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Ben Atkins
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Dear Mr Atkins

Draft Northern Regional Land Use Planning Framework

The Environmental Defenders Office (**EDO**) is a non-profit, community based legal service specialising in environmental and planning law. We welcome the opportunity to comment on the draft Northern Regional Land Use Planning Framework (the **draft Framework**).

Our principal comment is that the draft Framework fails to provide the level of strategic guidance that should be expected of a Regional Land Use Strategy. The document is a useful collation of regional data and summary of ideas, but lacks sufficient detail to serve its intended purpose. Discussions between the State government and Northern Tasmania Development regarding developing a regional strategic approach commenced in early 2007. It is extremely disappointing that after four years in development the draft Framework does not deliver on the promise of facilitating consistent, integrated and sustainable planning decisions.

We are also concerned that the draft Framework fails to address significant resource management and planning issues such as protecting water resources, cultural values, coastal management and integrated land use and transport planning. Our specific comments in respect of these issues are outlined below.

The Regional Land Use Strategies developed for the Southern and Cradle Coast regions are considerably more comprehensive than the draft Framework and provide a better model for consistent decision-making. We recommend that the draft Framework be revised in line with the structure and level of detail provided in those documents.

Regional Land Use Strategies

Regional land use strategies were formally introduced into Tasmania's planning framework in 2009. In discussing amendments to the *Land Use Planning and Approvals Act 1993 (LUPAA)* to introduce regional land use strategies, then Minister David Llewellyn stated:

These regional land use strategies will provide the strategic direction for the preparation of new planning schemes for each council in the respective regions. These new council planning schemes will be prepared to provide a greater level of consistency and certainty to stakeholders by providing a standard planning scheme framework and a set of standard planning scheme provisions.

Through this new legislation it will be mandatory for new planning schemes and planning scheme

amendments to conform to the regional land use strategies and a set of standard planning scheme provisions.¹

The Tasmanian Planning Commission website also describes the intended role of regional land use strategies:

Regional strategies for the three regions in the State will guide development and investment decisions and encourage a pattern of settlement and infrastructure provision important for the future needs, capabilities and potentials of each region. There will be direct benefits to communities from greater certainty in the planning schemes and from a broad strategic policy framework for long-term land use and infrastructure planning and development control within the regions.

Interim planning schemes, which are a key platform of the planning reform being promoted by the government (and by Northern Tasmania Development), must be “consistent with, and likely to further the objectives and outcomes of” a regional strategy which has been declared by the Minister under s.30C of LUPAA. While it is the planning schemes that will provide explicit development assessment criteria, it is imperative that regional land use strategies provide clear and comprehensive guidance regarding regional planning issues – what the region values, where and how the region should be developed, what should be protected and where resources should be prioritised. The draft Framework fails to provide such guidance.

The purpose of the Framework outlined on p4 is to:

- identify and set out options for regional policies; and
- establish a statutory platform for the preparation of Interim Schemes. The Framework is also intended to guide regional and local land use planning decisions (p5).

While the draft Framework goes some way towards the first goal, it fails to achieve its primary purpose in guiding planning decisions. The Framework includes some clear statements of priority in respect of development and industry. In respect of natural resource management, the draft Framework is more of a brainstorming exercise, identifying a range of options that might be good ideas, but failing to identify priorities or ways to implement preferred options.

Lack of detail

There appears to be internal confusion regarding the status and purpose of the Framework. Statements in the draft Framework indicate that it is not intended to be the final land use strategy envisaged by s.30C of LUPAA, but merely a step towards the development of such a strategy. For example:

It is critical to understand that this framework is work in progress. It does not attempt to lock in specific strategies... (p8)

Equally, a range of the strategies identified involve the development of further strategies, policies or codes. For example, the strategies regarding Industry include “provide a consistent regulatory environment that reduces the complexities of assessing new investment in industrial zoned areas.” Consistency requires a regional approach, yet the draft Framework does not outline what such a consistent regulatory environment should involve.

Clearly, a land use strategy must be adaptable (particularly in light of new evidence) and subject to periodic review, rather than locked-in for perpetuity. However, if the draft Framework does not outline specific strategies, it is difficult to understand exactly what its purpose is.

If the intention is for the Framework to be declared under s.30C of the *Land Use Planning and Approvals Act 1993*, considerably more work must be done to ensure that the Framework provides clear, comprehensive outcomes to guide the development of consistent planning schemes for the region. Without this guidance, ad hoc decisions by planning authorities will

¹ Hansard, 29 September 2009

continue to undermine the objectives of regional planning and the Principles underpinning the Framework.

Development agenda

The draft Framework consistently emphasises that the planning system should facilitate development, rather than focussing on the need to strike an appropriate and sustainable balance between development and protection of natural and cultural values. While the Framework Principles recognise the need to protect these values, the strategies are replete with goals such as:

- *minimising barriers to the establishment of small businesses*
- *assist innovation in the tourist industry by ensuring land use planning policies and principles do not unnecessarily restrict tourism use and development*
- *streamline the planning approval process for all physical infrastructure that is required to deliver the desired settlement and growth management strategies*

The Environment statement in the outline of the draft Framework provides a good example of this skewed perspective. The statement commences by acknowledging the unique, internationally recognised beauty, biodiversity and natural resources of the region. However, the remainder of the section focuses on the need to utilise these resources and states that “sustainability and resilience” requires:

- *Consistent approaches to the assessment of environmental impacts, so that future developments will not be distorted due to varying decision making priorities.*
- *Ensuring that climate change and energy use are considered in all spatial planning decisions, such as transport housing, water supply and waste management (NB: **we strongly support this statement**).*
- *Facilitation of the development and use of renewable energy, including assessing areas for opportunities; and providing strategic support for the construction of renewable energy infrastructure.*
- *Identification of areas of high agricultural production, including current proposed irrigation areas and the provision of strategic support for future increases in production.*

There is no reference, even in this environmental statement, to the protection of native vegetation, habitats and water quality or the need to manage emissions.

Biodiversity management

Establishing a consistent regional approach to biodiversity management, including native vegetation removal and species protection, is critically important. Such a regional approach must ensure that natural values are clearly mapped and taken into account in zoning decisions and assessments of proposed developments. The draft Framework recognises the need for such an approach, but does not actually implement it.

To ensure effective assessment and management of the impacts of development on natural values, it is critical that planning schemes:

- Require sufficient information to be submitted with a development application to understand the existing environment and likely impacts;
- Authorise planning authorities to require appropriate studies to be conducted to determine these impacts (e.g. vegetation or threatened species surveys);
- Empower planning authorities to refuse development or impose appropriate conditions where impacts on biodiversity and native vegetation are unacceptable.

The draft Framework should provide more explicit guidance on these issues.

The EDO is a strong advocate for a Statewide policy on vegetation management and biodiversity offsets. However, in the absence of such a policy, it is important that regional

approaches are developed which implement a rigorous system based on the 'avoid, minimise, mitigate, offset' hierarchy for biodiversity losses.

We support the development of a regional biodiversity code and regional assessment criteria (strategy at p44), but had hoped that the draft Framework itself would provide practical advances towards finalising such documents. Furthermore, the strategy does not explicitly adopt a hierarchy in which offsetting is considered a last resort- instead, it states that native vegetation losses can be offset "where appropriate" and "If biodiversity values can accommodate vegetation removal, a conditional or unconditional permit can be approved."

We recommend that the draft Framework be revised to address at least the following:

- Implement a planning assessment approach consistent with the 'avoid, minimise, mitigate, offset' hierarchy;
- Ensure that any offsets achieve a net conservation gain (rather than just no net loss), are assessed on the basis of 'like for like' and are secured in perpetuity;
- Require site management plans to address biodiversity loss (including through rehabilitation), habitat protection, soil and weed management;
- Restrict clearing of threatened native vegetation communities to exceptional circumstances, where it can be demonstrated that the loss of vegetation will not detract from the conservation of the vegetation community in the region (adopting the approach under the *Forest Practices Act 1985*);
- Identify setbacks from reserved land, including coastal reserves, forest reserves and waterways;
- Restricting development in areas of high conservation value;
- Improve the extent of endangered species by identifying and securing areas of potential habitat through appropriate zoning. This strategy should also be used to plan for the landward retreat of species threatened by sea level rise.

Missed opportunities

The draft Framework fails to deal adequately, or at all, with a range of critical resource management and planning issues that would benefit from a regional approach, including coastal management, cultural values, water resources and integrated land use and transport planning.

Coastal management

In the absence of a strong State Coastal Policy, regional approaches to coastal management are very important. The draft Framework addresses coastal issues only as part of a response to rising sea levels, rather than through comprehensive planning arrangements to sustainably manage coastal resources. The draft Framework should be revised to address the following issues:

- Minimising clearance of coastal vegetation;
- Avoiding linear development of coastal settlements. This is broadly addressed in the Settlement Strategies, but would benefit from a coast-specific strategy, particularly as the draft Framework recognises that coastal settlements will face increasing population pressure in the coming years;
- Prohibiting development on active coastal landforms such as dunes and mudflats, other than in exceptional circumstances;
- Guidance as to appropriate zoning for undeveloped coastal land (restricting urban expansion in favour of environmental management and recreation uses). Consideration should also be given to providing guidance on zoning to allow for planned retreat of residential areas identified as being at risk of inundation as a result of sea level rise;

- Consideration of the impact of development in the coastal zone on shorebirds and other sensitive species, including through increased visitation.

Water resources

The draft Framework refers to water quality in respect of assessment of secondary uses, but does not include more detailed strategies regarding maintenance of water quality and quantity at a regional level. In addition to environmental values, protection of water resources is critical to the social and economic wellbeing of the region.

The draft Framework should include strategies to protect and manage the health of waterways (including surface water, groundwater, wetlands and estuaries). These could include water sensitive urban design principles, specifying setbacks from watercourses, identifying strategies to minimise sedimentation, outlining responsibilities for monitoring water quality and encouraging appropriate reuse of greywater.

Cultural values

The Framework Principles include ensuring protection of cultural heritage and articulating requirements to protect sites with significant historic, architectural, scientific and cultural values from inappropriate development. However, other than a settlement strategy to “ensure development is sympathetic to the heritage and cultural values of a place”, the draft Framework offers no guidance on how to achieve the necessary protections.

We recommend that the draft Framework be revised to:

- articulate clear strategies for identifying cultural values (e.g. requiring planning schemes to include a register of local heritage places, recognising cultural landscapes and ensuring such landscapes are zoned appropriately);
- explicitly implement the Burra Charter principles for assessing developments which may impact on cultural heritage values;
- improve integration between assessments by the planning authority and the Tasmanian Heritage Council;
- ensure Aboriginal heritage is appropriately protected (e.g. restrictive zoning of land where Aboriginal cultural heritage values have been identified, requirements for heritage management plans for any soil disturbance activities in areas likely to contain Aboriginal heritage).

Integrated land use and transport planning

There are a few scattered references in the draft Framework to reducing private vehicle use and considering transport linkages in the location of settlements and social infrastructure. However, the draft Framework does not include detailed regional strategies regarding:

- Encouraging higher density residential development and major trip generating development to be located around existing transport hubs;
- Minimising land use conflict through appropriate buffer areas around significant transport networks;
- Encouraging the use of public transport, walking and cycling (e.g. reduced parking space requirements, requiring new commercial business developments to include bike-lock up and shower facilities for staff).

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