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### **Submission on the 'Draft Planning Directive No.2: Underground and Minor Aboveground Infrastructure'**

The Tasmanian Conservation Trust oppose the 'Draft Planning Directive No.2: Underground and Minor Aboveground Infrastructure' (Draft Directive) as it has the potential to cause wide spread and serious environmental damage, differs from what the State Government proposed, and will cause confusion and uncertainty in the rural communities, who are meant to benefit from it.

#### **Intended objective of the Planning Directive**

In media releases issued by two planning ministers, Allison Ritchie on 27 October 2008 and David Llewellyn on 1 December 2008, the Tasmanian community were told the State Government intended to develop a planning directive dealing with major public irrigation pipelines.

On 27 October 2008, the then Minister for Planning and Workplace Relations, Allison Ritchie, issued a media release announcing the development of the planning directive, titled 'Minister acts to speed up pipeline planning'. The media release states in part:

Applications for permits for public irrigation pipelines in Rural Zones of Council Planning Schemes will be treated as 'permitted developments'.

However, criteria will be developed against which irrigation pipelines will be assessed to ensure that planning, environment and cultural considerations are taken into account.

Allison Ritchie's replacement as Minister for Planning, David Llewellyn, issued a media release on 1 December 2008 titled 'Planning Irrigation Pipelines' which stated in part that:

The Minister for Planning, David Llewellyn, said today that he is committed to developing a Planning Directive for the assessment of major irrigation pipelines in the State.

Under the Directive, applications for permits for major irrigation pipelines will be treated as 'permitted developments', Mr Llewellyn said.

The intention is that if irrigation pipelines are in rural areas and the consistent assessment criteria provided by the Directive are satisfactorily addressed, there will be no 3rd party appeal rights.

In a letter to the TCT from Minister Llewellyn dated 26 March 2009, he reiterated the government's intention that the planning directive, already referred to the Resource Planning and Development Commission, would relate specifically to "Irrigation Pipelines".

The Draft Planning Directive No. 2. goes far beyond the objectives expressed by both ministers in that it is not limited to public infrastructure or to major irrigation infrastructure in rural zones, it proposes making infrastructure developments 'exempt' rather 'permitted developments' and proposes no assessment criteria.

We assume this change in direction for the directive was at the instruction of the State Government and not an initiative of the Resource Planning and Development Commission.

It is our firm belief the Tasmanian Government has misinformed the Tasmanian community regarding the intended purpose of the Draft Directive and we believe this is sufficient reason to ask that it be scrapped and the process of developing a planning directive re-started.

Contrary to the statement by the former Minister for Planning, Allison Ritchie, and advice from the Land Use Planning Branch of the Department of Justice, the Draft Directive does not prescribe criteria against which developments will be assessed. We fear a totally adhoc assessment process that will deliver negative environmental outcomes.

### **Further restrictions to third party appeals**

The Draft Directive clearly restricts third party appeals in relation to a range of infrastructure uses. The TCT opposes further restrictions to third party appeals.

### **Exempt vs permitted uses**

While the Draft Directive does not clearly state it, the Background Paper makes it perfectly clear that the Draft Directive will 'exempt' a range of infrastructure related developments rather than making them 'permitted'. The Background Paper states this aspect of the Draft Directive is based on the exceptions provisions in the Common Key Elements Template established under Planning Directive No.1. However, there are a number of very important differences between the exceptions proposed in the Draft Directive and those outlined in the template such as excepting minor road works that involves vegetation clearing or take place on heritage sites.

This differs from what was originally proposed by the Minister and what we expected. As well as restricting third party appeals, the Draft Directive excludes councils being involved in an advisory capacity or applying conditions. This will lead to a range of negative environmental outcomes.

### **Failure to define uses**

The Draft Directive proposes to allow ‘underground infrastructure’, ‘minor aboveground infrastructure’ and ‘minor road works’ to be except from any requirement to obtain a planning permit but none of these actions are defined. This is clearly unacceptable and must be corrected. Examples are given in the Draft Directive but these are not exhaustive and they could extend to developments with very significant environmental impacts.

### **“low impact nature” of infrastructure developments**

The Background Paper attempts to justify the exception for “Underground and Minor Aboveground Infrastructure” on the basis of their “low impact nature”. It is not possible without a clearer definition of what uses the Draft Directive applies to for the authors of the Background Paper to know they will have a “low impact nature”. To the contrary, we believe the exemptions will apply to developments with significant impacts e.g. vegetation clearing associated with road construction and maintenance, major irrigation pipelines etc.

### **Road construction**

The way the Draft Directive is currently worded, it would exempt road construction, including through areas pristine areas not previously roaded, as well as road upgrades and road maintenance. Road construction can lead to clearing of large areas of native vegetation, including high conservation value vegetation and threatened species and can spread weed and pathogen species.

### **Removal of Council advisory and oversight role**

We acknowledge that infrastructure developments will remain subject to other legislation. However, reliance on other legislative regimes e.g. Forest Practices Act, Threatened Species Protection Act and Environment Protection and Biodiversity Conservation Act will lead to gaps in assessments of environmental impacts and greater environmental impacts.

The Department of Primary Industries, Parks, Water and Environment, Forest Practices Authority and the Australian Government’s Department of Environment, Heritage and the Arts have very limited capacity to monitor impacts on threatened species and threatened vegetation communities and often rely on matters being brought to their attention by councils or concerned third parties. Many land owners do not know they have threatened species or vegetation communities on their land or precisely what part of their property they occupy. Therefore developers or land owners may not know a permit is required. Where such uses are referred to councils, council officers can perform an advisory role, providing relevant data for the property, can notify other authorities of potential impacts and can place conditions on the proposed use.

We are also concerned that removal of councils' advisory and oversight role could lead to the destruction of important Aboriginal and European heritage sites.

**EPBC referrals**

The removal of councils advisory and oversight role will likely lead to an explosion in referrals of developments to the EPBC Act whether they are controlled actions under that legislation or not.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter McGlone', written in a cursive style.

Peter McGlone  
Director