

Representation

In response to

Draft Northern Midlands Local Provisions Schedule – Tasmanian Planning Scheme 2021

Prepared by

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Acknowledgements

*Bush Heritage acknowledges the Palawa People as the custodians and Traditional Owners of lutruwita/
Tasmania.*

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and the Tasmanian Land Conservancy for their gracious support and assistance in the preparation of this
Representation.*

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**Bush Heritage Australia's Representation in response to:
*Draft Northern Midlands Local Provisions Schedule – Tasmanian Planning
Scheme 2021***

Bush Heritage Australia (**Bush Heritage** www.bushheritage.org.au) is a not-for-profit and registered environmental/conservation charity, protecting millions of hectares of ecologically important land for the benefit of nature and all Australians. Bush Heritage operates nationally, to protect and restore to health over 10 million ha of habitat. We prioritise land for acquisition or management through partnership based on the biodiversity values, percent of habitat type already protected in the National Reserve System, threats at play in the landscape and our ability to address those threats effectively.

Bush Heritage submits this Representation, regarding the Draft Northern Midlands Council Local Provisions Schedule (the **Draft LPS**) pursuant to s 35E(1) of the *Land Use Planning and Approvals Act 1993 (TAS)*. The focus points of this Representation are as follows:

- (1) The Draft LPS will result in the wholesale rezoning of land previously zoned as *Rural Resource to Agriculture*, notwithstanding LIST data and legal constraints which the Tasmanian State Planning Scheme and State Planning Provisions direct be taken into consideration for case by case rezoning as either *Landscape Conservation* or *Environmental Management*;
- (2) Land declared as a Private Nature Reserve (designated by conservation covenants registered on title) pursuant to the *Nature Conservation Act 2002 (TAS)*, will be rezoned as *Agriculture* rendering the validity of that otherwise legal land use in question;
- (2) The Draft LPS must be amended to accord with the Tasmanian Planning Scheme and State Planning Provisions and Guidelines No.1 so as to ensure that the wholesale rezoning of Private Nature Reserves and Constrained Land is not permitted, that the most appropriate alternative zone is applied to land that has or will be declared Private Nature Reserves and perverse town planning outcomes are avoided;
- (3) Bush Heritage Australia does not consent to any of its freehold properties as Private Nature Reserves being rezoned from Rural Resource to *Agriculture*; and
- (4) All four (4) Bush Heritage Reserves located in the Liffey Region should be transitioned to the *Environmental Management* zone under any approved new, approved Northern Midlands Council Local Provisions Schedule.

Kind regards

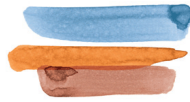
Mark Dwyer
Acting Chief Executive Officer
Bush Heritage Australia
21 December 2021

1. Bush Heritage land ownership and interest in the Draft LPS:

- (a) Bush Heritage owns four (4) freehold properties in the Northern Midlands Council (**NMC**) municipality. Two (2) of the four (4) Bush Heritage properties are located in the same local Liffey area, along the same road (Gulf Road, Liffey TAS 7301). All four (4) properties are currently zoned *Rural Resource* (under the Northern Midlands Council Interim Planning Scheme 2013) and Bush Heritage understands that this Zone no longer exists under the Tasmanian Planning Scheme (**TPS**) and therefore is not used in the Draft LPS. Under the Draft LPS - two (2) Bush Heritage properties will be rezoned as *Environmental Management* with the other two (2) properties to be rezoned as *Agriculture*¹ if the Draft LPS is approved by the Minister responsible for administration of the *Land Use Planning and Approvals Act 1993 (TAS)* (**LUPA Act**) and Tasmanian Planning Commission (**TPC**).

Property Address/Private Reserve Name	Volume/Folio	PID	Current Zoning (NMC Interim Planning Scheme 2013)	Proposed Rezoning (DRAFT NMC LPS)
<i>Oura Oura Reserve</i> ² 159 Gulf Road, Liffey TAS 7301	202805/1 246184/2	6753804 6753791	Rural Resource	<i>Agriculture</i>
<i>Liffey River Reserve</i> Gulf Road, Liffey TAS 7301	229083/1	6753839	Rural Resource	<i>Environmental Management</i>
<i>Drys Bluff Reserve</i> Gulf Road, Liffey Valley TAS 7301	150038/1	2776136	Rural Resource	<i>Agriculture</i>
<i>Coalmine Creek Reserve</i> Gulf Road. Liffey TAS 7301	119373/1	7588396	Rural Resource	<i>Environmental Management</i>

- (b) All four (4) properties owned by Bush Heritage have *Nature Conservation Act 2002 (TAS)* conservation covenants registered on title and Bush Heritage has an internal property naming policy by which all properties owned by Bush Heritage are known as “Reserves”. This appellation is separate and in addition to, the “Private Nature Reserve” denomination that comes pursuant to sections 12 and 19 with the declaration of conservation covenant pursuant, as defined in section 3 of the *Nature Conservation Act 2002 (TAS)*.
- (c) To be clear, Bush Heritage is not opposed to the proposed rezoning of its’ Liffey River and Coalmine Creek Reserves to *Environmental Management*. An assumption has been made that the rezoning of Liffey River and Coalmine Creek Reserves is predicated on those two (2) properties being made part of the World Heritage Area in 2015. This Representation will focus on Bush Heritage’s opposition to the proposed rezoning of Oura Oura and Drys Bluff Reserves to *Agriculture*.
- (d) Bush Heritage is of the view that the rezoning of the Oura Oura and Drys Bluff Reserves to *Agriculture*, does not accord with the Guideline No. 1: Local Provisions Schedule – Zone and Code Application (June 2018) (**Guideline No.1**) and, if approved, would result



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in a perverse town planning outcome given the proposed rezoning of the immediate and contiguous local region of all four (4) Bush Heritage Reserves adjacent to the rezoning of the World Heritage Area as *Environmental Management*.

- (e) To be rezoned as *Agriculture* would render the historic, current and future land use of both Oura Oura and Drys Bluff Reserves for conservation purposes, as *Discretionary* (and potentially requiring NMC approval via Permit) and or potentially *Prohibited* as being a non-agricultural use and purpose for which there is no Acceptable Solution listed in the Tasmanian Planning Scheme - State Planning Provisions - Clause 21.0 Agricultural Zone Permitted Use Table.

- (f) “*Agricultural use*” and “*agricultural land*” are both defined in clause 3.1 of the TPS as follows:

- “***agricultural land*** means all land that is in agricultural use, or has the potential for agricultural use, that has not been zoned or developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses”...

- “***agricultural use*** means use of the land for propagating, cultivating or harvesting plants or for keeping and breeding of animals, excluding domestic animals and pets. It includes the handling, packing or storing of plant and animal produce for dispatch to processors. It includes controlled environment agriculture and plantation forestry.”

The “*agricultural use*” of land is expressly prohibited under the terms of a *Nature Conservation Act 2002 (TAS)* conservation covenant, without prior written consent to the contrary issued by the relevant Minister. This legal constraint effectively removes Private Nature Reserves from consideration as “*agricultural land*” as this term is currently defined in the TPS to mean conservation and agriculture are, still, considered mutually exclusive land management activities from a town planning perspective.

2. **Application of Guideline No 1 - Consequence of umbrella rezoning of Rural Resource to Agriculture :**

- (a) Clause 21.0 of the Guideline No 1, Zone Application Guidelines for the *Agriculture* zone states:

- “AZ 1 The spatial application of the Agriculture Zone should be based on the land identified in the ‘Land Potentially Suitable for Agriculture Zone’ layer published on the LIST, while also having regard to: ...

- ... (b) any other relevant data sets; ...” and

- “AZ 3 Titles highlighted as Potentially Constrained Criteria 2A, 2B or 3 in the ‘Land Potentially Suitable for Agriculture Zone’ layer may require further investigation as to their suitability for inclusion within the Agriculture Zone, having regard to:

(a) existing land uses on the title and surrounding land;....”³

- (b) Having reviewed the Land Information System Tasmania (**LIST**) data for all four (4) Bush Heritage Reserves, Bush Heritage has formed the view that the rezoning of Oura Oura and Drys Bluff Reserves to *Agriculture* does not accord with clauses 1,3,5 & 6 of Guideline No.1 as to the application of the Agriculture Zone (AZ1 and AZ 3) to a Private Nature Reserve. Less than 50% of the total cadastral boundary for each of Oura Oura and Drys Bluff Reserves falls within Layer 1 ‘*Land Potentially Suitable For Agriculture Zone*’ and Layer 2 Potentially constrained agricultural land Criteria 2A and 2B (as not adjoining a Residential zone) and both data sets on LIST contain the statement “*Land Capability Class 6 – land marginally suited to grazing due to severe limitations.*”⁴

- (c) Appendix 3 of the Draft LPS Supporting Document titled “*State Mapping Agricultural Land Background Report (May 2017)*” contains the following significant qualification:

*“Despite the sophisticated methodology, the mapping is not intended to be a definitive strategic land use planning tool as it is predominantly a desktop analysis and has only focussed on assessing the agricultural potential of the land. Local planning authorities will need to utilise this data in conjunction with a range of other data sets and information sources in making strategic land use planning decisions about some of the areas identified.”*⁵

Therefore, the inclusion of a “Land Capability Class” of constraint for land included in the LIST layer titled ‘*Land Potentially Suitable for Agriculture Zone*’ must be acknowledged as a direction to the relevant planning authority that further investigation of the natural values/title and legal constraints must be had before the *Agriculture* Zone is imposed on that land via an LPS.

- (d) AZ 6 in Clause 21.0 of the Guidelines No. 1 states that:

“Land identified in the ‘Land Potentially Suitable for Agriculture Zone’ may be considered for alternate zoning if:...

...(c) for the identification and protection of significant nature values, such as priority vegetation areas in the Natural Assets Code, which require an alternate zoning, such as the Landscape Conservation Zone or Environmental Management Zone; ...

...(e) it can be demonstrated that:

- (i) the land has limited or no potential for agricultural use and is not integral to the management of a larger farm holding that will be within the Agriculture Zone;*
- (ii) there are significant constraints to agricultural use occurring on the land; or*
- (iii) the Agricultural Zone is otherwise not appropriate for the land.”*⁶

- (e) The wholesale transition of *Rural Resource* to *Agriculture* proposed in the Draft LPS:

- (i) does not comply with application of *Agriculture* zoning process set out in Guideline No.1;

- (ii) does not acknowledge nor take into consideration the legal status of the significant natural values and priority vegetation protected under Tasmanian law in perpetuity pursuant to conservation covenants registered on the freehold land title; and
- (iii) does not take into consideration the other available LIST datasets and Land Capability Classes constraints.

3. Application of Guideline No 1 to Private Nature Reserves in the DRAFT LPS:

- (a) Guideline No.1 sets out the following application guidelines for the *Landscape Conservation* and *Environmental Management* zones as follows:
 - “LCZ 1 The Landscape Conservation Zone should be applied to land with landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values” ⁷; and
 - “EMZ 1 The Environmental Management Zone should be applied to land with significant ecological, scientific, cultural or scenic values, such as:
 - (a) land reserved under the Nature Conservation Act 2002;
 - (b) land within the Tasmanian Wilderness World Heritage Area; ...
 - ... (e) any private land containing significant values identified for protection or conservation and where the intention is to limit use and development.” ⁸
- (e) Guideline No 1 is clear. Conservation covenanted properties categorised as a Private Nature Reserve (as defined in section 3 of the *Nature Conservation Act 2002 (TAS)*) in the NMC municipality should be uniformly zoned, subject to landholder consent, as *Environmental Management* or *Landscape Conservation*.
- (f) Guideline No 1 must be applied in the NMC draft LPS so as to avoid absurd or perverse town planning outcomes within the NMC municipality, all adjoining land used for similar land purposes in the NMC municipality – namely all four (4) Bush Heritage Private Nature Reserves adjoining the World Heritage Area in the Liffey River region – be uniformly and consistently rezoned to *Environmental Management*.

4. NMC Land Use Development Strategy behind the Draft LPS:

- (a) The NMC’s rationale for the “1:1” transition from *Rural Resource* to *Agriculture* is explicitly predicated on the assumptions that:
 - (i) “...the primary purpose for land in the Northern Midlands Council area is for agricultural uses.” ⁹; and
 - (ii) “Properties containing ... Private Conservation Covenants, are not permanently reserved for such purposes and in the event that ...,agreements, or covenants are terminated, then the land reverts back to its primary purpose.” ¹⁰



- (b) The framing of a conservation covenant as being *temporary*, is not accurate at law (see: section 35 *Nature Conservation Act 2002 (TAS)* as to the exceptional and limited circumstances in which a conservation covenant can in fact be discharged).
- (c) Pursuant to section 34 of the *Nature Conservation Act 2002 (TAS)* – a conservation covenant is entered into as between the land owner and the responsible Minister on the part of the State Government :-
“...to protect in perpetuity the flora and fauna, water quality and natural diversity of the land...” ...and ...
“...it is the intention of both parties to the covenant that it will have the effect of binding all future owners as well as the current owner of the land.”¹¹
- (d) Conservation Covenants are entered into voluntarily between the landowner and the Tasmanian State Government pursuant to the *Nature Conservation Act 2002 (TAS)*, administered by the (renamed in 2021) Department of Natural Resources & Environment (TAS). Management and protection of the natural values of the land is the primary purpose and use of the land under a conservation covenant that covers all or most of the land contained within the cadastral boundary. It is entirely possible for agriculture and conservation to sit side by side and or integrated on the land legal land title, but the principal or primary use of the land is the management and protection of the natural values and not agriculture as a land use conflict.
- (e) Schedule 1 Nature Conservation Act - Private Nature Reserve being a Class 10 –
“An area of land that contains natural values that - (a) contribute to the natural biological diversity or geological diversity of the area of land, or both; and (b) are unique, important or have representative value.”¹²
- (f) As pointed out in clause 1(f) above, the terms of a conservation covenant expressly prohibit (without the written consent of the responsible Minister to the contrary) “agricultural uses” as that term is defined in the TPS.
- (g) In the Supporting Document, the NMC justifies the rezoning of all Rural Resource to Agriculture (notwithstanding any land parcel having the declared and registered legal status as a Private Nature Reserve) as being in accordance with the NMC’s Land Use Development Strategy (**LUDS**) as follows:

“Land containing Private Conservation Covenants was initially considered for transition to Landscape Conservation Zone. However, this often required the split zoning of lots, which is counter to a key zoning principle in the LUDS. Accordingly, such land was transitioned to the primary purpose of the land, predominantly Agriculture Zone.”¹³
- (h) The NMC LUDS is predicated on the assumption made explicit that the primary use of land in the NMC municipality is agriculture so the rezoning default category for all previously zoned *Rural Resource* is to be *Agriculture* in service of the LUDS. It is a matter



for the NMC to persuade the TPC that the extent to which the Draft LPS is in consistent with the State Planning Provisions (**SPP**) Guidelines is justified by the assumptions made in the LUDS.

- (i) Despite the stated underlying assumption of the NMC LUDS, the Draft LPS Supporting Document contains contradictory statements:
 - (i) by way of introduction to the suite of proposed new Zoning Maps prepared in accordance with the SPP Guideline No.1, that:
*“The Guidelines contain ‘should’ statements for the zoning of land and in doing so, recognises that there will be circumstances whereby sustainable outcomes are not achieved without variation in zone type, or the inclusion of overriding provisions”.*¹⁴; and
 - (ii) in Table 4 of the Draft LPS Supporting Report sets out the *Zone Transition Rationale*: employed by the NMC:
*“... Landscape Conservation...(has)...been applied to preserved existing land uses and provide buffer areas between townships and agricultural land. Existing uses that are either permitted in the Rural Resource zone but prohibited in both the Rural and Agriculture Zone must be allocated an alternative zoning...”*¹⁵
- (j) The zoning of land in the NMC municipality, as a result of a Draft LPS, should not be predicated nor motivated by a desire to *“...avoid the potential for oddly zoned pockets of land throughout the municipality”*.¹⁶ The zoning of land must be done in accordance with the TPS, SPP and Guideline No.1 and accord with all applicable laws of Tasmania including the *Nature Conservation Act 2002 (TAS)*.

5. Application of Guideline No 1 – Existing capacity to rezoning Rural Resource to Landscape Conservation or Environmental Management on case by case basis

- (a) Clauses 1 and 3 of Guideline No.1 sets out the manner in which the available raft of zones and codes are to be applied to Local Planning Provisions and therefore, to the Draft LPS.
- (b) Clause 3.4 of the Guideline No.1 states that *“The primary objective in applying a zone should be to achieve the **zone purpose** to the greatest extent possible”*.
- (c) Clause 5 of the Guideline No.1 (Item 21.0) Agriculture Zone – sets out the ***purpose*** of the Agriculture zone as:
 - (i) 21.1.1 – *to provide for the use or development of land for agricultural use;*
 - (ii) 21.1.2 – *to minimise conflict with or interference from non-agricultural use or development that precludes the return of the land to agricultural use; and*
 - (iii) 21.1.3 – *to provide for use or development that supports the use of the land for agricultural use.*



- (d) Clause 5 of the Guideline No.1 (Item 21.0) then sets out the Zone Application Guidelines:
- (i) AZ 1 – the spatial application of the Agriculture Zone should be based on the land identified in the ‘Land Potentially Suitable for Agriculture Zone’ layer published on the in LIST whilst having regard to:
 - 1. detailed local mapping that addresses anomalies in the LIST data and layers;
 - 2. any other relevant data sets;
 - 3. better aligns with on ground features.
- (e) The application of the *Agricultural* Zone to conservation covenanted property in the NMC municipality and specifically the Bush Heritage Private Nature Reserves in the Liffey Region adjacent to the World Heritage Area, has not been undertaken in accordance with the Zone Application Guidelines in that:
- (i) the natural environmental features and values of the properties mapped, listed under both State and Federal law and protected in perpetuity by way of conservation covenant registered on title pursuant of the *Nature Conservation Act 2002 (TAS)* have been disregarded;
 - (ii) the known values and data sets published via LIST are directly at odds and conflict with the *purpose* of the *Agriculture* zone defined in the TPS and SPP;
 - (iii) In proposing the rezoning of these properties from *Rural Resource* to *Agriculture*, does not serve the purpose of the Agriculture Zone as defined by the TPS SPP and set out in Guideline No.1; and
 - (iv) Zone Application Guideline APZ 6 specifically states that land identified as falling within the “Land Potentially Suitable for Agriculture Zone” layer may be considered for alternate zoning if:

“...the identification and protection of significant natural values, such as priority vegetation areas as defined in the Natural Assets Code, which require an alternate zoning, such as the Landscape Conservation Zone or Environmental Management Zone;.....” ¹⁷
 - (v) All four (4) of Bush Heritage’s Private Nature Reserves, the subject of this Representation, are currently mapped in LIST as being within one or more of the Potentially Constrained criteria, having Land Capability Class 6 – “*land marginally suited to grazing due to severe limitations*” – which (pursuant to the application of APZ 6) would preclude the proposed application of the *Agriculture* zone pursuant to the SPP and Guideline No.1, without further detailed investigation by the NMC as the relevant planning authority.

References:

¹ Map 6 of 46 Tasmanian Planning Scheme – Zones : Northern Midlands Local Provisions Schedule 2021. Public Exhibition Document. <https://northernmidlands.tas.gov.au/source-assets/lps/Northern%20Midlands%20Draft%20LPS%20-%20Zone%20Maps%20-%20Exhibited%20Version.PDF>

² *Oura Oura Reserve* is comprised of 3 separate freehold land titles, 1 of which (Volume: 160359 Folio: 1 – PID: 3061167) is geographically located North of the Liffey River and is therefore located in the Meander Valley Council municipality and not the Northern Midlands Council municipality. This freehold land title does not have *Nature Conservation Act 2002 (TAS)* conservation covenant registered on title and is not actively managed for conservation purposes - given its' small land area, geographical location and minimal natural values. This freehold land title was rezoned from *Rural Resource* to *Rural Living* under the Meander Valley Council Local Provisions Schedule in April 2021.

³ pages 16 & 17 AZ 1 & 3 Zone Application Guidelines Clause 21.0 Agriculture Zone – Guideline No.1

⁴ Appendix 3 Draft LPS Supporting Document - “State Mapping Agricultural Land Background Report (May 2017)” states that only Land Capability Classes 1-4 qualified for inclusion into 2017 Statewide Mapping of “Land Potentially Suitable for Agriculture Zone”

⁵ page 22 Appendix 3 Draft LPS Supporting Document “State Mapping Agricultural Land Background Report (May 2017)” Agricultural Land Mapping Project - Identifying land suitable for inclusion within the Tasmanian Planning Scheme’s Agriculture Zone Background Report Prepared and published by Department of Justice, Planning Policy Unit in conjunction with Macquarie Franklin and Esk Mapping and GIS.

⁶ page 18 AZ 6 (c) Zone Application Guidelines Clause 21.0 Agriculture Zone – Guideline No.1.

⁷ page 19 LCZ 1 Zone Application Guidelines Clause 22.0 Landscape Conservation Zone – Guideline No. 1.

⁸ pages 20 & 21 EMZ 1 Zone Application Guidelines Clause 23.0 Environmental Management Zone – Guideline No.1.

⁹ page 88 Draft LPS Supporting Report Northern Midlands Council (February 2021)

¹⁰ page 88 Draft LPS Supporting Report Northern Midlands Council (February 2021)

¹¹ Page 2 Objectives 1(b) & (c) Drys Bluff Conservation Covenant Agreement dated 15 February 2005

¹² Schedule 1 *Nature Conservation Act 2002 (TAS)*

¹³ page 47 Draft LPS Supporting Report (February 2021).

¹⁴ page 63 Draft LPS Supporting Report (February 2021).

¹⁵ pages 64-73 inclusive Table 4 Draft LPS Supporting Report (February 2021)

¹⁶ page 89 Draft LPS Supporting Report (February 2021).

¹⁷ page 18 AZ 6 (c) Zone Application Guidelines Clause 21.0 Agriculture Zone – Guideline No.1.



Bibliography:

1. Tasmanian Planning Scheme Zones : Northern Midlands Local Provisions Schedule (Zone Overlay Maps) :
<https://northernmidlands.tas.gov.au/source-assets/lps/Northern%20Midlands%20Draft%20LPS%20-%20Zone%20Maps%20-%20Exhibited%20Version.PDF>
2. Local Provisions Schedule – Supporting Report (February 2021):
<https://northernmidlands.tas.gov.au/source-assets/lps/Northern%20Midlands%20Draft%20LPS%20-%20Supporting%20Report%20-%20Exhibited%20Version.PDF>
3. *Nature Conservation Act 2002 (TAS);*
4. *Land Use Planning and Approvals Act 1993 (TAS)*
5. Guideline No. 1 : Local Provisions Schedule (LPS) Zone & Code Application (June 2018) approved under section 8A *Land Use Planning And Approvals Act 1993 (TAS)*.