

# Submission to Validation (State Coastal Policy) Bill 2024

***The Tasmanian Government’s draft legislation to fast track changes to the State Coastal Policy through Tasmanian Parliament ignores legislated process and due diligence. The proposed changes have the potential to weaken the State Coastal Policy, erode protection to the natural and cultural values of Tasmania’s coast, and undermine statewide strategic planning.***

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## INTRODUCTION

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Australia’s coasts are globally important – as biodiversity hotspots, carbon sinks and migratory species refuges – yet climate change, coastal development and invasive species are causing increasing and cumulative pressure on these fragile environments. The 2021 national State of the Environment Report found the condition of beaches and shorelines throughout Australia to be poor, and that “all are deteriorating due to sea level rise and local factors related to human use of the coast.”<sup>1</sup>

Tasmania’s coasts remain relatively pristine<sup>2</sup> in comparison with those of mainland Australia, but this status is threatened by an increasing coastal population, commercial development, and the expansion of on- and near-shore industries including intensive

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<sup>1</sup> Clark et al (2021) *Australia: State of the Environment – Coasts*,  
<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-coasts.pdf>

<sup>2</sup> Noting that the Tasmanian Government has not produced a state-specific State of the Environment Report since 2009, despite a legislative requirement to do so every five years. See <https://australiainstitute.org.au/report/get-your-skates-on-tasmanias-next-state-of-the-environment-report/>

finfish aquaculture.<sup>3</sup> While it is nearly 30 years old, the *Tasmanian State Coastal Policy 1996* (the SCP) has played an important role in maintaining the health and integrity of Tasmania’s coastal environment despite these pressures. Critically, it has allowed Tasmania’s ecologically significant dune systems to remain relatively intact by prohibiting unnecessary development on mobile dune systems,<sup>4</sup> a provision that will be of increasing importance as climate driven sea level rise continues to affect Tasmania’s coastal areas.

On 17 July 2024, the *Validation (State Coastal Policy) Bill 2024* (the “Bill”) was released for public consultation by the Minister for Energy and Minister for Parks and the Environment, the Hon Nick Duigan, with the intention to “remove uncertainties around coastal infrastructure”.<sup>5</sup> The Bill seeks to retrospectively disallow clause 1.4.2. of the SCP (which prevents development on actively mobile landforms unless it serves to protect “land, property and human life”<sup>6</sup>) if the development was “issued, or purportedly issued,” with a permit under the *Land Use Planning and Approvals Act 1993* (Tas) (“LUPA permit”).<sup>7</sup> It seeks to “validate” (retrospectively approve) all developments on actively mobile landforms between 2009 and when the Bill commences, including for developments which have not yet commenced but have been issued a permit during that timeframe.

In retrospectively approving all developments which may be found on mobile landforms, in contradiction to the provisions of the SCP, the Tasmanian Government’s Bill has the potential to alter a key purpose of State Coastal Policy, and the way coasts and coastal hazards are managed, fundamentally undermining strategic planning in Tasmania.

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<sup>3</sup> Clark et al (2021) *Australia: State of the Environment – Coasts*, p 112,  
<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-coasts.pdf>

<sup>4</sup> *Tasmanian State Coastal Policy 1996*, clause 1.4.2.

<sup>5</sup> Duigan (2024) *Draft Coastal Policy Released*,  
[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/draft-coastal-policy-released](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/draft-coastal-policy-released)

<sup>6</sup> *Tasmanian State Coastal Policy 1996*, clause 1.4.2.,  
[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0010/11521/State\\_Coastal\\_Policy\\_1996.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0010/11521/State_Coastal_Policy_1996.pdf)

<sup>7</sup> *Validation (State Coastal Policy) Bill 2024* s 4(2),  
[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0037/366679/Validation-State-Coastal-Policy-Bill-2024.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0037/366679/Validation-State-Coastal-Policy-Bill-2024.pdf)

# RUSHED AND RETROSPECTIVE: KEY ISSUES WITH THE VALIDATION BILL

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## Implications of draft amendments

The Government's draft Bill is seeking to amend clause 1.4.2. of the SCP to validate structures constructed in the coastal zone since 2009, including developments which have not yet commenced but have received, or purportedly received, LUPA permits between 2009 and the commencement of the Act.<sup>8</sup> Clause 1.4.2. specifically prohibits development on mobile landforms *unless* it is to protect land, property or human life.<sup>9</sup> Development for any other reason on areas that are ecologically significant, structurally unstable and particularly vulnerable to climate-driven sea level rise and storm surges does not align with the SCP's core principles of protecting natural and cultural values, and sustainable use and development of the coast.<sup>10</sup>

Amending clause 1.4.2.'s prohibition of unnecessary development on actively mobile landforms has the potential to cause unexpected outcomes, such as development approvals for marina/canal estates in unsuitable areas, and pave the way for coastal subdivisions and other infrastructure and development throughout Tasmania's coastal areas.<sup>11</sup> Furthermore, the Tasmanian Government is yet to provide an example of existing coastal infrastructure that could be at risk because of the way the coastal policy is interpreted, and has refused requests to release the legal advice it received.<sup>12</sup>

Any amendment of clause 1.4.2 of the Tasmanian State Coastal Policy 1996 has the potential to undermine strategic planning in Tasmania by reducing protection to fragile dune ecosystems and increasing the vulnerability of Tasmania's coastal infrastructure.

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<sup>8</sup> *Validation (State Coastal Policy) Bill 2024 s 4(2)*,

[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0037/366679/Validation-State-Coastal-Policy-Bill-2024.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0037/366679/Validation-State-Coastal-Policy-Bill-2024.pdf)

<sup>9</sup> *Tasmanian State Coastal Policy 1996*, clause 1.4.1. and 1.4.2.

[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0010/11521/State\\_Coastal\\_Policy\\_1996.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0010/11521/State_Coastal_Policy_1996.pdf)

<sup>10</sup> *Tasmanian State Coastal Policy 1996*, principles, p 5.

[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0010/11521/State\\_Coastal\\_Policy\\_1996.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0010/11521/State_Coastal_Policy_1996.pdf)

<sup>11</sup> Planning Matters Alliance Tasmania (2024) *Background Report: Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm*,

<https://planningmatterstas.org.au/wp-content/uploads/2024/07/PMAT-Background-Report-Robbins-Island-and-State-Coastal-Policy-V1.3.pdf>

<sup>12</sup> *Ibid*, p 1.

**Recommendation:** The Tasmanian Parliament does not approve the retrospective amendment to the SCP to approve all developments that may be prohibited by clause 1.4.2. of the SCP.

## State Policies

The SCP is one of three State Policies created under the *State Policies and Projects Act 1993* (Tas). State Policies are an important and powerful component of Tasmania’s planning system, and have a robust, legislated process by which any significant amendments must be made. This includes an eight-week consultation process conducted by the independent Tasmanian Planning Commission and provides for the opportunity for public hearings. Furthermore, any changes to a State Policy must be approved by both houses of Tasmanian Parliament. The current two-week consultation period circumvents the rigorous process for amending State Policies, and is a clear attempt to rush the changes through Parliament without due process.

**Recommendation:** Any proposed changes to the Tasmanian State Coastal Policy must follow the existing, legislated public consultation process, be conducted by the independent Tasmanian Planning Commission, and provide the opportunity for public hearings.

## Any changes to the SCP should occur together

The State Government is proposing to make two rounds of changes to the SCP, to be dealt with in separate Bills and separate Parliamentary debates. The Tasmanian Government has indicated that further changes to the SCP are likely to commence shortly, stating that “the Government also considers that the SCP should be changed to include more contemporary planning controls for actively mobile land on our coasts. A separate position paper will be released in coming weeks outlining the proposed changes”<sup>13</sup>.

The current Bill aims to validate developments while the future Bill is expected to create a new assessment and approval processes, presumably for development on landforms regulated by clauses 1.4.1. and 1.4.2. The Parliament – and the Tasmanian public – should be able to consider a complete picture of forthcoming amendments to a State Policy, so it can properly comprehend the consequences of such changes, and make informed submissions to the consultative process.

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<sup>13</sup> Department of Premier and Cabinet (2024) Validation (State Coastal Policy) Act 2024, [https://www.dpac.tas.gov.au/divisions/policy/state\\_policies/validation-state-coastal-policy-act-2024](https://www.dpac.tas.gov.au/divisions/policy/state_policies/validation-state-coastal-policy-act-2024)

**Recommendation:** If two amendments are to be made to the SCP, the Parliament and the Tasmanian public should be given the opportunity to consider them simultaneously.

## ROBBINS ISLAND WINDFARM

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There is a public perception that Tasmanian Government is seeking to retrospectively change the SCP to ostensibly facilitate infrastructure for the proposed Robbins Island wind farm by amending the SCP to impact a current Supreme Court appeal against the validity of the proposed development.

The proposed Robbins Island wind farm development has been approved by the Tasmanian Civil and Administrative Appeals Tribunal, despite a range of concerns over the development's potential impact on endangered and migratory birds, as well as other natural and cultural values of the island. The approval is currently being appealed in the Supreme Court by the community group Circular Head Coastal Awareness Network. In March 2024, the Tasmanian Environmental Protection Authority commenced a proceeding in the Supreme Court to correct its error in not applying clause 1.4.2 of the SCP to a key component of the development proposal: a 500m long wharf to be constructed across mobile frontal dunes on the east coast of Robbins Island.

The explanation on the Department of Premier and Cabinet's website of the justification for the proposed changes state:

The recent approval of the Robbins Island windfarm (more specifically the wharf required for the construction of the windfarm) by the Tasmanian Civil and Administrative Tribunal (TasCAT) has raised questions around the manner in which the SCP has been previously applied in relation to Outcome 1.4.2 of the SCP.<sup>14</sup>

Further to this, Minister Duigan's media statement issued with the release of draft legislation states:

The interpretation of the Policy could potentially impact on existing coastal infrastructure, including boardwalks through the dunes, fencing, lookouts, boat

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<sup>14</sup> Department of Premier and Cabinet (2024) Validation (State Coastal Policy) Act 2024, [https://www.dpac.tas.gov.au/divisions/policy/state\\_policies/validation-state-coastal-policy-act-2024](https://www.dpac.tas.gov.au/divisions/policy/state_policies/validation-state-coastal-policy-act-2024)

launching facilities, bridges, and jetties...It has also impacted on the approval given to the Robbins Island windfarm which needs clarification.<sup>15</sup>

Despite requests from Planning Matters Alliance Tasmania (PMAT), the Australian Coastal Society, and the Tasmanian Conservation Trust, the Tasmanian Government has declined to release the legal reasons or advice supporting Minister Duigan's assertions.<sup>16</sup> Furthermore, the Tasmanian Government is yet to provide an example of existing coastal infrastructure that may be implicated. PMAT contends:

The Tasmanian Government has yet to demonstrate the need for this wide-ranging legislation. Evidence must be provided by the Government for the need for the draft legislation to change the State Coastal Policy.

If the Bill is enacted, it has the potential to significantly interfere with the current Supreme Court appeal. Furthermore, the Robbins Island wind farm is yet to gain approval from the Australian Government, so the invalidity of the 500m wharf under the SCP is not the primary roadblock to the development proceeding.

**Recommendation:** The Tasmanian Government ceases its attempt to fast track amendments to the Tasmanian SCP to ensure there is no impact to the ongoing Robbins Island Supreme Court case.

## CONCLUSION AND RECOMMENDATIONS

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The proposed retrospective amendment to clause 1.4.2 of the Tasmanian State Coastal Policy 1996 has the potential to undermine strategic planning in Tasmania by reducing protection to fragile dune ecosystems and increasing the vulnerability of Tasmania's coastal infrastructure.

The Australia Institute Tasmania recommends:

1. The Tasmanian Parliament does not approve the retrospective amendment to the SCP to approve all developments that may be prohibited by clause 1.4.2. of the SCP.

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<sup>15</sup> Duigan (2024) *Draft Coastal Policy released*,  
[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/draft-coastal-policy-released](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/draft-coastal-policy-released)

<sup>16</sup> Planning Matters Alliance Tasmania (2024) *Background Report: Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm*,  
<https://planningmatterstas.org.au/wp-content/uploads/2024/07/PMAT-Background-Report-Robbins-Island-and-State-Coastal-Policy-V1.3.pdf>

2. Any proposed changes to the Tasmanian State Coastal Policy must follow the existing, legislated public consultation process, be conducted by the independent Tasmanian Planning Commission, and provide the opportunity for public hearings.
3. If two amendments are to be made to the SCP, the Parliament and the Tasmanian public should be given the opportunity to consider them simultaneously.
4. The Tasmanian Government ceases its attempt to fast track amendments to the Tasmanian SCP to ensure there is no impact to the ongoing Robbins Island Supreme Court case.