

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 154

The amendment was to:

- (a) Rezone several parcels of land located between Abels Hill Road and Benvenue Road, St. Leonards, to LOW DENSITY RESIDENTIAL, and
- (b) Insert SCHEDULE 15- Hillary Street Outline Development Plan

Date and Place of Hearing

11 March 2009 at Town Hall, Civic Square, Launceston

Delegates

At its meeting on 2 February 2009 and pursuant to Section 8 of the Resource Planning and Development Commission Act 1997, the Commission delegated to Mr. C. Pryor and Mr. J. 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 154 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.

Representors

Campbell Smith Phelps Pedley Surveyors (CSPP), obo Mt. Leslie Estates Pty. Ltd.
Mr. V. Tunevitsch

Appearances

Launceston City Council	Ms Maria Chledowska - Policy Projects/ Planner Mr. Harry Galea - Manager Transportation and Development
CSPP	Mr John Dent

Issues raised in Representations

In support of the amendment CSPP supported:

- The overall road layout and connectivity of roads
- The provision, location and amount of public open space
- A residential zone for the area (not necessarily Low density Residential)
- The provision for a stormwater contribution to be made by developers to solve the stormwater drainage problem

In opposition to the amendment Mr Tunevitsch requested that the Rural Residential use of his property for the rearing of animals for domestic purposes be maintained. He also objected to the potential increase in Council rates as a consequence of enhancing neighbouring infrastructure.

CSPP requested that one parcel of their client's land be rezoned CLOSED RESIDENTIAL rather than LOW DENSITY RESIDENTIAL as proposed by the amendment.

CSPP also:

- Expressed concern regarding the amount of the required stormwater drainage contribution, and the lack of detail as to how the amount was determined.
- Submitted that the proposed stormwater drain would not adequately service one parcel of their client's land.
- Submitted that the planning strategy of the amendment failed to demonstrate that low density use and development adequately addressed the objectives of the Planning Scheme, the Council's Corporate Plan 2005- 2010, and the Resource Management and Planning System.

Council's Report

At a meeting held on 19 January 2009, Council considered a report by the Policy/Projects Planner setting out the representations and the officers' responses to them.

Pursuant to Section 39 of the *Act* the Council advised the Commission that Council partially supported the representations, and recommended:

'that the draft amendment 154 be approved as certified with the following change: a "drainage easement" over CT 139952/1 marked on the Hillary Street Area, St. Leonards Outline Development Plan (Road and Drainage Layout) (ODP).

Commission's consideration of the draft amendment

Council's evidence- the site

The draft amendment proposed to:

1. Rezone properties between Abels Hill Road and Benvenue Road, St. Leonards from FUTURE URBAN and RESERVED RESIDENTIAL to LOW DENSITY RESIDENTIAL and CLOSED RESIDENTIAL.
2. Insert 'Schedule 15- Hillary Street Area, St. Leonards Outline Development Plan (Road Layout and Drainage) (ODP) in the Planning Scheme.

3. Insert provisions relating to land shown in Schedule 15- Hillary Street Area, St. Leonards Outline Development Plan (Road, and Drainage Layout) (ODP) in the Planning Scheme.

The subject land includes the following:

<u>Land currently zoned Future Urban</u>	<u>Title</u>	<u>Area</u>
Part of 29 Hillary Street	Vol. 138165 Folio 2	1.056 ha
58A Abels Hill Road	Vol. 138165 Folio 3	2.678 ha
80A Abels Hill Road	Vol. 112660 Folio 1	2.213 ha
47 Benvenue Road	Vol. 126939 Folio 2	3.255 ha
71 Benvenue Road	Vol. 152471 Folio 1	8364 sq. m
71A Benvenue Road	Vol. 152471 Folio 2	3.585 ha
30 Hillary Street	Vol. 139952 Folio 1	4583 sq. m
Ashfield Court	Vol. 149270 Folio 1- 13	1.43 ha
Part of 313 St. Leonards Road	Vol. 152310 Folio 1	3 000 sq. m
Part of 23 Hillary Street	Vol. 138165 Folio 7	300 sq. m
Road	Vol. 138165 Folio 6	2700 sq. m
<u>Total</u>		<u>16.11 ha</u>
<u>Land currently zoned Reserved Residential</u>		
14 Abels Hill Road	Vol. 15797 Folio 1	1.214 ha
30 Abels Hill Road	Vol. 30075 Folio 2	9159 sq. m
56 Abels Hill Road	Vol. 30075 Folio 1	9159 sq. m
285A St. Leonards Road	Vol. 138165 Folio 1	2.061 ha
Part of 29 Hillary Street	Vol. 138165 Folio 2	1.165 ha
Part of 13 Hillary Street	Vol. 136084 Folio 5	500 sq. m
<u>Total</u>		<u>6.32 ha</u>

The total area of land to be rezoned is 22.43 hectares.

The subject area is semi- rural in character, with ribbon development along St. Leonards Road, Hillary Street, Abels Hill Road and Benvenue Road. Some of the listed parcels are developed with houses and associated buildings.

The density of the residential development decreases at the eastern end of Abels Hill Road and Benvenue Road.

Behind the development along the existing roads, the land has a more rural character, being mostly cleared with scattered mature trees, except for a group of small young trees at 80A Abels Hill Road, and a row of mature pine trees in the centre of the area. The risk of bushfire is low.

TASVEG mapping classifies the land along Abels Hill Road, Hillary Street and Benvenue Road as Agricultural, Urban and Exotic Vegetation, containing Urban/Built up areas and Agricultural areas.

There are no rare or threatened fauna or flora within 500m, and no scientific, aesthetic, architectural, historical and cultural values or unique ecosystems present on the land.

In regard to Land Capability, the majority of the subject land is within an urban area and unclassified. No. 80A and part of 58 Abels Hill Road are classified as Class 5, that is land with slight to moderate limitations to pastoral use and unsuitable for cropping.

In regard to land stability, the land is generally Class II and Class III on the western side and Class III on the eastern side, with relatively small areas of Class IV and Class V along the eastern, upper boundary of the land.

Roads

The land can be accessed from a number of points on the surrounding roads.

There are two access points from Abels Hill Road to the north, two access points from Benvenue Road to the south, and Hillary Street provides access from the west. One property has an access off St. Leonards Road.

Water and sewer.

There are no restrictions on the availability of water, or sewage disposal from the subject area.

Stormwater drainage

There is a small creek running northwest across the subject land, draining a large rural catchment. The creek has a history of minor flooding, and some overland sheet flows from the rural land into the back of residential properties during heavy rain storms. It is poorly defined with rural style diversions and culverts along it in a number of places.

Public Open Space

Most of the public open space in the area is located along the North Esk River, west of St. Leonards. The public open space on the eastern side of St. Leonards Road is limited to the Village Green. It has no potential for a proper playground.

Community services

Community facilities and services are located in the neighbourhood, including a church, a hotel, an antiques/ gallery, newsagency, Police Station, aged care facility, grocery shop, a primary school and a missionary college.

The Metro bus service runs along St. Leonards Road.

Zoning

The subject land is currently zoned partly FUTURE URBAN and partly RESERVED RESIDENTIAL. It is surrounded by CLOSED RESIDENTIAL zoned land along Abels Hill Road, Benvenue Road and Hillary Street, and RURAL zoning to the east.

Council's evidence- the proposal

Council's s.35 report stated that a number of landowners in the area had expressed interest in developing their land, and subdivision applications had been received for the majority of the land in the FUTURE URBAN zone. The applications were separate for each title and did not take into account any of the surrounding land.

Council's view that a coordinated approach for the whole area was required was the genesis of the proposed amendment.

The purpose of the amendment was to provide a long term subdivision opportunity for the subject area, and to address the issues specific to the area. The issues included the multiplicity of separate owners, the existence of a public watercourse running through some properties, the need for appropriate road connections for vehicle and pedestrian traffic, and the need for public open space.

This was to be done by rezoning the land, adopting an Outline Development Plan, and adding textual provisions to apply to development of the land included in the ODP, especially in relation to the funding of stormwater works.

A number of other properties, which were not included in the ODP, were to be similarly rezoned to correct anomalies such as double zoning, which resulted from previous subdivision development.

The ODP is intended to provide a 'blueprint' for subdivision and infill development of the subject land. One of the key elements was the location of roads and how they would connect various land parcels and existing surrounding residential development. This was to provide alternative safe means of access, and allow for some distribution of Abels Hill Road traffic, without exceeding existing road capacity.

The Plan also identifies the area to be designated as Public Open Space, as a consolidated contribution from landowners rather than requiring a separate 5% contribution (or cash in lieu) from individual owners.

The ODP indicates a notional lot layout, totalling 87 lots, with a minimum lot size of 1500 sq. m. (the minimum specified in the planning scheme for the LOW DENSITY zone). The Plan was not to be read as a commitment to exact lot numbers, size or configuration. However, the proposed density of development for an individual title, as determined by the number of notional lots shown on the Plan would be a factor in determining whether a proposed subdivision would be a Permitted or a Discretionary development.

A key component of the Plan was the provision for the construction and funding of underground works to address the issue of stormwater drainage, since a failure to address this issue would render the land substantially incapable of being subdivided.

Because of the long time frame envisaged for the full development of the subject land, possibly 20+ years, it was not considered to be economic or equitable for Council to construct a total underground drainage installation as a prelude to any development. This would necessitate either the Council bearing the total cost –estimated at \$470,000 (the cost of the works plus on-cost of 17 ½% for design and supervision) for an unknown length of time, or alternatively seeking to recover it proportionately from benefiting landowners, some of whom may not intend to develop their land in the foreseeable future or indeed not ever.

The amendment therefore proposed that a ‘Stormwater Developer Contribution’ be charged in accordance with a Schedule which formed part of the textual amendment. The Schedule listed the proportion of the total cost (including the 17½% on-cost) applicable to each parcel of land. The contribution would be charged when a particular landowner sought a permit to subdivide that land. If an owner was not interested in subdividing, then no charge would apply. To provide for any variation in the cost of the drainage works over time, the developer contribution would be subject to adjustment in accordance with movements in the Consumer Price Index (CPI).

Conversely, in the instance of any parcel of land through which the underground main was constructed, the Council would make a scheduled contribution, again subject to CPI adjustment. The contribution would be the estimated cost of the works through the relevant land, with the 17 ½% on-cost being retained by the Council as reimbursement for the cost of design, documentation, contract administration and supervision. However, it would be open to a developer to undertake the design and supervision instead of the Council, in which instance the Council’s contribution would include the on-cost.

Because of the configuration of the existing creek, the ODP provided an alignment for the stormwater main which would enable it to be constructed in sections as individual parcels of land were developed. At any stage, the ‘missing links’ would be addressed by forming a connection between the open creek and the piped drain.

The eventual outcome, assuming that all landowners did in fact subdivide their land, would be the total piping of the creek, with the cost being progressively contributed by the benefiting landowners.

Several properties in St. Leonards Road and the Ashfield Court subdivision were to be exempt from the developer contribution since they had already contributed as conditions of previous planning permits.

Representations

Mr. Tunevitsch’s representation stated that the property at 30 Abel’s Hill Road had been used for the keeping of pigs, poultry, sheep, goats and cows for domestic use over the period of 50 plus years that it had been owned by the Tunevitsch family. He asked that the current use be permitted to continue. Mr. Tunevitsch also objected to any rates increase which might result from the appreciation of values by the installation of infrastructure as proposed by the amendment.

In relation to the continuation of the use, Council's response was that a 'minor scale' of agricultural use could be continued as an existing use right, provided it did not cause any nuisance to the neighbourhood.

In relation to the possibility of increased rates, Council stated that the proposed amendment would not affect Council rates as they are calculated according to the value of land as determined by the Valuer General.

Campbell Smith Phelps Pedley (CSPP) requested that one parcel of their client's land, at 47 Benvenue Road, be rezoned CLOSED RESIDENTIAL, and submitted a draft plan of subdivision showing 15 lots, ranging in size from 609 sq. m to 1433 sq. m, that is 15 more than the number of notional lots shown on the ODP. CSPP contended that the proposed roads, services, and social infrastructure would be able to support the additional lots, thus ensuring their full utilisation.

In support of their request for closed residential zoning, CSPP representation included a number of submissions:

(i) the zoning would not set a precedent for other landowners in the area to seek similar zoning. Three owners to the north of the subject parcel had all recently submitted applications to the Council for approval of low density subdivisions.

Those subdivisions would form a buffer to the adjoining rural land to the northeast, so that it would be logical to extend the existing closed residential development over CSPP's clients land.

(ii) there was a demand for closed residential type lots in the St. Leonards area, as evidenced by current sales in Ashfield Court and Mestre Court, and other subdivisions which are being developed along St. Leonards Road and Benvenue Road. In Launceston generally there was a strong demand for, and a shortage of closed residential lots.

With the number of low density lots which would result from the rezoning proposed by the amendment, the requested zoning would provide a mix of lot sizes for potential purchasers in the ODP area.

(iii) the cost to provide full services to 1500 sq. m lots would be likely to be much greater than for say 750 sq. m lots. This would be contrary to the current pressure for the provision of cheaper housing to enable the high demand for houses to be satisfied at reasonable prices. A further possibility was that the land might have a very slow sales uptake, or even not be subdivided at all.

(iv) it would be a waste of land to allow only 1500 sq. m lots on the subject land, and would put more pressure on land on the periphery of the city to be used for residential development. The land should be used for its highest and best use, and to do otherwise was not sustainable development.

Council's response to the request for CLOSED RESIDENTIAL zoning did not address the specific questions of lot demand and supply, or the issue of development costs and the ramifications for affordable housing. Council stated that there had been considerable consultation over the past five years. Rezoning the whole area to LOW DENSITY RESIDENTIAL was considered the best option, and the infrastructure was appropriate for such zoning.

There was no probability that all lots would be released concurrently; on the contrary, the land may not be fully developed for 10- 30 years or more.

CSPP also raised four general issues in opposition to the amendment:

Lack of detailed information on the proposed stormwater charge

CSPP queried the basis for the calculation of the estimated cost of \$470,000, and the on-cost of 17 ½% for design and supervision. Council's response was that the estimate had been prepared with strict adherence to the internal estimating rates which were used for Council designed projects. The 17 1/2 % on-cost was an industry rate, and whilst it could vary depending on the complexity of the relevant works, it was considered to be appropriate in the present instance.

Land not fully serviced

CSPP also submitted that the proposed stormwater main, if located as shown on the ODP, would not serve the entirety of their client's land unless there was a connection through neighbouring land. Council's response was that drainage connections were the responsibility of the property owner, even though works may be needed over an adjoining property. However, in the interests of transparency the indication of an appropriate drainage route on the ODP was supported.

Planning strategy

CSPP contended that the amendment did not address the Council's strategic planning objectives, in that:

1. It did not provide for diversity in affordable housing.
2. It did not meet the specific needs of the aged and people with disabilities. (For instance a retirement village was a Prohibited use.)
3. Larger lots would not provide a residential amenity and traditional suburban patterns.
4. Low density housing would not contribute to a thriving and sustainable city.

In response, Council stated that low density development would create diversity with the existing surrounding development, and the proposed lot size would not preclude various housing sizes and types. In relation to the specific issue of retirement accommodation, this was restricted by the topography of the area. The creation and development of 87 new lots would have a positive impact on local businesses, and increase utilisation of the existing social infrastructure.

The Objectives of the Resource Management and Planning System

CSPP referred to Objectives (a) and (b) of Part 1 of the schedule to the *Land Use Planning and Approvals Act 1993* which contains the objectives of the Tasmanian Resource Management and Planning System (RMPS), which requires the sustainable development of natural and physical resources, and the fair, orderly and sustainable use and development of land.

They contended that low density residential zoning was not sustainable, and was not consistent with surrounding residential development, all of which was of closed residential density.

Council's response was that the proposal was unlikely to have any significant impact on natural resources and ecological processes.

To the contrary, the proposed ODP with its provision for solving the problem of flooding of the existing creek, would provide for future development of the area in a fair and orderly manner.

Commission's comments

(Note that where appropriate for the sake of convenience, this Decision refers to the various titles by the numbers shown on the certified amendment (14, 30, etc) which are in fact the street addresses of the respective titles.)

Development of the land for residential use

The subject area has previously been 'earmarked' for eventual residential development by the current zonings of FUTURE URBAN and RESERVED RESIDENTIAL.

The Intent of these two zones is stated in the planning scheme as, among other things:

Future Urban

This zone seeks to reduce the amount of undeveloped pre-zoned vacant residential land in some areas, where infrastructure constraints and lack of demand make co-ordinated development unlikely in the foreseeable future.

Reserved Residential

To enable essential planning to be carried out before subdivision, including the location and types of roads, housing, recreation areas and the provision of essential services...".

On the evidence, the amendment recognises that the constraints of the Future Urban intent no longer apply, and the Reserved Residential intent is satisfied.

Also the land is located in an established urban precinct; therefore residential zoning is considered to be appropriate, and is supported.

Zoning

From the suite of Residential zones in the planning scheme, the most appropriate zoning to be considered for the subject land is LOW DENSITY RESIDENTIAL or CLOSED RESIDENTIAL.

Council's s. 35 report considered the options for zoning, and stated:

“Closed Residential would give a higher density of development and taken in isolation could be seen as a good use of land. When viewed across the river in Station Road, Norwood, this land is critical to the visual appeal of St. Leonards- not to prevent development but to present a level of development that can be incorporated in the wider landscape. The best use to achieve this would be Low Density Residential where houses can be set on large lots with substantial landscaping. A further factor in justifying Low Density Residential zoning is the impact the Higher Density Closed Residential zoning could have had on traffic flows in the road network around St. Leonards.”

Council's case for LOW DENSITY zoning rests on three grounds:

1. Subjective preference.
Council's evidence contained unsupported assertions as to the preference of the Council, the landowners and the community for LOW DENSITY zoning, although CSPP's request for CLOSED RESIDENTIAL zoning on parcel 47 calls into question the unanimity of that preference.
2. The capacity of infrastructure.
3. The visual impact of development.

In relation to (1), in our opinion asserted preferences are not a valid basis for objective planning decisions which will ensure compliance with the Objectives of the *Land Use Planning and Development Act*, particularly Objective (b) of Part 1.

“to provide for the fair, orderly and sustainable use and development of ... land..”

In relation to (2), Mr. Galea's evidence was that both the road pattern and the services infrastructure were capable of providing for Closed Residential Development.

In relation to (3), in our opinion the description of the subject land as *critical* to the visual appeal of St. Leonards, to such a degree that it should dictate a choice between Low Density and Closed Residential zoning, is an overstatement. The Council's contention refers to the impact as seen from Station Road, Norwood. The only such street in Norwood is Station Road West, a minor cul-de-sac from which the subject land can hardly be seen.

From the West, only Quarantine Road is oriented to allow a view of the land when travelling towards it. From the upper part of Quarantine Road, the view is almost totally obscured by trees. From the lower part, the land can be seen, but the view is dominated by dense foliage along the North Esk River, the large Mount Esk aged care facility, Johnston Road, and especially the rural land slopes to the east and beyond the subject land. From Penquite Road, some brief glimpses of the land can be had, but since Norwood Avenue does not face towards St. Leonards, these are not considered to be significant.

Further it must be borne in mind that the existing visual effect is of vacant land, and will be significantly impacted by the development which the amendment proposes to allow,

whatever the zoning might be. Nevertheless, our conclusion is that if some low density lots were to be developed and landscaped on the eastern part of the site, they would provide an appropriate transition to the open rural land beyond.

Regard must be had to issues such as those raised by the CSPP representation (albeit that they were related to one particular title).

Such issues are the efficient utilisation of infrastructure, the demand for, and the shortage of closed residential type lots, the development cost of larger lots and the ramifications for affordable housing.

Our conclusion is that the rezoning proposal should provide a combination of CLOSED RESIDENTIAL and LOW DENSITY RESIDENTIAL zoning. We consider that the amendment should be modified so that the proposed CLOSED RESIDENTIAL zoning will include the titles:

- 15797/1
- 30075/2
- 30075/1
- 138165/1
- 138165/2
- 139952/1

identified in the amendment as 14, 30, 56, 285A,29, and 30 respectively.

We make two consequential comments.

CLOSED RESIDENTIAL zoning will not prevent a landowner who genuinely wishes to develop lots larger than the zone minimum from doing so. In relation to any concern that the zoning will potentially open the door to developments which the Council and landowners had wished to avoid, it should be noted that whilst there are some differences in the Discretionary uses listed in the Tables of Uses, the Permitted (P1) and Permitted (P) uses are identical for the CLOSED RESIDENTIAL and LOW DENSITY RESIDENTIAL zones.

In relation to the CSPP request for CLOSED RESIDENTIAL zoning for title 47, notwithstanding the capacity of the infrastructure to service the higher density of development, we consider that the land should be zoned LOW DENSITY RESIDENTIAL. It should be part of the area of transition between the CLOSED RESIDENTIAL development on the lower part of the subject land and the open rural land to the east.

The drainage scheme.

In our view, it is unusual for a planning scheme to include a detailed schedule of contributions for drainage, which could only be varied by an amendment to the scheme. Also, variations in the CPI is a questionable basis for adjustments to the cost of a drainage scheme.

Conventional practice suggests that the stormwater main should be constructed at the outset by Council, and the cost recovered by whatever mechanism Council would normally employ. Mr. Galea acknowledged that there were alternative methods

available to Council for the collection of infrastructure contributions. However, in the present instance, he considered the procedure proposed by the amendment to be suitable, because of the possible staging of development, so that payment would only be required when land was actually developed. Council would be accepting some risk in regard to the recovery of contributions, but it was necessary to consider the greater good in the development of the area.

We recognise the logic of the Council's proposed procedure, in view of:

- The technical feasibility of doing the work in sections
- The avoidance of an initial major capital outlay by the Council, to be carried for an undetermined time or alternatively loaded onto possibly reluctant landowners.
- Whilst the CPI may be an unreliable tool over time, the schedule can be varied in the new planning scheme, or by amendment in the meantime if necessary.
- The contributions paid by any approved subdivisions will progressively reduce the outstanding balance and thus the potential for significant cost increases.
- The submission and approval of three recent subdivision proposals suggests that the time frame for the total development of the area may be significantly less than the Council's estimate of 10-30 years.

We expressed concern that the cost of the stormwater main might increase by more than the CPI movement, and thus disadvantage a landowner whose property was traversed by it (since the Council contribution is limited to the scheduled estimate plus CPI). Mr. Galea acknowledged the concern but was not able to offer a remedy. However, Mr. Dent's opinion was that private enterprise could carry out the work more cheaply than the Council's estimate, and that this difference would provide some buffer against inadequate CPI adjustments.

Notwithstanding these considerations, whilst this provision may be useful in providing a degree of predictability for prospective developers, we consider it to be inappropriate and unnecessary for the amendment to attempt to deal with the issue of contributions to the cost of drainage works. There are other established and commonly employed procedures available to the Council for this purpose, as was acknowledged by Mr. Galea.

The Outline Development Plan (ODP)

There are a number of Development Plans included as Schedules in the planning scheme. Some, for example the Plan for Little Saltwater Creek Area, are schematic diagrams only. Others, for example the Plan for Mount Stuart Drive, Newnham, are fully detailed subdivision proposals. The Plans are accompanied by development requirements stated in the relevant zone provisions. The proposed ODP, comprising ordinance provisions and a plan of the subject area goes beyond the former, but falls short of the latter, and in so doing it exhibits some defects.

Pursuant to Clause 16.3 of the planning scheme, Development of Land, subdivision of land in the LOW DENSITY RESIDENTIAL zone is a Discretionary development. Clause 16.8.1 of the ordinance amendment sets aside this development status, and then ties development status as Permitted, Discretionary, or Prohibited to compliance or otherwise with the provisions of a number of following clauses. These clauses detail the

ODP's development requirements in regard to drainage, road network, subdivision design, public open space and road works.

Clause 16.8.1 represents these requirements as five criteria by which P (Permitted), D (Discretionary) or X (Prohibited) status is to be determined.

In our opinion, if the ODP is to have any standing, there is effectively only one optional criterion. Clause 16.8.2 Drainage, and Clause 16.8.3 Road Network, are both fundamental to the structure of the ODP and are, or should be, mandatory. There is no alternative to Clause 16.8.5 Open Space since it is clearly earmarked on the ODP. It is unlikely that Clause 16.8.6 Road Works could be varied.

The key consideration therefore is Clause 16.8.4 Subdivision Design. A table in Clause 16.8.4 lists the various tiles which make up the subject area, and assigns to each title a 'Lot Yield' (which is apparently based on the notional layout on the ODP, although that layout is in no way binding). A subdivision which proposed 20% more, or 20% less lots than the relevant Lot Yield would be Permitted; otherwise it would be Discretionary. We are concerned that the Council has provided no explanation for adopting this procedure, and no reason for nominating the particular figure of 20%.

In relation to the proposed Discretionary status, since the Council's stated aim is to allow for variety in lot sizes, we see no reason for discouraging the provision of larger lots by downgrading their status to D, if the number of proposed lots falls below the Lot Yield less 20%. In the absence of any explanation by the Council, we consider that that part of the provision of Clause 16.8.4 which relates to a lot density of - 20% should be deleted.

In relation to the proposed Permitted status, Council's initial report stated that the 87 lots notionally shown on the ODP would comply with the zone minimum of 1500 sq. m. We assume that in allowing the Lot Yield plus 20%, any resultant lots would also comply with the zone minimum. However, within the limits of accuracy permitted by the small scale plan, an analysis of the effect of Clause 16.8.4 on the seven major titles- disregarding the two untypical titles at 30 and 56 Abels Hill Road- raises some doubt.

The following table shows, for each of the seven titles:

- (i) The effective area after allowing for roads, and Public Open Space if applicable.
- (ii) The ODP Lot Yield
- (iii) The average area of those lots
- (iv) The maximum number of lots for P status, i.e. Lot Yield +20%
- (v) The average area of those lots. Note that in several instances the lots would be sub-minimum.
- (vi) The number of lots which would be produced by adopting the zone minimum of 1500 sq. m.

TITLE	EFFECTIVE AREA	LOTS ON ODP	AV. AREA	MAX. LOTS FOR 'P'	AV. AREA	LOTS IF 1500
152471/2	28500	15	1920	18	1583	19

126939/2	25500	15	1704	18	1420*	17
112660/1	18200	10	1820	12	1520	12
138165/3	21390	11	1950	13	1640	13
138165/2	20860	12	1740	14	1470*	13
138165/1	18580	11	1690	13	1430*	12
15797/1	10040	6	1670	7	1440*	6

Note: * indicates lots less than the zone minimum of 1500 sq. m

The following tentative conclusions may be drawn from this analysis:

- (i) 4 of the 7 lots cannot be subdivided to the maximum number envisaged by the +20% rule, because the lots would be smaller than the zone minimum.
- (ii) The total of the Lot Yield in 16.8.4 for the 7 lots is 80 lots.
- (iii) The total yield if subdivided to +20% is 95 lots.
- (iv) If sub-minimum lots are excluded, the number of lots with area not less than the 1500 minimum is $95-3 = 92$ lots, that is, within 3 lots of the hypothetical total based on 16.8.4.

In our opinion, not only should the -20% provision be abandoned, but also there is no point in the cumbersome Lot Yield provisions of Clause 16.8.4. Subdivision approval, insofar as it relates to lot area, should simply be subject to the zone minimum of 1500 sq. m.

We also question the appropriateness of conferring permitted status at all, on subdivision within the ODP. This is inconsistent with the internal logic of the planning scheme. In every other zone in the scheme, subdivision is a Discretionary development, and this is not relaxed even in the instances of subdivisions which are in accordance with a detailed development Plan such as those referred to above.

Given the Council's evidence that the lot layout on the ODP is only notional, and not intended to dictate the pattern of any potential development, we cannot support the conferring of Permitted status on a subdivision proposal 'sight unseen'.

In relation to the plan shown as Schedule 15, it is clear that the essential elements are the principal connecting roads, the main stormwater drain and the Public Open Space. In our opinion, since the lot layout has no standing, it should not be shown on the ODP. Further, we consider that given the principal road layout, and the removal of the lot layout, there is no ground for the plan to pre-empt the pattern of future development by indicating subdivision roads. This would remove another defect in the plan, that is, that notwithstanding the Council's aim of facilitating coordinated development, the plan as certified effectively inhibits such coordination in respect of titles 14, 30, 56, 285A and 29.

Our conclusion is that Schedule 15 should comprise an Outline Development Plan showing, in respect of the amendment:

- (a) the principal connecting roads, i.e. Abels Hill Road to Benvenue Road. (two connections), and Hillary Street.

(Note that the roads should be more accurately drawn, to eliminate the constrictions and tight curves shown in titles 47 and 71A)

- (b) the main stormwater drain
- (c) the Public Open Space

Schedule 1 Objectives

(Part I)

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

Comment: Ecological processes and genetic diversity are not considered to be issues in this instance. The adoption of an approved Outline Development Plan, modified as described, is seen as contributing to sustainable development of resources.

- (b) *to provide for the fair, orderly and sustainable use and development of air, land and water;*
Comment: the amendment as certified is not considered to be an orderly proposal, but can be improved by modification as described.

- (c) *to encourage public involvement in resource management and planning;*
Comment: public involvement has been ensured by the processes of community consultation, advertising, public exhibition, representations and a public hearing.

- (d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b), and (c);*
Comment: the amendment is intended to provide economic benefit by generating construction activity and extending the potential catchment for local businesses.

- (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;*
Comment: the proposal has involved landowners and the community, the Council as the Planning Authority, and the Commission as the approving authority.

(Part 2)

- (a) *to require sound strategic planning and co-ordinated action by state and local Government;*
Comment: a weakness of the amendment has been the lack of sound strategic planning, in terms of issues such as housing affordability and economic utilisation of infrastructure. This can be addressed through modification of the amendment.
- (b) *to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land;*
Comment: the amendment has been processed through the Planning Scheme mechanism.
- (c) *to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;*
Comment: preparation of the amendment has taken account of environmental factors, and the social impact on the St. Leonards community. However local views should be tempered by a more strategic assessment of the City's housing needs.
- (d) *to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional, and municipal levels;*
Comment: the amendment is not inconsistent with this Objective.
- (e) *to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals;*
Comment: this Objective is not relevant to the proposal.
- (f) *to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;*
Comment: the amendment seeks to further this Objective.
- (g) *to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;*
Comment: this Objective is not relevant to the proposal.
- (h) *to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;*
Comment: the amendment has taken full account of infrastructure issues.
- (i) *to provide a planning framework which fully considers land capability;*
Comment: the proposal has considered land capacity.

Application of State Policies

Interim State Policy for the Protection of Agricultural Land. 2008

With the subject land having little potential for agricultural activities, and being in an urban location previously designated for residential development, it is considered that the amendment is not in conflict with this Policy.

State Coastal Policy 1996

This Policy does not apply to the subject land.

State Policy for Water Quality Management 1997

The proposal for the construction of a main stormwater drain to replace the existing open creek will ensure the effective collection disposal of surface water runoff.

Conclusion

In consideration of the foregoing discussion of the identified issues, we conclude that:

1. It is appropriate to rezone the subject land for residential use and development.
2. The proposed rezoning should comprise a combination of CLOSED RESIDENTIAL and LOW DENSITY RESIDENTIAL zoning.
3. In relation to Schedule 15, Outline Development Plan, whilst it is appropriate to establish the primary connecting road network, it is neither necessary nor desirable to pre-determine the location or configuration of secondary subdivision roads.
4. There is no rationale for the determination of development status as P, D, or X by the application of a "plot Ratio" based on a notional lot layout. This provision should be abandoned.
5. Development status should be determined by the existing provisions of the planning scheme for the relevant zones.
6. It is neither necessary nor desirable for the amendment to include provisions relating to contributions to the cost of drainage works.

Decision

Pursuant to Section 41(a) of the *Land Use Planning and Approvals Act 1993* the Commission requires the planning authority to alter the draft amendment to a substantial degree as set out in Annexure A, and to submit the altered amendment to the Commission by 19 June 2009.



Clarry Pryor
Delegate



John Vandenberg
Delegate

18 May 2009

ANNEXURE A

1. Rezone the land identified by the following title references to CLOSED RESIDENTIAL.
15797/1
30075/2
30075/1
138165/1
138165/2
139952/1
2. Alter the Outline Development Plan in Schedule 15 by deleting:
 - (a) the notional lot layout and lot numbers;
 - (b) all proposed new roads except the roads connecting Abels Hill Road, Benvenue Road, and Hillary Street.
3. Delete the provisions relating to Lot Yield, and the determination of P, D, or X development status.
4. Delete the provisions relating to the contribution by developers to the cost of the proposed stormwater main.