

## General Provisions

---

### 7.0 General Provisions

#### 7.1 Changes to an Existing Non-conforming Use

7.1.1 Notwithstanding clause 6.9.1 of this planning scheme, the planning authority may at its discretion, approve an application:

- (a) to bring an existing use of land that does not conform to the planning scheme into conformity, or greater conformity, with the planning scheme;
- (b) to extend or transfer an existing non-conforming use and any associated development, from one part of a site to another part of that site; or
- (c) for a minor development to an existing non-conforming use.

7.1.2 An application must only be approved under sub-clause 7.1.1 of this planning scheme where there is:

- (a) no unreasonable detrimental impact on adjoining uses or the amenity of the surrounding area; and
- (b) no substantial intensification of the use.

7.1.3 In exercising its discretion under sub-clauses 7.1.1 and 7.1.2 of this planning scheme, the planning authority must have regard to the purpose and provisions of the zone, any relevant local area objectives and any applicable codes.

#### 7.2 Development for Existing Discretionary Uses

7.2.1 Notwithstanding clause 6.8.1 of this planning scheme, proposals for development (excluding subdivision), associated with a Use Class specified in an applicable Use Table, as a Discretionary use, must be considered as if that Use Class had Permitted status in that Use Table, where the proposal for development does not establish a new use, or substantially intensify the existing use.

#### 7.3 Adjustment of a Boundary

7.3.1 An application for a boundary adjustment is Permitted and a permit must be granted if:

- (a) no additional lots are created;
- (b) there is only minor change to the relative size, shape and orientation of the existing lots;
- (c) no setback from an existing building will be reduced below the relevant Acceptable Solution setback requirement;
- (d) no frontage is reduced below the relevant Acceptable Solution minimum frontage requirement;
- (e) no lot is reduced below the relevant Acceptable Solution minimum lot size unless already below the minimum lot size; and
- (f) no lot boundary that aligns with a zone boundary will be changed.

## **7.4 Change of Use of a Place listed on the Tasmanian Heritage Register or a Local Heritage Place**

- 7.4.1 An application for a use of a place listed on the Tasmanian Heritage Register or as a Local Heritage Place subject to the Local Historic Heritage Code that would otherwise be Prohibited is Discretionary.
- 7.4.2 The planning authority may approve such an application if it would facilitate the restoration, conservation and future maintenance of:
- (a) the local historic heritage significance of the local heritage place; or
  - (b) the historic cultural heritage significance of the place as described in the Tasmanian Heritage Register.
- 7.4.3 In determining an application the planning authority must have regard to:
- (a) any statement of historic cultural heritage significance for the place, as described in the Tasmanian Heritage Register;
  - (b) any statement of local historic heritage significance and historic heritage values, as described in the Local Historic Heritage Code;
  - (c) any heritage impact statement prepared by a suitably qualified person setting out the effect of the proposed use and any associated development on:
    - (i) the local historic heritage significance of the local heritage place or local heritage precinct; and
    - (ii) the historic cultural heritage significance of the place as described in the Tasmanian Heritage Register;
  - (d) any conservation plan prepared by a suitably qualified person in accordance with *The Conservation Plan: A guide to the preparation of conservation plans for places of European cultural significance 7<sup>th</sup> edition, 2013*;
  - (e) the degree to which the restoration, conservation and future maintenance of the heritage significance of the place is dependent upon the establishment of the proposed use;
  - (f) the likely impact of the proposed use on the amenity, or operation, of surrounding uses;
  - (g) any Heritage Agreement that may be in place, in accordance with the provisions contained in the *Historic Cultural Heritage Act 1995*;
  - (h) the purpose and provisions of the applicable zone; and
  - (i) the purpose and provisions of any applicable code.

## **7.5 Change of Use**

- 7.5.1 A permit is not required for a change of use from an existing lawful use to another use in the same Use Class if:
- (a) the use is not otherwise Prohibited or Discretionary under any provision of the planning scheme;
  - (b) the use complies with all applicable standards and does not rely on any Performance Criteria to do so; and
  - (c) there is no:

- (i) increase in the gross floor area of the use;
- (ii) increase in the requirement for parking spaces under the Parking and Sustainable Transport Code;
- (iii) change in the arrangements for site access, parking, or for the loading and servicing of vehicles on the site;
- (iv) change in arrangements for the use of external areas of the site for display, operational activity or storage;
- (v) increase in emissions or change in the nature of emissions;
- (vi) increase in the required capacity of utility services; and
- (vii) increase in the existing hours of operation if outside the hours of 8.00am to 6.00pm Monday to Sunday inclusive.

## **7.6 Access and Provision of Infrastructure Across Land in Another Zone**

7.6.1 If an application for use or development includes access or provision of infrastructure across land that is in a different zone to that in which the main part of the use or development is located, and the access or infrastructure is prohibited by the provisions of the different zone, the planning authority may at its discretion approve an application for access or provision of infrastructure over the land in the other zone, having regard to:

- (a) whether there is no practical and reasonable alternative for providing the access or infrastructure to the site;
- (b) the purpose and provisions of the zone and any applicable code for the land over which the access or provision of infrastructure is to occur; and
- (c) the potential for land use conflict with the use or development permissible under the planning scheme for any adjoining properties and for the land over which the access or provision of infrastructure is to occur.

## **7.7 Buildings Projecting onto Land in a Different Zone**

7.7.1 If an application for use or development includes a building that projects over land in a different zone, the status of the use for the projecting portion of the building is to be determined in accordance with the provisions of the zone in which the main part of the building is located.

## **7.8 Port and Shipping in Proclaimed Wharf Areas**

7.8.1 Notwithstanding any other provision in this planning scheme, an application for a use or development for Port and Shipping within a proclaimed wharf area must be considered as No Permit Required.

## **7.9 Demolition**

7.9.1 Unless approved as part of another development or Prohibited by another provision in this planning scheme, or the Local Historic Heritage Code applies, an application for demolition is Permitted and a permit must be granted subject to any conditions and restrictions specified in clause 6.11.2 of this planning scheme.

## **7.10 Development Not Required to be Categorised into a Use Class**

- 7.10.1 An application for development that is not required to be categorised into one of the Use Classes under sub-clause 6.2.6 of this planning scheme and to which 6.8.2 applies, excluding adjustment of a boundary under sub-clause 7.3.1, may be approved at the discretion of the planning authority.
- 7.10.2 An application must only be approved under sub-clause 7.10.1 if there is no unreasonable detrimental impact on adjoining uses or the amenity of the surrounding area.
- 7.10.3 In exercising its discretion under sub-clauses 7.10.1 and 7.10.2 of this planning scheme, the planning authority must have regard to:
- (a) the purpose of the applicable zone;
  - (b) the purpose of any applicable code;
  - (c) any relevant local area objectives; and
  - (d) the purpose of any applicable specific area plan.

## **7.11 Use or Development Seaward of the Municipal District**

- 7.11.1 Use or development of a type referred to in section 7(a) to (d) of the Act that is unzoned in the zoning maps in the relevant Local Provisions Schedules must be considered in accordance with:
- (a) the provisions of the zone that is closest to the site; or
  - (b) in the case of a use or development that extends from land that is zoned, the provisions of the zone from which the use or development extends.

## **7.12 Sheds on Vacant Sites**

- 7.12.1 An application for a shed on a vacant site in the Low Density Residential Zone, Rural Living Zone and Landscape Conservation Zone is Permitted and a permit must be granted if:
- (a) there is not more than 1 shed on the lot;
  - (b) the frontage, side and rear setbacks are not less than the Acceptable Solution setbacks for the relevant zone;
  - (c) it is located on the site so that a future dwelling can be built between the shed and the frontage setback;
  - (d) the building height is not greater than 6m and the height of any wall is not greater than 4m;
  - (e) the gross floor area is not greater than 54 m<sup>2</sup>; and
  - (f) it complies with the Acceptable Solution of each applicable standard of any code that applies to the land.

## **7.13 Temporary Housing**

- 7.13.1 Unless No Permit Required under any other provision of this planning scheme, use and development for temporary housing of eligible persons within an existing building is Permitted, and a permit must be granted, if:
- (a) on land within:

- (i) the General Residential Zone, Inner Residential Zone, Urban Mixed Use Zone, Central Business Zone, General Business Zone, Local Business Zone, Community Purpose Zone, Recreation Zone, or Open Space Zone; or
- (ii) the Commercial Zone in the Hobart Local Provisions Schedule;
- (b) funded or operated by, or on behalf of, the Director of Housing or a housing support provider;
- (c) the development is limited to minor building works or structures necessary for the use of the existing building for temporary housing; and
- (d) the following does not apply:
  - (i) Bushfire-Prone Areas Code;
  - (ii) Flood-Prone Areas Hazard Code;
  - (iii) Coastal Inundation Hazard Code;
  - (iv) Landslip Hazard Code;
  - (v) Potentially Contaminated Land Code; or
  - (vi) Local Historic Heritage Code.

7.13.2 Unless No Permit Required under any other provisions of this planning scheme, use and development for temporary housing of eligible persons within demountable, relocatable, or other forms of non-permanent buildings is Permitted, and a permit must be granted, if:

- (a) on land within:
  - (i) a General Residential Zone, Inner Residential Zone, Urban Mixed Use Zone, Central Business Zone, General Business Zone, Local Business Zone, Community Purpose Zone, Recreation Zone, or Open Space Zone under an interim planning scheme, or
  - (ii) the Commercial Zone in the Hobart Local Provisions Schedule;
- (b) funded or operated by, or on behalf of, the Director of Housing or a housing support provider;
- (c) located on the same site, or a site adjoining, an existing residential facility that is funded or operated by, or on behalf of, the Director of Housing or a housing support provider;
- (d) the building height is not more than 8m above existing ground level; and
- (e) the buildings have a setback from an adjoining property of not less than half the wall height of the building if the adjoining property is within a General Residential Zone, Low Density Residential Zone, or Inner Residential Zone, excluding:
  - (i) an adjoining property to which sub-clause 7.13.2)(c) applies; and
  - (ii) the portion of the wall that is not more than 3m above existing ground level; and
- (f) the following does not apply:
  - (i) Bushfire-Prone Areas Code;
  - (ii) Flood-Prone Areas Hazard Code;
  - (iii) Coastal Inundation Hazard Code;
  - (iv) Landslip Hazard Code;
  - (v) Potentially Contaminated Land Code;
  - (vi) Local Historic Heritage Code; or

- (vii) buildings are located on land within an inner protection area, or registered electricity easement, as defined in an Electricity Transmission Infrastructure Protection Code.
- 7.13.3 Unless sub-clause 7.13.1 or 7.13.2 applies, use or development for temporary housing of eligible persons within an existing building, or in a demountable, relocatable or other non-permanent building that would otherwise be Prohibited under any other provisions of this planning scheme, is Discretionary, if funded or operated by, or on behalf of, the Director of Housing or a housing support provider.
- 7.13.4 In determining an application under sub-clause 7.13.3, a planning authority must have regard to:
  - (a) the proximity of the temporary housing to existing residential facilities and social support services that are funded or operated by, or on behalf of, the Director of Housing or a housing support provider;
  - (b) the availability of public transport and capacity of road infrastructure and utility services to the site;
  - (c) the purpose and provisions of the applicable zone and any applicable codes; and
  - (d) the potential for land use conflict with other use or development on adjoining properties and any measures available to manage or mitigate such conflict.
- 7.13.5 Temporary housing must only be located in a bushfire-prone area, as defined under the Bushfire-Prone Areas Code, if accompanied by an emergency management strategy, endorsed by the Tasmania Fire Service or accredited person, as defined under the Bushfire-Prone Areas Code, that provides for mitigation measures to achieve and maintain a level of tolerable risk that is specifically developed to address the characteristics, nature and scale of the use considering:
  - (a) the nature of the bushfire-prone vegetation, as defined under the Bushfire-Prone Areas Code, including the type, fuel load, structure and flammability;
  - (b) the ability of occupants of the temporary housing to:
    - (i) protect themselves and defend property from bushfire attack;
    - (ii) evacuate in an emergency;
    - (iii) understand and respond to instructions in the event of a bushfire; and
  - (c) any bushfire protection measures, as defined under the Bushfire-Prone Areas Code, available to reduce risk to emergency service personnel.
- 7.13.6 A permit granted under sub-clauses 7.13.1 or 7.13.2 must be subject to a condition to require that not more than 6 months after the date on which the permit lapses, all traces of any works, buildings, plant or materials introduced and used for the purposes temporary housing must be removed from the site to the satisfaction of the planning authority, unless:
  - (a) a new permit for temporary housing has been granted; or
  - (b) such works, buildings, plant or materials are to be used for a use or development for which a permit has been granted, or are exempt from requiring a permit.
- 7.13.7 Additional permits for temporary housing issued under sub-clauses 7.13.1 or 7.13.2 must not cause the approval of temporary housing for a period longer than 3 years commencing from the date on which the initial occupancy permit, or temporary occupancy permit, is issued in accordance with Part 17 of the Building Act 2016.
- 7.13.8 No other provisions in this planning scheme apply to a use or development in accordance with sub-clauses 7.13.1 or 7.13.2.