

# TASMANIAN PLANNING COMMISSION

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## DECISION

<b>Planning scheme</b>	Tasmanian Planning Scheme - Devonport
<b>Amendment</b>	Draft amendment AM2020.03 (1) - for a floor area qualification to Food Services in Devonport Homemaker Centre Specific Area Plan
<b>Permit</b>	PA2020.0227 - Food services and associated development
<b>Planning authority</b>	Devonport City Council
<b>Applicant</b>	Urbis Pty Ltd
<b>Date of decision</b>	11 August 2021

## Decision

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

The permit is modified under section 42B(1)(b)(ii) of the *Land Use Planning and Approvals Act 1993*, as set out in Annexure B.



John Ramsay

**Executive Commissioner**

## REASONS FOR DECISION

### Background

#### Amendment

The draft amendment proposes to amend the use standard for floor area by deleting clause DEV-S1.6.1 A2 (a) and inserting a new clause DEV-S1.6.1 A2 (a), as follows:

Excluding Food Services, the gross floor area of each tenancy within a building must not be less than 500m<sup>2</sup>.

#### Permit

The permit provides for Food Services premises and associated signage at 4 Friend Street, Devonport.

#### Site information

The subject site is located between the Bass Highway and Stony Rise Road and contains established and vacant lots dedicated to a Homemaker Centre. The site is surrounded by residential land to the east, residential land and a lot containing an electricity substation to the west, and designated services for the Homemaker Centre are located to the southeast.

The Homemaker Centre is occupied by bulky goods showrooms and associated tenancies, including Harvey Norman and Bunnings Warehouse amongst others. A McDonald's convenience restaurant and service station 'pad site' is located to the northwest.

#### Issues raised in representations

One representation was received from TasWater. TasWater raised no concerns with the draft amendment or proposed development and does not require to be notified of, nor attend, any subsequent hearings.

### Consideration of the draft amendment

1. Under section 40M of the Act, the Commission is required to consider the amendment and representations, statements and recommendations contained in the planning authority's section 40K report.
2. One representation was received and after consultation under section 40G and 40Z of the Act, the Commission dispensed with holding a hearing.
3. The amendment has been and certified by the Devonport City Council, in its capacity as planning authority, and further supported in the reports under sections 40F and 42 of the Act.
4. The Commission must also consider whether the draft amendment meets the LPS criteria as set out under section 34(2) of the Act and whether modifications ought to be made to the draft amendment.
  - (a)-(h) . . .
    - (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;
- (f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.
- (h) has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019.

### **Specific Area Plan**

- 5. Section 34(2)(b) refers to requirements under Section 32(4) that apply to a particular purpose zone (PPZ), specific area plan (SAP) or site-specific qualification (SSQ).
- 6. The Devonport Homemaker Centre Specific Area Plan is an existing provision and the effect of the draft amendment does not significantly change the SAP.

### **Commission's consideration**

- 7. The Commission finds that the proposal complies with section 32(4).

### **Regional land use strategy**

- 8. The relevant regional strategy is the Living on the Coast- Cradle Coast Regional Land Use Strategy 2010 – 2030, December 2010 (the regional strategy).
- 9. The planning authority considers that the draft amendment is, as far as practicable, consistent with the regional strategy, as follows:

The proposed amendment is consistent with the regional land use strategy in that the LPS was prepared taking the strategy into consideration and the proposal allows for established employment land to be fully utilised (p.35).

- 10. Similarly, the applicant considers that the draft amendment is, as far as practicable, consistent with the regional strategy, as follows:

Devonport is acknowledged as the 'dominant employment centre' in the region, and one of a number of areas supporting settlement growth (p.16).

The existing Homemaker Centre forms part of this higher order function. The proposed amendment will support the function of the centre...

The proposed amendment seeks only to allow restaurant and take away tenancies that are smaller than the bulky goods showroom floor space threshold 500 sqm. This is consistent with the original Homemaker Zone clause and maintains the principles of the Regional Strategy given that the land use is confined within the existing Homemaker centre and does not represent the expansion of convenience

uses (food sales, clothing etc) which are sought to be retained in existing convenience retail centres. (p.16).

11. The applicant considers that the draft amendment is consistent with the Objectives of the Homemaker Centre Specific Area Plan.
12. The applicant further notes, as follows:

In 2013 with the introduction of the Interim Devonport Planning Scheme the floor area restriction was imposed to a broader range of uses as an unintended consequence in the 'neutral translation' of the controls. This resulted in the creation of the Devonport Homemaker Specific Area Plan and the requirement under acceptable solutions for floor area that 'The floor area of each tenancy within a building must not be less than 500sqm' (our emphasis). The proposed amendments seeks to effectively correct this error (p.15).
13. The planning authority agreed and considered that the draft amendment will rectify an anomaly that arose when the original Devonport Regional Homemaker Centre Zone was translated to a Specific Area Plan.

### **Commission's consideration**

14. The Commission is satisfied with the justification provided by the applicant and planning authority. The draft amendment allows for established employment land to be fully utilised, consistent with the regional strategy's economic activity policy 3.3.1(a).
15. The proposed amendment will encourage Food Services uses that will support the dominant focus of the Homemaker Centre as bulky goods retailing, consistent with the regional strategy's economic activity policy 3.3.1(e). The restriction on the extent of Food Services allowed by the Specific Area Plan will minimise competition with similar established uses in surrounding activity centres.
16. The Commission accepts the justification from the planning authority and the applicant that the draft amendment will rectify an anomaly in the Tasmanian Planning Scheme- Devonport.
17. The Commission considers that the draft amendment is, as far as is practicable, consistent with the regional strategy.

### **State Policies and Resource Management and Planning System Objectives**

The Commission finds that no State Policies are relevant to the draft amendment and that it seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

### **LPS Criteria**

18. The Commission finds that the draft amendment meets the LPS criteria under section 34(2).

### **Decision on draft amendment**

19. The Commission finds that the draft amendment is in order and gives its approval.

### **Consideration of the permit**

20. In its consideration of the permit under section 42A, the Commission is required to review the planning authority's decision as reported under section 42.

### **Assessment against the Tasmanian Planning Scheme- Devonport**

21. In its section 40Y report, the planning authority has assessed the permit application against the Tasmanian Planning Scheme- Devonport.
22. The planning authority considers that the permit application is consistent with the objectives and provisions of the Homemaker Centre Specific Area Plan, as follows:

The proposal is consistent with the intent of both the zone and the specific area plan which is to provide for large floor area retailing and service industries (Commercial zone) and for integrated bulky goods showrooms and trade supplies, including associated food outlets, car parking, signage, and landscaping (Devonport Regional Homemaker Centre SAP) (p.11).
23. The planning authority considers that the permit application proposes use and development to the existing bulky goods showrooms which is suitable for the site. The permit application will not have an unreasonable impact on the amenity of use on land beyond the boundaries of the Devonport Regional Homemaker Centre Specific Area Plan, or the surrounding streetscape.
24. The building height is minimised to prevent visual prominence when viewed from the Bass Highway or Stony Rise Road, and sufficient car parking is proposed to prevent adverse impacts on the site and surrounding area.
25. The proposed signs and landscaping were required to be assessed against the relevant Performance Criteria of the Tasmanian Planning Scheme- Devonport. The planning authority considered that the proposed signs are compatible with the streetscape and will not contribute to visual clutter when viewed from the adjoining sites.
26. The planning authority further considers that the proposed landscaping treatment is proposed to be provided along the frontage of the subject site and further enhances the amenity and appearance of the streetscape, and therefore complies with the relevant Performance Criterion.

### **Commission's consideration**

27. The Commission agrees with the planning authority and the applicant that no significant impacts to surrounding land uses would be caused by the permit application. The intensity of the use is restricted to an appropriate level by the relevant requirements of the Tasmanian Planning Scheme- Devonport.
28. The Commission agrees with the planning authority that the proposed signs and landscaping meet the relevant Performance Criteria of the Tasmanian Planning Scheme- Devonport and will not have adverse impacts on surrounding land.

### **Resource Management and Planning System Objectives**

29. The Commission finds that the permit seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

### **Modification to permit conditions**

30. The TasWater notice to the planning authority provides conditions to be included in the permit under sections 56P and 56S of the *Water and Sewerage Industry Act 2008*, although these were not included on the permit.
31. The Commission amends the permit to include reference to the TasWater Submission to Planning Authority Notice as a condition 8.

32. Condition 7 on the TasWater notice provides for the payment by the developer of a fee for development assessment and for consent to register a legal document. This condition is not for a proper planning purpose and is to be removed but may be included as advice.
33. The applicant provided the planning authority with an amended landscape plan. The planning authority is satisfied that the amended landscape plan complies with the all relevant provisions of the Tasmanian Planning Scheme- Devonport and requested the Commission to amend the permit. The Commission amends condition 3 on the planning permit, as follows:

Landscaping must be provided in accordance with the proposed site plan (WD-0.02), dated 10 May 2020, along the frontage of the tenancy prior to the building permits being finalised.
34. The planning permit includes notes for information purposes which refers to appeal rights to the RMPAT. The advice is incorrect as the applicant is not able to appeal against the Commission's decision. The inclusion of notes or advice is a matter for the planning authority.

### **Decision on permit**

35. The Commission modifies the draft permit conditions, as set out above and grants the permit.

### **Attachments**

Annexure A- Amendment AM2020.03

Annexure B- Modified permit PA2020.0227

## **Annexure A**

Amendment AM2020.03 to the Tasmanian Planning Scheme- Devonport

- (1) Delete clause DEV-S1.6.1 A2 (a) and insert a new clause DEV-S1.6.1 A2 (a) as follows:

Excluding Food Services, the gross floor area of each tenancy within a building must not be less than 500m<sup>2</sup>.

## Annexure B

### Modified permit PA2020.0227

The following conditions apply to this permit:

1. Unless altered by subsequent conditions the Use and Development is to proceed generally in accordance with the submitted plans referenced as KFC Devonport, Job No. 2037, Dwg No. WD-0.00, WD-0.01, WD-0.03, WD-1.01, WD-2.01, WD-2.02, WD-2.03, WD-2.20 & WD-2.21, dated 16/12/20 by inaspace Architecture and Design, copies of which are attached and endorsed as documents forming part of this Planning Permit.
2. Approval is not granted for the proposed pylon sign within the setback area of the Bass Highway frontage.
- \*3. Landscaping must be provided in the location shown on site plan (WD-0.02), dated 10 May 2020, along the frontage of the tenancy prior to the building permits being finalised.
4. A minimum of 3 bicycle parking spaces are to be provided within 50m of the tenancy.
5. Concentrated stormwater is to be discharged in accordance with the National Construction Code.
6. The developer must seek approval from the Council's Environmental Health Department before any works commence. As part of this the Building Surveyor is to submit a Form 42 and its associated paperwork (including proposed menu type) as part of the Building and Plumbing application process.
7. The developer is to ensure that food preparation and food storage areas comply with the National Construction Code of Australia Tas H102 and AS4676:2004 Design, Construction and Fit-out of a food Premises.
- \*8. The development must meet all required Conditions of Approval, with the exception of condition 7, specified by TasWater notice, dated 12 March 2021 (TWDA-2021/00355-DCC).

**\*permit conditions modified by the decision of the Tasmanian Planning Commission dated 17 August 2021**