

TASMANIAN PLANNING COMMISSION

Our ref: DOC/20/119478
Officer: Lauren O'Brien
Phone: 03 6165 6813
Email: tpc@planning.tas.gov.au

15 October 2020

Mr Des Jennings
General Manager
Northern Midlands Council
Attention: Mr Paul Godier, Strategic Planner

By email: council@nmc.tas.gov.au

Dear Mr Jennings

**Northern Midlands Interim Planning Scheme 2013
Draft amendment 01-2020 and permit PLN-20-0001
Rezone 41-43 Wellington Street, Longford from Community Purpose to General Residential,
three lot subdivision and partial demolition of a State heritage listed place**

I refer to the hearing into the representations held by the Tasmanian Planning Commission (the Commission) for the above draft amendment and permit on 14 October 2020.

I confirm that the following directions were made by the Commission's Delegates at the hearing:

1. Submissions are invited from all parties on:
 - (a) the Tasmanian Heritage Council's report under section 39A(12) of the *Historic Cultural Heritage Act 1995*, dated 22 September 2020;
 - (b) Gray Planning's Statement of Evidence dated 12 October 2020;
 - (c) further information that may assist in establishing when or how a separate lot was created for the old manse site;
 - (d) opinions on whether the Part 5 Agreement (attached) is still in effect and the impact it may have on the proposal to subdivide the land; and
 - (e) the merit of including a condition for a Part 5 Agreement that limits development on the site to a single dwelling, taking into consideration whether a building envelope that limits the height of development to a single storey is sufficient.
2. The planning authority is to provide:
 - (a) a submission about the origin of the Part 5 Agreement relating to the site, including a copy of the relevant permit (P09-160) and the officer's accompanying report about the application;
 - (b) a copy of the letter from the General Manager of Northern Midlands Council granting consent for a cash-in-lieu contribution for public open space; and
 - (c) a revised draft permit, including amendments to the conditions as follows:

- (i) Amend condition 1 to reflect that endorsed plans P1 and D1 will be amended due to conditions placed on the permit covered by (iii) and (iv) below, that requires a building envelope and that future development on lot 1 is to be designed by a suitably qualified architect.
- (ii) Replace condition 4 with:
TASMANIAN HERITAGE COUNCIL
The use and development approved by this permit shall comply with the requirements of the Tasmanian Heritage Council Notice of Heritage Decision (Reference: 10-14-81THC, dated 4 May 2020).
- (iii) Insert a new condition to require a three dimensional building envelope, matching as close as practicable the building envelope for the old manse. Note that there may be a need for the planning authority and Tasmanian Heritage Council to liaise to determine the building envelope based on the proposed envelope in Figure 2 of the section 39 report and that recommended by the Heritage Council in its correspondence of 22 September 2020.
- (iv) Provide a mechanism by way of a permit condition (e.g. requirement for a Part 5 Agreement) to require any future building on Lot 1 to be designed by a suitably qualified architect, with well-established credentials in heritage conservation, that references the historical old manse building, as recommended by the Tasmanian Heritage Council in its correspondence dated 22 September 2020.

Submissions requested above must be received by close of business on **29 October 2020**.

Any response submissions must be received by close of business on **12 November 2020**.

The information will be made available to all parties on the iplan website at:

<https://iplan.tas.gov.au/Pages/XC.Track.Assessment/SearchAssessment.aspx?id=963>

All submissions are to be provided by email to tpc@planning.tas.gov.au. Where attachments are too large for email, please contact the Commission for assistance with accessing Dropbox. The Commission keeps electronic records and does not require hard copy documents.

Please note that submissions will be published in full, without redaction.

If you require further information please contact Lauren O'Brien, Planning Adviser, on 03 6165 6813.

Yours sincerely



Sandra Hogue
Delegate (Chair)

Attachments Part 5 Agreement (Dealing No. C966590)

cc Applicant, Tasmanian Heritage Council and representors

TASMANIAN LAND TITLES OFFICE

Notification of Agreement under the

Land Use Planning and Approvals Act 1993 (Section 71)



C966590

| DESCRIPTION OF LAND | | | |
|-----------------------|-------|--------|-------|
| Folio of the Register | | | |
| Volume | Folio | Volume | Folio |
| 196815 | 1 | 112240 | 1 |

REGISTERED PROPRIETOR:

ANDREW PAUL JOHNSTONE and JANICE ELIZABETH JOHNSTONE and JOBEL PTY LTD

PLANNING AUTHORITY:

NORTHERN MIDLANDS COUNCIL


Dated this 24th day of December 2009

I/We ADAM WILSON

of **13 SMITH STREET, LONGFRD in TASMANIA**

the abovenamed Planning Authority, certify that the above particulars are correct and that attached is a certified executed copy of the agreement between the abovenamed parties, notice of which is to be registered against the abovementioned folio of the Register.

The abovenamed Planning Authority holds the original executed Agreement.

Signed 
(on behalf of the Planning Authority)

Land Titles Office Use Only
REGISTERED

11 JUN 2010

LUA Version 1

RECORDED 
THE BACK OF THIS

FORM MUST NOT BE USED

Stamp Duty

DEED OF AGREEMENT

THIS DEED OF AGREEMENT is made the 24th day of December 20 09

PARTIES:

THE NORTHERN MIDLANDS COUNCIL of 13 Smith Street Longford in Tasmania (the Council)

THE PERSON OR PERSONS DESCRIBED AT ITEM 1 OF THE SCHEDULE (the owner)

RECITALS:

- 1 The owner is the owner of all that land described at item 2 of the schedule (the land).
- 2 The land is within the area subject to the provisions of the Northern Midlands Planning Scheme 1995.
- 3 On the 15th day of July 2009 the Council issued a permit No P09-160 in respect of an application by the Owner to subdivide the land in accordance with the procedure specified at section 81 of the Local Government (Building & Miscellaneous Provisions) Act 1993 and section 57 of the Land Use Planning & Approvals Act 1993 (the permit).
- 4 Clause 5 of the permit allowed, pursuant to section 58A of the Act, that this agreement be entered into to enable the Owner to proceed with the permit.

OPERATIVE PART:

The parties agree and covenant as follows:

1 Interpretation & Definitions

1.1 Definitions

In this agreement unless the contrary intention appears:

“Act” is the Land Use Planning & Approvals Act 1993.

“Permit” is the permit described in recital 3.

“Land” means the land described in item 2 of the schedule.

“Planning Scheme” is the Northern Midlands Planning Scheme 1995 and any amendment, modification or replacement of that scheme made pursuant to the

Signed:
Dated: 24 December 2009

I, Adam Wilson, Acting General Manager of Northern Midlands Council, do hereby certify that this is a true and correct copy of the original Agreement under Part 5 of the Land Use Planning & Approvals Act 1993.

provisions of the Act.

“**Lot**” is a block created by subdivision of the land of which it was part.

“**The Miscellaneous Act**” is the Local Government (Building & Miscellaneous Provisions) Act 1993.

“**The application**” is the application referred to in recital 3.

“**The approved plans**” mean the plan or plans of subdivision approved by the permit.

“**A final plan of subdivision**” in respect of the land means a plan or plans for:

- (a) The subdivision of all of the land;
- (b) The subdivision of any stage of the land; or
- (c) The subdivision of any combination of stages of the land

within the meaning of division 3 of Part 3 of the Miscellaneous Act which is lodged with the Council pursuant to Section 88 of that Act.

1.2 Interpretation

In this agreement:

- (a) A reference to the Council includes a reference to any new council which has jurisdiction in respect of the land established pursuant to part 2 of the Local Government Act 1993 or any other legislation or proclamation;
- (b) A reference to the owner includes its assignees and any person bound by the covenants in it as provided for in section 79 of the Act;
- © A reference to this agreement in another instrument is a reference to this agreement as amended, varied, novated or substituted from time to time;
- (d) A reference to a statute, ordinance, code, law or planning scheme includes a reference to such document as amended or substituted from time to time;
- (e) A reference to a person or party includes that persons executors, administrators, successors, substitutes (including persons taking novation), transferees, assigns and any person deriving title under such a person;
- (f) Words and expressions used both in this agreement and in the Act, the Local Government Act 1993 or the Miscellaneous Act have the same meanings as they have in this Acts;
- (g) Words and expressions used both in this agreement and in the planning scheme have the same meanings as they have in the planning scheme.

THE PARTIES COVENANT AND AGREE AS FOLLOWS

2 Objective and Function of the Agreement

- 2.1 Without limiting any operation or effect which this agreement otherwise has, the Council and the owner acknowledge that this agreement is made under Part 5 of the Act (and in particular section 71) with the intent that the burden of the owner's covenants run with the land as provided for by section 79 of the Act.
- 2.2 The parties enter this agreement:
 - (a) To give effect to the permit; and
 - (b) To provide for the matters set out in section 72(2) of the Act.
- 2.3 This agreement must be registered pursuant to section 78 of the Act in respect of the land and each lot created by subdivision of the land.

3 Development of the Land

- 3.1 The owner must only subdivide the land in accordance with the permit, the provisions of this agreement, the Planning Scheme, the Act and the Miscellaneous Act.
- 3.2 Subdivision of the land, except as authorised by the permit, is prohibited.
- 3.3 The owner acknowledges:
 - 3.3.1 that the land is currently zoned "Community Purposes"; and
 - 3.3.2 that further development of Lot 2 on the approved plans for residential purposes is prohibited until the said Lot 2 is rezoned to "Residential Serviced".
- 3.4 Before council affixed its seal to a final plan of subdivision pursuant to section 89 of the Miscellaneous Act the owner must have:
 - (a) Complied with the provisions of the permit; and
 - (b) Complied with the provisions of this agreement.
- 3.5 The Council may refuse to cause its seal to be affixed to a final plan of subdivision for the land if the owner has not complied with the provisions of the permit, the provisions of this agreement or Council is otherwise satisfied that a final plan does not comply with the provisions of part 3 of the Miscellaneous Act.

4 Other Obligations of the Owner

The owner must:

- 4.1 Permit registration of this deed of agreement in accordance with section 78 of

the Act and pay the costs of registering it.

- 4.2 Pay all stamp duty and registration costs in respect of this agreement or any document required by it.
- 4.3 Pay or cause to be paid when due and payable all taxes (including any goods and services tax or like consumption tax, duties, fees, penalties, stamp duties and other charges of any nature whatsoever) levied by any governmental authority arising out or in relation to this agreement or the provision of the matters referred to in it and the Council is not liable to pay or reimburse the owner for such taxes or charges and the owner must indemnify and keep indemnified the Council in respect of them.

5 **Conditional Nature of the Council's Obligations**

- 5.1 The Council is not obliged to perform the provisions of this agreement if the owner is in breach of it or the permit at the time that performance by the Council is due.

6 **No Claims**

- 6.1 The owner agrees with the Council that the owner will make no claims for any costs, loss or damage whatsoever or howsoever arising as a result of any disruption, delay, disturbance or inconvenience caused to the owner, its lessees or licensees, as a result of the Council undertaking the infrastructure works in accordance with this agreement and the owner hereby acknowledges the likelihood that the construction of the infrastructure works may cause disruptions, delay, inconvenience and loss to the owner its lessees and licensees.

7 **Relationship Between the Parties**

- 7.1 Nothing in this agreement creates the relationship of partnership or of principal and agent or of joint venture between the Council and the owner.

8 **Proper Law**

- 8.1 This deed of agreement is governed by the laws of the State of Tasmania and the parties submit to the non exclusive jurisdiction of those courts and from courts competent to hear appeals therefrom.

9 **Commencement**

- 9.1 This agreement begins immediately upon execution by the parties.

10 **Other Documents**

- 10.1 This agreement is to be read in conjunction with the permit and any plans submitted to and approved by the Council in relation to the permit or subdivision

of the land.

11 Termination

- 11.1 This agreement will end upon the rezoning of Lot 2 on the approved plans under the Planning Scheme to "Residential Serviced" or otherwise in accordance with the Act
- 11.2 Despite the fact that another person may become liable for the obligations of the owner under this agreement or may be bound by this agreement in conjunction with the owner the owner does not cease to be liable to comply with this agreement until it has been discharged by performance of all of the owner's obligations in full.
- 11.3 If a party terminates this agreement for breach of it by the other party, then that termination does not affect rights which have accrued prior to the date of termination.
- 11.4 The Council may terminate this agreement by notice in writing to the owner if:
- (i) The owner breaches it;
 - (iii) The owner fails to comply with the permit;
 - (iv) The owner fails to comply with the planning scheme, the Act or the Miscellaneous Act in respect of the use or development of the land; or
 - (v) This agreement is not registered pursuant to the provisions of the Land Titles Act 1980.
- 11.5 This agreement also terminates as provided for in the Act.

12 Reading Down and Severability

- 12.1 If a provision of this agreement is void or voidable by a party, unenforceable or illegal but would not be so if read down or severed from the agreement, it must be read down or severed accordingly.

13 Council's Costs

- 13.1 The owner must immediately on demand pay to the Council the Council's costs and expenses (as between solicitor and client) relating to this agreement and anything done before or after this agreement for the enforcement of any obligation imposed upon the owner under it.

14 Change to Plans of Subdivision

- 14.1 In the event that there is an amendment or revision of a plan of subdivision in respect of the land approved by the Council or required by the Recorder of Titles pursuant to the provisions of the Land Titles Act 1980, this agreement must be read so as to apply to the plan as amended or revised.

15 **Exercise of Powers**

- 15.1 The Council and the owner expressly acknowledge that any obligation imposed upon the Council under this agreement does not fetter the future exercise of any statutory discretion by the Council whether in relation to the permit or the land or otherwise and the provisions of this agreement must be read accordingly.
- 15.2 In particular, this agreement does not mean the Council must approve any applications for a permit to subdivide, develop and use the land.

16 **Disclosure of this Agreement**

- 16.1 The owner must not at any time or after the registration of this agreement sell, transfer, dispose of or in any way part with possession of the land without first disclosing the existence of and nature of this agreement to the owner's successors.

17 **Alteration to this Agreement**

- 17.1 This agreement may amended by agreement between Council and all persons who are bounded by any covenant in the agreement.
- 17.2 If any proposed amendment to this agreement requires a new or an amended permit, then that permit or that amended permit (as the case may be) must be obtained before this agreement is amended.
- 17.3 Despite this clause, the Council may determine that a new agreement is required.

18 **Notices**

- 18.1 A notice pursuant to this agreement must be in writing. Notices may be served:
- (a) personally by leaving them with the party on whom they are to be served at that party's address stated in clause 18.3; or
 - (b) by pre paid post sent to the address stated in clause 18.3; or
 - © by facsimile (or by any other like method by which a written or recorded message may be sent) directed to the part on whom they are to be served at that party's address stated in clause 18.3.
- 18.2 Notices are not effective until received by the other part and any such notice is without prejudice to any other mode of receipt, deemed to be received by such other party:
- (a) if served personally when left at the address of the other party stated in

clause 18.3;

- (b) when mailed, three business days after being put into the post addressed to such party at that address; and
- © if made by facsimile or any other like method upon the production of a transmission report by a machine from which the transmission was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient stated in clause 18.3.

18.3 The addresses of the parties for service of notices are as follows:

NORTHERN MIDLANDS COUNCIL
13 Smith Street
LONGFORD TAS 7301
Ph: 6391 1303
Facsimile 6391 1741

Owners Details
Address: 5 Smith Street
LONGFORD TAS 7301
Ph: 6391 2816

THE SCHEDULE

Item 1 - The Owner

Full name of Owner: Andrew Paul Johnstone, Janice Elizabeth Johnstone and Jobel Pty Ltd
Address of Owner: c/- 5 Smith Street Longford in Tasmania

Item 2 - The Land

All that comprised in Certificates of Title Volume 196815 Folio 1 and Volume 112240 Folio 1 of the Register known as No. 41-43 Wellington Street, Longford in Tasmania.

DATED this

day of

2009

EXECUTED AS A DEED

THE COMMON SEAL of THE NORTHERN)
MIDLANDS COUNCIL was hereunto affixed)
pursuant to a resolution of the Council)
passed on the day of 2009)
in the presence of:)

.....

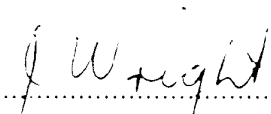
Mayor

)
)
)

.....

General Manager

SIGNED by JOBEL PTY LTD (009 536)
752) in accordance with Section 127(1) of)
the Corporations Law)


.....
Sole Director/Secretary

SIGNED SEALED AND DELIVERED by the)
said ANDREW PAUL JOHNSTONE in the)
presence of:-)

A. Johnstone

[Witness Signature] *Emma Curbishley*
[Witness Full Name] **Emma Curbishley**
[Witness Occupation] **Law Clerk**
[Witness Address] **C/- Clarke & Gee**
Launceston Tas 7250

SIGNED SEALED AND DELIVERED by)
the said JANICE ELIZABETH)
JOHNSTONE in the presence of:-)

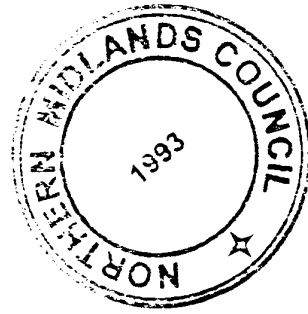
Janice Elizabeth Johnstone

[Witness Signature] *Emma Curbishley*
[Witness Full Name] **Emma Curbishley**
[Witness Occupation] **Law Clerk**
[Witness Address] **C/- Clarke & Gee**
Launceston Tas 7250

DATED this 24th day of December 2009

EXECUTED AS A DEED

THE COMMON SEAL of THE NORTHERN)
MIDLANDS COUNCIL was hereunto affixed)
pursuant to a resolution of the Council)
passed on the 24th day of December 2009)
in the presence of:)



[Handwritten Signature]
.....
Mayor

)
)
)
[Handwritten Signature]
.....
A/General Manager

SIGNED by JOBEL PTY LTD (009 536)
752) in accordance with Section 127(1) of)
the Corporations Law)

[Handwritten Signature]
.....
Sole Director/Secretary

