Environmental Defenders Office

Submission on draft amendment 01-2025 to the Tasmanian State Coastal Policy 1996

25 August 2025

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 40 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

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Tasmanian Planning Commission
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Acknowledgement of Country

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.

Introduction

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on draft amendment 01-2025 to the Tasmanian *State Coastal Policy 1996* (**the SCP**).

Tasmania's coasts are among the state's most valuable and vulnerable assets, ecologically, culturally, and economically. They are subject to intensifying pressures from climate change, sea-level rise, erosion, development, and recreational pressures. The SCP plays a key role in managing this important area of the State, including protecting it from ongoing and intensifying pressures.

The draft amendment proposes changes to Outcomes 1.4.1 and 1.4.2 of the SCP and a definition for the new term "tolerable risk". The Tasmanian Planning Commission's website describes the changes as follows:

> *"The modifications to Outcome 1.4.1 aim to establish consistency and clarification of the policy setting. The changes to Outcome 1.4.2 aim to remove the prohibition of development and introduce a performance-based policy response that allows certain use and development to be considered, provided it can demonstrate compliance with certain criteria".*[1]

These changes have been proposed in response to concerns about the interpretation and application of Outcome 1.4.2 of the SCP.

In October 2024, EDO provided feedback on the *Review of the State Coastal Policy – Development of Actively Mobile Landforms Position Paper*,[2] which first proposed changes to Outcome 1.4.2 of the SCP. At that time, EDO indicated it did not support proposed amendments to Outcome 1.4.2 of the SCP, particularly as they were piecemeal and risked weakening the level of protection of lutruwita/Tasmania's vulnerable coastlines and communities. We suggested that what was needed was a much stronger SCP that identifies objectives to protect and conserve our coasts and clear, enforceable strategies to achieve these objectives. Our position has not changed – **we do not support the proposed amendments**. A copy of our earlier submission is available on our website,[3] and should, where relevant, be considered alongside this submission.

This submission provides further feedback, including on the specific draft amendment 01-2025 to the SCP set out in 'Draft amendment 01-2025' (**Draft Amendment**),[4] and the 'Draft Amendment 01-25 to State Coastal Policy - Development of Actively Mobile Landforms Background Report provided to the Tasmanian Planning Commission' (**Background Report**).[5]

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[1] https://www.planning.tas.gov.au/assessments-and-hearings/current-assessments-and-hearings/state-coastal-policy-draft-amendment-01-25

[2] https://www.stateplanning.tas.gov.au/__data/assets/pdf_file/0006/543534/Position-Paper-Review-of-the-State-Coastal-Policy-Development-of-Actively-Mobile-Landforms-September-2024.pdf

[3] EDO, *Submission in response to the Review of the State Coastal Policy – Development of Actively Mobile Landforms Position Paper (lutruwita/Tasmania)*, October 2024, https://www.edo.org.au/wp-content/uploads/2024/10/EDO-Submission-on-State-Coastal-Policy-Position-Paper.pdf

[4] https://www.planning.tas.gov.au/__data/assets/pdf_file/0012/808968/Draft-amendment-01-2025.pdf

[5] https://www.planning.tas.gov.au/__data/assets/pdf_file/0009/808965/Background-report-on-draft-amendment-01-2025-March-2025.pdf

Our submission addresses the following key issues:

- Flawed justification for the proposed amendment
- Proposed amendment to 1.4.2 is a step backwards and will put vulnerable coastal areas at risk
- Ambiguity around the terms "Foredune" and "Actively Mobile Landforms"
- Broader need to reform and better implement the SCP
- Declaration of the amendment as an Interim State Policy

As outlined in our conclusion, we recommend that:

- The proposed amendment to Outcome 1.4.2 should be **rejected.** Any amendment must strengthen definitions and protections for actively mobile landforms; and
- The Tasmanian Government must commit to a **comprehensive overhaul of the SCP**, ensuring it provides effective, enforceable, and climate-ready protection for Tasmania's coastal environments.

Key Issues

- **Flawed justification for the proposed amendment**

The Background Report states at "*3.1 Policy setting of Outcome 1.4.2"*:

> *"Any action, such as maintaining a path, removal of weeds or the construction of a fence … is technically in contravention of Outcome 1.4.2 of the SCP and the person undertaking those works can technically be convicted of an offence*".

We do not agree with this sweeping statement, which is misleading. Works of that kind that are consistent with clause 1.4.1 are permissible. Relevantly, clauses 1.4.1 and 1.4.2 currently provide:

> *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.*

In fact, an amendment to the SCP in 2009 to add the words "*except for works consistent with Outcome 1.4.1"* into clause 1.4.2 was made to clarify that management to minimise the need for engineering or remediation works to protect land, property and human life is permissible. Maintaining a path, removal of weeds or the construction of a fence could be undertaken as management activities to protect the land. Suggestions in the Background Report that the amendments are needed to allow *"a sand ladder to protect vulnerable coastal ecosystems…*" are similarly flawed.

The proposed amendment to Outcome 1.4.1 to remove the words "engineering or remediation" works, and simply stating "works" could address any residual concerns about the limits of clauses 1.4.1 and 1.4.2 to allow appropriate management of natural coastal processes and hazards. However, as outlined below, the more substantive changes to clause 1.4.2 are completely unjustified.

- **Proposed amendment to 1.4.2 is a step backwards and will put vulnerable coastal areas at risk**

Alarmingly, the proposed amendment goes beyond simply providing further clarity on how coastal areas can be managed to address risks. Instead, it is intended to remove the long-standing prohibition on development in vulnerable areas of the coast including 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. It is proposed to allow development in these areas using a 'risk-based' approach. As drafted, there is no requirement that the works be necessary to protect land, property, coastal values and human life. The proposal is to replace the current clear restriction on development with a permissive approach which would allow ANY development, providing it meets the following criteria:

a) can achieve and maintain a tolerable risk for the intended life of the use and development;
b) benefits the public or is dependent on the particular location; and
c) considers the impacts on coastal values and natural processes and those impacts are managed in accordance with the objectives, principles and outcomes of this Policy.

It is proposed to define "tolerable risk" as follows:

> "*Tolerable risk "tolerable risk" means the lowest level of likely risk from the relevant hazard:*
> *a) to secure the benefits of a use or development in a relevant hazard area; and*
> *b) which can be managed through:*
> *iii* (sic). *routine regulatory measures; or*
> *iv.* (sic). *by specific hazard management measures for the intended life of each use or development*

The proposed amendment to Clause 1.4.2 fundamentally alters the approach to coastal hazards in Tasmania. The current approach is that the only works permissible on actively mobile landforms such as frontal dunes are those works identified as being needed to minimise the need for engineering or remediation works to protect land, property and human life.

Not only is this proposed change to 1.4.2 a clear move away from the current prohibition, as drafted it allows the decision-maker significant discretion to allow any development on frontal dunes, provided the decision-maker is satisfied these three factors are met. There will be nothing to prevent applications for construction of buildings or other structures on dunes if they can be said to "benefit the public" or be "dependent on the particular location". There are no prescriptive controls, making decisions difficult to enforce or review. The only possible challenge would be through judicial review, for example that a decision was irrational or so unreasonable that no decision maker could have come to that conclusion.

Possible scenarios under such broad provisions could include:

- Public facilities constructed on foredunes, on the strength of evacuation plans that purport to make use of such buildings a "tolerable risk".
- A boatshed that benefits the public or is development which is dependent on the particular location.
- Restaurants and holiday or resort accommodation that are argued to be of benefit the public.
- Construction of "specific hazardous management measures" in the form of hard engineering structures, which will themselves have impacts on coastal processes. For example, walls to

protect structures may divert or refocus erosion forces, accelerating or aggravating coastal processes in other locations.

This is a significant expansion on the scope of the current provisions and is not consistent with the three main principles of the coastal policy, namely that: natural and cultural values of the coast shall be protected, the coast shall be used and developed in a sustainable manner, and integrated management and protection of the coastal zone is a shared responsibility.

Given the significant discretion in the draft amendment, it is likely to create more ambiguity and uncertainty than the current Outcome 1.4.2, and this could give rise to cascading adverse consequences for planning across lutruwita/Tasmania's coastlines. There is a real risk that the proposed provisions could be exploited and used as a trojan horse for a range of development entirely inappropriate for Tasmania's vulnerable coast.

Further, in addition to potential impacts on sensitive coastal environments, including on natural and cultural values, there is also the likelihood of extremely costly measures being required in the future to reduce risks to life or property in circumstances where any currently "tolerable" risks become intolerable due to ongoing and intensifying threats from coastal processes and climate change. Rather than responding to pressures and threats to the environment, the Government's proposed amendment itself constitutes a threat to Tasmania's coastal environment.

We also acknowledge that any concerns regarding the permissibility of specific past developments should have been dealt with separately by the *Validation (State Coastal Policy) Act 2024*, and do not justify the need for changes proposed by this amendment.

There has been no justification provided for such retrograde, sweeping changes to outcome 1.4.2, and the proposal is at odds with other principles and outcomes of the SCP. The amendments **should be rejected** and outcome 1.4.2 should be retained in its current form.

- **Ambiguity around the terms "Foredune" and "Actively Mobile Landforms"**

The Background Report cites ambiguity around the meaning of the phrase "*actively mobile landforms such as frontal dunes*" as being a matter of concern, and cites a paper by Chris Sharples, titled "*The problem of the use of ambiguous terms in Tasmanian coastal planning policy documents for defining appropriate coastal development zone*".[6]

The paper by Sharples, cited in the Background Paper, stated with respect to "frontal dunes" the following by way of summary:

- Shore-parallel sand dunes backing sandy beaches and formed by accumulation of sand blown off beaches by onshore winds, are a common feature backing most Australian beaches. These features are normally referred to in the contemporary coastal geomorphic literature as '**foredunes'**, and have widely accepted characteristics and an accepted definition.

[6] A copy of the paper is available here: https://williamccromer.com/content/uploads/2015/03/SharplesOpinion_CoastalDuneTerminology_PolicyImplications_v3_May2012.pdf

- Two main types of foredunes are widely recognised, namely “established foredunes” and “incipient foredunes”.

- Established foredunes typically extend parallel to the back of most of a beach. They form by accumulation of sand blown landwards from the beach and trapped by backshore vegetation above the limit of all but the largest storms.

- Because the position at which they can form is determined by the landwards reach of the largest storms, the dune front will occasionally be reached and eroded by storm waves during infrequent large storms. …if sea level is rising, successive large storms may erode the dune further back than it has been previously eroded and may ultimately destroy the entire foredune. A new foredune may subsequently form further to landwards if sea-level later stabilises again at a higher level.

- An incipient dune is an ephemeral feature which accumulates to seawards of the main established foredune.

- “**Frontal dune**” has generally been replaced in the contemporary coastal geomorphic literature by the term ‘**foredune**’.

- The ambiguity is regularly exploited by developers wishing to build on an established foredune.

With respect to “*actively mobile landforms”* Sharples stated:

> *“It seems likely that the term ‘actively mobile landform’ is intended to refer to a landform which is actively moving in whole or in part. Movement of a coastal landform will generally involve the processes of erosion and/or accretion – which both amount to changes of landform shape or morphology – since there are few other natural processes by which a coastal landform might be said to ‘move’.*
>
> *I have previously argued (in tribunal hearings involving proponents who wished to build or use dunes which are arguably ‘actively mobile’) that the relevant degree and timing of ‘active mobility’ should be a degree of movement (shape change by erosion and or accretion) sufficient to create a significant hazard for buildings or other relevant uses within a normal planning time frame of 50 or 100 years.*
>
> *Defined in this way an established foredune would be an ‘actively mobile landform’ since it is highly likely to be subject to one or more episodes of storm wave erosion in such a period, as well as a high likelihood of significant blowout erosion. However this was not a definition the proponents preferred, and they hired their own advocates to argue that the landform must be visibly moving (changing shape) on timeframes of minutes to days in order for it to be classified as ‘actively mobile”.*

Sharples concluded that the purpose of the SCP in avoiding development in coastal areas subject to hazards such as erosion, dune mobility, flooding and slumping was of particular relevance to present and future coastal development in view of the fact that ongoing sea-level rise is expected to cause progressively more erosion and flooding to greater distances inland than has occurred in the past. He

foreshadowed the pressure by developers to get access to development on foredunes by their suggesting ridiculously short timeframes for mobility. He suggested a time frame of 50-100 years.

Any ambiguity over the terms used in the SCP could be addressed by technical amendments that reflect this expert advice, such as replacing the term "frontal dune" with "foredune" and referencing appropriate timeframes, such as 50-100 years. Any ambiguity does not however justify the more sweeping changes being made to 1.4.2 to expand the scope of development allowed in *'actively mobile landforms',* however defined, because what is not uncertain is the vulnerability of these areas.

- **Broader need to reform and better implement the SCP**

More generally, we oppose this ad hoc and unjustified amendment to the SCP when there is a broader need for a more holistic review of the SCP. The 2024 Tasmanian State of the Environment report recommended a comprehensive review of Tasmanian coastal policy to address contemporary pressures including climate change, coastal development, recreational use, and the need for stronger habitat protection and restoration.[7]

Further, implementation of the SCP must be improved. The *State Policies and Projects Act 1993* (SPPA) gives the SCP binding legal force. Under s.13(1), any provision of a planning scheme that is inconsistent with a State Policy is void to the extent of the inconsistency. Further, s.13(3) requires the Tasmanian Planning Commission to amend planning schemes to incorporate relevant parts of the SCP and remove inconsistencies. In short, planning schemes must reflect and uphold the SCP, not override it. The SCP itself envisages coordinated implementation. Section 4.1 requires oversight through a State Coastal Advisory Committee, while s.4.2 identifies land use planning controls, marine farming plans, and local council strategies as the main vehicles for delivery. Section 4.4 mandates monitoring and reporting through the State of the Environment (SoE) process.

In practice, these mechanisms have failed. There is no evidence of an active State Coastal Advisory Committee since 2001. The Government failed to produce SoE Reports between 2009 and 2024, despite a statutory obligation to do so every five years. The most recent 2024 Report devoted only a single page to the SCP and concluded that the policy is outdated, inadequately implemented, and in urgent need of review.

Failures of implementation have had real-world consequences. As noted above in the Background Report, developments have been approved on actively mobile landforms contrary to the SCP, later requiring retrospective legislation to validate them.

The Tasmanian Government must commit to a comprehensive overhaul of the SCP, ensuring it provides effective, enforceable, and climate-ready protection for Tasmania's coastal environments.

- **Declaration of the amendment as an Interim State Policy**

The Background Report provides:

> *"During the exhibition, the Governor, in accordance with section 12 of the SPPA and on request from the Minister, may declare that the draft amendment is to be an Interim State Policy after*

[7] Tasmanian Planning Commission, *State of the Environment Report Volume 1: Summary report*, 2024, Recommendation 6, https://www.planning.tas.gov.au/__data/assets/pdf_file/0008/782603/SOE-Report-2024-Vol.1_27-September-2024.pdf

being satisfied that it is necessary for the amended Policy to apply without delay. There is evidence that the current drafting of the SCP is ambiguous, creates perverse outcomes and is inconsistent with other Principles and Outcomes of the SCP and does not align with the evolution of performance-based planning controls for other natural vales and hazards as found in the TPS.

It is the intention of the Minister to make a request to the Governor to declare the draft amendment to the SCP to be an Interim State Policy."

We **do not support** the intention to declare the draft amendment to the SCP to be an Interim State Policy. As outlined above, the amendment is unjustified and will put vulnerable coastal areas at risk. It is likely 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. We do not believe it is necessary for the amended Policy to apply without delay, and therefore we don't believe it is open to the Governor to declare the amendment an Interim State Policy under section 12 of the *State Policies and Projects Act 1993***.**

Conclusion

The amendment to the SCP goes too far. If there really are definitional problems with the SCP, they can be readily addressed through minor amendments, as discussed above. There is no justification for more sweeping amendments and the removal of what has been and ought to remain in effect a prohibition on the development of foredunes.

Based on our analysis, EDO recommends that:

- The proposed amendment to Outcome 1.4.2 should be **rejected.** Any amendment must strengthen definitions and protections for vulnerable coastal areas; and
- The Tasmanian Government must commit to a **comprehensive overhaul of the SCP**, ensuring it provides effective, enforceable, and climate-ready protection for Tasmania's coastal environments.

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