

Resource Planning and Development Commission

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

TASMAN PLANNING SCHEME 1979

Draft Amendment 4/2006
Permit Application No 103/2004

Draft Amendment/Combined Permit

The draft Amendment proposes to rezone land at Wades Road, White Beach from Rural A to Village Infill.

The planning permit DA 103/2004 provides for subdivision of the site into twelve (12) lots accessed from a cul-de-sac to be constructed on the land. As a permit condition relevant to the density standard for the Village Infill zone, Council required that lots must have a minimum area of 4000m². Other conditions imposed by Council relate to matters such as documentation, weed management, fire protection, prohibition of long term use by temporary dwellings or caravans, road and access construction and wastewater management. Condition 17 required the applicant to contribute to the upgrading of Wades Road.

Delegation

At its meeting on 8 September 2008 and pursuant to Section 8 of the *Resource Planning and Development Commission Act 1997*, the Commission delegated to Mr J Vandenberg, Commissioner Roger Howlett and Ms Carol Hughes, jointly and severally:

1. its powers and functions under sections 40, 41, 41A, 41B, 42(1), 42(2), 43G, 43H and 43I of the *Land Use Planning and Approvals Act 1993* in relation to draft amendment 4/2006 to the Tasman Planning Scheme 1979 and Permit No: DA 103/2004; 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*.

Ms Hughes was unable to take part in the hearing and the matter was determined by Mr Vandenberg and Commissioner Howlett.

Background

The subject land comprises a 7.237ha property (Lot 1 on SP 143813) located on hill slopes on the eastern side of Cripps Creek and approximately midway between existing closer settled areas at White Beach. The site is surrounded on all boundaries by land zoned Rural A and there is a Public Purposes reservation at the south east corner. The only road frontage is to an access strip which borders on a Crown Reservation and Reserved Road, known as Wades Road. There is also a private right of way from the north eastern corner of the land across the adjacent title to the north.

The site does not have access to mains water, sewerage or stormwater services.

The land is moderately steep with a northerly aspect, rising at an average gradient of approximately 1 in 7 from poorly drained ground in the north-western corner to steeper slopes in the south-eastern corner. (See Figure 1 – Locality Map)

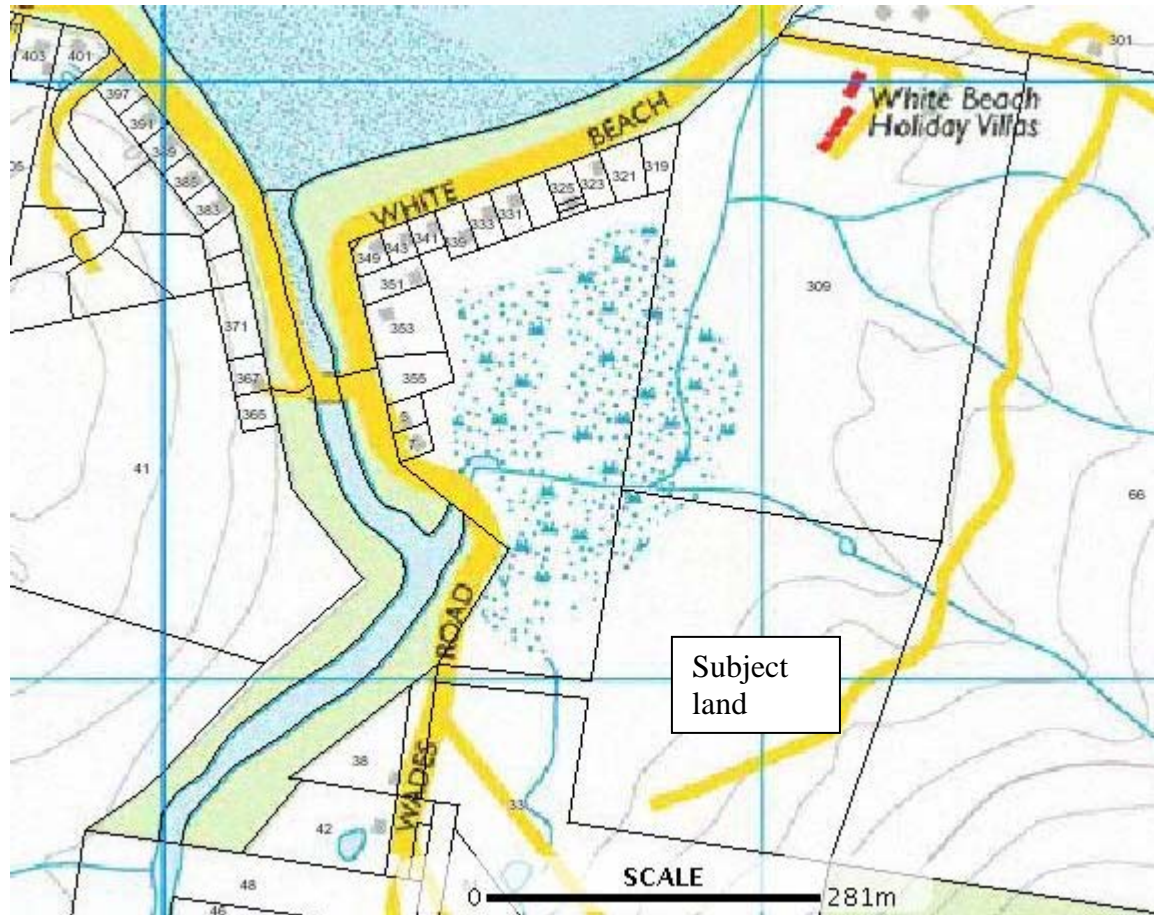


Figure 1 Locality Map, Wades Road, White Beach

The natural vegetation is predominantly dry eucalypt forest, but substantial clearing is reported to have taken place in recent years. The TASVEG database classifies the vegetation as 'Eucalyptus pulchella forest and woodland' which is not a threatened community. A site specific vegetation survey has not been provided.

Soil profiles are diverse, with nine test pits displaying various combinations of clayey sands, clays and dolerite boulders overlain by sands. Slopes range from 2 to 12 degrees. The site investigations, by Aldanmark Consulting Engineers, concluded that the potential for landslip and other geotechnical risks was low to moderate and the site was suitable for subdivision construction, subject to good building practices, maintenance of vegetation and careful site water management. Septic tank and trench systems were possible on deep well drained sands but the risk of ground water contamination was flagged if septic tank and trench systems were used on the low-lying lots. Further investigation of appropriate waste water treatment systems would be required for each lot.

History

The application was for rezoning and a 12-lot subdivision with lot sizes ranging from 3372m² to 7313m². The certified amendment and the permit are dated 16 October 2006. The permit has not lapsed because it has not yet come into effect, pending the Commission's decision. The permit required amended plans, complying with a 4000m² minimum lot size (the minimum for the Village Infill zone) to be submitted to Council. The amendment and permit were publicly exhibited, no representations were received and the documentation was then forwarded to the Commission for determination.

The Commission, on 5 March 2007, considered a report from one of its planning officers and decided to reject the draft amendment and refuse the permit for the following reasons: -

- the draft Amendment does not further the sustainable development of natural and physical resources as it has the potential to contribute to cumulative environmental impacts on water quality at White Beach (Objective 1(a));
- the draft Amendment is not considered to provided for fair, orderly and sustainable use and development as it seeks to rezone unserviced rural land without any strategic context (Objective 1(b));
- the draft Amendment perpetuates the ad hoc nature of development in White Beach and does not represent sound strategic planning (Objective 2(a));
- the draft Amendment is likely to exacerbate the known risks associated with inadequate wastewater disposal and therefore, does not secure a pleasant and safe living and recreational environment (Objectives 2(f) and 2(h)); and
- the draft Amendment has not been prepared in accordance with the *Tasmanian State Coastal Policy 1996*.

The landowner appealed to the Supreme Court under the *Judicial Review Act 2000*. Mr Justice Blow found that the Commission had acted unfairly in not giving the applicant an opportunity to comment on two matters in the planner's report prior to making its decision. Those matters related to 'waste water management and the strategic basis for the proposed zoning'. On 8 November 2007, His Honour ordered that the Commission's decision be set aside and referred back to the Commission for further consideration.

The Commission determined to hold a hearing at which the applicant and the Council would be given an opportunity to address the outstanding issues of wastewater management and strategy.

Date and Place of Hearing

The hearing was held on 5th May 2009 at the Commission's offices, Hobart.

Attendance at the Hearing

Council

Robert Higgins

Applicant

Sean McElwaine, lawyer

Irene Duckett, planning consultant, Ireneinc Planning P/L

Sam Walters, consulting engineer, Aldanmark P/L (by phone)

Documents considered

1. Planning submission by Ireneinc Planning Pty Ltd, dated May 2005
2. Waste water treatment report by Aldanmark Pty Ltd, April 2005
3. Agenda and Minutes of Council meeting of 16 October 2006
4. Amendment 4/2006, certified by Council 16 October 2006
5. Planning permit, application no. DA103/204, dated 16 October 2006
6. Council's s.39(2) and s 43F(6) report advising that no representations were received
7. Letter from Aldanmark Pty Ltd, 31 January 2008 clarifying earlier report
8. Council letter dated 12 December 2007 providing additional comments to the Commission in relation to waste water management and strategic basis for amendment
9. Supplementary planning submission by Ireneinc Planning Pty Ltd, undated but received by the Commission on 4 February 2009

Evidence at the Hearing

Mr Higgins advised that the application had been with Council since 2004 and in the intervening period there had been several changes of management and planning officers. He did not possess a comprehensive history of the application.

The current Tasman planning scheme is old (1979) but various efforts to modernise the strategic basis for the planning scheme had not yet resulted in a new planning scheme. Consultant, Bob Graham, had prepared a strategic background report some years ago but its present status was uncertain. Attempts to produce a draft planning scheme had not progressed to formal certification. Strategic planning for Tasman and the East Coast more generally is still in flux and the subject of a current study, the East Coast Sub-regional Strategy Study.

Mr Higgins also advised that the boundaries of the White Beach settlement(s) are not formally defined or mapped and that Wades Road is not a Council road or maintainable by Council.

Waste Water

Mr Higgins advised that Council was not in a position to fund a sewerage system for White Beach. Headworks contributions had been obtained previously from some subdividers but these had had to be reimbursed due to Council's inability to progress the

project within the required timeframe. Prospects for sewerage under the new regional service authority regime were uncertain but thought to be at least 2 years away.

Ms Duckett relied on her written reports and advised that the availability of sewerage did not affect the subdivision of the subject land, since all lots could install self-contained systems. However the unavailability of sewerage would impact on the capacity to consolidate the White Beach settlement because the land between the headlands, and north east of the subject land, was low-lying and unable to satisfactorily dispose of waste water. Settlement expansion will be limited to higher ground.

Planning strategy

In the absence of a more recently adopted strategy, assessment of the amendment must be based on the provisions of the 1979 Tasman planning scheme, supplemented by information made available by Ms Duckett and Council.

In correspondence to the Commission dated 12 December 2007 Council's planning manager, Mr Darke, wrote,

"White Beach is identified in the Council's draft planning scheme as a settlement node. The strategy for this settlement node is for consolidation with limited expansion, provided development does not result in further linear expansion along main roads and the coast."

He noted that the permanent population had increased by 22 persons between the 2001 and 2006 Censuses and continued,

"In the White Beach area there are a large number of vacant lots, some 200 or more. Many of these although classified as vacant are occupied by caravans or sheds and become temporary residences or campsites over the holiday period. This brings with it its own problems including wastewater disposal. Council is attempting to tackle these problems through policies and by-laws. Under current policy it is not possible to construct [a] shed on a vacant lot"

Mr Darke asserted that there were no large tracts of un-subdivided residential land in the White Beach area and virtually no vacant residential land for subdivision. The creation of lots smaller than 2000m² was not encouraged and there were less than 10 vacant lots in the 3000m² – 5000m² range. The basis for these claims (such as a documented assessment of capacity and realised development potential in each zone) was not explained. He concluded, *"Given that the location of the proposed lots does not extend development along a main road or the coast and there is a demand for larger lots, the proposal can be supported."*

Ms Duckett noted that the relevant planning scheme objectives sought to concentrate development in existing settlements, encourage future development to be in character and scale with existing settlements and the local environment, discourage sporadic, scattered or ribbon development and discourage small lot subdivision where it would adversely affect landscape character, conservation values or maintenance of agricultural production.

Ms Duckett's supplementary report submitted that the White Beach area was extensive and consisted of clusters of small residential lots (500m²-1500m²) surrounded by larger lots (~10 ha) that formed a wooded backdrop to the settlement. She considered that lots of the intermediate size proposed were nevertheless responsive to the scale and character of the area and would provide a lot size that was in demand but not currently available in White Beach. In her opinion the proposal did not represent ribbon development, did not affect significant landscape values and, due to poor sandy soils, would not affect agricultural production potential.

It was further submitted that future development of other land in the White Beach area was constrained by poor drainage, heavy vegetation, or existing residential, agricultural or marine uses. Therefore it was suggested by Ms Duckett that the proposed location off Wades Road was, *"the most appropriate and best suited location for the next release of residential land."*

At the hearing Ms Duckett sought to qualify some observations noted in Mr Graham's report that the subdivision pattern in coastal areas of the municipality was ad hoc or opportunistic, usually consisting of a ribbon of lots along many coastal margins. Mr Graham had also noted that at Penzance and White Beach there had been a more extensive subdivision process, with land set back from the coast being subdivided for holiday housing. (R. J Graham & Associates, Tasman Municipality, Resource and Development Issues, January 2003, pp55-56)

Ms Duckett submitted that the cadastral maps of the area did not give a complete picture of recent subdivision and development in the vicinity of the subject land, such as a multi-dwelling development for holiday homes on the title immediately to the north.

Reasons for the Decision

The Draft Amendment

The requested zone for the land is Village Infill. The planning scheme sets the intent of the zone and establishes a minimum lot size as follows: -

"8.3 Village Infill Zone

8.3.1 *The intent of this zone is to consolidate development, that is in scale and character with the existing settlement and that retains the natural vegetation cover, so as to utilise both the physical and social infrastructure.*

8.3.2 *Each allotment comprising a subdivision intended to be used for the purposes permitted under this scheme in this, zone shall have a minimum area of 4000 square metres with a minimum frontage and depth of 40 metres and 60 metres respectively."*

Waste water

On the engineering advice, it is accepted that the soils on the subject land are capable of supporting suitably designed, individual waste water treatment systems on relatively large residential lots. The absence of a reticulated sewerage system is not, in itself, a bar to residential development at the density allowed by the Village Infill zone.

However, as Ms Duckett acknowledged, the absence of sewerage does impact on a Council strategy to consolidate the White Beach settlements. Council's previous attempt to implement a sewerage strategy, funded partly by subdivider contributions, has failed. The matter is now out of Council's hands and depends on the as yet undetermined infrastructure priorities of a new regional water and sewerage authority.

It would seem from Mr Darke's comments that the land use strategy for White Beach, as expressed in the current allocation of zones, is not working. There are many small vacant lots in the residential zones but for whatever reason they are not being built on.

Planning strategy

The statement of intent for the Village Infill zone suggests that there would or should be other physical or social infrastructure available. There is no public infrastructure for the proposed Village Infill zone at Wades Road. There are no water mains, sewers, drains, electricity or telecommunications services serving the land. Wades Road is a narrow gravel road not maintainable by Council. From our inspection, Wades Road crosses Cripps Creek over a rudimentary low level bridge at which the road level is quite close to the waterline.

The lack of certainty concerning whose responsibility it is to maintain the only means of vehicular access to the land raises concerns about the strategic wisdom of intensifying its use through residential development. The risk of residents' isolation in the event of bridge failure or road flooding (perhaps as a consequence of sea level rise or storm events) does not seem to have been considered.

Also, the concepts of 'consolidation' and 'infill' suggest to the Delegates that the Village Infill zone, despite its relatively low density, should be contiguous with either the Coastal Village or Closed Residential zones and that it should be connected in a quite direct manner to those zones via the public road network. That is not the case here. The adjacent land is zoned Rural A.

The loosely defined settlement of White Beach is a scattering of holiday home clusters strung around the coastal fringe of Wedge Bay in a dumbbell pattern, with disjointed centres of population located on opposing headlands. An isolated, low-density residential subdivision midway between those centres is not considered to contribute to consolidation.

We are not persuaded by Ms Duckett's conclusion that the proposed location off Wades Road is the most appropriate and best suited location for the next release of residential land. There would seem to be no urgency for the 'next release', given the number of vacant lots and rate of uptake for building. No serious examination of alternative locations for this zone appears to have been carried out by Council. If small lot size and lack of sewerage are obstacles to development of the many existing vacant residential lots, then the provisions of the Closed Residential, Coastal Village and Semi-Rural zones should be reassessed before more of the Rural A zone is converted to residential and other uses in the Village Infill zone. That remains as a task to be tackled in preparations for a replacement planning scheme.

Conclusion

On balance, the Delegates consider that the draft amendment is not strategically justified and that the Village Infill Zone is not the appropriate zone to apply to the subject land. This amendment should be refused.

The Permit

As the decision is to refuse the draft amendment, the permit also must be refused.

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: The creation of a low density residential zone with inadequate road connections and minimal infrastructure is not considered to promote sustainable development. There was no specific evidence of adverse effects on ecological processes or biodiversity, however it is reasonable to presume that, in the absence of positive countermeasures, clearing for human occupation would be accompanied by loss of natural habitat and native species.

- (b) *to provide for the fair, orderly and sustainable use and development of air, land and water;*
Comment: The establishment of a Village Infill zone detached from the remainder of the developed White Beach settlement nodes is not considered to represent orderly and sustainable use of land.

- (c) *to encourage public involvement in resource management and planning;*
Comment: The amendment has been considered through a process that encourages public involvement.

- (d) *to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b), and (c);*
Comment: The draft amendment may superficially appear to facilitate economic development but the full public costs of supporting residential use at this location have not been analysed.

- (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: Strategically sound planning and resource management for the White Beach settlement will require consultation and commitment by stakeholders including State government, the regional servicing authority, Council, land owners and the affected community. This has not yet occurred.

(Part 2)

It is considered that the draft amendment has not adequately satisfied the Part 2 objectives in regard to strategic planning, policy integration and effective planning instruments based on land capability and infrastructure provision.

Application of State Policies

State Coastal Policy 1996

The subject land is within 1 km of the coastline and the Policy is applicable. Prior to review of its decision by the Supreme Court, the Commission had determined that the amendment had not been prepared in accordance with the *Tasmanian State Coastal Policy 1996*. Justice Blow's decision did not overturn that aspect of the Commission's decision.

State Policy on Water Quality Management 1997

The Policy is applicable but the amendment, of itself, does not direct any outcomes to the furtherance of the Policy. Achievement of water quality management objectives is frequently left to specific permit conditions upon development of land.

Decision

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



John Vandenberg
Delegate (Chair)



Roger Howlett
Delegate

28 July 2009