

TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Kingborough Interim Planning Scheme 2015
Amendment	PSA-2020-2
Planning authority	Kingborough Council
Applicant	Nil
Date of decision	10 February 2021

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.

Marietta Wong
Delegate (Chair)

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

Include additional incorporated documents in Appendix 1 - Referenced and Incorporated Documents and to amend references to the incorporated documents within the planning scheme.

The documents proposed to be incorporated into the Kingborough Interim Planning Scheme 2015 (planning scheme) are as follows:

- Southern Tasmania Regional Land Use Strategy 2010-2035, as amended February 2020
- Kingborough Council Roads, Parking and Stormwater By-Law, By-Law 4, August 2011
- Kingborough Public Open Space Contribution Policy, Policy 6.3, May 2019
- Kingborough Biodiversity Offset Policy 6.10, November 2016
- Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process, April 2013
- Tasmanian Noise Measurement Procedures Manual, second edition, July 2008
- Tasmanian Coastal Works Manual, December, 2010
- Wetlands and Waterways Works Manual, December 2003

Issues raised in representations

One representation was received during the public exhibition period.

TasWater provided a Submission to Planning Authority Notice advising it does not object and has no formal comments for the Commission in relation to the 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 recommended on 16 July 2020:

That:

- a) Council notes the representation received from TasWater.
- b) 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.

The Commission directed the planning authority to readvertise the draft amendment due to concerns that the advertisement did not describe the documents to be incorporated. After re-exhibition of the draft amendment the planning authority recommended on 19 November 2020:

That:

- a) Council notes that no additional representations received during the re-exhibition of the planning scheme amendment;
- b) The Tasmanian Planning Commission be advised that Council is not recommending any further modifications to the amendment; 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 and the representations to the Tasmanian Planning Commission.

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 draft amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. One representation was received and after consultation under section 40(2A) of the Act, the Commission dispensed with holding a hearing.
3. The draft amendment has been initiated and certified by the Kingborough 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 draft 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.

Operation of the interim planning scheme

7. The draft amendment proposes to include a list of incorporated and referenced documents in Appendix 1 of the planning scheme and to update and correct references to these documents throughout the text of the planning scheme.
8. The planning authority in their section 35 report states:

Studies, strategies, guidelines and policies that inform a planning scheme, guide decision making or affect the operation of the planning scheme should be part of the scheme in some form. This can be achieved by incorporating documents into the planning scheme. (p 2)
9. The planning authority states that one of the benefits of incorporating documents into a planning scheme is that they carry the same weight as other parts of the scheme. Being part of the planning scheme, the planning authority can only change an incorporated document by a planning scheme amendment.

10. The planning authority notes that the proposed amendment is not to introduce new development standards, but rather to correct a translation error to include a list of documents in Appendix 1 that formed part of the previous planning scheme and that are still being used today and ensuring these documents are correctly referenced throughout the text in the planning scheme.

Commission's consideration

11. The forward of the planning scheme explains that the 'foreword, footnotes and appendices are not legally part of this planning scheme. They have been added to help users understand the planning scheme and its relationship to the Act. They are a guide only...'
12. The Commission considers that the first part of the draft amendment, which is to include a summary of the subject referenced and incorporated documents in the appendix, is not required to be included in the amendment and may be added to the published version of the planning scheme without a planning scheme amendment.
13. This also applies to the proposed revisions to Clause E11.3.R1 to update the details for the Tasmanian Coastal Works Manual and the Wetlands and Waterways Works Manual. Clause E11.3.R1 is a note rather than a clause of the planning scheme.
14. Update of these non-statutory parts of the scheme can be achieved by request to the Commission since the Commission maintains the online versions of planning schemes found on the iplan website.
15. In relation to the second part of the draft amendment which identifies a series of provisions within the planning scheme text that are to be revised to make reference to specific documents, the Commission considers that references to the current version of the Southern Tasmania Regional Land Use Strategy 2010-2035 (Feb 2020) and the Kingborough Council Roads, Parking and Stormwater By-Law, 4 August 2011 are not required.
16. These documents are regulatory documents that form part of the broader context within which the planning scheme operates, the currency of which may legitimately change from time to time without the need for the planning scheme to be amended. Akin to the way the *Land Use Planning and Approvals Act 1993* is amended from time to time.
17. The Commission notes that the particular textual references are provisions of the planning scheme that are substantially common to all other interim planning schemes in the region and have been drafted to make general reference to the regional strategy and any relevant By-Laws.
18. The Commission notes that the draft amendment incorrectly references the Tasmanian Coastal Works Manual (DPIPWE, December 2010) at footnote E11.3 R1. In the planning scheme Clause E11.3 R1 refers to the Soil and Water Management for Building and Construction Sites (DPIPWE 2009). The correct clauses to reference in relation to the Tasmanian Coastal Works Manual (DPIPWE, December 2010) are E11.7.1 P1 (i) and E11.7.1 P2 (g).

Regional Strategy

19. The planning authority states that the draft amendment is consistent with the Southern Tasmania Regional Land Use Strategy (regional strategy):

It is considered that the proposed amendment is consistent with the regional land use strategy and local land use strategy, and therefore meets the requirements of section 300 and therefore Section 32(ea) of the former provisions of LUPAA. (p 9)

Commission's consideration

20. The Commission considers that the scope of the draft amendment is administrative and it does not have any strategic land use implications. Therefore the Commission agrees with the planning authority that updating the references to the incorporated documents is consistent with the regional strategy.

State Policies and Resource Management and Planning System Objectives

21. The Commission finds that no State Policies are relevant to the draft amendment and that it seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modifications required to draft amendment

22. The Commission finds that the draft amendment requires modification as follows:
- delete the list of included incorporated documents to be included in Appendix 1 - Referenced and Incorporated Documents;
 - delete the Southern Tasmania Regional Land Use Strategy 2010-2035, as amended, Feb 2020 and Kingborough Council Roads, Parking and Stormwater By-Law, By-Law 4, August 2011 from the list of amendments to the text of the planning scheme;
 - insert the words 'Delete 'relevant Council policy' and replace with:' before reference to the Kingborough Public Open Space Contribution Policy, Policy 6.3, May 2019.
 - delete the reference to the Tasmanian Coastal Works Manual (DPIPWE,) December 2010) and the Wetlands and Waterways Works Manual (DPIPWE, 2003) for clause E11.3.R1;
 - include clause E11.7.1 P1 (i) and E11.7.1 P2 (g) to reference the Waterways and Wetlands Works Manual (DPIWE, 2003); and
 - minor corrections to the clause numbers and document references.

Decision on draft amendment

23. 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 PSA-2020-2

The Kingborough Interim Planning Scheme 2015 is amended as follows:

1. Amend the reference to the following incorporated documents in the text of the planning scheme.

Relevant clause in KIPS2015 to be amended	Amend text reference to the following documents
Clauses 10.6.3 P1 (h); 11.5.3 P1 (h); 12.5.3 P2; 13.5.3 P2; 14.5.3 P2; 15.5.1 P6; 16.5.3 P1 (h); 17.5.1 P3 (h); 18.5.1 P3 (h); 20.5.1 P6; 21.5.1 P6; 22.5.1 P6; 23.5.1 P6; 24.5.1 P6; and 31.5.1 P6	Delete 'relevant Council policy' and replace with: Kingborough Public Open Space Contribution Policy, Policy 6.3, May 2019
Clauses E10.7.1 P1(b)(iv); E10.7.1 P1(c)(v); E10.8.1 P1(b)(iv) and E10.8.1 P1(c)(v)	Kingborough Biodiversity Offset Policy 6.10, November 2016
Clauses E10.7.1 P1(b)(iv); E10.7.1 P1(c)(v); E10.8.1 P1(b)(iv) and E10.8.1 P1(c)(v)	Guidelines for the use of Biodiversity Offsets in the local planning approval process, Southern Tasmanian Councils Authority, April 2013
Clauses 10.3.1 A2(c); 11.3.1 A2(c); 15.3.1 A2(c); 16.3.1 A2(c); 17.3.2 A1(c); 18.3.2 A1(c); 19.3.2 A1(c); 20.3.2 A1(c); 21.3.2 A1(c); 22.3.2 A1(c); 23.3.2 A1(c); 24.3.2 A1(c); 28.3.2A1(c); 31.3.2 A1(c); E8.8.1 A2(b)(iii)(a); and F3.6.2.1 A3(c)	Tasmanian Noise Measurement Procedures Manual, second edition, July 2008
Clause E11.7.1 P1(i); E11.7.1 P2(g)	Tasmanian Coastal Works Manual (DPIPWE, December 2010) Waterways and Wetlands Works Manual (DPIWE, 2003)