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Sent: Tue, 31 May 2022 14:28:03 +1000
To: "Huon Valley Council" <hvc@huonvalley.tas.gov.au>
Cc: "Toby Wellstead" <tj_sj@hotmail.com>
Subject: Huon Valley LPS Submission for 115 Cemetery Rd Dover (PID: 2989772),
Attachments: Huon-LPS_Rec-RL_PlanningSubmission_Welstead_31-May-2011.pdf

Dear General Manager,

in accordance with Section 35 E of LUPAA please find attached a submission on the Huon Valley LPS.

Kind regards,

Trent J. Henderson

BA(Hons) GCURbDgn MEP RPIA

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RED SEAL
Urban & Regional Planning

2022

Huon Valley Local Planning Schedule (LPS)
Submission Section 35E – Land Use Planning and
Approvals Act 1993:

- 115 Cemetery Road, Dover (PID: 2989772)

For: T J Welstead & S J Haddon

BY: TRENT J. HENDERSON

BA(Hons) GCurbDgn MEP RPIA

Principal Planner

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Summary

Project:	Huon Valley Local Provision Schedule Planning Submission relating to the land known as to the property at 115 Cemetery Road, Dover
Planning Authority:	Huon Valley Council
Planning Policy:	Section 35E - <i>Land Use Planning and Approvals Act 1993</i>
Current Zoning:	Rural Resource & Recreation
Proposed Zoning:	Rural & Recreation
Date of Assessment:	April 2022

1 Introduction

The property owners Samantha Haddon and Toby Welstead have engaged Red Seal Urban & Regional Planning to review the exhibited documents of the Huon Valley draft Local Provisions Schedule (LPS) in relation to land known as 115 Cemetery Road, Dover (PID: 2989772), located at the southern end of the Golf Course.

1.1 Background

It is recognised that a huge body of work is involved in progressing the LPS to this stage and we commend Huon Valley Council (the Council) and its planning staff for it. However, given the extent of work required, it is conceivable that some aspects of the zone mapping are not optimal due to the base data not being specific to each site.

Therefore, pursuant to Section 35E of the *Land Use Planning and Approvals Act 1993* (LUPAA), the following representation is made to assist Council and the Tasmanian Planning Commission (TPC) in implementing zoning by providing onsite clarification for the properties of concern. However, our principal concern is CT: 100627/1: a 4012m² lot is currently zoned Recreation under the Huon Valley Interim Planning Scheme 2015.

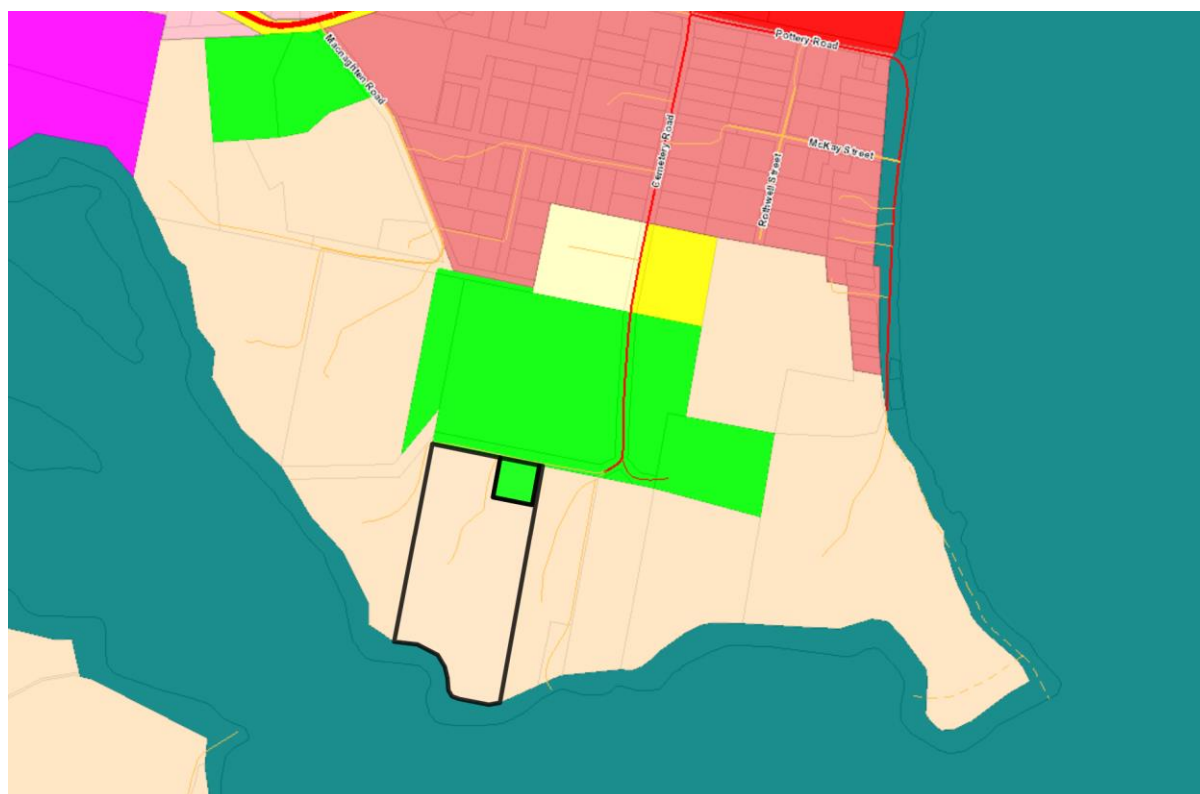


Figure 1.1a – the two titles associated with 115 Cemetery Road, Dover. The light brown is zoned Rural Resource whilst the green is the Recreation Zone under the current Huon Valley Interim Planning Scheme 2015. (Source LIST Map)

As the property was in private hands when the Huon Valley Interim Planning Scheme 2015 came into effect, although under different ownership, the strategic purpose in zoning this land Recreation is unclear. Additionally, as the previous Esperance Planning Scheme 1989 zoned this property Reserved Residential, it is unclear why the previous owner did not pursue an application pursuant to Section 30IA of LUPAA: Urgent amendment of interim planning schemes.

Under Esperance Planning Scheme a residential dwelling was a P1 use class, which was an as of right use that “may be undertaken without the application for and issue of a planning approval” as per Part 3- Clause 3.3 of the Esperance Planning Scheme. However, the property under the Interim Planning Scheme is split into Rural Resource with residential, which is a discretionary use class and only if a single dwelling (Use Table 26.2), and for the title zoned Recreation a prohibited use class (Use Table 18.2). Therefore, with the transition to the Interim Planning Scheme the two titles lost the “as of right” ability to construct a residential dwelling on each title.



Figure 1.1b – The Esperance Planning Scheme 1989 had the site cross hatched in red, which was Reserved Residential zone (Figure 1.1c), the equivalent based on the use types allowed to Rural Living within the Interim Planning Schemes and the LPS. (Source Huon Valley Council)

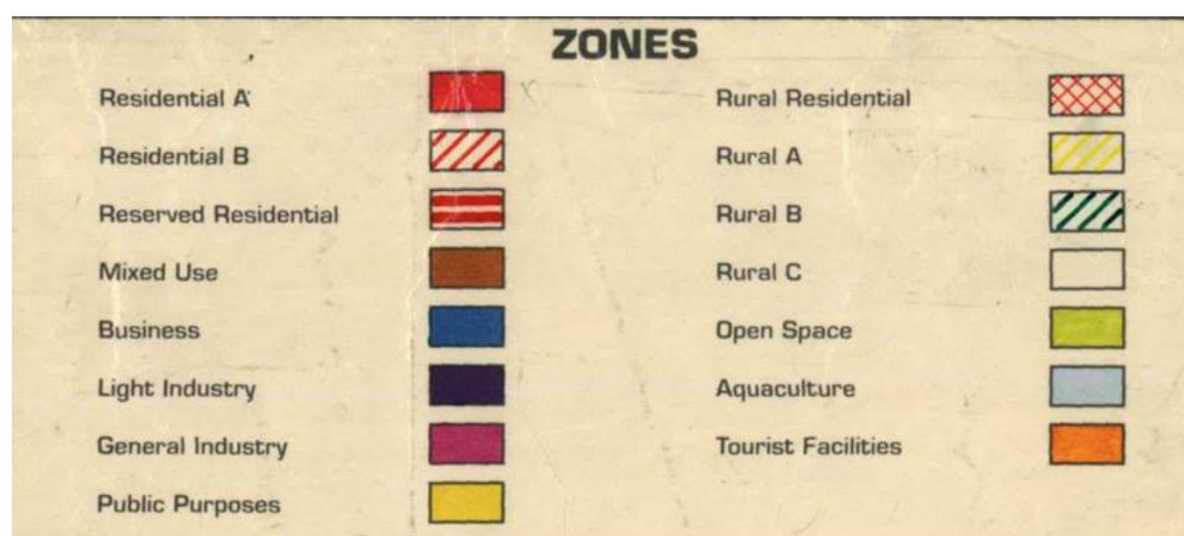


Figure 1.1c - Esperance Planning Scheme 1989 zone key. (Source, Huon Valley Council)

Enquiries by the current owners, on the possibility to lodge an Urgent Amendment application prior to the LPS process getting underway indicated that the matter and resources should be directed through the LPS process.

1.2 Site

The property is rectangle in shape covering a total of 6.38 hectares and divided into two titles, being CT: 222334/1 (5.98 hectares) containing the dwelling, and CT: 100627/1 (4023m²).

The smaller lot is square in shape that was approved by the Recorder of Titles 19 January 1993, according to the Certificate of Title.

Topography of the site range from the 10m contour in the southern boundary near the foreshore with Esperance Narrows to a height of almost 40m near the road frontage on the northern boundary: providing a southerly aspect with an average gradient over the site of 9%.

Vegetation type is listed under the TasVege layer of the LIST Map as Agricultural land although the 6-hectare property is not being farmed. The 4023m² lot is predominately covered in *Eucalyptus pulchella* forest and woodland within the TasVege layer of the LIST Map, which is not a listed under Schedule 3A - Threatened native vegetation communities of the *Nature Conservation Act 2002*.

1.3 Surrounding

The land to the north of the property is zoned Recreation and consists of the Dover Golf Club. On both sides the land is zoned Rural Resource under the current Planning Scheme. The shoreline and the waterway to the south is zoned Environmental Management. The LPS is to transition like-for-like with Recreation and Rural zonings for these adjoining properties.

The area is located at the end of Cemetery Road that joins Huon Highway and passes through General Residential and Low-Density Residential Zoned land before getting to this site. The LPS maps indicate no change to this zoning.

However, as referenced in Figure 1.1b above most of this area south of the Dover Golf Course was zoned Restricted Residential under the old Planning Scheme except for a couple of properties zoned Rural B, which appears to be consistent with the Rural Resource Zone based on the provisions. It is noted that the Rural B zoned properties where the anomalies and the surrounding area was best described as rural residential in type, and they are not commercially farmed.

In reviewing the latest State Land Use (2019) most of the surrounding land including the subject site is classified as Code:5.4.3 *Rural residential without agriculture*, this applies to most of the peninsular. These properties are to be zoned Rural under the LPS.

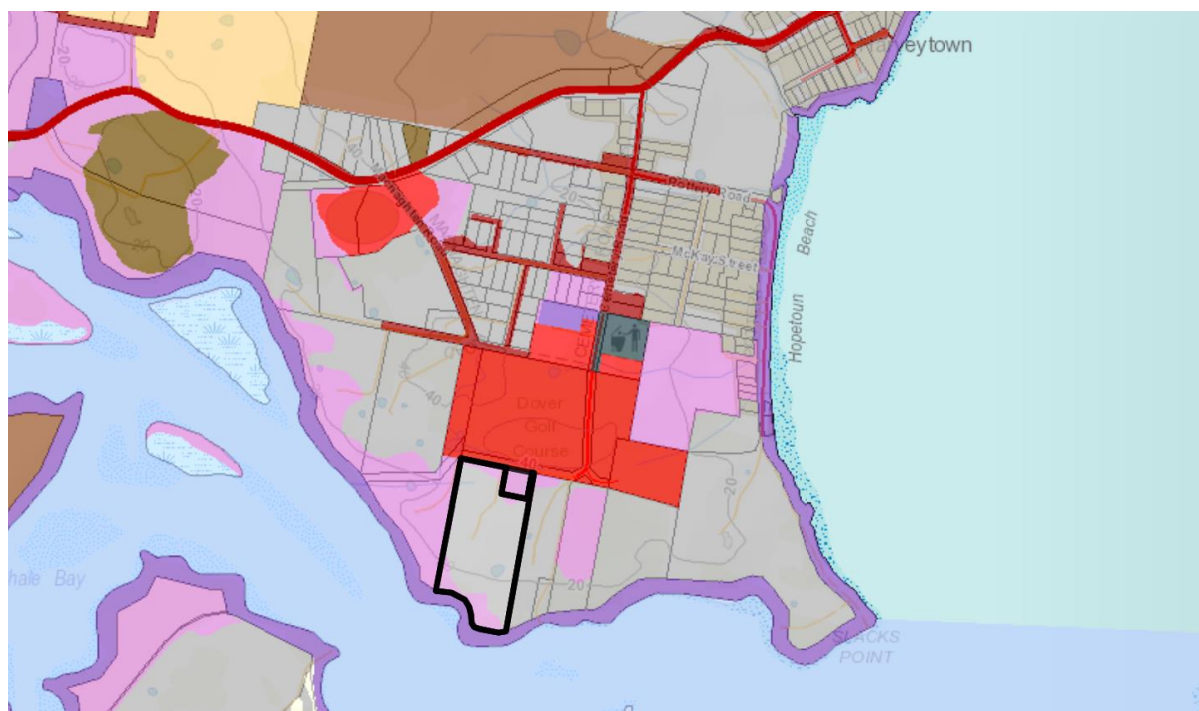


Figure 1.3a – Land Use 2019, properties in grey are classified as Code:5.4.3 *Rural residential without agriculture*, which applies to post of the peninsular and includes several properties currently zoned Rural Resource yet are proposed to be Rural. (Source LIST Map)

2 Planning Provisions

2.1 Planning Provisions

Under the State Planning Provisions (SPP), the purpose of the Recreation Zone is:

- 28.1.1 - *To provide for active and organised recreational use and development ranging from small community facilities to major sporting facilities.*
- 28.1.2 - *To provide for complementary uses that do not impact adversely on the recreational use of the land.*
- 28.1.3 - *To ensure that new major sporting facilities do not cause unreasonable impacts on adjacent sensitive uses.*

Clarification has been sort by both the property owners and Red Seal Planning as to the intended strategic purpose for the zoning of the subject land Recreation in the transition to the Huon Valley Interim Planning Scheme 2015 (13 October 2021). Additionally, a request as to what is the current strategic interest from Council for this land to remain zone Recreation progressing into the LPS.

These requests are made in reference that although the site is on the opposite site of the road to the Golf Course, which is more commonly associated with Recreation Zoned land and more in line with the LPS Guidelines¹, there does not appear to be any strategic reason for this location to be Recreation. Additionally, it is appreciated that under Guideline RecZ 2 the

¹ TPC, "Guideline No. 1 Local Provisions Schedule (LPS): zone and code application," ed. Tasmanian Planning Commission (TPC) (Hobart, Tasmania2018), p.24.

Recreation Zone can apply to private land; however, this would be more appropriate in the case of a private golf course or sports centre, not associated with a private residential home.

No clarification has been provided after these requests as to the strategic reasoning for the Recreational Zone at the time of implementing the Interim Planning Scheme or under the current LPS process. Additionally, it is observed that the site is not referenced within the Council strategic recreation plan² either as a specific site or as part of a potential expansion to the Dover Golf Course.

Therefore, there appears to be no strategic basis for the zoning of this site Recreation and that the zoning of the site recreation was an error in transition from the Esperance Planning Scheme to the Huon Valley Interim Planning Scheme.

2.2 Proposed Alternative LPS Zoning

There are two options for alternative zoning the first being rural which is consistent with the surrounding properties and is a direct translation from the current interim planning schemes rural resource zone. However, this assumes that the existing zone in the interim planning scheme was correct.

The surrounding properties to the site are not of sufficient size or by land capacity that facilitates agricultural use and better described as a rural residential use without agriculture as demonstrated in figure 1.3a above. On this basis the zoning under the Esperance planning scheme was correct in having the site along with several other properties zoned reserved residential which is consistent with the provisions under the new Tasmanian Planning Scheme.

The largest lot size in this area is 10.6 ha with most lots being around 5 ha size. If the area was zoned rural living zone D which has a minimum lot size of 10 ha, this zoning would be more consistent with the actual use of the land being residential in a rural area it would also prohibit further residential subdivision without additional strategic assessment but the use rights with the use rights that were present under the Esperance planning scheme at a more consistent transition to new planning scheme of what is actually occurring on the ground.

The site and surrounds do not lend themselves to an agricultural use give their size combined with the southerly aspect and the fact that the Land Capability is Class 6 (see Figure 2.2a below). Class 6 is:

Land only marginally suited to grazing activities due to severe limitations. This land has low productivity, high risk of erosion, low natural fertility or other limitations that severely restrict agricultural use. This land should be retained under its natural vegetation cover.

Therefore, the site and surrounding lots should not be Rural as the capacity of the land is inconsistent with the objectives and the allowable uses within the Rural Zone.

² Inspiring Place, "Huon Valley Recreation Plan," (Hobart: Huon Valley Council, 2020).

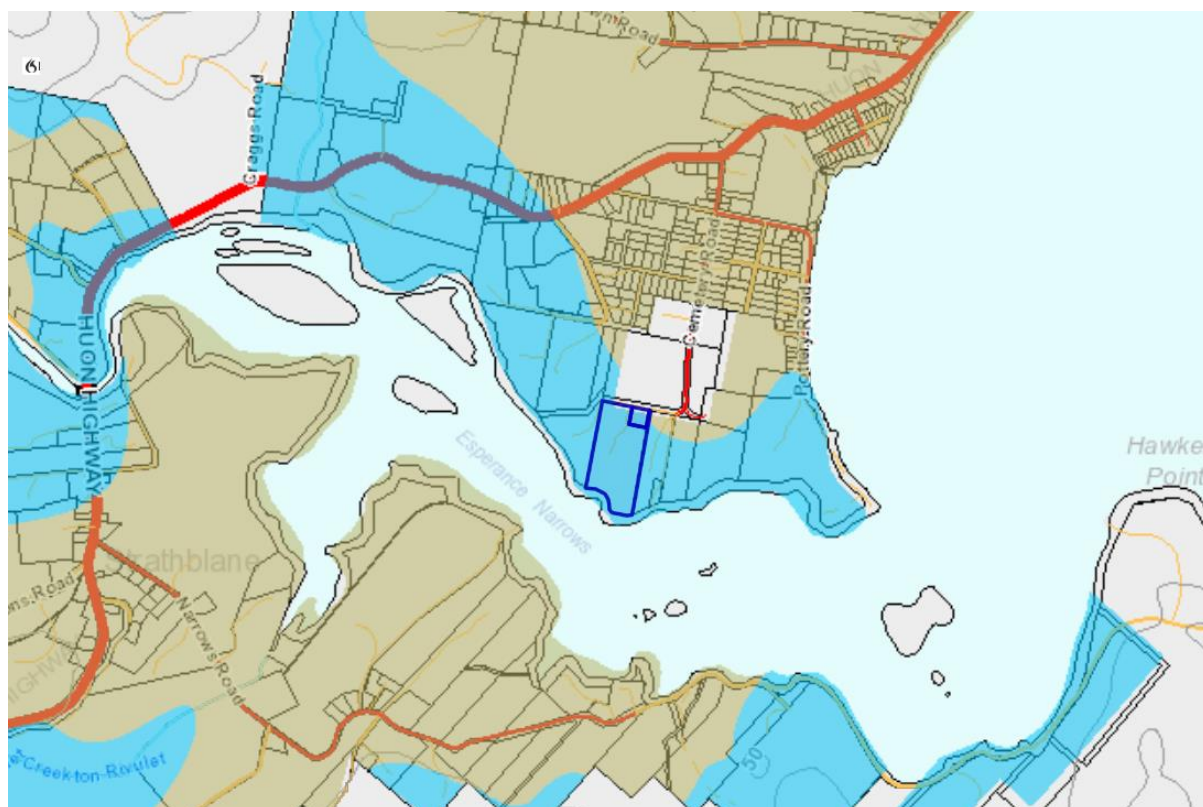


Figure 2.2a – Land Capability Map the blue area is Class 6, which is marginal grazing land and not suitable for cropping. (Source LIST Map)

2.3 LPS Zone Purpose Statements

The appropriateness of the zoning under the LPS to Rural Living is even more evident with a review of the applicable zone purpose statements. The LPS specifies that the purpose of the Rural Zone Clause 20.1, is as follows:

20.1.1 - To provide for a range of use or development in a rural location:

- (a) where agricultural use is limited or marginal due to topographical, environmental or other site or regional characteristics;*
- (b) that requires a rural location for operational reasons;*
- (c) is compatible with agricultural use if occurring on agricultural land;*
- (d) minimises adverse impacts on surrounding uses.*

20.1.2 - To minimise conversion of agricultural land for non-agricultural use.

20.1.3 - To ensure that use or development is of a scale and intensity that is appropriate for a rural location and does not compromise the function of surrounding settlements.

The fact that this land is poor quality is supported by the site being zoned Rural Resource; however, simple transition to Rural instead of zoning it Agriculture is not necessarily the most appropriate measure either when reviewing what is permissible within the zone. There is a broad range of uses within the Rural Zone Use Table 20.2 that are listed as a Permitted Use Class that may not be considered appropriate to be located at the end of streets that travers through and near residential areas.

Additionally, it is noted that the Discretionary Uses listed under the Table 20.2 are not required to have regard for the surrounding residential use, only that of any rural or agricultural use.

Reference here is made to Clause 6.10.2, the Performance Criteria of Clause 20.3.1 and the Rural Zone Purpose Statements all of which do not require regard for impact on the amenity of surrounding sensitive use.

In contrast, this site lends itself to that of a Rural Living Zoned lot, facilitating modest residential development providing a low-density buffer area between the residential zones and the agricultural zone on the southern side of the Esperance Narrows. Such a zoning also allows for residential use with associated agricultural use to occur that are suitable for close proximity to the larger residential area to the north of the golf course.

The LPS purpose of the Rural Living Zone Clause 11.1, is as follows:

- 11.1.1 - *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.*
- 11.1.2 - *To provide for compatible agricultural use and development that does not adversely impact on residential amenity.*
- 11.1.3 - *To provide for other use or development that does not cause an unreasonable loss of amenity, through noise, scale, intensity, traffic generation and movement, or other off-site impacts.*
- 11.1.4 - *To provide for Visitor Accommodation that is compatible with residential character.*

The specific purpose of the Rural Living zone is to allow residential development on rural land to act as a buffer from agricultural use impacting on sensitive use. The range of permitted use classes within Rural Living Zone Use Table 11.2 is limited to residential and visitor accommodation. Additionally, in juxtaposition to the Rural Zone, any discretionary listed activities must have regard to their impact on amenity of sensitive use on surrounding properties, in addition to the impact on agricultural use, pursuant to Clause 6.10.2 of the New Scheme.

Therefore, based on the zone purpose statements, the site is more suitable to be zoned Rural Living than Rural.

Such by zoning the property at 115 Cemetery Road, Dover along with the surrounding properties in the Huon Valley LPS Rural Living is consistent with the Guideline RLZ-1(a) as it is an:

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.

Additionally, this is also consistent with the statements under SRD 1.3 (a) of the *Southern Tasmanian Regional Land Use Strategy 2010-2035*.

Any environmental values will still be addressed under the Natural Assets Code which the LPS intends to have as an overlay in this area.

3 Conclusion

This representation provides site specific clarification for the following parcels of land

Currently, the property 115 Cemetery Road, Dover is zoned both Rural Resource and Recreation. Huon Valley Council has proposed under the Huon Valley LPS to zone the land Rural and Recreation without any clear reasoning as to the strategic value of the site being zoned this way.

Whilst the proposes zoning of land Rural and Recreation might be regarded as a clear transition of the current zoning this assumes that the current zoning is correct. The position of this submission is that it was an error in the transition from the Esperance Planning Scheme 1989 to the Huon Valley Interim Planning Scheme 2015 that has not been corrected.

Based on the actual land use, an analysis of the purpose of the zones, and a review of the Guidelines the more appropriate land use zoning is that of Rural Living Zone D. This zoning facilitates minor agricultural activities but is more applicable to the residential activity that is occurring on the land.

Therefore, pursuant to Section 35E (3)(b) of the *Land Use Planning and Approvals Act 1993*, the draft LPS should not apply the zone Rural and Recreation, as it is more appropriate to remain Rural Living zoned.

Reference

Place, Inspiring. "Huon Valley Recreation Plan." 112. Hobart: Huon Valley Council, 2020.

TPC. "Guideline No. 1 Local Provisions Schedule (Lps): Zone and Code Application." edited by Tasmanian Planning Commission (TPC), 56. Hobart, Tasmania, 2018.



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