



**NOTICE OF APPROVED MODIFIED AMENDMENT
TASMANIAN PLANNING SCHEME – CLARENCE
EFFECTIVE DATE – 13 DECEMBER 2023
PDPSPAMEND-2022/028710
457 AND 469 ROKEBY ROAD, HOWRAH**

The amendment to

- Rezone the southeast corner of 469 Rokeby Road, Howrah (folio of the Register 159207/1), including its access strip to Savoy Place, from General Residential to Local Business and to apply the CLA-S23.0 469 Rokeby Road Specific Area Plan (SAP) to that same area;
- rezone the northwest corner of 469 Rokeby road and an adjacent section of 457 Rokeby Road (folio of the Register 159207.2) from General Residential to Local Business and rezone adjacent section of two road parcels (folio of the Register 2228871/1 and 169915/1) from Utilities to Local Business

has been modified in accordance with section 40N(1)(b) of the *Land Use Planning and Approvals Act 1993* and approved under section 40Q by the Tasmanian Planning Commission (the Commission).

The modified amendment to the Local Provision Schedule maps comes into effect on 13 December 2023. The Commission will make the necessary amendments to the planning scheme and the planning scheme maps to give effect to the amendment.

The associated planning permit application for a boundary adjustment in the northwest corner between 469 Rokeby road and an adjacent section of 457 Rokeby Road (folio of the Register 159207/2) and adjacent section of two road parcels has been modified by the Tasmanian Planning Commission under section 42B(1)(b)(ii) of the *Land Use Planning and Approvals Act 1993*.

RELEVANT PLANNING SCHEME: Tasmanian Planning Scheme - Clarence

ADVERTISING EXPIRY DATE: 5 February 2024

The approved modified amendment and permit is being advertised in accordance with section 8A of the *Land Use Planning and Approvals Regulations 2014*, and can be inspected at the Council offices, 38 Bligh Street, Rosny Park, during normal office hours from 18 December 2023 until 5 February 2024. In accordance with legislative requirements, approved amendment and permit can also be viewed at www.ccc.tas.gov.au during these times.

If you would like to make further enquiries, please contact Council's Strategic Planner – Indra Boss on (03) 6217 9550.

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

TASMANIAN PLANNING COMMISSION

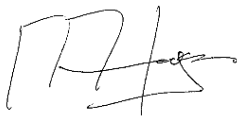
DECISION

Planning scheme	Tasmanian Planning Scheme - Clarence
Amendment	PDPSPAMEND-2022-028710 - rezone part of 457 and 469 Rokeby Road, Howrah from General Residential to Local Business and insert CLA-S23.0 469 Rokeby Road, Howrah Specific Area Plan.
Permit	PDPSPAMEND-2022-028710 - boundary adjustment
Planning authority	Clarence City Council
Applicant	Loci Architecture & Planning for Ruthven Rokeby Road Pty Ltd
Date of decision	20 November 2023

Decision

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

The permit is modified under section 42B(1)(b)(ii) of the *Land Use Planning and Approvals Act 1993*, as set out in Annexure B.



Michael Hogan
Delegate (Chair)



Rohan Probert
Delegate

REASONS FOR DECISION

Background

Amendment

The draft amendment proposes to:

- rezone the southeast corner of 469 Rokeby Road, Howrah (folio of the Register 159207/1), including its access strip to Savoy Place, from General Residential to Local Business and to apply the CLA-S23.0 469 Rokeby Road Specific Area Plan (SAP) to that same area;
- rezone the northwest corner of 469 Rokeby Road and an adjacent section of 457 Rokeby Road (folio of the Register 159207/2) from General Residential to Local Business and rezone adjacent sections of two road parcels (folio of the Register 222887/1 and 169915/1) from Utilities to Local Business.

The SAP would include a use table in substitution for the Local Business Zone Use Table and would provide an additional standard preventing the access strip from being used for vehicular access.

The draft amendment was lodged by Loci Architecture & Planning for Ruthven Rokeby Road Pty Ltd. During the assessment, the Commission was notified that Mr Robert Howie had purchased the site. Ireneinc Planning represented Mr Howie.

Permit

The amendment would facilitate a boundary adjustment between the four lots, they being 469 Rokeby Road, 457 Rokeby Road and two road parcels to the north of these two lots administered by the Department of State Growth. The boundary adjustment seeks to realign the north-western boundaries of 469 Rokeby Road with the adjacent land, so that small sections of land are added to 469 Rokeby Road and removed from 457 Rokeby Road and the two road lots.

Site information

The site is located on the south side of Rokeby Road, Howrah. 469 Rokeby Road is accessible via a one-way turnoff from Rokeby Road and Ploughman Road, and a secondary pedestrian access at the rear of the site connects to Savoy Place.

469 Rokeby Road is 6,888m² and is currently used for commercial use, in the form of a grocery/convenience store, nursery, and retail (bottle shop) store. There is also a single dwelling located on the title which is obscured by the commercial buildings at the front. A large proportion of the site, primarily occupied by those buildings, and the nursery is zoned Local Business, with the carparking area in the south-eastern section of the site and an area in the north-western section of the site being zoned General Residential.

The surrounding land is zoned General Residential to the east, south and west and Utilities to the north. The Parking and Sustainable Transport, Road & Railway Assets, Natural Assets, Flood-Prone Hazard Area, Bushfire-Prone Areas, and Safeguarding of Airports codes apply to the site.

Issues raised in representations

The representors raised the following issues:

- use of the existing laneway to Savoy Place by vehicles rather than pedestrians, and lack of maintenance of the laneway;

- lack of clarity regarding the area of 469 Rokeby Road the SAP applies to;
- changes to the use table for the existing and permitted uses;
- concerns with the permit conditions in relation to the Part 5 Agreement, Landscaping and the TasWater Submission to Planning Authority Notice;
- the appropriateness of expanding the Local Business Zone;
- noise from the existing bottle shop and future development;
- the meaning of an activity centre in the context of the Local Business Purpose Statement.

Planning authority's response to the representations

The planning authority recommended no modifications to the draft amendment or permit in response to the representations.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 25 August 2023.

Appearances at the hearing

Planning authority:	Indra Boss, Strategic Planner
Representors:	Jacqui Blowfield, Ireneinc Planning for Robert Howie Robert Howie Karen Adams

Consideration of the draft amendment

1. Under section 40M of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the draft amendment to the Local Provisions Schedule (LPS) and the representations, statements and recommendations contained in the planning authority's section 40K report and any information obtained at a hearing.
2. A hearing was convened to assist the Commission consider the issues in the representations.
3. The Commission must also consider whether the draft amendment meets the LPS criteria as set out under section 34(2) of the Act:
 - (a) contains all the provisions that the SPPs specify must be contained in an LPS; and
 - (b) is in accordance with section 32; and
 - (c) furthers the objectives set out in Schedule 1; and
 - (d) is consistent with each State policy; and
 - (da) satisfies the relevant criteria in relation to the TPPs; and
 - (e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates; and
 - (f) has regard to the strategic plan, prepared under section 66 of the *Local Government Act 1993*, that applies in relation to the land to which the relevant planning instrument relates; and

- (g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and
- (h) has regard to the safety requirements set out in the standards prescribed under the *Gas Safety Act 2019*.

Specific Area Plan

4. Under section 32(4) of the Act, a LPS may only include a SAP if:
 - (a) a use or development to which the provision relates is of significant social, economic or environmental benefit to the State, a region or a municipal area; or
 - (b) the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.
5. The planning authority's section 40K report considered that the SAP was consistent with section 32(4) of the Act and that:

The proposed provisions in the SAP substitute for the Local Business Zone use Table in the south eastern area of the site, to minimise potential adverse residential amenity impacts, while still supporting appropriate Local Centre commercial uses. The SAP also provides an additional use standard relating specifically to the access strip to Savoy Place, so that it is retained as a pedestrian/cycle access only, thereby leveraging this site-specific connection to the surrounding residential area. Accordingly, the draft SAP is considered to respond to the particular economic, social and spatial qualities of 469 Rokeby Road and is consistent with s.32(4)(b).
6. The planning authority submission dated 11 September 2023 stated in relation to section 32(4)(a) that:

The proposed rezoning will provide greater certainty for existing and future uses at the site, respond to local resident concerns, and consolidate its position as a Local Centre, consistent with the Clarence Retail Strategy 2010.
7. The planning authority also submitted in relation to section 32(4)(b) that the SAP will enable uses consistent with a Local Centre, and that the site is highly accessible by active and public transport options, especially via the access strip to Savoy Place which facilitates its walkability for surrounding residents.
8. The planning authority considered the site to be unique in that it is surrounded by residential uses on three sides and has faced challenges with the evolution of the Rokeby Road – South Arm Highway upgrade program.
9. The planning authority noted that the nature of developments and their operation at the site had generated community concerns and complaints in relation to noise, odours and the limited ability to participate in the planning process.
10. The planning authority provided a comparison with other Local Business Zone land within 2km of the subject site and noted that the majority of those sites were significantly smaller than 469 Rokeby Road, which limits development and use at those sites.
11. The planning authority submitted that 469 Rokeby Road's size of 7,248m² is significant and could support uses such as a petrol station, warehouse and distribution centre, but did not consider these uses appropriate given the proximity of the surrounding General Residential Zone and the known concerns of nearby residents. They also submitted that such development

and use was not appropriate for a Local Centre and would distort the Clarence Activity Centre Strategy 2013.

12. At the hearing, Ms Blowfield, appearing on behalf of Mr Howie, queried whether the proposed SAP was justified and submitted that it was overly restrictive.

13. In her later submission dated 18 August 2023, Ms Blowfield submitted:

The Local Business Zone has been appropriately applied to the main part of the land consistent with this guideline (Guideline No. 1 Local Provisions Schedule zone and code application), the existing development of the land is not consistent with use and development intended for the residential zone. The rezoning of the car parking area already serving the commercial operation on the site is therefore also appropriate to the LBZ.

The uses and development [standards] of the LBZ are focussed on controlling development that is located near to existing residential development as appropriate for a zone which is intended to be located with a boundary to residential zoned land.

We would suggest that the extent of divergence from the standard zone provisions proposed through the SAP [is] unnecessary to provide an appropriate outcome for the subject land, given the other standards in place...

Commission consideration

14. The Commission notes the submission by the planning authority in relation to section 32(4)(a) but is not persuaded that the draft SAP gives effect to that section of the Act.
15. The Commission notes the planning authority's intention to have a single zone apply to 469 Rokeby Road and broadly supports that intent.
16. The Commission also recognises the planning authority's intent to support appropriate local centre commercial uses on the site. It also acknowledges that:
- there may be a scarce supply of Local Business zoned land within the municipal area that can act as local centres to service nearby residential neighbourhoods; and
 - refining the uses ordinarily possible under the Local Business zone to better reflect the principles for Local Centres under the Activity Centre Network of Southern Regional Land Use Strategy may have merit.
17. However, the Commission considers that while there may be potential merit in / social and economic benefits from, a SAP that effectively implements the Activity Centre Network to achieve benefits at a municipal level, the application of such an approach ought to occur to Local Centres on a wider municipal basis rather than to a section of a single site.
18. The Commission also notes the planning authority's submission that the purpose of the proposed SAP's refined Local Business Zone use table is to minimise potential adverse residential amenity impacts on neighbouring properties. Again, while doing so may have potential merit, the Commission considers that any application of such an approach ought to occur on a wider municipal basis rather than to a section of a single site as is proposed in this case.
19. The Commission is therefore not persuaded that:
- the site has particular environmental, economic, social or spatial qualities that are necessarily any different to other similarly sized Local Business zoned sites in the Clarence municipality or other municipalities; or

- that the site requires unique provisions to apply to it due to a particular quality in substitution for, or in addition to, or modification of, the provisions of the SPPs.
20. The Commission notes the submissions of Ms Blowfield and agrees that the extent of divergence from the standard zone provisions proposed through the SAP are unnecessary and that the proposed SAP is not justified.
21. To the degree that there may be some planning merit in giving effect to any specific policies of the Southern Tasmania Regional Land Use Strategy that relate to Local Centres, the Objectives of the Act for sound, orderly and strategic planning necessitate this being considered across that entire Council area rather than applied to a section of one specific site.
22. The Commission finds that the proposed SAP:
- is inconsistent with the requirements of section 32(4), and therefore does not satisfy LPS criterion section 34(2)(b);
 - does not further the Objectives of the Act; and
 - should not be approved as part of the draft amendment.

Application of the Local Business Zone

Regional land use strategy

23. The relevant regional land use strategy is the Southern Tasmania Regional Land Use Strategy 2010-2035 (regional strategy).
24. The applicant's supporting report submitted that the draft amendment is consistent with the Holistically Managing Residential Growth, Creating a Network of Vibrant and Attractive Activity Centres, Supporting Strong and Healthy Communities, and Creating Liveable Communities strategic directions of the regional strategy.
25. The planning authority's section 40F report submitted that the draft amendment was most consistent with the Social Infrastructure, Activity Centres and Settlement and Residential Development policies of the regional strategy.
26. The planning authority's section 40F report submitted that the draft amendment is consistent with the regional policy for Activity Centres noting that the draft amendment will:
- AC 1 - Focus employment, retail and commercial uses, community services and opportunities for social interaction in well-planned, vibrant and accessible regional activity centres that are provided with a high level of amenity and with good transport links with residential areas.
 - AC 2 - Reinforce the role and function of the Primary and Principal Activity Centres as providing for the key employment, shopping, entertainment, cultural and political needs for Southern Tasmania.
 - AC 3 - Evolve Activity Centres focussing on people and their amenity and giving the highest priority to creation of pedestrian orientated environments.
 - [Promote] a greater emphasis on the role of activity centres, particularly neighbourhood and local activity centres, in revitalising and strengthening the local community (AC 1.4);
 - Encourage an appropriate mix of uses in activity centres to create a multi-functional activity in those centres (AC 1.6);
 - Encourage new development and redevelopment in established urban areas to reinforce the strength and individual character of the urban area in which the development occurs (AC 1.8);

- Actively encourage people to walk, cycle and use public transport to access Activity Centres (AC 3.1); and
 - Allow flexibility in providing on-site car parking in the lower order Activity Centres subject to consideration of surrounding residential amenity (AC 3.5).
27. The planning authority's section 40F report submitted that the draft amendment is consistent with the regional policy for Settlement and Residential Development as it will:
- SRD 1 - Provide a sustainable and compact network of settlements with Greater Hobart at its core, that is capable of meeting projected demand.
- SRD 2 - Manage residential growth for Greater Hobart on a whole of settlement basis and in a manner that balances the needs for greater sustainability, housing choice and affordability.
- [Recognise] that the Urban Growth Boundary includes vacant land suitable for land release as greenfield development through residential rezoning as well as land suitable for other urban purposes including commercial, industrial, public parks, sporting and recreational facilities, hospitals, schools, major infrastructure, etc. (SRD 2.4); and
- Encourage a greater mix of residential dwelling types across the area with a particular focus on dwelling types that will provide for demographic change including an ageing population (SRD 2.9).
28. The planning authority considered that under the Activity Centre Network provisions in the regional strategy, the site would be classified as a Local Centre and the proposed rezoning to Local Business would be consistent with those provisions.
29. The planning authority submitted that the Clarence Activity Centre Strategy (2013) noted that Local Activity Centres provide for 'convenience needs for residential areas, do not include major anchor [tenants] and are unlikely to influence the development or structure of an activity centre hierarchy for Clarence'.
30. The planning authority noted that the strategy identified shopping strips on Rokeby Road, Mornington Road, Clarence Street and South Arm Road amongst others as Local Activity Centres in Clarence.

Site suitability

31. The applicant's supporting report considered that the proposed rezoning would not provide for an increased scale of commercial development beyond that of a local centre, which would be consistent with Guideline No. 1 LPS zone and code application (Guideline 1).
32. Guideline 1 states that:
- LBZ 1 The Local Business Zone should be applied to land within urban settlements which provides, or is intended to provide, for the business, commercial and community functions within:
- (a) local shopping strips; or
- (b) town centres for some smaller settlements.
- LBZ 2 The Local Business Zone may be applied to:
- (a) Local Centres and the lower order Minor or Neighbourhood Centres in the Activity Centre Network under the Southern Tasmania Regional Land Use Strategy
33. The planning authority's section 40F report submitted that the site is located within an urban settlement and presents as a 'local shopping strip', and that the proposed rezoning would

provide opportunities to further enhance the provision of commercial and community functions on the land in accordance with LBZ 1.

34. The planning authority considered that the proposed rezoning to Local Business would:

- provide certainty and clarity to those wishing to invest in the site and facilitate further economic development;
- enable the boundary adjustment with adjoining land to the north, north-west to align the property boundaries with actual existing uses at the site, and
- improve local business services/offers, reducing the need for additional vehicular trips further afield.

35. In her representation of 5 May 2023, Ms Adams noted the existence of land zoned General Business on the northern side of South Arm Highway directly across from the site and the recently established Glebe Hill Shopping Centre and submitted that they were likely to satisfy the needs of residents in the area well into the future.

Commission consideration

36. The Commission accepts the submissions of the applicant and planning authority that the application of the Local Business zone to parts of the site as proposed under the draft amendment would be consistent with Guideline 1 and with some Activity Centres policies within the regional strategy.

37. However, the Commission notes that the draft amendment proposes to alter the Local Business zone use table applying to the south-eastern area of 469 Rokeby Road by introducing the proposed SAP over that section of the site.

38. As detailed above, the Commission finds that the proposed SAP is inconsistent with section 32(4) and ought not be supported as part of the draft amendment.

39. The Commission considered that the SAP is fundamentally linked to the proposed underlying zoning and that in effect they are simply two elements of the one amendment.

40. Accordingly, without the SAP in place, the Commission finds that it has no basis for considering the merits of the zoning proposed for the south-eastern area of 469 Rokeby Road, including the access strip to Savoy Place, to Local Business as proposed by the draft amendment. Neither the planning authority, the applicant nor the land owner proposed or suggested that the Local Business Zone should be applied to the south-eastern area of the land in the absence of a SAP.

41. The Commission finds that this element of the draft amendment should be rejected.

42. In relation to the north-western area of the site, the Commission considers that the proposed rezoning of the north-western part of 469 Rokeby Road, the adjacent area of 457 Rokeby Road and areas of the two road parcels to the north to Local Business to be appropriate, and that it should be approved.

43. On that basis, the Commission finds that the draft amendment is, as far as practicable, consistent with Guideline 1 and the regional strategy.

Strategic Plan

44. The planning authority's section 40F report submitted that the draft amendment is considered generally consistent with the overarching goals of the City of Clarence Strategic Plan 2021-2031 for a people friendly city, a well-planned liveable city, a prosperous and creative city, and an environmentally responsible city.

Commission consideration

45. The Commission accepts the planning authority's submission that the draft amendment has regard to the strategic plan.

Changes to the certified draft amendment

46. Changes to the certified draft amendment were discussed with the planning authority and the owner at the hearing.
47. The Commission directed the planning authority to provide a submission on changes to the draft SAP to reflect Council's intent, the LPS criteria and specifically section 32(4) of the Act.
48. The planning authority submission dated 11 September 2023 provided a revised SAP which was redrafted to:
- balance the provisions of the underlying Local Business Zone and the provisions of the existing General Residential Zone in some areas of the site,
 - position the site as a local centre whilst acknowledging its development history,
 - respond to the concerns nearby residents have raised with council in relation to historic and current development and uses at the site, and
 - extend the SAP provisions over the entire site, to better reflect the intent and provide consistent amenity provisions to surrounding residential zoned land.
49. The planning authority submitted that the redrafted SAP provided for permitted uses that more closely aligned with the Local Centre criteria in the regional strategy Activity Centre Hierarchy and provided for limited vehicular use of the Savoy Place access.
50. In response to discussion at the hearing to recognise the intended densification of residential development proposed on the adjoining lot to the north-west, namely 457 Rokeby Road, the planning authority also proposed that the redrafted SAP be applied to the entirety of the site.
51. The planning authority submitted that if the Commission did not support the proposed SAP and its provisions, the site would not be able to fulfill the intended Local Centre role/function in the Clarence Activity Centre Strategy 2013 and Council's reason for supporting the removal of the existing split zoning from the site would no longer apply.
52. In the eventuality of the Commission not supporting the proposed SAP or permit conditions, the planning authority submitted that the draft amendment ought to be modified so that:
- only the land in the north-west corner that is required to facilitate the Boundary Adjustment is rezoned from Utilities to General Residential; and
 - no change is made to the existing split zoning (General Residential and Local Business) of the site, either in the north-west corner or the south-eastern area of the site, thereby limiting the Local Business Zone provisions to their existing footprint.
53. The response submission from Ms Blowfield dated 27 September 2023 disagreed with the planning authority submission and was concerned with the planning authority's suggestion to extend the proposed SAP controls to include the entirety of the property.
54. On behalf of Mr Howie, Ms Blowfield objected to the extension of the application of the proposed SAP and the overall extent of the draft amendment to impose greater restriction on land that was already in the Local Business Zone.
55. She submitted that the proposed additional restrictions on the existing commercial property were unnecessary and unjustified, and had the potential to affect its future sustainability.

Commission consideration

56. Consistent with the considerations above, the Commission does not consider that the changes proposed will meet section 32(4) of the Act and finds that they do not represent sound strategic planning.

State Policies

State Policy on the Protection of Agricultural Land 2009 (PAL Policy)

57. The planning authority submitted that the State Policy is not applicable as the site does not include any land zoned Agriculture or Rural.

State Coastal Policy 1996 (Coastal Policy)

58. The planning authority submitted that the site is located more than 1km from the coast, and is therefore outside the Coastal Zone as defined in the Coastal Policy.

State Policy on Water Quality Management 1997 (Water Quality Policy)

59. The planning authority submitted that the site is located within an urban area, is fully serviced by stormwater infrastructure and any future development would be assessed against the planning scheme standards.

Commission consideration

60. The Commission accepts the planning authority's submissions that the Coastal Policy and PAL Policy do not apply.
61. The Water Quality Policy has application, but the site is serviced by stormwater infrastructure, and any future development would be assessed against relevant planning scheme standards.
62. The Commission finds that the draft amendment is consistent with the Water Quality Policy.

Schedule 1 Objectives of the Act

63. In its section 40F report, the planning authority submitted that the draft amendment would be consistent with all objectives within Schedule 1 of the Act. Their assessment included that:

The draft amendment enables the efficient use of land within an existing urban setting. The land is already developed, is fully serviced and does not include natural resources or ecological processes or genetic diversity that could be promoted...

The draft amendment resolves a historic zoning anomaly on the site and provides for fair, orderly development of the land by providing consistent provisions on the land...
and

The proposed amendment extends the existing Local Business zoning to all of the land associated with 469 Rokeby Road with the draft SAP providing alternative and additional provisions to provide a pleasant, efficient and safe environment for working and living. The draft amendment will ensure additional local services are accessible without the need for a vehicle...

Commission consideration

64. The Commission notes that the SAP included in the draft amendment would alter the use table of the proposed underlying Local Business zone for only a section of the subject site, and not for any other Local Business zoned land within the municipal area.

65. As discussed above, the Commission considers that to the degree that there may be some planning merit in giving effect to any specific policies of the regional strategy that relate to Local Centres, the Objectives of the Act that require sound, orderly and strategic planning necessitate this being considered across that entire municipal area rather than being applied to a section of one specific site.
66. The Commission notes that the Schedule 1 Objectives include:
- Part 1 1(b) to provide for the fair, orderly and sustainable use and development of air, land and water...
 - and
 - Part 2(a) to require sound strategic planning and co-ordinated action by State and local government...
67. The Commission finds that the draft amendment as proposed is inconsistent with the Schedule 1 Objectives of the Act.
68. The Commission finds that subject to the removal of the proposed SAP and the proposed rezoning of the southeastern section of the site to Local Business as discussed above, the modified draft amendment is consistent with the Schedule 1 Objectives of the Act.

Modifications required to draft amendment

69. Under section 40M of the Act, the Commission must consider whether modifications to a draft amendment of an LPS ought to be made.
70. The draft amendment requires modification to delete the proposed rezoning of the south-eastern part of 469 Rokeby Road, including the access strip to Savoy Place from General Residential to Local Business.
71. The SAP is also deleted from the draft amendment.

Decision on draft amendment

72. Subject to the modifications described above and shown in Annexure A, the Commission is satisfied that the draft amendment meets the LPS criteria and gives its approval.

Consideration of the permit

73. In its consideration of the permit under section 42A of the Act, the Commission is required to review the planning authority's decision as reported under section 42B. The permit is for subdivision by boundary adjustment between 457 and 469 Rokeby Road, Howrah and part of two adjacent road parcels.
74. At the hearing, the drafting of the planning permit conditions was reviewed with the planning authority and the owner.

Assessment against the provisions of the planning scheme Local Business Zone Standards

75. The applicant and planning authority assessed the use and development standards of the Local Business Zone that have application to the draft permit.
76. A number of draft permit conditions were discussed at the hearing and via further submission. These are discussed below.

Condition 2

77. At the hearing, Ms Blowfield submitted that condition 2, requiring the owner to enter into a Part 5 Agreement in relation to vehicular access, was not justified, indicating that other mechanisms deal with vehicular access. In her representation dated 5 May 2023, she also submitted:

There is no additional lot created by the application and the boundary adjustment does not create a lot which is not already serviced by an approved access. The existing accesses for both 457 and 469 Rokeby Road are unaffected by the proposed boundary adjustment and... therefore the requirement through this condition for a new Part 5 to be entered in to for these properties appears unnecessary

Commission consideration

78. The Commission agrees with Ms Blowfield's submission and finds that there is not a sufficient nexus between the proposed boundary adjustment and the proposed condition. The Commission therefore modifies the permit by deleting condition 2 and renumbering the permit accordingly.

Conditions 6 and 7

79. Condition 6 of the draft permit requires the submission and approval of a detailed landscape plan for the access strip to Savoy Place and the subsequent carrying out and maintenance in perpetuity of approved works (including a pedestrian/bicycle path, security lighting and landscaping).
80. Condition 7 is linked to condition 6 in that it requires payment to the Council of a bond 1.5 times the estimated cost of works shown on the landscape plan.
81. At the hearing, Ms Blowfield submitted that the conditions were unjustified as they were unrelated to the application being considered and added significant financial cost to the landowner Mr Howie.
82. In her representation dated 5 May 2023, Ms Blowfield made the following submission in relation to condition 6:

There is no development proposed that affects the access strip to Savoy Place and the proposed boundary adjustment relates to land in another part of the lot entirely, it is therefore considered that this condition imposes an unreasonable burden unrelated to the application proposed

83. That representation also included the following submission in relation to condition 7:

Condition 7 relates to a bond for landscaping the only landscaping required is that discussed above which does not relate to the area of the site affected by the boundary adjustment and therefore this Permit condition is not required if the landscape plan condition is not applied

84. Ms Blowfield then submits in relation to conditions 2, 6 and 7 as follows:

The three conditions above are either unnecessary or unreasonable or both, given that they do not relate to the adjustment of the boundaries which is proposed by the application. They impose a burden on the land owner which is unrelated to the proposed development, it is therefore considered that these conditions should not be applied to the Permit.

Commission consideration

85. The Commission agrees with Ms Blowfield's submission and finds that there is not a sufficient nexus between the proposed boundary adjustment and the proposed conditions. The Commission therefore modifies the permit by deleting conditions 6 and 7 and renumbering the permit accordingly.

TasWater conditions

86. The TasWater submission to planning authority notice states that:

CONNECTIONS, METERING & BACKFLOW

1. A suitably sized water supply with metered connections and sewerage system and connections to each lot of the development must be designed and constructed to TasWater's satisfaction and be in accordance with any other conditions in this permit.
2. Any removal/supply and installation of water meters and/or the removal of redundant and/or installation of new and modified property service connections must be carried out by TasWater at the developer's cost.
3. Prior to commencing construction of the subdivision/use of the development, any water connection utilised for construction/the development must have a backflow prevention device and water meter installed, to the satisfaction of

87. The TasWater submission dated 8 September 2023 submitted that:

The reason for Conditions 1-3 is that when boundaries are adjusted, TasWater property connections can end up either outside the lots they currently service, or the sewer property connection may no longer be at the low point of the lot. At the planning stage, we do not generally require a detailed servicing plan, however this was offered when this issue was raised by Council and nothing was forthcoming, see attached correspondence.

Without these conditions connections and meters could be in a third party's land after the adjustment is implemented, or the sewer connection could not be able to service the entire lot of land, therefore causing dispute between landowners and/or TasWater and/or preventing the full utilisation of the land

88. Ms Blowfield's submission dated 27 September 2023 submitted that the mapping information available on the LISTMAP indicates that the water service connections to both 469 and 457 Rokeby Road are not located in the areas directly affected by the proposed boundary adjustment, and the remaining two balance lots are road lots which presumably do not require service connections. It is unclear why any alterations to the existing service connections would be required as part of the application.

89. Ms Blowfield considered the conditions unnecessary and unreasonable given that they do not relate to the adjustment of the boundaries which is proposed by the application, and submitted that these conditions should not be applied to the Permit.

Commission consideration

90. The Commission modifies the TasWater condition 1 as follows:

A suitable water supply with metered connections and sewerage system and connections to each lot of the development must be available to TasWater's satisfaction.

Codes

91. The site is subject to the Parking and Sustainable Transport, Road & Railway Assets, Natural Assets, Flood-Prone Hazard Area, Bushfire-Prone Areas, and Safeguarding of Airports codes.
92. The Commission accepts the evidence of the applicant and planning authority and finds that the proposed development provided for in the permit meets the applicable codes.

Modification to permit conditions

93. The Commission modifies the conditions attached to the permit by deleting conditions 2, 6 and 7.
94. Condition 1 of the TasWater notice requires modification as shown above.
95. Condition 7 on the TasWater notice provides for the payment by the developer of a fee for development assessment and for consent to register a legal document. This condition is not for a proper planning purpose¹ and is to be removed but may be included as advice.

Decision on permit

96. The Commission modifies the conditions attached to the permit granted by the planning authority, as set out in Annexure B.

Attachments

Annexure A - Modified amendment

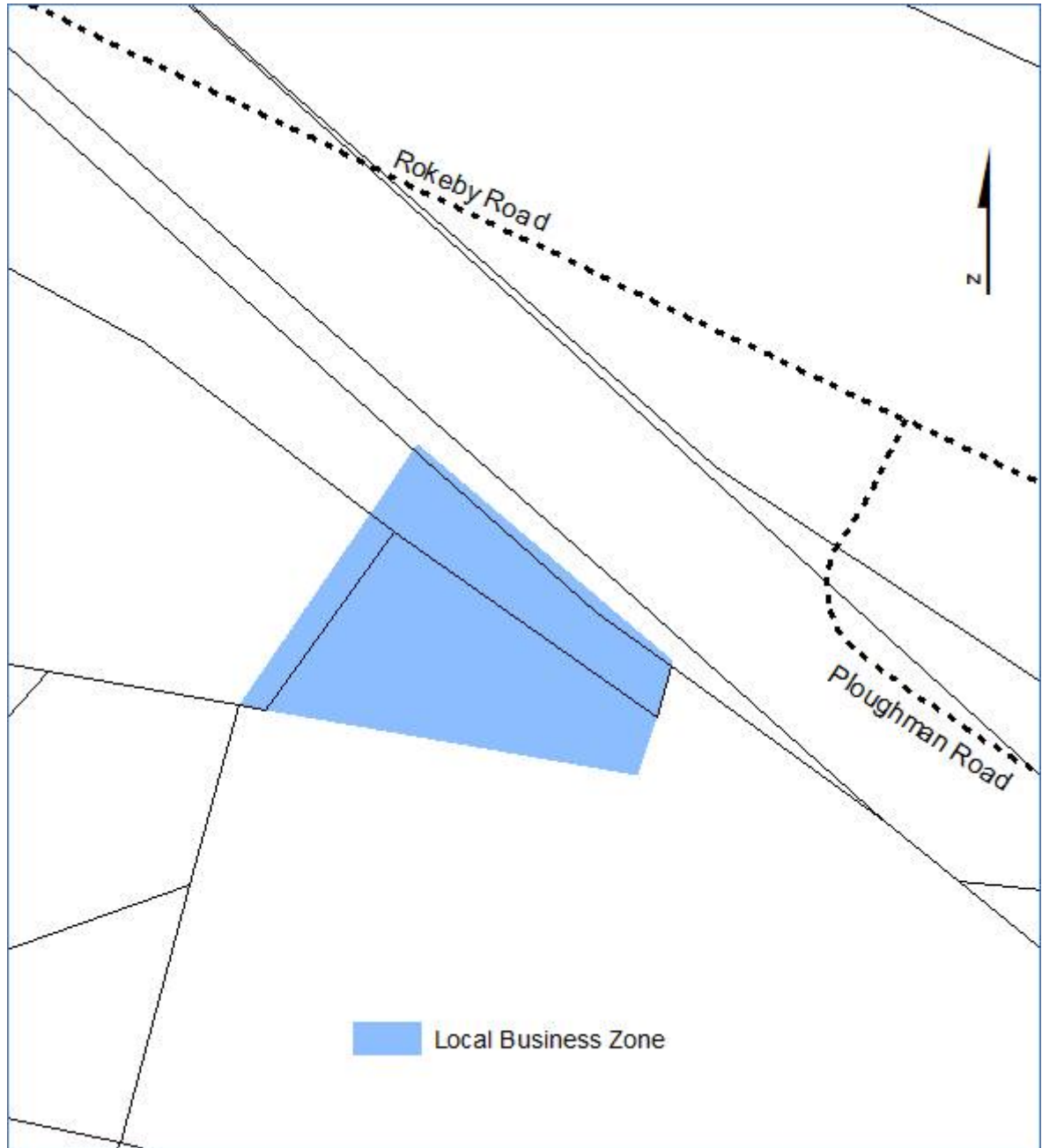
Annexure B - Modified permit

¹ See *Western Australian Planning Commission v Temwood Holding Pty Ltd* [2004] HCA 63 at 57 and 60

Annexure A

Modified amendment PDPSPAMEND-2022-028710

1. Rezone part of 457 Rokeby Road and 469 Rokeby Road, Howrah (folio of the Register 159207/2 and 159207/1) from General Residential to Local Business and the adjacent road parcels (folio of the Register 222887/1 and 169915/1) from Utilities to Local Business, as shown below.



Annexure B

Modified permit PDPSPAMEND-2022-028710

General Conditions:

- 1 The use or development must only be undertaken in accordance with the endorsed plans and any permit conditions and must not be altered without the consent of Council.
- 2 Prior to the sealing of the final survey plan, the portions of land of 457 Rokeby Road, Howrah (CT 159207/2) and the two road parcels (CT 222887/1 and CT 169915/1) included in the boundary adjustment must be transferred from Crown ownership into the same ownership as 469 Rokeby Road, Howrah (CT 159207/1) including all documentation in relation to discharges of any Mortgages, withdrawal of caveats, and all other relevant registrable dealings.

This Transfer must be executed by the Crown, identifying the land to be transferred and the applicant is responsible for all Land Titles Office fees and charges and duty in relation to the document. The applicant remains responsible for ensuring that any Land Titles Office requisitions are effectively resolved and the applicant must meet the costs of such requisitions.
- 3 The Final Plan and accompanying Schedule of Easements must describe all existing easements and any additional easements required in respect of all Council infrastructure required to service the lots in a form to the satisfaction of Council's relevant / delegated officer.
- 4 The Final Plan and accompanying Schedule of Easements must describe all existing easements and any additional easements required in respect of all utilities infrastructure required to service the lots in a form to the satisfaction of the relevant utility service provider.
- *5 The development must meet all required Conditions of Approval specified by TasWater notice, dated 25 October 2022 (TWDA 2022/01990-CCC), except for condition 7 and in accordance with modified condition 1.

***permit conditions modified by the decision of the Tasmanian Planning Commission dated 20 November 2023**



Clarence... a brighter place

Clarence City Council

PLANNING PERMIT

LAND USE PLANNING AND APPROVALS ACT 1993

Development No: PDPSPAMEND-2022/028710

Approval Date: 13 December 2023

Description: Boundary Adjustment

Address: 457 & 469 Rokeby Road, Howrah & 2 road parcels (CT 222887/1 & 169915/1)

This permit is granted, subject to the following conditions:

General Conditions:

- 1 The use or development must only be undertaken in accordance with the endorsed plans and any permit conditions and must not be altered without the consent of Council.
- 2 Prior to the sealing of the final survey plan, the portions of land of 457 Rokeby Road, Howrah (CT 159207/2) and the two road parcels (CT 222887/1 and CT169915/1) included in the boundary adjustment must be transferred from Crown ownership into the same ownership as 469 Rokeby Road, Howrah (CT 159207/1) including all documentation in relation to discharges of any Mortgages, withdrawal of caveats, and all other relevant registrable dealings.

This Transfer must be executed by the Crown, identifying the land to be transferred and the applicant is responsible for all Land Titles Office fees and charges and duty in relation to the document. The applicant remains responsible for ensuring that any Land Titles Office requisitions are effectively resolved and the applicant must meet the costs of such requisitions.
- 3 The Final Plan and accompanying Schedule of Easements must describe all existing easements and any additional easements required in respect of all Council infrastructure required to service the lots in a form to the satisfaction of Council's relevant / delegated officer.
- 4 The Final Plan and accompanying Schedule of Easements must describe all existing easements and any additional easements required in respect of all utilities infrastructure

required to service the lots in a form to the satisfaction of the relevant utility service provider.

- *5 The development must meet all required Conditions of Approval specified by TasWater notice, dated 25 October 2022 (TWDA 2022/01990-CCC), except for condition 7 and in accordance with modified condition 1.

***Permit conditions modified by the decision of the Tasmanian Planning Commission dated 20 November 2023.**

The following advice is also provided:

- a. This Permit will lapse after 2 years from the date on which it is granted unless the development / use has been substantially commenced. Upon request, under Section 42C(4) of the Land Use Planning and Approvals Act 1993 Council may grant an extension of time for a further 2 years. A further 2 years may be granted upon request under Section 42C(5) of the Land Use Planning and Approvals Act 1993. Any such requests must be made in writing and within 6 months of the day on which the permit has lapsed in accordance with Section 42C(3).
- b. This is a town planning permit only. Please be aware that a building permit and / or a plumbing certificate of likely compliance or plumbing permit may be required before the development can proceed. It is recommended that you contact Council's Building Department on (03) 6217 9580 to discuss the requirement for any additional permits or certification.
- c. TasNetworks has a high voltage line running along the property boundary line of 457 and 469 Rokeby Rd Howrah. The developer should contact TasNetworks to discuss safe approach distances and clearances to electricity infrastructure for any development and be aware that restrictions apply to building within electricity easements and wayleaves.

It is recommended that the customer or their electrician contact TasNetworks on 1300 137008 if they have any questions regarding any upgrades, they may require to their electricity supply due to this development.

- d. The Certificate of Title contains several private covenants. Compliance with the covenants is the landowner's legal responsibility and may prevent or alter the ability to act upon this permit.
- e. Non-compliance with this permit is an offence under Section 63 of the Land Use Planning and Approvals Act 1993 and may result in enforcement action under Division 4A of the Land Use Planning and Approvals Act 1993 which provides for substantial fines and daily penalties.



Daniel Marr

HEAD OF CITY PLANNING

THIS APPROVAL IS GIVEN UNDER DELEGATION

Amended Submission to Planning Authority Notice

Council Planning Permit No.	PDPSPAMEND-2022/028710		Council notice date	29/06/2022
TasWater details				
TasWater Reference No.	TWDA 2022/01009-CCC		Date of response	25/10/2022
			Date amended	13/12/2023
TasWater Contact	Al Cole	Phone No.	0439605108	
Response issued to				
Council name	CLARENCE CITY COUNCIL			
Contact details	cityplanning@ccc.tas.gov.au			
Development details				
Address	469 ROKEBY RD, HOWRAH		Property ID (PID)	3023339
Description of development	Scheme Amendment and Subdivision			
Schedule of drawings/documents				
Prepared by		Drawing/document No.	Revision No.	Date of Issue
Rogerson and Birch		Lot Details and Services	A	18/01/2022
Conditions				
Pursuant to the <i>Water and Sewerage Industry Act 2008 (TAS)</i> Section 56S(2) TasWater makes the following submission(s):				
1. TasWater does not object to proposed amendments and has no formal comments for the Tasmanian Planning Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings.				
Pursuant to the <i>Water and Sewerage Industry Act 2008 (TAS)</i> Section 56P(1) TasWater imposes the following conditions on the permit for this application:				
CONNECTIONS, METERING & BACKFLOW				
1. A suitable water supply with metered connections and sewerage system and connections to each lot of the development must be available to TasWater's satisfaction.				
2. Any removal/supply and installation of water meters and/or the removal of redundant and/or installation of new and modified property service connections must be carried out by TasWater at the developer's cost.				
3. Prior to commencing construction of the subdivision/use of the development, any water connection utilised for construction/the development must have a backflow prevention device and water meter installed, to the satisfaction of TasWater.				
FINAL PLANS, EASEMENTS & ENDORSEMENTS				
4. Prior to the Sealing of the Final Plan of Survey, a Consent to Register a Legal Document must be obtained from TasWater as evidence of compliance with these conditions when application for sealing is made. <i>Advice: Council will refer the Final Plan of Survey to TasWater requesting Consent to Register a Legal Document be issued directly to them on behalf of the applicant.</i>				
5. Pipeline easements, to TasWater's satisfaction, must be created over any existing or proposed TasWater infrastructure and be in accordance with TasWater's standard pipeline easement conditions.				

6. Prior to the issue of a TasWater Consent to Register a Legal Document, the applicant must submit a .dwg file, prepared by a suitably qualified person to TasWater's satisfaction, showing:
- the exact location of the existing water and sewerage infrastructure,
 - the easement protecting that infrastructure.

The developer must locate the existing TasWater infrastructure and clearly show it on the .dwg file. Existing TasWater infrastructure may be located by a surveyor and/or a private contractor engaged at the developers cost.

Advice

General

For information on TasWater development standards, please visit <https://www.taswater.com.au/building-and-development/technical-standards>

For application forms please visit <https://www.taswater.com.au/building-and-development/development-application-form>

Development Assessment Fees

The applicant or landowner as the case may be, must pay a development assessment fee of \$226.71, and a Consent to Register a Legal Document fee of \$239.90 to TasWater, as approved by the Economic Regulator and the fees will be indexed, until the date paid to TasWater.

The payment is required within 30 days of the issue of an invoice by TasWater.

Service Locations

Please note that the developer is responsible for arranging to locate the existing TasWater infrastructure and clearly showing it on the drawings. Existing TasWater infrastructure may be located by a surveyor and/or a private contractor engaged at the developers cost to locate the infrastructure.

A copy of the GIS is included in email with this notice and should aid in updating of the documentation. The location of this infrastructure as shown on the GIS is indicative only.

- A permit is required to work within TasWater's easements or in the vicinity of its infrastructure. Further information can be obtained from TasWater.
- TasWater has listed a number of service providers who can provide asset detection and location services should you require it. Visit www.taswater.com.au/Development/Service-location for a list of companies.
- Sewer drainage plans or Inspection Openings (IO) for residential properties are available from your local council.

Declaration

The drawings/documents and conditions stated above constitute TasWater's Submission to Planning Authority Notice.

TasWater Contact Details

Phone	13 6992	Email	development@taswater.com.au
Mail	GPO Box 1393 Hobart TAS 7001	Web	www.taswater.com.au

This plan has been prepared only for the purpose of obtaining preliminary subdivisional approval from the local authority and is subject to that approval.
 All measurements and areas are subject to the final survey.
 Base image by TASMAP (www.tasmap.tas.gov.au), © State of Tasmania
 Base data from the LIST (www.thelist.tas.gov.au), © State of Tasmania



CITY OF CLARENCE PLANNING APPROVAL

DEVELOPMENT PERMIT NO: PDPSPAEMD-2022/028710

DATED: 13/12/2023

NOTE: A separate building and plumbing approval may be required BEFORE the commencement of any building works.

C.T.222887/1
2888m²

C.T.169915/1
641m²

C.T.159207/2
5221m²

C.T.159207/1
6888m²

ROKEBY ROAD

PLOUGHMAN ROAD

BUCKINGHAM DRIVE

PARIS COURT

SAVOY PLACE

existing
Cable Easement

existing
Pipeline Easement

existing
Drainage Easement

existing
Drainage Easement

Existing Titles

Proposed Subdivision

E				
D				
C				
B				
A				
REV	AMENDMENTS	DRAWN	DATE	APPR.



UNIT 1, 2 KENNEDY DRIVE
CAMBRIDGE 7170
PHONE: (03)6248 5898
EMAIL: admin@rbsurveyors.com
WEB: www.rbsurveyors.com

OWNER: Ruthven Rokeby Road Pty Ltd, The Crown
The Crown in right of Tasmania
TITLE REFERENCE: C.T.159207/1, C.T.159207/2
C.T.169915/1, C.T.222887/1
LOCATION: 457 & 469 Rokeby Road
HOWRAH

Date:	7-6-2021	Reference:	LOC1002 13511-01
Scale:	1:750 (A3)	Municipality:	Clarence

This plan has been prepared only for the purpose of obtaining preliminary
subdivisional approval from the local authority and is subject to that approval.
All measurements and areas are subject to the final survey.
Base image by TASMAP (www.tasmap.tas.gov.au), © State of Tasmania
Base data from the LIST (www.thelist.tas.gov.au), © State of Tasmania



CITY OF CLARENCE PLANNING APPROVAL

DEVELOPMENT PERMIT NO: PDPSPAEMD-2022/028710

DATED: 13/12/2023

NOTE: A separate building and plumbing approval may be
required BEFORE the commencement of any building works.

Balance of
C.T.222887/1
3
2639m²

Balance of
C.T.169915/1
4
605m²

Balance of
C.T.159207/2
2
5146m²

ROKEBY ROAD

PLOUGHMAN ROAD

BUCKINGHAM DRIVE

PARIS COURT

SAVOY PLACE

existing
Cable Easement

existing
Pipeline Easement

existing
Drainage Easement

existing
Drainage Easement

Resultant Titles

Proposed Subdivision

Date:	7-6-2021	Reference:	LOC1002 13511-01
Scale:	1:750 (A3)	Municipality:	Clarence

E				
D				
C				
B				
A				
REV	AMENDMENTS	DRAWN	DATE	APPR.



UNIT 1, 2 KENNEDY DRIVE
CAMBRIDGE 7170
PHONE: (03)6248 5898
EMAIL: admin@rbsurveyors.com
WEB: www.rbsurveyors.com

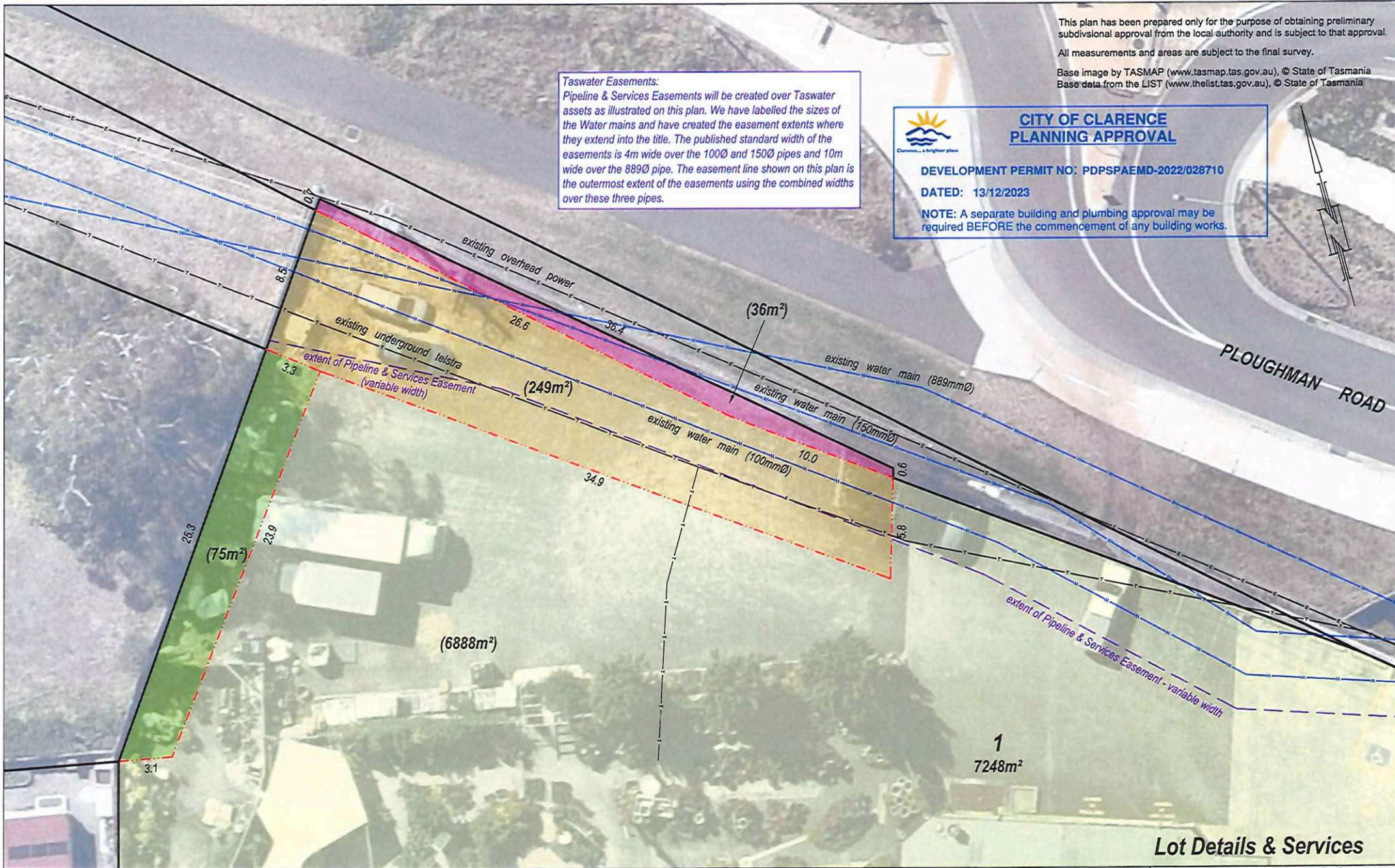
OWNER: Ruthven Rokeby Road Pty Ltd, The Crown
The Crown in right of Tasmania
TITLE REFERENCE: C.T.159207/1, C.T.159207/2
C.T.169915/1, C.T.222887/1
LOCATION: 457 & 469 Rokeby Road
HOWRAH

This plan has been prepared only for the purpose of obtaining preliminary subdivisional approval from the local authority and is subject to that approval.
All measurements and areas are subject to the final survey.
Base image by TASMAP (www.tasmap.tas.gov.au), © State of Tasmania
Base data from the LIST (www.thelist.tas.gov.au), © State of Tasmania



**CITY OF CLARENCE
PLANNING APPROVAL**
DEVELOPMENT PERMIT NO: PDPSPAEMD-2022/028710
DATED: 13/12/2023
NOTE: A separate building and plumbing approval may be required BEFORE the commencement of any building works.

Taswater Easements:
Pipeline & Services Easements will be created over Taswater assets as illustrated on this plan. We have labelled the sizes of the Water mains and have created the easement extents where they extend into the title. The published standard width of the easements is 4m wide over the 1000 and 1500 pipes and 10m wide over the 8890 pipe. The easement line shown on this plan is the outermost extent of the easements using the combined widths over these three pipes.



Lot Details & Services

Proposed Subdivision

E				
D				
C				
B				
A	easement details and pipe sizes added	AB	18-1-22	AB
REV	AMENDMENTS	DRAWN	DATE	APPR.



**ROGERSON
& BIRCH
SURVEYORS**

UNIT 1, 2 KENNEDY DRIVE
CAMBRIDGE 7170
PHONE: (03)6248 5898
EMAIL: admin@rbsurveyors.com
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OWNER: Ruthven Rokeby Road Pty Ltd, The Crown
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LOCATION: 457 & 469 Rokeby Road
HOWRAH

Date:	18-1-2022	Reference:	LOC1002	13511-01
Scale:	1:750 (A3)	Municipality:	Clarence	