
From: Jo Blackwell <Jo.Blackwell@brighton.tas.gov.au>
Sent: Wednesday, 20 December 2023 4:43 PM
To: TPC Enquiry
Subject: Draft Planning Scheme Amendment (RZ 2023/002)
Attachments: Attachment C - Representation and Attachments.pdf; Attachment D - Applicants response to representation.pdf; Attachment B - TasNetworks Response.pdf; Attachment E - TasWater response to representation.pdf; Attachment A- TasWater SPAN.pdf; 203 and 205 Old Beach Road - S40K Report.pdf

Dear Sir

This proposal for rezoning has now concluded public exhibition. Please see attached Council's s40K report, together with attachments. The submissions received do not warrant modification to the proposal.

I look forward to hearing from you in due course as to a possible hearing date.

Regards

Jo

JO BLACKWELL
SENIOR PLANNER

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We acknowledge the traditional owners who once walked this country, the Mumirimina people, the original custodians of the skies, land and water of kotalayna (Jordan River). We forward our respect to the palawa/pakana (Tasmanian Aboriginal) community as the traditional and original owners of lutruwita (Tasmania).

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5.1 PLANNING SCHEME AMENDMENT FOR 203 and 205 OLD BEACH ROAD,
OLD BEACH – RZ 2023-002

Type of Report	Section 40K of <i>Land Use Planning and Approvals Act 1993</i>
File Reference:	RZ 2023-002
Requested by	JMG Engineers and Planners
Owner/s:	Mark Nolan Lisa Schimanski
Location:	203 Old Beach Road, Old Beach 205 Old Beach Road, Old Beach
Proposal:	Amend the planning scheme map to: A. Rezone the land at 203 and 205 Old Beach Road, Old Beach from Future Urban Zone to General Residential Zone, Low Density Residential Zone, Environmental Management and Open Space Zone B. Amend the Priority Vegetation Overlay from 203 and 205 Old Beach Road, Old Beach, C. Insert the Flood Prone Hazard Overlay over 203 and 205 Old Beach Road, Old Beach.
Planning Instrument:	Tasmanian Planning Scheme - Brighton
Date Advertised:	21/10/20-23 – 20/11/2023
Representations:	Three (3)
Attachments	Attachment A – TasWater Submission to Planning Authority Notice Attachment B – TasNetworks Submission Attachment C – Representation and attachments Attachment D – Applicant's response to representation Attachment E - TasWater response to representation
Author	Jo Blackwell (Senior Planner)

Authorised:	David Allingham (Director Development Services)
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1. Executive Summary

This report considers the submissions made during the exhibition period regarding a draft planning scheme amendment pursuant to s37 of the *Land Use Planning and Approvals Act 1993* (the Act) for the land at 203 and 205 Old Beach Road, Old Beach (the Site) by amending the planning scheme maps to:

- a) Rezone the land at 203 and 205 Old Beach Road, Old Beach from Future Urban Zone to General Residential Zone, Low Density Residential Zone, Environmental Management and Open Space Zone.
- b) Amend the Priority Vegetation Overlay from 203 and 205 Old Beach Road, Old Beach.
- c) Insert the Flood Prone Hazard Overlay over 203 and 205 Old Beach Road, Old Beach.

Council's Planning Authority, at its meeting on 17th October 2023, agreed to initiate the proposed planning scheme amendment made by JMG Engineers and Planners under s38(2) of the *Land Use Planning and Approvals Act 1993* (the Act) and, therefore prepared and certified the draft amendment to the LPS (s40F) as meeting the LPS criteria (s34) under the Act.

The amendment application was then exhibited for a period of twenty-eight (28) days (s40H).

This is a report required by s40K to be submitted to the Commission in relation to the three (3) representations received during advertising.

It is considered that the representations to the draft amendment do not warrant any modification to the proposed amendment.

2. Legislative requirements

In accordance with s40H the planning authority must exhibit the draft amendment for twenty-eight (28) days.

Following exhibition, the planning authority must consider any representations and provide a report to the Commission. The report must include [s40K]:

(a) a copy of each representation, including any agreed to be accepted after the end of the exhibition period;

(b) the planning authority's views on the merit of each representation;

(c) a recommendation as to whether the draft amendment should be modified to take into account the representation and the effect on the LPS as a whole in implementing the recommendation; and

(d) a statement as to whether the planning authority is satisfied that the draft amendment meets the LPS criteria; and

(e) any other recommendations in relation to the draft amendment.

The planning authority has 35 days from the close of the exhibition period to forward its report to the Commission.

The Representations and Response

The draft planning scheme amendment was on public exhibition from 21st October until 20th November 2023. Three (3) submissions were received during the public exhibition period.

A summary of the concerns raised in Representation 3 has been provided to the applicant, TasWater and Department of State Growth for comment. Responses from the applicant and the TasWater are included as Attachments D and E respectively.

Below is a summary of the 3 representations received during the public exhibition period, and the assessing officer's response on the merit of each representation as required by s.40K(b) of the Act.

No.	Submission	Response on merit
Rep 1 – TasWater (Attachment A)		
1.	<p>TasWater initially advised that it does not object to the proposed amendment and has no formal comments, and does not required to be notified nor attend any subsequent hearings</p> <p>Upon receipt of a representation received during the public exhibition period, TasWater was asked to provide further comment on the submission made. TasWater's response (Attachment E) was in the following terms:</p> <p>TasWater provides the following comments regarding sewerage servicing in the referred representation from [REDACTED] dated [REDACTED] relating to the rezoning Draft Amendment RZ2023/002;</p> <p>TasWater will not support the construction of a sewage pump station within the H5 flood inundation area.</p> <ol style="list-style-type: none">1. Any future development in the proposed General Residential zones will require extensions to TasWater's existing sewerage networks. In the event any future development within any portion of the land located in the	<p>TasWater's comments are noted.</p> <p>It is considered that, should the rezoning be approved, the applicant will be required to design any future subdivision in accordance with TasWater's requirements.</p> <p>See responses to individual submissions below for more detailed response.</p>

	<p>proposed General Residential zones cannot be serviced by an extension to TasWater’s gravity sewerage network the developer will be required to install a suitably sized sewage pumping station on a dedicated lot to TasWater’s satisfaction.</p> <p>2. TasWater will take into account the “reserved” capacity at the downstream Tivoli Rd SPS for the entire Tivoli Green development when determining capacity restraints on future developments and where necessary developers will be required to build additional spare capacity or provide a monetary contribution to TasWater for future emergency storage upgrades.</p>	
Rep 2 – TasNetworks (Attachment B)		
2.	TasNetwork have confirmed that it does not have any issues regarding the proposed amendment	Noted.
Representation 3 (Attachment C)		
3.	Based on a permit granted on 6 th May 2023 to subdivide the lot into 4 (SA2022/44), all lots were required to remain onsite disposal of stormwater and sewerage. The connection of Lots 1 and 2 to reticulated sewer and point discharge or stormwater off-site were rejected by TasWater and Brighton Council due to impact on the surrounding environment	<p>The provision of new stormwater connections for Lots 1 and 2 were conditioned under SA2022/44. Due to the existing Future Urban zoning, assessment was based on the uses the site could accommodate under the current zoning. Under the approved subdivision, a single dwelling could be developed whilst not fettering future subdivision. The lots were considered large enough to manage sewer and stormwater on site.</p> <p>As noted by the Applicant (Attachment D), any further development is subject to separate assessment, should this application for rezoning be successful. Any stormwater management provided will need to provide a detention and water quality system that would ensure the stormwater leaving the site will be at pre-existing flows and at a water quality consistent with Council’s standards.</p>

4.	<p>The Open Space zoning located on 205 Old Beach Road was required to be transferred to Council under Permit SA2022/44. No such contribution exists adjacent to Gage Brook and Bob's Creek for 203 Old Beach Road. The construction of walking trails and large open areas for recreation as planned in the Council's endorsed open space strategy for Tivoli Green has commenced by the developer. The strategy of connecting the open space areas to the East Derwent Highway (EDH) walking and bike trail is proceeding within the current DA. Increasing access along Gage Brook and Bobs Creek to Old Beach Road as part of this rezoning would complement this strategy and the significant contribution of land and resources being invested in the area.</p> <p>The rezoning report and indicative subdivision plans by JMG offer no additional open space other than required under SA2022/44</p>	<p>The amount of open space required under SA2022/44 equated to approximately 5%, which is the contribution amount provided pursuant to s116 of the <i>Local Government (Building and Miscellaneous Provisions) Act</i>1993 (LGBMP). Accordingly, there is no requirement to provide additional POS under SA2022/44.</p> <p>LGBMP makes provision for the purchase of open space and riparian areas. If open space, pedestrian connections, and the like are required into the future, this will be considered by Council at that time.</p> <p>Any future subdivision of the proposed general residential zoned land will require the provision of public open space, or a payment in lieu of, in accordance with ss 116 and 117 of LGBMP.</p>
5.	<p>The Traffic Impact Statement provided by Midson Traffic dated August 23 (TIS) significantly underestimates the number of lots within the study zone.</p>	<p>The Applicant notes that the site is intended to be linked to Lottie Mews and thus onto Riviera Drive and that the only resultant would be the Riviera Drive/East Derwent Highway junction would need to be upgraded sooner.</p> <p>Application of the Road and Railway Assets Code will require any future subdivision application to give consideration to the extended road network, especially the Riviera Drive/East Derwent Highway intersection. The Department of State Growth has the ability to require upgrades to the EDH intersection as part of any future subdivision</p>

		application pursuant to Code.
6.	The TIS nominates Riviera Drive as a residential collector road and raises issues with road pavement widths	Road connectivity to the site has already been accommodated in the Tivoli Green Subdivision. Riviera Drive was originally intended to be, and is likely to be used as, a through road irrespective of the rezoning. Should the rezoning place increased demand on Riviera Drive some upgrades may be required.
7.	<p>Both the TIS and the representors independent TIA (attachment C) agree that the Riviera Drive intersection at the EDH has capacity of 450 residents prior to unacceptable wait times. This capacity has already been taken up by existing residences and approved lots under SA2021/007.</p> <p>The TIS incorrectly assesses the number of lots to be serviced and spare capacity at the intersection from Riviera Drive onto the EDH.</p>	<p>The applicant submits that, based on the TIS, that the traffic capacity of Riviera Drive is limited by the junction at EDH, to a capacity of 3330 vehicles per day, with a peak of 350 vehicles per hour with the existing junction configuration.</p> <p>Council officers advise that the TIA submitted with the rezoning did not fully address the connection of Riviera Drive to Old Beach Road and underestimated volumes from the already approved Tivoli Green subdivision. It highlights that the level of service at the Riviera Drive/East Derwent Highway will reach an unacceptable level of service at 450 lots which roughly equates to the already approved Tivoli Green subdivision. It does however point out that upgrades could be undertaken to accommodate the rezoned land including provision of a large diameter round about. A new TIA would be required as part of any future subdivision application and conditions requiring road upgrades could be imposed, as required.</p>
8.	All subdivision in Tivoli Green is greenfield development and the developer has planned, developed and paid for the infrastructure.	In the absence of infrastructure contributions, the developer is required to pay for upgrades to infrastructure. Should TasWater, Department of State Growth and Council require future

		upgrades to existing infrastructure, the developer will bear the cost of these.
9.	Page 15 of the Concept Services Plan (CSP) shows two stormwater point discharges as existing, but do not exist. These connection points were not approved as part of SA2022/44. The lots are for onsite disposal of stormwater.	Correct. The developer will be required to address stormwater discharge as part of any future subdivision application, pending successful rezoning of the site (refer point 3 above)
10.	Proposed discharge Point 1 is located in the area to be zoned Environmental Protection and flows by open channel across title CT 181742 to Gage Brook. Discharge Point 2 is from proposed Lot 2 onto Lot 3 within the coastal protection area. The Rezoning report states in relation to State Policy for Water Quality Management 1997 that no new point source discharges are proposed therefore the application is consistent with the policy.	This is the key reason the planning authority recommended on site disposal for the 4-lot subdivision (2 additional lots) approved under SA 2022/44. Stormwater point discharge will be considered as part of any future subdivision application.
11.	This is contradictory with the CSP and the subdivision of un-serviced lots, stormwater discharge points will have to be developed. These discharge points will have the potential to negatively impact Bobs Creek, Gage Brook and adjoining land on title 181742/5. These sites contain threatened flora and the report provides no detail into management of these threats.	Council officers advise that future subdivision of the rezoned land would require new stormwater outfalls to the watercourse(s), and any development will include a requirement for stormwater treatment and management of flows so as to ensure there is no detriment to the watercourse or adjacent properties.
12.	The Plan proposes a sewer pump station (SPS) and Sewer Rising Main (SRM). No report has been provided with the application and the impact to the Tivoli Green SAP cannot be quantified. However the following items typical to the SPS have the potential to adversely impact adjacent sites: <ul style="list-style-type: none"> The location proposed for the SPS (Flussig flood map) is in the 	As noted above TasWater will not approve a SPS within the H5 area, and the proposed location of the SPS is not supported by council officers. As such future subdivision will need to consider how sewer services can be accommodated on the site. It is noted that the lot layout provided as part of the Flussig report is indicative only, and that the SPS will need to be located in a

	<p>H5 Flood zone with flooding up to 2m deep during a 1% flood event;</p> <ul style="list-style-type: none"> • The SPS will require an emergency bypass flow and none has been shown. This has the potential to cause significant impact on the recreational open space and stormwater treatment wetlands under construction on Tivoli Green 	<p>low flood hazard area.</p> <p>The emergency bypass is a matter for TasWater, who have provided comment (see point 1 above)</p>
13.	<p>The SPS is to discharge to the TasWater Sewer Main and onto the existing SPS on Tivoli Green. Due to a decision taken by TasWater at the time of construction the capacity of the SPS was matched to the Tivoli Green SAP with no spare capacity. The developer has met all costs associated with the development of this SPS and reserve the capacity for the rapidly developing Tivoli Green. Hence any additional loading will need to investigate and identify upgrades required to this SPS.</p>	<p>See comments from TasWater noted in point 1 above.</p>

14.	<p>The JMG Bushfire Hazard Management Plan (BHMP) is the report submitted for SA2022/44 and does not directly address the rezoning application.</p> <p>The vehicle access outlined in the BHMP does not align with the vehicle access proposed in the CSP. Specifically the BHMP would involve a new crossover to Old Beach Road to proposed lots 1 and 2, whereas the subdivision access in the CSP is via Lottie Mews.</p> <p>Both the BHMP and the CSP show an access to Lot 3 which does not comply with the BHMP. The access easement is only 4m, rather than 5m wide and lacks the 7m wide passing bay</p>	<p>The applicant advises that the reports were included to show the impact of the hazards on the site and consequently on the proposed rezoning and overlays. Council officers advise that the permit conditions for SA 2022/44 require an amended BFHMP to address the access requirements.</p> <p>It is intended that access to any future division of land in the area proposed for general residential will be accessed from Lottie Mews and Elodie Drive.</p> <p>The officers' assessment of SA2022/44 determined that the accesses for Lots 3 and 4 (existing properties) are existing and will retain a rural nature. It was noted that both accesses will need to be upgraded to comply with bushfire standards and a condition to this effect was included in the approved permit.</p>
17.	<p>The Flussig Flood Hazard Report (FHR) is the report submitted for SA2022/44 and does not directly address the rezoning application.</p> <p>It is unclear if the flood report means to cover the existing permit or is intended for use with the future multi lot subdivision.</p> <p>Under the flood mapping the proposed SPS is under approximately 2m of water and in the H5 Flood zone</p> <p>Under the flood mapping, the indicative layout for the residential subdivision has lots 12 to 15 significantly within the flood one and within hazard zones H3-H5, whilst the report notes that "any future structures, located in the inundation area, are to be designed to resist flood forces including debris for the given flood</p>	<p>The reports were included to show the impact of the hazards on the site and consequently on the proposed rezoning and overlays.</p> <p>The Flood-Prone Hazard Code applies to any development of land within a flood prone hazard area, whether mapped or identified by council, based on information it has in its possession that the land is subject to risk from flood or has the potential to cause increased risk from flood.</p> <p>Council officers advise that the land affected by flooding would not be considered acceptable to Council as Public Open Space. Additionally, the flood affected land in the H3 to H5 hazard bands should not form part of residential lots. The proposed zoning map shows the flood affected land is to be zoned environmental management.</p>

	<p>conditions". This seems like unnecessarily inviting risk when the flood map demonstrates inundation of up to 1.6m</p> <p>The FHR recommends that the indicative layout provides an unimpeded overland flow from the southern boundary of 205 Old Beach Road towards Gage Brook. If this overland flow path is zoned Open Space it could also provide public connection to the Tivoli Green Open Space and prove an area for stormwater treatment</p> <p>There are no calculations in the flood model regarding the impact of future subdivision and how future residential would affect flooding.</p>	<p>The representation was also referred to TasWater for further comment (Attachment E).</p> <p>It is considered that future use and development can be controlled by the applicable zone and code provisions of the planning scheme, together with TasWater's requirements relating to any proposed SPS.</p>
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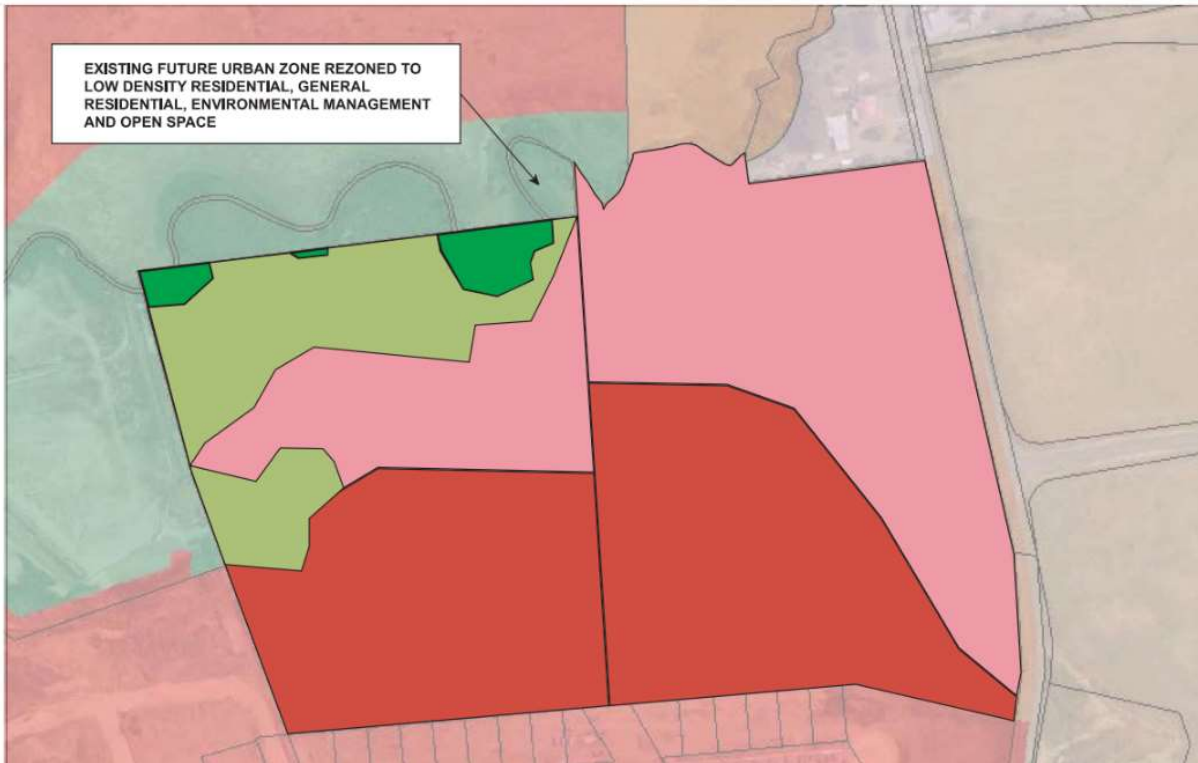
3. Assessment of proposed rezoning to EMZ / GRZ

The representor correctly identifies the risks associated with the flood hazard affecting the site. Some of the land identified to be rezoned to the General Residential zone falls within the flood affected land.

The Section 8a Guidelines note at GRZ3 that:

The General Residential Zone should not be applied to land that is highly constrained by hazards, natural values (i.e. threatened vegetation communities) or other impediments to developing the land consistent with the zone purpose of the General Residential Zone, except where those issues have been taken into account and appropriate management put into place during the rezoning process.

The zoning map in the applicant's s37 application shows the area of land identified as H3-H5 as Environmental Management, which will increase the safety and reduce the risk to people and property.



4. Assessment of proposed rezoning to GRZ against BRI-S9.0 Tivoli Green Specific Area Plan

The representation above raises the issue of whether the General Residential Zoned land should be included within the Tivoli Green Specific Area Plan (Tivoli SAP). Consideration of the proposed rezoning against the Tivoli SAP demonstrates that there are no advantages to extending the SAP across the site, as the standards within the Zone and Code provisions will provide for appropriate assessment, if the site is subdivided.

5. Modifications to the draft planning scheme amendment

As demonstrated above, based on assessment of the representations above, no modifications to the draft planning scheme amendment are required.

6. Conclusion

Three (3) representations were received during the public exhibition period for the 203 and 205 Old Beach Road draft planning scheme amendment, which have been considered in this report. The proposed draft planning scheme amendment still meets the LPS criteria as required by s.40K(d) of the Act, and does not require any modification (s40K (2)(c)).

4. Options:

- a) To adopt the recommendation; or
- b) To adopt an alternative recommendation satisfying the provisions of section 40K of the Act, with a full statement of reasons as determined by Council.

5. Recommendation

It is recommended that Council resolves that:

- a) Pursuant to section 40K(1) of the *Land Use Planning and Approvals Act 1993*, provide the Tasmania Planning Commission with a copy of this report.
- b) Pursuant to section 40K (2)(a) of the *Land Use Planning and Approvals Act 1993*, provide to the Tasmanian Planning Commission a copy of each of the 3 representations that were received during the advertising of draft amendment RZ 2023-02.
- c) Pursuant to section 40K (2)(c) of the *Land Use Planning and Approvals Act 1993* advise the Tasmanian Planning Commission that the representations received during advertising do not warrant a modification to draft amendment RZ 2023-02 as detailed in this report.

DECISION: