

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Hobart Interim Planning Scheme 2015
Amendment	PSA-19-4
Planning authority	Hobart City Council
Applicant	JMG Engineers and Planners
Date of decision	23 April 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.

Sandra Hogue
Delegate (Chair)

Claire Hynes
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

Amend the Use Table at clause 24.2 of the Light Industrial Zone, by omitting the qualification for the Food services use class that states 'Only if take away food premises or café'; and insert Resource processing as a discretionary use with the qualification 'If for food and beverage production'.

Issues raised in representations

No representations were made during the public notification period.

Site information

The Light Industrial Zone under the Hobart Interim Planning Scheme 2015 (interim planning scheme) applies only to land in the North Hobart area. It comprises a relatively small area of 4.5 ha, and applies to strips of land along some major thoroughfares in North Hobart including Federal Street, Argyle Street and Burnett Street.

Due to the linear application of the Light Industrial Zone, it has an extensive interface with other zones, particularly the Inner Residential Zone.

The site is located on folio of the Register 104000/1, comprising an area of 1138m² with a 29m frontage to Argyle Street. It has been developed for light industrial purposes and contains warehouse buildings with shop frontages to Argyle Street.

The site is located approximately 80m north of the intersection of Burnett and Argyle Streets and approximately 150m northeast of North Hobart's restaurant precinct along Elizabeth Street.

The site is bound by Inner Residential zoned land and residential uses to the north and west. To the south the land is zoned Light Industrial.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 27 February 2020.

Appearances at the hearing

Planning authority: Sarah Crawford, Strategic Planner

Applicant: Matthew Clark, Principal and Indra Boss, Town Planner for JMG Engineers and Planners

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. While no representations were received, the Commission held a hearing.
3. The amendment has been initiated and certified by the Hobart City 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. 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.
6. 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.
7. Section 300(2)-(5) inclusive relates to the amendment of local provisions when such an amendment would alter the operation of common provisions. The draft amendment will not alter the operation of any common provisions.
8. Under section 32(1)(f) regional impacts of use and development permissible under the amendment have been considered with reference to the Southern Tasmania Regional Land Use Strategy (regional strategy).

Southern Tasmania Regional Land Use Strategy

9. The supporting application report prepared by JMG dated October 2019 (applicant's report) considers that the amendment is consistent with a number of regional strategy policies.
10. The report states that the amendment is consistent with Physical Infrastructure and Land Use and Transport Integration policies because development arising from the amendment will utilise existing infrastructure and transport (p 20).
11. In response to the regional strategy's Industrial Activity policies, the applicant states that the amendment is consistent with policies 1.1 and 3.1 because the land is flat and accessible to infrastructure and offsite impacts can be managed thereby 'protecting the regional environmental values' (pp 20-21).
12. The consultant's report provided an assessment of the draft amendment against the regional strategy's Activity Centres regional policies and states:

The amendment will allow for additional uses in the Light Industrial zone, providing employment in a primary activity centre in an area with good transport links and nearby public open space (AC1). The additional uses will encourage in-centre development (AC1.3). The new uses will provide an opportunity to strengthen the local community through employment opportunities and economy generating activity (AC1.4). The amendment will increase the mix of uses appropriate to the zone within the primary activity centre adding to the multi-functional activity in the centre (AC1.6). Any redevelopment of land in the zone will be in line with the requirements of the Light Industrial zone ensuring the character of the urban area is maintained (AC1.8). The amendment will allow for additional uses that can facilitate local employment through small scale business (AC1.10) (p 20).

13. The planning authority concurred with the applicant's assessment of the amendment's consistency with the regional strategy. The planning authority did not expand on the assessment provided in the applicant's report (pp 18-21).
14. At the hearing, Ms Crawford submitted that much of the Light Industrial Zone is adjacent to the restaurant strip in North Hobart, and there are a lot of restaurants in the surrounding area. In this regard she stated that she was comfortable that there does not appear to be land use conflicts arising between the two areas.

Commission's consideration

15. Much of the regional strategy's industrial activity policies relate to the identification of new industrial land, which is not relevant to consideration of the amendment. The Commission agrees that the zone wide amendment would increase the potential range of industrial uses on land that is well located in relation to existing services and infrastructure.
16. In their assessment of the amendment's consistency with the Activity Centre policies, the applicant appears to assess North Hobart as being part of the Primary Activity Centre only, which is identified as 'Hobart CBD & immediate surrounds (including waterfront)' in the regional strategy (p 76).
17. Table 1 in section 18 of the regional strategy outlines the types of activity centres comprising the Activity Centre Network in the southern region. It specifically identifies particular centres and where they fit within the network. The Commission notes that North Hobart is not identified on Table 1 as being associated with any activity centre type or as being incorporated within the Primary Activity Centre.
18. Whilst North Hobart forms part of Greater Hobart, this does not necessarily suggest that it forms part of the Primary Activity Centre, nor that it is precluded from being an activity centre in its own right. Neither the applicant nor the planning authority provided an analysis of North Hobart's role within the Activity Centre Network and whether the Light Industrial zoned land should be considered part of the activity centre, or whether the General Business Zone land, consisting of the restaurant and shopping precinct, should be exclusively considered the activity centre.
19. For instance, the North Hobart Specific Area Plan and the Desired Future Character Statements relating to North Hobart's restaurant and shopping precinct in the interim planning scheme may indicate that the General Business zoned land forms its own Specialist Centre as identified in Table 1.
20. Currently the Light Industrial Zone only allows for take away food premises or cafes as discretionary uses within the zone. The amendment to the Use Table across the zone, however, would allow for discretionary consideration of restaurants without qualification across the zone.
21. Whilst the discretionary status would give the planning authority the capacity to refuse the use, the cumulative impact of Food services uses such as restaurants across the Light Industrial Zone may be difficult to control and could potentially act to undermine the role of the restaurant and shopping precinct. Based on the evidence before it the Commission cannot make a finding as to the role of North Hobart in the regional strategy's Activity Centre Network, nor whether the amendment satisfies regional policy AC1.3 which discourages out-of-centre development.
22. The Commission accepts that the amendment is unlikely to generate environmental impacts on a regional scale. The offsite impacts potentially generated by the proposed amendment are considered in the following section.

Suitability of the amendment in the Light Industrial Zone

23. The planning authority outlines how the proposed amendment will bring the interim planning scheme into greater consistency with the status of the Food services and Resource processing use classes under the provisions of Light Industrial Zone Use Table in the State Planning Provisions (SPPs) and a proposed Hobart Light Industrial Zone Specific Area Plan (SAP) in the Hobart draft Local Provisions Schedule (LPS) which is currently being assessed by the Commission. Their section 35 report states:

The Light Industrial Zone under the State Planning Provisions (SPPs) of the Tasmanian Planning Scheme allows for food services as an unqualified discretionary use, and resource processing as a discretionary use...

The proposed Hobart Local Provision Schedule (LPS) includes a Specific Area Plan for the Light Industrial Zone, as the area in Hobart covered by this zone is unique in context given its relatively small lot sizes and proximity to residential land (p 326).

24. To explain the role of the SAP, the applicant's report refers to supporting information considered by the planning authority when resolving to submit a draft LPS to the Commission:

The purpose of the SAP is to accommodate the existing operation of the light industrial areas in North Hobart. These are not representative of a usual industrial estate given the relatively small land size and location in close proximity to residential zones. As such, the range of permitted and discretionary uses provided for in the SPP zone is not appropriate for this area. The specific area plan substitutes the SPP use table and prohibits more intensive uses...

There is no other SPP zone that would be a better fit for this area and as such a Specific Area Plan is required for Hobart's existing light industrial area to support the unique character of the area. The provisions within the SAP are a translation of existing provisions in the Light Industrial Zone in the HIPS2015 (p 7).

25. In considering alternative forms of the amendment, the applicant's report states:

Initially, a site-specific qualification was considered to be the most appropriate form of amendment as global changes to the provisions of the Light Industrial zone would normally require greater analysis than is achievable based on a single development site. However, the endorsement of the Hobart LPS provides a strong justification for the proposed use amendments as this is the future planning direction for the Hobart municipality (p 11).

26. Acknowledging the amendment may result in introducing higher impacting uses across the Light Industrial Zone, the applicant states:

The development controls established under the zone and applicable Codes will ensure that the external impacts of the proposed use can avoid potential for land use conflicts in the adjacent area. The zone use and development provisions would still be applicable (p 11).

27. The applicant also notes that some production capacities under the Resource processing use may require assessment under the *Environmental Management Pollution Control Act 1994*.

28. At the hearing Ms Crawford was asked to provide an outline of any strategic work undertaken to determine the longer term intent for the Light Industrial Zone in North Hobart, given that the current zoning may not be appropriate due to the area's unique characteristics. Ms Crawford indicated that, whilst there was probably a need for the strategic work to be undertaken, it had not at this stage.

Commission's consideration

29. The Commission notes that the introduction of the Food services and Resource processing use (either with or without qualification) would bring the interim planning scheme into greater consistency with the uses allowed under the Light Industrial Zone of the SPPs. However, as outlined in the applicant's report, the planning authority acknowledges that the Light Industrial Zone in the SPPs allows for uses that are not suitable to the character and surrounding uses associated with the light industrial area of North Hobart.
30. The Commission considers that the draft amendment, reflecting the uses in the SAP proposed under the draft LPS, represents a change in policy by opening up restaurant uses and potentially providing for higher impacting food and beverage processing uses across this industrial zone. The Commission is concerned that implementing policy changes, before the strategic work to determine the future direction of the North Hobart light industrial area is undertaken, is premature and that the future of the area and its interaction with surrounding business and residential areas should be resolved prior to such decisions being made.
31. The qualification for the Resource processing use in the proposed draft amendment currently states 'If for food and beverage production'. The Commission notes that, under the interim planning scheme, there is no definition for food and beverage production.
32. The amendment as proposed does not seek to define 'food and beverage production' nor specify the uses within the Resource processing use class that could be approved for the site. The Commission finds that the draft amendment in its current form does not provide sufficient clarity around the Resource processing uses that could be approved on the site.

Suitability of the amendment as a site-specific qualification

33. The applicant indicated in their report and submissions that a site-specific qualification originally formed the request to the planning authority to allow for the uses on a single site at 284A to 284D Argyle Street, North Hobart to allow for a brewery and distillery on site, with tasting and some restaurant facilities.
34. The applicant and the planning authority provided the Commission with a joint submission on 27 March 2020 proposing a modified amendment to apply as a site-specific qualification to the land at 284A to 284D Argyle Street, North Hobart. The modified amendment provides for Discretionary use class Food services to apply with no qualification at the site (as originally requested), and for Resource processing as a new Discretionary use limited to the site and 'for a distillery or brewery'.
35. The submission notes that:

The amendment will introduce a Resource processing (limited to distilleries and breweries) as a discretionary use. Being a discretionary use provides the planning authority with greater control over the introduction of the use on the site. The development controls established under the zone and applicable Codes will ensure that the external impacts of the proposed use can avoid potential for land use conflict in the adjacent area (p 9).
36. In relation to the impact of attenuation areas under the SPPs the submission states:

Attenuation Code. Resource processing associated with "Brewery or distillery" is an activity listed in Table 9.1 only if for a capacity to produce more than 2000L per day. At that volume it is a Level 1 activity and requires a 200m attenuation area for emissions such as odour and noise. The Code provides for performance criteria to be considered for any activities with the potential to cause emissions (p 23).

Commission's consideration

37. The Commission agrees that the controls provided through the zone and the discretionary status of the uses proposed as part of the amendment will provide the planning authority with greater control over potential impacts of future use and development. Further assurance is provided by restricting the uses to a single site, rather than across the whole zone, particularly given that the site will only have a relatively limited production capacity.
38. The Zone Purpose Statements under clause 24.1.1 of the Light Industrial Zone state:
 - 24.1.1.1 To provide for manufacturing, processing, repair, storage and distribution of goods and materials where off-site impacts are minimal or can be managed to minimise conflict or impact on the amenity of any other uses.
 - 24.1.1.2 To promote efficient use of existing industrial land stock.
 - 24.1.1.3 To minimise land use conflict in order to protect industrial viability and the safety and amenity of sensitive land uses in adjacent zones.
 - 24.1.1.4 To ensure that building design and form enhances the streetscape and protects the amenity of the neighbourhood.
39. The Commission is comfortable that the impacts generated by future brewery or distillery uses can be managed in line with the purpose of the Light Industrial Zone. However, the Zone Purpose provides minimal, if any, scope to approve uses that are not related to Light Industrial Activity.
40. The Commission considers that a further modification to the Zone Purpose Statements is appropriate to allow the modified amendment to the Use Table to operate within the interim planning scheme.

State Policies and Resource Management and Planning System Objectives

41. The *State Policy on the Protection of Agricultural Land 2009* and the *Tasmanian State Coastal Policy 1996* are not considered relevant to the draft amendment.
42. The State Policy on Water Quality Management may be relevant to consideration of future use and development of the site. The Commission considers that adequate controls are able to be applied via a use and development permit to manage potential impacts.
43. The Commission finds that, as modified, the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modifications required to draft amendment

44. The Commission does not consider that the draft amendment, as originally requested, meets the regional strategy's Activity Centres policy AC1.3, because there is not sufficient evidence or analysis available to determine the impact that broadening the Food services use class across the Light Industrial Zone would have on the North Hobart restaurant and shopping precinct.
45. The Commission finds that it is premature to allow for restaurants or higher impacting Resource processing uses to be discretionary across the entire Light Industrial Zone given the necessary strategic work to determine the future planning direction of the North Hobart area has not been undertaken.
46. The Commission therefore modifies the draft amendment to limit application of Food services as a qualified discretionary use and Resource processing only if for a distillery or brewery at 284A to 284D Argyle Street, North Hobart.

47. The Commission also modifies the Zone Purpose to insert an additional Zone Purpose Statement at clause 24.1.1.5. The modification will allow for consideration and approval of other uses that support the purpose of the Light Industrial Zone.

Decision on draft amendment

48. 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.

Attachments

Annexure A – Modified amendment

Annexure A

Modified amendment PSA-19-4 of the Hobart Interim Planning Scheme 2015

1) Under the Zone Purpose Statements of the Light Industrial Zone, insert a new clause as follows:

24.1.1.5 To provide for use or development that supports and does not adversely impact on industrial activity.

2) Under the Use Table of the Light Industrial Zone at clause 24.2, insert the following to the discretionary uses:

a. For Food services insert at the end of the qualification:

‘or if at 284A-284D Argyle Street, North Hobart (folio of the Register 104000/1)’; and

b. Add the Resource processing use class with the qualification:

‘Only if for a distillery or brewery at 284A-284D Argyle Street, North Hobart (folio of the Register 104000/1)’.