



# SORELL PLANNING AUTHORITY (SPA) AGENDA

15 OCTOBER 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, 15 October 2024 commencing at 4:30 pm.

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## CERTIFICATION

I, Jess Hinchon, Acting 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.

JESS HINCHON  
ACTING GENERAL MANAGER  
9 OCTOBER 2024



## **AGENDA**

FOR THE SORELL PLANNING AUTHORITY (SPA) MEETING TO BE HELD AT THE COMMUNITY ADMINISTRATION CENTRE (CAC), 47 COLE STREET, SORELL ON TUESDAY 15 OCTOBER 2024.

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## 1.0 ATTENDANCE

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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 1 OCTOBER 2024

### RECOMMENDATION

“That the Minutes of the Sorell Planning Authority (SPA) Meeting held on 1 October 2024 be confirmed.”

## 4.0 DECLARATIONS OF PECUNIARY INTEREST



### AGENDA

SORELL PLANNING AUTHORITY (SPA) MEETING  
15 OCTOBER 2024

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 SCHEME AMENDMENT NO. SOR 2023.312.1

<b>Applicant:</b>	GHD Pty Ltd
<b>Proposal:</b>	Section 40T – Rezone from Rural Living with 24 lot subdivision
<b>Site Address:</b>	88 Lewisham Road, Forcett (CT 166029/1)
<b>Planning Scheme:</b>	<i>Tasmanian Planning Scheme Sorell (TPS-S)</i>
<b>Relevant Legislation:</b>	Part 3B of the <i>Land Use Planning and Approvals Act 1993 (LUPAA)</i>
<b>Reason for SPA meeting:</b>	No delegated authority for a planning scheme amendment
<b>Relevant Zone:</b>	Rural
<b>Proposed Zone:</b>	Rural Living
<b>Decision Due:</b>	16 October 2024 (extension granted by the Tasmanian Planning Commission)
<b>Representation(s):</b>	N/A

### RECOMMENDATION

That pursuant to Section 38(1), 40D(a), 40F(2)(b) and 40F(3) of the *Land Use Planning and Approvals Act 1993 (LUPAA)*, the Planning Authority does not prepare or certify Amendment AM-SOR-5.2023-312-1 to the Sorell Local Provisions Schedule for land at 88 Lewisham Road, Forcett to rezone part of the property from the Rural Zone to the Rural Living Zone A as the proposal does not fully meet the LPS criteria setout at s34 of LUPAA, for reasons including:

- a) the conversion of locally significant agricultural land in a manner contrary to SRD 1.3 (c) of the Southern Tasmanian Regional Land Use Strategy and the State Policy on the Protection of Agricultural Land 2008
- b) the physical expansion of residential use in a manner inconsistent with promoting a compact residential settlement pattern as required by SRD 1 of the Southern Tasmanian Regional Land Use Strategy and clause 2.4.2 of the State Coastal Policy 1999

## Background

At its meeting of 27 August 2024, the Sorell Planning Authority (SPA) considered this matter. A recommendation to prepare and certify the planning scheme amendment, with modifications, and approve the associated subdivision permit was tabled and a motion to this effect was put and lost.

On 6 September 2024, Simmons Wolfhagen, acting for the owners of 88 Lewisham Road, Forcett wrote to Council expressing concern that the planning authority determination is inconclusive and had not been fully determined and requested that the Planning Authority reconsider its position and certify the amendment.

In response to the Simmons Wolfhagen letter, Council staff requested an extension of time from the Tasmanian Planning Commission to determine the application. That request has been granted. Staff also sought legal advice on the matter.

## Report

### Is the concern valid or reasonable?

Because the motion has a few moving parts, the decisions open to SPA were:

- a) refuse to prepare the amendment;
- b) prepare the amendment, but without the suggested modifications (and then either grant or refuse the permit);
- c) prepare the amendment, modify the amendment, but not grant the permit;
- d) prepare the amendment, modify the amendment, and grant a permit on the recommended conditions;
- e) prepare the amendment, modify the amendment and grant a permit, but on different conditions;
- f) prepare the amendment, modify the amendment and grant a permit, but on no conditions.

Essentially, the lost motion from the 27 August 2024 SPA (ref: 37/2024) ruled out option (d), being the recommendation, but did not conclusively rule out all other options.

In the case of discretionary planning applications of a kind that are ordinarily before SPA, the concern of Simmons Wolfhagen is entirely valid. There are well established cases that support this position.

In the case of request for planning scheme amendments, there are no established cases and the legislative provisions are different to those of discretionary applications. Notwithstanding this, a similar or same logic applies and the matter has therefore been tabled at SPA.

### **What determination is required?**

The lost motion from the 27 August 2024 SPA (ref: 37/2024) is not in dispute. That is a valid decision.

However, to conclusively determine the matter, a successful motion is required that rules out each of the options outlined above.

The original report and recommendation is tabled as an attachment to this report. That report provides detail of the process, the proposal, the site and the strategic and legislative considerations.

The recommendation included in this report reflects the discussion of Councillors at the meeting on 27 August 2024.

### **What considerations apply?**

Section 38(1) of the *Land Use Planning and Approvals Act 1993* (LUPAA) is the key clause for determining a planning scheme amendment. Section 38(1) requires that the planning authority consider if the amendment will meet the Local Provisions Schedule (LPS) criteria.

The following table addresses the LPA criteria. This includes a summary of the original report outlining how the LPS criteria are satisfied as well as arguments for how the LPS criteria are not satisfied based on the planning authority discussion.

<b>LPS Criteria</b>	<b>Summary of original report and recommendation</b>	<b>Alternative rationale for why the matter should not proceed</b>
The LPS criteria to be met by a relevant planning instrument are that the instrument:		
(a) contains all the provisions that the SPPs specify must be contained in an LPS; and	Of minor relevance to the matter	Of minor relevance to the matter

<p>(b) is in accordance with section 32;</p>	<p>Of minor relevance to the matter</p>	<p>Of minor relevance to the matter</p>
<p>(c) furthers the objectives set out in Schedule 1;</p>	<p>The proposal will provide a fair and orderly increase in the supply of rural living land without significant direct or indirect impacts to air, land and water resources.</p>	<p>The expansion of the residential footprint is not fair or orderly as:</p> <ul style="list-style-type: none"> <li>• there is no demonstrated need for such expansion at this site or any other site.</li> <li>• there is no strategic document that has regard to short-term or long-term need for rural living land or the suitable location(s) for any additional rural living land.</li> </ul>
<p>(d) is consistent with each State policy;</p>	<p>The State Policy on the Protection of Agricultural Land is satisfied as the conversion of land is minimal and not of local or regional significance</p> <p>The State Coastal Policy is satisfied as the land has minimal natural values or hazards and provides residential land based on an existing settlement pattern.</p>	<p>The State Policy on the Protection of Agricultural Land is not satisfied as the proposal converts class 4 agricultural land that is within the irrigation scheme to non-residential use and this is of local or regional significance.</p> <p>The State Coastal Policy is not satisfied as the land has does not support compact and contained planned urban and residential development through the outwards expansion of the</p>



		residential footprint that would result.
(da) satisfies the relevant criteria in relation to the TPPs;	The Tasmanian Planning Policies (TPPs) are in draft form and are not adopted	The Tasmanian Planning Policies (TPPs) are in draft form and are not adopted
(e) as far as practicable, is consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the relevant planning instrument relates;	Consistent with STRLUS SRD 1.3 (c) as: <ul style="list-style-type: none"> <li>• the land adjoins existing rural living land</li> <li>• the amount of land to be rezone is a small increase in the total amount of rural living land in Forcett</li> <li>• the loss of productive agricultural land is minimal and potential land use conflicts can be ameliorated</li> </ul>	Inconsistent with STRLUS SRD 1.3 (c) as the request would not support the consolidation of existing settlements and would convert agricultural to non-agricultural use
(f) has regard to the strategic plan, prepared under section 66 of the Local Government Act 1993, that applies in relation to the land to which the relevant planning instrument relates;	Provides some degree of diversified growth consistent with contemporary planning frameworks	Through extending the residential footprint, the request does not support increased connectivity within and between townships by being
(g) as far as practicable, is consistent with and co-ordinated with any LPSs that apply to municipal areas that are adjacent to the municipal area to which the relevant planning instrument relates;	Of minor relevance to the matter	Of minor relevance to the matter

(h) has regard to the safety requirements set out in the standards prescribed under the Gas Safety Act 2019.	Not relevant	Not relevant
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### Summary and recommendation

The original recommendation to the Sorell Planning Authority was to prepare and certify an amendment, with modifications, to rezone part of 88 Lewisham Road from Rural to Rural Living and Open Space and to approve a draft permit for 24 lots. That motion was put and lost.

The Sorell Planning Authority is to reconsider the matter and in doing so has the full range of options available to it to consider, being to:

- a) refuse to prepare the amendment;
- b) prepare the amendment, but without the suggested modifications (and then either grant or refuse the permit);
- c) prepare the amendment, modify the amendment, but not grant the permit;
- d) prepare the amendment, modify the amendment, and grant a permit on the recommended conditions;
- e) prepare the amendment, modify the amendment and grant a permit, but on different conditions;
- f) prepare the amendment, modify the amendment and grant a permit, but on no conditions.

The discussion around the table at the 27 August 2024 indicated that the rejection of option (d) in the terms presented and the adoption of option (a), being a refusal of the amendment (and permit), was the clear intent.

Option (f) is legally possible and practically impossible as there is no instance where a reasonable planning authority would grant a subdivision involving a new road with no conditions.

That part of option (b) to (f) that entail potential modifications to the amendment are difficult to fully address in a report. At a strategic level, an amendment of this kind could be modified in many different ways.



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Returning to the table and to the discussion from the 27 August 2024 meeting, the request was considered to be:

- inconsistent with clause SRD 1 of the Southern Tasmanian Regional Land Use Strategy and clause 2.4.2 of the State Coastal Policy, as the proposal does not support the objective of a sustainable and compact network of settlements. The proposal would expand the residential footprint contrary to the objective of compact residential land use and would do so without demonstrating the demand for additional rural living zoned land in the locality, or the region.
- inconsistent with clause SRD 1.3 (c) of the Southern Tasmanian Regional Land Use Strategy and the State Policy on the Protection of Agricultural Land as it would convert locally significant agricultural land to non-agricultural use

### **Conclusion**

The request for an amendment and associated permit be refused.

Shane Wells

**Manager Planning**



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