



tasmanian conservation trust inc

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11 October 2010

Tasmanian Conservation Trust submission on the 'Draft Planning Directive No.1 – The Format and Structure of Planning Schemes (2010)'

Please find attached the Tasmanian Conservation Trust's submission on the 'Draft Planning Directive No.1 – The Format and Structure of Planning Schemes (2010)'. We thank the Tasmanian Planning Commission for providing us with an extension of time to provide this submission.

The TCT would welcome an opportunity to meet with Tasmanian Planning Commission staff to discuss our submission in further detail.

We also welcome any questions regarding our submission or requests for further information.

Yours sincerely,

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Tasmanian Conservation Trust submission on the 'Draft Planning Directive No.1 – The Format and Structure of Planning Schemes (2010)'

This submission refers to the 'Draft Planning Directive No.1 – The Format and Structure of Planning Schemes (2010)' as the Draft Template.

It will become apparent to the Tasmanian Planning Commission (TPC) from our comments in this submission that the Tasmanian Conservation Trust (TCT) is greatly disappointed in the Draft Template, both in terms of the substantive content of the template and the failure to provide crucial explanations and justifications in the Background Paper. In particular we are concerned that the draft regional strategies have not been released for public comment simultaneously with the Draft Template. It is not possible for the TCT or other members of the general public to make a meaningful submission on the Draft Template.

RECOMMENDATION: The TCT recommends that the TPC re-draft the Draft Template taking into account our recommendations and re-release the Draft Template, background documents and draft regional strategies simultaneously for further public comment.

Zoning

The standard zones as set out in 'Part D Zones' of the Draft Template are not mandatory, even though Background Paper acknowledges that 'Zone provisions will contain the primary directions relating to the use, development, protection and conservation of land within each zone' (page 3). This appears contradictory and the TPC is effectively leaving Councils to take or leave the standard zones. The TCT would have preferred the standards zones were made mandatory but also we find it greatly disappointing that the TPC provides no discussion or justification for its decision for not making them mandatory. The TCT and the general public cannot assess the TPC's arguments for making this decision and this is unfair and unacceptable.

In preparing submissions on draft planning schemes over many years, it has become clearly apparent to the TCT that many, perhaps most, planning authorities make little or no attempt to justify how they determine zone types and boundaries other than to recommend zoning which reflects previous zoning. Planning authorities generally determine zones which are consistent with previous development patterns and most suitable for ongoing development. There is little attempt to reassess zoning to take account of natural values even though data is becoming increasingly easier to access and use. This is perhaps the most significant weakness in all planning schemes and yet the Draft Template does not directly address the issue.

Section 2.1 of the Draft Template refers to regional and local strategies and policies and implies that these will in some way assist with determining zoning. If this was the TPC's expectation (see below for comments on regional strategies) then the Draft Template should include clear guidelines or instructions on development of local policies and strategies. The Draft Template is totally silent on the issue of how planning authorities develop local strategies and zoning.

Given that planning authorities have a raft of legislative requirements which they must address in the planning schemes, Section 2.1 should at least articulate these and give guidance regarding how they should be integrated into planning schemes.

RECOMMENDATION: The TCT is supportive of the standard zones contained in the Draft Template being mandatory. We also recommend the Draft Template include guidelines or instructions for how planning authorities determine appropriate zone types and boundaries including data sources.

We draw the TPC's attention to the Victorian statewide planning zones developed by the Victorian Department of Planning. These zones are determined by the Department of Planning for the whole state and all planning authorities are required to apply them. This option should also be canvassed by the TPC.

Given the failure of the Draft Template to make the standard zones mandatory and the failure to provide guidance in how planning authorities determine zoning, The TCT concludes that the Draft Template performs virtually no substantial function in terms of improving the 'outcomes' of planning authorities however it may improve planning 'processes' to some degree.

Regional strategies

While one of the stated reasons for the review of the Draft Template was 'to conduct a review of the Template to ensure its suitability for the regional planning initiatives' (Background Paper, Appendix 2, Terms of Reference) none of the documents provided with the Draft Template explains in any detail what the regional plans are and how they will effect planning schemes. The Background Paper refers vaguely to 'establishing three regional land use strategies from which new planning schemes will be derived' (page 1). We cannot determine from this statement whether the regional strategies will be appropriately prescriptive and if so whether they will make appropriate recommendations regarding where different zones should be.

RECOMMENDATION: It would have been more constructive to release the Draft Template and the draft regional strategies simultaneously and the TCT urges the TPC to hold another round of consultation to enable this to occur.

Failure to acknowledge Forest Practices Regulations 2009

The Terms of Reference for the Review (Background Paper, Appendix 2) states that one reason for the review was 'to consider the need to implement State Policies through Template based planning schemes'. We can see no

justification for the review to consider State Policies but fail to consider other regulatory requirements.

Perhaps the most important omission is that the Draft Template makes no mention of the Forest Practices Regulations 2009 and nor does the Background Paper.

Under the new regulations, councils and other planning authorities now have responsibility for regulating clearing of native vegetation including threatened native vegetation communities for construction of buildings and associated developments through planning schemes. Some planning schemes have weak or non-existent controls over vegetation clearing. Therefore, in many areas of the state, native vegetation clearing for construction of buildings and associated developments will be effectively unregulated. It is therefore a high priority for the TPC to fix this regulatory failure.

RECOMMENDATION: The TCT urges the TPC to redraft the template incorporating mandatory provisions for all planning schemes to ensure an appropriate level of protection for all important native vegetation. The TCT can provide further information regarding this issue.

If it is the TPC's intention that regulation of vegetation clearing be dealt with through other mechanisms, such as a stand alone planning directive or via the regional plans, there should have been a clear statement in the Background Paper to this effect. The TPC's failure to communicate its intention regarding this vital issue makes it impossible for the TCT and the public generally to make a meaningful submission on the Draft Template.

Maintenance of biological diversity and ecosystems

The objective 'Maintain biological diversity and ecosystems' listed in Section 2.2.1 is far too broad and planning authorities have little guidance in the Draft Directive as to what this means, how they are expected to achieve this objective and how they measure that they have achieved it. We believe that providing this type of guidance is the very purpose of a planning directive and are disappointed that such an obvious issue has not been addressed.

RECOMMENDATION: The Draft Directive should spell out a series of more specific sub-objectives and measurable outcomes for this and probably other stated objectives.

This exact issue was discussed at length in the report 'Review of the biodiversity provisions of the Tasmanian Forest Practices Code' and it was recommended to 'Include biodiversity conservation as a specific objective in the Forest Practices Act and include objectives, sub-objectives and measurable outcomes in the Forest Practices Code'. We recommend the TPC consider this report and discuss the issues with the primary author Dr Mick Brown.

We also suggest the TPC considers the TCT's response to the reports recommendation as it is applicable to planning authorities:

The recommendation is strongly supported. The existing Forest Practices System has many admirable processes and is strongly orientated toward ensuring appropriate scientific inputs to these processes. However,

whether these deliver appropriate outcomes for biodiversity is perhaps the greatest weakness of the system.

Strategic background to planning schemes

Pages 7-9 of the Background Paper summarises discussions between the TPC and planning authorities about whether Part A of the Draft Template should or should not have been included and therefore be a requirement in planning schemes. We view it as an insult to the Tasmanian public that anyone in the TPC could even consider omitting a statement of purpose and objectives from planning schemes. Quite apart from the very important need for the very broad statutory objectives to be defined in more detail (see comments above regarding sub-objectives and performance measures), it is vital for the general public when commenting on particular planning decisions and making submissions on scheme amendments and reviews, to be able to see clearly what the strategic and policy context to the schemes was. We find it irritating in the extreme that this strategic and policy context is referred to in the Background Paper as 'background' to the scheme when it is much more than that. It contains (or should) the justification for how the scheme was developed and it is vital the public know this and can comment on and criticise this.

RECOMMENDATION: The TCT supports the conclusion made in the Background Report to include a statement of purpose and objectives in Part A of the Draft Template. However, we recommend that if the TPC agrees to hold another consultation period, that the Background Paper be re-drafted to provide a much stronger argument in support of the importance of including a statement of purpose and objectives.

3.1. Planning terms and definitions

Agency

The definition of agency does not clearly state whether a government business agency (GBE) is included within the definition of 'agency'.

RECOMMENDATION: The TCT recommends that a GBE should be included within the definition of an agency and the definition clearly express this.

Vegetation

We are perplexed at the arcane definition used for vegetation and in particular the forest/shrub focused wording i.e. understorey is mentioned only in so far as it is associated with shrubs and trees. The definition is biased toward forest or shrub dominated vegetation and will lead to planning authorities not recognizing vegetation types which do not include trees or shrubs, such as grassland, saltmarsh and wetland vegetation, or treating them as less important.

RECOMMENDATION: The TCT recommends including separate definitions for 'vegetation' and 'native vegetation'. Most dictionaries define vegetation as 'all plant life in a particular region or period' or simply as 'plant cover'. If examples are given the list should be fairly comprehensive e.g. trees, shrubs, grasses, creepers, herbs, mosses, lichens etc. We recommend the use of the

Forest Practices Act definition of 'native vegetation' as: 'vegetation of a species that existed in Tasmania, on land, before European settlement'.

Threatened vegetation

It is unclear why the Draft Template includes a definition for threatened vegetation but omits a range of other environment values which also have statutory recognition such as:

- World Heritage, National Heritage and threatened species and ecological community policy statements as recognized under the EPBC Act; and
- Threatened species and their habitats as listed under the Tasmanian Threatened Species Protection Act 1995.

RECOMMENDATION: We recommend that the list of definitions be amended to include a definition for the values listed above and other values deemed relevant.

4.13.1. Exemptions in regard to vegetation planting, clearing or modification

The TCT is horrified that the Draft Template contains an extensive list of mandatory exemptions in relation to 'Vegetation planting, clearing or modification', which, if implemented by planning authorities, has the potential to cause significant environmental harm. We accept that planting of native vegetation and clearing of non-native vegetation may also have significant benefit and some exemptions may be acceptable.

We are horrified that while the Draft Template includes numerous exemptions relating to vegetation clearing, it contains no mandatory requirements for planning schemes to provide for the protection of important natural values. We discuss these issues in other sections of this submission.

We have an additional concern about the exemption for the planting, clearing or modification of vegetation for:

- (h) the implementation of a vegetation management agreement or a natural resource, catchment, coastal, reserve or property management plan provided the agreement or plan has been endorsed by the relevant agency.

The TCT is concerned that the Draft Template is not requiring any standards for development of such the agreements and plans and simply accepts the endorsement of the relevant agency rather than an independent and objective assessment and approval process.

As stated in the TCT's submission on the 'Review of the biodiversity provisions of the Tasmanian Forest Practices Code', we are concerned at the lack of any standards for informal property management plans and property management agreements that are being increasingly used to guide management of biodiversity on private land in Tasmania.

The Forest Practices Code review report concluded that the 'Forest Practices Authority establish state-level principles and objectives for off-reserve management of forest biodiversity' and we urge the TPC to do likewise.

RECOMMENDATION: Until a state-level system is in place setting standards for development of the agreements and plans and establishing an independent process of endorsement the TCT urges the TPC to exclude section 4.13.1 (h) from the Draft Template.