

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Derwent Valley Interim Planning Scheme 2015
Amendment	PSA 2021-1 - insert Storage as a permitted use class in the Rural Living Zone subject to a qualification limiting the use to a contractors yard at 42 Black Hills Road, Magra
Planning authority	Derwent Valley Council
Applicant	Van Diemen Consulting Pty Ltd for Danny Hills
Date of decision	14 April 2022

Decision

The draft amendment is modified under section 41(ab) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A and is approved under section 42.

A handwritten signature in black ink, appearing to read 'Dan Ford', enclosed in a thin black rectangular border.

Dan Ford
Delegate (Chair)

A handwritten signature in blue ink, appearing to read 'Claire Hynes'.

Claire Hynes
Delegate

Note:

References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The commencement day was 17 December 2015.

REASONS FOR DECISION

Background

Amendment

The draft amendment proposes to insert a site-specific provision to allow Storage as a permitted use class in 13.2 Use Table of the Rural Living Zone with a qualification only if for a contractors yard at 42 Black Hills Road, Magra (folio of the Register 179383/2).

Site information

The land is located on the eastern side of the intersection of Black Hills Road and Daniels Road.

The site is 1.2ha and contains an existing contractors yard, established circa 1982 and is developed with a number of storage buildings, an administration building and outdoor storage areas.

The land subject to the amendment is surrounded to the north and east by land zoned Rural Living, Rural Resource Zone to the west and Particular Purpose Zone – Future Urban (which is separated by Black Hills Road) to the south. The Bushfire-Prone Areas Code and Waterways and Coastal Protection Areas Code apply to the site.

Only water services are available to the site.

Planning authority's response to the representations

No representations were received and the planning authority did not recommend any modifications to the draft amendment.

TasWater provided a Submission to Planning Authority Notice (SPAN) advising it does not object to the draft amendment to the planning interim scheme and has no formal comments for the Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings.

Under section 56S of the *Water and Sewerage Industry Act 2008*, the TasWater submission is taken to be a representation made under subsection 39(1).

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 21 March 2022.

Appearances at the hearing

Planning authority: Mr Shane Wells, Consultant Planner

Applicant: Dr Richard Barnes, Van Diemen Consulting Pty Ltd

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. A hearing was convened to assist the Commission consider the draft amendment.

3. The amendment was initiated and certified by the Derwent Valley Council, in its capacity as planning authority, and further supported in the reports under sections 35 and 39.
4. Under section 32(1), in the opinion of the relevant decision-maker, a draft amendment:
 - (a)-(d) . . .
 - (e) must, as far as practicable, avoid potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area;
 - (ea) must not conflict with the requirements of section 300;
 - (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.
5. Under section 32(2), the provisions of section 20(2)-(9) inclusive apply to the amendment of a planning scheme in the same manner as they apply to a planning scheme.
6. Subsection 32(1)(e) is not relevant to the draft amendment as the site does not adjoin an adjacent municipal area.
7. Section 300 includes that:
 - (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.
8. Subsections 300(2)-(5) inclusive relate to the effect of amending a local provision with respect to common provisions. These matters are not relevant, as the draft amendment is limited to a local provision and has no implications for any common provisions.
9. Under section 32(1)(f), regional impacts of use and development permissible under the amendment have been considered with reference to the Southern Tasmania Regional Land Use Strategy 22 September 2021 (regional strategy).

Regional land use strategy

10. The planning authority's section 35 report considers that the regional strategy provides criteria to guide where the Rural Living Zone should be applied, but provides little guidance to the types of non-residential land uses that should or should not be considered. It notes that there is also limited direction on considerations such as maintaining residential amenity.
11. The planning authority considers that the regional strategy:

recognises that forms of industrial activity will take place outside of industrial zones due to locational advantages and it emphasises the consideration of adjoining sensitive land use.
12. In regard to industrial land in the area the planning authority submits that:

Additionally, there is a limited amount of available and suitably located industrial land in New Norfolk. Existing industrial land along Hamilton Road is occupied by existing uses and the industrial zone at Ring Road is poorly suited for industrial activity. The industrial zone along Boyer Road is also occupied by existing uses.
13. The planning authority notes that the New Norfolk Structure Plan does not apply in this instance and there is no local land use strategy that applies to the site.

Commission's consideration

14. The Commission agrees with the planning authority's statement that the regional strategy provides little guidance to the types of non-residential land uses that should or should not be considered in the Rural Living Zone and agrees that the existing Rural Living Zone standards provide for consideration of sensitive uses.
15. IA 1.2 of the regional strategy requires new industrial areas to be located away from sensitive land uses such as residentially zoned land. The existing contractors yard, albeit non-conforming, is a lawfully established use located within a zone primarily providing for residential use and compatible uses and development that do not adversely impact residential amenity. The site is surrounded by similarly zoned land developed for residential purposes with further development potential.
16. The Rural Living Zone prescribes use standards to ensure that non-residential uses do not unreasonably impact residential amenity, the Commission considers that, subject to suitable scale and intensity, the draft amendment will provide for a use that is consistent, as far as is practicable, with the regional strategy.

Suitability of the site

17. The planning authority's section 35 report recognises that the Storage use class is currently prohibited in the Rural Living Zone and submits that the proposed site-specific amendment will legitimise the non-conforming contractors yard which has been established for close to 40 years. The planning authority notes that during this time there has been no history of complaints relating to the use of the site.
18. Figure 3 of the planning authority's section 35 report shows the adjoining dwellings to the site, with the nearest dwelling being 60m to the west. The planning authority advises that site adjoins a number of Rural Living zoned properties containing dwellings. The figure also shows potential future lots based on the minimum lot size of the Rural Living Zone.
19. At the hearing the Commission considered whether the Storage use should be a permitted or discretionary use within the use table of the Rural Living Zone.
20. Dr Richard Barnes noted that in the Rural Living Zone the acceptable solutions for a permitted use must be met, otherwise the performance criteria must be relied on. Dr Barnes submitted that:

If the Commission resolves that it should be in the discretionary category, it is not something that is going to be of significant upset from the applicant's perspective.
21. The planning authority notes that a contractors yard will typically involve some infrequent movement of vehicles to and from the site at the start and end of day and some repair and maintenance work during normal opening hours which can cause noise, but the use is not listed in the Attenuation Code of the planning scheme.
22. The planning authority submits that:

The site and adjoining land is adjacent to the Rural Resource Zone. Activities in the Rural Resource Zone are not subject to use standards relating to noise or operating hours. The Rural Resource Zone should be viewed as an industrial zone given the level of noise and odour that can be generated by permitted agricultural and other rural activity in the zone.

The existing operation hours are outside those specified in the Acceptable Solution for the interim planning scheme. Given this, the hours of operation would not be a major consideration in any planning assessment. However, future applications are likely to focus on development of the site through works such as additional buildings

for storage of vehicles and equipment. It is unlikely that there would be additional market demand that would necessitate earlier or later operating hours.

Commission's consideration

23. The Commission agrees with the planning authority that in this instance, considering the site context and particular circumstances, Storage for a contractors yard ought to be provided for in the Rural Living Zone to recognise the existing non-conforming use on the site. However, depending on scale and intensity the use has the potential to be inconsistent with the zone purpose statements.
24. The relevant Rural Living Zone purposes statements are:
 - 13.1.1.2 To provide for compatible use and development that does not adversely impact on residential amenity.
 - 13.1.1.5 To avoid land use conflict with adjacent Rural Resource or Significant Agriculture zoned land by providing for adequate buffer areas.
25. The Commission notes that Resource Development for agricultural use is currently permitted in the Rural Living Zone and this potentially has the same impact on neighbouring amenity due to this use allowing for the packing or storing of produce for dispatch to processors.
26. Clause 13.3.1 of the planning scheme requires that non-residential use does not unreasonably impact residential amenity. The Commission finds that as there is currently residential use and development close to the site, with a minimum lot size of 1ha, and the planning scheme provides for further residential subdivision of surrounding lots. Given the use has the potential to adversely impact current and future residential amenity of surrounding Rural Living zoned land, it is considered that assigning a discretionary use status will assist to ensure that the zone purpose is not compromised and any potential land use conflicts may be appropriately considered.
27. The planning scheme provisions provide for consideration of standards in regard to hours, noise emissions, external lighting and commercial vehicles movements that regulate the use. The current use and any future expansion of the use may provide for potential conflicts to residential amenity and a discretionary process would provide the opportunity to assess those impacts.
28. The Commission finds that the draft amendment should be modified to insert the site specific qualification as a discretionary use in Rural Living Zone clause 13.2 Use Table instead of permitted as certified and exhibited.

State Policies and Resource Management and Planning System Objectives

29. The planning authority submits that the *State Policy on Water Quality Management 1997* applies but is more relevant to specific proposals for use and development and is predominately implemented through planning scheme standards related to stormwater management, waterway and with respect to powers to impose conditions related to soil and water management.
30. The Commission finds that no other 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.

Draft Local Provisions Schedule

31. Under the State Planning Provisions, in the Rural Living Zone, there are only use standards for discretionary uses, not permitted uses. Following a direction from the Commission, the

planning authority and applicant provided submissions on how an approval of the proposed amendment may be reflected in the future Local Provisions Schedule (LPS) and what that may mean for the future assessment of use and development on the site.

32. The planning authority submitted that it would be reflected as a site specific qualification and that given it is unlikely the existing use will be further intensified in terms of operational hours and/or external lighting, the application of additional use standards would be of limited benefit.
33. Dr Barnes's submission generally agreed with the position of the planning authority.

Commission's consideration

34. The Commission notes in a practical sense, the Assessment of use standards would only be relevant to a future application involving substantial intensification. Notwithstanding, the proposed amendment before the Commission is to the interim planning scheme currently in effect, and accordingly the draft amendment is to be assessed under the former provisions of the Act.

Modifications required to draft amendment

35. The draft amendment requires modification to insert the site specific qualification as a discretionary use in 13.2 Use Table instead of permitted. The draft amendment should also be modified to reference folio of the Register instead of CT to adhere to drafting convention.

Decision on draft amendment

36. Subject to the modifications described above, the Commission finds that the draft amendment is in order and gives its approval.

Attachments

Annexure A – Modified amendment

Annexure A

Modified amendment PSA 2021-1

Amend clause 13.2 Use Table of the Rural Living Zone to insert the Storage use class into the discretionary section of the use table:

Discretionary	
Use Class	Qualification
Storage	Only if for a contractors yard on land at 42 Black Hills Road, Magra (folio of the Register 179383/2)