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

BURNIE PLANNING SCHEME 1989
Draft Amendment 35
Permit Application No SD1036

To rezone land , from RESERVED RESIDENTIAL and OPEN SPACE to RESIDENTIAL 'A' and OPEN SPACE, and permit a residential subdivision on the rezoned land.

Date and Place of Hearing Thursday 30 August 2007,
at Burnie City Council,
80 Wilson Street, Burnie

Delegate
At its meeting on 16 July 2007 and pursuant to Section 8 of the *Resource Planning and Development Commission Act 1997*, the Commission delegated to Mr. Clarry Pryor and Dr. Frances Mowling:

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 35 to the Burnie Planning Scheme 1989; 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*.

Representors
Ms. Christine Fisher and family
Ms. Elizabeth Thomson
D. Hale
Mr. Neil Greives and Ms. Lynnn Greives
Mr. James Dobbie
Ms. Katrina Hay

Appearances

Burnie City Council:	Mr. P. Earle	Director Land and Environment Services
	Ms. M. Edwards	Planning Development Manager
Applicant:	Mr. M. Lester	Lester Franks Survey and Geographic Pty. Ltd. obo Ritson and Partners
	Ms. Claire Hughes	Lester Franks Survey and Geographic Pty. Ltd. obo Ritson and

		Partners
	Mr. C. Ritson	Ritson and Partners
	Ms. Tanya Ford	Coffey Geotchnics
Expert advisor to the Commission:	Mr. C. Mazengarb	Mineral Resources Tasmania

Amendment
The draft amendment proposed to rezone land off View Road and Lyons Street, Burnie, from RESERVED RESIDENTIAL and OPEN SPACE to RESIDENTIAL 'A' and OPEN SPACE.

Permit
The permit proposed to allow a subdivision of 71 residential lots, a road and two open space areas, on the rezoned land.

Issues raised in Representations
(a) Loss of open space to residential development
(b) Deficiencies in open space areas
(c) Inadequate pedestrian access and linkages
(d) Increase in ageing population and impact on provision of medical and hospital services
(e) Traffic congestion and safety issues
(f) Deficiencies in relation to vehicle speed and sight distances at View Road junction
(g) Geotechnical report incomplete

Council's Report
In accordance with Sections 39(2) and 43F(6), Council submitted a report and recommendations after considering the representations received.

Issue (a):
It was submitted that over the past 25 years the subject site had been transformed from a refuse area to open space used by walkers, runners, and students attending the local colleges. The rezoning would result in a loss of this open space, and probably a loss of the existing grassland habitat for flora and fauna.

In response Council stated that the representations misunderstood the location of the subdivision and over-estimated the impact on the established open space areas. The land subject to the subdivision application was not actually available for, or currently used for open space purposes. It was above the valley floor, which would remain as open space.

The open grass land was regularly slashed to reduce fire risk and was not considered to support a significant range of flora or flora species.

Council determined that no modification of the draft amendment or permit was required.

Issue (b):
It was submitted that the lack of a landscaping plan made it difficult to assess the value of the open space shown in the proposal. Also, the area of open space adjacent to Terryland Street was very steep and seemed to have little value in terms of either recreational use or visual appeal. Proper landscaping of the area would provide some visual amenity. The retention of open space along Shorewell Creek was supported, but the area should be properly upgraded.

Council considered that the representations had merit. The land fronting Terryland Street (approx. 5000 sq. m) was steep, of little substance, difficult to maintain, and would result in additional cost to the community. The land should be absorbed into the lot layout.

Further, the developer should be required to make a contribution and establish landscaping throughout the existing open space area, preferably in native species, and also establish a walking trail to link View Road and the existing Shorewell Creek walkway. Maintenance would be the Council's responsibility.

Council recommended:
1. that the subdivision layout plan be amended to <u>not</u> show the open space area to the east of the subdivision, off Terryland Street; and
2. that the developer be required to submit a landscaping plan detailing the establishment of trees and shrubs and a pedestrian walkway on the adjoining Shorewell Creek open space area, linking the roadway to Council's existing Shorewell Creek walkway with View Road.

Issue (c):
It was contended that lots in the Jorgensen Street subdivision, fronting the subject land, were purchased on the understanding that a link road would connect to a north- south road on the area now proposed for subdivision. This would allow access to the open space and the Shorewell Creek walking track, and pedestrian access to the Burnie Primary School and tertiary education facilities.

Council concluded that the representation had merit. However a vehicular link could result in the funnelling of traffic through the proposed subdivision. It was considered that wide walkways (for safety) should be established from Jorgensen Street and from Terryland Street to the new road. Council recommended that the draft permit be modified to require pedestrian walkways from Jorgensen Street and Terryland Street to the new road.

Issue (d):
It was submitted that the local population was ageing and further subdivision would attract 'baby boomers'. This would have an impact on the provision of medical services and hospital beds.

Council's response was that the Tasmanian population as a whole was ageing but this did not preclude the creation of urban residential lots. Primarily, the provision of adequate medical services fell under State Government jurisdiction.

Council determined that no modification of the draft amendment was required.

Issue (e):
It was submitted that the proposed subdivision was an opportunity to provide a direct vehicular link between West Park Grove and Terryland Street. The current vehicle link was via six residential streets which were required to provide a distributor road function. A subdivision of the size proposed would normally have two access points to provide for emergency service access and lessen the impact on the View Street intersection.

Council considered that there were two potential options:
1. To create a closed subdivision, with the road terminating within the subdivision, thus preventing the creation of a through road which may result in the funnelling of a large flow of traffic from the eastern residential area into View Road. This option would provide a preferred residential amenity for the subdivision, and lessen the long term traffic impact on View Road; or
2. To require a link to adjoining land owned by the Council, creating a potential for traffic from the east to use the proposed road as a through road onto View Road.

Council recommended that the layout be modified to show the primary road terminating in a cul-de-sac within the subdivision, with no through road in the area (Option 1).

Issue (f):
The representor made a detailed technical submission in relation to aspects of the Traffic Impact assessment which accompanied the application.
The issues raised included:
- Sight Distances at intersections
- Vehicle speeds
- Major road gradient
- Subdivision traffic generation
- Average annual daily traffic
- Peak hour traffic

Council referred the submission to the applicant, whose consultants provided a detailed response and commentary on the issues raised.

Council determined that no modification of the permit was required.

Issue (g):
It was submitted that the geotechnical report accompanying the application did not include an Engineering Certificate as required by Section 4 of the planning scheme, which related to areas of doubtful land stability.
The consultant report only provided an indicative delineation of areas that would be subject to restricted development, and did not indicate the extent of cut and fill or the

treatment of surface storm water. It was requested that permit conditions address this issue.

Council acknowledged that the site was in an area of doubtful land stability and that the geotechnical report was limited to determining the general suitability of the site for the proposed subdivision. All built development in the site would be subject to Clause 4.3 0f the planning scheme and would need to be supported by an engineering certificate stating that development would not have an adverse impact on surrounding property.

Council recommended that the permit be amended to require a certified engineering certificate in relation to the road and infrastructure works associated with the subdivision, stating that the works met the requirements of Clause 4.3 of the scheme, for that part of the works proposed.

In conclusion Council's S.39 report recommended that the Resource Planning and Development Commission amend the draft permit SD 1039 as follows:

1.1 Delete condition No.1 and insert the following:

"1. that prior to sealing of the Final Plan the Permit holder is to submit a revised subdivision layout plan, generally in accordance with the plan by Lester Franks Survey and Geographic Pty. Ltd. dated 11 June 2004, amended to show:

(a) a 4m wide pedestrian walkway from Jorgenson Street to the proposed Road;
(b) a 6m wide pedestrian walkway from Terryland Street to the proposed Road;
(c) a walkway in the western public open space area linking View Road to the Shorewell Creek walkway;
(d) the open space area adjoining Terryland Street deleted from the plan and absorbed into lot layouts;
(e) a cul-de-sac formed at the southern termination of the main road; and
(f) all lots to be serviced by the internal road network."

1.2 amend condition 2 to read:

"2 that prior to the sealing of the Final Survey Plan the Permit holder is to enter into an agreement under Part 5 of the Land Use Planning and Approvals Act 1993. The agreement is to be prepared at the Permit holder's cost and is to advise the following:

(a) the land was subject to filling operations and that prior to any works in individual lots, the suitability of the land for construction is to be determined."

1.3 insert the following after condition No. 1:

"3. that prior to sealing of the Final Survey Plan the Permit holder is to submit a landscaping plan for endorsement as part of this approval (hereinafter described as the 'approved landscaping plan') showing :

(a) a sealed walkway in the Shorewell Creek western public open space area shown on plan, with the walkway linking View Road to Council's established Shorewell Creek walkway;

(b) landscaping to the public open space areas shown on plan, comprising native tree and shrub species and grassland;
(c) details of landscaping species, numbers and planting layout; and
(d) seating along the public open space walkway."

1.4 insert the following after condition No. 8

"9. that all works detailed in the landscaping plan must be established prior to completion of Stage One of the subdivision;
10. that the permit holder is responsible for maintenance of the landscaped public open space areas for a period of 26 weeks following sealing of the Final Survey Plan."

1.5 amend condition No.16 as follows:

"16. that a temporary cul-de-sac is to be constructed at the end of each of the roadways at the termination of each stage of the subdivision, such that a long-axle truck (garbage truck) is able to turn."

1.6 insert the following after condition No.16

"17. that the road is to have a 15m road reserve and an 8m road width;
18. that the road design must incorporate local area traffic management devices to reduce vehicle speed;
20. that the right hand turning lane, as specified in the Traffic Impact Assessment by Pitt and Sherry, is to be incorporated into the design of the View Road intersection."

Commission's consideration of the draft amendment
Council's initiation report identified the subject land as an area off View Road and Lyons Street, Burnie, comprising Certificate of Title 251473/1 of 6.262. ha, and Certificate of Title 199876/1 of 8.82 ha. The land is an internal parcel that had been substantially modified by past use as a refuse site and for grazing. It was considered to have few natural attributes.

Currently, the land use is open space under pasture, grading to an area managed by Council as a walkway and the Shorewell Creek on the western boundary. It is not within an area of agricultural land or within the coastal zone. The subject land has full access to reticulated services.

Parcel CT 251473/1 had been vacant for many years. Recreational use had been established over time, and the current OPEN SPACE zoning reflected the former role of the land as a buffer between municipal landfill operations and adjoining residential land.

Parcel CT 199876/1 was formerly used as the municipal refuse site. Council advised that it was closed in the late 1980s with the surface waste cells capped and planted to grass. It was currently zoned RESERVED RESIDENTIAL/DEFERRED URBAN.

The lower northwestern portion of the site formed riparian land piped to Shorewell Creek. It was considered by Council to be flood prone although the waterway was highly modified, and controlled.

The site was also recorded as being in an area of doubtful land stability. Council stated that there was evidence of recent instability.

The application was supported by consultant reports, which included an assessment of site conditions, infrastructure capacity, demographic analysis, proposed plan of subdivision, geotechnical assessment, traffic impact assessment, natural values report, and an aboriginal heritage assessment.

In relation to environmental quality, the evidence from Council' report was:

- Habitat value was low, given that the principal vegetation cover was grassland.
- The land was not subject to significant bushfire risk, being remote from stands of trees.
- Onsite, no rare flora or fauna had been identified by Parks and Wildlife database.
- Portion of Shorewell creek was piped. Further upstream, the endangered Burrowing Crayfish was regarded as a resident of Shorewell creek riparian streamside. A Threatened Species report formed part of the application documents. That report concluded that there was marked stream bed staining between the upper intake pipe of Shorewell Creek and the lower outfall and that sediment control measures should be put in place to prevent potential contaminating stormwater from threatening the viability of the crayfish habitat.
- A portion of the site adjoining the piped section of the creek may be contaminated. The decommissioned refuse area was to remain OPEN SPACE. A site contamination report of the open space area had not been conducted and was not required by the Council. However, the application stated that whilst on preliminary examination there was no reason to expect contamination issues, a formal site contamination assessment was being undertaken, and would be presented to Council as soon as it was available.

Council stated that the circumstances applying to the land had altered significantly since the adoption of the planning scheme in 1995, and submitted that it was now appropriate to review the zoning and permissibility of land use, and the designation of zone boundaries to more accurately reflect the existing and desired patterns of land use.

At the hearing, following the presentation and discussion of evidence in relation to the demographic and strategic basis for the amendment, and the relevant provisions of the planning scheme, it was acknowledged by all parties that the principal and pivotal issue was that of the stability of the subject land and its suitability for any residential development that might emerge subsequent to its rezoning as proposed. Accordingly, it was agreed that that issue should be resolved before addressing any other issues.

Geotechnical Issues:

The application documents from Lester Franks Survey and Geographic Pty. Ltd. (Lester Franks) included a Site Investigation Report by geotechnical consultants BPF Consultants

Pty. Ltd. (BFP). The purpose of the investigation was to assess general surface conditions at the site, and provide comments on its suitability for development, being in an area designated 'of doubtful stability'.

The report concluded that the site was suitable for development with some limitations on development on or above the steeper slopes. An indicative identification of the areas of limited development was given, to be delineated more exactly by fieldwork at the stage of initial development. A geotechnical review and a more detailed investigation would need to be undertaken to determine building areas and road alignments.

Lester Franks stated that in the area which had previously been a refuse tip, an amount of fill was uncovered on the valley floor and lower slopes. The affected area was identified by the consultants as being limited to the lower part of the slope. Preliminary examination found the subject site to be unaffected by large amounts of fill.

Three areas of potential landslip were identified on the site. Lester Franks proposed that in those areas development should be limited by means of Part 5 agreements.

The Commission noted that the BFP report made only minimal reference to the fact that a substantial proportion of the land was an ancient landslide site. Further, the report did not provide any details which would assist in acquiring a full and comprehensive understanding of the geological conditions of the area for the purpose of the proposed rezoning.

The Commission requested that the Council obtain and submit a peer review of the geotechnical report. In response Lester Franks provided a Geotechnical Review and Slope Stability Appraisal (but not the requested peer review).

The Commission responded to Lester Franks, advising that because of the technical nature of the issue, Mineral Resources Tasmania (MRT) had been requested to review the report and provide advice to the Commission.

MRT considered that the report lacked certain critical information such as:

1. The proposal that more investigations would be required at the stage of development was not the correct sequence; geotechnical issues needed to be resolved before design work was undertaken.
2. The report should include maps of features such as landslides, slopes, landfill footprints, etc.
3. All geotechnical reports should be peer reviewed.
4. There should be discussion of Factor-of-Safety calculations.
5. No consideration had been given to earthquake conditions.
6. There was no adequate assessment or discussion of the landslide risk.

MRT concluded that much more extensive investigation was required before the proposal could be considered for approval.

Consultants Coffey Geotechnics - formerly BFP(Coffey) responded to the matters raised by MRT, and submitted that their assessment had been systematic, landslide features had been mapped, a full contour survey of the site had been carried out and considered in the delineation of the defined no-build areas. The risk assessment was based on conservative likelihood judgements which were supported by their responses to the issues raised by MRT.

MRT sent further comments to the Commission in relation to aerial photography, topography and landform, extent of landfill, and seepage.

After further discussion of the geotechnical issues, Lester Franks proposed to the Commission that the holding of a hearing would be the most appropriate way to resolve the issues.

A hearing was held on 30 August 2007.

After discussion of the matters covered in the report and other issues raised by MRT, the Delegates concluded that there was insufficient information available to enable a proper consideration of all aspects of the amendment (and permit). As noted above, it was agreed that the geotechnical issues should be addressed in the first instance, to determine whether they could be resolved, or whether they were considered to be fatal to the proposal, in which event any consideration of other issues would be nugatory.

Consequently, the hearing was adjourned and the applicant was requested to provide further information including (in relation to the amendment):

1. A revised geomorphological map.
2. A revised geological model.
3. Factor-of-safety modelling.
4. Assessment of landslide risk.
5. The spring fed dam and its effect on stability.
6. Possible engineering solutions.
7. Building areas.

Subsequently, following advice from MRT, the Commission advised Lester Franks that records had been discovered in relation to a landslide which had occurred as recently as 1982, and that this event should be taken into consideration.

In response to the Commission's request for further information, Lester Franks provided a further detailed report, Geotechnical Slope Stability Assessment, by Coffey, incorporating a scope of study which had been approved by the Commission. The report reviewed previous investigations and a Desktop Study drawing on information from Mineral Resources Tasmania (MRT), Burnie Area Advisory Landslip Zoning Map, and aerial photographs.

A slope stability analysis was undertaken, with geotechnical models developed for four critical topographical sections. All four sections were aligned down the slope of the site towards the valley floor. From the analysis Factors of Safety (FOS) of 1.4 or greater (a

FOS of 1.4 was considered to be acceptable) were obtained for the analysed slopes and the global stability of the slope was deemed to be acceptable, except for Section 3 and Section 4 under high water conditions.

Based on the findings of this analysis, combined with the previous investigations and assessments, it was considered that flatter slopes where the FOS were 1.4 or greater, and which had not previously been identified as no-build areas, would be suitable for residential development. Some areas in Section 3 and Section 4 with a FOS of less than 1.4 were recommended to be excluded from the potential development areas. Those areas could be reassessed if additional investigation established that better ground conditions and /or soil strengths existed.

In response to a request from the Commission, Lester Franks provided some further information, including the Peer Review (by consultants Pitt and Sherry) which had been requested earlier.

MRT provided a commentary on the Coffey report. It was considered to represent a major revision of the findings of previous geotechnical investigations, and to significantly extend previously proposed no-build areas. However, it also identified that some of the areas previously considered suitable for residential development were in fact sited on landfill.

MRT contended that whilst the content in the subsequent report had improved the understanding of the geological conditions of the area for the purpose of the proposed rezoning, there were still some remaining deficiencies. These were in relation to:

1. The geomorphological mapping.
2. The claimed 'conservative' parameters in the slope stability analysis.
3. The groundwater profile.
4. The pre-landfill slope stability back analysis.
5. No-build zones.
6. The landfill area.
7. Risk assessment.

MRT concluded that whilst the improved report recognised a greater area of unsuitable land than previously, it omitted critical necessary information, and contained potentially significant flaws in the assessment of landslide risk. There were also management issues which should be addressed.

Lester Franks provided a response from Coffey to the comments by MRT. Coffey contended that most of MRT comments related to drafting/wording matters that could be resolved by presenting a more comprehensive report. Four of the matters raised issues with the adopted geotechnical model and the behaviour of the groundwater on the site; to resolve them would require the drilling of deep holes and the monitoring of groundwater levels.

Because of the nature of the further work which was required to be carried out, Lester Franks sought and were granted an extension of time by the Commission to provide the