

Dorset Draft LPS – Representation No 10 – Response to Section 35F Report

Hearing Day 1 – Thursday 29 September 2022 - 10 am to 12 pm

Address	PID	CT	Rep No
'Dunbarton' – 183 Bridport Back Road, Nabowla TAS 7260	1905872	112806/1	1
1425 Forester Road, North Scottsdale TAS 7260	2000514	133542/2	3
1453 Forester Road, North Scottsdale TAS 7260	2000522	133542/1	6

Summary

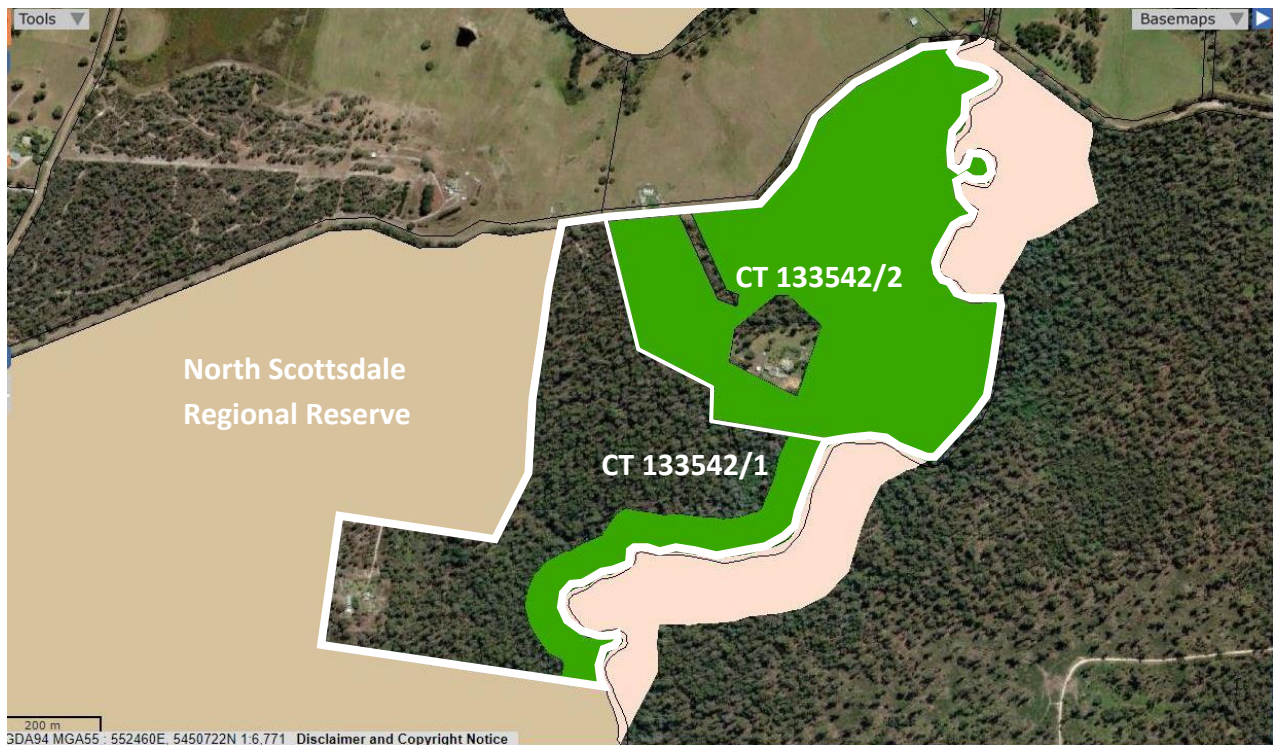
In its Section 35F Report the Dorset Planning Authority provided a detailed analysis of the cases for rezoning to Landscape Conservation the covenanted properties included in Representation No 10 by Conservation Landholders Tasmania. The Planning Authority accepted the case for extending the Landscape Conservation Zone on CT 112806/1 to include all of the covenanted land on 'Dunbarton'.

For two of the properties that the Planning Authority did not recommend to be rezoned to Landscape Conservation as requested by the landowners, Conservation Landholders Tasmania (CLT) disagrees with the Dorset Planning Authority's rationale for opposing the rezoning requests by the owners and recommending instead that they be zoned Rural with the application of the Priority Vegetation Area overlay.

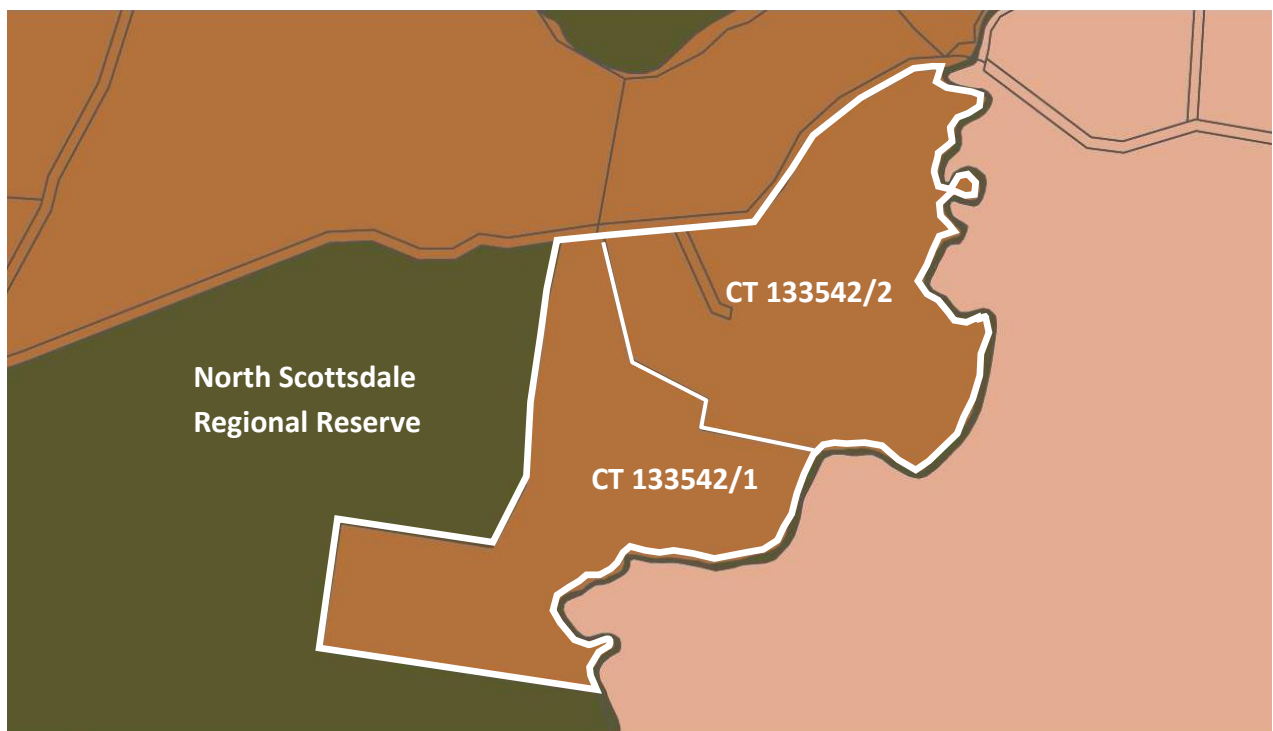
In our view the Planning Authority did not follow the 22 April 2021 Planners Portal advice with respect to the application of Landscape Conservation Zone to covenanted land for these two titles which together adjoin the 4080 ha North Scottsdale Regional Reserve.

CLT's written response to the Section 35F Report for the above two properties is presented for consideration by the Commission delegates and the Planning Authority well in advance to help progress discussion at the hearing.

**Case for rezoning the cluster of two covenanted titles on Forester Road (Rep Nos 3 and 6)
adjoining the North Scottsdale Regional Reserve**



ListMap Satellite image of the two titles with the Tasmanian Reserve Estate layer showing the covenanted land (bright green), North Scottsdale Regional Reserve (beige) and SST Informal Reserves (pale pink).



Draft Zone Map of the two titles and surrounds as exhibited

Planning Authority reasons for recommending Rural Zone rather than Landscape Conservation

In the Section 35F Report (pp 7-11) the rezoning requests for these two properties (1425 Forester Road, PID 2000514, CT 133542/2 and 1453 Forester Road, PID 2000522, CT 133542/1) were considered together with six other surrounding properties that had all been zoned Agriculture in the Draft Zone Map but which were not subject to landowner representations.

As a result of their detailed analysis in response to Representations 3, 6 and 10 the Planning Authority determined that all eight properties have

limited to no agricultural potential and therefore the Rural Zone ought to be applied to the property in lieu of the proposed Agriculture Zone.

The Planning Authority also determined that

The application of the Rural Zone ... to these pertinent properties would enable the PVAO to apply to the pertinent parts of the property.

The Planning Authority's rationale for opposing the application of the Landscape Conservation Zone to the two properties was

(2) The existence of conservations covenants, or limited threatened flora individuals, is accordingly not reason enough to apply the Landscape Conservation Zone. Guideline No. 1 states that the Landscape Conservation Zone may be applied to:

- (i) areas of 'landscape value that are identified for protection', placing an emphasis on prior strategic planning work to identify areas for protection;*
- (ii) land that has significant constraints on development through the application of the Natural Assets Code or Scenic Protection Code; or*
- (iii) land within a DIPS Environmental Living Zone and the primary intention is for the protection and conservation of landscape values.*

(3) The title has:

- (i) not been identified for protection through a strategic municipal wide landscape values assessment or identification of substantial stands of TNVC listed under Schedule 3A - TNVC of the NC Act;*
- (ii) would not be burdened with significant constraints on development through the application of the Natural Assets Code or the Scenic Protection Code; and*
- (iii) is not currently zoned Environmental Living Zone.*

It is notable that the Planning Authority did not comment on the 22 April 2021 Planners Portal advice to Planning Authorities on the application of Landscape Conservation zone to properties containing conservation covenants. This advice was central to the cases included in Representation Nos 3, 6 and 10.

Commission advice to Planning Authorities regarding the application of Landscape Conservation Zone to land containing conservation covenants

The advice to Planning Authorities on the Planners Portal (22 April 2021) makes it clear that land with a conservation covenant 'will invariably have values' that make it suitable for Landscape Conservation Zone (LCZ). While avoiding spot zoning should be a consideration it is not the only consideration.

The advice states further that

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.

The Dorset Planning Authority recognised the good strategic planning merit in applying LCZ to the cluster of six covenanted titles at Nabowla (CTs 130081/1, 130081/2, 130081/3, 112805/2, 130081/4 and 112806/1)¹. The total area recommended for rezoning to Landscape Conservation is 80.7 ha.

However, the Planning Authority did not recognise the same merit in applying LCZ to the two covenanted titles at Foresters Road (combined area of 57.0 ha) that have 'connectivity with' the 4080 ha North Scottsdale Regional Reserve which is 'zoned for similar values', i.e. Environmental Management.

Application of Landscape Conservation Zone to covenanted titles adjoining public reserves in neighbouring municipalities

With few exceptions across the State, the Commission has accepted the merit of rezoning covenanted titles adjoining public reserves to Landscape Conservation. In the surrounding three municipalities the Planning Authorities have either exhibited such titles as Landscape Conservation or have been persuaded to support landowner requests to rezone such titles following the receipt of representations, or at the hearings. The covenanted titles rezoned, or to be rezoned, to Landscape Conservation due to their connectivity with public reserves zoned Environmental Management are listed below for the three neighbouring municipalities:

Municipality	Title Ref	Adjoining public land zoned EMZ
George Town	145665/1	Unnamed Conservation Area CT 203624/1
Launceston	43810/1	Pipers River Regional Reserve
Launceston	42762/5	Pipers River Regional Reserve
Launceston	49914/1	Unnamed Public Reserve
Break O'Day	209977/1	German Town Regional Reserve St Marys Pass State Reserve
Break O'Day	179552/1	St Marys Pass State Reserve
Break O'Day	210430/1	Unnamed Crown Land
Break O'Day	101081/1 and 101080/1	Ansons River Conservation Area

¹ The Dorset Draft LPS Supporting Report (p 118) actually presents the case for rezoning the 'Nabowla Conservation Covenant Cluster' to Environmental Management rather than Landscape Conservation. While the Supporting Report states that Environmental Management Zone is 'most appropriately applied to these titles', the Planning Authority must have subsequently recognised that Landscape Conservation zone is more appropriate for private land and this is the zone that was applied in Draft Zone Map No 18.

Municipality	Title Ref	Adjoining public land zoned EMZ
Break O'Day	228407/1, 236472/1 and 236471/1	Blue Tier Regional Reserve Weldborough Pass State Reserve
Break O'Day	242163/1	Avenue River Regional Reserve
Break O'Day	121906/1 and 121906/2	Cheesebury Hill Conservation Area
Break O'Day	157275/1, 142906/2, 142906/4 and 142906/5	St Marys Pass State Reserve
Break O'Day	120054/1, 206762/1 and 120232/1	St Patricks Head State Reserve

Case for applying Landscape Conservation Zone rather than Rural Zone with the PVA overlay

While the Planning Authority's approach of grouping the two covenanted titles with the six other 'rural lifestyle' titles at the intersection of Old Waterhouse Road and Forester Road is understandable, the circumstances for 1425 and 1453 Forester Road are different. The latter two titles contain significant natural values that have been identified for protection by the State and Federal Governments and the owners of these titles have requested rezoning to Landscape Conservation. 721 Old Waterhouse Road (CT 105162/1) is also partly covenanted but the owner has not consented to rezoning to Landscape Conservation.

The case for zoning the 1425 and 1453 Forester Road as Landscape Conservation rather than relying on the Priority Vegetation Area provision of the Natural Assets Code is that LCZ provides protection against inappropriate use as well as inappropriate development. The SPPs make it clear that the application of zoning is the primary method for control of use and development. Furthermore the Natural Assets Code does not apply to use (SPPs C7.2.2).

Because the Natural Assets Code does not apply to Use, destruction of threatened species and threatened vegetation communities can occur without planning control. For example, in the Rural Zone cattle would be allowed to graze the native vegetation as a No Permit Required use.

And with respect to Development, the 'Clearance within a priority vegetation area' (C7.6.2) provisions in the SPPs are much weaker than the 'Landscape protection' (22.4.4) provisions for Landscape Conservation Zone. For example, 22.4.4 requires that developments 'minimise native vegetation removal' but C7.6.2 allows 'clearance of native vegetation' provided that it is 'of limited scale relative to the extent of priority vegetation on the site'.

Landscape and natural values of the two titles

The Section 35F Report on page 7 states with respect to CT 133542/2

Statement of Merit

...

(3) The title has:

- (i) not been identified for protection through a strategic municipal wide landscape values assessment or identification of substantial stands of TNVC listed under Schedule 3A - TNVC of the NC Act;*

While this is correct for both titles, the Commission's advice on the Planners Portal about interpreting the LCZ Guidelines for covenanted land makes it clear that land protected by conservation covenant invariably has intrinsic landscape value due to it containing large areas of native vegetation.

And regarding the lack of identified Schedule 3A threatened native vegetation communities (TNVCs), not all conservation covenants have been created to protect areas of TNVCs. The covenanted covenants comprising Scottsdale #2 and #1 private reserves on CT 133542/2 and 133542/1, respectively, were created by the Minister for Environment on 2 July 2001 to protect, *inter alia*, the vulnerable *Astacopsis gouldi* (Giant freshwater crayfish) listed in Schedule 4 of the *Threatened Species Protection Act 1995* and also the rare *Hypolepis muelleri* (Harsh groundfern) listed in Schedule 5 of the same Act.



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On behalf of the Board of Trustees, CLT Trust

12th September 2022

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