
From: NE Bioregional Network <telopea_tas@yahoo.com.au>
Sent: Friday, 25 November 2022 11:08 AM
To: TPC Enquiry; McCrossen, Samuel
Subject: Post Hearing Representations
Attachments: TPC Post Hearing representation Woolcott Surveys for Marguerite Gee.doc; TPC Refusal 54 lot subdivision.pdf; Parkside Farm subdivision habitat report-1.pdf

Categories:

Please find attached the first of two emails regarding post hearing submissions on the Break O Day LPS. The first email is specifically related to Woolcott Surveys .

Regards

Todd Dudley
President
North East Bioregional Network

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- **Woolcott Surveys for Marguerite Gee 19th September 2022**

We have attached the TPC decision as well as a report from Nick Fitzgerald which formed part of our evidence at the TPC hearings dealing with the proposed 54 lot subdivision and rezoning application (DA 021-2018 Amendment 01-2018) of the Gee land. The TPC refused this rezoning application. The North Barker report submitted includes the following quotes regarding landscape connectivity and habitat values:

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3.4 Fauna habitat values

“The native vegetation communities within the study area form part of contiguous corridor of coastal habitat extending along St Helens Point connecting to Scamander Tier, which collectively provides a range of habitats for native fauna.

This mosaic of vegetation types and connectivity with habitats elsewhere provide a range of habitat opportunities for mammals, birds, reptiles and invertebrates. Patches of dense cover occur throughout the site, particularly in the damper areas providing shelter to mammals. Open areas, including water bodies, provide opportunities for grazing, hunting and foraging. There is also access to seasonal water in the form of creeks.

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“Parkside Farm supports a large area of native vegetation, including five threatened vegetation communities and wetland ecosystems.”

The Landscape Conservation Zone*Zone Application Guidelines in Guideline no 1* state:

LCZ 1 The Landscape Conservation Zone should be applied to land with landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values, where some small scale use or development may be appropriate.

LCZ 2 The Landscape Conservation Zone may be applied to:

(a) large areas of bushland or large areas of native vegetation which are not otherwise reserved, but contains threatened native vegetation communities, threatened species or other areas of locally or regionally important native vegetation;

(b) land that has significant constraints on development through the

application of the Natural Assets Code or Scenic Protection Code; or (c) land within an interim planning scheme Environmental Living Zone and the primary intention is for the protection and conservation of landscape values.

Summary

The Landscape Conservation Zone is clearly the most suitable zoning for this land given the size of the land (over 150ha) and the extent of native vegetation cover.

The land in our opinion forms part of a significant habitat corridor as identified in the North Barker report. It is important to note that the Guideline no 1 Zone Application Guidelines do not specifically require land to be covered in threatened species or communities to be considered worthy of Landscape Conservation Zoning. This land has some significant conservation values being covered in native forest in generally good ecological condition and forms part of a broader connected habitat corridor between St Helens Point and the hinterland including Scamander Tierone of the most important habitat corridors in the Break O Day municipality. As such the land clearly meets the criteria under Guideline no 1 for Landscape Conservation Zoning.

There is a very evident delineation between the urban development areas of St Helens and the land south of St Helens Point road where the defining character is one of relatively large titles with extensive native forest cover. Allowing rezoning of large lots covered in native forest to Zones other than Landscape Conservation Zone which permit more and higher density residential development would in our view be inconsistent with the intent of clause 2.4.2 of the State Coastal Policy.

As noted on page 8 of the TPC decision (DA 021-2018 Amendment 01-2018) "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

Page | 60 of the tcg planning Break O Day Land Use and Development Strategy Municipal Management Plan August 2015 states under

8.4 Rural and Environmental Land Use Principles and Recommendations

Principles

The key principles for the rural lands within Break O'Day, including the principles for rural lands identified within the Economic Development Strategy (MCA, 2013) are:

♣ Native vegetation should be retained in a manner that contributes to the maintenance of broad habitat corridors



Habitat Corridor. St Helens Point to Scamander Tier

Todd Dudley

President

North East Bioregional Network

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Other Attachments

***Parkside Farm report Nick Fitzgerald**

***TPC decision (DA 021-2018 Amendment 01-2018)**

Landscape context and ecological considerations relating to proposed rezoning and subdivision at 50 St Helens Point Rd, St Helens

By Nick Fitzgerald

February 2019

Introduction

Planning permit DA 021-18 lodged with the Break O’Day Council relates to approximately 151 hectares of land at 50 St Helens Point Rd, known as Parkside Farm (land title references 43185/1 and 43185/2). The permit proposes to amend the Break O’Day Interim Planning Scheme 2013 for this land from Environmental Living Zone to Rural Living Zone and subsequently subdivide the land into 54 lots with an average lot size of 2.6 ha and a minimum of 1.1 ha. This short report considers some of the ecological implications of the proposal with regard to relevant municipal and State policies.

Landscape context and habitat considerations

Connectivity

Habitat connectivity is the degree to which the landscape permits mobility and provides resources for flora and fauna.

Connectivity in fragmented landscapes allows for normal processes of migration, dispersal and breeding and also provides opportunities for species to respond to environmental changes. At shorter time scales it provides a means for animals to move through the landscape in response to fire or drought and for foraging or breeding behaviour. For both animals and plants, connectivity helps maintain metapopulation processes such as dispersal and gene flow which increases the viability of species. (Fitzgerald 2016)

The majority of the land is identified as core habitat zone in a statewide spatial conservation prioritisation analysis ‘Priority areas for biodiversity conservation in Tasmania’ (Fig. 1; Fitzgerald 2016). The majority of the land is also mapped as core habitat in the ‘Break O’Day priority habitat mapping project’ (Fig. 2; Fitzgerald 2011). Both these habitat mapping projects combined numerous spatial biodiversity datasets to identify important areas for biodiversity conservation. By considering the spatial configuration of important areas and the connections between them the resulting mapping provide a blueprint for maintaining biodiversity at the landscape scale.

A Conservation Action Planning process for the St Helens region identified land clearing and climate change as the major threats to the viability of dry forests and woodlands; and included strategies to maintain and improve connectivity including recognizing habitat connectivity in land use planning and restricting coastal development to existing urban areas (North East Bioregional Network 2010).

Presently there is continuous bushland from Scamander Tier to St Helens Point. The land provides a link between the Boggy Creek Conservation Area, immediately to the west, and St Helens Point Conservation Area to the east via the St Helens airstrip and other bushland (Fig. 3). Strategic planning for habitat conservation is necessary to prevent incremental loss of bushland due to subdivisions and developments which could eventually isolate the very important natural areas of St Helens Point from the bushland west of the Tasman Highway.

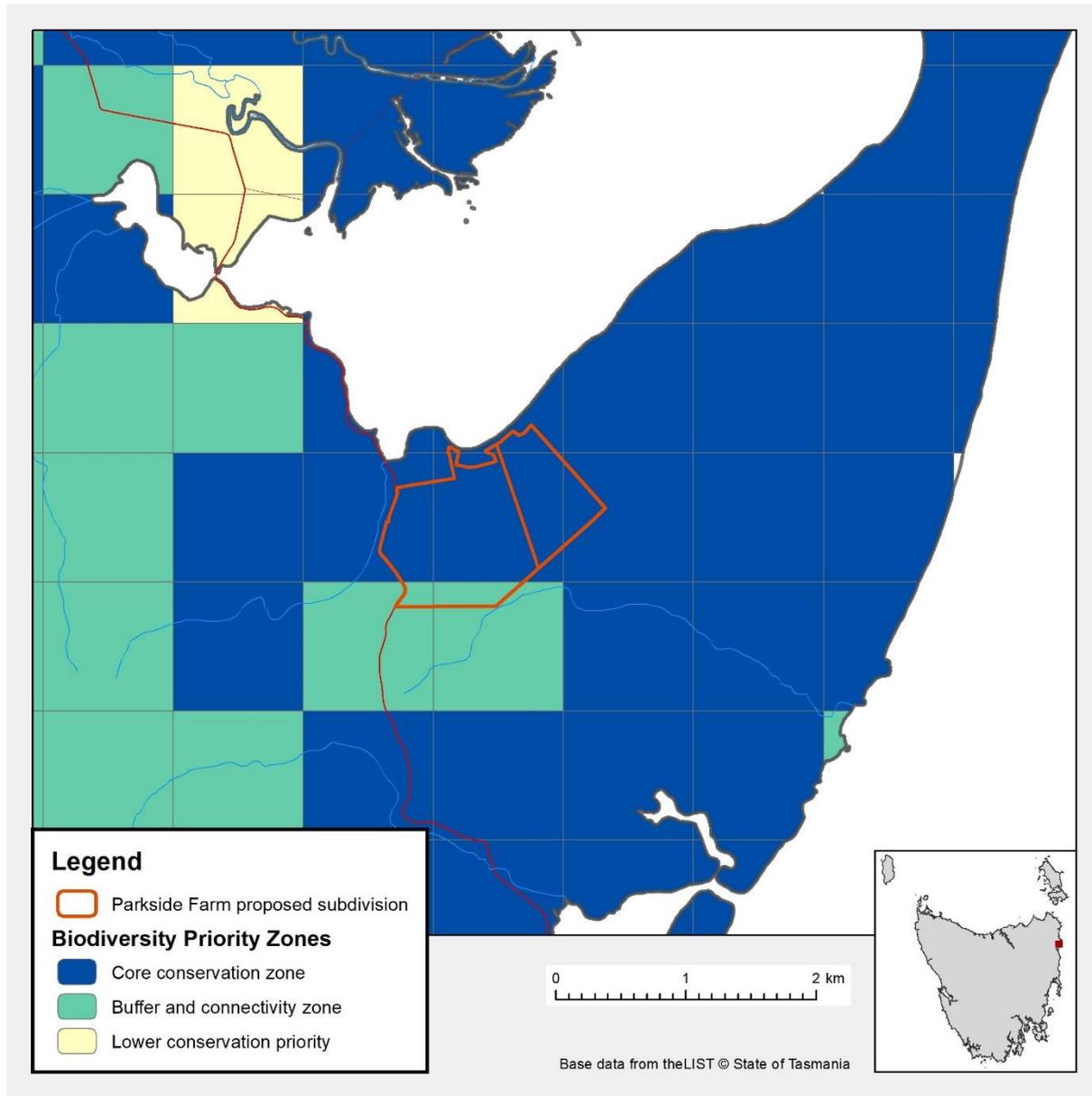


Fig. 1. Biodiversity priority zones from 'Priority areas for biodiversity conservation in Tasmania' (Fitzgerald 2016). Grid cells of 1 km square are assigned to a zone based on biodiversity values and landscape context (recognizing the conservation value for cells which buffer or connect high conservation areas).

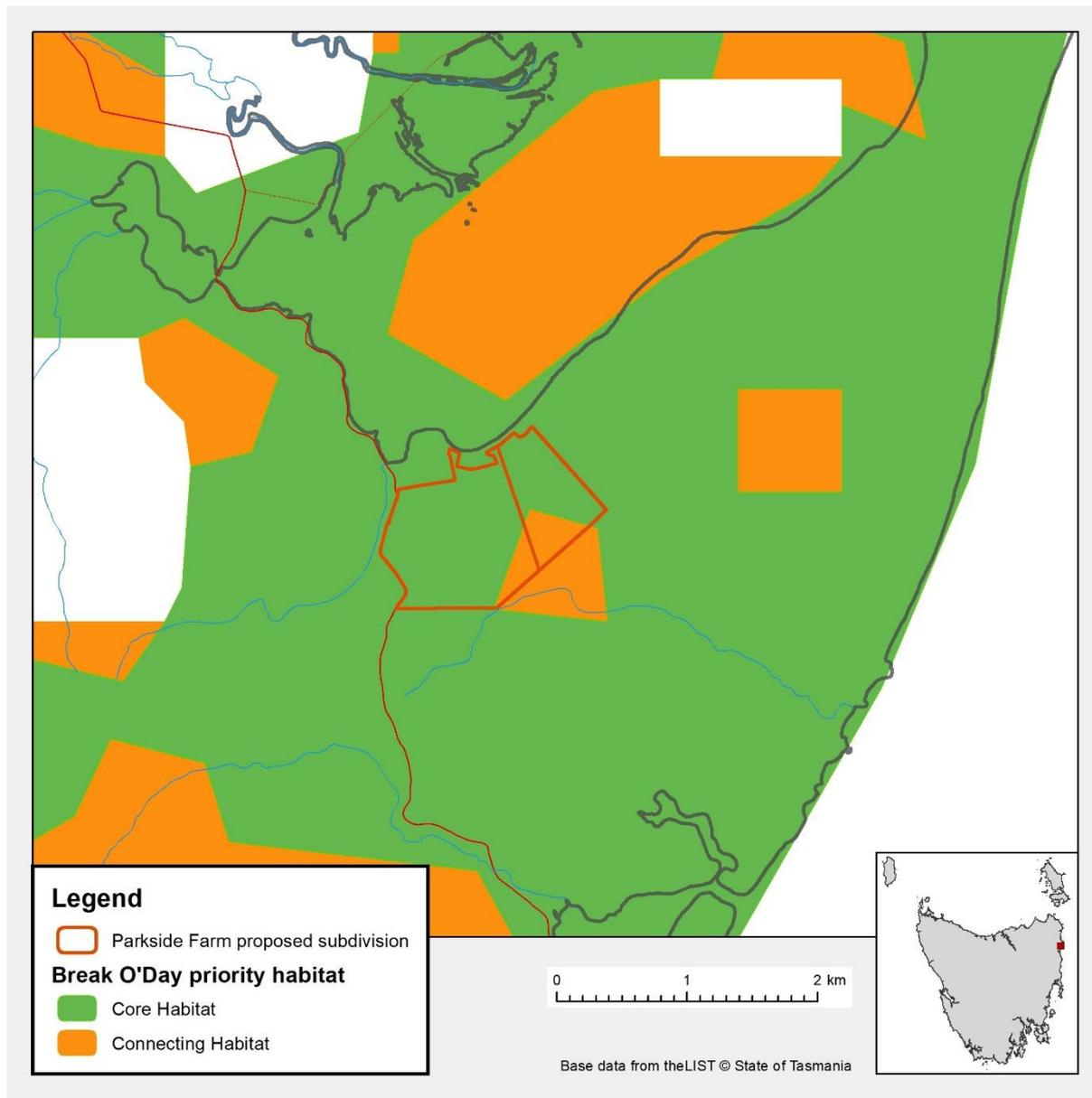


Fig. 2. Priority habitat from 'Break O'Day priority habitat mapping project' (Fitzgerald 2011). Note that some developed areas have habitat value due to presence of biodiversity features such as threatened species or rare vegetation (e.g. wetlands) or importance for connectivity yet may be degraded and not viable.

Resilience

Native dry forest vegetation has high resilience, that is it is capable of tolerating and recovering from significant disturbance. The vegetation is adapted to relatively frequent fire and is drought tolerant. Given time, these forest types can generally recover following land clearing or logging. However, habitat values such as old growth trees and coarse woody debris may take centuries to re-establish. Consequently, regrowth or degraded dry forest vegetation is typically viable and will generally provide increasing habitat value as the forest grows back. The flora and fauna site assessment (North Barker 2017) notes that some areas of native vegetation are degraded due to disturbance or too frequent burning and that most of the site is free of weeds. This suggests the site has much potential to improve in condition and be viable with minimal management.

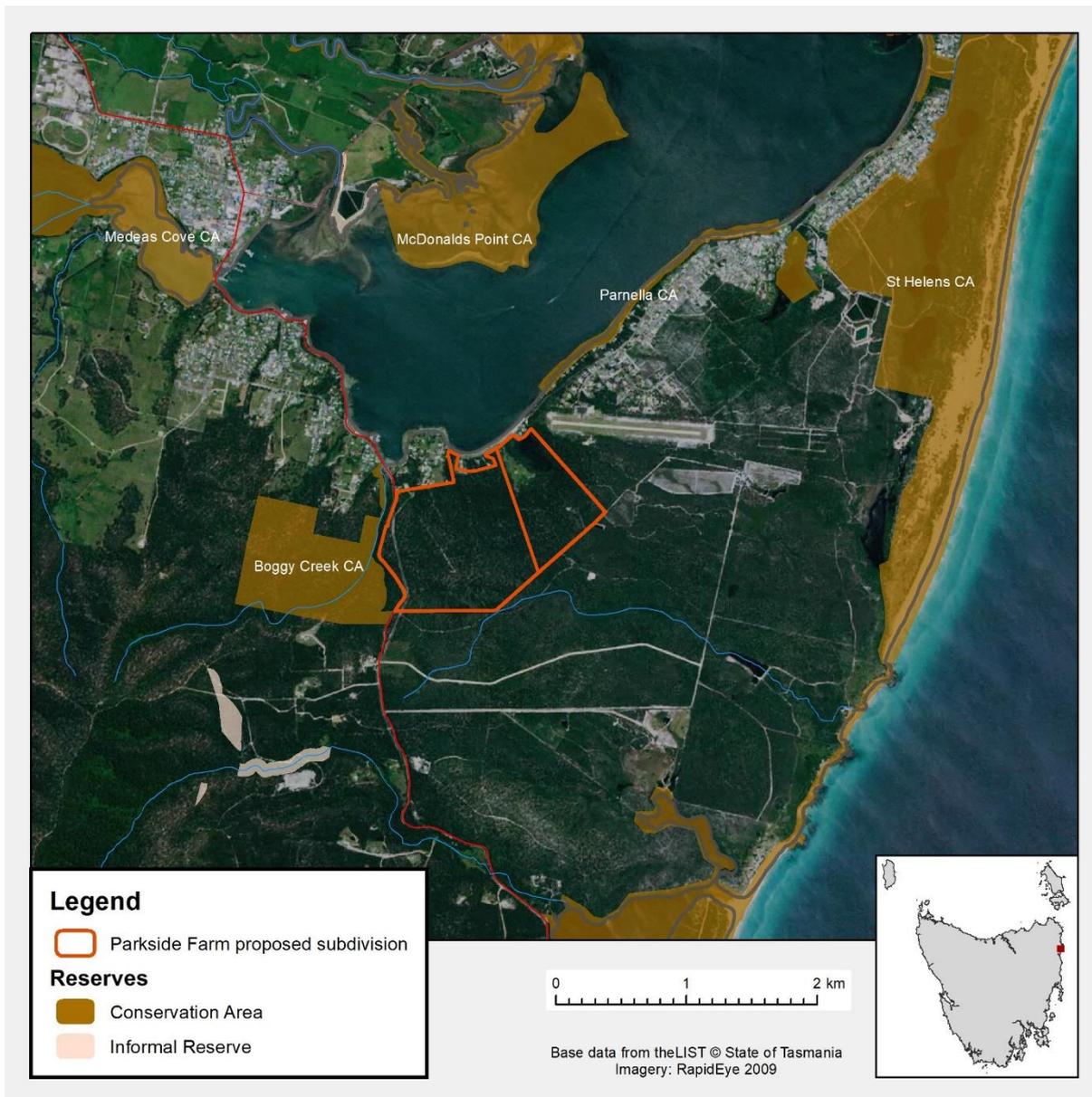


Fig. 3. Landscape context of proposed development showing bushland connecting Conservation Areas.

Habitat Loss and Fragmentation

The flora and fauna report (North Barker 2017) states:

The native vegetation communities within the study area form part of contiguous corridor of coastal habitat extending along St Helens Point connecting to Scamander Tier, which collectively provides a range of habitats for native fauna.

This mosaic of vegetation types and connectivity with habitats elsewhere provide a range of habitat opportunities for mammals, birds, reptiles and invertebrates. Patches of dense cover occur throughout the site, particularly in the damper areas providing shelter to mammals. Open areas, including water bodies, provide opportunities for grazing, hunting and foraging. There is also access to seasonal water in the form of creeks.

Habitat for native species depends on the quality and quantity of vegetation. Clearing of vegetation reduces the total amount of available habitat and can also reduce the quality of habitat. For example, clearing vegetation in a bushfire hazard management area (BHMA) around each dwelling in the proposed subdivision will result in severe fragmentation of native vegetation, leaving small fragments of vegetation which are inadequate for some species and also subject to edge effects such as nutrient runoff from domestic gardens and lawns. Land clearing and vegetation fragmentation is a major threat to the ecological processes which support functioning and resilient ecosystems in Tasmania, such as appropriate disturbance regimes and movement of species (McQuillan *et al.* 2009).

Of particular concern with the proposed subdivision is the substantial quantity of native vegetation required to be cleared for B HMAs around dwellings (Abernethy 2017). For most of the proposed lots around half or more of the lot area will be cleared for BHMAs. This is particularly evident in the central portion of the proposed subdivision where apart from the riparian no-build zone there will be very little intact native vegetation remaining after the minimum BHMAs are established. This essentially fragments the native vegetation by creating large contiguous areas with little or no vegetation and eliminating the existing east to west connectivity.

The proposal states that “each lot has ample room to provide for appropriate bushfire hazard management areas” (p. 23), yet the Bushfire Assessment Report (Abernethy 2017) provides a map of proposed BHMAs showing that some extend onto neighbouring lots (e.g. lots 22, 26, 35, 36, etc.).

A subdivision of this scale will impact on native wildlife by reducing the quantity and quality of habitat (i.e. native vegetation), increased predation by domestic dogs and cats, barriers to movement (such as fences, buildings and open lawns) and promoting invasive pest species (such as rats, mice, starlings). There is no guarantee that land owners will be willing or capable of managing the natural values of bushland on their lots.

Break O’Day planning scheme

The proposal notes that under the new Tasmanian Planning Scheme, which does not provide for an Environmental Living Zone, the Break O’Day Council will be required to rezone this land. The proponent suggests that Rural Living B is the most appropriate zoning for the land, assuming that relatively high-density (~2 ha lot size) residential development is the desired outcome for the land. However, the largely natural condition of the land fits the character of the Landscape Conservation Zone, which prioritises the protection of landscape values while allowing for discretionary residential development.

The development proposal states (p. 41): “There are large areas of the municipality within the Environmental Living Zone which currently contain significant flora and fauna, it is viewed that the removal of vegetation as part of the subdivision application and future residential developments will not have a major impact on the region”. However, the Environmental Living Zone comprises a relatively small [proportion of the municipality and this statement ignores the role of land use zoning to reduce the cumulative impacts of multiple developments.

A key function of planning schemes is to determine appropriate proportions of different land uses at the municipal scale. Without sufficient controls on subdivision, such as minimum lot sizes, there is a real risk of substantial cumulative impacts on land, water, amenity and biodiversity. In this case, the cumulative impact of land clearing on individual residential lots will destroy at least 20 hectares of native vegetation, plus another 5 ha for public roads. This is a conservative estimate, based on the

19.4 hectares total of all HMAs calculated by North Barker, whereas the map provided in the Bushfire Assessment Report (Abernethy 2017) shows much larger HMAs, totalling roughly 40 ha. Furthermore, the likely impact will be much greater, since there are no limits to land clearing on the individual lots so that landowners may clear all native vegetation, leaving only the designated no-build areas (assuming an instrument is placed on the relevant titles to prevent land clearing in no-build areas). Additionally, there will likely be substantial loss of native vegetation associated with clearing for fences, firebreaks and utilities which is not counted in the above estimates and will contribute to habitat fragmentation and barriers to wildlife movement.

Break O’Day Council Strategic Plan

The proposal states that the development is consistent with the four objectives of the environment goal “To balance our use of the natural environment to ensure that it is available for future generations to enjoy as we do” (p. 30). However, the proposed development is arguably only consistent with the second part of Strategy 4, which relates to risk to humans from a changing environment. The proposal appears inconsistent with Strategies 2 and 3.

Tasmanian State Coastal Policy 1996

The State Coastal Policy applies to the Coastal Zone, defined as land within 1 km of the high-water mark. Therefore, most of the proposed subdivision is covered by this Policy, except for the southernmost part of the land, comprising around five proposed lots.

The Planning Application by East Coast Surveying claims “The amendment is deemed to comply with the coastal policy” (p. 37). However, no justification is provided for how the proposal meets two of the key principles of the policy:

- Natural and cultural values of the coast shall be protected;
- The coast shall be used and developed in a sustainable manner.

The proposal appears to be inconsistent with numerous outcomes of the State Coastal Policy, including:

OUTCOMES

1. Protection of Natural and Cultural Values of the Coastal Zone

1.1. NATURAL RESOURCES AND ECOSYSTEMS

1.1.1.

The coastal zone will be managed to ensure sustainability of major ecosystems and natural processes.

1.1.10. The design and siting of buildings, engineering works and other infrastructure, including access routes in the coastal zone, will be subject to planning controls to ensure compatibility with natural landscape.

1.1.11. Fire management, for whatever purpose, shall be carried out in a manner which will maintain ecological processes, geomorphological processes and genetic diversity of the natural resources located within the coastal zone.

2.1. COASTAL USES AND DEVELOPMENT

2.1.1.

The coastal zone shall be used and developed in a sustainable manner subject to the objectives, principles and outcomes of this Policy. It is acknowledged that there are conservation reserves and other areas within the coastal zone which will not be available for development.

2.1.3.

Siting, design, construction and maintenance of buildings, engineering works and other infrastructure, including access routes within the coastal zone will be sensitive to the natural and aesthetic qualities of the coastal environment.

2.4. URBAN AND RESIDENTIAL DEVELOPMENT

2.4.1.

Care will be taken to minimise, or where possible totally avoid, any impact on environmentally sensitive areas from the expansion of urban and residential areas, including the provision of infrastructure for urban and residential areas.

2.4.2.

Urban and residential development in the coastal zone will be based on existing towns and townships. Compact and contained planned urban and residential development will be encouraged in order to avoid ribbon development and unrelated cluster developments along the coast.

Conclusion

The intent of the State Coastal Policy and the present zoning of this land as Environmental Living Zone is to reduce the environmental impact of increasing development pressure in the Coastal Zone. The scale of the proposed development and the associated clearance of native vegetation is not appropriate in this context. The cumulative impact of developments like the one proposed here is substantial and not ecologically sustainable.

References

- Abernethy, I (2017) Bushfire assessment report Parkside Farm, St Helens, for Ian Gabbedy.
- Fitzgerald, N (2011) Break O’Day priority habitat mapping project. Report for the North East Bioregional Network and Bay of Fires Coastal Preservation Lobby.
- Fitzgerald, N (2016) Priority areas for biodiversity conservation in Tasmania. The Wilderness Society, Hobart.
- McQuillan, PB, Watson, J, Fitzgerald, NB, Leaman, D & Obendorf, D (2009) The importance of ecological processes for terrestrial biodiversity conservation in Tasmania – a review. *Pacific Conservation Biology*, 15: 171-196.
- North Barker Ecosystem Services (2017) Parkside Farm, St Helens. Proposed Subdivision. Flora survey and fauna habitat assessment.
- North East Bioregional Network (2010) Land Use Plan. North East Bioregional Network.

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.