

Meander Valley Council

W O R K I N G T O G E T H E R

AGENDA

SPECIAL COUNCIL MEETING

28th February 2012



PO Box 102, Westbury,
Tasmania, 7303

Dear Councillors

I wish to advise that a special meeting of the Meander Valley Council will be held at the Westbury Council Chambers, 26 Lyall Street, Westbury on ***Tuesday 28th February 2012 at 4:30pm*** to discuss the Meander Valley Draft Interim Planning Scheme 2011.

A handwritten signature in blue ink, appearing to read 'Greg Preece', with a large, stylized flourish at the beginning.

Greg Preece

GENERAL MANAGER

Table of Contents

DECLARATIONS OF INTEREST :	4
DEVEL 1 THE DRAFT MEANDER VALLEY PLANNING SCHEME 2011	6

Minutes of a special meeting of the Meander Valley Council held at the Westbury Council Chambers, 26 Lyall Street, Westbury on Tuesday 28th February 2012.

PRESENT:

APOLOGIES:

IN ATTENDANCE:

LEAVE OF ABSENCE:

DECLARATIONS OF INTEREST :

CERTIFICATION

"I certify that with respect to all advice, information or recommendation provided to Council with this agenda:

1. the advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation, and
2. where any advice is given directly to Council by a person who does not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person."



Greg Preece
GENERAL MANAGER

"Notes: S65(1) of the Local Government Act requires the General Manager to ensure that any advice, information or recommendation given to the Council (or a Council committee) is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation. S65(2) forbids Council from deciding any matter which requires the advice of a qualified person without considering that advice."

In accordance with the *Land Use Planning and Approvals Act 1993*, the Mayor will advise that Council now acts as Planning Authority.

DEVEL 1 THE DRAFT MEANDER VALLEY PLANNING SCHEME 2011

1) Introduction

This report follows the Council meeting of the 14th February 2012 whereby Council deferred endorsing the draft Meander Valley Planning Scheme to a Special Meeting, whereby the revised document could be considered once the updated Regional Model had been received from Northern Tasmania Development.

The purpose of this report is to inform Council of revisions to the Regional Model planning scheme provisions in light of initial feedback from the Tasmanian Planning Commission (TPC), which in turn affects the content of the Draft Meander Valley Planning Scheme 2011, endorsed by Council at its meeting of the 11th October 2011.

The Draft Meander Planning Scheme will then be at the stage where it will be formally submitted for declaration as an Interim Planning Scheme under S.30F of the *Land Use Planning & Approvals Act* (LUPAA) 1993.

2) Background

At its meeting of the 11th October 2011, Council endorsed the Draft Meander Valley Planning Scheme 2011. The Draft Planning Scheme is comprised of:

- The Common Key Elements Template (CKET) which sets out the form and structure of planning schemes throughout the State mandated through Planning Directive 1 (PD1);
- Common regional provisions developed by the 8 Councils of the northern region through the Northern Region Planning Initiative; and
- Local provisions.

As outlined in the October 2011 Council Meeting Agenda...

"The process for assessing the draft planning schemes as Interim Planning Schemes has been determined by the TPC. In the first

instance, an informal period of assessment will be undertaken, whereby each of the eight planning schemes of the Northern Region will be compared with the NRLUS, the regional provisions and each other. The intention of this informal process is that the TPC may initially identify potential, significant issues of inconsistency with the NRLUS and the Regional provisions. This is due to the fact that Interim Planning Schemes come into operational effect immediately upon declaration by the Minister, before the period of public notification and hearings. Upon completion of the informal assessment, the TPC will notify Northern Tasmania Development and the Councils if any modifications are required, prior to a recommendation being forwarded to the Minister that the Interim Planning Schemes should be declared. "

The TPC has provided initial feedback through their informal review of the regional provisions that some issues will need to be addressed in order to satisfy the TPC's interpretation of the requirements of LUPAA.

The Council representatives of the northern region have discussed the TPC feedback and have revised some components of the common regional provisions. This is discussed below in the Officer's Comments.

3) Strategic/Annual Plan Conformance

Council's Strategic Plan 2004 – 2014 provides a strategic objective under Natural and Built Environment to "*Establish a new Land Use Planning Scheme*".

The development of the planning scheme supports the remaining objectives for the natural and built environment namely:

- *Revise and implement a manageable and achievable Natural Resource Management Strategy.*
- *Work in partnership to develop a cross-tenure management plan for the Karst areas.*
- *Support the development and implementation of a Salinity Management Strategy for Urban and Rural Land under threat.*
- *Maintain and build the character of our townships through good urban design.*

- *Maintain and protect important elements of natural, cultural and built heritage throughout the Meander Valley.*

4) Policy Implications

Under the State Policies and Projects Act 1993, a new planning scheme must comply with all State Policies. The TPC has raised compliance with the State Policy on the Protection of Agricultural land 2009 as an issue that required further attention.

5) Statutory Requirements

The Land Use Planning and Approvals Act 1993, under section 30D., provides that a Planning Authority may submit to the Minister a draft interim planning scheme for the authority's municipal area.

As discussed above, the TPC have raised initial concerns regarding compliance with the statutory requirements of LUPAA.

Section 30D. provides that a planning authority may provide a draft Interim Planning Scheme to the Minister, who may or may not declare the Interim Planning Scheme under S.30F. Whilst the Act does not specifically outline the process from submission to declaration, it is practice for the Minister to request the TPC to provide advice as the State planning organisation as to whether the requests meet statutory obligations and it expected that the Minister will seek advice to determine if it is an appropriate action to declare each of the interim planning schemes.

It is noted however, that the Minister is not bound to accept the advice of the TPC and that the TPC is not the statutory authority for the declaration of interim planning schemes.

6) Risk Management

The revision of the regional provisions in response to the TPC review is to reduce the risk of an adverse opinion of the regional content and potential for rejection of the Interim Planning Schemes on that basis.

7) Consultation with State Government and Other Authorities

The eight Councils involved in the regional project have had ongoing discussions in regard to the TPC feedback and as well as liaison with the TPC through the Technical Reference Group in regard to the regional common provisions.

In addition, consultation between the Councils in regard to zoning application and the interface at municipal boundaries has been ongoing.

8) Community Consultation

Public submissions through the informal consultation period were addressed in the preparation of the draft planning scheme that was endorsed at the October 2011 Council meeting. It was noted at that time... *"Several of the submissions addressed components that were developed as regional common provisions. Council has committed to supporting the Regional Model and does not have the mandate to individually amend those components. However, Council may make submissions to the TPC during the formal notification of Interim Schemes, on behalf of the submissions received if it supports the content of those submissions."*

The revision of the regional content aims to progress the Interim Planning Schemes of the Northern Region through the first threshold of declaration. This does not alter the ability of Council to support individual submissions made through the formal process as discussed above. Members of the public will still be able to make representation to the TPC during the formal notification period and will be heard by an independent panel.

9) Financial Impact

Not applicable

10) Alternative Options

Council as the Planning Authority may:

- 1/ adopt the officers recommendations; or
- 2/ not adopt the officers recommendations; or
- 3/ propose alternate modifications to the local provisions only of the draft planning scheme and/or identify which submission points to the regional provisions it will support in the formal TPC assessment process.

11) Officers Comments

The Northern Regional Planning Initiative developed common planning scheme provisions which, when combined with the State *Common Key Elements Template* for planning schemes,

becomes the document known as the '*Regional Model Planning Scheme*' (the Regional Model).

The Regional Model was forwarded to the Tasmanian Planning Commission for a period of informal review in late October 2011. The preliminary consideration of the Regional Model was received from the TPC in late December 2011 which outlined matters under LUPAA that must be considered for the approval of Interim Planning Schemes and raised some issues that it considers need further attention.

As described in the report to Council October 2011...

"The regional planning process is intended to provide consistency in the way zones are used and also in the text that addresses use and development components common to all zones."

It is in this context that the Northern Regional Planning Initiative (Technical Reference Group, together with representatives from the Management Committee) have revised some of the regional provisions to address the concerns raised by the TPC.

The issues raised by the TPC include:

- the large number of allowable uses in the use tables for zones;
- the optional status of the Heritage Code;
- compliance with the State Policy on the Protection of Agricultural Land 2009;
- editorial issues in compliance with the State Common Key Elements Template and the manner of drafting.

The review also notes that at this stage consideration is "high level" and full compliance with the Northern Region Land Use Strategy (a requirement of LUPAA now that it has been formally declared by the Minister) will not be able to be determined until each of the Councils draft Interim Planning Schemes are submitted and the extent of zoning and the nature of local provisions can be ascertained.

The Northern Region's response to each of the issues identified in the preliminary review is discussed below.

Zone Use Tables

The TPC noted that whilst *Planning Directive 1 – The Format and Structure of Planning Schemes* "expressly allows Councils to choose to populate the Use Table" it has raised concerns that

“too many allowable uses will erode the zone purpose” and that local and regional strategies, particularly in regard to settlement, will be undermined.

The uses provided for as common or optional provisions in the Regional Model reflected discussions amongst the Technical Reference Group (TRG) relating to each municipality’s current experience in regard to nature of uses that exist or are desired and the range of zones provided in the CKET. The group found that the CKET zones, which include mandatory purpose statements, did not comfortably fit all circumstances across the region.

Regional Response

The basic tenet of performance based planning schemes is that they recognise that there is a vast array of scenarios that either exist or may comfortably exist within an area and that the first response to the testing of the appropriateness of use, is not necessarily one of prohibition. The expression of objectives that are relevant to particular areas (a fundamental new component in the CKET and the operational structure of the planning scheme) and the criteria for determining degrees of acceptability can properly ascertain if a use is appropriate and protects the purpose of the zone.

The regional group agreed that in rare circumstances, if there was a special local situation that did not fall within the common range of uses, that a Council could add those uses as a local provision and would provide justification on a local basis for that circumstance.

The nuances of particular localities and existing or potential uses is to be supported by local justification in the supporting report by each Council that will accompany the draft Interim Planning Schemes. This report will have a shared component amongst the region explaining the common provisions.

The assertion by the TPC that section 9.1 of the CKET relating to changes to non-conforming uses can be relied upon for existing uses that do not comfortably fit the available zones, fails to adequately consider the extreme limitations that this clause places on use and development, whereby very little is expected to be able meet its terms due to the compulsory requirement that all use and development must be brought into greater conformity with planning scheme.

Irrespective, the regional group reviewed the uses provided for in the zone use tables and the potential for qualifications to address the TPC's concerns. The following revisions to the Use Tables have been agreed:

Rural Living Zone:

- *Bulky Goods Sales* with the qualification - "*only for farm machinery, landscape supplies and timber yard*" has been deleted, rendering this use prohibited in the zone unless there is a specific local justification.
- The floor area limitation on *General Retail and Hire* is moved from the use table to the acceptable solution.
- An additional clause is added to provide for a limitation on use for *Business and Professional Services* and *General Retail and Hire* as a prohibition above 250m² floor area.

Community Purpose Zone:

- *General Retail and Hire* with the qualification - "*not exceeding 100m² gross floor area*" and *Vehicle Parking* have been deleted, rendering these uses prohibited in the zone unless there is a specific local justification.

Open Space Zone:

- *Crematoria and Cemeteries* has been deleted, rendering this use prohibited in the zone unless there is a specific local justification.
- Agreement that all public cemeteries are to be zoned Community Purpose.
- The size limitation in the Acceptable Solution for discretionary uses has been increased to 250m to be consistent with other zones with a prohibition on *General Retail and Hire* being any larger than this.

Light Industrial and General Industrial Zones:

- Addition of qualification "*If for crematoria*" to the use *Crematoria and Cemeteries*.

Rural Resources Zone:

Refer to discussion below regarding PAL Policy compliance for detailed discussion on rural uses.

Utilities Zone:

- Addition of a qualification “If for minor utilities” for *No Permit Required* status with all other utilities having *Permitted* status.

Environmental Management Zone:

- Addition of an optional Performance Criteria at 29.4.1 P3 to enable reduction of the setback in particular circumstances.

P3 “Buildings may only have a lesser setback if the natural values of the site will be better protected by a reduced setback or the risk from natural hazards will be reduced”

Major Tourism Zone:

- *Education and Occasional Care* has been deleted rendering this use prohibited in the zone unless there is a specific local justification.

Heritage Code

The TPC have raised concerns regarding the optional status of the Heritage Code and that this could effectively allow Councils to avoid inclusion of heritage provisions altogether. The TPC regard this as potentially inconsistent with the Act and consider that there is an expectation that heritage conservation is provided for in planning schemes.

The regional response has been formulated as follows:

- *It is the position of the Northern Regional Planning project that management of local heritage is a local matter and as such the regional model is consistent with both the legislative position to be adopted by Heritage Tasmania and objective Part 2 (g) of LUPAA relating to places of historical interest or cultural value.*
- *This position is based on the fact that there is not going to be any State level legislative mandate for local heritage in the legislative changes currently being drafted by Heritage Tasmania.*
- *This position is also supported by the feedback received during the informal consultation process conducted by each Council, whereby there were very few submissions received in relation*

to the mandatory management of local heritage. This indicates that there is not a sufficient mandate from the community to require local heritage provisions be made mandatory.

- *This position will be tested during the formal assessment and consultation process following sign-off by the Minister of the interim schemes. This consultation will provide a further opportunity for the community position to be determined for those Councils that have not conducted detailed heritage surveys or adopted all or part of the optional Heritage Provisions contained within the Regional Model.”*

Rural Resources Zone and the State Policy on the Protection of Agricultural Land 2009

The TPC review raises concerns that several of the principles of the PAL policy have not been complied with. In particular the range of uses allowable in the zone is again highlighted as potentially undermining the primary purpose of the zone namely ... “to provide for sustainable development of agriculture”. It is noted that the mandatory CKET zone purpose actually ascribes equal importance to a range of primary industry resources, of which agriculture is but one.

The range of uses provided for as regional provisions reflects the discussion on the highly diversified uses found throughout the rural areas that contribute to the primary industry, tourism, environmental and recreation sectors and the communities that rely on those sectors. The Northern Region, informed by its Northern Region Land Use Strategy and due to a high degree of consistency in local strategies, has agreed to consolidate some common local area objectives to better describe the strategic intent behind the range of uses that can be considered in the zone.

As discussed previously, it is important to understand the relationship between the objectives for the zone, the allowable uses and the tests of appropriateness contained in the performance criteria in the operation of a performance based planning scheme. The performance criteria filter proposed uses and assess the potential impacts on surrounding primary industries.

In light of the TPC comments, the Technical Reference Group has revised the Use Table together with the tests contained in the performance criteria for discretionary uses, to refine the region’s

response to the PAL Policy and to better describe the rationale behind the consideration of uses within the zone.

The revised Rural Resources Zone is attached however the revisions can be summarised as follows:

- The 'No Permit Required' status for Resource Development has been qualified to remove controlled environment agriculture, intensive animal husbandry, plantation forestry and utilities on prime agricultural land to achieve compliance with Principle 4 of the PAL Policy. This is reinforced with the inclusion of the prescribed criteria contained in Principle 4.
- 'Permitted' status for Business and Professional Services has been qualified to include a limitation to veterinary or animal care services.
- Permitted status for Extractive Industries has been qualified to limit this use to only Level 1 activities, and only if they are not located on prime agricultural land. Level 2 activities or extractive industries on prime land become 'Discretionary' (it is noted that Level 2 activities are automatically discretionary through the associated sections in EMPCA).
- The option of Utilities having a permitted status has been deleted with all Utilities either being 'No Permit Required' for existing uses or 'Discretionary' for new utilities.
- Bulky Goods Sales has been qualified to limit uses to farm machinery, landscape supplies and a timber yard.
- Hotel Industry has been qualified to limit new uses to cellar door sales, breweries and distilleries.
- The Performance Criteria for Discretionary Uses have been expanded into four concepts:
 - Strategic justification against the local area objectives;
 - Conversion of land;
 - Potential impacts on surrounding land;
 - Visual impacts
- The specific requirements for consideration of prime land in Principles 2,4 and 6 of the PAL Policy have been incorporated into the criteria.
- A new clause 26.3.3 has been added to address Principle 8 of the PAL Policy which requires that irrigation districts must

be protected. Non agricultural uses are tested against their potential impact on the irrigation potential of the land.

Planning Directive 1 - Common Key Elements Template

The TPC have highlighted some editorial issues with the way in which some clauses were added to the CKET which conflict with PD1 in that the template text cannot be altered. In addition some definition compatibility issues and typographical errors were noted. These issues are generally considered to be minor.

Some issues concerning the CKET and PD1 are being forwarded to the TPC as a separate request for clarification.

Map Amendment

Discussions between Meander Valley, Launceston City and West Tamar Councils in regard to zoning interface at the municipal boundary have concluded that at this stage, the transmission line corridors should not be zoned 'Utilities'. This is due to the prevailing land uses that occur underneath and potentially above transmission lines and the inability to accurately map the easements. The zoning endorsed at Council's October 2011 meeting is shown in Figure 1 below.

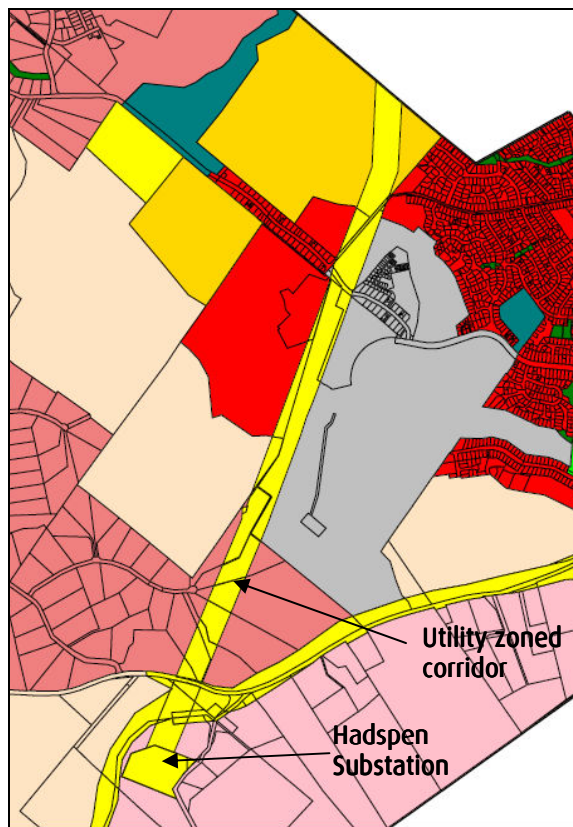


Figure 1 – Transmission line corridor as Utility Zone from the Hadspen substation north to the Launceston City Council boundary.

As such, it is recommended that the planning scheme maps be amended to remove the Utility Zone from the transmission line corridor from the Hadspen substation north to the boundary with Launceston City Council and instead extend the zoning that is applicable to the balance of the title. This will ensure consistency between Councils.

The amended map is attached.

Conclusion

The revisions to the Regional Model take account of the concerns of the TPC however are not considered to compromise the principles behind the consistent approach that underpins the regional provisions. It is important to note that the revisions do not affect Council's response to the public submissions or the local provisions and the public will be able to make submissions through the formal process as has been previously discussed.

The final edited version of the Regional Model is included in the draft Meander Valley Planning Scheme submitted with this report.

It is recommended that Council endorse the revisions to the regional provisions and the map amendment as described to finalise the Planning Scheme for formal submission to the Minister as the Meander Valley Interim Planning Scheme 2012.

Author: Jo Oliver, Senior Town Planner

12) Recommendation

1. That Council endorse the revisions to the Regional Model.
2. That Council endorse the map amendment to remove the Utility Zone from the transmission line corridor from the Hadspen substation north to the boundary with Launceston City Council and instead extend the zoning that is applicable to the balance of the title.
3. That Council, pursuant to Section 30D(1) of the Land Use Planning & Approvals Act 1993 forward the Draft Meander

Valley Planning Scheme 2012, including the updated Regional Model, to the Minister for Planning as formal lodgement of its Interim Planning Scheme.

DECISION: