

23 March 2023

Reference: 1718-087

Mr John Ramsay
Executive Director and Assessment Panel Chair
Tasmanian Planning Commission
144 Macquarie Street
Hobart TAS 7000

By email: tpc@planning.tas.gov.au

Dear Sir

**DRAFT AMENDMENT AM 2018-03 CAMBRIA ESTATE SPECIFIC AREA PLAN
CLOSING SUBMISSIONS**

These closing submissions are provided on behalf of the representor, East Coast Alliance Inc, and address the key issues raised in the hearings, that I submit, form the basis for a refusal of the Draft Amendment.

1. Introduction

- 1.1 It is my submission that the Draft Amendment as certified does not satisfy the legislative provisions of the *Land Use Planning and Approvals Act 1993* (the Act).
- 1.2 It is also my submission that none of the modifications put forward by the Council at the section 39 stage or the applicant through the numerous iterations of modified amendments presented over the past three months sufficiently resolve the issues raised by the Draft Amendment to the extent that it is capable of meeting the relevant legislative provisions.
- 1.3 Indeed, the continuing stream of further suggested modifications to the Draft Amendment by the Applicant through the hearing process, I submit is evidence that the Applicant themselves, are not satisfied that the Draft Amendment satisfies the legislative provisions.
- 1.4 The Draft Amendment seeks to introduce a specific area plan (SAP) to a large area of land, known as Cambria Estate. An area of land that is more than 3,000ha across 12 titles. The area of land affected by the Draft Amendment is greater than the township of Swansea and the Dolphin Sands settlement area combined.
- 1.5 There was broad consensus in the evidence provided to the Commission, that Cambria Estate is significant for several reasons, including its ecological values, Aboriginal heritage, European heritage and landscape values.
- 1.6 Yet through cross examination of the Applicant's own experts, it became apparent that there had been limited to no involvement of any technical experts in preparing the Draft Amendment or reviewing the appropriateness of the SAP standards to ensure the protection of those values. This I submit has been accepted by the Applicant, as they have acknowledged some of these shortcomings in modifications proposed following the hearing process.
- 1.7 In some cases, the experts had been constrained by their brief, as was the case with Ms Catriona McLeod in relation to landscape heritage values or had not been provided an opportunity to do a more detailed site assessment, as was the case with Mr Stuart Huys in relation to Aboriginal heritage.

- 1.8 There has also been insufficient evidence from the Applicant to demonstrate why the Draft Amendment is required to achieve their objectives as stated in the original application being to:
- Support ongoing heritage restoration and adaptive reuse of the Cambria homestead.
 - Support intensive agricultural use of prime and productive agricultural land.
 - Support ecological restoration and protection of important ecosystems.
 - Provide for complimentary tourist facilities and activities to support the broader operations economically.
- 1.9 Indeed, some of the proposed modifications put forward by the Applicant, such as limiting uses in the Agricultural Precinct, would arguably work against the objectives.
- 1.10 In comparison, the ECA case has continued to demonstrate that these objectives are already achievable through the current planning scheme provisions applying to the land.

2. Contents of an LPS

- 2.1 The legislative provisions against which the Draft Amendment must be tested are considered below.
- 2.2 Section 34(2)(a) requires that an amendment results in a planning scheme instrument which contains all the provisions that the SPPs specify must be contained in an LPS. There is no contention that this requirement is satisfied.
- 2.3 Section 34(2)(b) requires that the amendment is in accordance with section 32 of the Act. Of relevance to this Draft Amendment is its compliance with Section 32(4) which requires that a SAP only be applied where:
- (a) *a use or development to which the provision relates is of significant social, economic or environmental benefit of the State, a region or a municipal area; or*
 - (b) *the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.*
- 2.4 It is my submission that subclause (a) of section 34(2)(b) cannot be satisfied.
- 2.5 In the first instance this is because the Draft Amendment and supporting documentation and evidence is seeking provisions which would facilitate a range of unconfirmed outcomes. Indeed, the entire approach to the Draft Amendment that was adopted by Ms Duckett and articulated in her evidence was that the planning process started with an undisclosed 'wish list' from the proponent that was then narrowed through the master planning process. Ms Duckett said in her cross examination that it was for a 'generic tourism development' however it is submitted that it is not possible to determine if there are significant social, economic, or environmental benefit from a generic tourism development.
- 2.6 In the second instance the cost benefit analysis, which was prepared by SGS Economics and Planning cannot, I submit, be relied on for the purposes of this test, due to the extent of reliance on information provided by the proponent. Ms Witte in cross examination confirmed that the costs and benefits were provided by the proponent and not through independent analysis.
- 2.7 Mr Inches in his evidence also raised doubts with the approach taken to some of the costs and benefits. He stated that there was a greater likelihood of people who are attracted to a 'destination' resort or facility to spend more time and money in the resort itself rather than the regional area, particularly with wedding/conference/golf travellers to resorts. He stated that it was a logical strategy for a resort manager to capture as large a share of the dollar spend as possible. However, it means that there was less positive flow on effect to other tourism operators in the East Coast area.
- 2.8 Mr Inches also indicated that the traditional traveller to Tasmania is looking for small scale, intimate experiences and that these are the travellers that provide maximum benefit to Tasmania and regional economies from high levels of spending and dispersal. The tourism concept underpinning the Draft Amendment does not align with this and increases the risk of environmental and social costs through high levels of visitation and unsustainable tourism. Mr Inches drew attention to the

key issues being experienced in the East Coast area due to high levels of visitation during the summer peak periods.

- 2.9 In my submission, based on the evidence of Mr Inches, the potential costs arising from this type of tourism development have not been sufficiently considered and therefore it is difficult to conclude what is the significance of the benefit, if one exists, is.
- 2.10 Turning to subclause (b) while it is incontrovertible that the site has important values, I submit that there is a lack of evidence to support that the site characteristics are sufficiently unique to warrant the inclusion of a SAP.
- 2.11 The evidence provided by Ms McConnell in her written statement (section 4.1.7) and in cross examination, was that Cambria is part of a broader cultural landscape of colonial farming that extended from Swansea through to Cranbrook and Apslawn and includes other similarly THR listed properties.
- 2.12 Mr North, regarding natural values, also noted in his cross examination that while there were important ecological values on Cambria that are, due to its current Agricultural zoning, unprotected, this was not an issue specific to the Cambria Estate and was a matter that he has raised as part of the Local Provision Schedule (LPS) hearing processes for other sites and LPS.
- 2.13 Indeed a large amount of the evidence provided indicated that Cambria had characteristics that were not unique, including:
- Agricultural land characteristics similar to other farming properties along the broader East Coast region, with river flats and valleys suited to cropping and horticulture and hillsides suited to viticulture and grading.
 - Coastal characteristics of other similar rural properties adjoining Moulting Lagoon.
 - Visual landscape characteristics similar to other sections along the Great Eastern Drive.
- 2.14 Furthermore, the purpose of the Draft Amendment does not specifically arise from the site's characteristics and a need to depart from the State Planning Provisions due to the site's characteristics¹.
- 2.15 The motivation for the land owner is for a tourism development on the East Coast and I submit the site's characteristics were an afterthought. This was clear from Ms Duckett's evidence that there was an original wish list which was whittled down through her master planning process and the proposal was for a 'generic tourism development'. All the Applicant's other experts stated in cross examination they were unaware of the provision of the SAP and had not been asked for input into developing standards.
- 2.16 Moreover, apart from the issue of protecting natural values on land zoned Agriculture (see paragraphs 3.55 to 3.61 below) neither the Draft Amendment nor the series of modifications put forward by the Applicant, go to managing or protecting the site's characteristics as a stand-alone objective. The provisions put forward in the SAP are there because the Applicant is seeking to implement a tourism development of a scale and intensity that would, without further protections, be incompatible with those site characteristics.
- 2.17 In summary, the design, scale, and location of the desired tourism outcomes for Cambria Estate across all precincts are not required by the particular qualities of the land and elements of the Draft Amendment, including in its suggested modified form, and would give rise to use and development that are contrary to the qualities of the land.

3. Consistency with the policy framework

- 3.1 Section 32(2)(c) requires that the amendment furthers the objectives of the resource management and planning system set out in Schedule 1 of the Act.

¹ The Commission's decision on AM-CLA-PDPSAMEND-2019-001707 provides guidance on the application of section 34(2)(b).

- 3.2 Section 32(2)(d) requires that the amendment is consistent with each State Policy. All three State Policies are relevant to this draft amendment, being the State Policy on the Protection of Agricultural Land, State Coastal Policy and State Policy on Water Quality Management.
- 3.3 Section 32(2)(e) requires that the draft amendment is consistent with the Southern Tasmania Regional Land Use Strategy.
- 3.4 As these documents form the core basis of the hierarchy of policy and strategic instruments that are used to guide planning decisions and should, I submit, be read in context of each other, my submissions are presented as specific issues.
- 3.5 As came to light during the questioning of the planning experts in the hearing, it is important to recognise that there is an Implementation Statement at the beginning of the regional land use strategy which states:
- “This Strategy applies to Local Provisions Schedules, excluding the Regional Policies contained in sections 5.5, 6.5, 7.5, 8.4, 9.3, 10.5, 11.5, 12.5, 13.5, 14.5, 15.3, 16.5, 17.5, 18.6 and 19.7 in Part C of this Strategy. These Regional Policies are substituted by the Regional Policies contained in the*
- Tasmanian Planning Scheme Addendum for:*
- *Local Provisions Schedules prepared under Part 3A of the Act; and*
 - *Amendments to approved Local Provisions Schedules made under Part 3B of the Act*
- In the event of a conflict or inconsistency between the State Planning Provisions and any substantially similar policy statements in this Strategy, the State Planning Provisions prevail”.*
- 3.6 Therefore, the Regional Land Use Strategy must, it is submitted, also be read in the context of the State Planning Provisions. This is particularly relevant to the application of the biodiversity policies, as the State Planning Provisions are based on an intentional policy decision to prioritise agricultural land use and development over the protection of biodiversity values, through the decision to limit the application of the Priority Vegetation Overlay to land in the Agriculture Zone.
- 3.7 I also submit that it is important to maintain a holistic decision-making mindset in the policy assessment process. Throughout the hearing process, the Applicant made much of how existing permit processes (either planning or through other approvals) deal with the issues raised and rely on the scope of those approvals to limit consideration of issues under the assessment of these three requirements.
- 3.8 It is my submission this is the incorrect approach to the assessment of draft amendment as it does not consider the cumulative impact of what could be approved. The focus on this assessment should be the potential cumulative impact of the full range of potential use and development outcomes that could be issued for a permit on the land if the amendment was approved.
- 3.9 Limitations associated with other legislation that does not form part of the legislative framework for assessing planning scheme amendments should not be justification for turning a ‘blind eye’ to that consideration. This is particularly the case with issues associated with ground water management and wastewater impacts, geo-conservation values and Aboriginal heritage values².
- 3.10 Before I turn to the key issues in the context of these policy and strategic requirements, it is also important to lay some groundwork as to practically how the SAP would be applied at the application assessment stage.
- 3.11 The Applicant’s expert planner, Ms Duckett has heavily relied in her evidence on the local area objectives doing the work for the SAP to achieve the desired outcomes. In particular this includes protecting the values on the land and its site characteristics by appropriately managing use and development.

² This is different to considering the extent to which the legislative or planning scheme requirements provide safeguards to ensure the protection and management of specific matters.

- 3.12 In looking at the latest modification to the SAP put forward by the Applicant on 22 July 2019 – the 7th iteration of the SAP since the Draft Amendment was certified- there is not a single reference to the zone purpose statement or local area objectives in a standard.
- 3.13 While zone purpose statements and local area objectives are matters that a Planning Authority is required to have regard to in determining a discretionary use (Clause 6.10.2 of the planning scheme), they do not provide a basis for the refusal of a discretionary use unless specifically called up by a relevant performance criterion.³

Agricultural land issues

- 3.14 The capacity of Cambria Estate for agricultural use has been the subject of much evidence throughout the hearing process.
- 3.15 There was general agreement between the experts that the flatter parts of the site around the Homestead are highly productive. There was, however, disagreement between the experts on the capacity of the hillside area for agricultural use and what the most appropriate zoning for that land would be.
- 3.16 The *State Policy on the Protection of Agricultural Land 2009* (PAL policy) provides direction on the management of agricultural land in the planning system. The purpose of the PAL policy is “to conserve and protect agricultural land so that it remains available for the sustainable development of agriculture...”
- 3.17 Principle 1 of the PAL policy states that “Agricultural land is a valuable resource and its use for the sustainable development of agriculture should not be unreasonably confined or restrained by non-agricultural use or development”.
- 3.18 Agricultural land is defined under the PAL policy as “all land that is in agricultural use or has the potential for agricultural use, that has not been zoned or developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses”.
- 3.19 The Draft Amendment I submit clearly seeks to introduce an allowable pathway through the planning scheme (by way of a SAP) for a non-agricultural use (tourism) of a scale and intensity that is incompatible with it being Agricultural Land for the purposes of the PAL policy.
- 3.20 The definition of Agricultural land does not refer or mention the productivity value of the land. It does not exclude land that is not suited to cropping or horticulture or improved pasture. The approach under the PAL policy is why, I submit, that the evidence of Mr Lynch should be preferred over the evidence of Mr Wells, who in his evidence used the productivity value of the land for high value agricultural land use to conclude that it was suitable to convert the land to non-agricultural use.
- 3.21 Mr Wells had no regard to the value of the land as part of a larger farm holding and in supporting a broader mixed-use enterprise. The starting point for his assessment, is I submit, the wrong approach. His has sought to identify the most valuable agricultural land on the site so everything else can be given over to tourism use and development with the remaining agricultural land left on the site, used for ‘demonstrative’ purposes to visitors rather than as an agricultural enterprise.
- 3.22 This brings me to the crux of the issue with the Draft Amendment in relation to agricultural land use. The Draft Amendment seeks to introduce a SAP that is incompatible with the underlying zoning, even if Precinct 4 was to be in the Rural Zone. This conclusion is, I submit, unavoidable as both the Agriculture and the Rural Zones already allow for tourism activity of a type, scale, and intensity appropriate to land in that zone. The SAP fundamentally seeks to alter the primary land use from agriculture to tourism and recreation.

³ The decision of the Tasmanian Civil and Administrative Tribunal in *Mount Wellington Cableway Company Pty Ltd v Hobart City Council and Others [2022] TASCAT 128 (3 November 2022)*, directed that the zone purpose statements do not provide a basis for the refusal of a discretionary use unless specifically called up in the performance criterion of a relevant use standard.

Protection of heritage values

- 3.23 These inherent contradictions with the Draft Amendment are also relevant to the management and protection of the historic heritage values.
- 3.24 Ms Duckett's evidence is that part of the reason for the SAP is to facilitate use and development that would support the restoration and adaptive reuse of the historic homestead at Cambria Estate. Yet our evidence that the general provisions at Clause 7.4 of the planning scheme already facilitate restoration and adaptive reuse in a more appropriate way – by directly linking the two outcomes at the development assessment stage – was unchallenged in the hearing.
- 3.25 Indeed, as compared to Clause 7.4 of the planning scheme, which gives discretion to the Planning Authority to overcome any use prohibition provided it is satisfied that it would facilitate the restoration, conservation, and future maintenance of the listed place; the SAP would not provide sufficient basis to prevent a use if it would facilitate the opposite outcome (see paragraph 3.13 above).
- 3.26 Weakening the argument that protection of heritage values is a key reason for the SAP is that the modifications to the SAP now put forward by the Applicant seek to reduce the extent of Precinct 1 to the same area as the heritage listing.
- 3.27 The Draft Amendment does not, I submit, conserve, or protect Cambria Estate's historic heritage significance as required by the objectives of the planning system at Schedule 1, Part 2(g) of the Act.
- 3.28 Turning to Aboriginal heritage values, it is my submission that there is insufficient information for the Commission to make an informed decision, particularly as there was agreement amongst the experts, Mr Huys (for the Applicant) and Ms McConnell (for East Coast Alliance), that the site was likely to have Aboriginal heritage sensitivities given its location and characteristics.
- 3.29 The Applicant submitted a desktop assessment only. That review is from 2016. In his cross-examination Mr Huys noted that the desktop assessment was 7 years old, and, in that time, there had been significant changes to the Aboriginal Heritage Tasmania (AHT) guidelines and standard procedures. He further stated that Aboriginal cultural values play a larger role in reporting than they did in 2016 and that often the significance of a site from a cultural perspective will not come out until the engagement process which is now required by the AHT guidelines.
- 3.30 I submit that this is a particularly important point. The desktop assessment reviewed known Aboriginal Heritage sites only as defined under the *Aboriginal Heritage Act 1975*. They are effectively archaeological sites demonstrating past occupation. They are not representative of broader cultural values, and I submit it is not sufficient to rely on the *Aboriginal Heritage Act 1975* to solely do the work in protecting Aboriginal values in the use and development of land.
- 3.32 This is because the application of the *Aboriginal Heritage Act 1975* is narrow due to the definition of Aboriginal Heritage site achieved by section 7 of that Act and the reliance on the term 'relic'⁴. In addition, the objective of the planning scheme at Schedule 1, Part 2(g), is sufficiently broad to apply to Aboriginal cultural values and, combined with regional policy CV1.3 under the Regional Land Use Strategy, requires land use growth opportunities be avoided in areas where Aboriginal cultural values are known to exist.
- 3.33 In comparison Ms McConnell in her evidence did consider broader Aboriginal cultural values, albeit to a limited degree. She noted that there has been no formal assessment, but her work from 2020 suggested that there may be broader Aboriginal landscape values in the area that have historical significance. This evidence was uncontested and supports the relevance of regional policy CV 1.3.

⁴ A relic is defined under section 2(2) of the Aboriginal Heritage Act 1975 as follows:

- (a) any artefact, painting, carving, engraving, arrangement of stones, midden, or other object, made or created by any of the original inhabitants of Australia or the descendants of any such inhabitants, which is of significance to the Aboriginal people of Tasmania; or
- (b) any object, site, or place that bears signs of the activities of any such original inhabitants or their descendants, which is of significance to the Aboriginal people of Tasmania; or
- (c) the remains of the body of such an original inhabitant or of a descendant of such an inhabitant that are not interred in–
 - (i) any land that is or has been held, set aside, reserved, or used for the purposes of a burial-ground or cemetery pursuant to any Act, deed, or other instrument; or
 - (ii) a marked grave in any other land.

- 3.34 Putting aside the issue about a lack of understanding of the broader Aboriginal cultural values and the impact that the use and development being facilitated by the Draft Amendment would have on those, there is also insufficient information to understand the impact on Aboriginal Heritage sites.
- 3.35 In further cross-examination, Mr Huys specifically stated it would be prudent to do a field survey sooner rather than later, as it provides a better idea of where major issues are present and what the obvious constraints for future development are. He stated that you cannot assume you can mitigate or permit your way through the process.
- 3.36 In summary, I submit that there is insufficient information to determine whether the Draft Amendment achieves consistency with the objectives of the planning system at Schedule 1, Part 2(g) of the Act, given the lack of on-site Aboriginal heritage assessment and that the *Aboriginal Heritage Act 1975* cannot be relied on to provide sufficient safeguards.

Development in the coastal zone

- 3.37 A substantial part of the Cambria Estate is in the coastal zone and is therefore subject to the *State Coastal Policy 1996* (coastal policy).
- 3.38 Ms Duckett in her oral evidence at the hearing indicates that the response in the Draft Amendment to the coastal values of the SAP was to allocate appropriate activities into precincts and allow the SAP to do the work.
- 3.39 The latest and 7th iteration of the SAP put forward by the Applicant does refine the extent of allowable uses in the coastal zone to a greater degree than the Draft Amendment through removing some uses originally intended for Precinct 2 such as the skills training centre and staff accommodation. However, I submit that this insufficiently resolves the concerns with the protection of the coastal values.
- 3.40 The coastal values of the site were uncontested in the hearing. All parties recognise that the site adjoins a RAMSAR listed wetland, Moulting Lagoon and along with the Meredith River foreshore provides important ecological values including habitat for shore birds.
- 3.41 Its coastal values also include the Dolphin Sands Aquifer which in the evidence of Mr Bill Cromer on behalf of East Coast Alliance was described as the largest and most significant coastal sands aquifer in Tasmania.
- 3.42 The coastal policy requires at outcome 2.3.1 that:
Tourism use and development in the coastal zone, including visitor accommodation and other facilities, will be directed to suitable locations based on the objectives, principles and outcomes of this Policy and subject to planning controls.
- 3.43 Outcome 2.3.4 states that:
Tourism development will be located where there is environmental capacity and where it does not significantly conflict with the natural and aesthetic qualities of the coastal zone.
- 3.44 Outcome 2.8.1 states that:
Recreational use of the coastal zone will be encouraged where activities can be conducted in a safe and environmentally responsible manner.
- 3.45 Outcome 2.8.2 states that:
Suitable recreation opportunities will be identified through strategic planning and may be provided in appropriate locations where they do not adversely affect sensitive coastal ecosystems and landforms or in designated areas where such effects can be remedied or mitigated.
- 3.46 The Draft Amendment, even with the latest proposed modifications, seeks to facilitate two golf courses and a clubhouse, watercraft tourism operation, an airstrip, function centre and accommodation in the coastal zone. The golf courses are both a tourism and recreation use. The evidence of Mr Mogford on behalf of the Applicant, was that 30,000 to 40,000 rounds of golf may be expected once the golf courses were established.

- 3.47 The Applicant's evidence from Ms Duckett and Mr Mogford relied as justification that a links style golf course requires a coastal location, drawing on Barnbogle/Lost Farm, Seven Mile Beach and Cape Wickham as examples.
- 3.48 However I submit that the coastal values of this site are more elevated than the sites where these courses are located and that other examples are not sufficient justification alone.
- 3.49 Mr North's evidence on behalf of East Coast Alliance in cross examination was that golf courses can result in complete loss of habitat for native orchid species and due to the potential water quality impacts. He stated that realistically there was potential for impacts on Matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 2002*.
- 3.50 Furthermore, throughout cross examination of the ecological evidence by both Mr Wapstra on behalf of the Applicant and Mr North, it became apparent that the master plan, which is now suggested for inclusion in the SAP by the Applicant, is reliant on a road access to the golf course. This would traverse a conservation covenant area in the coastal zone and near to known nests for the White-bellied Sea-eagle, a listed species under the *Threatened Species Act 1995*.
- 3.52 In response to these concerns, the Applicant is proposing the inclusion of a revised SAP standard that addresses works within 1km of an eagle's nest, with a performance criteria allowing reduction of the buffer to 200m.
- 3.53 Mr North's evidence is that the guidelines issued by the Department of Natural Resources suggest no less than 500m and that there would need to be a limitation on no construction within 1km during the breeding season and that this would practically limit construction to 4 months of the year.
- 3.54 In summary, there was evidence that the development of the coastal zone as envisaged under the Draft Amendment, even in the form of the latest proposed modification, would give rise to potential environmental impacts. No detail on potential mitigation or management of these has been put forward by the Applicant, other than comparing the site with other coastal areas of which, I submit, have less significant values.

Protection of natural values

- 3.55 It was incontrovertible evidence amongst the parties that Cambria Estate has significant natural values. Many of these are addressed in the coastal zone consideration. The focus of the remaining evidence on natural values was those present in Precinct 4.
- 3.56 These values are relevant to whether the Draft Amendment is consistent with the objectives of the planning system at Schedule 1 of the Act and in particular Part 1(a).
- 3.57 The Applicant has made much that the Draft Amendment offers an opportunity to improve the protection of those values by either rezoning the land in Precinct 4 and applying the Priority Vegetation overlay or including provisions in the SAP and therefore this is justification of its approval.
- 3.58 While it is reasonable to conclude that the use of the Priority Vegetation overlay across the land in Precinct 4 will better recognise and protect its natural values, it is also important to recognise that the planning system clearly prioritises agricultural values over natural values, by virtue of of the State Planning Provisions and in particular the exemption of the Agriculture Zone from the Natural Assets Code.
- 3.59 I submit that this prioritisation is not overcome through any other relevant policy. In particular the Regional Land Use Strategy policies are superseded by the State Planning Provisions due to the implementation statement which states:
- In the event of a conflict or inconsistency between the State Planning Provisions and any substantially similar policy statements in this Strategy, the State Planning Provisions prevail.*
- 3.60 Therefore I submit, that while the predominant land use remains agriculture the priority is on the agricultural land use over the natural values.

3.61 Moreover I submit this policy prioritisation is not sufficient justification for the Draft Amendment. Mr North in his cross-examination specifically noted that farming activities are not the same as what could come out of this Draft Amendment and that if it was left to farming, because of the likely lower intensity of farming activity, the values would likely be the same in 50 years and currently there does not appear to be any current threats.

Airstrip

- 3.62 A concern raised in the hearing process was the use of the Airstrip on Cambria Estate by visitors to access the site and the tourism facilities that are being facilitated by the Draft Amendment.
- 3.63 Ms Duckett in her oral evidence stated that the use of the airstrip had been clarified and the intention was for it to retain its existing use rights with a discretionary pathway for other use. Further, that it was not unusual to see an agricultural airstrip and any intensification would need to be assessed for impact. In questioning by the panel, Mr Purves on behalf of the Planning Authority advised that the airstrip has never been used for tourism flights.
- 3.65 The Applicant proposed in the latest round of potential modifications to alter the use standard for the airstrip so that the permitted standard relies on an understanding of the existing number of flights per day.
- 3.66 In the course of the hearing however, it was clear that no one at the hearing knew how many flights currently occur or what the existing use rights were. Mr Purves confirmed that effectively Council had no record. Mr Irving in his submission of 22 June 2021 also addresses this.
- 3.67 The reliance on existing use rights for an acceptable solution, it not I submit, a reasonable planning approach and puts unnecessary pressure on nearby residents to engage in lengthy and complex planning permit processes to resolve the question at a later point in time. This is hardly sound strategic planning as required by the Part 2(a) objective under Schedule 1 of the Act.

Infrastructure provision

- 3.68 The objectives of the planning system at Schedule 1 of the Act require planning decisions to provide for the fair, orderly and sustainable use and development or air, land and water (Part 1(b)) and sound strategic planning (Part 2(a)).
- 3.69 I submit that the integration and coordination of land use and infrastructure decisions is an important element in achieving these objectives. This is recognised in the Regional Land Use Strategy which encourages a more integrated approach to planning and infrastructure in its strategic directions (SD1).
- 3.70 The Applicant has had little regard to the likely future infrastructure needs of the use and development being facilitated by the Draft Amendment and therefore it is, I submit, not possible to demonstrate that the Draft Amendment provides for orderly or sound strategic planning.
- 3.71 Two key infrastructure issues came to light in the evidence and hearing.
- 3.72 The first of these is the provision of water to the potential golf courses. Mr Mogford in his cross examination stated that he estimated between 90 to 100 ML of water annually would be required for irrigation purposes with a water storage facility of between 90 to 140 ML of based on local environmental conditions.
- 3.73 Mr Mogford further stated in cross-examination how it would be supplied; that a main line would be required from the water source and, as he recalls there are options away from the course site for a holding dam. He stated that there was plenty of scope for a holding dam and based on his site visit he recalled there being a walnut orchard and pasture nearby that seemed at the time like a feasible location.
- 3.74 Mr Mogford's evidence gives rise to significant problems for the Applicant. Firstly, his suggestion that the most significant agricultural land on Cambria Estate which has cropping and horticulture productivity value and is in an irrigation area is given over to water storage is a further impediment to consistency with the PAL policy.
- 3.75 Secondly, the evidence of Ms Ketelaar on behalf of the Applicant was to the effect that any stored water from the Swan River Irrigation Scheme cannot be made available to the golf course.

Therefore, there is no information where sufficient water to supply the size of the storage facility indicated by Mr Mogford, would come from.

- 3.76 The second key infrastructure issue is the lack of consideration of wastewater management for the tourism development, particular for the more intensely developable areas under the Draft Amendment such as Precinct 4. The latest round of potential modifications suggests up to 139 villa units, a 150-room resort, an 80 room health retreat as well as a conference centre.
- 3.77 There is the potential for a significant number of people on site at any one time and our evidence is that the potential volumes of wastewater exceed typical allowances for Level 1 on-site wastewater systems. In the evidence of Mr Cromer this could pose a risk to the groundwater system on site, unless treated to a secondary or potentially tertiary treatment system.
- 3.78 These types of systems have potential to trigger approval thresholds beyond the standard planning and plumbing permit systems and may require assessment by the EPA. It would, I submit, be more orderly planning and sound strategic planning to understand these consequences before allowing the scale of tourism use and development on the land.

Other policy issues

- 3.79 Turning to the final legislative requirements of Section 34(2) which also require that:
- The amendment has regard to the Glamorgan Spring Bay Strategic Plan
 - Is consistent with any Local Provisions Schedules that apply to adjacent municipal areas; and
 - Has regard to the safety requirements set out in the *Gas Safety Act 2019*.
- 3.80 It is accepted that these legislative requirements can be satisfied by the Draft Amendment and are not matters of contention between the parties.

4. Proposed modifications

- 4.1 Throughout the legislative assessment process, numerous modifications to the Draft Amendment have been put forward by the Applicant and the Planning Authority. This began at the section 39 stage and has continued throughout the hearing process. The last round of suggested modifications to the Draft Amendment circulated by the Applicant for the purposes of closing submission on 22 July 2022 are substantial and include alternative zonings. It was the 7th iteration of the Draft Amendment.
- 4.2 While it is not unusual for a Draft Amendments to be modified, even to a substantial degree, as a result of the assessment process, it is highly unusual for this to effectively amount to a 'moving feast' or a round table exercise in drafting a scheme amendment. For example, iteration 7 now proposes the application of the Rural Zone for part of the site while during the hearing process the Applicant indicated an intention through another iteration to use the Landscape Conservation Zone for the same part of the site.
- 4.3 I submit that the degree to which the Applicant is requesting to 'transform' the certified Draft Amendment through modifications is not allowed by the Act. It is also evidence that the Applicant themselves are scrambling to pull together a Draft Amendment that can meet the legislative requirement.
- 4.4 The fundamental purpose of Part 3B of the Act is to present an amendment to the LPS for assessment. The purpose of the legislative process is not to collectively draft the amendment. It is also a requirement to undertake the assessment and determine if the amendment to the LPS satisfies the legislative requirements for LPS at section 32 and 34 of the Act.
- 4.5 Continually changing the amendment to the degree that has occurred, undermines the capacity to assess the amendment in accordance with the Act, as new issues are continually raised.
- 4.6 While section 40N of the Act contemplates modification or substantial modification to a draft amendment, it is not, I submit, reasonable to interpret this allowance to permit the Commission to approve an amendment that achieves a different outcome than originally sought. To do so would render section 40N(1)(e) and section 39 of the Act pointless.

- 4.7 I submit that iteration 7 of the Draft Amendment achieves a different outcome than originally certified for the following reasons:
- It changes the purpose of the Cambria SAP including providing for use or development that supports the use of the land for agricultural purposes and providing for the protection, conservation and management of landscape values.
 - It makes numerous changes to the local area objectives.
 - It makes numerous changes to the use table.
 - It amends use and development standards.
 - It alters precinct boundaries.
 - It proposes new zonings and new overlays.
- 4.8 In doing so, it gives rise to new consequences for example the subdivision standards in the Rural Zone would apply to Precinct 4 instead of the Agriculture Zone, where there is not a clear pathway for excision of small lots where visitor accommodation has been built. Or that the SAP now proposes to modify allowable uses to the extent that it is no longer compatible with the purpose of the underlying zone.
- 4.9 In summary, I submit that the purpose of the substantial modification process is to allow a Draft Amendment to proceed where the overall intended outcome is the same as the Draft Amendment which was certified.
- 4.10 If the Commission does not agree with that position, I also submit as identified elsewhere in these submissions, that the latest round of iterations do not sufficiently resolve key issues that have been identified throughout the hearing process.

5. Conclusion

- 5.1 The Draft Amendment is one of the most significant planning scheme amendments put before the Commission and the process to date, has been highly complex. This has been a result of the frequently modified planning scheme standards being suggested by firstly, the Planning Authority, and now the Applicant.
- 5.2 The Applicant has continued to press for modification at every point since the exchange of written evidence and throughout the hearing process. The Applicant has submitted that this is to respond to the issues raised and while some of them do, at every turn the suggested modifications give rise to new and different issues.
- 5.3 Fundamentally this is occurring, because the Draft Amendment is seeking to amend the LPS to achieve an outcome that is inconsistent with the requirements under section 32 and section 34 of the Act.
- 5.4 In the evidence, the Planning Authority and the Applicant has stated that the purpose of the Draft Amendment is to:
- support ongoing heritage restoration and adaptive reuse of the historic Cambria homestead
 - support intensive agricultural use of prime and productive agricultural land
 - support ecological restoration and protection of important ecosystems; and
 - provide for complimentary tourist facilities and activities to support the above activities economically.
- 5.5 Yet this is already facilitated by the planning scheme and the existing zoning, with the exception of the protection of ecological values in Precinct 4 which I submit is not possible, because of the policy prioritisation of agricultural use over protection of natural values inherent in the State Planning Provisions.
- 5.6 I submit, the reason the Applicant continued to raise what seemed like a constant stream of potential modifications through the hearing process, is that they are cognisant that the Draft

Amendment does not comply with the legislative requirements under the Act. Every modification gives rise to new inconsistencies, because they are seeking to achieve an unsupported planning outcome where the cumulative effects of the use and development being facilitated by the Draft Amendment result in significant detrimental impacts on the site's values and the characteristics of the surrounding area.

- 5.7 The Applicant has also sought through cross examination to distract from the key assessment questions before the Commission by focussing on the coverage of other legislation, suggesting that the Commission must be constrained in how it applies the requirements of section 32 and 34 of the Act. They have alternatively focussed on peripheral matters through extensive and at times unnecessarily long cross examination.
- 5.8 Ultimately this Draft Amendment is one, which I submit, the Commission should reject pursuant to section 40(1)(e) of the Act for the following reasons:
- It does not meet section 32(4) of the Act.
 - It does not further the objectives of the planning system in Schedule 1 of the Act. In particular it does not further the objectives at Part 1 (a), (b) and (d) and at Part 2 (a), (c) and g).
 - It is not consistent with the *State Policy on the Protection of Agricultural Land 2009*.
 - It is not consistent with the *State Coastal Policy 1996*.
 - It is not consistent, as far as practicable, with the Southern Tasmania Regional Land Use Strategy. In particular, the regional policies relating to Aboriginal and historic heritage values and tourism.

Yours sincerely



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Director