

From: Mick Purves <purvesmick1@gmail.com>
Sent: Friday, 23 April 2021 9:33 AM
To: wtc@wtc.tas.gov.au; Michelle Riley
Cc: Pino and Clare Tedeschi
Subject: I2021159054 - Representation against effective prohibition on minimum lot size - WTA-S3.8.1 P1
Attachments: Representation to WTC LPS SAP WTA-S3 Lothian Pl.pdf

Good morning
Please see the attached representation lodged on behalf of my client.
Thanks and regards

Mick Purves
Town Planning Solutions Pty Ltd
MPIA MTP

General Manager
West Tamar Council

Email to: wtc@wtc.tas.gov.au

Dear Sir

REPRESENTATION TO LOCAL PROVISIONS SCHEDULE WTA-S3.8.1 P1

Objection against effective prohibition on minimum lot size

Please consider this submission a representation against the ultimate limitation on lot size under performance criteria WTA-S3.8.1 P1 in the West Tamar Council (Council) Local Provisions Schedule (LPS).

My client owns land at 2 Lothian Place, Riverside. The subject area is identified as within the Low Density Residential zone of the LPS and subject to *WTA-S3 Residential Supply and Density Specific Area Plan* (SAP).

I was engaged to prepare and submit a representation to WTA-S3.8.1 P1 to enable limited subdivision within the area.

Inclusion of WTA-S3 Residential Supply and Density Specific Area Plan is supported. Application of the SAP across a range of areas that are clearly non-urban residential but display a large-lot character is supported. The minimum lot sizes of the Tasmanian Planning Provisions Low Density Residential zone is a recognised problem that was highlighted by multiple Councils during the hearings on the Tasmanian Planning Provisions. West Tamar made specific representation on this issue that was ultimately unsuccessful. That outcome has effectively mandated inclusion of the subject SAP.

The exhibited LPS provides an acceptable solution for subdivision of lots to 5,000 m², subject to compliance with three other tests. This provision is supported.

The corresponding performance criteria P1 purports to establish discretion on those standards, subject to an ultimate limitation that lots must have a minimum area of 5,000 m².

Inclusion of the same 5,000 m² figure in the acceptable solution and performance criteria is not consistent with the construction of the State Planning Provisions, the requirements of *Practice Note 8 Draft LPS written document: drafting advice* (Practice Note 8) and the concept of or requirements for performance criteria.

The 5,000 m² threshold for performance criteria is also inconsistent with plan purpose statement WTA-S3.1.2, objective (a) for WTA-S3.8.1 and zone purpose statement 10.1.1.

Practice Note 8 provides clear instruction on the nature of both acceptable solutions and performance criteria, and the difference between them, at page 4:

The statement of an objective in a standard is, in fact, the standard that must be met. It must be consistent with the purpose statement in a PPZ or SAP. The Acceptable Solutions and Performance Criteria specify the alternative ways that the standard may be met. Acceptable Solutions are quantitative and Performance Criteria are qualitative. The qualitative statements in the Performance Criteria indicate the range of matters that are to be considered in making a discretionary decision.

Further guidance is provided at page 7:

Performance Criteria should not be written as alternative Acceptable Solutions. If an Acceptable Solution cannot be met, the corresponding Performance Criterion (if one has been provided) should confirm the objective to be met and set out the matters to which regard must be had when the planning authority makes a decision in the exercise of its discretion. Where possible, limit the number of matters to which regard must be had under any Performance Criterion in order to clarify the decision making task.

Inclusion of the absolute minimum 5,000 m² area as part of the performance criteria removes the opportunity for discretion on this standard. This is contrary to both the intent and specific drafting instructions of Practice Note 8.

The drafting style of the State Planning Provisions provides discretion in relevant zones (Low Density Residential and Rural Living) that establish a convention of 20% discretion on minimum lot size. This concept is supported for the SAP.

It is requested that WTA-S3.8.1 P1 be modified to establish a discretion on the minimum lot size of 1,000 m² or 20%, for consistency with the structure and format of similar provisions within the State Planning Provisions and compliance with Practice Note 8.

It is also suggested that West Tamar consider making its own representation on this issue and then listing the minimum lot sizes of the Low Density Residential zone and the resulting conflict that results in its application to the real world as an issue for the Commission to consider in a section 35G notice for issues with or alterations to the State Planning Provisions.

I look forward to discussing this submission with you further informally or at the LPS hearings.

Thank you and regards



Mick Purves
Director
Town Planning Solutions Pty Ltd

23 April 2021