

Submission to the Tasmanian Planning Commission in response to the Section 35F Report on Representation No 42 – Northern Midlands Draft LPS Assessment

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

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Summary

Representation No 42 proposed that 11 of the 81 properties containing Private Reserves protected by conservation covenant in the Northern Midlands municipality should be rezoned fully or partly to Landscape Conservation based on Guideline LCZ1, when read together with Guideline AZ6, subject to landowner agreement.

In its Section 35F Report the Planning Authority opposed the representation without detailed consideration based on three high level arguments:

- 1. Private Conservation Covenants are not permanently reserved for the purposes of determining the underlying zone, and in the event that leases, agreements, or covenants are terminated, then the land reverts back to its primary purpose.*
- 2. The representation has not provided suitable evidence that the land is primarily managed for landscape values (in accordance with Ministerial Guidance No. 1), or that the application of the relevant codes does not provide sufficient protection for these lands.*
- 3. No evidence has been provided that individual landowners support the application of the Landscape Conservation Zone to the properties (other than the assertion that landowners will be contacted, where individual representations are received from landowners these are addressed under each representation individually).*

The bulk of the Planning Authority's response was a cut-and-paste from p 88 of its Supporting Report which sought to justify its blanket application of the Agriculture Zone to rural properties based on a misrepresentation of its so-called LUDS principle of 1 to 1 transition.

The claim by the Planning Authority that conservation covenants are not permanently reserved is erroneous. All of the covenanted land included in Representation No 42 is subject to perpetual covenants as recognised by both the State and Federal Governments.

The claim by the Planning Authority that the land is not primarily managed for landscape values as required by Guideline No 1 is contrary to the Tasmanian Planning Commission's Planners Portal interpretation of Guideline No 1 of 22 April 2021 (which was included in Representation No 42) that states

Guideline No.1 for both the Landscape Conservation Zone (LCZ) and Environmental Management Zone (EMZ) indicate that land which contains a conservation covenant will invariably have values that can result in the land being suitable for zoning in either the EMZ or LCZ.

Finally the Planning Authority's cursory disregard for Representation No 42 on the basis that it failed to provide evidence of individual landowner support for the proposed rezoning of their covenanted titles demonstrates its misunderstanding of Section 40J of the Act which entitled CLT to

make its representation about the zoning of those properties. Unlike a Part 3B Amendment, there is no requirement under Part 3A for a representor to provide evidence of written consent when making a representation. In the absence of landowner consent the Commission delegates have the authority to treat such representations with planning merit as a substantial modification and in the public interest direct a Planning Authority to submit an Amendment under Section 35KB.

Nonetheless CLT made every effort to contact affected landowners during the exhibition period as explained on p 2 of the representation. This resulted in Representation Nos 12, 32, 41 and 47 from Northern Midlands landowners requesting the rezoning of their covenanted titles and representation Nos 34, 35 and 37 requesting the rezoning of neighbouring non-covenanted titles to Landscape Conservation. Most of these representations relied on and referred to the cases presented in Representation No 42.

Despite its opposition to Representation No 42 the Northern Midlands Planning Authority nonetheless supported 6 of the 7 landowner representations in their Section 35F Report but opposed Representation No 47 which requested the rezoning of the 673.1 ha Preston #2 Reserve protected by conservation covenant across nine adjoining titles on the basis that 'spot rezoning would lead to an oddly zoned pocket of land'.

This submission supplements the strong case presented in Representation Nos 42 and 47 for rezoning Preston #2 Reserve at 1726 Auburn Road, Ross. The Commission's 22 April 21 advice to planning authorities confirms that the rezoning of the 673.1 ha Preston #2 Reserve to Landscape Conservation demonstrates good strategic planning merit as it is widely visible in the landscape and spans nine adjoining covenanted titles across a very large area. It is in fact larger than Campbell Town, one and a half times the area of Longford and almost four times the size of Ross.

The Planning Authority's erroneous claim that private conservation covenants are not permanently reserved

The Section 35F Report claims that

Private Conservation Covenants are not permanently reserved for the purposes of determining the underlying zone, and in the event that leases, agreements, or covenants are terminated, then the land reverts back to its primary purpose.

All of the conservation covenants included in Representation No 42 are perpetual covenants and this information is publicly available on The List. 93.3 % of the covenanted land in Northern Midlands is protected by perpetual covenant under the *Nature Conservation Act 2002*.

This is illustrated for two examples included in Representation No 42. Screenshots from ListMap for 1827 Liffey Road, Liffey, and 1726 Auburn Road, Ross, demonstrate that these conservation covenants are considered perpetual for the purposes of the Tasmanian Reserve Estate under Tasmania's Regional Forestry Agreement, and Australia's National Reserve System in fulfilment of Australia's obligations under the international *Convention on Biological Diversity 1993*.

Identify Results		Disclaimer	
3 features found in 3 layers		4 features found in 4 layers	
Feature		Feature	
Property Address	1827 LIFFEY RD LIFFEY TAS 7301	Property Address	'PRESTON' - 1726 AUBURN RD ROSS TAS 7209
Property ID	6753759	Property ID	7951183
Title Reference	45838/1	Title Reference	35606/1
Tasmanian Reserve Estate (one feature)		Tasmanian Reserve Estate (one feature)	
Feature		Feature	
FOREIGN_ID	21638	FOREIGN_ID	13555
RES_CLASS	Conservation Covenant (NCA)	RES_CLASS	Conservation Covenant (NCA)
RES_NAME		RES_NAME	
RES_STATUS	Private Reserve (Perpetual)	RES_STATUS	Private Reserve (Perpetual)
NAME_SHORT		NAME_SHORT	

While the *Nature Conservation Act 2002* does allow for conservation covenants to be terminated by mutual agreement of the landowner and the State and Federal Ministers for Environment, the 'primary purpose' of the land is also a human construct which can be varied over time by Council and with less safeguards.

The Planning Authority's erroneous claim that evidence of landscape values was not provided

The claim by the Planning Authority that the land is not primarily managed for landscape values as required by Guideline No 1 is contrary to the Tasmanian Planning Commission's interpretation of Guideline No 1 on this matter contained in the Planners Portal advice of 22 April 2021 in response to the question 'What is the most appropriate zone for land with a conservation covenant?'

That advice states up front that

Guideline No.1 for both the Landscape Conservation Zone (LCZ) and Environmental Management Zone (EMZ) indicate that land which contains a conservation covenant will invariably have values that can result in the land being suitable for zoning in either the EMZ or LCZ.

Covenanted land invariably has landscape values because it contains 'large areas of native vegetation', but it also necessarily contains biodiversity values which further strengthen the case

for the application of these zones. Furthermore, some of the covenanted land also contains 'important scenic values' and this has been indicated in Representation No 42 where applicable.

Paragraph four of the Commission's advice to Planning Authorities outlines the circumstances where the application of Landscape Conservation zone to covenanted titles demonstrates 'good strategic planning merit'.

However, areas that have extensive conservation covenants (such as, a cluster of many, a large area, or both, or connectivity with other land zoned for similar values) may demonstrate good strategic planning merit for applying this zone.

Representation No 42 heeded the Commission's advice by only proposing that 11 of the 81 properties in Northern Midlands municipality containing conservation covenants should be considered for rezoning to Landscape Conservation.

The existence of landscape values on these 11 covenanted properties has already been acknowledged by the Commission by virtue of their being covenanted and therefore requires no further demonstration.

The Planning Authority's dismissal of the representation because evidence of landowner consent was not included

The Planning Authority's disregard for Representation No 42 on the basis that it failed to provide evidence of individual landowner support for the proposed rezoning of their covenanted titles demonstrates its misunderstanding of Section 40J of the *Land Use Planning and Approvals Act 1993* which entitled CLT to make its representation about the zoning of those properties. Representors do not need to be landowners in the subject municipality and they are not required to submit a landowner's consent (Form 1 or otherwise) in relation to a proposed change of zoning or code overlays to a third party's property.

The Commission delegates have the authority to override planning authorities and support such representations if they have planning merit, with or without landowner consent. In the latter case the delegates will treat such changes to a Draft LPS as a substantial modification and in the public interest direct a Planning Authority to submit an Amendment under Section 35KB. The recent West Tamar and Southern Midlands Decisions exemplify the Commission's exercise of the provisions under Section 35KB.

CLT made every effort to contact affected landowners during the exhibition period as explained on p 2 of the representation. This resulted in Representation Nos 12, 32, 41 and 47 from Northern Midlands landowners requesting the rezoning of their covenanted titles and representation Nos 34, 35 and 37 requesting the rezoning of neighbouring non-covenanted titles to Landscape Conservation. Most of these representations relied on and referred to the cases presented in Representation No 42.

Despite its opposition to Representation No 42 the Northern Midlands Planning Authority nonetheless, and to their credit, supported 6 of the 7 landowner representations in their Section 35F Report, but opposed Representation No 47 that requested the rezoning of the 673.1 ha Preston #2 Reserve protected by conservation covenant across nine adjoining titles, on the basis that 'spot rezoning would lead to an oddly zoned pocket of land'.

Why the Planning Authority's reference to Council's LUDS principle of 1 to 1 mapping is actually a misrepresentation of the principle and a misunderstanding of their consultant's advice

This issue has also been addressed in my submission in response to the Northern Midlands Planning Authority's Section 35F Report on Representation No 9 on behalf of Liffey landowners, but warrants repetition given the Planning Authority's reference to its '1 to 1 transition' LUDS Principle as justification for rezoning from Rural Resource to Agriculture with almost no exceptions.

In its Supporting Report and Section 35F Report the Planning Authority has frequently quoted the following 'LUDS principle'

Apply a 1 to 1 transition, both spatially and from the ordinance (use class and development provisions) perspective wherever possible;

to justify its strict 1 to 1 mapping of NMIPS 2013 zones to TPS zones.

Reference to the source document, the Draft Northern Midland Council Land Use Development Strategy 2018-2038 prepared by Johnston, McGee and Gandy Pty Ltd (JMG), reveals that the Planning Authority has consistently misrepresented this principle in its Reports and has failed to comply with its own principle. The actual LUDS principle states on p 19 of that document that

Within the constraints of the Guidelines and other regulatory requirements, apply a 1 to 1 transition, both spatially and from the ordinance (use class and development provisions) perspective wherever possible.

Omitting the underlined phrase substantially changes the principle.

The JMG draft Strategy, Guideline No 1 and the Planners Portal advice on the matter all make it very clear that mechanical 1 to 1 mapping of NMIPS 2013 zones to TPS zones is not allowed. In particular the blanket 1 to 1 conversion of Rural Resource to Agriculture, based on its view that the primary purpose of land in the Northern Midlands Council area is for agricultural uses, finds no justification in any of these three sources, or in the ALMP Background Report.

It is true that for most NIMPS 2013 zones there is a logical equivalent with the same name but even then the Planners Portal Q&A of 25 May 2017 advised Planning Authorities that they still need to justify the retention of the zone with the same name while taking into account changes to the zone provisions.

In the cases where NIMPS 2013 zones are being retired (e.g. Rural Resource, Environmental Living) the Planning Authorities are required to follow the Guidelines, as acknowledged in the actual LUDS principle published by JMG, and this precludes the blanket 1 to 1 conversion from Rural Resource to Agriculture as applied in the Northern Midlands Draft LPS.

Guideline No 1 requires that land currently zoned Rural Resource should, with reference to the ALMP Maps and Background Report, be considered for the new Agriculture, Rural or Landscape Conservation Zones. The JMG draft Strategy acknowledged this on p 18

Transitioning land from Rural Resource Zone required consideration of three potential target zones, namely Rural Zone, Agriculture Zone and Landscape Conservation Zone.

Following Guideline No 1 would have resulted in the application of the Rural Zone to most of the 185 titles not identified in the 'Land Potentially Suitable for Agriculture Zone' layer and other constrained land, and the wider use of Landscape Conservation Zone. Instead the Planning Authority has chosen to misrepresent the advice from its consultant to justify its disregard for Guideline No 1 by its mechanical conversion of Rural Resource to Agriculture.

The case for rezoning Preston #2 Reserve at 1726 Auburn Road, Ross, to Landscape Conservation

The Planning Authority's two reasons for opposing Representation 47, which requested that their 673.1 ha Preston #2 Reserve at 1726 Auburn Road spanning nine adjoining titles be rezoned to Landscape Conservation, were:

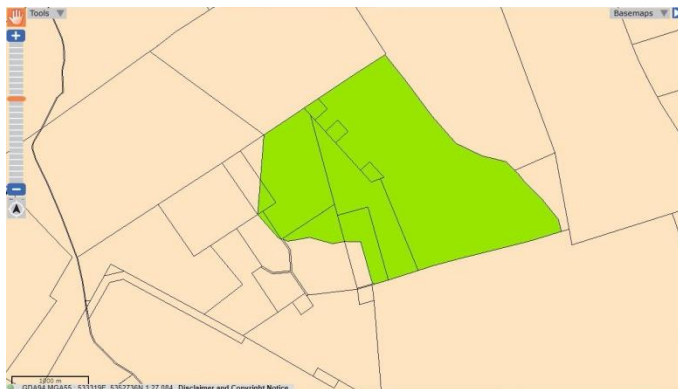
1. *The representation has not provided suitable evidence that the land is primarily managed for landscape values (in accordance with Ministerial Guidance No. 1), or that the application of the relevant codes does not provide sufficient protection for these lands.*
2. *Furthermore, in this particular instance the site is within an area of predominantly Agriculture Zone land, and a spot rezoning would lead to an oddly zoned pocket of land (this is against the proposed methodology outlined in the 'LPS Supporting Report', 2021).*

Representation No 47 refers to the case presented by CLT in Representation No 42. As explained on pp 3-4 of this submission, the existence of the conservation covenant on these nine titles is sufficient evidence for the Tasmanian Planning Commission that the land has landscape values justifying its consideration for the Landscape Conservation Zone. Furthermore, it contains a very large area of native vegetation and is also clearly visible from Auburn, Glen Connell and Isis Roads to its west.

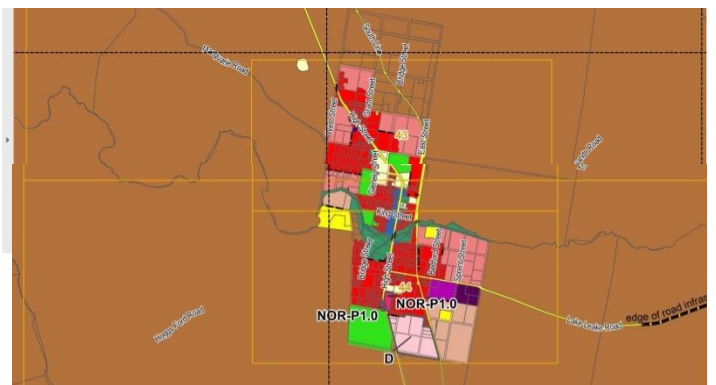
The Planning Authority's response that the landowners did not provide suitable evidence that '*the application of the relevant codes does not provide sufficient protection for these lands*' is a further indication of the disrespect shown to representors. As the Planning Authority explicitly acknowledges on pp 47 and 107 of its Supporting Report, the Priority Vegetation Area overlay cannot apply in the Agriculture Zone so how can the Natural Assets Code provide any protection for the threatened vegetation communities and threatened flora within the Preston #2 Reserve if zoned Agriculture?

The Planning Authority's proposition that rezoning the 673.1 ha Preston #2 Reserve would create a spot zone within land predominantly zoned Agriculture is ludicrous. The Preston #2 Reserve is a very large area across 9 titles. It is of a similar size to the town of Perth and is substantially bigger than Campbell Town, Longford and Ross, as can be seen in the matching scale screen shots on the next page.

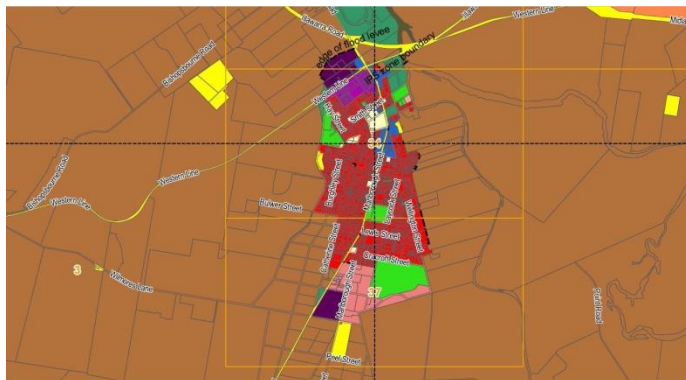
The size of Preston #2 Reserve in the NIMPS 2013 Zone Map compared with Campbell Town, Longford and Ross in the Northern Midlands Draft Zone Map (all maps are at the same scale)



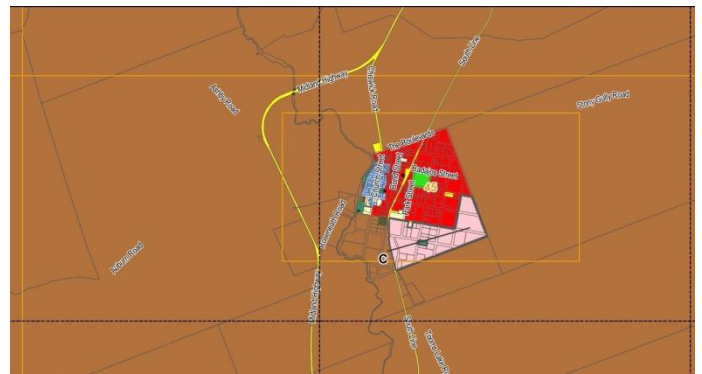
Preston #2 Reserve – 673.1 ha



Campbell Town – 501 ha



Longford – 441 ha



Ross – 203 ha

The proposed split zoning of the mixed use titles is consistent with Guideline AZ5 given the significant size of the titles. Proposed grid references for the intra-title zone boundaries aligning with the covenant boundaries are listed below.

Latitude	Longitude
-41.97631	147.34885
-41.98577	147.34784
-41.98850	147.35108
-41.98872	147.35163
-41.98862	147.35184
-41.98875	147.35196
-41.98894	147.35269
-41.98850	147.35619
-41.98924	147.35986
-41.98899	147.36176
-41.98900	147.36432
-41.99402	147.36624
-41.99397	147.36646
-41.99407	147.36651