

Devonport Local Provisions Schedule – draft amendment AM2022.02 and permit PA2022.092 – 1, 5 Friend Street & 88, 90-102 Stony Rise Road, Stony Rise

Addendum Report about determination of representation received from the applicant during the public exhibition period (sections 40K and 42 Land Use Planning and Approvals Act 1993).

1. Summary

- (1) At its ordinary meeting of 23 January 2023, and in its capacity as a Planning Authority under the *Land Use Planning Approvals Act 1993* (LUPAA), the Devonport City Council considered a report prepared in accordance with sections 40K and 42 of LUPAA regarding the representations received during the public exhibition period of the abovementioned draft amendment to the Devonport Local Provisions Schedule (LPS) and combined permit application.
- (2) At this meeting, the Planning Authority determined that the representation received from the applicant had sufficient merit to warrant some modifications to the exhibited draft amendment and also some modifications to the conditions on the associated permit.
- (3) The purpose of this Addendum Report is to provide supplementary justification to that determination. The Addendum Report has a specific focus on the Planning Authority's decision in relation to the representation from the applicant and provides supplementary detail for this purpose.
- (4) Whilst the Addendum Report has a specific focus on supplementary information to support the Planning Authority's determination of the representation received from the applicant, the remaining content of the report about the exhibition of the draft amendment and combined permit application (as included with the agenda for Council's 23 January 2023 ordinary meeting) remains applicable.
- (5) To clarify, both the report included with the agenda for Council's 23 January 2023 ordinary meeting and this Addendum Report are provided to the Commission for the purposes of responding to sections 40K and 42 of LUPAA. In the context of Council's determination of the representation received from the applicant, where there is inconsistency between the former mentioned report and the Addendum Report, the content of the Addendum Report is to prevail.

2. Determination of representation received from the applicant (GHD)

The Planning Authority's determination of the representation from the applicant, including supporting justification for that determination, is set out in Table 1 below.

Table 1 – Determination of representation

Representation	Applicant (GHD)
General summary of matter(s) raised in the representation	<p>Allowances for General Retail and Hire use</p> <ol style="list-style-type: none"> (1) The representation requests modification to the qualification prescribed for General Retail and Hire use (as a Discretionary use) in the Specific Area Plan (SAP) Use Table at clause DEV-S1.5 so that the existing text is replaced with <i>'if not listed as Permitted and for a market retailing food by independent stall holders.'</i> (2) The modification seeks to limit the scope for General Retail and Hire use (as a discretionary use) to occur outside of the Stony Rise Village Precincts (Precincts A and B) included with the SAP and to retain a level of regulation consistent with the existing planning scheme controls applying to the Homemaker Centre site. (3) The reasons include: <ul style="list-style-type: none"> - The provisions of the draft SAP as exhibited allow for consideration of a range of General Retail and Hire activities that are not currently allowable across the entire SAP area, which is submitted to be inappropriate; - The retention of the existing planning scheme controls which limit General Retail and Hire Use are appropriate for the broader Homemaker Centre site and would assist to maintain the original intent of the Homemaker Centre; and

- The restriction on General Retail and Hire uses other than in Precincts A and B will assist to establish and maintain a local village character for these areas as intended.

Allowances for Food Services use

- (4) The representation requests modification to the qualification prescribed for Food Services use (as a Permitted use) in the Specific Area Plan (SAP) Use Table at clause DEV-S1.5 so that the existing text is replaced with:

'if the total number of Food Services on land subject to the Devonport Regional Homemaker Centre and Stony Rise Village Specific Area Plan is:

- (a) not more than 5 drive through facility food services; and*
 - (b) not more than a total of 12 food services and further limited to not more than 4 food services premises outside of Precinct A and Precinct B; and*
 - (c) if within Stony Rise Village a drive through facility is limited to one premises each for Precinct A and Precinct B'*
- (5) The modification seeks to limit the scope for Food Services (as a Permitted use) to occur outside of the Stony Rise Village Precincts (Precincts A and B) included with the SAP and to retain a level of regulation consistent with the existing planning scheme controls applying to the Homemaker Centre site.
- (6) The reasons include:
- The qualification for Food Services (as a Permitted Use) at clause DEV-S1.5 of the draft SAP as exhibited allow for consideration of a further nine Food Services;
 - A further limitation of Food Services outside of Precincts A and B would assist to maintain the original intent of the Homemaker Centre; and
 - That a variety of Food Services should be focussed towards Precincts A and B where there is intended to be a complimentary association with daily and weekly convenience shopping. Eating activity should be prioritised in these precincts.

Permit conditions – commercial vehicle activity

- (7) The representation requests modification to condition 10 on the exhibited permit application which relates to matters including hours of operation and commercial vehicle movements. Modification is sought so that the existing condition is amended as follows:

'Hours of operation and loading/unloading of deliveries, within 50m of residential properties must be within:

- a. 7:00am to 9:00pm Monday to Saturday; and*
 - b. 8:00am to 9:00pm Sunday and public holidays*
- (8) The reasons include:
- the effect of the current permit condition (as exhibited) would result in the site being inaccessible to commercial vehicles between the hours of 9pm and 7am Monday to Saturday and 9pm and 8am Sundays and statutory holidays. A consequence of this is that despite being well outside of the 50m threshold (as contemplated under clause 17.3.1 of the Tasmanian Planning Scheme) the primary loading area for the supermarket would be inaccessible;
 - The proposal has been designed to encourage vehicle movements associated with delivery and pick up at the

	<p>eastern end of the site, separated by primary customer parking and pedestrian circulation areas with this layout considered to provide for safe and logical circulation and movement;</p> <ul style="list-style-type: none"> - Constraints on delivery times for a supermarket involves substantial impacts on the whole supply chain and the availability of produce to consumers; - The representation provides supporting rationale detailing mitigating circumstances for residential properties in the vicinity including the number of properties, and also relevant topographical considerations. - The representation makes a further suggestion that the installation of an appropriate acoustic barrier to be located at the north-east corner of the site could also provide for an appropriate noise mitigation measure.
<p>Planning Authority Response</p>	<p>Allowances for General Retail and Hire uses</p> <ol style="list-style-type: none"> (1) The 'Stony Rise Village' proposal involves the creation of a 'neighbourhood centre' that is intended to offer a limited range of retail, business and food service uses for the convenience needs of the local area. A major supermarket will serve as the primary activity generator and will be supported by a limited range of complimentary uses. (2) The provisions of the draft Specific Area Plan (SAP) are intended to provide for an appropriate regulation of land use and development that supports but does not compromise the role of established activity centres (including the CBD). Importantly, the intention of the draft SAP is not to facilitate a full spectrum of retail use and development to occur. Rather, it seeks a nuanced approach that is appropriately consistent with the concept and function of a neighbourhood centre which is central to the Stony Rise Village proposal. (3) Notwithstanding, the Planning Authority finds merit in the representation from the applicant which identifies that the exhibited draft SAP considers General Retail and Hire uses more broadly than just the 'neighbourhood centre' precincts of the Stony Rise Village proposal. It extends the consideration of these uses to the broader area of the Homemaker Centre site and makes allowances for General Retail and Hire that currently does not exist. Introducing new opportunities for General Retail and Hire has the potential to unreasonably compromise and/or distort the role of established activity centres. (4) Following the above reasoning, the Planning Authority agrees with the representor that there is merit to modify the draft SAP to limit the scope for General Retail and Hire use to occur outside of the Stony Rise Village Precincts (i.e. Precincts A and B shown in the SAP). This approach is consistent with the existing and well-established planning scheme controls applying to the Homemaker Centre site, and also a suitable measure to minimise the opportunity for adverse effects on established activity centres. (5) Whilst the exhibited draft SAP generally seeks to regulate this matter through the application of the relevant Local Area Objectives at clause DEV-S1.3 and also the use standard at clause DEV-S1.6.1, modification can be made directly to the Use Table at clause DEV-S1.5 to reinforce this level of regulation and clearly articulate the policy position with respect to allowances for General Retail and Hire uses.

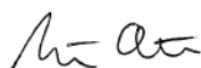
	<p>Allowances for Food Services uses</p> <p>(6) The Planning Authority finds merit in the matters raised in the representation which identify that the draft SAP considers Food Services uses more broadly than just the neighbour centre precincts of the Stony Rise Village. It extends the consideration of these uses to the broader area of the Homemaker Centre site and makes additional allowances for Food Services that currently does not exist. Additional Food Services in the homemaker centre has the potential to result in an undesirable outcome where there is a proliferation of Food Services uses.</p> <p>(7) The Planning Authority agrees with the representor that there is merit to modify the draft amendment to limit the scope for Food Services uses to occur outside of the Stony Rise Village Precincts (i.e. Precincts A and B shown in the SAP). There is a logic that Food Services uses will have a complimentary relationship to the neighbourhood centre concept which underpins the Stony Rise Village proposal. There is further logic that a greater level of regulation on Food Services use should be applied outside of the Stony Rise Village Precincts to the Homemaker Centre site.</p> <p>(8) This approach is consistent with the existing and well-established planning scheme controls that apply to the Homemaker Centre site and seeks to prevent a situation where Food Services become a dominant activity within the Homemaker Centre.</p> <p>(9) Following the justification set out above, modification can be made directly to the Use Table at clause DEV-S1.5 to reinforce this level of regulation and clearly articulate the policy position with respect to allowances for Food Services uses.</p> <p>Permit conditions – commercial vehicle activity</p> <p>(10) The inclusion of Condition 10 on the exhibited permit generally replicates the requirements of clause 17.3.1 A3 of the Tasmanian Planning Scheme, which represent the Acceptable Solution (or permitted standard) of this particular standard. Notably there is a corresponding Performance Criteria to this clause which allows for discretion to be considered where the Acceptable Solution is not met.</p> <p>(11) The effect of prescribing this Condition (as exhibited) is that the compliance with requirements of clause 17.3.1 A3 become absolute without the room for any discretion.</p> <p>(12) The Planning Authority finds that the representation received from the applicant provides an appropriate level of justification as to why this Condition should be modified as requested.</p> <p>(13) Furthermore, the Planning Authority also considers that the inclusion of an additional permit condition which requires the installation of an appropriate acoustic barrier at the north-eastern corner of the site and within 50m of residential land is a reasonable measure to address amenity considerations</p>
<p>Recommended action(s)</p>	<p>Modify the draft amendment as follows:</p> <p>(1) amend the Use Table at clause DEV-S1.5 so that the qualification for 'General Retail and Hire' (as a Discretionary use) is replaced with: <i>'if not listed as Permitted and for a market retailing food by independent stall holders'</i>;</p> <p>(2) amend the Use Table at clause DEV-S1.5 so that the qualification for 'Food Services' (as a Permitted Use) is replaced with:</p>

	<p><i>'if the total number of Food Services on land subject to the Devonport Regional Homemaker Centre and Stony Rise Village Specific Area Plan is:</i></p> <ol style="list-style-type: none"> <i>not more than 5 drive through facility food services; and</i> <i>not more than a total of 12 food services and further limited to not more than 4 food services premises outside of Precinct A and Precinct B; and</i> <i>If within Stony Rise Village a drive through facility is limited to one premises each for Precinct A and Precinct B.'</i> <p>Modify the conditions for the concurrent permit application as follows:</p> <ol style="list-style-type: none"> Remove Condition 10 as shown on the exhibited permit application and insert the following text as Condition 13: <i>'Hours of operation and loading/unloading of deliveries, within 50m of residential properties must be within:</i> <ol style="list-style-type: none"> <i>7:00am to 9:00pm Monday to Saturday; and</i> <i>8:00am to 9:00pm Sunday and public holidays'.</i> Insert the following text as Condition 14: <i>'The developer is to construct a 3m high acoustic barrier at the north-east corner of the developed site for the length of the area within 50m of residential land.'</i>
Effect of recommendation on the draft amendment and the LPS as a whole	<p>Other than the recommended modifications to the draft Specific Area Plan and the associated permit, there is no effect on either the draft amendment or the Devonport Local Provisions Schedule as a whole resulting from implementing the recommendation. Satisfaction of the LPS criteria at section 34(2) of LUPAA is maintained.</p>

3. Conclusion

This Addendum Report provides supplementary justification to the Planning Authority's determination of representation received from the applicant in respect of the exhibited draft amendment and combined permit application. The Planning Authority has seen fit that the matters raised in the representation have sufficient merit to warrant some modifications to the exhibited draft amendment and also some modifications to the associated permit.

The Planning Authority confirms its satisfaction that these recommended modifications meet the LPS criteria under section 34(2) of LUPAA and confirms its support of the draft amendment and combined permit application.



Matthew Atkins
GENERAL MANAGER

10th February 2023