

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Tasmanian Planning Scheme - Latrobe
Amendment	4-2023 - Apply the Agriculture Zone to several properties on Victor Street, Cotton Street and Hamilton Street, Latrobe and remove the Priority Vegetation overlay.
Planning authority	Latrobe Council
Date of decision	24 April 2024

Decision

The draft amendment is approved under section 40Q of the *Land Use Planning and Approvals Act 1993*.

Claire Hynes
Delegate (Chair)

Dianne Cowen
Delegate

REASONS FOR DECISION

Background

On 16 March 2023, the Commission decided to modify the draft Latrobe Local Provisions Schedule (draft LPS). The Latrobe LPS (as modified) became effective on 10 May 2023.

As part of the decision, the Commission found that the draft LPS required substantial modification and accordingly, under section 35KB of the *Land Use Planning and Approval Act* (the Act), the Commission directed the planning authority to prepare a series of draft amendments to the Latrobe LPS and to submit the draft amendments to the Commission after the LPS came into effect.

The subject draft amendment is one of nine draft amendments to the Latrobe LPS prepared in response to the Commission's direction.

The Latrobe planning authority has publicly exhibited the draft amendment in accordance with section 40G and provided the Commission with its section 40K report.

Amendment

The draft amendment proposes to apply the Agriculture Zone and remove the Natural Assets Code - priority vegetation overlay to the following properties at Victor Street, Cotton Street and Hamilton Street, Latrobe:

- a. Cotton Street, Latrobe folio of the Register 33474/2;
- b. Cotton Street, Latrobe General Law deed 54/2104;
- c. 42 Hamilton Street, Latrobe folios of the Register 148873/1, 148873/2 and 225459/1;
- d. Hamilton Street, Latrobe folio of the Register 146040/1;
- e. 20 Victor Street, Latrobe folio of the Register 7149/1;
- f. Victor Street, Latrobe folio of the Register 146271/1;
- g. Victor Street, Latrobe folio of the Register 132179/1;
- h. Victor Street, Latrobe folio of the Register 118067/2;
- i. reserved road between folio of the Register 33474/2 and General Law deed 54/2104;
- j. unidentified Crown land adjacent to the southern boundary of folio of the Register
- k. 146040/1;
- l. the reserved/subdivision roads that adjoin the western boundaries of Cotton Street
- m. General Law deed 54/2104 and 42 Hamilton Street; and
- n. public roads adjoining the land to the road centrelines.

Site information

The subject properties (the subject land) are located adjacent to the Mersey River and are all subject to the Flood-Prone Areas Hazard Code and Bushfire-Prone Areas Code overlays. Parts of the subject land are subject to the Natural Assets Code priority vegetation area and waterway and coastal protection overlays.

The subject land is sparsely vegetated and predominately flat, grassed and used for pasture. Surrounding land to the north and east is zoned General Residential, General Business or Open Space. Land to the south and west is zoned Agriculture or Environmental Management.

Issues raised in representations

One representation was received which raised the following concerns:

- the suitability for the Agriculture Zone based on specific titles referenced not being in common ownership with adjoining agriculture land;
- potential conflict with the adjoining residential land;
- the Rural Zone is more appropriate and compatible; and
- limited agriculture capacity of the land.

The draft amendment was referred to TasWater under section 56S of the *Water and Sewerage Industry Act 2008*. In response, TasWater advised it had no written representation to submit and noted they had no objection or proposed changes to the draft amendment.

Planning authority's response to the representations

The planning authority considered the representations and recommended no change to the draft amendment.

In the 40K report the planning authority also noted they had no objection to receiving a future application for a site-specific qualification on the affected titles to allow a larger range of uses which would be compatible with both the residential area and the flood prone nature of the land.

Date and place of hearing

The hearing was held at Latrobe Council Chambers, 170 Gilbert Street, Latrobe on 22 February 2024.

Appearances at the hearing

Planning authority: Jo Oliver, Terra Firma Town Planning for Latrobe Council

Representors: Nil

Consideration of the draft amendment

1. Under section 40M of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the draft amendment to the LPS and the representations, statements and recommendations contained in the planning authority's section 40K report and any information obtained at a hearing.
2. A hearing was convened to assist the Commission consider the issues raised in the representation.
3. The Commission must also consider whether the draft amendment meets the LPS criteria as set out under section 34(2) of the Act:
 - (a) contains all the provisions that the SPPs specify must be contained in an LPS; and
 - (b) is in accordance with section 32; and
 - (c) furthers the objectives set out in Schedule 1; and

- (d) is consistent with each State policy; and
 - (da) satisfies the relevant criteria in relation to the TPPs; and
 - (e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates; and
 - (f) has regard to the strategic plan, prepared under section 66 of the *Local Government Act 1993*, that applies in relation to the land to which the relevant planning instrument relates; and
 - (g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates;
 - (h) has regard to the safety requirements set out in the standards prescribed under the *Gas Safety Act 2019*.
4. In its approval of the draft LPS the Commission determined that it met the LPS criteria. As part of that decision, it follows that the Commission also established that the modifications to the LPS through section 35KB were also consistent with the LPS criteria.
5. Where relevant to the submissions received, these matters are discussed below.
6. The Commission considered that the modification was a substantial modification as there may be a public interest. The Commission considers that exhibition of the draft amendment has given sufficient opportunity for any matters of public interest to be raised. The Commission notes no matters were raised in relation to the LPS criteria in sections 34(2)(a), (c), (d), (e), (f), (g), and (h), and remains satisfied that the draft amendment is consistent with these LPS criteria.

Suitability of Zoning and Potential Site-specific Qualification (SSQ)

7. The Commission's decision dated 16 March 2023 on the Latrobe LPS to apply the Agriculture Zone to the subject land (via a substantial modification process) was supported by the State Emergency Service (SES) and the planning authority at that time.
8. In the 40K report the planning authority did not recommend any changes to the draft amendment.
9. At the hearing, the planning authority noted the high risk for allowable uses under the Rural Zone to cause land use conflict issues with adjoining land and raised the possibility of introducing a site-specific qualification (SSQ) on the land to allow additional uses applicable to all or part of the land proposed to be zoned Agriculture in the draft amendment.
10. The planning authority advised it had only had the opportunity to consult with one of the affected landowners prior to the hearing. The planning authority was not able to provide detail on the s.32(4) argument supporting the potential SSQ or confirm the spatial extent of where it would apply relevant to the subject land.
11. On 12 March 2024, the Commission wrote to the planning authority and observed that not all landowners were aware of the potential SSQ and how it may affect their land, and they have not been afforded the opportunity to be heard or comment on information that the delegates may base their conclusions on.
12. The Commission's letter also noted that introducing new uses (whatever they may be) to the subject land requires consideration of the Flood-prone Hazard Area Code provisions to ensure such uses are located and managed appropriately according to the flood risk, and evidence supported by a suitably qualified person is required to support. Consideration of the newly

constructed flood levee system at Latrobe and how this affects the subject land is also relevant.

13. The letter also stated that information on how the potential SSQ meets section 32(4) of the *Land Use Planning and Approvals Act 1993* has not been addressed.
14. The Commission provided parties with the opportunity to submit a closing submission. No submissions were received within the identified timeframe.

Commission consideration

15. The Commission's decision on the Latrobe LPS established that it accepted the planning authority's evidence in support of the application of the Agriculture Zone to the subject land and it considered the application of the zone to be consistent with Guideline No.1.
16. The Commission notes that the subject land is used for grazing. The subject land is in the Flood-prone Hazard Area overlay and the Commission accepts there is merit in use of the Agriculture Zone controls to manage risk of flooding to use and development, which is supported by the Cradle Coast Regional Land Use Strategy, Land Use Policies for Protecting People and Property.
17. The Commission is not persuaded that a SSQ is appropriate to be introduced at this time without evidence provided on the flooding risk issues to the subject land, and consideration of the nearby and newly constructed flood levee and related flood mitigation infrastructure for Latrobe. Additionally, the Commission is not satisfied on the information provided that the proposed SSQ has planning merit and that it meets 32(4)(a) or (b) of the Act.
18. The Commission remains satisfied the application of the Agriculture Zone to the subject land is consistent with Guideline No. 1.

Decision on draft amendment

19. The Commission is satisfied that the draft amendment meets the LPS criteria and gives its approval.

Attachments

Annexure A

Approved amendment

Annexure A

Approved amendment 4-2023, Tasmanian Planning Scheme - Latrobe

Apply the Agriculture Zone and remove the Natural Assets Code -priority vegetation overlay to the following properties at Victor Street, Cotton Street and Hamilton Street, Latrobe:

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- b. Cotton Street, Latrobe General Law deed 54/2104;
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- g. Victor Street, Latrobe folio of the Register 132179/1;
- h. Victor Street, Latrobe folio of the Register 118067/2;
- i. reserved road between folio of the Register 33474/2 and General Law deed 54/2104;
- j. unidentified Crown land adjacent to the southern boundary of folio of the Register 146040/1;
- k. the reserved/subdivision roads that adjoin the western boundaries of Cotton Street General Law deed 54/2104 and 42 Hamilton Street; and
- l. public roads adjoining the land to the road centrelines.

as shown in Figure 1 below:



Figure 1: Application of the Agriculture Zone to land at Victor Street, Cotton Street and Hamilton Street, Latrobe