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using the law to protect the natural and built environment

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John Ramsay
Chair – Draft Planning Directive #1
Tasmanian Planning Commission
GPO Box 1691
Hobart TAS 7001

By email: enquiry@planning.tas.gov.au

Dear Mr Ramsay

Draft Planning Directive #1

The Environmental Defenders Office (***EDO***) is a non-profit, community based legal service specialising in environmental and planning law. We welcome the opportunity to comment on the draft *Planning Directive No. 1 – The Format and Structure of Planning Schemes* (the ***draft Directive***).

GENERAL COMMENTS

The EDO is generally supportive of a clear planning scheme template and drafting instructions to improve consistency (and enforceability) of Planning Schemes throughout Tasmania. A significant aspect of the consistent application of planning policy will be the Codes addressing issues such as development in wetlands and watercourse buffer areas, scenic protection overlays, coastal protection (including planned retreat), vegetation protection and heritage management. We look forward to an opportunity to comment on such Codes in future.

The Sustainable Development Objectives in clause 2.2 attempt to amalgamate the RMPS objectives set out in Schedule 1 (Part 1), the objectives set out in Schedule 1 (Part 2) of the *Land Use Planning and Approvals Act 1993* (***LUPAA***) and those matters referred to in s.20(1)(a). This simplification should not be at the expense of the explicit obligation to further the specific objectives of the Act.

Therefore, we recommend that clause 2.2.1 be amended to read:

> *The overarching objectives of the planning system are set out in Schedule 1 of the Land Use Planning and Approvals Act 1993. In particular, but without limitation, the planning scheme aims to:*
>
> *(a) maintain biological diversity… etc*

EXEMPTIONS

The following comments relate to the proposed exemptions in Clause 4 of the draft Directive:

- The exemption for Occasional Use in clause 4.2 should include a further qualification that the use not be likely to cause material or serious environmental harm. We appreciate that any use, such as a music event, will be required to obtain licences under Council by-laws and the *Public Health Act 1997*, however the additional qualification will ensure that activities that are likely to give rise to issues such as significant noise, management of temporary ablution facilities or access to sensitive areas are subject to oversight by the planning authority.
- The exemption for Community Gardens in clause 4.9 does not provide any guidance in relation to what is meant by "community basis". The use allows for sale by the growers, so more guidance is necessary to distinguish the use from a commercial fruit and vegetable operation.
- We recommend that the criteria for Qualified Exemptions in clause 4.10.1 be amended to include:
    - Disturbance of land that is inhabited by a threatened species within the meaning of the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*;
    - Disturbance of land within 30 metres of any watercourse (or watercourse listed in a Waterways Code);
    - Excavation in an identified landslip area (or disturbance of land with a slope greater than the landslide threshold slope angles set out in the Forest Practices Code);[1]
    - Development on flood prone land;
    - Disturbance of land identified in any vulnerable coastal location (e.g identified in the *Tasmanian Coastal Vulnerability Study* (Sharples, 2006));
    - Placing structures in scenic / landscape protection areas, on exposed ridgelines etc. The area may be identified through a Scenic Protection Code or an appropriate zone.
- Given the ecological sensitivity of many areas within the rural resource and significant agricultural zones, we do not support the blanket exemption for buildings and structures in those zones at clause 4.15. If the exemption is to be maintained, at the least it should be subject to restrictions on height and setbacks from any adjoining properties. This would prevent, for example, a 15 metre wind turbine being erected on a rural property without a permit to manage the impacts on adjoining landowners (alternatively, clause 4.15 could be made subject to clause 4.11.2).

USE AND DEVELOPMENT

No permit required

We note comments from planning authorities regarding the elimination of "Permitted as of Right" uses from the Template. However, we support the previous recommendations of the RPDC that it is preferable to have a process for

[1] These qualifications are largely consistent with the definition of 'vulnerable land' in the *Forest Practices Regulations 2007*.

documenting when an assessment has taken place against planning scheme standards.

A good example of the value of requiring a permit as a way of maintaining oversight relates to vegetation clearance. Recent amendments to the *Forest Practices Regulations 2007* transferred responsibility for the assessment of vegetation clearing associated with buildings from the Forest Practices Authority to planning authorities. This includes responsibility for the clearance of threatened native vegetation, and vegetation on 'vulnerable land' such as within a streamside reserve or in recognised threatened species habitat. While the area of vegetation likely to be affected by the changes may be small-scale, it will frequently involve vegetation with high conservation value.

This additional responsibility imposes a significant obligation on planning authorities to keep records of the amount of threatened vegetation cleared in municipal areas. Arguably, permitted as of right developments will not fall within the new exemption (as no permit will issue under LUPAA), and will still require a certified forest practices plan. However, if this is not the case, allowing various developments to proceed 'as of right' will reduce a planning authority's capacity to monitor threatened vegetation clearance in its municipal area. This may jeopardise Tasmania's compliance with its obligations under the *Regional Forest Agreement* and the *Policy for Maintaining a Permanent Native Forest Estate 2009*.

Lack of oversight may also have implications for other issues, such as building height, setbacks from waterways, wastewater loads etc. Requiring some level of council involvement may improve general compliance through liaison with council staff and ultimately reduce the need for costly enforcement actions when developments are found not to comply with basic Scheme requirements.

In our view, rather than allowing use and development to be designated as 'no permit required', it would be preferable to require a permit, but to introduce more streamlined (and less expensive) administrative arrangements for those developments that the planning authority identifies as being appropriate in a zone.

Categorising use or development

Clause 6.1.3 provides that, where a use or development fits into more than one use class, the use "most specifically describing the use" applies. While we do not specifically oppose that provision, we submit that it would be appropriate to also provide require the use class that is subject to the higher assessment criteria to be adopted. That is, if two use classes are potentially applicable, one of which is permitted and the other discretionary, the use class that is discretionary is to be preferred. If the use class definitions are similar enough that either could apply, the impacts of the use will also be similar and should therefore be subject to the highest level of assessment.

Boundary adjustment

We support the clearer provisions in relation to boundary adjustments to avoid substantial reconfigurations being assessed as boundary adjustments rather than subdivision.

ZONES

We do not believe that it is necessary to divide the Environmental Management and Conservation Zone into Environmental Management and the Environmental Living zones. The Rural Living Zone is available where rural residential development is deemed appropriate.

The Environmental Management Zone should not be 'watered down' to allow for greater incursion of residential development. In our view, it would be more appropriate to maintain the Environmental Management Zone, including its Zone Purposes, and provide clear guidance on the circumstances in which residential development will be allowed in the Zone through the Zone standards.

We also note that "conservation" and "protection", referred to in the Zone purposes for the Environmental Management Zone are not defined in the Terms and Definitions section of the draft Directive.

We would support the introduction of a Heritage Zone, to manage areas such as Richmond Village.

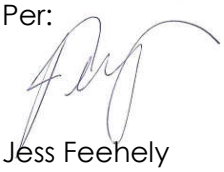
APPLICATION REQUIREMENTS

Suggested additions to the application requirements set out in Appendix 1 include:

- Sufficient documentation to confirm that the landowner is aware that the development application is being made;
- The Site Analysis should identify the neighbourhood character, as well as the physical characteristics of the site;
- The Site Plan should identify the location of any machinery, including hours of operation;
- The Site Plan requirement to identify trees and vegetation should specify that threatened vegetation communities are to be clearly identified;
- Where buildings are to be constructed, details of any innovations to address energy / water efficiency should be included.

The EDO appreciates the opportunity to make these comments. Please do not hesitate to contact us to discuss any issue raised in this submission.

Kind regards,
Environmental Defenders Office (Tas) Inc
Per:



Jess Feehely
Principal Lawyer