



Environmental
Defenders Office

**Submission in response to the Regional Planning
Framework Discussion Paper (Iutruwita/Tasmania)**

28 February 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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Acknowledgement of Country

EDO recognises First Nations peoples as the Custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law.

In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

EDO gratefully acknowledges the assistance of Kate Johnston in the preparation of this submission.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Regional Planning Framework Discussion Paper (**Discussion Paper**) and the draft Structure Plan Guidelines.

EDO broadly supports a review of the Regional Planning Framework to better define the purpose and scope of regional land use strategies (**RLUSs**), ensure consistency between the RLUSs, and provide processes around the preparation, assessment, declaration, governance, monitoring, review and amendment of RLUSs.

The following submission is structured around the following topics in the Discussion Paper:

1. Scope and purpose
2. Consistency
3. Assessing and declaring RLUSs
4. Reviewing RLUSs
5. Amending RLUSs
6. Structure plan guidelines

A summary of EDO's recommendations concerning these issues can be found below.

Recommendations

Recommendation 1: The general scope and purposes of the RLUSs should be outlined in the legislation and should include:

- (a) addressing the achievement of the United Nations Sustainable Development Goals; and
- (b) actions to:
 - i. implement the legislated greenhouse gas emissions reduction target and Climate Action Plan, and
 - ii. respond to State-wide climate change risk assessments, and sector-based emissions reduction and resilience plans under the *Climate Change (State Action) Act 2008*;
- (c) actions responding to State of the Environment Reports produced under the *State Policies and Projects Act 1993*;
- (d) a consistent time horizon of not less than 30 years;
- (e) the spatial application of the Tasmanian Planning Policies;
- (f) an implementation plan.

Recommendation 2: A voluntary template which includes a list of definitions of core terms should be developed for RLUSs.

Recommendation 3: The Tasmanian Planning Commission be responsible for providing advice and recommendations to the Minister on whether an RLUS should be approved.

Recommendation 4: In making its recommendation to the Minister on a proposed RLUS, the Tasmanian Planning Commission be required to consider the matters outlined in the legislated RLUSs purpose and scope, public representations, matters raised in hearings, and technical matters concerning the application of Tasmanian Planning Policies into an RLUS and RLUSs into an Local Provisions Schedules.

Recommendation 5: The review of RLUSs should consider the Tasmanian Planning Policies (as amended or made) and State of Environment Reports and their recommendations and be subject to strict legislated criteria that do not allow for the erosion of their long-term focus.

Recommendation 6: The Tasmanian Planning Commission, Councils and communities need to be properly resourced by the Tasmanian Government to engage in the review of RLUSs, and Tasmanian Planning Policies, and State Planning Provisions.

Recommendation 7: The *Land Use Planning and Approvals Act 1993* should provide a process for the amendment of RLUSs in limited circumstances.

Recommendation 8: The only amendments to RLUSs that should be able to be made without Tasmanian Planning Commission assessment and community consultation are those that are minor corrections to genuine errors within the RLUSs.

Recommendation 9: Triggers for the amendment of an RLUS include the making or amendment of Tasmanian Planning Policies, State of Environment reports, or state-wide climate change risk assessments. Criteria should be developed to ensure that amendments to RLUSs are not allowed for short-term economic or electoral priorities.

Recommendation 10: Voluntary structure plan guidelines should include clear guidance on stakeholder engagement and community consultation, and climate change mitigation and adaptation.

1. Scope and purpose

EDO agrees with the suggestion in the Discussion Paper that the general scope and purposes of the RLUSs should be outlined in the legislation, similar to the Tasmanian Planning Policies (**TPPs**) and State Planning Provisions (**SPPs**).

The Discussion Paper (at p 9) proposes using similar wording to section 12B of the *Land Use Planning and Approvals Act 1993* (**LUPA Act**) for the content and purposes of the RLUSs, such as the following:

- The purpose of a regional land use strategy is to set out the policies or strategies that are to be achieved or applied in that region by:
 - a) a local provisions schedule; and
 - b) any sub-regional or local land use planning strategies.
- A regional land use strategy may relate to the following:
 - a) the sustainable use, development, protection or conservation of land;
 - b) environmental protection;
 - c) liveability, health and wellbeing of the community;

d) any other matter that may be included in a planning scheme or a regional land use strategy.

It would appear that 2(d) above contains an error in that it refers to RLUSs. If this is not an error, EDO considers it problematic, as it would become a self-referring scope provision, essentially saying an RLUS can relate to anything that is included in an RLUS.

EDO proposes that in addition to the issues listed above, the legislated scope and purpose of the RLUSs should include:

- (a) the achievement of the United Nations Sustainable Development Goals (**SDGs**); and
- (b) actions to:
 - i. implement the legislated greenhouse gas (**GHG**) emissions reduction target and Climate Action Plan, and
 - ii. respond to State-wide climate change risk assessments, and sector-based emissions reduction and resilience plans under the *Climate Change (State Action) Act 2008*
- (c) actions responding to State of the Environment Reports produced under the *State Policies and Projects Act 1993*;
- (d) a consistent time horizon of not less than 30 years;
- (e) the spatial application of the Tasmanian Planning Policies;
- (f) an implementation plan.

Each of these issues is addressed in further detail below.

1.1 Achievement of Sustainable Development Goals

In the *Report on the Implementation of the Sustainable Development Goals* the Australian Government outlined Australia's commitment to the SDGs, and acknowledged that many of the targets in the SDGs fall to sub-national levels of government, including local governments.¹ The Report noted that the Perth Eastern Metropolitan Regional Council and the Melbourne City Council have worked to incorporate the SDGs into their planning processes and are actively reporting against them – proving that it is feasible for local governments to actively work to address the SDGs.

In our previous submissions responding to the [Scope of the TPPs](#) and the [Draft TPPs](#), EDO provided a detailed case for the alignment between lutruwita/Tasmania's planning instruments and the SDGs. We consider that those same arguments apply for addressing the SDGs within RLUSs.

Ensuring RLUSs addressed the SDGs is consistent with the Premier's Economic and Social Recovery Advisory Council recommendations that the State Government develop a sustainability vision and strategy aligned with the SDGs and ensure that Government policies and strategies also

¹ Department of Foreign Affairs and Trade, 2018, Report on the Implementation of the Sustainable Development Goals, https://www.sdgdata.gov.au/sites/default/files/voluntary_national_review.pdf. Accessed on 1/02/2023.

align with the SDGs.² Addressing the achievement of the SDGs in the RLUSs would be a concrete way of ensuring regional planning works towards the realisation of these important goals.

1.2 Actions to implement the *Climate Change (State Action) Act 2008*

Local governments are often amongst the first to respond to those experiencing the effects of climate change, such as natural disasters like floods and fires. They also bear responsibility for ensuring infrastructure, such as water, sewage, and transport is repaired and restored as quickly as possible following these disasters. Councils are also well placed to ensure that harmful GHG emissions are reduced through planning for denser communities, active and public transport networks, the provision of sustainable or “green” infrastructure, and requiring energy efficient design.

Regional planning needs to actively consider the risks posed by climate change both now and into the future and identify actions that will be required to mitigate and/or adapt to these risks over the short term (e.g., now and in the next 2-3 years), the medium term (e.g., by 2030) and long term (e.g., by 2100). Regional planning is key to ensuring infrastructure and development are properly responding to climate change risks and are not “locking in” climate change winners and losers.

Planning at a regional scale provides an ideal opportunity to address these issues and ensure that lutruwita/Tasmania is on track to meeting its GHG emissions target, statutory climate change policies and plans. While it appears the TPPs will provide climate change statements in each TPP area, EDO also considers it essential that the scope of the RLUSs explicitly includes addressing the legislated GHG emissions target of net zero emissions by 2030, Climate Action Plan, state-wide climate change risk assessments, and sector-based emissions reduction and resilience plans under the *Climate Change (State Action) Act 2008*. By requiring RLUSs to address GHG emissions mitigation and climate change risks it will help reduce the need for disaster recovery funding, and create more resilient, healthy and safe communities in the future.

1.3 Responding to State of the Environment Reports produced under the *State Policies and Projects Act 1993*

The Tasmanian Planning Commission (**TPC**) is required to publish State of the Environment (**SoE**) reports for lutruwita/Tasmania every 5 years. These SoE reports are required to address:

- (a) the condition of the environment; and
- (b) trends and changes in the environment; and
- (c) the achievement of resource management objectives; and
- (d) recommendations for future action to be taken in relation to the management of the environment.

The SoE reports are relevant to RLUSs in as far as these are one of the key tools for regions to further the objectives of the Resource Management and Planning System and understand how they can better seek to prevent or mitigate environmental degradation. Requiring RLUSs to

² Premier’s Economic and Social Recovery Advisory Council, 2021, Final Report, https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf at p 69. Accessed on 8/02/2023.

respond to SoE reports will ensure that the Commission's recommendations for future action to manage the environment are implemented into the planning framework at a meaningful scale.

1.4 A consistent time horizon of not less than 30 years

RLUSs are a key framework for councils within a region to actively identify and plan for future infrastructure needs and respond to long terms pressures (such as population growth, climate change, and ecological degradation). RLUSs provide an important link between different levels of government, major service and infrastructure providers, businesses, and communities.

Given the significant costs of infrastructure and pressures like climate change and ecological degradation and their importance to communities, regional planning should not be dictated by short-term economic priorities or electoral cycles. RLUSs should therefore have a longer timescale than other, local planning instruments. Noting the need for RLUSs to adapt to changing conditions (e.g., new or emerging climate impacts or models reported under statutory state-wide climate change risk assessments), EDO suggests that the time horizon for RLUSs should be at least 30 years, if not longer.

1.5 Spatial application of the TPPs

RLUSs provide a unique opportunity to spatially apply the TPPs. This is recognised within the Discussion Paper on multiple occasions; however, EDO considers that this purpose should be explicit in the legislation.

1.6 An implementation plan

RLUSs should be required to provide a plan setting out how the RLUS will be implemented, including for example, through prioritising the densification of existing development areas before the staged release of land, the provision of infrastructure and areas of likely funding.

Recommendation 1: The general scope and purposes of the RLUSs should be outlined in the legislation and should include:

- (a) addressing the achievement of the United Nations SDGs; and
- (b) actions to:
 - i. implement the legislated GHG emissions reduction target and Climate Action Plan, and
 - ii. Respond to State-wide climate change risk assessments, and sector-based emissions reduction and resilience plans under the *Climate Change (State Action) Act 2008*
- (c) actions responding to SoE produced under the *State Policies and Projects Act 1993*;
- (d) a consistent time horizon of not less than 30 years;
- (e) the spatial application of the TPPs;
- (f) an implementation plan.

2. Consistency

EDO is broadly supportive of there being a voluntary template for RLUSs.

The existing three RLUSs show significant variations in both structure and content. Guidance on what should be included in an RLUS in the form of a non-mandatory template will likely address these disparities, ensuring that RLUSs are serving their intended purpose and that they can be properly understood by planners, developers and the community more broadly. Furthermore, to ensure consistency across regions in the use of certain terminology, a template could provide a list of definitions of core terms.

Making the template voluntary will ensure that a region is not constrained should it discover that it needs to address issues or concepts particular to that region which are not otherwise allowed for or picked up in the template.

Recommendation 2: A voluntary template which includes a list of definitions of core terms should be developed for RLUSs.

3. Assessing and declaring RLUSs

EDO supports the proposal to give the TPC responsibility for providing advice and recommendations to the Minister on whether an RLUS should be approved.

Discussion Paper (at p 12) proposes that the TPC consider the following in making its recommendation on the RLUS:

- whether the RLUSs:
 - further the objectives of Schedule 1 of the Act;
 - are consistent with the State Policies;
 - are consistent with the TPPs;
- all representations received during the public exhibition period;
- relevant matters raised at a hearing in relation to a representation;
- any matters of a technical nature in relation to the application of the
 - TPPs into a RLUS; and
 - RLUS into a LPS.

EDO is generally supportive of the above-listed matters being mandatory considerations for the TPC, however, the list of considerations should also reflect the finalised purpose and scope of the RLUSs (about which EDO has made other recommendations - see Recommendation 1).

EDO strongly supports the TPC's assessment process for RLUSs including public hearings. Given RLUSs can have wide-ranging implications for regions, including by guiding the drafting of Local Provisions Schedules (**LPSs**), it is crucial to the democratic process that the public be given the opportunity to have their say and provide input into matters that will affect their lives.

Recommendation 3: The TPC be responsible for providing advice and recommendations to the Minister on whether an RLUS should be approved.

Recommendation 4: In making its recommendation to the Minister on a proposed RLUS, the TPC be required to consider the matters outlined in the legislated RLUSs purpose and scope, public representations, matters raised in hearings, and technical matters concerning the application of TPPs into an RLUS and RLUSs into an LPS.

4. Reviewing RLUSs

As noted in the Discussion Paper, the existing RLUSs have not been subject to a comprehensive review since their declaration over 10 years ago. The lack of a legislative framework for the review and amendment RLUSs has made it unclear what are appropriate triggers for the review of RLUSs, how the reviews should be undertaken and what changes can be made to RLUSs as a result. Given the significant changes that have occurred both to the planning framework since the existing RLUSs were implemented and to the growth of the regions, EDO agrees that it is timely for the Tasmanian Government to provide more clarity on these issues.

EDO is broadly supportive of regular reviews of the RLUSs taking account of TPPs (as amended or made), SoE reports and their recommendations, and state-wide climate change risk assessments under the *Climate Change (State Action) Act 2008*. However, in supporting the reviews of RLUSs, EDO considers some strict limitations should be imposed to ensure that the reviews do not allow for the erosion of longer-term time horizons for the RLUSs. That is, it is not desirable for 5- or 10-yearly reviews to result in the amendments of the RLUSs to reflect short-term economic or electoral priorities (see our discussion above at 1.4 of this submission), for example by allowing the expansion of urban growth boundaries to allow for more, unsustainable subdivisions. For this reason, we recommend that strict legislated criteria be developed to ensure that reviews do not result in RLUSs losing their longer-term focus.

If RLUSs are reviewed together with the review of the TPPs and the SPPs on a 5-yearly cycle, EDO encourages the Tasmanian Government to provide appropriate resourcing for the TPC, councils, and community groups to engage in these processes.

Recommendation 5: The review of RLUSs should consider the TPPs (as amended or made) and SoE reports and their recommendations, and state-wide climate change risk assessments under the *Climate Change (State Action) Act 2008* and be subject to strict legislated criteria that do not allow for the erosion of their long-term focus.

Recommendation 6: The TPC, Councils and communities need to be properly resourced by the Tasmanian Government to engage in the review of RLUSs, and TPPs, SPPs.

5. Amending RLUSs

While EDO supports the proposal for the LUPA Act to provide a specific process for amending RLUSs in limited circumstances, we have some concerns about simply using a process analogous to the process for the amendment of TPPs or SPPs. This is because the TPP and SPP amendment process provides the Minister with an inappropriate level of discretion to amend TPPs without community consultation in the case of so-called “minor amendments”. In EDO’s opinion, the only amendments to RLUSs that should be made without the TPC’s assessment and community consultation are those that are minor corrections to genuine errors within the RLUSs.

As we have outlined in section 4 above, some of the matters that should qualify triggers for review and amendment of an RLUS include:

- The making or amendment of TPPs;
- The 5-yearly SoE reports;
- The 5-yearly climate change risk assessment under section 5B of the *Climate Change (State Action) Act 2008*.

Examples of situations that should **not** trigger a review of an RLUS include:

- A developer has had a subdivision proposal refused because it falls outside urban growth boundaries set by an RLUS;
- A development has been refused due to its infrastructure requirements; or
- The Government makes or makes changes to non-legislated policies (e.g., the Rural Water Use Strategy, population and migration policy, or Salmon Industry Plan).

Recommendation 7: The LUPA Act should provide a process for the amendment of RLUS in limited circumstances.

Recommendation 8: The only amendments to RLUSs that should be able to be made without TPC assessment and community consultation are those that are minor corrections to genuine errors within the RLUSs.

Recommendation 9: Triggers for the amendment of an RLUS include the making or amendment of TPPs, SoE reports, or state-wide climate change risk assessments. Criteria should be developed to ensure that amendments to RLUSs are not allowed for short-term economic or electoral priorities.

6. Structure plan guidelines

Given their widespread use in lutruwita/Tasmania, EDO supports the development of voluntary structure plan guidelines by the State Planning Office in conjunction with councils.

EDO recommends the guidelines include clear guidance on:

- *Stakeholder engagement and community consultation* - EDO recommends the SPO provide clear guidelines on what is good community engagement and consultation on these matters. This should include strategies to more effectively involve those groups who are often underrepresented in formal planning consultation processes, such as young people, people living with disabilities, people from non-English speaking backgrounds and First Nations people.
- *Climate change mitigation and adaptation* – EDO recommends that in conjunction with Renewables, Climate and Future Industries Tasmania, the SPO provide information on where councils can access up-to-date climate change modelling, risk assessments, emissions reduction and resilience plans to inform structure plans.

Recommendation 10: Voluntary structure plan guidelines should include clear guidance on stakeholder engagement and community consultation, and climate change mitigation and adaptation.