

TASMANIAN PLANNING COMMISSION

DECISION

Planning scheme	Kingborough Interim Planning Scheme 2015
Amendment	PSA-2019-5 - rezone 50 Huntingfield Avenue, Huntingfield from Light Industrial to Community Purpose
Permit:	DA-2019-655 for land to be used for Educational and Occasional Care (secondary school) and developed by alteration to car parking area and refacing an existing ground based sign
Planning authority	Kingborough Council
Applicant	All Urban Planning Pty Ltd obo Tasmanian Catholic Education Office
Date of decision	24 September 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 B.



Mr Peter Fischer
Delegate (Chair)



Mr Robin Nolan
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

To rezone land at 50 Huntingfield Avenue, Huntingfield (folio of the Register 131210/62) from the Light Industrial Zone to the Community Purpose Zone.

The intent of the amendment is to allow the site to be used and developed as an additional senior school campus for the nearby St Aloysius Catholic College.

Permit

A permit for the land at 50 Huntingfield Avenue, Huntingfield (folio of the Register 131210/62) to be used as a secondary school for 565 students by the year 2023, and developed by converting part of an existing car park to a bus drop-off and pick-up area and refacing an existing ground based sign with the name and logo for the new school.

No external building works are proposed as part of the permit.

Site information

The site is located approximately 650m south of the intersection of Huntingfield Avenue with Algona Road and the Channel Highway, on the southern edge of the Huntingfield industrial area.

The site is owned by Institute of Mine Seismology Pty Ltd, with an area of 3.055ha and frontage of approximately 125m to Huntingfield Avenue to the west and 85m to Ascot Drive to the north.

The land has an elevation between approximately 53m and 65m on the Australian Height Datum (AHD83 and drains with gentle slopes towards Coffee Creek to the east.

The site is developed with a 5,200m² office building and carpark previously used by Vodaphone as a call centre.

Adjoining land is generally used for residential to the south and west and light industrial to the north and east. The St Aloysius Catholic College is located approximately 200m to the south at 12 Nautilus Grove, Huntingfield, while the Peter Murrell Reserve is located to the east.

Access is provided to Huntingfield Avenue to the west, which is a full access local collector road under the care and maintenance of the council.

The site is fully serviced and lies within the TasWater water and sewer service areas. Stormwater drains to Ascot Drive and then to Coffee Creek. Electricity and telecommunications services are provided.

The site is within the Kingborough Interim Planning Scheme 2015 (interim planning scheme) and is zoned Light Industrial. The site is also subject to the Attenuation Area overlay associated with industrial land to the north.

Surrounding land is generally in the Light Industrial Zone to the north and east and General Residential Zone to the south and west. Land immediately to the south is zoned Environmental Management.

Educational and occasional care is a prohibited use class in the Light Industrial Zone, unless for an employment training centre use, and a permitted use class in the Community Purpose Zone.

Issues raised in representations

Two representations were received from the following:

- TasWater; and
- TasFire.

The representors raised the following issues:

- No objections were raised by either representor, while TasWater provided seven conditions to be imposed on the permit.
- TFS confirmed it had no objection to the proposal and did not intend to submit a representation.

TasWater provided a Submission to Planning Authority Notice SPAN TWDA 2019/01772-KIN under subsection 56S(2) of the *Water and Sewerage Industry Act 2008*, advising it does not object 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.

Under section 56P(1) of the *Water and Sewerage Industry Act 2008*, the TasWater submission is taken to be a representation made under subsection 43F(5).

Planning authority's response to the representations

The planning authority considered the representations and resolved that:

- a) Council notes the representations to PSA-2019-5 and DA-2019-655 together with the officer's response;
- b) Council recommend to the Tasmanian Planning Commission, that the conditions of TasWater, provided in Appendix A of Draft Development Permit DA-2019-655, is to be replaced with their amended representation received by Council on 26 May 2020; and
- c) Pursuant to section 39(2)(a) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council forward a copy of this report to the Tasmanian Planning Commission.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on the 1 September 2020.

Prior to the hearing, one delegate made an inspection of the site.

Appearances at the hearing

Planning authority:	Mr Adriaan Stander, Strategic Planner (land use planning) Ms Xin Barbour, Planning Officer (land use planning) Mr Simon Johnson, Development Engineer (traffic management)
Applicant:	Mr Frazer Read, All Urban Planning Pty Ltd (land use planning) and Mr Adam Mulcahy for Tasmanian Catholic Education Office
Representors:	Mr Jason Taylor, Development Assessment Manager, for TasWater by telephone.

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. A hearing was convened to assist the Commission consider the issues in the representations.
3. The amendment has been initiated and certified by the Kingborough 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. 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.
6. 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.
7. Section 32(1)(e) is not considered relevant to the draft amendment as the land does not adjoin an adjacent municipal area.
8. Under section 32(1)(f) the 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), Kingborough Land Use Strategy, the Kingborough Council Strategic Plan 2015-2025, 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.

Strategic planning

10. The applicant submits the draft amendment will further the regional strategy's policies, in particular:
 - SI 1 Provide high quality social and community facilities to meet the education, health and care needs of the community and facilitate healthy, happy and productive lives.
 - SI 1.3 Provide social infrastructure that is well located and accessible in relation to residential development, public transport services, employment and education opportunities.

11. The applicant submits the proposed improved educational facility, centrally located to the residential population of the southern areas of Greater Hobart, including the Government's Housing Land Supply Land at Huntingfield intended to further Affordable Housing Outcomes, will also further regional policy SI 2:
 - SI 2 Provide for the broad distribution and variety of social housing in areas with good public transport accessibility or in proximity to employment, education and other community services
12. The applicant also submits the draft amendment will assist the adaptive reuse of existing building stock and further broader objectives for the efficient and equitable use of resources and infrastructure.
13. The planning authority considered the draft amendment against the policies of the regional strategy it considered most relevant,
 - IA 1 Identify, protect and manage the supply of well-sited industrial land that will meet regional need across the 5, 15 and 30 year horizons.
 - SI 1 Provide high quality social and community facilities to meet the education, health and care needs of the community and facilitate healthy, happy and productive lives.
14. The planning authority submits the loss of light industrial zoned land is not likely to impact on the supply of industrial land in the region, as the existing building and site configuration cannot logically be adapted for future use that would further the purpose of the Light Industrial Zone. Additionally, the planning authority submits urban growth further to the west and south of the site is likely to create a need for additional community and educational facilities.
15. The planning authority considers that having regard to surrounding land uses and expected urban outcomes sought for the locality, the draft amendment will provide an appropriate transition from the Light Industrial Zone to the General Residential Zone.
16. The planning authority also submits the draft amendment will allow an appropriate reuse of the existing building on the site to augment and complement the nearby St Aloysius Catholic College Campus.
17. The planning authority concludes the draft amendment is consistent with the regional strategy.
18. The planning authority also considers the draft amendment is compatible with the Kingborough Land Use Strategy to use the site for other than industrial uses and consistent with the Kingborough Council Strategic Plan 2020-2025.

Commission's consideration

19. The Commission accepts the conclusion of the planning authority in relation to the regional and local strategies and finds that the draft amendment will, as far as practical, avoid potential for land use conflicts, not conflict with the requirements of section 300 and be, as far as is practicable, consistent with the regional strategy.

State Policies and Resource Management and Planning System Objectives

20. The site is not agricultural land under the State Policy on the Protection of Agricultural Land 2009.
21. The site is not within 1 km from the coast, so the State Coastal Policy 1996 does not apply.

22. Surface and ground water quality may be managed consistent with the State Policy on Water Quality Management 1997.
23. National Environmental Protection Measures (NEPMs) 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 an NEPM is taken to be a State Policy approved by both Houses of Parliament.
24. The land is currently zoned Light Industrial and is proposed to be used for a sensitive use under the potentially Contaminated Land Code. It is therefore necessary to consider whether the land is suitable for the intended uses allowed under the proposed Community Purpose Zone, as required by subclause 6(5) of the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (the NEPM).
25. No evidence is provided that the site has been used for any potentially contaminating use, so that the draft amendment is considered to comply with the NEPM.

Commission's consideration

26. The Commission accepts there is no evidence to show that the site is potentially contaminated. Future use and development may be managed through the provisions of the interim planning scheme.
27. The Commission finds that no other State Policies are relevant to the draft amendment.
28. The Commission finds that the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1

Decision on draft amendment

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

Consideration of the permit

30. Under section 43H, the Commission is required to review the planning authority's decision as reported under section 43F.
31. The draft permit purports to allow for development that includes 'signage'. The application documents show this 'signage' to be the refacing of a legally existing sign. 'Refacing' is not a term defined in the interim planning scheme, but is taken to mean a change to the graphics of an existing sign.
32. Clause E17.4.3 of the Signs Code provides:
 - E17.4.3 Changes to the graphics of a legally existing sign, including text, graphic design and colour is exempt from requiring a permit under this planning scheme.
33. Under clause E17.4.3, the 'refacing' of an existing sign is exempt from the provisions of the Signs Code and therefore not relevant to the permit. The reference to 'signage' is required to be removed from the permit.

Resource Management and Planning System Objectives

34. The Commission finds that the permit as modified by this decision seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modification to permit conditions

35. Turning to the conditions generally, at the hearing, the parties agreed the permit conditions require modification and undertook to provide submissions on the wording of the modified conditions.

The Commission agreed and so directed.

36. Condition 2 of the permit provides as follows;

2. The developer must enter into a planning agreement under section 71 of the *Land Use Planning and Approvals Act 1993* which provides a mechanism to reassess the need for traffic management measures for the proposed use and development into the future as the number of students and staff increase with the school's expansion.

The Part 5 agreement must require an amended Traffic Impact Assessment (TIA) by the same consultancy to be provided no later than 31 October 2022 on the basis of a revised traffic projection to the Year 2023. The TIA must include, but not be limited to, the following:

- traffic surveys conducted during the ordinary schooling year to ensure the most appropriate information is captured.
- recommendations for any road or traffic modifications required to manage issues of traffic movement and generation as a result of the use of the site as a school.
- suggested timing for any such works to be undertaken.
- any limitations, if necessary, on the number of students or staff on the site to ensure that offsite impacts are minimised.

The Part 5 agreement must detail:

- that any modifications to the road network or infrastructure must be through written agreement with Council and the Department of State Growth as appropriate.
- the timing of any required (and agreed) works must be in agreement with the Council before the number of students reaches 450 (it is expected that the increased number of staff will correlate with the number of students and therefore is not specified).
- that any costs of modifications to the road network or infrastructure must be borne by the owner/operator of the site.

The terms of the Part 5 agreement must be to the satisfaction of the Manager Development Services.

All costs associated with drafting and registering the Part 5 Agreement on the title are to be borne by the developer. All terms of this Agreement must be complied with once executed.

Please note, planning permits containing a requirement for a Part 5 Agreement are not valid until such time as the Agreement is executed, as specified in the *Land Use Planning and Approvals Act 1993*. Therefore the above Agreement must be signed and sealed prior to the Planning Permit coming into effect and commencement of works. A template, and a checklist for the process of drafting and lodging such an Agreement, may be obtained from Council's planning team.

37. At the hearing, the applicant raised concern with the requirement for the further TIA to be carried out by the same consultancy, noting this was an unnecessary restriction on trade and not for a proper planning purpose. The Commission agrees.

38. The Commission considers this condition to be invalid for uncertainty, as the works required cannot be determined at the time the permit is issued and is subject to the approval of a body other than the planning authority (the Department of State Growth).

39. Condition 3 provides as follows:

- 3 The approval is granted for a maximum of 565 students at 50 Huntingfield Avenue campus and 362 students at the existing Nautilus Grove campus in the year 2023.

40. The Commission considers this condition is not for a proper planning purpose, as it relates to land that is not included in the application or part of the site. That portion of the condition is deleted.

41. Both the applicant and the planning authority made submissions concerning the wording of condition 2 and 3 in similar terms. It was submitted that the use be limited to not more than 565 students and that the requirements for traffic management works be assessed before the use exceeds 450 students. An agreement under Part 5 is to be registered on the title requiring that a further TIA be carried out before the use exceeds 450 students. The Commission prefers the modifications submitted by Mr Read, but with further modifications as follows:

- 2 This approval is granted for a maximum of 565 students
- 3 The developer must enter into a planning agreement under section 71 of the *Land Use Planning and Approvals Act 1993* which provides a mechanism to reassess the need for traffic management measures for the proposed use and development once the number of students reaches 450. The Part 5 agreement must require an amended Traffic Impact Assessment (TIA) before student numbers exceed 450. The TIA must include, but not be limited to, the following:
 - traffic surveys conducted during the ordinary schooling year;
 - recommendations for any modifications required to the existing site access to manage issues of traffic movement as a result of the use of the site as a school in consultation with Council and Department of State Growth;
 - suggested timing for any such works to be undertaken; and
 - that any costs of modifications to the access must be borne by the owner/operator of the site.

The terms of the Part 5 agreement must be to the satisfaction of the Manager Development Services. All costs associated with drafting and registering the Part 5 Agreement on the title are to be by the developer. All terms of this Agreement must be complied with once executed. Please note, planning permits containing a requirement for a Part 5 Agreement are not valid until such time as the Agreement is executed, as specified in the *Land Use Planning and Approvals Act 1993*. Therefore the above Agreement must be signed and sealed prior to the Planning Permit coming into effect and commencement of works. A template, and a checklist for the process of drafting and lodging such an Agreement, may be obtained from Council's planning team

42. Condition 4 provides as follows:

- 4 Hours of operation must be within:
 - (a) 8.00 am to 8.00 pm Mondays to Fridays inclusive;
 - (b) 9.00 am to 6.00 pm Saturdays;
 - (c) 10.00 am to 5.00 pm Sundays and Public Holidays;

except for office and administrative tasks.

43. The applicant considered this condition was unnecessary, given the nature of the proposed use and the existing uses on adjoining industrial land. Even if included, the applicant considered the hours to be too restrictive, as they could affect the operation of night classes, school concerts, parent/teacher nights and so on. The planning authority accepted that this condition may be omitted.
44. The Commission considers the proposed use satisfies the performance criteria of clause 17.3.1 of the Community Purpose Zone and the condition is deleted.
45. Condition 6 provides as follows:
- 6 Prior to the commencement of operation, a vehicle movement plan must be established and communicated to all carpark users. The plan must include appropriate signage within the carpark to guide users.
46. The Commission considers this condition to be invalid for uncertainty, as it cannot be enforced. The planning authority in reply considered that a better approach would be to reword the two objectives into a single requirement for signage setting out the traffic management arrangements. On this site adequate parking is provided for the proposed use and the internal management of traffic is a matter for the occupier to manage, the condition is considered superfluous and should be deleted.
47. Condition 7 provides as follows:
- 7 Prior to the commencement of operation, school zone speed (40km/h) and appropriate signage plan must be established for the site by a suitable qualified traffic engineer. The plan must be approved by the relevant Authorities (Dept of State Growth and Council) prior to implementation. A Permit to carry out works within a Council road reservation must be obtained prior to any works commencing within the Council road reservation for implementation of the school zone.
48. The planning authority submitted that this condition be reworded as follows:
- 7 Prior to the use, a school zone speed (40km/h) and appropriate signage plan must be established for the site by a suitable qualified traffic engineer. The plan must be approved by the relevant Authorities (Dept of State Growth and Council) prior to implementation.
- Note: It is a standard requirement and condition of consent that any modifications to road infrastructure required to establish a school zone must be done in consultation with the Department of State Growth. Any costs associated with the school zone must be borne by the owner/operator.
49. The Commission considers this condition should be modified as submitted by the planning authority.
50. The drawings forming part of the application show bus parking being developed on part of the existing car park. However, Advice B on the permit, refers only to a 'possible bus parking area if implemented'. In addition, the TIA accompanying the application notes that if bus parking area is constructed, the access driveway should be widened to accommodate a bus turning movement and allow a bus to safely enter the site from Huntingfield Drive.

51. The Commission considers that suitable conditions for bus parking and access are required. The parties agreed that development of bus parking forms part of the permit. The planning authority submitted an additional permit condition, as follows:

- 4 The bus parking area (if implemented) requires a separate works approval. A Permit to carry out works within a Council road reservation must be obtained prior to any works commencing within the Council road reservation.

Note: Currently, there is one bus stop in Huntingfield Business Park near Algona Roundabout. There will be additional school bus services in the future and they will access either the existing Nautilus Grove campus or the proposed new 50 Huntingfield Avenue campus, if the dedicated bus area is constructed.

52. The Commission considers this should be modified as follows:

- 4 The proposed bus parking area (if implemented) requires separate works approval before any work is carried out within the Council road reservation.

Note: A works approval for work within the Council road reservation may be obtained from the Council.

53. The reworded permit conditions received are generally supported and adopted by the Commission, except as noted above. The modified permit is included as Annexure A.

TasWater conditions

54. The TasWater notice to the planning authority provided conditions to be included in the permit under sections 56P and 56S of the *Water and Sewerage Industry Act 2008*.

55. Condition seven on the TasWater notice provides for the payment by the developer of a fee for development assessment and for consent to register a legal document.

56. At the hearing, the Commission questioned whether conditions 1-6 were for a proper planning purpose and whether they were contrary to section 9 of the *Building Act 2016*, subsection (3) of which provides that a condition that relates to the technical requirements of the design or construction of plumbing work may not be imposed on a permit without the approval of the Minister, and subsection (4) of which provides that such any condition imposed otherwise on the permit is of no effect unless the condition is retrospectively approved by the Minister.

57. Mr Taylor submitted that the conditions were not of a technical nature, but rather necessary to specify the matters to be addressed in any future plumbing permit.

58. Mr Read suggested that some of these conditions could be included as advice, however Mr Taylor did not agree, noting that these require something that must be done, such as entering into a trade waste agreement with TasWater, and so should be included as conditions.

59. Mr Taylor advised that advice received from TasWater's counsel was that the approach adopted by TasWater complied with the *Building Act 2016*.

60. The Commission considers that condition seven is not for a proper planning purpose¹ and is to be removed, but may be included as advice.

61. The Commission considers that the remaining conditions may be retained on the permit, but notes any conditions found to be contrary to section 9 of the *Building Act 2016* will be of no effect under subsection 9(4) and so may be severed from the permit.

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

Decision on permit

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

Attachments

Annexure A – Modified permit

Annexure A

Modified permit DA-2019-655

ADDRESS OF THE LAND:

REFERENCE:

*50 Huntingfield Avenue, Huntingfield (folio of the Register 13210/62)

DA-2019-655

THE PERMIT ALLOWS:

*Change of use to Educational and occasional care (secondary school) alteration to car parking and access.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. Except as otherwise required by this Permit, use and development of the land must be substantially in accordance with Development Application No. DA-2019-655 and Council Plan Reference No. P1 submitted on 14 November 2019. This Permit relates to the use of land or buildings irrespective of the applicant or subsequent occupants, and whoever acts on it must comply with all conditions in this Permit. Any amendment, variation or extension of this Permit requires further planning consent of Council.
2. *This approval is granted for a maximum of 565 students.
3. *The developer must enter into a planning agreement under section 71 of the *Land Use Planning and Approvals Act 1993* which provides a mechanism to reassess the need for traffic management measures for the proposed use and development once the number of students reaches 450. The Part 5 agreement must require an amended Traffic Impact Assessment (TIA) before student numbers exceed 450. The TIA must include, but not be limited to, the following.
 - traffic surveys conducted during the ordinary schooling year
 - recommendations for any modifications required to the existing site access to manage issues of traffic movement as a result of the use of the site as a school in consultation with Council and Department of State Growth
 - suggested timing for any such works to be undertaken.
 - that any costs of modifications to the access must be borne by the owner/operator of the site.

The terms of the Part 5 agreement must be to the satisfaction of the Manager Development Services. All costs associated with drafting and registering the Part 5 Agreement on the title are to be by the developer. All terms of this Agreement must be complied with once executed. Please note, planning permits containing a requirement for a Part 5 Agreement are not valid until such time as the Agreement is executed, as specified in the *Land Use Planning and Approvals Act 1993*. Therefore the above Agreement must be signed and sealed prior to the Planning Permit coming into effect and commencement of works. A template, and a checklist for the process of drafting and lodging such an Agreement, may be obtained from Council's planning team.

4. *The bus parking area (if implemented) requires a separate works approval before any work is carried out within the Council road reservation.

Note: A works approval for work within the Council road reservation may be obtained from the Council.

5. Commercial vehicle movements, (including loading and unloading and garbage removal), to or from a site must be within the hours of:
 - (a) 7.00 am to 6.00 pm Mondays to Fridays inclusive;
 - (b) 9.00 am to 5 pm Saturdays;
 - (c) 10.00 am to 12 noon Sundays and Public Holidays.
6. *Prior to the use, a school zone speed (40km/h) and appropriate signage plan must be established for the site by a suitable qualified traffic engineer. The plan must be approved by the relevant Authorities (Dept of State Growth and Council) prior to implementation.

Note: It is a standard requirement and condition of consent that any modifications to road infrastructure required to establish a school zone must be done in consultation with the Department of State Growth. Any costs associated with the school zone must be borne by the owner/operator.
7. *Prior to the use, a bicycle parking area is required to be established with a minimum capacity of 61 parking spaces.
8. *The conditions as determined by TasWater, and set out in the attached Appendix A, form part of this permit, except for condition 7.

ADVICE

***permit conditions modified by the decision of the Tasmanian Planning Commission dated 24 September 2020.**