

Sorell Interim Planning Scheme 2015
Draft Amendment 43-2021-1 and Permit SA-2021-3

Southern Tasmania Regional Land Use Strategy

“Consistent with”

1. This phrase does not mean “complies with”, or “satisfies”. It does not impose an absolute test. In the context of land use planning, the phrase has been relatively recently considered in *Nairn v Metro-Central Joint Development Assessment Panel* [2016] WASC 56. Chaney J said:

78. For properties within the SDA, the first precondition to the exercise of the discretion to vary the requirements of Element 3 is that it can be demonstrated that the development 'is consistent with the guidance statements applicable'. In its ordinary meaning, 'consistent' means accordant or compatible (Macquarie Dictionary (4th ed)) or 'agreeing in substance or form; congruous, compatible ..., not contradictory' (Shorter Oxford English Dictionary (5th ed)).

2. So, when s300 of the *Land Use Planning and Appeals Act 1993* (in the form that applies to this amendment) requires the amendment to be “as far as is, in the opinion of the relevant decision-maker...practicable, consistent with the regional land use strategy...” that does not require inflexible compliance. It must be, as far as is practicable, compatible with, agreeing in substance with or not contradictory of, STRLUS.
3. There is, therefore, a certain level of flexibility in the application of STRLUS, which is entirely appropriate and enables site-specific or locality-specific context to be taken into account.
4. The applicant for the rezoning submits that the proposed rezoning from Rural Resource to Rural Living and Rural Living B is so far as is practicable and having regard to the context of the locality, compatible with, agreeing in substance with, and not contradictory to regional policy SRD 1 in STRLUS.
5. STRLUS states at 1.3 that it is to be read in conjunction with a number of background reports. In Background Report 11 to the STRLUS, it was noted on page 35 that area specific objectives being the desired attributes of the sub-region described as Southern Beaches (Lewisham to Primrose Sands) were:
 - Consolidate residential development within existing settlement nodes;
 - Facilitate economic infrastructure to improve the provision of commercial, community and retail activities in the region;
 - Enhance access to recreational areas of regional significance.

6. The context of the locality is that it is a rural living community, comprising a mixture of Rural Living, Low Density Residential and Rural Resource zoned land. It is certainly not an isolated locality within a predominantly agricultural area. Indeed, STRLUS describes its settlement function (in Table 3) as a dormitory suburb, therefore residential use is plainly a central feature of the locality.
7. SRD1.3 supports the consolidation of existing settlements by restricting the application of rural living and environmental living zones to existing rural living and environmental living communities. This statement reflects background report 11's objective to consolidate residential development within existing settlement nodes. Note the reference to existing communities. Also note the use of the specific "Rural Living zoning", and the more general rural living community. The use of capital letters is referring to the zone, and lower case to the community.
8. SRD1.3 goes on that land not currently zoned for such use (meaning for rural residential use) may only be zoned where one or more of 3 circumstances apply.
9. The first circumstance is para (a), which recognises existing rural living or environmental living communities *regardless of current zoning*. It goes on that where not 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 the rezoning.
10. This circumstance applies to this proposed rezoning. The site is within a location that is an existing rural living community comprising Rural Living, Low density Residential and Rural Resource zoned land. This includes Low density residential along the bank of the Carlton River, and north of Carlton River Road. It also includes the Rural Resource zoned land that lies between the proposed rezoning site and the Rural Living zoned land on Dodges Hill which is itself largely occupied in the nature of rural living, being hobby farms or otherwise not agricultural uses. These properties in Waterson Road and Josephs Road Largely are large rural lots on which people live – i.e part of a rural living community.
11. This community is large. It does not adjoin a settlement, but as discussed below is part of a settlement, being in a locality categorised by STRLUS as a dormitory suburb. It is not required for any settlement purpose other than consolidating within existing settlement nodes.
12. Limited subdivision potential is created by enabling the use of three zone B lots providing a final buffer between the regular 1 ha lots and the Rural

Resource zoned land to the north. The rezoning will facilitate a subdivision designed to limit subdivision.

13. On this basis alone, the proposed rezoning is consistent with STRLUS.

SRD 1.3 (c)

14. Another alternative circumstance is in paragraph (c) of SRD 1.3. This enables rezoning of areas that provide for the infill or consolidation of existing rural living communities in accordance with a number of matters (i – vii).

15. This proposal is clearly consolidation. The existing Rural Living Zoned land to the south is subdivided in a way that anticipates further extension of the road layout. The proposed rezoning site is “bookended” in effect by Low Density Residential zoning.

16. The first matter (i) is that the land predominantly shares common boundaries with:

- (a) existing rural living zoned land. The proposed rezoning site shares common boundaries with a substantial area of rural living zoned land; or
- (b) rural living communities “which comply with SRD 1.3(a)”. The rural living community, in the three different zones, “complies with” 1.3 (a) as discussed above.

The application of either or both of these factors results in satisfaction that the land predominantly shares common boundaries with land as described.

17. The second matter (ii) is that the amount of land rezoned to rural living must not constitute a significant increase in the immediate locality. What is the immediate locality? It is not defined in STRLUS.

18. The locality of Carlton is within the Southern Beaches sub-region. The LIST designates a locality of Carlton, as described in Ian Stanley’s statement dated April 2021. The STRLUS, however, refers in Table 3 to a settlement of Carlton Beach, described as a dormitory suburb with very low growth strategy through consolidation. It is noteworthy that it is not designated in that table as the lesser settlement of “township”. It is unclear why STRLUS would refer to a locality not recorded on the LIST.

19. That being the case, the only sensible interpretation of STRLUS is that its reference to Carlton Beach in Table 3 (which is the only reference to “Carlton” in the whole of STRLUS) is to, at least, the LIST locality of Carlton. This is the area shown surrounded by a purple line in Attachment 1 to Ian Stanley’s April 2021 statement, which includes most of the proposed rezoning land.

20. However, there is a significant area of settlement between the purple line in Attachment 1 and the Carlton River. That area of settlement must also form

part of the settlement of "Carlton Beach", as noted in Table 3. It is obviously attached to it, or more correctly is a continuation of it.

21. There is also an area of rural living land directly adjoining, and extending uphill from, the parcel of rural living land on the north western side of the Carlton settlement. This area, containing Dodges Hill Road and Deborah Lane is a continuation of the rural living land within the Carlton locality "purple line" and is closer to the proposed rezoning site than much of the settled land in Carlton. It is properly included in the immediate locality.
22. On that analysis, the "immediate locality" in which the proposed rezoning land is situated is the Carlton locality together with the continuing settlement up the Carlton River, and the land accessed by Dodges Hill Road and Deborah Lane. This "immediate locality" is part of the broader Southern Beaches sub-region.
23. The area of land zoned Rural Living in this "immediate locality" is $39 + 58 + 31 = 132$ ha. The proposed rezoning site is 41 ha, which is 31%. Further, sensibly construed having regard to the purpose of SRD 1.3 (c), which is to provide for infill or consolidation of existing rural living communities which may not necessarily be zoned rural living, the requirement that the "amount of land...must not constitute a significant increase in the immediate locality" is not necessarily confined to an increase only in Rural Living zoned land.
24. There are areas zoned Low Density Residential which can properly be considered to be, for all intents and purposes, rural living in the sense of the rural living community to which SRD1.3(c) is directed. These areas include along the bank of the Carlton River, and north of Carlton River Road. Inclusion of these areas estimated at 40 hectares reduces the percentage increase to under 25%.
25. Further, the Rural Resource zoned land that lies between the proposed rezoning site and the Rural Living zoned land on Dodges Hill is itself largely occupied in the nature of rural living, being hobby farms or otherwise not agricultural uses. Largely they are large rural lots on which people live – i.e part of a rural living community.
26. When all of this is considered, there is not a significant increase of rural living in the immediate locality as a result of the proposed rezoning.
27. The third matter (iii) is that the development and use of the land for rural living will not increase the potential for land use conflict with other uses. The agricultural assessment report by Jason Lynch addresses this issue and concludes that because of lower land capability and absence of irrigation produce there are significant constraints on the use of rural resource land in this area, and that land use on adjoining properties is minimal as a consequence. Rural living use will not produce conflict with those uses, and potential sources of conflict between those uses and residential living can be alleviated by the location, nature and design of dwellings including separation and buffer distances.

28. The fourth matter (iv) requires rezoned areas to be able to be integrated with the adjacent rural living area by connection for pedestrian and vehicle movements. The immediately adjoining Rural Living zoned land road layout is a direct integration and is obviously incomplete and anticipates an extension northward. The road layout in the proposed subdivision provides this extension and finalises the integration.
29. The fifth matter (v) is that the proposed rezoning site is not designated Significant Agriculture Land. It is not, and the owner cannot even obtain a land tax exemption – he pays tax as if the land were for residential use.
30. The sixth matter (vi) is that the land is not adjacent to the Urban Growth Boundary. This land is nowhere near the UGB.
31. The seventh matter (vii) is that the management of risks and values on the land rezoned to rural living use is consistent with the policies in the STRLUS. It is unclear what this matter adds to the consideration. Nevertheless, because this site complies with the other matters, and because it is located within a locality described as a dormitory suburb, and it has limited “values”, and has a comprehensive Bushfire Management Plan, it satisfies this matter.
32. There is another potentially relevant policy in SRD1.4. This concerns increasing densities in existing rural living areas to an average of 1 dwelling per hectare where *site conditions allow*. The proposal is for 1 ha lots, with a “buffer area” of 10ha area B zoning where site conditions including ephemeral waterways, gullies and steeper land, a small area subject to landslip, and the presence of *Macrocarpa* are such that 1 ha lots are not suitable.

State Coastal Policy

33. It is not clear whether the proposed rezoning land is within the Coastal Zone under the State Coastal Policy. That Zone is defined as State waters and all land to a distance of one kilometre inland from the high-water mark.
34. It might be the case that the Carlton River at its nearest point to the proposed rezoning land is State waters, being tidal waters that are adjacent to the State and are on the landward side of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law. However, no part of State waters is proposed for rezoning.
35. To be in the Coastal Zone, the proposed rezoning site is to be within a distance of one kilometre from the high-water mark. What does this mean? High-water mark is not defined, so it is necessary to consider the purpose of the Policy, which is contained in the three principles contained in the Policy:
 - (a) Natural and cultural values of the coast shall be protected;
 - (b) The coast shall be used and developed in a sustainable manner;

(c) Integrated management and protection of the coastal zone is a shared responsibility.

36. Plainly, the focus of this purpose is the “coast”. It follows that the high-water mark is the high-water mark of the coast. “Coast” does not appear to be defined in any Tasmanian legislation. In its ordinary meaning coast does not include a river, even though State waters as specifically defined in legislation might include part of a river.

37. The closest the proposed rezoning land comes to the coast is 2.1km at the high-water mark at Primrose Sands Beach. It is therefore not in the Coastal Zone.

38. If that, for reasons that are not presently obvious, is not accepted, then in any event the proposal is consistent with SCP outcome 2.4.2. This 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 development along the coast.

39. A number of matters fall out of this:

- (a) The proposed rezoning site is within a dormitory suburb, which sits higher on the activity table than either towns or townships. It therefore plainly satisfies this matter. Also, it is part of a substantial existing rural living community which comprises land zoned Rural Residential, Low Density Residential and Rural Resource.
- (b) The proposed rezoning will not create “ribbon development”. Quite the opposite. It will create a consolidation that extends a substantial area of Rural Living zoned land inland from the coast (which is 2 km away).
- (c) No part of the proposed rezoning site can be considered to be “along the coast”.
- (d) There is no unrelated cluster development. It is consolidation by rezoning what is part of an existing rural living community, and therefore entirely “related”.

40. This proposed rezoning is clearly consistent with the provisions in STRLUS and with the State Coastal Policy.

Subdivision

41. Ian Stanley assesses the proposal against the subdivision standards in 13.5.1 at pages 14 – 21 of his report dated December 2020. The proposal meets acceptable solutions A1 – A5.

- 42. The performance criteria 13.5.2 and 13.5.3 are met.
- 43. The performance criteria 13.5.4 P2 and P3 which are applicable are met.
- 44. The minimum lot sizes in Table 13.1 are met.
- 45. The satisfaction of cades is addressed by Ian Stanley's report at pages 21-23.
- 46. Consideration of the objectives of Schedule 1 is addressed at pages 23-25 of Ian Stanley's report.
- 47. Consideration of State policies is addresses at pages 25-27 of Ian Stanley's report.

Conditions

- 48. The proponent suggests that additional comfort could be achieved by making 2 small amendments to the proposal plan (amended to contain - version 12), being:
 - (a) Requiring all "Indicative Building Areas" to be identified on the plan and titles as Building Areas;
 - (b) Showing 2 building areas on lot 3 – Area B to exclude the part of the lot where the Macrocarpa stand is located, and adding a condition that only one building area on lot 3 is to be built on;
 - (c) Showing lot 3 having 2 accesses, one at the caldersac at the top of Baudin Road, and one at the corner of the other road, so as to provide access to either of the 2 Building Areas on lot 3.

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