

Part C

Special Provisions

9.0 Special Provisions

9.1 Changes to an Existing Non-conforming Use

9.1.1 Notwithstanding any other provision of this planning scheme, whether specific or general, the planning authority may at its discretion, approve an application:

- (a) to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme; or
- (b) to extend or transfer a non-conforming use and any associated development, from one part of the site to another part of that site; or
- (c) for a minor development to a non-conforming use,
where there is -
 - (a) no detrimental impact on adjoining uses; or
 - (b) the amenity of the locality; and
 - (c) no substantial intensification of the use of any land, building or work,

In exercising its discretion, the planning authority may have regard to the purpose and provisions of the zone and any applicable codes.

9.2 Development for Existing Discretionary Uses

9.2.1 Notwithstanding clause 8.8.1, 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 use.

9.3 Adjustment of a Boundary

9.3.1 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 applicable minimum setback requirement;

- (d) no frontage is reduced below the applicable minimum frontage requirement; and
- (e) no lot boundary that aligns with a zone boundary will be changed.

9.4 Demolition

9.4.1 Unless approved as part of another development or Prohibited by another provision in this planning scheme, or a code relating to historic heritage values applies, an application for demolition is Permitted and a permit must be granted subject to any conditions and restrictions specified in clause 8.11.2 of the relevant interim planning scheme.

9.5 Change of Use of a Place listed on the Tasmanian Heritage Register or a heritage place

9.5.1 An application for a use of a place listed on the Tasmanian Heritage Register or as a heritage place in a code relating to historic heritage values that would otherwise be Prohibited is Discretionary.

9.5.2 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 heritage place; or
- (b) the historic cultural heritage significance of the place as described in the Tasmanian Heritage Register.

9.5.3 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 a code relating to historic heritage values;
- (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 heritage place or 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 7th 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.

9.6 Change of Use

9.6.1 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 a code relating to parking;
 - (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.

9.7 Access and Provision of Infrastructure Across Land in Another Zone

9.7.1 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.

9.8 Buildings Projecting onto Land in a Different Zone

9.8.1 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.

9.9 Port and Shipping in Proclaimed Wharf Areas

9.9.1 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.

9.10 Subdivision

9.10.1 A permit is required for development involving a plan of subdivision.

9.10.2 A permit for development involving a plan of subdivision is discretionary unless:

- (a) for adjustment of a boundary in accordance with clause 9.3.1;
- (b) the subdivision is prohibited in accordance with clause 8.9; or
- (c) the plan of subdivision must not be approved under section 84 *Local Government (Building and Miscellaneous Provisions) Act 1993*.

9.11 Accretions

9.11.1 Unless excluded by s.20 of the Act, use or development of an existing or proposed accretion of land from the sea, whether natural or unnatural, located either partially or wholly outside the planning scheme area and including structures and use and development of the type referred to in s.7 (c) and s.7 (d) of the Act may be approved at the discretion of the planning authority having regard to all of the following:

- (a) the provisions of the Environmental Management Zone;
- (b) the purpose and any relevant standards of all Codes;
- (c) the compliance with the planning scheme standards of any related use or development wholly contained within the planning scheme area.