

# TASMANIAN PLANNING COMMISSION

## DECISION

<b>Planning scheme</b>	Glamorgan Spring Bay Interim Planning Scheme 2015
<b>Amendment</b>	AM 2018-07(a) – rezone CT 149641/2, Rheban Road, Orford from Rural Resource to General Residential; and AM 2018-07(b) – rezone CT 117058/150 and CT 149641/1, Rheban Road, Orford from Rural Resource to General Residential.
<b>Permit</b>	SA 2017-04 – subdivision for 91 residential lots and one open space lot at CT 149641/2, Rheban Road, Orford.
<b>Planning authority</b>	Glamorgan Spring Bay Council
<b>Applicant</b>	M & H Lawrence [AM 2018-07(a) and SA 2017-04]
<b>Date of decision</b>	24 July 2019

## Decision

The draft amendments are 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*.



Marietta Wong  
**Delegate (Chair)**



Sandra Hogue  
**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

A combined draft amendment and permit was requested for a rezoning and subdivision of land at CT 149641/2, Rheban Road, Orford under section 34(1)(a) (draft amendment AM 2018-07(a) and SA 2017/04). The Glamorgan Spring Bay Council decided to also initiate a rezoning of 2 adjoining parcels under section 34(1)(b) (AM 2018-07(b)).

Draft amendment AM 2018-07(a) proposes to rezone CT 149641/2, Rheban Road, Orford from Rural Resource to General Residential.

Draft amendment AM 2018-07(b) proposes to rezone CT 117058/150 and CT 149641/1 (number 135), Rheban Road, Orford from Rural Resource to General Residential.

#### Permit

The permit is for a 92 lot subdivision (91 residential lots and one open space lot) at CT 149641/2, Rheban Road, Orford. The permit requires discretions under the Glamorgan Spring Bay Interim Planning Scheme 2015 for:

- lot design and orientation;
- frontage width;
- internal lots;
- subdivision of more than 3 lots;
- road design;
- arrangement of ways and public open space; and
- servicing.

#### Site information

The land is located on Rheban Road, about 2 kilometres south east of the intersection of Charles Street with the Tasman Highway. The following table describes the land:

Draft amendment	Certificate of Title/Address	Land size	Land description
AM 2018-07(a)	CT 149641/2	10.2 ha	Land with a single dwelling, flat and predominantly cleared, with some native vegetation to the north. Road frontage to Rheban Road and East Shelly Road.
AM 2018-07(b)	CT 117058/150	4.3 ha	Vacant, flat and predominantly cleared, with native vegetation associated with existing drain/watercourse running alongside eastern boundary, and a few trees scattered across site. Road frontage to Rheban Road and Jetty Road.
AM 2018-07(b)	CT 149641/1 (135 Rheban Rd)	0.4 ha	Single dwelling

All 3 lots are zoned Rural Resource. Northern sections of the 2 larger lots are subject to the Coastal Inundation Hazard Area overlay. All 3 lots are partially subject to the Waterway and Coastal Protection Area overlay.

### **Issues raised in representations**

The representors raised the following issues:

- adequacy of water and sewerage infrastructure;
- pedestrian access;
- private ownership of the creek land;
- concern with lot size;
- use of dam on site for firefighting purposes;
- support for riparian reserves and walking tracks;
- request dish drains rather than kerbing;
- concern about impervious surfaces;
- identifying threatened species in the area;
- request for front fences;
- odour from sewage treatment plant;
- changing the character of the area;
- traffic and pedestrian congestion and safety;
- questions about supply and demand for lots and order of development;
- inconsistency with regional planning policies;
- economic impact of rezoning from Rural Resource;
- inconsistency with the structure plan;
- poor road layout design; and
- concern about method of advertising.

### **Planning authority's response to the representations**

The planning authority considered the representations and resolved that:

- a copy of the representations be forwarded to the Tasmanian Planning Commission; and
- no modifications are necessary to the amendments or to the permit.

### **Date and place of hearing**

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 21 May 2019. The hearing was reconvened on 18 June 2019.

Prior to the hearing, the delegates made an inspection of the site.

### **Appearances at the hearing**

Planning authority:	Mr Shane Wells, Manager Development & Compliance
Representors:	Mr Tony Ibbott
Others:	Ms Dianne Cowen, Gray Planning on behalf of Rheban Rd Pty Ltd, Mr Jason Barnes, Mr Matt Bridgeman (only on 18 June 2019) and Mr Gary Barnes (only on 18 June 2019), on behalf of Rheban Rd Pty Ltd
	Mr Allan Miller, owner of CT 117058/150, Rheban Road, Orford [land subject to AM 2018-07(b)] (only on 18 June 2019)

The Commission is advised that land the subject of the application for a combined permit and amendment [AM 2018-07(a)] made by Mr and Mrs Lawrence, has subsequently been sold to Rheban Road Pty Ltd. The new owners were joined as party to the hearing.

## 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's 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 Glamorgan Spring Bay 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. Section 32(1)(e) is not relevant to the draft amendments as the subject site does not adjoin an adjacent planning area.
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. Under section 32(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, 9 May 2018 (the regional strategy) and the Triabunna Orford Structure Plan 2014 (the structure plan).
8. 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.

## Regional Land Use Strategy

9. The regional strategy gives direction about settlement and residential development in the region. Table 3 Growth Management Strategies for Settlements (p 89) identifies Orford as a township, having a low growth strategy and a consolidation growth scenario. The footnote to the table states that '\*for all settlements categorized as 'township' or lesser, the growth strategy indicated does not preclude growth possible under existing capacity'.

10. The regional growth management strategy in section 19.5.2 sets out that a low growth strategy allows less than 10% increase in the number of potential dwellings. The percentage growth is calculated as the increase that can occur across a 25 year planning period from the number of dwellings existing at the declaration date (p 86).
11. Prior to, and through the hearing process the Commission sought submissions from the parties on the consistency of the draft amendments with this requirement of the regional strategy.

### **The boundary of Orford**

12. In a submission of 20 May 2019, Mr Wells, on behalf of the planning authority, submitted that the relevant boundary of Orford should be the 'suburb level' rather than the Urban Centre Locality, as defined by the Australian Bureau of Statistics (ABS).
13. At the reconvened hearing, Mr Wells further clarified that his assessment for Orford was based on the 'locality boundaries' layer shown on theLIST (Land Information System Tasmania). Mr Wells considered that the state suburb locality is fixed and therefore preferable to the ABS boundaries.
14. In her response submission of 5 June 2019, Ms Cowen, of Gray Planning, disagreed with the planning authority and considered the Urban Centre Locality is more relevant and useful, stating:

The STRLUS defines the population of a township in table 2 (p87) as "**excluding any surrounding rural living areas**". As noted in the State Suburb map for 2016, a significant deviation away from the town centre area exists whereas the remaining areas are predominantly within the areas zoned for residential development...
15. Ms Westwood, a representor, provided a response submission dated 4 June 2019. This submission was supported by other representors Mr and Mrs Ibbott, and Mr Smith.
16. In her submission, Ms Westwood refers to the description of Orford in the structure plan as including the areas of approved residential land within the Solis Estate, which is located east of the Tasman Highway towards Louisville.

### **Commission's consideration**

17. The Commission agrees with Mr Wells that the locality boundary shown on theLIST is the preferred boundary of Orford. The Commission considers this is a relatively stable boundary, and notes that it also closely matches the most recent Urban Centre Locality defined by the Australian Bureau of Statistics.
18. The Commission notes that this boundary includes the area of the Solis Estate.

### **Residential supply and demand**

19. Mr Wells' submission of 20 May 2019 considered the number of dwellings in Orford at declaration date of the regional strategy to be 718 dwellings. However, Mr Wells also considered it appropriate to include potential dwellings at the declaration date, noting that the most recent business case provided to the Council advises that the Solis development will yield 609 residential lots and 60 eco cabins. Mr Wells therefore calculated the base number of potential dwellings as 1387, which would allow 139 additional dwellings under the low growth strategy.

20. Mr Wells further noted:

However, this interpretation conflates permanently occupied dwellings and dwelling units used for shack or visitor accommodation purposes contrary to the initial RLUS [the regional strategy] analysis.

The 2016 census shows vacancy rates increased at an annual rate of approximately 0.7% and confirm that the demand for holiday homes (now inclusive of short-stay accommodation) continues to outpace demand for permanent homes.

21. Ms Cowen calculated a base number of dwellings at 2011 to be 716, with an allowable increase of dwellings at 71-72 dwellings. She went on to state that, in her view, the increase in occupied private dwellings had increased by 27 dwellings between 2011 and 2016 leaving a shortfall of 45 on the allowable increase.

22. Ms Cowen further relied upon allowance being made for Orford's recognition as primarily a shack/holiday home settlement in Table 4 (p 90) of the regional strategy and drew on ABS data showing that the rate of unoccupied dwellings in Orford has remained consistently at 67-69% from 2006 to 2016. She contended that of the 91 lots proposed to be created at CT 149641/2:

...on the premise that approximately 68-69% of these dwellings are likely to comprise visitor or holiday accommodation, the total number of new dwellings likely to be utilised for residential purposes is 29. This is well below the allowable level of 45 new dwellings outlined above which falls under the 10% cap. It is therefore argued that the proposed subdivision will go toward meeting the residential target for new dwellings, however still falls short of the allowable total.

23. At the hearing, Mr Wells noted that all permits for visitor accommodation are conditioned to allow houses to be used either for dwellings or visitor accommodation interchangeably. He also referred to Planning Directive No. 6 – Exemption and Standards for Visitor Accommodation in Planning Schemes (PD 6), allowing houses to be used for certain types of visitor accommodation without requiring a permit.

24. In her response submission dated 4 June 2019, Ms Westwood used the figures provided in the structure plan to calculate a base figure of 716 dwellings at the declaration date of the regional strategy, and calculated a maximum of 71.6 potential dwellings based on a less than 10% increase over the 25 year period of the regional strategy (2010-2035).

25. Ms Westwood disputed Mr Wells' contention that 'potential' dwellings can be used to calculate the base number. In relation to Ms Cowen's submission, she further stated:

Under the RLUS low density strategy, it is the number of existing dwellings at the declaration date that is the relevant consideration, regardless of whether they are permanent or holiday dwellings. Consistently with this, the RLUS also states at 19.5.3 that "*the planning system through the Common Key Elements Template does not distinguish between the use of a dwelling for permanent residence and dwellings for occasional residence*". It is simply erroneous to suggest that consideration of whether dwellings are for permanent or holiday use is relevant to the threshold questions of compliance with the RLUS.

26. In her submission dated 5 June 2019, Ms Cowen suggested the amendment be modified to remove AM 2018/07(b) from consideration, given the impact it would have on dwelling yield. At the reconvened hearing this was supported by Mr Miller, the owner of CT 117058/150, who submitted that he did not wish his land to be rezoned. Mr Wells did not oppose Ms Cowen's suggestion.

### **Commission's consideration**

27. The Commission notes that the parties were in agreement that approximately 716 dwellings existed in Orford at the declaration date of the regional strategy. The Commission does not agree with Mr Wells that this number should be expanded to include potential dwellings at the declaration date, as the regional strategy clearly states 'existing' dwellings.
28. The Commission prefers Ms Westwood's analysis as being the most logical interpretation of the low growth strategy. That is, as 716 dwellings existed at the declaration date, the regional strategy provides for a maximum of 71 new dwellings from 2010 to 2035.
29. The Commission notes that the permit is for 91 residential lots. This is greater than the maximum number of new dwellings (assuming at least 1:1 lots to dwellings) allowed for in the regional strategy to 2035. Given this, the Commission finds it is not necessary to determine the potential dwelling yield from Certificates of Title 117058/150 and 149641/1 (AM 2018/07 (b)).
30. The Commission considers that while the regional strategy recognises that some settlements in the region are subject to seasonal population fluctuations as a result of being attractive as shack or holiday home destinations, this does not explicitly influence the manner that land supply and demand is calculated.
31. Further, the Commission notes that new arrangements implemented under PD 6 will allow dwellings to be used interchangeably as visitor accommodation or residential use, in certain circumstances, meaning that it is irrelevant to consider that dwellings will be solely used for either permanent residences or shacks.
32. The Commission considers that nothing turns on the difference between permanent residences and holiday dwellings and notes that both are included in the supply and demand calculations in the structure plan.
33. The Commission finds that the draft amendments are not consistent with the low growth strategy applicable to Orford under the regional strategy.

### **Consolidation growth scenario**

34. At the reconvened hearing, both Mr Wells and Ms Cowen were in agreement that the rezoning of the lots represented 'infill' and therefore the draft amendments were consistent with the consolidation growth scenario. Mr Ibbott disagreed and considered the proposal was an expansion.
35. The regional strategy states:

A consolidation scenario indicates that growth should be predominantly 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. (p 86)
36. Infill development is also separately defined in the regional strategy as:

Development within existing urban areas through:

  - a. Small scale subdivision or unit development on existing residential lots; or
  - b. Redevelopment of brownfield or greyfield sites.

May involve increases in density. (p 103)

37. In her submission of 4 June 2019, Ms Westwood referred to the above definitions and considered that the draft amendments 'do not fall within the types of infill development indicated by the consolidation growth scenario'. Ms Westwood further noted that the objectives for residential land uses in the structure plan include to 'promote infill development by utilising existing residentially zoned land before rezoning more residential land'.
38. At the reconvened hearing, Mr Wells considered that the language used to describe infill was more suited to the Greater Hobart area. Ms Cowen noted that the word 'predominantly' also provided flexibility to consider development not within the definition of infill.

### **Commission's consideration**

39. The Commission considers that the draft amendments are not infill as defined under the regional strategy.
40. Although under the consolidation growth scenario, growth may be 'predominantly' from infill, allowing flexibility to consider growth that is not infill, the Commission considers that considerably more infill development would need to occur in Orford before it could be said that growth was predominantly from infill.
41. The Commission therefore finds that the draft amendments are not consistent with the consolidation growth scenario applicable to Orford under the regional strategy.

### **Triabunna/Orford Structure Plan**

42. Mr Wells confirmed at the hearing that the structure plan was originally prepared in 2011 and that the June 2014 update (the current version) had been amended to reflect new data from the 2011 census.
43. In her submission of 4 June 2019, Ms Westwood submits that the structure plan identifies the function and growth management strategy for Orford by reference to the regional strategy and has an objective for residential land use to 'promote infill development by utilising existing residentially zoned land before zoning new residential land'. She submits that the regional strategy and the structure plan are 'at one'.
44. At the reconvened hearing, the Commission sought to better understand the availability of other land zoned for residential development in Orford, particularly land that had been rezoned since the regional strategy was declared, including land to the north of Orford shown in the structure plan (figure titled Proposed Settlement Limits and Zonal Recommendations, p 60).
45. In a further submission dated 25 June 2019, Mr Wells advised that stormwater constraints were preventing further development of 66 Alma Road (for 14 lots), on the northern edge of Orford. Mr Wells provided engineering information in an undated document titled 'Holkham Court Stormwater Assessment', about stormwater management measures for land to the north of Orford which had been identified for future Low Density or Rural Living zoning in the structure plan and rezoned as such when the Glamorgan Spring Bay Interim Planning Scheme was declared in 2015. Mr Wells submitted that the cost of managing stormwater was a constraint to developing the land, and also requires the Department of State Growth committing to upgrade Tasman Highway infrastructure.
46. In a response submission on 3 July 2019, Ms Westwood considers that Mr Wells' submission does not show the lots rezoned since declaration of the regional strategy and casts doubt over the weight that can be given to the additional information provided on infrastructure servicing for land in the vicinity of Holkham Court.

### **Commission's consideration**

47. The Commission agrees with Ms Westwood that the structure plan is in broad alignment with the regional strategy. In fact, the regional strategy anticipates local structure planning will be required to implement the regional growth strategy. It is expressly referred to in considering seasonal fluctuations in population on p 90, stating that settlements, identified in Table 4 Growth Management Strategies for Settlements, 'require more detailed local level structure planning to ensure both residential and tourism related growth is managed appropriately having regard to infrastructure, environmental and social issues'.
48. The Commission notes that the structure plan specifically states:
- Any residential rezonings undertaken should be timed so as to contribute to the provision of a 15 year supply of land to meet the projected demand. Given the vacant land analysis indicates there are currently many potential infill development opportunities, these rezonings may not need to occur for a number of years. Monitoring the supply of vacant land will be an important action to ensure that rezonings occur only when the available land supply drops below 15 years. (p 58)
49. The Commission is not convinced by Mr Wells' submissions that there is not already sufficient zoned land for a 15 year supply of land in Orford and therefore considers that the draft amendments are premature.
50. It considers the local structure planning process is an opportunity to investigate areas suitable for settlement expansion and that it is unfortunate that land to the north of Orford, including Solis, has been rezoned but is delayed from being developed as a result of servicing and other constraints.
51. While there is uncertainty about when these areas may be developed, the rezoning of additional land for residential development could result in an oversupply if infrastructure constraints are quickly resolved.

### **State Policies and Resource Management and Planning System Objectives**

52. The Commission considers that the draft amendments are not inconsistent with the State Policies relevant to the draft amendment.
53. However, the Commission finds that the draft amendments do not further the Objectives of the Resource Management and Planning System in Schedule 1. The draft amendments do not represent an orderly release of land in the manner anticipated under the local structure plan, as discussed above.

### **Decision on draft amendment**

54. The Commission finds that the draft amendments:
- are not, as far as is practicable, consistent with the Regional Settlement Strategy under the regional strategy, particularly in that the draft amendments are not consistent with the growth strategy and growth scenario for Orford; and
  - do not further Objective (b) of the Resource Management and Planning System in Schedule 1 because they do not represent an orderly release of land.
55. The draft amendments are rejected.

## **Consideration of the permit**

56. As the draft amendments are rejected under section 41(b), the permit is refused.