KENTISH COUNCIL

Promoting

Tasmania's Outdoor Art Gallery

26 June 2023

Tasmanian Planning Commission
GPO Box 1691
HOBART 7001

By email: tpc@planning.tas.gov.au

Dear Sir/Madam

RE: Kentish Council Representation – Public Exhibition of the Draft Tasmanian Planning Policies

Please find attached Kentish Council's representation to the public exhibition of the Draft Tasmanian Planning Policies.

Council also requests that the Commission hold public hearings into the matters raised in representations, given the complexity of the procedural, technical and policy content matters.

If you have any queries regarding the representation, could you please contact Jan Febey, Manager Development & Regulatory Services on 6426 4456 or by email at jan.febey@latrobe.tas.gov.au

Yours Faithfully

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Kentish Council Representation

Draft Tasmanian Planning Policies – Public Exhibition under Section 12D of the *Land Use Planning & Approvals Act* 1993

The Minister for Planning has given notice to the Tasmanian Planning Commission (TPC) under section 12C of the *Land Use Planning & Approvals Act* (LUPAA) 1993, to publicly exhibit the draft of the Tasmanian Planning Policies (TPP's). The Draft TPP's are on exhibition from 28 March to 26 June and are open to representations on the contents and merits of the draft. Representations will be considered in a process conducted by the TPC, which may include public hearings.

Pursuant to section 12F of the LUPAA, the TPC must consider whether:
i) it is satisfied that the draft meets the TPP Criteria specified in the LUPAA;
ii) there are any matters of a technical nature, or that may be relevant, in relation to the application of the TPP's to the Tasmanian Planning Scheme (including LPS's) or to each Regional Land Use Strategy (RLUS); and
iii) all representations.

The TPP Criteria specified in section 12B(4) of the LUPAA are that the TPP's:
i) seek to further the objectives set out in Schedule 1 of the LUPAA; and
ii) are consistent with any relevant State Policy.

Following consideration of the above, the TPC will provide a report to the Minister for Planning that summarises the representations and provides an opinion on whether the TPP's satisfy the TPP Criteria and if there are matters of a technical nature in relation to the application of the TPP's. Upon receipt of the TPC report, the Minister may make the TPP's, substantially modify the TPP's or refuse to make the TPP's.

This representation outlines Council's position on the contents and merits of the Draft TPP's, in consideration of the statutory criteria that direct the TPC assessment and the Minister's decision.

In summary, this representation submits:
- that the TPP's are focussed at too low a level to operate effectively within the current planning system and that the structure and content of the TPP's should be revised to target the policies at a level to provide appropriate guidance for implementation through the subordinate instruments;
- the statutory TPP instrument should provide clear expectations and certainty as to how the TPP's will be implemented through the RLUS's and the Tasmanian Planning Scheme;
- Council has particular concerns regarding policies for settlement and the implications for future strategic planning at the local level. Council submits that the strategies related to settlement are not consistent with the Schedule 1 Objectives of the LUPAA as all settlements and communities have a legislated entitlement to sustainability; and
- There is no provision of evidence underpinning the policies and the need for a high degree of prescription.

1.0 Application of the TPP's

Council submits that it must be fundamentally understood, that in progressing the Draft TPP's to statutory implementation, the procedural requirements for planning instruments and subsequent outcomes will manifest at a local level. In preparing the Draft TPP's there must be a highly developed appreciation of what these outcomes will be 'on the ground' in the diverse settlement, natural and resource areas across the State. To that end, the State must be clear in its intentions in regard to expectations, or positions, on various matters where the implications in regard to the application of the TPP's will have a significant impact on regional and local strategic planning, particularly in regard to future growth and settlement.

Section 12B of the Act, relating to the contents and purposes of the Tasmanian Planning Policies, establishes that the purposes of the TPP's '*are to set out the aims, or principles, that are to be achieved or applied by*':

- the Tasmanian Planning Scheme (TPS) – as the composite of the State Planning Provisions (SPP's) and the Local Provisions Schedules (LPS's); and
- the regional land use strategies (RLUS's).

Section 12B(3) further states that the '*TPP's may specify the manner in which the TPP's are to be implemented*' into those instruments.

In drafting and establishing the TPP's, it is critical to understand the technical, procedural and interpretative outcomes that eventuate as a result of their required application through statutory instruments. The structure of section 12B prescribes that the aims/principles of the TPP's (as a reflection of their purpose) are to be achieved or applied through subordinate instruments … the RLUS's, the SPP's and the LPS's. Despite being 'policy' in title, the TPP's are a statutory document that has a statutory role in a hierarchy that determines how use and development manifests throughout the State. This hierarchy must be clear in how each of the instruments that have a legislated role interact and how these flow to the lowest level of regulation of land use and development. This is the foundation of natural justice and procedural fairness in the drafting and implementation of new statutory regulation.

Targeting policy at the right level for application within this hierarchical system must also properly account for legislative entitlements at the lower levels of regulation, such as that provided for in the sections of the LUPAA that relate to the preparation of Local Provisions Schedules and the ability to justify strategic application of the SPP's and local variation under section 32(4) and the Schedule 1 Objectives.

Supporting explanatory documentation is provided on the State Planning Office (SPO) webpage and Council notes that this suite of documents is not included in the documents for public exhibition on the TPC webpage. Presumably, this is because these documents do not form part of the statutory documentation being exhibited. Irrespective, these documents provide the only information in regard to the rationale and expectations of the State Government in regard to the content, merits and implementation of the Draft TPP's. Council's submission therefore includes consideration of the State Government's position on these matters as being relevant to any representation on the content and merits of the TPP's, as well as technical matters related to the application of the TPP's through the Tasmanian Planning Scheme and the Regional Land Use Strategy and whether the draft TPP's meet the TPP Criteria, particularly the Schedule 1 Objectives of the LUPAA.

2.0 Structure of the TPP's

The Background Report states that the *"TPPs are intended to establish high-level strategic policy directions that will be delivered through the Regional Land Use Strategies (RLUS) and the Tasmanian Planning Scheme (TPS)".* The proposed structure is described as primarily delivering the policy intent through the 'Objectives' and the 'Strategies', with the objective 'setting the scene' for the what the TPP is aiming to achieve and the strategies being an expression of 'how those aims' are to be achieved.

Council submits that, as drafted, the TPP 'strategies' are set at too low a level and are too detailed or prescriptive to operate effectively within the hierarchy and will compromise the achievement of '*fair, orderly and sustainable use and development*', as expressed in the Schedule 1 Objectives of the LUPAA, in strategically planning for the local level.

The General Application section of the TPP's is the key, statutory plank for the technical application of the TPP's to the subordinate planning instruments. The Background Report states that this section "*specifies the manner in which the TPP's are to be implemented in accordance with section 12B(3)*" of the LUPAA. Section 34(2) of the LUPAA specifies that any Draft LPS, or an amendment to a LPS, must meet the LPS criteria which includes (da) - satisfying the relevant TPP criteria. The relevant TPP criteria are satisfied if:

- where the SPP's and the applicable RLUS have not yet been reviewed against the TPP's, the Draft LPS/amendment is consistent with the TPP's in force; and
- irrespective of the SPP's and the applicable RLUS having been reviewed against the TPP's, the Draft LPS/amendment complies with <u>each direction</u> [our emphasis] in the TPP's as to the manner in which the TPP's are to be implemented into the LPS.

This is a mandatory, statutory requirement for all Draft LPS's and any amendment to a LPS. Therefore, the General Application part of the TPP's must be carefully considered in terms of content, expression and outcome in order to:

a) provide procedural clarity for planning authorities and the general public in the application of the TPP's to Draft LPS's and amendments to LPS's;
b) understand how the TPP's are given effect through RLUS's and how a Draft LPS or amendment to a LPS will comply with the TPP through that statutory document; and
c) understand how the TPP's are given effect through the SPP's and how a Draft LPS or amendment to a LPS will comply with the TPP through that statutory document.

The Background report states that "*the General Application section includes two directions in accordance with section 34(2A)b) that apply to the manner in which the TPPs are to be implemented once the RLUSs and SPPs have been reviewed following the making of the TPPs. The intention of these directions is to provide an opportunity for the decision maker to be satisfied that the SPPs or RLUSs adequately addresses the local application of the relevant TPP strategy and therefore there is no further need to determine compliance with that strategy*".

These two directions are expressed in the General Application section as:

- *Where a relevant strategy, or part of a relevant strategy, has been applied regionally through the RLUS, the decision maker <u>may</u>* [our emphasis] *consider that compliance with the RLUS adequately addresses and satisfies the local application of the relevant strategy, and the LPS is deemed to comply with the relevant strategy;* and
- *Where a relevant strategy, or part of a relevant strategy, has been applied to the SPPs, the decision maker <u>may</u>* [our emphasis] *consider that compliance with the relevant strategy <u>may</u>* [our emphasis] *be adequately addressed through the application of the SPPs, which will*

satisfy the local application of the relevant strategy through the LPS, then the LPS is deemed to comply with the relevant strategy.

The Background Report goes on to state that "*as drafting of the policy content commenced the strategies were considered to incorporate sufficient detail to guide how they might be implemented into various planning instruments*" and that "*there is no single way that a strategy is intended to apply and the State is more concerned with achieving the outcome rather than how the outcome is achieved*".

Section 34(2)(da) requires that every amendment to a LPS must comply with each direction of the TPP's as to the manner in which they are to be implemented. As noted above, the Background Report states that the individual strategies are an expression of 'how' the policy aims are to be achieved and as drafted, they each would reasonably be construed as an expression of the 'manner' in which the TPP's are to be implemented into the LPS.

Council submits that the Background Report infers a level of flexibility in the application of the strategies that does not technically exist in the required practice of the statutory regulation in regard to amendments to LPS's. The General Application section includes as a direction … "*When applying the range of relevant strategies to a particular matter, the planning outcome will be influenced by how those strategies interact, which may result in different planning responses being expressed. Judgement must be exercised when interpreting and applying the TPPs so that a range of alternate approaches and outcomes can be considered where it can be demonstrated that the intent of the strategy, and the objective it seeks to achieve, can be met".* (p.3) This contradicts TPP Criteria at section 34(2)(da) of the LUPAA which clearly mandates compliance with 'each direction' as to the manner in which the TPP's are to be implemented into the LPS [our emphasis].

This technical inconsistency is compounded by the specific text of the two directions cited above as to the manner of application to LPS's, through compliance with the RLUS or the SPP's, bearing in mind that these directions have statutory weight. The use of the term 'may' has legal meaning and within this regulatory instrument creates an unacceptable level of uncertainty for the practice of applying the TPP's for applicants, planning authorities and the TPC, in that you won't know if the 'relevant decision maker' (planning authority and/or TPC) determines compliance with the RLUS or the SPP's as being enough until the matter is actually in the assessment and decision phase. This becomes particularly complicated when the amendment is at the stage of being heard by the TPC, which is the stage at which the TPC will determine compliance.

Council submits that the drafted approach to application, whilst well-intentioned, is practically, and potentially legally, dysfunctional.

However, in Council's opinion, the General Application section can be revised for appropriate functionality. In this regard Council makes the following submissions for modification of this operative part of TPP's to achieve an appropriate degree of technical functionality and legal operation:

- Remove all ambiguous, non-directory language from the General Application section (which in its entirety has statutory operative effect) and replace with language that has a clear positive disposition. e.g.

  The Foreword, Table of Contents, headings, footnote and the Policy Context section of each TPP ~~are not intended to~~ do not *have operative effect. These parts or sections of the TPPs provide background or advisory information and have been included to assist users' understanding of the TPPs and ~~how they are intended~~ to inform both the planning system and planning outcomes. They are a guide only and should be read in conjunction with the Act.*

The operative parts of the TPPs express the planning policy and the manner in which the planning policy is ~~intended~~ to be applied. The table below sets out those parts of the TPPs that ~~are intended to~~ have operational effect and the purpose of those operational parts.

Directions as to the manner of application specifically to LPS's:

- *Where a relevant strategy, or part of a relevant strategy, has been applied regionally through the RLUS, the decision maker ~~may~~* must *consider that compliance with the RLUS adequately addresses and satisfies the local application of the relevant strategy, and the LPS is deemed to comply with the relevant strategy; and*
- *Where a relevant strategy, or part of a relevant strategy, has been applied to the SPPs, the decision maker ~~may~~* must *consider that compliance with the relevant strategy ~~may be~~* is *adequately addressed through the application of the SPPs, which will satisfy the local application of the relevant strategy through the LPS, then the LPS is deemed to comply with the relevant strategy.*

As noted above, Council submits that, as drafted, the statutory construct of the TPP's is too specific, and therefore inappropriately onerous, when considering that each individual strategy has statutory effect over a number of subordinate instruments. The purpose of the operative parts are described in the following table in the General Application section (p3):

OPERATIVE PARTS	***PURPOSE OF OPERATIVE PARTS***
General Application	*The General Application section provides details, considerations and principles as to the manner in which the TPPs are to be implemented and applied to RLUS, SPPs and LPSs.*
Policy content is provided under subheadings within each of the TPPs. Each subheading represents a policy that comprises the following operative parts:	
Policy Application	*Policy Application - provides any requirements regarding the application of specific policies.*
Objective	*Objective - sets out the aims of the policy.*
Strategies	*Strategies - sets out ways that the policy objective can be achieved.*

The table, General Application 'directions' and associated commentary in the Background Report do not properly reflect the legislative role and effect of the individual strategies, inferring more flexibility in application than actually exists.

Council submits that, for the most part, the objectives function as a reasonable expression of policy which can be interpreted as an 'aim' to be achieved by the subordinate instruments (Note: separate commentary is included on the individual objectives). However the expression in the table that the strategies set out '*ways that the policy objective can be achieved*' is not technically correct. A proper construct under the legislation is that the strategies set out ways that the objective must be achieved, as they are defined as individual components that make up the TPP's.

The individual strategies will not be appropriate in all circumstances and, as drafted, because they are applied individually as statutory policy, will result in impediments to reasonable strategic planning by applying an obligation that has too high an onus in particular circumstances and will

prevent achievement of the objectives of LUPAA in others. The merits of objectives and strategies are discussed later in this submission.

By way of example … 1.1 Growth -

1.1.3-6. *Promote the preparation of structure plans that provide for the effective planning and management of land use and development within a settlement, or part of a settlement, that, as a minimum* [our emphasis]*, considers:*

- *a) the identified values, physical constraints, environmental hazards, and the strategic context of the location:*
- *b) urban or settlement growth boundary;*
- *c) movement networks, including street hierarchy and pedestrian and cycling paths for active transport modes;*
- *d) location of land for the purpose of residential, commercial, open space, recreation and community use and development, the relationship between uses and their positioning to limit or manage land use conflict;*
- *e) any staging or sequencing of development of land;*
- *f) the use of existing physical infrastructure and the logical and efficient provision of additional physical infrastructure; and*
- *g) impacts on broader physical and social infrastructure, including health and education facilities, strategic transport networks, public transport services, stormwater, water and sewerage.*

Whilst structure planning is a useful tool for local strategic planning to outline responses and future directions to various matters for communities, not all of the matters listed will be relevant or appropriate in all circumstances and whether the preparation of a structure plan is necessary at all will depend on the specific circumstances, particularly for very small rezonings.
As drafted, the strategy could readily be interpreted that a structure plan is necessary to be in place, or prepared, for every LPS amendment and must include all matters listed a) - g) because of the mandatory expression of 'as a minimum'. This is clearly an unreasonable impost for amendments of a minor nature that can be reasonably demonstrated as appropriate under the LUPAA. Whilst we could argue ad-nauseum about what the statutory meaning and implications of 'promote' are, Council's point is that the strategy is both mandatory and unclear at the same time, which will only result in significant procedural problems for the assessment of LPS amendments and the review of RLUS's in the future.

The General Application section can revise the statutory construct of the objectives and strategies to properly reflect the position that the strategies are some ways that the objective can be achieved and are not individually mandatory, allowing flexibility for other ways to achieve the objective to be demonstrated. This can be expressed in a manner that the strategies are a list of things that can be undertaken to support compliance as an acceptable demonstration of meeting the objective. It is noted that this is a similar construct to planning regulation whereby an acceptable solution is one way to achieve compliance with the objective, allowing for other ways to be demonstrated through performance criteria.

To avoid regulatory complication with section 34(2A) of the LUPAA, potentially the strategies may need to be moved into the non-operational, guidance component and another statement included with the objective as to the manner of application … RLUS, SPP's and /or LPS's. Alternatively, the General Application section needs to more clearly and separately define the structure as the objective being the policy to be achieved, add statements in regard to the manner of application (RLUS, SPP's and /or LPS's) and the strategies being non-mandatory options for consideration as to how that might be done. An example of non-statutory guidance documents effectively providing more detailed directions and options to achieve compliance with state level policy, can be found in

the Queensland system of planning instruments. The guidance material is referenced in the state policy document, but is not a statutory component.

2.1 Application Principles

Council submits that the application principles, as drafted, will not be sufficient to satisfy the legislative requirements for application of the TPP's under sections 12B and 34(2A) of the LUPAA and that they create an inconsistency between legislative obligation and regulatory practice, whereby if the strategies are expressed individually as the manner in which the TPP's are applied to LPS amendments, there is no flexibility in the consideration of the application of them through RLUS's, SPP's and LPS's. The regulatory pathway must be more clearly expressed, in line with suggestions above, that where the TPP is applied, and exhausted, through RLUS's and SPP's (with clear recognition in those documents back to the TPP's), amendments to LPS's comply with section 34(2A) if they comply with those instruments.

Comment is made against the individual principles below:

1) *There is no order or hierarchy associated with the application of the TPPs.*

   Agree. This then creates an issue with conflicting policies that needs to be carefully considered in determining resolution and expression as to how that is to occur.

2) *No one TPP, policy or strategy should be read in isolation from another to imply a particular action or consequence.*

   As drafted, under section 34(2A), an amendment to a LPS is required to comply with each direction in the individual strategy as to the manner of application. In this regard, compliance is stand-alone.

3) *The TPPs are generally not expressed in absolute terms and should not be interpreted or applied so literally or rigidly that reasonable, alternate approaches to achieve a particular strategy are excluded from consideration.*

   As discussed above, commentary related to a general appreciation of the interpretation and application of the TPP components has no place in the statutory, operational parts of the TPP's, particularly when it contradicts the statutory instruction in the legislation. If variable approaches can be considered, the structure of the TPP's requires revision to address the conflict with section 34(2A) of the LUPAA, which requires literal application of the individual strategies to LPS amendments.

4) *Where the Act requires a planning instrument to be consistent with the TPPs, the TPPs must be considered in their entirety to determine those strategies that are relevant to the particular matter.*

   On the basis of the drafted structure, section 34(2A) of the LUPAA requires that LPS amendments comply with the TPP's as to the manner of implementation. To the inverse, this would require a demonstration of why a particular strategy does not apply or has no effect.

5) *Strategies that are relevant to the particular matter should be considered and applied in the context of the objective that the strategy is seeking to achieve.*

   This should be set out as clear, statutory, operational instruction, not a principle.

6) *In determining what strategies are relevant to a particular matter, regard must be had to:*

a) *the nature of the particular matter being considered;*
b) *the purpose of the applicable planning instrument;*
c) *the Policy Application statement for each policy;*
d) *the scale at which the strategies are being applied (for example at a regional, local or site-specific level); and*
e) *the environmental, social and economic characteristics of the region, local area or site.*

There is no performance test of relevance expressed in the legislation, each of the strategies are applicable under section 34(2A). As above, the structure of the TPP's should provide appropriate direction and regulatory pathway as to whether the policy is to be applied through RLUS's, SPP's and/or LPS's.

7) *Where the application of relevant strategies to a particular matter causes competing interests to be met, resolution should be based on balanced consideration and judgement derived from evidence, having regard to:*

a) *the overall purpose of the TPPs;*
b) *an understanding of the overall combination of interests expressed through the TPPs;*
c) *the objective of strategies that are subject to competing interests;*
d) *alternate ways to achieve strategies that are subject to competing interests;*
e) *any relevant and applicable regional or local planning policies;*
f) *any characteristics of the land, subject to the competing policy interests, that may influence how the competing interests can be resolved or managed;*
g) *consideration of the regional and local context and how competing interests can be appropriately integrated at the regional, local or site specific level; and*
h) *the purpose of the applicable planning instrument.*

There is a place for guidance in reconciling competing policy interests in the operational parts of the General Application section. It is noted that the statutory TPP document does not contain any expression of the overall purpose of the TPP's. A pure concept of 'evidence' may not always be available on every matter and should be removed from the leading sentence. Submissions on the resolution of competing interests will be case specific and sufficient flexibility should be available to the process, rather than potential protracted arguments about what constitutes evidence.

Principle g) is overly onerous in expression and is unnecessary. It can simply be confined to 'consideration of the regional and local context' which provides sufficient scope to discuss a broad range of matters without invoking complex concepts that may have no practical solution.

3.0 Content and Merits of the TPP's

The Background Report states that "*development of the policy content commenced with an overview of those matters that present reoccurring issues in planning and where a policy foundation is required to provide direction for strategic and statutory planning instruments. The policy content has also been derived through a review, consideration and response to the social, economic and environmental challenges that are facing Tasmania. This has been informed by a review of the existing RLUS where a number of the regional policies have been adopted and modified to suit statewide application. It has also been informed by a review of government policy administered through the agencies and planning policies from other States*". (p.12) It goes on to state that *"Further detail regarding the rationale and justification for the drafting of the policy content is provided in the Policy Context section within each TPP"*.

What are these recurring issues that require such a prescriptive intervention that will override the rights to local strategic planning provided for in the LUPAA?

What is the evidence that underpins the need for the high degree of prescription contained in the Draft TPP's?

The TPP's assume a utopian state, whereby all needs and capabilities are known up-front and settlement and growth can be assigned in a neat equation that provides for social and physical infrastructure. This is an unrealistic proposition and the lack of flexibility in the strategies will manifest at the local level and likely result in significant impediments to local, strategic planning. The policy content of the TPP's cannot be read in isolation of the statutory requirements for application as expressed in the legislation and discussed above.

Council has concerns in regard to the effect of a number of the strategies which, as drafted, become mandatory statutory requirements for amendments to LPS's. Council submits that many of these strategies are too prescriptive and will undermine, and indeed prevent, local level opportunities to demonstrate compliance with the Schedule 1 Objectives of the LUPAA. A reconsideration of the strategies within the structure of the TPP's, as discussed above, could alleviate this issue.

In particular, Council has significant concerns regarding policies for settlement and the implications for future strategic planning at the local level. Council submits that strategies under *1.0 Settlement* are not consistent with the Schedule 1 Objectives of the LUPAA. The Policy Context section states … "*With the guidance of the TPPs, the planning system will determine how and where growth will occur…*
Settlement patterns have a direct impact on infrastructure and service requirements and outcomes. Where possible, use and development should align with and maximise the use of existing infrastructure and services…
The policy prioritises a settlement pattern that locates people where they have access to employment, social infrastructure and transport networks to improve connectivity and liveability of settlements".(p.9)

1.1 Growth Strategy 4. then states… '*Prioritise growth of settlements that are within the higher tiers of the settlement hierarchy*".

The common meaning of 'priority' prevails given that it is not a defined term, that is … the right to precede others in order of rank or privilege. This can only be lawfully interpreted in statutory process that the higher order settlements will always be preferred in providing for growth, because they will always be able to service growth in a number of ways. This will effectively prohibit LPS amendments to provide for growth in middle to lower tiers of the hierarchy, irrespective of the liveability attributes they offer to residents or opportunities for commercial enterprises and local economies.

Are the RLUS's and LPS decisions required to prohibit settlement growth that is not in the higher tiers of the hierarchy? **What are the higher tiers of the hierarchy?**

If it is the intention of government that this is the outcome 'on the ground', it must clearly state this as the 'aim or principle to be achieved' by the RLUS's and the LPS's and provide an evidential basis as to why this response is necessary. Because of the strict direction contained in the strategy, this is not a matter that can be deferred to a future process to determine what it actually, and practically, means. This results in protracted, expensive arguments in RLUS review or TPC amendment assessment process, whereby unintended consequences become apparent through decisions, which then can only be addressed by separate process to amend the statutory document that created the interpretive impediment. Prior issues with the three RLUS's have provided a salutary lesson in this regard and it is critical that the same mistakes are not repeated.

Council submits that as drafted, the growth strategies deny fundamental, legislated rights to locally plan for the future of settlements. In defining 'sustainable development', as the first principle underpinning the objectives of the LUPAA, the Act enshrines the right of each settlement to provide for its long-term sustainability...

Sustainable Development means:
*"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* [our emphasis]:

a) 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.

Without evidence to demonstrate how the policy achieves 'sustainable development' outcomes, this right under the Act cannot be overridden by subordinate regulation.

It is a requirement of section 12B(4) of the LUPAA, that the TPP's "*must seek to further the objectives set out in Schedule 1*". The growth strategies impose a significant future restriction on middle to lower order settlements, which represents a significant number of rural settlements around the State, without having conducted any process to provide for people and communities to input on their future social, economic, and cultural well-being and their health and safety. There is no recognition of the role of regional towns in the broader Tasmanian economy and no rationale has been provided to those communities as to why the restriction on future growth is warranted.

The Regional Australia Institute (RAI) is calling for greater regionalisation releasing its '*Regionalisation Ambition 2023 – A Framework to Rebalance the Nation'* (2022) which states that for balanced population, growth that does not only focus only on metropolitan growth, but seeks a balanced approach to population growth, will lead to a more prosperous, inclusive Australia.

Further, the RAI in its report *Building the Good Life – Foundations of Regional Housing 2022,* concluded…

"Failure to recognise the distinct regional housing markets in Australia and respond accordingly will see the current pressures continue to escalate, resulting in current residents being priced out of the market in some clusters, regional economic growth constrained, a further tightening of the rental market, and the most vulnerable in our community bearing the brunt of the housing challenge."

In regard to Tasmania, the Background Report includes a specific section dedicated to responding to the Premier's Economic and Social Recovery Advisory Council (PESRAC) Report of March 2021. It is noted that the response omits discussion in the PESRAC Report where consultation identifies that "*regional Tasmania is a partner for recovery - it is a powerhouse for many aspects of the Tasmanian economy and greater community involvement is needed to achieve 'local solutions to local problems"* and that "*Tasmania needs to activate migration strategies that bring people to the regions to live and work*".

A recommendation of the PESRAC Report is… "*Our view is that in developing recovery mechanisms, the State Government and its agencies should start from the perspective of actively looking for opportunity to make approaches place-based. The first step is to involve target communities (people cohorts, sectors or places) in co-designing approaches (also flagged in Chapter 7), and then considering how approaches can operate flexibly to address differences in localised needs*".
Some strategies in the TPP's actively impede this outcome.

Council submits that high-level planning theory is not sufficient in detail to justify the restrictions on settlement growth and Council submits that the TPP approach and supporting information does not meet the LUPAA objectives to:

(b) provide for the fair, orderly and sustainable use and development of air, land and water;
(c) to encourage public involvement in resource management and planning; and
(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c).

The policy approach for settlements and growth should focus on settlement sustainability and levels of service and not on allocation based on a strict settlement hierarchy. As drafted, the settlement strategies provide little, to no, scope for local solutions through public involvement in strategic planning at the local level for middle and lower order settlements in the required hierarchy. A simplistic hierarchy is not reflective of the settlements of the Cradle Coast Region which have a high degree of interactivity.

Similarly, strategies under *1.4 Settlement Types* are too simplistic and blunt to deliver the broad objective for 'sustainable use and development of settlements', with the attributes and values of settlements being nuanced and individual. Of particular concern is that the TPP's do not even recognise community aspiration. Concepts of prioritisation should be removed and replaced by demonstration of sustainability attributes for each settlement – economic, social, environmental/physical.

Sustainability is a complex concept and no two settlements will be the same because they have very different physical and social circumstances. The policy should focus on the nature of the attributes that would demonstrate what that looks like for each settlement and properly observe the objectives of the LUPAA to encourage public involvement in planning for their communities and the sharing of responsibility for planning between government, community and industry.

The following table provides more detailed commentary on the merits of the content of the Draft TPP's.

TASMANIAN PLANNING POLICIES	**COMMENTS**
1.0 SETTLEMENT	
The strategies are written in a very prescriptive manner that, as drafted, requires the compliance of all amendments to LPS's. This will preclude the ability to plan strategically at the local level, particularly for aspirational growth that could improve the liveability of settlements and attraction of population. The approach does not provide for recognition of changing circumstances.	
1.1 Growth	• The 15 to 20 year planning timeframe is reasonable forecast period for planning. Does this take the form of a rolling reserve or 5 year RLUS review periods? The review period has not proven to be an effective parameter given the unprecedented demand over the last 3 years. Generally, the 15-20 year timeframes allow for regulatory approval turnover and infrastructure planning. • In 'prioritising' infill development, how will the prior experience of inertia be prevented if infill is not feasible or commercially viable? The TPP's need to be expressed in a way that does not unnecessarily impede reasonable expansion while waiting for infill and densification that may never come.

	• 2d) Strategies should be expressed as a positive disposition and not as a double negative. What is meant by the term 'well-serviced' for physical and social infrastructure? How would this be determined in statutory application? • Requirement for a settlement hierarchy should be replaced by a 'settlement network', which allows for changing circumstances and demonstration of local need and aspiration. Population projections and demographic forecasting has proven to have significant flaws in adequately accounting for the nature of changing communities. It is one tool that is used to test future scenarios for the planning of settlements, but should not be a singular, defining element that determines choices for settlement growth. • The effect of technological change on work patterns and residential preferences is another aspect that should be considered. • There is no evidence to support the effective prohibition of growth of middle to lower tiers of the settlement hierarchy. • "Actively address impediments to infill development…" How can the planning system do this in the context of a state-wide planning scheme? The planning system mechanisms to do this are limited. • Strategy 6 - Preparing structure plans for every amendment to an LPS is not a reasonable requirement, but is potentially the ultimate effect of the strategy as drafted. Mandating an extensive list of matters to be addressed 'as a minimum' is not appropriate as the matters appropriately addressed through structure planning will vary with each circumstance. Point g) relating to a minimum requirement for analysis of impacts on broader physical and social infrastructure including health and education is too high an onus on smaller amendments. These types of analyses generally apply to the demonstration of appropriateness under the objectives of LUPAA at the level commensurate with the degree of change. Structure planning is more aligned with the set out and rationale of use and development on the ground. • The requirement for setting growth boundaries for every settlement (apart from middle to lower order) is not reasonable as this is not the only way to manage growth. It precludes the consideration of opportunities not previously recognised, however this does not make them inappropriate. The tests contained in the LUPAA appropriately analyse whether growth is appropriate or not. The mandatory requirement to set growth boundaries assumes there is adequate information on infrastructure and services to set the terms for the next 15 years. This is simply not feasible when organisations such as Taswater, TasNetworks and Dept State Growth cannot provide plans for this advance period. The requirement to lay down the spatial boundaries of everything that will happen in the next 15-20 years is a theoretical, utopian view that is not practically achievable in reality. The inevitable consequence of the prescriptive nature of the strategies will be that without these growth boundaries in place, and they can't be put in place until all issues are resolved, no amendment that enables growth can be approved. This will result in significant economic inertia in the development sector. Discussion and recommendations in regard to the General Application section can address this by altering the structure of the TPP's to reflect that strategies are one way to achieve the objective. In this way,

	settlements that are better placed to set out the preferred growth areas within a spatial boundary can implement this, however this does not preclude other settlements demonstrating sustainability through growth on a case by case basis. • Strategy 10 is not feasible as many settlements that have an activity centre and can support minor adjustments for suitable commercial or cultural uses, do not have 'highly accessible' public transport. How does a RLUS or an LPS 'encourage' outcomes? It can only be provided by planning scheme provisions that enable particular uses. • Strategy 11 – Sequence of development is often related to the response of the market and commercial feasibility. The issue of land banking is significant in managing a constrained market supply and sequencing of development. The TPP's should consider how to address issues relating to land banking rather than mandating sequencing that won't be possible to pin down. • Rural residential land use is an integral part of settlement and should not be separated out in policy. Growth policy should account for the diverse range of housing opportunities that play a significant part in attracting populations that play an important part in sustaining rural settlements.
1.2 Liveability	• Strategies include matters that are outside the purview of the planning system such as public transport and location of telecommunications infrastructure, cultural and recreational facilities. A planning scheme can only enable. • Connectivity and improved public open space would be assisted by provisions in the SPP's, where there is currently a significant deficiency. • Strategy 10 to 'protect and enhance settlements' is in conflict with strategies for growth as it precludes middle to lower order settlements. • Facilitating place making conflicts with strategies that limit the ability to add cultural and commercial uses to settlements that do not have public transport.
1.3 Social Infrastructure	• Strategies include matters that are outside the purview of the planning system such as locating schools, aged care and social services in advance. Policies need to reflect the limited degree of intervention by the planning system.
1.4 Settlement Type	• Settlement type is an unnecessary topic that is confusing in its duplication with other settlement strategies. Recommend condensing into one section. • All settlements have individual characteristics and values. • The issue of the impact of visitor accommodation in settlements that have high attraction is matter that is inherent to settlement growth and population characteristics. • Strategy 5 - Rural residential land use is an integral part of settlement – use of the term 'avoid' in regard to the consideration criteria is too restrictive. Rural Residential use will never be able to 'avoid' bushfire risk. The criteria conflict with one another such that any amendment will not be able to demonstrate compliance with all, which is mandatory. Policy relating to rural residential land use as part of the settlement mix needs to be substantially reviewed and must account for strategic repair, rather than being caught by unresolved zoning of land.

1.5 Housing	• Strategies include matters that are outside the purview of the planning system such as facilitating social and affordable housing and aged care services. The planning system can only enable. • Densification of settlements must also be a product of local community consultation.
1.6 Design	• Only relates to urban spaces. • Many of the matters relating to building design are outside the purview of the planning system and cross into building code territory that is prohibited by section 8 of the Building Act. • Strategy 4 relating to the character of neighbourhoods is not achievable in a planning system that seeks to homogenise the standards for General Residential zoning. Multiple attempts to reflect different pathways have bene rejected for lack of consistency with the TPS. Is the State now saying that aspiration for neighbourhood character can now be implemented? The policy needs to be clear. • Strategies 7 and 8 import planning scheme criteria for subdivision. TPP should be at a higher level in expressing expectations for subdivision. Planning instruments can only provide a minimum standard for lot size. Point h) would require a SAP over every subdivision in variation to the SPP standards.
2.0 ENVIRONMENTAL VALUES	
There is little point in recognising that values management is largely outside the planning system. This is better reflected in supporting documentation. The TPP's should only express how the management of issues occurs within the system, though can set the context of how the systems interact.	
2.1 Biodiversity	• The requirement to 'rank' the significance of biodiversity values for mapping within the planning system requires greater clarity in regard to expectations. • Many of the strategies relate to matters that are outside the purview of the planning system, such as land clearance for agriculture or forestry, weed management, carbon storage and climate change impacts on habitat.
2.2 Waterways, wetlands and estuaries	• Strategies for avoiding land within proximity to waterways does not appropriately consider the implications for urban waterways. • The strategies are unnecessarily prescriptive given the range of regulatory instruments available to manage impacts on waterways and wetlands, noting that the SPP's could benefit from some improved provisions relating to the management of stormwater.
2.3 Geodiversity	Who will resource the mapping of high conservation value geodiversity which could be an extensive exercise? What is the definition of high conservation value geodiversity? In regard to the Mole Creek Karst system, the townships of Mole Creek and Chudleigh are located on this system, as are extensive areas of agriculture. Considering the already highly developed nature of karst areas for settlement and agriculture and tourism, it is not a practical policy to 'discourage' development. It is however possible to manage use and development to prevent or mitigate adverse impacts, which should be the focus of the policy in a positive disposition, rather than 'discourage' or 'avoid if practicable' in the negative.

2.4 Landscape Values	Is it the State position that all municipalities must include mapped scenic/landscape areas in their LPS's? On the basis of what criteria? Strategy 3 effectively requires all use and development to avoid those areas subject to provisos that in effect, create a higher impost on development than the provisions of the SPP Landscape Conservation Zone and Scenic Protection Code. The TPP 's should make it clear what the expectations are for inclusion in RLUS's and when the SPP's are reviewed, what are the implications for existing scenic road corridors etc. and the management of development within those.
2.5 Coasts	Given the evolution of mapping of coastal hazards at State level that includes climate change scenarios, the TPP should appropriately reflect this work, rather than defaulting to the clunky 1km definition in the State Coastal Policy, which only ever applied to rectify a legal validity issue that arose many years ago. The planning system will not be able to reduce threats, only respond to them in an appropriate way by allowing for development for asset and infrastructure protection and preventing or mitigating development that may be affected by/or impact upon coastal processes. It is more appropriate to discuss risk, as this is what the State Natural Hazard Framework is based on. There is some overlap in regard to policies for Environmental Hazards. Suggest policies may be more efficient if separated into coastal development as part of settlement and hazard/risk addressed through Environmental Hazards.
3.0 ENVIRONMENTAL HAZARDS	
Policies should reflect at higher level the notion of conflict and hazard that may exist naturally in the landscape. The concept of avoidance should not used due to its absolute interpretation, except perhaps for the most extreme scenarios such as active landslip. The SPP content and RLUS's all reflect the ability to manage hazard and risk to a tolerable level.	
3.1 Bushfire	Strategy 2 is technically incorrect. Many aspects of bushfire protection for buildings have been appropriately removed from the planning system. The regulatory burden associated with bushfire certification for individual buildings in planning process has proven to be untenable. This would still be the case even with increased numbers of practitioners, contrary to State planning reform to reduce unnecessary regulation. Strategy 2 risks reintroduction of over-regulation upon review of the SPP's to comply with the TPP's. Given most of the state is mapped as bushfire prone, is it the State's intention to bring certification for individual developments back into the planning system? If so, there needs to be a clear statement of expectation and evidence as to why this is necessary. Strategy 3 – Use of the term 'avoid' has absolute legal meaning. This strategy will effectively prohibit rezoning at the edge of settlements for residential purposes. The policy should reflect the concept of tolerable and manageable risk. Who will resource the identification of bushfire conditions based on climate change? It is not appropriate to relegate this task to local government.

3.2 Landslip	The vast majority of land mapped as landslide hazard in the State Natural Hazard Framework is manageable for a tolerable risk. The TPP's should not prescribe avoidance only to then apply a proviso. This confuses the intent of the policy. The TPP should just reflect the management approach and tolerable risk which is based on sound scientific work undertaken by the State.
3.3 Flooding	Why does the climate change scenario only relate to State Government determination. Numerous local flood studies have included the climate change scenario for 1% event and have been incorporated into LPS's. The policy needs to reflect the State position on where the extreme flood event threshold now lies given the 2016 and 2022 events. What is incompatible use and development? Currently the provisions relating to flooding do not account for many industrial type uses which can be severely impacted, or create impacts to other land in the event of flooding such as containers/materials that are swept into infrastructure such as bridges and into other private property, as witnessed in the most recent flood events. Determining hazardous use as defined in the SPP's is a highly complex exercise that includes high thresholds for storage of contaminants such as fuels and chemicals, which means substantive levels of contaminants are not subject to flood management regulations. There needs to be a conversation about the elements of use and development that should be managed for flood risk, noting that State has commenced a process for flood risk under the Natural Hazards Framework to apply Statewide. This process is supported. Policies for flooding and tolerable risk need to account for uses that are neither sensitive nor hazardous. The recognition and support for flood mitigation infrastructure is supported. Many of Tasmania's settlements are located downstream of a dam. It is not tenable for every amendment to an LPS for settlement growth to do a dam safety assessment.
3.4 Coastal Hazards	Refer comments above. Retreat may be an appropriate solution for economic development for tourism that capitalises on a coastal location and is a more appropriate term than the expression in Strategy 3b).. Strategy 6 – Avoidance is not appropriate – tolerable risk is the appropriate concept.
3.5 Contaminated Air and Land	It is not tenable to map all land that may have historically been exposed to potentially contaminating activities. Strategy 3 confuses contamination with attenuation in regard to land use conflict. The TPP's should recognise the processes that are in place for attenuating uses and clearly state expectations, as this has a significant impact on the cost of regulatory process for 'mum and dad' developers.
4.0 SUSTAINABLE ECONOMIC DEVELOPMENT	
4.1 Agriculture	The TPP strategies largely import the principles of the State PAL Policy, however does not carry over the nuances of the PAL Policy in allowing for agricultural land to be converted if a higher order benefit can be demonstrated, such as the need to expand settlements. The exercise is one of balance and the language of the TPP strategies in using the term 'avoid' with a proviso, should be changed to a positive disposition that reflects this balancing exercise.

	Value added uses may not always be ancillary to the agricultural use. This does not mean they are inappropriate and can provide an economic benefit. The issue of seasonal worker accommodation needs to be addressed in policy and it is not only related to agricultural land with inclusion within rural settlements being a matter requiring more attention. It is a unique land use with specific needs to provide critical support to the agricultural sector and will not prefer locations on agricultural land. Dwellings that are directly associated with and subservient to agriculture are not 'residential uses'. Policy must, as a minimum, reflect the legal response in regulation. How can a planning system 'acknowledge' small farm contribution? What are small farms? This is introducing a concept that will need better resolution as the SPP's will be required to be reviewed to comply and individual amendments at settlement edges will be required to address this.
4.2 Timber Production	It is noted that the 'designation' of land for forestry changes over time in response to markets.
4.3 Extractive Industry	Who will resource the identification of key resource areas and deposits in order to map them? Strategy 5 – what if identified resources occur in a rural residential area? The exercise must be one of balance, rather than absolute protection. Strategy 7 - Policies for housing and recognising that mining may have unique needs for locating housing, is better located with settlement policies to ensure that there is no interpretive conflict.
4.3 Tourism	Identifying potential tourism sites and assessing them for sustainability in a free market is an impractical and untenable requirement. Policies must reflect market identification of attributes and enable consideration of a range of matters to determine appropriateness. It is not the place of a planning system to undertake market feasibility. Strategy 3 – visitor accommodation – This is a curious position given the State planning directive that required all planning schemes to alleviate regulation of visitor accommodation, many now not requiring a permit. Has the State altered its position on visitor accommodation levels in settlements?
4.5 Renewable Energy	Who will resource the identification of renewable resource areas? The strategies appear to relate more to investment strategies than the planning system. The State needs to be clear about preference for infrastructure and the local aspirations of community in the location of infrastructure.
4.5 Industry	Industrial land is usually more appropriate outside of urban growth boundaries, not only due to higher impact uses, but also cumulative effects and the benefits of aggregation. It is extremely difficult to manage land use conflict in an urban setting, yet the TPP's preference this. The concept of urban growth boundaries should be limited to settlements. Existing industrial precincts remote from settlements should be separately described to avoid confusion in policies relating to settlement and growth.
4.7 Business and Commercial	The TPP's must recognise that there is role for the market as a demonstration of demand for commercial use, whether this is for local service or the tourism economy. The Strategy 1 criteria for assessment for small activity centre amendments is not reasonable or practical and are too prescriptive for State policy level. Intensification of growth generally around activity centres may not always be possible dependent upon local circumstances, such as heritage values.

	The role of local planning for activity centres should be reflected and elevated in policies for economic development. Strategy 5 - New local activity centres may be required and appropriate for larger, new greenfield sites.
4.8 Innovation and Research	Many of the strategies relate more to investment matters that are outside the jurisdiction of the planning system. Policies for precinct planning are better located with policies for settlement and industry.
5.0 PHYSICAL INFRASTRUCTURE	
5.1 Provision of Services	It is not possible to identify where land needs to be set aside for infrastructure or protect future infrastructure, when the infrastructure authorities have not yet determined what and where that will be. The strategy assumes forward planning by service authorities that does not actually exist at a level that provides certainty. The TPP should reconcile expectations in the provision of infrastructure that serves multiple parties e.g 'facilitate developer contributions'. How is the planning system to do this? It has no authority over Taswater and in order to levy developer contribution, a party must act as 'the bank' to actually establish the infrastructure that is being paid for. This is quite a complicated and legal exercise. The strategies are too prescriptive for State policy level and stray into areas that are outside of the planning system jurisdiction, such as providing for electricity transmission from an alternate source of power, when considering that they will apply to individual LPS amendments. The TPP should simply express expectations and variations for levels of service, taking into account the variabilities across localities and different types of settlement.
5.2 Energy Infrastructure	Future energy facilities are unknown and are usually a response to the market. The strategies relate to matters that are outside the jurisdiction of the planning system. The variable application of the strategies should be expressed in the policy, in consideration of the application of the TPP to individual LPS amendments. The state needs to be clear in its expectations for design intervention in urban environments and whether this will be included in the SPP's for implementation. The SPP standards for urban areas do not currently allow for this degree of intervention. Has the State position changed?
5.3 Roads	Many of the strategies relate to matters that are outside the jurisdiction of the planning system. There are no definitions of the key road corridors. What is the last mile urban freight route? This should be defined. Road investment programs should align with strategic planning, not the other way around.
5.4 Passenger Transport Modes	Good urban planning that enables access to public transport is appropriately recognised in policy, however it cannot dictate that the provision of those services occur as this outside of the planning system. Many of the strategies relate to matters involving the provision of service by organisations that are not incorporated into the planning system, bearing in mind that all LPS amendments will be required to demonstrate compliance. Strategy 8 – not all developments that attract high numbers will be appropriate in urban activity centres, nor will they be accessible to urban public transport, as is the case in middle or lower order settlements. This

	does not mean that a popular tourism use will not be appropriate. Eg. Distilleries in heritage character towns. The effect of the strategy is to prohibit uses that may have a high economic benefit to a settlement or locality, because it is not urban or within proximity to public transport. The strategies are too prescriptive for State policy level.
5.5 Ports and Strategic Transport Networks	Future distribution facilities are unknown and are usually a response to the market. There are obvious conflicts with policies for locating industrial development within urban growth boundaries. The planning system cannot anticipate, as-yet, unknown changes to freight systems as a result of market or technological change. What is the strategic value of non-operational rail corridors? Tourism?

6.0 TASMANIAN PLANNING POLICY: CULTURAL HERITAGE	
6.1 Aboriginal Cultural Heritage	The strategies relate to numerous matters that are outside the jurisdiction of the planning system. There is a process under separate State legislation in consultation with the Aboriginal community for determining whether land use will adversely impact Aboriginal heritage. There are circumstances where Aboriginal heritage values and development co-exist and promote Aboriginal cultural values, which it is noted are current cultural practice as well as heritage e.g. tourism uses. Strategy 3 could effectively prohibit use and development that is acceptable to the Aboriginal community in regard to its degree of impact.
6.2 Historic Cultural Heritage	Is local heritage regarded as 'significant'? How is significant to be interpreted? Is the expectation of the State that there will be a local heritage list of places and/or heritage precincts in LPS's?
7.0 PLANNING PROCESSES	
Discussion around the mechanisms for local planning and involvement in the process is supported and goes to Council's earlier comments that the TPP's must inherently recognise the right to local planning and provide for it. A discussed above, Council submits that the TPP process to date and the draft TPP's, has failed to meet the LUPAA objective to involve the public in planning. It is important to understand the distinction between consultation and public notification.	
7.1 Consultation	The strategies for consultation relate to matters that are outside the jurisdiction of the planning scheme. Ideally the TPP should elevate the role of local consultation in determining the balance of competing interests expressed in the suite of TPP's. It is not just a 'top-down' approach, the objectives of the LUPAA also enshrine a 'bottom-up' role in regard to local aspiration and involvement.
7.2 Strategic Planning	The strategies actually read as an effective suite of principles that inform not only the TPP's, but the subordinate instruments that are subject to them. Recommend reframing this section as the 'purpose' or 'principles and aims to be achieved by the TPP's'.
7.3 Regulation	Further to comments above, regulation must also be able to reflect local aspiration, as enshrined in the LUPAA.