

From: andrewjones7109@gmail.com
Sent: Mon, 30 May 2022 15:57:30 +1000
To: hvc@huonvalley.tas.gov.au
Subject: The General Manager, Huon Valley Council with reference "Draft Huon Valley Local Provisions Schedule" Lot 1 Ida Bay Road ref 5269324
Attachments: Lot 1 Ida Bay Road ref 5269324 HVC LPS_May 2022.pdf

Hi General Manager,

Please find attached representation regarding "Draft Huon Valley Local Provisions Schedule" in relation to Lot 1 Ida Bay Road.

Cheers,
Andrew

REPRESENTATION TO DRAFT HUON VALLEY LOCAL PROVISIONS SCHEDULE

PID 5269324

IDA BAY RD CT112795/2 Freehold Title Area 74338.215

Huon Valley Draft Local Provisions Schedule

Overlays

- Priority Vegetation Area
- Landslip Hazard
- Coastal Inundation Hazard
- Future Coastal Refugia Area
- Bushfire Prone Areas

Proposed Zone: Landscape Conservation

Proposed translation from Environmental Living to Landscape Conservation Zone

I make the following representations on the Draft *Huon Valley Local Provisions Schedule [LPS]* in relation to property title reference 112795/2. According to the correspondence provided to me in May 2022 by the Huon Valley Council and related documents I understand the proposed zone translation for my property is from the Environmental Living Zone under the *Huon Valley Interim Planning Scheme 2015* to the Landscape Conservation Zone in the *Huon Valley Draft LPS*.

I purchased the property in 2020 with the intention to build a small dwelling as permitted under the current *Interim Planning Scheme*, as constrained by the various Codes and other requirements that apply under that scheme, including the Biodiversity Code.

The property is unusual in that it is surrounded by State Reserve, with access to the property by foot and rail (Ida Bay Railway) and does not have road access. The proposed re-zoning to the Landscape Conservation Zone appears to prohibit the establishment of a residential dwelling on the property, as it would be a discretionary use that requires road access to achieve an acceptable solution or meet the performance criteria for the development standards for buildings and works. There is no applicable access road.

This would be a fundamental change in use and development rights from a situation where a residential dwelling is permitted to one where such development is discretionary and is very unlikely to be permitted by virtue of the requirements for road access. It is anticipated that this is an unintended consequence of application of the Landscape Conservation Zone to this property, as most properties transitioning to this Zoning would be expected to have road access.

I note the provisions in the *Land Use Planning and Approvals Act 1993 [LUPAA]* for a planning authority to prepare a draft LPS provide that the designation of the zone under the State Planning Provisions must be that which most closely corresponds to the zone in the current planning scheme.

Specifically, section 35(5C) provides that:

“A provision that is to be included, in a draft LPS in relation to a municipal area, in accordance with a direction under subsection (5A) to modify the draft LPS, may be varied so that the provision – ...

(b) will reflect the terminology used in the SPPs or in the LPS, including, but not limited to including, where the modification relates to the designation of a zone in the planning scheme, by changing the designation of the zone to the zone in the draft LPS that most closely corresponds to the zone in the planning scheme; or...”

A change to the Landscape Conservation Zone for this specific property would create a fundamental difference in use and development rights and criteria to be met for residential development on this site. I am of the view that the Landscape Conservation Zone is not the zone that most closely corresponds to the zone in the current planning scheme in this case.

I understand from information publicly available on the preparation of draft LPSs, including the *Fact-Sheet-6-Tasmanian-Planning-Scheme-Rural-Living-Areas-September-2017* on the Department of Justice website, that land which is zoned Environmental Living under interim planning schemes is proposed to be translated to either the Landscape Conservation Zone or the Rural Living Zone under the State Planning Provisions.

I am of the view that for this property, the new zoning in the State Planning Provisions that most closely corresponds to the current zone of Environmental Living in the *Huon Valley IPS 2015* is the new Rural Living Zone, rather than the Landscape Conservation Zone, including for the reasons outlined below.

- The Rural Living Zone maintains the permitted use of residential dwelling whereas the Landscape Conservation Zone would make this discretionary or in this specific instance, more likely not permitted.
- The Rural Living Zone does not include specific requirements for road access that limit and likely prevent the establishment of a residential dwelling on the land, which is not only permitted under the current zoning but is one of the key purposes of that zone.
- The Zone Purpose Statement for the Rural Living Zone is more consistent with the Environmental Living Zone. The Rural Living Zone Purpose Statement provides for residential use or development in a rural setting where services are limited; or existing natural and landscape values are to be retained. The Environmental Living Zone Purpose Statement provides for residential use or development in areas where existing natural and landscape values are to be retained, among other things. By contrast the Landscape Conservation Zone Purpose Statement does not refer to residential dwellings but rather to “compatible use and development” generally and may allow for a wider range of use and development in that zone.

I note the application of relevant Codes to the property is identified in the *Draft LPS* as follows – Natural Assets Code, Landslip Hazard Code, Coastal Inundation Code and Bushfire Prone Areas Code – and that the protection of natural and landscape values on the property would be provided through this mechanism in addition to any applicable legislation.

To the extent there is a policy objective to protect the landscape and biodiversity values of this property and surrounding properties, I propose that the Natural Assets Code, other Codes and requirements including building design criteria and boundary offsets associated with the neighbouring state reserve would provide the same or better protection of those values as the proposed Landscape Conservation Zone. For example, it is easy to envisage a tourism operation (permitted under landscape conservation zoning) having a more substantive adverse visual and biodiversity impact than a modest residential dwelling on the site.

In summary, I am of the view that the zoning that most closely corresponds to the current zoning under the new planning scheme, in accordance with the requirements of LUPAA, would be Rural Living, which maintains the right to establish a residential dwelling on the property.

I also note as a general comment that the property appears to have previously been built on in some form. Access tracks are clearly visible on historical aerial photos, and the remains of some infrastructure including an old gate as well as garden plantings remain on the property.

Extracts from relevant planning schemes and legislation are provided in appendix below for convenience.

As I am submitting my representation via email, given the closing date of 31 May 2022, I request a return email acknowledging that my representation has been received by that date.

Thank you for the opportunity to make a representation, and please feel free to call me if you would like to discuss.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive style with a large initial 'A'.

Yours Sincerely,

Andrew Jones

26 Miandetta Drive, Margate 7054

0400 537 944

Appendix 1 Extracts from relevant planning schemes and legislation

Huon Valley Interim Planning Scheme 2015

The Environmental Living Zone provides that:

14.1 Zone Purpose

14.1.1 Zone Purpose Statements

14.1.1.1 To provide for residential use or development in areas where existing natural and landscape values are to be retained. This may include areas not suitable or needed for [resource development](#) or agriculture and characterised by [native vegetation](#) cover, and where services are limited and residential amenity may be impacted on by nearby or adjacent rural activities.

14.1.1.2 To ensure development is reflective and responsive to the natural or landscape values of the land.

14.1.1.3 To provide for the management and protection of natural and landscape values, including skylines and ridgelines.

14.1.1.4 To protect the privacy and seclusion that residents of this zone enjoy.

14.1.1.5 To provide for limited community, tourism and recreational uses that do not impact on [natural values](#) or residential amenity.

14.1.1.6 To encourage passive recreational opportunities through the inclusion of pedestrian, cycling and horse trail linkages.

14.1.1.7 To avoid land use conflict with adjacent Rural Resource or Significant Agriculture zoned land by providing for adequate buffer areas.

14.1.1.8 To provide for low impact tourism development and other commercial uses that benefit from natural areas including those areas in the south of the planning scheme area.

14.1.1.9 To provide for sensitive uses in locations where the risk to life and property from land hazards is minimal.

14.1.1.10 To provide for the maintenance of scenic values along the coast including those areas in the south of the planning scheme area.

14.1.2 Local Area Objectives There are no local area objectives for this zone.

14.1.3 Desired Future Character Statements There are no desired future character statements for this zone.

14.2 Use Table

- Residential use is permitted – if single dwelling or home-based business.

14.4 Development standards for buildings and works

14.4.3 Design of buildings

- the acceptable solution is – the location of buildings and works must comply with any of the following: (a) be located within a building area, if provided on the title; (b) be an addition or alteration to an existing building; (c) be located on a site that does not require the clearing of native vegetation and is not on a skyline or ridgeline.
- The performance criteria are – P1 The location of buildings and works must satisfy all of the following: (a) be located in an area requiring the clearing of native vegetation only if: (i) there are no sites clear of native vegetation and clear of other significant site constraints such as access difficulties or excessive slope; (ii) the extent of clearing is the minimum necessary to provide for buildings, associated works and associated bushfire protection measures; (iii) the location of clearing has the least environmental impact; (b) be located on a skyline or ridgeline only if: (i) there are no other sites suitable for development due to access difficulties or excessive slope; (ii) there is no significant impact on the rural landscape; (iii) building height is minimised; (iv) any screening vegetation is maintained.

(c) be consistent with any Desired Future Character Statements provided for the area or, if no such statements are provided, have regard to the landscape.

Tasmanian Planning Scheme – State Planning Provisions

The Landscape Conservation Zone provides that:

22.1 Zone Purpose

The purpose of the Landscape Conservation Zone is:

22.1.1 To provide for the protection, conservation and management of landscape values.

22.1.2 To provide for compatible use or development that does not adversely impact on the protection, conservation and management of the landscape values.

22.2 Use Table

- Residential use is permitted if for a: (a) home-based business; or (b) single dwelling located within a building area, if shown on a sealed plan.
- Residential use is discretionary if for a single dwelling – There are no acceptable solutions for the discretionary use. The performance criterion is – use listed as Discretionary must be compatible with landscape values, having regard to: (a) the nature, scale and extent of the use; (b) the characteristics and type of the use; (c) the landscape values of the site; (d) the landscape value of the surrounding area; and (e) measures to minimise or mitigate impacts.

22.4 Development standards for buildings and works

- 22.4.3 Access to a road
 - The acceptable solution is - new dwellings must be located on lots that have frontage with access to a road maintained by a road authority. There is no road frontage on the property PID 5269324 therefore this criterion cannot be met by a residential dwelling.
 - The performance criterion is - new dwellings must have legal access, by right of carriageway, to a road maintained by a road authority that is sufficient for the intended use, having regard to: (a) the number of users of the access; (b) the length of the access; (c) the suitability of the access for use by the occupants of the dwelling; (d) the suitability of the access for emergency services vehicles; (e) the topography of the site; (f) the construction and maintenance of the access; and (g) the construction, maintenance and usage of the road. It appears that this criterion could not be met by a residential dwelling on property PID 5269324 at this time.
- 22.4.4 Landscape protection

Objective:	That the landscape values of the site and surrounding area are protected or managed to minimise adverse impacts.
Acceptable solutions	Performance criteria
A1 Building and works must be located within a building area, if shown on a sealed plan.	P1 Building and works must be located to minimise native vegetation removal and the impact on landscape values, having regard to: (a) the extent of the area from which vegetation has been removed; (b) the extent of native vegetation to be removed; (c) any remedial or mitigation measures or revegetation requirements; (d) provision for native habitat for native fauna; (e) the management and treatment of the balance of the site or native vegetation areas; (f) the type, size, and design of development; and (g) the landscape values of the site and surrounding area.
A2	P2.1

<p>Buildings and works must: (a) be located within a building area, if shown on a sealed plan; or (b) be an alteration or extension to an existing building providing it is not more than the existing building height; and (c) not include cut and fill greater than 1m; and (d) be not less than 10m in elevation below a skyline or ridgeline.</p>	<p>Buildings and works must be located to minimise impacts on landscape values, having regard to: (a) the topography of the site; (b) the size and shape of the site; (c) the proposed building height, size and bulk; (d) any constraints imposed by existing development; (e) visual impact when viewed from roads and public places; and (f) any screening vegetation.</p> <p>P2.2 If the building and works are less than 10m in elevation below a skyline or ridgeline, there are no other suitable building areas.</p>
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The Rural Living Zone provides that:

11.1 Zone Purpose

11.1.1 Zone Purpose Statements

11.1.1 To provide for residential use or development in a rural setting where: (a) services are limited; or (b) existing natural and landscape values are to be retained.

11.1.2 To provide for compatible agricultural use and development that does not adversely impact on residential amenity.

11.1.3 To provide for other use or development that does not cause an unreasonable loss of amenity, through noise, scale, intensity, traffic generation and movement, or other off site impacts.

11.1.4 To provide for Visitor Accommodation that is compatible with residential character.

Zone Purpose 11.1.1 appears comparable to the Environmental Living Zone Purpose which applies to the property under the Huon Valley Interim Planning Scheme.

11.2 Use Table

- Residential use is no permit required if for a single dwelling.
- Residential use is permitted if for a home-based business.

11.4 Development standards for buildings and works

- There are no specific requirements for road access in this zone.

35. Draft LPS to be provided to Commission

[Section 35 Amended by No. 85 of 1997, Sched. 4, Applied:01 Jan 1998] [Section 35 Substituted by No. 49 of 2001, s. 16, Applied:16 Jul 2001] [Section 35 Subsection (2) amended by No. 100 of 2001, s. 5, Applied:17 Dec 2001] [Section 35 Repealed by No. 47 of 2015, s. 10, Applied:17 Dec 2015]

- (1) A planning authority may prepare and submit to the Commission a draft LPS that applies to the municipal area of the planning authority.
- (2) The Minister, by notice in writing to a planning authority, may direct the planning authority to prepare and submit to the Commission a draft LPS that applies to the municipal area of the planning authority.
- (3) A direction to a planning authority under [subsection \(2\)](#) in relation to a draft LPS may require that the draft LPS be submitted to the Commission by a date, specified in the direction, that is not less than 42 days after the date on which the direction is given.
- (4) A planning authority must submit to the Commission in accordance with a direction under [subsection \(2\)](#) a draft LPS by the date, if any, specified in the direction as the date by which the draft LPS must be submitted or within a longer period allowed by the Minister.
- (5) If a planning authority has submitted to the Commission a draft LPS under this section, the Commission must –
 - (a) submit the draft LPS to the Minister under [section 35B\(1\)](#) together with a request under that section for approval to issue a direction under [section 35B\(4\)](#) in relation to the draft LPS; or
 - (b) by notice in writing to the planning authority, direct the authority to prepare and submit to the Commission, within the period specified in the direction, the draft LPS modified in accordance with the direction; or
 - (c) with the agreement of the planning authority, modify the draft LPS so that the draft LPS meets the LPS criteria.
- (5A) *[Section 35 Subsection (5A) inserted by No. 7 of 2021, s. 12, Applied:14 Jul 2021]* Without limiting the generality of [subsection \(5\)\(b\)](#), the Commission may give to a planning authority under [subsection \(5\)\(b\)](#) a direction to modify a draft LPS –
 - (a) to include provisions that correspond to provisions that were included, in the planning scheme, within the meaning of [section 10\(2\)\(a\)\(ii\)](#), that applies in relation to the municipal area, by an amendment, of that planning scheme, that came into effect after the draft LPS was submitted to the Commission under [subsection \(1\)](#); or
 - (b) so that the provisions of the draft LPS, as modified in accordance with the direction, will correspond to the provisions, of the planning scheme, within the meaning of [section 10\(2\)\(a\)\(ii\)](#), that applies to the municipal area, as that planning scheme is altered by an amendment, of that planning scheme, that is in effect on the day on which the draft LPS is submitted to the Commission under [subsection \(1\)](#).
- (5B) *[Section 35 Subsection (5B) inserted by No. 7 of 2021, s. 12, Applied:14 Jul 2021]* A direction may not be given under [subsection \(5A\)](#) unless the provisions to be included in the draft LPS, as so modified, if at all, in accordance with the direction, are provisions of a kind that may be included in a draft LPS prepared under [section 35](#).
- (5C) *[Section 35 Subsection (5C) inserted by No. 7 of 2021, s. 12, Applied:14 Jul 2021]* A provision that is to be included, in a draft LPS in relation to a municipal area, in accordance with a direction under [subsection \(5A\)](#) to modify the draft LPS, may be varied so that the provision –
 - (a) will conform to the requirements of the SPPs in relation to the LPS; or

- (b) will reflect the terminology used in the SPPs or in the LPS, including, but not limited to including, where the modification relates to the designation of a zone in the planning scheme, by changing the designation of the zone to the zone in the draft LPS that most closely corresponds to the zone in the planning scheme; or
- (c) will contain provisions that –
 - (i) are appropriately numbered; or
 - (ii) make correct references to provisions in the draft LPS or in other instruments, including but not limited to the SPPs; or
 - (d) will achieve the effect intended by the amendment of the planning scheme to which the direction relates.
- (6) A planning authority to which a direction under [subsection \(5\)\(b\)](#) is given must prepare and submit to the Commission, within the period specified in the direction or a longer period allowed by the Commission, a draft LPS modified in accordance with the direction.
- (7) A planning authority must not prepare and submit a draft LPS to the Commission under this section unless the planning authority is satisfied that the draft LPS meets the LPS criteria.