

From: [Richard Barnes](#)
To: [TPC Enquiry](#)
Cc: [Danny Hills](#)
Subject: DOC/22/30766 - Derwent Valley Interim Planning Scheme 2015 Draft amendment PSA 2021-1 42 Black Hills Road, Magra
Date: Tuesday, 5 April 2022 9:29:29 PM
Attachments: [Applicant - Derwent Valley 2015 - draft amendment PSA 2021-1 - Commission letter confirmation of directions given at hearing, 23 March 2022.pdf](#)
[MSD Constructions Pty Ltd Existing Use Activities Danny 27 July 2021.pdf](#)

Dear Sir

I write in response to your letter of 23 March 2022.

I note the directions from the Commission:

'Under the interim planning scheme, there are a number of use standards that are applicable to a permitted use in the Rural Living Zone. Under the Tasmanian Planning Scheme (TPS), the use standards in the Rural Living Zone will only apply to discretionary uses. The planning authority and applicant are to provide to the Commission by 6 April 2022 a submission on how the effect of the proposed site specific qualification for this site may be reflected in the future Local Provisions Schedule.'

It is submitted that the SSQ inserts the Storage Use Class in the appropriate table of the LPS (Rural Living), with it listed as a Permitted use for that CT. The Storage Use Class definition in the SPP includes the existing use (contractor's yard) - 'use of land for storage or wholesale of goods, and may incorporate distribution. Examples include boat and caravan storage, self storage, contractors yard, freezing and cool storage, liquid fuel depot, solid fuel depot, vehicle storage, warehouse and woodyard.'

The continuation of the use and development associated with the use are covered by existing use rights. Documentation around the nature of the use (including the operating hours) was advertised with the amendment application. The existing use will enjoy those operating hours etc irrespective of the Scheme in force. It is only when, and if (notwithstanding the Council's ability to ask for a permit to be applied for under non-conforming use provisions once permissible), an application is necessary for development or use or both that the TPS would be enlivened.

The provisions of *11.4 Development Standards for Buildings and Works* pose no impediment to the listing of Storage in the Permitted section of the Use Table at Clause 11.2 (by SSQ) as they would apply in any event (i.e. the interim scheme and TPS have development standards that would apply). Development would be the most likely scenario to occur, but even that is unlikely.

Any new use or change to the existing use (including intensification) would likely need a permit. If for example, the owner wanted to erect a 10x12m shed, a DA would need to be lodged. That DA if it were to be assessed under the Use Standards of the SPP (Rural Living zone) would trigger all of the performance criteria. However, the development of a shed itself does not necessarily change the use - indeed, there may be no change to the use in terms of operating hours, persons employed, etc. However, the shed would have 'use' associated with it and therefore the use standards would or are likely to be applicable if the Storage use was to be a discretionary use in the SSQ table of the LPS. Hence, a single DA for a shed could expose the entire existing use to assessment. Alternatively, the DA may be limited to the shed and **its** use, however this may not be the position (interpretation) of the planning authority at that time. It is submitted that while it may appear appropriate to list the Storage use class (for the CT) as Discretionary via an SSQ in the SPP, it could lead

to perverse outcomes of a refusal or contested hearing (TASCAT) where the existing use and new use (which could, for example, be limited to a single small shed) are conflated. Given this, it is submitted that the requested amendment be given the same effect in the LPS as the IPS - being a SSQ that lists for the relevant CT the Storage use class as Permitted in the Rural Living zone.

The Commission would be aware that the Scheme and associated development application process does not exist in a policy and regulatory vacuum. EMPCA and its associated Regulations (especially the noise regulations) provide various means to regulate activities (whether they have, need or are exempt from having a LUPAA permit), the most notable being s44 which authorises the issuance of an Environment Protection Notice by a council officer. There are other statutory measures and regulations which apply or could apply to the existing use or any use where those regulatory provisions apply. For example, the operation of power tools, machinery etc is regulated to certain hours and days and noise emissions. A permit under LUPAA or lack of a permit under LUPAA does not derogate Council's ability to regulate through EMPCA, such as the issuing of an EPN. Indeed, EPN's can be issued by Council officers independent of any LUPAA related process.

I trust the above aids the Commission in its decision making process for Draft amendment PSA 2021-1.

Please contact me if you require any further information or submissions.

regards
Richard Barnes

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27 July 2021

The following Terms are used in this document to describe the broad activities associated with the existing use on the Site.

Term	Definition
Office Activities	Administration activities in the office (e.g., payroll, filing)
Operational Activities	Activities associated with storage, collection, refuelling and maintenance of machinery and/or equipment. Mechanical repairs (workshop), equipment washing, office operations, collection and or delivery of operational supplies including job specific materials (e.g., pipes, jute matting, vegetation control substances), equipment movement, parking of employees' vehicles.
Equipment Washdown	Machinery washdown and cleaning.
Machinery Float	Attending the Site to collect and transport a float loaded with equipment and/or machinery.
Site	The land identified as 179383/2, 42 BLACK HILLS RD MAGRA TAS 7140 including the access from Black Hills Road, several buildings (mobile) such as sheds, locked-storage spaces, office building and veranda and associated amenities (tea room and toilet with septic system), car parks, outside storage areas, and washdown bay.

The following table documents the type and time periods within which activities have and continue to occur at the Site.

Day	Activities	Time Period
Monday	Office and Operational Activities	4.00am to 6.00am – entry and exit of the site for workers attending site and equipment transporting, in and out of the premises only, 7.00am to 6.00pm normal Operational Activities.
Tuesday	Office and Operational Activities	As above
Wednesday	Office and Operational Activities	As above
Thursday	Office and Operational Activities	As above
Friday	Office and Operational Activities	As above

Saturday	Equipment Washdown and Machinery Float only	8.00am till 4.00pm
Sunday	Machinery Float	Rare, mainly pm

EXCEPTIONS

The following exceptions to the standard activities described as a Term are provided below. Exceptions are activities which occur intermittently and are occasionally season-related, such as fire season activities.

Task	Description	Occurrence
Emergency Activities	Activities associated with emergency repairs to machinery and equipment, attending to fire season tasks (e.g., access to firefighting equipment)	Occur at anytime and are in response to the emergency being addressed/managed. Fire season related attendance at the Site is seasonal (summer mainly) and intermittent subject to the occurrence of fires, their severity and longevity

FUELS AND OILS

Storage of oils and fuels is below manifest quantities. Fuel storage is self-bunded.