

**From:** "Trent Henderson" <redsealplanning@gmail.com>  
**Sent:** Tue, 31 May 2022 16:52:57 +1000  
**To:** "Huon Valley Council" <hvc@huonvalley.tas.gov.au>; "Lorraine Walker" <lorrainefwalker@bigpond.com>  
**Subject:** Huon Valley LPS Submission - Walker  
**Attachments:** Huon-LPS\_AG-R\_PlanningSubmission\_Walker\_31-May-22.pdf

## **Trent J. Henderson**

BA(Hons) GCUrbDgn MEP RPIA

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## **RED SEAL Urban & Regional PLANNING**

**M:** +61 411 631 258 : [LinkedIn](#)  
nipaluna / Hobart, Tasmania

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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:**

- Flakemore Road, Franklin – CT: 159201/1, CT: 159196/1, CT: 153611/3 (PID: 3307462 & PID: 3307411)

**For: V & I Walker**

BY: TRENT J. HENDERSON

BA(Hons) GCurbDgn MEP RPIA

Principal Planner

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

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#### Red Seal Urban & Regional Planning

ABN: 40 176 568 800

Hobart, Tasmania | M +61 411 631 258 | E [redsealplanning@gmail.com](mailto:redsealplanning@gmail.com)

## Summary

Project:	Huon Valley Local Provision Schedule Planning Submission relating to the land off Braeside Road and Flakemore Road, Franklin described as: <ul style="list-style-type: none"><li>- CT: 159201/1,</li><li>- CT: 159196/1,</li><li>- CT: 153611/3</li></ul>
Planning Authority:	Huon Valley Council
Planning Policy:	Section 35E - <i>Land Use Planning and Approvals Act 1993</i>
Current Scheme Zoning:	Rural Resource
Proposed LPS Zoning:	Agriculture
Revised LPS Zoning:	Rural
Date of Assessment:	May 2022

### At Issue:

- a) There appears to be a core error in the decision tree to determine the allocation of Agriculture Zone, resulting in:
  - i. Land zoned Agriculture
  - ii. Not using Certificate of Titles to base the Agriculture Zone resulting in an untimely and misguided image of the lot layout,
  - iii. Not factoring poor soil quality with the two previous errors resulting in small lots that are zoned agriculture, plus the fact the land is recognised as a drought zone, not able to sustain agricultural use or be positioned to be incorporated into a larger sustainable farm.
  
- b) It appears that existing approvals have not been considered in assuming that the 'Land Potentially Suitable for Agriculture Zone' layer in the LIST is correct, therefore resulting in zoning implications that will inhibit the capacity for the lots to be able to be developed.

Therefore, 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 area but instead the Rural Zone.

# 1 Introduction

Red Seal Urban & Regional Planning have been engaged by the property owners Vivian & Ivan Walker 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 off Flakemore Road, Franklin described as CT: 159201/1, CT: 159196/1, & CT: 153611/3 alternatively as PID: 3307462 & PID: 3307411.

In reviewing this land (the Site) the submission will also undertake an assessment of surrounding land and the proposed zoning.

## 1.1 Background

It is acknowledged the significant body of work that has evidently occurred in progressing the LPS to this stage and we commend Huon Valley Council (the Council) and its planning staff for it. However, given the extent of work required and the duration of time it has taken Council to undertake the mapping process, it is understandable that some aspects of the zone mapping are not optimal due to the base data not being specific to each site in addition to the fact that the land tenure and on ground activity has varied since the desktop assessment was undertaken.

Therefore, pursuant to Section 35E of the *Land Use Planning and Approvals Act 1993* (LUPAA), 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 Flakemore Road Site change from Rural Resource under the Huon Valley interim Planning Scheme 2015 to be zoned Agriculture under the Huon Valley - LPS (Figure 1.1a), with the surrounding area to be zoned Rural.



**Figure 1.1a – The proposed new zoning to Agriculture for the subject eight lots (in the center of the image in dark brown) under the Huon Valley LPS. (Source Huon Valley Council)**

Council’s supporting report notes, “multiple lots owned by the same landholder with a total area over 10ha”<sup>1</sup>. Whilst the Walker’s have historically owned a significant number of lots, they currently only own the subject three lots of the fourteen to be zoned Agriculture. The remaining eleven lots are all in separate individual ownership. This could hardly be considered multiple lots by the same landowner. What the map does not show is other than the Walker’s three lots, each property has a residential dwelling either constructed or approved under the current planning provisions

It is also unclear why some lots have been zoned Agriculture whilst others of a similar size have not; for example, 256 Braeside Road (CT 24727/1). Why has this small lot been zoned Agriculture whilst similar sized lots also surrounded by Agriculture zoning have been zoned Rural. Alternatively, why has 292 Braeside Road (CT 118438/1) been zoned Rural when it is adjacent to the Walker’s site, used for the same purpose and is of a similar land size and was also considered “unconstrained” land<sup>2</sup>.

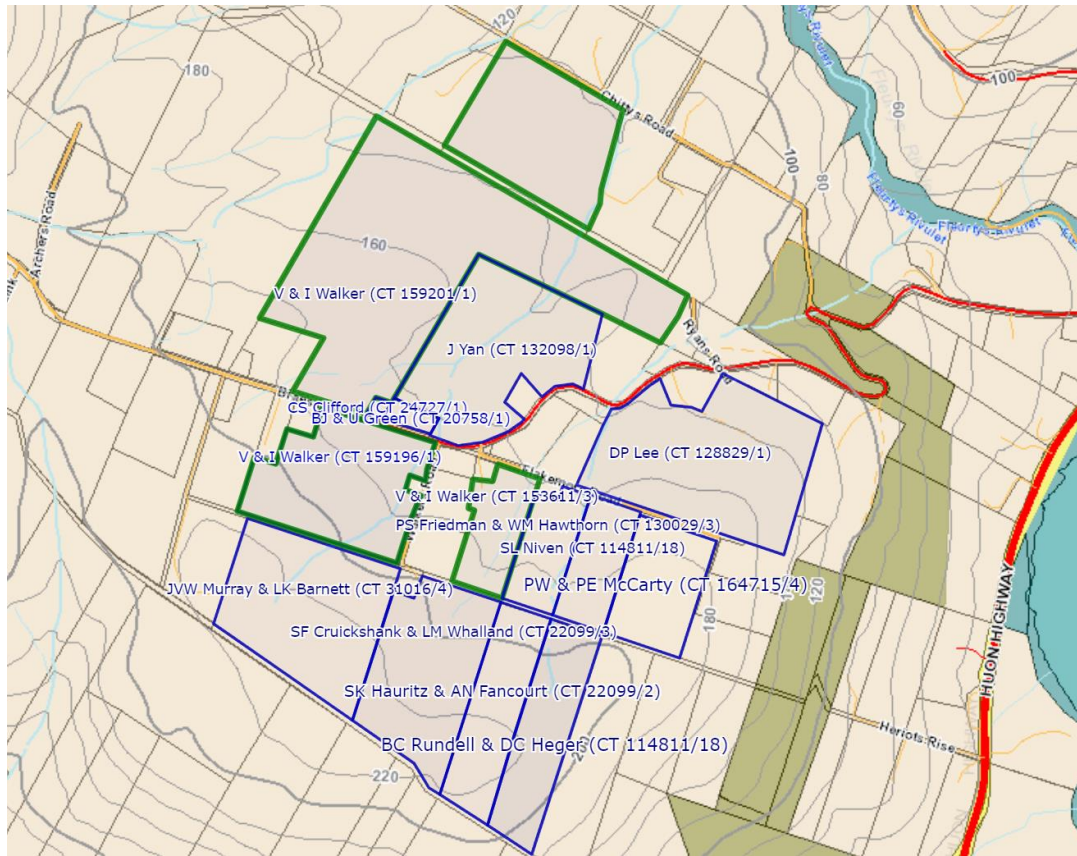
Other inconsistent application of the agriculture zoning is evident when cross examining the Land Potentially Suitable for Agriculture Zone’ layer of the LIST which is meant to be the starting point for determining the allocation of the zone. Of the fourteen lots to be zoned Agriculture, only two of the lots are mapped as unconstrained land, with only applying to the the larger of the Walker’s lots (Figure 1.1c).

It is also noted that other than the Walker’s three lots, each property proposed to be zoned agriculture has a residential dwelling either constructed or approved under the current

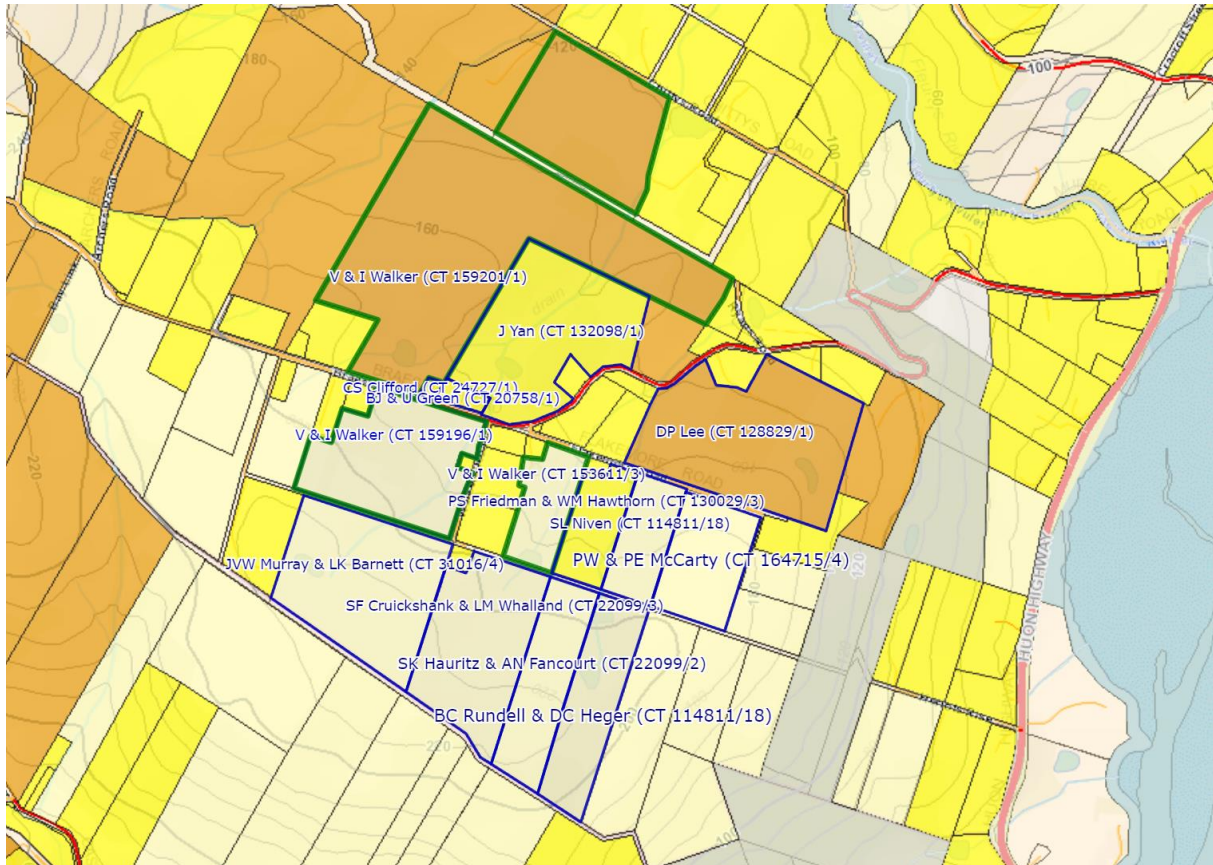
<sup>1</sup> HVC, "Supporting Report for the Huon Valley Draft Huon Valley Local Provisions Schedule (LPS)," (Huonville: Huon Valley Council, 2021), p.34.

<sup>2</sup> 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).

planning provisions. This does not also account for the fact that several of the surrounding Rural lots have residential dwellings approved onsite.



**Figure 1.1b – The lots to be zoned Agriculture are outlined in the center of the image. The Walker’s lots (outlined in green) under the current Huon Valley Interim Planning Scheme 2015, currently zoned Rural Resource (light brown) along with the surrounding area. (Source LIST Map)**



**Figure 1.1c – The lot boundaries are outlined; only two of the fourteen lots are shown to be “unconstrained” within the Land Potentially Suitable for Agriculture Zone’ layer of the LIST. The remaining lots are shown to be constrained in some form. (Source LIST Map)**

## 1.2 Site

The site consists of three lots located off Braeside Road and Flakemore Road, Franklin. Historically the lots were associated with a larger property that covered a considerable area.

The specific area of the lots are as follows:

- CT: 159201/1 is 41.3 hectares
- CT: 159196/1 is 10.9 hectares
- CT: 153611/3 is 3.97 hectares



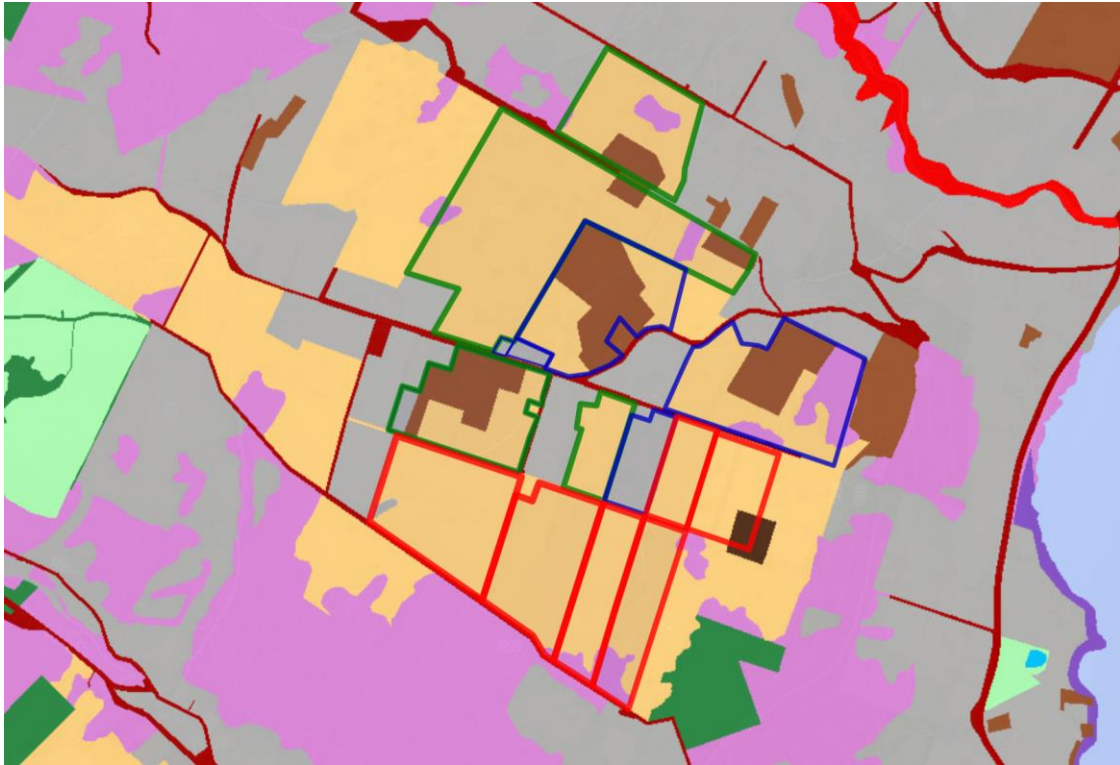


Figure 1.2b – From the 2019 Land Use mapping; the dominate land use as yellow indicates livestock grazing, whilst horticulture activity does occur it is limited. The red outlined lots have since 2019 had residential dwellings commenced or approved and, in some cases, established on these lots, each in association with livestock grazing in their planning permits. The grey indicates rural residential use. (Source LIST Map)

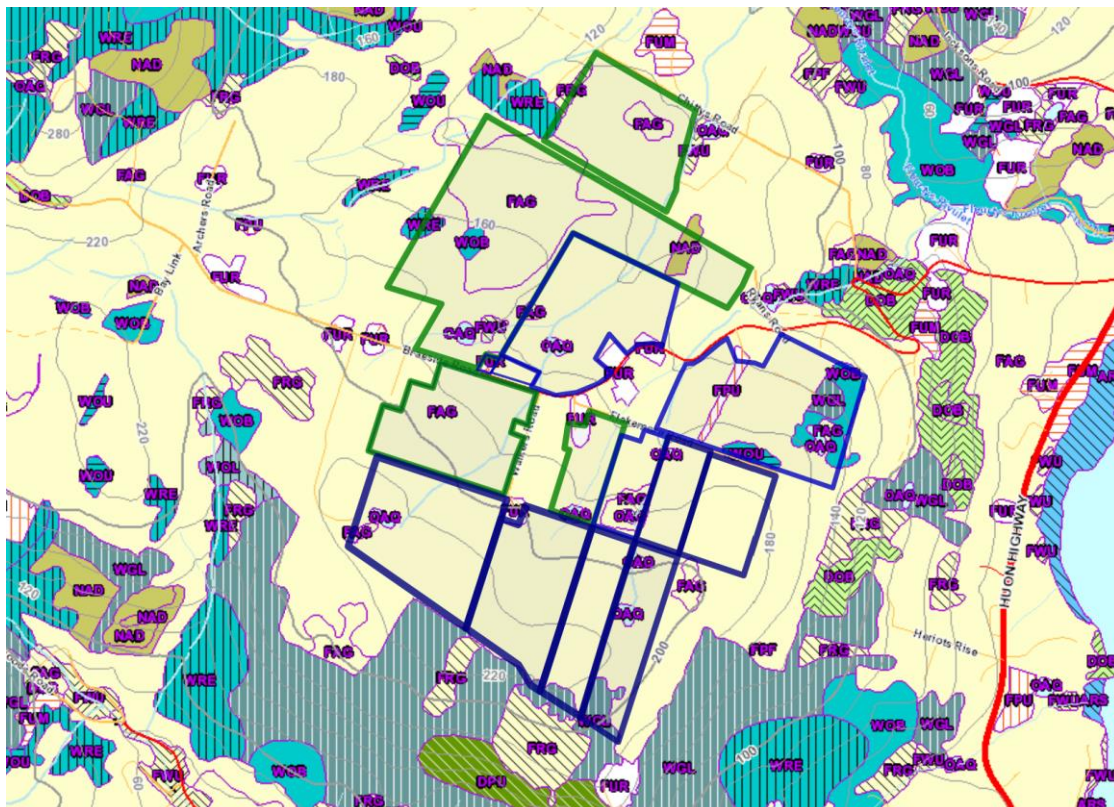


Figure 1.2c – Until relatively recently most of the subject land (outlined in blue) was under single ownership and being used for livestock grazing. The image shows lots with residential dwellings present. (Source LIST Map)

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 WOU or 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*.

However, the TasVege Layer again demonstrates that there is an inconsistency in zoning, as the surrounding land is not subject to high conservation vegetation then why is this not also zoned Agriculture. Correspondingly, if this site is consistent with the surrounding land, then why is it not being zoned Rural under the LPS.



**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 cropping<sup>3</sup>, see Figure 1.2e below. Whilst the central area is of Class 4 (shown as green in Figure 1.2e), which is:

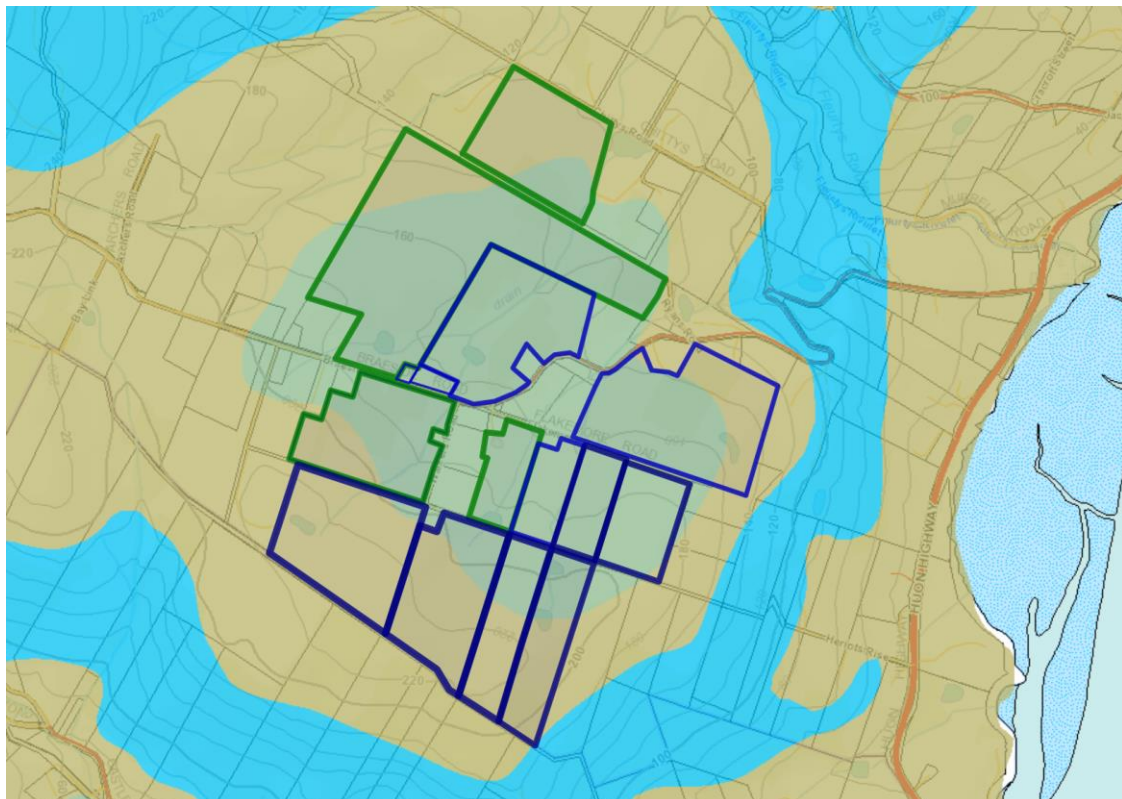
*Land well suited to grazing but which is limited to occasional cropping or to a very restricted range of crops. The length of cropping phase and/or range of crops are constrained by severe limitations of erosion, wetness, soils or climate. Major conservation treatments and/or careful management is required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

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

<sup>4</sup> Ibid.

It is observed that these sites are surrounded and interspersed by residential dwellings, significantly restricting the ability to crop. Whilst this is considered good quality land in a Southern Tasmania context, it is noted that this is only a couple of hectares within the property and the accuracy is also questionable when cross referencing the features with the LIST Map.

Class 4 classification may occasionally facilitate cropping, it is noted however that the site's altitude and microclimate significantly restricts the types of cropping due to extended cold and dampness according to the longer-term property owners. Additionally, 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.



**Figure 1.2e – Land Capability Map – the green area is Class 4, olive green area is Class 5, and the blue area is Class 6. There are a number of lots almost entirely covered by Class 4 but is not proposed to be zoned Agriculture, similarly along the south there are a number of lots with very little class 4 to be zoned Agriculture. (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 the regard has been given to the existing land use on and surrounding the land, ownership, the agricultural potential, and part of a strategic detailed analysis consistent with the relevant regional land use Strategy and endorsed by the relevant council.

We propose that the “decision tree” established by consultants engaged by the Southern Group of Councils has not factored in the multiple ownership that has occurred for the lots. 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 means to assist Council officers when assessing agricultural mapping<sup>5</sup>. Therefore, the decision tree has not accounted for the various stages of dwelling construction on the surrounding sites nor has the Council accounted for the numerous small lots distributed through the area. As a result, the land should not be considered unconstrained but should be mapped as constrained within the ‘Land Potentially Suitable for Agriculture Zone’.

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. Each of these lots has been purchased with the intent of building a residential dwelling, whilst horticultural use is occurring on a few lots, most lots are being used for livestock grazing which has minimal impact on adjoining sensitive use: no spray drift, dust, or noise from machinery or pest management.

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 which 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.)

Even within the report AK Consulting suggest:

*Where titles are under the same ownership it is likely that they are farmed in conjunction. Hence even small titles (without dwellings) have the capacity to contribute to a ‘medium to large-scale’ holding. Where there is a cluster of titles, the majority with a dwelling and less than 40ha and under different ownership, it is likely this area is already compromised for ‘medium to large-scale’ agriculture unless there is evidence of irrigation water and high value agricultural activities.<sup>6</sup>*

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<sup>5</sup> 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), p.1.

<sup>6</sup> Ibid. P.7.

Therefore, in this situation whilst some of the lots are yet to have a dwelling, only one lot is more than 40 hectares by 1 hectare.

Although the cluster of titles exceed 40 hectares most are in separate ownership and each has been purchased within the last five years, for the purpose of constructing a residential dwelling at some stage. Therefore, in accordance with the AK Consultant Decision tree the sites should be classified “Potentially Constrained Titles”<sup>7</sup>. And as they are all unlikely to be purchased by a large nearby agricultural enterprise as they were recently sold by just such an enterprise, then the Decision Tree directs the land to be zoned Rural instead of Agriculture<sup>8</sup>.

## 2.2 Proposed Alternative LPS Zoning

The proposed zoning for the entire site is Rural under the Huon Valley LPS.

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

## 2.3 LPS Zone Purpose Statements & Guidelines

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 poor quality is supported by it being zoned Rural Resource under the current Interim Planning Scheme and not Significant Agriculture, and 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. As it has been demonstrated, this not only was published (May 2017) prior to the change of ownership of each title, but also the land classification and size of lots does not facilitate the area being singled out as Agriculture.

Other zone guideline analysis should occur for land that is potentially subject to use class conflict. Given the size, character, and location it is considered that the Rural Zone guidelines are applicable to the site, which state:

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<sup>7</sup> *ibid.*, p.12.

<sup>8</sup> *ibid.* p.12.

***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 the inability to establish sustainable cropping, the land associated with eight titles should have Rural Zone applied as it has no potential for agriculture because of topographical, environmental or other characteristics of the area.

***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 with the fourteen titles has been considered in accordance with the guideline of this provision; however, the next stage of ruling out all other issues associated with the provision does not appear to have occurred. As a result, there appears to be an error and the individually owned lots are being considered together as a single cluster of vacant titles and not with potentially of a dwelling on each lot or with a dwelling on each title that surrounds the lots.

***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;***

Although the two of the fourteen lots are identified within the 'Land Potentially Suitable for Agriculture Zone', it is observed that only one title is considered large and that the surrounding properties are not of a size or scale to be considered for a larger farm sufficiently sustainable to warrant financial outlay to integrate the subject land into a larger holding. Therefore, Rural Zone could apply in accordance with RZ 3(a).

It is also note that the Walker's had the property initially as a single farm for sale with all lots and titles as one entity; however, the sale as hole farm as the documentation is suggesting that would occur, never eventuated.

As previously addressed, each lot has been purchased with the intent of constructing a home at some point with some already underway. Therefore, 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 eight 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 parcels of land off Braeside Road and Flakemore Road, Franklin (PID: 3307462 & PID: 3307411) described as:

- CT: 159201/1,
- CT: 159196/1,
- CT: 153611/3

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 limit the useability and reliance of the site for agricultural uses. Therefore, it is considered more appropriate that the lots associated with this submission, and the surrounding area, are zoned Rural. This 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.

- 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 prohibitive<sup>9</sup>.

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<sup>9</sup> *P & K Degenhardt v Waratah Wynyard Council and A & M Jackson* [2015] TASRMPAT 10 (23 April 2015)



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### Red Seal Urban & Regional Planning

ABN: 40 176 568 800

Hobart, Tasmania | **M** +61 411 631 258 | **E** redsealplanning@gmail.com

