



Environmental  
Defenders Office

**Submission in response to the Review of the State  
Coastal Policy – Development of Actively Mobile  
Landforms Position Paper (lutruwita/Tasmania)**

**21 October 2024**

## **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.

**[www.edo.org.au](http://www.edo.org.au)**

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## **Acknowledgement of Country**

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

## **A Note on Language**

We acknowledge that there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the terms First Nations when discussing matters generally, and Tasmanian Aboriginal when discussing lutruwita/Tasmania specifically. We acknowledge that not all First Nations or Tasmanian Aboriginal people will identify with those terms and that they may instead identify using other terms or with their immediate community or language group.

First Laws is used to describe the laws which exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. EDO respects all First Laws and values their inherent and immeasurable worth. EDO recognises that there are many different terms used throughout First Nations for what is understood in the Western world as 'First Laws'.

## **EDO's role**

EDO is a non-Indigenous community legal centre, which works alongside First Nations around Australia and the Torres Strait Islands in their efforts to protect their Countries and Cultures from damage and destruction. EDO has and continues to work with First Nations clients who have interacted with Western laws, including Western cultural heritage laws in many ways, including litigation and engaging in Western law reform processes. In respect for First Nations self-determination, EDO has provided high level key recommendations for Western law reform to empower First Nations to protect their Countries and Cultures. The high-level recommendations in this submission comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and Cultures.

## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to provide the following submission in response to the *Review of the State Coastal Policy – Development of Actively Mobile Landforms Position Paper* (**Position Paper**). In preparing this submission, EDO has also had regard to the Validation (State Coastal Policy) Bill 2024 (the **Bill**) which is presently before the Tasmanian Parliament, and the Department of Premier and Cabinet (**DPAC**) webpage which provides a short overview of the Bill.

In providing policy principles and outcomes for the management of State waters and all land to a distance of one kilometre inland from the high-water mark, the State Coastal Policy 1996 (**SCP**) is an important component of lutruwita/Tasmania’s Resource Management and Planning System (**RMPS**).

Relevantly, the SCP provides for the following three key Principles:

1. Natural and cultural values of the coast shall be protected.
2. The coast shall be used and developed in a sustainable manner.
3. Integrated management and protection of the coastal zone is a shared responsibility.

The SCP also provides for certain outcomes to be achieved under each of these Principles. Under the Overarching Outcome “Protection of Natural and Cultural Values of the Coastal Zone”, the SCP provides:

### 1.4. COASTAL HAZARDS

1.4.1. Areas subject to significant risk from natural coastal processes and hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility and sea-level rise will be identified and managed to minimise the need for engineering or remediation works to protect land, property and human life.

1.4.2. Development on actively mobile landforms such as frontal dunes will not be permitted except for works consistent with Outcome 1.4.1.

1.4.3. Policies will be developed to respond to the potential effects of climate change (including sea-level rise) on use and development in the coastal zone.

The Tasmanian Government proposes to amend or replace Outcome 1.4.2 in the SCP due to recent appeals before the Tasmanian Civil and Administrative Tribunal (**TASCAT**) and “concerns that a number of developments on the coast, approved over many years, may not have been subject to the appropriate level of scrutiny under the SCP and as a consequence could be vulnerable to legal challenge.”<sup>1</sup> The Position Paper further claims Outcome 1.4.2 should be

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<sup>1</sup> Position Paper, p7.

reviewed to allow “more contemporary planning controls” found in the Tasmanian Planning Scheme and Tasmanian Planning Policies (TPPs) “to be fully used”.

EDO recognises that the practical implementation of the SCP has not been without issue. For example, previous judicial criticism of the drafting of the SCP resulted in the need for the *State Coastal Policy Validation Act 2003*.<sup>2</sup> Appeals currently before the Tasmanian Supreme Court relating to ACEN’s proposed large-scale private jetty on a sensitive coastal dune for its Robbins Island Windfarm, including one lodged by the Tasmanian Environment Protection Authority, have prompted the Tasmanian Government to seek further retrospective amendments to “clarify” the previous understanding of how Outcome 1.4.2 of the SCP applied to developments.

EDO has previously highlighted the need for greater clarity and direction in State Policies and in the outcomes they contain, to prevent these types of issues from arising.<sup>3</sup> However, we maintain that piecemeal amendments to the SCP, as outlined and proposed in the Position Paper and under the Bill, are unlikely to provide the certainty and clarity the Tasmanian Government appears to be seeking. Indeed, the previous amendments to Outcome 1.4.2 of the SCP in 2009 (which overturned a previous complete ban on development on actively mobile landforms) are now the subject of apparent contention and are the focus of the Position Paper and the Bill.

The most recent State of the Environment Report found lutruwita/Tasmania’s coastlines are already suffering the effects of sea-level rise due to global heating. It concluded that “in coming decades, storm tide events are likely to occur more often, and more susceptible coastal areas will be subject to more frequent flooding and erosion. These impacts have serious implications for built infrastructure and natural ecosystems and habitats.” In response to these threats, the report recommended the Tasmanian Government undertake a comprehensive review of Tasmanian coastal policy “in response to the pressures and threats to natural and built coastal environments, including the impacts of climate change, development, recreational activity and other activities on important coastal environments and habitats, as well as matters of habitat protection and restoration, and other options available to manage coastal environmental impacts”.<sup>4</sup> We anticipate that lutruwita/Tasmania’s Statewide Climate Change Risk Assessment, which is scheduled for publication in November 2024, will further emphasise the necessity for strong action in response to climate change.

**Given the real and looming impacts of sea-level rise, coastal inundation and flooding arising from climate change,<sup>5</sup> EDO rejects any suggestion that the SCP should be amended in a**

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<sup>2</sup> See *Richard G. Bejah Insurance & Financial Services Pty Ltd v Manning & Ors* [2002] TASSC 35, *Cameron & Anor v Resource Planning and Development Commission* [2006] TASSC 66. See also Blow CJ’s comments in *St. Helen’s Landcare and Coastcare Group Inc v Break O’Day Council & Anor* [2007] TASSC 15.

<sup>3</sup> It was discussed in EDO’s 2010 [Submission in response to the Review of the Draft State Coastal Policy 2008](#), and repeated in EDO’s [Submission response to the Draft Validation \(State Coastal Policy\) Bill 2024](#).

<sup>4</sup> Tasmanian Planning Commission (2024), [Tasmanian 2024 State of the Environment Report](#), Vol 1 at p 34, Recommendation 6.

<sup>5</sup> IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001

**piecemeal fashion to weaken the level of protection of lutruwita/Tasmania’s vulnerable coastlines and communities, as is proposed in the Position Paper. Rather, what lutruwita/Tasmania actually requires is a much stronger SCP that identifies objectives to protect and conserve our coasts and clear, enforceable strategies to achieve these objectives.** Unfortunately, the Position Paper foreshadows changes that in no way seek to clarify or strengthen the SCP, and for this reason, **EDO does not support the proposed amendments to the SCP outcome 1.4.2.**

**EDO also strongly opposes the apparent intention to introduce amendments to Outcome 1.4.2 of the SCP as an Interim State Policy.** This is because any amendment is liable to create more ambiguity and uncertainty than the current Outcome 1.4.2, and this uncertainty could give rise to cascading adverse consequences for planning across lutruwita/Tasmania’s coastlines.

EDO’s submission is structured as follows:

- 1. Response to issues raised in Position Paper**
  - a. Outcome 1.4.2**
  - b. Intent of Outcome 1.4.2**
  - c. Actively Mobile Landforms**
  - d. Recent changes to tools for identifying and managing coastal processes and hazards**
- 2. Response to proposed amendments to update the controls on actively mobile landforms**
  - a. Coastal development generally**
  - b. Updating Outcomes on coastal hazards to align better with other outcomes**
  - c. A risk-based assessment for coastal development in areas of hazard**
  - d. Considering ‘need’ and ‘benefit’ of use and development**
- 3. Comments on proposed amendments to State Coastal Policy**
- 4. Process going forward**

We provide a summary of our recommendations below.

#### **Summary of Recommendations**

**Recommendation 1:** Any amendments to Outcome 1.4.2 of the SCP should not proceed until the Supreme Court has ruled on the Robbins Island Windfarm appeals.

**Recommendation 2:** Any amendment to Outcome 1.4.2 of the SCP should be consistent with the overarching outcome of ‘Protection of Natural and Cultural Values of the Coastal Zone’ and the SCP Principle that ‘Natural and cultural values of the coast shall be protected.’

**Recommendation 3:** The Tasmanian Government should seek advice from geomorphological, climate and legal experts in developing any definition or clarity to the phrase ‘actively mobile landforms’. Any proposed definition should be subject to further public consultation before it is adopted.

**Recommendation 4:** Existing limitations on developments on actively mobile landforms should remain in the SCP or be strengthened.

**Recommendation 5:** Without clearly articulated outcomes directed at protecting natural and cultural values of actively mobile landforms, risk-based assessments are an insufficient replacement for Outcome 1.4.2.

**Recommendation 6:** The proposed amendment to the SCP to replace Outcome 1.4.2 should not proceed as it is not required, fails to protect the natural and cultural values of the coast, is uncertain and ambiguous, and introduces irrelevant considerations.

**Recommendation 7:** Amendments to Outcome 1.4.2 or the definition of ‘actively mobile landform’ in the SCP should not be given effect as Interim State Policy.

## 1. Response to issues raised in Position Paper

### (a) Outcome 1.4.2

Part 4.1 of the Position Paper states: “The effect of Outcome 1.4.2 is that it is a self-executing prohibition of development on ‘actively mobile landforms’ except for works involving the protection of land, property or human life.” It goes on to state: “This effectively means that the application of Outcome 1.4.2, consistent with these definitions, would result in any subdivision, structure, pathway, fence, jetty, sign or lopping of trees on an ‘actively mobile landform’ to be contrary to the SCP. Furthermore, and paradoxically, the removal of buildings, structures or works to seemingly comply with the Outcome is also considered development and therefore inconsistent with SCP.”

**EDO would argue another more preferable interpretation of Outcome 1.4.2 is that only works directed at *managing* “an area subject to significant risk from natural coastal processes and hazards” to “minimise the need for engineering or remediation works to protect land, property and human life” are allowed on actively mobile landforms. If such an interpretation is taken, then works like boardwalks, signage, even jetties or the removal of buildings or structures *could* be allowed on actively mobile landforms subject to an assessment of the purpose and effect of those works.**

EDO’s preferred interpretation is consistent with the 19 January 2009 advice provided to the then-Resource Planning and Development Commission (**RPDC**) concerning the amendments which introduced the words “except for works consistent with Outcome 1.4.1” to Outcome 1.4.2. That advice has been extracted below:<sup>6</sup>

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<sup>6</sup> Resource Planning and Development Commission (2009) *Proposed Amendment to the State Coastal Policy 1996, Report to the Resource Planning and Development Commission, Meeting Date 19 January 2009, File No SPOL Pol Rev Coastal*, Accessed at:

## Proposed amendment

The proposed amendment relates to Outcomes 1.4.1 and 1.4.2 of the State Coastal Policy to correct an inconsistency between the outcomes. The outcomes currently read as follows:

### Outcome 1.4.1:

Areas subject to significant risk from natural coastal processes and hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility and sea-level rise will be identified and managed to minimise the need for engineering or remediation works to protect land, property and human life.

### Outcome 1.4.2:

Development on actively mobile landforms such as frontal dunes will not be permitted.

The inconsistency is that Outcome 1.4.2 does not permit works required under the management component of 1.4.1.

It is proposed to amend Outcome 1.4.2 to read:

Development on actively mobile landforms such as frontal dunes will not be permitted **except for works consistent with Outcome 1.4.1.** [Bold type added to show proposed amendment]

(Bold font in original, underlined font EDO's for emphasis).

It is also consistent with the 12 January 2009 Acting Premier's direction to the RPDC concerning the proposed minor amendment (see **Annexure 1**).

**The apparent multiple competing interpretations of Outcome 1.4.2 underscore the need for the Tasmanian Government to allow the Tasmanian Supreme Court to rule on the current appeal by the Tasmanian EPA against the approval granted to ACEN's Robbins Island Windfarm.** This will allow everyone, including governments, councils, developers, and most importantly, the Tasmanian community to properly understand the legal effect of the outcome before any steps are taken to change it.

**Recommendation 1:** Any amendments to Outcome 1.4.2 of the SCP should not proceed until the Supreme Court has ruled on the Robbins Island Windfarm appeals.



## (b) Intent of Outcome 1.4.2

Part 4.2 of the Position Paper states, “Outcome 1.4.2 sits under the subheading ‘Coastal Hazards’. This implies that the intent of the prohibition of development on actively mobile landforms is in response to minimising risk to development from hazards.”

EDO questions this logic. Outcome 1.4.2 is listed below the overarching SCP Outcome of “Protection of Natural and Cultural Values of the Coastal Zone”. Given this, another more plausible interpretation is that the intent of Outcome 1.4.2 is aimed at protecting the natural and cultural features associated with actively mobile landforms, such as dunes, from destructive developments that are not directed to managing the areas to minimise the need for engineering or remediation works to protect land, property and human life. While this intent is later partly conceded on page 7 of the Position Paper, it is done so in a way tainted by the earlier conclusion.

In EDO’s view, it would be inconsistent with the intent of the SCP and the original outcome 1.4.2 to amend the SCP to allow works that limit actively mobile land to limit “impacts of that mobility” to undisclosed features and only “allow those natural processes to continue unless they pose an unacceptable risk”. Terminology and concepts such as “unacceptable risk” are not introduced or used elsewhere in the SCP. We observe that **many engineering interventions to limit actively mobile landforms, such as seawalls, groynes and beach replenishment works can and do negatively impact the natural and cultural values of these areas. Furthermore, they can result in cascading risks and impacts to other land, property and human life.** In EDO’s view, it would be entirely inconsistent with the overarching objectives of the SCP to allow such works to proceed in all but the most limited of circumstances to avoid or minimise future engineering and remediation interventions.

EDO maintains that no changes should be made to Outcome 1.4.2 that would result in it being inconsistent with the overarching Outcome ‘Protection of Natural and Cultural Values of the Coastal Zone’ and the SCP Principle that ‘Natural and cultural values of the coast shall be protected’.

**Recommendation 2:** Any amendment to Outcome 1.4.2 of the SCP should be consistent with the overarching outcome of ‘Protection of Natural and Cultural Values of the Coastal Zone’ and the SCP Principle that ‘Natural and cultural values of the coast shall be protected.’

## (c) Actively Mobile Landforms

The issue of the lack of definition for the phrase ‘actively mobile landforms’ has been longstanding.<sup>7</sup> The urgency with which the Government now seeks to address this issue given it

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<sup>7</sup> So much is acknowledged in the Position Paper, as it references Dr Chris Sharples’ 2012 paper on the subject [The problem of the use of ambiguous terms in Tasmanian coastal planning policy documents for defining appropriate coastal development zones.](#)

may impact on proposed large commercial developments impacting sensitive coastal areas is disappointing, given any reform of the SCP would greatly benefit from a holistic approach. Notwithstanding, EDO considers there may be some benefit to introducing a common definition for ‘actively mobile landforms’, or otherwise addressing the ambiguity created by that phrase. It would have been helpful if, in the Position Paper, clear options for definitions of these areas were put forward for public comment.

Defining ‘actively mobile landforms’ by reference to maps alone is unlikely to be satisfactory given the readily changing location and extent of these areas. We understand that other submissions in response to the Position Paper, such as by the Australian Coastal Society, raise issues with the proposed use of the Dune Mobility layer on the Land Information System Tasmania (**LIST**) to define areas of the coasts where development should be strictly managed. We suggest that using some mapping in conjunction with a broader written definition may be sufficient (for example, like the approach taken for the definition of waterways and coastal protection areas under clause C7.3.1 of the State Planning Provisions (**SPPs**)).

**EDO urges the Tasmanian Government to seek advice from geomorphological, climate and legal experts in developing any definition or clarity to the phrase ‘actively mobile landforms’. We also strongly recommend that any definition be released for further public comment before it is introduced.**

**Recommendation 3:** The Tasmanian Government should seek advice from geomorphological, climate and legal experts in developing any definition or clarity to the phrase ‘actively mobile landforms’. Any proposed definition should be subject to further public consultation before it is adopted.

#### **(d) Recent changes to tools for identifying and managing coastal processes and hazards**

EDO acknowledges that there have been many changes to lutruwita/Tasmania’s planning system since the SCP came into effect. In our view, however, **the SCP and Outcome 1.4.2 have provided a strong guardrail to planning reforms over the past decade by seeking to ensure that inappropriate developments along our coastlines do not proliferate.**

While there are references to environmental impact assessments (**EIAs**) in the SCP, Tasmanian Planning Policies (**TPPs**), and SPPs, we do not think an EIA process alone is sufficient to ensure that developments do not unacceptably impact the natural and cultural values of our coasts. Rather, clear outcomes and criteria against which these assessments are to take place are necessary features of best-practice environmental management. Without such clear guidance, we will undoubtedly see different planning authorities take different approaches to assessments, resulting in inconsistent and unpredictable outcomes.<sup>8</sup>

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<sup>8</sup> This would be inconsistent with the legislative requirement that State Policies “must seek to ensure that a consistent and co-ordinated approach is maintained throughout the State with respect to the matters contained in the State Policy”: *State Policies and Projects Act 1993*, section 5(1)(c).

These unpredictable outcomes may not just affect the environment or the community, they could also have significant implications for local councils in terms of their exposure to potential legal liability should they approve a development which is later impacted by readily foreseeable rising sea levels, storm surges, flooding or inundation.<sup>9</sup> We know that the risks of this occurring along our coasts are heightened under future global heating scenarios<sup>10</sup> and that the insurance industry is urging Australian governments at all levels to do more to prevent developments in inappropriate locations (and, in appropriate circumstances actively plan for the retreat from these locations).<sup>11</sup>

**Instead of heeding the science and the calls of the insurance industry, we question why the Tasmanian Government is moving to increase developments in these vulnerable ecologically and culturally important areas. In EDO’s view, the preferred option is for the existing limitations on developments on actively mobile landforms to remain or be strengthened.**

**Recommendation 4:** Existing limitations on developments on actively mobile landforms should remain in the SCP or be strengthened.

## 2. Proposed amendments to update the controls on actively mobile landforms

### (a) Coastal development generally

Part 6.1 of the Position Paper states, “The current proposal is only to amend the outcomes to provide greater clarity and a more contemporary approach to managing development on actively mobile landforms. The Government has no intention of amending any other part of the SCP which includes many other policy directions controlling development along the coast.”

In EDO’s view, Outcome 1.4.2 is one of the strongest provisions in the whole SCP. The proposal to weaken or remove it will have flow-on consequences for the remaining provisions in the policy, particularly when it comes to the protection of Aboriginal cultural heritage, natural resources and ecosystems.

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<sup>9</sup> For more on the legal risks associated with decision-making regarding coastal developments see: Bell-James, J., Baker-Jones, M., and Barton E., 2017: Legal risk. A guide to legal decision making in the face of climate change for coastal decision makers. CoastAdapt Information Manual 6, 2nd edn, National Climate Change Adaptation Research Facility, Gold Coast; and Hughes, L., Dean, A., and Koegel, M., 2021. Neighbourhood Issue: Climate Costs and Risks to Councils. Climate Council of Australia Limited, accessed at [https://www.climatecouncil.org.au/wp-content/uploads/2021/09/Report-Councils-on-the-Frontline\\_V5-FA\\_Low\\_Res\\_Single\\_Pages.pdf](https://www.climatecouncil.org.au/wp-content/uploads/2021/09/Report-Councils-on-the-Frontline_V5-FA_Low_Res_Single_Pages.pdf)

<sup>10</sup> IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001

<sup>11</sup> Insurance Council of Australia, 2023, Insurance Catastrophe Resilience Report 2022–23, p ii, accessed at <https://insurancecouncil.com.au/> on 22 January 2024.

### **(b) Updating Outcomes on coastal hazards to align better with other outcomes**

Part 6.2 of the Position Paper states, “The process of seeking to amend the SCP to clarify the current case by case application of the controls on actively mobile land is itself consistent with Outcome 3.1.1 which seeks consistency in policy interpretation.” It further states, “The current proposal is intended to clarify the restrictions and management of those uses where actively mobile land may be involved to ensure that other outcomes of the SCP around public access and safety, and management of natural and cultural values, are also delivered.”

**If anything, there is a need to update the SCP to strengthen how it addresses the challenges posed by climate change and associated sea level rise, flooding and storm surge risks. That is not what is being proposed in the Position Paper. Rather, it is the weakening of the SCP framework to potentially allow for far greater development in the very areas most at risk of climate change.**

The pre-2009 total ban on developments on actively mobile land in Outcome 1.4.2 made for the clearest message that these areas were too risky. There should only be very minor exceptions to this rule – relating to essential management works or infrastructure built by public authorities in the public interest (e.g. public access tracks, signage, boat jetties etc).

### **(c) A risk-based assessment for coastal development in areas of hazard**

Part 6.3 of the Position Paper states, “The proposed amendment is to replace the limited exemption for some development on actively mobile landforms provided in Outcome 1.4.1 with a requirement that other planning instruments put in place assessments that determine the level of risk associated with development to better consider the impacts and any mitigation required. Risk-based assessment is now standard practice for managing use and development in areas of natural hazard and forms the basis of all the hazard codes in the State Planning Provisions.”

The main objective of the SCP is to identify the *outcomes* that the Tasmanian Government (on behalf of the Tasmanian people) is seeking to achieve for our precious coastline. The proposal to effectively delegate this function to planning instruments, such as the SPPs and TPPs, does nothing to provide clear goals or guidance on these issues.

The introduction of the Tasmanian Planning Scheme has weakened or removed previously existing protections for the natural and cultural values of our coastlines, including through the removal of the 200 metre environmental management zoning to the seaward extent of the high water mark of lutruwita/Tasmania’s coasts. The Coastal Erosion Hazards and Coastal Inundation Hazards Codes of the SPPs do not require any risk-based assessment directed at ensuring natural and cultural values are adequately protected. The SPPs and TPPs utterly fail to address the need to protect the rich and ongoing Tasmanian Aboriginal cultural heritage in lutruwita/Tasmania’s coasts and Sea Country.<sup>12</sup> The *Aboriginal Heritage Act 1975* is even acknowledged by the

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<sup>12</sup> In this respect, we refer to and reply upon EDO’s [Submission in response to the Draft Tasmanian Planning Policies](#).

Tasmanian Government as being “woefully outdated” and “shamefully inadequate”, and therefore does not protect these important values.<sup>13</sup>

For these reasons, it is wholly unsatisfactory to propose, as it does in Part 6.3 of the Position Paper, that there will be a “risk based assessment” for any development on lutruwita/Tasmania’s coasts using existing inadequate laws and schemes, without identifying the objectives for such assessments.

**Recommendation 5:** Without clearly articulated outcomes directed at protecting natural and cultural values of actively mobile landforms, risk-based assessments are an insufficient replacement for Outcome 1.4.2.

#### (d) Considering ‘need’ and ‘benefit’ of use and development

Part 6.4 of the Position Paper states, “The SCP is predicated on the sustainable use of the coast not the complete prohibition of all development. The SCP sets out particular principles for a variety of uses including community infrastructure and recreational assets such as wharfs (sic), jetties and boat ramps as well as the requirements to provide for safe use of the coast.”

EDO does not agree that the SCP is predicated on the “sustainable use of the coast”. Rather the SCP must further the RMPS objectives,<sup>14</sup> which include “to promote the sustainable development of natural and physical resources *and the maintenance of ecological processes and genetic diversity*” (emphasis added). The definition of ‘sustainable development’ from the RMPS objectives, provides for “managing use, development and protection of natural 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 on the environment.”

Consistent with the RMPS objectives, **Outcome 1.4.2 does not currently prohibit all development on actively mobile land. Rather, in acknowledgement of the risks associated with such land and the important natural and cultural values found there, it provides that those developments and works must only be for specific purposes in the management of these areas.** There is nothing objectionable to such an approach, and indeed, it is preferable given the need for expert engineering, climatic, ecological and cultural heritage advice that may be

<sup>13</sup> The Mercury, 25 June 2016, “Relics Act shamefully disrespectful” by the Matthew Groom, Heritage Minister in the Hodgman State Government, accessed at <http://www.kooriweb.org/foley/news/2000s/2016/hr25jun2016.pdf>

<sup>14</sup> *State Policies and Projects Act 1993*, section 5(1)(a).

required before planning authorities could even attempt to make a reasonable assessment of the risks to all the values posed by developments at these locations.

The Position Paper states, “Given the broad interpretation, actively mobile land forms (sic) may include any area of the interface which is not a rocky foreshore, the proposed amendments seek to introduce a direction that assessments of any proposal where he (sic) land might be mobile should consider if it needs to be in that location and if so what benefits might warrant not relocating it to another part of the coast or avoiding it entirely”.

Again, EDO considers it would have been helpful to understand what the Tasmanian Government considers to be plausible definitions of ‘actively mobile land’ so that the public might be able to respond to the proposed amendments to the SCP. As outlined in Dr Chris Sharples’ paper,<sup>15</sup> there are some areas where development should be prohibited or actively discouraged. This should be reflected in any SCP outcome and definitions. Allowing councils (acting as planning authorities) to consider the needs and benefits of a particular development on actively mobile land leaves too much to their discretion and allows consideration of matters that are irrelevant to the protection of natural and cultural values of the coasts. Such an approach is not in keeping with the overarching principles of the SCP, or with the legislative requirement that State Policies “must seek to ensure that a consistent and co-ordinated approach is maintained throughout the State with respect to the matters contained in the State Policy”.<sup>16</sup>

### 3. Comments on proposed amendments to State Coastal Policy

The Position Paper proposes, “as a starting point for discussion and to assist with the consultation process” following draft amendment to the SCP:

Delete Outcome 1.4.2 and replace with:

1.4.2 Development on actively mobile landforms will only be allowed for engineering or remediation works necessary to protect land, property and human life, unless it can be demonstrated that the development appropriately considers:

- a) protecting coastal values and natural coastal processes;
- b) achieving and maintaining a tolerable level of risk; and
- c) the benefits to the public and dependency on the particular location.”

Firstly, we reiterate Outcome 1.4.2 does not impose a “broad prohibition of development of actively mobile landforms”, and therefore we question the need for the proposed amendments. As discussed above, only certain developments are allowed in line with the objectives of the preceding Outcome 1.4.1.

Secondly, the proposed framing of the replacement to Outcome 1.4.2 to allow “Development on actively mobile landforms... for engineering or remediation works necessary to protect land,

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<sup>15</sup> Op. cit. n7.

<sup>16</sup> *State Policies and Projects Act 1993*, section 5(1)(c).

property and human life...”, even if you disregarded the rest of the draft Outcome, already allows a much broader range of development than the current provision which, in EDO’s view, only allows for developments that manage actively mobile landforms to “*minimise* the need for engineering or remediation works to protect land, property and human life.”

Thirdly, the drafting of the proposed Outcome is loose and itself creates uncertainty. For example:

- What is meant by the phrase “...unless it can be demonstrated that the development appropriately considers...”? What is “appropriately” in this context, and how does a development demonstrate consideration of anything (or is that the job of an applicant or application)?
- What is a “tolerable level of risk”? Does this phrase refer to risk to humans, property, natural or coastal values, or all of these features? What about cultural heritage, which shamefully, is not mentioned in the proposed Outcome at all? And once these issues are settled, how does one identify what risk is “tolerable”, and over what timeframes?
- What “benefits to the public” may be considered here? What if the development benefits some but not others in the community? Why are disbenefits not able to be considered – surely, they are just as important, if not more, in the context of such a decision.
- What is meant by “dependency on the particular location”? This could mean that there is no other option but to locate the development in that place, or it could be that the development is dependent on a location because that is the only one that is owned by the developer or available for purchase.

Finally, EDO strongly opposes the proposed framing of any replacement for Outcome 1.4.2 with a consideration of the “benefits may result in the development proceeding” (even if this is framed as “the benefits to the public” as in the draft). It is unclear how such an amendment which encompasses consideration of potential social and economic benefits, would be in keeping with the clear overarching Outcome of this part of the SCP concerning the ‘Protection of Natural and Cultural Values of the Coastal Zone’.

As mentioned, the Position Paper does not provide a proposed definition for ‘actively mobile landform’. Given the changing nature of these landforms, EDO considers that the definition of ‘actively mobile land’ should incorporate areas identified by maps and also areas identified through a written definition. To define this term, EDO suggests that the Tasmanian Government consult with experts in the fields of coastal geomorphology, planning and law. **In this respect, we repeat Recommendation 3 above.**

**Recommendation 6:** The proposed amendment to the SCP to replace Outcome 1.4.2 should not proceed as it is not required, fails to protect the natural and cultural values of the coast, is uncertain and ambiguous, and introduces irrelevant considerations.

#### 4. Process going forward

The Position Paper flags that the Tasmanian Government is likely to ask the Governor to declare that the draft amendment is to be an Interim State Policy under section 12 of the *State Policies and Projects Act 1993*. This would mean that the amended provisions of the SCP would have immediate effect and apply to development applications while the Tasmanian Planning Commission undertakes its assessment of the draft amendment to the SCP. The Position Paper appears to justify such an approach by stating, “There is evidence that the current drafting of the SCP is ambiguous and creates perverse outcomes and is not in line with the evolution of risk-based planning controls for other natural hazards as found in the Tasmanian Planning Scheme.”

It appears to EDO that the only evidence of a “perverse outcome” resulting from the operation of Outcome 1.4.2 of SCP, from the Tasmanian Government and ACEN’s perspectives at least, relates to the EPA’s Supreme Court appeal against the Robbins Island Windfarm. While there may be legal questions arising from that appeal to EDO’s knowledge, no other legal challenges have been launched relating to other coastal developments. Indeed, uncertainty concerning the scope and definitions of terms in Outcome 1.4.2 of the SCP has been publicly aired for over a decade.

In these circumstances, EDO rejects the notion that there is an urgent need for these questions to be resolved through the adoption of amendments through an Interim State Policy. As we outlined above, any amendment to the SCP is liable to create more ambiguity and uncertainty than the current Outcome 1.4.2. If these amendments were to be given effect without these uncertainties and ambiguities being properly assessed and considered by the Tasmanian Planning Commission and without further input from councils and the public, it could give rise to cascading adverse and irreversible consequences for lutruwita/Tasmania’s coastlines.

**EDO therefore strongly opposes the apparent intention to introduce amendments to Outcome 1.4.2 of the SCP as an Interim State Policy.**

**Recommendation 7:** Amendments to Outcome 1.4.2 or the definition of ‘actively mobile landform’ in the SCP should not be given effect as Interim State Policy.

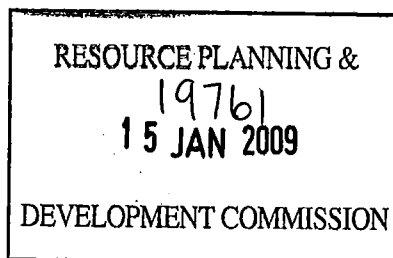
*Thank you for the opportunity to make this submission.  
Please do not hesitate to contact our office should you have further enquiries.*



## Annexure 1 - Ministerial Direction to Resource Planning and Development Commission

Premier

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Mr G Alomes  
 Executive Commissioner  
 Resource Planning and Development Commission  
 GPO Box 1691  
 HOBART TAS 7001

12 JAN 2009

Dear Mr Alomes

I am writing to advise that the Government wishes to amend the State Coastal Policy 1996 to correct an anomaly between Outcome 1.4.1 and Outcome 1.4.2

Outcome 1.4.1 currently reads:

*Areas subject to significant risk from natural coastal processes and hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility and sea-level rise will be identified and managed to minimise the need for engineering or remediation works to protect land, property and human life.*

Outcome 1.4.2 currently reads:

*Development on actively mobile landforms such as frontal dunes will not be permitted.*

As such Outcome 1.4.2 is inconsistent with Outcome 1.4.1, as it prevents works which would be required under the management component of Outcome 1.4.1. It is therefore proposed to change Outcome 1.4.2 to read:

*Development on actively mobile landforms such as frontal dunes will not be permitted except for works consistent with Outcome 1.4.1.*

Some background information in relation to the anomaly and the rationale for the amendment is attached.

In accordance with section 15A (2) of the *State Policies and Projects Act 1993*, I hereby direct the Commission to advise whether the proposed amendments constitute a significant change to the current State Policy.

Yours sincerely

Lara Giddings MP  
 Acting Premier

## Amendment to the State Coastal Policy 1996

### Additional Information for the Resource Planning and Development Commission

#### Apparent anomaly

As currently worded, Outcome 1.4.2 it is at odds with Outcome 1.4.1 which promotes the identification and management (which may necessitate works) of areas subject to significant risk from natural coastal processes and hazards to minimise the need for engineering or remediation works to protect land, property and human life.

The anomaly is reinforced by the use of the term "development", which is defined in the Policy as including "the construction or carrying out of works" and "the subdivision and consolidation of land". The term "works" is separately defined as including "any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil, but does not include forest practices, as defined in the *Forest Practices Act 1985*, carried out in State Forests."

As a consequence, any form of remediation works, fencing, rehabilitation planting, earth moving, or even amalgamation of titles involving actively mobile landforms is technically in breach of the State Policy.

Some of these activities, however, may actually be required to properly comply with Outcome 1.4.1. which requires management of areas including those subject to littoral drift and dune mobility. Indeed, it is probable that a significant volume of legitimate coastal works and biodiversity protection activities carried out by councils, the Parks and Wildlife Service and community over the past 12 years has been technically inconsistent with 1.4.2., but entirely consistent with the overall intent of the Policy, in particular Outcome 1.4.1.

#### Previous consideration of amendment to Outcome 1.4.2

Problems relating to Outcome 1.4.2 are well known and an attempt to amend the Policy to clarify the meaning of the clause was proposed in 2002. In the background information to that amendment, it was stated that in the original draft Policy released in 1994 Outcome 1.4.2 referred to "construction" on actively mobile landforms but was amended to "development" by the Sustainable Development Advisory Council (SDAC). It went on to say that as SDAC did not indicate that it intended to prohibit beneficial works through this wording change, it must be concluded that this was an unforeseen side effect.

The background paper concluded that Outcome 1.4.2 of the Policy, as modified, could inadvertently prevent coastal engineering works that could be necessary to protect assets of considerable public benefit.

It was proposed to replace Outcome 1.4.2 with an alternative and substantially different Outcome that allowed some development on frontal dunes and other actively mobile land forms in certain circumstances — including residential infill in areas subdivided

prior to the date of the Policy coming into force and commercial or industrial facilities which are dependent on the specific coastal location.

The amendment was considered a significant change to the Policy, but was not pursued by the Government when the Supreme Court ruled that the Coastal Policy was invalid.

#### **Limitation of amendment to Outcome 1.4.2**

The solution to the anomaly is to link Outcome 1.4.2 more closely to Outcome 1.4.1 such that development allowed on actively mobile landforms is limited to that required to deliver the intent of Outcome 1.4.1.

As the range of works required under Outcome 1.4.1 is uncertain, the most effective approach is to leave the allowable works unfettered by definition, but subject to the restriction that they are only required for management purposes.

The proposed amendment adds an exception to Outcome 1.4.2 referencing Outcome 1.4.1. It refers to 'works' only, not all forms of 'development' and limits those works to actions consistent with Outcome 1.4.1., as follows (additional words in italics):

- 1.4.2 Development on actively mobile landforms such as frontal dunes will not be permitted *except for works consistent with Outcome 1.4.1.*