



Environmental
Defenders Office

**Submission in response to the Draft Tasmanian Planning
Policies**

1 November 2022

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 of 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.

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A Note on Language

EDO acknowledges that there is a legacy of writing about First Nations peoples without seeking guidance about terminology. In this submission, we have chosen to use the term “First Nations” to refer to Aboriginal and Torres Strait Islander peoples across Australia. We also acknowledge that where possible, specificity is more respectful. When referring to Tasmanian Aboriginal / palawa / pakana people in this submission we have used the term “Tasmanian Aboriginal”. We acknowledge that not all Aboriginal people may identify with these terms and that they may instead identify using other terms.

Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws.

In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Draft Tasmanian Planning Policies (**TPPs**) before they are submitted for consideration by the Tasmanian Planning Commission.

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

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

We note the context of the TPPs is important to understanding the opportunity implementation of new TPPs represents.

The TPPs are proposed to be introduced at a time when:

- There have been numerous complex reforms to the *Land Use Planning and Approvals Act 1993* (Tas) (**LUPA Act**), which have had the effect of curtailing public participation in the Resource Management and Planning System (**RMPS**).
- There is a review of the State Planning Provisions (**SPPs**) underway. It is anticipated that any TPPs created will provide clear direction to the final form of any amendments to the SPPs under that review.

¹ LUPA Act, s 12B(1).

- There has been no State of Environment report published since 2009 to provide a clear indication of whether lutruwita/Tasmania’s RMPS legislation regimes are achieving their objectives, including the maintenance of ecological processes and diversity.
- The Sixth Assessment Report of the Intergovernmental Panel on Climate Change (**IPCC**) has provided an urgent warning that time is running out to take action to halt runaway global heating and keep the world to the Paris Agreement target of 1.5° degrees Celsius (°C) above pre-industrial levels and that with “every additional increment of global warming, changes in extremes, continue to become larger”, resulting in increased bushfire weather, floods, droughts, sea-level rise and heatwaves.²
- Biodiversity in Australia is facing increased pressures, with habitat loss, degradation and invasive species resulting in persistent and sometimes irreversible impacts in all areas of Australia (including lutruwita/ Tasmania). Many of these pressures are cumulative and compounding and may lead to ecosystem collapse. These pressures are expected to worsen³
- lutruwita/Tasmania’s Aboriginal cultural heritage protection legislation remains woefully inadequate and provides no role for Tasmanian Aboriginal people to determine the management and protection of their cultural heritage.
- The UN General Assembly recognised the human right to a healthy environment on 28 July 2022.⁴ Australia voted in favour of the UN resolution, opening the door to domestic action.

EDO recently released its report *A Healthy Environment is a Human Right*.⁵ The report calls for Australian Commonwealth, state and territory governments to provide for and act consistently with the right to a healthy environment when exercising their functions under legislation that affects the environment and human health.⁶ While lutruwita/Tasmania is yet to implement the Tasmanian Law Reform Institute's recommendation to legislate a Charter of Human Rights,⁷ planning policy can play an important role in achieving environmental justice through the recognition of the human right to a healthy environment.⁸

² IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2021) at B.2.2 and C.2.4 accessed at <https://www.ipcc.ch/report/ar6/wg1/#SPM>. See also the IPCC, *Sixth Assessment Report Regional Factsheet - Australasia*: https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf.

³ Commonwealth Department of Climate Change, Energy, Environment and Water, *State of Environment Report: Biodiversity* (Report, 2022), accessed at <https://soe.dcceew.gov.au/biodiversity/introduction>.

⁴ UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022).

⁵ EDO, *A Healthy Environment is a Human Right* (Report, August 2022).

⁶ See recommendations 1- 4 in EDO, *A Healthy Environment is a Human Right* (Report, August 2022).

⁷ Tasmanian Law Reform Institute (2007) *A Charter of Rights for Tasmania*, accessed at; https://www.utas.edu.au/_data/assets/pdf_file/0003/283728/Human_Rights_A4_Final_10_Oct_2007_revised.pdf

⁸ EDO explores the concept of environmental justice, and the importance of applying an environmental justice framework to environmental protection, in *Implementing effective independent Environmental*

Consistent with the UN recognition of the human right to a healthy environment and our report recommendations, EDO considers that TPPs and their implementation must seek to give effect to this human right, by making clear that every Tasmanian has a right to access to clean air, safe and sufficient water, healthy and sustainably produced food, and non-toxic environments for work, life and play. TPPs should also recognise the disproportionate impact of environmental harms – including harm from climate change, pollution, extractive industries, and natural disasters – are imposed on overburdened people and communities including First Nations Peoples. TPPs can create policy settings to ensure that these environmental harms are preferably avoided, or if they cannot be avoided, mitigated, and empower overburdened peoples and communities to exercise their right to a healthy environment.

Given their strategic importance and potential scope, it is vital that the TPPs adequately reflect and respond to the key issues facing lutruwita/ Tasmania in the context of twin extinction and climate crises. While it is pleasing that much of the feedback by EDO and other groups and individuals on the scope of the TPPs has been taken on board by the State Planning Office in the drafting of the TPPs, we consider that further work is required to meet the challenges we currently face.

The following submission responds to the draft TPPs, including the scope and structure of the TPPs. Given there will be further opportunities for such an analysis when the TPPs are exhibited for public comment by the Tasmanian Planning Commission, we have taken this opportunity to provide “high-level” comments to address key issues and strengthen and clarify the TPPs.

A **summary** of EDO’s key recommendations in response to the Draft TPPs is outlined below.

Recommendation 1: The draft TPPs, be significantly clarified and strengthened, and EDO’s recommendations on TPP topics and issues and implementation guidelines outlined in **Appendix 1** be adopted.

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

Recommendation 3: All the TPPs need to explicitly incorporate clear and mandatory strategies around climate change adaptation and GHG mitigation and provide express implementation guidelines in line with legislated targets, climate risk assessments, and sectorial plans.

Recommendation 4: Replace the proposed “Sustainable Economic Development” TPP with a “Sustainable Development” TPP.

Recommendation 5: Ensure the issues covered by the Sustainable Development TPP align with the UN Sustainable Development Goals.

Protection Agencies in Australia: Best practice environmental governance for environmental justice (Report, January 2022).

1. General comments

EDO provides the following general comments in response to the draft TPP topics, with specific recommendations on each of the proposed TPP topics provided in **Appendix 1** to this submission.

EDO considers that the draft TPPs could be significantly strengthened and clarified by:

- (a) Providing recognition of Tasmanian's right to a clean and healthy environment throughout all the TPPs;
- (b) Better providing for the recognition and protection of Aboriginal cultural heritage values consistent with the United Nations Declaration on the Rights of Indigenous peoples, in the TPPs, including through:
 - i. the recognition of the values in Aboriginal cultural heritage in landscapes (not just sites and objects);
 - ii. the reflection in the TPPs strategies of Tasmanian Aboriginal people's ongoing connection to and reliance on Country and Sea Country;
 - iii. the provision of clear, mandatory strategies and implementation guidelines to spell out how the SPPs, Local Provisions Schedules (**LPSs**) and RLUSs will provide for Tasmanian Aboriginal custodianship of Aboriginal cultural heritage and decision-making concerning any impacts on this heritage.
- (c) Clearly linking all the TPPs to the objectives of the RMPS, and most particularly, the objectives concerning sustainable development and maintaining ecological processes and genetic diversity (this is discussed in further detail with respect to the Sustainable Economic Development TPP below).
- (d) Clarifying how the TPPs link to and support the objectives of existing State Policies. For example, the Environmental Values TPP relating to Waterways, Wetlands and Estuaries does not explicitly mention or link to the State Policy on Water Quality Management. In that State Policy, there are explicit requirements for consideration of Protected Environmental Values, Water Quality Objectives, the control of erosion and stormwater runoff from land disturbance, and best practice environmental management in planning schemes and related decision-making, yet these matters are not mentioned (or scarcely mentioned) in the TPPs. By failing to deal with these issues and by failing to provide strategies or implementation guidance consistent with the State Policy, this TPP arguably fails to comply with s12B(4) of the *Land Use Planning and Approvals Act 1993*. It also fails to provide for the human right to clean, safe and sufficient drinking, irrigation and recreational water.
- (e) Acknowledging that, typically, overburdened people and communities are the least able to participate in standard-form planning consultation processes, and that further support, such as resources in other languages, drop-in sessions (where planners meet face-to-face with communities), and strategic outreach to community groups or leaders may be required to ensure that these communities can meaningfully engage with land use planning.

- (f) Clarifying the drafting of many of the strategies in the TPPs to ensure they use plain English, are easily interpreted, and do not introduce multiple competing concepts at once. By way of example, the following non-exhaustive list of clauses lack clarity due to their drafting: in the Environmental Values TPP, clauses 2.1.3 (4), 2.1.3 (8), 2.1.3 (9), 2.1.3 (10), 2.1.3 (12), 2.2.3 (2); in the Sustainable Economic Development TPP clauses 4.2.3 (5), 4.2.3 (6), 4.4.3 (1), 4.4.3 (5); in the Physical Infrastructure TPP, clause 5.4.3 (11); in the Cultural Heritage TPP, clauses 6.0.1, 6.1.3 (4); and within the Planning Processes TPP, clauses 7.3.3 (3), 7.3.3 (5).
- (g) The provision of more definitions of key terms used in the TPPs in the glossary. Terms and phrases used in the TPPs without any clear meaning or definition include “regional settlement hierarchies”, “settlement hierarchy”, “structure plan”, “identified settlements”, “peri-urban”, “high biodiversity values”, “offset”, “reserve objectives”, “retreat pathways”, “viable ecological processes”, “early action”, “endangered ecosystems”, “significant landscapes”, “scenic areas”, “scenic corridors”, “identified values”, “apply climate change adaptation responses through statutory provisions”, “planned retreat”, “activity centre hierarchy”, “last mile”, “mode choice”, and “modal shift”.

Recommendation 1: The draft TPPs, be significantly clarified and strengthened, and EDO’s recommendations on TPP topics and issues and implementation guidelines outlined in **Appendix 1** be adopted.

1.1 Planning for climate change

As set out in EDO’s submission in response to Tasmanian Planning Policy Scoping Paper,⁹ anthropogenic climate change is having significant impacts in Australia and across the globe. Because of these impacts, Tasmania will experience higher average temperatures all year, sea level rise, increase in extreme rainfall events and flooding but a decrease in rainfall in spring and with the possibility of decreased rainfall in autumn and summer.¹⁰ Given these impacts, EDO considers it imperative that lutruwita/Tasmania via its land use planning instruments mitigates greenhouse gas (**GHG**) emissions and adapts.¹¹

Though EDO is supportive of the inclusion of climate change across all TPPs, EDO still considers the decision to only address climate change across relevant planning policies on different topics via a “climate change statement” instead of a standalone TPP to be inadequate given the severity of impacts climate change poses lutruwita/Tasmania. **It is strongly recommended that climate change should form a standalone TPP.**

In making this recommendation EDO relies on the following:

- (a) EDO previously submitted that 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

⁹ EDO, *Submission in Response to Tasmanian Planning Policy Scoping Paper* (2021) 5. https://www.justice.tas.gov.au/_data/assets/pdf_file/0007/640537/Tasmanian-Planning-Policies-Scoping-Paper-Submissions-61-80-reduced.pdf

¹⁰ Ibid.

¹¹ Ibid 6.

change adaptation. It also exacerbates the risk that potential synergies and conflicts between mitigation and adaptation goals, or indeed between these goals and other objectives of TPPs could be overlooked.”¹² EDO does not consider that the inclusion of the climate change statements in their current form addresses these issues. It remains the case that climate change statements act as standalone statements, without any overarching means of ensuring they are consistent and or addressing conflicts between mitigation and adaptation goals. EDO considers that only a climate change TPP could address these issues.

- (b) The draft climate change statements are broad and aspirational, without the objectives and specific, detailed strategies that are provided for other topics in the TPPs. By way of example, the draft climate change statement contained at 2.0.2 of the draft Environmental Values TPP lists four broad points about how the TPP seeks to address the impacts of climate change in respect of lutruwita/Tasmania’s environment. Each of these points is vague – for instance, “enabling retreat pathways for ecosystems” – and is non-mandatory. Furthermore, even where aspirations in the climate change statements may have found their way into the strategies of the TPPs, they remain vague and non-mandatory. For example, clause 2.1.3 (12) of the Environmental Values Draft TPP under the sub-topic of Biodiversity states “Identify and enable retreat pathways for endangered ecosystems in coastal zones”. EDO considers that a climate change TPP must be incorporated into the draft TPPs to provide sufficiently detailed objectives and strategies of stronger, mandatory to enable the impacts of climate change to be addressed in the TPPs.
- (c) EDO reiterates its previous submission on the scope of the TPPs that a stand-alone climate change TPP is needed to:¹³
- i. explicitly recognise the soon-to-be legislated GHG emissions reduction target and any:
 - Climate Action Plan (**CAP**);
 - State-wide climate change risk assessments (**CRA**); and
 - Sector-based emissions reduction and resilience plans (**Plans**) created under the Climate Change (State Actions) Act 2008; and
 - ii. Provide clear guidance on how GHG emissions reduction target, the CAP, CRA and Plans are to be implemented, where appropriate through RLUss, SPPs, or LPSs.
- (d) Without being incorporated into a standalone TPP there is no opportunity for a specific implementation guideline to be produced for climate change. While EDO notes there are currently very few implementation guidelines for the TPPs, each of the TPPs has a blank section allowing for future provisions to be incorporated. Given the generality of the climate change statement, it can be expected that any future implementation guidelines for the draft TPPs will not include implementation guidelines concerning climate change. Without an implementation guideline specifically related to climate change, the current draft TPPs

¹² Ibid.

¹³ Ibid 5

will not be able to guide how those matters set out in (c) above are to be implemented through RLUS and SPPs, and LPSs.

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

Recommendation 3: All the TPPs need to explicitly incorporate clear and mandatory strategies around climate change adaptation and GHG mitigation and provide express implementation guidelines in line with legislated targets, climate risk assessments, and sectorial plans.

1.2 Sustainable development

The TPPs must seek to further the objectives of the LUPA Act and the RMPS objectives.¹⁴ 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 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 EDO acknowledges that the topic “economic development” has been amended to “sustainable economic development” in the draft TPP, EDO considers that the inclusion of “economic” in sustainable economic development still fails to reflect the RMPS objectives and ensure that economic, social, and environmental considerations are appropriately balanced. The express inclusion of “economic” continues to give added weight to this consideration. As was noted in EDO’s previous submission on the scope of the TPPs,¹⁵ paragraph (d) of the RMPS objectives expressly notes that “facilitation of economic development” must be in accordance with the objectives outlined in paragraphs (a), (b) and (c). EDO considers the term “sustainable development” most appropriately reflects that economic development is subordinated to the goal

¹⁴ LUPA Act, s 12B(4).

¹⁵ EDO’s previous submission (n 9), 7.

of sustainable development in the RMPS objectives and that it should “only be facilitated where it is sustainable and encourages public involvement in the management of our shared resources.”¹⁶

EDO reiterates that this approach is consistent with the Premier’s Economic and Social Recovery Advisory Council (**PESRAC**) recommendation for a “consistent and coordinated government approach to sustainability”.¹⁷ While EDO acknowledges that PESRAC’s recommended “Sustainability Strategy” is a “separate project to the TPPs”,¹⁸ we note that in response to PESRAC recommendation (38) that “the State Government should develop a sustainability vision and strategy for Tasmania, with ambitious goals, and concrete targets and actions”, it was advised that “The draft TPPs support sustainability principles that are applied through the strategies that will support, where relevant, the sustainability vision and strategy”.¹⁹ Given PESRAC recommends the sustainability strategy should be “aligned with the United Nations Sustainability Development Goals (**UNSDGs**)”²⁰ it is clear that the Sustainable Development TPP (and all TPPs) should also align with these goals.

EDO does not agree that the LUPA Act precludes the alignment of the TPPs with the UNSDGs.²¹ Indeed, the history of the development of the LUPA Act and the RMPS objectives, including sustainable development, demonstrate their clear nexus with the UNSDGs. The RMPS objectives were developed to reflect the ecological sustainability guidelines recommended by Australian jurisdictions in the National Strategy for Ecologically Sustainable Development (**NSESD**)²² and later adapted in the Council of Australian Governments’ Intergovernmental Agreement on the Environment (**IGAE**) (to which Tasmania is a signatory).²³ The NSESD and the IGAE were, in turn, implemented to give effect to the Rio Declaration on the Environment and Development and Agenda 21.²⁴ The UNSDGs arose from the Rio +20 conference in 2011, and the Agenda 2030 resolution of the UN General Assembly in 2015 (which was adopted by Australia), both of which built upon the Millennium Development Goals and Agenda 21 before them. Accordingly, EDO considers that it would be entirely consistent with the LUPA Act and the RMPS objectives to align both the Sustainable Development TPP, and the draft TPPs more generally, with the UNSDGs.

¹⁶ Ibid.

¹⁷ Ibid 8.

¹⁸ See comments in State Planning Office, *Tasmanian Planning Policies: Report on draft TPP Scoping Consultation* (Department of Premier and Cabinet, March 2022) 9.

¹⁹ Department of Premier and Cabinet, *Draft Tasmanian Planning Policies: Supporting Report for Consultation* 15.

²⁰ Premier’s Economic & Social Recovery Advisory Council, *Final Report* (Department Treasury and Finance, March 2021) 69, accessed at

https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0011/283196/Final_Report_WCAG2.pdf.

²¹ See comments in State Planning Office, *Tasmanian Planning Policies: Report on draft TPP Scoping Consultation* (Department of Premier and Cabinet, March 2022) 9.

²² Ecologically Sustainable Development Steering Committee, *National Strategy for Ecologically Sustainable Development* (Report, December 1992).

²³ Council of Australian Governments (COAG), *Intergovernmental Agreement on the Environment* (1992) (*IGAE*), accessed at: <http://www.onlyoneplanet.com/igae.htm>.

²⁴ See Information Provided by the Government of Australia to the United Nations Commission on Sustainable Development Fifth Session 7-25 April 1997 New York, accessed at:

<https://www.un.org/esa/earthsummit/astra-cp.htm>

EDO notes that the Tasmanian Government State Planning Office said that a “supporting report” would be produced to demonstrate “alignment [of the TPPs] with the UNSDGs”.²⁵ For the following reasons, EDO’s view is that this is not a satisfactory or useful substitute for the express alignment of the TPPs with the UNSDGs:

- (a) Firstly, no details have been provided about the “supporting report”. If it was intended that alignment with the UNSDGs be addressed in the *Draft Tasmanian Planning Policies Supporting Report for Consultation*, that has not occurred.²⁶
- (b) Secondly, on the assumption a “supporting report” is produced, it is unclear what the response would be to any inconsistency between the TPPs and UNSDGs that is uncovered.

Recommendation 4: Replace the proposed topic heading of “Sustainable Economic Development” TPP with “Sustainable Development”.

Recommendation 5: Ensure issues covered by all TPPs, including the Sustainable Development TPP, align with the UN Sustainable Development Goals.

2. Proposed structure of TPPs

EDO reiterates its position that the structure of the TPP must include a component called “performance measures” that provides a clear mechanism to measure the achievement of the objectives outlined in the TPP. EDO notes that the State Planning Office’s reason for not including this component is that: “There is no adequate data to use as benchmarks to accurately reflect the aspirational targets being set by the TPPs and therefore no way to meaningfully measure their success. Legislative review is however required.”²⁷ EDO’s previous submission provided three clear examples of performance measures each with measurable outcomes that could be measured using existing available data sources such as statistics compiled by the Forest Practices Authority, the Tasmanian Planning Commission under State of the Environment reporting, and/or the Tasmanian and Commonwealth Governments

It is a matter of good governance that where governments enact policies, there must be a means of examining the effect and performance of the policies to ensure they are effectively operating and fulfilling their intended purpose. Each TPP carries detailed objectives, which EDO is broadly supportive of. Given these objectives are included to ensure the TPP achieves certain outcomes, the achievement of such outcomes must be measured. This is especially the case given that the LUPA Act requires a five yearly review of the TPPs and their implementation. It is unclear to EDO how such reviews can be accurately undertaken without assessing whether certain performance markers/achievements have been met.

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

²⁵ See comments in State Planning Office, *Tasmanian Planning Policies: Report on draft TPP Scoping Consultation* (Department of Premier and Cabinet, September 2022) .

²⁶ Aside for reference to the UNSDGs in the Glossary, no other reference is made in the State Planning Office, *Draft Tasmanian Planning Policies Supporting Report for Consultation* (Department of Premier and Cabinet, March 2022) 4.

²⁷ State Planning Office, *Tasmanian Planning Policies: Report on draft TPP Scoping Consultation* (Department of Premier and Cabinet, March 2022) attachment 1 to appendix A, 33.

APPENDIX 1 – EDO recommendations on specific TPP topics, issues and implementation guidelines

TPP Topic	Issues (to be addressed under each TPP Topic)	EDO's Recommendations
Settlement	<ul style="list-style-type: none"> • Growth • Liveability • Social infrastructure • Settlement Types • Housing • Design 	<p>Access to affordable and sustainable housing is a critical feature of environmental justice and the human right to a healthy environment. However, as previously noted by EDO²⁸ despite being required under Action 2 of <i>Tasmania's Affordable Housing Action Plan 2019-2023</i>, dated March 2019,²⁹ affordable housing has not been sufficiently addressed by the proposed TPP. EDO considers the provision of affordable/social housing requires specific planning policy guidance. Expanding the availability of housing generally via settlement growth or new housing developments does not guarantee improved affordability of housing nor does it ensure the provision of social housing. EDO notes that given population growth can be expected to remain high for the foreseeable future, any provision of new housing stock will likely be absorbed by increasing overall demand for housing.</p> <p>EDO recommends that affordable and social housing be included as a separate issue to be addressed under the Settlements TPP with specific strategies indicating how social and affordable housing can be factored into all planning and decision-making concerning both greenfield and infill developments.</p> <p>EDO further recommends that a percentage target of affordable and/or social housing should be included in the implementation guideline for all new supplies of land, including infill, reuse and greenfield sites as required to be facilitated by 1.5.3 (3) <i>Strategies</i> under the Housing sub-heading in the draft TPP. This target should be as close to the proportion of the amount of housing that will need to be constructed that is social and affordable housing to meet projected Tasmanian demand.</p>

²⁸ See EDO's previous submission (n 9), 11.

²⁹ Accessed at https://www.communities.tas.gov.au/_data/assets/pdf_file/0027/31698/TAH_Action-Plan-2019-2023.pdf.

<p>Environmental Values</p>	<ul style="list-style-type: none"> • Biodiversity • Waterways, wetlands, and estuaries • Geodiversity • Landscape values • Coasts 	<p>EDO recommends that the TPP contain the following issues:</p> <ul style="list-style-type: none"> • <u>Conservation</u> - which would address lutruwita/ Tasmania’s national parks, reserves, and land subject to conservation covenants or Part 5 agreements. EDO notes no clear response was provided in the <i>Tasmanian Planning Policies: Report on draft TPP Scoping Consultation</i> – why the recommendation for the inclusion of conservation as an issue should be rejected. EDO considers that the TPP should specifically focus on conservation and ensure that not only is the conservation of environmental values encouraged via the TPP but ensure that conservation efforts are not undermined or harmed by adverse development. • <u>Rehabilitation & restoration</u> – 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. EDO disagrees with the assertion that the planning system can do very little to influence ecological restoration. For instance, the TPP can include strategies for: <ul style="list-style-type: none"> ○ ensuring development that impacts natural ecological processes which contribute to rehabilitation and restoration is avoided; and ○ ensuring development is undertaken in such a way that maximises the potential for ecological rehabilitation and restoration. <p>We further recommend that the drafting of the TPP be amended such that:</p> <ul style="list-style-type: none"> • in clause 2.0.1 there is recognition that we all rely on a healthy environment and that it ultimately underpins <i>all</i> aspects of our economy and lifestyle; • noting that the TPPs (and all land use planning under the LUPA Act) ultimately sit within the RMPS, clarification is made of the statement “A significant proportion of Tasmania’s environmental values are protected by mechanisms outside the planning system”. In EDO’s view, land use planning is the primary way in which the identification of
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		<p>environmental values and measures for their protection, rehabilitation or restoration can be provided within the RMPS.</p> <ul style="list-style-type: none"> • consistent with the RMPS objectives which require the avoidance, remediation or mitigation of “any adverse effects of activities on the environment” (emphasis added), the principles listed in clause 2.0.1, and the strategies throughout the TPP, recognise and provide adequate protection not only to “significant” environmental values but all environmental values.
Environmental Hazards	<ul style="list-style-type: none"> • Bushfire • Landslip • Floodings • Coastal hazards • Contaminated Air and Land 	<p>EDO supports the decision to drop the distinction between human-made and natural hazards.</p> <p>EDO continues to recommend that the draft TPP includes “extreme heat and heatwaves” as an issue to be addressed as these are likely to become more common in future because of climate change. EDO notes that no response was given to this recommendation, other than to state that it is “not specifically addressed”.³⁰ It is unclear to EDO why it is not included as an issue in the TPP and reiterates this recommendation.</p> <p>EDO recommends that clearer hazard planning requirements be included in the strategies to deal with the anticipated impacts of climate change, and appropriately manage adverse impacts of environmental hazard reduction. These requirements should ensure:</p> <ul style="list-style-type: none"> • new development or increased intensity of development or use is limited in hazard zones, such as zones prone to bushfires and coastal erosion and vulnerable to sea-level rise, especially where those environmental hazards are expected to worsen with climate change; • new development or increased intensity of development or use does not exacerbate hazards expected to worsen with climate change. For example, new developments and

³⁰ State Planning Office, *Tasmanian Planning Policies: Report on draft TPP Scoping Consultation* (Department of Premier and Cabinet, March 2022) attachment 1 to appendix A, 27.

		<p>uses must avoid contributing to urban heat island effects which will intensify the dangers of extreme heat and heat waves;</p> <ul style="list-style-type: none"> • the environmental and biodiversity impacts of environmental hazard mitigation works, such as clearing for bushfire mitigation, and coastal protection works, are properly considered and weighed against the expected benefits of those works; • new development and uses or increased intensity of development or use is better adapted to the future effects of climate change worsened/exacerbated environmental hazards and their impacts; and • guidance is provided for a planned retreat from areas where environmental hazards are modelled to be unmanageable.
Sustainable Economic Development	<ul style="list-style-type: none"> • Agriculture • Extractive Industry • Tourism • Renewable Energy • Industry • Business and Commerce • Innovation and Research 	<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 the submission above. Associated amendments should be made to the content of the strategies and implementation guidelines outlined in the TPP to reflect the priority for sustainability in all issues addressed.</p>
Physical Infrastructure	<ul style="list-style-type: none"> • Provision of Services • Energy Infrastructure • Roads • Transport Modes • Ports and Strategic Transport Networks 	<p>EDO notes the revision of the originally proposed TPP scope of “Infrastructure to support the economy and create liveable communities” to “Physical Infrastructure” in the draft TPP, with some of the issues contained under the original topic moved elsewhere. Nevertheless, EDO recommends that the topic be titled “Sustainable Physical Infrastructure” and that the content of the TPP be updated to reflect the critical need for infrastructure to be sustainable, not contribute to or lock in GHG emissions, and be adaptive and resilient to a rapidly changing climate.</p>

		<p>EDO reiterates its position that this would better align the TPP to the RMPS objectives and take account of PESRAC’s recommendations and the UNSDG.³¹ 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"> • “transport modes” might instead be “sustainable transport modes”; and • “energy infrastructure” might instead be “sustainable energy infrastructure”.
Cultural Heritage	<ul style="list-style-type: none"> • Aboriginal Cultural Heritage • Non-Indigenous Cultural Heritage 	<p>While EDO supports the integration of Aboriginal Heritage into the Cultural Heritage TPP, we strongly recommend that the TPP:</p> <ul style="list-style-type: none"> • recognises Aboriginal cultural heritage in landscapes (not just sites and objects); • reflect in its strategies Tasmanian Aboriginal people’s ongoing connection to and reliance on Country and Sea Country • provides clear, mandatory strategies and implementation guidelines to spell out how the SPPs, Local Provisions Schedules (LPSs) and RLUSs will provide for Tasmanian Aboriginal custodianship of Aboriginal cultural heritage and free, prior and informed consent decision-making concerning any impacts on this heritage
Planning Processes	<ul style="list-style-type: none"> • Consultation • Strategic Planning • Regulation 	<p>EDO does not support the change from the TPP scoping document for a “Public Engagement” TPP to “Consultation” in the draft TPPs. This is because “consultation” denotes a lower level of active involvement of the lutruwita/Tasmanian community in planning decisions that affect them. In line with our comments earlier in this submission, EDO recommends the “Consultation” TPP be rebadged as “Public Engagement”, and that it provide real strategies and implementation guidelines relating to how planning authorities and decision-makers can effectively engage with the lutruwita/Tasmanian community, and most especially, those in</p>

³¹ See EDO’s previous submission (n 9), 12.

		<p>the community that are overburdened with the consequences of climate change, and environmental harms.</p> <p>EDO reiterates its previous recommendation in response to the scope of the TPPs, that issues relating to the exercise of appeal and civil enforcement rights should be included in the TPP as means of ensuring public engagement. While appeal and civil enforcement rights are referred to in the LUPA Act, this issue should also be contained in the TPP and should include references ensuring the transparency of decisions and access to information about proposed developments. Such mechanisms are essential tools to ensure a human right to a healthy environment and environmental justice.</p> <p>EDO recommends that an issue of civil enforcement and appeal rights be included in the TPP.</p>
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