

Resource Planning and Development Commission

Land Use Planning and Approvals Act 1993 and Resource Planning and Development Commission Act 1997

Decision and Reasons for Decision

**Launceston Planning Scheme 1996
Draft amendment No. 147**

Draft amendment No. 147 seeks to amend the planning scheme:

- (i) to rezone land (in 4 titles) at Rocherlea and Mayfield from Rural to Closed Residential;**
- (ii) to insert clause 15.10 to require contributions to infrastructure upgrading and drainage works shown in an outline development plan for 3 of the titles;**
- (iii) to insert an outline development plan as Schedule 16 of the planning scheme for land at 6 Reservoir Road Rocherlea, 62 Parklands Parade and 6 Meadowbank Road, Newnham.**
- (iv) to reduce the extent of buffer 2 special provision (for the Remount Road Refuse Disposal Area) over the southern portion of the outline development plan.**

Date and Place of Hearing

Friday 30 January 2009 at Town Hall Launceston commencing at 10.00am.

Delegation

In accordance with its decision dated 5 January 2009 and in exercise of the power conferred upon it by s.8 of the *Resource Planning and Development Commission Act 1997*, the Resource Planning and Development Commission delegated to Mr Robin Nolan and Mr John Vandenberg jointly and severally:

1. its powers and functions under sections 40, 41, 41A, 41B, 42(1), and 42(2) of the *Land Use Planning and Approvals Act 1993* in relation to draft amendment 147 to the Launceston Planning Scheme 1996; and
2. in connection with the exercise of those powers in performance of those functions, its powers under Part 3 of the *Resource Planning and Development Commission Act 1997*.

Representations

Representations were received from:

A Thomas
B Torossi

Appearances at the hearing

Council:

Mr R Jamieson and Mr H Galea (for part of the hearing) represented the Launceston City Council.

Representors:

Ms I Duckett for B Torossi
Mr M Hawkins for B Torossi
Ms B Torossi

Although representors were either in support of the draft amendment or did not wish to come to a hearing, the Commission exercised its discretion pursuant to Section 40(4) of the *Land Use Planning and Approvals Act 1993* to hold a hearing for the purpose of considering a number of issues that arose from the draft amendment.

Issues raised in the Representations

The representation from Ms Thomas simply sought additional information on the proposed amendment.

The representation for Ms Torossi endorsed the amendment as the owner of the land and proponent.

Council's Response to the Representations

In consideration of the representations and the draft amendment Council resolved to support the representations received to Amendment 147 and to recommend:

- 1 *That draft amendment 147 be approved as certified with the following modifications:*
 - (a) *Plan Amendment: Reduce the Buffer Area 2 from the Remount Refuse Disposal Area to 500 metres in accordance with the Landfill Sustainability Guide 2004 (as in Attachment 1); and*
 - (b) *Text Amendment: insert the following clause after proposed clause 15.10.2*

15.10.3 Development within the Buffer Area 2

Any residential and/or sensitive use of land within 'Extent of Remount Buffer' as marked on the Outline Development Plan – Rocherlea Mayfield in Schedule 16 is prohibited without a detailed assessment including noise, particulate (dust) and odour modelling.

Commission's assessment of the draft amendment

Site and locality

The land for rezoning from Rural to Closed Residential borders the Launceston suburbs of Rocherlea, Newnham and Mayfield.

The site for the proposed outline development plan (ODP) involves a smaller area than that for rezoning comprising 3 titles in the name of The Grange (Launceston) Ltd. The total area for the ODP is approximately 80ha. The site is crossed by the Bell Bay Railway, an abandoned rail line and a number of unnamed watercourses.

Access to the site is from Parkland Parade from the south and Reservoir Road from the north. Another area situated off Hargrave Crescent Mayfield of approximately 12.7ha is subject to the rezoning but not the ODP.

The land is vacant and used and developed for pasture and grazing. A small number of endangered flora and fauna habitats were identified in a botanic survey conducted by the proponent's consultant.

The surrounding land to the north and west is generally residential and immediately joining land to the north is used and developed for water reservoirs. Land to the east is generally used and developed for agriculture or remains as remnant forest vegetation, while land to the south is used and developed for open space, including the Mowbray Golf Club and public land. Land further south is used and developed for the Remount Refuse Disposal Area, owned and operated by the Launceston City Council.

Matters for determination

1. Rural to Closed Residential zoning
2. Reduction of Buffer Area 2
3. To insert Clause 15.10 into the Scheme
4. The Outline Development Plan

1. Rural to Closed Residential zoning

Draft Amendment 147 is to amend the plan to show Closed Residential zoning for land generally lying east of Mayfield. Council described the location as 'infill' between and as extensions to existing suburbs and residential development of land that is consistent with Council's residential strategy and housing objectives.

Council's description of the location and its suitability for rezoning is agreed. The rezoning offers the opportunity to improve links between the relatively isolated suburb of Rocherlea and the rest of the urban area. The land has capacity for residential use except in respect of the buffer area to the Remount Road disposal site that is examined below. No physical limitations or competing interest of other land use have emerged from the site investigations and hearing processes.

The area for Closed Residential zoning includes some 12.7ha owned by RE and MA Cadman. This property has access to Hargrave Crescent, Mayfield, is isolated from the applicant's land by the rail line and an abandoned rail corridor. Whilst the Cadman land is identified as 'future urban' on the ODP, the ODP provisions do not apply to the land. This disconnect between the ODP and the Cadman property is identified below with respect to modifications to the ODP. Submissions to the hearing confirmed that the Cadman property is not required as part of the stormwater solution to the ODP.

In addition, Council submitted that the Cadman property, by its location, fixed access points and access to infrastructure, does not need an ODP to determine how the land is to be developed.

Turning to the suitability of the Cadman property for Closed Residential zoning, the southern portion of the property has some limitations for residential development because of slope and drainage. Nevertheless in terms of strategy and location, the Cadman property should be zoned Closed Residential with the details for any subdivision resolved through the normal permit process.

The part of the draft amendment to rezone land to Closed Residential should be approved as certified.

2 *Reduction of Buffer Area 2*

The Remount Road waste disposal site is currently protected by Buffer Area 2 as shown on the plans as a special provision. Scheme provisions for Buffer Area 2 are at clause 45.4 which makes use or development discretionary unless otherwise prohibited by the underlying zone.

Buffer Area 2 provides a 1000m distance setback from the title boundary to the Remount Road Refuse Disposal site. The first matter to be addressed is whether an amendment to Buffer Area 2 was part of the certified documents.

Council's s.35 of LUPAA report to initiate the amendment approved the following:

‘(b) Reduced the Buffer Area 2 from the Remount Refuse Disposal Area, Mowbray.’

This resolution to amend the buffer was not carried forward into the certified documents because, Council submitted, the extent of reduction of the buffer that would still protect the operation of the refuse disposal site had not been defined. Council's response at the hearing was to argue that the intention to reduce the extent of the buffer was advertised and no interest was received from the public.

Council's s.39(2) of LUPAA report referred to further investigations and resolved to the view that the reduced buffer should be set at 500m from the northern extent of the ultimate refuse disposal area. Council further submitted that the buffer protects Council's infrastructure that performs a regional function and that although protection of the refuse site is of vital interest to Council it is of little interest to others and no other land owner is affected.

Buffer Area 2 currently covers the southern portion of the proposed development area including the first stage of implementing the ODP by the extension of Parklands Parade. There is a clear intention by Council to reduce the area of the buffer, the matter was advertised and no public interest was raised, in addition a reduced buffer area was indicated on the ODP.

The Delegates are satisfied that the proposed reduction in the buffer can be dealt with as a modification to the draft amendment rather than an alteration to a substantial degree. It is clear from the cases decided in the Supreme Court of Tasmania that it is for the Commission's Delegates to decide that question, employing their specialist expertise within reasonable limits, provided that the final document does not contain significant changes from the draft amendment as exhibited. In the present case the amended buffer will maintain adequate separation of sensitive uses to now allow Closed Residential zoning within the area of the current buffer. The exclusion of sensitive uses from the modified buffer area can be reinforced by a restriction noted on the face of the ODP, as described below.

The plans should be modified to show the reduced Buffer Area 2 as defined on the plan attached to Council's s.39(2) of LUPAA report.

3. *To insert Clause 15.10 into the Scheme*

Draft Clause 15.10 as certified has two components:

- 5.10.1 sets out requirements for contributions to wastewater treatment for Council’s sewage treatment plants; and
- 15.10.2 requires certain works for on-site retention of stormwater.

Mr Galea submitted that the intent for the specification of infrastructure was to ensure Council’s requirement for contributions to sewerage infrastructure and stormwater were clearly known to the applicant and any other person who does the development.

Mr Jamieson submitted that Council’s support for the draft amendment was subject to, what was described as, ‘non-negotiables’ as follows:

- The creation of connecting roads to link Parklands Parade, Newnham to Reservoir Road, Rocherlea and to enable access to other developable land to the north east.
- Satisfactory contributions to off-site waste water treatment works, resolution of on-site stormwater disposal and the provision of on-site sewerage and water services.
- Retention of the operation of the refuse disposal area by retaining an adequate separation distance to prevent encroachment from sensitive uses.

Draft Clause 5.10 as certified is deficient in that it does not set a head clause for the incorporation of the outline development plan and it deals with the detail of contributions more akin to permit conditions than provisions in a planning scheme.

Submissions to the hearing and assessment of draft clause 15.10 has identified the need for the following modifications.

- (i) The applicant submitted a head clause for 15.10.1 as follows
‘Subdivision of land within the area contained within the Outline Development Plan Rocherlea - Mayfield in Schedule 16 of the planning scheme shall be subject to and in accordance with that plan’.

It was submitted that the above clause identifies the subject of the ODP as ‘subdivision’ and provides the necessary link to the proposed schedule 16. In this context the submissions for Council and applicant confirms that the ODP is concerned primarily with the layout of the subdivision. Land use would be governed by the prevailing standards applying to the Closed Residential zone.

The creation of a link clause to the ODP at schedule 16 is necessary, however the submissions for the Council and applicant are not accepted in total as the ODP provides a layout of areas for housing, roads, open space and commercial activity. It does not show ‘lots’, therefore ‘development’ rather than ‘subdivision’ would better describe the subject matter for the ODP.

(ii) Identify the three titles in the ownership of the applicant as the titles to which contributions to off-site sewerage treatment are applicable. The identified titles are at; 6 Meadowbank Road, 6 Reservoir Road and 62 Parklands Parade.

(iii) On the matter of subdivision, the intent of the ODP is for subdivision in accordance with that plan to be permitted. Development for subdivision in the Closed Residential zone is discretionary, therefore clause 15.10 should make provision for subdivision to be permitted where it is in accordance with the ODP and discretionary where there are departures from the ODP.

(iv) For Council the key requirement is for the applicant to provide a connecting road between Newnham and Rocherlea. The scheme provisions need to address this issue to define the requirement and stage at which the connection road is to be achieved. Submissions for the applicant described the proposed first stage being the extension of Parklands Parade and the bridge over the rail line being the end of stage two.

To address the requirement for the connecting road and staging, the following clauses should be inserted in clause 15.10.

‘Staging of Subdivision

The applicant must submit to the Council for approval a detailed Staging Plan of the Outline Development Plan shown in Schedule 16 with the first subdivision application for the subject land. The approved Staging Plan shall be incorporated as a condition on the Planning Permit’

‘Collector Road

Development in accordance with the Outline Development Plan must provide a collector road between Parklands Parade and Reservoir Road capable of accommodating a public bus route. The collector road must be completed as a through road prior to completion of stage 4 as indicated on the approved Staging Plan.’

(v) Council’s s.39(2) of LUPAA report recommended an additional clause (at 15.10.3) to address the matter of land within Buffer Area 2 (as proposed). The additional recommended clause was as follows:

‘Any residential and/or sensitive use of land within ‘Extent of Remount Buffer’ as marked on the Outline Development Plan-Rocherlea Mayfield in Schedule 16 is prohibited without a detailed assessment including noise, particulate (dust) and odour modelling.’

The subject of the proposed clause is the protection of the refuse site from encroachment of sensitive uses. With the amendment to the ODP as defined below, this additional clause is not required.

(vi) To address vegetation management, clause 15.10 should include the following:

‘Vegetation Management

Development within the ODP must be in accordance with a vegetation management plan prepared by the applicant identifying the protection of

threatened species and the eradication program for weeds and approved by Council.’

(vii) To address the requirements for infrastructure identified in clause 15.10.1 as certified, details of obligations for upgrading of wastewater treatment infrastructure are needed. Clause 15.10. should identify the need for infrastructure as follows:

‘Contributions to sewerage infrastructure

Residential and other use of land within the ODP gives rise to the need to augment off-site sewage treatment for Council’s waste water treatment plants (WWTP). The applicant must: -

- (1) Contribute to the cost of upgrading the Newnham WWTP and Tea Tree Bend WWTP.
- (2) Contribute to the cost of additional works required at the Newnham WWTP and Tea Tree Bend WWTP necessary to provide additional capacity for the development in its fully developed state.
- (3) Provide 3 months notice to Council’s Water and Sewer Directorate to allow the precise calculations and design to be undertaken and to allow the Contribution values of (1) and (2) to be determined.
- (4) Pay the contributions in lump sum components proportional to the size of each stage of the subdivision as determined in an approved Planning Permit.

(viii) Clause 15.10.1 as certified seeks to require the implementation of water saving urban design principles and for stormwater to be retained on-site with off-site flows no greater than that is now the case. The clause is acceptable, subject to modifications to refer to the outline development plan as schedule 16 of the scheme.

With the above modifications proposed clause 15.10 should be approved.

4. *The Outline Development Plan*

The draft amendment is to insert the ODP comprising Figure 4 from the application as schedule 16 of the scheme.

Submissions and assessment of the ODP have identified the need for the following modifications:

(i) To delete land owned by others, specifically land owned by RE and MA Cadman on the face of the ODP and the reference in the legend. Whilst the Cadman land is part of the draft amendment for Closed Residential zoning, development of the land has not received the detailed consideration as applying to the ODP.

(ii) To reduce the area shown as ‘extent of Remount buffer’ to the extent described as 500 metres from the ultimate extent of the Remount Road refuse disposal site and to have the area within the reduced buffer shown coloured yellow-(General Residential) with cross hatching. To delete ‘Extent of Remount Buffer’ and add ‘no habitable buildings’ on the face of the plan so that it applies to the hatched area that defines the buffer.

(iii) The ODP identified locations for various styles and densities of housing and a commercial node. Submissions confirmed that the styles and density of housing as

indicated on the ODP and the location for a commercial node are within scope for permit applications to be considered under the Closed Residential zone use table and standards so that there are no modifications required to this aspect of the ODP.

(iv) The legend to the ODP states:

‘Development is ‘permitted’ to proceed generally in accordance with this ODP (defined as +/-10% variation) any greater variation is discretionary.’

This sets up a concept of permitted and discretionary using a percentage variation without defining what is being measured to determine the variation. This statement should be deleted. Proposed modifications to clause 15.10 to make development for subdivision permitted wherein accordance with the ODP covers the permit status of subdivision under the planning scheme.

(v) The provision of the collector road to join Parklands Parade and Reservoir Drive is based on an indicative staging of development that should be shown on the ODP. The following notation should be added to the legend.

‘Staging of Subdivision and Road Connections

The indicative staging of subdivision and road connections, subject to clause 15.10.6 of the planning scheme shall be as follows:

- Stage 1 Meadowbank Road to the abandoned railway reserve
- Stage 2 Abandoned railway reserve to the Bell Bay Railway Line
- Stage 3 Bridge over Bell Bay Railway Line and area between Bell Bay Railway Line, south-east boundary, north-east boundary and land incorporating proposed oval
- Stage 4 Area or sub-stages following the south-western boundary, completion of collector road link to Reservoir Road.
- Stage 5 Area or sub-stages following the north-western and north-eastern boundaries, construction of road access to north eastern boundary.’

With the above modifications, the ODP should be approved.

Application of State Policies

State Coastal Policy 1996:

The draft amendment does not involve land in the coastal zone as defined in the Policy. The Policy is not applicable to the draft amendment.

Interim State Policy on the Protection of Agricultural Land 2008:

The draft amendment involves agricultural land as defined in the Policy. The land is degraded and classified as mostly class 5. In consideration of location, past urban impacts and surrounding land use there is no basis to retain the land for agricultural use.

State Policy on Water Quality Management 1997

The draft amendment and outline development plan requires stormwater management based on water sensitive urban design. The draft amendment is assessed as being prepared in accordance with the Policy.

National environmental protection measures

National environmental protection measures do not have application for use or development of the site.

Schedule 1 Objectives

Part 1 objectives

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;

The draft amendment furthers the objective for sustainable development of physical resources through the provision for additional residential land in a location that will eventually link through to the isolated suburb of Rocherlea and that is close to, or can provide ready accessibility to urban services. The ODP documentation identifies areas of native vegetation that can be managed through attention to lot densities, permit conditions and the requirement for a vegetation management plan.

(b) to provide for the fair, orderly and sustainable use and development of air, land and water;

The draft amendment furthers the objective for fair and orderly use and development through the provision of additional housing land within adjoining urban areas with ready access to transport, shops and community services.

(c) to encourage public involvement in resource management and planning;

The draft amendment has included public processes.

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c);

The draft amendment furthers this objective consistent with the above objectives.

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

The draft amendment involves the sharing of responsibility for additional housing land and the facilitation of residential development to achieve broader strategic objectives for connectivity between suburbs.

Part 2 objectives

The part 2 objectives are furthered principally in terms of establishing a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land and to secure a pleasant, efficient and safe, living and recreational environment. The amendment and subsequent use and

development seek to protect public infrastructure and has fully considered land capability.

Conclusion

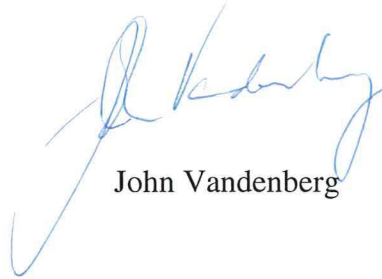
In accordance with s.40(1) of LUPAA, the draft amendment, representations and Council’s report have been considered. The draft amendment is to rezone land to Closed Residential and to insert site specific provisions in the form of an outline development plan. The ODP provides a suitable structure for the staged development of the land. The alteration of the extent of Buffer Area 2 provides adequate separation of sensitive uses from the operations of the waste disposal facility.

Decision

Pursuant to Section 41(a) of the *Land Use Planning and Approvals Act 1993* the Commission requires the planning authority to modify the draft amendment as set out in Annexure A and gives its approval to the draft amendment as modified pursuant to Section 42 of the Act.



Robin Nolan
Chairman



John Vandenberg

Delegates
Resource Planning and Development Commission
23 February 2009

Attachment:
Annexure A: The specified modifications to the draft amendment.

Annexure A

LAUNCESTON PLANNING SCHEME 1996 AMENDMENT No.147

Draft amendment no. 147 is to be modified as follows:

- (i) The plan for rezoning land to Closed Residential, no modifications required.
- (ii) Modify draft clause 15.10 to read as follows:

‘15.10 Provisions relating to ‘The Green, Rocherlea -Mowbray Outline Development Plan’ (ODP)

15.10.1 The ODP at schedule 16 applies to land at 6 Reservoir Road Rocherlea (CT38194/3) 62 Parklands Parade Newnham (CT 140075/1) and 6 Meadowbank Road Newnham (CT140074/16).

15.10.2 Development within the area of the ODP in schedule 16 shall be subject to, and be in accordance with that plan and the provisions below.

15.10.3 Subdivision of land

Despite the provisions of clause 15.3 for the Closed Residential zone, development for subdivision principally in accordance with the ODP in terms of housing areas, road connections and open spaces shall be permitted in accordance with clause 10.2. Development for subdivision that is not principally in accordance with the ODP is discretionary and may be granted a permit in accordance with clause 10.3.

15.10.4 Contributions to Sewerage Infrastructure

Residential and other use of land within the ODP gives rise to the need to augment off-site sewage treatment for Council’s waste water treatment plants (WWTP). The applicant must:

- (1) Contribute to the cost of upgrading the Newnham WWTP and Tea Tree Bend WWTP.
- (2) Contribute to the cost of the additional works required at the Newnham WWTP and Tea Tree Bend WWTP necessary to provide additional capacity for the development in its fully developed state.
- (3) Provide 3 months notice to Council’s Water and Sewer Directorate to allow the precise calculations and design to be undertaken and to allow the Contribution value to be determined.
- (4) Pay the contributions in lump sum components proportional to the size of each stage of the subdivision as determined in an approval Planning Permit.

15.10.5 Works to address Stormwater disposal and treatment.

Development in accordance with the ODP must provide on –site detention of stormwater and include Water Sensitive Urban Design principles. The stormwater detention system shall limit the flow of stormwater from the total site to the flow rate if the land remained undeveloped’.

15.10.6 Vegetation Management

Development within the ODP must be in accordance with a vegetation management plan prepared by the applicant identifying the protection of threatened species and the eradication program for weeds and approved by Council.

15.10.7 Staging of Subdivision

The applicant must submit to the Council for approval a detailed Staging Plan of the Outline Development Plan shown in Schedule 16 with the first subdivision application for the subject land. The approved Staging Plan shall be incorporated as a condition on the Planning Permit’

15.10.8 Collector Road

Development in accordance with the Outline Development Plan must provide a collector road between Parklands Parade and Reservoir Road capable of accommodating a public bus route. The collector road must be completed as a through road prior to completion of stage 4 as indicated on the approved Staging Plan.’

(iii) Insert Schedule 16 Outline Development Plan – Rocherlea-Mayfield after Schedule 15.

(iv) Modify the Outline Development Plan as follows.

1. To delete land owned by others, specifically land owned by RE and MA Cadman on the face of the ODP and the reference to ‘Future Urban’ in the legend.
2. To reduce the area shown as ‘extent of Remount buffer’ to the extent described as 500 metres from the ultimate extent of the Remount Road refuse disposal site and to have the area within the reduced buffer shown coloured yellow-(General Residential) with cross hatching. To delete ‘Extent of Remount Buffer’ and add ‘No habitable buildings’ on the face of the plan so that it applies to the hatched area that defines the buffer.
3. To delete from the legend:

‘Development is ‘permitted’ to proceed generally in accordance with this ODP (defined as +/-10% variation) any greater variation is discretionary.’

4. To add the following notation to the legend of the ODP

‘Staging of Subdivision and road connections

The indicative staging of subdivision and road connections, subject to clause 15.10.6 of the planning scheme shall be as follows:

Stage 1	Meadowbank Road to the abandoned railway reserve
Stage 2	Abandoned railway reserve to the Bell Bay Railway Line
Stage 3	Bridge over Bell Bay Railway Line and area between Bell Bay Railway Line, south-east boundary, north-east boundary and land incorporating proposed oval
Stage 4	Area or sub-stages following the south-western boundary, completion of collector road link to Reservoir Road.
Stage 5	Area or sub-stages following the north-western and north-eastern boundaries, construction of road access to north eastern boundary.’

(v) Modify Plan sheets 15a, 16a and 7a, to omit Buffer Area 2 as currently shown and substitute a line representing Buffer Area 2 as drawn for Council’s s.39(2) of LUPAA report.