



SORELL PLANNING AUTHORITY (SPA) AGENDA

6 AUGUST 2024

COUNCIL CHAMBERS

COMMUNITY ADMINISTRATION CENTRE (CAC)

NOTICE OF MEETING

Notice is hereby given that the next meeting of the Sorell Planning Authority (SPA) will be held at the Community Administration Centre (CAC), 47 Cole Street, Sorell on Tuesday, 6 August 2024, commencing at 4:30 pm.

C E R T I F I C A T I O N

I, Robert Higgins, General Manager of the Sorell Council, hereby certify that in accordance with Section 65 of the *Local Government Act 1993*, the reports in this Agenda have been prepared by persons who have the qualifications and experience necessary to give such advice. Information and recommendations or such advice was obtained and taken into account in providing general advice contained within the Agenda.

ROBERT HIGGINS
GENERAL MANAGER
1 AUGUST 2024



AGENDA

**FOR THE SORELL PLANNING AUTHORITY (SPA) MEETING TO BE HELD AT
THE COMMUNITY ADMINISTRATION CENTRE (CAC), 47 COLE STREET,
SORELL ON TUESDAY 6 AUGUST 2024**

TABLE OF CONTENTS

1.0	ATTENDANCE	1
2.0	APOLOGIES	1
3.0	CONFIRMATION OF THE MINUTES OF 16 JULY 2024	1
4.0	DECLARATIONS OF PECUNIARY INTEREST	1
5.0	LAND USE PLANNING	2
5.1	SUBDIVISION APPLICATION NO. DA 2023 / 9 - 1	2

1.0 ATTENDANCE

△

Chairperson Mayor Gatehouse
Deputy Mayor C Wooley
Councillor B Nichols
Councillor S Campbell
Councillor M Larkins
Councillor M Miro Quesada Le Roux
Councillor M Reed
Councillor N Reynolds
Councillor C Torenius
Robert Higgins, General Manager

2.0 APOLOGIES

3.0 CONFIRMATION OF THE MINUTES OF 18 JUNE 2024

RECOMMENDATION

"That the Minutes of the Sorell Planning Authority (SPA) Meeting held on 18 June 2024 be confirmed."

4.0 DECLARATIONS OF PECUNIARY INTEREST



In considering the following land use planning matters the Sorell Planning Authority intends to act as a planning authority under the *Land Use Planning and Approvals Act 1993*.

5.0 LAND USE PLANNING

5.1 SUBDIVISION APPLICATION NO. DA 2023 / 9 - 1

Applicant:	PDA Pty Ltd
Proposal:	Eight Lot Subdivision
Site Address:	16-42 Arthur Highway, Dunalley including works to the Arthur Highway road reservation (CT 206181/1)
Planning Scheme:	<i>Tasmanian Planning Scheme - Sorell</i>
Application Status	Discretionary
Relevant Legislation:	Section 57 of the <i>Land Use Planning and Approvals Act 1993</i> (LUPAA) & Part 3 of the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> (LGBMP).
Reason for SPA meeting:	Subdivision creates more than one lot. More than one representation received.

Relevant Zone:	Rural Living Zone
Proposed Use:	N/A
Applicable Overlay(s):	Bushfire-Prone Area, Flood Hazard Area
Applicable Codes(s):	Road & Rail Assets
Valid Application Date:	22 March 2024
Decision Due:	2 August 2024
Discretion(s):	1 Frontage 2 New road 3 Onsite wastewater management 4 Traffic 5 Flood
Representation(s):	Three

RECOMMENDATION

That pursuant to Section 57 of the *Land Use Planning and Approvals Act 1993* Council resolve that Planning Application 7.2023.9.1 for an Eight Lot Subdivision at 16-42 Arthur Highway, Dunalley including works to the Arthur Highway road reservation be approved, subject to the following conditions:

1. Except where modified by a condition of this permit, the use and development must be substantially in accordance with the endorsed plans and documents:
 - a) P1 - planning assessment from PDA dated May 2023;
 - b) P1 - bushfire hazard report from GES dated June 2023;
 - c) P3 - Letter from PDA regarding stormwater management dated 5 October 2023 inclusive of preliminary engineering designs;
 - d) P3 - Letter from PDA regarding traffic dated 16 May 2024;



- e) P3 - Traffic impact assessment from TCS dated 11 December 2023;
and
 - f) P3 - Proposal plan from PDA dated 9 June 2023.
2. Staging must be in accordance with the endorsed plans and documents unless otherwise agreed to in writing by the General Manager.
 3. As no provision has been made for Public Open Space or improvements thereto and, having formed the opinion that such a provision should be made, Council invokes the provisions of Section 117 of the Local Government (Building and Miscellaneous Provisions) Act 1993 and requires security equivalent of 5% of the improved value of the gross area of the subdivision.

This should be in the form of a direct payment made before the sealing of the final plan or, alternatively, in the form of security provided under Section 117 of the Act.

The subdivider is to obtain a report from an Independent Registered Valuer for the purposes of determining the improved value of the gross area of the subdivision. The date to which the valuation is to be done must be within 3 months of the date of lodgement of the Final Plan of subdivision. Please refer to Council's Open Space Policy for valuation requirements.

4. Staging must be in accordance with the endorsed plans and documents unless otherwise agreed to in writing by Council's General Manager.
5. Prior to sealing any final plan, all recommendations of the bushfire hazard management plan must be complete and be certified by a suitably qualified person.
6. All land noted as roadway, footway, open space, or similar must be transferred to Council. Complete transfer documents that have been assessed for stamp duty, must be submitted with the final plan of survey.
7. To the satisfaction of Council's General Manager, the final plan of survey must include easements over all drains, pipelines, wayleaves and services. The minimum easement width for stormwater is in accordance with the Tasmanian Subdivision Guidelines.
8. Covenants or other restrictions must not conflict with, or seek to override, provisions of the planning scheme.
9. Prior to practical completion, survey pegs are to be certified correct post construction.

Design and Construction

10. Prior to the commencement of works, engineering design drawings showing all work required by this planning permit, and any additional work proposed, must be prepared in accordance with the current:
- a) Tasmanian Subdivision Guidelines
 - b) Tasmanian Municipal Standard - Specifications
 - c) Tasmanian Municipal Standard - Drawings
 - d) Any relevant council policy

The design drawings must be prepared by a suitably qualified and experienced engineer or engineering consultancy with an appropriate level of professional indemnity insurance.

Advice:

- i. *The Tasmanian Subdivision Guidelines, Specification, and Drawings are available at www.lgat.tas.gov.au.*
 - ii. *Variations from the Tasmanian Subdivision Guidelines, Specifications, or Drawings may be approved at the discretion of Council's General Manager or their delegate where a clear justification exists and the alternative solution is to a no lesser quality in terms of infrastructure performance or maintenance costs over the life of the asset.*
 - iii. *Where there exists any conflict(s) between the Tasmanian Subdivision Guidelines, Specifications, or Drawings and this permit, any requirements of this permit shall take precedence.*
 - iv. *Engineering design drawings will expire two years after their approval and will be endorsed as such.*
11. Prior to works commencing, the following fees must be paid for each stage of construction:
- a) Engineering design drawing assessment fee;
 - b) Inspection fees for minimum estimated number of inspections.
- Where reassessment of engineering drawings or subsequent inspections are required, additional fees may be required.
- Advice: Where appropriate, Council fees are updated each financial year and can be found in the Sorell Council Fees and Charges schedule, available from Council.*
12. Works must not commence on site prior to the approval of engineering design drawings by the General Manager.
13. A Construction Management Plan (CMP) must be provided including, but not limited to, the following:
- a) Traffic Management Plan;

b) Soil and Stormwater Management Plan.

All requirements of the CMP must be implemented prior to any works commencing on site.

14. Prior to works commencing, the developer must submit a Notice of Intention to Carry Out Work (available from Council) inclusive a certificate of currency for public liability insurance for the contractor and any sub-contractor.
15. Prior to sealing the final plan the following works must be completed in accordance with the endorsed engineering design drawings:

a) Lot connections for each lot:

- I. Connection to the electricity network;
- II. Connection to the telecommunication network (if available).

b) Vehicle access for each lot:

- I. 40mm thick DG10 asphalt vehicle crossover to front boundary (6.0m minimum);
- II. Sealed vehicle driveway over the access strip for lot 5;
- III. Minimum width of 4.0m for bushfire-prone area;
- IV. Each property access must be located to minimise potential conflicts with other vehicles.

c) Fencing and gates:

- I. Any existing frontage fencing not located on the correct boundary must be removed with new rural type fence installed in the correct location;
- II. Gates must be installed at each new property access and set back to allow vehicles to stop clear of traffic lanes, minimum of 6.0m from edge of seal.

d) Road construction:

- I. Sealed and drained road carriageway with a 7m wide seal width (including shoulders) and 18m road reservation (or wider reservation if necessary to accommodate stormwater quantity or quality treatment measures);
- II. Cul-de-sac heads must be finished with 40mm thick DG10 asphalt with 12m radius contained within suitable road reservation;
- III. Junction design to the satisfaction of the road authority;
- IV. Street signage and standard line marking to each intersection.

e) Stormwater network:

- I. Unimpeded major stormwater network for a 1% AEP event;
- II. Minor stormwater network for a 5% AEP event including:

- Check dams or equivalent to reduce velocities where the swale exceeds 4%;
- Detention to ensure post-development volumes do not exceed pre-development volumes;
- Velocity dissipation measures within the subdivision site to ensure no increase in velocities to receiving waters above pre-subdivision conditions.

f) Natural values:

- I. Construction soil and water management plan.

g) Rehabilitation:

- I. Provision of top soil and grass or vegetation on all disturbed surfaces along with weed management measures.

16. Mandatory audit inspections are required in accordance with the Tasmanian Subdivision Guidelines. The developer must provide a minimum 48 hours' notice.
17. Works must be completed to a standard that is to the satisfaction of the Council General Manager.
18. A qualified and experienced civil engineer must supervise and certify all works in accordance with clause 21, 22, 23 and 24 of the Tasmanian Subdivision Guidelines.
19. The developer must engage Council to organise a Practical Completion inspection when practical completion of works for each stage has been reached. Upon successful completion of the inspection in accordance with clause 21 and Appendix 6 of the Tasmanian Subdivision Guidelines, Council will issue a Certificate of practical Completion, listing any minor defects identified.
20. Works are subject to a twelve (12) month Defect Liability Period commencing from the day the final plan of survey was sealed (for the applicable stage, if any) during which time all maintenance and repair of work required by this permit is the responsibility of the developer.
21. A Defect Liability Bond equal to 5% of the total construction value, and no less than \$10,000.00, must be submitted for the duration of the defect liability period.
22. Upon completion of the Defect Liability Period, the developer must engage Council to organise a Final Completion inspection in accordance with clause 24 of the Tasmanian Subdivision Guidelines. When all outstanding items listed in the Certificate of Practical Completion and subsequent defects are satisfactorily completed, Council will issue a Certificate of Final Completion. Any remaining financial security in relation to the works will be returned and Council will assume maintenance of the works.

As Constructed

23. Prior to sealing the final plan of survey, accurate as constructed drawings of all works undertaken must be submitted in .pdf and .dwg formats and:
- a) Be completed, and certified, by a land surveyor or civil engineer;
 - b) Include the data spreadsheet available from Council completed in accordance with the 'Guidelines for As Constructed Drawings and Asset Data Collection' available from Council;
 - c) photos of all new assets;
 - d) be accurate to AHD and GDA94;
 - e) be drawn to scale and dimensioned;
 - f) include top, inlet, and outlet invert levels;
 - g) include compaction and soil test results; and
 - h) include an engineer's certificate stating that each component of the works complies with the approved engineering plans and Council standards.

Advice: The minimum standard is demonstrated through the As Constructed Example Drawing, available from Council.

State Road Indemnity

24. Prior to the commencement of any works associated with this permit the developer must obtain the consent of the Minister administering the *Roads and Jetties Act 1935* in accordance with Section 84 (1) (c) of the *Local Government (Building and Miscellaneous Provisions) Act 1993*. This must include an indemnity for the Crown against any claim which may arise from an increase in the water flowing away from or under the State Road, or its rate of flow, by reason of the works approved by this permit.

Advice: Please contact Transport Services within the Department of State Growth.

Roads

25. All roads in the subdivision must be conveyed to the Council upon the issue of the Certificate under Section 10 (7) of the *Local Government (Highways) Act 1982*. All costs involved in this procedure must be met by the person responsible.
26. The new intersection of Arthur Highway and the proposed road must be constructed in accordance with any Department of State Growth requirements.
27. Unless for a local road, service installation across an existing sealed road carriageway must be bored with a minimum cover of 1.2m. Bores for services greater than 100mm must have a pumped backfill.

Stormwater

28. The minor and major stormwater system must be designed and constructed to not exceed the conveyance or treatment capacity of the downstream network. Stormwater calculations will need to be revised with appropriate parameters for roughness in consultation with Council's development engineer.

Sight distance

29. The development must undertake vegetation clearance and/or earthworks to achieve the minimum sight distance specified in the planning scheme for the junction and all existing and proposed vehicle accesses.

Existing Services

30. Prior to sealing the final plan of survey, all existing lot connections must be relocated to be wholly contained within the balance lot or contained within new or existing service easements to the satisfaction of Council's General Manager.

Advice: this condition covers any existing stormwater, water, sewer, electrical, access or telecommunications infrastructure.

31. Existing crossover(s) or lot connections, if retained, must comply with current standards.

Telecommunications & Power

32. Prior to sealing the final plan of survey, the developer must submit to Council either:
- a) Demonstration that the exemption from the installation of fibre ready pit and pipe notice has been completed, or
 - b) An Exemption from the installation of fibre ready pit and pipe, a "Provisioning of Telecommunications Infrastructure – Confirmation of final payment" or "Certificate of Practical Completion of Developer's Activities" from Telstra or NBN Co.

Advice: Please refer to Notice under Telecommunications (Fibre-ready Facilities – Exempt Real Estate Development Projects) Instrument 2021" at

<https://www.communications.gov.au/policy/policylisting/exemption-pit-and-pipe-requirements/development-form>

33. Prior to sealing the final plan of survey, the developer must submit written advice from TasNetworks confirming that all conditions of the Agreement between the Owner and authority have been complied with and that future lot owners will not be liable for network extension or upgrade costs, other than individual property connections at the time each lot is further developed.

34. Street lights must include LED lamps at the developers cost.

Road Widening

35. The final plan or survey must show the corners of each road intersection must be splayed or rounded by chords of a circle with a radius of not less than 6m.

NOTE: THE FOLLOWING ADVICE APPLIES TO THIS PERMIT

Legal

- The permit does not take effect until 15 days after the date that this permit was served on you as the applicant and each representor provided that no appeal is lodged as provided by s53 of the Land Use Planning and Approvals Act 1993.
- This planning approval shall lapse at the expiration of two (2) years from the date on which this permit became valid, if the permit is not substantially commenced. At the discretion of the Planning Authority, the expiration date may be extended for a further two (2) years on two separate occasions for a total of six (6) years. Once lapsed, a new application will be required.
- Any changes to the use or development approved, may be deemed as substantially in accordance with the permit or may first require either a formal amendment to this permit or a new permit.

Asset Protection

- In accordance with the Local Highway Bylaw 2 of 2015, the owner is required to repair any damage to any Council infrastructure caused during construction.
- Council recommends contacting Dial-Before-You-Dig (phone 1100 or www.1100.com.au) before undertaking any works.

Other Approvals

- This permit does not imply that any other approval required under any other by-law or legislation has been granted.

Generally

- Requirements for works or other outcomes to the satisfaction of the General Manager will be delegated to the appropriate officer for determination.
- All engineering related queries should be directed to the Development Engineer. The Council General Manager has delegated functions relevant to the permit to the Development Engineer.

- Sealing of a final plan of survey is subject to a prescribed Council fee at the date of lodgement of the final plan or survey. Land Title Office fees must be paid directly to the Recorder of Titles.
- The final plan of survey is inclusive of any schedule of easement and Part 5 Agreement.
- The final plan of survey will not be sealed until all works required by this permit are complete. On lodgement of the final plan of survey, inspections will be undertaken, unless otherwise advised by the developer, and additional inspection fees will apply to incomplete or substandard works.

Street Naming

- The developer may suggest street names. Suggestions should be received three months prior to sealing the final plan of survey and be made in writing to the General Manager. Street names must be consistent with *Tasmanian Place Naming Guidelines, May 2021*. Please refer to <https://nre.tas.gov.au/land-tasmania/place-naming-in-tasmania>

You may appeal against the above conditions, any such appeal must be lodged within fourteen (14) days of service of this notice to TASCAT, 38 Barrack Street Hobart 7000 Ph: (03) 6165 6790 or email resourceplanning@tascat.tas.gov.au

Executive Summary

Application is made for an Eight Lot Subdivision at 16-42 Arthur Highway, Dunalley including works to the Arthur Highway Road reservation. This property is zoned Rural Living and is located in the rural living area east of the township proper.

The key planning considerations relate to the lot layout and provision of road infrastructure.

The application is considered to comply with each applicable standard of the *Tasmanian Planning Scheme - Sorell* and is recommended for conditional approval.

This report has been reviewed by external legal and engineering consultants.

Relevance to Council Plans & Policies

Strategic Plan 2019-2029	Objective 1: To Facilitate Regional Growth Objective 2: Responsible Stewardship and a Sustainable Organisation Objective 3: To Ensure a Liveable and Inclusive Community
Asset Management Strategy 2018	The proposal includes new road assets to be donated to Council. Design and construction standards for these assets are considered in this report.
Risk Management Strategy 2018	In its capacity as a Planning Authority, Council must determine this application. Due diligence has been exercised in preparing this report and there are no predicted risks from a determination of this application.
Financial Implications	No financial implications are anticipated unless the decision is appealed to TASCAT. In such instances, legal counsel is typically required.
Open Space Strategy 2020 and Public Open Space Policy	The proposed subdivision is assessed in accordance with the Public Open Space Policy.
Enforcement Policy	Not applicable.
Environmental Sustainability Policy	There are no environmental implications associated with the proposal.

Legislation

- This report details the reasons for the officer recommendation.
- Broadly, the planning authority can either adopt or change the recommendation by adding, modifying or removing conditions or replacing an approval with a refusal (or vice versa). Any alternative decision requires a full statement of reasons to comply with the *Judicial Review Act 2000* and the *Local Government (Meeting Procedures) Regulations 2015*.
- The planning authority has a specific role in LUPAA. As noted by the Tribunal:

The role of the Council in relation to planning matters is, in very broad terms, to uphold its planning scheme. In that context it is in a sense, blind to everything but the terms of the Scheme. It cannot put economic advantage or perceived community benefits over the terms of the Scheme. And in the context of enforcement proceedings unless expressly authorised to do so, it may not take any approach which is inconsistent with the terms of its Scheme.



Planning Scheme Operation – for Zones, Codes and site specific provisions

- Clause 5.6.1 requires that each applicable standard is complied with if an application is to be approved.
- Clause 5.6.2, in turn, outlines that an applicable standard is any standard that deals with a matter that could affect, or could be affected by, the proposal.
- A standard can be met by either complying with an acceptable solution or satisfying the performance criteria, which are equally valid ways to comply with the standard.
- An acceptable solution will specify a measurable outcome. Performance criteria require judgement as to whether or not the proposal reasonably satisfies the criteria.
- Clause 6.10 outlines the matters that must be considered by a planning authority in determining applications. Clause 6.11 outlines the type of conditions and restrictions that can be specified in a conditional approval.

Referrals

Agency / Dept.	Referred?	Response?	Conditions?	Comments
Development Engineering	Yes	Yes	Yes	Yes (below)
Environmental Health	Yes	Yes	Nil	Nil
Plumbing	No			
NRM	No			
TasWater	No			
TasNetworks	Yes	No		
State Growth	Yes	Yes	Yes	Nil

Development engineering comments

- Road cross section should be 7m, rather than 6.5m, for bushfire requirements as the access is longer than 200m.
- The table drain calculations use a mannings n roughness value of 0.06 which is possibly over estimated and thus underestimating actual velocity in the drain.
- Swale slope in the upper sections of the road range from around 4 - 10%. In the steeper sections, the swale is unlikely to provide adequate infiltration in order to treat pollutants and also the steepness may cause erosion problems within the swale due to higher velocities. In order to reduce flows, and velocities in the swale, it is recommended to provide a series of check dams/ terraces within the swale drain. This will have the benefit of reducing downstream flows (can condition to size the check dams to reduce flows to the pre-development scenario up to a 1% AEP event), decrease velocities and also provide more adequate infiltration and



pollution reduction. In doing this, risk of increasing the flooding potential on neighbouring properties is reduced.

- A dam risk analysis may be required given the proximity to downstream building envelopes on Lots 5 and also Lot 3.

The above points are capable of being addressed through permit conditions, and this is reflected in the recommended conditions.

Report

Description of Proposal

Application is made for an eight lot subdivision plus balance. Lots 1 to 8 are one hectare in size, while the balance lot is 4.3 hectares. Lots 1 - 4 are accessed from the Arthur Highway and all other lots are accessed from a proposed road. Lot 4 contains an existing dwelling. Lots 1 to 4 represent stage 1 and all other works are within stage 2. The road is to have a 7m wide seal with an average gradient of approximately 1 in 15. A basic right turn facility at the junction is recommended in the traffic impact assessment. A road reserve is included to 8 Arthur Highway from the new road.

The application is supported by:

- a planning assessment from PDA dated May 2023;
- a bushfire hazard report from GES dated June 2023;
- Letter from PDA regarding stormwater management dated 5 October 2023 inclusive of preliminary engineering designs;
- Letter from PDA regarding traffic dated 16 May 2024;
- Traffic impact assessment from TCS dated 11 December 2023; and
- Proposal plan from PDA dated 9 June 2023.

Crown consent was provided on 19 March 2024 and received by Council on 20 May 2024.

If a planning permit is issued, further State Growth approval is required for any works in the road reservation including the final design and specification of the junction, access locations and stormwater conveyance.

Traffic management – As Proposed in the Application

The key points of the traffic impact assessment (TIA) are as follows:

- There are 2,200 vehicles per day (vpd) recorded in 2022 1.6km north of the site, and expected traffic numbers are 2,970 vpd in 2033;
- The compound traffic growth rate is 2% per annum (44 vehicles);
- Trucks represent 9% of traffic movements;
- The crash risk for the new road is assessed as low;
- Sight distances comply with either/both Austroads or AS/NZS 2890.1;
- Traffic generation is 9 vpd per lot being a total of 72 vpd overall of which 45 vpd are via the new road and with a total peak of 4 vpd;
- The highway operates with a A rated level of service indicating that there are no capacity issues; and



- Traffic volumes require a partial rural BAR junction to satisfy the guidelines of the Department of State Growth. As per appendix A of the TIA (page 32) this will require a 55m long lane on the southern side of the highway with two 14m tapers on either side with a maximum widening of 5.5m.

Stormwater Management – As Proposed in the Application

Table drains are proposed to both sides of the subdivision road with 300mm diameter culverts under each crossover off the road. The road is generally within the middle of an 8.8 hectare catchment that presently drains to a highway culvert in the north-west corner of 2 Ryans Road. The PDA stormwater management letter has determined the pre-development flows through the culvert at 101 litres per second for a 5% AEP event and 291 litres (from figure 6) per second for a 1% AEP event.

The road will create four sub-catchments from the existing catchment (figure 3 of the PDA letter). Post-development flows are 117 litres per second for the 5% AEP event and 292 litres per second for the 1% AEP event. The 1% AEP event post subdivision is estimated to increase flows in the table drain by 40 litres per second.

The table drains are designed for a flow of 137 litres per second for a 1% AEP event.

Future houses are expected to require a 2m wide x 15m long x 0.5m deep trench, which equates to 30m² or 0.003% of lots 1-8.

PDA recommend that stormwater quality be managed at the subdivision stage by the use of vegetation swales.

With vegetation swales in place, stormwater quality is modelled with a 97.3% reduction in total suspended solids, 94.2% reduction in total phosphorus and 94.6% reduction in total nitrogen averaged across a 12 month period. These reductions exceed the requirements of Council's Stormwater in New Development Policy, which has adopted the targets from the State Stormwater Strategy. For reference, the targets are 80% for suspended solids and 45% for nitrogen and phosphorus.

Description of the Site

The site is a large property near the eastern extent of the Dunalley settlement. The site, and surrounding sites, were rezoned from a rural to a rural living zone following the adoption of the Dunalley Structure Plan.

The site rises in elevation with a gradient of approximately 1 in 14 in the southern section increasing to 1 in 10 in the northern section. The site consists of cleared pasture with an existing dwelling in the south-west corner. A watercourse generally follows the western boundary of the site and weaves in and out of the property. A further, smaller watercourse is to the east of the site.

The site is unserviced. Arthur Highway is a sealed public road maintainable by the Department of State Growth with the speed limit set at 60 km/hr.

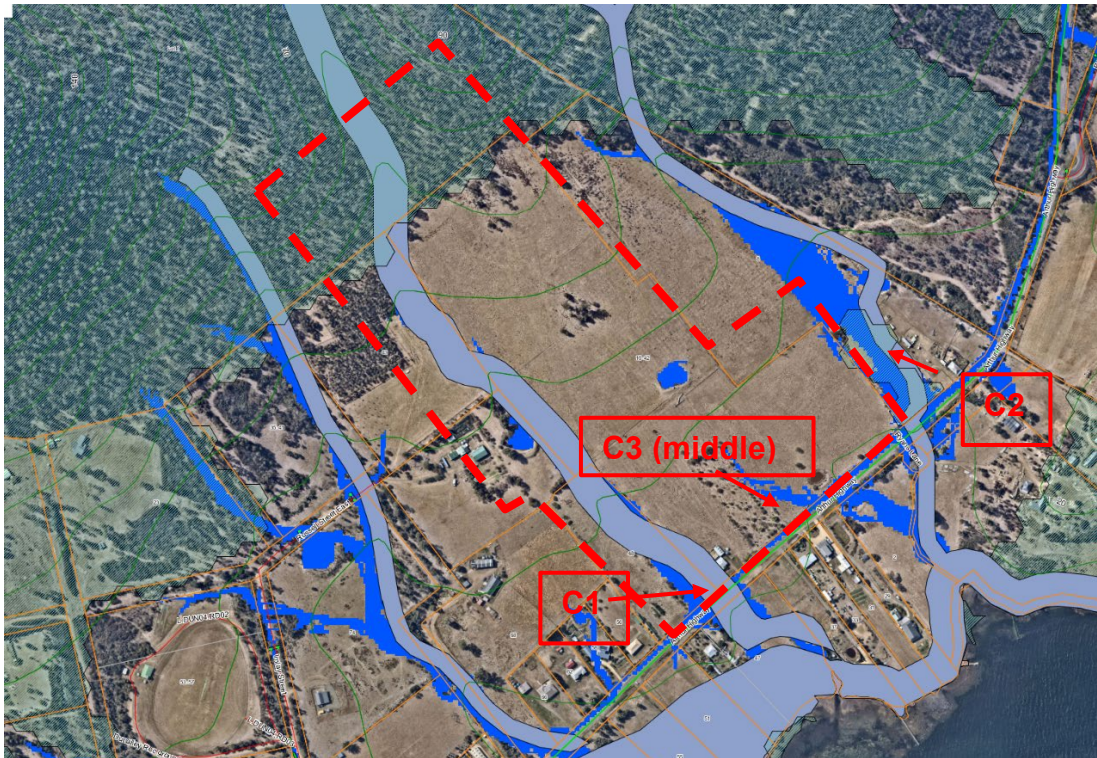


Figure 1. Subject site showing 10m contour elevations (green), waterway and coastal protection area (light blue) and flood hazard area (blue).



Figure 2. Ryans Lane.

The Stormwater Network

Council has no stormwater infrastructure in the area.

The *Urban Drainage Act 2013* (UDA) technically applies to any area. Council's *Stormwater in New Development Policy* includes maps of urban areas for the purposes of assisting in understanding where the UDA provisions apply. This part of Dunalley is not included in the mapped areas.

The stormwater network in the area is comprised of three highway culverts:

- Culvert 1 drains the major watercourse that weaves in and out of the properties western boundary;
- Culvert 2 drains the smaller watercourse east of the site; and
- Culvert 3 located between culverts 1 and 2 (hereafter referred to as the middle culvert) located between the two small dams in the western half of figure 2.

Other than the smaller dam on the southern side of the highway, these dams have been in place since at least 1979 as shown in Figure 3. The culverts are located at natural depressions as evident in Figure 1. That is, the culverts drain the two watercourses and the overland flood path shown in Figure 1. The dam which receives culvert 2 and the middle culvert is located on a natural drainage line and all overflow spills to the natural drainage line and through to the coast.



Figure 3. Aerial image 6 January 1979 (orange shows present day dams, green shows areas where watercourses / drainage lines visible) (DPIPWE aerial photo viewer)



Figure 1 – Gentle topography on lots 1 & 2 leading to a small dam on lot 2 (note small drain which leads from Arthur Highway to the Dam).

Figure 4. Extract of Ryans Lane subdivision application showing pre-development runoff from the middle culvert to the dam

The subdivision that created Ryans Lane formalised the above drainage network. That permit, issued by the Tasmanian Planning Commission and which has further stages not yet acted upon, requires:

- an open drain through 2 Ryans Lane from the existing 600mm diameter highway culvert (the middle culvert);
- a 375mm diameter culvert under the footway from Ryans Lane to the foreshore to convey the above open drain through to the existing farm dam;
- the construction of a 1.5m wide gravel path in the footway (which is not complete);
- an open drain parallel with, and east of, the footway to convey the 600mm diameter highway culvert (culvert 1) that is north-east of Ryans Lane to the same farm dam with twin 600mm culverts under Ryans Lane, and
- no specific drainage provision for Ryans Lane.

With respect to the culverts, condition 15 of that Ryans Lane permit required “easements are to be created by the applicant as required including **easements along the existing gullies into which stormwater from existing highway culverts discharge**” (emphasis added).

Both open drains required by the Ryans Lane subdivision appear at face value to be contained within drainage easements shown in figure 5 (a survey would be required to confirm).

Both easements were created through the Ryan's Lane subdivision and registered in 2013. Both drainage easements incorrectly benefit Sorell Council as opposed to the Department of State Growth, however, this is of no consequence to their function or legality. On this point it is important to note that the easements related to pre-existing natural runoff.

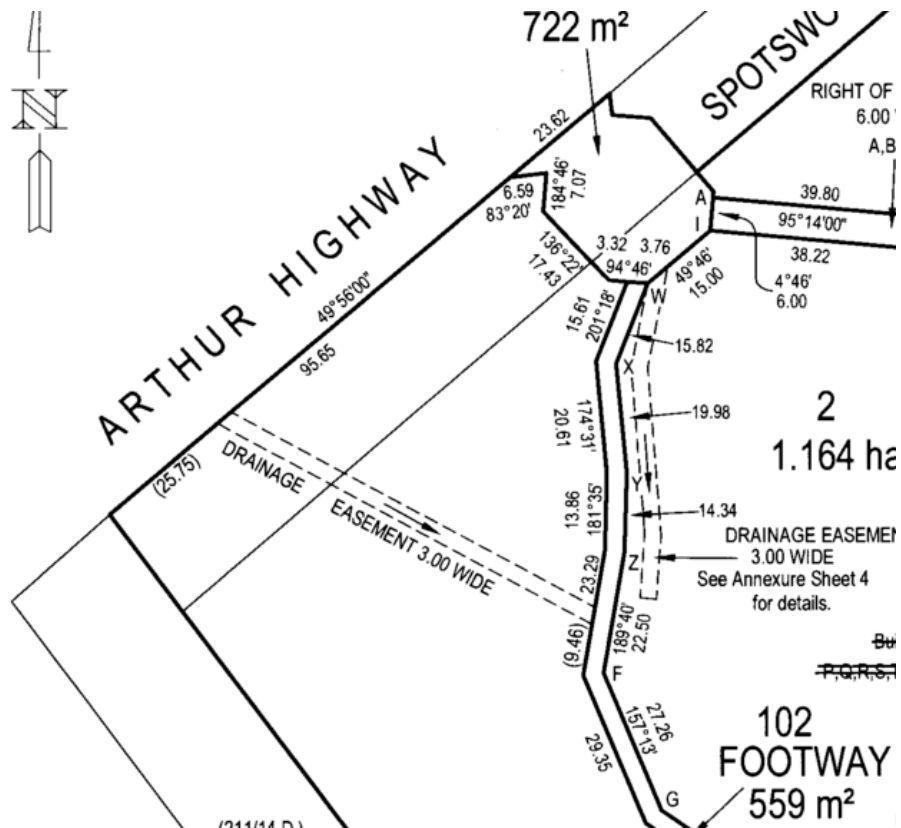


Figure 5. Easements (Extract of 2 Ryans Road title)

Section 40 of the *Roads and Jetties Act 1935* gives the road authority (the Department) broad powers to make and maintain drains or watercourses on land adjoining its roads which it may deem necessary. Whether or not the Department invoked these powers when constructing Arthur Highway is not known. It is important to understand the broad powers that the Department has with respect to draining its roads.

At the time of the Ryans Lane subdivision it is clear that three highway culverts were in place. It is not clear what form the open drains were and Figure 4 indicates a shallower depression existing compared to today's conditions. As noted above, the permit required the drains to be made. It is also not evident today that the drains were constructed or constructed to the required specification.



Figure 6. Unformed and unfenced footway (24 June 2024).



Figure 7. Drain through 2 Ryans Lane taken from footway facing north-west (24 June 2024)



Figure 8. Culvert under footway (24 June 2024)



Figure 9. Receiving dam facing south-east from footway (24 June 2024)



Figure 10. Downstream of receiving dam facing north from footway (24 June 2024)



Figure 11. Open drain on eastern side of Ryans Lane facing south from highway (24 June 2024).

In summary, the stormwater network in the area consists of:

- long-established highway culverts draining natural watercourses and overland flow paths; and
- private drains and natural watercourses conveying highway culverts to the coast via private dams.

Planning Assessment

Zone

Applicable zone standards		
Clause	Matter	Complies with acceptable solution?
11.5.1 A1	Lot size & dimension	Yes, as each lot is one hectare in size, the existing dwelling is setback more than ten metres from new boundaries and each lot contains a 15m x 20m building area clear of setbacks and easements.
11.5.1 A2	Frontage	No, as frontage of the balance lot and lot 7 is less than 40m wide.
11.5.1 A3	Access	Yes, as each lot has access that satisfies the road authority (State Growth & Council).
15.5.2 A1	Roads	No acceptable solution for new roads.
11.5.3 A1	Water	Yes, as no reticulated water services exist.
11.5.3 A2	Sewer	No, as all subdivisions involving onsite wastewater are discretionary.

Performance Criteria Assessment 1 – Clause 11.5.1 P2 Frontage

Each lot, or a lot proposed in a plan of subdivision, must be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use, having regard to:

- (a) *the width of frontage proposed, if any;*
- (b) *the number of other lots which have the land subject to the right of carriageway as their sole or principal means of access;*
- (c) *the topography of the site;*
- (d) *the functionality and useability of the frontage.*

The performance criteria is applicable as the frontage of the balance lot and lot 7 is less than 40m.

It is considered that the performance criteria is satisfied as each lot has frontage of a width that is functional and usable for future residential uses.

Performance Criteria Assessment 2 – Clause 11.5.2 P1 Roads

The arrangement and construction of roads within a subdivision must provide an appropriate level of access, connectivity, safety, convenience and legibility for vehicles, having regard to:

- (a) *any relevant road network plan adopted by the council;*
- (b) *the existing and proposed road hierarchy;*
- (c) *maximising connectivity with the surrounding road network;*



- (d) appropriate access to public transport; and
- (e) access for pedestrians and cyclists.

The performance criteria applies to all new roads.

It is considered that the performance criteria is satisfied as:

- there is no road network plan;
- the proposed cul-de-sac is a short street access from the highway;
- connectivity is maximised through the road reserve to 8 Arthur Highway, Dunalley which is a Rural Living lot with subdivision potential;
- public transport is limited and does not use any streets within Dunalley township, being contained to the highway corridor only; and
- the road has a moderate grade, straight alignment and minimal traffic and a shared carriageway with no dedicated footpath is appropriate.

It should be noted that the Tasmanian Subdivision Drawings specify footpaths for residential areas and make no comment on rural living areas. No recent rural living road has included footpaths (eg Goodford Lane, Abruzzi Court, Vigar Court).

Performance Criteria Assessment 3- Clause 11.5.3 P2 Onsite Wastewater Management

Each lot, or a lot proposed in a plan of subdivision, excluding within Rural Living Zone C or Rural Living Zone D or for public open space, a riparian or littoral reserve or Utilities, must be capable of accommodating an on-site wastewater treatment system adequate for the future use and development of the land.

The Southern Beaches Onsite Wastewater and Stormwater Code does not apply.

The zone standards do not address stormwater management from either the road or future development.

Council's Manager Health and Compliance has reviewed the application and has no concerns with respect to future servicing.

Each lot, being one hectare or greater, and complying with the minimum lot size raises no issues with respect to future onsite wastewater management.

Code

Road and Railway Assets Code

Applicable Code standards		
Clause	Matter	Complies with acceptable solution?
C3.5.1 A1.4	Traffic	No, as traffic generation will increase by more than 40 vehicles per day to the Arthur Highway.



Performance Criteria Assessment 4 – C3.5.1 P1 Traffic generation

Vehicular traffic to and from the site must minimise any adverse effects on the safety of a junction, vehicle crossing or level crossing or safety or efficiency of the road or rail network, having regard to:

- (a) *any increase in traffic caused by the use;*
- (b) *the nature of the traffic generated by the use;*
- (c) *the nature of the road;*
- (d) *the speed limit and traffic flow of the road;*
- (e) *any alternative access to a road;*
- (f) *the need for the use;*
- (g) *any traffic impact assessment; and*
- (h) *any advice received from the rail or road authority.*

It is considered that the performance criteria is satisfied having regard to:

- the findings of the traffic impact assessment;
- the advice of the road authority through the Crown consent and as included in the traffic impact assessment;
- the available sight distance to accesses and functions;
- the existing capacity of the highway for traffic and the relatively small increase in traffic generation; and
- the lack of any practical alternative to constructing a new road in the form proposed or providing direct access to lots 1 to 4.

Natural Assets Code

Applicable Code standards		
Clause	Matter	Complies with acceptable solution?
C7.7.1 A1	Waterways	Yes, the Waterway and Coastal Protection Area (WCPA) applies to the site. No new works and no future building areas are located within the WCPA other than boundary fencing which is allowable under the acceptable solution. The existing dwelling is within the WCPA however no works are proposed to this dwelling.
C7.7.2 A1	Priority vegetation	Yes, as no works are proposed within the priority vegetation area.

Flood Prone Areas Hazard Code.

Applicable Code standards		
Clause	Matter	Complies with acceptable solution?
C12.7.1 A1	Subdivision	No, as access for lots 1 and 2 are within the flood hazard area.

Performance Criteria Assessment 5 – C12.7.1 P1 Flood

Each lot, or a lot proposed in a plan of subdivision, within a flood-prone hazard area, must not create an opportunity for use or development that cannot achieve a tolerable risk from flood, having regard to:



- (a) any increase in risk from flood for adjacent land;
- (b) the level of risk to use or development arising from an increased reliance on public infrastructure;
- (c) the need to minimise future remediation works;
- (d) any loss or substantial compromise by flood of access to the lot, on or off site;
- (e) the need to locate building areas outside the flood-prone hazard area;
- (f) any advice from a State authority, regulated entity or a council; and
- (g) the advice contained in a flood hazard report.

The extent of flooding along the frontage of lots 1 and 2 is shown in figure 11. The modelling indicates that during a 1% AEP event, the culverts are undersized and flooding occurs on the northern side of the highway, including overtopping the highway in two places. For lot 1 and lot 2 there are sections of frontage entirely clear of flood hazard, however, as shown in figure 12 the accesses are partially subject to the overlay. Detailed flood mapping shows that at no point along the frontage does the depth of flooding exceed 0.2m.

It is considered that the performance criteria is satisfied as:

- the accesses will not increase the flood risk to any adjacent land;
- the level of risk, in terms of the severity of the hazard and the consequence to life and property of a partially flooded access at a minimal depth, is slight.

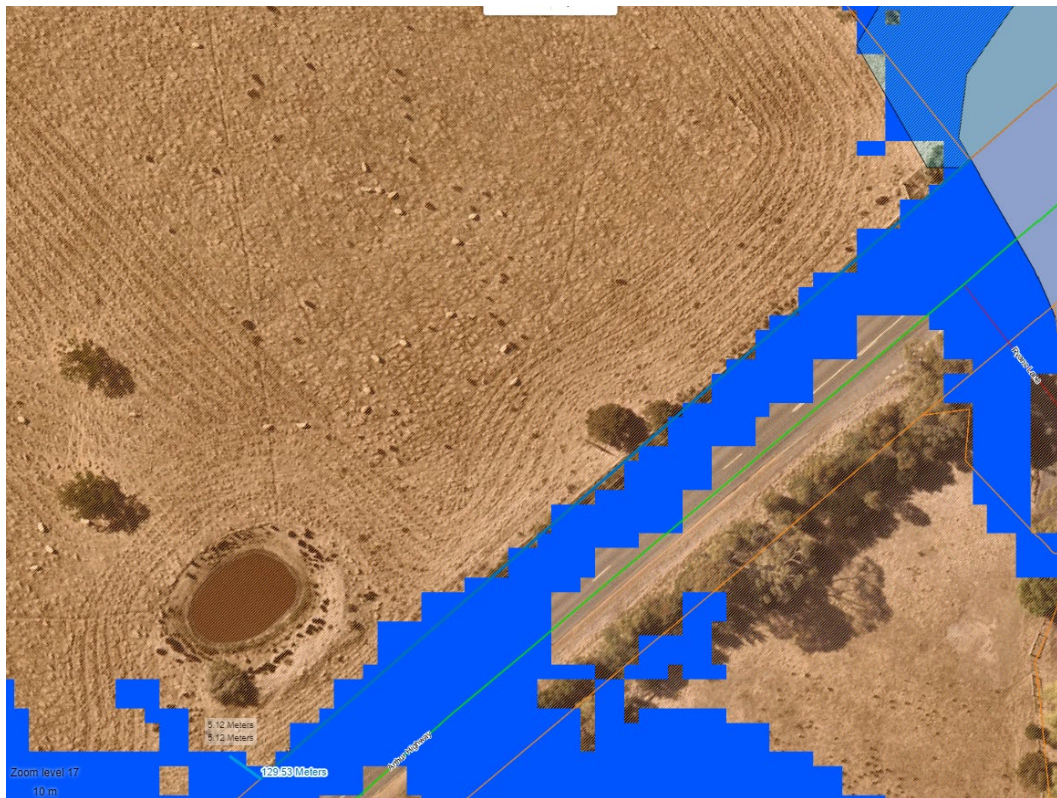


Figure 11. Flood Hazard Area Overlay along Frontage of Lots 1 and 2

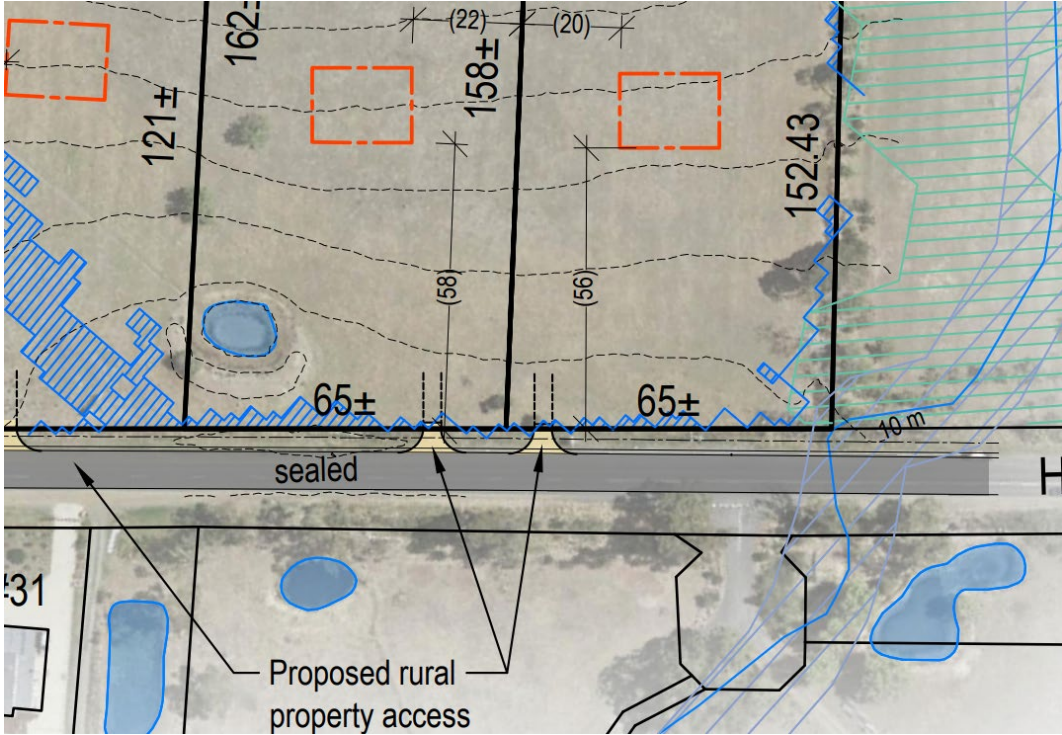


Figure 12. Lot 1 and 2 accesses

Bushfire-Prone Areas Code

As the proposal is not a vulnerable or hazardous use (as defined by the Code), the provisions of the Code do not apply.

The proposal complies with the Code through the provision of an accredited persons bushfire hazard report, which s52(2)(d) of LUPAA requires the planning authority to accept.

Public Open Space Policy

Broadly, there are three considerations for public open space within a subdivision under this policy being:

- whether public open space land should be taken for a park or other purpose;
- whether public open space land should be taken for connectivity; or
- if no public open space land is proposed or taken, what rate of a cash in lieu contribution should apply.

Section 5.2 of the public open space policy outlines criteria to assess the taking of land. Among other matters, this section has regard to any related Council policy, whether the land is conveniently located with respect to the wider area along with existing open space and any alternatives, whether the land would contribute to Council's ability to support a diversity of recreational activities and the demand created.

In this case, it is considered that taking land for open space would not further the Council policy.

Where land is not taken, a cash contribution is required. Section 6.4 of the policy states:

- (a) *the existing provision of POS in the vicinity of the subject area;*
- (b) *any planned provision of POS in the vicinity of the subject area as identified in the Open Space Strategy, the long-term financial plan, any relevant Council resolution or required by a valid subdivision permit;*
- (c) *the extent to which the newly created lots will impact upon demand for POS; and*
- (d) *the size of the newly created lots and the extent to which the lots can provide for their own recreational opportunities.*

Implicit in the policy is that Council maintains and develops many forms of open space assets and across different scales. All residents benefit from regional and district scale facilities such as South East Sports Complex, from walking tracks and trails and from land used to manage natural or cultural values. Within settlements, residents also benefit from, and have a need for, nearby local parks.

Public open space in the vicinity includes the Dunalley Recreation Ground some 1km from the site by road and a walkway from Ryans Road to the foreshore. Council's Long-Term Financial Plan includes provision for a new gravel path along the Arthur Highway for the full length of the Dunalley settlement. Accordingly, it is recommended that a cash in lieu contribution of 5% of the improved value of the land be required on any permit granted.

Local Government (Building and Miscellaneous Provisions) Act 1993

The *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGBMP) sets out requirements for subdivision that apply to proposals unless addressed by a planning scheme, in which case the planning scheme takes precedence.

Section 85 of LGBMP provides:

The council may refuse to approve a plan of subdivision if it is of the opinion –

- (a) *that the roads will not suit the public convenience, or will not give satisfactory inter-communication to the inhabitants both of the subdivision and the municipal area in which it is; or*
- (b) *that the drainage both of roads and of other land will not be satisfactorily carried off and disposed of; or*
- (ba) *that the land is not suitable for an on-site effluent disposal system for all or specified kinds of effluent from each block; or*
- (c) *that the site or layout will make unduly expensive the arrangements for supply of water and electricity, connection to drains and sewers and the construction or maintenance of streets; or*
- (d) *that the layout should be altered to include or omit –*
 - (i) *blind roads; or*
 - (ii) *alleys or rights of way to give access to the rear of lots;*

or



- (iii) public open space; or
- (iv) littoral or riparian reserves of up to 30 metres in from the shore of the sea or the bank of a river, rivulet or lake; or
- (v) private roads, ways or open spaces; or
- (vi) where the ground on one side is higher than on the other, wider roads in order to give reasonable access to both sides; or
- (vii) licences to embank highways under the Highways Act 1951 ; or
- (viii) provision for widening or deviating ways on or adjoining land comprised in the subdivision; or
- (ix) provision for the preservation of trees and shrubs; or
- (e) that adjacent land of the owner, including land in which the owner has any estate or interest, ought to be included in the subdivision; or
- (f) that one or more of the lots is by reason of its shape in relation to its size or its contours unsuitable for building on; or
- (g) that one or more of the lots ought not to be sold because of
 - (i) easements to which it is subject; or
 - (ii) party-wall easements; or
 - (iii) the state of a party-wall on its boundary.

The above matters are in effect discretionary clauses. Clause (a), (ba), (d)(i), (d)(ii), (d)(ix) (f) and (g) are directly covered by planning scheme standards and are disregarded. Clause (d)(iii) and (d)(v) are assessed via Council's public open space policy.

On the issue of stormwater, the planning scheme does address stormwater in so far that clause 6.11.2 specifically allows conditions on stormwater volume and quality to be included in permits issued. Council's planning scheme also includes a specific area plan that addresses stormwater but does not apply to the site.

Representations

Clause 6.10.1 of the planning scheme requires the consideration of any representation received but 'only insofar as each such matter is relevant to the particular discretion being exercised'.

Three representations have been received, which are addressed in the following table.

One late submission was received which requested that no further subdivision of the balance lot proceed on the basis of maintaining character.

Issue	Relevant Clause	Response
Traffic congestion	C3.5.1	Traffic generation is minimal and to a State highway.
The BAR will encroach into nature strips, will increase traffic risk	C3.5.1	The BAR will maintain traffic flows when a vehicle is queuing to turn right into the new



and create multiple traffic lanes		road. It is not accepted that this will increase risk. The property at 37 Arthur Highway is opposite the new road. The dwelling on that property is setback over 150m from the highway. The road verge is 8m wide in this location.
Traffic safety	C3.5.1	The traffic generation from the subdivision is minimal relative to existing traffic numbers along the highway and relative to natural rates of traffic growth due to developments occurring across Dunalley and the Tasman Peninsula.
Light pollution	Nil	Lights from vehicles, buildings and other sources in a rural living area cannot reasonably be considered pollution. In any case, all adjoining dwellings are either setback significantly from the highway or have vegetated frontage and all have private outdoor space facing the water.
Stormwater management "The application includes no information as to how stormwater is to be accommodated within any existing public or private stormwater system." There is insufficient detail and how and where stormwater will reach the sea or what if any new public or private stormwater systems are proposed.	Nil	The application includes detailed engineering designs and stormwater advice, all of which is outlined earlier in this report. The application describes the pre and post-development flow in terms of conveyance, quality and volume.
No consultant report on wastewater management is provided	11.5.3	As noted above, a report was not required and there are no concerns in relation to future onsite wastewater management on a one hectare lot.
Consent under s 84(1)(c) of LGBMP is required	Nil	Noted. A standard condition to this effect is recommended for any permit granted.
Council cannot be satisfied that s85(b) is satisfied as (1) there is no lawful point of discharge (2) the	Nil	A lawful point of discharge exists through the various easements, natural watercourses and legislation related to the management of stormwater in State highways.

<p>application does not disclose what happens to stormwater once conveyed under the highway (3) the easement through 2 Ryans Lane benefits Council only (4) there is no public stormwater infrastructure to drain to (5) neither Council nor the applicant possess any proprietary right over the drainage line downstream of the site.</p> <p>"... the subdivision seeks to direct stormwater collected on the new road to private property over which no right of drainage exists in favour of the applicant and only a limited right of drainage exists in favour of the Council. The change in volume, intensity and quality of the stormwater that results is understandably of concern ..."</p>		<p>It is self-evident that stormwater once conveyed under the highway will follow the same alignment as existing runoff. The volume and quality of flows are documented in the application.</p> <p>The easement being for the benefit of Council only is not an obstacle to the subdivision given existing legislative provisions.</p> <p>Drainage is to public infrastructure managed by the Department of State Growth. DSG have consented to the application being made and will need to provide the developer with further approvals before construction works can commence. To avoid any doubt, a condition should require further written consents from DSG in relation to s84(1)(c) as is standard and as noted above.</p> <p>The drainage line is natural.</p> <p>It is considered that section 85(b) is satisfied.</p>
<p>Flooding and whether the existing highway culverts can convey a 1% AEP rain event</p>	<p>C12.5.1</p>	<p>This question was put to Department of State Growth who noted:</p> <p><i>The design capacity for the culverts are not known; noting that these culverts could have formed part of the initial road construction – prior to the hydraulic assessment and requirements of today.</i></p> <p><i>Any development adjacent the State road reservation needs to assess its impact to the State highway drainage system such that the development does not cause any adverse impacts.</i></p>



Conclusion

The application is considered to comply with each applicable standard of the *Tasmanian Planning Scheme - Sorell* and is recommended for conditional approval.

Shane Wells


Manager Planning

Attachments:

Proposal plan from PDA dated 9 June 2023.
Representations x 3




Separate Attachments:

Planning assessment from PDA dated May 2023;
Bushfire hazard report from GES dated June 2023;
Letter from PDA regarding stormwater management dated 5 October 2023 inclusive of preliminary engineering designs;
Letter from PDA regarding traffic dated 16 May 2024; and
Traffic impact assessment from TCS dated 11 December 2023

<h1>PLAN OF SUBDIVISION</h1>		 PDA SURVEYORS, ENGINEERS & PLANNERS		127 Barnard Street Hobart, Tasmania, 7000 PHONE: +61 83 2234 3277 FAX: +61 83 2234 3235 EMAIL: info@pda.com.au www.pda.com.au ASSETS: KINGSLEY, LEITCH & BURNETT							
Owners	Brendan Michael Shane Daly	Address	16-42 Arthur Highway Dunalley Tas 7177	This plan has been prepared only for the purpose of obtaining preliminary subdivision approval from the Council and the information shown hereon should be used for no other purpose. All measurements and areas are subject to final survey.							
Title References	FR 206181/1	Council	Sorell Council								
Schedule Of Easements	Nil.	Tas. Planning Scheme	Sorell Local Provisions Schedule								
		Zone & Overlay	11 Rural Living Zone A; 13 Bushfire-prone area.								
Scale	1:2500	Date	9 June 2023	PDA Reference	47948CT-2F	Map reference	562542 & 562552	PID	5956818	Point of Interest	GOA20 MGA55 566820E, 5252290N

Sorell Council
 Development Application: Response to Request for Information - 16-42 Arthur Highway, Dunalley TAS
 Plans Reference: 47948CT-2F
 Date received: 18/3/2023





LEGEND

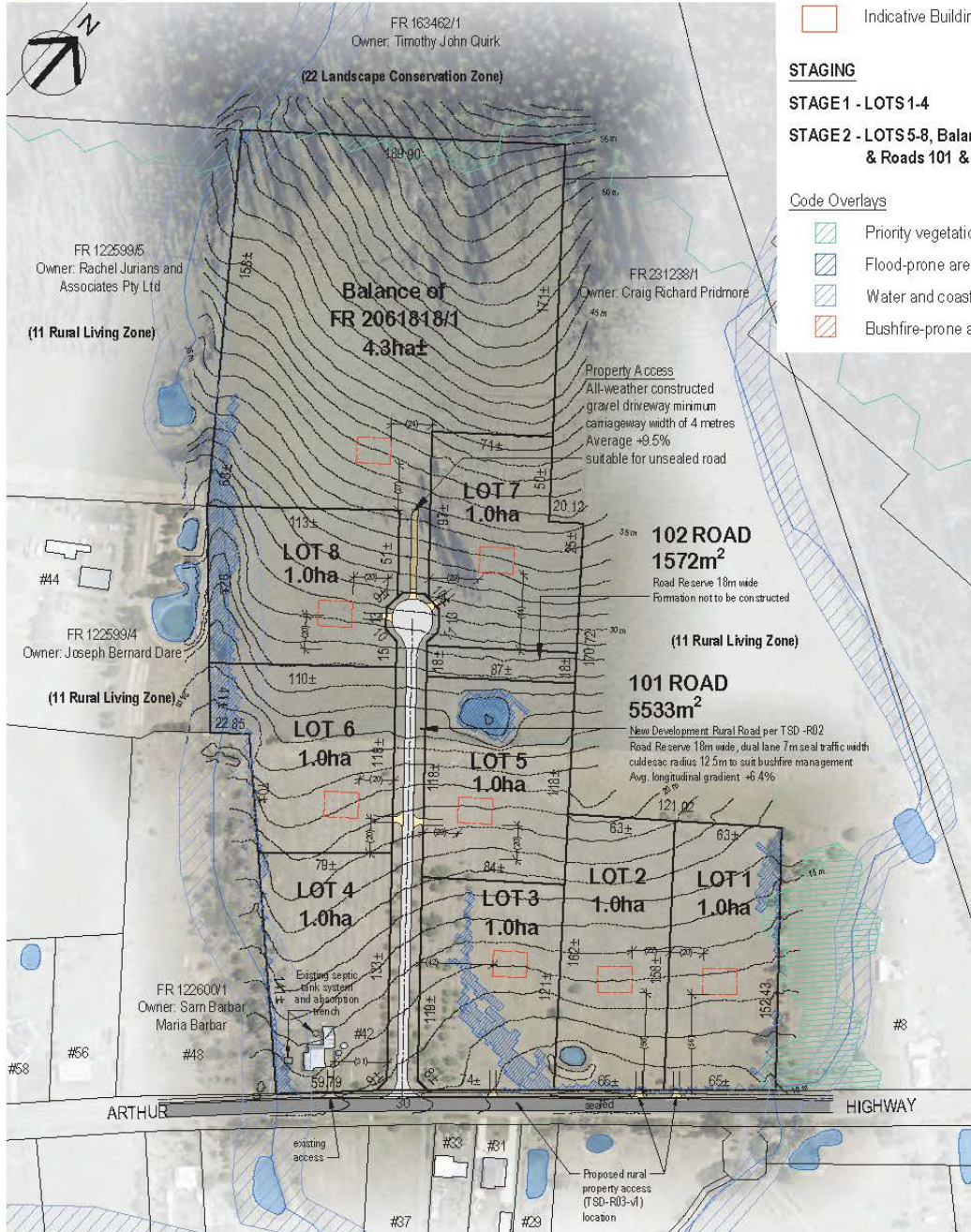
-  Title / Proposed Boundary
-  1m Contour Interval
-  Indicative Building Area (15 x 20m)

STAGING

- STAGE 1 - LOTS 1-4**
- STAGE 2 - LOTS 5-8, Balance & Roads 101 & 102**

Code Overlays

-  Priority vegetation
-  Flood-prone areas
-  Water and coastal protection
-  Bushfire-prone areas



To
 General Manager
 Sorell Council
 Sorell 7172

Dear Sir/Madam,

I am writing to express my serious concerns regarding the recent development proposal that has been put forward to the Council. Please note, it is very troubling that I was not directly notified about the initial (other) proposal for the same address, preventing me from providing my representation for that occasion.

I have two main concerns with the current proposal:

1) Traffic and pollution from adding Public Roads

The construction of the new public road (101 Road) and the proposed public road (102 Road) to connect to the adjacent land should not be approved for the following reasons:

- The building of 101 Road does not satisfy regulatory requirements (refer to p.106 of the attached document). The proposed road will create a complex and congested traffic situation on Arthur Highway, near the junction of the new road. The few existing houses opposite, as well as the proposed houses (Lot 1, 2, 3), will face significant difficulties navigating this congested area. The proposed solution to add BAR will only further complicate traffic flow, as it will create potentially two lanes from each direction. Additionally, the proposed BAR will encroach on the natural strip and driveways of the current houses, significantly increasing traffic risks and safety concerns. The current flat nature strips are directly connected to the driveways of the existing houses, some of which are very close to the properties. Safety has been seriously overlooked in the submitted document.
- The current traffic situation around Arthur Highway is already dangerous for residents and pedestrians. There is no safe pedestrian path on the side of Arthur Highway to the local park, playground, township, or jetty. Adding a new road as mentioned above will only exacerbate the current situation.
- Light and air pollution will increase and affect negatively the residents of the surrounding houses. The addition of 101 Road will increase light pollution from frequent car headlights shining directly into the existing opposite houses. The increased street lights resulting from this proposed public road and street lighting are incompatible with the rural landscape setting. The increased air pollution from the idling or awaiting cars will affect residents in the immediate vicinity.
- The future allowance of 102 Road will likely prompt further development on adjacent land, intensifying the issues mentioned above.

2) Insufficient Storm Water System

Currently, the frontage of the opposite properties, particularly at 37 Arthur Highway, becomes heavily waterlogged after heavy rain due to seepage from the proposed areas. If approved, the development will reduce the absorption area, worsening this waterlogging issue as there is no planned detention area to manage stormwater.

Overall, this type of proposal that disregards the safety, amenities, enjoyment and living conditions of the current residents and the immediate surroundings could be seen as inconsiderate, merely financially driven, and is not part of good

development planning. If this is approved at its current form, it will likely encourage similar developments on adjacent lands, leading to large-scale, unprecedented changes that are insensitive to the environment, the immediate surroundings, and residents, and overall, not sympathetic to the character of Dunalley as a coastal rural town.

I urge you (and Council Members) to consider the negative impacts of this subdivision and reject the proposal in its current form or any future applications of the same address which:

- *include a plan to add new public road(s) into the concerned areas, and
- *do not include proper detention of the storm water.

Thank you for your consideration.

Yours sincerely,



11 June 2024

The General Manager
Sorell Council

By email: sorell.council@sorell.tas.gov.au

Dear Sir

REPRESENTATION – 16-42 ARTHUR HIGHWAY, DUNALLEY (7.2023.9.1)

I act for

This representation is made in response to the development application referred to above and described by Council notice as an 8-lot subdivision relating to the land known as 16-42 Arthur Highway, Dunalley, including works in the Arthur Highway road reservation.

The Application

I note that the plan of subdivision is limited to the land known as 16-42 Arthur Highway, Dunalley. To the extent that it depicts works that are outside of this land, those works are limited to 3 new proposed accesses. While the application includes preliminary engineering drawings, these are limited to the internal subdivision works.

A new junction is proposed between the internal subdivision road and the Arthur Highway.

I have been unable to identify any documentation that describes the works outside of the subject site in any detail, including works such as:

- The junction treatment. This is described in the Traffic Impact Statement as a BAR, with the length described at page 32 of that document and represented pictorially at page 8 (Figure 11). No plans are provided to show its physical location or related works such as changes to existing vehicle accesses in this area.
- Vehicle accesses for lots 1, 2 and 3.
- The proposed stormwater system outside of the installation of table drains on either side of the proposed internal subdivision road, with all flows directed to the east and to utilise an existing culvert under the Arthur Highway.

While it is noted that the stormwater assessment (see letter dated 5 October 2023) appears to indicate reliance upon an existing stormwater system that flows onto the land described in Certificate of Title Volume 166287 Folio 1, the application includes no information as to how stormwater is to be accommodated within any existing public or private stormwater systems.

I further note references to what is referred to as a "Lawful Point of Discharge" which is nominated to be the Arthur Highway table drain. For the reasons that I expand upon below, references to the highway drain as a lawful point of discharge are misconceived because they fail to recognise and respond to the requirement for drainage to be carried off and disposed of which necessitates consideration of the downstream stormwater system.

A letter dated 5 October 2023, describes what appears to be the internal subdivision road as having a two-way cross fall with a table drain on either side. Stormwater calculations are provided which provide a level of information concerning the likely increase in stormwater outflows from the Site in consequence of the new road.



No lots are proposed to be provided with a stormwater connection and will be required to manage stormwater within their boundaries in consequence of this.

Basis of Representation

My client owns and resides at the property known as _____ which is more particularly described in Certificate of _____ . The property known as _____ which is more particularly described in the Certificate of _____ (is owned by my client’s parents.

Stormwater outflows from the proposed subdivision, and more particularly from the new subdivision road, are proposed to be directed to a drainage line that flows firstly through 2 Ryan’s Lane before entering a farm dam on my client’s property. In high rain events (specific intensity unknown but at least annual events), the farm dam overflows and the outflow from the dam runs over my client’s property before entering the adjoining bay.

My client is concerned that the proposed subdivision seeks to direct stormwater collected on the new road to private property over which no right of drainage exists in favour of the applicant and only a limited right of drainage exists in favour of the Council. The change in volume, intensity and quality of the stormwater that results is understandably of concern to my client.

This representation does not seek to respond to every aspect of the proposed subdivision and instead is limited to the key issues that are likely to have an impact on my client’s land. With traffic management to be resolved through a requirement to develop a BAR facility in association with the new junction, the key issue that remains unresolved is the management of stormwater and associated flood impacts.

Stormwater Management

The application is required to be assessed under both the *Land Use Planning and Approvals Act 1993 (LUPA Act)* and the *Local Government (Building and Miscellaneous Provisions) Act 1993 (LGBMP Act)*. Under the LUPA Act, the Tasmanian Planning Scheme – Sorell (Scheme) provides the standards and other provisions under which the application must be assessed. Under the LGBMP Act, additional requirements and discretionary considerations arise. It is noted that, where the Scheme regulates matters that are made relevant under the LGBMP Act, the Scheme prevails and the relevant provisions under the LGBMP Act are left with no work to do.

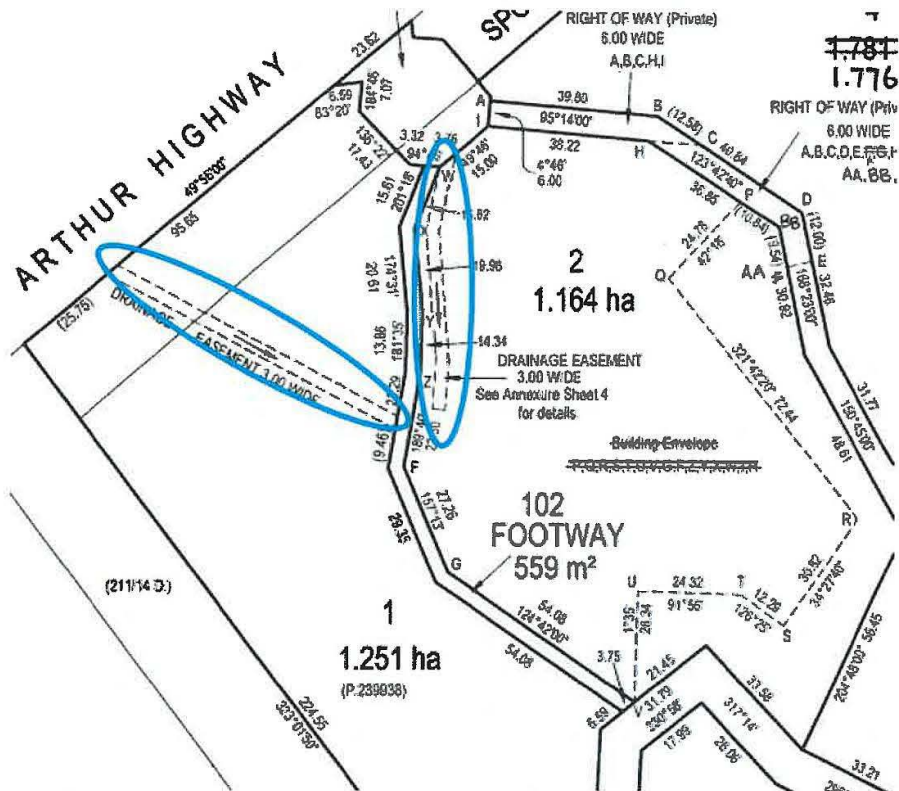
In the present case, the key issue under the LGBMP Act is the management of stormwater. Insofar as the management of stormwater from the individual lots is concerned, these are regulated by the Scheme. Drainage of roads and other proposed public infrastructure is not.

I note the operation of s.84(1)(c) of the LGBMP Act. I trust that the Council will ensure that the necessary consent is provided and that any person purporting to provide consent has the necessary delegated authority.

More fundamentally, I note the operation of s.85(b) of the LGBMP Act. For the reasons that I set out below, this is a case where the Council cannot be satisfied that the drainage of roads will be satisfactorily carried off and disposed of. I draw your attention to the following matters:

- (a) The application purports to rely upon what it refers to as a “Lawful Point of Discharge” which is nominated to be the drain alongside the Arthur Highway.
- (b) The application does not disclose what happens to the stormwater once it is conveyed under the highway by way of the indicated culvert.
- (c) In fact what happens, is that the stormwater enters a drain on the private land
- (d) The Council has the benefit of an easement over this area as shown in the below figure. A further easement over the land described in CT 172416/1 _____ is also shown. This easement is again in favour of the Council but is of no relevance to the present application.





- (e) Beyond the existence of the easement, the Council has not assumed responsibility for either drain (refer Council stormwater map extracted below):



In essence, this means that the Council has the benefit of a right of drainage but that there is no public stormwater system in this area.

- (f) The application includes no information that enables an assessment of what works might be required within the drainage easement to accommodate the increased stormwater flows or what impact this might have on the landowner. The impact of the increased flows (volume and velocity) is not disclosed in sufficient detail to understand whether those flows can be contained within existing channels and pipes, and what the risk of scouring and sedimentation is as well as the risk of blockages and/or overflow.
- (g) Fundamentally, however, the drainage easement ends at the property boundary of 2 Ryan's Lane and does not continue onto my client's property
- (h) The physical drainage line continues under the footway with an outfall by a culvert on my client's property where it enters the dam on that site. Outflow from the dam continues to the river below. This is the path that water takes.
- (i) The Council does not have the benefit of any easement or other right over this dam or the continuation of the drainage line.

In light of the above, it is apparent that the subdivision seeks to discharge stormwater in reliance upon a drainage line over which neither the Council nor the applicant possess any proprietary right.

The application accordingly fails to ensure that drainage will be satisfactorily carried off and disposed of. The application must therefore be refused.

References to a "Lawful Point of Discharge" are curious at best and tend to confuse the issue. Stormwater that is collected and concentrated upon a site and then released from it must go somewhere. In the present case, that stormwater fails to drain to a public stormwater system and instead seeks to rely upon private land. This is impermissible.

We note that the doomed nature of applications that rely upon stormwater infrastructure over land outside of the development and which is not included in the original application was recently considered by the Tribunal in *Smith v Latrobe Council & Tasracing Pty Ltd* [2024] TASCAT 76. In this case, there is simply no drainage system that can be relied upon and the application has not sought to create such a system by including other land within its terms.

For the sake of completeness, I note that there is no record of any rights in favour of the State over this area. It is noted that such a right may exist, limited to CT 166287/1, as referred to on the title documents.

I further emphasise that my client does not accept the discharge of stormwater over his land from this proposed development.

Flooding

The application includes a report prepared by Ms Jane Monks as a "Planning Assessment". The report records that cl.C12.7.1 A1 is met; see page 17. This is a reference to the acceptable solution for subdivision under the Flood Prone Areas Code. That acceptable solution requires that each lot is able to contain a building area, vehicle access and services that are wholly located outside the flood-prone hazard area.

The below figure shows the flood-prone hazard area as mapped by the Scheme maps:





I note that the above extracted image does not match the depiction of the flood-prone hazard area shown on the plan of subdivision. The above extract from the electronic mapping is to be taken to prevail over that shown by the applicant.

In addition to the above, it is understood that the Council holds records that show the flood risk to the subject site as well as those properties below the highway. Undoubtedly, the Council is aware of the flood hazard in this area.

It is undoubtedly the case that lots 1, 2 and 3 have their vehicle accesses within the flood-prone hazard area. In addition to this, the new junction will require works within the flood-prone hazard area that require assessment under cl.C12.6.1 P1.1. In this regard, it should be noted that the works associated with the subdivision fall to be assessed independently of the division of the land.

It is noted that cl.C12.7.1 P1 requires that each lot not create an opportunity for use or development that cannot achieve a tolerable risk from flood. At present, lot 3 has its vehicle access located through an area that is mapped to be flood-prone, and then internally will require that access/driveway to cross further flood-prone hazard areas to provide access to the building area that is shown for the lot. The application does not indicate whether and how this can be managed.

The application does not identify the existing flood levels alongside the highway and extending onto the road. The information provided by the applicant as to water levels in these drains is limited to only part of the catchment that relies upon the highway drainage system and the outflow over my client’s property below. Accordingly, this information is insufficient to inform the necessary assessment.

There is no information in the application to enable a conclusion to be drawn that the vehicle accesses proposed for lots 1, 2 and 3 and the new road junction will be safe during a flood event or what impact these will have on the highway and properties below.

The application does not disclose whether the existing drains are adequate to manage flows associated with the 1% AEP and coincidentally whether they can cope with the additional flows arising in consequence of the subdivision. In circumstances where existing mapping and anecdotal evidence suggest that the drains are not sufficient, further information is required before anyone can be satisfied that the subdivision and new lots do not create an opportunity for development that cannot meet the required risk assessment.

I note that my client's land is downstream of the subdivision. The drainage line runs through his property and he reports that in times of high rain events, the existing dams overflow and areas of his property are engulfed in flows. Erosion and scouring occur and he often needs to check the culverts for blockages. In these circumstances, the planning authority cannot be satisfied that a tolerable risk is achieved having regard to the increase in risk from flood for adjacent land (cl.C12.7.1 P1). Furthermore, I note that there is no flood hazard report which demonstrates that the proposed works do not cause or contribute to flood on adjacent land as required by cl.C12.6.1 P1.2.

Outcome

Having regard to the above it is recommended that the application be refused because:

- (a) The application does not demonstrate that drainage will be adequately carried off and disposed of; s.85(b).
- (b) Lots 1, 2 and 3 have their vehicle access in a flood-prone hazard area and are not demonstrated to achieve a tolerable risk from flood having regard in particular to the risk from flood for the adjacent land; cl.C12.7.1, P1.
- (c) The proposed new road and junction involve works within a flood-prone hazard area and are not demonstrated to not cause or contribute to flood on adjacent land, namely that described in (

I note that this is the second application for subdivision of the land known as 16-42 Arthur Highway in recent years. A previous application was mistakenly approved by the Council notwithstanding that it was prohibited by the express terms of the previous planning scheme.

My client previously succeeded in his appeal from that decision with all parties eventually consenting to orders by which the permit was set aside.

I do not raise the history of this site to be inflammatory, but instead to emphasise the importance of the decision to be made by the Council and the need to ensure that the Council has a proper evidentiary basis for any conclusion that is suggested to it, to the effect that the relevant standards and provisions of the Scheme and the LGBMP Act are satisfied.

The Council plays an important role when it acts as the planning authority and must ensure compliance with the relevant tests in order to avoid unreasonably exposing its ratepayers to the time and expense of the appeals process as well as ensuring that the objectives of the Resource Management and Planning System are satisfied.

My client is directly affected by the proposed development, and in particular by the proposal that stormwater is discharged to a drainage line that relies upon his land. The application fails to address the critical issues of stormwater management and flood risk.

In light of the matters raised by this representation, we ask that the Council carefully consider the evidence that is presented to it in relation to the management of stormwater and flood impacts and its ability to be satisfied that the standards are met. The application should be refused.



The General Manager

Sorell Council

Representation regarding 7.2023.9.1 16-42 Arthur Highway, Dunalley Including Works to the Arthur Highway.

11 June 2024

We have three concerns that we would like to express in relation to the above-mentioned proposal.

1. From documents available on the council website, it appears that stormwater discharge from the proposed subdivision, and the new subdivision road will be directed to a drainage culvert that flows from the Arthur Highway table drain onto

The application has no information as to how stormwater from the proposed lots is to be retained or controlled and what if any new public or private stormwater systems will be created. There is reference to a lawful point of discharge but no reference to what happens to stormwater after that. The proponent needs to provide detailed technical information about how and where the stormwater will reach the sea.

We are not agreeable for that stormwater to be discharged onto our land, directly or indirectly, neither will we permit council drainage infrastructure on our land.

2. The application does not contain any consultants reports to demonstrate that the lots are suitable for onsite wastewater treatment systems or that the soil is suitable for the absorption of effluent or that waterways will not be polluted by household wastewater.
3. We are still not convinced that creating additional accesses onto Arthur Highway in an established BAR zone is a safe and sensible proposition.

We understand the application needs to be assessed under the Land Use Planning and Approvals Act 1993 (LUPA Act), the LUPA Act, the Tasmanian Planning Scheme – Sorell (Scheme) and the Local Government (Building and Miscellaneous Provisions) Act 1993 (LGBMP Act).

We also note that additional requirements and discretionary considerations arise under the LGBMP Act. In this case, the management of stormwater is an important issue under the LGBMP Act.

We request that this subdivision proposal, in particular the stormwater management is carefully assessed against the appropriate standards in the relevant acts and that deemed to satisfy or not satisfy, explanations are clearly articulated by the approving authority.

Yours sincerely