

Resource Planning and Development Commission

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

**KENTISH PLANNING SCHEME 2005
Draft Amendment 2008/01**

Draft Amendment

The Draft Amendment is to replace and to add provisions for exemptions under Clause 6.1 of the scheme. It expands on use and development that doesn't require a permit, by inserting provisions for:

- **minor domestic buildings or structures in all zones**
- **domestic garages and carports in the Urban, Natural Resources and Commercial Zones;**
- **dwelling additions in the Urban and Natural Resources Zones; and**
- **agricultural buildings or structures in the Natural Resources Zone.**

Date and place of hearing

Wednesday 10 December 2008 at the Council Chambers Sheffield.

Although no representations were received, the Commission exercised its discretion pursuant to Section 40(4) of the *Land Use Planning and Approvals Act 1993* and hold a hearing for the purpose of considering a number of issues that arose from the draft amendment.

Delegation

In accordance with its decision of 21 October 2008 and in exercise of the power conferred upon it by s.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* (LUPAA) in relation to draft amendment 2008/01 to the Kentish Planning Scheme 2005; 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*.

Background

A previous (similar) application in 2007 sought to amend the planning scheme by expanding the exemption provisions to deal with minor residential extensions and outbuildings. That application was rejected by the Commission on the basis that it:

- created complex, imprecise and ineffective exemption clauses;
- conflicted with Objective 1(b) of the *Land Use Planning and Approvals Act 1993* in that it did not provide for a fair, orderly or sustainable approach to the use and development of land; and
- contained other minor flaws and technical issues.

Council consultant planners reviewed that previous report and the current application was certified by Council.

Council's submission in support of the Draft Amendment defines its purpose as, to ensure an efficient planning approval process for relatively minor development where impacts are negligible. It was contended that the exemption provisions are consistent with the objectives of the RMPS and the planning process established under Schedule 1 of the *Land Use Planning and Approvals Act 1993* (the Act).

Council considers that the existing exemption provisions were too limited. There are a significant number of applications for minor development with limited or no impacts that unnecessarily require full planning assessment. Council submitted that of 302 applications received since September 2005, 125 were "permitted" under s.58 of the Act and had received planning approval with no, or limited, conditions of approval. Most were straightforward for minor domestic and agricultural buildings and structures such as sheds, carports and garages, or minor residential extensions that are consistent with the objectives under the scheme and have no off-site impacts.

The purpose of this Draft Amendment was stated to:

- improve the planning approval process for ratepayers and residents by minimising unnecessary processes;
- provide for efficient economic development;
- allow for a simplified and timely permit approval processes consistent with the planning scheme; and
- further Council's regulatory objectives under Council's Strategic Plan.

Documents supplied by Planning Authority

- s.35 certification report and supporting documentation;
- four copies of the certified Amendment; and
- s.39 report.

Council's s.39(2) of LUPAA report

Council advised that no representations were received during the three week public exhibition period. Council made no recommendations for modifications to the draft amendment.

Appearances at the hearing

Council

Mrs E Riley of GHD and Ms Robyn Barwick represented the Kentish Council.

Representations

No representations were received on the draft amendment. The Commission determined that a hearing should be held in accordance s.40(4) of LUPAA.

Commission's assessment of the draft amendment

In consideration of the draft amendment, two preliminary points need to be addressed.

First, in the Kentish planning scheme, clause 6.1 states exemptions are use or development not requiring a permit. The current exemptions appropriately have the character of being exempt from the planning scheme. That is, the exemptions are self contained and do not rely on reference to any other part of the planning scheme for assessment criteria to establish exempt status.

This approach is consistent with the exemptions in Planning Directive No1 and Common Key Elements Template (the Template). The draft amendment as certified changes this approach with proposed clauses that rely on a reference to other parts of the scheme and in some cases a planning assessment to establish whether the application is exempt.

Second, the Kentish Planning Scheme predated the Template, and the Directive does not apply to the draft amendments brought forward after the directive was made. However in the Commission's assessment of such amendments it can be argued that, for matters common to planning schemes, a policy of consistency across schemes should be the objective. For this draft amendment note is made of the capacity of the Commission to vary the Template. In this case, and if the Template was applicable a variation could be justified on the ground of different requirements within the need and capacities of local communities. In essence the reason for planning schemes to be based at the local level.

Prior to the hearing a further submission was received from Mrs Riley for Council that answered the first question posed above, that being that the exemptions should exempt defined use or development from the planning scheme as distinct from requiring compliance with certain scheme provisions but one that does not require an application for, or issue of, a permit. The second question about state-wide consistency, was considered to be a matter for submissions at the hearing.

The hearing established that the Council no longer wished to pursue the certified draft amendment and that the revised provisions submitted prior to the hearing should be the provisions for the Commission's assessment.

Exemptions

The hearing served to identify a set of principles for the consideration of the draft amendment, as follows:

- 1) Exemptions are an important part of a planning scheme that allows the identification of matters that the planning scheme does not seek to intervene upon. The importance of exemptions arises from the interpretations for use, development and works in the Act that are inclusive. The Act interpretations set out to comprehensively capture a limitless range of activities and exemptions in planning schemes seek to confine permit requirements to a considerably smaller set of activities.
- 2) Exemptions must not require reference to any provision or standard in other parts of the planning scheme and particularly any standards that require forming a judgement, discretion or any other form of assessment. (An exception to this principal is that both the Template and modified draft amendment defer to the planning scheme heritage list.)
- 3) Exemptions should be consistent across different planning jurisdictions and planning schemes in respect to a core set of matters that are exempt. However local variation in planning schemes should be accommodated in the form of

variations in the specified standards (eg dimensions) within the core matters and to allow additional exemptions (non core) for the particular planning area.

- 4) Terminology used in exemptions must be consistent with terminology used in the planning scheme.
- 5) Exemptions must be precise as to those matters that are exempt, aiming to avoid any argument over whether or not a particular use or development is exempt.
- 6) Although planning schemes are stand alone documents and do not affect other approval requirements, exemptions where possible should be consistent with exemptions under the building legislation.

On the basis of the above principles, Council's revised provisions were examined and further modifications identified. The revised provisions and the identified modifications shown by strikethrough for deletion and underlined for addition are detailed below. The modified draft amendment without edits is shown at Annexure A.

Clause 6.1.13

Clause 6.1.13 is a substitute clause with principally similar provisions to that existing except that the certified draft amendment initially sought a maximum floor area of 20m².

Proposed clause 6.1.13 showing modifications, states:

Development ~~or demolition~~ of a minor domestic building ~~or structure~~ (excluding signs) within the rear curtilage of a residential development dwelling including ~~non-commercial dog kennels~~ dog kennel, garden sheds, glasshouses, rubbish receptacles or other such minor ~~structures~~ buildings for the domestic needs of the occupants provided that:

- (i) the ~~total gross~~ floor area of the building ~~or structure~~ does not exceed 9 square metres;
- (ii) ~~no part of the building or structure is higher than 2.4 metres above natural ground level;~~ the maximum height is 2.4 metres;
- (iii) each side is not longer than 3 metres; and
- (iv) no part of the building ~~or structure~~ encroaches within any services easement or within 1 metres of any underground service.

Matters canvassed at the hearing are set out below.

Under the Act, the term 'development' includes 'demolition' and the term 'building' includes 'structure'. Although this approach is that of the Template, the exemption provisions should be consistent with terminology in the Act and planning scheme.

The substitution of 'dwelling' for 'residential development' and the reference to 'gross floor area' reflects the definitions in the scheme.

The reference to 'non commercial' in relation to dog kennels is viewed as not being required. The contra situation of commercial kennels would not be classed as being for the domestic needs of the occupants. The examples of minor domestic buildings, dog kennels, garden sheds, glasshouses, rubbish receptacles, should be in the singular again consistent with the planning scheme.

Subclause (ii) states 'no part of the building or structure is higher than 2.4 metres above natural ground level'. This provision is the equivalent to the Template except the Template sets a height of 2.1m. Council's submission on a change of height to 2.4m was principally because of the height of prefabricated sheds and to allow more flexibility of roof forms.

The standards for floor area and wall length are the same as that for an outbuilding exempt from requiring a building permit under the *Tasmanian Building Regulations 2004*. The proposed height limit of 2.4m is the standard in the Building Regulations and should be adopted for the draft amendment. Otherwise the clause should be redrafted to refer to a 'maximum height' for consistency with the planning scheme.

Clause 6.1.18

Clause 6.1.18 is an additional exemption for domestic garages and carports.

Clause 6.1.18 states:

~~The construction or erection of Development for one domestic garage or carport, other than an appurtenant building under clause 13.7.4, within the curtilage of a dwelling in the Urban, Natural Resource or Commercial zone provided that:~~

- (i) ~~the gross floor area of the building does not exceed 36 square metres;~~
- (ii) ~~no part of the building is greater than 6 metres above natural ground level;~~
the maximum height is 6 metres;
- (iii) the maximum wall height is 3 metres;
- (iv) ~~the building will be setback at least 3 metres from any side or rear boundary;~~
the minimum setback from any side or rear boundary is 3 metres;
- (v) ~~the building or structure will be located behind the building line of the dwelling to which it relates or at a distance that is not less than the setback for the applicable zone;~~
- (vi) ~~the site does not contain heritage items or places identified in the Heritage code of the Scheme;~~
the site is not a heritage place as identified in the Heritage Code of the Scheme.
- (vii) the building is not located within 30 metres of a waterway or wetland;
- (viii) no part of the building encroaches within any services easement or within 1 metres of any underground service; and
- (ix) there ~~is~~ are no other garages or carports on the site.

This exemption is basically to apply to a 2 car garage or carport that sets the limit on the floor area. The reference to 'development' instead of 'construction or erection' is to use the more general term. The additional reference to appurtenant buildings is to clarify that clause 13.7.4 does not apply to garages and carports but would apply to

limit the overall floor area of outbuildings on a site exempted by clause 6.1.13. This is a provision specific to the Kentish planning scheme. The addition of a maximum wall height is to restrict high walls near property boundaries that may affect the amenity of adjoining residents.

Clause 6.1.19

Clause 6.1.19 is an additional clause to cover additions to dwellings.

Clause 6.1.19 states:

Development for the extension or addition to an existing approved a dwelling within the Urban or Natural Resources Zone including its partial demolition and replacement provided that:

- (i) ~~the use complies with the allowable use qualifications for the relevant zone;~~
- (ii) the site is not within a bushfire prone area, landslip area or subject to flooding flood-prone area;
- (iii) if within the Urban Zone:
 - a) ~~no part of the building is greater than 6 metres above natural ground level;~~
the maximum height is 6 metres;
 - b) the maximum wall height is 3 metres;
 - c) ~~there is a minimum setback of 3 metres from any side or rear boundary;~~
the minimum setback from any side or rear boundary is 3 metres;
 - d) there remains on the site open space of minimum area of 80 square metres and any part with a minimum dimension of 2.5m and
 - e) is located on land that has access to reticulated services.
- (iv) if within the Natural Resources Zone
 - a) is not located on prime agricultural land;
 - b) ~~is setback 100 metres from any boundary with an adjoining property;~~
the minimum setback from any boundary with an adjoining property is 3 metres and
 - c) is not located within the attenuation distance for any existing approved activity.
- (v) the extension or addition will be located behind the building line of the dwelling to which it relates or at a distance that is not less than the setback for the applicable zone;
- (vi) the extension or addition will not be located within 30 metres of a waterway or wetland;
- (vii) no part of the building ~~or structure~~ encroaches within any services easement or within 1 metres of any underground service;
- (iv) ~~the site is not designated as Landslip A; and~~
- (v) ~~the site does not contain heritage items or places identified in the Heritage Code of the Scheme;~~
- (viii) the site is not a heritage place as identified in the Heritage Code of the Scheme.

Modifications to draft clause 6.1.19 follow the principles applied to the previous clauses. Subclause (iv)(a) raises an interest in prime agricultural land in response to the *Interim State Policy on the Protection of Agricultural Land 2008*. The addition of subclause (iii)(d) concerning the retention of open space reflects the standards for open space in table 13.12 of the residential development code of the scheme.

Clause 6.1.20

Clause 6.1.20 is an additional clause to cover agricultural buildings in the natural resources zone.

Clause 6.1.20 states:

Development for minor agricultural buildings or structures (excluding signs) in the Natural Resources Zone provided that:

- (i) ~~the building or structures are ancillary to an existing lawful use or development;~~
- (ii) the gross floor area does not exceed 75 square metres;
- (iii) ~~no part of the building or structure is higher than 3.5 metres;~~
the maximum height is 7.5 metres;
- (iv) no part of the building ~~or structure~~ encroaches within any service easement or within 1 metre of any underground service;
- (v) no part of the building ~~or structure~~ is located within 30 metres of a wetland or waterway;
- (vi) ~~it is setback a minimum of 50 metres from all property boundaries;~~
the minimum setback from all property boundaries is 50 metres;
- (vii) external surfaces and materials are finished in non-reflective materials;
- (viii) there is no more than one other agricultural building ~~or structure~~ on the lot;
- (ix) ~~the site does not contain heritage items or places identified in the Heritage Code of the Scheme; and~~
the site is not a heritage place as identified in the Heritage Code of the Scheme; and
- (x) The building is not located on prime agricultural land.

The modifications shown for draft clause 6.1.20 follow the modifications required for the earlier clauses. The addition of subclause (x) for prime agricultural land follows the criterion used in 6.1.19(iv)(a).

Application of State Policies

State Coastal Policy 1996

The planning area is not located within the Coastal Zone. The Policy is not applicable to the draft amendment.

State Policy on Water Quality Management 1997

The draft amendment is not likely to lead to situations that are contrary to the Policy. The draft amendment is assessed as being prepared in accordance with the State Policy.

Interim State Policy on the Protection of Agricultural Land 2008

There is the potential for applications for development to come under the ambit of the Policy. The modification to draft clauses 6.1.19 and 6.1.20 to refer to prime agricultural land will bring the draft amendment in accordance with the Policy.

National Environmental Protection Measures (NEPMs)

The NEPMs are not considered relevant to the draft amendment.

Schedule 1 Objectives

Part 1 objectives

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

The modified draft amendment furthers this objective through allowing for use or development within the planning area and to not be adverse to the maintenance of ecological processes and genetic diversity

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

The draft amendment furthers this objective through providing for fair, orderly and sustainable use or development without the requirement for the application for and issue of a permit.

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

The draft amendment has been subject to public processes. Whilst the exemptions do not allow for public input, the provisions regulating exemptions accommodate the public interest in use and development.

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

The draft amendment furthers this objective consistent with the preceding 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 implementation of the planning scheme will require involvement in and responsibility by various interests in the planning process.

Part 2 objectives


The amendment will further the Part 2 objectives principally in respect to the planning scheme setting objectives, policies and controls for the use, development and protection of land.

Conclusion

As noted above exemptions are an important part of the planning scheme, in that they specify that which does not require a permit, but still sets parameters for use and development. The clauses under examination for the draft amendment brought specific focus on the proposed exemptions in terms of setting the principles for the exemptions and the rationalisation of terminology used.

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
19 January 2009

Attachments Annexure A: The modified amendment

Annexure A

Resource Planning and Development Commission

Kentish Planning Scheme 2005

Amendment 2008/01

The planning scheme is amended as follows:

- (i) Omit Clause 6.1.13 and substitute the following:

6.1.13 Development of a minor building (excluding signs) within the rear curtilage of a dwelling including dog kennel, garden shed, glasshouse, rubbish receptacle or other such minor building for the domestic needs of the occupants provided that:

- (i) the gross floor area of the building does not exceed 9 square metres;
- (ii) the maximum height is 2.4 metres;
- (iii) each side is no longer than 3 metres; and
- (iv) no part of the building encroaches within any service easement or within 1 metre of any underground service.

- (ii) Insert clause 6.1.18.

6.1.18 Development for one domestic garage or carport, other than an appurtenant building under clause 13.7.4, within the curtilage of a dwelling in the Urban, Natural Resource or Commercial zone provided that:

- (i) the gross floor area of the building does not exceed 36 square metres;
- (ii) the maximum height is 6 metres;
- (iii) the maximum wall height is 3 metres;
- (iv) the minimum setback from any side or rear boundary is 3 metres;
- (v) the building will be located behind the building line of the dwelling to which it relates or at a distance that is not less than the setback for the applicable zone;
- (vi) the site is not a heritage place as identified in the Heritage Code of the Scheme;
- (vii) the building is not located within 30 metres of a waterway or wetland;
- (viii) no part of the building encroaches within any service easement or within 1 metre of any underground service; and
- (ix) there is no other garage or carport on the site.

(iii) Insert Clause 6.1.19

6.1.19 Development for the extension or addition to a dwelling within the Urban or Natural Resources Zone including its partial demolition and replacement provided that:

- (i) the site is not within a bushfire prone area, landslip area or subject to flooding;
- (ii) if within the Urban Zone:
 - a. the maximum height is 6 metres;
 - b. the maximum wall height is 3 metres;
 - c. the minimum setback from any side or rear boundary is 3 metres;
 - d. there remains on the site open space of minimum area of 80 square metres and any part with a minimum dimension of 2.5m and
 - e. is located on land that has access to reticulated services.
- (iii) if within the Natural Resources Zone:
 - a. is not located on prime agricultural land;
 - b. the minimum setback from any boundary with an adjoining property is 3 metres; and
 - c. is not located within the attenuation distance for any existing approved activity.
- (iv) the extension or addition will be located behind the building line of the dwelling to which it relates or at a distance that is not less than the setback for the applicable zone;
- (v) the extension or addition will not be located within 30 metres of a waterway or wetland;
- (vi) no part of the building encroaches within any service easement or within 1 metre of any underground service; and
- (vii) the site is not a heritage place as identified in the Heritage Code of the Scheme.

(iv) Insert clause 6.1.20

6.1.20 Development for minor agricultural buildings (excluding signs) in the Natural Resources Zone provided that:

- (i) the gross floor area does not exceed 75 square metres;
- (ii) the maximum height is 7.5 metres;
- (iii) no part of the building encroaches within any service easement or within 1 metre of any underground service;
- (iv) no part of the building is located within 30 metres of a wetland or waterway;
- (v) the minimum setback from all property boundaries is 50 metres;
- (vi) external surfaces and materials are finished in non-reflective materials;
- (vii) there is no more than one other agricultural building on the lot;
- (viii) the site is not a heritage place as identified in the Heritage Code of the Scheme; and
- (ix) The building is not located on prime agricultural land.