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2 June 2023

Our Ref: PSA-2022-3

The Executive Commissioner
Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

Dear Madam/Sir

PSA-2022-3 - Amendment to the Kingborough Interim Planning Scheme 2015 to Update Incorporated Documents

Section 39(2) of the *Land Use Planning and Approvals Act 1993* requires a report to be submitted to the Commission not later than 35 days after the draft amendment exhibition period.

Please find enclosed a report comprising a copy of each representation, a statement of the Council's opinion as to the merit of each representation and our associated recommendations in relation to the planning scheme amendment in general.

If you wish to discuss the application or seek clarification in relation to the above, please contact Council's Senior Strategic Planner, Adriaan Stander on (03) 6211 8120.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Tasha Tyler-Moore".

TASHA TYLER-MOORE
MANAGER DEVELOPMENT SERVICES

13.1 PSA-2022-3 - AMENDMENT TO THE KINGBOROUGH INTERIM PLANNING SCHEME 2015 TO UPDATE THE INCORPORATED DOCUMENTS**File Number:** PSA-2022-3**Author:** Adriaan Stander, Strategic Planner**Authoriser:** Tasha Tyler-Moore, Manager Development Services**Application Number:** PSA-2022-3

The purpose: The purpose of this report is to consider representations that have been received following the public exhibition proposal to amend the *Kingborough Interim Planning Scheme 2015* to update the incorporated documents.

Representations: A total of 13 representations were received during the exhibition period.

Recommendation: That Council notes the representations received, together with the officer's responses and recommend the Tasmanian Planning Commission finalise the Planning Scheme Amendment as Initiated on 21 November 2022.

1. INTRODUCTION

- 1.1 The [*Kingborough Interim Planning Scheme 2016*](#) (KIPS2015) references several external documents that are relied upon to make planning decisions. They are commonly referred to as the 'incorporated documents' and listed in [Appendix 1](#) and throughout the text of the planning scheme.
- 1.2 The benefits of having these documents referenced and formally incorporated into the planning scheme is that they form part of the scheme.
- 1.3 Not all types of documents referred to in the planning scheme need to be formally incorporated. For example, the Building Code of Australia and the Australian Standards have their own statutory standing.
- 1.4 If any of the documents listed in the planning scheme are updated (a process which sits outside the planning scheme) and there is a need to update the reference to those documents in the planning scheme, a formal planning scheme amendment is required.
- 1.5 If this planning scheme amendment does not occur, the outdated version of two policies (the subject of the planning scheme amendment) will remain in the planning scheme and the revised version of the two policies has no standing.
- 1.6 The *Kingborough Public Open Space Policy, Policy 6.3 (dated May 2019)* and the *Kingborough Biodiversity Offset Policy, Policy 6.1 (dated November 2016)* are two of eight existing incorporated documents listed and referenced in the KIPS2015.
- 1.7 The above-mentioned two policies are part of good governance procedures and guide Council decisions as follows:
 - The purpose of the *Kingborough Public Open Space Policy* is to provide guidance to the application of monetary contributions in lieu of providing open space.

- The purpose of the Biodiversity Offset Policy is to ensure that offsets avoid a net loss and are implemented in a transparent and consistent manner.
- 1.8 The two policies have been in place for a significant time, predate the current planning scheme and have been referenced in the Kingborough Interim Planning Scheme since it was introduced in 2015.
 - 1.9 Council policies are reviewed and updated periodically and depending on the nature of changes proposed as part of a review, it may or may not be subject to public consultation.
 - 1.10 Over the years the two policies have been subject to reviews and updates, with the planning scheme amended to incorporate these changes in 2020. Throughout these reviews, the intention of the policies remains the same as to when they were introduced.
 - 1.11 The *Kingborough Public Open Space Policy* was last updated on 15 November 2021. The changes to the policy as approved by Council are discussed in more detail in [Item 15.2 of Council's Agenda of 15 November 2021](#).
 - 1.12 The *Kingborough Biodiversity Policy* was last updated on 15 August 2022. The changes to the policy as approved by Council are discussed in more detail in [Item 16.1 of Council's Agenda of 15 August 2022](#). While beyond the scope of this amendment, for clarity, a summary of the key changes to the Policy are also provided in Appendix 2.
 - 1.13 On 21 November 2022 the Planning Authority initiated a planning scheme amendment to update reference of to the above-mentioned two policies in KIPS2015 as the planning scheme refers to previous versions of the above two policies.
 - 1.14 To clarify, the intent of the Planning Scheme Amendment is not for the review or update of the policies, but merely to update the listing and reference of the current endorsed versions of the two policies in the planning scheme.

PREVIOUS EXHIBITED VERSIONS OF THE INCORPORATED DOCUMENTS

- 2.1 Previous versions of the policies formed part of the suit of documents that were introduced as part of the Kingborough Interim Planning Scheme in 2015.
- 2.2 The previous update of the incorporated documents in the planning scheme occurred in 2020. The link below provides an overview of the changes Council sought as well as the Tasmanian Planning Commission's considerations. It should be noted that no representations were received during that exhibition period.

[Kingborough Interim Planning Scheme 2015 amendment PSA-2020-2 \[2021\] TASPCComm 3 \(10 February 2021\) \(austlii.edu.au\)](#)

PUBLIC EXHIBITION OF THE PLANNING SCHEME AMENDMENT (THE SUBJECT OF THIS REPORT)

- 3.1 At its meeting of 21 November 2022 the Planning Authority also decided to put a request to the Tasmanian Planning Commission to dispense or reduce the exhibition requirements of Section 38 of the former provisions of LUPPAA as it was felt that the changes to the reference in the scheme were administrative in nature.
- 3.2 The Tasmanian Commission, did not agree to Council's request due to the community interest in the matter, and asked Council to proceed with the formal exhibition as per the standard statutory requirements.

3.3 Section 38 of the former provisions of LUPAA requires that a planning scheme amendment be exhibited for a minimum period of 28 days. The proposed planning scheme amendment was exhibited between 25 February 2022 and 28 March 2022 as follows:

- on the [Kingborough Council website](#); and
- twice in The Mercury.

3.4 Exhibition material was made available for viewing on the Kingborough Council website and at the customer service centres in Kingston and on Bruny Island and included:

- Council report and minutes of the meeting of 21 November 2022;
- Draft Amendment to the Kingborough Interim Planning Scheme 2015;
- Copies of the approved Public Open Space Contribution Policy and Biodiversity Offset Policy including copies of the Council Agendas where Council considered the updates to the policies.

4. PRE-PRESENTATIONS RECEIVED

4.1 A total of 13 representations were received during the exhibition period.

4.2 Details of the representations received, with Council officers' comments, is provided in Attachment 1.

4.3 A summary of the representations are provided below.

Biodiversity Offset Policy

4.4 Two representations are opposing the updated reference to the most recent version of the Kingborough Biodiversity Offset Policy in the planning scheme.

4.5 Even though the planning scheme amendment is only to update reference to the most recent version of the two subject policies in the planning scheme, 11 of the 13 representations are also about the concerns people have with the Biodiversity Offset Policy in general. The concerns with the policy are not a matter for consideration as part of the planning scheme amendment, however Council officers in Attachment 1 also address those matters for completeness and will consider these in future policy reviews.

Public Open Space Contribution Policy

4.6 One representation was received in relation to the Public Open Space Policy opposing referencing of it in the planning scheme. This does not relate directly to the scope of the proposed amendment, however Council officers in Attachment 1 also address those matters for completeness.

No objection to Planning Scheme Amendment

4.7 One presentation was received from TasWater indicating no objection to the planning scheme amendment.

5. CRITICAL DATES / TIME FRAMES

- 5.1 Council has 35 days from the close of the notification period to forward its report to the Commission. Council has received an extension of time until 18 May 2023 to report back to the Commission.
- 5.2 All representors will be invited to attend hearings at the Tasmanian Planning Commission's offices.
- 5.3 Ultimately, arising out of the hearing process, the Commission must make a decision based on all the information and evidence it receives, from the Planning Authority and representors, and in light of any expert evidence that is presented.
- 5.4 The Commission must complete its consideration and decision process within three months of receiving Council's report on the representations, unless an extension of time has been agreed by the Minister.
- 5.5 If the Commission approves the amendment, the amendment takes effect seven days after being signed by the Commission, unless a date is specified.

6. CONCLUSION

- 6.1 The proposed amendment does not introduce new development standards or policies but is rather to update the list of supplementary documents in Appendix 1 in the KIPS2015 to reflect Council's Public Open Space Contribution Policy, Policy 6.3, dated November 2021 and Biodiversity Offset Policy 6.1 dated August 2022. The proposal also seeks to ensure that these documents are correctly referenced throughout the text in the planning scheme.
- 6.2 The proposed amendment meets all statutory requirements and is a logical amendment to the planning scheme to improve the application of existing provisions of the planning scheme.
- 6.3 Public exhibition has been completed and the representations generally raised issues with the policy content and merit rather than updating the referencing of the incorporation of the policies into the planning scheme. The representations have not raised matters that require changes to the Initiated Scheme Amendment, nor does it provide sufficient grounds to recommend to the Tasmanian Planning Commission not to proceed with the amendment. All representors will be invited to attend hearings at the Tasmanian Planning Commission's offices. The Commission will make the final decision on the planning scheme amendment based on all the information and evidence it receives as part of those proceedings.
- 6.4 If the Planning Authority or the Commissions decide not to proceed with the planning scheme amendment, the planning scheme will continue to operate with the existing policies (i.e., the *Public Open Space Policy, Policy 6.3 (dated May 2019)* and the *Kingborough Biodiversity Offset Policy, Policy 6.1 (dated November 2016)*).

7. RECOMMENDATION

That Council:

- a) Notes the representations received during the exhibition period together with the officer's responses.
- b) Resolves to make no further changes to the Initiated Planning Scheme Amendment to update the incorporated documents in the *Kingborough Interim Planning Scheme 2015 (PSA-2022-3)*.

- c) Pursuant to section 39(2)(a) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council forward a copy of this report to the Tasmanian Planning Commission.

ATTACHMENTS

1. Representations received during exhibition period

ATTACHMENT 1

Table 1: Representations related to the public exhibition process directly related to the amendment.

Issue/Comment	Summary main points	Response	Doc ID (ECM)
Public exhibition	There needs to be an adequately advertised public exhibition process, including raising community awareness through social media.	The public exhibition process for the planning scheme amendment was undertaken in accordance with the requirements of LUPAA.	4545397
	The Policy was brought in without community consultation and Council have unsuccessfully tried to rush through the planning scheme amendments	<p>The initiated planning scheme amendment included a request to the Tasmanian Planning Commission to dispense of the exhibition requirements as the two policies subject of this amendment are already approved by Council and because the previous amendment to update the planning scheme to this effect attracted no representations.</p> <p>The Tasmanian Commission did not agree to the request due to community interest in the public exhibition of this planning scheme amendment.</p>	4545373
Schedule 1, Part 1 Objectives of LUPPA	The responses to the Schedule 1, Part 1 Objectives are not satisfactory. It is not demonstrated how the amendment will provide for the fair and orderly use and development of land. Increasing the costs during a housing and cost of living crisis will undoubtedly have significant impacts on residents who are already struggling. Flow on impact to regional economies.	<p>The amendment is limited in scope to updating the referencing of the Public Open Space Contribution Policy and Biodiversity Offset Policy as recently approved by Council into the Planning Scheme.</p> <p>In addition, the amended Biodiversity Offset Policy does not introduce any new application requirements and the only increased cost is the increase in the financial offset rate to reflect CPI.</p>	4545397

Table 2: Representations related to the incorporation of the Policy.

Issue/Comment	Summary main points	Response	Doc ID (ECM)
Objection to the incorporation of the Biodiversity Offset Policy	The Offset Policy creates a conflict of interest for Council as Planning Authority and the link between the Offset Policy and the Scheme should not be maintained. A separate by-law is the appropriate mechanism.	The Policy is already incorporated into the existing planning scheme and the scope of the amendment is to ensure the planning scheme incorporates the current endorsed version of the Policy. The inclusion of offset requirements in the planning scheme was subject to the relevant legal requirements, is not unique to Kingborough and the lawfulness of offsets has been upheld in the Tribunal. While the introduction of a by-law may provide for offsets for vegetation removal not subject to the planning scheme, this is a different mechanism and cannot be utilised to implement the Policy for vegetation removal otherwise subject to the planning scheme.	4538429
	Objection to the inclusion of the Biodiversity Policy in the state-wide Planning Scheme.	The current amendment is to the Kingborough Interim Planning Scheme 2015 and has no bearing on the state-wide Tasmanian Planning Scheme.	4545390

Table 3: Representations related to the content of the Policies.

The following representations raise concerns about the scope, application and details of the policies themselves and the process for periodic updates. These concerns are beyond the scope of the proposed planning scheme amendment, which simply seeks to update the referencing to the Policies to ensure the current versions apply under the Kingborough Interim Planning Scheme 2015 rather than superseded versions. However, in the interests of transparency and completeness, a response to these concerns is provided.

Issue/Comment	Summary main points	Response	Doc ID (ECM)
General issues with the Biodiversity Offset Policy	The Biodiversity Offset Policy penalises people who have had property before the rules came into effect.	The requirement for offsets sits within the planning scheme rather than the Policy, with explicit offset requirements introduced into the former planning scheme in 2013 and included in the current interim planning scheme since it came into effect in 2015. The inclusion of offset requirements in the planning scheme went through the full statutory requirements at the time, including formal public exhibition as required by LUPAA. Use and development of land is required to comply with the planning	4544613

		scheme in effect at the time the application is validly made. Therefore, it is a reality that as the rules change over time and properties may be subject to different requirements to those in place when the property was purchased.	
	The offset policy should apply to developments on Council owned or managed land with a view to Council initiated developments being able to be cited as exemplars of good practice in the preservation of biodiversity.	Biodiversity offsets are applied to Council works and developments that require a permit under the planning scheme.	4545615
	Point 5.4. of the Policy places the Council in a policing rather than an educational role and the wording should be amended to reflect this.	Section 5.4 relates to the assessment of an offset proposal by Council. This assessment is undertaken as part of the development approval process. As part of this process, offset proposals can be discussed, negotiated and agreed. However, as reflected in the wording of the clause, ultimately it is Council's role as Planning Authority to assess and determine an application, including any offset proposal.	4545615
	The Policy is not required by the State Government.	<p>Planning schemes are developed in accordance with the legislation and implemented by Local Government. The conservation of endangered animals, plants and ecosystems is one of the greatest environmental challenges facing Kingborough. The municipality has important biodiversity values, many of which are significant at a regional, state or national level.</p> <p>There is a direct link between decreasing vegetation cover arising from changing land uses and urban development and the high numbers of species becoming threatened, or a species' threatened status being upgraded. This policy is a means of addressing this serious issue. The current interim planning scheme includes offset requirements and enables these offsets to be linked to a</p>	4545373

		<p>policy. The role of the Offset Policy is to ensure a clear transparent process that can be applied consistently in Kingborough where offsets are required under the planning scheme.</p> <p>Other Council's, such as the Huon Valley, have also developed an offset policy to ensure consistency and transparency in offset requirements. Where the State Government regulates vegetation removal, they also have similar biodiversity offset policies related to proposals to remove native vegetation and habitat.</p>	
	<p>The biodiversity policy should not be applied to Rural Resource Zoned properties, or at the very least there should only be a percentage of the property that falls under the policy.</p>	<p>The planning scheme provides the requirement for offsets, the policy provides guidance on how this is applied. Clauses E10.7.1 P1 (b) (iv) and E10.8.1 P1 (b) (iv) of the Kingborough Interim Planning Scheme 2015 require offsets for impacts on moderate and high priority biodiversity values within a Biodiversity Protection Area no matter the zone.</p>	4540517
<p>Issues with the concept of 'not substantially detract from the conservation status'</p>	<p>In the Policy Statement '....end the sentence at 'exhausted''. The words 'and the impacts will not substantially detract from the conservation status of biodiversity value(s)' leaves unclear what is the status – and what policy covers</p>	<p>The words in the Policy Statement are about not detracting from the conservation status of a species and are required as they create the policy position where an offset cannot be considered if the loss will lead a threatened species or community to become increasingly threatened. For clarity, a definition of what 'substantially detract from' means has been included as part of the amended Policy and this definition is consistent with that used by other regulators.</p>	4545615
	<p>5.3.2 makes no sense</p>	<p>5.3.2 reads '<i>Offsets will only be considered where the loss of the biodiversity value will not substantially detract from its conservation status in the vicinity</i>'. At the State and Federal level, threatened species may be placed in one of several categories which indicate their level of extinction risk. This rule is to ensure that the proposed loss of the species or its habitat as a result of a development will not result in a significant change to its conservation</p>	4545615

		status.	
Offset security confidence	Assumption that offsets are less secure than pre-development vegetation, leading to a higher ratio for replacement	Security is a requirement for all offsets and is not linked to replacement ratios. The replacement ratio is related to ensuring a conservation outcome and are determined on the basis of the conservation status of the value. Factors that can also affect the replacement ratio can include the condition of the value, whether the value impacted is equivalent to that being protected and the level of risk associated with the offset. This flexibility enables replacement ratios to be reduced where the area subject to the offset is in better condition and being managed well. This approach is consistent with other regulators.	4545381
Potential habitat	Potential habitat should not be included as part of the Biodiversity Offset Policy as the whole of the Island is a potential habitat for all sorts of species.	Clauses E10.7.1 P1 (b) (iv) and E10.8.1 P1 (b) (iv) of the planning scheme require offsets for impacts on moderate priority biodiversity values, which under Table E10.1 of the Scheme, includes potential habitat. The Biodiversity Offset Policy provides guidance on what the offset requirements are for impacts on potential habitat.	4545390
	Potential TSP/EPBC Act species habitat is treated as Moderate priority with a replacement ratio of 3:1 for example Quoll habitat. These values are very widespread. I'd like to see this category shifted to 'Low value' (1:1 ratio) since it most generally equates with "all other native vegetation communities".	The definition of potential habitat in both the planning scheme and the Biodiversity Offset Policy are consistent with definitions developed by the State Government. These definitions ensure the whole of Tasmania is not assessed as potential habitat, as the application of the Biodiversity Code limits habitat to native vegetation.	4545381
	Definition 2.3 Potential Habitat. The interpretation is open to the opinion of a Council Officer. The definition is quite broad with words like 'all habitat types', 'potential range' and of most concern	The definition of potential habitat also excludes habitats known to be occupied intermittently. This ensures that habitat for widespread species such as the Quoll is not assessed as a moderate priority value where the species is only using the habitat occasionally.	4544610

	'unpublished scientific literature'.		
Value of individual trees	Individual trees are targeted with high or very high biodiversity value ratings, where typically the biodiversity value of trees will be higher when they exist more robustly in a stand with its additional ecological features.	<p>The species and diameter of individual trees are used in the policy as a surrogate for threatened species habitat. The species listed as very high in Table 2 are not threatened, they provide habitat for species that are threatened. The tree's health is considered as part of the offset negotiations. It is well established that Individual or small groups of trees in urban environments can be important foraging habitat.</p> <p>While some individual trees are identified as very high biodiversity value in Table 2, this value does not automatically equate to the tree being a high priority biodiversity value. It is also important to acknowledge that trees may meet both the definition of an individual tree of high or very high conservation value and the definition of significant or potential habitat.</p> <p>Where high or very biodiversity value trees are in a predominantly cleared context (i.e., outside a patch of native vegetation), they are generally assessed on an individual tree basis and as a moderate priority.</p> <p>Where an impact involves multiple high biodiversity value trees within a patch of native vegetation (i.e. within a native vegetation community) and are located within the Biodiversity Protection Area, these trees will usually be classified as potential habitat for a threatened species (a moderate priority) or significant habitat for a threatened species (a high priority). In these instances, the offset will generally be calculated on an area basis rather than an individual tree basis and will be subject to the relevant offset ratio.</p>	4545381
Head of power for financial contributions	What is the Head of Power that authorizes Kingborough Council to implement a biodiversity	Under the Local Government Act, Council is entitled to charge fees or charges. Council also has the power to impose conditions on a permit under s	4545390

	offset Scheme that requires a financial contribution not associated with providing a service as a condition of approval?	43C(4) of the Former LUPAA. Conditions must fairly and reasonably relate to the Scheme. In the case of offsets, there are numerous clauses in the Scheme requiring offsets, which may include a financial contribution. This financial contribution is used to secure the protection of biodiversity values elsewhere in Kingborough as an offset in accordance with the Guidelines for Expenditure of the Kingborough Environmental Fund.	
Dual taxation	Concern with ratepayers being subject to a dual taxation system, the offsets also required by the Federal Government	Firstly, offsets are not a form of taxation but rather is a charge set by Council. Secondly, it is acknowledged that approvals may be required for impacts on biodiversity by different levels of government, and these approvals may include offset requirements. There is no issue with offsets required by the Federal Government also being used to meet the planning scheme requirements, providing these offsets achieve the required outcomes in the Policy.	4545390
Financial Rates/Fees/Value	Objection to the increase in the financial rate and the strain it will put on people. It does not encourage people to develop their land.	In 2016 the rate was increased to include an administrative component to cover the cost of Council managing the cost of sourcing and securing offsets on behalf of the applicant.	4545169 4544610
	In 2016 Council increased rates by 20%, now Council wishes to increase the financial contribution yet again.	The most recent changes to the financial offset rate were fully considered and endorsed by Council in April 2022 and these changes were included in the latest amendments to the Policy. Following a review of alternative frameworks and methodologies, the changes to the financial rate were limited to increasing the per hectare rate to reflect CPI and increasing the per tree rate to reflect the costs of achieving the required offset outcome. The financial offset option enables people to develop their land, where on-site offsets are not available or feasible. In the absence of this option, the development would either need to secure an offsite offset or the development would be unable to meet the scheme requirements.	4544610

	<p>The financial offset rate should differentiate between each category of biodiversity values, rather than lumping high and moderate biodiversity value together. Also, a financial offset option for low priority biodiversity.</p>	<p>While the per hectare financial offset rate is the same irrespective of the priority of whether a value is a high or moderate priority, this rate is also subject to the replacement ratios identified in Table 3 of the Policy. When the replacement ratios are applied, the financial offset does differentiate between category of values and results in a higher financial offset for high priority values relative to moderate priority values. No financial offset rate is specified for low priority values as the interim planning scheme does provide for offsetting of low priority values.</p>	4545381
	<p>Given the extra fees being paid, a representative within Council should be assigned to help guide more equitable outcomes.</p>	<p>Financial offsets are required to be spent on achieving the offset outcomes and are not general revenue. When assessing development applications, Council is also acting as Planning Authority and their role is not to act as a representative of the applicant but assess applications in accordance with the planning scheme requirements.</p>	4544643
	<p>If environmental protection is the main objective and not financial gain, then adequately show how the money is being spent to re-establish natural values within the local area.</p>	<p>Council has developed guidelines for expenditure of offset contributions and these guidelines are available on Council's website. Council has also done communications around outcomes achieved through the offset funds. Environmental Fund (kingborough.tas.gov.au)</p>	4544643
	<p>How many complaints have been raised against the financial offset charge?</p>	<p>There have been four complaints recorded by Council regarding the financial offset rate.</p>	4545390
<p>Determining and understanding offset requirements</p>	<p>The number of significant trees being cleared should be the main consideration, not purely the square meterage as this differs significantly depending on zone e.g. low density residential.</p>	<p>Offsets are calculated differently depending on the values being impacted. For example, where the value impacted are trees in a cleared setting which provide habitat for a particular threatened species, the offset is based on the number of significant trees being cleared. However, where the value impacted is a threatened vegetation community or an area of significant habitat, this value can be totally lost or</p>	4544643

		displaced through removal of the understorey vegetation and no tree removal at all. Therefore, for threatened vegetation communities and some threatened species habitat the appropriate way to calculate the offset is by the extent of loss in m ² .	
	A streamlined process is required that allows landowners to estimate and understand their offset cost before planning commences.	Applying the replacement ratios and financial offset rates in the Biodiversity Offset Policy enable offset requirements to be estimated, providing the classification of the biodiversity values and extent of impact can also be estimated. However, the specifics of any offset proposal cannot be confirmed until the details of a proposal are finalised, which generally occurs as part of the development application process.	4544643
	3rd party reviews of all biodiversity offset determinations.	The current process enables applicants to submit an offset proposal, which is then subject to review and determination by the Planning Authority. As part of this process, there is the opportunity for negotiation and discussion and in some instances a third-party review may be obtained. However, there is no mechanism for the Planning Authority to delegate the decision on an offset to a third party and a third-party review of all offset determinations is impractical, making the process slower and increasing the costs. Where the applicant is not satisfied with the determination of the Planning Authority, the process for review is either through seeking a minor amendment or an appeal.	4544643
	Greater trust given to external consultants which landowners are encouraged to consult.	It is an applicant's responsibility to submit documentation addressing the relevant Scheme requirements in relation to their proposal, which may include Natural Values Assessments. Council Officers assessing a Development Application (DA) undertake assessments against the relevant Clauses of the planning scheme, including the Biodiversity Code. The assessments draw on the Officers expert knowledge in addition to the supporting documentation submitted with the application. As Council is required to	4544643

		form its own view of whether a proposal complies with the planning scheme requirements, Council's assessment may occasionally differ from the assessment undertaken by consultants acting on behalf of the applicant.	
Social and economic impacts of the Biodiversity Offset Policy	Concerns around the lack of consideration for the economic and social impacts of the Policy and a submission that these impacts need to be considered before the Policy is assessed for incorporation into the planning scheme.	The Policy has been in effect since 2010 and was incorporated into the current planning scheme when this scheme came into effect. The proposed amendment only seeks to update the referencing to current Council endorsed version. In addition, the scope of the amendments to Policy are generally technical in nature and are not considered to have significant social or economic implications beyond the existing policy, with the changes to financial rates limited to CPI.	4545397
	it's inappropriate to penalise people trying to build a home. Not only does council make this process more arduous and costly, but Council is also benefiting financially.	Council is not benefitting from the Biodiversity Offset Policy. Financial offsets are administered by Council to source and protect the required offset on behalf of the landowner or developer. This does not benefit Council financially but rather enables landowners and developers to meet their offset requirements without needing to directly secure those offsets.	4545373
	Significant discrepancy between the likely cost to a developer, for an application to clear trees via Kingborough's LUPAA system and the state's Forest Practices System.	The planning application fees are comparable to the application fees for a Forest Practices Plan. Financial offset rates are separate to application fees and the Forest Practices Authority also have a biodiversity offset policy which includes the use of financial offsets to compensate for the loss of biodiversity values associated with an activity conducted under the forest practices system. The offset rate set in the original Kingborough Biodiversity Offset Policy of \$10,000/hectare was derived from the financial offset rates set by the Forest Practices Authority and this fee has only been increased to enable administration of the offset expenditure and reflect CPI.	4545381
Lack of security and certainty around offset	Under the revised Policy the offsets required would be extremely	The offset requirements under the current Council endorsed Policy are generally consistent with the previous	4545397

requirements	difficult to predict.	<p>versions of the Policy (and as currently reflected in the planning scheme) but have been amended to provide greater clarity around when financial contributions or direct offsets are appropriate and replacement ratios.</p> <p>Most offset requirements are relatively straight forward and Council officers routinely provide pre-purchase and pre-lodgement advice to landowners and consultants around potential offset requirements and are also able to clarify offset requirements as part of the assessment process.</p> <p>Some offsets may be more complex, such as when multiple values are impacted, or the proposed offset is not like-for-like. Again, Council officers are able to provide advice on the requirements under the Policy both before or during the assessment of an application. Ecological consultants are also familiar with offset requirements and are able to provide guidance to their clients, noting that the final offset requirements cannot be confirmed or determined until a proposal has been fully assessed by Council.</p>	
	The policy provides further discretionary power to an already over zealous council with wishy washy language such as 'potential habitat'	The policy provides definitions of terms such as 'potential habitat'.	4545373
Relationship between bushfire mitigation and offsets	It is unclear whether bushfire mitigation or retaining biodiversity takes precedence.	The planning scheme provides for clearing of priority biodiversity values for bushfire, providing the clearing is the minimum necessary and any residual loss of moderate or high priority values are offset. Confusion arises where a bushfire plan is developed to comply with building regulations and this plan has not taken into consideration the planning scheme requirements.	4544643
	Making a property fire safe should not be subject to offsets.	Under the planning scheme, there are existing exemptions from offsets for bushfire management, where landowners are implementing necessary	4544613

		<p>bushfire mitigation measures for existing dwellings in accordance with a bushfire hazard management plan certified by an accredited person. Similarly, offsets are not required where fire management is required by the Tasmania Fire Service (TFS) as part of the TFS hazard reduction program.</p> <p>Where a proposed development, for example a new house, creates the need for new bushfire hazard management measures, the planning scheme determines whether offsets are required. These offset requirements, where they exist, are important for ensuring any adverse impacts of a proposed development, including bushfire hazard management, are appropriately mitigated.</p>	
Flexibility in the policy	Flexibility of policy to allow adaptation: Climate change is likely to challenge existing norms and some innovation in responses will likely be useful to improve our community's adaptation and resilience.	The policy is reviewed every five years or sooner if requested by Council, allowing new issues and knowledge to be considered. Council has the discretion as per Table 3 to determine offset ratios based on an individual scenario.	4545381
Awareness of the Policy	Many residents are unaware of the existence of this policy, and others only learned of it after submitting their development application.	Noted	4545397
Public consultation on the Biodiversity Offset Policy	<p>Please consult with the community, industry and a wide range of experts, not just those selected by the council staff.</p> <p>The Policy should not be brought in or amended without consultation with landowners.</p>	The comments are noted. Consultation was undertaken with a range of independent consultants, government and non-government experts as part of the latest review of the Biodiversity Offset Policy. Consultation on offsets was also undertaken when offset provisions were first introduced into the planning scheme in 2013 and again when the Kingborough Interim Planning Scheme was exhibited.	<p>4545397</p> <p>4544613</p> <p>4544610</p> <p>4545169</p>

	<p>Council should actively seek input from every member of the community impacted by the Policy.</p> <p>The Biodiversity Offset Policy affects people greatly. This policy, until now, has had no community input yet affects so many of us</p>		
Public Open Space Contribution Policy	Lack of public consultation when the policy was created and subsequent reviews.	<p>The policy provides guidelines for when Council will request a public open space contribution, whether through land or cash-in-lieu of that land; and how funds are held. The policy is an operational document and operates in conjunction with the Kingborough Interim Planning Scheme 2015 and the Kingborough Public Open Space Strategy 2019.</p> <p>The policy predates the current planning scheme and has always formed part of the Kingborough Interim Planning Scheme when it was introduced in 2015. The most recent version of the policy (as approved by Council on 15 November 2021) was not subject to public consultation as it is not significantly different from the previous version and the changes that were introduced were done in a manner to align with the Kingborough Open Space Strategy of 2019. The changes in the policy were made to provide improved transparency in relation to operational procedures to ensure that the policy provides community benefit consistent with the outcomes sought by the Open Space Strategy.</p>	4545392
	General public unawareness of the policy.	As mentioned above, the policy predates and have always been part of the Kingborough Interim Planning Scheme 2015. The policy is displayed on Council's website together with all policies relevant to the municipality.	4545392
	Expenditure of funds created through the policy.	Council is currently developing a policy on Reserves, which will cover the public open space reserve (fund collected through the Policy Open Space Policy and operational budgets). As part of this Policy, the issue of reporting will be considered. The Policy will be reviewed	4545392

		by Council later this year.	
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Table 4: Representations not related to amendment or the Policies.

Issue/Comment	Summary main points	Response	Doc ID (ECM)
Fire safety/Emergency response system	What discussions, plans and policies between the council, forestry, fire safety and emergency services have been developed to ensure the safety of people, property and flora and fauna in the Kingborough and neighbouring municipalities?	Council is an active member of the Fire Management Advisory Committees which are facilitated by the Tasmanian Fire Service. Council also regularly attends the regional Emergency Management Committee meetings and briefings.	4545390
Improving understanding of planning scheme requirements	Greater transparency with overlays that affect land use and development is required.	LISTmap shows overlays which apply to land, including the Biodiversity Overlay. Council has also recently developed its own interactive mapping to assist with identifying which overlays are applicable. Some planning scheme requirements do not have an overlay and determining when they apply depends on the specifics of the proposal and the characteristics of the land. Council staff are available to help landowners use the available mapping tools and provide an overview of likely planning scheme requirements.	4544643
	Easily understood resources to support landowners in navigating the complex planning schemes.	In recent years, Council has employed Technical Officers to provide a first point of call for advice to landowners. For more complex issues, specialist staff are available to assist. Consideration could be given to development a specific Biodiversity Offset Factsheet to assist landowners understand how offsets work and how they are calculated.	4544643

PLANNING AUTHORITY IN SESSION

Planning authority commenced at 5.50pm

13 OFFICERS REPORTS TO PLANNING AUTHORITY

C151/9-2023

13.1 PSA-2022-3 - AMENDMENT TO THE KINGBOROUGH INTERIM PLANNING SCHEME 2015 TO UPDATE THE INCORPORATED DOCUMENTS

Moved: Cr Amanda Midgley

Seconded: Cr Gideon Cordover

That Council:

- a) Notes the representations received during the exhibition period together with the officer's responses.
- b) Resolves to make no further changes to the Initiated Planning Scheme Amendment to update the incorporated documents in the *Kingborough Interim Planning Scheme 2015* (PSA-2022-3).
- c) Pursuant to section 39(2)(a) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council forward a copy of this report to the Tasmanian Planning Commission.

Moved Cr Antolli

Seconded Cr Richardson

That the matter be discussed.

In Favour: Crs Clare Glade-Wright, Aldo Antolli, David Bain, Kaspar Deane, Amanda Midgley Mark Richardson and Christian Street

Against: Cr Gideon Cordover

CARRIED 7/1

Moved Cr Street

Seconded Cr Cordover

That the motion be put.

CARRIED

The motion was then put.

In Favour: Crs Clare Glade-Wright, David Bain, Gideon Cordover, Kaspar Deane, Amanda Midgley and Christian Street

Against: Crs Aldo Antolli and Mark Richardson

CARRIED 6/2

PLANNING AUTHORITY SESSION ADJOURNS