



**Brighton
Council**

PLANNING SCHEME AMENDMENT BRIGHTON INTERIM PLANNING SCHEME 2015 – AMENDMENT RZ 2018/04

The Tasmanian Planning Commission has approved the following planning scheme amendment: Delete Attenuation Area overlay for the quarries at 252 Elderslie Road and 157 William Street, Brighton. The amendment is effective from **24 May 2019**. The amendment may be viewed at www.brighton.tas.gov.au and at the Council Offices, 1 Tivoli Road, Old Beach from **24 May 2019**.

Ron Sanderson, General Manager

Brighton
going places

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TASMANIAN PLANNING COMMISSION



DECISION

Planning scheme	Brighton Interim Planning Scheme 2015
Amendment	RZ 2018-04 - Delete Attenuation Area Overlays for the quarries at 252 Elderslie Road and 157 William Street, Brighton
Planning authority	Brighton Council
Applicant	Brighton Council
Date of decision	10 May 2019

Decision

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

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

Delete the Attenuation Area Overlays applied to the quarries at 252 Elderslie Road and 157 William Street, Brighton.

Currently clause E9.2.3 of the Attenuation Code prohibits residential use or development on land subject to the mapped Attenuation Area Overlay (mapped attenuation area). The draft amendment seeks to remove the mapped attenuation area applied to the two quarries to allow for residential use and development subject to the rest of the use and development provisions under the Attenuation Code. This approach is also consistent with the other interim planning schemes in the State and the approach being taken in the Brighton draft Local Provisions Schedule (LPS).

Site information

The draft amendment removes two mapped attenuation areas currently applied to quarries on separate sites.

One of the quarries is located at 252 Elderslie Road, Brighton. The quarry is situated 0.5 km south of Elderslie Road and approximately 2.5 km from the Brighton town centre.

The quarry is located on CT 31166/1 on land zoned Rural Resource. The mapped attenuation area applying to it affects land zoned Rural Resource and Significant Agriculture. There are a number of dwellings located within the mapped attenuation area, the closest situated approximately 450 m away.

The other quarry is located at 157 William Street, Brighton. It is adjacent to the Jordan River, approximately 280m south of the Midland Highway and the Brighton town centre is situated 1.3km to the north.

The quarry is located on CT 158011/8, a title consisting of an area of 90.95ha and zoned Rural Resource. A dwelling, horse training track and associated stables are also located on the title. An extensive area of the title is also subject to the Bridgewater Quarry attenuation area. The quarry is not subject to any mining lease.

Issues raised in representations

No representations were received.

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. No representations were received and the Commission did not hold a hearing.
3. The amendment has been initiated and certified by the Brighton 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. 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.
 7. 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.
 8. Regard for the regional impacts required under section 32(1)(f) and the draft amendments consistency with the applicable regional strategy as required under section 300 have been considered with reference to the Southern Tasmania Regional Land Use Strategy 2010-2035, amended 9 May 2018 (the regional strategy).
 9. The draft amendment is not relevant to consideration under sections 300(2)-(5) because it does not amend or affect the operation of a common provision of the interim planning scheme.

Suitability of land use

10. In the section 35 report to the planning authority dated 20 November 2018 (the planner's report) the current operations associated with each of the quarry sites is outlined. In relation to the Elderslie Road quarry it is noted that (p 3-4):

The quarry at 252 Elderslie Rd was established many decades ago and a permit has never been issued but has continued to operate with "existing use rights". The quarry currently has a Mining Lease (1701P/M) which was renewed in 2017 and this is currently the only regulatory mechanism for the quarry.
11. On 21 February 2019 the planning authority provided the Commission with an Environmental Protection Notice (EPN) for the Elderslie Road quarry issued on 3 December 2018. The EPN classifies the quarry as a 'Level 1' activity under the *Environmental Management and Pollution Control Act 1994* and restricts processing of materials to 1000m³ per year. The activity must not include blasting.
12. The planner's report states, in relation to the quarry at 157 William Street, that it (p 4):

...no longer has an active Mining Lease, which expired on 1/05/2015. Previously the quarry operated under Level 2 Permit No. 5941 (former Licence to Operate Scheduled Premises) issued by the Environment Protection Authority (EPA). On 12 October 2015 the EPA issued EPN No. 9246/1 to vary the conditions of Permit No. 9541, which included limiting the extraction of materials per annum to 4,999m³, effectively downgrading the quarry to a Level 1 activity.

13. The rationale for the draft amendment in the planner's report provides the following:
 - a) Remove the mapped Attenuation Areas so that the residential prohibition under clause E9.2.3 of BIPS 2015 no longer applies. This will provide greater consistency between BIPS 2015 and other interim planning schemes.
 - b) To reduce the buffer around 252 Elderslie Road from approximately 900m to 750m to be consistent with the current activity (i.e. no blasting of hard rock).
14. The report further explains (p 9) that:

Should the mapped Attenuation Area be removed, the Attenuation Code would still be triggered through the Attenuation Distances identified in Table E9.1 in the Interim Scheme.
15. In an email to the planning authority on 29 March 2019, the Commission requested further information clarifying the reason the draft amendment only applies to the removal of the mapped attenuation area relating to the two quarries, and not the amendment of clause E9.2.3 which prohibits residential use and development on land subject to the overlays. On 15 April 2019, the planning authority responded with a further submission outlining that:

The main reason for not removing E9.2.3 is that it applies to three key sites where Council don't want it removed – Bridgewater Quarry, Baskerville Raceway and Old Beach Quarry. These three sites all have non-standard attenuation distances and Council has always taken a strong stance on prohibiting residential use in these areas.
16. That submission further notes that:

...in the Brighton draft LPS, SAP's [Specific Area Plans] have been proposed for all three of these activities to continue the prohibition of residential use on these sites. Removal of E9.2.3 would then have required Council to introduce complex new planning controls for these three sites, which there was no appetite for with the draft LPS soon to come into force.

Commission's consideration

17. The draft amendment would result in the attenuation areas around the two quarries being controlled through the attenuation distance requirements specified in Table E9.1 of the Attenuation Code only, rather than provisions relating to the mapped overlay.
18. It would allow clause E9.4.1(b) and E9.6.1 to apply to residential use which provide for exemptions and development standards relating to additions and alterations to sensitive use within attenuation areas. The Commission notes that there are no other standards in the Attenuation Code that relate specifically to mapped attenuation areas and, therefore, other than clause E9.4.1(b), all other relevant standards of the Code will continue to apply to the sites through the application of the attenuation areas specified in Table E9.1.
19. The Commission accepts the planning authority's assertion that the attenuation distances prescribed in Table E9.1 and the associated standards provided in the Attenuation Code can adequately control residential use and development given the existing activity associated with the quarries.
20. The Commission agrees that the draft amendment will bring the interim planning scheme into greater consistency with those of the region by removing the prohibition on residential use and development. It accepts the planning authority's reasoning for removing the mapped attenuation areas from the quarries rather than amending or deleting clause E9.4.1(b) of the interim planning scheme.

Southern Tasmania Regional Land Use Strategy

21. The planner's report acknowledges that the regional strategy seeks to protect regionally significant extractive industry sites through the application of the Rural Zone and Attenuation Code. The report states (p 12):

The proposed amendment seeks to remove a mapped Attenuation Area under Section E9.0 of the BIPS 2015.

The risks associated with new sensitive uses being developed in proximity to the existing use that have the potential to cause environmental harm can still be adequately managed via the attenuation distances listed in Table E9.1 and its subsequent application through the Performance Criteria in Section E9.7.2 P1 of the Interim Scheme.

It is worth noting that all properties within the reduced attenuation distance for 252 Elderslie Rd either have an existing residential use or have a building area on the property outside the building envelope.

As such, it is considered that the existing extractive industries will continue to be protected by attenuation distances and satisfy the requirements of Section PR3 of the STRLUS.

Commission's consideration

22. The regional strategy (p 64) recognises the strategic importance of the Brighton quarries, however does not specifically identify the role or priority of any individual quarry. As noted in the previous section the mapped attenuation areas will be retained over the Bridgewater and Old Beach Quarries, indicative of their role in the region.
23. The Commission has found that the provisions associated with the attenuation distances provided in Table E9.1 will provide adequate controls for residential use and development within the attenuation areas of the Elderslie and Williams Road quarries. It is therefore considered that the draft amendment is consistent with the regional strategy's policies for extractive industries.

State Policies and Resource Management and Planning System Objectives

24. The draft amendment relates to land zoned Rural Resource and it is therefore relevant to consider it under the *State Policy on the Protection of Agricultural Land 2009*. The draft amendment will have the effect of removing a prohibition relating to residential use and development under the Attenuation Code. Notwithstanding this, the provisions of the Rural Resource Zone will continue to apply to the land. The draft amendment is therefore not considered to have any material effect on the productive capacity of the land.
25. The Commission finds that the draft amendment seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Decision on draft amendment

26. The Commission finds that the draft amendment is in order and gives its approval.