

20 December 2022

Mr Brian Risby  
Director  
State Planning Office  
Department of Premier and Cabinet  
GPO Box 123  
Hobart TAS 7001

Via email: [brian.risby@dpac.tas.gov.au](mailto:brian.risby@dpac.tas.gov.au)

Dear Brian

### **Draft Tasmanian Planning Policies**

Thank you for the opportunity to provide comment on the Draft Tasmanian Planning Policies (TPPs).

The forthcoming Tasmanian Planning Policies represent a vital and foundational step in developing the critically needed strategic framework of Tasmania's planning system. We welcome the progress of this work.

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. We have consulted our members closely to inform this submission. We also encouraged councils to make direct submissions to this process to reflect their particular experience. Any omission of their issues in this submission should not be viewed as lack of support by LGAT for those specific issues.

Please contact Michael Edrich, Senior Policy Officer, if you have any questions or would like further information at [michael.edrich@lgat.tas.gov.au](mailto:michael.edrich@lgat.tas.gov.au) or (03) 6146 3740.

Yours sincerely



Dion Lester  
**CHIEF EXECUTIVE OFFICER**

### 1. Introduction

LGAT has consulted its members on the Draft Tasmanian Planning Policies through online workshops, direct engagement and written submissions. We received a wide range of feedback from the majority of our 29 member councils, including both formal submissions and informal advice.

Responses to the draft TPPs were undeniably mixed. Councils overwhelmingly welcomed the progress on the strategic elements of Tasmania's planning system and support the Tasmanian Government finally becoming closer to entering this important space after decades of absence and ambiguity. However, there is significant concern about the effectiveness of the current draft TPPs and very serious concern at the absence of any meaningful two-way engagement with the sector over the 12 months of policy development. These are both issues that LGAT warned of in its submission to the Scoping Paper.

The key points revealed from council feedback and our analysis were:

1. Tasmanian Government efforts to fill the strategic gap are overwhelmingly welcomed and supported, irrespective of any critiques.
2. Despite LGAT advocacy, engagement is virtually absent, shutting out the most critical implementors of planning reform, being local government, and causing a variety of acceptance issues and serious concerns about effectiveness.
3. Despite LGAT advocacy, effectiveness remains a concern, needing priority action, particularly on:
  - a. Clarifying the intended role and regulatory effect of the TPPs.
  - b. Minimising over-prescription that hinders the strategic influence of the TPPs.
  - c. Ensuring the TPPs enable balanced decisions, not checklists for refusals.
  - d. Devolving implementation guidelines to subordinate guiding documents to improve TPPs' strategic effect.
  - e. Testing the draft TPPs to gauge intended effect using known cases or mock scenarios.
4. Communication and accessibility of TPPs need improving – deliver a development narrative for Tasmania.
5. Specific improvements:
  - a. Infrastructure contributions – growing best practice
  - b. Water quality – growing best practice

- c. Consultation – growing best practice
- d. Regulatory efficiency – support efficient regulation over red-tape reduction

## **2. Overwhelming Support for Tasmanian Government Efforts to fill The Strategic Gap**

In our close consultation with our membership, it was clear that the sector overwhelmingly welcomes the Tasmanian Government's efforts to fill the very significant strategic gap in Tasmania's planning framework. For too long, development in Tasmania has suffered from a lack of strategic guidance material to inform development regulation across the state and support a functional planning framework. This gap creates a high degree of uncertainty that councils must navigate to achieve their communities' development goals, and that development proponents must navigate to achieve their individual goals.

This has resulted in councils bearing the full brunt of public criticism on development problems, despite their efforts to appropriately manage development pressures and create Tasmania's future communities. This has also meant that councils have not felt supported by the Tasmanian Government in providing positive, constructive development outcomes for Tasmanians. This is not a healthy situation.

Consequently, local government understands better than any the importance and significance of the strategic-level planning reforms, beginning with the Tasmanian Planning Policies. This is why councils are very keen to help the Tasmanian Government develop these policies, to make them as successful as possible for the Government and councils (as well as developers and all communities), and to prevent them from being delayed again, as were the previous set of draft TPPs from 2017.

To maximise success of the TPPs, the Tasmanian Government should recognise and capitalise on local government's interests here by leveraging council planning experience and expertise to develop the TPPs. This can easily be done through much closer engagement and working collaboratively to deliver results for Tasmanians. LGAT is eager to assist here.

## **3. LGAT's Scoping Paper Submission**

LGAT noticed and appreciates the incorporation of many of the points we made to the Scoping Paper, some of which were challenging to achieve.

We asked that the TPPs lead with climate change, yet embed actions within relevant policy areas for implementation effectiveness. It's clear our point has been taken on board in the drafting of Climate Change Statements in each section.

We asked that the TPPs help Tasmania get ready for the substantial growth task we currently face, including housing. The draft TPPs look to do this through sections on Settlement (1.0), Growth (1.1), and Housing (1.5), as well as a light mention of developer contributions in 5.1 Provision of Services.

We asked for attention to development standards and urban design, and note section 1.6 devoted to Design, as well as other actions.

We proposed a structure for the TPPs that might assist in articulating a development narrative for Tasmania. We note the document structure closely resembles the narrative structure we proposed.

We recognise and appreciate all the efforts taken here and the challenge in assimilating it all. We believe that the draft TPPs meet the broad scope of issues, at a topic level, very well. This should be applauded.

#### 4. Consultation Gap Creating Acceptance Issues

In LGAT's Scoping Paper submission, we stated that for the TPPs, success depends on consultation, emphasising the need for deep and genuine engagement, over basic-level 'informing' or 'consulting'. However, since the consultation for the Draft TPPs Scoping Paper over a year ago, there has been less than that, with no two-way engagement undertaken with local government in developing the draft TPPs. This has seriously impacted the reception of the draft TPPs with local government, is already generating consternation and acceptance issues, and has resulted in serious concerns that the draft product would have significant issues in effect and not be fit for purpose.

This is an unfortunate situation, particularly because it is so avoidable. This must be remedied without delay.

There are a range of problems with charging ahead on a project without properly connecting with those impacted by it. These include:

- 1) **Unfit for purpose** – delivering a product that is not properly designed to meet the right needs.
- 2) **Resisted or rejected** – the product might have been potentially adequate, but due to not being communicated properly amongst key stakeholders (especially implementors), it generates acceptance issues and resistance, or even rejection.
- 3) **Unowned and ineffective** – even if the product is potentially adequate and received without resistance, without meaningful engagement the product development process can fail to generate a sufficient level of ownership in the product, so fail to be effective and properly implemented. Again, this is

particularly a problem created for those implementing the product, and we have seen this issue play out in other components of the Planning Reforms;

- 4) **Divergent and entrenched positions** – progressing well ahead of stakeholders, particularly the lead implementors, can create a reluctance to change in the product authors. This can derail subsequent consultation as authors defend the product and resist feedback and present a barrier to further improvements. This is particularly the case when divergence develops between authors and key stakeholders (again, especially implementors). Effective engagement helps keep divergence small and resolvable, particularly with the stakeholders’ expectations.

The TPPs are a statutory communication device for the development aspirations of all Tasmanians, implemented almost entirely through local government development regulation. That’s a large stakeholder group of interests, but the specific role of local government makes councils critical – entirely fundamental – to their success. The TPPs development process must engender a sense of ownership in those tasked with applying it. That is now at risk.

As we stated in our 2021 Scoping Paper submission, we ask again that:

*Consultation must be deep and genuine, rather than basic ‘informing’ or ‘consulting’. The Tasmanian Government needs to build an internal sense of the experience across different sectors, in engaging with, and implementing the Tasmanian planning system. We urge the Tasmanian Government to increase its focus on engagement as the TPPs are being drafted, and before the statutory consultation phase of the Tasmanian Planning Commission. We recommend targeted workshops and would be very happy to assist in informing high quality engagement with local government to draw on the sector’s expertise.*

To be clear, we are again offering help in engagement and forecasting that success depends upon this. We do this for other Tasmanian Government agencies, which invariably generates vast improvements on results.

***Recommendation: Urgently rectify the consultation gap and deliver proper, two-way engagement opportunities for local government planning expertise.***

## **5. Effectiveness: Generally**

As raised in our Scoping Paper submission, the effectiveness of the TPPs remains a concern. At that stage, our concerns were broadly about potential TPPs being inefficient and overburdened, causing diminished relevance and effect. This is generally still the case, however, close consultation with councils has allowed us to add much more detail to this than we could 12 months ago.

### 5.1. Effectiveness: Clarify Intended Role and Regulatory Effect of TPPs

To best guide the effect of the TPPs, the document needs to clarify the role and regulatory effect it is intended to have and was designed for. This will sharpen the document's focus and also assist future review of the TPPs for performance.

For example, the TPPs will be a statutory instrument under the *Land Use Planning and Approvals Act 1993* (LUPAA), so the core role of the document will be in regulating development, which is ultimately done through planning approvals. This development regulation role should be made explicit, possibly under Page 2 Implementation. This will help to filter out or focus more aspirational objectives that go beyond development regulation that would diminish the effect of the TPPs.

***Recommendation: Focus the role of TPPs on development regulation; filter out statements that do not contribute to this role.***

Page 2 Implementation section is not decisive in how to use the TPPs and is not helpful for practitioners. Specifically, stating that *"there is no order or hierarchy"* and *"the TPPs should be considered in their entirety with all relevant strategies applying equally"* provides no guide and hinders effectiveness. This section should be reworked to enable more certain use and application of the document in practice, including how to resolve internal conflicts between TPPs. We suggest several options for achieving this, discussed subsequent sections.

***Recommendation: Remove non-functional implementation statements and replace with greater clarity for usage and application.***

The regulatory effect and how it will be used should also be described and presented clearly within the document. This includes not only the cases where the TPPs effect is clear and explicit under legislation, but also where it is not clear and explicit, or where the document may be referred by the courts for informing a decision. The following areas of effect should be described in the document:

- 1) Regional land use strategies
- 2) Tasmanian Planning Scheme (TPS), including:
  - a) State Planning Provisions (SPPs)
  - b) Local Provisions Schedules (LPSs), both Part 3A and 3B
- 3) Development applications and permits, particularly:
  - a) Combined permit and LPS amendment applications (section 40T)

- 4) Court scenarios, such as:
  - a) Planning appeals to the Tasmanian Civil and Administrative Tribunal (TASCAT; sections 61-62);
  - b) Elevation to higher courts.

The effect of the TPPs on some of these items are not immediately obvious. For example, there are some differing opinions among professionals on whether the TPPs would be referred to in TasCAT appeals for typical applications (section 51 & 57). However, there is a view that higher court decisions would be more likely to rely on the TPPs. Court rulings are notoriously difficult to predict and can't be excluded (outside of legislative amendments), so development of the TPPs should anticipate that the TPPs would be used in a range of court scenarios.

As we understand them, the TPPs are intended to inform plan-making, so only indirectly inform development assessment. Nevertheless, it seems clear that there will be cases where the TPPs will be directly referred to in development assessment and permitting, particular through the courts. This is material for how the TPPs are constructed.

***Recommendation: Make the intended regulatory effect of the TPPs explicit.***

### **5.2. Effectiveness: Minimise Over-Prescription to Improve Strategic Effect**

A majority of planners felt that most of the TPPs were too prescriptive, stepping beyond policy intent and strategic direction and into specific measures and outcomes. The risk here is that over-prescription will make the TPPs too inflexible and difficult to apply, or prescriptions impossible to achieve.

Another risk is that over-prescription will too heavily constrain local planning, limiting councils' ability to meet their communities' development goals. Councils need for a policy framework that supports and enables them in their place making work, rather than overly constrain them.

***Recommendation: Review all sections of the draft TPPs for over-prescription and remove.***

### **5.3. Effectiveness: Enable On-Balance Decisions, Not Checklist Failures**

Along the same theme, councils are concerned that the draft TPPs as currently constructed would tend to be used in checklist or tripwire fashion, where any one failure against a policy component could cause rejection of proposals (usually plans and their components). This would cause the TPPs to have a reductive, process-of-elimination

effect on plan making, suppressing innovations from local government that strive to make the best out of imperfect land development scenarios.

Councils already report challenges in achieving approval (or at least a constructive, enabling pathway forward) with their plan proposals put to the Tasmanian Planning Commission (TPC). A further statutory document like the TPPs, although critically needed, presents a further risk of refusal.

LGAT is looking to investigate this further to examine the evidence, but as an anecdote, one council reports rejection of affordable housing and inclusionary zoning proposals by the TPC, based on fairly academic and theoretical grounds, leaving the council with no tool to adequately address the housing affordability crisis in their municipality. This is a barrier to our development goals, and we understand this is not isolated. Providing clarity in the TPPs on their interpretation and application can address this.

Councils need the TPPs to be an enabling tool that facilitates them delivering for their communities. It should not preclude or hinder councils innovating in plan making or developing novel planning approaches or tools. Rather, the TPPs should point the broad strategic direction and support councils in developing their approaches.

It is possible that this was the intention of the “*no order or hierarchy... strategies applying equally*” statements of Page 2 Implementation. However, those statements do not contain sufficient information to achieve this. Some detailed thought is needed here to properly support on-balance decision making.

***Recommendation: That the TPPs develop methods to support on-balance decision-making and discourage single-issue conflicts derailing plan development.***

#### **5.4. Effectiveness: Devolve Implementation Guidelines to Separate, Supporting Guides**

A majority of councils felt that the draft TPPs were both too bulky and unwieldy, and that the Implementation Guidelines in each section needed significant development. A good way to resolve this is to remove the Implementation Guidelines from the main TPPs document and express them through a suite of separate TPPs Implementation Guideline documents.

There are several advantages to doing this. It will make the TPPs more focused and high level, improving their strategic policy effect. This will simplify the TPPs and improve their overall development narrative and communication to Tasmanians.



Good implementation can be very iterative as we learn from what is and is not working, so it will allow for easier and more targeted updating and improvements, supporting continual improvement and detailed focus within each policy area.

These supporting guidelines would be subordinate to the TPPs themselves. These documents need not be strictly statutory to have meaningful effect in the planning system.

***Recommendation: Remove Implementation Guidelines from the main TPPs document and further improve and develop them in separate, subordinate documents.***

#### **5.5. Effectiveness: Test draft TPPs with known cases or mock scenarios to gauge intended effect**

The potential effectiveness of the draft TPPs can be tested using mock scenarios or known cases to see if it is likely to achieve its intended effect. Councils have concerns and seek to understand more about what the draft TPPs will mean once brought into effect.

As mentioned above, councils are reporting issues moving certain plan proposals through the TPC, hindering achieving local development goals. The nature and extent of this issue needs to be fleshed out, but this is severely frustrating for the councils involved, particularly during this moment of unprecedented and sustained growth in Tasmania. It is difficult to meet the needs of this growth when your innovations are being rejected on theoretical, rather than practical and place-based, grounds.

This provides an opportunity to test the draft TPPs to see if they are practical and will meet the needs of communities. These cases of rejection by the TPC can be examined for merit before being used as test cases for the draft TPPs. Cases relating to managing our current growth pressures, such as housing or infrastructure contributions, are particularly pertinent today.

***Recommendation: That the SPO undertake some scenario testing of the draft TPPs to gauge likely effect, especially using known cases.***

#### **6. Communication and Accessibility Improvements: A Development Narrative for Tasmania**

Councils report finding the draft TPPs overly complex, limiting its accessibility for the wider community. There is a balance here, but unnecessary complexity limits expressing what the TPPs are trying to achieve.

Despite being a technical planning document, there are ways to improve the TPPs communication and accessibility to make them as widely accessible and usable as possible. This will increase the TPPs strategic effect on the planning system.

In our Scoping Paper submission, we proposed a structure that is intended to support a planning or development narrative for Tasmania. In reality, it is a simple SWOT analysis structure (slightly varied), where:

- Strengths are our values to be protected and maintained (e.g. Tasmania's natural heritage)
- Weaknesses are our growth challenges that we need to prepare for (e.g. housing)
- Opportunities are our productive economic opportunities to be realised (e.g. tourism and energy)
- Threats are our environmental hazards that require resilience building (e.g. flood, bushfire).

Although basic, the intention was to convey meaning of what our planning work is about. However, it is the narrative that is important, both for usability, as well as for conveying the strategic intent of the TPPs, helping communities engage with them.

We note that the TPPs have begun to do this through its structure and the use of climate change statements. This can be further developed through the simplification suggestions above (remove over-prescription, separate implementation guidelines), but also through introductory context setting (Tasmania's development history and current situation) and communicating underlying themes (what this context means for developing our future).

Lastly, this narrative must remain broad and statewide and avoid over-prescription, to allow room for councils to develop their own local narratives, expressed through their own plans and strategies.

***Recommendation: Further grow a development narrative for Tasmania through accessibility improvements, introductory context setting, and expressing underlying themes.***

## **7. Specific improvements**

### **7.1. Infrastructure Contributions (5.1 Provision of Services)**

The inclusion of an explicit statement supporting infrastructure contributions is noted and welcomed. There is opportunity here to improve this and related statements to support better infrastructure delivery to facilitate development.

The TPPs statements supporting infrastructure charges (e.g. Strategy 5), and section 5.1 Provision of Services generally, needs to:

- For strategy 5, the statement needs to include expanded and intensified uses for contributions, not just ‘new’ uses.
  - Best practice infrastructure contributions of other states apply their charges to any proposal that increases demand on infrastructure networks, regardless of whether infrastructure servicing the site already exists.
  - This supports densification and uplift objectives for infill situations, not just peripheral greenfield development.
- Support broad-based, incremental demand accounting and charging to avoid an infrastructure and funding gap at the time of need.
- Address the land development issues associated with the first mover problem that we identify in our Infrastructure Contributions Discussion Paper<sup>1</sup>, including:
  - Delayed development
  - Unfair cost distribution
  - Subsidisation of beneficiaries
  - Substandard network infrastructure solutions
  - Impacted infrastructure networks
- Support maturation of our infrastructure contributions arrangements from basic agreements, to more advanced general charging based on infrastructure planning.

For example, we suggest the following strategies:

5. *Facilitate developer contributions to service new, expanded and intensified use and development to be transparent, fair and reasonable, providing for equity between users.*
- 5a. *Facilitate infrastructure contributions that address the first mover problem by moving beyond basic agreements and developing best practice incremental general charging systems supported by more advanced infrastructure planning.*

We would be pleased to meet to discuss our Discussion Paper and best practice infrastructure charging to explore how we can deliver a better system for Tasmania.

***Recommendation: Improve support for best practice infrastructure contributions systems through understanding developer and council needs.***

---

<sup>1</sup> See: <https://www.lgat.tas.gov.au/media-and-publications/reports-and-submissions>

## 7.2. Water Quality (2.2 Waterways, Wetlands and Estuaries)

LGAT has consulted with local government stormwater and water quality experts. It is considered that some statements in section 2.2 Waterways, Wetlands and Estuaries do not properly support progress towards best practice. For example, section 2.2.3, item 4(e):

*Use and development located on land in, or around, waterways, wetlands and estuaries will... not significantly increase the rate and quantity of stormwater or pollutants entering the water*

This statement leaves us vulnerable to incremental degradation of our water systems, appears out of alignment with the *State Policy on Water Quality Management 1997*, and does not support our economic clean and green image. Councils are keen to support our state objectives for maintaining environmental values and improving water quality outcomes, within their own capabilities. LGAT is supporting councils with tools to better manage stormwater and water quality, so we do not want to see these movements towards best practice undermined in strategy.

***Recommendation: Remove or reword environmental values statements that undermine or do not support council efforts to progress towards best practice, within their own capabilities.***

## 7.3. Consultation (7.1)

Including a section on consultation is valuable and supported. To add to this, we recommend including statements that encourage:

- Consultation early in the proposal development and design process to begin resolving issues early and improve development outcomes.
- Greater proponent involvement and led consultation, rather than merely a government task. Other Australian states put more emphasis on proponent involvement in planning and responsibility for consultation for their own proposals.

***Recommendation: Include statements encouraging earlier, proponent-led consultation.***

## 7.4. Regulation (7.3)

The broad objective of 7.3.2 to avoid over-regulation is worthwhile and supported. However, this takes some work to evaluate processes and achieve and should not be mandated without this detailed evaluation. We also recommend focusing on regulatory efficiency measures, rather than the simplistic and often counter-productive red-tape reduction approach.

Therefore, in 7.3.3 we recommend rewording Strategies 1 and 2 as follows:

1. Support opportunities to facilitate use and development that has little or no impact to proceed without requiring planning approval, or with minimised planning requirements.
2. Support opportunities to improve regulatory efficiency by optimising planning regulation to the amount necessary to reflect, manage and be proportionate to, the level of impact caused by the use and development.

**Recommendation: Reword strategies to support planning authority regulatory efficiency over imposed red-tape reduction**

LGAT also supports the objective of moving toward regulatory consistency and harmonisation, but not at the expense of losing resolution and capability for local place making. Local place making is a critical task of local government and the reason many people choose to work for or stand for their council. Limiting councils' ability to provide for their communities impacts those communities and the local government workforce.

Therefore, while LGAT supports the development of consistent plan making tools and the voluntary development of capacity toward best practice, such as through template statutory instruments and policies, LGAT does not support mandating perfect and unremarkable uniformity in plan making. Councils support unique and diverse communities so need to apply their role specifically. Mandating complete uniformity damages local place diversity, whereas consistent statutory tools and templates that allow room for local application and adaptation can provide meaningful support to councils and local communities.

A critical side effect of imposing statewide uniformity, especially in local plan making, is that local councils and communities lose a sense of ownership in their plans and place making authority. Triggering this disengagement from local place making should be avoided at all costs, which is why we always support empowering councils towards consistent best practice, rather than imposing it.

Therefore, we do not support Strategy 3 unless reworded as follows:

3. Support the development of consistent regulatory tools that allow for appropriate local application to diverse development circumstances.

**Recommendation: Reword strategies to support local place-based application of consistent statewide tools, rather than imposing rigid, uniform application of statewide mandates.**