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Northern Midlands Interim Planning Scheme 2013 Approval of Draft Amendment

In accordance with s42 of the *Land Use Planning & Approvals Act 1993*, the Tasmanian Planning Commission has granted final approval for the following amendment to the Northern Midlands Interim Planning Scheme 2013.

Amendment 01/2015 (Approved 10.12.15)

Purpose: AMENDMENT 01/2015 to the Northern Midlands Interim Planning Scheme 2013 - Rural Living Zone Subdivision Provisions

TASMANIAN PLANNING COMMISSION

Our ref: DOC/15/104216
Officer: Liza Fallon
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3 December 2015

Mr Des Jennings
General Manager
Northern Midlands Council
PO Box 156
LONGFORD TAS 7301

Attention: Paul Godier

Dear Mr Jennings

**Amendment 01/2015
Northern Midlands Interim Planning Scheme 2013**

Further to the hearing of this matter held on 26 August 2015 the Delegates have decided, pursuant to section 42 of the *Land Use Planning and Approvals Act 1993* (the Act), to grant approval to this draft amendment. The Commission has specified that the amendment comes into operation on 10 December 2015.

Please find enclosed one copy of the Delegates decision and approved amendment.

In accordance with section 42(3)(d) of the Act, the Council is required to give notice of the decision and in this respect your attention is drawn to regulation 8 of the *Land Use Planning and Approvals Regulations 2014*.

To allow for the completion of our files it would be appreciated if a copy of the advertisement was provided.

Yours sincerely



Karen Fyfe
Executive Planning Officer

Approved *J. S. Blaine*

Operative date: 10 December 2015

NORTHERN MIDLANDS INTERIM PLANNING SCHEME 2013

AMENDMENT 01/2015

To amend the Rural Living zone provisions to establish minimum lot sizes by amending clause 13.4.2 as follows:

- Omit from clause 13.4.2 P1 b) v) the word "or" and substitute with "and".
- Omit clause 13.4.2 P1 d) and substitute the following:
"d) for Caledonia Drive and Kalangadoo, not create lots less than 2.0ha; and".
- Insert new clauses after clause 13.4.1 P1 d) as follows:
"e) for Blackwood Creek, Deddington, Norwich Drive, and Pateena Road, not create lots less than 5ha; and
f) for Blackwood Creek, Deddington, Norwich Drive, and Pateena Road, maintain an overall density of 1 lot per 10 ha over the lot(s) being subdivided."

The COMMON SEAL of the)
Northern Midlands Council is)
affixed below, pursuant to the)
Council's resolution of)
20 April 2015 in the presence of:)



D J Downe

.....
Mayor

[Signature]

.....
General Manager

TASMANIAN PLANNING COMMISSION

DECISION

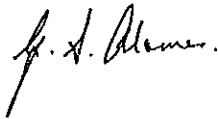
Planning scheme amendment	01/2015
Council	Northern Midlands Council
Applicant	Northern Midlands Council
Site	Caledonia Drive (at Relbia), Kalangadoo, Blackwood Creek, Deddington, and Norwich Drive and Pateena Road (at Longford)
Date of decision	13 November 2015

Catchwords

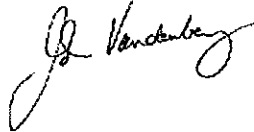
Draft amendment – Rural Living zone – specified departure – Performance Criteria – subdivision – minimum lot size

Decision

The draft amendment is approved under section 42 of the *Land Use Planning and Approvals Act 1993*.



Mr Greg Alomes
Chair



Mr John Vandenberg
Delegate

DESCRIPTION OF AMENDMENT

Amendment

The draft amendment to the Northern Midlands Interim Planning Scheme 2013, under section 34 of the *Land Use Planning and Approvals Act 1993* (Act), is for a specified departure to cl.13.4.2 (Rural Living Zone – Subdivision) to amend the Performance Criteria as follows for areas at Caledonia Drive (at Relbia) and Kalangadoo (Lake Leake), and Blackwood Creek, Deddington, Norwich Drive and Pateena Road (north of Longford):

To amend the Rural Living zone provisions to establish minimum lot sizes by amending clause 13.4.2 as follows:

- Omit from clause 13.4.2 P1 b) v) the word “or” and substitute with
“and”.
- Omit clause 13.4.2 P1 d) and substitute the following:
“d) for Caledonia Drive and Kalangadoo, not create lots less than 2.0 ha; and”.
- Insert new clauses after clause 13.4.1 P1 d) as follows:
“e) for Blackwood Creek, Deddington, Norwich Drive, and Pateena Road, not create lots less than 5 ha; and
f) for Blackwood Creek, Deddington, Norwich Drive, and Pateena Road, maintain an overall density of 1 lot per 10 ha over the lot(s) being subdivided.”

Issues raised in representations

Two representations were received during the public exhibition for the draft amendment from:

- Mrs E. O’Mahoney
- Mr Colin Smith (Woolcott Surveyors)

The representors raised the following issues:

- The minimum lot size for Pateena Road and Norwich Drive of 2 ha should be consistent with the 2 ha lots along Pateena Road that are in the Rural Living zone in the Meander Valley municipality.
- Smaller lot sizes will not lead to an explosion in subdivision potential because people tend to purchase neighbouring lots.
- Objects to the proposed cl.13.4.2 P1 (f) that limits subdivision in Blackwood Creek, Deddington, Norwich Drive and Pateena Road to those parcels of land that are currently 20 ha or over, because it is a ‘drastic change’ from the current one hectare minimum lot size that is specified in the planning scheme. Supports cl.13.4.2 P1 (f) being deleted from the draft amendment.
- Questions why a density of one lot per 10 ha is proposed when 5 ha lots could be allowed in some cases.
- No strategic planning reason has been provided by Council to support the draft amendment.
- The proposed planning scheme amendment adds another variation to the northern interim planning schemes for the Rural Living zone in the Northern Region.

- The proposed amendment undermines the planning scheme reform process given that the State Government is seeking greater consistency between planning schemes.

Planning Authority's response to the representations

The Planning Authority's report pursuant to section 39 of the Act considered the representations and recommended that no alterations are required to draft amendment 01/2015 and that it be approved as certified.

Issues raised in further submission by a representor

In a further written submission dated 18 August 2015, Mr Smith (Woolcott Surveyors) raised the following issues:

- No strategic planning reasoning, evidence, information or reports have been provided by Council to support the draft amendment.
- The draft amendment does not support Council's settlement strategy because it does not recognise the existing settlement pattern.
- The proposed amendments will increase the demand for Rural Living land in the Northern Midlands municipality, when infill has been proven to be possible for the identified areas.
- Five hectare lots could be allowed in some cases (and particularly at Blackwood Creek), and subdivision of lot sizes as small as one hectare is possible provided that onsite services can be provided and all other planning codes and planning provisions can be met.
- The draft amendment would result in only four of the 23 properties at Blackwood Creek being able to be further subdivided. Proposing to limit the future subdivision of blocks at Blackwood Creek to properties that are currently over 20 ha is not consistent with the current settlement pattern.
- Given that the six titles in the Rural Living zone at Deddington are below 12.09 ha, cl.13.4.2 P1 (f) would prohibit any further subdivision in this area. Why does Council not prohibit subdivision in the Rural Living zone at Deddington?
- If a 5 ha lot is an appropriate minimum lot size in the Rural Living zone at Deddington, why is an 'overall density clause' required or justified?
- In the Rural Living zone at Pateena Road and Norwich Drive, only seven of the 51 titles are above 20 ha and the draft amendment would result in only these properties being further subdivided.
- Supports the deletion of cl.13.4.2 P1 (e) and (f) from the draft amendment to allow for the subdivision of land under 20 ha in the Rural Living zone. Considers this is appropriate given that Council has discretion to reject inappropriate subdivision if cl.13.4.2 P1 (b), (c) and (d) and the planning code provisions can be met.

Mr Smith also included a plan in the further submission indicating that a subdivision with lots of 5 ha can be achieved at Blackwood Creek as exemplified by a current subdivision application at 78 Hop Valley Road, Blackwood Creek that proposes to subdivide a 11.98 ha title into two lots.

Date and place of hearing

A hearing was held at the Tasmanian Planning Commission's office at 12 St John Street, Launceston on 26 August 2015.

Attendance at the hearing

Council and applicant: Mr Paul Godier, Senior Planner for the Northern Midlands Council

Invited by the Commission: Mr Jason Taylor, Development Assessment Manager for TasWater

No representors attended the hearing.

REASONS FOR DECISION

Consideration of issues

Background

Under the former Northern Midlands Planning Scheme 1995 (1995 Scheme), the areas subject to the draft amendment were zoned, as follows:

- **Residential Low Density B** – Blackwood Creek, Deddington, Norwich Drive and Pateena Road (at Longford).
- **Residential Low Density C** – Caledonia Drive (at Relbia) and Kalangadoo.

The 1995 Scheme specified the development standards in the Residential Low Density (R3) zone at cl.3.4.3, as follows:

(ii) *Lot Size in Area B*

- (a) *The minimum area of a lot in the Residential Low Density Zone marked B on the Northern Midlands Planning Scheme 1995 maps shall be 10 hectares.*
- (b) *Where effluent disposal allows and the siting of buildings can be met the minimum lot can be reduced to 5 hectares provided the overall density of 1 lot per 10 hectares is maintained over the lot(s) being subdivided.*

(iii) *Lot Size in Area C*

- (c) *The minimum area of a lot in the Residential Low Density Zone marked C on the Northern Midlands Planning Scheme 1995 maps, shall be 2 hectares and shall be so proportioned as to contain a circle of 70m in diameter and frontage to a road of not less than 6m.*

In the process of translating the 1995 Scheme to the Northern Midlands Interim Planning Scheme 2013 (Interim Scheme), Council had proposed to the then Minister for Planning that the Residential Low Density zone be translated to the Low Density Residential zone as contained in Planning Directive No.1 (PD1) - the statewide planning scheme template for Tasmania. Under this proposed zone, the minimum lot size would have been in the order of 1,200 to 2,000 m², significantly less than the existing lot sizes under the Residential Low Density zone.

The Minister, on advice, found that this was not the closest, 'like for like' translation to a PD1 zone and determined that the zone with the closest and most appropriate zone purpose statement was Rural Living.

The Minister directed Council to make this amendment under section 30D(6) of the Act, however, Council declined. The Minister then directed the Tasmanian Planning Commission to make the amendment under section 30(8) of the Act prior to declaring and gazetting the Interim Scheme.

Under the Interim Scheme, the minimum lot size for the Rural Living zone at cl.13.4.2 P1 (d) – Subdivision is one hectare. The following Interim Scheme overlays also apply to these areas and may impact on potential subdivision lot sizes:

- Caledonia Drive – Priority Habitat Overlay.
- Kalangadoo – Urban Growth Boundary Overlay and the Priority Habitat Overlay applies to the Rural Living zoned land located on the north-eastern side of in the settlement.
- Blackwood Creek – Priority Habitat Overlay applies to parts of the Rural Living zoned land in the settlement.
- Deddington – Priority Habitat Overlay applies to part of title CT 54303/4.
- Norwich Drive and Pateena Road – Scenic Management Area Overlay applies to a number of titles on Norwich Drive and Pateena Road, and the Priority Habitat overlay applies to part of title CT 12087/17 on Norwich Drive.

Council's intent in initiating the draft amendment is to reinstate the minimum lots sizes that had previously applied to these areas under former Residential Low Density zone the 1995 Scheme.

Planning scheme provisions – Rural Living Zone

The purpose of the Rural Living zone under cl.13.1 of the Interim Scheme is defined as:

13.1.1 Zone Purpose Statements

- 13.1.1.1 To provide for residential use or development on large lots in a rural setting where services are limited.*
- 13.1.1.2 To provide for compatible use and development that does not adversely impact on residential amenity.*
- 13.1.1.3 To provide for rural lifestyle opportunities in strategic locations to maximize efficiencies for services and infrastructure.*
- 13.1.1.4 To provide for a mix of residential and low impact rural uses.*

Under cl.2.2.2.1 – Settlement, the purpose of the Interim Scheme identifies that Council will:

- (a) Encourage growth within the existing settlement pattern in the main towns of Longford, Cressy, Perth, Evandale, Campbell Town, Ross and Avoca as the foci for commercial, residential, industrial, community and other development.*
- (b) Allow urban development within the capacity of existing services outside the urban growth boundaries of the main settlements but only in established settlements.*
- (c) Actively discourage further residential development in the rural areas outside these centres unless clearly required for the operation of a rural enterprise, except for limited low density residential development in selected areas where Council has made provision.*

Assessment under the Act – regional strategic land use considerations

The delegates considered the draft amendment in relation to the Northern Tasmania Regional Land Use Strategy 2013 (NTRLUS) which was declared by the Minister for Planning on 23 September 2013.

The NTRLUS aims to facilitate and manage change, growth and development within Northern Tasmania over the next 20 years. Strategic Direction 4 of the NTRLUS states the need to establish an urban settlement hierarchy based on the most appropriate locations for future population growth and urban centres within an Urban Growth Boundary Area (UGBA), and the need to coordinate investment of services to existing and future settlements to ensure maximum integration, community benefit, efficiency and long-term sustainability of service provision.

The NTRLUS identifies that rural living areas are not intended to be within the UGBAs and but can be supported in strategically located areas that are characterised by an established rural residential land use pattern where it does not fragment or restrict productive rural land and other primary industries.

In this context, rural living areas are intended to support opportunities for residential use on large allotments in preferred locations strategically aligned to nearby urban settlements.

The NTRLUS does not specify whether there should be subdivision opportunities in all areas zoned Rural Living or a minimum lot size for the Rural Living zone in areas already developed with an existing land use pattern.

A minimum lot size of one hectare is specified if larger lots are required by environmental constraints, local context, access to services, Regional and Local policy and any relevant Local Area Statements (NTRLUS, section 4.6, p. 56).

Subdivision options will therefore be controlled and respond to the criteria for sustainability and the context of individual localities, based on strategic preference that is identified in local strategies.

The delegates reviewed the application of Rural Living zones in other adjoining municipal areas.

The delegates observed that among the councils in the Northern Region there is considerable disparity in the way the Rural Living zone has been applied, including the basis for selecting candidate locations, the density of development that is encouraged or enabled and whether or not subdivision for residential purposes is permitted. This reflects the legacy of the planning schemes that preceded the current interim planning schemes, the planning scheme translation process and the timing of various stages of the State's planning reform agenda.

In these circumstances it is difficult to discern a consistent 'regional strategy' for Rural Living against which to assess the Northern Midlands draft amendment.

Notwithstanding this, the delegates confirm that the draft amendment meets regional land use strategy requirements under section 300 of the Act.

The delegates also note that there is not a state planning policy at this stage that would clarify a statewide or regionally consistent approach to rural living settlement.

Assessment under the Act – Local Strategic Land Use Considerations

Council's Strategic Plan 2007-2017 Volume 2 states that for rural areas, the community identified the following key land use priorities for the Northern Midlands municipality:

- agriculture – a strong and secure farming sector – where the right to farm to be asserted as fundamental, not to be compromised;

- management of urban / rural issues (conflict, right to farm) – Council to ensure the new planning scheme is unequivocal on protection from fettering due to conflict with the ‘urban invasion’ and other land uses; and
- water as the most important input – and the need for a comprehensive water resource management strategy that is transparent and coherent for the region.

At the hearing, Mr Godier (representing Council) advised that the former Residential Low Density zone provisions under the 1995 Scheme had set the existing subdivision and development pattern of the areas now zoned Rural Living. Mr Godier noted that these areas were largely developed with established communities and that property owners generally did not wish to see further subdivision as allowed under the Interim Scheme.

Mr Godier further advised that it is the provisions in the draft amendment that ought to direct future subdivision of these areas.

The Interim Scheme objectives for Rural Living development at cl.3.6.3 are, as follows:

Consistent with the initial statement in the Settlement Strategy, no new areas for development have been proposed. Any additional future supply is expected to be by the incremental expansion of areas already established, principally in the Pateena Rd/Norwich Drive area, but subject to the State Policy on the Protection of Agricultural Land (PAL Policy), land suitability, the land not being in conflict with any other aspects of Council’s Strategic Plan, and demand being established such as to justify further zoning for this purpose at the time.

The Interim Scheme objectives for urban growth boundaries at cl.3.7.3.1 are, as follows:

Urban growth boundaries are shown for a number of towns and its purpose is to define areas within which residential and other forms of urban development is to be encouraged.

Mr Godier confirmed that since the Interim Scheme was introduced, no further strategic work had been undertaken by Council that identified a preference to increase rural living areas or densities in the municipality.

The delegates noted that the Settlement Strategy at cl.3.6 of the Interim Scheme states that *‘Council has previously made provision for limited low-density residential development in selected areas, and will actively discourage further residential development in rural areas.’*

Furthermore, un-serviced settlements at cl.3.6.2 of the Interim Scheme identify a number of settlements, including Deddington, Blackwood Creek and Lake Leake/Kalangadoo, as lacking some essential services, and any growth prospects are constrained by the practicality of improving their delivery, quality and reliability. Consequently, *‘it is not the policy’* of Council *‘to promote the growth of these settlements or augment the capacity of services beyond meeting their existing needs’* and that zoning is intended to reflect these principles.

At the hearing, the delegates requested Council to further consider its settlement strategy for the Northern Midlands area in terms of the utilisation of Rural Living zoned land and possible areas of rural land that may be ‘earmarked’ for future rezoning to Rural Living over the next 20 to 30 years. The delegates also requested Council to examine the demand for this form of residential settlement, and review Council’s policy to not zone additional rural areas to Rural Living.

A further submission from Council, dated 22 September 2015, noted, as follows:

Consistent with the initial statement in the Settlement Strategy at clause 3.6 of the Interim Scheme, Council’s view is that the utilisation of Rural Living zoned land should be maximised by allowing subdivision of such land providing it is consistent with the settlement pattern of the existing areas within that zone, thereby limiting the demand for additional areas to be rezoned to Rural Living.

Furthermore, Council identified that none of the areas that form the draft amendment are serviced by public transport, schools, shops or medical facilities and they have little or no reticulated sewer and water infrastructure; and apart from Caledonia Drive, fire stations are located over 10 kms away.

In light of cl.3.6.2 of the Interim Scheme, the delegates also requested Council to provide additional information on the Council's local area settlement strategy for Blackwood Creek, Deddington and Kalangadoo, especially in relation to further subdivision, residential use and other development and supporting infrastructure and facilities in these areas.

The further submission from Council stated that it is not immediately clear whether the growth in un-serviced settlements referred to in cl.3.6.2 of the Interim Scheme means growth in number of lots by subdivision within the existing Rural Living zoned land or outward growth by rezoning adjacent land.

However, based on cl.3.6.3 and cl.3.7.3 of the Interim Scheme, the growth of the un-serviced settlements strategy is taken to mean that development is encouraged in the existing zoned land, but the zone is not to be expanded beyond existing boundaries.

The delegates note and agree that the draft amendment represents a closer 'like for like' translation from the previous zone provisions in the 1995 Scheme.

The delegates are satisfied that the proposed Rural Living zone subdivision provisions are consistent with the purpose and objectives of the NTRLUS, Council's Strategic Plan, the settlement strategy under cl.2.2.2.1 and cl.3.6 of the Interim Scheme, and the purpose of the Rural Living zone under cl.13.1.

Assessment under the Act – consideration of representations

The delegates considered the representations and a further submission made by Mr Smith.

The delegates understand the economic potential that may have arisen as a consequence of the changes to the Rural Living zone provisions through the interim planning scheme process.

As noted above, Council's position is that subdivision in Rural Living zoned land needs to be consistent with the existing settlement pattern and not increase the density of development.

The delegates note the contrary view expressed by the representors but conclude that there is insufficient evidence to justify or support retention of the current Interim Scheme provisions.

In relation to adopting similar subdivision provisions to those applying in Meander Valley, the delegates note that the Meander Valley Interim Planning Scheme does not currently allow subdivision under the Rural Living zone.

The simplest explanation of the draft amendment is that it seeks to return previous 'rural living' type zones to a 'close' equivalent of the controls that applied before the current scheme was declared. It also closes off a 'windfall' opportunity to apply for one hectare minimum lots (based on satisfaction of Performance Criteria) in localities where much larger lots (2-10 ha) were the established norm.

Water and sewage

Mr Godier submitted at the hearing that as a general principle, residential lots in the Rural Living zone are to provide onsite water supply and wastewater treatment. In addition, the areas that form the draft amendment are located where infrastructure services are limited and Council does not have funding to extend services to these areas.

Mr Taylor for TasWater advised that most of the land that forms the draft amendment is unserviced by TasWater as follows:

- A northern section of Kalangadoo located in the General Residential zone is sewerred. There is potential for limited extension of the sewer infrastructure in the township, although no water infrastructure is planned.
- Caledonia Drive has a limited TasWater reticulated water supply, although the flow and pressure of the water is not sufficient to provide adequate fire protection.
- Pateena Road and Norwich Drive could be considered as part of the Hadspen Structure Plan and the provision of reticulated water to the area could be fed from the main Launceston system. However, TasWater does not have resources to provide infrastructure services to this area and its provision would need to be driven by developers.
- Blackwood Creek and Deddington are unserved by TasWater.

Mr Taylor submitted that TasWater did not object to the draft amendment and no conditions would be imposed.

A further submission from Council, dated 22 September 2015, confirmed that no reticulated sewer and water services are provided on Rural Living zoned land at Pateena Road and Norwich Drive, Kalangadoo, Blackwood Creek, Deddington. No reticulated sewer services are provided at Caledonia Drive although limited reticulated water is supplied.

Bushfire hazard

The delegates note that some of the areas that form the draft amendment are exposed to a bushfire hazard risk, including Norwich Drive (which is serviced by a single road providing one way in and one way out) and Kalangadoo and Blackwood Creek (which adjoin extensive bushland areas and are located some distance away from emergency services).

Mr Godier advised that a recent subdivision application to Council for land in Norwich Drive was refused by Council because it posed an unacceptable bushfire hazard risk. The application failed to meet the bushfire hazard provisions of the Interim Scheme, partly because Norwich Drive is a 'no through' road.

The delegates concluded that the Bushfire Prone Areas Code provided appropriate planning provisions for the assessment of bushfire risk and protection requirements.

State Policies and the Objectives of the Resource Management and Planning System

The draft amendment seeks to restore the provisions for subdivision of land zoned Rural Living by increasing the minimum lot size based on locality that applied in the previous 1995 Scheme. Accordingly, the delegates consider that there are no State Policies relevant to the draft amendment. The delegates also consider that the draft amendment furthers the Objectives of the Resource Management and Planning System in Schedule 1 of that Act.

Decision on draft amendment

The delegates consider the draft amendment meets the requirements of section 42 of the *Land Use Planning and Approvals Act 1993* and can be approved.