



# Extending the Tasmanian Regional Forest Agreement

The Australian and Tasmanian governments have committed to establish a 20 year rolling extension to the Tasmanian Regional Forest Agreement (RFA). To inform this process, we are seeking your feedback.

Stakeholders have had an initial opportunity to provide feedback (from 17 April to 12 June 2015) about extending the Tasmanian RFA, as part of the third five-yearly review of the RFA. This initial feedback, and the Independent Reviewer's report to the third five-yearly review of the Tasmanian RFA, has informed the focus of this additional consultation.

The governments will consider any practical improvements to the Tasmanian RFA, to ensure it remains effective and credible in the long term. While the governments are not negotiating a new RFA, or changing the Agreement's fundamental objectives, they have identified the following improvements to the RFA framework:

- **Streamlined and strengthened review and reporting arrangements** – presently the five yearly reviews examine the implementation of the RFA clause-by-clause. The improved review and reporting arrangements will be outcomes focused.
- **Improved and contemporary dispute resolution mechanisms** – these will give the governments more options for resolving issues about the implementation of the RFA.
- **Improved communication and consultation** – the governments will hold annual officials level bilateral meetings, in the interim years between five-yearly reviews, to discuss issues relating to the ongoing implementation of the RFA.
- **Modernisation of the RFA** – where practicable, the governments will update references to superseded legislation and policy.

The Tasmanian RFA is the governments' policy framework for delivering sustainable forest management in Tasmania. In extending the Tasmanian RFA, the governments will maintain the Agreement's key objectives:

- certainty of resource access and supply to Tasmania's forestry industry
- ecologically sustainable forest management and use of Tasmania's productive forests, and
- a Comprehensive Adequate and Representative reserve system.

## Have your say

Please complete the questionnaire and:

- Hand in while visiting a drop-in centre

**Monday 5 December 2016, 4.00–7.30pm** at Peach & Plum Rooms – Huon LINC, 1 Skinner Drive, Huonville

**Wednesday 7 December 2016, 4.00–7.30pm** at Wellers Inn, 36 Queen Street, Burnie

**Thursday 8 December 2016, 4.00–7.30pm** at The LINC, 51 King Street, Scottsdale

- Or, email your completed response to: [reviewrfa@stategrowth.tas.gov.au](mailto:reviewrfa@stategrowth.tas.gov.au).

Consultation closes **12.30pm AEDT, Friday, 23 December 2016**. Questionnaires received after this time may not be accepted.

## Your details

Given name

Family name

Organisation

Mobile phone

Email

## Please select one of the following

- I confirm that my completed questionnaire does not contain sensitive information and can be published in full on the Department of State Growth website.
- My completed questionnaire should **NOT** be published on the Department of State Growth website.

## Privacy Notice

You are providing personal information to the Tasmanian Department of State Growth (the Department), which will manage that information in accordance with the *Personal Information Protection Act 2004*. The personal information collected here will be used by the Department for the purpose of receiving and verifying contact details for stakeholders who have chosen to submit a completed questionnaire on the extension to the Tasmanian Regional Forest Agreement. Failure to provide this information may result in the non-acceptance of your questionnaire or records not being properly maintained. The Department may also use the information for related purposes, or disclose it to third parties, including the Australian Government Department of Agriculture and Water Resources, in circumstances allowed for by law. You have the right to access your personal information by request to the Department and you may be charged a fee for this service.

Copyright in completed questionnaires resides with the author(s), not with the Department.

In providing a completed questionnaire, you agree that:

- unless you indicate otherwise below (or as otherwise determined by the Department), your questionnaire will be published on the Department's website and will remain on the Department's website indefinitely
- the Department can contact you about your questionnaire
- for published questionnaires from individuals, your name will be published with your questionnaire. All other contact details will be removed from your questionnaire
- for published questionnaires from organisations, your name and your organisation's details will be published with your questionnaire.

## Please select your interest/s with extending the RFA

Forest management system

Resource certainty

Research and development

Threatened species

Comprehensive Adequate and Representative reserve system

Heritage values

Socio-economic data

Value of industry

Employment figures

## Other interests (please list)

## Your feedback

**Please list any publicly available non-government documents, reports or data that the Australian and Tasmanian governments could consider in extending the Tasmanian RFA, and that have not already been provided to the governments through the third five-yearly RFA review, or by other means?**

**Where applicable, please list the publication title, date, author and url.**

**What improvements could be made to the five-yearly RFA review process to make it more outcomes focused?**

**What research and development priorities are important to Tasmanian forestry industry stakeholders?**

**What socio-economic data and analysis is important to Tasmanian forest industry stakeholders?**

**How could the governments improve outcomes-focused monitoring and reporting on threatened species and biodiversity, as part of extending the Tasmanian RFA?**

**What other improvements could be made to the RFA framework?**

## *Introduction*

A key outcome of the RFA is the protection of Commonwealth and state listed species and vegetation communities. When vegetation clearing is proposed on either private or public land the primary mechanism of environmental protection is through the implementation of a Forest Practice Plan (FFP) produced in accordance with the Forest Practice Code. FFP's therefore are the primary mechanism used to deliver environmental protection within the Regional Forest Agreement when vegetation clearing is proposed. Appropriate application of FFP's is therefore fundamental to the delivery of agreed environmental outcomes.

In general there is no statutory requirement to make FFP's publicly available. In addition there is no opportunity for the general public to comment on the suitability of the management actions proposed in FFP's. The process for the application and granting of FFP's is essentially opaque. Although the Forest Practice Authority audits a selection of FFP's each year this is essentially a desk top based process which checks that appropriate administrative processes have been followed but fails to consider actual on ground ecological impacts at the single or multiple FFP level. There is no independent scrutiny of FFP's in the majority of cases.

In some circumstances however when an FFP forms part of a development application on private land (not primarily related to use of forest resources) the FFP can be made available for public comment and be reviewed under the provisions of the Land Use Planning and Approvals Act 1993 (LUPAA 1993). This process gives a rare opportunity to scrutinise the adequacy of management prescriptions applied by the Forest Practice Authority through the Forest Practice Code. In such cases it is also informative to consider any different management actions applied by other government agencies involved as part of the planning system.

This representation considers a single development application within the Huon Municipality in 2015 which contained a FFP (TJW0292-01) The development application was referred to as PSA-1/2014 and was considered by the Huon Valley Council (HVC) under the Esperance Planning Scheme 1989. As the proposal required a planning scheme amendment it was first assessed by the HVC before being put out to public comment and proceeding to the Tasmanian Planning Commission. The passage of this proposal through the planning scheme highlighted the different levels of consideration that the Forest Practice Authority, the local council and a state agency gave to two areas of priority environmental impact; the clearing of an area of *Dry Eucalyptus ovata* (DOV) forest and the potential disturbance of the breeding cycle of White-bellied Sea Eagles.

In addition to the FFP the council also required a number of additional environmental investigations and imposed a number of conditions on the draft permit designed to lessen the impact of the clearing of vegetation. The Policy, Conservation and Assessment Branch (PCAB) of the Department of Primary Industries, Parks, Water and Environment also provided advice in relation to environmental impacts of the proposal.

The development proposal was for a bulk transport facility situated adjacent and within the Huon River at Waterloo Bay. The development required an access road which required the removal of approximately two hectares of vegetation including the removal of approximately 0.5 ha of *Dry Eucalyptus ovata* (DOV), a threatened vegetation community under state legislation. The access road was also within a kilometre of two White Bellied Sea Eagle nests. A FFP was included as part of the proposal and was used in the first instance as a basis for the management of ecological values potentially impacted by the vegetation clearing.

### *1. Disturbance or clearing of Dry Eucalyptus ovata (DOV) vegetation community*

DOV is listed as a threatened native vegetation community (TNVC) in Schedule 3A of the Nature Conservation Act 2002. Where any clearance and conversion of a TNVC is proposed a FFP is required. Any proposed action to clear a TNVC should follow a mitigation hierarchy where the first consideration is whether impacts can be avoided or minimised, followed by remedying of the impacts on site, followed by mitigation options within the footprint area of the development, followed by offsetting some or all of the residual impacts, as appropriate. This decision tree is consistent

with the principle of sustainable development required by the Resource Management and Planning System (RMPS) for Tasmania. Sustainable development is defined in the RMPS as “avoiding, remedying or mitigating any adverse effects of activities on the environment.”

Similarly the FPA requires that TNVC should be protected and any FFP that includes the clearance and conversion of a TNVC will not be certified by the authority unless they are satisfied certain conditions exist that are specified in the *Forest Practices Act 1985* in section 19(1AA). Clearance is only allowed if one or more of four circumstances are present:

- (a) the clearance and conversion is justified by exceptional circumstances;*
- (b) the activities authorised by the forest practices plan are likely to have an overall environmental benefit;*
- (c) the clearance and conversion is unlikely to detract substantially from the conservation of the threatened native vegetation community;*
- (d) the clearance and conversion is unlikely to detract substantially from the conservation values in the vicinity of the threatened native vegetation community.*

The FPA is also required under the *Forest Practices Act 1985* section 4C(fb):

*"to implement the State Permanent Forest Estate Policy, being the policy referred to in, and developed in accordance with, Attachment 9 to the Tasmanian Regional Forest Agreement made between the State and the Commonwealth on 8 November 1997."*

The State Permanent Forest Estate Policy provides that:

*"Threatened forest communities -- all viable threatened forest communities are to be maintained other than in those circumstances, where conversion will not substantially detract from the conservation of that Forest community or conservation values within the immediate area."*

The FPA can exercise discretion in relation to the clearing of TNVC where:

*"substantial private benefits will accrue from the conversion of the native forest area and the forest area represents only a small fraction of the area of that Forest community in the immediate area, and:*

*-- the loss of the area does not substantially detract from the nature conservation values of the Forest community in that particular area; and -- the remainder of the Forest community is adequately protected in the immediate area to ensure its maintenance as part of the Permanent Native Forest Estate."*

Overall it is clear that the clearance and conversion of TNVC can only occur after consideration of alternatives to clearing, and where avoidance is not possible the amount of clearing will be minimal and does not substantially detract from the nature conservation values in that immediate area.

### *1.1 FPA management of DOV*

Both the FFP (TJW0292-01 July 2014) and an Ecological Assessment and Report by Van Diemen Consulting (March 2014) recognised the project as proposed required the clearance of 0.5ha of DOV as part of a total vegetation clearance of 1.9ha. The DOV community only covers a relatively small proportion of the site (<3ha of 19ha) and is positioned at the far end of the site. The FFP states the road;

*"location & designed so as to minimise threatened communities."*

It is assumed this is a typographical error and the intent was to minimise impacts on threatened communities. The FFP does reduce the impact of the clearing by reducing the width of clearing for the road to 15m within the DOV compared to 20m width through the remainder of the site. However inspection of the plans and consideration of the requirements for access for the development indicate that alternate road routes could have substantially reduced if not completely avoided the impact. There is no justification as to why the road alignment could not be external to the DOV community and a reasonable buffer zone *E. obliqua* forest be retained between the DOV and the road. A further prescription imposed by the FFP was the retention “where possible” of *E. ovata* trees over 300mm diameter. This prescription was in relation to retention of swift parrot feeding resource rather than the conservation of the vegetation community.

Clearly the FFP had been certified by the FPA, inquiries to the FPA as to why it had certified a plan which required the clearance of a TNVC revealed that the plan had been approved under Section 19(1AA) (c) and (d).

No justification was provided for this assessment by the FPA.

The FPA approval of the plan indicates what amount of clearing may be considered "substantial" and would detract from the overall conservation outcome of the DOV community at least for this bioregion. The proposed clearance of 0.5ha is part of an isolated patch of the community of approximately 1.5ha. The proposal falls within the D'Entrecasteaux bioregion and in 2010 of 200ha of DOV only 40ha was reserved. The 200ha of DOV represents 2.9% of the state total of 7000ha. DOV communities have declined by 97% in Tasmania since 1750 from 232,000ha leaving only 3% of this vegetation community extant. Only 960ha (13%) of the 7000ha remaining has reserve status based on 1/1/2015 reporting under the RFA. This vegetation community therefore is not only severely depleted in terms of previous extent but also is under represented in terms of protection status. Based on the available data from the RFA as at 1/1/2015 DOV in the D'Entrecasteaux bioregion has only declined in area by 1.2ha over a 19 year reporting period. Therefore a decline of 0.5ha in the bioregional context of 200ha remaining would seem to represent a significant proportion of recent clearing rates in a single event.

This FFP was certified using section 19 1AA (c) it is therefore informative to consider similar situations that have been considered in the past by the Forest Practices Tribunal. A 2009 appeal against FPA by Hazelwood Pty Ltd (D4/2009) considered the definition of "substantial" in relation to the clearing of two TNVC communities. The tribunal noted the dictionary definition of "substantial" as - "not inconsiderable or merely nominal". In relation to the 2009 decision the tribunal considered the potential clearance of 12ha of *Eucalyptus ovata* (DOV) in the bioregional context of 700ha (~1.7%) and the clearing of 4ha of *Eucalyptus Amygdalina* forest on sandstone where 24,000ha remained in the bioregion (~0.05%) as capable of subtracting substantially from the conservation of either of the TNVC within the meaning of the Section 19(1AA) (c) of the *Forest Practices Act 1985*. The proposed clearance in the present proposal of DOV of 0.5ha when 200ha remain in the bioregion represents 0.25% which falls within the range considered significant in the 2009 Tribunal case.

### *1.2 Policy Conservation and Assessment Branch (PCAB) management of DOV*

The PCAB provided advice to council in relation to clearance of DOV in May 2014. The PCAB advice allowed the clearance of a "relatively small area" of DOV as part of the proposal. There is no indication as to what size this "small area" is or where it is situated. The PCAB also provided statistics about the prevalence (2000ha) and reservation status (500ha) of DOV in the "Huon Council Municipality" and concluded that if the amount of clearing is small then it would be "unlikely to represent a significant impact to this vegetation community within the regional or municipal context".

The advice provided to the council by PCAB substantially overestimated the amount of DOV in the municipality by an order of magnitude (200ha actual versus 2000ha stated) and the amount that was reserved by more than 12 times (40ha actual versus 500ha stated). Clearly this overestimation would be critical in any consideration of what amount of clearing would potentially detract substantially from the conservation status of the DOV. The PCAB where also unsure as to the actual amount of DOV that would be cleared and advises the council that if the "cleared area of DOV is small" then it would be "unlikely to represent a significant impact".

The PCAB advice gives no indication as to whether avoidance of the clearing was investigated or if mitigation or offsetting measures should be applied.

### *1.3 Huon Valley Council (HVC) management of DOV*

The local council accepted the need to remove the 0.5ha of DOV as part of the proposal. There is no indication that the council assessed whether avoidance of clearance could be achieved whilst still allowing the development proposal to proceed. The council did require that the clearance of trees >30cm diameter be avoided where possible during

construction of the road and accepted an additional plan to offset the loss of the TNVC by the establishment of 0.4ha of onsite offsets.

Although the offsets policy of the southern region councils in Tasmania require a high level of assessment including a vegetation condition survey and an assessment of the likely ecological impacts of the proposal on ecological values none of these were produced as part of the assessment.

The offsets policy of the council includes a number of principles which include:

**Principle 1. Offsets are the final component of a mitigation hierarchy**

*Impacts should in the first instance be avoided; alternatives to minimise and remedy must also be thoroughly addressed and only in the event that these actions cannot achieve satisfactory results for biodiversity conservation, impacts should be offset.*

**Principle 2. Offsets must deliver a net benefit for biodiversity conservation**

*When taken as a whole, the benefits of an offset action(s) must be greater than the scope of the adverse impacts on biodiversity values.*

**Principle 3. Offsets must aim to be permanent**

*An offset must be permanent. As impacts on biodiversity are generally permanent, any offset to compensate must also be permanent, as must its management. As far as practical, permanency entails security from revocation or circumvention in perpetuity, an ability to monitor and enforce the offset and on-going management.*

**Principle 4. Offsets must aim to be ‘like for like’**

*Those values adversely impacted upon by the approved action, should be the same as those values benefitting from the offset. Only where an offset will provide a net gain for a biodiversity value of equal or greater conservation significance in the region, can the impacts upon one value be offset by a net benefit to another value.*

Without a condition assessment it is difficult to see how principles 2 and 4 could be achieved. Similarly the offsets policy requires that when TNVC is cleared an offset ratio of 1:3 to 1:5 should be applied. In this case the actual area of offset is only 80%(i.e. less than 1:1) of the cleared area. In addition the offset area proposed was a long thin reserve (400m by 10m) on a disused dirt road. The position of the offset directly adjacent to an active apple orchard and a proposal to establish five times the density of trees present in the natural forest were not assessed in terms of principle 2, 3 and 4.

As part of the planning process the HVC acknowledged the concerns raised in public representations in relation to the removal of DOV and considered the option of relocating the road to an area not containing this community. They concluded that;

*“the relocation of the access to avoid disturbance to the DOV is not supported”*

The councils position was that the addition of the offset area in conjunction with the protection of the remaining 0.97ha of DOV together with a buffer area of *E. oblique* in conjunction with ongoing management of all these areas would;

*“enable a net benefit for biodiversity conservation by improving the reservation status, condition scoring and knowledge of the existing TNVC with measurable outcomes.”*

In a further submission to the Tasmanian planning Commission the HVC stated;

*“impacts to the DOV as a result of some proposed road construction activities on the access road were unavoidable, and suitable control measures were necessary to minimise these impacts through consideration of the access road route and avoidance of impacts to DOV where possible.”*

No information was supplied as to how consideration of alternate less damaging road routes were assessed against the potential impacts on ecological values.

Overall the HVC took the position that the road alignment was not able to be altered and hence the removal of 0.5ha of DOV was unavoidable. They concluded that with the mitigation measures proposed (protection of the remaining DOV, establishment of a 0.4ha offset and ongoing vegetation management) that a “net benefit for biodiversity conservation” would occur and that in conjunction with other commitments in relation to other environmental issues this would;  
*“aim to ensure the development occurs in an environmentally sustainable manner ....”*

## 1.4 Synopsis of the approach to management of DOV

Of the three government agencies only two (the FPA and HVC) provided management actions in relation to the clearance of DOV. The CAB provided advice to the HVC and left the final decision to the council. None of the agencies appeared to use the primary conservation principle of avoidance or minimization of the clearing other than the FPA by reducing the road width within the DOV from 20m to 15m. The HVC and FPA required the additional mitigation of avoiding the loss of *E. ovata* trees greater than 30cm diameter where possible but this was primarily to retain feeding habitat for swift parrots. The HVC required the implementation of an onsite offset of 80% of the area cleared. No assessment of the appropriateness of the offset in terms of “like” for “like” or a net gain in biodiversity where considered.

Overall the approach of all three agencies appears inadequate; no justification is given by any of them as to why avoidance is inappropriate in this case. It appears that both the FPA and PCAB are unconcerned about the loss of TNVC even when it is highly depleted at both the regional and state level and is severely under represented in reserves. This position seems at odds with the principles of the Permanent Forest Estate Policy. No justification was given for this position by the FPA, this seems extraordinary given that the clearing of 0.5ha of this TNVC in a single event represented a significant proportion of the previous clearing of 1.2ha over a 19 year period. The PCAB provided information to the HVC that was factually incorrect and misrepresented the current status of the TNVC by overestimating both the extent and reservation status of this vegetation community (by at least a factor of ten) in the Huon Municipality. It is unclear whether the HVC was aware of this error or if the PCAB would have come to a different conclusion if the true areas of this community were considered.

The HVC took a similar, but unsupported, view to the FPA and PCAB that the clearing of the DOV was unavoidable. However they did consider that the impact of the clearing should be mitigated through additional vegetation management measures, including the reservation of the remaining DOV and offsetting of some of the loss. The HVC considered that these mitigation measures would lead to a net gain in biodiversity values and would be consistent with sustainable development principles. Unfortunately the offset area appears to be inadequate in size and there is no data to make any quantitative assessment as to the quality of the vegetation the offset is replacing. Similarly there is no analysis as to whether the site chosen is likely to lead to equal or greater biodiversity values of the cleared area and over what time frame. Certainly in the short term the new offset site would not adequately replace the environmental services provided by the extant vegetation community.

## 2 Disturbance of the Breeding cycle of White-bellied Sea Eagles

White-bellied sea eagles are sensitive to disturbance during the breeding cycle from June to December with particularly high sensitivity to disturbance from July to September. The effects of disturbance are cumulative and increase with the intensity, proximity and duration, as well as with elevation above the nest. Prescriptions in relation to forest activities in the vicinity of nests are outlined in the *Fauna Technical Note 1 Eagle Nest Searching, Activity Checking and Nest Management*. A fundamental management action is halting of forestry activity during the breeding season (June to December) within a 1km line of sight of the nest. Apart from leaving a reserve area around any nest (of approximately 500m radius) the most critical management procedure is the minimization of disturbance. The *Fauna Technical Note 1* provides:

*“Timing: Forestry activities must not occur within 500m or 1km line-of-sight during the breeding season of either species.”*

The development application proposes to use large barges that can be loaded from a jetty attached to the site which will then be transferred to normal bulk commodity ships. The proposal envisages a maximum throughput of 500,000 tonnes of material per annum and equates this to an average 27 truck deliveries a day over 300 days. Apart from the actual construction phase of the proposal (which could be timed to avoid the Sea Eagle breeding season) the development would require considerable numbers of truck movements per day throughout the year as well as the loading of barges with front end loaders.

## 2.1 FPA management of Sea Eagles

The Environmental Assessment considered two previously identified nests approximately 500m to the south-east of the site. They also performed a nest site survey within the development site and found no additional nests. A map produced in the Environmental Assessment modelled the 500m buffer area and the 1km line of sight for the nearest nest and noted that a “small part” of the development area is visible from this nest within the 1km line of sight area.

The FPP states that “*the road is outside of the 1km line of sight*” there is no additional information supplied but it is presumed that the same analysis used in the Environmental Assessment was used in the FPP. The FPP does provide for some retention of vegetation to provide screening where the road enters the mapped line of site area “*within the designated line of sight section*”.

No Additional measures were prescribed for Sea Eagle management.

As part of a Right to know request a more detailed report of the Sea Eagle issue was provided by the FPA. In this analysis it was stated;

*“The proposed road line passes through a small section of modelled “line of sight” ...It is questionable as to whether this section is in fact within line of sight of the nest in reality given local topography and screening provided by standing forest.....”*

Overall the FPA considered that the “*vast majority*” of the road was outside the 500m/1 km line of sight and that apart from retaining some screening trees in the area closest to the nest no additional measures were required.

## 2.2 PCAB management of Sea Eagles

The PCAB also used the Environmental Assessment modelled line of site analysis and concluded that;  
*“there was little if any direct line of sight of the proposed access road from the eagles nests. On that basis no specific mitigation measures are recommended by the PCAB.”*

Additional advice from the PCAB was provided to the council after concerns were raised in representations during the planning process. The PCAB recommended that a further survey of any nest sites between the proposed development site and the known nests be undertaken prior to construction works, and that annual nest activity checks be undertaken. The PCAB did not indicate how any additional nests sites that might be found would be considered as part of the development plan, or whether a lack of breeding success in the known nests once the development was in place would lead to additional management prescriptions.

The PCAB analysis took a very similar approach to the FPA, which was to consider the land based impact of the construction and use of the road. The PCAB also provided advice on the marine impacts of the development requiring the HVC to obtain a marine environmental survey and impact assessment of the proposal prior to approval. This was to include potential impacts on threatened species. Although the environmental survey and impact assessment was provided it confined its analysis of threatened species to underwater fauna. It did not consider the potential impacts of activities on the marine based infrastructure (jetty and barges) on the Sea Eagles breeding success. This was a critical omission as the 1 km line of sight analysis had clearly indicated that a portion of the jetty and most of the moored barges would be within sight of one of the nests. The intended use of the jetty was the loading of material from dump trucks onto the barges using front end loaders, an activity that would be almost exclusively done during the day. No assessment of this activity was done either as part of the terrestrial or marine impact reports.

## 2.3 HVC management of Sea Eagles

The HVC was satisfied with the management prescriptions for Sea Eagles provided by the FPP and PCAB. They did not recommend any additional management measures and included the additional ground survey for nests and annual nest activity checks recommended by PCAB as part of the permit conditions. Again no consideration was given to what

would happen if additional nests were found or breeding failed. Similarly there was no acknowledgement that a substantial amount of heavy machinery activity on the marine based portion of the site would be within the line of sight of a Sea Eagle nest.

## *2.4 Synopsis of the approach to management of Sea Eagles*

The Environmental assessment provided the basis for most of the actions for Sea Eagle management; it completed a nest search within the site and identified two known nests sites within 1 km. In addition it provided a line of sight analysis for the known nests. Unfortunately the nest search did not extend into the area between the development site and the area where the known nests occurred leaving the possibility that another nest may be present closer to the development.

The FFP acknowledged the possibility that part of the road was potentially within the line of sight based on the Environmental assessment line of sight modeling and “ground profile analysis provided by the FPO” of one of the nests. Overall the FPA thought it “questionable” that the road was visible from the nest but recommended retaining existing vegetation between the road and the nest as a precautionary measure. Further justification for retaining the road in the proposed alignment was added by arguing that should the road actually be visible to the nest;

*‘it is difficult to anticipate that the proposed road might have any significant bearing on the productivity of the nesting at this site, given the array of agriculture and aquaculture activities regularly carried out in the line of sight of the nest.’*

This statement is not supported by any actual observations or assessment of these activities. Most of the aquaculture activities occur to the south of the nests and although within sight of the nests is predominately more than 1km away. The agricultural land in the vicinity of the nest appears to be used for grazing which would have a relatively low level of mechanized activity. The proposed development is anticipated to have an average 27 truck deliveries a day over 300 days per year equating to on average greater than 50 truck movements though the section of road per day. Given the requirement that the facility prohibit heavy vehicle movements at night all these truck movements would occur during daylight hours.

The proposition that the activity generated by the development is unlikely to be detrimental given the other activities already present also is completely opposite to the advice given in the *Fauna Technical Note 1* where it is clearly stated that;  
*“The effects of disturbance are cumulative and:*

- *increase with intensity;*
- *increase with proximity;*
- *increase with duration;....”*

In addition no consideration was given of the potential for disturbance though activities occurring at the jetty and barge area that also were within the 1km line of sight.

The PCAB generally followed the advice given by the FPA but later included an additional search for nests and annual nest activity checks. There was no advice given as to how to respond if additional nests were found closer to the site or if nest activity declined. The PCAB did require a marine impact assessment for all listed species but failed to pick up the omission of Sea Eagles from this assessment when clearly the 1 km line of sight showed a significant overlap of the facilities loading area.

The HVC endorsed all the recommendations of the FPA and PCAB. No further prescriptions were required.

Clearly all the agencies were satisfied that the proposed road construction and use would be unlikely to disrupt the breeding success in the adjacent Sea Eagle nests. The more detailed report from the FPA however is not definitive on whether the road would be visible from the nests stating;

*It is questionable as to whether this section is in fact within line of sight of the nest....”*

If there was some doubt a more precautionary approach would have been to re-align this “small section” of road to the north to avoid any possible overlap with the modelled line of sight area. None of the agencies appeared to consider this as an option.

### *3 The role of public participation in the protection of environmental values.*

Public participation is key component of the Resource Management and Planning System of Tasmania (RMPS). Objective 1(c) of the RMPS is;

*“to encourage public involvement in resource management and planning”*

In the case of vegetation clearing generally an FFP is required however unless the clearing is directly related to a development proposal covered by a planning scheme no or very little public involvement is permitted. Any FFP produced for forest activities alone only allows some comments from adjacent landholders. Even when a clearing proposal is covered by planning scheme provisions the opportunity for public comment is only required when the development is not permitted or discretionary under the zoning provisions of the planning scheme. It is only in these limited circumstances the public can be involved in the decision making process. This situation also gives an opportunity to critique any proposed management prescriptions endorsed by the planning authority.

In circumstances where a TNVC is impacted there are three government agencies (FPA, PCAB and the council) involved in providing advice on the potential impact of the development on the environmental values of the site as well as surrounding areas. This gives a rare opportunity to compare the advice and management response of the three agencies to Federal, State and local legislative requirements. Finally in cases where public involvement is allowed it is useful to consider whether such involvement positively influences the final environmental outcomes and potentially provides alternative views that make the process more robust.

In the case outlined in this report two key environmental assets were potentially impacted; a threatened native vegetation community and the breeding success of an endangered species. The approach of the three agencies was generally similar for the White-bellied Sea Eagle but differed significantly for the TNVC. The public participation in the approval process was also significant by highlighting deficiencies in the initial sets of conditions proposed around the protection of these assets. It is a pity that in this case the approval process was abandoned when it became clear that the council had erred in allowing the development to enter the planning approval system when it had no jurisdiction over part of the proposal.

A critical component in the sustainable development of land and water is the principle of a hierarchical decision tree of avoid, mitigate and offset when environmental values are threatened. In the present case there was little attention given to the possibility of avoiding the majority of impacts by re-aligning the road away from the areas of environmental value. All the agencies failed to consider other options however it was only the council that gave a clear statement that the impacts were “unavoidable”. No justification for this statement was given.

It is significant that just prior to the assessment process being curtailed that the proponent for the development requested that the council consider the relocation of the road to significantly reduce the area of TNVC (DOV) that would need to be cleared. The justification for this was that the road alignment had been identified as part of the FFP *“to minimise the grade”* and that the consideration of offsets and other landscape management actions came later. The proponent was of the opinion that although rerouting the road away from the DOV community would incur some further expenditure that this may be achievable at a reasonable cost. Clearly the decision of the proponent to reroute the road was driven by the level of concern raised as part of the public consultation process as it was clear that the council was still of the view that the impacts on DOV by the road construction were unavoidable.

The public consultation process also revealed some significant deficiencies in the advice given by some agencies and lack of consistency between stated policies and actual management prescriptions. In at least one case factually incorrect information was exchanged between agencies which could have seriously diminished the consideration of the impact a proposed action would cause. In other cases the proposed mitigation measures did not compare favourably or were at odds with the stated policy position. Similarly some decisions appeared inconsistent with historic trends and legislative requirements. None of these issues were tested as the Tasmanian Planning Commission hearings were halted prior to their consideration.

The proposed development at Waterloo Bay was not approved and currently no new proposal has been considered by the council, however the FFP (TJW0292) is still active and does not expire until the 30/06/2017. Under the current

legislation there is no opportunity to review or comment on the FFP as a standalone permit. This is the case even when it is apparent that some of the environmental impacts of the road construction were able to be avoided (based on the developers admittance that a less destructive route was always a possibility) and information subsequently supplied by the FPA revealed that it is “questionable” as to the level of impact the road will have on Sea Eagles. Similarly the impact of activities on the marine based portion of the development overlooked by one of the Sea Eagle nests was also not considered.

The public consultation process provided substantive and important criticism in relation to the protection of key environmental assets. They also provided a critical evaluation of proposed management actions designed to protect natural values against the principles of sustainable development and the RFA. Finally they prompted the developer to reconsider the more damaging components of the project and suggest a re-evaluation in order to substantially reduce their impacts.

## **What improvements could be made to the five-yearly RFA review process to make it more outcomes focused?**

Increase the level of public participation in the Forest Practice System.

Allow an opportunity to review FFP's in the light of new evidence or policy positions.

Provide a mechanism to audit FFP's against actual environmental outcomes over the medium to long term including an assessment of the effectiveness of previous FFP's in a regional and state context.

## **How could the governments improve outcomes-focused monitoring and reporting on threatened species and biodiversity, as part of extending the Tasmanian RFA?**

Increase the level of public participation in the Forest Practice System.

Implement tighter controls on the clearance of Threatened Native Vegetation Communities and regionally rare forest types.

Increase the level of availability of FFP's and provide clear reasoning in relation to management prescriptions particularly in the cases that involve Threatened species and Threatened Native Vegetation Communities.

Provide opportunities to improve communication between the FPA and local government.

Increase the scrutiny of forest clearing in terms of impact on biodiversity and areas cleared on private land that is currently not captured by the FFP framework.