

Planning Directive No. 9 – Container Refund Scheme - Exemptions and Special Provisions

Supporting Report

Contents

Summary	3
Policy Context.....	3
Background.....	4
Purpose and terms of the draft Planning Directive (generally)	5
<i>Land Use Planning and Approvals Act 1993</i> – Schedule 1 Objectives.....	7
Part 1 - Objectives of the Resource Management and Planning System of Tasmania (RMPS)	7
Part 2 - Objectives of the Planning Process Established by this Act	8
State Policies and NEPMs	9
Tasmanian Planning Policies	11
Gas Pipeline Safety	11
Background for Gas Pipeline Safety issues.....	12

Abbreviations

Act	–	<i>Land Use Planning and Approvals Act 1993</i>
CRS	–	Container Refund Scheme
IPS		Interim Planning Scheme
LPS	–	Local Provisions Schedule
NEPM	–	National Environment Protection Measure
NRE		Natural Resources and Environment Tasmania
RMPS	–	Resource Management and Planning System
SPP	–	State Planning Provisions
TPP	–	Tasmanian Planning Policy
TPS	–	Tasmanian Planning Scheme



Summary

The Department of Natural Resources and Environment Tasmania (NRE) will appoint a network operator of the CRS under the *Container Refund Scheme Act 2022*. The network operator will install and run the CRS on a statewide basis, including King and Flinders Islands. The Department expects that there will be around 40-50 CRS return points across the state, where these will be a combination of the various different types of the CRS return points, similar to what has occurred on the mainland. On this basis, it is not expected to see CRS return points appear everywhere or in every car park across the state. It is expected that the network operator will only provide the minimum number of return points to reduce overall costs of providing the entire CRS across the state.

Currently under the interim planning schemes, the rollout of the CRS is not exempt from needing a planning permit and in some cases, a key element of the CRS is prohibited.

Planning Directive 9 proposes to streamline the implementation of the CRS by providing a range of provisions that are intended to be clear how they apply to the implementation of the CRS, rather than having to interpret the current interim planning scheme provisions to work out if a particular CRS feature is exempt or permissible or prohibited.

NRE has prepared a background document that details the types of infrastructure expected to occur in the State (based on interstate experience) for the CRS. This document should be read in conjunction with this report.

Policy Context

The provisions of Planning Directive 9 are based upon observations of what has already occurred in other jurisdictions across Australia for container refund points, as well as the specific characteristics of what is likely to form the CRS for Tasmania and the draft State Planning Provisions (SPP) amendment 01/2022, so as to provide a consistent framework across the State. Planning Directive 9 is intended to operate as an additional provision to the interim planning schemes and the *Sullivans Cove Planning Scheme 1997* but will have the effect of modifying how those schemes operate.

The operation of the interim schemes is proposed to be modified in a manner that replicates the effect of the draft SPP amendment 01/2022 rather than inserting Planning Directive 9 into each interim scheme. This allows the proposed provisions to be read separately rather than modifying them to match the different definitions and terminology used in those interim planning schemes. This enables easy use of the definitions created for the draft SPP amendment 01/2022.

Planning Directive 9 also sets out the specific requirements relating to 'car parking matters' for each interim planning scheme, noting that some of these may cease operation before Planning Directive 9 takes effect due to the introduction of the Tasmanian Planning Scheme over the coming months.



The operation of the *Sullivans Cove Interim Planning Scheme 1997* is proposed to be modified in a manner that reflects the place-based nature of the scheme and acknowledges that some parts of the Sullivans Cove area are not suitable for any or all elements of the CRS. While the Sullivans Cove area will be included within the Hobart LPS, the longstanding planning intent in this area has been to carefully manage elements in the streets and public spaces as shown by the specific overlay and schedule for Public Urban Space. That is why there is only a limited range of exempt CRS activities proposed for this area. The larger facilities or infrastructure for the CRS in the draft SPP amendment 01/2022 are not considered suitable for the Sullivans Cove area. The provisions in Planning Directive 9 for the Sullivans Cove area are aligned to the specific considerations of managing intrusions in public spaces and those most likely to occur in that area connected to events and use of the public spaces, that is:

- a) small container refund machines,
- b) over the counter refund points, or
- c) pop up return points associated with the Salamanca market or an event, such as Winter Feast or the Taste of Summer (previously Taste of Tasmania).

In the Sullivans Cove area, Planning Directive 9 only provides for limited exemptions in the Sullivans Cove Mixed Use area, the Sullivans Cove Gateway area, the Regatta Point area and the Sullivans Cove Working Port area. Also, in the Regatta Point area and the Sullivans Cove Working Port area the exemption for the over the counter refunds is not provided because there are no businesses there that are open to the general public.

Planning Directive 9 intends to provide some definitions, exemptions, a general provision and an alteration to car parking requirements in the relevant car parking code.

The draft planning directive consists of –

- a) Definitions to clarify the operation of the planning directive,
- b) an exemption for the smaller CRS features,
- c) a general provision for some of the larger CRS features, which has a ‘Permitted’ pathway,
- d) a general provision for the main CRS features that are a bit ‘outside the box’ and not provided for under the exemption or the ‘Permitted’ general provision. This provision provides a ‘Discretionary’ pathway, and
- e) a modification to car parking requirements for sites that contain a CRS feature located in an existing car park.

Background

Currently under the interim planning schemes any element of the CRS would be classified in the ‘Recycling and Waste Disposal’ Use class, which means – use of land to collect, dismantle, store, dispose of, recycle or sell used or scrap material. Examples include a recycling depot, refuse disposal site, scrap yard, vehicle wrecking yard and waste transfer station. In reality, the smaller CRS features



are still a 'waste transfer station' even though their impacts on surrounding land would be small to non-existent.

The intended locations for most of the CRS features is in the areas subject to the business zones and in these zones the 'Recycling and Waste Disposal' Use class is a prohibited use.

The interim planning scheme exemptions provide for rubbish bins, and the planning system doesn't get involved in the parking of trailers or the pitching of tents. Technically though they are still 'using' the land for a particular purpose and that falls into the 'Recycling and Waste Disposal' Use class. There is no clear exemption that relates to the CRS rollout.

Clause 8.2.2 of the interim planning schemes enables consideration of subservient/directly associated uses to be included within the main use of the site going on. For example, a CRS feature that was ancillary to a supermarket would be considered under the use class of the supermarket. However, forming that view requires interpretation of the facts of each individual case. This may differ from case to case around the state and potentially frustrate the rollout of the CRS.

Prior to preparing the draft SPP amendment 01/2022, NRE conducted a survey of council planners around the state and 13 replied. The survey quizzed the planners on the matter of subservient use and the response varied from agreeing that a CRS feature would be a subservient use to not agreeing and noting that the CRS feature would be prohibited.

This variance in viewpoints across the state is not conducive to a predictable smooth rollout of the CRS in a timely manner. At the time of drafting the interim planning schemes the CRS was an unknown quantity. These two elements in combination suggest that the interim planning schemes could potentially hamper or frustrate the rollout of the CRS rather than supporting a predictable smooth rollout of the CRS in a timely manner.

Accordingly, intervention is required to provide a clearer interpretation of the interim planning schemes in relation to assessing proposals for the CRS rollout.

Purpose and terms of the draft Planning Directive (generally)

Planning Directive 9 intends to provide some definitions, exemptions, a general provision and an alteration to car parking requirements.

Planning Directive 9 consists of –

- a) Definitions to clarify the operation of the draft SPP amendment,
- b) an exemption for the smaller CRS features,
- c) an exemption for the Sullivans Cove area
- d) a general provision for some of the larger CRS features, which has a 'Permitted' pathway,



- e) a general provision for the main CRS features that are a bit ‘outside the box’ and not provided for under the exemption or the ‘Permitted’ general provision. This provision provides a ‘Discretionary’ pathway, and
- f) a modification to car parking requirements for sites that contain a CRS feature located in an existing car park.

In order to provide for the clear application of the planning directive, some definitions are required to clearly describe the CRS features. The definitions are intended to distinguish between the different types of CRS refund points, which can then enable understanding the difference between the intended exempt CRS features and those CRS features that will require a permit to proceed. Some of the definitions are linked to the *Container Refund Scheme Act 2022* to assist with clarity on their intended purpose. Modification to an existing PD1 definition for ‘waste transfer station’ is also required to provide further clarity in how the CRS features are treated in the planning process.

The definition for ‘Container refund machine’ is intended to cover the automated machines, both small and large or on a trailer, as shown on page 11-13 & 21 of the NRE infrastructure details document. The definition for ‘Bag Drop Refund Point’ is intended to cover the refund points, both small and large as shown on page 19-20 of the NRE infrastructure details document. The definition for ‘Over the counter refund point’ is intended to cover the scenario set out on page 8 of the NRE infrastructure details document. The definition for ‘Pop-up refund point’ is intended to cover the scenario set out in figure 22 on page 22 and on page 23 of the NRE infrastructure details document.

The proposed exemption provides criteria to ensure that the CRS features are small and with low potential for impacts to surrounding land or they are temporary CRS features. The proposed exemption also provides clarity on what a temporary CRS feature is and the time period that they can be temporary for. This has been done to be clear that some container refund machines are a temporary feature, noting that the NRE background document has referred to these as ‘mobile’ refund points and in one case as ‘pop-up’ refund point on page 21.

The proposed general provision provides a ‘Permitted’ decision pathway for the CRS features where it is expected that impact to surrounding land uses would be minimal and it includes additional requirements if the CRS feature is located within 50m of a residential zone. The additional requirements are based upon the policy position in the existing SPPs, for managing the interaction between the business and residential zones. An additional clause is provided to be clear that applications assessed under the ‘Permitted’ clause are assessed against that provision and no other provisions of the scheme. This clause is only applicable to certain zones, which represent the intended locations for the rollout of the majority of the CRS. This clause does not provide for ‘pop-up refund points’ or ‘over the counter refund points’ because it is expected that the exemption will be able to handle the majority of these.

The proposed general provision provides a ‘Discretionary’ decision pathway for the unusual or unexpected CRS features. The general provision includes consideration of the relevant zone and code purpose and provisions, local area objectives, specific area plans, pedestrian safety, traffic management and residential amenity if the CRS feature is located within 50m of a residential zone.



By the construct of the proposed exemption and general provision, any CRS feature proposed on a local heritage listed site will only be able to be considered through the 'Discretionary' pathway of the proposed general provision.

The draft Planning Directive 9 allows a site that contains a CRS feature in an existing car park to have a reduced number of car parks on that site.

There are some elements of the CRS that draft Planning Directive 9 does not provide for through the exemptions or the general provision. These are the drop off depots and processing facilities, which are best located in the existing industrial zones. These facilities are mostly permissible under the interim planning schemes in the industrial zones or the utilities zone, with the modification to the definition of 'waste transfer station' mentioned above.

Land Use Planning and Approvals Act 1993 – Schedule 1 **Objectives**

Part 1 - Objectives of the Resource Management and Planning System of Tasmania (RMPS)

1. The objectives of the resource management and planning system of Tasmania are –
 - a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - c) to encourage public involvement in resource management and planning; and
 - d) to facilitate economic development in accordance with the objectives set out in [paragraphs \(a\), \(b\) and \(c\)](#); and
 - e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.
2. In [clause 1 \(a\)](#), **sustainable development** means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –
 - a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - c) avoiding, remedying or mitigating any adverse effects of activities on the environment.



Part 2 - Objectives of the Planning Process Established by this Act

The objectives of the planning process established by this Act are, in support of the objectives set out in [Part 1](#) of this Schedule –

- a) to require sound strategic planning and co-ordinated action by State and local government; and
- b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and
- e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and
- f) to promote the health and wellbeing of all Tasmanians and visitors to Tasmania by ensuring a pleasant, efficient and safe environment for working, living and recreation; and
- g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- i) to provide a planning framework which fully considers land capability.

Response

Planning Directive 9 will further the sustainable use of resources in Tasmania by facilitating the rollout of the CRS, which in turn will increase the level of recycling in the State, adding to a 'circular' economy.

In terms of land use planning aspects of Planning Directive 9, most of the CRS refund points (other than temporary CRS refund points) are only allowed to occur on land that has already been developed. The structure of the proposed exemptions requires the majority of the CRS refund points to be co-located with existing businesses or through the general provision 'Permitted' pathway that requires the CRS refund points to be located in business zones, which mostly contain land that has been previously developed, in line with historical development patterns.

The general provision also provides a 'discretionary' decision pathway for situations where the provisions of the exemption or the 'Permitted' general provision does not allow a CRS refund point. Here the 'Discretionary' general provision requires consideration to the purpose and provision of the zone and any relevant code when determining the development application. On this basis, the zone or relevant code should be able to ensure that any potential issues with the development maintaining ecological processes and genetic diversity is taken into account with future planning decisions.



The Planning Directive 9 will be subject to public consultation and public hearings before it is finally determined. Some of the CRS refund point development applications will also be discretionary when they occur, further involving the public in decision making.

The IPSs, SPPs and planning directives are part of the states planning system that also includes regional land use strategies, State Policies and the objectives of the Act. There will also be Tasmanian Planning Policies included within the system as well, in the near future. The system also includes the application of the SPPs through the LPSs. Planning Directive 9 is a small addition to the whole system.

Planning Directive 9 includes provisions for the consideration of potential impacts on heritage places, so as to support the conservation of those places of historical interest.

The development application process includes referrals to infrastructure providers to ensure that their infrastructure is suitably protected from any issues that may arise from a proposed development. Planning Directive 9 provides for some aspects of the CRS to be exempt, but these are considered to be small with minimal potential impact on infrastructure.

Generally, the installation of CRS features should not cause any issues with neighbouring land use as they are small in their size or are considered to be a consistent operation with the businesses they will be co-located with. For the cases where the connection between the existing site activity and the CRS feature is less obvious, Planning Directive 9 provides for the consideration of potential land use conflicts when determining a development application under the proposed clause 9.1.1 This consideration should ensure a healthy pleasant environment at each relevant site is maintained with any co-location of a CRS feature.

On the above grounds Planning Directive 9 is considered to further the objectives of the RMPS.

State Policies and NEPMs

State Policies are created under Part 2 of the *State Policies and Projects Act 1993*. Also, under section 12A of that act, all National Environment Protection Measures (NEPM) made by the Commonwealth are taken to be State Policies. There are currently 3 state Policies and 7 NEPMs in place. These are the –

1. State Coastal Policy 1996
2. State Policy on the Protection of Agricultural Land 2009
3. State Policy on Water Quality Management 1997
4. National Environment Protection (Air Toxics) Measure 2004
5. National Environment Protection (Ambient Air Quality) Measure 1998
6. National Environment Protection (Assessment of Site Contamination) Measure 1999
7. National Environment Protection (Diesel Vehicle Emissions) Measure 2001
8. National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998



9. National Environment Protection (National Pollutant Inventory) Measure 1998
10. National Environment Protection (Used Packaging Materials) Measure 1998

Response State Policies

Planning Directive 9 provides for the CRS to be predominantly implemented inside existing towns on existing business or industrial sites. Some CRS sites may also include existing recreation grounds.

Essentially, these sites will be –

1. within existing settlements on land that is already converted from agricultural use,
2. on land inside the coastal zone that has already been developed and essentially void of any natural elements that need protection, by virtue of the existing choices of zone application by the local planning authority and historical patterns of development.

Also, with the sites where the proposed general provision in Planning Directive 9 will apply, the local planning authority will still refer the development application to Taswater and TasGas (if needs be) and also place conditions on the permit to manage their own stormwater (water quality) and road infrastructure issues. These conditions will collectively manage water quality issues in accordance with the water quality policy.

On these grounds Planning Directive 9 is considered to be consistent with each state policy.

Response NEPMs

The Air Toxics NEPM is mostly concerned with collecting information about air toxics and establishing a consistent approach to identifying sites where significant populations may be exposed to air toxics. Planning Directive 9 is unlikely to offend the desired outcomes of this NEPM as Planning Directive 9 does not propose to change the measurement of air toxics.

The Ambient Air Quality NEPM is concerned with ambient air quality that minimises the risk of adverse health impacts from exposure to air pollution. Planning Directive 9 is unlikely to offend the desired outcomes of this NEPM as each CRS site related to Planning Directive 9 will be relatively small and empty drink containers should not create air pollution.

The Assessment of Site Contamination NEPM is concerned with establishing a nationally consistent approach to the measurement of site contamination. Planning Directive 9 is unlikely to offend the desired outcomes of this NEPM as Planning Directive 9 does not propose to change the measurement of site contamination.

The Diesel Vehicle Emissions NEPM is concerned with reducing emissions diesel vehicles by setting standards for their emissions. Planning Directive 9 is unlikely to offend the desired outcomes of this NEPM as Planning Directive 9 does not propose to change the standards for diesel vehicle emissions.

The Movement of Controlled Waste between States and Territories NEPM is concerned with minimising adverse impacts associated with the movement of controlled waste. The recycled containers in the CRS are not controlled waste and as such Planning Directive 9 does not offend this NEPM, noting that a used Beverage container must be clean to be an eligible container for the CRS.



The National Pollutant Inventory NEPM is concerned with the collection and dissemination of information on emissions and transfers of substances on its reporting list leading to desired environmental outcomes that are –

- a) The maintenance and improvement of
 - i. ambient air quality and
 - ii. ambient marine, estuarine and fresh water quality;
- b) The minimisation of environmental impacts associated with hazardous wastes; and
- c) An improvement in the sustainable use of resources

Planning Directive 9 will help facilitate the roll out of the CRS which will lead to an increase in recycled materials taking a step closer to a 'circular economy' and on that basis, the draft SPP amendment does not offend this NEPM.

The Used Packaging NEPM aims to optimise packaging to use resources efficiently and to efficiently collect and recycle packaging. The CRS scheme is considered to align with the goals of this NEPM and Planning Directive 9 is designed to facilitate the roll out of the CRS.

On the above grounds Planning Directive 9 is considered to be consistent with the NEPMs.

Tasmanian Planning Policies

These are not yet in place.

Gas Pipeline Safety

Currently the Act refers to the safety requirements set out in the standards prescribed in the *Gas Safety Act 2019*. However, this act only seems to deal with safety requirements for individual appliances, etc, not safety in respect of the major gas infrastructure in the State. There is the ability under this act for the Minister to issue determinations in respect of any matter to do with safety, but at present there doesn't appear to be any determinations issued.

On this basis, any planning directive, SPP amendment or planning scheme amendment would only have the potential to affect the risk level of the major gas infrastructure if an individual development, arising from that amendment, was located inside the declared gas pipeline corridor. And if that were the case, the development application would be referred to the gas pipeline licensee for comment under the Gas Industry Act 2019 at the development application stage.

In conclusion Planning Directive 9 is unlikely to directly affect the risk levels of the Tasmanian Gas Pipeline and any specific issues will be managed through individual development applications if they are located within the declared gas pipeline corridor.



Background for Gas Pipeline Safety issues

Reference to gas safety was included within the Act in late 2002. Upon review of parliaments Hansard record on 19 November 2002 in part 2 starting on page 23, the Hansard sets out the reasons why Parliament considered that new development ought to be examined for its potential impact to risk levels of the main Duke Energy gas pipeline (now the Tasmanian Gas Pipeline) when the proposed development is located near to that gas pipeline.

The original intent of this section in the Act was to give some protection to the Duke energy main gas pipeline in the State. Where the level of risk to the gas pipeline was to be assessed with each development application or amendment to a planning scheme (or even a new planning scheme). To be clear which development applications were needed to be considered, a gas pipeline corridor has been declared along the length of the main Duke Energy gas pipeline and this corridor has variable widths.

The gas pipeline was installed with variable pipe wall thickness along its length, so the level of risk to the asset may be higher in some locations than others – which generates the need for input from the pipeline licensee with every development application or planning scheme amendment located inside the declared gas pipeline corridor.

The main gas pipeline corridor is not required to be shown in a planning scheme map nor is there a planning scheme code in which to manage any development issues. This is all done through a referral to the Gas Pipeline licensee under the *Gas Industry act 2019* for each individual development application but not for amendments to planning schemes or new planning schemes.

