Oatlands or can be emailed to [mail@southernmidlands.tas.gov.au](mailto:mail@southernmidlands.tas.gov.au). Written submissions will be received up until ..... December 2018.

Should you require further information, please contact the Council office on telephone 6254 5000.

TF Kirkwood  
**GENERAL MANAGER**

**Human Resources & Financial Implications** – Refer comment above.

**Community Consultation & Public Relations Implications** – Refer detail provided.

**Policy Implications** – Policy position.

**Priority - Implementation Time Frame** – N/A.

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### RECOMMENDATION

Submitted for discussion and direction.

### DECISION

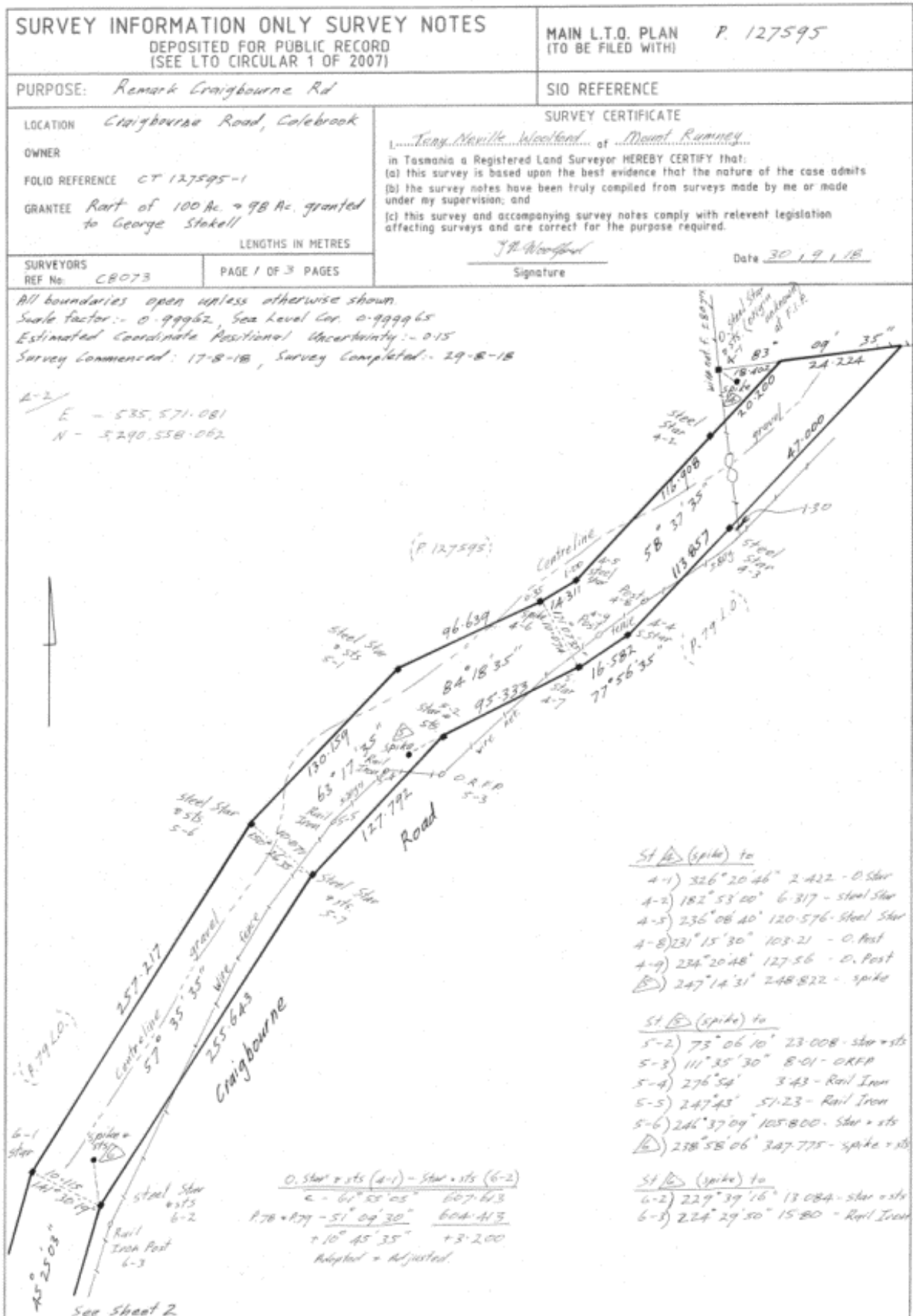
*Moved by Deputy Mayor E Batt, seconded by Cllr A E Bisdee*

**THAT prior to making a formal decision to close the road, Council seek prior input from the broader public (via a Public Notice published in the Mercury Newspaper on Saturday, 1<sup>st</sup> December 2018). The aim would be to seek written submissions in response to the possible closure of the road. Council to further consider its position following consideration of submissions received.**

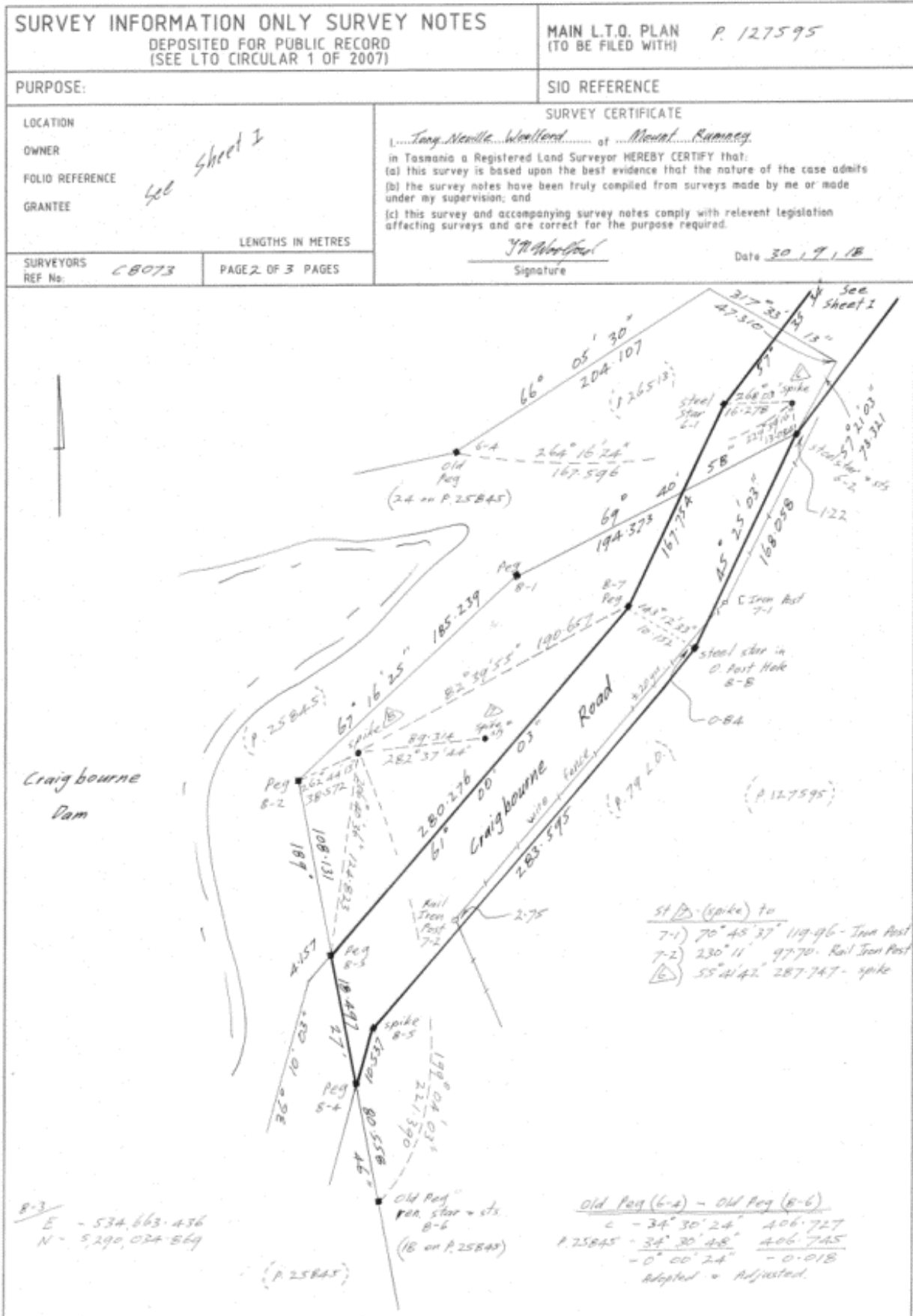
### CARRIED

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     | √        |              |
| Deputy Mayor E Batt | √        |              |
| Cllr A Bantick      | √        |              |
| Cllr A E Bisdee OAM | √        |              |
| Cllr K Dudgeon      | √        |              |
| Cllr D F Fish       | √        |              |
| Cllr R McDougall    | √        |              |

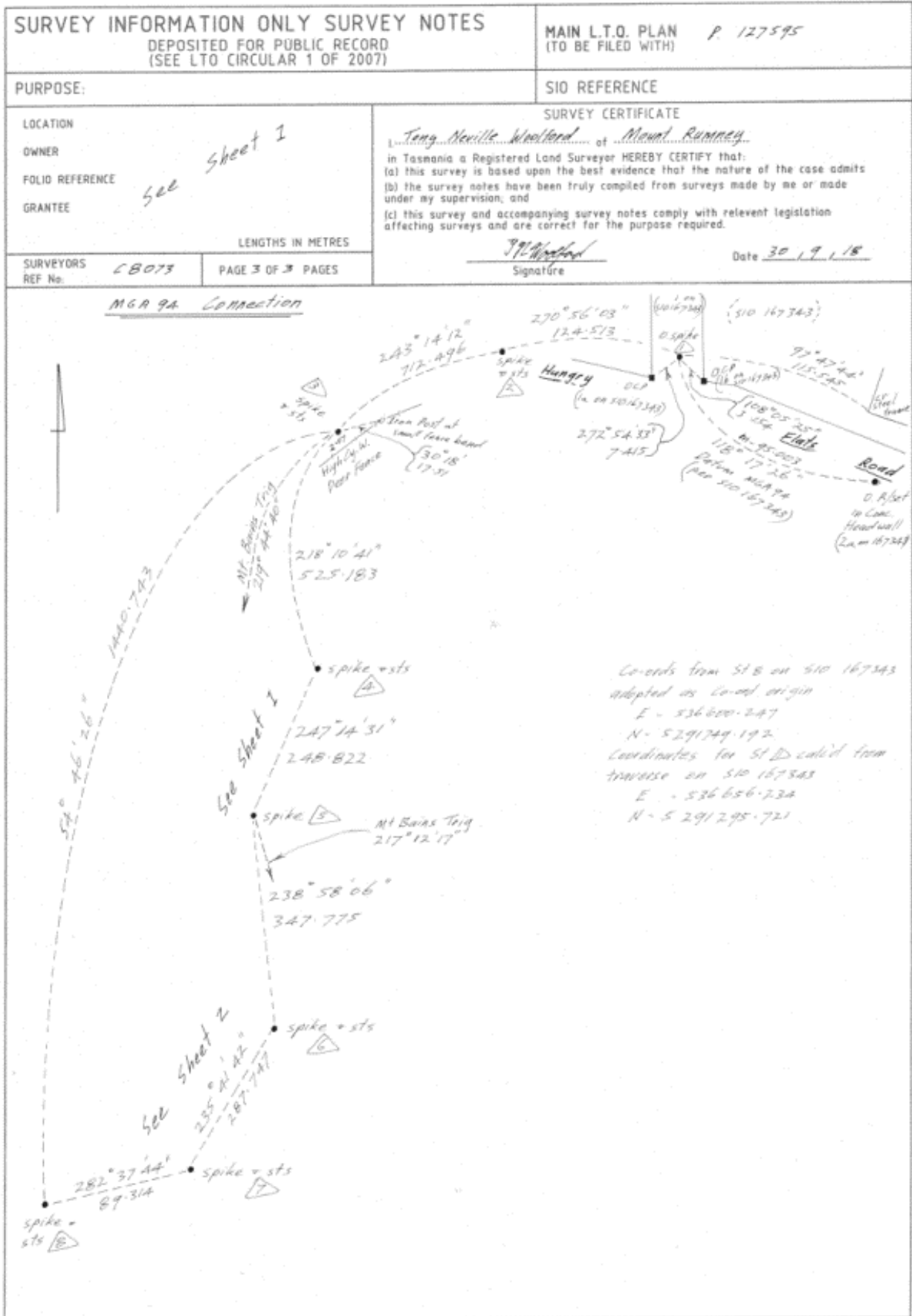
**[END EXTRACT - MINUTES OF COUNCIL MEETING HELD 28 NOVEMBER 2018]**



(6-1)



(L-1)



(4-1)

## 12.2 Bridges

**Strategic Plan Reference 1.2.1**

*Maintenance and improvement of the standard and safety of bridges in the municipality.*

Nil.

## 12.3 Walkways, Cycle ways and Trails

**Strategic Plan Reference 1.3.1**

*Maintenance and improvement of the standard and safety of walkways, cycle ways and pedestrian areas to provide consistent accessibility.*

Nil.

## 12.4 Lighting

**Strategic Plan Reference 1.4.1a & 1.4.1b**

*Ensure adequate lighting based on demonstrated need / Contestability of energy supply.*

Nil.

## 12.5 Buildings

**Strategic Plan Reference 1.5.1**

*Maintenance and improvement of the standard and safety of public buildings in the municipality.*

Nil.

## 12.6 Sewers / Water

**Strategic Plan Reference(s) 1.6.1 & 1.6.2**

*Increase the capacity of access to reticulated sewerage services / Increase the capacity and ability to access water to satisfy development and Community to have access to reticulated water.*

Nil.

## 12.7 Drainage

**Strategic Plan Reference 1.7.1**

*Maintenance and improvement of the town storm-water drainage systems.*

Nil.

## 12.8 Waste

**Strategic Plan Reference 1.8.1**

*Maintenance and improvement of the provision of waste management services to the Community.*

Nil.

## 12.9 Information, Communication Technology

**Strategic Plan Reference 1.9.1**

*Improve access to modern communications infrastructure.*

Nil.

## 12.10 Officer Reports – Infrastructure & Works

### 12.10.1 MANAGER – INFRASTRUCTURE & WORKS REPORT

**Author:** MANAGER INFRASTRUCTURE & WORKS (JACK LYALL)

**Date:** 13 FEBRUARY 2020

#### Roads Program

Roadside slashing is currently occurring in the Kempton and Bagdad areas.

Beams for the Nutting Garden Rivulet Bridge are being cast this week.

#### Town and General Maintenance

Town and general maintenance is continuing in all other areas.

#### Waste Management Program

Operating arrangements at the Waste Transfer Stations are working well.

### QUESTIONS WITHOUT NOTICE TO MANAGER, INFRASTRUCTURE & WORKS

### RECOMMENDATION

**THAT the Infrastructure & Works Report be received and the information noted.**

| <b>DECISION</b>     |                 |                     |
|---------------------|-----------------|---------------------|
| <b>Councillor</b>   | <b>Vote FOR</b> | <b>Vote AGAINST</b> |
| Mayor A O Green     |                 |                     |
| Deputy Mayor E Batt |                 |                     |
| Clr A Bantick       |                 |                     |
| Clr A E Bisdee OAM  |                 |                     |
| Clr K Dudgeon       |                 |                     |
| Clr D F Fish        |                 |                     |
| Clr R McDougall     |                 |                     |



## **13. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – GROWTH)**

### **13.1 Residential**

**Strategic Plan Reference 2.1.1**

*Increase the resident, rate-paying population in the municipality.*

Nil.

### **13.2 Tourism**

**Strategic Plan Reference 2.2.1**

*Increase the number of tourists visiting and spending money in the municipality.*

Nil.

### **13.3 Business**

**Strategic Plan Reference 2.3.1a, 2.3.1b & 2.3.1c**

*Increase the number and diversity of businesses in the Southern Midlands / Increase employment within the municipality / Increase Council revenue to facilitate business and development activities (social enterprise).*

Nil.

### **13.4 Industry**

**Strategic Plan Reference 2.4.1 & 2.4.2**

*Retain and enhance the development of the rural sector as a key economic driver in the Southern Midlands / Increase access to irrigation water within the municipality.*

Nil.

## 14. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – LANDSCAPES)

### 14.1 Heritage

**Strategic Plan Reference 3.1.1, 3.1.2 & 3.1.3**

*Maintenance and restoration of significant public heritage assets / Act as an advocate for heritage and provide support to heritage property owners / Investigate document, understand and promote the heritage values of the Southern Midlands.*

#### 14.1.1 HERITAGE PROJECT PROGRAM REPORT

**Author:** MANAGER HERITAGE PROJECTS (BRAD WILLIAMS)

**Date:** 13 FEBRUARY 2020

#### ISSUE

Report from the Manager, Heritage Projects on various Southern Midlands Heritage Projects.

#### DETAIL

During the past month, Southern Midlands Council Heritage Projects have included:

- The SMC/UTas collaboration *Convict Archaeology in the Southern Midlands – Convict Archaeology Fieldschool* was successfully staged over a two-week period at the Picton Road Station site near Kempton. 19 students participated with three areas of the station investigated. The exhibition at the Kempton Watch house attracted approximately 100 attendees (will be open again for Kempton Festival). Media interest resulted in the following:
  - Mercury article
  - Tasmanian Talks (Launceston) radio interview
  - ABC radio interview
  - WinTV and 7Tasmania news stories
  - Mainland news articles (National Tribune, Mirage News).
  - *Transcripts/links will be provided to Councillors via the Weekly Information bulletin.*
- Establishment of 'If the walls could talk' project. This project aims to deliver social media posts over the next six months telling heritage stories through grafitti, surface finishes, convict inscriptions, etc – basically anything found on the walls of a heritage building which tell a story. Stage One has begun, with several visits to the Spring Hill Watch House which has very well-preserved convict grafitti in the former Mens' Ward. The first social media post from the Watch House will go out this Friday, and tells the story of John Keogh, a convict at the Watch House in 1845. Will use Instagram & Facebook. Other sites have been the subject of twice weekly social media posts with reach extending from an average of 900 up to 3500 people. Initial

preparations for a larger scale exhibition under the same name for the National Trust, National Heritage Festival in April.

- Liaising with staff from Brighton & Northern Midlands Councils to discuss combining themes & dates for the 2021 200-year celebrations as multiple towns turn 200 along the Heritage Highway.
- Meeting with Port Arthur Education to discuss ways to enhance visitor experiences & heritage education resources for Oatlands.
- Spring Hill Watch House Project, photographing, documenting & researching the building, the graffiti & it's context within the convict history of the Southern Midlands.
- Assisting with planning/design work for the Victoria Hall (Kempton) forecourt and façade upgrade.
- Hosting Juliet Tillson, Artist in Residence at the Oatlands Gaol. Councillors will be invited to a forthcoming exhibition at the Heritage Hub.
- Liaising with Hunter Island Press for exhibition in May.
- Processing of archaeological artefacts deriving from the CASM-CAFS project, including planning conservation strategies and finalisation of the 2019-20 excavation reports and artefact catalogues.
- Audit of reservation conditions for SMC collections in heritage buildings.

## RECOMMENDATION

**THAT the Heritage Projects Report be received and the information noted.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

## 14.2 Natural

### Strategic Plan Reference 3.2.1 & 3.2.2

*Identify and protect areas that are of high conservation value / Encourage the adoption of best practice land care techniques.*

### 14.2.1 NRM UNIT – GENERAL REPORT

**Author:** NRM PROGRAMS MANAGER (MARIA WEEDING)

**Date:** 11 FEBRUARY 2020

#### ISSUE:

Southern Midlands Landcare Unit Monthly Report.

#### DETAIL

- Maria Weeding has been busy with meetings in relation to the pathway upgrade for the Lake Dulverton foreshore. This includes a meeting with the Works Department and the Green Track / Dirt Glue representatives in regard to training for using the Dirt Glue product. A Vegetation Survey is to be undertaken on the pathway route, possibly in the next two weeks.
- Maria Weeding has continued to be busy with the Callington Park Playground upgrade.
- Some Council staff met with Aboriginal Heritage Tasmania (AHT) and Parks & Wildlife in regard to the pine tree area at Mahers Point. A process to move forward to tidy the area has been proposed by AHT. Council has not been able to undertake works on the site since the initial felling of the trees occurred. A permit application for the works involved to tidy the area has now been submitted to AHT for their consideration at their March meeting. Should the proposed works process be accepted by AHT, then a permit will need to be signed by the relevant Minister to proceed. There is no indication as to how long it will take to get the signed permit.
- Helen Geard has been away for a time in January, on annual leave.

The Weeds Officer Jen Milne has provided the following report for the month ending 11<sup>th</sup> February 2020.

#### WEEDS REPORT:

##### Site visits and roadside weed control

- Re-inspected St Johns wort on Little Plains Road (successfully controlled, just 2 seedlings). New locations found at Rhyndaston (controlled) and Kempton (to be inspected).
- Broom gall mite release sites inspected on Tunnack Road (from 2018 release). Gall mite present on majority of broom plants along this road corridor and adjacent properties.
- Re-inspected Spanish heath in Levendale area. Removed 60 seedlings from old school site.

- Site visits to Woodbury with landowners to discuss thistle management.

### Projects

- Demonstration of a Quick Steam spray unit at works depot by Quick Spray.
- Records of cotton thistle created to weed database and new data recorded.

### Communications

- Social media posts for awareness of zone A thistles in flower.

### RECOMMENDATION

**THAT the Landcare Unit Report be received and the information noted.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

### 14.3 Cultural

**Strategic Plan Reference 3.3.1**

*Ensure that the cultural diversity of the Southern Midlands is maximised.*

Nil.

### 14.4 Regulatory (Other than Planning Authority Agenda Items)

**Strategic Plan Reference 3.4.1**

*A regulatory environment that is supportive of and enables appropriate development.*

Nil.

### 14.5 Climate Change

**Strategic Plan Reference 3.5.1**

*Implement strategies to address issues of climate change in relation to its impact on Councils corporate functions and on the Community.*

Nil.

## 15. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – LIFESTYLE)

### 15.1 Community Health and Wellbeing

**Strategic Plan Reference 4.1.1**

*Support and improve the independence, health and wellbeing of the Community.*

Nil.

### 15.2 Youth

**Strategic Plan Reference 4.2.1**

*Increase the retention of young people in the municipality.*

Nil.

### 15.3 Seniors

**Strategic Plan Reference 4.3.1**

*Improve the ability of the seniors to stay in their communities.*

Nil.

### 15.4 Children and Families

**Strategic Plan Reference 4.4.1**

*Ensure that appropriate childcare services as well as other family related services are facilitated within the Community.*

Nil.

### 15.5 Volunteers

**Strategic Plan Reference 4.5.1**

*Encourage community members to volunteer.*

Nil.

### 15.6 Access

**Strategic Plan Reference 4.6.1a & 4.6.1b**

*Continue to explore transport options for the Southern Midlands Community / Continue to meet the requirements of the Disability Discrimination Act (DDA).*

Nil.

### 15.7 Public Health

**Strategic Plan Reference 4.7.1**

*Monitor and maintain a safe and healthy public environment.*

Nil.

## 15.8 Recreation

**Strategic Plan Reference 4.8.1**

*Provide a range of recreational activities and services that meet the reasonable needs of the Community.*

Nil.

## 15.9 Animals

**Strategic Plan Reference 4.9.1**

*Create an environment where animals are treated with respect and do not create a nuisance for the Community.*

Nil.

## 15.10 Education

**Strategic Plan Reference 4.10.1**

*Increase the educational and employment opportunities available within the Southern Midlands.*

Nil.



## **16. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – COMMUNITY)**

### **16.1 Capacity**

**Strategic Plan Reference 5.1.1 & 5.1.2**

*Build the capacity of the community to help itself and embrace the framework and strategies articulated through social inclusion to achieve sustainability / Maintain and strengthen communities in the Southern Midlands.*

Nil.

### **16.2 Safety**

**Strategic Plan Reference 5.2.1**

*Increase the level of safety of the community and those visiting or passing through the municipality.*

Nil.

### **16.3 Consultation & Communication**

**Strategic Plan Reference 5.3.1**

*Improve the effectiveness of consultation and communication with the community.*

Nil.

## 17. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – ORGANISATION)

### 17.1 Improvement

**Strategic Plan Reference(s) 6.1.1, 6.1.2, 6.1.3, 6.1.4 & 6.1.5**

*Improve the level of responsiveness to Community needs / Improve communication within Council / Improve the accuracy, comprehensiveness and user friendliness of the Council asset management system / Increase the effectiveness, efficiency and use-ability of Council IT systems / Develop an overall Continuous Improvement Strategy and framework.*

Nil.

## 17.2 Sustainability

**Strategic Plan Reference(s) 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7 & 6.2.8**

*Retain corporate and operational knowledge within Council / Provide a safe and healthy working environment / Ensure that staff and elected members have the training and skills they need to undertake their roles / Increase the cost effectiveness of Council operations through resource sharing with other organisations / Continue to manage and improve the level of statutory compliance of Council operations / Ensure that suitably qualified and sufficient staff are available to meet the Communities need / Work co-operatively with State and Regional organisations / Minimise Councils exposure to risk.*

### 17.2.1 LOCAL GOVERNMENT SHARED SERVICES UPDATE (STANDING ITEM – INFORMATION ONLY)

**Author:** GENERAL MANAGER (TIM KIRKWOOD)

**Date:** 13 FEBRUARY 2020

**Enclosure(s):**

*Local Government Shared Services Update – December 2019*

*Local Government Shared Services – Council Update – December 2019*

### ISSUE

To inform Council of the Common Services Joint Venture activities for the month of December 2019.

### BACKGROUND

There are seven existing members of the Common Services Joint Venture Agreement, with two other Council's participating as non-members.

Members: Brighton, Central Highlands, Glenorchy, Huon Valley, Sorell, Southern Midlands and Tasman.

### DETAIL

Refer to the enclosed 'Local Government Shared Services – Council Update'.

**Human Resources & Financial Implications** – Refer comment provided in the update.

Councillors will note that the Southern Midlands Council provided 56 hours of service to other Councils and received 9 hours of services from other Councils during the month.

Details of services provided are included in the enclosures.

**Community Consultation & Public Relations Implications** – Nil

**Policy Implications** – N/A

**Priority - Implementation Time Frame** – Ongoing.

**RECOMMENDATION**

**THAT the information be received.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

**ENCLOSURE**  
 Agenda Item 17.2.1

# LG Shared Services Update

December 2019

## Summary of Recent Shared Services Activity

294 hours of Shared Services were exchanged between Councils in December 2019, which is a decrease of 22% when compared to hours exchanged in November 2019 (448 hours) and is below the three-month average of 369 hours per month.

Fig 1 - Shared Service Exchange Hours in Recent Months

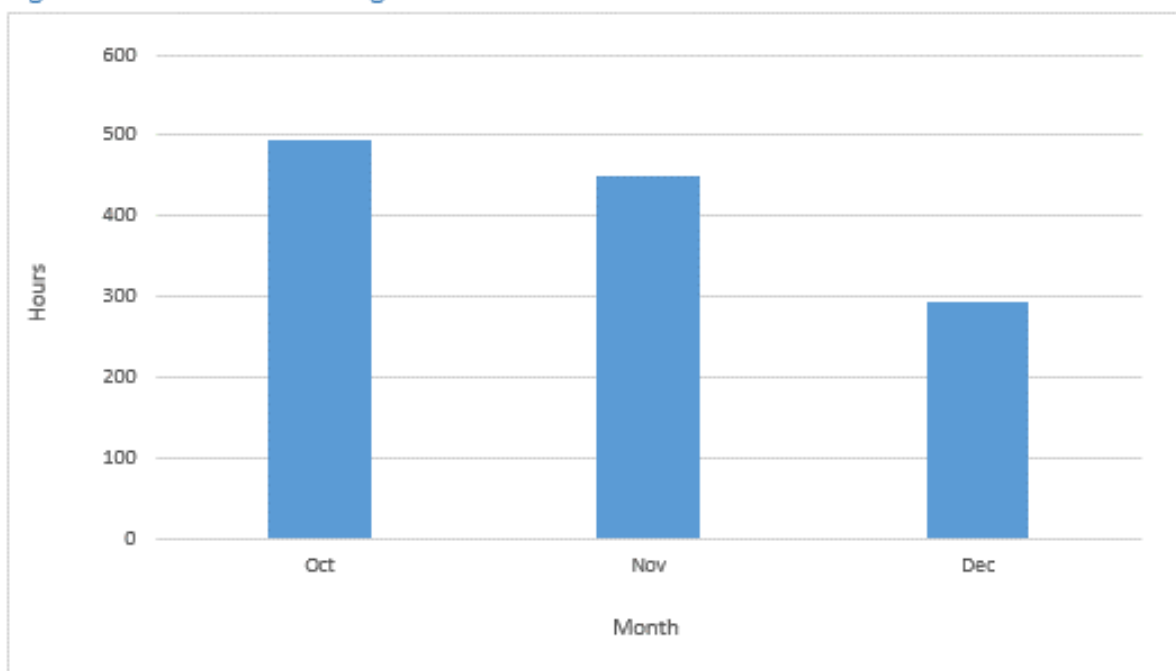
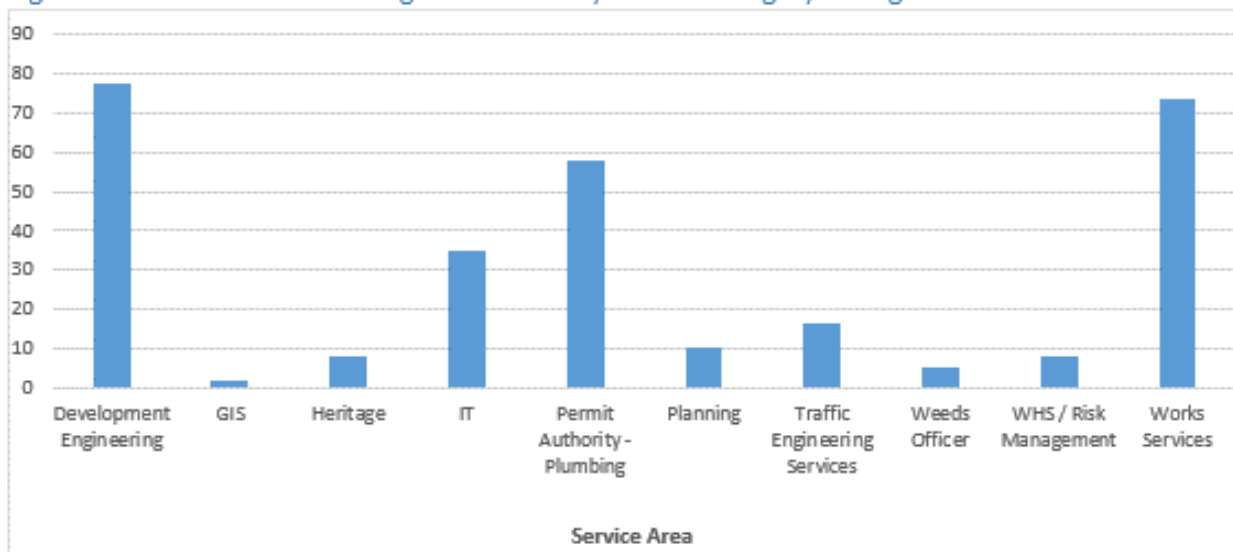


Fig 2 - Details of Current Exchange of Services by Council during December 2019

| Provider Council     | Client / Organisation |                   |                |           |      |        |                   |        |
|----------------------|-----------------------|-------------------|----------------|-----------|------|--------|-------------------|--------|
|                      | Brighton              | Central Highlands | Derwent Valley | Glenorchy | GSB  | Sorell | Southern Midlands | Tasman |
| Brighton             |                       | 1.5               | 3.25           | 16.5      | 66   |        | 6.75              | 99     |
| Central Highlands    | 2                     |                   |                |           |      | 2      | 2                 | 2      |
| GSB                  |                       |                   |                |           |      |        |                   |        |
| Glenorchy            |                       |                   |                |           |      |        |                   |        |
| Huon Valley          |                       |                   |                |           |      |        |                   |        |
| Litchfield           |                       |                   |                |           |      |        |                   |        |
| West Arnhem Regional |                       |                   |                |           |      |        |                   |        |
| Sorell               | 2                     |                   |                |           | 18.5 |        |                   | 16.5   |
| Southern Midlands    | 5                     | 10                | 40.5           |           |      |        |                   |        |
| Tasman               |                       |                   |                |           |      |        |                   |        |

\* Council/Organisation not currently a member of the Shared Services Joint Venture Agreement

Fig 3 - Details of Current Exchange of Services by Service Category during December 2019



### Savings to Local Government

A total of 294 hours of shared services were exchanged between Councils last month. Analysis of Shared Services provision has indicated that both the Provider Council and the Client Council save money through the exchange of Shared Services at an approximate ratio of 50%.

Due to this, it is estimated that the provision of shared services between Councils saved participating Councils and Local Government as a whole \$20,000 for the month of December. This was a result of increasing the utilisation of current Council Staff at Councils providing services and from Client Councils utilising Shared services from within Local Government as opposed to external consultants (on average LG Shared Services rates can be procured at significant discount to external consultant fees).

# Local Government Shared Services - Council Update

## Council

Southern Midlands

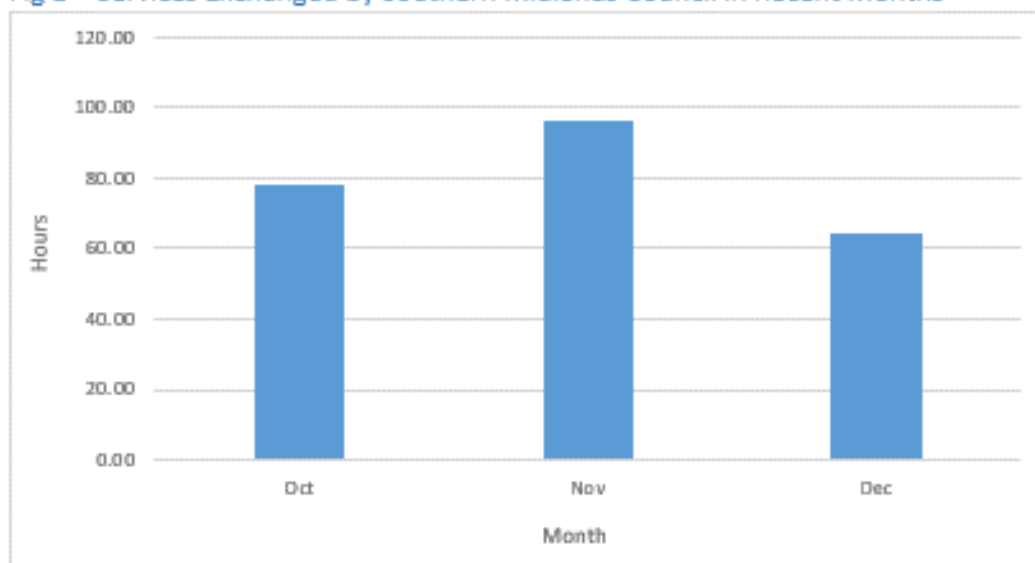
## Shared Service Participation in December 2019

65 hours

### Summary

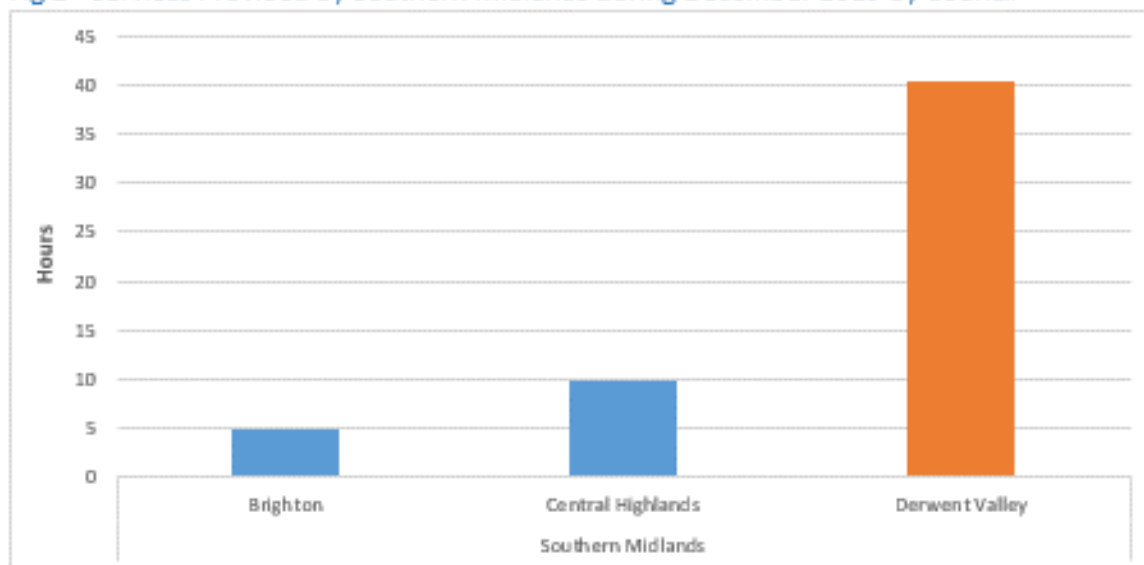
In December 2019, 65 hours of shared services were exchanged by the Southern Midlands Council. From this total, Southern Midlands provided 56 hours to other Councils and received 9 hours of services from other Councils. Total hours of exchange decreased by 33% when compared to November 2019 (96) and were below the three-month average of 79 hours per month.

Fig 1 – Services Exchanged by Southern Midlands Council in Recent Months



## Services Provided by Southern Midlands Council

Fig 2 - Services Provided by Southern Midlands during December 2019 by Council



\* Council is not currently a member of LG Shared Services

Fig 3 - Services Provided by Southern Midlands during December 2019 by Service Category

| Southern Midlands           | 56        | Summary of Services Provided      |
|-----------------------------|-----------|-----------------------------------|
| <b>Brighton</b>             | <b>5</b>  |                                   |
| Weeds Officer               | 5         | Weed Management                   |
| <b>Central Highlands</b>    | <b>10</b> |                                   |
| Planning                    | 10        | Regulatory and Strategic Planning |
| <b>Derwent Valley</b>       | <b>41</b> |                                   |
| Permit Authority - Plumbing | 32        | Plumbing Inspections and Admin    |
| Heritage                    | 8         | Heritage Planning                 |

\* Council is not currently a member of LG Shared Services

### Services Received by Southern Midlands Council

Fig 4 - Services Received by Southern Midlands during December 2019 by Council

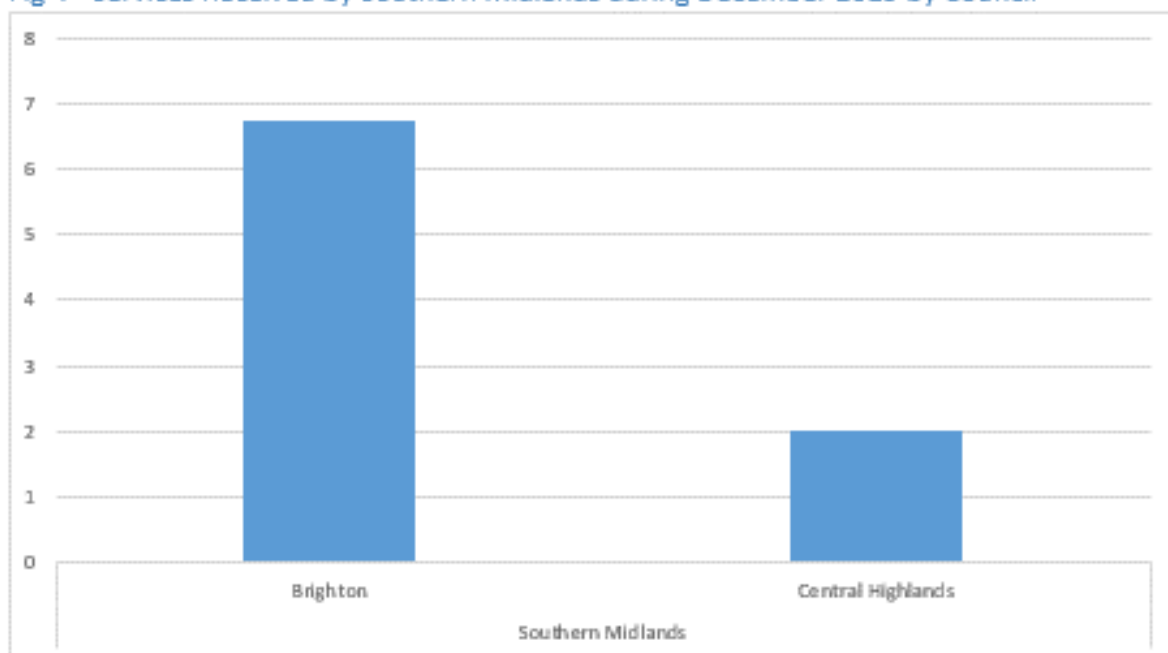


Fig 5 - Services Received by Southern Midlands during December 2019 by Service Category

| Southern Midlands        | 9        | Summary of Services Received |
|--------------------------|----------|------------------------------|
| <b>Brighton</b>          | <b>7</b> |                              |
| Development Engineering  | 7        | Development Engineering      |
| <b>Central Highlands</b> | <b>2</b> |                              |
| WHS / Risk Management    | 2        | Online Contractor Inductions |



## 17.2.2 KEMPTON COMMUNITY HEALTH CENTRE – DEED OF VARIATION OF GRANT DEED

**Author:** DEPUTY GENERAL MANAGER (ANDREW BENSON)

**Date:** 13 FEBRUARY 2020

**Enclosure:**

*Deed of Variation of Grant Deed – Crown & SMC*

### ISSUE

Signing and sealing the Deed of Variation to the Grant Deed for the Kempton School part conversion to the Kempton Community Health Centre. This will extend the project completion date.

### BACKGROUND

The Tasmanian State Government provided a grant of \$75,000 to contribute to the costs associated with the upgrade and conversion of the existing Kempton Primary School House into a multi-use facility providing both education and health care services.

The original completion date was scheduled in the original Grant Deed as 30<sup>th</sup> June 2019.

### DETAIL

This document is the Deed of Variation to the original Grant Deed with an extended completion date to the 31<sup>st</sup> July 2020. The reporting and acquittal is due by 30<sup>th</sup> September 2020.

This document was required to be returned to Communities, Sport & Recreation prior to the next scheduled meeting of Council, so in order to expedite the return of the document, it was required to be signed and sealed prior to the February 2020 meeting. Given it was merely a procedural matter, after reference to the General Manager, the document was executed and returned to Communities, Sport & Recreation as a matter of course.

### RECOMMENDATION

**THAT Council approve signing and sealing the Deed of Variation of the Grant Deed for the funding agreement between the Tasmanian Government and the Southern Midlands Council for the Kempton School part conversion to the Kempton Community Health Centre.**

| DECISION            |          |              |
|---------------------|----------|--------------|
| Councillor          | Vote FOR | Vote AGAINST |
| Mayor A O Green     |          |              |
| Deputy Mayor E Batt |          |              |
| Clr A Bantick       |          |              |
| Clr A E Bisdee OAM  |          |              |
| Clr K Dudgeon       |          |              |
| Clr D F Fish        |          |              |
| Clr R McDougall     |          |              |

**ENCLOSURE**  
*Agenda Item 17.2.2*



**Deed of Variation of Grant Deed**  
2018 Election Commitment

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The Crown in the Right of Tasmania  
(represented by the Department of Communities Tasmania)  
**(Grantor)**

and

Southern Midlands Council  
**(Recipient)**

REFERENCE AND CONTACT DETAILS  
Department: Communities Tasmania  
Contact Officer: Manager, Grants, Sport and Recreation Infrastructure  
Telephone: 1800 204 224  
Email: [csrgrants@communities.tas.gov.au](mailto:csrgrants@communities.tas.gov.au)

Doc Ref: Deed of Variation of Grant Deed | DOC/19/27858 | Deed of Variation – Southern  
Midlands Council Grant Deed

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## Deed of Variation of Grant Deed

### Details and recitals

---

**Date:**

**Parties:**

---

|                 |  |
|-----------------|--|
| Name            | <b>Crown in the Right of Tasmania</b><br>(represented by the Department of Communities Tasmania)   |
| Short form name | <b>Grantor</b>   |
| Notice details  | C/- Department of Communities<br>GPO Box 65, Hobart, Tasmania, 7001<br>Telephone: 1800 204 224<br>Email: <a href="mailto:csrgrants@communities.tas.gov.au">csrgrants@communities.tas.gov.au</a><br>Attention: Manager, Grants, Sport and Recreation Infrastructure |

---

|                 |                               |
|-----------------|-------------------------------|
| Name            | <b>As described in Item 3</b> |
| Short form name | <b>Recipient</b>              |
| Notice details  | As set out in Item 3          |

---

**Recitals:**

- A. The parties have entered into the Grant Deed.
- B. The parties have agreed to vary the terms and conditions of the Grant Deed as set out in this Deed.

## Information Table

|  |
|--|
| <b>Item 1 (clause 1.1): Commencement Date</b>  |
| The date of this Deed.   |
| <b>Item 2 (clause 1.1): Grant Deed</b>   |
| The grant deed between the Grantor and the recipient dated 22 June 2018.   |
| <b>Item 3 (clause 1.1): Recipient</b>  |
| Southern Midlands Council<br>68 653 459 589<br>PO Box 21, OATLANDS TAS 7120<br>Email: <a href="mailto:mail@southernmidlands.tas.gov.au">mail@southernmidlands.tas.gov.au</a><br>Attention: Mr. Timothy Kirkwood, General Manager   |
| <b>Item 4 (clause 2): Variation</b>  |
| <ol style="list-style-type: none"><li>1. The date of completion referred to in Item 6 (clause 4.3) of the Grant Deed is deleted and replaced with:<br/>'31 July 2020'</li><li>2. The due date of the reporting requirements referred to in Item 7 (clause 7.2) of the Grant Deed is deleted and replaced with:<br/>'30 September 2020'</li></ol> |

## Operative provisions

---

The parties agree as follows:

---

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Commencement Date** means the date set out in Item 1.

**this Deed** means this deed and includes all its annexures, appendices, attachments and schedules (if any).

**Grant Deed** means the grant deed described in Item 2.

**Information Table** means the table titled 'Information Table' set out above.

**Item** means an item in the Information Table.

**Recipient** means the recipient described in Item 3.

#### 1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Deed;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
  - (i) any thing on which there is writing;
  - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
  - (iii) an amendment or supplement to, or replacement or novation of, that document; or
  - (iv) a map, plan, drawing or photograph;

- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.

### 1.3 Headings

Headings are included for convenience only and do not affect the interpretation of this Deed.

### 1.4 No rule of construction applies to disadvantage party

In relation to the interpretation of this Deed, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

### 1.5 Information Table

If there is an Information Table:

- (a) an Item that has not been completed will be taken to be 'not applicable'; and
- (b) unless the context otherwise requires, expressions defined in that table have the same meanings when used in other parts of this Deed.

---

## 2 Variation

- (a) The Grant Deed is amended and varied with effect on and from the Commencement Date in the manner set out in Item 4.
- (b) In all other respects the parties confirm the provisions of the Grant Deed.

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### **3 Confidentiality**

Despite any confidentiality subsisting in this Deed, any party may publish without reference to the other party all or any part of this Deed.

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### **4 Miscellaneous**

#### **4.1 Governing law**

This Deed is governed by the laws of Tasmania.

#### **4.2 Severance**

If a provision of this Deed is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Deed and the remaining provisions of this Deed:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Deed.

#### **4.3 Counterparts**

This Deed may be entered into in any number of counterparts. A party may execute this Deed by signing any counterpart. All counterparts, taken together, constitute one agreement.

#### **4.4 Further assurance**

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Deed.

#### **4.5 Legal costs**

Each party must bear their own costs in preparing and negotiating this Deed.

#### **4.6 Amendment**

This Deed may only be amended or supplemented in writing signed by the parties.

#### **4.7 No interference with executive duties or powers**

Nothing in this Deed is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Deed that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

#### **Executed as a deed**



## Signing

### Signing by Grantor

Executed as a deed on behalf of the **Crown in Right of Tasmania** by the person named below in the presence of the witness named below:

Signature: →

Being a person who has authority to sign this Deed on behalf of the Crown.

\*Print name and position:

Witness' signature: →


\*Witness print name and position:

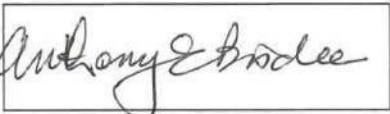
\*Use BLOCK LETTERS

\*Witness print address:


### Signing by Recipient

The common seal of **Southern Midlands Council** was hereunto affixed in the presence of:

Common seal: → 

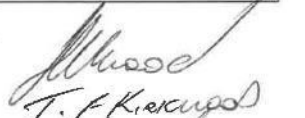
Signature: → 

\*Print name and position held: ANTHONY EDWARD BISDEE  
COUNCILLOR

Signature: → 

\*Print name and position held: EDWIN BATT  
DEPUTY MAYOR

\*Use BLOCK LETTERS

  
T. F. Kiercup  
General Manager

### **17.2.3     TABLING OF DOCUMENTS**

Nil.

#### **17.2.4 ELECTED MEMBER STATEMENTS**

An opportunity is provided for elected members to brief fellow Councillors on issues not requiring a decision.

##### **Mayor A O Green – Township of Oatlands (Bicentenary – 3<sup>rd</sup> June 1821)**

Mayor Green to provide comment. Includes raising the issue of Council's planned actions for the event.

*Note: Refer following extract from the Heritage Project Program Report:*

*“Liaising with staff from Brighton & Northern Midlands Councils to discuss combining themes & dates for the 2021 200-year celebrations as multiple towns turn 200 along the Heritage Highway”.*

## 17.3 Finances

### Strategic Plan Reference(s) 6.3.1, 6.3.2 & 6.3.3

*Community's finances will be managed responsibly to enhance the wellbeing of residents / Council will maintain community wealth to ensure that the wealth enjoyed by today's generation may also be enjoyed by tomorrow's generation / Council's financial position will be robust enough to recover from unanticipated events, and absorb the volatility inherent in revenues and expenses.*

### 17.3.1 MONTHLY FINANCIAL STATEMENT (PERIOD ENDING 31 JANUARY 2020)

**Author:** FINANCE OFFICER (MANDY BURBURY)

**Date:** 13 FEBRUARY 2020

#### ISSUE

Provide the Financial Report for the period ending 31<sup>st</sup> January 2020.

#### BACKGROUND

The format of the Operating Expenditure Report has been amended to include a Year To Date (YTD) Budget Column, with variations (and percentage) based on YTD Budgets – as opposed to total annual Budget.

Note: Depreciation is calculated on an annual basis at the end of the financial year and therefore the budget for depreciation is included in the June period.

#### DETAIL

The enclosed Report incorporates the following: -

- Statement of Comprehensive Income – 1 July 2019 to 31 January 2020.
- Operating Expenditure Budget Report – as at 31 January 2020.
- Capital Expenditure Estimates – as at 31 January 2020.
- Cash Flow Statement – 1 July 2019 to 31 January 2020.
- Rates & Charges – as at 11<sup>th</sup> February 2020

#### OPERATING EXPENDITURE ESTIMATES (OPERATING BUDGET)

Overall, operating expenditure to end of January 2020 was \$4,067,740, which represents 83.13% of YTD Budget.

Whilst there are some variations within the individual Program Budgets (refer following comments), YTD expenditure is consistent with Budget.

#### ***Strategic Theme - Infrastructure***

**Sub-Program – Signage** – expenditure to date (\$5,854 – 134.73%). Expenditure relates to purchasing and replacing stolen road signs. This is a relatively minor budget and will be monitored.

**Strategic Theme – Growth**

Nil.

**Strategic Theme – Landscapes**

Nil.

**Strategic Theme – Lifestyle**

Nil.

**Strategic Theme – Community**

**Sub-Program – Capacity** – expenditure to date (\$36,182 – 117.04%). Expenditure relates to costs associated with the Heritage Bullock Festival, Arts Committee Events and donations provided for sporting representations.

**Sub-Program – Safety** – expenditure to date (\$38,075 – 135.02%). Expenditure includes \$12,484 relating to Salaries, On Costs and Plant associated with fire fighting and recovery following the Pelham Fire.

**Strategic Theme – Organisation**

Nil.

**RECOMMENDATION**

**THAT the Financial Report be received and the information noted.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

**STATEMENT OF COMPREHENSIVE INCOME**

FOR THE PERIOD

1st JULY 2019 to 31st JANUARY 2020

|   | Annual<br>Budget       | Year to Date<br>as at 31st January | %              | Comments   |
|---|------------------------|------------------------------------|----------------|--|
| <b>Income</b>                                       |                        |                                    |                |  |
| General rates                                       | \$ 5,724,701           | \$ 5,672,337                       | 99.1%          | Budget includes Interest & Penalties to be imposed to end of June 2020 |
| User Fees (refer Note 1)                            | \$ 694,036             | \$ 382,603                         | 55.1%          |  |
| Interest  | \$ 180,000             | \$ 100,588                         | 55.9%          |  |
| Government Subsidies                                | \$ 19,250              | \$ 11,655                          | 60.5%          | Heavy Vehicle Licence Fees & Road Rescue MAIB reimbursements           |
| Contract Income                                     | \$ 0                   | \$ 0                               | 0.0%           |  |
| Other (refer Note 2)                                | \$ 162,000             | \$ 104,058                         | 64.2%          |  |
| <b>Sub-Total</b>                                    | <b>\$ 6,779,987</b>    | <b>\$ 6,271,241</b>                | <b>92.5%</b>   |  |
| Grants - Operating                                  | \$ 3,470,832           | \$ 875,616                         | 25.2%          |  |
| <b>Total Income</b>                                 | <b>\$ 10,250,819</b>   | <b>\$ 7,146,858</b>                | <b>69.7%</b>   |  |
| <b>Expenses</b>                                     |                        |                                    |                |  |
| Employee benefits                                   | \$ (3,905,753)         | \$ (1,976,161)                     | 50.6%          | Less Roads - Resheeting Capitalised                                    |
| Materials and contracts                             | \$ (3,063,277)         | \$ (1,899,544)                     | 62.0%          | Less Roads - Resheeting Capitalised, Includes Land Tax                 |
| Depreciation and amortisation                       | \$ (3,061,160)         | \$ (1,806,084)                     | 59.0%          | Percentage Calculation (based on year-to-date)                         |
| Finance costs                                       | \$ (27,088)            | \$ (18,015)                        | 66.5%          |  |
| Contributions                                       | \$ (233,907)           | \$ (116,954)                       | 50.0%          | Fire Service Levies  |
| Other   | \$ (133,944)           | \$ (132,239)                       | 98.7%          | Incls Rate Discounts   |
| <b>Total expenses</b>                               | <b>\$ (10,425,129)</b> | <b>\$ (5,948,997)</b>              | <b>57.1%</b>   |  |
| <b>Surplus (deficit) from operations</b>            | <b>\$ (174,310)</b>    | <b>\$ 1,197,860</b>                | <b>-687.2%</b> |  |
| Grants - Capital (refer Note 3)                     | \$ 4,526,481           | \$ 830,950                         | 18.4%          |  |
| Sale Proceeds (Plant & Machinery)                   | \$ 0                   | \$ 226,869                         | 0.0%           |  |
| Net gain / (loss on disposal of non-current assets) | \$ (108,182)           | \$ 0                               | 0.0%           |  |
| <b>Surplus / (Deficit)</b>                          | <b>\$ 4,243,989</b>    | <b>\$ 2,255,679</b>                | <b>53.1%</b>   |  |

| NOTES  |              |            |        |  |
|--|--------------|------------|--------|--|
| <b>1. Income - User Fees (Budget \$730,602) includes:</b>  |              |            |        |  |
| - All other Programs                                       | \$ 471,579   | \$ 230,787 | 48.9%  | Actual Income Received (i.e. excluding Debtors)                            |
| - Private Works  | \$ 222,457   | \$ 148,929 | 66.9%  |  |
| - Callington Mill  | \$ -         | \$ 2,887   | 0.0%   |  |
|  | \$ 694,036   | \$ 382,603 |        |  |
| <b>2. Income - Other (Budget \$162,000) includes:</b>      |              |            |        |  |
| - Tas Water Distributions                                  | \$ 152,000   | \$ 12,315  | 8.10%  |  |
| - HBS Dividend   | \$ 10,000    | \$ -       | 0.0%   |  |
| - Other  | \$ -         | \$ 91,743  | 0.0%   | \$58,450 received from the Tunbridge Hall Management Comm - Tolet Project. |
|  | \$ 162,000   | \$ 104,058 | 64.2%  |  |
| <b>3. Grant - Capital (Budget \$1,669,375) includes:</b>   |              |            |        |  |
| - Aus Gov Election Commit'                                 | \$ 1,930,000 | \$ -       | 0.0%   |  |
| - Swimming Pool  | \$ 1,900,000 | \$ 800,000 | 0.0%   |  |
| - Roads To Recovery Grant                                  | \$ 665,531   | \$ -       | 0.0%   | To be received March 2020  |
| - Twin Equestrian Arenas                                   | \$ -         | \$ -       | 0.0%   |  |
| - Commissariat NSRF Grant                                  | \$ 30,950    | \$ 30,950  | 100.0% |  |
|  | \$ 4,526,481 | \$ 830,950 | 18.4%  |  |
| <b>4. Grant - Operating (Budget \$1,669,375) includes:</b> |              |            |        |  |
| Operating Grants   |              |            |        |  |
| - FAGS   |              | \$ 870,921 |        |  |
| - Court House  |              | \$ 150     |        |  |
| - Weed Control Grant                                       |              | \$ 4,545   |        |  |
|  | \$ -         | \$ 875,616 |        |  |

**CAPITAL EXPENDITURE PROGRAM 2019-20**

AS AT 31 JANUARY 2020

|                                     |          |   | BUDGET              | EXPENDITURE       | VARIANCE            | COMMENTS                                |
|-------------------------------------|----------|---|---------------------|-------------------|---------------------|---|
| <b>INFRASTRUCTURE</b>               |          |   |                     |                   |                     |   |
| <b>ROAD ASSETS</b>                  |          |   |                     |                   |                     |   |
| Resheeting Program                  | Various  | Roads Resheeting  | \$ 500,000          | \$ 113,906        | \$ 386,094          |   |
| Reseal Program                      |          | Roads Resealing (as per agreed program)                     | \$ 280,000          | \$ -              | \$ 280,000          |   |
|                                     | C1020033 | Yarlington Road (Smarts Hill - 150 metres)                  | \$ 15,000           | \$ -              | \$ 15,000           | \$15K Budget c/fwd                      |
| Reconstruct & Seal                  |          | Green Valley Road, Bagdad (300metres off Swan Street)       | \$ 54,000           | \$ -              | \$ 54,000           |   |
|                                     | C1020025 | Shene Road, Mangalore (650metres)                           | \$ 97,500           | \$ 44,698         | \$ 52,802           |   |
|                                     | C1010089 | Woodsdale Road (1klm Reconstruction)                        | \$ 165,000          | \$ 164,225        | \$ 775              |   |
| Construct & Seal (Unsealed Roads)   |          | Huntington Tier (300 metres new seal)                       | \$ 63,000           | \$ -              | \$ 63,000           |   |
|                                     |          | Roberts Road (350m new seal incl. stormwater)               | \$ 59,000           | \$ -              | \$ 59,000           |   |
|                                     |          | Main Intersection/Carpark Campania - Design Concept         | \$ 50,000           | \$ -              | \$ 50,000           |   |
|                                     | C1020067 | Eldon Road (800 metres new seal)                            | \$ 154,000          | \$ -              | \$ 154,000          | RTR                                     |
|                                     |          | Banticks Road (1klm new seal from Junction with Blackbrush) | \$ 27,500           | \$ -              | \$ 27,500           |   |
|                                     | C1020068 | Blackbrush Road (1klm new seal from existing to Banticks)   | \$ 210,000          | \$ -              | \$ 210,000          | RTR                                     |
|                                     | C1020055 | Yarlington Road (construct & Seal)                          |                     | \$ 2,984          | \$ (2,984)          | RTR                                     |
| Minor Seals (New)                   |          | Dust Suppressant Seal                                       | \$ 20,000           | \$ -              | \$ 20,000           |   |
|                                     |          | Junctions - Various Locations (incl. Greggs Road)           | \$ 20,000           | \$ -              | \$ 20,000           |   |
|                                     | C1020032 | Hasting Street Junction                                     | \$ 15,000           | \$ 959            | \$ 14,041           | \$15K Budget c/fwd WIP 30/6/19 \$959    |
| Unsealed Rds - Road Widening        | C1020065 | Clifton Vale Road - (Cliff Section)                         | \$ 20,128           | \$ 17,410         | \$ 2,717            |   |
|                                     | C1020061 | Native Corners Road (Far end, Widening/Guard Rail)          | \$ 9,000            | \$ 3,277          | \$ 5,723            | \$9K Budget c/fwd                       |
| Junction / Road Realignment / Other | C1010037 | Campania - Reeve St / Clime Street (includes Footpath)      | \$ 70,000           | \$ 9,504          | \$ 60,496           | \$70K Budget c/fwd WIP 30/6/19 \$2,617  |
|                                     |          | Water Lane (Minor Widening/drainage - V drain)              | \$ 23,500           | \$ -              | \$ 23,500           |   |
| Drainage Component - \$42,900       | C1010079 | Reeve St - Hall Street to Rec Ground (K&G)                  | \$ 94,915           | \$ 9,477          | \$ 85,438           | \$20k Budget c/fwd WIP 30/06/19 \$6,887 |
|                                     | C1020047 | Lovely Banks Road (vicinity of Carnes)                      | \$ 25,000           | \$ 1,621          | \$ 23,379           | Extend Culverts/ tree removal / realign |
|                                     |          | Rhyndaston Road - Guard Rail                                | \$ 20,000           | \$ -              | \$ 20,000           |   |
|                                     | C1020066 | Stonor Road - Guard Rail                                    | \$ 30,000           | \$ 8,657          | \$ 21,343           |   |
|                                     |          | Woodsdale Road (Vicinity of Dean Property)                  | \$ 15,000           | \$ -              | \$ 15,000           |   |
|                                     | C1010088 | Bagdad Primary School - Car Park (contribution)             | \$ 25,000           | \$ 23,543         | \$ 1,457            | \$25k Budget c/fwd WIP 30/06/19 \$6,036 |
|                                     |          |   | <b>\$ 2,062,543</b> | <b>\$ 400,260</b> | <b>\$ 1,662,282</b> |   |



|                      |   |   |                   |                   |                   |   |
|----------------------|---|---|-------------------|-------------------|-------------------|---|
| <b>BRIDGE ASSETS</b> | C1030058  | Hardings Road (White Kangaroo Rivulet- B1096)                           | \$ 180,400        | \$ 59,259         | \$ 121,141        | RTR   |
|                      | C1030059  | Woodsdale Road (Nutting Garden Rivulet- B3968))                         | \$ 210,390        | \$ 11,734         | \$ 198,656        | RTR   |
|                      |   |   | <b>\$ 390,790</b> | <b>\$ 70,993</b>  | <b>\$ 319,797</b> |   |
| <b>WALKWAYS</b>      | C1040003  | Footpaths - General Streetscapes<br>Bagdad Township                     | \$ 20,000         | \$ -              | \$ 20,000         |   |
|                      | C1040014  | - East Bagdad Road<br>Broadmarsh Township                               | \$ 105,000        | \$ 3,486          | \$ 101,514        | WIP 30/6/19   |
|                      |   | - Streetscape Works<br>Campania Township                                | \$ 230,000        | \$ -              | \$ 230,000        | Funds \$230k subject to finalising Grant Deeds (Federal Gov.)                             |
|                      |   | - Review Management Plan (Site Plan) / Walking Tracks (Bush Reser       | \$ 5,000          | \$ -              | \$ 5,000          | \$5K Budget c/fwd   |
|                      |   | - Reeve Street - Footpath through to Hall                               | \$ 30,000         | \$ -              | \$ 30,000         |   |
|                      |   | - Climie Street/Water Lane (incl. footpath)                             |                   |                   |                   |   |
|                      |   | - Climie Street to Kandara Court Footpath<br>Kempton Township           |                   |                   |                   |   |
|                      |   | - Midlands Highway/Mood Food  | \$ 70,150         | \$ -              | \$ 70,150         |   |
|                      | C1040027  | - Memorial Avenue (complete drainage/other site works)                  | \$ 25,000         | \$ 16,245         | \$ 8,755          |   |
|                      |   | - Streetscape Plan (Review & Implementation)<br>Melton Mowbray Township | \$ 110,000        | \$ 31,357         | \$ 78,643         | Footpath renewal Component - Funds \$75k subject to finalising Grant Deeds (Federal Gov.) |
|                      | G2020002  | - Streetscape Works (Trough / Shelter etc)                              | \$ 30,000         | \$ 5,318          | \$ 24,682         |   |
|                      |   | Oatlands Township   |                   |                   |                   |   |
|                      | C1040016  | - High Street (Footpath Renewal)  | \$ 33,000         | \$ 1,252          | \$ 31,748         |   |
|                      | C1040026  | - Church Street (Footpath Renewal)                                      | \$ 17,000         | \$ 16,714         | \$ 286            |   |
|                      |   | Tunbridge Township  |                   |                   |                   |   |
|                      | - Maint Street Kerb & Gutter (Vicinity of Hall) | \$ 30,000   | \$ -              | \$ 30,000         |                   |   |
|                      | Tunnack Township                                |   |                   |                   |                   |   |
|                      | - Streetscape concept Plan                      | \$ 5,000  | \$ -              | \$ 5,000          |                   |   |
|                      |   | <b>\$ 710,150</b>   | <b>\$ 74,372</b>  | <b>\$ 635,778</b> |                   |   |

|                  |          |  |                   |                  |                   |  |
|------------------|----------|--|-------------------|------------------|-------------------|--|
| <b>LIGHTING</b>  | C1050001 | Esplanade Project (Total Project Cost \$128k year 1-2)                       | \$ 134,000        | \$ 21,327        | \$ 112,673        | subject to finalising Grant Deeds (Federal Gov.) |
|                  |          |  | <b>\$ 134,000</b> | <b>\$ 21,327</b> | <b>\$ 112,673</b> |  |
| <b>BUILDINGS</b> | C1110002 | Campania Flour Mill Park - Concrete Pathways/drainage/remove pavers          | \$ 15,000         | \$ -             | \$ 15,000         |  |
|                  |          | Tunbridge Hall Toilets   | \$ 77,500         | \$ 84,864        | \$ (7,364)        | WIP 30/6/19 \$18,288 - Budget incl. Grants       |
|                  |          |  | <b>\$ 92,500</b>  | <b>\$ 84,864</b> | <b>\$ 7,636</b>   |  |
| <b>DRAINAGE</b>  |          | Bagdad   |                   |                  |                   |  |
|                  |          | - Lyndon Road  | \$ 15,000         | \$ -             | \$ 15,000         | \$15K Budget c/fwd                               |
|                  | C1090013 | - Midland Highway/Swan Street Drainage                                       | \$ 50,000         | \$ 8,178         | \$ 41,822         |  |
|                  |          | Campania   |                   |                  |                   |  |
|                  |          | - Estate Road (School Farm)  | \$ 10,000         | \$ -             | \$ 10,000         |  |
|                  |          | Oatlands   |                   |                  |                   |  |
|                  |          | - Barrack Street (towards Mason Street)                                      | \$ 10,000         | \$ -             | \$ 10,000         | \$10K Budget c/fwd                               |
|                  |          | - High St/Wellington Street Junction   | \$ 5,000          | \$ -             | \$ 5,000          | \$5K Budget c/fwd                                |
|                  |          | - Queen Anne Street  | \$ 7,500          | \$ -             | \$ 7,500          | \$7.5K Budget c/fwd                              |
|                  |          | Kempton  |                   |                  |                   |  |
|                  |          | - Erskine Street   |                   | \$ 4,668         | \$ (4,668)        | WIP 30/6/19                                      |
|                  |          |  | <b>\$ 97,500</b>  | <b>\$ 12,846</b> | <b>\$ 84,654</b>  |  |
| <b>WASTE</b>     | C110001  | Wheelie Bins and Crates  | \$ 8,000          | \$ -             | \$ 8,000          |  |
|                  |          | Oatlands WTS - Concrete Pad(s)   | \$ 25,000         | \$ -             | \$ 25,000         | \$25K Budget c/fwd                               |
|                  |          | Dysart WTS - General Improvements  | \$ 20,000         | \$ 4,060         | \$ 15,940         | \$20K Budget c/fwd                               |
|                  |          |  | <b>\$ 53,000</b>  | <b>\$ 4,060</b>  | <b>\$ 48,940</b>  |  |
| <b>GROWTH</b>    |          |  |                   |                  |                   |  |
| <b>HERITAGE</b>  | C3010003 | Callington Mill (Asset Renewals)   | \$ 10,000         | \$ 35,550        | \$ (25,550)       |  |
|                  |          | Callington Mill (Mill Tower - Fire Detection System & Exit Lighting)         | \$ 6,500          | \$ 6,500         | \$ -              | Budget c/fwd                                     |
|                  |          | Oatlands Court House (Stabilisation & Gaol Cell)                             | \$ 8,000          | \$ -             | \$ 8,000          | \$8K Budget c/fwd                                |
|                  | C3010002 | Oatlands Gaol - Wingwall Completion  | \$ 15,000         | \$ 3,938         | \$ 11,062         | \$15K Budget c/fwd                               |
|                  |          | Oatlands Gaol - Aluminum Temporary Steps (Entrance)                          | \$ 3,500          | \$ -             | \$ 3,500          | \$3.5K Budget c/fwd                              |
|                  |          | Kempton Watch House (Fitout)   | \$ 4,000          | \$ -             | \$ 4,000          | \$7.5K Budget c/fwd                              |
|                  | C3010011 | Roche Hall Forecourt (Interps - Planning Condition of Approval)              | \$ 40,000         | \$ 6,945         | \$ 33,056         | WIP 30/6/19 \$3,845 - Budget c/fwd               |
|                  | C3010011 | Roche Hall - Internal & External Painting (excl. Gutters, Fascias & Soffits) | \$ 80,000         | \$ -             | \$ 80,000         | \$15K Budget c/fwd                               |
|                  |          |  | <b>\$ 167,000</b> | <b>\$ 52,933</b> | <b>\$ 114,067</b> |  |

|                   |          |   |                   |                 |                   |   |
|-------------------|----------|---|-------------------|-----------------|-------------------|---|
| <b>NATURAL</b>    |          | Campania Bush Reserve (Walking/Riding Path)             | \$ 100,000        | \$ -            | \$ 100,000        | Funds \$100k subject to finalising Grant Deeds (Federal Gov.) |
|                   | C3020007 | Chauncy Vale - Sanctuary Bridge                         | \$ 55,000         | \$ -            | \$ 55,000         | Funds \$55k subject to finalising Grant Deeds (Federal Gov.)  |
|                   | C3020008 | Mahers Point - Lanscape Plan                            | \$ 22,404         | \$ -            | \$ 22,404         | Budget c/fwd  |
|                   | C1040019 | Lake Dulverton Walkway (Section 1)                      | \$ 135,000        | \$ -            | \$ 135,000        | Funds \$135k subject to finalising Grant Deeds (Federal Gov.) |
|                   | C1040028 | Lake Dulverton Walkway (Section 2)                      | \$ 85,000         | \$ -            | \$ 85,000         | Funds \$85k subject to finalising Grant Deeds (Federal Gov.)  |
|                   |          |   | <b>\$ 397,404</b> | <b>\$ -</b>     | <b>\$ 397,404</b> |   |
| <b>CULTURAL</b>   |          |   |                   |                 |                   |   |
|                   |          | Heritage HUB - Internal fitout                          | \$ 10,000         | \$ -            | \$ 10,000         |   |
|                   |          |   | <b>\$ 10,000</b>  | <b>\$ -</b>     | <b>\$ 10,000</b>  |   |
| <b>REGULATORY</b> |          |   |                   |                 |                   |   |
|                   | C3040001 | Kempton Council Chambers - Restoration Works            | \$ 5,000          | \$ 4,278        | \$ 722            |   |
|                   | C9990001 | Kempton Council Chambers - Office Furniture & Equipment | \$ 5,000          | \$ 1,489        | \$ 3,511          |   |
|                   |          |   | <b>\$ 10,000</b>  | <b>\$ 5,766</b> | <b>\$ 4,234</b>   |   |

|   |          |   | BUDGET            | EXPENDITURE     | VARIANCE          | COMMENTS                              |
|---|----------|---|-------------------|-----------------|-------------------|---------------------------------------|
| <b>LIFESTYLE</b>                        |          |   |                   |                 |                   |                                       |
| <b>COMMUNITY HEALTH &amp; WELLBEING</b> |          |   |                   |                 |                   |                                       |
|   | C4070035 | Oatlands Bus Shelter                            | \$ 14,000         | \$ -            | \$ 14,000         |                                       |
|   |          |   | <b>\$ 14,000</b>  | <b>\$ -</b>     | <b>\$ 14,000</b>  |                                       |
| <b>LIFESTYLE</b>                        |          |   |                   |                 |                   |                                       |
| <b>ACCESS</b>                           |          |   |                   |                 |                   |                                       |
|   | C4070035 | All Buildings (Priority Approach - Year 4 of 5) | \$ 40,000         | \$ -            | \$ 40,000         |                                       |
|   |          |   | <b>\$ 40,000</b>  | <b>\$ -</b>     | <b>\$ 40,000</b>  |                                       |
| <b>PUBLIC HEALTH</b>                    |          |   |                   |                 |                   |                                       |
|   | C4070035 | Kempton Community Health Facility               | \$ 225,000        | \$ 2,415        | \$ 222,585        | \$200K Budget c/fwd WIP 30/6/19 \$445 |
|   |          |   | <b>\$ 225,000</b> | <b>\$ 2,415</b> | <b>\$ 222,585</b> |                                       |

|                                    |          |   |                     |                   |                     |   |
|------------------------------------|----------|---|---------------------|-------------------|---------------------|---|
| <b>RECREATION</b>                  |          |   |                     |                   |                     |   |
|                                    | C4070005 | Recreation Committee  | \$ 20,000           | \$ 3,364          | \$ 16,636           | Campania Rec Ground Window  |
|                                    |          | Oatlands Aquatic Centre (New Pool)                                | \$2,400,000         | \$ -              | \$2,400,000         | Funds \$500k subject to finalising Grant Deeds (Federal Gov.)   |
|                                    | C4070034 | Oatlands Aquatic Centre (New Pool)                                |                     | \$ 471,768        | \$ (471,768)        | WIP 30/6/19 \$395,896   |
|                                    | C4070034 | Oatlands Aquatic Centre (New Pool)                                |                     | \$ 379,803        | \$ (379,803)        | WIP 30/6/18 \$379,803   |
|                                    |          | Campania - Public Open Space dev (Subdivision)                    | \$ 23,000           |                   | \$ 23,000           |   |
|                                    |          | Campania - Public Open Space dev (Shelter Alexander Circle)       | \$ 10,000           | \$ 8,400          | \$ 1,600            |   |
|                                    |          | Campania - Public Open Space dev (Play Equip Alexander Circle)    | \$ 16,000           |                   | \$ 16,000           |   |
|                                    | G4070024 | Mangalore Equestrian Arena  | \$ 51,784           | \$ 37,437.30      | \$ 14,347           | Grant of \$36,784 plus additional budget \$15k  |
|                                    |          | Mangalore Hall (replace Gutters and Roofing)                      | \$ 18,000           |                   | \$ 18,000           |   |
|                                    |          | Oatlands - Callington Park (Playground Election Commitment)       | \$ 500,000          |                   | \$ 500,000          | Incls. Revegetation and Watering System - Funds \$500k subject to finalising Grant Deeds (Federal Gov.) |
|                                    |          | Campania - Recreation Ground (Nets)                               | \$ 45,000           |                   | \$ 45,000           | \$45K Budget c/fwd  |
|                                    | C4070019 | Kempton - Recreation Ground (Granstand Rails & Seating)           | \$ 6,000            |                   | \$ 6,000            | \$6K Budget c/fwd   |
|                                    |          | Kempton - Recreation Ground (Lighting)                            | \$ 10,000           |                   | \$ 10,000           | \$10K Budget c/fwd  |
|                                    |          | Kempton - Recreation Ground (Roof Structure - Entry to Clubrooms) | \$ 15,000           |                   | \$ 15,000           |   |
|                                    |          | Mount Pleasant - Recreation Ground (Upgrade Toilets)              | \$ 38,000           |                   | \$ 38,000           | \$13K Budget c/fwd  |
|                                    |          | Runnymede - Recreation Ground (resurfacing & watering system)     | \$ 20,000           |                   | \$ 20,000           |   |
|                                    |          | Tunbridge Park - Perimeter Fence (Safety)                         | \$ 30,000           |                   | \$ 30,000           | \$7.5K Budget c/fwd   |
|                                    |          |   | <b>\$ 3,202,784</b> | <b>\$ 900,772</b> | <b>\$ 2,302,012</b> |   |
| <b>COMMUNITY ANIMALS</b>           |          | Oatlands - Dog Pound  | \$ 20,000           | \$ -              | \$ 20,000           |   |
|                                    |          |   | <b>\$ 20,000</b>    | <b>\$ -</b>       | <b>\$ 20,000</b>    |   |
| <b>CAPACITY</b>                    |          |   |                     |                   |                     |   |
|                                    | C5020001 | Levendale Community Centre  | \$ 8,000            | \$ -              | \$ 8,000            | \$8K Budget c/fwd   |
|                                    |          | Oatlands Structure Plan   | \$ 25,000           | \$ -              | \$ 25,000           |   |
|                                    |          |   | <b>\$ 33,000</b>    | <b>\$ -</b>       | <b>\$ 33,000</b>    |   |
| <b>SAFETY</b>                      |          |   |                     |                   |                     |   |
|                                    |          | Road Accident Rescue Unit   | \$ 3,000            | \$ -              | \$ 3,000            |   |
|                                    |          |   | <b>\$ 3,000</b>     | <b>\$ -</b>       | <b>\$ 3,000</b>     |   |
| <b>ORGANISATION SUSTAINABILITY</b> |          |   |                     |                   |                     |   |
|                                    |          | Council Chambers - Internal Toilets Upgrade                       | \$ 60,000           | \$ -              | \$ 60,000           |   |
|                                    |          | Council Chambers - Damp Issues & Stonemasonry                     | \$ 15,000           | \$ -              | \$ 15,000           | \$15K Budget c/fwd  |
|                                    |          | Council Chambers - Works Office (floor coverings)                 | \$ 5,000            | \$ -              | \$ 5,000            | \$5K Budget c/fwd   |
|                                    | C9990001 | Town Hall (General - Incl. Office Equip/Furniture)                | \$ 5,540            | \$ 625            | \$ 4,916            |   |
|                                    | C6020003 | Computer System (Hardware / Software)                             | \$ 55,400           | \$ 42,198         | \$ 13,202           | \$15K Budget c/fwd  |
|                                    |          |   | <b>\$ 140,940</b>   | <b>\$ 42,823</b>  | <b>\$ 98,117</b>    |   |

|              |          |   |                     |                     |                     |   |
|--------------|----------|---|---------------------|---------------------|---------------------|---|
| <b>WORKS</b> | C6020011 | Kempton Depot - Property Purchase (Year 1 Budget of \$180K)         | \$ 50,000           | \$ 178,497          | \$ (128,497)        | Total Project Cost - to be funded over 4 yrs (Yr 1 - \$50K) |
|              | C6020011 | Kempton Depot - External Painting                                   | \$ 10,000           | \$ -                | \$ 10,000           | \$10K Budget c/fwd  |
|              | C6020001 | Depot Relocation (Site / Concept Plans/ Amneities/ Redords Storage) | \$ 200,000          | \$ 92,776           | \$ 107,224          |   |
|              |          | Minor Plant Purchases   | \$ 9,500            | \$ 535              | \$ 8,965            |   |
|              | C6020008 | Radio System  | \$ 3,000            | \$ -                | \$ 3,000            |   |
|              |          | <b>Plant Replacement Program</b>                                    |                     |                     |                     |   |
|              |          | Refer separate Schedule (Gross)                                     | \$ 935,000          | \$ 114,215          | \$ 820,785          |   |
|              |          | Light Vehicles (Gross)  | \$ 210,000          | \$ 192,763          | \$ 17,237           |   |
|              |          | (Trade Allowance - \$180K)  |                     |                     |                     |   |
|              |          |   | <b>\$ 1,417,500</b> | <b>\$ 578,787</b>   | <b>\$ 838,713</b>   |   |
|              |          |   |                     |                     |                     |   |
|              |          | <b>GRAND TOTALS</b>   | <b>\$ 9,221,111</b> | <b>\$ 2,252,219</b> | <b>\$ 6,968,892</b> |   |

|   | INFLOWS<br>(OUTFLOWS)<br>(July 2019) | INFLOWS<br>(OUTFLOWS)<br>(August 2019) | INFLOWS<br>(OUTFLOWS)<br>(September 2019) | INFLOWS<br>(OUTFLOWS)<br>(October 2019) | INFLOWS<br>(OUTFLOWS)<br>(November) | INFLOWS<br>(OUTFLOWS)<br>(December) | INFLOWS<br>(OUTFLOWS)<br>(January 2019) | INFLOWS<br>(OUTFLOWS)<br>(Year to Date) |
|---|--------------------------------------|--|---|---|-------------------------------------|-------------------------------------|---|---|
| <b>Cash flows from operating</b>                    |                                      |  |   |   |                                     |                                     |   |   |
| <b>Payments</b>                                     |                                      |  |   |   |                                     |                                     |   |   |
| Employee costs                                      | - 259,732.34                         | - 280,026.23                           | - 290,033.86                              | - 374,698.08                            | - 281,014.52                        | - 283,264.70                        | - 183,941.18                            | - 1,952,710.91                          |
| Materials and contracts                             | - 489,960.05                         | - 252,409.90                           | - 176,421.49                              | - 359,780.69                            | - 285,349.16                        | - 169,232.07                        | - 295,391.97                            | - 2,028,545.33                          |
| Interest  | - 4,148.51                           | -                                      | -   | -                                       | - 2,995.62                          | - 10,870.47                         | -                                       | - 18,014.60                             |
| Other   | - 29,966.89                          | - 69,054.75                            | - 52,617.77                               | - 80,824.91                             | - 23,849.60                         | - 32,135.15                         | - 78,377.51                             | - 366,826.58                            |
|   | <b>- 783,807.79</b>                  | <b>- 601,490.88</b>                    | <b>- 519,073.12</b>                       | <b>- 815,303.68</b>                     | <b>- 593,208.90</b>                 | <b>- 495,502.39</b>                 | <b>- 557,710.66</b>                     | <b>- 4,366,097.42</b>                   |
| <b>Receipts</b>                                     |                                      |  |   |   |                                     |                                     |   |   |
| Rates   | 98,749.91                            | 1,287,791.14                           | 1,399,266.96                              | 201,106.06                              | 519,769.80                          | 329,069.98                          | 470,490.84                              | 4,306,244.69                            |
| User charges  | 65,479.66                            | 44,553.00                              | 127,713.29                                | 47,010.97                               | 31,174.71                           | 69,604.49                           | 41,028.67                               | 426,564.79                              |
| Interest received                                   | 18,471.63                            | 6,408.06                               | 16,386.98                                 | 20,750.03                               | 8,083.13                            | 15,117.45                           | 15,370.55                               | 100,587.83                              |
| Subsidies   |                                      | -                                      | 11,655.00                                 | -                                       | -                                   | -                                   | -                                       | 11,655.00                               |
| Other revenue grants                                | 150.00                               | 435,460.50                             | -   | -                                       | 466,410.50                          | 4,545.45                            | -                                       | 906,566.45                              |
| GST Refunds from ATO                                |                                      | -                                      | -   | -                                       | -                                   | -                                   | -                                       | -                                       |
| Other   | 34,923.65                            | 94,315.16                              | 66.01                                     | - 17,193.20                             | - 31,632.04                         | 70,015.89                           | - 60,943.56                             | 89,551.91                               |
|   | <b>217,774.85</b>                    | <b>1,868,527.86</b>                    | <b>1,555,088.24</b>                       | <b>251,673.86</b>                       | <b>993,806.10</b>                   | <b>488,353.26</b>                   | <b>465,946.50</b>                       | <b>5,841,170.67</b>                     |
| <b>Net cash from operating activities</b>           | <b>- 566,032.94</b>                  | <b>1,267,036.98</b>                    | <b>1,036,015.12</b>                       | <b>- 563,629.82</b>                     | <b>400,597.20</b>                   | <b>- 7,149.13</b>                   | <b>- 91,764.16</b>                      | <b>1,475,073.25</b>                     |
| <b>Cash flows from investing</b>                    |                                      |  |   |   |                                     |                                     |   |   |
| Payments for property, plant & equipment            | - 66,086.49                          | - 82,224.34                            | - 450,270.92                              | - 360,407.41                            | - 92,140.02                         | - 184,331.75                        | - 12,334.95                             | - 1,247,795.88                          |
| Proceeds from sale of property, plant & equipment   | 30,840.90                            | 15,054.55                              | 147,996.46                                | 32,540.91                               | 54.55                               | 381.82                              | -                                       | 226,869.19                              |
| Proceeds from Capital grants                        | -                                    | -                                      | -   | -                                       | -                                   | 800,000.00                          | -                                       | 800,000.00                              |
| Proceeds from Investments                           | -                                    | -                                      | -   | -                                       | -                                   | -                                   | -                                       | -                                       |
| Payment for Investments                             | -                                    | -                                      | -   | -                                       | -                                   | -                                   | -                                       | -                                       |
| <b>Net cash used in investing</b>                   | <b>- 35,245.59</b>                   | <b>- 67,169.79</b>                     | <b>- 302,274.46</b>                       | <b>- 327,866.50</b>                     | <b>- 92,085.47</b>                  | <b>616,050.07</b>                   | <b>- 12,212.22</b>                      | <b>- 220,803.96</b>                     |
| <b>Cash flows from financing</b>                    |                                      |  |   |   |                                     |                                     |   |   |
| Repayment of borrowings                             | - 7,060.07                           | -                                      | -   | -                                       | - 14,548.10                         | - 25,330.69                         | -                                       | - 46,938.86                             |
| Proceeds from borrowings                            |                                      |  |   |   |                                     |                                     |   | -                                       |
| <b>Net cash from (used in) financing activities</b> | <b>- 7,060.07</b>                    | <b>-</b>                               | <b>-</b>                                  | <b>-</b>                                | <b>- 14,548.10</b>                  | <b>- 25,330.69</b>                  | <b>-</b>                                | <b>- 46,938.86</b>                      |
| <b>Net increase/(decrease) in cash</b>              | <b>- 608,338.60</b>                  | <b>1,199,867.19</b>                    | <b>733,740.66</b>                         | <b>- 891,496.32</b>                     | <b>293,963.63</b>                   | <b>583,570.25</b>                   | <b>- 103,976.38</b>                     | <b>1,207,330.43</b>                     |
| Cash at beginning of reporting year                 | 12,368,944.95                        | 11,760,606.35                          | 12,960,473.54                             | 13,694,214.20                           | 12,802,717.88                       | 13,096,681.51                       | 13,680,251.76                           | 12,368,944.95                           |
| <b>Cash at end of reporting year</b>                | <b>11,760,606.35</b>                 | <b>12,960,473.54</b>                   | <b>13,694,214.20</b>                      | <b>12,802,717.88</b>                    | <b>13,096,681.51</b>                | <b>13,680,251.76</b>                | <b>13,576,275.38</b>                    | <b>13,576,275.38</b>                    |

SOUTHERN MIDLANDS COUNCIL : OPERATING EXPENDITURE 2019/20  
SUMMARY SHEET

| PROGRAM                      | YTD ACTUAL<br>(as at 31 January 20) | YTD BUDGET (as at<br>31 January 20) | YTD VARIANCE   | YTD VARIANCE % | FULL YEAR BUDGET -<br>REVISED INC. GRANTS<br>& OTHER |
|------------------------------|-------------------------------------|-------------------------------------|----------------|----------------|--|
| <b>INFRASTRUCTURE</b>        |                                     |                                     |                |                |  |
| Roads                        | 774,943                             | 789,680                             | 14,737         | 98.13%         | 3,205,738  |
| Bridges                      | 16,776                              | 25,874                              | 9,098          | 64.84%         | 383,498  |
| Walkways                     | 124,752                             | 140,793                             | 16,041         | 88.61%         | 214,930  |
| Lighting                     | 45,044                              | 50,029                              | 4,985          | 90.03%         | 85,764   |
| Drainage                     | 8,763                               | 16,875                              | 8,113          | 51.93%         | 78,072   |
| Waste                        | 503,610                             | 514,737                             | 11,127         | 97.84%         | 901,549  |
| Public Toilets               | 42,745                              | 41,906                              | 839            | 102.00%        | 66,982   |
| Communications               | -                                   | -                                   | -              | -              | -  |
| Signage                      | 5,854                               | 4,345                               | 1,509          | 134.73%        | 7,020  |
| <b>INFRASTRUCTURE TOTAL:</b> | <b>1,522,487</b>                    | <b>1,584,240</b>                    | <b>61,753</b>  | <b>96.10%</b>  | <b>4,943,553</b>                                     |
| <b>GROWTH</b>                |                                     |                                     |                |                |  |
| Residential                  | -                                   | -                                   | -              | -              | -  |
| Tourism                      | 40,637                              | 44,305                              | 3,668          | 91.72%         | 62,380   |
| Business                     | 115,474                             | 130,915                             | 15,441         | 88.21%         | 971,998  |
| Agriculture                  | -                                   | -                                   | -              | -              | -  |
| <b>GROWTH TOTAL:</b>         | <b>156,111</b>                      | <b>175,220</b>                      | <b>19,109</b>  | <b>89.09%</b>  | <b>1,034,378</b>                                     |
| <b>LANDSCAPES</b>            |                                     |                                     |                |                |  |
| Heritage                     | 151,308                             | 197,762                             | 46,454         | 76.51%         | 335,907  |
| Natural                      | 109,737                             | 121,284                             | 11,547         | 90.48%         | 188,629  |
| Cultural                     | 6,347                               | 23,583                              | 17,236         | 26.91%         | 40,427   |
| Regulatory                   | 374,244                             | 493,842                             | 119,597        | 75.78%         | 846,586  |
| Climate Change               | -                                   | -                                   | -              | -              | -  |
| <b>LANDSCAPES TOTAL:</b>     | <b>641,637</b>                      | <b>836,471</b>                      | <b>194,834</b> | <b>76.71%</b>  | <b>1,411,549</b>                                     |
| <b>LIFESTYLE</b>             |                                     |                                     |                |                |  |
| Youth                        | 173,155                             | 155,853                             | 17,301         | 111.10%        | 264,320  |
| Aged                         | 1,011                               | 1,500                               | 489            | 67.42%         | 1,500  |
| Childcare                    | 4,000                               | 5,875                               | 1,875          | 68.09%         | 6,500  |
| Volunteers                   | 12,799                              | 35,833                              | 23,034         | 35.72%         | 40,000   |
| Access                       | -                                   | -                                   | -              | -              | -  |
| Public Health                | 2,028                               | 5,943                               | 3,915          | 34.12%         | 10,189   |
| Recreation                   | 202,828                             | 269,114                             | 66,286         | 75.37%         | 462,022  |
| Animals                      | 55,960                              | 64,246                              | 8,286          | 87.10%         | 110,137  |
| Education                    | -                                   | -                                   | -              | -              | -  |
| <b>LIFESTYLE TOTAL:</b>      | <b>451,782</b>                      | <b>538,366</b>                      | <b>86,584</b>  | <b>83.92%</b>  | <b>894,668</b>                                       |
| <b>COMMUNITY</b>             |                                     |                                     |                |                |  |
| Retention                    | -                                   | -                                   | -              | -              | -  |
| Capacity                     | 36,182                              | 30,915                              | 5,267          | 117.04%        | 41,925   |
| Safety                       | 38,075                              | 28,117                              | 9,958          | 135.42%        | 51,200   |
| Consultation                 | 10,604                              | 12,925                              | 2,321          | 82.04%         | 21,300   |
| <b>COMMUNITY TOTAL:</b>      | <b>84,861</b>                       | <b>71,956</b>                       | <b>12,905</b>  | <b>117.93%</b> | <b>114,425</b>                                       |
| <b>ORGANISATION</b>          |                                     |                                     |                |                |  |
| Improvement                  | 46,696                              | 66,568                              | 19,872         | 70.15%         | 114,116  |
| Sustainability               | 997,807                             | 1,445,594                           | 447,787        | 69.02%         | 2,370,532  |
| Finances                     | 166,361                             | 174,859                             | 8,498          | 95.14%         | 306,907  |
| <b>ORGANISATION TOTAL:</b>   | <b>1,210,864</b>                    | <b>1,687,020</b>                    | <b>476,157</b> | <b>71.78%</b>  | <b>2,791,555</b>                                     |
| <b>TOTALS</b>                | <b>4,067,740</b>                    | <b>4,893,273</b>                    | <b>825,532</b> | <b>83.13%</b>  | <b>11,190,128</b>                                    |

| <b>SOUTHERN MIDLANDS COUNCIL</b>                                   |   |                 |   |                 |
|--|---|-----------------|---|-----------------|
| <b>SUMMARY OF RATES AND CHARGES LEVIED, REMITTED AND COLLECTED</b> |   |                 |   |                 |
|  | This Financial Year<br>11th February 2020 |                 | Last Financial Year<br>12th February 2019 |                 |
| Arrears brought forward as at July 1                               |   | \$ 429,240.71   |   | \$ 419,894.17   |
| ADD current rates and charges levied                               |   | \$ 5,625,571.60 |   | \$ 5,297,326.00 |
| ADD current interest and penalty                                   |   | \$ 61,196.91    |   | \$ 47,472.90    |
| <b>TOTAL rates and charges demanded</b>                            | 100.00%                                   | \$ 6,116,009.22 | 100.00%                                   | \$ 5,764,693.07 |
| LESS rates and charges collected                                   | 70.11%                                    | \$ 4,287,695.85 | 70.02%                                    | \$ 4,036,442.06 |
| LESS pensioner remissions  | 3.90%                                     | \$ 238,712.14   | 3.94%                                     | \$ 227,211.96   |
| LESS other remissions and refunds                                  | -0.18%                                    | -\$ 11,097.17   | 0.29%                                     | \$ 16,772.93    |
| LESS discounts   | 0.48%                                     | \$ 29,535.30    | 0.49%                                     | \$ 28,524.85    |
| <b>TOTAL rates and charges collected and remitted</b>              | 74.31%                                    | \$ 4,544,846.12 | 74.75%                                    | \$ 4,308,951.80 |
| <b>UNPAID RATES AND CHARGES</b>                                    | 25.69%                                    | \$ 1,571,163.10 | 25.25%                                    | \$ 1,455,741.27 |



**18. MUNICIPAL SEAL**

Nil.

**19. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA**

Council to address urgent business items previously accepted onto the agenda.

**RECOMMENDATION**

**THAT in accordance with Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015*, the following items are to be dealt with in Closed Session.**

| <b>Matter</b>   | <b>Local Government (Meeting Procedures) Regulations 2015 Reference</b> |
|---|---|
| <i>Closed Council Minutes - Confirmation</i>  | 15(2)   |
| <i>Applications for Leave of Absence</i>  | 15(2)(h)  |
| <i>Brighton Road (Old Section of Midland Highway), Pontville / Mangalore – Transfer of Control and Management from Department Of State Growth</i> | 15(2)(b)  |
| <i>Tenders – Annual Reseal and Road Reconstruction Program</i>  | 15(2)(d)  |

| <b>DECISION</b>     |                 |                     |
|---------------------|-----------------|---------------------|
| <b>Councillor</b>   | <b>Vote FOR</b> | <b>Vote AGAINST</b> |
| Mayor A O Green     |                 |                     |
| Deputy Mayor E Batt |                 |                     |
| Clr A Bantick       |                 |                     |
| Clr A E Bisdee OAM  |                 |                     |
| Clr K Dudgeon       |                 |                     |
| Clr D F Fish        |                 |                     |
| Clr R McDougall     |                 |                     |

**RECOMMENDATION**

**THAT in accordance with Regulation 15(2) of the *Local Government (Meeting Procedures) Regulations 2015*, Council move into Closed Session and the meeting be closed to members of the public.**

| <b>DECISION (MUST BE BY ABSOLUTE MAJORITY)</b> |                 |                     |
|--|-----------------|---------------------|
| <b>Councillor</b>                              | <b>Vote FOR</b> | <b>Vote AGAINST</b> |
| Mayor A O Green                                |                 |                     |
| Deputy Mayor E Batt                            |                 |                     |
| Clr A Bantick                                  |                 |                     |
| Clr A E Bisdee OAM                             |                 |                     |
| Clr D F Fish                                   |                 |                     |
| Clr K Dudgeon                                  |                 |                     |
| Clr R McDougall                                |                 |                     |

## **CLOSED COUNCIL AGENDA**

### **20. BUSINESS IN “CLOSED SESSION”**

*Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015 provides that Council may consider certain sensitive matters in Closed Meeting.*

*The following matters have been listed in the Closed Meeting section of the Council Agenda in accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015.*

#### **20.1 CLOSED COUNCIL MINUTES - CONFIRMATION**

#### **20.2 APPLICATIONS FOR LEAVE OF ABSENCE**

#### **20.3 BRIGHTON ROAD (OLD SECTION OF MIDLAND HIGHWAY), PONTVILLE / MANGALORE – TRANSFER OF CONTROL AND MANAGEMENT FROM DEPARTMENT OF STATE GROWTH**

#### **20.4 TENDERS – ANNUAL RESEAL AND ROAD RECONSTRUCTION PROGRAM**

**RECOMMENDATION**

**THAT Council move out of “Closed Session”.**

| <b>DECISION</b>     |                     |                         |
|---------------------|---------------------|-------------------------|
| <b>Councillor</b>   | <b>Vote<br/>FOR</b> | <b>Vote<br/>AGAINST</b> |
| Mayor A O Green     |                     |                         |
| Deputy Mayor E Batt |                     |                         |
| Clr A Bantick       |                     |                         |
| Clr A E Bisdee OAM  |                     |                         |
| Clr K Dudgeon       |                     |                         |
| Clr D F Fish        |                     |                         |
| Clr R McDougall     |                     |                         |

## OPEN COUNCIL AGENDA

### 21. CLOSURE