

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Tasmanian Planning Scheme - Northern Midlands
Amendment	10-2023 - insert SSQ NOR-8.3 - 36 Collins Street, Evandale
Planning authority	Northern Midlands Council
Date of decision	9 April 2024

Decision

The draft amendment is modified under section 40N(1)(b) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A and is approved under section 40Q.

John Ramsay
Delegate (Chair)

Claire Hynes
Delegate

REASONS FOR DECISION

Background

At its meeting on 16 October 2023, the planning authority agreed to the draft amendment to amend the Northern Midlands Local Provisions Schedule (LPS). The draft amendment was publicly exhibited from 30 October 2023. One representation was received.

The planning authority considered its response to the representation at the Council meeting on the 11 December 2023. This included recommendations to modify the draft amendment in response to the representation.

Amendment

The draft amendment proposes to insert a site-specific qualification (SSQ) to clause 8.2 Use Table of the General Residential Zone to allow for General Retail and Hire with the qualification 'if for market and directly associated with the Evandale Market' as a Discretionary Use over part of 16A Logan Road, Evandale (folio of the Register 141412/1).

16A Logan Road was previously known as 35 or 36 Collins Street.

The proposed SSQ in the draft amendment is related to the ongoing activity and future facilities for the Evandale Market (the market).

The draft amendment was lodged by Ms Jacqui Tyson, planning consultant for the owner of the land who is also the organiser of the Evandale Market.

Site information

The site of the proposed SSQ (the subject land) is part of a title owned by Mr Peter Woof. The title is an internal rectangular lot, which has a total area of 8,375m².

The proposed SSQ applies to the northern end of the title, measuring approximately 1,800m².

The subject land is zoned General Residential and is within the NOR-S52.1 Evandale Specific Area Plan (SAP). The Attenuation Code - attenuation area overlay, Safeguarding of Airports Code - airport obstacle limitation area overlay and the Bushfire-Prone Area Code - bushfire-prone areas overlay all apply to the land.

The proposed SSQ is positioned separating and providing pedestrian access between the Evandale Market at 2-14 Logan Road to the west and the car park for the market at 18 Logan Road to the east.

The site of the proposed SSQ is largely clear of vegetation with some mature exotic trees near the boundary and a small shed (approximately 25m²) in the north-western corner. There is a fence which provides pedestrian access along the length of the northern boundary.

Adjoining the site to the east is the market car park, which is an internal lot with an access strip to Logan Road. This site is split zoned, General Residential Zone on the access strip and Rural Zone on the main part. The site is subject to existing SSQs (NOR-8.2 and NOR-20.1) which allow for Vehicle Parking use with the qualification 'if directly associated with the Evandale Market'. This site is also owned by Mr Woof.

The Evandale Market site at Falls Park to the west is zoned Open Space. The land and the Falls Park Pavilion building (the pavilion) are owned by Council and predominately used for the market. This site is within the Evandale Heritage Precinct (NOR-C6.2.2).

Also adjoining the subject site to the west, south of Falls Park is property known as Briar Lane, which is privately owned and zoned General Residential.

Land to the north of the site accommodates a seven unit residential development with frontage to Logan Road, which is zoned General Residential Zone.

Land to the south of the site is zoned Agriculture and comprises grazing paddocks.

Issues raised in representation

There was one representation received, which raised the following issues:

- Exact meaning and guidelines are required so planning laws are not disregarded;
- Can the business name Evandale Market be used on any other building;
- Impacts of development in the long term on the site for use other than for that of the Evandale Market;
- Any permit should have conditions to exclude such occurring nor be linked to the Falls Park marketplace lease;
- What will happen if there is a change of ownership of the building or change in market lease;
- What are the hours of operation;
- What is the intended building, form use and function;
- Will the discretionary use clause be reviewed regularly;
- Would a permit expire at the termination or expiration of the lease on Falls Park;
- Will it revert back to residential or can it be used for another business;
- Will the council have the power to ensure all regulations guidelines and standards are enforced; and
- What will happen about all previous conditions and work that has been ignored or not attended to previously.

The draft amendment was referred to TasWater under section 56S of the *Water and Sewerage Industry Act 2008*. In response TasWater made a submission prior to the exhibition period stating no objection to the draft amendment and that TasWater did not wish to attend any hearing.

Planning authority's response to the representations

In the 40K report the planning authority responded to the representation, recommending the draft amendment ought to be modified as follows: 'If for a market directly associated with the Evandale Market'. The reason being to avoid the possibility of the site being operated as a market in isolation.

The planning authority stated that the revised draft amendment satisfies the Local Provisions Schedule criteria set out under section 34(2) of the Act and recommended approval by the Commission.

Date and place of hearing

The hearing was held at the Northern Midlands Council Chambers at 13 Smith Street, Longford on 19 March 2024.

Appearances at the hearing

Planning authority:	Ms Erin Miles, Project Officer Northern Midlands Council Mr Paul Godier, Senior Planner Northern Midlands Council
Applicant:	Ms Jacqui Tyson, Planning Consultant 6ty ^o for the landowner
Landowner:	Mr Peter Woof, Market Licensee

Consideration of the draft amendment

1. Under section 40M of the Act, the Commission is required to consider the draft amendment to the LPS any representations, statements and recommendations contained in the planning authority's section 40K report and any information obtained at a hearing.
2. A hearing was convened to assist the Commission consider the issues in the representation, and to gain further insight to the conditions and circumstance of the site, surrounds and the proposed amendment.
3. The Commission must also consider whether the draft amendment meets the LPS criteria as set out under section 34(2) of the Act:
 - a) contains all the provisions that the SPPs specify must be contained in an LPS; and
 - b) is in accordance with section 32; and
 - c) furthers the objectives set out in Schedule 1; and
 - d) is consistent with each State policy; and
 - da) satisfies the relevant criteria in relation to the TPPs; and
 - e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates; and
 - f) has regard to the strategic plan, prepared under section 66 of the *Local Government Act 1993*, that applies in relation to the land to which the relevant planning instrument relates; and
 - g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates; and
 - h) has regard to the safety requirements set out in the standards prescribed under the *Gas Safety Act 2019*.

Site Specific Qualification

4. Under section 32(4) of the Act, an LPS may only include a site-specific qualification if:
 - (a) a use or development to which the provision relates is of significant social, economic or environmental benefit to the State, a region or a municipal area; or
 - (b) the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.
5. The planning authority outlined in its initiating report that the intent of the amendment is to allow for the 'construction of a new building associated with the Evandale Market'. This would expand the area and offerings of the existing Sunday market and would also serve the need for more all-weather stall space which would help mitigate the impact of the weather.
6. The planning authority submitted that the proposed SSQ meets the requirements of section 32(4)(a) through the site's spatial quality of adjoining the land between the Evandale Market and the market carpark.
7. The applicant submitted in their application report, that the proposed SSQ meets the section 32(4) requirement spatially and due to the economic activity generated by the market. It is

estimated there is an economic benefit of \$30,000 spent on market day each week across approximately 100 stalls. This is on the assumption an average visitation of 3,000 people each week spend \$10 each.

8. The planning authority in their initiating report stated:

The market has been operating consistently since approximately 1975, and runs every Sunday, in all weather. Visitor numbers to the market each week average 3,000 people (up to 5,000 at peak times) along with approximately 150 stallholders (Examiner, 2017).
9. At the hearing, Mr Woof provided details of the market operation. He explained Council have granted him a 15-year licence to run the Evandale Market. This includes the management of the Falls Park Pavilion which holds a number of stalls each Sunday and currently is the only under cover venue for the market. A catering business also rents space in the pavilion from him.
10. Mr Woof explained stall holders pay a flat fee to him and any profits made go to the stall holders undisclosed. It was clarified that the Evandale Market is not run by Council, but entirely by Mr Woof.
11. Mr Woof submitted the pavilion is used for other non-market activities during the week and other events periodically. At times, the pavilion must be emptied of all the stall holder's goods to provide for other events, such as the Glover Art Prize event which is held for 2 weeks annually.
12. Mr Woof explained that it is his intention to establish a building on the subject land in order to provide for full time stall holder occupation and to free up the pavilion for other community and public events.
13. At the hearing, the applicant and the planning authority agreed that the Sunday trade to other businesses in Evandale was very active and reasonably attributed to the regular holding of the Evandale Market and the consequent influx of visitors.
14. At the hearing, Mr Godier for the planning authority submitted that as the proposed SSQ allows for an additional discretionary use and will be subject to a public comment process and to the discretionary use standards under the General Residential Zone any potential land use conflicts will be mitigated.

Commission consideration

15. The Commission accepts the argument that the subject land has particular spatial qualities because of its location between the carpark and the market and is persuaded that the proposed SSQ would allow for use, that as outlined, would support and reinforce activity at the Evandale Market.
16. The Commission notes that the site under the current zoning of General Residential, the use class General Retail and Hire is already a discretionary use, with the qualification 'If for a local shop'.
17. It is noted the intended development, as outlined in the applicant report, of providing a building to accommodate market stalls is not provided for by this qualification, the Commission therefore considers that the proposed amendment would be for an additional qualification to the discretionary use General Retail and Hire.
18. The Commission is satisfied that the proposed SSQ, by allowing for further General Retail and Hire use on the subject land, with additional qualifications will provide scope for expansion of the Evandale Market and also greater flexibility for the Falls Pavilion to be more readily

available for other community and similar events. While this would provide some social benefit to part of the municipal area, the Commission considers this social benefit supports the economic benefit generated by the site.

19. The Commission accepts the estimated figure of \$30,000 a week benefit to the township generated by the Evandale Market given that the estimated figures are conservative comparing the figures from the planning authority and the applicant.
20. The Commission accepts that the Evandale Market creates a demonstrable economic benefit for the local area and the proposed SSQ, by allowing for further use to support the market will provide a significant economic benefit to part of a municipal area.
21. Therefore, the Commission finds that the proposed SSQ meets the requirements of section 32(4)(a) of the Act as it provides significant economic benefit to part of the municipal area.
22. The Commission notes the concerns raised by the representor that the provisions of the proposed SSQ could be used for other purposes and by extension move away from the intention of the operation of the proposed SSQ.
23. The Commission considers these concerns, while somewhat addressed by the removal of the 'and' in the wording of the proposed SSQ to read 'If for a market directly associated with the Evandale Market' should be further reinforced with reference to the location of the current Evandale Market to state instead; 'If for a market directly associated with the Evandale Market at 2-14 Logan Road Evandale'.

Strategic considerations

Regional land use strategy

24. The relevant regional strategy is the Northern Tasmania Regional Land Use Strategy (regional strategy).
25. The planning authority advised in their initiating report that in the regional strategy, the subject land is identified as being within the Urban Growth Area which is land within a developed urban settlement or area intended for urban development.
26. Evandale is classified as a Satellite Settlement within the Regional Settlement Hierarchy and as a Neighbourhood or Town Centre in the Regional Activity Centre Hierarchy.
27. The planning authority contends that the proposal is largely consistent with the Key Activity Centre Network Strategies detailed at section E.3.3 of the regional strategy and the associated Specific Policies and Actions. However, one of the E3.3 Key Centre Network Strategies is to 'accommodate higher density residential development and multiple trip-generating activities'. As this proposed SSQ will allow an area of land in the General Residential Zone to potentially be developed to accommodate a non-residential use the suitability for residential use was considered. The planning authority asserts the site is already constrained for residential use as there is no road frontage or right of way provision on the adjoining title providing access. Additionally, the site is subject to the Evandale Wastewater Treatment Plant attenuation area.
28. At the hearing, the planning authority also submitted that there is a significant supply of undeveloped residential land in Evandale, particularly in the north of the town and to the west along Logan Road.

Commission consideration

29. The Commission notes that the underlying zoning of the land as General Residential continues, so that the land is not removed from consideration as residential land sometime in the future. While the SSQ enables the purpose of the land to be further used for a non-

residential use, the zoning of the land is in so far as practicable, consistent with the regional land use strategy.

Northern Midlands Strategic Plan 2021 – 2027 (strategic plan)

30. In their section 40K report, the planning authority submitted that assessment of the draft amendment was not applicable in relation to the strategic plan.
31. The applicant submitted in their application report that the draft amendment supports the intended strategic outcomes in three of the four key priorities identified in the strategic plan:
 - 2)Progress: Economic health and wealth – grow and prosper.
32. By providing potential for a larger footprint for the Evandale Market and more all weather venue allowing for growth and reliability.
 - 3)People: Cultural and society – a vibrant future that respects the past.
33. ‘Enhancing existing cultural amenity’ and creating an enviable place to live and work by providing potential for expansion of the Evandale Market which has a notable cultural benefit for the region as a tourist attraction and activity for local also further providing job opportunities and incomes.
 - 4)Place: Nurture our heritage environment.
34. The potential development allowed for by the proposed amendment will not negatively impact the built heritage of Evandale.

Commission consideration

35. The Commission notes that the Evandale SAP includes a plan purpose to ‘protect and enhance the unique history and character of the village’ and includes provisions that regulate roof forms, wall materials and facades which specifically address the historic building forms in Evandale.
36. The Commission accepts the evidence from the planning authority and the applicant and finds that the draft amendment is consistent with the strategic plan.

State Policies

37. The Commission finds that, the *State Protection of Agricultural Land Policy 2009* is not relevant to the draft amendment.
38. The Commission finds that water quality management measures can be required where appropriate to potential future development.
39. The Commission finds that the draft amendment is consistent with the *State Policy on Water Quality Management 1997*.
40. The Commission finds that the draft amendment is not inconsistent with requirements for National Environment Protection Measure.
41. The Commission finds that due to the location of the site, the *State Coastal Policy 1996* is not relevant to the draft amendment.

Schedule 1 Objectives of the Act

42. In their initiating report, the planning authority submitted that the draft amendment furthers the objectives of the Act, as follows:

- Any future development of the site is likely to have minimal impact on the maintenance of ecological processes and genetic diversity. The area is mostly cleared and contains limited natural resources;
- The draft amendment presents a logical expansion of the market site and forms a natural linkage between the established market car park, walkway and Falls Park market area, without impacting on existing retail and service provisions within the town;
- The draft amendment encourages public involvement by following statutory processes; and
- The draft amendment facilitates economic development by supporting and allowing for potential growth of the market.

Commission consideration

43. The Commission agrees with the planning authority's submission and finds that the proposed SSQ seeks to further the objectives of the Resource Management and Planning System at Schedule 1 of the Act.

Modifications required to draft amendment

44. Under section 40M of the Act the Commission must consider whether modifications to a draft amendment of an LPS ought to be made.
45. As discussed previously, the Commission considers some changes to the wording are necessary to deliver the intent of the proposed amendment as follows:
- the proposed SSQ should be an additional qualification for the Discretionary Use Class General Retail and Hire;
 - the Evandale Market should be further identified with the street address included to read 'associated with the Evandale Market at 2-14 Logan Road, Evandale'; and
 - The site in the proposed SSQ should be referred to as 16A Logan Road to reflect the current address.
46. The Commission considers the modifications to be minor and to be consistent with the draft amendment and the requirements of the Act.
47. Accordingly, the draft amendment is modified as shown in Attachment A.

Decision on draft amendment

48. Subject to the modifications described above, the Commission is satisfied that the draft amendment meets the LPS criteria and gives its approval.

Attachments

Annexure A - Modified amendment

Annexure A

Modified amendment 10-2023 - Tasmanian Planning Scheme - Northern Midlands

1. Amend Table NOR-Site-specific Qualifications by inserting the following row in numerical order, as follows:

Reference Number	Site reference	Folio of the Register	Description (modification, substitution or addition)	Relevant Clause in State Planning Provisions
NOR-8.3	16A Logan Road, Evandale	141412/1	An additional qualification for the Discretionary Use Class of General Retail and Hire for this site is: "If for a market directly associated with the Evandale Market at 2-14 Logan Road, Evandale."	General Residential Zone – clause 8.2 Use Table

2. Amend the planning scheme maps to insert a site-specific qualification overlay on 16A Logan Road, Evandale, as shown below:

