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ANNEXURE PAGE

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**AGREEMENT UNDER PART 5  
LAND USE PLANNING AND APPROVALS ACT 1993**

This **Agreement** is made on the                      day of                      2020

BETWEEN: Daniel Han Gray-Barnett  
of 3376 Huon Highway, Franklin, TAS ("the Owner")

-and-

HUON VALLEY COUNCIL  
of 40 Main Street, Huonville in Tasmania ("the Council")

**TERMS OF AGREEMENT**

**1. OBJECTIVES**

- a) This **Agreement** is entered into pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993*.
- b) The purpose of the **Agreement** is to protect in perpetuity the **Environmental Values** of the **Land** and, in particular, the **Conservation Area**.
- c) It is the intention of both parties to the **Agreement** that it will have the effect of binding all future owners as well as the current owner of the **Land**. The **Owner's** covenants shall run with the **Land** as if they were covenants to which section 102(2) of the *Land Titles Act 1980* applies.
- d) This **Agreement** is to be registered pursuant to section 78 of the *Land Use Planning and Approvals Act 1993*.

**2. LAND**

This **Agreement** applies to the **Land**, being:


The whole of the land known as C.T. 33185folio 1 at Lloyds Road, Franklin in the Municipality of Huon Valley in Tasmania comprising of 4.3 hectares.

**3. DEFINITIONS AND INTERPRETATIONS**

3.1 In this **Agreement** unless the contrary intention appears:

- a) "**Agreement**" means this instrument including any schedules and attachments;
- b) "**Balance Land**" means that part of the **Land** (if any) that is not within the "**Conservation Area**";

NOTE:- Every annexed page shall be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing.

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- c) "**Clearance of Native Vegetation**" means the clearing, cutting, pushing over or otherwise removing of native vegetation or the destruction of native vegetation in any way;
  - d) "**Conservation Area**" means that part of the Lots marked "**Conservation Area**" on the plan attached hereto as Schedule A;
  - e) "**Council**" means Huon Valley Council;
  - f) "**Development Envelope**" means that part of the land (if any) marked "**Development Envelope**" on the plan attached hereto as Schedule A;
  - g) "**Environmental Values**" means all of the natural features of the **Conservation Area**, including but not limited to landscapes, soils, watercourses, species, habitats, ecological communities and the physical and hydrological processes that support those features; it may also include other values that have been specifically identified by Council (eg view-fields, cultural heritage values);
  - h) "**Exotic Species**" means any species not native to the **Land** or its immediate surrounds and includes any genetically modified organisms;
  - i) "**Foreign Material**" means any material that is derived from outside the boundaries of the **Land** and includes effluent, rubbish, soil, gravel, mulch and compost;
  - j) "**General Manager**" means the General Manager for the time being of Huon Valley Council and his or her successors in office;
  - k) "**Interference with the Natural Flow of Water**" means any diversion or capture of natural water flows and any addition to the natural water flows, including the construction of dams or drains and irrigation of any kind;
  - l) "**Land**" means the land described in Clause 2 of this **Agreement**;
  - m) "**Local Provenance**" means plants and plant propagules (seeds and cuttings) which are local in origin, preferably collected from within the local catchment area;
  - n) "**Native Vegetation**" means all plants, plant matter and fungi native to the **Land** or its immediate surrounds, including fallen dead wood and litter;
  - o) "**Owner**" means the person or persons named at the beginning of this **Agreement** as "the Owner" and includes any successors or assignees of that person;
- 3.2 Nothing contained herein should be taken to mean or imply that planning approval or any other approval has been or will be granted for activities which require such approval;
- 3.3 The reference to the harming or taking of any wildlife includes a reference to killing, destroying, hunting, pursuing, and catching, shooting, netting, snaring or injuring that wildlife.

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#### 4. GENERAL COVENANTS

In consideration of the **Council** as the relevant planning authority granting the planning permit for the development and/or use of the **Land** (Application number DA-96/2020) the **Owner** hereby covenants with the **Council** as follows:


- a) All of the native vegetation in the 2.64 hectare **Conservation Area** (Schedule A) is to be protected and must be managed by the **Owner** in perpetuity in accordance with this **Agreement** so as to protect and maintain or improve the condition of the **Environmental Values** contained herein, including **Native Vegetation** and habitat for threatened fauna species;
- b) All buildings and works, including the bushfire hazard management area, access and wastewater disposal must be entirely contained within the Development area and avoid impacts on native vegetation located within or outside the **Conservation Area**;
- c) Not to further subdivide the title unless the subdivision results in no additional lots and it can be demonstrated that an equal or greater conservation outcome is achieved;

#### CONSERVATION AREA

4.1 The **Owner** agrees in relation to the **Conservation Area**:

- a) to use the best endeavours to ensure that **Exotic Species** that pose a threat to the **Environmental Values** of the **Conservation Area** do not become established;
- b) to use the best endeavours to eliminate or control established **Exotic Species** that pose a threat to the **Environmental Values** of the **Conservation Area**;
- c) to implement the vegetation management prescriptions attached hereto as Schedule B for the ongoing protection of 2.64 hectares listed as the **Conservation Area**;
- d) to observe any fire management recommendations provided by the Tasmanian Fire Service or **Council** and to use the best endeavours to protect the **Conservation Area** from uncontrolled fire;
- e) to maintain fences where those fences are necessary to protect the **Environmental Values** of the **Conservation Area**;
- f) to use the best endeavours to ensure the **Environmental Values** of the **Conservation Area** are protected from any external impacts that are under the **Owner's** control;
- g) when clearing **Native Vegetation** for activities approved under this **Agreement**, to clear by cutting and slashing wherever possible so as to minimise soil disturbance; and
- h) in the event that any of the **Owner's** activities are found to pose a threat to the **Environmental Values** of the **Conservation Area**, to use the best endeavours to remove the threat and to undertake any rehabilitation that may be necessary.


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- 4.2 The **Owner** agrees in relation to the **Conservation Area** not to undertake or allow any actions that will damage or degrade the **Environmental Values**, except where necessary for the conduct of specific activities approved by the **Council** under Clause 4.4 or 4.5 of this **Agreement**.
- 4.3 The following actions may damage or degrade the **Environmental Values** and must not be undertaken within the **Conservation Area**, except where necessary for the conduct of specific activities approved by the **Council** under Clause 4.1 or 4.4 of this **Agreement**:
- a) **Clearance of Native Vegetation**;
  - b) introduction of Exotic Species;
  - c) planting of any plants;
  - d) use of chemicals (including fertilisers)
  - e) introduction of Foreign Material;
  - f) disturbance of the soil;
  - g) removal of soil, gravel or other mineral resources;
  - h) interference with the Natural Flow of Water;
  - i) boundary fencing (see above for guidelines);
  - j) building or placement of structures;
  - k) construction of roads or tracks;
  - l) removal of dead trees – standing or fallen;
  - m) off-road use of vehicles;
  - n) grazing of domestic animals; and
  - o) harming or taking of wildlife.
- 4.4 The **Council** agrees that the **Owner** may undertake the following activities in the **Conservation Area**, provided that any necessary approvals from the **Council** have first been obtained and any associated **Clearance of Native Vegetation** is the minimum required for the conduct of the approved activity:
- a) emergency fire-fighting operations, including fire breaks, control lines or “back-burns”;
  - b) off-road use of vehicles for emergency or essential management purposes;
  - c) use of registered herbicides or pesticides where necessary for the control of **Exotic Species** that threaten the **Environmental Values** of the **Land**;

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- d) revegetation using **Local Provenance** where necessary to stabilise exposed ground following soil disturbance or erosion;
- e) introduction of biological control agents which are declared agent organisms under the *Biological Controls Act 1986* for the control of declared target organisms under the *Biological Controls Act 1986*;
- f) harming or taking of wildlife where authorised by a permit under the *Nature Conservation Act 2002* or the *Wildlife Regulations 1999*;
- g) if and when required by the Tasmanian Fire Service or the Council, **Clearance of Native Vegetation** for fire hazard reduction;
- h) use of controlled burns for ecological purposes (e.g. the maintenance of biodiversity);

#### BALANCE LAND

4.5 The **Owner** agrees in relation to the **Balance Land** not to undertake the following activities:

- a) removal or damage to native trees with a diameter over 25cm at 1.5m from natural ground level without the prior written approval from Huon Valley Council;
- b) remove or damage to **Native Vegetation Communities** without the prior written approval from Huon Valley Council;
- c) introduction of grazing animals/stock to areas of pasture without first establishing stock-proof fencing to prevent them from straying into the **Conservation Area**;
- d) introduction of known environmental weeds or any other exotic species that pose a threat to the **Environmental Values** of the **Conservation Zone**;
- e) harming or taking of wildlife, unless authorised by a permit under the *Nature Conservation Act 2002* or the *Wildlife Regulations 1999*;
- f) subdivision or stratum title development but not including subdivisions that do not result in any additional lots, where it can be demonstrated that an equal or greater conservation outcome can be achieved.

4.6 The **Owner** agrees in relation to the **Balance Land** to:

- a) locate all development including buildings, structures, associated bushfire hazard management areas and on-site wastewater infrastructure within the **Balanced Land**;
- b) design and locate **Development** to minimise impacts on **Environmental Values** to the extent practicable;

4.7 In the event that any of the **Owner's** activities on the **Balance Land** are found to pose a threat to the **Environmental Values** of the **Conservation Zone**, to use best endeavours to remove the threat and to undertake any rehabilitation that may be necessary.

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5. WAIVER OF RIGHTS TO RECOVERY AND OTHER COMPENSATION

The **Owner** waives all rights to recover damages from the **Council** for any liability to the **Owner** for:

- a) personal injury to, or death of, any person; or
- b) for damage to any of the **Owner's** property or finances, arising from the performance or purported performance of any obligations or activities required or approved under this **Agreement**. This waiver does not operate to release the **Council** from any liability attributed to a wrongful (including negligent) act or omission on part of the **Council**.

6. DISPUTE

- a) If a dispute arises between the parties under this **Agreement**, then (except in the case of action required to be taken under statute) the parties agree that it must be resolved expeditiously in accordance with the provisions of this clause;
- b) If a dispute arises requiring resolution, a party must serve a notice on the other specifying the nature and substance of the matter in dispute;
- c) If, within thirty (30) days of a notice under Clause 6(b) being served, the parties are unable to resolve the dispute, then the dispute must be submitted by the parties for resolution under the following sub-clauses;
- d) The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience, as agreed between the parties, who will act as mediator and conduct mediation concerning the matter in dispute;
- e) If the dispute is not settled under Clause 6(d) or the parties fail to appoint a mediator, the **General Manager** may establish, in an attempt to resolve the dispute, a review committee comprising an independent chairperson and representative of the **Owner** and a representative of the **Council**. This committee will be required to review the dispute and then attempt to resolve the dispute by agreement;
- f) The costs of all mediation under this clause are to be shared equally between the parties;
- g) Each of the parties agrees to use their best endeavours to resolve the dispute through mediation;
- h) If a dispute cannot be settled within thirty (30) days (or such other period as the parties agree) of one party serving a notice of that dispute in accordance with Clause 6(b), the dispute must be determined under the provisions of the *Commercial Arbitration Act 1986*.

7. SEVERANCE

If any provision of this **Agreement** or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable. If any provision or part of it cannot be so read down, then the provision or part of it will be taken to be void and severable and the remaining provisions of this **Agreement** will not be affected or impaired in any way.

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**8. NOTIFICATION OF CHANGE OF OWNERSHIP**

- a) The **Owner** must notify the **Council** in writing of any agreement entered into by the **Owner** to effect any change of ownership or control of the **Land** and that notice must detail the name and address of all parties to the agreement and the nature of the change of ownership or control.
- b) The **Owner** must notify the **Council** in writing of any change of ownership or control of any portion of the **Land** and that notice must detail the name and address of the new owner, lessee or licensee.
- c) The **Owner** must provide a copy of all directions and approvals given by the **Council** under the terms of this **Agreement** to all prospective purchases, lessees or licensees of the **Land**.

**9. NOTIFICATION AND COMMUNICATION**

- a) The **Owner** and the **Council** must:
  - 1. advise each of any proposed action which could adversely affect the **Land**; and
  - 2. respond promptly to all communications from each other relating to this **Agreement**.
- b) The **Owner** must notify the **Council**:
  - 1. of any event which has or could have a significant adverse impact on the **Environmental Values** of the **Land**;
  - 2. if the **Owner** intends to alter the use of any part of the **Land**;
- c) The **Council** must notify the **Owner** of any information relating to the **Land** within its knowledge that could adversely affect the use and management of the **Land**.

**10. ACCESS**

- a) The **Owner** must, having been given reasonable notice by the **General Manager** or servants of the **Council**, allow relevant and identified servants of the **Council** to enter the **Land** at a reasonable time in order to:
  - 1. inspect the condition of the **Land**;
  - 2. carry out research relevant to the protection of the **Land**; or,
  - 3. determine whether the conditions of this Agreement have been complied with.
- b) The **Owner** and the **Council** must agree on the means of notification for a visit and the length of notice required. The **Owner** may also specify an access route, and the servants of the **Council** must follow that route, except in case of emergency.

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## 11. NOTICES

- a) A notice or other communication given or made under this **Agreement** must be in writing and addressed to the party to whom the notice is given at the address for service of notices as agreed by the parties from time to time.
- b) A notice or other communication is taken to have been duly served:
  - 1. in the case of hand delivery – when delivered;
  - 2. if sent by prepaid post – on the third business day after the date of posting;
  - 3. if sent by facsimile transmission (only if the sending facsimile machine produces a printout of the time, date and uninterrupted transmission record of the sending of the notice) – upon completion of sending if completion is within ordinary business hours in the place where the recipients facsimile machine is located, but if not, then at 9.00 a.m. on the next business day in that place;
  - 4. if sent by email, when the recipient acknowledges receipt of the email.
- c) A notice or other communication given or made under this **Agreement** is sufficient if:
  - 1. in the case of **Council**, it is under the hand of the **General Manager** or duly authorised officer of the **Council** or the **Council's** solicitors;
  - 2. in the case of the **Owner**, it is under the hand of the **Owner** or the **Owner's** solicitors.
- d) A printed or copied signature is insufficient for the purposes of sending any demand, written consent or other communication by facsimile transmission or email.

## 12. PERFORMANCE AND REVIEW

The **Owner** and the **Council** agree to review the operation of this **Agreement** every five (5) years, or at lesser intervals if circumstances necessitate, including but not limited to discussion of the operation of the **Agreement** and assessment of the level of compliance by both parties.

The **Council** agrees that, in the event that the **Owner** fails to comply with the terms of the **Agreement**, the **Council** must give reasonable notice and opportunity for the **Owner** to undertake the necessary works to rectify this failure and remedy any damage caused by this failure.

the **Owner** agrees that, in the event that they fail to comply with terms of this **Agreement** and fail to undertake the necessary works to rectify this failure and remedy any damage caused by this failure, having been given reasonable notice and opportunity to rectify this failure, the **Owner** is burdened by all of **Council's** costs to rectify and undertake these works on the **Owner's** behalf.

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13. COSTS

The **Owner** must pay all costs associated with the preparation, execution and registration of this **Agreement**. Each party is to pay its own costs of the future operation of this **Agreement**.

SIGNED SEALED AND DELIVERED  
BY THE OWNER

Daniel Han Gray-Barnett



in the presence of:

Witness Signature:



Witness Name:

COLLEEN MARGE SHIELD

Address:

3/11 MAIN STREET, HUON VILLE, TAS. 7109

Occupation:

BANK MANAGER

THE COMMON SEAL of the Huon Valley Council has been hereunto affixed pursuant to a resolution of the said Council passed the ..... day of ..... in the presence of us:

Mayor/Councillor: .....

Council Delegate: .....

Mortgagee: .....

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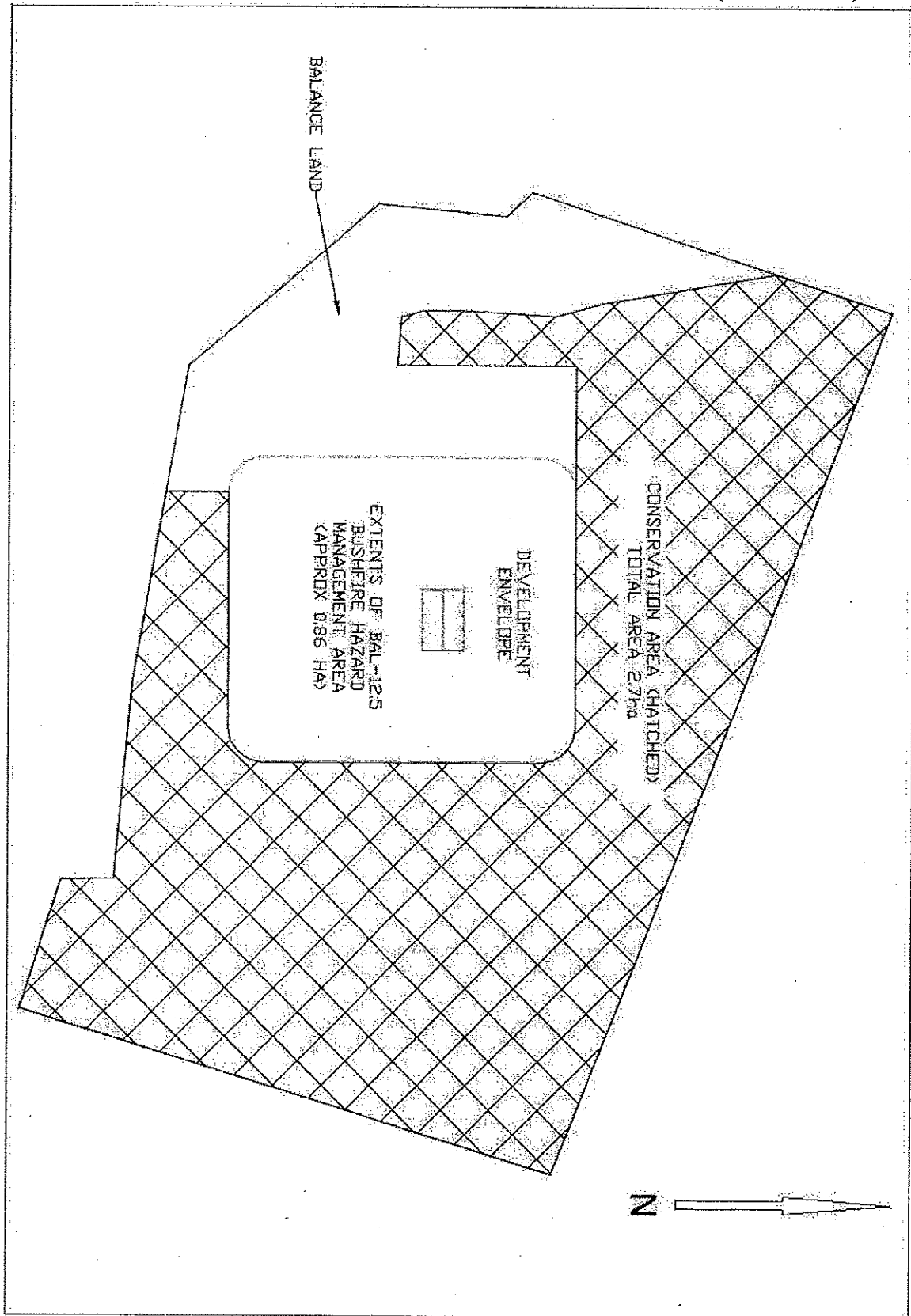
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**SCHEDULE A: CONSERVATION AREA, LLOYDS ROAD, FRANKLIN (C.T. 33185/1)**



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**SCHEDULE B: VEGETATION AND LAND MANAGEMENT PRESCRIPTIONS FOR  
CONSERVATION AREA, LLOYDS ROAD, FRANKLIN (C.T. 33185/1)**

For future reference the Part 5 Conservation Area applicable to C.T. 331185/1 Lloyds Road, Franklin is defined by Schedule A. Management prescriptions for the Conservation Area include:

- The conservation area supports two native vegetation communities. Both are not listed as a threatened under Tasmania's *Nature Conservation Act 2002*;
- No harvesting, clearance or conversion of native vegetation as per definition in HVIPS2015 from within the Part 5 Conservation Area without appropriate approval from Huon Valley Council,
- Prior to commencement of any works, including fencing, implement best practice hygiene protocols to prevent accidental importation of new weed species and *Phytophthora cinnamomi*. Includes including cleaning all machinery and equipment off-site prior to commencement of works in accordance with *Tasmanian Washdown Guidelines for Weed and Disease Control: Machinery, Vehicles and Equipment (Edition 1, 2004)*;
- Where required weed management activities permitted in accordance with Statutory Weed Management Plans.
- No livestock, including but not limited to horses, cattle, pigs, sheep, goats, poultry and alpacas, are permitted within the Conservation Area identified in this Part 5 Agreement;
- Fencing of existing property boundaries bordering the Conservation Area is permitted in accordance with provisions within the fencing act;
- Dead trees must be retained as they offer nesting hollows for birds and animals, especially parrots and owls and provide a vantage perch site for most birds of prey;
- Access for fire management activities such as bushfire suppression including for biodiversity regenerating purposes permitted where provided for in Clause 4.4 of this Agreement.

For future reference the Balance Land applicable to C.T. 331185/1 Lloyds Road, Franklin is defined by Schedule A. Management prescriptions for the Conservation Area include:

- Prior to commencement of any works, including fencing, implement best practice hygiene protocols to prevent accidental importation of new weed species and *Phytophthora cinnamomi*. Includes including cleaning all machinery and equipment off-site prior to commencement of works in accordance with *Tasmanian Washdown Guidelines for Weed and Disease Control: Machinery, Vehicles and Equipment (Edition 1, 2004)*;
- No harvesting, clearance or conversion of native vegetation as per definition in HVIPS2015 from within the balance land without appropriate approval from Huon Valley Council;
- Where required weed management activities permitted in accordance with Statutory Weed Management Plans.

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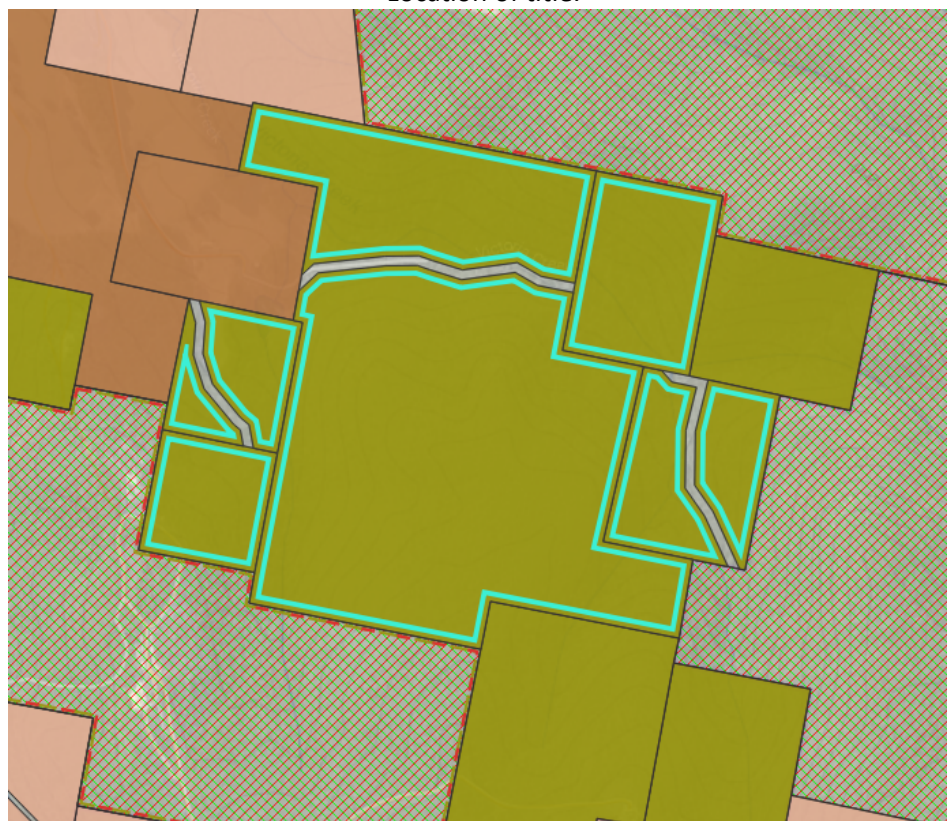
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Disclaimer: This Huon Valley Zoning Association Template is to be used to assist the landowner in structuring their position to the Planning Authority. It is not to be understood as planning or legal advice and whilst the information provided in this template is within our best efforts as being correct, these details need to be verified by the landowner, themselves.

Owner / Representor: Nigel Goodwin			Location address:153;67 Goodwins Rd Upper Woodstock		
CT	PID	Area Size	IPS	Council LPS (Post 35F)	Requested Zone/s
147364/1 245056/1 147364/3 120775/1 147364/2 147364/4	2558323	10.11 ha 16.90 ha 6.27 ha 10.28 ha 6.10 ha 52.57 ha	26.0 Rural Resource	Landscape Conservation	Rural

Location of title.

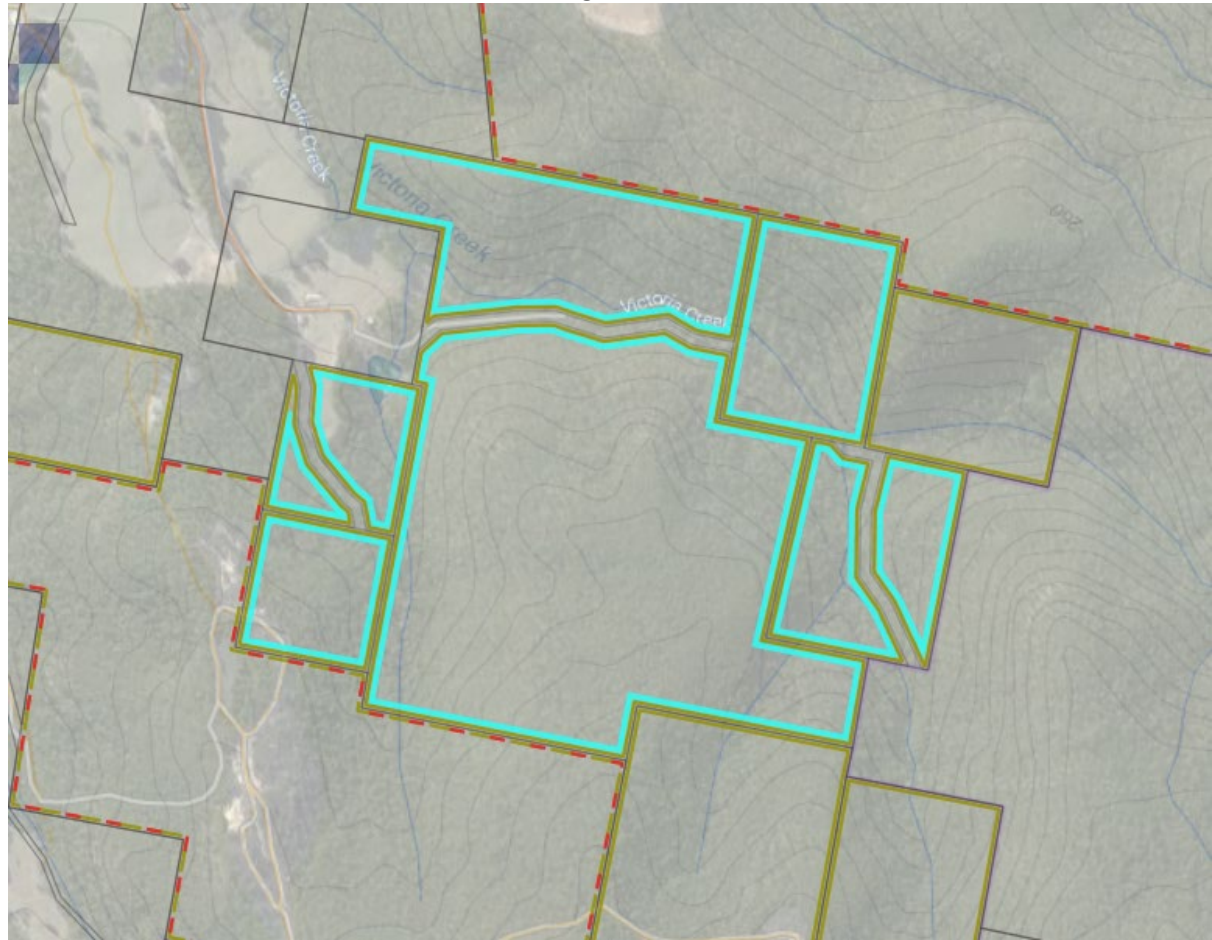


LEGEND		
<span style="display:inline-block; width:15px; height:15px; background-color:yellow;"></span> General Residential	<span style="display:inline-block; width:15px; height:15px; background-color:purple;"></span> Light Industrial	<span style="display:inline-block; width:15px; height:15px; background-color:lightyellow;"></span> Community Purpose
<span style="display:inline-block; width:15px; height:15px; background-color:lightcoral;"></span> Low Density Residential	<span style="display:inline-block; width:15px; height:15px; background-color:darkpurple;"></span> General Industrial	<span style="display:inline-block; width:15px; height:15px; background-color:lightgreen;"></span> Recreation
<span style="display:inline-block; width:15px; height:15px; background-color:pink;"></span> Rural Living	<span style="display:inline-block; width:15px; height:15px; background-color:tan;"></span> Rural	<span style="display:inline-block; width:15px; height:15px; background-color:darkgreen;"></span> Open Space
<span style="display:inline-block; width:15px; height:15px; background-color:orange;"></span> Village	<span style="display:inline-block; width:15px; height:15px; background-color:brown;"></span> Agriculture	<span style="display:inline-block; width:15px; height:15px; background-color:lightorange;"></span> Future Urban
<span style="display:inline-block; width:15px; height:15px; background-color:lightblue;"></span> Local Business	<span style="display:inline-block; width:15px; height:15px; background-color:olive;"></span> Landscape Conservation	<span style="display:inline-block; width:15px; height:15px; background-color:magenta;"></span> Particular Purpose
<span style="display:inline-block; width:15px; height:15px; background-color:blue;"></span> General Business	<span style="display:inline-block; width:15px; height:15px; background-color:darkolivegreen;"></span> Environmental Management	<span style="display:inline-block; width:15px; height:15px; background: repeating-linear-gradient(45deg, transparent, transparent 2px, black 2px, black 4px);"></span> Split*

\*Split Zones please consult Draft-HVC-LPS data Appendix 61 and later 35F documentation.

\*\*Light Blue Border shows owner's land in question.

Viewshed: 0% Coverage across all titles selected



Huon Valley Zoning Association's Viewshed Map:

#### LEGEND

HVC-LIST-HVZA-RAW

VIEWShed

Landscape Conservation

Landscape Conservation Split Zone

HVZA-ViewShed

No. of Viewpoints

<3

3

6

9

11

14

17

20

22

>25

\*Light Blue Border shows owner's land in question.

\*\*Landscape Conservation (LCZ) Borders indicate land within the Huon Valley Councils Endorsed 35F and Draft-LPS with LCZ full or split Zoning intent.

\*\*\* The HVZA-Viewshed indicates how visible parts of the subject title is from a viewshed based off of verified scenic road corridors. The colour shade represent how many viewpoints can see a portion of land. Further, explanation is to be provided to the TPC by HVZA.

Property Description
<p>The six blocks mentioned above are mostly connected to each other and consist of steep grades from both sides of Victoria Creek, which has almost a permanent flow except for mid to late summer, where it tends to stop altogether. Away from the Creek, there are less steep grades of land with access via tracks put in place by previous owners prior to 1960s where selective logging occurred for apple box timber.</p> <p>Most of the land can only be seen from the adjacent hills but cannot be seen from the Channel Highway on from the Pelverata Rd.</p> <p>The largest hill within the area has mostly Brown Peppermint trees on it, the other areas have Stringy Bark. All the land involved was completely burned in 1967 and although the Stringy Bark trees survived, the few Blue Gums didn't, and have still not reappeared.</p>

Current use of title
<p>The land was purchased by my father between 1946 and 1960 where he became an apple orchardist until 1975. He then cleared suitable land and bred beef cattle. I assisted him with this and continue to still do the same. It's a small beef operation with approx.. 25Ha of cleared land for pasture but the areas of bushland is used for winter grazing and shelter for the livestock.</p>

How does the title not meet Council's proposed Zone
---

As the land cannot be seen from any major travel route and has no skyline visible, it has no landscape value, therefore does not meet LCZ1.
---

This can be demonstrated by the "view shed" supplied by HVZA, attached.
---

How does the title meet Requested Zone/s
--

These titles has been used for many years as part of a rural farming operation and should be permitted to continue. If like for like was applied it could be.
---