



23 November 2020

Ms Sandra Hogue
Acting Executive Commissioner
Tasmanian Planning Commission
GPO Box 1691
Hobart TAS 7001

By email: tpc@planning.tas.gov.au

Circular Head Draft LPS – Representation No 32 - response to Section 35F Report

Dear Commissioner Hogue

Conservation Landholders Tasmania wishes to respond to a number of matters raised by the Circular Head planning authority in their Section 35F Report about our representation, as well as relevant matters from the Supporting Report, in advance of the 1 December 2020 hearing.

Yours sincerely

A handwritten signature in blue ink, appearing to read "John Thompson".

John Thompson
On behalf of the Board of Trustees, CLT Trust

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1. The Circular Head planning authority misread the CLT representation thereby making their comment partly invalid

The Section 35F Report p 48 states that the CLT representation 'requests that all land subject to a conservation covenant be zoned Landscape Conservation'.

In fact, the representation only proposed that some of the 19 properties with conservation covenants should be rezoned as Landscape Conservation, i.e. 'titles where the covenant covers the whole area, or on partly covered titles where the non-covenanted part is unsuitable for agriculture'.

Consequently there are only six properties that CLT considers as more appropriately zoned as Landscape Conservation.

| Address | PID | Title References | Draft Zone |
|---------------------------------------|---------|---------------------|-------------|
| 273 MAWBANNA RD BLACK RIVER TAS 7321 | 3173687 | 161750/1 | Agriculture |
| 26588 BASS HWY REDPA TAS 7330 | 6247944 | 114976/1 | Agriculture |
| 205 ARTHUR RIVER RD MARRAWAH TAS 7330 | 7556669 | 245124/1 | Rural |
| CROLES RD TROWUTTA TAS 7330 | 1905223 | 241538/1 & 213266/1 | Rural |
| 913 SUMAC RD ROGER RIVER TAS 7330 | 6247119 | 237812/1 | Rural |
| SANDY CAPE TRK TEMMA TAS 7330 | 6252022 | 236792/1 | Rural |

All of the above titles are fully covenanted or partly covenanted with the non-covenanted part unsuitable for agriculture, so the 'land use of the whole lot' was taken into account.

2. The argument that 'covenants in themselves provide significantly greater protection of natural values' is not relevant to the correct application of the State Planning Provisions

The protection of natural values on covenanted land afforded by the *Nature Conservation Act 2002* must not be a consideration by the planning authority when applying the Zones and Codes in the State Planning Provisions (SPPs) to that land. The existence of a covenant does not exempt the planning authority from following the Guidelines. Its job is to apply the most appropriate zone according to the SPPs and the Guidelines to meet its obligations under the *LUPA Act 1993*.

The existence of a conservation covenant on these properties is only relevant in that it demonstrates that these properties comply with Guidelines RZ1 and LCZ1 as possessing specific natural values that have been 'identified for protection and conservation' by the Minister for Environment, on behalf of the Crown.

3. The argument that the above covenanted properties can only be rezoned to Landscape Conservation as part of a future municipality-wide strategic analysis is not supported by the Guidelines

As stated above, the planning authority is required to apply the most appropriate zone according to the SPPs and the Guidelines during the current process. Assessing the six covenanted properties that met CLT's criteria is surely not beyond the scope of this Draft LPS process.

4. Protection of priority vegetation on properties zone Rural by the Natural Assets Code is limited

The Natural Assets Code only applies to development and does not apply to use (C7.2.2). The Rural zone allows a number of uses, e.g. Resource Development (No Permit Required), Extractive Industries (Permitted), that may not require a development application but which are nonetheless incompatible with the protection of the natural values on those properties.

Furthermore, codes do not apply to development under a Permitted Use which is an Acceptable Solution.

5. The Circular Head planning authority have inconsistently applied Landscape Conservation in their Draft LPS

Section 3.0 of Circular Head Council LPS Supporting Report (March 2019 – Revised December 2019) describes how the new zones in the SPPs have been applied.

In addition to the 105 lots on the west coast and at Rocky Cape currently zoned Environmental Living which have been converted to Landscape Conservation, as allowed under Guidelines LCZ 2(c) and LCZ 3, seven other properties currently zoned Rural Resource, including Lot 1 Arthur River Rd (PIDs 3486587 and 3486579), have been converted to Landscape Conservation.

Appendix B (Agriculture and Rural Zone Decision Rules) describes the criterion used for converting Rural Resource to Landscape Conservation.

*Titles with significant natural values will be recommended for an alternate zone to Agriculture.
... Landscape Conservation will be prioritized where the land is subject to greater public exposure.*

We propose that this criterion incorrectly focuses on the scenic values of titles at the expense of the natural values. While 'landscape values' is not defined in the SPPs the Guidelines make it clear that landscape values include both natural and scenic values.

Appendix C (Natural Values Assessment for Landscape Conservation Zone) identifies the natural values for the seven properties to be converted from Rural Resource to Landscape Conservation, all of which include rare, threatened or endangered habitat, species or vegetation communities as identified values.

The six properties in our list have also been identified as containing threatened fauna, flora or vegetation communities, and should have been rezoned accordingly.

6. The Circular Head draft LPS incorrectly applied the Guidelines to PID 1905223 (Representation No 1) and PID 6252022 (Representation No 2)

The two properties in question are zoned as Rural Resource under CHIPS2013.

In its Supporting Report discussion of zone conversion from Rural Resource was limited to Rural and Agriculture. But in doing so they have failed to comply with Guideline RZ1 which requires that Rural zone should not be used if the land is

more appropriately included within the Landscape Conservation Zone or Environmental Management Zone for the protection of specific values.

The Tasmanian Government has, under the *Nature Conservation Act 2002*, 'identified' the covenanted land on these properties for 'protection and conservation' of specific natural values in perpetuity. Under this Act the Minister, on behalf of the Crown, initiates the covenant and identifies the natural values to be protected then enters into a conservation covenant with the private landowner for a conservation purpose, as defined in the Act.

Furthermore, the Terms of Covenant for these two properties include a clause to the effect that the purpose of the covenant is to protect the natural values.

The Australian Government has also identified this land for 'protection and conservation' in perpetuity as part of the National Reserve System in fulfilment of its international obligations under the *1993 Convention on Biological Diversity*.

Therefore these properties should be zoned as Landscape Conservation as required by Guidelines RZ1 and LCZ1.

6. The identified natural values at PID 1905223 (Representation No 1) and PID 6252022 (Representation No 2)

Property ID 1905223 on Croles Road, Trowutta

The conservation covenant (CPR6215) was approved by the Minister for Environment as the property provides habitat for a number of endangered and vulnerable fauna within a mix of vegetation communities including *Nothofagus - Atherosperma* rainforest, *Acacia melanoxylon* forest on rises, Broad-leaf scrub and *Leptospermum* with rainforest scrub.

It provides habitat for the endangered Tasmanian devil *Sarcophilus harrisii*, Grey goshawk *Accipiter novaehollandiae*, and Wedge-tailed eagle *Aquila audax fleayi* Schedule 3, as well as the vulnerable Giant freshwater crayfish *Astacopsis gouldi* Schedule 4 of the *Threatened Species Protection Act 1995*

Property ID 6252022 on Sandy Cape Track, Temma

The conservation covenant (CPR6293) was approved by the Minister for Environment as the property contains the threatened vegetation community No. 30 '*Melaleuca ericifolia* swamp forest', as listed in Schedule 3A of the *Nature Conservation Act 2002*.