

10 October 2023

The Executive Commissioner
Tasmanian Planning Commission
tpc@planning.tas.gov.au

Dear Mr Ramsay and Mr Ford

Re: AM-KIN-PSA-2022-3 Referenced and Incorporated Documents

Thank you for the opportunity to respond to Kingborough Council's submission dated 22 September 2023. I'm sorry that my reply is late. I have spent a lot of time trying to establish what is required for my submission to have more chance of being supported, but it took far longer than I thought. I understand if you are unable to consider this email.

As this seems to be the last – yet also the first - opportunity for the community to comment on these policies, I will try to address the same requirements, and follow the same structure, as the planning authority did in their report. As there is limited time available, I will focus on the Biodiversity Offset Policy because of the seriousness of the concerns related to its use in the Kingborough Interim Planning Scheme. I will try to provide as much justification as I can for why the revised version should not be incorporated into the planning scheme.

The Council Officer's recent letter questioned the relevance of representors' concerns regarding the content and operation of the revised policies if they were to be incorporated into the planning scheme. I am still trying to understand the complexities of the planning system, but I will provide my reasoning as to why I believe that the content and impact of the revised policies should be considered in the assessment of the draft planning scheme amendment.

As I understand it, the Tasmanian Planning Commission (TPC) cannot make changes to the policies, but the decision as to whether the planning scheme amendment is approved or rejected will be based on an assessment of the impact on the planning system of the revised policies replacing the currently incorporated versions of the policies. I believe the assessment will consider whether the proposed amended planning scheme meets the necessary requirements.

I tried to establish the scope of the representations. There was - and there still seems to be - a difference of opinion. Correspondence from the TPC on 5 January 2023 advised that:

“You can make comment on what changes have been made to the policy, but these should reflect any concerns with the effect they will have if the updated version is included in the planning scheme.”

The TPC Practice Note 5 states that:

*“Applied, adopted or incorporated documents should be prepared by a recognised authority or body that has endorsed the document such as a State Government Department or Standards Australia. **If the document is revised from time to time, a formal amendment is required to ensure that the regulatory change is appropriate as a matter of planning policy**, and to alter the reference to the document to reflect the appropriate date of issue.”* (my emphasis)

The TPC Practice Note 2 states that:

*“**Amendments that have policy or strategic significance are likely to impact the public interest and should be initiated in the usual manner. This process includes public notification of the draft amendment and invites representations.** [section 34]*

For the correction of minor errors, amongst other matters, the Commission may allow the planning authority to dispense with notification and public exhibition where it meets the requirements of the Act. [section 37]” (my emphasis)

In response to Council’s request to dispense with the public exhibition requirements, the TPC’s letter of 19 December 2022 stated that:

“...the Commission decided that the proposal does not meet the required tests on the basis that the amendment has the capacity to prejudice the public interest. The planning authority has been advised of this decision and directed to commence the exhibition as prescribed under the Act.”

It seemed to me that the Commission agreed that the changes made in the revision of the policies were not simple, inconsequential clerical amendments. Although the proposed amendment of the text would only involve a change of date, the incorporation of the

revised policies into the planning scheme would enable land use and development outcomes that are different to those enabled by the provisions in the current planning system.

As the draft amendment was exhibited, and representations from the public were invited, logically (to a layperson at least) the content and the effect of the revised policies would be considered an appropriate focus of our representations.

The letter from the TPC dated 17 August 2023 stated that:

*“The Commission notes that section 20(2)(g) of the Land Use Planning and Approvals Act 1993 that applies in the Kingborough Municipality, enables documents to be applied, adopted or incorporated in the planning scheme which deal with the use, development, or protection of land. **The hearing will focus on consideration of the policies in light of what is enabled by this provision and the effect of the application of the policies in the planning system in the Kingborough municipality.**”* (my emphasis)

In the planning authority’s report (dated 6 June 2020) regarding the first planning scheme amendment to incorporate documents, it stated that:

“Studies, strategies, guidelines and policies that inform a planning scheme, guide decision making or affect the operation of the planning scheme should be part of the scheme in some form. This can be achieved by incorporating documents into the planning scheme”

*“**Any decision to incorporate a document into the planning scheme should be based on the role the document plays in decision making and the way in which the document will be used or relied upon.**”* (my emphasis)

The planning authority’s reports for both the previous and current planning scheme amendment stated that:

*“**One of the benefits of incorporating documents into a planning scheme is that they carry the same weight as other parts of the scheme. Being part of the planning scheme, the planning authority can only change an incorporated document by a planning scheme amendment.**”* (my emphasis)

As these policies are not State Government documents that will have already been subject to a legal review or a regulatory impact assessment, the Commission's analysis of any such document would be essential. It's not clear whether the current or earlier versions of the policies went through the full TPC assessment process. I understand that the offset policy wasn't an incorporated document in the previous planning scheme, although I'm not sure what 'translation errors' the planning authority was referring to in the report for the 2020 incorporated documents planning scheme amendment. It seems some incorporated documents from the previous planning scheme didn't move over to KIPS and other southern interim planning schemes quite as they should have.

Existing situation under the Kingborough Interim Planning Scheme 2015

The planning scheme currently incorporates and relies upon the Biodiversity Offset Policy 2016. This policy was reviewed by staff in 2022. That report stated that *"this review found that our current approach to offsets has been working well"*, and it listed the following achieved outcomes:

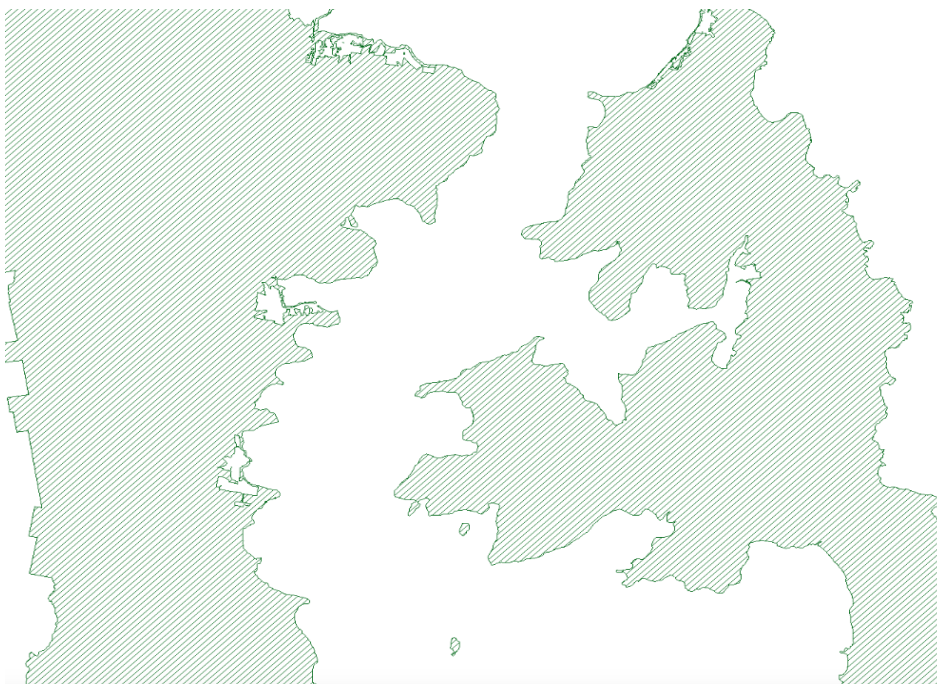
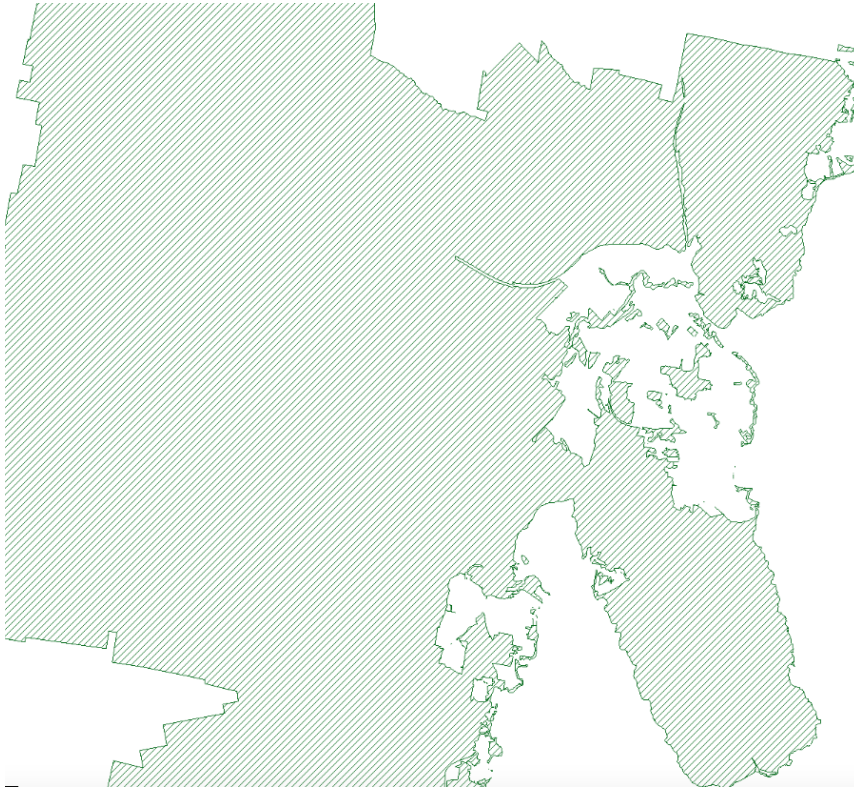
- protection of over 150 hectares under Part 5 Agreements on-site;
- protection of 9.5 hectares under Part 5 Agreements off-site;
- >22 hectares transferred to Council as bushland reserves;
- 12 hectares protected under a Conservation Covenant off-site;
- 1.9 hectares replanted on-site;
- Payment of over \$1, 162, 000 in financial contributions which to date have resulted in:
 - 69 hectares secured under conservation covenants off-site;
 - a further 454 hectares in negotiation for protection under a conservation covenant off-site and
 - 6 hectares of revegetation off-site.

The report also acknowledged that Kingborough's approach to offsetting is not reflective of other councils, and that implementation of offsets by other planning authorities is currently ad hoc and limited. The Huon Valley Council has a biodiversity offset policy but I believe that offsetting isn't used very often. I'm not aware of any other Tasmanian councils having an offset policy.

Until recently, Kingborough Council also had a By-Law that protected trees on private property when LUPAA didn't apply. I believe that the Biodiversity Offset Policy might also be incorporated into a new By-Law in the near future. I'm not aware of any other planning authority having a similar By-Law. It seems we have the strictest regulations regarding the protection of vegetation in the state, which I thought was great until I understood the impacts of those rules relating to the use, development and protection of land.

Council's [Implementing Biodiversity Offsets Flowchart](#) is a good visual indicator of the existing planning scheme requirements for development within a Biodiversity Protection Area in Kingborough.

You may already be aware, but the vast majority of Kingborough is classified as a Biodiversity Protection Area. The overlay has been applied to the remainder of Kingborough to the same extent as the second image.



An application that requires assessment against the Biodiversity Code introduces the potential for requests for information and specialist reports costing significant amounts of money, while also adding very significant, additional timeframes to the project. The impacts of the offset policy on the planning process have been mentioned in several representations. Council stated at the hearing that there hasn't ever been any community consultation regarding the Biodiversity Offset Policy in the 20 years they have been charging financial offsets, which is completely unjustifiable. At present there is no data on any of the social or economic impacts of this policy, the length of time taken to process applications where the offset policy has been triggered, the number of cases that are taken to the tribunal, the cost of the necessary legal representation etc.

To eliminate the potential for any understandable, natural bias of council officers who are clearly extremely knowledgeable and passionate about conservation, a robust evaluation of the policy would require an independent assessor (perhaps someone from the TPC?). An independent assessor could also report on the impact of the use and development enabled by the current policy within the planning system, consider Kingborough's land capability, and the use and development of the region's land in social and economic terms. It would be interesting to examine: any increase/decrease in the total area of agricultural, rural or light industrial land within the last 20 years; whether any rezoning decisions were related to protecting biodiversity and limiting use and development; and the contribution of productive/industrial land to the local and regional economy and employment opportunities.

The resultant Part 5 agreements will also be limiting land capability. Rural uses such as growing crops or grazing are prohibited. Because of the replacement ratios involved in the offset calculations, very large areas of land are being prevented from being used even for low impact, sustainable resource production or development. I believe that the Part 5 agreements also stipulate that the vegetation and habitat mustn't be disturbed at all, so dead vegetation such as dropped branches, bark, and leaf litter cannot be cleared. It's very concerning that the impacts of increasing the fuel load, and prohibiting basic bushfire mitigation measures, in one of the most bushfire-prone areas of the world, doesn't seem to have been considered.

Without establishing the current policy's effects on Kingborough's planning processes and outcomes, I don't think it's possible to gauge whether the proposed changes to the policy are appropriate.

Consistency with the Southern Tasmania Regional Land Use Strategy

BNV 1.4 - Manage clearance of native vegetation arising from use and development in a manner that is generally consistent across the region but allowing for variances in local values.

The Kingborough Interim Planning Scheme already protects the natural environment - from not only clearance but also disturbance - to a greater degree than any other planning authority in the region. The revised policy would add to the inconsistency eg a Kingborough Council Officer could consider potential habitat, and the decision-making could be based on unpublished scientific literature. More developments in Kingborough involving vegetation/habitat disturbance would require offsets than in the other municipalities. The revised policy would also increase the inconsistency in outcomes due to the introduction of a 6:1 replacement ratio and a significant increase in the financial offset rates. I don't agree that the revised policy would provide greater certainty for applicants; I believe the outcomes would be harder for most people to predict.

However, at the latest review of the policy, Council explained that the offset policy has allowed development to occur which would have otherwise been refused. Those benefits of the policy definitely need careful consideration.

A thorough analysis of the extent of the inconsistency between Kingborough's approach to biodiversity and that of the rest of the region needs clarification. If there is an inconsistency between a local planning provision and the STRLUS, I thought that the latter should prevail? Given that one of the main aims of the new planning scheme is statewide consistency, incorporating the revised policy into the planning scheme now doesn't seem appropriate.

Strategic alignment – Kingborough Council Strategic Plan 2020- 2025

Council's Strategic Plan states:

"Our community is at the heart of everything we do".

The Strategic Plan provides the direction for the future delivery of services by Kingborough Council, which influence the quality of life for residents and businesses. Council's [website](#) explains that:

“The Council’s commitment is to put the community at the heart of our priorities and decisions”.

Several of the Strategic Plan’s key priorities and strategic outcomes are relevant to the draft planning scheme amendment as they relate to striking a balance between protecting the natural environment and facilitating development. For example, Council aims to achieve the following outcomes by 2025: to be a Council that engages with and enables its community; for best practice land use planning systems to be in place to manage the current and future impacts of development; and to have a corporate culture that delivers quality customer service, encourages innovation and high standards of accountability.

For Council to be able to track their progress towards these goals it’s essential that the community have the opportunity to give feedback on the proposed changes to the policies.

The vast majority of people who are potentially impacted by this planning scheme amendment weren’t aware of the public exhibition period. If it had been advertised in the way Council raises awareness of other events and consultations etc I think there could have been valuable input from ecologists, builders, developers, arborists, TFS, residents and others groups who have all had some experience of how the offset policy impacts the planning system in Kingborough.

The manner in which planning scheme amendments are advertised clearly prejudices the public interest, and not only at the time of the current public exhibition. Earlier missed public exhibition opportunities have resulted in no representations being considered under section 30I.

Thank you for questioning the head of power for the financial offsets. The Kingborough Planning Scheme 2000 stated that the financial offset charges were set under the provisions of the Local Government Act 1993, however offsets haven’t been specifically mentioned in the Act. They aren’t included in Council’s current list of fees and charges for services provided either.

The Kingborough Ratepayers Association Inc (KRAI) tried to verify the validity of the offset policy and the head of power for the financial offsets a few years ago. I’m not sure whether Council obtained the required legal advice.

<https://www.kingboroughratepayers.org.au/wp-content/uploads/2021/08/KRAI-OGA-Submission-for-KCouncillors.pdf>

It seems that it may have been the KRAI’s input that led to the first incorporation of the documents.

There is undoubtedly a very significant legal, financial and reputational risk if Council hasn't established whether it has the necessary head of power to charge financial offsets.

It seems that the revised Public Open Space Policy could result in subdivisions including less public open space, which conflicts with LUPAA's objective of securing a pleasant living environment for all Tasmanians. The amenity of most urban housing developments would be improved by even small areas of trees or other vegetation for example. The shade provided by trees, and the potential to lower the stormwater levels due to the reduction of impervious surfaces, would further the RMPS objectives of sustainable development and climate change resilience.

With the exception of subdivisions very close to existing areas of open space, I doubt that the future residents of the high-density subdivisions would consider it fair that Council chose to take cash in lieu of open space, and then spend that money on projects in another area. I think the current policy – as opposed to the revised policy – would be more certain to enable an equitable, orderly provision of public facilities. There needs to be transparency regarding these decisions however. There is only selective information available to the public regarding open space decisions and where those contributions are spent. I imagine that most decisions will benefit Kingston as usual.

The revised Public Open Space Contributions Policy was endorsed in 2021. Has it already been applied to any subdivision applications or expenditure decisions? The revised versions of both these policies are the only versions on Council's website, despite them not yet having been incorporated into the planning scheme.

A summary of past decision-making and outcomes enabled by the current policies would provide for a more accurate assessment of the potential impacts on use and development if the amendment is approved.

I believe the draft amendment does not meet the necessary requirements. I hope that representors have raised enough concerns for the Commission to consider it appropriate to reject the proposed amendment and advise Council to establish the legislative authorisation for the Biodiversity Offset Policy, and undertake community consultation to ascertain the impacts of this policy.

I'm sorry this is so long. Thank you for considering every representor's point of view.

Kind regards

Jo Landon

