

**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**

**GLAMORGAN-SPRING BAY PLANNING SCHEME 1994**

**Draft Amendment**                      **05/04**  
**Draft Permit**                              **04/04020**

**The applications are to:**

- **Insert clause 7.4 Development plan No. 4 Swanwick Golf Course Residential Estate to apply over the provisions for Open Space zoning for land identified as proposed Lot 1 off Hazards View Road, Coles Bay.**
- **Grant a permit for a 1 lot subdivision from the golf course title at Swanwick Road Coles Bay.**

**Delegation**

In accordance with its decision dated 30 March 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 R Nolan and Commissioner S Hogue jointly and severally:

1. Its powers and functions under sections 40, 41, 41A, 41B, 42(1), 42(2), 43G, 43H and 43I of the *Land Use Planning and Approvals Act 1993* in relation to Draft Amendment 05/04 and Permit Number SU04020 to the Glamorgan Spring Bay Planning Scheme 1994; 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*.

**Date and Place of Hearing**

Tuesday, 21 April to Thursday 23 April 2009 at Hearing Room 1, Resource Planning and Development Commission, 4<sup>th</sup> Floor, 144 Macquarie Street, Hobart.

Draft amendment 01/06 to rezone adjoining land to Village was a concurrent application. As the representors and issues were largely common to both applications, the hearings were held concurrently.

**Representations**

Representations were received from the following:

<b>Rep No.</b>	<b>Name</b>
1	Ms Angela Higgins
2	Mr C Woodfield (later C Bell) for Tasmanian Conservation Trust

<b>Rep No.</b>	<b>Name</b>
3	Mr J Hunter
4	Mr & Mrs A & M Morgan
5	Mr & Mrs P & J Godfrey
6	Mr Luke Henry-Middleton for Department of Infrastructure, Energy and Resources
7	Ms A Brammall
8	Mr T Brammall
9	Mr & Mrs K & D Nunn
10	Ms J Longden for Freycinet Golf Club Inc.
11	H Preston and K Paterson
12	Mrs J Watkins
13	Mr A J Gooding
14	Mr J W Snooks
15	Mr K Dean for Freycinet Golf Club Inc.
16	Mr G Peltzer
17	Mr A R Campbell
18	Mr R Heather
19	Mr A Coltier
20	Mr C Mason White, Ms M Robertson, Ms H Jessup and Mr S Rogerson
21	Ms J Hutchinson
22	Ms S Underwood
23	Ms K Barker
24	Ms V Cowie
25	Ms P Denne
26	Mr & Mrs M & M King
27	Mr & Mrs C & J von Bibra for Dunsinane Pty Ltd
28	Ms R Morgan
29	Mr B Williams
30	Mr C G Beecroft
31	R & S Down
32	Mr W Kelly
33	G Roberts
34	Ms P Muir
35	R Alexander
36	K Alexander
37	J Longden
38	Mr R Bird
39	Mrs J Bird
40	Ms S Cowan
41	Mr G O'Neill
42	Mr J Hawson
43	Mr J Faulkner
44	R Cooper
45	K Richmond
46	Mr B Leighton
47	Mr G Leighton
48	Mr R Wilkie
49	Ms B Ferrall

<b>Rep No.</b>	<b>Name</b>
50	L Dransfield
51	Mr J Gough
52	Ms J Gough
53	R Scott
54	A Board
55	N Mithen
56	Mrs & Mrs T & A Howell

### **Appearances at the hearing**

#### *Council*

Mr R Higgins represented Glamorgan Spring Bay Council.

#### *Applicant:*

Ms I Duckett on behalf of Federal Hotels and Resorts and in turn on behalf of Freycinet Golf Club Inc. who called evidence from Mr R Scott, Dr JP Cumming and Dr P Barker.

#### *Representors*

Ms J Feehely of Counsel represented Ms S Underwood and Ms K Barker with Ms S Underwood in attendance.

Mr G Peltzer

### **Issues raised in Representations**

Of the representations received, 27 were in favour of the proposal. These representations referred to the Freycinet Golf Club's ability to develop the community asset and ensure its availability for future generations.

The representations objecting to the draft amendment claimed:

- Adverse impact on the character of the locality.
- Lack of supporting infrastructure.
- Adverse impact from waste water and stormwater on surface and ground water.
- Vagueness of the proposal without clarity of the number of dwellings and location.
- Prospect of a new commercial zone through available discretionary uses, motel, miscellaneous and tourist operation.
- Traffic impacts from residential use and potential commercial use of the site.
- Impacts on coastal environment and loss of remnant vegetation and threatened species.
- Inconsistent with intent and objectives of the Open Space zone.
- The golf course was part of public open space contributions from earlier subdivision.
- Residential development would be incompatible with the operation of the golf course putting the future of the golf course at risk.

### **Council's response to the representations**

In regard to the draft amendment, Council's response to the representations was to resolve to advise the Resource Planning and Development Commission that in its opinion the amendment be modified as follows:

- *The critical review of development categories and associated use status to accord with the intent of the Development Plan.*
- *The formatting of text to reflect that adopted by the planning scheme.*
- *The critical review of statements, terminology and controls in the draft DP and associated text to provide a greater level of certainty and control over the scale, form and location of future development.*

In regard to the permit, Council resolved to advise the Resource Planning and Development Commission that in its opinion the conditions on the permit should be modified. The recommended modifications principally concerned arrangements for the management of stormwater and bushfire.

### **Commission's assessment of the draft amendment**

#### ***Background***

The draft amendment was certified and permit approved in February 2007. The certified document comprised the development plan and associated plan of 'proposed 1 lot subdivision'. Development in accordance with the combined draft amendment and permit was dependent on the provision of a wastewater treatment plant for Coles Bay that was itself dependent on the development of a resort by the Federal Group at Coles Bay. It was proposed that the golf course accept the treated effluent from the plant. Subsequently the proposal for sewerage reticulation emanating from the Federal Group resort was abandoned.

The need to revise the arrangements for the disposal of waste water and the recommendations following Council's s.39 review of representations led to a revised development plan that was provided for the Commission's consideration and circulated to the representors prior to the hearing. A final revision of the development plan was generated during the hearing of representations.

#### ***Site and locality***

The subject site is part of land occupied and developed as a golf course by the Freycinet Golf Club Inc. The draft amendment is to provide for residential use and development on a 1.94ha portion of the 30.36ha Golf Club title.

#### ***The application***

The draft amendment is to set provisions in the planning scheme for use and development for a range of uses on part of the Freycinet golf course that is zoned open space. Justification for the planning scheme provisions was contained in reports that accompanied the application for certification of the draft amendment and later submissions.

The principal proposition in the application was stated as:

'The subject area has been identified as land that is surplus to the needs of the golf course. An appropriately designed and managed development would enhance the

amenity and value of the golf course, as well as complement the existing residential settlement. It is considered that housing can be accommodated within this area without compromising the ongoing use of the golf course, and hence, the scheme's objective for open space zone.'

The area to which the development plan is to apply was described as degraded, eroded and not integrated into the golf course, serves no specific purpose and is redundant.

### ***Applicable zoning***

The application was submitted as a development plan under section 4.20.2 of the planning scheme. The application referred to '*rezone the area identified in appendix F to the Village zone*'. Appendix F appears as a subdivision plan superimposed over an aerial photo. The plan does not provide adequate definition of the area for rezoning and could be interpreted to be the whole of the golf course site.

However, as events unfolded the certified document did not include rezoning to Village and the application of the development plan provisions to lot 1 is sufficiently clear. However, the certified plan defined as lot 1 lacks clarity at the scale at which it was presented.

Village zoning for lot 1 was canvassed at the hearing with differing views expressed which do not need analysis as a change of zoning would be considered to be beyond a modification to the certified draft amendment.

### ***The development plan***

The draft amendment proposes to insert clause 7.4 'Development Plan No. 4 Swanwick Golf Course Residential Estate' to apply to land zoned Open Space. The surrounding land use is residential with Village zoning, Open Space zoning (that is proposed for Village zoning through draft amendment 01/06) and rural zoning.

The intent of the development plan as certified is stated as:

*'To allow for residential development in a golf course setting, whilst observing the primary functions of the course. The site contains remnant native vegetation disturbance of which should be minimised'*

The draft plan as certified is to apply to the extent of any inconsistency to the underlying Open Space zoning and sets provisions for land use, subdivision, consolidation of development, access, open space, vegetation, visual amenity, parking and domestic infrastructure, building form and colour and detail.

As stated above, following the need to review the arrangements for disposal of waste water and to address issues raised by Council in response to representations, the applicant submitted a revised development plan prior to the Commission hearing with a final revision tabled at the hearing.

The revised documents were similar in content but elaborated on the provisions. The intent was replaced with a desired future character statement as follows:

*‘The purpose of this development plan is to facilitate residential development within a golf course setting, whilst preserving the primary function of the golf course. The site contains remnant native vegetation, disturbance of which should be minimised. The visual impact of housing development should be minimised, taking particular care to avoid development which would be prominent when viewed from Coles Bay Road.’*

The versions of the development plan under the various headings describe the intended use and development of the site but lacked specific development standards consequently the various documents lacked certainty. On the certified document standards were confined to a provision for no further subdivision and a maximum building height of 8m. On the final revised development plan submitted at the hearing an additional standard was included to set a maximum number of dwelling units of 15.

In terms of land use, the use classification and qualifications were revised in the later documents. For example the final revision deleted motel and tourist accommodation as available use classes. The availability of these use classes had led to representations claiming the possible development of a ‘commercial zone’ on the site.

The final version introduced an additional instrument in the form of a master plan by containing an additional provision stated as:

‘Any development or works on the site subject to the prior approval of, and compliance with an overall master plan of the site, which must contain access, building envelopes and landscape plan, in accordance with this schedule.’

The draft amendment is styled as a development plan to replace the provisions of the Open Space zone. The development plan, as certified and revised, does little to prescribe the actual use and development of the site which should be its purpose with some assurance that the intent/desired future character is in fact achieved. Instead these details are deferred to a master plan for the necessary level of detail. The master plan would be subject to an undefined prior approval process. Therefore, the development plan does not provide the certainty of development implied by the development plan approach.

### ***Vegetation***

The intent/desired future character statement of the development plan includes a statement about minimising native vegetation disturbance. The botanical survey and fauna habitat assessment (North Barker September 2003) identified two rare plant species listed under the *Threatened Species Protection Act 1993* and reported:

‘the proposed village development as currently presented will probably result in the loss or disturbance to plants or habitat of the vulnerable plant species *Desmodium gunnii*’. (It is noted that this plant is recorded on land immediately adjoining the boundary of the land to which the development plan applies.)

‘The stand of *Eucalyptus ovata* is subject to a moratorium against clearing under the Forest Practices Act as a swift parrot foraging habitat is also classed as vulnerable land under the Act.’

A series of recommendations sought ‘the retention of some of the higher conservation values on the property’ and to define the approvals required under other Acts.

At the hearing Dr Barker submitted that, to avoid bird strike, approval could be sought for the removal of the *Eucalyptus ovata* and consideration of offset planting. This submission led to Ms Duckett proposing the removal of the ovata and replacement with other suitable native vegetation as a provision in the development plan.

The final version of the development plan states:

‘Where possible, development is to be restricted to areas of existing disturbance. No threatened flora is to be disturbed or damaged. Native providence species are to be used for revegetation and landscaping where possible. Notwithstanding the provision of clause 6.92 of the planning scheme, prior to any development occurring on the site, the existing stand of *Eucalyptus Ovata* shall be removed, and replaced with other suitable native vegetation.

All vegetation removal, revegetation, and landscape planting is to be shown on a landscape plan forming part of the master plan for the site.’

Despite an intent/desired future character to minimise vegetation disturbance, following an identified prospect of conflict between bird strike against buildings, there was a proposal to remove an existing stand of *Eucalyptus ovata*. In essence the ability to achieve the intended use and development in accordance with the intent/desired future character for the area has not been demonstrated.

### **Roads**

The Road Needs Study (Tony Peters 2004) concluded:

‘the traffic impacts of the proposed residential village development subdivision and the golf course were factored into the Coroolinda Pty Ltd subdivision proposal and no adverse impacts were identified’

Nothing further arises from road matters. The critical upgrading of the road junctions with Coles Bay Road are required under the permit for draft amendment 01/06 for the adjoining land.

### **Other issues**

The supplementary material provided for the Commission’s hearing examined matters concerning settlement strategy, demographic trends and examples of residential golf courses in other places. Nothing particularly arises from this material.

The supplementary material included a fire management plan that in respect to wild fires stated:

‘the site is considered to be within a bushfire prone area and wild fires can be expected to periodically occur that will affect the site.’

The provision of a building protection zone and a fuel modified buffer zone to minimise the fuel load within close proximity to buildings and other assets was examined. The

consultants that prepared the fire plan advised allowing the golf course to act as the fuel modified buffer zone and a cleared buffer of 3m width of external walls of any structure to act as minimum building protection zone and to remove any large over hanging trees.

The fire management plan refers to retaining the amenity of the golf course, the bushland character and minimising the visual impact of the development from the surrounding areas. The ability to maintain a fire safe environment and to achieve the amenity as described has not been demonstrated for the potential number of dwellings defined for the site.

The geotechnical waste water assessment (JP Cumming undated) found the risk of land instability and inundation of flooding was low and therefore acceptable. The proposed waste water assessment was based on the residential lots and future club house being serviced by a small decentralised waste water treatment plant located on the course close to the residential zone. Treated effluent would be combined with the effluent from the Hazards View Drive treatment plants to be subsequently reticulated for irrigation of the golf course. The waste water calculations were based on 'approximately 15 new residential lots'. The material provided sufficiently demonstrates the suitability of the site in respect to the management of stormwater and disposal of waste water.

An Aboriginal heritage survey (R Sainty 2004) found no aboriginal sites within the survey area. However a further review of the report suggests the survey site is not the subject lot with the statement made that the area had been used for farming and all native vegetation had been removed, the ground was covered by thick grass rendering ground visibility poor.

Mr Scott described the position of the Freycinet golf club submitting:

- The golf club is a community based facility that caters for locals and visitors.
- The club cannot survive without a club house.
- A club house can't be built without a major injection of capital.
- The previous club house was lost in a fire.
- The subdivision will provide the necessary capital.
- The club house will offer the ability to generate additional revenue.

The position of the golf club in attempting to establish a firm financial position and funds for a club house is noted however this is secondary to the sustainable development of the site.

Drafting of some aspects of the development plan will create uncertainty for the future permit assessment process by using phrases such as

'buildings do not become the dominant element in the landscape'.

'Any development within the discretionary building zone or exceeding two storeys in height but provide a visual impact assessment that demonstrates the development will not be visibly prominent when viewed from any public road.'

'Detailing the building should be simple at a general level and well articulated at a more detailed level.'

The inclusion of such statements, lack of clarity of the boundaries of the discretionary building zone and few measurable standards do not aid in providing certainty through the development plan.

In addition, there are unresolved matters relevant to the ability to achieve the intent or desired future character of the development plan including:

- The boundaries for permitted building zones and discretionary building zones as the basis for the classification of use and development, lack clarity. The plan constituting Appendix F in the application and the certified plan (with details barely visible) noted ‘possible building sites’ and ‘discretionary building zine’ (sic) and was a scale that the boundaries would be difficult to determine.
- No assessment of requirements for the manoeuvring of vehicles and location of car parking on the site, water storage and other requirements and the additional areas to be cleared of vegetation to satisfy these requirements.
- No maximum floor area of buildings and definition of area to limit ground disturbance.
- No acknowledgement of requirements for ancillary structures, outbuildings, clotheslines etc. (The schedule defines prohibited use or development as ‘use or development not specifically defined as exempt, permitted or discretionary within the schedule’. This contrasts to another place in the planning scheme where exemptions appear for sheds etc less than 10m<sup>2</sup> and planting untied to any particular zone).
- The means of protecting the golf course interests with subsequent development of lot 1 if conflicts between the uses occur.
- The actual number of dwellings on the site is deferred to the master plan.

The draft amended is deficient in structure and content and has not demonstrated that the intent/desired future character statement can be achieved.

### ***Commission’s assessment of the permit***

The s.43A process grants a conditional permit for the subdivision of one lot of 1.94ha. The lot provides the site for the range of uses and developments intended under the development plan which is central to the draft amendment. As concluded below because the draft amendment is rejected so must the permit be refused.

### **Application of State Policies**

#### *State Coastal Policy 1996*

The site is within the coastal zone as defined in the Policy. The application assessed as being prepared in accordance with the State Policy primarily because it meets the requirements of:

- 2.4.2. *Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.*

#### *Interim State Policy on the Protection of Agricultural Land 2008*

The land is not agricultural land as defined in the Policy. The application is assessed as being prepared in accordance with the *Interim State Policy on the Protection of Agricultural Land 2008*.

*State Policy on Water Quality Management 1997*

The proposed arrangements for stormwater management and waste water disposal should ensure use or development in accordance with the Policy. The amendment is assessed as being prepared in accordance with the *State Policy on Water Quality Management 1997*.

*National Environmental Protection Measures*

The NEPMs are not applicable to the applications.

**Schedule 1 objectives Land Use Planning and Approvals Act 1993**

**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 has not demonstrated that this objective has been furthered. The maintenance of ecological processes and genetic diversity are matters applicable to the site.

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

The draft amendment has not demonstrated that the proposals for the site are fair, orderly and sustainable use and development.

- (c) *to encourage public involvement in resource management and planning.*  
The draft amendment has been through the formal public processes required by LUPAA.

- (d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c) above.*  
The draft amendment does not facilitate economic development consistent with the preceding 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 deficiencies and unresolved issues of the development plan do not assist in furthering this objective.

**Part 2 objectives**

The Part 2 objectives are not furthered 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 that demonstrates the intended use or development secures a pleasant, efficient and safe working, living and recreational environment.

**Conclusion on the draft amendment**

The draft amendment seeks to make particular provisions for residential use and development on part of the golf course. The draft amendment is deficient in structure and content and has not demonstrated that the intent/desired future character statement of the amendment can be achieved. The draft amendment should be rejected.

**Conclusion on the permit**

As the draft amendment is rejected the permit is refused.

**Decision**

The Commission rejects the draft amendment pursuant to Section 41(b) of the *Land Use Planning and Approvals Act 1993*) and refuses the permit.

Pursuant to Section 43H (1)(b)(i) of the *Land Use Planning and Approvals Act 1993* the Commission refuses the permit.



Robin Nolan  
Chairman



Sandra Hogue

Delegates  
Resource Planning and development Commission

30 June 2009