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13th January 2020

Your ref: DOC/20/374

Mr John Ramsay
Delegate (Chair)
Tasmanian Planning Commission
GPO Box 1691
Hobart TAS 7001

**Response to Further Submission by the Department of State Growth of 20 December 2019 re
Central Coast Draft Local Provisions Schedule**

Dear Mr Ramsay

Thank you for the invitation to provide a written response to the Department of State Growth's further submission.

We wish to respond to the 8 paragraphs under their heading 'Clarification of the application of the Landscape Conservation Zone' on pages 1 and 2 of their submission.

Summary of our response

- Properties with conservation covenants have been 'identified for protection and conservation' by the Minister for Environment and are therefore most appropriately zoned as Landscape Conservation based on the State Planning Provisions and Section 8A Guideline No 1.
- The State Planning Provisions determine that Extractive Industries and plantation forestry are incompatible with the purpose of Landscape Conservation Zone and are therefore 'Prohibited' uses in this Zone.
- The Department's premise in opposing Landscape Conservation Zone, namely that Extractive Industries and plantation forestry are pre-eminent uses and should not be prohibited under any circumstances, is not supported by the State Planning Provisions.
- The Department's claim that applying Landscape Conservation Zone to the land parcels in question could have a sterilising effect on rural land well beyond the land parcels is unfounded.
- The Department's claim that conservation covenants have traditionally been used for protecting land parcels from extraction activities, while not relevant to the issue at hand, is nonetheless inappropriate.
- The Department's claim that applying Landscape Conservation Zone to covenanted land provides no additional protection is incorrect as Landscape Conservation Zone would provide planning protection against incompatible uses.

Summary of the Department of State Growth's Submission

Re Landscape Conservation Zone (LCZ)

The Department of State Growth:

- Opposes the application of LCZ because it prohibits Extractive Industries and plantation forestry (a subset of Resource Development) uses;
- Claims that applying LCZ to isolated land parcels across the rural landscape 'could have a sterilising effect on rural land well beyond the land parcels', particularly because LCZ allows sensitive uses.

Re conservation covenants

The Department of State Growth claims that:

- Conservation covenants have traditionally been used for protecting land parcels from extraction activities; and
- Applying LCZ to covenanted land provides no additional protection and is therefore redundant.

Landscape Conservation Zone – the most appropriate zone

Properties with conservation covenants typically contain threatened fauna, flora or vegetation communities, as defined in Schedule 3A of the *Nature Conservation Act 2002*, and have been 'identified for protection and conservation' by the Minister for Environment.

Taken together Guidelines LZ 1 and LZ 2 make it clear that titles fully covered by a conservation covenant should be zoned Landscape Conservation because the fact of the conservation covenant means they necessarily meet the criteria, and titles partly covered by a covenant may also be zoned Landscape Conservation depending on the use of the non-covenanted part.

On titles where the covenant covers the whole area, or on partly covered titles where the non-covenanted part is unsuitable for agriculture, Guidelines RZ 1 and AZ 6 indicate that these titles should not be zoned Rural or Agriculture, respectively.

The land parcels associated with representations 2, 4, 5, 7 and 9 have conservation covenants over the majority of each title with the balance used for residential purposes, and, in the case of representation 5, visitor accommodation as well.

The land parcels associated with representations 6, 10 and 11 do not have conservation covenants but equally comply with the purpose of the Landscape Conservation Zone and also meet the abovementioned criteria.

The Department of State Growth's submission argues that land parcels relating to representations 2, 4, 5, 6, 7, 10 and 11 should be zoned Rural, and representation 9 zoned Environmental Management, solely because this would allow Extractive Industries and plantation forestry on and immediately around these parcels. There is no consideration by the Department of the respective purposes of the zones in question described in the State Planning Provisions (SPP), or of the criteria listed in Section 8A Guideline No 1 for applying these zones.

Extractive Industries and plantation forestry incompatible with Landscape Conservation Zone purpose

The SPP came into effect on 2 March 2017 after a lengthy consultation process and include the new Landscape Conservation, Rural and Agriculture Zones. Subsequently the TPC has issued Section 8A Guideline No 1 on the application of these and other zones.

In developing the SPP the Tasmanian Government has determined that Extractive Industries and plantation forestry are incompatible with the purpose of Landscape Conservation Zone and are therefore 'Prohibited' uses in this Zone.

The premise of the Department of State Growth's case against the application of Landscape Conservation Zone is that Extractive Industries and plantation forestry are pre-eminent uses and should not be prohibited under any circumstances.

To this end the Department opposes the application of Landscape Conservation Zone in the rural landscape, despite Landscape Conservation Zone being the most appropriate Zone according to the SPP and associated Guideline No 1.

The pre-eminence of mining and plantation forestry uses may be the position of some lobbyists for those industries but it is certainly not the view of the Tasmanian Government as represented by its SPP developed under the *Land Use Planning and Approvals Act 1993*.

Claim that applying Landscape Conservation Zone would have a 'sterilising effect'

The claim that applying Landscape Conservation Zone (LCZ) to isolated land parcels across the rural landscape 'could have a sterilising effect on rural land well beyond the land parcels to be rezoned' is founded on the same premise, that Extractive Industries and plantation forestry are pre-eminent and all other uses are inferior. The claim also implies that all conservation covenants are isolated and that setbacks for Extractive Industries and Resource Development uses could be substantial.

The idea that Extractive Industries and plantation forestry are pre-eminent uses and should therefore be allowed across the entire rural landscape is without substance. Clause 6.2 of the SPP lists the full set of Use Classes including Extractive Industries, Natural and Cultural Values Management, Residential and Resource Development. There is no hierarchy *per se*.

It is only when the SPP address a particular zone that the compatibility of uses with that zone purpose is determined, resulting in uses being either 'No Permit Required', 'Permitted', 'Discretionary' or 'Prohibited'. And the SPP have determined that Extractive Industries and plantation forestry are incompatible with the purpose of LCZ.

The implication that all conservation covenants are isolated is not supported by the facts. Across the State conservation covenants are often clustered around areas of high conservation values. For example, in Central Coast municipality there are four contiguous covenants protecting the threatened *E. viminalis* wet forest, including the neighbouring land parcels of representations 2 and 7. The land parcels associated with representations 4 and 5 are also contiguous.

The claim that the so-called 'sterilising effect' would extend 'well beyond' the rezoned land parcels is also overstated. The land parcels relating to representations 2, 4, 5, 6, 7, 9, 10 and 11 all have existing residences so there are no new sensitive uses, and any setbacks imposed by the planning authority to 'minimise adverse impacts on surrounding uses' are likely to be modest.

The use of such emotive and hyperbolic language in the Department of State Growth's submission is a concern. It is not the measured language one expects of a senior public servant representing the Tasmanian Government.

Claim that Conservation Covenants have been used for inhibiting extractive industries

The claim that conservation covenants have traditionally been used for protecting land parcels from extraction activities, while not relevant to the issue at hand, is still worthy of comment.

In Tasmania there are currently 890 conservation covenants which over time have been approved by the Minister for Environment under the *Nature Conservation Act 2002*.

For a senior public servant to imply that the Minister for Environment has misused their powers by approving covenants for other than 'a conservation purpose' is highly unprofessional and verges on being a breach of the State Service Code of Conduct. However, this is a matter for the relevant Minister rather than the TPC.

Claim that applying Landscape Conservation Zone to covenanted land provides no additional protection

This claim is incorrect as Landscape Conservation Zone (LCZ) would prohibit Extractive Industries whereas the conservation covenant itself would not. While mining has not been approved on a conservation covenant in Tasmania so far, mining has been approved on conservation covenants in other Australian jurisdictions.

On titles partly covered by a covenant where the balance of the title is used for residential purposes, *i.e.* the landowner lives on site to manage and protect the natural values, it is consistent with the purpose of LCZ to zone the entire title as LCZ. This would provide additional protection for the natural values within the covenanted area as the Permitted and Discretionary uses for LCZ are unlikely to impact on these natural values. Conversely some of the Permitted and Discretionary uses for Rural Zone could adversely impact the natural values within the covenanted area.

Yours sincerely



John G. Thompson



Annette K. Vojinov

Cc. Mary-Ann Edwards and Geoff Davis, Central Coast Council