



Review of the State Coastal Policy - Development of Actively Mobile Landforms

Report on Consultation

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Author:
State Planning Office

Publisher:
Department of State Growth

Date:
March 2025

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State Planning Office, Department of State Growth
GPO Box 536 HOBART TAS 7001
Phone: 1300 703 977
Email: spo@stateplanning.tas.gov.au

1.0 Glossary

The following acronyms and abbreviations are used in this Report:

RMPS	Resource Management and Planning System
SCP	State Coastal Policy 1996
SPO	State Planning Office
the Act	<i>Land Use Planning and Approvals Act 1993</i>
TasCAT	Tasmanian Civil and Administrative Tribunal
SPPA	<i>State Policies and Project Act 1993</i>
Commission	Tasmanian Planning Commission
SoE Report	State of the Environment Report
SPPs	State Planning Provisions
TPS	Tasmanian Planning Scheme
LIST	Land Information Systems Tasmania

2.0 Introduction

The State Planning Office (SPO), on behalf of the Premier, released a Position Paper titled ‘Review of the State Coastal Policy – Development of Actively Mobile Landforms’ (the Position Paper) for a 6 week consultation period from 9 September to 21 October 2024.

The Position Paper explored issues relating to Outcome 1.4.2 of the State Coastal Policy 1996 (the SCP) and how that particular provision has been applied.

Outcome 1.4.2 effectively prohibits development on ‘actively mobile landforms’ unless it is required to minimise the need for engineering or remediation works to protection land, property and human life. There is no definition of ‘actively mobile landforms’ in the SCP and there is no agreed position among technical experts on what constitutes this particular type of landform.

The *State Policies and Projects Act 1993* (the SPPA) sets out the legislative framework for the making and operation of State Policies, which includes explicit provisions requiring that where there is an inconsistency between a State Policy and the provision of a planning scheme, the provision of the planning scheme is void to the extent of the inconsistency.

The legal application of Outcome 1.4.2 means that any development on ‘actively mobile landforms’ that does not involve engineering or remediation works to protect land, property and human life, such as walking tracks, lookouts, fencing, bridges, boat launching facilities and jetties are in contravention of the SCP and therefore illegal.

This legal threat to existing coastal development prompted the Government to initiate [legislation¹](#) that validates past approvals under the *Land Use Planning Approvals Act 1993* (the Act) that may contravene Outcome 1.4.2 of the SCP. It also prompted the Position Paper to explore the policy setting of Outcome 1.4.2 and whether it is a reasonable and contemporary response to future development on ‘actively mobile landforms’.

The Review of the SCP – Development of Actively Mobile Landforms, Report on Consultation (the Report on Consultation) discusses the issues raised in submissions received during consultation on the Position Paper and presents a revised draft amendment to the SCP in response to those issues.

3.0 Summary of Issues with Outcome 1.4.2

Outcome 1.4.2 of the SCP provides that:

Development on actively mobile landforms such as frontal dunes will not be permitted except for works consistent with Outcome 1.4.1.

Outcome 1.4.1 states that:

Areas subject to significant risk from natural coastal processes and hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility and sea level rise will be identified and managed to minimise the need for engineering or remediation works to protect land, property and human life.

The effect of Outcome 1.4.2 is that it is a self-executing prohibition of development on ‘actively mobile landforms’ except for engineering or remediation works involving the protection of land, property and human life.

The definition of ‘development’ is consistent across the Resource Management and Planning System (RMPS) and includes:

- construction, alteration or decoration of a building;
- demolition or removal of a building, structures or works;
- carrying out works;
- subdivision of land; and
- signs.

Additionally, ‘works’ is defined as “*includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil, but does not include forest practices...*”

This means that the application of Outcome 1.4.2, consistent with these definitions, would result in any subdivision, structure, pathway, fence, jetty, sign or even the lopping of trees on an ‘actively mobile landforms’ to be contrary to the SCP. Furthermore, even the removal of buildings, structures or works to seemingly comply with Outcome 1.4.2 is considered ‘development’ and therefore inconsistent with SCP.

¹ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2024-026>

The Position Paper discussed the use of the term ‘actively mobile landforms’ which is not defined in the SCP, nor is it used anywhere else in the RMPS. Ambiguity regarding what constitutes an ‘actively mobile landform’ casts doubt over the spatial application of Outcome 1.4.2.

Another source of ambiguity is understanding the actual policy intent of the Outcome. The Position Paper discussed whether the intent of limiting development on ‘actively mobile landforms’ was to protect the naturally occurring process that created those landforms from development, or to protect the development from the hazards associated with those landforms. The Position Paper contended that it was both.

3.1 Amendment to Outcome 1.4.2 as proposed in Position Paper

Having discussed the issues with Outcome 1.4.2 and coming to the broad conclusion that there is a need for certain development to be located on ‘actively mobile landforms’ and that the original intent was both to protect coastal values and geomorphological processes from development, and to minimise the risk to development from geomorphological processes, the Position Paper proposed the following amendment to the SCP:

Delete Outcome 1.4.2 and replace with:

1.4.2 Development on actively mobile landforms will only be allowed for engineering or remediation works necessary to protect land, property and human life, unless it can be demonstrated that the development appropriately considers:

- a) protecting coastal values and natural coastal processes;*
- b) achieving and maintaining a tolerable level of risk; and*
- c) the benefits to the public and dependency on the particular location.*

The Position Paper also invited submissions on how ‘actively mobile landforms’ might be defined or whether the mapping identified in the [present dune mobility](#) layer of the Land Information System Tasmania (the LIST) was appropriate to identify ‘actively mobile landforms’.

The purpose of making these suggestions and proposing an amendment to Outcome 1.4.2 in the Position Paper was to stimulate discussion for consultation.

4.0 Consultation

The SPO notified stakeholders that the Position Paper was available for review on its website from 9 September to 21 October 2024. A total of 135 submissions were received during the consultation period. Shortly after the close of exhibition, the SPO published all submissions which can be accessed on the [SPO website](#).

During the consultation period, the Minister for Housing, Planning and Consumer Affairs tabled the State of the Environmental Report 2024 (SoE Report) in both Houses of Parliament. One of the Tasmanian Planning Commission’s (the Commission)

recommendations in the SoE Report was for the Government to undertake a full and comprehensive review of the State Coastal Policy.

The timing of making the Commission's recommendations public appeared to create some confusion regarding the intent and scope of the Position Paper which was only to review the policy expressed in Outcome 1.4.2. Any commitment by the Government to undertake a full review of the SCP is a separate process to this review.

Following receipt of submissions on the Position Paper, the SPO undertook targeted consultation with the Department of Natural Resources and Environment and those councils that have land within the 'coastal zone', to seek additional advice on the matters raised in submission and to further refine the draft amendment.

5.0 Summary of Issues Raised in Submissions

The SPO would like to thank all those who made submissions and acknowledge the effort taken to provide comments on the matters raised in the Position Paper. The advice received is greatly appreciated and has provided valuable input in informing a revised draft amendment to the SCP.

Many of the submissions welcomed the opportunity to comment on the Position Paper and the Government's commitment to the review Outcome 1.4.2 of the SCP.

The following sections provide a summary of the issues raised during consultation and the SPO's response to those issues.

A more detailed list of issues and responses are provided in Attachment 1 to this report.

5.1 Lack of justification

Issues raised in the submissions

- That there is a lack of justification for amending the SCP.
- In support of the amendment as there is a need for a more contemporary, performance-based policy response.
- The amendment has been prompted by the Robbin Island windfarm which is not significant justification for the modification.
- There is no justification for making the amendment prior to the completion of the Supreme Court ruling on the Robbins Island windfarm.

Response

The [Position Paper](#)² and other publicly available documents from [Parliament](#)³ explain the issues with Outcome 1.4.2, the general application of the SCP and how these issues came to the Government's attention. The following dot points explicitly set this out:

- The approval of the Robbins Island windfarm by the Tasmanian Civil and Administrative Tribunal (TasCAT) raised questions regarding the manner in which it applied the SCP, especially in relation to Outcome 1.4.2 which prohibits all development on 'actively mobile landforms' unless it is for the purpose provided in Outcome 1.4.1.
- Most of the Outcomes in the SCP are statements of intent which, when applied, guide certain outcomes that can be expressed differently in different circumstances while still achieving the policy intent. Outcome 1.4.2 differs in that it behaves as a self-executing regulation that when applied correctly, prohibits any development on 'actively mobile landforms' unless it is for remediation or engineering works necessary to protect human life, property or land.
- The definition of 'development' also includes 'carrying out of "works"' which is defined as 'any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil, but does not include forest practices, as defined in the Forest Practices Act 1985, carried out in State Forests'.
- The SPPA requires explicit consideration of State Policies when exercising decision-making powers. Because a planning scheme has been approved as consistent with all State Policies there has been an assumption that any subsequent development that complies with the planning scheme also complies with State Policies.
- While this assumption is typically correct, because Outcome 1.4.2 is a self-regulating prohibition on development, the strict application of the policy means, for example, any subdivision, pathway, weed removal, works to protect coastal values, fences or signs on any land that is an 'actively mobile landforms' is contrary to the SCP. The Government has expressed the view that this is an unreasonable policy as there are certain works and development that are both needed and appropriate, such as jetties or viewing platforms to protect trampling of fragile coastal ecosystems, to occur on 'actively mobile landforms' which are currently prohibited.
- Additionally, section 14 of the SPPA provides criminal sanction for a person who contravenes or fails to comply with a provision of a State Policy. This means that if the policy in Outcome 1.4.2 is not changed, it is technically a criminal offence to undertake the removal of weeds or the lopping of branches from trees on an

² https://www.stateplanning.tas.gov.au/__data/assets/pdf_file/0006/543534/Position-Paper-Review-of-the-State-Coastal-Policy-Development-of-Actively-Mobile-Landforms-September-2024.pdf

³ <https://www.parliament.tas.gov.au/bills/bills2024/validation-state-coastal-policy-bill-2024-37-of-2024>

‘actively mobile landforms’ because this is considered ‘works’ which is part of the definition of ‘development’.

- There is also no definition or agreed position on what constitutes an ‘actively mobile landform’ which puts into question the spatial application of Outcome 1.4.2.
- In 2024, Parliament approved the Validation (State Coastal Policy) Bill 2024 which validated past planning permits issued under the *Land Use Planning and Approvals Act 1993* (the Act) that may offend Outcome 1.4.2. In doing so, Parliament accepted that the application of Outcome 1.4.2 was problematic for the same reasons outlined here.
- While the threat of legal challenge to existing development that might offend Outcome 1.4.2 has been addressed by legislating the validity of past permits, unless amended, the issues with Outcome 1.4.2 remain applicable to future development or works on ‘actively mobile landforms’.
- The justification for the amendment is to remove uncertainties regarding the types of landforms that should be subject to Outcome 1.4.2 and to modify the policy setting to allow consideration of certain developments, including works, to occur on these landforms under certain circumstances.

The dots point above provide significant justification for the need to amend Outcome 1.4.2 of the SCP. The fact that the issues with Outcome 1.4.2 were identified following a review of TasCAT’s decision on the Robbins Island windfarm proposal is irrelevant for the purpose of addressing the issues which exist regardless of the outcomes of the Supreme Court’s ruling on the proposed windfarm.

5.2 Removal of prohibition of development on ‘Actively Mobile Landforms’

Issues raised in submissions

- Support for removing the prohibition of development on ‘actively mobile landforms’ in favour of providing a more contemporary and performance-based policy response.
- Opposed the removal of the prohibition of development on ‘actively mobile landforms’ on the basis that it would allow inappropriate development to occur, compromising the protection of coastal values associated with these landforms.
- The removal of the prohibition is inconsistent with the SCP principles.
- The removal of the prohibition introduces uncertainty, significantly undermining the effectiveness of preventing development and protecting the coastal zone.

Response

The Position Paper clearly expressed the reasons why the prohibition of all development (other than for remedial or engineering works) is problematic. It also suggested that there

are certain types of use and development, such as walking tracks, jetties or fences that may be appropriately located on ‘actively mobile landforms’.

The submissions that opposed the removal of the prohibition of development raised concerns regarding the impact that development will have on coastal values or natural processes associated with ‘actively mobile landforms’.

The amendment proposed in the Position Paper responded to both the protection of coastal values and only allowing development that could achieve and maintain a tolerable risk threshold. In response to concerns raised in submissions, it is accepted that both of these considerations can be strengthened in a modified amendment.

To achieve this, it is proposed to include the protection of coastal values in the list of works, along with protecting land, property and human life, as being allowed to occur on ‘actively mobile landforms’ without having to address any additional criteria.

Where development on ‘actively mobile landforms’ is not for the protection of land, property, coastal values or human life, the amendment has been modified from the requirement to ‘demonstrate that development appropriately considers protecting coastal values and natural coastal processes’ to requiring ‘it can be demonstrated that impacts on coastal values and natural processes are managed in accordance with the objectives, principles and outcomes of this Policy’.

This modification to the amendment clearly establishes the parameters by which the coastal values and natural processes must be managed.

Similarly, that part of the Position Paper amendment that refers to ‘appropriately considers achieving and maintaining a tolerable level of risk’ has been modified to provide greater certainty by requiring only use and development where it ‘can be demonstrated that it can achieve and maintain a tolerable risk for the intended life of the use and development’. This statement is then accompanied by the inclusion of an additional definition for ‘Tolerable risk’ (see section 5.3 for additional information about ‘tolerable risk’). A full version of the proposed modified amendment is provided in the Conclusion part of this report at section 6.1.

The removal of the prohibition of development on ‘actively mobile landforms’ in favour of a performance-based criteria that addresses the risks to use and development associated with being located on ‘actively mobile landforms’ and the impacts of use and development on natural processes and coastal values provides a more balanced and considered policy response and remains supported. In response to the concerns regarding the removal of the prohibition, the amendment has been modified to strengthen consideration of the associated risks and the impacts to natural values by providing greater prescription around the application of those criteria.

5.3 Clarification of ‘Actively Mobile Landforms’

Issues raised in submissions

- That the term ‘actively mobile landforms’ is ambiguous and lacks clarity for the application of Outcome 1.4.2 of the SCP.
- The meaning of ‘actively mobile landforms’ is understood, and the SCP has been operating efficiently under that term.
- Some submissions proposed definitions for ‘actively mobile landforms’ (see below for detail).
- That the State should provide a comprehensive mapping layer that identifies ‘actively mobile landforms’ which forms the basis of the application of Outcome 1.4.2.
- The existing ‘present dune mobility’ mapping layer available on Land Information Systems Tasmania (LIST) is not fit for the purpose of applying Outcome 1.4.2.

Response

There were a range of varying opinion on what should constitute an ‘actively mobile landform’. Some viewed ‘actively mobile landforms’ to only include sand dunes, while others suggested that it relates to any landform subject to movement or change of morphology caused by erosion, deposition, accretion or subsidence. The fact that the submissions had such varying views on the matter only highlighted the initial concern of ambiguity regarding the term and the subsequent impact that the range of interpretations have for the application of the provision.

‘Actively mobile landform’ is not a technical geomorphological term and is not used elsewhere in the RMPS. Some submissions offered helpful insights into what the term may mean by proposing the following definitions of ‘actively mobile landforms’. These include:

- A. *Actively mobile landforms are those where the natural processes of erosion, sediment transport or deposition, operating over planning timescale of 50 to 100 years, could reasonably be anticipated to:*
 - a) *be altered by a proposed development to the extent of presenting a previously absent degree of risk to preexisting coastal values; or*
 - b) *cause change to the shape of the land of sufficient magnitude to represent a risk to any development thereon.*
- B. *A landform subject to processes of erosion and or accretion – where both or either process is likely to amount to changes of landform shape or morphology – that would:*
 - a) *adversely affect a development within its design life such that remedial or protective works would be required; and/or*
 - b) *the development and /or remedial or protective works have an adverse impact on cultural values, natural processes or natural values.*

- C. A coastal landform that is actively moving in whole or part through processes of erosion, subsidence and/or accretion sufficient to create a hazard for buildings or other relevant uses within a normal planning timeframe of 50 to 100 years.*

Some of the submissions contended that all landforms are actively mobile over geological timeframes, therefore any definition must articulate the rate and scale of mobility that, for the purpose of applying Outcome 1.4.2, cause a landform to be 'actively mobile'. All of the proposed definitions have attempted to introduce ways to quantify the level of movement by introducing a timescale based on the lifespan of the development.

While this is useful, given the range of actions that are considered 'development' (refer to section 3.0 above) it is difficult to rationalise a level of mobility as a trigger for the application of Outcome 1.4.2 because the level of mobility that would impact some forms of development has no bearing on others. For example, there is no impact associated with 'development' that involves the subdivision of land, however there is likely to be an impact associated with the development of a dwelling.

It was submitted that the list of coastal processes and hazards provided in Outcome 1.4.1 adequately represents landforms that might be considered 'actively mobile landforms'. The Outcome refers to land subject to coastal processes and hazards such as flooding, storms, landslip, littoral drift, dune mobility and sea level rise. All of these processes or hazards may cause the erosion, deposition, subsidence or accretion of landforms and it is accepted that these adequately represent what might be considered as 'actively mobile landforms'.

The Position Paper explored the possibility of using the 'present dune mobility' layer of the Land Information Systems Tasmania (the LIST) as a suitable reference point for applying Outcome 1.4.2. A number of submissions raised concern that the layer is incomplete and is indicative only. In addition, it only maps mobile dunes and not other landforms, as discussed above, that might be considered 'actively mobile landforms'.

The State has undertaken mapping of areas subject to risk of coastal erosion, flooding and landslip which are incorporated in the Tasmanian Planning Scheme (TPS). Any mapping undertaken by the State to identify other 'actively mobile landforms' still needs to clearly define what parameters are to be included in informing the layer. As discussed at length above, given all landforms move over time, determining the rate and scale at which that movement impacts use and development depends on the nature of that use and development.

The draft amendment to Outcome 1.4.2 has been modified to remove the reference to 'development on actively mobile landforms' and replace with 'use and development on land subject to significant impacts from natural coastal processes and hazards listed in Outcome 1.4.1'. This modification refers to specific processes or hazards that might cause landform mobility which helps clarify the scope of the original drafting.

In response to the issues relating to a landform's mobility causing different types of development to be impacted differently, and the difficulty in incorporating a mobility threshold, the amendment to Outcome 1.4.2 includes a requirement to demonstrate that a

tolerable level of risk can be achieved and maintained for the intended life of the use and development.

The proposed amendment also introduces a definition for 'Tolerable Risk, as follows:

“Tolerable risk” means the lowest level of likely risk from the relevant hazard:

- a) to secure the benefits of a use or development in a relevant hazard area; and*
- b) which can be managed through:*
 - i. routine regulatory measures; or*
 - ii. by specific hazard management measures for the intended life of each use or development.*

'Tolerable risk' is the risk threshold that is adopted in the TPS hazards codes which, from a land use planning perspective, is consistent with other State Government initiatives such as the Tasmanian Disaster Resilience Strategy.

The concept of 'tolerable risk', including an established method of determining the threshold, is described in the Practice Note Guidelines for Landslide Risk Management 2007(Australian Geomechanics Vol 42 No.1 March 2007) which can be accessed from this [webpage⁴](#).

While the methodology appears very technical, it is only required to be applied where there is a significant impact from natural coastal processes or hazards which may expose the development, depending on what that development is, to unreasonable risks.

Much of this work has already been done through hazard mapping and existing regulatory provisions that apply through the hazard codes of the TPS.

5.4 Amendment given interim effect under section 12 of the SPPA

Issues raised in submissions

- Do not support using section 12 of the SPPA to give interim effect to the amendment to the SCP while the Tasmanian Planning Commission (the Commission) is assessing the proposed amendment.

The Position Paper described the process available under the SPPA for the Minister, in this case the Premier, to make a recommendation to the Governor to make the draft amendment an Interim State policy, thereby having effect before the Commission has completed its assessment.

Given Parliament approved legislation validating past approvals that might offend Outcome 1.4.2, there is an acceptance of the issue and an expectation that an amendment to the SCP should be made to rectify the situation.

⁴ <https://landsliderisk.org/resources/guidelines/>

The proposed amendment provides a contemporary policy response that considers the risks to development and protects natural values. It also removes ambiguity regarding what type of landforms might constitute an 'actively mobile landform' and therefore the application of the outcome. The proposed amendment is a more appropriate expression of policy than the existing provision and immediate application as an Interim State Policy through the process established by section 12 of the SPPA remains supported.

6.0 Conclusion

The amendment to the SCP to remove the prohibition of development on 'actively mobile landforms' in favour of a performance-based policy remains supported. The performance-based policy approach is similar to how other types of hazards and values are managed in the RMPS. Unlike the existing provision that behaves as a regulatory prohibition, the modified policy can be applied through the subordinate planning instruments, providing both informed strategic and regulatory land use planning responses.

Introducing greater prescription regarding the protection of natural values also bring the modified provision into greater conformity with other Outcomes of the SCP. In addition, the inclusion of the requirement to achieve and maintain a 'tolerable risk' for use and development on 'actively mobile landforms', establishes a risk threshold to help determine the suitability of the use and development. This is the same risk threshold that is adopted in the draft Tasmanian Planning Policies and the Coastal Erosion Hazard Code, Coastal Inundation Hazard Code, Flood-Prone Areas Hazard Code, Bushfire-Prone Areas Code and Landslip Hazard Code of the TPS.

The amendment has also been modified to include a definition of 'tolerable risk' which is consistent with the definition used across other planning instruments.

The range of submissions made in relation to what constitutes an 'actively mobile landform' highlighted how contested the term is. Referring to the list of processes that might cause a landform to move is considered to provide greater clarity and consistency to the application of the modified policy.

While there were many submissions that did not agree to introducing the amendment as an Interim State Policy in accordance with section 12 of the SPPA, the modified policy removes the ambiguity associated with the existing provisions and provides a clear policy setting for considering the impacts of use and development on 'actively mobile landforms'. Subject to seeking approval from the Governor, it is recommended that it is appropriate for the amended provisions to apply while the Commission undertakes its assessment of those provisions.

6.1 Modified draft amendment to the SCP

It is proposed to amend the State Coastal Policy 1996 as follows:

1. Delete Outcome 1.4.1 and replace with:

Land subject to significant risk from natural coastal processes or hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility or sea

level rise will be identified and managed to minimise the need for works to protect land, property, coastal values or human life.

2. Delete Outcome 1.4.2 and replace with:

Use and development on land subject to significant impacts from natural coastal processes or hazards, such as those listed in Outcome 1.4.1, will only be allowed for works necessary to protect land, property, coastal values and human life, unless it can be demonstrated that the use and development:

- a) can achieve and maintain a tolerable risk for the intended life of the use and development;*
- b) benefits the public or is dependent on the particular location; and*
- c) considers the impacts on coastal values and natural processes and those impacts are managed in accordance with the objectives, principles and outcomes of this Policy.*

3. In the Definitions section, following the definition of 'planning controls', insert the following definition of 'tolerable risk':

Tolerable risk

"tolerable risk" means the lowest level of likely risk from the relevant hazard:

- a) to secure the benefits of a use or development in a relevant hazard area; and*
- b) which can be managed through:*
 - i. routine regulatory measures; or*
 - ii. by specific hazard management measures for the intended life of each use or development.*

Attachment 1 – Summary of submissions