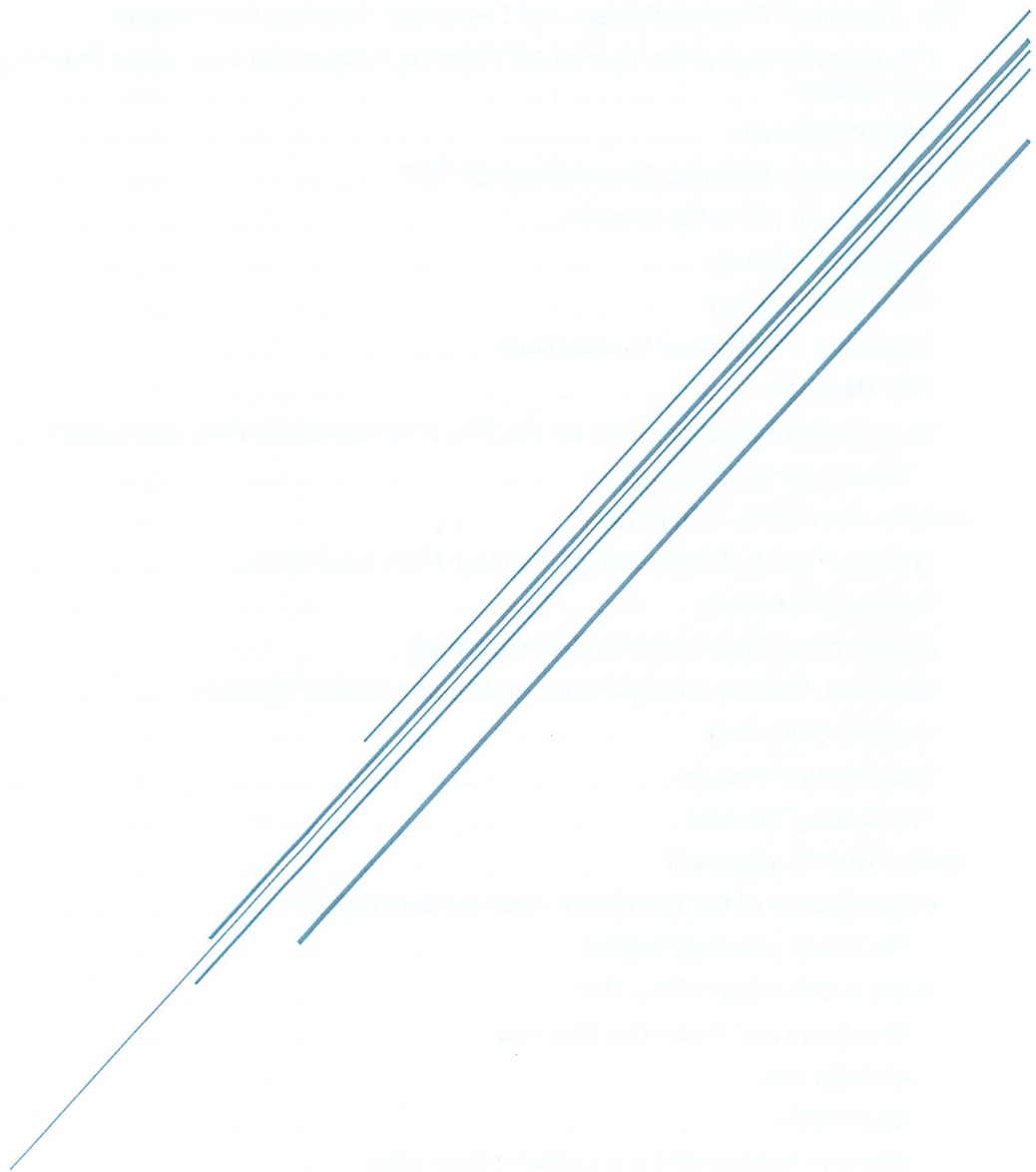


INDEPENDENT REVIEW OF THE TASMANIAN PLANNING COMMISSION

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Forward Thinking
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Executive Summary

This Independent Review (the Review) of the role and function of the Tasmanian Planning Commission (TPC) in the Tasmanian Planning System and its governing legislation, the *Tasmanian Planning Commission Act 1997* (the Act), has been commissioned by the Tasmanian Government Department of Justice (DoJ).

The Review has been commissioned in the context of reforms since 2009-10 that have changed the regulatory and policy framework for the Tasmanian Planning System and extended the role and function of the TPC within it. These reforms are now close to being fully implemented and, in view of the changes they have involved, it is an appropriate time to take stock and consider the future role and function of the TPC in the Tasmanian Planning System.

The Terms of Reference (ToR, Box 1) below guided the Review.

Box 1 Terms of Reference

The Department of Justice will conduct a review of Tasmanian Planning Commission and the *Tasmanian Planning Commission Act 1997 (the Act)* to examine:

1. The structure of the Commission and its functions and powers under the Act to ensure that:
 - a. The Commission is able to continue to perform its role as an independent decision maker and advisory body, in a fair, just, efficient and effective manner;
 - b. The Commission's statutory functions are not compromised by its membership including representatives of Stage Agencies or bodies that are proponents of matters that the Commission's functions extend to;
 - c. The ongoing structure of the office of the Commission and its resourcing and work allocation is reflective of its extended role in the planning system as an independent decision maker and advisory body on the new components of the Tasmanian Planning system; and
 - d. Its functions are not undermined by the demands of historically designated roles under other legislation that might be better reallocated to another agency or body, in particular the State of Environment Reporting function.
2. The conflict of interest provisions in the Act and the process of delegation to ensure they operate transparently and meet public expectations;
3. The ongoing structure of the office of the Commission, including the staffing profile and required capabilities;
4. The roles, functions and appointment provisions of the Executive Commissioner to ensure that they:
 - a. Provide for the appointment of an appropriately qualified person;
 - b. Align with the State Service expectations of a senior executive;
 - c. Provide flexibility of appointment; and allow for the effective management of the Commission, the Commission's office and State Service employees and contractors, in accordance with applicable legislation and State Service policy.

The Review

The Review is forward-looking and has considered what is working well and could be improved to ensure the TPC can perform its roles and functions in a fair, just, efficient and effective manner. The Review is not intended to be a legalistic, line-by-line, or root-and-branch style review of the TPC and Act, a review of its performance in meeting statutory assessment timeframes, nor whether the regulatory and policy objectives of the Tasmanian Planning System are being achieved by the TPC in performing its roles and functions.

The Review has considered a range of materials including:

- Targeted engagement across the Tasmanian Government, local councils, professional and industry associations, and environment and community groups during two site visits to Hobart and Launceston in January and March 2020 and a series of phone interviews, as well as a public submissions process in April and May 2020.
- Meetings with the TPC Commissioners, staff, and observing TPC public hearings held online
- Findings and recommendations of previous reviews into the Tasmanian Planning System, the TPC and its predecessor organisations, and the role and function of independent statutory planning bodies in other jurisdictions across Australia and internationally

Over 100 people representing almost 50 organisations and the range of different interests that are balanced in land use planning decision-making were engaged during the site visits and phone interviews. A total of 296 submissions were received and published on the DoJ website. A list of organisations engaged, and a summary of submissions is at Appendices A and B. Quotes provided by stakeholders have been included throughout this report to provide more detail on specific issues raised.

The Tasmanian Planning Commission

The *Tasmanian Planning Commission Act 1997* establishes the TPC as an independent statutory planning body with the following roles and functions:

- advice and support to the Minister in relation to the performance of their functions and exercise of powers in relation to land use planning under the *Tasmanian Planning Commission Act 1997* or any other Act;
- advice to the Minister in respect of matters related to land use planning;
- plan for the coordinated provision of transport, and of infrastructure, for land development;
- advice to local government in relation to planning schemes under the *Land Use Planning and Approvals Act 1993* and the functions of local government under that Act;
- review and advise the Minister in respect of state and regional strategic land use planning matters.

In a practical sense, these roles and functions translate to:

- Assessment and determination of Local Planning Schemes and Scheme Amendments, and Combined Scheme Amendments and Development Permits, (and the equivalent processes as part of the new Tasmanian Planning Scheme) as well as State and Regionally Significant projects
- Reviewing draft management plans for state land and other reserves such as national parks
- Providing advice on land use planning issues to the Tasmanian Government and local councils through fact sheets and guidelines, including the preparation and exhibition of Local Provision Schedules, Local Planning Schemes and Scheme Amendments, and Combined Scheme Amendments and Development Permits
- Reviewing and advising the Minister and councils on planning regulations and policies including the State Policies, Tasmanian Planning Policies, the Tasmanian Planning Scheme inclusive of State Planning Provisions and Local Provision Schedules, Regional Land Use Strategies (RLUS), and Local Planning Schemes
- Coordinating planning for land use, transport, and other infrastructure across the Tasmanian Government to support delivery of strategic planning initiatives such as the RLUS

Most Australian jurisdictions have at least one independent statutory body operating within their respective planning systems. These bodies have different roles and functions, including developing and reviewing land use regulations and policies; advising governments, councils, and applicants on land use and infrastructure planning issues; and assessing and determining planning schemes, rezoning proposals, and development applications against established land use, infrastructure, and other policies and regulations.

The potential for conflicts of interest exists naturally in any and all planning systems because land use planning decision-making involve windfall gains. It is widely accepted that, in order to reduce this potential, those who are involved in developing planning regulations and policies should not be involved in assessing and determining the merits of planning matters against those regulations and policies. These roles of regulatory and policy development and statutory assessment and determination are increasingly being separated at both local, regional, and state levels to maintain community confidence in and the integrity of planning systems.

Principally, independent statutory planning bodies are intended to safeguard against the potential for conflicts by enabling the assessment and determination of planning applications at arm's length from government agencies that are typically responsible for developing land use regulations and policies. Along with other safeguards, such as the use of rotated panels of independent expert decision-makers that introduce more rigour and a degree of randomness into decision-making, separating these roles is crucial to minimising the natural risk of conflicts in planning systems.

Over the last decade, a number of Australian jurisdictions have implemented major reforms to strengthen the role of independent statutory planning bodies by clarifying and separating responsibility for the development of land use regulations and policies and the assessment and determination of planning scheme, rezoning, and development applications against those regulations and policies.

Key Findings

Overall, the Review finds:

1. Stakeholders highly value the independence of the TPC¹ to review, assess and determine significant and contentious planning matters; have strong regard for the TPC's expertise, skills, capabilities, and professionalism; and are confident the TPC's decision-making is free of undue influence.
2. The TPC public hearings are particularly highly valued because they enable transparency by providing an opportunity for people to have a say in planning decision-making in an informal context.
3. The TPC is performing its roles and functions in a just, fair, efficient and effective manner to the satisfaction of stakeholders. In particular, this includes assessing and determining Local Planning Schemes, Planning Scheme Amendments, Combined Scheme Amendments and Development Permits, and State and Regionally Significant Projects, and reviewing Draft Plans of Management.
4. There is a general lack of community understanding of how land use planning and decision-making work in Tasmania, particularly developing and advising on land use regulations and policies and the assessment and determination of planning matters. This uncertainty exists because there is a perceived overlap in these functions, some of which are partly the role of the TPC and others are partly the role of the recently established Planning Policy Unit (PPU). During the Review, many stakeholders felt strongly that the

¹ The term TPC refers to the current delegated decisions that people perceive as the TPC made by Panels consisting of a mix of Commissioners and Senior Staff.

role and function of the TPC and PPU cannot be considered in isolation and this is addressed throughout this report in relation to the issues raised by stakeholders.

5. The community and some stakeholder uncertainty over which organisation is responsible for developing and advising on land use regulation and policy inhibits the TPC from performing some of its roles and functions in an efficient, effective, fair and just manner to the satisfaction of all stakeholders. Further, some perceive there is a conflict in the roles of TPC to advise the Minister and local governments on the development of regulations and policies, undertaking technical reviews of some of these regulations and policies, and then to assess and determine planning matters against those regulations and policies.
6. If the Tasmanian Planning System continues to operate without clear responsibility for developing and advising on land use regulations and policies, it is unlikely the policy gaps in the Tasmanian Planning System identified during the Review will be sufficiently addressed and there is a significant risk that Tasmania will end up with unplanned growth as it is now on a growth trajectory.
7. Whilst there is confidence that the TPC's model of using development assessment panels comprising experts to assess and determine planning matters is free of undue influence, the operationalisation of this model through a small pool of experts, many of whom are TPC staff and technically employees of the Tasmanian Government, means decision-making is not at sufficient arm's length from Government. There are inadequate safeguards in place to reduce the potential for avoidance of conflicts of interest (either perceived or actual) that is naturally elevated in land use decision-making and uniquely heightened in the Tasmanian context due to the small size of the planning profession.
8. To ensure adequate safeguards are in place to reduce the potential for conflicts of interest, clearer responsibility for and separation between land use regulation and policy development and statutory assessment and determination are needed alongside implementation of an independent expert model process for decision-making. To achieve this, the Tasmanian Government should establish an adequately resourced state planning agency with clear responsibility for developing and advising on land use regulations and policies. The role of the TPC should be re-focused on its highly valued assessment and determination functions – this separation is critical. A pool of part-time, persons external to Government, decision-makers should be established to form development assessment panels to determine applications on a rotational, expertise informed basis.

These key findings and how they relate to recommendations for the role and function of the TPC in accordance with the ToR are further discussed below.

The TPC's role as an independent statutory planning body is highly valued because it provides informal opportunities for the community participation in land use planning decision-making, and has developed a strong reputation for independence, transparency and expertise.

There is a high degree of confidence in the skills, expertise, and capabilities of the TPC and general stakeholder satisfaction the TPC is efficiently, effectively, and justly reviewing, assessing and determining Local Planning Schemes, Planning Scheme Amendments, Combined Planning Scheme Amendments and Development Permits, and State and Regionally Significant Projects, and Draft Plans of Management.

Where stakeholders identified the TPC is not performing some of its roles and functions efficiently, effectively, and justly to their satisfaction, this mostly relates to lack of clarity and overlap with the roles and functions of the recently established PPU and the extended roles and functions the TPC took on to assist with the development and implementation of recent reforms in the Tasmanian Planning System. It also relates to perceived conflict in the TPC's role to develop and advise the Tasmanian Government and local councils on land use regulation and policy, undertake technical reviews of these regulations and policies, and then assess and determine development applications against those regulations and policies.

The Planning Policy Unit (PPU) was established in 2017 to assist with developing and implementing the most recent reforms. Despite the establishment of the PPU, the bulk of planning resources at the state-level in Tasmania remained concentrated in the TPC. Therefore, the TPC was naturally capable of playing some role in the development of regulations and policies needed to implement the reforms. However, in other jurisdictions, this is a role typically carried out by state planning agencies rather than independent statutory bodies that typically assess and determine planning matters against those regulations and policies. Overall, stakeholders indicated strong dissatisfaction with the perceived overlap in the role of the TPC and PPU as this has generated significant confusion over which is responsible for land use regulation and policy development, advice, and decision-making.

Clarifying responsibility for developing and advising on land use regulations and policies in the future and better resourcing the PPU to undertake these roles, alongside re-focusing the TPC on its more highly valued assessment and determination role can address the uncertainty by removing the perceived role conflict. Whilst establishment of the PPU shows Tasmania is on the path to developing a proper land use regulation and policy development and advice function, it remains significantly under-developed and under resourced (in comparison to other jurisdictions) to support continuous improvement and ongoing maintenance of the regulatory and policy framework. The Review considers the framework that now exists is most appropriately further developed and kept up to date by an adequately resourced and stand-alone state planning agency as typically occurs in other jurisdictions.

Regulatory and policy gaps in the Tasmanian Planning System

Overwhelmingly, stakeholders identified that now the new regulatory and policy framework for the Tasmanian Planning System is in place, there are significant and concerning policy gaps and insufficient guidance at the state level, which hampers the TPC's decision-making. The Review also notes these policy gaps are damaging stakeholder and community confidence in the Tasmanian Government's capability for land use regulation and policy development. To address the policy gaps, and in combination with properly resourcing land use regulation and policy development at the state level, the Tasmanian Government is encouraged to urgently prioritise the development of Tasmanian Planning Policies (TPPs).

The Review considers suggestions by stakeholders to further extend the role of the TPC to include a more thoroughgoing regulatory and policy development function are inappropriate because it is not elected nor has the level of accountability which resides with the Parliament. As occurs in other jurisdictions, the Review considers ongoing regulatory and policy development is appropriately a responsibility of the Tasmanian Government via a state planning agency with final sign off residing with the Minister who has ultimate accountability through the electoral process and through Parliamentary approval of legislation.

If these suggestions were adopted without adequate internal organisational separation and other safeguards in place to reduce the potential for conflicts of interest, this would result in a situation where those responsible for developing planning rules and policies also assess and determine applications against them. The Review considers these safeguards are much harder to operationalise in the unique Tasmanian context, due to the smaller scale of the planning profession. This unique aspect of the Tasmanian Planning System and profession has been raised by previous reviews and is further discussed in this report.

The Review acknowledges there is some precedent in other jurisdictions for land use regulations and policies to be developed by independent statutory bodies, such as the Greater Sydney Commission in NSW. However, in these jurisdictions, those bodies are typically not also responsible for statutory assessment and determination of planning schemes and some development applications against the regulations and policies they develop. Where regulatory and policy development and statutory assessment and determination are carried out by the same independent planning body, as in Western Australia, there remains strong organisational separation and other safeguards in place to reduce the potential for conflicts of interest.

The Tasmanian Government is also encouraged to prioritise an update of the Regional Land Use Strategies. This is because the TPC relies on these as statutory assessment considerations which are now considerably out of date and do not reflect Tasmania's recent growth trajectory, modern planning ideas and changing demographics. The Review considers updating the RLUS is appropriately done by a collaborative process between local councils across Tasmania's three regions with funding and coordination support from the Tasmanian Government through the PPU or state planning agency. Similarly, the Tasmanian Government is encouraged to clarify the policy hierarchy in the Tasmanian Planning System. Where councils have developed new local planning strategies to accommodate the more recent growth trajectory, stakeholders expressed concern the regulatory framework for the Tasmanian Planning System does not permit the TPC to consider these as assessment considerations.

Organisational arrangements

Overall, the Review finds the statutory framework setting up the TPC's organisational structure, membership, and decision-making arrangements does not provide adequate safeguards to reduce the potential for conflicts of interest. This potential is uniquely elevated in the Tasmanian context due to the smaller pool of planning professionals and potential decision-makers the TPC could use to assess and determine planning applications.

The Review agrees with stakeholder observations that delegating decision-making to some TPC staff that are technically Tasmanian Government employees through their membership of development assessment panels is a highly unusual arrangement for independent statutory planning bodies and does not accord with the intent of the independent expert model for decision-making to occur at arm's length from government through these bodies. This is no reflection on the particular individuals currently carrying out these roles who clearly operate with high levels of integrity and professionalism, but is an observation about the structural arrangements.

To address this, it is recommended that a more thoroughgoing independent expert model be instituted. This would involve establishing a larger pool of external, part-time expert decision-makers who are available to form development assessment panels to assess and determine applications at arm's length from government which is administered by the TPC. TPC staff would not sit on the panels nor be involved in assessing or determining applications but would support the external, part-time, independent, and expert panel members through a secretariat function and preparation of professional reports. These members should be appointed by the Minister.

The Review has considered the approach to decision-making used by the Resource Management and Planning Appeals Tribunal (RMPAT). RMPAT uses a larger pool of external and part-time experts to make decisions on a rotational basis at arms' length from government. The RMPAT model indicates that although the Tasmanian planning profession is small, there is scope to expand the pool of decision-makers to reduce the potential for conflicts. This would also have the benefit of enabling a broader range of expertise and address specific gaps in expertise identified by stakeholders during the Review.

During the Review, stakeholders commented the hybrid model where some TPC Commissioners are appointed as members of the Commission on the basis of expertise and others on the basis of representing certain organisations is out of date. It was also noted Commissioners representing or nominated by organisations can find themselves conflicted when assessing applications that involve those organisations, further reducing the already limited pool of decision-makers. Other jurisdictions are shifting to a more robust independent expert model and stakeholders indicated the TPC should also by appointing decision-makers solely on the basis of expertise in fields necessary to determine complex planning matters including economic, environmental, social, heritage, project delivery, and public administration.

The Review notes the PPU is located in the DoJ and also considers this an unusual machinery of government arrangement for a state planning agency. Locating the PPU in the DoJ and the TPC Executive Commissioner's reporting line to the DoJ Secretary further raises potential for conflict of interest where the DoJ might be the proponent of a major project before the TPC. As such, the Tasmanian Government is encouraged to consider the appropriateness of these arrangements. In other jurisdictions, state planning agencies typically operate on a stand-alone basis or are located in a central agency that is not a proponent of major projects, such as the Department of Premier and Cabinet. This degree of organisational separation is one of the safeguards that can help reduce the potential for conflict of interest. There are also other benefits for locating the planning function in a central agency with broad interests in whole of government matters and their integration and in emphasising the policy and strategic focus of the PPU as opposed to a regulatory function which is arguably appropriately located in DOJ.

Resources, skills, capabilities, and expertise

Based on stakeholder feedback, the Review finds the TPC has the appropriate resources, skills, capabilities, and expertise and should be responsible for assessing and determining Local Planning Schemes, Scheme Amendments, and Combined Scheme Amendments and Development Permits, as well as state and regionally significant projects and future projects eligible for assessment under the Major Projects Bill, and also reviewing draft Plans of Management for state land.

Some stakeholders expressed concerns about the TPC's resourcing given workload pressures experienced when it assisted with the development and implementation of recent reforms. However, as these are now almost fully implemented, the Review considers these pressures are unlikely to be repeated. Considering as a comparator the limited number of state and regionally significant projects that have passed through the Tasmanian Planning System to date, the Review considers the TPC is unlikely to experience a material change in its workload or resourcing needs by also taking on the assessment and determination of eligible projects under the Major Projects Bill². There are compelling reasons for the TPC to take on the determination of such projects, as they are often amongst the most contentious matters in planning systems and independent statutory planning bodies typically have responsibility for assessing such matters.

As noted, the Review considers it is inappropriate for the TPC to play a major role in updating the RLUS as it relies on these as statutory assessment considerations. Furthermore, stakeholders indicated the TPC does not have the appropriate resourcing, skills, capabilities, or expertise to effectively update the RLUS. However, the Review acknowledges the valuable system-level insights the TPC attains through its assessment role and these insights should be brought into the process to update the RLUS to ensure they address persistent and emerging regionally significant planning issues.

As noted, there is significant need to further develop capability within the Tasmanian Planning System to develop and advise the Tasmanian Government and local councils on land use planning regulations and policies. However, based on stakeholder feedback on the TPC's performance in these extended roles and functions during the recent reforms, the Review considers the TPC does not have the adequate resourcing to perform them on an ongoing basis and it would be inappropriate for it to do so. Rather, the Review considers these skills, capabilities, and expertise are appropriately developed within an adequately resourced and organisationally separated state planning agency that can take on the planning regulation and policy development function on an ongoing basis.

Conflicts of interest

Notwithstanding the inadequate system safeguards, there is significant stakeholder confidence the TPC's decision-making is independent and free of undue influence. This

² The Bill that has passed through Parliament is consistent with the recommended roles and functions of the TPC as the independent arms' length final decision maker.

indicates the TPC is effectively managing conflicts of interest in accordance with its Code of Conduct.

However, there are opportunities to improve transparency in how the TPC manages conflicts, including by making declarations of conflicts of interest by TPC decision-makers publicly available. Other opportunities include ensuring any and all advice on the statutory operation of the Tasmanian Planning System provided by the TPC to the Minister and the Minister's response to this is made publicly available via the TPC website. While the TPC currently issues reasons for its decisions as good practice, it should specifically be required by its own Act to provide Statements of Reasons that clearly and succinctly outline issues determinative of its assessment.

Whilst the TPC's public hearings are highly valued, there are opportunities to improve hearing practices to ensure a fairer, more efficient and effective, and just process including improved documentation guidance, providing parties with advice on assessment issues that will be canvassed during the hearings, providing state agencies with an opportunity for input on applications prior to the hearings, and limiting requests for further information, establishing realistic timeframes to respond to these requests, and limiting follow-up hearings.

State of the Environment Reporting

Stakeholders consider there is significant value in the State of the Environment (SoE) report and there is an urgent need for its update. The Review considers the TPC is not the appropriate body to prepare the SoE Report as it does not have the appropriate resourcing, skills, expertise, or capability to access and analyse the relevant data to effectively perform this role as the SoE has been constructed.

However, approaches to SoE reporting across Australia have evolved significantly since the last Tasmanian SoE was prepared in 2009. Determining the appropriate body to prepare it in the future depends on the purpose and how SoE data is to be used in decision-making. If the SoE is intended to be used to enhance environmental land management practices, responsibility would appropriately reside with the Environment Protection Agency; if guiding government decisions around cross-portfolio responsibilities, it would appropriately reside within a central agency such as the Department of Premier and Cabinet; if a narrow land use focus, it would appropriately reside with the PPU or state planning agency.

Recommendations

Engagement undertaken during the Review identified significant uncertainty of how land use planning and decision-making works in Tasmania following the recent reforms. The engagement also identified significant stakeholder interest in strengthening the role and function of the TPC. Overall, the Review considers this is best achieved through:

1. Clearer separation and appropriate resourcing of a state planning agency³ to develop planning regulations and policies and advise the Tasmanian Government and councils on the se
2. Re-focusing the TPC on its highly valued roles to independently review, assess, and determine significant and contentious planning matters
3. Changes to the current decision-making model to ensure a truly independent model with development assessment panels comprised solely of external, part-time experts
4. Changes to the current Commissioner model to ensure Commissioners are appointed solely on the basis of expertise rather than organisation or interest-based
5. Expanding the pool of independent expert decision-makers available to sit on assessment panels on a rotational basis

³ Given the limited number of State agencies in Tasmania it is acknowledged that a standalone new agency just for planning is unlikely, but establishing a clearly identified and properly resourced area of a central agency with comparable status to the TPC is vital to the success of the proposals.

To give effect to this and enable the TPC to perform its roles and functions in a fair, just, efficient, and effective manner, the Review recommends:

Public understanding of the Tasmanian Planning System

- Develop a program to educate the community and stakeholders about land use regulation and policy development and statutory assessment and determination in the Tasmanian Planning System, including:
 - the principal role of the TPC as an independent assessment and determination body for Local Provisions Schedules part of the Tasmanian Planning Scheme, and Amendments to those, Combined Amendments and Development Permits, state and regionally significant projects, major projects eligible under the Major Projects Bill, and draft Plans of Management for state land;
 - the principal role of the PPU or state planning agency and Minister for Planning, as representatives of the Tasmanian Government, as well as local councils in developing land use planning regulation and policy;
 - the advisory role of the TPC to review Tasmanian Planning Policies, the State Planning Provisions part of the Tasmanian Planning Scheme, and Regional Land Use Strategies and that the Minister and councils are not bound to accept the findings of reviews by the TPC.

Roles and Functions in the Tasmanian Planning System

- Retain the TPC's statutory role to assess and determine Local Planning Provision Schedules and Amendments, Combined Amendments and Development Permits, and state and regionally significant projects in line with existing provisions in the Act.
- Retain the TPC's statutory role to review draft management plans for state land and other reserves such as national parks in line with existing provisions in the Act.
- Retain the TPC's statutory role with respect to major projects to include assessment and determination of these projects and to have the TPC responsible for the final decision on members of the panel composed to assess and determine eligible projects.
- Retain the TPC's statutory role to review and make recommendations on the Tasmanian Planning Policies, the State Planning Provisions of the Tasmanian Planning Scheme, and Regional Land Use Strategies and update the Act to automatically trigger this review every five years.
- Retain the right of the Minister to accept or refuse the findings of any review by the TPC of those matters it does not make determinations on under the legislation, and clarify local councils must accept the findings of any review of Local Planning Schemes and Local Provision Schedules undertaken by the TPC.
- Update the Act to require the Minister to provide a publicly available response to any technical review by the TPC of the statutory operation of the Tasmanian Planning System, including outlining reasons for that response.
- Remove the TPC's role to advise the Tasmanian Government and councils on regulatory and policy development, state and regionally significant land use planning issues, and coordinate provision of transport and other infrastructure to support delivery of strategic planning initiatives. The Review considers this role is the cause of unnecessary confusion over how the Tasmanian Planning System works and, where it exists, stakeholder dissatisfaction with the TPC's performance. Furthermore, the Review considers this role is appropriately performed by an adequately resourced and organisationally separate state planning agency. Notwithstanding, the Review acknowledges the TPC gains valuable insights on how the Tasmanian Planning System is operating through its assessment role and these should be captured through engagement undertaken as part of regulatory and policy development processes by a state planning agency.

Strengthening regulatory and policy development in the Tasmanian Planning System

- Prioritise the development of Tasmanian Planning Policies. The Review considers this is the appropriate role of a state planning agency.
- Prioritise the review and update of Regional Land Use Strategies. The Review considers this is the appropriate role of local councils with funding and coordination support provided by the Tasmanian Government through a state planning agency.
- Clarify the statutory weight planning authorities should give to the hierarchy of land use regulations and policies when assessing and determining development applications, in particular Regional Land Use Strategies and additional local planning strategies referred to in Local Planning Schemes.

Strengthening statutory assessment and determination in the Tasmanian Planning System through the structure and membership of the Tasmanian Planning Commission

- Restructure the TPC to be led by a Chief Executive Officer responsible for day to day operations and management including prioritising its workload, overseeing conflict of interest processes, and assessment secretariat functions provided by TPC staff such as assisting with the writing of assessment and determination reports and administration associated with the development assessment panels. In contrast to current arrangements for the Executive Commissioner role, the CEO would be ineligible to sit on development assessment panels. However, it is recommended the CEO have responsibility for allocating Commissioners and independent experts to the panels based on the expertise needed to assess the planning issues being considered for each application, and ensuring and publicly reporting sufficient rotation of Commissioners and experts across panels.
- Remove the organisation-based Commissioners and appoint six term-limited expertise-based Commissioners as formal members of the TPC, including one Chief Commissioner. These members would have the necessary skills, expertise, capabilities, and reputation expected of eminent planning professionals responsible for leading planning decision-making processes. It is recommended the role of the Commissioners is to Chair the development assessment panels but they would not have any role in selecting or appointing part-time, external independent experts to those panels.
- Establish an expanded pool of external, part-time independent experts available to sit on development assessment panels to assess and determine matters and develop systems to ensure the pool is regularly refreshed and Commissioners and experts are sufficiently rotated across panels. It is recommended TPC staff are ineligible for membership of the panels.
- Establish a formal referral process to ensure state agencies have an opportunity to comment on applications prior to any public hearing carried out by a development assessment panel.

Ensuring the TPC performs its roles and functions in a fair, just, efficient and effective manner

- Direct the TPC to develop guidelines for public hearings to provide clear guidance on hearing processes and documentation requirements, Chairing hearings and summarising key issues to ensure efficient use of time and hear from representors, and limit the number of and timing to respond to requests for follow-up information and hearings.
- Use the Statement of Ministerial Expectation to provide the Chief Executive Officer with clear guidance on the Tasmanian Government's expectations of the TPC's workload priorities by allocating timeframes to the priorities identified in the Statement.
- Improve transparency and understanding of the use of delegated decision-making authority to independent experts through development assessment panels and managing conflicts of interest through publicly available declarations of interest.

- Update the Act to require the TPC to provide a Statement of Reasons that clearly outlines issues determinative of its review, assessment, and determination of Local Provisions Schedules part of the Tasmanian Planning Scheme, and Amendments to those, Combined Amendments and Development Permits, state and regionally significant projects, major projects, and draft Plans of Management.

State of Environment Reporting

- Remove from the Act the TPC's role to prepare the State of Environment Report. The Tasmanian Government should confirm the intended purpose of the SoE and assign responsibility for its preparation based on this.

The Review acknowledges there may be significant resourcing and funding implications of these recommendations for both the TPC and PPU. However, considering these implications in detail is considered much beyond the scope of the Review. During the course of the Review, stakeholders provided some ideas on how the funding necessary to adequately resource a proper regulatory and policy development and advice function in the Tasmanian Planning System via a state planning agency could be provided, such as a nominal levy on all development applications.

Introduction

This Independent Review (the Review) of the role and function of the Tasmanian Planning Commission (TPC) in the Tasmanian Planning System and its governing legislation, the *Tasmanian Planning Commission Act 1997* (the Act), has been commissioned by the Tasmanian Government Department of Justice (DoJ).

The Review has been commissioned in the context of reforms since 2009-10 that have changed the regulatory and policy framework for the Tasmanian Planning System and extended the role and function of the TPC within it. This includes the introduction of Regional Land Use Strategies, the Tasmanian Planning Scheme inclusive of model State Planning Provisions and Local Provision Schedules that standardised Local Planning Schemes, and the future Tasmanian Planning Policies.

These reforms are now close to being fully implemented and, in view of the changes they have entailed, it is an appropriate time to take stock and consider the future role and function of the TPC in the Tasmanian Planning System.

It's healthy for public and private organisations to have reviews and look at what is and isn't working well and what we need to look at changing (community stakeholder)

Approach to the Review

There are a number of approaches to independent reviews such as this. It is intended to be a forward-looking review based on what is working well and could be improved to ensure the TPC continues to perform its roles and functions as an independent statutory body in a fair, just, efficient and effective manner.

The Review is not intended to be a legalistic, line-by-line, or root-and-branch style review of the TPC and Act, a rearward-looking review of the TPC's performance in meeting statutory assessment and determination timeframes, nor whether the regulatory and policy objectives for the Tasmanian Planning System are being achieved by the TPC in performing its roles and functions.

The Review has been informed by stakeholder engagement and a range of materials including:

- targeted engagement across the Tasmanian Government, councils, professional and industry associations, environment and community groups during two site visits to Hobart and Launceston in January and March 2020 and a series of phone interviews
- meetings with the TPC Commissioners, staff, and observing TPC public hearings online
- findings and recommendations of previous reviews of the Tasmanian Planning System, the TPC and its predecessor organisations⁴, and independent statutory planning bodies in other jurisdictions across Australia and internationally
- a public submissions process in April and May 2020

The Department of Justice established a Steering Committee with representatives of the DoJ, Planning Policy Unit (PPU), and Local Government Association of Tasmania. The Committee met three times to monitor the Review's progress.

⁴ These include the Resource Planning and Development Commission, Land Use Planning Review Panel, and Sustainable Development Advisory Council

Stakeholder Engagement and Public Submissions

Feedback provided by stakeholders through face to face engagement and public submissions have informed the Review's considerations, findings, and recommendations.

Over 100 people representing almost 50 organisations with different interests in the Tasmanian Planning System were engaged face to face during two site visits to Hobart and Launceston in January and March 2020, as well as phone interviews.

A total of 296 submissions were received and published on the Department of Justice website. These included 36 organisational submissions and 248 submissions from members or associates of *Planning Matters Alliance Tasmania*.

A list of these organisations and summary of submissions is at Appendices A and B. Quotes provided by stakeholders have been included throughout this report to provide more detail on specific issues raised.

COVID-19

The world was impacted by the CoVID-19 pandemic during the Review. Some stakeholders requested an extension of the Review timeframe given the unprecedented impacts of CoVID-19. The Tasmanian Government allowed additional time for submissions and reporting for the Review, and the Review team continued to offer stakeholders with an opportunity for phone interviews. The Review team is grateful to stakeholders for continuing to engage in the face of these unprecedented times.

Terms of Reference

Terms of Reference (ToR, Box 1) guided the Review in considering the TPC's roles and functions as an independent statutory body in the Tasmanian Planning System to ensure it can continue to perform these roles and functions in a fair, just, efficient, and effective manner.

Stakeholders provided more input on some ToR than others and these have been considered more deeply to reflect the relative importance of these issues to stakeholders. A number of critical issues raised by stakeholders relate to the broader regulatory and policy framework and organisational structuring and resourcing arrangements for the Tasmanian Planning System. Whilst these issues may appear beyond the direct scope of the ToR, stakeholders indicated they significantly impact the TPC's roles and functions and, as such, they have been given deeper consideration. Other issues raised, such as the application of particular land use zones or development standards, are considered to operate at level of detail beyond the intended scope and scale of the Review and have been given less consideration.

The ToR directed the Review to consider a number of specific issues such as the TPC's role with respect to State of the Environment reporting, how it manages conflicts of interest, and its organisational structure, workload, staffing, and resourcing. Some of these issues received more and others less input, and have been considered to the extent they were raised by stakeholders.

In addition, the TPC has recently had a more detailed analysis of its workload and resourcing undertaken by an external consultant that found insufficient resourcing to cope with the workload of recent reforms. Similarly, technical options for data collection, collation, and analysis for the SoE report have been considered by a number of Tasmanian Government agencies. Whilst the findings of this work have been considered by the Review, it is not intended to duplicate that work and it is considered beyond the intended scope and scale of the Review to undertake detailed analysis of the SoE and the TPC's structure, workload, staffing, and resourcing.

Box 2 Terms of Reference

The Department of Justice will conduct a review of Tasmanian Planning Commission and the *Tasmanian Planning Commission Act 1997 (the Act)* to examine:

1. The structure of the Commission and its functions and powers under the Act to ensure that:
 - a. The Commission is able to continue to perform its role as an independent decision maker and advisory body, in a fair, just, efficient and effective manner;
 - b. The Commission's statutory functions are not compromised by its membership including representatives of Stage Agencies or bodies that are proponents of matters that the Commission's functions extend to;
 - c. The ongoing structure of the office of the Commission and its resourcing and work allocation is reflective of its extended role in the planning system as an independent decision maker and advisory body on the new components of the Tasmanian Planning system; and
 - d. Its functions are not undermined by the demands of historically designated roles under other legislation that might be better reallocated to another agency or body, in particular the State of Environment Reporting function.
2. The conflict of interest provisions in the Act and the process of delegation to ensure they operate transparently and meet public expectations;
3. The ongoing structure of the office of the Commission, including the staffing profile and required capabilities;
4. The roles, functions and appointment provisions of the Executive Commissioner to ensure that they:
 - a. Provide for the appointment of an appropriately qualified person;
 - b. Align with the State Service expectations of a senior executive;
 - c. Provide flexibility of appointment; and allow for the effective management of the Commission, the Commission's office and State Service employees and contractors, in accordance with applicable legislation and State Service policy.

The Tasmanian Planning System and Tasmanian Planning Commission

The TPC performs its roles and functions in accordance within a range of legislation that, collectively, form the Tasmanian Planning System:

- *Land Use Planning and Approvals Act 1993*
- *State Policies and Projects Act 1993*
- *National Parks and Reserves Management Act 2002*
- *Water Management Act 1999*
- *Wellington Park Act 1993*
- *Public Land (Administration and Forests) Act 1991*
- *Aboriginal Lands Act 1995*
- *Conveyancing and Law of Property Act 1884*
- *Environmental Management and Pollution Control Act 1994*
- *Local Government (Building and Miscellaneous Provisions) Act 1993*
- *Major Infrastructure Development Approvals Act 1999*
- *Marine Farming Planning Act 1995*
- *Survey Co-ordination Act 1944*

The *Land Use Planning and Approvals Act 1993* and *State Policies and Projects Act 1993* are the main legislation that establish the framework of land use regulations, policies, and plans. This includes three State Policies prepared in the 1990s for coastal, agriculture and water issues, three Regional Land Use Strategies prepared in 2009-10, a series of fact sheets and guidelines on particular issues, the Tasmanian Planning Scheme developed in 2014-15 including model State Planning Provisions that standardised Local Planning Schemes through Local Provision Schedules, and a suite of Tasmanian Planning Policies that are currently being developed by an inter-departmental committee of the Tasmanian Government.

It is probably beyond the remit of the Review but there needs to be a back to basics examination of the suite of laws that make up the Tasmanian Planning System. It has become a system for more and more detailed proscription of development control without an accompanying effort into policy and strategic planning. (community stakeholder)

In performing its roles and functions, the TPC is to have regard for and further the following objectives of the Tasmanian Planning System, which flow across the various legislation:

- a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- c) to encourage public involvement in resource management and planning; and
- d) to facilitate economic development in accordance with the objectives set out in the above paragraphs
- e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

Previous Reviews of the Tasmanian Planning System and Tasmanian Planning Commission

A number of reviews of the Tasmanian Planning System, the TPC and its predecessor organisations have been undertaken since they were first introduced in 1993 and 1997, respectively. The Tasmanian Planning System and role and function of the TPC within it are the culmination of regulatory, policy, and organisational changes designed to implement the findings and recommendations of these prior reviews.

It is not the intention of this Review to provide a detailed account of the findings and recommendations of the prior reviews. However, it is noted from considering these findings and recommendations that the statutory assessment and determination role of the TPC has remained constant over time whilst the TPC's role reviewing and advising on land use regulations and policies is has shifted over time and was more recently formalised with the suite of 2009 reforms.

- The *1996 Nixon Review*, which first recommended standardising Local Planning Schemes across Tasmania. While some consistency was provided under the 2009 regional planning initiative, the Tasmanian Planning Scheme, inclusive of State Planning Provisions and Local Provision Schedules, is currently giving full effect to this.
- The *1997 Committee for the Review of the State Planning System in Tasmania*, which was the first major review of the Tasmanian Planning System.
- The *2009 Review of the Tasmanian Planning System*, which responded to particular concerns raised by stakeholders and recommended introduction of Regional Land Use Strategies (RLUS) and established a role for the TPC to review and advise the Minister and councils on strategic planning and coordinate provision of transport and infrastructure to support delivery of strategic planning initiatives, such as the RLUS.
- The *2014-15 Planning Reform Taskforce*, which advised on the most recent reforms including the form of the Tasmanian Planning Scheme, and the content of the State Planning Provisions part of that, and the need for Tasmanian Planning Policies, and the establishment of the PPU.

The TPC has changed considerably...part of the reason has been the development of the Planning Policy Unit in the Department of Justice. But the policy direction is not being provided, we are still talking about frameworks and structure rather than policy direction. (planning professional)

We noticed a need for someone to engage the state agencies and take a coordinated approach to translating policy into the planning system. No one else does that because there is no big P planning department to make sure the departments have an understanding of what is going on in the planning system (state government planner)

Recent Reforms

Recent reforms to the Tasmanian Planning System have established a program of reform measures that aim to make it simpler, fairer, and more efficient. New components of the Tasmanian Planning System introduced by the 2009-10 and 2014-15 reforms are highlighted in Figure 1 overleaf.

Whilst the PPU was established in 2017 to assist with the more recent reforms, historically, Tasmania has lacked a standalone Department of Planning with responsibility for land use regulation and policy development as is commonly found in other jurisdictions.

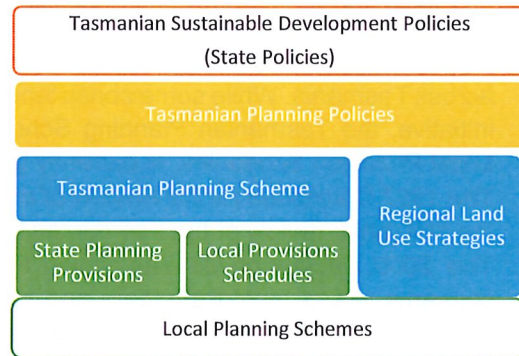
The new regulatory and policy framework and establishment of the PPU have, to some extent, address the absence of state guidance in land use planning in Tasmania which the Productivity Commission identified was not leading practice in its recent major review of Australian planning systems.⁵

Tasmania [has a state-level commission] that performs most of the functions assigned to planning departments in other jurisdictions. Tasmania is the only state without a planning department — planning comes under the Department of Justice. (Productivity Commission, 2011, p70)

⁵ <https://www.pc.gov.au/inquiries/completed/regulation-benchmarking-planning/report> (p.64)

- **Tasmanian Planning Policies** will sit below the three existing State Policies and provide strategic direction on planning matters of state interest and articulate aims and principles to be achieved through the Tasmanian Planning System. The TPPs are currently being prepared by the Tasmanian Government's State Policies Interdepartmental Committee and may cover planning issues relating to the sustainable use, development, protection or conservation of land, environmental protection, liveability, health and wellbeing of the community, or other issues. Once TPPs are finalised, the Tasmanian Planning Scheme, Regional Land Use Strategies, and Local Planning Schemes will be updated to reflect the strategic directions of the TPP.

Figure 1: Regulatory and policy framework of the Tasmanian Planning System



- **Tasmanian Planning Scheme** (TPS) is being introduced to replace the 29 Interim Local Planning Schemes. The State Planning Provisions (SPPs) provide consistent planning scheme provisions that are incorporated into Local Provision Schedules and applied at the local level through Local Planning Schemes (LPS'). The SPPs and 29 LPS' make up a single planning scheme across Tasmania with some local unique rules allowed through Particular Purpose Zones, Specific Area Plans, and Site-Specific Qualifications.
- **Regional Land Use Strategies**, which reflect the State Policies and inform Local Planning Schemes. The TPC had a limited role in preparing the RLUS, which was done by councils across Tasmania's three regions with funding and coordination support provided by the Tasmanian Government.

The TPC, alongside the PPU, councils, and stakeholders have all taken on extended roles and functions developing and implementing the recent reforms. In particular, the TPC's role has extended to include advice to the Tasmanian Government and councils as part of its technical review of State Planning Provisions and Local Provision Schedules, as well as its assessment of Local Planning Scheme Amendments to ensure they give effect to the State Planning Provisions via Local Provision Schedules.

The TPC reports progress to the Minister on its role in implementing the reforms, and previously participated in the DoJ Local Planning Scheme State Steering Committee. Finalising these reforms was identified as a priority for the TPC in the 2017/18 Statement of Ministerial Expectations. There have been some delays in the TPC's review and assessment as some councils took the opportunity to prepare more comprehensive updates as part of their Local Planning Scheme Amendments to facilitate Tasmania's more recent growth conditions.

The whole Tasmanian Planning Policy piece is being done the wrong way around. The policies should come first, then a review of the RLUS, then State Planning Provisions, then Local Provision Schedules and updates to Local Planning Schemes. (local government stakeholder)

I'm not sure if the range of issues the Tasmanian Planning Policies need to cover has been sufficiently identified. It is an unexceptional list that doesn't cover the more urgent things we need to deal with as a state. (planning professional)

No one is the keeper of policy in the state government. I don't think the Tasmanian Planning Policies will be written in a way that is clear and the TPC will have to figure out what they mean. (local government stakeholder)

When the Tasmanian Planning Policies come out and the State Planning Provisions, Local Provision Schedules, and Local Planning Schemes are again updated to reflect the TPPs, the issues will arise again. There needs to be a centralised process involving the TPC and PPU to deal with those issues when they arise. (local government stakeholder)

The TPC should be identifying the policy issues that need to be looked at by the government. (environment organisation stakeholder)

The Tasmanian Planning Commission Act 1997

The *Tasmanian Planning Commission Act 1997* establishes the TPC as an independent statutory body in the Tasmanian Planning System with the following roles and functions:

- advice and support to the Minister in relation to the performance of their functions and exercise of powers in relation to land use planning under the *Tasmanian Planning Commission Act 1997* or any other Act;
- advice to the Minister in respect of matters related to land use planning;
- plan for the coordinated provision of transport, and of infrastructure, for land development;
- advice to local government in relation to planning schemes under the *Land Use Planning and Approvals Act 1993* and the functions of local government under that Act;
- review and advise the Minister in respect of state and regional strategic land use planning matters.

In a practical sense, these translate to:

- Reviewing and advising the Minister and councils on planning regulations and policies including State Policies, Tasmanian Planning Policies, the Tasmanian Planning Scheme inclusive of State Planning Provisions and Local Provision Schedules
- Assessment and determination of Local Planning Schemes, Scheme Amendments, and Combined Scheme Amendments and Development Permits
- Assessment and determination of State and Regionally Significant projects
- Providing advice to the Tasmanian Government and councils on land use planning issues through fact sheets, and guidelines
- Coordinating provision of transport and other infrastructure across the Tasmanian Government to support delivery of strategic planning initiatives such as the Regional Land Use Strategies (RLUS)
- Reviewing draft management plans for state land and other reserves such as national parks, Battery Point, and Wellington Park

Membership of the Commission

The Act proscribes processes and conditions for recommending, selecting, appointing, remunerating, and terminating Commissioners as the formal members of the TPC, the interests and disclosures to be reported by the Commissioners, and the conduct of TPC hearings and meetings.

Under the Act, Commissioners can be appointed as members of the TPC for up to 5 years and are eligible for re-appointment. While the TPC's predecessor, the RPDC, had 6 Commissioners, when the policy functions of the then Department of Justice's Planning Branch were amalgamated with it in 2009, the membership was expanded by two to include State infrastructure provider representation. Hence the TPC has 8 Commissioners, including one full-time Chairperson who is the Executive Commissioner and is also responsible for managing the TPC's day to day operations and workload. The 7 remaining Commissioners are appointed as members on a part-time basis and based on their representation of different organisational interests and types of expertise:

- a person who has planning experience and recommended by the Local Government Association of Tasmania (part-time, referred to in this report as the Local Government representative)
- a person who has experience in public administration relating to project implementation nominated by the Minister responsible for state projects (part-time)
- a person who has expertise and management experience in resource conservation (part-time)

- a person who, in the opinion of the Minister, has planning experience and appropriate experience in industry and commerce (part-time)
- a person who representing community interests who has resource conservation or planning experience (part-time)
- a person who is the Head or an employee of the state agency responsible for transport and infrastructure (part-time, referred to in this report as a State Agency representative)
- a person who is the Chairperson of TasWater, or their nominee (part-time, referred to in this report as a State Agency representative⁶)

Delegated Authority

The Act allows the TPC to delegate any of its roles and functions to another body, commission or person, except the State Agency representatives.

The TPC delegates authority for its assessment and determination of Local Planning Schemes, Scheme Amendments, the Local Provisions Schedules part of the Tasmanian Planning Scheme, and Amendments to those, and Combined Amendments and Development Permits, to development assessment panels. These panels typically include one of the Commissioners as Chair, a Lead Delegate who is a member of the TPC's Senior Management Team, and a member of the TPC staff as Planning Advisor.

The Lead Delegate is responsible for all procedures and decisions associated with and may also Chair the development assessment panel. The Planning Advisor assists the panel including responding to applicant enquiries, administration and research, coordinating meetings, preparing and publishing documents and correspondence, quality assurance, and other general assistance.

Conflicts of Interest

The TPC has statutory decision-making powers that have the potential to materially affect the rights of others. The TPC's decision-making must be undertaken in a way that maintains the Commission's reputation for independence, fairness, and good governance, and withstands the closest legal and public scrutiny.

It is important Commissioners and Delegates maintain the integrity of the TPC's decision-making by observing rules of natural justice, bringing an open and unprejudiced mind to all matters, and always abiding by the law. To protect and uphold the public interest, the TPC must take all reasonable steps to avoid, resolve or disclose any conflict of interest that arises or is likely to arise, between any personal interests and the official duties of Commissioners or Delegates.

The Executive Commissioner, Commissioners, and Delegates are bound by the TPC's Code of Conduct developed in 2019, which addresses conflicts of interest and is to be reviewed at least every four years.⁷ Each individual bound by the Code is responsible for reporting all

⁶ The TPC Act specifically restricts the participation of the two State infrastructure representatives from being on panels to determine matters. Their role appears to be advisory on policy matters only.

⁷ Under the TPC Code of Conduct, conflicts of interest are defined as a situation arising from a conflict between the performance of a public duty and a private or personal interest. A conflict of interest may be actual or perceived.

- i. **Actual:** means there is a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest.
- ii. **Perceived:** means when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case.

Personal interest includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, whether it be a positive or negative one. Personal interests may be pecuniary or non-pecuniary.

- i. **Pecuniary:** refers to an actual or potential financial gain or loss for the person, their family, friends or close associates arising from (but not limited to) ownership of shares, trusts, partnerships, real estate, directorships, other assets, other substantial sources of income, liabilities and memberships.

financial and other interests that could reasonably be seen to constitute a real or perceived conflict of interest. The Commission maintains a register of these interests and the Executive Commissioner, Commissioners, and Delegates are requested to review and update the register on an annual basis and following any relevant change in their interests or circumstances.

Any conflict between a personal interest and these duties is to be declared in writing to the Commission, or at a Commission hearing or meeting as soon as possible after the Executive Commissioner, Commissioners, or Delegates become aware of it. The conflict must be resolved promptly in favour of the public interest. Under the Act, if a Commissioner has a perceived or actual conflict of interest recorded in the minutes of a TPC meeting they must not be present during the deliberations or take part in any assessment or determination by the TPC with respect to that matter.

Statement of Ministerial Expectations

Under the Act, the Minister can provide directions to the TPC to perform its roles and functions in accordance with those directions. These directions are provided every two years through a Statement of Ministerial Expectations. The Statement outlines priorities for and expected relationship between the TPC, the Minister, other reporting or referral Ministers, departments, agencies, and planning authorities.

The Minister must consult the TPC before preparing the Statement, which must be published through the Tasmanian Government Gazette and on the TPC's website. The Statement can be amended, substituted with another, or revoked in writing by the Minister. The Statement cannot extend the TPC's roles and functions nor give a direction to the TPC in relation to the outcome of the performance of its roles and functions.

The Statement of Expectations is not being used to its full extent. It is very broad and could provide more direction to the TPC, such as standard procedures for hearings. (planning professional)

When you read the Statement of Expectations, it doesn't provide much guidance on priorities or give a sense of time frames. It makes everything look equally important and it becomes a massive challenge to meet timeframes. (environment group stakeholder)

TPC Hearings

Under the Act, the TPC can hold public hearings to inform itself about any matter before it in any way it thinks fit. Provisions of the Act note the TPC is not bound to act in a formal manner during the hearings and is not bound by rules of evidence.

Evidence can be provided orally or in writing, and be given in private if the TPC or person giving the evidence object to providing it in public or if the interest in the evidence remaining confidential is greater than the interest in having it presented in public.

If a person gives written evidence at a hearing or makes a written submission to the TPC, they must make that evidence available to the public unless the person giving it or the TPC considers it should be private.

ii. **Non-pecuniary:** refers to an interest that is not financial or monetary but arises from such things as personal relationships, beliefs or involvement in social, cultural, religious or sporting activities. Dislike for someone as well as friendship can give rise to a conflict of interest.

Organisational Arrangements for the TPC and Tasmanian Planning System

The TPC has approximately 26 staff employed by the DoJ under the *State Service Act 2000*. They are involved in writing pre-hearing assessment reports, researching and advising development assessment panel Delegates on key issues, administering and participating in the TPC's hearings as members of the development assessment panel, and assisting with writing assessment and determination reports after the panel's deliberations.

The 26 staff include a Senior Management Team of approximately 5, including the Executive Commissioner, who along with the rest of the TPC staff are subject to the DoJ Conflict of Interest Policy and Code of Conduct. With 26 staff, the Review has observed the TPC is relatively well-resourced compared to other planning authorities in Tasmania and has one of the single largest concentrations of staffing resources involved in land use planning at the state level.

The Planning Policy Unit

The PPU was established in the DoJ in 2017 to assist with implementing the 2014-15 reforms to introduce the Tasmanian Planning System. Prior to this, the foundation staff of the PPU (3 senior planners and one administrative assistant) had been seconded from the TPC to work with the Planning Reform Taskforce* particularly to prepare the State Planning Provisions. Following the adoption of the State Planning Provisions in 2017 and the reduced role of the Taskforce, these four staff were relocated to the Office of the Secretary in the Department of Justice to further progress planning reforms and provide policy advice up to the Minister.

The PPU currently has approximately 9 full-time staff positions, including one currently seconded to the Minister's office and another recently returned from a secondment with the TPC.

The PPU and TPC are located in separate offices on separate floors in the same building in Hobart which provides convenient working proximity with some separation of identities although this may add to the apparent confusion of their respective roles held by the broader public. The small size of the Tasmanian planning profession and long length of tenure of the TPC and PPU staff mean many of them have worked together closely over the years through the course of their employment in these or other organisations.

The level of resources allocated to planning is an indicator of system capacity to manage planning, zoning, and development assessment.⁸ Overall, the Review considers there is a significant and serious lack of resources across the Tasmanian Planning System more generally. While an audit of all planning staff across the various tiers of government and sectors of industry is not available, it is clear that the State agency (the PPU) which is charged with maintaining the legislative framework and the State Planning Provisions, and preparing the Tasmanian Planning Policies, amongst broader roles, is less resourced than some of the large councils.

The Productivity Commission (2011) has also previously found Tasmania has the lowest level of spending on planning per full time equivalent staff and lowest number of staff on both an absolute and per capita basis.⁹

⁸ <https://www.pc.gov.au/inquiries/completed/regulation-benchmarking-planning/report/planning-volume1.pdf>

⁹ *Ibid*

Insights from Other Jurisdictions

Most Australian State planning systems have at least one independent statutory body operating within them. These bodies can have different roles and functions, including preparing and reviewing land use regulations and policies; advising Ministers, councils, and applicants on planning issues; and assessing and determining planning schemes, rezoning proposals, and development applications.

A selected overview of these bodies is provided at Appendix C. This shows the TPC has a wide range of roles and functions compared to most other bodies, and these other bodies tend to have clearer delineation and greater separation of roles and functions. A number of Australian States have recently reviewed aspects of their planning systems relevant to the role and function of independent statutory bodies.¹⁰ These reviews considered a number of issues pertinent to the ToR for this Review and the issues raised by stakeholders. Relevant findings and recommendations of these reviews are considered below.

The Importance of Independent Statutory Planning Bodies

The nature of land use regulations and policies that rezone land, set rules for development, or deliver infrastructure and other major projects means some financially benefit from decisions to change these regulations and policies. This means planning systems involve windfall gains – the unintended consequence and distribution of financial benefits through public decision-making.

To maintain the integrity of planning systems and minimise the inherent risk of conflicts, it is crucial those developing land use regulations and policies are restricted from unduly benefiting from the subsequent making of decisions in accordance with those regulations and policies. It is therefore crucial that planning systems establish adequate separation of responsibility for developing land use regulations and policies and assessment and determination of planning matters in accordance with those regulations and policies.

The assessment and determination of development applications independently and at arm's length from government helps manage the perception and risk of conflicts that arises from windfall gains. The NSW Productivity Commission's 2019 *Review of the Independent Planning Commission* described independence as an environment where separation from Ministerial and Departmental influence is needed to satisfy public expectations of impartiality and signals publicly that decisions are free of undue influence.

Independent statutory planning bodies are intended to safeguard against this potential for conflicts that exists in any and all planning systems. The 2019 IPC Review noted there are strong reasons to strengthen the role of these bodies given the contested nature of decision-making and risks of undue influence. However, because they ultimately derive their independence from government legislation, there can be uncertainty about the extent of independence these bodies enjoy. This also means they face a perceived role conflict when assessing development where government agencies are proponents, such as major infrastructure projects.

¹⁰ The 2019 Kaldas [Review of Governance and Decision-Making in the NSW Planning System](#), the NSW Productivity Commission's 2019 [Review of the Independent Planning Commission](#), the [Final Evaluation of the Introduction of Local Planning Panels in NSW](#), and the Productivity Commission's 2011 [Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments](#)

Roles and Functions

The role and function of independent statutory planning bodies is unique across jurisdictions and there is no single model followed. However, there is some similarity in the scope, scale, and complexity of matters they are involved with. The policies, plans, or projects they advise on, review, assess, or determine are generally above a certain threshold, of a significant or contentious nature, or have elevated potential for conflicts of interest.

However, thresholds for involvement in certain planning matters, assessment processes and determination powers, and membership of these bodies is often different. Most have a small set of expert members with a wide mix of professional backgrounds employed on permanent part-time or otherwise available for regular advice, review, assessment, and determination of planning matters.

More recently, governments have reformed the roles and functions of these bodies to reduce the potential for conflicts of interest by more clearly separating regulation and policy development from the assessment and determination of applications in accordance with those regulations and policies. For instance, recent reforms to the NSW IPC sought to emphasise its primary role assessing significant and contentious development applications by removing its statutory function to review these applications.

Importantly, bodies with a role in regulatory and policy development are typically limited to preparing, advising, and reviewing these regulations and policies whilst final decisions to adopt or alter them reside with Ministers as representatives of the elected government of the day.

For example, in NSW, the independent Greater Sydney Commission (GSC) prepares draft regional and subregional plans that are formally adopted by the Minister. The GSC is not involved in assessing or determining development applications in accordance with them. Instead, regional and local planning panels of rotating pools of independent experts assess and determine certain development applications whilst the NSW IPC assesses and determines only the State's most significant and contentious applications.

In contrast, the Western Australia Planning Commission (WAPC) advises the Minister on land use planning issues, including the preparation of land use regulations and policies, but also delegates assessment and determination of development applications to independent experts through Development Assessment Panels (DAP). In Victoria, Planning Panels Victoria (PPV) assesses planning scheme amendments rather than development applications, and reviews significant development applications prior to assessment and determination by other bodies.

Independent, Expert Decision-Making Model

A number of jurisdictions have shifted to the assessment and determination of development applications by rotating pools of independent subject matter experts. The use of independent experts improves transparency, helps reduce the potential for and guards against conflicts, and can free up elected representatives to be more involved in leading regulatory and policy development.¹¹ This independent expert decision-making model is intended to improve the quality, rigour, and consistency of decision-making by providing certainty expert judgment about the impacts and merits of development will be determinative of decisions rather than personal, political, or financial influences.

¹¹ <https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Assess-and-Regulate/compliance/review-of-governance-of-decision-making-in-the-nsw-planning-system-report-2018-12-18.pdf>

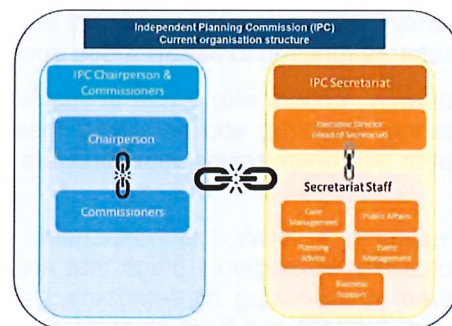
A 2010 report by the NSW Independent Commission Against Corruption (ICAC) noted opportunities to approach a decision-maker corruptly are limited when it is not known far in advance who will assess and determine an application.¹² However, it also noted the opportunity to 'groom' decision-makers can increase over time as the pool of decision-makers becomes known.¹³ For these reasons, it recommends a large pool of experts be made available for the assessment and determination of applications, refreshing the pool frequently and limiting tenure and opportunities for reappointment, and rotating the pool of experts across applications. This variable composition of planning assessment and decision-making panels helps safeguard against the potential for corruption and lowers the risk decision-makers will be subject to other influences by injecting a degree of randomness into decision-making.

Workload, Staffing Arrangements, and Organisational Structure

The roles and functions of independent statutory planning bodies shape their workload, staffing, structure, and resourcing.

For instance, in NSW, the IPC is supported by a Secretariat of 13 full-time staff who manage and administer its workload and assist 29 term-limited, part-time Commissioners who assess and determine matters and are assisted in writing reports by the full-time staff. The IPC staff are employed by the Department of Planning, Industry, and Environment with an Executive Director who is Head of the Agency and reports to the Secretary of the Department but is not involved in the assessment or determination of applications before the IPC (Figure 2). The Secretariat is accommodated in a separate office and otherwise operates independently of the Department.

Figure 2 Organisational model of the NSW Independent Planning Commission



Source: NSW Productivity Commission, 2019

The NSW Productivity Commission's 2019 Review of the IPC noted good governance of independent statutory bodies requires clear lines of accountability and control. That Review considered the role of the Executive Director and Chairperson and found that whilst accountability and control of the organisation rests with the Executive Director, the Chairperson is publicly seen as accountable for the IPC's performance even though they have no formal control over the Secretariat or Commissioners beyond their assignment to assessment panels. For these reasons, that Review recommended greater clarity in the IPC organisational design and operating model.

By comparison, the Greater Sydney Commission advises the Minister on planning issues, prepares regional and subregional land use plans, and coordinates delivery of infrastructure in accordance with the plans. Staff numbers have fluctuated from 80 in 2017 when subregional plans were being drafted to 55 in 2018 after the plans had been adopted. The GSC has a Commission and organisational structure that reflects the coordinating and place-based nature of its roles with a Chief Commissioner, three expertise-based Commissioners to represent economic, social, and environmental issues, place-based Commissioners to represent Greater Sydney's five subregions, and a special office for the Western Sydney City Deal which the GSC plays a coordination role in delivering.

¹² *The Exercise of Discretion Under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005* (p. 19)

¹³ <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf> (p.57)

In contrast, the Western Australia Planning Commission has state-wide planning, advisory, and assessment and determination roles. It has 18 members on its Board of Management who are also members of a larger pool of 125 experts organised in issue-specific Committees responsible for strategic planning for certain areas, advising the government on planning issues, advising on the design quality of major development, and statutory assessment and determination of particular development applications.

Conflicts of Interest

Regardless of who makes decisions, where decision-making involves windfall gains there will always be some risk of potential for actual or perceived conflict of interest. Because complaints about conflicts of interest can undermine the impartiality of decision making and public confidence in planning systems, it is imperative independent statutory bodies manage conflicts effectively.

In 2017, the NSW IPC was reformed to improve community confidence in the planning system by reducing the potential for conflicts and introducing more rigour into decision-making through the use of independent experts to assess and determine applications.¹⁴ In 2017, the NSW Auditor General recommended more could be done to improve transparency and the public's perception of the IPC's independence by publishing on its website a summary of conflict of interest declarations and how conflicts were handled for each application.

Statements of Reason

Removing development from the jurisdiction of independent statutory bodies can create a perception of undue influence. In NSW, the Independent Commission Against Corruption has noted that where alternative approaches to the recommendations of these bodies are adopted, reasons for this should be clearly documented and publicly available. The NSW IPC has prepared a template, known as a 'Statement of Reasons', to promote openness and transparency. However, the 2019 NSW IPC Review found the Statement is too legalistic, does not list issues in order of priority, and sometimes does not provide enough information on the reasons for decisions, which makes it difficult for the public to understand the planning merits of its decisions.

The Hearing Process

The 2019 NSW IPC Review also considered the public hearing processes of several independent statutory planning bodies in other jurisdictions including Victoria, New Zealand, Canada, British Columbia, Greater London, and New York. It found multiple hearings that evaluate and re-evaluate issues add little value and do not improve the quality of decision-making whilst only serving to delay the assessment process.¹⁵ Despite unique differences in hearing processes across jurisdictions, there were several overlapping themes:¹⁶

- the importance of hearings is related to procedural fairness
- early and comprehensive notice of a public hearing is vital
- hearing discussions are generally structured around key issues
- speakers need to be time limited to avoid minor issues taking time away from key issues
- questions to speakers are provided by or through the panel or Chair

¹⁴ <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf> (p.55)

¹⁵ <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf> (p.45)

¹⁶ <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf> (p.45)

For example, the Greater London Authority (GLA) allocates equal time to supporters and objectors to ensure even weight is given to the consideration of issues for and against an application. Supporters and objectors are expected to coordinate amongst themselves to ensure time is used effectively and to avoid multiple speakers repeating issues. The GLA also restricts the scope of what can be discussed and ensures speakers do not refer to non-planning issues. In NSW, the Chair of IPC development assessment panels also has discretion to extend the time for speakers beyond an allocated five-minutes.¹⁷

¹⁷ Ibid

Stakeholder Engagement

This section documents views expressed by stakeholders through the engagement and submissions received as part of the Review. These views are analysed thematically as they relate to the Terms of Reference. Quotes provided by stakeholders have been included throughout to provide more detail on specific issues raised.

Independence of the Tasmanian Planning Commission

An independent statutory planning body is seen as a crucial element of the Tasmanian Planning System to reduce the potential for undue influence by providing frank and fearless advice on planning issues and through planning decision-making at arm's length from government. Almost all stakeholders expressed significant confidence in the TPC's independence in performing its roles and functions.

We were confident once the application got to the TPC, it would be dealt with by people with the right expertise who would make a decision based on information and facts they gathered through an independent process. It was a shining example of how an independent and transparent process involves community members and provides oversight of state and local governments. The TPC has no agenda and aren't going to get voted out at the next round of elections so there's no politics involved and they can make an independent decision (community stakeholder)

There is value and comfort in advice coming from an outside body, fair enough it might not be adopted but at least there is an avenue to have that advice (community stakeholder)

The TPC needs to be able to present frank and fearless advice to the Minister (state government stakeholder)

However, as has been found in other jurisdictions, there appears to be significant community and stakeholder misunderstanding of the extent of the TPC's independence and roles and functions with respect to land use planning and decision-making. For instance, whilst the TPC performs its assessment and determination roles independent of government, the Tasmanian Government is not bound to accept the advice of the TPC with respect to land use regulation (as set out in the State Planning Provisions) and policy development.

The community need to understand how the planning system works. The system is too complex and no one knows who is responsible for planning policy. Governments have lost sight of policy, and that is bad because that drives the decisions the TPC needs to make and means growth is happening in an unmanaged way. (industry stakeholder)

The absence of policy has resulted in there being two dominant voices on planning. One is the TPC as an independent assessment and determination body, and the other is councils. The perception is that all the powers are with the TPC and not the Minister. In a legislative sense, that is just not the case. (planning professional)

The Minister should not have decision-making powers but could be a stronger voice in the Tasmanian Planning System in terms of setting planning policy direction. (planning professional)

There is no accountability in the TPC – who are they accountable to? For matters around policy, the final answer should rest with the Minister. That is common on other issues where a recommendation is made to the Minister and decisions can be appealed. This is how the TPC should work. (industry stakeholder)

The Minister is an elected representative. The TPC is a non-elected, appointed committee. (industry stakeholder)

The Public Hearing Process

The TPC's public hearings are considered a crucial element of its independence that provide opportunities to access the planning system in an open, transparent, and informal way. The hearings are highly valued because they enable stakeholders, particularly community members, to participate in planning decision-making in an informal manner.

The independence of the TPC is upheld through the hearings (industry stakeholder)

It is very valuable the TPC run things informally and you don't need to go with a planning lawyer. The TPC is very good at dealing with self-representors and making the planning system accessible and understandable for them. (industry stakeholder)

On the whole, the way the TPC conducts hearings is really good. Some of the best conversations with communities happen through TPC hearings. The process the TPC goes through is rigorous and the hearings provide transparency and credibility. No one comes out of a hearing feeling like they haven't been heard. (local government stakeholder)

The hearings are crucial to get better decisions and community acceptance of decisions. Even though stakeholders may not agree with the decisions made, they accept it has been a fair process driven by the perception the TPC is independent and not driven by government. The areas where the TPC hasn't held hearings is what drives distrust. (environment group stakeholder)

However, some expressed concern the level of informality in the hearings leads to inefficiencies that impede the timeliness of the TPC's assessment and determination. Some stakeholders indicated that, despite hearings starting with an overview of key planning issues to be considered, they often lack structure and go off-track as new issues are raised by representors. Applicants indicated this is unfair because they feel they must respond to these issues on the spot without sufficient preparation or, if they cannot do this, seek adjournment to obtain further studies to provide an adequate response. This causes further assessment delays as it can take several months to re-schedule a hearing.

Stakeholders also indicated representors often raise similar issues that can add little value to the hearings, whilst the amount of speaking time allocated to representors is sometimes not commensurate with the issues that end up determinative of the TPC's decision. Stakeholders also noted councils often speak first at a hearing, and this is considered to negatively impact procedural fairness for applicants as there is no proper explanation of an application¹⁸. It was suggested a fairer process would involve applicants speaking first to properly explain an application, followed by council, then representors.

The scope and ease of representation is a challenge with objections being made from outside Tasmania. Petitions addressing one issue but with several signatures on it triggers consultation. There is probably a sensible reform that other jurisdictions have followed by focusing more on unique submissions. (industry stakeholder)

A lot of it comes down to good chairing and asking representors whether they have anything to add to what's already been said. If it turns out it is just repeating things, the Chair should shut that down and ask for anything new. (planning professional)

At the TPC, they always ask council to go first. The proponent should go first, council second, and then representors. (legal industry stakeholder)

The TPC needs to invite representors beforehand otherwise people just show up on the day and it gets out of hand. (local government stakeholder)

¹⁸ Predominantly it is the Council that is the applicant if it has initiated an amendment even if that was requested by a developer.

Stakeholders identified multiple requests for information during the pre-assessment and hearing stages as key issues that lead to delays. In particular, delays are likely because there is no statutory timeframe to respond to requests for information during pre-assessment whilst stakeholders consider the 14-day timeframe to respond to requests for information during a hearing is unrealistic. Stakeholders also expressed concern over instances where the TPC has sought its own third-party advice prior to a hearing on matters relevant to its assessment but then not provided this to applicants.

Whilst some applicants don't like questions being asked that mean you have to go back for another hearing, you need to have flexibility to do that because issues arise while evidence is being given and the TPC might need more evidence before it is satisfied. (environment group stakeholder)

A big issue is multiple requests for information through the pre-assessment and hearing processes. There is no statutory timeframe to get information back. (industry stakeholder)

A timeframe of 14 days to respond to what comes out of a hearing might not be realistic. (local government stakeholder)

The TPC is well resourced with planning and legal expertise but there is a need to access the services of other experts such as architects or engineers to ensure it has an appropriate balance of expertise to conduct a thorough assessment. (state government stakeholders)

Stakeholders compared TPC hearings to those of the Resource Management and Planning Appeals Tribunal (RMPAT). Some aspects of the RMPAT hearings were considered superior, particularly early directions hearings that confirm the key planning issues to be considered during the hearing. This was seen as providing certainty of the issues that will be determinative of an assessment as well as procedural fairness by allowing time for further background studies on these issues to be undertaken prior to the hearing proceedings.

There is opportunity for issues to be consolidated into categories before the hearing. The TPC has some responsibility for properly administering the hearings. (planning professional)

There have been a few instances where there has been a hearing and no information on what is going to be covered. The result is no one is prepared and questions just get peppered at you. It's a waste of time for everyone because you have to go back and get studies done. The TPC needs to set an agenda for what a hearing is going to cover so there are no surprises. (local government stakeholder)

The Act basically says panels can establish their own hearing procedures. It is problematic there are no standard procedures. How the hearing plays out depends on the panel. This raises issues of procedural fairness. (industry stakeholder)

Sometimes it is like the TPC want to surprise you going into the hearing. In the RMPAT, you know what the issues are and can prepare and exchange evidence beforehand. (industry stakeholder)

Sometimes I contact the planning officer assigned to a case to seek clarification on what the panel has asked for – which isn't always clear - so we can better answer the question. (state government stakeholder)

It would work a lot easier if there was a process with a direction hearing that outlines what the issues are. The process needs to be more predictable and transparent. (legal industry stakeholder)

Sometimes the panels make decisions based on issues that haven't been heard at the hearings. If the Delegates have an issue that is determinative of the decision it should be heard at the hearing otherwise it's a denial of natural justice. (planning professional)

Going into a hearing we don't necessarily know what the issues are and depending on who the delegates are, we may or may not get the chance to fully explore things. We spent days preparing our argument and then it wasn't raised at the hearing. The lack of articulated structure disadvantaged us. There is a sense the TPC can make the rules up as they go. (local government professional)

Overall, it was suggested improved chairing and hearing guidelines that make clear the information requirements and how hearings will be conducted could make the process more efficient. In other jurisdictions such as NSW, independent statutory planning bodies have published documents outlining how hearings will be conducted, including time limits for speakers and ways to reduce repetition in public representations.¹⁹ Further, whilst independent statutory planning bodies in other jurisdictions seek out third party advice for particularly contentious or complex issues, this advice is typically made public in the interests of transparency and fairness.²⁰

If the TPC published a practice note on how the hearing process operates from start to finish, including how it will make representors aware of issues beforehand and deal with requests for more information raised during the hearing, that would clear things up immeasurably. (environment group stakeholder)

Roles and Function of the TPC

Overall, there was significant misunderstanding of the TPC's roles and functions, particularly the TPC's involvement in advising on the development of land use regulations and policies. As part of the most recent reforms to the Tasmanian Planning System, the TPC took on an extended range of roles and functions. However, some stakeholders indicated the TPC has lacked resources, skills, capabilities, and expertise to perform these effectively, particularly advising on policy for issues of state and regional significance, planning for coordinated provision of transport and infrastructure to support strategic planning initiatives such as the Regional Land Use Strategies, and advising councils on the development of Local Provision Schedules and incorporation into Local Planning Scheme Amendments.

If you look at the key roles and functions, the TPC makes decisions on draft planning schemes and scheme amendments, as well as combined scheme amendments and permits. It also has input into planning directives, it's involved in Tasmanian Planning Policies, and projects of regional and state significance. They also have a role in drafting state policies and amendments and also in public asset reviews such as national park and reserve plans of management (industry stakeholder)

I'm a bit unsure on the TPC's role. I've never looked at the legislation but I was pretty surprised to find under the Act there is quite a broad strategic planning function to coordinate land development and infrastructure. The TPC hasn't done any strategic planning. It has provided comment on strategic plans but never led the preparation of a strategy (local government stakeholder)

The TPC has never had the resources to coordinate or guide strategic planning (community stakeholder)

The structure of the TPC makes it appear policy has been taken out because there aren't a lot of resources allocated to policy development. That is a positive thing, there is supposed to be separation between policy and assessment. (state government stakeholder)

¹⁹ *Public Hearing Guidelines* (for single stage public hearings) and *Guidelines for a Public Hearing Held in Multiple Stages*

²⁰ <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf> (p.42)

Through its roles and functions, the TPC deals with a wide range of planning issues. Policy direction is provided on some of these but stakeholders identified there are many for which there is no established direction. Stakeholders indicated this significant policy gap creates challenges for the TPC as it lacks a policy basis to guide its roles and functions advising on, reviewing, assessing, and determining significant planning matters. These issues have been encountered with independent statutory bodies in other jurisdictions such as NSW, where the 2019 Review of the Independent Planning Commission identified a need for a mechanism through which the IPC can seek clarification where government policy direction is unclear.

In the absence of clearer policy direction, stakeholders suggested the TPC's decisions become de facto policy. Concern was expressed this creates a situation where experts that are not elected by nor accountable to the public are responsible for setting policy. Whilst the Tasmanian Planning Policies are currently being prepared and expected to address these critical policy gaps, stakeholders identified opportunities to capture the TPC's insights of persistent and emerging planning issues that require policy direction to feed into the process to prepare TPPs as well as ongoing advice on and review of these policies.

If you look at other models, the Victorian Planning Panels have a variety of roles. They perform an assessment role, but also act as advisory committees to investigate policy issues and report to the government. There is a legitimate role for the TPC in that and there needs to be transparency in how that happens through a public hearing process and a reporting feedback loop into government. But the Minister must set the policy. (industry stakeholder)

You cannot have people in the TPC with all this power being unelected and unaccountable. (local government stakeholder)

When you've got an independent body, how they provide advice into the policy development process is always a challenge (state government stakeholder)

The TPC has to have a feedback loop to say this policy doesn't work or we think there is something wrong with it (environment group)

Keeping policies up to date and reviewing them should be a role for the TPC – advising the Minister that Policy X doesn't work or is out of date etc. (planning professional)

Regulatory and Policy Development

There was significant discussion by stakeholders but mixed views on the appropriate role of the TPC in land use regulation and policy development. Some felt the TPC should develop regulation and policy independent of government to ensure an evidence-based approach free of undue influence. However, others felt this is inappropriate because the TPC is not accountable to the public. Whilst stakeholders supported the role of the TPC providing advice on policy issues, it was suggested lack of clear policy direction has led to the increasing use of planning directives that have further complicated the Tasmanian Planning System whilst also creating workload pressures that have taken away from the TPC's more valued assessment and determination roles.

It is not clear how the TPC has a role in policy. The Planning Policy Unit has picked up the policy development function. The TPC is reviewing the policy, but not developing it. The reality is, policy is appropriately made by the government of the day, but I'm not sure what policy they are developing. (local government stakeholder)

The TPC should have the final say. Ministers should not have any say over planning matters. The politics should be separate. The Plans of Management, Regional Land Use Strategies – all these things need to be with the TPC. (community stakeholder)

The TPC should prepare land use strategies independent of government so they are based on good data and planning principles, rather than the whim of the Minister. (local government stakeholder)

There's a vacuum of policy. I don't see that as the TPC's role. They might be a vital adjudicator, but it's not their work to do. I don't want to see the TPC gutted but it isn't their responsibility. The community would like to see an enhanced role for the TPC because they see no policy coming forward from government. (community stakeholder)

Any planning system needs to be supported by robust state policies. The community can trust the TPC process in the absence of clear state policy direction. (community stakeholder)

The TPC's priorities are set by the Minister. At the moment, there are all these ad hoc planning directives coming through based on current issues facing the Minister. Whilst the TPC should provide advice on these, they get caught up in them. (local government stakeholder)

The difficulty is the legislation does not direct the TPC to review policy, that resides with the Minister. There is a disconnect between how roles are stated in the legislation and what triggers exist for that role to require a review of policy. (planning professional)

All the PPU and TPC deal with is administrative policy and providing templates for planning schemes. No one is looking at what the trends are and strategic policy development and review. No one goes back and reviews the policies. (planning professional)

If the TPC is a state assessment and determination body, it should not have a role in policy. But there is a lack of policy capacity within the State Government. (planning professional)

The TPC should have a role in policy development. The difficulty has been the TPC has always had a very strong independent position since it was formed in 1997. It has always been thought it isn't the TPC's role to get involved in policy because it would undermine the confidence the broader public has in them. (planning professional)

Advisory role

The TPC has several advisory roles under the Act including advising the Tasmanian Government, Minister, and councils on a range of planning issues. However, stakeholders indicated the advice they receive is often limited to process matters and, even in these instances, some suggested there is a lack of clear guidance on documents the TPC would like to see to inform its review, assessment, and determination processes.

Whilst stakeholders highly valued the TPC's process guidance, some identified instances where they had sought advice on how to achieve outcomes through the drafting of Local Provision Schedules and Local Planning Scheme Amendments but were unable to obtain this to their satisfaction. Some suggested this is because, if the TPC provides advice beyond process, it could be perceived as a conflict with its statutory role to review, assess, and determine Local Provision Schedules and Local Planning Scheme Amendments.

Other stakeholders questioned whether there is a conflict by comparing these TPC roles to local councils, which also review and advise applicants on planning applications through pre-assessment meetings and then go on to assess and determine those applications.

Stakeholders acknowledged that, if the TPC were to provide more outcome-focused advice, this would need to be qualified and not indicative of the assessment or determination outcome and may have implications for the TPC's organisational structure and resourcing. To address these implications, stakeholders compared the common practice of local councils to advise applicants that any advice received during pre-assessment is not indicative of the assessment and determination outcome, and the way in which councils and other planning authorities organisationally separate strategic planning from development assessment.

The TPC advice is narrow around process. If you're preparing a scheme amendment and want advice on which zone might be better, there's nowhere to get that (local government stakeholder)

There isn't enough of an outcome focus in the advice. The advice is not about planning principles, it's about process. The TPC is either approving or refusing things 'as is'. (local government stakeholder)

There is an expectation at the start of a Local Planning Scheme Amendment to discuss options with the TPC. Most councils don't do a lot of Amendments so there is a need for advice on what the content should be and the best way to write provisions. It would at least be good to have a conversation about what is the best mechanism to affect the type of outcome being sought. It doesn't matter if it's qualified advice, councils do that all the time and say this application may not be approved. (local government stakeholder)

The TPC needs to understand the difference between giving people information about process and advice on interpretation of development outcomes. (industry stakeholder)

The TPC should not be in the weeds helping councils write local planning schemes. (industry stakeholder)

The TPC move mountains but what gets lost is this fundamental lack of sight on the end game and the operational effect of the State Planning Provisions on the ground. Everyone gets obsessed with the TPC process but on the ground, councils have to administer it and half of it is incoherent. (local government stakeholder)

The independent advisory function is important and should be maintained. (state government stakeholders)

Other statutory roles the TPC has, such as reviewing management plans, are essentially advisory roles and should be retained to enable an 'integrity of process' review of planning issues that fall outside LUPAA. (state government stakeholders)

There is potential for the TPC to be organised the way most councils do with a statutory and strategic section. There has to be a fairly clear separation with a strategic section that reviews and maintains the Tasmanian Planning Policies, State Planning Provisions, and Regional Land Use Strategies, and another section that is more of an assessment body for Local Planning Schemes and Scheme Amendments. (local government stakeholder)

Review role

The TPC reviewed and advised the Tasmanian Government on the State Planning Provisions component of the Tasmanian Planning Scheme, which will standardise local planning controls through state-wide development standards. The TPC is currently undertaking a technical reviews of Local Provision Schedules proposed by councils to spatially apply the State Planning Provisions through determining the appropriate zones and overlays for their land. Whilst this reform implementation process is partially complete, stakeholders reflected on how it was conducted.

Stakeholders identified a number of instances where the TPC did not effectively coordinate across the planning system to resolve issues with some of the state-wide standards. This led to inefficiencies in the TPC's consideration of Local Provision Schedules as issues with state-wide ramifications were dealt with on an area-by-area basis. In this situation, stakeholders suggested the TPC could have benefited from clearer policy guidance on the issues to which the contested provisions related, and a more collaborative and transparent process to engaging councils and the Tasmanian Government.

The problem existed for every Local Planning Scheme because it was included in the Tasmanian Planning Scheme. The TPC response was 'we can't talk about a way to fix it at a state-wide level. The only thing we can deal with is your Scheme, but we can't tell you how to fix it, you have to go away and fix it'. The TPC then said to talk to the PPU so we did and the PPU said 'not our problem, you need to work it out and get back to the TPC'. (local government stakeholder)

I would like to see the TPC become a forum for whole-of-government discussion and analysis of issues of planning policy and a genuine planning agency, not merely a development control regulator tied down with legal process. It should have the capacity to engage with functional agencies, promote interagency collaboration, and support appropriate mechanisms for community consultation. (community stakeholder)

The TPC are supposed to be a body of technical review, and there is just not enough of that going on. (local government stakeholder)

Statutory Assessment and Determination roles

Overall, stakeholders identified assessment and determination of significant and contentious planning applications as the TPC's most important role. The TPC composes and delegates authority to assess and determine these applications to development assessment panels. Typically, the panels consist of at least one Commissioner and a senior TPC staff member. They are assisted by other TPC staff that deal with administration matters, prepare reports identifying issues with an application for the panel to consider during assessment, are present at the hearings, and responsible for drafting the determination report on behalf of the panel.

The benefit of the TPC is the statutory decision-making role. Everyone has confidence in them because they are seen as separate from government (industry stakeholder)

The development assessment panel had two planners and a lawyer. If I look at the decision made by councillors, there were local business owners, hairdressers, and the like. I'm not saying they don't have expertise and don't understand the planning system, but when it comes to large and complex decisions it gave me confidence it would end up at the TPC and a decision would be made by experts based on information they gathered through the TPC's ability to call agencies to provide evidence and the hearing and submissions process. That's a good thing because it makes for a much fairer process. (community stakeholder)

The Commission should continue to be an independent statutory decision maker. (state government stakeholders)

Overall, stakeholders felt the development assessment panel model works well but raised a number of concerns about the operation of panels. Stakeholders expressed uncertainty about whether the TPC staff assisting the panel also have delegated authority, which some suggested could be a conflict of interest as they are often involved in discussions with applicants in the lead up to a hearing, and queried why these staff are involved in hearings at all. Stakeholders also felt the TPC's assessment and determination can become bogged down in process issues, which was considered a function of the TPC's role as final decision-maker with limited appeal rights other than for procedural or jurisdictional issues.

The TPC are concerned about getting something wrong so they double, triple, and quadruple check everything. It is very process based and very much becomes bogged down (local government stakeholder)

Some of the decisions have given cause for concern because they are seen to be too bureaucratic (state government stakeholder)

The Commissioners did not make the decision. It was the panel members that had the final say. It's very unclear how and why the delegation process works the way it does. It was a

two-person hearing with no right of appeal to the full Commission. In that sense, the TPC seems to operate without good governance. (local government stakeholder)

TPC staff sitting on assessment panels is a conflict of interest. You can respect the process but at the end of the day it is not independent (industry stakeholder)

Stakeholders also raised issues about the size of the pool of potential panel members that can be drawn on to assess amendments and applications. Many identified a need to significantly expand the pool beyond the existing Commissioners and TPC staff members, citing concerns over the potential for conflicts of interest with such a limited pool of potential decision-makers and key gaps in the type of expertise available to assess and determine applications, including environment and heritage expertise.

Stakeholders suggested the small pool can lead to decisions being made based on personal preference rather than expertise relevant to an issue. Overall, many viewed the Resource Management and Planning Appeal Tribunal's (RMPAT) panels more favourably, particularly the larger pool of potential panel members that enables the RMPAT to draw on a wider range of more specific expertise. However, it should be noted that RMPAT has a wider range of legislation it works under and therefore has to cover expertise in more areas, such as building, strata legislation, fire, marine farming, historic heritage, threatened species and public health.

The establishment of a standing panel of delegates with relevant specialist expertise would help the TPC in the quality of its decision-making. (state government stakeholders)

Whilst the TPC has become more careful about who they select as delegates to sit on certain matters, one of the problems is having people with the right expertise. (planning professional)

There are some matters now where you only get two members on a panel. Often there is no one qualified for European and Colonial heritage. That is problematic when a lot of places in Tasmania are heritage listed. (legal industry stakeholder)

If you go to RMPAT, the panel members are genuinely independent because there is a bigger pool of potential members that can be brought in. The TPC don't call in anyone external, they just use the same people who make the same decisions over and over again. It's a culture of group think. The TPC should always have externals. (local government stakeholder)

Some stakeholders identified a need to improve integration in the TPC's assessment of planning matters. At present, some issues, such as threatened species and water quality, are assessed by other agencies through separate processes. Stakeholders suggested greater integrated is needed whereby particular issues are referred for assessment to other agencies with expertise in those issues, and the TPC then integrates and balances this assessment in an overall determination. This was considered beneficial in speeding up the determination process and resolving the concerns of some stakeholders where some land use and resource management issues, such as marine farming and forestry, have been removed from the TPC's jurisdiction.

An integrated assessment process is one where impacts are assessed together, not one where you have another agency conduct a separate assessment. This means the TPC sees some issues as another agency's responsibility. That disaggregated assessment model leads to poor outcomes (environment group stakeholder)

Role of the Planning Policy Unit

Stakeholders identified the role of the PPU as one of the most critical issues for the Review to consider. They expressed significant uncertainty about the role and relationship between the PPU and TPC in regulatory and policy development and advising on and undertaking technical reviews of land use regulations and policies. Whilst most suggested the PPU should be responsible for regulatory and policy development and the TPC for advice and technical review, many did not think the PPU has adequate resourcing to offer a proper regulatory and policy development function.

A number of stakeholders also questioned whether locating the PPU within the DoJ²¹ is appropriate as planning addresses issues that are fundamentally cross-portfolio in nature. It was also suggested the TPC's statutory membership arrangements that establish the Executive Commissioner as the head of the TPC with a reporting line to the Secretary of the DoJ can result in conflicts of interest where the DoJ is an applicant for a matter being assessed and determined by the TPC, such as a major project. To address these issues, stakeholders felt the PPU should be a stand-alone agency or located in a central agency such as the Department of Premier and Cabinet.

One of the big issues is clarity between the role of the TPC and PPU (local government stakeholder)

You cannot look at the role of the TPC without also considering the PPU because a lot of what isn't working is created by the interaction between the two, particularly given the PPU's involvement in drafting the Tasmanian Planning Scheme and State Planning Provisions and the advice provided on Local Provision Schedules (local government stakeholder)

The cross over with the PPU is blurry when preparing a new planning scheme, who do you go to for advice? (industry stakeholder)

I contacted the PPU to find out what process advice has gone to councils on a planning issue but they said we needed to ask the TPC because it is a statutory process (state government stakeholder)

It's just confusing to be honest. I'm not really sure what the PPU's role is once it gets to decision-making. There isn't any clarity around how the two work together (local government stakeholder)

The role of the PPU should be to develop policy and explain what the government is trying to achieve. The TPC is where discussions happen on the technical details to achieve that. But at the moment, the TPC is very much focused on process as the way to resolve issues, and that won't work. (local government stakeholder)

The PPU need way more staff and status to be a proper planning agency (industry stakeholder)

The PPU needs a clearly defined and differentiated role that guides planning decisions (community stakeholder)

There is a policy role for the TPC in the legislation but that no longer exists because it is supposed to be the role of the PPU. The first thing that needs to happen is decide where policy sits. If it sits in an independent statutory body, then it is in the wrong place at the moment and the legislation needs to be updated to reflect that. The right structure for the TPC cannot be worked out until it is known where policy sits. (state government stakeholder)

The policy role in the Act is the part that has not been reviewed since the PPU was created. There has not been an examination of what this now means. Subsections 6(1a, c, and e) could be deleted to avoid duplication with the PPU role. (state government stakeholders)

²¹ The Director of the PPU reports to a Deputy Secretary in DOJ.

If the policy role is external to the TPC, then the PPU needs to be adequately resourced. This allows the TPC to discharge its functions effectively. For example, lack of resourcing for reviewing and maintaining regional land use strategies affects the statutory considerations the TPC must apply in its assessment process. (state government stakeholders)

The ongoing work will be for the PPU and less so for the TPC. It will be about making sure the State Planning Provisions are updated and kept contemporary. Most of that can be done without too much TPC involvement. (planning professional)

An example of what might be potentially perceived as a conflict of interest is an application for a prison by the Department of Justice, which funds the TPC. If it proceeds, the TPC will have a role in its assessment, either by rezoning or a combined rezoning/development approval. (state government stakeholders)

Structure, Workload, Resourcing, Membership, and Organisational Arrangements

Stakeholders considered a range of issues relevant to the specific ToR guiding the Review's consideration of the TPC's organisational structure, workload, resourcing, membership, and conflicts of interest. Overall, stakeholders acknowledged the TPC's workload has been unusually high with significant resource implications over recent years given the role it has played assisting with the development and implementation of recent reforms. Many stakeholders also strongly expressed the statutory framework for the TPC's organisational structure and membership does not reduce the potential for conflicts of interest nor adequately safeguard against the potential for conflicts.

The Executive Commissioner

As has been observed in other jurisdictions, stakeholders indicated greater separation is needed between the role of the Executive Commissioner in managing the TPC's day to day operations and the capacity for the Executive Commissioner to sit on development assessment panels and assess and determine applications under the current legislation. In addition to the significant potential for conflict of interest in the role of the Executive Commissioner, stakeholders noted the skills and expertise needed of this role are distinct and questioned whether a senior executive responsible for full-time management of the TPC's workload also has sufficient time to commit to assessing and determining applications.

The Executive Commissioner role is not well setup. It became worse in 2009 when the TPC took on a policy function. It raised fundamental concerns in terms of how you separate the functions of the Executive Commissioner in day to day management and operations whilst also sitting as a Commissioner. The fact there is not a clear separation is problematic. (industry stakeholder)

There are issues in the separation of the TPC as a Board, and the organisation's day to day operations. (industry stakeholder)

The TPC needs someone who is dynamic to be responsible for day to day operations. (industry stakeholder)

There is a scope of roles issue in terms of the TPC's staffing and capabilities. They have had a determination role for some time now and that needs a specific skill set. Then this extra overlay with the reforms doing detailed work on Local Provision Schedules has created a burden for the TPC to deliver oversight on what's happening for Tasmania. How is that being factored into the TPC priorities when they are so focused on day to day approvals? It goes to the role of the Executive Commissioner and how they balance those competing priorities and the skill set that person brings to the role. (state government stakeholder)

They need someone running the organisation who is able to understand the nuances of government processes, but also able to understand the independent role of the TPC. (state government stakeholder)

The role of the Executive Commissioner is very important. But what does the role do, is it involved in discussions with applicants or just making decisions and providing oversight of organisational conduct? (industry stakeholder)

Some of the Commissioners are busy people, how can they provide adequate time to what the task demands. (community stakeholder)

There are two different roles for the Executive Commission. There is an administrative reporting line into the Secretary of the Department, and also as an independent statutory decision-making that reports into the Minister. (state government stakeholder)

The TPC must have a position who leads and manages its affairs. As a government funded organisation, the Executive Commissioner will have accountabilities to the Secretary of the funding agency. Actual or perceived independence from the Department is essential for the TPC to appropriately discharge its responsibilities. (state government stakeholders)

Membership of the Commission

Stakeholders noted concerns with the lack of maximum term limits for Commissioners because it does not allow new expertise to be injected into the TPC's decision-making. Some noted the current membership arrangements for TPC Commissioners and the use of TPC staff on assessment panels means the pool of potential decision-makers is not large enough. This can lead to conflicts of interests as well as gaps in expertise to assess some issues with the result being personal preference rather than expert assessment is determinative of decisions. Others noted appointing Commissioners on the basis of representing certain organisational interests, such as state agencies or local government, is an outdated model when other independent statutory planning bodies have moved to a more thorough independent expert decision-making model.

There are no maximum term limits for Commissioners. Some have been with the TPC for a long time. It can be painful when trying to propose something that is new in Tasmania. I question the level of contemporary experience. (industry stakeholder)

There is a question about professional competency. Some Commissioners have been there a long time and are very old fashioned in their thinking. (industry stakeholder)

The role of the Commissioners is very important. But some are approaching their third or fourth term and that is inadequate. It needs to be short-term and rotated. (industry stakeholder)

There should be maximum term limits for Commissioners. (industry stakeholder)

I find it a bit strange some of those specific organisational members have been removed in other jurisdictions but are still adhered to in Tasmania. I don't think it's a modern approach for what should be a skills-based board. (community stakeholder)

The membership of the TPC should reflect there is value in specialised knowledge and expertise and members shouldn't be drawn from organisational interests. (state government stakeholders)

The Act requires representatives of certain Tasmanian Government agencies to be members of the Commission. The original intent of this membership was to ensure state interests are reflected in the TPC's policy advice to the Tasmanian Government. In view of the recent reforms and introduction of legislation to prepare Tasmanian Planning Policies, stakeholders indicated the original intent of including State Agency representatives in the TPC membership is now achieved through the process to prepare the TPPs which sits with the PPU.

The value of the State Agency representatives is minimal. In theory, they are there to provide advice on policy direction. But policy sits with the PPU now. Because decision-making is delegated to development assessment panels with very competent technical people, the contribution of the State Agency representatives is minimal (state government planner)

Most applications have a state agency as a respondent because conditions are applied to the design of the proposal. The agencies respond to almost all of them. (state government planner)

I think State Agency representatives have a perceived conflict in terms of the decision-making role of the TPC. Whilst I have never seen agencies get special treatment, they are not on the same level playing field as community members in the hearing (environment group stakeholder)

When government is involved as proponent, the State Agency representatives must excuse themselves, or don't have them as Commissioners. This is a central conflict of interest. (industry stakeholder)

In addition, there are instances where these agencies are also applicants for matters assessed and determined by the TPC and, in these situations, the State Agency representatives face a conflict of interest and must be excluded from decision-making on those matters. Stakeholders noted improvements over the last 12 to 18 months in the TPC's processes to identify and deal with perceived and actual conflicts of interest and that they are confident State Agency representatives are not involved in assessing or determining matters on which they are conflicted. However, stakeholders raised concerns this further reduces the available pool of decision-makers and questioned the ongoing relevance of including the State Agency and Local Government representatives as Commissioners and members of the TPC.

There needs to be clearer separation between policy and assessment. I don't think the TPC needs representation by state agencies if policy development appropriately sits outside the TPC. (planning professional)

With the policy functions being the responsibility of the PPU, the State Agency and Local Government representatives have less relevance to the roles and functions of the Commission. (state government stakeholders)

Having State Agency representatives on the TPC makes it difficult when you are pursuing a scheme amendment where an agency has made a representation and the state representatives are conflicted out. I don't see a need for the state representatives if the TPC is not dealing with policy (local government stakeholder)

If the State Agency representatives are removed, there still needs to be a mechanism for them to contribute to policy. The Tasmanian Planning Policy process would provide that (community stakeholder)

If the State Agency representatives are no longer included in the TPC, they might be replaced by Commissioners that tips the balance in favour of industry (environment group stakeholder)

Stakeholders further considered the role of state agencies in the TPC's assessment and determination of applications. Because there are no formal referral processes whereby state agencies can input into the assessment process, staff from some agencies attend the public hearings to ensure their interests are considered in the TPC's assessment. However, concern was raised this does not afford procedural fairness to applicants or community members and it was suggested a formal referral process is a more appropriate mechanism to ensure state agency interests are considered, rather than through the hearing process which takes away valuable time from applicants and community members. Some indicated this referral process

should be undertaken by councils when preparing Local Planning Scheme Amendments, whereas others suggested it should be done by the TPC as part of its assessment processes.

For Local Planning Scheme Amendments, there is no requirement under the Act to refer to state agencies even though there is an objective to consider impacts on infrastructure. (state government stakeholder)

State agencies will attend hearings as representatives when there is a planning scheme or permit application that effects infrastructure directly (state government planner)

In a statutory sense, state agencies are treated as just another representor, there are no special provisions for state interests (state government planner)

Some of the TPC officers have picked up when there hasn't been adequate engagement by agencies in preparing a proposal (state government planner)

Some councils engage state agencies when preparing planning schemes and others do not. Councils should be responsible for that early engagement otherwise something may get to a state agency too late in the process. (state government planner)

Conflicts of Interest

Stakeholders noted there have been improvements over the last 12 to 18 months in the TPC's processes to manage perceived and actual conflicts of interest. However, stakeholders identified the TPC's membership creates potential for perceived and actual conflicts for Commissioners working in the planning profession. The small size of the planning profession is a factor that elevates the potential for conflict of interest in Tasmania.

Whilst many stakeholders noted these professionals have the appropriate expertise to assess and determine applications, it was suggested they should not be Commissioners and members of development assessment panels. This issue has been raised in previous reviews of the TPC and its predecessor organisations and confronted in other jurisdictions. Because of the small size of the planning profession in Tasmania, stakeholders suggested there is a strong need to significantly expand the Commission's membership and ensure decision-makers are regularly rotated across development assessment panels. Stakeholders identified the pool of RMPAT panel members as an easy way to expand the pool of potential decision-makers and ensure the adequate rotation of decision-makers to inject a greater degree of randomness into decision-making that would reduce the potential for conflict of interest.

There has been improvement over the last 12 to 18 months and there are now much stronger codes of conduct for the panels and those relationships, whether professional or personal, are disclosed. But these improvements have highlighted the problem we shouldn't be so dependent on the same pool of people for assessment. (industry stakeholder)

There is a view the role of planning professionals who are also Commissioners in the industry means they are conflicted on any application before the TPC. (state government planner)

It is no surprise that in a small place like Tasmania that everyone has pretty close connections with everyone else. We are a really small pool of professionals and the really important thing is disclosure. (industry stakeholder)

Because of the smallness of Tasmania, everyone knows everyone and there can be too cosy a relationship across the sector (community stakeholder)

Resourcing, Staff Capabilities, and Expertise

Most stakeholders find the TPC has adequate resources, capabilities, and expertise for its role assessing and determining significant or contentious planning applications. However, stakeholders indicated the TPC does not have adequate resources, capabilities and expertise for the extended roles and functions it has performed following recent reforms.

Some questioned the front-line experience of TPC staff and suggested some of the advice they had received is detached from the reality of how development delivery works. For example, whilst confidence was expressed in the capabilities, skills, and expertise of the TPC to assess and determine Local Planning Schemes and Scheme Amendments, there is less confidence in its assessment and determination of combined Scheme Amendments and development permits with stakeholders citing a number of unworkable conditions of consent drafted by the TPC.

The TPC isn't as well-resourced as it could be. With Local Provision Schedules, it has been under-staffed and is taking longer than originally thought. Resourcing and work allocation are an area that needs to be tightened up. (industry stakeholder)

I don't think the TPC's expertise lends itself to the nuts and bolts assessment of drafting conditions of consent. (planning professional)

The workload is high but I find the TPC doesn't deal with it efficiently either. They have highly qualified planners that are redrafting reports for Commissioners. That seems to be a waste of skills and expertise that is not well utilised. (industry stakeholder)

Technically, the staff are very competent. (local government stakeholder)

The TPC are on top of their game. They have recognised all these things that need to be done. Opportunity should exist to re-prioritise things and for the TPC to say these are the resources we need to do these tasks. (planning professional)

The TPC has always been under-resourced. As far as I can see, they have never gone to the Minister and advised we need to review the Regional Land Use Strategies because they don't have the people in the seats to do it. (industry stakeholder)

The TPC's workload is dominated by the assessment and determination of Local Planning Schemes and Scheme Amendments. (community stakeholder)

There needs to be a commitment to expanding the TPC's resources through a specific levy. (community stakeholder)

The TPC should be skills based and those skills should reflect the objectives of the Tasmanian Planning System with at least one member with planning expertise and experience due to the Commission's significant assessment role. (state government stakeholders)

The staffing structure of the TPC needs to reflect employees with different types of planning expertise. This should be determined by how much of the work is reviewing policy, assessing planning instruments such as the SPPs, proposed Tasmanian Planning Policies etc. For example, GIS is an ongoing and increasingly important skill because the TPC is responsible for maintaining an electronic database of planning schemes and maps. (state government stakeholders)

State of the Environment Reporting

The Act requires the TPC to prepare a State of the Environment (SoE) report every five years. The last report was prepared in 2009. Since then, the TPC's workload has been prioritised to assist with the development and implementation of recent reforms. Stakeholders indicated Tasmania's failure to prepare the SoE report has limited its contribution to national SoE reporting initiatives. However, since the last Tasmanian SoE report was prepared, the approach to reporting in other jurisdictions across Australia has evolved considerably to cover

a range of different issues and there is now a lack of cross-jurisdictional agreement about the best way to do it.

The State of the Environment report has not been prioritised by the TPC. To be fair, there has been a lot of other reform going on and a lot of resources internally have been directed at that. (state government stakeholder)

State of the Environment reporting is an important but demanding task that has become too onerous and tended to fall away. (community stakeholder)

The purpose of the SoE report is to provide overarching analysis of where we are at across a range of inter-related issues like settlement pattern, environment, and health. Not all the States prepare the same level of SoE reporting so it makes it difficult for the SoE to take up its national role. It's an indictment on Tasmania because it prevents fulfilling our national responsibility. (environment organisation stakeholder)

Stakeholders widely agree there is value in continuing the SoE as it can provide useful information to inform consideration of the impacts of planning decision-making on Tasmania's natural resources. However, some expressed a preference for an independent organisation to prepare the SoE because of limited confidence in government agencies to accurately report information that may reveal negative environmental impacts. Whilst some suggested the TPC should prepare it, there was a general view it is not the most appropriate organisation because it lacks the relevant skills, expertise, and capabilities to access and analyse the relevant data.

Stakeholders noted there could be a range of different approaches to preparing the SoE report depending on its content and how it is intended to be used. For instance, if the SoE is intended to be used to enhance environmental land management practices, responsibility may appropriately reside with the Environment Protection Authority; if intended to guide government decisions around cross-portfolio responsibilities, it may appropriately reside within a central agency such as the Department of Premier and Cabinet; if it is intended to have a more narrow land use focus, it may appropriately reside with the Planning Policy Unit.

While the report might still be a function the Government wishes to do, the TPC has neither the expertise nor resources to do it. (state government stakeholders)

It is good to have an independent body produce a report like that. The Environmental Protection Authority should do it and look at collating what data is already available rather than a data collection exercise. (environment organisation stakeholder)

SoE reporting should remain with the TPC. It is valuable and should be kept independent. It should not be done inside government because they cannot be trusted to produce and reliably analyse the data. (community stakeholder)

I don't think the TPC is the right place to do it. They don't have the right skills. I have tried to do it once and you end up outsourcing the components to someone else because the data sits in other agencies. It is better off being coordinated by an environmental agency through an independent panel because there needs to be a level of independence and expertise brought to the task. (local government planner)

The general public doesn't trust a government agency doing it, even if they are staffed with reputable and credible professionals. The TPC is regarded as independent but they can't get the information they need from government agencies to do a proper independent assessment of the State of the Environment. (local government stakeholder)

I think the TPC should be responsible but it could go to another organisation that is scientific-based. It is more important that we just have it prepared. (environment organisation stakeholder)

It should sit in the Department of Primary Industries, Parks, Water, and Environment (DPIPWE) because they have the information. Having it at arm's length from the

Department would be a positive thing. The reason it was with the TPC in the first place was so it could be a warts and all assessment and a level of independence is needed to report bad news. (state government stakeholder)

DPIPWE is the custodian for a lot of the data and information. If it had a stronger planning focus it would make sense for the TPC to do it but it is a whole-of-government task that needs to liaise across government. (local government stakeholder)

Plans of Management

The TPC reviews draft Plans of Management prepared for state land and other reserves such as national parks. This role did not feature prominently in the issues raised by stakeholders as important considerations for the Review. However, stakeholders indicated they have a high degree of confidence in the TPC continuing its review of the draft Plans of Management given concerns they have with the process to develop the draft plans.

The Plans of Management are really important but the process to prepare them has been a disaster. I wouldn't want the plans reviewed internally by government. That needs to be with the TPC. (community group stakeholder)

The Plans of Management for national parks should be prepared by government, but the government should not conduct a public hearing. I think the TPC is the right body to deal with reviewing Plans of Management. (environment organisation stakeholder)

The TPC review the Plans of Management really well and need to keep it. (environment organisation stakeholder)

Other issues

Whilst the Review has been guided by the Terms of Reference, stakeholders raised a number of other issues beyond the ToR as significant considerations for the Review.

Major Projects Bill

During the Review, the Tasmanian Government released a draft Major Projects Bill for consultation. The draft Bill set thresholds to determine which projects are eligible for a streamlined assessment and determination, and requires the TPC to nominate for the a panel to assess and determine eligible projects.

The Bill was passed into law with some minor amendments after the Review was finalised. Whilst it is beyond the scope of this Review to consider detailed implications of this for the TPC, some stakeholders expressed concern it had potential to erode the TPC's independence if the final assessment panel was subject to Ministerial approval. These stakeholders opined that the Minister does not have the power to approve or otherwise the composition of panels to assess and determine other matters before the TPC and were concerned that it might be different for major projects²².

Overall, stakeholders indicated they did not fully understand the role of the TPC under the draft Bill, particularly whether the panel is formally constituted by the TPC and therefore bound by its Code of Conduct. Stakeholders indicated the TPC has the appropriate resources, skills, and expertise to assess and determine major projects. Whilst some raised the prospect of a significant increase in the TPC's workload because of these projects, others questioned whether this would materialise given existing provisions for state and regionally significant projects have rarely been used and these have not been significant contributors to the TPC's workload.

The TPC is the most appropriate body to assess major projects. (local government stakeholder)

²² This was a mistaken assumption. The Draft Bill do not propose Ministerial approval of panels and the Act as passed provides that the TPC selects the panel.

The TPC should have a strong role in major projects, we definitely need a major projects assessment process. (industry stakeholder)

On my reading of the draft Bill, the TPC's determination of major projects final. If that is the case, they are going to have to be incredibly well resourced to deal with the complexity of that assessment and the TPC is not in that position at the moment (community stakeholder)

The TPC currently has authority to make decisions on state and regionally significant projects. In the draft Bill, it has no decision-making authority. All it does is help choose the panel and a Commissioner or delegate will sit on that. Ultimately the decision is made by the panel but there is no guarantee the panel is independent because the Minister can say yes or no to the proposed panel members. The panel isn't bound by the TPC Code of Conduct and there are no guarantee members are trained in hearings, assessments, or determining applications (community stakeholder)

The composition of the panel is important. You would want to see skill requirements with somebody that understands the nature and complexity of major projects (industry stakeholder)

The TPC should have an expanded role as an assessment panel to undertake hearings and make decisions on major projects over a certain value. They are very well respected and the Commissioners are fair, thorough and, importantly, independent. (industry stakeholder)

State and regionally significant project provisions have rarely been used because they are difficult. Assessing projects under the Major Projects Bill needs to be business as usual for the TPC. (industry stakeholder)

Policy in the Tasmanian Planning System

Many stakeholders identified gaps in policy direction for the Tasmanian Planning System as the most significant issue for the Review to consider. Whilst there is a process underway to develop Tasmanian Planning Policies, the policy gap has meant the TPC has often set policy on a de-facto basis through its decision-making. However, stakeholders expressed frustration at inconsistency in the TPC's decision-making and that policy is effectively made on an 'case-by-case' basis which diminishes certainty in the planning system.

If you are making decisions about merit, then you are making decisions about policy. So, because of the policy gap, the TPC ends up doing policy via the decisions they make. Through the PPU, the State Government should draft policies for the TPC to review and assess. If it means the TPC is clearer in its role, then that will assist (industry stakeholder)

Governments have not understood the benefits of strategic planning. But if they want to reduce regulation, the only way to do that is to have more policy and be clearer about what land uses we want where to provide easier, clearer assessment pathways. At the moment, we are dealing with the unknown because there is no policy and we don't have certainty about the government's view on what is appropriate where. (planning professional)

The early forays developing a couple of state policies were contentious. Despite support from the planning profession and community, various governments have since been reluctant to expand policy to matters like transport, settlement, recreation and open space. Resources have not been made available to enable systematic policy development for land use. (community stakeholder)

The challenge is we have a system that isn't based on policy. We just keep amending things like the Regional Land Use Strategies, State Policies, Planning Directives etc. It doesn't feel holistic because these have different statutory weight. What do you do if they are in conflict? – there is no proper hierarchy or guidance to provide the answer so the TPC has to navigate that minefield. (state government stakeholder)

Because there are only three state policies, it brings into question what is the role of the TPC. It is to make decisions and write supporting judgments. The TPC should be there to

independently assess and ensure the implementation of policy is correct. (industry stakeholder)

Regional Land Use Strategies

Regional Land Use Strategies were prepared in 2009-10 through a collaborative effort by councils across Tasmania's three regions with funding and coordination support provided by the Tasmanian Government. Feedback from stakeholders during the Review indicated the TPC played a minor role in the RLUS but it was a useful process of regional collaboration.

A number of issues with respect to the RLUS were raised as relevant to the TPC's roles and functions. In particular, stakeholders expressed concern over the TPC's reliance on the RLUS as assessment considerations, especially given they were prepared based on 2001-2006 Census data that does not reflect Tasmania's more recent growth conditions.

Several examples were cited where the TPC's interpretation of the RLUS meant some applications were refused because they were not envisaged at the time the RLUS were prepared but now have clear strategic merit given Tasmania's recent growth trajectory. However, stakeholders noted there is no clear legislative trigger to update the RLUS and the TPC is unable to review and update them unless instructed to do so by the Minister.

Overall, stakeholders emphasised there is a need to urgently review and update the RLUS and clarify the hierarchy of land use regulations and policies including whether the RLUS are intended to be interpreted strictly as assessment considerations. Stakeholders identified similar concerns with other parts of the land use policy hierarchy, in particular currency of the State Policies and the statutory weight of other local land use strategies called up by Local Planning Schemes.

The Regional Land Use Strategies are wildly out of date and don't look like they will be updated for some time. (planning professional)

The RLUS are supposed to be a guiding policy document rather than a statutory assessment consideration. (local government stakeholder)

Rather than basing decisions on the RLUS in a principle sense, the TPC uses them as statutory documents for decision-making. (local government stakeholder)

The statutory requirement is for applications to be consistent with the RLUS as far as practical. Every piece of legal advice I have received is that it requires a broad interpretation. (planning professional)

The TPC read parts of the RLUS and apply bits and pieces like a test in a planning scheme provision. (planning professional)

The big concern is that we have over a billion dollars in major infrastructure to roll out, and all the planning is based on these old RLUS. (planning professional)

The RLUS has been interesting. They have a statutory role and there have been instances where the TPC can't approve certain things because they are inconsistent with the mapping that was only ever intended to be high level. That is problematic because they are out of date and it relies on the Minister making the decision to review and update them. (state government stakeholder)

Because it's a policy document, the RLUS shouldn't be a prescriptive document that prohibits a scheme from going through. It would be good to know what effect they have and how they fit into the mix (legal industry stakeholder)

There is a provision that requires the RLUS to be reviewed but it has just been little band-aid solutions. The reason is that it has to be the Minister that instructs for the review and update to occur and that hasn't happened. (planning professional)

The TPC is required to undertake assessments on the basis of strategies that were devised 10 years ago, which applied economic and social data which doesn't always reflect the contemporary circumstances of Tasmania. (state government stakeholders)

The three state policies – coastal, air quality, agricultural land – are all quite different in format and structure. Some of them are motherhood statements, others have quite a lot of detail. When we get to a TPC hearing, the TPC sticks to what is in the policy and does not exercise any discretion on whether parts of the policy might be out of date. The fact they are out of date doesn't matter and they become a bureaucratic hurdle and a reason for refusing things. (planning professional)

The whole of hierarchy of policies isn't formalised very well. There are questions about how local strategies that sit outside Local Planning Schemes are called up because the RLUS refer to these. If a residential land use strategy is produced that identifies a particular piece of land needs to be rezoned, the unless the strategy is incorporated into the RLUS it is uncertain what statutory power it has. Whilst the TPC could make a decision based on local strategies but they don't have a clear place in the hierarchy, it isn't going to stack up in RMPAT because they don't fit in the legislation. There is no way to guide development unless there is a clear place in the hierarchy for local strategies. We are doing down the path of having small 'p' policies that don't have the legislative power of big 'P' policies. (state government stakeholder)

The Tasmanian Planning Scheme, State Planning Provisions and Local Provision Schedules
Stakeholders noted the important and valued contribution the TPC has made to developing and implementing Tasmania's recent reforms, particularly advising on the State Planning Provisions and technical review of Local Provision Schedules. It was noted the introduction of these new components created significant workload pressures for the TPC but it was considered this is unlikely to be repeated as all councils are unlikely to update their Local Provision Schedules at the same time in the future.

The TPC worked really hard to get as much done as quickly as possible in terms of advertising the review, assessment and hearing processes for the State Planning Provisions. (state government stakeholder)

The TPC did a reasonably good process of inquiry through the State Planning Provision hearings. (local government stakeholder)

Whilst a series of Practice Notes were produced to assist with drafting, mapping, and public exhibition, stakeholders noted the TPC's advice on and technical review of these new components of the Tasmanian Planning System was hampered by lack of clear responsibility between the TPC and PPU for providing advice on issues not covered within the guidance and whether councils are responsible for amending Local Provision Schedules following the TPC's technical review.

I'm not sure what the role of the TPC was in the State Planning Provisions. (community stakeholder)

One of the biggest issues' councils had was there are 29 and none were getting consistent advice. (local government stakeholder)

I was blown away at first by how little information there was about preparing a Local Provision Schedule. There seemed to be a constant changing of the goal posts that prevented people getting started. It started with the PPU and it wasn't clear what direction they were going in with certain zones. Then it moved to the TPC around what they wanted to see as far as the application went. There was a lot of change in the advice we were getting on how we should be drafting things. You would draft the Local Provision Schedule and update the Local Planning Scheme and then the TPC would change its mind on the

language it wanted used. It felt a bit like it was being made up on the run. In Victoria and NSW, they had state planners embed in councils and write provisions that aligned. (local government stakeholder)

The TPC worked really hard to get as much done as quickly as possible in terms of advertising the review, assessment and hearing processes for the State Planning Provisions. (state government stakeholder)

The TPC did a reasonably good process of inquiry through the State Planning Provision hearings. (local government stakeholder)

Councils are not well resourced and have struggled with the state-wide planning scheme. It has been challenging to provide the support that's been needed to keep councils moving and they are going through a degree of fatigue from all the changes and struggle to give it the resources, attention, and timeframe needed. (state government stakeholder)

It felt as though the Local Provisions Schedules were double handled. They were drafted, then sent back to councils to fix who are under-resourced and it will take years when they need to be finalised now to provide certainty whether we are dealing with the Interim Planning Schemes or Local Planning Schemes and remove the need to do dual assessments under both types of Schemes. (industry stakeholder).

Local Planning Scheme Amendments

Stakeholders identified some issues with the lodgement and assessment of Local Planning Scheme Amendments, which are applications to rezone parcels of land that can come from either a council or private applicant. In the case of a private applicant, they first apply to seek agreement from the local council to initiate an Amendment. Councils then undertake various types and levels of assessment and call for submissions before a decision is then made to formally endorse the Amendment and lodge it with the TPC for assessment and determination. Stakeholders indicated this leads to inefficiencies as Amendments undergo multiple rounds of assessment.

For applicant-initiated Amendments, it's fairly close to a full nuts and bolts assessment. (local government stakeholder)

The concept of a council-initiated Amendment is doubling up. Council has to first assess whether they are going to initiate the Amendment. If they decide they are, someone has to draft and certify the amendment, then council takes submissions. By the time the Amendment gets to the TPC, there has been three assessments. (legal industry stakeholder)

I like the way it is lodged with council to assess before it goes to the TPC. I think it's important councils have the power to refuse an applicant's initiation of an Amendment. But it would be better if the step wasn't synonymous with endorsement or approval by council and, instead, was more akin to council saying this has enough merit to have a full assessment and hearing by the TPC. (local government stakeholder)

A person must first apply to council to initiate a Planning Scheme Amendment. Then it becomes a council-initiated Amendment and council assesses and certifies it and calls for submissions. There are instances where councils agree to initiate an Amendment based on their assessment but if there a lot of submissions, they turn around and don't support it once it goes to the TPC. The TPC needs to clarify how these Amendments will progress. (legal industry stakeholder)

Appeal Rights and Statements of Reasons

Appeal rights for TPC decisions are generally limited to matters of process and jurisdiction and did not feature prominently in the issues raised by stakeholders. This was because of significant confidence in the rigour and expertise in TPC's assessments and determinations. However, given limited appeal rights for its decisions and in the interests of transparency, some stakeholders questioned why the TPC is not obliged under the Act to provide reasons for its decisions, although it was acknowledged applicants can request reasons. In the past, the TPC has provided detailed Statements of Reasons but it appears efforts have been made more recently to pare back these Statements to improve the timeliness of the TPC's assessment and determination.

If there is an appeal right, in most cases it is to the Supreme Court over a jurisdictional issue. The reason for that is because the TPC is the independent decision-making body in the field of planning and one has to trust the decisions they make are fair and just (community group stakeholder)

The TPC is a quasi-judicial body. But they don't rely on case law and you cannot appeal a decision back to them. (local government stakeholder)

It would be a good outcome if the TPC is required to give reasons for its decisions and these were reported in a central source such as iPlan. (environment organisation stakeholder)

You can request reasons for decisions but there is no statutory obligation. To ensure good governance, the TPC should be obliged to provide reasons. (legal industry stakeholder)

The TPC doesn't understand the consequences of not providing reasons for decisions. The feedback is not very variable and often inconsistent and you have to explain the decision to an applicant. (local government stakeholder)

There is no clarity as to why the TPC gives weight to some things and not others. It varies from panel to panel. (local government stakeholder)

Key Findings

This section brings together findings of the Review as they relate to the ToR and issues raised by stakeholders. Overall, the Review finds:

1. The TPC is performing most of its roles and functions in an efficient, effective, fair, and just manner to the satisfaction of stakeholders.
2. The independence of the TPC is highly valued by all stakeholders and there is strong regard for the expertise and professionalism of the TPC.
3. The TPC public hearings are highly valued because they provide opportunity for people to have a say in land use planning decision-making in an informal context.
4. There is general lack of understanding of how land use planning decision-making occurs in Tasmania including the role and function of the TPC and PPU in this.
5. There are inadequate organisational arrangements and resourcing for planning regulation and policy development in the Tasmanian Planning System. This creates an overlap and lack of clarity between the role of the TPC and PPU that hampers the TPC in performing some of its roles and functions to the satisfaction of stakeholders.
6. There is a perceived conflict between some of the TPC's roles and functions, in particular advising the Minister and councils on planning regulation and policy development, then undertaking technical reviews of those regulations and policies, and then assessing and determining applications against those regulations and policies.
7. The potential for conflict between the TPC's roles and functions needs to be addressed through clearer organisational separation of regulatory and policy development and advice by a state planning agency from the TPC's statutory assessment and determination role, and adequate resourcing regulatory and policy development and advice by a state planning agency.
8. Whilst there is significant confidence the TPC's decision-making is free of undue influence, there are inadequate system safeguards in place to reduce the potential for conflicts that is naturally elevated in the Tasmanian context and due to the statutory framework for the TPC's organisational structure and membership.

The TPC's Independence

The TPC's role as an independent statutory body in the Tasmanian Planning System is highly valued including its review, assessment, and determination on the State Planning Provisions part of the Tasmanian Planning Scheme, Local Planning Schemes and Scheme Amendments, Combined Scheme Amendments and Development Permits, state and regionally significant projects, and draft Plans of Management. In particular, there is a high level of confidence in the TPC as an independent statutory body that assesses and determines significant or contentious planning applications based on specialist expertise.

The Extended Roles and Functions of the TPC in the Tasmanian Planning System

Following the 2009 and 2014-15 planning reforms, the TPC took on a number of new roles and functions including advising on and reviewing new components of the Tasmanian Planning System, including the Regional Land Use Strategies, Tasmanian Planning Scheme (inclusive of State Planning Provisions and Local Provision Schedules), and Local Planning Schemes. The TPC has made an important and valued contribution to developing and implementing these reforms. However, the TPC has not effectively performed some of these new roles and functions to the satisfaction of stakeholders, in particular advising councils on Local Provision Schedules and Local Planning Schemes and coordinating provision of transport and other infrastructure across the Tasmanian Government to support delivery of strategic planning initiatives such as the RLUS.

Many of the reasons stakeholders identified for the TPC not performing these roles and functions to their satisfaction are symptomatic of the general lack of resources for a proper regulatory and policy development function in the Tasmanian Planning System. This leads to a lack of clarity between the role of the TPC and PPU in developing and advising on the new regulatory and policy framework, and perceived conflict between the TPC's role to undertake a technical review of aspects of this framework and then assess and determine planning matters against them.

The regulatory, policy, and organisational arrangements to develop and implement the recent reforms has meant the TPC has experienced mission creep away from the intended purpose of independent statutory planning bodies to reduce the potential for conflicts in planning systems. This is particularly evident when compared to other jurisdictions where the development and implementation of regulatory and policy reform is typically undertaken by an organisationally separate and adequately resourced state planning agency. Whilst the bulk of the limited planning resources at the state level are concentrated in the TPC and the Commission was naturally well-placed to play an expanded role in the recent reforms, Tasmania continues to lack an adequately resourced state planning agency that can continuously improve and further develop the new regulatory and policy framework.

At present, there are inadequate system safeguards and organisational separation between regulatory and policy development and advice and development assessment and determination functions in the Tasmanian Planning System. The current statutory arrangements appear to combine these roles in the TPC and do not align with the intended purpose of independent statutory bodies to reduce the potential for conflicts in planning systems through the appropriate separation of responsibility for regulatory and policy development and assessment and determination of significant or contentious planning matters against those regulations and policies.

Many of the issues raised with respect to the TPC's effectiveness in performing its roles and functions can be resolved by clarifying responsibility for and better resourcing regulatory and policy development and advice functions in the Tasmanian Planning System. Whilst there is precedent from other jurisdictions for independent statutory bodies to develop land use regulations and policies, even in these instances those bodies are typically not involved in assessing and determining development applications against those rules and policies and they are typically only responsible for drafting regulations and policies with final decisions to alter or adopt them appropriately residing with the Minister as representative of the elected government of the day and who is accountable to the public for regulation and policy.

The Review considers further extending the TPC's roles and functions to include responsibility for regulatory and policy development is inappropriate as the TPC does not have adequate resources, capabilities, skills, or expertise to do so, this would reinforce the existing lack of adequate separation between these roles, and would also concentrate significant power within the hands of a small group of unelected experts with specialist skills in planning decision-making rather than policy or plan-making which requires a different skill set.

Regulatory, Policy, and Organisational Arrangements of the Tasmanian Planning System

The development of land use regulations and policies in the Tasmanian Planning System must be adequately resourced and organisationally separated at the state level. The Review considers this should occur by establishing a state planning agency that is either stand alone or located in a central agency that is typically responsible for coordinating cross-portfolio issues such as the Department of Premier and Cabinet.

The Tasmanian Government is encouraged to prioritise the development of Tasmanian Planning Policies, including seeking advice from the TPC on planning issues that need to be addressed through the suite of TPPs. However, the Review considers final decisions on the suite and content of TPPs appropriately resides with the Minister.

Once the TPPs are finalised, the Tasmanian Government is encouraged to prioritise a review and update of the Regional Land Use Strategies. It is considered this is the appropriate responsibility of councils across Tasmania's three regions. However, the Review acknowledges there are significant resourcing constraints for councils and funding and coordination support from the Tasmanian Government will again be necessary similar to the process used in 2009-10.

Conflicts of Interest and Membership of the TPC

Significant stakeholder confidence the TPC's decision-making is independent and free of undue influence indicates it is effectively managing conflicts of interest in accordance with its Code of Conduct. However, stakeholders identified opportunities to improve how the TPC manages conflicts of interest to enhance the already fair manner in which it makes decisions.

The Review finds the statutory framework for the TPC's organisational structure, membership, and decision-making arrangements significantly raises the potential for conflict of interest. This occurs by establishing a dual and conflicted role for the Executive Commissioner as Chair of the TPC who is responsible for managing day to day operations and workload, is involved in the assessment and determination of applications, and has a reporting line to the Secretary of the DoJ which may also be a proponent of applications before the TPC; roles for State Agency and Local Government representatives in assessing and determining applications for which the organisations they represent may be proponents; and the delegation of decision-making authority to TPC staff that are Tasmanian Government employees.

The Review finds the potential for conflicts of interest and undue influence is naturally elevated in the Tasmanian context given the small size of the planning industry that is characterised by close professional relationships. This unique Tasmanian context underscores the importance of taking all steps to safeguard against the potential for conflict that naturally exists in any planning system. As such, deep consideration needs to be given the design of the development assessment panel model operationalised by the TPC.

Statutory Assessment and Determination

Recent reforms in other jurisdictions provide the model of how to reduce the potential for conflicts of interest by expanding the pool of external, part-time and independent experts available for the assessment and determination of developing applications at arm's length from government, ensuring the pool is regularly refreshed, and rotating decision-makers across planning matters. The Review finds this could be achieved by drawing on the existing pool of experts that determine matters before the Resource Management and Planning Appeals Tribunal, and ensuring TPC staff are ineligible to be part of the pool of experts and sit on development assessment panels.

Introducing a more comprehensive model of independent expert decision-making would have a number of benefits. These include addressing gaps in specific expertise needed to assess and determine some matters, relieving assessment and determination workload pressures that exist due to the limited number of existing Commissioners, and focusing the role of the Executive Commissioner on managing the TPC's day to day operations and workload. By

establishing a larger pool of decision-makers, the TPC would no longer have to rely on the Executive Commissioner to assist with assessment and determination and remove the potential for conflict that currently exists in this role. It would also negate the need for organisational representatives, such as the State Agency and Local Government representatives, to serve on the Commission which is an outdated model of decision-making.

This model would work in such a way that the TPC operates as a Secretariat function to development assessment panels composed of rotated pools of external, part-time and independent subject matter experts responsible for the assessment and determination of development applications. The Chief Executive Officer would be responsible for nominating subject matter experts to each panel based on the planning issues to be considered in each application and monitoring and reporting the rotation of Commissioners and experts across panels. The TPC staff would be responsible for advising and responding to applicant queries, writing assessment reports, and drafting determination reports on behalf of the panel but would not be allowed to sit on the panels or delegated authority to make decisions.

TPC Resourcing, Capabilities, and Expertise

The TPC has adequate resources, skills, capabilities, and expertise to assess and determine the significant and contentious planning matters before it, and for some of the expanded roles and functions it has taken on through recent reforms such as advising on and reviewing State Planning Provisions and Local Provision Schedules.

The TPC does not have adequate skills, capabilities, and expertise to effectively perform some of its extended roles and functions, in particular reviewing and updating Regional Land Use Strategies, and coordinating provision of transport and other infrastructure across the Tasmanian Government to support delivery of strategic planning initiatives such as the RLUS. However, there is a significant need for these skills, capabilities, and expertise in the Tasmanian Planning System and the Review finds these are appropriately developed and located in an organisationally separate and adequately resourced state planning agency.

The TPC's Workload and Major Projects

The Review finds recent workload pressures experienced by the TPC providing advice to the Minister and local councils on the development and then undertaking a technical review of the implementation of the Tasmanian Planning Scheme is unlikely to be repeated. The Review also finds the TPC is unlikely to experience a significant change in its workload as a result of the Major Projects Bill. The Review finds the TPC has the appropriate resources, skills, capabilities, and expertise and should be responsible for the assessment and determination of major projects as so defined under the draft Bill. The Review also finds the TPC should determine the skills, capabilities, and expertise necessary to assess and determine these projects without need for Ministerial approval in order to reduce the potential for conflicts.

Transparency and Statements of Reasons

The Review finds there is a need for greater transparency in the advice provided by the TPC to the Minister and any and all advice provided by the TPC and the Minister's response to that should be made publicly available via the TPC website. The Review also finds that given limited appeal rights for TPC decisions and in the interests of transparency, fairness, and justice, the TPC should be obliged to provide for all decisions Statements of Reasons that clearly and succinctly outline the planning issues that have been determinative of its decision.

The TPC's Public Hearings

The TPC's public hearings are highly valued and essential to enable it to continue to perform its roles and functions as an independent statutory body in a fair and just manner. However, there are opportunities to improve the processes and operation of the hearings to ensure they are efficient, effective, and afford procedural justice to applicants, community members, and other interested parties. In particular, this includes improved process and documentation guidance, more effective Chairing to summarise key issues and ensure more efficient use of time to hear from representors, and limiting requests for follow-up information and hearings.

State of the Environment Reporting

The Review finds there is significant value in the State of the Environment report and an urgent need for an SoE report to be prepared for Tasmania. However, the TPC is not the appropriate body to prepare it as it does not have adequate resources, skills, capabilities, or expertise to access and analyse relevant data. Determining the appropriate body depends on the purpose of and how the SoE data is intended to be used in decision-making. If the SoE is intended to be used to enhance environmental land management, responsibility would appropriately reside with the Environment Protection Agency; if guiding government decisions around cross-portfolio responsibilities, it would appropriately reside within a central agency such as the Department of Premier and Cabinet; if a narrow land use focus, it would appropriately reside with the Planning Policy Unit.

Recommendations

Engagement undertaken during the Review identified significant uncertainty of how land use planning and decision-making works in Tasmania following the recent reforms. The engagement also identified significant stakeholder interest in strengthening the role and function of the TPC. Overall, the Review considers this is best achieved through:

1. Clearer separation and appropriate resourcing of a state planning agency to develop planning regulations and policies and advise the Tasmanian Government and councils on these
2. Re-focusing the TPC on its more highly valued roles to independently review, assess, and determine significant and contentious planning matters
3. Changes to the current decision-making model to ensure a truly independent model with development assessment panels comprised solely of external, part-time experts
4. Changes to the current Commissioner model to ensure Commissioners are appointed solely on the basis of expertise rather than organisation or interest-based
5. Expanding the pool of independent expert decision-makers available to sit on development assessment panels to determine development applications on a rotational basis

To give effect to this and enable the TPC to perform its roles and functions in a fair, just, efficient, and effective manner, the Review recommends:

Public understanding of the Tasmanian Planning System

- Develop a program to educate the community and stakeholders about land use regulation and policy development and statutory assessment and determination in the Tasmanian Planning System, including:
 - the principal role of the PPU or state planning agency and Minister for Planning, as representatives of the Tasmanian Government, as well as local councils in developing land use planning regulation and policy;
 - the principal role of the TPC as an independent assessment and determination body for Local Planning Schemes, Scheme Amendments, the Local Provisions Schedules part of the Tasmanian Planning Scheme, and Amendments to those, and Combined Amendments and Development Permits, state and regionally significant projects, major projects eligible under the Major Projects Bill, and draft Plans of Management for state land;
 - the supporting role of the TPC to review Tasmanian Planning Policies, the State Planning Provisions part of the Tasmanian Planning Scheme, and Regional Land Use Strategies and that the is not bound to accept the findings of reviews by the TPC as opposed to determinations.

Roles and Functions in the Tasmanian Planning System

- Retain the TPC's statutory role to assess and determine Local Planning Provision Schedules and Amendments, Combined Amendments and Development Permits, and state and regionally significant projects in line with existing provisions in the Act.
- Retain the TPC's statutory role to review draft management plans for state land and other reserves such as national parks in line with existing provisions in the Act.
- Retain the TPC's statutory role with respect to major projects to include assessment and determination of these projects and to have the TPC responsible for the final decision on members of the panel composed to assess and determine eligible projects.
- Retain the TPC's statutory role to review and make recommendations on the Tasmanian Planning Policies, the State Planning Provisions of the Tasmanian Planning Scheme, and Regional Land Use Strategies and update the Act to automatically trigger this review every five years.
- Retain the right of the Minister to accept or refuse the findings of any review by the TPC of those matters it does not make determinations on under the legislation, and clarify local

councils must accept the findings of any review of Local Planning Schemes and Local Provision Schedules undertaken by the TPC.

- Update the Act to require the Minister to provide a publicly available response to any technical review by the TPC of the statutory operation of the Tasmanian Planning System, including outlining reasons for that response.
- Remove the TPC's role to advise the Tasmanian Government and councils on regulatory and policy development, state and regionally significant land use planning issues, and coordinate provision of transport and other infrastructure to support delivery of strategic planning initiatives. The Review considers this role is the cause of unnecessary confusion over how the Tasmanian Planning System works and, where it exists, stakeholder dissatisfaction with the TPC's performance. Furthermore, the Review considers this role is appropriately performed by an adequately resourced and organisationally separate state planning agency. Notwithstanding, the Review acknowledges the TPC gains valuable insights on how the Tasmanian Planning System is operating through its assessment role and these should be captured through engagement undertaken as part of regulatory and policy development processes by a state planning agency.
- Establish a separate clearly identified and properly resourced PPU or new unit with a central agency (probably Department of Premier and Cabinet²³) at a comparable level to the TPC.

Strengthening regulatory and policy development in the Tasmanian Planning System

- Prioritise the development of Tasmanian Planning Policies. The Review considers this is the appropriate role of a state planning agency.
- Prioritise the review and update of Regional Land Use Strategies. The Review considers this is the appropriate role of local councils with funding and coordination support provided by the Tasmanian Government through a state planning agency.
- Clarify the statutory weight planning authorities should give to the hierarchy of land use regulations and policies when assessing and determining development applications, in particular Regional Land Use Strategies and additional local planning strategies referred to in Local Planning Schemes.

Strengthening statutory assessment and determination in the Tasmanian Planning System through the structure and membership of the Tasmanian Planning Commission

- Restructure the TPC to be led by a Chief Executive Officer responsible for day to day operations and management including prioritising its workload, overseeing conflict of interest processes, and assessment secretariat functions provided by TPC staff such as assisting with the writing of assessment and determination reports and administration associated with the development assessment panels. In contrast to current arrangements for the Executive Commissioner role, the CEO would be ineligible to sit on development assessment panels. However, it is recommended the CEO have responsibility for allocating Commissioners and independent experts to the panels based on the expertise needed to assess the planning issues being considered for each application, and ensuring and publicly reporting sufficient rotation of Commissioners and experts across panels.
- Remove the organisation-based Commissioners and appoint six term-limited expertise-based Commissioners as formal members of the TPC, including one Chief Commissioner. These members would have the necessary skills, expertise, capabilities, and reputation expected of eminent planning professionals responsible for leading planning decision-making processes. It is recommended the role of the Commissioners is to Chair the development assessment panels but they would not have any role in selecting or appointing part-time, external independent experts to those panels.

²³ DPAC contains a number of divisions of similar or related functions to the PPU including local government, climate change, and whole of government policy.

- Establish an expanded pool of external, part-time independent experts available to sit on development assessment panels to assess and determine matters and develop systems to ensure the pool is regularly refreshed and Commissioners and experts are sufficiently rotated across panels. It is recommended TPC staff are ineligible for membership of the panels.
- Establish a formal referral process to ensure state agencies have an opportunity to comment on applications prior to any public hearing carried out by a development assessment panel.

Ensuring the TPC performs its roles and functions in a fair, just, efficient and effective manner

- Direct the TPC to develop guidelines for public hearings to provide clear guidance on hearing processes and documentation requirements, Chairing hearings and summarising key issues to ensure efficient use of time and hear from representors, and limit the number of and timing to respond to requests for follow-up information and hearings.
- Use the Statement of Ministerial Expectation to provide the Chief Executive Officer with clear guidance on the Tasmanian Government's expectations of the TPC's workload priorities by allocating timeframes to the priorities identified in the Statement.
- Improve transparency and understanding of the use of delegated decision-making authority to independent experts through development assessment panels and managing conflicts of interest through publicly available declarations of interest.
- Update the Act to require the TPC to provide a Statement of Reasons that clearly outlines issues determinative of its review, assessment, and determination of Local Provisions Schedules part of the Tasmanian Planning Scheme, and Amendments to those, Combined Amendments and Development Permits, state and regionally significant projects, major projects, and draft Plans of Management.

State of Environment Reporting

- Remove from the Act the TPC's role to prepare the State of Environment Report. The Tasmanian Government should confirm the intended purpose of the SoE and assign responsibility for its preparation based on this.

The Review acknowledges there may be significant resourcing and funding implications of these recommendations for both the TPC and PPU. However, considering these implications in detail is considered much beyond the scope of the Review. During the course of the Review, stakeholders provided some ideas on how the funding necessary to adequately resource a proper regulatory and policy development and advice function in the Tasmanian Planning System via a state planning agency could be provided, such as a nominal levy on all development applications.

Appendix A – List of Organisations Engaged in the Review

During the course of the Review, over 100 people representing almost 50 different organisations with a range of interests in the Tasmanian Planning System were engaged face to face during two site visits to Hobart and Launceston in January and March 2020, as well as subsequent phone interviews. A list of these organisations is provided below.

- 1) Tasmanian Department of Premier and Cabinet
- 2) Tasmanian Planning Commission
- 3) Tasmanian Department of Justice
- 4) Tasmanian Department of State Growth
- 5) Tasmanian Department of Primary Industries, Parks, Water, and Environment
- 6) Tasmanian Environment Protection Authority
- 7) Local Government Association of Tasmania
- 8) Launceston City Council
- 9) Hobart City Council
- 10) La Trobe Council
- 11) Clarence City Council
- 12) Kingsborough Council
- 13) Devonport Council
- 14) Brighton Council
- 15) Tasman Council
- 16) Meander Valley Council
- 17) West Tamar Council
- 18) Planning Institute of Australia (TAS)
- 19) Law Society Tasmania
- 20) Tasmanian Chamber of Industry and Commerce
- 21) Tasmanian Housing Industry Association
- 22) University of Tasmania
- 23) Planning Matters Alliance
- 24) Launceston Heritage Not High Rise
- 25) Tasmania Ratepayers Association
- 26) South Hobart Progress Association
- 27) Tasmanian Heritage Preservation Society
- 28) Hobart Heritage Not High Rise
- 29) Tasmanian Conservation Trust
- 30) Environmental Defenders Office (TAS)
- 31) Property Council of Australia (TAS)
- 32) Macquarie Point Development Corporation
- 33) North East Bioregional Network
- 34) Tasmanian Council of Social Services
- 35) Simmons Wolfhagen Lawyers
- 36) Masters Builders Association
- 37) ERA Planning and Environment
- 38) Residents Opposed to the Cable Car
- 39) Page Seager Lawyers
- 40) Wilderness Society
- 41) SGS Planning & Economics
- 42) Frazer Read & Associates
- 43) Neil Shepherd & Associates
- 44) Great Bay Constructions
- 45) Eco Shelta
- 46) Residents Opposed to the Cable Car
- 47) The Environment Association
- 48) Australian Labor Party
- 49) The Greens

Appendix B – Summary of Submissions

A total of 296 submissions were received and published on the Department of Justice website. These included 36 organisational submissions and 248 submissions from members or associates of *Planning Matters Alliance Tasmania*. This section thematically analyses the submissions according to the Terms of Reference.

Independence of the TPC

The submissions expressed strong confidence in the TPC. Submissions indicated the TPC's role as an independent statutory body that makes decisions at arm's length from government and free of political influence is highly valued. The TPC's independence is understood as being the final decision-maker, and many submissions indicated the TPC should continue to independently assess and determine significant planning matters, such as major projects and Local Planning Schemes and Scheme Amendments.

Many submissions expressed concern over potential erosion of the TPC's independence through a more Ministerial model of decision-making, and that no changes should be made to the TPC roles and functions that could undermine public perception of its independence. Some suggested the TPC's independence has been weakened, citing examples where they believed findings of the TPC's technical review of the State Planning Provisions and advice to the Tasmanian Government had been ignored. Submissions strongly indicated the TPC should be free of political influence and that Ministerial decision-making on appointments to development assessment panels was open to bias and could erode public confidence.

The Public Hearing Process

Submissions indicated the TPC's independence is physically expressed through open and transparent decision-making processes including public hearings that provide opportunities to participate in planning. Many submissions highlighted positive experiences with the hearings and considered these are held in a fair and impartial manner and accessible to members of the public who may not have planning expertise. Some suggested the hearings should be made mandatory, rather than discretionary and that strengthening TPC's independence was essential to maintain strong public confidence in the Tasmanian Planning System.

A number of submissions suggested the TPC hearings could be run more effectively. It was noted that representors often expand their objections and raise new issues during the hearings that the parties involved are not prepared to respond to. It was suggested there should be stricter rules over introducing new issues such as written submissions being circulated before hearings and hearing discussions being confined to those issues. Another submission highlighted that experts called by the TPC are often made to sit through hours of evidence and suggested a more efficient solution would be to allocate timeslots.

Roles and Functions

Some submissions expressed concern the TPC is consulted after policy is developed by the Policy Planning Unit, and supported an extended role for the TPC in policy, such as preparing and amending Regional Land Use Strategies and the State Planning Provisions. Many submissions also supported a role for the TPC reviewing and advising the Tasmanian Government on draft Tasmanian Planning Policies. However, many submissions also indicated policy is the proper responsibility of the Tasmanian Government.

Submissions identified a need for greater clarity of roles in the Tasmanian Planning System particularly with respect to policy development and providing advice. However, some perceived conflict in the TPC's role to provide advice on policy and then review, assess and determine Local Provision Schedules, Local Planning Schemes and Scheme Amendments in accordance with those policies. Submissions indicated the TPC's advice tends to be limited to matters of process, such as application requirements, and many indicated a need for more outcome-focused advice on planning matters, such as drafting Local Provision Schedules, Local Planning Schemes, and Scheme Amendments.

Many submissions supported a continued role for the TPC reviewing, advising on, and assessing and determining Local Provision Schedules, Local Planning Schemes, Scheme Amendments, and Combined Scheme Amendments and Planning Permits. Many submissions indicated the TPC should maintain its roles assessing projects of state and regional significance and reviewing draft Plans of Management for national parks and reserves, and some expressed concern the draft Major Projects Bill could undermine the TPC's independence.

Some submissions raised concern that pre-assessment discussions with the TPC are not possible for private firms or councils. Some submissions also highlighted the large number of councils but small size of the planning profession leads to a shortage of qualified planners across Tasmania. In the context of some councils not having in-house planning capabilities, the TPC performs a crucial role providing them with technical advice on planning matters.

However, a number of examples were cited of different interpretations of regulation and policy by the TPC and councils, particularly Regional Land Use Strategies. In the absence of pre-assessment discussions, these differences are sometimes only established at the end of a long and expensive process to prepare and assess Local Planning Schemes. Submissions suggested the TPC should make staff available to provide such advice, but these staff members should not take part in the assessment process.

Structure, Workload, Resourcing, Membership, and Organisational Arrangements

The Executive Commissioner

Few submissions addressed the role of the Executive Commissioner. Those submissions that did address the role of the Executive Commissioner considered there is potential for role conflict between reporting to the Secretary of the Department of Justice in terms of managing the workload and day to day operations of the TPC, and their role as a member and Chair of the Commission with a statutory decision-making role. Some also suggested the Executive Commissioner role should be a term-limited contract.

Membership of Commission

Only a small number of submissions had strong opinions on the TPC's membership. Some felt State Agency representatives should not continue as Commissioners with a decision-making role, and should only serve in an advisory role. Most submissions indicated the Commissioners and development assessment panels should demonstrate core competencies to reflect a variety of skills, expertise, and professions in areas like the environment, economics, and infrastructure. A number of submissions suggested term limits for Commissioners and an expanded and rotated pool of independent expert decision-makers is needed to ensure the TPC does not rely too heavily on any particular decision-makers.

Resourcing

Many submissions noted proper financial and human resourcing is essential for the TPC to carry out its roles effectively, and that the TPC's resources needed to be considered in the context of any changes to its roles and functions. Some suggested the TPC is currently under-resourced and this has resulted in the TPC not performing some of its roles effectively and slow assessment processes. In particular, lack of an SoE Report over the last decade was highlighted as an example of inadequate resourcing. Delays in the review and assessment of Local Provisions Schedules was also attributed to inadequate staff resourcing.

Conflicts of Interest

Many submissions expressed concern over the potential for conflicts of interest for State Agency representatives that are members and Commissioners of the TPC, particularly in instances where those Agencies are proponents of or have interests in planning matters before the TPC for assessment and determination. Because of this, it was suggested the State Agency representatives should only have an advisory, rather than decision-making role.

It was strongly indicated Commissioners and Delegates involved in assessment and determination should not hold any conflict of interests. However, some highlighted perceived conflicts of interest for members of the Commission with experience in planning and related professions as well as TPC staff that act as Delegates on development assessment panels. A number of submissions expressed concern that the composition of the TPC's membership favours developer interests to the detriment of community and environmental interests.

State of Environment Reporting

A majority of submissions considered an accurate State of the Environment report is essential to inform planning decision-making and believed the report should continue to be prepared. Many suggested it must be prepared independent of government and free from political influence and some indicated it should be prepared by the Environment Protection Authority.

Appendix C – Overview of selected independent statutory planning bodies in Australia

<i>Statutory body</i>	<i>Scale</i>	<i>Role</i>	<i>Function</i>	<i>Commission Structure</i>	<i>Organisational Structure</i>	<i>Budget</i>
Tasmanian Planning Commission	State-wide	Review Advice Coordination Assessment Determination	Planning schemes and directives, state and regionally significant projects, draft State policies, State of Environment reporting, online access, advice to Minister and local government, transport and land use coordination, plans of management, water management plans, place-based (Wellington Park)	Representation based	Independent agency staffed by 26 employees of the Department of Justice	\$3.6million (2018)
Greater Sydney Commission (NSW)	Metropolitan	Planning Coordination Review Advice Assessment Determination	Regional land use plan, city dashboard, thought leadership, advice to Minister, local government, transport and land use coordination, place based (subregions), project based (Western Sydney)	Expertise based Portfolio based Area based	Independent agency staffed by 55 full-time employees	\$17million (2018)
Independent Planning Commission (NSW)	State-wide	Assessment Determination	Assess and approve projects above certain thresholds State significant projects	Expertise based	29 Commissioners serviced centrally by Secretariat of 14 staff	\$5.84million (2019)
Department of Planning, Industry and Environment (NSW)	State-wide	Planning Coordination Review Advice	Regional and place-based planning, state planning policies, advice to Minister and councils, assessment and determination of development applications	Expertise based Portfolio based Area based	Central agency with 630 staff	\$2.6billion (2018)

		Assessment Determination				
West Australian Planning Commission (WA)	State-wide	Planning Coordination Review Advice Assessment Determination	State and regionally significant Projects above certain thresholds Ministerial referrals Regional land use plan	Expertise based	Serviced centrally by departmental staff	\$50million (2018)
Local Planning Panels (NSW)	Local	Assessment Determination	Projects above certain thresholds	Expertise based Area based	Project based Rotating pool of expert assessors	N/A

Independent review of the Tasmanian Planning Commission's roles and functions

The Department of Justice has announced the engagement of Professor Roberta Ryan and Mr Alex Lawrie through their consultancy, Forward Thinking Australia Pty Ltd, to conduct an independent review into the roles and functions of the Tasmanian Planning Commission.

The Minister for Planning called for the review in light of:

- administrative changes to the Commission's role in policy making;
- the importance of the Commission remaining completely at arm's length from Government;
- the recent resignation of long-term Executive Commissioner Mr Greg Alomes; and
- questions around the Commission being the most appropriate agency to conduct reporting on the State of the Environment.

Professor Ryan and Mr Lawrie will prepare a report for the Minister addressing the Terms of Reference (below) and after consulting with relevant stakeholders including government, industry, academic and community groups.

The report will be completed by 30 June 2020.

Further information on the review can be obtained from the Department of Justice, Planning Policy Unit: (03) 6166 1429 planning.unit@justice.tas.gov.au

Terms of Reference

Review of the Tasmanian Planning Commission – Membership and Functions

The Minister for Planning requests that the Secretary of the Department of Justice conduct a review of the Tasmanian Planning Commission and the Tasmanian Planning Commission Act 1997 (the Act) to examine:

1. The structure of the Commission and the Act to ensure that:
 - The Commission is able to continue to perform its role as an independent decision maker and advisory body, in a fair, just, efficient and effective manner;
 - the Commission's statutory functions are not compromised by its membership including representatives of State Agencies or bodies that are proponents of matters that the Commission's functions extend to;
 - the ongoing structure of the office of the Commission and its resourcing is reflective of its extended role in the planning system as an independent decision maker and advisory body on the new components of the Tasmanian planning system; and

- its functions are not undermined by the demands of historically designated roles under other legislation that might be better reallocated to another agency or body, in particular the State of Environment Reporting function.
2. The conflict of interest provisions in the Act and the process of delegation to ensure they operate transparently and meet public expectations;
 3. The ongoing structure of the office of the Commission, including the staffing profile and required capabilities;
 4. The roles, functions and appointment provisions of the Executive Commissioner to ensure that they:
 - (a) provide for the appointment of an appropriately qualified person;
 - (b) align with the State Service expectations of a senior executive;
 - (c) provide flexibility of appointment; and allow for the effective management of the Commission and the Commission's office.
 - The Secretary may be assisted in addressing any or all aspects of the terms of reference by a third party consultancy, subject to the terms of the consultancy being agreed with the Minister for Planning.
 - The Secretary may establish a Steering Committee or Reference Group to oversee the review with representatives from the Local Government Association Tasmania (LGAT), the Planning Institute of Australia (PIA), and the Law Institute.
 - The Secretary will ensure the Department provides secretarial support to the review through allocation of project officers for the review generally and the specific consideration of the State of the Environment Reporting function.
 - The review is to be completed with a report to the Minister for Planning by 30 June 2020.

2021 INCOMING GOVERNMENT BRIEF

Minister for Planning

Review of Tasmanian Planning Commission

The briefing must be **no more than two pages**.

Use bullet points only at 12 point, Arial font.

Overview

In October 2019 the then Secretary of the Department of Justice announced an Independent review of the Tasmanian Planning Commission (TPC). A consultant commenced the review in early 2020 and delivered a review report in October 2020.

Outline the status of any major issues as at the date of preparation. If the program/policy/project is running to plan, include details as to what milestones have been achieved and when.

- The Commission Review has delayed appointment of an Executive Commissioner and vacant Commissioner positions.
- The State of the Environment Report (SOER) is overdue and the recent review of the Commission recommended that this function be removed from the Commission.

Current Issues

State of the Environment Reporting Delayed

- The *State Policies and Projects Act 1993* requires the TPC to publish a State of Environment (SOE) Report each 5 years. The 2009 SOE Report identified a lack of adequate information and data on which to conduct a proper assessment of the State's environmental performance, as required under the Act.
- The next SOE Report was due in October 2014. However, the TPC was unable to meet this requirement due a lack of resources, and the priority given to planning reform tasks.
- Since then the Commission has undertaken reviews and recommended significant changes to the way the SOE would be produced. The Review of the Commission announced in late 2019 and delivered to the government in late 2020 found that Commission is not the appropriate body to prepare the SOE as it does not have adequate resources, capability or expertise to access an annual relevant data and recommended removal of this function from the Commission in the relevant legislation. A decision on this is pending.

Major Risks/Implications

- Appointment of Commissioners including the Executive Commissioner has been delayed due to implementation of Commission Review

Actions Required

Indicate whether there are any immediate/short-term actions required; and/or whether there are any medium/long-term actions by the Minister.

- Determine most appropriate body to deliver SOE reporting provisions
- Replace Commissioners and Executive Commissioner

Background

- Text
- Text
- Text

Contact Officer: Sandra Hogue
Position: Executive Commissioner
Phone: (03) 6165 6814
Date: 20 April 2021

Cleared by:
Position:
Phone: (03) 6165 4943
Date:

2018-10 Action 2.1 – Delegates Panel

Completed.

4.2 Tasmanian Planning Commission Delegates Register

Acting Executive Commissioner Fischer presented the paper for the Delegates Register. Commissioner Ramsay requested that the word *expertise* be replaced with *experience* in the last sentence: Delegates are expected to have **experience** in land use planning or law.

The Commission notes that the Executive Commissioner will initiate an Expression of Interest process in accordance with the Department's procurement requirements to establish a Delegates Register.

4.3 Solicitor General advice - LUPA Act 1993 Former Provisions, section 30IA - Judicial Review Act 2000 - Latrobe Council urgent amendment request regarding 283 Port Sorell Road, Wesley Vale, 17 January 2019

Acting Executive Commissioner Fischer provided advice from the Solicitor General as to whether a decision not to issue a notice to the Minister under section 30IA of the former provisions is a decision subject to the Judicial Review Act 2000.

There was a discussion about whether the Solicitor General's advice required changes to the way the Commission assessed urgent amendments.

After considering alternatives to the current process, Commissioners agreed that no procedural change was required stating that the Executive Commissioner should continue to exercise judgement on a case-by-case basis when determining whether to issue a notice to the Minister under section 30IA.

The Commissioners

1. Noted the Solicitor General's advice, and

2. Agreed that no procedural change was required and that the Executive Commissioner should continue to exercise judgement on a case-by-case basis when determining whether to issue notice to the Minister under section 30IA.

4.4 State of the Environment Report presentation

Rebecca Smith gave a presentation on the State of the Environment Report. A copy of the presentation will be sent to Commissioners for review and further discussion at the March Commission meeting.

The Commission resolved to prepare an options paper to the Minister as a whole-of-government approach to address systemic issues with environmental reporting in Tasmania.

5.0 FOR DECISION

5.1 Commissioners in Committee

The Commission reviewed the items considered by Commissioners-in-Committee for possible external publication.

The Commission resolved to approve external publication of Items 2.1, 2.2, 2.3, 2.4, 2.5 and 4.2.

6. OTHER BUSINESS

Commissioner Ramsay gave an update of the LPS process.

Meander Valley has now completed their exhibition period. Around 40 reps have been received and Council have asked for and received an extension of 2 weeks to process.

Glamorgan Spring Bay, Central Coast and Brighton are close to being exhibited.

Clarence, Southern Midlands and Glenorchy are currently being assessed by TPC planners.

Commission staff are working with a number of Councils and report to the Delegates Panel with progress fortnightly.

Commissioner Ramsay is attending workshops with Councillors at West Coast, George Town, Flinders, Huon Valley and Tasman. He advised that it is hard to work out whether the other Councils will be lodged by 30 June 2019, all except 3-4 Councils are progressing well.

Commissioner Ramsay also advised that the Natural Assets Code is challenging. He reported that the only real way for Councils to incorporate the Code in their LPS is through a Regional Eco System Model which includes data in the Tas Vege Layer and is mandated. Councils need to be able to tell land owners why the Code applies to their property.

He also stated that the Planning Policy Unit was providing funding for GIS mapping to Councils who need help.

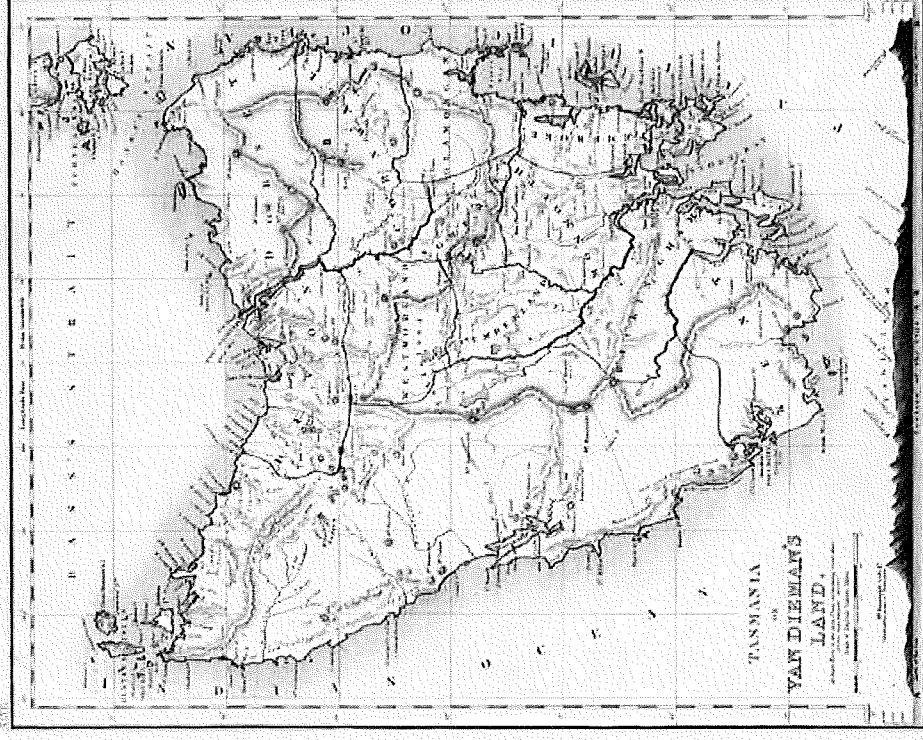
It was noted that Claire Hynes is doing an audit for the Delegates Panel on where Councils are at with their LPS process, when it's likely to go to Council.

Commissioner Ramsay will provide a report from the Delegates Panel at the next Commission meeting in March 2019.

Acting Executive Commissioner Fischer advised Commissioners that –

- Pamela Scott retirement is effective from 6 February 2019.
- Mitchell Clark will be Pam's replacement on the Marine Farm Review Panel.

Scoping the next Tasmanian State of the Environment Report



AGENDA ITEM: 4.5

MEETING No: 2018-04

PREPARED BY: GREG ALOMIES

Resolution: The Commission resolves to

- a) Note the draft 2018 review report and Recommendation 1 'that the Tasmanian SoE reporting program continues from within the Tasmanian Planning Commission;
- b) Commit to producing the next SoE Report as soon as practicable; and
- c) Prepare a draft SOE work program, including resourcing and management arrangements, for consideration by Commissioners.

SCOPING AIMS

1. Address and /or resolve problems and challenges with SoE reporting in Tasmania and elsewhere
2. Use an environmental-economic accounting framework

A black and white photograph of a dead, gnarled tree against a cloudy sky. The tree's branches are bare and twisted, reaching across the frame. The sky is filled with dark, heavy clouds, with a bright light source breaking through in the center, creating a dramatic, high-contrast scene.

Unconnected and of no utility to policy or
government decision making

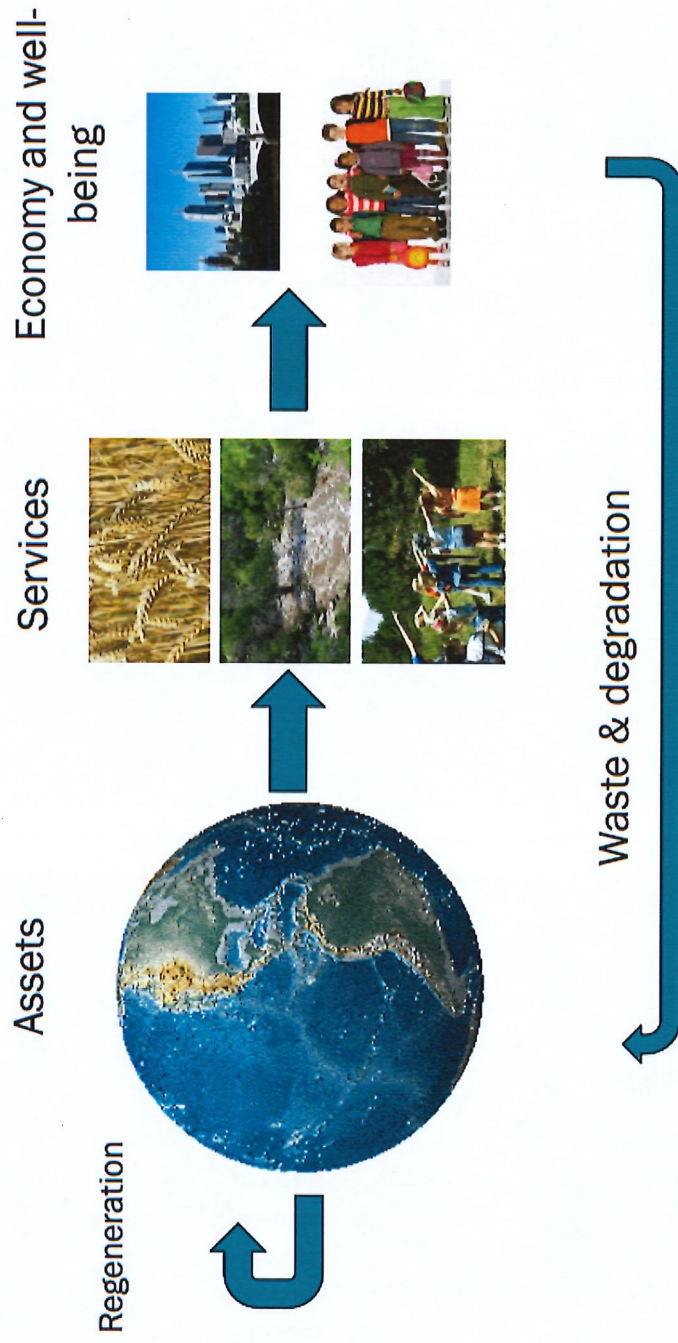
A drain on the human and financial resources
of data holders

An out-of-date collation of information that's
available, in more and better detail, elsewhere



**Using environmental-economic
accounts to interpret SOE data**

Measuring sustainability



The System of Environmental Economic Accounting (SEEA)

- An internationally agreed statistical framework to measure the environment and its interactions with economy
- The SEEA Central Framework was adopted as an international statistical standard by the UN Statistical Commission in 2012
- The SEEA Experimental Ecosystem Accounting complement the Central Framework and represent international efforts toward coherent ecosystem accounting



The SNA and SEEA: Systems of integrated information



Environmental-economic accounting helps us understand the condition of the environment and its relationship with the economy. Ministers endorsed the objectives of a common national approach to environmental-economic accounting and the free and open sharing of environmental data between jurisdictions.

Meeting of Environment Ministers – July 2017

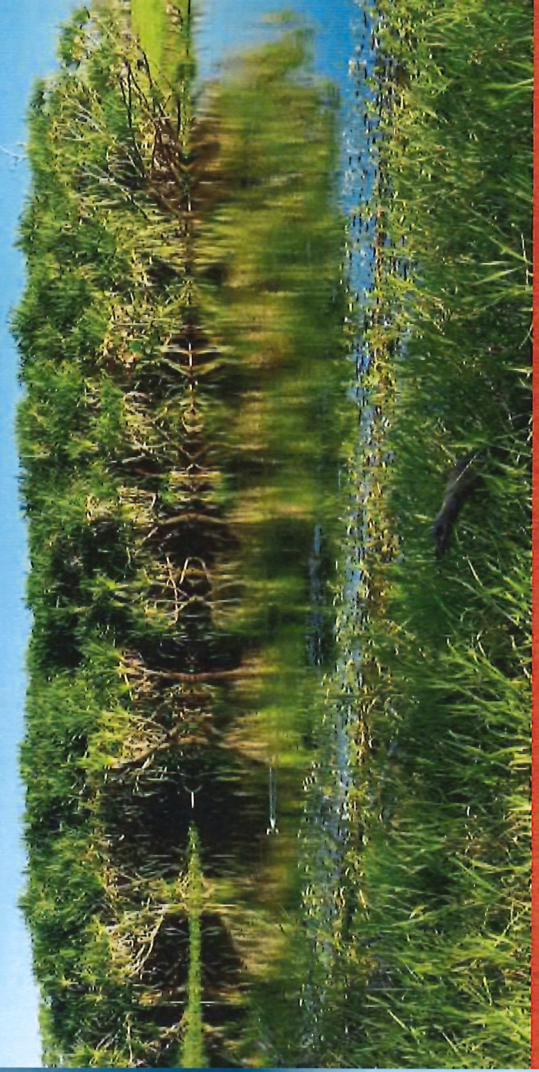




ENVIRONMENTAL ECONOMIC ACCOUNTING

April 2018

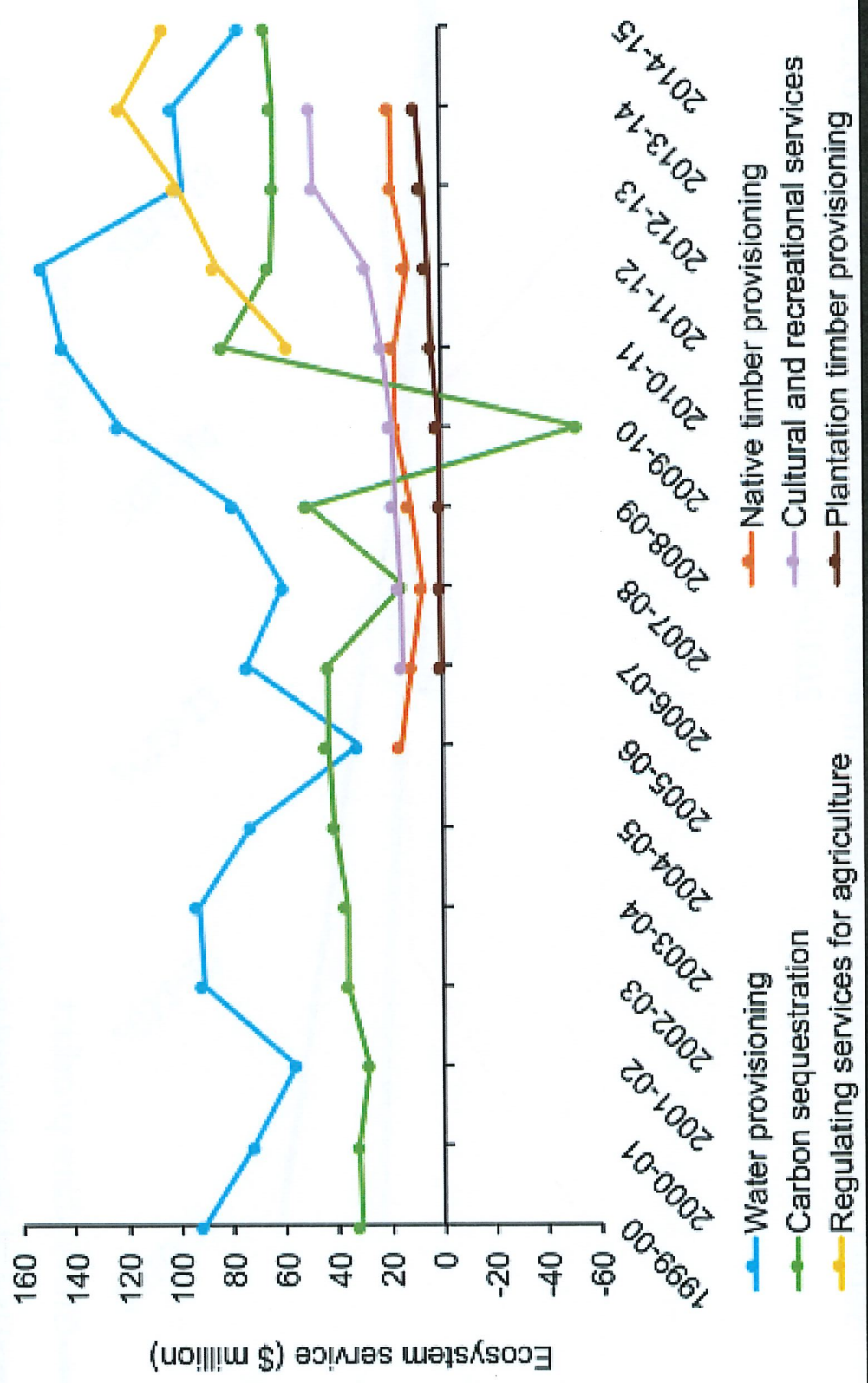
A common national approach
Strategy and Action Plan



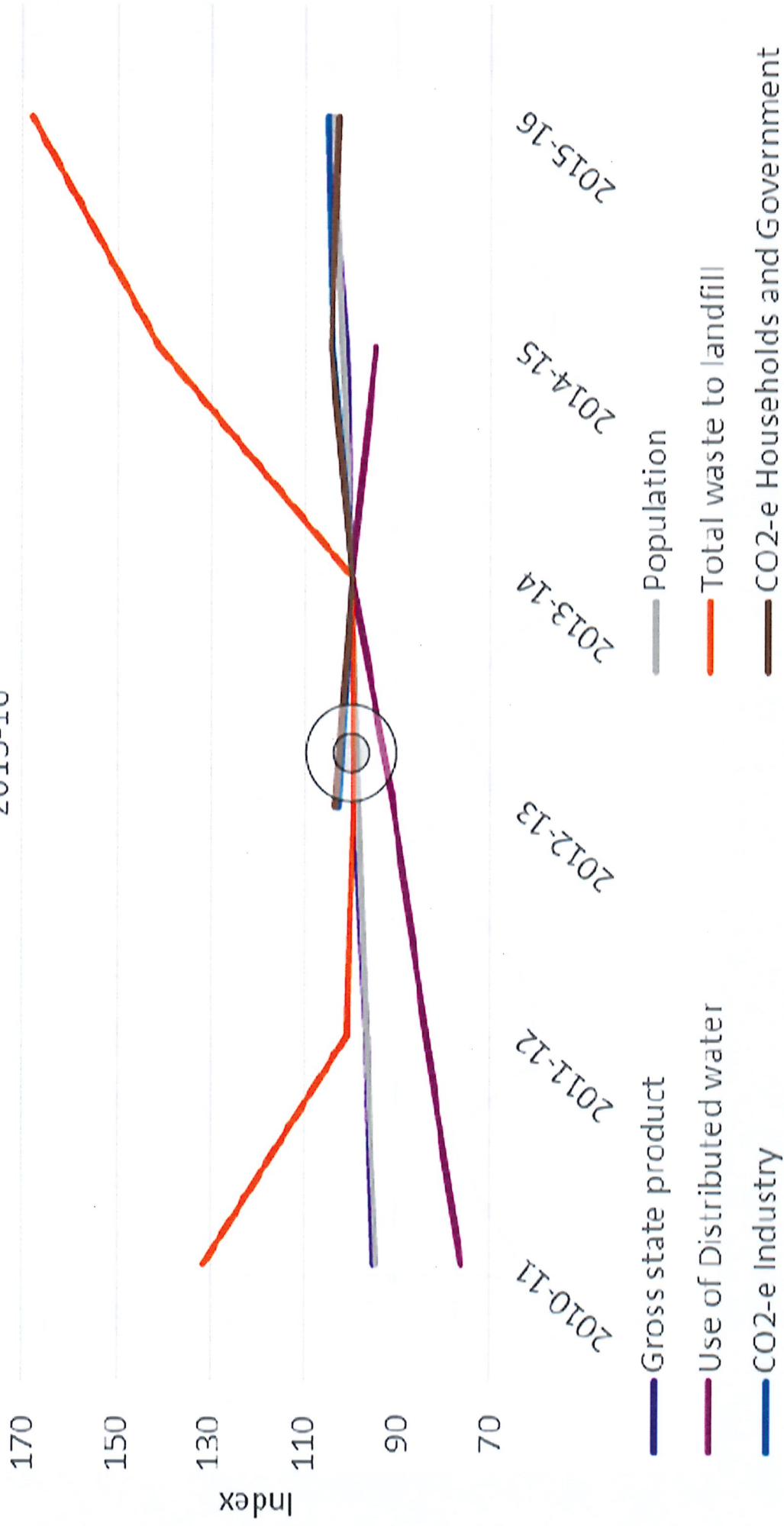
Prepared by the Interjurisdictional Environmental-Economic Accounting Steering Committee for the Meeting of Environment Ministers

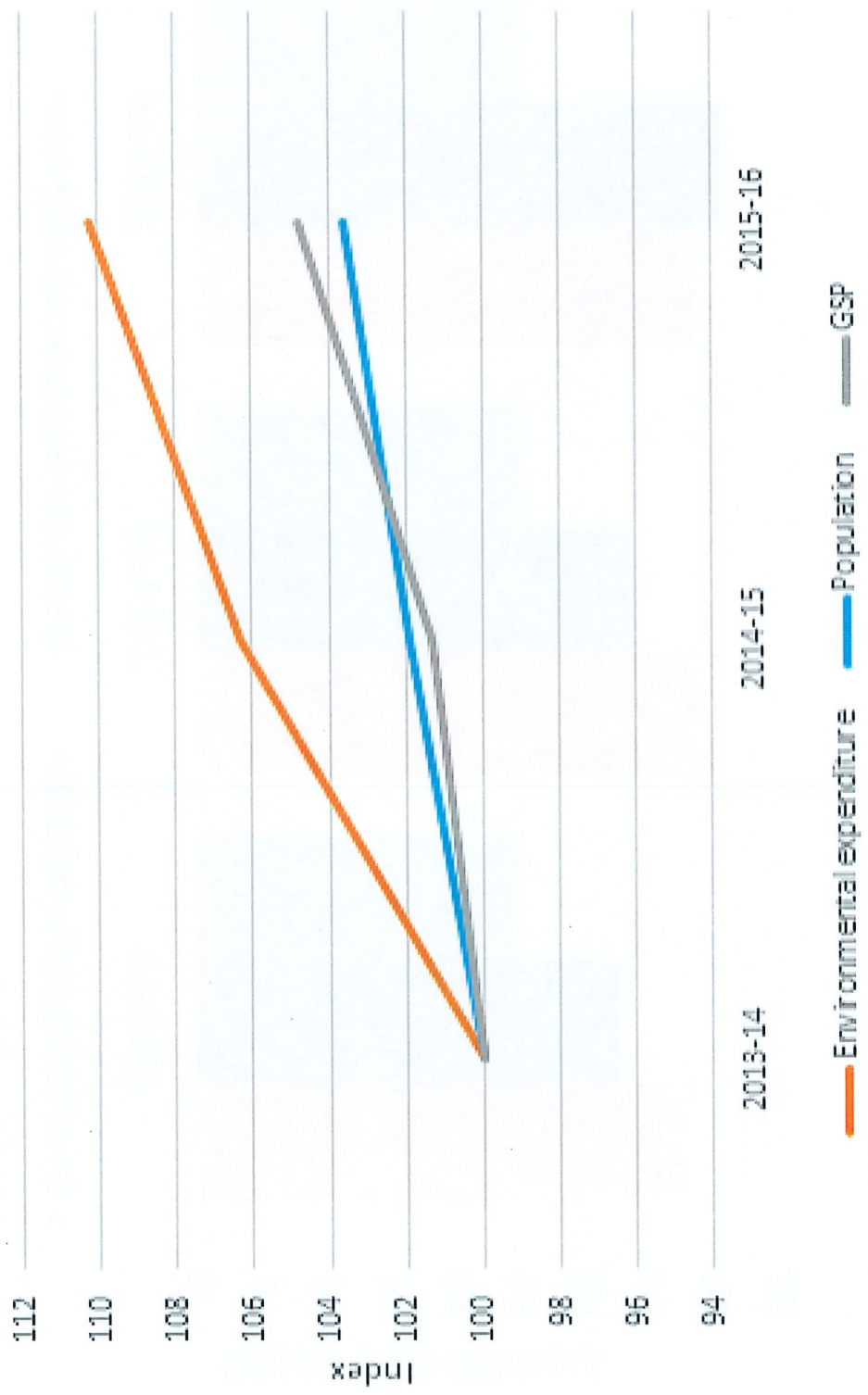


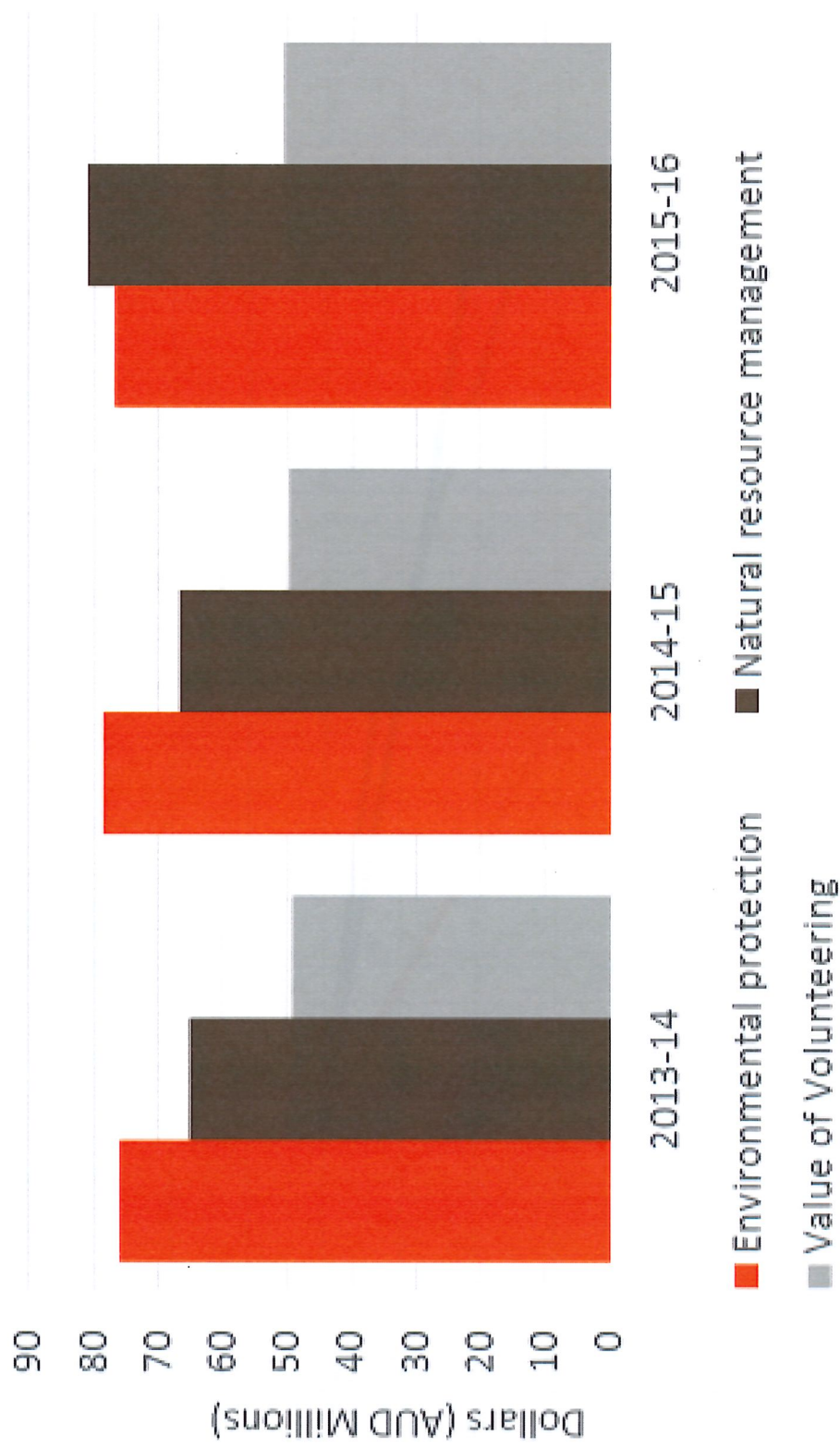




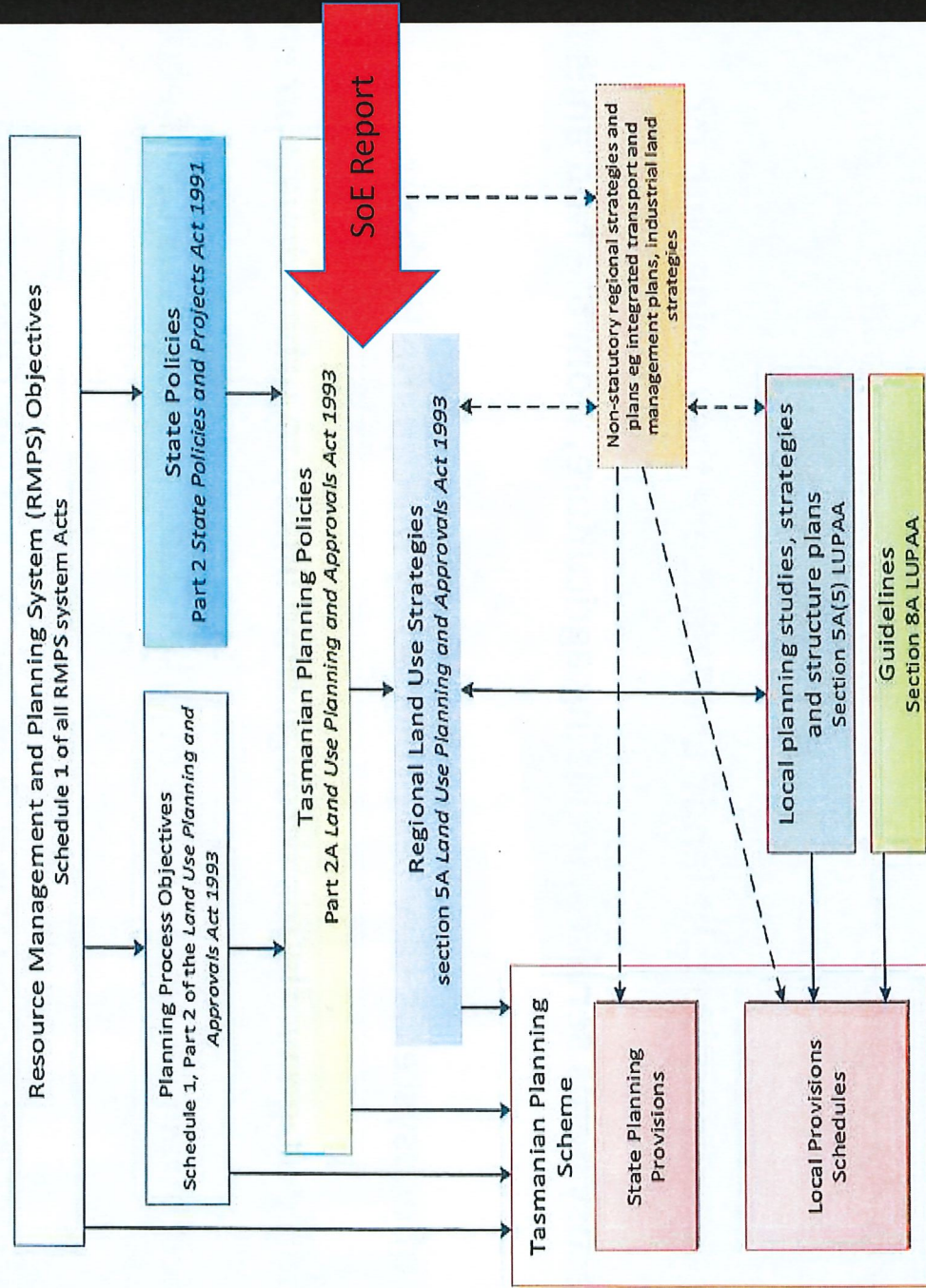
Select socio-economic and environmental indicators for the ACT from 2010-11 to 2015-16







Land use planning policy and strategy framework



Planning Policy and Accounts – sample preliminary scoping questions and issues:

- **Where have developers bought land? and What are they doing with it?**
- **Impacts on ecosystems services, including agriculture, from the Midlands irrigation scheme**
- **Comparison of ecosystems services provided by Macquarie Harbour**
- **Changes in percentage wetlands through time linked to urban development**
- **Value of agricultural land v. the value of urban land in the provision of ecosystems services**
- **Tasmania's ecological footprint incl. footprint by suburb / demographic**

Initial Masterplan in 2016



Source: Birmingham City Council

Development Impact Score	
Average Per-Hectare	
Ecosystem Service	Adjusted Scores
1. Harvested Products	-5.4
2. Biodiversity	+0.1
3. Aesthetic Values	+0.6
4. Recreation	+0.2
5. Water Quality Regulation	-0.2
6. Flood Risk Regulation	-0.1
7. Air Quality Regulation	+0.0
8. Local Climate Regulation	+0.0
9. Global Climate Regulation	-1.7
10. Soil Contamination	+0.0
Development Impact Score	-6.5



• *The alternatives.....*

1. Traditional SoE style report
2. Variation on traditional report using report cards
3. Environmental report developed for planning policy
4. Statutory remedy

• *Possible statutory remedies.....*

A. Amend SPP Act to provide for an environmental report for planning purposes; or

B. Options paper:

- Whole of government approach to address systemic issues with environmental reporting in Tasmania; plus
- Pilot accounts.

Recommended Option

Options paper to the Minister

- a. Prepared as a whole of governmental approach to address systemic issues with environmental reporting in Tasmania; plus
- b. Pilot accounts / report for planning policy

State and trends of biodiversity

Biodiversity State and trends

Coastal and marine species and ecosystems, Freshwater species and ecosystems, Terrestrial plant and animal species: Threatened species lists, Terrestrial ecosystems and communities, Genetic and species diversity, Assessing the state and trends of biodiversity

Tasmania

Year

Component	Summary	Very poor	Poor	Good	Very good	In Grade	Confidence	In Trend	Comparability
Terrestrial animals — birds	<p>Overall, bird species populations across much of Australia are in decline. Some areas experience inconsistent trends with some species increasing and some decreasing in the tropical savanna, Brigalow Belt and Tasmania region. Rainforest-dependent species appear to be increasing</p> <p>less Supporting information Topics</p> <p>Relatively resilient historically but threatened species make up a large proportion of known species in some areas of Queensland</p> <p>. more Topics</p>	2016	2011						
Terrestrial ecosystem (native vegetation) extent - Northern and central Australia	<p>Although native vegetation is largely intact across northern and central Australia, clearing rates have increased in Queensland, including in Cape York Peninsula</p> <p>less Supporting information Topics</p> <p>Native vegetation largely intact throughout much of this area (with a degree of modification in rangelands and</p>	2016	2011						

SCIENCE BEHIND THE GRADES

The Report Card grades are developed by analysing and integrating scientific monitoring data contributed by many organisations.

Each year the Partnership has been able to address a number of monitoring gaps by reporting on additional zones and indicators

- 2015-16: Additional estuary water quality monitoring zones; additional indicators for fish barriers in estuaries and for aquatic weeds in basins.
- 2016-17: Additional estuary water quality monitoring zone; additional indicator for stream flows in basins and estuaries.

We now have a comprehensive picture of the current condition of our waterways. Going forward, we are in a good position to track trends in the health of our estuaries, freshwaters and marine zones and see how they are responding to the community's 'stewardship' efforts.

For presentation purposes, scores are now rounded down to whole numbers.

More detailed information on the grades and the methods used to generate them is in these reports:

Wet Tropics Report Card 2018 Program Design

REPORTING ON DATA JULY 2016 TO JUNE 2017



Wet Tropics Report Card 2018 Methods

REPORTING ON DATA JULY 2016 TO JUNE 2017



Wet Tropics Report Card 2018 Method for Assessing Invasive Weeds



Wet Tropics Report Card 2018 Results

REPORTING ON DATA JULY 2016 TO JUNE 2017



State Policies and Projects Act 1993

Version current from 1 September 2009 to date (accessed 4 February 2019 at 10:40)

29. Preparation of State of the Environment Reports

- (1) The Commission must, as soon as reasonably practicable after the commencement of this Act and after that commencement at intervals of 5 years, produce a consolidated State of the Environment Report relating to—
- (a) the condition of the environment; and
 - (b) trends and changes in the environment; and
 - (c) the achievement of resource management objectives; and
 - (d) recommendations for future action to be taken in relation to the management of the environment.

Commissioners agreed that the PPU be advised of the administrative issues and that the Minister be sent a letter noting potential resourcing issues.

Copies of the advice and correspondence is to be provided to Commissioners. Commissioners were invited to provide any further comments after further consideration of the draft Bill.

4.5 2018 Update Review of the State of the Environment Reporting 2013

The Executive Commissioner outlined the key findings of the 2018 Update Review of the State of the Environment Reporting 2013.

Commissioners considered the report and resourcing, availability of data sources and timeframes and agreed that the Executive Commissioner prepare a work program and budget to produce the next SoE report.

The Commission resolved to:

- (a) note the draft 2018 review report and Recommendation 1 'that the Tasmanian SoE reporting program continues from within the Tasmanian Planning Commission;***
- (b) commit to producing the next SoE Report as soon as practicable; and***
- (c) prepare a draft SOE work program, including resourcing and management arrangements, for consideration by Commissioners.***

4.6 Business Plan Quarterly Report – January to March 2018

This item was deferred to the June Commission Meeting.

Noted

5.0 FOR DECISION

5.1 Commissioners in Committee

The Commission did not approve any items for external publication.

6. OTHER BUSINESS

The Executive Commissioner advised that the Deputy Executive Commissioner would be on leave during late May and June and that in this period, during her absence, Luke Newman would oversee day-to-day administration of LPSs assessments and Marietta Wong would assist the LPS Panel.

The Executive Commissioner advised that a morning tea was planned for the Minister to meet Commissioners and Commission staff. Date to be advised.

There was no further business.

Noted.

- The draft Clarence LPS is on the Council agenda for 7 May.

The Executive Commissioner advised that the Minister wants to complete LPSs as quickly as possible and that the PPU have sent the Commission a draft Minute to the Minister on legislative options to streamline the LPS process.

The PPU have also contacted all councils to confirm likely dates on which they will submit their draft LPSs. The schedule provided the Commission with possible receipt / scheduling timeframes for LPSs:

- Received – Meander Valley Council and Glamorgan Spring Bay
- Aug-Oct – 8-9 Councils could submit
- Sept-Dec – 4 Councils could submit
- Jan-Mar – 10 Councils could submit
- Post Mar – 2 Councils could submit

It was noted that the Commission's workload will increase over the next 2 years with the draft LPS assessments and a generally higher number of scheme amendments.

Commissioners resolved to request the LPS Panel to consider options to streamline the LPS approval process and provide a paper to the next Commission meeting, providing preliminary advice to the Minister if requested.

4.3 Confidential Report – Draft Planning Directive 6 - Exemptions and Standards for Visitor Accommodation

Commissioner Ramsay provided an overview of the PD6 report. The Commissioners considered the policy recommendations in the report.

The Commission resolved to:

- (a) note the report on draft PD6;***
- (b) endorse the report's policy recommendations relating to housing affordability and availability; and***
- (c) request the Senior Planning Consultants to develop criteria to, where appropriate, document planning policy advice for consideration by the Commission.***

4.4 Minister's consultation on Draft Residential Housing Supply Bill 2018

The Deputy Executive Commissioner gave an update on the *Draft Residential Housing Supply Bill 2014* including likely administrative and implementation resourcing issues for the Commission.

Commissioner Stretton advised that the Government had consulted with local government on the list of land areas to be included in the proposed the Bill and their suitability for development.

Commissioners considered the administrative and implementation issues.