

TASMANIAN PLANNING COMMISSION

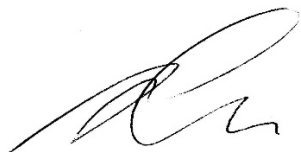
DECISION

Planning scheme	Northern Midlands Interim Planning Scheme 2013
Amendment	06-2019 - partially rezone 74 Marlborough Street, Longford from Community Purpose to General Residential, and insert a new Site Specific Qualification
Permit	PLN-19-0221 – seven lot subdivision and associated works
Planning authority	Northern Midlands Council
Applicant	Commercial Project Delivery
Date of decision	22 September 2020

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.

The permit is modified under section 43H(1)(b)(ii) of the *Land Use Planning and Approvals Act 1993*, as set out in Annexure B.



Peter Fischer
Delegate (Chair)



Dianne Cowen
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 amendment is to partially rezone 74 Marlborough Street, Longford (the site) from Community Purpose to General Residential.

The amendment includes a Site Specific Qualification by inserting a new Clause, Clause 10.4.15.1 A1.2, to the General Residential zone which sets additional subdivision standards for the site.

Permit

The permit is for a seven lot subdivision and associated works.

Site information

The site contains one parcel of land, being folio of the Register 222877/1. The site is a corner lot with frontages onto Marlborough Street and Malcombe Street. An existing hall, outbuildings associated with the Men's Shed and a community garden are located at the site. The remaining area is vacant and predominantly clear of vegetation.

Issues raised in representations

Two representations were received during the exhibition period.

One representation was from TasWater and included a number of recommended conditions for the planning permit. The planning authority have included these conditions in the permit.

The other representation raised concerns regarding future development of the site and potential impacts to the foundations of 72 Marlborough Street, Longford.

Planning authority's response to the representations

The planning authority considered the representations and recommended that the draft amendment not be modified in response to the representations.

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Tasmanian Planning Commission (the Commission) is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. After consultation with the two representors, the Commission dispensed with holding a hearing under section 40(2A) of the Act.
3. The amendment has been initiated and certified by the Northern Midlands 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. Section 32(1)(e) is not considered relevant to the draft amendment as the land does not adjoin an adjacent municipal area.
6. 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.
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. The relevant regional strategy under section 300(1) is the Northern Tasmania Regional Land Use Strategy, 27 June 2018 (the regional strategy).

Strategic justification

9. In its application, Commercial Project Delivery stated that the draft amendment supports the liveability and sustainability goals of the regional strategy, as follows.

The draft amendment supports strategic directions G2.1, G2.2, G2.3 and G2.4 as the site is within an existing urban area and includes a site specific qualification that limits the minimum lot size to an area that complements the surrounding residential area. The draft amendment would also retain a portion of the Community Purpose Zone for the Men's Shed to secure the tenure into the future.

The draft amendment supports strategic directions G3.1 and G3.2 as the draft amendment would result in the capability for infill residential development in a central location.

In its section 35 report, the planning authority considers that the draft amendment supports the regional strategy as Longford is identified as a Supporting Consolidation Area for urban settlement.

Commission's consideration

10. The Commission accepts the rationale of the applicant and planning authority and finds that the draft amendment is, as far as practical, consistent with the regional strategy.

State Policies and Resource Management and Planning System Objectives

11. 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.

Modification required to draft amendment

12. The area to be rezoned to General Residential is modified to extend half way across the Malcombe Street road reserve.
13. The site specific qualification under Clause 10.4.15.1 A1.2, is modified to match the drafting conventions of the interim planning scheme as follows:
 - (a) Delete the words 'On Certificate of Title 222877/1' and replace with 'On folio of the Register 222877/1'.

Decision on draft amendment

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

Consideration of the permit

15. Under section 43H, the Commission is required to review the planning authority's decision as reported under section 43F.
16. Subject to the modifications to permit conditions below, the permit is in order.

Resource Management and Planning System Objectives

17. 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

18. The permit description and condition 1 are modified to remove reference to use as the permit is for development only.
19. Note 2 under condition 8 is removed as this relates to general advice rather than a condition.

TasWater conditions

20. The TasWater notice to the planning authority provided conditions to be included in the permit under sections 56P and 56S of the *Water and Sewerage Industry Act 2008*.
21. Condition 18 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.
22. This condition is not for a proper planning purpose¹ and is to be removed but may be included as advice.

Decision on permit

23. The Commission modifies the conditions attached to the permit granted by the planning authority, as set above.

¹ See *Western Australian Planning Commission v Temwood Holding Pty Ltd* [2004] HCA 63 at 57 and 60

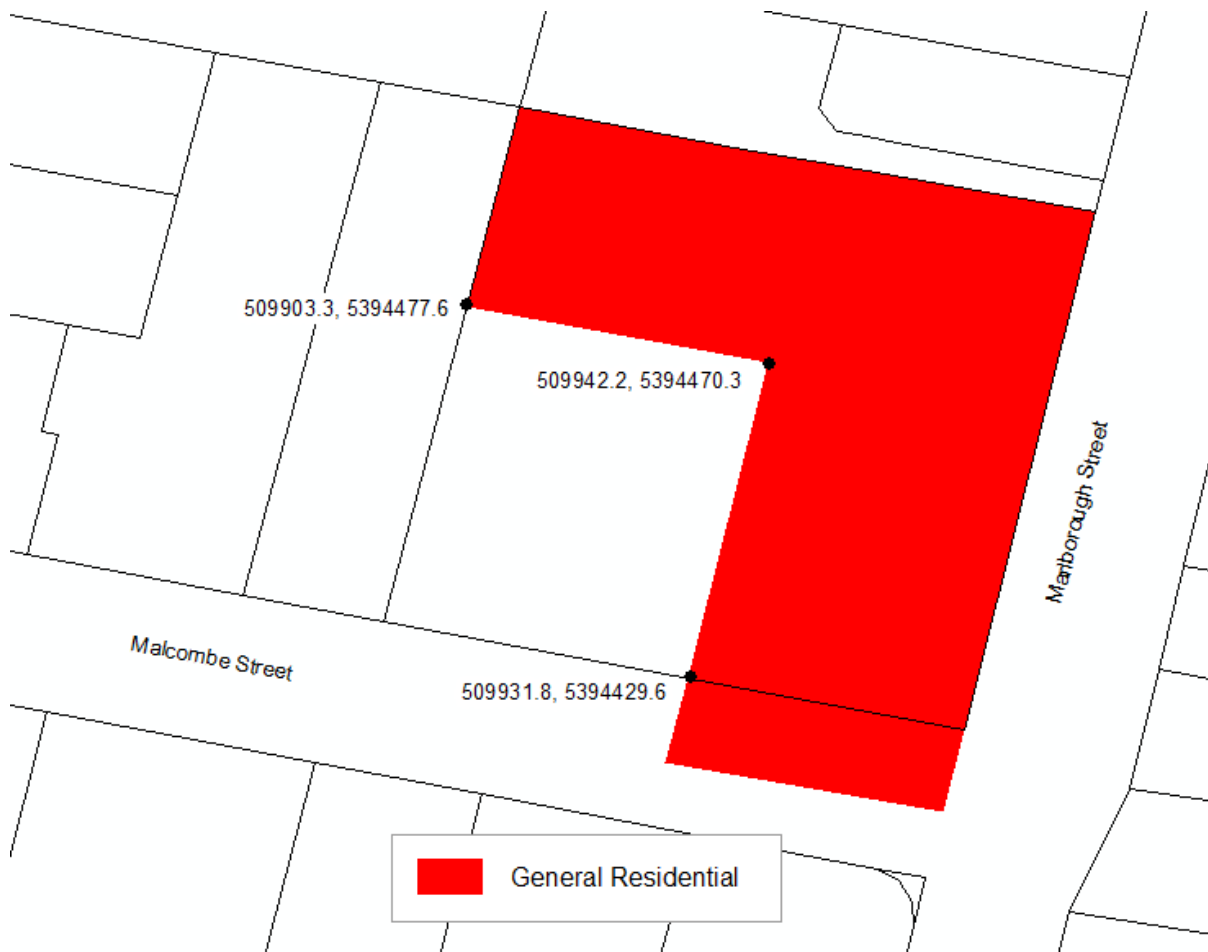
Attachments

Annexure A - Modified draft amendment
Annexure B - Modified permit

Annexure A

Modified amendment 06-2019

- 1) Rezone land at 74 Marlborough Street, Longford (folio of the Register 222877/1) from Community Purpose to General Residential. Map coordinates of proposed General Residential zone (± 0.1 metres):



- 2) Amend the text provisions of the Northern Midlands Interim Planning Scheme 2013, General Residential Zone, clause 10.4.15.1 - Lot Area, Building Envelopes and Frontage as follows.
- a) Renumber Clause 10.4.15.1 A1 to A1.1.
 - b) Insert a new Clause 10.4.15.1 A1.2, as follows:
A1.2
On folio of the Register 222877/1, lots fronting Marlborough Street must have a minimum area of at least 590m² which:
 - (a) is capable of containing a rectangle measuring 10m by 15m; and
 - (b) has new boundaries aligned from buildings that satisfy the relevant acceptable solutions for setbacks.
 - c) Renumber Clause 10.4.15.1 P1 to P1.1.
 - d) Insert a new Clause 10.4.15.1 P1.2, as follows:
P1.2
No performance criteria.

Annexure B

Modified permit PLN-19-0221

The land at 74 Marlborough Street, Longford is to be developed for a seven lot subdivision (Heritage Precinct) (access and infrastructure across Community Purpose zone) in accordance with application **PLN19-0221**, and subject to the following conditions:

***1 LAYOUT NOT ALTERED**

Except as required by condition 2, the development must be in accordance with the endorsed document P1 (Proposed 7 Lot Subdivision, Woolcott Surveys, Job Number L190718, Date 06/12/19, Sheet 1/1).

2 PLANS REQUIRED

Before the development starts, plans to the approval of the General Manager must be submitted. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the endorsed plans but amended to detail the crossover to Lot 4 located as close as practical to its southern boundary.

Reason for condition: To provide enough space between the driveways of lots 4 and 5 for the bus stop.

***3 TASWATER**

Sewer and water services must be provided in accordance with the attached Submission to Planning Authority Notice (reference number TWDA 2019/01696-NMC), except for condition 18 – see Appendix A.

4 COUNCIL'S WORKS & INFRASTRUCTURE DEPARTMENT'S CONDITIONS

***4.1 Stormwater**

- (a) Each lot must be provided with a connection to the Council's stormwater system, constructed in accordance with Council standards and to the satisfaction of Council's Works Manager.
- (b) A stormwater design plan including long sections and the depth, size (minimum diameter 225mm) and grade of the proposed main must be provided to the Works Manager for approval before the commencement of any works on site.

4.2 Footpath

A 1.8m wide concrete footpath must be constructed for the Malcombe Street frontage in accordance with Standard Drawing TSD-R11-v1 (Local Government Association of Tasmania).

***4.3 Access**

- (a) A concrete driveway apron must be constructed from the edge of Malcombe Street to the property boundary of Lot 1 in accordance with Standard Drawing TSF-R09-v1 (Local Government Association of Tasmania).
Reason for condition: A crossover exists. The concrete apron is to match the proposed concrete footpath.

- (b) A concrete driveway crossover and concrete apron must be constructed from the edge of Malcombe Street to the property boundary of Lot 2 in accordance with Standard Drawing TSF-R09-v1 (Local Government Association of Tasmania).

Reason for condition: The concrete apron is to match the proposed concrete footpath.

- (c) A concrete driveway crossover and hotmix sealed apron must be constructed from Marlborough Street to the property boundary of Lots 3, 4 & 5 in accordance with Standard Drawing TSF-R09-v1 (Local Government Association of Tasmania).

Reason for condition: The hotmix sealed aprons are to match the existing hotmix footpath.

- (d) Access works must not commence until an application for vehicular crossing has been approved by Council.

4.4 As constructed information

As Constructed Plans and Asset Management Information must be provided in accordance with Council's standard requirements.

4.5 Municipal standards & certification of works

Unless otherwise specified within a condition, all works must comply with the Municipal Standards including specifications and standard drawings. Any design must be completed in accordance with Council's subdivision design guidelines to the satisfaction of the Works and Infrastructure Department. Any construction, including maintenance periods, must also be completed to the approval of the Works & Infrastructure Department.

4.6 Works in Council road reserve

- (a) Works must not be undertaken within the public road reserves, including crossovers, driveways or kerb and guttering, without prior approval for the works by the Works Manager.
- (b) Twenty-four (24) hours' notice must be given to the Works and Infrastructure Department to inspect works within road reserve, and before placement of concrete or seal. Failure to do so may result in rejection of the vehicular access or other works and its reconstruction.

***4.7 Works in State road reserve**

- (a) The developer must obtain a permit from the Department State Growth for any works to be undertaken within the State Road reservation, including any works necessary in relation to access construction, stormwater drainage and/or traffic management control and devices from the proposal.
- (b) Application requirements and forms can be found at www.transport.tas.gov.au/road/permits. Applications must be submitted at least twenty eight (28) days prior to any scheduled works. In accordance with the *Roads and Jetties Act 1935*, works must not commence within the State Road reservation until a permit has been issued.

4.8 Separation of stormwater services

- (a) All existing stormwater pipes and connections must be located.
- (b) Where required, pipes are to be rerouted to provide an independent system for each lot.
- (c) Certification must be provided that stormwater services have been separated between the lots.

4.9 Easements to be created

Easements must be created over all Council owned services in favour of the Northern Midlands Council. Such easements must be created on the final plan to the satisfaction of the General Manager.

4.10 Pollutants

- (a) The developer/property owner must ensure that pollutants such as mud, silt or chemicals are not released from the site.
- (b) Prior to the commencement of the development authorised by this permit, the developer/property owner must install all necessary silt fences and cut-off drains to prevent soil, gravel and other debris from escaping the site. Material or debris must not be transported onto the road reserve (including the nature strip, footpath and road pavement). Any material that is deposited on the road reserve must be removed by the developer/property owner. Should Council be required to clean or carry out works on any of their infrastructure as a result of pollutants being released from the site, the cost of these works may be charged to the developer/property owner.

4.11 Nature strips

Any areas of nature strip that are disturbed during construction must be topped with 100mm of good quality topsoil and sown with grass. Grass must be established and free of weeds prior to Council accepting the development.

4.12 Bonds

The civil works shall be subject to a maintenance period of twelve (12) months and a bond shall be held by Council until satisfactory completion of an inspection at the completion of the maintenance period. The bond shall be calculated based on 5% of the cost of works.

5 PUBLIC OPEN SPACE CONTRIBUTION

A cash contribution must be paid in lieu of land for public open space equal to 5% of the value of the area of land described as lots 2 – 6, as demonstrated in a valuation not less than one month old by a registered land valuer.

6 POWERPOLES

Any powerpoles that require relocation must be at the developer's expense.

7 SEALING OF PLANS

All conditions must be complied with prior to sealing of the final plan of survey. Council may, at the developer's request, accept a bond or bank guarantee, for particular works or maintenance, to enable early seal and release of the final plan of survey.

***8 DEPARTMENT OF STATE GROWTH**

Provision of the new accesses and associated works to the Marlborough Street frontage shall be undertaken as outlined by the findings in the applicants Traffic Impact Assessment dated October 2019. Detailed engineering drawings showing the exact locations of the accesses and associated works, inclusive of any adjustment to the existing bus stop arrangements, must be provided to the Department of State Growth for review and acceptance as part of a works permit application per the details noted below.

Note 1: A valid works permit is required for all works undertaken in the State Road (Marlborough Street) reservation. Details of the permit process and application forms can be found at: www.transport.tas.gov.au/road/permits/road-access. Applications must be received by the Department of State Growth a minimum of twenty (20) business days prior to the expected commencement date for works in order to allow sufficient time for the application to be assessed. No works are to be undertaken until a written permit has been issued.

***permit conditions modified by the decision of the Tasmanian Planning Commission dated 22 September 2020.**