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Sent: Tue, 31 May 2022 16:47:23 +1000
To: "Huon Valley Council" <hvc@huonvalley.tas.gov.au>; "Kerrie-Lyn O'Neill" <Kerrie-Lyn.O'Neill@bendigoadelaide.com.au>
Subject: LPS Submission Silver Hill Road, Cygnet
Attachments: Huon-LPS_AG-R_PlanningSubmission_K-ONeill_31-May-22.pdf

Trent J. Henderson

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Red Seal Planning respectfully acknowledge the Traditional Owners of the land, the Muwinina band of the South-East Nation, on which we work and learn, and pay respect to the First Nations Peoples of lutruwita (Tasmania), the Palawa, and their elders, past, present and future.

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RED SEAL
Urban & Regional Planning

**Huon Valley Local Planning Schedule (LPS) –
Submission Section 35E Land Use Planning and
Approvals Act 1993:**

- 398 Silver Hill Road, Cygnet (PID: 1698295) CT: 238321/1
- 119 Silver Hill Road, Cygnet (PID: 5853141) CT: 106802/1, CT: 106801/2 & CT: 106801/1

For: K O'Neill

BY: TRENT J. HENDERSON

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Principal Planner

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Appendix A – Analysis and Assessment of Residential Use in Agriculture Zone

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Summary

Project:	Huon Valley Local Provision Schedule Planning Submission relating to the land at: <ul style="list-style-type: none">- 398 Silver Hill Road, Cygnet (PID: 1698295) CT: 238321/1, and- 119 Silver Hill Road, Cygnet (PID: 5853141) CT: 106802/1, CT: 106801/2 & CT: 106801/1
Planning Authority:	Huon Valley Council
Planning Policy:	Section 35E - <i>Land Use Planning and Approvals Act 1993</i>
Current Scheme Zoning:	Significant Agriculture
Proposed LPS Zoning:	Agriculture
Revised LPS Zoning:	Rural
Date of Assessment:	May 2022

1 Introduction

Red Seal Urban & Regional Planning have been engaged by the property owners Kerrie-Lyn O'Neill to review the exhibited documents of the Huon Valley draft Local Provisions Schedule (LPS) in relation to the application of the Agriculture Zone on land at:

- 398 Silver Hill Road, Cygnet (PID: 1698295) CT: 238321/1
- 119 Silver Hill Road, Cygnet (PID: 5853141) CT: 106802/1, CT: 106801/2 & CT: 106801/1

Although on paper the property is made up of two different properties, for the convenience of this submission the entire property will be referenced as the Site and singular, unless specific lots or areas are to be referenced.

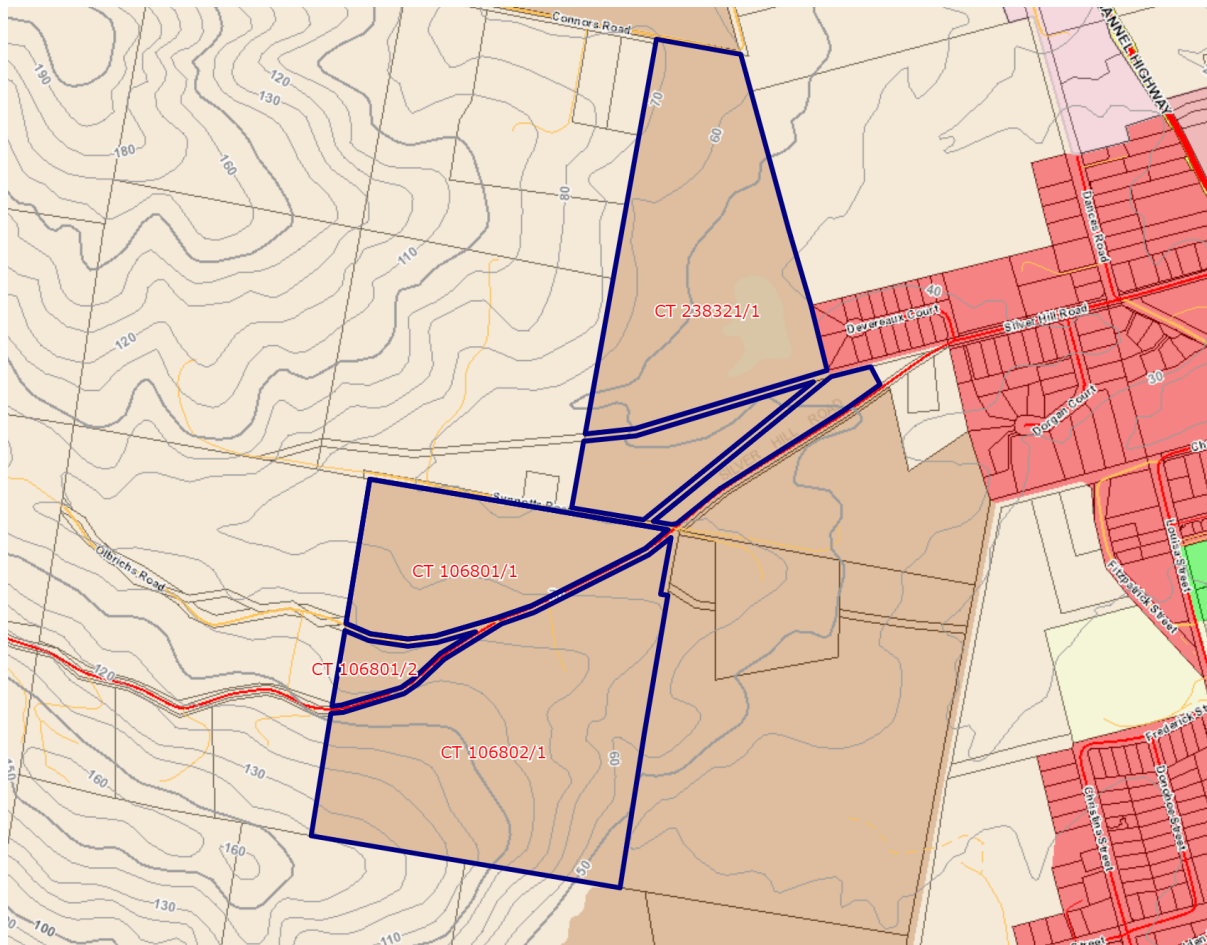


Figure 1 – Site covers the area in blue made up of three certificate of titles.

1.1 Background

Firstly, we would like to commend the Huon Valley Council and its planning staff on the huge body of work and effort evident in getting the LPS to this stage. Given the extent of work required for such a project, it is conceivable that some aspects of the zone mapping have erred due to the base data not being specific to each site.

Therefore, pursuant to Section 35E of the Land Use Planning and Approvals Act 1993 (the Act), the following representation is made to assist Council and the Tasmanian Planning Commission (TPC) in implementing zoning by providing onsite clarification for the properties of concern.

Council has proposed to zone the Site as Agriculture under the Huon Valley - LPS (Figure 1.1a), with the surrounding area to be zoned Rural or General Residential with some areas Landscape Conservation.

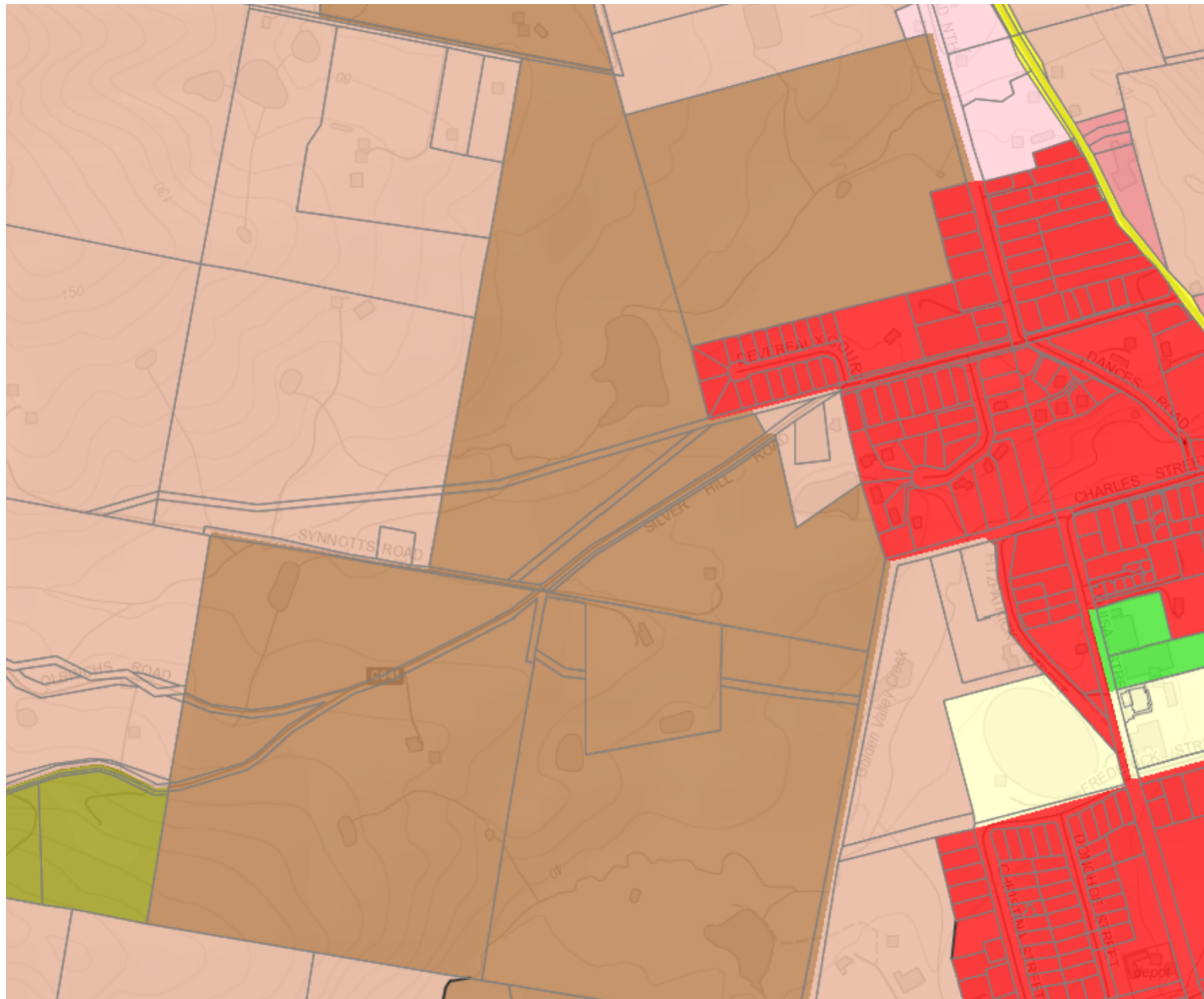


Figure 1.1a – The proposed zoning to Agriculture for the subject lots (in the center of the image in dark brown) under the Huon Valley LPS, with the part of the Site abutting General Residential zoned land of Cygnet. (Source Huon Valley Council)

Council’s supporting report notes, “multiple lots owned by the same landholder with a total area over 10ha”¹ should be zoned Agriculture this should follow a closer review if the lots are mapped as being constrained. All the lots on this Site are mapped as being constrained within the Land Potentially Suitable for Agriculture Zone layer of the LIST (see Figure 1.1b).

It is noted that Council’s consultants report that sets the decision tree for the interpretation of the agricultural mapping states:

¹ HVC, "Supporting Report for the Huon Valley Draft Huon Valley Local Provisions Schedule (LPS)," (Huonville: Huon Valley Council, 2021), p.12.

Titles adjacent to Residential Zones that display very constrained characteristics may be more suited to a Residential Zone. A separate assessment of these titles may be required to confirm this.²

Whilst this submission is not requesting a residential type zoning, the statement supports the fact that land abutting or within close vicinity to residential areas should not be Agriculture.

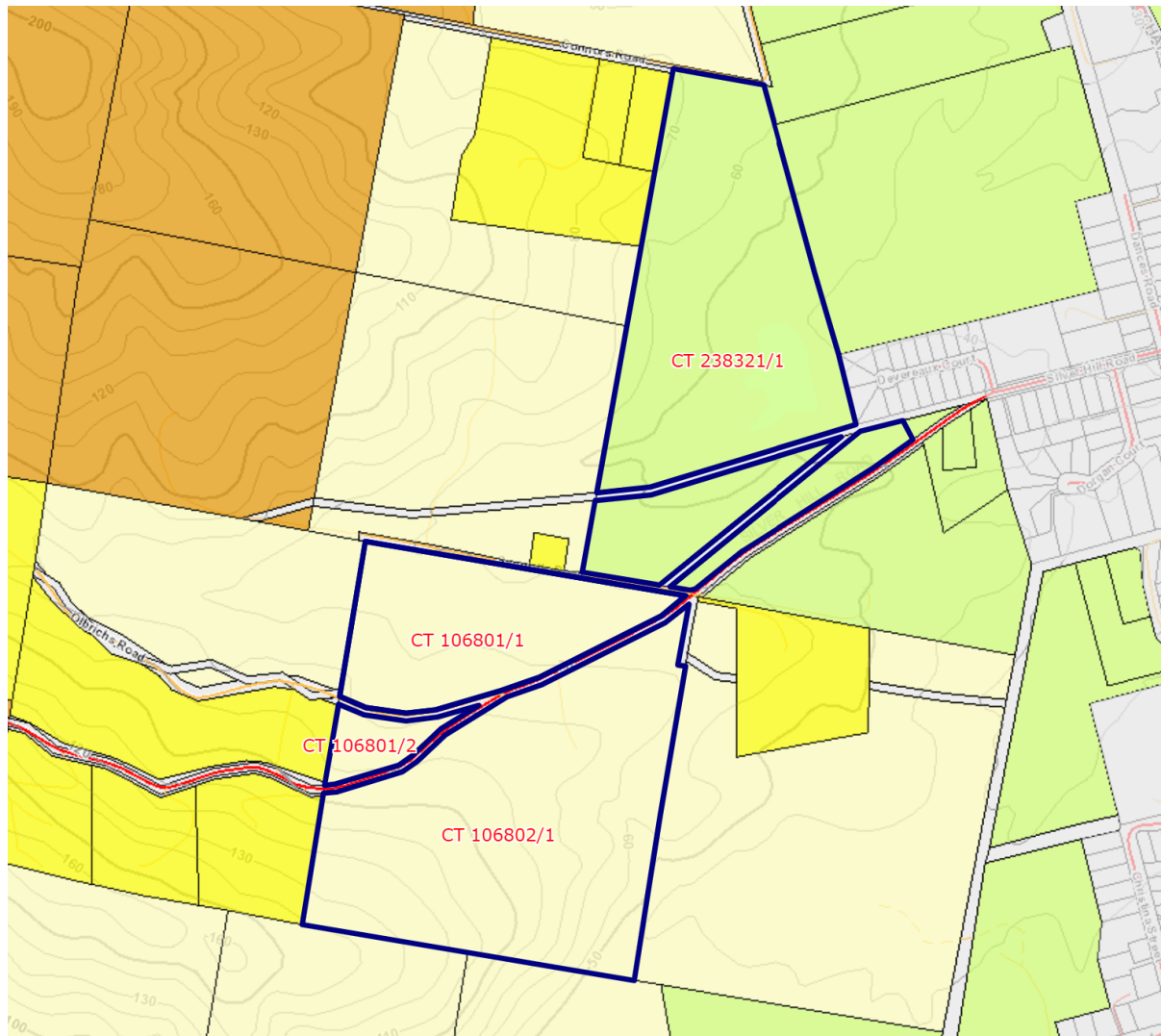


Figure 1.1b – The lot boundaries are outlined; all the titles associated with the Site are classified as constrained in some form within the Land Potentially Suitable for Agriculture Zone layer of the LIST. (Source LIST Map)

1.2 Site

The Site consists of just over 50 hectares, made up four titles.

Current land use used for cattle grazing, as horticultural activities are unsustainable due to the proximity to neighbouring residential properties. The surrounding land use is rural residential use without an agriculture use (Figure 1.2a & 1.2b).

² Astrid Ketelaar and Michael Tempest, "Decision Tree and Guidelines for Mapping the Agriculture and Rural Zones," ed. Michael Tempest and Astrid Ketelaar (Tasmania: AK Consultants, 2018).

Native vegetation is mapped as being present on CT: 106802/1 and CT: 106801/2; however, the small lot (CT 106801/2) is regrowth consisting predominately of weeds. Seasonal grazing occurs when required.

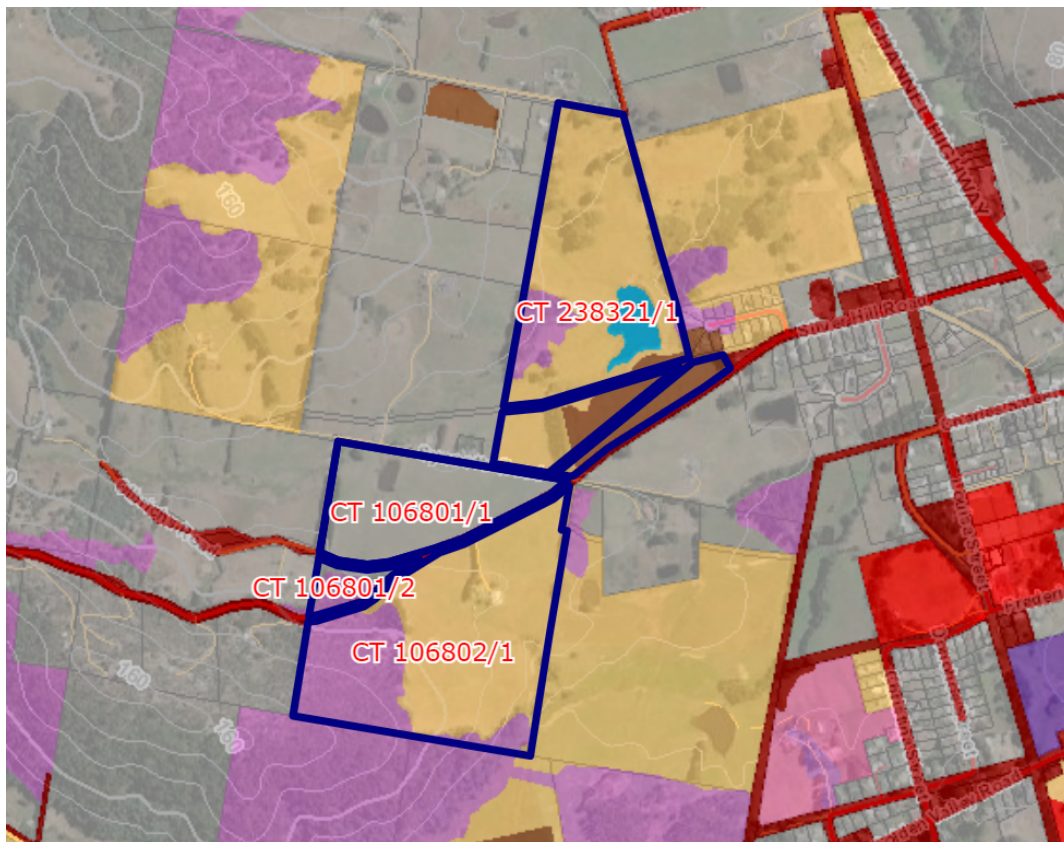


Figure 1.2a – From the 2019 Land Use mapping; yellow indicates livestock grazing. The grey indicates rural residential use without an agriculture use. (Source LIST Map)

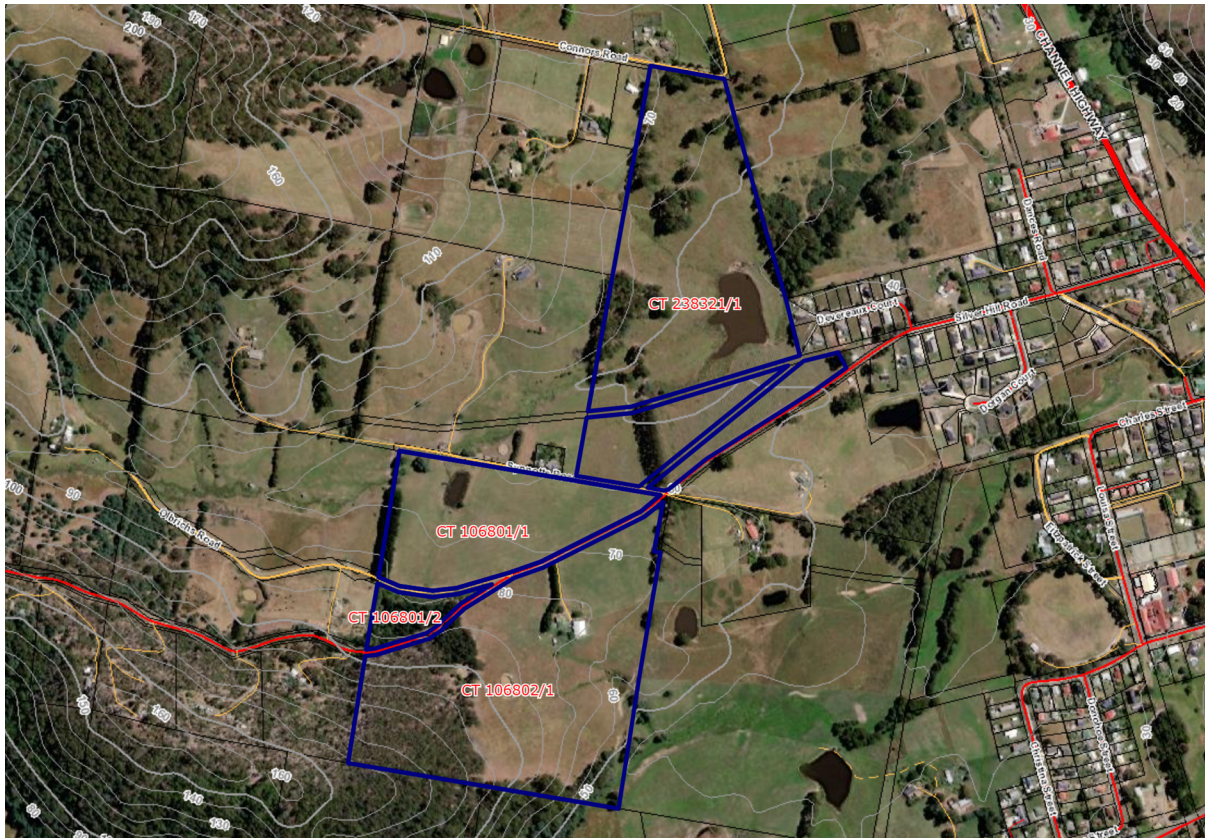


Figure 1.2b – The image shows the Site (outlined) only used for grazing. Additionally, the image shows proximity with residential dwellings. (Source LIST Map)

Vegetation type is listed under the TasVege layer of the LIST Map as Agricultural land (FAG) for most of the area (Figure 1.2d); however, most of the native vegetation is associated with *Eucalyptus obliqua* forest (DOB) and is dotted across the landscape.

None of these vegetation types are listed under Schedule 3A - Threatened native vegetation communities of the *Nature Conservation Act 2002*.

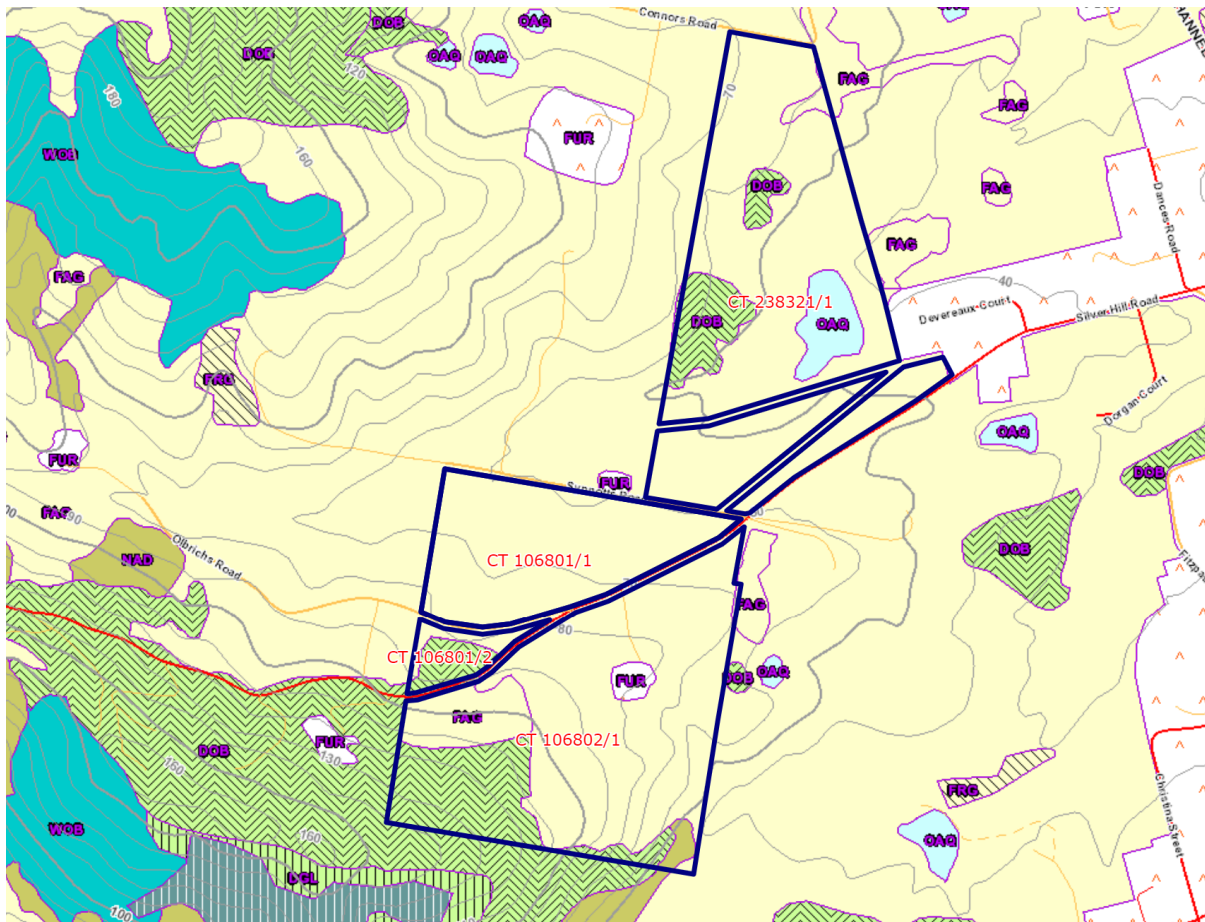


Figure 1.2d- Within the subject title areas the TasVege layer of the LIST Map has the site predominantly agriculture vegetation with small copses of various *Eucalyptus obliqua* forests. (Source LIST Map)

The Land Capability of the lots and the surrounding properties is predominantly Class 5, which is land moderately suitable for pastoral use but considered unsuitable for cropping³, see Figure 1.2e below. Whilst the central area is of Class 4+5 (Figure 1.2e), which is:

*Land well suited to grazing but which is limited to occasional cropping or to a very restricted range of crops. The length of cropping phase and/or range of crops are constrained by severe limitations of erosion, wetness, soils or climate. Major conservation treatments and/or careful management is required to minimise degradation.*⁴

It is observed that these sites are surrounded residential dwellings, significantly restricting the ability to crop or manage an orchard. Whilst this is considered good quality land in a Southern Tasmania context, it is questionable when cross referencing the features with the LIST Map.

Class 4+5 classification may occasionally facilitate cropping; however, pest control is considered impossible due to it being surrounded by sensitive use. Therefore, the only suitable agricultural activity is livestock grazing, which also applies to the Class 5 land.

³ AK R.C. DeRose, "Land Capability Survey of Tasmania: D'Entrecasteaux Report," (Tasmania: Department of Primary Industries, Water and Environment, 2001).

⁴ Ibid.



Figure 1.2e – Land Capability Map – the green area is Class 4+5, olive green area is Class 5, and the blue area is Class 6. The larger lots are covered by Class 4+5, but these areas abut General Residential Zoned land or are within 200m such land. (Source LIST Map)

2 Planning Provisions

2.1 At Issue: Agriculture Zone

It is recognised that Huon Valley Council has implemented the Agriculture Zone in accordance with the Ministerial “Guidelines No.1 Local Provisions Schedule (LPS): zone and code application”, which requires the zoning to be applied to all unconstrained land within the ‘Land Potentially Suitable for Agriculture Zone’ unless ruled out. In accordance with Guideline AZ 3 constrained land can be zoned Agriculture if regard has been given to the existing land use on surrounding the land, along with the agricultural potential, and as part of any strategic detailed analysis consistent with the relevant regional land use Strategy and endorsed by the relevant council.

Whilst it is acknowledged that currently the zoning is Significant Agriculture and Agriculture may seem a clear transition, it assumes that the current zoning under the Huon Valley Interim Planning Scheme 2015 is the correct zoning.

This submission proposes that the “decision tree” established by consultants engaged by the Southern Group of Councils, or its implementation has not factored in the proximity to the residential zoned land of Cygnet and the associated sensitive use.

Additionally, the AK Consultants report is not a “detailed local strategic analysis consistent with the relevant regional land use strategy and endorsed by the relevant council”, as it is simply a tool to assist Council officers when assessing agricultural mapping⁵.

Therefore, the decision tree has not accounted for the various for the fact that this Site is constrained within the ‘Land Potentially Suitable for Agriculture Zone’ mapping project⁶.

Implications of zoning the subject sites Agriculture is divulged in an analysis of the State Planning Provisions, and the ordinance of the Agriculture Zone within the new planning scheme. In juxtaposition to the current Interim Planning Scheme’s Significant Agriculture Zone where it must be demonstrated that there is an agricultural necessity for a residential dwelling, the new scheme does have a pathway that does not require the property owner to prove the agricultural necessity for a dwelling. However, the wording of these provisions is very subjective with minimal guidance, and it would take little to refuse a dwelling on land that is only suitable for livestock grazing such as the subject titles. (See the assessment under Appendix A for further clarification.)

The concern relates to the ability for the farm to facilitate succession planning. This does not imply further subdivision, as the property has several titles, but concern is factored into the ability for the owners’ children to construct a dwelling on established titles. Such a dwelling may or may not be interpreted as being directly necessary for the operation of the farm. This is particularly the case if the soil and land restrictions direct the only agricultural use to that of livestock grazing.

2.2 Proposed Alternative LPS Zoning

The proposed zoning for the Site is Agriculture under the Huon Valley LPS; however, it is proposed by this submission that the entire Site should be Rural.

By being Rural the core agriculture use is maintained, as the land can still be used for livestock grazing, which is the current use.

Whilst it is recognised that the property already has existing use rights, it is positioned that the restrictions under the ordinance of the Agricultural Zone on the land are significant to warrant the site transitioning to the new scheme to be Rural.

By being zoned Rural under the LPS the land has not been lost to the agriculture estate and the objective of the Tasmanian *State Policy on the Protection of Agricultural Land 2009* is still being achieved.

2.3 LPS Zone Purpose Statements & Guidelines

⁵ Ketelaar and Tempest, "Decision Tree and Guidelines for Mapping the Agriculture and Rural Zones," p.1.

⁶ Macquarie Franklin, "Agricultural Land Mapping Project: Identifying land suitable for inclusion within the Tasmanian Planning Scheme's Agricultural Zone: Background Report," (Hobart, Tasmania: Planning Policy Unit, 2017).

The appropriateness of the zoning under the LPS specifies that the purpose of the Rural Zone Clause 20.1, is as follows:

- 20.1.1 - *To provide for a range of use or development in a rural location:*
- (a) *where agricultural use is limited or marginal due to topographical, environmental or other site or regional characteristics;*
 - (b) *that requires a rural location for operational reasons;*
 - (c) *is compatible with agricultural use if occurring on agricultural land;*
 - (d) *minimises adverse impacts on surrounding uses.*
- 20.1.2 - *To minimise conversion of agricultural land for non-agricultural use.*
- 20.1.3 - *To ensure that use or development is of a scale and intensity that is appropriate for a rural location and does not compromise the function of surrounding settlements.*

The fact that this land is constrained, a simple transition to Rural instead of zoning it Agriculture is more appropriate measure when reviewing what is occurring on site.

In accordance with *Guidelines No.1 Local Provisions Schedule (LPS): zone and code application*, Agriculture is the default zone; however, this is based on the land being mapped as unconstrained within *Land Potentially Suitable for Agriculture Zone* layer published on the LIST. Other zone guideline analysis should occur for land that is potentially subject to land use class conflict.

RZ 1 The Rural Zone should be applied to land in non-urban areas with limited or no potential for agriculture as a consequence of topographical, environmental or other characteristics of the area, and which is not more appropriately included within the Landscape Conservation Zone or Environmental Management Zone for the protection of specific values.

Given the poor soil capability and land size and subsequent inability to establish sustainable cropping, the land associated with this submission, should have the Rural Zone and there is not the evidence that another zone is more applicable for the Site.

RZ 2 The Rural Zone should only be applied after considering whether the land is suitable for the Agriculture Zone in accordance with the 'Land Potentially Suitable for Agriculture Zone' layer published on the LIST.

It is evident that the land associated property has been considered in accordance with the guideline of this provision, but only in the initial extent of the provision. The next stage of analysis has not assessed all other issues associated the Site in that each lot associated with this property is classified as constrained within this layer.

RZ 3 The Rural Zone may be applied to land identified in the 'Land Potentially Suitable for Agriculture Zone' layer, if:

- (a) ***it can be demonstrated that 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;***
- (b) ***it can be demonstrated that there are significant constraints to agricultural use occurring on the land;***
- (c) ***the land is identified for the protection of a strategically important naturally occurring resource which is more appropriately located in the Rural Zone and is supported by strategic analysis;***

It is observed that this property is the largest property within the vicinity of the area. Therefore, there is not another farm surrounding the Site of a size or scale to be considered a larger farm sufficiently sustainable to warrant the financial outlay to integrate the subject land into a larger holding. Therefore, Rural Zone could apply in accordance with RZ 3(a).

The proximity to sensitive use associated with neighbouring land should be factored in. Whilst some properties are still in the design phase other properties within the area are built. Council records should have these occurrences on file. The additional fact that the soil quality is poor and insufficient to sustain cropping means that the land associated with four titles is significantly constrained and that there is sufficient justification for Rural Zone being allocated to the site in accordance with RZ 3(b).

In reviewing the site, the RZ 3(c) is not applicable.

3 Conclusion

This representation provides site specific clarification for the following land at:

- 398 Silver Hill Road, Cygnet (PID: 1698295) CT: 238321/1, and
- 119 Silver Hill Road, Cygnet (PID: 5853141) CT: 106802/1, CT: 106801/2 & CT: 106801/1

As the intent of the Agriculture Zone is to provide for agricultural activities and avoid conflict with unrelated non-agricultural activities, the characteristics and the restrictions on the Site limit the useability and reliance of the property for a diverse range of agricultural uses. Therefore, it is considered more appropriate that the property associated with this submission, and for that matter the surrounding area, be zoned Rural. Such a zoning is particularly applicable considering that the intent of the Rural Zone is to provide for less significant agriculture and for it be applied to land with limited or no potential for agriculture.

Pursuant to Section 35E (3)(b) of the *Land Use Planning and Approvals Act 1993*, the draft LPS should not apply the zone Agriculture to the subject sites, being more appropriate to be zoned Rural, which is more consistent with the actual use of the site and the agricultural use occurring within the neighbouring properties.

References

- DeRose, R.C. "Land Capability Survey of Tasmania: D'entrecasteaux Report." 88. Tasmania: Department of Primary Industries, Water and Environment, 2001.
- Franklin, Macquarie. "Agricultural Land Mapping Project: Identifying Land Suitable for Inclusion within the Tasmanian Planning Scheme's Agricultural Zone: Background Report." 27. Hobart, Tasmania: Planning Policy Unit, 2017.
- HVC. "Supporting Report for the Huon Valley Draft Huon Valley Local Provisions Schedule (Lps)." 145. Huonville: Huon Valley Council, 2021.
- Ketelaar, Astrid, and Michael Tempest. "Decision Tree and Guidelines for Mapping the Agriculture and Rural Zones." edited by Michael Tempest and Astrid Ketelaar, 30. Tasmania: AK Consultants, 2018.

Appendix A – Analysis and Assessment of Residential Use in Agriculture Zone

The purpose of the Agriculture Zone is to implement the Tasmanian *State Policy on the Protection of Agricultural Land 2009*. The Scheme adopts the Policy's definition of 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.”

Therefore, the purpose of the agricultural zone is to prioritise primary industry related business specifically farming and to minimise conflict with such activities. That is, non-agricultural use can occur if it does not result in loss of agricultural land or impact on an agricultural use.

The Agriculture Zone has residential use as a permitted use class for a home-based business in an existing dwelling, or alterations or extensions to an existing dwelling. A new residential use (a new dwelling) requires a discretionary application, needing public consultation and justification to show the impact is appropriate for the location by not causing a loss to Agricultural Land for either an existing or potential agricultural use.

Tourism operation, plus visitor accommodation can occur, but is subject to a discretionary application. A dwelling located outside a building area will also be regarded as discretionary.

Clause 21.3 (SPP) relates to use of standards for discretionary applications that are required to demonstrate support for agricultural uses and to reduce the conversion of land to non-agricultural uses. There is no acceptable solution listed under this provision; therefore, all applications will be subject to public notification. The provisions listed under P1, P2, & P3 do not apply to Residential Use.

P4 specifically relates to residential use, requiring the application to demonstrate either (a) it is necessary to be on the agricultural land as part of the agricultural use or (b) that it is located on a site not suitable for agricultural use. Specifically:

(a) be required as part of an agricultural use, having regard to:

- (i) the scale of the agricultural use;*
- (ii) the complexity of the agricultural use;*
- (iii) the operational requirements of the agricultural use;*
- (iv) the requirement for the occupier of the dwelling to attend to the agricultural use; and*
- (v) proximity of the dwelling to the agricultural use;*

Or alternatively,

(b) be located on a site that:

- (i) is not capable of supporting an agricultural use;*
- (ii) is not capable of being included with other agricultural land (regardless of ownership) for agricultural use; and*
- (iii) does not confine or restrain agricultural use on adjoining properties.*

It is observed that a dwelling does not need to comply with both sub-clause (a) and (b). Under the New Scheme there is a pathway for an approval of a dwelling that is not “necessary to facilitate... land for agricultural purpose” as it is within the Significant Agriculture Zone of the current Interim Planning Schemes.

However, there is a forewarning to the wording of sub-clause (b) – interpretation and enforcement of this provision is potentially variable as there is limited context of scale within the provision. To reiterate, agricultural use includes land used for keeping and breeding of animals; therefore, livestock grazing is an agricultural use. Livestock grazing can occur on quite poor soil classification, as a result there is not much land within the Huon Valley Region that is not capable of being considered capable of being included by others for an agricultural use. Therefore, it potentially will be hard to comply with sub-clause (b).

As there is no size limitation, such as the wording of sub-clause (a)(i), a Planning Authority could easily be placed in the position of refusing a proposal for a dwelling on a lot only suitable for grazing because the neighbour grazes cattle: noting that there is no differentiation between “pet” and a small herd of livestock.

Whilst this interpretation might appear an extreme example, past Tribunal decisions have demonstrated that a literal reading of the Performance Criteria has the potential to result in such a proposal being prohibitive⁷.

⁷ *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson* [2015] TASRMPAT 10 (23 April 2015)



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Sent: Tue, 31 May 2022 23:46:55 +1000
To: "Huon Valley Council" <hvc@huonvalley.tas.gov.au>
Cc: "Kerrie-Lyn O'Neill" <Kerrie-Lyn.O'Neill@bendigoadelaide.com.au>
Subject: HVC Submission please find the Land Assessment for 119 Silver Hill Rd Cygnet
PID 5853141
Attachments: Appendix-A_LandAssessment-Huon-LPS_SilverHill_ONeill_31-May-2022.pdf

Trent J. Henderson

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30/05/22

Trent Henderson
Red Seal Urban & Regional Planning
Hobart TAS 7000

RE: Agricultural land Capability – PID 5853141 & 1698295 – 119 Silver Hill Road Cygnet

I am a Certified Professional Soil Scientist (CPSS) and I have completed the assessment of numerous agricultural properties in Tasmania over the past 20 years including a number in the Huon Valley area. I have completed a review of my files for the local area and the subject property and can provide the following information.

- The property is located on Silver Hill Road close to the township of Cygnet and extends over an area of over 36ha and is bordered by a mix of rural, rural residential and residential properties (see figure 1 site location).
- The property consists of four titles, ranging in area from approximately 1ha to over 15ha
- The property is split by Silver Hill Road which runs approximately east to west and the southern portion of the property currently supports a dwelling
- The surrounding titles are also a mix of small residential blocks to the north east (Deveraux Court), to small rural residential lots of approximately 1-2ha, out to larger rural residential and rural properties of 15-20ha
- The property is underlain by Permain aged sediments of basal Tillite with duplex soils on the moderate slopes of the property (see figure 2 geological mapping).
- The property is mapped as predominantly a complex of class 4/5 agricultural land (see figure 3 land capability mapping).
- Smaller areas of the property are mapped as Class 6 agricultural land, however on the balance most of the property would be considered class 5 land.
- The land suitability mapping for the area which shows that the property is suitable for pasture production from typical ryegrass pastures provided adequate management measures are implemented (see figure 4 ryegrass pasture suitability).
- Generally, the duplex soils are subject to pugging from stock in winter months and drainage improvements are required to improve pasture growth. Periodic pasture renovation with tillage to alleviate compaction is also often employed as a management measure.

- The soil types on the property have a number of identified soil limitations to agricultural use, and in particular due to the clay subsoils on the property poor drainage and water logging poses a significant barrier to intensive agricultural use (see figure 5 soil waterlogging hazard mapping).
- Previous assessment of soils in the local area identified a number of limitations to agricultural use of the main soil type on the property
- The area of soils on Permian sediments the following limitations have been identified
 - Soils on hill slopes can be shallow with a high stone content and poor rooting depth
 - Soils generally have a strong texture contrast with potential for shallow perched seasonal water tables
 - Subsoils are imperfectly to poorly drained
 - Sandy topsoils have an acidic pH trend, weak structure and can be prone to surface erosion
 - The subsoil clays can also be sodic/dispersive and prone to erosion if stripped of surface cover
- From my review of the information relating to soil and land quality on the property it is my conclusion that the land has limited agricultural capability
- The titles are relatively small in area and are surrounded on all sides by several small titles with current rural residential and general residential use, therefore any future intensive agricultural use of the property is significantly fettered
- Given the agricultural capability of the property is highly constrained, future zoning as part of the state-wide planning scheme must be carefully considered to ensure the optimal future use of the land resource
- In conclusion a rural zoning which allows low intensity agricultural activities and rural residential uses may be the most appropriate use of the land resource into the future.

Kind regards,



Dr John Paul Cumming B.Agr.Sc (hons) PhD CPSS GAICD
Director

Figure 1 – Site location



Figure 2 – Geology mapping

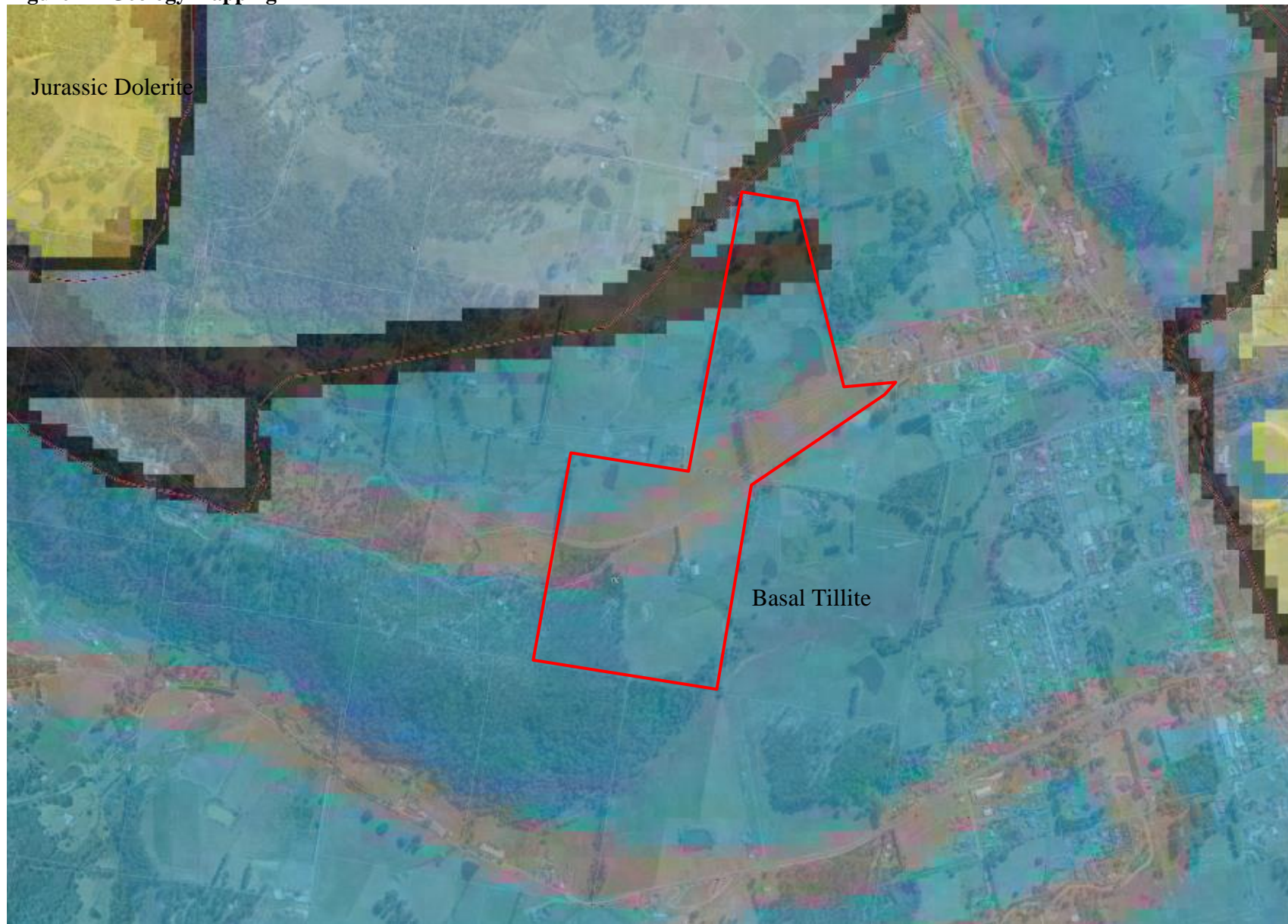


Figure 3 – Land capability mapping

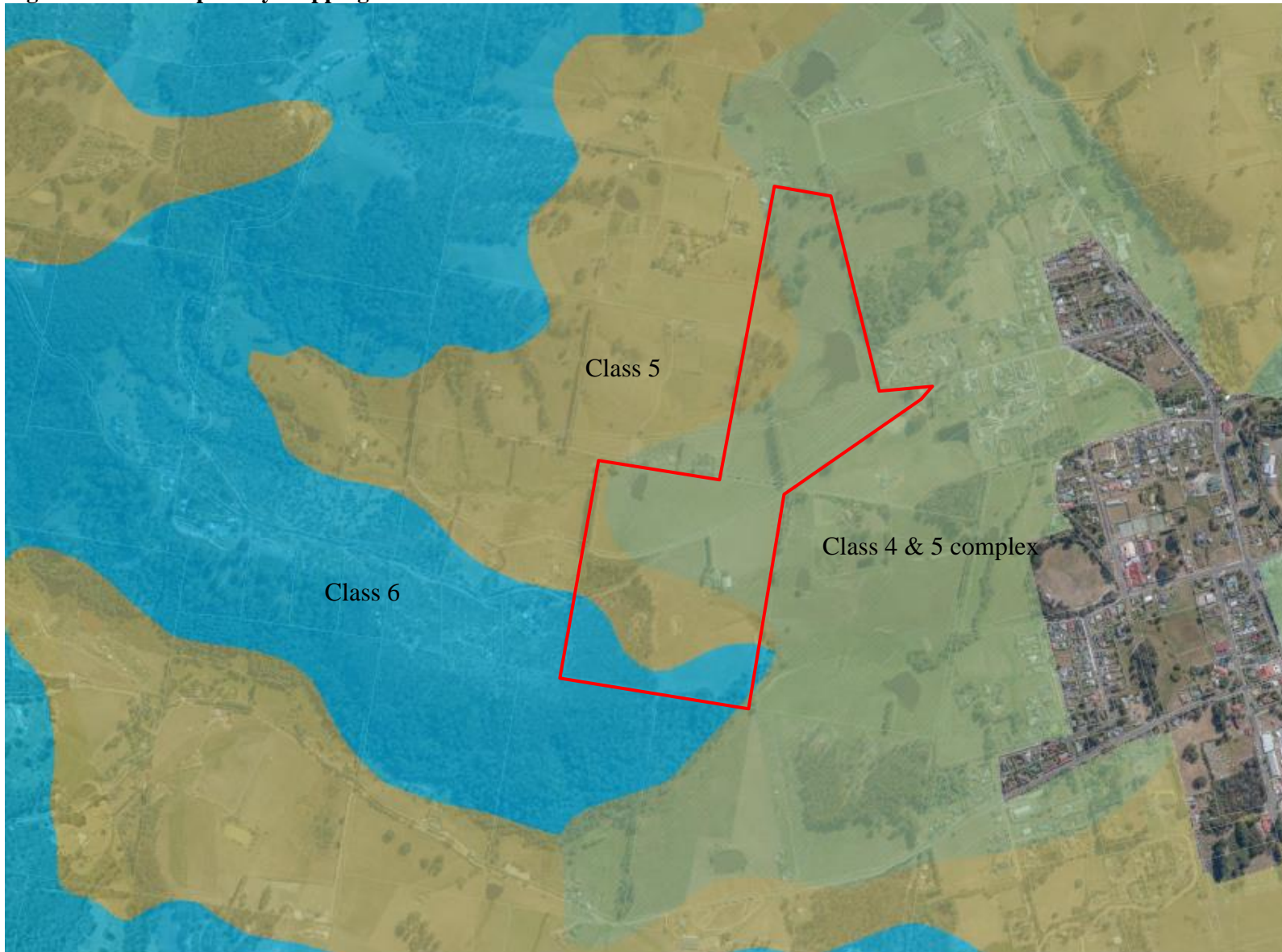


Figure 4 – Ryegrass pasture suitability mapping

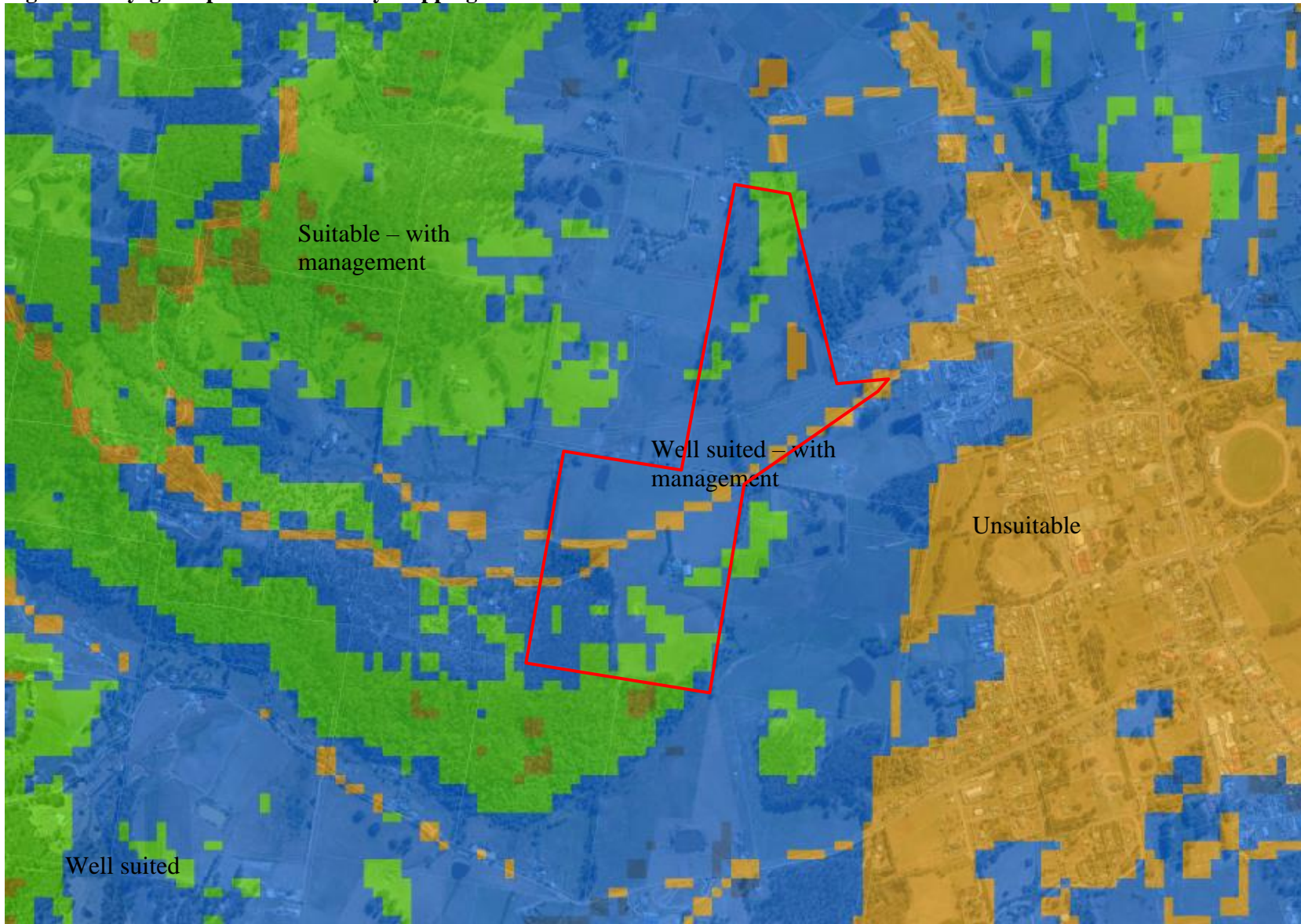


Figure 5 – Soil Waterlogging Hazard

