

TASMANIAN PLANNING COMMISSION

DECISION

Planning scheme	Sorell Interim Planning Scheme 2015
Amendment	43-2021-1 – rezone land at Josephs Road, Carlton and McGinness Road, Carlton River from Rural Resource to Rural Living
Permit	SA-2021-3 – 12 lot subdivision
Planning authority	Sorell Council
Applicant	Quentin Newitt
Date of decision	31 May 2022

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*.



Robin Nolan
Delegate (Chair)



Rohan Probert
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

The draft amendment proposes to rezone land at Josephs Road, Carlton and McGinness Road, Carlton River from Rural Resource to Rural Living.

The draft amendment also proposes to have the Rural Living Area B minimum lot size standard (10ha) under Table 13.1 applied to approximately 30ha of the land subject to the rezoning.

Permit

The permit provides for a 12 lot subdivision including nine 1ha lots and three 10ha lots with a new road constructed from the end of Baudin Road.

Site information

The site comprises two titles with a total area of approximately 40ha. Both titles are vacant grazing land.

The western lot (folio of the Register 169070/1) is 26.85ha, has a right of way access from Josephs Road/Watson Lane and also has access and frontage to Baudin Road.

The eastern lot (folio of the Register 119311/1) is 13.64ha, has a right of way access from Josephs Road/Watson Lane and also has frontage to the unformed end of McGinness Road, Carlton River.

The subdivision lots are proposed to have frontage and access off a new subdivision road as an extension to Baudin Road.

Surrounding land is zoned Rural Living to the south, being the Baudin Road settlement, and Rural Resource to the north, east and west. The Bushfire-Prone Areas, Landslide Hazard and the Waterway and Coastal Protection Areas Codes apply to the site.

Background

The planning authority resolved to initiate the draft amendment at its meeting of 20 July 2021 and certified the draft amendment at its 3 August 2021 meeting.

Issues raised in representations

The representors raised the following issues:

- The status of accreditation of the bushfire hazard practitioner.
- The hazard management areas on the bushfire hazard management plan being unclear and not complying with clause E1.6.1 of the planning scheme.
- The bushfire hazard management plan failing to demonstrate a compliant solution for public and private access.
- The bushfire hazard management plan not referencing static water supplies.
- The proposed subdivision road, including construction requirements, quality of road surface, existing road drainage on Baudin Road and Brue Court, and lack of connection to Watson Lane.
- Impact on endangered wedge-tailed eagles.
- The subdivision not connecting with an existing rural community, not being infill, and not representing consolidation of existing rural communities.

- The subdivision not being a natural extension to the pattern of development along the Southern Beaches.
- The land not being identified within the Sorell Land Supply Strategy or the strategic plan.
- Lots should be 10ha only.
- Protection of agricultural land from fragmentation.
- Inadequate walkways and footpaths and access to public open space in the area.
- Traffic issues.
- Impacts upon privacy and general amenity.
- In addition, the applicant lodged a representation responding to the concerns raised by neighbours and representors.

Planning authority's response to the representations

The planning authority considered the representations and recommended:

1. In accordance with the provisions of the former Section 39(2) of the *Land Use Planning and Approvals Act 1993*, in connection with the public exhibition period for Draft Amendment No. 43/2021/1, notification be made to the Tasmanian Planning Commission that seven (7) responses (representations) were received from five different property owners, and Tasmania Fire Service; and Council resolves:
2. In accordance with former section 43(F)6 of the *Land Use Planning and Approvals Act 1993*, notifies the Tasmanian Planning Commission that 7 representations were received during the public exhibition period for SA.2021.3.
3. For the reasons stated in this report, to advise the Tasmanian Planning Commission that Council considers the representations received do not raise any issues under former Section 39(2) (b) of the *Land Use Planning and Approvals Act 1993* for any:
 - Need to modify the Draft Amendment; or
 - Issues that impact on the Draft Amendment as a whole.
4. For the reasons stated in this report, to advise the Tasmanian Planning Commission that Council considers the representations received, under the former Section 43 F(6)(b) of the *Land Use Planning and Approvals Act 1993*, and that they do raise issues which require a modification to condition 4 and condition 12 which should now read:
 - (4) The Bushfire Hazard Management Plan prepared by Enviro-Dynamics dated November 2021, forms part of this Permit and the measures contained with the plan must be implemented including any future development on the lots.
 - (12) The proposed roads shall have a minimum sealed width of 6.0 metres with 0.6 metre wide gravel shoulders and 0.5 metre wide verges. Any cul-de-sac heads shall have a minimum sealed (asphalt) diameter of 24 metres. The road reservation width may be required to be increased to 31 metres to accommodate this. The minimum standard of seal shall be a prime and two coat 14/7 seal over an adequately designed pavement depth. Any necessary line marking and signage shall be provided by the

developer (ie. Road name signage, give way signage and line marking).

That Council provide advice to the Tasmanian Planning Commission that the amendment 43/2021/1 and subdivision permit application SA.2021.3 be approved with conditions as exhibited except for the modifications as referenced above.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 30 March 2022.

Appearances at the hearing

Planning authority:	Caroline Lindus, Consultant Senior Planner Russell Fox, Manager Engineering and Regulatory Services
Applicant:	Ian Stanley, Planning Consultant Andrew Walker, Counsel Jason Lynch, Pinion Advisory (agriculture) Andrew North, North Barker (natural values) Quentin Newitt, owner
Representors:	Margaret Bright Colin Merritt

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 draft amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. A hearing was convened to assist the Commission's consideration of the issues in the representations.
3. The amendment was initiated and certified by the Sorell 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. Subsection 32(1)(e) is not relevant to the draft amendment as the site does not adjoin an adjacent municipal area.

7. Section 300 includes that:
 - (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.
8. Subsections 300(2)-(5) inclusive relate to the effect of amending a local provision with respect to common provisions. These matters are not relevant, as the draft amendment is limited to a local provision and has no implications for any common provisions.
9. Under section 32(1)(f), regional impacts of use and development permissible under the amendment have been considered with reference to the Southern Tasmania Regional Land Use Strategy 2010-2035.
10. In consideration of the applicant's submissions to the planning authority, the planning authority's section 35 and section 39 reports and the requirements of the Act, the Commission advised the parties of the matters the Commission had identified for particular focus at the hearing. Those matters were:
 1. consistency with the Southern Tasmania Regional Land Use Strategy regional policies for settlement and residential development, in particular the policies relating to rural living at SRD 1.3 and SRD 1.4;
 2. within the context of SRD 1.3(c)(ii) and the subject site, how should "immediate locality" be applied; and
 3. consistency with the *State Coastal Policy 1996*, with particular regard to outcome 2.4.2.

Regional Land Use Strategy

11. The Southern Tasmania Regional Land Use Strategy (regional strategy) is the relevant regional strategy under section 300(1). Within it, Chapter 19, Settlement and Residential Development, contains a settlement strategy for the region supported by a series of policies to guide residential growth. Section 19.1 of the regional strategy states:

Contemporary imperatives of climate change, changing demographics, rising infrastructure costs and environmental management require a more sustainable approach to residential growth. The Strategy is therefore promoting consolidation of existing settlements and minimisation of urban sprawl and lower density development.
12. Regional policies at SRD 1 and the subparts SRD 1.3 and SRD 1.4 of the regional strategy were the primary focus of the assessment of the draft amendment. These policies, where relevant, are:

SRD 1	Provide a sustainable and compact network of settlements with Greater Hobart at its core, that is capable of meeting projected demand.
SRD 1.3	Support the consolidation of existing settlements by restricting the application of rural living and environmental living zones to existing rural living and environmental living communities. Land not currently zoned for such use may only be zoned for such use where one or more of the following applies: <ol style="list-style-type: none">a. Recognition of existing rural living or environmental living communities, regardless of current zoning. Where not currently explicitly zoned for such use, existing communities may be rezoned to rural living or environmental living provided:

- (i) the area of the community is either substantial in size or adjoins a settlement and will not be required for any other settlement purpose; and
 - (ii) only limited subdivision potential is created by rezoning.
- b.
- c. Rezoning areas that provide for the infill or consolidation of existing rural living communities, in accordance with the following:
- (i) the land must predominantly share common boundaries with:
 - existing Rural Living zoned land; or
 - rural living communities which comply with SRD 1.3(a);
 - (ii) the amount of land rezoned to rural living must not constitute a significant increase in the immediate locality;
 - (iii) development and use of the land for rural living purposes will not increase the potential for land use conflict with other uses;
 - (iv) such areas are able to be integrated with the adjacent existing rural living area by connections for pedestrian and vehicular movement. If any new roads are possible, a structure plan will be required to show how the new area will integrate with the established Rural Living zoned area;
 - (v) the land rezoned to rural living use is not designated as Significant Agricultural Land;
 - (vi) the land rezoned to rural living use is not adjacent to the Urban Growth Boundary for Greater Hobart or identified for future urban growth; and
 - (vii) the management of risks and values on the land rezoned to rural living use is consistent with the policies in this Strategy.

SRD 1.4 Increase densities in existing rural living areas to an average of 1 dwelling per hectare, where site conditions allow.

13. Submissions for the applicant and the planning authority primarily addressed concepts in the regional strategy on consolidation, infill, rural living communities and significant increase.
14. Submissions for the applicant contended that the amendment provides an opportunity for both 'infill' and 'consolidation' that reflects the surrounding land use and subsequent development. Further, that the subdivision that would result from the proposed rezoning would be a minor addition to the existing rural living community at the southern end of the existing Lewisham/Dodges Ferry/Carlton settlement.
15. For the applicant, it was contended that the site and the locality are clearly an existing rural living community, with the predominant use of nearby and adjoining land to the north, west and east of the site constituting rural living despite being in the Rural Resource zone. Mr Stanley described the properties fronting Josephs Road and Waterson Lane ranging in size from 10ha to 70ha as, on the whole, being used for 'rural living' as hobby farms or otherwise non-agricultural uses. He submitted that 'this area, in excess of 500ha consisting of 23 cadastral parcels (adds) to the stock of rural living land (in) the immediate locality of the subject site'.
16. Further for the applicant, it was contended that the site was not isolated, with the immediate locality comprising Rural Living zoning, Low Density Residential zoning along the banks of the Carlton River, and Rural Resource zoning for the land that lies between the site and the Rural Living zoning on Dodges Hill.
17. The applicant submitted that the proposed subdivision would constitute less than a 30% increase in lots over those existing in the Baudin Road Rural Living zone and that this did not constitute a significant increase in Rural Living zoning compared to what is there now.

18. In a different view on 'immediate locality', again for the applicant, it was submitted that the 'immediate locality' was the Carlton locality (as defined on the LIST) plus Carlton River and the Dodges Hill Road area comprising 132ha of existing Rural Living zoning, and that the draft amendment of 41ha proposed a 31% increase to Rural Living zoning. The submission further advocated to the effect that a nearby area of Low Density Residential zoning and the area in Rural Resource zoning that, as it was argued, has a rural living character should be included in the assessment of rural living and significant increase, thus further reducing the percentage of increase in the immediate locality.
19. The planning authority's section 35 report authored by Ms Lindus assessed the application as proposing an increase of approximately 26% in Rural Living lots in the immediate locality, which was assessed as being significant. At the hearing, Ms Lindus considered the draft amendment to be consolidation that shared a common boundary with Rural Living zoned land in Baudin Road. For Ms Lindus, immediate locality was the land that incorporates McGinness Road, Baudin Road and Brue Court.
20. The Regional Strategy at Table 3: *Growth Management Strategies for Settlements* outlines the proposed regional function, the growth strategy and the growth scenario for settlements within the region. Table 3 identifies a settlement at 'Carlton Beach' with the regional function of 'Dormitory Suburb' and growth strategy and growth scenario as 'very low' and 'consolidation' respectively.
21. Under section 19.5.2 of the regional strategy, a very low growth strategy is described as:

...no new potential dwellings except single dwellings on existing lots or where there is existing low density subdivision potential subject to demonstrating that:

 - there will be no off-site impacts from on-site waste water disposal;
 - there is adequate provision of potable water either through reticulation or tank water; and
 - hazard and natural values constraints are adequately addressed.
22. A consolidation growth scenario is described as:

growth should be predominantly from infill development which can involve development of existing subdivided lots, subdivision of existing zoned but vacant or developed residential land, construction of additional dwellings on existing developed lots, and redeveloping existing developed lots.
23. For the planning authority and applicant, the evidence and submissions on Table 3 concerned what should comprise 'Carlton Beach', as Carlton Beach is not a recognised location with reference to the LIST or Census Districts, and how dormitory suburb, very low growth strategy and consolidation should be applied such that the terms support the draft amendment.

Commission consideration

24. The effective provisions of SRD 1.3 aim to restrict the application of Rural Living zoning to existing rural living communities, and otherwise to only allow the application of the Rural Living zone subject to consistency with a range of criteria.
25. In the context of SRD 1.3, the Commission considers that an existing rural living community must comprise a group of dwellings existing in a rural location at a density within the range of densities available under the Rural Living zone.

26. To contemplate that an existing rural living community ought to include an area in excess of 500ha comprising 23 cadastral parcels, some being without dwellings, is considered by the Commission to be contrary to the imperative which is central to SRD 1.3 and the regional strategy's Settlement and Residential Development policies – that is to promote the consolidation of existing settlements and the minimisation of urban sprawl and lower density development. As the site is vacant grazing land, the Commission's view is that it cannot be a part of any particular existing rural living community.
27. It therefore follows, and the Commission finds, that the site does not constitute or form part of an existing rural living community and therefore is not, as far as is practicable, consistent with SRD 1.3(a)
28. SRD 1.3(b) is not applicable to the site as it applies to land currently zoned Rural Living.
29. Policy SRD 1.3(c) of the regional strategy provides for the rezoning of areas that constitute infill or consolidation of existing rural living communities.
30. The Commission notes that a rural living community exists within the Rural Living zone at Baudin Road/Brue Court/McGinness Road, Carlton River, and that another centred on Dodges Hill Road is located to the west. To enable an assessment of the proposal in relation to the seven subclauses of SRD 1.3(c), the draft amendment must first be considered to constitute either infill or consolidation of existing rural living communities. While the Commission does not consider the draft amendment to constitute infill, the question of whether it can be considered to be consolidation requires examination.
31. 'Consolidation' is not defined in the regional strategy, although the term 'consolidation strategy' is defined above. In the Macquarie Dictionary, 'consolidation' is defined as:
 1. the act of consolidating; unification.
 2. the state of being consolidated; combination.
 3. a consolidated whole.
32. 'Consolidate' is further defined as:
 1. ...
 2. ...
 3. to bring together compactly in one mass or connected whole; unite; combine...
 4. to unite or combine.
33. The draft amendment proposes to rezone approximately 40ha of land as an extension to what the Commission considers to be a relatively isolated node of existing Rural Living zoning that protrudes out into the surrounding Rural Resource zone. While the site is adjacent to the existing Baudin Road Rural Living zoned land, it would extend and enlarge that relatively isolated rural living community rather than consolidate it. This extension would more than double the area of Rural Living zoned land in that locality. Similarly, as the site is grazing land and not considered to constitute or be part of an existing rural living community, the Commission is not persuaded that the draft amendment would bring together existing rural living communities compactly into one mass. As such, the Commission finds that the draft amendment does not constitute consolidation.

34. Noting that the draft amendment is not considered to provide for infill or consolidation of existing rural living communities, the Commission consequently finds that the proposal fails the opening prerequisites of SRD 1.3(c), and that, as such, there is no necessity to consider the sub clauses that follow. Nevertheless, the Commission did seek and hear specific evidence regarding SRD 1.3 and SRD 1.4, particularly as to how 'immediate locality' should be applied within the context of SRD 1.3(c)(ii) to the site. For completeness, the remaining clauses of SRD 1.3 and SRD 1.4 are considered below.
35. In relation to SRD 1.3(c)(i), while the southern side of the site shares common boundaries with the existing Rural Living zoning centred on Baudin Road, those boundaries comprise just over a third of the site's entire boundaries. Noting that the Commission is not persuaded that the Rural Resource zoning to the north, west and east of the site constitutes an existing rural living community under SRD 1.3(a), the Commission finds that the draft amendment is not, as far as is practicable, consistent with SRD 1.3(c)(i).
36. In relation to SRD 1.3(c)(ii), whilst the Commission understands Mr Stanley's written evidence (undated but submitted to the Commission on 22 March 2022) that a number of the Rural Resource zoned titles to the north, west and east of the site may be used for rural lifestyle purposes, the Commission does not accept that that land forms part of the assessment of whether a significant increase has occurred in the immediate locality.
37. Noting that there is no definition for 'immediate locality' in the regional strategy, and that the Macquarie Dictionary definition for 'immediate' is 'having no object or space intervening; nearest or next: *in the immediate vicinity*', the Commission, in this case, prefers the evidence of Ms Lindus. That is, that the immediate locality is that part of Carlton River comprising Baudin Road, Brue Court and McGinness Road and the Rural Living zoning fronting Carlton River Road.
38. In that context, the Commission finds that the proposed draft amendment would add approximately 40ha to the approximately 35ha of Rural Living zoned land existing in the immediate locality. Representing an increase of approximately 114%, the Commission finds that the site, if zoned to Rural Living, would constitute a significant increase in the immediate locality, and that, as such, the draft amendment would not, as far as is practicable, be consistent with SRD 1.3(c)(ii).
39. SRD 1.3(c)(iii) refers to rural living not increasing the potential for land use conflict with other uses, in this case the interface with the adjoining Rural Resource zoned land should the site be zoned Rural Living. As the adjoining land has been assessed as not constituting a rural living community and Rural Resource zoning allows for a range of land uses then the potential of land use conflict arises from the proposed Rural Living zoning of the site. The draft amendment for Rural Living zoning is not, as far as is practicable, consistent with this subclause.
40. SRD 1.3(c)(iv) refers to the integration with the adjacent existing rural living area by connections for pedestrian and vehicular movement. If any new roads are possible, a structure plan will be required to show how the new area will integrate with the established Rural Living zoned area.
41. The proposed permit linked to the draft amendment integrates with the adjacent existing rural living community at Baudin Road by extending that road. Whilst the opportunity to improve connectivity through McGinness Road was not included in the draft amendment, the application appears to be consistent with SRD 1.3(c)(iv).

42. However looking at SRD 1.3(c)(iv) in a broader context, it was the planning authority's evidence that there is no strategic intention for longer term expansion of Rural Living zoning in this locality. The draft amendment is presented in a vacuum of structure planning for connectivity to adjoining lands that the applicant characterises as a rural living community. On the planning authority's evidence there is no planned connectivity or strategic planning for longer term expansion for Rural Living zoning in this locality. The draft amendment simply proposes further piece-meal expansion of Rural Living zoning without reference to longer term connectivity to adjoining lands. In terms of integration and structure planning, the draft amendment for Rural Living zoning is not considered to meet the intent of SRD 1.3(c)(iv).
43. The site is not designated as Significant Agricultural Land. The draft amendment for Rural Living zoning is consistent with SRD 1.3(c)(v).
44. The site is not adjacent to the Urban Growth Boundary for Greater Hobart or identified for future urban growth. The draft amendment for Rural Living zoning is consistent with SRD 1.3(c)(vi).
45. In regard to the management of risks and values of the site, the evidence satisfactorily addresses bushfire hazard and the identification of applicable waterway and landslide hazard code areas. In regard to natural values the evidence of Ms Bright and Mr Merritt is that the site attracts regular eagle foraging activity. Whilst Mr North's evidence was to the effect that the protection of eagles is directed at nesting sites rather than roosting and foraging areas, any significance of the site for eagle activity is of interest. Apart from the aspect of the eagles, the evidence is that the natural values of the site can be appropriately managed. The draft amendment for Rural Living zoning is consistent with subclause SRD 1.3(c)(vii).
46. SRD 1.4 seeks to have (housing) density in existing rural living areas to an average of 1 dwelling per hectare. As the site is not considered by the Commission to be an existing rural living area, SRD 1.4 is not relevant to its consideration. Nevertheless, if the site were in such an area, the proposed permit accompanying the draft amendment proposes 3 x 10ha lots together with 9 x 1ha lots. While the applicant submits that site conditions including ephemeral waterways, gullies, steeper land, landslip, and the presence of *Macrocarpa* make the 3 x 10ha lots unsuitable for 1ha lots, the Commission considers that a higher density of development would be achievable, inferring that the 10ha lots would be inconsistent with clause SRD 1.4.
47. To complete the assessment of the draft amendment against the regional strategy, submissions referred to Table 3 Growth Management Strategies for Settlements and as to what constitutes a 'settlement'. On further assessment, the Commission's view is that Table 3 concerns urban settlements and not rural living communities. Nevertheless, should Table 3 have application, it identifies; Dodges Ferry, Carlton Beach and Lewisham and 'all other settlements'. In relation to Table 3, the submissions on what constitutes Carlton Beach are not particularly helpful. 'Carlton Beach' can be taken as a recognised area, even if it is not identified as a suburb or a contained in a census district. Irrespective of what constitutes Carlton Beach, the intent for Table 3 is that the growth strategy for such areas is 'very low' and the growth scenario is 'consolidation'.
48. At 19.5.2, very low growth strategy is described as 'no new potential dwellings except single dwellings on existing lots or where there is existing low density subdivision potential subject to demonstrating' followed by 3 dot points concerning waste water, potable water and avoidance of hazards.

49. The strategy appears at other places to separate 'low density' from 'rural living', but taken in the general, the site complies with the 3 dot points under the very low growth strategy. However, 19.5.2 describes a consolidation strategy as:
- ...growth should be predominately from infill development which can involve development of existing subdivided lots, subdivision of existing zoned but vacant or developed residential, construction of additional dwellings on existing developed lots, redeveloping existing developed lots.
50. If Table 3 and clause 19.5.2 apply to Rural Living zoning, and whilst the criteria for a very low growth strategy might be met in part for the site, Rural Living zoning and subsequent development of the site is, in substance, inconsistent with the consolidation strategy.
51. The regional strategy seeks to promote the consolidation of existing settlements and the minimisation of urban sprawl and lower density development. The Commission's assessment is that the draft amendment does not constitute consolidation and that it would increase urban sprawl and lower density development, which is contrary to providing a sustainable and compact network of settlements as referred to in SRD 1. The Commission finds also that the draft amendment is not, as far as is practicable, consistent with the SRD 1.3. As such, the Commission finds that the draft amendment is not, as far as is practicable, consistent with the regional strategy's policies for settlement and residential development as required by the provisions of section 300(1).

State Policies and Resource Management and Planning System Objectives

State Coastal Policy 1996 (Coastal Policy)

52. The applicant's planning report did not assess the application of the Coastal Policy to the site.
53. The planning authority section 35 report submits that the site is within 1km of the coastline and therefore is classified as being within the coastal zone under the Coastal Policy. The planning authority assessment was that the natural and coastal values of the coastline would be protected.
54. At the hearing Mr Walker submitted that, if the Coastal Policy applies, Clause 2.4.2 requires urban residential development in the coastal zone to be based on existing towns and townships, and that the proposed rezoning site is within a dormitory suburb and is part of a substantial existing rural living community, and therefore must be considered to be based on existing towns and townships.
55. Mr Walker submitted that the proposed rezoning is not ribbon development, as it is consolidation that extends an already substantial area of rural living zoned land inland from the coast. He also submitted that it is consolidation by rezoning what is an existing rural living community.

Commission consideration

56. The Commission, in consideration:
- of the definition of the coastal zone in the Coastal Policy that is linked to the definition of State waters in the *Living Marine Resources Management Act 1995*;
 - that the Carlton River (tidal) estuary is in State Waters; and
 - that the site is mostly within one kilometre inland from the high-water mark as delineated on the LIST;

finds that the site is in the coastal zone and the Coastal Policy applies.

57. Turning to Coastal Policy outcomes:
58. Outcome 2.1.6. states: 'In determining decisions on use and development in the coastal zone, priority will be given to those which are dependent on a coastal location for spatial, social, economic, cultural or environmental reasons'.
59. The draft amendment for Rural Living zoning and subsequent development for residential use is not coastal dependent. The draft amendment has not been prepared in accordance with Outcome 2.1.6.
60. Outcome 2.4.1 states: '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'.
61. The site for the draft amendment for Rural Living zoning and subsequent development for residential use and the associated infrastructure avoids the environmentally sensitive areas as delineated on the planning scheme maps. The draft amendment has been prepared in accordance with Outcome 2.4.1.
62. Outcome 2.4.2 states: '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'.
63. The Coastal Policy does not define what constitutes a town or township. The regional strategy uses 'township' but does not identify Carlton Beach as a township, instead characterising the settlement as a 'dormitory suburb'. For the purpose of Outcome 2.4.2, and despite the Carlton Beach settlement not having a town centre nor being seen as a town or township, the site is sufficiently separated in physical distance from residential Carlton Beach to not be based on that or any other 'township'. The site of the draft amendment would constitute or add to unrelated cluster developments along the coast. The draft amendment has not been prepared in accordance with Outcome 2.4.2.
64. Outcome 2.4.3 states: 'Any urban and residential development in the coastal zone, future and existing, will be identified through designation of areas in planning schemes consistent with the objectives, principles and outcomes of this Policy'.
65. In consideration of the objectives, principles and outcomes of the Coastal Policy, the draft amendment has not been prepared in accordance with the policy.

State Policy on the Protection of Agricultural Land 2009

66. The applicant's agricultural assessment report by Pinion Advisory provided an assessment against the *State Policy on the Protection of Agricultural Land 2009* (PAL Policy).
67. The report advises that a detailed inspection of the site determined that the land was classified as Class 4, Class 4+5, Class 5 and Class 6.
68. The report notes that the land has capability limitations including erosion, rockiness, shallow topsoil depth, imperfect soil drainage, and soils with stone and gravel throughout their profile. The report also notes that pastures on the site are particularly degraded, that there is very low rainfall, and that there is no access to irrigation water.
69. The report concludes that the proposed development is consistent with the PAL policy principles.
70. The planning authority concurred that the application is consistent with the PAL policy, referring to the small area of the site compared to total non-prime agricultural land in the Nugent district and edge effects from established rural living areas.

Commission consideration

71. The evidence confirms that the site has lower land capability, has no realistic prospect of irrigation water, and has not been under 'active' agricultural use, at least in recent years.
72. Taking account of the site's soil characteristics, low rainfall environment and lack of irrigation water, and then its size, shape and proximity to adjoining non-agricultural uses (Baudin Road), the site has limitations on agricultural use. Further to clause 3.7 of the PAL Policy, the evidence does not identify a local or regional significance of the site for agricultural use.
73. The draft amendment has been prepared in accordance with the PAL Policy.

State Policy on Water Quality Management 1997

74. The *State Policy on Water Quality Management 1997* has application to the site. The Commission is satisfied that subsequent development and residential use of the site could be undertaken in accordance with the State Policy. The draft amendment has been prepared in accordance with the *State Policy on Water Quality Management 1997*.

NEPMs

75. The National Environmental Protection Measures (NEPMs) are taken to be State Policies under section 12A of the *State Policies and Projects Act 1993*.
76. The National Environment Protection (Assessment of Site Contamination) Measure is relevant to the site. There is no evidence of site contamination. The assessment is that the draft amendment has been prepared in accordance with the NEPMs.

Schedule 1 Objectives of the Act

77. In relation to the Resource Management and Planning System objectives, the Commission must consider the objectives under Part 1 and Part 2 of the Act. The Commission finds that as the draft amendment is assessed as not being consistent with the Southern Tasmania Regional Land Use Strategy and the State Coastal Policy, then Objective Part 1(b) to provide for the fair, orderly and sustainable use and development of air, land and water, is not furthered.

Decision on draft amendment

78. The Commission finds that the draft amendment:
 1. has not been prepared in accordance with clause 2.1.6, 2.4.2 and 2.4.3 of the *State Coastal Policy 1996*;
 2. is not, as far as is practicable, consistent with SRD 1, SRD 1.3(a) and SRD 1.3(c) of the Southern Tasmania Regional Land Use Strategy;
 3. does not seek to further the objectives of the Act; andis rejected.
79. As the draft amendment is rejected under section 41(b), the permit is refused.