

Mr Geoff Storr  
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TASMANIA 7171

5 July 2021

Mr Robert Higgins  
General Manger  
Sorell Council  
PO Box 126  
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SORELL COUNCIL

12 JUL 2021

RECEIVED

Dear Sir

I am writing to make a representation with respect to the Draft Local Provisions Schedule advertised in the press on Saturday 12 June 2021 and advised in a letter from your Strategic Planner, Caroline Lindus on 11 June 2021.

My representation relates to the zoning of land on the northern side of Shark Point Road and east of Brooklyn Drive at Penna, which has been the subject of considerable correspondence and submissions to Council and which has not been properly addressed in the Draft Local Provisions Schedule.

Although I made initial approaches to Sorell Council as early as 2007, and provided a submission to the working party regarding the Southern Tasmanian Regional Land Use Strategy (STRLUS) in 2010 this narrative begins effectively in 2013 when a group of thirteen (13) small landholders at Shark Point Road in Penna decided to seek re-zoning of their properties from Rural Resource to Rural Residential zoning. There were a number of legitimate reasons for seeking to make this change to the zoning:

1. Rural Resource is an inappropriate zone as none the lots meet the 40 hectare minimum requirements for that zone under either the previous or the new interim planning scheme.
2. The area under consideration is an anomaly. There is a cluster of small acreage properties, individually owned, almost all of 10 hectares in size, although they range in size from 1 to 14 hectares.
3. None of the lots are not sufficiently large to undertake any economic agricultural pursuits in the current environment. This is demonstrated by my own experience of over 30 years as a part time orchardist.
4. The small lot sizes make potential impacts on neighboring properties a much greater consideration should any agricultural pursuits be considered.
5. Immediately across the road to the south of the properties under consideration is a strip of intensive residential development, for which at present there is no buffer zone. The change would provide proper protection of the residential amenity across the road from pursuits which may be undertaken in a rural or rural resource zone.
6. At each end of the are under consideration to the east and west are rural living zones.
7. To the north is a ridge of steep hills and large titles of good agricultural land.

8. The impact of the proposed change of zones is limited by these geographical restraints.
9. The area already has all the usual services necessary for Rural Residential zoning. It has sealed roads, power, reticulated water and garbage and recycling collection.

A qualified Town Planner was consulted, who advised that the best path forward was to await the development of the the new Sorell Interim Planning Scheme, and then if the zoning was not as we considered it ought to be then we had a right of appeal to the Tasmanian Planning Commission.

Accordingly in 2015, the new Sorell Interim Planning Scheme 2015 was advertised and our properties were again zoned as Rural Resource. We objected in the appropriate way to the Sorell Council who took the issues on board. The objection to the Rural Resource zoning progressed to a hearing by the Tasmanian Planning Commission on the 17 March 2016, having been unanimously endorsed by the Sorell Council.

On that day, despite the delegates of the Commission recognising that there was merit in changing the zoning to Rural Residential, they were uncertain as to whether they had jurisdiction to deal with the matter, and adjourned the matter without reaching a decision.

On the 21 March 2016 I then wrote to the then Executive Commissioner of the Tasmanian Planning Commission, Mr Greg Alomes seeking his advice as to the Commission's jurisdiction in the following terms:

*"I was somewhat perplexed to find that after all the steps we had followed in the process that the Commissioners considering the matter, at this late stage, were uncertain as to whether they had jurisdiction to even deal with our original submission and ultimate objection to the Sorell Interim Planning Scheme in relation to the zoning of our properties. They reserved their decision, but the jurisdictional issues need to be resolved.*

*The fundamental questions I have are:*

*Was the whole process of submissions and objections a farce, which the Commission never anticipated would lead to zoning changes, and did the planning process mislead responsible citizens by suggesting they follow a path that was for all practical purposes a dead end?*

*Does the Tasmanian Planning Commission sitting as it did on 17 March 2016 have jurisdiction to deal with our matter, and if so on what basis and for what reason should it interfere with the decision taken by Sorell Council acting as a Planning Authority, in re-zoning our property and the others involved as Rural Residential.*

*I refer you to the documents and reports provided to Sorell Council, which I understand have been forwarded to the Commission and thank you in anticipation for your assistance in relation to this matter.*

No specific response was received in relation to that letter, nor have I been advised as to the outcome of the adjourned Commission hearing. However a meeting was arranged by Mr Alomes, the Executive Commissioner of the TPC, with the General Manger of the Sorell Council Mr Robert Higgins, Mr M Ball, the Town Planner we had consulted and myself. At that meeting on the advice of the General Manger and the Executive Director of the Tasmanian Planning Commission the following conclusions were reached as to the best way to progress the matter:

1. Sorell Council would initiate an amendment to the Interim Planning Scheme 2015 of its own accord.
2. That the application would encompass all the titles in the anomalous zone, an increase from the 13 titles originally involved in the application to 26 titles, which resulted in an increase in the number of lots resulting from 60 to over 120.
3. That I would personally contact the other property owners to inform them of the proposal and establish their agreement or otherwise to the process.
4. Neither the Executive Commissioner of the Planning Commission nor Council staff raised the issue of the STRLUS, the question of a limited number of lots resulting, and its possible impact on the application too change the Interim Planning Scheme.

Sorell Council did initiate the amendment as agreed, although this was initially under the incorrect section of the Land Use Planning and Approvals Act 1993, (LUPA) which required the whole process to be completed a second time. However, combined with the initial objection to the zoning under the Sorell Interim Planning Scheme 2015, this resulted in Sorell Council unanimously agreeing on a total of five occasions over two years to support the proposal. All the relevant material was provided in their Section 35 and Section 39 reports.

Despite these circumstances the Planning Commission, following a hearing on 20 September 2017, decided on 3 November 2017 that the application for re-zoning should be rejected on the basis that:

*“the draft amendment is inconsistent with SRD1.3(c)(ii) of the RLUS as the land to be rezoned does not create limited subdivision potential by the rezoning and therefore does not satisfy the requirement of Section 30O(1) of the Land Use Planning and Approvals Act 1993”*

This was despite the Executive Commissioner agreeing that the application to re-zone promulgated by Sorell Council was the only satisfactory way to resolve the problem of the Commission's apparent jurisdictional impasse. It is clearly inequitable for the Executive Commissioner to be a party to a process leading to an increased number of lots being considered and for his Commission to then refuse the application on the grounds of *“not creating limited subdivision potential”*.

The Department of State Growth at the hearing of 20 September 2017 raised a number of objections to the proposed re-zoning. These matters were also referred to in the Commission's decision and related to:

1. An Attenuation Zone related to a sand mine.
2. An Attenuation Zone related to tertiary treatment ponds.
3. The impact on the already congested traffic on the Tasman Highway.
4. That potential land use conflict was created with respect to the agricultural land to the north.

Two days after our application was rejected, an application to rezone 4.95 hectares of Rural Resource land adjacent to Sorell was re-zoned Residential, with the support of the Department of State Growth, and involving a variation of STRLUS to facilitate that re-zoning resulting in the creation of some 70 lots.

I subsequently wrote to the then Minister for Planning about these matters indicating in my view a lack of procedural fairness and natural justice and incorrect reasoning on the part of the Commission in my letters to him of 22 November 2017 and 28 November 2017.

I subsequently, on 6 May 2019 met with Mr Anthony Reid, Project Officer from the Office of the Minister for Planning, who I understood was undertaking a review of the Southern Tasmanian Regional Land Use Strategy (STRLUS) as part of the process for development of a single Tasmanian Planning Scheme.

Having discussed the history of our matter with him the following issues arose, on which he was prepared to make clear commentary:

1. Mr Reid was surprised that the Planning Commission had indicated that they did not have jurisdiction to deal with our objection to the zoning provided in the Sorell Interim Planning Scheme 2015 at the hearing of the 17 March 2016, as in his view they could have resolved the matter then.
2. Mr Reid considered that the only real impediment to approving the application on 3 November 2017 was the issue raised with regard to the STRLUS.
3. He considered that the statement that the proposed re-zoning created land use conflict was erroneous. He understood that to have changed the zoning would have provided a buffer zone between the Residential Zone along Shark Point Road and the Rural or Rural Resource zoned land to the north, rather than perpetuating a potential land use conflict by leaving the zone unchanged.
4. Mr Reid considered that given the lot sizes of the properties along the waterfront of Shark Point Road that area should more correctly be zoned as High Density Residential.
5. Mr Reid did not consider the issue of the attenuation zones were sufficient to prevent the re-zoning. The sand mine issue could be resolved by an adjustment to a boundary of the lease. He readily understood the absurdity of presenting an attenuation zone of 1400 meters around the sewerage ponds as an issue when such a zone took in most of the residential development of Midway Point.
6. Mr Reid gave me to understand that the situation I had outlined to him was a prime example of the inadvertent unintended consequences that were flowing from the STRLUS as it was then in place.
7. Mr Reid indicated he would raise the matter with the Minister and would keep me informed as to the progress of the review of the STRLUS to ensure I could have input.

Mr Reid also suggested I contact the Sorell Council regarding the development of the Sorell Local Provisions Schedule which I did by letter on 8 May 2019.

I understand Mr Reid subsequently moved on from that role with STRLUS and I have had no further contact from anyone with regard to the STRLUS review, nor do I as a consequence have any understanding of what progress if any has been made with respect to the review or any alterations to the STRLUS.

Recently our group has been progressing an application under Section 43(A) of LUPA, encompassing a reduced number of properties and which will result in some 68 lots, half the number resulting from the previous proposal facilitated by the former Executive Commissioner of the Planning Commission. This number of lots also correlates neatly with the number created when the property at Forcett Street was rezoned from Rural Resource to Residential with the support of State Growth and an amendment to STRLUS two days after our application was refused.

The group have chosen to wait until the Sorell Local Provision Schedule was advertised and should our properties again be zoned as Rural Resource rather than Rural Living then we would make representations and again take the matter to the Planning Commission.

Sorell Council has unanimously supported our proposal on five separate occasions. It is not appropriate for Council in the present process to move away from support and advocacy for a change of zoning, because of the outcome of the Commission's considerations four years ago in 2017. Rather Council should have sought an amendment to the STRLUS as it did for the rezoning of the land at Forcett Street.

This appears to put us back where we were in 2015, when we were objecting to the zoning under the Sorell Interim Planning Scheme 2015, five years ago, and again raises the question whether the Tasmanian Planning Commission will again find a lack of jurisdiction to accede to our request to change the zoning of our properties.

From my discussions with Mr Reid two years ago the development of the Local Provisions Schedule was an appropriate mechanism to address the inadvertent unintended consequences that were flowing from the STRLUS as it was then in place which had resulted in our application being refused by the Planning Commission in 2017.

I further wrote to the Minister on 19 December 2020, and he acknowledged the issues I had raised. He and further advised that there is an established mechanism available whereby an individual Council can seek amendments to the STRLUS, that several such amendments have been approved in recent years including the one relating to Forcett Street in the Sorell local government area.

With regard to the STRLUS:

1. The STRLUS does not appear to include rural living zones in any of its considerations apart from Paragraph 19.5 referred to below, so should not be considered the overarching guide with regard to re-zoning to this category.
2. It should be noted that in its preamble the strategy states it is intended to be a broad policy document that will facilitate and manage change, growth and development within Southern Tasmania over the next 25 years. It clearly does not envisage stagnation in land use.
3. The STRLUS states at Paragraph 16.5 that in order to avoid further fettering from residential development areas by setting a minimum buffer distance of 200 metres to manage land use conflicts. The properties under consideration at Shark Point should be zoned Rural Living to provide an appropriate buffer, where there is presently no such buffer in relation to the residential land across the road.
4. States at Paragraph 19.5 that one of its aims is planning for rural living opportunities to minimise detrimental impacts and maximise use of existing infrastructure. Rezoning Shark Point achieves both of these aims as it has no detrimental impact and in fact provides the proper buffer zone for the residential part of the area which is missing at present. The area already has reticulated water, power, sealed roads and a small sewerage management system.
5. The only section of the STRLUS which was cited as preventing our earlier application related to the requirement to create limited subdivision potential. The meaning of limited in this context is not defined and should be considered in the context of the significant numbers of residential lots being developed in Midway Point and east of Sorell.
6. The Section 43 application presently being considered in fact relates to only the properties east of Brooklyn Drive with a consequent reduction in the number of potential lots available to 68.

My representation is that Sorell Council should modify its Draft Local Provisions Schedule to reflect the change of zoning of properties north of Shark Point Road and east of Brooklyn Drive to Rural Living which is the zoning which should have been given to them in the Sorell Draft Planning Scheme of 2015 and earlier such schemes, and which Council has supported on five previous occasions.

In order to achieve this outcome, Sorell Council should also seek to amend the STRLUS as advised by the Minister for Planning in his letter to me of 21 January 2021 in the same way it was able to achieve the re-zoning of the land at Forcett Street.

While this representation is being provided on my own behalf, I understand that the residents who are parties to the Section 43 application referred to above are also lodging representations as a coordinated action.

Yours Faithfully



Geoff Storr



**Minister for Housing**  
**Minister for Environment and Parks**  
**Minister for Human Services**  
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**Minister for Planning**

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21 JAN 2021

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Dear Mr Storr,

I refer to your letter regarding land use planning processes and your request for advice regarding a review of the Southern Tasmania Regional Land Use Strategy (STRLUS). I note that your group of landowners has been seeking a change to the zoning of land along Shark Point Road, Penna for a number of years, and I understand that the proposed rezoning is not currently supported by the STRLUS.

While I acknowledge the issues you raise, I must advise that the zoning of land within a local government area is a matter for the relevant council to consider and the independent Tasmanian Planning Commission to assess. The State Government has no role to play and no authority to intervene.

However, I can advise that I am currently consulting with all southern region councils on a 'roadmap' towards a medium to long-term review of the STRLUS. The proposed 'roadmap', along with funding made available in the latest budget, will create opportunities to consider modifications to the growth strategies for the various settlements within the region.

Changes to these growth strategies may inform future zoning decisions. However, one of the issues that will need to be carefully considered carefully is the quantity of vacant land already zoned for residential development within the STRLUS Urban Growth Boundary

In the meantime, there is an established mechanism available whereby individual councils can seek amendments to the STRLUS. Several such amendments have been approved in recent years, including one in the Sorell local government area.

I therefore suggest that you again contact the Sorell Council to discuss your proposed rezoning, and whether the Council would be prepared to initiate the process for an amendment to the STRLUS to be considered.

Yours sincerely

Hon Roger Jaensch MP  
Minister for Planning