

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Glamorgan Spring Bay Interim Planning Scheme 2015
Amendment	AM 2021-01
Permit	DA 2020-80
Planning authority	Glamorgan Spring Bay Council
Applicant	Neil Shephard & Associates for Tempus Village Management
Date of decision	13 January 2022

Decision

The draft amendment is rejected under section 41(b) of the *Land Use Planning and Approvals Act 1993*.

The permit is refused under section 43H(1)(d) of the *Land Use Planning and Approvals Act 1993*.

Ann Cunningham
Delegate (Chair)

Roger Howlett
Delegate

Rohan Probert
Delegate

Note:

References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The commencement day was 17 December 2015.

REASONS FOR DECISION

Background

Amendment

The certified draft amendment proposes to insert clause 39 Particular Purpose Zone 8 - Tempus Village (Tempus Village PPZ) into the Glamorgan Spring Bay Interim Planning Scheme 2015 (interim planning scheme); and rezone part of 12371 Tasman Highway, Swansea from Significant Agriculture to Tempus Village PPZ.

The certified draft amendment also proposes to include the Tempus Integrated Impact Assessment, 19 November 2020 into Appendix 1 of the interim planning scheme as an incorporated document.

Permit

The permit provides for stage 1 of works including a two lot subdivision within the Tempus Village PPZ area. It also provides for part of the community centre building and observatory, a display unit, workshop buildings, landscaping, signage, and on-site services and infrastructure.

Site information

The site is located on folios of the Register 177646/1, 240461/1 and 181282/1 that form part of the Kelvedon property at 12371 Tasman Highway, Swansea.

The land subject to the draft amendment comprises an area of 16.9 ha. It is largely cleared land currently used for grazing.

Surrounding land is zoned Significant Agriculture, Rural Resource and Utilities (the Tasman Highway). The Bushfire-Prone Areas and Scenic Road Corridor overlays apply to the area subject to the draft amendment.

The site is bounded by the Tasman Highway to the east and Mount Pleasant Road to the north. The Gala Estate Cressy Vineyard is adjacent to the south east of the site, with the remainder of the Kelvedon property located adjacent to the west and south west.

Piermont Retreat is located opposite the site over the Tasman Highway. The site is located approximately 3.6 km south of the local post office in the Swansea township.

Issues raised in representations

The representors raised the following issues:

- compliance with the Southern Tasmania Regional Land Use Strategy, the Swansea Structure Plan and the State Policy on the Protection of Agricultural Land 2009;
- scale and location of the site;
- encroachment on agricultural land and land use conflict with agricultural use;
- medical facilities;
- establishment of precedent for the Cambria Green amendment;
- owner consent for the road;
- provision of services and infrastructure;
- visual impacts and light pollution;
- community access to the facilities within the proposal;
- use for visitor accommodation;
- project staging and completion;

- subdivision of land; and
- support for the proposal.

Planning authority's response to the representations

The planning authority considered the representations and recommended:

1. Endorse Attachment 1: Consideration of Representations to Draft Amendment AMD 2021/01 as its report in response to the representations in accordance with Section 39(2) of the former provisions of the Land Use Planning and Approvals Act 1993; and
2. Recommend to the Tasmanian Planning Commission the following modifications to Draft Amendment AMD 2021/01 – Tempus Particular Purpose zone as detailed in Attachment 1:
 - a. obtain further expert analysis from the applicant to investigate and advise on the conflicting statements by qualified or experienced parties within representations regarding conflicting statements and impacts on:
 - i. the potential for and the ability to manage land use conflicts around spraying, noise, competing demands and fettering; and
 - ii. the nature of the soils on the Tempus site and their ability to sustain viticulture and therefore, their value as agricultural lands; and
 - b. revise criterion GSB-P7.6.3 A3(b) to recognise existing setbacks for sensitive use;
 - c. refers concerns regarding water service capacity for existing and future urban and rural customers to Taswater for response; and
 - d. obtains expert analysis from the applicant to identify visual impacts of the proposal within the wider landscape and determine alterations to the finishes and colours for the project to minimise visual contrast with the surrounding day and nighttime landscape; and
3. Recommend to the Tasmanian Planning Commission the following modifications to Draft Planning Permit DA2020/080 as detailed in Attachment 1:
 - a. insert a new condition to the permit that limits stormwater discharges to the public system from the site to pre-development volumes; and
 - b. insert a new condition to the permit that requires materials, colours and finishes to minimise visual impacts to the surrounding landscape; and
 - c. insert a new condition to the permit that requires lighting to be baffled to minimise lighting impacts to the area and night sky; and
 - d. insert a new condition to the permit that ensures access for the wider community to the facilities within Tempus.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on the 19, 26 and 27 October, and 18 November 2021.

Appearances at the hearing

Planning authority: Michael Purves, Senior Planning Consultant and James Bonner, Town Planner

Applicant: Naomi Billett, Counsel for Tempus Village; John Lewis, Architect; Neil Shephard, Planning Consultant; Astrid Ketelaar, Natural Resource Management Consultant; Reuben Wells, Agricultural Consultant; Rod Hancl, Agronomist; Professor Andrew Osborne; Ross Murphy, Bushfire Engineer and Protection; Julian Cotton, Kelvedon.

Representors: Evan Boardman, Planning Consultant obo Adam Greenhill and Maree Von Haniel; Jason Lynch, Agricultural Consultant obo Adam Greenhill; Adam Greenhill, Gala Estate; Maree Von Haniel, Piermont; Sophie Underwood.

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. A hearing was convened to assist the Commission to consider the issues in the representations.
3. The amendment has been initiated and certified by the Glamorgan Spring Bay Council, in its capacity as planning authority, and further supported in the reports under sections 35 and 39.
4. Under section 32(1), in the opinion of the relevant decision-maker, a draft amendment:
 - (a)-(d) . . .
 - (e) must, as far as practicable, avoid potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area;
 - (ea) must not conflict with the requirements of section 300;
 - (f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.
5. Section 300 includes that:
 - (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.
6. Under section 32(f), regional impacts of use and development permissible under the amendment have been considered with reference to the Southern Tasmania Regional Land Use Strategy 2010 – 2035, 22 September 2021 (regional strategy) and the Swansea Structure Plan April 2016 (structure plan).
7. Under section 32(2), the provisions of section 20(2)-(9) inclusive apply to the amendment of a planning scheme in the same manner as they apply to a planning scheme.

Regional land use strategy

Social infrastructure

8. The planning authority submits that the regional strategy does not provide specific direction on the provision of aged care facilities for Swansea.
9. The planning authority considers the proposal is outside the expectations that informed preparation of the regional strategy and the concepts that underpin it, but that the proposal meets many specific requirements for delivery of residential, aged care, economic, scenic and other objectives of the regional strategy.

10. In his supporting report Mr Shephard provides an assessment of the draft amendment against the regional strategy's social infrastructure policies.

11. Mr Shephard explains that the proposal will provide for a high quality facility integrating retirement dwellings with other aged care services. In response to SI 1.2 which seeks to deliver social infrastructure 'in sequence with residential land release', Mr Shephard states:

Residential land release options in Swansea are limited to individual properties, small scale subdivision or ad hoc multiple unit development. There are no large-scale aged persons' options contemplated within the existing planning scheme and settlement framework. None of the relevant planning instruments (STRLUS, Swansea Structure Plan, or the planning scheme) provide for a largescale integrated facility like Tempus with the associated mixed use nature of activities, within the Residential zones.

12. Mr Shephard further submits:

As stated above, in terms of benefits to the broader community, the scale of the proposal will allow the provision of facilities and opportunities to local business and the wider community, that would not be available through traditional ad hoc fragmented individual smaller scale developments.

However, it should be acknowledged that whilst the main social and community benefits will flow to Swansea, the proposed catchment for Tempus is much larger than the Swansea area or indeed simply the East Coast of Tasmania. The concept of Tempus, like Berry, will be attractive to people from intrastate, interstate and overseas.

13. In terms of the benefit to the region, Mr Shephard states:

The proposal will also provide direct benefits to the wider community through the provision of additional employment opportunities, the support of local business and services, and the availability of certain facilities for public use (eg theatre, function hall).

14. In his representation on behalf of Mr Greenhill, Mr Boardman submits:

The [structure] Plan found that the population of Swansea was 771 people. The proposed retirement village would provide for a new population centre approximately 1/2 the size of the entire township of Swansea.

15. Ms Billett in her closing submission dated 29 November 2021 agrees with the population figure for Swansea, stating:

An appropriate baseline for the existing population of Swansea may be taken from the Structure Plan. This reports a population of 771 people for the Swansea township and an additional 278 people in the surrounding area.

16. However, Ms Billett further notes that, as acknowledged by the regional strategy, Swansea is subject to seasonal variations in population, with 55 visitors being present in the township on 2011 census night.

Mr Purves' evidence was that, allowing for the intended maximum growth allocated to Swansea of 20% under the Regional Strategy, two-thirds of the allocated growth has been achieved within the current operation of the Regional Strategy (i.e. 40% of the time).

If the current trajectory is maintained, irrespective of the current proposal, Swansea will exceed the growth scenario allocated to it under the Structure Plan within the next 5-6 years.

Commission's consideration

17. The Commission acknowledges that the proposal has the potential to provide direct benefits to the wider community as submitted by Mr Shephard. The Commission further acknowledges that Swansea is experiencing population growth, and that the regional strategy seeks to provide for aged care facilities that allow residents to age in place.
18. Notwithstanding this, the Commission also notes that in Mr Shephard's report it is indicated that the proposed Tempus facility will likely attract occupants from well beyond the Swansea, East Coast or Tasmanian catchment.
19. Based on the masterplan that comprises part of the draft amendment, the Commission notes that a significant area of land within the proposed Tempus development is dedicated to vegetation buffers and screening, setbacks from the surrounding agricultural land and land to provide for other lifestyle features of the facility. The Commission also notes that the Swansea Structure Plan provides for consideration of the golf course and sporting oval as a key development site for 'residential commercial' development.
20. The Commission accordingly acknowledges the constraints associated with the availability of land within Swansea to accommodate the Tempus facility as proposed. However, it appears on the evidence that retirement and aged care facilities for the Swansea population could be accommodated within the township.

Settlement and residential development

21. Addressing the regional strategy's settlement and residential development policy SRD 1.2, which requires residential growth to be managed through planning tools including structure plans, Mr Shephard in his supporting report states:

The area of the Swansea Structure Plan does not extend as far as the Tempus site. It finishes approximately 1km short, and equates only with the urbanised portion of Swansea and not the broader settlement. As such it is silent about strategic development factors and opportunities outside of the defined limit of the area of the Structure Plan. Also, as a consequence of this limitation the Structure Plan does not address the existing use and development or the strategic future for the area to the south that includes rural residential development, Kate's Berry Farm, Piermont and the new Gala Estate vineyard with potential cellar door sales. The Tempus site is within this area, which is clearly related to the Swansea locality and provides a more realistic development edge, given that there is no further non-rural development south for another 20km.

22. The report goes on to state:

...the current settlement strategy, insofar as it suggests (implicitly) residential development should be contained within the urban area of Swansea township, does not allow for the scale of the proposed development, or the fundamental rural context that makes it unique.

... an assessment that has regard to the 'settlement strategy' should conclude that a rezoning is appropriate to provide for the proposed use and development, because it cannot be provided for within the urbanised area of the Swansea township. The subject site is not isolated. Like Piermont and Kate's Berry Farm, and the intervening rural residential development, it is based on Swansea, is well within the identified Swansea settlement 'area'; and the development will be integrated with and reliant upon the Swansea community and services.

23. In her submission dated 29 November 2021 Ms Billett explains that the Swansea Structure Plan on pages 50, 55 and 59 makes references to areas outside of its study area, outlining the following:

There are even more generalised references to “Areas of residential and farming zoning surrounding the township also has the capacity to accommodate limited new growth” and “Long term planning and proactive rezoning of future residential land including rural land along the Tasman Hwy to the south of Swansea to direct growth”. These references suggest the potential for rezoning and growth of settlement outside of the area of the Structure Plan (that is defined to be the area of Swansea) to be supported.

24. In that submission she further states:

In our submission, the Commission should proceed on the basis that the overarching policy for Settlement and Residential Development is to provide a sustainable and compact network of settlements capable of meeting projected demand.

In our submission, the proposed amendment is consistent with this policy. It is located on the fringe of the Swansea township adjacent to land that is itself approved for the development of 192 strata lots and associated dwellings. This land, known as Piermont, is approved for both visitor accommodation and residential use. It provides an approved extension of Swansea.

25. In relation to the capacity of the location of the subject site to be considered as part of Swansea, at the hearing Mr Greenhill explained the reasons why he chose the location to establish his vineyard stating:

I assessed the risk or the implications of having Piermont next door, and there are implications as it's been pointed out. I have weighed those up and consider them fairly minimal, just from my talks with Piermont and Piermont management and the location of Piermont which is 600m away. I also assessed Piermont Hills, the staff accommodation which is over 300m away which also gave me a significant buffer and all the other land around me including the proposed Tempus site was zoned agricultural. So I was moving into a very attractive vineyard site with all the protections afforded by that zoning and my wife and I debated it and decided to invest in that because it was a very good opportunity for us.

26. Mr Greenhill was questioned as to whether he had considered the approved strata lots at Piermont, the closest of which are located some 176m from his vineyard site. Mr Greenhill stated:

I did assess those, I have nothing in writing, but I talked with the owners and managers of Piermont and there is no desire to develop any of those in the next 20 years and they are quite open about that. When they do develop it, it will bring more restrictions on me for sure, but that's a lot better than what I have at Cranbrook with the twelve residential neighbours and fourteen farming neighbours around my farm at Cranbrook.

Commission's consideration

27. The Commission acknowledges that the proposal provides for an integrated retirement and aged care facility. Notwithstanding this, the uses associated with the facility constitute Residential uses as identified under the Residential use class of the interim planning scheme. The Commission, therefore, considers the draft amendment to comprise a proposal for residential use.
28. SRD 1.2 of the regional strategy seeks to manage residential growth through settlement structure plans. In accordance with this policy, structure plans can provide guidance for the consideration of residential use and development.
29. The settlement pattern in and around Swansea is characterised by higher density general residential land in the township, that transitions through Rural Living and into Rural Resource

and Significant Agriculture Zoned land. Between the area containing the subject site and Piermont and the General Residential and Rural Living zoned areas of Swansea is an area of relatively undeveloped land on both sides of the Tasman Highway zoned Rural Resource. The Commission considers that this area of Rural Resource zoned land creates a clear distinction and separation, both visually and from a land use perspective, between the rural location of the subject site and the more urban context of Swansea.

30. The Commission notes that Kate's Berry Farm and a cellar door are permissible as discretionary uses in both the Significant Agriculture and Rural Resource Zones, given that those uses support the agricultural activity provided for under those Zones. These types of activities, therefore, have the capacity to be approved in the Significant Agriculture and Rural Resource Zones, and therefore do not relate to consideration of the urban context of the Swansea Township.
31. The Commission does not accept that the approval of Piermont, nor a potential future Gala Estate cellar door constitute an extension to or an edge of Swansea as submitted by Ms Billet and Mr Shephard. The Commission notes that Kate's Berry Farm is located within the boundary of the structure plan in the Rural Living Zone. The subject site, the Gala Estate Cressy Vineyard and Piermont are all located outside the boundary of the structure plan. The Commission does not accept that the statements in the structure plan referring to directing growth to rural land south of Swansea are intended to incorporate all land between the subject site and the township. The Commission notes that, in any event, rural land is identified south of Swansea on the Tasman Highway on the structure plan's zoning and land use map, and that this land is considered to be the subject of the objective under section 9.2.1, to which Ms Billett refers.
32. The Commission accepts the evidence of Mr Greenhill, that he purchased the Gala Estate land based on it being located largely within a rural context, which the Commission considers characterises the locality. The Commission further notes that Gala Estate is also separated from Piermont by the Tasman Highway, which reduces some of the potential fettering impacts from any future use and development on the western portion of the Piermont site.
33. The submission provided by Mr Purves on 14 October 2021 shows that the permit for the Piermont development was issued in 1992. The permit therefore pre-dates any legislation and policy relevant to the Commission's consideration of a draft amendment.
34. The Commission does not consider that the site is connected to or based on Swansea, but rather is relatively isolated. The Commission finds that, similarly, the structure plan does not provide for the land as far south as the subject site, and therefore does not consider it relevant to consideration of residential use and development in that location.
35. Settlement and residential development policy SRD 1 states:

Provide a sustainable and compact network of settlements with Greater Hobart at its core, that is capable of meeting projected demand.
36. SRD 1.1 then states:

Implement the Regional Settlement Strategy and associated growth management strategies through planning schemes.
37. Table 3: Growth management strategies for settlements identifies Swansea as a township with a moderate growth strategy and consolidation growth scenario. A consolidation growth scenario is outlined in the regional strategy as:

A consolidation scenario indicates that growth should be predominantly from infill development which can involve development of existing subdivided lots, subdivision of existing zoned but vacant or developed residential, construction of

additional dwellings on existing developed lots, redeveloping existing developed lots.

38. The Commission considers that the regional strategy provides for the consolidation of residential use and development within the township of Swansea. The draft amendment, as shown in the Tempus Site Plan, would provide for significant residential use outside of the township of Swansea, which the Commission does not consider is consistent with policy SRD 1 and the growth management strategies for the Swansea settlement as set out in Table 3. The Commission finds that the draft amendment is therefore not, as far as practicable, consistent with the regional strategy's policies for settlement and residential development as required by the provisions of section 300(1).

Productive Resources

39. In his supporting planning report, Mr Shephard submits that the draft amendment is consistent with each of the regional strategy's policies for productive resources. It is noted that Mr Shephard in his assessment has referenced the policies from the regional strategy's Tasmanian Planning Scheme Addendum, which have been updated to reflect the terminology used in the State Planning Provisions.

40. In response to PR 1.1, which provides guidance for the application of the Significant Agriculture Zone in the interim planning schemes, Mr Shephard states:

Adjacent areas have differing characteristics and potential based on a number of factors including access to (sufficient) irrigation, and existing constraints arising from existing and approved activities and infrastructure...

In summary, having regard to the expert advice (ibid.) it has been concluded that the land identified for the Tempus proposal is not significant land for agricultural production and has been incorrectly zoned...

41. In response to policy PR 2.6 which addresses the introduction of sensitive uses not associated with agricultural production, he states:

The proposed use and development has also been assessed as not having the potential to fetter agricultural uses on neighbouring land, providing that gas guns are not utilised (ibid.). Particular care has been taken to include in the PPZ, provisions that will buffer the adjoining vineyard development as well as land within the Rural Resource Zone, having regard to the relevant expert advice (ibid.).

42. In his representation on behalf of Mr Greenhill, Mr Boardman, in response to the regional strategy's productive resources policies stated that:

The land is zoned significant agriculture and my client purchased the land and developed the land for a vineyard based on this fact, expecting that the zoning would protect the vineyard from inappropriate neighboring land uses. The rezoning would threaten the viability of the vineyard and result in the permanent loss of a productive resource.

The proposal would not manage land use conflict, it would encourage and facilitate it.

Commission's consideration

43. Policy PR 1 of the productive resources policies seeks to support agricultural production on land identified as regionally significant. Under Policy PR 1.1, regionally significant land is identified through the application of the Significant Agriculture Zone.
44. The Commission acknowledges Mr Shephard's submission that the site has been assessed by the relevant experts as not being significant to the region for agricultural purposes.

Regardless, Mr Shephard addressed a number of the regional policies, largely on the basis that the subject land has been incorrectly zoned as Significant Agriculture.

45. The Commission considers that, given that the site is zoned Significant Agriculture, all of the relevant policy statements need to be considered in assessing the draft amendment.
46. Policy PR 1.2 states:

Avoid potential for further fettering from residential development by setting an acceptable solution buffer distance of 200 metres from the boundary of the Significant Agriculture Zone, within which planning schemes are to manage potential for land use conflict.
47. Policy PR 1.3 states:

Allow for ancillary and/or subservient non-agricultural uses that assist in providing income to support ongoing agricultural production.
48. Policy PR 1.4 states:

Prevent further land fragmentation by restricting subdivision unless necessary to facilitate the use of the land for agriculture.
49. The Commission notes that the provisions of the draft amendment provide a setback standard for sensitive use of 200 metres from the Significant Agriculture Zone as an acceptable solution. Notwithstanding this, the Commission also notes the Acceptable Solution for site cover and development layout, which refers to Figure GSB-8.2, Tempus Site Plan, provides for a reduced setback of 80m, inconsistent with the aforementioned standard.
50. The Commission notes that if the proposal was to proceed with residential use and development setback 200 metres from the Significant Agriculture Zone, the independent living units on the southern side of the complex would virtually be precluded from development, with the remainder of the site significantly constrained. The Acceptable Solution under clause GSB-P8.6.1 of the proposed Particular Purpose Zone requires use and development to be consistent with the Tempus Site Plan layout. Therefore the Commission needs to be reasonably satisfied that the issue of land use conflict can be adequately managed with sensitive use setback 80m from the Significant Agriculture Zone.
51. Policy PR 1.3 recognises the importance of land zoned Significant Agriculture and seeks to only allow for the introduction of non-agricultural uses that are subservient and contribute to agricultural use of the land.
52. The Commission notes the submission by Mr Shephard that the land is not of regional agricultural significance and has been incorrectly zoned. Should this evidence be accepted, the draft amendment would require consideration against the regional strategy's policies for non-significant agricultural land provided under PR2. Of relevance to the consideration of the draft amendment, policy PR2.6 states:

Ensure the introduction of sensitive uses not related to agricultural use, such as dwellings on small non-farming titles, are only allowed where it can be demonstrated the use will not fetter agricultural uses on neighbouring land.
53. Section 300(1) requires that an amendment only be made to an interim planning scheme where it is, in the opinion of the relevant decision-maker, as far as practicable, consistent with the regional strategy.
54. The Commission notes that the policies for both regionally significant and non-significant agricultural land emphasise the need to avoid the impacts of fettering neighbouring agricultural use. The Commission outlines its consideration for fettering and constraining agricultural land under its assessment of the draft amendment against the State Policy on the

Protection of Agricultural Land 2009. However, the applicant relies on the operator of the adjacent Gala Estate to adopt strategies to manage land use conflict, including avoiding the use of gas guns as noted in Mr Shephard's supporting report. Furthermore, the Commission is also required to have consideration for the potential for fettering on other land zoned Significant Agriculture surrounding the site of the proposed Tempus Village.

55. Policy PR1 of the regional strategy, which applies to regionally significant agricultural land requires 'the highest level of protection from fettering or conversion to non-agricultural use', whilst PR2.6, applying to non-significant land states that the introduction of sensitive use 'will not fetter'. It is apparent from the wording of these policies that whether the land is considered regionally significant for agriculture or not, the introduction of uses with the potential to fetter surrounding agricultural land should be avoided.
56. The Commission finds that the draft amendment is not, as far as practicable, consistent with the regional strategy. The Commission is not persuaded that surrounding agricultural land will not be fettered as a result of the introduction of sensitive use, particularly given the proposal's reliance on the reduced setback. Furthermore, the Commission does not consider that the Tempus Site Plan, upon which the proposed Particular Purpose zone is predicated can be achieved if the 200m setback of sensitive use is adhered to.

State Policy on the Protection of Agricultural Land 2009

57. The Commission considers the following policies from the State Policy on the Protection of Agricultural Land 2009 are relevant to consideration of the draft amendment:
58. Principle 1, which states:

Agricultural land is a valuable resource and its use for the sustainable development of agriculture should not be unreasonably confined or restrained by non-agricultural use or development.
59. Principle 5, which states:

Residential use of agricultural land is consistent with this Policy where it is required as part of an agricultural use or where it does not unreasonably convert agricultural land and does not confine or restrain agricultural use on or in the vicinity of that land.
60. Principle 7, which states:

The protection of non-prime agricultural land from conversion to non-agricultural use will be determined through consideration of the local and regional significance of that land for agricultural use.
61. Principle 8, which states:

Provision must be made for the appropriate protection of agricultural land within irrigation districts proclaimed under Part 9 of the *Water Management Act 1999* and may be made for the protection of other areas that may benefit from broad-scale irrigation development.

Conversion of agricultural land

62. An agricultural report was prepared by Ms Ketelaar and Mr Michael Tempest of AK Consultants, dated 20 July 2020. The purpose of the report was to confirm the results of the land capability assessment undertaken by Mr Hancl, dated September 2019.
63. In the Agricultural report prepared by Mr Hancl it is noted that the East Coast is restricted by low rainfall and that long-term climate change forecasts anticipate declining precipitation rates for the region. Mr Hancl notes that the subject site is within the Swan Irrigation District,

however, the pipeline does not extend south of the Swansea township. Mr Hancl stated in his report that, in personal communications, Tasmanian Irrigation advised that there is no plan to extend the pipeline to the south.

64. The AK Consultant's report notes that there are no water licenses or allocations associated with the subject site. However, the report also states that 644ML of high reliability and 183ML of moderate reliability water resources are available from an offtake on Stoney Creek to the north of the subject land.

65. The report concludes that:

Although there are no existing water resources associated with the Tempus land there is potential to bring irrigation water to the Tempus land.

66. At the hearing Ms Ketelaar clarified that it was surface waters that could be brought to the site, but that it would be unfeasible to do so due to the nature of the site and its capacity for economically viable agricultural production.

67. At the hearing Ms Ketelaar was asked whether the land needed to be protected in accordance with Principle 8 of the State Policy on the Protection of Agricultural Land 2009 (PAL policy) because it is within a declared irrigation district.

68. Ms Ketelaar responded that, in relation to Principle 8 of the PAL policy, she focused on the word 'appropriate' in the protection of agricultural land.

69. In a submission received from Tasmanian Irrigation dated 10 September 2021, Mr Andrew Kneebone states that:

The Swan Valley Irrigations scheme is currently fully sold and there is no additional capacity available. I can confirm there are currently no plans to extend that scheme being considered.

There may be potential in the future but they would depend on the development of a more reliable water supply than the current options provide.

70. Turning to the site's capacity for agricultural production, in the reports prepared by AK Consultants and Mr Hancl, and in the submission prepared by Dr Reuben Wells of Ag Logic, dated 29 July 2021, the experts agree that the rock profile of the site constrains its capacity for agricultural potential.

In total on the Tempus block there is likely to be less than 5ha, with the largest single area being less than 1ha of land that could be developed for horticulture. While the Tempus block is closer to the potential irrigation source than the Gala Estate vineyard, it would not be feasible to develop it for horticultural activities that would contribute to a commercial scale operation due to the Land Capability limitations and the lack of economies of scale caused by the fragmentation of suitable land.

71. In respect of the site's capacity to contribute to the agricultural activity on the broader Kelvedon operation, it is submitted in the report by AK Consultants that:

To the west and south west is the large (656ha CT 177646/1) Kelvedon title. This land is on a stony exposed ridgeline and has similar characteristics to the Tempus block. It is limited to grazing with a carrying capacity of 4DSE/ha. Land on the western border is also stony and has the same limitations for agriculture.

Land immediately adjacent to the south eastern corner and land 130m west of the western boundary has potential for intensive use. All other land in proximity is either low intensity grazing or has no primary industry potential.

Whilst the Tempus block does contribute to a commercially viable agricultural operation it represents 0.9% of the area used for the merino fine wool operation.

The loss of this land and the associated productive capacity is insignificant in the regional context.

72. In the AK Consultants' report, the agricultural potential of the land is summarised as follows:
- does not have viticulture or other horticulture potential which can be developed in an economically viable manner to be able to contribute to a commercial scale enterprise. The most productive and most appropriate agricultural use for this land is sheep grazing currently and in the foreseeable future.
73. At the hearing Mr Greenhill questioned Dr Wells as to whether he had considered the capacity of the Tempus site, with its rocky characteristics, for the production of premium wines, and whether his assessment of its commercial viability included being incorporated into an existing commercial operation.
74. Dr Wells stated that he had only considered the site as a stand-alone operation. He stated that he would agree that premium wines can come from restricted, rocky sites provided that the vines can cope with the associated stress, as there is a limit to the amount of stress they can cope with.

Land use conflict

75. In her submission dated 2 December 2021, Ms Billett provides general comment in relation to the potential for land use conflict by stating:

The applicant acknowledges that there is potential for land use conflict between a retirement village and a vineyard. The potential is not the test or relevant consideration. The relevant consideration is whether that potential would eventuate and whether the draft amendment provides a suitable framework to manage the risk of that potential arising.

The risk of complaints is not a fetter on agricultural use and the evidence establishes that the risk of complaints is capable of being mitigated such that there can be no reasonable assertion of the land use conflict arising...

Noise

76. The report by AK Consultants notes that there is potential for bird scaring devices, such as gas guns to be introduced on the Gala Estate Cressy Vineyard site. At the hearing, Mr Greenhill confirmed that the use of gas guns is a component of his preferred regime of bird control.
77. The report by AK Consultants states that there is potential for land use conflict to arise as a result of the use of gas guns and adjacent sensitive use. In relation to the proposed setbacks of sensitive use from an agricultural operation generally, the report submits:

A minimum of 200m is normally recommended to minimise the risk of a sensitive use constraining existing and potential agricultural use. However, there are circumstances where this distance is considered to be insufficient (e.g. frost fans or bird scaring devices or shooting for crop protection). There are also circumstances where this separation distance can be reduced due to mitigating factors such as vegetative buffers, prevailing wind, or landscape features.

78. In relation to the setback of the use and development proposed under the draft amendment it is stated in the AK Consultants' report that:

The proposed setback boundaries on the Tempus block are considered sufficient for mitigating the risk of the sensitive use on the Tempus block constraining any agricultural activity in proximity for all adjacent existing and potential agricultural uses.

79. In Appendix 4 of the AK Consultant's report it is explained that the impact of gas guns is regulated through the *Environmental Management and Pollution Control Act 1994*. It is stated that:

Whether or not the use of bird scaring devices, and the noise impact experienced upon the adjacent Tempus site, constitutes environmental harm (i.e. the unreasonable interference with a person's enjoyment of the environment) depends upon whether the impact is considered to be reasonable or not. Factors likely to contribute to such a determination include:

- (a) The time of emission
- (b) The noise level experienced at adjacent sensitive receivers
- (c) The number or frequency of emissions.

80. It is further suggested that the South Australian guidelines for the use of gas guns can provide guidance for establishing reasonableness through the following parameters:

- Where no more than 6 blasts are used each hour the maximum noise level for any shot is 100dB(LinPeak)
- In an area which is focused upon horticultural production the Maximum Accumulated Peak Level is 118dB
- For the interface between zones (i.e. adjoining a zone where residential amenity receives priority) the Maximum ALP is 115dB
- Stricter limits apply to noise emissions prior to 7am and after 8pm.

81. The guidelines provide the following rule of thumb:

- a typical gas gun located more than 300 m from a residence in a horticultural zone (or similar), restricted in operation to six shots per hour for 10 hours of the day should achieve the performance-based objective.
- a typical gas gun located more than 500 m from a residence in a residential, country township, or rural living zone (or similar) restricted in operation to six shots per hour for 10 hours of the day should achieve the performance-based objective.

82. In relation to the use of gas guns on the Gala Estate Cressy Vineyard site, the report in Appendix 4 concludes:

If the South Australian guidelines are adopted as a measure for reasonableness, and a restriction created by the proposed amendment for the location of a gas gun within 500m of the nearest point at which a dwelling may be located (on the basis that the proposed Tempus rezoning and Peirmont [sic] development are construed as "rural living" type areas) the area of the Gala vineyard impacted as a consequence of the Tempus rezoning (i.e. 500m radius from the nearest edge designated for residential development within the Tempus site) would be generally in accordance with the area impacted by the nearest approved dwelling lot within the Piermont complex (i.e. 500m from the approved location of this dwelling). [AK Appendix 4].

Considered in isolation the proposed rezoning has the potential to constrain or restrain the vineyard operations on the adjoining land (Gala Estate) by limiting the area in which bird scaring devices may be deployed and the manner in which they operate. Such a restraint may be considered reasonable so as not to offend Principle 1 of the PAL given the available alternatives to crop protection and the likelihood that bird scaring devices will not prove effective as a deterrent in the longer term due to the inability to discharge firearms within the relevant proximity to the highway. However, the proposed rezoning does not create any new constraint because the area likely to be impacted by the Tempus proposal

corresponds with that which will be impacted by development of the approved strata lots and associated dwellings within the Piermont complex. It can therefore be concluded that the proposed rezoning is consistent with the PAL Policy (including principles 1 and 5).

83. In the submission prepared by Dr Wells it is stated that:

There are alternative bird damage mitigation tools that do not create noise, such as netting, and laser bird scarers. It is very common for Tasmanian vineyards to use multiple systems, with nets being the most commonly used alternative. Nets are more effective than gas guns and shooting, however are expensive to purchase and time consuming to deploy and then retrieve. Gas guns are the lowest cost option, but are also the least effective in isolation.

The submission from Gala Vineyards suggest that nets are not compatible with spraying. While this is true, the standard method of managing this is to apply nets after the final vineyard spray application. They can be inconvenient, however they are the standard bird control method for many vineyards in the state, therefore to suggest that the incompatibility with spraying prevents vineyards from being managed is not valid. Typically, nets are applied at or just after veraison (when grapes start to colour and ripen), and spraying is generally complete by then. The spray program included in the submission from Gala Vineyards supports this, with the final spray shown as a preveraison fungicide application.

My conclusion on noise conflict resulting from gas guns is that it may indeed cause issues, however the vineyard operator does have other control options.

84. At the hearing Mr Greenhill questioned Dr Wells regarding his suggestion that Gala Estate can operate without the use of gas guns, and instead with nets. He asked Dr Wells at what time of grape development would he expect the nets to be erected. Dr Wells suggested post the ripening period when the grapes start to colour up.
85. Mr Greenhill also put it to Dr Wells that biological controls can be applied right up until harvest when the conditions require it. Dr Wells agreed that if conditions required it, that was correct. Mr Greenhill asked Dr Wells that if that were the case, how are the nets dealt with. Dr Wells confirmed that the nets would have to be removed which would be undesirable.
86. Mr Greenhill put it to Dr Wells that based on an assessment by his agronomist, taking nets on and off would add an extra \$22,700 cost to production and asked him whether he considered this would affect profitability. Dr Wells responded that you would have to consider whether the loss associated with not removing the nets to spray and then replacing them would outweigh the benefit of doing so.
87. Mr Greenhill asked Dr Wells whether he agreed that there are years where there is low bird pressure, where nets are not used at all and birds are controlled through gas guns and shooting? Dr Wells agreed this was the case in some areas, but in his experience it is not normally a responsive or reactive process, and usually a plan that is adhered to.
88. Mr Greenhill asked Dr Wells how birds are controlled when the nets come off for harvest. Mr Greenhill said that at his other vineyard they undertake a lot of bird scaring activities after the nets have been taken off the grapes. Dr Wells responded that he is aware of new laser bird scarers, but that they are not something that he had experience with and could not talk to their effectiveness. Dr Wells concluded that there are no methods regularly used apart from those that Mr Greenhill is already using.
89. In her closing submission, in response to the issue of noise arising from shooting and gas guns, Ms Billett summarised the issue as follows:

The closest existing Piermont residence is 510m distant. The proposed and approved Piermont strata titles are approximately 170m. It is understood that

these are approved for residential development. The vineyard is already constrained by the highway for the use of firearms and by the Stage Development Scheme on Piermont for the use of gas-guns. The use of gas-guns will only be effective for a short period as it will not be possible to provide supplementary shooting.

Machinery noise

90. In his submission provided to the Commission on 28 September 2021, Mr Lynch submits that the noise generating farming operations, including spraying and harvesting can be undertaken outside of business hours and that it is 'reasonable, acceptable and most appropriate' for weather conditions to be taken advantage of, including during prevailing easterly winds.
91. Mr Lynch further notes:
- Harvesting operations are fully mechanised and typically occur in autumn at night and depending upon the specific vine variety/clone and seasonal conditions would typically extend over 4 weeks.
92. In his submission, Dr Wells states that, due to the location of the Tasman Highway it is unlikely that tractor noise would be significantly different to that of traffic noise.
93. At the hearing Mr Greenhill questioned Dr Wells as to whether the noise generated from a tractor with conventional sprayer located closer to the units would be comparable to the traffic noise generated by the Highway. Dr Wells responded that in terms of the quantitative similarity it would be very hard to predict, and that he would not be comfortable answering that, because it would need to be assessed on site.
94. Mr Greenhill further questioned Dr Wells as to whether a tractor and sprayer operating more closely to the units would be noisier than a passing truck and would be there for a lot longer than a passing truck. Dr Wells agreed that this was a logical conclusion, and that he could not argue against it as he did not have any evidence one way or another.

Odour and dust

95. Mr Lynch's submission also addresses the impacts that may arise from the odour and dust from the Gala Estate vineyard. Mr Lynch submits:
- At times odor and dust emissions are an inevitable outcome of normal vineyard operating activities, such as from the application of organic fertilisers (eg compost, dynamic lifter, blood n bone) and soil amendments (eg lime or dolomite), mowing grasses and weed vegetation and harvesting grapes.
- If a vineyard is not allowed to produce odors and/or dust emissions, or rather only produce these emissions at times which accommodates the desire and wishes of the elderly residents of a retirement village would be a significant negative impact on the normal farming activities which could be undertaken on the vineyard.

Firearms

96. In the report prepared by AK Consultants, it is stated that the long-term use of gas guns is questionable as they require additional reinforcement such as shooting to ensure their long term effectiveness. The report submits that the use of firearms on the property within 250m of the Tasman Highway is prohibited. In cross examination of Ms Ketelaar at the hearing, Mr Boardman pointed out that section 113 of the Firearms Act 1996 (the Firearms Act) regulated the discharge of a firearm within 250 metres of a dwelling house, and there is no reference to firing within proximity to a road. Ms Ketelaar confirmed that the information had been received from a telephone conversation that her colleague Mr Michael Tempest had with Tasmania Police.

97. In her closing submission Ms Billett states in relation to firearm use on the Gala Estate site:

It is not an offence to discharge a firearm within a specified distance from the highway as it is for a dwelling. It is a crime to recklessly discharge a firearm.

What constitutes recklessness requires that regard is had to the circumstances. In our submission, it is reckless to discharge a firearm within 250m of the highway as has been indicated by Tasmania Police because 250m is the known maximum distance for a projectile from a standard shotgun. To shoot at or with risk of ricochet onto the highway carries a real and substantial prospect of injury to others.

Spray drift

98. Based on his assessment of prevailing winds and the proposed vegetative buffer between Gala Estate and Tempus, in his submission Dr Wells concluded that:

vineyard spraying should, in most cases, be possible without leading to spray drift and therefore causing conflict with the Tempus development using the above proposed aids (improved sprayer, a local weather station, timing of operations, and a buffer containing a wind break). It is recognised that this will require the vineyard operator to modify their current management systems, with respect to equipment and selecting appropriate weather conditions for spraying. Those modifications are not onerous, and once adopted would not reduce vineyard potential.

While these steps will minimise spray drift risk, it will not eliminate them. I am not familiar enough with the legality around this to know if there is a process whereby adhering to a predefined "reasonable practice" for spraying that is agreed upon by the operator and Tempus can then absolve the operator of unforeseen consequences from spraying, or the concerns of individual residents.

99. At the hearing Mr Greenhill asked Dr Wells if he had a design of a vegetation buffer that had a 90% effectiveness, as outlined in his submission. Dr Wells explained that he did have those references, but would need to find them.
100. The Chair asked Dr Wells to confirm that at 90% effectiveness some spray drift could get through a vegetation buffer. Dr Wells responded "correct".
101. At the hearing Ms Billett called Professor Osborne, who had prepared a flora and fauna study and a natural values survey addendum in support of the proponents request to the planning authority, to address the capacity of the proposed vegetation buffer to survive in the proposed location and how quickly it would grow.
102. Professor Osborne confirmed that he was familiar with the proposed vegetation buffer, but had not been involved in its design. Ms Billett put to Professor Osborne that concerns had been raised throughout the proceedings as to the capacity for the plants within the vegetation buffer to establish and grow in their proposed location. Professor Osborne responded "I'm comfortable".
103. Ms Billett then asked Professor Osborne if he was aware of any reason why the plants in this location would not survive or grow. Professor Osborne responded that
- I don't see any massive difficulty whatsoever in getting plants to survive. Maybe I'm premature in this but the block of land is heavily degraded. But, I'm totally comfortable that with careful choice of species and proper maintenance the block of land can be revegetated effectively and biodiversity restored.
104. Ms Billett then asked Professor Osborne how long it would be likely to take for the vegetation to grow to the extent that it would mitigate the impacts of the vineyard on adjacent residential development. Professor Osborne responded:

Not certain how long it will take to give you the screen you seek along the highway once planting commences. The species I have selected ... in most instances are fast growing and I would anticipate that within five years you would have very advanced growth and we would be well on our way to providing the screen that you want but in order to get it to sophisticated level you are seeking in the longer term that will have to give a bit of lea way. Seven or Eight years from commencement is probably reasonably achievable. But it's very difficult to know. You are talking about stresses on plants especially in small areas where plantings of different species may be required and different strategies may need to be adopted.

105. Professor Osborne also qualified:

My study needs to be qualified to the extent that it really took place over about a month and in order to answer your question accurately I need least an entire season to see what happens.

My original brief...I didn't spend a lot of time working in that area. I have done a reasonable amount of reading on spray drift and the New Zealanders are very good at this and what they find is that 2 rows of appropriately, carefully chosen species separated correctly reduces spray drift between 80 to 90 percent. That is remarkably good. Overseas research studies find that beyond 5 rows each separated by 9m of land is about as good a cleansing barrier as is humanly possible. I have spoken to the developers and they have assured me that I can have a minimum of 40m and I can encroach into Tempus 4 to 5 metres where people can meander.

106. Professor Osborne also explained that:

in New Zealand they get 80 to 90 percent spray drift captured in but two rows and gold standard is 5 rows.

107. When it was put to Professor Osborne if he could anticipate the time it would take for the buffer to establish he responded:

This is very difficult. Hopefully we would be able to achieve it in similar times to those along the highway. But I have had a lot of experience in revegetation of agriculturally degraded blocks of land in Swansea so I am much more confident of my response to the vegetation along the highway than I am with respect to the timing of the buffer zone. But I would anticipate that given the New Zealand experience where 80 to 90 percent of the pesticides are filtered out within two rows that we would in fact be in a remarkably good position because I am totally confident that we will find species that will thrive in those areas.

108. This is going to require trials but I am hopeful that we could achieve it in a not too dissimilar timeframe to along the highway, but it may take longer to get there because of the experimental nature of what is being asked for.

109. Mr Boardman asked Professor Osborne whether he had been on the site where the buffer is proposed. Professor Osborne confirmed that he had but in a very 'cursory fashion'. Mr Boardman then informed Professor Osborne that there is a fair amount of exposed bedrock in some areas on the site. Professor Osborne responded:

I did ask that question, but that's the first time I'm aware that there's a fair bit of it. That would present problems to me or any other biologist.

110. It was later put to Professor Osborne again whether he had any particular knowledge of the bedrock where the proposed buffer is intended to be planted. Professor Osborne replied:

I'm sorry I have absolutely no information on the bedrock. I don't believe I saw it when I was there and I'd have to look at how extensive it is and how much in front of or behind it I would have to work with, or whomever does it, would have to work

with it to create the kind of buffer that you're seeking, and I don't know when you move back into tempus site itself what flexibility I have, or someone else would have, to pick up any particles that have drifted through the buffer zone. I'm on thin ice here, I'll admit it openly. I haven't seen that site properly from the point of view of running east west.

111. Mr Boardman asked Professor Osborne if he knew anything about the soil depth or the amount of bedrock and whether he investigated those elements.

I don't believe I ever commented on the degradation of the buffer zone area at all when I was referring to degraded soils and lack of biodiversity, I was referring to the main body of the area that has been grazed. So when you get heavy grazing you get trampling by livestock and soil compaction and a whole series of problems develop including you no longer have normal age distribution of the your plants and you're getting more to finessing of the existing large plants. But now you're talking about the southern border and that was not an area that I was focussing upon in great depth but I would need to see the site and how large the areas are and what lies behind, north of those areas before you get to Tempus.

112. Mr Boardman put to Professor Osborne whether it was possible for the buffer to fail.

You can always get trees dying, I think it unlikely provided we have some soil. As you said before, you can't grow trees in bedrock. But assuming there is soil, then I am confident that we will find species under proper management guidelines you will in fact grow them and grow them relatively effectively.

113. Mr Boardman asked Dr Wells whether, given he would not recommend growing grapes on the site, would he recommend growing trees on the site, remembering that it's a 40m wide, continuous strip 300m in length through rocky areas. Dr Wells responded:

While it would not be without it's challenges the requirements for growing a tree is very different to growing a vineyard in that you're not needing trellising equipment to go in, you're not needing straight lines you can choose those deeper areas, you're not needing the same spacing that you would for a vineyard. So I haven't assessed the site with that in mind.

114. Mr Boardman asked Dr Wells if he had assessed the site to see if it's feasible to plant a 40m wide vegetative buffer along that site. Dr Wells responded:

I assessed the site based on its suitability as a vineyard site primarily.

115. Mr Boardman asked Dr Wells:

So you haven't assessed the site to see if it could plant a vegetation buffer there that would achieve this 90% reduction that he referred to in his submission.

116. Dr Wells responded "I have not".

117. Ms Billet submitted that the Commission only needs to be satisfied that the proposed vegetation buffer can be achieved and that the timing of the buffer is a matter to be tested when a proposal is put forward for one of the independent living units.

118. In his submission Mr Lynch states:

The vineyard manager must ensure the application of all agricultural chemicals is consistent with and abide by the DPIPWE's "Code of practice for ground spraying".

It is reasonable to consider that whilst every attempt is taken by the vineyard manager to avoid spray drift the presence of a high-density residential development in close proximity would result in the creation of a significantly higher level of risk, anxiety and concern for the neighboring residents by the vineyard manager and likely require substantial adjustment, modification and re-organisation of any and all spraying activities.

119. In summary of the potential impacts arising from spray drift, Mr Lynch states:
- The presence of the Tempus development is a clear imposition on the operation of the Gala Cressy Beach Vineyard and obviously would result in a change to their current practices in order to accommodate a land use activity which has no connection to and or support [sic] agricultural land use activity in the area.
120. At the hearing Mr Greenhill explained that there are often alternative management options, however, whether they should be adopted depends on costs and viability. He said he considered the proposal would fetter his operation because the alternatives put forward in the report by AK Consultants and in the submission by Dr Wells are not Mr Greenhill's first choice.
121. In her closing submission Ms Billet referred to the Department of Primary Industries, Parks, Water and Environment's Code of Practice for Ground Spraying. She submitted that, irrespective of the sensitive use proposed by the draft amendment, currently Gala Estate is required to avoid causing spray drift onto the adjacent Kelvedon property, due to the requirement under the Code of Practice to avoid causing adverse impacts to land, water, plants or stock on an adjacent property.
122. Turning to the issue of managing bushfire risks associated with the vegetation buffer, at the hearing Mr Boardman asked Professor Osborne how flammable are the species he is considering. Professor Osborne responded:
- Well there are very, very few plants that will not burn under extreme conditions.
Yeah you can get bushfires, there's no question about that.
123. At the hearing Mr Murphy explained that the bushfire hazard management plan had been prepared for the proposed Stage 1a, which does not involve vulnerable use, but that he had also developed a concept solution that demonstrated that a bushfire hazard management plan was capable of being developed for all stages of the masterplan.
124. Mr Murphy confirmed that at this stage the implications of the bushfire hazard requirements on the design of the vegetation buffer are unknown. He submitted that:
- It is plausible that if clearing the lower two metres underneath the trees is something that's unpalatable or doesn't meet the filtering expectations from a screening perspective that, its plausible...AS3959 still allows a 20 metre wind break that doesn't have any clearance under the vegetation and it defines that as low threat vegetation...
- Notionally you can have a band of 20m wind break that's 20m wide and then as long as it is separated by another 20m of cleared area between it you could notionally have another 20m of wind break vegetation and the whole thing could be defined as low threat vegetation
125. Mr Murphy explained that, whilst he was comfortable that a 40m hazard management area between the independent living units and the buffer could be achieved:
- ...in his opinion it would be beneficial to be left sufficiently open so that you can develop a strategy in subsequent stages where the detailed analysis is going to lead us to a conclusion about what the appropriate level of separation and distance to be provided in that location. I think at this point in time determining a particular setback of the hazard management area to the screening might be premature.

Commission's consideration – Conversion of Agricultural land

126. The Commission acknowledges the physical constraints associated with the Tempus site and the limitations of the site to be used as a stand-alone agricultural enterprise.
127. It is noted that the evidence provided by agricultural consultants for the applicant have not considered the use of the site for viticulture in conjunction with another enterprise.
128. The Commission notes the response from Tasmanian Irrigation, and that there are constraints relating to the availability of water for irrigation purposes both currently and into the future, but that the potential for extending the irrigation pipeline is not entirely exhausted. The Commission notes that other water sources are available to the site, as outlined in the report by AK Consultants.
129. The Commission does not consider that the evidence precludes the use of the site for future agricultural production, particularly in association with a near-by enterprise. The Commission also considers that Principle 8 relates not just to the subject site, but also to the land surrounding it, that may potentially be fettered by the introduction of a sensitive use.
130. The Commission finds that the current Significant Agriculture Zone provides for the appropriate protection of the land.

Commission's consideration – Land use conflict

131. The Commission is not persuaded that the approved strata lots at Piermont presently pose a constraint to Gala Estate. The dwellings have not been constructed and their future use as either residential or visitor accommodation is unclear, although the Commission notes that visitor accommodation is not a sensitive use. As noted earlier in the Commission's decision, the approval of the Piermont complex also predates the legislation and policy that the Commission must consider in its assessment of a draft amendment.
132. In relation to noise, the Commission considers that the proposed Tempus Village would introduce a new constraint to the existing operation on Gala Estate that, as outlined in AK Consultant's report, would require Mr Greenhill to adopt alternative management strategies in relation to the use of gas guns and firearms. The Commission also notes the evidence from Mr Lynch that conflict may arise as a result of the impacts from odours and dust from vineyard operations on the adjacent Gala Estate.
133. In relation to the submission made by Ms Billett regarding firearms use, the Commission is not satisfied that sufficient evidence was provided that firing a shot gun on the Gala Estate Cressy Vineyard within 250m of the highway would necessarily constitute recklessly discharging a firearm under the Criminal Code Act 1924.
134. The Commission further notes that there are areas in the northwest portion of the Gala Estate site that would be in excess of 250m from the highway. With regard for the evidence submitted by AK Consultants, the Commission notes that a 200m setback of a sensitive use may be insufficient under certain circumstances, including the use of firearms. The Commission considers that the introduction of sensitive uses on the subject site is likely to constrain the use of firearms on Gala Estate, both in terms of safety and noise impacts.

135. Turning to the issue of impacts arising from spray drift the Commission notes the Department of Primary Industries, Parks, Water and Environment's Code of Practice for Ground Spraying referred to by Ms Billett, and considers the following points relevant to consideration of the amendment, as it relates to spray drift:
- 10. When spraying, you must not allow an agricultural chemical product to move off target to the extent that it may adversely affect any people, their land, water, plants or stock. Areas of particular concern include schools, water supplies, places where there are beehives, residential areas and public areas.
 - 18. You must implement spray drift reduction strategies that are appropriate for the type of crop, layout, and sensitive land uses in adjacent areas. Such strategies should include consideration of wind direction and speed, temperature and humidity, atmospheric stability, nozzle selection, release height, delivery pressures, buffer distances and changes in conditions.
 - 21. If you are a commercial grower or producer, you should notify occupiers of properties and buildings within 100 metres of any area to be sprayed, of your intention to spray at least one, but preferably two days in advance. The information you provide should include details of the sprays to be used and the steps that will be taken to minimise drift. Verbal notification is acceptable.
136. The above provisions of the Code of Practice place particular emphasis on the impacts of spray drift on adjacent sensitive use. The Commission considers that the introduction of the sensitive use proposed for the Tempus site would unreasonably constrain the operations of the adjacent Gala Estate and thereby constitute fettering of this surrounding agricultural land.
137. The Commission accepts Mr Murphy's evidence that a range of options including the maintenance of hazard management areas and the use of suitable construction materials can be implemented to manage bushfire risks on the site.
138. However, the Commission notes that detailed work in this regard has not been undertaken and at this stage the evidence is such that the capacity to develop a bushfire management plan to manage risks at all stages of the masterplan is conceptual, but achievable.
139. Notwithstanding this, the Commission considers that conflict in the management of the vegetation buffer for bushfire hazard management purposes and the need for the buffer to reduce land use conflict with the adjacent Gala Estate Vineyard, may arise.
140. The Commission is not persuaded that the evidence demonstrates that, due to on site conditions and hazard management requirements, a vegetation buffer can be established to the extent required to mitigate the impacts of spray drift on the proposed adjacent sensitive use.

Commission's consideration against principles of the State Policy on the Protection of Agricultural Land 2009

141. Section 20(1)(b) of the Act requires a relevant decision-maker to prepare a relevant scheme in accordance with State Policies made under section 11 of the State Policies and Projects Act 1993. Section 20(2A)(b) states that an amendment of an interim planning scheme is a relevant scheme.
142. Section 13 of the *State Policies and Projects Act 1993* states that:
- Where there is an inconsistency between a provision of a State Policy and a provision of a planning scheme or an interim order in force at the time when the State Policy comes into operation, the provision of the planning scheme or interim order is void to the extent of the inconsistency.

143. The representations and evidence submitted throughout the hearing process largely concern potential land use conflict and fettering arising from the proposed Tempus Village upon the Gala Estate Cressy Vineyard. The Commission also considers that the potential fettering impacts that the proposed sensitive use may have on the surrounding agricultural land more broadly need to be assessed.
144. In relation to Principle 7, the Commission acknowledges, as outlined in the report by AK Consultants, that conversion of the land only represents a loss of 0.9% of the Kelvedon property. However it considers that there are other relevant matters, such as the fettering or constraint on activities on surrounding agricultural land.
145. The term ‘appropriate protection’ in Principle 8, needs to be considered in the context of the principle which is to conserve agricultural land that lies within an irrigation district. The principle refers to the protection of surrounding lands and broad irrigation development which suggests that the consideration goes beyond the subject land.
146. In considering Principles 1 and 5 the Commission accepts Ms Billett’s submission that regard must be had as to whether activities on surrounding agricultural land would be unreasonably fettered or restrained by the use proposed by the draft amendment, and whether the draft amendment provides a framework to manage potential land use conflict.
147. However, the Commission is not satisfied on the basis of the evidence provided that the framework proposed by the draft amendment adequately manages the potential risks arising from future land use conflict. Further, the Commission considers that the number of issues arising, and the extent that Mr Greenhill would be required to adapt his management practices constitutes an unreasonable fetter of his operation. In particular, Mr Greenhill’s operation on the Gala Estate Cressy Vineyard would be constrained in respect of:
- the use of firearms on the property due to potential safety and noise impacts on the proposed Tempus Village;
 - the use of gas guns on the property due to potential noise impacts on the proposed Tempus Village;
 - implementing a netting regime where the types of nets used and/or the way that nets are managed is not preferred, incurring additional expense; and
 - the implementation of spraying practices in accordance with Department of Primary Industries, Parks, Water and Environment’s Code of Practice for Ground Spraying that are not preferred to accommodate the adjacent sensitive use.
148. The Commission therefore finds that the draft amendment has not been prepared in accordance with the State Policy on the Protection of Agricultural Land 2009.

State Coastal Policy

149. In his supporting planning report Mr Shephard submits that the subject site is ‘approximately 1km from the southern nominal ‘boundary’ of the town’ and within the broader Swansea settlement area, and that:

The subject site is in a locality that contains the Piermont Resort to the east (and north) and a new vineyard to the south. A cellar door sales element is planned for the latter, and approval for considerably more development exists for the former. Further to the north is ‘Kate’s Berry Farm’. The locality is already a focus for a cluster of development, and the proposal would not extend this any further south. It is considered that the proposal would not contribute to ribbon development, but is in effect infill.

150. At the hearing Mr Shephard was asked how the proposal should can be considered under the urban and residential development policies of the State Coastal Policy. Mr Shephard responded that:

Back in 1996 the terms were used very broadly and the intention was to contain settlements in terms of their natural tendency to expand in respect of residential or urban type development.

I don't think that you can take that to mean that, given that it was something that was drafted in 1996 or before, that the intention was to preclude some form of new development that didn't fit the traditional form of urban or residential growth.

151. Mr Shephard explained that he considers this proposal unique and should be considered differently to other residential rezoning, stating:

I'm suggesting that this is something that has to be considered differently...I don't think that the State Coastal Policy is saying that, because this is residential development technically, that it can't be considered outside the existing settlement.

Commission's consideration

152. Policy 2.4.2 of the State Coastal Policy 1996 states:

Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.

153. The Commission notes that Mr Shephard submits in his supporting report that the proposed use and development of the subject site is effectively 'infill' due to the location of Piermont, Kate's Berry Farm and, potentially, a cellar door. This is contrary to his explanation at the hearing, where he referred to the location as being "outside the existing settlement".
154. The Commission considers that the draft amendment provides for a range of residential use and development capable of approval under the General Residential Zone, albeit integrated with other uses such as resource development and vehicle parking.
155. The Commission is not persuaded that other use and development in the locality provides justification for concluding that the subject site would be contained within the existing town or township. The Commission, therefore, finds that the draft amendment provides for urban and residential use in an unrelated cluster within the coastal zone.

Consideration of representations

156. In her representation to the planning authority, Ms Underwood raised concerns around the visual impact of the proposal, including the impact on the Great Eastern Drive and the implications this would have for the regional economy.
157. At the hearing Ms Underwood asked Mr Purves if the units will be visible from the Tasman Highway. Mr Purves responded that there would be glimpses of the development from the highway.
158. Ms Underwood asked Mr Purves why he thought the development would not impact the scenic landscape. Mr Purves responded that there is a variation between uninterrupted values and more built up areas. He explained that there are already modified values in that area, and that the proposed Tempus Village with Piermont would form a gateway to Swansea.

159. Mr Purves explained that there would be screening from the vegetation buffer along the highway, but he was not sure how long it would take to establish. As outlined in Professor Osborne's evidence, however, he considered the vegetation buffer along the Tasman Highway could take seven or eight years before the plants could provide a sophisticated level of screening.

Commission's consideration

160. The Commission considers that the amendment would provide for development that would be visible from the highway, however, the Commission acknowledges that the majority of the development proposed would be outside the Scenic Road Corridor.
161. The Commission notes that, apart from the entrance, development associated with Piermont is not readily visible from the Tasman Highway. The Commission has previously noted in this decision that the Piermont approval predates any contemporary legislation and policy that the Commission must have regard to in considering a draft amendment.
162. Similarly the Commission has found that the area is of a rural character and does not form the development edge, or gateway, of Swansea.

Resource Management and Planning System Objectives

163. As outlined, the Commission finds that the draft amendment has not been prepared in accordance with the State Policy on the Protection of Agricultural Land 2009 or the State Coastal Policy 1996.
164. Mr Shephard in his supporting report considers that stormwater and wastewater can both be adequately managed on site and that the proposal will not result in the pollution of surrounding waterways. The Commission is satisfied that the draft amendment has been prepared in accordance with the State Policy on Water Quality Management 1997.
165. The Commission finds that the draft amendment is not, as far as practicable, consistent with the regional strategy and has not been prepared in accordance with relevant State policies as outlined above. On that basis the Commission does not consider that the proposal seeks to further the objectives of Act, in particular because it does not provide for the fair, orderly and sustainable use and development of air, land and water under objective (b) Part 1; and does not provide for a framework that fully considers land capability under objective (i) Part 2, in relation to the potential fettering of agricultural land.

Decision on draft amendment

166. The Commission finds that the draft amendment:
- is not, as far as practicable, consistent with the regional strategy's policies for productive resources or settlement and residential development;
 - has not been prepared in accordance with the State Policy on the Protection of Agricultural Land 2009 or the State Coastal Policy 1996; and
 - does not seek to further the objectives of the Act; and
- and is rejected.

Consideration of the permit

167. As the draft amendment is rejected under section 41(b), the permit is refused.