



**Environmental
Defenders Office**

**Submission in response to Tasmanian Planning
Policy Scoping Paper**

22 October 2021

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

Submitted to:

Department of Justice
Office of the Secretary
GPO Box 825
HOBART TAS 7001

By email only: haveyoursay@justice.tas.gov.au

For further information, please contact:

Claire Bookless
Managing Lawyer – Tasmania
Environmental Defenders Office Ltd
claire.bookless@edo.org.au
Ph: (03) 6223 2770

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Introduction

The Tasmanian Planning Policies (**TPPs**) will provide overarching guidance and direction of both Regional Land Use Strategies and the Tasmanian Planning Scheme.¹ The TPPs may relate to the following:²

- (a) the sustainable use, development, protection or conservation of land;
- (b) environmental protection;
- (c) liveability, health and wellbeing of the community; and
- (d) any other matter that may be included in a planning scheme or a regional land use strategy.

Given their strategic importance and potential scope, it is vital that the TPPs adequately reflect and respond to the key issues facing Tasmania at this turbulent time, including the extinction and climate crises.

In this context, EDO welcomes the opportunity to comment on Tasmanian Planning Policies Scoping Paper (**Scoping Paper**). The following submission responds to the proposed scope and structure of the TPPs. A summary of EDO's key recommendations in response to the Scoping Paper is outlined below.

Recommendation 1: EDO's recommendations on TPP topics and issues outlined in **Appendix 1** be adopted.

Recommendation 2: An overarching climate change TPP be created which links to statutory GHG emissions reductions targets, climate risk assessments, and sectorial plans, and provides clear guidance on how these are to be implemented through Regional Land Use Strategies and the Tasmanian Planning Scheme.

Recommendation 3: Replace the proposed "Economic development" TPP with a "Sustainable Development" TPP.

Recommendation 4: Ensure the issues covered by the Sustainable Development TPP align with the UN Sustainable Development Goals.

Recommendation 5: TPPs include performance measures to provide a clear mechanism to measure the achievement of the TPP objectives.

¹ *Land Use Planning and Approvals Act 1993*, s 12B(1)

² *Land Use Planning and Approvals Act 1993*, s 12B(2)

1. Scope of proposed TPPs and issues

EDO provides the following general comments as to proposed TPP topic, with specific recommendations on the proposed TPP topics are provided in **Appendix 1** to this submission.

Recommendation 1: EDO's recommendations on TPP topics and issues outlined in **Appendix 1** be adopted.

Planning for climate change

Anthropogenic climate change is having significant impacts in Australia and across the globe. The annual global temperature in 2019 was 1.1 degrees Celsius (°C) warmer than pre-industrial conditions.³ Australia's average annual temperature has warmed by around 1.5°C since 1850,⁴ and the best available science tells us that average temperatures are projected to rise further. Australia is already experiencing the impacts of climate change, which include increasing temperatures, the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased and more extreme rainfall in the north, longer dry spells, greater number of extreme heat days and the long-term increase in extreme fire weather.

In the future, it is projected Tasmania will experience higher average temperatures all year, with more hot days and warm spells and harsher fire-weather. Tasmania will also experience sea level rise, an increase in extreme rainfall events and flooding, but a decrease in rainfall in spring and with the possibility of less rain in autumn and summer.⁵

The contribution of urban development to greenhouse gas (**GHG**) emissions and its vulnerability to climate change impacts is well established. As Caparros-Midwood, et al. (2019) observed:⁶

... urban areas are already responsible for approximately 70% of global greenhouse gas emissions and new urban development must reduce greenhouse gas emissions if the Paris Agreement to limit global warming are to be achieved. There is an urgent need for urban development to reduce resource consumption and emissions, whilst also enhancing resilience to climatic risks such as flooding and heatwaves. (Citations omitted)

It is therefore critical that land use planning policies effectively address these issues:⁷

³See World Meteorological Organisation, *WMO confirms 2019 as second hottest year on record, 15 January 2020*, accessed at <https://public.wmo.int/en/media/pressrelease/wmo-confirms-2019-second-hottest-year-record>

⁴ See CSIRO, *Response to Notice to Give Information 21 April 2020 for the Royal Commission into National Natural Disaster Arrangements*, 21 April 2020, accessed at <https://naturaldisaster.royalcommission.gov.au/system/files/exhibit/CSI.500.001.0001.pdf>

⁵ CSIRO, *Climate change in Australia - Projections for Australia's NRM regions*, accessed on 29 April 2021, accessed at: <https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/>

⁶ Caparros-Midwood, Dawson, Barr, "Low Carbon, Low Risk, Low Density: Resolving choices about sustainable development in cities", *Cities*, Volume 89, 2019, Pages 252-267, <https://doi.org/10.1016/j.cities.2019.02.018>

⁷ Hurlimann, Moosavi & Browne, "Urban planning policy must do more to integrate climate change adaptation and mitigation actions", *Land Use Policy*, Volume 101, 2021 <https://doi.org/10.1016/j.landusepol.2020.105188>

... it must be acknowledged that past and current urban planning activities have resulted in climate change impacts and path dependency. Thus, significant changes to the status quo of urban planning activities are required in many locations across the world to achieve the goal of limiting warming to 1.5°C but also to avoid the risk and harm attributable to even this amount of warming. (Citations omitted)

In Tasmania, much more must be done through land use planning to both mitigate GHG emissions and adapt to climate change risks.

Based on the available data, Tasmania has achieved net zero GHG emissions for the past four reported years.⁸ However, we note that this achievement is entirely attributable to the carbon stored in forests (otherwise referred to as the land use, land use change and forestry sector (**LULUCF**)).⁹ Reliance on the LULUCF sector alone to mitigate Tasmania's GHG emissions is risky as it is vulnerable to rapid change, for example through changes to land use practices arising from policies such as the Agri-Vision 2050 and Rural Water Use Strategy,¹⁰ relaxing of planning scheme restrictions on vegetation clearing, and the "reinvigoration" of the forestry sector¹¹. Furthermore, reliance on the emissions reductions from the LULUCF sector masks our failure to reduce GHG emissions in other sectors. For example, Tasmania's population, and its associated GHG emissions in transport, stationary energy, and waste, are expected to increase by 2050.¹² Point Advisory has modelled that if Tasmania continued on a "business as usual" path, its emissions could sharply increase to 2050.¹³ This modelling underlines the need for the Tasmanian Government to take urgent action to mitigate GHG emissions across all sectors. Land use planning controls provide the best opportunity for such action to be taken.

Tasmania has been taking steps towards planning to adapt to a rapidly warming climate. For example, the Tasmanian Planning Scheme contains codes for Coastal Erosion Hazards, Coastal Inundation Hazards, Flood-Prone Areas Hazards, and Bushfire-Prone Areas. However, more could be done to plan for Tasmania's future under different climate warming scenarios. For example, the mapping for the Coastal Erosion and Coastal Inundation Codes is based on

⁸ Australian Government, *State and territory greenhouse gas inventories: annual emissions*, accessed on 21 October 2021, at: <https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/state-and-territory-greenhouse-gas-inventories-annual-emissions>

⁹ Tasmania Climate Change Office, *Tasmania's Greenhouse Gas Emissions 2021 Factsheet*, accessed on 29 April 2021 at http://www.dpac.tas.gov.au/_data/assets/pdf_file/0004/575392/TCCO_Fact_Sheet_-_Tasmanias_Greenhouse_Gas_Emissions_-_2021.pdf

¹⁰ Ibid. See also DPIPWE (2019) *Tasmanian Sustainable Agri-Food Plan 2019-23*, accessible at <https://dPIPWE.tas.gov.au/agriculture/tasmanias-agri-food-plan>

¹¹ See <https://tas.liberal.org.au/securing-tasmanias-future-growing-forestry-jobs>

¹² Jacobs, *Discussion Paper on Tasmania's Climate Change Act: Independent Review of the Climate Change (State Actions) Act 2008* March 2021 at p 18, accessed at:

https://www.dpac.tas.gov.au/divisions/climatechange/Climate_Change_Priorities/review_of_the_climate_change_act

¹³ Point Advisory (2021) *Net Zero Emissions Pathway Options for Tasmania - Background Paper*, accessed on 26 April 2021 at

http://www.dpac.tas.gov.au/_data/assets/pdf_file/0011/573095/net_zero_emissions_background_Paper_-_Final.pdf at under a "high business as usual" rate outlined in table 1 on p 6.

analysis undertaken by the CSIRO using data from the fifth Intergovernmental Panel on Climate Change (IPCC) report.¹⁴ Further expert analysis of Tasmania's likely coastal erosion and inundation risks should be commissioned based on the sea-level rise information in the sixth IPCC report. Likewise, further investigation of the interaction between coastal inundation and estuarine flooding,¹⁵ and mapping of Tasmania's flood risks in future climate scenarios is required.¹⁶ As to the SPP provisions, these could be significantly strengthened to, for example, prevent vulnerable development and uses in high-risk bushfire prone and coastal erosion and inundation areas, and actively plan for managed retreat from high-risk locations.

Although the Scoping Paper acknowledges the overarching importance of land use planning in Tasmania's response to climate change, it proposes to address climate change across relevant planning policies on different topics. While the implementation of climate change considerations into each of the policies allows for climate-related factors to be considered in a broad range of areas, the failure to provide an overarching planning policy for climate change risks that an inconsistent approach may be taken in some policies to GHG mitigation and climate change adaptation.¹⁷ It also exacerbates the risk that potential synergies and conflicts between mitigation and adaptation goals, or indeed between those goals and other objectives of the TPPs, could be overlooked.¹⁸

While the EDO is supportive of the inclusion of climate change across all TPPs, it strongly recommends there be an overarching climate planning policy which:

- Explicitly recognises the soon-to-be legislated GHG emissions reduction target, and any
 - Climate Action Plan (**CAP**),
 - State-wide climate risk assessments (**CRA**), and
 - sector-based emissions reduction and resilience plans (**Plans**) created under the *Climate Change (State Actions) Act 2008*; and

¹⁴ Tasmanian Climate Change Office, "Coastal Impacts" webpage accessed at https://www.dpac.tas.gov.au/divisions/climatechange/climate_change_in_tasmania/impacts_of_climate_change/coastal_impacts; and Tasmanian Planning Commission, *Guideline No. 1 Local Provisions Schedule (LPS): zone and code application*, June 2018 accessed at https://www.planning.tas.gov.au/_data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

¹⁵ See discussion of this in Office of Security and Emergency Management, *Coastal Hazards Package: Summary of Consultation*, undated, accessible at https://www.dpac.tas.gov.au/divisions/osem/coastal_hazards_in_tasmania

¹⁶ There is currently no state wide mapping of flood prone areas, Tasmanian Planning Commission, *Guideline No. 1 Local Provisions Schedule (LPS): zone and code application*, June 2018, at p 51 accessed at https://www.planning.tas.gov.au/_data/assets/pdf_file/0006/583854/Section-8A-Guideline-No.-1-Local-Provisions-Schedule-LPS-zone-and-code-application-version-2.pdf

¹⁷ For a discussion of how this has occurred in Victoria, see Hurlimann, Moosavi & Browne, "Urban planning policy must do more to integrate climate change adaptation and mitigation actions" (2021) *Land Use Policy* 101 <https://doi.org/10.1016/j.landusepol.2020.105188>

¹⁸ See Hurlimann, Moosavi & Browne, "Urban planning policy must do more to integrate climate change adaptation and mitigation actions", *Land Use Policy*, Volume 101, 2021 <https://doi.org/10.1016/j.landusepol.2020.105188>

- Provides clear guidance on how GHG emissions reduction target, the CAP, CRA and Plans are to be implemented, where appropriate, through Regional Land Use Strategies (**RLUS**), State Planning Provisions (**SPPs**) and Local Provision Schedules (**LPSs**).

Recommendation 2: An overarching TPP on climate change be created which links to statutory GHG emissions reductions targets, risk assessments, and sectorial plans, and provides clear guidance on how these are to be implemented through RLUS and the Tasmanian Planning Scheme.

Sustainable development

The TPPs must seek to further the objectives of the *Land Use Planning and Approval Act 1993*, including the Resource Management and Planning System (**RMPS**) objectives.¹⁹

The RMPS objectives are:

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(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) ; and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

“Sustainable development” is then further defined as:

... 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 –

(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.

While none of the proposed TPPs expressly deals with sustainable development, one of the key proposed TPP topics is “Economic development”. Given that paragraph (d) of the RMPS objectives expressly notes that the “facilitation of economic development” must be “in accordance with” the objectives outlined in paragraphs (a), (b) and (c), it is clear that economic development should only be facilitated where it is sustainable and encourages public involvement in the management of our shared resources.

¹⁹ *Land Use Planning and Approvals Act 1993*, s 12B(4)

For this reason, EDO considers a more appropriate TPP topic would be “Sustainable Development” to reflect the RMPS objectives and ensure economic, social and environmental considerations are appropriately balanced. Such an approach is consistent with the Premier’s Economic and Social Recovery Advisory Council (**PESRAC**) recommendation for a “consistent and coordinated government approach to sustainability”, and with its observation that the Government should “influence, encourage and incentivise the adoption of sustainable development practices in business and non-government organisations through...Tasmania’s planning and resource management system”.²⁰

Furthermore, having a Sustainable Development TPP would provide a practical vehicle to apply the PESRAC’s recommendation to align Government policies and strategies with the United Nations Sustainable Development Goals.²¹ Aligning the Sustainable Development TPP with the UN Sustainable Development Goals would still allow the TPP to deal with issues including industry and business, tourism, agriculture and mining, but would ensure that they are addressed in the broader context of sustainability such as by incorporating sustainable design and innovation etc.

Recommendation 3: Replace the proposed “Economic development” TPP with a “Sustainable Development” TPP.

Recommendation 4: Ensure the issues covered by the Sustainable Development TPP align with the UN Sustainable Development Goals.

2. Proposed structure of TPPs

The Scoping Paper proposes that the TPPs include the following components:

TPP Topic	The name of the particular topic covered by the TPP
Issue	Sets out the particular issue(s) under the TPP Topic
Objective	Describes the broad intent of what the issue aims to address
Strategies	Describes how the objective will be achieved – there may be multiple strategies
Implementation Statements	Describes how each individual strategy will be delivered into the planning system, either through strategic planning such as regional land use strategies, or through statutory planning in the Tasmanian Planning Scheme (State Planning Provisions and Local Provision Schedules)

EDO considers that the proposed structure would be improved by providing another component called “performance measures” which provide a clear mechanism to measure the achievement of the objectives outlined in the TPP.

²⁰ Premier’s Economic & Social Recovery Advisory Council, *Final Report*, March 2021, Department of Treasury and Finance at p 69, accessed at https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf

²¹ Ibid.

For example:

- (a) if one of the objectives of the Environment Protection TPP is to “maintain biodiversity”, the TPP should provide clear performance measures for the achievement of that objective, such as “no net reduction of threatened native vegetation communities”, and/or “habitat for listed endangered species is identified and protected”;
- (b) for an objective in the Liveable Settlements TPP that “development be planned and contained within existing settlements along Tasmania’s coastline” a performance measure might be “no new urban subdivisions outside of existing or planned settlements identified in RLUS”;
- (c) for an objective in the Sustainable Development TPP of “facilitating sustainable economic development and employment opportunities in Tasmania’s West Coast”, a performance measure might be “an increase in employment in the West Coast region”.

While there would be no sanction for the failure to meet the performance measures in the TPPs, if they were not achieved it would prompt reflection and discussion about why that is and whether Implementation Statements and Strategies should be updated or varied to seek to achieve that outcome, or if external processes outside the planning framework require attention. In this way, the provision of performance measures will enable meaningful review and reporting on the implementation and effectiveness of the TPPs, as required under section 12I of the LUPA Act.

Recommendation 5: TPPs should include performance measures to provide a clear mechanism to measure the achievement of the TPP objectives.

Appendix 1 – EDO recommendations on specific TPP topics and issues

TPP Topic	Issues (to be addressed under each TPP Topic)	EDO Recommendations
Environmental Protection	<ul style="list-style-type: none"> • Biodiversity – flora and fauna habitat protection, weed management, fire management • Waterways and wetlands – water quality • Catchment management • Coastal processes and landforms • Applying the precautionary principle 	<p>EDO is supportive of this proposed TPP topic and the issues identified. However, it recommends that this TPP also address the following issues:</p> <ul style="list-style-type: none"> - Conservation – which would address Tasmania’s national parks, reserves and land subject to conservation covenants or Part 5 agreements. - Rehabilitation & restoration – which would provide for how historical and future adverse effects on the environment could be remedied, consistent with paragraph (c) of the definition of sustainable development in the RMPS objectives. - Air quality – to address the National Environmental Protection (Ambient Air Quality) Measure (which is a State Policy). <p>EDO further considers that the issue of “soil quality” proposed to be addressed in the Hazards and Risks TPP, may more comfortably sit within the Environment Protection TPP.</p>
Hazards and risks	<ul style="list-style-type: none"> • Natural hazards – bushfire • Flooding • Landslide • Sea level rise coastal inundation and erosion • Acid sulphate soils • Man-made hazards – emissions, contaminated land, soil quality/risks 	<p>In light of the fact that many hazards are being exacerbated by anthropogenic climate change and other activities, EDO recommends the proposed separation of hazard issues into “natural hazards” and “man-made hazards” be abandoned as it is artificial and unnecessary.</p> <p>EDO further recommends that this TPP include “extreme heat and heatwaves” as an issue to be addressed as these are likely to become more common in future as a result of climate change.</p>
Economic Development	<ul style="list-style-type: none"> • Industry and business • Tourism • Agriculture • Mining and minerals 	<p>EDO recommends that this TPP topic should be amended to “Sustainable Development” and link the issues to be addressed to relevant UN Sustainable Development Goals as per the discussion in part 1 of our submission above.</p>

TPP Topic	Issues (to be addressed under each TPP Topic)	EDO Recommendations
	<ul style="list-style-type: none"> • Use and development in the coastal zone 	
Liveable Settlements	<ul style="list-style-type: none"> • Planned and contained settlements • Pleasant places to live – amenity and avoiding land use conflicts • Integrating land use and transport • Health and wellbeing – recreation and open space opportunities • Community – health services and education 	<p>Access to affordable and sustainable housing is a critical feature of environmental justice and liveable settlements. However, despite being required under Action 2 of <i>Tasmania's Affordable Housing Action Plan 2019-2023</i>, dated March 2019,²² affordable housing issues are notably absent from the issues addressed by the proposed TPP.</p> <p>EDO recommends that affordable and sustainable housing is included as an issue to be addressed under the Liveable Settlements TPP.</p>
Heritage Protection	<ul style="list-style-type: none"> • Aboriginal heritage • Cultural heritage • Landscape heritage – scenic protection, including tourist routes 	<p>EDO supports the integration of Aboriginal Heritage into the Heritage Protection TPP. However, the consultation draft Aboriginal Heritage TPP circulated in 2017 failed to provide any tangible guidance or strategies for the recognition or protection of Aboriginal Heritage through the land use planning process. Likewise, there is a complete absence of any recognition of and protection for Aboriginal Heritage in the SPPs.</p> <p>While EDO understands that the <i>Aboriginal Heritage Act 1975</i> is currently under review, it recommends the Tasmanian Government to take this opportunity to ensure that the TPPs trigger consideration of Aboriginal Heritage in planning decisions and integrate a process for the Tasmanian Aboriginal community to exercise free, prior and informed consent for any development or use that has the potential to adversely impact Aboriginal heritage.</p>

²²Accessed at https://www.communities.tas.gov.au/_data/assets/pdf_file/0027/31698/TAH_Action-Plan-2019-2023.pdf

TPP Topic	Issues (to be addressed under each TPP Topic)	EDO Recommendations
Infrastructure to support the economy and create liveable communities	<ul style="list-style-type: none"> • Airports / Sea ports / Railways • Roads, car parking, cycleways and walkways • Public transport • Telecommunications • Electricity and energy • Irrigation, water, sewerage and stormwater • Waste management 	<p>EDO is generally supportive of a TPP covering infrastructure, however, it recommends that the TPP be titled “Infrastructure to support a <i>sustainable</i> economy and create liveable communities”, as this would better align to the RMPS objectives, take account of PESRAC’s recommendations and the UN sustainable development goals. It would also allow for the issues addressed under this TPP to better reflect this overarching objective. For example:</p> <ul style="list-style-type: none"> • “Roads, car parking, cycleways, and walkways” might instead be “sustainable transport”; • “Electricity and energy” might instead be “sustainable energy”; • “Waste management” might instead be “circular economy”. <p>These changes would be more than just semantic. They would ensure that consideration of infrastructure issues is framed towards the transition towards more sustainable practices and that the social and environmental impacts of these activities be properly taken into account in planning decisions.</p>
Public engagement in planning processes	<ul style="list-style-type: none"> • Consultation • Strategic planning • Ongoing review 	<p>EDO is supportive of a TPP covering public engagement in resource management and planning. However, it is unclear what is intended to be covered the issue of “ongoing review”. If it is intended that “ongoing review” will address the review of the TPPs, this may be unnecessary if EDO’s recommendation for all TPPs contain performance measures to facilitate their ongoing review and improvement is adopted.</p> <p>Some of the principal ways the public may be engaged in the planning process is through the exercise of appeal and civil enforcement rights. EDO therefore recommends that these issues also be addressed in this TPP, together with the issue of transparency and access to information to ensure that the public can be informed about resource and planning issues that affect them.</p>