

# TASMANIAN PLANNING COMMISSION



## DECISION

<b>Planning scheme</b>	Latrobe Interim Planning Scheme 2013
<b>Amendment</b>	02-18 – rezone CT 210704/1 Gardams Road, Port Sorell from Rural Resource to Rural Living and amend the Port Sorell and Environs Specific Area Plan
<b>Planning authority</b>	Latrobe Council
<b>Applicant</b>	MDG Contracting Pty Ltd obo Brooks Development Group Pty Ltd
<b>Date of decision</b>	8 February 2019

## 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.

Peter Fischer  
**Acting 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

A draft amendment to:

1. rezone CT 210704/1 at Gardams Road, Port Sorell, and part of adjacent road reservation, from Rural Resource to Rural Living.
2. amend the Port Sorell and Environs Specific Area Plan maps to include CT 210704/1 as being within the Rural Living Precinct.
3. in Clause F2.5.1.3, insert the following as A6 and P6 after A5 and P5:

A6 A plan of subdivision for land described on Certificate of Title 210704/1 must include a continuous, vegetated habitat corridor provided in accordance with Figure F2.5.1.3(a) and clear of any building area, development, road or access.	P6 No Performance Criteria
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4. Amend A3 of Clause F2.5.1.3 to read:

There must be vegetation corridors on land described on Certificates of Title 109132/1, 163587/1, 163487/2 and 210704/1 of mixed native woodland, grassland and wetland with a mature canopy height of not less than 2.0m.

#### Site information

The site is a 20.29ha, flat, rectangular parcel located in the Port Sorell locality, about one kilometre south of the township. The lot is currently pasture and is vacant except for some minor outbuildings, fencing and two small dams. A drainage channel runs from the middle of the northern boundary down to the south east.

The title is owned by Brooks Development Group Pty Ltd. The owner has given consent to MDG Contracting (Robert Dixon) to submit the rezoning on their behalf.

The site is zoned Rural Resource and is not subject to any overlays. Neighbouring land to the west comprises single dwellings on large lots within the Environmental Living zone. A large parcel of land to the west and south west is zoned Rural Living and is currently being subdivided into rural residential lots. This land is also subject to the Rural Living Precinct within the Port Sorell & Environs Specific Area Plan (SAP). Land to the north and south is zoned Rural Resource, however the southern parcel is subject to a conservation covenant. According to Council, the land to the north east is currently used to graze animals.

Access to the site is currently via a driveway within a reserved road connecting to Gardams Road. The site is within an area serviced with reticulated water, however is not currently connected. The site cannot be serviced by sewerage or stormwater.

### Issues raised in representations

A submission from TasWater was received, which advised that it did not object to the amendment and had no formal comments.

### Planning authority's response to the representations

The planning authority recommended the amendment be approved as presented.

### 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. One representation was received and after consultation under section 40(2A) of the Act, the Commission dispensed with holding a hearing.
3. The amendment has been initiated and certified by the Latrobe 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 relevant to the draft amendment as the subject site 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. Section 300(2)-(5) inclusive relates to the effect of amending a local provision with respect to common provisions. These matters are not relevant to the draft amendment as there are 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 *Living on the Coast – The Cradle Coast Regional Land Use Strategy 2010-2030* (the regional strategy).
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 justification

10. The applicant provided a report from Enviroplan (February 2016) supporting the draft amendment. The report argues the draft amendment is consistent with the regional strategy, as well as the Port Sorell and Environs Strategic Plan 2008 (the local strategy). The report also contains supporting studies including a land capability assessment, a flora and fauna assessment, a bushfire hazard risk assessment and a wastewater assessment.
11. The Enviroplan report identifies that, under the regional strategy, Port Sorell is expected to have a medium settlement growth scenario, with a contained settlement development and growth management strategy. The report notes:

A contained management strategy is not considered to exclude the release of new land, but provide for the appropriate expansion and development of land in settlement area with predicted higher growth rates (such as Port Sorell) that provides for infill development and that is further appropriately consistent with defined local settlement strategies and boundaries.
12. The report also notes that the subject site is designated for rural residential development by the local strategy.
13. In its section 35 report, the planning authority also identifies that, under the regional strategy:

Rural residential estates are a legitimate option and should be located without creating or increasing demands for infrastructure and service provision, risk to people and property or impact on resource development, natural or cultural values.
14. The planning authority argues that the draft amendment supports many of the strategic outcomes in the regional strategy, including:
  - Facilitate choice and diversity in location, form and type of housing to meet the economic social, health and well-being requirements and preferences of all people (4.7b.)
  - Provide opportunity for housing in rural areas where –
    - There is no adverse effect for access to and use of rural resource land, including land significant for agriculture;
    - There is no adverse effect on key natural resource values, including areas of biodiversity significance and landscape aesthetics;
    - Adequate arrangements are available for transport and convenient access to basic retail needs, community services and employment opportunities;
    - There is an acceptable level of risk from natural or man made hazard; and
    - There is capacity available to meet basic utility needs at a reasonable cost or capacity for self sufficiency in on-site generation, collect and disposal without risk to human or environmental health. (4.7h.)
15. The Enviroplan report provides further justification for the conversion of agricultural land to residential, stating that the supporting land capability assessment shows that the land has relatively minor agricultural value at both a local and regional context.
16. According to the planning authority, the applicant has demonstrated the site has no significant natural, aboriginal, cultural, or historic values. The planning authority also states that no coastal vulnerability risk exists, and notes that the submitted bushfire hazard risk assessment details mitigation measures for the site.
17. According to both applicant and planning authority, the site can be serviced by extension of existing services in the area and through capacity for wastewater, can be accessed by the development of an existing unmade road reservation, and is in close proximity to Shearwater

and Port Sorell for access to basic retail needs, community services and employment opportunities.

### **Commission's consideration**

18. The Commission notes the views of the parties and is satisfied that the draft amendment is, as far as is practicable, consistent with the regional strategy and the Port Sorell Strategic Plan 2008.

### **Land use conflicts**

19. The subject site currently neighbours land zoned Rural Resource to the north and south. The site to the south is owned by the Tasmanian Land Conservancy and is subject to a conservation covenant.
20. The planning authority's report considers that the rezoning to Rural Living is not likely to create land use conflict between neighbouring properties and the subject site. The applicant agrees, referencing the consistency with the local strategy and other neighbouring sites already in rural-residential use.
21. The applicant also provided an agricultural report, prepared by AK Consultants. In the report the author also notes the intention in the local strategy for the site and the neighbouring lots to the north and south to be converted to rural-residential land. The agricultural report also notes the requirement in the local strategy for a vegetation buffer to be developed along the eastern boundary. AK Consultants submit that the vegetation buffer, along with required bushfire setbacks would provide sufficient setbacks from Rural Resource land to the north and north east.

### **Commission's consideration**

22. The Commission considers that land use conflicts between the subject site and the Rural Resource-zoned property to the south are unlikely, given the existing conservation covenant on that lot which prevents clearance of vegetation (and therefore any agricultural or other rural use). This entire property also forms part of the network of vegetation corridors shown in the local strategy and in Figure F2.5.1.3(a) of the Port Sorell and Environs Specific Area Plan within the planning scheme.
23. The Commission accepts the applicant's argument that the vegetation buffer to be developed on the eastern boundary of the subject site will provide sufficient separation to limit conflict to those lots adjacent to the north east.
24. The neighbouring lot to the north will not be separated by a vegetation buffer, however it is a relatively small lot, developed with a dwelling and with a land capability suited only to grazing. The site is therefore unlikely to be used intensively for agricultural purposes.
25. The Commission also notes that the lots to the north and east are identified in Appendix 2 of the local strategy as part of the Panatana Rivulet and Squeaking Point Development Area. This area is one of several areas under the local strategy that are identified for expansion for the purpose of rural residential development (pp 26-30).
26. The Commission concludes that the proposed rezoning will not result in land use conflicts.

### **State Policy on the Protection of Agricultural Land 2009**

27. The applicant identifies the *State Policy on the Protection of Agricultural Land 2009* (PAL Policy) as relevant to the draft amendment. The planning authority considers that Principles 1, 5 and 7 of the PAL Policy are applicable.
28. Both parties submit that the site has limitations to agricultural use and is already constrained by surrounding residential development. They conclude that the loss of the land from agricultural use would be insignificant and would not impact on surrounding agricultural use, with the AK Consultants stating:

The proposed rezoning and subdivision does not impact upon prime agricultural land. The land is constrained by surrounding residential zoning and has limited potential to be farmed in conjunction with adjacent ag land. The loss of this 20ha of Class 5, that is used for dryland grazing is considered insignificant from an agricultural perspective.

The proposed rezoning does not place any further constraints on nearby Rural Resource land than already exists. The proposed establishment of a vegetated habitat corridor if the land is subdivided will provide adequate buffering between any residential development on the property and agricultural uses of land in proximity.

### **Commission's consideration**

29. The Commission finds that the PAL Policy is relevant to the draft amendment. The parties have demonstrated that not only is the land constrained by its size and land classification, but also by the existing residential development in proximity to the site.
30. The Commission finds that the land is not of local or regional significance for agricultural use. The draft amendment is therefore in accordance with the PAL Policy.

### **State Coastal Policy 1996**

31. The planning authority states that the subject site is not within 1 kilometre of the coast and therefore the *State Coastal Policy 1996* (the Coastal Policy) does not apply. However, the applicant considers the Coastal Policy is relevant to the site. The applicant reasons that the Coastal Policy is implemented through the planning scheme and therefore any future development on the site would be in accordance with the Coastal Policy. The applicant also notes that:

... the site is not identified as being located in proximity to or upon any actively mobile, or otherwise sensitive coastal landforms.

### **Commission's consideration**

32. The Commission finds that the Coastal Policy is relevant as the site is less than 1 kilometre inland from the high water mark, and therefore is within the coastal zone.
33. Particularly relevant is Outcome 2.4.2 which states:

Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.

34. The Commission finds that the draft amendment is consistent with Outcome 2.4.2. The subject site is identified as suitable for rural residential use in the local strategy which aims to develop an efficient and effective town structure, with rural residential growth to be contained in areas already developed with rural residential subdivision.
35. The Commission agrees that the site does not contain any sensitive landforms.
36. The Commission finds that the draft amendment is consistent with the Coastal Policy.

#### **State Policy on Water Quality Management 1997**

37. Both parties consider the draft amendment to be consistent with the *State Policy on Water Quality Management 1997* (the Water Quality Policy), noting that the suitability of future lots for waste water disposal will be considered under the Latrobe Interim Planning Scheme 2013, once an application for subdivision is lodged.
38. The applicant submits that, given the planning scheme has been prepared in line with the Water Quality Policy, any subdivision application complying with the provisions of the planning scheme will also therefore be in accordance with the Water Quality Policy.
39. The applicant also supplied an assessment of the water supply, onsite wastewater disposal, and stormwater disposal of a hypothetical lot design based on potential lot density allowed in the Rural Living Zone. The consultant concludes that future lots are capable of complying with the requirements of the planning scheme in relation to water, wastewater disposal and stormwater disposal.

#### **Commission's consideration**

40. The Commission accepts the submissions of the applicant and planning authority about the ability of the site to dispose of wastewater and stormwater in line with the Water Quality Policy.
41. The Commission finds that the draft amendment is consistent with the Water Quality Policy.

#### **State Policies and Resource Management and Planning System Objectives**

42. The Commission has discussed three State Policies, above. The Commission finds that the National Environment Protection Measures are not relevant to the draft amendment.
43. The Commission finds that the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

#### **Modifications required to draft amendment**

44. The certified version of the amendment sealed by the planning authority inserts a new Acceptable Solution and Performance Criteria in Clause F2.5.1.3 as A6 and P6 after A5 and P5. However there is already an existing A6 and P6.
45. The amendment has therefore been modified to insert the new Acceptable Solution and Performance Criteria as A7 and P7, as shown in Annexure A.

## **Decision on draft amendment**

46. Subject to the modifications described above, the Commission finds that the draft amendment is in order and gives its approval.

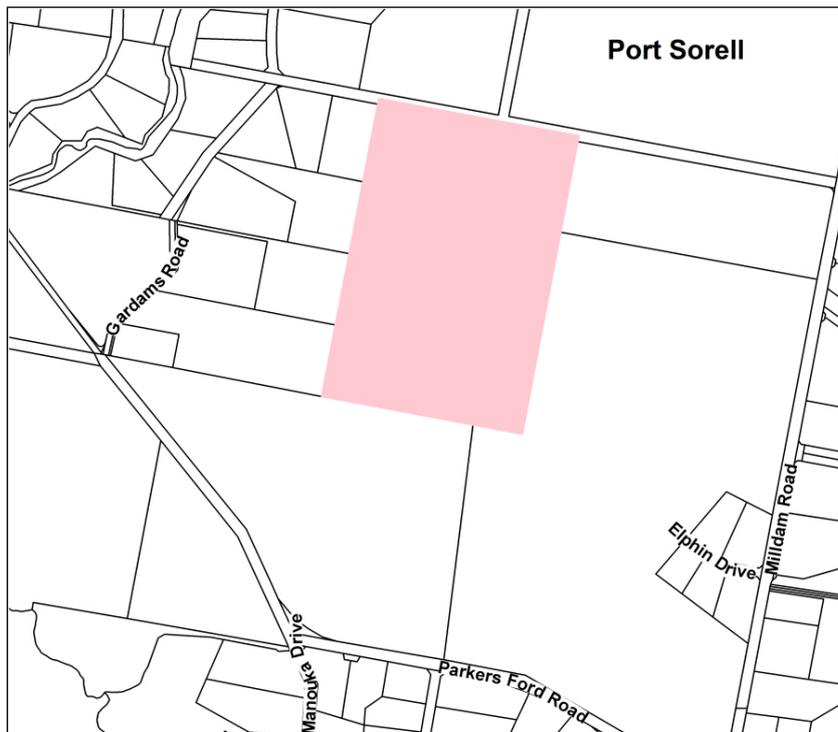
## **Attachments**

Annexure A – Modified amendment

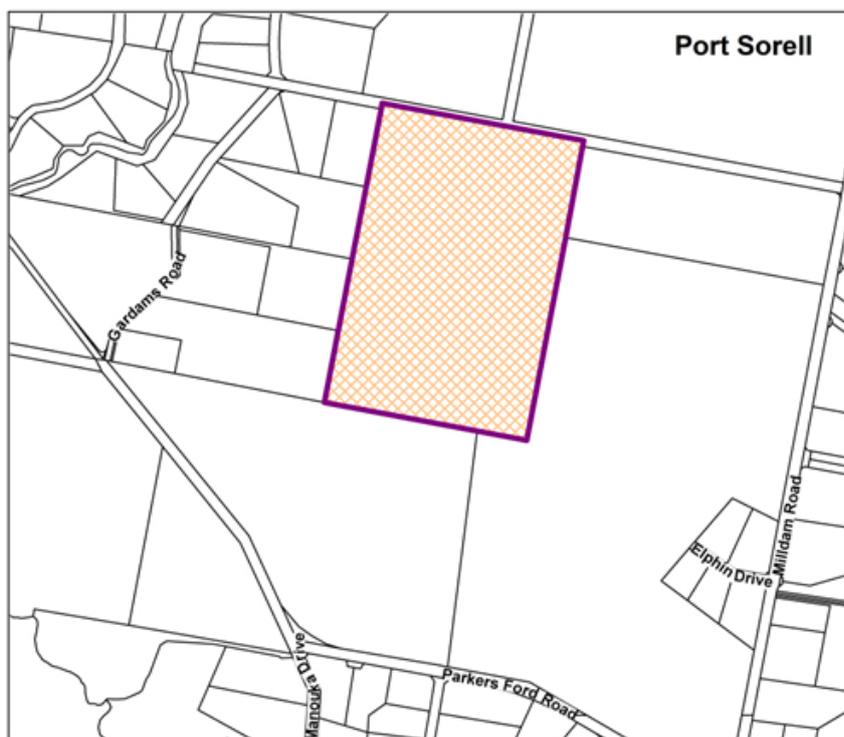
**Annexure A**

Modified amendment 02-18 Latrobe Interim Planning Scheme 2013

1. Amend Maps 1, 2 and 12 by changing the zoning of CT 210704/1 from Rural Resource to Rural Living.



2. Amend Maps 43, 44 and 55 to include CT 210704/1 as being within the Rural Living Precinct in the Port Sorell and Environs Specific Area Plan.



3. In Clause F2.5.1.3, insert the following as A7 and P7 after A6 & P6.

<b>A7</b>  A plan of subdivision for land described on Certificate of Title 210704/1 must include a continuous, vegetated habitat corridor provided in accordance with Figure F2.5.1.3(a) and clear of any building area, development, road or access.	<b>P7</b>  No Performance Criteria
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4. Amend A3 for Clause F2.5.1.3 to read as follows:

There must be vegetation corridors on land described on Certificates of Title 109132/1, 163587/1, 163487/2 and 210704/1 of mixed native woodland, grassland and wetland with a mature canopy height of not less than 2.0m.