

TASMANIAN PLANNING COMMISSION

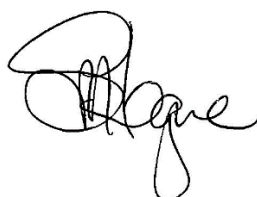
DECISION

Planning scheme	Hobart Interim Planning Scheme 2015
Amendment	PSA-20-1 - rezone 342 Sandy Bay Road, Sandy Bay and a portion of adjacent Crown land from Open Space and Environmental Management to General Residential and extend the overlay for Heritage Precinct SB8 over the rezoned portion of Crown land.
Permit	PLN-20-146 - a permit for development by subdivision to consolidate Crown land and 342 and 344-346 Sandy Bay Road, Sandy Bay to form a single parcel.
Planning authority	Hobart City Council
Applicant	PDA Surveyors
Date of decision	5 June 2020

Decision

The draft amendment is approved under section 42 of the *Land Use Planning and Approvals Act 1993*.

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



Sandra Hogue
Delegate (Chair)

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

A draft amendment to rezone Crown land that contains part of an existing private boatshed and which is to be purchased by the adjoining owner from Environmental Management to General Residential and rezone 342 Sandy Bay Road, Sandy Bay (folio of the Register 76753/1) from Open Space to General Residential. The intention is to bring the whole of the site into the General Residential Zone to reflect the existing established use and development of the land.

It is also proposed that Heritage Precinct SB8 – Sandy Bay Road be extended to cover the area of Crown land proposed to be rezoned to General Residential.

Permit

A permit to, first subdivide part of a Crown riparian reserve to create Lot 1 and secondly, to consolidate Lot 1 and 342 Sandy Bay Road (folio of the Register 76753/1) and 344-346 Sandy Bay Road (folios of the Register 144154/0 and 144154/1), Sandy Bay to create a single parcel.

Site information

The site is located 60m southeast of the intersection of Sandy Bay Road and Marievale Avenue, diagonally opposite the intersection with Earl Street in Sandy Bay.

The site of the draft amendment consists of two separate titles, both known as 342 Sandy Bay Road, Sandy; the first Crown land with an area of 22m² and the second (folio of the Register 76753/1) owned by PJ McCartney with an area of 131.5m², having a combined area of 153.5m² and a frontage to Sandy Bay Road of 10.78m.

The site of the combined permit consists of the above titles, together with 344-346 Sandy Bay Road, Sandy Bay (folio of the Register 144154/1) owned by PJ McCartney with an area of 297m², for a combined area of 450.5m²:

The site forms part of the foreshore of the Derwent River estuary, with an elevation generally between 2m and 6m on the Australian Height Datum (AHD83) and draining with flat slopes towards the estuary to the north. There are no environmental values on the land requiring protection.

The site is developed with a c.1900 conjoined dwelling as part of a multiple dwelling use, a boat shed, driveway and associated site works. Adjoining land is generally used and developed for Residential to the south and southeast, and Passive recreation and Pleasure boat facility for the Derwent Sailing Squadron slipway and marina to the west, with the University of Tasmania playing fields located further to the south-west. The river to the north is used for Passive recreation and Natural values management.

The site has a frontage to Sandy Bay Road to the south, which is a local arterial road under the care and maintenance of the council with a speed limit of 50kmph. The site is fully serviced and lies within the sewerage and reticulated water supply areas.

The land is within the Hobart Interim Planning Scheme 2015 and is zoned General Residential, Open Space and Environmental Management. Parts of the site close to the shoreline are also subject to the Coastal Erosion Hazard Area (Low) and Coastal Inundation Hazard Area (Medium and Low) overlays, while parts of the centre of the site are subject to the Landslide Hazard Band 2013 overlay and is classified as 'low' landslide hazard.

Except for the Crown land, the site is also within the SB8 – Sandy Bay Road Heritage Precinct overlay. Surrounding land is generally in the General Residential Zone to the southeast and further south west, Utilities to the southwest, Open Space Zone to the northwest and Environmental Management Zone to the northeast.

Issues raised in representations

No representations were received, other than a submission from TasWater, which provided a Submission to Planning Authority Notice (SPAN) under section 56S(2) of the *Water and Sewerage Industry Act 2008* advising that TasWater does not object to the draft amendment and has no formal comments for the Commission in relation to this matter and does not require to be notified of nor attend any subsequent hearings.

Planning authority's response to the representations

The planning authority considered the representations and the General Manager reported by letter under delegation provided on 10 October 2005.

The planning authority recommended that the draft amendment be approved in the form exhibited.

The planning authority also noted minor errors in condition SUB s1 of the combined permit where the condition referred to stratum plan 144514 rather than 144154. In addition, the condition should not have referred to 'common property' for the stratum plan in the included 'Reasons for condition'.

The planning authority submits the permit condition should be modified as shown below:

SUB s1

An amendment to Strata Plan ~~144514~~144154 must be submitted to Council in accordance with the requirements of sections 19 and 31 of the *Strata Titles Act 1998*, once the Planning Scheme Amendment to rezone Lot 1 and the land comprised in CT 76753/1 to General Residential has been approved.

Reason for condition

To enable Lot 1 and CT 76753/1 to be added to CT 144154/1 and ~~the common property for~~ Strata Plan 144514 (sic).

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. No representations were received and the Commission did not hold 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.
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. 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. Subsections 300(2)-(5) inclusive relate to the effect of amending a local provision with respect to common provisions. These matters are not relevant, as to the draft amendment has no implications for 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), and the interim planning scheme.
- 9. 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.

Regional planning

- 10. The stated purpose of the draft amendment is to reconcile/align long standing land use and development with ownership, zones and lot layout.
- 11. The applicant submits the regional strategy seeks to apply the Environmental Management Zone, Recreation Zone or Open Space Zone to vacant land in a coastal area. However, while the zoning generally reflects the use and development pattern of the surrounding area, the boundary between the Open Space, Environmental Management and General Residential Zones are incorrectly mapped. The draft amendment seeks to correct this anomaly.
- 12. The planning authority submits the intent of the draft amendment is to bring the site into greater uniformity and reflect the existing established development and use of the land, and existing structures built on the land.
- 13. The planning authority submits the proposal does not contradict the regional strategy because although the strategy seeks to apply an Environmental Management, Recreation or Open Space Zone to vacant land in a coastal area, the site is not vacant land and the rezoning will better reflect the existing pattern of zoning in this area (delineating public and private land) and will correct a zone boundary anomaly.
- 14. The planning authority submits rezoning the Crown land from Environmental Management to General Residential will better reflect the existing and long-standing land use of a private boatshed likely to have been constructed in c. 1920s. Further, the rezoning of the driveway and part of the boatshed from Open Space to General Residential recognises this land is privately used and not available for public recreation.
- 15. The planning authority submits the current Open Space Zone is inappropriate and that rezoning to General Residential reflects the existing use of the lot in conjunction with the adjoining dwelling, aligns with the General Residential Zone Purpose Statements and clarifies the delineation between public and private land and uses in the area.

16. The planning authority submits that the size, location and configuration of the land proposed for rezoning is such that it will not have any regional implications.
17. The planning authority considers the amendment consistent with the regional strategy in that it:
 - adopts a more integrated approach to planning and infrastructure by providing consistent zoning that reflects existing and future uses;
 - supports the managing of residential growth and zoning;
 - delineates the separation between private and public land; and
 - creates liveable communities.

Commission's consideration

18. The Commission is satisfied that the amendment will have no impact on the use and development of the region as an entity in environmental, economic or social terms and is, as far as practicable, consistent with the regional land use strategy.

Heritage Precinct

19. The applicant submits the existing boat shed is constructed in matching materials to that of the principal dwelling and it is unknown if the boat shed holds any historic values, but may provide some link to the nautical historic character of the area.
20. The applicant submits the consolidation of ownership and zoning to match the residential use of the site will further secure the conservation of the heritage precinct.
21. The planning authority submits the Sandy Bay Heritage Precinct 8 is residential in nature and is significant because of the key historical role of the road in the development of the area, the large number of exceptionally fine residences dating from 1830, the small number of commercial buildings creating a village character, and the very fine groups of residential buildings representing varying phases of development.
22. The planning authority submits extending the boundary of Heritage Precinct SB8 to cover the entirety of the boatshed will ensure any future development will require assessment under the Historic Heritage Code.

Commission's consideration

23. The Commission agrees that extending the Sandy Bay Heritage Precinct 8 to the whole of the General Residential Zone will assist in maintaining the cultural heritage values of the site which contributes to the heritage significance of the precinct.

State Coastal Policy 1996

24. The subject site is within 1km of the coast, so that the *State Coastal Policy 1996* (coastal policy), as amended on 25 February 2009, applies.
25. The planning authority submits the proposed amendment is consistent with the outcomes of the coastal policy as it reflects existing urban residential development on land that is already designated for this use and there are no relevant issues associated with the draft amendment.

Commission's consideration

26. The Commission accepts the submission of the planning authority and finds that the draft amendment is in accordance with the coastal policy.

National Environmental Protection Measures

27. National Environmental Protection Measures (NEPM) are broad framework setting statutory instruments made under the *National Environment Protection Council (Tasmania) Act 1995*. Section 12A of the *State Policies and Projects Act 1993* provides that a NEPM is taken to be a State Policy approved by both Houses of Parliament.
28. The *National Environment Protection (Assessment of Site Contamination) Measure 1999* deals with site contamination. Section 6(5) requires a planning authority to ensure that a contaminated site that is being considered for a change of use is suitable for its intended use.
29. The applicant submits that the NEPM is not relevant.
30. The planning authority notes a site investigation submitted by the applicant reveals there is no information to suggest potentially contaminating activities have existed on the subject site.
31. While the planning authority submits there have been land uses on adjoining sites that have deposited contaminants, previous testing of soils on the adjoining property indicated there is little or no potential risk to human and environmental health, but identified pockets of contaminated soils that require management if excavated. The planning authority submits that no excavation is proposed as part of the development application.

Commission's consideration

32. The Commission accepts the site is not potentially contaminated and notes the site is currently or has previously been used for Residential and that no works are proposed.
33. On this basis, the Commission is satisfied that the site is suitable for the intended use as required by the NEPM.

State Policies and Resource Management and Planning System Objectives

34. Subject to the above matters, the Commission finds that there are no State policies relevant to the draft amendment and that the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Decision on draft amendment

35. The Commission finds that the draft amendment is in order and gives its approval.

Consideration of the permit

36. Under section 43H, the Commission is required to review the planning authority's decision as reported under section 43F.
37. The proposed development is limited to the consolidation of three separate titles, folio of the Register 76753/1 of 131.5m², Lot 1 of 22m², being part of adjoining Crown land, and folio of the Register 144154/1, to create a single parcel of 450.5m². The development is required to be assessed against a number of relevant Performance Criteria.
38. The planning authority submits the consolidated lot will have a frontage of 10.78m containing a driveway that is consistent with the existing frontage enjoyed by the dwelling and that the dwelling will continue to enjoy passive surveillance of the road and adjoining public open space. On this basis, the planning authority submits the development complies with Performance Criteria P3 of clause 10.6.1.
39. Clause E3.4(b) provides that subdivision within the low landslide hazard area that creates no more than two lots is exempt from the Landslide Code.
40. Clause E11.4.1 (b) provides that development that does not involve clearing of vegetation or soil disturbance is exempt from the Waterway and Coastal Protection Code.
41. The council's Cultural Heritage Officer assessed the development and says the consolidation of lots will not result in any detriment to the cultural heritage significance of the precinct, will not create a pattern of subdivision unsympathetic to the cultural heritage significance and will have no impact on future incompatible development. On this basis, the planning authority submits the development complies with Performance Criteria P1 of clause E13.9.3.
42. The council's Environmental Development planner assessed the development against the relevant provisions of the Inundation Prone Areas Code and says the habitable buildings, access and services are located outside the inundation hazard areas. On this basis, the planning authority submits the development complies with Performance Criteria P1 of clause E15.8.1(c).
43. The council's Environmental Development planner assessed the development against the relevant provisions of the Coastal Erosion Code and says the habitable buildings and access is outside the coastal erosion hazard area and that the development will not change the erosion increase risk or increase reliance on infrastructure or need for future remedial works. On this basis, the planning authority submits the development complies with Performance Criteria P1 and P2 of clause E16.8.1.

Resource Management and Planning System Objectives

44. 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

45. Condition 1 of the permit provides that the 'use and/or development' must be substantially in accordance with the documents in the application 'except where modified below'. In this case, the permit is for the site to be developed by subdivision only without any associated change in use. Furthermore, the permit does not require any modifications to be made, so that the latter qualification is unnecessary.

46. The Commission finds that condition GEN should be modified as follows:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-20-146 - 342 SANDY BAY ROAD SANDY BAY TAS 7005 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

47. Condition SUB s1 is proposed to be modified by the planning authority as noted above.
48. Subsection 43C(3) provides that that the decision on a combined permit is to be made by reference to the provisions of the planning scheme as amended by a draft amendment. It is therefore unnecessary to qualify the condition as dependent on the approval of the amendment.
49. Furthermore, the Commission considers this condition to be beyond power, as it derives its purpose through the *Strata Titles Act 1998* and so is not for a proper planning purpose¹, being outside the planning legislation. This view strengthened by clause 4, which defines subdivide and subdivision to mean 'to divide the surface of a lot by creating estates or interests giving separate rights of occupation otherwise than by ... (d) the creation of a lot on a strata scheme or a staged development scheme under the *Strata Titles Act 1998*' and by section 80(1) of the *Local Government (Building & Miscellaneous Provisions) Act 1993*, which defines subdivide and subdivision in the same terms.
50. The Commissions considers condition SUB s1 unsuitable as drafted or as proposed to be modified and finds that it should be removed, rather than modified. The condition may instead be included as advice.
51. The Commission is concerned with conditions only and does not normally include advice or notes as part of its decision, unless these contain inaccuracies. For this reason, the permit advice is not included in Annexure B.

Decision on permit

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

Attachments

Annexure A – Modified permit

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

Annexure A

Modified permit PLN-20-146

APPLICATION NO PLN-20-146
ADDRESS 342 SANDY BAY ROAD, SANDY BAY & 1 / 344 - 346 SANDY BAY ROAD &
 ADJACENT CROWN LAND
PROPOSAL SUBDIVISION (LOT CONSOLIDATION)
PERMIT DATE

The following conditions and restrictions apply to this permit:

The development of the land by Subdivision (Lot Consolidation) subject to the following conditions and restrictions.

GEN

***The development must be substantially in accordance with the documents and drawings that comprise PLN-20-146 - 342 SANDY BAY ROAD SANDY BAY TAS 7005 - Final Planning Documents.**

Reason for condition

To clarify the scope of the permit.

***permit conditions modified by the decision of the Tasmanian Planning Commission dated 5 June 2020.**