

TASMANIAN PLANNING COMMISSION

DECISION

Planning scheme	Break O’Day Interim Planning Scheme 2013
Amendment	01-2018 - rezone land at 50 St Helens Point Road, St Helens
Permit	DA 021-2018 - 54 lot subdivision at 50 St Helens Point Road, St Helens
Planning authority	Break O’Day Council
Applicant	East Coast Surveying obo Ms M J Gee
Date of decision	15 January 2020

Decision

The draft amendment is rejected under section 41(b) of the *Land Use Planning and Approvals Act 1993*.

The permit is refused under section 43H(1)(d) of the *Land Use Planning and Approvals Act 1993*.



Sandra Hogue
Delegate (Chair)



Marietta Wong
Delegate

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

Rezone the land at 50 St Helens Point Road, St Helens (Parkside Farm) from Environmental Living to Rural Living.

Permit

A 54 lot rural living subdivision at 50 St Helens Point Road, St Helens, including lots for public open space, roads and road reservations. The subdivision is to be released in 10 stages.

Site information

The site consists of an area of 151.42ha across two adjoining titles FR 43185/1 and 2. It is located to the east of the Tasman Highway and to the south of St Helens Point Road. Georges Bay lies directly to the north of St Helens Point Road.

Directly to the north of the site lies a number of properties in the General Residential Zone. There are also five lots in the Low Density Residential Zone to the north east. To the west land is in the Environmental Management Zone. The St Helens air strip is to the north east and is in the Utilities Zone. The Utilities Zone also transects the site near the western boundary providing for the Tasman Highway. To the south is currently vacant undeveloped bushland in the Environmental Living Zone.

The site is largely vacant bushland except for an existing single dwelling with associated outbuildings and a dam on the north eastern portion of the property. The land slopes toward Georges Bay from a maximum elevation of approximately 50m. There are areas of high natural values associated with the native vegetation. However, significant clearing has occurred around the dwelling.

Access to the site is via an approved crossover to St Helens Point Road. A number of informal access points exist off the Tasman Highway and the end of Talbot Street. There is no stormwater infrastructure; however, the area is connected to TasWater reticulated water mains and there is an existing reticulated sewer system servicing the General Residential Zone lots to the north fronting onto St Helens Point Road and along Talbot Street.

Issues raised in representations

The representors raised the following issues:

- impact on natural values including habitat and corridor loss for threatened species;
- inadequacy of supporting reports;
- inconsistency with the State Coastal Policy and strategy documents;
- bushfire hazard;
- wastewater management and access;
- concerns regarding higher density development and settlement boundaries;
- rezoning preceding the Local Provisions Schedule process; and
- Council's process management and decision making.

Planning authority's response to the representations

The planning authority considered the representations and recommended:

That the Council:

- Considers the representations received to Amendment 01/2018 to the Break O'Day Interim Planning Scheme 2013, and the planning permit DA021-2018, together with the responses provided.
- Recommends to the Tasmanian Planning Commission that draft Amendment 01/2018 be approved as certified and exhibited.
- Recommends to the Tasmanian Planning Commission that the conditions of DA021-2018 be amended to take into account Department of State Growth suggested rewording of condition 7 and engineering conditions 8.1 and 8.2 to be altered to take into account the Manager Infrastructure and Development Services as follows:

Date and place of hearing

The hearing was held at the Break O'Day Council offices, 32-34 Georges Bay Esplanade, St Helens on 25 June 2019.

Prior to the hearing, the delegates made an inspection of the site.

Appearances at the hearing

Planning authority: Ms Rebecca Green, consultant planner for Break O'Day Council

Applicant: Mr Brett Woolcott, Woolcott Surveys

Mr Ian Abernethy, consultant planner

Mr Ian Gabbedy

Mr James Stewart, consultant planner, Woolcott Surveys

Mr Geoff Brayford, JMG

Dr Philip Barker, North Barker Ecosystem Services

Representors: Mr Todd Dudley, North East Bioregional Network

Mr Nicholas Fitzgerald, North East Bioregional Network

Ms Clare Hester, ERA Planning and Environment for North East Bioregional Network

Mr Garry Hills, Traffic Engineer, Department of State Growth (by phone)

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 section 39 report.
2. A hearing was convened to assist the Commission consider the issues in the representations.
3. The amendment has been initiated and certified by the Break O'Day 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. 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.
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 amendment of local provisions when such an amendment would alter the operation of common provisions. These matters are not relevant to the draft amendment because 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 the Northern Tasmania Regional Land Use Strategy (regional strategy), the St Helens and Surrounds Structure Plan (structure plan), the Break O'Day Council Municipal Management Plan - Land Use and Development Strategy (Break O'Day land use strategy) and representations.

Regional land use strategy – rural living areas location

9. Ms Green, in her section 35 report (planner's report) (pp 39-42) assessed that the relevant regional policies and actions in the regional strategy are those that outline requirements for regional settlement networks, specifically for rural and environmental living development. She concludes that the proposal is consistent with a number of relevant policies and actions.
10. The supporting planning application report prepared by East Coast Surveying (supporting report) more broadly addressed the actions and policies in the regional settlement networks section of the strategy.
11. At the hearing, action RSN-A7, which requires rural living areas to be located outside of urban growth areas, was considered. It was also noted that RSN-P21 requires that rural and environmental lifestyle opportunities will be provided outside urban areas.
12. On 1 July 2019 the Commission wrote to the parties confirming directions arising from the hearing. In that letter the Commission asked the parties to 'identify the boundary of the 'urban growth area' for St Helens'.
13. In her response submission, Ms Green states that the regional strategy does not identify an urban growth area for St Helens and refers (section 6) to page 31 of the structure plan which outlines an existing urban boundary in a bold red line which she considers to be the urban area. She further notes that the urban growth area could be considered to be the area shown on maps provided on pages 100 and 101 of the Break O'Day land use strategy including areas identified as part of a broader settlement plan. She states that the maps clearly show that the subject site is outside urban growth/settlement boundaries.

14. The applicant in a further submission dated 24 September 2019, also refers to the maps on pages 100 and 101 of the Break O'Day land use strategy as providing the urban growth area (section 6) and states that the 'map clearly shows that the subject site of Parkside Farm is outside the Urban Growth/Settlement boundaries'.
15. Ms Hester in her further submission dated 24 September 2019 considers the urban growth area is not identified in the regional strategy and that she is of the opinion that the urban growth area is 'inclusive of existing General Residential, Low Density, General Industrial, General Business, Community Purpose, Open Space and Recreation (where appropriate)' (p 5).

Commission consideration

16. The Commission notes that, while there was some variation in the area that each of the parties considered constitutes to be the St Helens' urban growth area, all agreed that the subject site is outside the urban growth area. The Commission is satisfied, based on the evidence before it, that the subject site does not fall within St Helens' urban growth area, and that RSN-A7 of the regional strategy is met.
17. Evidence was also provided that the land is outside the urban area of St Helens and therefore RSN-P21 is met.

Regional land use strategy – local strategy considerations

Action RSN-A22 for rural and environmental living development targets 'growth to preferred areas based on local strategy and consolidation of existing land use patterns'.

Local strategy requirements are also addressed in RSN-A26 which is as follows:

Consolidation and growth of Rural Residential Areas is to be directed to areas identified in local strategy, that align with the following criteria (where relevant):

- Proximity to existing settlements containing social services;
 - Access to road infrastructure with capacity;
 - On-site waste water system suitability;
 - Consideration of the impact on natural values or the potential land use limitations as a result of natural values;
 - Minimisation of impact on agricultural land and land conversion;
 - Minimisation of impacts on water supply requires for agricultural and environmental purposes;
 - Consideration of natural hazard management;
 - Existing supply within the region;
 - Potential for further requirement for the land for urban purposes; and
 - The ability to achieve positive environmental outcomes through rezoning.
18. Relevant local strategy documents submitted and referred to by the parties are the structure plan and Break O'Day land use strategy.
 19. The planner's report states (p 39) that the sites have been marked as lifestyle blocks under the structure plan.
 20. The applicant in the supporting report (pp 20, 23 and 36) concurs that the lots are identified as rural lifestyle lots under the structure plan.
 21. The planner's report (p 42) states that the structure plan at page 42:

specifically deals with Rural and Rural lifestyle properties. The reports identified the subject lands/adjacent lands to the south within the 1,238ha of vacant lifestyle land for rural living purposes (St Helens Structure Plan, Background Report), with the majority of the land identified in the report as being within the southern part of the study area (subject lands and adjacent lands). The subject lands in question are identified as being a rural lifestyle block by the structure plan.

22. Ms Hester also agrees that the subject site is identified under the structure plan as vacant lifestyle lots, however, she notes that the structure plan does not provide a definition for lifestyle lots (p 6).
23. In her response submission, Ms Hester provides an opinion that the planning authority is confusing the term rural lifestyle and rural living purposes with the Rural Living Zone, and that the structure plan identifies rural lifestyle properties as being zoned either Rural Living or Environmental Living.
24. The Commission's letter of 1 July 2019 requested that the planning authority provide the following:

identify references in the St Helens and Surrounds Structure Plan, 2013 (structure plan) and the Break O'Day Council Municipal Management Plan - Land Use and Development Strategy, August 2015 (Break O'Day land use strategy) regarding the areas for future application of the Rural Living Zone, with particular reference to the suggestion that the area south of St Helens is preferred for expansion of this zone;
25. In her response submission dated 23 September 2019, Ms Green reiterates that the structure plan 'identified the subject lands/adjacent lands to the south within the 1,238ha of vacant lifestyle land for rural living purposes (St Helens Structure Plan, background report)'; and that the subject site is 'identified as being a rural lifestyle block'.
26. In Ms Hester's representation she notes (p 7) that the Break O'Day land use strategy:

identifies the subject site area as environmental living lots. The potential for expansion of rural living zoned land is recognised in the strategy, which specifically identifies areas north west of the township. This is shown on the St Helens Overall Settlement Plan, which states that the land identified as potential for rural living, is contiguous with existing rural living zoning, is unviable agricultural land and has potential for long-term rural lifestyle growth
27. The location for identified expansion of rural living areas to the north west is also reiterated in Ms Hester's further submission dated 24 September 2019 (p 8).
28. In the joint land supply analysis prepared by the applicant and Ms Green and provided by the applicant in a further submission, an examination of the areas identified for expansion under the structure plan and the Break O'Day land use strategy is undertaken. The submission states in response to the Rural Living Zone expansion area to the north west of the township that 'as has been examined this zoning would do little more than [sic] to reflect the existing character of an already developed section of land'.
29. In response to the expansion areas identified in the structure plan, the joint submission states:

The majority of land which has been identified as going to Rural Living is located in the southern section, along the Medeas Cove area. Lots 9, 10 and 11 on the above maps have the most potential for subdivision, however all contain existing residential uses. Any development of these blocks would require the extension of a Council road in order to achieve 6m of direct frontage as required under the scheme.
30. Furthermore, the joint submission also states:

It is also noted that the Break O Day Land use strategy proposes that some of the lots identified as Rural Living in the Structure Plan should be General Residential. The Land Use Strategy also recommended expanding the industrial zone into existing Rural Living Zoned land.

31. In the final submission Mr Shane Wells, a planning consultant for the applicant, states that in section 4.9 of the structure plan, it is noted that the southern part of the study area could be suitable for rural lifestyle development, which can occur within either the Rural Living Zone or Environmental Living Zone and that the structure plan has had regard to native vegetation in determining a boundary between these two zones but does not offer the presence or otherwise of native vegetation as a fixed criteria (section on structure plan).
32. Ms Green in her final submission (para 27) states that 'the council recognises that the growth of St Helens is constrained to the north (flooding and agricultural land), east (waterbody), and west (government owned land), thereby leading the only area for growth to the south of the existing township'.

Commission consideration

33. The Commission notes RSN-A26 in the regional strategy requires that Rural Residential Areas are to be identified in local strategy. The Commission considers that for this amendment, relevant local strategy includes the structure plan and the Break O'Day land use strategy.
34. The Commission further notes that the applicant and planning authority are of the opinion that this land is in an area identified in the local strategies as being for rural living and that Ms Hester states that the local strategies do not identify that the land is to be in the Rural Living Zone.
35. The Commission considered whether the local strategies specifically identify where the Rural Living Zone should be applied. The Commission agrees with Ms Hester's view.
36. The Commission also notes that the land identified in to south of St Helens for the Rural Living Zone is near Medea Cove and is not in proximity to the subject land.
37. The Commission accepts submissions that there are constraints associated with the areas of rural living expansion identified under both the structure plan and the Break O'Day land use strategy. However, the proposed ultimate planning zones of the structure plan (p 30) identify that the subject land is to be in the Environmental Living Zone, rather than the Rural Living Zone as does the overall settlement plan in the settlement strategy (p 99).
38. The Commission does not consider that the rezoning of this land to the Rural Living Zone is consistent with local strategies as required under RSN-A26. Furthermore, the Commission is not satisfied that there is sufficient strategic justification for prioritising rural living development in this specific location, particularly at the densities proposed.
39. Prior to this amendment being able to be considered to be, as far as practicable, consistent with the regional strategy the relevant local strategies should be reviewed.

Existing supply within the region

40. A further criteria in RSN-A26 of the regional strategy is that consolidation and growth of Rural Residential Areas to be aligned with the 'existing supply in the region'. The Commission's letter of 1 July 2019 requested that the parties provide the following:

With reference to the regional strategy for the purposes of the consideration of 'existing supply within the region' in action RSN-A26, describe what 'the region' is.

41. In her submission of 23 September (section 5), Ms Green explains the various ways in which a region can be defined. She considers that for defining the region in terms of the regional strategy requirements, a functional region concept is the most appropriate, whereby the region is made up of 'a central place and surrounding areas affected by it' and that it is 'an area organised around a central hub or focal point'.
42. In determining the region for the purposes of RSN-A26 she considered the St Helens district school intake map, surrounding topographical features and commuting distances to St Helens. Ms Green identified largely a coastal area from Ironhouse Point from the south to The Gardens, north of St Helens.
43. In the further submission dated 24 September 2019, the applicant using the same criteria identified a similar area, from Ansons Bay to Four Mile Creek.
44. Ms Hester defined the region based on 'reliance upon St Helens itself as a district centre as identified in the regional strategy and the subject site's proximity to the coast and its landscape characteristics' (p 4). She similarly defined the region for the purpose of determining land supply issues as a coastal area from Ansons Bay to Ironhouse Point.
45. In considering RSN-A26, Ms Green and the applicant prepared a joint land supply analysis, provided in the further submission dated 24 September 2019. The analysis provided potential lot yield around St Helens, based on the area identified as the structure plan study area (p 6). The methodology considered only vacant lots in already zoned land with lot yield based on the interim planning scheme acceptable solution standards for subdivision (section 1) and other assumptions around lot yield due to areas taken up with infrastructure and/or public open space.
46. The land supply analysis concludes that in St Helens there is sufficient land in the General Residential Zone with a 500 to 800 potential lot yield. In addition, there is a potential lot yield of 12 Environmental Living, 2 Low Density Residential and 6 to 9 Rural Living lots (section 1).
47. The land supply analysis also included an examination of the region based on the planning authority and applicant definition of the region. The analysis notes that there is no land in the Rural Living Zone outside St Helens within the defined region. There is a potential lot yield of 15 Low Density Residential lots and 7 Environmental Living lots (section 2).
48. The report concludes that, across the defined region, there is a total potential lot yield of 42 to 45 rural residential lots, in the Low Density, Rural Living and Environmental Living Zones. There is a further potential lot yield of 13 lots within the rural living expansion area identified in the north west of the township under the Break O'Day land use strategy (section 3).
49. In her further submission Ms Green also provides data on Break O'Day Council dwelling approvals. Between 2013-14 and 2017-18 dwelling approvals fluctuated between 34 and 57 approvals per year for the municipal area.
50. In the further submission, the applicant states that demand for dwellings in the region is being driven by east coast tourism and (section 4):

The Commission and Council must look past the census data when determining whether a rezone is appropriate for an area. Council has a responsibility to provide a mix of residential land types within the municipality in order to provide a range of lot sizes for new dwellings in residential areas. The Break O'Day Council approves a significant number of single dwellings within the Rural Resource Zone, as is evidenced by the dwelling approvals for the municipality provided by the Council.
51. In her closing submission of 13 December 2019, Ms Hester considers that there is insufficient justification for only including vacant land in the land supply analysis, and that all land with subdivision potential should have been included (p 3).

52. In his closing submission, Mr Wells for the applicant states that, given the consistent higher actual to planned demand, the Commission should give greater weight to the actual approval figures rather than those used in the structure plan or Break O'Day land use strategy. He further submitted that the average number of dwelling approvals has, over a 15-year period, consistently exceeded the planned demand outlined in the structure plan and the Break O'Day land use strategy. Mr Wells considers this extent and enduring nature of the divergence to actual and planned demand is of significance.
53. Ms Green, in her closing submission, concurs with Mr Wells and states that the Commission should give weight to the actual dwelling approval figures rather than the planned demand in the structure plan and Break O'Day land use strategy.
54. In her closing submission, Ms Hester is of the opinion that the draft amendment does not adequately address demand and supply and is not considered to be an orderly or sustainable development of land.

Commission consideration

55. The Commission notes that, while there was some variation between the area that the parties consider constitutes the region, these are relatively similar and will not result in any material difference for the land supply analysis. The Commission is satisfied, based on the evidence before it, that the region for the purposes of RSN-A26 is not the whole of the area subject to the regional strategy, comprising all seven municipalities subject to the strategy, and is for the purposes of consideration of this application an area based around the town of St Helens, roughly from Ansons Bay in the north to Ironhouse Point in the south.
56. The Commission notes from the evidence of supply of existing rural residential land that there is a limited supply of land available in the agreed region. The Commission further notes that this is likely to be a conservative estimate as only vacant land was taken into account in the analysis. For example, the land subject to the amendment would not have been considered as it has a house on it.
57. The Commission further notes that, while there is limited supply of rural residential land, there is also a considerable supply of land in the General Residential Zone and that the local strategies advocate that the planning authority rezone land from Rural Living to General Residential.
58. The Commission considers that there is evidence that the structure plan and local strategy were prepared at a time when development growth was quite different to the present and it is likely that development demand has increased since then, particularly with increased tourism development.
59. While demand is likely to have increased the evidence provided is not sufficient to determine the actual degree of demand and whether this site is the best place to meet any unmet demand. It would be more appropriate that a strategic analysis be undertaken in a more holistic manner by way of a review of the structure plan and/or the Break O'Day land use strategy. Such a review would be consistent with the regional strategy which requires as a pre-condition in RSN-A26 to considering the criteria that 'consolidation and growth of Rural Residential Areas is to be directed to areas identified in local strategy'.
60. As such the Commission considers that it would be premature to rezone this land to Rural Living at this density without the appropriate strategic analysis and direction being established for the whole of St Helens.

State Coastal Policy

61. A number of the representations raised concerns that the amendment is not consistent with the *State Coastal Policy 1996* (Coastal Policy).
62. The Coastal Policy applies to land within one kilometre inland from the high-water mark.
63. In the section 39 report the planning authority stated that the 'proposal is indeed within 1km of the coast, being George's Bay (this is off-shore but tidal)' and that the planning authority is of the opinion that the amendment and subdivision are consistent with the Coastal Policy.
64. In a submission addressing the representations, the applicant also states that there is no doubt that the subject land is within one kilometre of the coast and, as to the impact the proposed development will have on coastal areas, in their opinion, it would be negligible and might even have a positive impact in terms of public access to areas which were previously under private ownership.
65. The parties referred to a number of policy outcomes in the Coastal Policy, largely drawn from section 2 of the Outcomes statements – Sustainable Development of Coastal Areas and Resources, to support or oppose the amendment.
66. Ms Billet of Billet Legal provided advice included in the applicant's further submission of 24 September 2019. She referred to outcomes 2.1.1, 2.4.1, 2.4.2 and 2.4.3 of the Coast Policy as well as to 1.1.1 and 1.1.3 within the context of outcome 2.4.1. She submits that the Coastal Policy, while requiring consideration of the impact upon natural values, does not prevent zoning of land that will result in an impact and it is a matter of ensuring that the proposed amendment ensures that an appropriate balance is maintained between the protection and conservation of areas of native vegetation and planned development such that the coastal zone is managed to ensure that key values are maintained and the area is only developed in a sustainable manner. She also states that the Coastal Policy does not require that management of the coastal zone to conserve species and habitat prevents any form of planning scheme amendment that would facilitate clearing of native vegetation.
67. In closing submissions Ms Sommer from the Environmental Defenders Office for the North East Bioregional Network submits that it is agreed that, while the Coastal Policy contemplates development, it expressly recognises that the right balance needs to be struck between economic and environmental objectives through the application of the principles of sustainable development. Ms Sommer further states that this is a balancing exercise between the need for housing and protection of the environment for future generations and is the basis of the principle of 'sustainable development', also known as ecologically sustainable development.
68. Ms Green's closing submission states that all principles and clauses of the Coastal Policy are relevant and must be read together with the more relevant clauses being 2.1.3, 2.4.1, 2.4.2 and 2.4.3. She goes further to state that the amendment and development do not constitute ribbon development or unrelated cluster development, scenic values have been examined and a flora and fauna assessment has resulted in identification of buffer area and no build zones.

Commission's consideration

69. The Commission notes that it is agreed by all parties that the land is within the coastal zone and that the Coastal Policy applies. The Commission agrees.
70. The Commission also agrees that the principles of the Coastal Policy must be read together; however, finds that the most relevant Coastal Policy outcomes are 2.1.1, 2.4.1, 2.4.2 and 2.4.3.

71. The Commission concurs with Ms Sommer that application of the Coast Policy is a balancing exercise. The Commission considers that a review of the structure plan and/or Break O'Day land use strategy would provide an opportunity to revisit the residential development potential of this site more broadly for the St Helens region and take into account any implications for the coast zone and relevant principles and outcome of the Coastal Policy.

State Policies and Resource Management and Planning System Objectives

72. The Commission finds the Coastal Policy relevant to the draft amendment.
73. The Commission considers that the draft amendment is prepared in accordance with other relevant State Policies.
74. However, the Commission finds that the draft amendment does not further the Objectives of the Resource Management and Planning System in Schedule 1. The draft amendment does not provide for the fair, orderly and sustainable use and development of land in the manner anticipated under the local strategies, being the structure plan and Break O'Day land use strategy.

Decision on draft amendment

75. The Commission finds that the draft amendment:
- is not, as far as is practicable, consistent with the policies and actions under the Northern Tasmania Regional Land Use Strategy, particularly RSN- A26 which requires that rural living growth be directed to areas identified in local strategy, relevantly the St Helens and Surrounds Structure Plan and the Break O'Day Council Municipal Management Plan – Land Use and Development Strategy; and
 - does not further objective (b) of the Resource Management and Planning System in Schedule 1 of the *Land Use Planning and Approvals Act 1993* because it does not provide for the fair, orderly and sustainable use and development of land.
76. The draft amendment is rejected.

Consideration of the permit

77. As the draft amendment is rejected under section 41(b), the permit is refused.