
From: Chris Sharman [REDACTED] >
Sent: Monday, 4 May 2026 5:19 PM
To: Kingborough LPS
Cc: Courtney Sharman
Subject: LPS Submission - C & C Sharman - [REDACTED]
Attachments: TPC Submission [REDACTED] v3.pdf

To whom it may concern,

Please find attached our submission to the Tasmanian Planning Commission in relation to the Kingborough draft Local Provisions Schedule (LPS).

Yours Sincerely
Chris Sharman and Courtney Sharman

Submission to the Tasmanian Planning Commission

Kingborough Draft Local Provisions Schedule

Request for Rural Living Zone D: [REDACTED], Margate

Date: 2 May 2026

To: The Tasmanian Planning Commission

Property Address	[REDACTED], Margate TAS 7054
Title Reference (folio)	Volume [REDACTED] Folio [REDACTED]
Lot Size (approx)	12.88ha
Locality	Margate
Current IPS Zone	Environmental Living Zone (ELZ)
Draft LPS Exhibited Zone	Landscape Conservation Zone (LCZ)
Ireneinc Recommended Zone	Landscape Conservation Zone (LCZ)
Zone Sought in this Submission	Rural Living Zone D (RLZ D)
Conservation Covenant	Yes — Nature Conservation Act 2002, s.34 (Instrument C919105, registered 10 August 2009)

Introduction

The owners of [REDACTED] Margate (the Owners) write in response to the Commission's letter advising that the Ireneinc report recommends that the property remain within the Landscape Conservation Zone (LCZ) under the draft Kingborough Local Provisions Schedule (LPS). As the Owners were not aware of the proposed zoning change until after the public exhibition period, no formal representation was made during that

process. It is the Owners' understanding that the Commission's letter provides the opportunity to formally participate at this stage by making a written submission.

The Owners dispute the Ireneinc recommendation and submit that Rural Living Zone D (RLZ D) is the more appropriate zone. The Owners understand that making a submission does not confer a right to be heard, but invite the Commission to consider the matters raised and, if appropriate, to invite the Owners to discuss them.

The term "landscape values" is not specifically defined by the Tasmanian Planning Scheme, and as acknowledged in the Ireneinc report (Kingborough LCZ Review and Findings Report, March 2026), "it is not evident that a consistent approach has been taken in establishing the extent of localised values in all localities across the region." The Southern Tasmania Regional Land Use Strategy at policy CV 4.1 requires that state and local government, in consultation with the community, determine an agreed set of criteria for identifying landscape values (Ireneinc, *Kingborough LCZ Review and Findings Report*, March 2026, section 4.2.4). That process has not occurred in relation to this locality.

As recognised by Council, Ireneinc, and the TPC throughout this process, the standard zone framework contains no zone that adequately reflects areas where long-established residential use coexists with high natural and scenic values. Council's section 35F report acknowledges that "neither of these two standard zones adequately reflect the unique characteristics of these areas or reflect the predominant and desirable uses." The question before the Commission is therefore not which zone perfectly describes this property, but which available zone is more appropriate for it. RLZ D, in combination with the Conservation Covenant and applicable overlay codes, is a substantially better outcome than LCZ, which tips the planning balance entirely toward conservation at the expense of an established residential use that has coexisted with, and actively stewarded, the natural values of this land for decades.

The following table summarises how this property sits against each decision point in the Ireneinc evaluation pathway (Kingborough LCZ Review and Findings Report, Table 8 and Appendix B):

Decision Point	Answer	Basis
1. Is there a strategic intention for any residential use to occur?	YES	Established dwelling (2014); non-covenanted area explicitly retained for residential use; current ELZ is a residential zone
2. Does the area include state-reserved land?	NO	Private freehold title (EMZ does not apply)
3. Does the area have characteristics of a rural living settlement?	YES	~30 dwellings on [REDACTED]; consistent pattern of detached dwellings with outbuildings; visual evidence of rural living activities

4. Are identified landscape values present?	YES	Bushland, native vegetation and scenic values are present — but the report itself states existence of landscape values alone is not sufficient to apply LCZ
5. Could identified landscape values be appropriately managed outside of LCZ?	YES	Conservation Covenant (perpetual, statutory, ministerial) protects 10.91ha in perpetuity, a superior instrument to any code or overlay available under the scheme. RLZ D (10ha minimum lot size) prevents further subdivision.

1. The Conservation Covenant Provides Comprehensive and Perpetual Statutory Protection of Natural Values

This property is unique in the [REDACTED] locality: the **majority of it — approximately 10.91 hectares — is already subject to a legally binding, perpetual Conservation Covenant** registered under Section 34 of the *Nature Conservation Act 2002* (Instrument C919105, dated 10 August 2009, Vol. 145943 Fol. 2). The covenant was entered into **voluntarily** by the registered proprietor — not at the direction of Council or the State — and binds the current and all future owners in perpetuity.

The covenanted area ("Conservation Covenant Area 1" on Plan CPR8576) is specifically delineated on the title. The covenant protects significant Comprehensive, Adequate and Representative (CAR) reserve system values, including five listed eucalyptus forest communities. The covenant prohibits clearing of native vegetation, building or placement of infrastructure, subdivision, introduction of exotic species, and any activities that would damage or degrade the Natural Values. These are **legally enforceable obligations running with the title in perpetuity**.

The purpose of the LCZ is, in the words of clause 22.1 of the State Planning Provisions (SPPs), "to provide for the protection, conservation and management of landscape values." The covenant already achieves this outcome across 10.91 of the property's 12.88 hectares. **Applying LCZ over land already protected by a perpetual statutory covenant provides no additional protection whatsoever.** The Commission confirmed this logic at Day 20 of the Hearing (15 April 2026) [02:33:54], when Commissioner Dan Ford drew the concession from Ireneinc that the Priority Vegetation Area (PVA) overlay does the landscape protection work — not the zone.

Council's own section 35F report (July 2025) further confirms that a protective agreement is **not determinative for zoning**. In its response to Representation 22 (303 Lighthouse Road, South Bruny), Council stated: "Although the property is subject to a Part 5 Agreement aimed at protecting natural values, this should not be the determining factor for zoning," and recommended the Rural Zone instead. A Conservation Covenant registered under s.34 of the *Nature Conservation Act 2002* is a materially stronger instrument than a Part 5

Agreement under the Land Use Planning and Approvals Act 1993 (LUPAA), being perpetual, ministerially executed, and registered on title.

2. The Property Has a Distinct Residential Area Intentionally Outside the Covenant

The covenant plan (CPR8576) specifically delineates "Conservation Covenant Area 1"; the remainder of the land is not subject to the covenant and was **deliberately retained for residential and rural living purposes**. The dwelling was constructed in 2014 on this non-covenanted portion and has been occupied as the family home since that time. Covenants routinely identify a designated area for residential or domestic use alongside a conservation area. This property follows precisely this model.

To zone the entire title LCZ, including the portion specifically preserved from the covenant for residential use, would be to use a planning instrument to further restrict land that the Owners deliberately and with the Minister's agreement set aside for ongoing residential use. Council's own Landscape Conservation material acknowledges that applying one zone to an entire cadastral parcel is not always "logical or appropriate" where the characteristics of different portions of land differ. Part of this title is under a perpetual conservation covenant; part is a residential lot. They warrant different treatment.

3. Rural Living Zone D Is the Correct Zone for This Property

The Rural Living Zone purpose (clause 11.1 of the SPPs) is "to provide for residential use or development in a rural setting where services are limited or existing natural and landscape values are to be retained." This describes this property: an established dwelling in a rural setting on a large lot, where natural values are not only retained but legally locked in by covenant.

RLZ D (minimum lot size 10ha) is the appropriate variant. The Ireneinc report specifically notes that for parcels of 15ha or smaller, "it is possible that the Rural Living Zone D subcategory could be applied to ensure subdivision potential was not provided for" (section 5.3.1.1, p.73). At 12.88ha, this property falls precisely within that example: RLZ D renders any further subdivision mathematically impossible, directly neutralising Council's concern about erosion of landscape values through increased density. The covenant itself also prohibits subdivision of the covenanted area in any event.

RLZ D is also the appropriate subcategory for the broader western end of Old Bernies Road. The properties on that end are generally larger than those on the eastern end, with several exceeding 10ha. RLZ D would limit subdivision potential across the western end more effectively than RLZ C, while reflecting the larger lot pattern that characterises that part of the road. As shown in Attachment A, the western end is extensively settled, with established dwellings on nearly every parcel.

Under RLZ, the property's natural values would remain protected by the Conservation Covenant, the Natural Assets Code (NAC), the Scenic Protection Code (SPC), and the Priority Vegetation Area (PVA) overlay. RLZ4(b) of the Zone Guidelines establishes that RLZ should not be applied to land containing important landscape values *"unless the values can be appropriately managed through the application and operation of the relevant codes"* (the Ireneinc report, section 5.3.1). That condition is satisfied: the Conservation Covenant alone provides protection exceeding anything achievable through a planning zone or code, with NAC, PVA, and SPC providing additional mechanisms. The Ireneinc report itself acknowledges that Council's approach "provided a global determination... without properly examining whether codes could manage the landscape values at a localised scale" and that "depending on the landscape value relevant to an area it is possible that there are properties... which could satisfy RLZ4(b) and be appropriate to be considered within the RLZ" (section 5.3.1, p.72). This property falls squarely within that category.

4. Residential Strategic Intention: Decision Point 1

The first and most critical question in the Ireneinc evaluation pathway is whether there is a strategic intention for any residential use to occur. The answer for this property is clearly yes, for the following reasons.

The property is currently zoned Environmental Living Zone (ELZ) under the Interim Planning Scheme. The ELZ was itself a residential zone, with the purpose of providing for residential use or development in areas where natural and landscape values are to be retained. A residential intention is already embedded in the current zone.

An established dwelling has been occupied on the property since 2014, located on the non-covenanted portion of the title. The existence of an established dwelling is the most direct possible evidence of a residential strategic intention.

The Conservation Covenant plan (CPR8576) itself provides documentary evidence of residential intention. By explicitly delineating "Conservation Covenant Area 1" and excluding the remaining land from the covenant, the registered proprietor — with the Minister's agreement — formally recorded that the non-covenanted portion was intended for ongoing residential use. That exclusion is not incidental; it is a deliberate and documented act.

The settlement pattern on [REDACTED] is consistent with rural living, with established dwellings on the majority of lots in the area, including those with significant native vegetation cover. As shown in Attachment A, the area is extensively and consistently settled, providing clear visual evidence that residential use is the primary strategic intention of the locality.

It is anticipated that Ireneinc or Council may argue that the Conservation Covenant is evidence of a conservation rather than residential primary intention. The Owners submit that this conflates the covenanted portion with the whole title. The covenant itself, by its own terms and its delineated boundary, distinguishes between the two. The residential intention on the non-covenanted land is not diminished by the conservation intention on the covenanted land; the two intentions coexist on the same title, precisely as the covenant instrument was designed to allow.

5. The Settlement Pattern and East/West Inconsistency

██████████ has at least **30 established dwellings**, well exceeding the minimum threshold of 10 blocks between 1 and 15 hectares the evaluation framework identifies as indicative of a rural living settlement pattern (the Ireneinc report, Table 8, Decision Point 3). Nearly all properties on the road have established dwellings, including those with significant native vegetation cover, demonstrating that bushland and residential use are not mutually exclusive in this locality. The road exhibits a consistent pattern of detached dwellings with outbuildings throughout its length. The broader locality, including Tabors Road, McGowans Road, and Van Morey Road, follows the same pattern.

As shown in Attachment A, the LCZ area is extensively and consistently settled. LCZ is not intended to be a zone in which people live — its purpose is the protection and conservation of landscape values, with residential use largely discretionary. Applying it to an area with this density of established dwellings is inconsistent with that purpose and directly engages the LCZ4 prohibition addressed in Section 6.

The proposed zoning creates an internal inconsistency: the eastern portion of ██████████ is proposed for RLZ while the western portion, including this property, is proposed for LCZ. The settlement pattern, lot characteristics, and rural living character are materially the same across the full length of the road. The apparent bases for the split are that the western end has denser native vegetation coverage and larger lot sizes. Neither is a valid distinction.

On vegetation density: the Ireneinc report explicitly acknowledges that the earlier LCZ methodology placed excessive weight on vegetation coverage. Council's 2023 revised approach was to have *"less emphasis on vegetation cover and a stronger focus on landscape values."* If vegetation density alone drove the western end into LCZ, that basis has been superseded by the methodology Ireneinc itself was appointed to apply. Furthermore, if RLZ with NAC, PVA, and Scenic Protection overlays is sufficient to manage landscape values on the eastern properties, the same answer must follow for the western properties. The management tools are identical on both ends of the road.

On lot size: as set out in Section 3, larger lots are an argument for RLZ D, not LCZ. The Ireneinc report identifies RLZ D as the appropriate subcategory for managing subdivision risk on parcels of this size. Lot size is not a reason to apply LCZ.

The directly neighbouring property was included in Council's proposed Kingborough Bushland and Coastal Living Zone (PPZ), a zone proposed specifically because LCZ was considered too restrictive for properties with established residential use in bushland settings. This property, which has stronger protections than its neighbour, was not included. That inconsistency warrants scrutiny.

The Ireneinc report warns against fragmented application of LCZ. Applying LCZ to the western end while the eastern end is RLZ produces exactly this outcome: a patchwork zone boundary mid-road with no principled justification. The properties on the western end are predominantly large-lot residential holdings with established dwellings, hobby farming, and home-based businesses, all consistent with the RLZ purpose and use table. Rezoning only this property in isolation would itself create a fragmented outcome; a broader RLZ outcome

for the western end is the more principled planning response. Commissioner Rohan Probert directly identified at Day 20 (15 April 2026) [01:07:48] that near-identical landscape descriptions for Tinderbox East and Howden produced opposite zone outcomes. The same inconsistency applies here: properties with near-identical settlement characteristics are treated differently based on which side of a zone boundary they fall.

6. LCZ4 Prohibits Application of LCZ to This Property

LCZ4 of the TPC's *Section 8A Guideline No. 1 — Local Provisions Schedule (LPS): Zone and Code Application* (Version 3.0) explicitly prohibits the application of LCZ to land where the priority is for residential use and development, stating that LCZ "is not a replacement zone for the Environmental Living Zone in interim planning schemes" and "is not a large lot residential zone in areas characterised by native vegetation cover." This property has an established dwelling (2014) on land deliberately retained for residential use, is currently zoned ELZ and has its conservation values already secured by a superior instrument. LCZ4 therefore prohibits the application of LCZ to this land.

7. Procedural Fairness: The Locality Assessment Has Not Been Made Available

The locality-by-locality assessments where the Ireneinc decision tree is actually applied to each area appear not to have been publicly released. Without access to the locality assessment, the Owners are unable to verify what pathway was followed, what evidence was relied upon at each decision point, or whether the Conservation Covenant was treated as determinative of residential intention rather than being properly considered in the context of the non-covenanted land. The Commission is asked either to require publication of the locality assessments or to give greater weight to the arguments made in this submission, which sets out a clear RLZ pathway through the decision tree.

8. Conclusion and Requests

The Owners submit that the appropriate zoning outcome for [REDACTED], Margate is **Rural Living Zone D**. The case rests on two independent bases.

The first applies to all properties on the western end of [REDACTED] the settlement pattern satisfies the rural living indicators, LCZ4 prohibits LCZ where the priority is residential, and the methodology that drove this end into LCZ placed excessive weight on vegetation density in a manner Ireneinc itself has acknowledged was inadequate. RLZ D is appropriate for the western end as a whole.

The second is unique to this property: the Conservation Covenant provides statutory protection that already achieves the purpose of LCZ, making that zone redundant on this title.

RLZ D for the western end as a whole is the principled outcome: it eliminates fragmentation, reflects the established settlement pattern, and retains the overlay codes and statutory

instruments that manage natural values across the area. That outcome would also be consistent with LCZ4, RLZ4(b), the Commission's own Day 20 reasoning, and Council's acknowledgement that neither standard zone adequately reflects this type of locality.

The Owners respectfully request that the Commission:

1. **Determine** that the draft Kingborough LPS should be modified to include the property at 165 Old Bernies Road, Margate within the **Rural Living Zone D**; and
2. **If the Commission proposes any alternative outcome**, that the Owners be provided with an opportunity to respond before any final determination is made.

Signed:  (CHRISTOPHER L SHARMAN)

Date: 5/4/2026

Signed:  (COURTNEY J SHARMAN)

Date: 5/4/2026

Attachment A: Figure 1 — Kingborough draft LPS zone overlay showing subject property at 165 Old Bernies Road (red outline), proposed LCZ parcels (orange outline), proposed RLZ parcels (blue outline), conservation covenant areas (green fill), and existing buildings (red dots). Source: The LIST, Kingborough Council draft LPS data, May 2026.

Parcels

 Buildings

Conservation Covenants

Parcels Info (local)

 Proposed LCZ

 Proposed RLZ

 

Google Satellite Hybrid

