

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Hobart Interim Planning Scheme 2015
Amendment	PSA-22-2 - rezone a portion of 44 Summerhill Road, West Hobart from Environmental Living Zone to General Residential Zone
Planning authority	Hobart City Council
Applicant	JMG Engineers and Planners for the land owner
Date of decision	9 June 2023

Decision

The draft amendment is modified under section 37(2) of the *Land Use Planning and Approvals Act 1993*, as set out in Annexure A, and is approved under section 42.

John Ramsay
Executive Commissioner

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

The draft amendment is to rezone a portion of 44 Summerhill Road, West Hobart (FR 176526/1), from the Environmental Living Zone to the General Residential Zone to clarify the zone boundary following a recent subdivision approval.

On 21 December 2022, the planning authority resolved to initiate and certify the draft amendment and request the Commission to dispense with the requirements of sections 38 to 41 of the *Land Use Planning and Approvals Act 1993* (the Act) in accordance with section 37(1) of the Act.

Site information

44 Summerhill Road comprises approximately 1.3ha and is currently split zoned across the Environmental Living Zone and the General Residential Zone. The land in the General Residential Zone contains a dwelling and the land proposed for the General Residential Zone contains a patio and retaining wall associated with the dwelling.

The Bushfire Prone Areas Code applies to the land in both zones and the Biodiversity Code applies to the land in the Environmental Living Zone, including the portion proposed for the General Residential Zone.

Referral to regulated entities

The draft amendment was referred to TasWater under section 56S of the *Water and Sewerage Industry Act 2008*. In response TasWater stated that it had no objection to the draft amendment and that TasWater did not wish to attend any hearing.

Consideration of the draft amendment

1. Under section 37(1) of the Act, the Commission may dispense with the requirements of sections 38, 39, 40 and 41 in relation to the draft amendment if the Commission is satisfied that the draft amendment is for the purpose of:
 - (i) the correction of any error in the planning scheme; or
 - (ii) the removal of any anomaly in the planning scheme; or
 - (iii) clarifying or simplifying the planning scheme; or
 - (iv) removing any inconsistency between the planning scheme and any Act; or
 - (v) making procedural changes to the planning scheme; or
 - (vi) amending the planning scheme to bring it into conformity with the model planning scheme framework; or
 - (via) the removal or amendment of any local provision of the scheme that is, under [section 30EA](#), inconsistent with another provision; or
 - (vib) ensuring the effective operation of a planning purposes notice; or
 - (vic) ensuring that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme; or
 - (vid) enabling an alteration of the zoning of land to which an interim planning scheme applies, or has applied, so that the zoning that applied to the land before the interim planning scheme applied (**the former zoning**) may become the zoning that most closely corresponds to the former zoning; or

- (vie) implementing an agreed amendment; or
 - (vii) for any other prescribed reason; and
- the public interest will not be prejudiced.

Application of the General Residential Zone

2. On 11 May 2022, Hobart City Council approved a two lot subdivision (1 lot plus balance) to facilitate the creation of a new lot containing the dwelling with frontage to Summerhill Road. The bulk of this title is in the General Residential Zone, however, a 60m² portion to the rear of the Lot 1 (comprising the rear patio and retaining wall of the dwelling) is in the Environmental Living Zone. A condition of the subdivision permit requires that the portion of Lot 1 in the Environmental Living Zone be rezoned to General Residential prior to the sealing of the final plan.
3. The planning authority's section 35 report states that the draft amendment satisfies section 37(1)(a)(i) and (ii) of the Act as the draft amendment is to correct an error or remove an anomaly in the planning scheme as a result of the subdivision approval.
4. The planning authority's section 35 report also notes that approval of the draft amendment would result in the General Residential Zone being applied outside the Urban Growth Boundary, which is aligns with the General Residential Zone in this location.
5. Subsequent to the planning authority submitting the draft amendment, amendments have been made to the relevant parts of the Southern Tasmania Regional Land Use Strategy (regional strategy). The changes impact assessment of the draft amendment against the regional strategy. The regional strategy's Policy SRD 2.12 allows consideration of the rezoning of land outside the Urban Growth Boundary for urban development if, with regard to the strategic intent of the Urban Growth Boundary under SRD 2 to manage and contain growth across greater Hobart, it:
 - (a) shares a common boundary with land zoned for urban development within the Urban Growth Boundary and:
 - i. only provides for a small and logical extension, in the context of the immediate area, to land zoned for urban development beyond the Urban Growth Boundary; or
 - ii. does not constitute a significant increase in land zoned for urban development in the context of the suburb, or the major or minor satellite as identified in Table 3, and is identified in a contemporary settlement strategy or structure plan produced or endorsed by the relevant planning authority; and
 - (b) can be supplied with reticulated water, sewerage and stormwater services; and
 - (c) can be accommodated by the existing transport system, does not reduce the level of service of the existing road network, and would provide for an efficient and connected extension of existing passenger and active transport services and networks; and
 - (d) results in minimal potential for land use conflicts with adjoining land uses.
6. In its section 35 report, the planning authority submitted that the draft amendment is consistent with the former regional strategy policy SRD 2.12 as the draft amendment:
 - comprises the residual area of a lot that is partially outside the Urban Growth Boundary and is less than 2ha;
 - does not increase the development potential of the lot;
 - does not facilitate urban development; and
 - will not generate the potential for land use conflicts.

Commission consideration

7. The Commission finds that the site satisfies the criteria of regional strategy policy SRD 2.12 for consideration of a rezoning for urban development for the reasons stated by the planning authority as well as:
 - the amendment furthers SRD 2 by reflecting the strategic intent of the Urban Growth Boundary;
 - the site sharing a common boundary with land in the urban growth boundary zoned for urban development and providing for a small and logical extension, in the context of the immediate area; and
 - the amendment does not affect the remainder of the property's existing access to reticulated and transport services.
8. The Commission considers that, while the history and timeline of approvals for the development at the rear of Lot 1 is unknown, the development forms part of the dwelling curtilage and is clearly associated with the portion of the site currently zoned General Residential. For this reason the zone boundary represents an anomaly consistent with the provisions of s37(1)(a)(i) of the Act.
9. In addition, the Commission is satisfied that the public interest will not be prejudiced by dispensing with the requirements of sections 38, 39, 40, and 41 of the Act as the draft amendment:
 - reflects the existing residential use and development of the land;
 - does not facilitate change to the nature of use and development in the locality or region; and
 - only impacts the 2 land titles resulting from the subdivision approval and currently under the same ownership.

Application of the Biodiversity Protection Code

10. The planning authority's section 35 report does not address the application of the Biodiversity Code to the rear portion of Lot 1 proposed for application of the General Residential Zone.

Commission consideration

11. The Commission notes that the provisions of the code relate to the clearance and conversion of native vegetation and the subject portion of Lot 1 is cleared and extensively developed for residential purposes. The Commission considers that the provisions of the code would have no work to do in either the proposed zone or current zone.
12. The Commission considers that the application of the overlay to the subject land is based on the application of the Environmental Living Zone, rather than the use and development on the land. The Commission further notes that the overlay has not been applied to surrounding land in the General Residential Zone, its retention represents an anomaly in this location. The Commission is satisfied that modification of the draft amendment under section 37(2) to include removal of the Biodiversity Protection Area overlay from the subject land is consistent with s37(1)(a)(ii) of the Act.
13. In addition, the Commission is satisfied that the public interest will not be prejudiced by dispensing with the requirements of sections 38, 39, 40, and 41 of the Act as the draft amendment reflects the existing residential use and development of the land.

Modifications required to draft amendment

14. Under section 37(2) the Commission may modify the draft amendment before approving the draft amendment under section 42.

15. The draft amendment is modified, as set out in Annexure A, to include removal of the Biodiversity Protection overlay from the subject land, and to make the following technical corrections:
- refer to 'folio of the Register' rather than 'FR';
 - to indicate the split zone boundary in accordance with the advice provided in Commission Practice Note 7; and
 - to include coordinates for the split zone boundary.

Decision on draft amendment

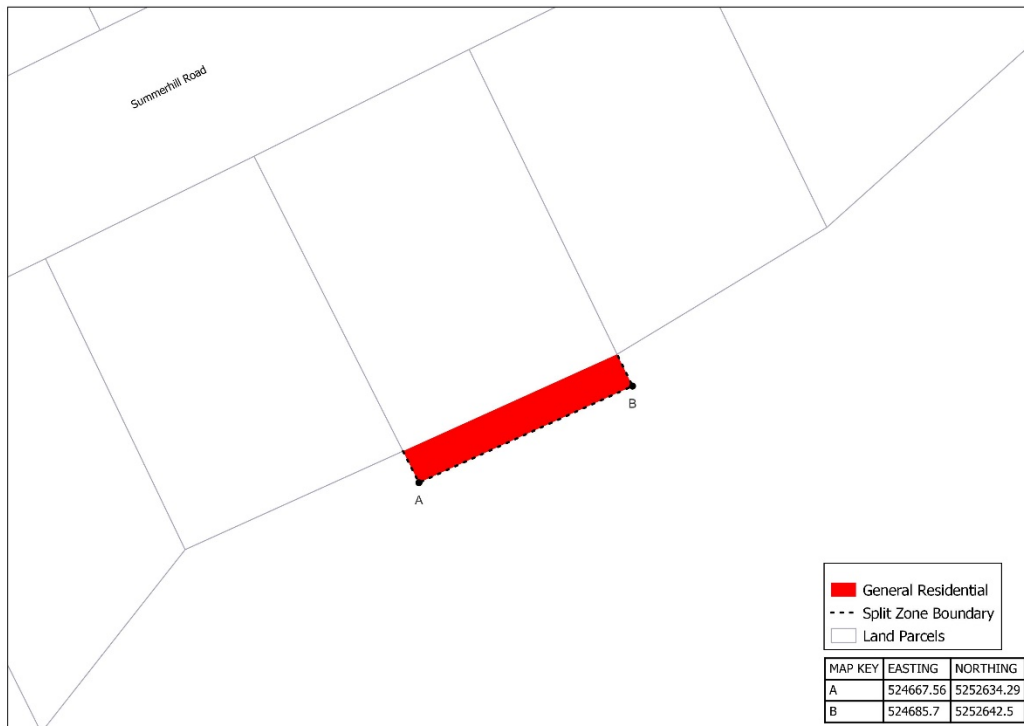
16. The draft amendment is modified under section 37(2) of the *Land Use Planning and Approvals Act 1993*, as set out in Annexure A, and is approved under section 42.

Attachments

Annexure A – Modified amendment

Annexure A**Modified amendment PSA-22-2, Hobart Interim Planning Scheme 2015**

1. Amend the zoning map by rezoning the land indicated at 44 Summerhill Rd, West Hobart (folio of the Register 176526/1) from the Environmental Living Zone to the General Residential Zone.



2. Remove the Biodiversity Protection Area overlay from 44 Summerhill Road, West Hobart (folio of the Register 176526/1), as shown below:

