

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

CITY OF HOBART PLANNING SCHEME 1982 Draft Amendment 1/2009

Draft Amendment 1/2009 has 6 parts relating to Precinct 33 including the establishment of a Lower Sandy Bay escarpment building line.

Delegation

At its meeting on 18 May 2009 and pursuant to Section 8 of the *Resource Planning and Development Commission Act 1997*, the Commission delegated to Mr Robin Nolan and Commissioner Roger Howlett 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 1/2009 to the City of Hobart Planning Scheme 1982; 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 and Issues raised in Representations

Representations were received from the following:

Ms Sorrel Standish-White	W & K Murlagh
Ms Pamela King	Mr Graeme Clennett
Mr Warwick Risby	Ms Raeleen Lawrence
Mr & Mrs Clive & Sandy Skilbeck	Mr & Mrs Damon & Elizabeth Thomas
Mrs Maria Fiotakis	Ms Lisa Romero
Mr & Mrs David & Jan Ritz	Cassy O'Connor MP
Ms Jillian Goater	Professor Craig Johnson
Mr Thomas Daniel Sprod obo Gleewyn	JD Parsell
Georgene Sprod	Ms Anne Barwick
Mr & Mrs DC & DM Thomson	Ms Suzanne Lockhart
Ms Stephanie Cooper	Ms June Noble
Mr Peter Watson	Mr & Mrs Richard & Irene Donaldson
Mr Peter Rumney	Mr & Mrs Graeme & Helen Yeoland
Mr & Mrs A & M Loidl obo M Packer, V	Mr & Mrs Douglas & Susan Carter
O'May and K & D Cunningham	Mr Paul Thomson
Ms Lynda Hove	Ms Marian Thomson
Mr Josef Giedl	

Date and Place of Hearing: Tuesday 30 June 2009
Resource Planning and Development Commission
144 Macquarie Street, Hobart

**Attendance at the Hearing
Council**

Mr J McIlhenny represented the Hobart City Council.

Representors

Ms S Lockhart

Ms J Noble

Mrs S Carter and Mr R Giblin of the Precinct 33 Residents Group.

A number of other representors attended the hearing as observers.

Background

Council advised that the catalyst for the draft amendment was a submission received by a community group known as 'Precinct 33 Residents Group'. The group raised concerns regarding the detrimental impact of inappropriate development occurring on the foreshore side of Sandy Bay Road, south of Blinking Billy Point, and the effect of this on the character of the area and residential amenity.

This area of Lower Sandy Bay is within the Residential 2 zone and the Riverview Precinct (No. 33). It is characterised by relatively long and narrow rectangular lots with short frontages to Sandy Bay Road and the foreshore with mostly high water title to the River Derwent. An escarpment, of varying magnitude, is present above high water mark. Difficulties associated with building on excessive slopes has resulted in development being concentrated on the more moderate sloping upper and middle portions of these lots. While the land containing the escarpment is (generally) unable to be built upon, its area is used to determine site coverage and calculate the dwelling unit factor causing a disproportionate pattern of development concentrated on the more moderate slopes. Redevelopment over recent years has seen increased dwelling density which has generated amenity issues including visual intrusion, overshadowing and loss of privacy. In addition the scale of buildings often on resubdivided rear lots has encouraged building close to, and to overhang, the escarpment with the representors claims that this is adverse to the environment of the river edge and the visual amenity of the river.

Issues raised in the representations

Of the 31 representations received, Twenty nine representations were in support of the draft amendment while the remaining two representations raised the following issues associated with the draft amendment:

- Provisions relating to steep areas being excluded from calculations to determine density and reduction in height restriction should apply to other areas within the municipality;
- Ancillary dwellings should be included as a dwelling unit when calculating density;
- All existing development should be included in the area used to calculate the number of new dwellings to prevent over development; and

- Ambiguity surrounding the interpretation of the introductory paragraph to clause AS1.2.

Council's Response to the Representations

Council's s.39(2) report considered the representations received during the exhibition period of the draft amendment. Council resolved that issues raised in the representations warranted modifications to part 1 of the draft amendment concerning clause AS1.2. Council's recommended modification is assessed below.

Commission's assessment of the draft amendment

The draft amendment relates to Schedule K – Rescode and principally precinct 33. The matters specific to precinct 33 are to:

- define a Lower Sandy Bay Escarpment Line
- exclude areas east of the Lower Sandy Bay Escarpment Line from the site area used to calculate dwelling unit factor and maximum site coverage;
- reduce the site coverage to 25% and reduce the height of buildings to 7.5m;
- insert an additional clause AS4.5 stipulating a 20m building setback from the Lower Sandy Bay Escarpment Line;
- insert a new Clause PC4.5 ensuring buildings are 'designed and sited to avoid, remedy or mitigate any adverse effects on landscape and visual values of the estuary'; and for general application to residential zones
- restructure AS1.2 and AS1.4 providing for a more comprehensive and consistent format.
- exclude any part of a site not zoned Residential from the site area used to calculate maximum site coverage;

City of Hobart Planning Scheme 1982

Precinct 33 is located within the Residential 2 zone. The objective of the zone is 'to enhance the character and amenity of areas of predominantly detached houses, with limited development of complementary dwelling types and minimum intrusion ...of non-residential uses'.

The Statement of Desired Future Character for the Riverview Precinct (no.33) states:

Development within the Precinct should be confined to residential activities and should acknowledge the fine river views and vistas afforded to residents and motorists alike.

Table A1 of the Use Schedule (Schedule A) permits Use Groups I – development of land for a house, ancillary flat, home occupation. Use Groups II, IV, V, VI, VII, XI and XVI are discretionary, these include development of land for a flat, elderly persons unit, domestic business, consulting rooms, community centre, hospital, welfare institution, educational establishment, active recreation and local shop.

Schedule K – Rescode applies to development involving use Groups I-IV and subdivision in the Residential zones.

Policy context for the draft amendment

The draft amendment addresses the planning scheme provisions in the subject area relating to dwelling density and the bulk of buildings, being site coverage, building height and setback. The intent is to bring residential development standards in precinct 33 into a dwelling density and building envelope framework more consistent with other Residential 2 zone areas within the planning scheme.

The area has development constraints requiring policy settings specific to the situation where there are relatively large lots with steep escarpments with considerable building constraints. The transfer of the accrued 'development rights' to the less steep land has concentrated density and bulk of buildings at a scale larger than otherwise would be able to be achieved as permitted development. By reducing the dwelling density the scope for additional dwellings in the vicinity of the escarpment is reduced and environmental outcomes improved.

The next policy issue is that although the draft amendment would have the effect of bringing controls more in line with other areas, the proposed amendment constitutes a significant reduction on the permitted development density than is currently available. This is likely to increase the use of the performance criteria thus leading to an increase in the discretionary provisions for granting or refusing permits. This is a matter of concern for some sectors in the community who seek to have planning schemes minimise uncertainty in approval processes. It is also an issue which the Commission needs to consider very carefully to ensure that planning schemes provide clarity to all parties involved in the implementation of planning schemes.

When examined on this issue at the hearing Mr McIlhenny accepted that the changes would likely increase the requests for the exercise of the performance criteria, but Council accepted this as part of setting standards in a physically difficult area where there is strong demand for housing. Mr McIlhenny also submitted that Precinct 33 was relatively small and the changed standards should have little impact on total dwelling stock. Whilst the Commission encourages the regulation of building to match community expectations and for a balanced regulatory regime that adds certainty to the approvals process, it acknowledges the difficulty of building in precinct 33 and is satisfied that permitted building status should still be able to be gained through compliance with the acceptable solutions.

Ms Lockhart claimed that the stricter standards of the draft amendment should be extended to the rest of the residential zones in the city. In response to this representation, the Commission views zones and precincts as mechanisms for defining standards specific to relatively small areas of the city where this is warranted and secondly, this call for wider application is outside the available determinations on the draft amendment.

An additional matter is the stage of the draft City of Hobart Planning Scheme that is about to be exposed to public forums prior to Council submitting the draft to the Commission for certification. Mr McIlhenny advised the provisions in the draft amendment are also in the draft planning scheme. This will allow for a testing of the proposed provisions during consideration of the planning scheme approval process.

Having considered the policy context, the separate parts to the draft amendment are examined below.

1. AMENDMENT 1/2009 - 1

The certified draft amendment specified:

‘Amend Schedule K by omitting Clause AS1.2 (not including Table 1) and substituting the following:

AS1.2

The number of new dwelling units on a development site shall be the lowest whole number determined by apportioning the site area according to the relevant dwelling unit factors prescribed in Table 1 subject to the following:

- (a) the dwelling unit factor does not prevent the development of a single dwelling on an existing lot;
- (b) for the purposes of calculating the dwelling unit factor an ancillary dwelling shall not be counted as a dwelling unit;
- (c) the area of the site associated with existing houses, as determined by AS1.1 (Minimum rear garden area), K.3.2 (Private Open Space) and K.3.3 (Parking and Access) shall not be included in the area for the purpose of calculating the number of new dwellings (**Figures 3 & 4**);
- (d) any part of the site not in the Residential 1, 2, 3 or 4 Zones shall not be included in the site area for the purpose of calculating the number of new dwellings;
- (e) any part of a site east of the Lower Sandy Bay Escarpment Line (Figure 1A) shall not be included in the site area for the purpose of calculating the number of new dwellings; and
- (f) if the site contains existing flats the total number of dwelling units on the site shall not exceed the number allowed if the site were vacant.”

Ms Noble’s representation raised concerns about the application of the clause where she claimed that the proposed changes would affect all precincts and will mean fewer houses will be permitted than under the current provisions. The representation attached legal advice that contended the draft clause as drafted was ambiguous. Alternative wording was provided by the representor that was adopted by the Council and recommended as a modification to the draft amendment.

The proposed revised AS1.2 is as follows:

- In order to aid interpretation of Clause AS1.2, replace the first paragraph of AS1.2 with:

The number of new dwelling units on a development site shall be determined as follows:

- (1) *for the Residential Zone, Precinct 46, by dividing the site area (m^2) by 155 for each new dwelling; and*
 - (2) *in any other zone or precinct, first by subtracting from the site area (m^2) the figure prescribed in Table 1 for the first new dwelling and secondly by dividing the balance by the figure prescribed in Table 1 for additional new dwellings subject to the following: ...*
- In Clause AS1.2(b) omit the word “dwelling” and substitute with the word “flat”.

The revised wording shown above removes the ambiguity that had been identified in the representation and should ensure the existing provisions are carried in to the amended provisions.

The amendment for AS 1.2 contains two additional provisions. First, AS1.2(d) removes any part of a lot in a non residential zone from the application of the dwelling unit calculations. This clause applies across the planning scheme and is an appropriate clarification for lots in more than one zone. The second matter at AS1.2(e) is specific to precinct 33 and removes land east of the Lower Sandy Bay Escarpment Line from the calculation of number of new dwellings. Proposed AS1.2(d) will remove in some cases significant portions of lots from the dwelling unit calculations but is a necessary provision to achieve the objective of reducing excessive concentrations of dwellings on the less steep slopes of the precinct.

The parts of the draft amendment concerning AS1.2 and AS1.4 also rationalise the existing scheme layout by bringing provisions in brackets and notes signified by asterisks fully into the respective provisions. This change to remove add-on notes etc to clauses is endorsed.

Draft amendment AS1.2 should be approved with the additional modifications recommended by Council.

2. AMENDMENT 1/2009 - 2

The certified draft amendment specified:

‘Amend Schedule K by omitting Clause AS1.4 and substituting the following:

AS1.4

A lot shall have a maximum site coverage of:

- (1) 40% in Precincts 7 14 15A 19A 25A 26A 27A;
- (2) 30% in Precincts 17 19B 21A 21B 22 23 24 25B 25C 25D 26B 26C 27B 27C 30A 30B 34A 35A 35B 37B 46; and
- (3) 25% in Precincts 24A 33 35C 36 37C 37D 39;
subject to the following:
 - (a) the maximum permitted site coverage on any lot with an area greater than $1500m^2$ is $375m^2$;

- (b) on any lot approved by Council under PC1.4 the maximum site coverage may be the same as allowed by the building envelope shown on the subdivision plan;
- (c) any part of the site not in the Residential 1, 2, 3 or 4 Zones shall not be included in the site area for the purpose of calculating the maximum site coverage; and
- (d) any part of a site east of the Lower Sandy Bay Escarpment Line (Figure 1A) shall not be included in the site area for the purpose of calculating the maximum site coverage.”

This part of the draft amendment is to reduce the maximum building site coverage from 30% to 25% for precinct 33. In addition as for AS1.2 above the amendment removes parts of lots that are in non residential zones from the site coverage calculations and brings in former notes into the body of AS1.4. The proposed changes are in the same context as AS1.2 and should be approved.

3. AMENDMENT 1/2009 - 3

The certified draft amendment specified:

‘Amend Schedule K by inserting “Figure 1A Lower Sandy Bay Escarpment Line” (Attachment A) after Clause K.3.1.’

This part of the draft amendment is to identify on a plan the Lower Sandy Bay Escarpment Line and a 20m line up slope of the Escarpment Line that is to set a building setback. The showing of these lines on a plan is essential to the operation of the provisions. The issue is the presentation of the respective lines on a plan of suitable scale that to the greatest degree possible removes argument over the location of the lines as, particularly the Escarpment Line, is critical to the operation of the clauses.

Mr McIlhenny described the process of defining the Escarpment Line on the Council’s GIS system and the plan can be presented at the scale acceptable to the Commission. It is considered that the plan to be referred to should be included physically in the scheme. This being the case the preferred plan is at a scale of 1:3000 scale which fits an A3 sheet Whilst this is not a scale generally used, the detail at this scale should enable the Escarpment Line to be located with the necessary accuracy for a statutory plan.

Part 3 of the draft amendment should be modified to insert Figure 1A being a plan an A3 sheet at 1:3000 scale.

4. AMENDMENT 1/2009 - 4

The certified draft amendment specified:

Amend Schedule K Clause AS4.1 by inserting “33,” in sub-clause (a) after ‘24A’.

This part of the draft amendment is to reduce the acceptable solution maximum building height from 9m to 7.5m. Currently a 7.5m height applies to only 3 precincts, however Mr McIlhenny advised that the draft planning scheme proposes to extend the 7.5m permitted height to all residential zones.

As for the above parts of the draft amendment this is another element towards reducing the building envelope for precinct 33 consistent with the intent.

Part 4 of the draft amendment should be approved as certified.

5. AMENDMENT 1/2009 - 5

The certified draft amendment specified:

Amend Schedule K Clause K.3.4 by inserting the following after Clause AS4.4:

AS4.5

Buildings shall be setback a minimum distance of 20m landward of the top of the Lower Sandy Bay Escarpment Line (Figure 1A) other than for the purpose of extension to an existing building where that extension does not extend further seaward than the existing building and is within the existing building's footprint."

The part of the draft amendment introduces, as an acceptable solution, a setback of 20m from the Escarpment Line for new dwellings, but allows extensions to existing buildings. The clause as drafted introduces concepts of existing building and building footprint that lack certainty of definition for an acceptable solution.

As part of the hearing, parties were invited to assist in resolving the definitional issues, and together submitted the following as a substitute clause:

AS4.5

Buildings shall be

- (a) setback a minimum distance of 20m landward of the Lower Sandy Bay Escarpment Line (Figure 1A); or
- (b) a minor extension (of no greater than 15m²) to an existing building*.

* existing building is one which is in place or approved as at (amendment date)

The proposed substitute clause provides the basis of an acceptable solution provision for buildings on lots within the area between the building setback and the Escarpment Line. With further modification to define that the extension to buildings applies to the area within 20m of the Escarpment Line and to refer to precinct 33, part 5 of the draft amendment should be approved with modifications.

6. AMENDMENT 1/2009 - 6

The certified draft amendment specified:

Amend Schedule K Clause K.3.4 by inserting the following after Clause PC4.4:

PC4.5

A building must be designed and sited to avoid, remedy or mitigate any adverse effects on landscape and visual values of the estuary."

This part of the draft amendment introduces as a performance criterion the alternative to the requirement for a setback of 20m from the Escarpment Line for new dwellings and

the limitations on building extensions. The clause as drafted requires elaboration of the words 'landscape and visual values of the estuary' to provide criteria for assessment.

As for the acceptable solution AS4.5, at the hearing parties were invited to assist in resolving the definitional issues, and together submitted the following as a substitute clause:

'PC4.5

A building must be designed and sited to minimise unreasonable impacts on views of the escarpment from the estuary by means such as:

- (a) The use of suitable landscaping and/or
- (b) The use of non-reflective materials on facades visible from the river;
and/or
- (c) The use of subdued colours.

Buildings shall not extend seaward of the Lower Sandy Bay Escarpment Line.'

The substitute clause devised at the hearing adds to the intent to have the view from the estuary a matter for assessment as the alternative to the acceptable solution. This concern for the estuary arises from recent development that has degraded the river edge by vegetation removal and extensive ground disturbance. There is also reference in the representations to prospective land instability on the steeper slopes. The second part to the substitute clause prohibits buildings seaward of the Escarpment Line. This is a new provision that has merit but is assessed as being beyond power to introduce as a modification but should be introduced as part of the assessment of the performance criteria. Part 6 of the draft amendment should be approved with modifications.

Application of State Policies

State Coastal Policy 1996:

The draft amendment involves land in the coastal zone as defined by the Policy. Many aspects of the Policy have application to the land and within the scope of bringing greater protection of the foreshore and escarpment interface, the draft amendment is assessed as being prepared in accordance with the Policy.

State Policy on Water Quality Management 1997

The draft amendment concerns land where storm water runoff and waste water can be managed consistent with the Policy.

National environmental protection measures

National environmental protection measures are assessed as not applicable to the land in the draft amendment.

Schedule 1 Objectives

Part 1

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

The objective is furthered through increasing protection of land primarily from 20m upslope of the escarpment through to the estuary below. By reducing impacts on the shoreline ecological processes and genetic diversity should be enhanced.

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

The initiation of the draft amendment was prompted through residents' concern for the changes taking place in precinct 33 that have led to a significant increase in dwelling density and building bulk over what has been the situation. Loss of waterfront amenity from the public domain of the estuary and the building-out of existing houses has not been fair or orderly. The provisions of the draft amendment should establish a dwelling density and building bulk more consistent with the other parts of the Residential 2 zone. And to allow a more detailed assessment of proposals which do not meet the acceptable solution..

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

The draft amendment has been subject to public processes. The application of the new standards is likely to result in a greater number of applications that rely on performance criteria that involve discretion and public processes.

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

The amendment furthers this objective albeit further limiting scope for economic development but 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 furthers this objective through community involvement in the initiation of the draft amendment and government and industry responding to the implementation of the revised standards.

Part 2

The part 2 objectives are furthered principally in respect to setting controls for the use, development and protection of land through the planning scheme, that secures a pleasant, efficient and safe living environment and that fully considers land capability.

Conclusion

In accordance with s.40(1) of LUPAA, the draft amendment, representations and Council's report have been considered. The application principally concerns precinct 33 at Lower Sandy Bay. The area has been under development pressure and the resultant dwelling density and building bulk on lots has been gained through 'development rights' over land that is mostly unsuitable for building and concentrating those rights in a relatively small area of the lot. The increased density has brought dwellings much closer to the escarpment and in some cases overhang the escarpment, adversely impacting on the estuarine environment. The draft amendment seeks to make the visual values of the Derwent estuary relevant in decisions on building form and location. Whilst the draft

amendment significantly reduces the potential for dwellings and building bulk on lots, the changes are assessed as reasonable in the context of their application.

The draft amendment with modifications is in order and should be approved.

Decision

Pursuant to Section 41(ab) of the *Land Use Planning and Approvals Act 1993* the Commission modifies 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



Roger Howlett

Delegates
Resource Planning and Development Commission

22 July 2009

Attachments: Annexure A

Resource Planning and Development Commission

**CITY OF HOBART PLANNING SCHEME 1982
Amendment 1/2009**

The Scheme is amended as follows

AMENDMENT 1/2009 - 1

Amend Schedule K by omitting Clause AS1.2 (not including Table 1) and substituting the following:

“AS1.2

The number of new dwelling units on a development site shall be determined as follows:

- (3) for the Residential 1 Zone, Precinct 46, by dividing the site area (m²) by 155 for each new dwelling; and
- (4) in any other zone or precinct, first by subtracting from the site area (m²) the figure prescribed in Table 1 for the first new dwelling and secondly by dividing the balance by the figure prescribed in Table 1 for additional new dwellings subject to the following:
 - (a) the dwelling unit factor does not prevent the development of a single dwelling on an existing lot;
 - (b) for the purposes of calculating the dwelling unit factor an ancillary flat shall not be counted as a dwelling unit;
 - (c) the area of the site associated with existing houses, as determined by AS1.1 (Minimum rear garden area), K.3.2 (Private Open Space) and K.3.3 (Parking and Access) shall not be included in the area for the purpose of calculating the number of new dwellings (**Figures 3 & 4**);
 - (d) any part of the site not in the Residential 1, 2, 3 or 4 Zones shall not be included in the site area for the purpose of calculating the number of new dwellings;
 - (e) any part of a site east of the Lower Sandy Bay Escarpment Line (Figure 1A) shall not be included in the site area for the purpose of calculating the number of new dwellings; and
 - (f) if the site contains existing flats the total number of dwelling units on the site shall not exceed the number allowed if the site were vacant.”

AMENDMENT 1/2009 - 2

Amend Schedule K by omitting Clause AS1.4 and substituting the following:

“AS1.4

A lot shall have a maximum site coverage of:

- (4) 40% in Precincts 7 14 15A 19A 25A 26A 27A;
- (5) 30% in Precincts 17 19B 21A 21B 22 23 24 25B 25C 25D 26B 26C 27B 27C 30A 30B 34A 35A 35B 37B 46; and
- (6) 25% in Precincts 24A 33 35C 36 37C 37D 39
subject to the following:
 - (a) the maximum permitted site coverage on any lot with an area greater than 1500m² is 375m²;
 - (b) on any lot approved by Council under PC1.4 the maximum site coverage may be the same as allowed by the building envelope shown on the subdivision plan;
 - (c) any part of the site not in the Residential 1, 2, 3 or 4 Zones shall not be included in the site area for the purpose of calculating the maximum site coverage; and
 - (d) any part of a site east of the Lower Sandy Bay Escarpment Line (Figure 1A) shall not be included in the site area for the purpose of calculating the maximum site coverage.”

AMENDMENT 1/2009 - 3

Amend Schedule K by inserting “Figure 1A Lower Sandy Bay Escarpment Line” (Attachment A) after Clause K.3.1.

AMENDMENT 1/2009 - 4

Amend Schedule K Clause AS4.1 by inserting “33,” in sub-clause (a) after ‘24A’.

AMENDMENT 1/2009 - 5

Amend Schedule K Clause K.3.4 by inserting the following after Clause AS4.4:

AS4.5

‘In Precinct 33:

- (a) a building shall be setback a minimum distance of 20m landward of the Lower Sandy Bay Escarpment Line (Figure 1A); or
- (b) where an existing building at within 20m landward of the Lower Sandy Bay Escarpment Line an extension to the floor area including open balconies and verandahs of no greater than 15m².

AMENDMENT 1/2009 - 6

Amend Schedule K Clause K.3.4 by inserting the following after Clause PC4.4:

PC4.5

In Precinct 33 a building must be designed and sited to minimise unreasonable impacts on views of the escarpment from the estuary by means such as:

- (a) minimising land disturbance and retention of native vegetation
- (b) the use of suitable landscaping;
- (c) the use of non-reflective materials on facades visible from the estuary;
- (d) the use of subdued colours on external building surfaces; and/or
- (e) . siting the building including the extent of any cantilevered section no further seaward than the Lower Sandy Bay Escarpment Line.

