

# TASMANIAN PLANNING COMMISSION



Our ref: DOC/23/88066  
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8 August 2023

Mr Matthew Atkins  
General Manager  
Devonport City Council  
PO Box 604  
DEVONPORT TAS 7310

By email: [council@devonport.tas.gov.au](mailto:council@devonport.tas.gov.au); [CMilnes@devonport.tas.gov.au](mailto:CMilnes@devonport.tas.gov.au)

Dear Mr Atkins,

**Tasmanian Planning Scheme - Devonport  
Draft amendment AM2022.01 and permit PA2022.0024  
133 Middle Road, Miandetta**

I refer to the above draft amendment and to the hearing held at the Paranapple Centre in Devonport on 6 and 7 March 2023, which was adjourned.

Following the hearing, the Commission has:

- established that the permit cannot be considered by the Commission under section 42A of the *Land Use Planning and Approvals Act 1993* (the Act) as it is not a request to which section 40T(1) relates; and
- determined, under section 40N(1)(c)(ii) of the Act that the draft amendment should be rejected and substantially modified.

## **Permit application**

The application was lodged under section 40T of the Act. Section 40T(1) provides for the concurrent assessment of a draft amendment and a permit application if the permit could not be issued unless the draft amendment were approved.

### **Section 40T(1):**

A person who requests a planning authority under section 37 to amend an LPS may also, under this subsection –

- (a) make an application to the planning authority for a permit, which permit could not be issued unless the LPS were amended as requested; ...'

Whilst this matter has been raised earlier with the planning authority and noted at the opening of the hearing, at that time the restriction in the legislation was not fully explored. It is now the Commission's opinion, after further consideration and advice, that the current provisions of the Tasmanian Planning Scheme – Devonport would allow for Discretionary assessment of the permit as now accompanying the draft amendment. The advice to the Commission is that a proposed use or development would need to be Prohibited under the provisions of the planning scheme to be considered under section 40T .

The Commission finds that the proposed subdivision development, which is the subject of the permit, is not Prohibited and approval of the permit application is not dependent on approval of the draft amendment. The Commission therefore does not have jurisdiction to consider the

permit lodged with Draft Amendment AM2022.01. This finding does not limit the Commission's ability to consider and determine the draft amendment.

### **Substantial modifications**

The draft amendment was subject to further submissions following the directions given by the Commission by letter of 3 April 2023. Direction 4(c) and (d) invited the following:

- (c) A map that confirms the boundary(s) of the area identified for the protection of the *Eucalyptus ovata* community and central north burrowing crayfish (*Engaeus granulatus*) habitat areas.
- (d) The natural values assessment and evidence to the hearing establishes a preliminary view that the area defined in 4(c) above should not be zoned General Residential, submissions are invited on:
  - i. the most appropriate alternative zone for this area;
  - ii. whether this zone warrants a connection with the proposed Open Space zone (i.e. lot 7); and
  - iii. whether any other mechanisms should be introduced by way of planning scheme provisions and/or permit conditions to protect the *E. ovata* community and central north burrowing crayfish (*E. granulatus*) habitat areas.

Another direction, also of 3 April, sought details of water and sewerage infrastructure from the applicant.

The applicant, by response submission of 15 May 2023, detailed infrastructure requirements that were, in respect to the draft amendment, satisfactory to TasWater. The response submission also provided a map showing 'Lot and Zone Boundaries Amended 15 May 2023'.

The Commission's direction of 3 April 2023 also invited submissions of any other mechanisms that should be introduced by way of planning scheme provisions to protect the *E. ovata* community and central north burrowing crayfish (*E. granulatus*) habitat areas. No submissions were received on this part of the direction.

The Commission is of the view that the applicant's proposed amended zoning of 15 May 2023 is, in principle, in accordance with its direction of 3 April 2023. However, in order to be satisfied that the application of the General Residential Zone meets the LPS criteria at section 34(2), in particular criteria c, d, e, and f, the Commission considers additional planning scheme provisions are required to:

- prevent changes to the drainage regime that supports central north burrowing crayfish (*E. granulatus*) habitat;
- retain the natural values of the land proposed for the Open Space Zone and the Environmental Management Zone; and
- promote the wellbeing and safety of users of the land proposed for the Open Space Zone and the Environmental Management Zone.

In accordance with section 40N(1)(c)(ii) of the Act, the Commission therefore rejects the draft amendment and directs the planning authority to substantially modify a part of the draft amendment to the Local Provision Schedule (LPS).

The Commission considers the following substantial modifications are required:

- (1) The planning authority is to modify the proposed zoning by submitting an amended map showing proposed Lot 7b as Environmental Management Zone. The modified

zoning is to substantially accord with the map described as 'Lot and Zone Boundaries Amended 15 May 2023' of the applicant's submission of 15 May 2023

- (2) The planning authority is to submit a substantially modified map for part 4 of the certified draft amendment that shows priority vegetation only applying to the Open Space zone and the Environmental Management zone.
- (3) the planning authority is to modify the proposed application of the General Residential Zone by preparing and submitting a specific area plan (SAP) or site specific qualification (SSQ) under section 32(3)(c) of the Act that sets standards for future development as follows:
  - a. A standard for bushfire management requirements to apply to land in the General Residential Zone and not to land in the Environmental Management Zone or Open Space zone. This standard is to give effect to the bushfire management area as depicted on Figure 3 of the applicant's submission of 15 May 2023.
  - b. A standard that establishes a stormwater/runoff regime to preserve the habitat of the central north burrowing crayfish.
  - c. A standard that requires future development of the site that assists in the surveillance of areas zoned Environmental Management and Open Space. This standard will aim to apply crime prevention through environmental design (CPTED) principles to the site.

With the introduction of a SAP or SSQ the planning authority and Commission must be satisfied that its inclusion in the LPS is in accordance with section 32(4) of the Act. The Commission invites the planning authority to give its response on this requirement of the Act.

As specified in section 40N(1)(c)(ii) of the Act the Commission requests the planning authority to submit the substantially modified draft amendment within 28 days from the receipt of this letter.

Once the Commission receives the substantially modified draft amendment, it must certify the draft amendment and by notice to the planning authority, direct that it be publicly exhibited. This will provide the planning authority and public with an opportunity to comment on the substantially modified draft amendment.

If you require further information please contact Janelle Townsend, Planning Adviser, on (03) 6165 6803.

Yours sincerely,



Robin Nolan  
**Delegate (Chair)**