



# edotasia

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10 December 2010

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Dear Damian and Emma

## **Draft Southern Tasmania Regional Land Use Strategy 2010 – 2035**

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 Southern Tasmania Regional Land Use Strategy (the **draft Strategy**). Unfortunately, due to limited resources and other commitments, our principal comments are confined to a few key areas:

- Biodiversity and Native Vegetation;
- Coastal Region;
- Land Use and Transport;
- Productive Resources.

We have also made a number of general comments regarding specific actions outlined in the draft Strategy, which we would be happy to discuss in greater detail if you have any further questions.

We strongly agree with the statement in the draft Strategy that "land use planning ought to be more than just regulatory in nature. It should first and foremost be about the creation of an agreed vision and associated strategic objectives." While much criticism has recently been levelled at the planning system by the development industry, it is our view that the major cause of dysfunction in Tasmania's planning system is the current lack of Statewide policy direction on significant resource management issues. We therefore commend the regional planning project for its efforts to improve the strategic policy direction for the region, to promote a proactive approach to planning and to improve certainty for all stakeholders.

We strongly support the development of a clear settlement strategy for the region to identify opportunities for growth and areas where natural values must be protected. A comprehensive strategy, consistent with the objectives of the draft Strategy, will be the key guide to land use and infrastructure planning over the coming decades.

## Biodiversity and Native Vegetation

### General comments

We endorse all the comments in the draft Strategy regarding the need for improved spatial information for natural values to guide strategic planning and development assessment (for example, SD7). We also agree with comments in the draft Strategy regarding the regulatory gap created by amendments to the Forest Practices Regulations 2007 to transfer of responsibility for assessment of land clearing associated with buildings back to local government.

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.

We are generally supportive of developing a rigorous system for biodiversity offsets, consistent with the 'avoid, minimise, mitigate, offset' hierarchy. Ideally, any offsets policy should be Statewide, to ensure consistency and facilitate compliance with Tasmania's commitments under the Regional Forest Agreement. However, in the interim, we support the development of a regional system.

A recent Tribunal decision has confirmed that explicit provision must be included in the planning scheme before a financial contribution to a general fund can be required to offset biodiversity impacts (*Wilkins v. Kingborough Council* [2010] TASRMPAT 217). Therefore, it is important that the draft Strategy provide clear guidance to planning authorities regarding this issue.

While we do not seek to go into much detail regarding offsets in this submission, we recommend that any biodiversity offsets system include the following features:

- financial contributions as compensation for small losses where it is not viable to secure alternative habitat. These contributions may be utilised for maintenance works, or to create and manage a 'biobank' where reserved land is protected;
- a rigorous system for 'matching' impacts with offsets;
- clear requirements for offsetting activities to be additional to existing activities and protection;
- assurance that avoidance and mitigation measures have been exhausted before offsetting is considered;
- a 'net gain' objective, with offset contributions to be of 'equal or greater value', depending on the nature of the biodiversity losses. We note that the Victorian *Native Vegetation Framework* adopts a 'net gain' objective.

Consistent with the 'net gain' approach to biodiversity management, we also recommend that the draft Strategy include measures to improve the extent of endangered species. This can be achieved by identifying and securing areas of potential habitat. We note efforts being made in Clarence Council area to secure potential areas for recolonisation of threatened saltmarsh species.

## Specific comments

Policy / Action	Comment
BNV-P5	<p>We recommend that the policy aim be <b>net gain</b> of biodiversity values at a bioregional or regional level, rather than <b>no net loss</b>. Clear guidance should also be given in any offset policy regarding the area over which biodiversity values are to be measured and opportunities to aggregate offset areas to provide greater connectivity and ecological viability.</p> <p>This is consistent with C-P2 to “maintain or increase” coastal vegetation and C-A4 to plan for retreat of coastal species.</p>
BNV-P8	<p>It is important to recognise the valuable contribution of non-land use planning organisations to resource management. For example, considerable work has been done in developing the NRM strategies and collating natural resource data, and this work should inform all planning scheme amendments and assessments.</p> <p>The draft Strategy should emphasise the benefits of pre-permit collaboration consultation between stakeholders. There are a number of recent examples of collaboration between conservation groups, councils and developers to achieve positive development outcomes, including the memorandum of understanding between Birds Tasmania, Glamorgan Spring Bay Council, PWS and the Bicheno Golf Club regarding measures to minimise the impact of a proposed subdivision development on coastal bird habitats.</p>
BNV-A4	<p>We strongly support the need for a head of power to allow planning authorities to require vegetation or threatened species surveys in sensitive areas.</p>
BNV-A6-A8	<p>We strongly support priority being given to establishing and maintaining good quality data on vegetation and biodiversity corridors, clearance rates and cumulative losses.</p>
BNV-A9 & A10	<p>We support development of Biodiversity Offsets Guidelines at a regional level, in accordance with the principles outlined above. We strongly believe that action should be taken at a State government level to ensure a consistent, rigorous approach to vegetation management.</p>
BNV-A5 & A11	<p>We support inclusion of powers to impose conditions requiring construction and weed management plans where development involves vegetation clearance or soil disturbance.</p> <p>We recommend that a head of power be introduced into all planning schemes to explicitly allow building envelopes to be nominated on plans of subdivision to minimise the impact of subsequent development on vegetation and fauna species.</p>

## The Coast

### General comments

We strongly support the regional approach to identifying coastal areas that are not appropriate for development (e.g. subject to inundation), and clearer guidance on what is, and is not, considered appropriate development in the coastal zone.

We strongly support the suggestion that canal estates be prohibited throughout the region (C-P9, C-A6). As outlined in the draft Strategy and background reports, coastal management documents in most other states include provisions banning or

regulating canal estates. For example, in NSW the *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.*<sup>1</sup>

Given the recent, comprehensive assessment by the Tasmanian Planning Commission of the Lauderdale Quay canal estate proposal as "inherently unsustainable", we believe that legislation should be introduced to prohibit canal estate throughout Tasmania. In the interim, we strongly support the policy in the draft Strategy to effectively prohibit such developments.

Given the inherent sensitivity of coastal shorebird habitat to disturbance, we recommend that tourism or residential development that is likely to materially increase visitation to these areas be encouraged to work with the local government, conservation groups and Parks and Wildlife Service to develop management strategies to minimise the impacts of disturbance (such a dune revegetation, signage and netting of nesting areas). Again, the recent example of collaboration between Birds Tasmania and developers in the Glamorgan Spring Bay municipality established a positive precedent.

### Specific comments

Policy / Action	Comment
C-P2	We support the aim of maintaining <u>or increasing</u> the extent of coastal vegetation
C-P4	We strongly support the prohibition of development on mobile landforms, conservation areas and coastal mudflats.
C-P8	We support minimising the construction of new marine infrastructure. We also recommend that municipal boundaries be amended or explicit provision made in planning schemes to ensure that the scheme area is sufficient to regulate development of jetties which extend beyond low water mark (s.7 LUPAA).
C-A4	We strongly support efforts to plan for landward retreat of species threatened by sea level rise. However, we also recommend that consideration be given to zoning restrictions to allow for planned retreat of residential areas currently identified as being at risk of inundation as a result of sea level rise.
C-A7	We strongly support including a head of power to allow planning authorities to require environmental and cultural values assessments to be undertaken for development in the coastal zone.

## Land Use and Transport

### General comments

As a general comment, the objectives and actions under this section are laudable. However, more explicit linkages should be made between these objectives and

<sup>1</sup> NSW Coastal Policy, 20

objectives in other relevant sections such as Recreation, Health and Open Spaces (10) and Activity Centres (18).

For the most part, the draft Strategy treats the transport system as being fixed. While the Tasmanian Urban Passenger Transport Framework notes that the Metro bus network is flexible, the draft Strategy explicitly seeks to limit development that is not serviced by an existing route (LUTI-A5 and LUTI-A12). We strongly support concentrating future development in existing transport corridors, however we also note that the transport network needs to be flexible enough to accommodate the transport needs of new developments. We also note that the Transport Infrastructure Plan includes the aim of ensuring that “growth corridors involve logical extensions of existing transport networks and public transport services”. These two documents should be consistent in their approach to land use and transport planning and concentrating development in *existing* serviced areas.

We note that the Gehl report makes recommendations for improving public space in inner-Hobart. This has obvious consequences for public transport. While we acknowledge that the report is a preliminary report only, and some of these recommendations are picked up in the Activity Centres objectives, we recommend that the LUTI objectives explicitly include integration of urban design and non-motorised transport options, and designing transport options around more intense use of inner-urban areas.

The objectives should also more explicitly adopt the strategies to encourage utilisation of public transport set out in the Urban Passenger Transport Framework. Regulatory and non-regulatory options including car-pooling incentives, use of transit lanes, lower annual registration fees for car-pool vehicles or hybrids. While we support the education policies outlined in the Framework, utilisation will often only be encouraged by a visible demonstration of the ease and reliability of public transport options.

We support an emphasis on high density urban living and urban renewal projects. However, it would be appropriate to include a qualification that residential densities should be subject to “liveability” tests to determine location, design, density and service provision. We also strongly recommend that planning schemes establish mandatory minimum sustainability standards for retrofitting existing buildings.

We note that the draft Strategy does not include any policies or actions in relation to airports, and creating better transit exchanges to improve visitor experiences. We also note that tourism and major events were not included in the mass transit studies undertaken as part of the Framework, and no regard is had to the use of regional transport by tourists (e.g ferry services to Moorilla or Bellerive). The recent Transport Infrastructure Plan calls for greater understanding of tourism needs from transport planning – the draft Strategy should be amended to reflect this.

### Specific comments

Policy Action	Comment
LUTI-P6 & LUTI A11	We support these objectives and actions, but note that topographical challenges for pedestrians and cyclists are not given sufficient attention in the Urban Transport Framework or the draft Strategy. For example Trondheim, Norway have installed bike lifts as part of an overall plan to encourage non-motorised transportation.
LUTI-A6	The protection of identified transport corridors from incompatible uses should be extended to all key transport routes, not just major transport corridors. This is consistent with the objectives of the Transport Infrastructure Plan.

Policy Action /	Comment
LUTI-A8	We recommend that the policy objectives include that “future developments and subdivisions comply with identified or strategic alternative transport needs and demonstrate efforts to minimise reliance on motor vehicles”

## Productive Resources

### General comments

We support minimising residential development in rural areas and the requirement for residential uses not to fetter existing agricultural uses (PR-A5). However, we recommend that this be expanded to include agricultural potential on adjoining property to ensure that viable agricultural land is not lost simply because it is currently being under utilised, or not utilised, for agricultural activities. With improvements in rural technologies and the introduction of niche markets for products such as olives (which require less water and smaller land areas than traditional crops), it is important to retain land with agricultural capacity.

To this end, we support the statement that agricultural land should not be rezoned to residential uses simply because the land is not currently profitable (PR-A8).

We support the emphasis on identifying land for resource activities and preventing sensitive uses being developed within appropriate attenuation distances (PR-A12). Currently, many planning scheme provisions regarding attenuation distances serve only to prevent new sensitive uses being developed within the attenuation buffer. However, it is also important to ensure that resource operations do not expand so that they encroach into the attenuation buffer enjoyed by existing sensitive uses. Planning scheme provisions should ensure that attenuation buffers are maintained to reduce land use conflicts.

### Other comments

The following comments relate to several specific provisions of the draft Strategy.

### Specific comments

Policy Action /	Comment
WR-A8	It is consistent with SD8 to encourage water reuse. However, in our experience, a number of planning authorities are resistant to innovative greywater reuse schemes (including small scale proposals in urban areas). We recommend that some guidance be provided in the draft Strategy to encourage greater acceptance of domestic solutions to grey water reuse (consistent with health guidelines etc).
MRH-A5	We support provisions to require geotechnical assessment of all sites with risk of instability or inundation, and the implementation of risk management strategies. We recommend that schemes require the proponent to demonstrate that any risk will be managed at an acceptable level.

Policy Action /	Comment
MRH-A11	<p>We strongly support the establishment and maintenance of lists of contaminated and potentially contaminated sites.</p> <p>While it is outside the scope of the draft Strategy, we note that information regarding the inclusion of a property on such a register should be included in the information provided under the s.337 of the <i>Local Government Act 1993</i>.</p>
CV-A6 T-A1	<p>We support the identification and protection of regional landscapes and ensuring power to assess landscape values. We recommend that the WA model be used as a guide for Tasmanian schemes.</p> <p>We recommend that schemes include provision requiring an assessment of landscape values where development will be visible from significant public viewing locations, such as national parks.</p>

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

***The EDO gratefully acknowledges the assistance of Keiran Andrusko in preparing these comments***

