



17 July 2023

Mr J Ramsay  
Delegate (Chair)  
Tasmanian Planning Commission  
GPO Box 1691  
HOBART TAS 7001  
**By Email only:**     [tpc@planning.tas.gov.au](mailto:tpc@planning.tas.gov.au)

Dear Mr Ramsay,

**SUBMISSION RE: HUON VALLEY DRAFT LOCAL PROVISIONS SCHEDULE  
ROBYN GIEC – 98 MAXFIELDS ROAD, FRANKLIN - CT 95394/1, CT 95394/2**

We act for Robyn Giec in relation to the proposed rezoning of land owned by her under the draft Huon Valley Local Provisions Schedule (**LPS**).

Our client is a joint owner of 98 Maxfields Road, Franklin, which comprises two titles numbered 95394/1 and 95394/2 (**the Property**). The Property is currently zoned Environmental Living.

The Council's draft LPS proposes to apply the Landscape Conservation Zone to the Property. We are instructed to provide this submission to explain why the Landscape Conservation Zone is inappropriate for our client's Property, and to suggest an alternative zoning.

**A.     ZONE APPLICATION GUIDELINES – LANDSCAPE CONSERVATION ZONE**

While the Commission is not necessarily bound by the guidelines published under section 8A of the *Land Use Planning and Approvals Act 1993* (**the Act**), they are of course a useful starting point for consideration.

Per *Guideline No. 1 – Local Provisions Schedule (LPS): Zone and Code Application* (**the Guideline**):

*LCZ 1 The Landscape Conservation Zone should be applied to land with landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values, where some small scale use or development may be appropriate.*

*LCZ 2 The Landscape Conservation Zone may be applied to:*

- (a) large areas of bushland or large areas of native vegetation which are not otherwise reserved, but contains threatened native vegetation communities, threatened species or other areas of locally or regionally important native vegetation;*

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- (b) *land that has significant constraints on development through the application of the Natural Assets Code or Scenic Protection Code; or*
- (c) *land within an interim planning scheme Environmental Living Zone and the primary intention is for the protection and conservation of landscape values.*

*LCZ 3 The Landscape Conservation Zone may be applied to a group of titles with landscape values that are less than the allowable minimum lot size for the zone.*

*LCZ 4 The Landscape Conservation Zone should not be applied to: (a) land where the priority is for residential use and development (see Rural Living Zone); or (b) State-reserved land (see Environmental Management Zone).*

*Note: The Landscape Conservation Zone is not a replacement zone for the Environmental Living Zone in interim planning schemes. There are key policy differences between the two zones. The Landscape Conservation Zone is not a large lot residential zone, in areas characterised by native vegetation cover and other landscape values. Instead, the Landscape Conservation Zone provides a clear priority for the protection of landscape values and for complementary use or development, with residential use largely being discretionary.*

*Together the Landscape Conservation Zone and the Environmental Management Zone, provide a suite of environmental zones to manage use and development in natural areas.*

*“Landscape values that are identified for protection and conservation”*

In its section 39F report, the Council’s response to our client’s representation states that the area “*forms part of a large contiguous bushland area incorporating Cannells Hill and tributaries to the Huon River*”.

As the Commission itself has previously noted, in order to have ‘landscape values’, land “*must be significantly visible from surrounding areas*”.<sup>1</sup> The Commission is not bound by its past decisions, but this is a logical conclusion to draw and should be accepted. ‘Landscape’ is in our submission an inherently visual quality.

Therefore, if the Property cannot be seen from surrounding areas, it cannot have landscape values requiring the protection of the Landscape Conservation Zone.

Based on Google Maps street view images, and photographs taken by our client, the Property is not visible at all from either Maxfields Road or the Huon Highway. Screenshots and photographs are annexed to this submission, marked “A”, together with notes on the source of each image.

On the basis of those images, we submit that LCZ 1 does not apply to the Property.

*“Large areas of bushland or large areas of native vegetation which are not otherwise reserved, but contains threatened native vegetation communities, threatened species, or other areas of locally or regionally important native vegetation”*

As our client has already advised the Council in her representation, the vegetation present on CT 95394/1 is all non-native. This part of the Property contains cleared paddocks, the existing dwelling, farm storage sheds, a stock loading ramp, and a dam. The dwelling is surrounded by introduced species of vegetation, including chestnuts, silver birch, ash, pine, wisteria, oak and cherry.

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<sup>1</sup> Flinders LPS decision, paragraph [325].



The TASVEG 4.0 layer in ListMAP shows an area of *Eucalyptus ovata* forest and woodland (DOV). The source date given for that information is 24 February 1996. There is in fact no DOV present on our client's Property. The annexed page marked "B" contains recent photographs of this location taken by our client. It is apparent that the area around the fenceline has been entirely cleared, save for one remaining tree some 3m from the fence. Our client has not been able to obtain a qualified opinion as to the species of that tree at the time of writing this submission, but it is plain that it stands alone and is not part of any 'forest' or 'woodland' community.

As for CT 95394/2, which contains a greater coverage of vegetation generally, much of that title is mapped as containing *Eucalyptus obliqua* (WOB). However, our client instructs that the majority of the trees in this area are thin and non-established, with many having a trunk circumference of less than 3 inches, with an understorey of acacia suckers and weeds such as blackberries and bracken.

In the annexure marked "C" is a recent photograph our client has taken of this area.

*Eucalyptus obliqua* is not a threatened native vegetation community, nor a threatened species. We have seen no suggestion that the vegetation in this area is of local or regional significance. A priority vegetation report prepared by the Council suggests that the mapped area provides habitat for threatened fauna, specifically the Tasmanian Devil, Eastern Quoll, and Eastern Barred Bandicoot. I will return to this point below.

"Land that has significant constraints on development through the application of the Natural Assets Code or Scenic Protection Code"

The draft LPS does not appear to apply the Scenic Protection Code to the Property.

The Natural Assets Code is proposed to be applied, on the basis of a priority vegetation overlay covering the areas mapped in TASVEG 4.0 as DOV and WOB. That would trigger the application of the Natural Assets Code.

As noted above, the only value which appears to attract the priority vegetation overlay for CT 95394/2 is the potential habitat for the Tasmanian Devil, Eastern Quoll and Eastern Barred Bandicoot. However, as far as we are aware, the Council has not carried out any form of field survey to ascertain whether that is in fact the case. Furthermore, in order to amount to "priority vegetation" warranting the application of the overlay, the Council would have to demonstrate that the area forms "significant" habitat for those threatened species. Our client instructs that none of these species have been seen on the Property in 25 years, and it is highly unlikely they are able to access the Property at all due to the existence of wallaby-proof fencing on all sides.

In respect of CT 95394/1, as noted above, the purported DOV woodland does not appear to actually exist.

It is therefore submitted that the Priority Vegetation Overlay should not be applied to the Property unless and until evidence is provided which properly supports it.

"Land within an interim planning scheme Environmental Living Zone and the primary intention is for the protection and conservation of landscape values"

As noted above, in our submission the Property has no landscape values requiring conservation, because it is not visible from either Maxfields Road or the Huon Highway. It is unclear whether it is visible from anywhere else in the municipality either.

On the basis of this and the preceding two points, it is submitted that LCZ 2 does not or should not apply to the Property.



*“Land where the priority is for residential use and development”*

It is unclear who is to determine the priority to which LCZ 4 refers. The Council has indicated that it has “*no strategic intention for this site and the broader Environmental Living area to be an area of residential use and development within a rural setting*”.

It is submitted that, in the context of the Guideline as a whole, LCZ 4 can be seen as a direct contrast to LCZ 2(c), in that one refers to the “*primary intention*” being protection of landscape values, and the other refers to the “*priority*” being residential use and development. This is supported by the note in this part of the Guideline, which states that:

*The Landscape Conservation Zone is not a replacement zone for the Environmental Living Zone in interim planning schemes. There are key policy differences between the two zones. The Landscape Conservation Zone is not a large lot residential zone, in areas characterised by native vegetation cover and other landscape values. Instead, the Landscape Conservation Zone provides a clear priority for the protection of landscape values and for complementary use or development, with residential use largely being discretionary.*

If read in this way, it can be understood as meaning that land which was previously zoned Environmental Living under an interim scheme can essentially fall into one of two categories – that where the focus is on protection of the landscape (the Landscape Conservation Zone), and that where the focus is on the residential use (Rural Living or similar).

Against that backdrop, it is submitted that if the priority is *not* conservation of landscape values, which it cannot be where the Property is not visible, then it follows that the priority must be residential use and development. This may well be subject to restrictions to nonetheless give protection to the rural context and environment, but the priority is nonetheless a residential one.

Therefore, it is submitted that LCZ 4 applies to the Property, in that the priority for the area should properly be considered a residential one.

**B. ZONE APPLICATION GUIDELINES – ALTERNATIVE ZONING**

Given the above, it is submitted that a more appropriate zone for the Property is either Low Density Residential, or Rural Living Zone A.

*Low Density Residential*

It is noted that the Guideline provides the following objective for the Low Density Residential Zone at clause 10.1.1:

*To provide for residential use and development in residential areas where there are infrastructure or environmental constraints that limit the density, location or form of development.*

Per LDRZ 1(a) of the Guideline, the Low Density Residential zone should be applied to “*residential areas with large lots that cannot be developed to higher densities due to any of the following constraints: (i) lack of availability or capacity of reticulated infrastructure services, unless the constraint is intended to be resolved prior to development of the land; and (ii) environmental constraints that limit development (e.g. land hazards, topography or slope)*”.



“Residential area” is not a defined term within the Guideline, the Act, or the State Planning Provisions. It is noted that the Guideline suggests the General Residential and Inner Residential zones should apply to “urban residential areas”, and that the Low Density Residential and Rural Living zones should apply to “residential areas”.

If ‘residential area’ simply means an area where the uses are generally residential rather than commercial, agricultural or industrial, then the vicinity of the Property amounts to a residential area. As noted above, it is presently zoned Environmental Living. The first zone purpose statement for the Environmental Living zone is “to provide for **residential use or development** in areas where existing natural and landscape values are to be retained...” (emphasis added). It is in that sense a residential zone.

We are instructed that our client’s Property was zoned Rural Residential when it was purchased in 1998.<sup>2</sup>

It is submitted therefore that the area surrounding the Property can properly be considered a residential area within the meaning of LDRZ 1.

The area is comprised of large lots, and the area presently zoned Environmental Living is not water- or sewer-serviced land.

LDRZ 2 and LDRZ 4 are not relevant for present purposes.

LDRZ 3 provides that the Low Density Residential Zone “*should not be applied for the purpose of protecting areas of important natural or landscape values*”. As noted above, we question the existence of any landscape values, as the Property is not visible from any nearby road. If it is visible from anywhere else in the municipality (or outside it), there is no evidence of that before the Commission.

As for natural values, as noted above, the area mapped as DOV on the Property does not appear to exist any longer, and the area mapped as WOB is not well established. It is *possible* that the area mapped as WOB provides habitat for threatened fauna species, but no ground surveys have been conducted to establish whether it amounts to significant habitat or not. Given the fact that none of these species have been seen on the Property in at least 25 years, and the Property is fenced on all sides, it is highly unlikely that the area is actually used by any of these species.

Therefore, it is submitted that there are no clearly identified natural values in need of protection on the site either.

Consequently, it is submitted that it would be appropriate for the Property to be zoned Low Density Residential.

#### Rural Living Zone A

In the alternative, if the Commission considers that Low Density Residential Zoning is not well suited to the Property, then it is submitted that Rural Living Zone A is the most appropriate zone.

Per clause 11.1.1 of the Guideline, the purpose of the Rural Living Zone is “to provide for residential use or development in a rural setting where: (a) services are limited; or (b) existing natural and landscape values are to be retained”.

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<sup>2</sup> We understand this would have been under the *Huon Planning Scheme 1979*.



Per RLZ 1(a), the Rural Living Zone should be applied to “*residential areas with larger lots, where existing and intended use is a mix between residential and lower order rural activities (e.g. hobby farming), but priority is given to the protection of residential amenity*”.

RLZ 2 provides that the Rural Living Zone should not be applied to land that is not currently zoned Rural Living under an interim scheme, *unless* the land is within an Environmental Living Zone and the primary strategic intention is for residential use and development within a rural setting and a similar minimum allowable lot size is being applied.

The minimum allowable lot size in the current interim scheme Environmental Living Zone. Therefore, RLZ 2 would, on its face, require that the Property be zoned Rural Living Zone C. However, it is submitted that it is appropriate that the existing lot sizes in the area be considered. Both titles which comprise the Property are approximately 1.5 ha in size, and the neighbouring title to the north-east is under 1 ha. For the sake of consistency in planning outcomes, it is submitted therefore that Rural Living Zone A is more appropriate for these specific lots.

In that regard, while not directly stated in RLZ 2, it is noted that RLZ 3 expressly acknowledges (and indeed requires) that the differentiation between Rural Living Zone A, B, C and D should be based on a reflection of the existing pattern and density of development in the area.

Finally, RLZ 4 provides that the Rural Living Zone should not be applied to land that:

- (a) Is suitable and targeted for future greenfield urban development – this does not apply to the Property;
- (b) Contains important landscape values that are identified for protection and conservation (in which case the Landscape Conservation Zone should be applied) – for reasons given earlier in this submission, we submit that this does not apply to the Property; or
- (c) Is identified as ‘Land Potentially Suitable for Agriculture Zone’ on ListMAP – this does not apply to the Property.

### **C. LPS CRITERIA**

As noted above, the Guideline, while highly persuasive, does not bind the Commission. The Commission’s overarching obligation is to ensure that the LPS complies with the LPS criteria set out in section 34 of the Act.

Of those requirements, the only one which we consider could potentially impact on the zoning change sought by our client is compliance with the Southern Tasmania Regional Land Use Strategy 2010 – 2035 (**STRLUS**).

In that regard, it is noted that regional policy SRD 1.6 of STRLUS provides that Low Density Residential Zoning should only be used where necessary to manage land constraints in settlements or to acknowledge existing areas. It is submitted that this is complied with, because if the Low Density Residential Zone is applied in accordance with these submissions, that is only being done due to the constraints present in the area and the existing pattern of subdivision to date.

Regional policy SRD 1.4 is also relevant, and recommends increased densities in existing rural living areas to an average of 1 dwelling per hectare. It is noted that the application of Rural Living Zone A to the Property would achieve this policy better than the Landscape



Conservation Zone would. It is noted that SRD 1.4 refers to “*existing rural living areas*”, not “*existing rural living zones*”. The Environmental Living Zone is, in our submission, a type of “*rural living area*” to which SRD 1.4 ought to apply.

#### **D. FINAL COMMENTS**

For all of the foregoing reasons, our client submits that:

- the Landscape Conservation Zone is not well suited to our client’s Property;
- in its place, it is submitted that the Low Density Residential Zone would be more appropriate; or
- if not Low Density Residential, then Rural Living Zone A should be applied to the Property; and
- the proposed Priority Vegetation Overlay should not be applied to the Property absent evidence establishing that there is in fact priority vegetation present on the Property.

If there are any queries about the above, please do contact the writer on the email address below, or by phone on (03) 6223 8955.

Yours faithfully

**ABETZ CURTIS**

Per:

**MEA QUARTARARO**

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## ANNEXURE A



**Figure 1: View of right of way from Maxfields Road to the Property. The Property is not visible from this location.**



**Figure 2: View from Maxfields Road to the Property. The Property is not visible from this location.**





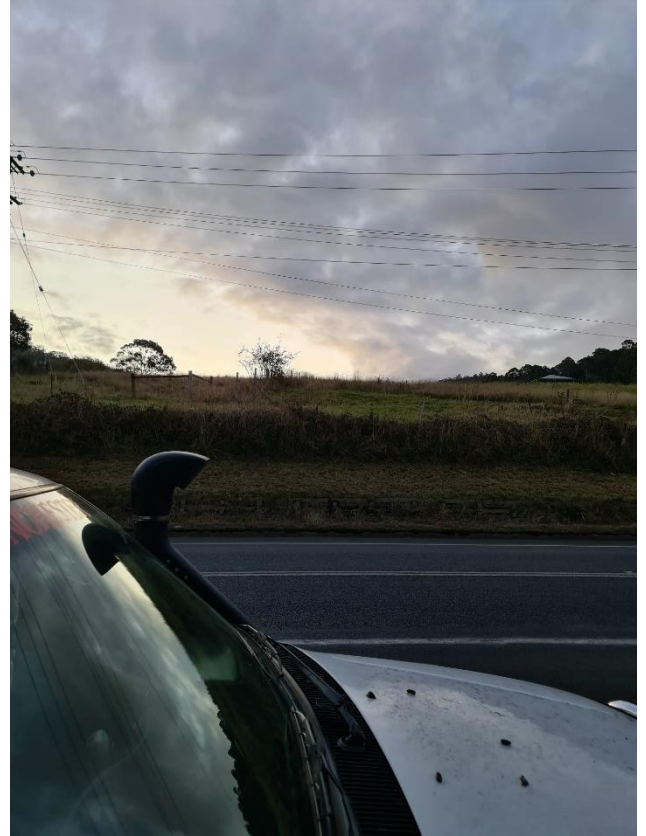
**Figure 3: View from Maxfields Road to the Property. The Property is not visible from this location.**



**Figure 4: View along Maxfields Road to Main Road. The Property is not visible from this location.**



**Figure 5: View from Huon Highway looking uphill towards the Property. The Property is not visible from this location.**



**Figure 6: View from Huon Highway looking uphill towards the Property. The Property is not visible from this location.**





**Figure 7: Google Street view from Maxfields Road to the Property. The Property is not visible from this location.**

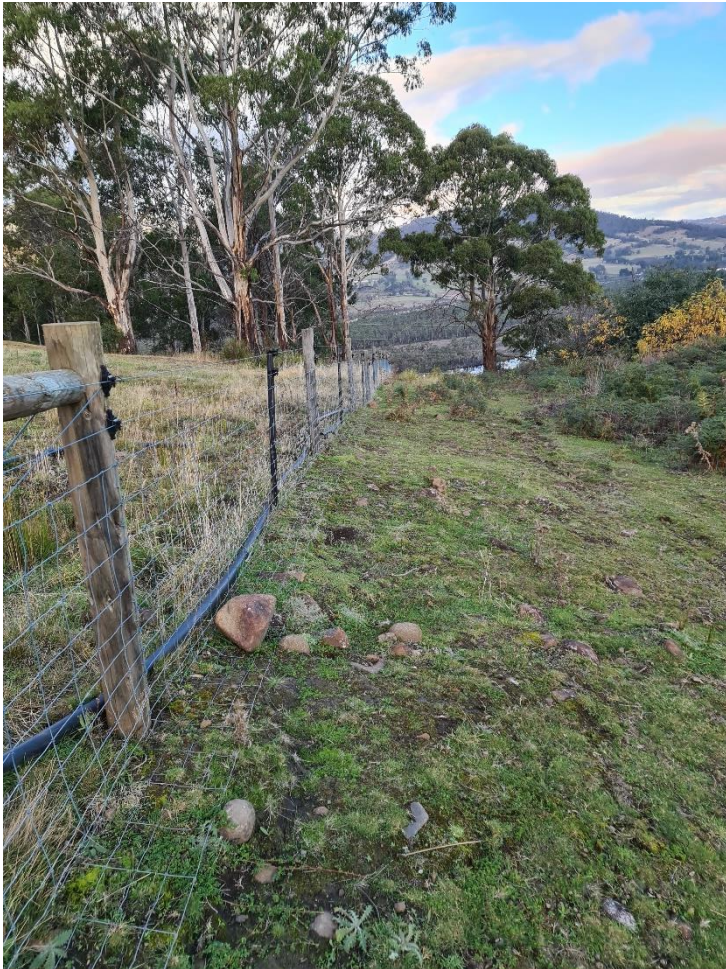


**Figure 8: Google Street view from Huon Highway to the Property. The Property is not visible from this location.**





## ANNEXURE B



**Figure 9: View from northern fence line looking towards the east. There is no *Eucalyptus ovata* forest and woodland (DOV) present**

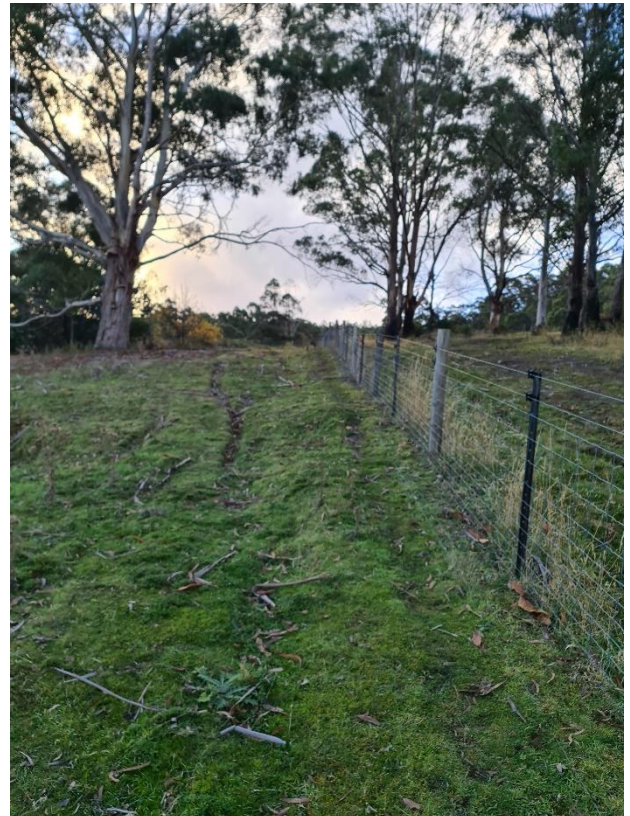


**Figure 10: View from northern fence line looking towards the east. There is no *Eucalyptus ovata* forest and woodland (DOV) present**





**Figure 11: View from northern fence line looking towards the west. There is no *Eucalyptus ovata* forest and woodland (DOV) present**



**Figure 12: View from northern fence line looking towards the west. There is no *Eucalyptus ovata* forest and woodland (DOV) present**



## ANNEXURE C



**Figure 13: View from Maxfields Road right of way towards the Property (i.e., looking at the southwestern boundary). The trees in this area are thin and non-established with an understorey of acacia suckers and weeds such as blackberries and bracken.**