

26 June 2023

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

Dear Sir

Representation to Exhibition – draft Tasmanian Planning Policies

Thank you for the opportunity to make representation to the draft Tasmanian Planning Policies (TPP).

Flinders Council (Council) has significant concern that the prioritisation of growth to higher order settlements that is scattered through a myriad of policy areas and strategies that will restrict, or more likely, prevent sustainable population growth for Council, in direct contravention of the definition of sustainable development provided in the Schedule 1 Objectives to the *Land Use Planning and Approvals Act 1993* (the Act).

Council comprises the Furneaux Group of Islands (Furneaux Islands), a collection of small to medium islands within Bass Strait. There are small, permanent populations on two islands being Flinders and Cape Barren Island. Extensive and highly productive agricultural and tourism sectors occur on Flinders though the Municipality hosts diverse values across geomorphology, history and heritage, scenic landscapes, recreation areas, agricultural and rural areas, with a network of small coastal settlements.

Development within the Flinders area is expected to largely reinforce the existing network of settlements, with increased recognition of the role of the regions in accommodating future population growth. This is reflected in the recent ABS data and at the State level through the *Discussion Paper for Refreshing Tasmania's Population Strategy* (Population Strategy) and the *draft Housing Strategy* (currently on consultation).

Key issues for Flinders include:

- increasing pressure for development in coastal locations and on the outer islands;
- a decrease of dwellings for permanent residential use and conversion to visitor accommodation and holiday or second homes;
- the remote nature of the Furneaux Islands and resultant restrictions on development created by the Bass Strait location and resulting discouragement for new development locally;
- the significant value of the natural and natural appearing landscapes to the perception of the Islands and their economic activity; and
- significant and ongoing difficulties in providing residential accommodation for residents and permanent/short term workers.

Council has significant concerns that the TPP, as drafted, do not:

- enable sustainable growth within the Furneaux Islands by allowing the range of lifestyle, economic, environmental and social opportunities that are recognised as part of the Council's, or Tasmania's, future;
- meet the outcomes at Part 2A of the Act;
- clearly establish the aims and objectives for land use planning within Tasmania to be delivered through the Regional Land Use Strategies (RLUS), Tasmanian Planning Scheme (TPS) and by definition, Local Provisions Schedules (LPS) or State Planning Provisions (SPP) as a collective (implementation tools);
- establish a strategic framework that can be clearly understood or implemented in a manner that is established through the TPP;
- enable identification of relevant land use strategies and the levels they are intended to be implemented at for key issues affecting land use planning, such as climate change response and/or adaption, housing supply and availability or development within remote areas such as the Furneaux Islands;
- provide an implementation structure consistent with the requirements of part 2A of the Act in a way that is clearly established, fairly implemented, coordinated in delivery across State and Local Government, is likely to reasonably facilitate economic development, enables sustainable development as defined in the Act, or provides for the easy integration and consolidation of land use planning and policy to be implemented at State, regional and municipal levels;
- use plain English in their drafting;
- limit content to the terms defined at section 12B of the Act and as a result, are expected to complicate interpretation, assessment and determination through their implementation;
- limit their content to matters of policy that can be delivered through the statutory implementation tools; and
- provide for local strategy to inform and enable sustainable development in a way that is consistent with the Regional Planning Framework Discussion Paper published by the State Planning Office (SPO).

As a result of these concerns, Council submits that the TPP do not:

- meet the requirements of Part 2 A of the Act;
- further the Schedule 1 Objectives; or
- establish strategic land use policy that will enable sustainable development in a manner that can be implemented across the range of local government areas within Tasmania or specifically, within the Furneaux Islands.

Council was a signatory to the representation lodged by the Northern Region Councils and supports the statements and submissions within that document.

Council requests that the Commission use its powers under section 12F of the Act to advise the Minister that the exhibited Policies can and should be modified to address the following:

1. the TPP are redrafted to clearly establish the statutory mandate for direction though application of aims and objectives for land use planning within Tasmania at the State level, as required by the Act;
2. the General Application section is revised to establish a clear way to determine relevance of the specific aims or objectives to a specific assessment, and manage competing or conflicting interests within and between policy areas in a way that supports good planning outcomes and delivers strategic, practical assessments and clear decision making;
3. the Objectives and Strategies are revised to enable growth and remove matters that are beyond the scope of the implementation tools;
4. that the redrafted TPP clearly establish the levels at which they are to be implemented, to simplify assessments and minimise opportunity for frustration and legal challenges to decisions and processes;
5. enables sustainable growth and development based on local and regional strategy, rather than is artificially constrained and restricted to higher order settlements through the drafting of the TPP strategies;
6. matters that cannot be delivered through the implementation tools are removed from the TPP;
7. matters that duplicate other assessment processes are removed from the TPP, such as State Policies;
8. matters relating to implementation or operation are relocated from the TPP to supporting documents (such as Section 8A Guidelines or Practice Notes);
9. the prioritisation of growth to higher order settlements that underpins myriad policy areas and strategies is removed;
10. sustainable growth is enabled through strategic processes that address local circumstances to support sustainable population growth for Council and in other remote communities, consistent with the definition of sustainable development provided in the Schedule 1 Objectives to the Act;
11. revise the structural approach to growth within the Policies to reflect the projected growth that is expected over the coming decades and enable sustainable development, rather than the apparent approach to protect and restrict based on historical development models;
12. remove the allocation of future growth through the RLUS as an artificial construct that has likely resulted in the restriction of the development process and likely resulted in the constraint of development and property markets where it was applied within the State, adversely impacting housing affordability and availability;
13. establish local strategy and aspiration as a key determinant for growth and sustainable development throughout the implementation tools;
14. provide a legally functional way to resolve conflicts between and within policy areas; and
15. address the matters identified in the representation from Northern Tasmanian Development on behalf of the collective of General Managers within the north of Tasmania.

Further, Council requests that the Commission undertake the following in its assessment of the TPP:

1. seeks an extension of time to the 90-day timeframe under section 12F(2) of the Act for submission of the report to the Minister for Planning to enable a proper assessment of the exhibited Tasmanian Planning Policies; and
2. holds public hearings into the representations on the TPP under section 12F(1)(c) of the Act; and
3. as the assessor of proposals against the existing RLUS across Tasmania, the Commission use its knowledge of problems with implementation of the existing RLUS to inform its assessment of the TPP against section 12F(1)(b) of the Act and enable implementation across the implementation tools on the Furneaux Islands and in other remote communities across Tasmania;
4. review and report on the suitability of the TPP for implementation on the Furneaux Islands and other remote communities to ensure they do not restrict or remove opportunity for sustainable development, as established within the Schedule 1 Objectives of the Act;
5. engage with the Council and the Local Government sector to investigate and evaluate issues associated with the implementation and operation of the Policies to inform its assessment on compliance with the statutory requirements for the TPP; and
6. fully consider and report on the impacts on remote and isolated communities and the use of supporting materials to inform assessment and delivery of matters through the implementation tools, including section 8A Guidelines, Practice Notes and any other mechanisms (particularly if they require statutory reform).

Additional comments are provided on the general structure and composition and operation of the TPP as an attachment to this representation. Thank you for the opportunity to make this representation. We look forward to attending future hearings to further discuss Council's concerns.

Yours faithfully



Warren Groves
General Manager



Rachel Summers
Mayor

ATTACHMENT 1 - GENERAL STRUCTURE OF TPP

RMPS Objectives

The Schedule 1 Objectives of the Act form part of the assessment criteria and establish high level policy statements about how the planning system should operate. Significantly, they define sustainable development as follows:

- a. *managing the use, development and protection of natural and physical resources in a way, or at a rate, **which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety** while sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and*
- b. *safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- c. *avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Multiple RMPS objectives are relevant to the structure and implementation of the Policies, which are summarised as follows:

1. promote fair, orderly and sustainable development (1a, 1b);
2. a coordinated suite of land use planning instruments across state and local government (1b and 2b);
3. encouraging public involvement in planning (1c);
4. facilitate economic development (1d);
5. the sharing of responsibility for decision making across government and the community (1e),
6. to require sound strategic planning and coordinated action between State and local government (2a) through planning instruments (2b);
7. Sound strategic planning and coordinated action by State and local government (2a);
8. the easy integration of land use and development planning and policy to policies at state, regional and municipal levels (2d); and
9. the consolidation and coordination of approvals across the land use planning system, which includes the planning scheme amendment process (2e).

Council makes the following representations regarding assessment against the Schedule 1 objectives:

Part 1:

- a. the promotion of sustainable development, as defined in the Act, was not established in the Policies. The supporting documents, which sit outside the formal exhibition process, do not demonstrate delivery of the objective, aside from the most abstract of concepts. There are significant concerns that the Policies when considered in their entirety, do not **enable people and communities to provide for their social, economic and cultural well-being and for their health and safety** as required by the definition of sustainable development within Schedule 1 and have the potential to restrict or prevent strategic changes to communities outside the urban areas within our settlement networks and villages;
- b. the internal contradictions and lack of a functional mechanism to resolve those contradictions within and between policy areas does not establish framework to provide for the fair, orderly and sustainable use and development of land, air and water;
- c. public involvement in the development of the policy and provisions in the Policies was not demonstrated, which is complicated by the lack of a shared vision that identifies the future of Tasmania (such as Tasmania Together), the convoluted process for development of the TPS and LPS, and the lack of public education and communication by the State on planning issues/reform. It is difficult to understand how public participation was encouraged within that environment. Statutory exhibition is of little value to public involvement as identified in the objective;

- d. it has not been demonstrated that the implementation methodology within the Policies will facilitate economic development, particularly noting the concerns within this representation, the complicated nature of assessments under a similar process with the existing RLUS and the expected frustrations they will create for every assessment they are applied to; and
- e. as exhibited, it is difficult to establish that the differing levels of government, community and industry are able to share responsibility for resource management decisions, until a clear process is established for consideration and resolution of competition and contradiction within and between policy areas under the Policies.

Part 2

- a. the exhibited Policies do not provide a framework for coordinated action between different levels of government, or delivery of sound strategic planning processes until the internal contradictions between and within policy areas are resolved and clear direction is provided at which level policies and strategies are intended to operate;
- b. the Policies further delivery of this objective, when read in isolation from other objectives.
- c. The Policies arguably further this objective,
- d. The inadequate process to resolve internal conflicts within and between policy areas and strategies does not enable easy integration of policy from state to regional and local levels;
- e. It is unclear how the internal contradictions within and between policy areas will consolidate or coordinate planning assessments and approvals for strategic matters, particularly when considering Aboriginal heritage issues under the draft Policies.
- f-i. the Policies appear to be neutral or positive when considered against these objectives, noting the concerns regarding incorporation of aboriginal heritage to the land use planning system.

Implementation

Section 12B(3) provides:

- (3) *The TPP may specify the manner in which the TPP are to be implemented into the SPPs, LPSs and regional land use strategies.*

The Policies propose that the General Application section addresses the requirements of section 12B(3) and do not provide any specify detail on how and where the Policies are to be implemented.

Council makes the following representations on this section of the Act:

1. in order to comply with the combined intent and obligations established under Schedule 1 of the Act, the *may* under this provision provides a clear instruction to identify the various levels at which the Policies are to be implemented and does not, as suggested, allow the various objectives and strategies to avoid identification of the intended level of implementation;
2. the General Application section of the Policies does not do this in a way that allows the clear interpretation of each objective or strategy to understand how and where it is to be implemented; and
3. the Policies do not deliver this requirement of the Act as drafted, but this can be addressed through revisions and thereby enable specific decisions to clearly define the delivery mechanisms for the Policies.

Section 12F(3) requires the Commission to report on various matters, including:

- (c) *a statement as to whether there are any matters of a technical nature, or that may be relevant, in relation to the application of the TPP to –*
- (i) *the Tasmanian Planning Scheme; or*
- (ii) *each regional land use strategy...*

Council request that the Commission specifically addresses the technical implementation of each policy, inclusive of the objective and strategy in response to this section of the Act through:

- the hearings for this current process with the ultimate users of the Policies being planning authorities in preparing and assessing amendments, and planning consultants/developers.
- Requests for planning scheme amendments and assessments, by reference to examples and case studies; and
- the reporting on these matters as part of the examination and determination of the Policies against the statutory criteria.

Further, Council requests that the Commission consider how implementation may be improved by expanding the opportunity under the Act for the Commission to issue Guidelines or practice notes to inform applications and assessments under section 8A of the Act to include the Policies.

General Application

The consulted Policies include a preliminary section on General Application, which establishes a process for implementation of the Policies through all planning instruments (seven principles) and additional provisions for LPS.

Principles 1 -4 appear to contradict each other and do not assist with implementation or interpretation as there is no precedent to them.

Principle 3 suggests that strategies are not absolute and should not be interpreted literally or rigidly, but this is contrary to principle 4 (which requires consideration of the Policies in their entirety) and the legislative structure they operate under within the act which require compliance with the Policies as a whole and each part under them.

Principle 5 suggest that not all strategies are relevant but in contrary to other principles and legislative requirements.

Principle 6 attempts to address internal conflicts within the Policies by reference to 6 criteria, which is contrary to the legislated instruction for operation of and compliance with the Policies. The function and wording of strategies requires redrafting to reflect this intent.

Principle 7 identifies that competing interests should be made on balanced consideration and judgement derived from evidence, subject to 8 criteria.

The following is noted:

- the provision of evidence is likely to be problematic in many areas within Glamorgan Spring Bay;
- the criteria prioritise development to higher order settlements and away from regions and lifestyle areas when considered against the Policies requirements;
- the consideration and integration of regional, local and site specific interests and demands in criterion g is similarly likely to disadvantage the Glamorgan Spring Bay area and prioritise development to higher order settlements, as drafted; and

- there is insufficient provision for local strategy to inform decisions and the balancing of competing interests.

Page 5 of the consulted document states that the decision maker may consider that compliance was delivered through the RLUS, SPP's or the LPS. Under the General Application to LPS's statement, the decision maker is unclear, but is most likely the Commission under the Act.

Council is concerned at how these principles may function for high level documents such as the RLUS or even the SPP's, and whether they can function for assessment of a planning scheme amendment.

The Glossary is not specified as an operative part of the Policies, which questions its function in implementation. Nor does the Glossary include all required terms that are used within the TPP. These matters must be clarified.

Following the processes established under the Act, the proponent and Planning Authority have no way to reasonably determine what parts of the Policies do or do not apply to an amendment application until the amendment has been submitted to the Commission for assessment and potentially, its final determination by the Commission.

This raises significant concern over the ability to validly compose, assess and initiate any planning scheme amendment:

- Planning Authorities are required to certify that any AMD meets the Policies once they are made. How can this be completed in a way that is legally robust when there is no process for the relevant decision maker (most likely the Commission for an AMD) to advise which of the Policies are relevant?
- Significant requirements are established under the Policies that cannot be delivered by a Planning Authority and require a State and/or regional response, significant policy, data, decisions and support from State agencies, and may require decisions at the State or regional level. The Planning Authorities must guess the relevance of and compliance with many strategies until the Commission can complete initial assessment and confirm the relevance and compliance of specific requirements can be determined and directions may be issued;
- The Policies do not address the mechanisms through which the various strategies are to be implemented or establish a process to clearly define when they have been implemented, as required under (s.12B(3)).

The process proposed under the exhibited Policies is not consistent with the requirements and obligations established on the State for the system and decisions through the RMPS objectives. The General Application statements are not functionally competent for assessment of local planning scheme amendments and create confusion with the legal provisions they operate under in addition to within the General Application section.

The General Application section does not establish a clear and robust framework for technical application of the Policies to local planning scheme amendment in a way that is consistent with the RMPS objectives.

This situation must be addressed.

Directions for application through LPS

The intent of this section appears relatively clear, noting the following:

- drafting issues that confuse implementation previously identified;
- the nature of the discretion under 12B(3) and the requirement to clearly specify what level of subordinate document the Policies must be addressed; and
- the identification of the relevant decision maker.
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The concerns can be addressed by redrafting the section.

Status of objectives and strategies

The Act provides that the Objectives and strategies have statutory weight as part of the Policies.

The status of objectives and strategies within the Policies are confusing between the discretion identified in the General Application principles and the statutory requirements for the Policies and assessment of compliance with them.

As exhibited, all objectives and strategies apply to every amendment, and require evidence to demonstrate compliance or arguably, relevance (noting the previous discussion contesting this capacity). The collective impact of the objectives and strategies must be considered.

Objectives set the aims of the policy (table, page 3). The language of objectives is inconsistent and varies across the Policies. Objectives should clearly specify the intended outcome of the particular issue. Objective statements should be redrafted to reflect this outcome.

Strategies specify how policy objectives can be achieved (table, page 3). This statement is inconsistent with the statutory structure of the Policies and infers a discretion that does not exist in the exhibited document. The full range of strategies will not be appropriate across all communities and towns, particularly in more remote areas. An example was provided as Attachment 2 to this representation.

The Policies establish an unreasonable bias prioritising growth in urban areas and higher order settlements with access to a wide range of facilities, infrastructure, public transport. This is addressed by the following objectives and strategies:

- 1.1 Growth – 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.10
- 1.2 Liveability – 1.2.3.1, 1.2.3.2, 1.2.3.5, 1.2.3.6,
- 1.3 Social Infrastructure – 1.3.3.1,
- 1.4 Settlement Types – 1.4.3.1, 1.4.3.5,
- 1.5. Housing – 1.5.3.1, 1.5.3.3, 1.5.3.5,
- 2.2 Waterways, Wetlands and Estuaries – 2.2.3.2,
- 5.4 Passenger Transport Modes – 5.4.3.1.

The Act and exhibited Policies direct compliance with every objective and strategy. The full range of such amenities are not available on to all communities outside the metro urban areas and as such the collective assessment effectively prohibits rezoning in more remote areas and development outside the terms established under the relevant planning scheme.

The residential zones within Whitemark or Lady Barron were forced to an arguably inappropriate zone through the LPS process due to the requirements of the TPS. Council and the community can *not* afford to have further artificial limitations through planning controls due to the arbitrary imposition of the combined requirements of a TPP assessment. This is contrary to the opportunity provided in the definition of sustainable development (*enabling people and*

communities to provide for their social, economic and cultural well-being and for their health and safety) and the objectives established under Schedule 1 of the Act.

Council makes the following representations on the General Application section:

1. The Principles must be revised to clarify the role of subordinate documents in delivery of the objectives and strategies under the Policies to comply with s.12B(3) of the Act;
2. The objectives and strategies do not provide a framework that enables the legally certain determination of subordinate documents and delivery of fair and orderly decisions and a coordinated regulatory framework for strategic planning matters;
3. Objectives must be established as mandatory statements of policy outcome;
4. Strategies cannot function as exhibited and must be restructured to inform consideration on a similar basis to performance criteria under planning schemes, on balance of assessment;
5. Strategies must also provide recognition for local strategy as part of determination criteria;
6. Principles must support identification of the level of response to the subordinate documents (RLUS, SPP's or LPS);
7. Principles must enable decisions under the Policies to specify a level of response and/or satisfaction of a specific policy or strategy in a legally robust way; and
8. The Commission must conduct and document a detailed review of the operation of the General Application principles across the full range of assessments for RLUS, SPP, LPS and major projects to identify and address:
 9. the technical requirements for implementation of the Principles
 10. the differing requirements, problems and opportunities that are likely to impact assessments of the various subordinate documents;
 11. the likely information or evidence that is required for operation of the principles across the regional, local and consulting sectors through an assessment; and
 12. the revisions that are required to clearly deliver the Schedule 1 objectives through the principles.

Policies generally

The Objective and strategy statements within the Policies assume that all future proposals will be identified, allocated and mapped at the commencement of the strategic process, presumed within the RLUS. We note the Northern Tasmanian Regional Land Use Strategy adopted a settlement network framework that relied on service levels. Our observation is that this approach did not suffer the same limitations as other approaches within the State through implementation in statutory assessments.

The assessment by the Commission and recommendations to the Minister must address how this difference will be addressed and not simply result in the southern approach being carried into the next series of RLUS and restricting sustainable development.

The Objectives and Strategies appear to assume they will be applied to new areas or greenfield development, rather than the existing developed areas that comprise the majority of the Flinders area, and many other areas within Tasmania where the Policies will be applied.

Council requests that the Commission and the Minister, as the statutory decision makers on assessments, provides a detailed review of these two approaches in implementation of the existing RLUS and its suitability for the review/development of future RLUS and the assessment of planning scheme amendments under LPS to ensure they are technically competent for application into and through the RLUS and TPS/LPS.

The Objectives and Strategies universally fail to acknowledge the role of local strategy in determining the future growth of our communities. This is combined with the lack of a shared State vision on how Tasmania will develop, which highlights the need for local strategy to inform growth. The Commission must ensure that the Policies enable implementation of local strategy to comply with the Schedule 1 Objectives and enable public participation in the land use process.

Many objectives and strategies address matters outside the purview of the RLUS, TPS and LPS. Matters that are outside delivery through the specified tools must be removed from the Policies, or they risk creating problems for implementation and confusion about the legal veracity of applications, assessments and decisions.

ATTACHMENT 2 – SUGGESTED REVISIONS TPP 6.1 ABORIGINAL CULTURAL HERITAGE

6.1 Aboriginal Cultural Heritage

6.1.1 Application

Statewide.

6.1.2 Objective

Support, recognise and protect Aboriginal Cultural Heritage within the Tasmanian Resource Management and Planning System and establish and implement measures to provide for the management of Aboriginal heritage.

6.1.3 Strategies

1. Land use planning is to:
 - a) recognise that Tasmanian Aboriginal people are the custodians of their cultural heritage;
 - b) acknowledge that Aboriginal Cultural Heritage is living and enduring;
 - c) promote the protection of Aboriginal Cultural Heritage values; and
 - d) support Tasmanian Aboriginal people to identify, manage and continue to use and culturally identify with, Aboriginal Cultural Heritage places.
2. Integrate Aboriginal Heritage into strategic and statutory land use planning processes, through consultation with the affected communities.
3. Establish the role of key statutory agencies and management processes for Aboriginal heritage within the land use planning process.
4. Establish mechanisms to integrate Aboriginal cultural heritage to strategic land use planning processes, including the consideration of Aboriginal heritage values, their significance to the relevant community and how they may be conserved through the land use planning process.
5. Integrate consideration of Aboriginal Cultural Heritage into the State Planning Provisions and establish guidelines to assist with addressing country and heritage through preparing applications and the assessment of applications.