

TASMANIAN PLANNING COMMISSION



DECISION

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| Planning scheme | Kingborough Interim Planning Scheme 2015 |
| Amendment | PSA-2019-1 - rezone part of Lot 3, Channel Highway, Kingston from Environmental Living to Environmental Management and insert a site-specific qualification to clause 14.5.1 P1 to allow a minimum lot size equal to the entire portion of Lot 3 Channel Highway Kingston within the Environmental Living Zone |
| Permit | DAS-2019-5 - boundary adjustment between Lot 3 Channel Highway and 757 Channel Highway, Kingston |
| Planning authority | Kingborough Council |
| Applicant | All Urban Planning Pty Ltd for N Urosevic |
| Date of decision | 23 June 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.

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.

Marietta Wong
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

An amendment to:

- (a) rezone part of Lot 3, Channel Highway, Kingston (folio of the Register 249340/3) from Environmental Living to Environmental Management; and
- (b) insert a site-specific qualification to Performance Criteria P1 of subdivision standard 14.5.1 Lot Design for Lot 3 Channel Highway Kingston to allow a lot with an area equal to the entire portion within the Environmental Living Zone, ie less than 1 lot per 10ha.

Permit

A permit to subdivide an area of 1.133ha from Lot 3 Channel Highway (Lot 2) and adhere this to 757 Channel Highway, Kingston (folio of the Register 138474/3), leaving a balance of 1.246ha (Lot 1). A new vehicle access from the Channel Highway is proposed to serve Lot 1.

The new lot boundary is designed to follow the new zone boundary.

Lot 2 contains a private roadway and part of the Browns River and its wetlands. Lot 3 contains an existing house.

Site information

The site is approximately 200m to the north east of the edge of the Kingston central business district and consists of two titles: Lot 3 Chanel Highway, with an area of 2.4ha and frontage to the Channel Highway, and 757 Channel Highway located immediately to the north, with an area of 5.02ha.

TASVEG 3.0 shows 757 Channel Highway is partly cleared urban land on the western river flats with Eucalyptus obliqua dry forest (DOB) on the higher slopes to the east. DOB is not listed as threatened under Schedule 3A – Threatened native vegetation communities of the *Nature Conservation Act (2002)*.

A natural values report for Lot 3 Chanel Highway (North Barker, 2019) states that the majority of the site contains Eucalyptus tenuiramis forest and woodland on sediments forest community (DTO), rather than DOB as shown on TASVEG 3.0. This community is said to contain a wide infestation of boneseed within the understorey, with various levels of density throughout.¹ The tree layer is said to be dominated by *E. tenuiramis* (silver peppermint), with *E. globulus* (blue gum), *E. pulchella* (white peppermint), *E. viminalis* (white gum) and *E. obliqua* (stringybark) also present. The understorey is said to be typically sparse and species poor. No threatened plant species were recorded.

The site contains a number of high conservation value trees, predominately blue gum, which is a potential foraging habitat for the swift parrot (*Lathamus discolor*).

DTO is a listed threatened community under Schedule 3A of the *Nature Conservation Act 2002* and is not listed as a threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

¹ Barker, P and Sayers, D (2019): Channel Highway, Kingston Proposed Single Dwelling Natural Values Determination prepared for N Urosevic by North Barker, 20 Nov 2019

Access to 757 Channel Highway is from a private right-of-carriageway 6m wide over Lot 3, which has an access off the Channel Highway.

The site is provided with reticulated water and wastewater is treated on-site. Stormwater drains directly to the river.

The site is zoned partly Environmental Management Zone and partly Environmental Living Zone. The site is also subject to the Biodiversity Protection Area, Bushfire Prone Area, Landslide Hazard Area, Waterway and Coastal Protection Area, and Coastal Inundation Hazard Area overlays. Lot 3 is also subject to the Kingston Beach Heritage Precinct, while a small portion of 757 Channel Highway is subject to the Browns Road Industrial Attenuation Area.

Issues raised in representations

Two representations were received, including a Submission to Planning Authority Notice (SPAN) from TasWater under section 56S of the *Water and Sewerage Industry Act 2008*.

The representor raised the following issues:

- no objection to rezoning;
- concern with the location of the proposed building area; and
- some conditions imposed are unreasonably restrictive.

TasWater had no objection or formal comments on the rezoning and imposed no permit conditions.

Planning authority's response to the representations

The planning authority considered the representations and resolved that condition 2(d)(iv) and condition 2(d)(vii) of the draft development permit DAS-2019-5 be amended as follows:

2(d)(iv) the loss of individual white gums (*Eucalyptus viminalis*) with a diameter >25cm at 1.5m from natural ground level, blue gums (*Eucalyptus globulus*) with a diameter >40cm at 1.5m from natural ground level and any native tree with a diameter >70cm at 1.5m from natural ground level to be offset to the satisfaction of Council and in accordance with the Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process and Biodiversity Offset Policy 6.10.

2(d)(vii) any landscaping within the designated building area (refer to condition 4), will incorporate native species (preferably Tasmanian endemic species) and will not include non declared priority weeds listed in the Kingborough Weed Management Strategy;

The planning authority did not recommend any modifications to the draft amendment.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 5 August 2020 and 9 June 2021.

Appearances at the hearing

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|---------------------|---|
| Planning authority: | Mr Adriaan Stander, Strategic Planner and Dr Nicki Den Exter, Environmental Planner |
| Applicant: | Mr Frazer Read, AllUrban Planning Pty Ltd and Ms Naomi Billet, Billet Legal (9 June 2021) for Ms Natalia Urosevic (5 August 2020) |
| Representors: | Ms Danielle Gray of Gray Planning for Mr Ken Thomason Mr Ken Thomason (9 June 2021) |

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 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 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 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 - 19 February 2020 (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.

Draft amendment

Strategic planning

10. The planning authority concluded that the draft amendment does not increase the development potential of the site and seeks to preserve appropriate land for non-development and so is consistent with the regional strategy and other strategies.
11. The planning authority considers that due to the minor nature of the draft amendment, the use and development permissible under the amendment will have no significant impact on the use and development of the region as an entity in environmental, economic and social terms.
12. The representor raised no objections to the draft amendment.

Commission consideration

13. The Commission accepts the conclusion of the planning authority in relation to the regional and local strategies and finds that the draft amendment does not conflict with the requirements of section 300 and is, as far as is practicable, consistent with the regional strategy.

State Policies

14. As the site is within 1km of the coast, the Tasmanian State Coastal Policy 1996 (Coastal Policy) is applicable.
15. The planning authority considers that the proposed amendment does not seek to remove any planning scheme provisions which would affect water quality or change the development potential of the land, and so is in accordance with the Coastal Policy.

Commission consideration

16. The Commission accepts the conclusion of the planning authority in relation to the Coastal Policy and finds the draft amendment is in accordance with the Coastal Policy.
17. Future use and development may be managed through the provisions of the interim planning scheme.
18. The Commission finds that no other State Policies are relevant to the draft amendment.

Resource Management and Planning System Objectives

19. The Commission finds the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modifications required to draft amendment

20. The draft amendment, as certified, includes existing and proposed zoning. It requires modification to include only the land to be rezoned by the amendment, as shown in Annexure A.

Decision on draft amendment

21. Subject to the modifications described above, the Commission finds that the draft amendment is in order and gives its approval. Annexure A is a modified amendment.

Consideration of the permit

22. Under section 43H, the Commission is required to review the planning authority's decision reported under section 43F.
23. At the hearing, Mr Read for the applicant, sought an adjournment to separately apply for a permit for a dwelling on the subject site.
24. The planning authority granted a permit for a dwelling on 757 Channel Highway, Kingston and provided the Commission a copy of the permit for DA-2020-410 on 9 April 2021. It was accompanied by the planning authority's submission in relation to the implications of the dwelling permit for the subdivision permit which forms part of the subject application.
25. The planning authority's submission, and subsequent submissions from Mr Read; and Ms Gray for Mr Thomason, focussed on the clause 14.5.1 Lot Design under the Environmental Living Zone and the E10.8.1 Subdivision under the Biodiversity Code.

26. The parties agreed that the intention of the subdivision was to align the lot boundaries with the new zone boundaries and that the subdivision itself did not negatively impact on conservation values. It was also agreed that to satisfy clause 14.5.1 P2(f), the clearing authorised by the dwelling permit [DA-2-2--410] would need to precede the subdivision.
27. The planning authority's submission of 2 June 2021 included a revised permit comprising six permit conditions.
28. Mr Read and Ms Gray jointly responded to the planning authority's revised permit conditions, including that condition 6, prohibiting removal of native vegetation did not acknowledge that in some circumstances, this is exempt. They provided revised drafting for the remaining conditions.
29. At the hearing the outstanding matters were:
 - submission of a revised plan of subdivision showing a building area reflective of the dwelling permit [P4 dated 9 June 2021] and including the land over which access connecting the building area to the Channel Highway is provided; and
 - deletion in condition 3 of the words 'and requiring monitoring and reporting for a minimum of 5 years' referring to the requirement for a conservation management plan on the Part 5 Agreement that includes amongst other things, a weed management plan; and
 - deletion of condition 4 in its entirety which requires a bond to be provided before the sealing of the Final Plan of Survey to cover the cost of monitoring and reporting as required by Condition 3.
30. The revised plan of subdivision showing the building area to be shown on lot 1 was accepted by all parties.
31. Ms Billet for the applicant, submitted that requirement for a bond to ensure monitoring and reporting for a period of five years to protect the values of the area nominated as a conservation zone, was not required and was not, in her opinion, for a proper planning purpose or proportionate to the works allowable under the permit. Ms Billet proposed that the provision of receipts for weed management could be relied upon as demonstration that the condition had been met.
32. Dr Den Exter for the planning authority, submitted that it had been the planning authority's practice to impose such a requirement. It was her evidence that over a period of more than 10 years, the conservation outcomes achieved by bonding the requirement for monitoring and reporting on the implementation of a conservation management plan were greater than when this had not been required. She did not support the provision of receipts as being an adequate way of assuring that weed management was occurring in the manner intended.
33. Dr Den Exter submitted that land managed under a conservation management plan can be impacted by adjacent residential use, including wood hooking, encroachment of gardens into natural areas and the spread of weeds or garden species.
34. Mr Read provided evidence that the 5,500 m² area to be managed as a conservation zone was unlikely to be subject such pressure because it is close to the existing dwelling which has established gardens and is separated by a steep change in elevation making it less accessible.
35. The parties also made submissions on the expression of proposed advice clauses.

Commission's consideration

36. The Commission accepts the evidence of Mr Read and agrees, in this circumstance, it is appropriate that the requirement for monitoring and reporting for a five year period is deleted from condition 3 and that condition 4 is deleted in its entirety. The permit is for a subdivision adjoining an existing dwelling with an established garden where the topography is likely to impede encroachment or impacts on the conservation area to be protected.
37. The Commission makes no comment on the advice clauses, as these are advisory only and are not matters it is required to consider under section 43H of the Act. The inclusion of advice is a matter for the planning authority when issuing the permit.

Resource Management and Planning System Objectives

38. The Commission finds that the permit seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Decision on permit

39. The Commission finds that the permit, subject to modified conditions as set out in Annexure B, is in order and should be granted.

Attachments

Annexure A – Modified amendment

Annexure B – Modified permit

Annexure A

Modified amendment PSA-2019-1

Amend the planning scheme as follows:

- 1 Rezone part of Lot 3 Channel Highway, Kingston (folio of the Register 249340/3) from the Environmental Living Zone to the Environmental Management Zone, as follows:



| ID | Easting | Northing |
|----|-----------|-------------|
| 1 | 525,825.9 | 5,242,279.2 |
| 2 | 525,852.3 | 5,242,194.2 |
| 3 | 525,869.8 | 5,242,044.8 |



29.0 Environmental Management Zone

- 2 Insert the following in Performance Criteria P1 of subdivision standard 14.5.1 Lot Design after (v):

(vi) Lot 3 Channel Highway, Kingston (folio of the Register 249340/3)

Annexure B

Modified permit DAS-2019-5

*This permit is granted, subject to the conditions set out below, for a boundary adjustment at the land situated and described as - Lot 3 and 757 Channel Highway, Kingston.

CONDITIONS

- *1. Except as otherwise required by this Permit, use and development of the land must be substantially in accordance with Development Application No. DAS-2019-5 and Council Plan Reference No. P4 [prepared by Leary & Cox comprising sheets 1 and 2 dated 08/06/21] and submitted on 9 June 2021. 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. Prior to the permit DAS-2019-5 for subdivision coming into effect, the building area approved under DA-2020-410 at 743 Channel Highway, Kingston for the purposes of a dwelling and associated servicing and bushfire hazard management must be established in accordance with the approved plan (Council Plan Reference No. P3 submitted on 18 February 2021) and any associated offset secured for required and approved vegetation removal in accordance with the permit DA-2020-410.
- *3. Prior to the permit coming into effect, the landowner must enter into a Part 5 Agreement under the *Land Use Planning and Approvals Act 1993* with and to the satisfaction of Kingborough Council to retain and protect the environmental values on Lot 3 within a conservation zone, outside those areas required for a building area, private open space and bushfire protection measures.

This Part 5 Agreement must:

- (a) verify the extent of the conservation zone, which is to total approximately 5500m² and be generally in accordance with the 'Proposed conservation zone at 757 Channel Highway' (Kingborough Council, 21 May 2021);
- (b) provide for the protection and management of all native vegetation and habitat values within the conservation zone;
- (c) include a Conservation Management Plan including but not limited to restricting vegetation removal, incorporating a weed management plan to ensure that environmental values are managed for their long term survival. These prescriptions must be drafted by a suitably qualified environmental consultant and including timeframes and details for each action;
- (d) be drafted using Council's template Part 5 Agreement for subdivision in the Environmental Living zone;
- (e) be signed and sealed prior to commencement of works; and,
- (f) be submitted to the Land Titles Office with the final plan of survey and registered on the title.

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.

Ongoing management of the site must be in accordance with the Part 5 Agreement.

- *4. The Final Plan of Survey must incorporate a designated building area for Lot 1, to be shown as a “Building Area” on the plan. This building area must be to the satisfaction of the Manager Development Services and must be broadly consistent with the building area as shown in the endorsed plans.

In addition, the Schedule of Easements must include a covenant requiring that all buildings, on-site wastewater and bushfire hazard management areas to be contained within the Building Area shown on the Final Plan.

***permit conditions modified by the decision of the Tasmanian Planning Commission dated 23 June 2021**