

8 December 2023

Dear Mr Ramsay and Mr Ford

Thank you for another opportunity to comment on the planning scheme amendment. I shall focus on the proposed incorporation of the revised Biodiversity Offset Policy because of the extent of the impact and concern in the community about this policy. I'm still trying to understand the complexities of the planning system, but I now understand that the Commission is only able to consider the editorial/administrative aspects of the policy and whether it fits into the planning scheme. I'll give it another go!

2.8 "Special circumstances" exist if "the use or development will result in significant long term social or economic community benefits"

Clarification is required regarding what constitutes social or economic community benefits. Is it social/economic benefits for the community as a group, or for an individual member of the community eg the applicant?

Has the Southern Tasmanian Council's Authority, 2013, Guidelines for the Use of Biodiversity Offsets document been assessed by the Commission or another government body? Were the authors of that document also the authors of the Biodiversity Offset Policy? Should it be referred to as the 'Regional Offset Guidelines' if it isn't used to guide decision-making by other planning authorities in the region?

Is there a procedural policy for the Part 5 agreements, including the costing, bonding and five-year monitoring requirement? Has this document been endorsed by councillors?

Councillors aren't required to sign-off on funding decisions re Biodiversity Offset Policy. Is there an endorsed policy regarding the negotiation of the stewardship payments?

Planning schemes should be transparent and complete in terms of policies and provisions that are relied upon to make decisions about planning matters. The policies themselves should be included within the main text of the planning scheme, instead of just the titles being listed in the appendices.

For greater transparency and accessibility of information, the Biodiversity Offset Policy should also be listed on the following pages of the Kingborough Council website: Development; Planning; Clearing and Tree Removal. Currently it only seems to be listed on the Policies page.

Is it the expectation of the Minister for Planning that the Commission has regard to the State Planning Provisions when carrying out its powers and functions under the Act? The provisions of the Natural Assets Code regarding the clearance of native vegetation are very different to those of the Biodiversity Code and Biodiversity Offset Policy. The State Planning Provisions include more exemptions, 'potential habitat' is not considered, and determination must be based on published – not unpublished - scientific data. The Natural Assets Code provides the requirement to 'have regard to' any on-site biodiversity offsets, and a development must

‘minimise adverse impacts on priority vegetation’. The State Planning Provisions do not refer to: financial biodiversity offsets; replacement ratios; or the costly, restrictive on-site or off-site Part 5 agreements. The revised Biodiversity Offset Policy has increased ratios, increased financial offsets and new, broad definitions. The revised policy would add to the inconsistency of planning provisions between Kingborough and other municipalities, which is contrary to the state government’s objective of statewide consistency of planning provisions.

Is there an endorsed procedural document regarding Council’s response to vegetation removal in situations where there is an immediate safety risk (eg storm damage to trees) outside of business hours?

Council’s capacity to charge an offset following the removal/pruning of a tree that was a risk to public safety cannot be justified. Council has created a barrier to the health and safety of the community. This, and other exemptions, need to be clearly listed within the policy.

Whilst the policy’s provision of secure conservation land is well-intentioned, increasing the fuel load, and prohibiting basic bushfire mitigation measures - in one of the most bushfire-prone areas of the world – creates a significant conflict between the biodiversity and bush-fire provisions of the planning scheme.

Is the policy consistent with legislation?

The Biodiversity Offset Policy creates a conflict with bushfire hazard management works of the Fire Service Act 1979, and the abatement notices issued under the Local Government Act 1993.

Council is now in the process of re-introducing a Trees on Private Property By-Law which the Biodiversity Offset Policy will also apply to. The by-law and policy will apply when the tree removal/pruning is exempt from LUPAA and the Forest Practices Authority. The last by-law was withdrawn following legal advice that it was in conflict with the planning scheme. Would the proposed by-law also be considered to be in conflict with the planning scheme?

The Local Government Act (1993) stipulates that a council is to consult with the community, and that councillors are to: represent the community; act in the best interests of the community; monitor the application of policies; and facilitate and encourage the planning and development of the municipal area in the best interests of the community. (There hasn’t been any community consultation on the offset policy.)

Section 65 of the Local Government Act supports the need for Council to seek legal advice. It states that “a council is not to decide on any matter which requires the advice of a qualified person without considering such advice”. There is undoubtedly a very significant legal, financial and reputational risk if Council hasn’t established whether it has the necessary head of power to charge financial offsets.

An application that requires assessment against the Biodiversity Code introduces the potential for requests for information and specialist reports costing significant amounts of money, while also adding very significant, additional timeframes to the project. The impacts

on applicants' mental health and wellbeing – during a housing and cost-of-living crisis - are very concerning.

Thank you for considering my submission.

Kind regards

Jo Landon