

2 August 2023

Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

Via email: tpc@planning.tas.gov.au

Dear recipient,

Draft Tasmanian Planning Policies - Tasmanian Planning Commission Review

Thank you for the opportunity to provide a submission on the Draft Tasmanian Planning Policies (TPPs) for the Tasmanian Planning Commission's review and report to the Minister of Planning under section 12F of the *Land Use Planning and Approvals Act 1993* (LUPAA; the Act). This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of Tasmanian local government in collaboration with our members; all 29 councils.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. Where a council has made a direct submission to this process, any omission of specific comments made by that council in this submission should not be viewed as lack of support by LGAT for that specific issue.

Our review of the Draft TPPs reveals unresolved issues that impact their performance in meeting the TPP criteria.

Please contact Michael Edrich if you have any questions or would like further information, at michael.edrich@lgat.tas.gov.au or 03 6146 3740.

Yours sincerely,



Dion Lester
CHIEF EXECUTIVE OFFICER

LGAT Submission: Draft Tasmanian Planning Policies – Tasmanian Planning Commission Review

Introduction

We undertook close consultation with all 29 Tasmanian councils, with a high response rate. This included a well-attended workshop with local government planning professionals to inform our response to the draft Tasmanian Planning Policies (TPPs). Interest in the TPPs from local government is extremely high, and councils have been calling for the development of them to fill the policy gap at the heart of Tasmania’s planning system [since at least 2018](#).

Development in Tasmania has suffered from very limited policy and strategic guidance material to inform development regulation and support a functional planning framework. This gap creates a significant uncertainty that councils must navigate to achieve their communities’ objectives, and that development proponents must navigate to achieve their individual goals. For councils, complete and functional TPPs may be the most important piece of planning reform for over a decade.

There are number of things the current TPPs do correctly and well. Councils strongly support the Tasmanian Government’s efforts to fill the critical policy and strategic gap in our planning system, notwithstanding critiques of some elements.

However, our consultation work strongly suggests that a majority of councils are of the view that the current TPPs are not yet fit for purpose and anticipate significant implementation problems in their plan making work and in meeting their communities’ development aspirations with the TPPs as drafted. As such, the TPPs need more work before they should be considered meeting the TPP criteria and the Objectives of the Resource Management and Planning System of Tasmania.

There are some councils of the view that the TPPs are good enough to proceed, subject to minor amendments, given the critical need for state planning policies now. We acknowledge this perspective, but the majority of councils are telling us that they are not acceptable in their current form.

The finalised TPPs will have a profound effect throughout the planning system. They will flow through to all the concurrent planning reforms, setting the framework for the Regional Land Use Strategies (RLUSs) updates, the State Planning Provisions (SPPs) Review and changes to council’s Local Provisions Schedules. Overlooking current drafting errors in the TPPs and allowing them to flow through the system and the current reform work will generate yet more changes and reform work to resolve.

Given this, it is prudent to invest maximum efforts in getting the TPPs right now, to minimise the impact of errors on the dependent components of the planning system and on planning in Tasmania.

This is the first time Tasmania has attempted anything like the TPPs, a comprehensive suite of policies on development and planning for the state. We do not yet have a clear picture of how they will operate to best effect and efficiency. Developing our proficiency in this will take some devoted effort to achieve through iteration and continual improvement.

General Issues

Clarify functional role and effect of TPPs

The key purpose of the TPPs is not only to express Tasmanian Government policy in how Tasmania develops, but to clearly guide plan-making that will achieve this policy intent by informing how development plans are prepared, as described in Figure 1 below.

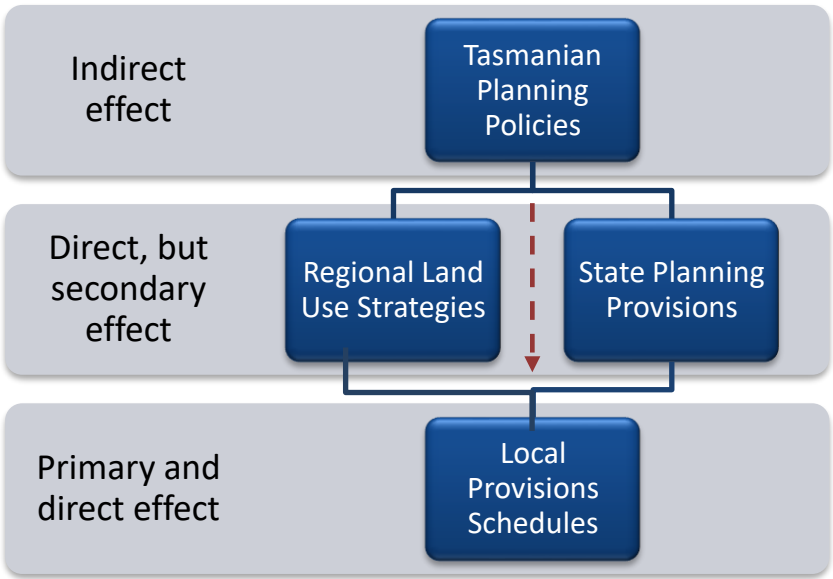


Figure 1. Relationship between planning instruments

To achieve this purpose the TPPs need to be written as clearly and efficiently as possible. They need to provide a clear pathway for the preparation and approval of plans and plan amendments. For efficiency, they need to be drafted in a way to make it clear when plans (or amendments) are unlikely to be approved, to help prevent wasted efforts in amendment applications, and optimise their success rate.

The current drafting of the TPPs is imprecise in a number of areas. The applicability of some statements and policies are too general and broad. This puts the onus of plan development to find ways to demonstrate why a statement or policy may be relevant or should not apply.

The drafting should be reviewed to tighten up language, improve precision of intent, remove non-functional statements, and be practical and effective. The review should look at each section and policy statement, asking the following questions:

1. What will this statement mean for plan-making? For RLUSs, for SPPs, for LPSs?
2. What is the effect of the statement in regulating development?
3. What will the plan maker need to do to comply, and is this practical and reasonable?
4. Does this statement enable and clarify local plan making, or make it ambiguous and uncertain?

These are matters of a technical nature relevant to the application of the TPPs to its subordinate statutory planning instruments, pursuant to section 12F(2)(c).

These are matters we raised in previous submissions (see attached). It is disappointing that this input has not been considered to integrate State development policy generation with local planning implementation. This consideration is part of the LUPAA Schedule 1 Objectives, in particular:

- The sharing of responsibility between the different spheres of Government – Schedule 1, Part 1, section 1(e).
- To require co-ordinated strategic planning by State and local government – Schedule 1, Part 2(a).
- To require land use and development planning and policy to be easily integrated with various policies at State, regional and municipal levels; and – Schedule 1, Part 2(d).

Overall objective – managing growth and change

Development is about change. This can be change occurring to us, such as population growth, or our response to circumstances or change itself. Development is a response to change, allowing us to adapt, but it also represents change for local communities.

However, change can be very challenging for some people and some communities. The TPPs need to be written and designed to facilitate local planning to appropriately deal with change. We believe this requires a more consciously acknowledgment of change and the importance of development in allowing planning to help communities manage change. The TPPs can do more to address this issue and elevate the issue of change to help facilitate good plan making. This would also better align the TPPs with the Schedule 1 objectives around fair, orderly and sustainable use and encourage public involvement in resource management and planning.

Specific Issues

Settlement policy – deflates regionalisation aspirations

Councils hold concerns for the draft Settlement Policy, as it appears to be an impediment to regionalisation goals and the development of smaller settlements.

For example, at 1.1.3(4) the draft Policy seeks to “*prioritise growth of settlements that are within the higher tiers of the settlement hierarchy*”. This appears to run counter to the development aspirations of many smaller communities across Tasmania. Other related studies and strategies have reported on the opportunity that exists both for the regions to grow and the ability of the regions to accommodate the growth we are experiencing.

Instead, the Settlement Policy should outline criteria by which settlements are identified for growth, not merely for their existing characteristics but for their potential for development to accommodate growth and deliver unique, Tasmanian lifestyle opportunities.

The Policy needs improved definition and description around settlement challenges to enable the good outcomes, such as describing where development should be located. The Policy also does not properly distinguish between different types, or broad categories, of development. For example, the intent of the Policy might be to discourage incremental accretion of isolated, site-by-site rezonings, such as under Part 3B of the Act, without a broader and coherent strategic planning intent to back them up.

Indeed, the TPPs could better express the methodology and process of settlement planning it intends. That is, the rigour it seeks when geographically determining locations for growth and development.

Nevertheless, this Draft Policy is perceived as a threat to the growth and continued viability of many settlements across Tasmania and their communities, particularly smaller settlements or even those living in the vicinity of a larger settlement or city.

Developing such an important and underpinning strategy needs to be done with much greater integration with stakeholders, particularly with political representatives, technical experts and the community to reflect their aspirations.

Further attention is needed to consider how this Policy helps Tasmania meet its Schedule 1 objectives.

Infill Development

The TPPs need to be improved to properly support infill development. For example, all discussion of regulatory supply is stated in terms of land, such as “land release” and “land supply” (see pages 10, 11, 13, 16, 41, 42). This implies and favours geographic expansion and fringe greenfield, rather than consolidation and infill, and will affect plan-making decisions. The language should instead refer to release or supply of “development capacity”, which is neutral to infill or greenfield development.

Indeed, infill has been very challenging for Tasmania to fully achieve and optimise, so an infill section within the Settlement Policy would help to support this. This is particularly important with TPPs that seek to implement settlement or urban growth boundaries.

Drafting such a section should draw heavily from the Department of State Growth’s [Toward Infill Housing Development Report](#)¹ and seek to further its recommendations in planning policy.

Infrastructure contributions – critical to support sustainable development

Infrastructure contributions are a fundamental tool for helping to deliver infrastructure to support development and place-making. Infrastructure contributions help to activate development and achieve our land use planning objectives. It does this by fairly distributing the cost of the infrastructure networks and upgrades needed to accommodate growth between development proponents, as the primary beneficiaries of the infrastructure, to allow them to proceed with their developments in a fair, orderly and sequenced manner.

Many of the statements related to infrastructure throughout the TPPs refer to maximising use of “...available capacity...” within existing infrastructure. This approach consumes infrastructure network capacity without equitably distributing the cost and creates the conditions for the first mover problem. In this case development halts due to proponents waiting for a competitor developer to upgrade the infrastructure that they will then rely upon for free.

Tasmania lacks a coherent and integrated system for fairly distributing the cost and demand that new development imposes on infrastructure networks. The TPPs are an opportunity to start building the effective system that we need to underpin our land use planning framework and achieve local community and state development and LUPAA Schedule 1 objectives.

¹ Available at this page: https://www.stategrowth.tas.gov.au/policies_and_strategies/populationstrategy

This is a gap that the Tasmanian Government must address. Development is not sustainable without a robust, best practice infrastructure contributions regime, and this is why contributions schemes are so common and growing in other states. To read more on the topic, please see [LGAT's Infrastructure Contributions Discussion Paper](#)².

Recommendations for the TPC

We have been urging close engagement with local government in the development of the TPPs from the very initial outset of work. Unfortunately, engagement has been insufficient resulting in TPPs with a number of issues that will impact local government when it comes to plan-making and the State in achieving its development objectives. We do acknowledge the attempts to ameliorate, but these were late in the process and resulted in minimal amendments.

It is our view that the best course of action is for the TPC to recommend more work on the TPPs. The most important issues to resolve are:

1. Settlement Policy – drawing on closer consultation with local government, refine to:
 - resolve a position on regionalisation goals that are consistent within the Tasmanian Government policy aims, and preferably between State and local government
 - include consideration of infill development to reflect the recommendations of the *Toward Infill Housing Development Report*.
2. Infrastructure contributions – review to:
 - set sustainable infrastructure funding principles
 - properly support best practice local government infrastructure contributions regimes to activate development.
3. Improve TPPs functional role and practical effect – review to make plan-making clearer and more certain by removing ambiguous and impractical statements and clarifying the applicability of statements and policies to matters and circumstances.
4. Anticipate change – review to support and set the stage for better adaptive responses and change management.

² Available here: <https://www.lgat.tas.gov.au/lgat-advocacy/reports-and-submissions>

20 December 2022

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Dear Brian

Draft Tasmanian Planning Policies

Thank you for the opportunity to provide comment on the Draft Tasmanian Planning Policies (TPPs).

The forthcoming Tasmanian Planning Policies represent a vital and foundational step in developing the critically needed strategic framework of Tasmania's planning system. We welcome the progress of this work.

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. We have consulted our members closely to inform this submission. We also encouraged councils to make direct submissions to this process to reflect their particular experience. Any omission of their issues in this submission should not be viewed as lack of support by LGAT for those specific issues.

Please contact Michael Edrich, Senior Policy Officer, if you have any questions or would like further information at michael.edrich@lgat.tas.gov.au or (03) 6146 3740.

Yours sincerely



Dion Lester
CHIEF EXECUTIVE OFFICER

1. Introduction

LGAT has consulted its members on the Draft Tasmanian Planning Policies through online workshops, direct engagement and written submissions. We received a wide range of feedback from the majority of our 29 member councils, including both formal submissions and informal advice.

Responses to the draft TPPs were undeniably mixed. Councils overwhelmingly welcomed the progress on the strategic elements of Tasmania's planning system and support the Tasmanian Government finally becoming closer to entering this important space after decades of absence and ambiguity. However, there is significant concern about the effectiveness of the current draft TPPs and very serious concern at the absence of any meaningful two-way engagement with the sector over the 12 months of policy development. These are both issues that LGAT warned of in its submission to the Scoping Paper.

The key points revealed from council feedback and our analysis were:

1. Tasmanian Government efforts to fill the strategic gap are overwhelmingly welcomed and supported, irrespective of any critiques.
2. Despite LGAT advocacy, engagement is virtually absent, shutting out the most critical implementors of planning reform, being local government, and causing a variety of acceptance issues and serious concerns about effectiveness.
3. Despite LGAT advocacy, effectiveness remains a concern, needing priority action, particularly on:
 - a. Clarifying the intended role and regulatory effect of the TPPs.
 - b. Minimising over-prescription that hinders the strategic influence of the TPPs.
 - c. Ensuring the TPPs enable balanced decisions, not checklists for refusals.
 - d. Devolving implementation guidelines to subordinate guiding documents to improve TPPs' strategic effect.
 - e. Testing the draft TPPs to gauge intended effect using known cases or mock scenarios.
4. Communication and accessibility of TPPs need improving – deliver a development narrative for Tasmania.
5. Specific improvements:
 - a. Infrastructure contributions – growing best practice
 - b. Water quality – growing best practice

- c. Consultation – growing best practice
- d. Regulatory efficiency – support efficient regulation over red-tape reduction

2. Overwhelming Support for Tasmanian Government Efforts to fill The Strategic Gap

In our close consultation with our membership, it was clear that the sector overwhelmingly welcomes the Tasmanian Government's efforts to fill the very significant strategic gap in Tasmania's planning framework. For too long, development in Tasmania has suffered from a lack of strategic guidance material to inform development regulation across the state and support a functional planning framework. This gap creates a high degree of uncertainty that councils must navigate to achieve their communities' development goals, and that development proponents must navigate to achieve their individual goals.

This has resulted in councils bearing the full brunt of public criticism on development problems, despite their efforts to appropriately manage development pressures and create Tasmania's future communities. This has also meant that councils have not felt supported by the Tasmanian Government in providing positive, constructive development outcomes for Tasmanians. This is not a healthy situation.

Consequently, local government understands better than any the importance and significance of the strategic-level planning reforms, beginning with the Tasmanian Planning Policies. This is why councils are very keen to help the Tasmanian Government develop these policies, to make them as successful as possible for the Government and councils (as well as developers and all communities), and to prevent them from being delayed again, as were the previous set of draft TPPs from 2017.

To maximise success of the TPPs, the Tasmanian Government should recognise and capitalise on local government's interests here by leveraging council planning experience and expertise to develop the TPPs. This can easily be done through much closer engagement and working collaboratively to deliver results for Tasmanians. LGAT is eager to assist here.

3. LGAT's Scoping Paper Submission

LGAT noticed and appreciates the incorporation of many of the points we made to the Scoping Paper, some of which were challenging to achieve.

We asked that the TPPs lead with climate change, yet embed actions within relevant policy areas for implementation effectiveness. It's clear our point has been taken on board in the drafting of Climate Change Statements in each section.

We asked that the TPPs help Tasmania get ready for the substantial growth task we currently face, including housing. The draft TPPs look to do this through sections on Settlement (1.0), Growth (1.1), and Housing (1.5), as well as a light mention of developer contributions in 5.1 Provision of Services.

We asked for attention to development standards and urban design, and note section 1.6 devoted to Design, as well as other actions.

We proposed a structure for the TPPs that might assist in articulating a development narrative for Tasmania. We note the document structure closely resembles the narrative structure we proposed.

We recognise and appreciate all the efforts taken here and the challenge in assimilating it all. We believe that the draft TPPs meet the broad scope of issues, at a topic level, very well. This should be applauded.

4. Consultation Gap Creating Acceptance Issues

In LGAT's Scoping Paper submission, we stated that for the TPPs, success depends on consultation, emphasising the need for deep and genuine engagement, over basic-level 'informing' or 'consulting'. However, since the consultation for the Draft TPPs Scoping Paper over a year ago, there has been less than that, with no two-way engagement undertaken with local government in developing the draft TPPs. This has seriously impacted the reception of the draft TPPs with local government, is already generating consternation and acceptance issues, and has resulted in serious concerns that the draft product would have significant issues in effect and not be fit for purpose.

This is an unfortunate situation, particularly because it is so avoidable. This must be remedied without delay.

There are a range of problems with charging ahead on a project without properly connecting with those impacted by it. These include:

- 1) **Unfit for purpose** – delivering a product that is not properly designed to meet the right needs.
- 2) **Resisted or rejected** – the product might have been potentially adequate, but due to not being communicated properly amongst key stakeholders (especially implementors), it generates acceptance issues and resistance, or even rejection.
- 3) **Unowned and ineffective** – even if the product is potentially adequate and received without resistance, without meaningful engagement the product development process can fail to generate a sufficient level of ownership in the product, so fail to be effective and properly implemented. Again, this is

particularly a problem created for those implementing the product, and we have seen this issue play out in other components of the Planning Reforms;

- 4) **Divergent and entrenched positions** – progressing well ahead of stakeholders, particularly the lead implementors, can create a reluctance to change in the product authors. This can derail subsequent consultation as authors defend the product and resist feedback and present a barrier to further improvements. This is particularly the case when divergence develops between authors and key stakeholders (again, especially implementors). Effective engagement helps keep divergence small and resolvable, particularly with the stakeholders’ expectations.

The TPPs are a statutory communication device for the development aspirations of all Tasmanians, implemented almost entirely through local government development regulation. That’s a large stakeholder group of interests, but the specific role of local government makes councils critical – entirely fundamental – to their success. The TPPs development process must engender a sense of ownership in those tasked with applying it. That is now at risk.

As we stated in our 2021 Scoping Paper submission, we ask again that:

Consultation must be deep and genuine, rather than basic ‘informing’ or ‘consulting’. The Tasmanian Government needs to build an internal sense of the experience across different sectors, in engaging with, and implementing the Tasmanian planning system. We urge the Tasmanian Government to increase its focus on engagement as the TPPs are being drafted, and before the statutory consultation phase of the Tasmanian Planning Commission. We recommend targeted workshops and would be very happy to assist in informing high quality engagement with local government to draw on the sector’s expertise.

To be clear, we are again offering help in engagement and forecasting that success depends upon this. We do this for other Tasmanian Government agencies, which invariably generates vast improvements on results.

Recommendation: Urgently rectify the consultation gap and deliver proper, two-way engagement opportunities for local government planning expertise.

5. Effectiveness: Generally

As raised in our Scoping Paper submission, the effectiveness of the TPPs remains a concern. At that stage, our concerns were broadly about potential TPPs being inefficient and overburdened, causing diminished relevance and effect. This is generally still the case, however, close consultation with councils has allowed us to add much more detail to this than we could 12 months ago.

5.1. Effectiveness: Clarify Intended Role and Regulatory Effect of TPPs

To best guide the effect of the TPPs, the document needs to clarify the role and regulatory effect it is intended to have and was designed for. This will sharpen the document's focus and also assist future review of the TPPs for performance.

For example, the TPPs will be a statutory instrument under the *Land Use Planning and Approvals Act 1993* (LUPAA), so the core role of the document will be in regulating development, which is ultimately done through planning approvals. This development regulation role should be made explicit, possibly under Page 2 Implementation. This will help to filter out or focus more aspirational objectives that go beyond development regulation that would diminish the effect of the TPPs.

Recommendation: Focus the role of TPPs on development regulation; filter out statements that do not contribute to this role.

Page 2 Implementation section is not decisive in how to use the TPPs and is not helpful for practitioners. Specifically, stating that *"there is no order or hierarchy"* and *"the TPPs should be considered in their entirety with all relevant strategies applying equally"* provides no guide and hinders effectiveness. This section should be reworked to enable more certain use and application of the document in practice, including how to resolve internal conflicts between TPPs. We suggest several options for achieving this, discussed subsequent sections.

Recommendation: Remove non-functional implementation statements and replace with greater clarity for usage and application.

The regulatory effect and how it will be used should also be described and presented clearly within the document. This includes not only the cases where the TPPs effect is clear and explicit under legislation, but also where it is not clear and explicit, or where the document may be referred by the courts for informing a decision. The following areas of effect should be described in the document:

- 1) Regional land use strategies
- 2) Tasmanian Planning Scheme (TPS), including:
 - a) State Planning Provisions (SPPs)
 - b) Local Provisions Schedules (LPSs), both Part 3A and 3B
- 3) Development applications and permits, particularly:
 - a) Combined permit and LPS amendment applications (section 40T)

- 4) Court scenarios, such as:
 - a) Planning appeals to the Tasmanian Civil and Administrative Tribunal (TASCAT; sections 61-62);
 - b) Elevation to higher courts.

The effect of the TPPs on some of these items are not immediately obvious. For example, there are some differing opinions among professionals on whether the TPPs would be referred to in TasCAT appeals for typical applications (section 51 & 57). However, there is a view that higher court decisions would be more likely to rely on the TPPs. Court rulings are notoriously difficult to predict and can't be excluded (outside of legislative amendments), so development of the TPPs should anticipate that the TPPs would be used in a range of court scenarios.

As we understand them, the TPPs are intended to inform plan-making, so only indirectly inform development assessment. Nevertheless, it seems clear that there will be cases where the TPPs will be directly referred to in development assessment and permitting, particular through the courts. This is material for how the TPPs are constructed.

Recommendation: Make the intended regulatory effect of the TPPs explicit.

5.2. Effectiveness: Minimise Over-Prescription to Improve Strategic Effect

A majority of planners felt that most of the TPPs were too prescriptive, stepping beyond policy intent and strategic direction and into specific measures and outcomes. The risk here is that over-prescription will make the TPPs too inflexible and difficult to apply, or prescriptions impossible to achieve.

Another risk is that over-prescription will too heavily constrain local planning, limiting councils' ability to meet their communities' development goals. Councils need for a policy framework that supports and enables them in their place making work, rather than overly constrain them.

Recommendation: Review all sections of the draft TPPs for over-prescription and remove.

5.3. Effectiveness: Enable On-Balance Decisions, Not Checklist Failures

Along the same theme, councils are concerned that the draft TPPs as currently constructed would tend to be used in checklist or tripwire fashion, where any one failure against a policy component could cause rejection of proposals (usually plans and their components). This would cause the TPPs to have a reductive, process-of-elimination

effect on plan making, suppressing innovations from local government that strive to make the best out of imperfect land development scenarios.

Councils already report challenges in achieving approval (or at least a constructive, enabling pathway forward) with their plan proposals put to the Tasmanian Planning Commission (TPC). A further statutory document like the TPPs, although critically needed, presents a further risk of refusal.

LGAT is looking to investigate this further to examine the evidence, but as an anecdote, one council reports rejection of affordable housing and inclusionary zoning proposals by the TPC, based on fairly academic and theoretical grounds, leaving the council with no tool to adequately address the housing affordability crisis in their municipality. This is a barrier to our development goals, and we understand this is not isolated. Providing clarity in the TPPs on their interpretation and application can address this.

Councils need the TPPs to be an enabling tool that facilitates them delivering for their communities. It should not preclude or hinder councils innovating in plan making or developing novel planning approaches or tools. Rather, the TPPs should point the broad strategic direction and support councils in developing their approaches.

It is possible that this was the intention of the *“no order or hierarchy... strategies applying equally”* statements of Page 2 Implementation. However, those statements do not contain sufficient information to achieve this. Some detailed thought is needed here to properly support on-balance decision making.

Recommendation: That the TPPs develop methods to support on-balance decision-making and discourage single-issue conflicts derailing plan development.

5.4. Effectiveness: Devolve Implementation Guidelines to Separate, Supporting Guides

A majority of councils felt that the draft TPPs were both too bulky and unwieldy, and that the Implementation Guidelines in each section needed significant development. A good way to resolve this is to remove the Implementation Guidelines from the main TPPs document and express them through a suite of separate TPPs Implementation Guideline documents.

There are several advantages to doing this. It will make the TPPs more focused and high level, improving their strategic policy effect. This will simplify the TPPs and improve their overall development narrative and communication to Tasmanians.

Good implementation can be very iterative as we learn from what is and is not working, so it will allow for easier and more targeted updating and improvements, supporting continual improvement and detailed focus within each policy area.

These supporting guidelines would be subordinate to the TPPs themselves. These documents need not be strictly statutory to have meaningful effect in the planning system.

Recommendation: Remove Implementation Guidelines from the main TPPs document and further improve and develop them in separate, subordinate documents.

5.5. Effectiveness: Test draft TPPs with known cases or mock scenarios to gauge intended effect

The potential effectiveness of the draft TPPs can be tested using mock scenarios or known cases to see if it is likely to achieve its intended effect. Councils have concerns and seek to understand more about what the draft TPPs will mean once brought into effect.

As mentioned above, councils are reporting issues moving certain plan proposals through the TPC, hindering achieving local development goals. The nature and extent of this issue needs to be fleshed out, but this is severely frustrating for the councils involved, particularly during this moment of unprecedented and sustained growth in Tasmania. It is difficult to meet the needs of this growth when your innovations are being rejected on theoretical, rather than practical and place-based, grounds.

This provides an opportunity to test the draft TPPs to see if they are practical and will meet the needs of communities. These cases of rejection by the TPC can be examined for merit before being used as test cases for the draft TPPs. Cases relating to managing our current growth pressures, such as housing or infrastructure contributions, are particularly pertinent today.

Recommendation: That the SPO undertake some scenario testing of the draft TPPs to gauge likely effect, especially using known cases.

6. Communication and Accessibility Improvements: A Development Narrative for Tasmania

Councils report finding the draft TPPs overly complex, limiting its accessibility for the wider community. There is a balance here, but unnecessary complexity limits expressing what the TPPs are trying to achieve.

Despite being a technical planning document, there are ways to improve the TPPs communication and accessibility to make them as widely accessible and usable as possible. This will increase the TPPs strategic effect on the planning system.

In our Scoping Paper submission, we proposed a structure that is intended to support a planning or development narrative for Tasmania. In reality, it is a simple SWOT analysis structure (slightly varied), where:

- Strengths are our values to be protected and maintained (e.g. Tasmania's natural heritage)
- Weaknesses are our growth challenges that we need to prepare for (e.g. housing)
- Opportunities are our productive economic opportunities to be realised (e.g. tourism and energy)
- Threats are our environmental hazards that require resilience building (e.g. flood, bushfire).

Although basic, the intention was to convey meaning of what our planning work is about. However, it is the narrative that is important, both for usability, as well as for conveying the strategic intent of the TPPs, helping communities engage with them.

We note that the TPPs have begun to do this through its structure and the use of climate change statements. This can be further developed through the simplification suggestions above (remove over-prescription, separate implementation guidelines), but also through introductory context setting (Tasmania's development history and current situation) and communicating underlying themes (what this context means for developing our future).

Lastly, this narrative must remain broad and statewide and avoid over-prescription, to allow room for councils to develop their own local narratives, expressed through their own plans and strategies.

Recommendation: Further grow a development narrative for Tasmania through accessibility improvements, introductory context setting, and expressing underlying themes.

7. Specific improvements

7.1. Infrastructure Contributions (5.1 Provision of Services)

The inclusion of an explicit statement supporting infrastructure contributions is noted and welcomed. There is opportunity here to improve this and related statements to support better infrastructure delivery to facilitate development.

The TPPs statements supporting infrastructure charges (e.g. Strategy 5), and section 5.1 Provision of Services generally, needs to:

- For strategy 5, the statement needs to include expanded and intensified uses for contributions, not just ‘new’ uses.
 - Best practice infrastructure contributions of other states apply their charges to any proposal that increases demand on infrastructure networks, regardless of whether infrastructure servicing the site already exists.
 - This supports densification and uplift objectives for infill situations, not just peripheral greenfield development.
- Support broad-based, incremental demand accounting and charging to avoid an infrastructure and funding gap at the time of need.
- Address the land development issues associated with the first mover problem that we identify in our Infrastructure Contributions Discussion Paper¹, including:
 - Delayed development
 - Unfair cost distribution
 - Subsidisation of beneficiaries
 - Substandard network infrastructure solutions
 - Impacted infrastructure networks
- Support maturation of our infrastructure contributions arrangements from basic agreements, to more advanced general charging based on infrastructure planning.

For example, we suggest the following strategies:

5. *Facilitate developer contributions to service new, expanded and intensified use and development to be transparent, fair and reasonable, providing for equity between users.*
- 5a. *Facilitate infrastructure contributions that address the first mover problem by moving beyond basic agreements and developing best practice incremental general charging systems supported by more advanced infrastructure planning.*

We would be pleased to meet to discuss our Discussion Paper and best practice infrastructure charging to explore how we can deliver a better system for Tasmania.

Recommendation: Improve support for best practice infrastructure contributions systems through understanding developer and council needs.

¹ See: <https://www.lgat.tas.gov.au/media-and-publications/reports-and-submissions>

7.2. Water Quality (2.2 Waterways, Wetlands and Estuaries)

LGAT has consulted with local government stormwater and water quality experts. It is considered that some statements in section 2.2 Waterways, Wetlands and Estuaries do not properly support progress towards best practice. For example, section 2.2.3, item 4(e):

Use and development located on land in, or around, waterways, wetlands and estuaries will... not significantly increase the rate and quantity of stormwater or pollutants entering the water

This statement leaves us vulnerable to incremental degradation of our water systems, appears out of alignment with the *State Policy on Water Quality Management 1997*, and does not support our economic clean and green image. Councils are keen to support our state objectives for maintaining environmental values and improving water quality outcomes, within their own capabilities. LGAT is supporting councils with tools to better manage stormwater and water quality, so we do not want to see these movements towards best practice undermined in strategy.

Recommendation: Remove or reword environmental values statements that undermine or do not support council efforts to progress towards best practice, within their own capabilities.

7.3. Consultation (7.1)

Including a section on consultation is valuable and supported. To add to this, we recommend including statements that encourage:

- Consultation early in the proposal development and design process to begin resolving issues early and improve development outcomes.
- Greater proponent involvement and led consultation, rather than merely a government task. Other Australian states put more emphasis on proponent involvement in planning and responsibility for consultation for their own proposals.

Recommendation: Include statements encouraging earlier, proponent-led consultation.

7.4. Regulation (7.3)

The broad objective of 7.3.2 to avoid over-regulation is worthwhile and supported. However, this takes some work to evaluate processes and achieve and should not be mandated without this detailed evaluation. We also recommend focusing on regulatory efficiency measures, rather than the simplistic and often counter-productive red-tape reduction approach.

Therefore, in 7.3.3 we recommend rewording Strategies 1 and 2 as follows:

1. Support opportunities to facilitate use and development that has little or no impact to proceed without requiring planning approval, or with minimised planning requirements.
2. Support opportunities to improve regulatory efficiency by optimising planning regulation to the amount necessary to reflect, manage and be proportionate to, the level of impact caused by the use and development.

Recommendation: Reword strategies to support planning authority regulatory efficiency over imposed red-tape reduction

LGAT also supports the objective of moving toward regulatory consistency and harmonisation, but not at the expense of losing resolution and capability for local place making. Local place making is a critical task of local government and the reason many people choose to work for or stand for their council. Limiting councils' ability to provide for their communities impacts those communities and the local government workforce.

Therefore, while LGAT supports the development of consistent plan making tools and the voluntary development of capacity toward best practice, such as through template statutory instruments and policies, LGAT does not support mandating perfect and unremarkable uniformity in plan making. Councils support unique and diverse communities so need to apply their role specifically. Mandating complete uniformity damages local place diversity, whereas consistent statutory tools and templates that allow room for local application and adaptation can provide meaningful support to councils and local communities.

A critical side effect of imposing statewide uniformity, especially in local plan making, is that local councils and communities lose a sense of ownership in their plans and place making authority. Triggering this disengagement from local place making should be avoided at all costs, which is why we always support empowering councils towards consistent best practice, rather than imposing it.

Therefore, we do not support Strategy 3 unless reworded as follows:

3. Support the development of consistent regulatory tools that allow for appropriate local application to diverse development circumstances.

Recommendation: Reword strategies to support local place-based application of consistent statewide tools, rather than imposing rigid, uniform application of statewide mandates.

24 November 2021

Department of Justice
Office of the Secretary
GPO Box 825
HOBART TAS 7001

Via email: haveyoursay@justice.tas.gov.au

Dear Sir/Madam

Scope of the Draft Tasmanian Planning Policies

Thank you for the opportunity to provide a submission to the Department of Justice's Scope of the Draft Tasmanian Planning Policies (TPPs).

This submission has been prepared by the Local Government Association of Tasmania (LGAT) on behalf of the local government sector. LGAT is incorporated under the *Local Government Act 1993* and is the representative body, and advocate, for local government in Tasmania.

We have consulted our member councils and make the following broad observations:

1. **A solid basis** – there is a general level of support with the draft suite of topics and issues. This indicates that the Tasmanian Government has done a good job of broadly capturing a significant proportion of the issues necessary for a successful set of policies. Our submission makes suggestions on how this base can be extended.
2. **Effectiveness remains a concern** – without explicit, direct links to development regulation there is a concern among councils, and in the planning profession, that the TPPs may become an aspirational 'wishlist', and do not make a tangible difference to development outcomes. Rather than 'standing the test of time', the TPPs must help Tasmania address our challenges and seize the opportunities. Careful attention is needed to ensure they are drafted to be effective and successful.
3. **A valuable opportunity to modernise** – it is close to 30 years since the inception of the Resource Management and Planning System of Tasmania (RMPS). While the framework has served us adequately and the themes still relevant, it is difficult to determine the extent to which the objectives have been successfully met in development. The revised TPPs are an opportunity to bring the objectives to better

effect through updating our strategic framework with modern planning, development knowledge and best practice.

4. **Climate change is the greatest test** – whatever the final form of the TPPs, climate change will be the greatest test to the development our towns, cities and communities, and our planning system. The drafting of the TPPs is a major opportunity to set the framework for adapting to the 21st century’s most significant challenge.
5. **Success depends on consultation** – local government will be largely responsible for implementing the TPPs through their planning schemes and have extensive planning and development expertise. It is critical that this resource be drawn upon, to avoid undermining the effectiveness of the TPPs. The current consultation is an adequate start, the success of the TPPs will hinge upon the quality of engagement with professions involved in development.

We urge the Tasmanian Government to be ambitious in developing the Tasmanian Planning Policies and fully draw upon the expertise that exists in the local government sector and beyond. This needs meaningful cross-sector engagement that includes industry, academia, and especially the daily implementors of the planning system, local government.

An effective strategic framework

Tasmanian councils are pleased that work on the Tasmanian Planning Policies has begun. However, there is a level of concern amongst councils and in the broader planning profession that strategic documents that have limited links to development assessment may have limited effectiveness. We outline strategies below to avoid this.

Efficient and relevant

Strategic documents can easily be overburdened with aspirational statements that are outside the document’s primary purpose or ability to affect. We recommend that the TPPs are drafted to be efficient and concise. The TPPs should be drafted to be focused on what they can do and their purpose in the planning system. That is to inform the drafting of two statutory planning components: the Tasmanian Planning Scheme and the regional land use strategies.

Councils want the TPPs to provide ambitious aims for our communities, but they must also be meaningful and inform planning practice. To keep the TPPs sharp and focused it may be useful to apply this criterion.

Based on principles and contemporary best practice

Local government wants planning policies that are based on up-to-date and contemporary principles and good practice. Drafting the TPPs is an opportunity to progressively modernise our 30-year old planning framework, using the lessons learn from other jurisdictions. The sector supports the Tasmanian Government to be ambitious on this aspect.

Drawing on principles applied in other states, specifically Queensland and South Australia, the following set of guiding principles drafted by a member council provide a sound basis:

Example Principles

Efficient – regulation is the minimum necessary to address impacts and the level of assessment and public engagement is proportional to the potential impacts and scale of development. External impacts to environment or infrastructure are considered.

Integrated – well considered and expressed policy, coordinated systems that are efficient and effective, coupled up deliver mechanisms and upgrading of infrastructure or public spaces.

Outcome focused (effective) – performance outcomes are clearly expressed and supported by placed-based objectives, focus on sustainable development and support of employment and economic growth.

Accountable – reflect balanced community views and aspirations, clear and transparent regulation, access to information is simple and direct.

Positive – wellbeing and resilience are promoted, contemporary challenges are addressed, high quality design and urban renewal is required, plans use clear, concise and positive language to describes outcomes to be sought.

The existence of the current State Planning Provisions should not prejudice or constrain the construction of the TPPs. The TPPs are intended to inform and guide the development of the SPPs (which now refers to their update), not the other way around.

Meaningful cross-sector engagement

To modernise our strategic planning framework and achieve an effective and relevant set of policies will require meaningful engagement across sectors. Individual council submissions have provided finer detail that requires consideration by the Tasmanian Government, in particular issues around urban form and design, and climate change.

Councils have considerable expertise in implementing planning development regulation, so are a valuable resource for how effectively principles might translate into practice. Industry can provide an important reference for the effect of these principles on

development. The University of Tasmania provides an ideal source of the latest academic knowledge to modernise Tasmania's planning principles and practice and need to be actively engaged.

Consultation must be deep and genuine, rather than basic 'informing' or 'consulting'. The Tasmanian Government needs to build an internal sense of the experience across different sectors, in engaging with, and implementing the Tasmanian planning system. We urge the Tasmanian Government to increase its focus on engagement as the TPPs are being drafted, and before the statutory consultation phase of the Tasmanian Planning Commission. We recommend targeted workshops and would be very happy to assist in informing high quality engagement with local government to draw on the sector's expertise.

Content

The Tasmanian Planning Policies should be drafted to ready our state, through the planning system, for 21st century challenges. In LGAT's view, the top three issues are: climate change, Tasmania's growth and housing.

Lead with climate change, embed action

The Tasmanian Government has taken a bold approach with climate change through the revised, draft Climate Change (State Action) Action Bill, that seizes opportunities and adapts to its challenges. The TPPs should do the same and lead on addressing climate change. Leading with climate change will enhance the relevance of the TPPs and move toward embedding climate action in the planning system.

Tasmanian councils have a resolved position in support of urgent and coordinated action on climate change. At the July 2019 LGAT General Meeting, Tasmanian councils resolved the following:

That the LGAT call upon the Federal and Tasmanian State Governments and Parliaments urging them to:

- a) Acknowledge the urgency created by climate change that requires immediate and collaborative action across all tiers of government;*
- b) Acknowledge that the world climate crisis is an issue of social and environmental injustice and, to a great extent, the burden of the frontline impacts of climate change fall on low income communities, vulnerable groups and future generations; and*
- c) Facilitate emergency action to address the climate crisis, reduce greenhouse gas emissions and meet or exceed targets in the Paris Agreement.*

Bold action on climate change within the TPPs, in collaboration with councils, is consistent with this motion. LGAT recommends that the Tasmanian Government conduct a workshop with local government planning and climate change professionals to delve into what this should look like.

There is also an important nuance in how we the TPPs should approach this issue. Climate change has a long history of being approached ineffectually, promising some and delivering far less. In our experience, this often occurs when climate change is treated as its own standalone problem requiring specific and separate treatment. We believe that to take proper and effective steps to addressing climate change, actions must be embedded in everyday tasks and operations.

For the TPPs, this means that climate change must be embedded within other policies, rather than a standalone policy that may be ineffective as a result of its disconnect from the functional areas. All the effective actions related to climate change should be embedded in other policies, such as those to do with hazards, or transport planning, or settlement planning. Any planning operation or task with implications for climate change adaptation or mitigation should contain a provision relating to climate change.

A separate, standalone policy on climate change may still be needed to communicate to Tasmanians that it is being treated seriously and addressed. However, that policy should link to and communicate the provisions embedded across other policies.

Ready for growth

Tasmania's growth and economy continue to boom, and this is not expected to relent as borders closures during the COVID-19 pandemic begin to ease. This growth is good for Tasmania, but comes with pressures and challenges that we must plan for and address. The TPPs should adopt policy settings that ready Tasmania for growth.

Most of the pressures will be on, and addressed by, infrastructure. Managing this growth requires infrastructure planning and delivery to cater for it, and this requires adequate financing. Developer contributions, or infrastructure charges, are an effective way to finance infrastructure delivery. They reduce the pressure that growth imposes on council rates, as they are directly linked to the rate and scale of growth. As a growth-ready policy setting, the TPPs should be constructed to support the implementation of infrastructure charging.

Address housing, acknowledge limitations

Access to secure, affordable housing is a critical issue across Australia, but particularly acute in the smaller housing and construction markets of Tasmania. As we ready ourselves for continued growth in Tasmania, this problem will not dissolve on its own and planning

must take up its role to ensure supply-side issues are dealt with. This means strategic planning that reflects supply constraints and timely amendments to statutory planning instruments, including Local Provisions Schedules and the regional land use strategies.

However, the TPPs should make it clear that planning is part of addressing the housing affordability issues we are experiencing, not the panacea, and that there are limits to what it can do. This is increasingly being recognised across Australia¹. Indeed, local planning can do nothing about the demand-side factors of the housing crisis with these almost entirely the result of national policy settings within the hands of the Australian Government. Planning can also not change private market factors, such as land banking or reluctance to sell in a rapidly escalating market. Without effective national action on demand-side factors or measures to reduce sale reluctance, state and local planning will continue to come under pressure to simply supply more land, at any cost.

Acknowledging the limits to planning will avoid overpromising to the community and help achieve the right policy settings across all levels of government.

Planning techniques, urban form, design, and standards

Tasmania is booming now, yet this has not always been the case, with many of our planning and development practices, techniques and standards developed in a low-growth environment. There is a need to ensure these components and their supporting resources are up to the task of managing today's growth.

Therefore, the TPPs need to address the planning and urban design practices needed to plan for growth and harmoniously integrate new development into existing settlements. Issues that should be covered include:

1. Structure planning – as an evidentiary requirement for rezoning applications.
2. Urban design and standards – streetscape and landscaping principles and objectives.
3. Urban form – particularly hierarchies of urban components, such as:
 - settlement hierarchies
 - road hierarchies and transport nodes
 - commercial/activity centre hierarchies
 - park and open space hierarchies.

¹ For example: <https://www.smh.com.au/national/nsw/planning-alone-will-not-fix-sydney-s-housing-affordability-crisis-20210914-p58rhv.html>

This area is detailed and complex. We urge the Tasmanian Government to pay particular attention to engaging with councils on this matter. Again, workshops would be ideal, and we would be happy to assist in engaging with the sector.

Structure

Consistent with our call to be ambitious with the TPPs, we suggest that the Tasmanian Government consider innovative approaches to how the TPPs are grouped and structured.

We offer the following structure, grouped into themes that connect with the points in our submission, as an indicator of how the TPPs might be constructed to provide a planning narrative for Tasmania. In addition to climate change being embedded, liveability and health must also be embedded across policy themes. Other issues from the Scoping Paper not included below would fit into the identified themes.

| Policy Theme (or Topic) | Topics (or Issues) | Comments |
|------------------------------------|--|--|
| 1. Ready for climate change | <ul style="list-style-type: none"> Climate change | Leading policy Sets up framework for action in other policies Communication only – reference action under other areas Avoids standalone, unintegrated actions |
| 2. Ready for growth | <ul style="list-style-type: none"> Settlement planning Infrastructure planning Housing affordability and security Urban design and standards Planning for healthy communities | Climate change mitigation embedded, e.g. in efficient land use and transport Integrated land use and transport planning All forms of infrastructure Support for charging schemes Hierarchies Health and wellbeing |
| 3. Maintaining our values | <ul style="list-style-type: none"> Environmental values Environmental amenity Coastal access and development Heritage values | This policy theme area combined Environmental and Heritage protection Climate change adaptation embedded Indigenous and non-indigenous cultural heritage |
| 4. Resilient to threats | <ul style="list-style-type: none"> Bushfire hazard Flood hazard Coastal hazards and sea level rise Landslide hazard | Climate change adaptation embedded across all topics |

| Policy Theme (or Topic) | Topics (or Issues) | Comments |
|-----------------------------------|--|---------------------------------|
| 5. Realising opportunities | <ul style="list-style-type: none"> • Economic development • Energy • Tourism • Agriculture • Resources • Industry and productivity | Climate change actions embedded |
| 6. Best practice planning | <ul style="list-style-type: none"> • Principles • Consultation and engagement • Strategic planning • Plan review and maintenance • Evidence in planning | |

Overall

Thank you for the opportunity to comment on the scope of the draft Tasmanian Planning Policies. We believe the Tasmanian Government has made a solid start that provides the basis for more ambition. There is a need to address concerns around relevance and the effectiveness of the end product. We urge that the Government lift the level of engagement during the drafting phase and before the statutory consultation phase to ensure the best outcome. This is particularly important for local government, who will be the authors of future Local Provisions Schedules and implementors of the TPPs outcomes through development assessment.

If you have any questions or would like further information, please contact Michael Edrich at michael.edrich@lgat.tas.gov.au or on (03) 6146 3740.

Yours sincerely



Dion Lester
CHIEF EXECUTIVE OFFICER