

Representation No. 15

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From: James Hattam <jhattam@tasland.org.au>
Sent: Wednesday, 8 April 2020 4:20 PM
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Subject: Draft Local Provisions Schedule - TLC Submission

Dear Mayor Quilliam,

Please find attached the Tasmanian Land Conservancy's submission to the Draft Circular Head Local Provision Schedule to Tasmanian Planning Scheme.

Should you have any questions or require any clarification regarding our submission please don't hesitate in contacting me.

Kind regards,
James



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8 April 2020

Dear Mayor,

CIRCULAR HEAD COUNCIL LOCAL PROVISIONS SCHEDULE REPRESENTATION IN RELATION TO COVENANTED LAND IN THE MUNICIPALITY

This letter is a representation in relation to the Circular Head Council Draft Local Provisions Schedule.

The Tasmanian Land Conservancy (TLC) is a for-purpose, apolitical, conservation organisation that protects nature on private land (tasland.org.au). Since humble beginnings in 2001, with \$50 in the bank and a handful of volunteers, the TLC has grown to become one of Tasmania's largest private landholders. Our mission is to look after Tasmania's unique natural places, rare ecosystems, and the habitat of threatened plants and wildlife on private land. We are contracted by the State Government to provide this service. We value nature and the cultural, social and economic benefits it provides us all.

The TLC works across four main areas:

- **PROTECTING NATURE** in the TLC's reserves, in partnership with private landholders, and by selling protected properties to conservation-minded buyers.
- **LOOKING AFTER NATURE** through reserve management principles informed by robust science.
- **INNOVATING FOR NATURE** by using smart business principles, bold ideas and leading technologies.
- **INVOLVING PEOPLE** by providing opportunities to experience nature, achieve nature conservation and support the work of the TLC.

As an organisation with land and associated partnerships throughout the state we have a strong interest in planning provisions, particularly regarding the recognition and protection of natural assets. The TLC welcomes the opportunity to provide feedback on the Circular Head Council Local Provisions Schedule. In Tasmania, as at September 2019, there were 886 conservation covenants, protecting 109,325 hectares across a diversity of habitats. Many of these covenants are vegetation communities that are poorly protected on public land. On-title protections identify the conservation values onsite, and the required management to

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Page 317 of 375

ensure their wellbeing. Local Government planning rules must complement existing land management and provide an important tool for recognising current and future areas of priority land for conservation. The TLC welcomes the opportunity to support this important process.

Conservation covenants and the Tasmanian Planning Scheme

The TLC is aware of a number of properties within the Circular Head municipality that are subject to conservation covenants under Part 5 of the *Nature Conservation Act 2002* (Tas) (**Nature Conservation Act**).

A conservation covenant is intended to protect the environmental values of private property. Such a covenant limits use or development of land in a way that the relevant Minister considers necessary or desirable to achieve a conservation purpose: *Nature Conservation Act*, s 34. It follows that any property (or part of the property) that is subject to a conservation covenant has been identified as important in achieving a conservation purpose. Private properties that are subject to such covenants form part of the national reserve estate, and part of the continuing adequate and representative reserve system (**CAR reserves**) that underpins the Tasmanian Regional Forest Agreement.

Covenanted properties therefore play an important and valuable role in protecting the economic, social and environmental values of the State's natural environment.

It is our submission that the Tasmanian Planning Scheme through the Local Provisions Schedule of each municipality must properly consider the role of covenanted land as part of the national reserve estate and apply controls appropriate to that purpose. The zone and codes that apply to covenanted properties, and in some circumstances, surrounding properties, should properly account for the conservation values protected by these statutory instruments. Discord between planning provisions and other, State-based regulatory instruments (i.e. conservation covenants under the *Nature Conservation Act*) is apt to lead to confusion, uncertainty and inconsistency of application.

It is consistent with the objective of "fair and orderly" use and development of land in Schedule 1 to the LUPA Act, that the zone and overlays that apply to land should properly reflect the current and future development potential. The converse is also true – to apply planning controls to covenanted land that indicates it has development potential would be inconsistent with the schedule 1 objectives of the resource management and planning system.

Zoning of covenanted properties

The first way we say that the Council can ensure that the LPS properly reflects the current and future development potential of covenanted land is by applying an appropriate zone to the land. The TLC considers that, as a general rule, land subject to a conservation covenant ought first to be considered for the Landscape Conservation Zone or the Environmental Management Zone. The purposes of these zones properly reflect the underlying purpose to which covenanted land is put – that is (respectively), to "provide for the protection, conservation and management of landscape values" (clause 22.1.1 of the TPS) and to "provide for the protection, conservation and management of land with significant ecological, scientific, cultural or scenic value" (clause 23.1.1 of the TPS) and use compatible with those purposes (clauses 22.1.2 and 23.1.2 respectively).

While the TLC has not conducted an exhaustive search of the mapping of the draft LPS, it is our understanding that covenanted properties may be within the Rural or Agriculture Zones. On the whole, our view is that this is not an appropriate zone designation for covenanted land. Designating covenanted properties within either of these zones will allow for, and facilitate, use and development that is contrary to the covenanted values of the property, most particularly, the fragmentation or clearing and conversion of native vegetation. While there may be exceptional cases where such zoning is appropriate, it is the TLCs submission that such a case must be the exception rather than the rule.

The purpose of the Agriculture Zone is to identify and protect high value agricultural land. Covenanted land may be used for some agricultural purposes, for instance, low-impact sheep grazing on native grasslands, but it is primarily used for conservation purposes. The use and development encouraged in the Agriculture Zone is likely to be antithetical to the values protected by a conservation covenant. Further, land in the Agriculture Zone is automatically exempt from the Natural Assets Code that protects priority vegetation, and again, that exemption may allow land clearing and conversion that is contrary to the purpose of the covenant.

The purpose of the Rural Zone is to provide for “a range of use or development in a rural location”. This is substantiated by the zoning table, which includes a broad range of discretionary uses. As the zoning of land is an important indicator of the expected development potential of the land, the application of this zoning to a covenanted property is misleading and inappropriate. Covenanted properties usually allow for extremely limited use and development. In most cases, the covenant may allow for a single dwelling and associated outbuildings, walking tracks and limited personal firewood collection. A conservation covenant would generally restrict further subdivision of the land, as this would lead to fragmentation of the covenanted conservation values of the property.

It is the TLC’s submission that the Council cannot be satisfied that the application of either zone would be consistent with the Schedule 1 objectives of the resource management and planning system. Namely, these zones would not properly reflect the purpose to which the land is put or can be put and is therefore contrary to fair and orderly use and development of the land.

Application of the Natural Assets Code to covenanted land

The second way (though not in itself sufficient) in which the Council can ensure that its Local Provisions Schedule recognises the conservation value of covenanted land is through its overlay mapping of: waterway and coastal protection areas; future coastal refugia areas and priority vegetation areas (**Natural Assets Overlays**). The presence of the Natural Assets Overlays on land engages C7, the Natural Assets Code. The purpose of the Natural Assets Code (C7.1.1 – C7.1.5) aligns closely with the conservation purposes for which conservation covenants are established.

Guidelines for applying zones and codes of the Tasmanian Planning Scheme, including the Natural Assets Code overlays, have been published by the Tasmanian Planning Commission under s 8A of the *Land Use Planning and Approvals Act 1993* (Tas) (**Guidelines**). The TLC considers that the Guidelines support its view that covenanted land should be overlaid with one or more the Natural Assets Overlays. That proposition is further explored below, in relation to each of the Natural Assets Overlays.

Before making specific comment in relation to the mapping of each of the Natural Assets Overlays in the municipality, the TLC wishes to raise a matter of general application in relation to overlay mapping and the Natural Assets Code. Namely, the capacity of overlay mapping to incorporate principles of adaptive management. In this regard, the TLC suggests that Circular Head Council implement a process whereby mapping of the Natural Assets Overlays is continually revised, updated and re-evaluated. This would ensure that planning decisions with the potential to impact on natural assets are informed by up-to-date information. So much is consistent with the principles of sustainable development that underpins the Tasmanian resource management and planning system: see *Land Use Planning and Approvals Act 1993* (Tas), sch 1.

We turn now to consider each of the Natural Assets Overlays.

Waterway and coastal protection areas overlay

The “waterway and coastal protection areas” overlay (**Waterways Overlay**) applies to certain watercourses, including Ramsar wetlands. The Guidelines require the Waterways Overlay to be mapped in accordance with the Waterway and Coastal Protection Area Guidance Map (**Waterways Guidance Map**) published on the List. The Waterways Guidance Map indicates that there are numerous areas in the municipality to which the Waterways Overlay must be applied. To that extent, Council has very little discretion in relation to where this overlay applies. But Council is permitted to modify Waterways Overlay to, among other things, identify a larger area if necessary to protect identified natural assets associated with the waterway and coastal protection area: NAC 3 of the Guidelines.

To the extent that covenanted land is adjacent to or partially overlaps land that is mapped in the Waterways Guidance Map, Council should consider extending the Waterways Overlay to include riparian or littoral values of covenanted land. This would allow for continuity in the landscape and an additional buffer zone for the waterway. In some cases, significant buffer zones are necessary to protect natural assets associated with waterways. The extension of the Waterways Overlay to include these areas of land would not meaningfully restrict use or development of that land, given the restrictions imposed by the covenant. Rather, it would facilitate consistency between the planning scheme and the conservation covenant system set up by the Nature Conservation Act.

Future coastal refugia areas overlay

The TLC makes a similar submission in relation to the “future coastal refugia areas” overlay (**Coastal Refugia Overlay**). This overlay applies to areas where coastal processes are likely to occur naturally and takes into account the landward transgression of coastal features due to sea level rise. The Guidelines require the Coastal Refugia to be mapped in accordance with the Future Coastal Refugia Guidance Map (**Coastal Refugia Guidance Map**) published on the List. The Coastal Refugia Guidance Map indicates that there are numerous areas in the municipality to which the Coastal Refugia Overlay must be applied. It follows that Council has very little discretion in relation to the minimum area to which this overlay applies. However, as with the Waterways Overlay, Council has the discretion to modify the Coastal Refugia to, among other things, identify a larger area if demonstrated necessary to protect identified future coastal refugia areas, such as mobile and other sensitive coastal habitats and existing saltmarshes and tidal wetlands.

To the extent that covenanted land is adjacent to or partially overlaps land that is mapped in the Coastal Refugia Guidance Map, Council should consider extending the Coastal Refugia

Overlay to include the covenanted land, where appropriate to the particular coastal refugia on or adjacent to the land. This would provide a greater buffer zone for vulnerable or especially mobile future coastal refugia. The Council should take into account that future coastal refugia areas are likely to be increasingly mobile as the effects of climate change on sea levels are realised.

Priority vegetation area overlay

The “priority vegetation area” overlay (**PV Overlay**) applies to native vegetation that (see C7.3):

- (a) forms an integral part of a threatened native vegetation community as prescribed under Schedule 3A to the Nature Conservation Act 2002 (Tas);
- (b) is a threatened flora species;
- (c) forms a significant habitat for a threatened fauna species; or
- (d) has been identified as native vegetation of local importance.

It is extremely common for covenanted land to contain threatened native vegetation communities, threatened flora species and areas of significant habitat for threatened fauna species (**Threatened Species Habitat**). Indeed, protection of those ecological communities is often the reason for the establishment of a covenant. Accordingly, the TLC encourages the Council to utilise existing information, including by engaging with the owners of covenanted land, to ground-truth the mapping in the LPS and to ascertain whether covenanted properties contains Threatened Species Habitat. It is too often the case that DPIPWE’s Natural Values Atlas and the mapping overlay of threatened native vegetation species that is published on the List website is incomplete or inaccurate. This data is a useful starting point but should not be the sole basis for mapping of Threatened Species Habitat, particularly where that information is likely to be held by people affected.

Further, in TLC’s submission, it is self-evident that covenanted land is covenanted because it is recognised as being of importance for a conservation purpose under the Nature Conservation Act. That is, because it contains native vegetation of value. The fact of the covenant alone should be sufficient to apply the definition of “native vegetation of local importance”. That is, the very existence of a conservation covenant over the land would usually indicate that the land contains native vegetation of local (if not regional or State) importance. It should be a rare occurrence, requiring substantive evidence, for the converse to be true. This considered, TLC’s submission is that the default position should be that covenanted land should be subject to the priority vegetation overlay and, accordingly, the Natural Assets Code.

Applying the Precautionary Principle

Furthering the objectives of the Resource Management and Planning System (RMPS) as outlined in Schedule 1 of the *Land Use Planning and Approvals Act 1993* through sustainable development involves:

‘managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.'

With unprecedented seasonal variations, natural systems and vegetation communities are changing. Now more than ever, we need good planning, based on the best information available at the time. Applying current research, monitoring and mapping data is critical to ensure sustainable use. The most up to date information must inform decisions, and when adequate information is not available, the precautionary principle should apply.

We would welcome the opportunity to present the TLC's submission at a hearing.

Please do not hesitate to contact me with any questions.

Yours sincerely,



James Hattam

Chief Executive Officer