

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 - 2008/30**

A draft amendment to rezone land at 17-17A, 19, 21, 23, 25, 27 and 29 Gordons Hill Road, Bellerive from Residential to Local Business.

Delegation

In accordance with its decision dated 20 April 2009 and pursuant to Section 8 of the *Resource Planning and Development Commission Act 1997*, the Commission delegated to Mr Robin Nolan:

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-2008/30 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*.

Date and Place of Hearing

Date of Hearing: Tuesday, 19 May 2009
Time: 10 A.M.
Location: Hearing Room 1, Resource Planning and Development Commission, 4th Floor, 144 Macquarie Street, Hobart

Representations

Representations were received from:
H Glidden, on behalf of Housing Tasmania
L Murray, on behalf of Housing Tasmania
P & S Hyland
P Bluett
A Ellis & E Devine
T Pain & H Gan-Pain

Attendance at the Hearing

Council
Mr D Ford represented Clarence Council.

Applicant:
Mr M Clark of JMG Engineers and Planners represented Hi-lite Plaster Pty Ltd.

Representors
Mr T Pain represented T Pain & H Gan-Pain

Issues raised in the representations

- Properties are strategically located for residential use close to all services.
- Local Business zoning will affect the ability for residential redevelopment.
- Local Business zoning will restrict further development of existing consulting rooms.
- The amendment will undermine business confidence for recent decisions made under Residential zoning.
- Any future development would be more expensive.
- The affect of permissible use or development under local business zoning on residential amenity.

Council's Response to the Representations

Council resolved to advise that it considers the merits of the representations do not warrant modification to the draft amendment.

Commission's assessment of the draft amendment

The Draft Amendment

The draft amendment proposes to rezone land at 17 – 17A, 19, 21, 23, 25, 27 and 29 Gordons Hill Road, Bellerive from Residential to Local Business.

The application to Council to initiate the draft amendment was in the form of a request for Local Business zoning for 7 titles but principally to change the zoning of 19 Gordons Hill Road. Council initiated the amendment under s.34 of LUPAA partly of its own motion as not all property owners consented to the application being made.

Site and locality

The subject land of 0.56ha consists of seven lots situated in Bellerive, as detailed below:

<i>Address</i>	<i>Land use</i>	<i>Area.</i>	<i>Owner</i>
17 – 17A Gordons Hill Road, Bellerive	Consulting rooms	1,416 s.m.	T D Pain & H J Gan- Pain
19 Gordons Hill Road, Bellerive	(residential) Plaster business	632 s.m.	Hi-Lite Plaster Pty Ltd
21 Gordons Hill Road, Bellerive	Residential	609 s.m.	Director of Housing
23 Gordons Hill Road, Bellerive	Residential	627 s.m.	Director of Housing
25 Gordons Hill Road, Bellerive	Residential & canvass repair	1,055 s.m.	P M & S L Hyland,
27 Gordons Hill Road, Bellerive	Residential	556 s.m.	P J Bluett
29 Gordons Hill Road, Bellerive	Residential	660 s.m.	Director of Housing

The land is located in a residential area where the principal use is residential. The principal non residential use is a recently established use for consulting rooms that are allowable under Residential zoning and prohibited under Local Business Zoning. The land has a frontage to Gordons Hill Road of some 165m between Mildura and Bligh Streets.

On the opposite side of Gordons Hill Road is the Rosny Park commercial district with Commercial zoning. Gordons Hill Road currently defines the extent of the Rosny Park commercial area except for a section of Local Business zoning to the north of the current application comprising a former service station site and shops fronting 31-37 Gordons Hill Road between Bligh Street and Cumberland Street.

Strategic

Part 2 of the planning scheme provides the Planning Policy Framework that refers to the reinforcement of Rosny Park as the prime retail and commercial centre and to not support rezoning of land for retail purposes on freestanding sites separated from existing centres.

The strategy for local business zoning is stated as:

'Applying the Business Zone to existing retail areas and to limited areas which adjoin these areas so as to provide for expansion which reinforces the retail hierarchy and applying the Local Business Zone to existing service business areas and to local shopping centres.'

The subject land is not an existing service business area or a local shopping centre. The draft amendment is not supported through the strategies in the planning policy framework.

Clause 6.7.1 of the planning scheme states that the purpose of the Local Business zone is:

- (a) *To implement the Planning Policy Framework.*
- (b) *To provide for business activities that meet the daily needs of the local community, in a manner that does not affect the safety and amenity of the area*
- (c) *n.a.*

It has not been established that rezoning to Local Business is required to provide for the daily needs of the local community. It will compete with or effectively extend the adjoining Rosny Park business area, which includes uses that provide for the daily needs of the nearby community, including the subject land, such as supermarkets, newsagents and other shops. The matter of safety under Local Business zoning has not been addressed in the submissions and Local Business zoning has the potential of being adverse to the amenity of adjoining residential areas by a commercial use interface which would now share a common boundary with residences and not be separated by Gordons Hill Road as is the current case.

Mr Pain raised concerns that the draft amendment would result in pressure for Local Business zoning of residential land in Gordons Hill Road between Mildura Street and Cambridge Road leading to additional encroachment on residential areas.

Mr Clark contended that Gordons Hill Road was not an effective buffer between the current Commercial and Residential zones because of the impacts of traffic and the commercial outlook for dwellings fronting the road. He further submitted that the proposed Local Business zone was a transition zone providing a buffer for Residential zoned land to the east.

Mr Pain's counter submission was that the width of the road, front setbacks and dwellings provided an effective buffer to the rear private open space of dwellings on the subject land and to other Residential zoned land to the east. He submitted the draft amendment would allow use and development that would result in no buffer between the subject land and the rear open space of the adjoining Residential zoned land.

On balance, the views of Mr Pain are preferred.

The draft amendment will also result in the recently approved consulting rooms at 17 – 17A Gordons Hill Road becoming a non-conforming use. Mr Pain expressed concern that plans for further development of the consulting rooms would be unreasonably restricted by the rezoning.

Arguments for a Local Business zoning to form a transition between Commercial and Residential zoning are not accepted. The planning scheme strategy does not contemplate this as a function of the zone and in this case Gordons Hill Road is a defining boundary between Commercial and Residential zoning. It is concluded that the certified draft amendment lacks a strategic base.

Use and development

The Local Business zone does not contain any development standards for building setback and the draft amendment will allow for a variety of permitted and discretionary commercial developments up to 8.0m in height to be built to the rear boundary of adjoining residential land. This will lead to the potential of overshadowing and other land use conflicts that may affect the safety and amenity of the area, contrary to the purpose of the Local Business zone.

Turning to the specific case, the draft amendment was designed primarily to allow the continuation of an illegal use for a plaster supply business. The evidence was that a prohibited use operated under various temporary permits under the previous planning scheme in the residential zone. Mr Ford advised no existing use rights had been established when the 2007 Planning Scheme took effect as the use was an intensification beyond the extent of existing temporary permits.

Clause 3.1.5 of the planning scheme provides that all use or development, other than subdivision, must be categorised in accordance with one or more of the uses defined in Section 4.3 of the planning scheme. Where a use class is not substantially described by one of the defined uses then it is undefined and must be considered a discretionary use in all zones, other than the Special Use zone.

Clause 3.5.1 provides that a use may have ancillary uses that are subservient to a principal use, while clause 3.5.2 provides that where a use does not fall into a single use category and it is not an integral and subservient part of an existing or proposed use, each part must be defined separately.

The documents provided to the Commission did not consider the matter of land use. At the hearing there was no agreement as to the appropriate use classification of the Hi-lite Plaster Pty Ltd business at 19 Gordons Hill Road. Both Mr Clark and Mr Ford felt that the business should have a mixed-use classification for the separate components of shop, office and storage.

The relevant use classes, definitions and status in the Local Business zone are as follows:

Use class	Use definition	Use status in the Local Business zone
office	Land used for administration, or clerical, technical, professional or other like business activity. No goods or materials intended for manufacture, sale, or hire may be stored on the land	Discretionary
shop	Land used to sell goods or services, or to hire goods, but does not include uses defined elsewhere in this clause.	Discretionary
warehouse	Land used to store or display goods. It may include the distribution and the wholesaling selling of the goods.	Prohibited

On the information available the current use of 19 Gordons Hill Road is not multiple use, but the principal use is not readily defined. An office as a principal use is not appropriate as goods are stored and sold from the site. A shop is not seen as the principal use of the site and if the principal use is storage (warehouse), this is prohibited. Instead the various use components are appropriately classed as ancillary to a principle use akin to a building contractor's depot, which is either an Undefined or a Service Industry use, which is defined as:

Use of a premises not more than 200 square metres which has no detrimental affect on the amenity of other activities in the area, and is used for either:

- *The manufacture of goods intended for sale on the premises;*
- *Processes directed towards the servicing of goods; or*
- *Premises having a retail shop front and used as a depot for processing goods to be serviced.*

If the Hi-lite Plaster Pty Ltd business at 19 Gordons Hill Road is an undefined use it may be approved under the residential zone as a discretionary use, if it is a service industry it is a prohibited use in the proposed Local Business zone. In either case, the need for the amendment is not made out.

If the assessment of use classification is wrong there remains the test under Local Business zoning as to whether the use is a business activity that 'meets the daily needs of the local community' consistent with the purpose of the zone.

Application of State Policies

The State Coastal Policy 1996

The draft amendment involves land in urban Bellerive. Use or development on the land would be consistent with the Policy.

Interim State Policy on the Protection of Agricultural Land 2008

The land is not agricultural land as defined in the Policy.

State Policy on Water Quality Management 1997

Stormwater and waste water can be managed in accordance with the State Policy.

National Environmental Protection Measures

The NEPMs are not applicable to the applications.

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 draft amendment does not affect natural and physical resources or 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.*

Local Business zoning is not assessed as fair, orderly or sustainable. Development in this area has the potential to adversely impact on residential zoned land to the east and result in a recently approved use and development becoming a non-conforming use.

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

The draft amendment has been through the formal public processes required by the Act.

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

The draft amendment is not consistent with the objectives, strategies and initiatives for economic development in the planning policy framework of the planning scheme and will not facilitate economic development 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.*

Use or development allowed by the draft amendment would involve the sharing of responsibility by government, community groups and industry.

Part 2 objectives

The Part 2 objectives are not furthered principally in terms of securing a pleasant, efficient and safe working, living and recreational environment.

Conclusion

The draft amendment is assessed as being not consistent with the objectives and strategies of the planning policy framework of the planning scheme. Local Business zoning will increase the potential for land use conflicts with adjoining residential zoned land and reduce the effectiveness of Gordons Hill Road as defining the extent of the Rosny Park commercial area.

The draft amendment is opposed by the landowners for 4 of the 7 titles, is unlikely to address the matter of Hi-lite Plaster Pty Ltd in terms of the appropriate classification of the use and will result in a recently approved use and development becoming non-conforming.

The draft amendment should be rejected.

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.

A handwritten signature in blue ink, appearing to read 'R. Nolan', is written over the printed name.

Robin Nolan
Delegate
Resource Planning and Development Commission
18 June 2009