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Tasmanian Planning Commission
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Dear Sir

Review of the Draft State Coastal Policy 2008

The Environmental Defenders Office (**EDO**) is a non-profit, community based legal service specialising in environmental and planning law. Our comments focus on the failure of the draft State Coastal Policy 2008 (the **draft Policy**) to provide clear, strategic guidance on sustainable coastal management or to overcome the legal uncertainty that has plagued the *State Coastal Policy 1996*.

The draft Policy is intended to be the principal strategic statement on coastal management in Tasmania. In our view, while its objectives are laudable, the terms of the draft Policy are grossly inadequate and will not achieve the stated outcomes.

Tasmania, a state with over 4,800 kilometres of coast-line, deserves a coastal policy in line with national and international best practice. Until the objectives and outcomes of the draft Policy are given greater precision, the policy will fall far short of protecting Tasmania's coastal zone.

SUMMARY OF COMMENTS

- The objectives of the draft Policy should include a clear hierarchy, in which protection of coastal values is the highest priority.
- The draft Policy must explicitly adopt the precautionary principle.
- The coastal zone should be extended to encompass all coastal catchments.
- The draft Policy must be specific enough to provide direct guidance on significant issues such as planning for the impacts of climate change, managing coastal hazards and consolidating urban growth in existing settlements.
- The draft Policy should prohibit canal estates and unnecessary foreshore development.
- The draft Policy should adopt a minimum planning allowance for sea level rise. The allowance should be regularly reviewed to reflect new scientific estimates.
- The draft Policy should be re-written in line with recent examples set in other jurisdictions, particularly Queensland and Victoria.

Need for clear guidance

The *Commonwealth Coastal Policy*¹ describes the two major problems inhibiting sustainable use of the coastal zone as:

- *fragmented management arrangements based on single issues or sectors;*
- *the 'tyranny of small decisions', whereby over time a number of decisions that in themselves are not significant accumulate and interact to result in a significant impact on the coastal zone.*

We believe that the State Coastal Policy must play a role in guiding the integrated, strategic planning necessary to overcome these problems. It is incumbent upon the State Government (the body best resourced to develop minimum standards) to formulate clear state-wide guidance on the measures necessary to secure appropriate coastal management.

To this end, s.5(1)(c) of the *State Policies and Projects Act 1993* provides that a State Policy 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.

For the reasons outlined below, we do not believe that the draft Policy will facilitate a consistent and coordinated approach to coastal management in Tasmania.

We agree with the general principle that State Policies should be high-level policy statements, implemented through planning schemes and other appropriate tools, such as management plans. Converting these policies into clear assessment criteria (e.g. within planning schemes) will ensure more consistent decisions and provide certainty to developers, councils and the community. To this end, we support clause 8.2 of the draft Policy.

However, the State Coastal Policy must also be specific enough to provide direct guidance to decision-makers, including the Commission and planning authorities.

Section 14 of the *State Policies and Projects Act 1993* makes it an offence to fail to comply with any obligation imposed under a State Policy. Much of the judicial debate regarding the current State Coastal Policy has focused on the difficulty of implementing the 'Outcomes' approach.² For example, Justice Blow has remarked:

There is nothing in the [State Policies and Projects] Act as to the status of anything called an "outcome." The SPP Act makes provision for a policy to contain provisions that impose strict obligations... No doubt the State Coastal Policy could have been worded as to impose very precise restrictions and obligations in relation to land use and development in the coastal zone. But that was not done. Instead, the makers of the policy formulated an elaborate list of "outcomes" – a list of goals that is not accompanied by any requirement or comment as to what should or must be done, or by whom, for the achievement of those goals.³

In order to respond to this critique, and provide the consistent approach demanded of a State Policy, the draft Policy must be clear and directive.

¹ *Commonwealth Coastal Policy*, 1995, see Summary

² 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 and *St. Helen's Landcare and Coastcare Group Inc v Break O'Day Council & Anor* [2007] TASSC 15.

³ *St. Helen's Landcare and Coastcare Group Inc v Break O'Day Council & Anor* at [64] and [65].

Hierarchy of objectives and outcomes

The *Commonwealth Coastal Policy* acknowledges that decision-makers are expected to exercise judgment in the application of competing principles. However, it also notes that the basis for such judgment must be explicit.

Section 1 of the draft Policy acknowledges the 'often competing demands for development and conservation' and the need to resolve this conflict in 'an appropriate manner'. However, no hierarchy is given to assist planners to adjudicate between competing objectives or outcomes.

Currently, the draft Policy provides that the Outcomes will not apply in all circumstances and the extent to which they are 'achieved' or 'advanced' will be relative to the assets and values to be protected. This approach does not provide any guidance regarding the relative significance of outcomes (compared with, for example, the Victorian and Queensland policies which articulate a clear hierarchy with protection of coastal values as the highest priority outcome).

We believe that the objectives of the draft Policy should be clearly identified in order of priority, with the principal objective being conservation of the natural and landscape values of the coastal environment.

Giving effect to outcomes

Clause 5.1 of the draft Policy requires statutory instruments to 'give effect to the Objectives and Outcomes', but has not provided sufficient guidance to ensure that the Outcomes are given effect in any consistent manner. Without provisions which are sufficiently certain to act as a guide, ad hoc planning decisions will undermine the objectives of the draft Policy.

For example, Outcome 4.9 provides:

Residential, commercial and industrial development will be contained and integrated within existing settlements, or in expanded or new settlements, where such expansion has been strategically planned, as far as practicable, to avoid ribbon development.

Rather than a strong statement that development is to be contained, with a preference for infill, the outcome is replete with qualifications: development can be outside existing settlements where the new settlement has been 'strategically planned' and avoids ribbon development 'as far as practicable'. This provides little guidance to planning authorities regarding the preparation of appropriate coastal settlement strategies.

Similarly, the outcomes relating to development in coastal hazard areas and areas subject to climate change (4.10 and 4.11) rely on demonstrating that risks are 'satisfactorily managed' or kept to 'acceptable levels'. No guidance is given to either identify the areas at risk or outline what is considered acceptable practice to manage those risks.

The Implementation Guide provides some practical guidance to planning authorities in relation to implementing the Policy, however the guidance is restricted to identifying the coastal zone, compliance auditing and planning. Little guidance is given regarding how to interpret the objectives and outcomes. Without clear guidance on these issues, there is no way to ensure that even minimum standards are achieved in 'giving effect' to the Outcomes.

Specific guidance needs to be given in terms of:

- The protection of coastal and landscape values as a priority in the coastal zone;
- Areas at risk from coastal hazards and the impacts of climate change. Any documents identifying these areas should be reviewed regularly to reflect improved mapping or scientific understanding in relation to these issues;
- Areas designated for coastal development;
- What is, and is not, considered appropriate development in the coastal zone;

We note that the Tasmanian Planning Commission's Draft Integrated Assessment Report in respect of the Lauderdale Quay development concluded that the proposal was "inherently unsustainable". Given the location and nature of the proposal, this is an example of the type of development that a strong Coastal Policy should have precluded at the outset.

- The functions and responsibilities of various agencies, such as local governments, state agencies, NRM bodies, private landholders and community groups.

Self-evidently, to the extent implementation of any of the provisions of a revised State Coastal Policy rely on local planning authorities, it will also be essential to ensure those bodies are provided with adequate resources. This includes technical and financial assistance to ensure planning authorities have the capacity to modify their planning schemes appropriately, to assess proposed developments against the Policy objectives and to take enforcement action in respect of non-compliant activities.

Precautionary approach

The *Commonwealth Coastal Policy* sets out a number of principles to guide the management of coastal resources throughout Australia. These principles provide that "a precautionary approach should be used in decision-making".

Unlike the current policy (see clause 2.1.5), the draft Policy fails to explicitly adopt a precautionary approach. Clause 5.3 requires a planning scheme review to determine:

- (d) *The extent to which the statutory instrument provides for decisions to be made in a way that:*
 - (i) *recognises that a lack of full scientific certainty about potential threats of serious or irreversible environmental damage should not prevent putting in place measures to avoid or mitigate such damage.*

This is consistent with a precautionary approach, however the objectives and outcomes of the draft Policy do not require such an approach to be adopted, only that an assessment be made to determine whether the planning scheme does in fact adopt the precautionary principle.

Coastal management, particularly in relation to climate change and sea-level rise, is a dynamic practice that is evolving with improved scientific knowledge. While some uncertainty remains as to the extent of impacts, it is clear that the overall effects will be significant. It is therefore critical that a precautionary approach be explicitly adopted as a guiding principle in the draft Policy.

Best practice

The Tasmanian Planning Commission website refers to the work done in other states to develop guidelines, policy and legislation focussing on coastal issues. It is disappointing that the draft Policy fails to take advantage of the work that has already been done and implement the best practice examples adopted in other States.

The attached table provides an overview of the manner in which significant coastal issues are dealt with in other Australian jurisdictions. We believe that Tasmania's State Coastal Policy should reflect the best practices from these examples.

Some key issues are discussed briefly below.

Coastal Zone

The definition of coastal zone in the draft Policy is an improvement on its predecessor. However, a more extensive (and progressive) definition would be appropriate to facilitate integrated catchment-scale management. This can be achieved by:

- expanding the landward extent of the zone, as in the draft Queensland policy:

The coastal zone is delineated on maps 1 to 8 contained within Annexe 1 of the draft policy and encompasses Queensland coastal waters and islands, and the area landward to 5 km from the coast or to where the land is below 10 m Australian Height Datum, whichever is further from the coast.

- a purposive definition that includes all land within the 'coastal catchment' (that is, land directly influencing the coastline), as in the *Victoria Coastal Strategy 2008*.

Whichever approach is adopted, clear mapping tools should be provided to ensure certainty as to the application of the Policy.

Climate Change

The Tasmanian Planning Commission website outlines the range of work that is being done in Tasmania in relation to climate change and coastal risks. Unfortunately, none of this work is reflected in the draft Policy.

Given the significance of climate change, it is important that the Tasmanian government adopt clear, consistent and best-practice standards to be implemented throughout the state. Coastal policies in other jurisdictions explicitly adopt minimum setbacks and require decision-makers to plan for predicted sea level rises of up to 0.8m by 2100.

The Department of Climate Change national assessment report, *Climate Change Risks to Australia's Coastline*⁴ adopts a predicted sea level rise of 1.1 metres by 2100, as explained at page 28:

AR4 findings triggered considerable debate in the science community. More recent analysis finds that sea-level rise of up to a metre or more this century is

⁴ 2009. Department of Climate Change. *Climate Change Risks to Australia's Coastline: A First Pass National Assessment*. Available at <http://www.climatechange.gov.au/en/publications/coastline/climate-change-risks-to-australias-coasts.aspx> (accessed 23.11.09).

plausible. Further, nearly all of the uncertainties in sea-level rise projections operate to increase rather than lower estimates of sea-level rise.

Very new research is updating projections of sea-level rise using statistical approaches informed by the observed relationship between temperature and sea level.

Sea-level rise projections presented to the March 2009 Climate Change Science Congress in Copenhagen ranged from 0.75 to 1.9 metres by 2100 relative to 1990, with 1.1–1.2 metres the mid-range of the projection.

A sea-level rise value of 1.1 metres by 2100 was selected for this assessment based on the plausible range of sea level rise values from post IPCC research. This is a dynamic area of science – sea-level rise projections will change and risk assessments and policies will need to be reviewed and amended over time to reflect new research findings.

This and many other reports reflect the need for a precautionary approach to planning for climate change impacts generally, and coastal development specifically. It must be standard practice to adopt the precautionary principle for decisions in relation to all areas likely to be vulnerable to climate change. We also advocate that a conservative sea level rise allowance, based on the best available information, be specified in the draft Policy as a clear guide for planners.

We recommend that the approach taken in Queensland and Victoria⁵ be considered for any revised Tasmanian Coastal Policy.

Canal estate developments

Coastal management documents in most other states include provisions banning or regulating canal estates. In NSW, *State Environmental Planning Policy 50 – Canal Estates* prohibits canal estates and this prohibition is reinforced in the Coastal Policy:

Canal estate developments will be prohibited in recognition of the fact that they can pose serious water quality problems, threaten the integrity of coastal wetlands and fisheries habitats, exacerbate flooding problems and disturb potential acid sulfate soils.⁶

The Victorian Coastal Strategy 2008 also provides:

It is also policy to prohibit the development of new residential canal estates to ensure the protection of coastal and estuarine environments. Canal estates can have major adverse impacts on the host estuary, causing loss of habitat, polluting estuarine waters by urban runoff and boating activities and disturbing coastal acid sulfate soils.⁷

Given the recent, comprehensive assessment by the Tasmanian Planning Commission of a canal estate proposal, it is disappointing that the draft Policy does not take the opportunity to indicate that such developments are not appropriate in Tasmania.

⁵ Victorian Coastal Strategy 2008, 13; Draft Queensland State Policy on Coastal Management 2009, 24, Tables 2-3.

⁶ NSW Coastal Policy, 20

⁷ Victorian Coastal Strategy 2008, p40.

Ribbon development

Expanding urban development poses a significant risk to Tasmania's coastline, and the control of 'ribbon development' under the current Policy has been the subject of much legal debate.⁸ We strongly believe that consolidating urban growth in existing development nodes is the most appropriate way to manage this issue.

As outlined above, clause 4.9 of the draft Policy is a poor attempt to regulate ribbon development. We recommend that the policy be redrafted to:

- give priority to infill development;
- require clear justification for any development outside existing development areas;
- emphasise the need for spatial growth capacity analysis to identify appropriate locations for growth.

The draft Queensland Policy is a good example of a more directive approach to guide planning decisions in relation to proposed development outside existing nodes:

Urban development is to achieve a nodal settlement pattern and avoid creating or extending settlements in a ribbon or linear pattern along the coast unless it can be demonstrated that factors such as landform constraints and/or the efficient provision of infrastructure provide that a linear development pattern is necessary in a particular area.⁹

Foredune development

Initially, the *State Coastal Policy 1996* explicitly prohibited development on frontal dunes (see Outcome 1.4.2). This was recently amended to allow development on frontal dunes where it was consistent with the need to minimise coastal risks. The draft Policy further weakens the protection of actively mobile landforms by making no specific reference to these features.

We believe that it is appropriate to strictly limit development on fragile, actively mobile landforms, subject only to necessary exemptions. The *NSW Coastal Policy* provides a reasonable example of this approach:

Development (other than for essential public purposes such as surf life saving clubs) on beach fore dunes is to be prohibited.

The draft Queensland Policy also provides clearer guidance on what factors will be considered to determine whether an 'overriding public interest' for a development exists, and what constitutes 'coastal protection work'.¹⁰

Coastal hazards

Ensuring that new development is located and designed so as to minimise the impacts of climate change and coastal hazards is an important planning strategy. It is therefore important for a State Coastal Policy to be explicit about relevant hazards and to provide comprehensive guidance on appropriate management strategies (such as development setbacks, minimum sea level rise allowances and policies for planned retreat).

⁸ See, for example, *Attorney-General v Cameron* [2007] TASSC 22; *Cameron & Anor v Resource Planning and Development Commission* [2006] TASSC 66

⁹ *Draft Queensland State Policy on Coastal Management 2009*, 3.1 (b) (ii)

¹⁰ See Annex 2

The draft Policy provides no such guidance. The Implementation Guidelines offer only limited assistance:

Planning authorities should use the best available information to assess the threat and likely consequences associated with these hazards... and apply controls that ensure that the risks to life and property are contained within acceptable levels.

It remains unclear what the likely threats are, what controls are appropriate and what level of risk is considered appropriate. There is a clear need for a consistent statewide approach on this issue, and it would be appropriate for this to be outlined in the draft Policy.

Provisions in line with those adopted in the Queensland, NSW and South Australian coastal policy documents should be considered for a revised Policy.

Conclusion

The significant research and understanding of coastal issues the Tasmanian government has achieved in other areas is simply not demonstrated by the draft Policy. As drafted, the Policy remains a series of broad, imprecise statements that fail to provide consistent guidance on critical matters of coastal management.

A comprehensive redraft is necessary for the draft Policy to achieve any of the objectives of a State Policy or of the Resource Management and Planning System. Until more direction is given to planning authorities and other decision-makers, the draft Policy will be ineffective.

The EDO appreciates the opportunity to make these comments. Please do not hesitate to contact us if you wish to discuss anything raised in this submission.

Kind regards,

Environmental Defenders Office (Tas) Inc

Per:



Jess Feehely
Principal Lawyer

Attach: Comparison table - State Coastal Policies in Australia

	TASMANIA	QUEENSLAND	VICTORIA	NSW	SA	WA
Relevant Documents	<ul style="list-style-type: none"> Draft State Coastal Policy 2008 	<ul style="list-style-type: none"> Draft State Planning Policy Coastal Protection 2009 Draft State Policy on Coastal Management 2009 Coastal Protection and Management Act 1995 	<ul style="list-style-type: none"> Victorian Coastal Strategy 2008 	<ul style="list-style-type: none"> Coastal Policy 1997 Coastal Protection Act 1979 	<ul style="list-style-type: none"> Living Coast Strategy 2004 Coastal erosion, Flooding and Sea level rise Policy 1992 State Planning Strategy for SA 	<ul style="list-style-type: none"> Draft Coastal Zone Management Policy 2001 State Planning Policy 2.6 – State Coastal Planning
Overall Comments	Too broad to provide guidance or effective coastal protection	<p>Strong guidance on coastal protection, with hierarchy of management principles</p> <p>Good interaction with other policies and legislation.</p>	Strong, clear guidance on coastal protection	<p>Strong, clear guidance on coastal protection.</p> <p>Good interaction with other legislation.</p>	<p>The Strategy is a broad vision document to guide Govt action only.</p> <p>Specific regulation left to the legislation and management plans for declared coastal districts.</p>	Broad guidance only, though does clear policy objectives.
Coastal zone	2km from high water mark (including offshore islands)	Up to 5km from coast or <10m AHD, including offshore islands (maps annexed)	3 nautical miles seaward and all land “directly influenced by the sea or directly influencing the coastline.”	1km inland and 3 nautical miles seaward (maps annexed)		Nearshore waters and coastal foreshore

	TASMANIA	QUEENSLAND	VICTORIA	NSW	SA	WA
Ribbon developments	Avoid ribbon development “as far as practicable” (cl.4.9)	Urban development to favour infill (clause 3.1(b)(i)) Ribbon development be avoided unless there is a compelling case for linear development (clause 3.1(b)(ii))	Design and siting guidelines to be reviewed to avoid ribbon development (clause 4.2(f))	Ribbon development “and other inappropriate housing developments on the coast” will be discouraged (2.3 key actions, p21)	Notes that linear development along the coast is inappropriate and should be managed (Objective 4).	Avoid linear or strip development (Policy 13). Major urban development outside settlement only where can demonstrate community need (SPP 5(xviii))
Canal estate developments	Not mentioned	Not explicitly prohibited, however extensive provisions regulating coastal development. Moratorium in effect on Gold Coast	New residential canal estates prohibited to ensure the protection of coastal and estuarine environments (clause 2.8)	Prohibited under <i>State Environment Planning Policy 50 – Canal Estate Development</i> . Ban is confirmed in the Coastal Policy (at 20).	Not explicitly prohibited but extensive provisions regulating coastal development in relevant documents	Strategy being developed. Currently assessed provisions under <i>Development Control Policy 1.8 – Canal Estates and Other Artificial Waterway Developments</i>
Foredune development	No specific reference (cf. 1996 Policy), though objective to conserve “natural values”	Foreshore development to be carefully planned to protect resources Land adjacent to tidal waters to be protected from development, other than in areas designated for declared maritime development projects (3.1(b)(iii))	Avoid development on primary dunes and in low-lying coastal areas (Policy 5)	Prohibited other than for essential, location-dependent services such as surf lifesaving clubs (clause 1.4)	Development in sensitive coastal areas such as dunes is to be “managed”.	Coastal foreshore should be transferred to the government and separated from adjacent development (SPP 5.1(vi)). Development should not be permitted on unstable, active frontal dunes.

	TASMANIA	QUEENSLAND	VICTORIA	NSW	SA	WA
Development and land use generally	Outcomes are broad and are to be “achieved or advanced” relative to values	Extensive development provisions	Extensive development provisions	Development provisions set out in the implementation plan.	Broad guidance. Development assessed under <i>Development Act 1993</i>	Extensive provisions on development
Coastal infrastructure	<p>”Adequate and appropriately located access” (4.14)</p> <p>Implementation guidelines note need for planning authorities to ensure coastal infrastructure within their council area.</p>	Comprehensive regulation of development (clause 4, Development Assessment Code).	Infrastructure to be “coastal dependant, sustainable, accessible, equitable and meet community needs.” (Section 4.3)	Avoid or minimise impacts. Strategic action plan in place.	-	<p>Locating new infrastructure away from coastal zone wherever practicable.</p> <p>“Intelligent siting and design” of infrastructure to avoid or mitigate impacts of natural hazards and visual impacts. (p20)</p>
Climate Change	Risks associated with climate change are to be “satisfactorily managed.” (4.11)	<p>Outcome is to adapt to expected impacts of climate change</p> <p>Allows for sea level rise of 0.8m by 2100.</p>	<p>Policy emphasises need to plan for climate change, and sea level rise of 0.8m by 2100.</p> <p>Comprehensive provisions on Climate Change (pp13-14, s.2.1)</p>	Investigations and monitoring to continue. Sea-level rise scenarios to be incorporated into planning decisions.	Recognises issues associated with climate change - policy to be developed.	Reference to sea level rise. Extensive discussion. Precautionary approach. Setbacks outlined to plan for sea level rise

	TASMANIA	QUEENSLAND	VICTORIA	NSW	SA	WA
Precautionary Principle	Planning scheme reviews to identify extent of precautionary approach. No requirement to adopt approach.	Does not explicitly refer to the precautionary principle, but adopts a precautionary approach.	Precautionary principle to be adopted for all decision-making, particularly in relation to climate change.	Explicitly adopts precautionary principle as “risk averse” approach to development assessment	Precautionary approach a guiding principle (p5)	“Coastal management requires a precautionary approach”
Coastal hazards	Risks must be contained to ‘acceptable levels’ (4.10)	Extensive references. Redraft to contain greater certainty as to management	Hazards defined and ensure that development is protected.	High priority	4.2 devoted to coastal hazards. Action plan included	Plans for coastal developments must address coastal hazards, which are to be managed to minimise harm.