

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

CLARENCE PLANNING SCHEME 2007

Draft Amendment A-2008/20

To allow additional uses as Discretionary uses in an INDUSTRY zone at Cambridge.

Date and Place of Hearing

Wednesday 17 December 2008 at Resource Planning and Development Commission,
Macquarie Street, Hobart

Delegate

At its meeting on 3 November 2008 and pursuant to Section 8 of the Resource Planning and Development Commission Act 1997, the Commission delegated to Mr. Clarry Pryor and Mr. John 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 A-2008/20 to the Clarence Planning Scheme 2007; 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

One representation was received during the public exhibition period.

Appearances

Clarence City Council	Mr. Evan Boardman - Planning Consultant on behalf of Council
Applicant	Ms. Jacqui Blowfield- Planning Consultant on behalf of Stanton Roberts Pty Ltd

Amendment

The draft amendment was to amend the Clarence Planning Scheme 2007 to allow the uses Consulting Rooms or Health Centre, and Motel, as discretionary uses within the INDUSTRY zone bounded by Kennedy Drive and Tasman Highway, Cambridge.

Issues raised by the draft amendment

No issues were raised by representation.

Issues identified by the Commission were:

1. Procedural uncertainty in regard to Council's resolution to effect the amendment.
2. The lack of development standards to regulate the proposed additional uses.
3. The lack of strategic justification for the amendment.
- 4.

Council's Report

In accordance with Section 39(2) of the *Land Use Planning and Approvals Act 1993*, on 5 August 2008 Council reported to the Commission that during the public exhibition period only one representation was received, and that representation was in support of the amendment. Consequently, the Council's position was unchanged from its previously reported decision.

Commission's consideration of the draft amendment

Council's initiation report stated that the purpose of the amendment was to allow the consideration of the uses 'Consulting Rooms or Health Centre', and 'Motel', as defined in Section 4.3 of the planning scheme, as Discretionary uses within the INDUSTRY zone, but only on the land in Cambridge bounded by Kennedy Drive to the north and Tasman Highway to the south. Both uses are currently Prohibited in the INDUSTRY zone generally

The amendment was to be effected by amending Clause 6.5.3 Table of Uses, to include:

Discretionary Uses	Condition
Consulting Rooms or Health Centre	Must be in Cambridge, on the land bounded by Kennedy Drive to the north and Tasman Highway to the south.
Motel	Must be in Cambridge, on the land bounded by Kennedy Drive to the north and Tasman Highway to the south.

The subject land, approximately 78 ha in area, is zoned INDUSTRY, under the CLARENCE PLANNING SCHEME 2007. It is also subject to the Airport Buffer Overlay (s.7.13), Subject to Inundation Overlay (s.7.2), Vegetation Management Overlay (s.7.1), and Mount Canopus Overlay (s.7.9).

The report submitted that whilst the Overlays provided a range of development controls, none was directly relevant to a consideration of the merits of the amendment. Rather, they would provide guidance in the assessment of any development proposals which might result from the amendment.

The evidence was that the land did not possess any significant natural values, but it was in the vicinity of a RAMSAR wetland. The area had been subject to significant

development, which had incorporated stormwater management measures designed to protect the wetland. The area was serviced with reticulated water and sewerage.

Existing development included non-industrial uses such as a Homemaker Centre, Hydro Consulting, and Aurora offices, all of which required and provided a high level of amenity, and generated large employee and customer numbers.

It was expected that with the provision of additional infrastructure and a critical mass of quality development, additional similar development would be attracted to the area.

Commission's comments

Issue: Council's resolution

The Commission noted some anomalies in the decision carried at the Council meeting held on 10 June 2008, which was the genesis of the draft amendment.

That decision stated, as far as is relevant to this point:

'Decision:

- A. *That Council resolves, under Section 34(1) of the Land Use Planning and Approvals Act 1993 to initiate draft Amendment A-2008/20.*
- B. *That Council resolves, under Section 35(1) of the Land Use Planning and Approvals Act 1993 that Draft Amendment A-2008/20, as modified, satisfies the provisions of Section 32 of the Land Use Planning and Approvals Act 1993.*

An obvious omission is that neither the detail of the proposed amendment A-2008/20 nor the proposed modification to it, is stated. It is understood that the decision referred to the concluding recommendation in the Council Officer's planning report, and that the comment 'as modified' referred to Clause B1 of that report's recommendation.

Clause B of the recommendation stated:

- 'B. That Council resolves, under Section 35(1) of the Land Use Planning and Approvals Act 1993, that the following modifications to draft Amendment A-2008/20 are warranted.*
1. *The deletion of the Motel definition from the amendment.*

However, that recommendation also omitted to state the detail of the amendment. Further, clause B1 did not follow, as there had been no discussion of the deletion of the Motel use definition in the planning report (although the definition had been quoted).

After discussion and clarification at the hearing, it was explained that the Council's intention had been:

- (a) to accept the Officer's recommendation that 'Consulting Rooms or Health Centre', be considered as a Discretionary development, and
- (b) to reject the Officer's conclusion that 'Motel' was an unsuitable use in any industrial area.

We accept that, notwithstanding the identified anomalies, draft Amendment A-2008/20 properly represents the intent of the Council's decision. However, we find no grounds to support the Council's 'modification' of the recommendation in the planning report, since no reasons were given for countervailing the advice of the professional officer.

Issue: Development Standards

In relation to development standards, in terms of amenity expectations, vehicle/pedestrian movement conflicts and the like, it is possible that the use 'Consulting Rooms or Health Centre' would not be dissimilar to other listed uses in the zone, such as 'Call Centre', 'Civic Building', 'Local Shop', 'Community Building', or 'Office'. However, the proposed addition of the use 'Motel' introduces a residential type use not presently represented in the Table (with the possible exception of 'Home Occupation').

In relation to the question of amenity, the applicant referred to the provisions of Cl. 6.5.3 (d) (v). This requires, in an INDUSTRY zone, a standard 10m. setback for development adjacent to existing dwelling or residential zones. It was submitted that this indicated that a 10m. setback is sufficient to protect a residential level of amenity, and that that level was substantially greater than the expectation for a Motel, a use which is often located in high impact areas.

To the contrary, the Council's initial planning report contended that a Motel is a non-industrial land use with high amenity expectations, that could reasonably be expected to be affected by operating hours and noise associated with nearby industrial uses.

Our view is that the development standards in Part 6.5 of the scheme, intended to apply to predominately non-residential development, are not necessarily appropriate to protect the amenity of a residential use. If the scheme were to be amended to include the use 'Motel' in the INDUSTRY zone, the amendment would need to also incorporate additional development standards to ensure an appropriate level of amenity for any Motel development. Such development standards, when applied to future industries in the vicinity, could have the effect of fettering industrial use, for example by restricting noise levels, other emissions, or hours of operation. That outcome would undermine the strategic intent of the INDUSTRY zone and of the planning scheme generally.

Issue: Strategic justification for the amendment

The applicant and the Council advanced a number of propositions in support of the amendment, including:

- (i) There is a need for a doctor in the subject area to serve the increasing number of employees as well as residents, and a possible need for other practitioners such as dentists, physiotherapists, and the like.
- (ii) There is a need for a motel in the vicinity of Hobart Airport as an alternative to the high standard motel currently under construction.
- (iii) There is little potential for alternative locations for such facilities.
- (iv) The additional uses proposed by the amendment would be unlikely to fetter industrial uses to any greater extent than other uses which are currently discretionary in the zone, such as Veterinary Establishment, Community Building, Office, Restaurant, etc.

These assertions were largely unsupported by evidence or analysis. Furthermore, it did not appear that the Council had seriously considered other locations in and around the Cambridge township as potential sites for a motel or health centre.

Much of the INDUSTRY zone at Kennedy Drive remains as yet undeveloped for the industrial uses envisaged by the planning scheme. Possible future uses and developments, and their impacts, cannot be predicted with any certainty at this time. We consider that a subjective comparison of hypothetical impacts is not an appropriate approach to the assessment of the merits of the draft amendment. Rather there must be a consideration of the strategy which underpinned the planning scheme and on which the zoning of the subject land was based.

The introduction to Section 2 of the planning scheme, Planning Policy Framework states, inter alia:

‘The Clarence Strategic Directions and Clarence Planning Policies must be taken into account when making decisions under this planning scheme, or preparing amendments to it.’

Clause 2.2.3 sets out the Objectives and Strategies for the implementation of the Policy framework.

Clause 3.3.2(c) includes in the Objectives for Industry:

‘Ensure industrial expansion avoids conflict with other uses, including housing, whose occupants have a higher amenity expectation.’

In our view, there is evidence of some ambivalence about the character of the subject INDUSTRY zone, and its congruity with the above provisions.

In Section 6.5 Industry Zone, the purpose of the zone is stated as:

- (a) To implement the Policy Planning Framework
- (b) To provide a range of *industrial* activities (emphasis added) that promote economic activity within the City.....’

Sub-clause (b) above refers only to industrial activity. Notwithstanding this, the Table of Uses, Clause 6.5.2 includes a wide range of Permitted or Discretionary non-industrial uses, whose inclusion in the INDUSTRY zone is not supported by any policy statement in the scheme. (Curiously, many of those non- industrial uses have Permitted status in the INDUSTRY zone, but are only Discretionary in the COMMERCIAL zone, which could be expected to be the preferred location for them.)

Further, if listed uses such as Civic Building (P), Local Shop (P), Community Building (D), Funeral Parlour (D), Office(D), Place of Worship (D), Restaurant (D), or Shop (D), were to occur in the zone, in our opinion they would have higher amenity expectations than an industrial use, and thus be non- compliant with the Objective in Clause 3.3.2. Consequently, even if the impact of the proposed additional uses were to be comparable with the listed uses, they would be similarly non-compliant.

The applicant’s evidence referred to an Industrial Development Strategy report by consultants AEC Group which noted that the Cambridge industrial area had potential

for industrial/commercial growth, and recommended the development of precincts to provide for uses such as large format retail, and campus style offices.

To date, the total zone appears to have been regarded as such a precinct, not only for those uses, but also for the other listed non-industrial uses. This approach is evidenced by the current proposal, in which, notwithstanding that the applicant has a specific site in mind for the proposed additional uses, the amendment is to apply to land in the zone generally.

However, it is noted that the AEC report did not designate the total Cambridge INDUSTRY zone as a precinct, but rather called for an identified precinct within the zone:

‘The present provision of campus style offices in the Cambridge Industrial Area has not been co-ordinated or clustered. This represents a future planning opportunity for Council to create a precinct for campus style offices, thereby.... reducing the potential for conflict with industrial uses.’

We acknowledge that the Planning Policy Framework explicitly provides for bulky goods stores to be located in industrial areas, and that the AEC report recommends that campus style offices be similarly accommodated. However, the range of other non-industrial uses allowable in the zone creates a potential for a significant dilution of the industrial character of the INDUSTRY zones, including the subject area, and we do not support increasing that potential by the addition of further non-industrial uses such as those proposed by the amendment.

In our view, the planning scheme clearly designates the subject land as an industrial area with provision for the accommodation of bulky goods stores. There is no strategic basis for other non-industrial uses, nor for the proposed additional uses.

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;*

Comment: This Objective is not seen as being relevant to the amendment.

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

Comment: The lack of a strategic basis for the amendment is not considered to represent orderly planning, and consequently cannot be regarded as promoting sustainable development.

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

Comment: Public involvement has been ensured by the process of 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 additional uses proposed by the amendment would not necessarily contribute to economic development any more than the uses currently allowed in the zone.

- (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: This Objective is not seen as being relevant to the amendment.

(Part 2)

- (a) *to require sound strategic planning and co-ordinated action by state and local Government;*

Comment: We consider that a lack of sound strategic planning is the main defect 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: This Objective is not seen as being relevant to the amendment.

- (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 uses and developments proposed to be allowed by the development are not consistent with the policies of the municipality as expressed by the planning scheme.

- (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 seen as being relevant to the amendment.

- (f) *to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;*

Comment: The possibility of conflict between industrial activity and other uses such as a health centre patronised by families, and a motel for tourists, creates potential for conflict with 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 seen as being relevant to the amendment.

- (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: Public infrastructure would be available to the proposed additional uses as it is to the existing uses.

- (i) *to provide a planning framework which fully considers land capability;*

Comment: This Objective is not seen as being relevant to the amendment.

Application of State Policies

State Coastal Policy 1996 and State Policy on Water Quality Management 1997:

Whilst the site is within 1km of the high water mark, and thus subject to the State Coastal Policy, any development which might be facilitated by the amendment would be in an area already significantly occupied by existing development. It would use existing reticulated infrastructure, which includes the provision of stormwater retention basins to protect the adjacent RAMSAR wetland.

Interim State Policy for the Protection of Agricultural Land 2008:

This Policy is not relevant to the amendment.

Conclusion

In consideration of:

1. The lack of a strategic basis for introducing additional uses into the Table of Uses;
and
2. The lack of appropriate Development Standards to apply to the proposed additional uses,

the Delegates conclude that the Draft Amendment A-2008/20 is not in order for approval.

Decision

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



Clarry Pryor
Delegate



John Vandenberg
Delegate

10 February 2009