

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Tasmanian Planning Scheme - Launceston
Amendment	PSA-LLP0002 - Rezone 9 Rose Lane, South Launceston from General Residential Zone and Recreation Zone to Community Purpose Zone
Permit	DA0439-2022 - subdivision (consolidation) and construction of 6 commercial tenancies
Planning authority	City of Launceston
Applicant	ERA Planning and Environment for OLSP Pty Ltd
Date of decision	25 August 2023

Decision

Under section 40N(1)(c)(i) of the *Land Use Planning and Approvals Act 1993*, the draft amendment is rejected and the planning authority is directed to submit a substitute draft amendment to the Commission.

Michael Hogan
Delegate (Chair)

Kevin Hazell
Delegate

Land Use Planning and Approvals Act 1993 (the Act)

Erratum under section 81AA(1)

Decision on PSA-LLP0002 Rezone 9 Rose Lane, South Launceston, 25 August 2023

Table 1 - list of corrections to decision

Page	Paragraph	Correction	Approved
11	75	Delete incorrect folio of the Register 217855/1 and insert folio of the Register 247578/2.	John Ramsay Executive Commissioner 21 September 2023

Background

Amendment

The draft amendment is proposed to rezone 9 Rose Lane, South Launceston (comprising folios of the Register 159336/1, 247578/2, and 200709/1) and a portion of the road reserve (folio of the Register 217855/1) from General Residential Zone and Recreation Zone to Community Purpose Zone.

Permit

The permit provides for:

- subdivision to consolidate folios of the Register 159336/1, 247578/2, and 200709/1 into a single title;
- adjustment of the title boundary along the northern end of the site to allow for road widening;
- construction of six detached, single storey office buildings with associated parking;
- tree removal; and
- road works including widening of the northern Road Lane section to 6.9m, path and kerb works on existing island at the intersection of Rose Lane and Westbury Road, new recess intersection line work at the intersection of Rose Lane and Westbury Road, and a pedestrian footpath.

Site information

The subject property consists of three titles which combined are approximately 1.4 hectares. Folio of the Register 159336/1 which is zoned General Residential is a cleared 3668m² corner lot and has been levelled with fill. The lot zoned General Residential is within the Southern Gateway Specific Area Plan. Adjoining lots, folios of the Register 247578/2 and 200709/1, are approximately 5364m² cleared and levelled with fill and 4939m² cleared with vegetation on the rear and south boundary. The two lots are zoned Recreation.

The land is slightly undulating and is set above the road level of Rose Lane. There is steep edge near the boundary of adjoining the convict cemetery at 5 Rose Lane to the south which is zoned Recreation and is council owned and part of the Rose Lane Park which is also to the east of the site.

Surrounding land to the west is zoned Low Density Residential and to the north Community Purpose which contains the Glen Dhu Primary School. Road reserves are shown along the boundary of 9 Rose Lane parallel to Wellington Street and through the park at 5 Rose Lane to Westbury Road. Additionally, a private road provides access to one dwelling at 48 Westbury Road from Peel Street to Westbury Road in line with Norwich Street.

Issues raised in representations

The draft amendment was referred to TasWater under sections 56S and 56O of the *Water and Sewerage Industry Act 2008*. In response TasWater made a representation stating no objection to the draft amendment and provided conditions to be included with any permit. TasWater advised it did not wish to attend any hearing.

Planning authority's response to the representations

The planning authority considered the representations and acknowledged the submission from TasWater and accepted that the provided conditions were to be included in any permit issued.

Date and place of hearing

The hearing was held at Level 3, Henty House, Launceston on 26 July 2023.

Appearances at the hearing

Planning authority: Ian More - City of Launceston
Applicant: Emma Riley - ERA Planning and Environment
Mark O'Brien - ERA Planning and Environment

Consideration of the draft amendment

1. Under section 40M of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the draft amendment to the Local Provisions Schedule (LPS) and the representations, statements and recommendations contained in the planning authority's section 40K report and any information obtained at a hearing.
2. Although no representations were received, a hearing was convened to assist the Commission's consideration of the amendment and associated permit.
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*.

Commission consideration

Site and Locality

4. The information provided by the planning authority and the applicant demonstrates that, while the site is located in a suburban area, the site and immediate locality has several unique characteristics, including:
 - to the west of the site the southern outlet / Midland Highway creates a strong physical barrier and a source of noise pollution;

- the Glen Dhu Primary School, occupies land to the north of the site and was built prior to the construction of the southern outlet;
- to the east of the site is a steep area of land that was a former landfill, which is now a Council owned public park;
- to the south and south west of the site is a former convict cemetery which is now a Council owned public park and a small area of low density residential development;
- the site is close to a Metro bus service that provides access to the Launceston Central Business District (CBD) and Kings Meadows district activity centre;
- the site is capable of connecting to reticulated services;
- evidence provided by the applicant outlines that the risk level associated with landside from adjacent land is likely to be tolerable;
- the grade of Rose Lane from the western corner of the site to Westbury Road is approximately 1:10 or 10%; and
- the site has been identified as having a Characteristic Situation (SC) level of 2 under the 2020 NSW Ground Gas Guidelines. SC2 is classified as a low risk level which requires appropriate gas protection measures for residential, public or commercial buildings.

Key matters outlined by the applicant

5. The Commission considers that the core interrelated issues and background as outlined by the applicant and the planning authority can be summarised and categorised as:
 - General suitability and consistency with land use strategies.
The land is serviced and close to community and commercial services and in principle is suitable for a range of residential uses.
Any non-residential zones need to fit with the Northern Tasmania Regional Land Use Strategy (the regional strategy) and, specifically, to policies related to the Activity Centre Hierarchy.
 - Avoiding constraints associated with contamination.
The applicant advised that the range of development options considered for residential uses are financially unviable due to the nature of ground contamination.
 - Catering for market opportunity.
The landowner has identified a market opportunity for the site to be developed for a range of activities within the Business and Professional Use Class.
6. Of the zones that cater for business and professional uses, the Community Purpose Zone has the greatest level of consistency with the activity centre hierarchy policies of the regional strategy.
7. The assessment report prepared for the planning authority and the planning authority's response to the Commission pre-hearing direction outlined that : the intended use of the land for business and professional activities is 'out of centre' for the purposes of the regional strategy;
 - the intent to use the site for business and professional activities will provide a positive social and economic impact;
 - overall the site is suited to achieving the purpose of the Community Purpose Zone; and
 - allowable uses in the Community Purpose Zone are suitable for the site.

Land Use Zoning - general suitability and land use strategy considerations

8. The Commission notes that part of the site is currently zoned General Residential. During the hearing the applicant advised that the owner had initiated an amendment process to apply the General Residential Zone to the central title but withdrew from the process partly on the basis of feedback from officers of the planning authority. The Planning Authority representative was not able to provide any evidence on whether this occurred or why this would be the planning authority's position.
9. The regional strategy includes the site within the 'supporting consolidation area', which identifies land in established suburban areas that may provide more consolidated residential development and provision of a range of complementary services and facilities.
10. The Commission agrees with the applicant that the part of the site within the Recreation Zone is not required or highly suitable to form part of the district's open space or recreational land system.
11. The Commission considers that the site provides an opportunity for suburban/ urban consolidation in line with policies of the regional strategy.

Opportunity for business and professional uses

12. The applicant's evidence outlined that a range of zones were investigated to determine if they could meet planning requirements as well as the commercial interests of the landowner. The landowner's commercial interests were outlined as enabling a range of business and professional activities to be developed on the site.
13. The applicant outlined that while a range of zones, including Urban Mixed Use, Local Business, and Light Industrial would accommodate business and professional activities, these zones would also potentially enable development outcomes that arguably would not be appropriate for the site and would be incompatible with the surrounding area.
14. The applicant outlined that a Particular Purpose Zone may be able to be tailored to the opportunities and constraints of the site, however this zone was not required as the Community Purpose Zone was suitable for the site and enabled business and professional activities to occur.

Proposed Community Purpose Zone

15. The Community Purpose Zone caters for a very wide range of land uses ranging from fire stations to childcare centres.
16. The zone application guidelines for the Community Purpose Zone of Guideline No. 1 state:
The Community Purpose Zone should be applied to land that provides, or is intended to provide, for key community facilities and services, including:
 - (a) *schools, tertiary institutions or other education facilities;*
 - (b) *medical centres, hospital services or other care-based facilities;*
 - (c) *emergency services facilities; or*
 - (d) *large community halls, places of worship or other key community or cultural facilities.*
17. The Commission considers that it is necessary to consider both the general suitability of the zone as well as the suitability of the zone for the intended use as part of its determination of the draft amendment.

General suitability

18. Neither the planning authority nor the applicant suggested that the site is likely to be suitable for a range of emergency services uses.

19. The Commission considers that, in principle, many community services that provide essential onsite services to a large population should be located and sited to be accessible to a broad range of the community, and specifically those reliant on public transport or with physical access needs. Commercial or social uses that provide a service to large population groups may be more suited to a CBD location that is close to the destination of multiple Metro bus routes. The Commission considers that the grade of the most direct walkways between the site and Westbury Road may limit accessibility for some sections of the community.
20. The Commission considers that the existence of a combination of noise and gas vapour pollution may make the site unsuitable for a range of health, child, family and community care services.
21. While the site is adjacent to a primary school in the Community Purpose Zone, the Commission considers that this is not a significant or material matter given the range of existing uses in the immediate locality, with the more dominant local context being Residential Uses to the immediate south and east of the site.
22. The planning authority stated that the site is suited to achieving the purpose of the Community Purpose Zone. The basis of the planning authority's view of the sites suitability for the zone is related to the site being accessed from Westbury Road and accessible to the southern suburbs of Launceston.
23. The applicant stated that the Community Purpose Zone was the most appropriate zone for the site given its constraints and opportunities. Specifically, the applicant stated that contamination effects could be more easily mitigated for non-sensitive uses in comparison to sensitive uses.
24. The Commission notes that the NSW 2020 *Guideline for the Assessment and Management of Hazardous Ground Gases* outlines that the protection guidance value to be achieved for public buildings, primary schools and childcare centres is the same value required for residential development.
25. Both the applicant and the planning authority stated that a major benefit of the Community Purpose Zone would be that it would prevent retail and related commercial uses.
26. The Commission agrees with the applicant that the site provides a suburban consolidation opportunity, however, the Commission considers the characteristics of the site limit its suitability for a wide range of community and social services and facilities.

Intended use of land for business and professional uses

27. The applicant submitted that the intended use of the site at a general level was for a range of activities in the Business and Professional Services Use Class, and that for the purpose of assessing the planning scheme amendment the uses shown in the planning application should be taken as the intended specific uses and the scale of intended uses.
28. Under the Planning Scheme the Business and Professional Services use class is described as:
use of land for administration, clerical, technical, professional or similar activities.
Examples include a bank, call centre, consulting room, funeral parlour, medical centre, office, post office, real estate agency, residential support services, travel agency and veterinary centre.
29. The intended uses are:
 - office for legal services;
 - office for engineering;
 - office for accounts;
 - medical centre;

- dental consulting rooms; and
 - veterinary centre.
30. The Commission accepts the applicant's advice that a floor area of around 3000m² is representative of the scale of the intended use.
31. The Commission notes that the intended uses are either fully or partially classified as No Permit Required, Permitted or Discretionary Uses in the Local Business, Commercial, and General Residential Zones within South Launceston. No evidence was provided to indicate that the uses could not be established in the locality.
32. At the hearing the Commission noted that in the Tasmanian Planning Scheme – Launceston the Community Purpose Zone has generally been applied to a range of community services including schools, childcare centres and medical facilities. The Commission notes that other sites zoned Community Purpose in the suburban area of South Launceston include:
- Glen Dhu Primary School – Pottery Road;
 - Tasmania Fire Service – Wellington Street; and
 - Stewart Child Care Services – Watchorn Street.
33. The planning authority's evidence was that within the Community Purpose Zone a medical centre would be Permitted, and all other uses would be Discretionary. The planning authority advised that the Discretionary Uses would enable the site to be used as a community business focused area, which is consistent with the purpose of the zone.
34. The Commission considers that a range of Business and Professional Services Uses related to commercial, technical and administrative activities may not be consistent with the purpose of the zone. However, there may be well be some specific uses that either provide a direct community service or, when operated close to and in conjunction with a site with a community facility, achieve a desirable community outcome.
35. Without prejudging the application for the planning permit, the Commission considers that use of land as offices for legal services, accounting and engineering are generally not consistent with the purpose of the zone and specifically that these uses are not key community services and are not related to social infrastructure.

Regional Land Use Strategy

36. The planning authority's assessment of the draft amendment cites policies RAC P1, P9 and P10 within the regional activity centre network section of the regional land use strategy as being relevant.
37. The applicant advised that the *Launceston Retail Audit and Activity Centre Strategy 2011* formed the basis of activity centre policies in the regional strategy. Specifically, the applicant outlined that the retail audit:
- identified a corridor of land between the Kings Meadows activity centre and the Principal Activity Centre as having potential as a high access corridor; the site is close to this corridor; and
 - calculated that 20% of the region's office floor area is located outside of the Launceston central area - predominantly in South Launceston.
38. Both the planning authority and the applicant stated that the use of the site for a range of business and professional activities would not compromise the activity centre hierarchy established by the regional strategy and specifically would not affect the role of the Launceston CBD/frame area as the principal location for that type of uses.

39. The Commission notes that the activity centre hierarchy established by the regional strategy generally aims for offices (business and government) to be located in the:
- principal activity centre - CBD or inner frame area;
 - major activity centres - Kings Meadows and Mowbray; or
 - suburban activity centres.
40. This strategy is given effect through zones that have been applied to these areas. Specifically, the Business and Professional Services Use Class is a No Permit Required or Permitted Use in the Central Business, General Business, Local Business, and Urban Mixed Use Zones.
41. At the hearing, the Commission outlined that it was aware that, as part of its assessment of activity centre strength and weaknesses, the 'retail audit' cited that there was a need to encourage a broader range of professional, commercial and community services in District Centres and specifically at Kings Meadows.
42. The planning authority's assessment of the draft amendments outlined that:
- activity centres were built around other services being provided around a primary retail offering; and
 - under the draft amendment it was likely people would be accessing single services in each visit which is the opposite of how activity centres work.
43. The Commission considers that the regional strategy aims for District and Suburban Activity Centres are based on a core retail offering being complemented by a range of other activities or employment opportunities including offices, administration and professional services. The Commission considers that one of the overall outcomes of the activity centre networks is to enable office based or professional services to be accessed in locations where users are able to undertake other activities in the same trip.
44. At the hearing, the parties discussed other zones, such as the Commercial Zone, in which Business and Professional Services Uses were also Discretionary. The Commission noted that in the Commercial Zone, unlike the Community Purpose Zone, there are specific standards for Discretionary uses that relate to the activity centre hierarchy.
45. The Planning Authority stated that as the site was located away from identified activity centres the draft amendment could be considered to be 'out of centre'. The planning authority was satisfied that due to the uses proposed the rezoning would provide a positive social and economic benefit.
46. In response to a prehearing direction, the applicant advised that:
- given the scale of the proposed use the proposal is not characteristic of an out of centre development; and
 - the draft amendment was consistent with RAC – P9 of the regional strategy as the medical, dental and veterinary services proposed would cater to a community need without having an adverse impact on existing activity centres.
47. At the hearing, the applicant expanded on the second point above and submitted that the Community Purpose Zone was considered appropriate and that the broad range of Permitted and Discretionary Uses in the zone would cater to a community need.
48. At the hearing, the applicant was asked if they considered that a Local Area Objective would be of benefit to provide some direction regarding the consideration of Discretionary Business and Professional Services Uses.

49. In summary, the applicant's view on this matter was that Local Area Objectives were not required as:
- firstly, decisions of the Appeal Tribunal (the Tribunal) had found that Discretionary Uses could not be refused on the basis of a zone or local area objectives; and
 - secondly, the Discretionary Uses in the zone were considered to provide for a community need and in general terms the draft amendment was considered appropriate.
50. The Commission's consideration of the submission offered in the first point above is outlined in the final section of this decision.
51. The applicant added that they had also considered proposing a Particular Purpose Zone related to the intended uses, however, this was considered unnecessary as the Community Purpose Zone was considered appropriate for the site as well as accommodating the identified market opportunity.
52. The Commission accepts that perspectives related to the draft amendment either compromising or reinforcing the activity centre hierarchy are matters of degree and scale. The applicant submitted that the scale of business and professional services at the site meant that the activity hierarchy would not be compromised.
53. The Commission considers that, to the extent that the intended use and development could establish around 3000m² of office accommodation for business and professional services at this location, it will go some way in catering for the local and regional demand for office space and consequently diminish the likelihood of these uses being supplied in areas identified as activity centres.
54. While the Commission agrees that the draft amendment may not distort the activity centre hierarchy the Commission considers that:
- the scale and nature of the intended use will act against urban development maintaining and consolidating the regional activity centre network; and
 - in effect, the amendment enables out of centre development, and it does not support the regional activity centre network.
55. At the hearing, the Commission noted that residential zones in the State Planning Provisions (SPPs) provide for a qualified range of Business and Professional Services activities as Discretionary Uses and that there is a clear overlap between these uses and the intended uses proposed by the applicant.

Procedural Matters

56. At the hearing, the applicant made verbal submissions on two procedural matters relating to:
- the correct interpretation of how applications for Discretionary Uses should be determined under the Community Purpose Zone; and
 - the proper scope of the Commission's determination with respect to regional land use strategies.
57. As these matters were considered by the Commission, an outline of how these matters were assessed is included below.

Application of regional land use strategy

58. The applicant proposed that, in considering the degree to which the draft amendment meets requirements of section 34(2)(e) of the Act relating to regional land use strategies, the Commission's focus should be on determining which zones should apply to the land - and

should not extend to a modification that introduces a Specific Area Plan or a Local Area Objective.

59. Given its functions and the scope of decisions it may make, the Commission considers that it is not limited to applying a SPP zone in determining that LPS criteria, in relation to regional land use strategies, have been met. If the Commission believes a site or area specific modification is required, it can consider and pursue this type of change.

Discretionary uses in the Community Purpose Zone

60. The applicant proposed that the decisions of the Tribunal on a range of matters means that an application for Discretionary Uses in the Community Purpose Zone cannot be refused on the basis of considering how the use proposed relates to the purpose of the zone.
61. Further, the applicant proposed that any Local Area Objective added to the site would have no effect as the Tribunal has determined that neither zone purpose statements nor local area objectives are able to be used as standards to determine a planning application.
62. The Commission understands the reasons for the Tribunal decisions on those matters. Generally, the key principle that these decisions relate to is that a generalised provision or objective of a planning scheme should not be relied on to the exclusion of a subsequent specific provision, except where this is provided for by the scheme.
63. The Commission considers that the Tribunal decisions referenced do not apply when considering Discretionary Uses in this zone as having regard to the purpose of the Community Purpose Zone in determining an application for a Discretionary Use will not involve the consideration of a general objective excluding giving effect to a subsequent specific provision.
64. Also, authorities have established that a requirement in a planning scheme to consider a general provision before determining an application may lead to a decision to approve or refuse an application where the principle outlined above is met.
65. The Commission considers that the planning scheme is constructed to require an application for a use that is shown as Discretionary in the Community Purpose Zone Use Table to be approved or refused based on a consideration of the zone purpose, along with other matters.

Commission findings

66. The Commission finds that no State Policies are relevant to the draft amendment.
67. The Commission finds that while some of the policies and goals of City of Launceston Strategic Plan 2014-2024 may relate to the proposal in a general manner, these policies are similar to those of the regional strategy or the Schedule 1 Objectives. These general statements have less weighting than elements of the LPS criteria that require either consistency with policies or the furthering of objectives.
68. The Commission finds that, on balance, the amendment does not further the objectives set out in Schedule 1 of the Act. The site is not considered to be suitable for application of the Community Purpose Zone due to:
- its topographical, environmental and geographic characteristics,
 - the intended use of the site not being considered to be directly related to community facilities and services; and
 - the amendment does not promote communities providing for their social, economic and cultural wellbeing.

69. The Commission finds that, on balance, the proposed amendment is not, as far as practicable, consistent with the regional strategy. Specifically, the Commission considers that the amendment:
- will not consolidate and reinforce the spatial hierarchy of existing centres or maintain and consolidate the regional activity centres network;
 - does not promote or support major or suburban activity centres so they can broaden attractions and employment; and
 - may facilitate an 'out of centre' development for activities that are not required to address a community need.

Modifications required to draft amendment

70. Under section 40M of the Act the Commission must consider whether modifications to a draft amendment of an LPS ought to be made.
71. Based on the information provided the Commission notes:
- the land is within the supporting consolidation area identified in the regional strategy;
 - the land has been identified as being capable of receiving full reticulated services, adjacent to a primary school and within walking distance of multiple public transport stops;
 - the planning scheme contains provisions and standards addressing:
 - the risk of landslide and ground contamination;
 - separation from major roads; and
 - development within visual corridors.
 - one title is currently zoned General Residential; and
 - the two titles currently zoned Recreation are vacant and have areas of approximately 5000m² and 5400m².
72. The Commission also notes that purpose of the General Residential Zone includes:
- providing for residential use and development and a range of dwelling types; and
 - providing for non-residential uses that cater to the local community and which do not cause an unreasonable loss of amenity to the surrounding area.
73. These factors indicate that the Commission should request modifications to enable a revised amendment to the LPS to proceed.

Decision under 40N(1)(c) to reject the draft amendment

74. The Commission rejects the draft amendment under section 40N(1)(c) for the reasons discussed above.
75. The Commission, in accordance with section 40N(1)(c)(i), directs the planning authority to provide a substitute draft amendment that applies the General Residential Zone to folios of the Register 247578/2 and 200709/1.