

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Tasmanian Planning Scheme – Meander Valley
Amendment	1-2020 – Rezone various lots to General Residential, Rural Living, Low Density Residential, Village and Utilities, and insert the Westbury Urban Residential Specific Area Plan
Planning authority	Meander Valley Council
Date of decision	10 June 2021

Decision

The draft amendment is modified under section 40N(1)(b) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A and is approved under section 40Q.

Marietta Wong
Delegate (Chair)

Dianne Cowen
Delegate

REASONS FOR DECISION

Background

Amendment

The certified draft amendment proposes the following:

- (a) rezone land bound by Dexter Street, Jones Street, Taylor Street and Shadforth Street (folios of the Register 15169/1 and 108079/1) from Low Density Residential to General Residential;
- (b) rezone two parcels of Crown land (folio of the Register 129482/2 and north of Quamby Brook) from Rural Resource to Utilities;
- (c) rezone land bound by Lyttleton Street, William Street, Taylor Street and Waterloo Street (folios of the Register 110565/2, 110565/4, 118081/2, 118081/4, 118081/6, 129939/1 and 129939/2) from Rural Resource to General Residential;
- (d) rezone land at 12 Lyttleton Street (folio of the Register 130408/1) from Rural Resource to Rural Living;
- (e) rezone land at 1 William Street (folios of the Register 130539/1, 118081/3 and 118081/5) from Rural Resource to Low Density Residential;
- (f) rezone 9 and 10 Quamby Street, and 113A Meander Valley Road (folios of the Register 205443/1, 106741/1 and 124290/2) from Rural Resource to Low Density Residential;
- (g) rezone land at 115 Meander Valley Road (folio of the Register 124290/1) from Rural Resource to Village;
- (h) rezone a parcel of Crown land from Rural Resource to Village and Low Density Residential;
- (i) rezone a parcel of Crown land from Rural Resource to Low Density Residential; and
- (j) insert a Specific Area Plan applied to land bound by Lyttleton Street, William Street, Taylor Street and Waterloo Street, and land bound by Dexter Street, Jones Street, Taylor Street and Shadforth Street.

It is noted that land zoned Rural Resource under the interim planning scheme is now zoned Agriculture under the Tasmanian Planning Scheme – Meander Valley.

Site information

The land applicable to the draft amendment includes various titles, as listed above, throughout Westbury. The planning authority has identified these titles as a northern area and southern area.

The southern area includes land identified in (a) above and the northern area includes land identified in (b)-(i) above.

The Flood Prone Areas, Natural Assets Codes, Attenuation Code and Bushfire-Prone Areas Code apply to various lots subject to the draft amendment.

Issues raised in representations

The representors raised the following concerns:

- permissible density and subsequent population growth;
- impact on the amenity and character of Westbury;
- increased traffic and impacts to pedestrian safety;

- impact on wildlife;
- suitability of the Traffic Impact Assessment;
- justification for the draft amendment;
- lack of services and impacts to existing infrastructure;
- compliance against the State Policy of Agricultural Land;
- impact on existing Hawthorn hedge row;
- impact on land values;
- relationship with the State Government’s proposed northern prison project;
- impact on existing railway line;
- impact on existing State highway route; and
- impact and proximity to existing sewerage treatment plant.

Planning authority’s response to the representations

The planning authority considered the representations and recommended the following modifications to the draft amendment:

- a) include Certificates of Title 15169/1 and 108079/1 in the F6 Westbury Urban Residential Specific Area Plan;
- b) include a new standard at F6.8.2 to provide for a 700m² lot size as an Acceptable Solution together with the other standards of the Tasmanian Planning Scheme as detailed in Attachment 1 (page 276); and
- c) include a new standard at F6.8.3 to provide for public open space along the western boundary of CT129939/2 as a mandatory Acceptable Solution as detailed in Attachment 1 (page 276).

Date and place of hearing

The hearing was held at the Commission’s office on Level 3, 144 Macquarie Street, Hobart on the 29 April 2021.

Appearances at the hearing

Planning authority: Ms Jo Oliver, Senior Strategic Planner

Representors: Mr Jason Taylor, TasWater
Ms Emma Hamilton

Others joined: Ms Dinah Fitzgerald, landowner
Mr Dale Badcock, landowner
Mr John Dent, PDA Surveyors (consultant of Dale Badcock)
Mr John Johnston, Landowner
Mr James Stewart, Woolcott Surveys (consultant of John Johnston)

Consideration of the draft amendment

1. The draft amendment was initiated, certified and exhibited by the planning authority under the former provisions of the *Land Use Planning and Approvals Act 1993*. However, on 19 April 2021, the Tasmanian Planning Scheme – Meander Valley took effect.
2. Schedule 6 of the current provisions of the *Land Use Planning and Approvals Act 1993* (the Act) provides for the saving of draft amendments that have been initiated by planning authorities under the former provisions. Under Schedule 6, clause 4 saves amendments that alter the designation of zoning and clause 5 saves amendments establishing a SAP. As a result, Part 3B of the Act applies to the draft amendment as if it were a draft amendment of the Local Provisions Schedule (LPS).
3. Therefore, under section 40M of the Act, the Commission is required to consider the draft amendment and the planning authority's section 40K report which includes the representations, the planning authority's opinion on the merit of the representations and any recommendations on the draft amendment it thinks fit. The Commission must also consider information obtained at the hearing, whether the draft amendment meets the LPS criteria as set out under section 34 of the Act and whether modifications ought to be made to the draft amendment.

Regional Land Use Strategy

4. The relevant regional strategy under section 34(2)(e) is the Northern Tasmania Regional Land Use Strategy, 27 June 2018 (the regional strategy).
5. The planning authority, in its supporting report dated September 2020 (the supporting report), addresses the regional strategy giving emphasis to those strategic directions, policies and actions that relate the integration of infrastructure, transport and land use planning; settlement hierarchy and provision for population growth; and planning for socio-demographic changes, including promoting a range of dwelling types and sizes to provide housing choice. (p. 35-46)

Land supply and demand

6. RSN-A4 of the regional strategy includes an action statement that seeks to:

Provide for the long term future supply of urban residential land that matches existing and planned infrastructure capacity being delivered by TasWater, specifically in parallel with existing water and sewerage capacity and required augmentation to meet urban development growth and capacity – both residential and industrial. (p. 24)
7. The supporting planning report provides a development and land availability assessment. This assessment suggested that there is ability to create approximately 37 lots through infill subdivision of existing General Residential and Urban Mixed Use zoned land.
8. The Commission also directed the planning authority to identify the available yield from development of land zoned Low Density Residential to clarify the available land supply from existing residential zoned land in Westbury.
9. The planning authority advised in its further submission dated 27 April 2021, that the theoretical yield for existing Low Density Residential zoned land is 361 lots. The planning authority further advised that:

... some landowners will wish to retain larger sized lots and not exercise the subdivision entitlement. Experience over recent years since subdivision has been

made allowable in the area, has shown that it is not possible to predict the circumstances where this will occur or the rate of development. (p. 2)

10. At the hearing, Ms Dinah Fitzgerald advised that while one of her properties is proposed to be rezoned to General Residential, she has no intention to subdivide in the near future.
11. Additionally, action statement RSN-A5 of the regional strategy seeks to:

Provide a diverse housing choice that is affordable, accessible and reflects changes in population, including population composition. Ageing populations and single persons should be supported to remain in existing communities as housing needs change; ‘ageing in home’ options should be provided. (p. 24)
12. In relation to multiple dwellings developments, the planning authority states in its supporting report that:

A number of titles that have constrained frontages are suitable for multiple dwelling developments only.... Recent trends indicate that multiple dwellings are particularly popular in the Westbury market with units spending very little time on the market before being sold. (p. 13)
13. At the hearing Ms Jo Oliver advised that based on previous take up of developable land, demand ranges from four lots to 15 lots per year.

Commission’s consideration

14. The Commission notes the information provided by the planning authority indicates that the combined potential lot yield of existing zoned land in the General Residential, Low Density Residential and Urban Mixed Use zones is 398 lots.
15. Based on the planning authority’s information about historical demand, there is approximately 26 years of existing land supply at the highest demand rate. This does not take into account that some lots may be developed for multiple dwellings.
16. The Commission notes that higher density multiple dwellings are only permitted in the General Residential Zone and would ideally be located close to the town centre to be consistent with RSN-A5.
17. The Commission acknowledges the importance of having residential land close to services within the town centre. It considers that the southern area to be rezoned to the General Residential Zone would create additional supply close to services for future residents.
18. It is acknowledged that many landowners may not wish to subdivide and therefore lots available to the market may appear sporadically. The Commission does not consider this to warrant the extent of rezoning proposed.
19. The Commission considers that the rezoning of land in the northern area to General Residential, Low Density Residential, Rural Living and Village is premature, given the amount of existing residential and Village zoned land in Westbury.
20. However, the Commission supports the rezoning of land bounded by Dexter, Taylor, Shadforth and Jones Streets from the Low Density Residential Zone to the General Residential Zone, as it will allow for higher density residential use and development, close to schools and services.

Sewerage treatment plant attenuation area

21. The northern area of the draft amendment is close to the Westbury Sewerage Treatment Plant, which is located off Meander Valley Road.
22. In its representation, TasWater stated:

TasWater would not support the development of future residential lots within the attenuation zone of the Sewerage Treatment Plant unless a current site specific study, as described within the MV IPS [Meander Valley Interim Planning Scheme 2013], is undertaken to determine there is no land use conflict as the plant currently operates. We therefore consider the rezonings within the area of the map shown below should also not occur without a site specific study being undertaken.
(p. 1)

23. Since the representation was lodged, the Tasmanian Planning Scheme – Meander Valley has come into effect. As a result, C9.0 Attenuation Code applies.
24. At the hearing, Mr Jason Taylor advised that since providing its Submission to Planning Authority Notice, TasWater now considers that the sewerage treatment plant can be classified as an aerobic lagoon, to which a 350m attenuation area applies. Mr Taylor advised that this is in accordance with C9.0 Attenuation Code.
25. Land affected by the attenuation area, which is associated with noise and odour concerns, includes 1 William Street, 9 and 10 Quamby Street, and 113A and 115 Meander Valley Road. These titles are located in the northern area of the draft amendment.
26. Mr Taylor advised at the hearing that TasWater has received three odour complaints this financial year regarding the sewerage treatment plant. These occurred at different times of the year, with two in relation to lots within the buffer area. The third was distant from the sewerage treatment plant at the eastern outskirts of Westbury.

Commission's consideration

27. The Commission acknowledges that sensitive use may be considered within the attenuation area as discretionary under the planning scheme.
28. However, the Commission considers that rezoning land within the attenuation area for the sewerage treatment plant to allow for additional sensitive use does not support the purpose of the Attenuation Code, which is to minimise conflict between sensitive use and activities which have the potential to cause emissions.

Low Density Residential, Rural Living and Utilities zoning

29. Ms Oliver submitted that the rezoning of land to Low Density Residential, Rural Living and Utilities at the northern extent of the draft amendment was influenced by the constraints faced by land adjoining Quamby Brook. Ms Oliver also advised that the proposed rezoning of land from Agriculture to Utilities was due to an oversight during the preparation of the LPS.
30. The Flood Prone Areas, Natural Assets and Attenuation Codes apply to the titles proposed for rezoning to Low Density Residential and Village, restricting the potential for future use and development on these titles.
31. In its further submission, the planning authority states that:

Zoning is first and foremost, a reflection of the intentions for the future use of land. The extent and intensity of future land use is influenced by the physical circumstances that exist and the planning scheme regulatory requirements that relate to those circumstances. The proposed consequential rezoning of land to the north and west of the urban growth area to Low Density Residential, Rural Living and Village zoning, rationalizes what is effectively 'left over' rural zoning, eliminating the potential for inappropriate land use and development impacts. (p. 2)
32. The Low Density Residential Zone allows the subdivision of lots at 1500m² and a variety of discretionary uses.

33. The Village Zone allows the subdivision of lots at 600m² and a variety of permitted and discretionary uses.
34. In its supporting planning report, the planning authority states ‘the residual Rural Resource zoning of the adjacent land becomes illogical’ given the principal purpose of the amendment is to facilitate urban residential expansion and that it views the Low Density Residential and Rural Living rezoning as consequential.
35. The planning authority did not provide any evidence of demand for extending the Low Density Residential Zone or Rural Living Zone.

Commission’s consideration

36. The Commission notes that the lots proposed for rezoning to Low Density Residential and Village are larger in area and it considers that the proposed rezoning implies that further subdivision and development of the titles may be possible.
37. However, the Commission considers that the likelihood for further development of these titles is low given that all titles are developed, three contain large dams and a number of restrictive provisions apply.
38. The Commission is not convinced, given the location and characteristics of the land, that the most suitable zones are the Low Density Residential and Village Zone. It also notes an absence of strategic basis for providing further unserviced land on larger lots at Westbury, given the extensive area of Low Density Residential zoning to the south of the highway.
39. The Commission does not consider that the rezoning to Low Density Residential and Village to reflect existing use and development is consequential or appropriate in this instance. The Commission notes the planning authority’s justification for rezoning land to Utilities. The Commission considers that given this land is owned by the Department of State Growth and adjoins a State highway, the Utilities Zone is the most appropriate for the land.

Reticulated infrastructure

40. At the hearing, the Commission sought clarification about whether there were constraints to extending General Residential zoning at Westbury. Mr Taylor confirmed that pending subdivision design, there are no issues with servicing future lots associated with the draft amendment.
41. Mr Taylor also submitted that although TasWater has not undertaken any future servicing investigations, subject to installation of a pump station, there is no impediment to the expansion of servicing.
42. Ms Oliver advised that the draft amendment did not propose an expansion of residential zoning south of Meander Valley Road as titles past Shadforth Street are unable to be serviced by TasWater infrastructure by gravity and would require a pump station to service the land. As such, the draft amendment is predominantly focused on land north of Meander Valley Road.
43. At the hearing, Mr John Dent, a surveyor for Mr Badcock stated that based on his experience, the cost to install a pump station to service land south of Meander Valley Road is approximately \$1 million. This is unlikely to be feasible for individual developers given the existing lot pattern and the subdivision potential of each of those lots.

Commission’s consideration

44. The Commission acknowledges that the extension of servicing beyond those areas that can be serviced by gravity, comes at a significant cost. However, it considers this to be one of a

number of matters to be weighed up when determining whether the town ought to be expanded and if so, how.

45. The case for expanding the town to the north includes consideration of the extent of existing land zoned for residential purposes and the potential for land use conflict with adjoining agricultural land.

State Policy on the Protection of Agricultural Land (PAL policy)

46. The PAL policy is relevant to that part of the draft amendment in the northern area proposing to rezone land from the Agriculture Zone to the General Residential, Low Density Residential and Rural Living Zones.

47. In support of the draft amendment, an agricultural assessment dated 14 July 2020 for 12 Lyttleton Street and agricultural report dated 24 August 2020 for 46 Lyttleton Street by AK Consultants was submitted. The report identified that:

The rezoning will result in the loss of 13ha of Class 4 land and approximately 8.7ML irrigation water from a bore. (p.9)

48. In the agricultural report, it is considered that:

The main risk of rezoning the entirety of the site to 'General Residential' is the potential for future conflict between residential use south of Lyttleton St and agricultural activity north of Lyttleton St... If the land use was intensified by the development of fixed irrigation infrastructure then a 200m buffer should be retained. (p. 8)

49. The draft amendment proposes a separation distance of approximately 30m, which includes an existing hedgerow along the northern titles of 46 Lyttleton Street.

50. AK Consultants considered that:

The proposed separation distance (approximately 30m including a hedgerow) is less than ideal and there is some risk of conflict between the existing and potential future agricultural use and proposed future residential use south of Lyttleton St. However, the risks need to be considered in the context of the potential for increased intensification of agricultural use immediately north of Lyttleton St, which is considered to be relatively low. (p. 9)

51. Ms Oliver submitted at the hearing that the rezoning would facilitate capital investment in modern irrigation infrastructure, improving agricultural outcomes for the balance land.

Commission's consideration

52. The Commission acknowledges the justification provided by AK Consultants and the planning authority, in that the land proposed for rezoning is restrained for large scale commercial agricultural use.

53. However, the Commission is not satisfied that this justification adequately addresses Principle 5 of the State Policy on the Protection of Agricultural Land (PAL policy), that states:

Residential use of agricultural land is consistent with the Policy where it is required as part of an agricultural use or where it does not unreasonably covert agricultural land and does not confine or restrain agricultural use on or in the vicinity of that land. (p. 2)

54. The Commission considers that allowing the land to be rezoned and developed for residential uses only moves potential land use conflict north of the site, which in turn may impact agricultural use on the remaining agriculture zoned land.

55. While it is noted that AK Consultants have identified the potential for intensification of agricultural use to the north of Lyttleton Street as being constrained by the location of dwellings and titles, the rezoning still places a low level of risk on the potential for conflict.
56. The Commission also considers it relevant that there are other options to increase residential land supply within Westbury, which would not impact on agricultural land.
57. On balance, the Commission does not consider that the draft amendment is consistent with the PAL policy, with particular reference to Principle 5.

Specific Area Plan

58. The draft amendment includes a SAP, with the effect that all new roads in a subdivision are to be via junctions with Lyttleton Street.
59. Following public exhibition, a number of representors raised concerns regarding the impact to the town character as a result of rezoning land to General Residential, which has a minimum lot size of 450m² under the State Planning Provisions (SPPs). Additionally, concerns were raised regarding the protection of existing hedge rows.
60. In response to the representations, the planning authority recommended a modification to the proposed SAP:
 - increasing the minimum lot size to 700m² to assist in retaining the existing character of Westbury;
 - application of the SAP to the northern and southern areas proposed to be in the General Residential Zone; and
 - providing for public open space to assist the maintenance of hedgerows where these exist along the western boundary of the northern area proposed to be zoned General Residential.
61. The planning authority provided justification against section 32(4)(b) of the Act for the inclusion of a new SAP, which states:
 - (4) ...
 - (b) the area of land has particular environmental, economic, social or spatial qualities that require provisions, that are unique to the area of land, to apply to the land in substitution for, or in addition to, or modification of, the provisions of the SPPs.
62. The planning authority considered that the land applicable to the SAP requires provisions in substitution for and in addition to the SPPs to maintain the prevailing density character of the township.

Commission's consideration

63. The Commission considers that as the rezoning for land bound by Lyttleton Street, William Street, Taylor Street and Waterloo Street is not supported, a SAP is not required over this area.
64. The SAP would therefore only apply to land bound by Dexter Street, Jones Street, Taylor Street and Shadforth Street.
65. The Commission considers the SAP to be unnecessary given that the minimum lot size would only affect a small portion of General Residential zoned land in Westbury that is adjacent to existing land zoned General Residential. All other General Residential zoned land could be subdivided as 450m² lots.

66. For this reason, the Commission does not consider that the land applicable to the proposed SAP requires provisions in substitution for, or in addition to, the SPPs.

Modifications required to draft amendment

67. The draft amendment is modified to include only the following:
- (a) rezone land bound by Dexter Street, Jones Street, Taylor Street and Shadforth Street (folios of the Register 15169/1 and 108079/1) from Low Density Residential to General Residential; and
 - (b) rezone folio of the Register 129482/2 and a portion of Crown land north of Quamby Brook from Agriculture to Utilities.

Decision on draft amendment

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

Attachments

Annexure A – Modified amendment

Annexure A

Modified amendment 1-2020 to the Tasmanian Planning Scheme – Meander Valley

1. Rezone land bound by Dexter Street, Jones Street, Taylor Street and Shadforth Street (folios of the Register 15169/1 and 108079/1) from Low Density Residential to General Residential, as identified in the following map.



2. Rezone folio of the Register 129482/2 and a portion of Crown land north of Quamby Brook from Agriculture to Utilities, as identified in the following map.

