

TASMANIAN PLANNING COMMISSION



Our ref: DOC/24/7273
Officer: Louise Blyth
Phone: 6165 6818
Email: tpc@planning.tas.gov.au

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Mr Brian Risby
Director
State Planning Office
GPO Box 123
Hobart 7000

By email: stateplanning@dpac.tas.gov.au
Nell.Nettlefold@dpac.tas.gov.au

Dear Mr Risby

Draft Tasmanian Planning Policies

The Commission invites further comment from State Planning Office (SPO) on various matters that arise from submissions received through representations and throughout the hearing process.

The Commission seeks a written response to these matters as the SPO considers appropriate. Responses may be the subject of a future hearing. As is usual practice, the questions and SPO responses will be published on the Commission website.

1. Aims and Principles or Objectives and Strategies

The Act specifies that the TPPs are to set out aims or principles. The draft TPPs set out objectives and strategies.

- In the application of the Act, will objectives and strategies be legally interpreted to be the same as aims or principles?
- Does the creation of TPP strategies take the TPPs beyond their statutory scope?
- Is there any risk that in a contested LPS amendment the requirement to be consistent with the TPPs could be legally challenged as the TPPs are not a valid statutory instrument?
- Is there any impediment to converting the existing objectives and strategies to aims or principles? Are there any implications if that was done?

Until the completion of the reviews of the RLUSs and the SPPs, any LPS amendment must be consistent with the TPPs.

- Does the expression of the TPPs as objectives and strategies make the consistency with the TPPs test more onerous than if the TPPs were expressed as aims or principles?

2. TPPs and Major Projects

The Act provides that a project is not eligible to be declared a major project if it would be in contravention of the TPPs.

- Does the expression of the TPPs as objectives and strategies make the contravention of TPPs test more onerous than if the TPPs were expressed as aims or principles?

The assessment criteria for a major project must specify the matters to be addressed in the criteria in relation to relevant land use planning matters. A relevant land use planning matter is the need for the criteria to require a major project to be consistent with each applicable provision of the TPPs.

- Does the expression of the TPPs as objectives and strategies make the consistency test more onerous than if the TPPs were expressed as aims or principles?

3. Growth TPP and Settlements

A number of representations raised issues with the settlement provisions of the Growth TPP in particular the Strategies in 1.1.3. Representation 45 at pp12, submits that the “growth strategies deny fundamental, legislated rights to locally plan for the future of settlements”. In that submission reliance is placed on the definition of sustainable development in *Land Use Planning and Approvals Act 1993* (the Act) and this is interpreted as “enshrining the right of each settlement to provide for its long term sustainability”. The submission is further elaborated on pp 12 & 13 of Representation 45.

- Can the definition of sustainable development in Schedule 1 of the Act be relied on to create rights as submitted, and if not, why not?

4. Climate Change Statements

The General Application section on page 3 of the TPPs indicates that the Policy Context sections of each TPP are not intended to have operative effect. Each TPP has a Policy context section. Each TPP also has a Climate Change Statement which follows the Policy context section.

- Is the Climate Change Statement considered to be part of the Policy context section and not to have operative effect?

Representation 31, at p 6 para 9 submits that the approach to climate change should be revised either to provide for a specific Climate Change policy or to clearly articulate climate change considerations throughout the TPPs including how they will be implemented in RLUSs, SPPs and LPSs.

It is noted that many strategies do directly reference climate change (e.g. 1.2.3-7, 1.6.3-1/3, 2.1.3-9/11, 2.5.3-2, 3.1.3-1, 3.2.3-1, 3.3.3-1, 3.4.2, 4.1.3-1/8, 5.1.3-4), plus others that allude to it with references to sea level rise, emissions reduction, energy efficiency, renewable energy and carbon storage.

- Could the TPP Climate Change policy be more effectively implemented in the planning system by giving the Climate Change Statement operative status or including appropriate elements from the Climate Change Statement in the relevant TPP, or creating specific climate change sections in a TPP, or a combination of some or all the above.

5. State Policies and the TPPs

The Waterways, Wetlands and Estuaries, Coasts, Coastal Hazards and Agriculture TPPs address issues that are covered by existing State Policies.

- Have those TPPs been reviewed and determined to be consistent with existing State Policies, which is a specific statutory requirement for a TPP to meet the TPP criteria?
- If a TPP is expressed in language that varies from the interpretation, application or scope of an existing State Policy, do the TPPs remain consistent with the State Policy?
- If the TPPs are considered to be consistent with relevant State Policies, will any difference in the way the two policy instruments are expressed cause unnecessary duplication in the assessments of amendments of an LPS or assessment of a major project?

6. Historic Cultural Heritage TPP

The Historic Cultural Heritage TPP applies to local historic cultural heritage. “Local historic cultural heritage” is not defined. The planning system applies to historic cultural heritage generally, but with different listing and regulatory approvals applying including through the processes established under the Act.

- Is it intended that the TPP is to be limited in its application to the current limitation established by the SPPs?

No such planning policy limitation applies to the similar situation of the Biodiversity TPP, where separate legislation operates in relation to matters of biodiversity.

- Are there any impediments to or implications if the TPPs include reference to both State and local heritage listed places?

7. Planning Processes TPP

It has been submitted that the 7.0 Planning Processes TPP is beyond the scope of matters on which TPPs can be made, as set out in section 12B of the Act. Some of the matters listed in the TPPs are covered by the provisions and objectives of the Act and State Policies.

- How do the provisions of section 12B of the Act provide authority for the making of the Planning Processes TPPs?
- Is there a potential conflict between some parts of the Planning Processes TPPs and the provisions of the Act and State Policies and if so how is it resolved?
- Will the combined application of the Act and State Policy provisions and the Planning Policy TPPs cause administrative and legal uncertainty in the application of the processes that are to be followed in the Tasmanian planning system?
- Are there alternative approaches to the content of the Planning Processes TPP to achieve effective implementation?

8. Implementation of the TPPs into the RLUS, SPPs and LPSs

The Act provides that the TPPs may specify the manner in which the TPPs are to be implemented into the RLUS, SPPs and LPSs. The TPPs all have a State-wide or locational application specified. The General Application section of the TPPs does not indicate which TPPs apply to which planning instrument.

However, this section does provide Direction on the way that the TPPs are to apply to LPSs in accordance with the requirements of the Act. Following the review of the RLUSs and SPPs in light of the TPPs, it also provides discretion to decision makers to determine that a strategy has

been applied through an RLUS or SPP, which will satisfy the need for an LPS to comply with the strategy.

Advice was provided in the hearing that work was undertaken to determine which TPP should apply to RLUSs, SPPs or LPSs. Advice was that the result of that work generated significant complexity in relation to implementation.

- Can advice be provided on the methodology or criteria applied to achieve specific TPP implementation in to the three relevant planning instruments?
- Can the outcome of the attempted implementation be made available?
- If the TPPs were expressed as aims or principles rather than objectives and strategies, would targeted implementation be more readily achievable?

9. Words and Phrases - Definitions, Clarification and Methodology

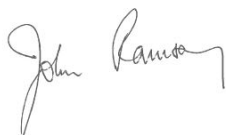
Submissions indicate that further definition, clarification or elaboration of some words and phrases would assist in the implementation of the TPPs.

- In clause 1.1.3 4, can the scope of “prioritising growth of settlements that are within the higher tiers of the settlement hierarchy” be clarified and drafted so as to focus on desired outcomes?
- Can the policy intent of clause 1.4.3 5 be achieved by the use of a less prescriptive introductory statement?
- Is there an accepted methodology that enables the appropriate ranking of the significance of identified biodiversity values as is referred to in clause 2.1.3 1?
- How is the “Tasmanian brand” referred to clause 4.4.3 1(f) and 4 ascertained and does it establish or create a perception that certain types of business will receive a more favourable assessment or less objective assessment than those businesses that do not align with or promote the “Tasmanian brand”?
- “avoid over regulation” in clause 7.3.2 has created a perception that there is an intent in the establishment of the TPPs to reduce planning controls. Can the objective of matching the level of regulation in the planning system to the nature of the impact associated with the use and development be differently expressed?

As is usual Commission practice, this Direction, and any SPO responses will be published on the Commission website.

If you require further information or are unable to access the website please contact Louise Blyth, Planning Adviser, on 6165 6818.

Yours sincerely



John Ramsay
Delegate (Chair)